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**PROBLEMS OF LEGAL REGULATION OF INDUSTRIAL PARKS IN
UKRAINE**

**ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ ІНДУСТРІАЛЬНИХ
ПАРКІВ В УКРАЇНІ**

**ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ
ИНДУСТРИАЛЬНЫХ ПАРКОВ В УКРАИНЕ**

Summary. The article analyses some problematic issues related to the inconsistency of the legal regulation of creation and operation of industrial parks in Ukraine.

Key words: investment activity, industrial park, attraction of investments.

Анотація. У статті аналізуються окремі проблемні питання, пов'язані з непослідовністю та несистемністю правового регулювання створення та функціонування індустріальних парків в Україні.

Ключові слова: *інвестиційна діяльність, індустріальний парк, залучення інвестицій.*

Анотація. *В статті аналізуються окремі проблемні питання, пов'язані з непослідовністю і несистемністю правового регулювання створення і функціонування індустріальних парків в Україні.*

Ключевые слова: *инвестиционная деятельность, индустриальный парк, привлечение инвестиций.*

Raising the problem. In 2012 it was worked out and accepted the Law of Ukraine "On industrial parks". A lot of industrial parks are constantly created in Ukraine, however, at the same time the legal adjusting in this area is inconsistent and nonsystematic. The establishment of industrial parks in Ukraine passed a few stages that differed in their approaches to the legal adjusting, which have become the reason of inconsistency. Thereby, there is an urgent requirement in the complex analysis of the legal adjusting of favorable investment climate zones in Ukraine.

The analysis of recent researches and publications. Quite a lot of researches related to the industrial, investment, technological parks appeared recently. Among researchers engaged in this problem one should highlight such scientists as L. Ya. Benovska, O. M. Boiko, O.V. Marchyshynets, S.M. Marchyshynets, N. V. Osadcha, N. T. Rud, Yu. V. Chyrychenko. However, their researches, as a rule, covered only certain aspects of creation and functioning of such zones or were related to practicability of their creation in Ukraine. Some of them outlined basic problems industrial parks face in Ukraine, though they did not offer the ways of how to resolve this at the legislative level.

The aim of the article is a complex analysis of the legal adjusting of industrial parks in Ukraine on the modern stage.

Exposition of the basic material. The inconsistency of the legal adjusting consists of many aspects. The first of them is a vagueness of concepts. Yes, the current legislation provides the possibility of establishing industrial and technological parks. Legislation in whole regulates the creation and operation of these parks in a similar way. However, at the same time it defines them fundamentally differently.

According to the Law of Ukraine "On industrial parks", industrial park - is a defined by the initiator of creation of the industrial park according to the town-planning documentation territory equipped with an appropriate infrastructure, within the limits of which participants of the industrial park can carry out economic activity in the field of processing industry, as well as research activities, activity in the field of information and telecommunications on the terms defined by this Law and agreement on the economic activities within the industrial park. At the same time, the Law of Ukraine "On the special mode of innovative activity of technological parks" contains the following definition: a "technological park (technopark) is a legal entity or group of legal entities (further - participants of technological park), that operate in accordance with the agreement on joint activity without creation of a separate legal entity and without the union of deposits with the aim of creation of organisational principles of implementation of projects of technological parks from productive introduction of science-intensive developments, high technologies and providing of the industrial production of globally competitive products". The comparison of these two definitions allows to make a row of disappointing conclusions.

Firstly, an industrial park is a territory, and a technological park is a group of people. However, these differences can not be considered as being specific and showing the differences between these two concepts. Rather, this is about the lack of a systematic approach to legal regulation. At the same time, a presence of such approaches is very important, since the way how these concepts are determined,

has a substantial value. If to determine industrial and technological parks as a territory, then their creation must include arrangement of territory, communications supply and other; this activity can be attributed to the sphere of construction, when the area adapted for certain functions is created, and then people who want to use it, conclude lease agreements, for example, or create other types of cooperation agreements. Accordingly, we can talk about what contracts can be created with investors: these will be the derivatives of agreements about the use of the territory. If industrial and technological parks are defined as a set of individuals, then the creation of a well-equipped area with the main activity of creation of such park becomes secondary, and the creation of the park should be considered as selection of interested people, who quite possibly will take the arrangement of territory and other organizational functions.

In the first case, the function of the initiators of the park is to prepare an equipped area that can be used as soon as possible; in the second case, the function of the initiators of the park is limited to the search for participants.

Secondly, it is easy to see that these two definitions practically do not allow to distinguish between the concepts of "industrial park" and "technological park" according to the types of activities they carry out. After all, based on the definitions, in both technological and industrial parks the following can be carried out:

- a) research activity;
- b) production implementation of the results of research activity;
- c) activity in the field of information and telecommunications (high technologies);
- d) activity in the field of an industrial production.

This highlights the unjustifiability of such a significant difference in the approach to the definition of concepts. We believe that the definition of a park as a territory equipped for the needs of a particular industry is more correct and consistent with world practice.

The prevalence of industrial parks in the world is due to certain factors [2]. Firstly, they contribute to the investment activity in the economy, because the essence of the functioning of industrial parks is to increase investment. The admission to the industrial park is usually limited to the minimum amount of investment that a company has to invest in the development of production. In addition, production within an industrial park automatically increases the demand for products of related industries, which stimulates their development. Additional source of investment is also the budget expenditures for development within the industrial parks of infrastructure and logistics.

Secondly, industrial parks allow legitimately (in terms of compliance with WTO rules and regulations) subsidize priority industries, as a rule, high technology. Any subsidy is ultimately designed to reduce the costs of enterprises: the country can provide it in the form of budgetary expenditures for infrastructure development or exempt the company from paying part of the taxes. Of course, the state can not provide such assistance for the whole economy, as it simply will not have the financial resources to carry out its functions. Moreover, the introduction of a preferential tax regime for the whole economy makes no sense, since it is not necessary to stimulate, for example, the trade or exploitation of natural resources. Though these industries are important, they however don't influence the quality economy development. But there is a lot of industries that can bring considerable economic value, even if they pay very small amounts of taxes. Investments, workplaces, inflow of currency, income growth, demand for education, etc may be such benefits. Obviously, that development of shipbuilding or aircraft construction will have a far more general benefits for the economy and country in whole even if they did not bring a single penny to the budget, than the extraction and export of gas and oil generating revenue to the budget. As a result, the state is ready to give up part of its own income in the form of taxes in order to ensure that these enterprises are located on its territory. Industrial parks allow to create a favorable economic environment for such industries.

Thirdly, the development of industrial parks allows to structure settlements economically, ecologically and esthetically, "clearing" cities from industrial production. In the last decade there is a tendency to expand the average area of industrial parks, which is related to the desire of authorities to concentrate in them both newly created enterprises and existing industrial enterprises (in fact, to carry them outside the territory of settlements). Concentration of industrial production in limited areas outside residential, historical, cultural and recreational areas not only makes the community's economy more effective by reducing transaction costs but also improves the quality of life and the ecology of the corresponding settlement. Already, in many European cities, all local industry concentrates exclusively within the industrial parks.

This aspect is extremely important for Ukraine, because its cities are conglomerates of residential areas and environmentally harmful enterprises. Note that despite the high prevalence of industrial parks, there are some problems. In practice, many industrial parks, especially in developing countries, are generally unused, or have a significant amount of free space [2]. This is due to:

1) the surplus of created capacities - if the initiators of the creation of industrial parks are local communities, then there is a situation where each community usually tries to create its own industrial park, despite the fact that a similar park can already be functioning nearby;

2) the limited duration of the benefits - often there are cases when companies come to industrial parks for the duration of tax benefits, and then relocate to other industrial parks within or outside the country, wishing to receive new benefits;

3) weak and low efficiency of work on attracting investors;

4) the availability of more attractive economic activities in neighboring countries.

Industrial parks in Ukraine are built according to the European model of technology parks, which is characterized by the following features: a centrally

developed and managed area with production, warehouse, office buildings, relevant communications and infrastructure, as well as research activities. Moreover, it is surprising that according to the Ukrainian legislation the concept of "technology park" is separated (even without clear criteria) from the concept of "industrial park".

There is a point of view according to which the main difference between technological parks and industrial parks is that technological parks contribute to the development and introduction of new technologies in production, for them there is a mandatory presence of the research component in the form of scientific institutes, centers, universities. Unlike them, industrial parks provide enterprises with infrastructure for their core business [1]. However, firstly, such a difference is not fixed by law. Secondly, industrial parks are borrowed from foreign experience and they are borrowed on the principle of technology parks, therefore, the distinction of these concepts is artificial. For both industrial parks and technological parks, the law provides the right, and not the obligation, to contain the research component.

The Law of Ukraine "On Industrial Parks" creates additional advantages for the start of industrial production on the territory of Ukraine, particularly:

- 1) "time to the market" for investors will decrease from 2-3 years to 6-9 months due to the preparation of industrial platforms equipped with the necessary infrastructure;
- 2) legal access to land of state or communal property and protection against abuse is granted;
- 3) a clear mechanism of interaction between the country, initiators of creation, managing companies and participants of industrial parks is determined;
- 4) ensuring transparency of procedures for the establishment of industrial parks and the choice of management companies by establishing comprehensive lists of documents and defining clear selection criteria;

5) foreseeing instruments of state incentives for the creation of industrial parks in Ukraine.

According to the Ukrainian legislation, state support of the construction of the industrial park and its participants is granted only if the industrial park is registered and added to the Register in accordance with the defined procedure. Significant conditions for the inclusion of an industrial park in the Register is the absence of an integral property complex within its boundaries, which allows to produce products, the attraction of non-state sources of funding in the amount of not less than 75% of the estimated cost of the project for the construction of an industrial park, the creation of new jobs, the introduction of modern technologies, ensuring of environmental protection.

To stimulate the development of industrial parks, state support is provided in the form of:

- a) releasing management companies and participants of the industrial park from share participation in infrastructure development of the settlement;
- b) providing managing companies and initiators of creation - the economic entities interest-free loans, targeted financing on a non-refundable basis for the construction of industrial parks;
- c) releasing management companies and members of the industrial park from import duty when importing of equipment and component parts for it which are not produced in Ukraine and are not excisable goods.

At the same time, for entities exempted from payment of import duties, it is provided an exhaustive list of possible directions of use of the released funds: industrial park construction, introduction of the newest technologies, increase of production, conducting research activities, repayment of loans, payment of interest on loans. This gives the managing companies and business entities of industrial parks additional financial resources for maintenance of their organizational, production and research activities.

The Law of Ukraine "On Industrial Parks" initiated the rapid development of industrial parks in Ukraine. But at the same time there are some problems that show the imperfection of legal regulation.

As it was already mentioned, only those industrial parks that are added to the Register receive state support. It would have been possible to assume that, since the aim of the participants of the industrial parks is to manage on more favorable conditions, then all these parks should be added to the Register as soon as possible, but this is not the case. There are many parks that are not only not added to the Register, but also they do not even try to do this. Meaning, state support is obviously not enough, and therefore, in reality industrial parks are less effective than they could be.

In addition, sometimes local authorities act like initiators of the creation of industrial parks, being sure that this is quite enough to generate profits from this, and there is no need to equip it, to create an infrastructure and to attract investors. Therefore, infrastructure is often absent, industrial parks are half-empty, and bringing the initiators of their creation to responsibility for not creating the conditions for the proper functioning of the industrial park provided by the current legislation, is difficult or impossible at all because of the problems with bringing to the responsibility of local authorities. It is also a problem of complex legal regulation, the problem of the lack of systematic legal regulation. By introducing new competences, in particular for local authorities, the legislator has not solved the problem of bringing them to justice.

Local authorities do not always try to fulfill one of the priority tasks - the creation of an industrial park: the development of priority industries in a particular region. Typically, before the establishment of an industrial park, no research is conducted on which industries can be developed in this region, it is not established whether there are objects that can become attractive to investors in this region, no investment maps are created. "Greenfield" objects meaning built from scratch are created more often, than "brownfield" objects - created on the

basis of abandoned or underperforming production capacities. This is due to the fact that reorganization and restoration of enterprises sometimes require more money than initiating a new industrial park, but exactly reorganization and restoration could ensure the efficiency of an industrial park in the future. However, local authorities usually try to get profit as quickly as possible, due to which there is a surplus of industrial parks in certain industries such as the woodworking industry [3].

We believe that it is necessary to oblige the initiators of the establishment of industrial parks to carry out research on what industries of production could become a priority in this region and to obtain an appropriate expert opinion.

Conclusions. To sum it up, it should be noted that in general, the Law of Ukraine "On Industrial Parks" has created the basis for creating many industrial parks, but legal regulation in this area lacks a systematic approach, it is especially necessary to fix such disadvantages:

- a) a) in order to ensure systematic legal regulation, it is needed to improve the definition of the technological park contained in the Law of Ukraine "On the special regime of innovation activity of technological parks", in such a way that the technological park, as well as industrial park, is defined as a territory, and not as a set of people;
- b) to review the legal regulation of technological parks and to merge them together with industrial parks into one object of legal regulation, or to clearly and explicitly differentiate these concepts;
- c) to resolve the issue of bringing the initiators of the establishment of industrial parks to responsibility for improper preparation of the industrial park territory;
- d) to conduct the research on which types of state support are most desirable for the industrial sector and to ensure such support to the participants of the industrial parks, making it mandatory, and not feasible.

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