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Reykjavík, 21 July 2025

TO THE PRESIDENT AND MEMBERS OF THE EFTA COURT

WRITTEN OBSERVATIONS

Submitted, pursuant to Article 20 of the Statute of the EFTA Court and Article 90(1) of the Rules of Procedure of the EFTA Court, by

UMHVERFIS- OG ORKUSTOFNUN
(The Environment and Energy Agency)

represented by Mr. Þorvaldur Hauksson,
Court of Appeals Attorney, Office of the Attorney General

acting as Agent in

CASE E-7/25

Edda Rún Ólafsdóttir and others

v

The Environment and Energy Agency

and

Benchmark Genetics Iceland hf.

in which Reykjavík District Court (*Héraðsdómur Reykjavíkur)* requests the EFTA Court to give 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 on the interpretation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

SUBMITTED DOCUMENTS

Pursuant to Article 30(2) of the Rules of Procedure of the EFTA Court, the Environment and Energy Agency submits the following documents:

A. Written observations on behalf of the Energy Agency 31 October 2024.

B. Information in *vatnavefsjá* about Reykjanes, water body ID 104-263-G.

C. Information in *vatnavefsjá* about other water bodies on the Reykjanes peninsula.

D. Status report for Iceland's river basins. Division of water into water bodies and assessment of main pressures on water from human activities. Published by the Environment Agency in 2013.

E. Reykjanes peninsula. Groundwater and flow model. Yearly review for 2014.

F. Groundwater quantitative status. Proposal for a methodological approach. Report from the Icelandic Meteorological Office 2019.

G. Proposals for groundwater bodies that may be under significant pressure from water abstraction and/or recharge due to human activity. Report from the Icelandic Meteorological Office 2020.

H. Properties of groundwater bodies under chemical pressure. Report from the Icelandic Meteorological Office to the Environment Agency 2020.

I. Icelandic River Basin Management Plan 2022 – 2027.

J. Programme of Measures 2022 – 2027.

K. Monitoring Programme 2022 – 2027.

L. The Environmental Agency's reviews 29 January 2020 and 29 September 2020 concerning Benchmark Genetics' environmental impact assessment report.

M. The Energy Agency's reviews 12 February 2020 and 15 October 2020 concerning Benchmark Genetics' environmental impact assessment report.

N. The National Planning Agency's opinion on Benchmark Genetics' environmental impact assessment report 10 May 2021.

O. The Environmental Agency's review 16 September 2022 concerning Benchmark Genetics' water abstraction application.

P. Benchmark Genetics' water abstraction permit issued by the Energy Agency on 4 May 2023.

Q. The Energy Agency's cover letter 4 May 2023 with Benchmark Genetics' water abstraction permit.

R. Ruling of the Environmental and Natural Resources Appeals Committee 20 September 2023 in case No. 72/2023.

S. Reykjavík District Court's record book on 14 February 2025 in case No. E-3628/2024.

FACTS AND RELEVANT NATIONAL LAW

Preliminary remarks

1. The case before the national court concerns a permit for water abstraction issued to Benchmark Genetics hf. on 4 May 2023. The proceedings were initiated by the service of a writ of summons on 18 June 2024 by plaintiffs Ólafur Þór Jónsson, Sigríður Sólrún Jónsdóttir, Særún Jónsdóttir, and Reykjaprent ehf., who owned land adjacent to Benchmark Genetics' land, against the company and the Energy Agency.

2. In court session 14 February 2025 attorney for plaintiffs informed that Ólafur Þór Jónsson had bequeathed his share in the land to his children, Edda Rún Ólafsdóttir, Freygerður Anna Ólafsdóttir, and Jón Gestur Ólafsson, and requested that they took over his standing in the case, cf. Article 22(1) of the Code of Civil Procedure No. 91/1991. In the same court session the undersigned informed the court that the Energy Agency had merged with the Environment Agency according to Act No. 110/2024 on the Environment and Energy Agency. Defendant's name should therefore be the Environment and Energy Agency.

3. The name of the case should be amended to reflect the abovementioned.

Benchmark Genetics' water abstraction

4. The water abstraction takes place on Benchmark Genetics' land in the municipality of Vogar at Stapavegur 1 and 1a which is located on Reykjanes peninsula in Iceland. The

country is considered as one whole River Basin District (IS1) and is further divided into four Water Regions. The Reykjanes peninsula is part of Water Region 4.

5. Benchmark Genetics abstracts water from a water body which has been assigned the name Reykjanes and water body ID 104-263-G. It is classified as a 301.8 square kilometre groundwater body with high groundwater flow. Further groundwater bodies have been delineated within the Reykjanes peninsula, cf. e.g. Ögmundarhraun (104-262-G), Rosmhvalanes 1 (104-115-1-G), Rosmhvalanes 2 (104-115-2-G), Fagradalsfjall (104-116-G), and Selvogsstraumur 3 (104-290-G). See further, submitted documents B and C, which contain information that has been published in *vatnavefsjá* (www.vatnavefsja.vedur.is). *Vatnavefsjá* corresponds e.g. to the maps discussed in Annex V to Directive 2000/60 and is referred to in Iceland's river basin management plan from 2022, cf. namely chapter 1.6.

6. Water has been abstracted through boreholes on Benchmark Genetics' land for at least forty years. Benchmark Genetics, and before its predecessor, Stofnfiskur hf., which was founded by the Icelandic State Salmon Farm in 1991 to carry out breeding and research on Norwegian-bred salmon, has had operations on the land from 2005. Before that other companies had operated there since 1984.

Water Framework Directive and Reykjanes groundwater body

7. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy was incorporated into the Agreement on the European Economic Area with decision of the EEA Joint Committee No. 125/2007 of 28 September 2007.

8. Directive 2000/60 was implemented into Icelandic law with Act No. 36/2011 on Water Management, and regulations No. 535/2011 on classifying water bodies, their properties, pressure assessment, and monitoring, and No. 935/2011 on water management. Since 2011 Iceland has taken significant steps to fulfil its obligations according to the Directive.

9. Among the most important steps Iceland has taken, for the purpose of these proceedings, are that in 2013 the Environment Agency published the following report: *Status report for Iceland's river basins. Division of water into water bodies and assessment of main pressures on water from human activities*, cf. submitted document D. According to the report 2,675 water bodies had, at that time, been delineated, i.e. 2,366 surface water bodies and 309 groundwater bodies. The Icelandic Meteorological Office and the Marine and Freshwater Research Institute were responsible for surface water bodies and the Energy Agency was responsible for groundwater bodies, cf. Article 10 of Act No. 36/2011. Furthermore, characteristics of water bodies were

classified and impact of human activity on the status of surface water and groundwater was reviewed. The following categorisation was used for initial characterisation and assessment to which degree water bodies were at risk of failing to meet environmental objectives:

1) *At risk*, i.e. water body is under significant pressure and is considered at risk of failing to meet the environmental objective of good status;

2) *Uncertain*, i.e. indication of pressure and uncertainty about its impact, lack of data. Pressure on a water body is not sufficiently known and therefore cannot be classified as "not at risk" or "at risk" without further examination.

3) *Not at risk*, i.e. water body not under significant pressure and meets the environment objective of good status.

10. Concerning groundwater bodies on the Reykjanes peninsula, among other areas, the report expressly states that its authors were able to use maps developed by the engineering office Vatnaskil. Within Water Region 4, pressure analysis determined the status of three water bodies as *uncertain* and the status of one water body was classified as *at risk*. However, the status of groundwater body Reykjanes was classified as *not at risk*.

11. On the basis of the aforementioned Article 10 of Act No. 36/2011 the Environment Agency signed an agreement with the Icelandic Meteorological Office in 2018 and commissioned reports e.g. regarding groundwater. According to the agreement the office should collaborate with the Energy Agency.

12. Pursuant to the abovementioned agreement, at least three reports were published in 2019 and 2020, i.e. *Groundwater quantitative status. Proposal for a methodological approach*; *Proposals for groundwater bodies that may be under significant pressure from water abstraction and/or recharge due to human activity*; and *Properties of groundwater bodies under chemical pressure*, cf. submitted documents F – G.

13. Among the abovementioned reports' conclusions was that reliable data was available to assess status of water bodies on the Reykjanes Peninsula and that in 2015 1,842 litres of water per second were abstracted from Reykjanes groundwater body, i.e. 6.1 litres per second on each square kilometre, cf. submitted document F.

14. In submitted document G, the Icelandic Meteorological Office defined more than 500 litres per second water abstraction as *extremely high* and 5 to 10 litres per second water abstraction on each square kilometre as *some*. Available information to assess water abstraction on the Reykjanes peninsula was deemed to be accurate. Water abstraction

from groundwater body Reykjanes was classified as *extremely high* and *some*, in the aforementioned categories.

15. In submitted document H, the Icelandic Meteorological Office discussed four groundwater bodies which the Environment Agency had classified *at risk* or *uncertain* due to chemical status. Groundwater body Reykjanes was not amongst those four.

16. Iceland's first river basin management plan was published in 2022, alongside programme of measures and monitoring programme, cf. submitted documents I – K. It discussed the status classification of groundwater bodies and explained that the environmental objectives of groundwater bodies were that they should all have good quantitative status and good chemical status. It was stated that in cases where water bodies had been defined as being at risk or in uncertainty according to the pressure analysis, monitoring or actions would need to be put in place to eliminate the uncertainty or to ensure that the water bodies met the environmental objectives. It was then discussed in more detail which water bodies were assessed as being at risk and in uncertainty, but Reykjanes groundwater body was not one of them, as previously stated.

17. Regarding groundwater bodies, it was nevertheless stated in the river basin management plan and programme of measures, that they would be monitored and researched further during the next water cycle. Furthermore, the monitoring programme expressly stated that groundwater bodies quantitative status would be monitored, of which Reykjanes groundwater status would be monitored on the basis of an issued permit.

18. The purpose of discussing all of the above is not at least to highlight that although quantitative status and chemical status of Reykjanes groundwater body has not yet been provided in the map *vatnavefsjá*, which is referred to in the river basin management plan, detailed information has been obtained about groundwater bodies based on work that has been carried out according to Act No. 36/2011.

Benchmark Genetics' water abstraction permit

19. In 2019 Benchmark Genetics informed the National Planning Agency of its intention to expand its fish farm operations on its land, which would require increased water abstraction. Following the appropriate procedure on behalf of the National Planning Agency, having received opinions from e.g. the Environment Agency and the Energy Agency, the National Planning Agency issued its opinion on Benchmark Genetics' environmental impact assessment report 10 May 2021, cf. submitted documents L and N.

20. Amongst the National Planning Agency's conclusions, were that it was unlikely that increased water abstraction by Benchmark Genetics would have any negative impact

on groundwater. However, the Agency concluded that it would be necessary to ensure that increased water extraction did not affect the balance between freshwater and saltwater, and therefore a monitoring plan for monitoring the effects of extraction on groundwater should be in place before water abstraction would be increased. Furthermore, the Agency believed that a water abstraction permit should include conditions for monitoring groundwater and appropriate measures if impact on groundwater levels proved to be greater than anticipated.

21. Subsequently, Benchmark Genetics' applied for a water abstraction permit 15 June 2021 on the basis of Act No. 57/1998 on Exploration and Utilization of Underground Resources. Following the appropriate procedure on behalf of the Energy Agency, having received an opinion from e.g. the Environment Agency, the Energy Agency issued a permit for water abstraction to Benchmark Genetics 4 May 2023, cf. submitted documents O – Q.

22. In the Energy Agency's cover letter with the water abstraction permit, the Agency discussed in depth Benchmark Genetics' application. Amongst its conclusions, discussed in the cover letter, were that with the specified mitigation measures, the proposed water abstraction would not have negative impact on the water balance of the area, nor would the current use of groundwater be affected by the use applied for. Nevertheless, the permit was subject to various conditions, cf. e.g. Articles 4, 5, 7, and 12, which are most relevant for these proceedings.

23. According to Article 4 of the permit, Benchmark Genetics' must conduct its operations in such a way as to ensure the best possible long-term utilization and ensure not to take more water than is needed for the operation. In carrying out construction and utilization on its own behalf, which may be expected to affect the utilization of other parties, it shall take into account and consult with parties engaged in utilization in the vicinity of the utilization area.

24. Article 5 of the permit stipulates, amongst other things, that Benchmark Genetic, shall ensure that construction and utilization do not have detrimental effect on the groundwater resource.

25. Article 7 of the permit, entitled 'Supervision and monitoring', provides, amongst other things, that Benchmark Genetics shall maintain active internal control over the implementation of the permit. Records shall be kept of the quantity, rate of exploitation and characteristics, including salinity, of the groundwater abstracted and exploited. Benchmark Genetics shall also monitor the impact of exploitation on groundwater levels. No later than 15 September 2023, the company shall submit to the Energy Agency for approval a plan for the frequency and arrangement of internal inspections,

and monitoring of the effects of utilization. The inspection and monitoring plan shall be reviewed no later than 31 December 2028 and thereafter every five years during the permit's period, or if the company so requests. No later than 31 December 2028 the company shall submit a report on the abstraction and utilization of groundwater according to this permit and submit a timed plan for improved utilization of aquaculture fluids.

26. Article 12 of the permit, provides that if it is demonstrated by data that environmental objectives set on the basis of the Water Management Act are not being achieved, in special cases it is permitted to review the permit or set new conditions for environmental objectives, cf. Article 17(2) of the Act on Exploration and Utilization of Underground Resources. The decision shall take into account the impact of the change on the interests of the permit holder and the benefits and disadvantages it may otherwise entail.

27. Subsequently, the original plaintiffs appealed the Energy Agency's decision to the Environmental and Natural Resources Appeals Committee, which issued its ruling in the case on 20 September 2023, cf. submitted document R. Amongst the Committee's conclusions were that the Energy Agency had fulfilled its obligations to assess whether the water abstraction permit would affect negatively the status of water.

RELEVANT EEA LAW

28. As mentioned above, Directive 2000/60 was incorporated into the EEA Agreement by Decisions of the EEA Joint Committee No. 125/2007 of 28 September 2007.

29. Recital 26, 28, 33, and 36 of Directive 2000/60 are worded as follows:

> (26) Member States should aim to achieve the objective of at least good water status by defining and implementing the necessary measures within integrated programmes of measures, taking into account existing Community requirements. Where good water status already exists, it should be maintained. For groundwater, in addition to the requirements of good status, any significant and sustained upward trend in the concentration of any pollutant should be identified and reversed.
>
> (28) Surface waters and groundwaters are in principle renewable natural resources; in particular, the task of ensuring good status of groundwater requires early action and stable long-term planning of protective measures, owing to the natural time lag in its formation and renewal. Such time lag for improvement should be taken into account in timetables when establishing measures for the

achievement of good status of groundwater and reversing any significant and sustained upward trend in the concentration of any pollutant in groundwater.

(33) The objective of achieving good water status should be pursued for each river basin, so that measures in respect of surface water and groundwaters belonging to the same ecological, hydrological, and hydrogeological systems are coordinated.

(36) It is necessary to undertake analyses of the characteristics of a river basin and the impacts of human activity as well as an economic analysis of water use. The development in water status should be monitored by Member States on a systematic and comparable basis throughout the Community. This information is necessary in order to provide a sound basis for Member States to develop programmes of measures aimed at achieving the objectives established under this Directive.

30. Article 1 of that directive, entitled 'Purpose', provides:

The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, costal waters and groundwater which:

...

(b) promotes sustainable water use based on long-term protection of available water resources;

...

and thereby contributes to:

- the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,

...

31. Article 2 of Directive 2000/60, entitled 'Definitions', states:

For the purpose of this Directive the following definitions shall apply:

...

2. 'Groundwater' means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

...

11. 'Aquifer' means a subsurface layer or layers of rock or other geological strata of sufficient porosity and permeability to allow either a significant flow of groundwater or the abstraction of significant quantities of groundwater.

12. 'Body of groundwater' means a distinct volume of groundwater within an aquifer or aquifers.

...

19. 'Groundwater status' is the general expression of the status of a body of groundwater, determined by the poorer of its quantitative status and its chemical status.

20. 'Good groundwater status' means the status achieved by a groundwater body when both its quantitative status and its chemical status are at least 'good'.

...

25. 'Good groundwater status' is the chemical status of a body of groundwater, which meets all the conditions set out in table 2.3.2 of Annex V.

26. 'Quantitative status' is an expression of the degree to which a body of groundwater is affected by direct and indirect abstractions.

27. 'Available groundwater resource' means the long-term annual average rate of overall recharge of the body of groundwater less the long-term annual rate of flow required to achieve the ecological quality objectives for associated surface waters specified under Article 4, to avoid any significant diminution in the ecological status of such waters and to avoid any significant damage to associated terrestrial ecosystems.

28. 'Good quantitative status' is the status defined in table 2.1.2 of Annex V.

...

34. 'Environmental objectives' means the objectives set out in Article 4.

...

32. Article 3 of that Directive, headed 'Coordination of administrative arrangements within river basin districts', provides as follows:

1. Member states shall identify the individual river basins lying within their national territory and, for the purpose of this Directive, shall assign them to individual river basin districts. Small river basins may be combined with larger river basins or joined with neighbouring small basins to form individual river

basins districts where appropriate. Where groundwaters do not fully follow a particular river basin, they shall be identified and assigned to the nearest or most appropriate river basin district. …

…

4. Member States shall ensure that the requirements of this Directive for the achievement of the environmental objectives established under Article 4, and in particular all programmes of measures are coordinated for the whole of the river basin district. …

…

33. Article 4 of Directive 2000/60, entitled 'Environmental objectives', states as follows:

1. In making operational the programmes of measures specified in the river basin management plans:

…

(b) for groundwater

(i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of the Article and subject to the application of Article 11(3)(j);

(ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at least 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

(iii) Member States shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater.

Measures to achieve trend reversal shall be implemented in accordance with paragraphs 2, 4 and 5 of Article 17, taking into account the applicable standards set out in relevant Community legislation, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;

...

34. Article 5 of the directive, entitled 'Characteristics of the river basin district, review of the environmental impact of human activity and economic analysis of water use', provides:

1. Each Member State shall ensure that for each river basin district ... :

- an analysis of its characteristics,
- a review of the impact of human activity on the status of surface waters and on groundwater, and
- an economic analysis of water use

is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.

2. The analyses and reviews mentioned under paragraph 1 shall be reviewed, and if necessary updated at the latest 13 years after the date of entry into force of this Directive and every six years thereafter.

35. Article 8 of the directive, entitled 'Monitoring of surface water status, groundwater status and protected areas', states:

1. Member States shall ensure the establishment of programmes for the monitoring of water status in order to establish a coherent and comprehensive overview of water status within each river basin district:

...

- for groundwaters such programmes shall cover monitoring of the chemical and quantitative status,

...

2. These programmes shall be operational at the latest six years after the date of entry into force of this Directive unless otherwise specified in the legislation

concerned. Such monitoring shall be in accordance with the requirements of Annex V.

...

36. Article 11 of the directive, entitled 'Programme of Measures', provides:

1. Each Member State shall ensure the establishment for each river basin district ..., of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. ...

2. Each programme of measures shall include the 'basic' measures specified in paragraph 3 and, where necessary, 'supplementary' measures.

...

5. Where monitoring or other data indicate that the objectives set under Article 4 for the body of water are unlikely to be achieved, the Member States shall ensure that:

- the causes of the possible failure are investigated,
- relevant permits and authorisations are examined and reviewed as appropriate,
- the monitoring programmes are reviewed and adjusted as appropriate, and
- additional measures as may be necessary in order to achieve those objectives are established, including, as appropriate, the establishment of stricter environmental quality standards following the procedures laid down in Annex V.

Where those causes are the result of circumstances of natural cause or *force majure* which are exceptional and could not reasonably have been foreseen, in particular extreme floods and prolonged droughts, the Member State may determine that additional measures are not practicable, subject to Article 4(6).

37. Article 13 of the directive, entitled 'River basin management plan', is worded as follows:

1. Member States shall ensure that a river basins management plan is produced for each river basin district lying entirely within their territory.

...

4. The river basin management plan shall include the information detailed in Annex VII.

5. River basin management plans may be supplemented by the production of more detailed programmes and management plans for sub-basin, sector, issue, or water type, to deal with particular aspects of water management. Implementation of these measures shall not exempt Member Sates from any of their obligation under the rest of this Directive.

6. River basin management plans shall be published at the latest nine years after the date of entry into force of the Directive.

7. River basin management plans shall be reviewed and updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter.

38. Article 15 of the directive, entitled 'Reporting', provides:

1. Member States shall send copies of the river basin management plans and all subsequent updates to the Commission and to any other Member State concerned within three months of their publication:

(a) for river basin districts falling entirely within the territory of a Member State, all river management plans covering that national territory and published pursuant to Article 13;

...

2. Member States shall submit summary reports of:

- the analyses required under Article 5, and

- the monitoring programmes designed under Article 8

undertaken for the purposes of the first river basin management plan within three months of their completion.

...

39. Annex II to Directive 2000/60 states as follows:

1. SURFACE WATERS

...

2. GROUNDWATERS

2.1 Initial characterisation

Member States shall carry out an initial characterisation of all groundwater bodies to assess their uses and the degree to which they are at risk of failing to meet the objectives for each groundwater body under Article 4. Member States may group groundwater bodies together for the purposes of this initial characterisation. This analysis may employ existing hydrological, geological, pedological, land use, discharge, abstraction and other data but shall identify:

- the location and boundaries of the groundwater body or bodies,
- the pressures to which the groundwater body or bodies are liable to be subject including:
    - diffuse sources of pollution
    - point sources of pollution
    - abstraction
    - artificial recharge,
- the general character of the overlying strata in the catchment area from which the groundwater body receives its recharge,
- those groundwater bodies for which there are directly dependents surface water ecosystems or terrestrial ecosystems.

2.2 Further characterisation

Following the initial characterisation, Member States shall carry out further characterisation of those groundwater bodies or groups of bodies which have been identified as being at risk in order to establish a more precise assessment of the significance of such risk and identification of any measures to be required under Article 11. Accordingly, this characterisation shall include relevant information on the impact of human activity and, where relevant, information on:

- geological characteristics of the groundwater body including the extent and type of geological units,
- hydrogeological characteristics of the groundwater body including hydraulic conductivity, porosity and confinement,
- characteristics of the superficial deposits and soils in the catchment from which the groundwater body receives its recharge, including the thickness, porosity, hydraulic, conductivity, and absorptive properties of the deposits and soils,

- stratification characteristics of the groundwater within the groundwater body,
- an inventory of associated surface systems, including terrestrial ecosystems and bodies of surface water, with which the groundwater body is dynamically linked,
- estimates of the directions and rates of exchange of water between the groundwater body and associated surface systems,
- sufficient data to calculate the long term annual average rate of overall charge,
- characterisation of the chemical composition of the groundwater, including specification of the contributions from human activity. Member States may use typologies for groundwater characterisations when establishing natural background levels for these bodies of groundwater.

2.3 Review of the impact of human activity on groundwaters

For those bodies of groundwaters which ... are identified following the initial characterisation undertaken in accordance with paragraph 2.1 as being at risk of failing to meet the objectives set for each body under Article 4, the following information shall, where relevant, be collected and maintained for each groundwater body:

...

2.4 Review of the impact of changes in groundwater levels

...

2.5 Review of the impact on pollution on groundwater quality

...

40. Annex V to Directive 2000/60 states as follows:

...

2. GROUNDWATER

2.1 Groundwater quantitative status

2.1.1. Parameter for the classification of quantitative status

Groundwater level regime

2.1.2. Definition of quantitative status

Elements	Good status
Groundwater level	The level of groundwater in the groundwater body is such that the available groundwater resource is not exceeded by the long-term annual average rate of abstraction. ...

2.2 Monitoring of groundwater quantitative status

2.2.1. Groundwater level monitoring network

The groundwater monitoring network shall be established in accordance with the requirements of Articles 7 and 8. The monitoring network shall be designed so as to provide a reliable assessment of the quantitative status of all groundwater bodies or group of bodies including assessment of the available groundwater resource. Member States shall provide a map or maps showing the groundwater monitoring network in the river basin management plan.

2.2.2. Density of monitoring sites

The network shall include sufficient representative monitoring points to estimate the groundwater level in each groundwater body or group of bodies taking into account short and long-term variations in recharge and in particular:

- for groundwater bodies identified as being at risk of failing to achieve environmental objectives under Article 4, ensure sufficient density of monitoring points to assess the impact of abstractions and discharges on the groundwater level,
- ...

2.2.3. Monitoring frequency

The frequency of observations shall be sufficient to allow assessment of the quantitative status of each groundwater body or group of bodies taking into account short and long-term variations in recharge. In particular:

- for groundwater bodies identified as being at risk of failing to achieve environmental objectives under Article 4, ensure sufficient frequency of measurement to assess the impact of abstractions and discharge on the groundwater level,
- ...

2.2.4. Interpretations and presentation of groundwater quantitative status

The results obtained from the monitoring network for a groundwater body or group of bodies shall be used to assess the quantitative status of that body or those bodies. Subject to point 2.5. Member States shall provide a map of the resulting assessment of groundwater status quantitative status, colour-coded in accordance with the following regime:

Good: green

Poor: red

2.3. Groundwater chemical status

2.3.1. Parameters for the determination of groundwater chemical status

Conductivity

Concentrations of pollutants

2.3.2. Definition of good groundwater chemical status

Elements	Good status
General	The chemical composition of the groundwater body is such that the concentrations of pollutants: - as specified below, do not exhibit the effects of saline or other intrusions - do not exceed the quality standards applicable under other relevant Community legislation in accordance with Article 17 - are not such as would result in failure to achieve the environmental objectives specified under Article 4 for associated surface waters nor any significant diminution of the ecological or chemical quality of such bodies nor in any significant damage to terrestrial ecosystems which depend directly on the groundwater body
Conductivity	Changes in conductivity are not indicative of saline or other intrusion into the groundwater body

2.4. Monitoring of groundwater chemical status

2.4.1. Groundwater monitoring network

The groundwater monitoring network shall be established in accordance with the requirements of Articles 7 and 8. The monitoring network shall be designed so as to provide a coherent and comprehensive overview of groundwater chemical status within each river basin and to detect the presence of long-term anthropogenically induced upward trends in pollutants.

On the basis of the characterisation and impact assessment carried out in accordance with Article 5 and Annex II, Member States shall for each period to which a river basin management plan applies, establish a surveillance monitoring programme. The results of this programme shall be used to establish an operational monitoring programme to be applied for the remaining period of the plan.

Estimates of the level of confidence and precision of the results provided by the monitoring programmes shall be given in the plan.

2.4.2. Surveillance monitoring

...

2.4.3. Operational monitoring

...

2.4.4. Identification of trends in pollutants

...

2.4.5. Interpretation and presentation of groundwater chemical status

In assessing status, the results of individual monitoring points within a groundwater body shall be aggregated for the body as a whole. Without prejudice to the Directives concerned, for good status to be achieved for a groundwater body, for those chemical parameters for which environmental quality standards have been set in Community legislation:

- the mean value of the results of monitoring at each point in the groundwater body or group of bodies shall be calculated, and
- in accordance with Article 17 these mean values shall be used to demonstrate compliance with good groundwater chemical status.

Subject to point 2.5, Member States shall provide a map of groundwater chemical status, colour-coded as indicated below:

Good: green

Poor: red

Member States shall also indicate by a black dot on the map, those groundwater bodies which are subject to a significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity. Reversal of a trend shall be indicated by a blue dot on the map.

These maps shall be included in the river basin management plan.

2.5. Presentation of Groundwater Status

Member States shall provide in the river basin management plan a map showing for each groundwater body or group of groundwater bodies both the quantitative status and the chemical status of that body or group of bodies, colour-coded in accordance with the requirements of points 2.2.4. and 2.4.5. Member States may choose not to provide separate maps under points 2.2.4 and 2.4.5 but shall in that case also provide an indication in accordance with the requirements of point 2.4.5 on the map required under this point, of those bodies which are subject to a significant and sustained upward trend in the concentration of any pollutant or any reversal in such a trend.

41. Annex VII to Directive 2000/60, entitled 'RIVER BASIN MANAGEMENT PLANS' provides:

A. River basin management plans shall cover the following elements:

1. a general description of the characteristics of the river basin district required under Article 5 and Annex II. This shall include:

1.1. for surface waters:

...

1.2. for groundwaters:

- mapping of the location and boundaries of groundwater bodies;

2. a summary of significant pressures and impact of human activity on the status of surface waters and groundwater, including:

- estimation of point source pollution,

- estimation of diffuse source pollution, including a summary of land use,

- estimation of pressures on the quantitative status of water including abstractions,

- analysis of other impacts of human activity on the status of water;

...

4. a map of the monitoring networks established for the purposes of Article 8 and Annex V, and a presentation in map form of the results of the monitoring programmes carried out under those provisions for the status of:

4.1. surface water (ecological and chemical);

4.2. groundwater (chemical and quantitative);

4.3. protected areas;

5. a list of the environmental objectives established under Article 4 for surface waters, groundwaters and protected areas, including in particular identification of instances where use has been made of Article 4(4), (5), (6) and (7), and the associated information required under that Article;

...

B. The first update of the river basin management plan and all subsequent updates shall also include:

...

2. an assessment of the progress made towards the achievement of the environmental objectives, including presentation of the monitoring results for the period of the previous plan in map form, and an explanation for any environmental objectives which have not been reached;

...

LEGAL ARGUMENTS

42. The question submitted by the national court is worded as follows:

Whether the provisions of Directive 2000/60, in particular the provisions of that Directive's Article 4, must be interpreted as precluding the granting of authorisation for a project which may potentially affect the status of a groundwater body for which classification and status assessment in the river basin management plan are required under that directive, prior to such assessment having been conducted and its results set

forth in a river basin management plan in accordance with that directive's provisions. That the provision bars the authorisation of a project, irrespective of whether a status assessment has been conducted, if the assessment results have not been set forth in the river basin management plan.

43. In light of the issues raised in the question above, the Environmental and Energy Agency first points out that Member States' obligations to identify, analyse, and assess water bodies are namely set forth in Articles 3, 5, and 8 of Directive 2000/60, cf. also Annexes II and V. Nothing in these provisions entails that Member States are barred from issuing permits, which may potentially affect water status, until all management obligations are met.

44. Furthermore, Article 13, cf. Annex VII to Directive 2000/60, which stipulates what a river basin management plan should cover, does not include provisions which prevent permits, which may potentially affect water status, from being issued until the plan has been published. According to point 4 of part A of Annex VII, cf. point 2.5. of Annex V to the directive, Member States shall e.g. provide in the river basin management plan a map showing for each groundwater body or groups of groundwater bodies both the quantitative status and the chemical status of that body or group of bodies, colour-coded in accordance with the requirements of points 2.2.4 and 2.4.5. Nevertheless, it is not possible to infer from these provisions that Member States are barred from issuing abovementioned permits until groundwater status has been presented in a river basin management plan.

45. On the contrary, the Environmental and Energy Agency believes that it is established case law that environmental objectives according to Article 4 of Directive 2000/60 are binding, cf. e.g. the judgement in case C-461/13 (paragraph 43), and that Member States obligations on the basis of the directive are to ascertain whether a project may have adverse effects on water which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of surface water and groundwater, cf. the judgement in case C-671/22 (paragraph 44), where the following was stated:

During the procedure for authorisation of a project, and therefore before the decision is taken, the competent national authorities are required, under Article 4(1) of Directive 2000/60, to ascertain whether that project may have adverse effects on water which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of surface water and groundwater ...

46. See also the judgements in cases C-301/22 (paragraphs 54, 57 and 58), C-525/20 (paragraphs 25 and 26), C-535/18 (paragraps 74 – 76), and C-461/13 (paragraph 50). In the last-mentioned judgement, the following was stated:

It follows that, unless a derogation is granted, any deterioration of the status of a body of water must be prevented, irrespective of the longer term planning provided for by management plans and programmes of measures. The obligation to prevent deterioration of the status of bodies of surface water remains binding at each stage of implementation of Directive 2000/60 and is applicable to every surface water body type and status for which a management plan has or should have been adopted. The Member State concerned is consequently required to refuse authorisation for a project where it is such as to result in deterioration of the status of the body of water concerned or to jeopardise the attainment of good surface water status, unless the view is taken that the project is covered by a derogation under Article 4(7) of the directive.

47. With reference to the above case law of the European Court of Justice, the Environment and Energy Agency believes that Directive 2000/60, namely Article 4 of that directive, entails that Member States must ensure that competent national authorities ascertain, during the procedure for authorisation of a project, and therefore before the decision is taken, whether that project may have adverse effects on water which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of surface water and groundwater, irrespective of the production of a river basin management plan according to Article 13, cf. Annex VII to the directive.

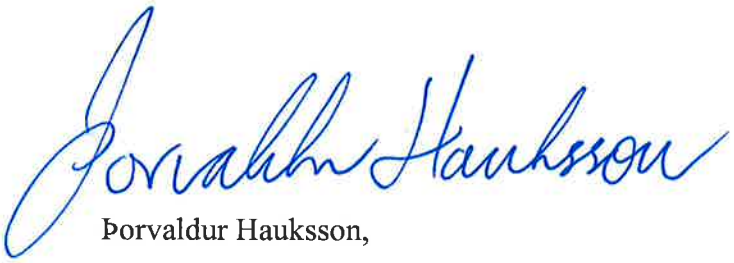
48. The Environment and Energy Agency's position is that these requirements were met before Benchmark Genetics' water abstraction permit was issued. As mentioned above, the permit concerns abstraction of water from Reykjanes groundwater body. Environmental objectives for that groundwater body are that its quantitative and chemical status are good. Available information about the groundwater body, and other water bodies on the Reykjanes peninsula, is reliable. As part of Iceland's initial characterisation of water bodies, Reykjanes groundwater body was classified as *not at risk* and was therefore not subjected to a specific discussion in the country's first river basin management plan. Before the Energy Agency issued Benchmark Genetics' water abstraction permit, it explicitly assessed whether the water abstraction would negatively affect the groundwater status, and concluded, on the basis of reliable data, that it would not do so. Therefore, water abstraction according to the permit does not entail that the groundwater body is considered to be at risk of failing to meet the environmental objective of good status.

ANSWER TO THE REFFERED QUESTION

49. In view of the above the Environment and Energy Agency respectfully submits that the EFTA Court answer the question from the national court as follows:

Directive 2000/60, in particular Article 4 of that directive, must be interpreted as not precluding the granting of authorisation for a project which may potentially affect the status of a groundwater body, irrespective of whether the status of that groundwater body has been presented in a river basin management plan, given that during the procedure for authorisation of the project, and therefore before the decision is taken, the competent national authorities have ascertained that the project will not have adverse effects on the groundwater body which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of groundwater.

On behalf of the Environment
and Energy Agency



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