BORGARTING COURT OF APPEAL

JUDGMENT AND DECISION

Issued: 14 November 2025

Case no.: 24-036810ASD-BORG/02

Judges:

Appellate Judge [redacted]
Appellate Judge [redacted]
Appellate Judge [redacted]

Appellant	The State, represented by the Ministry of Energy	Lawyer Omar Saleem Rathore
Respondent	Nature and Youth	Lawyer Jenny Arge Sandvig
Respondent	Greenpeace Nordic	Lawyer Jenny Arge Sandvig

Background

The case concerns a lawsuit regarding the validity of the approval of the plan for development and operation (PDO) for the Breidablikk and Tyrving petroleum fields and the Yggdrasil area – which comprises the Hugin, Munin and Fulla fields – as well as a petition for a temporary injunction to secure the claim of invalidity.

The key issues for the question of invalidity are whether the climate impact of combustion emissions has been sufficiently investigated and assessed in connection with the approvals, and whether any deficiencies constitute procedural errors that render the approvals invalid.

On 29 June 2023, the associations Greenpeace Norden and Natur og Ungdom brought a case before Oslo District Court concerning the validity of the Ministry of Petroleum and Energy's decisions of 29 June 2021, 5 June 2023 and 27 June 2023 regarding the approval of PDOs for Breidablikk, Tyrving and the three fields in the Yggdrasil area, respectively. The environmental organisations also requested a temporary injunction with a claim for a halt to production and development.

The Ministry of Petroleum and Energy changed its name to the Ministry of Energy on 1 January 2024. This designation is also used here to refer to the ministry prior to the change.

The following is quoted from the district court's ruling on the three fields:

> 1.5.2 Breidablikk
> Breidablikk is a pure oil field in the North Sea. The field was previously called Grand, but is now called Breidablikk. Recoverable reserves are estimated at just over 30 million standard cubic metres of oil (approx. 190/200 million barrels of oil equivalents). Gross emissions from the field are around 87 million tonnes of CO2. Total investments amount to around NOK 19 billion. The expected production period is 20 years, until around 2044.
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> The latest environmental impact assessment for Breidablikk is from 2013. Combustion emissions have not been included in the impact assessments. On 29 June 2021, the Ministry of Petroleum and Energy decided to approve the plan for development and operation (PDO) for Breidablikk. Breidablikk had initially expected to start up in the first quarter of 2024, but went into production in mid-October 2023. The Norwegian Petroleum Directorate gave its consent to start-up on 26 September 2023. The Ministry of Petroleum and Energy granted a production license on 13 October 2023. The production licence states that it was valid from 15 October 2023 to 31 December 2023.
> The start of production means that the field has begun producing petroleum for sale to the market. New production licences are applied for each year, cf. Section 4-4, third paragraph, of the Petroleum Act. On 18 December 2023, the Ministry of Petroleum and Energy made a decision on a production licence for Breidablikk, which is valid from 1 January 2024 until 31 December 2024.
>
> 1.5.3 Tyrving
> Tyrving (formerly Trell and Trine) is a pure oil field in the North Sea. Recoverable reserves are estimated at around 4.1 million standard cubic metres of oil equivalents. Expected

production start is in the first quarter of 2025. The expected production period is 15 years until 2040. Gross emissions are estimated at 11.3 million tonnes of CO2.

There are three licensees on the field. The impact assessment plan was submitted for public consultation by the operator Aker BP ASA on behalf of the licensees in January 2020. The Ministry of Petroleum and Energy established the impact assessment programme on 28 October 2021. The impact assessment was completed on 11 March 2022 and sent out for consultation on the same day. In June 2022, the operator sent a summary and evaluation of the comments received during the consultation round on behalf of the licensees. Combustion emissions have not been included in this impact assessment.

The licensees applied for approval of a plan for development and operation on 10 August 2022. On 5 June 2023, the Ministry of Petroleum and Energy approved the plan for the development and operation of the Tyrving field.

1.5.4 Yggdrasil

Yggdrasil comprises the Hugin, Munin and Fulla fields and is located in the North Sea. These three fields consist of oil, gas and NGL (natural gas liquid). Recoverable reserves are estimated at around 140 standard cubic metres of oil equivalents (650 million barrels of oil equivalents). Total gross emissions are estimated at 365 million tonnes of CO2. Total expected investments for the development of Yggdrasil are around NOK 115.1 billion. Production is expected to start in 2027. The expected production period is 25 years, until 2052.

In accordance with standard practice, PDO approvals with investment costs exceeding NOK 15 billion are submitted to the Storting before the Ministry makes a decision. Since the investment costs associated with Yggdrasil exceed this amount, the matter was submitted to the Storting on 31 March 2023 as a proposition, cf. Prop. 97 S (2022-2023).

This was considered by the Energy and Environment Committee, which submitted its recommendation on 25 May 2023, cf. Innst. 459 S (2022-2023). The majority of the committee recommended that the Storting should consent to the Ministry making a decision on the approval of the plan for development and operation. On 6 June 2023, the Storting made a decision in accordance with the majority recommendation. On 27 June 2023, the Ministry of Petroleum and Energy then made three decisions approving the development and operation plans for Hugin, Fulla and Munin, respectively.

On 18 January 2024, Oslo District Court issued a judgment and ruling with the following conclusion:

In the judgment on the main issue:

1. The Ministry of Energy's decision of 29 June 2021 to approve the PDO for Breidablikk is invalid.
2. The Ministry of Energy's decision of 5 June 2023 to approve the PDO for Tyrving is invalid.
3. The Ministry of Energy's decisions of 27 June 2023 to approve the PDO for Munin, Fulla and Hugin (Yggdrasil) are invalid.

In the ruling on the temporary injunction:

1. The State is prohibited from making other decisions that require valid PDO approval for Breidablikk until the validity of the PDO decision has been legally determined.

2. The State is prohibited from making other decisions that require valid PDO approval for Tyrving until the validity of the PDO decision has been legally determined.
3. The State is prohibited from making other decisions that require valid PDO approval for Yggdrasil until the validity of the PDO decisions has been legally determined.

Joint:

1. The State, represented by the Ministry of Energy, is ordered to pay NOK 3,260,427 – three million one hundred and sixty-four thousand four hundred and twenty-seven – [NOK], including VAT and court fees, in compensation for legal costs to Greenpeace Nordic and Nature and Youth within 14 – fourteen – days of the pronouncement of this judgment.

On 8 February 2024, the State, represented by the Ministry of Energy, appealed the judgment and ruling to the Borgarting Court of Appeal. Following a petition from the State, on 20 March 2024 the Court of Appeal made the following decision regarding the temporary injunction:

1. The appeal against the temporary injunction will be dealt with separately, so that it will first be considered whether there is basis for security (Section 34-1, first paragraph, of the Dispute Act) and whether a temporary injunction cannot be decided after weighing the interests of the parties (Section 34-1, second paragraph, of the Dispute Act). These questions will be decided after written proceedings.

2. The right to enforce the temporary injunction is deferred until the Court of Appeal after the written proceedings has decided the questions of basis for security and the balancing of interests.

During its written review of the case, the Court of Appeal concluded that oral proceedings were necessary for a proper consideration of the case concerning interim relief. At the same time, the Court of Appeal found that there were weaknesses in the District Court's ruling that warranted further suspension of its enforceability. On 16 May 2024, the Court of Appeal made the following decision:

1. The State's appeal against Oslo District Court's ruling in the injunction case of 18 January 2024 will be heard during the Court of Appeal's appeal proceedings concerning the main case.
2. The right to enforce the district court's temporary injunction is suspended until the court of appeal has decided the appeal against the district court's ruling of 18 January 2024.

On 17 June 2024, the Court of Appeal rejected the respondents' request to reverse the decision to suspend the effect of the District Court's injunction.

On 25 June 2024, the State requested that the EFTA Court, pursuant to Section 51a of the Courts Act, be asked to give a preliminary ruling on the interpretation of the EIA Directive (Directive 2011/92/EU). The background to the request was that the British Supreme Court, in its judgment of 20 June 2024, in a 3–2 dissent, had concluded that the Directive requires that combustion emissions be subject to an environmental impact assessment ("EIA").

On 5 July 2024, the Court of Appeal decided that questions should be referred to the EFTA Court regarding the interpretation of the EIA Directive and that the main case should therefore be postponed. At the same time, the Court of Appeal rejected a new petition from the appellants to reverse the decision to suspend enforcement, referring to the decision of 16 May 2024 and stating that the injunction would be subject to full review in September 2024.

After oral proceedings over six court days in the period from 4 to 12 September 2024, the Court of Appeal issued a ruling on 14 October with the following conclusion:

1. The application for a temporary injunction is not granted.
2. No legal costs are awarded, neither for the Court of Appeal nor the District Court.

The Greenpeace Nordic association and Natur og Ungdom appealed the Court of Appeal's ruling on 29 October 2024. On 11 April 2025 (HR-2025-677-A), the Supreme Court issued a ruling with the following conclusion:

1. The Court of Appeal's ruling is overturned.
2. In legal costs for the Supreme Court, the state, through the Ministry of Energy, shall pay the Greenpeace Nordic Association and Nature and Youth jointly NOK 1,660,807 – one million six hundred and sixty thousand eight hundred and seven – within two weeks of the pronouncement of the ruling.

In its ruling, the Supreme Court did not address the significance of the reversal for the Court of Appeal's earlier decision to suspend the enforceability of the District Court's ruling. In a letter from the Court of Appeal dated 14 May 2025, it was stated that any clarification from the Court of Appeal would have to be given in a formal decision following a request from one of the parties. Neither party has submitted a request for such clarification.

On 21 May 2025, the EFTA Court issued an advisory opinion in the case, concluding, among other things, that combustion emissions must be assessed in accordance with the EIA Directive.

On 19 June 2024, while the case was pending before the Court of Appeal, Aker BP completed additional assessments of the impact of combustion emissions on Tyrving and Yggdrasil. The assessments were sent out for consultation. The supplementary studies, together with Aker BP's summary of the consultation responses and Aker BP's comments on these, were sent to the Ministry of Energy on 21 August 2024. In a letter dated 28 August 2024 to Aker BP, the Ministry stated that the supplementary reports did not provide grounds for revoking the PDO permits for the two fields.

Equinor Energy AS completed its supplementary report for Breidablikk on 9 October 2024. The supplementary report, a summary of the consultation responses and comments on these were submitted to the Ministry on 6 December 2024. In a letter dated 20 December 2024, the Ministry stated, as in the case of Tyrving and Yggdrasil, that the supplementary report did not provide grounds for reversing the PDO approval for Breidablikk.

The appeal hearing in the lawsuit, with a completely new hearing on the injunction claim, was held over six court days between 28 August and 4 September 2025 at Borgarting Court of Appeal. The representatives of the environmental organisations and eleven witnesses gave evidence. Eight of these were expert witnesses. For further details of the evidence, please refer to the court records.

The Court of Appeal's deliberations are also based on submissions from Save the Children, submitted in accordance with Section 15-8 of the Dispute Act.

The State, represented by the Ministry of Energy, has mainly argued that

The requirement of topicality in Section 1-3 of the Dispute Act dictates that the environmental organisations must also challenge the validity of the decisions. In any case, there is no substantive legal basis for isolating the assessment of the 2021 and 2023 PDO approvals from the decisions to uphold the 2024 decisions. The decision in the Court of Appeal's judgment of 12 August 2025 (24-036660, Førdefjorden) cannot lead to any other result.

The PDO approvals are not based on inadequate environmental impact assessments. The scope of the requirement for EIAs must be based on Section 4-2 of the Petroleum Act, which is a continuation of the 1985 Act, see Ot.prp. no. 43 (1995-1996) page 41, which states that the bill was not intended to expand the scope compared to current practice. It appears that the objective is to reduce the amount of documentation work.

More detailed rules on the assessment are provided in Section 20 et seq. of the Petroleum Regulations, which implement the EIA Directive. It is the "development" that is central to the impact assessments, cf. the corresponding term "project" in the EIA Directive.

The Norwegian regulations must be interpreted in accordance with the EIA Directive. Wording, context, purpose, legislative history and the case law of the European Court of Justice are key factors for interpretation. The decisions of the EFTA Court are advisory, cf. Article 34(1) of the ODA. Norwegian courts must take an independent position on how EEA law should be understood and applied.

The effects of developing a project are different from the effects of combustion on the end user. This is how the Directive has been applied until the EFTA Court's response to the Court of Appeal's referral. Nevertheless, the State takes as its starting point the view expressed in the EFTA Court's response, including that combustion emissions at end users are an effect of development projects on the Norwegian continental shelf. The parties disagree on the scope of the assessment.

Article 1(g) of the Directive refers to the impact assessment that must be carried out, cf. "Environmental impact assessment". This consists of the developer's assessment report, consultation rounds and an evaluation of all information and input received. The purpose of the Directive dictates that no detailed requirements be set out; see, for example, points 2, 7 and 14 of the preamble.

The environmental organisations cannot be heard to say that the EIAs are incorrect and inadequate. The objections are not relevant. The Directive does not require more than what has been done. Among other things, the assessments have described gross combustion emissions, global temperature increase and the consequences of climate change. In addition, it is essential that the assessments are put out for consultation.

The EFTA Court's conclusion that greenhouse gas emissions must be assessed does not mean that this must be done in the manner advocated by environmental organisations. Neither the decision of the UK Supreme Court in the Finch case nor the UK guidelines for environmental impact assessments support the view that it is insufficient to describe volume and global warming. HR-2020-2472-P paragraph 227 supports the view that highly detailed assessments cannot be required.

Any errors have been corrected by the assessments carried out in 2024 for the three fields, together with the Ministry's subsequent decisions on approval. The reparation means that the original licences are valid from the time they were granted.
It is not a condition for reparation that the body itself considers the original decision to be invalid. The Ministry had the power to reverse the decision, cf. Section 35, last paragraph, of the Public Administration Act. There are no specific requirements for justification of decisions not to reverse. The Ministry has made assessments that are in line with the Directive and do not constitute a circumvention of EEA law.

The PDO approvals are valid regardless, as there is no real possibility that alleged investigative shortcomings have affected them. EEA law does not have a specific rule stating that PDO approvals must be declared invalid regardless of the impact criterion. Even if investigation errors may have affected the content of the decision, there are special reasons for upholding the decision.

Nor do the PDO approvals suffer from other factual or legal errors and are not in contravention of Article 112 of the Constitution, Article 8 of the ECHR or Article 3 of the Convention on the Rights of the Child.

It is uncertain whether the environmental organisations are in a position to succeed in a claim of violation of the ECHR, see paragraphs 521 and 523 of the KlimaSeniorinnen judgment. Violations of procedural rules do not in themselves constitute a violation of the ECHR. There are no procedural requirements under the ECHR that go beyond those in the Petroleum Act.

There is no legal basis for establishing an obligation to consider the best interests of children in connection with each individual PDO decision.

The PDO approvals are not based on any incorrect facts or irresponsible forecasts. The decisions are not based on the assumption that climate change cannot harm the environment in Norway. The impact assessments from 2024 describe precisely the impact on the climate and the environment.

Nor are the PDO approvals based on assumptions about the accuracy of any specific forecast or on an assumption that one net analysis is the correct one. The Ministry is clear that all such analyses are subject to uncertainty, see Prop. 97 S (2022-2023) p. 63. In any case, Rystad's analyses are not professionally unjustifiable.

Nor can the alleged errors regarding incorrect facts or unjustifiable forecasts have influenced the content of the decision.

A balancing of interests indicates that the decisions should be upheld as valid.

There are no grounds for a temporary injunction.

The injunction cannot be directed against the state, cf. Section 1-3 of the Dispute Act. The claim should have been directed against the companies that have the natural connection to the projects.

The injunction request also implies that the environmental organisations are asking the Court of Appeal to go further than what could be the contents of a judgment, see Rt-2015-1376 section 27. Regardless of how the request is formulated, it implies an order to the state to exercise public authority over third parties in a specific manner, which is not allowed.

There is no main claim.

The condition in Section 34-1(1)(a) of the Dispute Act that "the defendant's conduct" makes it necessary to secure the claim on a provisional basis because the pursuit or enforcement of the claim would otherwise be significantly impeded is not met. The claim of invalidity is not affected by whether the court upholds the environmental organisations' claim for interim relief. Nor is there anything in the State's "conduct" that gives reason to assume this. It is not relevant here to assess any underlying interest in a specific outcome of new administrative proceedings.

Nor is an injunction necessary to avert "significant damage or disadvantage" pursuant to Section 34-1(1)(b) of the Dispute Act. The condition of "necessity" implies that a net assessment must be made. Although the precautionary principle may suggest a gross assessment for the preparation of the impact assessment, this does not apply to the question of basis of security under subparagraph b.

Any injunction will probably be effective for less than one year. Yggdrasil will not be in production. During this period, only minimal emissions from Breidablikk and Tyrving, which are barely measurable, are likely. In 2025, Breidablikk will account for approximately 1.86% and Tyrving approximately 0.55% of Norwegian production. The consideration of the lesser sand eel stock has been answered in detail by the Norwegian Environment Agency in a letter dated 17 June 2025, in which various requirements were set to compensate for the risk.

It would be manifestly disproportionate to order the injunction that has been requested, cf. the Dispute Act Section 34-1, second paragraph. The injunction would mean that the state must act to halt the projects, which would have major consequences for the state, the rights holders, employees and Europe's access to stable oil and gas supplies. The potential benefits of an injunction would not outweigh the disadvantages.

The State, represented by the Ministry of Energy, has made the following claim:

1. In the main case: The State, represented by the Ministry of Energy, is acquitted.

2. In the injunction case: The application for a temporary injunction is dismissed.

3. In both cases: No legal costs shall be awarded to any party.

The Greenpeace Nordic and Natur og Ungdom associations have opposed the appeal and have essentially argued that:

The PDO approvals for Breidablikk, Tyrving and Yggdrasil on 29 June 2021, 5 June 2023 and 27 June 2023 are invalid.

Court review of procedural requirements and environmental impact assessments must be thorough, see HR-2020-2472-P section 184. This is supported by the fact that the decision has major implications and by considerations of democracy and the rule of law.

The environmental organisations still have a legal interest in a ruling on the invalidity of the PDO approvals and a ruling on injunctive relief. It is the original PDO approvals that determine the parties' rights and obligations, not the Ministry's subsequent letters of 28 August 2024 and 20 December 2024. These letters do not exercise any authority to reverse the decision. Section 35(1)(c) of the Public Administration Act only allows for reversal to the detriment of a beneficiary third party for decisions that are invalid, but the Ministry's assumption is that the PDO approvals are valid. Case law from the field of immigration law on legal interest, see Rt-2012-1985 section 90 and Rt-2013-1101, does not apply. This practice applies to refusals to reverse decisions in favour of the party against whom the decision is directed, where Section 35 of the Public Administration Act allows for reversal. The administration has not assessed the merits of reversal. The conclusion in LB-2024-36660 (Førdefjorden) is correct.

The EFTA Court's advisory opinion must be given considerable weight. "Special reasons" are required to deviate from the Court's opinion, see HR-2025-490-S. The Court's opinion is in accordance with the wording of the Directive and other sources of law.

Combustion emissions are "environmental effects" under Article 3(1) of the EIA Directive, cf. the EFTA Court's opinion. This means that the climate impact must be assessed in an impact assessment.

The failure to investigate when the PDO decisions were made is a substantial and unconditional ground for invalidity, see paragraphs 115-116 of the EFTA Court's decision. The error has had an effect, and regardless of its impact, it must lead to invalidity based on an EEA-compliant interpretation of the principle in Section 41 of the Public Administration Act and on the principle of effective legal protection.
The omission cannot be remedied retrospectively without the PDO decisions being annulled. Following this, the Ministry's letters of 28 August and 20 December 2024 are irrelevant.

Under EEA law, strict conditions apply to regularisation. These conditions are not met, see paragraph 118 of the EFTA Court's decision. There is no national legislation that allows regularisation. Reparation presupposes invalid decisions, but the State's assumption is that the decisions are valid. Upholding the decisions would be a circumvention of EEA law.

The operators' reports cannot be regarded as environmental impact assessments within the meaning of the Directive. In any case, they are inadequate.

No comprehensive assessment has been made of the effects of the emissions on the factors set out in Article 3 of the Directive. More detailed quantification would not be unreasonably burdensome, cf. the explanations given during the appeal hearing by Drange, Thiery and Stuart-Smith.

No assessments have been made of the emissions against the globally updated carbon budget that applies to limiting global temperature increase to 1.5 degrees C. Nor have the emissions been compared with an allocated national carbon budget. The relativisation against an already exhausted carbon budget from 1 January 2020 is misleading.

The reports have omitted significant emissions for Yggdrasil and Breidablikk.

The PDO approvals are also invalid because they were granted in violation of Section 4-2 of the Petroleum Act, interpreted in light of Section 112(2) of the Constitution and customary international law, see the ICJ's statement of 23 July 2025. The interests of third parties cannot be given particular weight where the error affects general environmental interests and future generations.

The shortcomings in the investigations must lead to invalidity. There is a “non-remote possibility” that the error has had an impact. In any case, the rules of procedure in this area must be enforced particularly strictly. This follows from both Norwegian law and international law obligations, see the ICJ's statement of 23 July 2025, paragraphs 447 and 452.

The lack of an EIA of the effects of combustion emissions on life and health is in any case contrary to Articles 2, 8 and 14 of the ECHR. The KlimaSeniorinnen judgment must be interpreted as meaning that the provisions of the Convention protect against the harmful effects of exported combustion emissions under the control of the home state. The procedural investigation requirements under the Convention have been violated in any case. Article 14 has independent significance in that it prohibits discrimination, including on the basis of age.

The PDO decisions are also invalid as a result of violations of children's rights under the Constitution Section 104 and Articles 3 and 12 of the Convention on the Rights of the Child. Children are particularly vulnerable to climate change due to their age and life expectancy.

The PDO decisions for Yggdrasil and Tyrving are based on incorrect facts. The decisions must be understood to mean that the emissions do not harm the environment in Norway, which is incorrect, cf. the evidence presented during the appeal hearing.

The PDO decisions for Yggdrasil and Tyrving are based on irresponsible forecasts. The legal starting point must be that all uncertainty must be in favour of the environment, cf. the precautionary principle. The decisions are based on an incorrect premise by Rystad Energy that displaced production will be permanently displaced. The decisions are also based on an incorrect assumption of perfect substitution between energy sources. These errors may have influenced the decision.

In the Ministry's letter in 2024 not to reverse the PDO approvals, no reassessment was made to correct the incorrect factual assumptions and irresponsible forecasts on which the approvals were based.

The conditions for a temporary injunction have been met. The main claim has been substantiated, and in HR-2025-677-A, the Supreme Court has assumed that the injunction claim can be directed against the state. In the event of a breach of the EIA Directive, the court has a duty to grant an injunction if the conditions are otherwise met.

An injunction is necessary pursuant to Section 34-1, first paragraph, *litra* a of the Dispute Act. In the assessment, consideration must be given to the environmental organisations' underlying claim for the right to an EIA while the outcome remains open. The State's conduct necessitates security under this alternative.

An injunction is also necessary to avert significant damage or disadvantage, cf. *litra* b. The damage that emissions from the three fields will cause is serious and irreversible. The causation requirement in the provision applies to direct emissions from the field and not to speculative assumptions about net emissions.

The emissions from Breidablikk, Tyrving and Yggdrasil will, among other things, cause approximately 109,100 heat-related deaths by 2100, expose approximately 2,824,900 children born in 2010-2020 to one additional heat wave, and reduce the global glacier area by 6,655,251,000 m³. Even the emissions in 2025 and 2026 will result in significant loss of human life and cause quantifiable climate damage far exceeding the threshold in *litra* b.

For Yggdrasil, an injunction is also necessary to avert significant damage or harm to sand eels and seabirds in the event of further development of the Viking Bank, cf. assessments by the Institute of Marine Research and the explanation by Professor Hessen.

There is also basis for security related to the ongoing development. The operator has recently started a drilling campaign that involves the release of 126,444 tonnes of toxic chemicals for the drilling of 58 production wells in the immediate vicinity of the particularly valuable and vulnerable Viking Bank area. This drilling campaign, which will continue until 2026, poses a high risk of irreversible damage to the site-specific key species sand eel. A new report from the Institute of Marine Research, published on 12 February 2025, shows that there is a critically low number of sand eels in the North Sea, and specifically at Vikingbanken. The Institute of Marine Research therefore recommends zero sand eel fishing in 2025 (down further from the low level of fishing in 2024) "due to critically low biomass of sand eel in all management areas". The Institute of Marine Research has warned against chemical emissions and production drilling.

The injunction will not be in conflict with an obvious imbalance between the parties' interests under Section 34-2, second paragraph, of the Dispute Act. Economic interests cannot be taken into account when weighing up the interests involved. Damage to the environment, life and health is, by its nature, irreversible.
The injunction will also protect citizens' right to influence the outcome of a renewed PDO review on an informed basis, cf. Section 112, second paragraph, of the Constitution. An injunction will ensure compliance with the EEA Agreement, protect the state from major claims for compensation and save the state from further investment losses. The state cannot avoid an injunction by invoking considerations relating to the operator or the employment effects on third parties.
The employment effects of the projects include workers who will have jobs regardless of the fields. The state and the companies have made choices with their eyes open and must bear the risk of not carrying out EIAs prior to the PDO.

Environmental organisations are entitled to have their legal costs covered by the state. Emphasis must be placed on the environmental organisations' right of appeal under the Aarhus Convention. The climate crisis is one of the most pressing issues of our time, and combating climate change is a fundamental goal. The scope of the proceedings is no broader than the state's approach has necessitated.

The organisations Greenpeace Norden and Natur og Ungdom have made the following claims:

Validity case:

1. Principally: The appeal is dismissed.
2. Alternatively: The Ministry of Energy's letters of 28 August 2024 concerning Tyrving and Yggdrasil and of 20 December 2024 concerning Breidablikk are invalid.
3. In both cases: Greenpeace Norden and Natur og Ungdom are awarded the costs of the case.

Interim relief case:

1. Principally: The State is ordered to suspend the effects of the PDO approvals for Breidablikk, Tyrving and Yggdrasil.
2. Alternatively: The appeal is dismissed.

3. In both cases: The Greenpeace Nordic Association and Nature and Youth are awarded the costs of the case.

On 26 June 2025, **Save the Children** submitted a written *amicus curiae* brief, with particular reference to children's rights under Section 104(2) of the Constitution and Article 3 of the UN Convention on the Rights of the Child. The submission, with references and attachments, is included in the Court of Appeal's basis for its decision, cf. Section 15-8 of the Dispute Act. Among other things, it has been argued that it is vital to limit global warming to 1.5 degrees Celsius by the year 2100. Failure to achieve this will lead to lifelong exposure to climate extremes, for example for 58 million children born in 2020. When interpreting Article 3 of the Convention on the Rights of the Child, emphasis must be placed on the UN Committee on the Rights of the Child's General Comment No. 26 from 2023 on children's rights and the environment, with particular emphasis on climate change. In the latter statement, the Committee on the Rights of the Child specifically mentions in paragraph 76 the obligation to make these assessments for states that have "substantial fossil fuel industries". Furthermore, in its "Concluding observations on the seventh periodic report of Norway" the UN Committee on the Rights of the Child made recommendations that directly apply to the petroleum sector. The best interests of children have been wrongly disregarded, both in the relevant PDO decisions and at a more general level by the Norwegian authorities.

The Court of Appeal's assessment

1. Introduction

As mentioned in the introduction, the case concerns a lawsuit regarding the validity of the approval of the plan for development and operation (PDO) for the three petroleum fields Breidablikk, Tyrving and Yggdrasil, as well as a petition for a temporary injunction to secure the claim of invalidity.

The key issues regarding invalidity are whether the climate impact of combustion emissions has been sufficiently investigated and assessed in connection with the approvals, and whether any deficiencies constitute procedural errors that render the approvals invalid.

As the case stands, there is no question of whether the Ministry was prevented from granting approval due to the substantive restrictions imposed by the protection of the environment in Article 112, first paragraph, of the Constitution or other human rights that have been incorporated into Norwegian law.

"Combustion emissions" refers to greenhouse gas emissions resulting from the combustion of products. Greenhouse gas emissions resulting from the actual development and extraction from the fields are referred to as "production emissions". Combustion emissions account for the majority of total greenhouse gas emissions.

The parties agree that greenhouse gas emissions cause global warming, which represents a very serious threat to humanity. Concerning the climate challenges facing Norway and the world,

The Court of Appeal refers to the description in the District Court's judgment on pages 27–33, which the Court of Appeal does not consider to be disputed.

The evidence presented to the Court of Appeal has, in short, shown that the international community has so far failed to achieve the reductions in greenhouse gas emissions necessary to limit the damage. In this light, the challenges appear to be more serious today than is apparent from the District Court's description. The global average temperature in 2024 was 1.35 degrees above pre-industrial levels (the period 1880–1929). According to the expert witness Professor Drange, this is higher than at any time in the last hundred thousand years. Dr Rupert Stuart Smith of the University of Oxford gave an account of the global carbon budget in terms of the prospects for limiting global warming to 1.5 degrees compared to pre-industrial times. The budget for 2024 shows that the prospects of achieving such a limit are considerably lower compared to the budget for 2020. This is also not disputed.

A very large proportion of Norwegian petroleum production is exported abroad, and combustion emissions therefore occur there. One element of the parties' disagreement about whether there are shortcomings in the reports and assessments is the extent to which assessments of "net emissions" are permitted. While "gross emissions" are the actual greenhouse gas emissions caused by the project, "net emissions" also include considerations of the market effects of changes in production volumes worldwide.

In section 2, the Court of Appeal considers the procedural question of whether the environmental organisations still have a legal interest in obtaining a judgment that the original decisions on the PDO are invalid.

Section 3 provides an overview of the legal regulation of petroleum activities on the Norwegian continental shelf, before the Court of Appeal considers, in section 4, the procedural requirements that apply to the approval of PDOs.

In sections 5 to 7, the Court of Appeal considers whether there have been procedural errors and whether these errors render the approvals invalid.

The request for interim relief is dealt with in section 8 and legal costs in section 9.

2. Do the environmental organisations still have a legal interest in having the validity of the original decisions reviewed?

Section 1-3, second paragraph, of the Dispute Act establishes a requirement for legal interest. The provision reads as follows:

> The party bringing the case must demonstrate a genuine need to have the claim decided in relation to the defendant. This is determined on the basis of an overall assessment of the relevance of the claim and the parties' connection to it.

It is undisputed that the environmental organisations' claim for a ruling that the original decisions from 2021 and 2023 approving the PDO for the three petroleum fields are legal claims, and that they have a sufficient connection to the case by virtue of the purpose of the environmental organisations. However, the parties disagree on whether the Ministry's letters from 2024 means that the environmental organisations no longer have a *current* legal interest in challenging the original PDO approvals.

The Court of Appeal first notes that the Ministry's two letters of 28 August 2024 to Aker BP for Tyrving and Yggdrasil and the letter of 20 December 2024 to Equinor for Breidablikk all conclude that the Ministry has concluded that no "information has come to light that provides grounds for reversing" the decision to approve the plan for development and operation (PDO) for the individual fields. The wording is conclusive. In the Court of Appeal's view, this expresses the exercise of authority, and a decision was made not to reverse the decision. The environmental organisations cannot be heard to argue that this can only be regarded as a "letter".

The question is what significance the decisions from autumn 2024 have for the condition of current legal interest. Rt-2013-1101 concerned the validity of rejections of applications for residence permits from three foreign nationals. In the district court's judgment, two of the Immigration Appeals Board's rejections were declared invalid. During the appeal court's proceedings, the Immigration Appeals Board made a new decision that the rejection should not be overturned. In the appeal proceedings, new information about health conditions was reviewed. The foreign nationals were given the opportunity to bring the new decision into dispute, but opposed this. The Supreme Court Appeals Committee found that the foreigners' interest in continuing to challenge the previous decision, which had been reviewed by the district court, had lapsed pursuant to Section 1-3 of the Dispute Act and that the case had to be dismissed. The legal interest was "exclusively" retained for the new decision. It was pointed out that the foreigners could have brought this into the case, but also that they could bring a new lawsuit on this matter.

The environmental organisations have pointed out that the case concerned a two-party relationship and that a reversal would be in favour of the private parties. The Court of Appeal cannot see that these are differences that would indicate a different outcome to the question of whether the legal interest remains. The key issue must be the core requirement that the legal interest must be current. The consideration of the best possible use of the parties' and the courts' resources dictates that the court review be conducted on an updated basis. The Court of Appeal agrees with the observations of Skoghøy, Dispute Resolution, 2022, page 432, which are reproduced below:

> Since it is a condition for bringing an action that the court's decision is of current significance to the plaintiff, once a decision by a subordinate body has been reviewed by a superior body – in accordance with the rules on appeals or reversal on its own initiative – no action may be brought against the decision of the subordinate body, see tvl. § 1-5 first sentence. After the decision has been reviewed by a superior body, the lawsuit must, in this case

be directed against the decision of the superior body, see section 7.4.4 (b) below for further details. The same applies if the administrative body itself has reversed the decision or has assessed the merits of the reversal and upheld the decision. The plaintiff then no longer has a legal interest in having the original decision reviewed. Once the reversal has been considered, it is the decision in the reversal process that must be challenged.

The starting point is that a reversal decision is not considered an individual decision when the outcome is that the reversal is rejected, see the summary of applicable law in Prop. 79 L (2024–2025) to the new Public Administration Act, section 22.7.1. For the procedural assessment under Section 1-3 of the Dispute Act, it is not decisive in the Court of Appeal's view that the reversal decision is not considered an individual decision. The key issue is whether substantive assessments were made in the final decision.

The Court of Appeal does not take a full position on what the minimum requirements are for a reversal process to be considered to include substantive assessments. Nor does the Court of Appeal take a position on whether a reversal process that does not meet the minimum requirements can lead to the legal interest in reviewing the original decision being retained. In the present case, it must in any event be sufficient that new investigations have been carried out, as referred to in the latest decisions. On this point, the case differs from the judgment of 12 August 2025 in the so-called Førdefjord case, where Borgarting Court of Appeal found that the latest administrative decision did not contain a new substantive assessment.

In Ot.prp. no. 51 (2004–2005), page 365, it is stated that the decisive factor is "the legal consequences that will follow from a judgment in favour of the plaintiff". In the present case, an isolated review of the original PDO approvals and a conclusion that they were invalid would not have provided a relevant clarification of the disagreement between the parties. Such a result would not have determined the significance of the Ministry's latest decisions.

The Court of Appeal's conclusion is therefore that the environmental organisations no longer have a current legal interest in a ruling that the original PDO approvals are invalid.
The environmental organisations have, in the alternative, for this case, brought the validity of the decisions in 2024 as a claim in the case. The State has not disputed that the claim can be included. The Court of Appeal finds it clear that the claim can be considered in the case, cf. Section 29-4(2)(d) of the Dispute Act.

The starting point under EEA law is that national courts have procedural autonomy. The Court of Appeal considers that EEA law cannot imply that there are other requirements for the relevance of the dispute than those on which the Court of Appeal has based its decision above.

Following this, the appeal case is dismissed insofar as it concerns the claims that the original decisions on the PDO for the three fields are invalid. The Court of Appeal shall examine the validity of the Ministry's decisions of 28 August 2024 for Tyrving and Yggdrasil and the Ministry's decision of 20 December 2024 for Breidablikk not to reverse the decisions. Although the Court of Appeal shall not formally decide on the validity of the original decisions, they must nevertheless be taken into account when reviewing the validity of the decisions.

3. General remarks on the legal regulation of petroleum activities

The District Court has described the legal framework underlying Norwegian petroleum activities as follows:

> Petroleum activities is a highly regulated sector. The Norwegian state has ownership rights to subsea petroleum deposits and exclusive rights to resource management, cf. Section 1-1 of the Petroleum Act. Petroleum resources shall be managed in a long-term perspective so that they benefit Norwegian society as a whole. Resource management shall generate revenue for the country and contribute to ensuring welfare, employment and "a better environment", and to strengthening Norwegian business and industrial development, while taking necessary account of regional policy interests and other activities, cf. Section 1-2 of the Petroleum Act. No one other than the state may engage in petroleum activities without the permits, approvals and consents required under the Petroleum Act, cf. Section 1-3 of the Petroleum Act.
>
> Petroleum activities are divided into three phases. These are the opening phase, the exploration phase and the production phase. Different rules apply to each phase. Before each phase, studies and assessments are carried out in accordance with the regulations for the phase in question.
>
> The Supreme Court described the background for this in its plenary ruling, cf. HR-2020-2472-P section 65, as follows:
>
> > For the opening phase, the main question is whether it is justifiable and desirable to open the area for petroleum activities based on an overall assessment of the advantages and disadvantages. Before a licence for exploration and production is granted, the assessment is primarily related to which blocks should be selected, based on the probability of discovery. A block is a defined geographical area. There are public consultations, and the Storting [Norwegian Parliament] is involved at several stages. Before extraction and production, the actual consequences of extraction are assessed in more detail.
>
> The opening phase is regulated by Section 3-1 of the Petroleum Act, cf. Chapter 2a of the Petroleum Regulations, and the EU's SEA Directive. An EIA is required. The content of the EIA requirement for the opening phase was one of the topics in the plenary ruling. The majority concluded that it was not a procedural error that the climate impacts were not assessed in the EIA when the Barents Sea South-East was opened in 2013, and that it would be sufficient for this to be subjected to an EIA in an application for a PDO, cf. HR-2020-2472-P sections 241 and 246. The minority considered it a procedural error that the climate impacts of combustion emissions were not subjected to an EIA in connection with the opening phase, cf. HR-2020-2472-P section 258 ff.
>
> The exploration phase is regulated by Section 3-3 et seq. of the Petroleum Act and Chapter 3 of the Petroleum Regulations. The King in Council has the authority to grant production licences for the exploration phase. There is no requirement for an EIA for this phase. A production licence gives the licensee exclusive rights to survey, explore and

extraction of petroleum within the geographical area covered by the licence, but does not grant the right to commence development and production.

The production phase is regulated by Chapter 4 of the Petroleum Act, Chapter 4 of the Petroleum Regulations and the EU EIA Directive. An EIA is required. The Ministry has the authority to make decisions on plans for development and operation (PDOs). The Supreme Court described this phase in its plenary ruling, cf. HR-2020-2472-P section 70, as follows:

> If viable discoveries are made under an extraction licence, a process is initiated towards the actual exploitation of the specific discovery. This process is regulated in Chapter 4 of the Petroleum Act and Chapter 4 of the Petroleum Regulations. Among other things, the licence holder must apply for and obtain approval for a plan for development and operation (PDO) based on an EIA before development and operation can commence, cf. Section 4-2 of the Petroleum Act and Sections 22 to 22 c of the Petroleum Regulations. I will return to this.

The Supreme Court's review of the legislation shows the context and purpose behind the rules that apply at the various stages. The Supreme Court described that prior to extraction and production, the "actual consequences of extraction are assessed in more detail", cf. HR-2020-2472-P section 65. The Supreme Court further stated that it would return to the requirements relating to the PDO later in the judgment. The Supreme Court thus made it clear that it would also issue statements and guidelines regarding the requirements for the PDO, even though the case in question concerned the opening phase and not the production phase.

A condition for petroleum activities is also ongoing licences, approvals and consents. For example, new licences for production must be granted for specific periods in the future, cf. Section 4-4, third paragraph, of the Petroleum Act. The Ministry has the right to require the submission of a new or amended plan for development and production, cf. Section 4-2, seventh paragraph, of the Petroleum Act. In addition, the Ministry has the right to decide that exploration drilling or development of a deposit shall be postponed, cf. Section 4-5 of the Petroleum Act. Where there are special reasons, the Ministry may also order that petroleum activities be suspended to the extent necessary or impose special conditions for continuation, cf. Section 10-1, third paragraph, of the Petroleum Act. The King may also revoke all licences under the Act, cf. Section 10-13 of the Petroleum Act. The Ministry may also reverse its decisions in accordance with general and statutory reversal rules, cf. Section 35 of the Public Administration Act.

Section 4-2, first paragraph, of the Petroleum Act thus requires that, before development and operation can commence, the operator must submit a plan for development and production to the Ministry. The Ministry of Energy is responsible for administering the Act. The provision requires the Ministry to assess whether the plan should be approved. The section reads in its entirety:

> Section 4-2. *Plan for the development and operation of petroleum deposits*
>
> If the licensee decides to develop a petroleum deposit, the licensee shall submit a plan for the development and operation of the petroleum deposit to the Ministry for approval.

> The plan shall include a description of economic, resource-related, technical, safety-related, industrial and environmental conditions, as well as information on how a facility may be disposed of upon termination of petroleum activities. The plan shall also contain information about facilities for transport or utilisation covered by Section 4-3. If a facility is to be located on the territory, the plan shall also provide information about which permits, etc. have been applied for in accordance with other applicable legislation.
>
> Where special reasons so warrant, the Ministry may require the licensee to provide a more detailed account of the environmental impact, possible risk of pollution and impact on other affected activities in a larger overall area.
>
> If development is planned in two or more stages, the plan shall, as far as possible, cover the entire development. The Ministry may limit the approval to apply to individual stages.
>
> No significant contractual obligations may be entered into and no construction work may be commenced before the plan for development and operation has been approved, unless the Ministry consents to this.
>
> The Ministry may, upon application from the licensee, waive the requirement for a plan for development and operation.
>
> The Ministry shall be notified of and approve any significant deviation from or change to the assumptions underlying a submitted or approved plan, as well as any significant changes to facilities. The Ministry may require a new or amended plan to be submitted for approval.

Supplementary rules are given in the Petroleum Regulations, Sections 20 to 22 c. The aforementioned provisions implement the EU's EIA Directive for the petroleum sector. The Directive is included in Annex XX to the EEA Agreement. The regulatory provisions must therefore be interpreted in such a way that they comply with the Directive.

Pursuant to Section 4-2 of the Petroleum Act, the Ministry of Energy also has the authority to approve applications for PDOs. For budgetary reasons, the Storting must in certain cases consent to approval being granted. According to the state budget decision for 2023, there was no requirement for submission to the Storting for that year if the project did not have any significant principles or societal aspects, the total investment for the project was less than
NOK 15 billion, the project had "acceptable socio-economic profitability" and was "reasonably robust against changes in oil and natural gas prices".

In HR-2020-2472-P, the Supreme Court held that the climate impact would be assessed at the PDO stage. The environmental organisations argued that refusal at this stage, or approval on terms that in practice amount to a refusal, "is unrealistic". In response, the Supreme Court noted that the project proponent has no legal right to approval of the PDO. In paragraphs 220–222, the Supreme Court stated:

(220) The starting point in the Act is clear: extraction requires an approved PDO. The Act does not set criteria for approval. The licence holder is, through the extraction licence, guaranteed an exclusive right to extraction, but this has the implication that no one else can extract. Before the PDO is approved, the licence holder cannot enter into significant contracts or commence construction work without the consent of the Ministry, see Section 4-2, fifth paragraph, of the Petroleum Act. This is to ensure that the company does not incur excessive expenses or commitments for itself or others during the exploration phase. The preparatory work emphasises that such consent does not prejudge the subsequent processing of an application for a PDO, see Ot.prp.nr.43 (1995–1996) page 43. This emphasises that the licence holder has no legal right to approval of the PDO.

(221) Within the framework of Section 4-2 of the Petroleum Act and general administrative law, there is also nothing to prevent the authorities from imposing such strict conditions on the approval of a PDO that the licence holder chooses not to proceed with the plan.

(222) I agree with the Court of Appeal that Section 4-2 of the Petroleum Act must in any case be read in conjunction with Section 112 of the Constitution. If the situation at the extraction stage is such that it would be contrary to Section 112 of the Constitution to approve the extraction, the authorities will have both the right and the duty not to approve the plan.

Before the Court of Appeal addresses the procedural requirements that directly follow from the EIA Directive, it should be noted that the position of PDO approval in Norwegian petroleum regulation is also relevant when determining the procedural requirements. In section 183, the Supreme Court pointed out that Article 112, second paragraph, of the Constitution imposes requirements on case processing in matters affecting the environment. The Supreme Court stated that the greater the consequences of a decision, the stricter the requirements for clarifying the consequences must be, adding that the judicial review of the case processing must also be more thorough the greater the consequences of the measure.

Beyond this, it is clear that the processing underlying the PDO approval must contribute to fulfilling the right to environmental information in Article 112, second paragraph, of the Constitution. In the Court of Appeal's view, the case processing must also enable the authorities to fulfil their obligations under Article 112, third paragraph, cf. first paragraph, of the Constitution.

4. The specific requirements for case processing for PDO approval

The EIA Directive – Directive 2011/92/EU "on the assessment of the effects of certain public and private projects on the environment" – is a consolidation of the replacement of the previous 85/337/EEC with amendments. The Directive has also been amended several times since its adoption December 2011.

The objectives behind the directive are set out in the preamble, among other places. The directive aims to contribute to a high level of environmental protection. The environmental impact of projects must be described and assessed prior to the granting of permits and after a consultation process, thereby also ensuring democratic involvement. The preamble also states that the directive is intended to implement the 1998 Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters).

The Directive establishes an obligation to carry out an "environmental impact assessment" – prior to granting permission for major projects. It is undisputed that the directive applies to the three projects concerned in this case.

It follows from Article 1(2)(g) that environmental impact assessment means a "process" consisting of five stages. In brief, these are: (i) preparation of a "environmental impact assessment report by the developer", (ii) "the carrying out of consultations", (iii) "the examination by the competent authority of the information", (iv) "the reasoned conclusion by the competent authority" and (v) "the integration of the competent authority's reasoned conclusion into any of the decisions referred to in Article 8a". The Court of Appeal will discuss these elements in more detail below.

Article 3(1) states the following regarding what shall be included in the environmental impact assessment:

> The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors:
> (a) population and human health;
> (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC;
> (c) land, soil, water, air and climate;
> (d) material assets, cultural heritage and the landscape;
> (e) the interaction between the factors referred to in points (a) to (d).

The environmental impact assessment therefore consists partly of *identifying* and *describing* certain environmental impacts ('identify, describe') and partly that these must *be assessed* ('assess').

'Climate' is expressly mentioned as one of several factors to be included in the environmental impact assessment. Regarding the obligation to both investigate and assess, the EFTA Court's advisory opinion of 21 May 2025, paragraph 114, states:

> As mentioned above, under Article 3 of the EIA Directive, the competent environmental authority is responsible for carrying out an environmental impact assessment which must include a description of the direct and indirect effects of the project on the factors mentioned in the first four indents of that article and the interaction between those factors. In order to fulfil its obligation under Article 3, the competent environmental authority cannot limit itself to identifying and describing the direct and indirect effects of a project on certain factors, but must also assess them in an appropriate manner in each individual case. This assessment obligation differs from the procedural obligation laid down in Article 11 of the EIA Directive (see the judgment in Commission v Ireland, C-50/09, cited above, paragraphs 36 to 38).

The parties have disagreed on whether the obligations under the Directive include the investigation and assessment of combustion emissions. The first of the three questions referred by the Court of Appeal to the EFTA Court was whether combustion emissions should be considered environmental "effects" of the project under Article 3(1). This was answered in the affirmative in the EFTA Court's advisory opinion of 21 May 2025, cf. the conclusion in paragraph 1 on page 21 of the decision, which is reproduced below:

> Emissions of greenhouse gases released by the combustion of oil and natural gas extracted as part of a project listed in point 14 of Annex I to Directive 2011/92/EU of the European Parliament and Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and Council Directive 2014/52/EU of 16 April 2014, and which are then sold to third parties, constitute, within the meaning of the Directive, 'effects' of that project.

As a key premise for the EFTA Court, paragraph 63 states that the Directive is intended 'to facilitate an assessment not only of the impact of the planned works, but also, and above all, of the impact of the project to be carried out'. Paragraphs 68 and 69 further state:

> (68) With regard to climate impacts in particular, point 13 of the preamble to Directive 2014/52/EU makes it clear that climate change will continue to damage the environment and jeopardise economic development. It follows from this that the impact of projects on the climate must be assessed in accordance with the EIA Directive.
>
> (69) As the respondents in the main proceedings have pointed out, there is a high probability that greenhouse gas emissions will be released as a result of the prior extraction of oil and natural gas in a project such as the present one. Were it not for the project, the greenhouse gases would have remained stored underground. The extraction of oil and natural gas is a necessary prerequisite for their use as fuel, whereby emissions affecting the climate will be released. It follows that the combustion of the oil and natural gas extracted and subsequently sold to third parties is a likely effect of the project.

In a procedural letter dated 5 June 2025, the State stated that it would base its decision on the EFTA Court's interpretation, both in the present case and in other cases. Nevertheless, the Court of Appeal must take an independent position on how the Directive should be interpreted. The EFTA Court's opinion is advisory. However, there is reason to attach great importance to the EFTA Court's view. In this case, in the Court of Appeal's view, the EFTA Court's interpretation is well founded in what appears to be a natural understanding of the wording of the Directive. Article 3(c) explicitly refers to "climate". Reference is also made to Annex IV to the Directive, point 5(f), which outlines that the EIA shall describe:

> (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;

In the opinion of the Court of Appeal, there are no "good and compelling" reasons to deviate from the interpretative statement in accordance with HR-2025-490-S, paragraph 66. The Court of Appeal therefore concurs with the EFTA Court's view that the Directive must be interpreted as meaning that combustion emissions are effects of the project that are covered by the investigation and assessment obligations in the Directive.

The EFTA Court's advisory opinion also contains statements on whether the investigation and assessment should be based on gross emissions or net emissions. Paragraphs 95–98 state:

> (95) ... It is clear that the environmental impact assessment should be limited to the effects of the project itself, as opposed to other alternative projects, whether they already exist or are speculative. This is expressly stated in the text of Article 3(1), while several other provisions of the Directive, as pointed out by the State, make it clear that the project is the decisive concept in this context.
>
> (96) The EFTA Court notes, moreover, that both Commission v Spain, C-227/01, cited above, and Abraham and Others, C-2/07, cited above, limited their analysis to foreseeable events that were likely to occur after the completion of the projects in question, without taking into account the knock-on effects of other projects elsewhere. In the case of a project subject to an environmental impact assessment, it is the likely significant environmental effects of the project itself as a result of its impact on the climate that are the relevant standard, without regard to speculative analyses of knock-on effects on other projects elsewhere.
>
> (97) The EFTA Court notes that this is also supported by recital 16 of Directive 2011/92/EU, which states that effective public participation in the decision-making process enables the public to express views and concerns that may be relevant to the decisions, so that the decision-maker can take them into account, thereby increasing the accountability and transparency of the decision-making process and contributing to public environmental awareness and support for the decisions. Such effective public participation in the decision-making process would be undermined if the EIADirective were interpreted in such a way that the developer could omit information on high levels of greenhouse gas emissions resulting from the combustion of oil and natural gas extracted in a project, simply because the emissions from the project would be below the materiality threshold in a 'net analysis'.
>
> (98) However, the EFTA Court notes that the EIA Directive has harmonised the principles for environmental impact assessments of projects by introducing minimum requirements for the types of projects to be assessed. There is therefore nothing to prevent an additional analysis of the expected net effects of the project in question with regard to greenhouse gas emissions. In particular, the word "at least" in Article 5(1) of the EIA Directive shows that the developer, when submitting the environmental impact report, has the opportunity to include additional information that may be relevant to the assessment to be carried out.

The Court of Appeal shares this view. The investigation and assessment must therefore be based on gross emissions. Net emissions are additional information that may be relevant to the assessment to be carried out, but see some comments on this in section 5.2 below.

In its judgment *in Greenpeace Nordic v Norway* of 28 October 2025, paragraph 336, with reference to the practice of the European Court of Justice in paragraph 154, the ECtHR has assumed that it is prohibited under the Directive to assess greenhouse gas emissions from projects individually without taking into account the cumulative emissions from all projects combined.

The Court of Appeal shares this understanding and refers to Annex IV to the Directive, where point 5(b) states that "likely significant effects of the project" include
"the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources".

A similar approach has been taken by the British authorities in their guidance on EIA programmes under UK law, which is based on the Directive.

The requirements for the operator's report are regulated in Article 5(1). In Section 20, first paragraph, of the Petroleum Regulations, this report is referred to as an "environmental impact assessment". Together with "a description of the development", the EIA constitutes the PDO that the operator must submit to the Ministry for approval pursuant to Section 4-2, first paragraph, of the Petroleum Act.

According to Article 6, the public concerned shall be involved in the assessment by means of a public consultation on the report.

The Court of Appeal notes that it is clear that combustion emissions were not included in the reports from the operators that formed the basis for the original PDO approvals. However, the question for the Court of Appeal is whether the procedural requirements have been met when the additional reports from the operators and the Ministry's decisions in 2024 are also taken into account.

Regarding the authorities' "examination" Article 5(3)(b) states, among other things, that it shall ensure that it has, or has access to when necessary, "sufficient expertise to examine the environmental impact assessment report".

Regarding the fifth stage of the environmental impact assessment process, as specified in Article 1(2)(g), the authority's decision, Article 8a stipulates:

> 1. The decision to grant development consent shall incorporate at least the following information:
> (a) the reasoned conclusion referred to in Article 1(2)(g)(iv);

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

Article 1(2)(g)(iv) – to which Article 8a refers – states that the environmental impact assessment shall include "the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination".

Section 20, fourth paragraph, of the Petroleum Regulations stipulates on this point that the Ministry shall "explain and justify its decision to approve or not approve the plan for development and operation" and that the justification shall "include, inter alia, any environmental conditions attached to the approval and any measures required to mitigate significant adverse environmental effects". As mentioned, the regulation must be interpreted in a manner that complies with the directive.

In the Court of Appeal's view, it is a fundamental obligation under the Directive that the authorities, prior to granting a permit, carry out an independent *assessment* of the environmental impact of the project. The Court of Appeal also refers here to paragraphs 48-50 of the EFTA Court's advisory opinion, which states:

> (48) As explained in recital 1 of Directive 2014/52/EU, the objective of the EIA Directive is to ensure a high level of protection of the environment and human health by laying down minimum requirements for the assessment of the environmental impact of projects. As explained in recital 3 of Directive 2011/92/EU, EEA States may therefore lay down stricter rules in their national legislation to protect the environment. It is for the Norwegian courts to assess whether the State has exercised this discretion.
>
> (49) The rationale behind the EIA Directive is to prevent environmental damage. As follows from points 4 and 14 of the preamble to Directive 2011/92/EU, the Directive requires an assessment of the environmental impact of public and private projects in order to achieve a high level of environmental protection, as laid down, inter alia, in point 10 of the preamble to the EEA Agreement and Article 73 of the EEA Agreement. The environmental impact of a project should be assessed taking into account the desire to protect human health, contribute to the quality of life by improving the environment, ensure the survival of biodiversity and preserve the reproductive capacity of the ecosystem, which is fundamental to all life (see judgment of 14 March 2013 in Leth, C-420/11, EU:C:2013:166, paragraphs 28, 29 and 34).
>
> (50) The EFTA Court notes that the obligation to carry out a prior assessment of the environmental impact of a project is therefore justified by the fact that, at the decision-making level, it is necessary for the competent authorities, as stated in recital 2 of Directive 2011/92/EU, to take environmental impacts into account at the earliest possible stage in all technical planning and decision-making processes. This point of the preamble further states that this approach is in line with the precautionary principle and the principles that preventive action should be taken and that environmental damage should preferably be

> be remedied at source, and the polluter pays principle, which, according to Article 73 of the EEA Agreement, are the basic principles of the Agreement's environmental policy (see judgment of 6 July 2023 in Hellfire Massy Residents Association, C-166/22, EU:C:2023:545, paragraph 38).

The duty to investigate under the Directive is also central, but particularly because the investigation is to form the basis for the authorities' own assessment. In addition, the investigation has an independent significance because it serves environmental information purposes, which is an important objective of the Directive. Paragraph 54 of the EFTA Court's advisory opinion states the following in this regard:

> (54) Consequently, paragraph 16 of the preamble to Directive 2011/92/EU states that effective public participation in the decision-making process enables the public to express views and concerns that may be relevant to the decisions, so that the decision-maker can take them into account. This increases the accountability and transparency of the decision-making process and contributes to general environmental awareness and support for the decisions.

The Court of Appeal adds that this understanding of the Directive's requirements for investigation and assessment also fulfils the requirements for this which, in the Court of Appeal's view, can be inferred from the requirements for case processing in Article 112 of the Constitution.

The requirements also meet the requirements for the national decision-making process that follow from Article 8 of the ECHR, and which the ECHR has summarised in the Greenpeace judgment, with reference to the ECHR's judgment of 9 April 2024 *KlimaSeniorinnen v. Switzerland*, in paragraphs 318 and 319:

> 318. ... Considering the Court's established case law on the environment and climate change (ibid., §§ 539 and 554), the grave and irreversible nature of the risks involved, the principle of precaution and the international case law on the matter, it is clear that especially material in determining whether the respondent State has remained within its margin of appreciation is the following procedural safeguard
> which is to be taken into account as regards the State’s decision-making process in the context of environment and climate change: an adequate, timely and comprehensive environmental impact assessment in good faith and based on the best available science must be conducted before authorising a potentially dangerous activity that may be harmful to the right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.
>
> 319. In the context of petroleum production projects, the environmental impact assessment must include, at a minimum, a quantification of the GHG emissions anticipated to be produced (including the combustion emissions both within the country and abroad; compare, mutatis mutandis, *Verein KlimaSeniorinnen Schweiz and Others*, cited above, § 550). Moreover, at the level of the public authorities, there must be an assessment of whether the activity is compatible with their obligations under national and international law to take effective measures against the adverse effects of climate change. Lastly, informed public consultation must take place at a time when all options are still open and when pollution can realistically be prevented at source.

The Court of Appeal cannot see that the duty to investigate and assess extends further to other human rights obligations that have been incorporated into Norwegian law and to which the environmental organisations have referred.

In addition to ensuring that the authorities assess whether approval is compatible with obligations under both national and international law to implement effective measures against the adverse effects of climate change – as emphasised by the ECtHR, the requirements thus contribute to fulfilling Norway's obligation under international law to prevent climate impacts in accordance with the principle of "to prevent significant harm to the environment", as follows, inter alia, from the ICJ's advisory opinion of 23 July 2025.

With these legal principles in mind, the Court of Appeal assesses whether the case processing underlying the approvals of the PDOs meets the requirements for investigation and assessment of combustion emissions.

5. Are the requirements for assessment of combustion emissions met?

5.1 Overview

As explained above, it follows from both international obligations incorporated into Norwegian law and on a purely domestic legal basis that there are requirements for both the investigation and assessment of the environmental consequences of combustion emissions before a PDO approval can be granted. The environmental organisations argue that the case processing is deficient on both points.

As has been shown, the environmental impact reports from the operators on which the original decisions to approve the PDOs were based did not contain any assessment of combustion emissions. However, following the district court's ruling, the operators have prepared supplementary assessments. It was the submission of the reports containing these supplementary assessments that prompted the Ministry to consider reversing its decision.

The Court of Appeal has focused primarily on the question of whether these supplementary investigations are sufficient – including the extent of the investigation obligation, particularly with regard to the further consequences of the temperature increase caused by greenhouse gas emissions – in addition to whether such supplementary investigations are suitable for rectifying errors in the environmental impact assessment process.

Nevertheless, the Court of Appeal finds it appropriate to first consider whether *the assessment* of the environmental consequences of the combustion emissions on which the approvals are based is sufficient. This must be done on the basis of the Ministry's decision not to reverse the original decision. However, other available documents may also be relevant in principle.

It is undisputed that the courts may fully examine whether there have been procedural errors and what effect any errors should be given. The Court of Appeal cannot see that there are any circumstances that would indicate that restraint should be exercised in the review. As mentioned, in HR-2020-2072-P, paragraph 183, the Supreme Court stated that the greater the consequences of the measure, the more thorough the review must be. Similarly, in the KlimaSeniorinnen judgment, emphasis was placed on the fact that the courts in climate cases have a special responsibility to

ensure that the executive and legislative powers comply with the applicable rules, see paragraphs 412–413.

5.2 Tyrving

The Ministry of Energy's decision of 28 August 2024 for Tyrving is reproduced here in its entirety. The background to the review assessment is stated as follows in the introduction:

> In a letter dated 13 May 2024, the Ministry received a copy of a letter from Aker BP, in which the operator submitted a proposal for a programme for investigating combustion emissions from the Tyrving field to the consultation bodies. In the letter, Aker BP states that the purpose of the process is to investigate the environmental consequences in Norway of greenhouse gas emissions from the combustion of hydrocarbons produced from the Tyrving field. It is further stated that the investigations are being carried out on the company's own initiative and that they are in addition to EIAs that have previously been carried out.
>
> In a letter dated 19 June 2024, the Ministry received a copy of a letter from Aker BP sent to consultation bodies with the completed assessments. The assessments also provide information about consultation responses received to the assessment programme and how these have been followed up.
>
> In a letter dated 21 August 2024, Aker BP informs that the consultation round on studies of combustion emissions has been completed. The letter also presents Aker BP's assessment of the consultation responses received to the investigations.

The Ministry then writes and concludes:

> The Ministry further refers to the decision of 5 June 2023 on the approval of the plan for development and operation (PDO) of the Tyrving field. The decision states that the Ministry has made an estimate of the gross emissions resulting from the use of the expected recoverable resources from the Tyrving field. In its decisions, the Ministry found that approving the development would not be in contravention of Section 112 of the Constitution, cf. HR-2020-2472-P.
>
> Based on the investigations that have now been completed, Aker BP has highlighted combustion emissions from end consumption of oil and gas extracted from the Tyrving field and the effects on environmental values in Norway. In a letter dated 21 August 2024, Aker BP states that the company considers that no information has emerged about environmental consequences from combustion emissions from end consumption that are of a nature or scope that would warrant further measures beyond those already planned.
>
> The Ministry refers to the investigation process, including public hearings, which has now been carried out by Aker BP. In a letter dated 7 May 2024 from Aker BP to the Ministry, the upcoming investigation process is described, and Aker BP asked the Ministry to assess any new information from the investigations. The Ministry has concluded

> that no information has emerged that would provide grounds for reversing the decision 5. June 2023 approving the plan for development and operation (PDO) of the Tyrving field.

Although Aker BP had not included combustion emissions in the environmental impact report on which the original decision of 5 June 2023 was based, combustion emissions were addressed by the Ministry in its decision.

The Ministry of Energy's assessment begins as follows:

> The Ministry refers to the EIA that has been carried out and the operator's response to the consultation statements received, and considers the assessment obligation to have been fulfilled. In the Ministry's assessment of whether the PDO should be approved under the Petroleum Act, the advantages and disadvantages of the development, including any deterioration or loss of biodiversity, have been weighed against each other. Damage and disadvantages to both public and private interests have been taken into account. The preservation of biodiversity is included in the EIA carried out by the licensee and in the Ministry's exercise of discretion under the Petroleum Act. This means that the environmental consequences of the development are assessed from a holistic and long-term perspective. The provision in the Nature Diversity Act Section 7 and the principles in Sections 8-10 of the same Act have been used as guidelines for the case processing. No significant negative environmental consequences of the development have been demonstrated, and the Ministry considers the knowledge base to be sufficient to make a decision. After weighing up the considerations in accordance with the Nature Diversity Act, it is the Ministry's assessment that the development can be carried out.

The Court of Appeal considers it clear – particularly in light of the statement that no significant negative environmental consequences of the development have been demonstrated – that this assessment is limited to the consequences of the development itself, and not combustion emissions. However, after referring to assessments made by the Ministry of Labour and Inclusion and the Norwegian Petroleum Directorate, the Ministry of Energy writes, based on the plenary ruling of the Supreme Court:

> In the Supreme Court's ruling of 22 December 2020 concerning the validity of the 23rd licensing round addresses the issue of assessing the emission consequences of burning exported Norwegian petroleum in relation to Article 112 of the Constitution. In its ruling, the Supreme Court states that the application of Article 112 of the Constitution must take into account whether emissions from the burning of Norwegian-produced petroleum abroad causes damage in Norway. It is uncertain whether new development projects on the Norwegian continental shelf will contribute to increased, unchanged or lower global greenhouse gas emissions overall. The Ministry has made an estimate of the gross emissions (without taking into account second-order effects) resulting from the use of the expected recoverable resources from Tyrving. Over the lifetime of the field, this is estimated at just under 11.25 million tonnes of CO_2, which averages approximately 0.75 million tonnes of CO_2 per year. Increased emissions from the Alvheim FPSO production vessel as a result of Tyrving are estimated at less than 1,000 tonnes of CO_2 per year and are covered by the EU ETS. Based on the calculations of greenhouse gas emissions from the Tyrving development, it is assumed that approval of the development does not contravene the Constitution Section 112.

The Court of Appeal cannot see that there are any other available documents that express assessments of the consequences of the combustion emissions from Tyrving. The question is therefore whether what is expressed here is sufficient.

As explained above, it follows from the wording of Article 8a(1)(a) of the EIA Directive, cf. Article 1(2)(g)(iv), that the Ministry's decision must contain
"the reasoned conclusion by the competent authority on the significant effects of the project on the environment, taking into account the results of the examination referred to in point (iii) and, where appropriate, its own supplementary examination".

The wording indicates that the Ministry's assessments must satisfy a certain standard of quality. The EFTA Court's advisory opinion also confirms that Article 8a lays down certain minimum requirements. Paragraph 77 states the following:

> (77) Similarly, Article 8a(1) of the EIA Directive lays down minimum requirements for the content of a development consent, primarily with regard to the conclusions of the assessment of the environmental impact of a project and the environmental conditions for its implementation. Article 8a of the EIA Directive makes it clear that the decision by the competent authority to grant or refuse a development consent must be taken on the basis of, among other things, the environmental impact assessment. According to Article 8a(1)(b), the necessary content shall also include any environmental conditions attached to the decision, a description of all the characteristics of the project and/or measures planned to avoid, prevent or limit and, if possible, offset any significant adverse effects on the environment, and, where appropriate, monitoring measures. This means that the environmental impact assessment process in a case such as the main case represents the last opportunity for the Ministry, as the competent authority, to decide whether or not to grant a licence for the extraction of oil and natural gas and, if so, to determine the quantities that may be extracted. This point in time is therefore decisive for whether the greenhouse gas emissions that can be expected to arise as a result of the combustion of the products extracted by the project will end up in the atmosphere.

The Ministry's assessment shall cover the significant environmental consequences of the project. The Court of Appeal considers that the Directive must be understood to mean that the Ministry must make apparent the environmental consequences on which it bases its assessment. Furthermore, it follows from Article 1(2)(g) (v) that the environmental consequences must be taken into account when assessing whether or not to grant approval. In the Court of Appeal's view, the requirement for a "reasoned conclusion" must be understood to mean that if approval is granted despite the project having significant negative environmental consequences, this must be justified.

In the Court of Appeal's view, the decision from 2024, read in conjunction with the decision from 2023 and the supplementary report from Aker BP on combustion emissions, creates uncertainty as to whether the environmental impact assessment has been carried out on the basis of gross emissions, as required. Admittedly, the Ministry refers to the calculated gross emissions, but this is only done after the Ministry has stated that it is "uncertain whether new development projects on the Norwegian continental shelf will contribute to increased, unchanged or lower global greenhouse gas emissions overall".

Although estimates of net emissions are to be regarded as additional information that may be relevant to the assessment to be made, the Court of Appeal considers that such estimates may only be relevant – and then under conditions to which the Court of Appeal will return – in assessing whether PDO approval should be granted despite the negative environmental consequences. Combustion emissions estimated to occur as a result of fossil energy extraction elsewhere, if PDO approval is not granted, are not environmental consequences of the project.

Furthermore, the decision does not take into account the cumulative combustion emissions from Norwegian petroleum activities, as required.

The Court of Appeal considers that these two circumstances in themselves – and regardless of the extent of the duty to investigate – mean that it has not been sufficiently clarified which environmental consequences of combustion emissions form the basis for the assessment.

In the Court of Appeal's view, a key procedural shortcoming is that the Ministry cannot be considered to have provided a "reasoned conclusion" for the approval of the PDOs despite the greenhouse gas emissions.

The State has argued that the statement on the relationship to Article 112 of the Constitution expresses that an assessment has been made. In the Court of Appeal's view, the statement does not meet the requirement for justification under the Directive.

Firstly, it is not only the substantive barrier in Article 112, first paragraph, of the Constitution that can give the Ministry a duty to reject the application for a PDO, or to impose conditions. It follows from the Greenpeace Nordic judgment that the Ministry also has a duty under Article 8 of the ECHR to assess whether approval is compatible with Norway's obligations under international law.

Secondly, Section 4-2 of the Petroleum Act provides for administrative discretion, see HR-2020-2471-P, paragraphs 220 and 221. In the opinion of the Court of Appeal, this means that the Ministry must assess whether the environmental impact of the combustion emissions warrants rejecting the application for approval or imposing conditions, even though there is no obligation to reject the application under Article 112 of the Constitution. In exercising its discretion, the Ministry must therefore weigh up all the relevant considerations. With regard to the legal requirements for this assessment, the Court of Appeal refers to the fact that, in its interpretation of the obligations under Article 8 of the ECHR, the European Court of Human Rights has stated that "climate protection should carry considerable weight in the balancing of any competing considerations", see the Greenpeace Nordic judgment, paragraph 316, and the KlimaSeniorinnen judgment, paragraph 542.

The Court of Appeal understands the State to also argue that the balancing of interests required by the Directive is, in any case, consistent with what is – in simplified terms – Norwegian petroleum policy. This is expressed in several places, including in the Storting's deliberations in connection with the PDO approval for Yggdrasil, and in the latest climate report, Meld. St. 25 (2024–2025). The State has further pointed out that this policy has broad support in the Storting.

The Court of Appeal finds that the directive allows for certain considerations at an overall level to be expressed in documents other than the approval of the individual PDO, as referred to in the decision. This applies to the importance of, for example, energy security, state revenues and security policy considerations, weighed against the environmental consequences of combustion emissions. It must be a prerequisite – as for the environmental impact assessment in general – that the overall assessment is based on up-to-date information. Such an overall assessment can facilitate the appropriate fulfilment of the requirement to take into account the environmental impact of Norwegian petroleum activities as a whole.

However, it is clear that the PDO approval does not refer to such an overall assessment. Nor can the Court of Appeal see that there was any other document in which an overall assessment was made. A number of relevant considerations are addressed in Prop. 97 S (2022–2023), which formed the basis for the PDO approval for Yggdrasil, particularly in Part II on the "status of petroleum activities". In the Court of Appeal's view, however, it does not contain any real assessment. In such an assessment, environmental considerations must also be given considerable weight.

In any case, an overall assessment does not exempt it from also being weighed against the findings on which the specific PDO application is based, cf. HR-2020-2472-P section 216. The Court of Appeal points here to examples such as the volumes covered by the application, whether the extraction involves gas or oil, and whether the oil is heavier than average on the Norwegian continental shelf. These are factors that are significant for the specific environmental impact of the project. The relevant considerations for extraction may also apply with varying degrees of force depending on whether, for example, oil or gas is involved.

As mentioned, considerations regarding net emissions are also relevant when weighing up whether to approve the PDO despite the greenhouse gas emissions. However, the Court of Appeal would first like to note that the use of net emissions analyses, which are based on assessments of the actions of other market players, must be done in a way that does not obscure the state's own responsibility to meet national and international climate commitments. Secondly, according to both the directive and general Norwegian administrative law, cf. inter alia Rt-1981-745, certain requirements must be imposed on the factual basis on which the Ministry bases its decision if this is included in the grounds for granting the application despite the greenhouse gas emissions from the project. A general reference to the fact that it is "uncertain whether new development projects on the Norwegian continental shelf will contribute to increased, unchanged or lower global greenhouse gas emissions overall", as has been done in this case, is clearly not sufficient. Since estimates of net emissions are based on a high degree of uncertainty – as the evidence presented to the Court of Appeal has also made clear – a reference to a single analysis, without considering all the available information, is, in the Court of Appeal's view, also insufficient.

The Court of Appeal therefore finds that there has been a procedural error in the PDO approval for Tyrving in that the requirement for assessment has not been met.

5.3 Yggdrasil

The Ministry of Energy's decision of 28 August 2024 for Yggdrasil is, with one exception, formulated in the same way as the decision for Tyrving of the same date. The difference is that, following the statement on the relationship to Section 112 of the Constitution, there is also a reference to Prop. 97 S (2022–2023) and the Energy and Environment Committee's consideration in Innst. 459 S (2022–2023). The total investment costs for the project in the Yggdrasil area were NOK 115 billion, and therefore the Storting's consent was required for approval.

The PDO approvals for the fields in the Yggdrasil area were granted by the Ministry's three decisions on 27 June 2023. The three decisions contain the following identical wording on combustion emissions and the Storting's deliberations:

> The Ministry has calculated the gross combustion emissions and net greenhouse gas emissions associated with the coordinated development of Yggdrasil. Production emissions to air during development and operation are included in the development plan. Based on the calculations of greenhouse gas emissions from Hugin, it is assumed that approval of the development does not contravene Section 112 of the Constitution.
>
> The development plans related to the coordinated development of the Yggdrasil area have been submitted to the Storting, cf. Prop. 97 S (2022–2023) *Development and operation of the Yggdrasil area and Fenris, as well as further development of Valhall, with status for oil and gas activities, etc.* and Innst. 459 S (2022–2023) *Recommendation from the Energy and Environment Committee on the development and operation of the Yggdrasil area and Fenris, as well as the further development of Valhall, with status for oil and gas activities, etc.*

Prop. 97 S (2022–2023) addresses a number of issues relevant to the development, but provides little information about the project's impact on the climate globally and in Norway. The climate challenge is mentioned in some places, including in section 2.2.4, where it is stated that "the climate challenge will remain a long-term driver in the energy system", but here as part of a discussion about the future market. The climate challenge is not linked to the question of whether or not a licence should be granted.

Some specific comments are made in section 4.4 under the heading "The duty to investigate – gross and net greenhouse gas emissions from Norwegian oil and gas". This section is included in Part II on the status of petroleum activities, as also referred to above. Reference is made there to the plenary ruling and that "the Supreme Court stated in its ruling that there is no doubt that global emissions will also affect Norway". This can be understood as highlighting climate risk, but it is done without any reference to Yggdrasil. The section then goes on to give a general account of measures being taken to promote emission cuts and participation in climate cooperation. Here, too, there is no specific mention of whether such measures are

connected to Yggdrasil in a way that could compensate for the negative consequences.

The same section states:

> It is uncertain whether new development projects on the Norwegian continental shelf will contribute to increased, unchanged or lower global net emissions, i.e. if one also takes into account second-order effects in the energy markets of increased resource extraction in Norway. This issue has been assessed by various expert groups, which have arrived at different estimates of the net effects. All such calculations are naturally based on a number of debatable and uncertain assumptions. In any case, the net effect on global emissions will be very small from a global perspective, and always less than gross emissions.

After presenting the EIAs for the three fields in the area in section 6, the Ministry's assessment in section 7.5 states:

> It is uncertain whether new development projects on the Norwegian continental shelf will contribute to increased, unchanged or lower global greenhouse gas emissions overall. The Ministry has calculated the net greenhouse gas emissions associated with the coordinated development based on a new analysis from Rystad Energy. The calculations show that global greenhouse gas emissions could be reduced by approximately 52 million tonnes of CO2 equivalents. These types of calculations are uncertain and the results are affected by various assumptions about future developments. Under alternative assumptions, the calculated figure would have been different. The Ministry has also estimated the gross combustion emissions that the use of recoverable resources from Yggdrasil may entail. Over the lifetime of the fields, this is estimated at approximately 365 million tonnes $_{\text{of CO2}}$, which averages out at approximately 15.2 million tonnes $_{\text{of CO2}}$ per year. These calculations do not give reason to assume that greenhouse gas emissions from the Yggdrasil development will harm the environment in Norway, cf. Section 112 of the Constitution.

In Innst. 459 S (2022–2023), the majority of the Storting's Energy and Environment Committee endorsed the Government's proposal that the Storting should give its consent to the approval of the PDO in the Yggdrasil area, and the Storting made a decision in accordance with this. The majority did not address combustion emissions in their comments. During the Storting's deliberations, however, the committee's *rapporteur* pointed out that the proposal states that "calculations show that global greenhouse gas emissions will be reduced by approximately 257 million tonnes of CO2 equivalents for projects covered by the oil tax package during the expected production period of the projects, but it also appears from the proposal that these figures are uncertain", cf. S.tid. (2022–2023) page 4589. Furthermore, several considerations that are relevant in weighing whether PDO approval should be granted despite greenhouse gas emissions are addressed both in the committee comments and in the contributions to the parliamentary debate.

The Court of Appeal considers that the PDO approval for Yggdrasil has the same shortcomings in terms of the assessment requirement as the approval for Tyrving: it is unclear whether the environmental impact assessment was based on gross emissions, and no consideration was given to the cumulative combustion emissions from Norwegian petroleum activities. As with Tyrving, it is crucial that there is no "reasoned conclusion" for the approval of the PDOs for Yggdrasil either, despite the greenhouse gas emissions.

The justification provided by the Ministry in relation to Yggdrasil differs from that provided for Tyrving in that it also referred to an analysis of net emissions from Rystad Energy, which showed that Yggdrasil could reduce global greenhouse gas emissions by approximately 52 million tonnes of CO_2. At the same time, there was a well-known report from Vista Analyse that showed an increase in combustion emissions. Incidentally, Aker BP states in the supplementary report from 2024 for Yggdrasil on page 12 that, based on Rystad Energy's conclusions from 2023, a net reduction of 41 million tonnes of CO2 is estimated, while based on Vista Analyse's conclusions in 2023, a net increase of 19 million tonnes of CO2 is estimated. As the Court of Appeal has stated above, given the high degree of uncertainty associated with estimates of net emissions, it is not sufficient to rely on a single analysis when this is included in the grounds for granting the application despite the greenhouse gas emissions from the project.

With regard to the significance of the Storting's consent, the Court of Appeal notes that, pursuant to Section 4-2 of the Petroleum Act, it is the Ministry that has the authority to approve PDOs and is therefore responsible for any approval that may be granted. Consequently, the Ministry cannot refrain from making the required assessment unless the Storting's assessment complies with the requirements and the Ministry expressly endorses it. This is not the case here.

Consequently, there is also a procedural error in the PDO approval for Yggdrasil in that the assessment requirement has not been met.

5.4 Breidablikk

The Ministry of Energy's decision of 20 December 2024 for Breidablikk is somewhat shorter and does not contain a more comprehensive assessment than the decisions for Tyrving and Yggdrasil of 28 August 2024. The decision for Breidablikk also concludes with the Ministry taking note of the additional investigation of combustion emissions and that, in the Ministry's opinion, no information has come to light that would justify reversing the decision of 29 June 2021 to approve the plan for development and operation (PDO) of the Breidablikk field.

The decision must also be viewed in the context of the original decision when assessing whether the Ministry has made a sufficient assessment of combustion emissions for Breidablikk.

The original decision for Breidablikk is from 29 June 2021, i.e. about two years earlier than the decisions for Tyrving and Yggdrasil. Unlike what was done for Tyrving and Yggdrasil, the Ministry did not make any calculations for combustion emissions. The only thing stated in the decision on environmental consequences is the following:

> The climate risk associated with the development has been highlighted by the companies through the project's robustness to both lower oil prices and higher operating costs, including if this were to be an effect of future climate measures.
> ...
>
> The development plan presented shows that the project can be implemented within acceptable limits with regard to health, the environment, safety and other users of the sea.

Given that the Ministry has not commented on combustion emissions in either its 2024 decision or its original 2021 decision, it is clear – based on the Court of Appeal's view of the approvals for Tyrving and Yggdrasil above – that the assessment is insufficient.

5.5 Summary

The Court of Appeal has therefore concluded that there has been a procedural error in the form of an inadequate *assessment* of combustion emissions for all approvals. The Court of Appeal has not found it necessary to consider the environmental organisations' arguments that the approvals as such are also based on incorrect facts and irresponsible forecasts.

The question of whether there has also been a procedural error in the form of an inadequate *investigation* is dealt with below in section 6, before the Court of Appeal considers the effects of the procedural errors in section 7.

6. Have the requirements for investigating combustion emissions been met?

6.1 Details of what is to be included in the investigation

In section 4, the Court of Appeal has reproduced what, according to Article 3 of the EIA Directive, must be *assessed* and *evaluated* in an environmental impact assessment process.

The minimum requirements for the content of the environmental impact report to be prepared by the operator are set out in Article 5(1), which reads as follows:

> Where an environmental impact assessment is required, the developer shall prepare and submit an environmental impact assessment report. The information to be provided by the developer shall include at least:
>
> (a) a description of the project comprising information on the site, design, size and other relevant features of the project;
> (b) a description of the likely significant effects of the project on the environment;
> (c) a description of the features of the project and/or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
> (d) a description of the reasonable alternatives studied by the developer, which are relevant to the project and its specific characteristics, and an indication of the

main reasons for the option chosen, taking into account the effects of the project on the environment;

(e) a non-technical summary of the information referred to in points (a) to (d); and

(f) any additional information specified in Annex IV relevant to the specific characteristics of a particular project or type of project and to the environmental features likely to be affected.

The requirements must be interpreted in accordance with the fact that combustion emissions must also be investigated, as this is considered to be a "likely significant effect of the project", cf. *litra* b.

The minimum requirements for operators' environmental reports under Article 5(1) do not cover everything that must be included in the assessment under Article 3. In the Court of Appeal's view, the Directive allows for an appropriate delimitation of what is to be assessed by the operator, and for the Ministry to make the necessary additions. The Court of Appeal refers in particular to Article 5(2) and the consultation procedure for the EIA programme set out in the PDO guidelines issued by the Ministry of Energy and the Ministry of Labour and Inclusion. However, the minimum requirements in Article 5(1) must be interpreted in such a way that the purpose of the consultation on the environmental report under Article 6 is fulfilled. In any case, it is the Ministry that is responsible for the entire environmental impact assessment process and the decision that is made.

As can be seen from the review of the decisions and resolutions, the Ministry has not itself conducted any investigation of combustion emissions in this case that goes beyond the supplementary reports from the operators. The requirements for the investigation under both Article 5 and Article 3 must therefore be assessed on the basis of these.

The supplementary reports from Aker BP for Tyrving and Yggdrasil are dated 19 June 2024. Since Aker BP is the operator for both fields, the two reports are identical except for the calculations based on volume. The supplementary report from Equinor for Breidablikk is dated 9 October 2024.

A key point of disagreement between the parties is the scope of the investigation obligation, particularly with regard to the further consequences of the temperature rise caused by greenhouse gas emissions. There is no case law from the European Court of Justice that determines the scope of the assessment obligation.

The assessment of the scope of the assessment obligation must be made in light of the fact that the purpose of the Directive is to ensure a high level of environmental protection. Reference is made here to point 7 of the preamble to the Directive, which states that approval may only be granted "only after an assessment of the likely significant environmental effects of those projects has been carried out". The wording of Article 3 – "shall" – indicates that a description of the listed factors is mandatory. This also applies to indirect effects. At the same time, the provision allows for discretion as to how this is to be done, cf. "an appropriate

manner, in the light of each individual case". The requirements imposed must not be unreasonably burdensome for the authorities, see C-461/24 paragraph 55.

6.2 Overview of the content of the supplementary reports from the operators

The Court of Appeal first provides a brief account of the content of the supplementary

reports.

In the supplementary reports from Aker BP for Tyrving and Yggdrasil, section 3 describes combustion emissions from the field in question, both "gross" and "net". It appears that experts have different views on the net effect

In the report for Tyrving, gross combustion emissions are estimated at 12 million tonnes of CO_2. Furthermore, it is noted that Rystad Energy estimates "total production from the Tyrving field to result in a net reduction in global greenhouse gas emissions of 0.36 million tonnes of CO2", while Vista Analyse estimates "total production from the Tyrving field to lead to a net increase in global greenhouse gas emissions of 1.72 million tonnes of CO_2".

The report for Yggdrasil estimates gross combustion emissions to be 267 million tonnes of CO_2. Reference is made to Rystad Energy's estimate that "total production from the Yggdrasil area to result in a net reduction in global greenhouse gas emissions of 41 million tonnes of CO2", while Vista Analyse estimates that "total production from the Yggdrasil area will lead to a net increase in global greenhouse gas emissions of 19 million tonnes of CO_2".

Section 4 of the reports describes the relationship between greenhouse gas emissions and temperature changes, and between temperature changes and certain climate effects in Norway, including ice melting in the Arctic, changes in the snow line and shorter snow seasons, the significance of tipping points, more instability in terms of precipitation, melting glaciers, impact on species and habitats, ocean acidification, rising sea levels and more extreme weather. This is summarised in section 5 as follows for Tyrving:

> The hydrocarbons produced from the Tyrving field will contribute to combustion emissions that are included in total global greenhouse gas emissions. Net combustion emissions from hydrocarbon production from the Tyrving field are estimated to cause a temperature change of between -0.0000002ºC and +0.0000011ºC, depending on the calculation method. Gross combustion emissions from hydrocarbon production from the Tyrving field are estimated to cause warming of between 0.000003ºC and 0.000008ºC.
>
> Based on current knowledge and established methods, it is not possible to link environmental effects in Norway directly to specific sources of greenhouse gas emissions. It is total global greenhouse gas emissions that will collectively affect environmental values in Norway. The combustion emissions from the Tyrving field are so small in relation to global greenhouse gas emissions that they cannot be linked to measurable temperature changes, environmental effects or exceeding tipping points. Aker BP has therefore provided an overview of the expected environmental effects of climate change in Norway as stated in

> White Paper 26 (Ministry of Climate and Environment, 2023) and other relevant reports dealing with climate impacts on Norwegian environmental values.
>
> Global warming will affect different ecosystems and regions differently, and thus the environmental effects in Norway will be unique to Norwegian nature. The environmental effects in Norway as a result of global temperature changes depend on the type of nature. Overall, cold-loving species will be negatively affected, while heat-loving species will be positively affected. Temperature changes may affect species composition and distribution in Norway. Existing species may remain unaffected, decline or increase in number, and/or change their habitat as a result of temperature changes. At the same time, new species may seek out Norwegian nature, which in turn may affect existing species diversity.

The first paragraph of the summary for Yggdrasil reads as follows:

> The hydrocarbons produced from the Yggdrasil area will contribute to combustion emissions that are included in total global greenhouse gas emissions. Net combustion emissions from hydrocarbon production in the Yggdrasil area are estimated to cause a temperature change of between -0.000026ºC and +0.000012ºC, depending on the calculation method. Gross combustion emissions from hydrocarbon production in the Yggdrasil area are estimated to cause warming of between 0.00007ºC and 0.00017ºC.

For the Yggdrasil area, it is also stated that combustion emissions are "so small in relation to global greenhouse gas emissions that they cannot be linked to measurable temperature changes, environmental effects or exceeding tipping points."

The supplementary report from Equinor for Breidablikk accounts for gross and net combustion emissions, based on the report from Rystad Energy in section 3 and the report from Vista Analyse in section 4. It appears that gross combustion emissions are estimated at 99.6 million tonnes $_{of\,CO2}$. Section 6 describes the consequences of combustion emissions on the environment in Norway, but also takes a global perspective. Firstly, it is pointed out that the UN Climate Panel – IPCC – in its 2021 report describes an approximately linear relationship between cumulative CO2 emissions and resulting global warming, and that “The remaining carbon budget from 2020 onwards, in order to limit global warming to 1.5 °C compared to the period 1850-1900, with a 17, 50 and 83 per cent probability, is 900, 500 and 400 Gt $_{CO2}$, respectively. It is assumed that climate change will lead to serious and irreversible consequences. In addition to describing certain effects on the environment in Norway, reference is made to tipping points from a global perspective. The summary in section 7 states the following about combustion emissions:

> Due to a lower gas content than other fields on the Norwegian continental shelf, as well as somewhat heavier oil, Breidablikk will result in higher net greenhouse gas emissions than an average Norwegian oil and gas field.
>
> According to Rystad Energy, the reference case for Breidablikk over a lifetime of 38 years will reduce global emissions by 1 million tonnes of CO2-e in total, while Vista concludes that global emissions will increase by 9.7 million tonnes of CO2-e in total, given the IEA's APS scenario.

Taking into account that part of the production volumes will go to non-energy-related purposes, Rystad Energy shows that the reference case for Breidablikk will reduce global emissions by 3.4 million tonnes of CO2-e, while Vista Analyse shows that global emissions will increase by 6.9 million tonnes of CO2-e.

The analyses show that net emissions are significantly lower than gross emissions and amount to between -1–10% of gross emissions for the reference case.

6.3 Assessment of the operators' reports against Article 5(1)

The operators have provided relevant information about the projects in accordance with Article 5(1)(a), and combustion emissions are correctly described as a likely significant environmental impact in accordance with (b), which was also the purpose of the supplementary studies.

However, environmental organisations have argued that the reports for Yggdrasil and Breidablikk omit significant emissions.

As mentioned, the supplementary report for Yggdrasil is based on 267 million tonnes of CO_2, while Prop. 97 S (2022–2023) – which formed the basis for the original PDO approval – estimated recoverable resources from Yggdrasil with combustion emissions of 365 million tonnes of CO2. The discrepancy between the Ministry's estimate and the assessment is thus 98 million CO2 equivalents. As the Court of Appeal understands it, the discrepancy is due to the fact that, at least at the time of the supplementary investigation, Aker BP only envisaged that it would be cost-effective to extract a volume with combustion emissions of 267 million CO_2.

In the Court of Appeal's view, it is a fundamental requirement under the Directive that all combustion emissions from the project must be investigated. The provision in Section 20, fifth paragraph, of the Petroleum Act, stating that the Ministry must be notified of "significant" changes to or deviations from the plan, and that the Ministry may then require a new or amended plan to be submitted, must be understood in light of this. Even though the Ministry may have assumed, at the time of the original approval, that oil extraction would result in combustion emissions of 365 million tonnes of CO2, the approval must – on the basis of the subsequent investigation and the Ministry's decision – be understood to be based on extraction with combustion emissions of 267 million tonnes of CO2. In light of the directive, the Court of Appeal finds that the Ministry has a duty to require the submission of a new or amended plan in the event of a change that affects that assumption.

The Court of Appeal considers that the situation for Breidablikk must be viewed in the same way. For Breidablikk, the report is based on 99.6 million CO2 equivalents over the lifetime, while the recoverable resources give combustion emissions of 107 million CO2 equivalents when taking into account that the field contains heavier oil, which has a greater climate footprint.

The supplementary report from Equinor does not specify the expected temperature increase as a result of combustion emissions in the same way as the report from Aker BP, but refers to

the IPCC report and carbon budget, which may be better suited to illustrating the significance.

With regard to the requirements in Article 5(1)(c) and (d), the Court of Appeal finds that the operators have not planned any other measures to compensate for the environmental impact of combustion emissions, nor have any alternatives been considered. The Court of Appeal finds that there is no requirement for the report to address the further consequences of the temperature increase caused by greenhouse gas emissions.

On this basis, the Court of Appeal finds that all three supplementary reports from the operators meet the requirements for the environmental impact report under Article 5(1) of the Directive.

Particularly in view of the fact that the reports are to form the basis for the consultation pursuant to Article 6, it is unfortunate that all three reports focus mainly on net emissions, when the assessment and evaluation are to be based on gross emissions. It is also unfortunate that the reports contain statements which, at least individually, could be interpreted as meaning that the emissions have no significance for the global climate. The Court of Appeal emphasises that when assessing the environmental impact of greenhouse gas emissions, all emissions must be considered relevant as part of the overall burden on the climate, cf. also the principle in Section 10 of the Nature Diversity Act.

However, the Court of Appeal finds that these circumstances do not mean that the reports fail to meet the requirements of Article 5(1). The question of how the reports should be structured in detail – also with regard to the Ministry's further investigation and assessment – belongs in the PDO guidelines or in the consultation on the EIA programme.

The Court of Appeal then assesses – still on the basis of the reports – the overall investigation in relation to Article 3.

6.4 Assessment of the overall investigation in relation to Article 3

Paragraph 4 states that the Directive prohibits the assessment of greenhouse gas emissions from projects individually without taking into account the cumulative emissions from all projects combined. In the Court of Appeal's view, this also entails an obligation to conduct assessments based on the total combustion emissions from Norwegian petroleum activities. No such assessment has been made, either in the supplementary reports or by the Ministry.

Although the obligation to describe cumulative effects is formulated in connection with the report that the operator must prepare pursuant to Article 5(1), the Court of Appeal considers it clear that it is in accordance with the purpose of the Directive that such a comprehensive assessment of combustion emissions from Norwegian petroleum activities be carried out by the Ministry.

Paragraph 4 also refers to the fact that, on the basis of Article 8 of the ECHR, the Ministry has a duty to assess whether approval is compatible with Norway's obligations under international law.

In the Court of Appeal's view, this means that the Ministry must conduct assessments in light of remaining carbon budgets.

The Court of Appeal refers in particular to the fact that, through Article 2(1)(a) of the Paris Agreement, the parties to the treaty agreed that global temperature increase, compared to pre-industrial times, should be limited to 2 degrees, and emphasised that the parties shall strive to limit the increase to 1.5 degrees, "recognising that this would significantly reduce the risks and impacts of climate change". Based on subsequent agreements, the commitment is now considered to apply to a limit of 1.5 degrees, cf. ICJ Advisory Opinion of 23 July 2025, paragraph 224.

The Court of Appeal also points out that the Directive itself requires that the environmental impact assessment must be placed in a relevant context. In the KlimaSeniorinnen judgment, the ECtHR also stated that, in assessing the exercise of the state's margin of discretion in climate cases, it will examine whether the legislative, executive and judicial authorities have "had due regard" to the remaining carbon budget, see paragraph 550.

In its reports for Tyrving and Yggdrasil, Aker BP has accounted for the remaining carbon budget in order to limit global warming to 1.5 degrees. Equinor has done the same in its report for Breidablikk. The operators have reproduced figures from the UN Climate Panel that were valid as of 1 January 2020. However, the Court of Appeal cannot see that any analyses have been made of how emissions from the fields – or Norwegian petroleum activities as a whole – relate to the remaining carbon budget. However, it is sufficient that such studies are carried out by the Ministry.

Furthermore, as mentioned above, the environmental organisations have argued that it is wrong that the projects' impact on factors set out in Article 3(1)(1) of the EIA Directive, including consideration for children and other vulnerable groups, has not been assessed. These are direct and indirect effects on the population and human health, soil, land, water, air and climate, material goods, cultural heritage and the landscape, and the interaction between these. A large part of the environmental organisation's evidence concerned such matters, also known as "attribution science".

The State has argued, in brief, that because the factors in Article 3 refer to “everything” on earth, the Directive cannot be understood in that way.

The Court of Appeal refers to the fact that the EFTA Court emphasised in several places in its advisory opinion that the obligation under Article 3 is not limited to identifying and describing a project's direct and indirect effects on certain factors. The effects must also be assessed in an appropriate manner in each individual case, see, inter alia, paragraph 114.

It must therefore be clear that it is not sufficient to account for, inter alia, combustion emissions without investigating the indirect effects of the emissions. The Court of Appeal emphasises that while the protection under Article 112 of the Constitution is limited to

climate in Norway, the Directive also covers damage abroad. It is also necessary to consider global impacts when assessing international obligations, including customary international law.

However, with regard to the effects of greenhouse gas emissions, the Court of Appeal considers that the duty to investigate under Article 3 can be fulfilled for most factors by considering the emissions, and any calculated temperature increase or share of the remaining carbon budget, in light of the effects as presented in the latest report from the UN Climate Panel. Such a duty to investigate is not unreasonably burdensome for the state. The effects must then be included in the Ministry's assessment of whether approval should be granted.

The Court of Appeal has therefore concluded that the overall assessment is inadequate in that no assessment has been made of the total combustion emissions from Norwegian petroleum activities, that combustion emissions have not been compared with remaining carbon budgets, and that there has been no adequate assessment of the effects on the conditions mentioned in Article 3 of the Directive, where global effects must also be taken into account. In the Court of Appeal's view, these are assessments that do not have to be included in the operators' reports under Article 5(1), but which can be carried out by the Ministry.

Consequently, there are also procedural errors in the assessments on which the PDO approvals are based.

The environmental organisations have also pointed out certain other errors in the case processing. However, these do not affect the Court of Appeal's assessment of the impact of the procedural errors that have been identified, and the Court of Appeal will therefore not consider them.

7. Do the procedural errors render the approvals invalid?

The main rule according to case law is that a decision is invalid if there is a not entirely remote possibility that errors have affected the decision, see for example HR-2017-2247-A section 95. The same applies to a decision not to reverse an earlier decision.

The State has argued that any errors in the decision have not affected it, based on similar considerations as referred to by the majority in HR-2020-2472-P, section 243. A key point is – as the Court of Appeal has understood the State – that the approvals are in line with Norwegian petroleum policy, which has broad support in the Storting, and where combustion emissions are taken into account.

However, as referred to by the minority in HR-2020-2472-P section 279, the impact doctrine is only a general rule. It is stated there that it the preparatory work for the Public Administration Act

Section 41 states that other considerations may also be taken into account, see Innst. O. no. 2 (1966–1967) page 16, which states:

> The proposed wording does not intend to bring about any change in case law and administrative theory, as it leaves the detailed demarcation to the courts. The provision also allows, to a certain extent, for other circumstances to be taken into account – e.g. the effect of invalidity and the significance of the procedural rules in the relevant area being enforced particularly strictly.

The minority then pointed out that there were two considerations that indicated that the procedural rules had to be strictly enforced, namely that the duty to investigate had to meet the requirements of the Constitution Section 112, second paragraph, and that the error related to the implementation of Norway's EEA legal obligations under the SEA Directive.

The Court of Appeal considers that the significance of procedural errors at the PDO stage must be assessed differently from any errors in connection with the opening of fields, which was the subject of the plenary judgment, because this is the last opportunity to carry out the investigation and assessment required under Article 112(2) of the Constitution, Norway's obligations under the EEA Agreement, and also under Article 8 of the ECHR. The Court of Appeal also points out that democratic involvement is an important objective of the environmental impact assessment.

With regard to the significance of the procedural errors constituting a breach of the procedural requirements under the EIA Directive, the Court of Appeal refers to paragraph 110 of the EFTA Court's advisory opinion, which states:

> If the EEA States have failed to carry out the environmental impact assessment of a project required under the EIA Directive, they are consequently obliged to eliminate the unlawful consequences of this failure, for example by revoking or suspending the development permit.

The Court of Appeal also refers to HR-2020-2472-P, paragraph 246, where the majority, based on the requirements of EEA law, points out the difference between the actual significance of the opening decision and the PDO approval.

Based on the above, the State cannot be heard in its argument that the approvals should be maintained as valid after a balancing of interests.

The Court of Appeal's view is therefore that it follows from both general administrative law and EEA law that the PDO approvals – i.e. the Ministry's formal decisions not to reverse the original decisions – must be declared invalid.

8. The request for interim relief

8.1 Introduction

The District Court, which reached the same conclusion regarding the validity of the PDO approvals after reviewing the original decisions, granted the environmental organisations' request for interim relief. The District Court decided that the State should be prohibited from making other decisions that require valid PDO approval for Breidablikk, Tyrving and Yggdrasil until the validity of the PDO decision has been legally determined.

The environmental organisations have – as before the District Court – principally requested an injunction requiring the state to suspend the effects of the PDO approvals for Breidablikk, Tyrving and Yggdrasil.

It is a condition for interim injunctive relief under Section 34-2, first paragraph, of the Dispute Act that the claim sought to be secured, referred to as the main claim, is substantiated. Furthermore, it is a condition that there is a basis of security and that the interim injunctive relief is not disproportionate. This follows from Section 34-1, first and second paragraphs, of the Dispute Act, which reads as follows:

> (1) A temporary injunction may be granted:
> a. when the defendant's conduct makes it necessary to secure the claim temporarily because the pursuit or enforcement of the claim would otherwise be significantly impeded, or
> b. when it is necessary to obtain a temporary arrangement in a disputed legal relationship in order to avert significant damage or disadvantage, or to prevent violence that the defendant's conduct gives reason to fear.
> (2) A temporary injunction cannot be granted if the damage or disadvantage suffered by the defendant is clearly disproportionate to the plaintiff's interest in obtaining the injunction.

In the Supreme Court's ruling of 11 April 2025 (HR-2025-677-A), the Court of Appeal's ruling of 14 October 2024, which did not grant the environmental organisations' request for a temporary injunction, was quashed. It follows from Section 29-24, second paragraph, cf. Section 30-3 of the Dispute Act that the Court of Appeal shall base its new assessment on the Supreme Court's legal opinion. In its ruling, the Supreme Court clarified that in a case such as this, given that there has been a breach of the EIA Directive, the Court of Appeal cannot refrain from granting a temporary injunction on the basis of the discretionary power referred to in the introduction to Section 34-1, first paragraph, if the other conditions are met. In its ruling, the Supreme Court rejected the Court of Appeal's view that the relationship between the state authorities and the special nature of the case could warrant restraint in assessing whether an injunction should be granted.

It follows from the Court of Appeal's assessment above that the main claim – the claim that the PDO approvals are invalid, formally speaking the Ministry's decisions not to reverse them – has been substantiated.

The Court of Appeal will first consider the State's arguments that the application for a temporary injunction must be dismissed, before assessing the conditions of security and proportionality.

8.2 The question of dismissal

The State has argued that the requirements in Section 1-3, second paragraph, of the Dispute Act mean that the environmental organisations' petition for a temporary injunction must be directed against those who operate the enterprise in question, and that the petition must be dismissed when this has not been done.

The Court of Appeal finds that this argument cannot be upheld. The main claim sought to be secured is the claim that the PDO approvals are invalid. The State is therefore also the proper defendant in the application for interim relief. There is no procedural requirement that third parties must be involved in legal proceedings against the public authorities concerning the validity of decisions, and the same applies to the provisional securing of claims of invalidity.

However, the constellation of parties is relevant to what a temporary injunction may entail, cf. Section 34-3, first paragraph, of the Dispute Act, which stipulates that it is the "defendant" who may be ordered, for example, to refrain from, perform or tolerate an action. This does not preclude third parties from being indirectly affected by the injunction, but it will be relevant in the overall proportionality assessment to be carried out pursuant to Section 34-1, second paragraph, of the Dispute Act.

The State has also pointed out that the courts cannot decide on an injunction that would prevent the administration from exercising its public authority, cf. Rt-2015-1376, paragraph 27, where it was stated that if the courts cannot rule on the merits of the case, "this also applies in cases concerning temporary injunctions".

It is somewhat unclear whether this should also be understood as an argument for dismissal or as an argument on the merits. However, the Court of Appeal notes that it is established law that public law claims – claims that decisions are invalid – can also be secured by interim relief, see HR-2025-677-A section 35 with further references. When the main claim is that an administrative decision is invalid, a temporary injunction may typically prohibit the authorities from implementing the decision. However, it may also be appropriate to order the authorities to reconsider the case or to do so within a certain period of time, see HR-2024-900-U Section 15. This may be particularly relevant in cases of rejection, precisely because the courts cannot rule on the merits of the case. The question in Rt-2015-1376, to which the State has referred, was whether a temporary injunction could be granted to require Oslo Børs ASA to resume the listing of a company. Because the courts could not rule that the company should be resumed, the claim of invalidity could not be secured in that way either.

8.3 The condition of basis of security

Section 34-1, first paragraph, of the Dispute Act contains two alternative bases of security, the so-called security alternative in subparagraph a and the settlement alternative in subparagraph b.

According to *litra* b, a temporary injunction may be granted "when it is necessary to obtain a temporary arrangement in a disputed legal relationship in order to avert significant damage or disadvantage".

The environmental organisations have argued that the combustion emissions resulting from the invalid PDO approvals constitute "significant damage or disadvantage". The State has contested this, partly because it is net emissions that must be assessed, and because the time perspective until a final decision on the main claim is made is, in any case, no more than one year.

The expert witness Professor Helge Drange at the Bjerknes Centre for Climate Research, University of Bergen, has explained to the Court of Appeal that combustion emissions from extraction at Tyrving and Breidablikk in the second half of 2025 and first half of 2026 will be 2.39 and 9.53 million tonnes of CO2 equivalents, respectively. This will contribute to global warming by 0.000001 and 0.000005 degrees, respectively. The Court of Appeal finds that the calculation as such is not disputed. However, since larger extraction is planned in 2025 than in 2026, the Court of Appeal assumes that combustion emissions from extraction in the coming year will be somewhat lower.

The Court of Appeal has no doubt that the extraction of oil that will result in combustion emissions of several million tonnes of CO2 constitutes "significant damage" within the meaning of the provision. The fact that the oil that is extracted and combusted undoubtedly has societal benefits does not alter this, but in the Court of Appeal's view is a matter for the proportionality assessment. The Court of Appeal also considers that it is irrelevant to the assessment of the basis for security whether more oil would have been extracted elsewhere in the world if it had not been extracted from the fields here.

The Yggdrasil area is much larger than both the Tyrving field and the Breidablikk field. Combustion emissions from what is extracted in the first year of production are estimated at 28.8 million tonnes of CO2 equivalents. However, production is not scheduled to start until 2027, i.e. after the estimated preliminary injunction period.

However, the Court of Appeal has no doubt that the environmental impact of the ongoing development also represents "significant damage". The Court of Appeal points out that the development as such has no direct social benefit unless viewed in the context of future extraction and associated combustion emissions. The development is extensive, and the Court of Appeal finds that permits from the environmental authorities have been granted on the basis of the Ministry of Energy's approval of the PDO with a view to oil extraction. An illustration of the negative environmental consequences during the development period, as pointed out by environmental organisations, is that the development is taking place in an area that is critical for the vulnerable stock of sand eels. Based on a statement from the Institute of Marine Research dated 30 April 2024 and the Norwegian Environment Agency's decision of 17 June 2025, the Court of Appeal considers that development activities and production drilling pose a risk of damage to the sand eel population. The Court of Appeal is aware that the Norwegian Environment Agency has granted permission for production drilling in its decision and that certain restrictions have been imposed. However, consideration of the environmental risk

under *litra* b must, however, be given greater weight when the PDO approval on which the development activity is based is invalid.

There is therefore basis of security pursuant to Section 34-1, second paragraph, letter b of the Dispute Act. It is therefore not necessary for the Court of Appeal to consider the security alternative in *litra* a.

8.4 Proportionality assessment

The proportionality assessment pursuant to Section 34-1, second paragraph, of the Dispute Act is based on a broad weighing of all interests involved, see Ot.prp. no. 65 (1990–91), page 292. In weighing these interests, the courts may take into account a wide range of considerations, see HR-2025-677-A paragraph 43. It follows from case law that considerations other than those of the parties to the case may also be relevant.

However, the environmental organisations have argued that it follows from EEA law and the EFTA Court's advisory opinion that the courts must halt the project in the event of a breach of the EIA Directive. The environmental organisations' view is thus based on the fact that there is no room for any further assessment of proportionality.

In paragraph 110 of the EFTA Court's Advisory Opinion, it is stated, in continuation of what is reproduced above in point 7 on the question of invalidity:

> However, EEA law does not preclude subsequent approval by means of such an assessment while the project is ongoing or even after its completion, on two conditions firstly, that national rules allowing such subsequent approval do not enable the parties concerned to circumvent the provisions of EEA law or to refrain from applying them, and, secondly, that an assessment carried out for approval purposes is not conducted solely with regard to the future environmental impact of the project, but must also take into account the environmental consequences in the period after its completion (see the judgment in *Comune di Corridonia and Others,* joined cases C-196/16 and C-197/16, cited above, paragraph 43, and the judgment of 28 February 2018 in *Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 30).

This is also reflected in the summary in paragraph 120, as follows:

> In light of all the above considerations, the answer to the second question must be that Article 3 of the EEA Agreement requires a national court, insofar as possible under national law, is obliged to remove the unlawful consequences of a failure to carry out the full environmental impact assessment required by the EIA Directive. However, this does not preclude subsequent approval by carrying out such an assessment while the project is ongoing or even after its completion, subject to the following two conditions:
>
> > - that national rules allowing such approval do not enable the parties concerned to circumvent the provisions of EEA law or to refrain from applying them, and

> - that any subsequent or supplementary assessment carried out for approval purposes should not only consider the future environmental impact of the project, but also take into account the environmental impact of the project after its completion.

On this basis, the Court of Appeal considers that the EFTA Court's advisory opinion, read in context, cannot be understood to mean that EEA law requires the project to be halted even if a breach of the Directive is found. Breaches of the Directive can be remedied while the project is ongoing, provided that this does not involve circumvention of EEA law, cf. below. HR-2025-677-A cannot be understood otherwise, see in particular paragraph 58, which is based on the fact that it must be assessed whether the proportionality requirement is met. With regard to paragraphs 117–119 of the EFTA Court's advisory opinion, to which the environmental organisations have referred, the Court of Appeal considers that these concern the question of whether the approvals can be upheld as valid, and not the question of the immediate effects of invalidity.

The Court of Appeal adds that it cannot be inferred from the ECHR or international law that stricter requirements for redress apply prior to a final decision on a breach of the obligations to investigate and assess climate impacts than those that apply under the EIA Directive.

Viewed in isolation, the significant adverse effects associated with the three fields indicate that the projects should be halted. In the case of Yggdrasil, the development itself also has no utility value. In its detailed proportionality assessment, however, the Court of Appeal attaches considerable weight to the fact that the decisions have not been found to be invalid due to a lack of material competence, but due to procedural errors in the form of inadequate investigation and assessment. Under general administrative law, the legal consequence of invalidity due to procedural errors is that the administration must re-examine the case. In this connection, the administration has a certain period of time in which to act, during which the relationship with the companies that have received the approvals – which are not parties to the lawsuit – must also be taken into consideration.

The Court of Appeal further points out that the consideration of predictability in the exercise of public authority is particularly important for Norwegian petroleum activities, not only for the sake of the operators, but also for the sake of jobs, local communities and confidence in Norway as a supplier of oil and gas. Requiring the state to "suspend the effect" of the PDO approvals, as requested by the environmental organisations, would have meant that activity would have come to a halt as new permits were required. The timing would have been somewhat random for each individual project, but it must be assumed that the injunction would have led to a relatively rapid halt in activity for all three projects. Such a halt would have had major repercussions due to the complexity of the projects, which require time-critical interaction between a large number of players and companies that are regulated by a number of contracts. This applies in particular to Yggdrasil, where development is still ongoing. For the same reason, the projects would not be able to be started immediately even if new approvals were granted. Such effects are contrary to

the principle that the administration has a certain grace period in the event of invalidity due to procedural errors, and considerations of predictability.

On the basis that no material lack of competence has been established and the aforementioned considerations, the Court of Appeal finds, after an overall assessment, that an order to the State to "suspend the effects" of the PDO approvals would be contrary to the principle of proportionality in Section 34-1, second paragraph, of the Dispute Act, which states that the damage or disadvantage caused by the injunction must not be "manifestly disproportionate" to the interests that justify the injunction.

However, the Court of Appeal is not bound by the claim for interim relief, but must, pursuant to Section 34-3, second paragraph, second sentence, cf. first paragraph, of the Dispute Act, assess whether there are other interim measures that fall within the proportionality limitation and are suitable for securing the main claim.

As mentioned in the introduction – with reference to HR-2024-900-U – in the case of a temporary injunction to secure a claim that an administrative decision is invalid, it may be appropriate to order the authorities to re-examine the case within a certain period of time.

Since the projects are ongoing and cause significant damage to the environment, as mentioned in the assessment of the basis of security, it is, in the opinion of the Court of Appeal, particularly important that the Ministry has grounds for re-examining the case shortly after a final decision has been made that the PDO approvals are invalid. The Court of Appeal also refers here to the EEA legal principle of effectiveness and the principle of effective protection of EEA rights, cf. HR-2025-677-A section 44 with further references.

The Court of Appeal therefore finds that the Ministry should be ordered to re-examine the applications for PDO approval so that new decisions can be made within six months of the Court of Appeal's judgment and ruling or, if the validity of the Ministry of Energy's decisions of 28 August 2024 and 20 December 2024 has not been legally determined by then, within two months of a final judgment on the validity of the decisions.

It follows from general administrative law that the administration has a duty to re-examine the case in the event of a final judgment of invalidity. In the opinion of the Court of Appeal, it is not disproportionate to order the Ministry to initiate the case processing by conducting the investigations and assessments that justify the Court of Appeal's conclusion that the decisions are invalid, before this has been legally decided.

In addition to meeting the requirements for investigation and assessment, the Ministry's new case processing must ensure that the environmental impact assessment is carried out retrospectively and while the projects are ongoing, cf. the EFTA Court's advisory opinion, paragraphs 110 and 120, reproduced above. A key prerequisite is that the new case processing does not

constitute a circumvention of EEA law. The process must be designed in such a way that the outcome is open, cf. Article 6(4) of the Directive.

Although the Court of Appeal has not found that the operators' reports pursuant to Article 5(1) of the EIA Directive are insufficient, it is up to the Ministry itself to decide whether the considerations of proper case handling and compliance with the Directive require that new consultations be carried out in accordance with Article 6. The deadline has been set in light of this.

The Court of Appeal's conclusion following this is that the injunction imposed by the District Court's ruling is amended to require the State to re-examine the applications for PDO approval so that new decisions can be made within six months of the Court of Appeal's judgment and ruling or – if the validity of the decisions has not been legally determined by then within two months of a final decision on their validity.

9. Legal costs

9.1 Legal costs for the Court of Appeal in the lawsuit

The Greenpeace Norden Association and Natur og Ungdom have won the case and are entitled to full compensation for their legal costs, cf. Section 20-2, first and second paragraphs, of the Dispute Act.
The Court of Appeal cannot see that there are compelling reasons that make it reasonable to exempt the State, represented by the Ministry of Energy, from liability for costs, cf. Section 20-2, third paragraph, of the Dispute Act.

In his submission of 4 September 2025, Attorney Sandvig stated that one tenth of the fees specified for Borgarting Court of Appeal apply to the preliminary injunction case. This distribution between the validity case and the preliminary injunction case must also apply to the costs of expert witnesses and other expenses.

Based on the statement and the supplementary statement of 11 September 2025, the claim for the appeal hearing in the validity case amounts to NOK 2,711,475 including VAT for 715.5 hours of work and NOK 144,638 including VAT in expenses, totalling
NOK 2,856,113. In addition, there is the claim for the proceedings before the EFTA Court of NOK 1,604,688 including VAT for 370.50 hours of work and NOK 161,920 including VAT for expenses. In total, the claim for the Court of Appeal amounts to NOK 4,622,721 including VAT.

The claim appears to be high. At the same time, the case raises a number of unresolved issues. The case also contains a large volume of documents, both relating to the facts of the case and legal sources. The Court of Appeal finds that the costs must be considered necessary, cf. Section 20-5 of the Dispute Act, and upholds the claim for costs.

9.2 Legal costs for the Court of Appeal in the preliminary injunction case

The State's appeal has been partially successful in that an injunction with a narrower scope than that determined by the district court has been granted. However, the Greenpeace Norden and Natur og Ungdom associations have been granted a temporary injunction, and the Court of Appeal finds that they have been upheld "in essence" pursuant to Section 20-2, first and second paragraphs, of the Dispute Act. The exception in the third paragraph does not apply. In any event, the respondents have been upheld in matters of "significance", and the Court of Appeal considers that there are compelling reasons to award them legal costs pursuant to Section 20-3 of the Dispute Act, cf. Article 9 of the Aarhus Convention.

The respondents have submitted a claim for costs of NOK 2,055,952, including VAT, to the Court of Appeal in the preliminary injunction case, for the first hearing. The amount relates to 388 hours of work and NOK 205,925 in expenses, including VAT.

For the second hearing of the preliminary injunction case in the Court of Appeal, which was heard together with the main case, cf. above, the claim amounts to NOK 317,346 including VAT. The amount relates to 79.5 hours of work and NOK 16,071 in expenses, including VAT.

The total amount for the two hearings is NOK 2,373,298. The Court of Appeal also finds these costs necessary, cf. Section 20-5 of the Dispute Act, and upholds the claim for costs.

9.3 Legal costs for the District Court

The Court of Appeal's ruling shall, in principle, form the basis for assessing liability for legal costs in the District Court, cf. Section 20-9, second paragraph, of the Dispute Act, but it must be taken into account that the validity of the original decisions was finally determined in the District Court, cf. point 2 above. The environmental organisations shall also be awarded legal costs in the district court in accordance with the main rule in Section 20-2, first and second paragraphs, of the Dispute Act.
The exception in the third paragraph does not apply.

In its decision on costs, the district court did not divide the costs of the lawsuit and the injunction case. In any event, the Court of Appeal finds no reason to make changes to the district court's decision on legal costs, in which the environmental organisations were awarded a total of NOK 3,260,427 in legal costs for the validity case and the injunction case.

The judgment and rulings are unanimous. The fact that the decision was not handed down within the statutory time limit is due to the large scope of the case.

CONCLUSION IN JUDGEMENT AND RULING

1. The appeal is dismissed insofar as it concerns the claims that the decisions to approve the PDOs of 29 June 2021 (Breidablik), 5 June 2023 (Tyrving) and 27 June 2023 (Munin, Fulla and Hugin (Yggdrasil)) are invalid.

2. The decisions of the Ministry of Energy of 28 August 2024 and 20 December 2024 not to revoke the approval of the PDO for Tyrving, Yggdrasil and Breidablikk are declared invalid.

3. The State, represented by the Ministry of Energy, shall pay the costs of the appeal proceedings, NOK 4,622,721 – four million six hundred and twenty-two thousand seven hundred and twenty-one – including VAT in legal costs to the Greenpeace Nordic Association and Nature and Youth jointly within two weeks of the pronouncement of this judgment.

4. No changes are made to the district court's decision on legal costs.

CONCLUSION IN THE JUDGMENT

1. The State, represented by the Ministry of Energy, is ordered to reconsider the applications for PDO approval so that new decisions can be made within six months of the Court of Appeal's judgment and ruling or – if the validity of the Ministry of Energy's decisions of 28 August 2024 and 20 December 2024 has not been legally determined – within two months of a final decision on the validity of the decisions.

2. In legal costs for the Court of Appeal, the State, represented by the Ministry of Energy, shall pay NOK 2,373,298 – two million three hundred and seventy-three thousand two hundred and ninety-eight – including value added tax in legal costs to the Greenpeace Nordic Association and Nature and Youth jointly within two weeks of the pronouncement of this ruling.

3. No changes are made to the district court's decision on legal costs.

[Judges names]

Document in accordance with the original.