Case No: 73632
Event No: 710501
Dec No: 193/14/COL

EFTA SURVEILLANCE AUTHORITY DECISION

of 8 May 2014

concerning certain amendments to Act No 50/1988 on Value Added Tax applicable to customers of Icelandic data centres

(Iceland)

The EFTA Surveillance Authority ("the Authority"),

HAVING REGARD to the Agreement on the European Economic Area ("the EEA Agreement"), in particular to Article 61(1) and Protocol 26,

HAVING REGARD to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ("the Surveillance and Court Agreement"), in particular to Article 24,

HAVING REGARD to Protocol 3 to the Surveillance and Court Agreement ("Protocol 3"), in particular Article 1(2) of Part I and Articles 7(5), 13 and 14 of Part II.

HAVING called on interested parties to submit their comments pursuant to those provisions[1] and having regard to their comments,

Whereas:

I. FACTS

1 Procedure

(1) On 2 September 2011 (Event No 607650), the Icelandic authorities notified to the Authority, for reasons of legal certainty, amendments to Act No 50/1988 on Value Added Tax ("VAT Act") affecting the data centre industry in Iceland. The amendments had already entered into force by the time they were notified to the Authority.

(2) By letter dated 21 December 2011 (Event No 610293), the Authority informed Iceland that it considered issuing a suspension injunction, pursuant to Article 11 of Part II of Protocol 3, with regard to the notified VAT Act amendments and invited the Icelandic authorities to provide comments. The Icelandic authorities subsequently submitted their comments and observations (Events No 622893, 632551 and 638241).

[1] EFTA Surveillance Authority Decision No 3/13/COL, of 16.1.2013, *to initiate the formal investigation procedure concerning certain amendments to Act No 50/1988 on Value Added Tax applicable to customers of Icelandic data centres* was published in the Official Journal of the European Union on 18.4.2013, OJ C 111, p. 5 and the EEA Supplement No. 23, 18.4.2013, p. 1.

(3) By letter dated 16 July 2012 (Event No 640476) the Authority requested additional information regarding the VAT amendments and their implementation. The Icelandic authorities responded to the Authority's request by letter of 11 September 2012 (Event No 646375). On 5 December 2012, the Icelandic authorities submitted a letter summarising their position regarding VAT rules on data centre services and on the import of servers (Event No 655502).[2]

(4) The Authority decided, by Decision No 3/13/COL of 16 January 2013, to initiate the formal investigation procedure into certain amendments to Act No 50/1988 on Value Added Tax applicable to customers of Icelandic data centres ("Decision No 3/13/COL" or "the opening decision").

(5) By letter dated 24 January 2013 (Event No 660815), the Icelandic authorities pre-notified to the Authority proposed changes to the Icelandic VAT Act. The goal of the amendments was to repel the provisions preliminarily found to constitute incompatible aid in the Authority's opening decision. The Authority, by letter dated 7 February 2013 (Event No 661383), informed the Icelandic authorities of its preliminary assessment that the pre-notified measures did not constitute state aid according to Article 61(1) of the EEA Agreement.

(6) On 18 April 2013, Decision No 3/13/COL was published in the Official Journal of the European Union and in the EEA Supplement. Interested parties were given one month to submit comments on the Authority's opening decision. The Authority received comments from one interested party, *i.e.* the Norwegian ICT industry (*IKT Norge AS*), by email dated 27 May 2013 (Event No 678429) and letter dated 15 August 2013 (Event No 680377).

(7) Finally, by letter dated 15 August 2013 (Event No 680433), the Icelandic authorities submitted the information and clarifications requested in Decision No 3/13/COL and formally informed the Authority of the measures taken to abolish the provisions of the VAT Act preliminarily found to constitute incompatible state aid.

2 Description of the measures

2.1 General

(8) In Decision No 3/13/COL the Authority assessed certain amendments to the Icelandic VAT Act affecting the data centre industry in Iceland. The amendments were adopted by the Icelandic Parliament in the form of Act No 163/2010 of 18 December 2010 ("Act No 163/2010") that entered into force on 1 May 2011. The following amendments were made to the VAT Act with the entry into force of Act No 163/2010:

(i) Non-imposition of VAT on electronically supplied services

(ii) Non-imposition of VAT on supply of mixed services to customers of data centres

(iii) VAT exemption for import of servers

(9) The Decision to open a formal investigation did not cover the first measure, and also not the second measure in so far as that measure concerned mixed services that are ancillary to the electronically supplied services. In this context, "ancillary" refers to services that are inseparable from and inherently linked to the electronically supplied services, *i.e.* cannot be invoiced separately and are necessary for the supply and delivery of the electronically

[2] For a more detailed description of the correspondence, see paragraphs 1-6 of the Authority's Decision No 3/13/COL.

supplied services. That means that services that are invoiced separately and can be delivered on a standalone basis, such as repair, storage, maintenance and consultancy services, cannot be considered as ancillary services. In the following, the measures not covered by the Decision to open a formal investigation are mentioned only in order to explain the context.

2.2 Legal framework: The Icelandic system of value added tax

(10) According to Article 1 of the VAT Act, "[a] value added tax shall be paid to the Treasury of all inland transactions at all stages, as well as of imports of goods and services, as provided for in this Act." Further, Article 2 of the VAT Act specifies: "The tax liability covers all goods […] and services". In line with Article 3, taxable persons are "those who sell or deliver goods or valuables on a professional or independent basis or perform taxable labour or service."

(11) Article 11 provides: "The taxable turnover of a registered party includes all sales or deliveries of goods and valuables against payment, as well as sold labour and services". Based on Article 12 of the VAT Act, transactions involving certain goods and services are not included in the taxable turnover.

(12) The basis for calculation of value added tax (VAT) on imports of goods is the customs price of the taxable good, which is determined in accordance with the provisions of the Customs Act No 88/2005, as amended. Article 36 of the VAT Act specifies certain exemptions from VAT upon importation, such as duty-free goods; goods exempted on the basis of international agreements; certain aircraft and ships; works of art; written material sent without payment and not for business purposes to scientific institutions, libraries and public institutions; and the import of goods (other than alcohol and tobacco products) under a specific value.

(13) The currently applicable VAT rate in Iceland is 25.5%, except for certain goods and services listed in Article 14(2) of the VAT Act, for which a reduced rate of 7% is applicable.

2.3 The amendments to Act No 163/2010 notified for legal certainty

2.3.1 General

(14) The Icelandic authorities notified for legal certainty amendments to the VAT Act in the form of three different measures which had already been put in place by means of Articles 4 and 12 of Act No 163/2010: (1) non-imposition of VAT on transactions involving services supplied electronically to non-residents; (2) non-imposition of VAT on transactions involving the supply of mixed services by data centres in Iceland to non-residents and (3) VAT exemption for the import of servers and similar equipment by non-residents for use in data centres in Iceland.[3]

2.3.2 Non-imposition of VAT on electronically supplied services

(15) According to Article 12(1) of the VAT Act,

> "*Taxable turnover does not include:*

[3] In this notification, the Icelandic authorities referred to all three measures as VAT exemptions. However, in the view of the Authority, following the logic of the VAT system, the measures involving electronically supplied services and mixed services should rather be referred to as being subject to a 'zero VAT rate', as the suppliers of those services, the Authority understands, have a right to deduct input VAT paid on purchases relating to the given supply.

1. An exported good as well as labour and services provided abroad. […]

10. Sales of services to parties neither domiciled nor having a venue of operations in this country, provided that the services are wholly used abroad. […]Sales of services to parties neither domiciled nor having a venue of operations in this country are, in the same manner, exempt from taxable turnover, even if the service is not wholly used abroad, provided the purchaser could, if its operations were subject to registry in this country, count the value added tax on the purchase of the services as part of the input tax, cf. Article 15 and 16. […]"

(16) The original list of services falling within the scope of Article 12(1) point 10 of the VAT Act was amended to exclude from taxable turnover:[4]

i) *"[…] data processing and the transfer of information"*[5];

ii) *"electronically supplied services; these services shall always be considered to be used where the buyer of the services has his residence or a place of business; the same applies to the sale by data centres of mixed services to buyers with residence abroad and not with a permanent establishment in this country."*[6]

(17) As a result of these amendments, non-resident customers of data centres could purchase electronically supplied services in Iceland without paying Icelandic VAT.[7]

2.3.3 Non-imposition of VAT on supply of mixed services to customers of data centres

(18) Act No 163/2010 also amended Article 12(1) point 10 of the VAT Act to exclude from taxable turnover mixed services provided by data centres to customers established abroad. These services are considered to be used abroad and, thus, are not subject to Icelandic VAT.

(19) The Icelandic authorities have explained that mixed services are inherently linked to, and inseparable from, the provision of electronically supplied services of data centres, but do not fall under this term. As examples, the Icelandic authorities mentioned hosting, supervision and the cooling of servers. However, unlike the concept of "electronically supplied services", there is no clear definition in the applicable laws, regulations or guidelines of the term "mixed services" in Article 12(1) point 10 of the VAT Act.

2.3.4 VAT exemption for import of servers

(20) The new Article 42 A of the VAT Act stated that:

"[i]mportation of servers and similar equipment shall be exempted from VAT under the condition that the owners are residents in another Member State of the EEA, EFTA or the Faroe Islands and do not have a permanent establishment in Iceland within the meaning of Article 3, point 4 of Act No 90/2003 on Income Tax. Similar

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4 cf. Article 4 of Act No 163/2010.

5 Article 12(1)10(c) VAT Act.

6 Article 12(1)10(d) VAT Act. The Icelandic authorities have explained that the term 'computer services' only covered a limited scope of services provided electronically and that the purpose of the amendment was to extend this exemption to a wider range of electronically supplied services.

7 According to the official definition, provided by the Icelandic authorities, the concept of "electronically supplied services" "encompasses a service delivered over the Internet or another network, automatically with a minimum of human interference where the use of information technology is a necessary part of the delivery".

equipment shall mean equipment which forms an integral part of the functionality of the servers and can only be used by the real owner of the server."

It was made clear that this provision would be subject to revision after two years from the time it entered into force.

(21) According to this provision, non-resident owners of servers were exempted from paying VAT on the import of servers and similar equipment into Iceland, provided the following additional requirements were cumulatively fulfilled:[8]

- The owner of the server(s) and similar equipment had to be a taxable person for VAT transactions in his country of residence.
- The taxable activity of the owner of the server(s) and similar equipment would be subject to registration and taxable in Iceland according to the VAT Act, if it was operated in Iceland.
- Servers and similar equipment had to be imported into Iceland exclusively to be used and located in a data centre with which the owner conducts business.
- Servers and similar equipment had to be exclusively used by the owner, and not in any other operation of the data centre.
- The processing of servers and similar equipment had to be used abroad or for the benefit of persons who do not have a residence or a permanent establishment in Iceland.

(22) The Icelandic authorities explained that "similar equipment" necessary for the functioning of a server can *inter alia* be computers, cables and other electronic devices. Pursuant to the Guidelines issued by the Ministry of Finance to the Director of Customs on 29 June 2011 ("the Guidelines"), servers fall under tariff number 8471 and similar equipment under tariff number 8517.

(23) The Icelandic authorities clarified that the owners of the servers could be large computer companies that produce the servers themselves and smaller companies that decide to store their servers purchased abroad in Iceland. Therefore, the exemption covered various situations. Furthermore, the Icelandic authorities explained that it is likely to be considered that the place of business (so-called "permanent establishment" in the terminology of the Act on Income Tax No 90/2003) of a customer of a data centre with facilities such as offices, machinery or equipment situated in the Icelandic territory is Iceland.[9] However, in the view of the Icelandic authorities, only the operation of large companies would constitute a "permanent establishment" and therefore trigger the VAT and income tax liability in Iceland.[10]

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[8] See Article 42 A of the VAT Act.

[9] In this context, there was a proposal submitted by the representative of the data centre industry in Iceland to modify the Act on Income Tax to the effect that imported servers placed in Icelandic data centres and owned by non-residents would not constitute a permanent establishment in Iceland. This proposal was however not taken up by the Parliament.

[10] See the examples given by the Icelandic authorities in their e-mail of 5.4.2011, p. 5: a network server company from an EU Member State hosting its servers in a data centre company located in Iceland and purchasing data storage services from the Icelandic data centre would be considered to have a permanent establishment in Iceland and thus, based on the current rules in force, would be subject to VAT (cf. Article 42A of the VAT Act). However, an accounting office from an EU Member State, the core operation of

(24) According to the Icelandic authorities, the aim of the amendments was to ensure that the business environment of data centres in Iceland, in terms of VAT treatment, was comparable with that of their competitors operating in the EU. Furthermore, the objective was to enhance the competitiveness of the Icelandic data centres and promote new use of Iceland's energy resources for the needs of the data centre industry. According to the Icelandic authorities, the exemption from VAT on the import of servers is inherent in the Icelandic VAT system, as pursuant to Article 36(1) of the VAT Act there exists a possibility to exempt specified imported goods from VAT. The Icelandic authorities also argued that most (if not all) comparable VAT systems have exemptions from their scope of application which are based on economic facts and considerations, and are in line with the nature and general structure of the tax system

2.4 Beneficiaries

(25) The Authority identified three groups of potential beneficiaries of the notified measures:

a. Any customer of Icelandic data centres, that is established abroad and does not have permanent residence in Iceland;

b. Importers of servers and similar equipment to Iceland for use in data centres; and

c. Indirectly: data centres established in Iceland.

2.5 Duration

(26) The amendments to the VAT Act entered into force on 1 May 2011. The Icelandic authorities did not provide any indication as to the duration of these exemptions. Article 42A was however subject to revision after two years from the time it entered into force, i.e., by May 2013.

3 Grounds for initiating the formal investigation procedure

(27) In Decision No 3/13/COL, the Authority assessed preliminarily whether the aforementioned amendments to the Icelandic VAT Act constituted state aid and, if so, whether the aid was compatible with the state aid provisions of the EEA Agreement.

(28) The Authority concluded that the first measure, *i.e.* the non-imposition of VAT on non-resident taxable customers of services supplied electronically from Iceland, was in line with the general principle of tax neutrality in the Icelandic VAT system and throughout the EEA. Therefore, it did not constitute state aid within the meaning of Article 61(1) of the EEA Agreement.[11] Moreover, the same was held to apply to mixed services to the extent they could be considered as being ancillary to the electronically supplied services.

(29) However, in the preliminary view of the Authority, the two other measures were found to involve state aid within the meaning of Article 61(1) of the EEA Agreement. The following aspects were identified in Decision No 3/13/COL:

i) The granting of a tax exemption involved a loss of tax revenues which is equivalent to the granting of state resources. Both measures involved loss of revenue for the Icelandic State in the form of VAT not being charged and therefore a transfer of state resources.

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which is not to host data on servers would not be determined to have permanent establishment in Iceland, even if it moved its servers to an Icelandic data centre for the purpose of storage.

[11] For a more detailed assessment, see paragraph 50 of the Authority's Decision No 3/13/COL.

ii) The measures conferred an advantage upon the customers of Icelandic data centres by relieving them of charges that would normally be borne from their budgets. Moreover, by exempting customers of data centres from some normally levied VAT, the costs of the customers are reduced and therefore it becomes more attractive for these undertakings to conduct business with data centres in Iceland

iii) The non-imposition of VAT for mixed services and the VAT exemption for the import of servers were *prima facie* selective measures since they only benefitted a selective group of undertakings. Furthermore, these two measures did not appear to be an adaptation of a general scheme particular to the nature and overall structure of the Icelandic VAT system. On the contrary, the amendments had been adopted with the economic and political objective of attracting foreign undertakings to purchase data centre services in Iceland and consequently improving the competitiveness of the Icelandic data centre industry. These considerations, in the Authority's preliminary opinion, did not form part of the logic and general nature of a consumer tax system.

iv) Finally, the Authority concluded that the measures were liable to distort competition. The measures had been deliberately introduced as a means of attracting customers from the EEA and beyond to purchase data centre services in Iceland. Since those customers are undertakings operating in competition with other entities in their respective sectors across the EEA, the measures threatened to distort competition and affect trade within the EEA.

(30) Moreover, the Authority preliminarily concluded that the derogations under Article 61(2) or (3) of the EEA Agreement were not applicable to the aid in question. Consequently, following its preliminary assessment, the Authority had doubts whether the VAT exemption for the import of servers and similar equipment by non-resident customers for the use in the Icelandic data centres, and non-imposition of VAT on transactions involving mixed services provided to non-resident customers of the Icelandic data centres could be deemed compatible under Article 61(3)(c) of the EEA Agreement.

4 Comments by the Icelandic authorities

(31) Shortly after the adoption of Decision No 3/13/COL, the Icelandic authorities informed the Authority that they intended to present a Bill of Law to repeal the provisions preliminarily found to entail incompatible state aid. The Bill was passed by the Parliament on 13 March 2013 and was effective immediately; cf. Act No 24/2013. The new Act included a general amendment to Article 43(3) of the VAT Act, which added the importation by foreign companies of goods, to the rules regarding the refund of VAT to foreign companies. According to the Icelandic authorities, the amendment is consistent with the general purpose of the VAT Act, which is that the final tax should be paid by the final consumer of the goods or services in question.

(32) According to information from the Directorate of Customs, concerning the number of imports subject to the VAT exemption for the import of servers in accordance with Article 42 A of Act 50/1988, there had only been one incident subject to the exemption. The total VAT amount in that case was 990.445 ISK. The Directorate of Customs also confirmed that there had been no further exemption provided under the aforementioned provision.[12]

(33) Furthermore, the Icelandic authorities provided information from the Directorate of Internal Revenue concerning potential sale of *"mixed services"* that are not ancillary to

[12] See letter by the Directorate of Customs, dated 14 December 2012.

electronically supplied services, in accordance with Article 12(1) point 10 of Act No 163/2010, by operating data centres. The following table demonstrates the taxable VAT turnover of the registered data centre businesses in Iceland, *i.e.* those entities registered as "*atvinnugrein 63.11.0 Gagnavinnsla, hýsing og tengd starfsemi"* (data processing, hosting and related activities) by Statistic Iceland, for the period 1 May 2011 – 30 June 2013:[13]

Company name:	**Year 2011**	**Year 2012**	**Year 2013**
Verne Real Estate II hf.			
Taxable VAT turnover	X	X	X
Zero rated VAT turnover	X	X	X
Tölvuþjónustan SecureStore ehf.			
Taxable VAT turnover	X	X	X
Zero rated VAT turnover	X	X	X
Datacell ehf.			
Taxable VAT turnover	X	X	X
Zero rated VAT turnover	X	X	X
Videntifier Technologies ehf.			
Taxable VAT turnover	X	X	X
Zero rated VAT turnover	X	X	X
THOR Data Center ehf.			
Taxable VAT turnover	X	X	X
Zero rated VAT turnover	X	X	X

(34) According to the Icelandic authorities, the majority of the zero rated VAT turnovers are most likely ordinary export. However, the compiled figures in the table above do not specifically reveal which part of the VAT turnover may relate to *"mixed services"*.

(35) Finally, the Icelandic authorities stressed that the potential aid elements in question seem to be of an insignificant amount. According to the Icelandic authorities, only one undertaking seems to have benefitted from the provisions VAT exemption for the import of servers of the now abolished Article 42 A of the VAT Act. The Icelandic authorities acknowledged that it could not be excluded that some undertakings may have benefitted from the provisions of the now abolished part of Article 12(1) point 10 on mixed services. However, in the view of the Icelandic authorities, it does not serve any useful purpose to undertake further measures in order to confirm potential aid elements on grounds of the abolished Articles 12 and the part of Article 4(b) which covered mixed services, of Act 163/2010, due to the insignificant amounts in question as demonstrated in the table above.

5 Comments from IKT Norge AS

(36) The Authority received comments from an interested third party, *i.e.* IKT Norge AS. IKT Norge, on behalf of the Norwegian ICT industry, submitted that it was not correct to conclude that non-resident businesses were afforded economic advantages compared with resident businesses in Iceland as regards the exemption on import of servers. According to IKT Norge, there is also no advantage with regard to the non-imposition of VAT for data centre services when it comes to customers that engage in taxable activities. However, as regards customers who do not engage in taxable activities, IKT Norge considered that the

[13] All figures are in ISK.

Icelandic amendment may involve an economic advantage for customers who are not resident in Iceland.

(37) According to IKT Norge, the legislative amendment ensured equal treatment for resident and non-resident businesses and the introduction of such an exemption was more effective and better suited than a refund scheme.

(38) Moreover, according to IKT Norge, the condition that only entities that conduct a type of business that would have entitled them to a tax deduction in Iceland, if they had been resident on Iceland, may invoke the exemption, ensures that non-resident businesses never achieve any savings in relation to the same type of business resident on Iceland. It is therefore difficult, according to IKT Norge, to see that the amendment affords economic advantages on any of the alleged beneficiaries.

(39) As regards the non-imposition of VAT on supply of mixed services to customers of data centres, IKT Norge agrees with the Icelandic authorities that it is difficult to split up data centre's services and tax these separately. According to IKT Norge, in order to achieve equal framework conditions for data centres in all countries, it would be most sensible to define all data centre services as export with an associated obligation for the buyer to pay VAT on the entire charge from the data centre.

(40) Finally, according to IKT Norge it should be examined more closely how the buyer is treated in the EU Member States. If the general rule here is such that the entire payment from the Icelandic data centre is subject to taxation in each buyer country, IKT Norge cannot see that the Icelandic amendment involves any economic advantage for this group. On the contrary, in that case the non-imposition of VAT will be a condition for avoiding double taxation for these customers.

II. ASSESSMENT

1 The presence of state aid within the meaning of Article 61(1) EEA

(41) Article 61(1) of the EEA Agreement reads as follows:

"*Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement.*"

(42) This implies that a measure constitutes state aid within the meaning of Article 61(1) of the EEA Agreement if the following conditions are cumulatively fulfilled: the measure (i) is granted by the State or through State resources; (ii) confers an economic advantage to the beneficiary; (iii) is selective; (iv) is liable to affect trade between Contracting Parties and is liable to distort competition.[14]

(43) In the following chapters the amendments to the Icelandic VAT Act preliminarily found to constitute incompatible state aid in Decision No 3/13/COL, *i.e.* (i) the VAT exemption for the import of servers and similar equipment by non-resident customers for the use in Icelandic data centres, and (ii) the non-imposition of VAT on transactions involving mixed services provided to non-resident customers of the Icelandic data centres to the extent those services were not ancillary to the electronically supplied services and therefore must be considered to have their place of delivery in Iceland, will be assessed with respect to these criteria.

1.1 State resources

(44) The aid measure must be granted by the State or through state resources. The granting of a tax exemption involves a loss of tax revenues which is equivalent to the granting of state resources.[15] The measures introduced with the entry into force of Act No 163/2010 involve loss of revenue for the Icelandic State in the form of VAT not being charged.

1.2 Economic advantage

(45) In order to constitute state aid within the meaning of Article 61(1) of the EEA Agreement, the measure must confer an advantage upon an undertaking. Undertakings are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed.[16] Economic activities are activities consisting of offering goods or services on a market.[17]

(46) The measures conferred upon the direct beneficiaries an advantage by relieving them of charges (non-payment of VAT for purchasing services and importing servers) that would normally be borne from their budgets.

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[14] According to settled case-law, classification as aid requires that all the conditions are cumulatively fulfilled, see Case C-142/87 *Belgium v Commission ("Tubemeuse")* [1990] ECR I-959.

[15] See point 3(3) of the Authority's State Aid Guidelines on Business Taxation, Case 248/84 *Germany v Commission* [1987] ECR 4013 and Case E-6/98 *Kingdom of Norway v EFTA Surveillance Authority* [1999] EFTA Court Reports, paragraph 34.

[16] Case C-41/90 *Höfner and Elser* v *Macroton* [1991] ECR I-1979, paragraphs 21-23 and Case E-5/07 *Private Barnehagers Landsforbund* v *EFTA Surveillance Authority* [2008] Ct. Rep. 61, paragraph 78.

[17] Case C-222/04 *Ministero dell'Economica e delle Finanze* v *Cassa di Risparmio di Firenze SpA* [2006] ECR I-289, paragraph 108.

(47) As noted in Decision No 3/13/COL, the payment of taxes is an operating cost incurred in the normal course of an undertaking's economic activity, and normally borne by the undertaking itself. An exemption from a tax or the non-imposition of such confers an advantage on the eligible companies because their operating costs are reduced in comparison with others that are in a similar factual and legal position.

(48) As regards services, that are considered to be supplied in Iceland, VAT would in the absence of an exemption have been levied on the buyer of such services. Therefore, by the non-imposition of VAT, the customers of mixed services were in principle afforded an economic advantage in the form of a lower purchase price for the respective services.

(49) Companies from other EEA States and the Faroe Islands that import servers and similar equipment to Iceland for their use in Icelandic data centres were afforded an economic advantage in the form of lower costs for the computer equipment imported to Iceland due to the relief from the payment of the Icelandic VAT, as described above. In the normal course of business, VAT would have been levied on those goods upon their entry into the Icelandic customs territory. The owners of such servers and similar equipment imported to Iceland were, therefore, provided with an economic advantage over other importers of goods.

(50) By exempting customers of data centres located in Iceland from VAT, the costs of the customers were reduced. Therefore, it became more attractive for these undertakings to conduct business with data centres in Iceland.

1.3 Selectivity

(51) In order to constitute state aid within the meaning of Article 6l of the EEA Agreement the measure must be selective in that it favours "*certain undertakings or the production of certain goods*".

(52) The assessment of selectivity requires determining whether under a particular legal regime a national measure favours certain undertakings or the production of certain goods in comparison with others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation.[18] The concept of state aid does not refer to measures which differentiate between undertakings and which are, *prima facie*, selective where that differentiation arises from the nature or the general scheme of the system of which they form part.[19]

(53) In the following the Authority will assess whether the amendments constitute selective measures and, the case being, whether they fall within the logic and general nature of the VAT system in Iceland.

1.3.1 The notified amendments constitute prima facie selective measures

(54) The non-imposition of VAT for mixed services benefitted only certain groups of undertakings, namely, non-resident customers of data centres located in Iceland.

(55) The exemption from VAT for the import of servers to be used in Iceland by foreign customers also benefitted a selective group of undertakings. It only concerned foreign undertakings that import their own servers into Iceland to be used in data centres located in Iceland.

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[18] Joined Cases C-106/09 P and C-107/9 P *Commission and Spain v Government of Gibraltar and United Kingdom* [2011] ECR I-11113, paragraph 75.

[19] Ibid paragraph 145.

(56) The fact that the number of undertakings able to claim entitlement under a measure is large, or that the measure covers an entire sector, is not sufficient to call into question the selective nature of that measure and, therefore, to rule out its classification as state aid.[20] Moreover, the fact that the measure in question is governed by objective criteria of horizontal application does not call into question its selective character, since it can serve only to show that the aid at issue falls within an aid scheme and is not individual aid.[21]

(57) The Authority considers that all undertakings which receive services in Iceland from companies located in Iceland, or import their own goods to be used in Iceland, are in the same legal and factual position as the identified beneficiaries of the notified VAT amendments. Other companies receiving services from Icelandic undertakings or importing own goods necessary for carrying out their business activities are subject to generally applicable VAT rules. The Authority is of the view that there is no reason to conclude that the beneficiary undertakings were in a different legal and factual situation to the other undertakings subject to VAT taxation in Iceland. Therefore, the Authority concludes that the notified amendments were selective.

1.3.2 Logic and general nature of the scheme

(58) A specific or selective tax measure can nevertheless be justified by the logic of the tax system.[22] Measures intended partially or wholly to exempt firms in a particular sector from the charges arising from the normal application of the general system can constitute state aid if there is no justification for the exemption on the basis of the nature and logic of the general tax system.[23] The Authority must assess whether the different treatment of undertakings as regards advantages or burdens introduced by the tax measure in question arise from the nature or the general system of the overall scheme which applies. Where such a differentiation is based on objectives other than those pursued by the overall scheme, the measure in question would in principle be considered selective.

(59) According to established case law, it is for the EFTA State that has introduced different treatment between undertakings to demonstrate that it is justified by the nature and general scheme of the system in question.[24] The Authority must thereafter consider whether an amendment to the tax rules meets the objectives inherent in the tax system itself, or whether it pursues other objectives.

(60) According to the information provided by the Icelandic authorities, the objective of the notified amendments was to bring the Icelandic data centre industry to a comparable level with the data centre industry in the EU. The non-imposition of VAT for mixed services

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[20] Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 32; Case C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* [2011] ECR I-8365, paragraph 48; and Case C-409/00 *Spain* v *Commission* [2003] ECR I-1487, paragraph 48

[21] See Case C-409/00 *Spain* v *Commission* [2003] ECR I-1487, paragraph 49.

[22] Case E-6/98 *Norway* v *EFTA Surveillance Authority*, [1999] EFTA Court Report, p. 76, paragraph 38; Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnfjord, PIL and others and Norway* v *EFTA Surveillance Authority*, [2005] EFTA Court Report, p. 117, paragraphs 84-85; Joined cases T-127/99, T-129/99 and T-148/99 *Territorio Histórico de Alava and others* v *Commission* [2002] ECR II-1275, paragraph 163; Case C-143/99 *Adria-Wien Pipeline* [2001] ECR I-8365, paragraph 42; Case T-308/00 *Salzgitter* v *Commission* [2004] ECR II-1933 paragraph 42; Case C-172/03 *Wolfgang Heiser* [2005] ECR I-1627, paragraph 43 and Case C-279/08 P *Commission v Netherlands* [2011] ECR I-7671, paragraph 62.

[23] Case E-6/98 *Norway* v *EFTA Surveillance Authority*, cited above, paragraph 38; Joined Cases E-5/04, E-6/04 and E-7/04 *Fesil and Finnfjord, PIL and others and Norway* v *EFTA Surveillance Authority*, cited above, paragraphs 76-89; Case 173/73 *Italy* v *Commission* [1974] ECR 709, paragraph 16.

[24] Case E-6/98 *Norway* v *EFTA Surveillance Authority*, mentioned above, paragraph 67, Case C-159/01 *Netherlands* v *Commission*, ECR [2004] I-4461, paragraph 43, Joined Cases C-106/09 P and C-107/9 P *Commission and Spain v Government of Gibraltar and United Kingdom*, mentioned above, paragraph 146.

and the exemption from VAT for the import of servers was designed to attract a mobile (and tax sensitive) service sector to Iceland, namely the data centre industry.

(61) It is important to note that in this case the reference tax framework, regarding which it has to be examined whether the objective pursued with the notified amendments falls within its general nature and logic of the system, is the Icelandic VAT system.

(62) As noted in Decision No 3/13/COL, there is no clear definition of mixed services to be found in Icelandic legislation, regulations or guidelines. The term "mixed services" is open-ended and it cannot be established that all mixed services provided by the Icelandic data centres to non-resident customers are actually used and enjoyed abroad. As examples of mixed services, the Icelandic authorities have mentioned hosting, supervision and the cooling of servers. However, other services that are clearly delivered in Iceland, and should therefore under normal circumstances be subject to VAT, such as maintenance and storage services seem to also be covered by the term mixed services.

(63) To the extent that the mixed services are inseparable from and inherently linked to electronically supplied services, and are used and enjoyed abroad, they are covered by the same considerations regarding tax neutrality as electronically supplied services.[25] Therefore, the non-imposition of VAT on those mixed services that are, in this sense, "ancillary" to the electronically supplied services provided by the Icelandic data centres to non-resident customers, falls within the nature and logic of the VAT system.

(64) The Icelandic authorities have submitted that as for mixed services which cannot be considered to be used and enjoyed abroad, most comparable VAT systems contain certain rules on items and services which are not included in the taxable turnover and are therefore exempted from VAT liability. Therefore, the aim of the amendment was to ensure that the business environment of data centres in Iceland, in terms of VAT treatment, was comparable with that of their competitors operating in the EU.

(65) The Authority considers the fact that other VAT systems provide for certain exemptions does not in itself justify non-imposition of VAT in Iceland. Even if the purpose of the measure is to compensate for disadvantages faced by the Icelandic date centre industry, such a measure could not, in any event, be justified by the fact that it is intended to correct distortions of competition on the EEA market for data centre services. According to settled case-law, the fact that a EEA State seeks to approximate, by unilateral measures, the conditions of competition in a particular sector of the economy to those prevailing elsewhere in the EEA cannot deprive the measures in question of their character as aid.[26] Whether a particular exception falls within the logic of the system therefore has to be assessed first and foremost with respect to the reference taxation system, *i.e.* the Icelandic VAT system.[27]

(66) It is not within the general nature and logic of the Icelandic VAT system to favour the production of Icelandic goods or to improve the competitive conditions of Icelandic companies over their competitors established elsewhere in the EEA. There are in fact no provisions in the Icelandic VAT Act that are designed to favour Icelandic services or goods over competing foreign services or goods. External policy objective, such as the

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[25] See paragraphs 50-51 of the Authority's Decision No 3/13/COL.

[26] Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 67 and Case C-172/03 *Heiser* [2005] ECR I-1627, paragraph 54.

[27] See Case T-210/02 *RENV British Aggregates Association v Commission* [2012] ECR II-0000, paragraphs 49-50 and Joined Cases C-106/09 P and C-107/9 P *Commission and Spain v. Government of Gibraltar and United Kingdom* [2011] ECR I-11113, paragraph 75 and 90.

goal to enhance the competitiveness of the Icelandic data centre industry and promoting new use of Iceland's energy resources, which are not inherent to the system of reference cannot be relied upon to justify derogations from the system.[28]

(67) Based on the above, the Authority considers that the non-imposition of VAT on those mixed services that are not separable from and not inherently linked to electronically supplied services cannot be seen as falling within the general nature and logic of the Icelandic VAT system.

(68) In relation to the import of servers, the Icelandic authorities have argued that Article 36(1) of the VAT Act provides for a possibility to exempt specified imported goods from VAT, and therefore VAT exemptions on the import of certain goods is inherent in the VAT system. In addition, they have argued that most VAT systems provide for certain exemptions which are based on economic facts and the nature and general structure of the tax system in the country in question.

(69) The Authority considers that the exemptions foreseen under Article 36(1) (artist works imported by the author, specific literary works, vehicles for rescue purposes, goods exempt from custom duties, etc.) are very limited and not necessarily linked to the provision of an economic activity. On the contrary, the companies that will benefit from the exemption from VAT on the import of servers, will carry out this import of their servers as an intrinsic part of their economic activities. As previously noted, the main rule of the Icelandic VAT Act is that economic activities should be subject to taxation and that VAT shall be paid to the Treasury of all inland transactions at all stages, as well as of imports of goods and services.[29] The Icelandic authorities have not pointed to any examples of similar sector specific exemptions in the Icelandic VAT Act to justify the amendments.

(70) The Icelandic authorities have further invoked a principle, according to which when goods are transferred only for the purposes of the provision of a service, and without a change in ownership, the transfer of such goods forms part of the provision of the service and is therefore not taxed separately for VAT purposes. However, the Icelandic authorities have neither explained the legal basis for this principle nor why there was a need to adopt a special provision, on the VAT exemption for the import of servers and similar equipment, if such import would in any case fall under this principle.

(71) The Authority cannot see that the exemption from VAT payment on the import of servers and the non-imposition of VAT on mixed services constitute an adaptation of a general scheme particular to the nature and overall structure of the Icelandic VAT system. On the contrary, the amendments seem to have been adopted with the economic and political objective[30] of attracting foreign undertakings to purchase data centre services in Iceland and consequently improving the competitiveness of the Icelandic data centre industry.[31] These considerations, in the Authority's opinion, do not form part of the logic and general nature of a consumer tax system.[32]

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[28] See Joined Cases C-78/08 to C-80/09 *Paint Graphos and others* [2011] ECR I-7611, paragraph 70.
[29] See Article 1 of Act No 50/1988 on Value Added Tax.
[30] Notification letter of 2.9.2011.
[31] See Joined Cases E-17/10 and E-6/11 *The Principality of Liechtenstein and VTM Fundmanagement. v EFTA Surveillance Authority* [2012] EFTA Court Report, p. 117, paragraph 76.
[32] See for a similar argumentation, Commission Decision 2003/515/EC of 17 February 2003 on the State aid implemented by the Netherlands for international financing activities, OJ 2003 L 180, paragraph (95).

(72) The Icelandic authorities claim that the measures in question are meant as an attempt to adapt the Icelandic VAT system to the VAT systems of EU Member States in order to provide a similar competitive environment for the domestic data centre industry as exists within the EU. In Decision 3/13/COL the Authority invited the Icelandic authorities to provide more substantial information, not only supporting their statements that the new VAT amendments mirror the VAT systems of EU Member States, but more importantly that the amendments fall within the logic of the Icelandic VAT system. However, the Icelandic authorities submitted no comments or additional information in this regard.

(73) In light of the above, the Authority considers that the VAT exemption on the import of servers and the non-imposition of VAT on mixed services do not fall within the logic and general nature of the Icelandic VAT system.

1.4 Distortion of competition and effect on trade between Contracting Parties

(74) Finally, the measure must be liable to distort competition and affect trade between the Contracting Parties to the EEA Agreement in order to be considered state aid within the meaning of Article 61(1) of the EEA Agreement.

(75) According to settled case law, the mere fact that a measure strengthens the position of an undertaking compared with other undertakings competing in intra-EEA trade is considered to be sufficient in order to conclude that the measure is liable to affect trade between Contracting Parties and distort competition between undertakings established in other EEA States.[33]

(76) The two measures at issue were aimed at entities established outside Iceland, including in the EEA. They would benefit from the measures if they purchased services from Icelandic data centres. Icelandic date centres are, in turn, in competition with operators of similar services in the EEA. In addition, the measures were deliberately introduced as a means of attracting customers from the EEA and beyond to purchase data centre services in Iceland. Since those customers are undertakings operating in competition with other entities in their respective sectors across the EEA, the measures were therefore liable to affect trade between the Contracting Parties to the EEA Agreement and distort or threaten to distort competition across the EEA.

1.5 Conclusion with regard to the presence of state aid

(77) With reference to the above considerations the Authority concludes that the measures under assessment, *i.e.* the VAT exemption for the import of servers and similar equipment by non-resident customers for use in the Icelandic data centres, and the non-imposition of VAT on transactions involving data centres, except for services "ancillary" to electronically supplied services, constitute state aid within the meaning of Article 61(1) of the EEA Agreement. Under the conditions referred to above, it is thus necessary to consider whether the measures can be found to be compatible with the functioning of the EEA Agreement.

2 Procedural requirements

(78) Pursuant to Article 1(3) of Part I of Protocol 3, "*[t]he EFTA Surveillance Authority shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. […] The State concerned shall not put its proposed measures into effect until th[e] procedure has resulted in a final decision*".

[33] Case E-6/98 *The Government of Norway* v *EFTA Surveillance Authority* [1999] EFTA Court Report, p. 76, paragraph 59; Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11.

(79) The Icelandic authorities did not notify the aid measures to the Authority in sufficient time before their implementation on 1 May 2011. Moreover, the Icelandic authorities put those measures into effect before the Authority has adopted a final decision. The Authority therefore concludes that the Icelandic authorities have not respected their obligations pursuant to Article 1(3) of Part I of Protocol 3. The granting of any aid is therefore unlawful.

3 Compatibility assessment

(80) The Icelandic authorities have not put forward any arguments that the state aid in the VAT measures, as specified above, could be considered as compatible state aid.

(81) Aid measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the functioning of the EEA Agreement, unless they qualify for derogation under Article 61(2) or (3) of the EEA Agreement.

(82) The derogation under Article 61(2) is not applicable to the aid in question and it is not designed to achieve any of the aims listed in this provision. Nor does Article 61(3)(a) or Article 61(3)(b) of the EEA Agreement apply to the case at hand. Further, the Authority has been provided with no information showing that the beneficiaries of the aid are located in a region which can benefit from regional aid within the meaning of Article 61(3)(c) of the EEA Agreement. Nor is the derogation in Article 59(2) of the EEA Agreement applicable in the present case.

(83) On the basis of the above, the Authority's conclusion is that the VAT exemption for the import of servers and similar equipment by non-resident customers for use in Icelandic data centres, and non-imposition of VAT on transactions involving mixed services provided to non-resident customers of the Icelandic data centres to the extent those services are not ancillary to the electronically supplied services, are not justified under the state aid provisions of the EEA Agreement.

4 Legitimate expectations and legal certainty

(84) The fundamental legal principles of legitimate expectations and legal certainty can be invoked by beneficiaries of aid to challenge an order for recovery of unlawfully granted state aid. The principles only apply, however, in exceptional circumstances and an undertaking cannot normally entertain legitimate expectations that aid is lawful unless it has been granted in accordance with the procedure for notifying the aid to the Authority (or the European Commission as the case may be).[34] This is a principle that has been re-affirmed by the Court of Justice as follows: "*In a situation such as that in the main proceedings, the existence of an exceptional circumstance also cannot be upheld in the light of the principle of legal certainty, since the Court has already held, essentially, that, so long as the Commission has not taken a decision approving aid, …the recipient cannot be certain as to the lawfulness of the aid, with the result that neither the principle of the protection of legitimate expectations nor that of legal certainty can be relied upon.*".[35]

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[34] Case C-5/89, *Commission* v *Germany* [1990] ECR I-3437, paragraph 14; Case C-169/95 *Commission* v *Spain*, [1997] ECR I-135, paragraph 51; Case C-24/95 *Land Rheinland-Pfalz* v *Alcan Deutschland GmbH*, [1997] ECR I-1591, paragraph 25

[35] Case C1-09 *Centre d'Exportation du Livre Français (CELF), Ministre de la Culture et de la Communication v Société Internationale de Diffusion et d'Édition* [2010] ECR I-02099, paragraph 53. See also Case C-91/01 *Italy v Commission* [2004] ECR I-4355, paragraphs 66 and 67

(85) In principle, the case law of the Court of Justice has stated that a legitimate expectation that aid is lawful cannot be invoked unless that aid has been granted in compliance with the procedure laid down in Article 1(3) in Part I of Protocol 3,[36] remarking that a diligent business man should normally be able to determine whether that procedure has been followed.[37]

(86) Notwithstanding this the Court has also accepted that in exceptional circumstances a recipient of aid which was granted unlawfully because it was not notified, may rely on legitimate expectations that the aid was lawful in order to oppose its repayment.[38] The Court of Justice has held that an entity may rely on the principle of protection of legitimate expectations where a Community authority has caused it to entertain expectations which are justified.[39] The Authority has done no such thing, and indeed the decisions of the Authority in disallowing selective fiscal aid measures should have made it clear that VAT measures favouring certain companies or groups of companies had to be notified to the Authority.[40]

(87) In light of the above, the Authority will not accept that arguments relating to legal certainty or legitimate expectations can be valid in this case given the jurisprudence of the court and the wide ranging applicability of Articles 61 (of the EEA Agreement) and 107 (TFEU). A conclusion that the VAT measures under investigation could involve state aid was clearly foreseeable at all times.

5 Recovery

(88) As the aid was granted without being notified to the Authority, it constitutes unlawful aid within the meaning of Article 1(f) of Part II of Protocol 3 to the Surveillance and Court Agreement. It follows from Article 14 of Part II of Protocol 3 to the Surveillance and Court Agreement that the Authority shall decide that unlawful aid which is incompatible with the state aid rules under the EEA Agreement must be recovered from the beneficiaries.

(89) The Authority is of the opinion that no general principles preclude repayment in the present case. According to settled case-law, abolishing unlawful aid by means of recovery is the logical consequence of a finding that the aid is not lawful. Consequently, the recovery of state aid unlawfully granted, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the EEA Agreement in regard to state aid.

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[36] Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 14 and *Regione Autónoma della Sardegna* v *Commission* [2005] ECR II-2123, paragraph 64.

[37] Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 14, Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 51.

[38] Joined Cases C-183/02 P and C-187/02 P *Demesa and Territorio Histórico de Álava* v *Commission* [2004] ECR I-10609, paragraph 51.

[39] Case T-290/97, *Mehibas Dordstelaan* v *Commission* [2000] ECR II-15 and cases C-182/03 and C-217/03, *Belgium and Forum 187 ASBL* v *Commission* [2006] ECR I-05479, paragraph 147.

[40] See EFTA Surveillance Authority Decision No 106/95/COL of 31.10.1995 *concerning a tax exemption from a basic tax for glass packaging* (OJ L 124, 23/05/1996, p. 30), EFTA Surveillance Authority Decision No 145/97/COL of 14.5.1997 *concerning appropriate measures regarding regionally differentiated social security taxation* and EFTA Surveillance Authority Decision No 97/10/COL of 24.3.2010 *regarding the taxation of captive insurance companies under the Liechtenstein Tax Act* (OJ L 261, 27.9.2012, p.1).

(90) By repaying the aid, the recipients forfeit the advantage which they have enjoyed over their competitors on the market, and the situation prior to payment of the aid is restored.[41] It also follows from that function of repayment of aid that, as a general rule, save in exceptional circumstances, the Authority will not exceed the bounds of its discretion if it requires the EFTA State concerned to recover the sums granted by way of unlawful aid since it is only restoring the previous situation.[42] Moreover, in view of the mandatory nature of the supervision of state aid by the Authority under Protocol 3 of the Surveillance and Court Agreement, undertakings to which aid has been granted cannot, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in the provisions of that Protocol.[43] There are no exceptional circumstances visible in this case, which could have led to legitimate expectations on the side of the aid beneficiaries.

(91) The recovery of the unduly granted state aid should include compound interest, in accordance with Article 14 (2) in Part II of Protocol 3 to the Surveillance and Court Agreement and Article 9 and 11 of the Authority's Decision 195/04/COL of 14 July 2004.[44]

(92) The Icelandic authorities have so far provided limited information on the amount of aid granted under the amendments in Act No 163/2010. Moreover, they have not provided sufficient information on the number and identity of the potential beneficiaries of the measures. The Icelandic authorities are hereby invited to provide detailed and accurate information on the amount of aid granted and the aid beneficiaries.

6 Conclusion

(93) Based on the above considerations, the Authority concludes that the Icelandic authorities have unlawfully implemented the aid in question in breach of Article 1(3) of Part I to Protocol 3.

(94) The state aid granted under the provisions of Act No 163/2010, *i.e.* the VAT exemption for the import of servers and similar equipment by non-resident customers for the use in Icelandic data centres, and non-imposition of VAT on mixed services provided to non-resident customers of the Icelandic data centres to the extent those services were not ancillary to the electronically supplied services, is not compatible with the functioning of the EEA Agreement for the reasons set out above and should be recovered with effect from the date it was granted.

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41 See Joined Cases E-17/10 and E-6/11 *The Principality of Liechtenstein and VTM Fundmanagement. v EFTA Surveillance Authority* [2012] EFTA Court Report, p. 117, paragraphs 141 - 142.

42 Case C-75/97 *Belgium v Commission* [1999] ECR I 3671, paragraph 66, and Case C-310/99 *Italy v Commission* [2002] ECR I-2289, paragraph 99.

43 Case C-169/95 *Spain v Commission* [1997] ECR I-135, paragraph 51.

44 As amended by EFTA Surveillance Authority Decision No 789/08/COL, of 17.12.2008, *amending College Decision No 195/04/COL on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice as regards the standard forms for notification of aid* (OJ L 340, 22/12/2010, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The provisions put in place by means of Articles 4 and 12 of Act No 163/2010, *i.e.* the VAT exemption for the import of servers and similar equipment by non-resident customers for the use in Icelandic data centres, and non-imposition of VAT on mixed services that are separable from and not inherently linked to the electronically supplied services provided to non-resident customers of the Icelandic data centres, entail state aid which is incompatible with the functioning of the EEA Agreement.

Article 2

The Icelandic authorities shall take all necessary measures to recover from the beneficiary/beneficiaries the aid referred to in Article 1 and that was unlawfully made available to them, from 1 May 2011 to 13 March 2013.

Article 3

Recovery shall be effected without delay, and in any event within four months from the date of this decision and in accordance with the procedures of national law, provided that they allow the immediate and effective execution of the decision.

The aid to be recovered shall include interest and compound interest from the date on which it was at the disposal of the beneficiary, until the date of its recovery.

Interest shall be calculated on the basis of Article 9 of the EFTA Surveillance Authority Decision 195/04/COL.[45]

Article 4

By 8 July 2014, Iceland shall inform the Authority of the total amount (principal and recovery interests) to be recovered from the beneficiary/beneficiaries as well as of the measures planned or taken to recover the aid.

By 8 September 2014, Iceland must have executed the Authority's decision and fully recovered the aid.

Article 5

This Decision is addressed to Iceland.

Article 6

Only the English language version of this Decision is authentic.

Decision made in Brussels, on 8 May 2014.

[45] As amended by EFTA Surveillance Authority Decision No 789/08/COL.

For the EFTA Surveillance Authority

Oda Helen Sletnes
President

Frank J. Büchel
College Member