



Luxembourg, 21 May 2025

PRESS RELEASE 07/2025

Judgment in Case E-18/24 *The Norwegian State v Greenpeace Nordic, Nature and Youth Norway*

GREENHOUSE GAS EMISSIONS THAT WILL BE RELEASED FROM THE COMBUSTION OF PETROLEUM AND NATURAL GAS EXTRACTED AS PART OF A PROJECT AND THEN SOLD TO THIRD PARTIES, CONSTITUTE “EFFECTS” OF THAT PROJECT WITHIN THE MEANING OF THE EIA DIRECTIVE

In a judgment delivered today, the Court answered questions referred to it by Borgarting Court of Appeal (*Borgarting lagmannsrett*), concerning the interpretation of the directive on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”).¹ The request was 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.

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 sought guidance on whether such combustion emissions are “effects” of the projects under Article 3(1) of the EIA Directive that should have been included in the environmental impact assessment. If this question were answered in the affirmative, the referring court sought guidance on whether a national court must eliminate the unlawful consequences of a grant of development consent without an environmental impact assessment of said effects. Moreover, the referring court asked 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.

By today’s judgment the Court replies that greenhouse gas emissions that will be released from the combustion of petroleum and natural gas extracted as part of a project and then sold to third parties, constitute “effects” of that project within the meaning of the EIA Directive.

Furthermore, a national court is required, 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. It follows that a national court may not retroactively dispense with the obligation to assess the effects under Article 3(1) of the EIA Directive.

¹ 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), as amended by 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).

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

The full text of the judgment is available on the Court's website: <https://eftacourt.int/cases/e-18-24/>

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