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**TO THE PRESIDENT AND THE MEMBERS OF THE EFTA COURT**

**OBSERVATIONS**

submitted pursuant to Article 20 of the Statute and Article 90(1) of the Rules of Procedure of the EFTA Court by the **European Commission**, represented by Geert Wils, Legal Advisor, and Magnus Noll-Ehlers, Member of its Legal Service, acting as Agents, with an address for service at the Legal Service, *Grefte contentieux*, BERL 1/93, 1049 Brussels and consenting to service by e-EFTA Court, in

**Case E-18/24**

**Norwegian State** (Appellant),

**v**

**Greenpeace Nordic, Nature and Youth Norway** (Respondents),

in which the Borgarting Court of Appeal (Norway) requested an advisory opinion pursuant to Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice with regard to the interpretation of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment<sup>1</sup> (“EIA-Directive”).

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<sup>1</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 026, 28.1.2012, p.1).

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## I. THE LEGAL FRAMEWORK

### EIA Directive

Article 1 point 2:

*“For the purposes of this Directive, the following definitions shall apply:*

*(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 [...]*”

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.”*

Article 3(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:*

*[c] climate;”*

Article 4(1):

*“Subject to Article 2(4), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.”*

Article 5(1):

*“Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least:*

*[...]*

*(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 I, 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.”*

Annex IV “Information for the environmental impact assessment report”, point 4:

*“A description of the factors specified in Article 3(1) likely to be significantly affected by the project: [...] climate (for example greenhouse gas emissions [...])”*

Annex IV “Information for the environmental impact assessment report”, point 5:

*“A description of the likely significant effects of the project on the environment resulting from, inter alia:*

*[(f)] the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions)*

*[...]*

*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.”*

## **II. FACTS AND QUESTIONS REFERRED**

1. Between 2021 and 2023, the Norwegian authorities approved plans for development of operations (PDO) for three petroleum fields («Breidablikk», «Tyrving», «Yggdrasil») in the North Sea.
2. The estimated recoverable reserves of the three oil/gas fields in question amount to over 30 million (Breidablikk), around 4.1 million (Tyrving) and around 140 million (Yggdrasil) standard cubic metres of oil equivalents. Production has started in at least one field. For the other two fields, the production has either started or is to start by 2027. The expected production time of the oil/gas fields is up to 25 years.
3. The referring court explains that to conduct petroleum activities under Norwegian law, first a production licence is awarded to a group of licensees led by an operator. If profitable discoveries are made, the licensees must obtain approval of a PDO before any extraction may take place. The PDO (according to the referring court a

“development consent” within the meaning of the EIA-Directive) consists of a technical-economic description of the project and an environmental impact assessment (“EIA”) subject to the requirements of the EIA-Directive.

4. For one of the fields, no EIA was carried out at all. For the other two fields, EIAs were carried out. However, they did not assess the impact on the climate from the greenhouse gas (“GHG”) emissions arising from the consumption of the extracted oil or gas.
5. The main proceedings concern the validity of the decisions to approve the PDOs for the three fields. The Oslo District Court quashed the decisions in first instance. The Norwegian authorities appealed. The Court of Appeals finds that the projects at issue in the main proceedings fall under point 14 of Annex I to the EIA-Directive. Consequently, it does not put into question that the extraction of oil and gas from the three fields requires a prior environmental assessment in accordance with Art. 4(1) in conjunction with point 14 of Annex I to the EIA-Directive.
6. However, the referring court reports that the parties disagree on the scope of the EIA, namely whether the GHG emissions from the consumption of the extracted oil or gas are environmental “effects” within the meaning of Art. 3(1) of the EIA-Directive.
7. In that regard, the Appellant takes the view that end user emissions from the consumption of the extracted oil and gas do not constitute effects of the extraction project itself. According to the Appellant, prior to the 2014 amendment of the EIA-Directive<sup>2</sup>, the general practice across all Member States was that there was no assessment of GHG of projects at all. The 2014 amendment intended to achieve a harmonised approach to the assessment of GHG arising from a project, but did not introduce a major change that would radically extend the scope of the Directive to include the GHG emissions arising from the consumption of the extracted oil or gas. Under the international climate regime, each state is only responsible for emissions on its own territory. This would exclude emissions arising from end user consumption in other countries.

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<sup>2</sup> Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 124, 25.4.2014, p. 1).

8. The respondents argue that emissions from extracted fossil fuels contribute to over 90 % of all anthropogenic CO<sub>2</sub> emissions, with 95 % of GHG emissions from petroleum released through end-use combustion. In view of an unbreakable chain of causation between the extraction of oil and gas and the release of the GHG emissions contained therein, these emissions constitute “effects” of the extraction project. The release of GHG is an inevitable and intentional effect of the extraction. It is the objective of the EIA-Directive to assess the environmental effects thereof at the earliest possible stage. The case law on the EIA-Directive emphasises the high level of environmental protection envisaged and the broad interpretation of its scope. Therefore, end user emissions from the consumption of the extracted oil and gas are to be considered effects of the extraction project.
  
9. The referring court finds that there is no case law from the Court of Justice of the European Union or the EFTA Court that would decide this question. It reports that the Norwegian Supreme Court left it open whether the GHG emissions from the consumption of the extracted oil or gas are to be considered “environmental effects” that need to be assessed under the so-called SEA-Directive 2001/42<sup>3</sup>. It further refers to a judgment by the UK Supreme Court, in which it was found that GHG emissions from the consumption of the oil produced in a petroleum extraction project within the meaning of point 14 of Annex I to the EIA-Directive constitute “effects” of that project.<sup>4</sup>
  
10. The referring court therefore makes a request for advisory opinion of the EFTA court, in which it raises the following 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?

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<sup>3</sup> Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).

<sup>4</sup> Judgment of 20 June 2024, Finch [2024] UKSC 20.

3. If Question 2 is answered in the affirmative and national law allows for the annulment 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?
11. For any further details of the facts and for the Norwegian law, the Commission refers to the ruling of the referring court seeking the advisory opinion of the EFTA Court<sup>5</sup>.

### **III. THE ANALYSIS BY THE COMMISSION**

#### ***The first question***

12. The first question concerns the extent of the assessment requirements in case of a project for the extraction of petroleum or natural gas that meets the conditions of point 14 to Annex I of the EIA-Directive<sup>6</sup>. Given that the project category for the extraction of petroleum and natural gas is placed in Annex I, it follows from Articles 2(1) and 4(1) of the Directive that an EIA of such a project needs to be carried out before development consent is given.
13. Against that background, the referring court essentially seeks to establish the scope of the EIA. It raises the question whether the GHG emissions from the use of the extracted oil and gas are “effects” of the project category set out in point 14 of Annex I. If this is so, then the identification, description, and assessment of the effects of such a project in accordance with Art. 3(1) of the Directive would have to include these GHG emissions.
14. To provide an answer to the question, it is useful to summarise some steps of the EIA procedure that are relevant in that regard.
15. The EIA procedure requires that the project developer submit an EIA report in accordance with Article 5. This consists of, amongst others, a description of the project, its likely significant effects on the environment, as well as the features of the

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<sup>5</sup> The Commission’s submission is based on the reference order in English. References to certain parts of the reference order in the text of this submission are references to that document.

<sup>6</sup> As set out in point 14 of Annex I, this project category comprises extraction that is carried out 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.

project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects.

16. In a next step, the authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent, Article 6(1). To ensure the effective participation of the public concerned in the decision-making procedures, the public shall be informed of, inter alia, the request for development consent, Article 6(2). Any information gathered pursuant to Article 5, as well as the main reports and advice issued to the competent authority are made available to the public concerned, Article 6(3) lit a. and b. The public concerned is entitled to express comments and opinions when all options are open to the competent authority before the decision on the request for development consent is taken, Article 6(4).
17. The results of consultations and the information gathered shall be duly taken into account in the development consent procedure, Article 8.
18. The interpretation provided in response to the first question is therefore likely to be relevant when carrying out the before-mentioned steps of the EIA procedure.
19. On the one hand, there are arguments in favour of assessing the effects of GHG emissions that will be released from the extracted oil and gas in the EIA of a project listed in point 14 of Annex I to the Directive.
20. First of all, with regard to the wording of the EIA Directive, it can be observed that the effects of a project on the climate are mentioned in several places. Art. 3(1)(c) of the Directive provides that the EIA “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 [inter alia] the climate”.
21. Effects on the climate are again mentioned in the text of the EIA-Directive when describing the content of the EIA report to be submitted by the developer. Article 5(1)(f) sets out that the information to be provided by the developer must include 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. In that regard, point 4 of Annex IV provides that the “climate (for example greenhouse gas emissions [])” is one of the factors that should be described if they are likely to be significantly affected by the project. Furthermore, point 5(f) of Annex IV sets out that the likely significant effects of the project on the environment resulting from “the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions [])” are to be described.

22. Still concerning the wording of the Directive, the Commission notes that the last subparagraph of point 5 of Annex IV requires that, “[t]he description of the likely significant effects on the factors [such as climate] 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.”
23. The wording of the Directive thus suggests that both direct and indirect effects of a project on the climate, in particular the emissions of GHG, are to be part of the EIA.
24. The objective of the EIA Directive is two-fold. First, it aims to address negative environmental impacts of a project early on. As recital 2 explains, “effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes”. The EIA is to be carried out before the development consent is given, Art. 2(1). The prior nature of such an assessment is justified by the fact that it is necessary for the competent authority to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects.<sup>7</sup> When identifying, describing and assessing the effects of the project, including the possible offset of effects, the extent to which the use of the extracted oil or gas will be subject to the EU Emission Trading System<sup>8</sup> could be relevant.

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<sup>7</sup> Judgment of 25 May 2023, *WertInvest Hotelbetriebs GmbH v Magistrat der Stadt Wien*, C-575/21, ECLI:EU:C:2023:425, para. 79.

<sup>8</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

25. A second objective of the Directive consists in effective public participation in the taking of decisions. This “enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken”<sup>9</sup>, in line with the objectives of the Aarhus convention.<sup>10</sup>
26. To achieve these objectives, the scope of the Directive is wide and its purpose is broad.<sup>11</sup> Direct and indirect effects of a project on the factors referred to in Article 3 of the EIA-Directive (such as the climate) must be fully examined, and in a comprehensive manner.<sup>12</sup>
27. Specifically with regard to effects on the climate, recital 13 of amending Directive 2014/52 states that “[c]limate change will continue to cause damage to the environment and compromise economic development. In this regard, it is appropriate to assess the impact of projects on climate (for example greenhouse gas emissions) [...]”
28. Including the effects of GHG emissions of the use of extracted oil and gas in the EIA can be seen as contributing to achieving effectively the objective of taking the effects on the environment into account at the earliest possible stage, and of increasing the accountability and transparency of the decision-making process. It would seem that most, if not all, uses of the extracted oil and gas will lead to GHG emissions.
29. Support for a wide interpretation of what constitutes an “effect” of the project in the sense of Art. 3(1) of the Directive can also be found in the case law of the Court of Justice of the European Union. In cases regarding the construction of transport

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<sup>9</sup> Recital 16 of the EIA-Directive. On public participation, see also recitals 17-20.

<sup>10</sup> Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

<sup>11</sup> Judgment of 7 August 2018, *Gerhard Prenninger and Others v Oberösterreichische Landesregierung and Netz Oberösterreich GmbH*, C-329/17, ECLI:EU:C:2018:640, para. 36.

<sup>12</sup> Judgment of 25 May 2023, *WertInvest Hotelbetriebs GmbH v Magistrat der Stadt Wien*, C-575/21, ECLI:EU:C:2023:425, para. 78.

infrastructure (railway tracks<sup>13</sup>, airport<sup>14</sup> and road projects<sup>15</sup>), the Court found that the EIA not only takes account of the direct effects of the works envisaged themselves, but also the environmental impact from the use and exploitation of those works, for example the significant noise effects brought about not by the works on the infrastructure itself, but by the foreseeable increase in traffic.

30. On the other hand, several arguments speak against the inclusion of GHG emissions that will be released from the extracted oil and gas of a project listed in point 14 of Annex I to the Directive in the EIA of that project.
31. The EIA-Directive does not include a project category “use of oil or gas”. Nor does the EIA Directive mention a requirement that GHG emissions from the use of oil and gas be included among the effects of a project for the extraction of oil and gas. Its formulation does not state that all GHG emissions that will be released from the extracted petroleum and natural gas shall be considered as either direct or indirect environmental effects.
32. None of the provisions of the Directive expressly requires that the impact on the climate from GHG emissions arising from the use of the extracted oil or gas of a project listed under point 14, Annex I be included in an EIA of such projects. Rather, the text of the Directive focuses on GHG emissions arising from the construction and operation (and, where relevant, demolition) of a project itself and the possible measures to avoid, reduce and mitigate such emissions.
33. The EIA Directive also introduces the concept of ‘whole’ project which implies that the effects of all associated works related to a given project are assessed as part of an EIA of the main project when such works are an integral part of this project. Recital 22 of Directive 2014/52 explains that the concept of ‘whole’ projects also includes “its subsurface and underground, during the construction, operational and, where

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<sup>13</sup> Judgment of 16 September 2004, *Commission of the European Communities v Kingdom of Spain*, C-227/01, ECLI:EU:C:2004:528, para. 49.

<sup>14</sup> Judgment of 28 February 2008, *Paul Abraham and Others v Région wallonne and Others*, C-2/07, ECLI:EU:C:2008:133, para. 43.

<sup>15</sup> Judgment of 25 July 2008, *Ecologistas en Acción-CODA v Ayuntamiento de Madrid*, C-142/07, ECLI:EU:C:2008:445, para. 39.

relevant, demolition phases”. Annex IV, point 1(b) of Directive 2011/92 adds that the “land-use requirements during the construction and operational phases” can also form part of the ‘whole’ project.

34. In contrast to that, using the extracted oil or gas cannot be considered an integral part of the project category for the extraction of petroleum or gas and as such would not fall under the concept of the ‘whole’ extraction project. Such use is neither listed in Annexes I or II to the Directive, nor can it be considered part of associated works related to the extraction project.
35. Moreover, the purpose of the EIA is to assess the impact of projects, not their products.
36. GHG emissions resulting from use of extracted oil or gas will in most cases be released at a distance from the site of the extraction project. This may occur during different, in certain cases extended, timeframes. The use may arise long after the initial extraction project has been executed (and possibly decommissioned).
37. In addition, at the time of the assessment of the effects of the extraction project, it is unlikely to be certain for which purposes exactly they will be used. The use of the extracted oil or gas may take various forms. Extracted petroleum may for example be used for the fuelling of cars, ships, aeroplanes and other means of transport; for combustion in thermal power plants or as input in various industrial processes; they may also be kept in storage.
38. One cannot overlook also the fact that the possible end-use consumption of the extracted petroleum or gas will occur for purposes outside the control of the developer of the initial extraction project.
39. With regard to the use of the extracted oil and gas, there are no activities within the control of the developer of the oil/gas field which, if the project proceeds and the extracted petroleum enters the supply chain, would avoid or reduce the effects of this end-use, including on climate. Effects from activities that may occur as a result of the use of oil or gas involve various intermediate operations (for example refining) that are in majority of cases undertaken by other developers or operators in locations not directly linked to the execution of the extraction site.

40. Furthermore, assessing GHG emissions in the EIA as effects of an oil or gas extraction project might lead to unclear interaction and overlap with other instruments.<sup>16</sup> Under the international climate regime, States are generally only responsible for emissions on their own territory.
41. Moreover, the GHG emissions from the use of the oil/gas resulting from the project could partially fall under other environmental assessment obligations. They can be covered by a number of project categories listed in both Annexes I and II of the EIA Directive (e.g. crude oil refineries, thermal power plants, other combustion plants, various industrial or waste disposal installations). The effects of such a use of oil/gas would be assessed as part of the EIA for that specific project in question, but not as a separate project as it itself does not constitute a project within the meaning of Art. 1(2)(a) of the EIA Directive.
42. Not including GHG emissions from the use of extracted oil or gas in the EIA for a project referred to in point 14 of Annex I is in line with guidance documents that the Commission services have published in the past.
43. A guidance document from 2013 was dedicated to integrating climate change into EIA procedures.<sup>17</sup> That document provides a non-exhaustive list of examples as a starting point for discussion of main climate change concerns to consider as part of EIA, which with respect to climate change mitigation reads as follows:

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<sup>16</sup> For instance an overlap with the corporate sustainability reporting standards, which are conceived to be exclusively a transparency tool. In their context, under well-defined conditions it is possible that more than one actor in a value chain reports on the same effects of their respective operations, subject to the requirement to make a clear distinction between direct emissions and indirect emissions. See to that effect [https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard\\_041613\\_2.pdf](https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporting-Standard_041613_2.pdf) (last consulted on 28.10.2024), p. 27: “By properly accounting for emissions as scope 1, scope 2, and scope 3, companies avoid double counting within scope 1 and scope 2. (...) In certain cases, two or more companies may account for the same emission within scope 3. For example, the scope 1 emissions of a power generator are the scope 2 emissions of an electrical appliance user, which are in turn the scope 3 emissions of both the appliance manufacturer and the appliance retailer. Each of these four companies has different and often mutually exclusive opportunities to reduce emissions.” Definitions of “scope 1”, “scope 2” and “scope 3” greenhouse gas emissions are in Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards, OJ L of 22.12.2023, Table 2, “Terms defined in the ESRS”, at p. 327.

<sup>17</sup> European Commission: Directorate-General for Environment, Guidance on integrating climate change and biodiversity into environmental impact assessment, Publications Office, 2013, <https://data.europa.eu/doi/10.2779/11735>

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- direct GHG emissions caused by the construction, operation, and possible decommissioning of the proposed project, including from land use, land-use change and forestry;
- indirect GHG emissions due to increased demand for energy;  
indirect GHG emissions caused by any supporting activities or infrastructure which is directly linked to the implementation of the proposed project (e.g. transport, waste management).”<sup>18</sup>

44. That guidance also provides the following examples of basic questions that could be asked when identifying major climate change mitigation concerns resulting from a project:

- “Related to direct GHG emissions:
  - Will the proposed project emit carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O) or methane (CH<sub>4</sub>) or any other greenhouse gases part of the UNFCCC?
  - Does the proposed project entail any land use, land-use change or forestry activities (e.g. deforestation) that may lead to increased emissions? Does it entail other activities (e.g. afforestation) that may act as emission sinks?

Related to indirect GHG emissions due to an increased demand for energy:

- Will the proposed project significantly influence demand for energy?
- Is it possible to use renewable energy sources?

Related to indirect GHG caused by any supporting activities or infrastructure that is directly linked to the implementation of the proposed project (e.g. transport):

- Will the proposed project significantly increase or decrease personal travel?
- Will the proposed project significantly increase or decrease freight transport?”<sup>19</sup>

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<sup>18</sup> See table 6, on page 29 of that document.

<sup>19</sup> See table 7, on page 30 of that document.

45. It can be seen that these questions are not specifically targeting projects for oil or gas extraction. They relate directly to the execution of the project and to limited aspects of GHG emissions, but not to any end-use of products resulting from it.
46. Another guidance document on the preparation of the Environmental Impact Assessment Report from 2017<sup>20</sup> also discussed aspects of climate change in the EIA.
47. It explains under ‘*Legislative requirements and key considerations*’ that ‘*the emphasis [on the reference to climate change in Annex IV] is placed on two distinct aspects of the climate change issue - climate change mitigation: this considers the impact the Project will have on climate change, through greenhouse gas emissions primarily, [and] climate change adaptation: this considers the vulnerability of the Project to future changes in the climate, and its capacity to adapt to the impacts of climate change, which may be uncertain*’. (page 38 of the guidance document)
48. Under the heading ‘*Climate change mitigation: project impacts on climate change*’, the guidance states that the EIA should include an assessment of the direct greenhouse gas emissions of the project over its lifetime, ‘e.g. *from on-site combustion of fossil fuels or energy use*’, and of emissions ‘*generated or avoided as a result of other activities encouraged by the Project (indirect impacts) e.g. transport infrastructure: increased or avoided carbon emissions associated with energy use for the operation of the Project; [and] commercial development: carbon emissions due to consumer trips to the commercial zone where the Project is located.*’(page 39)
49. The guidance thus confirms the understanding that the relevant ‘effects’ of a project in relation to GHG emissions are those relating to the operation of the project itself. The 2017 Guidance also refers to the 2013 Guidance, which, as noted above, only refers to limited aspects of GHG emissions.

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<sup>20</sup> European Commission: Directorate-General for Environment, McGuinn, J., Lukacova, Z., McNeill, A. and Lantieri, A., Environmental impact assessment of projects – Guidance on the preparation of the environmental impact assessment report (Directive 2011/92/EU as amended by 2014/52/EU), Publications Office, 2017, <https://data.europa.eu/doi/10.2779/41362>

50. Therefore, the Commission takes the view that the greenhouse gas emissions that will be released from the petroleum and natural gas extracted in a project listed under point 14 to Annex I of the EIA-Directive, do not constitute environmental "effects" of that project within the meaning of Article 3(1).

***Second and third question***

51. In view of the answer to the first question, it is not necessary to reply to the second and third question.

**IV. CONCLUSION: THE PROPOSED RESPONSE**

52. In the light of the preceding discussion, the Commission proposes to respond to the question from the referring court in the negative, as follows:

*Directive 2011/92 is to be interpreted as meaning that where a project is listed in point 14 of Annex I thereto, the greenhouse gas emissions that will be released from the extracted petroleum and natural gas do not constitute environmental "effects" of the project within the meaning of Article 3(1) of that Directive.*

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