Concept of public administration in the field of urban planning activities
With support of “Integrated urban development in Ukraine”
Content

Concept of public administration in the field of urban planning activities ........................................... 5

Infographics ........................................................................................................................................ 28

Infographic 1. Stages of the development of the Concept of Public Administration in the urban planning activities .......................................................................................................................... 29
Infographic 2. Analytical notes based on the urban planning cycle ...................................................... 30
Infographic 3. Purpose, tasks and terms of the Concept implementation ............................................. 31
Infographic 4. Key proposals of the Concept. Proposals whose implementation requires mainly regulatory legal settlement ........................................................................................................ 32
Infographic 5. Key proposals of the Concept. Proposals whose implementation requires mainly organizational measures ............................................................................................................... 33
Infographic 6. Information integration and access to information .......................................................... 34
Infographic 7. Land relations in spatial planning and construction ......................................................... 35
Infographic 8. Urban planning ............................................................................................................... 36
Infographic 9. Urban planning documentation ...................................................................................... 38
Infographic 10. Urban planning documentation (continuation) ............................................................ 39
Infographic 11. Local rules of the development regulation and zoning .................................................. 40
Infographic 12. Preservation of environment and urban development ................................................ 41
Infographic 13. Cultural heritage preservation ...................................................................................... 42
Infographic 14. Technical regulation .................................................................................................... 43
Infographic 15. Technical supervision for construction ......................................................................... 45
Infographic 16. Permitting system ........................................................................................................ 46
Infographic 17. State Architectural and Construction Control and Market Supervision ....................... 47
Infographic 18. Self-regulatory organizations (SRO) in the field of urban development. Professional certification of responsible performers ................................................................. 48
Infographic 19. Decentralization of public administration in the field of urban development ............... 49
Infographic 20. Risk insurances in the construction field ....................................................................... 50
Infographic 21. Public control .............................................................................................................. 51
Infographic 22. Professional and academic education, advanced training ............................................. 52
Infographic 23. Public procurement procedures ............................................................................... 53
Infographic 24. Pricing in construction ............................................................................................... 54
Infographic 25. Building information modeling .................................................................................. 55

Analytical Notes (short titles) ............................................................................................................. 56

Analytical Note 1. Principles and basis of the Concept ......................................................................... 57
Analytical note 2. Draft Urban Development Code taking into account the proposals of the integrated development of cities GIZ to the draft law 6403 ...................................................................... 63
Analytical note 3. Land allocation and land use in construction ............................................................. 80
Analytical note 4. Urban planning documentation ................................................................................ 83
Analytical note 5. Zoning and types of urban plans ............................................................................. 92
Analytical note 6. Preservation of the environment and construction .................................................... 95
Analytical note 7. Preservation of historical and cultural heritage .......................................................... 98
Analytical note 8. Information integration. Urban planning Cadastre ........................................113
Analytical note 9. Construction permit procedures, problems. Reengineering of the permit procedures.................................................................12918
Analytical note 10. Development of technological support for the smart city environment, BIM-technologies, geoinformation systems ..........................................................13229
Analytical Note 11. Basicorganisations. Reform, new forms of SBC ........................................1392
Analytical Note 12. Risk insurance in construction ................................................................139
Analytical note 13. State architectural and construction control and supervision, market supervision). .................................................................150
Analytical Note 14. Public control.....................................................................................158
Analytical Note 15. Development and empowerment of self-regulatory organizations........176
Analytical Note 16. Personalization and corporatization of responsibility......................198
Analytical note 17. The unity of normative regulation during the entire life cycle of construction objects - from planning the territory to demolition of the object........................................210
Analytical note 18. Professional and academic education in the field of urban development....216
Analytical Note 19. Strategies, programs, projects, plans and agreements on integrated spatial development of territories on the base of partnership at the national, regional and local levels. ..................................................................................223
Analytical Note 20. Road map: Ways of legislative, normative and technical regulation of the proposed changes. ..............................................................231
Analytical note 21. Glossary...............................................................................................237
Analytical note 22. Public procurement procedures...............................................................259
Concept of public administration in the field of urban planning activities
CABINET OF MINISTERS OF UKRAINE

DECREE

dated _______ 2019 p. N.o _______

Kyiv

On approval of the Concept of public administration in the field of urban planning activities for 2019-2030

1. To approve the Concept of public administration in the field of urban planning activities for 2019-2030 (hereinafter - the Concept), which is attached.

2. The Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine together with the Ministry of Justice of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Economic Development and Trade of Ukraine, the Ministry of Energy and Coal Industry of Ukraine, the Ministry of Infrastructure of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Health of Ukraine, the Ministry of Culture of Ukraine, the Ministry of Ecology and Natural Resources of Ukraine, the Ministry of Agrarian Policy and of Ukraine’s contentment, the State Service of Ukraine for geodesy, cartography and cadastre, the State Architectural and Construction Inspectorate of Ukraine, the State Agency for Highways of Ukraine, the State Agency for E-Government of Ukraine, the State Agency for Energy Efficiency and Energy Saving of Ukraine, other interested central and local authorities of executive powers to develop and to submit within a month from the date of endorsement of the Concept in the prescribed manner Ministers do not have a draft action plan to implement the concept approved by this decree.

Prime Minister of Ukraine V. GROISMAN
General provisions

Improving of the systemic and holistic basis for the effective functioning of public administration in the field of urban planning activities consists in creating a systemic legal basis for the development of urban planning, creating a safe and comfortable environment for the population, overcoming corruption in the public sector.

One of the priority tasks of developing of the Concept of public administration in the field of urban planning activities for 2019–2030 (hereinafter referred to as the Concept) is to meet the development needs of the economic and social sectors in products and services of enterprises and organizations in the construction industry.

State policy in the construction industry should be directed at ensuring high standards of living, effective financial and economic, technical, organizational and legal mechanisms to improve the socio-economic and spatial development of the state, regions and settlements.

The concept takes into account that sectorial construction management requires consideration of the entire set of issues related to spatial development and planning of territories (at national, regional and local level) and construction as a result of all spatial planning entities’ activities.

When developing draft laws of Ukraine and other regulatory and legal acts, the Concept stipulates compliance with following principles:

- transparency and availability of information on urban planning activities for all its participants;
- increasing the role of the public in decision-making processes during the implementation of urban planning activities;
- prioritizing the preservation of cultural heritage and the environment;
- elimination of corruption risks;
- subsidiarity;
- deregulation and maximum integration and automation of permitting procedures in construction.

The concept was developed in accordance with paragraph 70 of the Anti-Corruption measures in ministries, departments, other central executive authorities, approved by the Order of the Cabinet of Ministers of Ukraine dated 5 October 2016 No. 803 "Some issues of corruption prevention in ministries and other central executive authorities."

Consistency with strategic documents

The concept is based on:
- New Urban Development Program (Habitat III, Quito, Ecuador, October 2016);
- The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, was ratified by the Law of Ukraine No. 1678-VII of September 16, 2014;
- Global Sustainable Development Goals (2015–2030), approved at the UN Summit on September 25, 2015;
- Agreement of the International Union of Architects on recommended standards of professionalism in architectural practice, approved by the XXI Assembly of the International Union of Architects on June 28, 1999;
- Agreement on the coalition of deputies of the eighth convocation "European Ukraine" (2014)
- Decree of the President of Ukraine dated January 12, 2015, No. 5/2015 "On the Sustainable Development Strategy" Ukraine - 2020 ";
- Resolution of the Cabinet of Ministers of Ukraine of June 24, 2016, No. 474-p "Some issues of reforming of the state administration of Ukraine";
- Memorandum of Cooperation between the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine and the State Agency for Land Resources of Ukraine dated September 15, 2014;

Backgrounds of the Concept Development

The transformations that have taken place in Ukraine in recent years in the field of spatial development and construction, have given impetus to attracting investments, while significantly have reduced society trust to authorities during their implementation of urban planning policies, have not contributed to rising of living standards, and have caused reducing the quality of living in settlements and distortion of the historical and natural environment.

The concept defines main priorities for the formation of public administration and mechanisms of legislative and legal changes in the field of spatial planning of territories and construction, and civil society involvement to the management of sustainable development of territories.

The purpose and timing of the Concept implementation

The purpose of the Concept is to create the necessary organizational, legal and institutional prerequisites for reforming the construction industry through the public administration system.

The main objectives of the Concept implementation directed at ensuring:

• sustainable development of territories taking into account state, public and private interests;
• reforming of the governance structure in the urban development field;
• clarity and unambiguity of the urban planning legislation;
• maximum automation of permitting procedures;
• increasing the competence and competition of participants of the construction market;
• increasing the role of civil society in decision making in the spatial development field;
• preservation of a full-fledged living nature, environment and cultural heritage when locating construction objects;
• effective control and supervision in the construction field, accountability mechanisms for violation of the urban planning (spatial planning) legislation, transparency and publicity of permitting procedures,
• creation of a system of urban planning monitoring;
• creation and development or urban planning cadaster;
• increasing the role of self-regulatory organizations in the field of urban planning (spatial planning).

The implementation of the Concept is envisage for the period up to 2030 and will be implemented step by step through the development and implementation of the Action Plan.

Analysis of causes of problems and the rationale for their solution

Amendments to the legislation of recent years were directed at solving individual problems of construction and related industries and did not have an integrated nature and the strategic implementation plan. Inconsistency of reforms in related sectors had negative consequences.

Ignoring of public needs, aimed at creating a comfortable living environment, has
led to significant social tensions and increased crisis of trust to the government.

Deregulation has significantly reduced the state’s own institutional capacity to exercise control over the development of settlements and territories beyond their borders.

The decentralization reform aimed at implementation of new powers of local self-governments for territorial management is moving slowly and is not fully implemented due to the lack of urban planning documentation (spatial planning documentation), lack of experience, lack of qualified personnel and difficult access to information.

The level of informal influence of business on decision-making by the government remains extremely high, which makes it difficult to implement necessary changes.

There is no public access to necessary information on urban planning, the confusion of permitting procedures, opposition from the public and non-competitive environment has led to numerous abuses, that make the urban planning field investment unattractive.

During next period of construction industry reforming, public administration will be carried out based on followed system challenges:

• increasing global competition;
• a new tide of technological changes that enhances the role of innovation;
• insufficient role of human capital assets as the main factor of economic development;
• the need to reorient financing from budget to investment;
• the presence of administrative barriers, corruption risks, insufficient development of transport and engineering infrastructures, as well as a shortage of qualified scientific, engineering and working personnel.

The main causes of problems that are defined by the Concept are:

1) in the legal regulatory framework:
• non-codification of the urban planning legislation, discrepancy of its norms between themselves and with legislations from other fields;
  • the inconsistency of definitions;
  • excessive discretionary powers of authorities and officials determined by legislative norms;
  • absence or lack of responsibility for non-compliance with laws and by-laws;
  • discrepancy of a number of by-laws of executive authorities and local self-governments with the requirements of laws;
  • ineffective state and public control the implementation of powers by authorities and local self-governments;

2) in the information base for the unity and publicity of procedures in the field of spatial planning, technological support for the development of the urban planning field:
• an imperfect legislative base for the creation and maintenance of the urban planning cadastre
  • lack of the national infrastructure of geospatial data and unified cartographic basis, the absence of a unified state geospatial system that will unite all sectorial cadastres;
  • lack of single interoperable requirements on the spatial data creation;
  • non-performance of the norm on the transition to the mandatory use of GIS technologies in spatial planning;

3) in the land relations, spatial planning and construction:
• inconsistency of spatial planning and land legislation on establishing and changing of the designed assignment of land plots, establishing and changing of boundaries of administrative and territorial units, simplifying the transfer to the ownership (use) of land plots under immovable property;
  • non-transparency of the formation of state-owned and communal land plots and their disposal, closeness of data for public control at all its stages;
  • the unsettled issue for the cost compensation of land plots, buildings and structures due to changes that took place after the approval of urban planning documentation;

4) in the process of urban planning documentation development:
• lack of interest of local authorities in the development of urban planning documentation;
• possibility to approve spatial planning documentation without its promulgation that leads to offences by certain participants involved in the construction process;
• ignoring the norms of the legislation regarding the promulgation of approved urban planning documentation, which leads to a violation of requirements of the highest level for urban planning documentation in the interests of some participants of the construction market;
• lack of legislative regulation for the development of urban planning documentation for amalgamated communities;
• there is no requirement at the legislative level to develop action plans for the implementation of spatial planning documentation at the local level, and respect the mandatory sequence of implementation of design solutions;
• legislative uncertainty of taking into account the interests of adjacent territorial communities during the development of urban planning documentation;
• lack of requirements for carrying out expertise of spatial planning documentation at the local level, except for a master plan;
• the unsettled issue of approval, supervision under the development and implementation of spatial planning documentation; there is no a clear list of subjects of authority that have to approve the documentation;

5) in the field of environmental protection and formation the safety environment for humans:
• dub of procedures of the expertise of construction projects and expertise of assessment of the impact on the environment;
• non-proper access of citizens to environmental information;
• the unsettled procedure of the strategic environmental assessment (SEA) with expertise procedure for construction projects;
• the legislative unsettled issue of handling household and industrial wastes, ensuring energy efficiency of the infrastructure of settlements, reducing emissions of harmful substances into the atmospheric air;

6) in the field of preservation and use of cultural heritage:
• there is no norm the development of historical and architectural basic plan in the monument protection legislation;
• there is no clear imperative requirements in the legislation that allows to accept master plans of historic populated areas without a historical and architectural basic plan and to ignore the requirements of legislation in the field of the protection of cultural heritage when building up territories;
• inconsistency of urban planning and monument protection legislation, which allows to start construction on the basis of documents that give the right to perform construction work, but without obtaining approvals and permits from the authorized body for the protection of cultural heritage;

7) in technical regulation in the field of urban planning:
• the outdated system of technical regulation in construction, based on the analogy of the European model, which operated until 2011;
• discrepancy of the national technical regulation of construction products, buildings and structures to the European Regulation (EU) No. 305/2011;
• there is no effective mechanism for confirming the fulfillment of basic safety requirements throughout the entire life cycle (from the idea to demolition);
• low percentage of harmonized standards with europenian standards;
• inefficiency of conformity assessment procedures (mandatory certification is abolished, voluntary certification is almost not used);
• low professional awareness with European norms (EN) and international (ISO) standards, in particular the Eurocode;
• corruption risks derived by the approvals of departures from building norms, the implementation of expertise and architectural and construction control, and do
not stimulate the development of the construction sector;

8) in the permitting system in the construction field:
   • urban planning restrictions and conditions are issued in the manual mode under the non-transparent procedure;
   • non-transparent procedure of cancellation of urban planning restrictions and conditions;
   • uncertainty of conditions and powers of local councils and their executive bodies on cancelation of urban planning conditions and restrictions illegally issued by subordinate bodies;
   • lack of legislative definition and a clear list of works referred to preparatory work;
   • there are no clear procedural rules in the legislation on issuing or cancelation of permits by the body of architectural and construction control and supervision;
   • lack of public registers of expert conclusions on project documentation for construction;
   • presence of corruption risks due to procedures of non-abiding of constructional norms, performance of expertise, architectural and construction control

9) in designing of construction objects:
   • voluntarily use of digital technologies (BIM and GIS) in the design, which greatly complicates putting on data on construction projects in the Urban Cadastre, the creation of the Smart City system
   • lack of public state bases or registers of previously provided approvals for departures from building norms, standards and rules;
   • insignificant amounts of fines provided for design and expert organizations, responsible performers of certain works (services) that do not depend on the class of consequences of the construction project and do not restrain the commission of violations;
   • abuse of the monopoly position by the subjects that provide technical conditions (TC) for the design of engineering networks and the connection of construction objects to engineering network;

10) in accompanied by construction: licensing of construction companies, and technical supervision:
   • failure to guarantee compliance with safety requirements during construction works and their quality by licensed construction companies in the exercise of author’s and technical supervision;
   • the procedure for issuing licenses and monitoring compliance with license conditions leads to corruption risks in the urban development field;
   • lack of procedures and specific conditions for attracting specialists to implement technical supervision of complex industrial or infrastructure facilities;
   • lack of an effective mechanism of financial responsibility (indemnification) for construction companies, persons responsible for author’s and technical supervision, other responsible executors of certain works (services);

11) in the state author’s and construction control, in the state author’s and construction supervision and market supervision:
   • the inability to effectively perform the functions of author’s and construction control due to the complexity of applying the procedure for the demolition of unauthorized construction objects or their restructuring, the insignificant amount of fines for violating legislation, building norms, standards and rules, as well as the passivity of law enforcement agencies, which makes it impossible to implement the principle of inevitability penalties for violation of urban planning legislation;
   • imperfect distribution of powers between local self-governments and the State Architectural and Construction Inspection by consequences classes of construction objects;
   • performance of architectural and construction control, where a significant amount of powers are discretionary;
   • the inability to inspect in the presence of authorized persons of a developer, documentation of non-admission for an inspection is not provided that allow a developer to avoid inspections without penalties;
• low level of professional competence of a significant part of inspectors of architectural and construction control bodies (especially at local levels), low level of wages of inspectors, does not provide high-quality personnel selection and is not able to perform functions of an anti-corruption guard in their work;

• lack of appeal procedures for pre-trial appeal of actions or inactions of state architectural and construction control bodies;

• unpredictability of author's and construction supervision over the activities of subjects of natural monopolies that provide technical conditions;

• non-promulgation of certificates of inspections and conclusions based on results of inspections within the framework of the state architectural and construction control and supervision,

• an inefficient and ineffective system for construction materials and construction equipment of market supervision in the construction field;

12) in the functioning of self-regulatory organizations:

• imperfection of legal regulation of delegation of powers to self-regulatory organizations to control the quality of products and works at construction sites;

• lack of authority of self-regulatory organizations to monitor the activities of certified professionals in accordance with the standards of self-regulatory organizations and deprivation of certificates;

• very high corruption risks of temporary delegation of authorities to self-regulatory organizations;

• lack of effective mechanisms for pre-trial settlement of disputes by self-regulatory organizations and regarding self-regulatory organizations;

• lack of guarantees by self-regulatory organizations for compliance with requirements of the law by their members, and responsibility for their actions / inaction in the urban development field;

13) in the insurance field of construction:

• lack of insurance of construction risks along with insurance control and supervision together with the system of technical control, supervision, assessment and confirmation of the compliance of objects with requirements of the law:

• unsettled insurance of construction and installation risks by the legislation in the construction field, which should be a mandatory requirement for participation in tenders and conclusion of construction contracts;

• the lack of the institution of the representative of the insurer at the construction site in law and in practice that level out the effectiveness of insurance contracts;

• lack of awareness of methods, types, procedure and benefits of risk insurance by participants of investment and construction activities;

14) in public participation in decision-making in the urban development field:

• there are no concepts, procedures and mechanisms for public control at the legislative level in the urban planning field;

• ignoring of public interests and human rights when planning and developing territories to ensure the interests of investors and to obtain super-profits;

• inconsistency of legislation governing the involvement of the public, and the lack of procedures for taking into account proposals for urban planning documentation;

• lack of real mechanisms of public influence on decision-making processes during public hearings or public consultations, involvement of the public at late stages, outdated forms of public participation in decision-making processes;

• lack of the public access to the full text of draft decisions in the urban planning field, non-publicity of decisions and documentation on spatial planning, lack of necessary public registries or not filling them out that significantly make the public control weaken or impossible;

• the inefficient work of advisory bodies and public councils, since the formation of the composition of these bodies is nontransparent and does not ensure their independence;

• lack of responsibility of bodies and officials for non-compliance with procedures of
public participation in decision-making processes;
  • inefficiency of the public inspectors’ institute in practice in the field of architectural and construction control, the lack of public control during inspections;
  • lack of funding for research and design institutes of a city-planning profile, lack of qualified scientists and personnel in construction specialties;
  • liquidation of higher educational institutions of I-III accreditation levels due to lack of funding;
  • the lack of an advanced training system according to European standards and corresponding amendments in legislative and regulatory requirements in the urban planning field;
  • lack of separate certification for restoration architects, which leads to a reduction in the quality of restoration projects and the loss of cultural heritage sites;
  • imperfection of qualification criteria for the selection of performers in the process of public procurement on the basis of the lowest price in the urban planning field;
  • the impossibility of applying the competitive dialogue procedure due to the list of works determined by the law, which does not include the development of urban planning and design documentation, scientific design documentation for the restoration of monuments of cultural heritage;
  • ignoring of legislative requirements for conducting architectural and urban planning contests, taking into account their results and the priority right for further design by their winners;
  • erroneous legislative non-assignment of the development of urban planning and scientific design documentation to the “works”;
  • outdated approaches to estimated pricing in spatial planning based on state resource norms with the absence of monitoring of market prices;
  • lack of application of the concept of life cycle costs: the cost of construction, maintenance and operation of facilities;
  • lack of comprehensiveness of accounting components when pricing investment costs: the cost of land plots, capital, financial and management services, tax remissions, and most importantly operating costs;
  • the use of local budgets for work, does not allow a reliable determination of their value at the early stages of design, distorts budget planning of capital expenditures;
  • incomprehensibility of the pricing system for foreign experts, which is not based on monitoring of market prices, and is unacceptable for foreign investors and donors;
  • there is no implementation of the full assessment concept of the object existence - WLA, which provides for a systematic account not only of all expenses, but also of the income and benefits associated with the acquisition of an immovable property during its service life;
  • regulation of the design and construction stages, on the one hand, and on the maintenance and operation, on the other hand, are carried out by mutually agreed documents;
  • implementation of life cycle management is not yet possible due to the lack of information about capital and operating costs at facilities, about the level of future costs of operating of facilities; lack of a convenient format for the presentation of complex information;
  • the lack of complete BIM information about the object does not allow to obtain
current project and operational documentation and its visualization for solving management tasks at any time during the life cycle;

• uncertainty at the level of legislation on the need for BIM for the public sector, the lack of funding for the European public sector network formation program that will disseminate the best BIM experience;

Ways and methods to solve the problem:

1) Regulatory legal measures
   • to develop and approve a codified (consolidated) law - the Spatial Planning Code of Ukraine in accordance with the principles of the Concept and to ensure compliance with the principles of anti-corruption policy;
   • to provide for consistency of urban planning Code of Ukraine with and integrated development approaches and to promote strengthening of communities as institutions of self-government;
   • in the final provisions of the Code, to establish clear dates for the entry into force of each norm, material and technical support of activities requiring budget expenditures, updating of urban planning documentation (spatial planning documentation), identifying features of construction projects initiated under the legislation that previously existed;
   • to harmonize planning (spatial planning) legislation and laws that regulate adjacent fields of law;
   • to revise sub-legal regulations in the field of planning (spatial planning), eliminate excessive powers (discretions), gaps, conflicts and corruption risks that can be eliminated within the powers of the relevant governing body;
   • to introduce effective legal mechanisms of state and public control over the implementation of the requirements of spatial planning legislation by the executive authorities and local governments;
   • to introduce monitoring of regulatory legal acts of all levels and provide for the abolition of those that were adopted in violation of the law and not made public in accordance with the law;

2) Information base for the unity and publicity of procedures in the field of urban planning (spatial planning), technological support for the development of urban planning activities
   • to ensure the creation of the Urban Cadastre, which should be the only universal public source of urban planning information, a platform for ensuring public discussions of drafts of urban planning documentation and a “single window” for the provision of all administrative services in the field of urban planning;
   • to introduce automation of administrative and permitting procedures (provision of urban development conditions and restrictions, preparation of applications and obtaining technical specifications, registration of documents giving the right to carry out construction works, etc.);
   • to ensure the creation of a holistic legal framework of functioning and information interaction of the Urban Planning, State Land Cadastres, the State Register of Real Estate Rights, Registers (Lists) of Cultural Heritage Objects, Environmental and Other Official Cadastres, Registers and Other Databases;
   • to define unified requirements to the format, creation, exchange, storage and correction of registry data, their technical and semantic interoperability, non-overlapping (non-dub) data harmonization in the corresponding electronic registries;
   • to complete the unification and consistency of state classifiers used in the field of urban planning and a single terminological apparatus in the field of urban planning (spatial planning);
   • to establish clear deadlines for the transition to operating electronic documents in the design, use of GIS and BIM technologies, the issuing of urban planning conditions and restrictions, registration of documents giving the right to perform construction work, automatically through the Urban Planning Cadastre;
   • to provide a complete transition to a single topographic basis in the state coordinate system.

3) Land relations in spatial planning and construction
   • to ensure the mutual integration of urban planning (spatial planning) and land
management documentation by legislatively ensuring their consistent development;
- to unify, as a single regulatory legal act, the classification of types of functional assignment of a territory, types of designed assignment of land plots, as well as buildings and structures;
- extremely simplify the procedure for the acquisition by owners of real estate of land plots of state and communal property at their market value, including with the possibility of installment payments;
- to change the designed assignment of land plots in order to bring it in line with the approved detailed plan of the territory without drawing up land management documentation on a declarative principle;
- the formation of land plots, as well as the establishment (change) of the designed assignment of land plots within settlements and for other spatial planning needs (to house buildings, structures, structures for any purpose, their complexes, linear engineering and transport infrastructure objects), with unconditional compliance with the requirements of spatial planning documentation;
- to detail at the legislative level the requirements for the use of land plots (their parts) on the right of public servitude to ensure the interests of the state, local government or the local population, does not provide for the withdrawal of land plots, as well as the placement of landscaping facilities, infrastructure, etc., including the procedure for determining fees for servitude;
- to ensure the publicity of land management documentation and land valuation, including permits, accompanying its development;
- to introduce the principle of "single touch", according to which the verification of land management documentation by the requirements of the legislation is carried out once at the stage of entering information about land plots in the State Land Cadastre, canceling some procedures for documentation approval, expertise, and issuance of special permits for the removal (transfer) of fertile soil layer;
• to make a transition to geo-information modeling and forecasting the development of a territory based on principles and models of spatial analysis;
  • to introduce mechanisms of state financial support for the development of urban planning documentation at the local level;
  • to ensure the practical implementation of the hierarchy principle of urban planning documentation (spatial planning) (urban planning documentation of the lowest level should take into account the requirements of urban planning documentation (spatial planning) of the highest level)
  • to ensure harmonization of urban planning documentation (spatial planning) of the regional and state levels among themselves on the principle of countercurrent - the need to make changes at the lowest level according to design decisions is considered as the must for making appropriate changes to the urban planning documentation of the highest level and vice versa;
  • to determine the General planning scheme for the territory of Ukraine as a basis for drawing up a strategic plan of the Cabinet of Ministers of Ukraine on the spatial development of the state, forming state requirements for the development of regions and communities, making decisive decisions on the placement of large investment projects in the regions, determining priorities for spatial development of certain sectors of the economic complex and resettlement;
  • to provide for the need for the customer of urban planning documentation (spatial planning) to coordinate the planning of territories on the border of territorial communities and the location of construction objects that influence the adjacent territorial community with local self-governments that represent the interests of adjacent territorial communities;
  • to establish that detailed plans of territories and the local rules for regulating the development are documents establishing the ways of implementing the provisions of the plans of amalgamated communities and master plans of settlements in terms of determining the urban planning conditions and restrictions on the development of land plots;
  • to determine that zoning plans (zoning) are not related to urban planning documentation remaining mandatory to use of the already approved zoning plans (zoning) until new local building regulation rules are approved;
  • to introduce local building regulation rules, as regulatory legal acts of local self-governments for providing of a clear mechanism for implementation of norms for the rational use of lands within settlements and amalgamated communities, provisions of urban planning documentation at the local level;
  • to establish the mandatory adoption of the Implementation Plan (binding the local authorities themselves) containing a list of public activities, the timing of their implementation, amounts and sources of financing for activities provided for by the urban planning documentation;
  • to introduce mandatory use of requirements and measures stipulated by the urban planning documentation when developing and implementing of programs for socio-economic development, e.g., when urban renewal programs shall be implemented;
  • to provide for clear stages for the implementation of design decisions of urban planning documentation, their sequence and prohibition of the implementation of next stages before previous stages have not been implemented (in particular, the construction of social facilities and engineering, transport infrastructure should be coordinated with the construction of multi-storey buildings);
  • to provide for mandatory expertise for all types of urban planning documentation;
  • to establish the obligation to take into account the results of consideration of urban planning documentation by architectural and urban planning councils, with the obligatory publication of a report on the consideration of the results;
  • to exclude spatial planning documentation (urban planning documentation) from copyright objects.
5) Preservation of the environment and the formation of an environmentally friendly human surrounding

- to ensure the creation of an integrated environmental monitoring system in Ukraine;
- to take into account requirements of the legislation on environmental protection as an integral part of such documentation in urban planning documentation (spatial planning) and project documentation for construction;
- to develop a methodological basis for integrating the documentation of the ecological network concept to the practice of spatial planning in order to ensure environmental sustainability and form the ecological framework of the territory of the state and certain regions;
- to review, in terms of environmental conservation and energy efficiency, state norms and standards in order to eliminate outdated standards, and to introduce new standards for modern facilities;
- clearly regulate the procedure for submitting proposals and comments in the framework of public hearings, requirements for reporting of their conducting within strategic environmental assessment (SEA) and environmental impact assessment (EIA) procedures
- to eliminate duplication of procedures of the CEO and ATS with expertise of construction projects and integrated urban planning expertise.
- to determine qualification requirements for specialists who are involved in the assessment of natural conditions and resources, environmental protection during the development of urban planning documentation and construction projects, including the development of CEO and ATS reports;
- to introduce regulatory legal mechanisms to reduce pollution in large urban areas, based on “the polluter pays” principle, to introduce resource-efficient "green" technologies of cleaner production, alternative energy supply systems, development of environmental public transport, revitalization of river channels and coastlines of waters within settlements, increasing the area of "green zones".

6) Preservation and use of cultural heritage

- to derive a historical and architectural basic plan from the master plan and identify it as mandatory background data when developing or updating relevant urban planning documentation in historic settlements;
- to develop and approve the procedure of SEA implementing during the development of urban planning documentation;
- to provide commissioning of the development of Historical and Architectural Basic Plans by local authorities and entering into force after approval by the central executive body, which ensures the formation and implementation of state policy in the field of cultural heritage protection;
- to include in the historical-architectural basic plans the establishment of boundaries and methods of use of zones of protection of objects of cultural heritage and historical areas, detailed restrictions on the development of land in a suitable form for automated verification of their implementation;
- to establish the obligation to introduce the limitations into the urban planning documentation established by the legislation on environmental protection and protection of cultural heritage and observance of them during the implementation of urban planning activities;
- to establish that after the approval of the relevant cultural heritage protection body the boundaries and methods of the use of protected areas of cultural heritage and historical areas must be mandatory for consideration during construction and must be taken into account when determining the planning restrictions in the composition of urban planning documentation during their revision, and - at the other hand - the taking into account of justified public planning needs during the procedure of establishing Historical and Architectural Basic Plans;
- to ensure mandatory inclusion in the relevant public registers and the Urban-planning Cadaster of Historical and Architectural Basic Plans and documentation on the determination of the boundaries and
methods for the use of the sites for the protection of monuments;

- to stipulate at the legislative level the obligatory determination of the boundaries and methods of the use of territories of historical and cultural land while developing the urban planning documentation, to prohibit the development of land management projects in historical places without an approved historical and architectural basic plan and on the sites with no clear boundaries of the protected areas of memory;

- in the absence of an approved historical and architectural basic plan, to provide the full restriction on new construction and reconstruction of buildings and structures within the limits of historical habitats, and in the absence of the approved boundaries of historical areas - throughout the historical settlements.

7) Technical regulation in the field of urban planning

- to ensure maximum approximation to the European model and to adapt the national legislation to the European one; to update the construction norms;

- to Implement Regulation (EU) No. 305/2011;

- to consolidate at the legislative level a transition to the parametric method of valuation in developing new and revision of existing building codes and adopt a new program of revision of construction norms;

- to adopt a program of harmonization of standards EN and ISO in the field of construction;

- to apply, by making legislative changes, the requirements of building codes for the entire period of the construction life cycle (from design to liquidation of the object);

- to establish, at the design stage, requirements for the operation of buildings and structures, which, if the requirements and measures provided for by the design documentation are fulfilled, will ensure the safe use of the facility for its functional purpose during the established service life;

- to extend by introducing legislative changes, the general principles of technical regulation and the requirements of the Technical Regulation on the final product of construction - a building or structure;

- to establish at the level of normative documents an algorithm for the inspection of the state of buildings and structures, the performance of repairs to keep in their proper operating condition;

- to expand the range of basic organizations by engagement the institutions of higher education, research institutions, professional self-regulatory organizations;

- to adjust the curricula of institutions of higher education in terms of teaching the contemporary foundations and approaches of technical regulation, design methods, design training for Eurocodes;

- to establish administrative responsibility for violation of the requirements of the Technical Regulation.

8) Permitting system in the field of construction

- to introduce permitting documents through the personal e-cabinet of a participant in the construction process, ensuring the technical feasibility of such a process exclusively through electronic document workflow, as well as the publicity of the package of submitted documents for obtaining permits and documents created on the basis of their consideration;

- to regulate the basic requirements for permitting procedures at the level of laws, and not subordinate acts, specifically the list of documents that are necessary for obtaining documents that give the right to conduct preparatory or construction work;

- to introduce an automatic check of the documentation during its submitting (entering) into the registers, as well as the impossibility of registration of documents that violate the established requirements;

- to implement the principle of "single touch" when verifying the authenticity of documents submitted for the acquisition of the right to perform construction work, for obtaining a certificate of readiness of the object for operation, for other permit documentation in construction, as well as mandatory verification of the compliance of submitted documents with the requirements of urban development law, urban planning documentation, urban planning conditions and restrictions, requirements of monument protection legislation and environmental protection legislation;

- to supplement the list of documents submitted for the right to perform preparatory or construction works, by a document from the...
authorized body for the protection of cultural heritage, which confirms the approval of the project documentation and granting permission for earthwork in the case that is provided by the law of Ukraine "On the Protection of Cultural Heritage":
  • to provide urban planning conditions and restrictions in the form of an automatically generated Extract from a detailed plan of the territory, indicating the restrictions established for the preservation of the natural environment and cultural heritage;
  • the procedure for registration of the declaration on the readiness of the facility for operation should include the mandatory signing of the declaration by the persons responsible for compliance with construction requirements (general contractor, field supervision, technical supervision);
  • to provide at the legislative level clear grounds and procedures for annulment or cancellation of documents certifying the readiness of construction objects for operation of all classes of consequences;
  • to introduce a simplified procedure for the cancellation of registration of property rights and real rights to real estate in case of annulment or cancellation of documents certifying the readiness of construction objects for operation;
  • expert organizations for the examination should be chosen by the automated system randomly, and contacts between the customer or the developer of the documentation and the expert organization should not be allowed; the examination should be carried out by the expert by filling in the check list, which must note all the requirements for the appropriate type of documentation, with the expert notation of the conformity or non-compliance with the established requirements;
  • to provide a full prepayment of the examination of the project documentation for the construction or payment of such services through a notary to avoid financial pressure on experts for the purpose of giving positive conclusions;
  • at the legislative level, to enshrine the definitions of the terms "complex engineering-geological conditions" and "complex technological conditions", in order to avoid legal uncertainty as to the necessity of carrying out mandatory examinations.

9) Designing of construction objects
  • to create conditions for a complete transition in the development of construction projects and their expertise on the use of modern digital technologies;
  • to establish in the legislation the requirement for compulsory use of digital technologies for designing and examination of construction objects for classes of consequences of CC2 and CC3, which are carried out with attraction of funds of state or local budgets starting from 2020;
  • to ensure the preservation of project documentation for construction objects in the urban planning cadaster;
  • to create a single state register of granted approvals for deviations from construction norms, standards and rules;
  • to establish that during the examination of the design documentation for construction, verification of the compliance of design decisions with the requirements of the standards for the creation of barrier-free environment for persons with disabilities and other less-mobile groups are subject to verification;
  • to increase the penalty for violation of urban planning legislation and set the rate of it depending on the violation of urban planning legislation and the class of consequences of the construction object;
  • to provide control over the provision of technical specifications in accordance with the projected load on engineering networks and to establish exhaustive requirements regarding the content of technical specifications;
  • to create a public map of the distribution of power engineering networks, public registers of available free capacities and issued technical specifications (in the future - submitting this information to the urban planning cadaster);
  • at the legislative level, to establish the procedure for calculating the fee for connecting the unit of power to the construction object.

10) Managing of construction: licensing of construction companies, author's and technical supervision
  • to replace licensing to certification in construction;
to expand the list of responsible executors of selected works (services) that are subject to certification;

to determine the obligatory issuing of scientific restoration reports by the responsible executives of projects for the restoration upon completion of the restoration work;

to provide the mandatory involvement of a consultant engineer to provide organizational and advisory support for the design and construction of objects of CC2 and CC3 classes of consequences, which are carried out with the involvement of state and local budgets;

to introduce electronic cabinets for architects and engineer supervisors, which will contain the construction objects where such persons provide the author’s and technical supervision, with the function of electronic confirmation of supervision by means of a qualified electronic signature;

to provide the implementation of archaeological supervision during excavation on construction within the territory of the monument, protected archaeological territories, the buffer zone of objects of the world heritage, in the protection zones, in the historical habitats of inhabited places by the corresponding certified performers with general requirements similar to the author’s and technical supervision.

to provide for the publicity of scientific researches of archeological heritage and to introduce state supervision on activities of researchers of archaeological heritage;

11) State Architectural and Construction Control, State Architectural Construction Supervision and Market Surveillance

to set clear time frame for unscheduled inspections in order to control or provide reasoned responses on refusals to carry out inspections;

to provide the creation of a public register of inspection results in the order of architectural and building control and its information exchange with the urban planning cadaster;

to establish the time frame for submitting information in the register and the results of inspections in the order of architectural and construction control;

to provide at the legislative level the grounds for inspection with obligatory visit of the object, and also to determine the list of grounds for conducting inspections without visiting the facility on the basis of the existing documents, and the powers of the control and supervision authorities in carrying out the inspections;

• to eliminate the discretionary powers of the bodies of architectural and construction control and supervision and establish an exclusive list of cases of cancellation of permit documents at the level of law;

• to review the list of construction works, which do not require documents that give the right to their execution, and after completing such works there is no need in acceptance on operation;

• to establish a procedure for notification of business entities about conducting inspections through the entity’s electronic cabinet;

• to approve the form of the act of non-admission to the inspection and the procedure for its issuing;

• to establish a procedure for annulment of the permit for construction or cancellation of registration of a notice on the commencement of the execution of preparatory and / or construction works if the entity does not ensure compliance with the requirements of the legislation within the established terms;

• to determine, at the level of the law, an increased level wages for inspectors of the state architectural and construction control;

• to introduce competitive selection for management positions in the state bodies of architectural and construction control;

• to ensure the development, dissemination and use of the State Architectural and Construction Inspection of teaching materials, analytical documents and recommendations, as well as its explanations, consultations, and trainings on the practical implementation of the requirements of urban planning legislation;

• to bring the concept of “illegal construction” in accordance with the urban planning legislation, additionally providing features of illegal construction: violation of the requirements of urban planning documentation; urban planning conditions and restrictions of land development; requirements and restrictions imposed for the preservation
of the environment and the protection of cultural heritage;
• to introduce criminal liability for developers engaged in the construction of objects of CC2 and CC3 classes of consequences of, without obtaining a permit;
• to differentiate, depending on the class of consequences of the construction object, the amounts of fines for violating urban planning legislation;
• to extend the functions of state architectural and construction supervision on the activities of business entities that provide technical specifications for the connection to engineering networks;
• to provide the results of inspections of the architectural and construction control bodies, authorized bodies of city planning and architecture, economic entities that provides technical specifications for the connection to the engineering networks every quarter by the bodies of supervision.
• in case of non-compliance of building materials, products and constructions, using during the construction, with constructions norms, standards and rules, to oblige responsible persons of technical supervision and inspectors of architectural and construction control, to notify the correspondent authorities of state and market supervision about conducting unscheduled inspections of suppliers and/or producers of abovementioned products.

12) Self-regulatory organizations
• to regulate legislatively the activity of self-regulatory organizations;
• to ensure the creation of a self-regulatory organization in the event that it enters at least 25% of the participants in the relevant market;
• to ensure that delegated powers of self-regulatory organizations are extended to all market players for each type of activity or profession;
• delegation of powers to a self-regulatory organization if it has the necessary capacities to fulfill them in accordance with the legislation;
• legislatively regulate the terms for delegating powers to self-regulatory organizations and establish the grounds and mechanism for the revocation of all or part of the delegated authority;

13) Insurance in construction
• to define conceptual approaches to the formation of insurance model in urban development and construction;
• to determine the list of types of insurance in construction, which is a prerequisite for the performance of professional and economic activity;
• to propose a list of types of voluntary insurance, the provision of which will give certain preferences to the policyholder;
• to create conditions for the establishment of an institution representative of the insurer in construction, and to involve advisory-engineer for checking compliance of project documentation, object survey, risk assessment, independent supervision and support in the construction process;
• to establish requirements for insurance companies and construction insurance professionals;
• to strengthen the role and responsibilities of the insurer when the facility is put into operation and during the warranty period;
• to increase insurance amounts and reduce the rate when several types of insurance are applied at one facility.

14) Public participation in decision-making in the field of urban planning (spatial planning)
• to ensure the participation of the local public in the determination of goals and task, related to the integrated development of territories and land use;
to establish, at the law level, the institution of public control and provide the effective mechanisms of public control in decision-making in the field of urban development (spatial planning);

to ensure adherence to the principle of human-centeredness, that is, the priority of human and civil rights, life, health and safety of a person over other interests (including over interest in gaining income) - as the implementation of Article 3 of the Constitution of Ukraine;

to ensure public involvement at the earliest stage, when the ideas and vision of the draft decision are formed, the priorities, goals and directions of the territorial development are determined;

to provide public access to the materials of draft decisions in the field of spatial planning and all changes thereto, as well as to provide early disclosure of draft decisions and meetings of government bodies;

to establish the obligation to publish spatial planning documentation in full, together with a decision on its approval (as an integral supplement);

to provide the obligation to publish and take into account the conclusions of architectural and urban councils and the publicity of their meetings in accordance with the requirements of the legislation;

to improve the procedures of forming the composition of public councils and advisory bodies;

to introduce electronic public hearings as an additional form of public participation;

to consolidate the effective, deprived of corruption risks at the level of the law, the mechanism of functioning of the Institute of public inspectors of state architectural and construction control;

to provide police powers to take measures aimed at eliminating the threats to life and health of architectural and construction inspectors, public inspectors and other persons involved in the inspection;

to establish clear responsibility of the bodies and officials of the authorities for non-compliance with the procedures of public participation in the decision-making processes, as well as the procedure for the abolition of decisions based on non-compliance with the mentioned procedures, even in the absence of other violations in the decision-making process;

• legislatively to enforce the right of representatives of the territorial community to judicial protection of their rights as a result of planning of territories and new construction.

15) Professional and academic education, advanced training and certification of responsible executors of individual works (services)

• To identify the key areas and measures for the reform of the professional and academic education and the revival of the scientific potential of the sphere of urban development;

• To bring the list of specialties in the field of urban planning in line with modern requirements, to specify passports and standards of specialties, including training and retraining of experts on Eurocodes;

• to introduce separate state programs of priority development of certain specialties, for which there is a critical shortage of specialists;

• to stipulate that training in higher education institutions for occupations related to spatial development and planning activities may be carried out only on a day-to-day basis;

• to introduce ratings of teachers, students in the sphere of urban planning on the basis of essential industry criteria;

• to provide specialists who have received certificates in the direction of professional certification in the certification bodies of personnel accredited by the National Accreditation Body of Ukraine according to ISO / IEC 17024: 2014, the right to be included in the Register of Certified Persons;

• to review and supplement the list of occupations and types of works whose performers are subject to professional certification, depending on the complexity of such work, level of responsibility, necessary professional competences and potential risks;

• to create a platform for the improvement of professional qualifications of the responsible executives of certain types of works (services) in the field of urban planning, civil servants (Ministry of regional development, SACI, local self-government bodies and their executive bodies, local state administrations) through advanced training courses for corresponding programs;
• to determine a comprehensive and effective list of grounds for depriving a certified person of a qualification certificate;
• to introduce an evaluation procedure of performance of the responsible executives (separately in terms of professional activity) in the field of urban development activities;
• introduce a separate certification for conservation architects.

16) Public procurement in the field of urban development (spatial planning)
• to determine a negotiation procedure according to the results of architectural and urban planning contests as a priority for public procurements of the project documentation for construction objects and urban planning documentation;
• to harmonize national legislation in the field of organizing and conducting architectural and urban planning contests with current urban planning legislation and international standards, encouraging customers to practice competitive practices in the central parts of cities and within the historic areas of historical settlements;
• to open the possibility of applying a competitive dialogue procedure for procurement a range of services and works in the field of urban development, architecture and related fields, with the development of qualification criteria for each sphere;
• to determine at the legislative level the development of urban planning and scientific and project documentation belongs to works, but not services;
• to commission design and research and project documentation separately from the orders for construction / restoration of objects.

17) Pricing in construction
• to abolish state regulation of construction prices: to abandon state regulation of resource costs and to move to market regulation and valuation of the cost of products, works and services of participants, and to introduce a single approach to the definition of the value and price in the state and non-state sectors of the economy.
• to develop and implement pricing methodology in the field of construction based on the concept of cost of life cycle, to structure the cost and price with the coverage of the whole life cycle of objects;
• to reorient the pricing system from the estimated project decisions to design the optimal value (value) of the object, taking into account the cost of the life cycle;
• to contribute to the formation of unified regional data bases on actual prices for products, works and services of all participants in the construction and operation of facilities, the formation and publication of regional value (and not resource) norms in substantiating investment decisions, in designing, estimates of contractors, in planning and realization of expenses for maintenance and repair of objects;
• to provide the improvement of the reporting of participants in the investment and construction process of all forms of ownership under object contracts for the purchase of various construction products (materials, works, services);
• to switch from the cost of work to the cost of objects and structural elements in the investor's estimates on the basis of the international classification of structural elements UNIFORMAT II;
• to put into operation a single construction classifier;
• in the estimates of contractors to switch to cost and price calculations based on the current structure of the cost of work, but using internal corporate standards of cost of resources;
• to facilitate the organization of a non-state system of contract monitoring, analysis, generalization, continuous updating and publication of data.

18) The unity of normative regulation throughout the whole life cycle of construction objects - from spatial planning to demolition of the object
• to form the domestic normative, informational and software for implementation of life cycle management of construction objects, based on foreign analogues and standards;
• to introduce standards in Ukraine: ISO 14040 (life cycle management methodology for object operation), ISO 15686 (forecasting of service life, maintenance and replacement of objects and elements for safety purposes) and ISO 55000 (asset management);
• to develop and implement a transition program of the construction industry on the principles of life cycle management of objects;
• to launch databases on the structure and value of contracts of participants in investment and construction processes, the formation of a new budget and regulatory framework in construction regarding this basis;
• to create databases by real estate managers and standardization of operating expenses, including for the maintenance of buildings and structures;
• to create national or to adapt foreign software complexes for information modeling of life cycle cost analysis;
• to define and publish financial parameters and methods of their application for projects financed from the state budget.

19) BIM technologies
• to implement information modeling based on the BIM concept and program with a purpose of further adopting of relevant legal and regulatory acts;
• to provide for the development of regulatory documents - national standards that meet internationally recognized peers;
• to create and implement BIM in accordance with international standards, the use of modern national classifiers;
• to create databases based on information from manufacturers and suppliers of building materials, structures, machines, mechanisms, technical and process equipment;
• to create a unified information space of the construction industry, housing and public utilities based on the adopted unified system of classification and coding of products of building materials enterprises, structural elements that will be used in the design process and their further operation;
• to improve processes of tender procedures and contracts, design and expertise of BIM-projects with the use of appropriate software systems, management of construction and operation of buildings and structures;
• to ensure at the stage of tendering for design and construction, the representation by the customer of an approximate cost of the object proposed by the project organization, based on the BIM;
• to ensure the free exchange of information on the basis of universal data formats, the submission of project documentation in electronic form, to organize the maintenance of electronic archives of projects, databases of objects-analogues;
• to agree on the procedure for submission of tender bids by contractors derived from internal standards, based on conditions of construction, the structure of their organization, the cost of individual constructs with the procedure for tenders for design and construction;
• to ensure the transfer of all the technical, technological, economic and reporting documentation necessary for the operation of the facility to the investor in electronic form;
• to introduce a system for the implementation of current and capital repairs of buildings (structures) and engineering networks based on BIM and monitor the current technical condition of the constructed and commissioned facilities, develop appropriate data banks of analogous facilities for their further design and construction of similar facilities;
• to create a focal point to organize the integrated implementation of BIM;
• to introduce appropriate training and retraining programs for BIM specialists in specialized institutions of higher education.

Stages of the Concept implementation

The Concept implementation is carried out during 2019-2030 in three stages.

It is provided for at the first stage (2019-2020):

To consult the State Architectural and Construction Inspection of Ukraine in the manner prescribed by the Law on the implementation of construction activities with maximum detailing of permitting procedures stipulated by the legislation for all classes of consequences (liability) and special conditions.

Adoption of draft laws of Ukraine, which have been already registered in the Verkhovna Rada of Ukraine. As a first step, adoption of the draft law 6403, as a transitional legislation.
Development and introduction of amendments and extensions to by-laws (to which amendments can be made without amendments to laws of Ukraine) on implementation of ways and methods of solving problems defined by the Concept, in particular: the procedure for conducting public discussions; the procedure for the expertise of construction projects; the procedure of development of urban planning documentation; on the procedure for issuing of documents giving the right to perform preparatory and construction works; on the procedure for maintaining a register of documents giving the right to perform construction work; on the procedure for taking objects into operation; the introduction of e-cabinets of a construction company and responsible executives of certain types of work (services) related to the creation of architectural objects; the elimination of discretions in the procedures for conducting of state architectural and construction control and conducting of state architectural and construction supervision; extension of the content and functional content of the Register of certified persons; development of a unified classifier of the types of functional and designed assignment of the land plots and other normative legal acts stipulated by the implementation plan for this Concept.

Development of the draft Urban Planning Code of Ukraine and the package of drafts of other laws of Ukraine, which are defined by the Concept as part of the public administration reform of the industry, and their adoption by the Verkhovna Rada.

Conducting of explanation activities with representatives of local authorities to encourage them to approve urban planning documentation (spatial planning documentation) at the local level.

Development of specialized programs of sectorial development direction defined by this Concept (introduction of insurance in construction, BIM technologies, transition to a new pricing model in construction taking into account the life cycle of facilities, reforming of professional and academic education in the field of construction, etc.). The result of each program development should be a list of proposals for improving or developing new legislation and other measures to introduce the changes identified by this Concept.

Definition and regulatory fixing of forms, content and technological basis for the creation and use of urban planning and design documentation.

Definition and regulatory enshrining of unified requirements for the format, creation, exchange, storage and correction of registry data, their technical and semantic interoperability, non-intersecting coordination of data in corresponding electronic registries;

Introduction of a single topographic base in the state coordinate system, ensuring open access to it.

Creating of the Urban Planning Cadastre, a register of geospatial technical inventory data and inventory of real estate objects, an Address Register with appropriate geolocation: identifying sources of funding, organizational measures, developing a work plan, determining technical requirements and terms of reference, ways of integration with other registries, etc.)

Integration of the Urban Planning Cadastre with the State Land Cadastre, the State Register of Real Estate Rights, the Register of Geospatial Data on Technical Inventory and Accounting of Real Estate Objects, the Address Register (including the integration of cultural heritage registers, environmental and other natural resource cadastres and registers).

Review of the requirements on completeness and data format of existing registries.

The implementation measures to control compliance by the authorities with the requirements of the legislation by the Agency of the electronic management on filling up the bases and registers provided for by the legislation.

The introduction of electronic cabinets of construction companies, architects and engineers of technical supervision, through which interaction will be carried out with authorized bodies of urban planning and architecture, the bodies of state architectural and construction inspection.
Introduction of the list of necessary specialties in the field of urban planning defined by this Concept. Determination of educational institutions that will produce such specialists, the development of passports specialties, standards, curricula. Development and implementation of training programs and retraining of specialists according Eurocodes. Development and implementation of state programs for the priority development of specialties with a critical shortage of specialists.

It is provided for at the second stage (2021-2024).

Providing support to the Urban Planning Code of Ukraine and the package of drafts of other laws, which are defined by the Concept as part of the public administration, submitted to the Verkhovna Rada of Ukraine.

Development and approval of by-laws that are necessary for the full implementation of provisions of the Urban Planning Code.

Updating of previously approved urban planning documentation (spatial planning documentation) at the local level in order to bring it in line with the requirements of the Urban Planning Code.

Transition to the use of BIM-technologies in the development of construction projects for objects of CC3 consequences (responsibility) class and objects, regardless of the class of consequences, which are constructed with the involvement of budget funds, funds of state and communal enterprises, institutions and organizations, as well as loans provided under state guarantees.

Transition to the parametric method of regulation: development of building norms in a new format.

Transition to the issuing of urban planning conditions and restrictions in the form of an extract from the detailed plan of the territory, taking into account local rules for regulating development and switching to automatic provision of initial data for designing in the form of an extract from the Urban Planning Cadastre.

Integration of the Urban Cadastre with the State Land Cadastre, the State Register of Real Estate Rights, geospatial data of the technical inventory and registration of real estate objects, a single address registry (including the integration of registers of cultural heritage monuments, environmental and other natural resource cadastres and registries).

Implementation of a pilot project for the automated issuing and registration of documents in the Urban Planning Cadastre giving the right to carry out preparatory and construction works, register declarations and acts on the readiness of objects for operation.

Introduction of pilot projects for the performance of state architectural and construction control with the involvement of insurance companies and/or self-regulatory organizations.

Development of proposals for amendments to the laws of Ukraine and regulatory legal acts according the results of monitoring the implementation of pilot projects.

It is provided for at the third stage (2025-2030).

Monitoring of the implementation of the Concept. Development of proposals for amendments to the laws of Ukraine and regulatory legal acts according to the results of monitoring.

Improving of public administration mechanisms of the industry on the basis of partnership relations between government institutions and civil society institutions.

Full transition to the use of BIM technologies in the development of construction projects, automatic issuing of urban planning conditions and restrictions and registration of documents giving the right to carry out preparatory and construction works, etc., new rules for the architectural and construction control and supervision throughout Ukraine.

The development of the interaction of government, citizens and business

The implementation of this Concept will ensure coordination of actions of ministries and other central executive authorities on regulatory legal improvement of issues raised in the Concept and affect various interests, require the joint participation of all subjects of
public administration development in the field of construction: government, business and citizens.

**Expected results**

1. Reforming the construction industry and spatial planning activities on the basis of a common policy for the development of regions and settlements in accordance with recommendations of the Habitat and the Leipzig Charter, best world practices.

2. Introduction of public administration of the industry, which will ensure effective equal cooperation of public authorities and local self-governments with civil society and other stakeholders in the development and implementation of urban planning policies, the priority objectives of which will be human centeredness and social development.

3. Improving the investment climate.

4. Development and adoption of the Urban Planning Code of Ukraine and other regulatory legal acts in the field of urban planning, harmonization of the legislation of Ukraine.

5. Reducing the time of passage of permitting procedures in construction.

6. Minimization of corruption risks in the field of urban planning (spatial planning).

7. Ensuring the unity and publicity of all information in the field of urban planning (spatial planning).

8. Providing information and legal support for reforms of the administrative-territorial structure of Ukraine, housing and communal services, etc.


10. Preservation of cultural heritage and compliance with environmental requirements.

11. Significant improvement in the quality of spatial planning, design and construction, rational use of material and human resources.

12. Establishing of the urban planning (spatial planning) monitoring system based on objectivity, reliability of information, minimal influence of the human factor, automated generation of information on the state of urban planning activities.

13. Expansion of public access to the preparation and decision-making, strengthening of public control over the actions of authorities, assistance in achieving consensus when making decisions in the field of urban planning policy.

14. Elimination of duplication of work and expenditures of the state budget for the creation of geospatial data at all levels of government and local self-government.

15. Reforming the system of state architectural and construction control and supervision.

16. Improving the skills of performers of certain types of work (services) related to the creation of architectural objects.

17. The flexible response of the institute of professional and high education to changes in the sphere of urban planning.

**The amount of financial, material and labor resources**

Funding for the implementation of the Concept is carried out within the budget allocations provided for the relevant year by ministries, other central executive bodies whose authority is to resolve issues raised in the Concept, as well as local budgets and other sources not prohibited by law.

The volume of funding is updated annually, taking into account the capabilities of state and local budgets.
Infographics
Stages of the development of the Concept of Public Administration in the urban planning activities

1. August - September 2018: The best industry experts are involved in the work on the Concept

2. August - September 2018: 22 directions in the field of urban development were determined to research

3. September 2018: With the participation of German advisors, the International Advisory Board was created as a body for consulting and harmonizing the norms of the Concept with world leading trends in the field of spatial planning

4. September 2018: The Editorial Board was created as a body for decision-making on controversial issues, approval of analytical notes and a draft Concept

5. October - December 2018: 49 authors prepared 22 analytical notes concerning urban development

6. October - November 2018: Professors Dieter Schimanke and Janos Brenner consulted the authors of analytical notes (International Advisory Board, GIZ)

7. November - December 2018: The project team prepared the first version of the Concept

8. December 2018 - January 2019: dozens of discussions were held on the text of the Concept with the authors and the editorial board

9. January 2019: 25 infographics were developed, illustrating key changes in urban development

10. January 2019: infographic, analytical notes, the text of the Concept were edited and imposed for printing. All working materials were translated into English.

11. February 2018: transfer of the Concept to the customer - the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine

Project duration - 6 months

The total budget - 1 586 400 UAH
Analytical notes based on the urban planning cycle

Principles and ideological foundations of the Concept of Public Administration in the field of urban planning activities

AN 1

AN4

Urban planning documentation

AN 8

The system and legal framework for the unity and publicity of permitting procedures and all information in construction. Urban planning cadastre

AN 9

Obtaining of urban planning conditions and restrictions

AN 11

Project development

AN 12

Expertise, approval

AN 11

AN 12

AN 22

Public procurement

AN 19

Strategies, programs, projects, plans, contracts on integrated spatial planning

AN 3

Land allocation and land use in construction

AN 4

Rules for alienation of lands and construction objects

AN9

Obtaining documents for the right to carry out construction work

AN 10

Construction

AN 9

Putting into the operation

Operation

AN 6

AN 7

AN 8

AN 9

AN 10

AN 11

AN 12

AN 13

AN 14

AN 15

AN 16

AN 17

AN 18

AN 19

AN 20

AN 21

AN 22

Roadmap: Ways of legislative and legal regulatory technical regulation of the proposed changes

AN20

Glossary (updates and extensions of the White Book group)

AN21
Purpose, tasks and terms of the Concept implementation

Purpose of the Concept:
Creating necessary organizational, legal and financial prerequisites for reforming the construction industry through the public administration system.

The main tasks of the Concept:
• sustainable development of the territories, taking into account state, public and private interests;
• reforming the governance structure in the field of urban development;
• clarity and unambiguity of urban planning legislation;
• maximum automation of licensing procedures;
• increasing of competence and competition among participants of the construction market;
• increasing of the role of civil society in decision making in the field of urban development;
• preservation of a full-fledged living surroundings, environment and cultural heritage when placing construction objects;
• effective control and supervision in the field of construction, accountability mechanisms for violation of urban planning legislation, transparency and publicity of permitting procedures;
• development of a system for recording, disclosing and monitoring of urban planning documentation (spatial planning documentation), maintaining of the urban planning cadastre
• increasing the role of self-regulatory organizations in the field of urban planning.

Terms of the Concept implementation: by 2030
Step by step through the development and implementation of an Action Plan.
Key proposals of the Concept
Proposals whose implementation requires mainly regulatory legal settlement

1. Development and approval of the Urban Planning Code of Ukraine. The Urban Planning Code is the basic legal document in this field is the binding the special legal documents for selected issues (Cadastre, Land Code, technical norms etc.).
2. The Urban Planning Code shall enable the development of approaches of ‘Integrated Urban Development’ and strengthen the cities and communes as institutions of local self-government.
4. Development and implementation of a single classifier that combines types of functional assignment of the territory and the designated assignment of the land plot.
5. Legislative determination that the lower level urban planning documentation cannot contradict to the highest level documentation. But there should be a ‘two-way-communication’ (iterative process).
6. Transition to the parametric regulation method: development of building codes in a new format.
7. Development and implementation of a program for the transition of the construction industry to the principles of managing the life cycle of objects. Establishment of requirements for the operation of buildings and structures during the design for the safe use of the construction object during the regulatory life.
8. The abolition of state regulation of prices in construction: the rejection of state regulation of resource expenditures and the transition to market regulation and regulation of product costs, works, services.
9. Establishment of the compensation procedure for private owners (in case of a decrease) and relevant local budgets (in case of an increase) in cost changes of land plots, buildings and structures, resulting from the approval of urban planning documentation.
10. Bringing the legislation of Ukraine on public procurement in accordance with requirements of Directive 2014/24 /EU of the European Parliament and of the EU Council dated February 26, 2014 on public procurement to take into account specifics of the procurement of works on the development of urban planning and project documentation on quality criteria.
11. Establishment at the law level of procedures for the provision of permits from automated databases with the exception of discretionary powers.
12. Redistribution of functions between central executive authorities, local self-governments, self-regulatory organizations and other market entities on the basis of a fair distribution of risks and responsibilities. Carrying out further decentralization by transferring powers to insurance companies, self-regulatory organizations and other professional associations.
13. Creating a comprehensive legislative framework for self-regulation by introducing its internationally recognized instruments. Strengthening the personal and corporate responsibility of members of self-regulatory organizations. Improving the mechanisms for compensation of damages, the procedure for delegating powers to self-regulatory organizations, determining the grounds and mechanisms for their withdrawal.
14. Introduction of an effective insurance system in construction depending on possible losses and degree of risks: determination of the list of types of compulsory and voluntary insurance; setting requirements for insurance companies and professionals. Introduction of the institute of a representative of the insurer and the engagement of a advisory engineer to inspect the design and estimate documentation, site survey, risk assessment, independent supervision and construction support.
Key proposals of the Concept
Proposals whose implementation requires mainly organizational measures

15. The introduction of a single cartographic base in the state coordinate system USK-2000.
16. Creation of the Urban planning cadastre as the basis of a system for managing urban planning processes and a single public source for obtaining all information on urban planning activities. Entry into force of urban planning documentation (documentation on spatial planning) only from the moment of entering into the urban planning cadastre and after checking for compliance with the urban planning documentation of the highest level.
17. Information integration of the Urban Planning, State Land Cadastre, State Register of Real Estate Rights, geospatial data of technical inventory and registration of real estate objects, single address registry (including integration of registers of cultural heritage monuments, environmental and other cadastres and registries).
18. Improvement of forms, a content, technological basis for the development and use of urban planning and design documentation. Establishment of unified requirements for the creation, exchange, storage, correction and format of registered data, their interoperability.
19. Financing the development of urban planning documentation, including approaches of integrated urban planning, at the expense of the relevant local budgets, funds of the State Regional Development Fund, subventions from the State budget to local budgets for the implementation of activities.
20. Introduction of digital GIS and BIM-technologies as a tool for improving the quality of spatial planning documentation and project documentation for the construction of facilities, creating a continuous process of designing, implementing and monitoring of urban planning activities.
21. Ensuring the implementation of detailed plans of territories regarding the complexity and priority of construction. The zoning plans should be pushed back in the importance in favor of the detailed plans.
22. Strengthening public influence on decision-making: ensuring public access to the planning process at the initial stages, starting with planning development strategies (including concepts of urban development); introduction of effective mechanisms for public participation; enhancing the role of the public in the work of the advisory bodies and improving methods for selecting the appropriate representatives for them; possibility of canceling urban planning documentation in case of violation of public participation procedures.
23. Obligation to include to the urban planning documentation restrictions, established by the legislation and compliance with them, on the protection of the environment and cultural heritage in the implementation of city planning activities. To ensure that all restrictions on land use are included to the State land cadaster, it should be reflected in the urban planning cadastre.
24. Conducting reengineering of permitting procedures, which will ensure simplification, automation, publicity, transparency and non-contact. Performing of all administrative and permitting procedures in construction through an automated system.
25. Introduction of public registers of inspections of architectural and construction control and supervision, setting deadlines and procedures for such inspections.
26. Rejection of the practice of approving of forced deviations from building codes.
27. Improving the educational process in higher education institutions and institutions of postgraduate education, bringing the quality of education to the level of modern world standards of the educational process, bringing the list of specialties and training content in accordance with needs of the industry, improving the skills of responsible performers of certain types of works (services) in the field of urban planning. The profile of the profession of ‘Urban Planner’ shall be clarified in respect of European standards and implemented in the Academies and Universities.
28. Strengthen consumer protection by raising awareness of the quality and safety of structures and building products. Definition of the functions of state bodies in the field of formation and implementation of policies on technical regulation in construction. Establishment of basic requirements for structures and building materials that are identical with European ones.
29. Priorities shall be given the topics under number 1 and 2 (new) – high priority-. Moreover, the following topics shall have priority: 11, 12, 15 with 16, 21, and 26.
**Information integration and access to information**

**PROBLEM**

Absence of a single transparent public information environment causes the inconsistency and complexity of permitting procedures.

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The town planning cadastre and single address register have not been created yet.</td>
<td>To ensure the creation and functioning of the urban planning cadastre at all levels based on geoinformation technologies as an interactive system. To ensure the creation of a single address registry. To establish a legal requirement for harmonization, approval and entry into force of urban planning documentation only after its listed into the urban planning cadastre of the corresponded level.</td>
</tr>
<tr>
<td>There is no holistic legal framework for the functioning and information interaction of various cadastres and registers.</td>
<td>To ensure the creation of a holistic legal field for the functioning and information interaction of the urban planning, State land cadastres, State Register of real estate rights, registers (the list) of cultural heritage cites, environmental and other official cadastres, registers and databases. To organize the electronic interaction between the urban planning cadastre with the above-mentioned cadastres and registers by means of the EIS PEIR &quot;Trembita&quot;.</td>
</tr>
<tr>
<td>There are no unified requirements for the creation, exchange, storage, correction and format of registered data.</td>
<td>To establish unified requirements for the creation, exchange, storage, correction and format of registered data, their technical and semantic interoperability, non-overlapping (non-duplicate) matching of objects of corresponding public electronic registers.</td>
</tr>
<tr>
<td>There are inconsistent base classifiers used in the management of cadastres and registers. There is no single termbase in the field of urban development.</td>
<td>To ensure the unification and consistency of state classifiers used in the field of urban development, as well as the creation of a single termbase in the field of urban development.</td>
</tr>
<tr>
<td>Issues of technical inventory, accounting and state registration of real estate are not regulated.</td>
<td>To ensure the creation of the Cadstre of real estates as a separate interoperable geoinformation system at the legislative level.</td>
</tr>
<tr>
<td>The data produced during various works are duplicated and inconsistent (in particular, due to the use of other outdated and local coordinate systems instead of the single state coordinate system USK-2000).</td>
<td>To adopt the Law of Ukraine &quot;On the national infrastructure of geospatial data&quot; and ensure the introduction of a unified cartographic base in the USK-2000 state coordinate system, ensuring free admission to it.</td>
</tr>
<tr>
<td>There is no single transparent public information environment in the field of urban development.</td>
<td>To contribute to the creation of a single transparent public information environment in the field of urban development and to maximize the automation of interaction between subjects of urban planning bonds.</td>
</tr>
</tbody>
</table>
Land relations in spatial planning and construction

**PROBLEM**

Inconsistency of land and urban planning legislation, conceptual and terminological apparatus, information field and documentation leads to an excessive complication of procedures for granting land plots for construction

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Separate existence of related urban planning and land management documentation</td>
<td>To ensure the mutual integration of urban planning and land management documentation by legislatively ensuring their consistent development.</td>
</tr>
<tr>
<td>Inconsistency of classifiers of functional and designated assignments</td>
<td>To unify and mutually agree as a single regulatory legal act of type classifications of the functional assignment of territories with designated assignment and the classifier of buildings and structures.</td>
</tr>
<tr>
<td>Inconsistency of urban planning and land legislation in matters of determination and changing of designated assignment of lands granted for urban needs.</td>
<td>Mandatory compliance with urban planning documentation for the formation of land. The change of the designated assignment of land plots to bring it in line with the approved detailed plan of the territory should be carried out at the request of the owner (user) of the land plot.</td>
</tr>
<tr>
<td>There is no connection between future legal status of land plots and buildings and structures located on them, the complicated procedure of transferring for ownership (use) of land plots under existing immovable property objects</td>
<td>To provide for the right to owners of buildings and structures, who have immovable property registered in accordance with the procedure established by law, to develop land management documentation on the formation of land plots for their operation and to conduct expert monetary valuation of such plots without giving permission authorities.</td>
</tr>
<tr>
<td>There are no mechanisms to compensate for changes in the value of land plots when approving urban planning documentation.</td>
<td>Changing the designated assignment of land plots for urban planning needs leads to an increase of the market value of lands, and should be made after paying to the relevant local budget by the owner of the land plot (land user) most of the difference in market value of the plot before and after changing the assignment.</td>
</tr>
<tr>
<td>Servitude right is limitedly used for construction needs.</td>
<td>To detail requirements for the use of land plots on the right of public servitude and superficies to ensure public interests, as well as when placing objects of improvement, infrastructure, etc., to determine the procedure for fees for using land plots (their parts).</td>
</tr>
<tr>
<td>Non-public documentation of land management and land evaluation</td>
<td>To promulgate documentation on land management, including permits, accompanying its development, as well as documentation on the assessment of land plots.</td>
</tr>
<tr>
<td>Construction in the underground and aboveground space is not regulated</td>
<td>To normalize land, fiscal and other relations arising during the construction of objects in the underground and above-ground space.</td>
</tr>
<tr>
<td>Repeated checks of compliance of land management documentation with legal requirements</td>
<td>The introduction of the principle of &quot;single touch&quot; on which the verification of documentation to the requirements of the legislation is carried out once during the registration of a plot in the land cadastre. To cancel certain procedures for the coordination of land management documentation, state expertise, as well as the issuance of permits for removal of the fertile soil layer.</td>
</tr>
</tbody>
</table>
**PROBLEM**

Unsystematic spatial planning impedes the development of settlements, creates uncomfortable living environment

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Large construction paces are achieved by ignoring systemic approaches to the development of cities, destruction of their planning structure, not ensuring of the goal for comfort and safety of living.</td>
<td>Instead of the principle of economic benefits to introduce, the principle of human-centeredness when planning territories, creation of the comfortable environment for a people to live. To ensure the transition from a simple distribution of territory by function to planning the processes of development of a territory, taking into account resources in time.</td>
</tr>
<tr>
<td>Inconsistency of existing legislation among themselves and the lack of a single system document in the regulation of the urban planning field. Lack of political will to introduce positive changes - blocking the adoption of the draft 6403</td>
<td>To accept as soon as possible the urban planning code, which should replace all urban planning laws, incorporate most building codes and give them the force of law; to propose a clear regulation of related areas, eliminating contradictions with other branches of legislation. To adopt the draft law 6403 as the first step towards systematization and harmonization of legislation in the field of urban development</td>
</tr>
<tr>
<td>The ambiguity of the norms of Article 19 of the Law of Ukraine &quot;On the Regulation of Urban Planning Activities&quot; stipulates approval of the DPTs, which change the functional assignment of territories, determined by the master plan</td>
<td>To accept changes to this norm, providing for that the functional assignment of the territory in the detail plan cannot differ from the functional assignment of the corresponding territory defined in the general plan of the settlement or the plan of the amalgamated community</td>
</tr>
<tr>
<td>The lack of a real link between socio-economic development programs and urban planning documentation</td>
<td>To introduce the obligatory accounting of requirements and measures stipulated by the urban planning documentation in the development and implementation of socio-economic development programs. It is already provided for by the draft law 6403</td>
</tr>
<tr>
<td>Inconsistency of urban planning and monument protection legislation, the disapproval of historical and architectural basic plans (HABP) and non-compliance with their provisions</td>
<td>To ensure the interaction between permitting documentation for construction and cultural heritage protection, as well as the prescription of the cultural heritage protection authority with permitting documentation in construction. To improve the procedure of the HABP approval - the final approval of the Ministry of Culture; to strengthen the position of the HABP by providing the status of the initial data for the development of urban planning documentation (provided for by draft law 6403).</td>
</tr>
<tr>
<td>The lack of specialists in the urban planning field and professional personnel in the self-government bodies, the necessity of quality</td>
<td>To provide for that education in the urban development, construction and architectural spheres is acquired in specialized architectural and construction universities (not in the faculties of non-specialized universities).</td>
</tr>
<tr>
<td>increasing of education in the urban planning field</td>
<td>Advanced trainings should take place periodically, according to single programs developed by the central executive bodies in the construction, architecture and urban planning fields, and approved by the central executive bodies in the field of education. The Ministry of Regional Development should ensure the creation of a school of chief architects with the aim of preparing high-quality personnel for local governments and the industry as a whole.</td>
</tr>
</tbody>
</table>
**Urban planning documentation**

**PROBLEM**

Poor-quality urban planning documentation stops sustainable development of settlements and their economic growth.

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The development of poor-quality urban planning documentation leads to an imbalance in the development of territories, a discrepancy between the developed and already approved documentation by laws and the State building codes (SBCs)</td>
<td>To provide for a comprehensive examination for all types of urban planning documentation and to determine the procedure for implementing a strategic environmental assessment of urban planning documentation at the level of the law (these measures are in draft law 6403).</td>
</tr>
<tr>
<td>Lack of urban planning documentation for amalgamated communities</td>
<td>To introduce a new type of urban planning documentation at the local level - the plan of a amalgamated community, provided for by the draft law 6403.</td>
</tr>
<tr>
<td>The development of urban planning documentation at the expense of investors leads to complete ignoring of state and public interests and to the imbalance in the development of territories.</td>
<td>Financing the development of urban planning documentation should be at the expense of the state, relevant local budgets, funds of the State Regional Development Fund and subventions from the state budget to local budgets.</td>
</tr>
<tr>
<td>Authorities do not provide initial data for the development of urban planning documentation.</td>
<td>At the legislative level, to establish the responsibility of customers and officials for failure to provide or late data submission for the development of urban planning documentation</td>
</tr>
<tr>
<td>The lack of the unified topographic basis and unified approach to carrying out of works. Imperfect form of urban planning documentation submitting</td>
<td>To design on the base of integrated use of GIS technologies and geospatial databases; To provide for the transition from cartographic to geoinformational modeling and forecasting of the territory development. To integrate cadastral and design planning systems in the infrastructure of geospatial data based on unified digital terrain models and digital models for presenting design planning solutions represented by geospatial data. To introduce the execution of work on the development of urban planning documentation in electronic form using data from the urban planning cadastre and other state registers and cadastres.</td>
</tr>
</tbody>
</table>
**Urban planning documentation**  
*(continuation)*

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
</table>
| Inconsistency of provisions of urban planning and land management documentation, ignoring requirements of Part 2 of Art. 25 and Part 4 of Art. 26 of the Law of Ukraine "On the regulation of urban development" | To establish a legal ban on the approval of land management documentation, contrary to the requirements of urban planning documentation or does not take them into account.  
To change the approving procedure of land management documentation by providing for that the urban planning and architecture authorities should verify the compliance of urban planning documentation before development of the project, and compliance of designated assignment of land to the functional assignment of the territory.  
To approve the classifier of functional assignments of territories, harmonized with the classification of the designated assignment of land plots (draft law 6403). |
| A zoning plan, rather than having signs of town planning documentation, is often a mechanism for changing the functional purpose of territories and, accordingly, land acquisition. | To introduce new approaches to the zoning of territories and the rules for regulating the development of territories: the zoning plan (zoning) should receive the status of a regulatory legal act of local government and become part of local rules for regulating development (provided for by the draft law 6403). |
| Lack of control over the development and implementation of urban planning documentation, in accordance with its legislation, building codes and documentation of the highest level | To ensure the establishment of a state body that will exercise control and supervision, or to give appropriate powers to the existing state body |
| Imperfect mechanisms for public involvement in the development of urban planning documentation. | To ensure the posting on the web portal of open information on the current state and development prospects of the territory on the regular basis for public access |
| The lack of responsibility for the violation of urban planning documentation and the adoption of illegal decisions that violate urban planning legislation. | At the legislative level, to determine the procedure for bringing the responsibility and types of liability of officials of public authorities for violation of urban planning documentation and making illegal decisions that violate city planning legislation; to provide for mechanisms for elimination of negative consequences and violations caused by such illegal decisions and violation of urban planning documentation |
# Local rules of the development regulation and zoning

<table>
<thead>
<tr>
<th>Territory zoning plan (zoning)</th>
<th>Local rules of the development regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Developing according to</strong></td>
<td></td>
</tr>
<tr>
<td>• on the basis of a master plan of a settlement</td>
<td>• according to the approved master plan of a settlement (or a plan of a amalgamated community)</td>
</tr>
<tr>
<td>• as part of a master plan and/or as a separate document</td>
<td>• as a separate regulatory legal act</td>
</tr>
<tr>
<td><strong>Status</strong></td>
<td></td>
</tr>
<tr>
<td>Urban planning documentation of the local level</td>
<td>Regulatory legal act of the local self-government authority</td>
</tr>
<tr>
<td><strong>Development aim</strong></td>
<td></td>
</tr>
<tr>
<td>To determine the conditions and restrictions on the use of the territory for urban needs within certain zones (based on the approved urban planning documentation)</td>
<td>To implement urban planning documentation (spatial planning documentation) at the local level, creating conditions for attracting investments and carrying out business activities transparently, by defining at the level of a regulatory legal act:</td>
</tr>
<tr>
<td></td>
<td>• conditions of planning and development of territories</td>
</tr>
<tr>
<td></td>
<td>• legal and planning restrictions</td>
</tr>
<tr>
<td></td>
<td>• permitted types of the use of land plots within the designated functional areas of settlements (or amalgamated communities)</td>
</tr>
<tr>
<td></td>
<td>• the procedure of relations in the implementation of urban planning</td>
</tr>
<tr>
<td><strong>Composition</strong></td>
<td></td>
</tr>
<tr>
<td>1. The graphic part – the zoning plan of the territory</td>
<td>1. The text part includes:</td>
</tr>
<tr>
<td>2. The text part - an explanatory note in which the followed established:</td>
<td>• the procedure of planning, development and other use of the territory</td>
</tr>
<tr>
<td>• a set of mandatory requirements for the use of land plots falling into the corresponding zone</td>
<td>• regulation of land relations during the development and construction on certain land plots</td>
</tr>
<tr>
<td>• the permitted types of the use of land plots, the limit (minimum and (or) maximum) sizes of land plots</td>
<td>• basic requirements for the development and improvement of the city</td>
</tr>
<tr>
<td>• limit parameters of the allowed construction and reconstruction of real estate objects</td>
<td>• planning, historical and cultural environmental restrictions on the use of certain territories</td>
</tr>
<tr>
<td>• restrictions on the use of land plots and real estate objects, established in accordance with the legislation of Ukraine</td>
<td>• the procedure for the implementation of investment and urban planning activities related to new construction, reconstruction, restoration, capital repairing of construction projects, etc.</td>
</tr>
<tr>
<td>2. The graphic part includes:</td>
<td>2. The graphic part includes:</td>
</tr>
<tr>
<td><strong>zoning plan</strong>, developed on the basis of the master plan (or the plan of the amalgamated community)</td>
<td></td>
</tr>
</tbody>
</table>
### Preservation of environment and urban development

**PROBLEM:** Negative impact of urban planning on environment

<table>
<thead>
<tr>
<th><strong>CAUSES</strong></th>
<th><strong>SOLUTIONS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>There are no specific mechanisms to ensure the achievement of sustainable development goals.</td>
<td>To abide provisions of sustainable development concept and international acts ratified by Ukraine on needs of both economic and social development and environmental protection.</td>
</tr>
<tr>
<td>Preservation of environmental has formal approach in developed documentations of spatial planning and construction.</td>
<td>Environmental protection must become an inherent integrated component of any spatial planning and design documentation aimed at preventing negative environmental impacts at the stage of future economic activities planning, state policy, and drafting of plans and programs.</td>
</tr>
<tr>
<td>The procedure for conducting public discussions of projects under procedures of SEA and ATS is ambiguously defined.</td>
<td>To detail the procedure for public discussions conducting under the framework of CEO and ATS procedures, to determine rights and obligations of all participants of discussions.</td>
</tr>
<tr>
<td>There is no regulation on handling of household and industrial wastes, low energy efficiency of settlement infrastructures, a high level of air pollution, reducing areas of land allocated for sanitary protection zones.</td>
<td>To encourage population to the separate collection of household waste, cities - to construction of waste processing enterprises, owners of production - to introduce technologies with a low degree of environmental impact and reduce energy consumption, use of renewable energy sources.</td>
</tr>
<tr>
<td>Not efficient integration of the ecological network concept to the spatial planning field.</td>
<td>To develop a methodology for integrating of the ecological network concept to practice of spatial planning in order to ensure environmental sustainability and formation of the ecological framework of the territory of the state and specific regions.</td>
</tr>
<tr>
<td>Inconsistency of SEA and ATS procedures with the procedure of a comprehensive urban planning expertise.</td>
<td>To eliminate the duplication of SEA and ATS procedures with expertise of construction projects and comprehensive urban planning expertise by clarifying composition of experts involved in this expertise.</td>
</tr>
<tr>
<td>Lack of qualified specialists in environmental assessment and preservation.</td>
<td>To determine qualification requirements for professionals who are involved in assessment of natural conditions and resources, environmental preservation as part of urban planning documentation and construction projects, including the preparation of reports on CEO and ATS.</td>
</tr>
<tr>
<td>Initial data is not fully available for developers of spatial planning and construction documentations.</td>
<td>To ensure the creation of an integrated environmental monitoring system. To define the necessary data of spatial planning for achieving purposes of public administration. To form a unified open access information system of public administration authorities additionally to the abovementioned data.</td>
</tr>
</tbody>
</table>
# Cultural heritage preservation

**PROBLEM.** Impunity for bringing to an emergency condition, deliberate destruction and demolition of cultural heritage objects as a result of illegal construction caused by the investment attractiveness of historical centers of Ukraine, leads to new constructions at their place, ignoring and violating requirements and restrictions on construction in historical areas, protected zones and zones of protection of monuments.

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Destruction of cultural heritage for the sake of new construction</td>
<td>The strategic priority of preserving heritage in all investment and project cycles. Transition from the ideology of protection to the ideology of preserving the heritage - economical, balanced management of historical resources with their use in the dynamic processes of modern socio-cultural life. Any construction in historical areas must have the main purpose - preserving the heritage.</td>
</tr>
<tr>
<td>Absence of effective management of historical and cultural resources</td>
<td>Creation of a single authority for the preservation of cultural heritage with a subordinate system of local authorities with appropriate powers, funding and enshrining at the legislative level.</td>
</tr>
<tr>
<td>Insecurity of cultural heritage sites due to their absence in the Registry</td>
<td>Creation of a unified public State Register of Cultural Heritage Objects as an electronic system of a distributed database that combines all existing registries / lists of heritage cites and will automatically interact with industry electronic registries, cadastres, etc.</td>
</tr>
<tr>
<td>Incompleteness and inconsistency of the regulatory framework</td>
<td>Implementation of requirements and obligations of international documents. Unification of approaches for preservation of cultural heritage, procedures and mechanisms of control and supervision. Strengthening of administrative, criminal and financial liability for damages to heritage objects at the legislative level. A clear delineation of rights and obligations of the state and territorial communities and their administrative and legal powers.</td>
</tr>
<tr>
<td>There is no coordination between the monument preservation legislation and legislations of other industries</td>
<td>Coordination of monument legislation with requirements of urban planning, land legislation and legislation on the permitting system and administrative services. The cultural heritage preservation authority should be involved in the process of issuing documents giving the right to carry out preparatory and construction works. The prescription of the authority must be the basis for the termination of a permit for the construction.</td>
</tr>
<tr>
<td>Lack of interaction with stakeholders who have different positions, conflicting interests</td>
<td>Formation of an effective model of public-private partnership using legal norms of direct action. The introduction of the Unified State Register of specialists, institutions and organizations performing research, scientific design, expert and productions on cultural heritage sites.</td>
</tr>
<tr>
<td>Critical decline in public awareness on cultural heritage issues</td>
<td>Actively promoting the values of cultural and historical heritage of society, increasing of public awareness of the preservation of cultural heritage.</td>
</tr>
<tr>
<td>Absence of effective public control over the preservation of immovable cultural heritage</td>
<td>Make the review and approving of documentation on land, urban planning work in historic populated areas public. To review of draft legal acts on the preservation of cultural heritage. The introduction of mandatory public hearings of construction in historic areas of settlements.</td>
</tr>
</tbody>
</table>
Technical regulation

PROBLEM
The need to create a technical regulation system for construction capable of harmoniously integrating into the technical regulation systems of the European Union; the lack of prerequisites for the signing of the Agreement on the Evaluation of the Conformity and Acceptability of Industrial Products (ASAA)

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The absence of harmonized standards in Ukraine in accordance with Regulation (EU) No 305/2011; low percentage of harmonization of standards for materials, products and methods of their testing</td>
<td>Adoption of a program of standards harmonization of EN and ISO in the field of construction</td>
</tr>
<tr>
<td>Construction standards (CS) have been developed by the regulatory method of rationing, mainly overloaded with unnecessary requirements, hindering the use of new technologies and materials, encouraging to obtain deviations from BN</td>
<td>The adoption of amendments to the Law of Ukraine &quot;On building codes&quot; and the introduction of the parametric method of standardization in construction. Developing a program on CS reviewing using the parametric method</td>
</tr>
<tr>
<td>Construction standards do not take into account the need to ensure the basic requirements of the Technical (TR) at all stages of the life cycle of structures.</td>
<td>Adoption of amendments to the Law of Ukraine &quot;On construction standards&quot; in order to extend the requirements of construction standards throughout the life cycle of a structure</td>
</tr>
<tr>
<td>The current standardization system does not meet the needs of business entities in bringing innovative technologies and products to the market</td>
<td>Development of proposals for further privatization and the transition to public administration of the standardization system in Ukraine.</td>
</tr>
<tr>
<td>Legally defined administrative offenses do not take into account the binding nature of TR and voluntary standards.</td>
<td>The development of the draft Law of Ukraine “On Amendments to the Code of Ukraine on Administrative Offenses”, which should provide for in Articles 96 and 96¹ penalties only for violation of mandatory legal and regulatory acts.</td>
</tr>
<tr>
<td>Low institutional capacity of basic organizations in construction</td>
<td>Amendments to the Resolution of the Cabinet of Ministers dated July 14, 2010 No. 589 “On Approval of the Regulations on the Basic Organization for Scientific and Technical Activity in Construction” in order to attract higher education institutions, scientific institutions, and self-regulatory organizations to regulation in construction.</td>
</tr>
<tr>
<td>Low awareness of the construction industry specialists on the latest design and construction approaches</td>
<td>To make amendments to educational programs of higher educational regarding the part of introducing modern fundamentals of technical regulation, design methods, design according to the Eurocodes, and developing an appropriate retraining program for specialists</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>The need of reconstruction of existing facilities in accordance with the current construction standards make reconstruction technically impossible and/or economically unviable.</td>
<td>The determination of the possibility of restoring a part of the structure under reconstruction according to core parameters established by the project documentation and/or the requirements of CSs that acted at the time of the object construction.</td>
</tr>
</tbody>
</table>
## Technical supervision for construction

### PROBLEM

Inefficiency of the existing system for technical supervision of construction

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outdated approaches to supervision of construction</td>
<td>Adoption of amendments to the Law of Ukraine “On Architectural Activity” and the Procedure for the implementation of technical supervision during the construction of an architectural object, approved by Resolution of the Cabinet of Ministers of Ukraine dated July 11, 2009 No. 903 in order to attract an advisory engineer as a business entity.</td>
</tr>
<tr>
<td>Unregulated contractual relationship between a construction customer and an advisory engineer</td>
<td>Approval of the approximate form of the contract for the provision of engineering services, which should provide for functions, duties and procedure for resolving disputes during creating a construction object (order of the Ministry of Regional Development).</td>
</tr>
<tr>
<td>Formal performance of their responsibilities for the supervision of construction by responsible persons</td>
<td>The introduction of an e-cabinet for architects and engineers of technical supervision, cited the construction objects on which such persons carry out author’s and technical supervision, with the function of electronic confirmation of such supervision by means of qualified electronic signature;</td>
</tr>
<tr>
<td>Illegal use of data from the register of certified persons during urban planning activities</td>
<td>Establishment of administrative responsibility for the unlawful use of data from the register of certified persons during urban planning activities (amendments to the Law of Ukraine “On liability for offenses in the field of urban planning activities”, Article 96 of Chapter 8 of the Administrative Offenses Code of Ukraine)</td>
</tr>
</tbody>
</table>
Permitting system

PROBLEM
The construction industry has a significant impact on the investment attractiveness of the country, but complex and non-transparent procedures for obtaining permits for construction are often corrupted and cause the most criticism from the public.

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authorities often ignore procedures regulated by the legislation, they distort the content at the sub-law level, for example, turning the declaration to surrogate procedures of permitting system</td>
<td>basic requirements for authorization procedures at the level of laws. Ensure transparency of procedures for issuing permits in the field of construction by fully translating the relevant administrative procedures into electronic services.</td>
</tr>
<tr>
<td>Direct contact between a developer and officials of permitting authorities stimulates corruption</td>
<td>Provide only electronic document management in the provision of administrative services in the construction and preservation of relevant documents. Introduce automatic verification of documentation when it is registered (entered) in registries, as well as the impossibility of documentation in violation of the established requirements (which requires the mandatory integration of all registries and inventories).</td>
</tr>
<tr>
<td>Urban conditions and restrictions formally have to repeat the requirements of urban planning documentation at the local level for a specific land plot, and in fact are provided by local officials &quot;in manual mode&quot;</td>
<td>Provide urban planning conditions and restrictions as an excerpt from the urban planning inventory within an automated system without the intervention of officials.</td>
</tr>
<tr>
<td>An expert organization is selected by the customer of the urban planning documentation, which causes a significant risk of collusion between a developer and an expert organization, with the aim of providing a deliberately positive assessment of the documentation according to results of the expert examination</td>
<td>To conduct the selection of an expert organization by an automated system at random, with the prohibition of direct contacts between the customer or the developer of documentation and the expert organization. To carry out the examination by an expert filling out a checklist (check-list), which lists all the requirements for the relevant type of documentation. Introduce the regulatory framework for the cost of expertise and the public nature of the findings.</td>
</tr>
<tr>
<td>Licensing in construction does not perform socially useful functions almost at all, because the requirements for the logistics of licensees are often confirmed lease agreements of equipment, staff can be in a state of high personnel turnover, etc. Companies &quot;with licenses&quot; are actively sold on the market.</td>
<td>Regulate access to professional practice in construction through professional certification of individuals who perform work (services) related to the creation of architectural objects. Introduce the personal responsibility of these persons for all the defects (defects) of the work performed (services rendered) to the customer and third parties, including through professional liability insurance.</td>
</tr>
<tr>
<td>The public is deprived of the ability to effectively control the issuance of permitting documents and their quality.</td>
<td>Disclose as public information all documents submitted by applicants for obtaining permits and / or registration services, and all documents created as a result of the provision of relevant services.</td>
</tr>
</tbody>
</table>
# State Architectural and Construction Control and Market Supervision

## PROBLEM

Inefficiency of the State architectural and construction control and market supervision

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The impossibility of applying the procedure for the demolition of illegal construction objects.</td>
<td>To bring the concept of &quot;illegal construction&quot; in accordance with the urban planning legislation and to determine the procedure for the demolition of illegal construction objects.</td>
</tr>
<tr>
<td>Soft legislative regulation of architectural and construction control that is ineffective in the fight against illegal construction</td>
<td>To introduce the nullity procedure (deregistration) of documents giving the right to perform construction and/or preparatory work, if the business entity did not ensure compliance with legal requirements or did not eliminate the violations within a specified period.</td>
</tr>
<tr>
<td>Minor fines for violating legal requirements, building codes, standards and regulations</td>
<td>To criminalize the person carrying out construction of objects of the class of consequences CC2 and CC3 without obtaining permission.</td>
</tr>
<tr>
<td>Inspections are possible only with authorized persons of the developer, at the same time there is no document that would record the fact of non-admission to the inspection, which allows the developer to avoid inspections with impunity</td>
<td>To establish a clear procedure for notifying business entities of inspections, which includes the e-cabinet of business entities. To approve the form of the non-admission certificate before the inspection and the procedure for its filling in.</td>
</tr>
<tr>
<td>The promulgation of acts, protocols of inspections and decisions of inspectors on the results of inspections are not provided for.</td>
<td>To create a public register of audit results and ensure its interaction with the Urban Planning Cadastre, to determine a clear timeline for entering information into the register.</td>
</tr>
<tr>
<td>A significant amount of discretionary powers, including the cancellation of permits to perform construction work and the appointment of unscheduled inspections</td>
<td>Eliminate the discretionary powers of the bodies of architectural and construction control and establish, at the level of the law, clear grounds and criteria for refusing to register (issue) authorization documents.</td>
</tr>
<tr>
<td>Inefficient and ineffective system of market supervision in the field of construction materials and equipment.</td>
<td>To reform the market supervision system, to provide for responsibility for low-quality building materials with the possibility of withdrawing low-quality products.</td>
</tr>
<tr>
<td>There is no control over the implementation of work on the development of urban planning documentation, technical inspection of buildings and structures, the conduct of technical inventory of real estate, etc.</td>
<td>To introduce responsibility for violation of the requirements of regulatory legal acts on the development of urban planning documentation, conducting a condition survey of buildings and structures, technical inventory of real estate objects.</td>
</tr>
<tr>
<td>There is no provision for the implementation of architectural and construction supervision over the activities of subjects of natural monopolies that provide technical conditions.</td>
<td>To extend coverage of state architectural and construction supervision and to include there activities of entities providing technical conditions, and to ensure that the results of such inspections are made public on a quarterly basis.</td>
</tr>
<tr>
<td>DABI does not conduct methodological work on the implementation of state architectural and construction control</td>
<td>To ensure the development and dissemination of teaching materials, the provision of explanations, advice and recommendations, and trainings on the implementation of requirements of the urban planning legislation.</td>
</tr>
</tbody>
</table>
## Self-regulatory organizations (SRO) in the field of urban development.

### Professional certification of responsible performers

#### PROBLEM

Self-regulation mechanisms are not effective enough.
Professional certification system requires improvement

#### SOLUTIONS

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal framework for self-regulation is not effective enough in Ukraine</td>
<td>During developing of the Urban Planning Code of Ukraine and amending legislative acts to ensure the creation of a comprehensive legislative framework for self-regulation, to determine the role and position of SROs in regulation of entrepreneurial and professional activities</td>
</tr>
<tr>
<td>There are no traditions and experience in applying of public administration mechanisms of self-regulation</td>
<td>To increase effectiveness of public administration mechanisms, including: review and approval by the relevant Ministry responsible for SRO standards; enshrining delegated authority at the level of the law; monitoring compliance with antimonopoly laws; supervision of the implementation of delegated authority</td>
</tr>
<tr>
<td>Ineffective interaction and unclear allocation of functions between self-regulatory organizations and the relevant authority</td>
<td>To form a supervisory board at the Ministry of Regional Development as a collegial body with at least 51% of its members from all existing SROs (at least one of each direction) to consider issues related to the registration of SROs, ensuring supervision of their activities, delegation of authority and consideration of dispute</td>
</tr>
<tr>
<td>Unsettled SROs’ powers on professional certification for citizens who are not their members</td>
<td>To extend delegated authority to all market entities for each type of activity or profession; it must eliminate uncertainty regarding the spread of mechanisms for regulation, control and responsibility of non-SRO members</td>
</tr>
<tr>
<td>Risky method of authority delegation for a period of a year or a month, which makes impossible the continuity of their implementation</td>
<td>To introduce indefinite delegation of authority from the Ministry of Regional Development to an SRO. Establish the grounds and mechanism for revocation of delegated authority. In case of termination of delegated authorities to provide time for business handover and ensure continuity of the implementation of management functions</td>
</tr>
<tr>
<td>There is no effective system of corporate and personal responsibility of specialists and their associations.</td>
<td>To improve mechanisms for compensation of losses caused to consumers as a result of the provision of goods by members of SROs, performance of works (services) of inadequate quality (creation of compensation funds, insurance of risks and liability of SROs’ members)</td>
</tr>
<tr>
<td>The best international practices of self-regulation are not implemented in Ukraine.</td>
<td>To study and introduce new SRO tools, including: admission to the market of business entities and specialists; creating an accreditation system for testing laboratories, certification bodies for personnel, products and processes; quality control of projects, products, works and services; standardization in construction; registration of self-regulatory organizations of certain types of contracts; conducting of architectural contests, etc.</td>
</tr>
<tr>
<td>Low awareness in society regarding the nature, role, content, characteristics and models of self-regulation</td>
<td>To develop practical recommendations for the creation of an SRO and a step-by-step action plan (roadmap) for interested building materials producers, expert, construction and other organizations and specialists by the Ministry of Regional Development</td>
</tr>
<tr>
<td>Imperfect legislation on professional certification of specialists</td>
<td>To improve the legislation by: review of the procedure and grounds for deprivation of a certificate; gradual transition from licensing to professional certification; review and supplement of the list of professions and types of work, performers of which are subject to professional certification; to establish fees for professional certification and its procedure at the law level</td>
</tr>
<tr>
<td>Personnel certification procedures need to be adapted to European requirements.</td>
<td>To improve opportunities for personnel certification through qualification confirmation by bodies accredited by the National Accreditation Agency of Ukraine in accordance with ISO / IEC 17024: 2012</td>
</tr>
</tbody>
</table>
Decentralization of public administration in the field of urban development

PROBLEM

Inconsistencies between the distribution of risks, functions and responsibilities of the institutional capacity of main stakeholders in the field of urban development

<table>
<thead>
<tr>
<th>Functions</th>
<th>Central Executive Authorities (CEA)</th>
<th>Local self-government authorities</th>
<th>Non-governmental organizations and market entities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>formation of state policy in the field of construction, urban planning and architecture</td>
<td>development of urban planning documentation, making it public as a source of initial data for designing</td>
<td>industry self-regulation by admitting economic entities to the market, admitting specialists to the professional activity</td>
</tr>
<tr>
<td></td>
<td>implementation of state supervision under subjects of urban planning</td>
<td>establishing of a transparent process for issuing or obtaining permits of the entire life cycle of projects</td>
<td>control of projects, products and works for compliance with requirements of technical regulations</td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>approval of urban planning documentation</td>
<td>standardization and regulation in construction</td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of local building regulation rules</td>
<td>adoption of rules, standards, codes, charters of self-regulatory organizations</td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td></td>
<td>adoption of national standards, regulations and rules</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>adoption of standards for organizations</td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>approval of the General planning scheme of territories of Ukraine</td>
<td>approval of local building regulation rules</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the adoption of laws, acts of the CMU and CEA</td>
<td>adoption of regulatory legal acts of local self-government authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>adoption of building codes</td>
<td>approval of urban planning documentation</td>
<td></td>
</tr>
</tbody>
</table>
# Risk insurances in the construction field

## PROBLEM

The existing system of permitting and approving procedures and penalties does not ensure high quality of construction, protection of interests of all parties and compensation in case of property, life and health of third parties damage.

## CAUSES

<table>
<thead>
<tr>
<th>Construction is characterized by a high probability of financial, technical, technological, legal risks. Penalties for offenses do not stimulate to act within the legal framework.</th>
<th>To provide risk insurances in construction (voluntary, mandatory, and as a condition for carrying out of professional or economic activity) depending on classes of consequences (liability), the level of possible losses and the degree of risks. This will improve the quality of construction, protect the interests of all parties to the process and provide compensation for damages in case of damage during construction and the warranty period of operation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expertise of projects and construction control are characterized by formality and corruption.</td>
<td>In case of concluded insurance contracts, to conduct compulsory insurance expertise and set up monitoring compliance with the law, construction standards and compliance of the construction with project documentation by advisory engineers and insurance engineers.</td>
</tr>
<tr>
<td>Construction participants are not (de facto) responsible for damages during construction and warranty period of operation.</td>
<td>To introduce liability insurance of construction participants to third parties for damages to their property, life and/or health, depending on the classes of consequences (liability), the level of possible losses and the degree of risks. To oblige the construction participants to conclude risk insurance contracts in construction and to provide a financial guarantee for the warranty period within the law.</td>
</tr>
<tr>
<td>The state architectural and construction inspection (SACI) and local self-government authorities are not responsible for non-compliance with the legislation by construction participants.</td>
<td>To set up the professional liability of SACI inspectors and other officials, to provide for the possibility of insuring such liability. In case of concluded insurance contracts, the contractor, customer and insurance company are in charge for control over construction, compliance with a project documentation and commissioning.</td>
</tr>
<tr>
<td>Low reliability and qualification of personnel in insurance companies on risks assessments in construction and on settlement and compensation of losses.</td>
<td>To develop organizational, personnel and other special criteria for admission of insurance companies to risk insurances in construction. To oblige insurance companies to have certified insurance engineers on their staff or advisory engineers or to engage them on a contractual basis.</td>
</tr>
<tr>
<td>There is no institution of a representative of an insurance company at a construction site that is an alternative to inspectors of SACI.</td>
<td>To supplement the Art. 15 of the Law of Ukraine “On Insurance” by a new type of unlicensed mediation in the insurance industry – a survey - the Institution of insurance engineers and loss adjusters. To involve certified advisory engineers for risk assessments, survey and settlements of damages.</td>
</tr>
</tbody>
</table>
**Public control**

**PROBLEM**
The public cannot realize the right for comfortable living environment due to the absence of effective public control

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not state and public interests, but interests of investors and their super-profits are the highest priority during planning of territories.</td>
<td>Introduce the principle of human centeredness - the priority of human rights and a citizen, life, health and human security over other interests (including profit), implementing Article 3 of the Constitution of Ukraine. Development of urban planning documentation should be financed at the expense of state and/or local budgets</td>
</tr>
<tr>
<td>The public is involved to the control at late stages.</td>
<td>Ensure public involvement since the official publication of the decision to develop documentation.</td>
</tr>
<tr>
<td>Public hearings have advisory nature</td>
<td>Taking into account and coordination of public proposals must be mandatory within the framework of public hearings and discussions, if such proposals do not contradict the requirements of the legislation and urban planning documentation.</td>
</tr>
<tr>
<td>Officials are not responsible for violations of the procedure for public participation</td>
<td>Establish personal responsibility of officials for non-compliance with the procedure for public participation. Provide for the way of cancellation of documentation in case of violation of the public participation.</td>
</tr>
<tr>
<td>Non-transparency of decisions in the field of urban development</td>
<td>Ensure public access to draft decisions in advance, and publicize the agenda of meetings in advance. Urban planning documentation in full has to be published together with a decision on its approval.</td>
</tr>
<tr>
<td>Non-modern forms of public participation</td>
<td>Introduce electronic public hearings as an additional form of public participation.</td>
</tr>
<tr>
<td>The activity of public authorities is not effective and does not protect interests of the public through the submission to control of the public authority</td>
<td>To provide for the obligation to take into account solutions made by the architectural and urban planning council, which should be published, and meetings themselves must be public and broadcasted. At least 50% of members of public bodies should be formed by specialists of the relevant field who are not employees of a public body, by means of a rating Internet voting of the public. The chairman should be elected by a majority of members, and not be appointed by the decision of an official.</td>
</tr>
<tr>
<td>The Institute of Public Architectural Inspectors does not work</td>
<td>To settle the issue of public inspectors at the level of the law. To provide for the right of a public inspector to get acquainted with documents during an inspection, to sign a certificate of non-admission by a developer to an inspection, to complaint against actions of a state inspector to his supervisor.</td>
</tr>
<tr>
<td>Law enforcement do not take any measures for stopping violations in the field of urban development</td>
<td>To provide for police powers to ensure security and procedure during the inspection by an state inspector; compulsory execution of court decisions in the field of urban development and decisions of state architectural and construction inspection; tracing of an authorized person on behalf of a developer.</td>
</tr>
<tr>
<td>Non-publicity of documentation and decisions in the urban development field</td>
<td>Creation and operation of public cadastres, registers of documentation and permits.</td>
</tr>
</tbody>
</table>
Professional and academic education, advanced training

**PROBLEM**
The society does not receive specialists in appropriate modern knowledge, qualifications and competence in architecture and urban development.

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The content and methods of current higher and vocational education in the field of urban planning are not modern enough for needs of urban planning.</td>
<td>To identify as a separate program the key areas and measures for the reform of vocational and academic education, the revival of scientific potential in the field of urban planning. To coordinate the list of specialties in the field of urban planning with modern requirements, clarify passports and standards of specialties, including training and retraining of specialists based on Eurocodes.</td>
</tr>
<tr>
<td>Shortage of qualified scientists and personnel of construction specialties</td>
<td>To introduce separate state programs for the priority development of certain specialties with a critical shortage of specialists. To introduce specialties on the development of urban planning documentation, property management, inspection of construction objects, evaluation of objects of immovable cultural heritage, insurance engineers, etc.</td>
</tr>
<tr>
<td>Low quality of education and training in the urban development</td>
<td>To envisage that training in institutions of higher education for professions related to urban planning, can be carried out only on full-time basis. To introduce a public rating of teachers and students in the field of urban planning on the basis of significant industry criteria;</td>
</tr>
<tr>
<td>The lack of a system of professional advanced training according to European standards and the corresponding changes in legislative and regulatory requirements in the field of urban development</td>
<td>To create a platform for advanced trainings of responsible executives of certain types of work (services) in the field of urban planning, civil servants (Ministry of Regional Development, SACI, local self-governments and their executive bodies, local state administrations) through advanced trainings under relevant programs.</td>
</tr>
<tr>
<td>Certification is not provided for all professionals who perform complex and responsible work associated with the potential risk or loss of cultural heritage sites.</td>
<td>To review and add to the list of professions and types of work, those who are subject to professional certification, depending on the complexity of such work, level of responsibility, necessary professional competencies and potential risks. To introduce separate certification for architects-restorers.</td>
</tr>
<tr>
<td>The procedure for personnel certification needs to be improved concerning efficiency and transparency.</td>
<td>To determine an exhaustive and effective list of reasons for depriving a certified person of a qualification certificate. To introduce a public rating of responsible executives (separately by type of professional activity) in the field of urban development.</td>
</tr>
<tr>
<td>Procedures for certification of personnel are not adapted to European requirements in the field of urban development.</td>
<td>To provide the right to be included in the Register of Certified Persons to professionals who have received certificates for professional certification from personnel certification bodies accredited by the National Accreditation Body of Ukraine ISO / IEC 17024: 2014</td>
</tr>
</tbody>
</table>
Public procurement procedures
in the field of architectural design, urban development and development of scientific and project documentation for the restoration of monuments of urban development and architecture

**PROBLEM:** Procedures of public procurement are not effective and do not provide the necessary quality of urban planning, design and scientific design documentation in the field of architectural design and related areas.

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The main procedure for public procurement is the “open bidding” procedure, where the main criterion is low price, which negatively affects the quality of architectural projects.</td>
<td>The priority procedure for the procurement of architectural services must be architectural contests and negotiation procedure according to their results. To develop and introduce a high-quality selection procedure for a chief designer, open the possibility of using a “competitive dialogue” for the procurement of architectural services, develop qualification criteria for the selection of a contractor for each area (urban planning documentation (UPD), project documentation (PD), scientific design documentation (SDD)).</td>
</tr>
<tr>
<td>The negotiation procedure after conducting of an architectural competition is not regulated by the regulation and contains inconsistent deadlines</td>
<td>Develop recommendations, approved by a joint order of the Ministry of Economic Development and Trade and the Ministry of Regional Development, on the procedure for conducting a negotiation procedure to order a PD or MDB based on the results of an architectural competition. To agree on a terminological base, in particular, the Law of Ukraine “On Architectural Activity”, the Law of Ukraine “On Public Procurement”, the Law of Ukraine “On Architectural Activity”.</td>
</tr>
<tr>
<td>The procedure for ordering UPD and PD by a foreign participant who is the winner of the competition is not possible and not legally regulated.</td>
<td>Regulate the procedure for ordering project documentation after the competition and cooperation conditions with foreign architects - the winners of such competitions</td>
</tr>
<tr>
<td>The rules for organizing and conducting of architectural and urban planning competitions are outdated, do not correspond to modern urban planning legislation, the principles and methods of conducting architectural competitions in Europe and in the world.</td>
<td>With the involvement of professional communities, to develop and align the Resolution of the Cabinet of Ministers of Ukraine dated November 29, 1999 No. 2137 “On Approval of the Procedure for Organizing and Conducting Architectural and Urban Planning Competitions” with requirements of modern urban planning legislation and international rules for organizing and conducting of architectural and urban planning competitions.</td>
</tr>
<tr>
<td>The production of scientific and design documentation is not defined by the legislation either as “work” or “service”, which makes it impossible to order restoration of projects in a legal way.</td>
<td>To define in the Law of Ukraine “On public procurement” the development of scientific and project documentation for the restoration of architectural monuments and urban planning as “work”.</td>
</tr>
<tr>
<td>Reducing the quality of project documentation through the project procurement as part of construction work</td>
<td>To develop guidelines at the level of by-laws on reasonability of separate tenders for the design and construction</td>
</tr>
<tr>
<td>Deliberate incorrect definition of types of work by customers (capital repairs instead of reconstruction) in order to avoid the development of project documentation.</td>
<td>To develop guidelines for the correct definition of types of work (capital repair or reconstruction) at the level of by-laws. To strength the responsibility of customers for violation of the legislation on the definition of the type of work – capital repair/reconstruction to prevent the avoiding of designing for important public facilities.</td>
</tr>
<tr>
<td>Lack of experience and incentives for customers to conduct of contests</td>
<td>To develop a standard procedure for ordering services for the organization and conducting of architectural competition (engineering).</td>
</tr>
</tbody>
</table>
# Pricing in construction

## PROBLEM

The determination of the estimated construction cost and price by the investor and contractors based on state resource standards does not reflect the real costs and profits of contractors; creates a favorable environment for corruption in the planning of public capital expenditures, reporting and taxation.

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The formation of the estimated construction cost of with involvement of budgetary funds is carried out in Ukraine according to the methodology of a planned economy based on incomplete and outdated state resource standards in the absence of monitoring market prices. Due to the manipulation of norms, an artificially overestimation of the estimated cost of construction for budgetary funds occurs.</td>
<td>To transfer to market pricing in construction, to determine the estimated cost in the public and private sectors on the basis of modern information and software calculations. To abolish state regulation of prices in the construction by amending Art. 7 cl. 2 of the Law of Ukraine &quot;On Prices and Pricing&quot;; to cancel the obligation to use the relevant regulatory documents DSTU B.D.1.1-1: 2013 - DSTU B D. 1.1-9: 2013.</td>
</tr>
<tr>
<td>The estimated cost does not cover all available component costs, is not structured regarding real participants of the investment and construction process, and is not suitable for new types of contracts with a different combination of construction work, financial and management services.</td>
<td>To improve the accountability of entities of all forms of ownership under object contracts for the purchase of construction products, materials, works, services (in particular, through the relevant industry associations), to form a unified regional information base of current prices for products, works and services in construction. Based on the processing of this information, to form regional norms for the life cycle cost of objects and their elements. Through the ProZorro system, to switch to the procurement of products from the general contractor not only for the facility as a whole, but also for subcontract chains and suppliers up to a certain price threshold with the opening to use the relevant data.</td>
</tr>
<tr>
<td>It does not have the ability to determine reliably the cost early stages of design; it makes non-transparent the justification of efficiency and budget planning for capital expenditures.</td>
<td>To transfer to the use of current market standards in the justification of investment decisions, in cost engineering, in the planning and implementation of costs for the maintenance and repair of objects.</td>
</tr>
<tr>
<td>Methods for the cost determination are not methodologically separated: the customer - for costs of construction and maintenance of the elements of buildings and structures; the contractor - for the cost of the work (services).</td>
<td>To transfer from the cost of work to the cost of objects and their elements in investor sheets. To use contractors’ internal resource and cost norms in their estimate sheets.</td>
</tr>
</tbody>
</table>
## Building information modeling

**PROBLEM**

In developed countries, improving the efficiency of the industry, construction enterprises, construction and operation of facilities are associated with building information modeling (BIM). Ukraine is far behind in this field.

<table>
<thead>
<tr>
<th>CAUSES</th>
<th>SOLUTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional implementation of building information modeling (BIM), which creates a dynamic computer model of an object at the design stage and during its construction and operation</td>
<td>To introduce information modeling based on the BIM concept and program with a view to further adopting relevant legislation and regulations. To provide for the development of regulatory documents - national standards that meet international standards.</td>
</tr>
<tr>
<td>Uncertainty at the level of legislation the necessity for BIM for the public sector, the lack of an appropriate government strategy, the lack of funding for a program that will disseminate the best BIM experience</td>
<td>To create a coordination center for the integrated implementation of BIM. To start the implementation of BIM technologies at all stages of investment activities by government customers.</td>
</tr>
<tr>
<td>Ukraine is significantly far behind from the EU countries concerning BIM, its scientific and methodological support</td>
<td>To implement appropriate training and retraining programs for BIM specialists in specialized institutions of higher education. To create a unified system of classification and coding of building materials, structures, machines, mechanisms, technical and process equipment on the basis of information from manufacturers and suppliers.</td>
</tr>
<tr>
<td>Domestic regulation of design, expertise, construction and operation does not take into account the capabilities of BIM technologies</td>
<td>To improve the processes of tender procedures and contracts, design and examination of BIM-projects with the use of appropriate software systems for managing the construction and operation of buildings and structures. To create conditions for representing of approximate estimated cost of the object based on the BIM by the customer at the stage of tendering for the design and construction, proposed by the design organization.</td>
</tr>
<tr>
<td>The lack of complete BIM information about the object does not allow to receive current project and operational documentation and its visualization for solving managerial tasks at any time during the life cycle.</td>
<td>To ensure free exchange of information based on universal data formats, presentation of project documentation in electronic form. To implement a system for performing current and capital repairs of buildings (structures) and utilities based on BIM, to monitor the current technical condition of the constructed and commissioned facility, to develop appropriate data banks of analogous objects for their use in further design and construction of similar facilities.</td>
</tr>
</tbody>
</table>
Analytical Notes

(short titles)
Analytical Note No 1

Analytical Note 1. The theoretical basis of the concept of public administration in the field of urban planning activities and proposals for their practical implementation.

Authors:

1. Yuriy Mantsevich - Scientific Secretary of the State Enterprise "NDPI"
2. Yuri Dekhtyarenko - Associate Professor of the Department of Regional Management, Local Government and City Management of the National Academy under the President of Ukraine, Ph.D., Honored Economist of Ukraine

COVERAGE OF THE PROBLEM

The current state of public administration in the field of construction is determined by the general state of public administration in the state. Attempts to speed up the reform of the governance system in the direction of approaching European standards of public administration have some positive results. However, further progress without a clear program of action is impossible.

First of all, the purpose of the Concept should be formulated, the proposed clear system of basic principles and goals, activities and deadlines for their implementation. In addition, when writing this note, it was taken into account that the construction industry is part of the national economic complex and uses, first of all, the corresponding management mechanisms of administrative institutions, and spatial planning is part of social activity and uses public administration mechanisms. In terms of priority, spatial planning is a wider area of social relations than the construction industry.

Currently, the level of subsidiarity and decentralization in the field of construction should be assessed as quite high - the industry is one of the industries with a high level of private ownership of enterprises, in the region there is practically no vertical subordination of central, regional and local governments (except for SACI).

Such steps correspond to the obligations of Ukraine to harmonize with the European norms not only purely formally at the level of adaptation of standards, norms and rules, but also allow changing the philosophy of further reforming the sphere of urban planning in accordance with the principles and objectives of the European “Leipzig Charter”: balanced development of the economy, ecology and social cohesion in the conditions of a qualified city and rural areas.

CRITICAL ANALYSIS OF THE SITUATION

The tremendous share of superprofits, which are formed during the development of the most attractive land plots, is assigned by a group of individuals and legal entities that ensure the implementation of an investment project. This situation cannot be defined as illegal simply because the law completely ignores this phenomenon. The distribution of benefits forms the most corrupt component in the entire construction area due to the fact that all one hundred percent of the shadow flows generated by the formation, withdrawal and distribution of this benefit are not controlled by any government bodies, local authorities or public organizations. The authorities are not interested in identifying, accounting and taxing these financial flows, and the public does not have access to information (almost all this information is classified as commercial and is not subject to disclosure), as well as appropriate professional skills.

Currently, there is no Strategy or a Concept for the development of the construction industry, where problems of definition, accounting and control over the
formation and distribution of benefits, which should be reflected in the Action Program for the period up to 2030, would be highlighted. On the basis of this, compensation mechanisms can be created for damage to or deterioration of living conditions for residents of areas that have established infrastructure charges to ensure sustainable development of human settlements and other compensation mechanisms for any decisions of local governments and business activities. World practice contains many examples of the use of both standard procedures of economic-mathematical modeling and specialized packages of applied programs. In the realities of Ukrainian urban planning, there is not only practice, but also a desire for such methods to evaluate the prepared and adopted decisions.

3 PROPOSALS

In preparing this section, the authors proceeded from the fact that the main directions - historical, economic, social and environmental aspects in the development of cities and regions are defined in the Leipzig Charter, therefore there is no point in duplicating them or interpreting them at our discretion. The materials of this section are aimed at finding opportunities to adapt the general ideological principles of this document to the conditions and peculiarities of the development of Ukraine at this historical stage. In particular, what is declared by ministers of the participating countries as obligations of a political nature may well be considered as an ideological platform for the further actions of public authorities in Ukraine to create certain concepts, socio-economic models, program documents:

- integration of the basic principles of the Leipzig Charter on Sustainable Urban Development into the policies of regional and municipal authorities;
- improvement of means for integrated urban development, assistance in improving management structures for their implementation;
- promoting balanced spatial development based on the European polycentric urban system.

The purpose of the Concept is to determine the strategy of the development of public administration in the field of spatial planning of territories and construction, based on the principles of sustainable development. To ensure the practical implementation of the strategy, it is planned to develop a Program of Action for the period until 2030. Implementation of the Program is envisaged at the regional and local levels in accordance with the tasks set, powers and available funds.

The object of public administration is relations arising in the process of interaction between government institutions and civil society institutions at the regional and local levels of government in the implementation of territorial planning.

The subjects of this concept are: authority institutions and their officials, institutions of civil society and the population.

The basic principles of the Strategy are:

Legality means that laws that are implemented in the process of public administration must comply with the law from the point of view of the general and equal for all freedom and justice and protect citizens and businesses from manifestations of any arbitrariness. The right should dominate power.

The observance of the principle of legality implies the activity within the framework of the law not only of government institutions, but also of members of the public, that is, its operation is an all-inclusive.

Publicity includes: accessibility of public administration for citizens, transparency of the functioning of government bodies; participation in their activities, public control over the activities of government bodies over the observance of the interests of society, the rights and freedoms of citizens.

The effect of this principle has certain limitations, which are determined in accordance with the principle of legality - the
transparency of the functioning of the authorities does not apply to those sectors of activity or documents defined by law as having limited access (secret or for official use). At the same time, restrictions apply only to the information itself, and the documents that regulate access restrictions, the criteria for their definition and the procedure for access should be made public.

Scientific - management system is formed in accordance with the requirements of management science. Industry management provides for the improvement not only of the management process, but also of the industry itself as an object of management.

Efficiency - the achievement of the goal at the lowest cost based on the choice of the most effective management decisions based on a comprehensive analysis of the situation and the consideration of many solutions to achieve a better result.

Planning - the organization and implementation of public administration, the creation of plans for the socio-economic development of individual settlements, territories, regions, sectors of the national economy, the design and implementation of programs to address these or other issues.

Separately, the principles of subsidiarity and decentralization should be highlighted and a little more detailed on them:

This is one of the most important principles declared by the Leipzig Charter. When developing proposals to expand the scope of application of these principles, which are key elements and have an absolutely clear goal in Ukraine as a state. They carry certain features when they are implemented within a particular industry. As regards regional development in general, the principle of subsidiarity plays a key role in changing the format of public administration. At the same time, in accordance with the legislation of Ukraine, this principle in the field of spatial planning (urban planning) was implemented almost completely in the beginning of the two thousand years - according to their authorities, all levers of spatial development management were transferred to local authorities settlements. These powers are enshrined in the laws of Ukraine "On the Basics of Urban Planning", "On Planning and Development of Territories", "On Local Self-Government in Ukraine", "On Local State Administrations" and a number of others. In accordance with these laws, it is the regional and city, town and village authorities that have sufficiently broad powers to determine the following issues:

1) the types of documentation necessary to develop for the relevant territory;
2) the amount and timing of financing the development of documentation in conjunction with budget legislation;
3) a list of tasks to be solved by such documentation;
4) priorities that determine the future direction of development of the region or settlement;
5) the level of business freedom in the use of territories for the implementation of investment programs;
6) requirements for the integrated development of territories, the preservation of historical heritage and environmental protection and many other questions.

The development of the Public Administration Concept in the field of construction is a positive development for two reasons:

1) the development of the Concept allows to systematically and critically review the general approaches to methods of managing the construction industry and re-evaluate the set of mechanisms and tools that are used to ensure the activities of public authorities in the field of spatial development and construction in Ukraine;
2) attracting specialists from different spheres of activity allows us to look at reforming the industry as a single integrated process, as a result, it aims to significantly improve the quality of life of the population, business activities and fill the general principles of
sustainable development of territories with concrete actions.

The key factor that should influence the result of the work is the orientation towards the wide involvement of public organizations in its implementation. However, it is important to have a professional approach to the analysis of each component of the future concept.

The action Program for the period until 2030. Government Political strives

Given the nature of this document, the proposed conceptual proposals formulate only the main elements of such a program and the requirements for its creation. The Concept cannot determine the amount of funds and the need for resources for the implementation of the Program, which should be determined by the relevant government structures within their powers. The action program should be created as an independent, full-fledged administrative document, go through all the stages of coordination stipulated by the legislation, public discussion and only after that submit for approval.

The draft program of action for the period up to 2030 is based on the need to comprehensively solve the problems of the industry.

The action program was prepared in accordance with the principles of the Leipzig Charter and the main directions of development of the spatial development of regions and settlements of Ukraine and the construction industry.

The activities of public administration institutions should be focused on the following tasks:

1. Reform of public sector management.
2. Reform of the legislative framework for spatial planning and construction
3. Bringing regulatory legal acts regulating sectoral legislation in accordance with the concept of the Building Code
4. Coordination of the legal framework of land and city planning legislation
5. Introduction to the sphere of spatial development of territories and the construction sector of the economic block for settling the problem of compensation
6. The introduction of digital technology
7. Wide implementation of the principles of sustainable development in all spheres of spatial development of territories and areas of construction
8. Preservation of historical and cultural heritage
9. Improving the system of licensing procedures
10. Development of a clear and open policy regarding basic research and design organizations.
11. Insurance of risks in construction
12. Control and supervision
13. Social control
14. Strategies, programs, projects, plans and agreements

Objectives and content of the Concept, etc.

The main objectives are defined as formalized and generalized state of the public administration in the future and are reviewed with a certain frequency based on the results of monitoring the activities of the relevant authorities and adjusting the policy directions in the country as a whole and the field of construction as its important component. It should be noted that the proposed goals are formulated on the basis of the current situation and can be adjusted during the implementation of the Concept.

There should not be many goals, and they should determine the generalized formulations of the desired state of individual areas of development of the industry for the relevant period.
Analytical Note No 1

**Objective 1. Transformation of the public administration in accordance with European standards**

One of the important elements of the Reform is the creation of a public administration system, where government bodies will take their proper place according to their powers. At the same time, a significant expansion of cooperation with the public sector makes it possible to interpret the role of the Ministry of Regional Development as one of the elements of public authority. However, in the classical sense, public administration is carried out on the basis of the will of the society and is implemented by the entities defined by the society in order to meet the needs and achieve the goals of the society as an object of management. This is fully consistent with the main direction of the Concept.

**Objective 2. Integration of spatial development into the system of socio-economic forecasts as an integral component**

Integration of spatial development into the system of socio-economic forecasts as an integral part of the process of managing the resources of regions and localities (spatial, human, financial and others) will significantly improve the efficiency of functioning of territorial systems. It should be understood that such coordination at the state level will be significantly complicated due to the scale of the tasks, and at the regional and local levels such integration will be extremely useful.

A careful analysis of the consequences of introducing integration as a permanent process can be understood that such actions are beneficial for the construction business - a significant reduction in the risks of disagreements in time and space for the provision of engineering and transport infrastructure and financing the development of a settlement and its parts will significantly increase the likelihood of profit and reduce the likelihood bankruptcy.

**Objective 3. Ensuring effective management of territories based on a combination of interests of government, society and business**

At this stage, the main tasks are:

1. A significant reduction in the level of corruption in the activities of public administration authorities in the field of construction.

2. Bringing the level of openness of information to the requirements defined by the legislation of Ukraine in full compliance and in full with the development of the industry, the spatial development of regions and localities, the processes of preparation and decision-making.

3. Development of a system of indicators and indicators that will allow public audit of the activities of public administration authorities and control the level of compliance of decisions made with the basic principles defined by this concept.

4. Ensuring continuous monitoring and publication of its results with a simultaneous expansion of the scope of digital technology.

5. Ensuring regular discussion of key decisions on the development of the industry and the spatial development of regions and localities with representatives of the public, business and government.

6. Acceleration of activity in the direction of adaptation of European standards not only in the form of a set of documents, but, above all, quality standards for the development of regions and localities in accordance with the principles of the Leipzig Charter.

The content of the Concept is considered as a set of elements, processes, relationships that describe the concept as a socially significant phenomenon. This interpretation brings it closer to the concept of "meaning."

The content of the Concept should be determined by a set of proposals aimed at achieving certain goals. The proposed structure of analytical notes in general reflects the range of problems that need to be solved.
in a particular area. However, the desire to achieve success simultaneously in all areas of activity will lead to the depletion of limited resources, the lack of real progress. A good example is the state policy in the development and implementation of national programs defined in paragraph 6 of Article 85 of the Constitution of Ukraine. In 2010, there were more than 540 such programs, and the level of their implementation did not exceed an average of 5–7% (in the best cases, the level of funding was 15%, and in the worst, 0%). Now the number of programs is reduced, but the situation has not changed much. So, experience shows that a large number of events and offers is not a guarantee of a qualitative improvement of the situation. Therefore, an important part of the content of the Concept is the formation of a system of priorities and stages of its implementation.

In the framework of this work, legislative and rule-making activities are considered as the main tool for achieving the goal.

**Stages of reforming the legal framework:**

**The first stage:** for the period up to 2021 - the development of a building (Urban Planning) Code as a basic regulatory act in the field of spatial planning and construction. The main problem lies in the formulation of a paradigm (in the sense of a holistic theoretical-methodological model) of the code. Laws that now form the basis for regulating legal relations in the field of spatial development and construction were adopted in different periods to solve various problems (including political ones) with different priorities. Therefore, a mechanical or even systematized combination of these laws into a code will be a big methodological mistake. For the code, its own holistic model should be developed, which is focused on solving basic social needs based on the principles of the Leipzig Charter. That is, it is necessary to move from a sectoral approach to a community-oriented approach with wide public participation in the discussion of its structure and objectives at the earliest stages of work.

**The second stage:** for the period up to 2025 - the achievement of the prevailing state of harmonization of the Ukrainian sectoral legislation with the European recommendations and directives. It is necessary to clarify that in this context, the legislation provides for a broad interpretation of the term, which includes laws and other acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, and in some cases also regulatory legal acts of central executive bodies. Adoption of the Code will lead to the need to bring in compliance with it the entire set of regulations, norms, standards and rules. The whole cycle of these works should be completed before the end of the second period. This is not a formal procedure for adapting the document, but the principles that were laid in the basis for the creation of this document. It is possible to establish a shorter period, but practically it will be unrealistic to achieve this goal.

**The third stage:** for the period up to 2030 - the formation on the territory of Ukraine of a culture of applying legislation in the field of spatial planning and construction in all the versatility of this value as a set of material and spiritual values, a historically acquired set of rules within a society for its preservation and harmonization with European values. A culture of law enforcement should permeate the entire system of power institutions and civil society institutions from the highest levels to the very bottom.
Analytical Note No 2

Analytical note 2. Changing legislative approaches to spatial planning (taking into account the provisions of draft law 6403).
Draft Urban Development Code taking into account the proposals of the integrated development of cities GIZ

Authors:

1. Tetyana Chernyshenko (assistant of the people’s deputy of the Verkhovna Rada)
2. Igor Sokolov (Dniprovsk Branch of the SE SRI “Proektrekonstrukcia”, honoured architect of Ukraine)
3. Andriy Kudelin (deputy head of the department of SE “Ukrainian State Research Institute for Urban Design Dnipromisto”)

COVERAGE OF THE PROBLEM

Settlements development and territorial planning should be based on common international principles in order to create conditions for a happy human life in a safe environment, as stipulated in the New Urban Development Program (UN-Habitat, Quito, 17-20 October 2016) and the Charter for Continuous Urban Development (Leipzig Charter). In particular, the New Urban Development Program suggests that ways of planning, financing, developing, managing and regulating cities and settlements with the recognition of sustainable urban and territorial development are a prerequisite for achieving sustainable development and prosperity for all. Also it is stated in this document that in the issues of urban and territorial development, the interests of people should put first. This principle should be taken into account during developing policies, strategies and other documents.

It is important that in the New Urban Development Program, settlements are considered as fulfilling their social and ecological functions of land resources, providing access to drinking water and sanitation services, as well as equal access for all to public goods and quality services in areas such as food security and nutrition, health, education, infrastructure, mobility and transport, energy, air quality and livelihoods; create conditions and promote the participation of civil society, create a sense of participation and responsibility among all residents; give priority to the creation of safe, open, affordable, environmentally friendly and quality public places favored by families; enhance social interaction and interaction between generations, promote social cohesion, meet the needs of all inhabitants in recognizing the special needs of those who are in a vulnerable position; protect, preserve, restore and contribute to the formation of their ecosystems, water resources, natural habitats and biodiversity, minimize their environmental impact and move to sustainable patterns of consumption and production (paragraph 13); at the same time, culture and cultural diversity are recognized as a source of human enrichment and a significant contribution to the sustainable development of cities, settlements and citizens (paragraph 10).

Consequently, the development and planning of territories contributes to the development of society as a whole and its sustainable and happy future. In modern conditions, increasing the efficiency of society’s life is largely due to the need for more rational use of the territories of settlements and amalgamated communities with their inherent interaction between the environment, man and production, and stipulated by abovementioned socio-economic needs, environmental constraints, resource capabilities.

However, we must state that territorial planning in Ukraine does not ensure the achievement of the above-mentioned goals envisaged by the New Urban Development Program and does not contribute to the development of our society as a whole.
After all, the construction industry now mainly serves one purpose - to gain profits. At the same time, as noted above, the planning of territories plays a strategic role in the future of humanity, as it is an overall process designed to ensure harmonious development not only of the economy but of society as a whole. Therefore, we consider it a disastrous phenomenon that the state is now hiding behind the goal of promoting business and economic development, thus destroying the planning structure of cities, turning them into stone jungle without proper infrastructure, facilities, a sufficient number of labor places, destroying the ecosystem and cultural heritage. Therefore, the problem of the general level of territories planning is that instead of priority of the principle of human-centeredness the greatest weight gives to the principle of economic benefits.

In addition to fundamentally wrong approaches to planning the territories, it should be noted about unsystematic character and lack of clear policies in the urban sector that led to the chaotic development of settlements, the appearance of series of disharmonious objects. However, multistoried housing, without social infrastructure, places for recreation and leisure, with tremendous load on the existing engineering and transport infrastructure is not comfortable. Cities are irrevocably losing their architectural appearance, and developers state that this is a way of development. At the same time, the development of the construction industry is not discussed at all, because the vast majority of new buildings in the cities - multistory housing construction with a pathetic architecture, aggressive colors and very small apartments, with savings on construction materials and non-compliance with construction norms and rules. Because exactly this type of constructions provides the biggest profit. But low-quality housing can not provide development.

Any territory are used for construction. On the territories reserved for schools, kindergartens, sports and children's playgrounds, new multistory buildings are appearing, territoriesthat play a crucial role in balancing the ecosystem, such as spots above underground rivers and collectors, agricultural land, coastal areas, forests and others are being built up. Residential development replaces industrial areas in cities and has a negative effect on the development of the economy, because cities are losing their labor capacity that points the unwiseof such approaches. We can see the results of such destructive actions in the form of social and transport problems in settlements, emergencies connected with the failure of engineering networks.

In addition, with a purpose of new construction, existing buildings and structures, including those with the status of architectural monuments, are destroyed (brought to destruction, burned or written off with subsequent demolition). Also under the pretense of reconstruction, the existing buildings are destructed and completely new objects are appeared. As a result, in settlements (not only in cities, but also in towns and villages), buildings with a high population density appear, but without proper transport, public, social infrastructure and ecological network. Development of coastal areas of exceptional natural value in the surrounding areas can lead not only to the final degradation of the ecological system of large rivers and their tributaries, the destruction of unique natural territories, but also to catastrophes that will bring result in significant property damage and human losses. The massive construction of small hydropower stations in the upper reaches of rivers, the construction of other hydraulic structures (dams) for use in industrial and agricultural purposes is the evidence of the lack of a strategic approach to thereourses and planning of territories. At the same time, the ecological component and the environmental impact are often ignored, which leads to silting, drying up of rivers, and has negative changes in the ecosystem. The natural resources of the territories are "depleted" and destroyed for the sake of building new objects.

Therefore, it is necessary to change the approaches to the construction and
planning of territories. Territory planning should ensure sustainable urban development - a development that itself provides a momentum for development and further progress. The essence of sustainable development is to strive for the integration of economic, environmental and social goals and their balance. At the same time, sustainable development is not consistent with the goal of quick profits and the depletion of natural resources, but is designed to preserve the territories and their natural resources for future generations.

2 CRITICAL ANALYSIS OF THE SITUATION

Identified problems are caused because of such factors:

1. The absence of a unified system document in the regulation of the urban planning field, as well as inconsistency of existing legislative acts among themselves

The main problem of legislation in the urban development field is its disunity in various regulatory acts, inconsistency of norms among themselves, the presence of a large number of gaps and collisions. Thus, the current legislation of Ukraine has about 20 laws that regulate exclusively the construction and urban development fields. At the same time, there are several codes that, partly also regulate the issues of urban development and related industries. Also, there is a number of sub-legal regulatory acts and state building codes (SBC) as additional regulation of the urban development field.

Regarding such regulation, the following problems should be listed:

- Branching of one sphere in various fields of the legislation creates inconsistency and non-transparency of regulation, collisions and gaps. As an example, we can cite the problem of high-level urban planning documentation: now, based on the current legislation, it is impossible to determine the composition and content of the General Scheme of Ukraine, since the Law of Ukraine “On the General Scheme of the planning for the Territory of Ukraine” determines that the procedure of development, composition and content of the General Scheme of Ukraine is contained in regulatory legal acts. At the same time, regulatory legal acts specify that the composition and content should be in the law. And the Law of Ukraine “On the Regulation of Urban Planning” gives only a reference to the Law of Ukraine “On the General Scheme of the planning for the Territory of Ukraine”. That means that besides definitions, the current legislation does not provide explanations and legislative regulation of the General Scheme of Ukraine.

- Inconsistency and non-precision of norms in the basic Law of Ukraine for this field “On the Regulation of Urban Planning” which makes it possible to interpret them ambiguously. For example, the ambiguity in Article 19 of this law leads to the development of detailed plans of territories (DPT) contrary to the General Plan of settlements, and when approving DPT, changes are made to the General Plans regarding the functional use of the territory, violates other norms of the same Law, where the procedure of making changes to master plans of settlements is determined. This creates legal instability, and in the future may lead to the cancellation of illegally adopted urban planning documentation;

- Often laws regulate the same issues differently or contradict each other. For example, the non-agreed requirements of the Law of Ukraine “On the Regulation of Urban Planning” with monument protective legislation. For example, the Law of Ukraine “On the Regulation of Urban Planning” provides a clear list of documents required to obtain a document that gives the right to perform preparatory or construction work; at the same time, the specified list in the law is defined as exhaustive and the prohibition to require other documents is established. At the same time, the Law of Ukraine “On the Protection of Cultural Heritage” provides for the need to obtain approval of project documentation for construction and permission for excavation work; These
documents are not in the list of those listed in the Law of Ukraine "On the Regulation of Urban Planning". Therefore, it allows ignoring and not carrying out the monument protective law. Also, the problems of coordinating the historical and architectural key plans and their prolonged non-approval leads to the fact that master plans of settlements are approved without its part - the historical and architectural key plan. That means that the master plan had been developed and has been implemented without taking into account the requirements for the protection of cultural heritage. These and other similar problems make it impossible to protect and preserve monuments of cultural heritage;

- the difference in the approaches of legislative regulation of issues of targeted use of land plots and the functional use of territories is a separate systemic problem of the industry;

- a large number of by-laws also create administrative obstacles and corruption. After all, it is often difficult for citizens to determine which regulatory legal acts govern a specific issue. Therefore, the transfer of the main regulation to the level of the law will contribute to the reduction of the corruption component and the abuse of officials;

-regulation at the SBC level has two components of the problem: first, there are a large number of SBCs, which also sometimes have inconsistent provisions; second, each SBC also contains a very large number of norms and regulations causing significant administrative obstacles.

So, the above shows that, more than in any other area, contradicting legislation opens the door to corruption. Therefore, it is necessary to move from a system of hundreds of documents to a single code that would harmonize all conflicting norms, introduce the same approaches to regulation and remove a number of bureaucratic barriers, and at the same time provide for a comprehensive, rather than a point, industry regulation.

A significant problem of legislation in the field of urban development and the fact that it does not keep pace with the development of public relations and changes in the administrative and territorial structure of the country. Thus, in Ukraine, amalgamated communities (AC) are being created at a fast pace, however, there is no legislative regulation of spatial planning (urban planning documentation) for AC, which violates their rights and legitimate interests, stops development and improvement of their living conditions, makes it impossible to attract investment.

Amalgamated communities “fell out” of the legislative regulation not only in the urban development field, but also in others. However, the absence and impossibility of developing documentation on spatial planning (urban planning documentation) for new formations (AC) stops their development and does not even make it possible to complete the process of their creation. Indeed, without documentation on spatial planning (urban planning documentation), it is impossible to establish the boundaries of the territories of amalgamated communities and begin the process of allocating land for urban needs.

There is no procedure for developing documentation for an AC in the current legislation, and special documentation for an AC is not provided. Therefore, ACs develop a scheme of the community as part of a district (rayon) commissioned by regional councils. Currently, each settlement in the AC is developing a separate master plan, zoning plans and detailed plans of the territory.

So, the main problems connected with the lack of legislative regulation of urban planning documentation for AC are follow:

1) created amalgamated communities in accordance with the Law of Ukraine "On Voluntary Association of Amalgamated Communities" are not able to exercise their functions in terms of territorial management without spatial planning documentation (urban planning documentation) approved by the local government body;
2) execution of spatial planning documentation (city planning documentation) as documentation of a regional level developed in accordance with SBC B.1.1-21: 2017 "Composition and content of a territory planning scheme on which powers of village, town, city councils are exercised", approved by Order of The Ministry of Regional Development No. 343 dated December 27, 2017 does not reflect the interests of the communities, since the regional or district (oblast) state administration decides on its development and approval;

3) the development of spatial planning documentations (urban planning documentation), according to the existing practice, involves several stages (development of a scheme, master plans of all settlements in the community, detailed plans of separated territories), each of which requires separate procedures (deciding on the development of documentation, collection of initial data, development of documentation itself, coordination in relevant instances, holding public hearings, expertise, elimination of comments, approval of promulgation), which significantly increases the cost of the work and terms of its performance.

Thus, the elimination of gaps in the current legislation on the absence of documentation on spatial planning (urban planning documentation) for AC requires an urgent solution.

3. The construction of new objects is not aimed at sustainable development of cities, creating a comfortable environment for living and the conditions for the development of the economy.

During last decades, the development and planning of territories are characterized by the lack of strategic planning of territories and resources in space and time, an irresponsible attitude to the environment and cultural heritage, and the main goal is only short-term gain.

Ukrainian cities have a huge potential for the development of the country, but this potential is not used properly. Among the most striking examples of the neglect of the potential of settlements can be the fact that neither the spatial planning documentation (city planning documentation) of the highest level, nor detailed plans of the territory, nor the programs and strategies of local governments use environmental features, historical and cultural monuments for development of tourism business, attracting investment.

In addition, there is no balanced approach to industrial areas: all industrial areas in most cities are beyond their borders, which, in fact, have a negative impact on employment. This is contrary to the principles laid down in the New Urban Development Program (UN - Habitat, Quito, 17-20 October 2016) and the Charter for Continuous Urban Development (Leipzig Charter). According to these documents, one of the goals of spatial planning is overcoming poverty through the creation of new jobs in cities. At the same time, the master plans of most of the settlements of Ukraine provide for the removal of industrial territories outside the city, and public authorities, by their actions or inaction, essentially destroy those industrial facilities that have survived during difficult economic times. Replacing industrial areas with housing is a destructive phenomenon. Production and industrial areas can and should be preserved in cities, because they are the main place of employment. In this case, of course, should be carried out analysis (expertise) of the impact of objects on the environment. Not all production is harmful and such that cause a negative impact on the environment, at the same time can provide the necessary potential for the development of cities and the well-being of the population.

The features of the cross-border territories are also not used, the scientific potential is not taken into account during the development of territories and settlements, adjacent territories and potential benefits of such a neighborhood etc.

Territorial planning should be based on common international principles in order to create conditions for a happy live for a human in a safe environment, set out in the New
Urban Development Program (UN-Habitat, Quito, 17-20 October 2016) and the Charter of Continuous Urban Development (Leipzig Charter).

Therefore, spatial planning documentation (urban planning documentation) should become not only a territory planning, but an integral part of regional and local development strategies, without which settlements cannot thrive. The targets of the urban policy should be the result of the identified problems and be aimed at overcoming them, and not ignore them and not create new ones.

4. Unsystematic and unbalanced policy of legislative changes in the urban development sphere

Simplification of licensing procedures and control mechanisms in construction, decentralization of authority and other reforms in the construction industry and changes in the legislative base have not only positive consequences for public authorities, but also in practice revealed a number of shortcomings and new problems.

Thus, the moratorium on the implementation of inspections in construction, which operated for a long time, caused a large number of illegal objects. A greater number of illegal developments, which are now problematic, began to be built or changed their parameters without complying with the requirements and rules during the period of the moratorium and the impossibility of conducting inspections. This created the problem of a number of illegal long-term construction projects, but also created risks to the life and health of both potential residents and surrounding residents. The moratorium, if it gave a temporary acceleration in the pace of construction, however, gave rise to problems that will be seen for the next decades and which future generations will have to resolve.

The decentralization of powers in the urban development industry has shown that not all state architectural and construction control authorities are able properly provide administrative services in construction, implement measures of state architectural and construction control, which leads to the creation of illegal objects, conflicts and complaints of citizens and business entity.

The results of the implementation of measures of state architectural and construction supervision, according to official statistics of the SACI of Ukraine, indicate that the level of violations found reaches 70% (!), Which is an extremely high indicator that extremely negatively affects the state of the industry.

Also, inspections have shown that some of the newly re-established bodies of the state architectural and construction inspection are not really capable of properly performing their functions. In addition, with the introduction of the decentralization reform in the construction field, the issue of the supervision over the state architectural and construction control bodies in the field remained unresolved, which led not only to improper performance of powers, but also fulfillment of powers, but also gave rise to uncontrolled and permissiveness of the local authority. Therefore, unbalanced reform, instead of delegating services to the local level and eliminating the corruption of the central authority, has created incompetent and corrupt local authorities. Therefore, any reform should take into account the system of checks and balances, rather than a simple transfer of functions and the elimination of supervision and responsibility. For more information on state building inspection, see analytical note No. 13.

5. Financial, technical and organizational problems associated with the planning and development of territories

The state does not have a clear strategy for planning the territory of the country and its individual parts. Global problems, concerns all settlements (e.g., waste management, ensuring of social infrastructure) do not find solutions at an integrated level using common approaches and strategies. Moreover, the state withdraws from solving these problems, putting them on the shoulders of local communities, which due to lack of resources
(financial, personnel, technical) cannot solve them.

Moreover, when developing documentation on spatial planning (urban planning documentation) at the local level, government requirements are not provided, and therefore are not taken into account.

Also a significant problem is the lack of a single topographic base in a digital format, the creation of which should be provided by the state.

The problem with extremely negative impact on the development of communities is the absence of necessary funds in local budgets for the development of spatial planning documentation (urban planning documentation).

6. There is no real connection between the programs of socio-economic development with spatial planning documentation.

Unfortunately, at the level of legislation, the development and approval of socio-economic development programs in no way correlates with the processes of development and approval of spatial planning documentation. In practice, on the one hand, public authorities also do not take into account spatial planning documentation when preparing programs for socio-economic development. In addition, from the other hand, socio-economic development programs do not considered as mechanisms for the implementation of spatial planning documentation.

This creates a situation in which different, inconsistent and sometimes mutually exclusive strategies and policies may exist and be implemented at the level of a settlement.

The implementation strategy for spatial planning documentation should be a plan of key activities, resources and restrictions that can be managed and taken into account to achieve the objectives of the urban planning policy.

7. The current legislation does not provide for the implementation of environmental assessment of spatial planning documentation (city planning documentation) and does not provide mechanisms for taking into account environmental assessment reports when developing spatial planning documentation (urban planning documentation).

As noted above, territory planning is often carried out with damage to the environment. At the same time, the current legislation does not provide mechanisms for the elimination of harmful effects, nor does it impose the mandatory implementation of measures to eliminate negative consequences for the environment, including public health, caused by the implementation of spatial planning documentation (city planning documentation).

At the level of the law ("On Strategic Environmental Assessment"), the implementation of strategic environmental assessment is introduced, the purpose of which is to promote sustainable development by ensuring environmental protection, health and safety of the population, integrating environmental requirements in the development and approval of state planning documents. However, taking into account that when this law was adopted, no amendments were made to the provisions of the Law of Ukraine “On regulation of urban planning”, which determine the procedure for developing spatial planning documentation (urban planning documentation) and its components, a situation arose when local governments ignore the provisions of the Law of Ukraine "On Strategic Environmental Assessment" and even after the entry into the final force, detailed plans of the territories that are submitted for approval by the session, do not contain a report on strategic environmental assessment.

Therefore, it should be noted that, despite the adoption of the Law of Ukraine "On Strategic Environmental Assessment", the problem of environmental protection, health
and safety of the population, protection of environmental rights, has remained unresolved. For more information on environmental issues in the construction context, see analytical note No. 6.

8. Inconsistency of urban planning and monument protective legislation

The global problem of inconsistencies and contradictions of urban planning and monument protective legislation requires separate coverage. In the context of a urban-planning norms-making, the following problem should be considered.

Historical and architectural key plans is a scientific design documentation in contrast to the documentation for spatial planning (urban planning documentation). At the same time, it is stipulated that it is approved by local councils, which have neither scientists in the relevant field, nor permanently operating scientific councils that could give a proper assessment, comments and suggestions to this documentation (there are no relevant offices in their executive bodies).

Another problem is that local governments often make changes to an already historical and architectural key plan approved by the central executive body, which ensures the formation and implementation of the state policy in the field of the protection of cultural heritage, and do not send it for re-approval.

Therefore, it would be advisable for local governments to reserve the right to decide (initiate) the development of a historical and architectural key plan, but the central executive body that is responsible for the formation and implementation of the state policy in the field of cultural heritage protection should have the final coordination and approval function. This would provide a professional and balanced approach to the final version of the text of the historical and architectural key plan and eliminate possible abuses and other inappropriate actions.

Now the legislative regulation provides that a historical and architectural key plan should be part of the master plan of the settlement. Which is not entirely logical and strategically wrong. Indeed, in this case, territory planning and the development of a historical and architectural key plan are carried out simultaneously. However, territorial planning should initially take into account the requirements of the historical and architectural key plan, the boundaries and modes zones using of objects cultural heritage protection and historical areas of settlements. Otherwise, in the end the document is often inconsistent and contradictory (master plan), part of which provides for some restrictions (protection zones), and another one completely ignores them. Therefore, a historical and architectural key plan must become the initial data for the development of master plans for settlements, so that its provisions are taken compulsory.

Additionally, as the analysis of existing master plans of cities shows, many of them do not contain the section “Historical and architectural key plan”, which means that its requirements, protection zones of cultural heritage objects and historical areas of settlements are not taken into account at all. In the case of the granting of a historical-architectural reference plan, the status of the initial data for the development of master plans for settlements, the requirements of such an historical-architectural key plan will be taken into account and will become the basis for planning the territory of a settlement. For more information on the protection of cultural heritage, see analytical note No. 7.

9. Imperfect procedure of public involvement in decision-making in the field of urban development

A large number of conflicts between developers, local authorities, local residents and public organizations prove the shortsightedness of the policy of legislative changes, which essentially eliminated the institute of public hearings of urban planning documentation and deprived the public of a real opportunity to influence the decision-making process in the urban planning sphere.

As indicated in the New Urban Development Program (UN - Habitat, Quito, 17-20 October 2016), one of the most
important activities for the sustainable development of cities and their prosperity is the creation and promotion of the civil society participation, creating a sense of ownership and responsibility of all inhabitants, strengthening social interaction and social cohesion, meeting the needs of all residents and providing quality public spaces (subparagraph (b) of paragraph 13).

Without clear and effective mechanisms for involving the public in urban development and without giving the public a real opportunity to influence the planning of their territories, achieving the abovementioned goals is impossible. This problem is separately considered in analytical note No. 14.

10. Lack of qualified specialists in the field of spatial planning and professional staff in local governments, as well as the need to improve the quality of education in the urban planning field, to improve the skills and create a school of the chief architect

Unfortunately, recently in the country there are processes of destruction of research and design institutes in the field of urban development and architecture, as well as scientific design institutes in various areas of construction. Science in this area is gradually dying. As a rule, researchers at universities are not in touch with practice. And on the contrary, advanced courses are held by practiced architects and urban planners, detached from science.

We do not have the practice of preparing chief architects for local governments. Therefore, these positions are sometimes occupied by specialists without appropriate qualifications and education or with architectural education, but without experience in public administration. The Ministry of Regional Development could take over the function of creating a school of chief architects and be responsible for the high-quality personnel for both local governments and the industry as a whole.

Education in the construction, architectural and spatial planning areas is acquired in specialized architectural and construction universities, which should be responsible for the quality curricula and the professionalism of their graduates, and not at the faculties of non-specialized universities. Advanced training should also be carried out according to unified programs developed by the central executive authority, which ensures the formation and implements of the state policy in the field of construction, architecture and urban development, approved by the central executive authority implementing the state policy in the field of educational activities, and the obtaining of the document confirms the periodic advanced training. More information on education in these areas is considered in the analytical note No 18.

The quality of the development of spatial planning documentation (urban planning documentation) is very low. Specialized institutions lose personnel, and private firms, which include one certified architect or planner, cannot be responsible for all sections that are included in the spatial planning documentation (city planning documentation).

All these issues should be the area of the Ministry of Regional Development regulation.

Draft law No. 6403 provides that spatial planning documentation (urban planning documentation) should be developed by design organizations, regardless of the form of ownership, which meet the criteria defined by the central executive body that provides the formation and implements the state policy in the field of construction, architecture, urban planning, and information about such organizations is listed in the List of design organizations. In addition, it is foreseen that such organizations include specialists who have the appropriate qualification certificate for all the main sections of the spatial planning documentation (urban planning documentation).

Now there is no mechanism for withdrawal of the qualification certificate. The legislator is trying to solve this problem in another draft law (No. 7085).
The issues of creation and functioning of self-regulating organizations in the field of urban development, advanced training, professional certification, training of professional personnel, the obtaining and withdrawal of qualification certificates should be included in the Urban Planning Code.

PROPOSALS

1. Systematization of legislation in the field of urban development, the adoption of the Urban Planning Code

Solving the problem of inconsistency, non-specificity and branching of legislation, eliminate gaps and conflicts, move away from messed-by-laws and regulations can only be done by systematizing the current legislation in this area, as well as harmonizing it with legislation regulating the branches of the law.

Now, as noted earlier, there are a number of laws, sub-law regulatory legal acts, state building codes, and several existing codes that partly affect the sphere of urban development.

The central place is occupied by the Law of Ukraine "On Regulation of Urban Planning" from 2011, Law of Ukraine "On Architectural Activity" since 1999, and the Law of Ukraine "On the Basics of Urban Development" from 1992, while changes are permanently made to each of these laws. In addition, the Land Code of 2001 and the Law of Ukraine "On Land Management" of 2003, the State Building Regulations (some of them are at the stage of amendments or approval of new editions), the Law of Ukraine "On State Land Cadastre" and the relevant Reos and the Law of Ukraine "On State Regional Policy".

As noted above, the focus is on the content of legislative acts on the basis of the Law of Ukraine "On the Fundamentals of Urban Development" from 1992 and the Law of Ukraine "On the Regulation of Urban Planning" from 2011 in general, these two documents should form the main legislative framework for urban development and integrated urban development. The rest of the laws, instruments, and authorities should serve this goal. But the normative documents of Ukraine in the field of urban planning and urban development are neither consistent nor expedient for an orderly and modern urban planning. Therefore, in the future, it is proposed to apply a new regulatory document to replace many existing laws - the Urban Planning Code of Ukraine.

The urban planning code should replace all urban planning laws, as well as propose clear regulation of adjacent areas, eliminating contradictions with other branches of legislation. Thus, the Urban Planning Code should combine all the issues of urban planning, architecture and construction, as well as the protection of the environment and cultural heritage in the running of urban planning. In addition, the inconsistency of urban planning and land legislation must be resolved.

Urban Planning Code may include the following sections:

1. Planning the development of territories
2. Spatial planning
3. Land use
4. Architectural and construction design
5. Environmental protection during urban development activities
6. Protection of cultural heritage during urban development activities
7. Construction and control
8. Public control in the field of urban development
9. Operation of objects
10. Responsibility for violations of the law in the field of urban planning

The purpose of the code is to adopt a legislative framework that will ensure the creation of favorable conditions for the further development of urban planning, the creation of a comfortable living space and sustainable development of human settlements, attracting investment and effective public participation in decision-making processes in the field of urban development.
The tasks assigned to the Urban Planning Code provide that it:

- incorporates and systematizes all existing urban planning laws, eliminates gaps and conflicts in the current regulation of the construction industry;

- will introduce new approaches in the development of spatial planning documentation (urban planning documentation), improve its structure and provide a transition from a simple distribution of territory by function (now) to planning the processes of development of territories, taking into account resources over time;

- consolidate the leading value of spatial planning documentation (urban planning documentation) in regulating the development of settlements and territories;

- provide for carrying out a comprehensive examination for all types of spatial planning documentation (urban planning documentation);

- clearly separating the functions of state authorities and local governments in the development, approval and implementation of spatial planning documentation (city planning documentation);

- introduce a new type of spatial planning documentation (urban planning documentation) at the local level - a plan of an amalgamated community;

- expand the powers of local governments in making decisions on the planning of local territories by introducing local building regulation rules establishing the procedure for regulating development and other use of territories and objects in settlements, on the territories of amalgamated communities;

- ensure the availability and publicity of spatial planning documents (urban planning documentation), as well as permits in construction;

- will introduce a real link of socio-economic development programs with spatial planning documentation (urban planning documentation)

- will create a transparent, efficient and non-conflict mechanism for taking into account public interests in the development of spatial planning documentation (urban planning documentation), the permitting system and inspection in the construction industry;

- solve the problem of inconsistency of land and city planning legislation;

- incorporates most building codes and gives them the force of law;

- integrates not only the urban planning sphere, but also the architectural activity, the issues of environmental protection and cultural heritage in the construction of facilities.

At the same time, the Urban Planning Code not only has to systematize the existing legislation, but to propose a qualitatively new system and approaches to urban planning activities, ensuring:

- rehabilitation of the existing buildings for the sake of forming a diverse urban environment, maximum use of the context, increasing attention to the individual characteristics of the site and the architecture of the surrounding buildings;

- taking into account the position of international organizations on climate change and the role of Ukraine in this matter, helping to increase the resilience of cities to climate change (paragraph 67 of the New Urban Development Program)

- restoration of the natural complex, improvement of the environment, refusal to build on green areas, protected areas, water protection zones and new territories;

- priority of public transport over individual transport, the introduction of energy-saving technologies in utilities;

- reproducing the socially-psychological climate of a friendly neighborhood;

- development of special programs that encourage public participation in solving problems of urban development;
Analytical Note No 2

- strengthening public awareness of the intentions of the authorities to use the territories for infrastructure projects while ensuring security and adequate comfort of living in this territory;

- prioritization with the areas definition of influence on the management of the territories of the authorities, namely: spatial planning, land resources, construction, environment, health, technological, fire safety and protection of cultural heritage;

- introduction of the concept of "reconstruction (rehabilitation) of the territory" with the introduction of real measures for the implementation of the principle of the "compact city",

- capture in legislative the need to prioritize urban development zones, consolidate their status and apply control mechanisms for the implementation of measures provided for by the status of urban development zones;

- simplification of the composition and content of spatial planning documentation (urban planning documentation) with the exclusion of sections that restrain its development and approval, namely, “civil defense”, “civil protection” and “historical and architectural key plan”, which should be developed as separated works;

- development of legislative acts that will make it impossible to create corruption schemes in the implementation of spatial planning documentation (urban planning documentation) in construction, increasing the level of publicity and openness of documentation in urban planning.

2. Draft law No. 6403 as the first stage on the way to systematization and harmonization of legislation in the field of urban development

The issue of development of the Urban Planning Code has been raised for quite a long time, drafts of this document have been developed, a working group has been created (Order of the Ministry of Regional Development dated September 5, 2017).

However, so far we have to admit that all attempts to create and adopt the Urban Planning Code have not been crowned with success.

Therefore, the draft law No 6403 can be the basis on which the Urban Planning Code will emerge in the future.

In particular, the aforementioned draft law No. 6403 already provides for the elimination of many of the problems of the urban planning industry, mentioned earlier, and will also ensure the implementation of most of the tasks facing the Urban Planning Code.

So, the draft law number 6403:

- introduces a procedure for the implementation of a strategic environmental assessment of spatial planning documentation, which will enable such an assessment to be taken before approving state planning documents in accordance with the requirements of Directive 2001/24 / EC of the European Parliament and of the Council of June 27, 2001 on assessing the effects of individual plans and programs for the environment.

- ensures the right of the amalgamated communities to a single spatial planning documentation (urban planning documentation) by introducing a new type of spatial planning documentation at the local level - a plan of the amalgamated community;

- separates and details the powers of state bodies and local governments in the development of spatial planning documentation (urban planning documentation), including providing a clearer definition of the functions of state authorities and local governments in the development, approval and implementation of the General Planning Scheme for the Territory of Ukraine

- expands the powers of local governments to determine the rules for regulating the development of their territories by introducing local rules for regulating the development, establishing the procedure for regulating the development and other use of
territories and objects in settlements, on the territories of amalgamated communities;

- determines the composition of all types of spatial planning documentation (urban planning documentation);

- introduces new approaches in the development of spatial planning documentation (urban planning documentation), provides a transition from a simple distribution of territory by function (now) to planning the processes of development of territories, taking into account resources over time;

- provides for the implementation of a comprehensive examination for all types of spatial planning documentation (urban planning documentation);

- incorporates by-laws and regulations, introducing clear regulation;

- determines the historical and architectural key plan as the initial data for the development of spatial planning documentation (urban planning documentation);

- provides for ensuring proper development of land plots in accordance with the approved detailed plans of the territory and land development projects;

- eliminates many conflicts in the field of urban development which create contradictions and get stopping development;

- provides a real link to the programs of socio-economic development of documentation on spatial planning and urban planning documentation);

- introduces a transparent, efficient and non-conflict mechanism for taking public interests into account when developing spatial planning documentation (urban planning documentation);

- provides investors and public access to spatial planning documentation (urban planning documentation) through the State Spatial Planning Documentation Register (Spatial Planning Register) on the official website of the central executive authority, which provides the formation and implementation of state policy in the field of construction, architecture and urban development.

The draft law number 6403 defines some terms used in practice, but did not have legislative (legal) definitions:

1) **urban planning activity** - activity in the field of spatial planning and management of building development, which is to create a full-fledged environment of human life and covers forecasting the development of territories, planning, building and landscaping of settlements and their parts, urban planning reconstruction of built-up areas, engineering and transport infrastructure, preservation of historical and cultural environment, research and teaching activities;

2) **spatial planning** - a set of processes that cover all the activities and planning actions for improvement, the functional use of territories at the regional and local levels in accordance with their natural-geographical, economic and social potential, and also have a direct or side effect on spatial development and is a tool to manage it;

3) **spatial planning documentation** (urban planning documentation) is a set of documents and data on spatial planning of territories.

The use of the concept of "spatial planning" is one of the main tools for integrating with European legislation. At the same time, "spatial planning" fundamentally expands the concept of "planning" in the distribution of territory according to its function of planning the development processes of territories in time. It is worth to mention that not only the name, the essence (content) and approaches to spatial planning documentation change, but also the clarity of the documentation and its importance for investors. This, in turn, will help to improve the investment climate, since it will make the processes in construction more understandable for the investor.
Drafr law No. 6403 introduced new approaches to the zoning of territories and land development rules.

According to the current legislation (the Law of Ukraine "On Regulation of Urban Planning", paragraph 9 of the first part of Article 1) "zoning plan" (zoning) - urban planning documentation that defines the conditions and restrictions on the use of the territory for urban planning needs within certain zones. More information on zoning is in the analytical note No 5.

Since zoning does not contain any new provisions, new solutions for the planning and development of the territory, it cannot be related to spatial planning documentation (urban planning documentation). This is a document establishing technical regulations for land use and development and is a specific tool for implementing the decisions of the master plan.

Zoning should be developed by local authorities and become part of local building regulation rules. Legislators in the draft Law of Ukraine "On Amendments to the Law of Ukraine" On the Regulation of Urban Planning "(registry No. 6403) have already proposed to exclude the zoning plan (zoning) from the list of types of spatial planning documents (urban planning documentation). Draft law also proposes the local building regulation rules definition: "local building regulation rules is a regulatory legal act of local governments adopted in accordance with the legislation, a master plan or a plan of an amalgamated community".

In confirmation of the advisability of such changes, let’s refer to the history of zoning implementation and city charters. The United States is the ancestor of zoning (1920) as a mechanism that answered the question of how to use private land.

In practice (both in the USA and in Europe), zoning is used as a permissive system to prevent damage from the new development of the territory for residents and companies that already exist. Zoning is usually carried out by local authorities. Zoning may include regulation of activities acceptable in certain areas (open spaces, residential, agricultural, commercial or industrial), permissible density for building activity, building heights, spaces, occupancy of buildings on a site, proportions of types of space on a site (for example, how much lawn should occupy and how much is covered with hard surface), and how much parking should be provided (Hernandez v. City of Hanford, 41 Cal. 4th 279 (2007) (upholding constitutionality of zoning ordinance regulating which types of stores in which zones may sell furniture in the city of Hanford, California).

Zoning in other countries becomes the Charters of settlements, according to which construction activities are regulated.

Provided by the draft law No. 6403, local building regulation rules, which include a zoning plan, should be the legal act that is designed to define the conditions for planning and building, the establishment of legal and planning restrictions, and the permitted uses of land plots within the allocated functional areas of settlements and amalgamated communities.

It is significant that local building regulation rules will significantly improve the situation for making decisions about real estate investments and will increase the market value of local real estate.

The draft law No. 6403 also tries to make a step towards harmonization of the provisions of spatial planning documentation (city planning documentation) and land survey documentation by developing a Functional Classification of Territories, coordinated with the classification of targeted use of land plots. However, this is only the first and urgent step to solve this problem, which, however, requires a systematic solution. Since there remains the problem of the integration of land legislation in urban planning And this is the main issue that we will have to solve in the Urban Planning Code.

Obviously, the draft law of Ukraine "On Amendments to the Law of Ukraine" On the Regulation of Urban Planning "(register No.
Analytical Note No 2

6403 of 04/21/2017) cannot cover all the problems that exist in the current legislation. It was planned as an amendment to the issues of regulation planning of territories, but has grown into a system act. At the same time, during its processing, problems have arisen that had to be resolved by other draft laws, which are also being considered by the Verkhovna Rada of Ukrainenow.

Other issues of urban planning also need to be resolved by the draft law:

- the issue of the gradation of urban planning conditions and restrictions for various objects (for housing, industry, etc.) and for different settlements (depending on the size, nature of economic development, natural resources, etc.) is not resolved;

- not introduced changes to architectural and construction inspection (phased control);

- unresolved issues of control over the development and implementation of spatial planning documentation (urban planning documentation), responsibility for the compliance of spatial planning documentation (urban planning documentation) with legislation, building standards and higher level documentation (it is reasonable the creation of a state body that will exercise control and supervision, for example, a State agency (or inspection) on spatial planning as a center executive body, whose activities should be directed and coordinated by the Cabinet of Ministers of Ukraine through the Vice Prime Minister of Ukraine - the Minister of Regional Development, Construction and Housing and Communal Services, and which should implement the state policy in the field of urban development and spatial planning);

- unresolved issues of integrated urban development (neighborhoods, microdistricts, other territories), integrated development and rehabilitation of the urban development environment;

- there are no system changes to the Law of Ukraine "On financial and credit mechanisms and property management in housing construction and real estate transactions";

- not implemented insurance in construction, etc.

Therefore, all these and many other problems should be taken into account when developing the draft Urban Planning Code of Ukraine.

3. The transition from a simple distribution of territory by function to planning the processes of development of territories, taking into account resources over time

The achievement of results in the implementation of the principle of continuous development of the territory is possible through the stages of spatial planning from the General Planning Scheme of the territory of Ukraine in the detailed plans of the territory and development projects.

The new spatial planning documentation (urban planning documentation) as one of the principles introduces equality of conditions, including financial, for the development of both cities and rural areas, a clear separation of the functions and powers of the state and local governments in the planning of the development of territories in different areas, levels, strengthening the role of the community in decision making in the territory planning process.

As already noted, the communities of villages that have territories over their borders and previously were a part of village councils, today cannot make decisions about the use of these territories. These territories are still managed by district(rayon) administrations. This has led to a terrible change in the functional purpose of agricultural lands, building them into residential complexes without adequate engineering support and taking into account the interests of the communities. That is, everything depends on the territorial structure, and not on the status of the territory. Therefore, the development and approval of plans for the amalgamated communities and the legal establishment of the borders of the AC will solve this problem.
Modern spatial planning by optimizing solutions on the placement of various objects taking into account different aspects (government, business, residents) and long-term projects gives a significant positive effect for the economy, social sphere and the quality of the environment as a whole.

Considering the fact that today the validity of the master plan is not limited, it also has a significant change in its role. The modern master plan is only a remote model in time (figure) of how a locality is supposed to become. The master plan operates with territories, and not with land plots, covering the mutual arrangement of functional zones, the directions of their further development, the development strategy of engineering, transport, ecological frameworks, etc.

A huge number of calculations of indicators (and relevant drawings) for a 20-year period, as it was in Soviet times, is simply not used today. Unfortunately, the state building codes on the composition and content of the master plan (SBC B.1.1-15 2012) have largely retained the Soviet model of this document.

Therefore, the role, composition and content of the master plan should change. This should be a rather small document that will define a conditional model of the territorial development of the city, in particular, the mutual allocation of functional zones, taking into account the formation of new transport, engineering and environmental frameworks, and permissible loads on them.

It is necessary legally define the role of the detailed plan as a single urban planning document for the location of construction objects. The basic drawings of the detailed plan should not be a project plan, as defined by state building codes so far (SBC B.1.1-14 2012), but a development project (in a new interpretation). This is not so much a mismatch of deadlines, but rather in another task of documentation, another “philosophy” of a detailed plan, which is the only document aimed specifically at resolving issues related to the development of the territory.

These issues are extremely important for our state, as they emerge as a tool to determine the best ways to achieve long-term goals, ensure more efficient use of the economic, natural, human potential of the country, fully take into account national, regional and local priorities, integrated development of territories, overcoming imbalances, and intensifying other states. Cross-border cooperation will ensure the effective use of Ukraine’s significant transit-transport potential, strengthen trade and economic ties with neighboring regions and countries, can positively influence and improve political and diplomatic relations between Ukraine and neighboring countries, and the like. Therefore, these important issues should also be reflected in the spatial planning documentation.

OPEN QUESTIONS
1. Unfortunately, very often local governments are not interested in developing and approving quality spatial planning documents (urban planning documentation), because “manual control” of the development of territories is endless possibilities for corrupt activities. Even a drafted and agreed master plan can not been consciously approved upon for years, mostly because of far-fetched reasons. At the same time, the practice of developing detailed territory plans for specific construction projects to ensure only narrow business interests has become common, with such detailed plans being developed and adopted in violation of master plans.

2. Matching of the provisions of the documentation on spatial planning (urban planning documentation) and land management documentation on the principle of making "land" decisions in accordance with the "urban planning" (according to the current edition of part 2 of article 25 and part 4 of article 26 of the Law of Ukraine "On regulation urban planning"), and not vice versa.

3. The adoption of the draft law No 6403 is blocked. This project was adopted in first reading in November 2017, but there
is no political will to adopt it as a whole, since the construction business resists to honest and transparent construction activities and blocks the adoption of this document in every way.

4. Development of the Urban Planning Code, as a document that systematizes legislation in the field of urban planning and takes into account all the shortcomings of the implementation of previous laws, is also an open question. Developing and developed paper with its subsequent adoption are two big differences! The first time the draft Urban Development Code was developed by the government in 2009 (dl No. 5181 of September 29, 2009), the second time it was submitted by people’s deputies in 2010 (dl No. 6400 of 05/18/2010). But then there was no political will to accept it. Now the working group, the first meeting of which was held on October 13, 2017, has not yet submitted to the professional public even the structure of the code.
Analytical Note No 3

Analytical note 3. Land allocation and land use in construction. Overcoming the discrepancy between the requirements of legislation (urban development, land) and actual land use.

Authors:
1. Evgeniy Berdnikov - International Development Law Organization (IDLO)
2. Oleg Pilat - lawyer of the “building” sector of the public organization “Office of Effective Regulation” (BRDO)

COVERAGE OF THE PROBLEM

1. The problem that needs to be solved (critical analysis of the situation, legislative regulation)

The land plot and the construction site located on it are not legally perceived as a single object of property rights and are often owned by various individuals.

These shortcomings of legal regulation, creating a variety of legal and informational realities in two related industries, created a fertile ground for all sorts of abuses:
- powerlessness of entrepreneurs who are owners of real estate and temporary facilities on state and municipal property;
- the lack of rights of land owners to use them for the purposes stipulated by the urban planning documentation;
- powerlessness of territorial communities before the action of the so-called “toilet scheme”, when, due to the registration of rights to small real estate objects, huge tracts of land are carried away;
- corruption of investors during the issuance of initial data by officials and enterprises-monopolists for construction (urban planning conditions and restrictions, technical conditions), as well as during construction on agricultural land (along with damage to soil fertility, illegal trafficking, damage or destruction of fertile soil layer);
- the loss of local budgets through the avoidance of competitive forms of land provision of state and communal property; through the avoidance or substantial underestimation of the amount of land payments by “creators of artificially created land plots”, as well as due to the excessive “budget burden” on the creation of several related types of documentation;
- reducing the availability of housing and other real estate for the population due to the overestimation of its value through the corruption component.

CRITICAL ANALYSIS OF THE SITUATION

The goal of resolving these inconsistencies is to harmonize and gradually integrate:
- general and industry terminology apparatuses;
- land and urban planning legislation;
- land legislation and legislation on improvement (according to exhaustive rationing of the “land component” of the construction of temporary and seasonal objects, objects of public improvement, etc.);
- administrative (including conciliation) procedures;
- planning and project documentation, including legal and technological aspects of its creation;
- geospatial forms of cadastral registration, including requirements for automated information systems, their maintenance, filling and data formats;
- legal regimes for the use of lands (territories), including the procedure for technical and legal consolidation of restrictions and areas of their operation that are different in their legal nature;
- property status of land plots and real estate objects (construction objects) located on them, including the possibility of forming new legal approaches to the “thing” and its “belonging”, as well as the formation of single, complex real estate objects.
3.1. At the stage of codification of urban planning legislation, it is necessary to carry out coordination and unified application of the concepts of “land (s)”, “land plot”, “territory”. At the same time, the concept of “artificially created land plot” should be abandoned as such, which contradicts the basic concept of a land plot as part of the earth’s surface. At the same time, the purpose of such land should be consistent with the goals of such a “creation”.

3.2. Require the rationing of the question of the relationship of individual institutions of land legislation and legislation on landscaping in terms of determining cases and simplified unified procedures for the formation of land plots and registration of rights for them under temporary, seasonal objects, advertising and other structures, places for disposing of burials, movable things, objects use, infrastructure, parking and the like.

3.3. The only effective way to harmonize approaches to planning and design in the land and urban areas is the mutual integration of urban planning (planning) and land management documentation. The next steps should be integration:

1) Land management schemes and feasibility studies on the use and protection of lands of administrative-territorial units (Article 45 of the Law of Ukraine “On Land Management”) with the corresponding planning schemes for the territory of the Autonomous Republic of Crimea, regions and districts (Articles 13-15 of the Law of Ukraine "On the regulation of urban planning");

2) land management projects regarding the improvement of the territory of settlements (Article 53 of the Law of Ukraine "On Land Management") with master plans of settlements (Article 17 of the Law of Ukraine "On the regulation of urban planning");

3) land management projects for landscaping for urban needs (Art. 51 of the Law of Ukraine "On Land Management") with detailed plans of the territories (Art. 17 of the Law of Ukraine "On the regulation of urban planning").

3.4. To overcome disagreements in the application of official information, the products based on the results of land management and urban planning and design should at the normative level define the requirements for the content, structure and technical characteristics of unified electronic documents in the form of which should be created and entered into the urban planning cadastre (planning) and design technical documentation on construction objects (including real estate, technical features whose characteristics are determined by the result of our technical inventory). Such requirements should be unified with the existing requirements of electronic documents, on the basis of which information on the land plot and restrictions on land use are entered into the State Land Cadastre.

3.5. At the legislative level, it is necessary to drastically simplify the legal mechanism of redemption by individuals and legal entities - owners of real estate objects of state and municipal land, on which such property is located, to exclude any approvals and corruption risks when redeeming these land plots, the site and located on it real estate, to create favorable conditions for the development of business and, investment and mortgage lending, increase revenues to the state and local budgets. This requires changes to the Land Code of Ukraine, the laws of Ukraine "On Land Assessment" and "On state registration of rights to real estate and their encumbrances" to ensure the rights of owners of immovable property located on land plots of state and municipal property for free redemption (without the conclusion of contracts of sale and without any decisions, permits and approvals of the executive authorities and local governments) such land plots by paying to the treasury the account of the relevant executive authority or local government of the cost of these land plots in the amount of their regulatory monetary value, except for cases when the Land Code of Ukraine prohibits the transfer of such land plots to private ownership or when the specified land plots are located immovable property owned by other persons, or when the area of land plots exceeds that established by building codes planning and building areas.

3.6. It is necessary to overcome legislative distortions in the Civil (Art. 377) and Land (Art. 120) Codes of Ukraine: the ratio of land and building as the main thing and its belonging,
which became a meaningless tracing paper of the worst example of the Soviet legal doctrine, which virtually excluded land plots from objects of civil registration, and which has recently become one of the most common schemes for the seizure of land on unbeatable sources.

3.7. It is necessary to make changes to the Land Code of Ukraine, the Code of Ukraine on Administrative Offenses, the laws of Ukraine "On Land Management", "On State Land Cadastre", "On Land Protection", "On State Control of Land Use and Protection", "On State Registration of Property rights to immovable property and their encumbrances ", "On the regulation of urban planning activity "regarding ensuring the rights of land owners to free (within the limits of approved planning decisions) selection of directions for their use by submitting a public statement on the official website of the central executive body implementing state policy in the field of land relations to change the purpose of the land plot and receiving an extract from the State Land Cadastre on a land plot with has already changed assignment and established by law, urban planning or land use documentation restrictions on its use for a new (desirable) purpose. Moreover, officials of the relevant executive authorities and local governments, informing the landowner about the existing restrictions, have the right to refer only to those norms, urban planning and land management documentation posted on their official sites or in public parts of the land and / or urban planning cadastres. For violation of this procedure, it is supposed to bring the guilty officials to administrative responsibility.

3.8. It is necessary to reduce the number of unjustified permits in the field of economic activity, to overcome corruption when landowners and land users remove land cover (fertile soil layer) of land, protect the rights of landowners and land users to use land for infrastructure development and ensure openness and transparency in relations on soil fertility preservation, the introduction of designer supervision of relevant workers projects to the public and the public on the actual state of their implementation.

Over time (after the creation of the urban planning cadastre and its information integration with the State Land Cadastre), the corresponding working projects of land management can be included in the composition of project documentation for construction objects.

3.9. Most of the instruments of state regulation of the land allocation procedure need to be changed or terminated. In particular, it is proposed to terminate such unprofitable: state expertise of land management projects for the allocation of land; coordination of the land management project for the allocation of land by the territorial authority of the Stategeokadaster; issuance of certificates from the state statistical reporting on the availability of land and its distribution by land owners, land users and lands; issuing permits for conducting expert monetary valuation of a land plot and coordinating the sale of a communal property land plot to foreign legal entities.

3.10. In the medium term (3-5 years), the paper procedure for the allocation of a land plot is proposed to be transformed completely into electronic form, in which the paper document will appear only after its completion in the form of the Unified State Register of Rights.
Analytical Note 4

Analytical note 4. Form, content and technological basis for the creation and use of urban planning and design documentation; Urban planning documentation and planning of territories. Responsibility of local governments in the field of urban development, development and approval of urban planning documentation: master plans and DPT (Detailed Plan of the Territory). Publicity participation in urban development and planning. Rules of alienation and compensation of land and construction objects.

Authors:
1. Anna Ailikova - chief project architect of the state enterprise "Ukrainian State Research Institute for Urban Design" DIPROMISTO named after Y. Balokonya, Ph.D., associate professor
2. Anatoliy Ekonomov - head of the department of normative-methodical support of urban planning of the state enterprise "Ukrainian State Research Institute for Urban Design" DIPROMISTO named after Yu. M. Bilokon
3. Tatyana Kryshtop - SE "UKRNDPITSIVILBUD", deputy director for scientific work and regional planning, Ph.D., senior researcher (member of the National Union of Architects of Ukraine)
4. Alexander Chizhevsky - Honored Architect of Ukraine, Candidate of Architecture, Vice-President of the National Union of Architects of Ukraine

1. Low awareness of process participants
Managers (officials) of all levels and citizens do not have adequate information about the importance of carrying out work on spatial planning and solving, with their help, the development of human settlements and territories, the influence on strategic decisions regarding resource potential (demographic, natural, geographical, etc.) of relevant territory. Even worse is the awareness of citizens.

2. Imperfect legislation
1. Inconsistency of urban planning and land legislation.
The reason for the inconsistency of urban planning and land legislation lies in the
presence of conflicting positions and norms, as well as departmental instructions operating in the land authorities and provide an opportunity to ignore the decisions of urban planning documentation.

2. Personal responsibility and punishment for making unlawful decisions that violate urban planning legislation is not properly regulated.

3. The assignment in the procurement law of urban planning works to the category of services, determines the main criterion is not the quality of work, but the price, which, as a rule, provokes a situation when the organization wins the tender, does not have sufficient qualifications to perform urban planning works, and performs them poorly, without going through.

4. Linking the implementation of urban planning works to the end of the fiscal year, primarily due to the shift in the timing of the execution of works to the end of the budget year.

3. Departmental egoism. Unwillingness to provide initial data

The reason lies in the lack of understanding by individual departments of spatial planning processes, the fact that providing information in the future will enable these departments to use it more effectively, knowing the prospects for the development of territories. In addition, quite often there is a desire not to provide, but to sell information.

4. The lack of personnel.

A number of reasons lead to a shortage of personnel who have the appropriate competencies for the development of urban planning documentation. First of all, this is the lack of a sufficient number of higher educational institutions that train such specialists. The lack of modern prices for their implementation causes an outflow of personnel from the industry. Unfortunately, the state underestimates the scientific significance of urban planning.

5. Form of submission of urban planning documentation.

The lack of a unified topographic basis and a unified approach to the execution of works.

Despite the Law of Ukraine “On the Regulation of Urban Planning”, which obliges all urban planning documentation to be carried out in a single coordinate system on a renewed topographic basis, today there is no uniform topographic basis for the entire country in a single coordinate system. The reason lies in the lack of government regulation of this process; lack of political will regarding the commitment to create a single topographical basis, which will contribute to transparency in the field of land relations, targeted financing for such works from the State Budget of Ukraine.

6. Marriage of responsibility of local authorities

The abuse or inaction of local authorities, as the analysis of the practice shows, consist in:

- failure to ensure that the existing urban planning documentation of the territory or the corresponding settlement;

- non-compliance with the requirements and decisions laid down in the city planning documentation developed and approved in the established manner;

- not made public or late notification developed urban planning documentation, or information about the process of its development;

- conversion of open information about the urban development conditions and restrictions, which should be the result of the development of urban planning documentation, into closed information and its trade.

7. Problems of quality and content of urban planning documentation: master plans and DPT.

General plans of settlements are the main type of urban planning documentation at the local level and are intended to justify a long-term strategy for planning and building the territory of a settlement.

The validity of the master plan is not limited, changes to the master plan can be made no more than once every five years.

The detailed plan within the settlement clarifies the provisions of the master plan of the
settlement and determines the planning organization and development of a part of the territory.

General plans and detailed plans of the territories and changes in them are approved by the respective village, town and city councils after public discussion.

8. Imperfect mechanisms of public involvement in the development of urban planning documentation.

Ukrainian legislation defines two forms of public participation - public discussions and public hearings, and it is not clearly stated what the difference between them is, therefore, each community interprets this in its own way. At the same time, only urban planning documentation at the local level is subject to public discussion (hearing). Today - these are master plans of cities and detailed plans of the territory. After the entry into force of the amendment No. 6403 to the Law of Ukraine “On the Regulation of Urban Planning”, the Plan of the Territorial Community should be included in the list of these works.

More active public involvement should take place after the introduction of such type of work as a Strategic Environmental Assessment, which is mandatory for all urban planning works without exception: the General Planning Scheme of Ukraine, regional level planning schemes, master plans, detailed plans, plans of local communities. The Law on Strategic Environmental Assessment provides that public discussions of these works will be held twice in the process of carrying out work and discussing the report. Open questions of the sequence of execution of the actual urban planning works. SEA is carried out after work is finished (there is something to evaluate), partially completed work (only part of the project can be assessed), or before work is completed (there is nothing to evaluate, but suggestions can be made).


9.1 The Law of Ukraine “On Regulation of Urban Planning” in Article 24 “Features of the Regulation of Land Relations in the Implementation of Urban Planning Activities” notes that a change in the functional assignment of territories provided for by urban planning documentation does not entail the termination of property rights or the right to use land plots that were transferred (provided) in ownership or use until the establishment of a new functional purpose of the territories. At the same time, the development of a land plot is carried out within the limits of its designed purpose, established in accordance with the legislation.

But Article 25 “Regime of development of territories defined for urban needs” provides for restrictions on the use of land plots by establishing the regime of development of territories defined for urban needs.

Thus, there is a contradiction between the norms of Articles 24 and 25 of the said Law.

9.2 In the same Art. 25 states that the mode of development of territories defined for urban needs is mandatory for consideration in the development of land management documentation. However, land laws do not define how such accounting takes place. Therefore, in practice, this provision of the Law “On Regulation of Urban Planning” is not implemented.

9.3 Article 151 of the Land Code of Ukraine “The procedure for coordinating issues related to the purchase of land for public use or for reasons of social need” provides for several reasons for the purchase of land for urban planning. These can be solutions:

- urban planning documentation (master plans of settlements, detailed planning projects, other urban planning documentation);
- land management documentation;
- feasibility studies on the use and protection of lands of administrative and territorial entities;
- land management projects to streamline the territories of settlements.

9.4 The Law of Ukraine “On the alienation of land, other immovable property located on them, being in private ownership, for public use or for reasons of public need” provides that “The decision on the redemption of land, other
immovable property located on them, for public needs, the executive authorities or local governments accept on the basis of the general plans of settlements and other urban planning documentation, materials coordinating the location of such objects of land management projects for land allocation and other land management documentation approved in the manner prescribed by law, "that is, again provides alternatives to the availability of city planning documentation as the only legal basis for alienation of land and other objects real estate. Indeed, as already noted above, the specified land management documentation (materials for coordinating the location of objects, land management projects for land allocation) does not solve the issues of integrated development of the territory, creating a favorable living environment on it and therefore cannot be considered a justified reason for alienation of the land plot.

3 PROPOSALS

This section will present proposals for solutions in key areas of the analytical note.

1. Technological basis for the creation and use of urban planning and design documentation

The need to combine all the information on the urban planning documentation developed at all times became a real task with the adoption of the Law of Ukraine “On the Regulation of Urban Planning” and the Resolution of May 25, 2011 N 559 “On the Urban Planning Inventory”.

To solve these problems, it is necessary to create a multicomponent information model based on a unified system for classifying all objects, describing their main characteristics, as well as unified symbols. Such a system will ensure compliance with the fundamental principle of building automated information systems, which is the urban planning cadastre, to avoid duplication of input of initial data, since the object is registered in the system by its code at all levels and stages of the development of urban planning documentation.

The basis for filling the urban cadastre and the implementation of urban planning documentation should be the "List of classes of urban planning cadastre objects", which was approved by order of the Ministry of Regional Development, Construction and Housing of Ukraine of August 14, 2015 No. 193 (Registered in the Ministry of Justice of Ukraine on October 23, 2015 No. 1293/27738).

The basis for the construction of the list (classifier) was the object-oriented principle, where the main characteristics of the urban planning object are specified through semantic (attributive) characteristics.

The list of classes of objects of the urban planning cadastre is an integral part of the system of classification and coding of urban planning objects, in terms of defining the description and codes of classes of objects of urban planning documentation, which are subject to registration in the urban planning cadastre.

The system of classification and coding of urban planning objects includes a description of properties of objects with the definition of their codes, requirements for basic spatial data and their support in creating urban planning and other documentation, requirements for basic spatial data and their support in creating urban planning and other documentation, requirements for exchange file of geospatial data sets of urban planning cadastre, as well as the legend of objects of urban planning cadastre.

In accordance with this, the classifier has developed a system of symbols associated with codes with a list (classifier).

The proposed system of organization of urban planning documentation based on the creation of a multi-level geospatial database will allow to order the urban planning documentation in accordance with existing legislation and design system. The flexibility and convenience of this system allows you to add new groups of objects, expand subgroups in groups, specify attributes of objects.

This allows all subsequent development of urban planning documentation at all levels to perform in a single conceptual system with a
single classification system and symbols. For this, it is necessary to adopt a number of legislative acts on the implementation of such a system at the state level.

This system can be used today as to fill in the data in the urban planning types of urban planning documentation.

This will make it possible, with the further creation of the urban planning cadastre, to enter already ready information into the urban planning cadastre.

Since the land cadastre has already started operating in Ukraine, this system proposes to communicate the database of the urban planning cadastre and the database of the land cadastre through the cadastral code of the land plot.

To automate the use of this classification and legend system, it is necessary to create a library for software products of the ArcGIS line, as well as a font (such as Font_mkad.ttf) that will be compatible for all Windows operating systems.

It is also possible to use free GIS: Quantum GIS, PostgreSQL / PostGIS, OpenStreetMap, OpenLayers, MapServer and others, which also have the ability to work with map data in different projections, support services for working with spatial database systems, which, in turn, will allow integrate local data, or obtained via the Internet, within a single information system.

Such a system will allow not only to automate the creation and maintenance of automated information systems in urban planning, but also on the basis of requests to carry out urban planning analysis of the development of human settlements.

The most significant result of the introduction of modern geo-information technologies is the gradual creation of a single information space of Ukraine.

A breakthrough in accounting for public and private interests in the implementation of town planning documentation is possible only when creating public Internet portals, where you can see the existing situation (satellite imagery), cadastral information, territorial and administrative boundaries, as well as all proposals to change the urban situation. This is a spatial data infrastructure portal.

To execute urban planning documentation in the new format, you must:

1. radically change the design technology based on the integrated use of GIS technologies and geospatial databases;

2. To envisage a transition from cartographic to geoinformational modeling and forecasting of the development of a territory based on a multifactor analysis of the spatial interaction of objects and phenomena of the urban environment;

3. Integrate cadastral and design-planning systems in the infrastructure of geospatial data based on unified digital terrain models and digital models for presenting design-planning solutions in the form of specialized sets of geospatial data;

4. To provide for the provision of project planning and cadastral services to citizens, enterprises, potential investors in e-government systems using service-oriented technology and geoportals.

**The form of submission of urban planning documentation**

1. Work is carried out electronically using data from the urban planning cadastre and land and sectoral cadastres integrated in it (selected data required for work), freely available on the Internet or on request in the form of exchange files.

2. Submission of completed urban planning documentation should be as follows:

   - public information located on the geoportal (or on the website of the relevant council). For this information, it is necessary to develop a list of layers that will be freely available;

   - confidential information that is used by experts for work (list of layers), which is issued on request;

   - classified information containing state secrets and stored on a separate portal, is issued to the relevant services (list of layers).
3. Placing information on the geoportal and on the Internet will contribute to the availability of information to the general public.

2. Responsibility of local governments in urban planning.
Responsibility for the lack of urban planning documentation.
1. To amend to the Law of Ukraine “On Local Self-Government in Ukraine”, providing for the personal responsibility of the chairman of the village, town, city, district council and chairman of the deputy commission on urban planning of the above-mentioned councils for the lack of relevant urban planning documentation, documentation executed in accordance with current legislation (in the USK 2000 coordinate system, in electronic form, as a set of geospatial data).
2. To amend the art. 24-1 of the Budget Code of Ukraine and “The order of preparation, evaluation and selection of investment programs and projects of regional development can be implemented at the expense of the state fund for regional development”, approved by the Cabinet of Ministers of Ukraine dated March 18, 2015, No. 196, adding documents the requirement of compliance of these programs and projects, if they are aimed at the construction or reconstruction of facilities, urban planning documentation.

Responsibility for non-compliance with urban planning documentation
It is necessary to replace the practice of developing and approving urban planning conditions and restrictions by urban planning and architecture bodies, the practice of extracting (selecting) for specific construction objects with updated urban planning documentation. Any significant change in the parameters of the construction site in a big way should not occur without making changes to the urban planning documentation and publicizing it according to the procedure of public hearings.

Regarding the objects of architecture, the rights and obligations of local governments in terms of licensing procedures in line with the general decentralization should be significantly expanded. It should, giving greater authority to local governments in terms of permits for construction and commissioning of facilities, put the local governments responsible for ensuring the requirements of sustainable development of human settlements in terms of creating adequate engineering and social infrastructure. This should be the collective responsibility of an elected local government body.

This issue should be covered in the Urban Planning (Building Code of Ukraine).

Formation of customer service urban planning documentation.
To improve the organization, execution and quality control of urban planning, it is advisable to form special customer services for urban planning documentation on a permanent (for large cities) or temporary (for small settlements) basis. This will make it possible to personalize the responsibility for the implementation of these works in local governments, will not allow these bodies to distance themselves from solving the pressing problems associated with the development of documentation and will increase responsibility.

3. Urban planning documentation and territory planning. Development and approval of urban planning documentation: master plans and DPT.
it is necessary:
1. To simplify the system (content and coordination), making changes to the master plan.
2. To establish a procedure for calculating the prospective population in the master plan, taking into account the real demographic and migration processes in the regions and localities.
3. To view the composition and content of the draft master plans for their flexibility and ensuring the possibility of rapid response to investment processes.
4. To add a component to the content of the detailed plan - the distribution of the territories of a microdistrict, quarter, into local areas.
5. To make changes in the order of tenders for the development of urban planning documentation - to establish as a priority condition the availability of experience, professional staff in the design organizations.

6. Creation of a unified information base (urban cadastre) in the settlements.

7. To establish the procedure (legislatively) in which to determine that the detailed plan only specifies the decisions of the master plan and maintains the functional purpose of the relevant territory.

8. To attribute to individual works the constituent sections of the general and detailed plans - strategic environmental assessment, civil protection of the population.

9. To establish that changes to the master plan are carried out as an annex to the master plan.

10. To establish the minimum (optimal) number of services and structural units of the executive authorities, which are to consider the master and detailed plans (fire safety, ecology, protection of cultural heritage).

11. To establish as a compulsory norm a preliminary elaboration of a concept for the development of the territory of a settlement with the involvement of the public.

12. To establish more clearly at the legislative level the provisions, urban planning documentation (spatial plans) of the corresponding lower territorial level, should be developed on the basis of the spatial plan of the higher territorial level.

13. To make changes to the SBC, which determine the composition and content of the general plan of the settlement and the detailed plan of the territory, by definition of construction zoning, landscape zoning, blue and green lines.

4. Public participation in the urban planning and planning.

it is necessary:

1. Legislatively decide on issues that should be influenced by public decisions (meaning not the technical aspects of the projects).

2. Legislatively decide on the mechanism of public participation in the performance of strategic environmental assessments.

3. Government agencies and local governments should consistently carry out explanatory work about the fact that today the public should be directly involved in determining the development paths of the communities and territories concerned, and should be responsible for the decisions made, and not be outside observers. Constantly raise the level of awareness of citizens and managers on issues of urban development of territories and the development of urban planning documentation.

4. To local governments to inform the public about the decision-making on the development of urban planning documentation on the mechanisms for participation in decision-making.

5. Since it is not possible at the legislative level to develop an equal mechanism for public participation in decision-making in the development of urban planning documentation for cities with a population of over 1,000,000 people and villages with a population of up to 100 people, the best solution to this problem is to develop relevant legal acts at the community level which spelled out the procedure for public participation. Such documents may be the Local Building Regulations (legal part) or the charter of the relevant territorial community.

6. Community participation can be effective and active only if public information on the current state and development prospects of the territory (urban planning / spatial planning) is posted on the community’s web portal, which, in turn, will enable community representatives to monitor the processes occurring in a particular territory, associated with its urban development.


1. To amend the art. 19 of the Law of Ukraine "On Regulation of Urban Planning", noting that
a detailed plan of the territory is being developed with the aim, in particular, of determining the future purpose of each land plot.

2. To amend the Land Code of Ukraine and the Law of Ukraine "On the alienation of land, other immovable property located on them, being in private ownership, for public use or for reasons of social need," providing for a detailed plan established by law territory as the only legal basis for the alienation of land and other real estate.

3. To coordinate the classifiers of the types of functional assignment and assignment of the land plot.

4. OPEN QUESTIONS

It is proposed to amend Art. 25 of the Law of Ukraine "On regulation of urban development", changing the procedure for establishing the mode of development of territories defined for urban needs and providing compensation for limiting the right of ownership (use) of land plots, became part of the territories defined for urban planning needs.

"Article 25. Regime of development of territories defined for urban needs

1. The mode of development of territories defined for urban planning needs is established in order to avoid the risk that land owners will implement land improvements in the territory where they are supposed to implement the solutions of urban planning documentation in order to raise prices for them.

2. The mode of development of areas defined for urban needs, including temporary restrictions and restrictions on the use of territories.

The mode of development of areas defined for urban needs is established for a limited time, not exceeding ten years after the approval of the relevant urban planning documentation.

The mode of development of territories defined for urban needs provides for a ban on new construction or reconstruction of existing facilities in these territories if these actions contradict the prospective functional assignment of the specified territories established by the relevant urban planning documentation, except for current work, ensuring the safety of human life and health.

3. To implement the decisions of the state-level planning documentation, the order on the establishment of a territorial development regime is taken by the Cabinet of Ministers of Ukraine.

To implement the decisions of the urban planning documentation of the regional level, the order on the establishment of the mode of development of the territories is taken by the executive body of the regional council.

To implement the decisions of the urban planning documentation of the local level, the order on the establishment of the territorial development regime is taken by the executive body of the village, town, and city councils.

The decree approves the boundaries of the territories in respect of which the regime of development of territories defined for urban planning needs is established.

4. Since the establishment of the territorial development regime, the price of land and other immovable property, on which they are supposed to be redeemed for public needs, is determined at the level that is used to determine tax liabilities at the time of making an order. During the term of the territory development regime, the price is indicated, indexed in accordance with the index of price changes for land plots and other immovable property located outside the territory covered by the area development regime averaged over the region. At this price, the alienation of land and other immovable property will be implemented to implement the decisions of the city planning documentation.

5. The order approving the price of land for the period of validity of the mode of development of territories defined for urban planning needs is adopted until the day of promulgation of the project of urban planning documentation.

7. During the period of validity of the development mode of territories defined for urban needs, the Cabinet of Ministers of
Ukraine, the executive body of the regional council, the executive body of the village, town and city council carry out a set of measures for the implementation of urban planning decisions established by the relevant urban planning documentation (withdrawal (redemption) of land plots and their preparation for further use).

8. In the event that the decision of the urban planning documentation is not implemented within ten years, the established mode of development is canceled by the order of the same authority that established it; Changes are made to the urban planning documentation, according to which a new mode of development of the territory defined for urban planning needs is established, or no need to establish a regime is determined.

9. During the period of validity of the mode of development of territories defined for urban needs, the tax liabilities of the owner (user) of the land plot and other immovable property are reduced. The procedure for calculating the amount of reduction of tax liabilities is determined by the Tax Code of Ukraine. "For example, you can annually reduce the tax on land and real estate by 10%.\"
Analytical Note No 5

Analytical note 5. Zoning and types of urban plans (land use plan/master plan and detailed plan of the territory), responsibilities of municipalities in the territory planning.

Authors:
1. Vladimir Gusakov  - Honored Architect of Ukraine, Candidate of Technical Sciences, twice winner of the State Prize of Ukraine in the field of architecture, President of the National Union of Architects of Ukraine
2. Anna Ailikova  - chief project architect of the state enterprise "Ukrainian State Research Institute for Urban Design" DIPROMISTO "named after Y.Balokonya, Ph.D., associate professor

1 COVERAGE OF THE PROBLEM
Today, zoning is quite a controversial document.
Firstly, due to the deletion of the legal part of the text of the zoning, the document lost its primary purpose - according to a simplified procedure, to enable the owner or tenant of a certain land plot to change the assignment of the property. Secondly, there is far from always an understanding of this document, as such, establishing in the relevant territory certain "rules of the game" obligatory for all the subjects of urban planning and construction activities to be carried out.

Unfortunately, thanks to art. 24 of the Law of Ukraine “On the Regulation of Urban Planning” this document is perceived today only as a basis for the provision of land from state to private ownership, the provision of “conditions and restrictions” or a change in the targeted use of a plot.

2 CRITICAL ANALYSIS OF THE SITUATION
The permit system has largely retained the features of command and control management. The process of granting and obtaining permission to build a land plot is very often carried out without regard to city planning documentation, without proper control by citizens, although they are more interested in the quality of use of a particular territory and the creation of a favorable living environment.

As a result, the neglect of the requirements of the law by the authorities leads to unlawful decisions, the use of the territory despite the urban planning documentation, and the non-actions of law enforcement agencies to further violations.

3 PROPOSALS
3.1. Conditions for the implementation of local building regulation rules
Current legislation already today provides an opportunity for local governments to address the full range of issues of efficient use of territories of settlements on the application of zoning plans. The introduction of local rules for regulating development is better suited to the tasks of local self-government and filling this term with real content.

3.2. Competence of Local Rules
The following rules and procedures should be referred to the competence of the rules:
- division of the territory of the settlement into parts of homogeneous use - zones;
- determination of urban planning regulations for each zone;
- placement of certain types of use and development of territories on the basis of a more thorough examination (according to the DPT).
- the procedure for the use of existing land, buildings and structures that do not meet the standards established for a particular zone;
- the order of formation of new and changes to existing land;
- preparation of decisions by the local government on the use and development of specific land plots;
- the creation and activities of a special body under the head of the council of the settlement to ensure the implementation of the rules;
- the procedure of public discussions or public hearings;
- actions of citizens and legal entities of all forms of ownership on the use and development of land plots (including familiarization with the requirements of the Rules,)
- possible deviations from the requirements of the Rules and procedures for the coordination of deviations;
- organization of monitoring the implementation of urban planning documentation and monitoring compliance with the Rules.

The rules should be mandatory for all subjects of ownership of land, buildings and structures and users, as well as for design, survey, construction organizations, regardless of their location, forms of ownership and departmental subordination, for all divisions of the executive body in the implementation of planning, design, surveys, construction, reconstruction, repair and maintenance of any objects, selection, withdrawal, registration of land, landscaping and landscaping territories control over the use of land, buildings and structures and other procedures in the field covered by these Rules.

3.3. Application efficiency

The effectiveness of the Rules follows from their purpose and competence.

It consists in creating the prerequisites for solving a dual problem:

1. The broad development of investment activities allows to implement the proposals of the General Plan for the development of the settlement.

2. Ensuring effective state and public control over these processes.

Thus, by prohibiting, for example, certain types of development in the city center, the Rules not only restrain excessive growth in the price of land, but also stimulate investment in the development of other areas of the city where there is a need (depressed areas, etc.).

Thus, due to the application of the Zoning rules, the city authorities receive a reliable tool for regulating the market with the means of balanced development of various districts of the settlement.

3.4. Rules and urban planning documentation

Master plans are orderly and purposeful information for the system of decisions on the use and development of land in a populated area to be taken by the relevant state and local government bodies, but specific land plots are not considered in it. For this reason, this urban planning documentation may be mandatory only for the authority in the formation of its town planning policy, but not for the individual owner or user of the land plot, not for the individual developer.

Therefore, the Rules and detailed plans of the territory, developed on the basis of the requirements of the Rules, will be a single document, directly relating to the rights of citizens, as well as legal entities in matters of ownership, use and development of land, their property interests. This is due to the natural interconnection and sequence of development
of city planning documentation and drafting of the Rules: the general strategy of using and building up the territory is justified firstly with units of territory relatively large in size (regardless of ownership and use), whereas the operational objectives of implementing strategic plans are solved by detailed rules and plans use and development of the territory in relation to a separate land plot, has its owner Whether the user.

The rules, developed on the basis of the General Plan, act as a means of the day-to-day management activities of a local government body, a tool for its dialogue with the population, owners, and investors.

The role of the detailed planning, on the basis of which clearer boundaries are established for the distribution of various types of use and development of territories, also will not diminish, since the rules of development are the basis for the implementation of detailed plans of the territory, especially new development in free territories. Planning restrictions, number of floors, town planning regulations and zoning laid down in the graphical part of the rules should be maximally observed when carrying out the DPT.

3.5. The role of the public in the introduction of the rules

Residents of the village individually or through appropriate public associations, bodies of self-organization of the population and forms of direct will of the population - local referendums, general meetings of citizens - having the right to participate in the development and use of the Rules. This right is exercised by:

- their submission of comments, amendments, proposals and appeals on the content of the Rules during the period of their preparation, as well as to decisions that are made on the basis of the Rules already approved with the obligatory receipt of reasonable answers to these requests;
- the inclusion in public discussions of all issues of the use and development of the territory affecting their interests;

- carrying out on demand of the public of additional independent examination;
- development and introduction of alternative solutions and the like.

Thus, public participation in the drafting and implementation of the Rules provides:

- the fullest account of the various features of the development of a given locality, the rights, goals, and wishes of legal entities located within it, and especially of citizens;
- openness and democracy in the development and application of the Rules, due to which the universally understandable usefulness of their observance becomes apparent;
- public control over the process of using and building up the valuable resource of a settlement - its lands;
- prevention of abuse and corruption in this important matter;
- consolidation of the public to jointly solve the problems of territorial development;
- education of law-abiding, economic and socially active citizen.

3.6. compliance with the rules

Providing the Rules for building the status of a regulatory act will contribute to changing the attitude to this document. However, the rules must necessarily be developed taking into account the specifics of the settlement. The legal part should be carried out with the assistance of lawyers. It would be advisable to legislatively provide for (Administrative Code, Criminal Code) a measure of responsibility for violation of the rules (in the United States, the rules themselves spell sanctions for breaking the rules).
Analytical note 6. Preservation of the environment and the formation of an environmentally safe surroundings for humans in the field of spatial planning and construction

Authors:
1. Yaroslava Dzira - NGO "Community of building law"
2. Anastasia Oleschenko - chief sciences. employee of the State Enterprise "Ukrainian State Research Institute for Urban Design "DNIPROMISTO" named after Yu.M.Bilokon, Ph.D.
3. Marina Zerkal' – head of the research Department of SE "Ukrainian State Research Institute for Urban Design "DNIPROMISTO" named after Yu.M.Bilokon, Ph.D.

1 COVERAGE OF THE PROBLEM

According to the draft Law of Ukraine “On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period until 2030” prepared by the Ministry, it is planned to achieve “a slowdown in the rate of deterioration of the environmental situation by reforming the state environmental management system. ...”, and by 2025 only stabilization of the ecological situation is expected.

In March 2018, the Law of Ukraine “On Strategic Environmental Assessment” was adopted, which began to operate from October 12, 2018. The purpose of the Law is to establish the scope and procedure for the implementation of the strategic environmental assessment (SEA), the mechanism for conducting transboundary consultations, informing about the decision taken and monitoring the impact of the implementation of the state planning document on the environment.

2 CRITICAL ANALYSIS OF THE SITUATION

The issues of handling household and industrial wastes, ensuring the energy efficiency of human settlements, reducing the amount of harmful substances in the air from both stationary and mobile sources remain of particular importance in human settlements.

The projects of revitalization of river and coasts within the settlements remain relevant and at the same time only volunteer.

The introduction of procedures for SEA and ATS places additional demands on assessing the impact of design decisions on the state of the environment, as well as on public health. These requirements do not replace, but significantly expand the range of issues and deepen the analysis in the development of planning and project documentation. ATS and SEA are based on the principle: it is easier to prevent negative consequences for the environment at the planning stage than to manifest and correct them at the implementation stage. The purpose of ATS and SEA is to ensure a high level of environmental protection and to promote the integration of environmental factors in the preparation of plans and programs to ensure environmental protection and sustainable development.

At the same time, a significant problem remains the availability of initial data, which is an exceptional prerequisite for a qualitative assessment of the state of the environment, the impact of design decisions on its state and the development of proposals for the preservation of the environment.

3 PROPOSALS

1. Ensuring the integration of the environmental component to all design decisions of the spatial planning and construction documentation, as an integral priority component, and not an additional external component.

After the adoption of the draft law “On the basic principles (strategy) of the state environmental policy of Ukraine for the period until 2030”, it is necessary to develop guidelines for the integration of the Basic Principles (Strategy) of the state environmental policy of Ukraine until 2030 into spatial planning documents. This will help to ensure that environmental protection has become an integral part of any spatial planning documentation decisions.

2. Introduction of qualification requirements to the developers of strategic environmental assessment documents for spatial planning and environmental impact assessment of construction projects.
It is necessary to strengthen the role of specialists in the assessment of environmental conditions and resources and their protection. In order to improve the quality of environmental accounting in the design, it is advisable to introduce requirements for involving natural specialists in the development of documentation for spatial planning and construction projects.

Now the Laws of Ukraine "On Environmental Impact Assessment" and "On Strategic Environmental Assessment" do not provide any qualification requirements for report developers with SEA and ATS. Provision is made for the addition of the draft Law of Ukraine of 7085 "On Amendments to Certain Legislative Acts of Ukraine in the Sphere of Urban Planning" by the provisions concerning the qualification requirements for specialists who carry out SEA and ATS.

3. Coordination of the procedures of the SEA and ATS to the procedure of a comprehensive urban planning expertise, by revising the composition of experts involved in the examination.

The Law of Ukraine "On Environmental Impact Assessment" has been declared abolished by the Law of Ukraine "On Ecological Expertise" (Article 17, p.4). In addition, the Law of Ukraine "On Strategic Environmental Assessment" provides that the implementation of a strategic environmental assessment of a draft state planning document eliminates the need for a state sanitary and epidemiological examination of such a document (Article 2, Section 3). The SEA and ATS procedure, by their nature, is aimed at maximizing public involvement in decision making and is consistent with the decentralization processes. At the same time, it should be noted that the SEA has a predominantly analytical and deliberative character, whereas withdrawal from the ATS is mandatory and fully replaces the function of environmental impact assessment.

4. Specification of legislation on public discussions and hearings in the field of spatial planning and construction.

The Law of Ukraine "On the Regulation of Urban Planning" requires a definition of the concept “public” for the purpose of conducting public discussions and hearings in the field of spatial planning and construction and during environmental assessments, stating that “the public is a collection of individuals and public associations” not one person. Also prescribe in the mentioned law the procedure of public hearings, in particular the mechanisms for recording / rejecting proposals from the public, as mandatory. Implementation of the proposal is possible within the framework of the draft Law "On Amendments to the Law of Ukraine“ On the Regulation of Urban Planning "(registration number 6403).

5. Ensuring the availability of initial data for developers of documentation on spatial planning and construction projects.

It is proposed in the Draft Law "On Amendments to the Law of Ukraine" On the Regulation of Urban Planning Activity "(registration number 6403) to determine the list of source data necessary for the development of basic types of urban planning documentation.

The Ministry of Environment provides for the creation of an Integrated system of state monitoring and long-term scientific research of the state of all components of the environment in accordance with the requirements of EU legislation, which will operate in real time, but the approximate dates for its commencement are not defined.

6. Ensuring the availability of materials reports on ATS for the developers of documentation on spatial planning and construction projects.

The Law of Ukraine "On Environmental Impact Assessment" provides for the creation of a Unified Register of Environmental Impact Assessment, in which all documents required by the ATS procedure, including the report and conclusion, should be stored and accessible to a wide range of stakeholders. At the same time, the environmental impact assessment reports, which were developed prior to the entry into force of the Law of Ukraine "On Environmental Impact Assessment", remain primarily a commercial secret and are not available to the public, although they are directly subject to the provisions of the Aarhus Convention. Regulatory action is required to ensure open access to environmental impact assessment reports.

7. Introduction of responsibility for failure to provide initial data.

The draft Law of Ukraine "On the national infrastructure of geospatial data" (registration number 7523) obliges geospatial data holders not to restrict access to geospatial data used to develop urban planning documentation and to provide data created at the expense of the state budget without payment.
After the adoption of draft laws 6403 and 7523, it is necessary for the government to develop and adopt a procedure for the provision of source data and the use of geospatial data, which include the obligations of data holders and the procedure for their transfer.

8. Harmonization of standards and norms developed by various departments. Ensuring the availability of departmental standards.

It is necessary to prioritize the various types of documents and the executive authorities to coordinate the regulatory documentation among themselves.


When designing, the need to clearly separate the concepts of protected areas, as lands of conservation purposes, and protected areas, as zones with a regime, is superimposed on other types of functional assignment. Resolving of this issue is the subject of development of the spatial planning methodology and its regulatory framework.

10. Integration of the ecological network concept to the practice of spatial planning in order to form the ecological framework of the territory.

The concept of the national ecological network, which is created in accordance with the Laws of Ukraine "On the Ecological Network of Ukraine", "On the National Program for the Formation of the National Ecological Network of Ukraine for 2000-2015", should be considered as the organizational basis for the spatial and functional coordination of the existing environmental protection systems in Ukraine among themselves and with other types of environmental management.

In draft law 6403, provide for requirements for taking into account the National Ecological Network Scheme when developing a territory planning scheme at the regional level, and regional environmental network development schemes when planning the territories of settlements and amalgamated communities.


12. Alternative energy sources for the development of urban heating systems.

The development of this area is a complex task and should take into account both the goals of energy independence and energy efficiency, as well as the latest technological advances. The use of alternative energy sources should be foreseen in the formation of heat supply schemes for settlements. It is also necessary to implement the provisions of article 14 of DIRECTIVE 2012/27.eu of the European Parliament and the Council of 25 October 2012 “On energy efficiency”, which contains provisions on the promotion of efficiency in heating and cooling.

13. Development of methods and standards for the revitalization of river beds and coasts of reservoirs within settlements.

The newest world practice shows the expediency of restoration of river ecosystems as a basis for improving the state of the environment and aesthetically pleasing landscape attractiveness of human settlements and at the same time providing protection from natural hazards such as floods, flooding, erosion, as well as improving the sanitary and epidemiological state of the environment.

The introduction of an appropriate approach requires the formation of the methodological and regulatory foundations of the revitalization of river beds and coasts, the improvement of the respective territories, the formation of the landscape-aesthetic composition of the territory along the river as a cell of the public space of the settlement.
Analytical note 7. Preservation of historical and cultural heritage

Authors:

1. Olga Rutkovskaya - NGO "St. Andrew's Descent", ICOMOS Ukraine, State Enterprise "All-Ukrainian Scientific-Methodological and Experimental Information Center for Architectural Heritage", UTOPIK Main Council

2. Natalya Kondel-Perminova - Scientific Council INARH NSAU, IPSM NAS of Ukraine

3. Vitaliy Beletsky - Society "St. Andrew's Descent", UTOPIK Main Council

4. Alexander Malyshev - Senior Researcher, Department of Historical and Legal Research, Institute of State and Law named after V.M. Koretsky NAS of Ukraine, PhD in Law

5. Tatyana Chernyshenko - Assistant to the People’s Deputy of the Verkhovna Rada of Ukraine

COVERAGE OF THE PROBLEM

What is cultural heritage and why it must be preserved? The cultural heritage of each nation is a reflection of its history, mentality, moral and ethical principles. The concept of "heritage" covers the objects and phenomena of culture (tangible and intangible), on which a nation is based, reproduced in the continuity of generations. The value of heritage as cultural, social and economic capital is determined by its authenticity, aesthetics, and informative value.

Heritage is a significant factor in the socialization of the individual, it is based on the collective identity of social groups at the local, regional and national levels. The irreversibility of loss of cultural heritage leads to failures in historical memory, the destruction of identity, the danger of losing cultural diversity and the basis for further social development.

Current characteristic of cultural heritage preservation. Ukraine has a large number of multi-temporal monuments of immovable cultural heritage, representing its multinational culture. Unregulated construction of historical centers caused by its investment attractiveness leads to impunity in bringing buildings to critical condition, willful destruction and demolition of cultural heritage objects, followed by erection of new structures at their place, ignoring and violating the requirements of construction restrictions in historical areas and zones of monuments protection. As a result, the quality of life decreases, since the presence of cultural heritage is one of its indicators.

CRITICAL ANALYSIS OF THE SITUATION

In Ukraine, there is currently no effective management of historical and cultural resources. The identification and registration of cultural heritage objects is not carried out properly, and orders and regulations for the protection of monuments are not provided. Even in those minor cases when indicated orders and regulations are still provided, they are not implemented and/or ignored. The massive facts of the transfer to private ownership of lands on which monuments and archeological objects are located; sanctions for violation of legislation on the protection of monuments do not apply.

Monument protection bodies do not fulfill their functions, in many cases actually serve as an integral part of systemic violations of the law, taking into account passivity and non-response to such violations, or direct participation in them through the issuance of illegal permits and conclusions that are contrary to current regulations, unreasonable removal of monuments from the State registry of immovable monuments of Ukraine. Unqualified restorations and repairs of monuments cause significant damage and are carried out by structures not licensed for this work.

Most of the procedures, regulations and standards for the implementation of the main objectives of the preservation and use of cultural heritage are not defined and developed. The value of the cultural heritage, the priority of its preservation and the
peculiarities of its use are still not the main task in managing of the construction industry. Consequently, one of the main provisions of the Law of Ukraine No. 1805-III “On the Protection of Cultural Heritage” is not being fulfilled: “the protection of cultural heritage is one of priorities of state bodies and local governments”.

Ukraine badly needs certainty in its targets as an independent state, among which preserving cultural heritage is the strategic priority at all stages of urban planning processes.

b) CRITICAL ANALYSIS OF THE SITUATION

1. Incompleteness and inconsistency of the regulatory framework for cultural heritage

Currently, the functioning of the sphere of preservation of cultural heritage is regulated by a wide range of legislative acts. In particular, the laws of Ukraine "On Culture", "On the Protection of Cultural Heritage", "On Protection of Archaeological Heritage", "On Basics of Urban Planning", "On Architectural Activity", "On Regulation of Urban Planning", "On Museums and Museum Business". The implementation of the norms of international acts ratified by Ukraine in recent decades requires harmonization of national sectoral legislation in accordance with modern international law for the protection of World Heritage (archaeological, landscape, architectural, underwater, etc.).

2. Inefficiency of current legislation

The unconditional implementation of the preservation of immovable cultural heritage is not supported by the requirements of current legislation, the weakness of which is evidenced by the information and analytical note to parliamentary hearings “State, problems and prospects for the protection of cultural heritage in Ukraine” on April 18, 2018.

Ensuring the requirements of sectoral laws on the creation of a network of local authorities is still advisory in government acts of local authorities, without providing them with centralized funding and a system of full-fledged activities from the local budget. Accordingly, there are significant differences in the organization of such bodies in the field. In particular, local bodies of state executive power and local self-government formed their own bodies for the protection of cultural heritage, they had various organizational forms and status. In many executive bodies of city councils and district state administrations, the positions of specialists of protection of cultural heritage have not been introduced at all.

Functions of monitoring the safety of the immovable heritage, the coordination of documentation for construction are not fully provided. At the regional level, in most cases it is impossible to conduct a full-scale inventory of cultural heritage sites, conclude security contracts, agree on the placement of advertisements on monuments, bring to justice for violations and exercise other managerial and civil-law functions provided for by current legislation.

The economic and social potential of cultural heritage sites remains unvalued and does not take into account the development strategies of the respective cities and regions, historical populated areas. Currently, there is no open record of land for historical and cultural purposes and information on their use. There is a gap in regulating of an important component of town-planning restrictions formation on traditional environment preservation and the town-planning impact of buildings and complexes of monuments.

Ukrainian legislation contains many gaps that make it impossible to effectively preserve privately owned cultural heritage sites. In particular, the mechanisms of interaction and partnership in ensuring the high-quality preservation of monuments, bringing to responsibility for failure to conclude or non-compliance with security agreements.

3. Absence of connection between town planning and monument preservation legislation

In the Law of Ukraine "On the regulation of urban development" there is no norm for development regulation in monument protection zones monuments, in historic areas, in protected archaeological territories, on lands of historical and cultural purposes, concerning
interests of preserving cultural heritage. Protection legislation were amended by transitional provisions of the first edition of the Law of Ukraine "On the regulation of urban planning", which excluded construction work as requiring approval or permission from a special body for the protection of cultural heritage, the definition and grounds for conducting scientific archaeological expertise, etc.

This led to the fact that all declarative, notification and licensing procedures in construction do not need to obtain approvals of project documentation and permits for construction work on a monument. So, in order to obtain the right to carry out preparatory or construction work, it is not necessary to obtain permission or approval from an authorized body of cultural heritage even in the case when construction is provided for in a monument protection zone or directly on it. The Law of Ukraine "On the Protection of Cultural Heritage" provides for the need to obtain approval of urban planning, architectural and landscape projects, as well as permission to excavate, but obtaining such approvals and permits is not required when registering notifications and obtaining permits for construction works.

The absence of such approvals and permits is not a reason for the bodies of architectural and construction inspection to cancel a document for the performance of construction works or issue an order to cease construction works. This happened because the authorized body for cultural heritage protection was completely removed from its power of obtaining permits for construction work. It leads to irreversible loss of cultural heritage.

4. Vulnerability of cultural heritage sites due to the non-inclusion to the immovable monuments’ State Register of Ukraine (Register)

On the territory of Ukraine there are more than 130,000 cultural heritage sites that are on state records, of which 9,562 monuments (about 7%) are listed in the State Register of immovable monuments of Ukraine (914 monuments of national significance and 8,648 of local significance) and 6 unique cultural sites included in the UNESCO World Heritage List, which are of exceptional human value. About 65,350 (52%) archeological objects, 44,496 (35%) - history, 1944 - monumental art (2%), 13518 - architecture and urban planning, 327 - landscape art are on state accounting; 219 - landscape objects and 92 - objects of science and technology. Separately, there is an accounting system, defined by the Order of the Ministry of Culture of Ukraine No. 158 of March 11, 2013 “On Approval of the Procedure for Accounting for Cultural Heritage Objects”. This order, which develops the provisions of Part 2 of Art. 14 of the Law of Ukraine "On the Protection of Cultural Heritage", provides for the maintenance of local lists of cultural heritage sites. On the corresponding previous account consists of about 34,000 schonovyyvennych objects of cultural heritage. The list of cultural heritage monuments that are not subject to privatization includes 2.1 thousand monuments (mainly architectural and urban planning).

The current legislation regulates the protection and preservation procedures not for all objects of cultural heritage, but only for those registered in the State Register of Real Estate Monuments of Ukraine or taken on state records in accordance with the previous legislation. At the same time, the entry of objects into the State Register of Immovable Cultural Monuments of Ukraine is being implemented very slowly and inefficiently. As of 2006–2008, the proportion of cultural heritage sites that were under the management of the Ministry of Regional Development of Ukraine and that were classified in a new way did not extend to 2% of their total number. A similar trend was going on. The situation has become a bit better in recent years: in 2017. 15 monuments of national importance and 1419 local values were listed to the Register in 2017; 8 objects of cultural heritage of national importance in 2018.

The insignificant number of immovable monuments listed in the Register indicates significant organizational shortcomings. It is important to emphasize main reasons of this:

- too complex requirements for the preparation of relevant documentation for listing of cultural heritage to the register, which was required by
Analytical Note No 7

regulations (in recent years, this procedure is a bit simpler)

- the high cost of services for the preparation of relevant documentation for cultural heritage sites and absence of systematic state financing for documentation preparation;

- not undertaking of the necessary actions, underdoing at the local level, do not pay necessary attention to cultural heritage listing to the register;

- closeness of the state accounting system, the formal impossibility of initiating the taking of an object to the state account for representatives of territorial communities.

At the same time, the modern judicial practice relies mainly on the norm, only cultural heritage object listing to the Registry gives it the status of a monument, and then - full completeness of protection determined by current legislation. Currently, the court practice of applying the legal norm approved by the Law of Ukraine "On Amendments to the Law of Ukraine" On the Protection of Cultural Heritage "regarding the definition of the “cultural heritage monument” dated May 25, 2017 No. 2073-VIII regarding the memory status of objects of cultural heritage, which had been listed in the state accounting in accordance with the legislation, that had force before the entry into force of the Law of Ukraine "On the Protection of Cultural Heritage".

Thus, the problem is created when not listed to the Register (due to bureaucratic procedure or deliberately delays this process) cultural heritage objects are destroyed during construction work occurring, at or near the cultural heritage sites.

5. Absence of special status of lands of historical and cultural purpose and non-determination of their boundaries.

Almost one and a half thousand cities and towns (in fact, 100% of the total in Ukraine) and about 8,000 villages (more than 30% of the total) of Ukraine have cultural heritage sites. However, at the regional level, the compulsory determination of their boundaries is not ensured and the procedure for determining the boundaries and modes of territory use of land for historical and cultural purposes in the development of urban planning documentation has not been introduced.

Uncertainty of boundaries of especially valuable lands leads to gross violations of land and town planning legislation. In particular, it is subject to the illegal alienation of land plots of especially valuable land for historical and cultural purposes (archeological monuments - burial mounds, settlements), nature reserves, valuable forest areas for construction, agricultural production, etc. As of 2017, in most regions of Ukraine lands of the natural-reserve fund are not at all taken into account by the Stategeocadaster authoritie.

6. Undefined zones of monuments protection, which is the reason for the uncontrolled and unpunished destruction of cultural heritage

According to the Resolution of the Cabinet of Ministers of Ukraine No. 878 of July 26, 2001, 401 populated areas were listed to the List of Historic Settlements of Ukraine that preserved all or part of cultural heritage cites and associated layouts and forms of development inherent in certain cultural periods of development. And just for 101 populated areas boundaries and modes of historical areas use have been determined and approved as of September 1, 2018.

At the same time, most of historical and architectural key plans do not have clear boundaries of monumental protection zones marked in nature. It allows unfair developers to ignore requirements of the legislation, violate protection regimes and carry out construction without necessary approvals and permits from authorized cultural heritage bodies. This gives rise to chaotic construction within the protected (buffer) zones and adjacent territories of cultural heritage sites, reconstruction with expansion and superstructure of existing buildings within protected (buffer) zones and adjacent territories of monuments of world significance, as well as high-rise construction in the areas, although are outside the protection (buffer) zones and adjacent territories, but may have a negative impact on the outstanding universal and visual value of
Ukrainian objects, including listed on the UNESCO World Heritage List.

As experience has shown, even the cultural monuments of Ukraine, listed in the UNESCO World Heritage List, are not sufficiently protected. In particular, at the buffer zone of the St. Sophia’s Cathedral with adjacent monastic buildings, several dissonant overtime altitude facilities were built, which distorted the traditional environment of the cultural heritage site of world significance. In addition, due to the hydrological regime has been got worse, has occurred a danger for the complex of the monument.

7. Undefined boundaries of protected areas and rights to them

Uncertainty of reserves' boundaries and non-registration of the right to own respective land plots still has been current problem of the cultural heritage preserving. So, with 59 explored reserves, only 11 reserves preserved their right legally (19%). This leads to the fact that even the territory of reserves (do not have clear boundaries and land allocated for use) are given for development. At the same time, the damage is manifested not only in the destruction of the integrity of the traditional environment of the complex, which was given for construction, but also in the further negative impact of the new development on the entire territory of the reserve.

8. There is no unified body for cultural heritage protection in the field of urban development. New challenges

Currently in Ukraine, the Cabinet of Ministers of Ukraine is the highest executive body in the field of protection and preservation of cultural heritage. Article 5 of the Law of Ukraine “On the Protection of Cultural Heritage” is distinguished by a central executive body that ensures the formation of state policy in the field of cultural heritage protection, museum business, export, import, return cultural values, and also ensures the formation and implementation of state policy in the field of restoration and preservation of national memory. So, according to article 5 of the said law and the Resolution on the Ministry of Culture, this body is the main body that ensures the formation and implementation of the state policy in the field of cultural heritage protection.

However, in accordance with the established regulatory framework, it is envisaged to exercise the powers to manage and control the protection and functioning of cultural heritage sites as well as other agencies: as for architectural monuments, urban development - the Ministry of Regional Development; as for monuments of landscape art, landscape - the Ministry of Natural Resources; control over the use of land for historical and cultural purposes - Ministry of Agrarian Policy. The Ministry of Foreign Affairs, the Ministry of Education and other institutions also join the processes of the protection of cultural heritage within their own powers.

At the same time, none of the above bodies were granted the highest status in the protection and preservation of cultural heritage sites. Therefore, the memorial protection system of Ukraine is characterized by "polycentric". This leads to inconsistency of actions, dispersion of scientific and human potential, which is already lacking, duplication of subordinate structures and inefficient use of finance.

The complete (or partial) absence of local cultural heritage protection authorities, the need to create interdepartmental commissions on these issues confirm ineffectiveness of the existing management system. The division of functions is also contrary to international norms, according to which the management efficiency of cultural objects of all types and kinds is used in a single set of measures for accounting (identification, scientific study, classification, state registration), protection, preservation, maintenance, use, conservation, restoration and museumification of monuments.
The inability to fully exercise powers of public administration and control is due to the lack of a single body for the preservation of cultural heritage from its subordinate system of local authorities with appropriate powers, funding and consolidation at the legislative level.

**9. Construction projects - a threat to the preservation of cultural heritage**

Today, large investment projects and construction in general are considered as the main threat to cultural heritage all over the world; therefore, it is advisable to entrust control, supervision, Liability and responsibilities for preserving cultural heritage not only to specially authorized bodies, but also to a wide range of subjects among which are legal entities and individuals related to construction. The implementation of this idea has the effect of consolidating a number of norms for the preservation and protection of heritage in acts of land, urban development, environmental, natural resource and other legislation.

In addition, urban space is an environment that is constantly and rapidly developing: it is being developed, ordered, redeveloped. Certain historical objects that are within city boundaries need not only the protection of their status quo, but also effective practical use, constant inclusion to the modern context, with value increase for the surrounding inhabitants. Heritage is the basis of not only national, but also any local identity, the preservation of which has its own features in the process of urbanization.

The regulation of the relevant activity is carried out not only by public law, but also by private-law, and therefore it is necessary not only visibility of the cultural heritage preservation as a specific management sphere, but also to define cultural heritage and its various components as a specific object of civil rights, ownership, use and disposal which is carried out in compliance with certain rules. The role of urban planning legislation in this aspect is difficult to overestimate, as evidenced by foreign and Ukrainian experience.

Among main problems of our time are the low culture of developers and local authorities' representatives, absence of popularization among society at the regular basic, non-existing of value of historical environment, monuments and objects of cultural heritage. Unfortunately, a typical phenomenon is the desire of maximum profits from the construction of profitable objects in the historical centers of settlements, with irreparable damage to the preservation of the holistic historical and cultural environment. Often, for this purpose, demolition of immovable monuments that are under state protection was authorized. There are numerous cases when leasers change a status of monuments without a respective permission.

The existing practice of monuments preservation indicates a significant reduction in public influence on the issues of preservation of cultural heritage sites; in fact, it is excluded from real control over actions of central and local executive authorities and affect key decisions, especially at the local level. There is an objective need to strengthen mechanisms of public control in the field of preservation of monuments at the level of the legislation of Ukraine.

It is also impossible to ignore the problem of non-fulfillment by an investor-developer his obligations to finance archaeological research at the construction sites, which leads to the destruction of monuments and their building without preserving the cultural heritage.

**10. Deliberate destruction of cultural heritage**

Currently, in Ukraine, despite the presence of a number of legal acts on the protection of cultural heritage, there is a continuous deliberate destruction of architectural monuments and urban planning in the form of physical deterioration of monuments, spontaneous urbanization, chaotic new construction in a historic environment, and destructive authenticity of monuments, mass intervention in the restoration industry of non-professionals, vandalism and other aggressive actions.

The situation on the preservation of the immovable cultural heritage of Ukraine is
extremely critical. Non-understanding of the value of cultural heritage (even economic) of people who have influence in decision-making process on investment projects in historical territories. It leads to the destruction of the traditional nature of the environment, its identity and features of the architectural and urban planning composition, which were formed by previous generations.

In Ukraine, investments in construction aim at not preserving, but destroying monuments, since it is cheaper to build a new object than to restore an immovable “antiques”, which, however, will be more profitable in the long run.

Among systemic urban violations should be noted:

- illegal allocation of plots for new construction on lands of historical and cultural purpose, is a powerful source of corruption;
- conscious bringing a historical object to a state of ruin with a desire of its demolition and the construction of new buildings instead at this place;
- realization of investment and construction processes without developed and approved boundaries of historical areas, protective zones and development regulation;
- neglect of existing requirements for the preservation of monuments in the process of new construction in historical centers. Illegal increase in number of floors of new buildings in the areas of monuments protection of national and local significance, in the areas of construction regulation.

11. Preservation of religious buildings - monuments of architecture, transferred to religious communities for use

State legal basis set forth in noted analytical materials in respective parliamentary hearings that started in 1991-1992 for the transfer of religious buildings - monuments for the use of religious communities were subsequently supplemented by a number of regulatory documents. During the years of independence of Ukraine, 3.6 thousand temples and more than 10 000 objects of religious and church use were returned to religious communities, and a number of religious buildings and adapted premises used by churches increased from 9,449 to 18,634, or 92.7%. In particular, from 13.2 thousand temples that are now owned or used by religious organizations, 3,845 (29.2%) are architectural monuments. In many cases, this process is accompanied by conflict between religious communities and state interests in the protection and preservation of these objects as cultural heritage sites, the content of which requires certain well-defined conditions and requirements. In recent decades, quite numerous conflicts have been observed between cultural heritage protection authorities and religious communities over unauthorized reconstructions of ancient temples and their maintenance regimes. It is advisable to pay attention to international practice of consolidated actions for solving this problem, taking into account positions of all stakeholders.

12. Challenges of decentralization

The fundamental redistribution of power and resources that accompany administrative reforms in Ukraine inevitably leads to temporary disorganization of management and even loss of management of certain processes. In the case of cultural heritage, consequences of corresponding disorganization are especially painful (taking into account the feature of cultural heritage as non-renewable resources).

At the legislative level, the delegation of powers to local authorities for the cultural heritage preservation takes place without strengthening of their staff and resources. In a number of areas, decentralization led to liquidation of monuments’ protection inspections, with the transfer of their functions to the regional culture administration. This liquidation is explained by saving money and avoiding duplication of authority. In addition, it is emphasized that inspections are state bodies, but their maintenance is entrusted to local budgets. Fulfillment relevant cultural departments’ commitments in the field of the cultural heritage protection without professional accompaniment by inspections is no more than formality of their work.

13. Absence of interaction between all subjects (bodies of the cultural heritage protection, bodies of architecture and
urban development, bodies of land and land use, public institutions).

In the state regulation of new construction on the territories where cultural heritage objects are located, the interests of the customers of construction projects, design organizations, gene and subcontractors are taken into account. Important subjects are all authorities in the field of cultural heritage protection of the Ministry of Culture of Ukraine, the executive authorities of the ARC, the cultural heritage protection authorities of regional, Kyiv and Sevastopol city state administrations, district central administrations, executive bodies of village, town and city councils.

At the same time, opinions and interests of new subjects related to the preservation of cultural heritage are not taken into account, including professionals from various industries, experts, entrepreneurs, philanthropists, local historians, tourists, artists, citizens and their public associations (initiatives), religious denominations, owners of objects of immovable heritage (state, municipal, private), tenants, managers. All stakeholders have different positions, differing value systems, conflicting interests. Adjusting their interaction, achieving a balance of interests while observing the requirements of the legislation of Ukraine remains painful problems.

In addition to economic reasons, the loss of monuments is the result of weak legal capabilities of society in defending the rights to preserve the heritage, misunderstand what role monuments play in modern life, why they need to be preserved.

14. There is no mandatory monetary valuation of cultural heritage sites, insurance, and sufficient budgetary support for the implementation of restoration, conservation, and rehabilitation of monuments and cultural heritage sites. In the conditions of absence of preferential programs to support private initiatives for the rehabilitation, restoration of immovable cultural heritage, this leads to spread of the practice of underestimating the value of the object and deliberately bringing it to a state of ruin.

15. At the state and regional level, the proper organization of systematic scientific activities for the practical preservation of immovable cultural heritage through restoration, conservation, rehabilitation, and museification has not been ensured. During the 2000-2010s, there is no definition and formation of expenditures from central and local budgets for conducting systematic scientific activities for the practical preservation of immovable cultural heritage through restoration, conservation, rehabilitation, and museification.

16. There is no examination and certification, registration of specialists of conservatives, restorers in the scientific and design field, experts of immovable cultural heritage, appraisers of objects of immovable cultural heritage.

3 PROPOSALS

An integral component of cultural heritage preservation is immovable cultural (architectural, urban planning and archaeological) heritage, is a matter of national security of Ukraine.

The continued existence, self-preservation and development of Ukraine depend on the implementation of a targeted state policy (strategy) to preserve the cultural heritage. Preserving the cultural heritage should be an important part of the National Security Strategy - the document “identifies current threats to the national security of Ukraine and the corresponding goals, objectives, mechanisms for protecting the national interests of Ukraine and is the basis for planning and implementing state policy in the field of national security” (Article 1, Clause 19 of the Law of Ukraine "On the National Security of Ukraine" No. 2469-VIII of June 21, 2018)

PRIORITY TASKS FOR SOLVING PROBLEMS OF THE CULTURAL HERITAGE PRESERVATION IN THE FIELD OF URBAN DEVELOPMENT

1. Accession to international documents, implementation of norms of instruments ratified by Ukraine
Analytical Note No 7

The new Convention of the Council of Europe on cultural property offenses 2017, which has already been signed by Ukraine and is being prepared for ratification, is extremely important. The Convention introduces a new standard in terms of criminal liability for offences against cultural heritage.

An important part of the implementation of the Public Administration Concept of the construction industry should be mandatory implementation of requirements and obligations of international documents ratified and signed by Ukraine. First of all:

- Convention for the Protection of the World Cultural and Natural Heritage (ratified by the Decree of the Presidium of the Supreme Soviet of the USSR of 04.10.1988 No. 6673-CI)


- European Landscape Convention (signed on behalf of Ukraine on June 17, 2004, ratified by Law of Ukraine No. 2831-IV September 7, 2005)


- Convention for the Protection of the Architectural Heritage of Europe (signed on behalf of Ukraine on November 25, 2005, ratified by the Law of Ukraine No. 165-V on September 20, 2006)

2. It is necessary to make a transition from the ideology of protection to the ideology of heritage preservation.

The ideology of protection has been significantly narrowed down as a reflection of a complex conceptual crisis, which can be overcome by moving to the ideology of preserving of cultural heritage. The concept of preserving of cultural heritage means the economical, balanced management of historical and cultural resources, their application in the sociocultural dynamic processes of modern society, where protection is an integral part of a multi-layered process of preserving heritage. Cultural heritage is the main resource for the development of historical cities, so any construction on historical territories should be the tasks of preserving heritage.

The preservation of cultural heritage, which is linked with the economic and socio-economic and spatial development policies of Ukrainian cities, should be based on an effective model of public-private partnership, in cooperation with all stakeholders with maximum application of legal norms of direct action to counteract corruption risks.

At the state level, it is necessary to process the system of measures, the implementation of which will make the preservation of heritage objects beneficial for owners, lesasers and investors (special tax treatment, budget subsidies to reimburse part of costs for restoration of objects, etc.). A fundamentally important role should be played by a new entity – an insurer (insurance companies). Insurance of cultural heritage objects will strengthen the validity of protection contracts concluded between owners and the cultural heritage preservation authority.

The transition from the ideology of protection to the ideology of preserving cultural heritage requires refusal of “protection” definition, which will help eliminate various, sometimes even opposite, interpretations of various concepts, and will serve for communication between all stakeholders.

The ideological transition from protection to preservation does not mean a complete rejection of the term “protection”, the meaning of which requires a certain legal specification. The current Law of Ukraine “On the Protection of Cultural Heritage” defines protection too broadly, including identification, restoration, maintenance and preservation. However protection should be understood only as a public law component of the preservation of cultural heritage, which is characterized by the principle “only things stipulated by the law are allowed”. The mechanisms of protection include accounting, inspections, preventing unauthorized persons, bringing those
responsible to justice, etc. Heritage private law relations (scientific research, restoration, updating, valorization, etc.) require separate regulation and separation from protection (cf. German - “Denkmalschutz” and “Denkmalpflege”, t. - “conservazione” and “valorizzazione”, English - “heritage protection” and “heritage management”, Polish - “ochrona” and “opieka”, Soviet - “protection” and "use", etc.). As for storage, it should be the main goal and task of both the protection and use of cultural heritage.

3. Resolving contradictions and gaps in the regulatory framework in the field of preservation of cultural heritage

It is urgent to harmonize all legislation on the preservation (protection) of monuments, the unification of approaches, procedures and mechanisms of control and supervision. Procedures for listing monuments to the Register, protection of objects of cultural heritage that are not listed in the Register need to be regulated.

In addition, there is a need for amendments in legislation that will provide:

- application of appropriate legal, administrative and financial measures for reimbursement, registration of monuments, examination, museumification, accounting, control over the movement and promotion of cultural heritage sites;

- promoting the creation and development of national or regional centers for the training of specialists of the conservation, restoration and promotion of cultural heritage sites;

- promoting the creation and development of scientific and technical base and encouraging the implementation of scientific research;

- effective mechanisms of public control in the field of preservation of cultural heritage;

- mandatory public hearings on construction projects in the historical areas of populated areas.

Separate introduction requires the provision of mandatory public expert and public hearings, hearings of projects of urban planning documentation, building projects that are going to be planned in historical areas and areas of protection of monuments of architecture and urban planning, as well as those that are built by budgetary funds.

Currently, there are several new drafts law on the protection of cultural heritage, but none of them are recognized appropriate by experts and industry public associations.

4. Ensuring the necessary vertical management of the preservation of cultural heritage

It is urgent to create a single body for the preservation of cultural heritage with a subordinate system of local authorities with appropriate powers, funding and consolidation at the legislative level. The relevance of this issue is clearly demonstrated at the parliamentary hearings “The State, Problems and Prospects for the Protection of Cultural Heritage in Ukraine” of April 18, 2018, where the relevant proposals were mentioned in every speech.

The creation of a system of local bodies for the preservation of cultural heritage, especially in the context of decentralization related to the liquidation / reorganization of territorial bodies of executive power, is quite complex. Nowadays, even the Recommended list of structural subdivisions of the regional, Kiev and Sevastopol city state administration, approved by the Resolution of the CM of Ukraine No. 606 of April 18, 2012, does not define a separate structural unit for the protection of cultural heritage, and the corresponding functions mainly rely on cultural management administration do not have the appropriate professional level in the relevant field. Therefore, the creation of bodies for the preservation of cultural heritage in the field should be mandatory and guaranteed at the legislative level.

In the structure of a specialized central body that should deal with cultural heritage, it is necessary to create an independent inspection of the protection of cultural heritage, a system of licensing and examination of work on monuments.

Legislation on the protection of monuments of procedures speaks mainly about administrative
permits and approvals, almost not mention previous research and expertise. Thus, even the need for such research is made dependent on the decisions of administrative officials. This problem is also characteristic of the generally progressive draft law of Ukraine “On Amendments to the Law of Ukraine”, “On the Regulation of Urban Planning” (reg. No. 6403). Similarly, the Law of Ukraine “On Environmental Impact Assessment” in its Art. 6 provides that data on the archaeological and cultural heritage should be included in the environmental impact assessment report. At the same time, this law does not provide guarantees and research procedures, according to the logic should be performed before the preparation of the relevant report.

5. Creating a unified register of cultural heritage and its effective content

An important strategic task is to create a unified public State Register of Cultural Heritage Cites - an electronic distributed database system that combines all existing registers / lists of heritage objects with automatic interaction with industry electronic registries, cadastres, etc. related to transactions ownership, construction, budget financing and fiscal procedures.

The mechanisms and procedures for the inclusion of cultural heritage sites in the Register with the responsibility of authorities and officials for failure to take appropriate measures or delays require improvement. It is necessary to develop measures to speed up the resolution of issues of certification and monetary valuation of immovable monuments and to ensure systematic budget financing for comprehensive research and non-state funds.

It is necessary to make changes and additions to the Law of Ukraine “On the State Budget of Ukraine” by increasing the funding of programs for which work is being carried out on cultural heritage sites, including systemic financing of research projects (for individual programs).

6. Cultural heritage as an object of property rights

Since the preservation of cultural heritage is a matter of national importance and national priority, the preservation of the cultural heritage at the local level should not be exclusively the prerogative of local authorities, who are not always profitable to provide activities related to their rehabilitation, maintenance and use. This is especially true of complex monuments - fortresses, palace complexes, manor complexes, etc.

We consider it expedient to return to the practice of reproduction of socially important objects, which is possible on the basis of scientific research, taking into account the provision of the Riga Charter on the authenticity and historical reconstruction of the cultural heritage (2000). The recreated object becomes only an exact copy, historical reconstruction, a successful tourist product.

In addition, require:

- comprehensive settlement mechanisms for the acquisition by the state of ownership of newly discovered archaeological objects with the establishment of mechanisms for reimbursement to other interested parties, if necessary;

- procedural support of art. 9 of the Law of Ukraine “On Protection of Cultural Heritage” to ensure access to cultural heritage objects that are privately owned. It is also necessary to provide for compensatory measures in cases when the fulfillment by state bodies and scientific obligations of protecting the cultural heritage object leads to harm to their owner;

- detailing the procedure for the forced redemption of immovable objects of exceptional cultural value. The relevant norms are contained in the legislation on the protection of cultural heritage, but they must also be enshrined in other legislative acts, primarily in the Law of Ukraine “On the Alienation of Land Plots and Other Real Estate Objects Housed in Private Property for Public Use or motives of public necessity”;

- a clear delineation of the rights and obligations of the state and territorial communities as the owners of certain cultural heritage sites and their administrative and legal powers as subjects of public authority. This is especially important for those cases when, for example, a monument of local importance is in state ownership or a monument of national
importance - in communal ownership. In these circumstances, the owner and the public authority may be different persons, so a clear distinction between their functions is necessary;

- it is necessary to write out in greater detail the obligations of the investor in financing previous studies of objects at risk in the event of the implementation of the works designed by the investor. The boundaries of the respective duties and the grounds for attracting state financing of the relevant works should be defined. Also, in cases where after conducting preliminary research, the probability of finding archaeological objects on the site remains high, mandatory archaeological supervision of construction work should be provided. This scientific control procedure is already quite common in practice, but has no legislative consolidation. It is also necessary to strengthen the legislative guarantees of other forms of scientific and technical support and monitoring of buildings in order to protect both individual architectural monuments and complete ensembles and historical landscapes.

7. Coordination of land legislation and legislation on the protection of monuments

Critical analysis revealed many problems associated with the inconsistency of these two areas. In particular, it is necessary at the legislative level to provide for the obligatory determination of the boundaries and modes of use of territories of historical and cultural land when developing urban planning documentation, to prohibit the development of land management projects in historic places without an approved historical and architectural basic plan and where there are no clear boundaries (in reality) zones of protection of monuments and historical areas.

As for the Land Code of Ukraine, it still contains a lot of terminological inconsistencies with special legislation on cultural heritage.

8. Improving the procedures for approving and coordinating of the historical and architectural basic plan

Local authorities should decide on the development of a historical and architectural support plan, coordination should be carried out by regional councils (and Kiev and Sevastopol city state administrations), but the central executive body should ensure final approval, ensuring the formation and implementation of state policy in the field of cultural heritage protection. A prerequisite for the approval and transparency of such a decision on scientific and project documentation may be obtaining an independent review from a specialized state organization in the field of the cultural heritage preservation, which has experience in developing similar documentation and activities in the field of preservation of monuments for more than 15 years.

In addition, in historical places where there is no approved historical and architectural basic plan, any urban planning transformations should be prohibited.

This will ensure more effective protection of cultural heritage and control in this area, will protect the national interests of Ukraine.

9. Harmonization of urban planning legislation and legislation for the preservation of cultural heritage

It is necessary to return the cultural heritage preservation authority to the process of issuing documents giving the right to perform construction work. Now all construction sites - monuments of cultural heritage are related to significant consequences (CC3) according to part 5 of Art. 32 of the Law of Ukraine “On Regulation of Urban Planning”.

Authorities of architectural and construction control do not have information about the belonging of a particular object to the cultural heritage. Therefore, when issuing / registering documents giving the right to carry out preparatory or construction works, these bodies cannot, without special expertise, recognize the CC3 category of a construction object. At the same time, when obtaining permission to carry out preparatory or construction work on objects of category CC2 and notification to objects of category CC1, no confirmation is needed that this construction project is not an object of cultural heritage. Direct legislation, which would give the possibility of cancellation of the notification or
the cancellation of permits on the grounds of relating the object to the cultural heritage, the legislation does not contain.

In addition, under the rules of Part 5 of Art. 32 of the Law of Ukraine "On Regulation of Urban Planning" does not cover the objects of cultural heritage that are not listed in the register, but must receive adequate protection and protection.

Therefore, the body for the protection of cultural heritage should be involved in the process of obtaining documents giving the right to carry out preparatory and construction works. The mechanism for the implementation of this proposal may be different. However, the simplest and the one that requires the smallest changes to the legislation and to the existing procedures is the following: to add the list of documents submitted for obtaining the right to perform preparatory or construction works with a document from the authorized body for the protection of cultural heritage, confirming the approval of project documentation and granting permission for earthworks work (in the case stipulated by the law of Ukraine "On the Protection of Cultural Heritage").

It is also necessary to solve at the legislative level the gap regarding cease of construction work. In particular, to assume that the prescription of the cultural heritage protection authority to cease, in particular, earthworks at the cultural heritage site, is the basis for the suspension of the permission to perform construction work (registration of the notification) by the building authorities.

10. Strengthening of administrative, criminal and financial responsibility at the legislative level for damage to cultural heritage

It is necessary to introduce a strict system of punishment / liability for illegal construction work on cultural heritage sites and in the areas of monuments protection, for causing damage to cultural heritage objects during construction, and also add this system to the developer’s obligation to dismantle the facility on its own at its own expense. After all, now the use of only penalties actually allows to "legitimize" any destructive work.

It is also necessary to provide for effective mechanisms of responsibility for the non-implementation of funding by the investor-developer of archaeological research / observations at the construction site. In particular, one of such mechanisms should be the possibility of cancellation of the permit to perform preparatory and construction works.

11. Coordination of the legislation on cultural heritage to the requirements of the legislation on the permitting system and administrative services

The Law of Ukraine “On the permitting system in the sphere of economic activity” is already seen as somewhat outdated and in a strategic perspective should be abolished with the transfer of some of its provisions that have not lost relevance to the Law of Ukraine “About administrative services. At the same time, there should be a clear procedure for obtaining permits, approvals in the field of cultural heritage with a list of documents that must be submitted to obtain a permit, conditions for obtaining a permit, and the reasons for refusal. All these procedures should be defined at the level of the law, and not regulated by sub-laws.

The permitting procedure should fully take into account both the specifics of the cultural heritage sector and the specifics of each individual permit / approval.

12. Approval of sub-law and departmental acts

It is necessary first of all to approve such sub-law and departmental acts provided by law:

- the procedure for proclaiming topographically defined territories or water bodies in which cultural heritage sites are located or their presence is possible to be protected archaeological territories (Cabinet of Ministers of Ukraine);

- provision on the Qualification Council for the Study of the Archaeological Heritage (Cabinet of Ministers of Ukraine);

- provision on the historical and cultural reserve territory (Ministry of Culture of Ukraine);
11. The procedure for developing a plan for organizing the territory of a historical and cultural reserve and a historical and cultural reserve territory (Ministry of Culture of Ukraine);

- the procedure for determining and approving the boundaries and modes of use of the zones of protection of monuments and making amendments thereto (Ministry of Culture of Ukraine);

- the procedure for coordinating the project of land management for land allocation by the cultural heritage authority (Ministry of Culture of Ukraine);

- Regulations on the legal regime of the protected archaeological territory (Ministry of Culture of Ukraine);

- Amendments and additions to the Resolution of the Cabinet of Ministers of Ukraine of September 30, 2009 N 1104 and the procedure for granting permission to perform construction work, in terms of the obligation to enforce existing protection of monuments of restrictions and mandatory re-registration in the event of the discovery of cultural heritage at the construction site, cancellation in case of violation of the law in the field of conservation of cultural heritage; (Ministry of Culture of Ukraine, GASK of Ukraine);

- amendments and additions to the Resolution of the Cabinet of Ministers of Ukraine dated May 23, 2011 No. 554 and the provisions on certification of specialists in the field of restoration, conservation, monetary value of immovable heritage (Ministry of Culture of Ukraine);

- amendments and additions to the Resolution of the Cabinet of Ministers of Ukraine of April 18, 2012, No. 606 and the recommended lists of structural divisions of the regional, Kyiv and Sevastopol city administration.

13. Interactions of the main participants of urban development.

The formation of an effective model of cooperation between the state, business and society with the maximum use of legal norms of direct action in order to prevent corruption risks, which requires:

- to define a system of measures, the implementation of which will make the preservation and restoration of heritage objects beneficial for owners, tenants and investors (special tax treatment, budget subsidies to reimburse part of the costs of restoration of cultural heritage objects, etc.);

- among the main directions of economic incentives for the preservation of cultural heritage objects: reduction of corporate income taxes on the amount of charitable contributions for repairs, restoration of heritage objects; tax incentives for organizations whose main activity is the restoration of heritage, tax incentives for organizations in relation to their land plots belonging to lands of historical and cultural purpose.

14. An important mechanism of coordination, interaction and control is the introduction of the Unified State Register of specialists, institutions and organizations performing research, research, design, expert and production work on objects of immovable cultural heritage.

The compulsory component of public administration in the field of construction should be the development and implementation of the National Norms and Rules for the Protection and Preservation of Cultural Heritage (NEGP), and among them are the norms and rules for the implementation of: historical and urban planning documentation, pre-project research and surveys on the object cultural heritage, scientific design documentation, storage technology, performance of works on objects of immovable cultural heritage and its maintenance and operation.

15. Introduction of measures for the formation of the cultural and historical memory of the society.

In accordance with the provisions of the “Charter on the Interpretation and Presentation of Cultural Heritage Sights” (2008), each event for the preservation of cultural heritage is a communication act. The establishment of public communication (namely: distribution, popularization, presentation and interpretation) requires a number of areas:
- the introduction of cultural heritage in the content of vocational education of architects, urbanists, designers;

- training specialists in the dissemination of information on the value of cultural heritage, the interpretation and presentation of cultural heritage;

- launching educational events to raise the awareness of citizens about the importance of cultural heritage in public life by means of social propaganda, by introducing a system of educational programs at all levels: family, school, public associations, mass media, etc;

- establishing cooperation between various educational institutions and other institutions of Ukraine, including at the international level, on effective approaches to education and training (trainings, specialized courses, internships, etc.);

- strengthening the educational direction by improving the tourist attractiveness, including the objects of cultural heritage of Ukraine with national and international tourist routes.

16. The introduction of effective public control in the field of conservation of immovable cultural heritage

A significant role should be played by the institutions of civil society, including through the implementation of public control over the activities of public authorities in this area.

To control within the principles:

- the rule of law, the strict observance of the requirements of the law, which regulates the activities of subjects of preservation of immovable cultural heritage;

- transparency of expenses for the preservation of immovable cultural heritage;

- the effectiveness of state control over the use of financial and material resources in the field of preservation of cultural heritage;

- openness of information on the activities of entities ensuring the preservation of cultural heritage;

- the responsibility of officials for the timeliness, completeness and accuracy of the provided and for the proper response to the appeals of citizens, public organizations, messages in the media.

Ensuring the effectiveness of the following public control mechanisms:

- timely and reliable informing the public in the public domain about the procedures of public authorities for reviewing and agreeing on documentation of earthworks, urban planning transformations in historic populated areas;

- conducting a public examination of draft legal acts, concepts and programs on the preservation of immovable cultural heritage and taking into account its findings and recommendations by public authorities;

- to ensure that the proposals of the public are taken into account in public hearings and discussions;

- the creation of independent expert councils with the involvement of specialists who act on a voluntary basis.
Analytical Note No 8

Analytical note 8. The system and legal base for unity and publicity of permit procedures and all information in construction, transformation of the urban inventory into a united public source for receiving all the permits. Information integration and access to information (information integration of Urban Development, State land cadastre, State register of real estate rights, geospatial data of technical inventory and accounting of real estate objects, unified address register (including integration of registers of cultural heritage, ecological and other natural resource inventories and registers).

Authors:
1. Yevgeniy Berdnikov - International Organization for the Development of Law (IDLO)
2. Oleg Pilat - lawyer in the Office of Effective Regulation (BRDO)
3. Yuriy Palekha - deputy. Director of the State Enterprise "Ukrainian Research Institute for Designing Cities" named after Y.Milokon, Ph.D., Professor

1 COVERAGE OF THE PROBLEM

Today, Ukraine lacks a holistic legal framework for the functioning and information interaction of the urban planning, the State Land Cadastre, the state register of real estate rights, the registers of monuments of cultural heritage, environmental and other natural resource cadastres and registers; there is no unified terminological apparatus, unified requirements for the creation, exchange, storage, correction and format of raster data, as well as their technical and semantic interoperability and non-intersecting coordination of objects of the corresponding public electronic registers.

The lack of a unified information space inevitably entails a lack of unity and appropriate licensing procedures.

2 CRITICAL ANALYSIS OF THE SITUATION

2.1. Regulatory definition of requirements for the format, structure and content of electronic documents, in the form of which a urban planning (planning) and project documentation for construction objects should be created and entered into a city planning cadastre (standardized with the requirements of electronic documents of the State Land Cadastre).

2.2. Determination of technical-neutral requirements for the creation of interoperable information and telecommunication systems of the urban planning cadastre at the regional and local levels.

2.3. The introduction of software and hardware complex urban planning cadastre at the state level; its institutional support; identifying and training its operators and technical administrator. Organization of methodological and technological support for connecting information and telecommunication systems of the urban planning cadastre at the regional and local levels.

2.4. Establishment of legislative requirements for the approval, approval and entry into force of urban planning documentation only after its entry into the urban planning inventory of the appropriate level.
2.5. Organization of digitalization of existing urban planning documentation in accordance with the requirements for its creation and publication in the composition of the urban planning inventory.

2.6. Legislative support for the creation of the Real Estate Cadastre and the Unified Address Register.

2.7. Ensuring the implementation of the USK-2000 system, including through the development of transformation rules or the application of geospatial data previously entered into existing cadastral systems in other coordinate systems.

2.8. Taking measures similar to those provided for in paragraphs 2.1-2.5 for design documentation for construction and engineering infrastructure (including their technical inventory), as well as for registers of cultural heritage, environmental and other natural resource inventories and registers.

2.9. Providing renewal, increased openness and accessibility of topographic maps and plans.

2.10. Distinctions of data that are duplicated among themselves in the State Land Cadastre, Urban Cadastre and other above-mentioned cadastral and registration systems.

2.11. Organization of the electronic interaction of the urban planning cadastre with the above inventories and registries using the DEIR.

2.12. Legal consolidation and organization of the issuance of initial data for urban planning needs in a form convenient for different groups of users - the transformation of a urban planning cadastre into a single universal source of all urban planning information.

2.13. Legal and regulatory and technical support of the unity and publicity of licensing procedures in construction through intersectoral integration of relevant types of planning, design and security documentation.

2.14. Ensuring the unification and consistency of state classifiers used in the field of urban planning.

2.15. Publication and use of data that are formed as a result of the valuation of real estate objects, including land plots within existing cadastral and registration systems.

3. PROPOSALS

3.1. Urban cadastre at all levels should be created on the basis of the use of geo-information technologies, urban planning documentation and topographic maps and plans, which in the future will be transformed into basic geospatial data sets.

3.2. It is necessary at the regulatory and legal level (possibly, by making amendments and additions to the Regulation on the urban planning cadastre, approved by the Resolution of the Cabinet of Ministers of Ukraine of May 25, 2011 N 559) to determine the format, structure and content of electronic documents (including DBN B.1.1-16:2013 "Composition and content of the urban planning cadastre" in the context of the specified composition of urban planning cadastre objects), in the form of which the urban planning and design documents should be created and entered into the urban planning cadastre mentation on construction objects (unified with the existing requirements for electronic documents, on the basis of which information on the land plot and land use restrictions are entered into the State Land Cadastre in accordance with the Law of Ukraine "On the State Land Cadastre" and the State Land Cadastre Procedure approved by Resolution of the Cabinet of Ministers of Ukraine dated October 17, 2012 No. 1051).

3.3. It is necessary to regularly update and optimize the data structures of urban planning inventories at all levels, taking into account European requirements and practices of developing public electronic registries in Ukraine, updating normative documents on survey, planning, design and inventory works, ISO 19000 standards "Geographical Information / Geomatics" and specifications of geospatial data inspire

3.4. It is necessary at the regulatory level (perhaps by making appropriate changes and
additions to the Regulation on the urban planning cadastre, approved by the Resolution of the Cabinet of Ministers of Ukraine of May 25, 2011 N 559 or by adopting an appropriate order of the Ministry of Regional Development on its basis) interoperable (on software and hardware complexes of the State Land Cadastre and the State Register of Real Estate Rights) information and telecommunications data (geo-information) system-planning cadastre at the regional and local levels.

3.5. According to the above, it is necessary on a competitive basis to purchase (including the development / adaptation, customization and commissioning) of the software and hardware complex of the urban planning cadastre at the state level. Given the small number of jobs and the potential use as a means of exchanging information of the "Trembita", the financial aspects of this event are not overly burdensome. In addition, having a clear, not burdened with corruption, roadmap for creating an urban planning cadastre at the state level, the Ministry of Regional Development could be looking for its implementation and appropriate donor funds from international technical assistance projects.

3.6. After the implementation of the software and hardware complex of the urban planning cadastre at the state level, the Ministry of Regional Development, together with the technical administrator of this cadastre, should conduct in the regions:

- a wide presentation of the regulatory requirements for the creation of software and hardware complexes of urban planning inventories at the regional and local levels, relevant training, as well as explanatory work and reach appropriate agreements with the regional councils, councils of major cities and / or their executive bodies on the development of such inventories in the regions and in the field;
- to analyze the state of compliance of software-hardware complexes (information and telecommunication systems) of urban planning inventories created independently in cities and regions to the established requirements and to prepare specific recommendations that bring them to such conformity;
- draw up and ensure a schedule of activities for the continuous creation of urban cadastres in the regions and localities and their connection to information interaction systems and ensure their implementation.

3.7. Adjustment of the institutional structure and staffing of local state administrations and local governments, including the definition (and / or set) of future operators of urban planning inventories at the regional and local levels should be accompanied by the following measures:

- organization and implementation of adaptation, digitalization and ensuring the interoperability of existing urban planning documentation at the regional and local levels in accordance with the established requirements and other materials that, according to the requirements of the legislation, constitute the contents of the urban planning inventories at the appropriate levels, their entry into them;
- identification of technical administrators of urban planning inventories at the regional and local levels;
- ensuring the connection of regional and local cadastres in the "Trembita";
- training of operators and responsible employees of technical administrators of urban planning inventories at the regional and local levels;
- to ensure the launch, uninterrupted operation and updating of software and hardware systems (information and telecommunication systems) and data of urban planning inventories at the regional and local levels.

3.8. Establishing a legal requirement (by making appropriate changes and additions to the Law of Ukraine "On the regulation of urban planning" or codification of urban planning legislation) upon approval, approval and entry into force of urban planning documentation only after its entry into the urban planning cadastre of the appropriate level. In particular,
in the second part of Article 5 of the Law of Ukraine "On regulation of urban planning activity" it can be established that "2. Requirements of urban planning documentation are mandatory for all urban planning subjects to fulfill if it entered into force in accordance with the Constitution and laws of Ukraine and was promulgated in composition of the urban planning inventory of the appropriate level."

3.9. It is necessary at the legislative level to ensure the creation of the cadastre of real estate as a separate (interoperable with others) geographic information system or as part of the State Land or Urban Cadastre or the State Register of Real Estate Rights. or in any of their associations, including nowhere.

Information about the engineering infrastructure objects should be entered into the urban planning cadastre by their balance sheet holders (all information about them, as well as about real estate objects, should be reflected in the form of an electronic document containing information about their metric parameters in the unified state coordinate system State Land Cadastre on Land and Land Plots, and Relevant Metadata. At the same time, the issue of access to information with limited access should be addressed software and hardware in level through distributed access to this information, rather than by "underpaid" some part in the urban planning cadastre).

3.10. Providing a single address registry as a separate (interoperable with others) geographic information system or as part of the State Land or Urban Cadastre or State Register of Real Estate Rights.

3.11. The adoption of measures similar to those provided for in paragraphs 3.2-3.6 for the register of monuments of cultural heritage, ecological and other natural resource cadastres and registries.

3.12. It is necessary to adopt the Law of Ukraine "On the national infrastructure of geospatial data" and ensure the provision of basic geospatial data for the development of urban planning documentation and the creation of a state-level urban planning inventory. Basic data sets can be obtained from a topographic map of Ukraine on a scale of 1: 50,000.

3.13 Organization of the electronic interaction of the urban planning cadastre with the above-mentioned inventories and registries with the help of the "Trembita".

3.14. It is necessary at the legislative level to secure and provide independent automated receipt by urban development subjects of initial data for town planning needs in forms convenient for different types of users (lifts (including electronic documents), API), which will be an important step in turning the urban planning inventory into single universal source of all urban planning information.

All approvals should be carried out online with an electronic digital signature of an authorized person, while the object of approval can only be the documentation posted in public access as part of the urban planning cadastre and signed with an electronic digital signature of its developer.

3.15. All conciliation procedures in the field of protection of cultural heritage should be part of the overall process, which will take into account the results of the development of urban planning and land management documentation (or the result of combining them in the form of spatial planning documentation) or separate documentation for cultural heritage sites with the relevant information in the relevant inventories, based on publicity. Historical and urban planning studies also arise as part of the city planning conditions and restrictions and are provided within the same time frame and procedure.

3.16. It is necessary to carry out work on unification and ensuring consistency of classifiers used in the field of urban planning. In particular, an update of the classifier of classes of objects of the town-planning cadastre is required, which will ensure its correspondence with the classifier of the types of the designated purpose of land and the classifier of the administrative-territorial
structure. It is important to work to ensure the consistency of classifiers, which are contained in state building codes and governing the development of urban planning documentation, ISO 19000 standards "Geographical Information / Geomatics" and Inspire geospatial data specifications.

3.17. With the introduction by the Ministry of Justice of fixing the value of an immovable property or the amount of payment for its use when maintaining the State Register of Real Estate Rights, the development by the Dergegeocadast of databases on regulatory monetary valuation of land and the formation of FGIU databases on expert assessment of land plots and real estate information interaction of these data with the data of the Fiscal Service of Ukraine and the urban planning cadastre. This will contribute to the development of transparent market and fiscal relations in Ukraine and more efficient use of financial resources by all participants of such relations.

3.18. It is necessary at the regulatory and regulatory and technical levels to ensure the unity and publicity of licensing procedures in construction through the inter-sectoral integration of relevant types of urban planning, land management, design and security documentation. This question on the example of documentation on land management and urban planning documentation is discussed in more detail in the analytical note No. 3.

3.19. The procedure for commissioning an object must simultaneously coincide with the procedure for state registration of rights to such an object and its parts.
Analytical Note No 9

Analytical note 9. Construction permit procedures, problems. Reengineering of the permit procedures (integrity, simplification, automation, publicity, transparency and contactlessness). Integration of the cultural heritage protection, land management and environmental documentation and procedures to the urban development documentation.

Authors:

1. Andriy Martin - Head of the Department of Land Management of the National University of Life and Environmental Sciences of Ukraine, Doctor of Economics, Associate Professor

2. Evgeniy Berdnikov - International Development Law Organization (IDLO)

3. Ivan Nazarenko - Academy of Construction of Ukraine, President, Doctor of Technical Sciences, Professor of KNUSA

4. Alexandra Malomuzh - former head of the legal department of the Confederation of Builders

1. COVERAGE OF THE PROBLEM

The permit system in construction is currently mainly regulated by the Law of Ukraine dated February 17, 2011 No. 3038-VI “On the Regulation of Urban Planning”. In particular, the customer has the right to perform construction work after:

1) the customer’s notification submission of the beginning of construction work to the appropriate body of the state architectural and construction control - for construction objects of the CC1 class of consequences (responsibility) that are objects with minor consequences, and for objects whose construction is carried out on the basis of a construction passport and not requiring permission to carry out construction works in accordance with the list of construction objects approved by the Cabinet of Ministers. The form of notification of the beginning of construction work and the procedure for its submission are determined by the Cabinet of Ministers of Ukraine.

2) issuing permits to the customer by the state architectural and construction control authority to perform construction work on objects that, by the class of consequences (responsibility), are objects with medium (CC2) and significant (CC3) consequences or are subject to environmental impact assessment by the Law of Ukraine " On environmental impact assessment.

Documents giving the right to perform construction work are valid until the completion of construction. The list of construction works that do not require documents, giving the right to perform them, and after which the object is not subject to commissioning, is approved by the Cabinet of Ministers of Ukraine.

The State Architectural and Construction Inspection of Ukraine (SACI of Ukraine) is the central executive body that implements the state policy on state architectural and construction control and supervision. SACI of Ukraine provides permits and registration services to citizens, as well as advice on construction, reconstruction and commissioning of facilities. SACI, in particular: registers notifications about the beginning of preparatory and construction works (regarding objects with a minor class of consequences CC1). In the case of improper execution of these documents returns them to the subjects of submission; issues permits to carry out construction works (with respect to objects with an medium (CC2) and significant (CC3) class of consequences), refuses to issue these permits and in certain cases defined by the legislation cancels them; accepts the completed construction projects (issues the appropriate certificates, registers declarations of the facility’s readiness for operation and returns such declarations) keeps a single register of received notifications on the beginning preparatory and construction works, registered declarations on the start of preparatory and construction works, permits
issued construction works, registered declarations of the facility's readiness for operation and certificates issued, returning declarations and refusals to issue such permits and certificates, as well as issued licenses for economic activities related to the creation of objects of architecture.

Reconstruction, restoration or capital repairing of construction objects without changing the external geometric dimensions of their foundations in the plan, reconstruction or capital repairing of roads, railways, power lines, communications, pipelines, other linear communications within their lands, as well as complex reconstruction of quarters (microdistricts) of obsolete housing stock and new construction of engineering and transport infrastructure in accordance with the urban planning documentation ordered by the state authorities or local self-government bodies on the respective lands of the state or municipal property may be carried out in the absence of the document certifying the right of ownership or land use.

Information about the document that gives the right to perform construction work, as well as information about the class of consequences (responsibility) of the object, customer and contractors are placed on the appropriate stand, which is installed on the construction site in a visible place (except for individual (estate) residential buildings, garden, country houses, economic (household) buildings and structures, extensions to them). Performance of construction work without a relevant document is considered as illegal construction and entails liability in accordance with the law.

According to the Law of Ukraine No. 1817-VIII "On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Urban Planning Activities", a transition is taken place to a permitting system according to European standards. Instead of the existing three-step permitting system (notification, declaration, permit), a two-step system was implemented (notifications, permit). Therefore, the right to carry out construction work on objects with medium and significant consequences can occur only after obtaining permission to perform construction work at the same time, more than 80% of construction projects are carried out after the notification of the commencement of construction works.

The economic activity associated with the creation of the object of architecture is subject to licensing. The procedure for licensing economic activities related to the creation of architectural objects is determined by the Cabinet of Ministers of Ukraine. The licensing authorities are the State Architectural and Construction Inspectorate of Ukraine and its territorial bodies.

Responsible performers of certain types of work (services) related to the creation of architectural objects are subject to professional certification. The list of such types of works (services) and the procedure for professional certification are established by the Cabinet of Ministers of Ukraine.

Professional certification of the work (service) performers associated with the creation of architectural objects is carried out by the central executive body for construction, urban planning and architecture. The authority to conduct professional certification may be delegated to self-regulatory organizations in the field of architectural activity. A self-regulatory organization acquires the powers delegated to it from the date of publication by the central executive authority for construction, urban planning and architecture of the decision to grant (delegate) such authority in an official publication chosen by such a body. Professional certification is available for citizens who:

- have higher education at the educational and qualification levels of a bachelor, master's degree in the direction of professional certification, have work experience in the specialty for at least three years;
- have not had higher education at the educational and qualification level of a bachelor, master in the direction of professional certification, but have experience in the field of urban planning for at least ten years.

Citizens who have received an appropriate qualification certificate may perform certain types of works (services) related to the creation of an architecture object
without a corresponding license, have a personal seal and are responsible for the improper performance of works (services), the right to fulfill which is determined by a qualification certificate, and violation of requirements legislation, building codes, standards and regulations. Information about the person who received the qualification certificate shall be entered in the register of certified persons.

Expertise of construction projects by the class of consequences (responsibility) refers to objects with significant consequences (CC3), built at the expense of budget funds, funds from state and municipal enterprises, institutions and organizations, as well as loans provided under state guarantees, carried out by expert organizations with the status legal entities that meet the criteria defined by the central executive body that provides the formation and implements the state the policy in the field of construction, architecture, urban planning, in which at least 80 percent of the experts work on a permanent basis and received the appropriate qualification certificate in the areas of expertise specified in the first paragraph of part two of this article, and have branches (representative offices) in the regions, on the territory of which construction projects are being implemented.

Reengineering of permitting procedures in construction should be based on the fact that an exclusive list of permitting documents in the sphere of economic activity is approved in the annex to the Law of Ukraine dated May 19, 2011 No. 3392-VI “On the List of permitting documents in the field of economic activity”. Of the documents directly related to construction (except for the construction of the road infrastructure), this list includes “Permission to perform construction work” (paragraph 32 of the List) and “Certificate of acceptance for operation of completed construction projects belonging to IV and V categories of complexity” (Paragraph 121 of the List).

Permitting procedures in construction are mainly perceived by the society as administrative services provided by the bodies of the architectural and construction control, while observing the procedures established by the legislation that are necessary before construction starts and the facility is put into operation.

At the same time, the documents and approvals to be received by the subject of urban planning before and during the implementation of the urban planning process (in a broad sense) are, in fact, much more and not all of them are covered by the List of permits in the field of economic activity.

At the same time, not all documents, the legal nature of which is to provide “the right to exercise certain actions regarding the implementation of economic activities or types of economic activity and / or without which the business entity cannot continue certain actions regarding the implementation of economic activity or types of economic activity” are covered by the established legislative list of permits.

Another area of reengineering should be the organization of law enforcement and executive practices, establishing the optimal balance of judicial and extrajudicial (administrative) dispute resolution practices, creating legislative opportunities to hold accountable and overcoming the consequences of unlawful actions or non-actions of collective bodies and their members.

2 CRITICAL ANALYSIS OF THE SITUATION

Regulation of urban planning, in particular in terms of issuing permits and the procedure and conditions for their receipt has repeatedly become the subject of reform. The largest reforms in the construction industry are:

- enacted by the Law of Ukraine of April 9, 2015 No. 320-VII “On Amendments to Certain Legislative Acts of Ukraine on the Decentralization of Powers in the Field of Architectural and Construction Control and Improvement of Urban Planning Legislation”, the reform of decentralization, when the functions of state architectural and construction control were granted take local government;

Analytical Note No 9

Ukraine Concerning the Improvement of Urban Planning Activity" a reform that changed the approach to documents whose execution is required before and after construction.

2. Urban planning conditions and land development restrictions in accordance with the first part of Article 29 of the Law of Ukraine “On Regulation of Urban Planning” are the main components of the initial data. At the same time, in its essence - this is a document giving the right to realize the intention of the building provided by the customer for construction. Without receipt of this document, design and, in the future, construction will not be legal. This document is issued by the executive bodies of village, town, and city councils, and in the case of the location of a land plot outside settlements- district state administrations.

So, in practice, the refusal to issue urban planning conditions and restrictions as a basis can be indicated the absence of a document that was submitted and was indicated in the description of the adopted documents. In addition, despite the clearly defined part of Article 29 of the Law of Ukraine “On the regulation of urban development”, the period for issuing urban planning conditions and restrictions is 10 working days, in fact, the documents are reviewed for at least a month. And 10 days guaranteed by the Law are only recorded in the letter.

Urban conditions and restrictions issued by the urban planning and architecture authority may be indefinitely canceled by the chief inspectors of construction supervision in the exercise of state architectural and construction supervision in the event of inconsistency between urban planning conditions and restrictions on city planning legislation, city planning documentation at the local level, building codes, standards and rules.

Refusal to issue urban planning conditions and restrictions can only be appealed in court. Litigation can last for years. Understanding this, in fact, “untie the hands” of the city planning and architecture bodies in making decisions that encourage business entities to show corruption.

Consequently, the question arises: why, despite the large number of legislative changes, the process of obtaining urban conditions and restrictions did not become trouble-free and irreversible for the developer, and still are not safe for society?

Apparently, the recent changes in no way affected the legal nature of the urban planning conditions and restrictions, which are defined in Articles 1 and 29 of the Law of Ukraine “On the regulation of urban planning”, which, in particular, define them as a document containing a set of planning and architectural requirements for design and construction of the number of floors and building density of the land plot, distances of houses and structures from the red lines, borders of the land plot, its improvement and landscaping, and other requirements for construction projects, stipulated by the legislation and planning documentation, and provided by relevant authorities of urban planning and architecture based on the planning documentation at the local level.

Being in its essence only a “projection” of the requirements of urban planning documentation at the local level to a specific land plot, which can be easily and unconditionally relative to the correctness of the content is automated, the legislator artificially turns the possibility of their automatic receipt by any person for issuing “in manual mode” by local officials, who can directly arbitrarily influence their content during the formation, change and cancelation.

3. The types of business activities that are subject to licensing in Ukraine are currently determined by the Law of Ukraine "On Licensing Types of Business Activities" (dated 02.03.2015 No. 222-VIII). The law defines the principles of state policy in the field of licensing, the general procedure for licensing (including general requirements for licensing conditions, the procedure for their development and approval), provides a list of types of business activities subject to licensing, defines the procedure for supervision and control, responsibility for violation of legislation in the
field of licensing in the implementation of economic activities in the field of licensing.

Regarding the implementation of economic activities in construction in accordance with the Law, construction of objects of IV and V categories of complexity was subject to licensing, taking into account the features determined by the Law of Ukraine "On Architectural Activity". The need for licensing certain types of business activities in construction is confirmed by the requirements of the Law of Ukraine "On the Fundamentals of Urban Planning" and the Law of Ukraine "On the Regulation of Urban Planning Activity"."

The document that ensures the implementation of the requirements of these Laws, at present, is the Resolution of the Cabinet of Ministers of Ukraine of 30.03.2016 No. 256, which approved the relevant "Licensing conditions for the implementation of economic activities for the construction of objects of IV and V categories of complexity". Resolution of the Cabinet of Ministers of Ukraine of 07.06.2017 No. 401 amended Resolution No. 256 in terms of changing of objects of IV and V categories of complexity to the class of consequences (responsibility) of objects with medium and large consequences (CC2 and CC3) in compliance with the requirements of the State Construction Standards DBN B.1.2-14-2009 "General principles for ensuring the reliability and structural safety of buildings, structures, construction frameworks and foundations". Simultaneously with the changes introduced by the Resolution of the Cabinet of Ministers of Ukraine of 10.03.2010 No. 238 (in accordance with the Law of Ukraine), the license for construction activities is indefinite. At first glance, the Laws of Ukraine and the Decisions of the Cabinet of Ministers of Ukraine created all the conditions for an open and transparent procedure for licensing construction activities.

4. Subjects of the industry and the public express dissatisfaction with certain aspects of professional certification of responsible executors of works (services) related to the creation of architectural objects. The law provided that such professional certification is conducted by the Ministry of Regional Development. The authority to conduct professional certification may be delegated to self-regulatory organizations in the field of architectural activity.

As part of this issue, it should also be noted that there is lack ofthe responsibility in the legislation of such self-regulatory organizations for the inadequate performance of their duties - the issuance of an appropriate certificate to a person, does not have the necessary professional skills and theoretical knowledge to perform work.

5. Permitting procedures in construction, carried out by the Ministry of Culture of Ukraine, are the subject of criticism not only of construction customers, but also of the public. It is expected that corruption in the development of historical and urban planning studies will be significantly reduced due to the entry into force of January 1, 2019 of the regulation of the Cabinet of Ministers of Ukraine of February 21, 2018 N 92 “On Amendments to the Procedure for Determining Borders and Regimes of Using Historical Areas of Populated Areas, activities on the territory of the historical areas of populated areas ", providing for the development of historical and planning study in order, will be determined jointly by Culture and Ministry of Regional Development. At the same time, such historical and urban planning rationales are developed only if construction is carried out within the historical area of a populated area, in which the historical and architectural basic plan is not approved.

This is certainly a positive step towards minimizing corruption risks in this area. Thus, at present, the issue of construction, reconstruction of buildings and structures within the historic areas of populated areas of Ukraine is streamlined and "reasonably resolved" in accordance with the Methodological Recommendations for the development of historical and urban planning studies, which were adopted as an annex to the order of the Ministry of Culture of Ukraine on 17.02.2012 No. 122.
6. In accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 548 of May 25, 2011, the expertise of the General Planning Scheme for the territory of Ukraine, the planning schemes for the territory of the Autonomous Republic of Crimea, regions, districts is carried out by state expert organizations that belong to the management Ministry of Regional Development, Construction and Housing. This creates prerequisites for monopolization of the market of expert services for the specified types of urban planning documentation. At the same time, the expertise of master plans of cities is carried out by organizations regardless of the form of ownership, carrying out activities for the development of urban planning documentation and have in their composition experts who have received a qualification certificate.

Despite the fact that the expert organization is chosen by the customer of the urban planning documentation, there remains a significant risk of collusion between the developer and the expert organization, on providing a deliberately positive assessment of the documentation based on the results of the expert research.

At the same time, there is no exhaustive list of questions that have to be examined by an expert. But through the dispersion of legislation and building codes, the expert actually has considerable discretion in the implementation of expert research and can manipulate its results at its discretion. In addition, the absence of certified specialists in the field of land management, ecology and protection of cultural heritage in expert organizations refutes its main goal - a comprehensive analysis of documentation, which leads to the dissemination of a number of parallel burdensome licensing procedures, a bright example of which is the environmental assessment.

7. Each branch adjacent to urban planning (land management, ecology, protection of cultural heritage objects, etc.) has its own separate types of documentation, which establish the spatial characteristics of fixed objects, certain types of restrictions and peculiarities of the legal regime for using territories.

At the same time, today, only the State Land Cadastre is practically capable of generating the relevant information.

8. Despite the fact that the commissioning of the construction site, creates a full legal composition sufficient for the state to recognize the full scope of rights to such an object and all its parts, the existing procedure of state registration of rights operates according to the application principle and in general does not provide for registration of rights to the property as a whole, if at the construction stage certain rights arose on its separate parts. The existing model of registration of rights preserves the evasion of actual owners from paying real estate tax.

9. The issue of maintaining the safe condition and operation of construction facilities throughout their entire life cycle (including renovation of outdated housing) remains practically unregulated.

3 PROPOSALS

General issues

1. Reengineering of licensing procedures should be carried out on the basis of awareness of the unity of the physical environment, the physical basis of which is cartographic objects of natural, anthropogenic and mixed origin, the definition of legal regimes of which should be carried out at the inter-sectoral level within a single and integrated information space, legal field, ways of forming and use of data about them, permissive and other management procedures, etc. At the same time, the development of the sectoral component should be accompanied by the processes of professionalization and personalization of economic and managerial activities, according to which the institutional
affiliation of the subjects has to lose crucial importance.

2. The unity of the information space should be ensured through the creation of a unified interoperable system of public electronic registries, generating information about the physical environment, its individual parts and their legal regimes, defining a unified institutional structure of their operation, automated electronic information interaction and free unlimited online access to all relevant data (except, access to which is restricted by law) and their obligatory full and complex permits and other management activities, the provision of administrative services. The beginning of this process could be the immediate adoption and implementation of the draft Law of Ukraine “On Public Electronic Registries” (registration number 8602).

3. The unity of the legal field should be ensured in the short term by defining a single terminological apparatus and linking sectoral legislation on the use and protection of the physical environment, as well as reviewing the functional and institutional aspects of the regulatory framework of all licensing procedures for their minimization and complexity (see Details notes №№ 3, 7). In the long term, these norms can be codified under a single comprehensive legislative act, rationing issues of use and man-made impact on the physical environment.

4. The unity of methods for the formation and use of data on the physical environment, except for the implementation of the requirements provided for in the draft Law of Ukraine “On Public Electronic Registries” (registration No. 8602), should be ensured by creating, on the basis of and instead of the existing industry types of planning and technical documentation of new types of such documentation will produce the full range of necessary geospatial information about the physical environment and its future development (for more details see the Analytical Note No. 8).

5. Based on the implementation of the above 4 points, to carry out a significant simplification and quantitative reduction of the existing permit and other management procedures by ensuring their integrated, intersectoral, professional, responsible, transparent and “contactless” nature.

6. To regulate all educational and qualification requirements for specialists engaged in project, conciliation, control and supervision.

7. To ensure full openness and transparency of the procedures for issuing permits in the field of construction. In ensuring full openness and transparency in issuing permits in the construction sector by fully transition the relevant administrative procedures (registration of a notification of the start of preparatory and construction works, registration of a declaration of commencement of preparatory and construction works, issuance of a permit for construction works, registration of a declaration about the readiness of the object for operation) in the form of electronic service, and the requirements for the paperwork about to be trusted within the automated system. All documents submitted by applicants for obtaining permits and / or registration services, as well as all documents created as a result of the provision of relevant services, should have the status of public information, be published on the website of the state architectural and construction control, around the clock, without restrictions to access.

8. To coordinate the provisions of paragraph 121 of the List of permissive documents in the sphere of economic activity (annex to the Law of Ukraine of May 19, 2011 No. 3392-VI) with the terminology of the Law of Ukraine “On regulation of urban planning”. Namely, put the appropriate position of the list in the new edition:

<table>
<thead>
<tr>
<th>Current version</th>
<th>Proposed version</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certificate of acceptance into operation of completed construction projects belonging to IV and V categories of complexity</td>
<td>Certificate, which is issued in case of acceptance of the construction completed with the construction of objects with medium (CC2) and large (CC3) consequences.</td>
</tr>
</tbody>
</table>
9. To establish that the decision on the commissioning of a construction object under the law is a decision on the state registration of rights to such an object and all its parts.

10. To standardize (including both legal and regulatory and technical regulation) issues of operating construction projects throughout their life cycle (including renovation of outdated housing).

**In the field of expertise of urban planning documentation**

11. In order to ensure the independence and objectivity of the expertise of the urban planning documentation, expert organizations, from among those with relevant experts, should be selected by an automated system in the exercise of expertise by chance. The examination is carried out anonymously, and contacts between the customer or the developer of the documentation and the expert organization are not allowed. The examination should be carried out by an expert filling out a check list, in which all the requirements for the relevant type of documentation should be listed, with an indication by the expert of compliance or non-compliance with the established requirements. In order to avoid the subjectivity of expert judgments, each documentation must be evaluated independently by two expert organizations. In the event of significant discrepancies in the expert opinions, a third expert organization should be appointed. The cost of such expertise should be regulated by regulation. The conclusions of the examination should be public in nature and published in public access.

12. In order to ensure a comprehensive review of the object of expertise, the experts must include a certified land surveyor and, if necessary, an ecologist and a specialist in the protection of cultural heritage.

**In the field of professional certification of responsible contractors of works (services) related to the creation of architectural objects**

13. Professional certification of works (service) contractors related to the creation of architectural objects should be carried out by self-regulating organizations in the field of architectural activities that manage the risks of the professional activities of their members, including through the introduction of internal certification procedures and collective professional liability insurance. The recognition of the status of a self-regulatory organization in the field of architectural activity should be carried out by an independent body or bodies carrying out state registration of legal entities, by confirming the number of members. The central executive body for construction, urban planning and architecture may have the right to carry out professional certification, as an exception, only in the absence of self-regulating organizations.

14. To introduce the possibility of responsible executors of works (services) related to the creation of architectural objects to choose a subject who conducts professional certification and to create the possibility of choosing a subject to improve the skills of such persons. This event requires amendments to the Law of Ukraine "On Architectural Activities".

**In terms of licensing economic activities in the construction industry**

15. To provide for mandatory monitoring of compliance with license conditions in case of a change in the ownership of an enterprise that received a construction license during the year (or other reasonable period) after its receipt. For this, it is necessary to make changes to the Procedure for licensing economic activities related to the creation of architectural objects, approved by the Decree of the Cabinet of Ministers of Ukraine of December 5, 2007 No. 1396.

16. In the Licensing Conditions for the implementation of economic activities for the construction of facilities by the class of consequences (responsibility) refer to objects with medium and large consequences, approved by the Decree of the Cabinet of Ministers of Ukraine of March 30, 2016 No. 256, among the personnel requirements for a license applicant, it should be assumed that professionals and specialists must work on the
terms of the employment contract. At the same time, such professionals and specialists cannot work on part-time jobs in more than two (or three) positions at the same time.

In terms of issuing urban conditions and restrictions

To supplement the seventh part of the article 29 with the new paragraph of the following content:

“The central executive body ensuring the formation and implementation of the state policy in the sphere of construction, architecture, urban planning monitors the state of creation and the procedure for maintaining registers of urban planning conditions and restrictions.”

18. In administrative-territorial formations in which the urban planning cadastre is created at the local level, urban planning conditions and restrictions should be obtained by persons independently in the form of extracts from the urban planning cadastre, automatically generated by an online request to the information and telecommunications system of the urban planning cadastre.

In terms of streamlining the harmonization issues of construction in the historical areas of the Ministry of Culture of Ukraine

19. As a measure that may be implemented in a short period of time: ensuring that all applications for approvals and permits in the field of cultural heritage protection are displayed on the official website of the Ministry of Culture, as well as decisions based on their review competence of the Ministry of Culture.

20. Among the activities requiring legislative changes is the integration of conciliation procedures in the field of the protection of cultural heritage into the overall process of developing and approving urban planning and land-use documentation with the inclusion of relevant information in relevant cadastres, based on publicity. Historical and urban planning studies also arise as part of the urban planning conditions and restrictions and are provided within the same time frame and procedure.

For that, in particular, in Articles 31-35, 41 of the Law of Ukraine “On the Protection of Cultural Heritage” it is necessary to provide that:

- “The legal regime of the protected archaeological territory is determined by the central executive authority ensuring the formation of state policy in the field of cultural heritage protection and in accordance with the law is subject to reflection in the State Land and / or Urban Planning Cadastres.”;

- “The boundaries and modes of use of the zones of protection of monuments are determined in accordance with the law, urban planning documentation and documentation on land management on the basis approved by the relevant body of protection of cultural heritage of the relevant scientific project documentation.”;

- “The boundaries and modes of use of the historical areas of populated areas, restrictions on economic activities in the territories of the historical areas of populated areas are determined in accordance with the law of urban planning documentation and documentation on land management on the basis of the relevant scientific design documentation approved by the relevant cultural heritage protection agency.”;

- “In the protected archaeological territories, within the zones of protection of monuments, historical areas of populated places listed in the List of Historic Settlements of Ukraine, are prohibited, not provided for by urban planning documentation and / or land management documentation, urban planning, architectural or landscape transformations, construction, land reclamation, earthworks without the permission of the appropriate body for the protection of cultural heritage, which is issued as part of urban planning conditions and restrictions. “;

- “Limits, protection zones, volumes and terms of works on conservation, restoration, rehabilitation, museumification, repair and adaptation of cultural heritage, improvement of historical and cultural reserve and arrangement of historical and cultural protected area, as well as measures for the protection and use of
cultural objects heritage, preservation and reproduction of the traditional nature of the environment are determined respectively in terms of the organization of the territory of the historical and cultural reserve or the organization of the historical cult molecular conservation area - scientific and project documentation, developed in accordance with the law as part of urban planning documentation and documentation of land management in the manner determined by the central executive authority in the field of cultural heritage protection. ";

- “According to the results of consideration of a petition on declaring a complex (ensemble) of monuments as a historical and cultural reserve or territory as a historical and cultural reserve territory, the executive authority of the Autonomous Republic of Crimea, regional, Kiev and Sevastopol city state administrations or the corresponding executive body of village, town, city council gives conclusions on the expediency of declaring a complex (ensemble) of monuments as a historical and cultural reserve or territory -cultural reserve territory (in which, in particular, it starts a list of urban planning and land management documentation, which must be developed and approved and / or modified in order to legally fix the corresponding changes in the legal regime of use of the relevant territories) along with the necessary documents to the relevant authority determined by the third part of this article. 

“The decision to declare a complex (ensemble) of monuments as a historical and cultural reserve or a territory of a historical and cultural reserve territory of state or local significance comes into effect after entering relevant information into the register of immovable monuments, the urban planning and State land cadastre.”;

- “The lands on which monuments, historical and cultural reserves, historical and cultural protected areas, protected archaeological territories are located, belong to the lands of historical and cultural purpose.

Information on the legal regime of such lands is included in the urban planning and state land cadastres on the basis of the relevant urban planning documentation and land management documentation. “;

- “Conducting archaeological surveys, excavations and other earthworks on the territory of the monument, the protected archaeological territory, in the protection zones, in the historical areas of populated areas, as well as studies of human remains under the earth’s surface, under water, are carried out with the permission of the central executive body authorities implementing the state policy in the field of the protection of cultural heritage, except when such work is provided for by the cultural heritage bodies, urban planning documentation and/or documentation of land management.

When carrying out urban planning activities, such permits are issued exclusively as part of urban planning conditions and restrictions.”;

- “Special funds for financing the protection of cultural heritage can be used to ... develop urban planning documentation and documentation on land management, according to which the legal regime of historical and cultural lands is established or changed ...”.

21. In addition, there should be effective mechanisms for encouraging communities to develop historical and architectural support plans.

OPEN QUESTIONS:

1. The issue of electing the institutional configuration of the means of ensuring the unity of the information space has alternative solutions. The range of possible solutions includes options for creating and improving individual sectoral information and information-telecommunication systems with the help of the CMEA DEIR "Trembita", the mechanical integration of all geospatial information based on the National Infrastructure of Geospatial Data (the creation of which is provided for Ukraine’s Government Bill No. 7523), or numerous options for partial institutional integration radios of some industry
information and information telecommunication systems while maintaining the independence of others. But the best of these options will be the one that in specific circumstances will be the most efficient.

2. The method and legal forms of ensuring the unity of the legal field, as well as the timing, institutional structure, "breadth and depth" of the future codification of sectoral legislation on the use and protection of the physical environment should be the subject of wide public debate.

3. Ensuring the complexity of inter-sectoral types of planning and design and technical documentation is complicated by the absence of some standardized types of such documentation in certain related industries, in particular, in the field of ecology and protection of cultural heritage objects. The professional environment, together with the relevant central executive authorities, must urgently determine and develop the appropriate regulatory and regulatory framework.

4. Discussion is the question of the abolition of licensing of economic activities in the field of construction.

5. Debatable is the issue of introducing joint responsibility of the developer of urban planning documentation and expert expertise, provided her with a positive expert opinion.

6. Discussion is the creation of mechanisms to ensure the protection of the legitimate interests of customers of construction works (services) and third parties in the field of construction through the introduction of compulsory insurance of professional liability of contractors (works) related to the creation of architectural objects.

7. The limits within which measures of state architectural and construction control are carried out should be discussed: the expediency of cancellation of decisions made by other bodies and the time frame in which such cancellation is possible as a result of its implementation. On the other hand, violations identified in the framework of the procedure of state architectural and construction supervision are grounds for holding officials accountable; they have improperly implemented measures of state architectural and construction control. Provided that such inadequate fulfillment of official duties led to material losses, their compensation must be carried out by a court decision by a person who improperly implemented measures of state architectural and construction control.

8. The expediency of more detailed regulation of procedures carried out within the framework of the state architectural and construction control (decision-making procedure, review and evaluation of documents, etc.).

9. Structural divisions of the Ministry of Regional Development, responsible for technical regulation issues in the construction industry, believe that the sphere of regulation of the DBN does not include the maintenance of the operation of construction objects during their entire life cycle. In turn, the structural units of the Ministry of Regional Development responsible for housing and communal services (which prepare drafts of relevant regulatory and legal acts) take a passive position on this issue. The professional environment, together with the relevant structural units of the Ministry of Regional Development, needs to immediately determine and develop the appropriate regulatory and regulatory framework.
Analytical Note No 10

Analytical note 10. Development of technological support for the smart city environment, BIM-technologies, geoinformation systems.

Authors:
1. Vsevolod Nikolaev - Doctor of Economics, Professor, Academician of the Academy of Ukraine, National Academy of State Administration under the President of Ukraine (NADU), Department of Public Administration and Public Service
2. Valentin Lipskiy - Ph.D., Associate Professor, Deputy head of Partnership “ECOMM Co”

With contributions from:
Kolesnіki Kostyantin - member of the Board of Directors of CoNSAU, member of UaGBC Presidency, coordinator of the Kiev Strategic Strategy
Viktor Putrenko - head of the laboratory of GIZ of International Centre of geoinformatics and sustainable development of KPI im. Igor Sikorskaya, p.h.d
Vitaliy Grusevich - Confederation of Builders of Ukraine
Yevgen Seredinin - ESRI
Yuriy Krivohatko - Graphisoft
Oleksandr Tereshchenko - Nora, GO "International Federation of Designers"
Oleksandr Karpenko - Project Manager "Kiev Smart City"

1 COVERAGE OF THE PROBLEM

1.1. Regarding GIS-systems

Considering the issue of introducing GIS, BIM and Smart City technologies in Ukraine at the first stage, it is necessary to consider the problem of having a basic actual digital cartographic basis for the formation of a single information field.

Article 22 of the Law of Ukraine "On the regulation of urban development" as an information and analytical system for information support of urban planning identified a city planning cadastre based on a geographic information system with the task of creating databases on information from the following sources:

- state geoinformation resources;
- digital arrays of specialized geospatial data, created on the basis of materials approved by urban planning and design documentation, materials of completed construction;
- geographic information resources databases of legal entities and individuals, the use of which is determined by law.

1.2. Regarding BIM technology

Reports of European organizations predict that the widespread use of BIM will allow by 2025 to free up 15-25% of costs in the global infrastructure market. For the European market, the introduction of digital technologies will provide a reduction of 10-20% of the cost of capital construction and infrastructure projects. Even achieving a lower level of productivity growth in the European construction industry by 10% will result in savings of 130,000,000,000 euros.

2 CRITICAL ANALYSIS OF THE SITUATION

2.1. Regarding GIS-systems

As for open source software, its application in government bodies is limited as long as, according to the legislation, the user of such software may be at risk of liability for copyright infringement. Such restrictions are based on the fact that according to Clause 3 Part 1 of Art. 8 of the Law of Ukraine "On Copyright and Related Rights" software refers to the object of copyright. At the same time, the Civil Code requires the conclusion of a contract for the transfer of intellectual property rights in writing. Therefore, it is necessary to conclude an agreement containing the conditions stipulated by law, but then the question arises with whom to conclude it, if each module has its owner?
2.2. Regarding BIM technology

Despite the objective development of BIM in the non-government sector, this approach has received government support from only a few developed countries.

The problems of the Ukrainian market is a significant lag not only from the EU countries, but also from the neighboring post-Soviet countries in the practice of applying BIM, its scientific and methodological support, taking into account the specific conditions of the country, the lack of government regulation in this area, in particular the corresponding state concept. This necessitates government regulation in the field of BIM.

3. PROPOSALS

3.1. Regarding GIS-systems

Regarding the legislation of urban planning, it is necessary in paragraph one of the cl. 2 of Article 22 of the Law of Ukraine "On regulation of urban planning activities" to return to the mandatory creation of urban planning services as part of the authorized bodies of urban planning and architecture. Moreover, subclause two clauses 3 of this article shall be supplemented with a paragraph by definition of a source of information that also forms the urban planning cadastre issued by the authorized body of urban planning and architecture conditions and restrictions on the construction of the relevant object. At the same time, it is necessary to provide for the addition of paragraph 3 of Article 23 of the said law with a paragraph regarding the mandatory inclusion of project documentation in the urban planning cadastre, which will allow it to be automatically checked and assessed for compliance with the conditions and restrictions provided.

The procedure for exchanging information between the urban planning and state land cadastre was approved by the Resolution of the Cabinet of Ministers of Ukraine of May 25, 2011 No. 556, because nowadays the modern software of leading geoinformation systems companies are oriented on the interchange of information, not information, but services through the portal communication. With this approach, communication channels become cheaper and the time required for providing information for solving decision-making problems is significantly reduced.

The proposed change, given the catastrophic state of the availability in the state of primary source data in digital form, will speed up the process of forming the relevant databases not accepting the adoption of the Urban Planning Code, which is emphasized by a significant number of experts. With its adoption, the problem immediately, firstly, will not be solved, and secondly, experience will be accumulated during its preparation, which can be taken into account when adopting it.

3.2. Regarding BIM technology

A. In the methodological part - the transfer of construction activities to the principles of managing the life cycle of objects, changing the pricing system and estimated rationing for the reliable determination and management of the cost of the life cycle of objects (see Checkpoints 17, 11)

B. In the information support - the introduction of the industry classifier of products and services, the use of unified formats for presenting information, filling and opening the information base of participants in construction and operation.

C. In organizational and staffing.

State customers, relying on BIM-oriented regulatory documents and standards, harmonized with the best international practices, should set the tone for the market in introducing BIM technologies at all stages of investment activities.

At the first stage of introducing BIM technologies, it is proposed to improve the design system by moving to 3D design of the life cycle for CC3 objects, which will lead to a significant reduction in the time and laboriousness of the formation of project documentation and will allow to form the corresponding information base. In this case, it is necessary to ensure the free exchange of information on the basis of universal formats IFC and XML, the presentation of project documentation in electronic form, to organize
the maintenance of electronic archives of projects, databases of objects-analogues.

At the stage of tendering for design and construction, the state customer must submit to the tender the estimated investment value of the object on the basis of the BIM proposed to him by the design organization. A contractor to put out their tender proposals, based on the calculation not only of standards and norms, but also on the basis of internal standards, based on the conditions of construction, the structure of their organization, the cost of individual constructs and their own experience. At the same time, in its tender offer, in addition to the proposed cost of construction, the contractor will be required to provide a network (calendar) schedule that will help determine the timing of stage-by-stage financing, which will affect the price. To compare the various proposals of contractors, it is recommended to use a single format for the classification and coding of the structural elements of buildings and structures, harmonized with the international standard Uniformat II. In the direction of forming contractual relations between all participants of investment processes in construction, use FIDIC contracts, the implementation of which is accompanied by BIM-models. Provide for the possibility of applying in the future IPD-contracts.
Analytical note 11. Basic organizations. Reform and new system of SBC (State Building Code). Design documentation. Responsibilities of all participants in the construction field. Pricing. Expertise, quality and compliance of construction projects with legislation, design and technical supervision. Providing SBN requirements for safety, noise protection, fire safety, evacuation routes for builders, architects/engineers, building company. Emergency plans. Requirements for special types of buildings, such as porous buildings. Types and classification of buildings. Special buildings, public buildings such as schools, hospitals, etc. Regulations concerning the use of the land plot, such as the distance to the neighbors, access to buildings, special construction requirements, construction product requirements, roof requirements, ceiling, stairs, windows, emergency exits, elevators, gas and heating, sanitation, parking, construction without barriers, grounding and lightning protection, electricity.

Authors:

1. Dmitriy Barzilovich - President of the NGO "Association of Construction Industry Experts", Advisor to the President of the GS "Interstate Guild of Consulting Engineers"

2. Irina Lagunova - Head of the Department of the Interstate Guild of Engineers of Consultants, GS, Senior Lecturer, Department of Public Administration, IAPM, Postgraduate Student, Department of Public Administration, IAPM

3. Vsevolod Nikolaev - Doctor of Economics, Professor, National Academy of Public Administration under the President of Ukraine (NASU), Department of Public Administration and Public Service (section "Pricing")

With contributions from:

Vladimir Brunko - Deputy Head of the Scientific and Research Engineering and Technical Center of "Kiev ZNDIEP"

Victor Gleba - an expert in public administration in the field of urban planning, a full member of the Ukrainian Academy of Architecture, Associate Professor

COVERAGE OF THE PROBLEM

Regulatory documents in construction (national standards, standards of enterprises and organizations) are aimed at ensuring the implementation of the requirements established by building codes, updating and harmonizing the national regulatory framework in accordance with modern tasks of the construction industry. Standards set requirements for materials and products, services, processes, personnel.

Creating an effective mechanism for regulating issues related to design and construction through the implementation of European principles and the introduction of a parametric rationing method, involving a wider range of professional organizations in the development of building codes, improving the quality of construction products (from design documentation to facilities), improving the qualifications of designers technologies and materials, the free movement of products and
services on the market will become a systematic solution. The complex of pits is considered in this analytical note.

2 CRITICAL ANALYSIS OF THE SITUATION

Building codes is a complex document, interrelated with a number of other building codes and standards.

The adoption in 2009 of the Law of Ukraine “On construction standards” contributed to streamlining the process of valuation. law:

• established a clear definition of building codes as a sub-legal normative act of a technical nature, separating them from regulatory legal acts and granting the status of a mandatory document in the field of construction;

• identified two types of building codes - state building codes (SBC) and sectoral building codes (SBC), which are equal in their status;

• identified the main organizations for scientific and technical activities in construction to carry out work on rationing in construction (developers of building codes).

The use of land is a complex and complex issue, which should be considered in the framework of several analytical notes, in particular No. 3, 4, 5.

3 PROPOSALS

A workable technical regulation system is the foundation for the construction and operation of buildings and structures, it allows setting minimum mandatory requirements for all objects and subjects of construction activities and opens mechanisms for monitoring compliance with these requirements, assessing the conformity of objects and subjects of regulation.

With the signing of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, Ukraine has committed itself to the EU to improve the quality of technical regulations, standards, testing methods, market supervision and accreditation; introduction of harmonized European norms (EN) as national standards.

In addition, in order to build a technical regulation system in construction as close as possible to the European model, it is necessary to adapt national legislation to European one, update building codes, harmonize national standards with European norms (EN) and international (ISO) standards.

This requires the implementation of a number of legislative and regulatory changes.

1. The draft Law of Ukraine “On Basic Requirements for Structures, as well as the conditions for placement on the market of building products”, developed on the basis of Regulation (EU) No. 305/2011 and regulatory acts necessary for its implementation, has been approved.

Adoption of the law will allow:

• to extend the general principles of technical regulation and the requirements of the Technical Regulations to the final product of construction - the building / structure;

• comprehensively regulate the social relations of business entities in the process of conducting technical approbation of building products and making declarations;

• strengthen consumer protection, in particular by raising awareness of the quality and safety of structures and building products;

• to introduce market surveillance, which in fact does not work today;

• to extend the requirements of building codes for the entire period of the life cycle of the structure (from design to liquidation of the object).

2. To make changes to the Law of Ukraine “On construction standards".

Amendments to the law will allow:

• to establish, at the design stage, requirements for the operation of buildings and structures, which, if the requirements and measures provided for by the design documentation are
fulfilled, ensure the safe use of the facility for its functional purpose during the established service life;

- to introduce a parametric rationing method in construction;
- clearly to define the subject of regulation of building codes and the object of regulation;
- improves the storage procedure for building codes;
- to create an information system that will contain updated texts of building codes (as amended and amended), and provide the ability to quickly and easily access.

3. To make changes to the Resolution of the Cabinet of Ministers of Ukraine dated July 14, 2010 No. 589 “On the approval of the Regulations on the basic organization for scientific and technical activities in construction”, which will contribute to the involvement in the process of rationing in the construction of higher educational institutions, scientific institutions, professional self-regulating organizations and, as a result, will strengthen the institutional capacity of the base organizations.

4. To adopt the Building Code reviewing Program for the application of the parametric valuation method will allow:

- update and modernize building codes;
- to inconsistencies and duplication of requirements;
- gradually move to parametric regulation;
- to reduce corruption risks that may arise when applying the rules;
- to move away from the practice of deviations;
- to promote the use of new advanced materials and technologies.

5. Adopting a program to harmonize EN and ISO standards in the field of construction will help:

- implementation of the Association Agreement;
- approximation of the signing of the Agreement on the Evaluation of the Conformity and Acceptability of Industrial Goods (ASAA), which will make it possible to affix CE marking on Ukrainian goods and achieve mutual recognition of conformity certificates;

- approximation of the national regulatory field to the European, including the stages and stages of design;

- free movement of goods and services in the market.

6. To adjust the curricula of higher educational institutions in terms of teaching modern fundamentals and approaches of technical regulation, design methods, training design for the Eurocode and develop a retraining program for specialists to implement the design for the Eurocode in Ukraine, which will improve the qualification level of specialists and their competitiveness in the international market.

7. To establish at the level of regulatory documents (standards) an algorithm for inspecting the condition of buildings and structures, performing repairs to maintain their proper operating condition, which will ensure compliance with the requirements of the Technical Regulations during the operation phase, increase the reliability and availability of buildings / structures, establish interconnection “The relationship between building codes and regulatory documents in terms of maintaining performance.

In order to solve problematic issues related to the implementation of the author and technical supervision is necessary.

1. By amendments to the Law of Ukraine "On Architectural Activity" to establish the peculiarities of the technical supervision of the construction of the object on the basis of a construction passport, will remove the inconsistency of legislation in the implementation of technical supervision in the design and construction on the basis of a construction passport.

2. To provide for the possibility of technical supervision of the construction by a group of technical supervision engineers or a consulting engineer, as a business entity, by amending the Law of Ukraine “On Architectural Activities” and the Procedure for exercising technical
supervision during the construction of an architectural object, approved by the Cabinet of Ministers of Ukraine dated 07.11.2009 No. 903.

3. To introduce electronic offices of architects and engineers of technical supervision, displaying construction objects on which such persons carry out author and technical supervision, with the function of electronic confirmation of the exercise of supervision of the aid of a qualified electronic signature and establish administrative responsibility for the unauthorized use of data from the register of certified persons in the implementation town planning activities (changes to the Law of Ukraine "On liability for offenses in the field of grad order of intent ", Article 96 of Chapter 8 of the Code of Ukraine on Administrative Offenses).

4. By introducing changes to the Laws of Ukraine "On Architectural Activities" and "On Responsibility for Offenses in the Sphere of Urban Planning", to define the author’s supervision as a voluntary right of the project’s author, and not as the customer’s responsibility, which will avoid duplication of technical and author’s supervision functions.

5. By the order of the Ministry of Regional Development to approve the approximate form of the contract for the provision of engineering services to provide for the functions, duties and procedure for resolving disputes in the process of creating a construction object.

Critical analysis of the situation

The real situation with references to existing documents can be analyzed only in terms of state regulation of the cost of design and construction.

The main regulatory documents on pricing in construction (DSTU D.1.1-7: 2013 "Rules for determining the cost of design work and examination of construction projects" and DSTU B D.1.1-1: 2013 "Rules for determining the cost of construction" and others) are mandatory in the construction of facilities at the expense of budget funds, funds of state and municipal enterprises, institutions and organizations, as well as loans provided under state guarantees. In the absence of market information, approaches and standards of DSTU are often used and are in the private sector.

According to the Instruction of the Ministry of Finance of Ukraine on the preparation of budget requests, the amounts of capital investments are planned on the basis of project documentation of the early stages. Accordingly, there are no and cannot be justified estimates for the working drawings, scope of work and resource standards. So, planned budget investments are always unjustified in the construction part.

Pricing in construction

PROBLEMS

Pricing in the construction industry in Ukraine has generally two systemic disadvantages.

First, unlike developed countries with a market economy, the Ukrainian practice does not apply the concept of life cycle costs (Life Cycle Costing), according to which the costs of maintenance and operation and facilities are accepted by the investor, moreover, its latest modification is a full assessment of existence (Whole Life Appraisal), which additionally takes into account all preparatory costs, costs for the elimination of objects and the relationship between total costs and benefits [3]. This means that in the construction industry of Ukraine there is no necessary regulatory, methodological and information base, software systems for managing the cost of projects. In public procurement as part of the pricing process, an erroneous orientation toward the minimum bid price criterion.

Secondly, it is regulated by the state of formation of value only in terms of design and construction is carried out behind the methodology, erroneous for modern conditions, with the features of a planned economy. The current concept of estimated pricing in construction was formed in the late 90s on the basis of state resource standards in the absence of monitoring market prices.
In the absence of current enlarged average prices for the construction or overhaul of buildings and their parts, it is impossible to quickly and reliably assess depreciation (replacement cost) and the corresponding need for capital investments to maintain an acceptable level of performance of facilities. The pricing system, which does not rely on monitoring market prices, is incomprehensible and generally unacceptable for foreign investors and donors.

**PROPOSALS**

According to the concept of life cycle cost, the expediency of using budget funds should not be determined solely by the cost of construction.

Reforming pricing in construction with a focus on the world level and European experience is possible under several scenarios with a different role of the state in this process.

The first is the preservation and development of monitoring, rationing and price control of construction in the public sector, supporting the functioning of relevant state institutions. Mostly these functions are performed by private structures (experience of the CIS countries).

Second: the general abolition of state regulation of prices in the industry and the emergence of unified regional information databases on current prices for products, works and services of all participants in the construction and operation of facilities, the formation and publication of regional value (and not resource) standards, their use during the life cycle in the justification of investment decisions, in the design, the estimated calculations of contractors, in the planning and implementation of costs for the maintenance and repair of objects.

Considering the long-term self-elimination in Ukraine of the state from price monitoring in construction, its insignificant role in investing, the use of market prices for materials in estimates (the bulk of the cost), as well as recent decisions not to regulate the estimated salary (the second most value) expedient precisely such an approach. This can be ensured by the introduction of amendments to Art. 7 p. 2 of the Law of Ukraine "On Prices and Pricing" and the Ministry of Regional Development of Ukraine canceled the mandatory use of the relevant regulatory documents DSTU D.1.1-1: 2013 - DSTU B D. 1.1-9: 2013.

To do this, it is also necessary, firstly, to improve the reporting of entities of all forms of ownership under object contracts for the purchase of various construction products (materials, works, services), that will serve as an information basis for the next market rationing. Otherwise, this function in a somewhat limited scope on a voluntary commercial basis can be introduced through the relevant industry associations, primarily the Confederation of Builders of Ukraine. Separately, in the public sector, for example, through the ProZorro system, it is possible to switch to procurement not only of works from the general contractor for the facility as a whole, but also for subcontracting chains and suppliers up to a certain price threshold with the opening for using relevant data.

Secondly, in the formation of value standards for use in investor estimates, it is necessary to systematically move from the cost of work to the cost of objects and structural elements. This is of fundamental importance for the valuation, design and management of life cycle costs, since the management of the maintenance of buildings and structures is carried out precisely in the context of structural elements and systems, and not works. The basis can be taken international classification of structural elements UNIFORMAT II.

It is also necessary to fundamentally change the calculation methodology and cost structure in investor estimates as compared with the most common software packages of AVK, AS-4, etc., Potentially acceptable only for the estimates of the contractors, and in a simplified form. This will change the purpose of the resource rating system. It will operate in investment and construction companies and contractors as a system of internal-company standards for direct costs.

Thirdly, it will be necessary to introduce a single building classifier with a coding system,
the project of which was developed by domestic experts and harmonized with foreign standards. This will allow, like developed countries, to introduce BIM, which allows you to effectively manage the design, timing and cost of construction, modes and cost of operation [9].

In order to develop a new pricing concept, where the government will set about supporting the creation of a market system instead of regulation, it is necessary to organize the work of a professional group at the Ministry of Regional Development and the Ministry of Economic Development of Ukraine. The implementation of the new pricing concept provides for the emergence and use of new methods of justifying public capital investments, including in public procurement, new approaches to budget planning.

SOLUTIONS

New pricing principles in design and construction are seen as follows.

- The refusal of state regulation of resource costs and the transition to market regulation and rationing the cost of products, works and services of participants.

- The only methodical approach to determining the cost and price in the state and non-state sectors of the economy.

- Various methodological approaches to determining the estimated cost of investors (customers) and contractors.

- Reorientation of the pricing system from the estimated calculations of design solutions to the design of the optimal value (value) of the object, cost management. Significant deepening of the financial and economic part of the design.

- Pricing methodology should be based on the concept of life cycle costs. Structuring cost and price to cover the entire life cycle of objects (investment and construction process, including operation) and the project horizon for investors-owners

- Structuring the cost and prices in the context of all participants of the investment and construction process and the relationship between them and the state.

- Structuring of resources with coverage of all their types (including financial, energy, intellectual, etc.).

- Information and methodological support for pricing the products (services) of each of the participants in the investment and construction process based on the organization of a non-state system for monitoring contracts, analyzing, summarizing, constantly updating and publishing data.

- The introduction of forms for calculating the cost and price in contracts by contractors on the basis of the overall cost structure and internal company standards for resource use.

4. OPEN QUESTIONS

Relationship with other analytical notes.

1. Despite the described possibility of a separate improvement on the market principles of pricing in construction in terms of the cost of preparing, designing and constructing the objects, it must be borne in mind that it is closely related to the transition to managing the cost of the life cycle (see AN 17. Unity of the normative regulation cycle of construction objects - from planning the territory to the demolition of the object). Indeed, without information on the cost and maintenance of a building or structure, operating costs, time and cost of its liquidation, it is impossible to make an informed decision about the advisability of investing, building or acquiring an object, especially when it comes to public property. Therefore, the absolute absence of information today about the cost of maintaining and repairing buildings and structures, operational (energy and other) expenses will require from structural units of enterprises and organizations owned by, in the operational use or economic management of which real estate objects, management companies, etc. In the future, this information will be transformed into operational life-cycle costs and relevant standards. Additionally, you will need information about other operating standards, reflecting the benefits. A decisive role in this will
be played by property management associations, which are only being created only in the residential sector. It will be necessary to develop the training of professional property managers that is missing today.

2. On the other hand, the development of information support for life cycle costs is a prerequisite for the distribution of BIM in Ukraine (see AN 10. Development of technological support for the sphere - smart city, BIM technologies, geographic information systems). Otherwise, BIM spread in a simplified form without possible significant effects.
Analytical Note 12. Risk insurance in construction

Authors:
1. Irina Okayanyuk (Council of the Director of Megapolis)
2. Oleksandr Bondarenko (President of Ukrainian Construction Corporation "UkrArhBudInvest", Corresponding Member of the Academy of Construction)
3. Volodymyr Brun’ko (deputy head of research technical center PJSC Kyiv ZNDIEP)
4. Igor Zhizhara (representative of the insurance company UNIKA)
5. Oleksandr Zal’yotov (member of National committee of financial services)

COVERAGE OF THE PROBLEM

The construction industry, like no other, is associated with financial and technical risks. Risks can arise both from investors, developers, and from specialized contracting organizations.

The centuries-old experience of construction activities has shown the need to control and reduce the risks associated with the creation and operation of real estate.

Risk in construction is a possible event, the occurrence of which has probable and accidental nature and causes undesirable consequences for participants of a contract or third parties, insurance of risks in construction is a relationship to protect the property interests of construction participants covered by monetary funds in case of insured events that are created under insurance payments.

Construction (or technical or engineering) risks are:

1. Fire risks (fire, explosion);
2. Natural disaster risks (lightning, tornado, hurricane, storm, typhoon; flood, rain, hail; earthquake; avalanches; hail; falling trees, stones; ice, frosts and unusual for the area snowfalls)
3. Risks of accidents (water from water-supply, sewer, heating and fire systems; accident technical systems, including power supply systems)
4. Transport risks (hitting vehicles, falling on an insured property of a manned aircraft or its fragments)
5. Risks of illegal actions of third parties (violence, theft, robbery)

The most likely events and losses:

Death or damage to any construction object (building or structure), which is being constructed by a contractor, construction equipment, machines and equipment to the construction site, real estate located on the construction site and owned by the developer;

Death or damage to the construction object as a result of installation errors;

Damage to property or liability due to poor quality of work, lack of skill, negligence, malicious acts;

Losses due to short circuit, electrical breakdown, increased voltage;

Death or damage to any construction project as a result of overpressure or vacuum, rupture as a result of centrifugal forces;

Damage to underground utilities and adjacent buildings and structures as a result of settling of foundations and vibration, as well as the movement of vehicles in the area of the construction site;

Thefts in a secured construction site;

Break (stopping) of construction, delay in the start date of business operations at the constructed / mounted facility;

Submission of claims by third parties regarding the infliction of material damage or personal injury arising from the construction and installation works.

Currently in most countries of the world, there are systems for ensuring the safety of construction sites in different forms.

In international practice in construction, along with the system of technical inspection, supervision, assessment and confirmation of the compliance of objects with the requirements of the legislation, there is an
insurance of construction risks together with insurance inspection and supervision.

Insurance of risks in construction, namely, technical (engineering) risks, established more than two hundred years in the world. In the developed countries, insurance of building and construction risks is a prerequisite when participating in tenders and drawing up construction contracts.

Contracts (policies) of insurance risks in construction:

CAR (Contractor’s All Risks) - insurance policy of all risks of the contractor. This insurance guarantees covering all risks of the contractor. It consists of two sections - material damage and third-party liability insurance. This is insurance of all types of construction sites, within which insurance is provided both from damage caused to a construction site, structures at a construction site and/or construction machines, and from claims of third parties as a result of material damage or injury, related to a construction or facility. It guarantees coverage of all risks of a contractor and is one of the main and most common insurance types of technical risks. Sum of insurance - the total estimated cost of the construction object or the contract price, including the cost of construction materials provided by the developer and/or performed works.

Post-completion warranty obligation. Insurance coverage to the buildings, structures, equipment, machinery, installations, or their parts, specified in an insurance contract upon completion of construction and/or commissioning works for which a warranty period is established. In case of damages happened during the period of post-completion warranty obligation, insurance coverage only construction and installation work carried out at these facilities.

The sum of insurance is set within the full cost of the construction object after the completion of construction and installation works, including transportation costs, customs duties, installation costs, and other expenses defined by design and estimate documentation.

EAR (Erection All Risks) - insurance policy for all risks of installation; This policy applies if the installation work exceeds the scope of construction work. The basis of this type of insurance is the idea of providing the insurer with the necessary and as complete insurance coverage as possible for all risks arising during the installation of machines and mechanisms, as well as during building of steel structures.

BE (Boiler Explosion Insurance) - insurance policy for the explosion of boilers;

CPM (Contractor's Plant and Machinery Insurance) is an insurance policy for construction machines and mechanisms at a construction site, which is usually quite expensive and damage to which can cause damage not only to the contractor, but also cause a delay in the work of the entire organization.

MB (Machinery Breakdown Insurance) - insurance policy for machines breakdowns;

IDI (Inherent Defects Insurance) - insurance policy of inherent defects;

EE (Electronic Equipment) - electronic equipment insurance policy;

TPL (Third Party Liability) is a civil liability insurance policy of construction participants for harming the life, health, and property of third parties (including the state) as a result of construction and installation works. True, TPL insurance cannot be carried out separately from CAR and EAR policies.

From the history of insurance development in the world.

For the first time, insurance of contractors "against all risks" was in the 19th century in Great Britain during the construction of the Lambeth bridge across the Thames (in 1836). The terms and conditions of insurance are developed by a special committee of the London Insurers Institute (founded back in 1884) - a special research group 208A. Such committees are created from the members of the Institute and the underwriters of Lloyd to consider issues in which the insurance market is interested, develop recommendations on these issues, special insurance provisions
Analytical Note No 12

(reservations), and achieve mutual agreements on insurance and reinsurance. Insurers provide professional liability insurance services for designers, professional consultants, etc. regarding the customer. The customer insures his liability and technical risks. A construction insurance policy can be either a policy of a single object, or a general policy, that is, an open insurance policy.

The experience of France is very important. Responsibility of designers and builders for the premature loss of a house as a result of a construction defect was proposed by Napoleon and regulated by the Civil Code from the moment it entered into force in 1804. Articles 1792 and 2270 of the Civil Code impose the obligation on contractors to repair defects of a certain type as reported by the main customer one year after acceptance of the property; for contractors and manufacturers - the obligation to bear the cost of repairing or replacing equipment of a certain type, does not work normally, within two years from the date of construction acceptance; Responsibility for the cost of repairing or replacing property of a certain type that has suffered damage of a certain type occurred through a construction error (including project errors) within ten years after admission.

From 1804 (Art. 1792, 2270) until 1967, no amendments were made (in 1967, minor amendments were made). January 4, 1978 Amendments have been made to the Civil and Insurance Codes, which were called the Spinetta Act, brought into force on January 1, 1979. The law requires that all persons who contribute to the creation of the house: the owners, sellers and agents - provide insurance to themselves and all future owner from the cost of repairing damage provided for in Articles 1792 and 1792-1 of the Civil Code. Two types of insurance, “damage to the structure” and “civil liability of the creators of structures”, must be provided before starting of work on the construction site. Insurers in France combine these two types of insurance in one policy of the type “Unified construction policy” or abbreviated PUC. Law 79-12 1979 made it mandatory for all insurers who practice other types of policies to issue policies of “civil construction liability”, and also obliged insurers issuing property insurance policies to issue also policies insuring “damage to construction”.

Other countries of the world: Spain, Belgium, Finland have similar to France 10-year insurance. Germany: 1) compulsory third party liability insurance and construction fire insurance against fire risks (insured by the customer) 2) mandatory condition for drawing up a contract or building insurance activity at the time of construction completion and the entire period of its existence (at the completion stage the customer in responsible for insurance, after completion - the owner) and warranty construction insurance, this is insurance against the bankruptcy of the construction company or its failure to fulfill its obligations under the contract agreement, not return it received advance payment and others. United States, Australia, New Zealand, Singapore, Japan and others also have mandatory insurance terms at the stage of contract agreement conclusions.

Back in 1968, the The International Machinery Insurer’s Association (IMIA) was founded to exchange experience in the field of insurance of technical (engineering) risks. Later it was transformed into the International Association of Technical Risk Insurers.

IMIA is a non-profit organization that is the world's leading professional association for building and promoting knowledge and latest technologies in the field of methodology, risk management, engineering insurance statistics, professionalization of a specialized engineering risk market through supporting all market participants in risk management, underwriting and settling insurance claims.

The structure of IMIA includes associations of insurers, the largest insurance and reinsurance companies from 22 countries of the world, which account for the majority of the global collection of technical risk premium. To assess the scale of this organization’s activities, it is enough to note that the total premium amount of IMIA members for technical risks insurance contracts in 2015 was $ 9.2 billion, in 2016 - $ 8.7 billion, In 2017 - $ 8.5 billion at the same reimbursement under insurance and reinsurance contracts amounted, respectively,

FIDIC is another largest international organization in the field of construction consulting (from the French Fédération Internationale Des Ingénieurs-Conseils, Eng. International Federation of Consulting Engineers) pursues a policy of globalization, sustainable development and integrative understanding of business. At the beginning of 2018, FIDIC united 98 national and 67 affiliated and associated associations, representing over a million practicing building engineering consultants in 104 countries of the world.

The main goal of FIDIC is to regulate the relationship of participants in international investment and construction processes based on the development and publication of standard forms of contracts. FIDIC has developed contracting rules that are used by World and European Banks, the European Commission, various technical and financial assistance agencies, and major international corporations.

So in the terms of a contract for construction for construction and engineering work, article 18 "Insurance" is obligatory:

“18.1. General requirements for insurance ... "If the Contractor is the Contractor's Party, then the contract for each type of insurance is based on the conditions approved by the Customer." ... "If the Customer is the Party of the Insured, then the insurance contract for each type is based on the conditions specified in the Appendix to the Special Conditions of the Contract ... ".

“18.2. Insurance of Works and Equipment of the Contractor. The Party-Insured is obliged to enter into contracts for the insurance of works, equipment, materials and construction documentation for an amount not less than that needed to complete the restoration of works, including the costs of demolishing and removing trash and debris, compensation of specialists and profit. Party-Insured is obliged to insure the Contractor's equipment for an amount not less than the full cost of its replacing”.

“18.3. Insurance of liability for personal injury or property. The Party-Insured is obliged to insure the liability of each party (contract) for damage, death or injury to any property (except for the Insured in accordance with Clause 18.2.) or to an individual (except for employees of the contractor or customer) as a result of the Contractor’s performance of the Contract ... ".

The global experience of insuring technical risks shows that the state plays a significant but not necessarily central role in the system of technical regulation in general and in its individual components in particular. Denationalization of the technical regulation system - reducing the role of the state in managing technical regulation processes by transferring functions to the private sector has long ceased to be a trend and has become part of government policy in most economically developed countries because of political and economic reasons. The most significant consequences of the reforms of national technical regulation systems are liberalization and refusal of the state from a monopoly on the technical regulation of markets and the transition to a system of self-regulation, the transition to risk insurance.

A properly configured and workable technical regulation system is the foundation of the construction culture, which establishes minimum requirements for all objects and subjects of construction activities and introduces mechanisms for monitoring compliance with these requirements and assessing the regulatory compliance of objects and subjects of regulation.

Technical regulation involves building a whole complex of permitting and compulsory mechanisms: legal, administrative and organizational, and is aimed at ensuring safety of objects of regulation for people and nature.

The economic reason for the denationalization of the technical regulation system is the diversity of objects of technical regulation. The state simply does not have adequate resources to keep track of new technologies, materials, products, methods and processes therefore not able competently assess their safety and suitability for practical application.
CRITICAL ANALYSIS OF THE SITUATION

Ukraine.

The construction industry is one of the largest sectors of the national economy. The share of construction in Ukraine’s GDP over the past 17 years has averaged 4.5% per year, in 2017 it was 2.7%. At the same time, the pace of construction is growing, so according to the results of January-August 2018 Ukraine has already completed construction work at 732 billion UAH, and the index of construction products in comparison with the same period of 2017 was 105.7%.

At the same time, urban development is one of the most complex and dangerous, which requires a high level of professional responsibility and unconditional compliance with the requirements of legislation, building codes, state standards and regulations. State regulation in the field of construction and legal relations in the field of construction are governed by the Constitution of Ukraine, the Code of Ukraine: Commercial, Civil, Land, Criminal, Administrative Offenses, and the laws of Ukraine: “On the Basics of Urban Planning”; “On the architectural activity”; "On the regulation of urban planning"; "On prices and pricing", etc.

At the same time, state regulation in the field of construction insurance is regulated by:

Civil Code of Ukraine Article 881 Insurance of the construction site
http://kodeksy.com.ua/tsivil_nij_kodeks_ukraini/statja-881.htm:

1. Insurance of a construction object or works is carried out by a contractor or customer in accordance with the law. (The first paragraph of the first part of Article 881 as amended by Law No. 3201-IV dated December 15, 2005) The party charged with insurance must provide the other party with proof of its insurance contract, including information about the policyholder, the amount sum insured and insured risks.

2. Defects of works or used materials, committed through the fault of the contractor (or subcontractor), shall be eliminated by the contractor at his expense.

3. The customer has the right to inspect and supervise the construction and make relevant decisions on his own behalf to conclude an agreement on the provision of this type of services with a specialized organization or specialist. In this case, the functions of the specialist are defined in the construction contract agreement.

Economic Code of Ukraine, Article 318, cl. 5. Contract for construction
http://kodeksy.com.ua/gospodars_kij_kodeks_ukraini/statja-318.htm

5. The contract agreement for capital construction should include: name of the parties; place and date of its conclusion; the subject of the contract (the name of the object, the scope and types of work stipulated by the project); dates of beginning and completion of construction, performance of work; rights and obligations of the parties; cost and procedure for financing the construction of the object (work); the order of material, design and other provision of construction; quality control mode of work and materials by the customer; order of acceptance of the object (work); the order of payment for work performed, the conditions of defects and warranty periods; risk insurance, financial guarantees; the liability of the parties (damages reimbursement) dispute settlement, the grounds and conditions for changing and terminating the contract.

The Law of Ukraine "On the Regulation of Urban Planning":
http://zakon.rada.gov.ua/laws/show/3038-17

"Article 39. Adoption of completed construction projects cl. 2, the readiness act of the object for operation is signed by a customer, chief designer, chief contractor or contractor (in case construction work is performed without the involvement of subcontractors), subcontractors, insurer (if an object is insured)".

The cost of insurance may be included in the estimated calculation of the cost of construction and prime cost of construction and installation works.
DSTU B D.1.1-1: 2013 Rules for determining the cost of construction


clause 6.1.5. In the summary estimate calculation of the cost of the construction object after the total of chapters 1-12 include:

.. funds to cover risks of all construction participants

..funds to cover risks of the customer (according to the decision of the funds dispenser)

6.1.5.5. Funds for insurance of construction customer risks are included in the consolidated estimate calculation of the cost of the construction object in justified cases according to the relevant calculations.

The primary cost of construction and installation work is defined as the sum of direct and general production costs.

The Tax Code of Ukraine provides for the allocation of insurance costs to gross expenses.

Tax Code of Ukraine Art.140

Article 140. Features of the recognition of dual-use expenses: http://zakon.rada.gov.ua/laws/show/2755-17

140.1.6. any costs of insuring of crop loss risk, transportation of the taxpayer's products; civil liability associated with the operation of vehicles that are part of fixed assets of the taxpayer; any costs of insuring the risks associated with the production of national films (in the amount of no more than 10 percent of the cost of producing a national film), environmental and nuclear harm that may be caused to other persons by the tax payer; taxpayer property; the object of financial leasing, as well as operational leasing, concession of state or municipal property, provided that this is provided for by the contract; financial, credit and other risks of a taxpayer related to their business, within the normal price of the insurance rate of the relevant type of insurance valid at the time of conclusion of such an insurance contract, with the exception of life, health or other risks "related to the activities of individuals, having an employment relationship with a taxpayer, the obligation of which is not stipulated by law, or any expenses on insurance of third-party individuals or legal entities.

If the insurance conditions provide for the payment of insurance compensation in favor of a tax payer - the insured, the insured losses incurred by such a taxpayer in connection with economic activity are included in his expenses for the tax period in which he suffered losses, and any amounts of insurance compensation for these losses are included in income of such taxpayer for the tax period of their receipt.

It means that there is some legislative basis for insuring risks in construction. However, there is no voluntary insurance in the construction industry.

The underdevelopment of insurance in the construction industry is due to several reasons:

First, the regulatory and methodological basis of insurance in the investment and construction sector has not been developed sufficiently;

Secondly, the participants of the investment and construction activity are rather poorly informed about the methods, types, order and, most importantly, the benefits of insuring their risks.

And thirdly, insurance companies, in the absence of demand for such a product, are not engaged in its development and promotion.

Both the sanctions and the content of offenses in Ukraine today do not meet the requirements. Penalties for offenses in the field of urban planning, although significantly increased, do not encourage participants in the construction process to act within the legal framework.

The role of modern construction legislation should not be in regulating activities involved in the processes of building, operating and evaluating the regulatory compliance of buildings and structures, but to determine the
procedures for other subjects.

In Ukraine, the responsibility of participants in construction is regulated by the Law of Ukraine “On liability for offenses in the field of urban planning”, Article 2. “Responsibility for offenses in the field of urban planning” http://zakon.rada.gov.ua/laws/show/208/94-%D0%B2%D1%80

According to this law, urban planning entities carrying out the design of objects, examination of construction projects have liability in the form of a penalty for transferring design documentation to the customer, performing construction work on a construction site, developed in violation of the requirements of legislation, urban planning documentation, initial data for designing, construction norms, state standards and regulations, as well as for lowering the class of consequences (responsibility) of the construction object. The same system of penalties exists for developers.

From 2007 to the present, several attempts have been made to introduce compulsory insurance of technical risks and liability to third parties.

So, at the end of 2008, amendmentes were made to the Law of Ukraine “On financial and credit mechanisms and property management in housing construction and real estate transactions” http://zakon.rada.gov.ua/laws/show/ru/978-15, which introduced compulsory insurance of construction and installation works and property risks under a contract for participation in the construction financing fund. The Resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure for Concluding Compulsory Insurance Contracts for Construction and Installation Works” was adopted http://zakon.rada.gov.ua/laws/show/629-2009-%D0%BF and “On Approval of the Procedure and Rules for Mandatory Insurance of property risks under an agreement on participation in the construction financing fund in accordance with the Law of Ukraine "On financial and credit mechanisms and property management in housing construction and operations http://zakon.rada.gov.ua/laws/show/ru/ 805-

2009 -% D0% BF (expired on 10/26/2010, basis - 956-2010-cl).

The initiators of the abolition of the norm of the law were the developers themselves.

3 PROPOSALS

The introduction of an effective system of insuring risks in construction requires a graduated reform of legal relations in this area of legal regulation through the implementation of a number of measures. Such measures should include both systematic measures and steps for the practical implementation and dissemination of the best insurance practices in construction, namely:

1. Definition of conceptual approaches and the formation of a national insurance model in construction

Depending on the level of possible losses and the degree of risks that the society at this stage considers acceptable from the point of view of harming the health and safety of the population and the environment, should be justified, defined and legally fixed:

a) a list of types of compulsory insurance in construction (for the most complex objects of the class of consequences CC3)

- Amendments to Article 7 of the Law of Ukraine "On Insurance";

- adoption of the resolution of the Cabinet of Ministers of Ukraine on the procedure and rules of insurance, the form of a standard contract, special licensing terms, amounts of insurance premiums and maximum insurance tariffs or actuarial calculations;

b) a list of types of insurance that are a prerequisite for the implementation of professional and economic activities

- Amendments to Article 881 of the Civil Code of Ukraine, relevant articles regulating the implementation of certain types of professional and economic activities of the Laws of Ukraine "On Architectural Activities" and "On the Regulation of Urban Planning";
c) a list of types of voluntary insurance, the introduction of which will give certain preferences to the insured

- Amendments to the Laws of Ukraine “On Architectural Activity” and “On the Regulation of Urban Planning”.

Such approaches are consistent with the principle of risk management in public administration, according to which the level of regulation should depend on the degree of possible risk in the implementation of a particular activity. This will help protect the property interests of individuals and legal entities without creating an excessive burden on business.

2. Creating conditions for the introduction of the representative institute of the insurer in construction

Under the current legislation, it is currently possible to insure certain risks and liability in construction. However, the absence in law and practice of the institution of the insurer’s representative at the construction site negates the effectiveness of insurance contracts.

Such a representative should conduct project expertise, risk assessment, site surveys, independent supervision and support during the construction process. This can be implemented by:

a) the introduction of the institute of insurance engineers - survey - as a representative of the insurer, carrying out an inspection of the property accepted for insurance, an assessment of the probability of insured event occurrence

Supplement of Article 15 of the Law of Ukraine “On Insurance” with a New Type of Unlicensed Intermediary Activity in the Insurance Field - Survey

b) engaging a consulting engineer, a specialist or a specialized engineering organization that provides organizational and consulting support for the design and construction of facilities

- the practical implementation of the seventh part of Article 15 of the Law of Ukraine "On Insurance"

3. Establishment of requirements for insurance companies and specialists in risk insurance in construction

Construction refers to areas of activity that are characterized by a high risk probability associated with financial, technical, technological, legal, and other support to the construction industry. Large volumes of possible losses, significant social and environmental risks require a balanced approach to the choice of the insurer in construction, which should be as reliable and responsible as possible.

According to the experience of leading insurers, an insurance company in construction must have qualified risk assessors on staff, builders, underwriters, surveyors and loss-adjusters, or have agreements with professional organizations that provide such services. Also, insurers should have reinsurance contracts with these leading reinsurers that are members of the International Machinery Insurer’s Association IMIA.

In Ukraine, the requirements for insurance companies and specialists in building construction risk insurance (as an option: requirements for key financial indicators, availability of contracts with leading reinsurers, qualified staff on risk assessment or an agreement with an engineer consultants)

- Amendments to Article 881 of the Civil Code of Ukraine.

4. Stimulating the development of insurance in construction

The spread of insurance in the construction market of Ukraine as an internationally recognized mechanism for indemnification of losses should be carried out mostly not by administrative imperative, but by market methods of state regulation. In particular, stimulating the development of insurance mechanisms can be provided by:

a) reducing the level of state regulation in case existence of construction and installation insurance contracts and the responsibility of the main construction participants (the start of construction of such facilities is based on a notice, not a permit)
Amendments to Article 34 of the Law of Ukraine “On the Regulation of Urban Planning” by supplementing the list of objects that can be built according to a notice, with objects for which relevant insurance contracts have been concluded

b) strengthening the role and responsibility of the insurer during the acceptance of the object into operation and during the warranty period (provision of a quality guarantee instead of a certificate of readiness for operation);

- amending Article 39 of the Law of Ukraine “On the regulation of urban planning” according to which, if there are insurance contracts during construction and a warranty period for facilities, acceptance of the facility into operation can be carried out without providing an act of readiness subject to guaranteeing by an insurance company and an engineer-consultant object of project documentation, building codes, standards and rules. Determination by the Cabinet of Ministers of Ukraine of the form of such a guarantee

c) replacement of planned inspections by SACI (State Architectural and Construction Inspection) with measures of supervision carried out by the representative of the insurer (if necessary, the representative of the insurer must transfer materials about the revealed violations of SACI for imposing administrative sanctions or initiate an unscheduled inspection)

- addition of paragraph four of the first part of Article 41 of the Law of Ukraine “On regulation of urban planning” by the norm according to which SACI does not include objects for inspection if there are insurance contracts for construction and installation works, customer responsibility and consultant engineer before third parties for harm to property or life and health of people during the construction and warranty period of the facilities, as well as professional liability of certain types of work (services) artists associated with the creation of architectural objects, concluded before the beginning of construction works.

Insurance, in contrast to the traditional system of penalties and licensing procedures, provides not only the proper quality of construction, but also the protection of the interests of all parties and compensation for damages in the event of damage during construction and the warranty period. In addition, the replacement of permitting and control mechanisms by insurance will reduce corruption risks and promote further deregulation in construction.

5. Liability insurance of construction participants

Liability insurance of construction participants (designers, customers, contractors, suppliers, etc.) to third parties for harm to the life, health and property of third parties as a result of construction and installation work should be a prerequisite for the construction of complex construction objects.

The object of such insurance is the property interests of an insured, related to his duty to compensate for the damage that may be caused to the health or life of third parties during construction and installation works, as a result of which claims may be made to the insured by the third parties on indemnification in case of a direct causal link between the execution of construction works and the harm caused.

The insured event is the entry into force of a court decision, according to which the insured is obliged to compensate for the harm caused to the life, health and property of a third party or third parties.

The sum of insurance under the insurance contract is determined between the insurer and the insured as the insurer’s liability limit and is 10–50 percent of the estimated construction cost.

This rule will allow you to quickly and accurately settle the losses inflicted on third parties during the construction process.

Also a prerequisite for admission to the performance of some kinds of works should be the insurance of professional liability of architects, designers, experts, technical supervision engineers, consulting engineers and responsible persons of SACI.

This will strengthen the responsibility for compliance with the norms of construction legislation, for the quality of design, will allow to distribute the risks between the participants of
construction, which are associated with the possibility of causing material damage, which include the period of loss of the right to claim.

The insured event for this type of insurance is a mistake made by the insured during the performance of professional duties, which led to material damage or loss of health, injury to persons or death of third parties. The sum of insurance is also limited.

TPL (Third Party Liability) - civil liability insurance of construction participants for damage to life, health and property of third parties (including the state) as a result of construction and installation works, are widely used in Europe, the USA, Canada, the UK.

6. Introduction of Contractor's All Risks (CAR)

CAR (Contractor's All Risks) - all the risks of the contractor. This insurance guarantees coverage of Contractor's All Risks and is one of the main and most common types of insurance technical risks. This is insurance of all types of construction sites, within which insurance is provided both from damage caused to a construction site, structures at a construction site and/or construction machines, and from claims of third parties as a result of material damage or injury, related to the construction of the facility.

Insurance object - an integral complex of construction; property located at the construction site; facilities; materials stored on the construction site and necessary for construction work; construction site equipment; Construction machines.

All risks of the contractor include: fire, natural accidents; the action of water; side influence; industrial accident; other emergency events; illegal actions of third parties; collapse; mistakes made by the insured; shortcomings made in the performance of warranty obligations by the policyholder; test run or load test; expenses for clearing the territory of insurance; additional costs for payment of work in excess of the established standard time; claims for penalties and deficiencies of the services provided.

Sum of insurance - the total estimated cost of the construction object or the contract price, including the cost of construction materials provided by the developer and/or performed works.

Insurance of all risks of the contractor is widely used in developed countries, not as a mandatory type of insurance, but as an obligatory condition for concluding a contract between the developer and contractors.

Introduction of Contractor's All Risks (CAR) as a mandatory condition for the implementation of activities requires appropriate changes in legislation. Depending on the stage at which such a duty will be established, the following alternatives are possible:

- Amendments to Article 37 of the Law of Ukraine “On Regulation of Urban Planning” - in the case of concluding an insurance contract as a condition for obtaining permission to perform construction work;
- Amendments to Article 881 of the Civil Code of Ukraine - in the case of concluding an insurance contract as a condition for concluding a contract agreement between the developer and the contractor.

7. Introduction of post-completion warranty obligations

Insurance warranty covers buildings, structures, equipment, machinery, installations, or parts specified in the insurance contract upon completion of construction and/or commissioning works for which the warranty period is established. Insurance coverage happened damages during the period of performance of post-completion warranty obligations, in case if an object to the insurance of construction and installation work carried out at these facilities.

The insured amount is set within the full cost of the construction object after the completion of construction and installation works, including transportation costs, customs duties, installation costs, and other expenses defined by design and estimate documentation.

Short glossary:
The insurance contract (insurance certificate, insurance policy) is a written agreement
between the insurer and the insurer, according to which the insurer undertakes to pay the insured amount or compensate for the loss within the insured amount when the insured event occurs, and the insurer is obliged to pay insurance premiums within certain terms and fulfill other conditions of the contract.

**Limit of liability** - the maximum amount of insurance compensation payable upon the occurrence of an insured event; in contrast to the sum insured, not related to the value of the property.

**Material damages** – insurer’s losses incurred occurred during construction and/or installation; this includes damage from contractual work, materials, equipment. Additionally, you can insure construction equipment, temporary structures, property in the process of its transportation and in warehouses.

**Third-party civil liability** for harming the life, health, and property of third parties as a result of construction and installation work at a construction site provides for the insurer to compensate for damage caused by the developer’s fault to third parties. This can be as harm to human life and/or health and/or material damage. Third parties - persons not related to construction in any case.

**Post-completion warranty obligations** - insurance protection during the established warranty period, associated with repair, replacement, restoration of the constructed object, its elements as a result of its damage or death due to poor-quality construction and installation works.
Analytical Note No 13

Analytical note 13. Control and supervision (state architectural and construction control and supervision, market supervision). Possibility of construction without compulsory obtaining of permits, responsibility of inspectors, adjustment of buildings that do not comply with legislation and building standarts.

Decentralization of the control and supervision system.

Authors:
1. Alexander Bondarenko - President of UkrArchBudInvest, Megapolis
2. Yuriy Seregin - Honored Architect of Ukraine, twice winner of the State Prize of Ukraine, Professor of KNUCA
3. Victor Gleba - an expert in public administration in the field of urban planning, a full member of the Ukrainian Academy of Architecture, Associate Professor

With contributions from:
Sergey Kovriga - Deputy Director of Budtechexpertiza LLC, Head of NGO "Strategy for Success", Candidate of Technical Sciences, Civil Engineer, Lawyer, Research Engineer, Land Engineer, Member of the Public Council under the Ministry of Regional Development

1 COVERAGE OF THE PROBLEM

The essence of architectural and construction control is determined by part one of Article 10 of this Law: “ensuring that when building up territories, locating and constructing architectural objects, the subjects of architectural activity comply with the approved urban planning and other project documentation, the source data requirements, and also to protect the rights of consumers of construction products by the state”.

The state controlled the construction as part of the “architectural activity” - the buildings were called architectural objects, and the planning documentation (long-term and medium-term) was called urban planning documentation, and urban development was under the administrative authority.

According to clause 10 of the Procedure for the Implementation of Architectural and Construction Control, approved by Resolution of the Cabinet of Ministers of Ukraine of May 23, 2011 No. 553, another definition of architectural and construction control is provided, namely “State Architectural and Construction Control is carried out in compliance with:

1) the requirements of legislation in the field of urban planning, project documentation, building codes, state standards and regulations, technical conditions, other regulatory documents when performing preparatory and construction works, architectural, engineering, technical and structural solutions, the use of construction products;

2) the procedure for exercising authorial and technical supervision, maintaining general and (or) special logbooks for recording the performance of work (hereinafter referred to as general and (or) special journals), executive documentation, drawing up acts for completed construction, installation and commissioning works;

3) other requirements established by law, building codes, rules and project documentation for the creation of a construction object.”

2 CRITICAL ANALYSIS OF THE SITUATION

In fact, the control over the construction of most large and commercially attractive objects was transferred to the jurisdiction of the State Architectural and Construction Inspection. That is, they tried to solve the problem of corruption by reducing the material interest in the field, as well as by concentrating powers in one decision-making center. As a result, the reform of the state architectural and construction
control system, which was designed to implement the decentralization of powers, partially restored the initial positions - the accumulation of powers in one body.

It should also be noted that in all these attempts to implement reforms, namely, the transfer of powers to local authorities, the main essence of the implementation of state architectural and construction control as a technical procedure for verifying compliance with the implementation of the construction process in accordance with the requirements of the legislation was lost. Such a procedure should not provide for the granting or refusal to grant an appropriate permit, but should consist of checking by qualified controllers that the construction process participants comply with the established requirements of national general norms (laws and regulations), special norms (SBC, SNiP, standards, etc.) and local regulations (master plans, PDT, local building regulations, etc.). But there has been no corresponding change in this direction.

Another important part of the state architectural and construction control is the implementation of market supervision of building materials and products that are used in the implementation of construction.

Participants in the building materials market state that there are no effective mechanisms to struggle with false and low-quality products; there is virtually no market supervision in the country.

The consequences of the lack of effective market supervision are:

for the end user:
- purchase of low-quality building materials under the guise of high-quality and often at the cost of high-quality;
- the risk of health through direct contact with the structural parts of the construction project;
- the risk of loss of life due to the inconsistency of the applied load on the object projected characteristics;

for construction companies:
- the risk of losing potential customers, profits, reputation due to the publication of the fact of the use of poor-quality building materials;

for insurance companies
- the unattractiveness of the insurance market for construction objects through an uncontrolled and unregulated building materials market;

for manufacturers and distributors of high-quality construction products:
- legal compelled and equivalent competition with low-quality product distributors;

for the state:
- deterioration of the country’s image, in particular, for potential foreign investors;
- flooding of the market with even more low-quality materials as such, which takes everything and the criterion for which is only the price;
- subsidy with budgetary funds for the purchase of poor-quality building materials (at the expense of “warm loans”).

3 PROPOSALS

To solve the above problems and improve the work of the system of state architectural and construction control, it is possible to introduce the following measures:

- Full transition to the declarative principle of submitting permits.
- Cancellation of licensing in construction and a full transition to certification of responsible contractors of construction work.
- Implementation of optimization of the number of employees of the system of state architectural and construction control, focusing on the professional component.
- Consolidation in the legislation of the minimum wage of the main inspectors of the state architectural and construction control.
- The introduction of competitive selection for the posts of chief inspectors of the state architectural and construction control.
- Introduction of new sources of funding for the system of state architectural and construction control.

- Establishment of clear grounds and criteria for refusal to register permits.

- The establishment of a clear and effective responsibility of officials of the state architectural and construction control in the performance of their official duties.

- Introduction in the implementation of the registration procedure for the authorization documents of means of postal communication and the Internet and through the centers providing administrative services.

- Introduction of liability insurance for construction contractors and inspectors of the state architectural and construction control and supervision.

- To introduce measures to resolve legal relations for the implementation of market supervision over the use and production (manufacture) of building materials, products and structures.

Below we consider each of the proposed measures in detail.

**Full transition to the declarative principle of submitting permits.**

The transition to the declarative principle of submitting permits means the cancellation of any permits issued by state authorities during construction. The declarative principle is that a business entity acquires the right to perform certain actions regarding the implementation of economic activities without obtaining a permit document by notifying the appropriate licensing authority. Its main goal is to simplify the initial conditions for carrying out economic activity and to minimize the contacts of the enterprise and the official who makes the appropriate decision about the possibility of performing certain actions. In the field of construction, this principle can be implemented by introducing a procedure whereby the customer to provide the authorized body with a document of the established form (statement, declaration, etc.) in which they will independently indicate the data and characteristics of the future construction object, the list and details of permits documents, project documentation. In this case, the customer assumes responsibility for the accuracy and reliability of the documents indicated in the submitted documents, as well as compliance with the criteria, procedures and construction parameters. In this case, the state architectural and construction control will consist in the fact that officials will check the customer’s compliance with the specified criteria and the correctness of the information given by them. In the current construction legislation, the declarative principle has already been partially implemented, but it applies only to certain types of construction work. Thus, Article 36 of the Law of Ukraine “On the Regulation of Urban Planning” states that the right to perform preparatory work (if they were not fulfilled earlier, according to a message about the start of preparatory work) and construction work on objects, according to the class of consequences (liability) objects with minor consequences (CC1), objects whose construction is carried out on the basis of a construction passport, are provided to the customer and the general contractor or after the notification of the beginning of construction work. At the same time, part two of the same article indicates that the customer does not receive other permits to perform construction work, except for sending a notification of the start of construction work to the appropriate body of the state architectural and construction control in accordance with part one of this article. The form of notification of the commencement of construction works was approved by the Resolution of the Cabinet of Ministers of Ukraine of April 13, 2011 No. 466 “Some issues of the implementation of preparatory and construction works”. All other work is carried out only after obtaining permission to perform construction work according to the established procedure.

Prior to the amendments stipulated by the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Urban Planning Activities” dated January 17, 2017 No. 1817-VIII, the structure of permits was different. Thus, in accordance with the provisions of the law in
force at that time, the customer has the right to perform construction work after:

1) submission by the customer of a notice of the commencement of construction work to the appropriate body of the state architectural and construction control - on objects that are being built on the basis of a construction passport, which do not require registration of a declaration on the beginning of construction work or obtaining permission to perform construction work in accordance with the list of objects construction approved by the Cabinet of Ministers of Ukraine. The form of notification of the beginning of construction work and the procedure for its submission are determined by the Cabinet of Ministers of Ukraine;

2) registration by the state architectural and construction control body of the declaration on the commencement of construction work - for construction objects belonging to categories I-III;

3) issuing permits to the customer by the state architectural and construction control authority for construction works - for construction objects belonging to IV and V categories of complexity.

So, introducing the declarative principle, it is necessary to take into account the previous both positive and negative experience of its implementation. For example, it is necessary to develop such a form of declarative documents, which contained a clear list of information that will allow to identify all responsible participants in the construction of the facility, a list of available permits, a detailed description of the future construction object. Also, in our opinion, it is necessary to establish a certain time interval between the presentation of a declarative document and the immediate commencement of work - 10-15 days. This will allow the state architectural and construction control bodies to carry out a preliminary check of the information contained in the declaration. This will prevent the occurrence of violations of urban planning legislation and possible conflicts.

Cancellation of licensing in construction and full transition to certification of responsible contractors of construction work

As noted above, the procedure for issuing licenses for carrying out activities for the construction of facilities, as well as the procedure for conducting inspections to comply with licensing conditions, contain significant corruption risks. Approved licensing conditions require from the subjects of construction activities compliance with a large number of conditions, such as the availability of relevant specialists, equipment, equipment, premises and the like. In practice, it is impossible to fully comply with all licensing requirements when performing work on the construction of facilities with a class of consequences CC3. And having a license to perform such work does not guarantee that all the stated conditions are met. In our opinion, the main criterion for the ability to perform certain works should be the availability of qualified personnel, namely specific individuals responsible for the direct execution of certain construction works. A business entity that carries out construction work must have a composition of engineering and technical specialists who will work on an ongoing basis in accordance with the requirements of labor legislation and be fully responsible for the implementation of construction work. Additional workers to perform specific work can already be attracted by individual agreements if necessary. The same situation with the construction equipment and other material resources. A business entity himself can decide on what kind of equipment or he needs all the time, what can be rented for a certain period to implement a specific construction project.

But such innovations can be earned only if there is a clear responsibility of certified employees. As an additional guarantee of the possibility of compensation for possible damage as a result of poor-quality work, you can introduce compulsory liability insurance for such performers.

Optimization of the number of employees of the system of state architectural and construction control, focusing on the professional component

State architectural and construction control is a technical procedure that should be carried out by specialists with an appropriate level of professional knowledge. It is necessary to
introduce clear criteria for persons who may occupy the posts of inspectors in the bodies of state architectural and construction control. The main ones should be:

- the presence of higher engineering and technical education in the field of construction;
- availability of professional production experience (5-10 years);
- knowledge of urban planning and procedural legislation;
- skills in working with computer equipment and information registries.

The requirement to have professional production experience (5-10 years) will allow to attract to the work individuals who have actually received practical experience and skills in the implementation and maintenance of the construction work. This will allow them to effectively implement state architectural and construction control and make informed and informed decisions. The requirement for knowledge of urban planning and procedural legislation will allow specialists to legally substantiate their decisions and properly protect them in case of administrative or judicial appeal. Skills of work with computer equipment and information registries will allow specialists to quickly and in detail verify the accuracy and truthfulness of the information that will be presented in the permitting documents, which will be provided by developers for the commencement and completion of work.

Specialists who will meet the above requirements should make up to 70% of the state body of the state architectural and construction control, since they will directly carry out verification of the correctness of declarative documents, the implementation of construction works.

To enshrine the minimum wage of the main inspectors of the state architectural and construction control

In order to attract specialists who meet the requirements contained in the previous section of this report to the work of the bodies of state architectural and construction control, as well as to warn them against committing acts of corruption, it is necessary to ensure the possibility of competitive guaranteed pay for their labor. For example, according to Article 23 of the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” of 14.10.2014 No. 1698-VII, the official wages of its employees are set in accordance with the size of the subsistence minimum established for able-bodied persons on January 1 of the calendar year. Article 81 of the Law of Ukraine "On the Prosecutor's Office" dated 14.10.2014 No. 1697-VII states that the official salary of the prosecutor of the local prosecutor's office from January 1, 2017 is 12 living wages for able-bodied persons, the amount of which is set to January 1 of the calendar year. In the same way it is possible to fix the size of official salaries of the main inspectors at the level of 10-15 sizes of the subsistence minimum. Additional stimulation of the chief inspectors to development and fair labor can be provided by establishing a system of supplements to the official salary, as an extra payment for years of service, for a scientific degree, for work that provides access to state secrets, for a special rank or rank of a public servant, and the like.

Fixing the wages of the main inspectors will ensure their confidence in the stability of their work and independence from management. In addition, this will make it possible to clearly plan the size of budget funds that must be allocated from the state budget for the maintenance of the State Architectural and Construction Inspection.

Introduction of competitive selection for the positions of chief inspectors of the state architectural and construction control

If the above provisions on guaranteed wages are implemented, then we can expect that the position of chief inspector of the state architectural and construction control may be of interest to many specialists. In this regard, it is possible to introduce a competitive selection of candidates for such positions in order to select the best specialists. Such competitions can be carried out in accordance with the requirements of the Competition Procedure for holding civil service positions, approved by the Cabinet of Ministers of Ukraine on March 25, 2016 No. 246. According to its conditions of competition, it is carried out in accordance with the professional competence requirements of a
candidate for a vacant public service positions based on the assessment of his personal achievements, knowledge, skills, moral and business qualities. At the same time requirements for professional competence of a candidate for a position include qualification requirements, requirements for competence and requirements for professional knowledge.

Qualification requirements may be the above requirements on the availability of higher engineering and technical education in the field of construction and professional production experience (5-10 years). Compliance with the requirements of professional knowledge can be checked by testing the knowledge of urban planning and procedural law.

**Introduction of new sources of funding for the state system of architectural and construction control**

Since the construction industry, and in particular the system of state architectural and construction control, are not a priority in terms of budget financing, it is necessary to find other sources to implement and further maintain the proper existence of such a system. At the initial stage, it is possible to attract funds from international financial organizations to create a special fund, due to which wages will be paid to the chief inspector of the state architectural and construction control. In addition, it is possible in the law to fix a provision according to which a part of the fine for violations in the field of urban planning will be sent to the specified fund.

An additional source of funds may be the establishment of deductions in the estimated cost of construction in a special fund of the state budget, by analogy with the cost of maintaining technical supervision and designer supervision of the construction work. The establishment of such costs in the amount of, for example, 0.5% of the construction cost, will not lead to a significant increase in the cost of construction, but at the same time, nationwide, will provide additional funds for the implementation of professional and independent state architectural and construction control.

Establishing clear grounds and criteria for refusing registration of permits.

If, as a result of the implementation of the reforms, it is not possible to fully implement the declarative principle, then the law should clearly establish the list of grounds for refusing to register the submitted documents for obtaining permission to carry out construction works or to accept their results in operation. Such grounds can only be the non-submission of a complete package of documents or the omission of all necessary information. Grammar and spelling errors cannot be the basis for the adoption of documents. In addition, it is advisable to enter a deadline that will be provided to eliminate the deficiencies identified during the consideration of the submitted documents. This period may be, for example, 10 calendar days, if during it the defects are not eliminated, then only a decision will be made to refuse to issue permits.

Establishment of a clear and effective responsibility of officials of the state architectural and construction control in the performance of their official duties.

If the above-mentioned innovations are implemented for the introduction of guaranteed wages to inspectors of the state architectural and construction control, respectively, it is necessary to establish guarantees for their compliance with the law in carrying out their activities. Such guarantees may include the introduction of clear disciplinary and administrative liability of such persons. Such responsibility must be connected with the recognition of the actions of officials as illegal in the case established by law by a court or other authorized body. At the same time, the administrative responsibility of officials must be commensurate with the responsibility of the contractors who are involved in the decisions of such officials. If the decision of an official of the state architectural and construction control to bring the subject to responsibility under this article as unlawful is canceled in court, then the responsibility of such a person should be the same size - from two hundred to three hundred non-taxable minimum incomes of citizens.

**The use of the Internet and centers providing administrative services in the**
implementation of the registration procedure permits.

With the development of technologies and means of information transfer, they should be actively used in the preparation of permits in construction. By using electronic digital signatures, you can ensure that documents are presented electronically. This will speed up the process of their receipt and processing. With the introduction of a city planning cadastre system and identifiers of a construction object, the best option would be to create a separate electronic cabinet for each construction object, which would contain all information on such an object, including a list of permits, responsible persons, project documentation, etc. Such an office would be created when submitting documents on the start of construction of the facility and all subsequent relations between the construction customer and the state architectural and construction control authority, such as the presentation of the following permits or changes in construction information, could be realized precisely because cabinet

With the introduction of the declarative principle of submitting permits, it will be possible to use a wide network of administrative services providing centers for the submission of documents. Administrators of such centers will be able to check only the completeness and correctness of execution of permits and then will pass them to an inspection by the state architectural and construction control authority. This system partially already works, but it should be improved and streamlined, taking into account existing experience.

Introduction of liability insurance for construction contractors and inspectors of state architectural and construction control and supervision

This question is investigated in detail by the authors of another analytical note.

The introduction of measures to resolve legal relations for the implementation of market supervision over the use and production (manufacture) of building materials, products and structures

Solutions to problems in this area are the following:

- to make amendments to the Law of Ukraine "On public procurement" - the inclusion of a new article "Requirements for tender proposals", which in terms of the purchase of goods contain requirements for the provision of relevant technical certificates, and in the case of construction services - requirements for confirming the intentions to enter into contracts with manufacturers / suppliers of products has a technical certificate;

- to develop and approve by order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine procedures for confirming the suitability of groups of building products for use with a clear and comprehensive list of measures;

- to amend the Code of Ukraine on Administrative Offences, the Law of Ukraine "On Responsibility in the Sphere of Urban Planning" - strengthen and revise the system of punishment for the use and production (manufacturing) of building materials, products and structures that do not meet state standards, standards, technical conditions decision, subject to mandatory technical certificate, but did not receive it,

- to create on the website of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine the Register of certified products of building products, each of which will have an available technical certificate (a document confirming the suitability of products for use), a list of official places of sale and links to the manufacturers website; The register of certified building products should include an instrument for the automatic allocation of building products, the validity of which is coming to a loss of force;

- to introduce a mandatory declaration by manufacturers of building products in accordance with the relevant technical regulations.

OPEN QUESTIONS

It should be understood that the implementation of the above proposals and their positive result depends on the implementation of a whole range of activities. Firstly, it is necessary to determine the method
of amending the current legislation. The most effective way is to develop a single codified act in the field of urban planning and architecture - the Urban Planning Code. It was during its development and adoption that a large amount of work could be done, namely:

- to form its text using the experience of applying current legislation and received proposals;
- to hold its discussion with the involvement of representatives of all participants of urban planning and process the proposals received;
- to carry out full support of the developed draft act in the course of its processing and adoption by the Verkhovna Rada of Ukraine (including informational events, work with people’s deputies, committees, factions);
- after the adoption of such an act - to ensure the development of the subordinate regulatory legal acts provided for by it and the abolition of the existing regulatory legal acts that are no longer relevant to its requirements.

But at the same time, the process of adopting such a codified act is rather complicated, since it requires the joint action of the participants in town planning activities, people’s deputies of the central bodies of executive power. Moreover, the adoption of such an act affects other legal relations in the country, which may lead to the emergence of resistance regarding its adoption. The Verkhovna Rada of Ukraine has repeatedly made attempts to adopt such an act, but they all suffered defeat.

Another way to implement these proposals may be step-by-step changes in the current legislation. This path is more realistic, but it can only lead to a partial solution of the problems mentioned in this paper, and no fundamental changes will occur. To implement it, the following steps should be taken:

- to analyze the current legislation and draw up a list of regulatory acts subject to change or cancellation;
- develop drafts of relevant regulatory acts;
- to hold their discussion with the involvement of representatives of all the participants of urban planning activities and process the proposals received;
- to ensure their adoption by the competent authorities.

Separately, it should be noted that the real solution to all problems in the field of construction is impossible without ensuring the rule of law in a broad sense and ensuring the principle of inevitability of punishment for violating the requirements of the law. It is impossible to overcome corruption only through changes in urban planning legislation. This is a complex problem of the whole Ukrainian society. Corruption is a phenomenon when, in some cases, all parties are interested in legal relations. For officials - this is an opportunity to receive additional remuneration in the direct exercise of their duties, or vice versa when refraining from their fulfillment. For a construction participant, this is the possibility of non-compliance with legal requirements or the avoidance of punishment for violating such requirements. As a result, the country, society and ordinary citizens suffer, so reforming the construction industry requires an integrated approach, without making quick and ill-considered decisions.

Authors:
1. Tetyana Chernyshenko (assistant of the people's deputy of the Verhovna Rada)

1 COVERAGE OF THE PROBLEM

Ukraine has declared the way of democratic transformation. This is not only the political course of public authority, but also the demands of civil society, which has been developing rapidly in recent years. Democratic development of the state is impossible without improving the forms and methods of public administration and deepening cooperation between public authorities and the public, strengthening of public control over the activities of public authorities, their officials and increasing their responsibility in case of abuses or other violations.

New challenges are emerging in the field of urban development for public control, as the pace of construction over the last decade has grown rapidly, as the issues associated with the active development of the construction industry and the rapid growth of construction volumes. The unsystematic, often unregulated construction, not only in the capital, but also in cities, towns and villages of Ukraine, led to an imbalance in the development of settlements. It has made settlements uncomfortable for living, created problems in the social, environmental and fire safety areas, engineering and transport infrastructure, caused the destruction of historical areas of settlements and neglected of the cultural preservation legislation. In addition, uncontrolled, often corrupt permits (approval) on abuse of building regulations and rules created risks to the life and health of not only residents of new buildings, but also entire neighborhoods.

In addition to the lack of cooperation with the public, the issue is also that during the planning of the territories, the authorities do not prioritize the ensuring of state and public interests, and the highest priority is the interests of investors and excess profits. Thus, the planning of the territories and construction is aimed at satisfying the wishes of investors-developers to get the maximum number of square meters from one piece of land.

A striking fact cites how public authorities are very inactive in case of illegal construction, numerous appeals and complaints from the public are ineffective, authorities simply do not react at all, and an object itself has been completing and an issue for a community only. The criticality of the situation also adds the attitude of law enforcement agencies to the issues in urban development. As this is a specific area that needs additional knowledge, law enforcement officials exclude themselves from solving these issues and do not take measures to stop the law-breaking (even in the case of unauthorized occupation of the land) or vice versa - on behalf of the subjects of power authorities protect unauthorized projects from the community's anger.

2 CRITICAL ANALYSIS OF THE SITUATION

The legal framework regarding public control in the field of urban planning is a bit confusing and does not provide for real mechanisms of public participation in decision-making processes on urban planning issues.

One of the main types of civil control in urban planning, which is enshrined in law, is the participation of citizens in the processes of developing and adopting urban planning documentation. Thus, Article 31 of the Law of Ukraine "On Local Self-Government" indicates for public debates of urban planning documents, which are provided by the executive bodies of village, town and city
councils. At the same time, the Law of Ukraine “On Regulation of Urban Development” and the Procedure for Conducting of Public Hearings on the consideration of all public interests during the development of drafts urban planning documentation at the local level, approved by the Resolution of the Cabinet of Ministers of Ukraine dated May 25, 2011 No. 555 (hereinafter - Order No. 555), indicate the necessity of public hearings conducting in the case of development and adoption of urban planning documentation. That is, the laws stipulate various forms of public participation in the process of developing and adopting urban planning documentation. Although both the Law of Ukraine “On Regulation of Urban Development” and Order No. 555 establish the same method of participation - public hearings, but they determine the various stages for conducting the hearing. According the requirements of the Law of Ukraine “On the regulation of urban development”, public hearings must be conducted after fully developed city planning documentation, and Order No. 555 regulates the holding of public hearings during the development of relevant projects of urban planning documentation. The lack of consistency between the law and the lack of a clear and well-written procedure of public participation in the process of adopting urban planning documentation negatively affects the urban planning itself.

In addition to the above, the analysis of the situation regarding public involvement in the decision-making process and the practice of holding public hearings of urban planning documentation revealed the following problems:

✓ Attraction at late stages

The current legislation provides for public involvement in proposal and comment process to the projects of urban planning documentation at the stage when the project has been already developed. All that the public can do is make small proposals for the finished project. The influence on the key positions of the project at this stage is no longer possible, as it is impossible to foresee an entirely different vision of the ways of development of the territory and its use. Public authorities responsible for the development of the draft decision have no obligations to conduct a preliminary public survey or discussion, to hear public opinion. It rises significant conflicts related to the inability of the public to significantly influence the draft decision, because according to the current legislation, any proposals should relate to specific provisions of the project, but can not provide a different solution than proposed by the project. Despite the fact that the public, through legislatively established procedures - public hearings - cannot change the draft decision and its plans for using the territory, the community has to resort to various methods - from blocking roads to physical blocking of equipment - in the struggle to take into account their interests. Unfortunately, such cases have become a systemic phenomenon. This negatively affects all parties to the conflict: the interests of the territorial community are not taken into account, distrust of public authorities increases, and an investor loses funds due to unrealized projects or delays in their implementation.

✓ The public's perception of the plans for the development of the territory has no power and can be ignored

Proposals and comments submitted to the projects of urban planning documentation, even at later stages, have the shortcoming of their consultative nature. There is no obligation the public authorities to take into account opinion and suggestions of a community (provided that such proposals do not contradict the current legislation). Therefore, there is a the public is just only heard, and public authorities simultaneously take an opposite decision.

✓ Lack of information and inability to review draft decisions, which makes it impossible to submit proposals and comments:

1) the announcement on holding public hearings does not relate to the principles of effective information and do not follow with a main target – to inform as much as possible people about possibility to make comments, and proposals. Most often, the announcement is placed in the local newspapers in the column “advertising”. Therefore, the main task to inform the widest range of potential participants is not achieved.
2) **the public is not provided with the necessary information to submit proposals and comments** to draft decisions, even in the amount provided for by legislation.

Thus, the notice on holding public hearings does not contain all the necessary information determined by the legislation (using the example of more than 30 detailed plans of territories that recently public hearings were hold in the capital, nor notification (!) had all information stipulated in Order No. 555). There is also an indication of incorrect or inaccurate information (for example, the wrong place is indicated for reading the documentation or for submitting proposals). As a result, there is no opportunity to properly get acquainted with the draft decision and submit proposals in time. All this kills the essence of the already formal public hearings, and the goal of holding public hearings is not achieved at all;

3) **inability to familiarize with the entire draft decision.** Just some general information on vision and purpose of urban planning documentation and some graphic materials (not always) are available for the public. The entire textual part and all graphic materials are not made public nowhere.

✓ **The drafts of urban planning documentations are not provided to familiarize not only for the public but also for the deputy corps.** They are not made public in full either during the discussion or in the draft issued for approval, which makes it possible, if necessary, to change the city planning documentation, even after it official approval.

Just a developer owns of urban planning documentation (all materials), even during public hearings, projects of urban planning documentation are not always transferred to the customer. Also, during the passage of the commissions in local government bodies, only brief information on the proposed draft urban planning documentation is provided for discussion to the deputies' corps, sometimes additional graphic materials are provided, but never - the full scope of a project throughout the text and graphic parts. The draft decision is submitted only the draft decision on the approval of urban planning documentation, does not include an application in the form of the entire draft urban planning documentation approved. Thus, there is a situation when **full text and all graphic materials of urban planning documentation are accessible only to a limited number of persons who are directly developing the document.** The rest - the public and representatives of the authorities (deputies and officials of the executive bodies), have only a rough idea of the document that is being proposed to be adopted. Decision on approval of urban planning documentation is made public without citing urban planning documentation to a project.

**Absence of responsibility for violations of procedures regarding public participation** and the impossibility of canceling a decision concerning the violation of such procedures negates all the public control procedures provided by the current legislation.

✓ **Violation of the order of registration and response to public proposals**

There is a negative practice when public proposals expressed in the order of public hearings: 1) are not registered and not taken into account at all; 2) along with this, proposals from persons who do not have the right to take part in public hearings are taking into account; 3) taking into account proposals submitted with violation of deadline (mainly when it satisfies investor's intentions) 4) cases of not making response regarding taking into account or not taking into account proposals 5) refuse on register proposals without any justification and without reference to the norms of current legislation, which make it impossible to accept proposals; 6) refuse to take into account proposals because they contradict the goal (vision) of the project, which the community could not previously have had an influence on; 7) refuse to register proposals without justification or explanation, etc.

✓ **The advisory nature of the conclusions of professionals and the public**

Conclusions of the architectural and urban council are also not obligatory for consideration. Therefore, the expert and
professional environment within the framework of public control also has no influence. And city planning councils do not even have the right to “veto” on certain issues or personnel appointments in the field of urban development, therefore public control through architectural and city planning councils does not work either.

✓ Absence of responsibility of bodies and officials of public authorities for non-compliance with procedures of public participation in the decision-making process. Not introduction of the principle of inevitability of negative consequences in the form of decision cancellations in case of non-compliance with these procedures

As practice shows, even in Kiev over the past two years, when there is a high dynamics of the adoption of detailed plans for the territory, no public hearings were held with strict observance even of those ineffective requirements provided for by current legislation. In regions, especially at the level of district and village, the situation is often worse: the procedure for holding public hearings is even rarely similar to that provided for by current legislation. This state of affairs is due to the fact that non-compliance with the procedure for holding public hearings, disregarding the conclusions of architectural and urban planning councils does not bear the risk of canceling decisions made (in particular, approving urban planning documentation), and there is no personal responsibility of public officials for non-compliance with the procedure.

✓ Absence of access to changes of the text made to the urban planning documentation following the results of public hearings and conclusions of the experts

According to the results of conclusions of architectural and urban planning councils and proposals within the framework of public hearings, changes are made to the projects of the urban planning documentation, sometimes significant. However, the public does not have access to the text of these changes, there is no possibility to analyze these changes, therefore, it is not possible to control what is proposed to change. Therefore, a typical situation is when one project was submitted for public hearings, and as a result of introducing changes, after public hearings, a radically different version was approved, which the public did not hear about.

✓ If the urban planning documentation is financed by an investor, respect for his interests and intentions is a priority. At the same time public and state interests often go to the secondary plan or are ignored in general

The task for documentation development is prepared with the participation of an investor, and the public cannot in any way, even within the framework of proposals, influence the text of the development task. This makes public control and its influence impossible at all. Also, the developer always listens to the wishes of an investor, because he accepts work and pays for it, so all proposals from the public that are contrary to intentions of an investor are automatically rejected. In addition, taking into account not making investments in budgets for the development of urban planning documentation, territorial planning is not aimed at providing comfortable living conditions and the development of settlements, but at meeting the business interests of an investor.

✓ The issue of temporary buildings placing is absolutely out of public control

Chaotic, uncontrolled placement of temporary facilities is observed in various parts of cities, but they are most common in residential areas and areas intended for public buildings, squares, within the red lines of urban transport communications, in areas adjacent to public transport and the metro. This creates a great discomfort for residents, but the public is deprived of any influence or control on this issue.

✓ The Institute of Public inspectors in the field of architectural and construction control does not work in practice
Analytical Note No 14

Norms regulating powers of public inspectors and their participation in conducting inspections are not used in practice; public inspectors are not involved in inspections. So, there is a Regulation on groups of freelance (public) inspectors of the state architectural and construction inspection, housing and communal services inspection, approved by the Order of the Ministry of Regional Development No. 305 dated June 13, 2013. This Provision provides for appointment procedure and requirements for public inspectors in the field of building inspection, determined their legal status, tasks, rights and obligations. However, in the Basic Law (“On Regulation of Urban Planning”) the institute of public inspectors is completely absent. At the same time, Article 19 of the Constitution of Ukraine provides for the need to determine the powers and methods of actions of state bodies and local governments at the level of law. Therefore, SACI authorities, due to the lack of relevant provisions at the level of the law, are deprived of the opportunity to use the norms of the said Provision and involve public inspectors in inspections and joint work. Therefore, the above-mentioned Regulation is valid, not canceled, but does not apply. In addition, even these “non-living” norms do not provide opportunities for real inspection by public inspectors both in inspection and monitoring the legality of actions of SACI bodies.

✓ Absence of public registers of urban planning documentation and other documents in the field of urban planning

Urban planning documentation of the local level is not always published by the customers of such documentation, but even published documentation on the websites of local authorities does not allow to analyze this documentation and work with it, since the format of documents is often not available for reading, graphic materials are placed in a too reduced form without the possibility of approximation and familiarization.

Documents issued in the field of urban planning are also not public, especially if these documents are issued in the order of administrative services. Register of urban planning conditions and restrictions (hereinafter - UPCR) is conducted not everywhere, but even where registries are created, they are being filled slowly or not at all.

The register of documents that give the right to perform preparatory and construction works has limited access and does not allow searching for documents on the construction object (the address of the land plot), that is, essentially not usable. In addition, this register provides only a list of documents, but their content is not made public.

Design documentation, expertise of construction projects are not public at all. There are significant issues for familiarizing with these documents for the purpose of inspection even for the State architecture and construction inspection (SACI). Sometimes SACI waits for the design documentation from the developer for six months to inspect, while the construction continuing to be built.

There are no land plot registers can be used for construction that increases the level of corruption and makes impossible the public control.

Conclusions:

Public participation in accordance with the above legal regular acts is quite formal, the public is attracted at later stages, when the draft urban planning documentation is already ready, and the public cannot influence its vision or principal provisions. Taking into account the violation of public participation procedures in decision-making process, a strong belief was formed in the public that the opinion of ordinary citizens would not be taken into account anyway, and this in turn gives rise to even stronger confrontation and causes conflicts over any new construction.

A critical analysis of the situation shows a large number of issues. The main reason of those is the absence of effective mechanisms of public control and not
involvement of the public in decision-making in the urban development field.

The encouragement of public participation and the real participation of the public and its individual members in the process of urban development from the initial stages will ensure the least conflict of the whole process, relieve tension in society that has reached a critical point, ensure mutual interests and benefit everyone: public authorities, society business. After all, only if public interests are taken into account, conflict-free construction is possible, which will contribute to the development of the economy and ensure comfortable living. Therefore, it is necessary to shift citizens' focus from protests against building to a citizen as a participant in the development of a settlement.

Now the public is ready to take responsibility and be actively involved in public control. Sociological studies show that an absolute majority of citizens consider it necessary that the actions of the authorities be controlled by the public. Therefore, the issue is power: political will is needed for changes in legislation aimed at introducing effective mechanisms of public control and public involvement in decision-making process in the field of urban planning.

PROPOSALS

The main issues covered in the first two parts need to be eliminated at the legislative level. This analytical note proposes main directions of such work.

Currently there is a large number of definitions of "public control", based on various methodological approaches. We give the most stable definition of the concept, which most fully reveals its essence. This work is not intended to find a single and most correct definition of the concept of "public control", while at the same time not outlining its essence, it is impossible to define the procedures and tools of public control. Therefore, we represent the most well-established definition of this concept, which most fully reveals its essence, in the section “Glossary of the concept of public administration in the field of construction”.

Unfortunately, as noted earlier, the institute of public control in the field of urban planning has not yet found a clear and proper legislative framework in Ukraine.

Consequently, the first necessary step at the level of law is to consolidate public control, giving it formal legal nature. Therefore, the Law of Ukraine “On Regulation of Urban Development” (hereinafter also referred to as the Law) needs to be supplemented with a new section "Public Control in Urban Development", which will define the concepts, forms and mechanisms of public control in the field of urban development activities.

Draft Law No. 6403 does not provide a legal definition of public control and does not establish this institution as a whole. However, this draft law details some forms of public control. It provides for the elimination of ambiguities of the current legislation, the separation of definition of "public debates" from the "public hearings" in the urban planning documents. Also it details each of these procedures at the level of the law, they are extracted from the sub-normative -legal regulation, which is important, as it will make local self-government bodies follow the requirements of the law but not their own decisions and orders (currently the practice is exist, unfortunately).

Public control as a means of ensuring legality in the activities of public authorities is significantly different from other types of control. This distinction is primarily about the powers, the legal force of the decisions and the consequences of the control measures taken. In particular, at the legislative level there is generally no regulation of the powers of subjects of public control. If these powers are defined (for example, for freelance (civil) inspectors of state architectural and building inspection), then they do not have the power, and decisions based on the results of public control are not mandated and have only a recommendation nature. At the same time, public authorities are not obliged to eliminate or prevent violations detected during public
inspection. Since the Constitution of Ukraine grants citizens the right to take a real part in public administration, the results of such participation should not be ignored by the authorities, which should reflect the necessity of taking into account the results of public control and taking measures aimed at eliminating the revealed violations. In particular, for this purpose, in the Law, it is necessary to determine for each form (type) of public control the mechanism for taking into account the results of public control, the procedure of taking measures of architectural and construction Bodies, receiving public information about these measures with the possibility to verify their legitimacy. Below are the main suggestions for resolving this issue by forms of public control.

➢ Public Participation in Decision Making

The possibility of real public participation in decision-making is consistent with constitutional principles and is a fundamental requirement on the way to the introduction of transparency of power and the principles of people-centeredness in the actions of public authority. In addition, public involvement in decision-making processes helps to establish a dialogue between the government and society, increases the level of trust, helps better achieving goals, minimizes implementation delays and at the same time avoids the additional costs associated with public protests and inability to implement the approved decision.

At present, public participation is only a form of informing about draft decisions or their consequences and has consultative nature. So public control cannot be effective, because there is no possibility of influencing the decision-making process or its content. Therefore, fundamental changes are needed in the approaches to the issue of public participation in decision-making.

1. It is necessary to involve the public in the decision-making process at the earlier stage: when the ideas and vision of the draft decision are formed, the priorities, goals and directions of the territorial development are determined. Before presenting a draft plan, firstly the community must be interviewed about its own ideas. The public should speak on its basic mission and priorities (for example, the community sees the development of cycling as important for itself, then all development projects must necessarily provide for the construction and development of a cycle road network, or the community wants to significantly increase the percentage of common green spaces in the village, then a rate of landscaping can be established more than introduced by building codes and standards, etc.). Also, the community may decide on certain restrictions: the maximum number of stories in the settlement, the prohibition of glazing of balconies in historic areas, allowed colors for walls and roofs of buildings in the historic area, the prohibition of re-profiling and reconstruction of preschool and education institutions on any other constructions without preserving the main function, etc. These rules (mission, priorities) and restrictions should apply equally to all subjects of urban planning, as well as be public and known in advance, so that each subject of urban planning is familiar with the general rules and restrictions that exist in this territorial community before formulation of development goals. According to the general principle, a community, defining a mission or restrictions, cannot make worse the situation regarding rights and freedoms of a person and a citizen (for example, absence of ramps, a decrease in the level of greening or an increase in the density of construction than provided for by building norms and regulations).

The mechanism for implementing this approach has already been introduced at the level of the Draft Law No. 6403. Specifically, public debates and public hearings regarding the taking into account of public interests in the field of urban development begin from the moment when the decision of the local council is officially disclosed to develop the relevant documentation and cease after approval of the documentation on spatial planning. The bodies and persons responsible for organizing public hearings and discussions, consideration of the proposal are also identified. However, the Draft Law No. 6403 concerns only proposals for developing documentation on spatial planning and local norms for building regulation but not
all decisions of state authorities and local governments in the field of planning of territories. Therefore, it is necessary to provide for the public to voice not only about the intentions of developing city-planning documentation in the new section "Public control in the field of urban development". But after the authority announcing on the development of urban planning documentation, the opportunity to submit proposals from the public on priorities, basic principles, conditions and restrictions, which should be observed in the development of urban planning documentation, which is submitted for discussion, as well as it will become mandatory for lower level of urban planning documentation.

After identifying certain key points from the results of the above activities, it is possible to go a future project discussion in working groups with the support of experts. Such discussions can be implemented in the form of conferences, presentations, roundtables and other public events, where visions and proposals of a narrower circle of specialists in the field of urban planning will also be collected.

And only after that the next stage can be transferred to the synthesis and the formation of the draft decision itself, taking into account the proposals presented. The draft decision itself in the future should also be made available to the public for public comment or public hearings (depending on the type of document).

It is also important to foresee that, in case of amendments to the document as the results of public debates or public hearings, the project should be re-submitted to the public debate (hearing).

This approach will diminish possibility of conflicts and planning will take into account interests of citizens.

2. The public must be given more opportunities for influence: not only the right to express opinions, but legislation must ensure that the public will be heard that suggestions and visions of the community regarding their development paths will be taken into account. To do this, the following is required in the Basic Law:

- All public offerings should be documented and public (become public);
- All the citizens' proposals must be given a reasoned response;
- All proposals of citizens that cannot be taken into account must be given a reasoned refusal, with reference to the norms of the current legislation. There can be no refusal to accept the proposal from the public based on discrepancy of the idea or intention (as is widely practiced by local self-government bodies now);
- Registration, consideration and generalization of proposals (comments), as well as providing answers to them, should be carried out by the customer of the documentation or decision-making body (on other decisions in the field of urban development);
- Registers of proposals, as well as tables of proposals and responses with consideration / non-consideration (with justification) must be made public on official sites of the bodies that are the customers of the documentation or that make the decision;
- To provide for unified requirements for the website structure of the state and local authorities on placing on these websites the section "Public control", where, among others, there will be subdivisions "Public debates", "Public hearings". The information of these sections will become public: decisions of projects, public proposals, tables with the results of the proposals processing, the timetable for the projects, information about each actual stage of work on the project of urban planning documentation or a draft decision in the urban development sphere;
- The Law should stipulate, "State and local authorities are obliged to take into account proposals of the public if these proposals do not contradict the requirements of the legislative norms and supplement the draft by legal mechanisms and a description of the practical implementation of such
proposals. State and local authorities are obliged to take into account the comments of the public if the draft is contrary to the current legislation, state or civil interests, and requirements of higher-level urban planning documents or violates the rights and interests of citizens by making appropriate corrections to the project."

It is also necessary to involve the public in jointly developing proposals and draft decisions. In appropriate cases, involve professional community and target groups in the development of documents. These may include joint working groups, round tables with representatives of the public, the professional environment and the developers.

The greater intensity of public involvement, the greater is its influence on decision-making and the less conflicts arise when making such decisions. Therefore, overcoming most of the conflicts that arise now in Ukraine in the form of public protests against almost every new construction, because it is needed to move public participation from the later stages to the initial stage, when the idea, vision and priorities of territorial development are just being formed. These principles have been implemented in Draft Law No. 6403, which has been submitted for second reading. In particular, as indicated earlier, the project expanded the possibility of public participation in the decision-making process and introduced public participation at the initial stages. But, unfortunately, these changes do not provide for the necessary intensity of public involvement in decision-making processes.

3. Public participation in the decision-making process should be properly prepared, and the public is provided with the necessary information. In addition to meeting the formal requirements stipulated by law, public authorities should additionally use other methods that will improve information and facilitate the involvement of all target groups and the wide range of people whose issues affect or may affect decisions. Therefore, the Law should provide for the obligation of state and local authorities to use two additional types of informing the public in addition to fulfilling the basic requirements (e.g. distribution of booklets, brochures, announcements in the media, ad placement, publicity on the page in public networks, etc.). The type and method of additional information should be chosen by the public authority itself, depending on the type and level of documentation, the nature of the decision and be based on the best solution of communicating to the widest audience. At the same time, the forms and methods of such additional information obligatory must be indicated on the official website of the public authority.

4. There should be a clear responsibility of public authorities and public officials for non-compliance with public participation procedures in decision-making processes. As a result of that will be the abolition of such decisions only on the base of non-compliance with these procedures and even in the absence of other violations in the decision-making process. So, now from more than 10 claims about the cancellation of detailed plans of territories (hereinafter referred to as the DPT) in Kiev due to a violation of the public hearing procedure or not to hold a public hearing in general, not a single DPT has been canceled, because the current Ukrainian legislation does not clearly directly related to the legality of the decision and requirements for public participation in the adoption of such a decision. Therefore, the mandatory element of the lawfulness of the decision in the field of urban development should be the strict observance of the orders and procedures for public participation in the decision-making process. Therefore, the Law should provide for the obligation of the state and local authorities to report on violations or self-disclosure of violations of the orders and procedures for public participation in decision-making process eliminate the violations. In case of impossibility to eliminate violations, again organize the public participation in the decision-making process (public hearings, public debates). In addition, the law should contain a clear provision that decisions taken without regard to the interests of the public,
or in violation of the procedure for conducting public debates (public hearings), or without such a procedure in general, are illegal and invalid. Such decisions are the subject to cancellation of abovementioned grounds in court even for absence of other violations in decision-making process.

In addition, at the legislative level, it is necessary to establish effective mechanisms for bringing to legal responsibility the perpetrators of violations of legislation in the field of public hearings and public control in general. For that, the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine should provide for the liability of officials for violating the legislative requirements regarding public participation in decision-making processes in the field of urban development.

5. The process of developing and adopting drafts urban planning documentation should be transparent and public.

It is necessary to ensure publicity and promulgation of the entire project of urban planning documentation during all stages of the project: from the formation of ideas to the document that is submitted for approval. The public should always have access to all versions of the project in a form suitable for it, as well as any amendments that are made. The Law should provide for that both draft documents and approved urban planning documentation should be provided for free access in paper form in the building of a public authority which is a customer of city planning documentation, without limiting access to such building and throughout the working hours of this body. Also, it is obligatory to fully publicize on official websites of customers of city-planning documentation in electronic form in a readable format.

In addition, the Law should be supplemented with the provision that urban planning documentation approved by a decision of the public authority should be an integral annex (in full) to such a decision and be made public with this decision. Additionally, the Law should provide for a procedure for public re-debates (public hearings). If it is necessary to amend the draft urban planning documentation, because of the conclusions of the architectural and urban council and / or public hearings (debates). Such a project, taking into account the relevant changes, is again to be provided to the Architectural and Urban Development Council for a conclusion and to be passed by a new procedure for public debate (public hearings).

6. The electronic public hearings should be introduced in the Law as an additional form of public control and participation in the decision-making process.

The rapid pace of the information technology development enables citizens to simplify, optimize and provide accessible mechanisms of public administration. The mandatory and optional (non-alternative) form of public hearings should be electronic public hearings that will take place during the same period. In Europe, “E-governance” is getting wider for using.

Information and communication technologies existing in Ukraine today allow organizing public hearings at the proper level in the “online” mode, voting for electronic petitions, projects within the public participation budget via the Internet are also tested and successfully used in Europe. E-government electronic control.

Electronic public hearings will provide more intensive involvement of all stakeholders. Also, the advantages of the electronic procedure of public hearings are the convenience of familiarization with documents and the provision of proposals, efficiency, the opportunity to express your opinion at any time and in any place, as well as during the required time.

7. Public control through participation in decision-making process is provided not only in the form of public hearings, but also through participation (presence with the possibility of giving the floor) in commission meetings, architectural and town planning councils, working groups, etc. to discuss draft decisions in the field of urban planning. The Law of Ukraine “On Local Self-Government in Ukraine” requires the introduction of a unified procedure for the early
disclosure of draft decisions, agendas of commissions, working groups, councils meetings, etc., to make the disclosure of these documents obligatory and the responsibility of officials for non-fulfillment or improper fulfillment of these requirements.

8. Financing of city-planning documentation development cannot be carried out at the investor’s funds. Territory planning is a matter of state and public interest, and financing of all levels of city planning documentation should be carried out at the expense of state and local budgets. In addition, it will promote a balance of interests and people-centeredness in territorial planning, will ensure the priority of integrated development of cities over the interests of individual business groups.

The draft law No. 6403 stipulates the implementation of the mentioned proposals, but these provisions have not yet reached the law, while there is resistance to their adoption.

In addition, the Law should provide for partial financing from the state budget for the development of urban planning documentation at the local level. At this stage in Ukraine, often, the lack of funds in local budgets is an obstacle to the urban planning documentation development. It slows down the development of communities, especially small ones.

9. The issue of the placement of temporary structures is into the field of improvement, but should receive an effective mechanism of public control and influence on decision-making process. The domination of temporary structures in settlements directly affects the use of the territory, the comfort of living in settlements. At the same time, this issue remains completely outside the control of the public. Therefore, it is necessary to introduce effective mechanisms for public participation in decision-making on: the placement of temporary structures in certain territories; type of use of temporary structures; control demolition of temporary structures.

Now these issues are not regulated at the level of the law, but at the level of regulations and procedures adopted by local councils. This regulation is not of the same type. However, no matter how local councils rule this issue, one trend can be traced everywhere - the lack of public participation in its resolution.

That is why in the Law of Ukraine “On the improvement of settlements”, it is necessary to make system changes, providing for mechanisms of public control similar to the urban field. Because rights and obligations of citizens are restricted regarding participation in the process of solving issues.

In the short run, before making system changes, at least the following changes to the Law of Ukraine “On the improvement of settlements” should be made:

1) to supplement Article 17 “Rights and obligations of citizens in the field of improvement” with the provisions, providing for the right of citizens:

- to participate in the developing of plans for the social and economic development of settlements and measures for the improvement of their territorial community by providing proposals;
- to participate in the discussion of draft laws and other regulatory acts on the improvement of settlements by providing suggestions and comments;
- to demand the stopping of works performed in violation of the rules of improvement of the territory of settlements or lead to its misuse. Such a request may be directed both to the person who breaks the rules of the improvement and to the local authority responsible for the maintenance of the improvement, which is obliged to take measures for the correction of violations and to inform about the measures taken by to the applicant;
- to provide suggestions on the placement, demolition of improvement objects, including temporary structures;

2) supplement the Article 20 ”Organization of the improvement of settlements” with the provisions of the following: “Decisions of local bodies of executive power and local self-government on the improvement of the territory of a certain settlement should be taken with due consideration of public interests and with
preliminary public debate of draft decisions of these decisions."

10. In addition, **other issues related to the improvement of the territory should be subject to public control**: the legality of issuance of documents in violation of the improvement; time and terms of improvement violations; compliance with requirements for improvement by balance-holders, etc. However, all these issues require a system solution or the introduction of appropriate changes to the Law of Ukraine "On the improvement of settlements". It has to be supplemented with a new section "**Public control in the improvement field**, or by adopting the Urban Development Code, which will include public control in wider meaning than urban development, but also in the field of improvement, architecture, protection of cultural heritage, the environment, etc.

➢ **Participation in public councils and advisory bodies**

This form of public control, as enshrined in current legislation, also shows its ineffectiveness. This is due to the absence of binding conclusions and decisions of these bodies, as well as the unwillingness of the authorities to cooperate even with the professional public. By analogy with the previous form of public control, participation in public councils and advisory bodies should be intensified. A clear mechanism for implementation of the decisions and recommendations for these bodies should be provided for, as well as giving them a real power to influence the appointments in the field of urban developing. At least at the level of law "Veto" regarding the appointment of certain candidates, the adoption of certain decisions and the declaration of non-trust to the local authorities responsible for urban development, architecture and inspection). It is necessary to provide for amendments to Article 20 of the Law. The part 2 of the Article shall be amended as follows: "The results of consideration of urban planning documentation by the architectural and urban development council are obligatory taken into account by the developer. The developer must improve the draft urban planning documentation in order to implement the conclusions and recommendations and eliminate the shortcomings provided by Architectural and Urban Development Council. After completing the conclusions and eliminating of the shortcomings, the draft urban planning documents are re-submitted for consideration to the Architectural and Urban Development Council."

Since Architectural and Urban Development Council are a professional form of public control, their conclusions and remarks are very significant. Thus, the Law (Article 20) should be provided for the following powers:

«**Architectural and Urban Development Councils** give conclusions and comments on planning, constructing and other use of territories within the limits of historical areas of settlements and protection zones of architecture and urban development monuments taking into account the conclusions of local authorities on issues of cultural heritage protection. Implementation of the conclusions and removal of comments rests with the developer of the documentation.

Architectural and Urban Development Council considers architectural and spatial planning decisions of construction projects, the realization of which has a significant impact on the development and formation of the construction of settlements, objects located in the monuments protection zones of or may have a negative impact on the territory and nature reserve fund. The conclusions of the Architectural and Urban Council given to such construction projects must be implemented, and the comments resolved by the developer of the project."

It is necessary to provide for the broadcasting of council meetings according to the model of broadcastings of commissions of local self-government bodies, to ensure the publicity of the Architectural and Urban Development
Council activity. As well as the creation of a video archive of meetings of the council on the official website of the local self-government body.

In general, the government needs to make steps regarding advisory bodies in the form of establishing closer cooperation with community councils and advisory bodies as a platform for professional discussion of issues and solutions of problems, to establish partnership between them. In addition, public councils and advisory bodies should monitor the general trends of change in cooperation between the government and the public, identify problems in time and provide suggestions to authorities for their elimination.

At the same time, it is necessary to introduce a clearer and more transparent mechanism for the election, accountability and recall of members of public councils and advisory bodies without the decisive influence of the authorities on this process. In the process of choosing representatives to these bodies, modern technologies should also be used to ensure that the largest public circle and the transparency of the procedure are attracted to the vote (choice).

At the moment, the legislation is written out in such a way that a formatted architectural and urban planning council (hereinafter - AUPC) is fully under control by local government authority that deprives the professionals of an independent voice in decision-making. Therefore, the procedure for the formation of an AUPC should undergo drastic changes. At least fifty percent of the total number of members of the an AUPC should be formed from specialists of the construction, urban planning and architecture field, the other part from leading scientists, researchers, experts and highly skilled practitioners in the field of protection of cultural heritage and environmental protection. The election of members among specialists is carried out Internet voting of the public, ensuring publication of protocols of such voting and its official results on the official website of the body where an advisory body is created. A successful example of the implementation of such a vote in Ukraine is the election of members to the Council of Public Control at NABU. This method ensures the openness and transparency of the election of board members, as well as the maximum public participation in voting. In addition, such an election procedure will eliminate the factor of AUPC’s controllability and the possibility of forming an advisory body among the “loyal” candidates to the authorities. The only function that will be performed by the body, at which an AUPC is created, is to check whether candidates of an AUPC have complete higher education in the fields indicated above. This will ensure professional control of the public in the field of urban development, as well as make it transparent and independent.

➢ Public participation in inspections and the work of public inspectors (within the framework of cooperation with SACI)

The public participation in the inspection conducts can be divided into several independent stages: the initiation of inspection; direct participation in the inspection; analysis and control of the inspection results; working out the proposal in order to prevent the detected violations in the future.

Each citizen can initiate an inspection by applying to the architectural and construction Bodies. Currently there is no possibility for the applicant to monitor the taken action as a result of such an appeal: at best, the applicant receives a message that the inspection will be carried out; sometimes an answer is given about impossibility of verification due to lack of authorized representatives at the site of the control object. In order to increase the effectiveness of public control and reduce the possibility of a corruption component, the applicant should be able to attend the audit. This applicant's right must be provided in the Basic Law. Firstly, it provides an opportunity to check whether an inspector actually visited the site, secondly, it eliminates the possibility of unfair developers to “negotiate” with the inspector during the inspection or the inspector’s ability to demand a bribe. Thirdly, the presence of the applicant ensures the publicity of such an inspection and causes the inspector to be more careful in the performance of his functions and to abide all procedures.

Therefore, the applicant must be warned in
advance about the inspection, but is not required to participate in it. This provision should also be reflected in the Law.

At the same time it is reasonable more often presence of public inspectors during inspection.

The public Inspectors Institute should be established in the Law in the section of "Public control in the field of urban development" in the section of "Public inspectors of the architectural inspection". The main powers of inspectors of architectural and construction inspection, defined by the current (but not valid) Regulations on groups of freelance (public) inspectors of the state architectural and construction inspection, inspection in the sphere of housing and communal services, can be retained by public inspectors, but with other, more effective powers listed below.

In addition to the institution of public inspectors it is also necessary to provide in the law that the public inspector's presence, along with the applicant, during the inspection, but not only to protect the rights and interests of the applicant, but the interests of the whole public, and moreover, the professional protection. A citizen of Ukraine who has a higher education or work experience in the field of construction, urban planning and architecture can become a public inspector of the state architectural and construction inspection. It means that a public inspector provides professional public control. Therefore, the rights and tasks of a public inspector during the inspection should be broader: the opportunity to get acquainted with documents and receive their copies along with an inspector of public authority, make suggestions and advice to an inspector during the inspection, sign documents on the results of the inspection and get their copies, etc. Also, a public inspector should have the right to make a complaint about an inspector in case of detection of violations of the current legislation, non-compliance of with procedures by an inspector, inadequate level of professional training. In view of the decentralization of functions, the institute of public inspectors should cooperate not only with the SACI, but also with local architectural bodies that also requires legislative changes. The above powers of public inspectors should be enshrined in the law.

One more significant issue as non-accesses to the construction site and absence of an authorized person can be solved by public inspectors. Legislative attempt to reduce the number of non-accesses to the construction site for inspection by increasing fines and possibilities to annul the permit for construction work in case of repeated interference with the inspection did not solve the problem. Because for the drawing up the act of non-access for inspection requires the presence of the authorized person of the construction site and its signature in the act. Therefore, it is necessary to provide an opportunity to draw up an act of non-access by the inspector and public inspector. For that, the law should provide for the right for both an inspector (SACI or local architectural and construction body at local levels) and a public inspector to make such an act of non-access. Now neither one nor another do not have such power. Although the Law stipulate the responsibility of the developer for the repeated refusal for inspection in the form of cancellation of the building permit. But this violation is impossible to fix. The implementation of these proposals to the Law will help reduce the number of non-admission to inspection, because it will stop to ensure impunity of a developer, and mean the risk of revoking the building permit, which is much worse than the penalty for violations that can be detected during the inspection.

The applicant and public inspector should be able to familiarize themselves with the documents drawn up on the results of the inspection, information on the measures taken and the bringing of the perpetrators to responsibility. At the same time, public inspectors should be actively involved in working with the architectural and construction inspection Bodies in order to work out proposals aimed at preventing and preventing violations of the actions of inspectors of the architectural and construction inspection, improving the quality of their work, and preventing and preventing violations on construction sites.

In addition, it is necessary to provide for clear powers of law enforcement authorities
Analytical Note No 14

In order to protect the inspector, assist the inspector in carrying out the inspection and access to the object of inspection. By analogy with the provisions on state and private enforcement, it is necessary to provide for appropriate rules on cooperation between the police and inspectors in the field of architectural and construction inspection in Article 23 of the Law of Ukraine "On the National Police", namely:

"The police, in accordance with the tasks entrusted to it, shall take measures to ensure public security and order during the inspection by the inspector of the architectural and construction inspection of the construction project, verification of the execution of orders, the enforcement of court decisions in the urban development field and decisions of the architectural and construction bodies. Also takes measures aimed at elimination of threats to the life and health of the inspectors of the architectural and construction inspection, public inspectors and other persons involved in the inspection. The police brings the authorized person of the developer in case of the inspector non-access to the construction project according to the enforcement proceedings, searches for wanted persons authorized of the developer in cases stipulated by law or court order.

Involvement of police officers in order to facilitate the inspection by the inspectors of architectural and construction inspection is carried out by the decision of the head of the Architectural and Construction Body, which is sent to the head of the territorial police body at the place of carrying out the appropriate inspection. Refusal to recruit police officers is allowed only on the base of involving the personnel of the given territorial police body in order to stop the group violations of public safety and order or mass disturbances, as well as to overcome the consequences of large-scale accidents or other major emergencies."

➢ Control over the activity of subjects of authority in the field of urban development (decisions made by them, issued documents, refusals to issue documents)

In order to ensure this kind of control, the maximum publicity in the actions of the authorities is necessary, which will ensure transparency and reduce the corruption component.

Therefore, the public should be able to control the legality of the decisions taken in the field of urban development. Such as, the availability of grounds for issuing / refusing to issue documents (UCR, permits), the completeness of the required package of documents, the authenticity of documents (often the public informs SACI of false documents, which becomes a ground for cancellation of permissions), etc. For this, the public authority should not only store the documents submitted by the applicant for obtaining urban planning conditions and restrictions (UCR) or permits for construction work, and documents submitted by applicants for obtaining initial data and permits must be public. At present, the public cannot check the actions of the bodies of architectural and construction inspection in issuing / refusing to issue a permit for the execution of construction work, even on a formal basis: the completeness of the necessary documents for obtaining a permit, the authenticity of these documents, as the documents themselves are not made public. Moreover, the bodies of city development and architecture do not at all store the documents submitted for the receipt the UCR, but return them to the applicant together with the issued USR. In this situation, not only the public, but even the supervisory authority, is deprived of the opportunity to check the legality of the decision to issue the USR and bring the official to responsibility, which opens up unlimited opportunities for corruption.

And although the public will not be able to participate in the issuance of documents, it will be possible to carry out further monitoring (public monitoring), and in the case of detected violations, to address a complaint against such actions (to the court, to the supervisory body). Without publicity of the above-mentioned documents, the public will not be able to exercise control (analysis for compliance with the law), to detect violations, to appeal against unlawful actions and to cancel issued documents.

➢ Access, analysis and evaluation of information in public registers and
cadasters as a separate type of civil monitoring and public control

For the purpose of effective public control and reduction of the corruption component, public access to documentation should be provided not upon request for a specific object, but through access to public registers of relevant documentation. The very fact of the publicity of these documents, not only a list presence in registries, but also copies of documents and the reasons for their issuance, is already a form of control, because it provides free public access and analyze documents and identify violations, that means to carry out public monitoring. In addition, promulgation contributes that clearly illegal decisions by subjects of power will not be taken, because it will be impossible to extradite an illegal document or to hide it without extra publicity.

So, public registries should be created, and access to existing ones should be open and unrestricted.

Register of urban planning conditions and restrictions. Its creation is stipulated by the current legislation, but in practice such registers are not filled up, are placed on websites of local authorities, which complicates the search. In the future, it is necessary to create a unified register based on the Minregion, where the registries of the UCR of settlements will be collected. It will provide a convenient search, as well as give the Minregion and the public the opportunity to control the subjects of authority that does not fill the register, as well as the legality of the decisions.

Register of documents that give the right to perform preparatory and construction work. Although its functioning has also been re-enacted by current legislation, the availability of the registry is limited, it is impossible to obtain information at the address of the construction site (land plot) in which it is erected. In order to find information, you need to know the issuing body, month and year of issue, type of document (message, declaration, and permission), and class of consequences. Therefore, it is necessary to remove all these filters and to ensure that there is free access at the address of the construction project (land plot). This will make public control more efficient over state, because any community and individual can quickly check the legality of each construction in their places of residence / stay and react: to report to the inspection authorities in the absence of documents case that give the right to perfume construction or preparatory work . This will increase not only the effectiveness of public control, but also cooperation with the bodies of SACI (architectural and construction inspection).

Register of design documentation and expertise of construction projects. The absence of access to this type of documentation makes the state and public control impossible. Such a public register will enable the public to verify immediately which project is planned on a particular land plot, on which there are questions or conflicts. The absence of such documentation in the register will facilitate the prompt identification of unauthorized constructions by the public; make this process simple and effective. It will also promote cooperation between the public and the SACI in identifying unauthorized constructions. Also, public control with the help of such a register will be able to provide operational detection of deviations from the construction project in the early stages, and not at the stage of acceptance of the building for operation by the authorities of the SACI.

In addition, even architectural and construction authorities often cannot inspect because of the absence or refusal to provide design documentation (constructions built on the base of notifications and declarations). There is not even talk about the possibility of public control. At the same time, the registry will provide such an possibility.

Publicity of this information will also contribute to fair abidance of requirements by designers and experts, will provide an opportunity for public control over the compliance of findings and documentation with the requirements of current legislation. In addition, the register will relieve customers of temptation to falsify documents. There are a lot of cases of
submitting fake project documentation, falsified by UPCR for obtaining permission from the SACI. The presence of the above registries and their proper functioning will allow the SACI to verify UPCR authenticity, project documentation and expertise, when issuing a permit. Currently Dhabi decides on the basis of copies of documents without being able to verify their authenticity. Public control, in turn, will ensure the proper performance of duty to verify the accuracy of information by the authorities of the SACI.

Therefore, in the future it is necessary to create a unified register of project documentation and expertise of construction projects based on the Minregion. As well as to oblige the design and expert organizations to fill this register with the use of an electronic-digital signature. Absence of design documentation in the register should be the reason for refusal to issue a permit.

Register of urban planning documentation - it is necessary to create a single register based on the Minregion, and not on websites of local authorities, where urban planning documentation is difficult to find sometimes. It will simplify the search, unifies the requirements for the order and format of the placement of city-planning documentation. Currently it is located in such a format, which excludes the possibility of its analysis. This makes public control impossible. The obligation to disclose documentation remains the responsibility of the customer, however the public will have the possibility to see which settlements and territorial communities have not adopt urban planning documentation, also which local authorities do not make documentation public and make a complaint about elimination.

Register of land plots that can be used for construction. At present, only the authorities are duty to provide written information on the availability of land plots that can be used for construction, upon requests of individuals and legal entities (Art. 24 of the Law). But even on request public authorities do not provide complete information, but only about a specific land plot: can it be used for construction. However, it is difficult for a potential investor to choose a land plot if he does not have a list of vacant plots. Because of this, when appealing to local authorities there is always a corruption component, because an official is very easy to "hold" or "hide" a more attractive land plot and offer it to the investor with a benefit to himself. A public list of these plots will eliminate this issue. In addition, the public will have an opportunity to express their vision to the authorities of using a free land plot, before the investor appears and construction has begun. It can be for the construction of new facilities, to determine the purpose of the object, or even to offer landscaping of the site and use it with for recreational purposes, expressing categorically against the transfer of land for development. This will not only improve the dialogue between the authorities and the public, but also take into account the interests of the community and prevent a lot of conflicts related to the new construction and will save the investor from the potential risks of community disagreement with the new construction. Since even before the appearance of an investor, the public will have information about the possible uses of a land plot and the nature of construction, therefore, they will be able to express all their remarks even before the land plot is given for development. At the same time, the transfer of a land plot for construction will be carried out with certain conditions and restrictions, which the company has determined in advance and which are mandatory for any investor.

To the abovementioned list of registers, it is also necessary to add a register of permits for the placement of temporary structures, violation of the improvement, since the town-planning activity is not limited only by new constructions. Any work on the reconstruction of buildings, squares, as well as repair and construction of the engineering and transport network affect the spatial planning and comfort of the inhabitants. Therefore, they also have the right to access to this information and the right to public control in this area.

In this context, it is impossible to ignore the real creation and filling of the urban planning cadaster for all settlements, its integration with other registers (land, property rights, cultural heritage objects, ecological, water, forest, and above-mentioned registers).
The establishment and proper functioning of the abovementioned registers and cadasters, as well as their integration, will become an effective mechanism for civil monitoring.

The public will have the whole needed information for analysis and control. Also the public will be effective in urban planning monitoring, because anyone will be able to notice inconsistency between urban planning documentation, data in public registers and cadasters, real conditions on a site, appeal to local authorities with complaints, report about unreliable promulgated information (comparing with initial data), about inconsistency between issued documentation and promulgated, etc. In general, numbers of the public and its active members are always bigger that inspectors of SACI who can not inspect and monitor on a regular basis.

Therefore, public participation in urban monitoring will consist of:

- analysis of data from public registers and cadasters, other public documentation, detection of violations in issued / registered documents, revealing of inaccurate information, notification of violation;
- analysis of the urban development situation at local levels, notification of violation of the requirements of urban planning; documentation and other norms of urban planning legislation during the construction;
- notification to the authorities of the discrepancy between the data in the public registers and the cadasters with the actual situation at local levels;
- control of taking measures by the inspection bodies on the results of messages (appeals) and calling guilty persons to account;

Priority of professionalization of public inspection should not be above striving of increasing its affectivity. Powers of professional environment should also be increased. Only the professional inspection of the public will not be effective, it will not represent the interests of the public as a whole, but only one group. Professional public control (public inspectors, councils, civil organizations, advisory bodies) must exist in parallel with general public control and civil participation in decision-making processes.

Authors:

1. **Volodymyr Gusakov** (Honored Architect of Ukraine, Ph.D. in Engineering Science, twice winner of the State Prize of Ukraine in the field of architecture, President of the National Union of Architects of Ukraine)

2. **Oksana Medvedchuk** (Honorary Worker of Construction and Architectural field, Postgraduate Student, Senior Lecturer of the Public Administration Department of the Interregional Academy of Personnel Management, Head of the Department for Regulatory and Methodological Support of the Interstate Guild of Engineers and Consultants)

3. **Oleksandr Nepomnyaschy** (Honored Builder of Ukraine, Dr. hab. in Public Administration, Professor, President of the Interstate Guild of Engineers of Consultants)

4. **Oleksandr Chyzhevsky** (Honored Architect of Ukraine, Ph.D in Architecture, Vice-President of the National Union of Architects of Ukraine)

**COVERAGE OF THE PROBLEM**

The important task of state regulation in construction is the realization of the constitutional right of citizens for a safe life and healthy environment through strict compliance with the established requirements for building products, ensuring the harmonious development of territories based on city planning documentation at state, regional and local levels.

This task is significantly complicated in the context of the constant growth of complication and complexity of the construction industry, scientific and technological progress, which has caused a rapid growth in the number and variety of technical regulation objects in construction: building materials, products, processes and technologies.

State bodies, without having necessary specialists and financial resources, are often unable professionally evaluate all objects of regulation, establish requirements for them, regulate and control access of goods, works and services to the market. In this case, the regulatory capacity of the state decreases inversely with the increase in load, leading to a crisis of management. In economically developed countries, where the need to decentralize government is recognized, and members of professional communities strive to self-organization and self-government, it has become widely used of self-regulation of entrepreneurial and professional activities and specialists involvement from the private sector of the economy to perform the functions of supervision, control and evaluation matching.

The basis of this approach is distribution of functions, powers, and, most importantly, responsibilities between central executive authorities, local governments and self-regulatory organizations, where:

- the central executive authorities should remain a formation of state policy in the field of construction, urban planning and architecture, as well as the implementation of state supervision under the subjects of urban planning;
- the main functions of local governments should include the development of urban planning documentation, making it public (in particular, on official web portals) as a source for generating initial data for design, making a transparent issuance process or obtaining permits for the entire object creation cycle;
- professionals and their associations should be involved in the regulation of the industry by admitting economic entities to the market; admission to the professional activities of specialists; the establishment of an accreditation system for testing laboratories.
and certification bodies for personnel, products and processes; quality control of projects, products and works on objects; “Self-certification” of product manufacturers and service providers (identification and documentation of consumer characteristics of products by the manufacturer (first party), as provided for in EU Regulation No. 305/2011 and proposed to be implemented in Ukraine by the draft law No. 7151 of 02.10.2017 by introducing performance characteristics) etc. (for more details see analytical note No. 16).

International experience in the regulation of construction activities, the causes and methods of denationalization of construction management are summarized in an analytical review published in Chicago, the United States (part 1, p. 20-26). We give only one illustration of the fact that the performance of regulatory functions is not necessarily to be in the hands of the state. In New Zealand - a country that, by the way, traditionally occupies one of the first places in the ease of doing business according to the "Doing Business" rating, the body that issues building permits and provides inspections of construction objects, can be any person - a government agency or a private person - that has passed the appropriate accreditation, which is carried out by the unit for accreditation services of the Testing Laboratory Registration Council - self-regulatory non-profit organization.

Certainly, for each country of the world there is a certain specific of approaches to regulating construction activities and ways to introduce self-regulation in this area, due to the specificity of the legal system of countries, the degree of "overregulation" of business and professional activities, and the traditions of regulatory policy. At the same time, the key problem of interaction between the state and self-regulation organizations is the search for the optimal ratio of their regulatory influence and ways of interaction with each other.

In the Ukrainian reality, a number of features should be taken into account, which directly affect the development of self-regulation of construction and other industries.

1. First of all, the development of market mechanisms for regulating entrepreneurial and professional activities is constrained by a low level of awareness in society of the essence, role, content, characteristics and models of self-regulation. Self-regulation in construction is identified with the implementation of a single delegated power for today - professional certification of specialists. Even in the professional environment, self-regulatory organizations are perceived whether they have official status, and not on key grounds, including: unification of participants of one market, existence of their own rules and standards and mechanisms for monitoring their observance, introduction of tools for resolving disputes and corporate responsibility.

It should be noted that self-regulation is not deregulation, but regulation in another way, when the rules are established and controlled by market participants themselves. The development of self-regulation needs to popularize its mechanisms and advantages, coverage of procedures for obtaining the status of a self-regulatory organization etc. Therefore, within the framework of this analytical note, it seems right to provide a brief information on this issue, prepared on the basis of international experience and best domestic practices (see the Appendix).

2. It should be noted that self-regulatory organizations in the field of architectural activity, like most other SROs in Ukraine, are created on the basis of a moderate (mixed) model of self-regulation, according to which non-profit associations that are voluntarily formed by economic entities or professions in case of compliance with established requirements acquire the status of an SRO and receive authority from the state.

Such a model has both advantages and disadvantages. Among the latter is uncertainty about the distribution of mechanisms for

---


2 Doing Business-2019. URL: [http://russian.doingbusiness.org/ru/data/exploreconomics/ukraine#DB_dwcp](http://russian.doingbusiness.org/ru/data/exploreconomics/ukraine#DB_dwcp)
regulation, control and responsibility of SROs to persons who are not its members. If this issue is not resolved, SROs either will not carry out professional attestation of individuals without joining SROs, or do not bear any responsibility for such specialists.

3. Not to mention the legacy of the Soviet system of construction regulation, where it was planned, controlled, regulated and distributed everything from material and technical resources to finances and personnel at the state-party level. Under such conditions, unlike the market economy countries, the historical traditions of self-regulation in Ukraine are practically absent. Therefore, the experience of the creative union of architects with its long history and practice of SROs of technical supervision engineers, designers and experts on the implementation on a delegated basis of professional certification of specialists will require comprehensive study, reflection and consideration.

The issues of qualification and certification of responsible executives are closely connected to self-regulation, therefore it is quite logical to cover them in the framework of one analytical note.

The quality and safety of construction, as well as the efficiency of public administration in the construction industry in general, directly depend on the level of qualification and competence of the responsible executors and workers responsible for project management, development and examination of urban planning documentation and construction projects, also those who perform architectural and technical supervision, make management decisions etc. Abovementioned also appeals to officials of local governments, civil servants and government officials who make the urban planning conditions and restrictions, issue permits, take objects into operation, monitor and supervise.

In the overall structure of the industry, this issue is closely related to the topics of analytical notes No. 11, 12, 14, 16, 18 and others. One of the factors that, according to the authors of many analytical notes, is the cause of systemic crisis phenomena and certain problems in the field of construction, urban planning and architecture, is an extremely low level of qualification of personnel at all levels: from managers to professionals and experts.

Ensuring an appropriate level of staff training in accordance with Article 432 of the Association Agreement between Ukraine and the EU⁵, Article 17 of the Law of Ukraine “On Architectural Activities”⁶, Article 4 of the Law of Ukraine “On the Professional Development of Workers”⁷ needs continuous professional development and qualification confirmation. Therefore, the system of advanced training and professional certification in construction requires careful analysis and further improvement and development, taking into account the European integration processes in Ukraine.

2 CRITICAL ANALYSIS OF THE SITUATION

2.1. Analysis of legislative support and practical implementation of self-regulation in construction

The legislative framework for self-regulation in the field of construction, urban planning and architecture was established in 2011, with the introduction of amendments to the Law of Ukraine “On Architectural Activities”⁶, where:

- the definition of an SRO is defined in the field of architectural activity (Article 1);
- the general principles of the SRO activity, the procedure for their creation are established (article 16-1)
- the possibility is provided for the delegation of SROs’ powers from professional

---


178
certification of specialists and participation in the licensing of its members (Article 17).

This year, the Procedure for Professional Certification of Responsible Executors of Certain Types of Work (Services) associated with the Creation of Architectural Objects was adopted, which also provides for the possibility to delegate powers of conducting professional attestation.

In 2014, the Ministry of Regional Development approved two key documents on issues of self-regulation, the Procedure of registration of self-regulatory organizations in the field of architectural activity and the Procedure of delegation of authority to self-regulatory organizations.

Since June 2017, SROs have the opportunity, on the basis of delegated authority, to ensure the formation and maintenance of a register of expert organizations (Article 31 of the Law of Ukraine “On Regulation of Urban Planning” as amended by the Law of January 17, 2017, No. 1817-VIII).

In general, the abovementioned legislation today creates conditions for the registration of self-regulatory organizations of individuals (architects, technical supervision engineers, civil engineers and experts) and legal entities (organizations of manufacturers of building materials, expert and contractor-building organizations), the possibility of delegating authority of professional certification is provided, the formation and maintenance of the register of expert organizations, as well as the right of participation of SROs in the licensing of their members. However, in practice today only 4 organizations are registered as SROs in the field of architectural activity:

- National Union of Architects of Ukraine;
- Guild of civil engineers in construction;
- Guild of technical supervision engineers of the construction of architectural objects;
- Association of construction industry experts.

Opportunities for self-regulation of organizations of building materials manufacturers, expert and construction organizations remain unrealized, and the widespread international practice of self-regulatory organizations performing the functions of norms and standardization bodies, independent engineering control, and conformity assessment of goods, works, and services by Ukrainian legislation is not defined at all.

In general, the analysis of the specified package of documents and the practice of their application allows us to conclude that there are a number of problematic issues that need to be resolved.

On the interaction of self-regulatory organizations with executives who are not members of the SRO

The legislation does not establish the authority of an SRO to carry out professional certification of citizens who are not their members, in particular, to issue a qualification certificate, monitor the activities of certified specialists in accordance with the standards of SROs, and deprive the certificate, etc. It leads to possible refusals by self-regulatory organizations, which are delegated the authority to conduct professional certification, in the providing of such a service to citizens who are not members of the SRO. At the same time, the legislation also does not define an alternative opportunity for professional certification for citizens in this case.

On the interaction of self-regulatory organizations with the relevant authority

In accordance with the Regulation on the Ministry, the Ministry of Regional Development

---

7 Resolution of KMU dated 23 May 2011 No. 554. URL: http://zakon.rada.gov.ua/laws/show/554-2011-%D0%BF
8 Order of Minregion dated 13 May 2014 No 137. URL: http://zakon.rada.gov.ua/laws/show/z0573-14
9 Order of Minregion dated 13 October 2014 No 282 URL: http://zakon.rada.gov.ua/laws/show/z1369-14
11 Resolution of KMU dated 30 April 2014 No. 197. URL: http://zakon.rada.gov.ua/laws/show/197-2014-%D0%BF
Development: approves the rules and standards of entrepreneurial and professional activities of an SRO; registering an SRO; decides on the delegation of SRO authority, determines the official edition in which such decisions are published; provides organizational support for SRO activities; controls their activities.

It should be noted that the delegation of powers is carried out by the Ministry of Regional Development in a manner that does not comply with the legislation and contains corruption risks. Thus, the Procedure of delegation authority to Self-Regulatory Organizations in the Field of Architectural Activity\textsuperscript{12} does not provide for the possibility of the Ministry of Regional Development of the term of delegation. But they provide for the possibility of termination of authority on the following grounds: submission of an application by an SRO to refuse to exercise delegated authority; non-compliance with the requirements of this Procedure; failure to fulfill the duties defined by section IV of this Procedure; violation or non-compliance of the SRO with the requirements of the legislation, the charter and internal documents regulating its activities in terms of the delegated authority; revocation of delegated authority by the Ministry of Regional Development.

However, the Ministry of Regional Development delegated authority for a period of 1 year, after which it annually delayed the decision on delegation or refusal to delegate authority.

The next term of delegation of authority for the professional attestation of experts, civil engineers and technical supervision engineers ended on October 27, 2018. After that, within two months, no decisions of the Ministry of Regional Development on delegation of authority or refusal of delegation were made. People had nowhere to turn for professional certification, without which it is impossible to work in the market. A similar situation of uncertainty with the delegation of authority of SRO architects lasted about 6 months. This not only violates the right of citizens to receive a qualification certificate and deprives them of the opportunity to engage in professional activities, but also creates a negative image of the state.

The last orders of the Ministry of Regional Development (No. 357, 358 and 359 dated December 19, 2014) provide for the delegation of authority to conduct professional certification of experts, design engineers and technical supervision engineers for a period of up to February 1, 2019. Given the acquisition of authority from the date of publication of this decision, as well as New Year holidays and weekends, the delegation term is about 24 working days.

\textbf{On state regulation of self-regulatory organizations}

There are discussions about the need for unification of approaches to the formation of self-regulatory organizations in Ukraine, the definition of a unified procedure for their education, obtaining status and implementation of activities, and, accordingly, the introduction of a unified model of self-regulation in Ukraine. However, even within the same industry, there may be various approaches to self-regulation, which will take into account the specifics, needs and capabilities of individual areas of entrepreneurial and professional activities in construction. It is all the more difficult, and sometimes impractical, to unify self-regulation for all domestic markets.

At the same time, the development of an integrated model of self-regulation of construction activities as a system of interrelated components (goals, tools, activities, expected results) that would take into account the peculiarities of the current state of self-regulation is appropriate.

Important in the implementation of state regulation of self-regulatory organizations is also the prevention of risks of self-regulation, including: it is possible to create barriers to market access, restricting competition, contradictions between the interests of business and society, insufficient effectiveness.

\textsuperscript{12} Order of Minregion dated 13 October 2014 No. 282.
URL: \url{http://zakon.rada.gov.ua/laws/show/z1369-14}
of corporate responsibility mechanisms for violations and losses, possible misuse of self-regulating organizations in the implementation of delegated authority, etc.

Absence of effective pre-trial dispute resolution mechanisms

The Civil Code of Ukraine provides a list of forms of protection, among which are judicial and administrative forms, as well as self-defense of civil rights. According to the current legislation, this function is also implemented in arbitration courts, which can be created with an SRO in accordance with the law. In fact, the current legislation does not provide for other dispute resolution mechanisms. Meanwhile, in foreign countries, self-regulatory organizations, on the contrary, ensure the existence of various formal and informal dispute resolution mechanisms: dispute resolution centers, ombudsmen and other internal arbitration bodies. One of the most popular formal and informal dispute resolution mechanisms in developed countries is mediation - structured negotiations in which the parties themselves, on a voluntary basis, reach an agreement with the help of a third independent party - a mediator, which is practically not used in Ukraine.

Summing up, we should state: so far self-regulation in the construction industry of Ukraine is developing uneven, primarily in those areas of activity where the law provides for the possibility of delegating to SROs separate authority and management functions, and with gradually developing institutional capacity of associations of individuals and legal entities engaged in entrepreneurial and professional activities in the construction market.

2.2. Analysis of legislative support and practical implementation of professional certification and confirmation of qualifications of responsible executors in construction

Professional certification - the procedure for confirmation of professional specialization, level of qualification and knowledge of the executor. Legislation on issues of professional certification for today is: Article 17 of the Law of Ukraine "On Architectural Activity", Resolution of the Cabinet of Ministers No. 554 dated May 23, 2011. "Some issues of professional certification of responsible executors of certain types of work (services) related to the creation of "architectural objects", Order of the Ministry of Regional Development No. 93 dated June 25, 2011." On Approval of the Regulation on the Attestation Architectural and Construction Commission, Order of the Ministry of Regional Development No. 172 dated September 1, 2011 "On approval of the procedure for payment for the professional certification of responsible executives of certain types of works (services) related to the creation of architectural objects and its size", Order of the Ministry of Regional Development No. 342 of December 13, 2011 "On approval of the form and technical description of the form of the qualification certificate of the responsible executor of certain types of works (services) related to the creation of architectural objects ".

The legislation on professional certification is not aligned with the Law of Ukraine "On Administrative Services"

Professional certification, in case of its conduct by the Ministry of Regional Development, is an administrative service, according to the definition of the state service and its subjects (Article 1 of the Law of Ukraine "On Administrative Services"), and is confirmed by the Order of the Cabinet of Ministers of Ukraine dated 09.11.2011 No. 1110- "On a
paid administrative service provided by the Ministry of Regional Development, Construction and Housing and Communal Services ".

In accordance with the Law of Ukraine "On Administrative Services"19: - the amount of payment for the providing of a public service and the procedure for its collection are determined by law taking into account its social and economic value (part three of Article 11);

- payment for the providing of public services is paid by the subject of the appeal at a time for the entire range of actions and decisions of the subject of administrative services required to obtain the public service (including the cost of forms, examinations, extracts from registers, etc.) (part fifth of Article 11).

- The Cabinet of Ministers of Ukraine, within six months from the date of entry into force of this Law, was to submit to the Verkhovna Rada of Ukraine draft laws on amending the legislative acts of Ukraine in connection with the adoption of this Law (part six of Article 20).

However, the Law of Ukraine "On Architectural Activities"14 has not yet been brought into line with the Law of Ukraine "On Administrative Services"19, which in the case of professional certification by the Ministry of Regional Development as a subject of administrative services, creates a conflict between legislative acts of equal legal force.

Moreover, in the case of delegation of authority to self-regulatory organizations, when the Ministry of Regional Development does not provide administrative services, the executive officers still have to pay a fee to the state for the providing of public services.

The order of professional certification of specialists contains norms that do not comply with the Constitution and laws of Ukraine

Amendments were made by Resolution of the Cabinet of Ministers of Ukraine No. 327 of April 25, 201820 to Resolution of the Cabinet of Ministers of Ukraine No. 554 of May 23, 201115, according to which qualification certificates for architectural and civil engineering design, technical supervision and expertise in construction, issued before entering into the force of the Law of Ukraine of April 13, 2017, No. 2020-VII21, to persons who have not received higher education at educational and qualification levels of bachelor, specialist or master in the relevant direction of professional certification, are considered nulled.

This law does indeed establish that, in relation to professional attestation, only citizens who have received such education are allowed, which is required when submitting documents for passing professional attestation from the date this law enters into force. However, according to Article 58 of the Constitution of Ukraine22, laws and other regulatory legal acts have no retroactive effect, unless they soften or annul the responsibility of a person. Law No. 2020 VIII23 does not require annulling of certificates issued earlier, when such persons were allowed to pass certification with 10 years of experience in urban planning.

The establishment of such a norm in the resolution of the Cabinet of Ministers does not comply with the Law No. 2020-VIII of the Law "On Architectural Activity"23 and the Constitution of Ukraine and creates social tension in society. In addition, this provision does not provide for mechanisms for implementation. It remains unclear: who exactly and in what way the specified certificates "are considered canceled", and how to continue construction of facilities, have been designed or constructed with the

20 Resolution of KMU dated 25 April 2018 No. 327. URL: http://zakon.rada.gov.ua/laws/show/327-2018-%D0%BF
22 Constitution of Ukraine URL: http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80
Analytical Note No 15

participation of specialists whose certificates are "considered canceled".

Requires improvement the list of grounds for deprivation of a qualification certificate

According to clause 20 of the Professional Attestation Procedure, a decision on depriving an executor of a qualification certificate is made on the basis of: an application of an executor on deprivation of a qualification certificate, a court decision or an act of:

identification of the fact that the executor provides for the professional certification of invalid documents or information, they contain;

detection by supervisory authorities of the violation of the requirements by the executor of regulatory legal acts and regulatory documents in the field of urban planning;

detection of the fact of transfer of a qualification certificate to another person.

Such grounds (primarily with regard to acts of supervisory bodies) have general nature and, given the gaps in the settlement of the procedure for depriving a qualification certificate (first of all, in relation to citizens who are not members of a self-regulatory organization if delegated authority is exercised) they may cause difficulties in applying..

It is advisable to determine the grounds for depriving an executor of a qualification certificate at the level of a law, and not according to an act of the Cabinet of Ministers of Ukraine, since by its content such a procedure has characteristics of sanction (deprivation of the right to run a certain type of activity). According to the Constitution of Ukraine, actions that are crimes, administrative or disciplinary violations and responsibility for them are determined exclusively by laws (paragraph 22 of the first part of Article 92 of the Constitution of Ukraine24, Decision of the Constitutional Court No. 7-rp / 2001 dated 30.05.200125, regarding the official interpretation of the paragraph 22 of the first part of Article 92 of the Constitution of Ukraine).

Procedures for assessing the compliance of personnel in the field of construction, urban planning and architecture need to be adapted to European requirements.

An internationally recognized instrument for confirming personnel compliance with established requirements by personnel certification bodies accredited in accordance with the Law of Ukraine "On Accreditation of Conformity Assessment Bodies"26.

Accreditation is a procedure during which the national accreditation body (National Accreditation Agency of Ukraine, NAAU) certifies the right of the conformity assessment body to perform certain types of work (testing, certification of products and personnel, control).

NAAU conducts accreditation of personnel certification bodies in accordance with ISO / IEC 17024: 2012 "General requirements for personnel certification bodies" (available on the NAAU website27), which establishes clear internationally recognized requirements for organizations that intend to carry out personnel certification, and control over their activities. NAAU is guided by the recommendations of international (ILAC and IAF) and regional (EA) accreditation organizations.

Within the framework of a partnership, Ukraine and Europe reached an agreement on mutual recognition of certificates of personnel compliance28 with the European Accreditation Organization, which they pledged to promote recognition of certificates issued by accredited bodies by all users in European countries. Also,
in the long term, the obtained certificate can be useful in employment abroad.

Therefore, for new areas where personnel certification is introduced, it is advisable to immediately use the mechanisms that already exist in Ukraine to confirm personnel qualifications by bodies accredited in accordance with the law, and it is advisable to gradually bring the existing professional certification procedures in line with internationally recognized procedures.

3 PROPOSALS

3.1. Development of self-regulation as a mechanism for improving the quality of work and services in construction

Effective self-regulation of entrepreneurial and professional activities in the field of urban development can be implemented through:

- determining the priorities of state policy on this issue, among which, above all:
  - ensuring the effectiveness, consistency and stability of the legal field, enhance the benefits and reduce the risks of self-regulation;
  - clear spreading of the functions of central executive bodies in relation to SROs;
  - increasing personal and corporate responsibility of SROs and their members;
  - creation of preferences for members of SROs at the initial stage if they provide higher standards and mechanisms for reimbursement (simplification of permitting and negotiating procedures involving members of SROs, abolishing certain types of control, if SRO provides internal control, defining features of participation in procurement, etc.)
  - popularization of self-regulation mechanisms, its advantages, coverage of procedures for obtaining the status of a self-regulatory organization, dissemination of information about existing SRO mechanisms, etc;
  - creating conditions under which the state will carry out legal regulation, and the market will adopt technical standards and regulate relations between market entities, by transferring the maximum amount of authority to the SRO (if they are ready) and ensuring effective control over their implementation;
  - prevent risks of self-regulation, among which: it is possible to create barriers to access to the market, restriction of competition, contradictions between the interests of business and society, insufficient effectiveness of corporate liability mechanisms for violations and losses, possible abuses of SROs in the exercise of delegated authority, etc.

For the development of self-regulation of entrepreneurial and professional activities in the field of urban planning, it is necessary to:

1. When developing a general law on self-regulation, stipulated by the Action Plan for the implementation of the Concept of reforming the institute of self-regulation in Ukraine, the Ministry of Economic Development and Trade together with the Ministry of Regional Development should reflect as far as possible peculiarities of self-regulation in the field of urban development, in particular, to provide not only the mixed self-regulation model in Ukraine, but also the possibility of the delegated self-regulation implementation, where it is appropriate: the formation of self-regulatory organizations according the indication of this in the law, with lodge with powers..

2. When developing the Urban Planning Code on the basis of the general law on self-regulation in Ukraine (after its adoption), the Ministry of Regional Development should comprehensively define the peculiarities of regulating public relations on SRO activities in the field of urban development, primarily taking into account the best international practices of regulating the


access to the market by self-regulatory organizations and their corporate responsibility. The following provisions should be laid down:

- self-regulation must operate within the law and be legitimate. SRO when conducting control, applying sanctions and resolving disputes apply the tools defined by the legislation, and the state, if necessary, takes measures to improve them;

- legislation should contain unified provisions on the status of self-regulating organizations, the procedure for their formation and activity, while not restricting the right of SROs to choose the organizational and legal form, since such a right is an integral principle of the freedom of entrepreneurial activity and with a characteristic of a democratic society;

- it is not necessary to establish a single model of self-regulation for all types of entrepreneurial and professional activities in construction: market entities should independently choose the model that is suitable for themselves, and the legislation should condify it;

- SRO systems unite various self-regulatory organizations by specialization, each of which is subordinated to the principle of centralization - for each type of activity or profession a separate self-regulating organization is formed that coordinates the activities of regional branches or affiliated branches (or alternatively, several self-regulating organizations with delegation of power management functions for the admission to the market of one of them).

- delegation of powers to an SRO should be accompanied by the exclusion of relevant procedures from the system of administrative services, a clear delineation of the functions of the authorities and the SRO to avoid double regulation and unnecessary expenses of business;

- to prevent a "vacuum of powers" when deciding whether to delegate or withdraw them, an appropriate period should be provided for the transfer of business and the continuity of authority and management functions should be ensured;

- possible risks of self-regulation are dampened by effective mechanisms of state regulation, including: consideration and coordination by the relevant ministry of SRO standards to prevent the creation of barriers to market access and anti-competitive advantages; enhancing the effectiveness of corporate responsibility instruments (insurance and compensation funds); securing at the level of the law delegated powers to prevent delegation by the ministry or assigning SROs of authority and management functions not defined by law; Supervision over the activities of an SRO must ensure that the SRO complies with the established criteria and observes the law when exercising delegated powers without interfering with their internal activities;

- tools for supervising SROs and their members should include: a) on activities as SROs - the Ministry of Regional Development checks, with the assistance of the Supervisory Board, compliance with established criteria when registering SROs, monitoring eligibility by receiving periodic reports, reviewing rules and standards, checking complaints, excluding from the registry in case of non-compliance of the SRO with the established criteria, supervision of the Antimonopoly Committee over the observance of antimonopoly laws, etc. b) on compliance by members of SROs with city development legislation - state architectural and construction inspection; rules and standards of SRO - internal control of the self-regulatory organization; c) on compliance with the general labor, tax, financial and other legislation - control and supervision in accordance with the legislation;

- when delegating by the state the power and managerial functions, the SRO should be provided with the necessary legal tools for the implementation of the delegated powers.

3. Before the adoption of the Urban Development Code, it is necessary to settle certain urgent issues of self-regulation of urban development activities, in particular:

- instead of the corruption mechanism such as annual extension of the delegation term of powers, indefinite delegation should be introduced with the Ministry of Regional Development’s right to withdraw delegated
powers on grounds and in a manner that should be clearly defined by law (amendments to the Law of Ukraine "On architectural activity"\(^{31}\) regarding the indefiniteness of delegation of such grounds for their deprivation at the request of the self-regulatory organization, for the execution of a court decision on the termination of the delegated powers, in the case of deprivation of SRO status)

- in the case of SROs empowering with delegated functions, their powers should fully cover market entities, eliminate uncertainty regarding the spread of mechanisms for regulation, control and responsibility of non-SROs to non-members (changes to the Law of Ukraine "On Architectural Activities"\(^{31}\) on one of the following options: the establishment of a norm on education in the relevant areas of only one SRO, or the delegation of authority of one of the registered SROs with the dissemination of its rules and standards related to the exercise of delegated authority by me to all participants in the relevant market segment;

4. To improve cooperation with the relevant authority, it is necessary to create an supervisory board under the Ministry of Regional Development as a collegial body with representation of at least 51% of its members from all existing SROs in construction field (at least 1 in each direction) with such functions:

- consideration of issues related to registration of SROs and ensuring effective control over their activities, preparation of relevant proposals of the Ministry of Regional Development;

- consideration of the rules and standards of self-regulatory organizations and proposal submissions to the Ministry of Regional Development on their approval or on certain provisions they should contain in;

- development of recommendations on the content of materials for training programs;

- consideration of complaints and disputes as an appellate body, the organization and conduct of conciliation or coordination councils with the participation of all SROs, etc.

5. Taking into account the disadvantages of pricing and government procurement of works and services at the lowest price, an SRO (primarily architects) should ensure that **tenders are held** for architecturally complex and important projects for performers who have offered the best, most appropriate and effective offer. In assessing the best price-quality ratio, both qualitative and financial criteria related to the subject of the contract should be taken into account and the weight of each of these criteria should be established in the overall assessment taking into account the provisions of Directive 2014/24 / EU\(^{32}\) of the European Parliament and of the Council of February 26, 2014 on government procurement and abolished Directive 2004/18 / EU.

6. The practice of registering SROs for certain types of contracts for the execution of works or services should be studied and introduced, it will help to prevent poor quality products due to dumping, narrow the range of opportunities for corruption, support the level of the taxation and ensure the proper development of the industry.

7. It is necessary to study and introduce new tools for the implementation of self-regulation of urban planning activities, in particular by: admitting business entities to the market; the establishment of an accreditation system for testing laboratories and certification bodies for personnel, products and processes; quality control of projects, products and works on objects; self-certification of product manufacturers and service providers and, above all, standardization in construction, since the National Standardization Authority (SE) does not have experience and specialists on this issue and does not ensure the fulfillment of this function (amending the Law of Ukraine "On Urban Development Regulation"\(^{33}\)).

---


8. Considering the existing regulatory framework in construction, the existing legal basis for the development of self-regulation and the state of its practical implementation, there is an urgent need for practical recommendations developed by the Ministry of Regional Development to create self-regulatory organizations, where this is provided for by law, but not implemented in practice, and step by step introducing an action plan - a roadmap for interested business and professional entities (primarily, among manufacturers of building materials, expert organizations and contract-building organizations).

3.2. Questions of qualification and professional certification of responsible executives of certain types of works and services in construction

An effective solution to these problems can be achieved through:

- ensuring continuous professional development and confirmation of staff qualifications in accordance with Article 432 of the Association Agreement between Ukraine and the EU, Article 17 of the Law of Ukraine "On Architectural Activity", Article 4 of the Law of Ukraine "On the Professional Development of Workers" taking into account international experience and the best foreign practices;

- expanding opportunities for personnel certification not only through professional certification of regulated professions, but also through confirmation of qualification compliance by certification bodies accredited by the National Accreditation Body of Ukraine in accordance with international standards;

- review and supplement the list of professions and types of work, the executors of which are subject to professional certification, depending on their complexity and responsibility, the necessary professional competencies and potential risks associated with inadequate staff qualifications;

- gradual transition from licensing to professional certification as a mechanism for identifying responsible executors who have the right to perform certain types of work (services) and have personal liability for them;

- improving the mechanisms of qualification and professional certification of responsible executors on the principles of legality, openness, transparency, non-discrimination, competence and respect for a reasonable balance between security requirements and conditions for the development of the market for relevant services, that is, a balance between the interests of society and business.

In order to improve the mechanisms for the confirmation of qualifications and professional certification of responsible executives, it is necessary to:

1. Improve the procedure and list of grounds for depriving of an executor of a qualification certificate (amending Article 17 of the Law of Ukraine "On Architectural activity"34 and the Procedure for conducting professional certification of responsible executors of certain types of work (services) related to the creation of architectural objects35).

2. To establish at the level of the law the amount of payment for professional certification and the procedure for its correction (amending Article 17 of the Law of Ukraine "On Architectural Activity", declaring the order of the Ministry of Regional Development No. 172 dated September 1, 2011, null and void on the Payment Procedure for conducting professional certification and its amount36).

3. Develop approvement of staff qualifications according to the international procedure. Provide an opportunity to citizens who have received certificates in personnel

35 Resolution of KMU dated 23 May 2011 No. 554. URL: http://zakon.rada.gov.ua/laws/show/554-2011-%D0%BF
36 Order dated 1 September 2011 No. 172. URL: http://zakon2.rada.gov.ua/laws/show/z1099-11
certification bodies accredited to ISO / IEC 17024: 2012 in accordance with the Law of Ukraine, Law of Ukraine "On Accreditation of Conformity Assessment Bodies" to be included in the register of certified persons by amending Article 17 of the Law of Ukraine "On Architectural Activity".

4. Settle the issue of the implementation of professional certification by self-regulating organizations on a delegated basis, namely:

- Ensuring openness and transparency of the delegation of authority procedures;
- determining the competence for the professional certification of executors who are not members of an SRO;
- maintaining the continuity of the process of professional certification (avoiding a delegation vacuum, that deprives citizens of a law-defined right to pass professional certification and, hence, the possibility of carrying out professional activities).

5. To disseminate the practice of attracting certified specialists to perform work and services not only in mandatory cases defined by law, but also on a voluntary basis during the selection of contractors (including requirements for the qualifications of the personnel according to the tender documentation in the implementation of procurement).

6. Develop their own powers of SRO to improve the skills and professional level of its members on the principles of continuous professional development, as recommended, in particular, by the International Union of Architects, provided for by the Association Agreement between Ukraine and the EU and successfully implemented in developed countries. To follow that it should be:

- more extensive use of the authority of the SRO to establish its own rules and standards of professional activity concerning the qualifications of employees;
- to establish activities of educational and expert centers (including regions);
- develop adapted programs, modules of pre-certification training and test tasks on actual issues;
- to distribute the practice of pre-attestation internship for the formation of the regulatory and legal level of the executor who intends to obtain a qualification certificate, and the acquisition of the required statutory period of professional experience;
- take into account, when establishing the level of qualification and professional specialization, not only based on the results of the exam, but also the materials of a brief report on the creative achievements of executors by considering these issues by the commissions in the regional offices of a self-regulatory organization;
- to form the system of advanced training in the legislatively defined five-year cycle on the basis of the qualimetric assessment that the regional branches of the SRO should monitor. Such an assessment may include various actions and measures, such as not only passing advanced training courses of various duration, but also participation in SRO educational programs, in various competitions, seminars, master classes, as well as any efforts concerning the qualification development, professional knowledge, the prestige of the profession.

7. Determine at the legislative level the mechanisms of the pre-trial procedure for appealing decisions, actions or inactions of self-regulatory organizations, certification architectural and construction commissions and the Ministry of Regional Development on the issuance and deprivation of a qualification certificate (amendmentes to Article 17 of the Law of Ukraine "On Architectural Activities").

8. Bring the Resolution of the Cabinet of Ministers dated May 23, 2011 No. 554 "Some issues of professional certification of responsible performers of certain types of work (services) related to the creation of

---

architectural objects, in accordance with the Constitution of Ukraine and the Law of Ukraine No. 2020 VIII by excluding the rules on annulment issued earlier qualification certificates.

OPEN QUESTIONS

4.1. Absence of unified approaches to self-regulation in Ukraine


Now, for the implementation of the Concept for Reforming the Institute of Self-Regulation in Ukraine, another draft law is being drafted on this issue.

Based on the analysis of these draft laws, proposals and comments made by the committees and departments of the Verkhovna Rada, on the experience of the discussions, it can be concluded that, despite significant substantive differences, these documents have a common feature, which was one of the reasons for their critical perception: they all provided for a rather heavy regulation in all markets at the same way, which did not allow to take into account the peculiarities of various industries, to implement active SROs in a new legal field and it could lead to problems and inconsistencies instead of the development of self-regulation.

Constant “waiting” of the framework draft law hinders the development of sectoral legislation on self-regulation. On the other hand, the longer such a law is not adopted, the more distinct are the approaches to the self-regulation of various markets, which can lead to considerable difficulties in bringing industry legislation into line with the requirements of the new law.

SELF-REGULATION IN CONSTRUCTION: THEORY AND PRACTICE

The successful economic development of the country at the present stage requires the redistribution of functional powers between the central authorities and civil society institutions as a key element in the relationship between the state and the citizen. The successful experience of countries shows that along with activities of state authorities, self-regulating organizations also carry out their own standards, rules, conditions for carrying out activities and perform a number of functions provided by the state. The formation and development of self-regulation mechanisms and their active implementation into the management system of entrepreneurial and professional activities are considered simultaneously as components of civil society and market institutions that allow optimizing the control and supervisory functions of government.

CONCEPT OF SELF-REGULATION

In general, self-regulation [self-adjustment, self-regulation] is an independent response of the control object to external events (disturbances) that disrupt its normal functioning.

Self-regulation of entrepreneurial and professional activities is understood as the activities of non-governmental organizations aimed at autonomously adopting voluntary rules of conduct and exercising control over their observance by members of such organizations, as well as performing

38 Resolution of KMU dated 23 May 2011 No. 554. URL: http://zakon2.rada.gov.ua/laws/show/554-2011-%D0%BF
39 Constitution of Ukraine. URL: http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80

40 Concept. URL: http://zakon.rada.gov.ua/laws/show/308-2018-%D1%80
managerial functions delegated or directly defined by law.

The essence of self-regulation was vividly illustrated by Professor V. Tambovtsev: “One European traveler in the 17th or 18th centuries was in China and sailed by boat. It was a boat with oars, rowers sat, and at the stern there was a man with a bamboo stick, which periodically drove the rowers. The European was very surprised when he learned that the rowers were people who owned a boat, and the person who drove them with a bamboo stick was the “manager” hired by them, who ensures strict compliance with the rhythm. Self-regulation is the kind of person hired with a bamboo stick. " Thus, self-regulation is designed to ensure the effective functioning of market entities in which it is introduced.

SELF-REGULATORY ORGANIZATIONS

Organizations that regulate activities of their members by establishing certain rules for business or professional activities ensure control over their observance, consideration of complaints and settlement of disputes are called self-regulatory organizations (in English, self-regulatory organization or self-regulating organization), or rather, "organizations of self-regulation"

Despite the long existence of self-regulation as an institution for managing the relevant markets, the term “self-regulatory organization” was first legislated only in 1933. In the National Act of Industrial Restoration during the New Deal of President F. Roosevelt in the United States. The concept of "self-regulatory organization" was also used in the UK Financial Services Act.

At the same time, the use of the term "self-regulatory organization" in European countries is limited only to the sphere of financial services and regulation of the securities market. However, it is obvious that such organizations exist in other industries (in construction, auditing, medical services, advertising, tourism, etc.), although the law does not use this term.

In the post-Soviet space the term “self-regulatory organization” is used quite widely in many legislative acts. At the same time, if the sectoral legislation provides for the creation of an SRO and establishes certain requirements for such organizations, then organizations formed on the basis of these requirements are recognized as self-regulating, and organizations that are formed in other sectors, that do not establishes certain requirements, even if organizations have all the features of self-regulation, do not acquire status of SRO.

Therefore, it seems appropriate to include certain organizations to self-regulating not based on the name (as we see, in most countries such unity cannot be traced), and not by the presence in the laws of the rules on the possibility of introducing self-regulation in relevant areas (their absence may be a lack of sectoral legislation, which does not reflect the real state of self-regulation of the relevant markets), but on the basis of features of self-regulation, including: the unification of participants of one market, the existence of its own rules and standards and mechanisms for monitoring their observance, the introduction of tools for resolving disputes and corporate responsibility.

REASONS AND BACKGROUND OF SELF-REGULATION INTRODUCTION:

- understanding of the traditional approaches shortcomings to state regulation, command and control management methods in the context of globalization of the world economy, liberalization of economic activities and decentralization of powers;

- the limited resources of the state to perform regulatory functions with the growth of social complexity of modern society, the complexity of the construction industry;

- the ability of self-regulation to raise the standards of entrepreneurial and professional activities, the quality of works and services, the efficiency and responsibility of market participants, the level of consumer confidence to them.
GOVERNMENT REGULATION AND SELF-REGULATION

Self-regulation in varying degrees is possible in each of the three components of the system for regulating construction activities, which are: the regulatory framework of the construction industry, the system of supervision and control over the implementation of construction legislation, and the system for assessing the conformity of goods, works, services, processes, systems and personnel. The state plays a leading role in the formation of the legal component of the regulatory framework in construction, and the technical and administrative components have prospects for self-regulation, as well as the system of control and supervision and, especially, the system of conformity assessment.

Self-regulatory organizations with delegated authority and management functions, are subject to public administration and its tool.

Self-regulation is not deregulation. After all, neither the content of the delegated authority, nor its legal basis is independent of the subject of its implementation. So self-regulation is regulation in another way, more close to the object of regulation, but no less mandatory and controlled.

Self-regulation should be considered as a separate form of power decentralization on the principles of subsidiarity. Along with local governments, with regard to the professional environment, an SRO is precisely the closest link that has the possibility, in case of the introduction of an effective national model of self-regulation, ensures the high-quality functioning of the construction market.

Comprehensive application of mechanisms of state regulation and self-regulation in construction should ensure a reasonable balance between security requirements and conditions for the development of the market for relevant services, that is, a balance between the interests of society and business.

SELF-REGULATION MODELS:

With voluntary self-regulation, self-regulating organizations are created by representatives of the relevant profession or activity on their own initiative, they independently set high standards for the quality of work and ensure their observance by all members without receiving any governmental and managerial functions from the state. Voluntary self-regulation does not require additional state regulation (i.e., establishing the order of education, the procedure for obtaining status, additional state control). Such organizations are created on the basis of general civil law and act like any other public associations in accordance with the law and their own charter documents.

Delegated self-regulation is characteristic of the situation when the state forms professional self-government organizations (OPSs) as legal entities of public law by direct indication of this in the law, and allocates them with a number of state authority and management functions determined directly by law. In fact, to run a professional activity possible only in case of being a member of the relevant professional association, whose activities are governed by special rules of conduct.

Mixed self-regulation combines the two models described above. According to this model, non-profit organizations are voluntarily formed by subjects of a certain type of economic activity or profession.

Self-regulatory organizations in the field of architectural activity, like most other SROs in Ukraine, created on the basis of a moderate (mixed) model of self-regulation.

TYPOLOGY OF SELF-REGULATION

Self-regulatory organizations can be classified according to a number of features: the way of education, the subject of regulation, the organizational and legal form, the voluntary or mandatory membership, the criteria for naming in legislation, tools and instruments,
the degree of coverage of the market, types of functions, territorial coverage, etc.

- In accordance with the criterion of naming in the legislation, SROs are divided into named – those ones that are defined by the legislation as self-regulatory organizations, and not named – those which are not defined as self-regulatory organizations, but act as regulating the relations of market participants.

- Depending on the way of their formation, they can be divided into organizations of professional self-regulation (OPS) and self-regulatory organizations (SROs).

- By the subject of regulation there is a division into organizations of economic self-regulation (unite economic entities) and organizations of professional self-regulation (combining individuals - subjects of professional activity).

- By voluntary or obligatory membership: voluntary (participants of a particular market voluntarily enter and exit to a certain self-regulatory organization) and obligatory (in the case of delegated self-regulation, all market participants must necessarily be members of that SRO).

- By the area of common interests: sectoral organizations that bring together entrepreneurs or professionals in one industry; association based on the use of similar resources and / or technologies or their elements; inter-branch associations, not connected with the general technology, or with the general product.

- Depending on the means of regulating activities:

  - contractual - subjects use means, the basis for which is the contract (agreement): business contracts, customs of business turnover, standard rules, ethical codes of performance;

  - corporate - means used on the basis of corporate acts (rules of ethical behavior of representatives of corporations, codes of corporate ethics);

  - institutional (organizational regulation) - self-regulatory organizations are created that can develop certain rules of conduct in certain types of activities, in addition, monitor their implementation, provide assistance to SRO subjects and their protection.

- Depending on the degree of state intervention:

  - spontaneous self-regulation, when professional or business associations based on voluntary membership establish their own rules of conduct and ensure their compliance with their members, sometimes without even obtaining SRO status, and the state does not specifically regulate their activities as SROs;

  - regulated self-regulation, the extreme manifestation of which is the creation by the state of self-regulation organizations as subjects of public law, with the power-management functions determined by law, with mandatory membership and, often, one direction. In this case, the state establishes additional regulation of the SRO, defining by law their rights and obligations, the procedure of formation, activity and decision-making, and supervises their activities.

ADVANTAGES OF SELF-REGULATION

Generally recognized in the world are the advantages of self-regulation, namely:

for market entities: to gain competitive advantages in the market by establishing and maintaining higher standards than those established by law; cutting of administrative pressure, wider range of regulatory tools; protection and representation of interests in the authorities;

for consumers: improving the quality of works and services, reliability of construction products, the existence of mechanisms for damages, reducing the level of acceptability of risks in construction due to higher standards;

for the state: unloading of authorities, reduction of state expenses, professional control over the quality of services, increase of efficiency and responsibility of market participants, mechanisms of feedback.
DISADVANTAGES OF SELF REGULATION

The risks and disadvantages of self-regulation are primarily related to the fact that the subject of regulation coincides with the object of regulation. Manifestations of such risks can be:

- creating barriers to market access, restricting competition;
- it is possible to ignore the interests of entities that are not members of a self-regulating organization;
- the contradiction between the interests of business and society.

INTERNATIONAL EXPERIENCE OF SELF-REGULATION IN CONSTRUCTION

Studying the experience of economically developed countries points to the common goals of state regulation in construction and at the same time the variety of forms that the national system of such regulation can take, including the introduction of self-regulation mechanisms.

In the United States, the Military Engineers Corp., building associations and societies such as the Association of American General Contractors, the Association of American Subcontractors, the Association of American Architects, and the American Society of Civil Engineers play an important role in regulating the construction industry. These associations exist due to fees of construction firms. They develop and publish various regulatory documents, instructions and regulations, organize seminars, schools and refresher courses, etc.

The American model of self-regulation is based more on individual freedom and small government interference. As a result, self-regulation has more weight. It is autonomous and almost does not provide for additional control over the actions of self-regulating organizations by the state. The rules developed by self-regulating organizations are not endorsed in any way by state bodies.

Self regulation in the USA has the following characteristics:

- in the presence of organizations with both mandatory and voluntary membership, self-regulation in most industries is not voluntary;
- the presence of separate legislative bodies, often resulting in different approaches to the application of supervision of self-regulatory organizations in different segments of the same market;
- many companies are regulated by several self-regulatory organizations at once.

In France, non-governmental organizations play a significant role in market entry. The system of state licensing in construction is absent here, but there is a voluntary system for obtaining certificates confirming the appropriate level of the contractor. The bodies responsible for issuing certificates are the relevant non-profit organizations, the most well-known of which are Kvalibat, an organization that confirms the qualifications of construction organizations and issues relevant certificates. This non-profit organization was founded in 1949 and its activities are under the constant control of the government.

The development of the construction industry is greatly influenced by companies that are members of the National Federation of Public Works and the National Construction Federation. Construction companies in France, mostly large ones, have the opportunity to get profitable contracts through a system of well-established ties with government agencies. The joint management of these operations includes research, information and other institutions.

In the UK, building associations and federations have a significant impact on the development of the construction industry, among which the most important ones should be highlighted: Federation of civil engineering contractors; National Federation of Construction Entrepreneurs; The Federation of Foreign Construction, which combines construction companies that are building abroad, the Federation of Builders, which
Analytical Note No 15

unites mainly small construction firms that conduct ground construction, including repair and construction work.

Also, the self-regulatory functions in the UK construction market are performed by the British Steel Construction Association; Licensed (privileged) building institute; Chartered Institute of Construction Service Design; Construction Equipment Association; Consulate of the construction industry; Construction Industry Association; Institute of Civil Engineering; Institute of Civil Engineers; Royal Institute of Architects of Britain; Royal Institute of Appraisers and other associations.

A striking example of a self-regulating non-governmental organization in this country is the National House Building Council of the United Kingdom, whose function is to establish the rules and regulations for the construction of new real estate objects and which receives complaints from their customers.

Important is the fact that absolutely all companies and organizations that are part of the self-regulating system, firstly, before joining pass a fairly strict test of their work in construction, secondly, an audit of financial activities, thirdly, they must comply with existing standards, and finally, activities of all building companies are examined during performing of construction works.

APPENDIX 2

THE CHAMBERS OF ARCHITECTS IN GERMANY

By Dieter Schimanke, Senior Expert, Hamburg, December 2018

1. General

The Chamber of Architects is a public-law organization of architects in Germany. As a public corporation („Koerperschaft des oeffentlichen Rechts“, a special legal form in Germany for independent organizations that perform public functions), an architects’ chamber carries out state tasks and is committed to the general interest.

As architects’ law is a matter for the „Länder‘ (states), the architects’ chambers are at the level of the 16 countries. The contents of the 16 laws are largely identical. The occupational tasks, the entry in the list of architects and the organizational structure of the chambers are accordingly regulated in the individual architectural laws of the single states.

More than 130,000 people are members of the 16 chambers of architects in Germany.

2. Tasks of the Chamber of Architects

As a part of the indirect state administration, the chamber performs public functions and thus performs public tasks. In doing so, it is independent of the instructions of higher-ranking state authorities and is only subject to the legal supervision of the responsible ministry. That control of the Ministry is limited to the extent to which the chamber has respected or failed to comply with applicable laws. The Ministry does not have the responsibility of reviewing the appropriateness of a decision of the Chamber.

On the other hand, the chamber is an organization of self-administration of the profession and lives from the participation of its members. It represents all architects, interior designers, landscape architects and urban planners in the country (in some states also civil engineers), irrespective of the specific type of employment, and advocates not only the legal developments relevant to professional practice, but also all political, social and cultural issues and aspects of architect activity.

The Chamber ensures a constant updating of the professional qualifications of its members and, through monitoring of professional duties, serves to enhance the reputation of the profession in the public.

The legal tasks of the Chamber of Architects are in particular:
1. to cultivate and promote the building culture and the construction industry,

2. to keep the list of architects, the list of city planners and directories and to issue the certificates necessary for the exercise of the profession, to promote and represent professional interests, to preserve the reputation of the profession and to supervise the fulfillment of professional duties,

3. to work towards the resolution of disputes arising out of the exercise of the profession between members or between them and third parties,

4. to promote vocational education and training,

5. to assist the authorities and courts in all matters pertaining to the profession of the members, to prepare expert opinions and to name experts;

6. adopt provisions on the public appointment and swearing-in of architects’ experts in agreement with the competent authority;

7. to advise professionals on matters related to the exercise of their profession,

8. to advise in competition,

9. to carry out further tasks assigned to the Chamber of Architects within the scope of its activities under the Law on Architects by the competent authority.

3. Member of the Chamber of Architects and consequences of membership

All persons listed in the architects or city planner list of the Chamber of Architects are automatically members of the Chamber of Architects. This follows directly from the Law on Architects of the state. Exceptions to this membership are not provided for in the law or in the statutes of the Chamber of Architects. Accordingly, membership can not be "renounced" or "let go" and - conversely - not be a "passive" or "voluntary" member or "guest member" without being entered in the architect or city planner list.

Only those who, prior to their entry into the list of architects or urban planners, complete the necessary practical period of two years following their higher education, will be admitted to the Chamber (only) for that time at their request as "Extraordinary Members".

The membership in the Chamber of Architects automatically ends when the entry in the architect or city planner list is deleted. An extension of the membership without registration in the architect or city planner list is – see above - not possible.

All members of the Chamber of Architects form the Chamber of Architects as a public corporation and have rights (e.g. to co-determination in the chamber assembly as supreme chamber organ and to the use of the services of the chamber) and duties (above all to the observance of the legally standardized professional duties and to the payment of membership dues, so that the chamber as a self-governing body, can fulfill its legal tasks).

4. Application for entry in the architect and city planner list

The independent registration committee of the Chamber of Architects decides on the entry in the list of architects and urban planners based on the architects' law of the state.

Registration is only possible if the applicant has a place of residence, a place of business or the place of employment in the respective state.

In the registration procedure, professional qualifications must be demonstrated. The vocational qualification requires both a successfully completed study with a minimum of four years of regular study period for the field of architecture or a minimum of three years of regular study time for the subjects of interior design, landscape architecture or urban planning, as well as at least two years of practical experience in the requested field of study after completion of higher education. Submission of professionally suitable own work and proof of the employer or client (or the ability to higher technical management service with field-specific orientation) must be demonstrated.
With the entry in the architect or city planner list a compulsory membership in the architects chamber and a compulsory participation in the supply work of the architects is connected. Membership of the Chamber of Architects will then result in an annual membership fee based on income. The basic fee is € 242 per year (rate in Hamburg). Self-responsible members are also obliged to take out professional indemnity insurance (see below).

For an application for registration, the following documents must be provided:

a) Application for registration
b) Identity card in copy.
c) Professional CV
d) Certificates of employment as proof of practical activity after completion of the university education of at least 2 years of practical activity, as well as on the activity performed at the time of application.
e) Proof of titles, academic degrees or official titles
f) Proof of higher education
g) planning documents from the period of practical activity after completion of higher education from the field of study requested.

5. Services of the Chamber of Architects

Members of the Chamber of Architects benefit from the services of the Chamber.

In particular, the following topics should be emphasized:

a) Management of the job title
b) Academy for training
c) Participation in competitions
d) Initial legal advice
e) Honor method
f) Arbitration Method
g) old-age provision / insurance
h) PR
i) right to vote
j) Advice on setting up a business.

6. Obligation to maintain a professional liability insurance

6.1. Rationale

All members of the Chamber of Architects are required by law to adequately insure themselves against liability claims arising out of professional practice in the event of their own responsibility, corresponding to the scope and nature of the work performed.

6.2. Affected by the insurance

The compulsory insurance covers all members of the Chamber of Architects, who are self-responsible as architect / interior architect / landscape architect / city planner. This means that in addition to freelance, also employed, civil servant and construction industry active members need compulsory professional liability insurance, if they work independently as an architect / interior designer / landscape architect / city planner.

For so-called freelancers, compulsory insurance applies if their freelance employee contract can be interpreted as a subcontractor contract. This is the case if they are responsible for their client (for example for an architectural office), i. e. with independent obligations in accordance with the contract.

6.3. Insurance activities

Occupational activities

The professional indemnity insurance covers the damage caused by the policy-holder in the exercise of the self-employed activity as architect / interior architect / landscape architect / urban planner described in the insurance policy and its supplements. Which activities belong to the respective job profile, follows from the law on architects.

Time and compensation moment

A liability can occur even before a concrete architect contract is concluded orally or in
writing or a building application is submitted. In any case, even basic determination and other pure planning services have a high liability relevance, as several court decisions show. In addition, a liability can not only occur for planning services to be provided for a fee, but also for "favors" (for example, for friends or neighbors), volunteer work (eg as a member of a municipal council) or in the context of acquisition services.

6.4. Minimum insurance requirements

Firstly, the principle that professional liability insurance must always correspond with the size and nature of the activity carried out, that is, depending on the activity, much higher sums insured may be required than the minimum amounts for members and companies insured as listed below.

Natural people:

The Law on Architects itself does not contain any specific requirements with regard to the minimum cover required for compulsory insurance for natural persons. The minimum sum insured, however, results from the statutes of the Chamber of Architects. It amounts to 1,500,000, - € for personal injury as well as 250,000, - € for property and pecuniary damages for every insured event. The maximum annual payment for all damages caused in one insurance year must in principle amount to at least twice the amount of the minimum sum insured.

Companies:

The minimum sum insured for companies results - unlike natural persons - directly from the Law on Architects. It amounts to 1,500,000, - € for personal injury as well as 300,000, - € for property and pecuniary damages for every insured event. The maximum annual benefit for all damage caused in one insurance year must in principle amount to at least three times the amount of the minimum sum insured.

7. Federal Chamber of Architects (BAK) and regional chambers

Chambers of architects exist in each of the 16 states. They have joined to form the Federal Chamber of Architects (Bundesarchitektenkammer/BAK), an association that represents the interests of the profession at Central and European level and takes a stand on selected topics of occupational policy. The Federal Chamber of Architects fulfills no state tasks; therefore it is organized as a private law association and not as a public corporation like the chambers on the state level. The office of the BAK is based in Berlin and Brussels.
Analytical Note No 16


Authors:

1. Volodymyr Gusakov (Honored Architect of Ukraine, Ph.D. in Engineering Science, twice winner of the State Prize of Ukraine in the field of architecture, President of the National Union of Architects of Ukraine)

2. Oksana Medvedchuk (Honorary Worker of Construction and Architectural field, Postgraduate Student, Senior Lecturer of the Public Administration Department of the Interregional Academy of Personnel Management, Head of the Department for Regulatory and Methodological Support of the Interstate Guild of Engineers and Consultants)

3. Svetlana Reva (Master of Public Administration, Vice-President of the Interstate Guild of Engineers of Consultants.

4. Oleksandr Chyzhevsky (Honored Architect of Ukraine, Ph.D in Architecture, Vice-President of the National Union of Architects of Ukraine)

COVERAGE OF THE PROBLEM

Construction and operation of real estate throughout the life cycle (from intentions to invest, including design, construction, operation, repair, reconstruction till the demolition and utilization of materials and waste) is associated with a possible large number of risks of financial, technical, technological and legal nature. In domestic realities, these risks are complicated by economic instability, high levels of corruption, and the burden of the Soviet legacy in economy regulation.

In practice, this situation entails a violation of the rights and legitimate interests of citizens, territorial communities, investors and the state for the chaotic development of territories, distortion of the architectural appearance of cities, pollution of the environment, poor quality of construction products, etc.

The proper level of safety of the construction industry and the high culture of construction in modern conditions cannot be ensured solely by prescriptive management of public authorities, which leads to the search for new mechanisms for regulating construction activities. Therefore, these problems should be solved not only by reforming the system of state architectural and construction inspection and supervision, as reasonably proved in Analytical note No. 13 and through the introduction of public control (Analytical note No. 14). First of all, it is necessary to increase the personal and corporate responsibility of the subjects of urban development.

The best example of importance of personal and corporate responsibility in construction is the Methodology of rating of World Bank and the International Finance Corporation “Doing Business”

For many years, the effectiveness of national economies on “Obtaining construction permits” in this rating was assessed by three indicators aimed directly at ensuring ease of doing business (number, cost and duration of procedures). However, since 2015, the Rating Methodology includes the Quality Control Index, which the qualification and responsibility of professionals and the effectiveness of control, including non-state, are assessed.

The proportion of this indicator is quite high. Thus, in the Doing Business-201941 rating, despite the increase in the number, cost and duration of procedures, Ukraine has managed to improve its position on the indicator “Obtaining construction permits” by 5 positions and lightly (by 1.02%) move away from the top only because of new requirements

---

41 Doing Business-2019, URL: http://russian.doingbusiness.org/ru/data/exploreeconomies/ukraine#DB_dwcp
for certification and the responsibility of specialists (+4 points).

The effectiveness of personal and corporate responsibility in construction is confirmed by international experience. It shows that the state plays a significant but not always leading role in the management system of the construction industry in general and its individual components in particular. Denationalization (privatization) of the construction management system, which consists in reducing the role of the state by transferring management functions to the private sector and professionals, has long ceased to be a trend and has become part of the state policy of the most economically developed countries\(^2\).

One of the reasons for this situation is the rapid growth in the number and variety of building materials, products, processes and technologies. The state simply does not have adequate resources to keep up with them, not to mention competently assessing their safety and suitability for practical use, as well as to check each construction project at all stages of its construction for compliance with the established requirements. The acute deficiency of competent specialists and the lack of sufficient financial, material and human resources in public institutions lead to the transfer of functions that have historically been the prerogative of the state to the subjects of the construction market. At the same time, the state has no other way out, because a simple increase in funding and expanding the staff of qualified employees will not solve the problem of processing bigbulk engineering and technical data in the flow of construction innovations.

This problem clearly appeared during the decentralization of powers in the field of architectural and construction inspection with the adoption of the Law of Ukraine No. 320-VIII dated April 9, 2015\(^4\). The reform, designed to strengthen the powers of territorial communities and bring administrative services closer to the consumer, has faced institutional, organizational, and, above all, personnel problems in its implementation in the field. In many cases, local governments have failed to ensure the quality performance of approval and registration and inspection functions assigned to them.

However, the way to solve this problem, enshrined in the Law of Ukraine No. 1817-VIII dated January 17, 2017\(^4\), does not correspond to the international practice of construction regulation: instead of increasing the personal and corporate responsibility of market entities, rigid centralization of approval and inspection functions was actually returned and the State Architectural and Construction Inspection of Ukraine is in charge for it.

First of all, it requires the definition and legislative regulation of the issue of delimitation of the responsibility of central executive authorities, local authorities, as well as professionals and their organizations in the implementation of urban planning, design, construction and operation of construction projects. The fair distribution of risks and responsibilities should be the basis for such delimitation among all the major stakeholders in the construction industry, in which the responsibility in each case relies on the one who has leverage to influence the specific situation and manages the risks.

Uncertain today are the types of responsibility of professionals and their associations in construction. Basically, in Ukraine legal responsibility is applied to the subjects of urban planning, first of all:

- criminal (applied for the commission of a crime);
- administrative (comes for committing an administrative offense and entails the imposition of an administrative penalty)
- civil (comes for violations of contractual obligations or causing non-contractual harm. It entails reimbursement of so-called “property”


damage and also non-property, as well as payment of a penalty); 
- disciplinary (applied for violation of labor discipline);
- damage (liability for damage caused to an employer by an employee)
- financial (comes for violation of tax laws, entails sanctions in the form of fines and/or late fee).

However, the responsibilities of professionals and their associations in construction go beyond the limits of legal responsibility and lies within social responsibility: industrial, corporate, moral and ethical. Personal and corporate responsibility should include compliance with codes of professional ethics, rules and standards of professional activity, the creation and application of mechanisms damages reimbursements (compensation funds, insurance of risks and liabilities, etc.). There is a highly lack of development of such tools in the construction market of Ukraine.

There are also shortcomings in determined legal liability of laws in construction. The administrative responsibility for the chief architect of the project or the technical supervision engineer is clearly defined, easily identified and implemented in practice by applying appropriate penalties, but it is almost impossible to hold a certified expert accountable for inadequate expertise of the project or an architect for violations during developing urban planning documentation.

Personal responsibility is not established for all professionals who perform complex and responsible work related to potential risk. There is certain degree of personal responsibility is implemented at the stage of development and examination of projects (architects, experts, design engineers are certified and are liable in the form of a fine for improper performance of work (services), the right to perform of which is determined by a qualification certificate), but there are no certified specialists among personnel of contracting organizations and, accordingly, no personal responsibility has been introduced.

2 CRITICAL ANALYSIS OF THE SITUATION

2.1. Analysis of the practice of personal administrative responsibility in construction

Personal administrative responsibility in construction was introduced with the adoption of the Law of Ukraine dated 22 December 2011 No. 4220-VI "On Amendments to Certain Legislative Acts of Ukraine Concerning Strengthening Responsibility and Improving State Regulation in the Field of Urban Planning"\(^{45}\), where:

has been strengthened the responsibility for violations of all participants of the construction process in the field of urban development. The size of the penalties was brought to a reasonable level at that time, which has to ensure the performance of their punitive and preventive functions;

responsibility was established for violations in the implementation of new activities that have arisen after adoption of the Law of Ukraine "On the regulation of urban planning", and for which responsibility has not been provided at all (performance of work without notification or declaration, etc.);

for the first time, the personal responsibility of certified specialists who perform work that may be a reason of a threat to the life and health of population is determined (chief project engineer, chief project architect, expert, that carries out project expertise, technical supervision engineer, etc.);

the responsibility of officials for violations committed by them during performance of duties (violation of the deadlines for registration of the declaration and issuing permits, extortion when registering such declarations, issuing permits and certificates not prescribed by the legislation).

---

\(^{45}\) Law of Ukraine dated 22 December 2011 No. 4220-VI. URL: http://zakon.rada.gov.ua/laws/show/4220-17
Together with the personification of access to the market, made with the adoption of the Law of Ukraine "On Regulation of Urban Planning", an efficient and effective system of personal responsibility should look like:

1) in accordance with Article 17 of the Law of Ukraine "On Architectural Activity", the Cabinet of Ministers of Ukraine forms a list of certain types of work (services) related to the creation of architectural objects, responsible performers pass professional certification;

2) the legislation determines the relevant requirements for the implementation of such performers (work, services) for the violation of which responsibility comes;

3) the duty of the responsible executor requires a signature and a stamp (in electronic form if available) on the documentation created during construction, indicates information about it in the relevant document forms, that allows clearly identify a guilty person and results of its activities;

4) law defines specific violations and sanctions for their commission.

The application of such a mechanism can be illustrated by the example of the responsibility of technical supervision engineers, where not perfect, but quite effective procedure is established:

1) according to the Resolution of the Cabinet of Ministers of Ukraine dated May 23, 2011 No. 554, technical supervision is included in the List of certain types of work (services) related to the creation of architectural objects, the responsible executives pass professional certification (Section 4 of the List), and the profession of a technical supervision engineer is in the list of responsible executors of certain work types (services) (clause 2 of the Professional Attestation Procedure)

2) implementation of technical supervision procedure approved by the Resolution of the Cabinet of Ministers of Ukraine dated July 11, 2007 No. 903 "On the architectural and technical supervision during the construction of the architecture object"

3) applications of documents on the implementation of preparatory and construction works, approved by the Resolution of the Cabinet of Ministers of Ukraine dated April 13, 2011 No. 466, the surname, name and patronymic, series and number of its qualification certificate of a person exercising technical supervision on a specific object are indicated;

4) Article 96-1 of the Code of Administrative Violations of Ukraine establishes administrative liability in the form of a fine for:

   violation of the procedure for the implementation of technical supervision (part seven of Article 96-1) - from four to five hundred non-taxable minimum incomes of citizens;

   maintaining executive documentation on violation of building codes, state standards and regulations (part eleventh of Article 96-1) - from two hundred to three hundred non-taxable minimum incomes of citizens;

   performance of work without a qualification certificate (Part Eleventh of Article 96-1) - from fifty to one hundred non-taxable minimum incomes of citizens.

Thus, authorities of the state architectural and construction inspection can identify the person responsible for violations committed during the technical supervision of any object, and bring to administrative responsibility.

As for other responsible executives, this procedure is not always implemented, and, in many cases, bringing them to administrative responsibility is difficult or impossible.

---

46 Resolution of KMU dated 23 May 2011 No. 554. URL: http://zakon.rada.gov.ua/laws/show/554-2011-%D0%BF


48 Resolution of KMU dated 13 April 2011 No. 466. URL: http://zakon.rada.gov.ua/laws/show/466-2011-%D0%BF

49 Codex dated 7 December 1984 No. 8073. X. URL: http://zakon.rada.gov.ua/laws/show/80731-10
Example 1

In accordance with Article 1 of the Law of Ukraine "On Architectural Activity"\(^{50}\), expertise is the activity of experts who have appropriate qualification certificates and, on behalf of the customer, provide reports on the compliance of design solutions with legal requirements, state norms, standards, building norms and rules and are responsible for the accuracy of the reports provided.

Resolution of the Cabinet of Ministers of Ukraine dated 11 May, 2011 No. 560\(^{51}\) establishes the Procedure for approving construction projects and conducting their expertise, which defines both the requirements for the implementation of this type of activity and the need for their implementation by certified specialists. The national standard of Ukraine DSTU-N B A.2.2-10 2012 "Guidelines for organizing the examination of project documentation for construction", approved by Order of the Ministry of Regional Development dated December 21, 2012 No. 646, determines which documents in the expert report are developed by a certified expert and where are expert's data is mentioned.

Code of Administrative Violations of Ukraine\(^{8}\) establishes the responsibility of an expert in the form of a fine of two to three thousand non-taxable minimum incomes of citizens for transferring design documentation to the customer to perform construction work developed in violation of the requirements of legislation, urban planning documentation, initial data for designing objects, standards and regulations, including the creation of an unobstructed living environment for persons with disabilities and other people with limited mobility (first part of the Article 97-1).

It would seem that there are all conditions for the implementation of experts responsibility. However, due to the incorrectness of the wording of this norm, this sanction is practically impossible to apply, since, according to formal signs, neither the expert nor the expert organization does not transmit the project documentation to the customer, but provides a written report on the results of the examination. Thus, the personal responsibility of an expert in the examination of project documentation in practice is not implemented.

Example 2

The situation with experts - developers of urban planning documentation is even worse.

Urban planning documentation is the basis for the development of settlements; it is an instrument of state regulation of territory planning (Part Two of Article 2 of the Law of Ukraine "On the Regulation of Urban Planning"). Requirements of urban planning documentation are mandatory for all urban planning subjects to perform (Article 5 of the Law of Ukraine "On Urban Planning Regulation"). The same violations in the development of urban planning documentation can have significantly worse consequences for development of a territory than a violation in the design and construction of specific objects. Therefore, for them should be established strict liability.

In 2012, as part of the deregulation reform in construction, licensing of works on the development of urban planning documentation was canceled with the prospect of a gradual transition to certification of specialists in this professional activity.

Indeed, the Resolution of the Cabinet of Ministers of Ukraine dated 23 May, 2011 No. 554\(^{52}\) of the development of urban planning documentation is included in the List of certain types of work (services) related to the creation of architectural objects, responsible performers pass professional certification (Section 4 of the List). There is the professional certification of architects within "Development of urban planning documentation", and information

---

\(^{50}\) Law of Ukraine dated 20 May 1999 No. 687-XIV. URL: http://zakon.rada.gov.ua/laws/show/687-14


\(^{52}\) Resolution of KMU dated 23 травня 2011 р. № 554. URL: http://zakon.rada.gov.ua/laws/show/554-2011-%D0%BF
about them is included in the register of certified persons\textsuperscript{53}.

Currently the Code of Administrative Violations does not establish any sanctions against those responsible for violations in the development of urban planning documentation, which makes it impossible to bring them to administrative responsibility for poor-quality development of urban planning documentation, violation of the procedure for its development, etc.

A similar situation has arisen with the survey in construction (specialization of "Technical inspection of buildings" and facilities "Technical inventory of real estate objects"), where mechanisms of personal administrative responsibility are not involved to certified specialists.

It is impossible to deprive a qualification certificate of such experts as a form personal responsibility.

According to clause 20 of the Procedure for conducting professional certification of responsible executors of certain types of work (services) related to the creation of architectural objects, a specialist who has violated the requirements of the law may be deprived of a qualification certificate on the basis of the formal note of inspection authorities finding out that the executor violated requirements of regulatory legal acts and regulatory documents in the field of urban development. However, it is problematic to use such a tool due to the ineffectiveness of state inspection mechanisms described above (since it is impossible to bring to justice certified specialists cited in examples 1 and 2, so there are no formal notes on detection of these violations by inspection authorities).

2.2. Analysis of the practice of corporate responsibility mechanisms in construction

Corporate responsibility partly derived on the activities of self-regulating organizations in Ukraine.

At present, the foundations of self-regulation are enshrined in the legislation of Ukraine and implemented in practice. However, special attention should be paid to the issue of introducing effective mechanisms for the compensation of losses caused to consumers as a result of provision of goods by members of the self-regulatory organization, the performance of work (services) of inadequate quality as a risk management mechanism in construction. Now this issue is being actively discussed, in particular the aspect of insurance of civil liability of members of self-regulatory organizations.

In accordance with Article 16-1 of the Law of Ukraine "On Architectural Activity"\textsuperscript{54}, self-regulatory organizations determine the rules and standards of entrepreneurial and professional activities that are mandatory for all members of such organizations, and also provide mechanisms for damages compensation caused to consumers as a result of the provision of goods by members of a self-regulatory organization, performance of works (services) of inadequate quality.

According to the Procedure\textsuperscript{55} of registration of self-regulatory organizations in the field of architectural activity, exactly the rules and standards of business or professional activity determine the mechanism for damages compensation caused to consumers due to the provision of goods by members of the self-regulatory organization, performance of work (services) of inadequate quality.

Today, standards of professional activity of SROs include the following mechanisms for compensation of damages:

- formation of compensation funds;
- insurance of civil (property) liability of SRO’s members to the consumer in the exercise of professional or economic activity;
- combining of listed mechanisms.

The mechanism for compensation of damages, as for example, from one of SRO

\textsuperscript{53} Register. URL: http://www.minregion.gov.ua/napyamki-diyalnosti/building/reyestr-atestovanih-osib/arhitektori/

\textsuperscript{54} Law of Ukraine dated 20 May 1999 No. 687-XIV. URL: http://zakon.rada.gov.ua/laws/show/687-14

\textsuperscript{55} Order of Minregion dated 13.05.2014 No. 137. URL: http://zakon.rada.gov.ua/laws/show/z0573-14
standards is a system of measures aimed at covering a self-regulatory organization of losses caused to consumers as a result of performance (provision) of works (services) of inadequate quality, due to compensation payments from the compensation fund and insurance. At the same time, losses are understood as expenses that are a consequence of improper performance (provision) of works (services) by a member of an SRO that a consumer faced in connection with the destruction or damage of an architectural object, as well as expenses that the consumer made or should do to restore his violated property rights of an architectural object.

Court or an SRO is responsible for determination of the degree of guilt of a responsible executor, which considers the appeal of an investor. This is an element of corporate responsibility. SRO’s committee considers a complaint and makes the appropriate decision related to the reimbursement of losses inflicted to the consumer, guided by the Professional Standards adopted and mandatory for implementation.

The compensation fund is usually formed from the following sources:

- the paid part of membership fees in accordance with the Charter of the self-regulatory organization;
- revenues from placing funds of the compensation fund under bank deposit agreements, bank accounts and / or savings (deposit) certificates;
- other sources not prohibited by law.

The funds of SRO’s compensation fund must be kept in bank accounts and may be sent, by decision of the SRO governing body, to compensation payments, which means paying SRO to the consumer for damages, which are not sufficient to compensate for the insurance reimbursement paid in case of subsidiary (additional) liability of the self-regulatory organization.

It should be noted that a compensation fund is limited in its amount: larger membership fees needed for a large fund. As a rule, contributions to the fund of a self-regulatory organization are the same for all its members that creates a pressure on medium and small companies. Also such payments should be differentiated. In addition, payments from a compensation fund entails the need to replenish it, and, consequently, creates an additional burden for all SRO members.

SRO determines the procedure of replenish of a compensation fund in case of payments made from it, primarily at the expense of a member of the SRO, caused damage to the consumer who is obliged to pay a target membership fee, the amount of which is equal to such compensation payment. In the case of non-fulfillment or improper performance of such a fee by a member of the SRO, target members' fees to replenish the amount of the compensation fund are paid by all members of the self-regulatory organization, does not remove from the perpetrator the obligation to refund these payments.

To minimize payments from a compensation fund, a new member of an SRO must not only deposit the appropriate amount into the compensation fund at the entry stage, but also meet the established criteria and standards of entrepreneurial and professional activities. If the second condition is not met, an SRO risks to have a loss, which will be a heavy burden for the compensation fund, and therefore for other members of the organization. Therefore, applicants should be carefully selected and, in case of non-compliance with the requirements established by the rules and standards of the SRO, increase the level of their activities. At the same time, charter documents of an SRO must establish a procedure for joining membership and bodies authorized to accept new members (in case of mandatory membership, the procedure for joining an SRO should be regulated at the level of the law). The system of responsibility cannot be enclosed in the triangle investor-customer - certified performer.

Analytical Note No 16

- self-regulatory organization. Insurance companies must be involved in this triangle.

Insurance has certain advantages over the creation of compensation funds.

A distinctive feature is that any payment at the expense of a compensation fund entails the need to form additional contributions to all members of a self-regulatory organization, and in case of payment under the insurance contract, other SRO members do not have to pay additional insurance premium or other additional payments.

Insurance premiums are differentiated depending on the volume of activity of each company, which is often very important for small and medium businesses. For individual entrepreneurs - members of SROs in Ukraine, insurance premiums are also formed depending on work experience and the possible degree of risk of his professional activity, expressed through the class of consequences (responsibility) of the object on which an employee works.

Losses of the insurer do not entail a reduction in the size of its obligations and insurance premiums under specific insurance contracts. At the same time, such a risk always exists with the ineffective management of the compensation fund of a self-regulatory organization.

Insurance of SRO liability provides their financial protection in the event of harm to life, health and property of people and environment as a result of hidden defects and special properties of materials, equipment and tools used in performance of work, as well as other unforeseen circumstances. The insurance contract will also protect property interests of consumers who are harmed in their professional activities by members of an SRO.

The activities of insurance companies significantly strengthens the activities to minimize the risks of consumers in the process of creating architectural objects. Insurance companies can insure an architectural object during the entire cycle of its creation, and in this case, cooperation with an SRO may include the possibility for an SRO members to carry out an examination of design decisions and their implementation, or in monitoring (supporting) the construction process.

The role of self-regulatory organizations is also in corporate relations with insurance companies and obtaining certain preferences and guarantees for its members. The insurance company, making insurance payments, forms the first component of the three components of payment related to the reimbursement of the losses provided to the consumer.

Ukrainian insurance legislation is a more legally regulated compensation mechanism. Therefore, it is advisable to consider the creation of an insurance system as an effective way of securing property liability, where the size of the contribution depending on the size of the sum insured and the amount of insurance coverage.

At the same time, insurance and creation of compensation funds are mechanisms that do not replace, but complement each other. Both have the same goal: to protect market participants. However, the principles of this protection and the conditions for its provision are remarkably different. The most common is the simultaneous using of both mechanisms. In each case, they should be used depending on the needs and capabilities of a self-regulatory organization, taking into account the particulars of the professional or economic activities of its members, as well as the objective shortcomings and benefits of each of these mechanisms (open source analysis).

Problematic issues.

Shortcomings in legislative regulation of powers are the main problem that restricts spreading mechanisms of responsibility introduced by SROs that are exercised on a delegated basis, due to legal uncertainty regarding the spread of mechanisms for regulating, controlling and responsibility of

---

persons who are not members of self-regulating organization.

In accordance with the Law, the rules and standards of an SRO are mandatory only for members of an SRO. The same about SRO standards, which establish mechanisms for the compensation of losses caused to consumers as a result of goods provided by SRO members, performance of works (services) of inadequate quality. At the same time, a self-regulatory organization on a delegative basis is vested with authority and management functions for all market actors that are not its members and for which, respectively, SRO standards are not mandatory. Thus, having received authorization for admission to the market, the SRO is deprived of tools to control the activities of market participants, to a certain extent levels the essence of self-regulation as a tool for personalization and corporatization of responsibility in construction (for more details see analytical note No. 15).

In practice, a very difficult issue is also the determination of a key person in charge, who must be a manager of the entire project. Often, such a mission is entrusted to an architect – a chief architect of the project, but quite often an engineering consultant is engaged for this purpose - a specialized engineering company or an expert; it provides organizational and consulting support for the design and construction of facilities. Features of distribution of responsibility in this case should be clearly defined by the contract.

The creation of architectural objects is carried out as a result of certain investment processes, which are inextricably linked with risks. Formation and compliance with corporate rules minimize risks associated with inadequate quality of work performed by the executors or service delivery. At the same time, protection of investors from financial risks cannot be assigned to an SRO; this function is the prerogative and function of the state and the judicial system.

3 PROPOSALS

3.1. Action Plan for the introduction (strengthening) of personal and corporate responsibility in construction

Introduction (strengthening) of personalization and corporatization of responsibility in construction should be based on the following conceptual foundations:

- denationalization of the construction management system, which consists in reducing the role of the state by transferring certain management functions and responsibilities for the results of construction activities to professionals and their associations;

- a fair distribution of risks and responsibilities between all major stakeholders in construction, where the person who has the levers of influence on a specific situation and manages the relevant risk is responsible in each case;

- distribution of personnel certification (both mandatory and voluntary) as a mechanism for identifying responsible executives who have the right to perform certain types of work (services) and are personally liable for them;

- strengthening and improvement of all types of legal liability of professionals performing complex and responsible work related to potential risk;

- development of tools for social responsibility of specialists and their associations (production, corporate, moral and ethical), which should include compliance with codes of professional ethics, rules and standards of entrepreneurial and professional activities, the creation and application of mechanisms for compensation for damages (compensation funds, insurance, etc.).

3.2. Proposals for legislative, organizational and institutional strengthening of personalization tools and corporate responsibility in construction

To create a clear and effective mechanism for personal and corporate

---

Responsibility in construction it is necessary to take a number of measures.

1. **During developing the Urban Planning Code, the model of state regulation in construction should be reformed**, leaving the state and local authorities primarily responsible for observing of organizational and legal order of construction, and putting the responsibility for an object for professionals and their unification. For this:

   - main functions of local governments as a key element in the public administration of construction should include ensuring the development and approval of urban planning documentation in accordance with the legislation, placing it in a public space (on a web portal, web page, etc.) as a source formed the initial data for designing objects, establishing a transparent process of issuing or obtaining permits for the entire cycle of creating objects of architecture. Personal responsibility for violations in the performance of these functions should be established regarding officials of local governments;

   - the state policy in the construction industry, including supervision of objects of urban planning, should be carried out by the central executive body. The question of quality of design and construction work is placed on self-regulatory organizations, quality of design is supervised (monitored) by expert organizations in cooperation with insurance companies, architectural and construction control and licensing procedures must be implemented by local governments and local executive authorities. Thus, there are will be delineation between permitting-registrational and control functions that today are in the same hands (SACI is responsible for complex objects; local inspectorates for objects of the CC1 consequences class), which in itself contains corruption risks. Civil servants and employees of these bodies should be personally liable for their actions or inaction in accordance with the law;

   - professionals and their associations have to be much more involvement in the regulation of the industry and take personal and corporate responsibility for their actions and decisions. Besides currently available tools of non-state control (architectural/design) and technical supervision) and the exercise of delegated authority for professional certification, should be introduced the possibility by market participants themselves to admit economic entities to the market; admission to the professional activities of specialists; creation of an accreditation system for testing laboratories and certification bodies for personnel, products and processes; quality control of projects, products and works on objects. It is also worth more widely applying the practice of “self-certification” of product manufacturers and service providers, which refers to the definition and documentary evidence of consumer characteristics of products by the manufacturer (first party), as provided for by EU Regulation No. 305/2011 and proposed to be implemented in Ukraine by the draft law No. 7151 dated 02 October 2017 by introducing a declaration of performance indicators.

2. **It is necessary to improve the mechanisms of administrative responsibility**, ensuring a clear identification of an responsible person and the inevitability of sanctions in case of non-compliance with urban planning legislation, construction norms and rules. It is needed:

   - to revise the List of certain types of work (services) related to the creation of architectural objects, responsible executives pass professional certification, and include responsible executives performing work related to risk, the improper performance of which can have significant negative consequences (making amendments to the Resolution of Cabinet of Ministers of Ukraine dated May 23, 2011 No. 554)

---

59 Resolution of KMU dated 23 травня 2011 р. № 554. URL: http://zakon.rada.gov.ua/laws/show/554-2011-%D0%BF
available in electronic form) on the documentation created during construction, to indicate information about such a performer in the appropriate forms of documents to clearly identify the perpetrator and the results his activities;

- to establish specific sanctions for violations in the implementation of activities for all responsible executors performing work associated with risk, and improper performance of which can have significant negative consequences (amending Article 96-1 of the Code)\(^60\).

3. It is necessary to strengthen (and in some cases - establish) criminal responsibility for committing crimes while carrying out urban planning activities, designing and building objects, the consequences of which are violation of the rights and legitimate interests of citizens, territorial communities, investors and the state because of chaotic development of territories, distortion of architectural appearance of cities, environmental pollution, poor quality construction products, etc. (amendments to the Criminal Code of Ukraine).

4. It is necessary to establish personal responsibility (administrative, criminal, civil, disciplinary, and damage) of local government officials, civil servants, and employees of the central executive bodies, whose actions or inaction while performing official duties can harm life and health of people, environment, and interests of territorial communities, the state, etc.

Persons who form urban planning conditions and restrictions, issue permits, take objects into operation, exercise inspection and supervision should improve their skills, pass professional certification (mandatory or voluntary) and be responsible for their actions of the law (amendments to the Administrative Code and the Criminal Code of Ukraine).

5. It is necessary to extend practice of insuring the professional liability of specialists in construction (including medical insurance officials, government employees of the central executive bodies):
- ensure the introduction of insurance of professional activities of key specialists as a condition for admission to the market or obtaining the right to perform certain types of work (provision of services) (making necessary amendments to the Law of Ukraine "On Architectural Activity")\(^61\);
- stimulate the use of voluntary insurance by reducing the level of state regulation in case of having insurance contracts for construction and installation works and the responsibility of main participants in construction. The beginning of construction of such facilities may be carried out on the basis of a notice, and not a permit; acceptance of the object into operation can be carried out without providing an act of object readiness to an insurance company guaranteeing a facility’s compliance with project documentation, building codes, standards and rules (amending Articles 34 and 39 of the Law of Ukraine "On Regulation of Urban Planning")\(^62\).

6. It is necessary to promote the development of corporate responsibility instruments of self-regulatory organizations in construction and the widespread use of mechanisms for the compensation of damages caused by members of self-regulatory organizations as a result of provision of goods, performance of work (services) of inadequate quality. For this:
- to ensure transparency in registering SROs and delegating to them certain powers determined by law, to exercise appropriate control over the exercise of such powers by the Ministry of Regional Development;
- to take measures on establishing a national model of self-regulation and to improve the legislation on self-regulatory organizations in the field of architectural activity, taking into account the proposals from the analytical note No. 15.

---

\(^{60}\) Codex dated 7 December 1984 No. 8073-X. URL: http://zakon.rada.gov.ua/laws/show/80731-10


OPEN QUESTIONS

1. Determination of professionals to which personal responsibility should be applied in construction

According to the definition of a number of Council of Europe Guidelines, an architectural profession belongs to the professions that are responsible for the security of society. With a detailed analysis of the concept of "architectural activity", this responsibility should also be extrapolated to other responsible executors involved in the creation of architectural objects. This is precisely the personalization of responsibility - each certified performer is responsible, including property responsibility, for results of their activities.

Personal responsibility should apply to all subjects of architectural activity (the Law of Ukraine "On Architectural Activities" defines the concept of "subjects of architectural activity."). This will certainly help minimize risks, improve the quality of works and services in construction.

However, the maximum spread of personal responsibility requires consideration of these two factors:

1) not always the results of the work of a particular specialist can be clearly identified. Building products are often the result of collective labor (group of workers, shifts, work collective). So personal responsibility can be applied only if there is a real opportunity to identify the result of a professional activity;

2) certification and personalization of access to the market of too wide range of specialists imposes additional burden on the business, does not contribute to the establishment of a favorable investment climate, and may constrain the development of the industry.

Therefore, in each case, a separate decision to be made would provide a reasonable balance between security requirements, which foresee raising the level of qualification and competence of specialists, and, accordingly, strengthening their responsibility, conditions for the development of the market of relevant services, requires the avoidance of excessive regulation and unnecessary business expenses. As part of this analytical note, it is impossible to determine professionals to which personal responsibility should be applied in construction.

2. Responsibility for respecting the rights and legitimate interests of investors in ensuring financial risks

The creation of architectural objects is carried out within certain investment processes. Investor is an important participant in the construction. The function of the investor (whether it is an individual or a legal entity) is to invest, which is inseparably linked with risks.

If minimizing risks caused by the inadequate quality of work or services performed by responsible contractors, within the framework of personalization and corporatization of responsibility, is seen as possible and expedient, then preventing investors' financial risks by using only professionals or their organizations is problematic.

It should be noted that recently the problem of violation of rights and legitimate interests of investors, especially those whose funds are attracted to the construction, is becoming increasingly urgent, so it can not be overlooked in the study of any aspect of the management of the construction industry, including this analytical note. However, a coordinated vision of its decision in the context of corporatization and personalization of professional responsibility has not yet been achieved. Experience on these issues is limited to examples of the creation by public associations of "ratings" of construction organizations or "lists of unfair developers", which are ambiguous and require additional analysis and evaluation.
Analytical note 17. The unity of normative regulation during the entire life cycle of construction objects - from planning the territory to demolition of the object.

Authors:
1. Necheporchuk Anatoly - Ukrainian Public Organization "Association of construction industry experts", Ph.D.
2. Yury Prav - Vice President, SE "Interstate Guild of Consulting Engineers", Ph.D.
3. Irina Lagunova - Head of the Department of the Interstate Guild of Engineers consultants ", senior teacher of the department of public administration IAPM, postgraduate student of the IAPM public administration department

1 COVERAGE OF THE PROBLEM

The need to introduce international principles of economic activity in the construction industry is conditioned by the relevant requirements of the Agreement on Technical Barriers to Trade (hereinafter the Agreement) and the commitments made to the EU and is based on the use of uniform rules for conducting national and interstate economic activities, in the basis of which is the technical regulation system.

Obligation of the Technical Regulations as a regulatory document, defined by the agreement and the Law of Ukraine "On Technical Regulations and Conformity Assessment": "technical regulation - a regulatory act that defines product characteristics or related processes and methods proceedings, including the relevant procedural provisions, the observance of which is mandatory ... ". The first part of Article 9 of this Law establishes that technical regulations define state requirements for product safety for consumers and the environment, as well as form requirements for acceptable risks when using products, that is, they are designed to ensure consumer protection, and not regulation of economic aspects. economic activity.

In the field of construction, these legal requirements are provided for the validity of the Technical Regulations for Building Materials and Structures, which implements the Community Directive 89/106 / EEC into Ukrainian legislation.

At the same time, today neither the legislation in the housing and utilities sphere, nor the building codes, nor the existing normative documents, establish the provisions ensuring compliance with the basic requirements during operation. The longest, the most costly life cycle stage that is important for the consumer - operation is not regulated by the law or regulation. The mechanism for implementing the requirements of the Technical Regulations at the operational stage is practically absent.

2 CRITICAL ANALYSIS OF THE SITUATION

The existing regulatory structure in Ukraine in construction is close to the European structure/ At the highest level the Directive 89/106 / EEC on the approximation of laws, regulations and administrative provisions of EU member states regarding construction products, which establishes six basic (essential) requirements for buildings and structures. The directive stipulates that the structures should be designed and constructed in such a way that during their whole life cycle they ensure:

- mechanical resistance and durability;
- safety in case of fire;
- hygiene, health and the environment;
- security and availability;
- noise protection;
- energy saving and heat retention.

In Ukraine, the system of normative regulation of construction is built on the analogy of the European system, which existed from 1986 to 2011:
Analytical Note No 17

- Technical regulation of building products, buildings and structures establishes six basic safety requirements;
- six SBC (state building codes), developed on the basis of six European explanatory documents of Council Directive 89/106 / EEC, specify the main safety requirements established by the Technical Regulations;
- SBC or Eurocode can be used to carry out structural calculations (according to Resolution of the Cabinet of Ministers of Ukraine No. 547 of May 23, 2011 “On Approving the Procedure for Applying Building Standards Developed on the Basis of National Technological Traditions and Building Standards Harmonized with Regulatory Documents of the European Union” [8], all 58 parts of the Eurocode standards are adopted)
- about 300 national standards in force are harmonized with European and international standards.

But at the same time, in the field of construction there remain significant differences from the updated system of legislative and regulatory support in the European Union, and these differences must be eliminated.

**Problem 1. Technical Regulation**

Improving technical regulation in construction by replacing Council Directive 89/106 / EEC with Regulation (EU) No.305/2011 requires Ukraine to carry out appropriate institutional changes, in particular the adoption of the draft Law of Ukraine "On Basic Requirements for Structures and the conditions for placing on the market construction products " (registration number 7151). The adoption will ensure the identity of European approaches to the dominance of safety requirements of buildings and structures during the operational phase.

**Problem 2. Building norms**

At the level of the European Union, requirements are set only for the design of building structures and certain types of construction products, the requirements for the design of specific objects are set by each country separately, taking into account the specificity of territories, national traditions, etc.

In Ukraine, the confirmation of compliance with the requirements of the Technical Regulations is the use of regulatory documents, which are mostly voluntary for use.

The adoption in 2009 of the Law of Ukraine “On Construction Norms” to the construction standards of the status of a normative act of a technical nature, separated them from the normative legal acts while leaving the obligatory requirements of this category of documents. During 2010-2015, nearly 300 building codes were reviewed, most of which, after viewing, received the status of voluntary to the application of national standards or were canceled.

Construction and architecture objects have industry specifics, which is taken into account by the existing Technical Regulations, which determine the safety and reliability criteria important for the consumer in the form of basic requirements. However, the implementation of a change in the valuation method in the construction industry from an administrative to a parametric one at the current transitional period requires taking into account traditions and established practice, which consists of preliminary decades.

The introduction of the requirements of the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Concerning the Improvement of Urban Planning Activities” and by-laws on its implementation was not aimed at solving problems of technical regulation in construction.

The main conflict of inconsistency of the requirements of various documents in the provision of technical regulation is due to the constant understanding of the stages of the life cycle of the object, which are affected by building codes

A step for further transformation of building codes should be the adoption of the draft Law of Ukraine “On Amendments to the Law of Ukraine” On Building Standards " (registration No. 6577) which should consolidate the further development of the
building standards system through parametric rationing and give impetus for further review.

**Problem 3. Standards**

In the EU, the national standardization bodies are mainly non-state actors. Ukraine is still a state. The standardization system in Ukraine requires further privatization and transition to public administration. It is advisable to consider the possibility of creating and operating technical committees of standardization in the form of self-regulating public associations, the development of state regulatory documents for which it is carried out on an economic basis, except for the binding nature of which is established by normative legal acts. Such standards should be publicly available and free of charge and developed with state support (provision) of funding. Public management is advisable to ensure by improving the status of the Governing Council, acting in accordance with Article 13 of the Law of Ukraine "On Standardization" and public control of the central executive body, ensuring the formation of state policy in the field of standardization. Under the conditions prevailing in the current legislation, the Governing Council has become a statistician of state administration.

The obligation to apply the standard may be due to the presence of regulatory requirements in it, in national legislation it is ensured by establishing its binding nature by reference in a regulatory legal act (Article 23 of the Law of Ukraine “On Standardization”). A list of national standards, which are referenced in regulatory legal acts, is posted on the website of the National Standardization Body.

Recognition of the standard as a voluntary regulatory document is the key to the flexibility of the technical regulation system and makes it possible to remove various barriers to the introduction of new technologies, materials, equipment, allows the business entity to conduct a free and optimal choice of product options.

Another problematic issue is the consistency of the requirements of standards and building codes. Since 2016, the Ministry of Regional Development has no authority for standardization under ICS 91, 93 codes, on the basis of which it practically does not regulate standardization in the field of construction, does not act as a customer for the development or updating of standards. Thus, the interrelation of the complex of documents in the field of construction, aimed at providing a safe and comfortable environment through the regulatory system of requirements “technical regulations-building norms and standards” is gradually lost.

**Problem 4. Regulation of operational requirements**

In Ukraine, as well as throughout the European Union, at the legislative level there are mandatory requirements for buildings and structures. These requirements are aimed at providing a safe and comfortable environment for human life and activity and must be fulfilled during the entire life cycle of an object (from planning to its demolition).

With the development of building technologies, the emergence of new materials and equipment, building structures become technically more complex and it is almost impossible to ensure their normal operation without establishing certain design solutions, therefore the section connected with the operational features of the designed structure should become an obligatory section of design documentation.

### PROPOSALS

The orientation of the technical regulation system to consumer protection requires the priority provision of the basic requirements of the Technical Regulations for the operation of a construction object and the orientation towards achieving this goal at all other stages of its life cycle.

Since the only normative act that explains the mechanism for verifying the security of the basic requirements of the Technical Regulations at the facilities is building codes, the solution to the problem of meeting these requirements during the operation of the facility can be achieved by extending the requirements of building codes
for the entire life cycle of the facility. It is advisable to ensure the necessary extension of the construction norms to the operational phase at the legislative level in preparation for reviewing the draft law on amendments to the Law of Ukraine “On construction standards” by including the operational phase with life cycle stages proposed for rationing objects in part 2 of article 5 of this law.

If these legislative changes are adopted, it is advisable to develop a concept for improving the existing regulatory and legislative framework of the construction industry and a program of measures to implement this concept that take into account the removal of restrictions on the impact of construction standards at the operation stage only for housing and civil buildings, leaving priority to departmental regulations of the housing and communal services sector utility purposes.

This proposal for the legislative expansion of the area of operation of building codes at the stage of operation of facilities will prevent conflict, which may occur if the draft Law of Ukraine “On Basic Requirements for Structures,” as well as the conditions for placing building products on the market, is adopted and is implemented provisions of European Regulation No. 305/2011. At the same time, the national transcription to the European requirements in the draft law does not provide for specifying the requirements for structures for suitability throughout their life cycle. The European approach to the need to ensure the basic requirements for an economically reasonable lifetime, provided that the building structures are maintained normally, also did not find an equivalent disclosure in Article 15 of the draft Law. It is only about specifying the basic requirements of the Technical Regulations in building codes. And the draft Law “On Amendments to the Law of Ukraine” On Construction Norms “does not provide for the extension of their sphere of influence at the stage of operation.

Thus, legislative changes on the regulation of construction standards and technical regulation in construction are significantly different from the European approaches to the technical regulation of the requirements for public buildings and facilities set out in Regulation No.305/2011. Legislative consolidation of the interpretation of the basic requirements of the Technical Regulations on construction standards without extending the operation of these standards to the operation phase of the facilities, it excludes the possibility of regulatory support creating and monitoring the "normal conditions of service of building structures", that is, making it impossible to operate facilities in accordance with European regulations approaches. It is necessary to correct the situation in the technical regulation of construction, understanding that suitability for use at the stages of design and construction is only created, and evaluated during operation, that is, when used as intended.

Appropriate approaches to the priority of ensuring the basic requirements of the Technical Regulations should also be reflected in the current legislation. The Code of Ukraine on Administrative Offenses in Article 96-1 violates the law in the planning and development of territories and determines the transfer of design documentation to the customer to perform construction work on an object developed in violation of the requirements of the law, city planning documentation, initial data for the design of objects, building norms, standards and rules, including creating an unobstructed living environment for people with disabilities and other people with limited mobility.

The absence in the list of violations of the basic requirements of the Technical Regulations that are mandatory for all business entities, or simply the Technical Regulations, leads to its ignoring by leading industry experts. The current legal act of the second decade is not perceived as a document, ignoring which can create problems for the specialist and the consumer. The list of violations indicated in the article has become an established practice of the complete presentation of society about deviation from the normal and permissible. But the violation of the requirements of the standards does not take into account the peculiarities of their application, defined at the legislative level: “National standards and codes of established practice are applied on a voluntary basis, except for cases when the
mandatory nature of their application is established by regulatory legal acts. That is, the obligation of the standard arises only in individual cases, and the violation of its requirements is always treated as an administrative offense. It is necessary to revise the current legislation and clarify the wording in order to bring it in line with the priorities of the technical regulation system. This concerns, for example, articles 96 of the Code of Ukraine on Administrative Offenses, in which it is advisable to replace the text of "building codes, standards and rules" with "legal and regulatory acts, mandatory regulatory documents" or instead of mandatory normative documents "to use" normative documents, the binding nature of which is established by normative legal acts ".

The negative impact of restrictions on the operation of building codes during the operation of buildings affected the attempts to create unimpeded living environment for persons with disabilities and other people with limited mobility at existing facilities. Attempts at the state level to improve accessibility conditions for people with disabilities by introducing appropriate requirements to the licensing conditions for economic activity confirmed the imperfection of the current regulatory framework.

In the industry regulatory framework, the target regulatory act regulating the requirements for accessibility to architectural objects is the SBC V.2.2-17: 2006 “Buildings and Structures. Accessibility of buildings and structures for people with limited mobility ”, but the requirements of this document apply to the design and reconstruction of civilian (residential and public) buildings and structures, that is, they are not mandatory at the stage of their operation. In the new edition of this regulation SBC V.2.2-40: 2018 “Inclusion of buildings and structures. The main provisions ”, which comes into force from April 2019, also determined that its requirements apply to the design, construction of new buildings and reconstruction, restoration, overhaul and technical re-equipment of existing houses and public buildings and structures ”, that is, the distribution of these requirements does not include the stage of operation of objects.

The requirement of compliance with the rules is not ensured by the existence of such rules, as well as compliance with standards, the voluntariness of which is defined at the legislative level. As a result, accessibility at the audited sites is based on acts and documents that are not necessary for existing buildings and structures, does not contribute to solving socially acute problems of the barrier of the living environment. The need to ensure the regulatory requirements of accessibility of existing facilities was repeatedly drawn to the attention of the Ministry of Regional Development by representatives of public associations of people with disabilities, which confirms the relevance of extending the operation of building codes to the operation of facilities.

Sectoral discontinuity and uncertainty of the strategy for ensuring the basic requirements of the Technical Regulations at the stage of operation of the facility does not allow objectively determining the optimal timing and scope of remedial measures that will allow to maintain a safe and comfortable stay in the building during the estimated lifetime. The need to create a unified regulatory framework for all stages of the life cycle of housing and civil facilities requires a comprehensive assessment of the existing problems of implementing the modern principles of the technical regulation system, harmonizing EU regulations and legislation, eliminating and further preventing the prevailing national principles of the current practice in implementing common European approaches regulation of economic activity.

Considering that the requirements of building codes, in essence, are details of the requirements of the Technical Regulations, which in international practice are interpreted as safety requirements generally recognized by society, ignoring such requirements at the stage of building maintenance contributes to the loss of the socially necessary hazard level of the facility.

Considering the above, the future priority should be the formation of ways of public risk management by means of technical regulation, including:
the extension of the general principles of technical regulation and the requirements of technical regulations on the final product of construction - construction;

securing the public risk management system at the legislative level, primarily in the construction and housing and utilities sectors;

bringing the regulatory and legal framework of the construction and housing and public utilities sectors to uniform principles of technical regulation and the rule of technical regulations;

the introduction of the parametric method of standardization;

establishment the requirements at the design stage for the operation of buildings and structures, that will ensure the safe use of the facility for its functional purpose for a specified period of operation.

4. OPEN QUESTIONS

The above features of the introduction of modern international principles of technical regulation in the construction industry indicate the need for measures to bring the current regulatory framework in line with the requirements of the Agreement and the creation of conditions to avoid technical barriers in the country’s economic activity in the domestic and international markets. The most relevant in carrying out these activities is to resolve the following issues:

1. It is necessary to eliminate the artificial sectoral distribution of the life cycle of buildings and structures at the construction and operational stages. It requires the establishment of real cooperation between the construction and housing and communal services of the Ministry of Regional Development in determining a unified approach to ensuring the priority of the main requirements of the Technical Regulations, taking into account the existing legal and regulatory acts, rules and regulatory documents.

2. Intentions regarding expedient changes in approaches should be formulated in the form of the concept of providing a system of technical regulation during the construction and operation of buildings and structures, primarily housing and civil purposes.

3. A comprehensive understanding of the possibilities and directions for improving the base of normative acts and documents leads to the definition of new forms of ensuring the principles of the parametric rationing method, the necessary timelines and resources, the desirability of attracting international assistance and advice.

4. It becomes urgent to review and adjust (if necessary) draft regulatory acts prepared by the Ministry of Regional Development, bringing them into line with the conceptual principles of technical regulation of the properties of an object at all stages of its life cycle. It is urgently necessary to conduct a final legislative clarification of the status, regulation zone and place of construction standards in the technical regulation system, as well as the introduction of a new version of the industry technical regulation, identical to the European one. Relevant draft laws are under consideration in the Verkhovna Rada of Ukraine and in certain aspects require synchronization in accordance with conceptual principles.

5. If the provisions of the drafts of these regulatory acts are clarified, there will be a need to revise the draft laws that are under consideration by the Verkhovna Rada and are designed to solve the socially important problems of ensuring the accessibility of people with disabilities and people with limited mobility.

Carrying out the proposed set of measures requires the solution of organizational and legal problems at the intersectoral level, but avoiding them increases the risk of preserving the differences in national and European approaches to technical regulation in the construction industry.
Analytical Note No 18

Analytical note 18. Professional and academic education in the field of urban developing and construction, and its formats. Stuffing of the industry: demand and supply on the market for experts (engineers, builders, city developers, architects, urbanists). Studies and education for public officer in municipalities. Standards and requirements for professional qualification. Communication in the field - platforms and procedures

Authors:
1. Alexander Kashchenko - Doctor of Technical Sciences, Professor, Dean of the Architectural Department of KNUCA
2. Natalia Kondel-Perminova - Secretary of the Scientific Council of INARH NSAU, Candidate of Architecture, Senior Fellow of the Institute of Contemporary Art Problems, Academy of Arts of Ukraine
3. Konstantin Kolesnikov - a member of the board of the CoNSAU, a member of the presidium of the UaGBC, the coordinator of the Kiev Strategic Community
4. Victor Yatsenko - Candidate of Architecture, Professor, Associate Professor of the Urban Planning Department of KNUCA, Lecturer at the Department of Landscape Architecture

With contributions from:
Ivan Nazarenko - Academy of Construction of Ukraine, President, Doctor of Technical Sciences, Professor of KNUCA
Sergey Dyuzhev - Institute of Architectural Management Smart City*

COVERAGE OF THE PROBLEM

Recently, the results of urban planning and construction activities in Ukraine cause more and more dissatisfaction in society, resulting from the quality of new development (as a result of design and construction), as well as inappropriate maintenance of buildings, structures and infrastructure. Therefore, today there is an acute problem of responsibility to society for the consequences of the town-planning (design) and construction (implementation of design decisions) activities.

In the field of urban planning and construction, specialization has reached a significant level of branching. Professional areas stood out in separate professions (for example, an architect and a designer) and have lost contact with each other, both scientific and during the implementation of design solutions, have lost meaningful interaction. As a result, no one is responsible for the final result. Recently, there has been a gap between the cultural and ideological orientation in the profession of the older generation of builders and the investment and managerial orientation of the specialists of the new generation.

There is destroyed / distorted internal professional and inter-professional communication in the field.

At present, Ukraine has not developed a conceptual concept of restructuring the architectural, urban planning and construction education systems in accordance with the new socio-economic minds. In this context, the problem of forming actual target perspective characteristics of training specialists for the urban planning and construction sphere is of particular importance. This problem is forced by the increased demand for specialists in public administration, spatial planning, urban management, landscaping, improvements, etc.
ANCIAL ANALYSIS OF THE SITUATION

Modern professional and academic education in the field of architecture, urban planning and construction is formal due to the lack of complexity, consistency, compliance with the requirements and challenges of our time.

PROPOSALS

In shaping the future state of the urban development sphere in Ukraine, the leading process should be education, which should be accompanied and supported by sphere processes of research, analytics, rationing and criticism. Moreover, each of these systems must take into account the content and interests of the others.

All positive changes in urban planning and construction activities can be achieved through the establishment of a modern system of education, training, academic education, advanced training and retraining, which in essence is a system of continuing education (education throughout life).

1. It is necessary to develop the Concept, Strategy and the Program of continuing professional education in the new conditions with a future orientation, in which the professions of the sphere are a significant factor of the state cultural and investment policies.

For this you need:

- to open horizons for the country and business. To offer large national and investment projects - new cities, new settlement, social / rental housing, etc;
- to restore the intellectual integrity of the profession, rethink its theoretical foundations for activities in new conditions, create education that is adequate to the tasks and prospects;
- to raise the professional level of the architectural decision (through professional examinations and competitions based on clear criteria of professional skill (qualification requirements, rating, etc.);
- to create an effective and diverse in forms and formats professional communication with government, business and citizens.

The work on the development of the Concept of restructuring the system of continuous professional education in modern conditions should be guided and coordinated by the only body in which the Ministry of Education, the Ministry of Regional Development, trade unions and other public organizations are involved in a certain way.

Technological and administrative restructuring of the school should go along with the formation of the philosophy of vocational education. We are talking about the approval of ideological and methodological pluralism, inseparable from the democratic model of society, the implementation of the basic principles of an open, that is, the only possible modern ethical education.

The main ones are:

- concentration of pedagogical technology on the development of thinking and activity (and not on the products of activity);
- situational and environmental relevance (contexts)
- full presentation of the world architectural, other design and construction culture in its real inconsistency;
- the inclusion of real problem situations in the training programs;
- changes in the technology of education, ensuring the transition to open educational systems - self-management (individual choice of the content and trajectories of education), self-organization (share in building the content and the learning process), self-regulation (individualization of the pace of learning activities);
- advanced development of the level of professional communication - a system of
discussion, project workshops, summer schools, etc.;

- building and regulatory consolidation of systemic links between universities and the labor market.

2. Changes in learning technology

We need other technologies that put the student in front of a wide choice of various possibilities. Thanks to the technologies of individualization of education (elective courses, modular systems, “trust system” / (Credit Systems), etc.), you can actively involve students in shaping the content and forms of their education by:

- self-management (individual choice of content and learning trajectory);

- self-organization (building its specific structure at each stage of preparation)

- self-regulation (individualization of the pace) of educational activities.

A necessary condition for building open education systems is the independent efforts of schools. But they are not enough: the principles of openness should be enshrined in the national standards of education in the field. The main role in setting and maintaining new educational standards should belong to professional / public organizations of the sphere.

3. A systematic approach to education

The process of entering the profession must begin at school. The school curriculum should give more complete information from all spheres of architectural and urban planning activity. The provision of basic knowledge in the field of architecture and urban planning in the school curriculum will be the basis of a reasonable, conscious choice of a future profession. Such an approach will reduce the randomness of a large number of students in the choice of profession, deductions and will enhance the quality of professionalism.

For this you need:

- restoration in the school curriculum of subjects that are basic in further architectural and construction education (drawing, drawing, prototyping, computer prototyping, etc.), have a complex form in accordance with the requirements of future professions, and not as subjects of secondary importance. Such a situation will provide equal opportunities for all who wish to obtain the future profession of a specialist;

- to introduce specialized courses, schools, clubs should coordinate training software requirements and programs for further professional education;

- it is advisable to accompany the process of pre-university schooling with master classes for both university professors and students themselves;

- to provide an opportunity (during the year in order to popularize the profession) students practice in the form of classes in schools on subjects of composition, drawings and drawings;

- to develop various formats of popularization of professional pre-university training.

Vocational education.

A graduate of a vocational school, has successfully passed the qualification certification, is assigned the educational qualification level “qualified worker” from the acquired profession of the corresponding category (category). A graduate who has completed an appropriate course of study at an accredited higher vocational school, a vocational education center of a certain level of accreditation, can be assigned an educational qualification level “junior specialist”.

Open questions / special opinion (Nazarenko I.I.).

The Academy of Construction of Ukraine proposes the following structural reform of education, the introduction of which will open up new opportunities for improving the efficiency of education.
The main idea and goal of the first stage of the reform: on the basis of scattered educational institutions of the 1st - 4th levels of accreditation, create regional training complexes (RTC) based on the principle of correspondence of study programs. The introduction of such a structured system of organization of the educational process, in addition to improving the educational level, will open the way to determining the optimal composition of educational institutions in a particular region.

Creating a cluster / regional approach to learning provides an opportunity to improve the learning process, as well as significantly reduce and eliminate disciplines, in one form or another have a repetition. The cluster system of education should be another significant difference from the current system - the ability to quickly, if necessary, to adapt to the introduction of new curricula and disciplines.

At the second stage of the reform, there is a reorganization of the management and financing system, the introduction of the institutional, academic and financial autonomy of regional educational complexes. The introduction of such a scheme of financial autonomy for regional educational complexes is an essential component of decentralization.

Improving the quality of education is realized by moving from a state order to a contractual form of payment in the form of a loan for the entire period of study with the return of funds by appropriate development.

One of the ways to achieve the goal is to create a system of verification and promotion of the profiles and portfolios of students of educational institutions and construction workers.

The goal is to increase the demand for builder training services; development of the market for services of region builders; increasing the motivation of teaching students and graduates, increasing the demand for training services for builders, developing the market for services.

Modern academic education should be built in accordance with the principles formulated by international organizations:

- global competitiveness;
- student-centered approach to learning and teaching;
- flexible learning paths;
- recognition of knowledge and skills acquired outside the university;
- internationalization.

Urban education should provide for the development of the sphere of urban planning, and not be based on the study and criticism of the existing one. This can be achieved by joint efforts in the educational process of scientists, practitioners and managers:

- important in training is the general development of pre-project and project-based real works based on existing design institutes and higher educational institutions;
- one of the forms of the joint educational program should be educational, scientific and design and production complexes, a higher educational institution (student, teacher), a design organization and workers in the administrative sphere of urban planning (chief architects of cities, people working in the field of urban planning);
- the training system should be built on the reality of urban planning (competitiveness, reality, conceptuality, scientific character, legality, standardization, competitiveness, etc.);
- the learning process should provide for the actual participation of students in the project activities for which the training program must be flexible, capable of meeting the requirements of work (competence-based standards are being replaced by existing standards);
- social protection of society is the main monitoring factor in the adjustment of the curriculum, will prevent from obsolete standards and forms of higher education in the urban planning sphere;

Academic education
Analytical Note No 18

- the system of education and further postgraduate work has to be monitored for compliance with the knowledge, the demand for the profession, the quality of knowledge obtained at the university and the definitions of all the negative and positive aspects of the curriculum;

The internship (system of primary advanced training of graduates) as a type of training provides direct attachment to a specific place of practice, provides additional knowledge.

Retraining (advanced training) is focused on training and further work in various forms of special and non-project activities: researchers, designers, critics, administrators (urban architects), teachers, trainers, etc., ensuring the full functioning of the urban planning sphere.

Programs and requirements for training / education for civil servants should be dealt with by a separate group within the Scientific and Methodological Council. It is clear that for civil servants there should be additional requirements (for example, the level of knowledge of the legislative base, a certain level of administration, etc.), depending on the position held. Employee training / education programs are being developed as additional programs for advanced training courses. By creating a rating system and an employee’s e-profile, it will be possible to track their level of compliance with his or her future position.

4. Employment of graduates

To solve the problem of employment of graduates, joint for both universities and the state, it is necessary:

- more clearly to define the professional requirements regarding the levels of bachelor, master, in accordance with modern needs in the urban planning field;

- to create a new system for collecting information on the demand for specialists in the field of architecture and urban planning at the national and regional levels - monitoring the labor market;

- to determine systematically the future needs of specialists in the architectural and urban planning field in design organizations, territorial administration bodies, sectoral ministries, departments and institutions subordinate to them;

- to develop a targeted program for the training of specialists in architectural and urban planning specialties, taking into account the real demand for them in the country for the near and distant future.

5. Development of relations with world schools

Ensuring the quality of education according to European standards (ESG), the use of documents of organizations:

- European Association for the Quality of Higher Education (ENQA)
- European Union of Students (ESU)
- European University Associations (EUA)
- European Association of Higher Education Institutions (EURASHE)
- European Higher Education Quality Assurance Registry (EQAR).

6. Restoration of fundamental scientific research

As a result of decentralization, city budgets are gradually increasing, the number of urban development initiatives is increasing, which are implemented through “participation budgets”, crowd funding, crowdsourcing or grants. Thus, a request is formed for participatory planning, specialists capable of providing it, and for relevant knowledge that accompany these processes and contribute to the integration of Ukrainian urbanism into the global space.

In general, the state educational policy should be aimed at promoting the creation of new formats: hubs, research and production complexes (modern technologies and trends, critics, technology groups, start-ups, etc.).
7. Communication in the field - platforms and procedures

Overcoming the crisis state of the architectural and urban planning profession and professional education in Ukraine requires the implementation of balanced actions aimed at accepting the challenges of our time and finding ways out of further development. To this end, it is proposed to create a central communication platform - the National Scientific and Methodological Council as a collegial body of the sphere with the following leading functions:

- implementation of the strategy of vocational education;
- development / approval of methodology, educational methods, programs, plans;
- keeping registers of educational institutions, programs, projects, plans, teachers, students, employers;
- accreditation / licensing of educational institutions, research programs, projects, etc.
- a new proposed independent collegial body.
- development / harmonization of standards / requirements for professional qualifications

The National Scientific and Methodological Council is a public platform for continuous communication of the main participants in the urban development sector, including: professional associations and unions, public organizations, municipalities, integrated territorial communities, design and construction and production business structures, universities and other educational structures, leading state institutions - The Ministry of Education, Ministry of Regional Development and the relevant committees of the Verkhovna Rada of Ukraine.

The basic principles for creating a rating system:

- as early as possible inclusion in the system (creating an electronic profile at the stages of study in circles, high school ...);
- integration into the system of monitoring tools, verification, etc.;
- regional aspect (for example, it helps to see the dynamics of the demand of specialists, the level of competence, etc.);
- the connection of personal rating with the ratings of universities, teachers, programs, projects, etc.);
- mandatory level "qualification rating", including education, licensing / certification, advanced training;
- a lot of measurability rating "participation rating", “trust rating”, “competency rating”, “administrative rating”, “creative / creative rating”, “team rating” (ability to work effectively in a team), “rating of achievements” (for example, participation and winning contests), etc. ;
- correlation of rating (connections of ratings among themselves in a certain way)
- “live” list of positions (the list is not final, dynamic)
- binding to registers, cadastres (realized objects), other state, public, business systems, aggregators and bases.

The issue of financing the Council will be relevant:

- Ministry of Regional Development - financing of the management structure, projects and programs in areas of the field;
- Ministry of Education - funding for projects and programs related to the profile of the ministry (for example, education)
- The Council can have its own Foundation, which is filled from business, municipalities, amalgamated communities, public, other organizations. Thanks to this foundation, the Council’s grant program works.
- The Council can earn money by servicing certain projects and programs (in accordance with the regulations, other documents of the Council).

Scientific and Methodological Council has the right of legislative initiative. In its activities, in addition to the legislation of Ukraine, it is also guided by international standards, takes into account key documents of the world
professional community (Leipzig Charter, Habitat III, the UIA / UNESCO Charter on Architectural Education and other similar documents).
Analytical Note No 19

Analytical Note 19. Strategies, programs, projects, plans and agreements on integrated spatial development of territories on the base of partnership at the national, regional and local levels.

Authors:
1. Yuriy Mantsevich - Scientific Secretary of the State Enterprise "NDPI"
2. Grigoriy Melnychuk - Coordinator of the NGO "Kyiv Urban Council"
3. Yuri Dekhtyarenko - Associate Professor of the Department of Regional Management, Local Government and City Management of the National Academy under the President of Ukraine, Ph.D., Honored Economist of Ukraine

1 COVERAGE OF THE PROBLEM

The concept of urban development - the development plan of the territory, determines the ultimate functional purpose and the basic parameters of the development of the territory. It should include a comprehensive solution on architecture issues (it can include draft options for building using three-dimensional visualization), infrastructure, transport and engineering networks, as well as the rationale for the economic efficiency of financial investments and the investment attractiveness of the territory, taking into account the possibilities of its development.

On the example of Germany, it can be seen that the concept of planning the development of a city (informal, not provided for by the legislation is in essence nor regulated by content) is usually impossible to separate from spatial planning, because considerations for the development of a city or part of a city are already spatial solutions and vice versa land use (master plan) includes the strategic elements of the development of the city.

On the development of spatial planning documentation, these concepts can have quite practical application for determining not only the basic parameters of the future development of the object of research or design, but the requirements for the documentation itself (volumes, terms, amount of funding, etc.).

2 CRITICAL ANALYSIS OF THE SITUATION

Strategies. With proper tools, government institutions can not only monitor the construction and reconstruction of relevant facilities, but also form a forecast for the future on the dynamics and performance of individual projects at the national level to improve the performance of the coordination function. It is necessary to realize that the framework task of developing a strategic document is already defined in the Regional Development Strategy, and an attempt to introduce a new type of state forecasting document will cause resistance primarily to institutions that are already involved in relevant programs. In addition, as the experience of parallel development of land management and city planning documentation shows, this leads to duplication in both types of documentation up to 60% of the information. This practice can not be called rational.

Attention should be paid to the difference in the desire to make radical changes in the approaches to the development of formal and informal documents and real possibilities. A significant obstacle to the introduction of informal documents is a strict regulation of the formation of local budgets and expenses that can be implemented without violating the requirements of the law. Having no financial basis for development and a weak orientation of the Prozorro system towards the dominance of the price reduction criterion leads to the destruction of any progressive ideas at the stage of their formulation. The development of a strategy is in its essence more scientific than project work, and the mechanisms for determining the cost of such developments are so imperfect that it is advisable to state their absence rather than the presence.
Concepts. Consultations with specialists from leading urban planning institutes show that there is no demand for this type of work, mainly due to the lack of understanding among potential customers (local government leaders) of the possibilities of their practical application. This is one of the surprising cases when the institutions of civil society do not find a common language with the institutions not because of their resistance, but because they cannot formulate a public request for satisfying social needs.

Programs. The main disadvantage of the practice of developing sectoral programs is their weak connection, or the complete lack of connection with the documentation on spatial planning.

Plans. The development of processes of globalization, technology, public relations, socio-economic situation of the country and the corresponding territory as its part requires periodic revision of the basic indicators that form the basis for the development of the general plan of the settlement as a long-term strategy for planning and building up the territory. Outdated master plans causes the threat of stagnation in the spatial development of society, not only in practical but also in psychological terms.

Projects. The lack of direct linkage of planning the allocation of budgetary funds in spatial distribution, determined by urban planning documentation, allows presence of corruption schemes in such plans and ignoring the real interests of society, spending money inefficiently.

There is no mechanism for implementing the rule on the possibility for local governments to independently expand the composition of the master plan and the detailed plan of the territories (Article 15 and 18 of the draft law) and the corresponding financing of such additional works. It becomes obvious the inconsistency of the order of such projects exclusively through the "Prozorro" system.

Contracts. One of the biggest problems in the development of the construction industry and spatial development is the state of development of a perfect contracting system. It is necessary to take into account that the realization of ideas runs from the documentation on spatial planning to specific construction objects, and not vice versa. Therefore, it is advisable to consider the entire chain of contracts in that order.

The "Prozorro" system solved this problem by bidding for a reduction in the cost of supply, but gave rise to a new problem - in some cases, small organizations or individual entrepreneurs reduce the cost of work several times - there was a problem of dumping. Therein lies the great danger of the quality of work.

3 PROPOSALS

Strategies. Simultaneous approval of the Strategy as a conceptual document and a project as a stage of the Strategy implementation is methodologically incorrect, since the approval of the conceptual document must precede and be the basis for the further development of the project. Therefore, the problem requires further scientific and practical study, substantiation and preparation of the draft Resolution of the Cabinet of Ministers of Ukraine on the integrated accounting of strategic approaches in territorial planning documentation.

In our opinion, the Territory Development Strategy as an independent document should include:

- retrospective analysis and assessment of the socio-economic, innovation and technical development of the territory;
- creation of a territory development plan in accordance with the approved spatial planning documentation;
- formulation of goals, objectives and priorities of the socio-economic and investment policies implemented in the territory by local governments;
- planning and implementation of measures to improve the level of development of the territory;
Analytical Note No 19

- development of a territory development forecast in accordance with the approved spatial planning documentation;
- sectoral development strategy;
- transport, logistics and service strategy;
- personnel strategy.

The results of the implementation of the development strategy of the territory should be:

- qualitative improvement of the infrastructure of the territory;
- optimization of construction processes taking into account cultural, geographical and environmental features of the area;
- optimization of the implementation of spatial planning documentation;
- increase in welfare due to the provision by local governments of regular monitoring data of normative and planned indicators of the socio-economic development of the territory;
- increasing the level of security by taking into account and analyzing areas of high risk of emergency situations when making all urban planning decisions;
- creation of conditions for the investment attractiveness of the territory due to open and accessible information on the sites intended for construction and related development processes (conditions);
- reduction of corruption due to public decision-making of urban planning and creation of conditions for open management of the development of the territory.

At the same time, with the approval of the Strategy as a document, the process of monitoring its implementation and developing proposals for changes and clarifications begins - these are also processes associated with strategic planning and the key to successful implementation of the goals and objectives laid down in the Strategy.

**Concepts.** The development of the concept of urban development has not been established by regulatory and legislative acts, the need for this document is dictated by market conditions. This type of documentation is mainly focused on solving the investment problems of the territory, whether it is the organization of new business or the restructuring of existing activities due to the preferential development of selected areas with the highest growth potential and the lowest development costs, that is, the areas most willing to accept investment.

Advantages of the concept of urban development:

- an effective tool for attracting investments, allows you to take into account the specifics of the territory, reflect competitive advantages, promising areas in the development of the territory, as well as possible risks in the organization of investment activities;
- flexibility - the concept of urban development can be adjusted to the needs of various investment projects during implementation;
- large-scale vision - the concept, as a result of a comprehensive multi-factor analysis of the territory, forms the optimal scheme for the development of the territory, allows you to distribute the incoming investment flows by volume and purpose with the greatest efficiency;
- multifunctionality - it can be used for tasks related to the regeneration (reconstruction) of territories, the re-profiling of industrial zones, the formation of a new urban environment in undeveloped areas.

To develop a concept of urban development is the right of local governments. If the society believes that the documentation on spatial planning of the appropriate level can answer all questions of territorial development, then the local government body provides the development of documentation on spatial planning and necessarily the Territorial Development Strategy as an informal document on the implementation of spatial planning.

All these considerations can be reflected in the Concept, which in Germany is called the concept of integrated development of a city or community, which is embodied in the spatial
planning of the corresponding territory of a community. To overcome this problem, it is necessary to review the status, content and focus of the development concept of a settlement (rather than the master plan concept) or region (Urban Development Concept or Integrated Development Concept) and bring all the main parameters in line with modern requirements, consistent with the principles of the Leipzig Charter.

When applying the mechanism of competitive selection of executors of documentation on spatial planning of territorial development (urban planning), the concept of urban planning development (or the concept of integrated development) can be the basis for formulating requirements in a competitive proposal (technical task) and justifying the cost of the following design work. The next step should be the creation of a number of public hearings with the broad involvement of both government institutions and civil society institutions to disseminate these ideas.

Programs. It is advisable to instruct the Ministry of Regional Development to develop methodological recommendations for local governments and architectural authorities on the accounting of spatial planning documentation in the development of targeted programs.

After the adoption of draft law No. 6403 as a law, it is necessary to revise the regulatory framework for the development of sectoral programs and schemes in the areas of engineering and transport infrastructure and environmental protection. The final list of such changes will be possible to determine only after the adoption of this draft law.

Plans. Attention should be paid to conceptual approaches to changing the place and role of the general plan of the settlement in the detailed plan of the territory as a type of spatial planning documentation and its connection to “zoning” (local building rules). The master plan should be more conceptual in nature and more attention should be paid to justifying long-term forecasting, coordinating the planning of the socio-economic development of a settlement. It is advisable to introduce the practice of using economic and mathematical modeling and analyzing the consequences of making relevant decisions on a variant basis. This will require a fundamental change in approaches to the procedure for preparing and making decisions. When using the Prozorro system, the selection criteria should be changed, where the cost will not exceed 40%, and the competence of the performers and the quality of work.

The main purpose of this article is to legislate the inextricable link between spatial planning documentation and socio-economic development plans. Today, such a link is declared by a number of legislative norms in the laws of Ukraine "On State Forecasting and Programming of Economic and Social Development of Ukraine", "On the Regulation of Urban Planning Activity", "On the Basics of State Regional Policy" and a number of others. However, everything remains at the level of declarations. So far, no order and clear mechanisms for the implementation of such declarations have been developed. In the case of the adoption of the draft law No. 6403 as a law, the Ministry of Regional Development will need to develop regulatory acts to implement this article in the form of a package of documents in accordance with the authorities (draft resolution of the Cabinet of Ministers, orders within its competence).

Projects

Despite the fact that the draft law No.6403 provides for a significant (almost three times) reduction of the mandatory list of sections and schemes as part of these types of documentation and the availability of a norm allowing local governments to agree on the procedure for preparing and adopting decisions by local governments to form an order for development master plans of settlements and detailed plans of territories in terms of determining the composition and content. To do this, it is necessary to develop a package of industry standards and standards on a variant basis.

It should be noted that partly the issue of the preparation and publication of draft
documents has already been settled by a number of regulatory acts, but it is necessary to significantly expand the list of documents that require a clear procedure for publicizing documents at the stage of their preparation.

**Contracts.**

The draft treaty itself must be subject to promulgation and public discussion, and the preparation procedure cannot continue for less than a reasonable period in order not to complicate and prolong the term for concluding the contract. For this type of contract, a uniform approach should be established for the form, content, procedure, and provides for the following:

- the base cost, which is calculated based on the recommendations of the central executive bodies (CEB);
- cost increasing - practically not limited by expanding the requirements for the composition and content of the documentation, the introduction of new stages (concepts or strategies for the development of the relevant region or settlement), the implementation of unique sections not covered by the standard Sat. 40. But all these changes can take effect only after all the mandatory requirements of this section have been met;
- the issues of estimating the cost of an intellectual product can be considered by isolating it from the total amount of work on spatial planning and issuing for tenders, producing public processes, attracting experts, because the usual procedures for reducing prices cannot be applied to determining the value of ideas and solutions;
- the cut-off line to prevent dumping - to set the limit of cost reduction during trading, may be within 1015% (or other value) of the base value - by optimizing processes, applying technological improvements with a mandatory justification - due to which a decrease occurs. All bidders who bid below the established cut-off line should be removed from the auction;
- qualification requirements must be differentiated - for important objects it is very tough about experience and the list of already completed works, for small objects, on the contrary, to prohibit making very complex requirements for young teams to enter the market and gain experience to increase competition in the upper market segments of these services. Such a differentiated scale of requirements must go through a public discussion before it is approved;
- timing of development - to prohibit setting shorter than stipulated by the regulations, reduction of no more than (due to the agreement with the mandatory proportional compensation - an increase in the cost of the project and mandatory public discussion). Justification - there are technological processes that can be performed only sequentially with a certain amount of time.

Contracts are among the most difficult to implement new requirements. This is due to a significant predominance of contracts between private individuals and legal entities. Suggestions are as follows:

- the introduction of new requirements for contracts must be binding for contracts with full or partial attraction of funds from the state or local budgets starting from 2020. Even if part of the cost of budgetary funds does not exceed 1%, the requirements for concluding contracts are in full effect;
- based on international experience, the rapid introduction in Ukraine of the institute of engineering consultants based on the experience of FIDIC or similar world-class organizations. It is inexpedient to develop a homegrown system - it will take time, money and fruitless discussions; in the process of “tweaking” there will be included “holes” for building the schemes. For comparison - the cost of the package of the pro forma contracts FIDIC is less than 0.0001% of the estimated cost of construction of the construction object;
- the schedule for the performance of work must enter into an obligation of nature and its violations have to pull a number of mechanisms, which are activated automatically, and not at the suit of the other party to the contract. Such a proposal is based on taking into account the interests of third parties (for example, subcontractors or future
users), who are often not parties to the first level contract agreement between the customer and the contractor. Compensation for damages or compensation for lost profits for the injured party turns into long trials with an uncertain result. Such sanctions may include the requirements of SACI, stopping the financing of work, the publication of information about such violators to increase pressure on them by public organizations and the media;

- the practice of applying more stringent requirements to work contracts in the public sector to ensure the observance of public interests is gradually extended to contracts between private individuals. At the first stage, such requirements for individuals may be advisory in nature, and after a certain period of time - introduced as mandatory through a change in the requirements of legislation.

At the legislative level, a limited number of types of agreements on the attraction of funds from private individuals and legal entities for the construction of real estate objects (including apartment houses) must be determined. All other types of contracts after the entry into force of the new Law should be considered null.

All information on the passage of licensing procedures by individuals and legal entities (regardless of the form of ownership) must be made public within three days on the website of the local government.

It is necessary to establish strict control by the public over the provision of the requirements of legislation by local governments to "exercise, in the established manner, state control over compliance with the legislation, approved urban planning documentation when planning and building the respective territories; stopping in cases provided for by law, construction that is carried out in violation of urban planning documentation and projects of individual objects, and may also cause harm the environment. " Improve legislation to establish a clear list of positions and officials who should be responsible for such monitoring and responsibility for inaction.

**Solutions**

1. The issue of financing the development of both urban planning documentation, certain standards, and such types of documents as "spatial development strategies (regions and communities)", "concepts", "programs", "projects" and a number of others. Those documents that are already being developed in accordance with the legislation are severely restricted in the freedom to determine the amount of funding, and financing of new types of documentation is impossible due to the lack of relevant standards. At a certain stage of the fight against corruption schemes, such approaches were justified, but their excessive use led to the opposite effect - a new system of corruption schemes was created, which also led to a significant decrease in the quality of documentation and the destruction of professionalism, and accordingly, the possibility of applying new technologies development of documentation, the inclusion of new types of work that are not stipulated by the existing regulations. **Amendments should be prepared for the following laws: the Budget Code (possibly the Tax Code), the Law of Ukraine on Local Self-Government, urban planning legislation, land legislation.**

It is necessary to instruct the Ministry of Regional Development to prepare a comprehensive plan to address the issue of financing documentation and coordinate it with other ministries, as well as to involve a wide circle of the public from both the professional environment and community representatives.

2. It is necessary to define approaches to the development of the whole range of documents (strategies, concepts, programs, projects, plans and agreements) in accordance with the content of spatial planning, to unambiguously define the purpose, main tasks, development tools, approvals and implementations of documentation (with monitoring inclusive) with transparent and understandable procedures, clear regulation of relations arising in the process of interaction between government institutions and civil society at the regional,
local levels of government at rear spatial planning ysnenni.

Such standards with the wording of the requirements for the development of these documents should be developed by the Ministry of Regional Development as internal standards and approved by order or instruction, as they relate to organizational issues of the work of the Ministry. If necessary, a procedure may be provided for the coordination of such internal standards with interested institutions and civil society institutions.

It is advisable in the process of preparing such internal standards to pay attention to the following questions:

- admissibility and the need to develop strategies, concepts, programs, projects, plans on a variant basis with appropriate regulatory and financial support;
- establishing procedures for reviewing and approving documentation developed on a variant basis;
- use of mathematical tools (analysis, modeling, forecasting, testing prepared solutions and others) with the definition of such tools in the system of management decisions, financial support for their introduction, proper training and organizational support for expanding the scope of mathematical tools in the field of spatial planning;
- the interaction of government institutions and civil society institutions at the regional and local levels of government in the development of strategies, concepts, programs, projects, plans based on the precise regulation of such interaction.

3. All forecasts of the development of the country, regions and communities are developed on the basis of a linear (extrapolation) development model. This approach completely ignores market fluctuations in real conditions. The consequence of this is the complete lack of readiness of the government institutions to manage in crisis situations, as a result, the loss of the economy is significantly increased compared with the average indicators due to the lack of professionalism and action plan during the crisis. In addition, Ukraine is at the stage of development, that is, all the necessary management structures and market relations have not yet been properly formed, unreasonable political optimism dominates in planning, and without tools and resources for implementation, it turns into ordinary populism.

To overcome this trend, it is necessary to make a transition to risk management at the state level (development of basic scenarios of crisis situations and behavior in crisis conditions), as well as drawing up similar documents at the level of the construction industry and spatial planning. Transition to the proposed management model will require:

- additional funding for research and development and in-depth substantiation of strategies, concepts, action plans and other documents aimed at the forecast state of the country, industry, regions;
- developments of a specific algorithm for developing and approving forecast documents not in form and content, but in terms of the technology of their development and implementation;
- training of personnel capable of generating appropriate models, defrauding them and convincing the power institutions and civil society institutions of the expediency of development based on risk management.

4. Implementation of the previous proposals on the variant basis for decision making and transition to a management model based on risk management implies a significant expansion of the scope of application of economic and mathematical modeling in the field of construction and spatial development. Such an expansion cannot occur in the short term due to the lack of relevant personnel, experience in pilot projects and the basis for substantial funding for this area of management. Symbolic financing of works will lead to obtaining symbolic results that can not be implemented in real conditions.
The “growth points” in spatial planning and construction can be industry standards for gaining experience in translating digital technologies for substantiation, expertise and monitoring of formal and informal planning and design documents. The introduction of unified industry digital standards will entail the need to transition to digital models and technological schemes, the use of modern GIS and BIM-technologies in the work of scientific, design organizations and expertise.

5. The main function of the control system is to prevent violations of the law, and not punishment for violations already committed.

The control system is a kind of indicator of the inconsistency of management practices in the industry with the modern needs of the development of society. There are no mechanisms for creating funds to finance research and experimental work, excessive regulation of the state system destroys the development of new technologies.

6. A “white list” of organizational measures and procedures for the development and approval of strategies, concepts, programs, projects, and plans should be developed, to which the institutions of civil society should be involved along with the government institutions on a parity basis.
Analytical Note No 20

Analytical note 20. Road map: Ways of legislative, normative and technical regulation of the proposed changes.

Authors:
1. Yuriy Mantsevich - Scientific Secretary of the State Enterprise "NDPI"

COVERAGE OF THE PROBLEM

Currently, the Ministry of Regional Development, together with the Verkhovna Rada Committee on Construction, Urban Planning and Housing and Communal Services, is completing one of the stages of reforming urban planning legislation by finalizing the draft Law on Amendments to the Law of Ukraine "On the Regulation of Urban Planning" by the second reading (register No. 6403 of 04/21/2017) This draft law is aimed at continuing the deregulation process and creating favorable business conditions, increasing the investment attractiveness in the construction industry, they are invited to make appropriate changes to the Land Code of Ukraine, the laws of Ukraine "On regulation of urban planning", "On the protection of cultural heritage."

The proposed changes include: the introduction of new terminological definitions in the relevant field ("spatial planning", "sectoral schemes", "common interests", etc.): replacement of the concept of "urban planning documentation" by the concept of spatial planning documentation; introducing types of such documentation ("plan of the amalgamated community", “project of developing of territories”, etc.) including the plan of zoning the territory in the graphic part of local building regulation rules, and planning schemes for certain parts of the territory of Ukraine - up to territory planning schemes at the regional level. The project also proposes to create a State register of spatial planning documentation (Spatial Planning Registry) at the regional and local levels; refer to the competence of the Cabinet of Ministers of Ukraine to make a decision on the development, approval, amendment of the General Planning Scheme for the territory of Ukraine; establish state requirements for the use of territories; introduce a procedure for taking into account public interests in the field of urban planning through public discussions and public hearings, etc.

CRITICAL ANALYSIS OF THE SITUATION

Currently, there is no complete strategic program for reforming the legislative sphere in the field of construction and spatial planning of territories in the Ministry of Regional Development and the relevant VRU Committee or other body.

1. There are no specialists of an adequate level of training for the development of all parts of the Urban Planning (Construction) Code simultaneously. In some areas, specialists either do not have due experience in legislative work, or are not sufficiently familiar with the features of the legal sub-sectors should be reflected in the relevant parts of the code. The following should be considered

   • for the time of independence, the scientific potential of the industry has actually been destroyed, there is no adequate funding and structure of research institutes of an urban planning profile, old personnel has outdated ideas;
   • there remains an extremely high level of informal influence of business on decision-making by public authorities;
   • the public sector has not yet received enough capacity to significantly influence decision making.

2. Ukraine does not have sufficient financial and organizational basis for implementing such an ambitious project. There is also no social
demand - there is no real consumer of such a complex product. The leadership of the region, state bodies, local governments, heads of construction and design companies, and even the public are ready to accept only certain parts of a comprehensive legislative act. The absence of a public request specifically for a comprehensive settlement of legislation carries the threat of separating the legislative field into convenient fragments by individual stakeholders and solving their own problems with their own means.

3. The need and relevance of legislative regulation of various sub-sectors that are components of the Urban Planning (Construction) Code project is different, which will contribute to disorganization and delay in making key decisions in the work of the working group.

4. Creating a new text contradicts the interests of a significant part of the construction business, which will be subject to both administrative and political pressure in order to discredit the idea and get stopped of real work.

3 PROPOSALS

The solution to the problem should be staged. In this work, you can only determine the direction of further movement. To empower decision-making, it is proposed to work out the problem on a variant basis.

The above proposals are divided into two large groups:

the first group - proposals aimed at direct regulation of public administration in the field of construction and spatial planning of territories;

the second group - the proposals that must be made in the legislative acts of related branches of law to ensure the effectiveness of the norms of the first group.

**The first group includes proposals aimed at direct regulation of the public administration of the construction and spatial planning area.**

Currently, the greatest attention is paid to developing a unified approach to the development of the Urban Planning (Construction) Code.

With an integrated approach to the development of the Urban Planning Code, it will be necessary to significantly expand the structure and content of the future draft law.

If we follow the path of codification in a broad sense, the problem is divided into smaller tasks that are quite acceptable for the implementation.

For the development of individual parts can be created relatively autonomous groups under a single focal point. The coordination center should be entrusted with the task of not only controlling the content and direction of individual parts, but also observing the development schedule for these parts.

**Roadmap of legislative and regulatory technical regulation**

**Step 1.** The roadmap should be prepared based on the results of the development of the Concept and provide for:

- reforming the legal framework;
- integrated development of territories of regions and communities;
- creation of a unified system of territorial and land resources management;
- harmonization of powers and areas of regulation of state and local government bodies;
- ensuring the introduction of economic methods of regulation of the spatial development of regions and communities based on the interests of all parties;
- transformations of sustainable development of territories into an organic component of regions and communities;
coordination of regulatory approaches for the protection and use of cultural heritage in the field of construction, spatial development and protection of monuments;

converting the system of licensing procedures from predominantly restrictive functions to predominantly partner ones;

converting digital technologies to the information environment of the functioning of the construction industry and spatial;

coordination of the needs of state regulation and development of the market environment in pricing and economic support for the development of the industry;

the organic entry of Ukrainian norms and standards into the European regulatory environment for quality and reliability;

the transfer of expertise from primarily controlling to primarily deliberative functions;

the establishment of partnerships with the insurance sector of the economy as a factor in further ensuring sustainable development;

the expansion of the forms and content of the implementation of control functions in the preparation and decision-making, design and construction of construction projects on the basis of openness and cooperation with civil society;

the transformation of academic education in the process of continuing education and advanced training based on the combination of training and practical application of acquired knowledge;

the transformation of civil society institutions from partners to colleagues.

**Step 2.** The result of the development of each program should be a set of proposals for the improvement or development of new legislative norms, have to normalize the relevant substantive proposals. Proposals should be divided into three groups:

- change of laws in the field of spatial planning and construction;
- change of laws in related areas of law;
- change of regulations in the field of spatial planning and construction.

At the same time, the proposals should be based on the requirements of part 1) of Article 92 of the Constitution of Ukraine: “The following are exclusively determined by the laws of Ukraine: 1) the rights and freedoms of a person and a citizen, the guarantees of these rights and freedoms; the main duties of a citizen.”

The number and content of these programs may vary during the implementation.

**Step 3.** On the basis of a comprehensive analysis of the materials obtained as a result of processing programs, a list of proposals that require legislative regulation should be compiled. This list should be the basis for the formation of the structure and content of the Code.

**Step 4.** Creation of a working group to develop a code.

When developing the text of the Code, the principle of imitation should be observed - new norms should not lead to worsen of living conditions of the population, restriction of their rights and freedoms, destruction of the industry, destruction of honest participants of the construction market.

**Intermediate stage of reforming urban planning legislation.**

The development, and most importantly, public discussion and adoption of the Code is a long-term process. A full cycle from the start of development to the publication of the adopted Code can last from two to five years. So much time, the country can not be in a constant state of waiting for the necessary changes in legislation. Therefore, it is advisable to consider an intermediate stage and to adopt the following draft laws:
a) already registered in the Verkhovna Rada of Ukraine:

- the draft Law on Amendments to the Law of Ukraine "On the Regulation of Urban Planning" (register No. 6403 dated 04.21.2017)


- the draft Law of Ukraine "On Basic Requirements for Structures and the Conditions for Placement on the Market of Construction Products" (register No. 7151 dated October 2, 2017), Developed pursuant to EU Regulation No 305/2011 of the European Parliament and Council;


b) developed according to the work plan of the Ministry of Regional Development, but not yet submitted for consideration by the Verkhovna Rada of Ukraine:

- the draft Law of Ukraine "On the protection of the rights of injured individuals during the construction of residential real estate";

- the draft Law of Ukraine "On the comprehensive reconstruction of neighborhoods (neighborhoods) of obsolete housing stock";

- the draft Law of Ukraine "On Rental Housing";

- the draft Law on Amendments to Certain Legislative Acts of Ukraine regarding the improvement of regulatory procedures in construction;

The second group consists of proposals that must be made to the legislative acts of related branches of law in order to ensure the effectiveness of the norms of urban planning legislation.

Land legislation.

At the legislative level, it is necessary to simplify the legal mechanism of redemption by physical and legal persons - owners of real estate objects of state and communal land plots on which such property is located, to promote the unification of the land plot and real estate objects located on it, to create favorable conditions for business development, investment activities and mortgage lending, increase revenues in the State and local budgets. This requires changes to:

Land Code of Ukraine,

Law of Ukraine "On Land Management",

Law of Ukraine "On Land Evaluation",

The Law of Ukraine "On state registration of rights to real estate and their burdens" regarding ensuring the rights of owners of real estate objects located on land plots of state and municipal property. A free redemption of such land plots has been proposed by paying the cost of these land plots to the treasury account of the relevant executive authority or local government body in the amount of their regulatory monetary value.

At the same time, it is necessary to take into account such warnings – the indicated simplification can be introduced, except for the cases when:

The Land Code of Ukraine prohibits the transfer of such land plots to private ownership;

real estate objects owned by other persons are located on the mentioned land plots;

a detailed plan of the territory has not been developed for the relevant part of the
settlement, or a detailed plan of the territory provides for other functional use of the territory (it is subject to redemption, withdrawal for public use).

In cases when the relevant part of the settlement does not provide for the development of a detailed plan of the territory, redemption of a land plot can be carried out on condition that existing buildings and structures are used exclusively in accordance with the parameters and physical dimensions existing at the time of the redemption.

Another direction to improve land legislation is to provide the land cadastre with information on the actual prices of transactions in the sale of land. This can be done in the shortest possible time by synchronizing notarial transaction databases (notary as tax agents) with the relevant sections of the land cadastre that are open to the public. This will avoid the creation of corruption schemes for the purchase of land at reduced prices.

Legislation on the protection of cultural heritage.

It is advisable to focus on two main areas for the further development of legislation for the protection of cultural heritage:

firstly, maximum automation of information processing processes and its conversion into digital form in order to reduce the influence of the human factor, except for areas requiring the involvement of unique experts, as well as creating public data registers and ensuring monitoring of the implementation of activity monuments;

secondly, all issues related to licensing procedures or coordination should be carried out under the direct control of the public within tightly controlled deadlines.

One of the mechanisms for the implementation of these proposals should be the integration of monuments, land management and environmental documentation and procedures into the land and city planning cadastre, the relevant information databases and should be carried out automatically.

Providing a historical and architectural basic plan (HABP), documentation on the establishment of boundaries and regimes for the use of special status protection zones as a kind of sectoral documentation, establishes restrictions on the use of territories for the protection of cultural heritage, and establishes the central executive state policy in the field of protection of cultural heritage. The Ministry of Culture of Ukraine has in the shortest possible time to create an effective system for establishing in nature zones for the protection of monuments and entering data into the registration system integrated with the land and urban planning cadastre in digital form in the state geodetic coordinate system USK-2000. Now there are no such requirements in the legislation on the protection of cultural heritage.

General trends in the further development of sectoral legislation that are related to the construction field and spatial development of territories.

In addition, when developing the Public Administration Conception in the field of construction, the authors made a number of proposals that need to be considered in the expert environment in order to determine the feasibility of developing relevant legislative acts:

1. To establish an exhaustive list of types of documentation on spatial planning of territories (General Planning Scheme for the Territory of Ukraine, a Scheme for Planning Territories of Oblasts only, and also Master Plans for settlements with a population of over 100,000 people) exclusively in accordance with Article 13 "Procurement under framework agreements Law of Ukraine "On public procurement". A similar procedure can be applied to the procurement of the development of project documentation and the implementation of construction of facilities with a class of subsequences of CC3 at the expense of the
state budget, as well as unique industrial and civil facilities.

2. To amend to the Law of Ukraine "On Housing and Communal Services" in terms of ensuring the reliability of a building or structure at the operation stage, its compliance with its purpose and ability to maintain the necessary performance qualities for a specified period of operation, compliance with the implementation of routine work on time and in full volume.

3. To introduce changes to the Law of Ukraine "On Regulation of Urban Planning", the procedure for performing preparatory and construction works, which establish a decision-making procedure for officials of the SACI bodies when issuing a permit, determine an exhaustive list of issues to be checked when deciding whether to grant or refuse granting permission:
- completeness of the submitted documents for obtaining a permit;
- compliance of development plans and documents certifying the ownership / use of land plots;
- requirements of the spatial planning documentation (urban planning documentation) at the local level;
- requirements of urban planning conditions and restrictions and general requirements of SBC for urban planning and development of territories (maximum height, percentage of development, density of prospective population, area of green areas of common use, playgrounds, etc.);
- introduction of the customer's electronic office (construction company), responsible executives of certain types of work (services) related to the construction of facilities, public servants (Ministry of Regional Development, SACI, local governments and their executive bodies);
- supplement the list of annexes to the application for obtaining a permit to perform construction work with a positive conclusion from the expertise of the project documentation for construction and annexes thereto.

4. To introduce the practice of using economic-mathematical modeling and analyzing the consequences of making relevant decisions on a variant basis. In particular, the concept of urban development (or the concept of integrated development) can be the basis for the formulation of requirements in the tender proposal (terms of reference), the basis for the preparation of the contract and the rationale for the cost of the following design work.
Analytical note 21. Glossary of the concept of public administration in the field of urban planning activities

Authors:
1. Tatyana Kryshtop - SE "UKRNPDPTITSIVILBUD", deputy director for scientific work and regional planning, candidate of technical sciences, senior researcher (member of the National Union of Architects of Ukraine)
2. Andriy Martin - Head of the Department of Land Management of the National University of Life and Environmental Sciences of Ukraine, Doctor of Economics, Associate Professor

1 COVERAGE OF THE PROBLEM
The key problem of modern construction and urban planning terminology in Ukraine is the considerable dispersion of the terminological, duplication, incompatibility, vagueness and ambiguity of definitions of terms that are fixed at the level of legislation, state building standards, sanitary norms, documents in the field of standardization (state and industry standards, codes of good practice), etc.
A separate problem is the ratio of legal and scientific terminology, because the latter, as a rule, does not have to be applied, but it develops most dynamically.
An important task for Ukraine should be the internationalization of terminology in the field of construction and urban planning, as well as the transition to the use of terminology adopted at the international and European levels, will be one of the prerequisites for the country's further European integration.

2 CRITICAL ANALYSIS OF THE SITUATION
One of the key problems of the legal regulation of urban planning and construction activities is the lack of codifying legislation (code) that would comprehensively regulate the relevant sphere of legal relations, including terminology. Procedures are governed by a number of laws, the main ones of which are the laws of Ukraine “On the Basics of Urban Planning”, “On Architectural Activity”, “On Regulation of Urban Planning Activity”. Each of these laws uses its own set of terms that define the same concepts.

3 PROPOSALS
To solve these problems, it is necessary to harmonize the terminology that is used in the regulation of urban planning and construction. Terminology, the application of which affects the scope of rights and obligations of citizens, legal entities, public authorities and local self-government, should be fixed at the legislative level, while the definition of technical terms is proposed at the level of secondary legislation and documents in the field of standardization.
The proposed glossary can be used as the first article of the draft special codifying legislative act (Urban Planning Code).
<table>
<thead>
<tr>
<th>Current term</th>
<th>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</th>
<th>Proposed term with highlighting such changes in bold</th>
<th>Proposal for a legal regulatory legal act that should provide for a term</th>
<th>Justification of changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Accreditation of conformity assessment bodies (accreditation)</td>
<td><strong>Accreditation</strong> is a procedure during which the national accreditation body confirms the right of the conformity assessment body to perform certain types of work (testing, certification of products and personnel, control)</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>2</td>
<td>Law of Ukraine &quot;On accreditation of bodies of conformity assessment&quot; bodies</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td><strong>Architectural activities</strong> - activities on the creation of architectural objects, including the creative process of finding an architectural solution and its embodiment, coordinating the actions of the participants in developing all the components of the planning, building and landscaping projects, construction (new construction, renovation, restoration, overhaul) of buildings and structures, implementation of architectural and construction control and supervision of their construction, as well as the implementation of research oh and teaching in this area</td>
<td>Urban planning Code</td>
<td>Необхідність уточнення терміну з метою виключення дублювання території як об'єкту містобудівної та архітектурної діяльності</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Law of Ukraine “On architectural activity»</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Law of Ukraine «On construction norms»</td>
<td><strong>Construction norms</strong> - a sub-statutory normative act of a technical nature approved by the subject of regulation, containing mandatory requirements in the field of construction, urban planning and architecture</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BIM technology <em>(building information modeling)</em> is an approach to managing the life cycle of a building (structure), which involves the collection and complex processing of all architectural design, technological, economic, and other information about a building (structure) with all its interconnections</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>CAR Contractor's All Risks - insurance of all types of construction sites, within which insurance protection is provided against losses caused to a construction site, structures at a construction site and / or construction vehicles, as well as against claims of third parties as a result of material damage or bodily injury associated with the construction of the facility</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Master plan of a settlement</td>
<td>Law of Ukraine &quot;On regulation of urban development&quot;</td>
<td>The master plan of the settlement - urban planning documentation at the local level, is intended to justify the promising functional use of the territory of the settlement on the principles of sustainable development</td>
<td>Urban planning Code</td>
<td>The term is needed to be specified</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>-</td>
<td><strong>Delegated self-regulation</strong> is a model of self-regulation in which the state forms professional self-government organizations as legal entities of public law by direct indication of this in the law, and gives them a number of state authority and management functions determined directly by law, and membership in the relevant professional association is imperative admission to professional activities</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Detailed plan of the territory</td>
<td>Law of Ukraine “On regulation of urban development”</td>
<td><strong>Detailed territory plan</strong> - urban planning documentation at the local level, designed to detail the decisions of the general plan of the settlement, amalgamated community’s territory planning scheme (or, if there is no plan, the territory planning scheme) for the planning organization and the future purpose of land plots in order to ensure integrated development or reconstruction of the territory, determination of its spatial composition, building parameters (urban planning conditions and restrictions) and landscape authority.</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>2</td>
<td>-</td>
<td><strong>Voluntary self-regulation</strong> is a model of self-regulation, in which self-regulating</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>3</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>organizations are created by representatives of the relevant profession or activity on their own initiative, independently set high standards for the quality of work and ensure their observance by all members without receiving any governmental and managerial functions</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td></td>
<td>Insurance contract (insurance certificate, insurance policy) - a written agreement between the insured and the insurer, according to which the insurer undertakes to pay the insured amount or compensate for the loss within the insured amount upon occurrence of the insured event, and the insurer undertakes to pay insurance premiums within certain terms and fulfill other conditions of the contract</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td></td>
<td>Documentation of informal spatial planning - documentation on spatial planning, the implementation of which corresponds to the legislation of Ukraine and for which the decision-making procedure, ordering, development and approval is determined by the state or local government</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>---------------------------------------------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>body, has appropriate authority for this purpose, subject to the public discussion procedures and / or public hearings, as well as compliance with the principles of sustainable development of territories.</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>2</td>
<td><strong>Formal spatial planning documentation</strong> - spatial planning documentation (town planning documentation), the implementation of which is stipulated by the legislation of Ukraine, for which a decision-making procedure, order, development and approval are determined subject to the public discussion and / or public hearing procedures</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td><strong>The life cycle of the building (facilities)</strong> - the successive stages of the existence of the property from design to liquidation</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Sustainable development of settlements</td>
<td>Balanced (sustainable) development is a way to use resources to achieve the priority goals of social development, which ensures the livelihoods of present and future generations.</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>5</td>
<td>Law of Ukraine “On basics of urban planning”</td>
<td></td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Losses</strong> - expenses are the result of improper execution (provision) of works (services) on the object of architecture that the consumer incurred in connection with the destruction or damage to the object, as well as expenses that the consumer has made or should make to restore his violated property right on the object of architecture</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Land plots for urban needs</strong> - land plots intended for the placement of buildings, structures, structures for any purpose, their complexes, linear objects of engineering and transport infrastructure</td>
<td>Land Code, Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Lands of residential and public development</td>
<td>Land Code of Ukraine</td>
<td><strong>Lands of residential and public buildings</strong> - land plots intended for placement of residential buildings, public buildings and structures, other public facilities in accordance with the requirements of city planning documentation</td>
<td>Land Code, Urban planning Code</td>
<td>The term is needed to be specified</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Mixed self-regulation</strong> is a model of self-regulation, in which non-profit organizations are voluntarily formed by subjects of a certain type of economic activity or profession (self-regulating organizations), in case of</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provide for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Zoning</td>
<td>SBC Б.1.1-22:2017 «Composition and content of zoning plan»</td>
<td><strong>Zoning</strong> - the establishment of territorial zones within a settlement or amalgamated community with the definition of the appropriate types of use of the territory, real estate perspectives and the establishment of urban planning regulations.</td>
<td>Urban planning Code</td>
<td>Необхідність коригування терміну</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Self-regulation tools</strong> - mechanisms of intrasectoral regulation by admitting economic entities to the market, admitting specialists to the professional activity, creating an accreditation system for testing laboratories and personnel certification bodies, products and processes, quality control of projects, products and works at construction sites, self-certification of manufacturers and suppliers services, rationing and standardization in construction</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>1 -</td>
<td>-</td>
<td>Integrated development of the territory - a set of activities for the use of the territory based on the principles of public administration with the involvement of business entities, the public and in the coordination of spatial, sectoral and temporal aspects of key areas of local policy.</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>- -</td>
<td>-</td>
<td>Land category - part of the land fund, has a special legal regime, basic rules and restrictions on the use</td>
<td>Land Code, Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>- -</td>
<td>-</td>
<td>Qualimetric Assessment - a model for assessing the ways and results of advanced training of specialists in a legislatively defined period of validity of a certificate</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>- Analytical Note 1</td>
<td>-</td>
<td>Skilled development of urban and rural areas - use of the territory in accordance with the approved urban planning documentation</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>- -</td>
<td>-</td>
<td>The concept of spatial development is a document developed and approved in the prescribed manner, a defined belief system, a formulated defining concept of a state, regional or local policy, an understanding of social processes and phenomena based on a</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>-------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>variation of spatial planning taking into account other sectoral policies.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td>Corporate responsibility in construction - mechanisms for compensation for damages caused to consumers as a result of provision of self-regulated organization of goods by members, performance of works (services) of inadequate quality, is realized through the formation of compensation funds, various types of insurance and a combination of the listed mechanisms</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td>Limit of liability - the maximum amount of insurance compensation paid when an insured event occurs and is not related to the value of the property</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td>Material damage - losses incurred by the policyholder during construction and / or installation, including damage from contractual work, materials, equipment, as well as, if provided for by the insurance contract, construction equipment, temporary structures, property during its transportation and in warehouses</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
<td>-------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>1</td>
<td>-</td>
<td><strong>The method of regulation in construction</strong> is a way to develop building codes, has the goal of achieving an appropriate goal;</td>
<td>Law of Ukraine “On construction standards” or Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>2</td>
<td>-</td>
<td><strong>Damage compensation mechanism</strong> - a system of measures aimed at covering a self-regulating organization of damages caused to consumers as a result of the performance (provision) by a member of work (services) of inadequate quality, due to compensation payments from the compensation fund and insurance</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Urban planning cadastre</td>
<td>Law of Ukraine “On regulation of urban planning activities”</td>
<td><strong>Urban planning cadastre</strong> - geographic information system of accumulation, storage and use of geospatial data on decisions made in urban planning and project documentation on the future use of the territory</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Urban planning regulation</td>
<td>SBC B.1.1-22:2017 «Composition and content of zoning plan»m</td>
<td><strong>Urban planning regulations</strong> - a set of mandatory requirements for the use of land plots, are established within the relevant territorial zones and establish permissible and permissible types of land use of the land plots, the maximum (minimum and (or) maximum) sizes of land plots, the maximum</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Parameters of the permitted construction and reconstruction of construction objects, restrictions on the use of land and real estate objects, established in accordance with the laws of Ukraine. Urban planning regulations are used in the design, development and subsequent operation of facilities.</td>
<td></td>
<td></td>
<td>Нецуперечна потреба коригування терміну</td>
</tr>
<tr>
<td>Zoning plan</td>
<td>Analytical Note 05 Draft Law 6403</td>
<td><strong>Local building regulation rules</strong> are a regulatory legal act of a local government body adopted in accordance with legislation, a master plan or a plan for an integrated territorial community. The purpose of the development and approval of local building regulation rules is to determine the conditions for planning and development, to establish legal and planning restrictions, permitted types of use of land plots within the designated functional areas of settlements and united territorial communities.</td>
<td>Urban planning Code</td>
<td>Необхідність коригування терміну</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td>The Supervisory Board for Self-Regulation is a collegial body with at least 51% of its members from all existing SROs (at least 1 in each area), which is created under the central executive body for urban planning and</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
</tbody>
</table>

248
<table>
<thead>
<tr>
<th>Current term</th>
<th>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</th>
<th>Proposed term with highlighting such changes in bold</th>
<th>Proposal for a legal regulatory legal act that should provided for a term</th>
<th>Justification of changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation in construction</td>
<td>Law of Ukraine “On construction standards”</td>
<td><strong>Rationing in construction</strong> - the development, coordination, verification, approval, verification, amendment, cancellation or invalidation of building codes</td>
<td>Law of Ukraine “On construction standards” or Urban planning Code</td>
<td>The term is needed to be specified</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td>Organizations of professional self-government are legal entities of public law, which are formed by virtue of a direct indication of this in the law and are vested with state authority and management functions determined directly by law</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Parametric rationing method</strong> - the rationing method in construction, which consists in forming a requirement that provides for setting goals, parameters (criteria, performance requirements or indicators) for safety, functionality and quality of the rationing object</td>
<td>Law of Ukraine “On construction standards” or Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>----------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>-------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td><strong>Confirmation of qualification</strong> - the procedure for determining the compliance of professional specialization, the level of skills and knowledge of employees with the established requirements, the assessment of their professional level by professional certification or</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td><strong>Post-start guarantee obligations</strong> - insurance protection during the established warranty period, associated with the repair, replacement, restoration of the constructed object, its elements as a result of its damage or death due to poor construction and installation works</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td><strong>Urban planning Code</strong> - a document developed and approved in the prescribed manner, determined by a fixed system of goals, objectives and means, which provide for changing the situation in the spatial planning of a state, region, or society.</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Planning and development of territories</td>
<td>Law of Ukraine “On regulation of urban planning activities”</td>
<td>Planning and development of territories, land plots - the activities of state bodies,</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------</td>
<td>---------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Non-using of a land plot, transferred for construction</td>
<td>Law of Ukraine “On state control over use and protection of lands”</td>
<td><strong>Violation of the rules for the use of a land plot intended for urban needs</strong> — the use of a land plot contrary to the rules and restrictions set out in town planning and land management documentation, as well as non-compliance with the deadlines for its development</td>
<td>Law of Ukraine “On state control over use and protection of lands”</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>The principle of human centricity</strong> is the purpose of the adoption and the indicator of the implementation of management decisions aimed at increasing the safety, comfort and well-being of people</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>A spatial development program</strong> is a document developed and approved in the prescribed manner, defined by a set of interrelated tasks and activities aimed at solving the most important problems of spatial</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
</tr>
<tr>
<td>Spatial (urban) planning</td>
<td>Draft law 6403</td>
<td><strong>Spatial (urban) planning</strong> is the process of forecasting the use of territories, consisting in the development and implementation of executive bodies, local governments, legal entities and individuals of urban planning documentation at the state, regional and local levels.</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Professional certification</td>
<td></td>
<td><strong>Professional certification</strong> - a procedure during which confirms professional specialization, the level of qualifications and knowledge of the contractor by the central executive authority on urban planning and architecture or on the basis of the powers delegated to them by self-regulating organizations in the field of architectural activity</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Resolution of KMU dated 05.10.2016 № 803, Order of Minregion dated 05.12.2016 №</td>
<td><strong>Public management</strong> is an activity that ensures the effective functioning of the system of state authorities and local</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
<td></td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provide for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>1</td>
<td>319, № 70 «Development of the concept of public administration in the field of urban planning activities»</td>
<td>governments and provides for the wide involvement of various stakeholders (civil society) in the development and implementation of state policy to achieve the priority goals of social development</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>Law of Ukraine “On regulation of urban planning activities”</td>
<td>The mode of development of territories defined for urban planning needs - restrictions on the use of territories for the existing purpose, which are established for the period until the implementation of decisions of urban planning documentation on prospective functional purpose of these territories and are valid for the time set by this urban planning documentation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Works</td>
<td>Law of Ukraine “On public procurements”</td>
<td>Works - development of urban planning documentation, design, construction of new, expansion, reconstruction, overhaul and restoration of existing facilities and facilities for production and non-production purposes, work on standardization in construction, geological exploration, technical re-equipment of existing enterprises and accompanying work services, including geodetic work, drilling, seismic surveys, aerial and satellite</td>
<td>Law of Ukraine “On public procurements”</td>
<td>Необхідність віднесення розроблення містобудівної документації до робіт</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>3 photography and other services that are included in the estimated of works, if the cost of these services is not to claim the cost of the works themselves</td>
<td>4 Urban planning Code</td>
<td>5 The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td></td>
<td>- Denationalization of construction management - reducing the role of the state by transferring management functions and responsibility for its results to the private sector and professionals (non-state association of business or professional subjects)</td>
<td>4 Law of Ukraine “On construction standards” or Urban planning Code</td>
<td>5 The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td></td>
<td>- Regulatory rationing method - the rationing method in construction, which consists in forming a requirement, provides for element-by-element description (specific solutions, structures, materials, performance characteristics, etc., which do not provide for alternatives) of the rationing object</td>
<td>4 Law of Ukraine “On construction standards” or Urban planning Code</td>
<td>5 The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td></td>
<td>- Smart city is a city that uses modern technologies to improve the quality of life in it by improving the quality of service, reducing the cost and consumption of resources,</td>
<td>4 Urban planning Code</td>
<td>5 The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>improving communication and mutual understanding with residents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-</td>
<td></td>
<td><strong>Self-regulatory organizations</strong> - non-profitable voluntary associations of individuals and legal entities in the relevant area of business or professional activity (public associations or associations of enterprises), which in the prescribed manner received the appropriate status and can perform power-managerial functions on a delegative basis</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td></td>
<td><strong>Personnel certification</strong> - confirmation of personnel qualification by personnel certification bodies accredited by the national accreditation body in accordance with the current legislation for compliance with ISO / IEC 17024: 2012 “General requirements for personnel certification bodies”</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td></td>
<td><strong>Social responsibility in construction</strong> - production, corporate, moral and ethical responsibility of urban development entities and their associations, which should include compliance with codes of professional ethics, rules and standards of professional activity,</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory act that should be provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>1</td>
<td></td>
<td>the creation and application of mechanisms for damages</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Spatial Development Strategy</strong> - a document developed and approved in the prescribed manner, defines the goals of state, regional or local policies, the timing and means of achieving these goals, and also provides for consistency of state</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Sum insured</strong> - the total estimated cost of the construction object or the contract price, including the cost of construction materials provided by the developer and/or work performed by him</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Urbanism</strong> - a system of ideas, attitudes, values, practices of conscious and unconscious working out a style/lifestyle in an urbanized environment/space and following it</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>Urbanist</strong> - a subject of the city that interacts with the city, seeks to influence, works with the urban space at the level of theory and practice</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------</td>
<td>-----------------------------------------------------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Urban science</strong> - the direction / course of intellectual and practical activities within urbanism</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Функціональна зона</td>
<td>SBC B.2.2-12:2018 «Planning and development of territories»</td>
<td><strong>The functional zone</strong> is a part of the territory of a settlement or outside of a settlement with a pronounced overwhelming function of its urban planning use (residential, public, industrial, recreational, agricultural). FZ is displayed in the documentation of territorial planning.</td>
<td>Urban planning Code</td>
<td>Необхідність коригування терміну</td>
</tr>
<tr>
<td>-</td>
<td>Law of Ukraine &quot;On regulation of urban planning activities&quot;</td>
<td><strong>Functional zoning of the territory</strong> - the establishment of territorial zones with the definition of their promising functional purpose;</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Third party civil liability for damage to the life, health and property of third parties as a result of construction and installation work at the construction site</strong> - compensation by the insurer of damage caused by the developer to third parties</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Targeted method of valuation</strong> - the method of valuation in construction, which is the formation of requirements, combining</td>
<td>Law of Ukraine &quot;On construction&quot;</td>
<td>The term is needed to be defined</td>
</tr>
<tr>
<td>Current term</td>
<td>Reference to a specific clause, part, article, law or other legal regulatory act that contains a term</td>
<td>Proposed term with highlighting such changes in bold</td>
<td>Proposal for a legal regulatory legal act that should provided for a term</td>
<td>Justification of changes</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Designed assignment of land plot</td>
<td>Law of Ukraine “On land management”</td>
<td><strong>Designed assignment of the land plot</strong> - a set of specific rules and restrictions on the use of land within the category of land, which are established and modified on the basis of land management documentation, taking into account the functional zoning of the territory</td>
<td>Law of Ukraine “On land management”</td>
<td>The term is needed to be specified</td>
</tr>
<tr>
<td>-</td>
<td>-</td>
<td><strong>Legal responsibility in construction</strong> - administrative, criminal, civil, disciplinary, material, financial responsibility, which consists in the state applying certain coercive measures to violators of town-planning legislation, provided for by sanctions of legal norms</td>
<td>Urban planning Code</td>
<td>The term is needed to be defined</td>
</tr>
</tbody>
</table>
Analytical Note No 22

Analytical note 22. Public procurement procedures in the field of architectural design, urban planning and the development of scientific and project documentation for the restoration of monuments of urban planning and architecture

Authors:
1. Anna Bondar - Honored Architect of Ukraine, art historian

COVERAGE OF THE PROBLEM

The main type of procurement in the industry is “open bidding” - a procedure based on the selection of a contractor based on the principle of the lowest price. The possibility of using a “competitive dialogue” (prequalification procurement) is limited by a list of works determined by law.

The negotiation procedure for the procurement of architectural services based on the results of architectural contests is difficult and almost never used. There are frequent practices of deliberately lowering unscrupulous bidders with price quotations accompanied by abuses and inadequate quality of work. The procedure for the subsequent ordering of urban planning documentation and project documentation to a foreign participant that is a winning bidder remains unresolved. The rules for organizing and conducting architectural and urban planning contests, as procedures preceding the negotiation procedure, are outdated.

Customers often incorrectly determine the type of work (overhaul or reconstruction), reducing the actual volume of reconstruction to overhaul. This leads to a lack of project documentation as such. Construction work is carried out on defective acts. The qualification criteria for the selection of performers established by the legislation on public procurement are exhaustive and do not contain the main criterion - the quality of performance of similar contracts, is critical in the field of urban planning. Contest rules are not harmonized with international law in this area.

CRITICAL ANALYSIS OF THE SITUATION

2.1. Source base

This analytical note is based on a study of current Ukrainian legislation in the field of public procurement and urban planning, protection of cultural heritage; bills in these areas; international documents concerning the standards of the profession of an architect, public procurement in the field of architecture and related fields; modern studies of the state of affairs in the field of architectural and urban planning legislation of independent expert organizations; Ukrainian and international legislation in the field of organizing and holding architectural and urban planning contests; own research on the organization and conduct of architectural and urban design contests; statistical data on procurement procedures in Ukraine in the field of architecture and related fields; practical experience ordering urban planning documentation and participation in procurement procedures for the implementation of research and design documentation and the organization and conduct of architectural and urban planning contests; informal survey of participants in the process of public procurement in the field of architecture and related areas.

Public procurement problems are:

1. The main procedure for public procurement in the development of urban planning documentation (UPD), project documentation (PD) and scientific project documentation (SPD) in Ukraine is established at the legislative level, the procedure of “open bidding”, where the selection criterion is a low price.

2. Procurement procedures for highly intellectual products of human activity, such as: consulting, legal services, development of information systems, software, scientific research, experimentation or development, development and even construction, according to the legislation, are carried out according to pre-qualification dialogue, this list does not
include the development of PD, UPD, and SPD.

3. Urban planning legislation has no clarification regarding the specifics of procurement in the field of urban planning, given its own value base. Accordingly, the main type of procurement remains "open bidding" - a procedure based on the selection of a contractor according to the “lowest price” principle, which clearly does not correspond to the international standards of the profession and the importance of the field.

4. Urban planning legislation, legislation in the field of cultural heritage protection are not harmonized with legislation in the field of public procurement. The legislation of Ukraine, which regulates the sphere of cultural heritage protection and the urban planning field, has never mentioned the word “purchases”!

5. Legislative procedures for public procurement of UPD and PD (not NPA) enable customers to use a single procedure based on quality criteria, not just “low prices” - this is a "negotiation procedure based on the results of an architectural contest".

6. To order project / urban planning documentation according to the results of the contest is difficult. Urban planning legislation, in particular, the laws and regulations of the 1990s, have a contradictory terminological basis: the following subjects are mentioned in various documents: the winner of the contest; the person whose competitive design is recognized as the best; the author of the project that won the contest, etc. This leads to difficulty in attempting to use the “negotiation procedure” for the subsequent ordering of an PD or UPD based on the results of an architectural contest. (The winning team of authors, or a natural person - the winner obviously does not have the right to introduce architectural activity, and they cannot even transfer this right for further development of the project to a subject who has the right to carry out architectural activity in Ukraine - even to.

7. Procedures for the further order of PD or UPD to a foreign participant - the winner of the contest is not regulated at all by the legislation. To conduct a “negotiation procedure” with the winner of the contest, who has the right to introduce architectural activity in Ukraine (foreigners do not have such a right), a winning foreigner must open a subsidiary or representative office in Ukraine, which in principle rules out cooperation with international architects - winners of contests and directly contradicts international rules on the organization and conduct contests.

8. The rules for organizing and conducting architectural and urban planning contests, both the procedures preceding the “negotiation procedure”, are outdated (1999) and do not comply with both modern urban planning legislation and the principles and methods of conducting modern architectural contests in Europe and the world. This makes it difficult for a full-fledged entry of the “negotiation procedure” based on the results of an architectural contest into the standard method of public procurement in the field of urban planning and international contests in Ukraine.

9. SPD development is also being implemented under the “open bidding” procedure. The situation is even worse here, because architectural contests for the restoration of architectural monuments and urban planning are not practical (there are no variations), and customers are forced to use the only possible selection procedure for an architect-restorer on the “low price” criterion, which obviously does not increase the level of preservation of cultural objects. Heritage in Ukraine.

10. A separate problem is the general impossibility of ordering a SPD legally: it is not specified in either the “works” or the “services” of the Law of Ukraine “On public procurement”. Thus, customers of the SPD are at risk each time and are not encouraged to order the SPD, which means the gradual destruction of cultural heritage sites.

11. Specialists in the field of restoration of architectural monuments and urban planning are equal to specialists in the field of three-dimensional architectural design, although the knowledge, skills and abilities in these two professions are obviously different. This leads to a low level of scientific design documentation.
12. Customers often order project documentation for a construction site with a construction order for a facility at the same time. This leads to a decrease in the quality level of project documentation for the construction project.

13. Customers often incorrectly determine the type of work. This leads to the absence of project when it is really necessary. Construction work is carried out on defective acts. Such cases are frequent in the reconstruction of important public spaces - streets, parks, squares.

14. The qualification criteria established by the Public Procurement Law (Article 16) are exhaustive and do not contain the main criterion - the quality of the implementation of similar contracts is critical in the field.

15. In the Law of Ukraine “On Public Procurement” and the Order of the Ministry of Economic Development on approving the approximate tender documentation is the discrepancy on the specific weight of the price criterion (70%) when applying the “competitive dialogue” procedure.

16. Competitive practice is not common.

17. There are no procedures for transferring the results of the contest from the customer of the architectural contest to the customer for design and construction as a result of the contest.

18. Contest rules are not harmonized with international legislation in this area.

19. Services for the organization of contests is not developed.

20. Legislation on the need for contests is not implemented.

21. The ratio of procedures in the field of construction:
   - the total number of trades 2015-2018: 317080 beeds.
   - the number of "competitive dialogue" - 0
   - the number of "negotiation on the results of architectural contests" - 8.

3. PROPOSALS

3.1. European public procurement legislation

During the transition period, which will last from two to five years, Ukraine has pledged to harmonize legislation in 27 areas with the corresponding EU legislation. The list of areas (industries) whose legislation should be harmonized includes the area of building products, including measures for their implementation. This item is directly related to the market of designing facilities for construction.

Procurement procedures defined by Ukrainian legislation are typical for European legislation. According to the Public Procurement Strategy, priority areas are:

1. **Ensuring greater use of innovative, “green” and social purchases.** 55% of procurement procedures use the lowest price as the sole criterion for concluding contracts for government orders. This indicates that government customers apparently do not pay enough attention to quality, sustainability, and innovation.

2. **Professionalization of government customers**

3. **Increasing the availability of procurement markets**

4. **Increase transparency, integration and data**

5. **Enhance digital procurement transformation**

6. **Cooperation in the field of procurement**

Strategic public procurement brochure outlines the main priorities for procurement since 2017.

The rules and implementation of the national legislation of the EU Member States are set out in several directives. In particular, the 2014 European Parliament and Public Procurement Council Directive, the Procurement Directive in the areas of water, energy, transport and postal services, the Directive on concession contracts.

European legislation requires government customers to pay sufficient attention to the
Analytical Note No 22

quality of architectural services in the selection of the designer.

Public procurement aimed at ensuring contest and obtaining the best price for public investment. This is done by public auction. Legislators in the framework of the European public procurement rules establish several procedures for the acquisition of goods and services:

- Open procedure;
- Limited procedure;
- Negotiation procedure;
- Competitive dialogue (for individual cases)

A special role is defined for the Contest project

For the field of architecture there are special rules set forth in the following document “European public procurement legislation and architectural services. Recommendations and basic guidelines for transposing into national legislation” adopted by the general meeting of the Council of Architects of Europe (CAE) November 20, 2004.

This document provides the following guidelines for procurement in the field of architecture and related areas:

The procedures are generally NOT suitable for the procurement of architectural services:

1. Electronic auctions
2. Framework agreements
3. Dynamic purchasing systems

Procedures, in some cases, can be used for the procurement of architectural services:

1. The competitive dialogue

Procedures are acceptable for the purchase of architectural services:

1. Architectural Design Contest on preliminary opens qualification in two stages.

CAE recommends that the EU directives be transposed into the national legislation of the participating countries so that, in the case of a project contest, the contract is awarded to one of the winners (successful candidates) of the project contest with pre-qualification. If the client body chooses a prequalified bidding procedure according to the “competitive dialogue” procedure, in order to get the best results in the development of works, it is necessary to integrate the contest of architectural projects there.

The combination of the above tools (project bidding and bidding procedures with prequalification) makes it possible to best guarantee a high level of quality and economically viable results that cannot be achieved using the open or closed bidding procedure.

European legislation outlines the procedures for public procurement of architectural services recommends that purchases according to quality criteria.

On bidding for design and construction at the same time, CAE recommends that a distinction be made between design and construction. European legislators decided not to prescribe such a separation, but at the same time clearly noted that the decision on a separate or joint conclusion of contracts should be formed on the basis of qualitative economic criteria that can be determined in national legislation. Member States are encouraged to define such criteria based on existing research on the quality and business results of individual or common contracts.

European legislation allows the customer to choose the path of two separate tenders for design and construction, or one tender for two services, but advise to make a balanced choice.

Guidelines based on best practices.

- the conclusion of contracts for the provision of architectural services should be based on the quality of such services of the technical offer, and not on the cost of the service;
- the best way to ensure quality are contests of architectural projects;

European legislation values the importance of the task of the architect not only in the cultural
plane, but also in the plane of sustainability, innovation and the environment.

This document draws attention to the procedure for determining intentions. Defining objectives (project description) is the first step in the procurement procedure. This stage is crucial, especially given the fact that the client body has to make initial decisions that will be of great importance for the procurement process.

First, the customer’s body must define the intentions in the form of a design assignment, executed either on its own or with the assistance of experts. The design task is the basis for the tender documentation and will be developed at the second stage. Project assignment can be developed by conducting a contest of ideas. It is noted that state bodies should not limit information regarding the possibilities of concluding an agreement.

The next step for the body of the customer is to decide whether to order the design and execution of construction work as a separate, or general contract. According to CAE, the best option is to distinguish between design and work. Project contests, if they are properly organized and conducted, have shown that they are most suitable for ensuring the quality of work on the construction of public buildings.

At the stage of determining the intentions of the body the customer must decide on the appropriate procedure. In exceptional cases, when there is no possibility for him to have a clear project task or technical conditions (even with the help of a contest of ideas), the contracting authorities may have to consider using a competitive dialogue.

Qualitatively produced design assignments and a good understanding of the selection procedures is key to the success of the procurement.

Selection criteria for the purchase of construction services.

In general, the selection criteria that are determined by the authority of the customer should be based on the quality of the work of the architect. If necessary, you can limit the number of possible participants to the number with which the customer can work the body, there are different ways to achieve this.

Especially complex projects may from time to time require the use of selection criteria (specific experience, recommendations, additional special qualifications), which exclude business entities with general qualifications. In such cases, the contracting authority should allow participation of groups of business entities.

The selection criteria should be determined in such a way as not to exclude the participation of architects. It should be considered a valuable resource for the economy, which contains significant potential for innovative ideas and concepts.

Candidates should be selected by independent, duly authorized committees.

Limiting the number of candidates should be introduced on the basis of non-discriminatory methods. If it is necessary to introduce such restrictions, the selection process can occur in several stages. After pre-selection of candidates, customer authorities can arrange a lottery to further reduce the number of participants.

Selection criteria should never be developed to reduce the number of participants. There are cases of abusive selection criteria listed in European destinations. For example, candidates or procurement participants may be asked to confirm their compliance with the presentation of information on the turnover of funds over the past three fiscal years, the average annual number of employees over the past three years, the number of technical staff provided for performing managerial or supervisory functions, etc. These criteria generally do not relate to the quality of services in the field of architectural services, which they hope to receive from the candidate. Accordingly, such criteria should not be used as a technical means of limiting the number of participants.

Selection criteria are often used in favor of regional participants, even if by directive it is illegal. Some contracting authorities are trying to limit the participation of participants in the tender from their main office or branch near the

263
project site. In other cases, the customer authorities demanded specific experience in designing or constructing buildings in a typical local or regional style.

Another common problem is the pre-selection of participants. In some cases, it may be necessary to pre-screen participants. For example, if there are successful candidates among the participants of the previous contest of ideas or urban projects, or when it is necessary to extend the involvement of the architect of a building or complex. The pre-selection method should not be used to "circumvent" contest, for example, by pre-selecting candidates exclusively at the regional level.

The selection criteria proposed by the Annex to the Recommendations for the procurement of architectural services:

- Confirmation of recognized achievements in architecture, including data on victories in contests, recommendations, list of structures, participation in exhibitions.
- Confirmation of conceptual ability in architectural planning.
- Experience creating buildings of comparable complexity (not necessarily the same type).
- Understanding of the building context, including Spatial consistency with the existing environment.
- Understanding spatial quality with respect to external space.
- Understanding of settlements and cities of local and regional importance, as well as the interconnection of structures in an urban context.
- Understanding the environmental sustainability of the built environment, including accounting for the design of daylight, the use of sunlight, shade, natural ventilation and acoustic quality.
- Understanding of the design of facilities with universal accessibility.
- Understanding the local landscape and the links between buildings and the natural landscape.
- Evidence of innovative architecture solutions.
- Promotion of young architects and new architectural practices.
- Occupational risk insurance for a specific scope of work.

The selection criteria for participants should be non-discriminatory, and be based on the identification of the professional abilities of the architect!

Due to the assessment of the acceptability of the results of various national procedures, CAE concluded that the most appropriate way to purchase architectural services is a two-stage project contest with a subsequent negotiation procedure without prior notice. CAE draws attention to the fact that architectural design contests of projects can be made mandatory at the national level and at the same time not contradict to the European legislation on public procurement.

In the case of a public-private partnership, a project contest can provide optimal results in terms of quality and economic advantages, while guaranteeing a quality result to the public partner.

The best procedure for procurement of architectural services is determined by the architectural contest of projects in two stages with open prequalification. "Competitive dialogue" can be used in individual cases, and the criteria for selecting participants in the procedure of the mother based on the quality of future services.

3.2. Proposals

1. To refuse the vicious practice of "open bidding" for the purchase of construction services on the "low price" criterion.

2. To develop and introduce high-quality selection procedures for the general designer in the areas under study. This may be the opening of the possibility of applying the "competitive dialogue" for the procurement of architectural services for the development of qualification criteria for each sphere (two stages: qualification - price). Or applying RFI, RFQ (qualification), QBS, etc.
3. The priority procedure for the procurement of architectural services should be architectural contests and negotiation procedure for their results.

4. In order to disseminate competitive practices, to bring Ukrainian legislation into conformity with the organization and conduct of architectural contests according to international standards, encouraging clients to practice competitively. To improve the regulation of procedures for ordering project documentation after the contest and the conditions for cooperation with foreign architects who won the contests. Such rules should be made through project workshops involving all interested parties.

5. It is necessary to “reflash” the urban planning, architectural legislation and legislation in the field of the protection of cultural heritage with the procurement procedures of UPD, PD and SPD.

6. Consider the feasibility of separate certification for architects and restorers.

7. In the Law on public procurement to determine what type of production of scientific project documentation - services or works.

8. To determine the types of UPD for amalgamated communities.

9. Bidding on the order of project and scientific design documentation in most cases it is advisable to carry out separately from bidding for the construction / restoration of objects.

10. Strengthen the responsibility of customers for deliberately violating the legislation on the definition of the type of work - capital repairs / reconstruction, so as not to give an opportunity to avoid designing at important public facilities.

11. To bring into the line the Law of Ukraine “On Public Procurement” with each other and the Order of the Ministry of Economic Development on approving sample tender documentation on the discrepancy between the indicator of the specific weight of the price criterion (70%) when applying a competitive dialogue.


13. To develop recommendations on the application of public procurement legislation, including the procurement of services for the development of UPD, PD and SPD.