# BORGARTING LAGMANNSRETT

**Dok 134**

EFTA Court
1 rue du Fort Thüngen
L-1499 Luxembourg

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| | 24-036810ASD-BORG/02 | 19.08.2024 |

## REQUEST FOR AN ADVISORY OPINION IN CASE NO 24-03681ASD/BORG/02 BETWEEN THE NORWEGIAN STATE REPRESENTED BY THE MINISTRY OF ENERGY AND GREENPEACE NORDIC ET AL.

### 1. Introduction

Pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (SCA), read in conjunction with section 51a of the Norwegian Courts of Justice Act, the Borgarting Court of Appeal hereby requests an Advisory Opinion from the EFTA Court in case no. 24-036810ASD/BORG/02 between the Norwegian State, represented by the Ministry of Energy, and Greenpeace Nordic and Nature and Youth. It is asked that the request be given priority under Article 98 of the Rules of Procedure.

The parties to the case are:

**Appellant**: The Norwegian State, represented by the Ministry of Energy

Counsel: Office of the Attorney General (Civil Affairs)

Represented by attorney Gøran Østerman Thengs

Postboks 8012 Dep 0030 OSLO

**Respondents**: Greenpeace Nordic. Nature and Youth Norway

Counsel: Attorney Jenny Sandvig

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This case concerns the validity of decisions by the Ministry of Energy to approve plan for development and operations (PDO) for three petroleum projects in the North Sea, respectively the decision 29 June 2021 regarding the oil field «Breidablikk»; decision 5 June 2023 regarding the oil field «Tyrving»; and three decisions 28 June 2023 regarding the oil and natural gas project «Yggdrasil». 28 August 2024 the Ministry of Energy gave two decisions where it was concluded that the approvements related to Tyrving and Yggdrasil shall not be reversed. 30 August 2024 Greenpeace Nordic and Nature and Youth confirmed that also the validity of these two decisions will be challenged in the case.

The operators for these projects are, respectively, the companies Equinor ASA (Breidablikk) and Aker BP ASA (Tyrving and Yggdrasil).

## 2. The facts of the case

Petroleum activities may roughly be divided into three main phases: the opening of an area for exploration, the exploration phase and the production phase. A production license is awarded to a group of licensees led by an operator and grants exclusive rights to exploration, exploration drilling, development and production of petroleum in the area covered by the license. If profitable discoveries are made during exploration, a planning process is initiated until any actual development and production (extraction) may take place. The licensees must, inter alia, apply for and obtain approval of a plan for development and operations (PDO) of the petroleum discovery in question (development consent). The PDO consists of a technical-economical description of the project and an EIA, subject to the requirements of Directive 2011/92/EU as amended by Directive 2014/52/EU (EIA Directive).

Breidablikk is an oil field in the North Sea. Recoverable reserves are estimated at over 30 million standard cubic metres of oil (approx. 190/200 million barrels of oil equivalents). Production started in beginning of 2024. Expected production time is 25 years, until 2052.Gross emissions from the field are around 87 million tonnes of CO2. The total investment is around NOK 19 billion. The expected production period is 20 years, until around 2044.

Tyrving is an oil field in the North Sea. Recoverable reserves are estimated at around 4.1 million standard cubic metres of oil equivalents. Production is expected to start in September 2024. Gross emissions are estimated at 11.3 million tonnes of CO2.

Yggdrasil comprises the fields Hugin, Munin and Fulla in the North Sea. These three fields consist of oil and gas. Recoverable reserves are estimated at around 140 standard cubic metres of oil equivalents (650 million barrels of oil equivalents). Total gross emissions are estimated at 365 million tonnes of CO2. Total expected investments for the development of Yggdrasil are around NOK 115.1 billion. Production is expected to start in 2027. Expected production time is 25 years, until 2052.

Tyrving and Yggdrasil were made subject to EIAs pursuant to the domestic regulations implementing the EIA Directive. Breidablikk was exempted pursuant to the Petroleum

Regulation Section 22c. The EIAs carried out did not assess the impact on the climate from greenhouse gas (GHG) emissions arising from consumption.

Greenpeace Nordic et al. instituted legal proceedings and filed for temporary injunction on 29 June 2023. Oslo District Court quashed the decisions in a judgment of 18 January 2024 and granted a temporary injunction. The Ministry of Energy appealed on 8 February 2024.

The Borgarting Court of Appeals suspended the enforcement of the injunction on 20 March 2024. On 5 July 2024, the Court of Appeals decided to request the EFTA Court for an Advisory Opinion on the questions of EEA law raised by the case and severed the injunction case from the invalidity case.

## 3. Relevant Norwegian law

By its decisions to approve the PDOs for the petroleum fields in question, the Ministry applied the rules in the first and second subparagraphs of section 4-2 of Act No 72 of 29 November 1996 on Petroleum,[1] which reads as follows:

> *If a licensee decides to develop a petroleum deposit, the licensee shall submit to the Ministry for approval a plan for development and operation of the petroleum deposit. The plan shall contain an account of economic aspects, resource aspects, technical, safety related, commercial and environmental aspects, as well as information as to how a facility may be decommissioned and disposed of when the petroleum activities have ceased. (...)*

The requirement that the plan shall contain an assessment of "environmental aspects", is elaborated in Regulation No 653 of 27 June 1997 on Petroleum. Its Section 22a first subparagraph litra b reads as follows:

> *An impact assessment in a plan for development and operation of a petroleum deposit shall state the reasons for the effects that the development may have on [...] environmental aspects, including measures to prevent and remedy such effects. The impact assessment shall, inter alia: (...)*
>
> *b. describe the environment which may be significantly affected, consider and make a balanced judgment with regard to the environmental impact of the development, including:*
>
> *- describe emissions to sea, air and soil, (...)*

The Regulation is intended to implement the requirements of the Directive 2011/92/EU, as amended by Directive 2014/52/EU (EIA Directive).

[1] An official translation is available here: Act 29 November 1996 No. 72 relating to petroleum activities - The Norwegian Offshore Directorate (sodir.no)

The EIA Directive is also implemented through Regulation No 854 of 21 June 2017 on environmental assessments.

## 4. Relevant EEA law

The EIA Directive requires an EIA of projects that are likely to have significant effects on the environment, cf. Article 1(1). Member States shall adopt all necessary measures to ensure that such projects are made subject to a requirement for development consent and an EIA, before development consent is given, cf. Article 2(1):

> *Member States shall adopt all measures necessary to ensure that, before development consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects on the environment. Those projects are defined in Article 4.*

For the purposes of the Directive, the terms «project» and «development consent» are defined as follows, cf. Art. 1 point 2:

> *(a) 'project' means:*
>
> *— the execution of construction works or of other installations or schemes,— other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;*
>
> *(...)*
>
> *(b) 'development consent' means the decision of the competent authority or authorities which entitles the developer to proceed with the project*

Article 4(1) requires that the projects listed in Annex I shall be made subject to an EIA in accordance with Articles 5 to 10. The projects at issue are listed in Annex I, cf. point 14:

> *14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.*

Article 3(1) requires that the EIA identify, describe and assess the direct and indirect significant "effects" of a project on the factors listed in litra a – e.

> *1. The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:*
>
> *(a) population and human health;*

*(b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;*

*(c) land, soil, water, air and climate;*

*(d) material assets, cultural heritage and the landscape;*

*(e) the interaction between the factors referred to in points (a) to (d).*

Article 5(1) further specifies that the information to be provided by the developer in an EIA shall include at least:

*(a) a description of the project comprising information on the site, design, size and other relevant features of the project;*

*(b) a description of the likely significant effects of the project on the environment;*

*(c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;*

*(d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment;*

*(e) a non-technical summary of the information referred to in points (a) to (d); and*

*(f) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.*

Annex IV point 4, to which Article 5(1) litra refers, requires a description of the factors in Article 3(1).

*A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation) (...)*

Annex IV point 5 litra e and f, to which Article 5(1) litra f refers, requires that the description of the likely significant effects of the project on the environment includes:

*(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;*

*(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;*

Annex IV point 5, last subparagraph, states:

*The description of the likely significant effects on the factors specified in Article 3(1) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project.*

The request for an Advisory Opinion concerns the interpretation of Article 3(1) of the EIA Directive and what reparation obligations which follows from the EEA law. The parties disagree on whether the GHG emissions that will be released from end user consumption of the extracted petroleum for which development consent is sought, are environmental effects of the project. They also disagree on what the consequences of a potential breach of the EIA Directive may be.

## 5. The background for referral of question 1

To the referring court's knowledge, there is no case law from the Court of Justice of the European Union (CJEU) or the EFTA Court specifically on petroleum extraction under the EIA Directive, or the preceding Directive 2011/42/EC (SEA Directive). Generally, the CJEU "has pointed out on a number of occasions that the scope of the EIA Directive is wide and its purpose very broad" (Gerhard Prenninger and Others, Case C-329/17, EU:C:2018:640, para. 36; Kraaijeveld and Others, C-72/95, EU:C:1996:404, para. 31; Abraham and Others, C-2/07, EU:C:2008:133, para 32). On occasion, the CJEU has noted that "a purposeful interpretation of the directive cannot […] disregard the clearly expressed intention of the legislature of the European Union" (Brussel Hoofdstedelijk Gewest and Others, C-275/09, EU:C:2011:154, para. 29).

There is case law from the Norwegian Supreme Court on whether GHG emissions from the consumption of extracted oil and gas are "environmental effects" of a plan to open an area for petroleum production, albeit under the SEA Directive (HR-2020-2472-P (11-4)). The majority noted that CJEU case law "suggests that the provisions of the SEA Directive will be interpreted according to purpose, and that there is no basis for interpreting the wording strictly", but did not take a stand on whether this implies that the consequences of greenhouse gas emissions after combustion of exported oil and gas are environmental effects under the Directive (para. 211). The minority held that "the global climate impact of the combustion of Norwegian petroleum is undoubtedly comprised by the term 'environmental effects' in Article 5 of the SEA Directive" (para. 263). In the case at hand, the Oslo District Court reached the same conclusion for the purposes of the EIA Directive article 3(1).

In a similar case, the UK Supreme Court (3-2) on 20 June 2024 reached the same conclusion as the Oslo District Court, regarding a development consent granted in September 2019 (Finch, [2024] UKSC 20).[2] Two similar orders have since been reached by consent in the High Court of Justice.

Based on the above, the referring court considers that there is prima facie sufficient reason to request an Advisory Opinion from the EFTA Court on the interpretation of Article 3(1) EIA Directive.

## 6. The background for referral of questions 2 and 3

If greenhouse gas emissions from consumption are environmental effects of a project to extract oil and gas under Article 3(1) EIA Directive, the parties disagree on what the consequences of a breach may be.

The EIA Directive does not contain provisions governing the consequences of a breach. Under Article 4(3) TEU, the CJEU has nonetheless required that Member States "take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted" (Commission v. Ireland, C-261/18 [GC], para. 75; Wells C-201/02 para. 64-65, Bond Beter Leefmilieu Vlandeeren C-411/17 para. 172, Inter-Environnement Wallonie C-41/11 para. 46).

In HR-2020-2472-P (11-4), the majority of the Norwegian Supreme Court in an obiter dictum held that possible errors could not have impacted the outcome. The majority reasoned that the authorities will «be able through the further process to remedy a failure to assess the combustion effect abroad», primarily «at the PDO stage through the environmental assessment» (para. 246) The minority argued that the decisions were invalid because Article 3 of the EEA Agreement implies a duty for the courts to remedy violations of the SEA Directive to the extent possible under national law (para. 287).

The parties disagree on what reparation obligations which follows from the EEA law, especially if the failure to perform an environmental impact assessment of effects on the climate after the EIA Directive has been without influence on the outcome of the decision-making process.

On this basis, the referring court considers that there is prima facie sufficient reason to request an Advisory Opinion from the EFTA Court on Article 3 EEA.

[2] Available in full here: https://www.supremecourt.uk/cases/docs/uksc-2022-0064-judgment.pdf

## 7. Submissions by the Parties

### 7.1 The Appellants, The Norwegian State, represented by the Ministry of Energy

*Question 1*

The relevant environmental effects, both direct and indirect, to be assessed in an EIA pursuant to the EIA Directive, are those «of the» project» requiring a development consent.
Neither the text, purpose or general scheme of the Directive supports a widening of the scope of the Directive to also include climate effects of downstream greenhouse gases (GHGs) emitted as a result of end user consumption, in this case once the oil and natural gas has been extracted, transported, refined and sold to customers elsewhere; e.g. in another country and subject to the relevant provisions on such consumption in that jurisdiction. Such end user emissions are neither direct nor indirect effects «of» the extraction «project» for which development consent is required, cf. Art. 3 point 1 (c) of the Directive.

The drafting history, dating back to the first introduction of an EIA requirement by Council Directive 85/337/EEC, does not support such an expansive interpretation. The amending Directive 2014/52/EU refers inter alia to "climate change" and "greenhouse gases" in the recitals but was not intended to radically extend the scope of the Directive. Prior to the 2014 Directive, the general practice across all Member States was that there was no assessment at all of GHGs of projects, including those closely associated with a project. In relation to this particular subject, the object of the 2014 Directive was to achieve a harmonized approach to the assessment of GHGs arising from a project which ensured that both "direct effects" of projects in terms of their own GHGs and "indirect effects" in terms of GHGs associated with the project (such as from any increased power consumption or motor transportation it would involve) were taken into account in the EIA for a project. Neither the recitals to the 2014 Directive nor the text introduced by its amendments indicate intention to bring all end user downstream GHGs within the ambit of the Directive and thus introduce a major change in the EIA regime.

Had this been the intention, this would have been clearly stipulated in the Directive. Notably, such a major change would also not be aligned with the international climate regime, which is based on the principle that each state is responsible for emissions on its own territory. This includes emissions arising from the construction of and operation of projects but excludes emissions arising from end user consumption in other countries, subject to relevant provisions on such consumption in those countries.

The State is not aware of any previous Member State practice, nor CJEU or EFTA Court jurisprudence since the introduction of the 1985 Directive, the EIA Directive and the 2014 amending Directive, to indicate that downstream emissions from end user consumption have ever been intended or perceived as an «effect» of a «project» within the meaning of the Directive. Nor is there any indication that either the Commission or the Efta Surveillance

Authority (ESA) have considered Member State practice hitherto as contrary to Directive requirements.

*Question 2 and 3*

Under domestic law, a procedural defect vitiating an administrative decision does, as a main principle, not require the annulment of that decision if it may be shown, in view of the circumstances of the case, that there is no real possibility that the procedural defect could have influenced the outcome of the decision-making process.

In the State's view, it must be considered permissible under EEA law to apply this principle in cases where an environmental impact assessment has been carried out pursuant to the EIA Directive, but where the impact assessment is considered partially deficient, see cases C-72/12 *Altrip* paras. 49-54; C-137/14 *European Commission v. Federal Republic of Germany* paras. 59-61; and C-535/18 *Land Nordrhein-Westfalen* paras. 58-63.

**7.2 The Respondents, Greenpeace Nordic and Nature and Youth**

*The Respondents submits that Question 1 must be answered in the affirmative.*

Article 3(1) encompasses "the direct and indirect significant effects of the project" on a set of factors, including "water, air and climate". Emissions from extracted fossil fuels is the root cause of climate change, contributing up to 91% of all anthropogenic CO2 emissions,[3] with 95% of GHG emissions from petroleum extraction released through end-use combustion. The GHG emissions contained in extracted carbon pollute water,[4]air,[5] and climate, with quantifiable and detrimental impacts on all other factors listed in Article 3(1), including "human health" and "biodiversity". The failure to consider these emissions is a substantial defect of one of the main requirements of an EIA under Article 3(1).

The wording Article 5(1) litra f confirms that the GHG emissions ultimately released from extracted oil and gas are effects of the extraction project. Annex IV point 5 litra f requires the assessment of "the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions)". Annes IV point 5 last paragraph clarifies that the effects of a project should cover "the direct effects and any indirect, secondary, cumulative, transboundary, […] and long-term" effects. In view of the unbreakable chain of causation between extraction of oil and gas and the release of GHG emissions contained therein, the effect is "direct", or at the very least, "indirect" or "secondary".

This finds support in Article 1(2) litra a, and Annex I point 14, defining the project as the "[e]xtraction of petroleum and natural gas for commercial purposes […]". The whole purpose

[3] IPCC AR6 WGI *Physical Science Basis* 2021, Full report, p. 676, 687-688; Duarte and Others v. Portugal and Others, para. 194

[4] Article 1, para. 1, subpara. 4 of the Law of the Sea, cf. ITLOS, Advisory Opinion (No. 31), para. 179

[5] HR-2020-2472-P para. 218 and Massachusetts v. EPA, 549 U.S. 497 (2007)

is to make geologically stored carbon commercially available. The release of GHG emissions is "an inevitable and intentional effect" of this purpose.[6]Assessing these emissions "at source" and "at the earliest possible stage" in accordance with "the precautionary principle", before the carbon is irreversibly extracted, is perfectly aligned with preamble of the Directive, recital 2, cf. also the preamble to Directive 2014/52, recitals 13, 7 and 22. It is clearly the legislative intent.

To hold otherwise would restrict the scope and purpose of the Directive, contrary to CJEU case law (*Gerhard Prenninger and Others*, Case C-329/17, EU:C:2018:640, para. 36). Indeed, in furtherance of the SEA and EIA Directives' objective to ensure a high level of environmental protection, the CJEU has held that "provisions which delimit the directive's scope […] must be interpreted broadly" (see *Attikis,* C-473/14, ECLI:EU:C:2015:582, para. 50). Consequently, "[i]t would be simplistic and contrary to that approach to take account […] only of the direct effects of the works envisaged themselves, and not the environmental impact liable to result from the use and exploitation of the end product of those works" (*Ecologistas en Accion* (C-142/07, ECLI:EU:C:2008:445, para. 39).

On the same issue as here, the UK Supreme Court has held that the impact on climate from combustion emissions is an effect of a project to extract oil under Article 3(1) (*Finch*). In several consent orders, the UK Government has conceded that development consents granted without an EIA of these effects suffer from an "error of law". The minority of the NSC reached the same conclusion under the SEA Directive (para. 263), whilst the majority agreed that said emissions must be assessed in any subsequent EIAs (paras. 241, 246).

Similarly, the U.S. Federal National Environmental Policy Act (NEPA) Section 1508.1 g (2) requires environmental assessments of direct and indirect effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable", such as "end-use of the fossil fuel being extracted, including combustion".[7] Based on best available science, courts across the globe increasingly concur.[8] The EFTA Court should affirm.

*The Respondents submits that Questions 2 must be answered in the affirmative.*

In accordance with the principle of sincere cooperation in Article 4 TEU, "Member States are required to nullify the unlawful consequences" and must "take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact

6 Oslo District Court pp. 53-54; cited in Finch para. 172

7 NEPA Guidance on Consideration of GHG Emissions, p. 1204, available at: https://www.govinfo.gov/content/pkg/FR-2023-01-09/pdf/2023-00158.pdf

8 Gloucester Resources v Minister for Planning [2019] NSWLEC 7, paras. 486-513; Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6) [2022] QLC 21, paras. 25 – 28; Vereiniging Milieudefensie and others v Royal Dutch Shell PLC C/09/571932 para. 4.4.19; ITLOS Advisory Opinion on climate (No. 31), paras. 365 and 367; Oslo District Court, 18 January 2024 (appealed); *Center for Biological Diversity v. Bernhardt,* no. 18-73400 (9th Cir. 2020); Sovereign Inupiat for a Living Arctic v. Bureau of Land Management (District Court of Alaska), 2021; *Friends of the Earth v. Debra A. Haaland et al.* Civil Action, No.: 21-2317 (RC), District Court of Colombia, 27.01-2022.

assessment, for example by revoking or suspending consent already granted" (C-411/17, para. 170). Similarly, national courts in EEA States are required to eliminate the unlawful consequences under Article 3 of the EEA Agreement, see E-3/15 para. 82, and HR-2020-2472-P para. 286 (minority). This obligation is not confined to situations where the required EIA is lacking. As the EFTA Court notes in E-3/15 para. 83, where an "EIA procedure has not been properly carried out or has been incomplete", one "appropriate remedy […] could be to annul the contested decision".

*The Respondents submits that Question 3 must be answered in the negative.*

The CJEU has held that national courts are obliged to eliminate the unlawful consequences of a breach of the EIA Directive, without ever reserving its position for situations where the breach could not have impacted the outcome (C-201/02; C-24/19, see also C-278/21). This sets the EIA Directive apart from CJEU case-law on, for instance, the right to defense. The CJEU cases C-72/12, C-137/14 and C-535/18 do not assist, as they concern a different issue, namely Member States' discretion to restrict individuals' standing under Article 11.

An affirmative answer would erode the purpose of the Directive, which is to ensure that decisions which may affect the environment are made on the basis of full information, obtained by means of a particular inclusive and democratic procedure. Hence, a court is "not entitled retrospectively to dispense with the requirement of an EIA on the ground that the outcome would have been the same" (UK House of Lords, *Berkeley*, para. 8). The same is true for an EIA that ignore the vast majority of GHG emissions from an extraction project (*Finch,* paras. 148 seq). This serious defect deprived the public of their rights to access information and participation such that it cannot be said that the outcome would not have been different.

Similarly, the ECtHR has noted that the right to information would be depleted if the information provided was "insincere, inexacte ou même insuffisante", especially in cases with major and intergenerational environmental risks (*Association Burestop 55,* no. 56176/18, paras. 108 and 109; see also *KlimaSeniorinnen,* no. 53600/20). This sets our case apart from the marginal procedural defects considered in *Büttner* (no. 27547/18).

## 8. Questions

1. Where a project is listed in Directive 2011/92/EU Annex I point 14, are the greenhouse gas emissions that will be released from the extracted petroleum and natural gas, environmental "effects" of the project under Article 3(1)?

2. If Question 1 is answered in the affirmative, is a national court required under Article 3 EEA, to the extent possible under national law, to eliminate the unlawful consequences of a development consent granted without a prior EIA of said effects?

3. If Question 2 is answered in the affirmative and national law allows for the annulation and/or suspension of the unlawful consent, can a national court retroactively dispense with the obligation to assess these effects under Article 3(1) if it is shown that the failure has not influenced the outcome of the decision-making process?

## 9. Request for an expedited procedure under Article 98

The case concerns interests of great importance. In light of the urgency of the Court's Advisory Opinion on the matter, the Borgarting Court of Appeals respectfully asks for an expedited procedure under Article 98 of the Rules of Procedure. Hearings for both the invalidity case and the injunction case were scheduled to the first half of September 2024. When it was 5. July 2024 decided to request the EFTA Court for an Advisory Opinion, the invalidity case was postponed. The questions referred are intrinsically linked to the injunction case, with hearings scheduled from 3 – 13 September 2024. In the event the President is not able to apply Article 98, it is asked that the case nonetheless be given priority.

Oslo 2. September 2024

**Borgarting lagmannsrett**

Pål Morten Andreassen
Court of Appeal Judge