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DOI <https://doi.org/10.32849/2663-5313/2023.5.02>**Svitlychnyi Oleh,**

Postgraduate student, State Organization “V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine”, 60, Taras Shevchenko street, Kyiv, Ukraine, postal code 01032 snooze.oleg@gmail.com

ORCID: orcid.org/0009-0003-9254-2674

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CRITERIA FOR CLASSIFYING ACTIVITIES AS LICENSED

Abstract. Purpose. The above allows for formulating the paper’s purpose by defining criteria for classifying a certain type of economic activity as licensed, proposing legitimating such criteria, and extending the licensing procedure to new types of economic activity. **Research methods.** The paper was prepared using a complex of methods of scientific knowledge. The comparative legal, analytical synthetic, systemic-structural, formal-legal, and other methods were used to achieve the purpose of the paper and determine the criteria for classifying a certain type of economic activity as licensed. **Results.** The article clarifies that the legislator recognized the threat of violation of the rights, legitimate interests of citizens, human life or health, the environment and/or state security as a licensing criterion, and only in case of insufficiency of other means of state regulation. In addition, it was proposed that the high level of profitability of this type of activity be recognized as a criterion for classifying types of economic activity as licensed. Several licensed types of economic activity have been analyzed: production and trade in ethyl alcohol, alcohol distillates, bioethanol, alcoholic beverages, tobacco products, liquids used in electronic cigarettes; activities in the field of media; activities in the electric power industry, in the natural gas market, centralized water supply and centralized drainage, thermal energy production, transportation of thermal energy through main and local (distribution) heating networks, supply of thermal energy; professional activities in capital markets and organized commodity markets; activities in the gambling market; activities in the field of education; transportation of passengers, dangerous goods and hazardous waste by inland waterway, sea, road, rail and air transport, international transport of passengers and goods by road. **Conclusions.** The work resulted in a proposal to add a criterion of high profitability to the criteria for assigning types of economic activity to licensed ones in comparison with its average level by types of economic activity and legitimize it in subparagraph 4 of Article 3 “Principles of state policy in the field of licensing” of the Law of Ukraine “On Licensing of Economic Activities”. The quantitative determination of this criterion should be decided by a specially authorized licensing body, which can be specified in Article 4 of the Law of Ukraine “On Licensing of Types of Economic Activity”. It is proposed to add provisions on licensing of activities related to the mining of virtual assets to Article 7 “A list of types of economic activities subject to licensing” of the Law of Ukraine “On Licensing of Economic Activities” after the introduction of certain amendments to the Tax Code of Ukraine and the entry into force of the Law of Ukraine “On Virtual Assets”. This type of activity entirely falls under the criteria for classifying types of economic activity as licensed ones identified and described in the paper.

Key words: business activity, licensing, business entity, state interests, criterion, profitability, virtual assets, taxation, cryptocurrency, licensing grounds, legitimation, special law, specially authorized licensing body.

1. Introduction

Various researchers have repeatedly pointed out the priority of treating licensing as a means of regulating the state’s influence on the activities of business entities. It is clear that such an impact should not be carried out on the activities of all business entities and should be aimed at achieving certain significant and necessary results for the state. The state itself determines which types of economic activities are subject to licensing. As a result, business entities

intending to carry out certain licensed types of economic activities are subject to inspections by licensing authorities for compliance with the license conditions.

Previously, the licensing legislation did not establish or name criteria or priorities for classifying a particular type of economic activity as licensed. Currently, Article 1 of the Law of Ukraine “On Licensing of Economic Activities” defines the concept of “licensing” as a means of state regulation of economic activities aimed

at ensuring the safety and protection of economic and social interests of the state, society, rights and legitimate interests, life and health of people, environmental safety and environmental protection (On Licensing of Economic Activities, 2015). This means that the law explicitly specifies licensing tasks to ensure the safety and protection of economic and social interests of the state, society, rights and legitimate interests, life and health of people, environmental safety and environmental protection (On Licensing of Economic Activities, 2015). Thus, now the Law “On Licensing” shows what Ukrainian scientists and practitioners have repeatedly pointed out – the main criteria for assigning a particular type of economic activity to a licensed one are a high degree of social, economic, and environmental significance or a high degree of danger to human life, health, animals, plants, and the environment. The high profitability of a certain type of economic activity is not mentioned here.

Many Ukrainian researchers have studied relations related to the licensing of economic activities in various sectors and spheres of the economy. In particular, they are as follows: Apanasenko (Apanasenko, 2017), Averianova (Averianova, 2017), Derevianko (Derevianko, 2011), Herasymenko and Halasiuk (Herasymenko and Halasiuk, 2011), Khudoshyna (Khudoshyna, 2016), Klymenko (Klymenko, 2017), Maiboroda (Maiboroda, 2014), Malichenko (Malichenko, 2010), Shpomer (Shpomer, 2006; Shpomer, 2011), Soloshkina (Soloshkina, 2016), Yara (Yara, 2020), Yevdokimenko (Yevdokimenko, 2020) and others. However, the mentioned and other scientists did not pay attention to the criteria for classifying certain types of economic activity as licensed.

The above allows for formulating the paper’s purpose by defining criteria for classifying a certain type of economic activity as licensed, proposing legitimating such criteria, and extending the licensing procedure to new types of economic activity.

The paper was prepared using a complex of methods of scientific knowledge. The comparative legal, analytical synthetic, systemic-structural, formal-legal, and other methods were used to achieve the purpose of the paper and determine the criteria for classifying a certain type of economic activity as licensed.

2. Regulatory definition of licensing grounds

Confirmation of statements in the introduction is found in subparagraph 4 of Article 3 “Principles of state policy in the field of licensing” of the Law of Ukraine “On Licensing of Economic Activities”. One of the main principles was the principle of “priority of pro-

tecting human rights, legitimate interests, life and health, the natural environment, protecting limited resources of the state and ensuring state security, which provides for:

licensing applies only to such type of economic activity, the implementation of which poses a threat to violation of the rights, legitimate interests of citizens, human life or health, the environment and/or the security of the state, and only in case of insufficiency of other means of state regulation” (on Licensing of Economic Activities, 2015).

For example, the types of economic activities related to the production and trade of ethyl alcohol, distillates, bioethanol, alcoholic beverages, tobacco products, and liquids used in electronic cigarettes are licensed (on Licensing of Economic Activities, 2015). Conclusions and medical experiments proved the harmfulness of using these substances for the human body. The state, for various reasons, including financial ones, does not want or cannot prohibit the production and trade of alcoholic beverages and tobacco products containing a large amount of harmful substances. To reduce the amount of consumption of such products by the population, the state licenses these types of economic activities, automatically increasing the price of harmful products sold. In addition, the state simply earns a lot of money on bad habits of citizens. On the other hand, excessive consumption of the products mentioned above, as well as their simultaneous use with certain groups of other products, as well as a violation of production technology, can lead to deaths due to a single or repeated use by any person or a person of a certain age, state of health, mental state, etc. To prevent such cases, licensing authorities monitor the compliance of the production and trade process with regulatory licensing requirements. The importance for the state of economic activities related to the production and trade of ethyl alcohol, alcoholic distillates, bioethanol, alcoholic beverages, tobacco products, liquids used in electronic cigarettes, and fuel, storage of fuel, is specified in accordance with the Law of Ukraine “On State Regulation of the Production and Circulation of Ethyl Alcohol, Alcoholic Distillates, Alcoholic Beverages, Tobacco Products, Liquids Used in Electronic Cigarettes, and Fuel” as of December 19, 1995 (On the State Regulation of Production and Circulation of Ethyl Alcohol, Cognac and Fruit Alcohols, Alcoholic Beverages and Tobacco Products, 1995).

3. Licensing based on specific laws of Ukraine

Several other types of economic activity mentioned in Article 2 of the Law of Ukraine “On Licensing of Economic Activities” are

licensed based on separate special laws. For example, media activities are regulated by the Law of Ukraine “On Media” as of December 13, 2022 (On Media, 2022). We have previously stressed the importance of media activities, their impact on the life of the state and society, and, therefore, the great social significance of media activities that caused their licensing (Svitlychnyi, 2023). The state should ensure access to the media sphere only for those business entities that will provide objective information and not disseminate information that promotes various harmful ideologies and narratives. Activities in the field of electric power, in the natural gas market, centralized water supply and centralized drainage, production of thermal energy, transportation of thermal energy by main and local (distribution) heating networks, supply of thermal energy, and other activities licensed by the National Commission for State Regulation in the Field of Energy and Utilities, in accordance with special legislation (On Licensing of Economic Activities, 2015). It will be superfluous to say something about the significance of these types of economic activities for the economy and the life of the state, especially during the legal regime of martial law and a possible threat to the environment. The above fully concerns activities in the field of nuclear energy use, which are carried out under the Law of Ukraine “On Permit Activity in the Field of Nuclear Energy Utilization” (On Permit Activity in the Field of Nuclear Energy Utilization, 2000) as the threats to environmental safety posed by nuclear energy are known all over the world on the example of Ukraine. The role of nuclear energy in providing electricity to Ukraine’s economy and social sphere should not be underestimated. Professional activities in the capital markets and organized commodity markets, licensed by the National Securities and Stock Market Commission (per the Law on Licensing of Economic Activities, 2015), are highlighted separately. Economic activity in the capital markets and organized commodity markets is highly profitable (it is known that banks and financial institutions that carry out various speculative operations with shares and other securities on the stock markets often receive significantly higher revenues from the income of banks and financial institutions that carry out classical banking operations), and is also of great importance for the state. Participation of the state directly or through intermediaries in the capital markets ensures the stability of its financial system, insurance against risks, adversities of financial crises, fluctuations in stock markets, etc. Along the way, it should be noted that the licensing of banking activities, financial services, and cash transactions is car-

ried out by the National Bank of Ukraine under the Law of Ukraine “On the National Bank of Ukraine” as of May 20, 1999 (On the National Bank of Ukraine, 1999) and the Law of Ukraine “On Banks and Banking” as of December 7, 2000 (On Banks and Banking, 2000). The most profitable type of economic activity is activity in the gambling market, which is regulated following the Law of Ukraine “On State Regulation of Activities Related to the Organization and Conduct of Gambling” (On State Regulation of Activities Related to the Organization and Conduct of Gambling, 2020). Profits from such activities are taxed at the highest rate. Such activities can pose a public danger due to their negative impact on psychologically weak people. In the field of medicine, the possibility of recognizing “gambling addiction” as a mental illness is being discussed today.

4. Licensing based on the provisions of the Law of Ukraine “On Licensing of Economic Activities”

A general list of types of economic activities subject to licensing under the rules of special laws of Ukraine or the Law of Ukraine “On Licensing of Economic Activities” is given in Article 7 of the relevant law (On Licensing of Economic Activities, 2015). We will not quote all the points of this article. We pay attention only to certain points. Paragraph 6 of part one of this article states that educational activities are licensed considering the specifics defined by special laws in the field of education (On Licensing of Economic Activities, 2015). The field of education is crucial for the state. Thus, providing poor-quality educational services can lead to severe consequences in any sector of the economy and public life. Researchers of relations in the field of education point out that large universities with a developed material base, scientific achievements of professors, and practical achievements and success of graduates are able to provide high-quality educational services, carry out progressive research, and develop world science and education. A licensing procedure, in addition to state registration, was introduced to distinguish high-quality universities, academies, and institutes from those educational institutions that only have such names (Derevianko, 2011, p. 168). Paragraph 24 of the first part of Article 7 of the Law of Ukraine “On Licensing of Economic Activities” provides for mandatory licensing of transportation of passengers, dangerous goods, and hazardous waste by inland water, sea, road, rail and air transport, international transportation of passengers and cargo by road (On Licensing of Economic Activities, 2015). Types of economic activities related to the transportation of goods and passengers by

various modes of transport are usually profitable with a higher level of profitability than in most other sectors of the economy. At the same time, the vehicles themselves are sources of increased danger. For example, the safest option is air transport, which is less likely to cause accidents involving other types of transport. However, in most cases, neither passengers nor crew members survive such accidents. Ukrainian scientists define licensing of economic activities for the provision of services for the transportation of passengers and cargo by air as an integral part of state control in the field of air transport. They consider “formation and strengthening of management functions of the air transport complex in the areas of safety, licensing and certification, development of regional programs and proposals for state programs for the development of the industry, monitoring their implementation” to be an important tool for implementing state policy in the field of air transport (Polishchuk and Kononenko, 2023, p. 34; Krykhtina, 2022, p. 57).

Other licensed types of economic activity also have no less profitability, social significance, threat to the environment, or danger to the life or health of humans, animals, etc. Therefore, they are included in the list of licensed types of economic activity given in part one of Article 7 of the Law of Ukraine “On Licensing of Economic Activities”. It should be added that the list of licensed types of economic activity is not static. Some types of economic activity may be permanently or temporarily banned; accordingly, there is no need to license them. Other types of economic activity arise or are legitimized. Therefore, there is a need for state regulation through certain methods of state regulatory influence on the activities of business entities, among which licensing is not the least. Thus, by analogy with the existing licensed types of economic activity, it is proposed to legitimize new types of economic activity and extend the licensing procedure to them. The Law of Ukraine “On Virtual Assets” as of February 17, 2022 has been adopted, which was even published in the Bulletin of the Verkhovna Rada of Ukraine. Still, it has not entered into force (on Virtual Assets, 2022). It should legitimize relations related to the turnover of cryptocurrencies after it enters into force. In this case, operations on mining of cryptocurrency on a professional basis will meet all five characteristics of the economic essence as a business entity – organizational unity, property isolation, legitimacy of existence as a business entity (after the entry into force of the Law of Ukraine On Virtual Assets), the presence of economic rights and obligations, responsibility for the results of management

(Derevianko, 2018, p. 170-172). After legitimizing relations in the cryptocurrency market, researchers propose the introduction of licensing the activities of cryptocurrency miners, taxation of income from it, regulatory definition of liability measures for violators, and ensuring full-fledged state regulation and stimulation of such activities (Derevianko, 2018, p. 173). We support such a proposal and agree that it is caused by high profitability and significant public danger. The second reason is related to physical factors – significant use of electricity and, accordingly, fire danger; and financial factors – a threat to the classic national currency of the state – the hryvnia. Earlier, Ukrainian researchers pointed out the high profitability of mining (on average, the payback period of equipment (the cheapest and with low capacity is estimated at an average of 10 thousand dollars) is from 6 to 12 months), great public danger (in particular, a high risk of fires. It is also not fully known how people, animals, and the environment are affected by the crowding of various electromagnetic and computer equipment). Another issue is the availability of special knowledge and skills of miners (without proper control, they can harm computer networks and other Internet users). This type of activity must be licensed and specified in Article 7 of the Law of Ukraine “On Licensing of Economic Activities” (Derevianko and Turkot, 2018, p. 56). We should propose to apply licensing for the mining of cryptocurrency based on the Law of Ukraine “On Financial Services and Financial Companies” dated December 14, 2021 and determine under paragraph 47 of Article 1 of this Law of Ukraine that the regulator is the National Bank of Ukraine or the National Securities and Stock Market Commission according to the distribution of powers determined by this Law (On Financial Services and Financial Companies, 2021).

5. Conclusions

Thus, it can be concluded that the legislator in subparagraph 4 of Article 3 “Principles of state policy in the field of licensing” of the Law of Ukraine “On Licensing of Economic Activities” defined most of the criteria for assigning certain types of economic activity to licensed ones. The criterion of high profitability identified and characterized in the article compared to its average level by type of economic activity is not specified by the Law of Ukraine “On Licensing Economic Activities”. The legislator encrypted this criterion as “ensuring security and protecting the economic and social interests of the state and society” when defining the concept of licensing. However, it would be correct to add the phrase “which has a high level of profitability and/or” to the partially cited

subparagraph 4 of Article 3 “Principles of state policy in the field of licensing” of the Law of Ukraine “On Licensing of Economic Activities” after the words “licensing applies only to this type of economic activity”, and the quantitative determination of this criterion should be decided by the specially authorized body for licensing, which can be indicated in the relevant Article 4 of the Law of Ukraine “On Licensing of Economic Activities”.

We consider it important to add provisions on licensing of activities related to the mining of virtual assets to Article 7 “A list of types of economic activities subject to licensing” of the Law of Ukraine “On Licensing of Economic Activities” after the introduction of certain amendments to the Tax Code of Ukraine and the entry into force of the Law of Ukraine “On Virtual Assets”. This type of activity entirely falls under the criteria for classifying types of economic activity as licensed ones identified and described in the paper.

Future scientific research should be aimed at finding mechanisms to promote the introduction (legitimization) of new types of economic activities and introducing their licensing and taxation of income from them.

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Олег Світличний,

аспірант, Державна установа «Інститут економіко-правових досліджень імені В.К. Макутова НАН України», Україна, 01032, Київ, вул. Тараса Шевченка, 60, urnameo@gmail.com

ORCID: orcid.org/0009-0003-9254-2674

КРИТЕРІЇ ВІДНЕСЕННЯ ВИДІВ ДІЯЛЬНОСТІ ДО ЛІЦЕНЗОВАНИХ

Анотація. Мета. Метою статті є визначення критеріїв віднесення певного виду господарської діяльності до ліцензованих, дослідження легітиматії таких критеріїв та поширення процедури ліцензування на нові види господарської діяльності. **Методи дослідження.** Під час підготовки статті було використано комплекс методів наукового пізнання: порівняльно-правового, аналітико-синтетичного, системно-структурного, формально-юридичного та інших методів, завдяки яким було досягнуто мету статті, визначено критерії віднесення певного виду господарської діяльності до ліцензованих. **Результати.** У статті з'ясовано, що законодавець через критерії ліцензування визнає загрозу здійснення певного виду господарської діяльності порушенню прав, законних інтересів громадян, життю чи здоров'ю людини, навколишньому природному середовищу та/або безпеці держави, і лише в разі недостатності інших засобів державного регулювання. Крім того, критерієм віднесення видів господарської діяльності до ліцензованих було запропоновано визнати високий рівень рентабельності цього виду діяльності. Було проаналізовано декілька ліцензованих видів господарської діяльності – виробництво і торгівля спиртом етиловим, спиртовими

дистилятами, біоетанолом, алкогольними напоями, тютюновими виробами, рідинами, що використовуються в електронних сигаретах; діяльність у сфері медіа; діяльність у сфері електроенергетики, на ринку природного газу, централізоване водопостачання та централізоване водовідведення, виробництво теплової енергії, транспортування теплової енергії магістральними і місцевими (розподільними) тепловими мережами, постачання теплової енергії; професійну діяльність на ринках капіталу та організованих товарних ринках; діяльність на ринку азартних ігор; діяльність у сфері освіти; перевезення пасажирів, небезпечних вантажів та небезпечних відходів внутрішнім водним, морським, автомобільним, залізничним та повітряним транспортом, міжнародні перевезення пасажирів та вантажів автомобільним транспортом. **Висновки.** Підсумком роботи стала пропозиція до ліцензованих критеріїв віднесення видів господарської діяльності додати критерій високої рентабельності в порівнянні із середнім її рівнем за видами господарської діяльності й легітимізувати його в підпункті 4 статті 3 «Принципи державної політики у сфері ліцензування» Закону України «Про ліцензування видів господарської діяльності», а кількісне визначення цього критерію має вирішувати Спеціально уповноважений орган з питань ліцензування, про що можна вказати у відповідній статті 4 Закону України «Про ліцензування видів господарської діяльності». Запропоновано після внесення певних доповнень до Податкового кодексу України і набрання чинності Законом України «Про віртуальні активи» додати до статті 7 «Перелік видів господарської діяльності, що підлягають ліцензуванню» Закону України «Про ліцензування видів господарської діяльності» положень про ліцензування діяльності з видобутку, вирахування («майнінгу») віртуальних активів. Цей вид діяльності повністю підпадає під виявлені та схарактеризовані в статті критерії віднесення видів господарської діяльності до ліцензованих.

Ключові слова: господарська діяльність, ліцензування, суб'єкт господарювання, інтереси держави, критерій, рентабельність, віртуальні активи, оподаткування, криптовалюта, підстави ліцензування, легітимація, спеціальний закон, Спеціально уповноважений орган з питань ліцензування.

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