ESA | EFTA Surveillance Authority

Brussels, 23 April 2026
Case No: 86194
Document No: 1566880
Decision No: 081/26/COL

Norwegian Ministry of Climate and Environment
Postboks 8013 Dep
N-0030 Oslo
Norway

Dear Sir or Madam,

Subject: Letter of formal notice to Norway concerning the incorrect and incomplete implementation and application of Article 4(7) of the Water Framework Directive

1 Introduction

This case concerns the incorrect and incomplete implementation of Article 4(7)(c) of Directive 2000/60/EC establishing a framework for Community action in the field of water policy[1] ("Water Framework Directive" or "WFD") into Norwegian law, and Norway's failure to correctly apply the WFD with regards to two projects entailing the disposal of mining waste into water bodies.

Article 4(1)(a)(i) WFD requires the EEA States to prevent deterioration of the status of all surface water bodies. As an exemption, states may authorise projects leading to the deterioration of a water body subject to the strict conditions in Article 4(7) WFD.

The Authority considers that Article 4(7) WFD has not been implemented into Norwegian law with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty.

Norway has applied Article 4(7) WFD for the purpose of allowing the disposal of mining waste into water bodies in Førdefjord and Repparfjord. In both instances, the disposal of mining waste is deemed to lead to a deterioration of the ecological status in the water bodies concerned.

The Authority considers that not all the conditions for the application of Article 4(7) WFD to these projects have been fulfilled, and as such the use of that exemption is invalid. Specifically, the relevant authorisations do not satisfy the criteria of pursuing an "overriding public interest" within the meaning of Article 4(7)(c) WFD.

By this letter of formal notice, the Authority therefore concludes that:

(i) Norway has failed to correctly and completely implement Article 4(7) WFD into its national legal system.

(ii) Norway has incorrectly applied Article 4(1) in conjunction with Article 4(7) WFD by authorising, and maintaining in force the authorisation of, projects entailing the disposal of mining waste in Førdefjorden-ytre, Repparfjorden indre and Repparfjorden ytre without a valid derogation.

2 Background information and correspondence

On 21 January 2021, ESA opened this case concerning the deterioration of water bodies due to disposal of mining waste.

[1] OJ L 327, 22.12.2000, p. 1–73.

By letter dated 26 October 2021, the Authority's Internal Market Affairs Directorate ("the Directorate") sent a request for information to the Norwegian Government.[2] The request focused on the implementation into Norwegian law of Articles 4(3) and 4(7)(c) WFD and the national permitting regime for mining waste disposal into water bodies. The Norwegian Government replied by letter dated 15 December 2021.[3]

The Authority subsequently issued an open call for information to stakeholders and interested parties on the effects of mining waste on Norwegian water bodies,[4] and commissioned a technical report on the same topic.[5]

The case was discussed at the Package Meeting in October 2022.[6]

By e-mail of 1 February 2023, the Norwegian Government informed the Authority that they had initiated an evaluation of whether the Norwegian implementation of Article 4(7) of the Water Framework Directive into Section 12 of the Norwegian Water Regulation should be amended.[7]

On 30 August 2023, the Norwegian Government published for consultation a proposal that included an amendment of Section 12 of the Norwegian Water Regulation.[8]

On 25 January 2024, the Norwegian Government adopted amendments to Sections 28, 29, 33 of, and Annex 1 to the Norwegian Water Regulation.[9] On 30 January 2024, the Norwegian Government announced the amendments on its website, announcing at the same time that the proposed amendments to Section 12 of the Norwegian Water Regulation would be decided at a later date.[10]

By letter dated 12 December 2024, the Directorate provided the Norwegian Government with an update on the case.[11] The Directorate explained that the scope of the case had been limited to the correct implementation and application of Article 4(7) WFD in Norway. The Norwegian Government replied by letter dated 31 January 2025.[12]

The case was discussed at the Package Meeting in November 2025.[13]

3 Relationship to previous complaint cases of the Authority

The Authority has previously examined issues related to the WFD and the disposal of mining waste in Norway through multiple complaint cases.

In 2017, the Authority closed a complaint case concerning an alleged failure by Norway to comply with the WFD when approving the disposal of mining waste into Førdefjord.[14] On

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[2] Document No 1227895.
[3] Document No 1349557.
[4] https://www.eftasurv.int/newsroom/updates/call-information-effects-mining-waste-norwegian-fjords-and-water-bodies.
[5] Document No 1487006.
[6] Document No 1325668, pages 61-62.
[7] Document No 1351734.
[8] https://www.regjeringen.no/no/dokumenter/horing-forslag-til-endringer-i-vannforskriften/id2992564/?expand=horingsnotater.
[9] *Forskrift om endring i forskrift 15. desember 2006 nr. 1446 om rammer for vannforvaltningen,* FOR-2024-01-25-131. The amendments entered into force on 1 February 2024.
[10] https://www.regjeringen.no/no/aktuelt/endringar-i-vassforskrifta/id3023370/.
[11] Document No 1481913.
[12] Document No 1514979.
[13] Document No 1574576.
[14] Case 77424, Decision No 009/17/COL of 18 January 2017.

the basis of a limited review, the Authority concluded that the Norwegian authorities had not committed a "manifest error of assessment" in granting the permits.

In 2021, the Authority closed two complaint cases concerning an alleged failure by Norway to comply with the WFD by issuing, renewing and/or failing to withdraw permits allowing for the disposal of mining waste directly into a number of Norwegian fjords, including Repparfjord and Førdefjord.[15] The Authority concluded that there was insufficient evidence that Norwegian authorities had acted in breach of EEA law at the time of its decision-making.

The Authority's closure decisions in 2017 and 2021 were partly based on an assessment that the generation of income and employment could be considered as overriding public interest within the meaning of Article 4(7)(c) WFD.

In light of the EFTA Court's advisory opinion in E-13/24 *Friends of the Earth Norway*[16], the Authority considers that this assessment is no longer valid and accordingly deems it necessary to re-examine its evaluation.

4 Relevant EEA law

4.1 Main part of the EEA Agreement

Article 7 EEA reads:

Acts referred to or contained in the Annexes to this Agreement or in decisions of the EEA Joint Committee shall be binding upon the Contracting Parties and be, or be made, part of their internal legal order as follows :

(a) an act corresponding to an EEC regulation shall as such be made part of the internal legal order of the Contracting Parties;
(b) an act corresponding to an EEC directive shall leave to the authorities of the Contracting Parties the choice of form and method of implementation.

4.2 The Water Framework Directive

The Water Framework Directive was incorporated into the EEA Agreement by Joint Committee Decision ("JCD") No 125/2007 of 28 September 2007, which entered into force on 1 May 2009.[17]

Article 1 WFD, entitled "Purpose", provides as follows:

> "*The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:*
>
> *(a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;*
>
> *(b) promotes sustainable water use based on a long-term protection of available water resources;*
>
> *(c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;*

[15] Decision No 273/21/COL in Case No 80570, and Decision No 274/21/COL in Case No 78448, both of 8 December 2021.
[16] EFTA Court, Case E-13/24, *Friends of the Earth Norway,* 5 March 2025.
[17] OJ L 327, 22.12.2000, p. 1.

(d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and

(e) contributes to mitigating the effects of floods and droughts and thereby contributes to:

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

— a significant reduction in pollution of groundwater,

— the protection of territorial and marine waters, and

— achieving the objectives of relevant international agreements, including those which aim to prevent and eliminate pollution of the marine environment, by Community action under Article 16(3) to cease or phase out discharges, emissions and losses of priority hazardous substances, with the ultimate aim of achieving concentrations in the marine environment near background values for naturally occurring substances and close to zero for man-made synthetic substances."

Article 4 WFD, entitled "Environmental objectives", provides as follows, insofar as relevant:

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

(a) for surface waters

(i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;

(ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

(…)

7. Member States will not be in breach of this Directive when:

— failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or

— failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

(a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;

(b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;

(c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and

(d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option."

Article 24, entitled "Implementation", provides as follows, insofar as relevant, as adapted by Protocol 1 EEA and read in the light of JCD No 125/2007:

1. *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest [1 May 2009]. They shall forthwith inform the [EFTA Surveillance Authority] thereof.*

   When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

5 Relevant national law[18]

5.1 The Norwegian Pollution Control Act

The Norwegian Pollution Control Act (*forurensningsloven*) provides as follows, insofar as relevant:

§ 7 Obligation to Avoid Pollution

No one shall have, do, or initiate anything that may pose a risk of pollution unless it is lawful under Sections 8 or 9, or permitted by a decision pursuant to Section 11.

When there is a risk of pollution in violation of the law or decisions pursuant to the law, the person responsible for the pollution must take measures to prevent it from occurring. If the pollution has occurred, they must take measures to stop, remove, or limit its effects. The responsible party is also obligated to take measures to remedy damages and inconveniences caused by the pollution or the measures to counteract it. The obligation under this paragraph applies to measures that are reasonably proportionate to the damages and inconveniences to be avoided.

The provision in the second paragraph also applies to pollution permitted under Section 11 if it is evident that the decision can be reversed under Section 18, first paragraph, numbers 1 or 2. The same applies if, for the same reasons, it is evident that an exception from regulations permitting pollution can be made under Section 9, third paragraph.

[18] Unless otherwise indicated, the translations are the Authority's own.

The pollution control authority can require the responsible party to take measures pursuant to the second paragraph, first to third sentences, within a specified deadline.

(…)

§ 11 Special Permission for Polluting Activities[19]

The pollution control authority may, upon application, grant permission for activities that may result in pollution. In special cases, the pollution control authority may grant permission without an application and may impose conditions in such permission that replace the conditions under Section 16.

(…)

The pollution control authority may issue regulations requiring that certain types of activities, which by their nature may cause pollution, must apply for permission under this paragraph.

Pollution issues should, if possible, be resolved for larger areas as a whole and based on comprehensive and zoning plans. If the activity would be in conflict with final plans under the Planning and Building Act, the pollution control authority shall only grant permission under the Pollution Control Act with the consent of the planning authority.

When the pollution control authority decides whether a permit is to be granted and lays down conditions pursuant to section 16, it shall pay particular attention to any pollution-related nuisance arising from the project as compared with any other advantages and disadvantages so arising.

5.2 The Norwegian Mineral Act

Article 43 of the Norwegian Mineral Act (*mineralloven*) provides:

The extraction of mineral deposits exceeding a total volume of 10,000 m³ of undisturbed (in situ) material requires an operating licence from the Directorate of Mining. Test extraction pursuant to Sections 12 and 20 does not require an operating licence.

An operating licence may only be granted to a party holding extraction rights. In assessing whether an operating licence should be granted, emphasis shall be placed on whether the applicant is qualified to exploit the deposit. Conditions may be attached to the licence. The operating area shall be specified in the licence. An application for an operating licence shall include an operating plan.

The licence may be time-limited. It may be stipulated that the licence shall be revised after a specified period. In any event, the licence may be revised every ten years.
The provisions of Section 17, second to sixth paragraphs, apply correspondingly to the processing of applications for operating licences in Finnmark.

The Ministry may adopt regulations concerning:

a. operating licences and exemptions from the requirement for an operating licence,

[19] Section 11(5) as translated in the Request to the EFTA Court in case E-13/24.

b. requirements for professional qualifications of personnel responsible for the operation of mineral deposits under this Act, as well as rules on the recognition of equivalent qualifications for citizens of the EEA area.

5.3 The Water Regulation

The Norwegian Water Regulation (*vannforskriften*) entered into force on 1 January 2007 and, according to a Form 1 submitted by the Norwegian Government to the Authority on 23 April 2009,[20] implements the Water Framework Directive into Norwegian law.[21] It provides as follows, insofar as relevant:[22]

> ***§ 4 Environmental Objectives for Surface Water***
> *The status of surface water shall be protected against deterioration, improved, and restored with the aim that the water bodies shall have at least good ecological and good chemical status, in accordance with the classification in Annex V and the environmental quality standards in Annex VIII. Substances numbered 34 to 45 in Annex VIII, Part A, are included in the assessment of chemical status from December 22, 2018.*
>
> *The environmental quality standards in Annex VIII do not apply if it can be documented that exceedances of the environmental quality standards are due to long-range transboundary pollution.*
>
> ***§ 12 New Activities or Interventions***
>
> *New activity or new interventions in a water body can be carried out even though the environmental objective in sections 4 to 6 will not be attained or that the status is deteriorated if the cause is:*
>
> *a) new modifications to the physical characteristics of a surface water body or alterations to the levels of bodies of groundwater, or*
>
> *b) new sustainable activity causes deterioration in a water body from high status to good status.*
>
> *In addition these requirements have to be fulfilled:*
>
> *a) all practicable steps have to be taken to limit an adverse development in the status of the water body,*
>
> *b) the benefits for society of the new intervention or activities shall be greater than the loss of environmental quality, and*
>
> *c) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means, which are a significantly better environmental option.*
>
> *Where new modifications or alterations are implemented during a plan period, the reason for this shall be included in an updated river basin management plan. If permission is given to new activity or new interventions, this shall also transpire of the river basin management plan*."

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[20] Document No 516263.
[21] Forskrift om rammer for vannforvaltningen (vannforskriften), FOR-2006-12-15-1446, available online in Norwegian on Lovdata.
[22] Where available, translations are from the EFTA Court's judgment in case E-13/24.

6 The Authority's assessment

In this Section, the Authority will first set out some preliminary remarks on Article 4(7) WFD (Section 6.1). The Authority will then set out its assessment of the incorrect and incomplete implementation of Article 4(7)(c) WFD into Norwegian law (Section 6.2). Lastly, the Authority will set out its assessment concluding that, by allowing the disposal of mining waste into Førdefjorden-ytre (Section 6.3) and Repparfjord (Section 6.4), Norway has failed to fulfil its obligations under Article 4(1) read in conjunction with Article 4(7) WFD.

6.1 Preliminary remarks on Article 4(7) WFD

Article 4(1)(a)(i) WFD requires EEA States to implement the necessary measures to prevent deterioration of the status of all bodies of surface water. This obligation, also referred to here as the *non-deterioration requirement or objective* is, along with the obligation to achieve good status, one of the key environmental objectives of the WFD.

It is settled case law that EEA States are required to refuse authorisation for a project where it is such as to result in deterioration of the status of the body of water concerned or to jeopardise the attainment of good surface water or groundwater status, unless the view is taken that the project is covered by a derogation under Article 4(7) WFD.[23]

Article 4(7) WFD provides that EEA States will not be in breach of the Directive, when the conditions set out therein are fulfilled. As an exception to the general obligation to prevent deterioration in the status of water bodies and to achieve good status, Article 4(7) WFD and its conditions must be interpreted strictly.[24]

Article 4(7) WFD may be applied in two alternative scenarios:

i) Where the failure to achieve good groundwater status, good ecological status, or, where relevant, good ecological potential, or to prevent deterioration in the status of a body of surface water or groundwater, is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or
ii) Where the failure to prevent deterioration from high status to good status of a surface water body is the result of new sustainable human development activities.

In both instances, the conditions in Article 4(7)(a) to (d) must be satisfied cumulatively. Among these, Article 4(7)(c) WFD requires that *"the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development […]".*

As observed by the EFTA Court in *Friends of the Earth Norway,*[25] Article 4(7)(c) WFD must be understood as providing for two alternative scenarios. First, when the project in question will serve an overriding public interest and, second, when the benefits to the environment and society linked to the achievement of the objectives set out in Article 4(1) will be

[23] EFTA Court, Case E-7/25, *Ólafur Þór Jónsson and Others v The Icelandic Environment and Energy Agency and Benchmark Genetics Iceland hf.,* 16 December 2025, paragraph 55; CJEU, Case C-525/20 *Association France Nature Environment v Permier ministre, Ministre de la Transition écologique et solidaire,* 5 May 2022, paragraph 25; CJEU, Case C-535/18, *IL and others v Land Nordrhein-Westfalen,* 28 May 2020, paragraph 74; CJEU, Case C-346/14, *Commission v Austria,* 4 May 2016, paragraph 64, CJEU, Case C-461/13, *Bund für Umwelt und Naturschutz Deutschland eV v Bundesrepublik Deutschland,* 1 July 2015, paragraph 50.
[24] EFTA Court, Case E-7/25, *Ólafur Þór Jónsson and Others v The Icelandic Environment and Energy Agency and Benchmark Genetics Iceland hf.,* 16 December 2025, Fparagraph 53 and Case E-13/24, *Friends of the Earth Norway,* 5 March 2025, paragraph 27.
[25] EFTA Court, Case E-13/24, *Friends of the Earth Norway,* 5 March 2025, paragraph 30.

outweighed by the benefits to human health, the maintenance of human safety, or the sustainable development resulting from those projects.

Moreover, Article 4(7)(b) WFD requires that "*the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan* [("RBMP")] *required under Article 13 and the objectives are reviewed every six years*".

Regarding the condition in Article 4(7)(b) WFD, it is clear from the case law of the CJEU and the EFTA Court that it may be regarded as satisfied where the reasons behind the project concerned are set out, at the date of authorisation of that project, only in the decision authorising it.[26] [27]

In *I.L. and Others*[28], the CJEU held that Article 4 WFD obliged EEA States to assess the compliance of a project with the standards set out in that provision prior to its approval. Thus, the reasons for the modifications or alterations justifying the derogation must be specifically set out and explained in advance of authorising the project.

6.2 Norway has failed to correctly and completely implement Article 4(7)(c) WFD into its national law

6.2.1 Implementation of Directives in EEA law

It follows from Article 7 of the EEA Agreement that the EEA States have the choice of form and method when implementing directives into their legal order.[29] However, the EFTA Court has held that provisions of directives must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty and that EEA States must ensure full application of directives not only in fact, but also in law.[30]

6.2.2 The implementation of Article 4(7) WFD in Section 12 of the Norwegian Water Regulation

It follows from Article 1 WFD that the purpose of the Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters, and groundwater, which serves, amongst other things, to prevent deterioration to such bodies of water.

Article 4(1)(a)(i) WFD obliges EEA States to implement the necessary measures to prevent deterioration of the status of all bodies of surface water, the so-called *non-deterioration objective*.

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[26] CJEU, C-525/20, *Association France Nature Environnement,* 5 May 2022, paragraph 44; EFTA Court, Case E-7/25 *Ólafur Þór Jónsson and Others,* 16 December 2025, paragraph 70.

[27] This is elaborated on further in CIS Guidance Document No 36, which states that Article 4(7)(b) is a "reporting obligation and does not mean that Member States must wait until the publication of the River Basin Management Plan before allowing a new physical modification or new sustainable development activity to proceed". See Common Implementation Strategy for the Water Framework Directive and the Floods Directive, *Guidance Document No. 36, Exemptions to the Environmental objectives according to Article 4(7)*, *new modifications to the physical characteristics of surface water bodies, alterations to the level of groundwater, or new sustainable human development activities,* endorsed by EU Water Directors at their meeting in Tallinn on 4-5 December 2017, available at: https://circabc.europa.eu/ui/group/9ab5926d-bed4-4322-9aa7-9964bbe8312d/library/b94d0e1e-0a8f-4087-a4af-e336b9e620b6/details.

[28] Case C-535/18, *IL and others v Land Nordrhein-Westfalen,* 28 May 2020, paragraph 75.

[29] See EFTA Court, Case E-15/12, *Jan Anfinn Wahl v. Iceland*, 22 July 2013, paragraph 49 and Case E-12/13 *EFTA Surveillance Authority v Iceland*, 11 February 2014, paragraph 67.

[30] See EFTA Court, Case E-15/12, *Jan Anfinn Wahl v. Iceland*, 22 July 2013, paragraphs 50-51 and 56. See also Case E-12/13 *EFTA Surveillance Authority v Iceland*, 11 February 2014, paragraph 70.

Article 4(7) WFD establishes a derogation from the non-deterioration objective. It provides that EEA States will not be in breach of the WFD if all the conditions of the provision are met.

Among those conditions, Article 4(7)(c) WFD is composed of two alternative, non-mutually exclusive conditions. In order to fulfil the requirements of the provision, the modifications or alterations must fulfil one or both conditions. The first is that the reasons for the modifications or alterations are of overriding public interest. The second is that the benefits to the environment and to society of achieving the objectives set out in Article 4(1) are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety, or to sustainable development.[31]

The Directive was implemented into Norwegian law through Regulation No 1446 of 15 December 2006 on a framework for water management (*forskrift om rammer for vannforvaltningen*) ("the Water Regulation"). Article 4(7) WFD is implemented in Norwegian law by Section 12 Water Regulation. Article 4(7)(c) WFD is implemented into Section 12, second paragraph, subclause (b), which states that "*the benefits for society of the new intervention or activities shall be greater than the loss of environmental quality".*

6.2.3 The Authority's assessment of Norway's implementation

The question of whether Section 12 Water Regulation adequately implements Article 4(7)(c) WFD has been discussed in the Authority's correspondence with the Norwegian Government. In particular, the Norwegian Government sets out its position in letters of 15 December 2021[32] and 31 January 2025.[33]

In its letter of 15 December 2021, Norway acknowledged that the wording of the Norwegian provision is not a direct translation of Article 4(7)(c) WFD.[34] Norway explained that Section 12, second paragraph, subclause (b) of the Water Regulation is intended to reflect both the alternative criteria listed in Article 4(7)(c) WFD.[35] Moreover, Norway submitted that the interpretation of Norwegian law is guided by a number of interpretation principles. Among these is "the presumption principle", which entails that Norwegian national law transposing EEA legislation (or other international law) is presumed to be in accordance with that legislation, and that if the wording of the national provision leaves any room for interpretation, the national provision shall be interpreted in such a way that a uniform application of the EEA rule is achieved.[36]

On 30 August 2023, the Ministry published for consultation a proposal, including an amendment of Section 12 Water Regulation.[37] The proposed amendment would replace the wording "*the benefits for society of the new intervention or activities shall be greater than the loss of environmental quality"* with "[t]*he interventions or activities shall be justified by overriding public interests, or their benefits to human health, safety or sustainable development shall outweigh the benefits to the environment and to society of achieving the environmental objectives*".[38]

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[31] See EFTA Court Case E-13/24, *Friends of the Earth*, paragraph 30.
[32] Document 1349557.
[33] Document 1514979.
[34] Document 1349557, p. 4, question 2.2.
[35] Document 1349557, p. 4, question 2.3.
[36] Document 1349557, p. 4, question 2.4.
[37] The consultation paper is available at https://www.regjeringen.no/contentassets/ad714feed8a243a2a70d4604d9c412b1/horingsnotat-endringer-i-vannforskriften-230830.pdf.
[38] Page 3 of the consultation paper, the Authority's own translation. In Norwegian, the provision reads: *«Inngrepene eller aktivitetene skal være begrunnet i overordnede samfunnsinteresser, eller deres nytte for menneskers helse, sikkerhet eller en bærekraftig utvikling skal være større enn nytten for miljøet og samfunnet av at miljømålene nås*».

According to the Ministry, the proposed amendment would bring the wording of Section 12(2)(b) Water Regulation closer to that of Article 4(7)(c) WFD.[39] However, the use of "and/or" in Article 4(7)(c) is replaced with "or" in the proposed amendment to Section 12 Water Regulation. The Ministry has explained that this makes the wording of the provision somewhat simpler, while, in its view, not altering the substantive content.

In its letter of 31 January 2025, Norway informed the Authority that the feedback received during the consultation was under consideration, and the Ministry aimed to adopt a final decision on any amendments to Section 12 in 2025.[40]

At the annual Package Meeting on 13-14 November 2025, the Norwegian Government informed the Authority that they had put the proposed amendment on hold pending the national court proceedings concerning the mining waste disposal in Førdefjord.[41]

While the Authority has taken due note of the explanations provided by the Norwegian Government, it cannot conclude that Norway has adequately implemented the exemption in Article 4(7)(c) WFD into its national law.

The Authority emphasises that the wording of the national provision diverges from that of the WFD. Article 4(7)(c) WFD requires that modifications are either justified by reasons of overriding public interest, or that their benefits to human health, human safety or sustainable development outweigh the environmental and societal benefits of achieving the environmental objectives. By contrast, Section 12(2)(b) of the Water Regulation merely requires that "*the benefits for society of the new intervention or activities shall be greater than the loss of environmental quality*".

The Authority considers that a correct implementation of Article 4(7)(c) WFD would require, as a minimum, the implementation of one of the two alternative conditions set out therein.

With regards to the second alternative condition, the Authority finds that this is not implemented in Section 12 of the Norwegian Water Regulation at all. This is because the Norwegian implementation does not mention any of the categories of human health, human safety and sustainable development.

When it comes to the first alternative condition, "overriding public interests", the Authority finds that the Norwegian implementation has set a lower threshold than that of the WFD, as explained below. This is clear from a textual and contextual reading of Section 12 of the Norwegian Water Regulation. It is further evidenced by its application in practice.

Importantly, the national implementation fails to clearly specify that the interest in question must be of a *public* nature. As explained in sections 6.3 and 6.4, the Norwegian Government has relied on this provision to grant exemptions where the dominant justification has included purely *private* interests such as the generation of income to shareholders and employees. These examples demonstrate the lack of clarity and precision of the Norwegian implementation.

Furthermore, it is settled case law that, as an exemption to a general rule, Article 4(7) WFD must be interpreted strictly. The EFTA Court's advisory opinion in Case E-13/24 confirms that reliance on Article 4(7) WFD is subject to a strict threshold.[42] The requirement of "overriding public interest" entails a concrete and case-by-case balancing of interests, where only sufficiently weighty and public-oriented considerations may outweigh the

[39] Page 3 of the consultation paper.
[40] Document 1514979, p. 1.
[41] Document 1574576, p. 3-4.
[42] EFTA Court, Case E-13/24, *Friends of the Earth Norway,* 5 March 2025, *inter alia* paragraphs 27 and 40-45.

environmental objectives. The ambiguous wording of the Norwegian implementation fails to clearly and precisely implement the strict threshold established by the WFD.

The EFTA Court has held that not all types of considerations can qualify as an "*overriding public interest*" under Article 4(7)(c) WFD. Purely economic interest cannot, in themselves, constitute an overriding public interest.[43] The supply of critical raw materials may, in certain circumstances and pending the fulfilment of other conditions, qualify as an overriding public interest within the meaning of Article 4(7)(c) WFD, as may employment considerations in certain, narrowly defined circumstances.[44]

To fulfil the criteria of sufficient specificity, precision and clarity to satisfy the principle of legal certainty, there should be no doubt as to whether a national implementation sets a lower threshold for the application of an exemption such as Article 4(7) WFD.

Nevertheless, with regards to the Norwegian implementation such doubt may be deduced from statements from both the Norwegian Government and the Norwegian judiciary.

In its notice of appeal to the Norwegian Supreme Court, dated 15 September 2025, the Norwegian Government argues that, prior to the adoption of Norway's first RBMP, the wording of Section 12 of the Norwegian Water Regulation was not to be interpreted in conformity with Article 4(7) WFD, but rather with the obligation, pursuant to CJEU case law to "refrain from taking any measures liable to seriously compromise the attainment of the result prescribed by Article 4 of that directive". In the view of the Norwegian Government, this entails that, prior to the adoption of the first RBMP, the State had a somewhat larger room for manoeuvre than if Article 4(7) WFD were to be applied directly.[45]

The Authority notes that the obligation to prevent the deterioration of surface water bodies set out in Article 4(1) WFD is linked to the "making operational the programmes of measures specified in the river basin management plans". The Authority also notes that in the period between the entry into force of the WFD and the adoption of the first RBMP, the EEA States were required to refrain from taking measures liable to seriously compromise the attainment of the objective provided for in Article 4 WFD.[46]

The obligation to prevent deterioration of surface water bodies is implemented into Norwegian law through Section 4 of the Norwegian Water Regulation. As opposed to Article 4(1) WFD, Section 4 of the Norwegian Water Regulation does not make the obligation to prevent deterioration contingent upon the prior existence of an RBMP. As such, under Norwegian law, the obligation to prevent deterioration seems to have been fully applicable since the entry into force of the Norwegian Water Regulation on 1 January 2007.

Consequently, the Norwegian Government's argument that, prior to the first RBMP, Norway had a larger room for manoeuvre, relies on the premise that the wording of Section 12 of the Norwegian Water Regulation can accommodate an interpretation that sets a lower threshold for the use of exemptions than that set out in Article 4(7) WFD.

In its judgment of 10 November 2025, the Sogn og Fjordane District Court considered that "*the implementation of the Water Framework Directive, as a result of an imprecise*

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[43] EFTA Court, Case E-13/24, *Friends of the Earth Norway,* 5 March 2025, paragraph 40-42.
[44] EFTA Court, Case E-13/24, *Friends of the Earth Norway,* 5 March 2025, paragraph 43-45 and 46-48.
[45] Regjeringsadvokaten, Ankeerklæring til Høyesterett, Oslo, 15 September 2025, 2022-0922, available at: https://naturvernforbundet.no/content/uploads/2025/09/2025-09-15_Ankeerklaering_staten.pdf.
[46] See CJEU, C-43/10, *Nomarchiaki Aftodioikisi Aitoloakarnanias*, 11 September 2012, paragraph 60 and C-346/14, *Commission v Austria (Schwarze Sulm),* paragraph 50-51.

translation, has led to the Water Regulation applying a lower threshold for allowing interventions than that required by the Directive".[47]

The Authority has considered whether statements in relevant preparatory works can alleviate the discrepancy between the wording of WFD and Section 12 of the Water Regulation, to the extent that the exemption can nevertheless be considered as sufficiently implemented into national law. However, the preparatory works do not offer any such clarification. This absence reinforces the conclusion that the Norwegian provision lacks the specificity, precision and clarity required by the principle of legal certainty.

Given that Article 4(7) WFD constitutes an exception to the non-deterioration principle and must therefore be interpreted strictly,[48] the risk of an overly broad application is particularly problematic. The broad formulation "benefits for society" in Section 12 risks diluting this strict exception and allowing for a wider range of justifications than permitted by the WFD. This appears to have had concrete effects in practice, as illustrated by the cases concerning Førdefjord and Repparfjord discussed below.

With reference to all the above, the Authority concludes that Article 4(7) WFD has not been correctly and completely implemented into Norwegian law with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty.

As such, Norway has failed to fulfil its obligations under Articles 4(7) and 24(1) WFD, and Article 7 EEA.

6.3 Norway has breached Article 4(1) and 4(7) WFD by allowing the disposal of mining waste into Førdefjord

6.3.1 The project and permits

By decision dated 5 June 2015, the Norwegian Ministry of Climate and Environment ("the Ministry") issued to Nordic Mining ASA a permit, pursuant to Section 11 of the Norwegian Pollution Control Act[49], for a mining project at Engebø in Naustdal,[50] allowing the disposal of 250 million tons[51] of mining waste into the nearby water body Førdefjorden-ytre, which is located in Førdefjord ("the pollution permit").

According to that decision, the disposal of mining waste will lead to the deterioration of the ecological status of the water body from good to poor, mainly due to the impact on the benthic fauna.[52] In order to allow such deterioration, a derogation was necessary pursuant to Section 12 of the Norwegian Water Regulation, the Norwegian implementation of Article 4(7) WFD. The Ministry concluded that the conditions for applying that derogation were fulfilled.

Following an appeal by four non-governmental organisations ("NGOs"), the pollution permit was upheld by Royal Decree of 19 February 2016, with some minor modifications concerning environmental monitoring requirements.[53]

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[47] Sogn og Fjordane District Court, 10 November 2025, Case number 25-133969TVI-TSOF/TFOR, available at https://naturvernforbundet.no/content/uploads/2025/11/2025-11-10-Dom-Sogn-og-Fjordane-tingrett.pdf, p. 26. The Authority's own translation.
[48] See EFTA Court, Case E-13/24, *Friends of the Earth Norway,* paragraph 27.
[49] In Norwegian: "forurensningsloven". See Section 5.2 above.
[50] *Nordic Mining ASA – tillatelse til gruvevirksomhet i Engebøfjellet*, ref.13/4417.
[51] In a later revision to the permit, the maximum amount was reduced to 170 million tons.
[52] Section 4.6.7 of the pollution permit.
[53] Royal Decree of 19 February 2016, Case number 15/3378, *Klage fra Natur og Ungdom, Naturvernforbundet og Vevring og Førdefjorden Miljøgruppe og Norske Lakseelver over Klima- og miljødepartementets vedtak 5. juni 2015 om tillatelse etter forurensningsloven til gruvevirksomhet i Engebøfjellet. Klagen tas ikke til følge.*

The pollution permit was revised by the Norwegian Environment Agency on 29 June 2016, 18 January 2021[54] and 23 June 2023.[55] Among other things, the maximum amount of mining waste to be disposed was reduced from 250 million tons to 170 million tons. However, these revisions did not impact the conclusion that the water body would deteriorate due to the disposal of mining waste.

By Royal Decree of 23 May 2025, following the advisory opinion of the EFTA Court in *Friends of the Earth Norway* (see further Section 6.3.2 below), the Norwegian Government concluded that the pollution permit was to be maintained.[56]

An operating permit for the mining project pursuant to Section 43 of the Norwegian Mineral Act was granted by the Norwegian Directorate of Mining on 17 June 2020,[57] which was upheld on appeal by decision of the Ministry of Trade and Fisheries on 6 May 2022.[58] This permit laid down conditions for the mining project. In its decision awarding the operating permit, the Norwegian Directorate of mining largely reiterated the assessment in the pollution permit with regards to the compliance with the Norwegian Water Regulation. Compliance with the Norwegian Water Regulation was not further assessed by the Ministry of Trade and Fisheries in its decision of 6 May 2022. As such, the operating permit under the Norwegian Mineral Act did not alter the conclusions as to the deterioration of the water body and the ensuing application of Section 12 of the Norwegian Water Regulation.

The river basin management plan (RBMP) for Sogn og Fjordane, the river basin district in which the water body Førdefjorden-ytre is located, was approved on 4 July 2016.[59]

By way of summary, the disposal of mining waste into Førdefjorden-ytre was authorised by a pollution permit of 5 June 2015, upheld by Royal Decree of 19 February 2016, and was amended on 29 June 2016, 18 January 2021, and 23 June 2023. The authorisation remains in force at present. The decision of the Norwegian Government in Royal Decree of 23 May 2025 to not revise or withdraw the permit did not affect the incorrect application of the Article 4(7) WFD.

6.3.2 Court proceedings

In 2022, two Norwegian environmental NGOs, Friends of the Earth Norway (*Naturvernforbundet*) and Young Friends of the Earth Norway (*Natur og Ungdom*), took legal action against the Norwegian Government, arguing that the pollution permit and operating permit granted to Nordic Mining were invalid, among other things due to breaches of the Water Framework Directive.

On 10 January 2024, the Oslo District Court ruled in favour of the Norwegian Government.[60] The NGOs appealed to the Borgarting Court of Appeal. Upon request from the Borgarting

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[54] The revision of 18 January 2021 was upheld by decision of the Ministry of 23 November 2021, following appeal by NGOs.

[55] Permit number 2016.0721. The consolidated permit is available at https://www.norskeutslipp.no/WebHandlers/PDFDocumentHandler.ashx?documentID=737059&documentType=T&companyID=74055&aar=0&epslanguage=no.

[56] Royal Decree of 23 May 2025, Reference number 25/2094, *Tillatelsen etter forurensningsloven § 11 gitt til Nordic Mining ASA (nå Engebø Rutile and Garnet AS) i vedtak 19. februar 2016, 23. november 2021 og 23. juni 2023 omgjøres ikke.*

[57] Norwegian Directorate of Mining, 17 June 2020, *Tildeling av driftskonsesjon etter mineralloven for Engebø-prosjektet i Sunnfjord kommune. Tiltakshaver: Nordic Rutile AS,* reference number 19/00248-95.

[58] Norwegian Ministry of Trade and Fisheries, 6 May 2022, *Vedtak i klagesak om Direktoratet for mineralforvaltning med Bergmesteren for Svalbards vedtak om tildeling av driftskonsesjon til Nordic Rutile AS,* reference number 20/6821-46.

[59] The RBMP is available at https://cdr.eionet.europa.eu/no/eu/wfd2016/documents/no5106/envwcklzw/RBMP_NO5106_SognOgFjordane_20170925.pdf.

[60] Oslo District Court, 10 January 2024, Case number 22-165021TVI-TOSL/04.

Court of Appeal, the EFTA Court issued an advisory opinion in Case E-13/24.[61] In its judgment, the EFTA Court held that:

1. *Article 4(7)(c) [WFD] must be interpreted as requiring a weighing of the respective interests in all circumstances in order to determine the existence of an overriding public interest. While no specific qualified preponderance of interest is required for this purpose, it must nonetheless be the case that a concrete assessment must be undertaken, so that the identified overriding public interest justifying the modifications to the physical characteristics of a surface water body outweighs the environmental objective of preventing deterioration in the status of surface water bodies. Which factors will be relevant in determining the existence of an overriding public interest must be assessed on a case-by-case basis.*

2. *Income generated as a result of an economic activity, including for employees, shareholders or the EEA State in question via taxes, cannot be considered to constitute an overriding public interest within the meaning of Article 4(7) [WFD].*

3. *Certain considerations linked to the social and economic situation of a particular area, or the contribution of a project to the security of supply, or the supply, of critical raw materials within the EEA, may be considered to constitute an overriding public interest within the meaning of Article 4(7) [WFD], provided that all the other conditions set out therein have been fulfilled.*

On 12 August 2025, the Borgarting Court of Appeal declared the permits invalid, relying *inter alia* on the advisory opinion of the EFTA Court.[62] An appeal is currently pending before the Norwegian Supreme Court.[63]

The NGOs also sought a temporary injunction against the continued disposal of mining waste in Førdefjorden-ytre. On 10 November 2025, the Sogn og Fjordane District Court dismissed the petition for a temporary injunction.[64] The injunction case was appealed to the Gulating Court of Appeal, which by judgment of 15 April 2026 dismissed the appeal.[65]

At this time, the Authority understands that the disposal of mining waste in Førdefjorden-ytre is currently ongoing.

6.3.3 Applicability of Article 4 WFD

Article 4(1) WFD requires the environmental objectives to be attained *"in making operational the programmes of measures specified in the river basin management plans".* The deadline for the EEA EFTA States to publish their first river basin management plans expired on 1 May 2018.[66]

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[61] EFTA Court, Case E-13/24, *Friends of the Earth Norway and Young Friends of the Earth Norway and The Norwegian Government, represented by the Ministry of Climate and Environment and the Ministry of Trade, Industry and Fisheries,* 5 March 2025.

[62] Borgarting Court of Appeal, 12 August 2025, Case number 24-036660ASD-BORG/01.

[63] The oral hearings are scheduled to commence on 27 April 2026. The court schedule is available at https://www.domstol.no/no/nar-gar-rettssaken/?saksid=AAAA251014125540689181 2FUYCCF_EJBSak.

[64] Sogn og Fjordane District Court, 10 November 2025, Case number 25-133969TVI-TSOF/TFOR, available at: https://naturvernforbundet.no/content/uploads/2025/11/2025-11-10-Dom-Sogn-og-Fjordane-tingrett.pdf.

[65] Gulating Court of Appeal, 15 April 2026, Case number 26-002932ASK-GULA/AVD1.

[66] This follows from Article 13(6) WFD as adapted by Joint Committee Decision No 125/2007.

The river basin management plan (RBMP) for Sogn og Fjordane, the river basin district in which the water body Førdefjorden-ytre is located, was approved on 4 July 2016,[67] approximately four months after the Royal Decree of 19 February 2016 which constitutes the final administrative decision concerning the deterioration of the water body Førdefjorden-ytre and the application of Section 12 of the Norwegian Water Regulation, corresponding to Article 4(7) WFD.

In this context, the Authority notes that, following the entry into force of JCD No 125/2007 on 1 May 2009, until the adoption of the first RBMP on 4 July 2016, Norway was under an obligation to refrain from taking measures liable to seriously compromise the attainment of the objective provided for in Article 4 WFD.[68] This follows from Article 4 WFD and Articles 3 and 7 EEA.[69]

Case C-346/14 *Commission v Austria (Schwarze Sulm)* concerned the authorisation of a project between the entry into force of the WFD and the deadline to adopt the first RBMP. In its judgment, the CJEU held that although the project did not, at the time of the decision authorising it, come within the temporal scope of Article 4 WFD, Austria was nevertheless required to refrain from taking measures liable to seriously compromise the objective provided for by Article 4 WFD.[70] In this scenario, the CJEU found that *"it must be determined whether the contested project is liable to cause a deterioration of the status of the body of surface water of the Schwarze Sulm and, if so, whether that deterioration may come within the derogation from the prohibition of deterioration provided for in Article 4(7) of Directive 2000/60".*[71]

Thus, although the project at hand in *Schwarze Sulm* was approved before the adoption of Austria's first RBMP, Austria was nevertheless required to assess whether the project was liable to jeopardise the attainment of the objectives in Article 4(1) WFD and, if so, whether the conditions of Article 4(7) WFD were satisfied.

The Authority considers it clear that the authorisation of the project at hand, entailing the deterioration of the status of a water body mere months before the adoption of the first RBMP would be liable to seriously compromise the non-deterioration objective under Article 4 WFD, and, absent a valid derogation pursuant to Article 4(7) WFD, be illegal.

In addition, following the adoption of the first RBMP in 2016, the project came within the temporal scope of Article 4 WFD. Absent a valid derogation under Article 4(7) WFD, maintaining in force the authorisation of the project leading to the deterioration of the status of the water body, evidenced by the amendments of 29 June 2016, 18 January 2021, and 23 June 2023, and the Royal Decree of 23 May 2025, is a breach of Article 4(1) WFD, read in conjunction with Article 4(7) WFD.

6.3.4 The Authority's assessment of the condition under Article 4(7)(c) WFD

As stated above, the Ministry's decision of 5 June 2015 concluded that the disposal of mining waste will lead to the deterioration of the ecological status in the water body from 'good' to 'poor'.

In such a case, Article 4(7) WFD must be applied for the project to be lawful. This includes the test established in Article 4(7)(c) WFD, which requires that *"the reasons for those*

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[67] The RBMP is available at https://cdr.eionet.europa.eu/no/eu/wfd2016/documents/no5106/envwcklzw/RBMP_NO5106_SognOgFjordane_20170925.pdf.

[68] See CJEU, C-43/10, *Nomarchiaki Aftodioikisi Aitoloakarnanias*, 11 September 2012, paragraphs 58-60 and C-346/14, *Commission v Austria (Schwarze Sulm),* paragraph 50-51.

[69] See, *mutatis mutandis*, JEU, C-43/10, *Nomarchiaki Aftodioikisi Aitoloakarnanias*, 11 September 2012, paragraph 60 and C-346/14, *Commission v Austria (Schwarze Sulm),* paragraph 42.

[70] CJEU, C-346/14, *Commission v Austria (Schwarze Sulm),* paragraph 51.

[71] CJEU, C-346/14, *Commission v Austria (Schwarze Sulm),* paragraph 52.

modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development […]".

Article 4(7)(c) WFD provides two alternative scenarios, where the non-achievement of the environmental objectives may be justified based on either 1) benefits to human health, to the maintenance of human safety or to sustainable development, or 2) a more open-ended category of "overriding public interests".

The relevant decisions of the Norwegian Government do not specify which of the alternative categories under Article 4(7)(c) WFD the authorities relied upon. The decision of 5 June 2015 refers only to Section 12 of the Norwegian Water Regulation, which does not distinguish between these categories. The decision does not mention the categories of human health, human safety or sustainable development as the objectives sought by the project. The Authority will therefore assess the case on the basis of the "overriding public interests" test, which aligns more closely to the open-ended wording of the national provision.

6.3.4.1 The purported benefits of the project

The Royal Decree of 19 February 2016 summarises the advantages of the mining project at issue as follows:

> *The Ministry considers that the future revenues from mining activities are the dominant benefit for Norwegian society as a whole. The revenues are distributed between employees and shareholders, and as tax revenues to municipalities and the state. Naustdal municipality will receive increased tax revenues from the company through income and property tax, and from increased employment through taxes on general income, property tax and wealth tax. Other municipalities may receive increased revenue through income tax from employees who settle in their municipality. Corporate profits are taxed at 28%, which goes to the state. In addition, there is a state income from the employer's contribution, which for Naustdal is 10.6%.*
>
> *These increased revenues are considered to have a major positive effect. The mining operations will also generate employment. The price of rutile will vary over time, but these are factors that the company will take into account when assessing the profitability of the project. Extraction from the deposit in Engebøfjellet will be able to meet the demand for rutile on the world market for many years, as the rutile deposit in Engebøfjellet represents one of the largest known deposits in solid rock. This undertaking could therefore ensure increased employment in a long-term perspective. Locally, an increase in tax revenues and employment could have a significant impact. All in all, the project is expected to have a major positive effect on settlement locally, not least Naustdal, which is a relatively small municipality that has long been in a slightly declining population trend.*

The Authority notes that the same or very similar reasons were given in the original permit decision of the Ministry of 5 June 2015.

In the Royal Decree of 23 May 2025, the Ministry assessed whether, following the EFTA Court Advisory Opinion in E-13/24, the permit to Nordic Mining complied with Article 4(7)(c) WFD. The Ministry concluded that the permit was valid and should not be amended. In its reasoning, the Ministry stated that the project was important for employment and for access to minerals, and that both of these objectives constituted, both individually and together, an "overriding public interest" within the meaning of Article 4(7)(c) WFD which outweighed the objective of preventing the deterioration of the ecological status of the water body.

As recognised by the EFTA Court, the security of supply of critical raw materials within the EEA may, under certain circumstances, constitute an overriding public interest for the purposes of Article 4(7)(c) WFD.[72]

However, as held by the CJEU in *IL and others,* "*when a project is liable to have adverse effects on water, consent may be given to it only if the conditions set out in Article 4(7)(a) to (d) of [the WFD] are fulfilled. Without prejudice to the possibility of judicial review, the national authorities which are competent to authorise a project are required to review whether those conditions are satisfied before the grant of such an authorisation*."[73]

Among the conditions to be satisfied is the condition in Article 4(7)(b) WFD to set out and explain the reasons behind the project concerned.

In other words, and as elaborated on above in Section 6.1, EEA States are required to assess the compliance of a project with Article 4(7) WFD and set out and explain the reasons *prior* to its approval.[74]

Such an interpretation is supported with reference to the purpose of Article 4(7)(b) WFD, which is to provide for transparency in environmental decision making. The requirement to include the explanations in the RBMP entails that these explanations will be subject to public information and consultation in accordance with Article 14 WFD. While, in accordance with settled case law,[75] the authorisation of a project needs not necessarily await the update of the RBMP, the inclusion of the explanations in the permitting process normally entail that public consultation is ensured. To this end, the EFTA Court has held that the requirements of the Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment ("the EIA Directive") to make relevant information available to the public for consultation purposes before a project is approved provide a similar safeguard to ensure that the requirements of public information and consultation, reflected in Article 14 WFD, are not sidestepped.[76]

Consequently, the Authority considers that Norway is precluded from invoking *ex post facto* justifications for applying Article 4(7) WFD. The Authority will therefore not take the additional reasons set out in the Royal Decree of 23 May 2025 into account for the purposes of the present assessment.

To this end, the Authority notes that the Royal Decree of 23 May 2025 did not form part of the permitting process, and was not subject to any environmental impact assessment or public participation in accordance with the EIA Directive.

The Royal Decree of 19 February 2016 mentions the supply of rutile to the world market but does not link this to an objective to ensure a secure supply of a critical raw material. Rather, the statement on rutile when read in its context appears to explain that the project will be profitable and may thus ensure employment in the long term.

To this end, the Authority notes that the national authorities cannot merely refer in the abstract to a public interest but must make a detailed assessment of the expected benefits and weigh these against the resulting deterioration of the water body. On the basis of that assessment, the national authorities must ensure that the project would indeed confer the benefits sought, that all practicable steps had been taken to mitigate the adverse impact of

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[72] EFTA Court, Case E-13/24, *Friends of the Earth Norway,* paragraph 46-48.
[73] CJEU, Case C-535/18, *IL and others,* paragraph 75. See also EFTA Court, Case E-7/25, *Ólafur Þór Jónsson and others*, paragraph 61.
[74] Compare CJEU, Case C-535/18, *IL and others,* paragraph 75. See also EFTA Court, Case E-7/25, *Ólafur Þór Jónsson and others*, paragraph 61.
[75] As elaborated on in Section 6.1.
[76] EFTA Court, Case E-7/25, *Ólafur Þór Jónsson and others*, paragraphs 70-71.

the contested project on the status of that body of surface water, and that the objectives pursued by the project could not, for reasons of technical feasibility or disproportionate cost, be achieved by other means that would have been a significantly better environmental option.[77]

The Authority considers that the mere mention that the project will supply rutile to the world market does not satisfy the level of detailed explanations required to determine that the project is aimed at ensuring an overriding public interest of securing the supply of a critical mineral. As a minimum, there would have to be some information on why the mineral is of a particular importance, considering elements such as scarcity, potential uses, and the purposes for which the supply is being ensured.[78]

6.3.4.2 Whether the benefits of the project satisfies the threshold in Article 4(7)(c) WFD

Based on the above, the Authority has identified the following interests relied upon by the Norwegian Government in the Royal Decree of 19 February 2016 and the Ministry's decision of 5 June 2015 to justify the application of Article 4(7) WFD:

(i) Economic income in the form of wages to employees and revenues for shareholders,
(ii) Tax income to municipalities and to the state,
(iii) Employment locally and nationally, and
(iv) Local settlement.

With respect to wages and shareholder revenues, the Authority notes that these are economic interests of a purely private nature, and, by their very definition, cannot qualify as being of overriding public interest.[79]

As the EFTA Court observed in *Friends of the Earth Norway,* virtually all profit-making private entities will, by their very nature, generate some income for shareholders, a certain amount of tax revenue, and wage income for employees. Given that this is the ordinary outcome of economic activity, such considerations will not, in the absence of other contributing factors, be sufficient to satisfy the threshold set out in Article 4(7)(c) WFD.[80]

Similarly, as held by the EFTA Court, "the mere fact that a private undertaking will generate employment effects is also an ordinary outcome of economic activity and, as such, will not, in the absence of other contributing factors, be sufficient to qualify as satisfying the relevant threshold and cannot constitute an overriding public interest".[81]

Consideration linked to the social or economic situation of a particular area may, under certain conditions, constitute reasons of overriding public interest.[82] A project may potentially be authorised for reasons related to the need to generate employment effects and thereby ensure settlement in regions experiencing significant depopulation and social deprivation. However, such circumstances would, in any event, be subject to the test set out in Article 4(7) WFD, including requiring an overriding public interest. A simple desire to generate or increase employment, absent other factors, does not satisfy this criterion.[83]

The Royal Decree of 19 February 2016 contends that *the project is expected to have "a major positive effect on settlement locally, not least Naustdal, which is a relatively small municipality that has long been in a slightly declining population trend."*

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[77] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 33-34.
[78] See to this extent EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 47.
[79] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 42.
[80] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 42.
[81] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 43.
[82] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 44.
[83] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 45.

The Authority notes that, pursuant to data published by Statistics Norway, the municipality of Naustdal saw a decline in population from 2751 in 2002 to 2655 in 2009, followed by an increase to 2840 in 2016 (see figure 1). The Authority thus finds the statement from the Royal Decree of 19 February 2016 to be misleading, as the trend of slight decline ended in 2009 with a decisive reversal with a trend of marked and sustained increase. In any case, the Authority does not consider this to meet the threshold of a significant depopulation and social deprivation as set out by the EFTA Court in *Friends of the Earth Norway*.

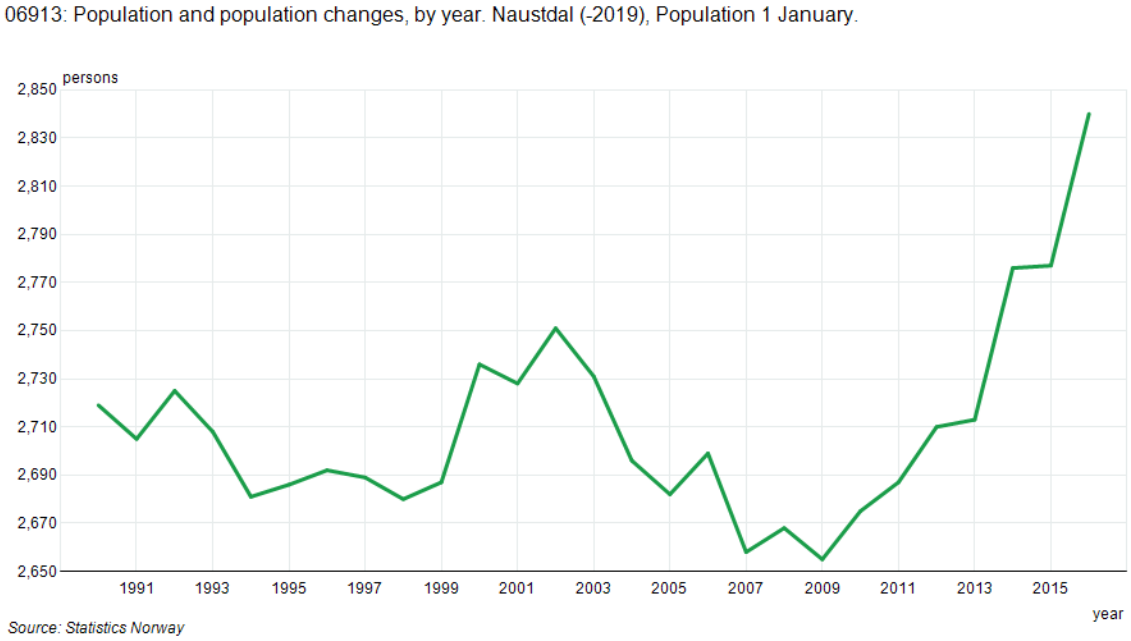

Figure 1. Population in Naustdal, 1990-2016. Source: Statistics Norway, Available at https://www.ssb.no/en/statbank/table/06913/

Neither the Royal Decree of 19 February 2016 nor previous decisions speak of any social deprivation locally. On the contrary, the Ministry's decision of 5 June 2015 states that it is expected that the project will to a great extent have to attract labour from other parts of the country or from abroad.[84] This may indicate that the project was not expected nor intended to relieve any social deprivation related to serious issues of local unemployment.

The Authority therefore considers that the interests and benefits sought through the project do not meet the threshold of an overriding public interest within the meaning of Article 4(7)(c) WFD. As such, Norway could not rely on the derogation under Article 4(7) WFD to allow the deterioration of the ecological status of Førdefjorden-ytre.

6.3.5 Conclusion

By authorising, and maintaining in force the authorisation of, the mining project projected to lead to the deterioration of the ecological status in Førdefjorden-ytre in the absence of a valid derogation under Article 4(7) WFD, the Norwegian Government has acted in breach of its obligation under Article 4(1) WFD to prevent deterioration of the status of all bodies of surface waters.

6.4 Norway has breached Article 4(1) and 4(7) WFD by allowing the disposal of mining waste into Repparfjord

6.4.1 The project and permits

On 15 January 2016, the Norwegian Environment Agency issued a permit to Nussir ASA, pursuant to Section 11 of the Norwegian Pollution Control Act, for the mining of copper at the Nussir and Ulveryggen mountains in the municipality of Kvalsund, Finnmark. The permit authorises the disposal of 30 million tons of mining waste into the nearby water bodies

[84] Page 26 of the decision.

Repparfjorden indre and Repparfjorden ytre, which are located in Repparfjord (hereinafter referred to as "the Nussir Pollution Permit").[85]

Following appeal from three environmental NGOs and the Sámi Parliament, the Ministry upheld the Nussir Pollution Permit by decision of 19 December 2016.[86]

According to the Norwegian Environment Agency's decision of 15 January 2016 and the Ministry's decision of 19 December 2016, the disposal of mining waste will lead to the deterioration of the ecological status in the water body in Repparfjorden indre from moderate to poor, and in Repparfjorden ytre from good to poor, mainly due to the impact on the benthic fauna.[87] In order to allow such deterioration, a derogation was necessary pursuant to Section 12 of the Norwegian Water Regulation, the Norwegian implementation of Article 4(7) WFD. The Norwegian Environment Agency concluded that the conditions for applying that derogation were fulfilled, and the Ministry confirmed this finding.

An operating permit pursuant to Section 43 of the Norwegian Mineral Act was granted by decision of the Ministry of Trade and Fisheries on 14 February 2019,[88] and upheld by Royal Decree of 29 November 2019.[89] This permit lays down conditions for the mining project. It does not alter the conclusions as to the deterioration of the water body and the ensuing application of Section 12 of the Norwegian Water Regulation.

The Nussir Pollution Permit was revised by the Norwegian Environment Agency on 29 November 2021.[90] The changes relate to the use of processing chemicals (in Norwegian: *prosesskjemikalier*). Following complaints from Friends of the Earth Norway (*Naturvernforbundet*) and Young Friends of the Earth Norway (*Natur og ungdom*), the Ministry upheld the revised permit by decision of 23 January 2024.[91] In that decision, the Ministry stated that its assessment was limited to the parts of the permit that had been

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[85] The decision of the Norwegian Environment Agency of 15 January 2016, reference number 2016/398, is available at: https://www.miljodirektoratet.no/globalassets/dokumenter/industri/gruver/nussir-tillatelse-oversendelse150116.pdf/download. The Nussir Pollution Permit, permit number 2016.0051.T, is available here: https://www.regjeringen.no/contentassets/0da96c16ad2b49f59afc736215ac1056/nussir-tillatelse-l322223.pdf.

[86] Norwegian Ministry of Climate and Environment, 19 December 2016, *Avgjørelse av klager på tillatelse etter forurensningsloven til gruvedrift i Nussir og Ulveryggen med deponering av avgangsmasser i sjødeponi i Reppartjorden,* referene number 12/5816, available at https://www.regjeringen.no/contentassets/0da96c16ad2b49f59afc736215ac1056/signert-brev---avgjorelse-av-klager-pa-tillatelse-etter-forurensningsloven-til-gruvedrift-i-nussir.pdf. See also the Norwegian Government's press release at https://www.regjeringen.no/no/dokumentarkiv/regjeringen-solberg/aktuelt-regjeringen-solberg/kld/nyheter/2016/opprettholder-tillatelse-til-gruvedrift-i-nussir-og-ulveryggen/id2524800/.

[87] See pages 39, 40 and 44 of the decision of the Norwegian Environment Agency of 15 January 2016, and page 11 of the Ministry's decision of 19 December 2016.

[88] Norwegian Ministry of Trade and Fisheries, 14 February 2019, *Vedtak om driftskonsesjon for Nussir og Ulveryggen kobberforekomst. Tiltakshaver: Nussir ASA,* reference number 17/4845-30, available athttps://www.regjeringen.no/globalassets/departementene/nfd/dokumenter/nussir-asa---driftskonsesjon-for-repparfjord-kobberforekomst---endelig-vedtak--.pdf.

[89] Royal Decree of 29 November 2019, *Klage over Nærings- og fiskeridepartementets vedtak 14. februar 2019 om tildeling av driftskonsesjon til Nussir ASA for utvinning av Repparfjord kobberforekomst,* case number 19/5729-, available at athttps://www.regjeringen.no/contentassets/7403db77a0d84af2b9876e868f3f8c02/kongelig-resolusjon.pdf.

[90] The Norwegian Environment Agency, 29 November 2021, *Vedtak - endret tillatelse - Nussir ASA*, reference number: 2019/291.

[91] Norwegian Ministry of Climate and Environment, 23 January 2024, *Avgjørelse i klagesak om revidert tillatelse for Nussir ASA*, reference number 23/2409.

amended, and that the obligation to assess Section 12 of the Water Regulation did not apply to subsequent decisions that did not involve further deterioration.[92]

On 12 June 2025, the Nussir project was listed as a Strategic Project by Commission Decision (EU) 2025/1174 of 4 June 2025 recognising certain critical raw material projects located in third countries and in overseas countries or territories as Strategic Projects under Regulation (EU) 2024/1252 of the European Parliament and of the Council. As will be elaborated on below, the Authority does not consider that this affects the conclusions as regards Norway's failure to comply with the WFD by authorising the project.

By way of summary, the disposal of mining waste into Repparfjorden indre and Repparfjorden ytre was authorised by a pollution permit of 15 January 2016, upheld by Ministry decision of 19 December 2016, and amended on 29 November 2021. That amendment was upheld by Ministry decision of 23 January 2024. The authorisation remains in force at present.

6.4.2 Applicability of Article 4 WFD

Article 4(1) WFD requires the environmental objectives to be attained *"in making operational the programmes of measures specified in the river basin management plans".* The deadline for the EEA EFTA States to publish their first river basin management plans expired on 1 May 2018.[93]

The first RBMP for the Finnmark River Basin District, within which the relevant water bodies are located, was approved on 4 July 2016,[94] five months before the Ministry's decision of 19 December 2016 upholding the Nussir Pollution Permit.

The Authority therefore finds it clear that the obligations in Article 4(1) WFD were applicable at the time of approving the project.

Norway was therefore required to refrain from authorising measures liable to cause a deterioration of the status of the water body, unless the conditions for a derogation under Article 4(7) WFD were fulfilled.

The Authority considers this obligation to apply *mutatis mutandis* to the maintaining in force of such authorisation, in this case evidenced by the revision of the Nussir Pollution Permit by the Norwegian Environment Agency on 29 November 2021.

6.4.3 The Authority's assessment of the condition under Article 4(7)(c) WFD

As stated above, the decision of 19 December 2016 concluded that the disposal of mining waste would lead to the deterioration of the ecological status in the water body from good or moderate to poor.

In such circumstances, Article 4(7) WFD must be applied for the project to be justified. This includes the test in Article 4(7)(c) WFD, which requires that *"the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development […]".*

As in the case of the project at Førdefjord, the relevant decisions of the Norwegian Government do not specify which of the alternative categories under Article 4(7)(c) WFD

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[92] Ibid, Page 5.

[93] This follows from Article 13(6) WFD as adapted by Joint Committee Decision No 125/2007.

[94] The RBMP is available at https://cdr.eionet.europa.eu/no/eu/wfd2016/documents/no1105/envwckila/RBMP_NO1105_Finnmark_20170925.pdf.

the authorities relied upon. The decisions refer only to Section 12 of the Norwegian Water Regulation, which does not distinguish between these categories. The decisions do not mention the categories of human health, human safety or sustainable development as the objectives sought by the project. The Authority will therefore assess the case on the basis of the "overriding public interests" test, which aligns more closely to the open-ended wording of the national provision.

6.4.3.1 The purported benefits of the project

The Norwegian Environment Agency's decision of 15 January 2016 summarises the advantages of the mining project at issue as follows:[95]

> *"In assessing whether to grant a licence, we have placed particular emphasis on the fact that there are industrial policy guidelines for extracting minerals in Norway, that it is likely that the project, if implemented, will generate significant revenue for society, and that we believe it is environmentally justifiable to permit mining operations subject to the strict requirements we impose.*
>
> […]
>
> *The extraction of copper concentrate in Kvalsund municipality is a measure with potentially large revenues. In order to start mining operations at Nussir and Ulveryggen, Nussir ASA must have extraction rights, cf. Section 29 of the Mineral Act. Such a permit shall be granted by the Directorate of Mineral Management when it is probable that the deposit is considered to be viable or will become viable within a reasonable period of time. Viable means that the operator of the deposit has demonstrated that this can be done with an economic surplus. The Norwegian Directorate of Mineral Management has granted Nussir ASA mining rights for Nussir and Ulveryggen, and has assessed the deposits as likely to be viable. The company's most recent profitability assessments estimate that investments of around NOK 920 million will be made over three years. Sales revenues are estimated at around NOK 830 million annually. The average annual operating profit is estimated at NOK 450 million. Based on the company's estimates for revenues and costs, we have estimated the present value of the project over 13 years to be approximately NOK 1.4 billion before tax at a discount rate of 10%.*
>
> *The mining project is expected to generate income in the form of returns to the company's shareholders, as well as increased tax revenues for the state, county, and municipality. Kvalsund municipality will also be able to increase its revenues through income and property taxes. The same applies to other municipalities in the area, as it is reasonable to assume that not everyone will live or settle in Kvalsund municipality. The company estimates a need for approximately 150 full-time equivalents in connection with mining operations in Kvalsund. Bedriftskompetanse[96] has estimated that mining operations could indirectly lead to 195-210 jobs in other industries in Northern Norway."*

Concerning mineral production, the decision mentions the following:

> *"The mineral industry is also mentioned in the Ministry of Trade and Industry's mineral strategy from 2013. The strategy states that "the government wants Norway to be an attractive country in which to conduct mineral operations." Regarding possible disposal solutions, it states that "For mineral extraction in coastal areas, marine disposal may be a possible alternative to land disposal. Both land disposal and marine disposal can have environmental consequences. It is not possible to*

[95] Page 46 and 48 of the decision, the Authority's own translation.

[96] Bedriftskompetanse AS is a private consultancy firm which prepared a memorandum in April 2013 on value creation and spillover effects from mineral extraction at the Repparfjord for Kvalsund Municipality. See the decision from the Environment Agency, p. 18.

> *specify on a general basis which type of disposal is most environmentally sound. The disposal solution to be chosen must be assessed on a case-by-case basis.*
>
> *In the Sundvolden Declaration[97], the government states that in many parts of Norway, the mineral industry can lead to increased activity and employment, and that the mineral industry is therefore an important area of focus."[98]*

The Norwegian Environment Agency identified the future income from mining operations as the main benefit to Norwegian society. In addition, it noted that the construction and operation of the mine would create employment, both directly and indirectly.

More generally, the decision refers to national policy documents highlighting the importance of the mineral industry. Reference is made to the Ministry of Trade and Industry's Mineral Strategy of 2013, which states that the Government seeks to make Norway an attractive country for mineral operations.

As mentioned above, the Ministry endorsed the Norwegian Environment Agency's assessment that the conditions for applying the derogation were fulfilled.[99] In addition, the Ministry provided some further elaboration on revenues in response to the appeal from the Sámi Parliament:[100]

> "*The Ministry assumes that the extraction of copper concentrate, as well as the by-products silver and gold, in Kvalsund municipality is a project with potentially large revenues if implemented. The operation will provide significant income in the form of returns to the company's shareholders, as well as increased tax revenues to the state, county, and municipality. It is estimated that there will be a need for 150 man-years in connection with the mining activities in Kvalsund, as well as derived employment*."

The minerals are mentioned, but it is the revenues and to some extent employment that are emphasized as the benefits of the project.

The legal requirement to assess compliance with Article 4(7) WFD and to set out and explain the reasons for the project prior to its approval, as described above in relation to Førdefjord (Section 6.3.4.1), applies equally to the mining project in Repparfjord.

6.4.3.2 Whether the benefits of the project satisfies the threshold in Article 4(7)(c) WFD

Based on the above-described decisions of the Norwegian Environment Agency of 15 January 2016 and of the Ministry of 19 December 2016, the Authority has identified the following interests relied upon by the Norwegian Government to justify the application of Article 4(7) WFD:

(i) Economic income in the form of wages to employees and revenues for shareholders,
(ii) Tax income to municipalities and to the state,
(iii) Employment locally and regionally, and
(iv) Promoting Norway as an attractive country for mineral operations

The Authority considers that the mere reference to the mineral industry and to the profitability of the project does not satisfy the level of detailed explanation required to determine that the mining project in Repparfjord is aimed at securing an overriding public

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[97] The Sundvolden Declaration was the Norwegian government's platform describing its priorities in 2013.
[98] The Norwegian Environment Agency's decision of 15 January 2016, p. 47. The Authority's own translation.
[99] The Ministry's decision of 19 December 2016, p. 11.
[100] The Ministry's decision of 19 December 2016, p. 13.

interest related to the supply of minerals. As a minimum, there would have to be some information on why the mineral is of a particular importance, considering elements such as scarcity, potential uses, and the purposes for which the supply is being ensured.[101]

The legal assessment set out in the Authority's analysis on the permit allowing disposal of mining waste into Førdefjord, apply *mutatis mutandis* to the permits granted in relation to Repparfjord.

With respect to wages and shareholder revenues, the Authority notes that these are economic interests of a purely private nature, and, by their very definition, cannot qualify as being of overriding public interest.[102]

Similarly, the creation of employment alone, both directly and indirectly, is an inherent feature of most profit-making activities and does not, as such, satisfy the threshold required to justify a derogation under Article 4(7) WFD.

While considerations relating to regional development may possibly, under certain conditions, constitute reasons of overriding public interest, such circumstances would require a demonstration of significant depopulation or social deprivation, assessed on the basis of objective and verifiable data. No such assessment is set out in the decisions relating to the mining project in Repparfjord, and there is no indication that the project was intended to address circumstances of social deprivation or severe demographic decline.

As regards promoting Norway as an attractive country for mineral operations, the Authority notes that the promotion of a specific industry in the abstract cannot be considered as an overriding public interest within the meaning of Article 4(7) WFD. As held by the EFTA Court in *Friends of the Earth Norway,* purely economic grounds such as, in particular, promotion of the national economy or its proper functioning, cannot serve as justification within the meaning of Article 4(7) WFD.[103]

The Authority therefore considers that the interests and benefits relied upon for the authorisation of the mining project in Repparfjord do not meet the threshold of an overriding public interest within the meaning of Article 4(7)(c) WFD. Accordingly, Norway could not rely on the derogation under Article 4(7) WFD to justify the deterioration of the ecological status of Repparfjorden indre and Repparfjorden ytre.

6.4.3.3 The recognition as a Strategic Project under the Critical Raw Materials Act

On 12 June 2025, the Nussir project was listed as a Strategic Project by Commission Decision (EU) 2025/1174 of 4 June 2025 recognising certain critical raw material projects located in third countries and in overseas countries or territories as Strategic Projects under Regulation (EU) 2024/1252 of the European Parliament and of the Council.[104]

The Authority does not consider that this alters its findings in the preceding section.

The Authority notes that neither Commission Decision (EU) 2025/1174 nor Regulation (EU) 2024/1252 ("the Critical Raw Materials Act" or "CRMA") have been incorporated into the EEA Agreement.[105]

Nevertheless, the EFTA Court has held that, while the CRMA has not been incorporated into the EEA Agreement, considerations under this act may nevertheless inform an

[101] See to this extent EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 47.
[102] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 42.
[103] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 40.
[104] OJ L, 2025/1174, 12.6.2025.
[105] The CRMA was marked as EEA relevant and is currently under scrutiny by the EEA EFTA States. Commission Decision (EU) 2025/1174 was not marked as EEA relevant.

assessment of whether a particular commodity is critical.[106] As such, the fact that the CRMA has not been incorporated into the EEA Agreement does not necessarily exclude its relevance.

However, the recognition of a Strategic Project does not automatically entail that the project is of an overriding public interest within the meaning of Article 4(7) WFD. Article 10 CRMA provides that "*with regard to the environmental impacts or obligations addressed in Article 6(4) and Article 16(1), point (c), of Directive 92/43/EEC, Article 4(7) of Directive 2000/60/EC and Article 9(1), point (a), of Directive 2009/147/EC or in Union legislative provisions regarding the restoration of terrestrial, coastal and freshwater ecosystems, Strategic Projects in the Union shall be considered to be of public interest or serving public health and safety, and may be considered to have an overriding public interest provided that all the conditions set out in those Union legislative acts are fulfilled."* (emphasis added).

In other words, projects listed as "Strategic Projects" within the meaning of the CRMA *may* be considered to be of overriding public interest, but only if all the conditions under Article 4(7) WFD are met.

This conclusion is also clear from Article 6(3) CRMA, which provides that *"The recognition of a project as a Strategic Project pursuant to this Article shall not affect the requirements applicable to the relevant project or project promoter under Union, national or international law"*. (emphasis added).

Furthermore, Recital 25 to the CRMA states that "[…] *Being recognised as a Strategic Project should therefore be without prejudice to any applicable permitting conditions for the relevant projects, including those set out in […] [the WFD]*. Recital 27 to the CRMA provides that: "*It should be possible to authorise Strategic Projects which have an adverse impact on the environment, to the extent they fall within the scope of Directives 2000/60/EC […] where the permitting authority responsible concludes, on the basis of a case-by-case assessment, that the public interest served by the project overrides those impacts, provided that all relevant conditions set out in those legal acts are met. […]"* (emphasis added).

In its above assessment, the Authority has found that not all the conditions under Article 4(7) WFD were met. Specifically, Article 4(7) WFD requires Norway to set out and explain the reasons for the project prior to its approval. The reasons provided prior to the approval of the project are described above, and do not include the provision of critical raw materials.

Moreover, as held above, the national authorities must make a detailed assessment of the expected benefits of the project and weigh these against the resulting deterioration of the water body. On the basis of that assessment, the national authorities must ensure that the project would indeed confer the benefits sought, that all practicable steps had been taken to mitigate the adverse impact of the contested project on the status of that body of surface water, and that the objectives pursued by the project could not, for reasons of technical feasibility or disproportionate cost, be achieved by other means that would have been a significantly better environmental option.[107] As such an assessment was absent in the authorisation of the project, the conditions under Article 4(7) WFD are not met.

6.4.4 Conclusion

In the absence of a valid derogation under Article 4(7) WFD, the Norwegian Government has acted in breach of its obligation under Article 4(1) WFD to prevent deterioration of the status of all bodies of surface waters by authorising, and maintaining in force the authorisation of, a project leading to the deterioration of the ecological status in Repparfjorden indre and Repparfjorden ytre.

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[106] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 46.
[107] EFTA Court, Case E-13/24, *Friends of the Earth,* paragraph 33-34.

7 Conclusion

Accordingly, as its information presently stands, the Authority must conclude that:

- By failing to implement correctly and completely Article 4(7)(c) WFD as adapted to the EEA Agreement by way of Protocol 1 thereto, Norway has failed to fulfil its obligations under the Water Framework Directive and Article 7 EEA;
- By authorising the project entailing the disposal of mining waste in Førdefjorden-ytre without a valid derogation, Norway has incorrectly applied Article 4(1) in conjunction with Article 4(7) WFD and failed to fulfil its obligations under the Directive;
- By maintaining in force the authorisation of the project entailing the disposal of mining waste in Førdefjorden-ytre without a valid derogation, Norway has incorrectly applied Article 4(1) in conjunction with Article 4(7) WFD and failed to fulfil its obligations under the Directive;
- By authorising the project entailing the disposal of mining waste in Repparfjorden indre and Repparfjorden ytre without a valid derogation, Norway has incorrectly applied Article 4(1) in conjunction with Article 4(7) WFD and failed to fulfil its obligations under the Directive;
- By maintaining in force the authorisation of the project entailing the disposal of mining waste in Repparfjorden indre and Repparfjorden ytre without a valid derogation, Norway has incorrectly applied Article 4(1) in conjunction with Article 4(7) WFD and failed to fulfil its obligations under the Directive.

In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Norwegian Government submits its observations on the content of this letter *within two months* of its receipt.

After the time limit has expired, the Authority will consider, in the light of any observations received from the Norwegian Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority

Arne Røksund President	Árni Páll Árnason Responsible College Member	Nuscha Wieczorek College Member

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This document has been electronically authenticated by Arne Roeksund, Melpo-Menie Josephides.