

EFTA COURT

Request for an Advisory Opinion from the EFTA Court by Borgarting Court of Appeal dated 8 May 2024 in the case of Friends of the Earth Norway and Young Friends of the Earth Norway v the Norwegian Government, represented by the Ministry of Climate and Environment and the Ministry of Trade, Industry and Fisheries

(Case E-13/24)

A request has been made to the EFTA Court dated 8 May 2024 from Borgarting Court of Appeal (*Borgarting lagmannsrett*), which was received at the Court Registry on 23 May 2024, for an Advisory Opinion in the case of *Friends of the Earth Norway and Young Friends of the Earth Norway v the Norwegian Government, represented by the Ministry of Climate and Environment (Klima-og miljødepartementet) and the Ministry of Trade, Industry and Fisheries (Nærings- og fiskeridepartementet)*, on the following questions:

1. What is the legal test when determining whether there is an "overriding public interest" within the meaning of Article 4(7)(c) of Directive 2000/60/EC?

a. Is a qualified preponderance of interest required and/or are only particularly important public interests relevant?

b. What will be key factors in the assessment of whether the public interests that justify the measure are "overriding"?

2. Can the following economic considerations constitute an "overriding public interest" under Article 4(7)(c) of Directive 2000/60/EC, and if so, under what conditions?

a. Purely economic considerations (i.e. the expected gross income generated by the planned mining operations)

b. That a private undertaking will generate income for shareholders

c. That a private undertaking will generate tax revenue for the state and municipality

d. That a private undertaking will provide wage income for employees

3. Can the following considerations constitute an "overriding public interest" under Article 4(7)(c) of Directive 2000/60/EC, and if so, under what conditions?

a. That a private undertaking will generate employment effects (increased local business activity, employment and settlement)

b. Global supply of rutile

c. Ensuring Norway and Europe access to critical minerals