



## JUDGMENT OF THE COURT

5 March 2025\*

*(Environment – Directive 2000/60/EC – Framework for action in the field of water policy – Article 4(7)(c) – Reasons of overriding public interest within the meaning of Article 4(7))*

In Case E-13/24,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Borgarting Court of Appeal (*Borgarting lagmannsrett*), in the case between

**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,**

concerning the interpretation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, in particular Article 4(7)(c) thereof,

THE COURT,

composed of: Páll Hreinsson, President (Judge-Rapporteur), Bernd Hammermann and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

having considered the written observations submitted on behalf of:

- Friends of the Earth Norway and Young Friends of the Earth Norway, represented by Asle Bjelland and Amund Noss, advocates;

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\* Language of the request: English. Translations of national provisions are unofficial and based on those contained in the documents of the case.

- the Norwegian Government, represented by Henrik Vaaler and Karen Mellingen, acting as Agents;
- the EFTA Surveillance Authority (“ESA”), represented by Hildur Hjörvar, Erlend Møinichen Leonhardsen, Kyrre Isaksen, and Melpo-Menie Joséphidès, acting as Agents; and
- the European Commission (“the Commission”), represented by Lorna Armati and Eulalia Sanfrutos Cano, acting as Agents,

having regard to the Report for the Hearing,

having heard oral arguments of Friends of the Earth Norway and Young Friends of the Earth Norway, represented by Asle Bjelland and Amund Noss; the Norwegian Government, represented by Henrik Vaaler; ESA, represented by Kyrre Isaksen and Erlend Møinichen Leonhardsen; and the Commission, represented by Lorna Armati, at the hearing on 16 October 2024,

gives the following

## **JUDGMENT**

- 1 This case concerns the interpretation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, and in particular Article 4(7)(c) thereof. More specifically, it concerns whether the notion of reasons of overriding public interest under Article 4(7)(c) should be interpreted as qualifying the public interests that may justify a derogation from the environmental objectives of that directive and/or whether this notion indicates a requirement to balance the public interest and the environmental objectives contained in the directive.

### **I LEGAL BACKGROUND**

#### **EEA law**

- 2 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1, and Norwegian EEA Supplement 2011 No 35, p. 589) (“Directive 2000/60” or “the Directive”) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 125/2007 of 28 September 2007 (OJ 2008 L 47, p. 53, and Norwegian EEA Supplement 2008 No 9, p. 41) and is referred to at point 13ca of Annex XX (Environment) to the EEA Agreement. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway, and the decision entered into force on 1 May 2009.

3 Recitals 1 and 32 of the Directive read:

*(1) Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.*

*(32) There may be grounds for exemptions from the requirement to prevent further deterioration or to achieve good status under specific conditions, if the failure is the result of unforeseen or exceptional circumstances, in particular floods and droughts, or, for reasons of overriding public interest, of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, provided that all practicable steps are taken to mitigate the adverse impact on the status of the body of water.*

4 Article 1 of the Directive defines its purpose, inter alia, 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;*

...

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

...

*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,*

...

5 Article 4(1)(a) of the Directive reads:

*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;*

(iii) *Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from 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;*

(iv) *Member States shall implement the necessary measures in accordance with Article 16(1) and (8), with the aim of progressively reducing pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances*

*without prejudice to the relevant international agreements referred to in Article 1 for the parties concerned;*

6 Article 4(7) of the Directive reads:

*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.*

## **National law**

- 7 The Norwegian Pollution Control Act No 6 of 13 March 1981 (*Lov om vern mot forurensninger og om avfall (forurensningsloven)*) (“the Pollution Control Act”) applies to all pollution within the confines of Sections 3 to 5, including pollution of water resources.
- 8 Pursuant to Section 7 of the Pollution Control Act, it is unlawful to do or initiate anything that may entail a risk of pollution unless this is lawful pursuant to Section 8 or 9, or permitted by a decision made pursuant to Section 11 of that act.
- 9 Under Section 16 of the Pollution Control Act, it is possible to impose conditions in a permit in order to counteract or limit damage caused by the activity in question. These conditions are binding on the permit holder.
- 10 Section 11 of the Pollution Control Act authorises the pollution control authority to issue pollution permits. The conditions for granting such permits are set out in the fifth paragraph of the provision:

*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.*
- 11 The Directive was transposed 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”).

- 12 Section 4 of the Water Regulation establishes the obligations to prevent deterioration of surface water bodies, as well as the objective that all water bodies shall have good ecological and chemical status.
- 13 Article 4(7) of the Directive was transposed through Section 12 of the Water Regulation. It is a requirement for the granting of a permit under Section 11 of the Pollution Control Act, in relation to a water body, that the conditions set out in Section 12 of the Water Regulation are met.
- 14 Section 12 of the Water Regulation reads:

*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 obtained 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.*

## **II FACTS AND PROCEDURE**

- 15 In 2022, two Norwegian environmental NGOs, Friends of the Earth Norway (*Norges Naturvernforbund*) and Young Friends of the Earth Norway (*Natur og Ungdom*), took legal action against the Norwegian Government before Oslo District Court, arguing that the four following permits (Decisions (i) to (iv) respectively) granted to Nordic Mining were invalid:

- (i) *The King in Council’s Royal Decree of 19 February 2016 (“the Royal Decree”).*

*The decision gives Nordic Mining a pollution permit pursuant to Section 11 of the Pollution Control Act. The permit gives Nordic Mining the right to deposit 250 million tonnes of mining waste in the fjord.*

- (ii) *The Ministry of Climate and Environment’s decision of 23 November 2021.*

*The decision is a minor revision of the pollution permit due to changes in the planned use of chemicals.*

- (iii) *The Ministry of Trade, Industry and Fisheries’ decision of 6 May 2022.*

*The decision concerns the granting of an operating licence pursuant to Section 43 of the Mining Act of 2008 (mineralloven).*

- (iv) *The Environment Agency’s decision of 23 June 2023.*

*The decision concerns approval of the waste management plan pursuant to Chapter 17 of Regulation No 930 of 1 June 2004 on Recycling and Treatment of Waste (avfallsforskriften), and a revision of the existing pollution permit. The most important revision is the reduction in the total permitted quantity of tailings to be disposed in the fjord, which is reduced from 250 to 170 million tonnes.*

- 16 The referring court considers that the Royal Decree (Decision (i)), which is the original pollution permit, is of particular importance to the present case. In that decision, the Norwegian Government sets out the reasons for applying the “overriding public interest” exception. Decisions (ii) and (iv) are subsequent adjustments to that original pollution permit. The pollution permit at issue before the referring court is thus a result of Decisions (i), (ii) and (iv).
- 17 The referring court states that Decision (iii) does not affect the pollution permit as such. The validity of Decision (iii) is disputed because the environmental organisations contend that it is based on the premise that the pollution permit is valid.
- 18 The Royal Decree describes the mining project at issue as follows:

*The planned project involves the extraction and processing of rutile (titanium dioxide) from Engebøffjellet in Naustdal municipality. The operation will be based on the extraction and further processing of eclogite ore from Engebøffjellet. To access the eclogite ore, waste rock will be removed and placed in a separate landfill on land. The eclogite ore is estimated to contain around 4 per cent rutile. This results in large quantities of tailings, which are mainly planned to be deposited in the outer part of the Fjørdefjord. Mining of the ore is*

*planned as open pit mining for the first 15 years. The area covered by the open pit is approximately 200 acres (0.2 km<sup>2</sup>). The extraction in the open pit will include drilling and blasting, pigging (splitting of rock with spike hammers), loading and transport in dump trucks. Both a coarse crushing plant and a fine crushing plant are planned to be located in the underground facility, both in the open pit and underground phases.*

*Processing of ore includes crushing, grinding and various separation processes for the extraction of rutile and garnet. According to preliminary calculations, up to 20 per cent of the ore input will go to flotation, where chemicals are used to extract fine-grained rutile. Flotation of the fines will increase the yield of titanium dioxide. Flocculant will be used in the recovery of fresh water from the thickeners to achieve sufficiently good water quality in the recycled water. The flocculant will also help to bind (clump) the fines in the effluent so that the sinking rate increases, thereby preventing the spread of fine particulate material during sea disposal.*

*After dewatering, waste material from the separation process will be transported to a mixing chamber down by the seashore. In the chamber, the tailings will be mixed with seawater and aerated to remove air bubbles before the diluted slurry is fed into the pipeline down the rock face and discharged over the seabed. The seawater, with its salt content, helps further flocculate fine particles flocculate further, so that they sink more quickly to the seabed and spreading is limited.*

19 The Royal Decree 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 Engebøffjellet will be able to meet the demand for rutile on the world market for many years, as the rutile deposit in Engebøffjellet 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.*

- 20 The Royal Decree states that the future revenues from the mining activities at issue are the dominant benefit. Furthermore, it states that these revenues consist of three components, namely: (i) income for employees, (ii) income for shareholders, and (iii) tax revenue for the state and municipality.
- 21 Before national courts, the Norwegian Government has also argued that the pollution permit at issue in the main proceedings, in addition to the economic justifications set out in the Royal Decree, can also be justified on grounds of (i) its employment effects (increased local business activity, employment and settlement), (ii) increasing the global supply of rutile, and (iii) ensuring Norway and Europe access to critical minerals.
- 22 By judgment of 10 January 2024, Oslo District Court dismissed the application in full. Both organisations appealed that judgment to Borgarting Court of Appeal.
- 23 Against this background, by letter of 8 May 2024, Borgarting Court of Appeal decided to refer the following questions to the Court, which were registered at the Court on 23 May 2024:
1. *What is the legal test when determining whether there is an “overriding public interest” within the meaning of Article 4(7)(c) of Directive 2000/60/EC?*
    - a. *Is a qualified preponderance of interest required and/or are only particularly important public interests relevant?*
    - b. *What will be key factors in the assessment of whether the public interests that justify the measure are “overriding”?*
  2. *Can the following economic considerations constitute an “overriding public interest” under Article 4(7)(c) of Directive 2000/60/EC, and if so, under what conditions?*
    - a. *Purely economic considerations (i.e. the expected gross income generated by the planned mining operations)*
    - b. *That a private undertaking will generate income for shareholders*
    - c. *That a private undertaking will generate tax revenue for the state and municipality*
    - d. *That a private undertaking will provide wage income for employees*
  3. *Can the following considerations constitute an “overriding public interest” under Article 4(7)(c) of Directive 2000/60/EC, and if so, under what conditions?*

- a. *That a private undertaking will generate employment effects (increased local business activity, employment and settlement)*
- b. *Global supply of rutile*
- c. *Ensuring Norway and Europe access to critical minerals*

24 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the facts, the procedure and the proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

### III ANSWER OF THE COURT

#### Question 1

- 25 By its first question, the referring court asks, in essence, whether Article 4(7)(c) of Directive 2000/60 requires, in all circumstances, a balancing of the interests at stake. In particular, the referring court asks whether, when determining the existence of an overriding public interest, a qualified preponderance of interest is required, and/or whether only particular important interests may be relevant. The referring court asks, further, whether key factors may be identified in the assessment of whether the public interests that justify a particular measure may be qualified as overriding.
- 26 The Court notes that Article 1 of Directive 2000/60 determines 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. In relation to bodies of surface water, specifically, Article 4(1)(a)(i) obliges EEA States to implement necessary measures to prevent deterioration of the status of all bodies of surface water. Recital 1 states that water is not a commercial product like any other but, rather, a heritage, which must be protected, defended and treated as such. Recital 32 states that there may be grounds for exemptions from the requirement to prevent deterioration under specific conditions, inter alia, for reasons of overriding public interest, provided all practicable steps are taken to mitigate the impact on the status of any affected body of water.
- 27 Article 4(7) of Directive 2000/60 provides that EEA States will not be in breach of the Directive, and by inference, the obligation to take all measures to prevent deterioration, when the conditions set out therein are fulfilled. The purpose of this provision is to create an exception to the general obligation to prevent deterioration in the status of surface water bodies. According to established case law on comparable directives, any exception to such an obligation should be interpreted strictly (compare the judgment of 29 July 2019 in *Inter-Environnement Wallonie*, C-411/17, EU:C:2019:622, paragraph 147 and case law cited). Moreover, as noted by the Commission, Article 4(7) must be read in light of the general obligation laid down in Article 4(1)(a)(i) to implement the

necessary measures to prevent the deterioration of the status of all bodies of surface water.

- 28 Article 4(7) of Directive 2000/60 prescribes, inter alia, that the failure to prevent deterioration in the status of surface water bodies must be as a result of either new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater or, in circumstances in which the failure is to prevent deterioration from high status to merely good status, new sustainable human development activities. In addition, a series of conditions listed in Article 4(7)(a) to (d) must be satisfied cumulatively. These relate to the need to take all practicable steps to mitigate the adverse impact on the status of the body of water, the obligation to record in the river basin management plan the reasons for the modifications, and the demonstration that no other significantly better environmental option exists to achieve the beneficial objectives served by those modifications.
- 29 Article 4(7)(c) of Directive 2000/60 requires, in addition, that the reasons for modifications undertaken are of overriding public interest and/or the benefits to the environment and to society of achieving the environmental objective of preventing deterioration in the status of surface water bodies are outweighed by the benefits of the new modifications to human health, to the maintenance of human safety or to sustainable development.
- 30 The Court observes that Article 4(7)(c) of Directive 2000/60 must be understood as providing for two alternative scenarios in which a derogation from the general obligation to prevent deterioration in the status of surface water bodies could be granted. First, when the project in question will serve an overriding public interest. Second, when the benefits to the environment and society linked to the achievement of the objectives set out in Article 4(1) will be outweighed by the benefits to human health, the maintenance of human safety, or the sustainable development resulting from those projects, as required by Article 4(7)(c) thereof (compare the judgment of 5 May 2022 in *Association France Nature Environnement*, C-525/20, EU:C:2022:350, paragraph 43).
- 31 The Court observes that the question of the referring court essentially relates to the methodology to be applied in determining the existence of an overriding public interest, i.e. the first of the two alternatives outlined above. The Court notes that EEA States must be allowed a certain margin of discretion for determining whether a specific project is of such overriding public interest, particularly as the Directive does not seek to achieve complete harmonisation of the rules concerning water for EEA States (compare the judgment of 4 May 2016 in *Commission v Austria*, C-346/14, EU:C:2016:322, paragraph 70 and case law cited).
- 32 However, the fact that the objectives may in principle be of such a nature as to fall within Article 4(7)(c) of Directive 2000/60 does not necessarily entail that they will suffice to justify a particular project. Both of the alternative scenarios referred to in Article 4(7)(c) effectively weigh the benefits of the modification against its adverse effects. For modifications for the benefit of human health, the maintenance of human

safety or sustainable development, the Directive expressly states that the interests must be weighed. *A fortiori*, another public interest in a modification – by nature less important – must outweigh the adverse effects of that modification in order to be recognised as “overriding” (compare the opinion of Advocate General Kokott of 13 October 2011 in *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10, EU:C:2011:651, point 89).

- 33 Thus, in order for a particular project to be justified, the national authorities will be obliged to weigh the expected benefits of the contested project against the resulting deterioration of the status of the body of surface water in question. 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 (compare the judgment in *Commission v Austria*, C-346/14, cited above, paragraphs 66 and 74, and the judgment of 11 September 2012 in *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10, EU:C:2012:560, paragraph 67).
- 34 It is for the referring court to determine whether the national authorities in the case in the main proceedings analysed the contested project as a whole, including its direct and indirect impact on the objectives of Directive 2000/60, and weighed up the advantages of the project with its negative impact on the status of the body of surface water in question. On this basis, the referring court must determine whether the relevant public interests outweigh the negative impact on the objective of non-deterioration pursued by Directive 2000/60. In this regard, it is incumbent on the national authorities to demonstrate that they did not merely refer in the abstract to the overriding public interest, but rather based themselves on a detailed and specific analysis of the contested project, before concluding that the conditions for a derogation from the prohibition of deterioration were met (compare the judgment in *Commission v Austria*, C-346/14, cited above, paragraph 80).
- 35 Thus, a case-by-case assessment is required which must determine whether 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. This assessment does not entail that a qualified preponderance of interest is required as mentioned in Question 1. The term “a qualified preponderance of interest” is not used in the Directive, nor can a basis for such an interpretation be derived from its context or objectives.
- 36 The Court further observes that it is not possible to state whether only particular important interests may be relevant. As previously noted, EEA States must be allowed a certain margin of discretion for determining whether a specific project is of such overriding public interest, as the directive does not seek to achieve complete harmonisation. While certain public interests such as the production of renewable energy through hydroelectricity, irrigation, and ensuring the public supply of water have

been identified by the European Court of Justice (“ECJ”) as potentially constituting such overriding public interests, the Court is not in a position to furnish an exhaustive list of factors that may be identified in the assessment as to whether the public interests that justify a particular modification may be qualified as overriding, as a case-by-case assessment will be required in each instance.

- 37 On the basis of the foregoing, the reply to the first question of the referring court must be that Article 4(7)(c) of Directive 2000/60 must be interpreted as requiring a weighing of the interests at stake 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.

### **Questions 2 and 3**

- 38 By its second and third questions, which may be addressed together, the referring court asks, in essence, whether certain considerations pertaining to economic benefits, social benefits, or material benefits – including security of supply of specific minerals – may constitute an overriding public interest within the meaning of Article 4(7)(c) of Directive 2000/60.
- 39 Specifically, the second question referred concerns whether certain economic considerations, namely either purely economic considerations, or that a private undertaking will generate income for shareholders, tax revenue, or wage income for employees, may constitute overriding public interests. The third question asks whether certain social or material considerations may constitute overriding public interests, specifically, that a private undertaking will generate employment effects, or that Norway, Europe or the world would be supplied with access to critical minerals, including rutile.
- 40 The Court recalls that EEA States must be allowed a certain margin of discretion for determining whether a specific project is of overriding public interest, as the directive does not seek to achieve complete harmonisation. However, 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) of Directive 2000/60 (compare the judgment of 13 July 2023 in *Xella Magyarország*, C-106/22, EU:C:2023:568, paragraph 64 and case law cited). Such an interpretation would undermine the objective of the Directive as a whole.
- 41 The Court observes that, in order to qualify as an overriding public interest, any economic considerations would, by definition, need to serve the public interest, and not merely private interests. In addition, such economic objectives must be significant due

to their context or due to some other contributing factor that would render their achievement sufficiently important to qualify as overriding.

- 42 In this context, economic interests that are purely private in nature cannot, by their very definition, qualify as being in the overriding public interest. The Court finds it appropriate to note in this regard that 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. As noted by ESA, 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) of the Directive.
- 43 Similarly, 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 requirement in the public interest.
- 44 However, as noted by the Commission, considerations linked to the social or economic situation of a particular area may, under certain conditions, constitute reasons of overriding public interest. In particular, the Court notes that the ECJ has recognised that reasons of an economic nature in the pursuit of an objective in the public interest or the guarantee of a service of general interest may constitute an overriding reason in the public interest capable of justifying an obstacle to one of the fundamental freedoms (compare the judgment in *Xella Magyarország*, C-106/22, cited above, paragraph 65 and case law cited).
- 45 On this basis, it cannot be excluded that a project may be authorised pursuant to Article 4(7) of Directive 2000/60 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), including requiring an overriding public interest. A simple desire to generate or increase employment, absent other factors, could not satisfy this criterion.
- 46 With respect to whether ensuring access to so-called critical minerals may constitute an overriding public interest within the meaning of Article 4(7)(c) of Directive 2000/60, the Court notes that access to – and supply of – certain raw materials is essential for the EEA economy and the functioning of the internal market. Rutile, which is the commodity that will be mined in accordance with the permits challenged in the main proceedings, is the main source for production of titanium metal. As noted by the Commission, according to Annex I to Regulation (EU) 2024/1252 of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials, titanium metal is considered a strategic raw material under that regulation. Although this regulation has not been incorporated into the EEA Agreement, such considerations may nevertheless inform an assessment as to whether a particular commodity may be critical.

- 47 The Court observes that it is important, in this context, to emphasise, first, the qualification, including the scarcity and potential uses, of the mineral to which access is being ensured and, second, the purposes for which that supply is being ensured. As noted by ESA and the Commission, the quality and available quantity of the mineral in question is of particular relevance, as is the uses for which such minerals may be, and actually will be, employed. This entails, first, that considerations relating to security of supply of such minerals may only be overriding when the mineral in question is of such a nature as to justify specific measures being taken to that effect and, second, that the mineral will in fact be used for such purposes within the EEA State in question or within the EEA more generally. If, for example, the supply of a critical mineral extracted from such a site is to be exported outside the EEA, the mere fact that the mineral in question is of such a nature will not, in and of itself, suffice to constitute an overriding public interest. The supply of the mineral must, at least, be available for use within the EEA within a relatively short period of time in the case of scarcity of that material.
- 48 It is further clear in this regard that, while establishing security of supply within the EEA may, in such circumstances, constitute an overriding public interest for the purposes of Article 4(7)(c) of Directive 2000/60, ensuring global supply of such a critical mineral – or any other material – would not satisfy this criterion, as it lacks the necessary link to the internal market.
- 49 On the basis of the foregoing, the reply to the second question of the referring court must be that 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) of Directive 2000/60.
- 50 The reply to the third question of the referring court must be that 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) of Directive 2000/60, provided that all the other conditions set out therein have been fulfilled.

#### **IV COSTS**

- 51 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by Borgarting Court of Appeal hereby gives the following Advisory Opinion:

- 1. Article 4(7)(c) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy 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) of Directive 2000/60.**
- 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) of Directive 2000/60, provided that all the other conditions set out therein have been fulfilled.**

Páll Hreinsson

Bernd Hammermann

Michael Reiertsen

Delivered in open court in Luxembourg on 5 March 2025.

Ólafur Ísberg Hannesson  
Acting Registrar

Páll Hreinsson  
President