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ON THE EXPERIENCE OF THE FIRST FIVE YEARS OF THE ELECTRONIC ROAD TRAFFIC CONTROL SYSTEM

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Abstract

In my study, I summarise the experience of the first five years of the Electronic Road Freight Traffic Control System introduced as a result of digitalization. The five-year interval is because a period ended at the end of 2020, because from 2021 a new regulation came into force, which I will not deal with within the framework of this article. After the brief introduction, I will describe the most important rules of the system in the relevant period. I will also present the experience of on-the-spot and ex-post inspections in the relevant period, as well as the sanctioning and redress issues. And in the concluding thoughts, I present to the reader the quantified results of the system.

Keywords*: digitalization, tax procedure, Electronic Road Traffic Control System*

1. Introduction

In recent years, the National Tax and Customs Administration has been striving to introduce customer-centric procedures, as well as to reduce administration and introduce online solutions, the tool of which is digitalization.

This is because more and more areas of our lives are being transferred to the digital space, more and more devices of physical reality are connected online, the concepts of money and work are being transformed, and within years, workplace types can disappear and transform by the hundreds. These changes pose serious challenges for individuals, economic operators and even organizations that are considered state-of-the-art. In the era of the data explosion and cryptocurrencies, only those companies and organizations that use services and processes that meet the expectations of the age and who can respond as quickly as possible to market needs can remain viable and successful. There are several international scientific articles about the need for public administrations to follow this transformation process, as customers using such market services expect the same level of service in administrative procedures after a while. It is also essential for tax authorities to monitor and quickly respond to trends and development directions identified at international level, as well as to adopt new technologies and transform their work processes. Perhaps for the first time in the history of taxation, taxpayers need to be provided with services that, taking into account the heterogeneous digital maturity of society, meet the requirements of traditional services on the one hand, and can also satisfy the digital customer experience of generations Y and Z on the other. Only an organization renewed in its IT, workflows and communication can meet the expectations of taxpayers and the public administration. In order to achieve this goal, NAV was renewed and started on the path of digitalization. The development of revenues in the state budget is fundamentally influenced by four factors: the performance of the economy, the legislative environment, tax awareness, and collection efficiency. The latter two factors are what NAV

is able to have a direct impact on, thereby increasing Hungary competitiveness and ensuring budget stability. (Kalocsai and Garami, 2018a)

One of the answers to these challenges, as a result of digitalisation, is the Electronic Road Traffic Control System (hereinafter referred to as EKAER) introduced by the tax authority in 2015, which checks whether tax obligations related to the road transport of a product from another Member State of the European Union to Hungary or from Hungary to the European Union, or within Hungary, are fulfilled. In order to establish the EKAER number, detailed information on the supplied product itself must be provided to the authority.

Examining the experience of the period 2015-2020, I would like to confirm that this digital innovation has fulfilled the hopes attached to it and had a positive impact on the revenues of the central budget.

Today, the technological conditions for extracting data have become much more favorable, and this has created a data-driven economy: data has become the most important raw material that drives the economy forward and influences every corner of the economy. However, the data itself is not worth much until it becomes possible to uncover the connections between them. That is why, with the continuous expansion of the range of data sources and the introduction of advanced data analyses, the tax authority is getting an increasingly clearer picture of the activities of taxpayers, making it possible to explore the relationships that are not yet known today. This data set is the basis for ex-post and real-time risk analysis, customer segmentation, and thus the introduction of individualized, compliance tools. It determines the type of communication, the initiation of a support procedure or even the conduct of an audit. Data-driven decision-making allows for fewer, faster but more targeted real-time audits, thus reducing administrative burdens for both the tax administration and customers and increasing government revenues. (Kalocsai and Garami, 2018b)

2. The Electronic Road Traffic Control System in general

The aim of EKAER is to be able to control freight transport in real time by the state tax and customs authority using information technology tools, thereby more effectively reducing VAT fraud.

The main regulatory elements of the EKAER system are:

- Notification obligations:
  - obligation to notify transport and product data in advance, obligation to notify changes to previously notified transport and product data
  - arrival at the pick-up address or notification of the start of transport
- Provision of risk collateral
- Obligation to declare
- Application of an official lock. (Kovács et al., 2015a)

The detailed rules are set out in Regulation (EC) No 5/2015 (II.27) on the operation of the Electronic Road Traffic Control System. NGM Regulation (hereinafter referred to as the 'EKAER Regulation').

- It is important to point out that road transport activities can only be carried out by taxpayers with a valid EKAER number. In the case of intermodal transport operations combining several modes of transport, notification shall be made only during road transport. (Kovács et al., 2015b)

From the customer's point of view, EKAER is a web interface accessible by an Internet browser, where shipments can be reported after registration.

Registration can take place

- the person required to notify,

- or by the forwarder.

The person required to report first registers requires an EKAER number. The primary registered person can be the legal representative or permanent proxy, for additional persons a secondary registration can be created. The National Tax and Customs Administration (hereinafter referred to as the NAV) continuously supervises the representation rights so that it is not possible to report it by a person who is no longer entitled to do so. During a freight forwarder registration, it is a case of the primary user entering the registration number of the forwarder to create an opportunity for the forwarder to process certain data in the system regarding the goods it transports. At the same time, EKAER is significantly more in the hands of the tax authority in terms of its operation, because in addition to the above obligations, it is a coherent system supported from outside by other contributors. It cooperates with the National Food Chain Safety Office, the organization operating the road camera system and other authorities, among others, within the framework of the system. (Kovács et al., 2015c)

In summary, we can say that EKÁER is a technical system for monitoring, controlling, and registering the movement of goods, created, and operated by the Hungarian National Tax and Customs Administration, the primary purpose of which is to reduce the number of abuses related to the transport of goods and the number of frauds committed on value added tax. The system covers transactions between Member States and the first domestic movements of goods with a view to sale to a non-end-user, as well as the prior electronic recording of these statutory data by the tax authorities and the notification of transport. Indirectly, this can lead to the whitening of the black economy, since by learning about the actual movement of goods, the legal fate of the transported products can also be checked by applying the NAV and HU-GO (Toll system proportional to the distance travelled.). With the help of these two digital systems, it is possible to significantly reduce the volume of goods circulating untaxed, since only those that have been previously and correctly declared can be legally put into circulation with the help of road transport. This instrument indirectly protects fair market participants, bona fide buyers and improves the equality of public burden-sharing and helps to inform government statistics and economic policy planning. (Szilovics, 2019)

3. Audit experience

On-site EKAER inspections are typically carried out by financial guards, who, together with operational tax inspectors and NÉBIH staff, work closely with the official dispatch service of the EKÁER Group. The task of this dispatch service is to carry out a preliminary risk assessment, to be assigned to targeted inspections, as well as to immediately process the information obtained during on-site inspections, to identify risk factors. At the on-site inspections, the financial guards constantly exchange information with this team and carry out the checks specified by the dispatcher.

In addition to the risk analysis team (dispatch service), the work of the inspectors is also supported by the so-called EKÁER Analyzer program, which provides a communication channel between the EKÁER database and the camera network of the electronic toll system. With the help of this, the current position of the goods can be continuously tracked based on the license plate number, so it can be seen if the goods are moving on a suspiciously different route compared to the information reported in the EKAER. As part of the on-the-spot check, the transport can be checked by the authority already during transport or even at the consignee. The latter may be justified because certain data and documents are only available to the recipient and are therefore not necessarily available during transport (e.g. invoice). In addition, the risk analysis team may consider it justified, on the basis of other circumstances, to accompany the shipments to the place of unloading and only then to start the inspection.

During on-site inspections, it is important that taxpayer master data, loading and unloading locations and shipment data can be combined with the information and data experienced on the spot and indicated on the waybill. It is good to know that the financial guards also see in the EKAER system exactly when the taxpayer requested the EKAER number, so it can be a failure if the taxpayer started the EKAER number application process only at the moment of starting the audit. Although most of the time the financial guards do not have the opportunity to make accurate measurements, they can visually determine if the goods are not in the cargo hold as those indicated in the EKAER system, or if the reported mass data differs by an order of magnitude from the weight of the goods on the vehicle and indicated on the delivery note.

A typical error in on-the-spot checks is that the data reported in the EKAER are not in accordance with the waybill, the consignment may not arrive at the location specified on the waybill, several times (or only a fraction) of the declared shipment is in the cargo hold, the declared goods are not transported, or even the place indicated as unloading declared (or indicated on the transport document) is not suitable for this purpose at all. It is important to emphasize that these examples can not only result from fraudulent behavior, but can also be caused by human error, problems in the logistics system, or deficiencies in communication with a partner.

On-the-spot checks can be greatly accelerated and simplified if the carrier is aware of the EKAER number of the transport concerned, as appropriate, and has an accompanying document that contains additional information in addition to the data indicated in the EKAER system, which helps the financial guards to clarify the facts. For example, such a document is strongly recommended in support of the exemption claims, since if the EKAER number has not been requested, it is necessary to clarify during the local inspection on what grounds the transport is exempted from the EKAER application. Since the haulage driver may not be aware of the exemption rules, a lot of time can be saved if the financial guards have ready-made documents and statements explaining the EKAER exemption of the given consignment. (Prantner, 5percado.hu)

In addition to on-the-spot checks, it is important to point out that the tax authority can check tax liabilities related to EKAER at any time within the limitation period. These are called ex-post audits. That is, a shipment announced in 2015 could be checked retrospectively, even until the end of 2020. In contrast to on-site inspections, these inspections are no longer carried out by financial guards, but by tax inspectors. Experience has shown that EKAER obligations are not audited by the tax authority in the context of all-tax audits aimed at the subsequent examination of returns, but are predominantly examined as compliance with the audit of certain tax liabilities. This means that regardless of whether the EKAER reports of a period are subsequently examined by the tax authority, the same period can still be verified for other tax types, and such EKAER investigations do not create a period closed by an audit. In the case of an ex-post inspection, the tax authority has significantly more time compared to the on-site inspection, so the inspectors also have the opportunity to request more information. Furthermore, during such an examination, typically, not a single transport is examined, but the fulfillment of all EKAER obligations fulfilled for a given period is reviewed by the inspectors, who arrive prepared in this case. It is common for an investigation to be initiated on the basis of discrepancies arising from the comparison of EKAER reports and VAT returns for a given period, or even on the basis of the risks indicated by the dispatch service. An example of such a situation may be if XYZ-123 license plates occur in the system (in the absence of real data), the company may not close the EKAER number, or there are no or few applications for ekaer numbers related to intra-Community acquisitions in the EKAER system, despite the large intra-Community purchases indicated in the VAT return.

With the introduction of online data reporting on invoicing, it is expected that the system will be even more integrated than it is now. As a result, it is likely that, with more detailed and related information, the screening of risky taxpayers will become more effective and it is hoped that controls will focus on those market participants with increased suspicions of tax fraud. (Prantner, 5percado.hu)

As a practical example, we can bring the following case. Subsequent audits of taxpayers were carried out on the basis of a local risk analysis. In the period proposed for examination, EKÁER related to a large number of intra-Community purchases by taxpayers, in connection with which, in connection with its resale, it reported deliveries related to the supply of Goods to the Community on the EKAER interface. In his return, he included the acquisition of goods and the supply of goods within the Community. On the basis of the information contained in the internal monitoring system, it was already established during the risk analysis that foreign buyers did not include community product purchases from taxpayers in their returns within the framework of the Union reporting and that no VIES control data was received. In order to review the discrepancies, the local risk analysis recommended conducting an audit of the taxpayer. During the audit, the ex-post department wanted to examine whether the community supply of goods had actually been carried out on the basis of the taxpayer's EKÁER notifications, so it started a query in the HUGO system for the identifiers included in the notifications, which are marked as license plates of goods vehicles. Based on the query, it was determined that the trucks belonging to the license plates included in the taxpayer's application either did not travel at all or on a completely different route at the times specified in the application. During the audit, the revision also examined the taxpayer's documentation related to the transactions, in which the taxpayer did not find the documents supporting the delivery of foreign invoices, and the taxpayer did not have them. Since the taxpayer could not adequately demonstrate that the products acquired from within the Community had left Hungary territory and the information available from the back-end systems on means of transport proved that the delivery did not actually take place, the revision established a tax difference at the taxpayer's expense through an ex post audit. The finding was based on the fact that the taxpayer included his domestic supplies of goods "disguised" as supplies of goods to the Community, both in his EKAER notifications and in his relevant returns. (Köcsky, 2019)

4. Sanction applied

According to the experience of the NAV, the most frequently occurring EKÁER errors are of a unique, administrative nature (for example: failure to comply with the reporting obligation, inclusion of incorrect data, failure to close the EKÁER number, incorrect determination of the value of the goods). However, administrative problems are predominantly due to human error or a lack of information. Typically, the tax authority is also more understanding of such administrative errors. In connection with minor, administrative, one-off or infrequent errors, the tax authority – appreciating all the circumstances of the case – often sets a low default fine (HUF 0-100,000) independent of the value of the goods.

In contrast to the above, in cases where errors in EKAER reports are due to a systemically poorly managed problem, the tax authority is less inclined to refrain from imposing a fine. In this case, the incidence of errors is much higher and the error could be avoided by a system-wide check. In such cases, much higher fines are already imposed, so it is worth designing the EKAER system in such a way that, although human error and error in the absence of information can never be completely avoided, the company should allow the complete and flawless request of EKAER numbers at the system level. This can be facilitated and supported by regular training of the employees concerned and by appropriate internal regulations. Unfortunately, the authority punishes the same with a higher amount if errors due

to human error or lack of information occur frequently or on a recurring basis. In such cases, the tax authority cannot dispense with the imposition of a fine due to the large number of errors. In connection with errors that can be caused on several occasions or due to systemic problems, the maximum fine rate of 40% is rarely imposed, instead the tax authority sets the EKAER fine at typically 4-5% of the value of the goods. Nevertheless, it can also be a very high amount if the total value of the goods is also high.

If the defects occur repeatedly and repeatedly, or if the errors are due to deliberate system circumvention activities, the tax authority may set the fine at a higher rate of the value of the goods, typically up to 15%.

At the same time, businesses have realised that it is worth reviewing the EKAER system even with the involvement of an external expert, because in the future they can save much more by systematically excluding the possibility of repeated and recurrent errors, so the incidence of fines of this amount is, in our experience, quite low. (Szabó, 5percado.hu)

The Act about the tax procedure (Art.) Section 226(2) fundamentally distinguishes the complete failure (failure) of the EKAER reporting obligation from the case of otherwise made but for some reason inadequate reports, so the classification of certain unlawful facts must always be carried out carefully. According to the facts of a specific legal case, the taxpayer had previously declared the delivery of 5,000 kg of firewood to the EKAER system, whereas the tax authority, after considering the cargo, found that the quantity actually transported was 21,787 kg, it could be concluded that the taxpayer, who had been engaged in the sale of firewood for several years, should have noticed a discrepancy of more than 15 tons during loading, also taking into account that that the transport was carried out by the taxpayer himself, he did not entrust the transport to a third party. In view of the above, the tax authority found, on the basis of the evidence revealed, that the discrepancy was not caused by the fact that the taxpayer presented incorrect data (incorrect reporting) (due to an administrative error), but by the fact that the taxpayer, despite the facts and information available to him, reported to the tax authority a significantly smaller quantity than it actually had. The correct legal classification of a breach committed by a taxpayer is therefore to report with false data content. According to the experience of law enforcement practice, violations of the law are typically detected in connection with erroneous, incomplete or false reports, while it is relatively rare to fail to comply with the EKAER reporting obligation. From all this, it can be logically concluded that taxpayers are typically aware of their reporting obligation, only the filing is performed incorrectly for certain reasons. In general, it can also be said that (although the legislator defines the legal consequences after each of the facts in a uniform manner), due to erroneous, incomplete reporting, due to the lower material gravity of these infringements, a lower default fine is typically imposed, while the failure to report false data or to report EKÁER provides for the imposition of a higher fine due to the increased tax interest. However, it is important to emphasize that if, during its audit, the tax authority reveals several violations of the law with different facts in connection with the EKAER reporting obligation (e.g. some of the taxpayer's reports were incomplete, while the other part was false), it will impose the fine for these violations not in one item, but separately (for each of the different facts). This ensures that the reasonableness of the assessment, that is to say, the merits of the amount of the fine relating to certain infringements of a different classification, can be objectively and unambiguously assessed, since the different situations differ not only from the nature of the taxpayer's conduct and the extent of the tax harm caused, but also (as follows from the foregoing, in relation to them) from the point of view of the circumstances to be considered. For example, in a specific case in which the taxpayer has committed several infringements that differ in time and in the nature of the failure to comply with the failure to comply with the notification obligation related to the EKAER (failure to record arrival at the landing address) and with false data content (different registration number), on the one hand, the

taxpayer had to be assessed separately, as well as their facts, both in terms of the amount of the default fines that may be imposed in relation to them, taking into account the facts and adapting the criteria for discretion under the Act to the seriousness of each failure.

In one case, for example, the taxpayer tried to be exempted from liability for failure to comply with the reporting obligation on the grounds that the goods were sent to the taxpayer by the contracting partner without ordering, under his own responsibility, without having been notified in advance, and thus was not in a position to comply with his reporting obligation. However, the court held in its judgment that since "the plaintiff took over the goods sent to him, he sold them, so he could no longer claim that he had received them without an order and therefore could not comply with his reporting obligation. (...) The defendant rightly argues that organisations involved in economic life must organise their economic activities and business in such a way that they can fulfil their legal obligations.' It can be seen, therefore, that in the latter case the plaintiff pleaded lack of self-fault in order to be exempted from liability, an argument which, however, the court did not find acceptable in view of the fact that the plaintiff would have had the option of refusing to accept and return the goods sent to him without order. The taxpayer did not exercise this option and "thereby exposed himself to the risk of EKAER engaging in unreported transport," the court said in the grounds of its judgment.

On the basis of the above, it can be stated that an important demarcation aspect in the examination of fault is the possibility of the taxpayer's involvement in the elimination (prevention) of the offending condition. In the case described, the taxpayer could have, at its own discretion, averted the omission resulting from the conduct of the other party. If, on the other hand, the taxpayer (e.g. by receiving goods sent without an order) voluntarily exposes himself to the risk of participating in transport without EKAER notification, he must bear the consequences. (Fodor, 2019a)

5. Practical experiences in relation to legal remedies

One of the biggest problems of the EKAER system is that the obligations related to it cannot be self-verified. So if the company notices after closing the EKAER number that something has been reported wrong (for example, the license plate number or the sender's data), unfortunately it is no longer possible to correct it. In such cases, however, it is worth making a note similar to the self-test report, by which the company certifies that the defect was detected and would have corrected it if the system had allowed it to do so. This demonstrates good faith and compliance, which may be invoked later in a possible subsequent appeal procedure. Moreover, the appeal procedures during the EKAER audits are carried out in the same way as in the examination of other tax liabilities: observations may be made on the minutes, and an appeal may be lodged on the decision. If the tax authority has identified any error in connection with the EKAER system, it is worthwhile for the taxpayer to identify the cause of the error and present it to the tax authority already in the observation, so that it can appreciate the facts and circumstances in favor of the taxpayer when imposing the fine. In the comment, the taxpayer can demonstrate that he has done everything possible to follow the legal requirements and acted in good faith when applying for EKAER numbers. If technical problems have prevented the application for an appropriate EKAER number, it may also be worth presenting this in the comment, especially if these technical problems have since been resolved by the taxpayer. In many cases, comments on the minutes are heard by the tax authorities and taken into account when imposing a fine. For this reason, it is definitely worth making a comment, provided that it is indeed possible to list aspects along which the company's flawed EKAER practice so far can be defended. (Szabó, 5percado.hu)

The factual basis of the tax authority's findings regarding the failure to comply with the EKAER notification obligation or its incorrect, incomplete, or untrue data content is usually difficult to dispute, and taxpayers typically acknowledge the fact of the omission and the fact of erroneous, incomplete, untrue filings. In most cases, their appeal is based on the lack of fault, i.e., that they were not responsible, for they acted as might be expected in the given situation. However, since neither the Art. nor the EKAER Regulation provides for the possibility of exoneration for debtors in connection with the obligation to notify, the application of the tax authority's law initially took the principled position of "no-fault taxpayer liability", according to which the factual finding of a violation of the law "automatically" entailed a certain amount of default the imposition of a fine. In this context, the tax authority also initially did not allow room for the relatively frequent reference that the erroneous or untrue reporting was due to the conduct of the taxpayer's foreign partner or the carrier beyond the taxpayer's control (e.g. incorrect or inaccurate reporting, failure to inform the taxpayer, etc.), i.e. the unlawful condition was not actually caused by the taxpayer's actions or omissions. Taxpayers could not avoid imposing a default fine under previous tax practice by relying on the above or similar circumstances. However, a fundamental change of approach to the examination of fault was brought about by the emerging judicial practice, according to which the court did not consider the carrier's default to be appreciable to the plaintiff taxpayer. (Fodor, 2019b)

6. Final Thoughts

We can say that the legal institution has passed the test well in the years since its introduction and has even served as a model, since in Poland the SENT system for reporting and monitoring road transports was introduced along this model. This finding is supported by the fact that by the end of 2019, 95,893 primary users and 59,686 secondary users had registered in the Electronic Road Traffic Control System (EKAER). (NAV Évkönyv, 2019a)

As I detailed earlier, in the EKAER, new obligors and carriers of risky products subject to the notification obligation must provide risk collateral. By the end of December 2019, those affected had paid more than HUF 7.3 billion for this purpose, of which the NAV accounted for almost HUF 931 million for the registered tax debts of taxpayers. The amount of collateral was 23 percent higher and the amount accounted for debts was 44 percent higher than a year earlier. (NAV Évkönyv, 2019b)

In 2019, 13.8 million customer and 72.4 thousand official announcements were recorded in the EKAER. The NAV inspected 88.4 thousand vehicles and their transports in 164,747 inspections. The acting staff revealed 25 023 breaches related to reporting or failing to report. In connection with ekaer, the NAV carried out a total of 482 tax audits, taking together the audit of tax liabilities and the tests carried out using system data. The established net tax difference amounted to HUF 18.2 billion, of which the revisions initiated on the basis of recommendations yielded a finding of HUF 6.9 billion. In addition to tax audits, 29,496 compliance investigations were also carried out. Taxpayers who did not follow the law received a total of HUF 1.2 billion in default fines. (NAV Évkönyv, 2019c)

In conclusion, we can state that since the introduction of the online era, the so-called VAT tax gap in Hungary has decreased by 12 percentage points in five years already by 2018, and the rate of tax evasion in the European Union has shrunk to single digits in an exemplary manner. Norbert Izer, State Secretary for Taxation, stated on the basis of a commission study (Study and Reports on the VAT Gap in the EU-28 Member States, 2019) that the estimated VAT gap in Hungary , i.e. the VAT revenue lost from the budget, decreased from 21 percent in 2013 to 9 percent in 2018. The biggest decrease was achieved from 2017 to 2018, when the tax gap could approach 9 percent from 13.9 percent, according

to preliminary estimates by Commission experts. The tax evasion rate of less than ten per cent is exemplary not only because it is below the EU average, but also because such a clearing has been achieved among market participants in a very short period of time. The beginning of the online era of economic whitening dates back to September 1, 2014, as the use of an online cash register is mandatory from then on. The following year, the EKÁER production plant detailed in my article was launched, and then on July 1, 2018, the third pillar of the fight against tax fraud debuted: the system of online invoicing, which played a significant role in reducing the tax gap rate to 9 percent in 2018. (kormany.hu)

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