

REQUEST FOR INTERNAL REVIEW

UNDER TITLE IV OF THE AARHUS REGULATION

Of Commission Decision 2025/1174/EU of 4 June 2025 granting the status of a Strategic Project to the raw materials project submitted for consideration by the project promoter NUSSIR ASA (the “Contested Act”) pursuant to Arts. 6, 7 of Regulation 2024/1252/EU of 11 April 2024, establishing a framework for ensuring a secure and sustainable supply of critical raw materials.

SUBMITTED BY

Friends of the Earth Europe

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On behalf of

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Also on behalf of:

- **Naturvernforbundet Finnmark** (regional group)
- **Naturvernforbundet Árvjórrí** (local group)
- **Naturvernforbundet Stilla-laget / Vest-Finnmark** (local group)
- **Natur og Ungdom** (Young Friends of the Earth Norway)

Hereafter “the Applicants”

TO

European Commission, Directorate-General for Internal Market, Industry,
Entrepreneurship and SMEs (DG GROW)

Pursuant to Article 10 of Regulation No 1367/2006 and Commission Decision
2023/748/EU of 11 April 2023.

The Applicants hereby jointly submit the request and have appointed FoEE as lead
NGO representing FoE Norway in the handling of this request.

A: Background

1. On 23 May 2024, the European Critical Raw Materials Act¹ (hereafter “the CRMA”) came into force. The act aims at ensuring a diverse, secure and sustainable supply of critical raw materials for the EU’s industry.
2. A central instrument of the CRMA consists in the designation of raw material projects that make a meaningful contribution to the security of the Union’s supply of strategic raw materials as so called “Strategic Projects” which, once bestowed with this status, benefit from streamlined permitting and enabling conditions for access to finance. Strategic projects can be implemented both in Member States and in third countries.
3. To ensure that Strategic Projects contribute to the objective of creating a *sustainable* supply of raw materials, the CRMA sets out strict environmental, social and governance criteria, that must be met in order to grant the strategic status to project promoters who have submitted their raw material projects for consideration.
4. In 2024 Commission opened the Call for Strategic Projects Applications. On June 4, 2025, the Commission announced its decision to accept several applications of critical raw materials projects and grant them the status of a Strategic Projects according to Art. 6 CRMA. Among those projects, the Commission also accepted the application by Nussir ASA, to which this request refers.
5. The application by Nussir ASA encompasses the mining of two copper deposits (Nussir and Ulveryggen) located in Hammerfest municipality in Finnmark County in the northern part of Norway. The two deposits lay within approximately three kilometres distance from each other.
6. The Ulveryggen deposit was developed in the 70s, and subsequently mining waste was disposed in the Repparfjord. After many decades, the fjord has finally begun to recover and stabilize, but the part of the fjord that was exposed to the dumping of mining waste in the 70s is still affected by the pollution in the past.²
7. Since 2005, Nussir ASA has been working with the aim to extract the Nussir deposit and develop the project as an underground mine. In 2010, Nussir ASA obtained the rights to the Ulveryggen deposit as well. Ulveryggen has been extracted in an open-pit mine between 1972 and 1978 by a previous company.
8. On May 6, 2016, Nussir ASA applied to the Norwegian Directorate of Mining (Direktoratet for mineralforvaltning med Bergmesteren for Svalbard) for an operating licence relating to the Minerals Act (lov 19. Juni 2009 nr. 101 om erverv og utvinning av mineralressurser) for the extraction of copper in the area of Repparfjord for the Nussir and Ulveryggen deposits. A permission was granted, and after appeal by

¹ OJ L 2024/1252, 3.5.2024.

² <https://naturvernforbundet.no/repparfjorden>

Naturvernforbundet regarding the decision, the final decision on operating permit was granted on November 29, 2019. Nussir ASA has estimated to extract 25 million cubic meters of materials over 25-30 years.

9. On January 16, 2016, Nussir ASA was granted a discharge permit to a submarine tailings disposal (STD) in Repparfjord under the Pollution Control Act (lov 13. mars 1981 nr. 6 om vern mot forurensninger og om avfall). On December 19, 2016, The Ministry of Climate and Environment confirmed the permit after appeals by Naturvernforbundet.
10. Repparfjord is designated as a national salmon fjord, and Repparfjord River as a national salmon river. Several species are dependent on the fjord, and the local biodiversity is significant. Especially for species like wild salmon, which is an anadromous species that depend on the fjord and the freshwater in the rivers for reproduction. The wild Atlantic salmon (*Salmo salar*) population has been dramatically reduced recent years, with a historically low population as of 2024. In the national red list of threatened species, the wild salmon is categorized as “Near threatened”.³
11. In addition to the operating license⁴ and the discharge permit (**Annex I**), Nussir project also requires a zoning plan for the area, building permit according to the Planning and Building Act (lov 27. juni 2008 nr 71 om planlegging og byggesaksbehandling) and an approved waste management plan according to the Regulations on Recycling and Treatment of Waste (Waste regulation) chapter 17 (forskrift 1. juni 2004 nr. 930 om gjenvinning og behandling av avfall).
12. The Nussir project is highly contentious among broad parts of the population. The project has received criticism from the Institute of Marine Research⁵ and the Directorate of Fisheries (**Annex II – Statement regarding Nussir Operating License**), and faces strong resistance from environmental organisations, fisheries organisations⁶ and the Sámi community, particularly for two reasons:
 - Dumping mining waste into a submarine tailings disposal (STD) in Repparfjord, with severe negative impacts on the marine ecosystem, currently designated as a national salmon fjord.
 - Disrupting and threatening the continuation of reindeer husbandry and Sea Sámi fishing, which are traditional livelihoods for the Sámi people.
13. Past performance already shows that Nussir ASA does not operate in a way that safeguards environmental quality, public health and Sámi interests. In 2021, Nussir ASA started construction works that were stopped by the county governor because of

³ NINA: [Status for norske laksebestander i 2025](#)

⁴ [Nussir Operating License](#)

⁵ Institute of Marine Research: [Statement regarding the application for discharge permit](#)

⁶ Norges Fiskarlag: [Questioning the use of marine dumping in the Repparfjord](#)

the lack of environmental impact assessments.⁷ Recently, Nussir ASA started blasting a test tunnel. The reindeer herders were not notified of this work during the sensitive calving season. On June 27 2025, Hammerfest municipality issued a cancellation order because necessary permits according to the Planning and Building Act (lov 27. juni 2008 nr 71 om planlegging og byggesaksbehandling) were not granted.⁸

14. The Applicants state that the Nussir project in Norway should not have been designated as strategic under Article 7(9), in conjunction with Article 6 (1) CRMA. This project is not sustainable because of its adverse impacts to both environmental interests and indigenous peoples' traditional livelihoods. The decision does not comply with mandatory requirements and safeguards stipulated by the CRMA under Art. 6 in connection with Annex III, it is not in compliance with national environmental laws and contravenes various requirements of the EU Treaties. The decision should be reviewed accordingly.

B: Legal framework

I. The Contested Act and the Critical Raw Materials Act

15. The Contested Act is an administrative decision taken under Arts. 6, 7 (9) CRMA. By recognizing the Nussir raw materials project as a Strategic Project, the Commission demonstrates that it is of the opinion, that the project promoter has satisfied all requirements laid down in Art. 6 (1) CRMA. These requirements are:

(a) the project would make a meaningful contribution to the security of the Union's supply of strategic raw materials;

(b) the project is or will become technically feasible within a reasonable timeframe and the expected production volume of the project can be estimated with a sufficient level of confidence;

(c) the project would be implemented sustainably, in particular as regards the monitoring, prevention and minimisation of environmental impacts, the prevention and minimisation of socially adverse impacts through the use of socially responsible practices including respect for human rights, indigenous peoples and labour rights, in particular in the case of involuntary resettlement, potential for quality job creation and meaningful engagement with local communities and relevant social partners, and the use of transparent business practices with adequate compliance policies to prevent and minimise risks of adverse impacts on the proper functioning of public administration, including corruption and bribery;

⁷ [Vedtak Statsforvalteren i Troms og Finnmark 2. mars 2022](#)

⁸ Norwegian Broadcasting Corporation: [Hammerfest municipality halts the Nussir Project](#)

(d) for projects in the Union, the establishment, operation or production of the project would have cross-border benefits beyond the Member State concerned, including for downstream sectors;

(e) for projects in third countries that are emerging markets or developing economies, the project would be mutually beneficial for the Union and the third country concerned by adding value in that third country.

16. According to Art. 6 (2) CRMA, the fulfilment of these criteria shall be assessed in accordance with the elements and evidence set out in Annex III of the CRMA. Regarding the criterion laid down in Art. 6 (1) lit. c), Annex III No. 5 states that the assessment whether the criterion is met for raw materials projects in third countries and overseas territories shall consider compliance with the applicable national law where that national law provides sufficient assurance of compliance with the criterion or aspects of it. In addition, compliance with a number of international instruments shall be taken into account, including:

(a) ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;

(b) OECD Due Diligence Guidance for Responsible Business Conduct, in particular the guidelines related to combatting corruption;

(c) OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;

(d) OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, including where referring to the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples;

(e) OECD Principles of Corporate Governance;

(f) OECD Guidelines for Multinational Enterprises on Responsible Business Conduct;

(g) UN Guiding Principles on Business and Human Rights;

(h) IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement.

17. Furthermore, project promoters can attest compliance with the criterion laid down in Article 6 (1) lit. (c) CRMA by (Annex III No. 6):

(a) providing evidence that the project concerned is individually certified by one or more schemes recognised pursuant to Article 30(2) that jointly cover the requirements listed in Annex IV, point (2); or

(b) committing to obtain certification for the project concerned as part of by one or more schemes recognised pursuant to Article 30(2) that jointly cover the

requirements listed in Annex IV, point (2), and providing sufficient evidence that when implemented the project concerned will be able to meet the criteria for such certification.

At the time when the Contested Act was adopted, no certification scheme in the meaning of the abovementioned point (a) has been recognized.

II. National Environmental Law of Norway

18. Due to the reference in Annex III No. 5 to the national law of the state where the raw materials project will be implemented, the relevant legal framework of the present case includes the following environmental law frameworks.
19. The Nature Diversity Act (Naturmangfoldloven) regulates the use and protection of nature. It covers all of nature and applies to everyone making decisions that affect biodiversity. The law outlines principles for sustainable use of nature, and how authorities should manage natural resources, including the need to consider the impact of a decision on biodiversity, the precautionary principle and avoiding unnecessary harm to nature.
20. When the state considers whether a company should be granted a permit under the Minerals Act (lov 19. Juni 2009 nr. 101 om erverv og utvinning av mineralressurser) to explore and develop a mineral deposit, the environmental principles in the Nature Diversity Act must be taken into account.
21. The Water Regulation (Vannforskriften) is the implementation of the EU Water Framework Directive (WFD) into Norwegian legislation. The Water Regulation and the WFD require measures to achieve good ecological status of water bodies and prevent deterioration of water ecosystems. These obligations are particularly relevant to this project due to the STD in Repparfjord. The discharge permit must be in line with the framework and environmental objectives of the Water Regulation and the WFD.
22. When a project pollutes the environment a discharge permit according to the Pollution Control Act (lov 13. mars 1981 nr. 6 om vern mot forurensninger og om avfall) is needed. Article 2, section 3 of the Pollution Control Act states that pollution and waste problems shall be avoided and limited by using technologies that, based on an overall assessment of environmental and economic conditions, give the best results.
23. Before exploring and developing the deposit, the company also require a waste management plan according to the Regulations on Recycling and Treatment of Waste (Waste Regulation) chapter 17 (forskrift 1. Juni 2004 nr. 930 om gjenvinning og behandling av avfall). This is the Mineral Waste Directive (2006/21/E), implemented in Norwegian law by Chapter 17 of the Regulation on the recovery and treatment of waste of 1 June 2004 No. 930 (the "Waste Regulation") under the Pollution Control Act.

24. An important purpose of the waste management plan is to identify early in the design phase how waste management can be carried out in order to minimize harmful effects. A Waste Management Plan will be essential information when the environmental authorities assess whether a discharge permit should be granted, and the content of the permit. Further, the company will have far stronger incentives to minimize mining waste and environmental impact *before* a permit is granted.
25. Furthermore, a permission according to the Planning and Building Act (lov 27. Juni 2008 nr. 71 om planlegging og byggesaksbehandling) is required for buildings and constructions outside the concession area following the permission from the Mineral Act.

III. **Art. 191 TFEU and the precautionary principle**

26. It is also relevant to briefly introduce Art. 191 TFEU, which states that Union policy on the environment shall aim at a high level of protection. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. According to Art. 191 (1) TFEU, Union environmental policy shall also contribute to promoting environmental protection at the regional and international level.
27. The precautionary principle is of importance in the present case because in adopting the contested act, the Commission undertook a forecast decision and a risk assessment of future harm that will or will not be associated with the Nussir raw materials project. The discretion which the Commission enjoys in undertaking such forecast decisions is limited by the precautionary principle in cases that concern the environment.⁹
28. Both in forecasting decisions in general, and where potential environmental harm is involved based on Art. 191 (3) TFEU in particular, Union institutions must examine carefully and impartially all the relevant aspects of the individual case¹⁰ and base their decision on factually accurate, reliable, consistent and complete evidence.¹¹

C: Admissibility

29. Article 10 Aarhus Regulation, as amended, entitles any non-governmental organisation that meets the criteria set out in Article 11 Aarhus Regulation to make a request for internal review to the Union institution or body that adopted an administrative act, as

⁹ GC, T-31/07, *Du Pont de Nemours e.a. v. Commission*, ECLI:EU:T:2013:167, para. 134 and case law cited.

¹⁰ CJEU, C-269/90, *Technische Universität München*, ECLI:EU:C:1991:438, para. 14.

¹¹ Eliantonio, M. (2019). *Deference to the administration in judicial review – the European Union*. In G. Zhu (Ed.), *Deference to the administration in judicial review* (pp. 165-179). Springer International Publishing.

defined in Article 2(1) lit. g) Aarhus Regulation, on the grounds that such an act or omission contravenes environmental law.

I. Lead Applicant meets the criteria set out in Art. 11 Aarhus Regulation

30. In the past, Friends of the Earth Europe (FoEE) has already submitted a number of internal review requests, and the EU institutions have always acknowledged that FoEE fulfils the criteria under Article 11(1). Yet to avoid any doubts, FoEE submits the documents listed in points 1-3 of the Annex to Decision 2008/50, specifically:
- Statue of Friends of the Earth Europe published in the Belgian Official Journal (Moniteur Belge) – see **Annex III**,
 - Annual activity reports of FoEE for the years 2024 and 2023 - see **Annex IV and V**,
 - An extract of the Belgian Companies Register, which proves FoEE's incorporation as a legal person under Belgian law since 27 September 1990 - see **Annex VI**.
31. Article 1 of the Statutes proves that FoEE is incorporated in the form of a non-profit association. This is also confirmed by the extract of the Belgian companies register. Both documents show that FoEE is a legal person in accordance with a Member State's national law.
32. Article 3 of the Statutes demonstrates that its primary stated objective is promoting environmental protection in the context of environmental law.
33. The extract of the Belgian companies register demonstrates that the organisation has existed for more than two years. The activity reports provide evidence that FoEE is actively pursuing the objective of environmental protection, including sustainable management of natural resources.
34. With regard to Art. 11 (1) lit. d) Aarhus-Regulation, the subject matter of this Request is the sustainable governance of natural resources, specifically related to mining projects and the safeguarding of the environment during the extraction, processing and disposal of raw materials. The objective of this Request is therefore to ensure that EU acts and decisions do not facilitate raw materials projects that would counter EU or national environmental laws. This subject matter and objective are fully in line with FoEEs statutory purpose described above and current activities. The past years, FoEE has closely followed the development and implementation of the Critical Raw Materials Act as well as the selection process of the Strategic Projects, analysing the socio-environmental impacts on the environment and local populations.

II. The Contested Act is an administrative act in accordance with Art. 2 (1) lit. g) Aarhus Regulation

1. The Contested Act is a non-legislative act adopted by a Union institution

35. Article 2 (1) lit. g) Aarhus Regulation, as amended, defines “administrative act” as “any nonlegislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1).”
36. The contested act is a decision in the sense of Art. 288 TFEU, taken by the Commission on the basis of Art. 7(9) CRMA. It is non-legislative, as it was not adopted by legislative procedure, see Art. 289 TFEU.

2. The Contested Act has legally binding and external effects

37. According to Art. 288 TFEU, decisions are legally binding in their entirety. The external effects of the contested act are derived from the CRMA which, in Arts. 9 - 18, attaches specific legal consequences to individual raw materials projects that have received the status of a Strategic Project and that confer corresponding subjective rights upon the project promoters of these projects, see Art. 7 (12) CRMA.

3. The Contested Act contains provisions that may contravene environmental law within the meaning of Art. 2 (1) lit. f) Aarhus Regulation

38. Pursuant to Article 2(1) lit. f) Aarhus Regulation, ‘environmental law’ means “Union legislation which, irrespective of its legal basis, contributes to the pursuit of the objectives of Union policy on the environment as set out in the Treaty: preserving, protecting and improving the quality of the environment, protecting human health, the prudent and rational utilisation of natural resources, and promoting measures at international level to deal with regional or worldwide environmental problems”. The EU General Court has held that this concept “must be interpreted, in principle, very broadly”.¹²
39. The present Request challenges the Commission decision to grant the Strategic Project status to the Nussir raw materials project, on the basis that this decision contravenes the environmental requirements set out by the CRMA in Art. 6 (1) lit. c) in conjunction with Annex III for the recognition of Strategic Projects. Furthermore, the decision is challenged on the basis of Art. 2, 7 CFR. All of these legal provisions are undoubtedly “environmental law” within the meaning of the Aarhus regulation, as they contribute to the objective of the prudent and rational utilisation of natural resources, specifically those labelled as critical raw materials in Art. 4 CRMA as well as to the objective of protecting human health.

¹² GC, T-33/16, *TestBioTech v Commission*, EU:T:2018:135, paras. 44-46.

40. For the CRMA, this is confirmed by Recital (17) which states that:

*In order to ensure the sustainability of increased critical raw material production, new critical raw materials projects should be planned and implemented sustainably **covering all aspects of sustainability** highlighted in the Commission's publication of 11 September 2021, entitled 'EU principles for sustainable raw materials', including ensuring **environmental protection, the prevention and minimisation of socially adverse impacts through the use of socially sustainable practices**, including respect for human rights such as the rights of women, and transparent business practices.*

41. The referenced publication of 11 September 2021 sets out various environmental principles for sustainable raw materials, including

a. applying sound science- and knowledge-based environmental management of technical and economic feasibility, which is in alignment with the current legal framework in place and the European Green Deal; the main negative impacts of the operations on the environment (e.g. water, air, soil) as well as resulting damages will be adequately monitored, assessed and minimised;

b. environmental protection and mitigation measures being applied throughout the life of an extraction and processing operation, from exploration to post closure;

c. applying the best available techniques on extractive waste management, in line with the Extractive Waste Directive and the Reference Document for the Management of Waste from Extractive Industries (MWEI) BREF in place;

d. applying, in line with current EU legislation and the European Green Deal and Biodiversity Strategy, the conservation of biodiversity, and any negative impact on biodiversity is minimised and where legally stipulated compensated through implementation of integrated approaches as well as reconciliation of extractive and processing activities in Natura 2000 sites.

42. Pursuant to Recital (17), all of these aspects must be taken into account when planning and implementing new critical raw materials projects and, accordingly, when deciding on the Strategic Status of such projects. This clearly demonstrates the environmental dimension of Art. 6 (1) CRMA.

43. Regarding Arts. 2, 7 CFR, the ECtHR has held that Art. 2 (1) ECHR and Art. 8 (1) ECHR, which correspond to Art. 2 (1) CFR and Art. 7 CFR, contain an environmental dimension. They require states to adequately assess the risks that stem from their activities or activities of private third parties and take appropriate measures in order to safeguard the right of applicants to a healthy and protected environment. The state must do everything in its power in the circumstances of the individual case to prevent the applicant's life from being avoidably put at risk due to industrial emissions, it has to fulfil its duty to place a legislative and administrative framework that ensures an effective deterrence against environmental threats to the right to life and private life

and it has to fulfil its duty to inform the applicants about environmental risks. Therefore, Art. 2 (1) ECHR and Art. 8 (1) ECHR as well as Art. 2 (1) CFR and Art. 7 CFR are 'environmental law' within the meaning of Article 2(1) lit. f) Aarhus Regulation.

D: Grounds of review

44. The Applicants contend that the Decision contravenes environmental law, in particular Article 6 (1) lit. c CRMA, read in conjunction with Articles 3 and 5, as well as national environmental laws stated above.
45. According to Art. 6 (1) lit. c) CRMA, the Commission shall recognize only such raw material projects as Strategic Projects that *“would be implemented sustainably, in particular as regards the monitoring, prevention and minimisation of environmental impacts, the prevention and minimisation of socially adverse impacts through the use of socially responsible practices including respect for [...] indigenous peoples [...]”*.
46. The operative term “would”, demonstrates that the decision under Art. 6 (1) CRMA refers to a project that is not yet implemented at the time of adoption. Therefore, the relevant assessment requires a prospective analysis of the future development of the project and its environmental impacts.
47. While such a forecasting decision involves an element of discretion, it is also evident from applicable case law that the margin of appreciation, enjoyed by the Commission in such cases, is not limitless.
48. In this context, it is important to recall that it is up to the project promoter and subsequently to the Commission, after having adopted the decision, to substantiate the facts upon which it grounds the fulfilment of the criterion in Art. 6 (1) lit. c) CRMA.
49. In doing so, the Commission is required to ensure that the assessment is based on evidence that is factually accurate, reliable, consistent and contains all the information that had to be taken into account to adopt the relevant decision.¹³
50. Furthermore, the evidence must be capable of substantiating the conclusions drawn from it. Where a prospective analysis is required, such as here, it follows from CJEU case law, that particular regard has to be given to past and present events from which the prospective scenario might be extrapolated.¹⁴ For the case at hand, this means that if present facts would show that a raw materials project is currently being implemented in violation of the requirements set out in Art. 6 (1) CRMA, then, in the absence of special circumstances that would indicate otherwise, the Commission must

¹³ GC, T-475/07, *Dow AgroSciences*, paras. 151-152; GC, T-204/11, *Spain v European Commission*, EU:T:2015:91, paras. 32-34.

¹⁴ CJEU, C-12/03, *Commission of the European Communities v Tetra Laval BV*, ECLI:EU:C:2005:87, para. 42.

adopt its decision on the presumption that the project will continue to be implemented in such a manner going forward.

51. According to Annex III No. 5, the assessment of whether projects located in third countries or overseas territories fulfil the criterion laid down in Article 6(1), point (c) shall take into account compliance with relevant national law.
52. The Commission has not given due consideration to past and present violations of criteria listed in Annex III of the CRMA nor to national laws and regulations.
53. Therefore, the Applicants contend that the Commission has grounded the Decision/designation of strategic status upon incomplete and inaccurate evidence and that the prospective analysis undertaken on the basis of this evidence suffers from a manifest error of assessment.
54. In the following sections, the Applicants will elaborate in more detail why the Nussir project is not in line with environmental laws and indigenous people's rights.

The Nussir project's negative impact on the environment

55. Repparfjord is designated as a national salmon fjord, and Repparfjord River as a national salmon river. As such, they have a significant ecological and socio-economic function and are important measures to protect biodiversity. The local biodiversity is significant, not only because of the salmon, but also sea trout and sea char. Repparfjord is the connection between the river and the sea for those anadromous species migrating between fresh water and the sea.
56. After decades of dumping mining waste in the Repparfjord, the fjord is today classified with good ecological status¹⁵ under the WFD.¹⁶ Biodiversity is rich, and Repparfjorden is a highly important habitat for salmon and a spawning ground for cod.
57. Nussir ASA is planning to restart disposing mining waste in Repparfjord through Submarine Tailings Disposal (STD), even though it is an outdated method because of its negative environmental impacts.¹⁷ Most countries have stopped the practice of dumping mining waste into the sea, and Norway is the only European country where the mining industry still applies STD.
58. The extraction/mining waste consists of crushed rock containing nanoparticles and copper, as well as chemicals and microplastics. Microplastics is a contaminant in mining waste from various sources within the mining process and surrounding areas.

¹⁵ Surface waters are classified into five quality classes (status) under the WFD: High, Good, Moderate, Poor and Bad.

¹⁶ [Vann-Nett | Miljøtilstand på vannforekomster i Norge](#) om 0421010500-2-C Repparfjorden indre

¹⁷ [Ditch Ocean Dumping - Earthworks](#)

The mining waste also contains Sodium Isobutyl Xanthate (SIBX), a chemical used in the mining process as a flotation reagent. SIBX is toxic and extremely harmful to aquatic organisms. The tailings will also contain traces of chromium and nickel, which are heavy metals and toxic when biota are exposed to high levels.

59. If mining waste is dumped in the environment, solid particles will coat the seabed for decades, causing bottom-dwelling animals and sea plants to die due to ingestion (clogging of gills and absorption in body tissues). A dead seabed will affect the entire ecosystem in the fjord. The Norwegian Institute of Marine Research (Havforskningsinstituttet) has found that nanoparticles have the potential to spread over a larger area than permitted.¹⁸ The spread and negative impacts by nanoparticles or microplastics was not sufficiently assessed when issuing the discharge permit in 2016.
60. The wild salmon population in Norway has dramatically diminished recent years and is continuing to decrease. In 2021, the wild Atlantic salmon (*salmo salar*) went from category “Least Concerned” (LC) to “Near Threatened” (NT) on the national red list of threatened species. In 2024 the population was historically low.¹⁹ Therefore, all activities that may harm the wild salmon population should be avoided in the Repparfjord, in order to protect this threatened species.
61. The STD will cause deterioration of the ecological status of the Repparfjord to a poorer status during and after the operations, due to mid- and long-term negative impacts (sometimes irreversible). In the Water Management Plan (2022-2027) for the water region Troms and Finnmark²⁰, the status in Repparfjord is expected to deteriorate to “Bad” status, which is the worst environmental condition, because of the dumping of mining waste in the fjord.
62. The Norwegian Water Regulation section 4 and the Water Framework Directive (WFD) Art. 4 establishes the obligation to prevent such deterioration of surface water bodies, as well as the objective that all water bodies shall have good (or high) ecological and chemical status.
63. Projects that cause deterioration of environmental status in a water body are not allowed, unless all the strict conditions for exemption in the Water Regulation section 12 (corresponding to the WFD Art. 4 point 7) are met:
64. All practicable steps to mitigate the adverse impact on the status of the water body must be taken. 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, cf. WFD Art. 4 (7) litra a and litra d.

¹⁸ The Norwegian Institute of Marine Research: [Master Sofie Arstein.pdf](#)

¹⁹ NINA: [Status for norske laksebestander i 2025](#)

²⁰ [Water Management Plan \(2022-2027\) for Troms and Finnmark](#)

65. The Applicants contend that the planned STD in Repparfjord is not in line with the principle of best available techniques, laid down in Section 2 of the Pollution Control Act and Section 12 of the Nature Diversity Act. As a waste management technique, STD is not only harmful to marine ecosystems, but also unnecessary given the alternatives such as reusing waste for construction or reclamation using tailings backfill.
66. The condition of an overriding public interest cf. WFD Art. 4 (7) letter c is not met either. It must be determined case-by-case whether the identified overriding public interest justifies the deterioration in the status of a surface water body. The environmental loss in Repparfjord would have to be outweighed by benefits for societal interests. Furthermore, accepting a significant deterioration from good to bad environmental status requires extraordinary and compelling reasons. These have not been presented or justified adequately in the case of the Nussir project. Although copper is considered a critical raw material, it can be obtained with less socio-environmental impacts through recycling. Furthermore, the Nussir deposit is not a suitable location to mine due to Repparfjord's biodiversity/ecological characteristics, and the traditional reindeer husbandry in the surrounding area. Moreover, STD as a waste management technique is highly unsustainable, as explained before.
67. The Applicants find that the permit allowing dumping of mining waste into the Repparfjord is in violation of the binding obligations established in the Water Regulation and the WFD. The discharge permit on January 16, 2016, does not assess the discharge to Repparfjord in relation to these obligations.
68. The Mineral Waste Directive and the Norwegian Waste Regulation under the Pollution Control Act, also requires that mineral waste is handled in such a way that harmful effects on the environment and human health are prevented or reduced as much as possible. An approved waste management plan is required by the Mineral Waste Directive Art. 5. The approval shall be an integral part of the discharge permit pursuant to the Pollution Act § 11, cf. the Waste Regulations § 17-4, and a proposed plan must accompany the discharge application.
69. A waste management plan for the Nussir project was not an integral part of the discharge permit granted in 2016. Nine years later, a Waste Management Plan for the Nussir project is still not approved. Nussir's discharge permit says that the plan must be submitted and approved by the Norwegian Environment Agency before the STD can be put into use. This is not in line with the Mineral Waste Directive and the Waste Regulation. Neither the Waste Regulations nor the Mineral Waste Directive allow for a two-step process where the waste management plan is prepared a long time after the discharge permit is granted.

70. The Norwegian state has been taken to court by Naturvernforbundet in a similar case in Førdefjorden,²¹ where a central point of dispute is the legality of allowing a STD in breach with the Water Regulation section 4 and the WFD art. 4. The judgment from the Court of Appeal is expected soon and will also be relevant for the assessment of the legality of Nussir's STD in Repparfjord.

The negative impact to Sámi culture and traditional livelihoods

71. The Nussir project in Repparfjord has met strong resistance from the Sámi community, because it will disrupt traditional reindeer husbandry and Sea Sámi fishing in Repparfjord.
72. In March 2022, the Sámi Parliament submitted²² a formal communication to the EFTA Surveillance Authority, pointing out the negative impacts on the ecology of Repparfjord as well as the Sámi culture and traditional livelihoods.
73. A report prepared by Protect Sápmi on behalf of the Sámi Parliament concluded that the Nussir project will violate Sámi rights.²³ The Truth and Reconciliation Commission concluded that Norwegian mineral extraction in Sámi areas is a continuation of the assimilation policy targeting the Sámi and other minorities in Norway, and the Nussir project was specifically mentioned in the report (page 548).²⁴ The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) has also concluded that mining projects in Sápmi, including the Nussir project, threaten Sámi rights.²⁵
74. The traditional Sámi culture with reindeer husbandry and Sea Sámi fishing is protected by international treaties that Norway has committed to follow. These are the international Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Indigenous Peoples and The Indigenous and Tribal Peoples Convention (ILO No. 169).
75. President of the Sámi Parliament, Silje Karine Muotka, held a speech²⁶ to EU Arctic Forum and Indigenous Peoples' Dialogue 2025 in Kittilä 26th of June 2025. She explained that: *"For us Sámi, the ocean is more than a livelihood. It's deeply tied to our language, knowledge, and relationship with nature. In Sámi, the word for fishing is bivdit, meaning "to ask for fish." This reflects our understanding: the ocean provides only when treated with humility and care."* She then underlined the paradox that while the EU seeks dialogue with indigenous people, the Commission has selected Nussir as a strategic project.

²¹ [Appeal to Borgarting Court, The Fjord Lawsuit](#)

²² [Letter from Sametinget to EFTA Surveillance Authority](#) march 18 2022

²³ [Analyse-av-virkningen-for-reindriften-ved-planlagt-gruvedrift-i-nussir-og-ulveryggen-i-kvalsund-kommune.pdf](#)

²⁴ [Sannhets- og forsoningskommisjonen - sluttrapport](#)

²⁵ [EMRIP-Norway-country-engagement-Advisory-note-19-03-2025.pdf](#)

²⁶ [Tale til EU Arctic Forum and Indigenous Peoples' Dialogue 2025 - Sametinget](#)

76. Based on the international Covenant on Civil and Political Rights Article 27, it follows that *“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”*.
77. Based on the United Nations Declaration on the Rights of Indigenous Peoples article 26, it follows that *“Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired”* and *“have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use”*. States shall give legal recognition and protection to these lands, territories and resources. The Applicants state that such recognition and protection has not been recognized or granted by the Norwegian government.
78. The Committee on the Elimination of Racial Discrimination has also noted that *“the close ties of indigenous peoples to the land must be recognized and understood as the fundamental basis of their cultures, spiritual life, integrity and economic survival. Their relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations”*.
79. The indigenous people’s rights are not merely political declarations, but binding law. The Commission is obliged to integrate these obligations into all decision-making processes affecting Sámi rights. FPIC stands for Free, Prior, and Informed Consent.²⁷ It is a specific right of Indigenous Peoples recognized in international human rights standards, particularly the UN Declaration on the Rights of Indigenous Peoples. FPIC ensures that Indigenous communities have the right to give or withhold their consent to activities that may affect their lands, territories, and rights. The Applicants state that this right has not been recognized in the project design.
80. The Nussir project will result in the closure of the reindeer migration route for District 20 Fála in the autumn, heavy traffic through the grazing area, and the establishment of a waste rock deposit on grazing lands. Underground blasting will frighten reindeer away from important grazing and migration areas. Additionally, the mine is planned in the middle of the calving area of District 22 Fiettar.
81. In the Norwegian Supreme Court's judgement HR-2021-1975-S (Fosen) about wind power development in a Sámi reindeer grazing area, the Court based its decision on the practice of the UN Human Rights Committee. The Court stated that a violation of rights under the ICCPR Article 27 occurs if the intervention leads to significant negative obstacles for the Sámi to practice their culture. The intervention in question must

²⁷ [Free Prior and Informed Consent – An Indigenous Peoples’ right and a good practice for local communities – FAO | United Nations For Indigenous Peoples](#)

therefore be viewed in the context of other, current and future interventions, as well as the overall impacts by all the interventions combined are crucial to determine whether a violation exists.

82. The designation of Nussir as a strategic project does not take account the direct or the cumulative impacts on the Sea Sámi fishing and reindeer husbandry in the area of Repparfjord, caused by mining and other activities. Mining is one of many interventions in Sámi areas in Finnmark, where traditional Sámi land use is also displaced by other industries, both existing and planned activities, such as large-scale development of wind power and power lines. The Applicants state that ongoing development of the power line Skaidi-Hammerfest must be taken into consideration of cumulative effects, as well as the cumulative effect of the application for 4 more power lines and 11 wind power plants in the same county, affecting the whole Sámi community.²⁸

The precautionary principle

83. The Applicants have serious doubts that the Nussir project will be implemented sustainably as regards the prevention and minimization of socially and environmentally adverse impacts. Therefore, the project is expected to fail the corresponding criterion in Article 6(1), point (c) CRMA, violating both environmental laws and indigenous rights.
84. It is important to recall that the remaining uncertainty that is inherent to decisions made under Art. 6 CRMA must be dealt with based on the precautionary principle. If, therefore, there are doubts as to whether the project will be implemented sustainably, the precautionary principle prohibits the Commission from taking steps that would facilitate and accelerate the implementation of the project.²⁹

Lack of public participation in the EU Commission's decision-making

85. The European Union and Norway have ratified the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) and is bound by its obligations, including articles 6, 7 and 8 on public participation in environmental decision-making. The Convention has partly been implemented by Regulation 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.
86. Union institutions and bodies shall in accordance with Regulation 1367/2006 provide, through appropriate practical and/or other provisions, early and effective opportunities for the public to participate during the preparation, modification or review of plans or

²⁸ [NVE vindkraft og nettsaker på høring i Finnmark høsten 2024](#)

²⁹ CJEU, C-647/11 *Luonnonsuojeluyhdistys Tapiola*, EU:C:2019:851, para. 66.; CJEU, C-487/17 to C-489/17 *Verlezza and Others*, EU:C:2019:270, para 38 ff; CJEU, C-212-18 *Prato Nevoso Termo Energy*, EU:C:2019:898, para 36.

programmes relating to the environment when all options are still open (article 9 para 1). Further, Union institutions and bodies shall identify the public affected or likely to be affected by, or having an interest in, a plan or programme of the type referred to in paragraph 1, taking into account the objectives of this Regulation (article 9 para 2). Union institutions and bodies shall ensure that the public referred to in paragraph 2 is informed and facilitate for participation, (article 9 para 3). Also, in taking a decision relating to the environment, Union institutions and bodies shall take due account of the outcome of the public participation as well as inform the public of that plan or programme, including its text, and of the reasons and considerations upon which the decision is based, including information on public participation (article 9 para 5).

87. In the case of Commission Decision 2025/1174/EU of 4 June 2025, there was no participation by the public in line with Regulation 1367/2006 and the Aarhus Convention in the process of granting strategic status to the Nussir project. There were no early and effective opportunities for the public to participate, nor identification of the public affected by or having an interest in the project, to ensure that they were informed. It is the Applicants' belief that participation during the decision-making process may have changed the outcome.

E: Conclusion

The Nussir project in Repparfjord is not in line with the requirements in Art. 6 (1) lit. c regarding prevention and minimisation of environmental impacts and responsible practices, including respect for indigenous people.

The Applicants hereby request the Commission to review its Decision 2025/1174/EU of 4 June 2025 granting the status of a Strategic Project to the raw materials project to NUSSIR ASA.

F: Schedule of Annexes

Annex I – Nussir Discharge Permit of 19th December 2016

Annex II - The Directorate of Fisheries – Statement regarding Nussir Operating License 1. September 2017

Annex III - Statue of Friends of the Earth Europe

Annex IV – Annual activity report of FoEE 2023

Annex V - Annual activity report of FoEE 2024

Annex VI - Extract from the Belgian Companies Register