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Judgment in Case E-13/24 *Friends of the Earth Norway and others v The Norwegian Government*

OVERRIDING PUBLIC INTEREST UNDER THE WATER FRAMEWORK DIRECTIVE

In a judgment delivered today, the Court answered questions referred to it by Borgarting Court of Appeal (*Borgarting lagmannsrett*), concerning the notion of “overriding public interest” in Article 4(7)(c) of the Water Framework Directive¹ (“the Directive”). In the main proceedings, Friends of the Earth Norway and Young Friends of the Earth challenge the validity of permits for a mining project granted by the Norwegian Government, involving the disposal of mining waste into Førdefjorden. Friends of the Earth Norway and Young Friends of the Earth argue that the project fails to meet the requirements of the Directive. The Norwegian Government contends that the project is justifiable under the “overriding public interest” exception, citing economic benefits, employment effects, and the need to secure access to critical raw materials.

The referring court essentially asked whether the notion of reasons of overriding public interest under Article 4(7)(c) should be interpreted as qualifying the public interests that may justify a derogation from the environmental objectives of that directive and/or whether this notion indicates a requirement to balance the public interest and the environmental objectives contained in the directive.

The Court held that Article 4(7)(c) requires a weighing of the interests at stake in all circumstances, in order to determine the existence of an overriding public interest. The public interest must outweigh the environmental objective of preventing deterioration in the status of surface water bodies. Which factors will be relevant in determining the existence of an overriding public interest must be assessed on a case-by-case basis.

The Court found that purely economic grounds, such as the promotion of the national economy, cannot serve as justification within the meaning of Article 4(7). Furthermore, the Court found that income from profits, wages or tax revenue does not constitute an overriding public interest, nor does the mere fact that a private undertaking creates employment. Considerations related to depopulation or social deprivation in certain areas could, on the other hand, potentially serve as justifications. Regarding critical raw materials, the Court held that securing supply within the EEA may, in certain circumstances, constitute an overriding public interest.

The advisory opinion is a step in the proceedings pending before the national court. The Borgarting Court of Appeal will now resume its proceedings and decide the case pending before it in light of the Court’s interpretation of the Directive.

The full text of the judgment is available on the Court’s website: eftacourt.int/cases/e-1324/

This press release is an unofficial document and is not binding upon the Court.

¹ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.