

## **EFTA COURT**

**Request for an Advisory Opinion from the EFTA Court by the Oslo District Court dated 8 July 2025 in the case of Redd Ullevål Sykehus v Norwegian State, represented by the Ministry of Local Government and Regional Development (Staten v/ Kommunal- og distriktdepartementet)**

**(Case E-17/25)**

A request has been made to the EFTA Court dated 8 July 2025 from the Oslo District Court (*Oslo tingrett*), which was received at the Court Registry on 15 July 2025, for an Advisory Opinion in the case of Redd Ullevål Sykehus v Norwegian State, represented by the Ministry of Local Government and Regional Development (Staten v/ Kommunal- og distriktdepartementet), on the following questions:

### **1. Question no 1: scope of the SEA Directive**

**The parties disagree as to whether the environmental impact assessment requirements of the SEA Directive apply.**

**The District Court is uncertain as to whether the conditions for coming within the scope of the SEA Directive are fulfilled for: 1) the two zoning plans; 2) the health enterprise meeting's decision of 24 June 2016 on the target image for the new hospital structure for Oslo University Hospital; 3) the Parliament's loan limit decision on stage 1 of the new hospital development, either individually or collectively.**

**The District Court requests the EFTA Court's general guidance as to how the conditions are to be construed, including as to how they fit in with assessments under the EIA Directive.**

### **2. Question no 2: national rules on errors that have not affected the substance of a decision**

**The second question concerns whether it is compatible with EEA law for a Norwegian court to apply a rule, such as section 41 of the Norwegian Public Administration Act, providing that a decision may be upheld as valid despite a procedural error if the error could not have had a decisive effect on the substance of the decision, in a case where it is argued that there has been non-compliance with the SEA Directive's environmental impact assessment requirements.**

**The court is uncertain whether it is compatible with the duty of loyalty under Article 3 of the EEA Agreement to apply a national rule such as section 41 of the Public Administration Act in such a case.**

### **3. The specific questions**

**1. Which factors are relevant in the assessment of whether the following decisions (individually or collectively) constitute a “plan” under Article 2(a) and Article 3(2) of Directive 2001/42/EC: 1) a health enterprise’s decision on a target image for a new hospital structure, adopted on the basis of its autonomy under private law; 2) a zoning plan; 3) State financing in the form of a loan limit decision?**

**For the assessment under question 1:**

**– Does it affect the assessment if a health enterprise’s decision on a target image for a new hospital structure is adopted by the State as owner of the health enterprise on the basis of autonomy under private law (that is to say, not the State as planning and building authority)?**

**– In the assessment of the term “plans and programmes” under Article 3(2)(a), of what significance is the project’s size and nature?**

**– Is the question whether or not the SEA Directive applies affected by whether an assessment has been carried out under the EIA Directive where the assessment under the EIA Directive does not include “reasonable alternatives” (see Article 5(1))?**

**2. Is it compatible with the EEA Agreement, including Article 3 thereof, for a national court, in proceedings involving alleged infringement of rules laid down in Directive 2001/42/EC, to apply a national rule providing that an administrative decision is valid if a court decides, on the basis of an overall assessment of the evidence in the case and without placing the burden of proof on the private party, that the error in question cannot have affected the substance of the decision?**

**In the assessment of question 2:**

**– which legal criteria are relevant in such an assessment?**