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ORIGINAL

IN THE EFTA COURT

WRITTEN OBSERVATIONS

submitted, pursuant to Article 20 of the Statute of the EFTA Court, by

THE EFTA SURVEILLANCE AUTHORITY

represented by
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Department of Legal & Executive Affairs,
acting as Agents,

IN CASE E-7/25

Ólafur Þór Jónsson and others

v

***the National Energy Authority of Iceland
and Benchmark Genetics Iceland hf.***

in which the District Court of Reykjavík (*Héraðsdómur Reykjavíkur*) requests an Advisory Opinion of the EFTA Court regarding the interpretation of Article 4 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.

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1 INTRODUCTION

1. These written observations were prepared with support from Mathias Thorkildsen, Legal Officer in the Internal Market Affairs Directorate of the EFTA Surveillance Authority (“**ESA**” or “**the Authority**”).
2. The present case concerns licensing for groundwater abstraction and the requirements 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 (“**the Water Framework Directive**” or “**the WFD**”). It originates in a request of the Reykjavík District Court (*Héraðsdómur Reykjavíkur*, “**the Referring Court**”) for an advisory opinion of the EFTA Court (“**the Request**”) concerning the interpretation of Article 4 of that Directive. The facts of the case are detailed in the Request.
3. The case was brought by four natural persons and one legal person (“**the Plaintiffs**”) against the National Energy Authority of Iceland (*Orkustofnun*, “**the Energy Authority**”) and the company Benchmark Genetics Iceland hf. (“**Benchmark Genetics**”) (together, “**the Respondents**”), challenging a licence for groundwater abstraction. The Plaintiffs allege, *inter alia*, that the Energy Authority granted Benchmark Genetics that licence in breach of the requirements of the Water Framework Directive.

1.1 Iceland’s Implementation of the WFD

4. The Water Framework Directive sets environmental objectives that the States are required to achieve. These are specified in Article 4(1) of the Directive. That provision requires the States to (i) prevent deterioration of the status of all water bodies (ii) and enhance water bodies to achieve ‘good’ status. For that purpose, the WFD establishes a system for mapping, assessing, and improving the status of the EEA States’ water bodies.
5. One of the mechanisms introduced to facilitate the achievement of the WFD’s objectives are the river basin management plans (“**RBMPs**”) as set out in Article 13 WFD. RBMPs are planning instruments which the EEA States must produce for every river basin district lying within their territory. In the RBMPs, the States must set out, among other things, the results of the monitoring programmes for the status of their water bodies, carried out in accordance with Article 8 and Annex V, the objectives for

each water body, and a summary of the programme of measures adopted to achieve these objectives.¹

6. Iceland adopted its first RBMP on 4 April 2022, nearly four years after the legal deadline under the EEA Agreement.² This RBMP covers the period of 2022-2027. In January 2023, Iceland submitted this RBMP to ESA, which issued an Implementation Report, accompanied by a country specific assessment, in April 2025.³
7. In its assessment of Iceland's RBMP, ESA found that Iceland had not yet undertaken the necessary monitoring and assessment of its water bodies. As such, their ecological, chemical, and quantitative status is largely unknown. This failure in a key component of the RBMP was the most serious of the shortcomings identified by ESA. These shortcomings have been the subject of subsequent exchanges between Iceland and ESA, wherein ESA has emphasised the importance of prioritising the status classifications.⁴
8. In its RBMP, Iceland delineated 313 groundwater bodies.⁵ As with other water bodies in Iceland, none of them had their chemical or quantitative status classified in Iceland's RBMP for 2022-2027, including the *Reykjanes* groundwater body which the present case concerns.

1.2 The Facts of the Case

9. The Authority understands that Benchmark Genetics has conducted operations and held a utilisation licence for groundwater abstraction since before the entry into force of the Water Framework Directive in the EEA. In 2019, Benchmark Genetics applied for a permit for a project entailing a 20% increase in groundwater abstraction, with the

¹ Article 13(4) WFD with reference to Annex VII, Section A, points 5 to 7.

² See ESA's assessment of Iceland's RBMP, p. 3, available at <https://www.eftasurv.int/esa-at-a-glance/publications/annual-report/report-implementation-water-framework-directive-1>. ESA notes that by way of Decision of the EEA Joint Committee No 125/2007 of 28 September 2007, time limits for submitting RBMPs under the WFD were adapted in to run from the entry into force of the WFD in the EEA, see Article 1(1)(b).

³ Both ESA's main report on the implementation of the WFD in the EFTA States, and the country-specific assessment on Iceland, are available at <https://www.eftasurv.int/newsroom/updates/esa-releases-report-water-management-iceland-liechtenstein-and-norway>.

⁴ This includes discussions at the 2025 Package Meeting in Iceland and subsequent exchanges, see Document No 1537351.

⁵ The RBMP addressed only cold groundwater bodies. Hot groundwater bodies have not yet been addressed in Iceland's RBMP.

objective of expanding its fish farming operations. The company was informed that the proposed project would require an environmental impact assessment (“EIA”).⁶

10. On 3 January 2020, Benchmark Genetics formally submitted its proposal to the National Planning Agency (*Skipulagsstofnun*). On 20 August 2020, Benchmark Genetics submitted its preliminary environmental assessment, concluding that the project would have a limited environmental impact. That assessment was subsequently made publicly available on 2 September 2020.⁷
11. On 10 May 2021, having received comments from various stakeholders, the Planning Agency issued an opinion on Benchmark Genetics’ assessment. It concluded *inter alia* that the negative environmental impact of the planned expansion would be limited, and that the increased water abstraction was unlikely to negatively affect groundwater to any material extent.⁸
12. Subsequently, Benchmark Genetics applied to the Energy Authority for a utilisation licence for groundwater abstraction over a term of 20 years. An updated application was submitted on 3 January 2022. On 4 May 2023, the Energy Authority issued a licence subject to conditions relating to monitoring the groundwater.⁹
13. The plaintiffs challenged this licence before the Environment and Resource Appeals Board (*áfrýjunarnefnd umhverfis- og auðlindamála*), which upheld the licence on 20 September 2023. They subsequently lodged the present proceedings.¹⁰

⁶ The Request, p. 3.

⁷ The Request, p. 3.

⁸ The Request, p. 4.

⁹ The Request, p. 4.

¹⁰ The Request, pp. 4-5.

2 EEA LAW

14. The Water Framework Directive¹¹ was incorporated into the EEA Agreement by way of Decision of the EEA Joint Committee (“JCD”) No 125/2007 of 28 September 2007.¹² It entered into force in the EEA on 1 May 2009.
15. The purpose of the Water Framework Directive is to establish a framework for the protection of surface waters, transitional waters, coastal waters and groundwater. Among other things, States must characterise their river basin districts (Article 5) and establish monitoring programmes (Article 8).
16. The core tool to achieve the aims of the Directive is the RBMP. Under Article 13 WFD, the EEA States are to ensure that an RBMP are produced for each river basin district lying within their territory.¹³ The RBMPs set out the characteristics of the river basin district, the pressures and impacts of human activity, and the current status of the water bodies. Together with the accompanying programme of measures, the RBMP is a comprehensive plan for how to achieve and maintain good status of water bodies in each EEA State.¹⁴ The RBMPs are to be reviewed and updated every six years.¹⁵
17. Under the WFD, the quantitative and chemical status of groundwater bodies is to be classified in accordance with its Annex V and Directive 2006/118 of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (“**the Groundwater Directive**”)¹⁶ (“**WFD status assessment**”). The status of the groundwater body is determined by the poorer of the two statuses.¹⁷
18. The preamble to the WFD provides as follows, insofar as relevant:

¹¹ OJ L 327, 22.12.2000, p. 1.

¹² OJ L 47, 21.02.2008, p. 53.

¹³ Article 13(1) WFD.

¹⁴ Article 13(1), Article 11(1), and Article 4(1) WFD.

¹⁵ Article 13(7) WFD.

¹⁶ Incorporated into the EEA Agreement by way of JCD No 87/2009 of 3 July 2009, OJ L 277, 22.10.2009, p. 39.

¹⁷ Article 2(19) WFD.

“(1) Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.

...

(20) The quantitative status of a body of groundwater may have an impact on the ecological quality of surface waters and terrestrial ecosystems associated with that groundwater body.

...

(25) Common definitions of the status of water in terms of quality and, where relevant for the purpose of the environmental protection, quantity should be established. Environmental objectives should be set to ensure that good status of surface water and groundwater is achieved throughout the Community and that deterioration in the status of waters is prevented at Community level.

...

(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.

...

(34) For the purposes of environmental protection there is a need for a greater integration of qualitative and quantitative aspects of both surface waters and groundwaters, taking into account the natural flow conditions of water within the hydrological cycle.”

19. Article 4(1) WFD sets the environmental objectives of the Directive. It provides, insofar as relevant:

“In making operation 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 this 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 the latest 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;”

20. Exemptions to the objectives allow for the extension of the deadlines (Article 4(4)), less stringent objectives (Article 4(5)), temporary deterioration in the status of water bodies (Article 4(6)), or deterioration for the implementation of new projects (Article 4(7)). Each exemption is contingent on a set of conditions, and the justifications for the exemption being included in the State's RBMP. Iceland did not report the use of any exemption in its RBMP for 2022-2027.

21. Among these exemptions, Article 4(7) WFD is the only one applicable to the development of new projects. It provides for the possibility of derogating from a State's obligation to achieve good status and to prevent deterioration in the status of its water bodies in certain circumstances, dependant on a case-by-case analysis and the

reasons put forth.¹⁸ Insofar as the Authority understands, this provision has not been invoked in the present case.

22. 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 (“**the EIA Directive**”) was incorporated into the EEA Agreement by way of JCD No 230/2012 of 7 December 2012.¹⁹ Article 6 EIA establishes, *inter alia*, an obligation to share certain information on projects subject to environmental impact assessments (“**EIA**”) with the public, including environmental information.

3 NATIONAL LAW

23. Article 17 of Act No 57/1998 on the Exploration and Exploitation of Underground Resources provides as follows:²⁰

“When granting utilisation licences, it shall be ensured that the use of resources in the ground is conducted in a manner that takes into account environmental considerations, is efficient from a macroeconomic perspective, and considers any existing utilisation in the immediate vicinity. If the Environment and Energy Agency²¹ deems that an applicant for a utilisation licence does not meet these requirements, it may deny the licence or impose specific conditions on the licence on this basis. It may be provided that a utilisation licence shall be subject to review after a specified period.

If it is demonstrated through documentation that environmental objectives, established on the basis of the Act on Water Management,²² will not be met, it shall be permitted in specific cases to review the licence or impose new conditions due to those environmental objectives. Such a decision shall take

¹⁸ See E-13/24 *Friends of the Earth Norway*, judgment of 5 March 2025, paras. 28 and 35.

¹⁹ OJ L 81, 21.3.2013, p. 32.

²⁰ The Authority’s translation, current as of July 2025.

²¹ At the time of events, the Environment Agency and the Energy Authority were separate administrative bodies, see Act No 110/2024 on the Environment and Energy Agency.

²² Ísl. lög um stjórn vatnamála nr. 36/2011, which implements the WFD into Icelandic law.

into account its impact on the interests of the licence holder, as well as to the benefits and disadvantages the change may otherwise entail.”

4 THE QUESTIONS REFERRED

24. The Referring Court asks the following question:

“Whether the provisions of Directive 2000/60/EC, 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.”

5 LEGAL ANALYSIS

25. In the Authority’s understanding, the question referred consists of two parts. The Referring Court asks:

- First, whether Article 4 WFD precludes the authorisation of a project which may affect the status of a groundwater body for which classification and status assessment is required under the WFD, where the WFD status assessment has not yet been carried out.
- Second, whether Article 4 WFD precludes the authorisation of such a project if the results of the WFD status assessment have not been set forth in the RBMP.

26. The Authority will in the following address these two parts in that order.

5.1 Should a WFD status assessment be performed before authorising a project?

27. In the first part, the Authority submits that Article 4 WFD requires that, prior to authorising a project liable to affect the status of a groundwater body subject to the Directive, an assessment of the status of the groundwater body must be conducted in line with the requirements of the WFD.
28. As noted by the Court, the purpose of the WFD is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters, and groundwater.²³ It seeks to achieve this by harmonising and systematising the assessment, monitoring, and improvement of the status of water bodies in the EEA.²⁴ Water being a unique heritage and essential to life on earth, the success of the WFD is crucial to EEA environmental policy.²⁵ That success is contingent on the genuine and disciplined efforts of the EEA States to maintain and improve the quality of their water bodies.
29. With respect to groundwater, EEA States are under an obligation to prevent their deterioration, and an obligation to enhance their status.²⁶ The obligation to enhance their status encompasses an aim to achieve ‘good’ groundwater status at the latest 15 years after the entry into force of the WFD. In the EFTA pillar, that date was 1 May 2024.²⁷
30. The licence at issue in the present case was issued after the entry into force of the WFD, five years after the EFTA States’ time limit under Article 13(6) WFD to adopt RBMPs, and one year before the time limit to achieve ‘good’ groundwater status.²⁸ In Case C-346/14 *Commission v. Austria* (“**Scwarze Sulm**”), the Court of Justice of the European Union (“**CJEU**”) addressed the obligations on States at different points in their timeline to enact the WFD.²⁹ It held that the States’ obligations under Article 4

²³ Case E-13/24 *Friends of the Earth Norway*, para. 26.

²⁴ Although, as noted by the Court in Case E-13/24 *Friends of the Earth Norway*, para. 31, the Directive does not seek to achieve full harmonisation of the rules concerning water for EEA States, e.g. in relation to the conditions in Article 4(7) where the EEA States are allowed a certain margin of discretion.

²⁵ See e.g. Recital 1 of the WFD. See also Case E-13/24 *Friends of the Earth Norway*, para. 26.

²⁶ Article 4(1)(b)(i) and (ii) WFD, as adapted to the EEA Agreement by JCD 125/2007; Case C-535/18 *IL*, EU:C:2020:391, para. 69

²⁷ Article 1(1)(b) of JCD 125/2007.

²⁸ See Article 13(6) WFD and para. 5 above.

²⁹ Case C-346/14 *Commission v Austria*, EU:C:2016:322.

WFD applied in full after the expiry of their time limit under Article 13(6) WFD. Prior to that time, the States were required to refrain from taking measures liable seriously to compromise the attainment of the objective provided for by Article 4.³⁰ In the present case, since the disputed licence was issued after the Article 13(6) time limit in the EFTA pillar, it comes fully within the scope of the WFD.

31. As underlined by the CJEU in the cases of *Bund* and *IL*, the obligations established in Article 4(1) WFD are not mere management-planning objectives; they have binding effects.³¹
32. As also clarified by the CJEU in *IL*, Article 4 does not only encompass more long-term planning requirements but also concerns specific projects.³² Therefore, national authorities must ensure compliance with the obligation to prevent deterioration and the obligation to achieve good groundwater status when authorising individual projects. According to the CJEU's judgment, States are obliged 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 status' for bodies of surface water or groundwater*", unless a derogation under Article 4(7) applies.³³
33. The CJEU moreover clearly held that the assessment of whether a project could negatively impact the status of a water body and jeopardise the State's obligations to prevent deterioration and to enhance had to take place *before* approving the project.³⁴
34. ESA submits that a determination of the current status of a groundwater body is inherent in the requirement to assess the potential impact of a project on that water body's status, and whether it is likely to contravene the requirements to prevent its deterioration, to enhance its status and achieve good status.
35. The functioning of the WFD is to set a common standard for assessing and classifying the status of water bodies, in order to improve their status in a transparent, reliable,

³⁰ See Case C-346/14 *Commission v Austria*, paras. 49-50.

³¹ Case C-535/18 *IL*, para. 72 (concerning groundwater) and Case C-461/13 *Bund*, EU:C:2015:433, para. 43 (concerning surface water). See also Case E-13/24 *Friends of the Earth Norway*, paras. 27 and 28, where Article 4(1)(a)(i) is referred to as an obligation upon the EEA States.

³² Case C-535/18 *IL*, para. 74 and case law cited.

³³ Case C-535/18 *IL*, para. 74.

³⁴ Case C-535/18 *IL*, para. 76.

and harmonised manner.³⁵ For an assessment of a project in line with what the CJEU established in *IL* to be adequate, it must be performed against the criteria relevant for status classification, which are set out in Annex V of the WFD and Articles 3 and 4 of the Groundwater Directive. Otherwise, it would not be possible to identify whether the potential impact could deteriorate the status classification of the water body in a way which might trigger the application of a derogation under Article 4(7) WFD.

36. The WFD emphasises that “*early action and stable long-term planning of protective measures*” are required to achieve good status of groundwater.³⁶ The disputed licence was issued shortly before the EFTA States’ 1 May 2024 time limit to achieve good status of all groundwater bodies. In light of this, ESA submits that a thorough assessment of the current status and potential impact of the project on the groundwater body in question is necessary in order to comply with WFD requirements.

37. Thus, ESA submits that the answer to the first part of the question referred is that Article 4 WFD precludes the authorisation of a project liable to affect the status of a groundwater body, prior to having assessed and classified the groundwater body’s status.

5.2 Should the WFD status assessment results be set forth in an RBMP prior to authorising a project?

38. As outlined above at paragraphs 30-36, ESA submits that national authorities must assess the status of a groundwater prior to granting an authorisation which is liable to affect the status of that body. This assessment, together with an assessment of the potential impact of the project on the status, must be performed and the results made publicly available prior to granting such a project authorisation.³⁷

39. In the second part, the Authority submits that this assessment and related information must be included in the next update of the State’s RBMP. However, the prior inclusion of this assessment in the RBMP is not a precondition for authorising the project.

³⁵ See, *inter alia*, recital 25 and Annex V to the WFD, and Article 8 on establishing coherent monitoring programmes.

³⁶ See recital 28 to the WFD.

³⁷ That obligation follows from Article 6 of the EIA Directive, see also Case C-535/18 *IL*, para. 84.

40. At the outset, the Authority notes that regardless of whether groundwater abstraction is authorised during or before the RBMP reporting cycles, their issuance should be consistent with the objectives of the Directive. The Directive's primary objective is the non-deterioration and the achievement of good status of water bodies. A key part to reaching that objective is the consistent and regular assessment, planning, and execution of a water policy aimed at maintaining and improving the status of water bodies. RBMPs, as a crucial tool to achieving this, ensure the systematic and comprehensive assessment of water body statuses. They ensure that decisions impacting water quality are not taken in isolation, but in an informed manner with the full context of various factors impacting water quality.
41. Nevertheless, the Authority submits that Article 4 WFD does not require that projects subject to a utilisation licence for groundwater abstraction be authorised only after the results of the necessary assessments are published in an RBMP. As explained above, the Authority considers that the assessment should be done in line with the requirements of the WFD, and the results published in line with the EIA Directive. The results should subsequently be included in the RBMP at the next regular interval. The Authority does not consider the requirement to include the results of the assessment in an RBMP to be an obligation to only authorise projects at the regular intervals when RBMPs are published, i.e. every six years, or an obligation to revise the State's RBMP each time a project is authorised.
42. This understanding of the assessment requirement is reflected in the findings of the CJEU in *Swarze Sulm*.³⁸ In that case, it was not considered fatal for the lawfulness of a derogation from WFD requirements under Article 4(7) for Austria not to have waited until the issuance of its next RBMP to authorise a project based on a derogation.³⁹ Rather, the derogation was not in breach because the necessary assessments had been carried out prior to granting authorisation for the contested project.⁴⁰

³⁸ Case C-346/14 *Commission v Austria*, para. 80.

³⁹ In that case, the contested decision was adopted in 2007 and the RBMP was adopted in 2009, see Case C-346/14 *Commission v Austria*, paras. 7 and 10, respectively.

⁴⁰ See Case C-346/14 *Commission v Austria*, paras. 65 and 68-72.

43. This understanding is also reflected in the European Commission's guidance document for Article 4(7) WFD, which concerns derogations from the obligations under the Directive and similarly requires performing an assessment and putting forth justifications prior to granting a licence.⁴¹ This guidance document is elaborated in collaboration between the EU Member States, the EFTA States, the European Commission, and other stakeholders. It is non-binding and does not necessarily reflect the official position of the drafting partners. Nevertheless, ESA finds it relevant to draw the Court's attention to this document, which states that the obligation under Article 4(7)(b) to provide reasons for granting derogations is "*a reporting obligation and does not mean that Member States must wait until the publication of the River Basin Management Plan before allowing a new physical modification or new sustainable development activity to proceed*".⁴² The guidance document continues to state that "*in many cases, projects will be developed within the RBMP six year cycle*".⁴³
44. The Authority submits that in the case of licences which are granted before the issuance of a State's RBMP, or in the interim between the issuance of two RBMPs, the rigor and quality of the assessment performed, and the scope of information made publicly available, must be equivalent to that which applies to assessments which are published in an RBMP. This much is also clear from the *Schwarze Sulm* judgment, where the CJEU emphasised the detail and rigor of the assessment done by the national authorities in assessing whether to grant a derogation under Article 4(7) WFD.⁴⁴
45. This requirement to perform an adequate assessment under WFD standards is especially relevant in cases such as the present one, where the disputed licence was only issued before Iceland's publication of its first RBMP due to the fact that Iceland delayed that publication four years beyond the time limit under Article 13(6). Although the requirement to publish assessments in an RBMP should not prevent granting licences in the time between the regular RBMP intervals, the failure to publish an

⁴¹ Common Implementation Strategy for the Water Framework Directive and the Floods Directive: Guidance Document No. 36 Exemptions to the Environmental Objectives according to Article 4(7). Accessible at: https://circabc.europa.eu/sd/a/e0352ec3-9f3b-4d91-bdbb939185be3e89/CIS_Guidance_Article_4_7_FINAL.PDF.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Case C-346/14 *Commission v Austria*, paras. 80-81.

RBMP within the time limit established in the WFD should also not create a loophole for issuing licences using procedures which fall short of WFD standards.

46. The Authority recognises that the WFD places significant obligations on the States and that the initial mapping and continuous monitoring of the status of water bodies in each State is a resource-intensive undertaking. These tasks are nevertheless crucial to achieving the goals of the WFD, which in turn are a key part of EEA environmental policy. The Authority welcomes this opportunity for the EFTA Court to clarify the requirements laid down by the WFD.

6 CONCLUSION

Accordingly, the Authority respectfully requests the Court to respond to the Request for an Advisory Opinion as follows:

1. Article 4 of the Water Framework Directive requires that prior to granting authorisation for a project which may potentially affect the status of a groundwater body which is subject to the classification and status requirements of the Directive, the current status of the groundwater body and the potential impact of the project on that status must be assessed. That assessment is to be made publicly available, in line with the requirements of the Environmental Impact Assessment Directive, and should form an integral part of the decision-making when issuing such a licence.
2. The assessment of the current status and potential impact of the project should be included in the next update of the applicable River Basin Management Plan. However, the Directive does not preclude such authorisation until such time as an updated river basin management plan has been published.

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