



## JUDGMENT OF THE COURT

21 May 2025\*

*(Environment – Directive 2011/92/EU – Assessment of the effects of projects on the environment – Article 3(1) – Projects covered by Annex I – Extraction of petroleum and natural gas that will be sold to third parties – Principle of sincere cooperation – Requirement to nullify the unlawful consequences of a breach of EEA law)*

In Case E-18/24,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Borgarting Court of Appeal (*Borgarting lagmannsrett*), in the case between

**the Norwegian State, represented by the Ministry of Energy,**

and

**Greenpeace Nordic and Nature and Youth Norway,**

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- the Norwegian Government, represented by Fredrik Sejersted and Andreas Runde, acting as Agents;

---

\* Language of the request: English. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- Greenpeace Nordic and Nature and Youth Norway, represented by Jenny Sandvig and Carl Victor Waldenstrøm, advocates;
- the Government of the Netherlands, represented by Mielle Bulterman, Joost Hoogveld and Emma Besselink, acting as Agents;
- the EFTA Surveillance Authority (“ESA”), represented by Erlend Møinichen Leonhardsen, Kyrre Isaksen and Melpo-Menie Joséphidès, acting as Agents; and
- the European Commission (“the Commission”), represented by Geert Wils and Magnus Noll-Ehlers, acting as Agents,

having regard to the Report for the Hearing,

having heard oral arguments of the Norwegian Government, represented by Fredrik Sejersted and Andreas Runde; Greenpeace Nordic and Nature and Youth Norway, represented by Jenny Sandvig; ESA, represented by Melpo-Menie Joséphidès and Erlend Møinichen Leonhardsen; and the Commission, represented by Geert Wils and Magnus Noll-Ehlers, at the hearing on 19 December 2024,

gives the following

## **JUDGMENT**

### **I INTRODUCTION**

- 1 This request for an advisory opinion concerns the interpretation of Article 3(1) of 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, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (“the EIA Directive” or “the Directive”). The request has been made in proceedings between the Norwegian Government and Greenpeace Nordic and Nature and Youth Norway concerning the validity of three decisions by the Norwegian Ministry of Energy granting consent to the development and operation of three petroleum and natural gas extraction projects in the North Sea.
- 2 The environmental impact assessments carried out did not assess the impact on the climate from greenhouse gas emissions arising from combustion of the petroleum and natural gas extracted from the project and sold to third parties. The referring court seeks guidance on whether such combustion emissions are an “effect” of the projects under Article 3(1) of the EIA Directive that should have been included in the environmental impact assessment. If this question is answered in the affirmative, the referring court seeks guidance on whether a national court must eliminate the unlawful consequences of a development consent granted without an environmental impact assessment of said effects. Moreover, the referring court asks if a national court can retroactively dispense

with the requirement to assess the effects of the combustion of the extracted petroleum and natural gas if it is shown that the procedural infringement has not affected the outcome of the decision-making process.

## II LEGAL BACKGROUND

### EEA law

- 3 The first paragraph of Article 3 of the Agreement on the European Economic Area (“EEA”) reads:

*The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.*

- 4 Article 73 EEA reads:

*1. Action by the Contracting Parties relating to the environment shall have the following objectives:*

*(a) to preserve, protect and improve the quality of the environment;*

*(b) to contribute towards protecting human health;*

*(c) to ensure a prudent and rational utilization of natural resources.*

*2. Action by the Contracting Parties relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements shall be a component of the Contracting Parties' other policies.*

- 5 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 2012 L 26, p. 1, and Norwegian EEA Supplement 2017 No 29, p. 826) (“Directive 2011/92/EU”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 230/2012 of 7 December 2012 (OJ 2013 L 81, p. 32, and Norwegian EEA Supplement 2013 No 18, p. 38) and is referred to at point 1a of Annex XX (Environment) to the EEA Agreement. The decision entered into force on 8 December 2012.
- 6 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 2014 L 124, p. 1, and Norwegian EEA Supplement 2019 No 77, p. 1017) (“Directive 2014/52/EU”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 117/2015 of 30 April 2015 (OJ 2016 L 211, p. 76, and Norwegian EEA Supplement 2016 No 42, p. 73) and is referred to at point 1a of Annex XX (Environment) to the EEA Agreement.

Constitutional requirements were indicated by Iceland and Liechtenstein, and the decision entered into force on 1 January 2016.

7 In the following, references to the EIA Directive mean Directive 2011/92/EU, as amended by Directive 2014/52/EU.

8 Recitals 2, 3, 4, 7, 10, 14 and 16 of Directive 2011/92/EU read:

*(2) Pursuant to Article 191 of the Treaty on the Functioning of the European Union, Union policy on the environment is based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source and that the polluter should pay. Effects on the environment should be taken into account at the earliest possible stage in all the technical planning and decision-making processes.*

*(3) The principles of the assessment of environmental effects should be harmonised, in particular with reference to the projects which should be subject to assessment, the main obligations of the developers and the content of the assessment. The Member States may lay down stricter rules to protect the environment.*

*(4) In addition, it is necessary to achieve one of the objectives of the Union in the sphere of the protection of the environment and the quality of life.*

*(7) Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question.*

*(10) Member States may set thresholds or criteria for the purpose of determining which of such projects should be subject to assessment on the basis of the significance of their environmental effects. Member States should not be required to examine projects below those thresholds or outside those criteria on a case-by-case basis.*

*(14) The effects of a project on the environment should be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life.*

*(16) Effective public participation in the taking of decisions 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.*

9 Article 1 of the EIA Directive reads, in extract:

*1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.*

*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;*

*...*

*(c) “development consent” means the decision of the competent authority or authorities which entitles the developer to proceed with the project;*

*...*

10 Article 2(1) of the EIA Directive reads:

*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.*

11 Article 3 of the EIA Directive reads:

*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).*

*2. The effects referred to in paragraph 1 on the factors set out therein shall include the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.*

12 Article 4(1) of the EIA Directive reads:

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

13 Article 5(1) of the EIA Directive reads:

*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:*

*(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.*

*Where an opinion is issued pursuant to paragraph 2, the environmental impact assessment report shall be based on that opinion, and include the information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment, taking into account current knowledge and methods of assessment. The developer shall, with a view to avoiding duplication of assessments, take into account the available results of other relevant assessments under Union or national legislation, in preparing the environmental impact assessment report.*

14 Article 6(4) of the EIA Directive reads:

*The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.*

15 Article 8a of the EIA Directive reads, in extract:

*1. The decision to grant development consent shall incorporate at least the following information:*

*(a) the reasoned conclusion referred to in Article 1(2)(g)(iv);*

*(b) any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures.*

...

*4. In accordance with the requirements referred to in paragraph 1(b), Member States shall ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment.*

*The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment.*

*Existing monitoring arrangements resulting from Union legislation other than this Directive and from national legislation may be used if appropriate, with a view to avoiding duplication of monitoring.*

...

16 Point 14 of Annex I to the EIA Directive reads:

*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.*

17 Point 4 of Annex IV to the EIA Directive reads:

*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), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.*

- 18 Point 5 of Annex IV to the EIA Directive reads, in extract:

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

...

*(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;*

...

- 19 The final subparagraph of point 5 of Annex IV to the EIA Directive reads:

*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.*

- 20 Recital 13 of Directive 2014/52/EU reads:

*(13) Climate 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) and their vulnerability to climate change.*

## **National law**

- 21 The first and second subparagraphs of Section 4-2 of Act No 72 of 29 November 1996 on Petroleum read, in extract:

*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. ...*

- 22 The first paragraph of Section 22a letter b of Regulation No 653 of 27 June 1997 on Petroleum (“the Petroleum Regulation”) reads, in extract:

*An impact assessment in a plan for development and operation of a petroleum deposit shall state the reason 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,*

*...*

- 23 The Petroleum Regulation is intended to implement the requirements of the EIA Directive.
- 24 The EIA Directive is also implemented through Norwegian Regulation No 854 of 21 June 2017 on environmental assessments.

### **III FACTS AND PROCEDURE**

- 25 The request for an advisory opinion has been made in proceedings between the Norwegian State, represented by the Ministry of Energy, as appellant, and Greenpeace Nordic and Nature and Youth Norway, as respondents.
- 26 According to the request, the case concerns the validity of decisions by the Ministry of Energy to approve a plan for development and operations for three petroleum projects in the North Sea. The decisions at issue are the following:
- decision of 29 June 2021 regarding the oil field Breidablikk;
  - decision of 5 June 2023 regarding the oil field Tyrving; and
  - three decisions of 28 June 2023 regarding the oil and natural gas project Yggdrasil.

- 27 The oil field Breidablikk has recoverable reserves that are estimated at over 30 million standard cubic metres of oil (approximately 190–200 million barrels of oil equivalents). Production started at the beginning of 2024 and the expected production time is 25 years (until 2052). Gross emissions from the field are around 87 million tonnes of CO<sub>2</sub>. The total investment is around NOK 19 billion. The expected production period is 20 years, until around 2044.
- 28 The oil field Tyrving has recoverable reserves that are estimated at around 4.1 million standard cubic metres of oil equivalents. Production was expected to start in September 2024 and gross emissions are estimated at 11.3 million tonnes of CO<sub>2</sub>.
- 29 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 CO<sub>2</sub>. Total expected investments for the development of Yggdrasil are around NOK 115.1 billion. Production is expected to start in 2027 and the expected production time is 25 years (until 2052).
- 30 Tyrving and Yggdrasil were made subject to environmental impact assessments pursuant to national law implementing the EIA Directive. Breidablikk was exempted pursuant to Section 22c of the Petroleum Regulation. The environmental impact assessments carried out did not assess the impact on the climate from greenhouse gas emissions arising from the later combustion of the extracted oil and gas.
- 31 Greenpeace Nordic and Nature and Youth Norway instituted legal proceedings and filed for a temporary injunction on 29 June 2023. Oslo District Court quashed the Ministry of Energy decisions in a judgment of 18 January 2024 and granted a temporary injunction. That judgment was appealed by the Ministry of Energy on 8 February 2024.
- 32 The referring court suspended the enforcement of the injunction on 20 March 2024. On 5 July 2024, the referring court decided to request an advisory opinion on the questions of EEA law raised by the case and severed the injunction case from the invalidity case. On 14 October 2024, the referring court lifted the injunction.
- 33 On 28 August 2024, the Ministry of Energy adopted two decisions upholding the approvals related to Tyrving and Yggdrasil. On 30 August 2024, Greenpeace Nordic and Nature and Youth Norway confirmed that also the validity of these two decisions will be challenged in the case before the referring court.
- 34 As noted in the request for an advisory opinion, 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 licence 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 licence. 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 and economical description of the project and an EIA, subject to the requirements of the EIA Directive.

- 35 According to the referring court, the request for an advisory opinion concerns the interpretation of Article 3(1) of the EIA Directive and what reparation obligations follow from EEA law. The parties to the case before the referring court disagree on whether the greenhouse gas 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.
- 36 The referring court notes that there is a judgment from the Norwegian Supreme Court, in HR-2020-2472-P, on whether greenhouse gas emissions from the combustion of extracted petroleum and natural gas are “environmental effects” of a plan to open an area for petroleum production, albeit under Directive 2001/42. It is apparent from the case file that the Norwegian Supreme Court held that the licensee does not have a legal claim for an approval of its PDO and that, under the Petroleum Act and general administrative law, there is nothing to prevent the authorities, when approving the PDO, from laying down so strict requirements that the applicant would choose not to proceed with the project.
- 37 The Supreme Court indicated in paragraph 246 of that judgment that consideration of the climate impact from emissions from combustion abroad will primarily take place at the PDO stage through the environmental assessment forming the basis for the authorities’ decision whether to award licences for development and operation. The Supreme Court further held that “this is reflected in the assessment regime applicable in this area, as a PDO cannot be approved until after an environmental assessment. In other words, the authorities are in full control of whether or not the environmental effect will occur.”
- 38 Against this background, the referring court decided to refer the following questions to the Court:
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?*

- 39 By order of 5 September 2024, the President of the Court held that none of the grounds put forward by the referring court, in requesting that the case be determined pursuant to an expedited procedure, justified the granting of that request. Accordingly, the request to apply an expedited procedure pursuant to Article 98 of the Rules of Procedure was denied.
- 40 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

#### **IV ANSWER OF THE COURT**

##### **Question 1**

*Preliminary remarks on the question referred*

- 41 By its first question, the referring court asks, in essence, whether greenhouse gas emissions that will be released from the combustion of petroleum and natural gas extracted as part of a project listed in point 14 of Annex I to the EIA Directive, constitute “effects” of that project within the meaning of Article 3(1) of the EIA Directive.
- 42 As a preliminary observation, the Court notes that no disagreement exists between the parties that, as long as petroleum and natural gas extracted under a given project is used in the project itself as part of its operation – for example, through flaring – then the effects of the emissions released from this usage on the environment and climate must be assessed in the environmental impact assessment for the project. Thus, the legal disagreement between the parties in the main proceedings only relates to the assessment of the effects of the combustion of the petroleum and natural gas that will be extracted and then sold to third parties to be used elsewhere.
- 43 In those circumstances, the question must be understood as asking whether greenhouse gas emissions that will be released from the combustion of petroleum and natural gas extracted as part of a project listed in point 14 of Annex I to the EIA Directive, and then sold to third parties, constitute “effects” of that project within the meaning of Article 3(1) of the Directive.
- 44 It should be noted that the questions of the referring court relate to the interpretation of the EIA Directive alone, and the facts of the dispute at issue in the main proceedings do not appear to require an assessment of other EEA acts, such as Directive 2001/42. As such, the Court’s examination therefore relates only to the interpretation of the EIA Directive, and not Directive 2001/42. In any event, according to the very wording of Article 11(1) of Directive 2001/42, a strategic environmental assessment carried out under that directive is without prejudice to any requirements under the EIA Directive.

- 45 It follows that an environmental assessment carried out under the EIA Directive, when required by its provisions, is in addition to an assessment carried out under Directive 2001/42 (compare the judgment of 22 September 2011 in *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraphs 57 to 58).

*Preliminary remarks on the principles underlying the EIA Directive*

- 46 The Court observes that before development consent is granted in respect of any project within the meaning of Article 1(2)(a) of the EIA Directive, an environmental impact assessment must be conducted on that project pursuant to Article 2(1) of that directive, if it is likely to have significant effects on the environment, by virtue of its nature, size or location (compare the judgment of 29 July 2019 in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, EU:C:2019:622, paragraph 73).
- 47 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 (compare the judgment of 25 May 2023 in *WertInvest Hotelbetrieb*, C-575/21, EU:C:2023:425, paragraphs 77 and 79).
- 48 As is explained in recital 1 of Directive 2014/52/EU, the objective of the EIA Directive is to ensure a high level of protection of the environment and of human health, through the establishment of minimum requirements for the environmental impact assessment of projects. Thus, as explained in recital 3 of Directive 2011/92/EU, EEA States may in their national law impose stricter requirements providing for more extensive protection of the environment. It is for the Norwegian courts to assess whether this discretion has been exercised by the Norwegian State.
- 49 The logic underlying the EIA Directive is the prevention of environmental damage. As follows from recitals 4 and 14 of Directive 2011/92/EU, the Directive requires the assessment of the effects of public and private projects on the environment in order to attain the objective of a high level of environmental protection as set out, inter alia, in recital 10 of the EEA Agreement and Article 73 EEA. The effects of a project on the environment should be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life (compare the judgment of 14 March 2013 in *Leth*, C-420/11, EU:C:2013:166, paragraphs 28, 29 and 34).
- 50 The Court notes that, as part of that logic, the obligation to carry out a prior assessment of the environmental effects of a project is justified by the fact that, at a decision-making level, it is necessary for the competent authorities, as stated in recital 2 of Directive 2011/92/EU, to take effects on the environment into account at the earliest possible stage in all the technical planning and decision-making processes. As is further stated in that recital, that approach is commensurate with the precautionary principle and the principles that preventive action should be taken, that environmental damage should, as

a priority, be rectified at source and that the polluter should pay which, pursuant to Article 73 EEA, are the basic principles of the Agreement's policy on the environment (compare the judgment of 6 July 2023 in *Hellfire Massy Residents Association*, C-166/22, EU:C:2023:545, paragraph 38).

- 51 Accordingly, the outcome of an environmental impact assessment, which must be a full assessment (compare the judgment of 24 February 2022 in *Namur-Est Environnement*, C-463/20, EU:C:2022:121, paragraph 58 and the case-law cited), must make it possible to determine whether, as stated in Article 1(1) of the EIA Directive, the project concerned is likely to have significant effects on the environment.
- 52 The provisions of the EIA Directive are essentially of a procedural nature. By the inclusion of information on the environment in the consent procedure it is ensured that the environmental impact of the project is included in the public debate as to whether the development consent should be granted. Thus, as highlighted in recital 7 of Directive 2011/92/EU, the environmental impact assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question (compare the judgment of 19 September 2000 in *Linster*, C-287/98, EU:C:2000:468, paragraph 53).
- 53 It must be borne in mind that any review of the legality of decisions, acts or omissions falling within the scope of the EIA Directive seeks, in accordance with the objectives of the Aarhus Convention, to involve members of the public concerned, with a view to contributing to preserving, protecting and improving the quality of the environment and protecting human health (compare the judgment of 7 November 2013 in *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraph 28).
- 54 Thus, recital 16 of Directive 2011/92/EU states that effective public participation in the taking of decisions 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.
- 55 The Court observes that one of the objectives of the Directive is to put in place guarantees to ensure that the public is better informed of, and more able to participate in, environmental impact assessments relating to public and private projects likely to have a significant effect on the environment (compare the judgment in *Gemeinde Altrip and Others*, C-72/12, cited above, paragraph 48).
- 56 In this regard, Article 6(4) of the EIA Directive provides that the public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures. Such public participation in decisions which may have a significant effect on the environment must take place at an early stage, when all options are still open and effective public participation can take place (compare the opinion of Advocate General Kokott of 30 March 2017 in *Comune di Corridonia and Others*, Joined Cases C-196/16 and C-197/16, EU:C:2017:249, point 26).

*Article 3(1) of the EIA Directive – the scope of the required assessment*

- 57 Article 3(1) of the Directive provides that the environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect effects of a project on population and human health, biodiversity, land, soil, water, air and climate, as well as material assets, cultural heritage and the landscape (compare the judgment in *WertInvest Hotelbetrieb*, C-575/21, cited above, paragraph 38). The examination of such direct and indirect effects must be carried out in full, and in a comprehensive manner, before development consent for the project in question is granted (compare the judgment in *WertInvest Hotelbetrieb*, C-575/21, cited above, paragraph 78, and the judgment of 28 May 2020 in *IL and Others*, C-535/18, EU:C:2020:391, paragraph 79).
- 58 Article 5(1)(f) of the Directive prescribes that, 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 must include, at least, 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.
- 59 In relation to the above, point 4 of Annex IV refers to the description of factors likely to be significantly affected by the project. These may include the climate (for example, greenhouse gas emissions). Point 5 of Annex IV refers in the same context to the impact of the project on the climate (for example the nature and magnitude of greenhouse gas emissions). Annex IV, point 5, second paragraph states that the description of the likely significant effects on the factors specified in Article 3(1) of the Directive 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.
- 60 As regards projects falling within Annex I to the EIA Directive, to which Article 4(1) of that directive refers, they present an inherent risk of significant effects on the environment and therefore an environmental impact assessment is indispensable in those cases (compare the judgment in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, cited above, paragraph 75). The projects listed in Annex I include, at point 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. It is uncontested by the parties in the main proceedings that the projects at issue in the main proceedings fall under this point.
- 61 The Court notes that the wording of Article 3(1) of the Directive does not specifically refer to greenhouse gas emissions that will be released from petroleum and natural gas extracted as part of a project subjected to an environmental impact assessment. In this context, it must be recalled that it is settled case law that the interpretation of a provision of EEA law requires account to be taken not only of its wording, but also of its context, and the objectives and purpose pursued by the act of which it forms part. Furthermore, where a provision of EEA law is open to several interpretations, preference must be

given to that interpretation which ensures that the provision retains its effectiveness (see the judgment of 25 January 2024 in *A Ltd*, E-2/23, paragraph 43).

- 62 The Court further observes that it is settled case law that the scope of the EIA Directive is wide and its purpose very broad (compare the judgment of 7 August 2018 in *Gerhard Prenninger and Others*, C-329/17, EU:C:2018:640, paragraph 36 and case law cited). Moreover, the Directive seeks an overall assessment of the environmental impact of projects.
- 63 In addition, the list laid down in Article 3(1) of the EIA Directive of the factors to be taken into account, such as the direct and indirect effects of a project on population and human health, biodiversity, land, soil, water, air climate, material assets, cultural heritage, the landscape, and the interaction between these factors, shows, in itself, that the environmental impact whose assessment the EIA Directive is designed to enable is not only the impact of the works envisaged but also, and above all, the impact of the project to be carried out (compare the judgment of 28 February 2008 in *Abraham and Others*, C-2/07, EU:C:2008:133, paragraph 44). This is further borne out by the more detailed list of information to be included in the environmental impact assessment report set out in points 4 and 5 of Annex IV thereto.
- 64 The Court observes, as the Commission noted in its written observations, that the European Court of Justice (“ECJ”) has held, for example, in relation to a project to double an existing railway track, that a project of that kind can have a significant effect on the environment, since it is likely to produce, inter alia, significant noise effects (compare the judgment of 16 September 2004 in *Commission v Spain*, C-227/01, EU:C:2004:528, paragraph 49). The significant noise effects in that case were not brought about by the works involved in doubling the railway track but by the foreseeable increase in rail traffic permitted precisely by the works involved in doubling the track. As the Commission further observed, a similar test was later applied by the ECJ in respect of an increase in the activity of an airport and, consequently, in the intensity of air traffic, due to improvements made to the airport in the context of a project subject to an environmental impact assessment (compare the judgment in *Abraham and Others*, C-2/07, cited above, paragraphs 43 to 46).
- 65 It follows that Article 3(1)(c) of the EIA Directive requires that the environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, all the direct and indirect likely significant effects of each project on several factors, including the climate. These effects must be fully examined and in a comprehensive manner (compare the judgment in *WertInvest Hotelbetrieb*, C-575/21, cited above, paragraph 78 and case law cited).

*The effects of the greenhouse gas emissions from the combustion of petroleum and natural gas extracted and sold to third parties*

- 66 According to Article 73 EEA the action by the Contracting Parties relating to the environment shall have the following objectives: (i) to preserve, protect and improve the quality of the environment; (ii) to contribute towards protecting human health and



(iii) to ensure a prudent and rational utilization of natural resources. These actions shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements shall be a component of the Contracting Parties' other policies. Annex XX contains the specific provisions which shall apply pursuant to Article 73 EEA.

- 67 The Court recalls that combating climate change is an objective of fundamental importance given its adverse effects and the severity of its consequences, including the grave risk of their irreversibility and its impact on fundamental rights (see the judgment of 9 August 2024 in *Norwegian Air Shuttle*, E-12/23, paragraph 35). Greenhouse gas emissions are one of the main causes of climate change which the EEA States have made a commitment to combat (compare the judgment of 22 June 2017 in *E.ON Biofor Sverige*, C-549/15, EU:C:2017:490, paragraphs 85 and 88 and case law cited).
- 68 Specifically with regard to effects on the climate, recital 13 of Directive 2014/52/EU explains that climate change will continue to cause damage to the environment and compromise economic development. It follows that the impact of projects on the climate must be assessed under the EIA Directive.
- 69 As noted by the respondents in the main proceedings, the release of greenhouse gas emissions is very likely to follow the antecedent action of extracting petroleum and natural gas in a project such as that at issue. If not for the project, the embedded greenhouse gases would stay below ground. As such, the extraction of the petroleum and natural gas represents a necessary precondition of burning it as fuel, thereby releasing emissions with an impact on the climate. It follows that the combustion of the petroleum and natural gas extracted and subsequently sold to third parties are likely effects of the project. To this preliminary conclusion, the Norwegian Government has raised three main objections.
- 70 First, the Norwegian Government notes that intermediate steps, and in particular, refinement, are generally required before petroleum and natural gas extracted through a project such as that at issue in the main proceedings are suitable for combustion. While projects entailing the extraction of petroleum and natural gas for commercial purposes are listed in point 14 of Annex I to the EIA Directive, crude oil refineries, pipelines for the transport of petroleum and natural gas, and installations for petroleum storage are listed in the same annex, thus requiring separate environmental impact assessments. This entails that the greenhouse gas emissions arising from the combustion of the petroleum and natural gas resulting from the project at issue could partially fall under other environmental assessment obligations relating to other projects listed in Annex I of the Directive.
- 71 However, whether a subsequent refinement project requires development consent and an environmental impact assessment or otherwise cannot affect the prior obligation to carry out such an assessment at the extraction stage, even if there might be some overlap between the assessments. Thus, where the assessment of the environmental impacts must, in particular, identify, describe and assess in an appropriate manner the indirect

effects of a project, that assessment must also include an analysis of the cumulative effects on the environment which that project may produce if considered jointly with other projects, in so far as such an analysis is necessary in order to ensure that the assessment covers examination of all the notable impacts on the environment of the project in question (compare the judgment of 24 November 2011 in *Commission v Spain*, C-404/09, EU:C:2011:768, paragraph 80). As such, having regard to the fact that greenhouse gas emissions arising from petroleum and natural gas might again be considered in the context of a subsequent refinement project does not, in itself, preclude their consideration in the earlier extraction project.

- 72 For the sake of completeness, the Court notes, further, that nothing in the text of the EIA Directive precludes a particular effect from being considered in environmental impact assessments relating to multiple projects. As such, the fact that a subsequent environmental impact assessment may or may not assess the same effects at a later juncture cannot affect the obligation to carry out such an assessment at the extraction stage in a project such as that at issue in the main proceedings.
- 73 Similarly, the obligations to assess environmental impacts of a project under the EIA Directive arise independently of which State must report them in accordance with the Paris Agreement. Whereas the Paris Agreement seeks to ensure that greenhouse gas emissions and greenhouse gas emissions reductions are not counted twice, the purpose of the EIA Directive is not limited in this manner as its purpose is not to divide responsibilities between States similarly to the Paris Agreement.
- 74 The Court observes that the Norwegian Government has, in the course of the proceedings, noted that almost all of the Norwegian production of petroleum and natural gas is exported abroad. While a majority of this production will be refined within the EEA, with respect to the remainder thereof, no further environmental impact assessment under EEA law will take place with respect to the subsequent refinement of such products.
- 75 The Court recalls that an environmental impact assessment in respect of a project must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment (compare the judgment in *Abraham and Others*, C-2/07, cited above, paragraph 26). The requirement that such an assessment should precede consent is, as is highlighted in recital 2 of Directive 2011/92/EU, justified by the fact that it is necessary, in the decision-making process, 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 to counteract their effects subsequently (compare the judgment in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, cited above, paragraph 83). This objective would be undermined if combustion emissions were only assessed by environmental impact assessments at a later juncture.
- 76 Furthermore, as also noted above, public participation in decisions which may have a significant effect on the environment must take place at an early stage, when all options

are still open and effective public participation can take place. In that context, it seems clear that to allow combustion emissions only to be assessed by environmental impact assessments at a later juncture would run counter to these objectives. This is because the environmental impact assessment prior to the extraction of petroleum and natural gas represents the last point at which the public can voice their views and concerns that greenhouse gas emissions that are likely to result from such products will ultimately reach the atmosphere and whether to avoid this by refraining from exploiting the deposits.

- 77 Similarly, Article 8a(1) of the EIA Directive lays down the minimum requirements for the content of a development consent, primarily as regards the conclusions of the assessment of a project's environmental impact and the environmental conditions for its implementation. Article 8a of the EIA Directive makes it clear that a decision by the competent authority to grant or refuse development consent shall be taken, *inter alia*, on the basis of the environmental impact assessment. Under Article 8a(1)(b), that required content also includes any environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures. This entails that the environmental impact assessment procedure in a case such as that in the main proceedings represents the last point at which the Ministry as the competent authority may determine whether consent should be granted for the petroleum and natural gas to be extracted or not, and if appropriate determine the quantities to be extracted. This point in time is therefore determinative for whether greenhouse gas emissions that are likely to result from the combustion of the products extracted during the project will eventually be released into the atmosphere.
- 78 When determining what information must be included in an environmental impact assessment for a project falling within the scope of the EIA Directive, Article 5(1)(a) and Annex IV to the Directive state that the project must, *inter alia*, be described in detail in the environmental impact assessment report. As previously observed, Article 5(1) of the Directive requires the developer to provide all necessary information in the relevant environmental impact assessment report, in order for development consent to be assessed on the basis of the factors identified in Article 3 of the Directive.
- 79 In deciding whether to grant a development consent for a project included in point 14 of Annex I to the EIA Directive, a competent authority may exercise its competence to determine what volume of petroleum and natural gas may be extracted for commercial purposes on the basis of the development consent granted; that is, whether the development consent should include limits in this regard.
- 80 In that context, information concerning the likely impact of the project on the climate, including with respect to greenhouse gas emissions represents particularly relevant information when determining the volume of petroleum and natural gas that the developer will be permitted to extract for commercial purposes on the basis of the development consent. Moreover, the Court recalls that Article 8a(1) of the Directive requires that the decision to grant development consent shall incorporate, at least, any

environmental conditions attached to the decision, a description of any features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment as well as, where appropriate, monitoring measures. In order for a competent authority to properly exercise its functions when deciding on the granting of a development consent, the developer must be required to provide information concerning the emissions resulting from the combustion of the petroleum and natural gas extracted, so that the competent authority can determine, if appropriate, whether any limits should be placed on the quantities extracted. As already observed, such information is also required for the public to have effective opportunities to participate in the decision-making procedure, since their observations could also include that a particular volume limit should not be exceeded.

- 81 The Norwegian Petroleum Regulation is, according to the request from the referring court, divided into three phases, namely: the opening of a field; exploration; and production. In the event of profitable discoveries, before any development and operations may be initiated, a development and operational plan (PDO) must be approved by the competent authority. It is evident from the request from the referring court that the applicant does not have an unconditional right to have a PDO approved in circumstances which profitable discoveries have been made. The competent authority may either refuse to issue an approval, or may attach conditions thereto. Accordingly, as summed up by the Norwegian Supreme Court in paragraph 246 of HR-2020-2472-P, “the authorities are in full control of whether or not the environmental effects will occur.”
- 82 As noted above, the final subparagraph of point 5 of Annex IV to the EIA Directive requires that the description of the likely significant effects on the factors specified in Article 3(1), 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 under the EEA or at national level, in the absence of harmonization, which are relevant to the project.
- 83 In light of the above considerations, indirect effects of the project should be understood to encompass secondary, cumulative, transboundary effects, including those that are long-term or temporary. Consequently, as long as such effects are both significant and likely, which must be determined on a case-by-case basis, such indirect effects must be included in the environmental impact assessment. Moreover, the Court observes that the wording of the Directive does not require the “effects” to have consequences with close temporal or geographical proximity to the installation or scheme.
- 84 As a decision concerning whether projects coming within the scope of Article 4(2) of the Directive are to be the subject of an EIA is not limited to the geographical scope of the territory of the competent authority, *a fortiori* such geographical limitations are not applicable in assessing the effects of projects within Article 4(1) (compare the judgment of 11 February 2015 in *Marktgemeinde Straßwalchen and Others*, C-531/13, EU:C:2015:79, paragraph 46).

- 85 Furthermore, the Court recalls, in this regard, that, in *Commission v Spain*, C-227/01, cited above, and *Abraham and Others*, C-2/07, cited above, the effects were brought about not by the works involved, but by foreseeable and likely events occurring subsequent to the completion of the project (an increase in rail traffic and air traffic, respectively), and that such effects were to be considered in the context of an environmental impact assessment. The Court observes that neither the increase in traffic, nor the precise extent of that increase, could be seen as inevitable at the time of the respective environmental impact assessments. A decrease in demand for either rail or air travel was not impossible, for example.
- 86 Second, the Norwegian Government has noted that a certain proportion of crude oil is not burned at all, but used for petrochemical and other industrial purposes, and that this percentage is rising.
- 87 However, the fact that the petroleum and natural gas extracted from a project such as that at issue in the main proceedings might be put to a variety of uses does not entail that its effects on the climate are not susceptible of examination in the context of an environmental impact assessment. As was the case in both *Commission v Spain*, C-227/01, cited above, and *Abraham and Others*, C-2/07, cited above, the likely effects are known, namely, that a significant proportion of the extracted petroleum and natural gas being burned as fuel, thereby generating greenhouse gas emissions. The fact that these effects are likely, rather than certain, cannot represent a barrier to such greenhouse gas emissions being considered as relevant effects under Articles 1 and 3(1) of the EIA Directive.
- 88 Moreover, the fact that the precise extent of the greenhouse gas emissions may be unknown, as such emissions will depend to some extent, first, on the use to which extracted petroleum and natural gas are put (that is, whether they are combusted or not), and second, in the event that they are combusted, the type of fuel to which they are refined (for example, jet fuel, diesel, or gasoline) does not preclude the inclusion of such greenhouse gas emissions in an environmental impact assessment. The Court observes that the Norwegian Government has provided a certain amount of statistical information concerning the uses to which such extracted petroleum and natural gas are typically put. As such, the likely uses of these products – and likely greenhouse gas emissions – can be readily identified by developers preparing a report in accordance with Article 5(1) of the EIA Directive. The Norwegian Government has further noted that it is fairly easy to assess the gross emissions from burning the estimated amount of petroleum and natural gas from a given reservoir.
- 89 As such, it does not appear unduly burdensome to require that developers provide for a reasoned estimate of the greenhouse gas emissions that are likely to result from the subsequent combustion of petroleum and natural gas extracted in the course of a project such as that at issue in the main proceedings. The Court observes, moreover, that such an estimate could consist, for example, of a likely range of emissions, depending on the uses to which the products in question are put, providing that the range in question assesses likely uses. Such an approach might be appropriate, in particular, where the

developer is not responsible for determining the ultimate end use of such products, for example, in cases where such products are exported and sold to third parties.

- 90 With respect to whether the greenhouse gas emissions resulting from petroleum and natural gas extracted as part of a project listed in point 14 of Annex I to the EIA Directive are significant, in addition to being likely, the Court recalls, first of all, that it follows from Article 2(1) of the EIA Directive that an environmental impact assessment must be carried out when there is a probability or a risk that the project in question will have significant effects on the environment. Taking into account the precautionary principle, one of the foundations of the high level of environmental protection pursued by the EEA Agreement, in the light of which the EIA Directive is to be interpreted, it is considered that such a risk exists if it cannot be excluded on the basis of objective evidence that the project is likely to have significant effects on the environment (compare the judgment of 6 March 2025 in *Waltham Abbey Residents Association*, C-41/24, EU:C:2025:140, paragraph 41 and case law cited).
- 91 A project is considered to be likely to have significant effects on the environment where, by reason of its nature, there is a risk that it will cause a substantial or irreversible change in environmental factors, such as fauna and flora, soil or water and climate, irrespective of its size (compare the judgment in *Waltham Abbey Residents Association*, C-41/24, cited above, paragraph 46 and case law cited).
- 92 Article 4 of the Directive provides that projects listed in Annex I shall be made subject to an assessment, whereas for projects listed in Annex II, EEA States shall determine whether the project shall be made subject to an assessment. This suggests, first of all, that the projects listed in Annex I are always likely to have a significant effect on the environment, whereas those in Annex II may have such an effect, depending on the circumstances. This point is borne out by an examination of the annexes themselves. Whereas Annex I contains, in most cases, a specific minimum project size indicating a significance threshold, Annex II contains no such minimum project size. This entails that Annex II could relate to both large-scale and small-scale projects, whereas the projects addressed by Annex I will always be of a certain size or larger, and thus the effects on the environment that may arise therefrom are more likely to be significant.
- 93 In this regard, the Court notes that projects listed in Annex I include, at point 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 natural gas. Thus, the effects of such projects are defined by the extraction that causes them. Accordingly, as noted by the respondents in the main proceedings, if the intention was to only include emissions from the production phase in the scope of the EIA obligation, one would have expected the EIA obligation to be defined based on the size or energy use of the project itself, not the volume of the extracted resources themselves. Thus, the Court observes that the fact that the size threshold is essentially connected to the products, rather than the development project itself, and that the quantity of products extracted determines whether an EIA is required in such a project suggests that the emissions from those products will be significant.

- 94 Third, the Norwegian Government has noted that it may be difficult in practice to determine the significance of greenhouse gas emissions from a particular petroleum or natural gas project in net – as opposed to gross – terms, as the alternative to a new Norwegian project may be that other, possibly non-EEA producers will increase their exports, and because petroleum – and in particular natural gas – often serves as an alternative to other energy forms that produce considerably more emissions, such as coal.
- 95 The Court observes, however, that even if this is the case, it cannot preclude the inclusion of greenhouse gas emissions resulting from petroleum and natural gas extracted as part of a project such as that in the main proceedings as part of the effects thereof. As noted, Article 5(1)(f) of the Directive sets out that the information to be provided by the developer must include any additional information specified in Annex IV to the Directive relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected. Point 5(f) of Annex IV sets out as additional information to be included by the developer the likely significant effects of the project on the environment resulting from the impact of the project on the climate. It is clear that the environmental impact assessment should be limited in scope to the effects of the project itself, as distinct from other alternative projects, whether existing or speculative. The text of Article 3(1) makes this explicit, while, as noted by the Norwegian Government, several further provisions of the Directive clarify that the project is the defining concept in this regard.
- 96 The Court notes, moreover, that both *Commission v Spain*, C-227/01, cited above, and *Abraham and Others*, C-2/07, cited above, confined their analysis to foreseeable and likely events occurring subsequent to the completion of the respective projects at issue, without regard to knock-on effects caused by other projects elsewhere. In relation to a project subject to an environmental impact assessment, the likely significant effects of the project on the environment resulting from the impact of the project itself on the climate represent the relevant standard, without regard to speculative analyses of knock-on effects on other projects elsewhere.
- 97 The Court observes that this is also borne out by recital 16 of Directive 2011/92/EU, which notes that effective public participation in the taking of decisions 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. Such effective public participation in decision making would be undermined if an interpretation of the EIA Directive were adopted that allowed the developer to omit information concerning high levels of greenhouse gas emissions occurring as a result of the combustion of petroleum and natural gas extracted during a project, purely on the basis that due to a “net” analysis, the amounts emitted by the project would not meet the threshold of significance.
- 98 However, the Court observes that the EIA Directive has harmonised the principles for the environmental impact assessment of projects by introducing minimum requirements

with regard to the type of projects subject to assessment. Thus, nothing precludes an additional analysis of predicted net effects of the project in question in terms of greenhouse gas emissions. In particular, the words “at least” in Article 5(1) of the EIA Directive denote that the developer, when submitting the environmental impact assessment report, has the scope to include additional information that may be relevant to the assessment to be undertaken.

- 99 On the basis of the foregoing, the reply to the first question must be that greenhouse gas emissions that will be released from the combustion of petroleum and natural gas extracted as part of a project listed in point 14 of Annex I to the EIA Directive, and then sold to third parties, constitute “effects” of that project within the meaning of the Directive.

### Questions 2 and 3

- 100 By its second question, the referring court asks, should its first question be answered in the affirmative, in essence, whether a national court is 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 environmental impact assessment. By its third question, the referring court asks, should its second question be answered in the affirmative, in essence, whether a national court can retroactively dispense with the obligation to assess these effects under Article 3(1) of the EIA Directive if it is shown that the failure has not influenced the outcome of the decision-making process. The Court finds it appropriate to examine these two questions together.
- 101 As previously observed, Article 2(1) of the EIA Directive provides that the environmental impact assessment must take place before development consent is given. That entails that the examination of a project’s direct and indirect effects on the factors referred to in Article 3 of that directive and on the interaction between those factors be fully carried out before consent is given (compare the judgment of 3 March 2011 in *Commission v Ireland*, C-50/09, EU:C:2011:109, paragraphs 76 and 77).
- 102 However, the EIA Directive does not specify what action should be taken in the event of infringement of the obligations laid down by that directive (compare the judgment in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, cited above, paragraph 169). More precisely, the Directive does not contain provisions governing the consequences of a breach of the obligation to carry out a prior assessment (compare the judgment of 12 November 2019 in *Commission v Ireland*, C-261/18, EU:C:2019:955, paragraph 74).
- 103 Nonetheless, under the principle of sincere cooperation, laid down in Article 3 EEA, EEA States are required to nullify the unlawful consequences of a breach of EEA law. The competent national authorities are therefore under an obligation to 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 in order to carry out such an assessment (compare, to that effect, the



judgment in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, cited above, paragraph 170 and case law cited).

- 104 The Court recalls, further, that in accordance with Article 3 EEA, it is the responsibility of the national courts to provide the legal protection that individuals derive from the EEA Agreement and to ensure that rules of EEA law are fully effective (see the judgment of 4 July 2023 in *RS*, E-11/22, paragraph 44). This must necessarily entail that the obligation to take all measures necessary to remedy a failure to carry out an environmental impact assessment is also incumbent upon national courts before which an action against a national measure on this basis has been brought.
- 105 The detailed procedural rules applicable to such actions are a matter for the domestic legal order of each EEA State, under the principle of procedural autonomy, provided that they are not less favourable than those governing similar domestic situations (the principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by EEA law (the principle of effectiveness) (see the judgment of 9 August 2024 in *Låssenteret*, E-11/23, paragraph 44, and compare the judgment of 7 January 2004 in *Wells*, C-201/02, EU:C:2004:12, paragraph 67).
- 106 The Court observes that it is for the national court, as far as possible, and where there has been a breach of EEA law, to interpret and apply the relevant provisions of national law in such a way that it is possible to nullify the consequences of that breach of EEA law (see the judgment of 2 October 2015 in *Liechtensteinische Gesellschaft für Umweltschutz*, E-3/15, paragraphs 74 to 75 and case law cited).
- 107 Such measures include, subject to the limits laid down by the principle of procedural autonomy of the EEA State, the revocation or suspension of a consent already granted, in order to carry out an assessment of the environmental effects of the project in question as provided for by the EIA Directive (see the judgment in *Liechtensteinische Gesellschaft für Umweltschutz*, E-3/15, cited above, paragraph 83, and compare the judgment in *Wells*, C-201/02, cited above, paragraph 65).
- 108 The Court further notes that EEA law does not preclude national rules which, in certain cases, permit the regularisation of operations or measures which are unlawful in the light of EEA law (compare the judgment of 26 July 2017 in *Comune di Corridonia and Others*, Joined Cases C-196/16 and C-197/16, EU:C:2017:589, paragraph 37 and case law cited).
- 109 However, such a possible regularisation would have to be subject to the condition that it does not offer the parties concerned the opportunity to circumvent the rules of EEA law or to dispense with applying them and should remain the exception (compare the judgment in *Comune di Corridonia and Others*, Joined Cases C-196/16 and C-197/16, cited above, paragraph 38 and case law cited).
- 110 Consequently, in the event of failure to carry out an assessment of the environmental impact of a project required under the EIA Directive, EEA States are required to nullify

the unlawful consequences of that failure, for instance by revoking or suspending the development consent. However, EEA law does not preclude regularisation through the conducting of such an assessment while the project is under way or even after it has been completed, on the twofold conditions that, first, that national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EEA law or to dispense with applying them, and second, an assessment carried out for regularisation purposes is not conducted solely in respect of the project's future environmental impact, but must also take into account its environmental impact since the time of completion of that project (compare the judgment in *Comune di Corridonia and Others*, Joined Cases C-196/16 and C-197/16, cited above, paragraph 43, and the judgment of 28 February 2018 in *Comune di Castellbellino*, C-117/17, EU:C:2018:129, paragraph 30).

- 111 It is for the referring court to assess whether the conditions are satisfied in the main proceedings, in the light of the content of the national provisions and the information available to it.
- 112 With respect to the third question of the referring court, the Norwegian Government has argued that the judgments in *Gemeinde Altrip and Others*, C-72/12, cited above, and of 15 October 2015 in *Commission v Germany*, C-137/14, EU:C:2015:683, support the conclusion that a procedural defect in the sense of an environmental impact assessment that allegedly does not contain all the elements required under Article 3 of the EIA Directive does not require remedies under Article 3 EEA where there is no real possibility that the procedural defect in question could have influenced the outcome of the decision-making process. Hence, in the view of the Norwegian Government, the procedural defect at issue in the case in the main proceedings does not require that a development consent which had previously been granted should be annulled or suspended by the national courts in order for a lawful decision to be made. On this basis, it is argued, no further analysis under Article 3 EEA is required.
- 113 However, the considerations in *Gemeinde Altrip and Others* and *Commission v Germany* relied on by the Norwegian Government in support of its position concern procedural defects related to the right to review of decisions under the Directive and specifically, Article 11 thereof. These considerations cannot be transposed to the present case, which concerns the requirement to conduct an environmental impact assessment under Article 3 of the EIA Directive, since this vital aspect of environmental protection could well be compromised if development projects of this kind were to be authorised in the absence of an assessment which meets the appropriate legal standards.
- 114 As noted above, Article 3 of the EIA Directive makes the competent environmental authority responsible for carrying out an environmental impact assessment which must include a description of a project's direct and indirect effects on the factors set out in the first four indents of that article and the interaction between those factors. In order to satisfy the obligation imposed on it by Article 3, the competent environmental authority may not confine itself to identifying and describing a project's direct and indirect effects on certain factors, but must also assess them in an appropriate manner, in the light of

each individual case. That assessment obligation is distinct from the procedural obligation laid down in Article 11 of the EIA Directive (compare the judgment in *Commission v Ireland*, C-50/09, cited above, paragraphs 36 to 38).

- 115 The Court further observes that Article 11 of the EIA Directive, which was the subject of the cases cited by the Norwegian Government, leaves the EEA States significant discretion to determine what constitutes impairment of a right within the meaning of Article 11(1)(b) thereof. Accordingly, it is permissible for national law not to recognise such an impairment if it is established that it is conceivable, in view of the circumstances of the case, that the contested decision would not have been different without the procedural defect invoked (compare the judgment in *IL and Others*, C-535/18, cited above, paragraph 59 and case law cited). As noted above, the substantive obligation laid down in Article 3 of the EIA Directive does not leave the EEA States with any such discretion.
- 116 In this regard, the Court notes that the present case concerns an environmental impact assessment that has not been carried out in the line with the EIA Directive as it has omitted very significant amounts of the greenhouse gas emissions related to the project concerned. Concluding that such an omission could not have impacted the development consent would undermine the whole purpose of the EIA Directive, which is to assess the environmental impacts of a project and take these assessments into consideration in the development consent procedure. It follows that a national court cannot retroactively dispense with the obligation to assess the direct and indirect effects on the environment of a project under Article 3(1) of the EIA Directive.
- 117 Lastly, for the sake of completeness, the Court observes that according to settled case law, national courts may, under certain exceptional circumstances, temporarily maintain the effects of a national rule that is contrary to EEA law, and thereby maintain the effect of certain consents granted in breach of an assessment requirement under EEA law until that defect is remedied *ex post* (see the judgment in *RS*, E-11/22, cited above, paragraph 45, and compare the judgments in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, cited above, paragraphs 178 to 182, and of 25 June 2020 in *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraphs 90 to 95).
- 118 Settled case law provides that a national court may exceptionally be authorised to make use of a national provision empowering it to maintain certain effects of a national measure the procedure for the adoption of which did not comply with the requirement to conduct an environmental impact assessment in circumstances in which an overriding consideration relating to the protection of the environment is at issue, and when there is a risk that the annulment of that measure could create a legal vacuum that is incompatible with that EEA State's obligations concerning the protection of the environment (compare the judgments of 28 July 2016 in *Association France Nature Environnement*, C-379/15, EU:C:2016:603, paragraph 39, and in *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, cited above, paragraph 90) or where annulment or suspension of the measure in question would cause a genuine and serious threat of disruption to the electricity supply of the EEA State concerned, which could not be

remedied by any other means or alternatives, particularly in the context of the internal market (compare the judgments in *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen*, C-411/17, cited above, paragraph 179, and in *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, cited above, paragraph 92). In this regard, the Court recalls that purely economic considerations cannot be regarded as overriding public interests (see, to that effect, the judgment of 5 March 2025 in *Friends of the Earth Norway and Others*, E-13/24, paragraphs 40 to 43).

- 119 The Court observes that the request for an advisory opinion provides no indication that such overriding reasons are present in the case in the main proceedings. As such, there are no grounds for an assessment as to whether the referring court may maintain the effects of the national measure on this basis.
- 120 In the light of all the above considerations, the answer to the second question must be that a national court is required under Article 3 EEA, to the extent possible under national law, to eliminate the unlawful consequences of a failure to carry out a full environmental impact assessment required under the EIA Directive. However, this does not preclude regularisation through the conducting of such an assessment while the project is under way or even after it has been completed, on the twofold condition that:
- national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EEA law or to dispense with applying them, and
  - any subsequent or ancillary assessment carried out for regularisation purposes is not conducted solely in respect of the project's future environmental impact, but must also take into account its environmental impact since the time of completion of that project.
- 121 It is for the referring court to assess whether the conditions are satisfied in the main proceedings, in the light of the content of the national provisions and the information available to it.
- 122 The answer to the third question must be that a national court may not retroactively dispense with the obligation to assess the effects under Article 3(1) of the EIA Directive.

## **V COSTS**

- 123 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by Borgarting Court of Appeal hereby gives the following Advisory Opinion:

- 1. Greenhouse gas emissions that will be released from the combustion of petroleum and natural gas extracted as part of a project listed in point 14 of Annex I to 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, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, and then sold to third parties, constitute “effects” of that project within the meaning of the Directive.**
- 2. A national court is required under Article 3 EEA, to the extent possible under national law, to eliminate the unlawful consequences of a failure to carry out a full environmental impact assessment required under Directive 2011/92/EU, as amended by Directive 2014/52/EU. However, this does not preclude regularisation through the conducting of such an assessment while the project is under way or even after it has been completed, on the twofold condition that:**
  - national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EEA law or to dispense with applying them, and**
  - any subsequent or ancillary assessment carried out for regularisation purposes is not conducted solely in respect of the project’s future environmental impact, but must also take into account its environmental impact since the time of completion of that project.**

**It is for the referring court to assess whether the conditions are satisfied in the main proceedings, in the light of the content of the national provisions and the information available to it.**

- 3. A national court may not retroactively dispense with the obligation to assess the effects under Article 3(1) of the Directive 2011/92/EU, as amended by Directive 2014/52/EU.**

Delivered in open court in Luxembourg on 21 May 2025.

Ólafur Jóhannes Einarsson  
Registrar

Páll Hreinsson  
President