

EFTA Surveillance Authority  
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BELGIUM

Oslo, 3 February 2022

**Reference is made to the letter of 15 December 2021 from the Norwegian Ministry of Climate and Environment (the Ministry) to the EFTA Surveillance Authority in case no. 86194.**

We have some comments on the Ministry's letter.

Under point two of the letter, the Ministry says that «overriding public interest» and «benefits to human health, the maintenance of human safety or to sustainable development» in WFD art. 4 (7) is reflected in The Water Regulation section 12, second paragraph subclose b, which use the expression «the benefits for society» (“samfunnsnytte” in Norwegian).

We do agree that the considerations specified in the directive are included in the broader and general expression “benefits for society”. But the issue here is that “benefits for society” also includes other considerations and benefits than those specified in the text of the WFD art. 4 (7). Water Regulation Section 12 seem to entail a wider access to derogate from the directive’s legal requirements, unless the word “samfunnsnytte” is interpreted and practiced more narrowly by the government than the common understanding of the word.

The Norwegian permits for sea disposals in Førdefjorden and Repparfjorden do not indicate that the Norwegian authorities practice a narrow interpretation of the expression “benefits for society”. The ecological status in these water bodies will deteriorate from good ecological status to poorer ecological status because of the mineral waste disposals. As we have pointed out in our meetings with ESA, the Norwegian government has reasoned this with the benefits of jobs and business interests.

The priority is clearly stated in the permits, and it is the complainants view that this is not in line with the requirements of WFD art. 4 (7). The complainants cannot see that the benefits emphasized in these permits are of overriding public interest or give benefits to human health, the maintenance of human safety or to sustainable development. Anyway, benefits of the mining industry can also be achieved without sea disposals.

We think that the expression «overriding public interest» must be understood as *significant* public interests. It does not include all benefits for the society, regardless of weight and type of interest. In comparison with the other Nordic languages, the expression in the Danish translation of the directive is “væsentlige samfundsinteresser» (significant societal interests) and in the Swedish translation «ett allmänintresse av större vikt» (a public interest of greater importance). It would be more in line with the directive to translate «overriding public interest» to another Norwegian expression, for example “tungtveiende samfunnshensyn” (weighty societal interests).

Yours sincerely,



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Elected head of Naturvernforbundet