ATTORNEY GENERAL FOR CIVIL AFFAIRS

To the EFTA Court

OSLO, 26.08.2026

Written observations by the Kingdom of Norway

represented by Karen Mellingen and Thea Westhagen Edell, advocates at the Office of the Attorney General for Civil Affairs, submitted pursuant to Article 90(1) of the Rules of Procedure of the EFTA Court, in case

E-11/26 World Wide Fund for Nature Norway v. The Norwegian State

in which Borgarting lagmannsrett (the Borgarting Court of Appeal) has requested 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 Article 5 of Directive 2001/42/EC of 27 June 2001 of the European Parliament and the Council on the assessment of the effects of certain plans and programmes on the environment.

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1 INTRODUCTION

(1) The proceedings pending before Borgarting Court of Appeal concerns the legality of the King in Council's Royal Decree of 12 April 2024 on opening a designated area on the Norwegian continental shelf for seabed mineral exploration and extraction[1] ("the opening decision"). An opening decision enables the authorities to grant exploration and extraction licenses. It does not, however, constitute a permit for seabed mineral activities nor does it grant any rights to individuals or companies.

(2) The parties agree that an opening decision is a 'plan' within the meaning of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the

[1] The Government notes that in the United Nations Convention on the Law of the Sea Article 77(1) the term 'exploitation' is used instead of 'extraction'.

assessment of the effects of certain plans and programmes on the environment ("the SEA Directive"). It is also common ground between the parties that the opening decision was preceded by an SEA, which was undertaken from 2020 to 2023; the dispute concerns whether that assessment was deficient.

(3) The Borgarting Court of Appeal ("the Referring Court") has, by a reference sent 19 June 2026, requested the EFTA Court ("the Court") to give an advisory opinion regarding Article 5 of the SEA Directive.

(4) The question reads as follows:

> *Where a plan to open an area of the continental shelf to seabed mineral activities – which forms the basis for awarding licenses for commercial exploration and exploitation – falls within the scope of Directive 2001/42/EC on the effects of certain plans and programmes on the environment (the SEA Directive), do effects in the form of onshore waste generation and/or radioactive pollution arising from processing of extracted seabed minerals qualify as "effects" of implementing the plan within the meaning of Article 5(1) of that Directive?*

(5) Exploration and extraction offshore and processing onshore are distinct activities within the value chain for seabed minerals. In simple terms, exploration consists of mapping and evaluating deposits, while extraction is physically retrieving the ore from the seabed. Processing may include separating, smelting or refining extracted ore into minerals and metals for commercial use by e.g. metallurgical, chemical or electrolytic processes. The extent and exact methods for processing therefore depends on the specific ore's composition and purity. Minerals and metals may then be used for manufacturing components, such as magnets and other technologies, which are then integrated into final products.

(6) Seabed mineral extraction represents a potential new industry. How, where and when extracted seabed minerals will enter existing raw material and metal value chains are entirely uncertain. Although it is true that activities in raw material and metal value chains will have environmental effects, it is – at the stage of the opening decision – not possible to determine more specifically which environmental effects this will be. The Referring Court essentially asks whether general onshore environmental effects potentially occurring within such value chains qualify as effects of a plan that serves as the basis for further investigations into whether seabed mineral activities may develop into a new industry.

(7) Some introductory observations regarding the Request for an Advisory Opinion are necessary.

(8) As regards the terminology used in the present case, the Government notes that the Request employs the terms "environmental impacts" and "impacts on the environment", whereas Article 5(1) of the SEA Directive uses the term "effects". Assumably, no substantive distinction between the terms is intended by the referring court. For the sake of clarity and consistency, the Government will adopt the term "effects" in the following.

(9) It is important to note that the referred question concerns only onshore waste generation potentially arising from the processing of seabed minerals. It does not concern "waste" potentially generated of mineral exploration and extraction on the continental shelf within the opened area, as environmental effects of such "waste" is an ordinary environmental effect of the plan.

(10) The question refers to "effects in the form of onshore waste generation". However, it is the Government's understanding that 'waste' is not an environmental effect in itself;[2] the effects on the environment depend on how the waste is handled. Waste generation is a characteristic of processing activities related to minerals extracted on land. The environmental effects of waste generation will depend on how and where the waste is handled, and the nature and characteristics of the waste. Disposal facilities may result in land take or land use.

(11) The Request uses the term 'radioactive pollution' without defining it, and the term 'radioactive contamination' seems to be more used in EU law.[3] The Government's understanding is that the term 'radioactive pollution' is meant to refer to a specific type of waste generation issue that may arise from processing depending on the specific ore's composition. Such radioactive waste may require long-term management and disposal.

(12) If the Referring Court assumes that waste in itself is an environmental effect, the Government disagrees. The question indicates that the word "effect" can be applied without identifying a more specific environmental factor than merely referring to 'onshore'. The Government considers that the term "effects on the environment" cannot be understood in the abstract or solely by reference to a geographical area such as "onshore". Rather, the term inherently refers to effects on one or more of the environmental factors identified in Annex I(f) of the SEA Directive.

(13) Last, the Government points out that the referred question asks whether two specific issues that may arise from onshore processing of seabed minerals are effects of the opening decision, and is, as such, closely bound up with an assessment of the facts of the case. This is a matter for the national court, and not for the EFTA Court.[4] Therefore, the question must be understood as that of a legal one, namely whether the requirement under Article 5(1) of the SEA Directive to identify, describe and assess environmental effects of implementing the plan or programme extends to the effects of downstream activities that fall outside the scope of that plan or programme.

(14) The Government submits that this question must be answered in the negative.

[2] 'Waste' can be defined as "any substance or object which the holder discards or intends or is required to discard, see the Waste Framework Directive 2008/98/EC Article 3(1).
[3] See Radiation protection legislation - European Commission.
[4] Article 34 SCA.

2 THE NORWEGIAN LEGAL FRAMEWORK

(15) The Norwegian Seabed Minerals Act[5] regulates mineral activities on the Norwegian continental shelf. Pursuant to section 1-1 of the Act, its objective is to facilitate exploration for and extraction of mineral deposits on the continental shelf in accordance with societal objectives, in such a manner that safeguards considerations such as value creation, environment, safety, other business activity, as well as other interests.

(16) The Act sets out a "step-by-step" licensing regime, which is briefly described in point 3 of the request for an advisory opinion. The licencing process may roughly be divided into four main phases: (i) opening of an area for mineral activities, (ii) exploration, (iii) extraction and (iv) the cessation of operations. The Act requires impact assessments to be carried out at three stages of the process: a strategic impact assessment prior to the opening of an area, intended to inform the decision whether, and on what conditions, an area should be opened for mineral activities; a project-specific impact assessment prior to the approval of extraction activities; and a separate impact assessment prior to the cessation of operations. The present case concerns the impact assessment required prior to the opening of an area.

(17) Pursuant to section 2-3 of the Act, opening an area for mineral activities is a precondition for granting licenses to private companies and therefore for mineral activities to become a possibility on the Norwegian continental shelf. The Act confers upon the "King in Council" the authority to issue opening decisions for a defined area of the continental shelf. Seabed mineral activities entail exploration and extraction of mineral deposits on the seabed and the subsurface. Opening an area does not in itself entail any activity but means that Norwegian authorities may grant licenses to commercial actors for exploration of mineral deposits within that area of the continental shelf. Extraction may only be authorised later if the necessary requirements under Norwegian law are fulfilled.

(18) Thus, opening an area represents only a first step toward further assessing whether the extraction of seabed minerals can be sustainable in the future.[6] Such further assessment will a.o. include a preparation of a project specific environmental impact assessment, which will be subject to public consultation both during the scoping stage and after the impact assessment report is completed. The first plans for extraction shall also be submitted to parliament before a final approval can be granted.

(19) Importantly, the Act governs the exploration and extraction of seabed minerals, and in general not onshore processing of those minerals. An opening decision under section 2-1

[5] Act of 22 March 2019 No. 7 relating to mineral activities on the continental shelf. An English translation is available here: https://www.sodir.no/en/regulations/acts/act-relating-to-mineral-activities-on-the-continental-shelf-seabed-minerals-act/#Chapter-2. The Seabed Minerals Act has been drafted within the framework of the Law of the Sea, under which the coastal State has an obligation to protect the environment and to permit other States to use the shelf for certain purposes, such as the laying of pipelines and submarine cables.

[6] As emphasised on page 4 of the Resolution, before any future extraction, any future applicant must "demonstrate that the extraction can be carried out in a sustainable and responsible manner, ensuring that environmental and safety considerations, as well as the coexistence with any fisheries or other maritime activities in the relevant area, are properly safeguarded".

makes it possible to grant licenses for "mineral activities" in the opened area. "Mineral activities" is in section 1-5(a), cf. section 1-2 defined as "activity relating to the exploration for and extraction of mineral deposits on the seabed and the subsoil thereof".[7] Only if onshore processing is necessary for or constitutes an integral part of the extraction, may the King decide that the Act shall also apply to processing taking place on the Norwegian land territory, cf. section 1-3(5). The preparatory works sets out that:

> *The concept of extraction is limited to activities taking place on the seabed, the subsoil of the seabed, and in or on the sea above. Land-based activity (downstream) related to, for example, separation, crushing, processing, refining, and melting is, in principle, not covered by the concept of extraction. However, section 1-3, fifth paragraph, proposes that the Act may also apply to further processing on land of minerals from an extracted subsea mineral deposit, when such processing is necessary for or form an integral part of the extraction.*[8]

(20) The latter could, for example, be relevant where extracted ore is transported onshore through a pipeline as part of an integrated development solution. Such development solutions are not likely for activities in the opened areas in question. The most likely scenario for any future seabed mineral extraction in the opened area is that the extracted ore would be transported to shore by ship, and that onshore processing would not be necessary for or form an integral part of the extraction.

3 FACTUAL BACKGROUND

3.1 Preliminary remarks

(21) Pursuant to Article 34 SCA, the assessment of the facts and how national law is applied is a matter for the national courts. The summary of the facts in the Request for an Advisory Opinion is brief and, on some instances, not fully accurate. The question from the referring court is very limited in scope compared to the legal and factual issues relating to the completed strategic environmental assessment that was considered by the Oslo District Court. The factual background is, of course, extensive, as the proceedings before the opening decision concerned the fundamental question of whether, and where, Norway should open for the potential establishment of a new offshore resource industry. The parties seem to have different views on relevant facts, and in the Government's opinion, WWFs submissions are largely vaguely formulated. The Government will first address certain errors and ambiguities in the request point 2 (page 2 to 6) submitted by the Referring Court. Then the Government will present relevant facts concerning seabed minerals and onshore waste management issues within the raw material value chain.

[7] Our translation.
[8] Proposition 106 L (2017–2018) page 57 (unofficial translation).

3.2 The facts presented in the request

(22) The main proceedings concern a range of issues relating to the environmental impacts of various types of exploration activities and potential extraction scenarios involving sulphide deposits and manganese crusts in the deep sea. These issues include the current state of knowledge regarding marine biodiversity, ecosystem functioning and development, as well as the technologies relevant to deep-sea exploration and extraction. It is unclear to the Government why the referral includes a discussion of the likely significant effects on the marine environment at pages 5-6. This is not relevant to the referred question, which relates to the effects of onshore processing of seabed minerals.

(23) The Request sites statements from the EU Commission and the European Parliament regarding extraction. The Government wishes to emphasise that Norway agrees that the current state of knowledge is insufficient to permit commercial exploitation. Norway's position is that there is sufficient knowledge to proceed with further assessment and exploration in order to determine whether future exploitation may be environmentally sustainable and economically viable. The Government does not understand the EU institutions to hold a different view. In fact, the activity that may initially take place as a result of the opening decision is surveying and exploration. Such activities have already taken place in areas beyond national jurisdiction[9] for several decades, with the participation of several EU Member States.

(24) Footnote 6 of the request cites a statement by the Norwegian Institute of Marine Research. The cited passage concerns knowledge of the deep-sea environment and is not relevant to the question referred, which relates to effects onshore of the subsequent processing of extracted minerals. Nevertheless, the Government wishes to point out that the citation is unclear.

(25) It is well known that only a small part of the deep sea has been explored by humankind. However, this does not mean that there are no knowledge of the continental shelf and its environment. The reports prepared as part of the strategic environmental assessment compile the available knowledge concerning the assessed area across a range of scientific disciplines.

(26) Public authorities and institutions with environmental responsibilities have been involved in both preparing the scope and conducting the impact assessment, as well as in the two public consultations. The Norwegian Environment Agency was also involved in the parliamentary hearing of the SEA before the opening decision. The impact assessment and a proposal to open the area in question for mineral activities were submitted to parliament together with a strategy for managing Norway’s seabed mineral resources. Almost 80 % of the parliament supported the Government’s proposal and found that the strategic environmental assessment provided an adequate decision-making basis for opening the area in question for seabed mineral activities.

[9] Referred to as the «Area» in the United Nations Convention on the Law of the Sea.

(27) The request suggests that several consultation submissions to the impact assessment report requested management of radioactive pollution, onshore waste and other effects of activities on land to be assessed. The Government would like to emphasise that none of the submissions addressed radioactive pollution from onshore processing. In general, onshore effects were not a significant topic during the consultation on the impact assessment report.

3.3 Facts regarding seabed minerals and processing of ore

(28) Mapping has shown that there is a considerable mineral resource potential on the Norwegian continental shelf including sulphides and manganese crusts. Both types of minerals are polymetallic and contain, among others, copper, zinc, cobalt, gold, silver, manganese, iron, lithium, titanium, vanadium and rare earth elements. The extraction of such minerals, which are in high global demand, could become a new ocean industry in Norway.

(29) These minerals are also of importance to the EU. Several of the minerals identified on the Norwegian continental shelf are classified by the EU as "critical" or "strategic" due to their importance to the internal market and to sectors such as defence, the green transition and aerospace.[10]

(30) A prerequisite for commercial seabed mineral activity in Norway, and thus ultimately for the extraction of the resources, is that areas are opened for exploration and extraction. The opening of an area enables authorities to grant permits to commercial companies, making exploration possible. It is through such exploration activities it can be determined whether the extraction of Norway's seabed mineral resources can be carried out profitably and with an acceptable level of environmental impact. Commercial extraction of minerals from the Norwegian seabed may, in the long term, help secure the diversification of supply of important metals for the global energy transition as well as defence-related equipment.

(31) Chapter 5.1 of the environmental impact assessment report prepared by the Ministry of Energy describes the value chain and operational phases of seabed mineral activities.[11] As commercial seabed mineral extraction is a potential new industry, the characteristics of the activity and its various phases are necessarily based on proposed concepts and expected methods. The solution for vertical transport of the ore from the seabed to a production unit on the sea surface, which is an integral part of the extraction activity, is described as follows:

> *In most of the solutions described to date, the ore is brought to the surface by converting it into an ore-water slurry that is then pumped to the production unit. There, the water is separated from the ore before the ore is stored onboard the production unit. The separated water is subsequently returned to the seabed (Figure 5-*

[10] The European Critical Raw Materials Act ('CRMA') includes minerals from the deep sea. Recital 18 of the CRMA proceeds on the assumption that seabed minerals are covered by the Regulation. However, it emphasises that further knowledge regarding the impacts of seabed mineral extraction on the marine environment and biodiversity is required, pursuant to the precautionary principle, before such projects may be designated as Strategic Projects by the European Commission. The Regulation does not, however, establish any general prohibition of, or limitation on, seabed mineral exploration, extraction projects or related activities within EU Member States.

[11] The report is presented in the request footnote 4 and is available here.

3). More recently, however, alternative methods for lifting the ore to the surface without producing dewatering effluent have also been considered (see Chapter 5.4).

Mining takes place at the surface and in the upper layers of the seabed. Unlike terrestrial mining operations, this involves the extraction of only minimal amounts of waste rock (i.e., rock that does not contain economically recoverable minerals). Consequently, smaller volumes of residue are generated. The separation and disposal of such residue may therefore potentially be deferred until the ore reaches onshore processing facilities.

(32) It is thus uncertain whether the extraction, and subsequent processing, of seabed minerals will generate waste at all; there are indications that all the material may be of commercial value.

(33) The report chapter 7 includes economic and social effects. The description shows that no specific location for onshore processing is presupposed, and use of existing infrastructure/plants is indicated:

Potential extraction sites on the Norwegian continental shelf are located sufficiently far from shore that geographical differences between European, U.S., and Canadian regions are not expected to constitute a decisive factor in overall transportation costs. For the industry, the use of existing processing infrastructure and facilities could be advantageous and cost-saving. However, it cannot be assumed that existing facilities are dimensioned to receive the volumes of ore that may be produced if deep-seabed mining were to become significant.

(...)

Maritime transport is the most obvious solution for inbound ore shipments (i.e., transport from the extraction site). Processing facilities located in proximity to suitable ports may therefore offer advantages. At present, there are numerous locations in Norway with either operational ports or the potential for development of suitable quay and port facilities. Other factors, such as access to labour and expertise, as well as the availability of power supply, are therefore likely to be decisive in determining whether processing facilities are established in Norway and, if so, where in the country they are located.

(34) The report does not presuppose that seabed minerals extracted on the Norwegian continental shelf will be processed in Norway, nor that such processing is a prerequisite for the implementation of seabed mineral projects.

(35) Any assessment seeking to identify more specified environmental effects of a future hypothetical processing activity would necessarily rely on a range of assumptions regarding location, scale, technology choices etc. As the report points out, transport distances to regions in Europe, United States and Canada are broadly comparable, meaning that a wide range of onshore sites could be relevant for processing of minerals extracted in the opened

area. In modern times, mineral and metal value chains are global in nature, and minerals extracted in one country may be transported to and processed in several other countries. Consequently, any assessment of effects from potential waste handling along the global value chain for minerals from the opening area, would at this stage be largely theoretical in nature. Also; Norway only has jurisdiction to plan how future processing capacity in Norway can take place.

(36) The Ministry's initially proposed scope for the SEA stated that «The environmental impact assessment will be limited to offshore activities».[12] A few respondents, including the Environment Agency, in the public consultation of the proposal pointed out that the effects of processing onshore also should be assessed:[13]

> *In order to get a complete picture of the new industry that is to be assessed, the SEA must also deal with environmental effects of possible activities on land. Disposal of tailings has been associated with large land-area problems on land. This is important to include in the SEA in order to get a complete picture.*

(37) In its consideration of the consultation responses, the Ministry of Energy concluded that[14] to the extent that knowledge exists indicating that the environmental impacts associated with processing ore extracted from the continental shelf systematically differ from those associated with processing ore extracted on land, this matter would be assessed at a general level. In the Government's view, however, requiring such an assessment would go beyond what is required under the SEA Directive.

(38) The Norwegian Offshore Directorate commissioned an expert report prepared jointly by two consultancy firms employing experts from a range of scientific disciplines.[15] The report describes the general effects of handling tailings:[16]

> *Environmental effects of onshore processing of manganese crusts and sulphide deposits are related to the use of chemicals, resources, and energy. The primary focus regarding the use of chemicals will likely be flotation chemicals or flocculants. Flocculation can be used to separate gangue minerals from the flotation slurry during the flotation process, enabling the reuse of process water. Process chemicals may have adverse environmental impacts if discharged into the marine environment, and provisions should be made to use substances that are as environmentally benign as possible if it becomes relevant to apply for such discharges. Although there may be challenges associated with the handling of processing chemicals and the use of natural resources and energy, the most significant environmental impacts from processing are associated with the management of tailings. The impact assessment for the disposal of*

[12] See the Ministry of Energy's proposed environmental assessment programme page 33, available here.
[13] See the request footnote 8 at page 22 row 71, available here.
[14] See the request footnote 8 at page 22 row 71, available here.
[15] See the request footnote 23, available here.
[16] See the request footnote 23 page 59, available here.

> *tailings is not part of this assessment (cf. Chapter 1.1) and must be assessed through the project-specific environmental impact assessments.*

(39) It is therefore incorrect to suggest that onshore processing effects are entirely absent from the SEA. The environmental effect report from the consultant's firm did not find any systematic differences in the environmental effects of processing ore extracted from the seabed and ore extracted on land. WWF has likewise not argued that any such systematic differences exist.

(40) The Oslo District Court concluded in its judgement that the scope of the SEA was adequate. Nevertheless, the Court examined the issues that WWF contended should have been addressed in greater detail in the assessment.[17] Regarding the environmental effects of processing onshore, the court held:

> *The District Court finds that the Akvaplan report did not identify systematically different environmental impacts between processing ore extracted from the seabed and ore extracted on land. Nor were such environmental impacts substantiated or argued before the District Court. The District Court finds that the SEA programme's delimitation of which onshore environmental effects were to be assessed satisfies the purpose of establishing a sound basis for the Opening Resolution.*

(41) Prompted by WWF's submissions, the District Court also considered a draft of the Akvaplan report where the possible effects of ore processing at a general level were presented in more detail than in the final report. The court referred to the draft as the "April-description" and held that it supported the conclusion in the final report that there are no systematically different environmental impacts between processing ore extracted from the seabed and ore extracted on land. It also noted that it was not disputed before the District Court that the processing method employed in any given case would depend on the mineral composition of the particular ore and the metals sought to be extracted from it, and that existing processing methods are expected to continue to evolve.

4 LEGAL ANALYSIS

4.1 Preliminary remarks

(42) The referred question concerns the extent of the requirement in Article 5(1) of the SEA Directive to identify, describe and assess environmental effects of implementing a plan or programme in relation to a process for a plan for seabed mineral activities.

(43) Given that the plan in question, within the meaning of Article 3(2)(a) of the SEA Directive, is prepared for "industry" in terms of commercial seabed mineral activities and that the plan "set[s] the framework for future development consent of projects listed in Annexes I and II to

[17] The judgement is available here.

[the EIA Directive]", an environmental assessment (SEA) needs to be carried out before decision making pursuant to Article 8 of the SEA Directive.

(44) At the outset, it is recalled that an environmental assessment is a procedure that shall be carried out during preparation of a plan and before its adoption, cf. Article 4(1). The procedure includes preparation of an environmental report pursuant to Article 5. That provision includes requirements for information that must be included and a consultation with relevant authorities regarding scope and level of detail of the necessary information. Further, Articles 6 and 7 require several types of consultation on the draft plan or programme before a decision making according to Article 8.

(45) Against that background, the Referring Court essentially seeks to establish the scope of the information required in the environmental assessment. It raises the question whether some specific issues related to future onshore processing of minerals, where the location, scale, timing and characteristics of such processing are not determined by the plan, are "effects" of the plan. If this is so, and the effects also are "likely" and "significant", the identification, description and assessment of such effects must be included in an environmental report according to Article 5 of the SEA Directive.

(46) The referred question is formulated as to whether two specific issues related to the processing of seabed minerals are effects of "*a* plan to open an area of the continental shelf to seabed mineral activities" in general (emphasis added). However, it is the effects "of implementing *the* plan or programme" (emphasis added) that are to be identified, described and assessed pursuant to Article 5(1) of the SEA Directive. In principle, one opening decision may set the framework for the processing of seabed minerals, whereas another opening decision may not address this topic at all. Therefore, the specific contents of the plan in question and which activities it sets the framework for are decisive and must be determined before assessing whether specific issues are effects of implementing the plan.

(47) It is the Government's firm opinion that the opening decision in question sets the framework only for the exploration and extraction of seabed minerals, and not for the subsequent activity of processing and refining those minerals onshore. Consequently, the Government submits that the question should be formulated as follows:

> *Where a plan to open an area of the continental shelf to seabed mineral activities falls within the scope of Directive 2001/42/EC on the effects of certain plans and programmes on the environment (the SEA Directive), and that plan sets the framework only for the exploration and extraction of seabed minerals, but not for the subsequent activity of processing those mineals onshore, do effects from onshore waste generation and/or radioactive pollution potentially arising from processing of extracted seabed minerals qualify as "effects of implementing the plan" within the meaning of Article 5(1) of that Directive?*

(48) The Government also notes that since the question relates to two specific issues related to waste potentially arising from onshore processing, and because the assessment must take into account the specific contents and the framework of the plan, the question is closely

bound up with an assessment of the facts of the case. As follows from persistent case-law, any assessment of the facts of the case is a matter for the national court or tribunal, which must assume responsibility for the subsequent judicial decision, and it is that court or tribunal which has the task of interpreting the provisions of national law at issue and ultimately determining their compatibility with EEA law.[18]

(49) Therefore, the Government is of the view that the question must be understood as that of a legal one, namely whether the requirement under Article 5(1) of the SEA Directive to identify, describe and assess environmental effects of implementing the plan or programme extends to effects of downstream activities that fall outside the scope of that plan or programme.

(50) The Government's main submission is that this question must be answered in the negative. It follows from the wording "effects of implementing *the* plan or programme" (emphasis added) that the scope of the environmental assessment must be determined in light of the scope of the plan itself. This means that effects of activities falling entirely outside the framework of the plan or programme in question are not to be included in the environmental assessment. That is especially so where the plan does not set any criteria for or determine the location, timing, scale or characteristics of the activity in question.

(51) In this regard, it is important to note that the processing of seabed minerals, as such, does not have known effects on identifiable environmental factors regardless of the location, scale, timing and characteristics of the processing act. This distinguishes our case from case E-18/24 *Greenpeace*, which concerned whether emissions from the combustion of fossil fuels are effects of a project for the development and operation of petroleum and gas extraction pursuant to Article 3(1) of Directive 2011/92/EC ("the EIA Directive"). Although extracted petroleum and natural gas might be put to a variety of uses, the likely end effects of combustion are known. It is common knowledge that burning fuel release emissions with an impact on the world's climate regardless of where and how the burning takes place. Therefore, the conclusion in case E-18/24 *Greenpeace* cannot be readily transposed to our case, concerning a different raw material and a distinct activity, namely, the processing of seabed minerals.

(52) If, in the alternative, the Court should decide that effects of onshore waste generation and/or radioactive pollution potentially arising from the processing of seabed minerals are to be deemed effects of a plan to open an area for seabed mineral activities in general and without having regard to the scope of the specific plan in question, the Government submits that the level of detail in identifying, describing and assessing the effects nevertheless depends on the contents of the plan and its stage in the decision-making process, cf. Article 5(2). At the stage of opening an area for seabed mineral activities, where the location, scale, timing and characteristics of potential processing in the future are not determined, it is sufficient to describe the nature of the environmental effects that may arise from processing of seabed minerals at a general level. There can be no requirement to describe, in detail, the specific effects of a range of potential processing scenarios.

[18] E.g. the EFTA Court's judgement in case E-17/25 *Redd Ullevål Sykehus*, para. 41.

4.2 Effects of onshore processing of seabed minerals are not effects of implementing the opening decision in question

4.2.1 Introduction

(53) Article 5(1) of the SEA Directive sets out that an environmental report shall identify, describe and assess "the likely significant effects on the environment of implementing the plan or programme".

(54) The wording of Article 5(1) is general and needs to be interpreted. 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.[19] Where a provision is open to several interpretations, preference must be given to that interpretation which ensures that the provision retains its effectiveness.

4.2.2 The wording "effects of implementing the plan"

(55) The Directive's Annex 1(f) footnote 1 prescribes that "likely significant effects" should include "secondary, cumulative, short, medium and long-term permanent and temporary, positive and negative effects", which implies that the wording "effects of implementing the plan" is to be interpreted broadly. The Government notes that in E-18/24 *Greenpeace*, the EFTA Court stated that the scope of the EIA Directive is wide and its purpose very broad and thereby adopted a broad interpretation of the wording "effects of a project" pursuant to Article 3(1) of the EIA Directive. The Court also stated 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.[20] The Government assumes that the Court will apply the same approach for Article 5(1) of the SEA Directive.

(56) Such a broad interpretation cannot, however, entail disregarding the fact that the wording "effects" is inherently linked to the wording "of implementing the plan or programme". It is the effects of implementing *the specific plan in question*, and not just *a plan* in the abstract, that are to be included in the environmental report. Therefore, the contents and the framework of the plan in question must be assessed to determine what the effects of implementing that plan are.

(57) In the Government's view this means that in our case it is the effects of exploration and extraction activities, for which the plan in question sets the framework for, that is to be included in the environmental report, and not the possible effects of subsequent onshore processing activities that fall outside the scope of that plan.

4.2.3 The context of the provision

(58) The interpretation above is supported by the provision's context.

[19] See the EFTA Court's judgement in case E-18/24 *Greenpeace* para. 61.
[20] Para. 83.

(59) First, Article 5(1) sets out that it is the "likely" significant effects that are to be included in the environmental report. Whilst any future effect on the environment in a never-ending value chain may in principle be regarded as an effect of a plan, the Government submits that the wording "likely", as opposed to e.g. "any", establishes a certain threshold for which effects that are to be included, in that it excludes effects that are too remote or derivative. This is supported by the Commission's guidelines for the implementation of the SEA Directive, where it is stated that the "prediction of likely environmental effects is complex, especially in the context of relatively broad-brush, or high level plans or programmes, where it may be difficult to anticipate the outcomes of implementation at the time a plan or programme is adopted. The use of the word 'likely' suggests that the environmental effects to be considered are those which can be expected with a reasonable degree of probability".[21]

(60) Second, Article 3(2)(a) links the requirement to carry out an environmental assessment to plans and programmes which are prepared for one of the mentioned sectors and which "set the framework for future development consent of projects listed in Annexes I and II to [the EIA Directive]". The meaning of "set the framework for future development consent" is crucial to the interpretation of the Directive.[22] That wording helps define the scope of the plan, which again determines the extent of the environmental assessment pursuant to Article 5.

(61) In case E-17/25 *Redd Ullevål Sykehus*, the EFTA Court stated that the wording "set the framework for future development consent" covers any measure which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, a significant body of criteria and detailed rules for the grant and implementation of one or more projects that are likely to have significant effects on the environment.[23] The concept of 'a significant body of criteria and detailed rules' must be construed qualitatively and not quantitatively, and must constitute a framework, not necessarily exhaustive, but sufficiently significant for the determination of the conditions for consent to be granted.[24]

(62) In the Commission guidelines for the implementation of the SEA Directive, it is stated that the wording "set the framework for future development consent" normally means that the plan or programme contains criteria or conditions which guide the way the consenting authority decides an application for development consent.[25] Such criteria could place limits on the type of activity or development which is to be permitted in a given area; or they could contain conditions which must be met by the applicant if permission is to be granted.[26] A plan can also set the framework for projects or other activities with regard to the location, nature, size and operating conditions or by allocating resources, cf. Annex II (1) to the SEA Directive.

[21] European Commission, Guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment ("Commission guidelines"), para. 3.50.
[22] Commission guidelines para. 3.23.
[23] Para. 47.
[24] Op.cit.
[25] Commission guidelines para. 3.23.
[26] Op.cit.

(63) However, where the plan in question does not contain criteria, conditions or limitations for a specific activity, nor the location, nature, size or operation conditions of that activity, it cannot be deemed to "set the framework for" the activity in question. Consequently, effects that may arise from an activity falling outside the framework of a plan can neither be considered as "effects of implementing the plan" pursuant to Article 5(1).

(64) In the Government's view, it is clear that the plan in the case at hand – decision 12 April 2024 to open an area of the Norwegian continental shelf for seabed minerals activity – sets the framework only for the exploration and extraction of seabed minerals, and not for the subsequent activity of processing and refining those minerals onshore.

(65) First, it should be noted that Annexes I and II to the EIA Directive, which Article 3(2)(a) of the SEA Directive refers to, recognizes that extraction and processing of minerals are distinct and separate project categories.[27]

(66) Second, an opening decision pursuant to the Norwegian Seabed Minerals Act regards only the exploration and extraction of seabed minerals and not the subsequent processing of those minerals onshore.[28]

(67) Third, the opening decision does not contain any criteria or conditions for the onshore processing of extracted seabed minerals nor the location, nature, size or operation conditions of such processing. The opening decision does not determine the processing method, the use of chemicals or the handling of potential onshore waste, all of which have a great influence on the environmental effects of processing activities. At the opening stage, there is uncertainty as to which mineral deposits will be found and which metals will be sought for extraction. This, in turn, has a bearing on the choice of processing methods and the volume of eventual waste generation. It is not possible to identify, describe and assess the environmental effects of processing as these effects will largely depend precisely on the location, timing and scale of the processing, and not least on the choice of processing method and the handling of potential waste.

(68) That does not mean that a plan to open an area for seabed mineral activities, in principle, can *never* set the framework for the processing of extracted seabed minerals. That depends on the contents and the scope of the specific plan in question. Where a plan to open for seabed mineral activities sets out the location, timing or character of the processing act, or delimits or conditions that activity in some way, environmental effects of such processing, including possible waste generation and radioactive pollution, might be "effects of implementing the plan". That is, however, not the case with the opening decision that this case concerns.

(69) Thus, the opening decision in question does not set the framework for future development consents relating to onshore processing. Instead, onshore processing projects at Norwegian territory may require a permit according to the Norwegian Pollution Control Act, and also a

[27] Extraction is covered by Annex I point 19 and Annex II point 2, while processing is covered by Annex I point 4(b) and Annex II point 4.

[28] See section 2 above on the Norwegian Seabed Minerals Act.

zoning plan and subsequent building permit pursuant to the Norwegian Planning and Building Act. An environmental impact assessment pursuant to the Norwegian Environmental Impact Assessment Regulation, which implements the SEA and EIA Directives, may be required depending on the characteristics of the case at hand.

(70) If "effects of implementing the plan" pursuant to Article 5(1) is not to be delimited by the activities which the plan in question sets the framework for, "effects" may, in principle, encompass every downstream effect across the entire value chain, e.g. the environmental effects of the transport of commercial-grade minerals and metals to relevant markets, environmental effects of the production of components and products based on those metals and environmental effects of the subsequent use of those products. That cannot be the intent of Article 5(1).

(71) That is also clearly supported by Article 5(2), which sets out that the environmental report pursuant to paragraph 1 shall include "the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment". That provision precludes an interpretation of Article 5(1) whereby any possible effect within an endless value chain arising from the extraction of seabed minerals is to be regarded as an effect of a decision to open an area for seabed mineral activities, irrespective of that decision's content, level of detail and stage in the decision-making process and irrespective of whether those effects will be assessed in other environmental impact assessments relating to other plans and/or projects.

(72) Having regard to the fact that the opening decision is the earliest stage in the process for seabed mineral activities, that it does not in itself entail any activity but represents a first step towards further assessing whether the extraction of seabed minerals can be sustainable in the future, and that it does not contain any criteria for the later processing of extracted seabed minerals, it would be incompatible with Article 5(2) to require the effects of such processing to be assessed as "effects of implementing the plan" pursuant to Article 5(1).

4.2.4 Limited guidance in case E-18/24 Greenpeace

(73) Annex 1(f) to the SEA Directive lists the environmental factors that are to be considered when identifying, describing and assessing the likely significant effects of a plan pursuant to Article 5(1). As the location, scale, timing and characteristics of future processing of seabed minerals are not determined by the plan in question, it is not possible – at the planning stage – to identify which environmental factors that will be affected by future processing activity. Whether and which effects the future processing will have on fauna, flora, soil, water, air etc., cannot be determined without knowing the location of the processing, the processing methods, the use of chemicals, and the handling of potential waste generation.

(74) This is also an important difference between the case at hand and case E-18/24 *Greenpeace*, where the first question was whether greenhouse gas emissions that will be released from the extracted petroleum and natural gas are environmental "effects" of the project pursuant

to Article 3(1) of the EIA Directive. In paragraph 69, the EFTA Court stated that "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". Thus, the environmental factor affected by the activity in question was known – namely 'the climate'. It is common knowledge that burning petroleum and natural gas release emissions that impact the world's climate regardless of where and how the burning takes place. In paragraph 87 the EFTA Court stated: "[….] 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 activity of processing minerals, on the other hand, has no such effect on a defined environmental factor in itself which will apply regardless of the location, timing, scale and characterisation of which the processing will take place.

(75) To further illustrate, the Court stated in *Greenpeace* that 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, and second, in the event that they are combusted, the type of fuels to which they are refined, does not preclude the inclusion of such greenhouse gas emissions in an environmental impact.[29] The Court noted that the Norwegian Government had provided a certain amount of statistical information concerning the uses to which such extracted petroleum and natural gas are typically put, and that the Government had 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. Therefore, the Court found that 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.[30] That does not transpose to the act of processing seabed minerals in a decision to open an area for seabed mineral activities, and where the location, scale, timing and characteristics of potential processing in the future are not determined.

(76) Consequently, the concept of combustion of petroleum and natural gas has little applicability to other activities and products This was not only recognised but also emphasised by Greenpeace itself in its written submissions in case E-18/24: "the unbreakable chain of causation sets end-use emissions from fossil fuels apart from other commodities encompassed by the Directive. An affirmative answer to Question 1 does not, therefore, open any floodgates to other downstream or upstream emissions from other projects or industries, as thoroughly explained in Finch paras. 121-124. The Sky is not the limit on this approach."[31]

(77) Also, in other aspects, there are important differences between the case at hand and case E-18/24. That case concerned the project stage and a project-specific environmental impact assessment pursuant to the EIA Directive, whereas the present case concerns the earlier and

[29] Para. 88.
[30] Op.cit.
[31] Written observations on behalf of Greenpeace Nordic, Nature and Youth Norway to the EFTA Court in case E-18/24, para. 55.

more overarching plan stage and a strategic environmental assessment under the SEA Directive.[32] There are important differences in the stage of the decision-making process and the level of detail between a project and a plan. Another important distinction is that the EIA Directive – for this reason – does not contain a provision equivalent to Article 5(2) of the SEA Directive. Thus, the application of Article 3(1) of the EIA Directive has little bearing on the interpretation of "effects of implementing the plan" pursuant to Article 5(1) of the SEA Directive.

(78) For the above-mentioned reasons, the Government submits that the interpretation of Article 3(1) of the EIA Directive in case E-18/24 gives limited guidance for the case at hand.

4.2.5 The objective of the provision

(79) The objective of the SEA Directive is to provide for a high level of protection on the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.[33] It ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.[34] Consistent with this objective, the environmental report ought not to be excessively comprehensive. It should not encompass a broad range of widely differing topics and effects far along the value chain without a sufficiently close connection to the activities to which the plan actually relates. On the contrary, this may result in the actual effects of the activities for which the plan *does* set the framework for to be obscured within an unduly expansive report. Such an approach would rather operate contrary to the purpose of the Directive.

(80) This is especially so where the location, timing, scale and characteristics of those activities are not covered by the plan nor decided at that stage of the procedure. To include all more or less uncertain future scenarios relating to an activity not covered by the plan would in fact overwhelm the environmental report and render it disproportionately long and unwieldy.

4.3 In the alternative – given that effects arising from the processing of seabed minerals are covered

(81) If, in the alternative, the Court should find that effects of onshore waste generation and/or radioactive pollution arising from processing of extracted seabed minerals are "effects of implementing" a decision to open an area to seabed mineral activities, regardless of the more specific contents of that decision, the Government is of the opinion that the level of detail in the assessment of those effects must be adjusted to the contents and level of detail in that plan and its stage in the decision-making process, cf. Article 5(2) of the SEA Directive.

[32] The EFTA Court emphasised that the Court's examination related only to the interpretation of the EIA Directive, and not the SEA Directive, see para. 44.
[33] As set out in Article 1 of the Directive. See also case E-17/25 *Redd Ullevål Sykehus* para. 37.
[34] See Recitals 4 and 5 of the SEA Directive and E-17/25 *Redd Ullevål Sykehus* para. 55.

(82) As the opening decision does not determine the location, nature, size or operation conditions of the onshore processing of extracted seabed minerals, and given the uncertainty as to the processing method, the use of chemicals, whether the processing will generate was and the handling of such potential onshore waste, the environmental report under Article 5(1) of the SEA Directive cannot be required to fully identify, describe and assess all conceivable environmental effects that may arise from the processing activity based on a range of different scenarios for how such processing may be carried out. This would result in a comprehensive and unwieldy environmental report. Instead, it must be regarded as sufficient to, at a general level, describe the nature of the environmental effects that may arise, such as, for example, pointing to the management of onshore waste and tailings from processing as issues that must be addressed and further assessed once the processing activity has been more precisely determined as to its location, timing, scale and characteristics.

5 ANSWER TO THE REFERRING COURT'S QUESTION

(83) Based on the foregoing, the Government submits that the question posed by the Referring Court should be answered as follows:

Where a plan to open an area of the continental shelf to seabed mineral activities falls within the scope of Directive 2001/42/EC on the effects of certain plans and programmes on the environment (the SEA Directive), and that plan sets the framework only for the exploration and extraction of seabed minerals, but not for the subsequent activity of processing those minerals onshore, effects of onshore waste generation and/or radioactive pollution potentially arising from processing of extracted seabed minerals does not qualify as "effects of implementing the plan" within the meaning of Article 5(1) of that Directive.

In the alternative, if effects of onshore waste generation and/or radioactive pollution potentially arising from onshore processing are "effects of implementing the plan", the requirement to identify, describe and assess those effects must be adjusted to the contents and level of detail in the plan and its stage in the decision-making process, cf. Article 5(2). At the stage of the planning procedure, it is sufficient to describe, at a general level, the nature of environmental effects that may arise from the potential processing of seabed minerals in the future.

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Karen Mellingen
Advocate

Thea Westhagen Edell
Advocate