

THE ELECTRONIC PUBLIC ROAD TRADE CONTROL SYSTEM (EKAER) IN HUNGARY

THE TRADE CONTROL
SYSTEM AND THE
FOLLOWING-UP AS
HANDY TOOLS FOR
TAX AUTHORITIES

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THE BACKGROUND

In 2008 the European Court of Auditors drew attention to the illegal activities related to VAT, distortion of competition and the large decrease in tax income of the Member States. According to the study of the European Commission (Lost public funds in the EU) based on the data of Eurostat, the VAT gap was around 177,2 billion euros in the EU, therefore the European Parliament called the Member States in 2013 to take action by reducing abuse of national and community law.

The movement of goods became more complex from the widening of commerce and creation of international chains, so the most relevant thing is that tracking connects the physical movement of goods with the flow of information. A rising role as a response to international tax fraud and tax evasion, is trade compliance, which is the key to tax enforcement and customs law. Furthermore, trade control, which means closer monitoring in addition to the active legislation.

Following-up is a handy tool for tax authorities and with trade control it is possible to gain tax revenue growth without increasing the tax burden. Only tracking goods is not enough for the audit as it is necessary to monitor the invoicing, payment and also in certain cases the flow of information.

HUNGARY

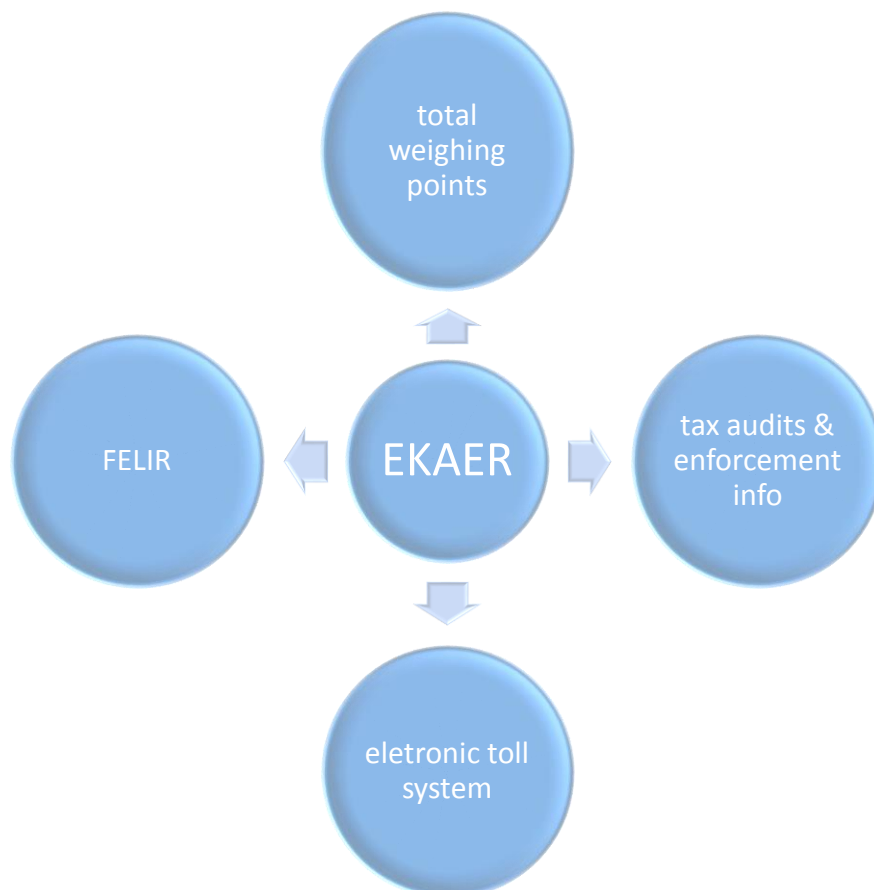
From 2012 in Hungary many amendments and new legal instruments appeared in the Act XCII of 2003 on Rules of Taxation in favour of decreasing fiscal losses and better effectiveness of fair taxation: tax registry procedure, increased tax supervision, cancellation of VAT numbers, increasing the rates of tax fines. The new element of the fight against tax fraud was the Electronic Public Road Trade Control System (EKAER) introduced in the beginning of 2015, which aimed to be the new and effective tool in fighting against tax fraud to facilitate real-time audits of consignment movement as well as implementing the present toolbox. From December 2014 an

intensive period of publishing information for the taxpayers involved began via an FAQ of www.ekaer.nav.gov.hu, the Help Desk and customer service of the National Tax and Customs Administration (NTCA), presentations and press releases. After the system launch, the first two months were a live test without any legal consequences (especially penalty fee, or paying risk guarantee).

I. *The network of databases*

The novelty is the wide connection of the official databases, which guarantee more coordinated audits and, shorter response times. The EKAER is an electronic platform of data access interface reachable via the Internet and is in connection with the database (FELIR) of the National Food Chain Safety Office (NÉBIH), which contains data on every supervised food chain farmer. The network of information is significant in relation to the first place of storage, which is in the shadows, undetected without prompt additional information.

The Hungarian tax and customs authority is entitled based on the LXVII Act of 2013 on Paying Highway Fees, to connect directly to the whole set of data for conducting audits. Unless supporting the tax audits is not the main purpose of the electronic toll system (and not suitable for it), the movement of the transport vehicle can be followed by cameras and on-board equipment but cannot prove the fact that the consignment left the territory of Hungary and cannot be the only evidence of the intra-Community supply of goods. Consignments moving only on paper or indeed unloaded to a different place can be filtered by comparing the data of the toll system and EKAER (mainly the route and weight). Since 31st of March, 2017, completion has been with the information of the 89 drive-through total weighing points or the fixed measuring points, so this method of VAT abuse (document the fictional movement of goods) can be repelled more effective. Moreover the confidential tax information can be disclosed to the Directorate General for Criminal Affairs of the tax authority in order to prevent and prosecute specific criminal cases related to taxation.



II. Main obligations

1. Obligors

The basic obligations are based on the geographical relation of the activity, the weight and price of the consignment and the means of transportation. The consignor or the consignee (depends on the relation)

- who imports goods from other Member States of the EU (procurement or other purpose i.e. contract work),
- who exports goods to other Member States of the EU (sales or other purpose i.e. contract work),
- whose first product sales are subject to the payment of value added tax in Hungary (not directly to final users)

has to request an EKAER number if the total gross weight of the transported goods exceeds 500 kg or their total price excluding taxes is more than 1 million HUF. The obligor is always a domestic taxpayer.

2. *The EKAER number*

The consignment of goods on public roads by motor vehicles which are subject to toll charges (total weight over 3.5 tons) related to the above mentioned activities may be performed solely by taxpayers having a valid EKAER number. There are exemptions regulated in the decree 5/2015. (II.27.) of Minister for National Economy:

- regarding the vehicles (based on mainly international conventions (i.e. NATO, Schengen) or special service),
- regarding the products (upon stricter rules and regulations (i.e. excise duties, waste, goods under customs supervision, security papers, banknotes and coins)),
- special dispensation (upon the order of the State Secretary governing the NTCA).

For the determination of the EKAER number, the taxpayer shall make a registration with the NTCA, apply for a tax number and have Client Gateway access for identification. No Client Gateway verification is needed to register a carrier who can only modify data.

The EKAER number containing 15 digits (mix of letters and numbers) identifies the unit of goods (can be a mix of different types of products!) transported once from a consignor to a consignee on public roads. Regarding the EKAER number, the consignor or the consignee shall inform the carrier in advance before starting the carriage, but there are no formal requirements. In most cases it is marked on the consignment note.

The number is valid (and can be modified or cancelled) for 15 days, so sending a request and registering the fact of the consignment's arrival to the system have to be done in this period.

It is important to emphasize that abiding by the VAT Directive, solely the lack of an EKAER number does not suitably block the taxpayers' withholding right.

3. *The scope of the data disclosure:*

The obligor shall register the following information on the electronic platform:

- name and tax number of the consignor and the consignee,
- place and date of uploading and downloading (or delivery)
- data of the consignment (general commercial name, customs tariff number and weight of goods, UN number of hazardous goods,
- cause of the carriage (sales, procurement, contract work, other purpose),
- price excluding taxes of risky goods in HUF (if applicable),
- number plate(s) of the used motor vehicle(s) and trailer(s),
- mark intermodal transport (if applicable).
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The EKAER system operates 24/7 and data can be submitted anytime but taxpayers have to be aware: there are some special rules. The place and date of uploading cannot be recorded after the event. The taxpayer shall submit the date of the arrival within a maximum of 3 working days of the delivery. Data on weight, price of goods and number plates can be modified only before this time (but have to be done upon arrival of the cause), and it is impossible after closing the EKAER number. From 01 April, 2015 the EKAER number can be invalidated by recording the cause (termination of the contract, failed delivery etc.). If in the system it looks like a certain consignment has never been recorded, the EKAER number doesn't exist.

The system records every activity (data disclosure, modification, cancellation, hibernation, annulation), which will be part of the risk profile, basement of risk management and will be taken into consideration when calculating the penalty fee (actualizing the data due to the control being a typical method). The 'missing' EKAER number cannot be corrected or registered subsequently afterwards as the main aim of the system is the real-time audit of the public road trade in regards to following up delivered goods.

registry of the consignment → uploading → transportation → downloading → closing process

all necessary data shall be submitted by this time at the latest	modification (asap) invalidation	
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4. Special rules for risky goods

In the case of carrying goods involving risk under the ministerial decree (51/2014. (XII.31.) of the Minister for National Economy), the buyer, in the case of intra-community procurement or the vendor (if not a final user) as the first domestic taxpayer of VAT, shall provide a risk guarantee. The scope of risky goods determined upon the experiences of former audits can be different kinds of foodstuffs (meat, milk, eggs, whey, honey, vegetables, fruits, grains, rice, soya-beans, oil etc.) or other risky products (such as flowers, all kinds of natural sands, different types of minerals, fuel wood, clothes, footwear etc.). Taxpayers dealing with risky foodstuffs have an extra obligation: they can register consignments only if they possess an FELIR number and have reported the first place of storage (even it is a rented premise). The EKAER checks the fact automatically.

The amount of guarantee should be at least 15 percent of the net combined value of the risky goods noticed by the taxpayer during the 45 days preceding the data disclosures and can be paid to a separate deposit account or undertaken by a financial institution, payment service institution or investment enterprise registered by the

NTCA. The EKAER allows query submissions for the current balance of the guarantee that can be checked on the platform (available limit, blocked limit (as a result of previous submissions) and paid guarantee).

The taxpayers shall not provide risk security if they:

- have been in business for at least two years and not included in the database of tax debtors or
- are a strategically high priority taxpayer in bankruptcy or liquidation proceedings and have the permit of the State Secretary of the NTCA.

The NTCA checks the tax account 5 days before the end of the month. If there is any tax debt, the risk security can be accounted for it so the taxpayer has to complement the amount of the security.

III. Legal consequences

1. The official seal

Complex audits can be conducted by colleagues from different areas (tax audit, tax enforcement, customs, excise duties etc.) and other authorities by public roads, at the place of downloading or afterwards. New legal consequences were initiated according to the launch of EKAER, but the current sanctions still exist! During the audits the tax authority can observe the fulfilment of every other tax obligation too, ie. registry of place of business or employees, amount of tax debt, submission and contents of tax reports, issuing invoices etc.

Unless the official sealing of consignments is linked to the EKAER, it was established upon the results of audits concerning the commercial quantity of goods before the legislation of EKAER entered into force. It can be used based on different risk aspects and serves to guarantee officially that the cargo between the place of the on-site audit and the address of unloading is still the same. It is important to emphasize that the official seal can be used only regarding the delivered goods of a certain taxpayer. It is possible to apply this only to locking a particular parcel and in this way the irrelevant taxpayers' right of disposal won't be breached. It is the carrier's responsibility to carry the parcel locked by the official seal of consignment to the receiver. Checking the circumstances of the implementation and unlocking the serial numbered tool under strict accountability takes place at the place of delivery.

2. The penalty fee

Non-fulfilment of EKAER obligations can be:

- non-reporting (there is no EKAER number at all),
- data disclosure containing non-appropriate elements (mistyping, countervalue of goods incl. VAT etc.),

- false reporting (unless containing real data),
- imperfect reporting (obligatory data missing upon start of transportation or by the delivery).

The taxpayer shall prove if internet access was impossible and a cause of non-fulfilment. There are no formal requirements, however a certification of the mobile company could be useful. There is one objective exemption for data disclosure when the taxpayer is not obliged to prove anything regarding a missing EKAER number: break-down or maintenance of the EKAER system. The tax authority publishes these periods on the official website of the EKAER by date and hour. It is important not to forget that taxpayers have to fulfil their obligation by the next work day at the latest.

As a result of changes of the contained water, sometimes it is hard to record the weight of the delivered goods, for example in the case of wood, flowers and sphagnum. However, the system allows only 10% discrepancy. To follow legal provisions it is necessary to give a carrier a certification of the weight of the consignment. Without this sheet of paper, the transportation cannot be started.

3. The seizure

There is a new legal consequence initiated specially for EKAER sanctions. If the taxpayer does not fulfil his obligation regarding recording necessary data, the relevant (parts of the) consignment become goods of unverified origin and a sanction can be applied up to the amount of 40% upon consideration of relevant circumstances based on basic tenet of progressiveness. As a prevention of luring the goods away from the execution of the penalty fee, the consignment in question can be seized immediately. It has been in force since before the launch of the EKAER, but as a new tool it is possible to apply also to secure the collection of the amount of the sanctions. Goods under attachment cannot be sold, modified, processed etc. unless one commits a crime.

IV. Experiences and achievements

1. Experiences

Thanks to the comparison of information of the toll system, FELIR and EKAER, the audit and the enforcement branch of the NTCA can react faster and in this way next to the more successful clarification of the facts, increase the possibility of providing for the tax debt as well as the tax income.

As a result of completion with the already available information (submitted reports, taxpaying, experiences of the audits, network) of NTCA, the risk management department can more effectively follow tax evasion methods, their evolution enabling more targeted selection and utilisation of auditors' capacity. As taxpayers' behaviour changes continuously and fits the activities of the tax authority. Of course it is

impossible to fully define every situation in advance, but based on the permanently broadening database classifying the criteria of tax evasion into risk profiles allows more precise and different types of risk management. The result of the risk management is available before or at the start of transportation and can be used to select on-site audits, (by the road or on premises) as opposed to the former audits which were based on physical presence and organised actions, integrated into the process or ex-post.

Conducting audits at the place of delivery drove auditors, executors and customs officers to realize non-compliance of reporting the place of business, the first place of warehousing or employment and, in several cases, other units of goods of unverified origin. In this way the NTCA detected new places of downloading or realised consignments delivered in the system to a natural person downloaded in the warehouse of a company.

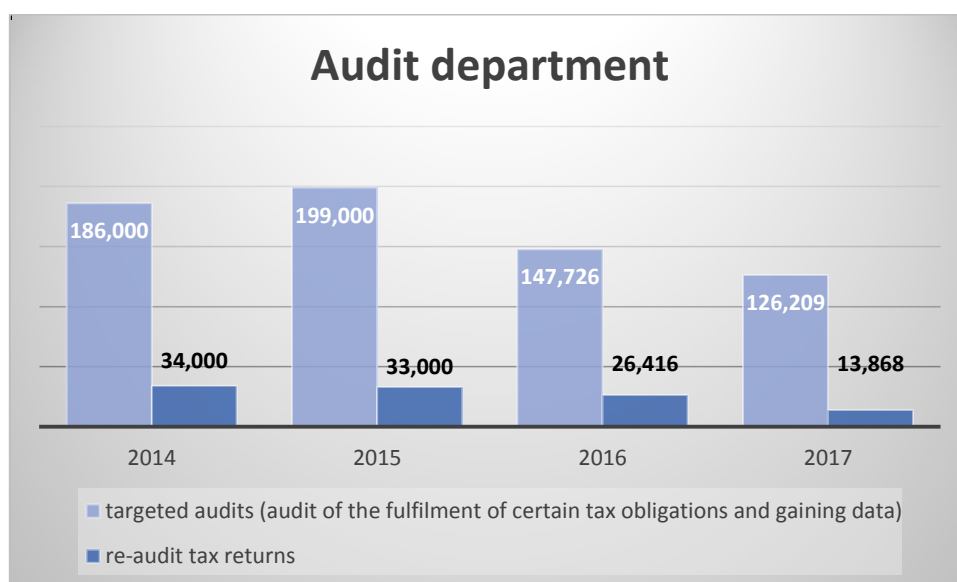
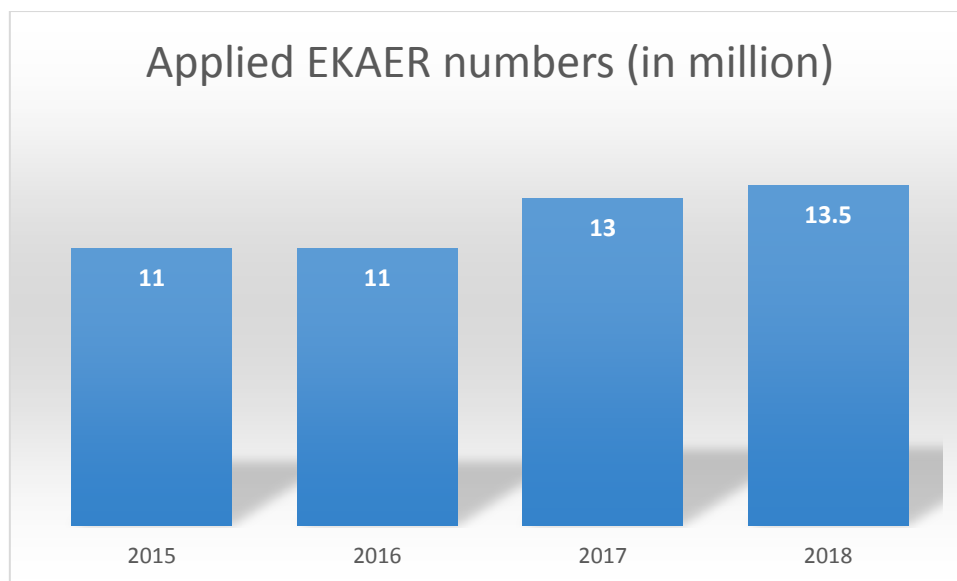
Customs officers control mostly – as was true before the EKAER system – the weight of the vehicles, driving and delivery licences, or analyse tachograph discs. It is an infringement to overload a vehicle under the total weight of 3.5 tons in order to avoid EKAER obligations and is sanctioned not just upon the EKAER but the accident risk too. Despite carriers using mainly the paper based CRM documents, by comparing the consignment note, information of the electronic toll system and the EKAER the real route of goods can be checked and followed. Often the inland delivery is registered as transit to avoid EKAER obligations. These infringements can be controlled upon the information of the network of databases but are not valid if the vehicle avoids the cameras related to the toll system or the total weighing points.

2. The achievements

Unless the main aim of initiating the EKAER was to control carousel fraud in a more effective way, surprisingly more than 60% of the registered data is concerned with the consignments related to the relation of Hungary-Hungary.

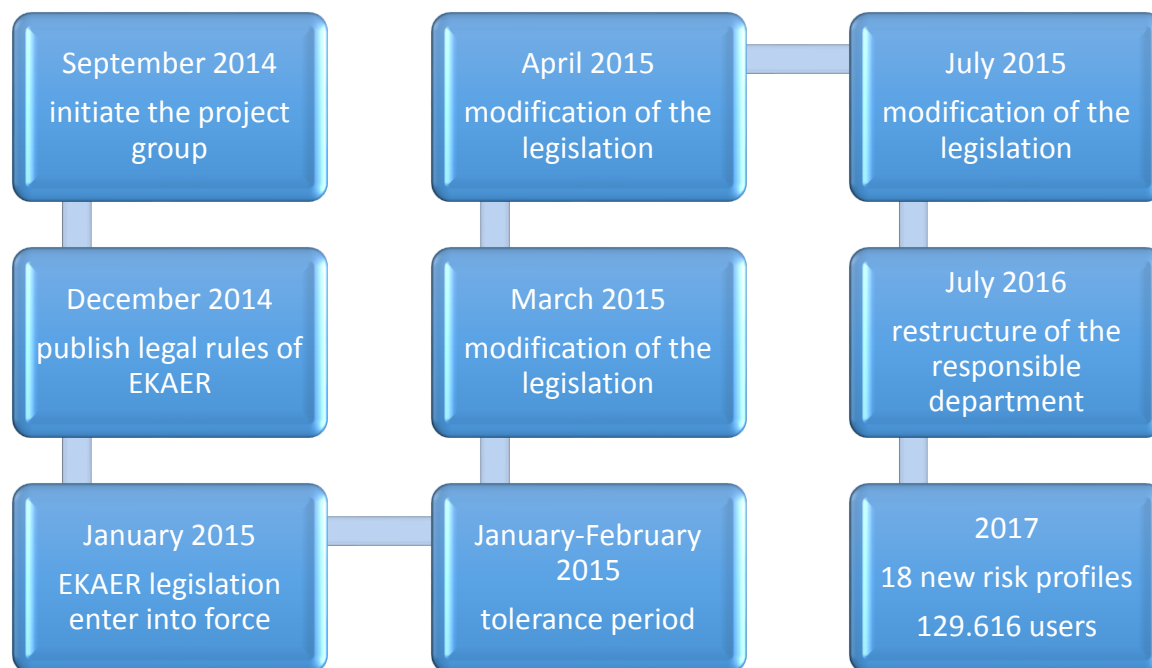
The on-site and by-the-road actions still needed to be controlled the fulfilment of EKAER obligations and enforce the legal regulations. The joint audits (mainly with officers of the food chain safety authority and the police) resulted in detecting food and transportation safety risks, such as fruit and vegetables of unverified origin, vehicles with huge overweight or carriers without driving and/or delivery license.

A huge inner data market has been built in accordance with compared stored data, making reports or risk profiles, serving risk analysis and management of the NTCA connected to the online cash register system.



V. Additional information

1. Timeline



2. *The legal background*

- Act CLI of 2017 on the Tax Administration and the Regulation of Tax Administration
- Act CL of 2017 on the Rules of Taxation
- Act CLIII of 2017 on Enforcement Proceedings to be implemented by the Tax Authority
- Government Decree 465/2017. (XII.28.) on the Detailed Rules of Tax Administration Procedures
- Decree 5/2015. (II.27.) of the Ministry for National Economy on the Operation of the electronic Public Road Trade Transport System (EKAER)
- Decree 51/2014. (XII.31.) of the Ministry for the National Economy on the Determination of Risky Goods in association with the operation of EKAER