

## Industrial parks as business infrastructure in Romania – current situation and upcoming legislative changes



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### 1. General

Relatively recently, the legislative process has once more turned its attention to the former *Draft Law amending Law no. 186/2013 on the establishment and operation of industrial parks (DL-x no. 250/2014)* adopted by the Senate on 28 April 2014 and by the Chamber of Deputies, as decisional chamber, on 4 May 2022 ("**Amending Law**").<sup>1</sup> The Amending Law will enter into force after promulgation by the Romanian President, who, nevertheless, has the prerogative of sending it back to the Parliament for re-examination.

In Romania, the regime of industrial parks as business infrastructure that offers their residents a number of facilities and access to utilities started to be regulated in 2000 through the adoption of *Law no. 134/2000 on industrial parks regime*, soon replaced by *Ordinance no. 65/2001 on the establishment and operation of industrial parks ("Ordinance 65/2001")*, subsequently approved under *Law no. 490/2002 for the approval of Government Ordinance no. 65/2001 on the establishment and operation of industrial parks ("Law 490/2002")*. In their turn, Ordinance 65/2001 and Law 490/2002 were repealed by *Law no. 186/2013 on the establishment and operation of industrial parks ("Industrial Parks Law")*, which is currently the main regulatory act governing industrial parks. Of course, in addition to the specific legislation, some distinct regulations on industrial parks regime can be found in the legislation covering other areas, such as, for example, energy and natural gas, advertising or taxation.

The Ministry of Development, Public Works and Administration through the General Directorate for Public Administration ("**Ministry**") is the specialized body of the central public administration with responsibilities in the field of industrial parks. The Ministry of Economy also works with the Inter-ministerial Committee for Stimulating and Facilitating the Establishment of New Industrial Parks<sup>2</sup>. Insofar as private bodies acting in the field of industrial parks are concerned, the Association of Industrial, Technological, Scientific Parks and Business Incubators in Romania ("**APITSIAR**") has been active in Romania since 2005. APITSIAR was established to (i) promote and protect the interests of its members, (ii) promote the sustainable development of industrial, technological, scientific parks and business incubators, (iii) attract domestic and foreign investment and provide specialized assistance to its members and potential investors, as well as to (iv) represent them in relations with national and international bodies and authorities<sup>3</sup>.

Although more than 20 years have passed since the industrial parks' regime was regulated in Romania, their number, even if significant, is not very large, still having the potential to increase. According to official information<sup>4</sup>, as of 26 April 2022, there were **104 industrial parks** in Romania (operational, greenfield or under development), with varying degrees of occupancy in terms of residents number. In terms of geographical

distribution, most parks are located in Prahova (16), Cluj (12), Brasov (10), Bihor (7), and Ilfov (5) counties, with 1 to 4 industrial parks operating in each other counties. Today, the existing industrial parks occupy a total area of approximately 3,450 hectares, while the surface of each industrial park ranges between a few hectares and up to over 250 hectares.

## **2. Establishment and operation of industrial parks**

### **2.1. Parties involved**

Industrial parks are concerned with three main categories of market actors, namely founders, administrators and residents.

**Founders of industrial parks** can be the local public administration authorities, individuals or private legal entities, whether Romanian or foreign, who, jointly or individually, initiate the establishment of an industrial park, by incorporating and registering a company (park administrator), applying to the Ministry for the issuance of an industrial park title ("**Founders**"). According to some sources, approximately 95% of the existing industrial parks have a shareholding structure that includes public authorities and only 5% are entirely private<sup>5</sup>.

**The industrial park administrator** can be a private Romanian and/or foreign company, set up by the Founders in order to establish an industrial park, acquire and hold the industrial park title, and to manage and administer the park ("**Administrator**"). The Industrial Parks Law does not specify the legal form of the Administrator, but in practice they are organized in an approximately equal proportion as joint stock companies or limited liability companies, according to official data<sup>6</sup>. The industrial park operates under the direct management of the Administrator, its prerogatives and obligations being regulated in the Industrial Parks Law, with the possibility to set forth any other obligations, prerogatives and/or rights in the administration contract.

Any economic operator, whether a Romanian and/or foreign company, which carries out economic activities, scientific research, exploitation of scientific research results and/or technological development, agro-industrial, logistical and innovative, industrial activities within the industrial park can be a **resident of the industrial park** in one or more of its units<sup>7</sup>, (i) as owner, concessionaire or under an administration and related services agreement; or (ii) as owner or lessee, as the case may be, of an immovable asset located within the perimeter of the industrial park established under the simplified procedure, which is not the Administrator's property ("**Residents**"). In the first case, the position of Resident is obtained upon the conclusion of the administration contract, while in the second case, this is obtained as from the issuance of the industrial park title under the simplified procedure.

The Industrial Parks Law regulates the Residents' rights and obligations, but the Administrator and the Residents may also to set forth other obligations and/or additional rights of the Residents in the administration contract.

### **2.2. Substantive and formal conditions**

#### **Substantive conditions**

The Industrial Parks Law regulates the substantive conditions to be met by the Administrator for the issuance of the industrial park title, which refer to (i) lawfulness of registration with the trade registry, (ii) non-existence of the insolvency procedure or its prevention; (iii) non-existence of overdue and unpaid debts to the consolidated state budget, established under enforceable titles.

The Industrial Parks Law also regulates the substantive conditions regarding the land of the industrial park, in terms of (i) title, (ii) access to roads, (iii) minimum area and (iv) absence of encumbrements.

Insofar as the title is concerned, the land may be (i) owned, (ii) given under concession to or (iii) administered/used by the Founders, Administrator or Residents.

The land must also have access to a European and/or national and/or county road and/or ring roads. In this regard, the Amending Law adds that if they are located in the built-up areas of administrative-territorial units, industrial parks must have access to streets that allow for an easy access and traffic of vehicles for the goods transportation.

Another requirement refers to the non-existence, with some exceptions, of registration charges, dismemberments of private property rights, mortgages, precautionary measures or foreclosure proceedings in respect of the land. Insofar as exceptions are concerned, the Amending Law covers also mortgages established to secure the repayment of loans from non-banking financial institutions, as opposed to the current form, which refers only to mortgages established to secure the repayment of bank loans. Also envisaged is the coverage of loans contracted by Founders, not only by Administrators, and with regard to the destination of the loans, the Amending Law adds that it may also include the financing of investments for the operation of industrial parks or the acquisition of assets that are part of the industrial park.

In terms of surface, pursuant to the Industrial Parks Law in its current form, the land is eligible only if it has at least a 5-hectare surface area.

### **Formal Conditions**

The Industrial Parks Law also sets forth the formal conditions to be met with regard to the application for the issuance of the industrial park title, the declaration of eligibility and the documents attached thereto.

The Amending Law has added a new document that must be attached to the application for the issuance of the industrial park title, namely the map of the industrial park location, neighborhoods and access roads.

### **Some Aspects Regarding the Simplified Procedure**

The Industrial Parks Law also regulates a simplified procedure for the issuance of the industrial park title for existing industrial platforms, at the request of the Founders who have opted for this choice, after they have won the privatization process and were awarded state-owned companies for which the Government approved the privatization strategy in the form of an industrial park ("**Simplified Procedure**"). An existing industrial platform is any industrial platform<sup>8</sup> built before 22 December 1989, owned by state-owned companies, for which the Government approved the privatization strategy in the form of industrial parks. The Amending Law alters these definitions by (i) excluding the words "*approval of privatization in the form of industrial parks*" and (ii) adding the words "*privatization through the sale of assets held by the Romanian state*", thus extending the scope of the industrial platform concept.

The Amending Law also removes from the substantive conditions for the simplified procedure (i) the approval of the local public administration authority for the establishment of the industrial park, in the form of a resolution of the local or county council and (ii) the adoption by the applicant of the declaration of eligibility.

### **2.3. Industrial Park Title, Administration Contract and Regulation**

**The industrial park title** is issued for at least a 10-year period, which can be extended, by (i) order of the Minister of Development, Public Works and Administration or (ii) by Government decision or a special law in the case of old industrial platforms privatized under an industrial park concept.

**Administration and related services contract.** The relations between the Administrator and the Residents are

mainly regulated under an administration and related services contract ("**Administration Contract**") concluded in writing, through direct negotiation or in any other form agreed by the Administrator, whose framework content has been prepared by the Administrator and approved under the regulation of the park. However, in terms of content, the Industrial Parks Law requires the existence of a penalty clause for nonperformance of the contract to allow for the termination of the Administration Contract if the Resident does not pay the amounts agreed in the Administration Contract after more than 30 days from the due date.

The Administration Contract regulates **(i)** the rights and obligations arising from the use of one or more components of the industrial park, and **(ii)** the supply of all and any utilities and services necessary for the activities carried out within the industrial park (e.g. supply of natural gas, heat, water, sewerage services, telecommunications services, the use of any kind of transport routes built on the land within the perimeter of the industrial park) by the Administrator in exchange for the payment of their equivalent value by the Resident.

In terms of utilities, the Administrator enters into business contracts with the primary utility providers, and residents must pay the cost of the utilities provided, but not more than the supply price of the authorized operator (therefore, the Administrator should not impose a profit margin when it reinvoices utilities). In addition to the cost of utilities, the Residents also owe the common or individual maintenance expenses, as applicable.

**Regulations on the organization, operation and development of the industrial park.** The organization, operation and development of the industrial park is also detailed under regulations that can be adopted by the Administrator's executive statutory body, covering, for example, the strategy for the organization, operation and development of the industrial park, the Residents' selection procedure, the supply of utilities, infrastructure etc. Regulations are unilateral legal acts generally binding on all Residents. However, Residents may apply to the court to request that a regulation adopted in breach of the law is found or declared invalid.

### **3. Incentives**

#### **3.1. Incentives under the Industrial Parks Law**

Pursuant to the Industrial Parks Law, Administrators and Residents enjoy a number of incentives such as: **(a)** exemption from the payment of taxes levied for the change of destination or for the removal from agricultural use of the industrial park land; **(b)** exemption from the payment of land tax, for the industrial park land, according to the Fiscal Code provisions; **(c)** exemption from the payment of the building tax, for the buildings that are part of the industrial park infrastructure, according to the Fiscal Code provisions; **(d)** exemption, only subject to the consent of local public authorities, from the payment of any taxes due to the local budget of the administrative-territorial units for the issuance of any urban planning certificates, building permits and/or demolition permits for land and buildings that are part of the park infrastructure, making an integral part of the industrial park; and **(e)** other incentives that may be provided according to the law by the local government authorities.

The incentives mentioned above are granted in the form of *de minimis* aid and regional state aid whose conditions are regulated under *Order no. 2980/2013 of the Ministry of Regional Development and Public Administration for the approval of the conditions for granting support measures for investments made in industrial parks ("Order 2980/2013")*, approving **(i)** the scheme on *de minimis* aid granted for investments made in industrial parks ("**de Minimis Aid Scheme**") and **(ii)** the regional state aid scheme for supporting initial investments made in industrial parks ("**Regional Aid Scheme**").

The Administrator of the *de Minimis* Aid Scheme and the Regional Aid Scheme is the Ministry, while the providers of the *de minimis* aid are **(i)** the Ministry of Agriculture and Rural Development and the National

Agency for Cadaster and Real Estate Publicity, for the incentive under point **(a)** above, and **(ii)** the administrative-territorial unit on whose territory the industrial park is located, for the incentives under points **(b)** - **(e)** above.

According to the **de Minimis Aid Scheme**, the *de minimis* aid is granted to enterprises set up in industrial parks through budget revenue waivers in the form of incentives capped at the RON equivalent of EUR 200,000 for each beneficiary for 3 consecutive fiscal years (2 previous fiscal years and the fiscal year in progress), and EUR 100,000 for companies operating in the road transportation sector.

According to the **Regional Aid Scheme**, regional state aid to support initial investments in industrial parks granted to eligible enterprises consists in the granting of incentives, while an “*initial investment*” means **(i)** an investment in tangible and intangible assets for starting a new unit, expanding the capacity of an existing unit, diversifying a unit's production through the manufacturing of products not previously produced in the unit or fundamentally changing the overall production process of an existing unit; or **(ii)** an acquisition of assets directly related to a unit, provided that the unit would have been shut down if it had not been acquired and purchased by an investor unrelated to the seller and that it excludes the mere acquisition of the shares in an enterprise.

The intensity of regional state aid<sup>9</sup> for supporting initial investments in industrial parks in the form of an equivalent updated gross subsidy may not exceed the regional aid intensity in force at the time the aid is granted for the region in which the investment is made, as set out in Romania's regional aid map<sup>10</sup>.

The Amending Law, in the initial form adopted by the Senate, also contained some new provisions on incentives. These provisions referred, inter alia, to (i) a new incentive consisting in the exemption from tax on constructions established under the Fiscal Code, (ii) the fact that the fulfillment of the conditions provided in state aid schemes is certified by resolution of the local council, which is the state aid provider; (iii) the fact that the privatized companies having an industrial park project, and the industrial park administration companies established prior to the entry into force of this law, whose status of industrial park was recognized by law or under another equivalent regulatory act, benefit from the incentives granted under this law. However, at the proposal of the Committee on Industries and Services and the Committee on Legal Affairs, Discipline and Immunities these provisions have been excluded from the final form of the Amending Law adopted by the Chamber of Deputies.

### **3.2. Incentives Resulting from other Regulatory Acts**

In addition to the incentives covering taxes and duties described above, there also are other benefits deriving from the industrial park status.

For example, according to *Energy and Natural Gas Law no. 123/2012*, electricity and natural gas distribution services may be provided within the perimeter of industrial parks in the absence of a license granted by ANRE to their administrators. Industrial parks can also be confirmed as closed distribution systems, with the advantage that closed distribution system operators are exempt from certain categories of obligations that would normally apply to distribution operators as follows: **(i)** the obligation to purchase the electricity they use for their own technological consumption and system services which are not aimed at frequency stability in their system, according to transparent, non-discriminatory and market-based procedures; **(ii)** the obligation that the tariffs or methodologies underpinning their calculation is approved before they enter into force; **(iii)** the obligation to purchase flexibility services; **(iv)** the distribution operator's obligation to develop its distribution systems based on network development plans; **(v)** the obligation to not own, develop, administer or operate recharging points for electric vehicles; and **(vi)** the obligation to not own, develop, administer or operate energy storage facilities.

Also, according to *Law no. 185/2013 on the location and authorization of advertising media*, they are exempted

from certain rules regarding the distance and size of advertising media and flags located inside industrial parks.

#### **4. Conclusions**

Industrial parks are a noteworthy location option for greenfield investments in terms of at least two major benefits for investors: **(i)** services and infrastructure that are managed in an integrated manner and are available from the outset (with no need to be generated by the investor from scratch) and **(ii)** incentives provided by the legislation.

Also, the owners of common service platforms can benefit from obtaining the industrial park title in consideration of the incentives granted by the legislation not only to the residents but to the park administrators as well.

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1. The legislative process can be seen [here](#).
  2. Established by Decision no. 959/2014 on the establishment of the Inter-ministerial Committee for stimulating and facilitating the establishment of new industrial parks
  3. The information is available [here](#).
  4. The information is available [here](#).
  5. The information is available [here](#).
  6. The information is available [here](#).
  7. The unit is an integral part of the industrial park, owned by the founder, the park administrator or, as the case may be, the residents of the industrial park, connected to the park's infrastructure, where one or more of the park's residents, as the case may be, carry out economic activities, scientific research, exploitation of scientific research results and/or technological development, agro-industrial, logistical and innovative, industrial and other activities within the industrial park, benefiting from specific incentives.

8. An industrial platform consists of the land and the constructions, installations, power supply systems, telecommunication networks, gas supply networks, water supply networks, sewerage networks, transport routes and premises roads built on it, for the purpose of developing any economic activity.

9. The intensity of regional state aid to support initial investments in industrial parks is the ratio between the updated gross value of the aid and the updated value of the eligible costs.

10. See Decision no. 311 of 2 March 2022 on the maximum intensity of regional state aid in the period 2022-2027 for initial investments