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## THE INDUSTRIAL PARK CONCEPT IN UKRAINIAN LEGISLATION COMPARED TO THE UNITED NATIONS STANDARDS

**Abstract. Purpose.** The purpose of the article is to study the modern regulatory framework for industrial parks in our country and to propose potential solutions to the numerous problems arising in connection with the reform of this institution. **Results.** The article studies the concept of industrial parks in the legislation of Ukraine, compares it to the UN standards and reveals the need for further research and improvement of national and international legislation in this field. Given the changes in legislation and the dominant global views on industrial parks, it should be noted that current Ukrainian legislation continues to ignore progressive global trends in the development of eco-industrial parks, focusing on an outdated approach typical of totalitarian planned economies, for which the creation of an investment-friendly climate is a significant deviation from the existing administrative command system. In this case, industrial parks will not be able to continue to perform the functions of attracting investment, i.e. the functions for which they are actually created. **Conclusions.** It is concluded that it is necessary to focus on the advantages that are considered essential in the modern world: 1) improvement of infrastructure (industrial parks should be subject to fairly stringent requirements in terms of logistics and energy components, and improved provision of all buildings with state-of-the-art communications; industrial parks should have their own hubs, logistics terminals, convenient transport interchanges, etc.); 2) improved environmental performance (in order to transform industrial parks into modern eco-industrial parks that will receive favourable feedback from UN experts, it is necessary to provide a modern power grid based on renewable sources, uninterrupted supply of quality water and its timely treatment, etc.; currently, many European investors prefer environmentally friendly production, so Ukraine should take care of this); 3) if tax incentives are granted (they should be given to those who invest in the creation of innovative advanced technologies and companies that create such technologies; global experience shows that it is through innovation that a country can earn significant funds in the future; given the challenges of rebuilding Ukraine's industry and housing stock after the war, investors and developers who propose to use innovative technologies in rebuilding Ukraine's infrastructure may also receive benefits).

**Key words:** industrial parks, investment attraction, industrial park territory, regulatory framework for industrial park activities, UN Industrial Development Organisation, EIP Framework.

### 1. Introduction

Modern Ukraine requires significant capital injections both during the war and after the victory, during the period of reconstruction and further development of the national economy. Both the public and private sectors of our economy need investments.

In the Index of Economic Freedom, Ukraine ranks 130th and is among the countries whose economies are characterised as "mostly unfree" (Index of Economic Freedom, 2022). It is therefore understandable that the authorities are

trying to make the domestic economy more efficient and attractive to foreign and domestic investors, including by creating special zones with reduced taxes and opportunities for further industrial development. However, the means by which Ukrainian lawmakers are trying to attract investors' attention sometimes seem questionable and may even worsen the state of our country's current economy. Therefore, the regulatory framework for industrial parks requires a comprehensive analysis and it should begin with a thorough study of the relevant concepts.

At present, industrial parks as a possible means of rebuilding the state economy are primarily of interest to journalists and economic analysts, such as V. Marchuk, O. Bilan, V. Bilotkach, Y. Horodnichenko, O. Zholud, T. Kupe, T. Milovanov, V. Movchan, A. Nikol'sko-Rzhevskiy, D. Nizalov, O. Nizalova, I. Solohub, O. Talavera, N. Shapoval, etc. The scientists who focused on the issues of industrial parks in their studies are L. Benovska, O. Boiko, O. Marchyshynets, S. Marchyshynets, N. Rud, Yu. Chyrychenko. However, due to significant changes in Ukrainian legislation and the lack of modern research, the issue of the feasibility of industrial parks and regulatory framework for them clearly requires scholars' significant attention.

The purpose of the article is to study the modern regulatory framework for industrial parks in our country and to propose potential solutions to the numerous problems arising in connection with the reform of this institution.

## 2. Theoretical issues of industrial parks' development

According to the Law of Ukraine "On Industrial Parks," Article 1, clause 3, an industrial (manufacturing) park (hereinafter referred to as the industrial park) is a land plot designated by the initiator of the industrial park in accordance with urban planning documentation and equipped with the proper infrastructure, where participants of IP can engage in economic activities in the field of processing industry, recycling of industrial and/or municipal waste (except for waste disposal), as well as scientific and technical activities, activities in the field of information and electronic communications under the conditions specified by this Law and the agreement on economic activities within the industrial park (Law of Ukraine On Industrial Parks, 2012).

Therefore, the legislator has actually equated industrial and manufacturing parks, considering these concepts synonymous. We believe that this is not true, as the reduction of industrial parks exclusively to manufacturing facilities (or industrial hubs) confuses the focus of attention of both legislators and scientists, leaving out such important innovations as the development of the most popular production sectors (computer technology, space technology, technologies with an enhanced environmental component, etc.). Nevertheless, these technologies should be constantly under focus by the legislator, as they are associated with the largest amount of investment and, consequently, the largest possible future income.

According to the definition, an industrial park is, first of all, a territory, i.e. a certain land plot that shall meet certain criteria:

1. It should be designated by the initiator of the industrial park in accordance with urban planning documentation. That is, it is a land plot that obviously cannot contain objects protected by other laws, such as legislation on the protection of historical monuments or land and environmental legislation.

The land plot should be properly designated by local authorities for the purpose of creating an industrial park;

2. It should be equipped with proper infrastructure.

The last point raises some questions. The Law does not specify what kind of infrastructure can be considered "proper". Only two terms are used: "proper infrastructure" and "engineering and transport infrastructure".

According to Article 8 of the Law, the following specific requirements are imposed on a land plot:

- 1) it shall belong to industrial land;

- 2) it shall be suitable for industrial use, meet the conditions and restrictions established by the relevant urban planning documentation;

- 3) the area of the land plot or the aggregate area of adjacent land plots shall be at least 10 hectares and not more than one thousand hectares.

It is allowed to locate between the land plots of the industrial park the land plots on which only engineering and transport infrastructure facilities are located or are supposed to be located in accordance with the urban planning documentation.

Again, we do not see any requirements for the infrastructure that shall be provided for the land plot. Nevertheless, as the practice of foreign countries shows, it is infrastructure that determines the success or failure of industrial parks.

## 3. Regulatory framework for industrial parks

The Law of Ukraine "On Industrial Parks" also regulates the activities that can be carried out on the territory of such a park. For example, economic activities in the processing industry, recycling of industrial and/or household waste (except for waste disposal), as well as scientific and technical activities, activities in the field of information and electronic communications can be carried out on this territory (Law of Ukraine On Industrial Parks, 2012).

In addition to the prohibition on waste disposal, according to the Law of Ukraine "On Industrial Parks," Article 1, clause 3, activities related to the production of excisable goods (except for the production of passenger cars, car bodies, trailers and semi-trailers, motorcycles, vehicles designed to carry 10 people or more, vehicles for the carriage of goods) shall not be carried out on the territory of industrial parks,

as well as economic activities subject to licensing in accordance with paragraphs 18, 18-1, 20-22, 32 of part one of Article 7 of the Law of Ukraine "On Licensing of Economic Activities", namely:

- 1) issue and conduct of lotteries;
- 2) activities in the gambling market, which are licensed in accordance with the Law of Ukraine "On state regulation of activities on organising and conducting gambling";
- 3) mediation in employment abroad;
- 4) commercial fishing for aquatic bioresources outside the borders of Ukraine;
- 5) cultivation of plants included in Table I of the List of narcotic drugs, psychotropic substances and precursors approved by the Cabinet of Ministers of Ukraine, as well as development, production, manufacture, storage, transportation, acquisition, sale (release), importation into the territory of Ukraine, exportation from the territory of Ukraine, use, destruction of narcotic drugs, psychotropic substances and precursors included in the List;
- 6) household waste disposal (Law of Ukraine On Industrial Parks, 2012; The Law of Ukraine On Licensing Types of Economic Activities, 2015).

Such prohibitions seem understandable, as they can be divided into three broad categories:

1. Prohibitions related to activities subject to additional taxes. According to the legislator, legal entities and natural persons operating in the territories of industrial parks already have appropriate tax benefits, so the budget cannot afford extra costs.

However, the possibility of granting additional benefits to persons investing in industrial parks is currently being debated;

2. Prohibitions related to a high risk of violation of the current criminal legislation of Ukraine;

3. Prohibitions related to the possibility of environmental pollution.

Moreover, the Law of Ukraine "On Industrial Parks" provides for the so-called cross-border industrial park, which is an industrial park that is created and operates on the basis of an international agreement of Ukraine concluded between governments or their authorised initiators. The procedure for the creation and operation of such industrial parks is regulated by international treaties of Ukraine (Law of Ukraine On Industrial Parks, 2012). In this case, the legislator emphasised the cross-border nature of the industrial park, emphasising this principle. However, it remains unclear how such an international treaty would be concluded, what competence and within what limits would be exercised by, for example, "initiators of the establishment authorised by the governments of the states", and who would

have the right to grant them the relevant competence. In fact, we may even be talking about private individuals who will have competence comparable to that of local authorities or may even perform certain governmental functions. This, of course, is not acceptable.

Therefore, the Law of Ukraine "On Industrial Parks" contains an outdated definition of an industrial park that existed before. With regard to the types of activities specified in the law, we can state that the legislator, similar to previous years, sees the industrial park as another replacement for free economic zones, which have repeatedly shown their inefficiency, whereupon they changed their name and continued to exist for corrupt purposes as offshore zones, since their main feature was tax benefits.

In today's world, industrial (manufacturing) parks in almost all developed countries and in most developing countries are giving way to so-called eco-industrial parks, which are supported by the relevant UN agencies (specifically, the UN Industrial Development Organisation, hereinafter referred to as UNIDO). The main purpose of such parks is not only to generate profits, but primarily to develop innovative technologies and preserve the environment at the same time (International Guidelines for Industrial Parks. UNIDO, 2019).

In 2018-2020, UNIDO assessed 50 parks in eight developing countries and countries with economies in transition against the 51 preconditions and performance indicators set out in the International Framework for Eco-Industrial Parks (EIP Framework). Eight countries were covered: Colombia, Egypt, Indonesia, Nigeria, Peru, South Africa, Ukraine and Vietnam. The aim was primarily to test the feasibility of transforming industrial parks into environmentally friendly eco-industrial parks and to provide appropriate funding for this (Van Beers, Tyrkko, Flammini, Barahona, Susan, 2020).

Four industrial parks were inspected in Ukraine: IP AgroMash (Zaporizhzhia), IP BVAK, IP Chemical and Metallurgical Plant, IP Patriot. Unfortunately, the report noted that Ukraine and South Africa have the highest gap between current efficiency and planned efficiency. Ukraine is (together with Peru) the country with the smallest size of industrial parks, and this is not a coincidence, as a lot of land in our country is allocated for agricultural rather than industrial production. The overall performance of parks in Ukraine is recognised as relatively equal, i.e. there are no so-called beacon industrial parks in our country that have the highest performance and can be used as a reference for others to learn from their experience in managing industrial parks. According to the report, if a country does not

have a beacon park with a very high EIP performance indicators, it is likely that there are limited opportunities, knowledge and/or experience at the country level for developing eco-industrial parks (Van Beers, Tyrkko, Flammini, Barahona, Susan, 2020).

In fact, UNIDO considered investing in Ukrainian industrial parks, but this opportunity was rejected, as it was recognised that Ukraine does not have the appropriate capacity to transform industrial parks into eco-industrial parks. The highest rating was given to public-private industrial parks in Vietnam and private industrial parks in Indonesia and Colombia. Therefore, it is reasonable to assume that since the UN has not found opportunities to invest in "industrial parks of the future", private investors interested in advanced industrial parks will not see the Ukrainian proposals as attractive either.

Furthermore, it is a plausible assumption that unscrupulous investors will come to our country in search of cheap resources, investing in the so-called "third world" countries, where labour slavery is actually encouraged, workers' wages are extremely low, and profits are exported abroad. However, they may be attracted by Ukraine's exceptionally favourable geopolitical location and there will not be many of them, as our country has a fairly well-developed labour law, and European environmental organisations will put a lot of pressure on the Ukrainian government over air and water pollution.

Thus, given the changes in legislation and the dominant global views on industrial parks, it should be noted that current Ukrainian legislation continues to ignore progressive global trends in the development of eco-industrial parks, focusing on an outdated approach typical of totalitarian planned economies, for which the creation of an investment-friendly climate is a significant deviation from the existing administrative command system. In this case, industrial parks will not be able to continue to perform the functions of attracting investment, i.e. the functions for which they are actually created.

It is important to realise that for investors from developed countries, whom we are trying to attract, the scheme used in Ukraine is also outdated and therefore not of much interest to them. The tax benefits that are supposed to attract investors are, firstly, quite small, and secondly, they are effectively levelled by the stipulation in the law that the profits generated by these benefits shall be spent exclusively on the development of the enterprise or the industrial park.

In general, we believe that the practice of granting new tax benefits to industrial park participants is largely inappropriate. At present, global practice convincingly shows that taxes are not a good reason to make additional invest-

ments. An analysis of the conditions under which industrial parks operate in foreign countries today demonstrates that tax incentives are rarely used and are not perceived by businesses as a significant advantage. The availability of ready-made infrastructure, potential partners who do not need to be sought out, the opportunity to take out a targeted loan or receive a grant from the state on favourable terms, and the absence of import duties on equipment are much more valued.

In addition, foreign investors, unfortunately, have already seen that Ukrainian legislation is changing very quickly. We believe that they will not rush to invest even if the tax burden is significantly reduced.

#### 4. Conclusions

Consequently, we consider it appropriate to change the approach to the regulatory framework for the creation and operation of industrial parks by substantially revising the definition of "industrial park" in the current legislation and ceasing to focus on tax benefits that effectively turn industrial parks into another variant of an offshore zone. Instead, we believe that it is necessary to focus on the advantages that are considered essential in the modern world:

1. Improvement of infrastructure. Industrial parks should be subject to fairly stringent requirements in terms of logistics and energy components, and improved provision of all buildings with state-of-the-art communications. Industrial parks should have their own hubs, logistics terminals, convenient transport interchanges, etc.

2. Improved environmental performance. In order to transform industrial parks into modern eco-industrial parks that will receive favourable feedback from UN experts, it is necessary to provide a modern power grid based on renewable sources (wind turbines, solar panels, etc.), uninterrupted supply of quality water and its timely treatment, etc. Currently, many European investors prefer environmentally friendly production, so Ukraine should take care of this.

3. If tax incentives are granted, they should be given to those who invest in the creation of innovative advanced technologies and companies that create such technologies. Global experience shows that it is through innovation that a country can earn significant funds in the future. Given the challenges of rebuilding Ukraine's industry and housing stock after the war, investors and developers who propose to use innovative technologies in rebuilding Ukraine's infrastructure may also receive benefits.

Further research should focus on the issue of creating an attractive economic situation in Ukraine without the use of inefficient tax incentives and on creating enabling environment at the legislative level for attracting advanced technologies and investments in efficient new technologies to our country.

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## ПОНЯТТЯ ІНДУСТРІАЛЬНОГО ПАРКУ В ЗАКОНОДАВСТВІ УКРАЇНИ ПОРІВНЯНО ЗІ СТАНДАРТАМИ ООН

**Анотація. Мета.** Метою статті є вивчення сучасного правового регулювання індустриальних парків у нашій державі та пропонування можливих варіантів вирішення численних проблем, що виникають у зв'язку з реформуванням цієї інституції. **Результати.** Статтю присвячено поняттю індустриальних парків у законодавстві України та порівнянню його зі стандартами ООН, також наголошено на необхідності подальших досліджень і вдосконалення національного й міжнародного законодавства в цій сфері. З огляду на зміни в законодавстві та панівні погляди на індустриальні парки у світі варто зауважити, що сучасне українське законодавство продовжує ігнорувати прогресивні світові тенденції розвитку екопромислових парків, зосереджуючись на застарілому підході, властивому насамперед тоталітарним країнам із плановою економікою, для яких створення інвестиційно привабливого клімату є значним відхиленням від наявної адміністративно-командної системи. У такому разі індустриальні парки й надалі не зможуть виконувати функції приваблювання інвестицій, тобто ті функції, для яких, власне, і створюються. **Висновки.** Зроблено висновок про необхідність зосередитися на перевагах індустриальних парків, які в сучасному світі вважають суттєвими: 1) покращенні інфраструктури (до індустриальних парків мають висуватися досить жорсткі вимоги щодо наявності логістичного та енергетичного складників, покращення забезпечення всіх будівель надсучасними засобами зв'язку; індустриальні парки повинні мати власні хаби, логістичні термінали, зручні транспортні розв'язки тощо); 2) покращенні екологічних показників (зادля перетворення індустриальних парків на сучасні екопромислові парки, які отримуватимуть схвальні відгуки від експертів ООН, необхідно забезпечити сучасну енергомережу на відновлюваних джерелах, безперебійну подачу якісної води та її своєчасне очищення тощо; наразі багато європейських інвесторів віддають перевагу екологічно безпечному виробництву, тож Україна має турбуватися про це); 3) можливості надання податкових пільг (однак у такому випадку їх мають отримати ті особи, які інвестують у створення інноваційних передових технологій, та компанії, що займаються створенням таких технологій; світовий досвід показує, що саме завдяки інноваціям країна в майбутньому може заробляти значні кошти; з огляду на проблеми, що виникнуть із відновленням промисловості й житлового фонду в Україні після війни, пільги також можуть отримати інвестори та забудовники, що пропонуватимуть використання інноваційних технологій під час відновлення української інфраструктури).

**Ключові слова:** індустриальні парки, залучення інвестицій, територія індустриального парку, правове регулювання діяльності індустриального парку, Організація промислового розвитку ООН, Міжнародна структура ЕІР.

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