

## Evaluation of the Slovak Republic Policies in the Construction Sector based on a Study of Selected Regions

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### Abstract

Public administration in the European Union is undergoing several reforms, as well as in Slovak Republic (SR), to make the public services more efficient. New Slovak building legislation introduced a new policy of state building authorities with retroactive transfer of building competences from self-government to the state. The aim of this paper is to evaluate two policies in the construction sector – the original and the new one and their efficiency. In the quantitative analysis current building authorities, exercising competences at municipalities, are compared with the simulated district building authorities, employing metafrontier approach based on Data Envelopment Analysis. Results of the analysis of the net effect of the two organizational forms on efficiency show that the potential district building authorities would be 56.5 percentage points less efficient than the current building authorities, in terms of Meta-Technology Ratio indicator. In the qualitative analysis, using guided interviews with mayors in two regions of the SR, we found out ambiguous opinion on the building competences transfer from municipalities to state authorities within the new state policy.

**Keywords:** self – government; exercise of competences; building competences; district offices; efficiency.

**JEL classification:** H79; R50; C61.

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## **1. Introduction**

In addition to the private sphere, the field of economic research also focuses on other entities such as public administration, the non-governmental sector, and so on. These are equally important parts of society that face many difficulties and problems that need to be addressed professionally. The area of public administration is a very specific area, as it focuses on governance and concerns all citizens of the region and the country without distinction. The area of governance in Central European countries has required numerous reforms over the past thirty years. The desire to improve processes in the handling of public affairs, whether at the level of cities, municipalities, regions or the state, was and is evident in all political representatives. However, an important question is how to reform the sub-areas of public administration so as not to disrupt the harmonious functioning of the whole public administration. Economic issues and the economic security of public affairs are also an increasingly pressing problem in public administration. Most often, the issue of cost-effectiveness, efficiency and efficiency gains come to the fore. These economic attributes are no longer just the domain of the economic background in the functioning of the private sector.

Public administration in Slovakia, similarly to other countries after the transition to a market-oriented economy, was forced to shape itself into a form that could fully ensure the operation of all areas it administers. The basic task of the state is to create, in particular, the legislative conditions, the legislative boundaries within which the various actors, entities and institutions are to operate. The constant, even dynamic, changes in governance are not conducive to its smooth performance. The challenge for all concerned is to reform the status quo and try to set conditions that will make a real contribution not only to meeting needs and ensuring real governance, but also under reasonable economic conditions.

The study of public administration issues at the scientific-research and partly legislative level has a relatively long tradition in several academic institutions. The academics deal with local and regional government and also with contemporary problems of public administration as such at the macro level. The collective of authors has reflected over the past months on the need or challenge to deal with the sub-issue of the efficiency of public administration in the conditions of local government. The author's team in its research within the APVV project focuses more closely on the sub-problem of self-government performance in the field of building regulations. This paper reacts to the Programme Statement of the Slovak Government for 2020-2024 issued on 28.4.2021 that planned to transfer building competences to newly created building district offices. In the context of the forthcoming legislative change in the construction sector, the authors of the present paper consider the partial results of research and scientific activity to be significant. In our view, any legislative change should be preceded by a thorough assessment of the current and forthcoming state of local government and state administration. Also, in the context of other upcoming legislative changes, we consider it important to deal with the issue of the competences of local government in the field of building regulations.

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## 2. Theoretical Background

Public administration can be characterized as a service to the public, which, according to Halml (2019), is carried out by the active actions of administrative bodies. Administrative bodies are public authorities that decide on the rights and legally protected interests of natural and legal persons, thus also in building proceedings, and proceed, in addition to special laws, according to the general regulation setting out the basic rules of their procedure – in Slovakia it is the Administrative Procedure Code. From the perspective of legal theory, public administration is interpreted as the administration of public affairs carried out "*as a manifestation of executive power in the state*", which is not only possessed by the state, but also by many other non-state entities carrying out the administration of public affairs in the public interest (Pravdová, 2007).

Currently, public administration in the sense of the concept of New Public Management is understood as a service to the public, as the provision of assistance or support to natural and legal persons in various areas. These actors rightly expect the governance reform changes to deal with their requests and proposals in a good and expeditious manner, without unnecessary bureaucracy. Following the example of developed countries, where public administration is implemented in the light of accessible and efficient service to the citizen, Slovakia is trying to move closer to this idea through several reforms.

Slovakia is a successor state, created after the dissolution of Czechoslovakia in 1992, and became a European Union member state in 2004. In all post-communist states of Central and Eastern Europe (CEE) that wanted to join the EU, according to Randma-Liiv & Drechsler (2017) during the EU-accession period (1997-2004/2007), several reform initiatives were strongly impelled and shaped by the EU accession criteria and "conditionality" set by the European Commission. However, in public administration in CEE after 2017, domestic decisions of individual CEE governments have moved them apart from each other, which makes it even more difficult than before to generalize findings and offer recommendations that apply to all CEE countries. According to Malatinec et al. (2016), the public administration structure and legal regulation markedly differ in the European Union member states. It results in disparities in performance and fulfilment of the European Union requirements and needs.

All post-communist countries have undergone public administration reforms. Among them Poland, Hungary, Slovakia, and the Czech Republic all moved to dismantle legal and institutional civil service systems which were created before European Union accession and returned to a much more politicized civil service model, including a much greater managerial discretion to hire and fire staff (Meyer-Sahling, 2011). We agree with Pylak et al. (2014), who in an analysis on the relationship of local government competences to the innovativeness of local companies' state, the higher the level of local authorities' competences, the greater the intensity of local measures supporting the competitiveness and innovativeness of local companies will be.

In countries around the world, public administration is practiced at central, regional and also local levels, with the different levels cooperating with each other in carrying out their activities (Mosher et al., 2013). Such cooperation should lead to the optimal provision of public services by the various institutions, which carry them out on the basis of their respective competences, regulated by legislation. This division of responsibilities assists in the implementation of the expected outcomes, including justice in societal relations (Mishchuk et al., 2019), welfare programs (Wolf et al., 2021) transparency and trust in the public sector (Lyeonov et al., 2023;

Vasylieva et al., 2023). Stytlar, N. (2005) argues on local government competences, using the examples of Switzerland, the USA, Australia and Canada, that common competences are mainly a feature of the way in which local government powers are defined in constitutions. Because of the position of local government in the hierarchy of governments, local government is seldom given exclusive powers.

Problems flowing from common competences are shared by many, if not all, decentralised and federal systems; they are a feature arising from the division of powers between two levels of government. The problem is particularly pronounced when a third level of government is added - local government. According to Hristova-Stefanova (2021), the recognition of the general power of competence of municipal councils gives the chance for overcoming the suspicion that some matters of local importance are not provided as local authorities' competence: *"the municipal council shall resolve other matters of local importance that do not fall within the exclusive competence of other bodies."*

Slovak Constitution No. 460/1992 Coll. as amended in Art. 64 states that the municipality is the basis of local self-government. Territorial self-government consists of municipalities and higher territorial units. The state may interfere in the activities of a municipality and a higher territorial unit only in the manner provided by law. This is how the National Council of the Slovak Republic proceeded when adopting Act No. 416/2001 Coll. on the transfer of certain competences from state administration bodies to municipalities and higher territorial units, which were transferred building competences from the state to local government - municipalities.

In Slovakia, despite the decentralisation process, which transferred competences to municipalities / cities that were previously the responsibility of the state, local government is highly fragmented, as evidenced by the high number of municipalities - currently the Slovak Republic has 2,927 municipalities (Bačík, 2021). Many, especially Scandinavian countries have reduced the number of municipalities through public administration reforms, e.g. as Lidström & Madell (2021) state, local government in Sweden consists of two tiers - 290 municipalities and 21 regions, each corresponding to the area of a county. Such a reform of self-government has not yet taken place in the Slovak Republic. Building competences in the Slovak Republic are, according to Act No. 50/1976 Coll. as amended, implemented by local government - municipalities, but according to the Programme Policy Statement of the Slovak Government for 2020-2024, their competences will be transferred to the state - district authorities.

According to Brinkerhoff & Brinkerhoff (2011), some research does explore a range of governance relationships between multiple government levels and civil society to understand their performance. However, others studied local collaborations and their implications on public service performance, which, in practice, generally occur when both paid public employees and (usually unpaid) service users (individuals or groups) make significant, active, and explicit joint contributions to the co-governance (i.e., planning, designing, budgeting, or decision-making in general) or coproduction (i.e., managing, delivering, or evaluating) of public services locally (Bovaird & Loeffler, 2012). Here we can see the implication of this statement of foreign authors also in the Slovak construction sector, where according to the current policy of self-governing building authorities (BA), building competences are mainly exercised by municipalities through their building authorities and builders are forced to join the administrative process by contacting various bodies for their consent with the construction. According to the new policy of the state building authorities in the Slovak Republic, this role is to be taken over by building designers, but builders will have to communicate with the newly established specialized building

authorities in the seats of the districts which can be seen as a deviation from the availability of public administration services to natural and legal persons. In the case of a building procedure, which is a special type of administrative procedure under the Slovak Administrative Procedure Code, these subjects must become parties to the procedure in which the administrative authority decides on their right to build the property. According to Spears & Sanford (1981), the average individual is affected more directly by decisions of administrative bodies than by judicial system. Most people will never be a party to a law suit, yet virtually everyone is affected by administration action every day. This fact is also reflected in the building procedure, as all builders must enter into administrative proceedings with the competent building authority of the municipality before starting the construction, which starts the building procedure, and its result is a decision - building permit.

In the new building legislation in the Slovak Republic (in the new Building Act), the administrative decision on the construction permit (the new Act uses the name "decision on the building plan") becomes final on the day of its delivery. Here we see a contradiction with the Constitution and the current Administrative Code of the Slovak Republic. Similarly, Ura (2021) states that the right to appeal against an administrative decision is a fundamental right of a party, guaranteed in the Constitution and the Code of Administrative Procedure. It allows verification of the decision by a higher instance body that seems to be professional and better prepared to deal with the case. In addition to this critical view, we see a potential lack of competence of the "collected" experts in decision-making processes in the building code at the newly established state institutions - district offices.

Christensen et al. (2019) are of the opinion that skilled employees are able to perform their jobs more efficiently as their human capital has a greater disposition. Clearly the opinion of Simon (2013) can also be relied on, who includes among accepted administrative principles also administrative efficiency increased by grouping the workers, purposes of control, according to a) purpose, b) process, c) clientele, d) place. The efficiency of professional duties requires appropriate competencies. One of the biggest challenges among them is digital competency (Bilan et al., 2023). Sometimes concerns arise regarding ethical judgments of public sector employees as well (Johari et al., 2020). Similarly, Shapiro (2001) says that administrative law prescribes behaviour within administrative organisations; more importantly, it delineates the relationships between those inside an administration and those outside it. Outside an administration lie both the statuemaker whose laws and regulations administrators owe a legal duty to faithfully implement and the citizens to whom administrators owe legally correct procedural and substantive action.

This fact has also been reflected in the reforms of public administration in Slovakia, in the framework of decentralisation processes in public administration, where natural and legal persons are participants in administrative proceedings in individual sectors of public administration, including building proceedings. By Act No. 416/2001 Coll. as amended, building competences were transferred from the state to the local government, thus closer to the citizens, but currently in the newly prepared Building Act it is planned to transfer these competences back from the municipalities to the state.

We agree with the authors Van der Westhuizen - Dollery (2009) that the world has reached a situation where the public administration system has completely changed in the last decades. This has been evidenced by the large-scale audits of administration system systems that have been the impetus for new reform measures in several countries around the world.

In the European Union, a combined, so-called community method is used in administrative proceedings, which according to Scott (2009) uses 'Input-oriented legitimacy' which refers to the sense that processes through which decisions are made are appropriate, irrespective of the actual outcome. 'Output-oriented legitimacy' refers to the acceptance of decisions premised upon their substantive quality, rather than the process through which they are made. The 'Community method' combines both forms of legitimacy.

Slovakia, as a European Union member state, applies a governance model based on legitimate involvement of European Union institutions and domestic governments, both in the adequate preparation of legislation and in administrative decision-making itself. However, we cannot fail to note, as Poór et al. (2020) or Strazovska & Sirotkova (2018) point out in their studies that it is necessary to bear in mind that public administration employees in Slovakia, the Czech Republic, but also in Hungary and Poland earn much less per month in similar positions than their counterparts in other EU countries.

Similarly, regarding the salaries of mayors of municipalities, Machyniak & Horváth (2017) or Mihálik et al. (2019) state that the mayor is entitled to a salary that is the product of the average monthly wage of an employee in the national economy calculated on the basis of data from the Statistical Office of the Slovak Republic and a specific multiplier established by Act No. 253/1994 Coll. Z. on the legal status and salary ratios of mayors of municipalities and mayors of towns, as amended. As a general rule, the mayor's salary cannot be lower than the law stipulates. However, the municipal council can increase the mayor's salary by up to 70% by decision, which should be seen especially as a risk of political abuse.

On the need for a new Building act in the Slovak Republic, Kováčik (2017) commented that for the present time it is an outdated law whose ambiguous wording often causes problems in practice. The author also states that its wording, on the one hand, gives great powers to officials, but on the other hand, it does not provide a clear definition of the rights and obligations of the main participants in the construction process. Also, Yar (2019) states that there should be a change in terms of the determination of the building authorities. The staff of the building authorities should work in fewer building authorities, whose processes should be made faster and more transparent.

According to the new Building Act the exercise of construction competence should be the responsibility of the state or the so-called building district offices. Here, in our research, we asked the question whether the current municipal building authorities (local self-government) would be more managerially efficient than alternative building authorities (state government). Heinrich (2012) states that performance measurement is important in order to be able to identify how much progress is being made in the performance of an activity and also to be interested in whether further intervention is needed to make that activity more effective.

There are a large number of studies focusing on efficiency analysis at the local government level. A large group of studies analyse so called global municipal efficiency at the level of a country, taking into account all or at least several competences, activities and services provided by municipalities. Review of such studies one can found in Narbón-Perpiñá & De Witte (2018) and Afonso & Fernandes (2008).

We also based our qualitative research on the view of (Steinerová, 2015), who states that understanding of events and contexts occurs through qualitative methods. In general, it is an in-depth analysis of data that we obtain through various means (e.g., text analysis, data collection, various motifs, categorization keys).

### **3. Methodology**

The main objective of this paper is to evaluate the efficiency of two policies applied in the construction sector of the Slovak Republic. The original, i.e., the first policy is the "Policy of self-governing building authorities", which was implemented within the decentralisation process by Act No. 416/2001 Coll., as amended, and the building competences were transferred from the state to the self-government. This policy has been applied in the Slovak Republic until now. The second, new policy in the construction sector, the "Policy of state building authorities" is introduced by new legislation, namely the retroactive transfer of building competences from local government to the state.

In our quantitative research based on 2014-2019 data in two selected regions of the Slovak Republic – Nitra (hereinafter NR) and Košice (hereinafter KE) regions, we evaluate the original and new policy in the construction sector of the Slovak Republic. We compare the efficiency of the current building authorities and simulated district building authorities, to which, according to the new legislation, the execution of building regulations is to be retroactively transferred.

The secondary objectives of the present paper are the evaluation and comparison of the original building legislation and those parts of the newly prepared legislation which are to bring about the acceleration and streamlining of the building procedure in comparison with the currently valid legislation. We base this assessment on the published proposals in the new Building Act.

In this context, we present the qualitative results of our research in 2021, focused on the performance of building competence in municipalities in two selected regions of the Slovak Republic – NR and KE regions, which we conducted in connection with the new state policy in the construction sector and in the frame of research project APVV No. 20-0076.

The intention of the research is to find out the views of municipal/building authority representatives on the exercise of building competence by the newly established state authorities.

To evaluate the efficiency of the two chosen policies for the exercise of building competence in the Slovak Republic, we analysed performance of 105 building authorities of the NR and KE regions serving 745 municipalities. The sample size is representative enough to make conclusions that are representative with 95% confidence level for the NR and KE regions. All building authorities' performance is expressed by three output variables (construction permits, certifications of occupancy, additional construction permits) relative to one input variable (government subsidies for the building authorities operation). District building authorities' performance is simulated by aggregating data of the individual current building authorities operating under jurisdiction of the analysed districts.

We use a pilot method of guided interviews with top representatives of municipalities - selected building authorities to research the problems and their possible solutions in exercising the competences of building authorities in the above-mentioned regions of the Slovak Republic.

We apply the method of analysis to the new legislative regulation of building competences in the Slovak Republic and focus on the benefits of the new legal regulation in the transfer of building competences from local self-government - municipalities to state administration - to district authorities.

Efficiency of building authorities is measured by the technical efficiency (TE) indicator. We use a two-stage estimation procedure. In the first stage for all current and simulated district authorities-together we estimate overall technical efficiency employing CCR DEA model (Charnes et al., 1978) and pure efficiency using BCC (Banker et al., 1984). Residually we calculate scale efficiency as a ratio of  $TE_{CCR}/TE_{BCC}$ . Overall (or total) technical efficiency indicates performance of individual building authorities with respect to the best performing units without respect to their scale size. Pure technical efficiency expresses performance of building authorities relative to similar scale size units and it is considered as an indicator of a managerial efficiency. Scale efficiency indicates inefficiency (or efficiency loss) caused due to non-optimal scale size of an analysed building authority. All three efficiency measures are from the range  $<0;1>$ , and generally they can be interpreted to what percentage is a building authority under observation efficient in comparison with the best performing building authorities in the sample.

In the second stage we analyse net effect of the alternative organizational forms of building authorities on their efficiency. Assuming that the two alternative organizational forms are independent technologies we employ a metafrontier approach suggested by O'Donnell et al. (2007). CCR DEA model is separately applied for current building authorities as well as for simulated district building authorities and estimated technical efficiency measures are compared to  $TE_{CCR}$  of the first stage, which we understand as meta-technology efficiency measures. The result of the comparison is coined as meta-technology ratio:

$$MTR^k = \frac{TE_{CCR}^M}{TE_{CCR}^k}$$

where  $MTR^k$  is a meta-technology ratio for the k-th organizational form,  $TE_{CCR}^M$  are technical efficiency measures relative to meta-technology (a pooled common efficiency meta-frontier in the first stage),  $TE_{CCR}^k$  are technical efficiency measures relative to k-th technology (frontier). Meta-technology ratio is from the range  $<0;1>$  and indicates net effect of organizational forms of building authorities on the efficiency of a unit under observation. In other words it is a distance of the k-th technology frontier to the common efficiency meta-frontier for the observed building authority.

Evaluation of which organizational form is superior is based on a comparison of the distributions of the meta-technology ratios of the two organizational forms. We used the non-parametric Mann-Whitney rank statistic as suggested by Brocket and Golany (1996).

## 4. Results and Discussion

### 4.1 Current SR policy: Policy of self-governing building authorities

Even before the Act No.416/2001 Coll. on the transfer of certain competences from state administration bodies to municipalities and higher territorial units, valid from 1.1.2002, Slavík et al. (2010) expressed that the exercise of building competence is very problematic, chaotic and its provision needs change.

The National Council of the Slovak Republic, by decentralizing competences from the state to the local government, introduced a policy of addressing the exercise of competences in several sectors, including the construction sector, so that the administrative authorities perform services



to natural and legal persons optimally. We agree with the view (Mura & Marišová, 2021) that in the previous period, the sphere of public administration has undergone numerous reform steps in order to streamline the administration of public affairs, increase the efficiency of public administration and get closer to the citizens.

One of the competences that has been transferred from the competence of state authorities to municipalities/cities is therefore also the competence in the field of building regulations. The transfer of this competence to self-government units is defined in §2e of Act No. 416/2001 Coll. on the transfer of certain competences from state administration bodies to municipalities and higher territorial units, as amended.

By this law, the state administration authorities delegated to municipalities/cities the exercise of more than 300 competences (Leško, 2015) falling into various areas. As a result, municipalities are obliged to provide not only original but also devolved competences for their inhabitants (today there are more than 4,000 of them). However, the problem arises here that the financial resources allocated by the state for the provision of these competences are often insufficient for municipalities in Slovakia, which forces them to violate the law and to supplement the provision of these competences from their own budgets.

In accordance with §117 of Act No. 50/1976 Coll. of the Building Act as amended, the municipality has become a "building authority" by the above-mentioned transfer of competences, and thus has the obligation to ensure all activities within the scope of the delegated competence associated with it. Currently, the Slovak Republic has 2 927 municipalities (Bačík, 2021).

However, according to the current and effective legislation in the Slovak Republic, municipalities use the opportunity and cooperate with each other in the exercise of building competence, as small municipalities would not be able to exercise this competence. According to Ryník (2021), municipalities pay from their own resources up to 60% of the total costs of building authorities for the exercise of building competence. Also, for this reason, municipalities create the so-called joint building authorities in the exercise of building competence in accordance with § 20 of Act No. 369/1990 Coll. on Municipal Establishment, as amended. However, this is generally only voluntary, contractual cooperation.

Fandel et al. (2019) provide a critical view on the financing of transferred competences that financial support by the Slovak state budget relating to the transferred competences to municipalities is regulated by § 6 par. 2 of Act No. 523/2004 Coll. on budgetary rules of public administration as amended, however, these financial resources are not sufficient, which leads municipalities at the level of the building competences to merge into the joint building offices serving for numerous municipalities.

The question of the effectiveness of the transfer of state competences to municipalities is still highly debated. (Berníková & Jakab, 2021). According to Delcamp & Loughlin (2003), the effectiveness of the impacts of devolved governance systems is debatable, but the last decades of the 20th century and the early 21st century have been characterized precisely by the growing global demand for the devolution of competences and resources to local levels of government.

As we have already mentioned in the introductory part of this article, the Government of the Slovak Republic in its Programme Statement for 2020-2024 proposed to change the current model of exercising building competence in the conditions of the Slovak Republic. Specifically, it will be about the withdrawal of the exercise of building competences from municipalities and the transfer of these competences to state authorities.

The exercise of building competence should in future be the responsibility of the state or the so-called regional building offices in seats of regions.

The question here is whether this would be effective for the exercise of the building competence?

In our quantitative analysis of the building authorities' efficiency, we used 2014-2019 data of 105 offices. Descriptive statistics of the sample is given in the *Table 1*.

In addition to the quantitative research, we also conducted qualitative research during 2021, consisting of guided interviews in 12 municipalities of the NR region and 16 municipalities in the KE region in order to find out the opinions of mayors and professional employees of building authorities regarding the planned transfer of building competences from the local government to the state.

**Table 1 Descriptive statistics of a sample of current and simulated district building authorities**

Sample descriptive statistics	NR	KE	NR&KE
Number of municipalities in the sample	353	392	745
Number of building authorities	36	69	105
Average number of municipalities per a building authority	9.8	5.7	7.1
Population per a building authority	18867	7474	11380
Number of simulated districts' building authorities	8	6	53
Avg. number of municipalities per a district building authority	47	62	53
Population per a district building authority	88860	80678	85353

Source: Authors' own calculation based on field data of the Project VEGA 1/0190/17(2019)

In order to find out whether mayors see the benefits of this solution, we obtained the opinion of 4 municipalities in the NR region, which partly support the transfer of these competences to the state because of the financial benefits for municipalities, since the subsidies for the performance of the competence are insufficient. Another opinion is the expression of the expected benefit of this solution - the removal of psychological pressure and pressure on mayors from developers, interest groups and residents. On the other hand, there is a risk that especially the inhabitants of the municipality will lose direct contact and assistance in dealing with building permits directly in the municipality where they reside. We have also encountered the opinion that the new Building Act will relieve the burden on smaller municipalities, for which securing the competences of the building authority was difficult and complex. They did not have the qualified staff to do it. Therefore, several municipalities provide these competences through a common building authority. On the other hand, however, they see the possibility of less interference by local government leaders in building procedures.

In the NR region, 8 municipalities disagreed in the guided interviews with the benefit of a retroactive transfer of building competences from the municipalities to the state, although they expressed the partial possibility that if the competences of the building office are provided by qualified, experienced staff in the district offices, it may be more efficient (shorter procedures, etc.). But according to media reports, there are also risks or negatives associated with it. Municipalities and towns will be significantly reduced in their ability to influence spatial development and construction in their territory. They are also concerned about the greater influence of developers on new construction. We also encountered the opinion that there is no

benefit in the new legislation, as "the same people" will be working in the construction sector as before, as the district authorities as state institutions had a strong position until now. In a controlled interview we also communicated with such a mayor who stated that it is not possible to give a clear answer to this question, because in the government's draft of the proposed new Building Act many issues are not regulated, for example, the appeal procedure, jurisdiction and competence of the appeal body in the building procedure. That is why he does not see any benefit of the draft law yet, building offices should remain in the competence of municipalities, in this way building offices are much closer to citizens. It would be necessary to strengthen the current building authorities both in terms of personnel and technical capacity and to simplify the legal regulation, especially for simple constructions, to issue building permits, as long as the builder submits a complete application, without a building procedure. Similarly, the mayor's view that the building procedure would be more time-consuming, with citizens having to go to the district offices that would be set up in the counties, was directed towards the fact that the current state of the building procedure was satisfactory. In addition, the power of the state will be centralised by the new legislation.

In the KE region we conducted a guided interview in 16 municipalities, 10 of which agreed to the transfer of building competences to the state, as they see the benefits of this solution as significant, since in small municipalities the building office is only externally, a few hours, perhaps marginally. In municipalities that have a separate authority, the municipality must subsidise the activities of the building authority. By having the mayor or the mayor sign the decisions, investment activity can be influenced by other interests and the decision-making powers would also be in the right place. They also see as a benefit of the solution, perhaps, in the fact that the financing and sufficient staffing of the office would be solved (often all building acts are solved by one person all or all acts) - from the performance of state construction supervision, through the procedure for additional building permit or removal, and the hearing of offences. Opinions were also expressed that the burden on municipalities will be reduced, and the local government will be relieved of this agenda. We also encountered the opinion that mayors see the only benefit of the solution in the fact that the activities will be fully financed by the state. The municipality significantly contributes to the activities of the building office, as the transfer from the state only covers the salary costs of the employees, even if not in full. It does not cover operating costs at all.

On the merits of the new building legislation, we also noted a view that change is needed. The benefits will be an increase in expertise and should also result in shorter timeframes and more rigorous compliance with the legality of the permitting process. However, the mayor cannot quite imagine the staffing of such a centralised building office.

We have noticed disagreeing opinions regarding the new building legislation in 6 municipalities in the KE region. The mayors in these villages do not see the benefit in anything, the administration will not be closer to the people. It is better when the building competences are with the municipality, as the mayor knows his area better and as it is now, it is more correct. According to other views, since the draft law has not reached the first instance authorities, it is not easy to assess its contribution. However, overall it would not be beneficial as there could be pressures from above and it would not be possible to take the view of a community that is closer to the site and knows its area better. The decision-making of the central authority may not be appropriate because it is not that close to the citizens of the municipality. The definitions of basic terms in the amendment should be clearly formulated and not in a descriptive form. The amendment was expected to result in a professionally drafted building law with clear rules. After the new building legislation is approved and effective in application practice, it is not a

question of who will implement the building regulations, whether the state administration or the local government, it is a question of how it will be implemented. The amendment itself does not have clear rules of procedure. Other opinions argued that the municipalities have so far based their decisions only on the materials published on the portal of the Legislative Council of the Slovak Government. From the point of view of professional practice, it is the least comprehensible for the employees of building authorities of all the amendments prepared so far. The permitting process in the amendment is completely outside the process of administrative proceedings, thus it does not respect the Act 138/2004 Coll. on Administrative Procedure, as amended - Administrative Procedure Code - in particular the initiation of the proceedings (zoning, construction, building permit) by notification, further local investigation, issuance of a decision - appeal - or legal validity). The new law somehow does not contemplate these procedural acts. Further, party status is absent. The current set-up of the existing building legislation is fine.

The questionnaire responses for Nitra and Košice regions are summarised in *Table 2*.

**Table 2. YES/NO questions in the survey and the percentage of responses**

Que. No.	Questions	Region	YES [%]	NO [%]
1	According to the new Building Act and according to the Program Statement of the Government of the Slovak Republic for the years 2020-2024, the building authorities will be abolished, and their competences will be transferred to the district (specialized) offices. Do you see this solution as a benefit?	NR	33	67
		KE	75	25
2	Is the municipality currently forced to co-finance the performance of its building competences from its own budget?	NR	100	0
		KE	81	19

Source: Authors' own calculation based on field data of the project APVV-20-0076 (2022)

#### 4.2 New SR policy: Policy of state building authorities

As we have already mentioned in Section 2, in connection with the exercise of competences in the field of building regulations, according to the Policy Statement of the Slovak Government for 2020-2024, the current building offices will be abolished and their competences transferred to state building district offices. This should reduce bureaucracy, time-consuming decision-making and streamline the exercise of competence in the field of building regulations, which is the basis for the new SR policy of state building authorities.

Since the state building authorities are not yet established despite the new building legislation, we base our analysis of the efficiency on the simulated district building authorities operating under jurisdiction of the analysed districts as state authorities and compare them with the current building authorities in the municipalities. The change of the organisational form of exercising the building competence in the Slovak Republic (according to the idea of the Policy Statement of the Slovak Government for 2020-2024 would reduce the number of building authorities.

The efficiency analysis is based on the computation of three standard efficiency indicators of overall technical efficiency, pure (managerial) technical efficiency, and scale efficiency and one indicator for measurement of the net effect of the organizational form of building authorities. Overview of average efficiency measures is presented in the *Table 3*.

**Table 3. Summary of efficiency measures**

Average efficiency measures	Overall technical efficiency (TE <sub>CCR</sub> )	Pure technical efficiency (TE <sub>BCC</sub> )	Scale efficiency (SE)	Meta-Technology Ratio (MTR)
Current building authorities	<b>0.374</b>	0.469	<b>0.802</b>	<b>1.000</b>
Simulated district building authorities	0.310	<b>0.636</b>	0.507	0.434
Difference	0.064	0.167	0.294	0.566
Mann-Whitney test results (Z-Score)	0.52374	-2.45374*	5.30337**	6.05805**

\* Significance at the 5% level, \*\* Significance at the 1% level

Source: Authors' own computation based on field data of the Project VEGA 1/0190/17

A comparison of efficiency measures of the two organizational forms (*Table 3*) leads to the conclusions that current building authorities seem to be more efficient (TE<sub>CCR</sub> =0.374) than potential district building authorities (TE<sub>CCR</sub> =0.310) in terms of overall technical efficiency. But the difference is not statistically significant. Differences are statistically significant in terms of pure technical efficiency and scale efficiency. Simulated district BA (TE<sub>BCC</sub>=0.636) outperform current BA (TE<sub>BCC</sub> =0.469) in pure technical efficiency by 16.7 percentage points, what can indicate that district BA can be potentially managerially more efficient. Current BA (SE=0.802) are superior to simulated district BA (SE=0.507) in scale efficiency. It shows that current BA are in average closer to the optimal scale size than potential district BA.

Decomposition of the overall technical efficiency of the current BA suggests that their efficiency is driven mainly by scale efficiency (SE=0,802) and current less by managerial efficiency (TE<sub>BCC</sub>=0,469). It confirms the conclusion that the current building authorities' advantage is their scale size and the disadvantage is their poorer managerial efficiency. In case of the simulated district BA it is opposite. Their potential advantage may result mainly from higher managerial efficiency (TE<sub>BCC</sub>=0,636) and less from scale efficiency (SE=0.507).

The question whether organizational form of building authorities may have an impact on BA efficiency is answered by the Meta-Technology Ratio. The ratio is based on elimination of sources of managerial and scale inefficiencies and then assuming that the residual inefficiency is due to net effect of the organizational forms of BA. Our results clearly show that potential district BA are strongly dominated by current BA. The difference between average MTR of current BA (MTR=1.000) and average MTR of potential district BA (MTR=0,434) indicates that the current BA would be 56,6 percentage points more efficient, and the result is statistically significant ( $p < 0.00001$ ).

According to the new legislation, the decision-making authority in the Slovak Republic will be changed in the permitting of constructions and new state administration bodies will be established which will decide on the building plan. The term "building permit", as originally designated, is deleted from the new building legislation and replaced by the term "building plan". A central state administration body with defined territorial competence - the Office for Spatial Planning and Construction of the Slovak Republic and the offices of this Office, which will be state building offices for the territorial districts in the seats of regional towns, will be established.

According to the Explanatory Memorandum to the Building Act (proposal is published under LP/2021/226), the basic obligation of the builder will be to commission the preparation of

project documentation from a designer who will carry out the building permit process according to the builder's instructions, and the contractor of the construction will have to be an entrepreneur on the basis of a bonded trade. So far, it is a free declared trade, for which no professional training or experience is required.

The draft building plan will be sent by the designer to the impact assessment body for discussion with the authorities concerned and determination of the scope of the assessment of the proposed activity via the Urbion electronic system. The report on the result of the discussion of the building plan should rationalise the building procedure and relieve the building office from providing all the decision documents, as it is now required by Section 62 par. 3 of Act 50/1976 Coll. Building Act as amended.

This new legislation pursues the basic purpose of the procedure at the building authority, namely, to eliminate contradictions from the discussion of the building plan, which the builder and the designer failed to eliminate, and to decide on them. If the builder and the designer have managed to resolve all contradictions and conflicting opinions, the building authority will issue a decision on the building plan.

### **4.3 Comparison of SR policies in the construction sector**

The newly prepared building legislation in Slovakia is based on the retroactive transfer of building competences from municipalities to the newly established district specialised offices and thus municipalities will no longer be building authorities. The existing powers of municipalities as building authorities will be transferred to a newly established central state administration body with defined territorial competence, the so-called Office for Spatial Planning and Construction of the Slovak Republic (hereinafter Authority). This authority will establish offices within its competence, whose main task will be to carry out the competences of the existing building offices. The list of workplaces of the Authority will be the building offices for the territorial districts of the districts in the seats of the regional towns and will be determined by a decree to the new Building Act. The Authority, in exercising the powers of the Building Authority, will therefore decide on the building plan (Explanatory Memorandum to the Building Act, 2021).

This decision will be the basis for the preparation of the construction and technical documentation, according to which the construction works can be carried out. The decision on the building plan according to the new Building Act becomes final on the day of its delivery. Here we see a contradiction with the current Administrative Code (Act No.138/2004 Coll., as amended), which regulates decision-making processes in public administration in §53 : A party to the proceedings shall have the right to appeal against the decision of the administrative authority, unless the party to the proceedings has waived the appeal in writing or orally on the record. The new policy of the state building authorities excludes the appeal as a stimulus for the initiation of the second-instance appeal proceedings at the administrative body and the decision on the building plan is granted legal validity by its delivery in this first-instance proceedings.

Under the new Building Act, the Authority will decide on the review of the decision on the building plan, which is an extraordinary proceeding on a final decision under the Administrative Procedure Code and is provided in § 65 of this Act as Review of a decision outside the appeal procedure. We agree with Košičiarová (2017), who states that an administrative authority may review a final decision, either on its own initiative or on the initiative of anyone else (e.g. a party to the proceedings, an interested party, but also another person who is not affected by the

decision at all). The competent authority for reviewing the decision is the administrative authority of the next higher-level superior to the administrative authority which issued the decision and, if it is a decision of a central government body, its head on the basis of a proposal by a special commission appointed by it. In this context, it is also questionable whether the newly established offices of the Authority will have legal personality and thus the Authority will be their superior administrative body.

The final decision on the building plan can be reviewed by the Authority at the initiative of the builder, according to the Administrative Code the time limit is maximum 3 years from the entry into force of the decision. Greguš (2020) is of the opinion that the basic problem in the Building Code is the length of the building permit. The exercise of building competence is administratively very demanding. The author claims that based on the analysis of the World Bank, the Slovak Republic ranks 154th among 190 countries in the world (The World Bank, 2021) in terms of the speed of processing building permits.

In the light of the new legislation, it is questionable whether the new Building Act will speed up the building procedure, as the review of a decision outside the appeal procedure under the Administrative Procedure Code can take up to 3 years. In the new policy of the state we see an intervention into the currently valid Administrative Code of the Slovak Republic, which regulates the two-instance procedure, i.e. the admissibility of filing a proper remedy - an appeal of the builder against an invalid decision on the building plan. The new wording of the Building Act lacks the reference to the Administrative Procedure Code and the proceedings on the building plan will no longer be subject to the two-step regulation of the administrative procedure. The Administrative Procedure Code will only apply to ordering the builder to do something under threat of sanction (offences, administrative offences) and to the exercise of state building supervision.

As we have already mentioned, a new central state administration body will be established - the Authority and the competence of the existing building offices (municipalities) will be transferred to building offices, which will be the workplaces of the newly established Authority with a defined territorial competence and their main task will be to perform the competence of the existing building offices. The newly established state building authorities will review and decide on each construction project. This legislation will transfer the so-called decision-making competences from the municipalities to the state administration, thus applying the new policy of the Slovak Republic, which we refer to as the policy of the State Building Authorities. This new policy does not respect the current wording of the Administrative Code and, as we have already mentioned, during the reform process in the Slovak Republic there was a transfer of competences from the state to the municipalities by Act No. 416/2001 Coll. as amended. The current, new Building Act will result in a retroactive transfer of building competences from municipalities to the state, which we see as an inconceptiveness of the new legislative solution and the new Policy of the State Building Authorities.

In line with our quantitative and qualitative research focused on the exercise of building competences in the public administration of the Slovak Republic, we are of the opinion that municipalities should remain building authorities and should continue to decide on the permitting of buildings, as they know best the needs of their territorial districts. In our opinion, there is no need to establish a new central government body - the Office for Spatial Planning and Construction but the necessary competences should be exercised by the existing district offices, namely the departments of the environment and the departments of construction and housing policy. In the case of the environmental departments, we are referring to the Authority's

proposed actions that should speed up the process of deciding on a development plan. However, we agree with the newly defined building plan, which starts the building process and is to be completed with the approval certificate of the new construction (change of construction) or the removal of the existing construction.

Under the new building legislation, the building plan is to provide basic information about the builder's intention to carry out construction work and details of the future outcome of the proposed construction work. The building plan shall include a design statement to the extent necessary and sufficient to ensure that all material circumstances and parameters of the outcome of the construction work are apparent and that the ideas and requirements of the builder are apparent to all participants in the mandatory building plan consultation (Explanatory Memorandum to the Building Act, 2021).

If the building process is preceded by an environmental impact assessment pursuant to Act No. 24/2006 Coll. on Environmental Impact Assessment and on Amendments and Additions to Certain Acts, as amended, the building plan would already be an annex to the application for environmental impact assessment to the extent already specified. The subject of these proceedings is the same plan in terms of content, therefore there will be no need to renegotiate with the authorities concerned, which have already assessed the plan and have not reserved the resubmission of the documentation of the building plan (submitted for the building plan procedure at the building office) for assessment.

After the necessary environmental impact assessment, the building plan would be immediately forwarded from the respective district Office, Department of Environment to the relevant municipality, which would issue a decision on the building plan. We still propose to maintain the two-instance nature of the administrative procedure, i.e. in case of a proper appeal against this decision of the building authority, the municipality would refer it to the competent district office - the Department of Construction and Housing Policy for a second-instance procedure - a decision on the appeal. This would optimise decision-making processes in public administration - district authorities as state institutions would ensure flexible assessment of environmental impacts and the decision-making process on construction would be carried out by municipalities as building authorities within the statutory time limits (30 or 60 days).

## **5. Conclusion**

Based on our quantitative and qualitative research on the performance of building competencies, we concluded that the new Policy SR of the State Building Authorities should be modified.

Our quantitative research has shown that potential district's building authorities might be more efficient in terms of overall technical efficiency, but the difference is insignificant. The current building authorities would be 16.5 percentage points (the difference is statistically significant) less pure technically efficiency than the potential district building offices. It may indicate that bigger building offices benefit from the more qualified personnel what leads to higher managerial efficiency. In scale efficiency current BA outperform potential district's BA by 29.4 percentage points (the difference is statistically significant) what could indicate that optimal scale size of building authorities is closer to the scale size of the current BA than to the one of big district's BA. The difference between average MTR of current BA and simulated district



BA indicates that the district BA as a new organisational form would be 56,6 percentage points less efficient.

At the same time, however, we support the adoption of a new Building Act, which would replace the current - already 46 times amended Building Act No. 50/1976 Coll. However, from the point of view of optimizing the administrative procedure of the local and state authorities in the construction sector, we propose to leave the first-instance decision-making process on the newly defined building plan to the local self-government - i.e. to the municipalities. We propose to leave the second-instance - appeal procedure to the state administration - district authorities, departments of building and housing policy. However, we agree with a more flexible and faster environmental impact assessment managed by district offices - environmental departments.

We base our proposals on the results of our qualitative research - the majority of municipalities in NR region disagree with the new Building Act, however, in KE region is the situation opposite. The majors mostly opposed the transfer of building competences back to state but they claimed that the state doesn't pay for the transferred building competences as it is regulated by legislation.

We do not support the creation of another central body of state administration - the Office for Spatial Planning and Construction of the Slovak Republic, because in our opinion, the expansion of state administration by other institutions would not lead to more effective decision-making in the construction sector.

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