OSLO DISTRICT COURT

[redacted]

Issued: 18.01.2024 in Oslo District Court,

Case no.: 23-099330TVI-TOSL/05

Judge: District court judge [redacted]

The Case concerns:

Demand for judgment for invalidity of approval of the plan for the development and operation (PDO) of an oil field and petition for a temporary injunction

Greenpeace Nordic Nature and Youth

Counsel Jenny Arge Sandvig Counsel Jenny Arge Sandvig
Counsel Camilla Hagelien (legal assistant)

against

The Government, represented by the Ministry of Energy

Counsel Gøran Østerman Thengs
Counsel Omar Saleem Rathore (legal assistant)

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JUDGMENT

The case concerns the validity of the Ministry of Petroleum and Energy's decision on the approval of plans for the development and operation of three petroleum fields. This includes a decision on Breidablikk
of 29 June 2021, a decision on Tyrving of 5 June 2023 and three decisions on Yggdrasil (Hugin, Munin and Fulla) of 28 June 2023.

On 1 January 2024, the Ministry of Petroleum and Energy changed its name to the Ministry of Energy. In what follows, the court will use both designations or just "the ministry".

1. Background of the case

1.1. Overview of the subject matter of the case

The regulation of Norwegian petroleum activities can be divided into three phases. These are the opening of fields, the exploration phase and the production phase. This case concerns the decisions made at the last stage, which is the production phase. The companies must then apply to the
Ministry of Petroleum and Energy for approval of a plan for the development and operation of a petroleum deposit (PDO). Production of oil and gas presupposes an approved PDO.

There are currently 93 petroleum-producing fields on the Norwegian continental shelf. As of autumn 2023, there were 26 ongoing development projects. Of these, 15 are new field developments, while 11 are changes to existing fields. The dispute in this case only concerns the Breidablikk, Tyrving and Yggdrasil fields. Breidablikk was put into production in mid-October 2023, while the other two fields are considered ongoing developments. This means that a decision has been made to approve the plan for development and operation for Tyrving and Yggdrasil, but that they have not yet been put into production.

The three fields in question have subjected to an environmental impact assessment by the companies that are operators and rights holders for the fields. However, these environmental impact assessments do not include combustion emissions from the oil and gas that is produced. The issue is therefore whether there is a legal requirement

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that an environmental impact assessment of combustion emissions must be carried out in connection with the approval of a plan for development and operation pursuant to the Petroleum Act § 4-2 subsection 2, cf. the Petroleum Regulations § 22a, interpreted in light of § 112 of the Constitution, and according to the EIA-Directive. It has not been argued that the environmental impact assessments that have been carried out contain deficiencies with regard to other matters. The plaintiffs argue that combustion emissions should have been included in the environmental impact assessment. The Ministry of Petroleum and Energy argues that it is sufficient that combustion emissions are assessed at a more general level by the Ministry, and that there is no requirement that these be included in the specific environmental impact assessments.

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The plaintiffs have alternatively argued that the decisions are in breach of the duty of investigation and justification according to Articles 2, 8 and 14 of the ECHR. The plaintiffs have also argued that the decisions suffer from errors because the child's best interests have not been assessed and evaluated, and that the decisions therefore are in violation of Section 104 of the Constitution and the UN Convention on the Rights of the Child, Articles 3 and 12. In addition, the plaintiffs have argued that the decisions are based on incorrect
facts and unjustifiable forecasts.

The plaintiffs have submitted a request for a preliminary injunction to secure the claims until the validity of the orders has been determined in a legally enforceable decision.

1.2. The Supreme Court's plenary judgment of 22 December 2020

On 22 December 2020, the Supreme Court delivered a verdict in plenary in the case between Nature and Youth Norway and Greenpeace Nordic against the Government of Norway represented by the Ministry of Petroleum and Energy, cf. HR-2020-2472-P. The case concerned the validity of a royal decree from 2016 on the awarding of 10 production licenses for petroleum in the areas Barents Sea south and Barents Sea south-east in the 23rd licensing round.

The decisions were considered valid. The Supreme Court assumed that Section 112 of the Constitution only gives citizens individual rights that can be reviewed by the courts to a very limited extent.

It was held that as a strong general rule it is up to the other branches of government to decide what environmental measures are to be implemented. The Supreme Court concluded that the royal decree was not invalid according to Section 112 of the Constitution, and that the decision was not in violation of Section 93 of the Constitution and Article 2 of the ECHR, or Section 102 of the Constitution and Article 8 of the ECHR. A majority of 11 judges concluded that the decision also was not invalid due to procedural errors. The minority of four judges held that the climate

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impact had been insufficiently assessed in the environmental impact assessment before the opening of the Barents Sea southeast, and that this lead to invalidity.

The parties disagree on the interpretation of this judgment. The plaintiffs argue that the judgment must be understood as the Supreme Court having held that combustion emissions must be subjected to an environmental impact assessment before a decision is made on approval of the PDO. The Ministry of Petroleum and Energy has argued, among other things, that the plenary case concerned production licenses, and that the Supreme Court did not need to evaluate the proceedings and the obligation to conduct an environmental impact assessment for the production phase. The Ministry of Petroleum and Energy argues that the judgment must be interpreted such that it is up to the authorities to make an overall assessment of this, and that combustion emissions are not covered by requirements for an environmental impact assessment, neither according to the petroleum regulations nor the EIA Directive. The court will return to its interpretation of this judgment.

1.3. The Ministry's course adjustment following the Supreme Court's plenary judgement

On 18 March 2022, the Norwegian National Institution for Human Rights (NIM) submitted a report called "The Constitution

§ 112 and plan for the development and operation of petroleum deposits" to the Ministry of Petroleum and Energy. Among other things, it raised the issue of when section 112 of the Constitution can give the Government the right and obligation to refuse plans for development and operation for reasons of climate and the environment, and the requirements for assessment of combustion emissions at the PDO stage.

This led to a public debate. To illustrate this, among other things, an article in [the newspaper] VG dated 29 April 2022 with the headline "Professor: Far more oil decisions can be illegal" has been presented to the court. The article states that Professor Ole Christian Fauchald believed that the state has a duty to subject the climate impact of Norwegian oil and gas, including emissions abroad, to an Environmental Impact Assessment before approving the development of discoveries. He argued that the legal situation had been the same since 2014 when the Constitution was amended, and that this therefore applies to decisions both before and after the Supreme Court's plenary judgement. He pointed out that this obligation to carry out an environmental impact assessment, which was mentioned

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by the Supreme Court, had not arisen suddenly, but rather it had existed since 2014. The Minister for Petroleum and Energy commented in the same article that the ministry assessed the climate effect before approving developments. He explained that the ministry had made a schematic calculation according to a template, and defined what it will entail when the oil and gas are burned. The conclusion was that the emissions were marginal. Professor Fauchald countered this and argued that schematic template calculations cannot replace an environmental impact assessment. He received support from Professor Sigrid Eskeland Schütz. She specified that an environmental impact assessment is always carried out by the operator, and not by the ministry, and that it must be presented to the public for input. She emphasized that the ministry's decisions to allow development are not publicly available, nor are their calculations of greenhouse gas emissions.

In April 2022, a written question was posed to the Minister Petroleum and Energy in the Storting about why no climate assessment of the development of Breidablikk had been carried out, even though the application was processed following the Supreme Court's plenary judgment in the climate lawsuit [HR-2020-2472-P]. The Minister for Petroleum and Energy responded in May 2022, and explained how the ministry interpreted the judgment. It emerged that the approval for Breidablikk was given before the ministry had taken a decision on whether the Supreme Court judgment called for an adjustment to the processing of applications for a PDO. He confirmed that "No explicit assessments have thus been made as part of the proceedings in this case". It was further stated that, as a result of the plenary verdict, the ministry would adjust the proceedings. The minister stated that the possibility of climate change that may result from combustion emissions from oil and gas will in the future be explicitly investigated and assessed by the ministry as part of the processing of relevant plans for development and operation. It was stated that the assessments that had been made would be made visible in the future in the decisions relating to applications for approval of a PDO.

On 1 July 2022, the Ministry of Petroleum and Energy issued a press release on assessments of combustion emissions from Norwegian petroleum. The adjustment in the proceedings was also discussed in Meld. St. 11 (2021-2022) – Supplementary notice to Meld. St. 36 (2020-2021) and considered by the Storting in Innst. 446 S (2021-2022). It was stated in the press release that the ministry had adjusted the proceedings for applications for approval of a plan for development and operation. The adjustment was made following the plenary judgment from the Supreme Court. Norway's obligations under the Paris Agreement were explained. It was further stated that after the delivery of the judgement, the ministry had made an assessment of whether the judgment called for an adjustment in the processing of applications

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for approval of plans for development and operation, and cases for which changes should be made. As a result, the procedures had been adjusted from autumn 2021 onwards. The ministry stated that after this, specific calculations and assessments of combustion emissions had been made as part of the processing of applications for approval of PDO. According to the ministry, these specific calculations and assessments were to complement the more general assessments of combustion emissions in the design of Norwegian petroleum and climate policy, which have been carried out for a long time.

The ministry further stated in the press release that it would make the assessments of combustion emissions visible in future decisions relating to applications for approval of plans for the development of operations. For developments submitted to the Storting before final processing in the ministry, the ministry's assessments of combustion emissions would be included in the case submission to the Storting. The ministry stated that it would calculate gross combustion emissions based on published emission factors and expected extractable resources in the PDO. It was stated that this gross calculation would form the basis for the ministry's assessment *vis-à-vis* Section 112 of the Constitution. If a PDO has extractable resources in excess of 30 million standard cubic meters of oil equivalents, the Government would also calculate net emission effects. It was stated that the calculations of the gross and net emissions effects together would provide the basis for the ministry's assessment *vis-à-vis* § 112 of the Constitution. The ministry stated that the net effect on global emissions will take into account factors such as the fact that new production of oil and gas in Norway will be able to displace other production with higher emissions in the production phase. Another effect is that coal can be replaced by gas in consuming countries. In addition, factors such as the effect of the EU's emissions quota system and the fact that gas use does not necessarily lead to emissions, for example due to carbon capture and storage, could be significant. The results of such calculations depend on assumptions about how the oil and gas produced from a field will affect energy
use and energy production globally through market effects. The ministry stated that the net calculations were based on external, published analyzes carried out by Rystad Energy (2021) and Fæhn et al. (2013 and 2017).

The ministry stated that there is a need for a coordinated, comprehensive and consistent approach to issues of combustion emissions, and that this is best ensured if the ministry itself makes the assessments. The ministry clarified that these assessments thus differ from environmental impact assessments that licensees are required to carry out in connection with specific developments of oil and gas fields. The ministry added that it is the Norwegian Government’s opinion that the EIA

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Directive does not require an assessment of combustion emissions in other countries as part of an environmental impact assessment of a PDO.

The adjustment of the proceedings thus meant that the ministry would estimate gross emissions for all PDO applications, and that it would estimate possible net emissions for PDO applications with resources over 30 million standard cubic meters of oil equivalents. However, the ministry would not assess the climate impacts of combustion emissions, neither with regard to gross emissions nor net emissions. In order to be able to estimate net combustion emissions, the ministry, after a tender round, ordered a report from the company Rystad Energy AS in mid-November 2022. The report was to concern net combustion emissions from petroleum extracted from the Norwegian continental shelf. In 2021, Rystad Energy AS had submitted a report on a similar topic on behalf of the trade association Norwegian Oil and Gas. Rystad Energy AS concluded in the report of 15 February 2023 that increased Norwegian production will result in a net global emission reduction of 26 kg CO2e per barrel of oil equivalent in increased oil production, and 123 kg CO2e per barrel of oil equivalent in increased gas production, respectively. The report from Rystad Energy AS was not subjected to an ordinary public consultation. The ministry sent out the report for "professional input" with a deadline of eight working days. The ministry refused requests for an extended response deadline. Statistics Norway and several environmental protection organizations provided professional input within the deadline, and criticized the report.

Vista Analyse subsequently prepared a report on behalf of WWF, the Friends of the Earth Norway, Nature and Youth, and Greenpeace. The company had participated in the tender round with the ministry but did not receive the assignment. Vista Analyse concluded in the report of 16 March 2023 that the global net effect of increased Norwegian oil and gas production will be increased greenhouse gas emissions.

1.4. The Storting's consideration of the ministry's adjusted case management

The Storting has been presented with the ministry's adjusted case management procedure, and this has been considered in connection with various committee proceedings. However, no legislative proceedings have been proposed relating to the disputed topics in this case.

The adjustment was first discussed in the notice to the Storting Meld. St. 11 (2021-2022) supplementary notice to Meld. St. 36 (2020-2021) Energy for work –

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long-term value creation from Norwegian energy resources. A further explanation was given to the Standing Committee on Energy and the Environment at the Storting in connection with the committee's consideration of the report. The notice was considered in Innst. 446 S (2021-2022), and the Storting consented to the government's proposal.

The ministry's adjusted case management procedure has also been considered by the Storting's Standing Committee on Scrutiny and Constitutional Affairs. This happened in connection with processing the annual report of the Norwegian National Institution for Human Rights (NIM), cf. Innst. 425 S (2021-2022). It appears that NIM had, among other things, recommended that the government investigate enshrining the 1.5 degree target into law in the Climate Act. Attached to the committee's proposal to the Storting was also a legal opinion from Professor Eivind Smith of 16 May 2022, which concerned the interpretation of Section 112 of the Constitution, including, among other things, what requirements § 112 of the Constitution is assumed to make for the assessment of combustion emissions at the PDO stage. The court will return to this matter.

The recommendations from NIM also formed the basis for a Private Members' Motion to withdraw development permits on the Norwegian continental shelf, cf. DOK 8:236 S (2021-2022). NIM gave written input to the Storting in connection with the motion, and recommended, among other things, that "global climate impacts of combustion emissions from exported Norwegian oil and gas must be subjected to an environmental impact assessment of the impact of each individual project against the remaining carbon budget for the 1.5 degree target". A minority in the Standing Committee on Energy and the Environment proposed, among other things, that the government should "establish clear, transparent criteria for climate assessments of combustion emissions in connection with PDO applications, in line with the recommendation of the Norwegian National Institution for Human Rights". However, the majority in the Standing Committee on Energy and the Environment rejected the proposals, and gave their approval to the ministry's proceedings, cf. Inst. 433 S (2021-2022).

As the investment cost for the Yggdrasil development is over NOK 15 billion, this matter was submitted to the Storting for approval before the ministry made a decision on a PDO, cf. Prop. 97 S (2022-2023). In connection with the consideration of the case in the Standing Committee on Energy and the Environment, a minority put forward a proposal to update the PDO guidelines with a clarification that "combustion emissions for each individual project must be assessed against the

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remaining carbon budget for the 1.5 degree target, in line with the Supreme Court judgment in 2020 and the Norwegian National Institution for Human Rights' recommendations", cf. Inst. 459 S (2022- 2023). The proposal was rejected by the majority in the committee.

1.5. The specific case management proceedings

1.5.1. Introduction

All the relevant decisions in this case have been made following the Supreme Court's plenary judgment of 22 December 2020, cf. HR-2020-2472-P. The decision on the plan for development and operation for the Breidablikk field was made before the ministry's "course adjustment" as a result of the judgment. No environmental impact assessment or other assessment of combustion emissions has therefore been carried out for the Breidablikk field, and this is not mentioned in the decision either. The decisions on plans for development and operation for Tyrving and Yggdrasil have been made following the ministry's "course adjustment". Combustion emissions are discussed and assessed in the actual decision on the PDO for Tyrving, but not subjected to an environmental impact assessment beyond this. In the case of Yggdrasil, combustion emissions are mentioned in the case submission to the Storting, as well as mentioned and assessed in the decision on PDO, but there is no environmental impact assessment beyond this. In the following, the court will explain in more detail the specific proceedings of Breidablikk, Yggdrasil and Tyrving.

1.5.2. Breidablikk

Breidablikk is a pure oil field in the North Sea. The field was formerly called Grand, but is now called Breidablikk. Extractable reserves are estimated at over 30 million standard cubic meters of oil (approx. 190/200 million barrels of oil equivalents). Gross emissions from the field are around 87 million tonnes of CO2. The total investments are around NOK 19 billion. The expected production period is 20 years, until around 2044.

The latest environmental impact assessment for Breidablikk is from 2013. Combustion emissions have not been part of the environmental impact assessments. On 29 June 2021, the Ministry of Petroleum and Energy made a decision on the approval of the plan for development and operation (PDO) for Breidablikk. Breidablikk initially had an expected start-up date in the first quarter of 2024 but was put into production in mid-October 2023. The Norwegian Petroleum Directorate gave consent for start-up on 26 September 2023. The Ministry of

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Petroleum and Energy granted a production permit on 13 October 2023. It appears from the production permit that it applied from and including 15 October 2023 to and including 31 December 2023. Start of production means that the field has started producing petroleum for sale to the market. New production permits are applied for every year, cf. the Petroleum Act § 4-4 subsection 3. On 18 December 2023, the Ministry of Petroleum and Energy made a decision on a production permit for Breidablikk that applies from 1 January 2024 up to and including 31 December 2024.

1.5.3. Tyrving

Tyrving (formerly Trell and Trine) is a pure oil field in the North Sea. Extractable reserves are estimated at around 4.1 million standard cubic meters of oil equivalents. Expected start of production is the first quarter of 2025. Expected production time is 15, years until 2040. Gross emissions are estimated at 11.3 million tonnes of CO2.

There are three licensees at the field. The program for environmental impact assessment was submitted for public consultation by the operator Aker BP ASA on behalf of the rights holders in January 2020.
The Ministry of Petroleum and Energy set the program for the impact assessment on 28 October 2021.

The impact assessment was completed on 11 March 2022, and was sent out for public consultation on the same day.

In June 2022, the operator issued a summary and evaluation of the comments received in the consultation period on behalf of the rights holders. Combustion emissions have not been part of this environmental impact assessment.

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

1.5.4. Yggdrasil

Yggdrasil comprises the fields Hugin, Munin and Fulla, and is located in the North Sea. These three fields

consist of oil, gas and NGL (natural gas liquid). Extractable reserves are estimated at around 140 standard cubic meters of oil equivalents (650 million barrels of oil equivalents). Total gross emissions are estimated at 365 million tonnes of CO2. Total expected investments for the development of Yggdrasil are around NOK 115.1

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billion. Expected start of production is in 2027. Expected production time is 25 years, until 2052.

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

This was considered by the Standing Committee on Energy and the Environment, which presented its recommendation on 25 May 2023, cf. Inst. 459 S (2022-2023). The majority in the committee recommended that the Storting should consent to the ministry being able to make a decision approving the plan for development and operation. On 6 June 2023, the Storting reached a decision in accordance with the majority's recommendation.

The Ministry of Petroleum and Energy subsequently made three decisions on 27 June 2023 approving plans for development and operation for Hugin, Fulla and Munin respectively.

1.6. Briefly on parallel proceedings at the European Court of Human Rights (ECtHR)

The Supreme Court's plenary judgment of 22 December 2020 has been appealed to the ECtHR. On 22 December 2021, the case was taken up for consideration as an "impact case". This means that it can be of great importance. The plaintiffs have argued before the ECtHR, among other things, that the ECHR
Articles 2 and 8 require that an environmental impact assessment be carried out as early as possible, in

connection with the opening of fields. In this regard, the ECtHR has sent several questions to the parties, including whether it is realistic that the climate impact of combustion emissions will be assessed at the
PDO stage. The attorney general’s office for civil affairs responded on behalf of Norway on 26 April 2022. The attorney general’s office for civil affairs referred to the majority ruling in the plenary verdict, which concluded that it would be more appropriate for combustion emissions (abroad) to be dealt with at a later stage when approving plans for the production of oil and gas. The attorney general’s office for civil affairs summarized this in paragraph 116 as follows:

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> Accordingly, potential emmissions [sic.] from combustion of petroleum extracted and exported will be adressed [sic.] when considering an application for the approval of PDO of a new field, thus before any actual environmental impacts of the extraction and/or exportation occurs. The authorities` right and duty under Article 112 § 2 to reject an application based on climate change considerations or attach very strict conditions to an approval, will be taken into account at this stage, cf. the Supreme Court judgment §§ 281-223 [sic.].

The attorney general's office for civil affairs further stated in paragraph 118 that the plaintiffs' arguments would be "realistically taken into account" at the PDO stage.

On 10 October 2022, the EMD suspended the processing of the application pending the processing of three Grand Chamber cases on climate. It is expected that a ruling will be made by the ECtHR during 2024.

1.7. The legal proceedings

On 29 June 2023, Oslo District Court received a summons and petition for a preliminary injunction from Greenpeace Nordic and Nature and Youth Norway against the Government represented by the Ministry of Petroleum and Energy. Due to the public vacation, the response deadline was set to 29 June 2023.

At the same time, the court contacted the attorney general's office for civil affairs with a view to scheduling the

main hearing. In mid-August 2023, the attorney general's office for civil affairs asked for a postponed response deadline to 19 September 2023. The plaintiffs opposed this. However, the court accepted the request, and postponed the response deadline to 19 September 2023. After some procedural exchanges, the main hearing was scheduled for week 48/49. The planning meeting was held on 25 September 2023. It was clarified that the main case and the preliminary injunction case could be dealt with together during the main hearing, which was to start on 28 November 2023.

On 1 October 2023, the plaintiffs submitted pleadings in which it was stated that the Norwegian Petroleum Directorate had issued a press release on 29 September 2023 regarding consent

to start-up of the Breidablikk field. It had previously been stated that the planned start-up for Breidablikk was the first quarter of 2024. The plaintiffs therefore requested that the court schedule a hearing immediately in the preliminary injunction

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case regarding Breidablikk. The court asked that the
government give a specific account of what the start of production entailed. The government stated that the field would start producing for sale to the market, and that average production from Breidablikk is expected to be approx. 4,600 standard cubic meters per day in the period from 15 October until the turn of the year, and that this corresponds to 1-2 percent of Norwegian oil production in this period. The government noted that 15 October 2023 could not be considered a decisive cut-off point making an immediate injunction necessary. The government further noted that if the court concluded that the conditions for a preliminary injunction were met, the court would have jurisdiction to do so both before and after 15 October. The court then sent letters to the parties in which the decision to deal with the main case and the injunction case together was upheld. In this assessment, the court placed particular emphasis on the nature and complexity of the case, the fact that there was a short amount of time remaining until the main hearing, and the consideration of responsible case procedure.

On 13 October 2023, the plaintiffs submitted a request for the court to appoint experts, cf. the Disputes Act § 25-2. The plaintiffs proposed that Professors Helge Drange and Dag Olav Hessen should be appointed to assess the potential harmful effects of linear and non-linear climate change from emissions from the three oil fields. It was also proposed that Professor Wim
Thiery should be appointed on the matter of the potential harmful effects of the fields on children living today over their lifetime. The government opposed the petition for court appointment of experts. The court called a planning meeting on 18 October 2023 about this petition. The court stated that the process of appointing experts could lead to the main hearing having to be postponed. After this, the plaintiffs withdrew the application for the court appointment of experts. The plaintiffs instead called them later as expert witnesses. The expert statement from Professor Helge Drange was provided a few days after the deadline for completed case preparation, and the government therefore submitted a request for exclusion of evidence. The petition was rejected by the District Court's order of 21 November 2023.

The main hearing was conducted in the Oslo District Court on 28 November – 6 December 2023. The entire main hearing was live-streamed, cf. Section 124a of the Courts Act. The head of Nature and Youth and the head of Greenpeace Norway gave party statements. Following a request from the plaintiffs, a department director in the Ministry of Petroleum and Energy also gave a party statement. A total of nine expert witnesses were called. Reference is further made to the court record.

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2. The parties' arguments and claims

2.1. The plaintiffs' argument

In the following, the court will give an overview of the argument from the plaintiffs, Greenpeace Nordic and Nature and Youth.

At its core, this case concerns legal rules which the Supreme Court has clarified in plenary, but which the Ministry of Oil and Energy does not comply with. These legal rules
require an environmental impact assessment. This is important to ensure democratic participation in decisions that may affect the environment, and to ensure an informed and correct decision-making basis. The failure to conduct an environmental impact assessment of the climate impact of combustion emissions for Breidablikk, Tyrving and Yggdrasil means that the decisions have been made without knowledge of the harmful effects the fields can actually cause. The failure also means that citizens have not had the opportunity to influence what is investigated through hearings. Several of the decisions are, by extension, based on actual errors and unjustifiable forecasts.

The decisions are, firstly, invalid because the lack of environmental impact assessment of the
combustion emissions are contrary to the Petroleum Act § 4-2 cf. the Petroleum Regulations § 22a interpreted in the light of the Constitution § 112 subsection two. Section 22a of the regulation requires an environmental impact assessment of "emissions to [...] air". The expression includes emissions of greenhouse gases during combustion, cf. HR-2020-2472-P paragraph 218, cf. also the paragraphs 216, 241, and 246. A unanimous Supreme Court in plenary has clarified that an environmental impact assessment of combustion emissions must normally be assessed before a decision on PDO. Such interpretation statements in plenary have decisive weight as a source of law. Consequently, Breidablikk (no assessment of combustion emissions at all), Tyrving and Yggdrasil (no environmental impact assessment of combustion emissions) are based on serious procedural errors. The error is serious because the environmental impact assessment regime with hearings must ensure the citizens' right to knowledge of the effects of a planned environmental intervention, as well as that decisions are made on a sound and informed basis, cf. the Constitution § 112 subsection two, cf. HR-2020-2472-P paragraph 183. The error leads to invalidity. There is a “not entirely remote possibility” that the error may have affected the result, cf. Norwegian Public Administration Act § 41, cf. Rt-2009-661 paragraph 71.

Due to the environmental and democratic considerations that the environmental

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impact assessment regime must ensure, the road to invalidity "could be short when the procedural error consists in a missing or defective environmental impact assessment", cf. Rt-2009-661 paragraph 72. In contrast to the majority's assessment at the opening and search stage in HR-2020-2472-P, the lack of assessment in this last the stage of the proceedings is no longer repairable. In any case, the procedural
rules in this area must be "enforced particularly strictly", cf. Innst.O.no.2 (1966-1967) p. 16, cf.
the minority in HR-2020-2472-P paragraph 279. The Government must have the burden of proof that the error is insignificant.

Secondly, the decisions are invalid as a result of insufficient environmental impact assessment
according to the EU's project directive article 4.1, cf. article 3.1. The directive requires that
the environmental impact assessment must identify, describe and assess "the direct and indirect significant effects of a project on [...] (a) population and human health; (b) biodiversity [...]; (c) land, soil, water, air and climate; (d) material assets, cultural heritage and the landscape; (e) the interaction between the factors referred to in points (a) to (d)." In 2014, it was clarified that this includes "any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term [...] effects of the project", cf. Annex IV to point 5.

The EU Court of Justice has clarified that the directive's scope of application must be interpreted broadly, and that it would be too narrow and counterproductive to assess only the direct effects of a project, and not possible environmental effects from the end use. The majority in HR-2020-2472-P suggested, and
the minority concluded, that the climate impact of combustion emissions is "undoubtedly" covered by the environmental impact assessment obligation under the corresponding planning directive. Violation of the environmental impact assessment obligation according to the project directive entails invalidity.
Thirdly, the decisions are invalid because the lack of environmental impact assessment of potential harmful effects on life and health from the combustion emissions violates ECHR articles 2 and 8, isolated and read in conjunction with ECHR article 14. The emissions will increase the average temperature and worsen climate-attributed extreme weather as already at present heating takes life in Norway. The provisions thus apply.

According to ECtHR practice, proceedings on environmental effects must be based on "appropriate investigations and studies". Such studies should make it possible to

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predict and assess possible effects on the environment and human rights. The provisions require that citizens have access to relevant information to assess "the danger to which they are exposed", "contribute to the decision-making", as well as challenge "any decision, act or omission". Where the information offered is "inaccurate or even insufficient", the right to content is voided.

None of these requirements are satisfied here. Violation of the ECHR automatically results in invalidity.

Fourthly, the decisions are invalid because the long-term consequences of the developments for living children in Norway have neither been investigated nor assessed, cf. the Constitution § 104 second paragraph and the UN Convention on the Rights of the Child article 3. The developments will worsen climate change with effects for living children beyond 2120. The emissions will also tie up much of the remaining carbon budget, thereby exacerbating the future burden of cuts for children who are still alive.

The UN Children's Committee has stated that environment-related projects and decisions "require
vigorous children's rights impact assessments, in accordance with article 3 (1) of the Convention", including indirect effects from incineration on children's rights also in the long term.

In other cases, the Supreme Court requires that the consideration of the child's best interest is properly assessed and weighed against any opposing considerations and that it appears from the decision that the consideration of the child's best interest is given weight as a fundamental consideration, cf. Rt-2012-1985
paragraph 149 and HR- 2015-2524-P paragraphs 169. None of the decisions consider the best interests of children. This error also leads to invalidity.

The decisions for Yggdrasil and Tyrving are also invalid because they are based on significant factual errors. In the case presentation for Yggdrasil it is stated that calculations about maximum emissions
from the field - 365 million tonnes of CO2e - "does not give reason to assume that greenhouse gas emissions from the Yggdrasil development will harm the environment in Norway". In the decision for Tyrving, it is stated that calculations of the maximum emissions from Tyrving – 11.25 million tonnes of CO2e – "are not contrary to Section 112 of the Constitution".

The assessments are the result of an incorrect factual premise that the combustion emissions will not have an impact on the extent of climate change in Norway or have a measurable impact on climate change in Norway. This is contrary to established

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climate science. The factual error is significant and leads to invalidity, cf. Public Administration Act § 41.

The decisions for Yggdrasil and Tyrving are also invalid because they are based on unjustified forecasts. The plaintiffs dispute that assumptions about market effects in other countries, so-called "net effects", are to be regarded as indirect environmental effects according to section 22a of the petroleum regulations and article 3.1 of the project directive. For that, the assumptions are too derivative, speculative and uncertain, cf. the Natural Diversity Act § 9. In the event that such assumptions are nonetheless relevant, it is stated that the forecast the ministry has based on market effects for Yggdrasil is unjustifiable.
Correspondingly, the forecast in the calculation that deals with Tyrving is unjustifiable.

The error leads to invalidity, cf. the Public Administration Act § 41.

The plaintiffs have a legal interest in the injunction case vis-à-vis the Government of Norway, cf. the Disputes Act § 1-3. The conditions for injunction have been met. The main claim of invalidity has been proved, cf. Disputes Act § 34-2 first paragraph. There are grounds for safeguarding, cf. the Disputes Act § 34-1 first paragraph letter a and b. The defendant's behavior makes it necessary to temporarily secure the claim because implementation will otherwise be "significantly made difficult", cf. letter a, cf.
HR-2007-716-U paragraph 37. It is pointed out that the Government represented by the Norwegian Petroleum Directorate and the Norwegian Environment Agency have not complied with requests to suspend the processing of further decisions based on the disputed PDO decisions or to grant deferred implementation of complaints pending the trial . In any case, an injunction is necessary to prevent "significant damage or inconvenience" from the extraction of 11, 87 and 365 MtCO2e respectively from the fields, cf. letter b.

Grounds for protection here do not mean that there are grounds for protection for any other domestic greenhouse gas emissions, as the Government has claimed. Firstly, the emissions originate from wrongful administrative decisions. Secondly, Section 34-1 of the Disputes Act, first paragraph, letter b, restricts damage or disadvantages that are not significant. Current decisions will collectively produce emissions many times the annual territorial emissions from Norway, and correspond to large overruns of the remaining carbon budget for Norway (per capita) to limit warming to 1.5 degrees. The harmful effects that the decisions will exacerbate are far above the threshold for materiality.

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As the emissions cannot later be removed from the atmosphere or the sea, and the oil cannot be returned to the geological carbon cycle underground, the damage is irreversible, cf. Rt-2000-1293.

An injunction for these three individual PDO decisions until a legally binding decision in the validity case is not in obvious disproportion with the interest the plaintiffs have in an injunction being decided, cf. the Disputes Act section 34-1 second paragraph. A unanimous public committee has recently recommended a halt to all PDO approvals because they lock in territorial emissions until 2050, which prevents the statutory goal in Climate Change Act § 4 subsection two that greenhouse gas emissions in Norway must be reduced by "90 to 95 per cent". Injunction will ensure the democratic considerations on which the Supreme Court's interpretation of § 112, second paragraph of the Constitution rests, the rule of law considerations and considerations of predictability which compliance with precedents from the Supreme Court must take care of, cf. Grl. § 88, and the environmental considerations from which the environmental impact assessment duty is a result of.

2.2. The plaintiffs claim

The plaintiffs, Greenpeace Nordic and Nature and Youth, have submitted the following claim:
The main case:
1. The Ministry of Petroleum and Energy's decision on 29 June 2021 on approval of PDO for Breidablikk is invalid.
2. The Ministry of Petroleum and Energy's decision of 5 June 2023 on approval of the PDO
for Tyrving is invalid.
3. The Ministry of Petroleum and Energy's decision of 27 June 2023 on the approval of PDO for respectively Munin, Fulla and Hugin (Yggdrasil) are invalid.
4. The association Greenpeace Noric and Nature and Youth is awarded the case costs.

The injunction case:
1. The Government represented by the Ministry of Oil and Energy is ordered to suspend the effect of decision on 29 June 2021 on approval of the PDO for Breidablikk until the validity of the decision has been legally determined.
2. The Government is prohibited from making other decisions that require valid PDO approval for Breidablikk until the validity of the PDO decision has been legally determined.

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3. The Government represented by the Ministry of Oil and Energy is ordered to suspend the effect of the decision on 5 June 2023 on the approval of the PDO for Tyrving until the validity of the decision has been legally determined.
4. The Government is prohibited from making other decisions that require valid PDO approval for
Tyrving until the validity of the PUD decision has been legally determined.
5. The Government represented by the Ministry of Oil and Energy is ordered to suspend the effect of the decision on 27 June 2023 on the approval of the PDO for Yggdrasil until the validity of the decisions has been legally determined.
6. The Government is prohibited from making other decisions that require valid PDO approval for
Yggdrasil until the validity of the PDO decisions has been legally determined.
7. The association Greenpeace Nordic and Nature and Youth is awarded the case costs.

2.3. The defendant's argument

In the following, the court will provide an overview of the argument from the Ministry of Petroleum and Energy.

The Government believes that the decisions are valid. The environmental impact assessments are in line with current regulations, and there is no basis for setting up additional environmental impact assessment requirements or justification obligations. Furthermore, the decisions are based neither on incorrect facts nor unjustifiable forecasts. Any errors cannot in any case have affected the decisions and thus cannot lead to invalidity in any case, cf. the Public Administration Act § 41. The same result follows from a balancing of interests.

The decisions are not invalid as a result of a flawed environmental impact assessment. According to the Petroleum Act § 4-2 subsection two, a PDO must "contain a description of [...] economic and environmental conditions". In this lies a requirement for an environmental impact assessment which must be "seen in the light of the requirements both national and international regulations set for environmental impact assessments including, among other things, the provision in the Constitution § 110 b", cf. Ot.prp.no.43 (1995–1996) p. 41–42.

Supplementary rules on what must be included in such an environmental impact assessment are laid down in the petroleum regulations § 22 a. The provision implements the requirements of the EU's project directive, which means that it is the requirements of the directive that determine the content of an environmental impact

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assessment carried out in accordance with the petroleum regulations § 22 a.
It follows from the directive article 3 no. 1 that an environmental impact assessment - where this is required - shall "identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project". What must be investigated in more detail is the direct and indirect effect on, among other things, "land, soil, water, air and climate", see art. 3 no. 1 letter a, c and d. The same also follows by far from the regulation § 22 a subsection one. The scope of the duty to investigate is limited to the consequences of a "project".

The term project is defined in article 1 no. 2 letter a, as 1) "the execution of construction works or of
other installations or schemes", and 2) "other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources". The wording clearly suggests that the directive with "project" refers to the actual activity itself to which the authorities' permission applies, cf. also the directive's definition of "development consent", see article 1 no. 2 letter c. What is "the project" according to the Petroleum Act, is "development and operation" for petroleum extraction. That the consequences of such development must be investigated follows from Annex I, section 14 of the directive, which defines "[e]xtraction of petroleum and natural gas for commercial purposes" (of a certain size) as a separate project that must be investigated, cf. also art. 4 and 5.

It follows from this that it is the environmental consequences of the actual development and operation that must be investigated. This is evident from the regulation § 22 a, which states that an environmental impact assessment at the PDO stage "must account for the effects the development may have on economic conditions and environmental conditions, including preventive and mitigating measures'. Furthermore, it states that the environmental impact assessment must describe "the environment that may be significantly affected and assess and weigh up the environmental consequences of the development". The aim here is the development and production emissions that development and operation lead to in Norway. This is substantiated by the PDO guide point 4.8, which operationalizes the environmental impact assessment obligation, and at the same time reflects how the regulations have been interpreted over the years. Reference is made in particular to page 25, where it is stated that what is to be investigated is "[the] effects the development may have on environmental conditions, both during the construction period (developments, installation and drilling), operation and closure of the business".

Emissions from the share of Norwegian exported petroleum that later ends up being

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incinerated are actually causally related to development and operation in Norway. Legally, however, such emissions are not "indirect effects of a project" according to the project directive.

These are not effects of the actual development project in Norway, including production and operation in Norway, but later effects as a result of end users possibly incinerating the products they buy. That the directive does not include this type of derived effects follows from the Government's view of a natural and contextual interpretation of the directive, cf. also the petroleum regulations and the PDO guide chapter
4. As far as the Government is aware, there are no decisions from the European Court of Justice that support up about the plaintiffs' view of the directive's almost unlimited reach. Nor is the Government aware of any countries practicing the directive in the way the plaintiffs believe it should be understood. That the directive is to be interpreted broadly does not mean that the words "indirect effects of a project" can be given a different meaning than that which clearly follows from the directive's wording.

Nor can a requirement to investigate combustion emissions be derived from either the
Petroleum Act § 4-2, the Petroleum Regulations § 22a, the wording of the Constitution § 112 subsection two or administrative practice. The claimants' statement is thus based exclusively on certain formulations in HR-2020-2472-P. The Government believes that the judgment - read in its entirety - does not provide a basis
for the conclusions on which the plaintiffs base their view. For the Supreme Court, it was not necessary to take a decision on which possible investigation requirements apply at the PDO stage according to
the Petroleum Act § 4-2. Among the things that the Supreme Court had to take a decision on in a preliminary ruling was the environmental organizations' claim that there is a requirement to investigate combustion emissions prior to a decision on opening an area for petroleum activities in
accordance with the Petroleum Act § 3-1. The majority came to the conclusion that no such requirement applies to the opening stage, and also stated that the PDO stage must in any case be a more suitable and expedient time to assess climate impacts in general. As the case was presented by the environmental organizations, the Supreme Court had no basis for generally clarifying which case processing requirements apply at the PDO stage, as this was a very limited topic. It is wrong when the plaintiffs present it as if the Government should have succeeded in one statement that such a requirement applies at the PDO stage. On the contrary, the

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Government stated that such a requirement cannot be derived from the regulations, and that if a minimum requirement to assess combustion emissions can be derived from the petroleum regulations read in the light of the Constitution § 112 subsection two, it must be up to the Storting to decide in which context it should then be investigated. The Government's view was that in that case this should happen collectively and at a higher level, which the Supreme Court also states that there is a "clear need for".

Before the Supreme Court, the environmental organizations did not state that "the environmental
impact assessment must contain extensive research", but believed that an investigation "should
have pointed to and assessed the combustion effect abroad". The Supreme Court's assessment of
the statement was that "in addition to the known effects of burning petroleum", it was "difficult" to
see what such an assessment would concretely contain. In the case here, the plaintiffs have a more
comprehensive statement than they had before the Supreme Court, with demands for a
far-reaching investigation program in connection with each individual PDO that cannot be anchored
in HR-2020-2472-P, even in the event that the Supreme Court intends to interpret a minimum requirement to assess combustion emissions. The Storting has rejected a number of proposals for comprehensive environmental impact assessment rules which the plaintiffs now state follow from current law, see, Inst. 425 S (2021-2022), Inst. 433 S (2021-2022), Inst. 446 (2021-2022) and Inst. 459 S (2022-2023). As no requirement can be derived to an environmental impact assessment of combustion emissions abroad in connection with an application for or approval of a PDO, the Government's view is that there are no deficiencies in any of the environmental impact assessments in the case, and there are thus no procedural errors in the PDO decisions.

To the extent that there should be a minimum requirement for an assessment of combustion
emissions at the PDO stage, the Government's view is that in that case it will be up to the
authorities to decide how such information is concretely most appropriately obtained and made
available. The Ministry's adjusted case management for PDO applications received

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after HR-2020-
2472-P will, in the Government's view, be well within any minimum requirements according to the
Constitution § 112 subsection two. Reference is also made to the Storting's approval of the adjusted
proceedings in the Inst. 433 S (2021-2022) and Inst. 446 (2021-2022). In the Government's view, the
fact that at the time of the PDO processing for Breidablikk had not finished assessing any adjustments
in the proceedings for PDO applications has no bearing on the validity of the Breidablikk decision.

Any deficiencies in the environmental impact assessments do not in any case lead to invalidity. That the
production and combustion of petroleum will lead to CO2 emissions has been widely known for a long
time and has been a clear part of the debate on Norwegian petroleum and climate policy for many
years. Norwegian policy has for a long time been rooted in the principles that the world's states have
agreed on for the management of greenhouse gas emissions, i.e., that each country is responsible for
emissions within its own territory. It is undisputed that it is the total emissions of greenhouse gases in
the world, including emissions from Norwegian territory, that affect global warming.

On a number of occasions, the Storting has decided on and rejected proposals for the complete
or partial phasing out of Norwegian petroleum activities due to global CO2 emissions, including not
approving new development plans that have been presented. Later proposals to introduce special
requirements to investigate global emissions from combustion have also been voted down by broad
political majorities. The Government's policy over several decades has been that measures to reduce global
emissions and harmful effects thereof must be carried out in other ways than by reducing or
stopping petroleum extraction, see also HR-2020-2472-P paragraph 243. The Government's view is

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that in order to reach the world's climate goals, the world must be able to replace fossil energy with
renewable energy through measures to reduce demand.

To the extent that it would be a procedural error that in the environmental impact assessments
that form the basis of each individual PDO, it is not investigated how any combustion emissions abroad could affect the environment in Norway, in the Government's view it is clear that this is an error that cannot have had a decisive effect on the decision's content. The decisions are therefore valid in any case, cf. the principle in of the Public Administration Act § 41. If the court should come to the conclusion that any procedural errors may have had a determining effect on the content of the decision, the question of invalidity depends on a balancing of interests based on the advantages and disadvantages of finding the decisions invalid. The Government's view is that the potential financial consequences of any invalidity indicate that the decision is upheld as valid in any case.

Nor are the decisions based on incorrect facts. The decisions are not based on an assumption
that maximum gross emissions will not have an impact on the climate or cause damage to the
environment in Norway, neither for Tyrving nor for the Yggdrasil fields. What is apparent
from the decisions, however, are the Ministry's legal assessments that the developments will
not materially contravene the Constitution § 112. To the extent that the plaintiffs were to disagree with
this legal assessment, the plaintiffs could state that the decision is invalid as a result of an error in the application of law. The plaintiffs have not done that, but rather have constructed a fact that cannot be inferred from the decisions, and instead allege invalidity based on this allegedly incorrect fact. Any errors of fact on this point cannot have affected the content of the decisions anyway.

The decisions are not based on unreasonable "forecasts". The decisions are not based on
a "forecast" of specific quantified net effects. Of the decisions attacked in our case, it is only for the
Yggdrasil fields that calculations were made of net effects in addition to maximum gross emissions
in connection with processing the PDO application. In the case presentation to the

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Storting, it was
explained that there was professional disagreement about the assumptions for the calculations, and
how submitted input from several of the actors that the plaintiffs now bring as expert witnesses,
"contributes to highlighting the uncertainty associated with calculations of net greenhouse gas
emissions, and thus about new development projects on the Norwegian continental shelf
contribute to increased, unchanged or lower global net emissions", cf. Prop. 97 S (2022-2023) among
other things points 4.4 and 7.5. The plaintiffs seem to think that, as a matter of principle,
probable net effects should be disregarded, but also the expert witnesses called by the
plaintiffs assume global net effects that will always be lower than maximum gross emissions.
Even if net effects were to be completely disregarded, the Ministry's legal assessment against
the Constitution § 12 will not turn out differently. In the event that the court were to agree that the
PDO decision for Yggdrasil is based on a forecast that is unjustifiable, it is in any case
not an error that could have been decisive for the decision's contents. It is noted in this connection that the Storting's consent to the approval of the PDO for the Yggdrasil fields is not justified by any reference to the calculation of specific net effects, cf. Inst. 459 S (2022-2023).

In the Government's view, the ECHR does not apply. In order for ECHR article 2 or 8 to be
applicable, there is firstly a requirement to specify that you, as a subject of rights, are directly
and personally affected by the risk of the consequences of an act or omission. The environmental
organizations are not protected under article 2 or 8, and do not become subjects of rights
even if organizations in Norwegian law have procedural access to legal action according to §
1-4 of the Disputes Act, cf. HR-2020-2472-P paragraph 165. The rights are also not collectively enforceable and cannot be invoked by the organizations on behalf of the

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population as such. The consequence is that the plaintiffs are not in a position to succeed in a
claim that the decisions are contrary to article 2 or 8, possibly read together with article 14.

The ECHR also contains no right to the environment, and there is no ECtHR practice relating to the
effects of global greenhouse gas emissions. The requirement that the ECtHR has set for a
qualified connection between specific actions/omissions and specified effects on individuals'
right to life, health, home, etc. in cases of local environmental damage (pollution, noise, natural
disaster), is clearly not fulfilled in our case. Also for this reason, the ECHR does not apply in
the case, cf. HR-2020-2472-P, see paragraphs 167-168 (article 2) and section 171 (art. 8). The
question of whether global greenhouse gas emissions can actualize article 2 and/or 8 after an
expanded interpretation of these provisions is the subject of three grand chamber cases
before the ECtHR, where decisions are expected during 2024. It is not the role of Norwegian
courts to develop the ECtHR, see e.g. a. Rt-2005-833. In the event that the ECHR should be
applied, the Government's view is that in any case there is no violation of article 2 or article 8 of
the ECHR, alternatively read together with article 14.

In the Government's view, there is also no legal basis for establishing any obligation to make a concrete assessment of the best interests of children in connection with the processing of PDO applications pursuant to the Petroleum Act § 4-2, cf. the Constitution § 104 subsection two, cf. article 3 of the UN Convention on the Rights of the Child. Any insufficient investigation of combustion emissions according to the ECHR or insufficient justification according to the UN Convention on the Rights of the Child cannot in any case have affected the content of the decisions.

The conditions for a temporary injunction have not been met. In the Government's view, an
injunction that requires the court to order the Government to suspend the effect of

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PDO
decisions that have come into force will also involve an injunction in substance, which is not
permitted. In the Government's view, in any case, no error relating to the PDO decisions that
could lead to invalidity has been proven, and thus a main claim has not been proven, cf. the
Disputes Act § 34-2 subsection one. The Government further believes that there is also no probable
cause for protection, either according to § 34-1 letter a or b of the Disputes Act. In the
Government's view, the financial loss from a temporary injunction, in line with the claimants'
claim, in all case stand in an obvious disproportion with the plaintiffs' interest in injunction, cf. Disputes Act § 34-1 subsection two.

2.4. Defendant's claim

The defendant, the Government represented by the Ministry of Petroleum and Energy, has submitted the following claim:

The main claim:
1. The Government represented by the Ministry of Oil and Energy is acquitted.
2. The Government represented by the Ministry of Oil and Energy is awarded legal costs.

The injunction case:
To the petitions for injunctions that require the state to "be ordered to suspend the effect of" the PDO decisions for Breidablikk, Tyrving and Yggdrasil respectively:
1. Principal: The petitions are rejected.
2. Subsidiary: The petitions are not accepted.

To the petitions for an injunction which states that the state is "prohibited from making other decisions that
require valid PDO approval" for Breidablikk, Tyrving and Yggdrasil respectively:
3. The petitions are not accepted.

In any case:
4. The Government represented by the Ministry of Petroleum and Energy is awarded legal costs.

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3. The court's assessment

3.1. The court's conclusion

The court has concluded that the decisions concerning the plan on development and operation of petroleum deposits for Breidablikk, Yggdrasil and Tyrving are invalid.

The court found that there is a legal requirement to assess the environmental impact of combustion emissions in accordance with Section 4-2 of the Petroleum Act, cf. Petroleum Regulations Section 22a, interpreted in the light of Section 112 of the Constitution. This is also established in the EU Project Directive Article 4 No. 1, cf. article 3 no. 1. No environmental impact assessment of combustion emissions has been carried out in relation to the decisions in question. Environmental impact assessment is a crucial element in the decision-making, as to ensure an informed and correct basis for the decisions. An environmental impact assessment ensures that dissenting voices are heard and considered, and that the basis for the decision-making can be verified and easily accessed by the public. This is an important safeguard for democratic participation in decisions that may affect the environment. The failure to conduct an adequate environmental impact assessment of combustion emissions and climate effects led to the court’s conclusion on declaring the decisions invalid.

The court emphasizes that there are a number of circumstances which suggest that the decisions for Yggdrasil and Tyrving are based on incorrect facts and an unjustifiable forecast. However, the court has not had sufficient grounds to decide whether this in itself implies that the decisions are invalid. Nor has this been necessary for the result in this case.

The court has found that there is no legal obligation to address the best interest of children in the individual decision-making on a plan for development and operation of petroleum activities. The court has thus come to the conclusion that the decisions do not breach Section 104 of the Norwegian Constitution and Articles 3 and 12 of the UN Convention on the Rights of the Child.

The court has concluded that the decisions do not breach the European Convention on Human Rights (ECHR) articles 2, 8 and 14.

The request for an interim court order is put into action by prohibiting the state from making other decisions that require valid PDO-permits for Breidablikk, Yggdrasil and

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Tyrving until the validity of the decisions has been legally determined.

The Government by the Ministry of Petroleum and Energy is ordered to compensate the legal costs of the plaintiff in relation to the case.

The court will elaborate the grounds for the result below.

3.2. Legal regulation of petroleum operations in Norway

The section for petroleum operations is thoroughly regulated. The Norwegian state holds property rights to underwater petroleum deposits, and exclusive right to resource management, cf. Petroleum Act section 1-1. The petroleum resources shall be managed in a long-term perspective so that they can benefit the entire Norwegian society. Resource management shall hereby provide the country with income and contribute to ensuring welfare, employment and "a better environment", as well as to strengthen Norwegian business and industrial development, whilst taking necessary account of regional political interests and other activities, cf. Petroleum Act § 1-2. No other party than the state can operate petroleum operations without the required permits, approvals and consents pursuant to Petroleum Act, cf. Petroleum Act § 1-3.

Petroleum operations are divided into three phases. These phases are the opening phase, the exploration phase and the production phase. There are different regulations for the individual phases. In advance of effectuating a phase, investigations and assessments are done in line with the regulations for the phase in question. The Supreme Court described the background for this in the plenary judgment, cf. HR-2020-2472-P paragraph 65, as follows:

> As for the opening phase, the main question is whether it is reasonable and desirable to open the relevant area for petroleum operations based on an overall assessment of advantages and disadvantages. In prior to granting permission for exploration and extraction, the assessment is primarily linked to the selection of which blocks that are to be announced, based on the chance of discovery. A block is a defined geographical area. There are public hearings, and the Parliament is involved at several stages. Before extraction and production, the actual consequences of the extraction are assessed thoroughly.

The opening phase is regulated by section 3-1 of the Petroleum Act, cf. the petroleum regulations chapter 2a, and the EU's planning directive (SEA Directive).

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These regulations states that it is mandatory to carry out an environmental impact assessment. The content of the environmental impact assessment obligation related to the opening phase was one of the topics in the plenary judgement. The majority concluded that it could not be considered a procedural error that there had not been conducted an environmental impact assessment in relation to the opening of the southeastern parts of the Barents Sea in 2013, and that it would be sufficient to request an environmental impact assessment by an application for PDO, cf. HR-2020-2472-P paragraph 241 and 246. The minority found that the failure to conduct an environmental impact assessment of combustion emissions in relation to the opening phase, constituted a procedural error, cf. HR-2020-2472-P paragraph 258 et seq.

The exploration phase is regulated by the Petroleum Act section 3-3 et seq., and the Petroleum Regulations Chapter 3. It is the Government who has the competence to grant extraction permits related to the exploration phase. There is no requirement for an environmental impact assessment at this phase. An extraction permit gives the rights holder the exclusive right to carry out investigations, to explore and to extract petroleum within the geographical area outlined by the permit, but does not give the right to commence development and production.

The production phase is regulated by the Petroleum Act Chapter 4, the Petroleum Regulations Chapter 4, as well as the EU's project directive. These regulations lay out environmental impact assessment as an obligation. It is the ministry that has the relevant competence to make decisions on a plan for development and operation (PDO). The Norwegian Supreme Court described this phase in the plenary judgment, cf. HR-2020-2472-P paragraph 70, as follows:

> If exploitable discoveries are made under an extraction permit, a process is initiated towards the actual exploitation of the specific discovery. This process is regulated in the Petroleum
>
> Act chapter 4 and the petroleum regulations chapter 4. The rights holder must, among other things, apply for and receive approval for a plan for development and operation (PDO), based on an environmental impact assessment, before the actual development and operation can be carried out, cf. Petroleum Act section 4 -2 and the petroleum regulations §§ 22 to 22 c. I will come back to this.

The Supreme Court's review of the legal regulation shows the context and purpose behind the rules that apply at the various stages. The Supreme Court stated that in

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prior to extraction and production, the "actual consequences of the extraction are assessed in more detail", cf. HR-2020-2472-P paragraph 65. The Supreme Court further expressed that it would make additional notes on the requirements related to PDO later in the judgement. The Supreme Court was thus clear that there would be given clarifying statements and guidelines regarding the requirements for PDO, even if the disputed case concerned the opening phase, and not the production phase.

Petroleum operations must in addition meet the conditions of ongoing permits, approvals and consents. For instance, production permits can now only be granted for a defined time period in the future, cf. Petroleum Act section 4-4 third subsection. The Ministry has the right to demand a presentation for a new or amended plan for development and production, cf. Petroleum Act section 4-2 seventh subsection. In addition, the ministry has the right to decide that exploratory drilling or development of a deposit must be postponed, cf. section 4-5 of the Petroleum Act. When the circumstances call for it, the ministry can also order a stop for the petroleum operations to the extent they consider necessary or put special conditions for continuation into effect, cf. Petroleum Act § 10-1 third subsection. The King by the Government can also withdraw all given permits according to the law, cf. Petroleum Act § 10-13. Alternatively, the ministry can overturn its own decisions according to general and statutory reversal rules, cf. section 35 of the Administration Act.

3.3. Judicial review of the proceedings

The courts must be restrained to review political trade-offs. The clear starting point is that it is the role of the Parliament and the government to make the political decisions and assess specific environmental measures. However, the Supreme Court has emphasized that the courts, on the other hand, should not be restrained when it comes to reviewing the proceedings, cf. HR-2020-2472-P paragraph 182-184. The Supreme Court emphasized that Section 112 of the Norwegian Constitution, second subsection, contains a procedural requirement that citizens have the right to know about the effects of planned nature interventions, and that the purpose of this is to ensure that citizens can safeguard their rights under Section 112 of the Constitution, first subsection. This can be achieve, among other measures, through hearings during the process. The Supreme Court specified that the greater the consequences the decision has, the stricter the requirements must be for clarifying the consequences. Correspondingly, the greater the consequences of a measure, the more detailed the judicial review of the proceedings must be.

For petroleum operations, the constitutional requirements relating to the proceedings

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are regulated through the Petroleum Act and the Petroleum Regulations, and the rules must therefore be interpreted and applied in the light of Section 112 of the Constitution, cf. HR-2020-2472-P paragraph 184. The Supreme Court assumed that petroleum operations have a number of consequences which everyone has a major impact on society, and that this has an impact on the requirements placed on the proceedings. The minority agreed with the majority's view that the courts should not be restrained when examining the proceedings. The minority stated in the extension of this, cf. HR-2020-2472-P paragraph 256, that:

> As the courts' review of the Parliament's decision against the substantive content of Section 112 of the Constitution is modest, there is even more reason to review whether the proceedings have been sound.

In this case, it is the ministry, and not the Parliament, that has the decision-making competence. This differs from the case before the Supreme Court in plenary session. The court cannot see that there is any reason to be more restrained in examining the ministry's proceedings as to when examining the proceedings of the Parliament.

Judicial review of the proceedings must ensure that the decision-making basis is sufficiently and reasonable disclosed, that objections have been heard and considered, and that the public are informed about the basis for decisions. Proper case proceedings shall ensure that decisions are made on the most correct and informed basis as possible. Since the development and operation of petroleum activities have major impacts on society, the court assumes that the judicial review of the proceedings must be thorough.

The review of the decisions must be approached on the basis of the actual situation at the time of decision, but later developments may still shed light on whether the factual assessment at the time of decision was justifiable, cf. HR-2020-2472-P paragraph 154. The parties agree that subsequent circumstances are relevant for the impact assessment. The court will address this later in the judgement.

3.4. The climate challenges

During the main proceedings, fairly extensive evidence was presented on climate challenges and the effects of greenhouse gas emissions, with a particular emphasis on the effects on the Norwegian environment. This included, among other evidence,

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several expert witnesses and extensive documentation, particularly related to the sixth and last main report from the UN climate panel, cf. IPCC AR6 2021-2023. The parties essentially agree that up to date climate science can be used as a basis, and the court does not consider it necessary to give a complete presentation of this. It it the opinion of the court, however, that it is essential to include a few marks on updated climate science after the Supreme Court delivered its plenary judgment in December 2020. In addition, the court finds it relevant to include information on how combustion emissions abroad will impact the Norwegian environment. Both elements are important for the requirements that must be set for the proceedings.

The Supreme Court explained in the plenary judgment that there was broad national and international agreement that the climate is changing as a result of man-made greenhouse gas
emissions, and that these climate changes can have serious consequences for life on earth, cf. HR-2020-2472- P paragraph 49-55. The Supreme Court stated that the detailed explanation for this was taken from the Climate Risk Committee's report "Climate risk and the Norwegian economy", cf. NOU:2018: 17 chapter 3 pp. 31-53. This report was essentially a compilation of knowledge from the UN Climate Panel's fifth main report from 2014 (IPCC AR5) and special report on 1.5 degree warming from 2018 (IPCC 1.5C). The Supreme Court emphasized that the UN climate panel is a scientific body whose main task is to carry out regular assessments and compilations of the current state of knowledge about climate and climate changes. The Supreme Court assumed that the reports from the UN climate panel are considered the most important and best scientific knowledge base on climate change, cf. HR-2020-2472-P paragraph 50.

Following this, a new main report from the UN climate panel has arrived. This is the climate panel's sixth main report, cf. IPCC AR6 2021-2023. Climate science has thus been updated after the Supreme Court delivered its verdict. Working group 1, cf. IPCC AR6 WR1, which reviews all available scientific literature dealing with the physical climate system, had, among other things, the following main conclusion:

> It is unequivocal that human influence has warmed the atmosphere, ocean and land.
>
> …
>
> Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in

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extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened since AR5

The first part of the main conclusion shows that it is scientifically certain that man-made emissions from coal, oil and gas, as well as land use, have changed all parts of the earth's climate. According to expert witness Professor Helge Drange, the second part of the main conclusion shows that there is now sufficient observation, theoretical understanding and modeling to conclude that not only climate, but also extreme weather events, are affected by man-made greenhouse gas emissions. The court refers to Drange's expert statement pp. 4-5, and his explanation of this in court. The conclusion has been strengthened since the previous main report because there is now sufficient knowledge to scientifically establish this on a global scale. The abbreviation AR5 refers to the previous and fifth main report from the UN climate panel, published in 2013/2014, to which the Climate Risk Committee and the Supreme Court referred.

The UN Climate Panel's latest main report also concluded that every ton of CO2 emissions will increase global warming. This is expressed as "Every tonne of CO2 emissions adds to global warming", cf. IPCC AR6 WG1 Summary for Policymakers, figure SPM.10.

In the plenary judgment, the Supreme Court assumed that the average temperature on Earth has increased by approximately 1 degree Celsius since pre-industrial times, cf. HR-2020-2472-P paragraph 51. However, updated climate science shows that average warming has now increased by at least 1.2 degrees Celsius, and not just 1 degree Celsius. This is evident, among other things, from the UN climate panel's sixth report, and annually updated report on global climate change, cf. IPCC AR6 SYR SPM A.1; Forster: 2022. According to the updated report from 2022, the indicators show that man-made warming reached 1.14 degrees Celsius on average during 2013-2022, and 1.26 degrees Celsius in 2022. During the period 2013-2022, man-made warming has increased at a rate of over 0.1 degrees Celsius per decade.

In the plenary verdict, the Supreme Court further assumed that global warming will reach around 1.5 degrees Celsius around 2040, and increase towards 3-4 degrees Celsius towards the end of this century if no changes are made to the climate policy being pursued around the world in day, cf.
HR-2020-2472-P paragraph 51. However, updated climate science shows that average global warming may exceed 1.5 degrees Celsius as early as around 2030,

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and not around 2040, and that the warming is thus faster than previously expected. This is evident, among other things, from the UN climate panel's sixth report, and annually updated report on global climate change, cf. IPCC AR6 SYR SPM A.1; Forster: 2022. In the annual update from 2022, it is highlighted, among other things, that:

> This is a critical decade: human-induced global warming rates are at their highest historical level, and 1.5 degrees C warming might be expected to be reached or exceeded within the next 10 years.

Furthermore, the Supreme Court assumed in the plenary judgment that there would be a real danger that several critical tipping points would be passed in the event of higher warming than 2 degrees Celsius, cf. HR-2020-2472-P paragraph 53. The Supreme Court further specified that this could involve that extreme weather without historical precedent is likely to occur, and that climate change will have major consequences for marine life and the ability to produce food. However, updated climate science shows that a warming of 1.5 degrees Celsius already represents a threshold for several tipping points, and that this does not only apply to a higher warming of more than 2 degrees Celsius, cf. McKay et al: 2022.

This updated climate science is also used as a basis by the Norwegian authorities. Among other things, this is explained in more detail in a report to the Parliament from the Ministry
of Climate and the Environment of 16 June 2023, cf. Report St. 26 (2022-2023) "Climate in change - together for a climate-resilient society". This notification to the Parliament came after the relevant PDO decisions in this case. It is clear from the source references in the report to the Parliament that it is largely based on the UN Climate Panel's sixth main report, cf. IPCC AR6 2021-2023. It is stated at the outset in this notification to the Parliament that:

> Man-made climate change has already caused serious and partly irreversible consequences for nature and society across the globe. Climate change is happening faster, and the consequences are more extensive and dramatic than previously thought. The last eight years are the eight warmest years ever recorded globally.

The report to the Parliament contains a separate section on climate change and its consequences. In this part, it is explained in more detail that the climate is no longer

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stable, that warming is fastest in the north, that Norway has become wetter, that the climate changes towards the end of this century may become significant, that Norway is getting warmer, that more water creates more problems, that snow and ice melt, that the sea enters a new state, and that coincident weather events can have major consequences, cf. Meld. St. 26 (2022-2023) pp. 10-14.

In the same report to the Parliament, there is further on pp. 14-15 a description of tipping points under the heading "Tipping points in the climate system can affect Norway". It is clear that such rocking elements can go from a stable state to a new and different state if global warming passes a temperature threshold, and that it is often a matter of a relatively abrupt change that is irreversible on a human time scale. The concrete tipping points are described by the fact that ocean circulation in the Atlantic can slow down significantly, and reduce heat transport towards Norwegian latitudes. The ice caps in Greenland and West Antarctica may already have passed a point where they will continue to melt for centuries to come, thus causing faster sea level rise. The permafrost can go from gradual thawing to sudden thawing as a result of heat waves or forest fires, and this will release large amounts of greenhouse gases stored in the ground. The distribution area of the boreal forest can also be significantly changed as a result of heat, drought and forest fires. It is further stated in the Parliament message that more than 15 tilting elements have been identified in the world. Some tipping elements may have passed the tipping point already, while others require higher temperatures. It can take time from the system tipping until one can observe. It is assumed in the parliamentary report that the risk of passing tipping points increases with continued global warming, and that the probability increases with global warming above 1.5 degrees Celsius. Further heating increases the risk of passing even more tipping points. Passing tipping points can, according to the report to the Parliament, have major ripple effects in the climate system, including through forest death, changes in ice extent and greenhouse gas emissions from thawing permafrost.

The updated climate science that appears in the UN climate panel's sixth main report is supported by other submitted reports, and is, as mentioned, reproduced in the Parliament message from the Ministry of Climate and the Environment of 16 June 2023. The court
assumes that the parties essentially agree on the updated climate science can be used as a basis. In addition, this is supported by the explanations from the expert witnesses Helge Drange and Dag Hessen. The court refers to the expert statement from Drange, as well as both explanations and presentations in court. In what follows, the court will give a brief explanation of their main conclusions related to the

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climate challenges. The court will return to the impact assessment of combustion emissions from the specific petroleum fields later.

Helge Drange is professor of oceanography at the Institute of Geophysics at the University of Bergen.

He was one of the initiators of the establishment of the Bjerknes Center for climate research at the University of Bergen, and has been a member of the management group there. He obtained a doctorate on climate modeling in the 90s, and is, among other things, a co-author of 79 publications in peer-reviewed international journals. He has also been a contributor to the UN climate panel. From key climate science points of departure, Professor Drange emphasized that all man-made greenhouse gas emissions affect global and local climate. According to Drange, CO2 is the most important of the man-made greenhouse gases, and around 20 percent of today's CO2 emissions will affect the Earth's climate for a thousand years or more. He stated that, for the first time, there is now sufficient observation, basic knowledge and good enough models to establish that weather events such as heat waves, extreme rainfall, prolonged drought and storm surges are directly affected by man-made greenhouse gas emissions. The effect of a warming of 1.5 degrees, 2 degrees or more than this will make a significant difference to nature and society.

The probability of passing tipping points, i.e. irreversible changes in climate, rises with increasing greenhouse gas emissions. Of seven identified tipping points that can be activated when global warming increases from 1.5 to 2 degrees, according to Drange, five of these will affect Norway directly. This applies to the collapse of the ice cap in West Antarctica, which causes higher sea levels. This applies to the thawing of permafrost, which will cause unstable land/mountain slopes in the mountains and the north of Norway, and which can contribute to increased emissions of methane. This applies to the absence of sea ice in the Barents Sea, which will affect marine life, marine transport and access to resources. This also applies to reduced vertical mixing in the Labrador Sea, which in isolation will weaken the Gulf Stream system. In addition, this applies to the loss of glaciers, which will change landscapes and ecosystems, affect meltwater supply and tourism. A sixth, geographically nearby tipping point that can be activated when global warming increases from 1.5 to 2 degrees, is the melting of the Greenland ice sheet. However, it is expected that the melting of the Greenland ice sheet will only slightly affect the sea level along the Norwegian coast. The reason for this is that the loss of ice on Greenland will change the Earth's gravitational field so that the sea level rise from melting Greenland ice will lead to increased sea levels far away from

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the source, such as the tropics and in the southern hemisphere. Correspondingly, loss of ice in Antarctica will lead to the greatest sea level rise in the northern hemisphere, including Norway.

Professor Drange also described a selection of observed climate changes in Norway. The annual average temperature in Norway has risen by 1.2 degrees in the last 100 years, and by 1.9 degrees in the last 50 years. For Oslo, the average temperature has risen by 1.6 degrees in the last 100 years, and by 1.8 degrees in the last 50 years. In Svalbard, the annual average temperature rose by 3.0 degrees in the last 100 years, and a whopping 5.1 degrees in the last 50 years. Both in Oslo and on Svalbard, the temperature and climate can be expected to change significantly in the future.

The annual average temperature increase in Norway is comparable to the increase in global temperature. There is an increase in temperature for all months of the year, both in terms of the trend for the last 100 years and the last 50 years.

Average annual rainfall for Norway has increased by 21 per cent in the last 100 years, and by 14 per cent in the last 50 years. The increase in precipitation for Norway is significantly greater compared to the global average. The number of days with heavy rainfall is increasing. Rising sea levels and storm surges will become a growing problem for Norway. The biggest challenges related to this will come along the southern and western coasts, and in northern Norway. The challenge will be particularly great if parts of the Antarctic ice sheet were to collapse. In addition, Drange pointed out that the risk of rot damage will increase sharply in this century, and that increased greenhouse gas emissions will intensify the rot problem. It is estimated that the high rot risk will increase from today's approx. 600,000 buildings, to approx. 2.4 million buildings.

Drange further explained that there will also be heat waves at sea, in a similar way as on land. As a result of global warming, marine heat waves occur more often and with more intensity than before. In the extreme, a marine heat wave could lead to fish deaths. In Norwegian waters, the frequency and duration of marine heat waves has increased, particularly in the Barents Sea. For the period 1982 to 2020, more than half of all marine heat wave days have occurred in the last decade. According to Drange, increased greenhouse gas emissions will increase the number and intensity of marine heat waves.

Dag Hessen is professor of biology at the University of Oslo and head of the

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research center Center for Biogeochemistry in the Anthropocene (CBA). Professor Hessen explained that climate change threatens vulnerable species and ecosystems, and that the effects on nature are greater and more extensive than previously thought. At the same time, natural diversity affects the climate, and destruction of ecosystems can worsen climate change. Hessen explained that arctic and alpine ecosystems are most at risk, partly because the changes are greatest there, and partly because they lack a refugium. In addition, he explained that new and more heat-loving species can displace established species. There will be better conditions for new parasites and disease organisms, which will in turn have effects on animals, such as moose. In Norway, according to Hessen, there are particular problems for the mountain ecosystems. Less snow, more ice and the loss of "lemen years" have ripple effects for many other species. Icing is a significant problem for reindeer. There will also be a mismatch between plants and pollinators.

Furthermore, Hessen described that increasingly warmer seas lead to the movement of key species, such as the rudd, northwards, with major effects on fish, seabirds and other species. Warmer sea surface results in reduced absorption of CO2, increases the risk of oxygen-free bottom water and can result in reduced marine production. More runoff from land also increases the transport of particles and colored water to the sea. Hessen further described that altered runoff due to drought has major consequences for plant production, including agriculture, and that floods and heavy rainfall cause crop damage. Hessen described that climate change leads to special effects on northern ecosystems and for Sami people groups.

In summary, Hessen explained that there is no doubt that climate change is already affecting Norwegian nature, infrastructure and society in many ways, mainly negatively. He explained that any additional contribution will worsen the situation and increase the risk of long-term and partly irreversible damage.

The updated climate science shows that the effects of greenhouse gas emissions can have serious and extensive negative consequences both globally and for the environment in Norway. In the court's view, this is important for the requirements that must be set for the proceedings, including the environmental impact assessments.

3.5. Obligation to conduct environmental impact assessments

3.5.1. Legal starting points regarding the environmental impact assessment obligation

The requirements for an environmental impact assessment in connection with the approval of a plan for the development and operation of petroleum operations are

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regulated in the Petroleum Act § 4-2 second subsection and the petroleum regulations. Section 22a of the Petroleum Regulations regulates the requirements for environmental impact assessment in plans for the development and operation of a petroleum deposit, and is therefore particularly relevant in this case. These provisions are intended to meet the requirements for the processing of cases that follow from the second paragraph of Section 112 of the Constitution, and must be interpreted in the light of this provision.

The EU project directive 2011/92/EU of 13 December 2011 was amended on 16 April 2014 by directive 2014/52/ EU. In what follows, the court will refer to both directives as the project directive, but will specify which parts came after the change in 2014.

The project directive sets special requirements for environmental impact assessments in connection with development projects, and also applies to the continental shelf. The project directive has been implemented in Norwegian law through the requirements of the petroleum regulations and the environmental impact assessment regulations. In the event of a conflict, the provisions in the project directive must take precedence over other Norwegian legal provisions on the same matter, cf. EEA Act § 2. The Norwegian petroleum regulations must therefore be interpreted in accordance with the directive.

In what follows, the court will first interpret the Norwegian petroleum regulations, and then the regulations according to the project directive.

3.5.2. The Norwegian regulations for environmental impact assessment in plans for development and operation of a petroleum deposit

If the rights holder decides to replace a petroleum deposit, the rights holder must submit to the ministry for approval a plan for development and operation (PDO) of the petroleum deposit, cf. Petroleum Act § 4-2 first paragraph. The plan and the requirements for approval are a central regulatory tool. The rights holder is charged with an investigation duty which must ensure that key considerations and interests are mapped and taken into account. The plan must also provide the authorities with a thorough and detailed description of the licensee's plans to extract the petroleum deposit.

Section 4-2 of the Petroleum Act sets out the overall framework and conditions for

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what the plan must contain, as well as the requirements for environmental impact assessment and authority approval. Additional and more detailed requirements for the plan and the prior environmental impact assessment follow from chapter 4 of the petroleum regulations.

The plan for development and operation must contain a description of the development, and an environmental impact assessment, and the environmental impact assessment is included in the assessment upon approval of the plan for development and operation, cf. section 20 of the Petroleum Regulations.

Before the actual submission of the completed development plan is sent for approval, a proposal for an investigation program must be sent to the authorities and interest organizations concerned, who must be given the opportunity to comment. This part of the process is regulated by section 22 of the Petroleum Regulations. The proposal for an investigation program must, among other things, provide a brief description of assumed effects on the "environment, including any transboundary environmental effects", and must also clarify the need for documentation. It is further stated that the proposal for an investigation program should, to the extent necessary, contain a description of how the investigation work will be carried out, particularly with a view to information and participation with regard to groups that are assumed to be particularly affected.

The rights holder must send the proposal for the study program for comments to the authorities and interest organisations, and a reasonable deadline for comments must be set, which should not be shorter than six weeks. It is then up to the ministry to adopt the study program on the basis of the proposal and the statements thereon. In this connection, according to the regulations, statements received and how these have been assessed and taken care of in the prescribed program must be explained. A copy of the prescribed program must be sent to those who have submitted a statement in the matter. The ministry can also decide in special cases that the ministry must send the proposal for a study program for consultation.

The ministry has also prepared a guide (the PDO guide) which provides guidance and guidelines with regard to the decision-making process, the requirements for environmental impact assessment and how these should be understood, as well as what the plan should otherwise contain. The court assumes that the guide expresses administrative practice, but that it otherwise has limited weight in terms of legal sources.

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Section 22b of the Petroleum Regulations regulates when an exemption from the requirement for an environmental impact assessment can be granted, but is not relevant to this case.

The case processing requirements can also be supplemented by the administrative law principle of the general duty to investigate according to § 17 of the Administrative Procedure Act, cf. also HR-2020-2472-P paragraph 185. This principle entails, among other things, that the authorities must ensure that the case is as well informed as possible before a decision is made meet.

As a starting point, permits under the Petroleum Act do not exempt the licensees from requirements for permits under other laws, such as the Pollution Act, cf. Petroleum Act § 1-5.

Petroleum operations require various permits from the Norwegian Environment Agency for pollution, cf. Pollution Act §§ 7 and 11. If a PDO decision is suspended or lapses, a decision according to § 11 of the Pollution Act cannot be implemented.

The Natural Diversity Act also contains some overarching principles that apply to interventions in nature.

Public decisions that affect natural diversity must, as far as is reasonable, be based on a scientific knowledge base, cf. the Natural Diversity Act § 8. The precautionary principle is regulated in the Natural Diversity Act § 9. It basically appears that if there is a lack of knowledge about effects on the natural environment, one must aim to avoid possible significant damage to natural diversity, and that a lack of knowledge should not be used as a reason to postpone decisions when there is a risk of serious or irreversible damage to natural diversity. In addition, it is a principle that an impact on an ecosystem must be assessed on the basis of the overall burden to which the ecosystem is or will be exposed, cf. section 10 of the Natural Diversity Act.

3.5.3. Is there a legal requirement to conduct an environmental impact assessment of combustion emissions?

The question is whether there is a legal requirement to conduct an environmental impact assessment on combustion emissions in accordance with the Petroleum Act § 4-2 second subsection and the Petroleum Regulations § 22a, interpreted in the light of § 112 of the Constitution.

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Section 4-2 of the Petroleum Act, second subsection, regulates what a plan for the development and

operation of a petroleum business (PDO) must contain. It appears that the plan must contain a description of several conditions, including "environmental conditions". According to the legislative preparations, this section describes the overall themes the plan must contain. The purpose of including a detailed description of which conditions must be mentioned in the plan for development and operation in the actual text of the law was to highlight the central importance these considerations have when assessing the issue of development, cf. Ot.prp.no. 43 (1995-1996) p. 41. In extension of this, it is specified that the bill does not involve any expansion of the scope of the plan in relation to the practice that has been followed.

According to the wording, the term "environmental conditions" is broad, and does not contain any

delimitation against the climate effects of combustion emissions. In the legislative preparations, it is specified that "environmental effects" are covered by this term, and that the provision thus authorizes requirements for the preparation of environmental impact assessments, cf. Ot.prp. No. 43 (1995-1996) p. 41. It also appears that this authority must be seen in the light of the requirements both national and international regulations set for environmental impact assessments, including, among other things, the provision in Grl § 110 b, cf. Ot.prp. no. 43 (1995-1996) p. 41. After an explanation of current international obligations that applied at this time, it appears that the ministry would consider providing more supplementary rules for the preparation of environmental impact assessments through the regulations for the provision, cf. Ot.prp. No. 43 (1995-1996) p. 42. The court takes this to mean that mapping environmental effects is a central purpose behind the requirement for an environmental impact assessment, and that the environmental impact assessment obligation must be interpreted in the light of Section 112 of the Constitution and international obligations, including the EU's project directive. In addition, the ministry has provided more detailed rules for the preparation of environmental impact assessments in the petroleum regulations.

The Supreme Court stated in the plenary judgment that the constitutional requirements relating to the proceedings for the petroleum business are regulated through the Petroleum Act and the Petroleum Regulations.
The Supreme Court clarified that "When these rules are interpreted and applied, it must be done in the light of § 112 of the Constitution", cf. HR-2020-2472-P

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paragraph 184. The Supreme Court, in an extension of this, showed that the petroleum business has a number of consequences, which all
have a major impact on society, and that the proceedings must therefore thoroughly clarify the advantages and disadvantages of opening new fields. The minority agreed with the majority's understanding of this, and also stated that "The procedure rules in the petroleum legislation must be assessed in the light of § 112 of the Constitution", cf. HR-2020-2472-P section 255. The minority added in that connection
(section 255) that:

The environmental impact assessment must provide information to - and form the basis for participation from - the population in the decision-making process. The investigations must therefore be objective and so comprehensive and complete that they are suitable to give the population real insight into the effects of the planned interventions.

The Petroleum Act and the Petroleum Regulations are thus the central legal basis with regard to the environmental impact assessment obligation, but the rules must be interpreted in the light of Section 112 of the Constitution.The environmental impact assessment is intended to ensure the population's right to information and participation in connection with environmental impacts.

The court cannot see that there is a basis for this to be different for the production phase

than for the opening phase, which was the subject of the Supreme Court. On the contrary, the production phase has more extensive consequences, and the climate effects from
combustion emissions are easier to calculate based on the resources that have been found in the field. This is also the background for the fact that the actual consequences of the extraction can be assessed in more detail and concretely in connection with the production phase, cf. HR-2020-2472-P paragraph 65. All this indicates that the proceedings can and should be even more thorough and sound in this phase.

It is clear from Section 112, second subsection of the Constitution, that citizens have the right to know about the state of the natural environment, and about the effects of planned and implemented interventions in nature, so that they can safeguard the material right according to the first paragraph. In the legislative preparations,
it is assumed that Section 112, second subsection of the Constitution "ensures the

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right to information
in environmental matters, including the important environmental legal principle of investigation of the environmental consequences of relevant measures", and that this is a prerequisite for real citizen participation in the decision- making process, cf. Inst. S. No. 163 (1991-92) p. 6. Section 112 of the Constitution, second paragraph, thus shows that the right to information with regard to the environmental consequences of measures has democratic significance.

In connection with the plenary proceedings, the state argued before the Supreme Court that climate, including greenhouse gas emissions, is outside the material scope of Section 112 of the Constitution, cf. HR-2020-2472-P paragraphs 146-147. To this, the Supreme Court stated that there is no evidence that climate falls outside the scope of § 112 of the Constitution, cf. HR-2020-2472-P paragraph 147. In extension of this, the Supreme Court discussed the question of whether it is only emissions and climate effects on Norwegian territory that is relevant according to Section 112 of the Constitution, or whether emissions and effects in other countries must also be taken into account in the assessment. To this question, the Supreme Court stated in section 149 that:

Section 112 of the Constitution does not generally protect against acts and actions outside the kingdom. But if businesses abroad that the Norwegian authorities have a direct influence on or can implement measures against, cause damage in Norway, it must be possible to draw attention to it by using Section 112 of the Constitution. An example is the burning of Norwegian-produced oil or gas abroad, when it also causes damage in Norway.

The Supreme Court assumed that around 95% of greenhouse gas emissions from petroleum extraction generally occur when incinerated abroad after export. The Supreme Court further stated that although there are no figures on the extent to which emissions after combustion abroad lead to harmful effects in Norway, it is "not doubtful that global emissions will also affect Norway", cf. HR-2020-2472-P paragraph 155. This is supported by the updated climate science from the UN climate panel and the expert witness statements from Professor Drange and Professor Hessen. This does not appear to be contested by the state either.

The Supreme Court has thus determined that the combustion of Norwegian-produced oil or gas both in Norway and abroad is part of the material scope of application of Section 112 of the Constitution. In light of the fact that the rules of procedure under Section 4-2 of the Petroleum Act and Section 22a of the

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Petroleum Regulations must safeguard the right to information under Section 112 of the Constitution second paragraph, this suggests that combustion emissions are covered by the environmental impact assessment obligation.

When it came to the substantive review under Section 112 of the Constitution, the Supreme Court in its plenary judgment assumed that the threshold for the courts to override a legislative decision or other decision taken by the Parliament is very high, that the provision must be understood as a safety valve, and that the Parliament in that case grossly must have neglected his duties after Section 112 third paragraph of the Constitution, cf. HR-2020-2472-P paragraph 142. With this as a

starting point, the Supreme Court made a concrete assessment of the opening decision in paragraph 157-163. In this specific assessment, the Supreme Court assumed that it was acceptable for the Parliament and the government to base Norwegian climate policy on the division of responsibility between states that follows from international agreements, where a clear principle applies that each state is responsible for the combustion that takes place on its own territory, cf. HR-2020-2472-P paragraph 159. The legal starting point with a high threshold for review, and the Supreme Court's subsequent concrete assessment of this, was thus related to a material review according to Section 112 of the Constitution, including material and political considerations. Court review of these substantive assessments is very limited. The court cannot see that these statements have any significance for the court's control of the proceedings, which, on the other hand, must be thorough in this area.

In the court's view, this is supported by both the majority's and the minority's statements about the distinction between the very limited substantive review under section 112 of the Constitution, and the more in-depth judicial control of the proceedings, cf. HR-2020-2472-P paragraph 182-184 (the majority) and paragraph 254-256 (the minority). The court also assumes that international agreements on the accounting of territorial emissions are something different from environmental impact assessments of combustion emissions, and that the Supreme Court's statements on this principle in paragraph 159 must be seen in the light of this distinction.

Sections 20 et seq. of the Petroleum Regulations regulate the detailed requirements for the environmental impact assessment process with regard to the phase for development and production (PDO). The requirements for the content of the environmental impact assessment in a plan for the development and operation of a petroleum deposit are regulated in section 22a of the Petroleum Regulations. It appears that such an environmental impact assessment "must" account for the

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effects the "development" may have on economic conditions and "environmental conditions", including preventive and mitigating measures. It is further stated that the environmental impact assessment, among other things, "must" describe the "environment that may be significantly affected", and assess and weigh up the "environmental consequences of the development", including describing "emissions" to "air". In the court's view, greenhouse gas emissions are clearly covered by the words "emissions to air".

The state has argued that the provision must be interpreted as that the environmental impact assessment only should consider the consequences of the "development" itself. The state has argued that the term "emissions to air" thus only relates to greenhouse gas emissions locally in connection with the production itself (production emissions), and not subsequent combustion of the oil and gas that is extracted. However, the court cannot see that there is support for this interpretation either in the wording or the purpose of the provision. It is clear from the provision that the environmental impact assessments must account for environmental conditions, including that emissions to air must be accounted for. This clearly includes greenhouse gas emissions. Although the provision refers to "development", there is also no doubt that production and operation are also covered by the provision. This does not appear as contested, but could have been another unintended consequence of the state's restrictive interpretation of the provision. In addition, the purpose of the environmental impact assessment is in particular to ensure that environmental effects are mapped. In the court's view, combustion emissions from the oil and gas produced are at the core of what must be considered the environmental effects of petroleum operations. This therefore speaks clearly against interpreting the provision restrictively.

The provision must also be interpreted in the light of Section 112 of the Constitution. In the court's view, this also suggests that the provision cannot be interpreted restrictively. The court has already explained that both the majority and the minority in the plenary judgment came to the conclusion that both emissions of greenhouse gases from petroleum operations in Norway (production emissions) and emissions as a result of the petroleum being produced, exported and burned (combustion emissions) are covered by section 112 of the Constitution, cf. .HR-2020-2472-P paragraph 149 (majority) and sections 259-260 (minority). When both production emissions and combustion emissions fall within § 112 of the Constitution, this also suggests that the environmental impact assessment obligation includes both forms of greenhouse gas emissions as a result of the development and operation of a petroleum deposit.

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In addition, the state's interpretation is contrary to both the majority's and the minority's premises in the plenary judgment in connection with the assessment of when the environmental impact assessment of combustion emissions should take place. The Supreme Court considered the extent of the environmental impact assessment obligation at the opening stage, and in that connection came up with concrete assumptions for the proceedings in connection with the plan for the development and operation of a petroleum deposit (PDO).

The majority of the Supreme Court first clarified the issue related to this, cf. HR-2020-2472-P paragraph 214, as follows:

> I first look at the time when climate impacts must or should be assessed.
>
> The question in the case here is when the analysis of global climate effects will be done in an ongoing process. It is closely related to the question of when the governing authorities have the knowledge base that is otherwise necessary for the analysis to be able to fulfill its purpose - and form a natural part of a decision-making basis.

The Supreme Court's majority then explained that at the time of the opening decision in 2013, it was uncertain whether oil and gas would be found, and whether it would be found to such an extent that it was worth driving, and that the climate consequences were therefore very uncertain. After this, the majority concluded that the time for possible approval of the PDO would be a more suitable time. The majority formulated this, cf. HR-2020-2472-P paragraph 216, as follows:

> Against this background, the time for possible approval of the PDO must clearly be the most appropriate and suitable for assessing the concrete global climate effects of the extraction that one then has to decide on.

The majority of the Supreme Court considered it "fully essential" that global environmental consequences will not particularly follow the opening or exploration, and that consequences will only come if viable discoveries are made, and permission is applied for and granted for development and operation, cf. HR-2020-2472-P paragraph 217. The Supreme Court's majority then indicated that greenhouse gas emissions will be subject to an environmental impact assessment before a decision on the PDO is made. The majority formulated this in section 218 as follows:

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> I place great emphasis on the fact that an extraction permit, despite the language used, does not give
>
> an unconditional right to extraction, even if worthwhile discoveries are made. Extraction requires an approved PDO - according to Section 4-2 of the Petroleum Act. At the PDO, an environmental impact assessment will normally be carried out - which must also include missions to air, cf. petroleum regulations § 22 a. Emissions to air include emissions of greenhouse gases. When assessing the application, the governing authorities will thus have to take a position on the release of greenhouse gases.

The Supreme Court therefore precise and clearly assumed that an environmental impact assessment according to the Petroleum Act § 4-2, cf. the Petroleum regulations § 22 a must include greenhouse gas emissions. The Supreme Court's assessment of this came after the Supreme Court had clarified, contrary to the state's view, that combustion emissions abroad must also be considered as effects of petroleum activities, cf. HR-2020-2472-P paragraph 218. In the court's view, the Supreme Court's assumption and interpretation of the petroleum regulations are clearly formulated, and this appears to be a central prerequisite for the conclusion. The court points out that the majority expressed that "great importance" was placed on the fact that greenhouse gas emissions would be subject to an environmental impact assessment when delivering an application for PDO, and that the authorities, based on this report, would have to take a position on the relevant greenhouse gas emissions.

After this, the majority of the Supreme Court reiterated that Section 4-2 of the Petroleum Act must in any case be read in conjunction with Section 112 of the Constitution, and that if it turns out that it would be contrary to Section 112 of the Constitution to approve the extraction, the authorities will have both the right and the duty not to to approve the plan, cf. HR-2020-2472-P paragraph 222. The majority of the Supreme Court further clarified that the authorities will have both the right and the duty not to approve the PDO if consideration of the climate and the environment otherwise at this time dictates this, cf. HR -2020-2472-P pragraph 223.

The court’s opinion is that this review underpins the Supreme Court's premise that climate impacts in the form of combustion emissions must be subject to an environmental impact assessment. However, the majority's view was that it would be most appropriate for this to happen before the approval of the PDO, and not at the

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opening stage. The environmental organizations believed that it might be too late to do this at the PDO stage, but the Supreme Court pointed out that the authorities would have both the right and duty not to approve the plan if the situation had become such that it would be contrary to Section 112 of the Constitution to approve the recovery, cf. HR-2020-2472-P paragraph 222-223. The court understands this to mean that a real environmental impact assessment must be carried out before approval of the PDO, and that an actual test must be carried out as to whether approval will be in breach of the Constitution § 112. Such an actual test requires that the consequences of combustion emissions and climate effects are investigated.

The majority further discussed the content and scope of the investigation into the global climate impacts, cf. HR-2020-2472-P paragraph 224-240. In that connection, the Supreme Court distinguished between assessments of gross emissions and net emissions. The majority explained, among other things, that the net effect of combustion emissions is more complicated and debated, and that there is a need to see all emissions from Norwegian production of petroleum together. In that connection, the majority stated that it would then be up to the ministry and the government to decide whether it was appropriate to refer to climate impacts at an overall level, as part of Norwegian climate policy, rather than mention them in the specific environmental impact assessment, cf. HR-2020-2472-P paragraph 234. The majority again indicated that at the opening stage it would be uncertain what the gross emissions would be (paragraph 239) and that this applied even more to the assessment of the net effect (paragraph 240).

The state has argued that the Supreme Court's statements in paragraphs 234 and 238-239 indicate

that the ministry itself can assess greenhouse gas emissions at a more general level, and that there is no requirement for this to be subject to an environmental impact assessment. The court does not agree with this interpretation, and believes the ministry's interpretation is based on individual quotes taken out of context. The court perceives this part of the majority's discussion as a concrete assessment of what requirements could be set for the content and scope of the investigation at the opening stage, and not at the PDO stage.

The majority indicated that both gross and net emissions would be uncertain at the opening stage, and that it would therefore be more appropriate for this to subject to an environmental impact assesment at the PDO stage. In that connection, the majority stated that at the opening stage it was sufficient that this happened at a more general level, and that there was no environmental impact assessment. The

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majority was also clear that there are maximum emissions, i.e. gross emissions, which must be subject to an environmental impact assessment before approval of the PDO. It appears less certain whether the Supreme Court assumed that net emissions must also be subject to an environmental impact assessment, or whether this can be taken at a more general level. Considerations for sound case management may, however, argue that this should be part of the environmental impact assessment, as long as the state considers net emissions to be relevant. The court will return to this.

In the end, the majority concluded that there were no procedural errors related to climate impacts during the environmental impact assessment on the opening of the Barents Sea in the southeast in 2013. In this connection, the majority reiterated the assumption of an environmental impact assessment of climate effects in the event of a possible application for a PDO. The majority of the Supreme Court formulated this, cf. HR-2020-2472 paragraph 241, as follows:

> My conclusion is that there were no case handling errors linked to the climate impacts during the environmental impact assessment for the opening of the Barents Sea in the southeast in 2013.
>
> The climate impacts are continuously politically assessed - and will be subject to an environmental impact assessment in the event of an application for a PDO. Thus, this also may
> not lead to the decision on the extraction license in the 23rd licensing round in 2016 being invalid on this basis.

This conclusion came after the majority of the Supreme Court had explained that combustion emissions abroad are greenhouse gas emissions that are covered by the environmental impact assessment obligation under the Petroleum Act § 4-2, cf. the Petroleum Regulations § 22 a, interpreted in the light of § 112 of the Constitution. In the court's view, this appears clear prerequisite for the majority's conclusion with regard to the requirements that could be placed on the environmental impact assessment at the opening stage. The majority clearly assumed that combustion emissions and climate impacts should be subject to an environmental impact assessment later in the event of an application for a PDO, and that the climate impacts will also be continuously politically assessed. As mentioned, the court shall not review the political assessments of this, and shall only assess whether there is a requirement for this to be subject to an environmental impact assessment.

In the first translation of the plenary judgment into English, this wording was used for

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the statement in paragraph 241:

> The climate effects are politically assessed on a regular basis – and the consequences will be clarified with a possible PDO application.

The State by the Government Attorney referred to this wording in its letter of 26 April 2022 to the ECtHR in connection with the ongoing appeal there. The English translation at the time could be taken to mean that the Supreme Court only presupposed a requirement that the climate effects should be clarified or similar, and that there was no clear requirement for an environmental impact assessment. However, the Supreme Court changed the translation on 4 May 2022. This can be seen from footnote 2 in the English translation which is now available on Lovdata. In the latest available translation, this part of paragraph 241 is worded as follows:

> The climate effects are politically assessed on a continuous basis - and will be subject to an environmental impact assessment in connection with a possible PDO application.

The latest available translation thus clearly shows that the majority's assumption was that the climate effects would be subject to an environmental impact assessment, and not just clarified, in connection with a possible application for a PDO.

The majority of the Supreme Court repeated in paragraph 243 that there was a lack of environmental impact assessment of combustion emissions abroad that had been called for and specifically assessed. In paragraph 246, the Supreme Court reiterated the clear assumption that this must be subject to an environmental impact assessment at the PDO stage. This was formulated as follows:

> I do mention, however, that in this case the cork opening in 2013 or the allocation decision in 2016 has led to the release of greenhouse gases. A possibly deficient assessment of the combustion effect abroad from future extraction of petroleum in the southeast Barents Sea before the opening in 2013, the governing authorities will thus be able to rectify - "redress" - through the further process. As mentioned, this will primarily be possible at the PDO stage, through the environmental impact assessment that will form the basis of the governing authorities' decision on whether permission should be granted for development and operation, and if so, under what conditions. But it can also happen through a general political decision to scale back petroleum

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> operations if the Parliament thinks it is right. This must clearly be sufficient according to the requirements set by the EU Court of Justice. The basic purpose behind the rules is that the environmental effects must be sufficiently investigated and assessed before it is relevant for them to occur. This is captured by the assessment regime that applies in this area, in that a PDO cannot be approved until after an environmental impact assessment. Here, the governing authorities have full control over whether the environmental effects will actually occur or not.

The court perceives this as a clear and unequivocal assumption that the climate effects from combustion emissions abroad must either be subject to an environmental impact assessment before approval of the PDO, or that, alternatively, a political decision must be made to scale back petroleum activities if the Parliament thinks this is correct. The court cannot see that the majority of the Supreme Court has indicated as an alternative that the ministry itself can choose to assess the climate effects at a more general level or similar, as the state has argued for. On the contrary, the majority of the Supreme Court has clearly assumed that combustion emissions must be subject to an environmental impact assessment before approval of the PDO.

This is also supported by the minority's interpretation of the majority's statements, cf. HR-2020-2472-P paragraph 270 and 283. It is clear from the minority's premises that the disagreement did not relate to whether combustion emissions and climate effects should be subject to an environmental impact assessment , but the timing of when this should take place. The majority believed that it would be sufficient for this to be assessed at the PDO stage, while the minority believed that this should also be subject to an environmental impact assessment at the opening stage.

The Supreme Court's statements are clearly formulating that combustion emissions abroad must be subject to an environmental impact assessment with a possible application for plan for the development and operation of a petroleum deposit (PDO), and the statements appear to be central to the justification for the judgment result. This understanding of the petroleum regulations, seen in the light of Section 112 of the Constitution, appears to be completely clear from both the majority's and the minority's premises, and was an essential prerequisite for the majority's conclusion.

The court therefore believes that the statements in this regard have a precedential effect, cf. Skoghøy, Rett og Rettsanvendelse 2nd edition 2023 p. 168. It is assumed here that "While the legal effect of a judgment is linked to the outcome of the case, the precedential effect of a court decision is linked to the legal sentence that forms

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the basis for the decision". Furthermore, it is explained that a decision can be based on several reasons. It appears in this context that "If a decision is based on equal decision bases, all the decision bases must be given precedential effect". To this it is noted that the Supreme Court could choose to only consider the environmental impact assessment obligation at the opening stage. When the Supreme Court has nevertheless made clear statements about the obligation to consider an environmental impact assessment at the production stage, and has considered this to be an essential prerequisite for the result, the court believes that these premises have precedential effect.

The threshold for deviating from previous precedents varies with the level within the Supreme Court that has made the decision, and decisions in plenary have the greatest weight, cf. Courts Act § 5 fourth subsection. The threshold for deviating from decisions made in plenum is very high due to the function intended by the Supreme Court in plenum, cf. Skoghøy, Rett og Rettsanvendelse, 2nd edition 2023 p. 168. This is further stated in the same book on p. 178 that:

> As a general rule, precedents should be regarded as applicable law until the rule is changed by the legislature, or the precedent is deviated from by the Supreme Court itself. Lower courts can argue for deviating from a legal opinion expressed by the Supreme Court, but for reasons of legal unity they should normally follow this legal opinion as long as it has not been derogated from by the Supreme Court. The same applies to theorists and other legal practitioners.

This is also supported i.a. by Eckhoff ved/Helgesen, Rettskildelære 5th edition 2001 p. 160-161 and p.179. It appears, among other things, that the common opinion is that the Supreme Court's precedents are binding on everyone other than the Supreme Court itself, and that it practically never occurs that a subordinate court or an administrative body deliberately departs from a Supreme Court judgment which they consider to be a precedent, cf. p. 160. In extension of this, it is specified that no other source of law factors have as much weight as a Supreme Court judgment, and that one must normally comply with what the Supreme Court has said about the interpretation of the law, cf. p. 161. It also appears that it has rarely or never happened that a judgment handed down in plenum is later expressly set aside, and that in that case it will presumably require a new plenary hearing, cf. p. 179.

This therefore means that the Supreme Court's precedent in plenary cannot be deviated from by neither the Ministry of Oil and Energy, the Oslo District Court nor

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other legal practitioners. Furthermore, as far as the court is aware, there is no other Norwegian case law on the interpretation of these rules.

The state has stated that if it is taken as a basis that the Supreme Court has held that combustion emissions must be subject to an environmental impact assessment in connection with PDO, then this will in practice involve a change of the law. The state has argued that this would be stretching the sentence too far. In addition, it should be noted that the Supreme Court's interpretation of the petroleum regulations is in compliance with the wording of the law, draftsman and purpose. The Supreme Court's interpretation thus does not entail a need for legislative changes, either of the Petroleum Act § 4-2 second subsection or the Petroleum Regulations § 22a. That there is probably a need to update the PDO guide on this point, in the court's view cannot in itself in any case be used to deviate from the Supreme Court's understanding of the regulations.

The court's conclusion is that there is a legal requirement that combustion emissions must be subject to an environmental impact assessment in accordance with the Petroleum Act § 4-2 second subsection, cf. the Petroleum Regulations § 22a, interpreted in the light of § 112 of the Basic Law. The court will come back to whether the obligation to perform an environmental impact assessment includes both gross emissions and net emissions.

3.5.4. The environmental impact assessment obligation according to the EIA Directive

The rules in the petroleum regulations implement the EU's project directive, and must therefore be interpreted in accordance with the project directive. In the event of a conflict, the provisions in the project directive shall take precedence over the rules in the petroleum regulations, cf. EEA Act § 2.

The court has concluded that there is no contradiction between the Norwegian the petroleum regulations and the project directive. A closer interpretation of the project directive confirms, in the court's view, the Supreme Court's assumption that combustion emissions from petroleum activities must be subject to an environmental impact assessment.

The EEA legal rule must be interpreted using the EEA legal method. In the European Court of Justice's decision on 3 October 2013 (C-538/11 P), section 50 states the following about the interpretation of provisions in EU law:

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> As regards the question, whether this part of the first plea is well-founded, it is noted that it appears
>
> from the Court's established practice that when interpreting an EU legal provision, not only must account be taken of its wording and the goals it pursues, but also to the context in which it forms part, and to the provisions of EU law as a whole (cf. in this regard judgment of 6.10.1982, case 283/81, Cilfit et al., Sml. p. 3415, paragraph 20). The creation of an EU legal provision can also provide relevant elements with a view to its interpretation (cf. in this regard judgment of 27.11.2012, case C-370/12, Pringle, paragraph 135).

The wording is thus central. The same applies to context and purpose. The history of creation is also relevant, but only to confirm or deny different interpretation options. This method of interpretation is also explained in C-24/19 paragraph 37, HR-2023-1246-A section paragraph and HR-2023-2030- P paragraph 165.

Practice from the European Court of Justice is relevant. However, there are no comparable decisions from the European Court of Justice on a similar issue as in this case, and the court therefore sees no reason to go into this in more detail. However, the court will point out that the EU Court of Justice has assumed that the scope of the project directive must be interpreted broadly and that the purpose is very broad, cf. C-2/07 Abraham et. eel. paragraph 42. In extension of this, it is stated in the same decision that it would be too narrow and counterproductive to only assess direct effects, and not possible effects from "the use and explication of the end product", cf. paragraph 42-46. Overall, the court believes that the practice of the European Court of Justice shows that the wording of the directive should not be interpreted restrictively.

The fact that there is little comparable practice from the EU courts could possibly explained by the fact that there are few other oil and gas producing countries in Europe. During the main proceedings, the parties have therefore referred to internal law in other countries, including the USA, Australia, England, Ireland, Scotland and the Netherlands. The court assumes that the internal law of other countries initially has limited weight in terms of source of law. At the same time, it is worth noting that the USA has rules that climate effects from combustion emissions must be subject to an environmental impact assessment, and that this has been done, for example, for the Willow oil field in northern Alaska. The court also points out that Australian courts have considered combustion emissions from, for example, coal as indirect effects.

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The court reasoned that it will harm the environment in Australia, regardless of where the coal is ultimately burned, cf. Waratah Coal Pty Ltd v. Youth Verdict Ltd & Ors (No 6) 2022 QLC, para 25-28. It is also stated that a similar problem to that in this case is being considered in the British Supreme Court. The Court of Appeal gave its decision on 17 February 2022 in dissent, the reference being R (Finch) v Surrey County Council et al. Court of Appeal. However, the court sees no reason to go into more detail on a comparative analysis of other countries' internal law since this has limited significance.

The state has further argued that statements in the preface have limited weight in terms of legal sources. However, the court assumes that the preamble is relevant with regard to the context and purpose of the directive, sml. also HR-2020-2472-P paragraph 285. In any case, this does not come to the fore in this case because the wording of the directive is clearly formulated. The content of the forewords to the directives from 2011 and 2014 respectively does not in any case contain grounds for a restrictive interpretation of the wording.

This is also supported by the Supreme Court's statement that the provisions in the planning directive, based on practice from the European Court of Justice, will be interpreted based on the purpose, and that there was no basis for interpreting the wording restrictively, cf. HR-2020-2472-P paragraph 211, cf. also paragraph 246. This was also based on the fact that the minority in the Supreme Court, cf. HR-2020-2472-P paragraph 263-267. In the court's view, this implies that the project directive must also be interpreted based on its purpose, and that there is no basis for interpreting the wording restrictively.

Among other things, it appears from the foreword that the purpose of the project directive is, among other things, to ensure a high level of protection for the environment and effective public participation. It appears from the preamble point 16 that:

> Effective public participation in decision-making gives the public the opportunity to make statements and express concerns, which may be relevant to the decisions, and which the decision-maker can take into account, so that accountability and transparency in the decision-making process is promoted and the public's attention to environmental issues and its support until the decisions increase.

The court takes this to mean that the process itself is intended to safeguard

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democratic considerations and increased attention to environmental issues. The project directive does not provide guidelines for the result, but for the process itself. In addition, point 2 of the preamble states that the project directive is based on the precautionary principle and prevention at the source. It also appears from point 7 of the foreword that permits that can be expected to have significant impacts on the environment should only be granted once these significant impacts on the environment have been assessed.

The project directive sets investigation and information requirements for projects that may significantly affect the environment, cf. article 1 no. 1. A "project" is defined as the execution of construction works or other installations or works, and other interventions in the natural environment or in the landscape, including those that aim at "exploitation of resources in the underground", cf. article 1 no. 2 letter a).
Permission for such projects should only be granted after an environmental impact assessment has been carried out, cf. article 2 no. 1. This is also evident from the preamble, where it is specified that this assessment should be carried out on the basis of relevant information from the client, and possibly also from the authorities and the public expected to be affected by the project. A "permit" is further defined as a decision from the competent authority or authorities that gives the client the right to "implement the project", cf. article 1 no. 2 letter c). The court assumes that approval of a plan for the development and operation of petroleum activities must be considered a permit covered by the project directive. This is also not disputed.

The project directive distinguishes between certain projects which, according to the clear general rule, must be subject to an environmental impact assessment , and other projects which must be addressed if the Member State deems it necessary. It appears from Article 4 No. 1 that the projects listed in Annex I must be subject to an environmental impact assessment in accordance with Articles 5-10. It appears from Article 4 No. 2 that the Member States themselves can consider whether projects listed in Annex II are to be subject to an environmental impact assessment. Oil extraction of a certain size is a project that "must" be subject to an environmental impact assessment , cf. Article 4 No. 1 and Annex I Section 14. The court assumes that Breidablikk, Tyrving and Yggdrasil are projects covered by Annex I Section 14, and which therefore shall be subject to an environmental impact assessment, cf. Article 4 no. 1. This does not appear to be contested either. Environmental impact assessments have been carried out on the projects, and the disagreement only relates to whether combustion emissions and climate effects should have been part of the environmental impact

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assessments.

The projects in Annex I, which are to be subject to environmental impact assessment, are also mentioned in point 8 of the preamble. It is stated that "Projects within certain categories have significant impacts on the environment, and such projects should in principle be subject to a systematic evaluation". This shows that the purpose of environmental impact assessment is to carry out a systematic evaluation to ensure a good basis for decision-making. This is considered to be important for projects that have significant impacts on the environment.

The environmental impact assessment must consist of detecting, describing and assessing a project's "significant direct and indirect effects" on several factors that are listed, including "climate", cf. article 3 no. 1 letter c). The wording "indirect" assumes that it is not directly, and that the effect may come via one or more intermediaries. This suggests that it cannot be decisive that the combustion emissions do not occur on site in connection with production, and that instead they arrive later via one or more intermediaries as combustion emissions elsewhere.

In cases where an environmental impact assessment is required, as is the case for all projects in this case, the developer must draw up and submit an "environmental impact assessment report", cf. article 5 no. 1. It appears that the information "at least" must include, among other things, a description of the project's "expected significant effects on the environment", and "all additional information" referred to in Annex IV, which is relevant to the special characteristics that apply to a particular project or project type, and to the "environment" that is expected to be affected , cf. article 5 no. 1 letter b) and f). A natural understanding of the wording implies that it is not only direct effects that are relevant, but that indirect effects are also covered. In addition, climate is one of the factors to be assessed with regard to both direct and indirect effects. The environmental impact assessment must include conditions that are particularly characteristic effects of this type of project, and the list is only intended as a minimum requirement. In addition, it appears that the environmental impact assessment must contain "all" information referred to in Annex IV. It therefore does not appear that there is room to make exceptions if the information is listed in Annex IV.

Annex IV to the project directive provides a detailed overview of what information must be included in the environmental impact assessment, cf. Article 5 no. 1. It

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appears from Annex IV point 4 a more detailed description of significant direct and indirect effects that are mentioned in Article 3 no. 1. It is specified that this includes "air, climate (e.g. greenhouse gas emissions, effects, which are relevant for adaptation)". The wording thus clearly indicates that greenhouse gas emissions are covered. Article 3 no. 1 states that both direct and indirect effects must be disclosed, and the court cannot see that any distinction has been made between production emissions and subsequent combustion emissions. On the contrary, the wording is broad and clearly includes both direct and indirect greenhouse gas emissions. In the court's view, combustion emissions are also a particularly characteristic effect from oil and gas extraction.

In addition, Annex IV section 5 states that the environmental impact assessment must contain a description of the project's expected significant effects on the environment as a result of, among other things, the cumulation of the project's effects with other existing and/or approved projects, and the project's "impact on the climate (e.g. . the nature and extent of greenhouse gas emissions) and the project's vulnerability to climate change", cf. section 5 letters e) and f). The provision in letter f) was included in the project directive in 2014. In that connection, changes were made to Annex III no. 1 f) and Annex IV sections 4 and 5 f). These changes show that it became even more clear that a comprehensive overall assessment of, among other things, climate impacts must be carried out in the environmental impact assessment.

It also generally appears under Annex IV point 5 a detailed description of the significant effects that should be included in the environmental impact assessment in connection with the specified factors, cf. Article 3 no. 1. It appears that the description of these factors, including climate effects, should include "the project's direct effects and, where appropriate, its indirect, secondary, cumulative, cross-border, short-, medium- and long-term, persistent or temporary as well as positive or negative effects". It also appears that the description should take into account the "environmental protection objectives" that have been determined at EU or Member State level, and which are relevant to the project. The wording advocates that there are not only more direct local environmental impacts as a result of the development and production that are covered, but that all relevant climate impacts as a result of the project must also be taken into account. This is also supported by the wording in the English translation of the project directive, where it appears that the description must contain "any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project", cf. Annex IV point 5 last paragraph.

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The state has argued that combustion emissions are not effects of the project or development. The court does not agree with this, and believes that this is contrary to the wording of the project directive. In the court's view, combustion emissions from petroleum extraction are such a significant and particularly characteristic consequence of such projects that this must clearly be considered indirect climate effects within the meaning of the project directive. The whole purpose of petroleum extraction is to make available geologically stored carbon in the form of oil or gas. Greenhouse gas emissions from the carbon are thus both an inevitable and intentional effect from the project. In that connection, the court also refers, among other things, to the statement from expert witness, Professor Drange. He explained that once the carbon has been extracted, it does not help to store it temporarily or similar. In that case, the only safe way to prevent greenhouse gas emissions would be to store it in mines, as nuclear waste. If combustion emissions are not covered, this will mean that the provisions in the project directive on assessment of indirect climate impacts from petroleum operations will in practice be without real content.

In the court's view, this interpretation is also supported by the fact that the environmental impact assessment obligation is determined by the amount of oil and gas that will be extracted for commercial purposes, cf. project directive Annex I point 14, cf. article 14 no. 1. It appears that projects involving the extraction of oil and natural gas for commercial purposes where the quantity extracted exceeds 500 tonnes per day for oil and 500,000 m3 per day for gas must be subject to an environmental impact assessment. This point is also included in a similar way in Norwegian law in the environmental impact assessment regulation, appendix I, pt. 14. The fact that the environmental impact assessment obligation is defined based on the amount of oil and gas to be extracted for commercial purposes also clearly speaks for combustion emissions to be included in the environmental impact assessment. If only production emissions had been relevant, it would have been more natural for the environmental impact assessment obligation to have been defined based on the scope and emissions for the development or the like, and not from the amount of oil and gas to be extracted for commercial purposes.

In the court's view, the interpretation is also supported by several points in the preamble to the project directive, and particular reference is made to point 2 of the preamble, where it is stated that the Union's environmental policy is based on the precautionary principle, the principle of preventive efforts, the principle of intervention against environmental damage preferably at the source and the principle that the polluter pays. It also appears that the effects on the

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environment should be taken into account at such an early stage as possible in all technical planning and decision-making processes. In the foreword to the updated directive from 2014, cf. 2014/52/EU, there are also several points which emphasize that a comprehensive assessment of climate effects must be carried out. The court refers in particular to points 7, 13, 22 and 23 of the preamble. It appears from point 7 of the preamble that climate change has gained greater importance in policy-making, and that this should therefore constitute important elements in the assessment and decision-making processes. It is further apparent from point 13 of the foreword that:

> Climate change will continue to cause damage to the environment and endanger economic development. In this connection, assessments should be made of the projects' impact on the climate (e.g. greenhouse gas emissions) and their vulnerability to climate change.

In the preamble point 22, it is further emphasized that the environmental impact assessment should take into account the effects of the entire specific project, in order to ensure a high level of the environment. In addition, point 23 of the preamble highlights what the authorities should do to obtain a complete assessment of the project's direct and indirect effects on the environment.

In the court's view, the statements in the preamble to the directive support that a holistic and complete analysis of both direct and indirect environmental effects must be carried out, and that combustion emissions must be subject to an environmental impact assessment in connection with permission to develop and operate petroleum activities.

In the court's view, this interpretation of the project directive is also supported by the Supreme Court's statements in the plenary judgment, cf. HR-2020-2472-P. In that connection, the Supreme Court assessed the question against the planning directive, since the case concerned the opening phase. However, there are largely similar formulations in both the planning directive and the project directive with regard to what is covered by the environmental impact assessment obligation. The difference is mainly that this is even more clearly specified in the project directive.

The majority of the Supreme Court assumed that the EU Court's position was that the planning directive would be interpreted based on its purpose, and that there was

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no basis for interpreting the wording restrictively, cf. HR-2020-2472-P paragraph 210-211. However, the majority did not consider it necessary to decide whether the consequences of the emission of greenhouse gases after the combustion of exported oil and gas, in EU/EEA countries or other countries, also fell under the obligation to carry out an environmental impact assessment according to the planning directive.

The Supreme Court's minority had no doubt that combustion emissions are covered by the planning directive, cf. HR-2020-2472-P paragraph 263-267. The minority stated in paragraph 263 that:

> The combustion emissions from Norwegian-produced petroleum are an environmental consequence of our petroleum industry. The emissions affect the global climate, including the climate in Norway and the EEA area. The climate consequences are "environmental impacts of petroleum activities", cf. Petroleum Act § 3-1, cf. § 1-6 letter c, cf. also the Petroleum Regulations § 6 c letters d and e. Similarly, the global climate consequences of burning Norwegian-produced petroleum are undoubtedly covered of the term "environmental effects" in the planning directive article 5, cf. its appendix I letters e and f. I also refer to the footnote in the appendix that the first voter cites, where it appears that secondary, cumulative and long-term environmental effects are also covered.

The difference between the planning directive and the project directive is that "indirect" has been included in the project directive, and concretely stated what is understood. The majority also emphasized aspects that were in a footnote to the planning directive. In 2014, the content of this footnote was included directly in the project directive Annex IV point 5. It is thus even clearer from the wording of the project directive that subsequent combustion emissions are covered by the environmental impact assessment obligation. In addition, this is supported by the purpose of the directive. The Supreme Court's minority believed that it was completely "undoubted" that combustion emissions were environmental effects of the petroleum industry. In the court's view, this assessment is even more clear from the wording of the project directive.

The court's conclusion is that there is a legal requirement that combustion emissions and climate effects must be subject to an environmental impact assessment in accordance with the EU's project directive.

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3.5.5. Significance of subsequent parliamentary proceedings etc.

The State has shown that the Supreme Court's plenary judgment etc. has been the subject of the Parliament several times afterwards, and that a majority in the Parliament has rejected that the judgment can be interpreted to mean that there is a legal requirement that combustion emissions must be assessed for consequences.

As a starting point, the Supreme Court has assumed that subsequent statements from the Parliament on applicable law in regulations, propositions and the like have limited weight in terms of legal sources. In another case, the Supreme Court has stated that "Statements in a proposition about current law must be regarded as a follow-up to the previous law, which in itself has limited weight", cf. HR-2021-2572-A paragraph 60. In the court's view, this suggests that statements from individual representatives in connection with subsequent committee proceedings at the Parliament have limited legal source weight.

In legal theory, it is further assumed that political signals should not be used as means to expand the framework for interventions or curtail rights, and that in such cases the political majority must find themselves going the route of a change in the law, cf. Eckhoff v/Helgesen, Legal sources 5th edition 2001 pp. 99-100. This means that no weight can be attached to statements from individual representatives about proposals that have not been dealt with in a legislative matter, regardless of whether the representatives have belonged to the majority in the committees, and regardless of whether the Parliament representatives themselves have a legal background. This is also supported by other legal theory, cf. Skoghøy, Rett og rettsanvendelse 2nd edition 2023 p 99, where it is stated, among other things:

> If subsequent legislative statements are to be given authoritative force, it will, however, give rise to - without following the normal procedure for amending the law - changing the law with retroactive effect. This is not acceptable. In areas where legal requirements, the Supreme Court has therefore taken a completely negative view of assigning post-employment independent legal source significance to the detriment of citizens.

Against this background, the court believes that it is problematic in principle to give importance to subsequent statements from the Parliament, which are not in the legislative process, when interpreting the petroleum regulations. This is also supported by the fact that the statements have been made in committee proceedings in a different context, and in the court's view are also not in accordance

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with the other legal sources, comp. HR-2010-258-P paragraph 172. Although subsequent statements in the Parliament do not have legal source weight in the actual interpretation of the petroleum regulations, political signals can be important as a factor in the environmental impact assessment. The court will return to this.

Overall, the court will also note that the Parliament must in any case comply with the EU's project directive, which in the court's view is at least as clear as the petroleum regulations with regard to the requirement that combustion emissions must be subject to an environmental impact assessment.

However, for the sake of completeness, the court will in what follows review the parliamentary documents that the state has shown during the legal process. This mainly applies to subsequent statements from representatives in the Parliament about the applicable law.

The state has referred to the Recommendation from the Control and Constitution Committee on the Annual Report for 2021 from the Norwegian Institution for Human Rights, cf. Inst. 425 S (2021-2022). It appears on p. 5 of this statement that NIM recommended the Parliament to ask the government to investigate changes to the climate act in order to legislate the 1.5 degree target and commit to specified annual emission cuts up to zero emissions within a national carbon budget. It appears on p. 9 of the proposal that the majority of the committee rejected the proposal, and that in that connection they disagreed with NIM's interpretation of the plenary verdict. The majority stated in that connection that NIM's view of the importance of exported combustion emissions can hardly be in line with the premises of the Supreme Court's plenary judgement. In support of this, the majority referred to the report from Professor Eivind Smith of 16 May 2022, which was attached to the proposal.

The title of the reflection from Professor Smith was "Does Section 112 of the Constitution oblige the state to refuse a plan for development and operation (PDO) for reasons of climate and environment". Professor Smith argued, among other things, that the climate effect of combustion emissions is not an obligatory consideration, but that it is only a consideration that "must be factored in" when using Section 112 of the Constitution, cf. HR-2020-2472-P) paragraph 149. He further argued that the Supreme Court did not say anything about the knowledge being made available in a specific form, such as an environmental impact assessment, and that he himself believed that there was no reason why consequences should be made available in a more general form when reports to the Parliament etc. would not be able to meet the requirements of the Constitution. In

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addition, he maintained that he could not see that the requirements for sustainability according to Section 112 of the Constitution must be met in each individual case of permission for petroleum activities. In addition to this, the court will note that it appears from the statement that he would exclusively look at questions about the understanding of Section 112 of the Constitution, and that he would not go into any duties that may arise from other provisions, such as the Petroleum Act, the Natural Diversity Act, the Human Rights Act (ECHR), the Climate Act, as well as the planning and project directive etc. The consideration thus only applies to the interpretation of § 112 of the Constitution, and not an interpretation of the petroleum regulations in light of § 112 of the Constitution. In addition, the context was the processing of NIM's annual report, where, among other things, there had been a proposal to legislate the 1.5 degree target. This is not the subject of this case. The plaintiffs have further emphasized that the consideration is based on Professor Eivinds Smith's article in the book "Between law and politics: Grunnloven § 112" from 2019, where he was editor together with Professor Ole Kristian Fauchald. His article was entitled "The environmental paragraph - critically read". In this article, Professor Smith argued that enforcement of Section 112 of the Constitution falls under impeachment, and is not a matter for the ordinary courts. However, this point of view was rejected by the Supreme Court in HR-2020-2472-P paragraph 138-145. All this indicates, in the court's view, that the consideration has limited relevance in the specific interpretation of the petroleum regulations and the project directive, also in light of Section 112 of the Constitution.

The recommendation from the control and constitution committee on NIM's annual report was debated in the Parliament. Although the annual report concerned several other matters, it was the climate proposal that received the most attention. Several individual representatives believed that NIM had gone too far, while other individual representatives defended the proposal and NIM's assessments. During the legal process, the State has emphasized that several of the representatives of the Parliament from the majority are lawyers, and therefore have good grounds for interpreting the Supreme Court's plenary judgement.

In addition, it should be noted that this proposal concerned a proposal that the Parliament should ask the government to legislate the 1.5 degree target and commit to annual emission cuts. This is a different topic than what requirements must be placed on the proceedings, including whether there is a requirement that combustion emissions must be subject to an environmental impact assessment. The recommendation also applies to a review of NIM's annual report, and is not provided for in legislation. When it comes to statements from the individual representatives about their understanding of the Supreme Court's judgment, the court cannot see that these statements have weight in terms of

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legal sources, regardless of their education and background. The statements appear as political posts. Overall, the court therefore cannot see that this subsequent recommendation from the control and constitution committee and the subsequent debate in the Parliament has any significance for the legal interpretation of the petroleum regulations, the project directive or the understanding of the Supreme Court's plenary judgement.

The state has also referred to the Energy and Environment Committee's recommendation on several different topics, cf. Set 446 S (2021-2022). It appears on p. 57 of the proposal that some committee members suggested asking the government to change the PDO guide so that there is a requirement for an environmental impact assessment of all new oil and gas projects, in light of the 1.5 degree target and in light of economic climate risk, and that combustion emissions should be included in these environmental impact assessments. The same committee members proposed that the Parliament should ask the government to ensure that in the environmental impact assessment of plans for development and operation (PDO) the consequences of the combustion emissions from extracted fossil resources are also being investigated and whether those consequences are in line with the 1.5 degree target from the Paris Agreement. It appears on pp. 59-60 of the submission that the majority referred to the plenary judgment in the climate lawsuit where the state's view prevailed, and that the Supreme Court judgment has not changed the legal situation. The majority believed that NIM's investigation had based a different interpretation of Section 112 of the Constitution than what the Supreme Court had arrived at in the climate lawsuit. The majority pointed out that the petroleum legislation requires an environmental impact assessment, but that there is no basis for interpreting this as a formal requirement according to Section 112 of the Constitution. The majority believed that the 1.5 degree target could not be incorporated into the interpretation of Section 112 of the Constitution either, because this target otherwise enjoys broad political support and is incorporated into secondary law. Several of the proposals were rejected by the committee's majority. This included, among other things, the proposals to change the PDO guide, the proposal for an environmental impact assessment at PDO, and that it should be assessed whether the consequences of combustion emissions are in line with the 1.5 degree target, etc.

In addition, it should be noted that this recommendation and the committee's proceedings were not made in a legal case either, and thus have limited weight in terms of legal sources. In addition, the proposals concerned the enactment of the 1.5 degree target etc., which is not the subject of this case. In the court's view, this subsequent committee proceedings do not provide a basis for a different interpretation of the petroleum regulations in light of the Supreme Court's plenary judgement.

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The state has also referred to the Recommendation from the Energy and Environment Committee on, among other things, the development and operation of the Yggdrasil area, cf. 459 S. (2022-2023), cf. also Prop. 97 S (2022- 2023). It appears on p. 4 of the proposal that a minority of the committee referred to the plenary judgment where the Supreme Court concluded that combustion emissions must be subject to an environmental impact assessment at the PDO stage, and that the state has a right and a duty not to approve applications for new oil and gas fields if the extraction is contrary to Section 112 of the Constitution on the environment. The minority indicated that NIM had subsequently recommended that the state request an assessment of combustion emissions for each individual project against the remaining carbon budget for the 1.5 degree target, and that this must be sent for consultation before a decision is made. The proposals from the minority were rejected by the committee's majority. The court cannot see that the specific case management of one of the fields in question has legal source weight in the legal interpretation of the petroleum regulations.

In light of the debates that have taken place in the Parliament following the plenary verdict, the court sees reason to emphasize that requirements for the proceedings, including requirements that combustion emissions and climate effects must be subject to an environmental impact assessment, do not prevent the authorities from making political considerations and making the desired decisions. Proper case management and a thorough environmental impact assessment must, however, ensure that the decision-making basis is sufficiently broad and informed, that the population has been informed and heard, that dissenting voices have emerged, and that different views are clarified and evaluated in an open and transparent manner. The policy must not be based on a decision- making basis that is not verifiable or accessible to the public. Requirements for the proceedings must therefore take care of democratic considerations, promote public debate, and that the decisions are made on the most correct and informed decision-making basis possible. It is then up to the authorities to make the political decisions and make the desired decisions.

3.5.6. The scope of the environmental impact assessment obligation

A topic during the legal process has been how comprehensive the environmental impact assessment of combustion emissions and climate effects should be.

The starting point is that the regulations on the process for environmental impact assessments that follow from the petroleum regulations and the project directive must be followed. The process is described in more detail in both the petroleum regulations and the project directive, and is, among other things, summarized in the project directive

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article 1.2 letter g) as a democratic participatory process. The result of this process is not given in advance, and it is therefore not possible for the court to give a complete explanation of what will be the more detailed content of the environmental impact assessment of combustion emissions.

According to the regulations, as mentioned earlier, a proposal for an investigation program must first be sent to the authorities and interest organizations concerned, who must be given the opportunity to express themselves, cf. petroleum regulations § 22. The proposal for an investigation program must, among other things, give a brief description of assumed effects on the environment, including any cross- border environmental impacts, and shall clarify the need for documentation. The proposal for an investigation program should contain a description of how the investigation work will be carried out, particularly with a view to information and participation from groups that are believed to be particularly affected. The proposal for the study program must be sent for comments to the authorities and interest organisations, and reasonable deadlines must be set for comments, which should not be shorter than six weeks. It is then up to the ministry to adopt the study program on the basis of the proposal and the statements thereon. In this connection, an account must be given of statements received, and how these have been assessed and taken care of in the established programme. A copy of the prescribed program must be sent to those who have submitted a statement in the matter. The ministry can also decide in special cases that the ministry must send the proposal for a study program for consultation.

The court cannot prejudge the outcome of the process on proposals for an investigation programme, beyond the fact that combustion emissions and climate effects from this must be part of the environmental impact assessment. The whole point of an environmental impact assessment is precisely that the process must be followed, and that the result is not given in advance. It is part of the process that statements and the like are obtained with regard to what is relevant for the assessment of combustion emissions.

It is concretely clear from the petroleum regulations and the project directive that the plan must explain the effects the development may have on environmental conditions, including preventive and mitigating measures, cf. the petroleum regulations section 22a first paragraph. The environmental impact assessment must, among other things, describe the environment that may be significantly affected, and assess and weigh up the environmental consequences of the development, including describing, among other things, emissions to air, any material values and cultural monuments that may be affected, as well as describe possible and planned measures to prevent, reduce and, if possible, offset significant negative environmental effects.

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The environmental impact assessment must be prepared on the basis of the assessment program that has been established, cf. the petroleum regulations section 22a second section. The rights holder must send the environmental impact assessment for comment to the authorities and interest organisations. It also appears that the environmental impact assessment, and as far as possible any relevant background documents, must be made available on the internet. A reasonable deadline must be set for statements to the environmental impact assessment. The deadline should not be shorter than six weeks. In special cases, the ministry can decide that the ministry sends the environmental impact assessment for consultation. The ministry must also, on the basis of the consultation, take a decision on whether there is a need for additional investigations or documentation on specific matters, cf. section 22a fifth paragraph of the Petroleum Regulations. It is further stated that any additional investigations must be submitted to the authorities concerned and those who have submitted a statement to the environmental impact assessment for a statement before a decision is made in the case. The deadline for statements should not be shorter than two weeks.

In the ministry's case presentation, it must be stated how the effects of statements received have been assessed, and what significance has been attached to them, cf. the petroleum regulations § 22a, sixth paragraph. It is further stated that it must be assessed in the case presentation whether conditions with the aim of limiting and mitigating significant negative effects are to be set. The Ministry can decide that an environmental follow-up program is to be drawn up with the aim of monitoring and mitigating significant negative effects.

The court cannot prejudge the content of the environmental impact assessment, including received statements and their assessment, before the environmental impact assessment has been completed. The only thing the court can assume is that combustion emissions and climate effects from this must be part of the environmental impact assessment, and that the regulations on the process must be followed. The court therefore sees no reason to state in detail what will be relevant in the investigation before the process has been completed. The court refers as an example to the environmental impact assessments that have been carried out with regard to other conditions connected to these fields. The process that has been followed provides an accessible, broad and informed decision-making basis. The court also refers as an example to the presented environmental impact assessment of combustion emissions for the Willow oil field in northern Alaska, which was carried out in January 2023.

A key point, however, is that the environmental impact assessment must investigate the

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actual climate consequences of the combustion emissions, so that this can form a sufficient basis of knowledge for the authorities to carry out a real test in accordance with section 112 of the Constitution, cf. HR-2020-2472-P paragraph 65. This implies the court's view, in particular, that knowledge must be obtained about and in what way the combustion emissions can damage the environment in Norway. The court further assumes that the environmental impact assessments must be objective and so comprehensive and complete that they are suitable to give the population real insight into the climate effects of the combustion emissions, cf. also HR-2020-2472-P paragraph 255.

The investigation of climate effects from combustion emissions must be complete and comprehensive, cf. also the project directive (2014) and preamble points 7, 13, 22 and 23. The environmental impact assessment must consist of demonstrating, describing and assessing the project's significant direct and "indirect" effects on, among other things, "climate", cf. project directive article 3 no. 1 letter c). The environmental impact assessment must, among other things, contain a description of the project's "expected significant impacts on the environment", cf. project directive article 5 no. 1 letter b). In addition, the environmental impact assessment must contain a summary of the information, and "all additional information" referred to in Annex IV, which is relevant to the special characteristics that apply to a particular project or project type and to the environment that can be expected to be affected, cf. the project directive article 5 no. 1 letter e) and f). The court has already explained that combustion emissions are considered particularly characteristic effects of petroleum activities, cf. also Annex III no. 1 letter f).

The project directive, article 5 no. 3, contains detailed rules that the environmental impact assessment must be prepared by competent experts to ensure that it is complete and of good quality. Annex IV of the project directive also contains a detailed description of which information must be included. It appears that a description of greenhouse gas emissions must be included, cf. Annex IV point 4. In addition, it is explicitly stated that a description of the project's expected significant effects on the environment must be included as a result of, among other things, the cumulation of the project's effects with other existing and /or approved projects, as well as the project's impact on the climate, such as the nature and extent of greenhouse gas emissions, cf. Annex IV point 5 letters e) and f). The description must include positive, negative, direct, indirect, temporary, lasting, short-term and long-term effects of the combustion emissions, cf. project directive Annex IV point 5 last paragraph, comp. also the environmental impact assessment regulation § 21. It is stated there that the environmental impact assessment must identify and describe the factors that may be affected, and assess significant effects for the environment and society, including, among other things, natural diversity, ecosystem services, national and international environmental targets, pollution, the water

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environment, as well as Sami natural and cultural basis. In addition, effects as a result of climate change are a relevant factor, including risks from sea level rise, storm surges, floods and landslides.

In the court's view, the principles in the Biodiversity Act on scientific knowledge bases, the precautionary principle and an overall load could also be relevant for the environmental impact assessments of climate effects from combustion emissions, cf. Biodiversity Act §§ 8-10.

The court assumes that the maximum combustion emissions (gross emissions) should be the starting point for the environmental impact assessment. Based on the proceedings that have taken place with regard to the assessment of net emissions from Yggdrasil and Tyrving, it appears that the authorities have considered this to be a central and relevant part of the concrete decision-making basis. The court therefore basically believes that net emissions should also be included as part of the environmental impact assessments to ensure proper case management and investigation of climate impacts. The court cannot see that the petroleum regulations or the project directive delimits such assessments, even if these calculations will be more uncertain. This will safeguard democratic considerations by ensuring that the information is available and verifiable, that dissenting voices are heard, and that the decision-making basis is more informed. The assessment of whether net emissions should be included will also be part of the process of proposals and plans for investigation programmes, etc., and the court therefore does not need to make a full decision on this.

3.5.6. Specific assessment of the decisions

3.5.6.1. Breidablikk

Combustion emissions have not been subject to an environmental impact assessment before the PDO decision for Breidablikk. Combustion emissions are also not mentioned or assessed in any other way in the basis for the decision or the decision itself.

In December 2018, Equinor Energy AS submitted an application for approval of the completed assessment obligation for the development and operation of the field. It appeared that the operator considered the assessment obligation covered through updated information and assessment attached to the application, as well as existing environmental impact assessments, including environmental impact assessment for Grane (2000), regional environmental impact assessment for the North Sea (2006), and comprehensive management plan for the North Sea and Skagerrak (2013). The Ministry of Petroleum and Energy assessed in March 2019 that Equinor, through the information in the application, had proved that the development is covered by existing environmental

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impact assessments, cf. section 22a of the Petroleum Regulations. After this, approval of the development and operation plan (PDO) was applied for on 28 September 2020.

The ministry decided on 28 March 2019 that the duty to investigate had been fulfilled by existing investigations. There was no publicity or right of appeal related to this. The Ministry of Petroleum and Energy then made a decision on 29 June 2021 to approve the plan for development and operation (PDO) for Breidablikk. In the decision, it is indicated that the ministry had previously confirmed that the duty to investigate had been fulfilled for the development. It was confirmed that the duty to investigate was considered to be covered by the existing environmental impact assessments according to section 22a of the Petroleum Regulations. The latest assessment for the area is thus from 2013, and there is no information or assessment relating to combustion emissions and climate effects.

The court has come to the conclusion that there is a legal requirement for an environmental impact assessment of combustion emissions and climate effects. In the court's view, there is thus no doubt that the inadequate environmental impact assessment of combustion emissions for Breidablikk constitutes a procedural error. This is reinforced by the fact that this is also not discussed or assessed in any other way.

3.5.6.2. Tyrving

It is quite clear that combustion emissions were not part of the environmental impact assessment before the PDO decision for Tyrving. Combustion emissions were not included in the proposed plan for environmental impact assessment of 6 January 2020, established program for environmental impact assessment of 28 October 2021, the environmental impact assessment of 11 March 2022, nor of the summary of consultation comments received and their evaluation of 20 June 2022. The court assumes that any consultation input on combustion emissions would have been rejected because it was not part of the established program for the investigation.

Combustion emissions related to Tyrving were first mentioned in an undated table of projects that had been "finished". In this table, gross emissions from Tyrving are stated at 11.3 million tonnes of CO2. In the text above the table, expected recoverable resources for Tyrving and several other fields are indicated at a total of around 37 million standard cubic meters of oil and 102.4 million standard cubic meters of gas. Furthermore, it appears that it is estimated that these resources will provide a "net non-emission reduction of approximately 14.9 million tonnes of CO2 using Rystad Energy's main scenario." Gross combustion emissions for these fields taken together were estimated at around 24.1 million tonnes of CO2 per year, or around 341 million tonnes of CO2 over their lifetime. The estimate of gross emissions is then reproduced in the decision on the PDO of 5 June 2023. It appears from the decision that the ministry, on the basis of the

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environmental impact assessment carried out and the operator's response to the consultation statements received, considered the obligation to investigate fulfilled. The decision states the following assessment with regard to combustion emissions:

> In the Supreme Court's judgment of 22 December 2020 regarding the validity of the 23rd licensing round, the issue of assessments of the emission consequences of burning exported Norwegian petroleum against § 112 of the Constitution is discussed. In the judgment, the Supreme Court assumes that in the application of § 112 of the Constitution it must be possible to look to whether emissions from combustion abroad of Norwegian-produced petroleum cause damage in Norway. It is uncertain whether new development projects on the Norwegian continental shelf contribute to increased, unchanged or lower global greenhouse gas emissions overall. The ministry has made an estimate of how large gross emissions (without taking into account second-order effects) the use of the expected recoverable resources from Tyrving will entail. Over the life of the field, this is estimated at just under 11.25 million tonnes of CO2, which on average amounts to approx. 0.75 tonnes of CO2 per year. Increased emissions from the production ship Alvheim FPSO as a result of Tyrving are estimated at less than 1,000 tonnes of CO2 per year, and are covered by the EU ETS. Based on the calculations of greenhouse gas emissions from the Tyrving development, it is assumed that approval of the development does not contravene § 112 of the Constitution.

It appears that, on the basis of these calculations, it is assumed that approval of the development does not contravene § 112 of the Constitution. The State has argued that this is exclusively a legal assessment according to § 112 of the Constitution. This indicates, in that case, that it is unclear what are the specific calculations of combustion emissions and the climate effects of this. It also appears that the decision is based on a factual premise that it is not possible to estimate whether climate emissions of 11.3 million tonnes of CO2 from the Norwegian continental shelf will lead to increased, unchanged or lower greenhouse gas emissions overall. The court will return to this during the assessment of whether the decision is based on incorrect facts below.

Overall, in the court's view, there is no doubt that the deficient environmental impact assessment of combustion emissions for Tyrving constitutes a procedural error.

3.5.6.3. Yggdrasil

Combustion emissions and climate effects have not been part of the environmental impact assessment for Yggdrasil. However, this is mentioned in the case submission to the Parliament and in the decision itself.

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Combustion emissions were not included in the proposed environmental impact assessment program of 11 October 2021, the established environmental impact assessment program of 13 May 2022 and the environmental impact assessment of 17 June 2022. A summary of consultation statements and replies were available around the turn of 2022. The works proposals for environmental impact assessment for the fields or the environmental impact assessments themselves mention combustion emissions and climate effects from this. The court assumes that any consultation input on combustion emissions would have been rejected because it was not part of the established program for the investigation.

Combustion emissions from Yggdrasil were first discussed in a submission to the Parliament on 31 March 2023, cf. Prop. 97 S (2022-2023). At this point, the ministry, as the decision-making authority, had already decided to approve the plan for development and operation, cf. Petroleum Act section 4-2. The court refers to the proposal where it is finally stated under the ministry's assessment in point 7.5 that "The Ministry of Petroleum and Energy will approve the development of Yggdrasil in accordance with the plans the operator has presented and the notes and conditions that appear in this proposal". In the case submission to the Parliament, the Ministry of Petroleum and Energy's assessment of Yggdrasil appears under point 7.5. It appears on pp. 94-95 (under point 7.5) in the proposal, among other things, that:

> No significant negative environmental consequences of the development have been demonstrated, and the ministry considers the knowledge base to be sufficient to make a decision. After a balance in line with the Natural Diversity Act, it is the ministry's assessment that the development can be carried out.
>
> It is uncertain whether new development projects on the Norwegian continental shelf contribute to increased, unchanged or lower global greenhouse gas emissions overall. The ministry has calculated net greenhouse gas emissions linked to the coordinated development based on a new analysis from Rystad Energy. The calculations show that global greenhouse gas emissions could be reduced by around 52 million tonnes of CO2 equivalents. This type of calculation is uncertain and the results are affected by various assumptions about future development. Under alternative assumptions, the calculated number would have been different. The ministry has also made an estimate of how large gross combustion emissions the use of recoverable resources from Yggdrasil may entail. Over the lifetime of the fields, this is estimated at around 365 tonnes of CO2, which on average amounts to approx. 15.2 million tonnes of CO2 per year. These calculations do not give reason to assume that greenhouse gas emissions from the Yggdrasil development will cause damage to the environment in Norway, cf. Section 112 of the Constitution.

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After the sentence that the figure would have been different under alternative assumptions, there is a footnote with reference to "the discussion in section 4.4". This part of the proposal is entitled "The obligation to investigate - gross and net greenhouse gas emissions from Norwegian oil and gas". Under this point, there is an account of the ministry's course adjustment of the proceedings as a result of the premises in the plenary judgment from the Supreme Court on 22 December 2020. It appears that the case submission to the Parliament therefore contains the ministry's calculations of gross and net greenhouse gas emissions against § 112 of the Constitution. As regards the basis for these calculations, it appears, among other things, on p. 64 of the proposal that:

> Calculations and assessments in the case submissions have, among other things, been made on the basis of an updated, external study of net emission effects that the ministry has had prepared. The report "Net greenhouse gas emissions from increased oil and gas production on the Norwegian continental shelf" has been prepared by Rystad Energy and has been made publicly available.
>
> …
>
> There is uncertainty related to calculations of net greenhouse gas emissions from oil and gas extracted from the Norwegian continental shelf. The results of Rystad's professional investigation are, like all such analyses, a simplification of complex markets and connections. Such analyzes are based on different assumptions that lead to different conclusions about the global emission effects of changed Norwegian petroleum production. The purpose of the study is to ensure an up-to-date professional basis related to net greenhouse gas emissions. This will be included in calculations and assessments of greenhouse gas emissions when authorities process new developments.
>
> The investigation has been made publicly available and the ministry has received some professional input. In addition, Vista Analyze has carried out a study on the same topic. The ministry believes that the input contributes to highlighting uncertainty associated with calculations of net greenhouse gas emissions, and thus whether new development projects on the Norwegian continental shelf contribute to increased, unchanged or lower global net emissions. Even if uncertainty is taken into account in the calculations, the net effect will be small in a global perspective, and significantly lower than gross combustion emissions.

This was dealt with by the Energy and Environment Committee, which came up with its recommendation on 25 May 2023, cf. Inst. 459 S (2022-2023). It appears from the motion that there was disagreement between the committee members at the Parliament, among other things with regard to whether the proceedings were in accordance with the

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Supreme Court's plenary judgment of 22 December 2022. It also appears from the voting report from case no. 27 regarding motion 459 S that representatives from the majority assessed the project as "good for the climate". The majority in the committee insisted that the Parliament should consent to the ministry being able to make a decision on approval of the plan for development and operation. On 6 June 2023, the Parliament made a decision in accordance with the majority's recommendation.

On 27 June 2023, the Ministry of Petroleum and Energy made three decisions on the approval of plans for development and operation for Hugin, Fulla and Munin respectively. All three decisions contained the same wording with regard to the assessment of combustion emissions, which was as follows:

> The ministry has calculated gross combustion emissions and net greenhouse gas emissions related to the coordinated development of Yggdrasil. Production emissions to air during development and operation are included in the development plan. Based on the calculations of greenhouse gas emissions from [current field], it is assumed that approval of the development does not contravene § 112 of the Constitution.

It also appears from all three decisions that the approval was given on the basis of the submitted plans, comments and assumptions that appear in Prop. 97 S (2022-2023) and Inst. 459 S (2022-2023) with subsequent consideration in the Parliament, and on some conditions, which are not relevant to this case.

On this basis, the court assumes that no environmental impact assessment was carried out on combustion emissions, and that no information was given or an opportunity to comment on combustion emissions for Yggdrasil before the decision-making authority had made its decision.

The opportunity was given to provide professional input to the report from Rystad Energy AS (2023) with a deadline of eight working days, but the input was not specifically mentioned or considered in either the case presentation to the Parliament or the ministry's decision, apart from the fact that, according to the ministry, they helped to highlight uncertainty.

Overall, the court has subsequently come to the conclusion that the inadequate environmental impact assessment of combustion emissions for Yggdrasil constitutes a procedural error.

3.6. Incorrect facts and unjustifiable forecast

3.6.6. Introduction

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The plaintiffs' allegations relating to incorrect facts and unjustifiable forecasts are independent grounds for invalidity. The argument is also related to the flawed environmental impact assessment. The court will therefore assess the allegations related to incorrect facts and unjustifiable forecasts, before a concrete assessment is made of whether the flawed environmental impact assessment has affected the content of the decisions, cf. the principle in Section 41 of the Public Administration Act.

3.6.7. Incorrect facts

Combustion emissions have not been assessed with regard to Breidablikk. Since this has not been considered at all, the plaintiffs have assumed that there is also no basis for arguing that the decisions are based on the wrong facts. The court agrees with this.

However, the plaintiffs have argued that the decisions on PDO for Yggdrasil and Tyrving are based on the wrong facts. The state, for its part, has argued that the allegation of incorrect facts has been made up. The state has, as the court has understood it, essentially stated that the decisions are not based on a concrete assessment of the facts, and that only a legal assessment against § 112 of the Constitution. The state has argued that the assessment in the decisions is that approval will not cause damage to the environment in Norway to such an extent that it may be in violation of a material threshold in § 112 of the Constitution. According to the state, this is exclusively a legal assessment, and not an assessment of fact.

In the court's view, the state's argument is illustrative of the fact that the actual decision-making basis for the decisions is not verifiable and available to the public.

This is again a result of the fact that combustion emissions and climate effects have not been subject to an environmental impact assessment, neither with regard to gross emissions nor net emissions. If this had been subject to an environmental impact assessment, there would have been no doubt as to which fact was the basis for the decisions. Instead, the state has only shown that various calculations have been made, and argued that this is exclusively a legal assessment against section 112 of the Constitution.

There is no doubt that it is entirely possible to clarify the maximum emissions (gross emissions) from the individual fields at the production stage. For opening and exploration, these will be estimates, while for the production phase there will be specific calculations. The Supreme Court stated the following in the plenary judgment, cf. HR-2020-2472-P paragraph 227, about these calculations:

> It would probably be simple, viewed in isolation, to calculate the greenhouse gas emissions based on estimates for the appropriate high and low extraction

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> scenario. This is done according to guidelines adopted by the UN climate panel, see 2006 IPCC Guidelines for National Greenhouse Gas Inventories. These are later updated. The CO2 emissions are derived from the possible production volumes. It is therefore not a question of a professional discussion of climate effects based on various possible causal factors, but a calculation operation based on estimated magnitudes.

In other words, the climate effects of the maximum emissions will be certain and easy to quantify. Gross emissions will be calculated based on production volume, and will be able to indicate the climate effects of the possible combustion of Norwegian petroleum abroad in isolation, cf. also HR-2020-2472-P paragraph 239. As regards net emissions, the Supreme Court stated that an assessment of this in addition must be based on an exemplification of distinct political priorities abroad and in Norway, such as extraction and combustion of gas versus extraction and combustion of coal, cf. HR-2020-2472-P paragraph 240.

The decisions relating to the Yggdrasil field contain the same wording with regard to the assessment of combustion emissions. It appears from the decisions that:

> The ministry has calculated gross combustion emissions and net greenhouse gas emissions related to the coordinated development of Yggdrasil. Production emissions to air during development and operation are included in the development plan. Based on the calculations of greenhouse gas emissions from [current field], it is assumed that approval of the development does not contravene § 112 of the Constitution.

The court assumes that the first sentence refers to combustion emissions, while the second sentence refers to production emissions. The decisions do not contain specific information about which actual calculations form the basis for the legal assessment. However, it appears in the decisions that the approval has been given on the basis of the conditions set out in Prop. 97 S (2022-2023) and Inst. 459 S (2022-2023), with subsequent consideration in the Parliament. In Prop. 97 S (2022-2023) under point 4.4 and the heading "Obligation to investigate - gross and net greenhouse gas emissions from Norwegian oil and gas", on pp. 62-64, among other things, the ministry's course adjustment of the proceedings following the Supreme Court's plenary judgment is explained. In addition, there is an account of measures Norway has adopted to reduce emissions of greenhouse gases, such as mandatory quotas and CO2 fee, as well as direct regulation, standards, agreements, subsidies for emission-reducing measures, including support for research and technology development and various information tools. It has also been shown that Norway seeks to reduce emissions from other countries as well, through concrete measures in aid and climate cooperation. It has been shown that,

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according to the judgment from the Supreme Court, it is the entirety of the climate policy that is important for assessments against § 112 of the Constitution. It appears that it is the total emissions of greenhouse gases in the world, including emissions from Norway, that affect global warming. It is stated that the global emissions from the use of oil and gas make up around 40 per cent of greenhouse gas emissions, and that Norwegian fields cover around 2-3 per cent of the world's need for oil and gas. It is further shown that it is uncertain whether new development projects on the NCS contribute to increased, unchanged or lower global net emissions, but that the net effect on global emissions will in any case be very small in a global perspective, and always less than the gross emissions.

It is further stated that "The case management that has been established means that explicit and concrete calculations and assessments of gross and net greenhouse gas emissions are made as part of the processing of the PDO", and that this is "in addition to the more general assessments of greenhouse gas emissions that have been made for a long time in the design of Norwegian petroleum and climate policy", cf. Prop. 97 S (2022-2023) p. 63. It appears that when submitted to the Parliament, the case presentation will contain "the ministry's calculations and assessments of gross and net greenhouse gas emissions up to § 112 of the Constitution", cf. Prop. 97 S (2022-2023) p. 63. On this basis, the court assumes that the ministry has intended that explicit and specific calculations and assessments of both gross and net greenhouse gas emissions should be made for each concrete development project in connection with PDO, and that this must be explained, among other things, in the case presentations relating to the development projects that must be submitted to the Parliament.

Under the ministry's assessment in Prop. 97 S (2022-2023) point 7.5, it appears on p. 95 that "These calculations do not give reason to assume that greenhouse gas emissions from the Yggdrasil development will cause damage to the environment in Norway, cf. Section 112 of the Constitution." The state has stated during the legal process that the wording "these calculations" in the last sentence applies to the estimates of gross combustion emissions of 15.2 million tonnes of CO2 annually, and 365 million tonnes of CO2 over the expected lifetime. The court has therefore understood it to mean that calculations of net emissions have not has been part of the assessment against section 112 of the Constitution. The state has further expressed agreement that it can be determined with great certainty what the maximum (gross) combustion emissions are related to the resources in a field, and that there is no professional disagreement about this . However, the state has argued that, based on "these calculations", the ministry has exclusively carried out a legal assessment against § 112 of the Constitution to assess whether the development may be harmful to the environment in Norway in such a way that, materially speaking, there may be grounds for denied PDO approval. In support of

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this, the State has referred to the Supreme Court's statements in the plenary judgment, cf. HR-2020-2472-P paragraph 149 and 222. The Supreme Court has stated in these sections that:

> A final question is whether it is relevant to look at greenhouse gas emissions and effects outside Norway. Is it only emissions and effects on Norwegian territory that are relevant according to § 112 of the Constitution, or must emissions and effects in other countries also be taken into account in the assessment? Section 112 of the Constitution does not generally protect against acts and actions outside the kingdom. But if businesses abroad that the Norwegian authorities have a direct influence on or can implement measures against cause damage in Norway, it must be able to be brought in by the application of Section 112 of the Constitution.
>
> An example is the burning of Norwegian-produced oil or gas abroad, when it also causes damage
>
> in Norway." (episode 149)
>
> …
>
> "I agree with the Court of Appeal that § 4-2 of the Petroleum Act must in any case be read
>
> in conjunction with § 112 of the Basic Law. If the situation at the extraction stage is such that it would be contrary to § 112 of the Basic Law to approve the extraction, the governing authorities will have both the right and duty not to approve the plan." (episode 222)

The Supreme Court thus assumed that burning of Norwegian-produced oil or gas abroad can be included in the assessment according to Section 112 of the Constitution when this leads to damage also in Norway. In addition, the Supreme Court assumed that the authorities will be able to have a right and duty to refuse an application for a PDO if the situation at the production stage has become such that it would be contrary to Section 112 of the Constitution to approve the extraction.

The court understands this to mean that an actual assessment must be made of whether the burning of Norwegian-produced oil or gas abroad will lead to damage in Norway. A legal assessment must then be made according to Section 112 of the Constitution if the situation has become such that it would be contrary to the provision to approve the plan. In other words, an actual assessment must be made of whether combustion emissions will cause damage to the environment in Norway, and then a subsumption must be made linked to Section 112 of the Constitution. The court therefore does not agree with the

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state that this is exclusively a legal assessment. If the ministry has made a real material assessment against section 112 of the Constitution, this assessment must be based on an interpretation of the legal rule that is applied to a fact.

The court agrees with the state that the wording in the decisions themselves can be interpreted as a legal assessment has been made with regard to whether the approval will be contrary to section 112 of the Constitution. However, it is unclear which assessments and which threshold is laid as a basis. The wording in Prop. 97 S (2022-2023) p. 95 suggests that it is assumed that the gross emissions from the Yggdrasil development will not harm the environment in Norway at all. It appears directly that the calculations "give no reason to assume that greenhouse gas emissions from the Yggdrasil development will cause damage to the environment in Norway". For example, the ministry has not indicated that it will cause some damage to the environment in Norway, but that this will not in any case be contrary to § 112 of the Constitution. the formulation used. Based on the wording in the proposal, on which the decisions are based, it is therefore most likely to assume that the ministry has considered that combustion emissions will not cause damage to the environment in Norway.

That the assessment of whether combustion emissions damage the environment in Norway is also of a factual nature is also supported by the ministry's corresponding assessments in other cases, where no reference is made to Section 112 of the Constitution. As an example, the court refers to the Ministry of Petroleum and Energy's decision memorandum with regard to Hasselmus of 21 October 2021 under point 6 on environmental impact assessment. Another example is the Ministry of Oil and Energy's decision on approval of the plan for development and operation (PDO) of Oseberg of 1 December 2022 on p. 3 of the decision. In addition, the court points out that the minister from the Ministry of Oil and Energy, in his written response of 21 April 2022 to the Parliament to question no. 1809, answered the corresponding question with a factual justification. In that connection, it was not shown that this is a legal assessment according to Section 112 of the Constitution.

The court sees reason to note that it appears problematic that it is unclear what concrete fact the decisions are based on, including whether the ministry has assumed that the combustion emissions from Yggdrasil will harm the environment in Norway or not. It is problematic that it is unclear whether this is an actual assessment or a legal assessment according to Section 112 of the Constitution. Decisions on approval of the development and production of petroleum have major impacts on society, and strict requirements are therefore placed on the proceedings, including that there is as clear as possible which fact the decisions are based on. In the court's view, it is the state that must bear the risk that this is unclear. The court cannot see that it is clear from the case presentation how

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the climate effects of the combustion emissions have been assessed, and what significance is attached to this.

The state has stated during the legal process that there is no disagreement between the parties about the cause of climate change, the degree of severity or that climate change will cause damage in Norway. It is further shown that the actual basis for Norway's overall energy and climate policy is not stated in each individual sector-wise administrative decision, but that the state's overall policy and weighting of various considerations are instead described in a number of other documents. In this connection, the State has referred to Meld. St. 14 (2020-2021) Perspective report 2021, chapter 6 Green future. The state has further referred to Prop. 97 S (2022-2023) and chapter 2 under the heading "The energy challenge". It appears on p. 19 of this proposal, among other things, that:

> The world's population and businesses depend on energy to function and to achieve the UN's sustainability goals. Abundant and continuous access to affordable energy is a prerequisite for sustainable economic progress and prosperity development. It is a major challenge to obtain access to enough energy for a growing population. At the same time, today's complicated, global energy system is dominated by coal, oil and gas. It produces large emissions of greenhouse gases and contributes to global warming, which will lead to serious and irreversible consequences for animals, nature and people all over the globe. The need for large and rapid emission cuts in line with the goals of the Paris Agreement requires a major change in the world's energy supply, including streamlining energy use, increased development of renewable energy and development of new low-emission solutions such as carbon capture and storage. Energy and the climate challenges facing the world must be solved in parallel.

The state has also referred to the Government's climate report Meld. St. 26 (2022-2023) "Climate in change - together for a climate-resilient society". In this report, it appears on page 5, among other things, that man-made climate change has already caused serious and partly irreversible consequences for nature and society across the globe. In addition, it appears that climate change is happening faster and that the consequences are more extensive and dramatic than previously believed. The message is mainly based on the updated climate science from the UN climate panel, to which Norway is an active contributor. The Norwegian Environment Agency is Norway's focal point for the Climate Panel, and the state has shown that there is available inter-agency knowledge about this on the website www.miljøstatus.no.

In addition, the state has referred to the Government's "Green Book" of 6 October 2023. This document contains, among other things, an explanation of Norwegian climate

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targets, and that the climate quota system is a central part of this, cf. point 2.2.1. The following appears on page 96 of the "Green book":

> Norway's climate targets and climate obligations resulting from international agreements apply to greenhouse gas emissions that occur within the geographical area of Norway. This is mapped through the national greenhouse gas accounting in line with the regulations for reporting greenhouse gas emissions in the UN climate convention. To ensure that global emissions are only counted once, the emissions are included in the accounts of the country where the emissions occur. This means, for example, that emissions from the production of oil and gas are accounted for in Norway, while emissions resulting from use are accounted for in the country where the combustion takes place. The national accounts do not give a complete picture of the greenhouse gas emissions that activity in Norway contributes to globally.

Review of the documents that the state has shown substantiates that the state has a comprehensive climate policy, and that the state is well aware of the updated climate science, including that greenhouse gas emissions have global climate consequences, also on the environment in Norway. The documents show the state's general assessments of greenhouse gas emissions, which form the basis for Norwegian petroleum and climate policy.

However, nothing appears on assessments related to combustion emissions from the specific fields, including whether, and in what way, these emissions damage the environment in Norway. The ministry has explained that the adjusted case management means that, in addition, explicit and concrete calculations and assessments of both gross and net greenhouse gas emissions must be made for each concrete development project in connection with PDO, cf., among other things, Prop. 97 S (2022-2023) s 63. When the plaintiffs demand that this actually be done, the court cannot see that this can be considered a general settlement with the entire environmental, climate or petroleum policy. This case only applies to the validity of the decisions in question, and not the state's policy as such, etc. HR-2020-2472-P paragraph 148, 161-162.

Furthermore, the court does not agree with the state that the Supreme Court's account of and assessment of the authorities' overall climate policy is transferable in this context, cf. HR-2020-2472-P paragraph 228-240. In the court's view, this must be seen in the light of the specific case structure that concerned extraction permits, and that the Supreme Court clearly assumed that combustion emissions must be subject to an environmental impact assessment later at the production stage. When this has not been done, in the court's view it is not sufficient to refer to the authorities' overall climate policy.

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Based on the state's arguments during the court process, it may appear that there is agreement that greenhouse gas emissions from the Yggdrasil development will harm the environment in Norway. However, the state has maintained that the Yggdrasil development will not cause damage to the environment in Norway to such an extent that this may be in breach of a material threshold according to section 112 of the Constitution. Based on the decisions and the underlying documentation, however, the court has doubts about the ministry in connection with approval of the PDO has assumed that the Yggdrasil development will in general cause damage to the environment in Norway. In all cases, it appears unclear to what extent the ministry has considered that the development will cause damage to the environment in Norway.

With regard to the decision on the PDO for Tyrving, reference is made to the Supreme Court's plenary judgment, and that the Supreme Court has assumed that, by applying Section 112 of the Constitution, it must be possible to look at whether emissions from the combustion abroad of Norwegian-produced petroleum cause damage in Norway. The ministry has assumed that it is "uncertain whether new development projects on the Norwegian continental shelf contribute to increased, unchanged or lower global greenhouse gas emissions overall". The ministry has then given an estimate of gross emissions which will be just under 11.25 million tonnes of CO2. The resolution does not contain calculations with regard to net emissions. Based on the information on gross emissions, it is assumed that approval of the development does not contravene § 112 of the Constitution.

The court shall not examine whether the decision is materially in conflict with Section 112 of the Constitution. However, it appears as if the decision is based on a factual premise that it is not possible to estimate whether climate emissions of 11.3 million tonnes of CO2 from the Norwegian continental shelf will lead to to increased, unchanged or lower greenhouse gas emissions overall. By comparison, the Minister of State has, in his written response to the Parliament on 21 April 2022 to question no. 1809, explained the assessment of greenhouse gas emissions of 20 and 17.6 million tonnes of CO2, respectively, linked to other fields. In that connection, the Minister stated that the assessment was that such a "marginal effect on global emissions will not have a measurable impact on climate change in Norway". The Ministry's reasoning in the decision for Tyrving, together with the minister's explanation for other comparable cases, substantiates that the decision is based on an actual premise that emissions of 11.3 million tonnes of CO2 cannot have a measurable impact on climate change in Norway. This is an actual premise, and not a legal assessment of whether the emissions are in breach of Section 112 of the Constitution.

The court therefore sees reason to emphasize that, based on the evidence, it has been established that the combustion emissions from both Yggdrasil and Tyrving (and

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Breidablikk) are measurable, and will cause damage to the environment in Norway. In the following, the court will give a brief explanation of this.

The updated climate science shows that there is a close linear, or a close one-to-one relationship, between the sum of global CO2 emissions and global temperature rise. The UN climate panel has expressed that "Every tonne of CO2 emissions adds to global warming", cf. the UN climate panel's sixth main report, working group 1, Summary for policymakers, section D.1.1. This is understood to mean that any greenhouse gas emissions will intensify global warming. According to the expert witness, Professor Drange, this is a particularly central and well-established result from the updated climate research. According to Professor Drange, it is this connection that makes it possible to connect an accumulated, future CO2 emission to a (probable) future global temperature. This means that every tonne of CO2 – regardless of where or when the emission takes place – leads to the same warming. This also means that the warming contribution from each CO2 emission can be quantified.

In addition, the updated climate science shows that risks and projected negative impacts from climate change escalate with each increase in global warming. The UN climate panel has expressed that "Risks and projected adverse impacts and related losses and damages from climate change escalate with every increment of global warming (very high confidence)", cf. UN climate panel's sixth main report, synthesis report, Summary for policymakers, section B.2 .

According to an expert statement from Professor Drange, the maximum emission from Yggdrasil is expected to cause a global warming of 0.00018 degrees Celsius. The maximum emission from Tyrving is expected to cause global warming of 0.00001 degrees Celsius. The maximum emission from Breidablikk is expected to cause a global warming of 0.00004 degrees Celsius. The temperature contribution may initially appear to be small. However, this must be seen in the light of the fact that the total global greenhouse gas emissions from the start of the industrial revolution until today have contributed to an increase in the global temperature of 1.2 degrees. Compared to this, both Yggdrasil and Tyrving (and Breidablikk) contribute to global warming. The sum of the maximum emissions from the three fields corresponds to 9.5 years of Norway's greenhouse gas emissions for 2022.

Drange has also stated that Yggdrasil's warming contribution to the earth's climate is equivalent to 185 times Norway's total annual energy production. According to Drange, the main part of the warming effect of the emissions from Yggdrasil and Tyrving will reach the sea as increased sea temperature, and will consequently contribute to increased sea levels and the impact of marine ecosystems for hundreds to thousands of years to come. The discharges from Yggdrasil and Tyrving will contribute to continued acidification of the

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oceans globally and along the Norwegian coast and on Svalbard. The discharges from Yggdrasil and Tyrving will contribute to continued increasing average rainfall, and more extreme rainfall events in Norway. The maximum discharge from Yggdrasil will reduce the September extent of sea ice in the Arctic by approximately 1,000 square kilometers. In addition, the emissions from Yggdrasil and Tyrving will contribute to increased temperatures, and thus also a higher snow limit in Norway. According to Professor Drange, it cannot be ruled out that the emissions from Yggdrasil and Tyrving could activate one or more tipping points, including the collapse of the ice cap in West Antarctica. This is one of the tipping points that can occur with a global temperature of between 1.5 and 2 degrees, and this will cause global and local sea levels to rise by several metres. According to Professor Drange, this will obviously have major consequences for society and ecosystems globally and for Norway. In addition, increased sea temperatures will cause more and more intense marine heat waves. For Norway, the Barents Sea in particular is at risk, with negative consequences for ecosystems and fisheries.

The expert witness, Professor Hessen, also explained in detail how climate change is already affecting Norwegian nature, infrastructure and society in many ways, mainly in a negative way. He explained that each additional contribution will worsen the situation and increase the risk of long-term and partly irreversible damage. He concluded that the maximum emissions from Yggdrasil and Tyrving will make significant contributions to damage. Professor Hessen's explanation and presentation during the main hearing supports, in the court's view, that the combustion emissions from Yggdrasil and Tyrving will lead to significant and concrete damage to the environment in Norway.

The state has further stated that the calculations are not based on a proportion of the crude oil going to petrochemicals. However, it appears from the case presentation to the Parliament related to Yggdrasil that close to 15 per cent of the oil is used within petrochemicals and the production of raw materials for a wide range of products used in households and business. It is stated that this includes everything from plastic bags to medical equipment. It is further stated in the proposal that such use does not generate combustion emissions. It has been shown that in plastic production, CO2 is bound in the product, where the main challenge is plastic waste and microplastics, which can be reduced by measures for recycling and reuse. It is further stated that continued growth is expected for oil for petrochemicals. All this appears from Prop. 97 S (2022-2022) point 2.1.2, p. 24-25. However, this information is at odds with the expert explanation from Professor Drange. He explained that converting oil to plastic could postpone the emissions for a few years, but that the carbon would remain in the plastic. There is a finite shelf life with regard to plastic reuse, and eventually the quality will be so low that it will be burned or similar, and then the CO2 emissions go out into the atmosphere again.

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He explained that the only way to avoid greenhouse gas emissions is to store the plastic (carbon) in mines.

In summary, according to the court's assessment, the basis for the decision is unclear with respect to which fact is based on it. If it is assumed that the ministry has considered that the Yggdrasil development will not cause damage to the environment in Norway, these decisions are, in the court's view, based on the wrong facts. If it is taken as a basis that the ministry has had as a factual premise that the climate emissions from Tyrving cannot have a measurable impact on climate change, this decision is also based on the wrong fact. If it is agreed that the developments will cause damage to the environment in Norway to the same extent as the court has explained, the court shall not carry out a substantive review of whether this is in breach of section 112 of the Constitution. As this has no bearing on the outcome of the case , the court does not consider it necessary to take a full stand on whether the decisions are based on incorrect facts. The lack of clarity related to the fact is also important for the assessment of whether the inadequate environmental impact assessment of combustion emissions may have affected the content of the decisions. The court will return to this.

3.6.8. Unjustifiable forecast

The plaintiffs have mainly argued that forecasts of market effects are too derivative and uncertain to constitute effects of the project. Subsidiarily, it is argued that the state's forecast of global market effects is in any case unjustifiable. The state, for its part, has argued that the decisions are not based on a specific forecast, and that the court in all cases has no basis for deciding on the allegation of an unreasonable forecast.

When reviewing administrative discretion, the legal starting point according to case law is that to the extent that the administrative decision is based on forecasts of future development, the judicial review will be limited to whether the forecasts were justifiable at the time the administrative decision was made, cf. Rt 1982 p. 241 (Alta) at p . limit the examination to whether the administration's forecasts were justifiable, cf. HR-2021-1975-S (Fosen) paragraph 71. Although the court has full competence, it is also assumed that in some contexts a certain restraint should be shown in the examination, especially where assessments are based on the administration's special specialist knowledge and broad experience base, cf. Rt 1975 p. 603 (Swingball), HR-2008-1991-A (Biomar) paragraph 38-40 and HR-2022-718-A (Cabin Quarantine) paragraph 75.

The evidence has shown that there is some strong criticism of the assessment from Rystad Energy AS on the calculation of net emissions from Norwegian petroleum operations. This criticism and dissent would have come out more clearly if combustion emissions had been subject to an environmental impact assessment. The court therefore

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considers it appropriate in any case to grant a relative thorough explanation of the process of calculating net emissions, and the various assessments of this.

When the Supreme Court assessed whether combustion emissions abroad could be taken into account as part of the assessment under Section 112 of the Constitution, it was based on the fact that this provision does not protect against actions and effects outside the kingdom. As an extension of this, the Supreme Court stated that if businesses abroad that the Norwegian authorities "have a direct influence on or can implement measures against" cause damage in Norway, then it must be possible to withdraw it by applying section 112 of the Constitution, cf. HR- 2020-2472-P paragraph 149. As an example of what the Norwegian authorities have a direct impact on and can implement measures against, the Supreme Court pointed to the burning of Norwegian-produced oil or gas abroad, when it leads to damage in Norway. On the contrary, it can be argued that the Norwegian authorities have little direct influence on market effects abroad, and that this thus limits the opportunity to take this into account in the assessment to be carried out pursuant to Section 112 of the Constitution.

The Supreme Court further assumed that the net effect of combustion emissions is complicated, debated and disputed, because it is linked to the global market and the competitive situation for oil and gas, cf. HR-2020-2472-P paragraph 234. The Supreme Court assumed that an assessment of the net effect of the global emissions must be based on an exemplification of distinct political priorities both nationally and internationally, such as extraction and combustion of gas versus extraction and combustion of coal, cf. HR-2020-2472-P paragraph 240.

The court cannot see that the Supreme Court has cut off the possibility of making net calculations of combustion emissions. However, in light of the fact that the calculations are uncertain and debated, and that the Norwegian authorities have limited possibilities of influencing this, it appears that such calculations should be given limited weight.

The state has argued that the allegation of unreasonable forecasting is flawed because the ministry has not stated a "forecast" that something will or will not happen, but that this is instead based on an "assessment", and that it is clear that the assessment is uncertain.

According to the court's assessment, however, in the decision-making bases for Tyrving and Yggdrasil, the ministry highlighted a specific forecast related to net emissions. The ministry's assessment related to Tyrving appears in a table that shows "the ministry's calculations of gross and net gas emissions when processing plans for development and operation (PDO)", and changed plans for development and operation since the proceedings were adjusted in autumn 2021 and until October 2022. The text above this table states that:

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> Total expected recoverable resources linked to these projects amount to approximately 37 million Sm3 of oil and 102.4 million Sm3 of gas. These resources are estimated to provide a net emission reduction of approximately 14.9 million tonnes of CO2 using Rystad Energy's main scenario.

In a footnote related to Rystad Energy's main scenario, it appears that the calculations of net emissions are based on the report "The emission effect of production cuts on the Norwegian continental shelf", which was Rystad Energy's report commissioned by Norwegian Oil and Gas in 2021. The court perceives this as a clear forecast of that the resources from Tyrving, together with the resources from several other fields, will provide a significant net emission reduction. Although there is no reference to this calculation in the decision for Tyrving, it is clear from the text attached to this table that the ministry has assumed that the development will contribute to a net emission reduction. It is clear that this is based on the report from Rystad Energy AS, which was carried out in 2021.The fact that the decision on Yggdrasil is also based on, among other things, a forecast of net emissions is substantiated, in the court's view, in addition to the fact that it has been explained that the adjusted proceedings entail that "explicit and concrete calculations" must be made and assessments of both gross and net greenhouse gas emissions for each concrete development project, cf., among other things, Prop. 97 S (2022-2023) p. 63. In addition, this is supported by the fact that the state carried out a round of tenders with a view to having net emissions investigated. It is clear from the report from Rystad Energy AS of 15 February 2023 that it concerns net greenhouse gas emissions from increased oil and gas production on the Norwegian continental shelf. It appears from the introduction to the report that the mission from the Ministry of Petroleum and Energy was to investigate the "net climate effect of increased future Norwegian oil and gas production". The main conclusion of the report was that increased production from the Norwegian continental shelf will reduce global greenhouse gas emissions.

The report from Rystad Energy AS was not sent out for consultation, but a deadline of eight working days was given to provide professional input. The ministry refused requests for an extended response deadline. There was nevertheless professional input from, among others, Statistics Norway, Greenpeace, the Nature Conservation Association, Nature and Youth and the WWF World Nature Fund, as well as Oilchange International by the deadline of 1 March 2023. The report from Rystad Energy AS was heavily criticised. In addition, Vista Analyze prepared a report of 16 March 2023 on behalf of the environmental organisations. The report from Vista Analysis concluded that the global net effect of increased Norwegian oil and gas production will be increased greenhouse gas emissions.

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In the case presentation to the Parliament, which is part of the basis for the PDO decision for Yggdrasil, it is nevertheless only the forecast from Rystad Energy AS that is highlighted. It appears from Prop. 97 S (2022-2023) p. 95 that:

> The ministry has calculated net greenhouse gas emissions linked to the coordinated development based on a new analysis from Rystad Energy. The calculations show that global greenhouse gas emissions could be reduced by around 52 million tonnes of CO2-equivalents. This type of calculation is uncertain, and the results are affected by various factors assumptions about future development. Under alternative assumptions, the calculated number would have been different.

The court perceives this as a clear forecast that the development of Yggdrasil will result in a significant net emission reduction. Although it has been stated that this type of calculation is uncertain, it has not been presented what this uncertainty may consist of. There is also no account of the criticism of the report from, among others, Statistics Norway. After the sentence about "alternative assumptions" there is a footnote with reference to the discussion in section 4.4. Under point 4.4, it is stated, among other things, that net emissions have been "assessed by various professional groups who have arrived at different estimates of the net effects". In extension of this, it is assumed that the net effect will in any case be very small in a global perspective, and always less than the gross emissions. It also appears that calculations and assessments in the case submissions have, among other things, been made on the basis of an updated, external assessment of net emission effects that the ministry has had prepared by Rystad Energy AS. It appears that the purpose of the study was to ensure an up-to-date professional basis relating to net greenhouse gas emissions, and that this will be included in calculations and assessments of greenhouse gas emissions when authorities process new developments. It appears that the report has been made publicly available and that the ministry has received "individual professional input", and that Vista Analyze has also "conducted a report on the same topic". However, there is no further explanation of the professional input or the report from Vista Analyse. In the proposal, the Ministry only gave the following assessment of this:

> The ministry believes that the input contributes to highlighting uncertainty associated with calculations of net greenhouse gas emissions, and thus whether new development projects on the Norwegian continental shelf contribute to increased, unchanged or lower global net emissions. Even if uncertainty is taken into account in the calculations, the net effect will be small in a global perspective, and significantly lower than gross combustion emissions.

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Although it has been stated that there is uncertainty related to calculations of net emissions, the court believes that it appears clear that the ministry has based an assessment or forecast that increased production from the Norwegian continental shelf will contribute to a significant reduction in net emissions. The suggestions and criticisms against the report are only briefly mentioned, and the detailed content of this has not been explained. There is also no account of the ministry's assessment of these inputs beyond the fact that they help to highlight the uncertainty associated with such calculations. The clear and tone-setting impression is thus that the ministry has mainly based the decisions for both Tyrving and Yggdrasil on the forecast from Rystad Energy AS that increased production from the Norwegian continental shelf will reduce global net emissions.

That the basis for the decision was not readily available, and that the forecast from Rystad Energy AS set the tone, is, in the court's view, also substantiated by the subsequent Parliament proceedings and voting report case no. 27 regarding Institution. 459 S. It appears that several representatives considered the development a measure that was good for the climate. The Minister of State gave in one of his posts the following information about the investigations from Rystad Energy respectively AS and Vista Analysis:

> Calculating the net consequences of oil and gas activity on the NCS is complicated. There is a difference between the Rystad report and the Vista report, yes, and I accept that there is disagreement about that because it is a very difficult topic to go into, but we see that from the gross emissions calculated for each individual PDO, so the net effect – when we calculate it – is positive. There will be emissions, yes, but it has a positive effect. This means that oil and gas from the Norwegian shelf are exchanged and used as a counterweight to other types of fossil energy use that have higher emissions, if you are to trust both the Rystad report and the Vista Analysis report.

A parliamentary representative responded to this with the following comment:

> Thank you for the minister's reply. I just want to clarify for the room, and perhaps also for the minister, that the Vista Analysis - which is only referred to, and the factual basis is not used in the proposal, concludes that the extraction of the fields we are currently approving will lead to net increased emissions globally, i.e. not just a little less well than Rystad Energy. There are two completely different analyses.

Overall, it appears unclear whether the Parliament had information about, and access to, the report from Vista Analysis and the other professional input from, among others, the

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National Statistics Office when the case was dealt with there. This was not part of the formal presentation of the case. In all cases, it appears unclear whether, and possibly in what way, the ministry itself has assessed this, beyond the fact that the ministry has assumed that the input highlights an uncertainty related to net calculations.

During the main proceeding, quite extensive evidence relating to calculations of net emissions was carried out. This included six expert witnesses, each with their own presentation, as well as a number of reports and documentation. However, the court does not have sufficient grounds to decide whether the ministry's forecast is justifiable, and must also show some restraint in verifying this. Nor has this been necessary for the result in the case. The court will nevertheless provide an explanation for this.

The court will first note that the proceedings relating to the calculation of net emissions underpin the need for an environmental impact assessment of combustion emissions, and that this is not carried out at a higher level by the ministry. In the court's view, maximum emissions (gross emissions) must in all cases be subject to an environmental impact assessment for consequences. If the ministry wishes to investigate net emissions and base its decisions on this, the court has concluded that this should also be part of the environmental impact assessments. The ministry's case management has shown limited ability and willingness to ensure publicity, contradiction and evaluation of objections.

The state has expressed that it appears conspiratorial that the plaintiffs have questioned the fact that Rystad Energy AS was commissioned to carry out the calculations of net emissions. The court need not decide on this. The court notes, however, that it is quite clear that this company two years earlier produced a report on a similar topic on behalf of Norwegian Oil and Gas, where it was concluded that increased production from the Norwegian continental shelf will result in a reduction in greenhouse gas emissions. In light of this, it is natural, in the court's view, to question the fact that the same company received a similar assignment from the Ministry of Oil and Energy. The court further points out that a deadline of eight working days was only given for other professional input to the report, and that the ministry has not explained or made specific assessments of these inputs, neither in the case presentation to the Parliament nor elsewhere. It is therefore unknown to the court whether, and possibly in what way, the ministry has assessed these the inputs.

The State has expressed that the expert discussion, which came out during the evidence, about what is the most appropriate net calculation, is irrelevant for the court's decision as to whether the decisions are valid. The State has stated that they therefore refrained from calling more expert witnesses on this in order to avoid unnecessary elaboration and to limit the level of costs. Instead, the state has presented several newspaper articles to illustrate the debate from Dagens Næringsliv published in the period June-August 2018.

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The state has also presented an article from Dagens Næringsliv from 7 March 2023 with the headline "Full argument about the climate effect of Norwegian oil and gas: - The more, the better say British energy consultants". The article states, among other things, that:

> Now Rystad is fully supported by Wood Mackenzie, the British giant in analysis and consulting in the energy field - a kind of big brother to the Norwegian challenger that was established by Jarand Rystad. Top analyst Andrew Latham tells DN that he agrees with Rystad both when it comes to increased production from the Norwegian continental shelf leading to lower emissions globally, and conversely, that reduced Norwegian production leads to increased missions. The latter was the conclusion of a Rystad report for Norwegian Oil and Gas (now Offshore Norway), which caused a stir during the election campaign in 2021. It stood in sharp contrast to an earlier and much- cited Norwegian Statistical Institute report, which argues that reduced production from Norway leads to lower consumption, and thus lower emissions.

It is therefore quite clear that there has been a public debate about net emissions, and that these newspaper articles are suitable to shed light on this. The articles presented are from 2018 at the same time, and thus long before both reports from Rystad Energy AS. As for the article from 2023 about the support from Wood Mackenzie, this also substantiates that the latest report from Rystad Energy AS, to which the state has shown, has been understood as a clear forecast that increased production on the NCS will lead to a reduction in net emissions .

Although this has no bearing on the court's assessment, it is noted that the state's statement that they have tried to limit the cost level related to this topic is not in accordance with the cost claim related to the witnesses from Rystad Energy AS. According to the cost statement, the company has spent a total of 322 hours in connection with the legal process in the district court. This amounts to a total cost of over NOK 1.1 million ex. VAT. It is stated that a total of 268 hours have been spent on preparation, review of other reports, witness statements and questions. Of this 207 hours relates to the time before the plaintiffs presented expert statements from their expert witnesses. This means that Rystad Energy AS has spent over 200 hours on general preparation and review of its own report. However, the court cannot see that Rystad's presentation in court contained new, updated analyzes or assessments. In the court's view, it appears problematic that the company, and the ministry, have deemed it necessary to spend so much resources on preparing the presentation of a report that was completed in February 2023, and which has formed the basis for several PDO decisions. In the court's view, most of the work should have been done before the report was completed, and not afterwards. The report from Vista Analysis and the input from

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Statistics Norway were already known in March 2023, and should thus have been assessed by the ministry when they were received. The cost claim and the time taken by Rystad Energy AS in connection with the legal process thus also illustrate that the proceedings have not been satisfactory with regard to the assessments of net emissions.

Rystad Energy AS has analyzed increased future Norwegian oil and gas production in a framework consisting of three steps. The first step describes the combustion effect of consuming more oil and gas. The second step describes the substitution effect. The third step describes the effect on the upstream and midstream effects by increasing Norwegian production with oil or gas, and replacing it with a percentage from other providers. A form has been set up which, summed up through these three steps, describes the effects of increasing Norwegian production by one barrel of oil and one barrel of gas, respectively. The conclusion is that increased Norwegian oil production reduces global greenhouse gas emissions by 25 kg CO2, while increased Norwegian gas production significantly reduces global greenhouse gas emissions by 123 kg CO2. If it is assumed that future Norwegian production increases with the same amount of oil and gas, this leads to an emission reduction of 75 kg CO2 per barrel of oil equivalent. Part of the main findings is that the climate effect of a new field therefore depends on the proportion of oil and the proportion of gas expected to be produced. In this connection, the court notes that both Breidablikk and Tyrving are pure oil fields, while Yggdrasil consists of both oil and gas.

In summary, Rystad Energy AS has concluded that cuts in Norwegian production with very low emissions in the production phase are not a climate measure. This is, firstly, based on a main finding that increased production from the Norwegian continental shelf leads to reduced global greenhouse gas emissions, as explained above. In addition, it is secondly based on a main finding that the effect is driven by limited market response, replacement of coal and low Norwegian upstream emissions, which is assessed in the three steps. Thirdly, it is a main finding that increased production from the Norwegian continental shelf has global effects. It is particularly pointed out that both the oil market and the gas market are global markets, and that the price contagion from increased supply is therefore global. Furthermore, it has been shown that the findings for oil production are not unique to Norway, but generally apply to new oil production with low upstream emissions. It has also been shown that Norway is in a special situation with regard to gas, because Norwegian piped gas to Europe can outcompete imports of emissions-intensive LNG.

The expert witness Taran Fæhn, who is a researcher and environmental economist at Statistics Norway, criticized the report from Rystad Energy AS. She explained that the actual analysis structure used, with three steps and the factors involved, is adequate. She believed, however, that the actual fixing of the numbers leads to a "highly unlikely"

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emissions effect from increased Norwegian oil production, that it is "particularly unlikely" that global emissions will decrease, and that the estimates that have been chosen provide a "systematic underestimation" of emissions in all three stages. She mainly commented on the oil analysis, and not the gas analysis.

Fæhn believed that it was particularly the assumptions and projections in step 1 about demand elasticity that were decisive. She believed that the elasticity of demand that Rystad had arrived to was "highly unlikely" low. This was particularly justified by the fact that the selection from the literature was systematically taken from the lowest part of the scale, and that the estimates were based on data from before 2009, and cannot represent 2030. Fæhn further pointed out that Rystad justifies using low figures from before 2009 for 2030 with a narrative that in 2030 there is no longer a choice between technologies because most relevant global transport segments have been electrified, which in itself is "highly unlikely". Fæhn also pointed out that Rystad himself has written that as long as electrification is increasing, demand elasticity increases, but that they have nevertheless retained the lower estimate of 0.11 in their alternative scenario with a slower transition. According to Fæhn, this is "inconsistent" and "highly unlikely".

In addition, Fæhn believed that the elasticity of supply in the oil market from Rystad's report is "improbably" high. She justified this in particular by the fact that the three scenarios Rystad has shown are climate-optimistic compared to the latest literature, and that the elasticity of supply is thus likely to be systematically overestimated. In addition, she justified this by saying that Rystad's estimates of supply elasticities are based on own model calculations for 2030, and that two completely different methods of calculating demand and supply elasticities lead to inconsistencies. She pointed out that simultaneous estimations are recommended from a professional perspective. She believed that these different estimates had led to a systematic underestimation of supply elasticity in Rystad's report.

Regarding step 2 of the analysis structure from Rystad, Fæhn did not agree with Rystad that consumers and end users of energy are not influenced by increased supply and reduced prices for oil and gas. Rystad pointed out in his presentation that end users will be little affected by lower oil prices. As an example, it was shown that, according to Rystad, consumers will to a small extent use more petrol/diesel when the price is low, that consumers will to a small extent fly more when the price is low, that consumers will to a small extent buy more goods (which burden trucks and ship more) when the price is low, and that consumers will to a small extent buy more plastic (which is made from oil) when the price is low. According to Rystad, all this implies a low elasticity of demand. Fæhn was critical of Rystad's assumptions about this, and believed that this was a systematic underestimation. Fæhn believed that the assumption is not justified, and that it is in conflict with both economic theory and empiricism. She also pointed out that this

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assumption is made in both the oil and gas calculation, and that this is most serious for gas, because site 2 is much more important for gas in Rystad's calculations.

With regard to step 1 on supply substitution, Fæhn highlighted that Rystad's assumptions about emission intensity are very much higher than the global average and appear high, and that displacement calculated from step 1 is "highly improbable". According to Fæhn, the combination of high emission intensity and large displacement has led to an assumption that a lot of emissions are saved abroad. Her assessment was that Rystad "probably" underestimates the emissions in Norway, and that this is politically controversial and highly uncertain. In addition, she believed that this was an unnecessary assumption for all new PDO decisions, and that this should instead be assessed concretely for each individual PDO.

Expert witness Haakon Riekeles from Vista Analyze was also critical of the report from Rystad Energy AS. He particularly pointed out that Rystad operates with a lower elasticity of demand and a higher elasticity of supply than others. According to Riekeles, it is particularly the elasticity of demand that Rystad has used that differs most from other literature. It emerged during the legal process that Vista Analyze and Rystad disagree about which literature is relevant. Vista Analysis was mainly based on a meta-study from 2018, which in turn is based on 75 underlying research studies. Based on this, Vista Analysis has concluded a demand elasticity of 0.26. Rystad has carried out a separate research review of 10 individual studies, and according to Riekeles, the review has not been peer-reviewed. Based on this review, Rystad has arrived at a demand elasticity of 0.11. In addition, Vista Analysis highlighted in particular that Rystad's assumption that total energy use is unchanged by increased production and changed price is based on assumptions, and not empirical evidence. It was also highlighted that Rystad has used the year 2030 as the basis for the analysis, and that this will be before 70 per cent of the production in the PDOs that are being considered. Vista Analysis, on the other hand, has analyzed based on production coming in the period 2030-2040, and also has a long-term version of the scenarios that looks at the period 2040-2060. Concretely, Vista Analyze assessed with their assumptions that net emissions for the Yggdrasil field will increase by 11 million tonnes of CO2 in the base case, and by 46 million tonnes of CO2 in a low emission case.

Expert witness Bård Harstad, who is a professor of political economy at Stanford University, explained that he was also critical of Rystad's calculations and forecast. He explained that if Norway offers more oil, the oil price goes down a little, and that is why other players change their behaviour. Consumers demand more, and other manufacturers offer a lot. If consumers are adaptable, they buy a good deal more, and then the elasticity of demand is considered high. If consumers are not adaptable, they will buy roughly the same even if the price falls. Then the elasticity of demand is small.

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Harstad explained that the calculations of both supply and demand elasticity are very uncertain, especially in the long term.

According to Harstad, all research shows that energy consumption will increase if the price of an energy source falls. The increase will be particularly large in the long term, because then consumers will have time to adapt their habits, electrical goods, transport patterns and eco-friendly measures. Overall, Harstad believed that Rystad's starting point with a demand elasticity of 0.11 was too low, and that this was absolutely crucial for their calculation. He further showed that this was based on an assumption that the total consumption of energy is constant and unaffected by market prices, and that this means that no account has been taken of the consumers' ability to adapt to higher prices. In addition, he pointed out that the assumption implies that there is perfect substitution between different energy sources. He emphasized, however, that it is well known that gas and coal are substitutes, but that other energy sources are to a lesser extent substitutes for oil.

As regards the elasticity of supply, Harstad believed that it had not been taken into account that falling prices will not necessarily lead to politicians in other countries reducing their production. As an example, he pointed to the fact that industry organizations in Norway have argued for increased investment when the price of oil has fallen, because it has then been considered that it is particularly timely to open new fields and invest in the industry so that it does not lose qualified labour. Harstad believed that a long-term perspective should be used in the calculation, and thus longer than 2030. It should also be taken into account that oil and gas are exhaustible resources. According to Harstad, investments in renewable energy are more price sensitive than the supply of fossil fuels in the long term. This means that increased extraction in Norway can displace renewable energy more than it displaces other fossil sources, especially in a long-term perspective.

Harstad also believed that it is important to take into account climate policy as a coordination game. He pointed out that investors choose green if an ambitious policy is realistic, and that an ambitious policy is realistic if investors choose green. According to Harstad, investments in extraction can be perceived as less belief in a future ambitious climate policy, and in addition, Norwegian investments will make such a policy more difficult to implement. According to Harstad, both parts can get other players to invest more in them extraction of fossil fuels, and less in green and climate-friendly technology. He argued that Norwegian investments in future extraction could intensify the problems with restructuring, and make climate cooperation on the demand side more difficult. According to Harstad, it is more difficult for Norway to put pressure on other countries to contribute, as long as they can point to the fact that Norway extracts a lot and earns a lot from the extraction of fossil fuels. He believed that Norwegian extraction could have a

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contagion effect on other countries and lead to other countries also extracting more, or choosing to cut their own emissions less.

In summary, Professor Harstad believed that the assumptions from Rystad Energy AS were uncertain and speculative, and that almost all the assumptions point in the same direction. He believed that this has led to Rystad underestimating demand elasticity, while supply elasticity is overestimated compared to what is realistic in the long term. With more realistic assumptions, according to Harstad, the climate effect of Norwegian extraction will be far less favorable, and most likely negative. In addition, in his view, account must be taken of the political signaling effects of increased Norwegian production of oil and gas.

Expert witness Michael Lazarus at the Stockholm Environment Institute explained concretely about Rystad's assessment of net emissions linked to Yggdrasil. He started from the same three-step model for calculation, but believed that the estimates were not correct. He believed that with more correct estimates, the conclusion would be that Yggdrasil will increase global net emissions by approximately 80 million tonnes of CO2 during its lifetime. This is thus contrary to Rystad's forecast that production from Yggdrasil will lead to a reduction in net emissions of 52 million tonnes of CO2 during its lifetime. Lazarus believed that Rystad had based the analysis on a too early year, when the starting point was 2030. He believed that Rystad had underestimated the market, and thus the emission effects of increased oil production. He further believed that Rystad had overestimated how much coal power gas will displace in the mid-2030s, and underestimated how much production would slow down the transition to cleaner energy. Lazarus believed that Rystad significantly overestimates emission reductions from replacing oil and gas production in other countries. In addition, Lazarus highlighted more generally that development of Yggdrasil will lead to long-term investments in new, fossil fuel-using infrastructure that will slow down the transition to clean energy. He emphasized that this could again undermine Norway's climate leadership.

The review of the presentations and explanations from Statistics Norway, Vista Analyse, Bård Harstad and Michael Lazarus shows that there has subsequently been some strong criticism of the assumptions that Rystad Energy AS has used as a basis for the calculations of net emissions. All have advocated that there is a basis for increased Norwegian production, concretized by Yggdrasil, to lead to an increase, and not a reduction, in global net emissions. The court does not have sufficient grounds to assess which assumptions or calculations are the most correct, nor shall it make political considerations related to this. The court thus does not have sufficient grounds to assess whether the forecast is justifiable or not, and must also show some restraint in trying this. This has no bearing on the outcome of the case, and the court therefore does not need to make a full decision on this. However, in the court's opinion, the problem is that these

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objections, and possibly other relevant objections, have not been systematically assessed and evaluated. It is unclear whether, and possibly in what way, this has been assessed by the ministry (and the Parliament), beyond the fact that the input makes clear that there is uncertainty related to the calculations. In the court's view, it is primarily the case management linked to the assessment of this that is problematic.

3.7. Assessment of the effects on the decision
3.7.6. Legal points of departure

The question is whether the lack of environmental impact assessment of combustion emissions means that the decisions on planning and development and operation from Breidablikk, Tyrving and Yggdrasil are invalid.

If the rules for the proceedings have not been complied with, decisions can nevertheless be valid when there is "reason to assume" that the error "could not have had a decisive effect on the content of the decision", cf. the principle in Section 41 of the Public Administration Act. It is a certain right that the principle in the provision can be applied analogously in the event of a breach of procedural rules in other laws and regulations, cf. Rt 1982 p. 241 at p. 262 (Alta) and NOU 2019:5 p. 535. According to this principle, a decision is valid despite errors in the method of processing if the error cannot have had a determining effect on the content of the decision, cf. also NOU 2019:5 p. 535. The provision does not state that the error must have affected the content of the decision for invalidity to occur, but only that the decision is nonetheless valid where the error cannot have had such significance. The wording of "reason to count on" implies that it does not have to be proven or probable that the decision would not otherwise have been made, but that it is sufficient that there is reason to count that the error may have had an impact on the content of the decision, cf. also Norwegian Law Commentary, note 1040 on Rettsdata by Jan Fridthjof Bernt. In recent practice from the Supreme Court, this is formulated as a requirement that there must be a "not entirely remote possibility" that the error has affected the content of the decision, cf. Rt 2009 p. 661 (embassy) section 71, Rt 2015 p. 1388 P (internal flight) sections 282 and 300, and NOU 2019:5 p. 535.

The starting point is that the validity of the decision must be based on the facts at the time of the decision. However, both parties have agreed that subsequent circumstances may be particularly relevant for the specific consequence assessment. The court agrees that later developments may shed light on whether there was reason to believe that the flawed environmental impact assessment may have had an impact on the content of the decisions.

The Supreme Court considered in case Rt 2009 p. 661 the validity of a decision to change the zoning plan for the construction of a new American embassy. No mandatory environmental impact assessment had been carried out in connection with the

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re-regulation. The Supreme Court came to the conclusion that this error could not have been decisive for the municipality's rezoning decision, and that there was thus no basis for invalidity, cf. Section 41 of the Public Administration Act. The Supreme Court assumed that there was no requirement of a preponderance of probability for the error to have become significant, and that it is "sufficient to have a not entirely remote possibility", cf. section 71. With regard to the starting point related to a flawed environmental impact assessment, the Supreme Court stated the following in paragraph 72:

> The assessment depends on the specific circumstances of the case, including which errors have been committed and the nature of the decision. Where the procedural error has led to insufficient or incorrect basis for decision on a point of importance for the decision, or the error in some other way involves the disregard of basic requirements for sound treatment, generally quite little is required. Combined with the interests that must be safeguarded through the rules on environmental impact assessment, and the complex investigation process that is set up there, the road to invalidity could therefore be short when the procedural error consists in
>
> a missing or defective environmental impact assessment. But there is no question of any automaticity. And, in my view, there is also no room for a general presumption of influence, as the appellants have advocated. Such a presumption would represent an unjustified weighting of form over contents. It cannot be taken for granted that the considerations and interests that must be safeguarded through the rules for environmental impact assessment, in a specific case, cannot also be safeguarded within the framework of ordinary planning processing. In relation to the impact criterion, one must therefore, in my view, proceed concretely, and link the investigation to the individual invoked deviations from the case management that would have been followed if an environmental impact assessment had been carried out in the case in question.

The Supreme Court has thus assumed that a deficient environmental impact assessment does not automatically lead to invalidity, but that a concrete assessment must be made of the proceedings that have been carried out against the proceedings that should have been followed if an environmental impact assessment had been carried out. If the proceedings have led to a flawed or incorrect basis for decision on a point of importance for the decision, or the error in some other way involves disregarding the requirements for sound processing, it takes "little" for the error to lead to invalidity. Transferred to this case, the court assumes that an assessment must be made of the ministry's own case management with regard to the investigation of combustion emissions against the case management that would have been followed if this had been part of the environmental impact assessments.

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The Supreme Court then carried out a concrete assessment, and came to the conclusion that the process leading up to the embassy's choice of site was sufficiently documented as a whole, and that it was justifiable of the planning authority to settle for the fact that the relevant alternative was not available, cf. Rt 2009 p. 661 paragraph 82. The Supreme Court indicated that there was no evidence to assume that the decision basis was incorrect on this point. The Supreme Court further explained that the review of the planning process showed that arrangements had been made for input in several rounds, and that there was no doubt that the critical voices were heard, cf. section 84. The Court interprets this decision as meaning that the Supreme Court emphasized that there was no reason to believe that the basis for the decision had been incorrect, and that the process had shown that dissenting voices had been heard in a proper manner.

The state has also referred to the Supreme Court's statement on the legal starting point in HR-2017-2247-A (Reinøya). This case concerned the validity of expropriation decisions due to a lack of environmental impact assessment prior to the planning decision. The background was that a municipality in Troms had adopted a zoning plan for a road project that would have consequences for the reindeer herding industry in the area. It was shown that the costs were not sufficiently high to justify an environmental impact assessment. The majority of the Supreme Court further referred to what had been known to the municipal council about the consequences for reindeer husbandry of the road project, and came to the conclusion that there was no "real possibility" that an environmental impact assessment would have led to any changes to the decisions that had been made. The lack of environmental impact assessment therefore did not invalidate the expropriation decision according to section 41 of the Public Administration Act.

In comparison, in this case there is no doubt that an environmental impact assessment should be carried out before the PDO decisions, and this has also been done. The dispute concerns exclusively whether combustion emissions should have been part of this environmental impact assessment. As regards the legal starting point, the Supreme Court referred to the previous statements in Rt 2009 p. 661 (embassy). The Supreme Court assumed that it is sufficient to have "a not entirely remote possibility" that the mistake has had an impact on the decision, and that not much is needed, but that based on the specific circumstances of the case - the evidence situation - there must be a " real possibility" that the error may have had an impact on the decision's content, cf. HR-2017-2247-A paragraph 93-99. In the concrete assessment, the Supreme Court placed particular emphasis on, among other things, that a number of expert studies on reindeer herding had been carried out, that the reasoned views of reindeer herding interests had been taken into account in the impact analysis, that the consequences for the reindeer herding industry were known, that the municipal council had all along been

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well aware of reindeer herding's objections and the basis for them, and that it emerged what had been done to take this into account. On this background, the court assumes that the Supreme Court made a concrete assessment of the proceedings, whether the basis for the decision was informed and correct, and whether dissenting voices had been heard and assessed. In other words, a concrete assessment was made of whether the proceedings were sound, whether the consideration of contradiction was taken care of, and whether there was reason to believe that the basis for the decision was incorrect.

In the plenary judgment, the majority of the Supreme Court assumed that any errors in the environmental impact assessment at the opening stage could not lead to the decision being set aside as invalid, cf. HR-2020-2472-P paragraph 242. This was justified in section 243 as follows:

> Environmental impact assessments must, among other things, identify the political trade-off questions that the governing authorities must decide on. In this case, it is the assessment of the combustion effect abroad that is requested by the appealing parties. The Parliament has nevertheless taken a position on this subject on a number of occasions, which I have mentioned previously. Possible shortcomings in the environmental impact assessment therefore cannot have had anything to say about the decision on the opening of the Barents Sea to the south-east. Considerations other than the effects on the climate were in any case decisive. The policy of the governing authorities was that measures to reduce global climate emissions and the harmful effects of these should be carried out in other ways than by stopping future petroleum extraction. Decisions on extraction licenses in the 23rd licensing round are therefore valid in any case, cf. the principle in section 41 of the Administration Act.

The majority of the Supreme Court thus emphasized that the authorities have had a firm policy that measures to reduce global climate emissions and the harmful effects thereof must be carried out in other ways than by stopping future petroleum extraction. This shows that the Supreme Court considered the authorities' policy in the area to be relevant for the impact assessment. At the same time, this statement must be seen as a kind of obiter dictum, and without further discussion beyond this. The majority of the Supreme Court had then already concluded that there had been no procedural errors related to the climate impacts during the environmental impact assessment on the opening of the Barents Sea in the southeast. In this assessment, the majority had placed great emphasis on the fact that the climate effects are continuously assessed politically, and that they would be subject to an environmental impact assessment in the event of a possible application for a PDO, cf. HR 2020-2472-P paragraph 241. In this connection, the Supreme Court had also emphasized that the calculations of global combustion emissions on the opening stage would be highly uncertain because at this point it would

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be unclear whether and how much resources would eventually be found. The assumption was thus that an environmental impact assessment of combustion emissions at the opening stage would not bring in new information that had not already been assessed and weighed. The Supreme Court did not rule on whether a deficient environmental impact assessment of combustion emissions at the production stage would be without significance. Overall, the court believes that there is therefore reason to emphasize the authorities' view of petroleum policy in the impact assessment, but that the Supreme Court's statement on this in section 243 must at the same time be seen in the light of the context, and that this assessment was made against the decision at the opening stage.

The Supreme Court's minority had a different starting point before the impact assessment. The minority had concluded that it was a procedural error that the climate consequences of combustion emissions had not been subject to an environmental impact assessment. The minority did not overlook the fact that the political discussions could have been different if the environmental impact assessment had contained an investigation and assessment of the climate consequences of combustion emissions, cf. HR-2020-2472-P paragraph 277. The minority also pointed out that the climate, climate measures and emissions from the petroleum sector have been continuously debated in the Parliament in recent years, and that there has been a clear majority in the Parliament for continued petroleum activities on the Norwegian continental shelf, despite the fact that burning Norwegian-produced petroleum has consequences for the climate. The minority therefore considered it "less likely" that the result would have been different if the climate effects had been part of the environmental impact assessment for the opening of the Barents Sea in the southeast. Extending this, the minority stated in paragraph 278 that:

> At the same time, it is unsatisfying to have to speculate on how political processes could and would have proceeded if the environmental impact assessment had looked different.

The minority then stated that it would be too narrow to apply a pure impact assessment in any case, and that there were two circumstances in particular which dictated that the procedural rules must be strictly enforced in this case, cf. HR-2020-472- P paragraph 279-282. The minority pointed out that the duty to investigate must firstly meet the requirements of Section 112, second subsection, of the Constitution. Secondly, it was shown that the error related to the implementation of Norway's international obligation or the planning directive. In addition, the minority noted that it did not agree with the majority that it would not be sufficient to postpone the investigation to a later stage, including the decision-making process for PDO, cf. HR-2020-2472-P paragraph 283-287. The last statement from the minority substantiates that the majority's environmental impact assessment must be seen in the light of the fact that it was clearly assumed that combustion emissions would be assessed in connection with the PDO. In this connection,

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the court again refers to the majority's assessment of this, cf. HR-2020-2472-P paragraph 246.

3.7.7. Summary of the court's assessment on effects on the decision

For a long time there has been a broad political majority in favor of continuing Norwegian petroleum policy with the extraction of oil and gas. This suggests that it is less likely that the decisions would have been different, regardless of what information will emerge from an environmental impact assessment of combustion emissions and climate effects. The court has nevertheless, after an overall assessment, come to the conclusion that there is not a completely remote possibility that the deficient environmental impact assessment of combustion emissions may have affected the content of the decisions. In this assessment, the court has emphasized that the proceedings have shown that the decision-making basis has been poorly informed, verifiable and accessible, and that dissenting voices have not been heard and assessed in an open manner. The court cannot anticipate the outcome and content of the environmental impact assessments that must be carried out. In the court's view, however, it cannot be ignored that the social debate and the political considerations could have been different if this had been subject to an environmental impact assessment. Environmental impact assessment must both ensure an informed and correct basis for decision-making, and take into account democratic participation in decisions that may affect the environment. In the specific assessment, the court has also placed particular emphasis on the fact that the procedural rules must be strictly enforced in order to safeguard the rights under Section 112 of the Constitution and Norway's international obligations under the EEA Agreement. The court has also emphasized that climate science has been updated. In addition, the court has emphasized that a public committee has recently recommended that the government draw up an overall strategy for the final phase of Norwegian petroleum activities, including a temporary halt in PDO decisions until an overall strategy is finalised. In a concrete balancing of interests, consideration for sound case management, disclosure of the case and considerations of democracy must be of greatest importance. Overall, the court has thus concluded that the decisions are invalid. The court will explain the assessment in more detail below.

3.7.2. Norwegian petroleum policy

There has been a broad political majority in Norway for a long time to continue Norwegian petroleum policy with the extraction of oil and gas. The Parliament has rejected all proposals for the complete or partial phasing out of petroleum activities, including not approving new developments, as a result of global greenhouse gas emissions. Reference is made to the Supreme Court's account of this in HR-2020-2472-P paragraph 236-237. The Parliament processed in Inst. 433 S (2021-2022) representative proposal to withdraw development permits on the Norwegian continental shelf that are in

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conflict with the Constitution. It appears from the recommendation from the energy and environment committee on p. 2 that the majority was of the opinion that the size of Norwegian resources limits the opportunity Norwegian resource management has to influence global greenhouse gas emissions and thus also possible climate change in Norway, even if one only calculates gross emissions from combustion . The majority went on to refer to the ministry's course adjustment, and concluded on p. 3 that there was no basis for revising previous applications, not finalizing applications that are pending, or not accepting new applications for processing.

There is also a broad political majority for Norway to continue to be a stable and long-term supplier of oil and gas to Europe, and that the climate and energy challenge must be solved in parallel. This appears, among other things, from the Government of Støre's supplementary report Meld. St. 11 (2021-2022) to the Government Solbergs Meld St. 36 (2020-2021). This received wide support in the Institution. 446 S (2021-2022). It appears at the outset that a broad historical starting point for energy policy has been outlined, from hydropower development to oil and gas discoveries, and "Norway as the world's leading petroleum supplier". It appears that four goals have been drawn up for the energy policy, where the fourth goal is to "further develop a future-oriented oil and gas industry within the framework of the climate goals". It also appears that it is a demanding time with great unrest in the energy markets, and that Russia's military invasion of Ukraine has intensified the situation. It appears on p. 3 of the proposal that the Støre Government will pursue an energy policy that contributes to increased value creation and to "meeting Norway's international climate commitments". It is further stated that the government will pursue a policy which means that "Norwegian petroleum industry is developed, not liquidated", and that arrangements must be made for the Norwegian continental shelf to continue to be a "stable and long-term supplier of oil and gas to Europe in a very demanding time".

It is further stated on p. 57 and p. 71 of this proposal that a proposal was put forward that the Parliament should ask the government to change the PDO guide so that there is a requirement for an environmental impact assessment of all new oil and gas projects, in light of 1.5 degree target from the Paris Agreement and in light of economic climate risk. It was proposed that the Parliament should ask the government to ensure that the consequences of combustion emissions from fossil resources are also investigated in the environmental impact assessment for plans for development and operation (PDO), and whether the consequences are in line with the 1.5 degree target from the Paris Agreement. The proposals for this were voted down by the majority in the committee. The court notes that the proposals imply that the environmental impact assessment should be held up to the 1.5 degree target from the Paris Agreement, and thus not only apply to the

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question of whether combustion emissions should be subject to an environmental impact assessment.

In the proposal, which concerns, among other things, the development and operation of Yggdrasil, the new security policy situation and the energy crisis in Europe after Russia's invasion are also described in more detail, cf. Prop. 97 S (2022-2023) chapter 2. This appears, among other things, on p. 24 that crude oil from Norway is "an even more important source of supply for European users than before". Furthermore, it appears on p. 26 that there are large oil resources around the world, and that they are more than large enough to cover expected future demand, and that it is a "competitive advantage to have low emissions in production" because these resources will be utilized first. It appears on p. 30 that Norway is the only net exporter of gas in Western Europe. It is further stated on p. 31 that the loss of Russian deliveries has led to Norwegian gas gaining increased importance and is absolutely critical for Europe's gas supply and energy security. In addition, it appears on page 34 that Norway's contribution is to "produce as much as possible", and that the Norwegian authorities have warned the EU against measures that could worsen the situation, for example by reducing the supply of gas to Europe or increasing consumption. It appears on p. 35 that in a joint statement with Norway in June 2022, the EU has expressed support for Norway developing new oil and gas resources to supply the European market. Europe's import demand for gas is expected to remain high over the next decade, even though both the EU and the UK have ambitions to reduce gas consumption. The government has also emphasized that it is a central consideration that the petroleum industry is Norway's largest industry in terms of value creation, government revenues, investments and export value. It appears that "The main goal in petroleum policy is to facilitate the profitable production of oil and gas in a long-term perspective", cf. Prop. 97 S (2022-2023) chapter 3.1.

All this underpins that the Norwegian authorities have a clear policy that as much oil and gas as possible should be produced from the Norwegian continental shelf, and that this has been reinforced by the new security policy situation and the energy crisis in Europe. This suggests that there is no real possibility that the decisions would have been different, regardless of what information would have come to light during the environmental impact assessments on combustion emissions and climate effects.

The state has also referred to the latest recommendation from the energy and environment committee on changes to the climate act (the climate target for 2030), cf. Inst. 38 L (2023-2024). As far as the court can see, the petroleum activities or the decisions in question have not been discussed in more detail. However, the proposal contained a proposal for a more legally binding climate act, cf. the proposal point 2.7. The members who highlighted the proposal believed that there was a need to improve the Norwegian climate act in order for it to fulfill its purpose of promoting the implementation

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of Norway's climate goals and to promote transparency and public debate about the status, direction and progress of this work. The members believed that it hindered the climate act's purpose that one did not commits to territorial emission cuts or cuts in the export of combustion emissions, and that there is no statutory obligation to annual specified emission cuts within a national carbon budget derived from the Paris Agreement's goal of reducing global warming to 1.5 degrees. The proposal involved legislative decisions with regard to climate targets for 2030, cf. climate act § 3. In addition, the energy and environment committee proposed that the Parliament should ask the government to return to the Parliament in the spring of 2024 with a report to the Parliament showing how Norway will cut emissions in the period ahead towards 2030 in line with Norway's climate goals. In the court's view, this shows that there is still an active political debate about, among other things, combustion emissions, and how Norway as a whole should be able to cut emissions up to 2030 in line with Norway's climate goals.

The review shows that both the government and a majority in the Parliament have a firm view that the established petroleum policy should continue, and that there is an overarching political desire for as much oil and gas to be produced from the Norwegian continental shelf as possible. This has been reinforced by the new security policy situation and the energy crisis in Europe as a result of Russia's invasion of Ukraine. It is also highlighted that the petroleum industry is Norway's largest industry in terms of value creation, government revenues, investments and export value. All this suggests that it is less likely that the inadequate environmental impact assessment of combustion emissions has affected the content of the decisions.

3.7.3. Norwegian climate policy and the importance of updated climate science

Norway has a stated political goal that the Norwegian petroleum industry must be within the framework of the climate goals, and that the overall energy policy must fulfill Norway's international climate obligations, cf., among other things, Inst. 446 S (2021-2022) and Inst. 38 L (2023-2024). It appears that Norway has ambitious climate targets, and that both the government and the Parliament want to further develop the petroleum industry within the framework of the climate targets and the international climate commitments.

Climate science has also been updated. The court refers to the account of the climate challenges and the key findings from the UN climate panel's sixth main report above. The Norwegian authorities have recently also assumed that man-made climate change has already led to serious and partly irreversible consequences for nature and society across the globe. It is assumed that climate change is happening faster, and that the consequences are more extensive and dramatic than previously thought, cf. Report. St. 26 (2022-2023) p. 5.

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The authorities have also just received a public report in which the committee recommends that the government draw up an overall strategy for the final phase of Norwegian petroleum operations, cf. NOU 2023:25 p. 171. It also appears that the committee recommends that no decisions are made that contribute to investment in new activity until an overall strategy has been finalised. According to the committee, this means a temporary halt in new permits for exploration or extraction (PDO), that permits for construction and operation (PAD) are not granted and that no decisions are made about electrification.

The Norwegian authorities' stated plan to follow the climate targets and fulfill the international climate obligations, seen in the context of the updated climate science and the public expert committee's proposal to halt new developments, suggests that there is not a completely remote possibility that the decisions could have been different if combustion emissions and climate impacts for the relevant fields had been subject to an environmental impact assessment.

3.7.4. Assessment of whether the proceedings have otherwise been sound

The decision-making basis for Breidablikk does not contain any investigation, assessment or mention of combustion emissions. This is also not mentioned or considered in the decision. This suggests that the proceedings have not been sound, that dissenting voices have not been heard and that the decision-making basis has not been sufficiently disclosed. In the court's view, this in itself indicates that there is not a completely remote possibility that the flawed environmental impact assessment may have influenced the decision on the PDO for Breidablikk.

The decision-making basis for Tyrving does not contain any environmental impact assessment or other assessment of combustion emissions. This was first mentioned in an undated table with an overview of projects that had been processed. In this connection, it was also referred to the report from Rystad Energy AS (2021) that the projects would overall lead to a significant reduction in net emissions. In the court's view, it appears unclear which fact the decision is based on with regard to combustion emissions and the climate effects thereof, and what was the actual basis for the legal assessment according to the Constitution § 112. No consultation rounds were held, and information only became known after the project was considered to have been processed. In the court's view, these proceedings show that the public was not given information, that dissenting voices were not heard and considered, and that there are doubts as to whether the ministry has based the decision on the wrong facts and an unjustifiable forecast. Overall, this underpins the fact that there is not a completely remote possibility that the flawed environmental impact assessment may have had an impact on the decision on the PDO for Tyrving.

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The decision-making basis for Yggdrasil contains no environmental impact assessment of gross combustion emissions. A general report on net emissions has been obtained from Rystad Energy AS, which provides a method for assessing this more concretely for Yggdrasil. This report was not sent for ordinary consultation, but an opportunity was given for professional input with a short deadline of eight working days. The public first received information about gross and net combustion emissions from Yggdrasil in the proposal to the Storting, which was sent after the ministry as decision-making authority had made its decision. Despite the fact that there had been strong professional criticism of the report from Rystad Energy AS from, among others, Statistics Norway and Vista Analyse, these inputs were not considered and commented on further. This was therefore not part of the decision basis that was available to the public. It was only stated that input had been received which helped to highlight uncertainty related to the calculations. Overall, these proceedings show that the public did not receive information, that dissenting voices were not heard and considered, and that there are doubts as to whether the ministry has based its decisions on the wrong facts and an unjustifiable forecast. This underpins the fact that there is not a completely remote possibility that the flawed environmental impact assessment may have influenced the decisions on the PDO for Yggdrasil.

Overall, the court believes that the ministry's case management with regard to the investigation of combustion emissions and climate effects as a result cannot be considered sound compared to the investigation that would have been carried out according to the regulations

For envirnonmental impact assessments. The decision-making basis appears to be little available to the public. Votes against have not had the opportunity to comment on the assessment of gross emissions and the climate effects of this for the environment in Norway. Opposing votes have only been given the opportunity to comment on the report which was the basis for calculating net emissions with regard to Yggdrasil, and then a short deadline of eight days was set to provide professional input. Otherwise, no consultation rounds have been carried out with regard to the assessments of combustion emissions and the climate effects thereof, neither with regard to gross emissions nor net emissions. This in itself speaks for the fact that the decision-making basis has not been sufficiently broad and adequately informed.

The Government has argued that the decisions are not based on any specific forecast with regard to net emissions. However, the key factor in the decision-making basis for both Tyrving and Yggdrasil has been the forecast from Rystad Energy AS that increased production of Norwegian oil and gas will result in a significant reduction in net emissions. Although the report has been criticized by, among others, Statistics Norway and Vista

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Analyse, their input has not been discussed or assessed, beyond the fact that the input highlights the uncertainty surrounding the calculations.

The courts are not to make the political trade-offs, and that it is therefore challenging to speculate on how the ministry, and possibly the Storting, would have assessed the factual basis if combustion emissions had been assessed and it had been conducted an environmental impact assessment. It is also challenging to speculate on the outcome of the environmental impact assessments before this has been carried out.

However, it is quite clear that the environmental impact assessment of combustion emissions would have ensured that consultations had been carried out with reasonable deadlines, and that consultation input had been assessed, commented on and weighed. The decision-making basis would be informed, verifiable, accessible and balanced. This is substantiated by the environmental impact assessments that have, for example, been carried out for Tyrving and Yggdrasil with regard to other environmental impacts. The environmental impact assessments show how thoroughly and transparently this can be done within the rules on environmental impact assessment, and that this ensures that the process is reassuring, sound and accessible.

Instead, the factual basis with regard to combustion emissions appears to be sparsely described in the decision-making bases, and it is challenging to assess what has been assessed and what trade-offs have been made. In the court's view, it is not sufficient that the updated climate science and general climate effects of greenhouse gas emissions are described in other public documents, and from other ministries, as the Government has argued.

3.7.5. The consideration of safeguarding the rights under the Constitution § 112 and compliance with Norway's international obligations under the EEA Agreement

In the court's view, there are two special circumstances which indicate that the procedural rules in this area must be strictly enforced, and that this has an impact on the impact assessment, cf. Inst. O. no. 2 (1966-1967) p. 16, cf. HR-2020-2472-P paragraph 279. This includes safeguarding the rights under § 112 of the Constitution and compliance with Norway's international obligations under the EEA Agreement.

The environmental impact assessment obligation under the Petroleum Act § 4-2 and the Petroleum Regulations § 22a must fulfill the requirements under the Constitution § 112 subsection two, cf. Ot.prp. no. 43 (1995-1996) p. 41-42, cf. HR-2020-2472-P paragraph 281. The Constitution § 112 must ensure the population information and knowledge about the effects of planned natural interventions. The minority of the Supreme Court stated in the plenary judgment that the Constitution § 112 subsection two therefore requires that an ordinary assessment cannot be made of whether the error may have taken effect in

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accordance with the principle of § 41, because this could undermine the purpose of the constitutional provision, cf. HR-2020- 2472-P paragraph 281. This suggests that the procedural rules must be strictly enforced.

In addition, the environmental impact assessment obligation is part of Norway's international obligations according to the EU's project directive, cf. Ot.prp. no. 43 (1995-1996) p. 41-42, cf. HR-2020-2472-P paragraph 282 in the following. In accordance with the EEA Agreement requires that the parties to the agreement loyally follow up the obligations arising from the agreement. The court assumes that this entails a duty for the courts to remedy breaches of the project directive's investigation provisions as far as is possible under national law, cf. HR-2020-2472-P paragraph 245 (the majority), and paragraphs 286-287 (the minority).

The production phase is the last stage in the process, and is therefore the last opportunity to repair procedural errors related to the environmental impact assessment of combustion emissions, cf. HR-2020-2472-P paragraph 246. This speaks for interpreting the principle in § 41 of the Public Administration Act in accordance with the obligations under international law that follow from the project directive and the duty of loyalty under article 3 of the EEA Agreement. In legal littrature, it is assumed that the duty to repair requires that Norwegian courts assess whether the impact assessment can be supplemented with other points, so that you can arrive at an EEA-compliant result. When the preparatory work allows other assessments to be withdrawn, the obligation to repair requires that the option is used. Against this background, it is assumed that the EEA legal obligation to repair changes a national competence to become an obligation, cf. Venemyr, The EEA legal obligation to repair as part of Norwegian law - illustrated by the Supreme Court's decision in HR-2020-2472- P, Law and Justice, Vol. 60, issue 5 p. 310-312. In legal littrature, it is stated that a lack of an environmental impact assessment according to EEA law means that the decision must be considered invalid regardless of whether the error may have affected the content of the decision, cf. Venemyr, On EEA law's requirements for administrative law consequences of errors, PhD thesis, chapter 4.1 and 5.2.2.

In support of this, the court also refers to the fact that the EFTA Surveillance Authority (ESA) sent a letter to the Norwegian Ministry of Climate and Environment on 4 November 2021, asking for information related to the requirements to carry out assessments and environmental impact assessments.

Among other things, ESA questioned the practice linked to the project directive for situations where a deficient environmental impact assessment does not lead to invalidity because there is a political majority in favor of the decision anyway. The Ministry of

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Climate and the Environment responded to the inquiry in a letter dated 15 February 2022. This letter states, among other things, the following:

Firstly, it should be underlined that the wishes of the decision-making authority in general cannot be the sole decisive factor in the decision-making process: the discretion of decision-making authorities will always be limited by the law in different ways. For the sake of good order, the Government underlines that the legal obligation to carry out an SEA or an EIA is independent of the wishes or views of the decision-making authority (and not left to the decision-making authority's discretion).

The limits to the discretionary competence of decision-makers will vary depending on the area of law, and different types of flaws in the exercise of discretion may be relevant depending on the case. In general, however, it may be said that a failure to sufficiently consider important aspects or relevant facts in the particular area of law, will lead to invalidity of the decision. This applies even if the result of a decision – read in isolation – may seem to fall within the competences of the decision-making authority. On this note, it may be underlined that in the unlikely case that clarification and consideration of relevant environmental concerns are intentionally neglected when adopting an administrative decision due to a municipality's “strong desire” for a particular project, the decision should be deemed invalid under Norwegian administrative law.

In addition, the letter from the Ministry of Climate and Environment stated that:

> As the contents of an SEA or an EIA cannot be predicted beforehand, a failure to carry out an SEA or EIA in accordance with the regulations should in most cases lead to the conclusion that the error may have affected the contents of the decision, and therefore that the decision is invalid.

The abbreviation SEA stands for Strategic Environmental Assessment, while the abbreviation EIA stands for Environmental Impact Assessment, and is understood in this context as an environmental impact assessment. The Ministry of Climate and Environment thus confirmed that the legal obligation to carry out an environmental impact assessment applies regardless of whether there is a political majority for the decision, and that it is not left to the discretion of the decision-making authority to assess whether an environmental impact assessment should be carried out or not. In addition, the ministry expressed that a deficient environmental impact assessment in most cases will lead to the decision having to be considered invalid, regardless of whether there is a political majority for the decision itself or not. Both the consideration of safeguarding the rights according to § 112 of the Constitution and Norway's international obligations according to the EEA Agreement thus strongly suggest that the flawed environmental impact assessment should lead to the decisions being considered invalid.

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3.7.6. Specific balancing of interests

The Government has subsidiarily argued that the decisions should be upheld anyway after a balancing of interests. In this connection, the Government has shown that total investments for Yggdrasil are NOK 115.1 billion, that the expected net present value before tax is NOK 38.4 billion, that gross emissions from combustion as a share of global annual emissions is 0.03% and that a net emission reduction of 0.004% has been calculated. The Government has further shown that total investments in Tyrving are NOK 6.2 billion, that the expected net present value before tax is NOK 1.8 billion, and that the maximum gross emissions from combustion as a share of global annual emissions is 0.001%. The Government has also shown that total investments in Breidablikk are NOK 19.4 billion, that the expected net present value before tax is NOK 31.1 billion, that production in Breidablikk constitutes 1-2 percent of Norway's total oil production, and that maximum gross emissions from combustion as a share of global annual emissions is 0.008%.

In addition to this, the court sees reason to note that the environmental impact assessment obligation does not prevent the authorities from making the desired political decisions. If the decisions are considered invalid, this will mean that an environmental impact assessment of combustion emissions and climate effects must be carried out, and that the plan for development and operation (PDO) must be reassessed after these environmental impact assessments have been carried out.

The environmental impact assessment must ensure that the public receives information, that objections are heard and considered, that the proceedings are sound, and that the decision-making basis is informed, verifiable and accessible. This is to ensure democratic participation in decisions about the environment, and that the policy is based on the most correct decision-making basis possible.

In addition, the court sees reason to note that both the state and the companies that are licensees and operators have had knowledge of the Supreme Court's plenary judgment in HR-2020-2472-P since December 2020. All decisions in this case have been made in accordance with this judgment. In the court's view, this implies that the Government and the beneficiary third party themselves must bear the risk that the legal rules on environmental impact assessment of combustion emissions have not been complied with.

The court shall not make the political trade-offs between the Government’s investments and income from petroleum activities against consideration of the climate. However, the court cannot see that the investments themselves can lead to the decisions still having to be considered valid based on a balancing of interests. In the court's view, considerations of sound case management, disclosure of the case and considerations of democracy must weigh heaviest in this area.

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The court's conclusion is that the decisions on PDO for Breidablikk, Tyrving and Yggdrasil are invalid.

3.8. Consideration of children's best interests and children's right to be heard

The question is whether the decisions are invalid because the child's best interests have not been investigated or assessed, cf. Section 104 of the Constitution and Article 3 of the UN Convention on the Rights of the Child.

It has not been stated that the petroleum regulations and the project directive contain a legal duty to assess the consequences of consideration of the best interests of children. The court has taken it to mean that the plaintiffs believe that this should have been investigated and assessed in a different way. The plaintiffs have also argued that the organization Nature and Youth Norway has the right to be heard.

The consideration of children's best interests has not been investigated, assessed or discussed in any other way in connection with the specific PDO decisions. This does not appear to be contested. The court shall not attempt the political balancing of what will be in the best interest of the child. The court shall only assess whether the ministry has a legal duty to investigate and assess the best interests of children in connection with a decision on approval of a plan for the development and operation of petroleum activities. In this connection, the court must also assess whether Nature and Youth Norway has the right to be heard

It follows from the administration's general investigative duty that minor parties must be given the opportunity to express their views, cf. the Public Administration Act section 17 first subsection, second sentence. However, the court cannot see that the provision applies in this case as there are no children who are direct parties.

The starting point is that children have the right to be heard in matters that concern them, and that consideration of children's best interests must be a fundamental consideration in all actions and decisions that concern them, cf. Section 104 of the Constitution. Section 104 of the Constitution can thus provide a basis so that more general effects that the decision may have on children must be investigated, cf. also NOU 2019:5 point 21.2.2.1.

The principle that the child's best interests must be a fundamental consideration is also stated in the UN Convention on the Rights of the Child, Article 3 No. 1, as

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follows:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts
>
> of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Investigation of the child's best interests is also related to the principle of the child's right to be heard according to Article 12 of the UN Convention on the Rights of the Child.

The UN Convention on the Rights of the Child applies as Norwegian law, and in the event of a conflict shall take precedence over provisions in other legislation, cf. Human Rights Act § 2 no. 4, cf. § 3.

The UN Children's Committee is an expert body that interprets the Convention on the Rights of the Child. The Children's Committee publishes, among other things, general comments which can be guidelines for the interpretation and application of the convention, and relatively great importance should therefore initially be placed on these statements when interpreting and applying the provisions of the convention in practice, cf. Ot.prp. no. 104 (2008-2009) p. 26. At the same time, the Supreme Court has emphasized that mere committee opinions are generally not binding under international law, cf. Rt 2009 p. 1261 section 41 and Rt 2015-1388-P section 151. In this connection, the Supreme Court has in Rt 2009 p. 1261 paragraph 44, and Rt 2015-1388-P paragraph 152 highlighted the following:

> The decisive factor will nevertheless be how clearly it must be considered to express the monitoring bodies' understanding of the parties' obligations under the conventions.
> In particular, one must consider whether the statement must be seen as an interpretive statement, or more as a recommendation on optimal practice in the area of the convention. Secondly, one must assess whether the statement fits the facts and legal area in question. The latter is of particular importance in the case of general statements which are not linked to individual cases or country reports, and which have therefore
> not been the subject of dialogue between the committee and the state concerned.

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The UN Children's Committee has made general comments on the conditions in Article 3. It is emphasized that the term "administrative authorities" must be understood broadly, and points to decisions on, among other things, "environment", cf. CRC/C/GC/14 paragraph 30. The Court assumes that
any ministry, including the Ministry of Petroleum and Energy, may initially be covered by this condition. This follows directly from the wording, and is in line with this interpretive statement.

In addition, the UN Committee on Children has assumed that the inclusion of the wording

"legislative bodies" shows that Article 3 No. 1 applies generally to children, and not just to the individual child, cf. CRC/C/GC/14 section 31. It is thus no requirement that the decision or resolution must apply to a specific child. It is sufficient that the decision applies to children as a group or children in general.
This can thus include Nature and Youth, which represents a group of children, and children in general.

A central question is whether the decisions on PDO are decisions "concerning children". The UN Children's Committee has stated that this must be understood in a very broad sense, and that this includes measures that both directly and indirectly affect a child, children as a group or children in general, and measures that have an effect on a child, children as a group or children in general, "even if they
are not the direct targets of the measure", cf. CRC/C/GC/14 paragraph 19. It is further stated that this includes actions that are directly aimed at children, for example related to health, care or education, as well as actions that include children and other population groups, for example related to the environment, housing or transport. The court cannot see that PDO decisions are directly aimed at children as a group or children in general, but it can be argued that climate effects as a result of petroleum activities concern children as a group and children in general.

However, in extension of this, the UN Committee on the Rights of the Child has stated that all actions carried out by a state in reality affect children, but that this does not mean that the state needs to
implement a full and formal process in order to assess the child's best interests, cf. CRC/CGC/ 14 paragraph 20. This is formulated as follows:

> Indeed, all actions by a State affect children in one way or another. This does not mean that every action taken by the State needs to incorporate a full and formal process of assessing and determining the best interests of the child.

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> However, where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate.
> Thus, in relation to measures that are not directly aimed at the child or children, the term "concerning" would need to be clarified in the light of the circumstances of each case in order to be able to appreciate the impact of the action on the child or children.

The court takes this to mean that there is not necessarily a requirement that every decision must be based on an investigation and assessment of the child's best interests, even if they concern children. This suggests that the consideration of children's best interests in some areas can instead be assessed at a more general level, and not in each individual decision. It also appears that if a decision has a major impact on children, then a high level of protection and detailed procedures will be appropriate. This must be assessed concretely based on the significance of the decision for children. UN's The children's committee has also stated that consideration must be given to whether children are in a vulnerable situation, cf. CRC/C/GC/26 paras 75-76.

The plaintiffs have also referred to the UN Committee on the Rights of the Child's general comments to Norway, cf. CRC/C/NOR/CO/5-6 paragraph 13. It appears that the committee recommends that Norway strengthen its efforts to establish clear criteria regarding the best interests of the child for all authorities that meet decisions affecting children, and ensures that this right is properly incorporated and interpreted and applied consistently in all legislative processes, administrative proceedings and legal proceedings, and in all policies, all programs, all projects and all international cooperation of relevance to and impact on children . Part of the same is also apparent from the UN Children's Committee's general comment
no. 12, CRC/C/12 paragraphs 70-74. On the one hand, this may suggest that Norway should strengthen its efforts to ensure that consideration of children's best interests is taken into account in absolutely all decisions that have relevance to and impact on children. At the same time, this appears as a general statement about the consideration of children's best interests, and nothing concrete appears about petroleum activities
or the climate. The court also does not perceive this as an interpretive statement, but more as a general recommendation on optimal practice in the area of the Convention.

There is basically no doubt that children are particularly vulnerable to climate effects and global warming as a result of greenhouse gas emissions from fossil energy. The

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court refers to the
account of the updated climate science, the expert witness statements from professors Drange and Hessen, as well as the expert statement from professor Wim Thiery, which specifically applied to this. The Children's Ombudsman has shown that the effects of climate change are long-term, and that the
situation can be very serious for today's children and future generations. The Children's Ombudsman has therefore argued that the state has a duty to assess the consequences for children's rights of new oil and gas extraction in Norway, that the child's best interests must be a fundamental consideration, and that the assessment must be made visible in the decision that is made. This appears from written input from the Norwegian Ombudsperson for Children of 27 April 2022 to Document 8:236 (2021-2022). In legal theory, it has also been argued that Article 3 of the Convention on the Rights of the Child applies to the climate area, and that this must be ensured, among other things, in decisions in the petroleum area, cf. Climate Law, Bugge, Universitetsforlaget (2021) on pp. 196-197. This was written by the plaintiffs' attorney,
and the court therefore does not go into this argument in more detail.

In a concrete complaint, it was also shown how climate impacts generally have an impact on children, cf. CRC/ C/88/D/107/2019. It appears from paragraph 9.13, among other things, that:

> The Committee considers that, as children, the authors are particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken.

For the sake of completeness, the court mentions that decisions within the petroleum industry sector can also have an impact on children in other ways, in the form of, among other things,
income for the state, welfare services and employment. However, the parties have not made any submissions related to this, and the court does not consider it necessary to elaborate on this further. The court assumes that this will be part of the political considerations that are taken.

Overall, there is no doubt that climate effects resulting from combustion emissions from fossil energy have a major impact on children and their future. However, the court cannot see that there is a basis for establishing a legal duty to investigate this

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or to hear children separately in connection with specific decisions on plans for the development and operation of petroleum activities.
The court perceives the statements from the UN Children's Committee more as advice on optimal practice in the area of the Convention, and not as concrete interpretation statements that have significance for the issue in this case. The court cannot see that the statements fit the relevant fact and legal area. In the court's view, decisions in the petroleum area are examples of decisions that in reality affect children, but without this meaning that the state needs to initiate a full and formal process to assess the consideration of children's best interests, cf. CRC/CGC/14 paragraph 14. In the court's view, it is more appropriate to consider the child's best interests at a more general level. This is therefore different from an investigation of combustion emissions and climate effects thereof,
which is suitable for a concrete environmental impact assessment.

In this assessment, the court has also emphasized that climate effects from combustion emissions must be subject to an environmental impact assessment. In this connection, children's and youth organisations, such as Nature and Youth Norway, will in any case have the right to express themselves, cf. the petroleum regulations §§ 22 and 22a. In the court's view, their right to be heard will thus be safeguarded. Furthermore, the ministry must also, in any case, consider the consideration of future generations when applying Section 112 of the Constitution. In addition, it appears from the Petroleum Act that the resources must be managed in a long-term perspective so that they benefit the whole of Norwegian society, cf. Petroleum
Act § 1-2 others paragraph.

The court has thus come to the conclusion that, based on applicable legal sources, there is no basis for there being a concrete legal duty to hear children, or to investigate and assess the consideration of children's best interests, in connection with each individual decision on a plan for
the development and operation of petroleum activities. If such a legal duty is to be established, this clarification must, in the court's view, be taken by the legislature or higher courts. In this connection, the court points out that the Parliament has rejected a proposal to ask the government to amend the PDO guide with the requirement that consideration of the child's best interests be assessed in advance of a final decision, cf. Inst. 433 S (2021-2022) proposal 5. The court is not familiar with Norwegian case law from the courts of appeal or the Supreme Court which provides a basis for establishing such a legal duty.

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The court's conclusion is that there is no legal obligation for children to be heard and that consideration of the child's best interests must be investigated and assessed in connection with a decision on approval of the plan for the development and operation of petroleum operations. The decisions are therefore not contrary to Section 104 of the Constitution and Articles 3 and 12 of the UN Convention on the Rights of the Child.

3.9. The European Convention on Human Rights Articles 2 and 8, and Article 14

The question is whether the decisions are in conflict with the European Convention on Human Rights (ECHR) articles 2 and 8, in isolation, and in the context of article 14. The convention applies as Norwegian law, and in the event of a conflict it shall take precedence over provisions in other legislation, cf. Human Rights Act §§ 2 and 3. Article 2 concerns the right to life, and Article 8 concerns the right to respect for private life and family life.

The exercise of rights and freedoms resulting from the convention must be ensured without discrimination on

any basis, cf. article 14. This provision does not have an independent field of application, and can only be applied in conjunction with other rights provisions.

The European Convention on Human Rights does not have a separate rule on the protection of the environment. The provisions in Articles 2 and 8 may nevertheless be applied in environmental matters, and the same applies to the parallel provisions in §§ 93 and 102 of the Constitution, cf. HR-2020-2472-P paragraph 164.

There is no doubt that Greenpeace and Nature and Youth Norway as environmental organizations have procedural access to legal action, cf. the Swedish Disputes Act § 1-4, cf. HR-2020-2472-P paragraph 165. However, a procedural access to legal action for organizations does not necessarily make them subjects of rights according to EMF. In order for the provisions to be applied, it is basically a requirement that you, as an individual
subject of rights, are directly and personally affected by risk through an act or omission, cf. e.g. Kjølbro, The European Convention on Human Rights (2023) pp. 105-106. In the court's view, it is therefore doubtful whether the plaintiffs are in a position to succeed in a claim that the decisions are contrary to Articles 2 and 8.

The Supreme Court concluded in the plenary judgment that the decision on the extraction permit in the 23rd licensing round was not in breach of Article 2 or 8 of the

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ECHR, cf. HR-2020-2472-P paragraph 164-176. The court assumes that the Supreme Court's statements and assessments thereof express the applicable law, and have transferable value.

The Supreme Court pointed out that Article 2 ECHR protects the right to life, but that it is required that the risk of loss of life is "real and immediate", cf. HR-2020-1472-P paragraph 166 with further references. The Supreme Court did not consider it doubtful that the consequences of climate change in Norway could lead to the loss of human life, for example through floods and landslides. However, the Supreme Court held that there was not a sufficient connection between the extraction permit in the 23rd licensing round and the possible loss of human life, so that the requirement for "real and immediate risk" could be considered fulfilled. In this assessment, the Supreme Court emphasized that it was uncertain whether the decision would actually lead to greenhouse gas emissions, and that the possible impact on the climate lay well in the future, cf. HR-2020-1472-P paragraph 167-168.

In comparison, at the time of approval of the plan for the development and operation of petroleum activities, it is more certain that the decision will actually lead to greenhouse gas emissions, and what effect this will have on the climate. This will also be even more clarified after combustion emissions and climate effects have been assessed. At the same time, the impact on climate is in the future, and the court considers it doubtful whether the requirement for "real and immediate risk" has been met.

The Supreme Court further assumed that the state's duties are only covered by Article 8 if there is a direct and contemporaneous connection between the deterioration of the environment and private life, family life or the home. The Supreme Court assumed that it therefore appeared clear that the effects of the possible future emissions as a result of the concession awards in the 23rd concession round do not fall under Article 8 of the ECHR, cf. HR-2020-1472-P paragraph 170- 171.

Although the climate effects of combustion emissions are more real and possible to estimate at the time of approval of the plan for the development and operation of petroleum activities, it still
appears doubtful whether there is a sufficiently direct and timely connection between this, and the rights that must be safeguarded under Article EMF 8.

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The plaintiffs have referred to several decisions from the ECHR which show that Articles 2 and 8 of the ECHR protect against real risks of, among other things, mortality and morbidity due to pollution. However, these cases concern persons who are directly and personally affected by a specific danger, local pollution or the like. It is referred to Pavlov and Others v. Russia which concerned local air and water pollution. It is referred to Cordella and Others v. Italy which concerned local air pollution. It is referred to Budayeva and Others v. Russia which concerned a specific landslide that had claimed several lives. It is referred to Öneryildiz v. Turkey, which concerned a concrete methane gas explosion at a landfill. The court agrees that the cases show that Article 2 of the ECHR protects against risks resulting from pollution. However, the cases concern more local pollution and people who are directly affected by this. The court cannot see that the facts in these cases are comparable to this case.

In addition, the plaintiffs have referred to several decisions from the ECHR which show that Articles 2 and 8 of the ECHR set certain requirements for the decision-making process, including an investigation of this. However, these cases also apply to people who are directly affected by a specific danger, local pollution or the like. Reference is made to Taskin and Others v. Turkey which concerned pollution from mining in the vicinity of the complainants. It is shown to Dubetska and Others v. Ukraine which concerned pollution from a coal mine near the complainants. It is referred to Di Sarno and Others v. Italy which concerned health hazards and pollution from local waste accumulation. It is referred to Association Burestop 55 and Others v. France which concerned a lack of information according to EMF Article 10 regarding the planned storage center for radioactive waste. The court agrees that the cases substantiate that there are procedural investigation requirements, but cannot see that the circumstances of the case are comparable to this case.

The plaintiffs have also shown that courts in Germany, the Netherlands and Belgium apply the rights to greenhouse gas emissions. For this, the court refers in particular to the fact that the Supreme Court considered that the Urgenda case from the Netherlands was considered to have little transfer value, cf. HR-2020-1472-P paragraph 172-173. The Supreme Court pointed out that the case concerned the general emission targets that the Dutch government had set, and that there was thus no question of prohibiting a particular measure or possible future emissions. The Supreme Court also pointed out that it was not a case of a validity action against an administrative decision. The court cannot see that this assessment is different for PDO decisions. The court has not had sufficient grounds to assess

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whether the cases from Germany and Belgium have any greater transfer value.

The question of whether global greenhouse gas emissions can actualize Article 2 or 8 of the ECHR after an expansive interpretation of these provisions is the subject of three grand chamber cases that are being considered by the ECHR. This is evident, among other things, from the European Court of Human
Rights "Fact sheet - Climate change" from February 2023. This applies to the cases Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20), Carême v. France (no. 7189/21) and Duarte Agostinho and Others v. Portugal and 32 Other States (no.
39371/20). The EMD has postponed the processing of six other cases pending judgment in these Grand Chamber cases. This includes the appeal case against the plenary verdict from Norway, cf. Greenpeace Nordic and Others v. Norway (no. 34068/21). It is stated that the decisions will be made during 2024.

Against this background, the court assumes that the question will be further clarified by the ECtHR during 2024. This may mean that the current law in Norway is maintained, or it may mean that the scope of application of Articles 2, 8 and 14 of the ECHR is expanded in climate cases.

The Supreme Court has basically assumed that Norwegian courts must make an independent interpretation of the human rights convention, and in that connection use the same method as the ECHR. Among other things, the Supreme Court has stated in Rt 2005 p. 833 paragraph 45 that:

> Norwegian courts must therefore refer to the text of the convention, general purpose considerations and ECtHR's decisions. Nevertheless, it is primarily the ECtHR that will develop the convention. And if there is doubt about the understanding, when weighing up different
> interests or values, Norwegian courts must be able to draw in value priorities that form the basis of Norwegian legislation and legal opinion.

Even if Norwegian courts must make an independent interpretation of the convention, the court assumes that it is primarily the ECtHR that has the task of developing the convention, cf. also Rt 2000 p. 966 on pp. 1007-1008 and HR-2019-1206-A paragraph 104-105. According to the court’s view, there is thus, as of today, no basis for expanding the scope of application in climate matters until this has possibly been clarified by the EMD.

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The court's conclusion is, after this, that the decisions do not contravene Articles 2, 8 and 14 of the ECHR.

4. Order on preliminary injunction

4.7. The request for preliminary injunction

The plaintiffs have submitted a request that the court should issue a ruling on a preliminary injunction to secure the main claim. In the petition, the plaintiffs have made a principal claim that the
ministry is obliged to suspend the effect of the PDO decisions, and a subsidiary claim that the state is prohibited from making other decisions that require valid PDO approval until the validity of the decisions has been legally determined. The subsidiary claim is directed at the state as such because permits
and similar decisions based on PDO decisions are made by both directorates, ministries etc. which is subject to the state.

The state has argued that a demand to suspend the effect of PDO decisions requires that the court issues an order specifying that the state shall use its competence and how it shall be used, and that this would, therefore, constitute a substantive injunction. It has been shown that this will in reality be an order for reversal. The State has not raised a corresponding objection to the subsidiary claim.

The starting point is that the courts cannot make a decision on the merits unless there is special legal basis for this, and that this also applies to claims for an injunction, cf. Rt. 2015 page 1376 paragraph 27 and Rt. 2009 page 170 paragraph 52.

The expected start of production for Tyrving and Yggdrasil is 2025 and 2027, respectively, and this will require a decision on production permits etc. The subsidiary claim will thus be sufficient to secure the main claim with respect to these two fields.

Breidablikk was put into production in mid-October 2023. The latest production

permit is valid until and including 31 December 2024. The court cannot see that there is a legal basis for issuing an order to suspend the effect of PDO decisions, which in practice would be a request for reversal. However, further production after

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the last permit expires is necessary, and the court will therefore consider the subsidiary claim with respect to Breidablikk as well.

4.8. The main claim

A preliminary injunction can only be granted if the claim for which the injunction is requested has been proven, cf. the Norwegian Disputes Act section 34-2 first paragraph. The court has concluded that the PDO decisions for Breidablikk, Tyrving and Yggdrasil are invalid. The main claim has thus been proven. Reference is made to the assessments of this above

4.9. The basis for security

Furthermore, a preliminary injunction can only be decided if the basis for security has been proven, cf. the Norwegian Disputes Act § 34-2 first paragraph.

According to the court's assessment, it has been proven that "the defendant's conduct makes it necessary to preliminary secure the claim because the pursuit or implementation of the claim will otherwise be made significantly more difficult", cf. the Disputes Act section 34-1 first paragraph letter a). In the preparatory works, the implementation of an invalid administrative decision is mentioned as an example of unlawful conduct, cf. Ot.prp. no. 65 (1990-91) page 292. In the court's view, a preliminary injunction is necessary to ensure that no more production permits etc. are granted before the validity of the matter has been legally decided. In another case, the Supreme Court has decided that the right to request deferred implementation will not be sufficient, cf. HR-2007-716-U paragraph 37. The ministry and other state authorities have so far not acceded to such requests. Additionally, the court points out that a production permit for Breidablikk was granted despite the validity being under consideration, and despite the plaintiffs also having requested a preliminary injunction. The state did not inform about this until after the permit had been issued.

The court does not consider it necessary decide on whether the conditions for the basis of security are met according to the Disputes Act 34-1, first paragraph, letter b).

4.10. Balancing of interests

A preliminary injunction cannot be decided if the loss or inconvenience caused to the defendant is "clearly disproportionate" to the interests the plaintiffs have in the injunction being granted. A natural understanding of the wording implies that a

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specific balancing of interests should be carried out, and that the threshold is high if the conditions for preliminary injunction are otherwise met

In this regard, the State has particularly pointed to the investment costs, and that, for example, a one-year delay for Breidablikk will be an estimated NOK 2.5 billion. The court refers to the assessment of the investment costs made during the balancing of interests, as already conducted in the impact assessment in point 3.7.6.

The court sees reason to repeat that the environmental impact assessment obligation does not prevent the authorities from making desired political decisions. The environmental impact assessment shall ensure that the case-proceedings are sound, that the decision-making basis is informed, verifiable and accessible. This is to safeguard democratic participation in decisions about the environment. In the court's view, the injunction is to ensure that no further permits are granted before the validity issue is legally decided, so that these considerations can be taken care of.

For the sake of clarity, the court notes that this judgment and ruling only have legal effect for these three fields,
and not for other activities on the Norwegian continental shelf. The state has stated that the production from
Breidablikk constitutes 1-2 percent of Norway's oil production today and thus, it concerns a limited portion of the total production.

The subsidiary claim does not imply an immediate halt for Breidablikk. It does not prevent production in accordance with the present permit up to and including 31 December 2024.

The expected start of production for Tyrving and Yggdrasil is not until 2025 and 2027, respectively. The court cannot see that a preliminary injunction is disproportionate in this time perspective.

In the specific balancing of interests, the court has also considered the recommendations from the public committee, which has proposed a temporary halt in new permits for exploration or extraction, and that no investment be made in new activity until a comprehensive strategy for the phasing out of Norwegian petroleum activities, cf. NOU2023: 25. It appears on p. 171 of this report that:

> The current activity on the Norwegian continental shelf justifies introducing a momentary pause now. Due to the oil tax package that was given in 2020,

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there is, in any case, an expectation of a very high level of investment in oil and gas extraction on the Norwegian continental shelf in the coming years. Thus, a pause in decisions regarding exploration and investments not directly related to existing installations will not pose a challenge to European energy security.

Overall, the court has come to the conclusion that the loss or inconvenience caused to the state is not clearly disproportionate to the interest the plaintiffs have in having an injunction being decied.

The court's conclusion is that the request for a preliminary injunction is accepted by prohibiting the state from making other decisions that require valid PDO approval for Breidablikk, Yggdrasil and Tyrving until the validity of the decisions has been legally determined.

5. Case cost

In the main case, the plaintiffs have been fully upheld in their principal claim that the decisions are invalid because combustion emissions and that it has not been conducted an environmental impact assessment. The plaintiffs have also been successful in the subsidiary claim in the injunction case. The court therefore assumes that the plaintiffs have been fully or substantially successful in both the main case and the injunction case. This means that the claimants are considered to have won the case, and are basically entitled to full compensation for their legal costs from the other party, cf. Disputes Act § 20-2 subsection one, cf. subsection two.

The plaintiffs' attorney has submitted a statement of costs where the total claim is NOK 3,260,427 incl. VAT. Of this, the fee requirement for the legal representative and others is NOK 3,000,562 incl. VAT, while the rest is related to travel expenses and costs for five of the expert witnesses. No claim has been made for costs for three of the expert witnesses. This applies to Helge Drange, Dag Hessen and Wim Thiery. The court assumes that this has been a labor-intensive and complex case for the legal representative and others. both during the case preparation and the main hearing. In the court's view, the expert witnesses have also shed light on the disputed subject of the case. Overall, the court has therefore come to the conclusion that the costs must be considered reasonable and necessary in connection with the case, cf. the Disputes Act § 20-5.

The court has considered whether there is a basis for making an exception to the

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general rule of full compensation according to Disputes Act § 20-2 subsection three, but cannot see that this is applicable. This is not stated by the Government either.

The court's conclusion is, after this, that the Government by the Ministry of Energy is sentenced to pay NOK 3,260,427, incl. VAT. in compensation for legal costs to the plaintiffs. In addition, there is also the court fee.

The judgment has not been handed down within the statutory deadline, cf. Disputes Act | 19-4 subsection five. This is due to the scope and complexity of the case, the Christmas holiday and other tasks.

END

In judgment on the main case:
1. The Ministry of Energy's decision on 29 June 2021 on approval of the PDO for Breidablikk is invalid.
2. The Ministry of Energy's decision on 5 June 2023 on approval of the PDO for Tyrving is invalid.
3. The Ministry of Energy's decision on 27 June 2023 on approval of the PDO for respectively Munin, Fulla and Hugin (Yggdrasil) are invalid.

In the ruling on the injunction case:
1. The Government is prohibited from making other decisions that require valid PDO approval for Breidablikk until the validity of the PDO decision has been legally determined.
2. The Government is prohibited from making other decisions that require valid PDO approval for Tyrving until the validity of the PDO decision has been legally determined.
3. The Government is prohibited from making other decisions that require valid PDO approval for Yggdrasil until the validity of the PDO decisions has been legally determined.

In both cases:
1. The Government represented by the Ministry of Energy is ordered to pay 3,260,427 - three million one hundred and sixty one four hundred and eighty seven - kroner including VAT. and with the addition of the court's fee in compensation for legal costs to Greenpeace Nordic and Nature and Youth within 14 - fourteen - days from service of this judgment.

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The court is adjourned

[redacted]