OSLO TINGRETT

JUDGMENT AND RULING

Pronounced on: 18.01.2024 in Oslo District Court

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

Judge: District Court Judge Lena Skjold Rafoss

Issue: Claim for judgment declaring for invalid the approval of the plan for the development and operation (PDO) of an oil field and petition for a temporary injunction

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Greenpeace Nordic Nature and Youth Norway	Counsel Jenny Arge Sandvig Counsel Jenny Arge Sandvig Counsel Camilla Hagelien (legal assistant)
v.	
The Norwegian Government represented by the Ministry of Energy	Counsel Gøran Østerman Thengs Counsel Omar Saleem Rathore (legal assistant)

Content

JUDGMENT

This case concerns the validity of the Ministry of Petroleum and Energy's administrative decision to approve 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 the following, the Court will use both names or just "the Ministry".

1 Background to the case

1.1 General information about the issue in dispute

The regulation of Norwegian petroleum activities can be divided into three phases: the opening of fields, the exploration phase and the production phase. This case concerns the decisions made in the final phase, i.e. the production phase. In this phase, the companies must 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 requires an approved PDO.

There are currently 93 fields in production on the Norwegian continental shelf. In autumn 2023, there were 26 ongoing development projects. Of these, 15 are new field developments, while 11 are modifications 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 undergone an impact assessment by the companies that are operators and licensees for the fields. However, these impact assessments do not include combustion emissions from the oil and gas that is produced. The issue is therefore whether it is a legal requirement that an impact assessment of combustion emissions must be carried out in connection with the approval of a plan for development and operation pursuant to Section 4-2, second paragraph of the Petroleum Act (cf. Section 22a of the Petroleum Regulations), interpreted in light of Article 112 of the Norwegian Constitution, and pursuant to the EIA Directive. It has not been argued that the impact assessments that have been carried out contain deficiencies with regard to other matters. The plaintiffs argue that combustion emissions ought to have been included in the 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 impact assessments.

The plaintiffs have alternatively argued that the decisions are in breach of the duty of assessment and justification pursuant to Articles 2, 8 and 14 of the ECHR. The plaintiffs have also argued that the decisions contain errors because the best interests of the child have not been assessed and evaluated, and that the decisions therefore are contrary to Article 104 of the Norwegian Constitution and Articles 3 and 12 of the UN Convention on the Rights of the Child. In addition, the plaintiffs have argued that the decisions are based on incorrect facts and indefensible forecasts.

The plaintiffs have submitted a request for a temporary injunction to secure the claims until the validity of the decisions 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 plenary judgment in the case between Greenpeace Nordic and Natur og Ungdom (Young Friends of the Earth Norway) v. the Norwegian State 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 licences 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 held that Article 112 of the Norwegian Constitution only to a very limited extent gives citizens individual rights that can be reviewed by the courts. 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 pursuant to Article 112 of the Norwegian Constitution, and that the decision was not contrary to Article 93 of the Norwegian Constitution and Article 2 of the ECHR, or Article 102 of the Norwegian Constitution and Article 8 of the ECHR. A majority of 11 judges concluded that the decision was also not invalid due to procedural errors. The minority of four judges held that the climate impact had been insufficiently assessed in the impact assessment before the opening of the Barents Sea South-East, and that this must lead to invalidity.

The parties disagree on the interpretation of this judgment. The plaintiffs argue that the judgment must be understood as meaning that the Supreme Court has assumed that combustion emissions must undergo an impact assessment before a decision is made to approve a PDO. The Ministry of Petroleum and Energy has argued, among other things, that the plenary case concerned production licences, and that the Supreme Court did not need to evaluate the case processing and the obligation to conduct an 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 subject to requirements for an impact assessment, pursuant to neither the Norwegian Petroleum Regulations nor the EIA Directive. The Court will return to the interpretation of this judgment.

1.3 The Ministry's adjustment of its course following the Supreme Court's plenary judgment

On 18 March 2022, the Norwegian National Human Rights Institution (NIM) submitted a report called "Article 112 of the Norwegian Constitution and the 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 Article 112 of the Norwegian Constitution can give the State the right and an obligation to refuse plans for development and operation for climate and environmental reasons, 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 may be illegal" has been presented to the Court. The article states that Professor Ole Christian Fauchald believes that the State has a duty to assess the climate impact of Norwegian oil and gas, including emissions abroad, 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 judgment. He pointed out that this obligation to carry out an impact assessment, which was mentioned 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 impact before approving developments. He explained that the Ministry had made a schematic calculation using 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 impact assessment. He received support from Professor Sigrid Eskeland Schütz. She specified that an impact assessment is always carried out by the operator, and not by the Ministry, and that it must be presented to the public for comment and input. She pointed out 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 after 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 had been granted before the Ministry had

considered 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 processing of this case". It was further stated that, as a result of the plenary judgment, the Ministry would adjust its case processing. 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 case processing was also discussed in the white paper Report no. 11 to the Storting (2021-2022) – Supplementary report to Report no. 36 to the Storting (2020-2021) and was considered by the Storting in Recommendation no. 446 to the Storting (2021-2022). It was stated in the press release that the Ministry had adjusted the case processing 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 judgment, the Ministry had assessed whether the judgment called for an adjustment in the processing of applications for approval of plans for development and operation, and if so, what changes should be made. As a result, the case processing had been adjusted from autumn 2021 onwards. The Ministry stated that since then, 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 intended to complement the more general assessments of combustion emissions in the formulation 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 by the Ministry, the Ministry's assessments of combustion emissions would be included in the case presentation to the Storting. The Ministry stated that it would calculate gross combustion emissions based on published emission factors and expected recoverable resources in the PDO. It was stated that this gross calculation would form the basis for the Ministry's assessment vis-à-vis Article 112 of the Norwegian Constitution. If a PDO has recoverable resources in excess of 30 million standard cubic metres of oil equivalents, the State 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 Article 112 of the Norwegian 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 analyses 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 relating to combustion emissions, and that this is best ensured if the Ministry itself performs the assessments. The Ministry clarified that these assessments thus differ from 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 Directive does not require an assessment of combustion emissions in other countries as part of an impact assessment for a PDO.

The adjustment of the case processing 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 exceeding 30 million standard cubic metres of oil equivalents. However, the Ministry would not assess the climate impacts of combustion emissions, with regard to neither gross emissions nor net emissions. In order to be able to estimate net combustion emissions, the Ministry commissioned a report from the company Rystad Energy AS in mid-November 2022, following a tender competition. The report was to cover 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. In its report dated 15 February 2023, Rystad Energy AS concluded 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 did not undergo an ordinary public consultation. The Ministry sent out the report for "specialist input" with a deadline of eight working days. The Ministry refused requests for an extended response deadline. Statistics Norway and several environmental protection organisations provided specialist input within the deadline, and criticised the report.

Vista Analyse subsequently prepared a report on behalf of WWF, Friends of the Earth Norway, Natur og Ungdom (Young Friends of the Earth Norway), and Greenpeace. The company had participated in the Ministry's tender competition but had not been awarded the contract. 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 processing rules

The Storting has been presented with the Ministry's adjusted case processing 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 white paper Report no. 11 to the Storting (2021-2022) – Supplementary report to Report no. 36 to the Storting (2020-2021) Energy for work – long-term value creation from Norwegian energy resources. A further account was given to the Storting's Standing Committee on Energy and the Environment in connection with the Committee's consideration of the white paper. The white paper was considered in Recommendation no. 446 to the Storting (2021-2022), and the Storting adopted the Government's proposal.

The Ministry's adjusted case processing rules have 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 Human Rights Institution (NIM) (cf. Recommendation no. 425 to the Storting (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 Change Act. Attached to the Committee's proposal to the Storting was also a legal opinion from Professor Eivind Smith of 16 May 2022, on the interpretation of Article 112 of the Norwegian Constitution, including, among other things, what requirements Article 112 of the Norwegian Constitution is assumed to make for the assessment of combustion emissions at the PDO stage. The Court will revert to this matter.

The recommendations from NIM also formed the basis for a private members' bill to revoke consent for development production licenses on the Norwegian continental shelf (cf. DOK 8:236 to the Storting (2021-2022)). NIM gave written input to the Storting in connection with the bill, and recommended, among other things, that "the global climate impacts of combustion emissions from exported Norwegian oil and gas must be subject to an 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 Human Rights Institution". However, the majority of the Standing Committee on Energy and the Environment rejected the proposals, and approved the Ministry's current case processing (cf. Recommendation no. 433 to the Storting (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. Proposition no. 97 to the Storting (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 remaining carbon budget for the 1.5 degree target, in line with the Supreme Court judgment in 2020 and the Norwegian National Human Rights Institution's recommendations" (cf. Recommendation no. 459 to the Storting (2022- 2023)). The proposal was rejected by the majority of the committee.

1.5 The specific case processing

1.5.1 Introduction

All the relevant decisions in this case were made following the Supreme Court's plenary judgment of 22 December 2020 (cf. HR-2020-2472-P). The administrative 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. As a result, no impact assessment or other assessment of combustion emissions were carried out for the Breidablikk field, nor is this mentioned in the decision. The decisions on the plans for development and operation for Tyrving and Yggdrasil were made after the Ministry's "course adjustment". Combustion emissions are discussed and assessed in the actual decision on the PDO for Tyrving, but no further impact assessment has been carried out. In the case of Yggdrasil, combustion emissions are mentioned in the case submission to the Storting, as well as discussed and assessed in the decision on the PDO, but no further impact assessment has been carried out. In the following, the Court will provide a more detailed account of the specific case processing in connection with Breidablikk, Yggdrasil and Tyrving.

1.5.2 Breidablikk

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

The latest impact assessment for Breidablikk is from 2013. Combustion emissions have not been included in the 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 Petroleum

and Energy granted a production licence on 13 October 2023. It appears from the production licence that it applied from 15 October 2023 to 31 December 2023. Start-up of production means that the field has started producing petroleum for sale to the market. New production licences are applied for every year (cf. Section 4-4, third paragraph of the Petroleum Act). On 18 December 2023, the Ministry of Petroleum and Energy made a decision on a production licence 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 an oil-only field in the North Sea. Recoverable reserves are estimated at around 4.1 million standard cubic metres of oil equivalents. Production is expected to start in 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 on the field. The programme for impact assessment was submitted for public consultation by the operator Aker BP ASA on behalf of the licensees in January 2020. The Ministry of Petroleum and Energy approved the programme 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 licensees. Combustion emissions have not been part of this 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). Recoverable reserves are estimated at around 140 standard cubic metres 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 billion. Production is expected to start 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 threshold, the matter was submitted to the Storting on 31 March 2023 as a proposition (cf. Proposition no. 97 to the Storting (2022-2023)).

This was considered by the Standing Committee on Energy and the Environment, which presented its recommendation on 25 May 2023 (cf. Recommendation no. 459 to the Storting (2022-2023)). The majority of the Committee recommended that the Storting should consent to the Ministry making a decision to approve the plan for development and operation. On 6 June 2023, the Storting passed 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 Brief presentation of the parallel proceedings in 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 admitted for consideration as an "impact case". This means that it may have great significance. The plaintiffs have argued before the ECtHR, among other things, that Articles 2 and 8 of the ECHR require that an 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 for the climate impact of combustion emissions to be assessed at the PDO stage. The Office of the Attorney General responded on behalf of Norway on 26 April 2022. The Office of the Attorney General referred to the majority ruling in the plenary judgment, 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 Office of the Attorney General summarised this in paragraph 116 as follows:

> Accordingly, potential emissions from combustion of petroleum extracted and exported will be addressed 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.

The Office of the Attorney General further stated in paragraph 118 that the plaintiffs' arguments would be "realistically taken into account" at the PDO stage.

On 10 October 2022, the ECtHR 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 temporary injunction from Greenpeace Nordic and Natur og Ungdom (Young Friends of the Earth Norway) against the Norwegian State represented by the Ministry of Petroleum and Energy. Due to the summer holidays, the time limit for submitting a response was set to 29 June 2023. At the same time, the Court contacted the Office of the Attorney General with a view to scheduling the main hearing. In mid-August 2023, the Office of the Attorney General requested postponement of the response deadline until 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 temporary 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 temporary injunction case regarding Breidablikk. The Court asked that the State provide a specific account of what the start of production entailed. The State explained 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 metres per day in the period from 15 October until the end of the year, and that this corresponds to 1-2% of Norwegian oil production in this period. The State noted that 15 October 2023 could not be considered a decisive cut-off point making an immediate injunction necessary. The State further noted that if the Court concluded that the conditions for a temporary 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 need for proper case processing.

On 13 October 2023, the plaintiffs submitted a request for the Court to appoint experts (cf. Section 25-2 of the Disputes Act). 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 State 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. The plaintiffs then 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 submitted a few days after the deadline for completion of case preparation, and the State therefore submitted a request for exclusion of evidence. The petition was rejected by the District Court's order of 21 November 2023.

On 28 November – 6 December 2023, the main hearing was held in Oslo District Court. The entire main hearing was live-streamed (cf. Section 124a of the Courts Act). The head of Natur og Ungdom (Young Friends of the Earth Norway) and the head of Greenpeace Norway gave their statements. Following a request from the plaintiffs, a department director in the Ministry of Petroleum and Energy also gave a statement. A total of nine expert witnesses were called. Reference is further made to the court record.

2 The parties' arguments and claims

2.1 The plaintiffs' arguments

In the following, the Court will give an overview of the arguments from the plaintiffs, Greenpeace Nordic and Natur og Ungdom (Young Friends of the Earth Norway).

The core concerns of this case are the legal rules that the Supreme Court has clarified in a plenary judgment, but which the Ministry of Petroleum and Energy does not comply with. These legal rules require an impact assessment. This is important to ensure democratic participation in decisions that may affect the environment, and to ensure an informed and correct basis for decision-making. The failure to conduct an 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 the public has not had the opportunity to influence what is investigated through hearings. Several of the decisions are, by extension, based on incorrect facts and indefensible forecasts.

Firstly, the decisions are invalid because the lack of impact assessment of the combustion emissions is in breach of Section 4-2 the Petroleum Act (cf. Section 22a of the Petroleum Regulations) interpreted in the light of Article 112, second paragraph, of the Norwegian Constitution. Section 22a of the Petroleum Regulations requires an impact assessment of "emissions to [...] the air". The expression includes emissions of greenhouse gases during combustion (cf. HR-2020-2472-P, paragraph 218; cf. also paragraphs 216, 241, and 246). A unanimous Supreme Court in plenary has clarified that an impact assessment of combustion emissions must normally be assessed before making an administrative decision on a 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 impact assessment of combustion emissions) are based on serious procedural errors. The error is serious because the impact assessment regime with hearings is intended to safeguard the citizens' right to knowledge of the effects of a planned environmental intervention, as well as ensure that administrative decisions are made on a sound and informed basis (cf. Article 112, second paragraph, of the Norwegian Constitution; cf. HR-2020-2472-P, paragraph 183). This error leads to invalidity. There is a "not entirely remote possibility" that the error may have affected the result (cf. Section 41 of the Norwegian Public Administration Act; cf. Rt-2009-661, paragraph 71). Due to the environmental and democratic considerations that the impact assessment regime is intended to safeguard, the road to invalidity "could be short when the procedural error consists in a lack of or inadequate impact assessment" (cf. Rt-2009-661, paragraph 72). In contrast to the majority's assessment at the opening and exploration stage in HR-2020-2472-P, the lack of assessment in this last stage of the process can no longer be repaired. In any case, the procedural rules in this area must be "enforced particularly strictly" (cf.

Recommendation no. 2 to the Odelsting (1966-1967) p. 16, cf. the minority in HR-2020-2472-P, paragraph 279). The State must have the burden of proof that the error is insignificant.

Secondly, the administrative decisions are invalid as a result of insufficient impact assessment pursuant to the Article 4.1 of the EIA Directive (cf. Article 3.1). The Directive requires that the 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 Court of Justice of the European Union has clarified that the scope of the Directive 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 impacts 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 obligation to conduct an impact assessment pursuant to the corresponding SEA Directive. Non-compliance with the obligation to conduct an impact assessment pursuant to the EIA Directive entails invalidity.

Thirdly, the administrative decisions are invalid because the lack of impact assessment of potential harmful effects on life and health from the combustion emissions violates Articles 2 and 8 of the ECHR, both in isolation and read in conjunction with Article 14 of the ECHR. The emissions will increase the average temperature and exacerbate climate-change-attributable extreme weather events that are already taking lives in Norway due to the ongoing global warming. The provisions thus apply. According to ECtHR practice, case processing relating to environmental impacts must be based on "appropriate investigations and studies". Such studies should make it possible to predict and assess possible impacts 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 is emptied of content. None of these requirements is satisfied here. Violation of the ECHR automatically results in invalidity.

Fourthly, the administrative decisions are invalid because the long-term consequences of the developments for living children in Norway have neither been investigated nor assessed (cf. Article 104, second paragraph, of the Norwegian Constitution and Article 3 of the UN Convention on the Rights of the Child). The developments will exacerbate climate change with effects for living children beyond 2120. The emissions will also use up much of the remaining carbon budget, thereby increasing the future burden of cuts for living

children. 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 of combustion on children's rights also in the long term. In other cases, the Supreme Court requires that the best interests of the child have been properly assessed and weighed up against any opposing considerations and that it is stated in the decision that importance has been attached to the best interests of the child as a fundamental consideration (cf. Rt-2012-1985, paragraph 149 and HR- 2015-2524-P, paragraph 169). None of the administrative decisions has considered the best interests of children. This error also leads to invalidity.

The administrative 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 of the 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 administrative decision for Tyrving, it is stated that calculations of the maximum emissions from Tyrving – 11.25 million tonnes of CO2e – "are not contrary to Article 112 of the Norwegian Constitution". The assessments are the result of an incorrect factual premise that the combustion emissions will not affect the extent of climate change in Norway or have a measurable impact on climate change in Norway. This is contrary to established climate science. The factual error is significant and leads to invalidity (cf. Section 41 of the Public Administration Act).

The administrative decisions for Yggdrasil and Tyrving are also invalid because they are based on indefensible forecasts. The plaintiffs dispute that assumptions about market effects in other countries, so-called "net effects", are to be regarded as indirect environmental impacts pursuant to Section 22a of the Petroleum Regulations and Article 3.1 of the EIA Directive. The assumptions are too derivative, speculative and uncertain for that (cf. Section 9 of the Nature Diversity Act). In the event that such assumptions are nonetheless relevant, it is stated that the forecast on which the Ministry has based the market effects for Yggdrasil is indefensible. Correspondingly, the forecast in the calculation for Tyrving is indefensible. The error leads to invalidity (cf. Section 41 of the Public Administration Act).

The plaintiffs have a legal interest in the injunction case vis-à-vis the Norwegian State (cf. Section 1-3 of the Disputes Act). The conditions for an injunction have been met. The main claim of invalidity has been rendered probable (cf. Section 34-2, first paragraph, of the Disputes Act). There are grounds for securing the claim (cf. Section 34-1, first paragraph, (a) and (b), of the Disputes Act). The defendant's conduct necessitates temporary securing of the claim because the implementation would otherwise be "considerably impeded" (cf. (a), cf. HR-2007-716-U, paragraph 37). It is pointed out that the State represented by the Norwegian Petroleum Directorate and the Norwegian

Environment Agency has 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 avert "considerable loss or inconvenience" from the extraction of 11, 87 and 365 MtCO2e respectively from the fields (cf. (b)).
In this context, grounds for securing the claim does not mean that there are grounds for securing any other domestic greenhouse gas emissions, as the State has claimed. Firstly, the emissions originate from unlawful administrative decisions. Secondly, Section 34-1 of the Disputes Act, first paragraph (b) precludes losses and inconveniences that are not considerable. The decisions in question 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. 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 clearly disproportionate to the interests of the claimants in the interim measure being granted (cf. Section 34-1, second paragraph, of the Disputes Act). 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 Section 4, second paragraph, of the Climate Change Act that greenhouse gas emissions in Norway must be reduced by "90 to 95 percent". An interim measure will ensure the democratic considerations on which the Supreme Court's interpretation of Article 112, second paragraph of the Norwegian Constitution rests, the rule of law considerations and considerations of predictability that compliance with precedents from the Supreme Court must safeguard (cf. Article 88 of the Norwegian Constitution), and the environmental considerations that have given rise to duty to conduct impact assessments.

2.2 The plaintiffs' claim

The plaintiffs, Greenpeace Nordic and Natur og Ungdom (Young Friends of the Earth Norway), 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 Munin, Fulla and Hugin (Yggdrasil), respectively, is invalid.

4. Greenpeace Nordic and Young Friends of the Earth Norway are awarded legal costs.

The injunction case:

1. The Norwegian State, represented by the Ministry of Petroleum and Energy, is ordered to suspend the effects of the decision of 29 June 2021 on approval of the PDO for Breidablikk until the validity of the decision has been legally determined.
2. The Norwegian State is prohibited from making other decisions that presuppose a valid PDO approval for Breidablikk until the validity of the PDO decision has been legally determined.
3. The Norwegian State, represented by the Ministry of Petroleum and Energy, is ordered to suspend the effects of the decision of 5 June 2023 on the approval of the PDO for Tyrving until the validity of the decision has been legally determined.
4. The Norwegian State is prohibited from making other decisions that presuppose a valid PDO approval for Tyrving until the validity of the PUD decision has been legally determined.
5. The Norwegian State, represented by the Ministry of Petroleum and Energy, is ordered to suspend the effects 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 Norwegian State is prohibited from making other decisions that presuppose a valid PDO approval for Yggdrasil until the validity of the PDO decisions has been legally determined.
7. The Greenpeace Nordic and Young Friends of the Earth Norway are awarded legal costs.

2.3 The defendant's arguments

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

The Norwegian State holds that the administrative decisions are valid. The impact assessments are in line with current regulations, and there is no basis for imposing additional impact assessment requirements or justification obligations. Furthermore, the administrative decisions are not based on incorrect facts or indefensible forecasts. Regardless, any errors cannot have affected the decisions and thus cannot lead to invalidity (cf. Section 41 of the Public Administration Act). The same result follows from a balancing of interests.

The administrative decisions are not invalid as a result of an inadequate impact assessment. Pursuant to Section 4-2, second paragraph, of the Petroleum Act, a PDO must "contain a description of [...] commercial and environmental aspects". This includes a requirement for an impact assessment that must be "seen in the light of the requirements set out in both

national and international regulations for impact assessments including, among other things, the provision in Article 110 b of the Constitution" (cf. Proposition no. 43 to the Odelsting (1995–1996) p. 41–42). Supplementary rules on what must be included in such an impact assessment are laid down in Section 22a of the Petroleum Regulations. The provision implements the requirements of the EIA Directive, which means that it is the requirements of the Directive that determine the content of an impact assessment carried out in accordance with Section 22 a of the Petroleum Regulations.

Pursuant to Article 3 (1) of the Directive, an 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 Article 3 (1) a, c and d). The same is also laid down in Section 22 a, first paragraph, of the Petroleum Regulations. The scope of the obligation to conduct an impact assessment is limited to the consequences of a "project". The term project is defined in Article 1 (2) (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 in the Directive the term "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 (2) (c)). The Norwegian Petroleum Act defines "the project" as "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 Articles 4 and 5).

Accordingly, it is the environmental consequences of the actual development and operation that must be investigated. This is evident from Section 22 a of the Petroleum Regulations, which states that an impact assessment at the PDO stage must "state the reasons for the effects that the development may have on commercial activities and environmental aspects, including measures to prevent and remedy such effects". Furthermore, it states that the impact assessment must describe "describe the environment which may be significantly affected, consider and make a balanced judgment with regard to the environmental impact of the development". This refers to the development and production emissions that development and operation will have in Norway. This is supported by section 4.8 of the PDO guidelines, which operationalises the obligation to conduct an impact assessment, 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 aspects, both during the development period (developments, installation and drilling), operation and termination of the activity ".

Emissions from the share of Norwegian exported petroleum that later ends up being burned are actually causally related to development and operation in Norway. Legally, however, such emissions are not "indirect effects of a project" pursuant to the EIA 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' possible combustion of the products they buy. According to the Norwegian State, the fact that the Directive does not include this type of derived effects follows from a natural and contextual interpretation of the Directive (cf. also the Petroleum Regulations and chapter 4 of the PDO guidelines). As far as the State is aware, there are no decisions from the Court of Justice of the European Union that support the plaintiffs' view of the almost unlimited scope of the Directive. Nor is the State aware of any countries practising the Directive in the way the plaintiffs believe it should be understood. A broad interpretation of the Directive does not mean that the words "indirect effects of a project" can be given a different meaning than that which clearly follows from the wording of the Directive.

Nor can a requirement to investigate combustion emissions be derived from Section 4-2 of the Petroleum Act, Section 22a of the Petroleum Regulations, the wording of Article 112, second paragraph, of the Norwegian Constitution or administrative practice. The plaintiffs' statement is thus based exclusively on certain formulations in HR-2020-2472-P. The State believes that the judgment – when read in its entirety – does not provide a basis for the conclusions on which the plaintiffs base their view. It was not necessary for the Supreme Court to rule on which, if any, assessment requirements apply at the PDO stage pursuant to Section 4-2 of the Petroleum Act. Among the specific issues that the Supreme Court had to consider in a preliminary ruling was the environmental organisations' claim that there is a requirement to investigate combustion emissions prior to deciding to open an area for petroleum activities pursuant to Section 3-1 of the Petroleum Act. The majority came to the conclusion that no such requirement applies at 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. In the way that the case was presented by the environmental organisations, the Supreme Court had no basis for generally clarifying which case processing requirements apply at the PDO stage, as this was a peripheral issue. It is incorrect for the plaintiffs to present it as if the State should have been successful in its claim that such a requirement applies at the PDO stage. On the contrary, the State argued 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 Article 112, second paragraph, of the Norwegian Constitution, it must be up to the Storting to decide in which context it should then be investigated. The State's view was that in that case this should be done 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 organisations did not argue that "the environmental impact assessment must contain extensive research» but claimed that an

assessment "should have pointed out and assessed the effect of combustion abroad". The Supreme Court's assessment of this argument was that "in addition to the known effects of burning petroleum", it was "difficult" to see what such an assessment should contain in concrete terms. In the current case, the plaintiffs present a more comprehensive argument than they did before the Supreme Court, with demands for a far-reaching programme for impact assessment in connection with each individual PDO that cannot be anchored in HR-2020-2472-P, even in the event that the Supreme Court has intended to interpret a minimum requirement to assess combustion emissions. The Storting has rejected a number of proposals for comprehensive impact assessment rules that the plaintiffs now argue follow from current law (see Recommendation no. 425 to the Storting (2021-2022), Recommendation no. 433 to the Storting (2021-2022), Recommendation no. 446 to the Storting (2021-2022) and Recommendation no. 459 to the Storting (2022-2023)). Since there is no requirement to conduct an impact assessment of emissions from combustion abroad in connection with an application for or approval of a PDO, the State's view is that there are no shortcomings in any of the 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 State'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 processing rules for PDO applications received after HR-2020-2472-P will, according to the State, ensure full compliance with any minimum requirements pursuant to Article 112, second paragraph, of the Norwegian Constitution. Reference is also made to the Storting's approval of the adjusted case processing rules in Recommendation no. 433 to the Storting (2021-2022) and Recommendation no. 446 to the Storting (2021-2022). According to the State, the fact that, at the time of the PDO processing for Breidablikk, the assessment of the need to make any adjustments to the processing of PDO applications had not been completed has no bearing on the validity of the Breidablikk decision.

Any shortcomings in the impact assessments do not in any case lead to invalidity. The fact 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 some considerable time been rooted in the principles on which the states of the world states have agreed 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 debated 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. For several decades now, the State's policy has been that measures to reduce global emissions and harmful effects thereof must be implemented in other ways than by reducing or stopping petroleum extraction (see also HR-2020-2472-P, paragraph 243). The State is of the opinion that in order to reach the global climate goals, the world must manage to replace fossil energy with renewable energy through measures to reduce demand.

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

Nor are the administrative 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 be in defiance of Article 112 of the Norwegian Constitution. To the extent that the plaintiffs disagree with this legal assessment, the plaintiffs could claim that the decision is invalid as a result of an error in the application of law. The plaintiffs have not done so, but rather have constructed a fact that cannot be inferred from the decisions, and instead claim invalidity based on this allegedly incorrect fact. Regardless, any errors of fact on this point cannot have affected the content of the decisions.

The administrative decisions are not based on indefensible "forecasts". The decisions are not based on a "forecast" of specifically quantified net effects. Of the administrative decisions challenged 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 presentation of the matter to the Storting, it was explained that there was disagreement among the specialists about the assumptions used in the calculations, and how the input submitted by several of the parties that the plaintiffs now bring as expert witnesses, "serves to highlight the uncertainty associated with calculations of net greenhouse gas emissions, and thus whether new development projects on the Norwegian continental shelf would contribute to increased, unchanged or lower global net emissions" (cf. Proposition no. 97 to the Storting (2022-2023), sections 4.4 and 7.5, among

others). The plaintiffs seem to think that, as a matter of principle, probable net effects should be disregarded, but the expert witnesses called by the plaintiffs also assume global net effects that will always be lower than maximum gross emissions. However, even if net effects were to be completely disregarded, the Ministry's legal assessment against Article 112 of the Constitution would remain unchanged. In the event that the Court were to agree that the PDO decision for Yggdrasil is based on a forecast that is indefensible, it is in any case not an error that could have been decisive for the content of the decision. 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. Recommendation no. 459 to the Storting (2022-2023)).

According to the State, the ECHR does not apply. In order for Article 2 or 8 of the ECHR to be applicable, there is first a requirement that a party, as a legal entity, is directly and personally affected by the risk of the consequences of an act or omission. The environmental organisations are not protected under Article 2 or 8, and are not legal entities even if organisations under Norwegian law have a procedural right of action pursuant to Section 1-4 of the Disputes Act (cf. HR-2020-2472-P, paragraph 165). Nor are the rights collectively enforceable and they cannot be invoked by the organisations on behalf of the 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 previous 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 paragraph 171 (Article 8)). The question of whether global greenhouse gas emissions can be linked to 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 ECHR (see for example Rt-2005-833). In the event that the ECHR should be applied, the State’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.

Nor is there, in the State’s view, any legal basis for establishing any obligation to make a concrete assessment of the best interests of the child in connection with the processing of PDO applications pursuant to Section 4-2 of the Petroleum Act (cf. Article 104, second paragraph, of the Norwegian Constitution; cf. Article 3 of the UN Convention on the Rights of the Child). Any inadequate assessment of combustion emissions pursuant to the ECHR or inadequate justification pursuant 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. According to the State, an injunction that requires the Court to order that the State suspend the effect of PDO decisions that have come into force will also involve an injunction in substance, which is not permitted. In any case, the State is of the opinion that no error relating to the PDO decisions that could lead to invalidity has been rendered probable, and thus a main claim has not been rendered probable (cf. Section 34-2, first paragraph, of the Disputes Act). The State further believes that there is also no probable cause for securing the claim, pursuant to either (a) or (b) of Section 34-1 of the Disputes Act. The State finds that the financial loss from a temporary injunction, in line with the plaintiffs' claim, will in any case be clearly disproportionate to the plaintiffs' interest in the injunction (cf. Section 34-1, second paragraph, of Disputes Act).

2.4 The defendant's claim

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

The main claim:

1. The Norwegian State, represented by the Ministry of Petroleum and Energy, is acquitted.
2. The Norwegian State, represented by the Ministry of Petroleum and Energy, is awarded legal costs.

The injunction case:

To the petitions for an injunction that requires that the State "be ordered to suspend the effect of" the PDO decisions for Breidablikk, Tyrving and Yggdrasil respectively:

1. Principally: The petitions are rejected.
2. Subsidiarily: The petitions are not allowed.

To the petitions for an injunction that requires that the State is "be prohibited from making other administrative decisions that require valid PDO approval" for Breidablikk, Tyrving and Yggdrasil respectively:

3. The petitions are not allowed.

In any case:

4. The Norwegian State, represented by the Ministry of Petroleum and Energy, is awarded legal costs.

3 The Court's assessment

3.1 The Court's conclusion

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

The Court finds that there is a legal requirement to assess the environmental impact of combustion emissions pursuant to Section 4-2 of the Petroleum Act (cf. Section 22a of the Petroleum Regulations), interpreted in the light of Article 112 of the Norwegian Constitution. This also follows from Article 4 (1) of the EIA Directive (cf. Article 3 (1)). No impact assessment of combustion emissions has been carried out in connection with the administrative decisions in question. Impact assessment is a crucial element in the decision-making, to ensure an informed and correct basis for the administrative decisions. An 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 impact assessment of combustion emissions and climate effects led to the Court's conclusion on declaring the administrative decisions invalid.

The Court emphasises that a number of circumstances suggest that the administrative decisions for Yggdrasil and Tyrving are based on incorrect facts and an indefensible forecast. However, the Court has not had sufficient grounds to decide whether this in itself implies that the administrative 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 consider the best interests of the child 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 administrative decisions are not contrary to Article 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 administrative decisions are not contrary to Articles 2, 8 and 14 of the European Convention on Human Rights (ECHR).

The request for an interim Court order is put into action by prohibiting the State from making other administrative decisions that require valid PDO licences for Breidablikk, Yggdrasil and Tyrving until the validity of the decisions has been legally determined.

The State, represented by the Ministry of Petroleum and Energy, is ordered to pay the plaintiffs' legal costs in connection with the case.

The Court will provide a more detailed account of the grounds for the result below.

3.2 Legal regulation of petroleum operations in Norway

The petroleum industry is a thoroughly regulated sector. The Norwegian State has the proprietary right to subsea petroleum deposits and the exclusive right to resource management (cf. Section 1-1 of the Petroleum Act). Petroleum resource management shall be carried out in a long-term perspective for the benefit of the Norwegian society as a whole. In this regard the resource management shall provide revenues to the country and shall contribute to ensuring welfare, employment and an improved environment, as well as to the strengthening of Norwegian trade and industry and industrial development, and at the same time take due regard to regional and local policy considerations and other activities (cf. Section 1-2 of the Petroleum Act). No one else but the State may conduct petroleum activities without the licences, approvals and consents required pursuant to the Petroleum Act (cf. Section 1-3 of the Petroleum Act).

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. Before each phase, assessments and assessments are carried out in line with the regulations for the relevant phase. The Supreme Court described the background for this in the plenary judgment (cf. HR-2020-2472-P, paragraph 65) as follows:

> For the opening phase, the main question is whether it is appropriate and desirable to open the area for petroleum activities in the light of an overall balancing of advantages and disadvantages. Before a production licence is awarded, the assessment is primarily related to which blocks should be announced, based on the likelihood of discovery. A block is a defined geographic area. Public consultation rounds are held, involving the Storting at several stages. Before extraction and production, the actual consequences of the extraction are assessed in more detail

The opening phase is regulated by Section 3-1 of the Petroleum Act (cf. Chapter 2a of the Petroleum Regulations, and the EU's SEA Directive). These regulations state that it is mandatory to carry out an impact assessment. The content of the obligation to conduct an impact assessment related to the opening phase was one of the topics in the plenary judgment. The majority concluded that it could not be considered a procedural error that an impact assessment had not been conducted in relation to the opening of the south-eastern parts of the Barents Sea in 2013, and that it would be sufficient that the environmental impact was assessed in connection with an application for PDO (cf. HR-2020-2472-P, paragraphs 241 and 246). The minority found that the failure to conduct an 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 Section 3-3 et seq. of the Petroleum Act and Chapter 3 of the Petroleum Regulations. The King in Council has the authority to grant production licences related to the exploration phase. There is no requirement for an impact assessment in this phase. A production licence gives the licensee the exclusive right to carry out assessments, to explore and to extract petroleum within the geographical area outlined in the licence, but does not give the right to commence development and production.

The production phase is regulated by Chapter 4 of the Petroleum Act, Chapter 4 of the Petroleum Regulations, and the EIA Directive. These regulations set a requirement for impact assessments. The Ministry has the authority 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 profitable discoveries are made under a production licence, a process is initiated until the actual exploitation of the specific discovery. This process is regulated in chapter 4 of the Petroleum Act and in chapter 4 of the Petroleum Regulations. Among other things, the licensee must apply for and obtain approval of a plan for development and operation (PDO), based on an impact assessment, before development and operation may be initiated, see section 4-2 of the Petroleum Act and sections 22 to 22 c of the Petroleum Regulations. I will return 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 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 stated that it would revert to the requirements related to the PDO later in the judgment. The Supreme Court thus stated expressly that clarifying statements and guidelines would be given regarding the PDO requirements, even though the case in question 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 licences can now only be granted for a defined period of time in the future (cf. Section 4-4, third paragraph, of the Petroleum Act). The Ministry has the right to require the submission of a new or amended plan for development and production (cf. Section 4-2, seventh paragraph, of the Petroleum Act). In addition, the Ministry has the right to decide that exploration drilling or development of a deposit must be postponed (cf. Section 4-5 of the Petroleum Act). If so warranted for particular reasons the Ministry may order the petroleum activities to be stopped for as long as it is considered necessary, or stipulate particular conditions for continuation (cf. Section 10-1, third paragraph, of the Petroleum Act). The King may also revoke a licence granted pursuant to

this Act (cf. Section 10-13 of the Petroleum Act). Alternatively, the Ministry can reverse its own administrative decisions in accordance with general and statutory reversal rules (cf. Section 35 of the Public Administration Act).

3.3 Judicial review of the case processing

The courts should be reluctant to review political considerations. The clear starting point is that it is the role of the Storting and the Government to make the political decisions and assess specific environmental measures. However, the Supreme Court has emphasised that the courts, on the other hand, should not be reluctant when it comes to reviewing the case processing (cf. HR-2020-2472-P, paragraphs 182-184). The Supreme Court emphasised that the second paragraph of Article 112 of the Norwegian Constitution contains a procedural requirement that citizens have the right to know about the effects of planned interventions in nature, and that the purpose of this is to ensure that citizens can safeguard their rights under the first paragraph of Article 112. This can be achieved, 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 clarification of the consequences. Correspondingly, the greater the consequences of a measure, the more thorough the judicial review of the case processing must be.

For petroleum operations, the constitutional requirements relating to case processing are regulated through the Petroleum Act and the Petroleum Regulations, and the rules must therefore be interpreted and applied in the light of Article 112 of the Norwegian Constitution (cf. HR-2020-2472-P, paragraph 184). The Supreme Court assumed that petroleum operations have a number of consequences, all of which have a major impact on society, and that this is of significance for the requirements placed on the case processing. The minority agreed with the majority's view that the courts should not be reluctant when reviewing the case processing. In extension of this, the minority stated (cf. HR-2020-2472-P, paragraph 256) that:

> Since the courts' review of the Storting's decision against the substantive contents of Article 112 of the Constitution is modest, there is even more reason to review the adequacy of the procedure.

In this case, it is the Ministry, and not the Storting, that has the decision-making authority. This differs from the case before the Supreme Court in plenary session. The Court cannot see that there is any reason to be more reluctant in examining the Ministry's case processing than when examining the Storting’s case processing.

Judicial review of case processing must ensure that the basis on which the decision was made, has been sufficiently and properly investigated, that objections have been heard and considered, and that the public has been informed about the basis for decisions. Proper case

processing shall ensure that decisions are made on the most correct and informed basis possible. Since the development and operation of petroleum activities have major impacts on society, the Court assumes that the judicial review of the case processing must be thorough.

The review of the administrative decisions must be based on the actual situation at the time of the decision, but subsequent developments may nevertheless shed light on whether the factual assessment at the time of decision was sound (cf. HR-2020-2472-P, paragraph 154). The parties agree that subsequent circumstances are relevant for the assessment of the effect of the error on the decision. The Court will revert to this later in the judgment.

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 focus on the effects on the Norwegian environment. This included several expert witnesses and extensive documentation, particularly related to the sixth and last main report from the Intergovernmental Panel on Climate Change (cf. IPCC AR6 2021-2023). The parties largely agree that up to date climate science can be used as a basis, and the Court does not consider it necessary to provide a complete presentation of this. In the Court's opinion, however, it is important to mention some key factors in respect of 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 emissions from combustion abroad will impact the Norwegian environment. Both elements are important for the requirements that must be set for the case processing.

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 human-induced greenhouse gas emissions, and that these climate changes may have serious consequences for life on earth (cf. HR-2020-2472- P, paragraphs 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. Official Norwegian Report NOU:2018: 17, chapter 3 pp. 31-53). This report was essentially a compilation of knowledge from the IPCC's fifth main report from 2014 (IPCC AR5) and special report on 1.5 degree warming from 2018 (IPCC 1.5C). The Supreme Court emphasised that the IPCC is a scientific body whose main task is to carry out regular assessments and compilations of the current state of knowledge about the climate and climate change. The Supreme Court stressed that the reports from the IPCC are considered to be the most important and best scientific knowledge base on climate change (cf. HR-2020-2472-P, paragraph 50).

Since then, the IPCC has published a new main report. This is the IPCC's Sixth Assessment Report (cf. IPCC AR6 2021-2023). Climate science has thus been updated

since the Supreme Court judgment. Working group 1 (cf. IPCC AR6 WR1), which reviews all available scientific literature on the physical climate system, reached the following main conclusion, among others:

> 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 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 human-induced 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 are now sufficient observations, theoretical understanding and modelling to conclude that not only climate, but also extreme weather events, are affected by human-induced 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 IPCC, published in 2013/2014, to which the Climate Risk Committee and the Supreme Court referred. The IPCC'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 its 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 IPCC's Sixth Assessment Report and annual updates on climate change (cf. IPCC AR6 SYR SPM A.1; Forster: 2022). According to the updated report from 2022, the indicators show that human-induced warming reached 1.14 degrees Celsius on average during 2013-2022, and 1.26 degrees Celsius in 2022. During the period 2013-2022, human-induced warming has increased at a rate of over 0.1 degrees Celsius per decade.

In its plenary judgment, 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 currently being pursued around the world (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, and not around 2040, and that the warming is thus faster than previously expected.

This is evident, among other things, from the IPCC's Sixth Assessment Report and annual updates 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 is a real risk 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 stated further that this could mean that extreme weather events without historical precedent are 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 at a higher level of 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 the white paper from the Ministry of Climate and Environment dated 16 June 2023 (cf. Report no. 26 to the Storting (2022-2023) "Climate in change – together for a climate-resilient society"). This white paper was published after the relevant PDO decisions in this case. It is clear from the source references in the white paper that it is largely based on the IPCC's Sixth Assessment Report (cf. IPCC AR6 2021-2023). It is stated in the introduction to this white paper that:

> Human-induced climate changes have 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 white paper contains a separate section on climate change and its consequences. In this section, it is explained in more detail that the climate is no longer 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 are melting, that the sea is entering a new state, and that concurrent weather events can have major consequences (cf. Report no. 26 to the Storting (2022-2023) pp. 10-14).

On pages 14-15 of the same white paper, there is also a description of tipping points under the heading "Tipping points in the climate system can affect Norway". Here it is stated that these kinds of tipping points can go from a stable state to a new and different state if global warming passes a temperature threshold, and that this often occurs as a relatively abrupt change that is irreversible on a human time scale. The specific tipping points are described

by the fact that ocean circulation in the Atlantic may slow down significantly, reducing 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 may go from gradual thawing to sudden thawing as a result of heatwaves or forest fires, releasing large amounts of greenhouse gases stored in the ground. The distribution area of the boreal forest may also be significantly changed as a result of heat, drought and forest fires. It is further stated in the white paper that more than 15 tipping 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 starting to tip until it can be observed. The white paper assumes 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 warming increases the risk of passing even more tipping points. Passing tipping points may, according to the white paper, have major ripple effects in the climate system, including through forest dieback, changes in ice extent and greenhouse gas emissions from thawing permafrost.

The updated climate science presented in the IPCC's Sixth Assessment Report is supported by other reports that have been submitted and, as mentioned, is reproduced in the white paper from the Ministry of Climate and Environment of 16 June 2023. The Court assumes that the parties essentially agree that the updated climate science can be used as a basis.

In addition, this is supported by the statements from the expert witnesses Helge Drange and Dag Hessen. The Court refers to the expert statement from Drange, as well as both witnesses' statements and presentations in Court. In the following, the Court will give a brief explanation of their main conclusions related to the climate challenges. The Court will revert to their assessments of the impact of combustion emissions from the specific petroleum fields later.

Helge Drange is a professor of oceanography at the Department 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 team. He obtained a doctorate on climate modelling in the 1990s, and has co-authored 79 publications in peer-reviewed international journals. He has also been a contributor to the UN Intergovernmental Panel on Climate Change (IPCC). Among the various key climate science points of departure, Professor Drange emphasised that all human-induced greenhouse gas emissions affect the global and local climate. According to Drange, CO2 is the most important of the human-induced 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 are now sufficient observations, basic knowledge and good enough models to establish that weather events such as heatwaves, extreme precipitation, 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 higher this will make a significant difference to nature and society.

The probability of passing tipping points, i.e. irreversible changes in the climate, rises with increasing greenhouse gas emissions. Of seven identified tipping points that may 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 will cause 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 may 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 closer tipping point that may 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 have only a minor impact on sea levels 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 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 has risen by 3.0 degrees in the last 100 years, and a massive 5.1 degrees in the last 50 years. Significant changes in temperature and climate can be expected in both Oslo and Svalbard 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 precipitation for Norway has increased by 21 percent in the last 100 years, and by 14 percent in the last 50 years. The increase in precipitation for Norway is significantly greater than the global average. The number of days with heavy precipitation is increasing. Rising sea levels and storm surges will become a growing problem for Norway. The biggest challenges related to this will occur 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 risk of rot will increase from today's approx. 600,000 buildings, to approx. 2.4 million buildings.

Drange further explained that there will also be heatwaves at sea, in a similar way as on land. As a result of global warming, marine heatwaves are occurring more frequently and with greater intensity than before. In the worst-case scenario, a marine heatwave could cause fish to die. In Norwegian waters, the frequency and duration of marine heatwaves has increased, particularly in the Barents Sea. For the period 1982 to 2020, more than half of all marine heatwave days have occurred in the last decade. According to Drange, increased greenhouse gas emissions will increase the number and intensity of marine heatwaves.

Dag Hessen is a professor of biology at the University of Oslo and head of the research centre Centre 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, biodiversity affects the climate, and destruction of ecosystems can exacerbate climate change. Hessen explained that arctic and alpine ecosystems are the most vulnerable, partly because the changes are greatest there, and partly because they lack a refuge. In addition, he explained that new and more heat-loving species may 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 "lemming years" will 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 marine copepod Calanus finmarchicus, northwards, with major effects for fish, seabirds and other species. A warmer sea surface results in reduced absorption of CO2, increases the risk of oxygen-free bottom water and can lead to reduced marine production. More runoff from land also increases the transport of particles and coloured water to the sea. Hessen further described that changes in runoff patterns due to drought has major consequences for plant production, including agriculture, and that floods and heavy precipitation cause crop damage. Hessen described that climate change leads to special effects on northern ecosystems and for the Sami people. 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 further exacerbate 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 case processing, including the impact assessments.

3.5 The obligation to carry out impact assessments

3.5.1 Legal starting points for the obligation to carry out impact assessments

The impact assessment requirements in connection with the approval of a plan for the development and operation of petroleum operations are regulated in Section 4-2, second paragraph, of the Petroleum Act and the Petroleum Regulations. Section 22a of the Petroleum Regulations regulates the impact assessment requirements in the plans for development and operation of a petroleum deposit, and is therefore particularly relevant in this case. These provisions are intended to ensure compliance with the requirements for the processing of cases that follow from the second paragraph of Article 112 of the Norwegian Constitution, and must be interpreted in the light of this provision.

The EU's Impact assessment (EIA) Directive 2011/92/EU of 13 December 2011 was amended on 16 April 2014 by Directive 2014/52/ EU. In the following, the Court will refer to both Directives as the EIA Directive, but will specify which parts came after the amendment in 2014.

The EIA Directive sets special impact assessment requirements in connection with development projects, and also applies on the continental shelf. The EIA Directive has been implemented in Norwegian law through the requirements of the Petroleum Regulations and the Impact Assessment Regulations. In the event of a conflict, the provisions in the EIA Directive take precedence over other Norwegian statutory provisions on the same matter (cf. Section 2 of the EEA Act). The Norwegian Petroleum Regulations must therefore be interpreted in accordance with the Directive.

In the following, the Court will first interpret the Norwegian Petroleum Regulations, and then the regulations ensuing from the EIA Directive.

3.5.2 The Norwegian regulations on impact assessment in the plan for development and operation of a petroleum deposit

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

Section 4-2 of the Petroleum Act sets out the paramount framework and conditions for what the plan must contain, as well as the requirements for impact assessment and approval by the authorities. Additional and more detailed requirements for the plan and the prior impact assessment are stipulated in Chapter 4 of the Petroleum Regulations.

The plan for development and operation must contain a description of the development, and an impact assessment, and the impact assessment must be included in the assessment process in connection with approving 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 proposed programme for impact assessment must be sent to the authorities and interest organisations concerned, who must be given the opportunity to comment. This part of the process is regulated by Section 22 of the Petroleum Regulations. The proposed programme for impact assessment must, among other things, provide a brief description of the envisaged effects on the "environment, including possible transboundary environmental impact", and must also clarify the need for documentation. It is further stated that the proposed programme for impact assessment should, to the extent necessary, contain a description of how the impact assessment work will be carried out, particularly with regard to information and involvement of the groups likely to be especially affected.

The licensee must send the proposal for the impact assessment programme to the authorities and interest organisations concerned for comment, 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 assessment programme on the basis of the proposal and the comments received. In this connection, pursuant to the regulations, an account must be given of the comments received and how they have been assessed and addressed in the adopted programme. A copy of the adopted programme must be sent to the parties that have submitted comments on the matter. In special cases, the Ministry may also decide that the Ministry will submit the proposed impact assessment programme for public consultation.

The Ministry has also prepared a guide (the PDO guide) that provides guidance and guidelines on the decision-making process, the requirements for impact assessment and how these should be understood, as well as what the plan should otherwise contain. The Court assumes that this guide expresses administrative practice, but that it otherwise has limited weight in terms of as a source of law.

Section 22b of the Petroleum Regulations regulates when exemption from the requirement for an 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 obligation to conduct an impact assessment pursuant to Section 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.

As a general starting point, licences under the Petroleum Act do not exempt the licensees from requirements for permits under other laws, such as the Pollution Control Act (cf. Section 1-5 of the Petroleum Act). Petroleum operations require various permits from the Norwegian Environment Agency for pollution (cf. Sections 7 and 11 of the Pollution Control Act). If a PDO decision is suspended or lapses, a decision pursuant to Section 11 of the Pollution Control Act cannot be implemented.

The Nature Diversity Act also contains some paramount principles that apply to interventions in nature. Official decisions that affect natural diversity must, as far as is reasonable, be based on a scientific knowledge base (cf. Section 8 of the Nature Diversity Act). The precautionary principle is regulated in Section 9 of the Nature Diversity Act. This section essentially states that if there is an absence of adequate knowledge about impacts on the natural environment, the aim must be to avoid possible significant damage to natural diversity, and that a lack of knowledge must 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 any impact on an ecosystem must be assessed on the basis of the cumulative pressure to which the ecosystem is or will be exposed (cf. Section 10 of the Nature Diversity Act).

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

The question is whether there is a legal requirement that an impact assessment must be carried out on combustion emissions pursuant to Section 4-2, second paragraph, of the Petroleum Act and Section 22a of the Petroleum Regulations, interpreted in the light of Article 112 of the Norwegian Constitution.

Section 4-2, second paragraph, of the Petroleum Act regulates what a plan for the development and operation of petroleum activities (PDO) must contain. It appears that the plan must contain a description of several aspects, including "environmental aspects". According to the preparatory works for the Act, this section describes the paramount topics that the plan must address. The purpose of including a detailed description of which aspects must be addressed in the plan for development and operation in the actual text of the Act was to highlight the central importance these considerations have when assessing the issue of development (cf. Proposition no. 43 to the Odelsting (1995-1996) p. 41). As an extension of this, it is specified that the bill does not entail any expansion of the scope of the plan in relation to the practice that has previously been followed.

According to the wording, the term "environmental aspects" is broad, and does not contain any delimitation to the climate impacts of combustion emissions. In the preparatory works for legislation, it is specified that "environmental impacts" are covered by this term, and that the provision thus authorises a requirement for preparation of impact assessments (cf. Proposition no. 43 to the Odelsting (1995-1996) p. 41). It is also stated that this authorisation must be seen in the light of the requirements set out in both national and international regulations for impact assessments, including the provision in Article 110 b of the Constitution (cf. Proposition no. 43 to the Odelsting (1995-1996), p. 41). After an account of the relevant international obligations that applied at this time, it appears that the Ministry was going to consider providing more supplementary rules for the preparation of impact assessments through the regulations to the provision (cf. Proposition no. 43 to the Odelsting (1995-1996) p. 42). The Court takes this to mean that mapping environmental impacts is a central purpose behind the requirement for an impact assessment, and that the obligation to conduct an impact assessment must be interpreted in the light of Article 112 of the Norwegian Constitution and international obligations, including the EIA Directive. In addition, the Ministry has issued more detailed rules for the preparation of impact assessments in the Petroleum Regulations.

In the plenary judgment, the Supreme Court stated that the constitutional requirements relating to the case processing for petroleum activities are regulated through the Petroleum Act and the Petroleum Regulations. The Supreme Court emphasised that "When these rules are interpreted and applied, it must be done in the light of Article 112 of the Norwegian Constitution" (cf. HR-2020-2472-P, paragraph 184). In an extension of this, the Supreme Court pointed out that the petroleum industry has a number of consequences, which all have a major impact on society, and that the case processing 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 procedural rules in the petroleum legislation must be assessed in the light of Article 112 of the Norwegian Constitution" (cf. HR-2020-2472-P, paragraph 255). In this context, the minority added (paragraph 255) that:

> The impact assessment is to provide information to – and create a basis for participation from – the public in the decision-making process. The assessment must therefore be objective and sufficiently comprehensive and complete to give the public real insight into the effects of the planned encroachments.

The Petroleum Act and the Petroleum Regulations are thus the central legal basis with regard to the obligation to conduct an impact assessment, but the rules must be interpreted in the light of Article 112 of the Norwegian Constitution. The impact assessment is intended to ensure the public'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 impacts from combustion emissions are easier to calculate based on the resources that have been found in the field. This is also the reason why 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 case processing can and should be even more thorough and rigorous in this phase.

Article 112, second paragraph, of the Norwegian Constitution states that citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out, so that they can safeguard the substantive right pursuant to the first paragraph. In the preparatory work, it is assumed that the Article 112, second paragraph, of the Norwegian Constitution "ensures the right to information on environmental matters, including the important principle of environmental law of assessment of the environmental consequences of relevant measures", and that this is a prerequisite for genuine citizen participation in the decision-making process (cf. Recommendation no. 163 to the Storting (1991-92) p. 6). Article 112, second paragraph, of the Norwegian Constitution 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 Article 112 of the Norwegian 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 Article 112 of the Norwegian 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 impacts on Norwegian territory that are relevant pursuant to Article 112 of the Norwegian Constitution, or whether emissions and impacts in other countries must also be included in the assessment. To this question, the Supreme Court stated in paragraph 149 that:

> Article 112 does not provide general protection against actions and effects outside the realm. However, if Norway is affected by activities taking place abroad that Norwegian authorities may influence directly on or take measures against, this must also be relevant to the application of Article 112. An example is combustion of Norwegian-produced oil or gas abroad, when this causes harm also in Norway.

The Supreme Court assumed that around 95% of greenhouse gas emissions from petroleum extraction generally occur in connection with combustion abroad after export. Furthermore, the Supreme Court 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 Intergovernmental Panel on Climate Change (IPCC) and the expert witness statements from Professor Drange and Professor Hessen. Nor does this appear to be contested by the State.

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 Article 112 of the Norwegian Constitution. In light of the fact that the rules of procedure under Section 4-2 of the Petroleum Act and Section 22a of the Petroleum Regulations are intended to ensure compliance with the right to information under Article 112, second paragraph, of the Norwegian Constitution, this suggests that combustion emissions are covered by the obligation to conduct an impact assessment.

With regard to the substantive review under Article 112 of the Norwegian Constitution, the Supreme Court in its plenary judgment assumed that the threshold for the courts to set aside a legislative decision or other decision taken by the Storting is very high, that the provision must be understood as a safety valve, and that the Storting must in that case have grossly neglected its duties pursuant to the third paragraph of Article 112 of the Norwegian 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 paragraphs 157-163. In this specific assessment, the Supreme Court assumed that it was acceptable for the Storting 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 substantive review pursuant to Article 112 of the Norwegian 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 review of the case processing, 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 Article 112 of the Norwegian Constitution, and the more in-depth judicial review of the case processing (cf. HR-2020-2472-P, paragraph 182-184 (the majority) and paragraph 254-256 (the minority)). The Court also assumes that international agreements on accounting for territorial emissions are different from the 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 more detailed requirements for the impact assessment process with regard to the phase for development and production

(PDO). The requirements for the content of the impact assessment in a plan for the development and operation of a petroleum deposit are regulated in Section 22a of the Petroleum Regulations. It states that such an impact assessment "shall" account for the effects the "development" may have on commercial activities and "environmental aspects", including preventive and mitigating measures. It is further stated that the impact assessment, among other things, "shall" describe the "environment that may be significantly affected", and consider and make a balanced judgment with regard to the "environmental impact 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 meaning that the impact assessment should only 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 the subsequent combustion of the oil and gas that is extracted. However, the Court cannot see that there is support for this interpretation in either the wording or the purpose of the provision. It is clear from the provision that the impact assessments must account for environmental aspects, including that emissions to air must be accounted for. This clearly includes greenhouse gas emissions. Although the provision refers to the "development", there is also no doubt that production and operation are also covered by the provision. This does not appear to be contested, but could have been another unintended consequence of the State's restrictive interpretation of the provision. In addition, the purpose of the impact assessment is in particular to ensure that environmental impacts 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 impacts of petroleum operations. This therefore speaks clearly against interpreting the provision restrictively.

The provision must also be interpreted in the light of Article 112 of the Norwegian Constitution. In the Court's view, this also indicates 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 Article 112 of the Norwegian Constitution (cf. HR-2020-2472-P, paragraph 149 (majority) and paragraphs 259-260 (minority)). When both production emissions and combustion emissions fall within the scope of Article 112 of the Norwegian Constitution, this also suggests that the obligation to perform impact assessments includes both forms of greenhouse gas emissions as a result of the development and operation of a petroleum deposit.

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 impact assessment of combustion emissions should take place. The Supreme Court considered the extent of the obligation to conduct an impact assessment at the opening stage, and in that connection made concrete assumptions for the case processing 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 will first consider when the climate effects must or should be assessed. The issue at hand is when the assessment of global climate effects should be made in an ongoing process. It is closely linked to the question of when the authorities have obtained the knowledge otherwise required for the assessment to fulfil its purpose – and be included as a natural part of a decision-making basis.

The majority of the Supreme Court 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 commercially viable, 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 of possible approval of the PDO must clearly be the time most suited to assess the specific global climate impact of the extraction to be considered then.

The majority of the Supreme Court considered it "absolutely essential" that there will not be any major global environmental consequences of the opening or exploration, and that consequences will only occur if commercially viable discoveries are made, and a licence 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 impact assessment before a decision on the PDO is made. The majority formulated this in paragraph 218 as follows:

> I emphasise that a production licence, despite its wording, is not an unconditional right to extraction even if profitable discoveries should be made. Extraction requires an approved PDO under section 4-2 of the Petroleum Act. With the PDO, an impact assessment will normally be carried out – which must also include emissions into air, see section 22 (a) of the Petroleum Regulations. Emissions into the air comprise greenhouse gas emissions. The authorities will thus have to consider greenhouse gas emissions when assessing the application.

The Supreme Court thus precisely and clearly assumed that an impact assessment pursuant to Section 4-2 of the Petroleum Act (cf. Section 22a of the Petroleum Regulations) 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 regarded as impacts of the 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 impact assessment in connection with the submission of an application for a 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 Article 112 of the Norwegian Constitution, and that if it turns out that it would be contrary to Article 112 of the Norwegian Constitution to approve the development, the authorities will have both the right and a duty not 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 a duty not to approve the PDO if climate and the environmental considerations otherwise so dictate at this time (cf. HR -2020-2472-P, paragraph 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 undergo to an impact assessment. However, the majority's view was that it would be most appropriate for this to take place before the approval of the PDO, and not at the opening stage. The environmental organisations 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 Article 112 of the Norwegian Constitution to approve the extraction (cf. HR-2020-2472-P, paragraph 222-223). The Court understands this to mean that a real impact assessment must be carried out before a PDO is approved, and it must actually be tested whether approval will be contrary to Article 112 of the Norwegian Constitution. Such a test requires that the consequences of combustion emissions and climate effects are actually investigated.

The majority further discussed the content and scope of the assessment of 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 controversial, and that it is necessary to consider all emissions from Norway’s 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 a paramount level, as part of Norway's climate policy, rather than mentioning them in the specific 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 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 impact assessment 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 undergo impact assessment 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 no impact assessment was performed. The majority was also clear that it is maximum emissions, i.e. gross emissions, that must be impact assessed before the PDO is approved. It appears less certain whether the Supreme Court assumed that net emissions must also be impact assessed, or whether this can be taken at a more general level. Considerations of sound case management may, however, indicate that this should be part of the impact assessment, as long as the State considers net emissions to be relevant. The Court will revert to this.

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

> My conclusion is that no procedural errors were made relating to the climate effects during the impact assessment for the opening of the southeast Barents Sea in 2013. The climate effects are politically considered on a continuous basis – and will be subject to an environmental impact assessment in connection with a possible PDO application. Hence, this cannot have the effect that the decision to award production licences in the 23rd licensing rounds in 2016 is 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 obligation to conduct an impact assessment pursuant to Section 4-2 of the Petroleum Act (cf. Section 22 a of the Petroleum Regulations), interpreted in the light of Article 112 of the Norwegian Constitution. In the Court's view, this appears to be a clear prerequisite for

the majority's conclusion with regard to the requirements that could be imposed on the impact assessment at the opening stage. The majority clearly assumed that combustion emissions and climate impacts would be impact assessed later in the connection with a possible application for a PDO, and that the climate impacts will also be continuously politically assessed. As mentioned, the Court is not supposed to review the political assessments of this and shall only assess whether there is a requirement for this to be subject to an impact assessment.

In the first translation of the plenary judgment into English, this wording was used for 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, represented by the Office of the Attorney General, 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 interpreted as meaning that the Supreme Court only presupposed a requirement that the climate impacts should be clarified or similar, and that there was no clear requirement for an 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 impacts would be subject to an impact assessment, and not just clarified, in connection with a possible application for a PDO.

The majority of the Supreme Court reiterated in paragraph 243 that there was a lack of impact assessment of emissions from 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 impact assessment at the PDO stage. This was formulated as follows:

> I mention all the same that in the case at hand, neither the opening in 2013 nor the awarding of licences in 2016 has led to greenhouse gas emissions. The authorities will thus be able through the further process to remedy a failure to assess the combustion effect abroad of future petroleum recovery in the southeast Barents Sea before the opening in 2013. As mentioned, this will primarily take place at the PDO stage through the environmental assessment forming the basis for the authorities' decision whether to award licences for development and operation, on what conditions. However, it may also take place through a general political decision to

> downscale the petroleum activities if the Storting deems it appropriate. This must clearly be sufficient under the requirements laid down by the European Court of Justice. The basic intent behind the rules is to ensure that the environmental effects are adequately clarified and assessed before possible implementation. This is reflected in the assessment regime applicable in this area, as a PDO cannot be approved until after an environmental assessment. In other words, the authorities are in full control of whether or not the environmental effect will occur.

The Court interprets this as a clear and unequivocal assumption that the climate impacts from emissions from combustion abroad must either be impact assessed before approval of the PDO, or that, alternatively, a political decision must be made to scale back petroleum activities if the Storting believes this is the best course of action. 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 impact assessed before approval of the PDO.

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

The Supreme Court's statements that combustion emissions abroad must be subject to an impact assessment in connection with a possible application for a plan for the development and operation of a petroleum deposit (PDO) are clearly formulated, 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 Article 112 of the Norwegian 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 [Law and application of the law], 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 principle that forms the basis for the decision". Furthermore, it is explained that a decision can be based on several grounds. It appears in this context that "If a decision is based on equal grounds for decision, all the grounds for decision must be given precedential effect". To this it is noted that the Supreme Court could have chosen to only consider the obligation to conduct an impact assessment at the opening stage. When the Supreme Court has nevertheless made clear statements about the obligation to conduct an 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 according to the level within the Supreme Court that has made the decision, and decisions in plenary have the greatest weight (cf. Section 5, fourth paragraph, of the Courts of Justice Act). The threshold for deviating from decisions made in plenum is very high due to the function that the Supreme Court in plenary session is intended to fulfil (cf. Skoghøy, Rett og Rettsanvendelse [Law and application of the law], 2nd edition 2023 p. 168). It 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 deviated from by the Supreme Court. The same applies to theorists and other legal practitioners.

This is also supported by Eckhoff ved/Helgesen, Rettskildelære [Sources of law] 5th edition 2001 p. 160-161 and p.179. It is stated, 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 is also stated that it has rarely or never happened that a judgment handed down in plenary session has later been expressly deviated from, and that in that case a new plenary hearing would probably be required (cf. p. 179).

With that, this means that the Supreme Court's precedent in plenary cannot be deviated from by the Ministry of Petroleum and Energy, Oslo District Court or 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 argued that if it is assumed that the Supreme Court has held that combustion emissions must be subject to an 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 judgment 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, the preparatory works and the defined purpose of the Act. The Supreme Court's interpretation thus does not entail a need for legislative amendments to either Section 4-2, second paragraph, of the Petroleum Act or Section 22a of the Petroleum Regulations. That there is probably a need

to update the PDO guide on this point cannot, in the Court's view, in itself be a reason 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 impact assessment pursuant to Section 4-2, second paragraph, of the Petroleum Act (cf. Section 22a of the Petroleum Regulations), interpreted in the light of Article 112 of the Constitution. The Court will return to the question of whether the obligation to perform an impact assessment includes both gross emissions and net emissions.

3.5.4 The obligation to conduct an impact assessment pursuant to the EIA Directive

The rules in the Petroleum Regulations implement the EIA Directive and must therefore be interpreted in accordance with the EIA Directive. In the event of conflict, the provisions in the EIA Directive shall take precedence over the rules in the Petroleum Regulations (cf. Section 2 of the EEA Act).

The Court has concluded that there is no contradiction between the Norwegian Petroleum Regulations and the EIA Directive. In the Court's view, a closer interpretation of the EIA Directive confirms the Supreme Court's assumption that combustion emissions from petroleum activities must be subject to an impact assessment.

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

> As regards the merits of this part of the first ground of appeal, it must be observed that, in accordance with the Court’s settled case-law, the interpretation of a provision of European Union law requires that account be taken not only of its wording and the objectives it pursues, but also its context and the provisions of European Union law as a whole (see, to that effect, Case 283/81 Cilfit and Others [1982] ECR 3415, paragraph 20). The origins of a provision of European Union law may also provide information relevant to its interpretation (see, to that effect, the judgment of 27 November 2012 in Case C-370/12 Pringle [2012] ECR, paragraph 135).

The wording is thus central. The same applies to context and purpose. The preparatory works are 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, paragraph 37, and HR-2023-2030- P, paragraph 165.

Practice from the Court of Justice of the European Union is relevant. However, there are no comparable decisions from the CJEU on issues similar to the ones in this case, and the Court therefore sees no reason to go into this in more detail. However, the Court would point out that the CJEU has assumed that the scope of the EIA Directive must be

interpreted broadly and that the purpose is very broad (cf. for example C-2/07 Abraham and others, paragraph 42). In extension of this, it is stated in the same decision that it would be too narrow and counterproductive to assess only direct effects, and not possible effects from "the use and explication of the end product" (cf. paragraphs 42-46). Overall, the Court finds that the practice of the CJEU shows that the wording of the directive should not be interpreted restrictively.

The scarcity of comparable practice from the EU courts may be due to the fact that there are few other oil and gas producing countries in Europe. During the main proceedings, the parties have therefore referred to domestic law in other countries, including the USA, Australia, England, Ireland, Scotland and the Netherlands. The Court assumes as a general starting point that the domestic law of other countries has limited weight as a source of law. At the same time, it is worth noting that the USA has rules that the climate impacts of combustion emissions must assessed, 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. 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 issue to that in this case is being pending in the UK Supreme Court. The Court of Appeal gave its decision on 17 February 2022 in dissent, with the reference 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' domestic law since this has limited significance.

The State has further argued that statements in the preamble have limited weight in as a source of law. However, the Court assumes that the preamble is relevant with regard to the context and purpose of the directive (cf. 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. In any case, the content of the preambles to the directives from 2011 and 2014 does not provide a basis for a restrictive interpretation of the wording.

This is also supported by the Supreme Court's statement that the provisions of the SEA Directive, based on practice from the Court of Justice of the European Union, will be interpreted on the basis of 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 assumed by the minority in the Supreme Court (cf. HR-2020-2472-P, paragraphs 263-267). In the Court's view, this implies that the EIA Directive must also be interpreted on the basis of its purpose, and that there is no basis for interpreting the wording restrictively.

In the preamble it is, among other things, stated that the purpose of the EIA Directive is to ensure a high level of protection for the environment and effective public participation. In the preamble paragraph 16 it is stated that:

> Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

The Court takes this to mean that the process itself is intended to safeguard democratic considerations and increased awareness of environmental issues. The EIA Directive does not provide guidelines for the result, but for the process itself. In addition, paragraph 2 of preface states that the EIA Directive is based on the precautionary principle and prevention at source. It is also stated in paragraph 7 in the preface that consent for developments 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 EIA Directive sets assessment and information requirements for projects that may significantly affect the environment (cf. Article 1 (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 involving the extraction of mineral resources (cf. Article 1 (2) (a)).

Consent for these kinds of projects should only be granted after an impact assessment has been carried out (cf. Article 2 (1)). This is also evident from the preface, where it is specified that this assessment should be carried out on the basis of relevant information from the developer, and possibly also from the authorities and the public expected to be affected by the project. "Consent" is further defined as a decision from the competent authority or authorities that entitles the developer to “proceed with the project” (cf. Article 1 (2) (c)). The Court assumes that approval of a plan for the development and operation of petroleum activities must be considered consent as defined in the EIA Directive. This is also not disputed.

The EIA Directive distinguishes between certain projects that, as a clear general rule, must be subject to an impact assessment, and other projects that must be assessed if the Member State deems it necessary. Article 4 (1) states that the projects listed in Annex I must be subject to an impact assessment in accordance with Articles 5 to 10. Pursuant to Article 4 (2), the Member States can themselves determine whether projects listed in Annex II are to be subject to an impact assessment. Oil extraction of a certain size is a project that "must" be subject to an impact assessment (cf. Article 4 (1) and Annex I (14). The Court assumes that Breidablikk, Tyrving and Yggdrasil are projects covered by Annex I (14), and which therefore must be subject to an impact assessment (cf. Article 4 (1)). This does not appear

to be contested either. Impact assessments of the projects have been carried out, and the disagreement only relates to whether combustion emissions and climate impacts should have been included in the impact assessments.

The projects in Annex I, which are to be subject to impact assessment, are also mentioned in paragraph 8 of the preface. It is stated that "Projects belonging to certain types have significant effects on the environment and those projects should, as a rule, be subject to a systematic assessment". This shows that the purpose of impact assessment is to carry out a systematic evaluation to ensure a sound basis for decision-making. This is considered to be important for projects that have significant effects on the environment.

The impact assessment must identify, describe and assess a project's "significant direct and indirect effects" on several factors that are listed, including "climate" (cf. Article 3 (1) (c)). The term "indirect" assumes that the effect is not direct, and that the effect may occur via one or more intermediate steps. This suggests that it cannot be decisive that the combustion emissions do not occur on site in connection with production, and that instead they occur later via one or more intermediate steps as combustion emissions elsewhere.

In cases where an impact assessment is required, as is the case for all the projects in this case, the developer must draw up and submit an "impact assessment report" (cf. Article 5 (1)). It is stated that the information must "at least" must include, among other things, a description of the project's "expected significant effects on the environment", and "all the 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 (1) (b) and (f)). A natural understanding of this wording implies that it is not only direct effects that are relevant, but that indirect effects are also included. In addition, climate is one of the factors to be assessed with regard to both direct and indirect effects. The impact assessment must include factors 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 impact assessment must contain "all" the information referred to in Annex IV. It thus appears that there is no room to make exceptions if the information is listed in Annex IV.

Annex IV to the EIA Directive provides a more detailed overview of what information must be included in the impact assessment (cf. Article 5 (1)). Annex IV (4) provides a more detailed description of significant direct and indirect effects that are mentioned in Article 3 (1). It is specified that this includes "air, climate (e.g. greenhouse gas emissions, effects that are relevant for adaptation)". The wording thus clearly indicates that greenhouse gas emissions are covered. Article 3 (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 (5) states that the impact assessment must contain a description of the likely significant effects of the project 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 (e) and (f)). The provision in (f) was included in the EIA Directive in 2014. In that connection, amendments were made to Annex III (1) (f) and Annex IV (4) and (5) (f). These changes make it even clearer that a comprehensive overall assessment of, among other things, climate impacts must be carried out in the impact assessment.

Furthermore, Annex IV (5) provides a more detailed description of the significant effects that should be included in the impact assessment in connection with the specified factors (cf. Article 3 (1)). It is stated that the description of these factors, including climate effects, should include "the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project". It is also stated 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 indicates that it is not only the more direct local environmental impacts resulting from the development and production that are covered, but that all relevant climate impacts resulting from the project must also be taken into account. This is also supported by the wording in the English translation of the EIA 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 (5) last paragraph).

The State has argued that combustion emissions are not effects of the project or development. The Court does not agree with this, and holds that this is contrary to the wording of the EIA Directive. In the Court's view, combustion emissions from petroleum extraction are such a significant and particularly characteristic consequence of these kinds of projects that they must clearly be considered indirect climate effects within the meaning of the EIA Directive. The whole purpose of petroleum extraction is to make geologically stored carbon available 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 this 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, storing it temporarily does not help. The only certain way to prevent greenhouse gas emissions would be to store it in mines, like nuclear waste. If combustion emissions are not included,

this will mean that the provisions of the EIA Directive on the assessment of indirect climate impacts from petroleum operations will in practice have no real content.

In the Court's view, this interpretation is also supported by the fact that the obligation to conduct an impact assessment is determined by the amount of oil and gas that will be extracted for commercial purposes (cf. Annex I (14) of the EIA Directive; cf. Article 14 (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 impact assessment. This point is also included in a similar way in Norwegian law in Annex I, section 14, of the Impact Assessment Regulations. The fact that the obligation to perform impact assessments is defined on the basis of the amount of oil and gas to be extracted for commercial purposes also clearly indicates that combustion emissions must be included in the impact assessment. If only production emissions had been relevant, it would have been more natural for the obligation to conduct an impact assessment to have been defined on the basis 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, this interpretation is also supported by several points in the preamble to the EIA Directive, and particular reference is made to paragraph 2 in the preface, where it is stated that the Union's environmental policy is based on the precautionary principle, the principle of preventive action, the rectification of environmental damage at the source and the polluter pays principle. It is also stated that the effects on the environment should be taken into account at the earliest stage possible in all technical planning and decision-making processes. In the preface to the updated directive from 2014 (cf. 2014/52/EU), there are also several paragraphs that emphasise that a comprehensive assessment of climate impacts must be carried out. The Court refers in particular to paragraphs 7, 13, 22 and 23 of the preamble. Paragraph 7 of the preamble states 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. Paragraph 13 of the preamble further states that:

> Climate change will continue to cause damage to the environment and compromise economic development. In this regard, it is appropriate to assess the impact of projects on climate (for example greenhouse gas emissions) and their vulnerability to climate change.

Paragraph 22 of the preface further emphasises that impact assessments should take account of the impact of the whole project in question, in order to ensure a high level of protection of the environment. In addition, paragraph 23 of the preface 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 indicate that a comprehensive and complete analysis of both direct and indirect environmental impacts must be carried out, and that combustion emissions must be impact assessed in connection with permission to develop and operate petroleum activities.

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

The majority of the Supreme Court assumed that the EU Court's position was that the SEA Directive would be interpreted based on its purpose, and that there was no basis for a restrictive interpretation of the wording (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 impact assessment pursuant to the SEA Directive.

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

> The combustion emissions from Norwegian petroleum production are an environmental consequence of our petroleum industry. The emissions affect the global climate, including in Norway and in the EEA. The effects on the climate are "environmental effects of the petroleum production", see section 3-1 of the Petroleum Act, cf. section 1-6 (c), see also sections 6 c (d) and (e) of the Petroleum Regulations. Correspondingly, the global climate impact of the combustion of Norwegian petroleum is undoubtedly comprised by the term "environmental effects" in Article 5 of the SEA Directive, see Annex I (e) and (f). I also refer to the footnote in the Annex quoted by Justice Høgetveit Berg, stating that this includes secondary, cumulative and long-term environmental effects.

The difference between the SEA Directive and the EIA Directive is that "indirect" has been included in the EIA Directive, with a concrete specification of what is included. The majority also attached importance to elements that were included in a footnote in the SEA Directive. In 2014, the content of this footnote was included directly in the EIA Directive Annex IV (5). It is thus even clearer from the wording of the EIA Directive that subsequent combustion emissions are covered by the obligation to conduct an impact assessment. This is also supported by the purpose of the directive. The minority of the Supreme Court held that there was "no doubt" that combustion emissions were environmental impacts of the

petroleum industry. In the Court's view, this assessment is even clearer from the wording of the EIA Directive.

The Court's conclusion is that there is a legal requirement that combustion emissions and climate effects must be subject to an impact assessment pursuant to the EIA Directive.

3.5.5 Significance of subsequent parliamentary proceedings etc.

The State has pointed out that the Supreme Court's plenary judgment etc. has been the subject of debate in the Storting on several occasions since then, and that a majority in the Storting has rejected the view that the judgment can be interpreted as meaning that there is a legal requirement that combustion emissions must be impact assessed.

As a general starting point, the Supreme Court has held that subsequent statements from the Storting on applicable law in regulations, propositions and the like have limited weight as a source of law. In another case, the Supreme Court has stated that "Statements in a proposition on current law must be regarded as 'supplementary works' to the previous law, which in themselves have limited weight" (cf. HR-2021-2572-A, paragraph 60). In the Court's view, this suggests that statements from individual members of parliament in connection with subsequent committee proceedings in the Storting have limited weight as a source of law.

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 accept the possibility that the law may need to be amended (cf. Eckhoff v/Helgesen, Rettskildelære [Sources of law], 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 legislative proceedings, regardless of whether the representatives have belonged to the majority in the committees, and regardless of whether the members of the Storting themselves have a legal background. This is also supported by other legal theory: cf. Skoghøy, Rett og Rettsanvendelse [Law and application of the law], 2nd edition 2023, p 99, where it is stated, among other things:

> However, if subsequent legislative statements were to be given authoritative force, this would provide an opportunity to amend the law – without following the normal procedure for amending legislation – with retroactive effect. This is not acceptable. In areas with statutory requirements, the Supreme Court has therefore consistently refused to assign independent significance as a source of law to supplementary works where this is to the detriment of citizens.

Against this background, the Court finds that in principle it is problematic to attach importance to subsequent statements from the Storting, which were not part of 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 with the other legal sources (cf. HR-2010-258-P, paragraph 172). Although subsequent statements in the Storting do not have weight as a source of law in the actual interpretation of the Petroleum Regulations, political signals may have significance as a factor in the assessment of the effect of procedural errors on the decision. The Court will revert to this.

On a general level, the Court would also note that the Storting must in any case comply with the EIA 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 impact assessed.

However, for the sake of completeness, in the following the Court will review the parliamentary documents that the State has referred to during the legal process. This mainly applies to subsequent statements from members of the Storting about the applicable law.

The State has referred to the Recommendation from the Standing Committee on Scrutiny and Constitutional Affairs on the Annual Report for 2021 from the Norwegian National Human Rights Institution (NIM) (cf. Recommendation no. 425 to the Storting (2021-2022). It is stated on page 5 of this statement that NIM recommended that the Storting ask the Government to investigate amending the Climate Change Act with a view to legalising the 1.5 degree target and committing to specified annual emission cuts up to zero emissions within a national carbon budget. It is stated on page 9 of the Recommendation that the majority of the Committee rejected the proposal, and that in this connection they disagreed with NIM's interpretation of the plenary judgment. The majority stated in this connection that NIM's view of the significance of exported combustion emissions can hardly be regarded as in line with the premises of the Supreme Court's plenary judgment. In support of this, the majority referred to the report from Professor Eivind Smith of 16 May 2022, which was attached to the Recommendation.

The title of the opinion from Professor Smith was "Does Article 112 of the Norwegian Constitution oblige the State to deny a plan for development and operation (PDO) for climate and environmental reasons". Professor Smith argued, among other things, that the climate effect of combustion emissions is not an obligatory consideration, but rather that it is only a consideration that "it must also be relevant to factor in" when applying Article 112 of the Norwegian 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 impact assessment, and that he himself held that there was no reason why consequences made available in a more general form such as white papers etc. could not be regarded as meeting the requirements of the Norwegian Constitution. In addition, he maintained that he could not see that the requirements for sustainability pursuant to Article 112 of the Norwegian Constitution must be met in each

individual case concerning a licence for petroleum activities. In response to this, the Court would point out that it appears from this opinion that he looked exclusively at questions relating to the understanding of Article 112 of the Norwegian Constitution, and that he chose not to consider any obligations that may follow from other provisions, such as the Petroleum Act, the Nature Diversity Act, the Human Rights Act (ECHR), the Climate Change Act, as well as the SEA and EIA Directives etc. The opinion thus only applies to the interpretation of Article 112 of the Norwegian Constitution, and not an interpretation of the Petroleum Regulations in light of Article 112 of the Norwegian Constitution. In addition, the context was the processing of NIM's annual report, which included, among other things, a proposal to legalise the 1.5 degree target. This is not the subject of this case. The plaintiffs have further emphasised that the opinion is based on Professor Eivind Smith's article in the book "Mellom jus og politik: Grunnloven § 112" [Between law and politics: Article 112 of the Norwegian Constitution] from 2019, which he co-edited with Professor Ole Kristian Fauchald. His article was entitled "The environmental clause – a critical reading". In this article, Professor Smith argued that enforcement of Article 112 of the Norwegian 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, paragraphs 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 EIA Directive, also in light of Article 112 of the Norwegian Constitution.

The Recommendation from the Standing Committee on Scrutiny and Constitutional Affairs on NIM's annual report was debated in the Storting. Although the annual report concerned several other matters, it was the climate proposal that received the most attention. Several individual members of parliament held that NIM had gone too far, while other individual members of parliament defended the proposal and NIM's assessments. During the legal process, the State has emphasised that several of the members of the Storting from the majority are lawyers and therefore are well positioned to interpret the Supreme Court's plenary judgment.

In this context, it should be noted that this Recommendation concerned a proposal that the Storting should ask the Government to legalise the 1.5 degree target and commit to annual emissions cuts. This is a different topic than the requirements to be imposed on the case processing, including whether there is a requirement that combustion emissions must be subject to an impact assessment. The Recommendation also applies to a review of NIM's annual report, and is not part of a legislative case. As regards statements from the individual members of the Storting about their understanding of the Supreme Court judgment, the Court cannot see that these statements have weight as sources of law, regardless of the MPs' education and background. The statements are political opinions. Overall, the Court therefore cannot see that this subsequent recommendation from the Standing Committee on Scrutiny and Constitutional Affairs and the subsequent debate in

the Storting have any significance for the legal interpretation of the Petroleum Regulations, the EIA Directive or the understanding of the Supreme Court's plenary judgment.

The State has also referred to the Standing Committee on Energy and the Environment 's Recommendation on several different topics (cf. Recommendation no. 446 to the Storting (2021-2022)). It is stated on page 57 of the Recommendation that some committee members proposed asking the Government to amend the PDO guide to include a requirement for an 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 impact assessments. The same committee members proposed that the Storting should ask the Government to ensure that in the impact assessment of plans for development and operation (PDO) the consequences of the combustion emissions from extracted fossil resources are also impact assessed and whether those consequences are in line with the 1.5 degree target from the Paris Agreement. It is stated on pages 59-60 of the Recommendation 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 law. The majority held that NIM's report had used a different interpretation of Article 112 of the Norwegian Constitution than the Supreme Court had arrived at in the climate lawsuit. The majority pointed out that the petroleum legislation requires an impact assessment, but that there is no basis for interpreting this as a formal requirement pursuant to Article 112 of the Norwegian Constitution. The majority was of the opinion that the 1.5 degree target could not be incorporated into the interpretation of Article 112 of the Norwegian 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 amend the PDO guide, the proposal for an impact assessment at the PDO stage, 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 and thus have limited weight as sources of law. 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, these subsequent committee proceedings do not provide a basis for a different interpretation of the Petroleum Regulations in light of the Supreme Court's plenary judgment.

The State has also referred to the Recommendation from the Standing Committee on Energy and the Environment on, among other things, the development and operation of the Yggdrasil area (cf. Recommendation no. 459 to the Storting (2022-2023); cf. also Proposition no. 97 to the Storting (2022-2023)). It is stated on page 4 of the Recommendation that a minority of the committee referred to the plenary judgment where the Supreme Court concluded that combustion emissions must be subject to an 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 Article 112 of the Norwegian Constitution on the environment. The minority referred to the fact that NIM had subsequently recommended that the State request an assessment of combustion emissions for each individual project in relation to the remaining carbon budget for the 1.5 degree target, and that this must be submitted 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 processing in connection with one of the fields in question has any weight as a source of law in the legal interpretation of the Petroleum Regulations.

In light of the debates that have taken place in the Storting following the plenary judgment, the Court finds reason to emphasise that requirements related to case processing, including requirements that combustion emissions and climate effects must be subject to an impact assessment, do not prevent the authorities from making political choices and the decisions it deems fit. However, sound case processing and a thorough impact assessment must ensure that the basis for decision making is sufficiently broad and informed, that the public has been informed and consulted, that dissenting voices have been heard, and that different views are clarified and evaluated in an open and transparent manner. Policy must not be based on a decision-making basis that is not verifiable or accessible to the public. Requirements relating to case processing must therefore safeguard democratic considerations, promote public debate, and ensure that decisions are made on as correct and informed a decision-making basis as possible. It is then up to the authorities to weigh up the various political considerations and make the decisions they see fit.

3.5.6 The scope of the obligation to conduct impact assessments

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

The starting point is that the regulations on the process for impact assessments that ensue from the Petroleum Regulations and the EIA Directive must be adhered to. The process is described in more detail in both the Petroleum Regulations and the EIA Directive, and is summarised in Article 1.2 (g) of the EIA Directive 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 account of the detailed content of the impact assessment of combustion emissions.

Pursuant to the regulations, as mentioned earlier, a proposed programme for environmental impact assessment must first be sent to the authorities and interest organisations concerned, who must be given the opportunity to submit comments (cf. Section 22 of the Petroleum Regulations). The proposed programme for environmental impact assessment must, among other things, give a brief description of assumed effects on the environment, including any transboundary environmental impacts, and must clarify the need for documentation. The

proposed programme for environmental impact assessment should contain a description of how the assessment work will be carried out, particularly with a view to information and participation from groups that it is believed will be particularly affected. The proposed programme for environmental impact assessment must be sent to the authorities and interest organisations for comment, and reasonable deadlines must be set for submission of comments, which should not be shorter than six weeks. It is then up to the Ministry to adopt the programme on the basis of the proposal and the statements thereon. In this connection, an account must be given of the statements received, and how these have been assessed and taken into account in the adopted programme. A copy of the adopted programme must be sent to the parties that submitted a statement in the matter. In special cases, the Ministry may also decide to submit the proposed programme for environmental impact assessment for public consultation.

The Court cannot anticipate the outcome of the process on proposals for a programme for environmental impact assessment, beyond the fact that combustion emissions and climate impacts from this must be included in the impact assessment. The whole point of an impact assessment is precisely that the process must be followed, and that the result is not predetermined. It is part of the process to obtain statements etc. regarding what is relevant for the assessment of combustion emissions.

It is expressly stated in the Petroleum Regulations and the EIA Directive that the plan must provide an account of the effects that the development may have on commercial activities and environmental aspects, including measures to prevent and remedy such effects (cf. Section 22a, first paragraph, of the Petroleum Regulations). The impact assessment must, among other things, describe the environment that may be significantly affected, consider and make a balanced judgment with regard to the environmental impact of the development, including describing, among other things, emissions to air, possible material assets and monuments of cultural heritage that may be affected, as well as describe possible and planned measures in order to prevent, reduce and if possible compensate for any significant adverse effects on the environment.

The impact assessment must be prepared on the basis of the assessment programme that has been established (cf. Section 22a, second paragraph, of the Petroleum Regulations). The licensee must send the impact assessment to the authorities and interest organisations for comment. It also appears that the 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 comments on the impact assessment. The deadline should not be shorter than six weeks. In special cases, the Ministry may decide to submit the impact assessment for public consultation. The Ministry must also, on the basis of the comments received, decide whether there is a need for additional assessments or documentation on specific aspects (cf. Section 22a, fifth paragraph, of the Petroleum Regulations). It is further stated that any additional assessments must be submitted to the authorities concerned and the parties that have submitted comments on the impact assessment for further comment

before a decision is made in the case. The deadline for submission of comments should not be shorter than two weeks.

The Ministry's case presentation must contain an assessment of the impacts of the development and the comments received, and how these comments have been weighted (cf. Section 22a, sixth paragraph, of the Petroleum Regulations). It is further stated that it must be considered in the case presentation whether conditions to reduce and compensate for significant adverse effects should be set. The Ministry may decide that an environmental monitoring programme is to be established to monitor and compensate for significant negative effects.

The Court cannot anticipate the content of the impact assessment, including the comments received and how they are assessed, before the 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 impact assessment, and that the regulations on the process must be complied with. The Court therefore sees no reason to state in detail what will be relevant in the assessment before the process has been completed. As an example, the Court refers to the impact assessments that have been carried out with regard to other matters related to these fields. The process that has been followed provides an accessible, broad and informed basis for decision making. The Court also refers, as an example, to the presented 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 impact assessment must analyse the actual climate impacts of the combustion emissions, so that this can form a sufficient knowledge base for the authorities to carry out a real test in accordance with Article 112 of the Norwegian Constitution (cf. HR-2020-2472-P, paragraph 65). In the Court's view, this implies in particular that knowledge must be obtained about whether and in what way the combustion emissions may harm the environment in Norway. The Court further assumes that the impact assessments must be objective and sufficiently comprehensive and complete to give the public real insight into the climate effects of the combustion emissions (cf. also HR-2020-2472-P, paragraph 255).

The assessment of climate impacts from combustion emissions must be complete and comprehensive (cf. also the EIA Directive (2014) and paragraphs 7, 13, 22 and 23 of the preface). The impact assessment must identify, describe and assess the significant direct and "indirect" effects of a project on the "climate", inter alia (cf. Article 3 (1) (c) of the EIA Directive). The impact assessment must, among other things, contain a description of the "likely significant effects of the project on the environment" (cf. Article 5 (1) (b) of the EIA Directive). In addition, the impact assessment must contain a summary of the information, and "all additional information" referred to in Annex IV, which is relevant to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected (cf. Article 5 (1) (e) and (f) of the EIA

Directive). The Court has already explained that combustion emissions are considered particularly characteristic effects of petroleum activities (cf. also Annex III (1) (f).

Article 5 (3) of the EIA Directive contains detailed rules that the impact assessment must be prepared by competent experts to ensure that it is complete and of good quality. Annex IV of the EIA Directive also contains a detailed description of which information must be included. It is stated that a description of greenhouse gas emissions must be included (cf. Annex IV (4)). In addition, it is explicitly stated that a description of the expected significant effects of the project 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 (5) (e) and (f)). The description must include positive, negative, direct, indirect, temporary, permanent, short-term and long-term effects of the combustion emissions (cf. Annex IV (5) last paragraph of the EIA Directive; cf. also Section 21 of the Impact Assessment Regulations). It is stated there that the 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 environment, as well as Sami natural and cultural heritage. In addition, effects as a result of climate change are a relevant factor, including risks from rising sea levels, storm surges, floods and landslides.

In the Court's view, the principles in the Nature Diversity Act on scientific knowledge bases, the precautionary principle and cumulative environmental impact may also be relevant for the impact assessments of climate effects from combustion emissions (cf. Section 8-10 of the Nature Diversity Act).

The Court assumes that the maximum combustion emissions (gross emissions) should be the starting point for the impact assessment. Based on the case processing that has 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 is therefore of the opinion that net emissions should also be included as part of the impact assessments to ensure proper case processing and assessment of climate impacts. The Court cannot see that the Petroleum Regulations or the EIA Directive delimits such assessments, even though 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 basis for decision-making is more informed. The assessment of whether net emissions should be included will also be part of the process of the proposal and plan for a programme for impact assessments, etc., and the Court therefore does not need to make a full decision on this.

3.5.6 Specific assessment of the administrative decision

3.5.6.1 Breidablikk

Combustion emissions have not been impact assessed before the PDO decision for Breidablikk. Nor are combustion emissions mentioned or assessed in any other way in the basis for the decision or the administrative decision itself.

In December 2018, Equinor Energy AS submitted an application for approval of fulfilment of the obligation to conduct an impact assessment for the development and operation of the field. It was stated that the operator considered that the obligation to conduct an impact assessment had been fulfilled through updated information and reports attached to the application, accompanied by existing impact assessments, including an impact assessment for Grane (2000), a regional impact assessment for the North Sea (2006), and the integrated management plan for the North Sea and Skagerrak (2013). In March 2019, the Ministry of Petroleum and Energy considered that Equinor had demonstrated through the information in the application that the development was covered by existing 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.

On 28 March 2019, the Ministry decided that the obligation to conduct an impact assessment had been fulfilled by the existing assessments. There was no publicity or right of appeal related to this. On 29 June 2021, the Ministry of Petroleum and Energy then made a decision 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 obligation to conduct an impact assessment had been fulfilled for the development. It was confirmed that the obligation to conduct an impact assessment was considered to be covered by the existing impact assessments pursuant to Section 22a of the Petroleum Regulations. The most recent assessment for the area is thus from 2013, and there is no information or assessments relating to combustion emissions and climate impacts.

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

3.5.6.2 Tyrving

It is quite clear that combustion emissions were not included in the impact assessment prior to the PDO decision for Tyrving. Combustion emissions were not included in the proposed plan for impact assessment of 6 January 2020, the adopted programme for impact assessment of 28 October 2021, the impact assessment of 11 March 2022, or 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 programme for the assessment.

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 to be 11.3 million tonnes of CO2. In the text above the table, expected recoverable resources for Tyrving and several other fields are stated to total around 37 million standard cubic metres of oil and 102.4 million standard cubic metres of gas. Furthermore, it is estimated that these resources will provide a "net emission reduction of approximately 14.9 million tonnes of CO2 using Rystad Energy's main scenario." Gross combustion emissions for these fields combined 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 impact assessment carried out and the operator's response to the consultation statements received, considered the assessment obligation to have been met. 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 is discussed in relation to Article 112 of the Norwegian Constitution. In the judgment, the Supreme Court holds that in the application of Article 112 of the Norwegian Constitution it must be possible to consider 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 net greenhouse gas emissions. The Ministry has made an estimate of the gross emissions (without taking into account second-order effects) resulting from the use of the expected recoverable resources from Tyrving. Over the lifetime 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 is not contrary to Article 112 of the Norwegian Constitution.

It is stated that, on the basis of these calculations, it is assumed that approval of the development is not contrary to Article 112 of the Norwegian Constitution. The State has argued that this is exclusively a legal assessment pursuant to Article 112 of the Norwegian Constitution. In that case, this indicates that it is unclear what 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 global net greenhouse gas emissions. The Court will revert to this during the assessment below of whether the decision is based on incorrect facts.

All in all, in the Court's view, there is no doubt that the inadequate 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 impact assessment for Yggdrasil. However, this is mentioned in the case submission to the Storting and in the decision itself.

Combustion emissions were not included in the proposed impact assessment programme of 11 October 2021, the established impact assessment programme of 13 May 2022, or the impact assessment of 17 June 2022. A summary of consultation statements and responses were available at the turn of the year 2022. Neither the proposals for impact assessment for the fields nor the impact assessments themselves mention combustion emissions and the ensuing climate impacts. 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 assessment.

Combustion emissions from Yggdrasil were first discussed in a submission to the Storting on 31 March 2023 (cf. Proposition no. 97 to the Storting (2022-2023)). At this point, the Ministry, as the decision-making authority, had already decided to approve the plan for development and operation (cf. Section 4-2 of the Petroleum Act). The Court refers to the Proposition where it is stated towards the end of the Ministry's assessment in section 7.5 that "The Ministry of Petroleum and Energy will approve the development of Yggdrasil in accordance with the plans the operator has submitted and the comments and conditions presented in this Proposition". In the case submission to the Storting, the Ministry of Petroleum and Energy's assessment of Yggdrasil appears under section 7.5. It is stated on pp. 94-95 (under section 7.5) in the Proposition that:

> No significant negative environmental consequences of the development have been identified, and the Ministry considers the knowledge base to be sufficient to make a decision. After a weighing up of the various considerations in line with the Nature 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 will contribute to increased, unchanged or lower global net greenhouse gas emissions. 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 developments. Using alternative assumptions, the calculations would have been different. The Ministry has also made an estimate of the gross combustion emissions that 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. Article 112 of the Norwegian Constitution).

After the sentence that the figure would have been different if alternative assumptions had been used, there is a footnote with reference to "the discussion in section 4.4". This part of the Proposition has the heading "The obligation to conduct impact assessments -– gross and net greenhouse gas emissions from Norwegian oil and gas". This section provides an account of the Ministry's course adjustment of the case processing 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 Storting therefore contains the Ministry's calculations of gross and net greenhouse gas emissions in relation to Article 112 of the Norwegian Constitution. As regards the basis for these calculations, it is stated on page 64 of the Proposition that:

> Calculations and assessments in the case submissions have been made on the basis of, among other things, 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 assessment are, like all such analyses, a simplification of complex markets and connections. Such analyses are based on different assumptions that lead to different conclusions about the global emission effects of changes in Norwegian petroleum production. The purpose of the study is to ensure an up-to-date basis of technical knowledge related to net greenhouse gas emissions. This will be included in calculations and assessments of greenhouse gas emissions when new developments are being processed by the authorities.
>
> The assessment has been made publicly available and the Ministry has received some specialist input. In addition, Vista Analyse has carried out a study on the same topic. The Ministry finds that the input serves to highlight the 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 considered by the Standing Committee on Energy and the Environment, which submitted its recommendation on 25 May 2023 (cf. Recommendation no. 459 to the Storting (2022-2023)). It appears from the recommendation that there was disagreement between the committee members in the Storting, among other things with regard to whether the proceedings were in accordance with the Supreme Court's plenary judgment of

22 December 2022. It also appears from the voting report from case no. 27 regarding Recommendation no. 459 to the Storting that representatives from the majority regarded the project as "good for the climate". The majority in the committee recommended that the Storting should consent to the Ministry adopting a decision to approve the plan for development and operation. On 6 June 2023, the Storting passed a decision in accordance with the majority's recommendation.

On 27 June 2023, the Ministry of Petroleum and Energy made three administrative decisions approving plans for development and operation for Hugin, Fulla and Munin, respectively. All three decisions contained identical 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 Yggdrasil development. Production emissions to air during development and operation are included in the development plan. Based on the calculations of greenhouse gas emissions from [relevant field], it is assumed that approval of the development is not contrary to Article 112 of the Norwegian Constitution.

Furthermore, all three decisions state that consent was granted on the basis of the submitted plans, comments and assumptions set out in Proposition no. 97 to the Storting (2022-2023) and Recommendation no. 459 to the Storting (2022-2023) with subsequent consideration in the Storting, and on some conditions, which are not relevant to this case.

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

An opportunity was given to provide specialist input to the report from Rystad Energy AS (2023) with a deadline of eight working days, but the input was not specifically discussed or assessed in either the case presentation to the Storting or the Ministry's decision, other than that, according to the Ministry, it served to highlight the uncertainty.

Overall, the Court has concluded that the inadequate impact assessment of combustion emissions for Yggdrasil constitutes a procedural error.

3.6 Incorrect facts and indefensible forecasts

3.6.1 Introduction

The plaintiffs' arguments relating to incorrect facts and indefensible forecasts are independent grounds for invalidity. The argument is also related to the inadequate impact assessment. The Court will therefore assess the allegations related to incorrect facts and indefensible forecasts, before a concrete assessment is made of whether the inadequate

impact assessment has affected the content of the decisions (cf. the principle in Section 41 of the Public Administration Act).

3.6.2 Incorrect facts

Combustion emissions have not been assessed with regard to Breidablikk. Since this has not been considered at all, the plaintiffs have argued that there is thus no basis for arguing that the administrative decisions are based on incorrect facts. The Court agrees with this.

However, the plaintiffs have argued that the administrative decisions on PDO for Yggdrasil and Tyrving are based on incorrect facts. The State, for its part, has argued that the allegation of incorrect facts is fabricated. The State has, as the Court has understood it, essentially stated that the decisions are not based on a concrete assessment of the facts, but rather only a legal assessment against Article 112 of the Norwegian Constitution. The State has argued that the assessment in the decisions is that approval will not harm to the environment in Norway to such an extent that it may be in violation of a material threshold in Article 112 of the Norwegian 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 administrative 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 impact assessed – neither gross emissions nor net emissions. If these aspects had been impact assessed, there would have been no doubt as to which facts the decisions were based on. Instead, the State has only referred to the fact that various calculations have been made, and argued that this is exclusively a legal assessment against Article 112 of the Norwegian 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. At the opening and exploration stages, these will be estimates, whereas in 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:

> Admittedly, it would have been easy, considered in isolation, to *calculate* the greenhouse gas emissions based on estimates for a high and low recovery scenario respectively. This is done according to guidelines adopted by the IPCC, see 2006 IPCC Guidelines for National Greenhouse Gas Inventories. These have subsequently been updated. The greenhouse gas emissions are derived from potential production volumes. Thus, it does not involve a professional discussion of climate effects based on various possible causes, but a calculation operation based on estimated figures.

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 volumes 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 administrative decisions relating to the Yggdrasil field contain the same wording with regard to the assessment of combustion emissions. It is stated in the decisions that:

> The Ministry has calculated gross combustion emissions and net greenhouse gas emissions related to the coordinated Yggdrasil development. Production emissions to air during development and operation are included in the development plan. Based on the calculations of greenhouse gas emissions from [relevant field], it is assumed that approval of the development is not contrary to Article 112 of the Norwegian 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 is stated in the decisions that the approval has been given on the basis of the assumptions set out in Proposition no. 97 to the Storting (2022-2023) and Recommendation no. 459 to the Storting (2022-2023), and the subsequent consideration in the Storting. In Proposition no. 97 to the Storting (2022-2023) under section 4.4 and the heading "Obligation to conduct assessments – gross and net greenhouse gas emissions from Norwegian oil and gas", on pp. 62-64, the Ministry's course adjustment of the case processing 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 tax, 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 pointed out that Norway seeks to reduce emissions from other countries as well, through concrete measures in its aid and climate cooperation. Reference is made to the fact that, according to the judgment from the Supreme Court, it is the entirety of the climate policy that is important for assessments against Article 112 of the Norwegian Constitution. It is stated 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 percent of greenhouse gas emissions, and that Norwegian fields cover around 2-3 percent of the world's need for oil and gas. It is further stated that it is uncertain whether new development projects on the Norwegian continental shelf will 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 processing 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 connection with Norwegian petroleum and climate policy" (cf. Proposition no. 97 to the Storting (2022-2023) p. 63). It is stated that when submitted to the Storting, the case presentation will contain "the Ministry's calculations and assessments of gross and net greenhouse gas emissions in relation to Article 112 of the Norwegian Constitution" (cf. Proposition no. 97 to the Storting (2022-2023) p. 63). The Court therefore assumes that the Ministry has intended that explicit and specific calculations and assessments of both gross and net greenhouse gas emissions must be made for each individual development project in connection with the PDO, and that an account of this must be provided in the case presentations relating to the development projects that must be submitted to the Storting.

Under the Ministry's assessment in Proposition no. 97 to the Storting (2022-2023), section 7.5, it is stated on page 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. Article 112 of the Norwegian Constitution"). During the legal proceedings, the State has claimed that the wording "these calculations" in the last sentence refers 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 been part of the assessment in relation to Article 112 of the Norwegian Constitution. The State has further expressed agreement that the maximum (gross) combustion emissions related to the resources in a field can be determined with great certainty, and that there is no professional disagreement about this. However, the State has argued that, based on "these calculations", the Ministry has only carried out a legal assessment against Article 112 of the Norwegian Constitution to assess whether the development may be harmful to the environment in Norway in such a way that there may be substantive grounds for denying PDO approval. In support of this, the State has referred to the Supreme Court's statements in the plenary judgment (cf. HR-2020-2472-P, paragraphs 149 and 222). The Supreme Court has stated in these paragraphs that:

> A final question is whether it is relevant to consider greenhouse gas emissions and effects outside Norway. Is it only emissions and effects on Norwegian territories that are relevant under Article 112 of the Constitution, or must the assessment also include emissions and effects in other countries? Article 112 does not provide general protection against actions and effects outside the realm. However, if Norway is affected by activities taking place abroad that Norwegian authorities may influence directly on or take measures against, this must also be relevant to the application of Article 112. An example is combustion of Norwegian-produced oil or gas abroad, when this causes harm also in Norway." (paragraph 149)
> …

> I agree with the Court of Appeal that section 4-2 of the Petroleum Act in any case must be interpreted in the light of Article 112 of the Constitution. If the situation at the extraction stage has become such that allowing the extraction would be incompatible with Article 112, the authorities will have both a right and a duty not to approve the project." (paragraph 222)

The Supreme Court thus held that combustion of Norwegian-produced oil or gas abroad can be included in the assessment in relation to Article 112 of the Norwegian Constitution when this leads to harmful effects in Norway. In addition, the Supreme Court assumed that the authorities will have a right and a duty to deny an application for a PDO if the situation at the production stage has become such that it would be contrary to Article 112 of the Norwegian Constitution to authorise 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 harmful effects on the environment in Norway. A legal assessment must then be made pursuant to Article 112 of the Norwegian 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 Article 112 of the Norwegian Constitution. The Court therefore does not agree with the State that this is exclusively a legal assessment. If the Ministry has made a real substantive assessment against Article 112 of the Norwegian 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 meaning that a legal assessment has been made with regard to whether the approval will be contrary to Article 112 of the Norwegian Constitution. However, it is unclear which assessments and which threshold have been used as a basis. The wording on page 95 of Proposition no. 97 to the Storting (2022-2023) suggests that it has been assumed that the gross emissions from the Yggdrasil development will not harm the environment in Norway at all. It is stated 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 in any case not be contrary to Article 112 of the Norwegian Constitution. If that is indeed the case, this is at best poorly communicated and, in the Court's view, is masked by the formulation used. Based on the wording in the proposition, on which the decisions are based, it therefore seems most likely that the Ministry has held that combustion emissions will not cause damage to the environment in Norway.

The fact that the assessment of whether combustion emissions harm the environment in Norway is also of a factual nature is further supported by the Ministry's corresponding

assessments in other cases, where no reference is made to Article 112 of the Norwegian 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 section 6 on impact assessment. Another example is the Ministry of Petroleum and Energy's administrative decision to approve the plan for development and operation (PDO) of Oseberg of 1 December 2022 (page 3 of the decision). In addition, the Court refers to the fact that the Minister from the Ministry of Petroleum and Energy, in his written response of 21 April 2022 to the Storting to question no. 1809, answered the corresponding question with a factual justification. In that connection, it was not mentioned that this is a legal assessment pursuant to Article 112 of the Norwegian Constitution.

The Court finds reason to note that it is problematic that it is unclear what concrete fact the administrative 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 pursuant to Article 112 of the Norwegian Constitution. Administrative decisions authorising the development and production of petroleum have major impacts on society, and strict requirements are therefore imposed on the case processing, including that it must be as clear as possible which facts the administrative 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 the climate effects of the combustion emissions have been assessed, and what importance has been attached to this.

During the legal proceedings, the State has claimed that there is no disagreement between the parties about the cause of climate change, its severity or that climate change will cause damage in Norway. It has also been pointed out that the actual basis for Norway's overall energy and climate policy is not reiterated in each individual administrative decision in each sector, but rather 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 Report no. 14 to the Storting (2020-2021) The perspective report 2021, chapter 6 Green future. The State has also referred to Proposition no. 97 to the Storting (2022-2023) and chapter 2 under the heading "The energy challenge". It is stated on page 19 of this Proposition 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. It is a major challenge to ensure access to enough energy for a growing population. At the same time, today's complex global energy system is dominated by coal, oil and gas. This results in 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 improving efficiency in 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 white paper on climate change Report no. 26 to the Storting (2022-2023) "Climate in change – together for a climate-resilient society". On page 5 of this white paper, it is stated that human-induced climate change has already caused serious and partly irreversible consequences for nature and society across the globe. In addition, it is stated that climate change is happening faster and that the consequences are more extensive and dramatic than previously believed. The white paper is mainly based on the updated climate science from the UN Intergovernmental Panel on Climate Change (IPCC), to which Norway is an active contributor. The Norwegian Environment Agency is Norway's focal point for the IPCC, and the State has referred to the fact that inter-agency knowledge about this is available 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, a presentation of Norway's climate targets, and that the climate quota system is a central part of this (cf. section 2.2.1). On page 96 of the "Green book" it is stated:

> Norway's climate targets and climate commitments under international agreements apply to greenhouse gas emissions that occur within the Norway's geographical area. This is mapped through the national greenhouse gas accounting in line with the regulations for reporting greenhouse gas emissions in the UN Framework Convention on Climate Change. 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 their 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 activities in Norway contributes to globally.

A review of the documents that the State has referred to substantiates that the State has a comprehensive climate policy, and that the State is familiar with 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 Norway's petroleum and climate policy.

However, there is no information on assessments related to combustion emissions from the specific fields, including whether, and in what way, these emissions harm the environment in Norway. The Ministry has explained that the adjusted case processing rules means that

explicit and concrete calculations and assessments of both gross and net greenhouse gas emissions must also be made for each individual development project in connection with the PDO (cf. for example Proposition no. 97 to the Storting (2022-2023) p. 63). In connection with the plaintiffs' claim that this must actually be done, the Court cannot see that this can be considered met through a general settlement with the entire environmental, climate or petroleum policy. This case concerns only the validity of the administrative decisions in question, and not the State's policy as such (cf. HR-2020-2472-P, paragraphs 148, 161-162).

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

Based on the State's arguments during the court case, 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 harm the environment in Norway to such an extent that this may be in breach of a material threshold pursuant to Article 112 of the Norwegian Constitution. Based on the decisions and the underlying documentation, however, the Court has doubts about whether the Ministry, in connection with approval of the PDO, has assumed that the Yggdrasil development will harm the environment in Norway at all. Regardless, it is unclear to what extent the Ministry believes that the development will harm the environment in Norway.

With regard to the administrative 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 Article 112 of the Norwegian 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 will contribute to increased, unchanged or lower global greenhouse gas emissions overall". The Ministry has subsequently provided an estimate of gross emissions, which will be just under 11.25 million tonnes of CO2. The decision does not contain calculations with regard to net emissions. Based on the information on gross emissions, it is assumed that approval of the development is not contrary to Article 112 of the Norwegian Constitution.

The Court will not examine whether the administrative decision is materially contrary to Article 112 of the Norwegian Constitution. However, it appears as if the administrative 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 global net greenhouse gas emissions. By comparison, in his written response to the Storting dated 21 April 2022 to question no. 1809, the Minister has 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 administrative decision for Tyrving, combined with the Minister's explanation in connection with other comparable cases, lends support to view that the decision is based on a factual premise that emissions of 11.3 million tonnes of CO2 cannot have a measurable impact on climate change in Norway. This is a factual premise, and not a legal assessment of whether the emissions are contrary to Article 112 of the Norwegian Constitution.

The Court therefore sees reason to emphasise that, based on the evidence, it has been established that the combustion emissions from both Yggdrasil and Tyrving (and 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 IPCC has expressed that "Every tonne of CO2 emissions adds to global warming" (cf. IPCC Sixth Assessment Report, working group 1, Summary for policymakers, section D.1.1). This is understood to mean that any greenhouse gas emissions will exacerbate 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 correlation that makes it possible to link 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 IPCC 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. IPCC's Sixth Assessment Report, synthesis report, Summary for policymakers, section B.2).

According to the 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 a 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, most of the warming effect of the emissions from Yggdrasil and Tyrving will occur in the sea as increased sea temperature, and will consequently contribute to rising sea levels and impact marine ecosystems for many hundreds to thousands of years to come. The emissions from Yggdrasil and Tyrving will contribute to continued acidification of the oceans globally and along the Norwegian coast and in Svalbard. The discharges from Yggdrasil and Tyrving will contribute to continued increasing average precipitation, and more extreme precipitation events in Norway. The maximum emissions from Yggdrasil will reduce the September extent of the sea ice in the Arctic by approximately 1,000 square kilometres. In addition, the emissions from Yggdrasil and Tyrving will contribute to increased temperatures, and thus also a higher snow line 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 might 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 societies and ecosystems globally and for Norway. In addition, higher sea temperatures will cause more and more intense marine heatwaves. For Norway, the Barents Sea is particularly vulnerable, with adverse consequences for ecosystems and fisheries.

The expert witness, Professor Hessen, also explained in detail how climate changes are already affecting Norwegian nature, infrastructure and society in many ways, mainly in a negative way. He explained that each additional contribution will exacerbate 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 the damage to the environment. In the Court's view, Professor Hessen's statement and presentation during the main hearing supports the view that the combustion emissions from Yggdrasil and Tyrving will lead to significant and concrete harm 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 Storting related to Yggdrasil that close to 15 percent of the oil is used for 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 proposition that such use does not generate combustion emissions. It is pointed out 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 is stated in Proposition no. 97 to the Storting (2022-2022), section 2.1.2, on pages 24-25. However, this information is at odds with the expert testimony from Professor Drange. He explained that converting oil to plastic could postpone the emissions for a few years, but that the carbon will 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 be released into the atmosphere again. He explained that the only way to avoid greenhouse gas emissions is to store the plastic (carbon) in mines.

In summary, the Court is of the opinion that the basis for the administrative decision is unclear with respect to which facts it has been 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 incorrect facts. If it is assumed 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 incorrect fact. If it is agreed that the developments will cause damage to the environment in Norway to the extent that the Court has explained, the Court does not need to carry out a substantive review of whether this is contrary to Article 112 of the Norwegian Constitution. Since this has no bearing on the outcome of the case, the Court does not consider it necessary to take fully assess whether the decisions are based on incorrect facts. The lack of clarity related to the facts is also important for the assessment of whether the inadequate impact assessment of combustion emissions may have affected the content of the decisions. The Court will revert to this.

3.6.3 Indefensible forecast

The plaintiffs have mainly argued that the forecasts of market effects are too derivative and uncertain to constitute effects of the project. Subsidiarily, it is argued that the State's forecasts of global market effects are in any case indefensible. The State, for its part, has argued that the administrative decisions are not based on a specific forecast, and that the Court in any case has no basis for deciding on the claim of indefensible forecasting.

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 developments, the judicial review will be limited to whether the forecasts were defensible at the time the administrative decision was made (cf. Supreme Court Law Reports Rt 1982, p. 241 (Alta) p. 266 and Rt 2012 p. 1985 (long-term child I), paragraph 77, and HR-2021-1975-S (Fosen), paragraph 71. However, the Supreme Court has held that the Court must

make an independent assessment of the facts in questions of breach of rights and cannot limit the review to whether the administration's forecasts were reasonable (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 review, especially where assessments are based on the administration's specialist expertise and broad experience (cf. Supreme Court Law Reports 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 in part strong criticism of the assessment from Rystad Energy AS on the calculation of net emissions from Norwegian petroleum operations. This criticism and the dissenting opinions would have been made more apparent if combustion emissions had been subject to an impact assessment. The Court therefore nevertheless considers it appropriate to provide a relative thorough explanation of the process of calculating net emissions and the various assessments of this.

When the Supreme Court assessed whether emissions from combustion abroad could be included as part of the assessment under Article 112 of the Norwegian Constitution, it was based on the fact that this provision does not protect against actions and effects outside the realm. In the extension of this, the Supreme Court stated that if activities abroad that the Norwegian authorities "may influence directly on or take measures against" cause damage in Norway, then it must be possible to take this into account when applying Article 112 of the Norwegian Constitution (cf. HR- 2020-2472-P, paragraph 149). As an example of what the Norwegian authorities may influence directly on or take measures against, the Supreme Court referred to the combustion of Norwegian-produced oil or gas abroad, when this causes harm in Norway. If not, 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 Article 112 of the Norwegian Constitution.

The Supreme Court further noted that the net effect of combustion emissions is complicated and controversial, 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 held 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 recovery and combustion of gas versus recovery and combustion of coal (cf. HR-2020-2472-P, paragraph 240).

The Court cannot see that the Supreme Court has precluded the possibility of making net calculations of combustion emissions. However, in light of the fact that the calculations are uncertain and controversial, and that the Norwegian authorities have limited possibilities to influence this, limited weight should be attached to such calculations.

The State has argued that the allegation of indefensible forecasting is inadequate because the Ministry has not "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 is presented in a table that shows "the Ministry's calculations of gross and net gas emissions in connection with the processing of plans for development and operation (PDO)", and changed plans for development and operation since the case processing rules were adjusted in autumn 2021 and until October 2022. The text above this table reads:

> 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 is stated 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 that the resources from Tyrving, together with the resources from several other fields, will provide a significant net reduction in emissions. Although there is no reference to this calculation in the administrative decision for Tyrving, it is clear from the text linked to this table that the Ministry has assumed that the development will contribute to a net reduction in emissions. It is clear that this is based on the report from Rystad Energy AS, which was carried out in 2021.

The fact that the administrative decision for Yggdrasil is also based on, among other things, a forecast of net emissions is, in the Court's view, further supported by the fact that it has been explained that the adjusted case processing rules entail that "explicit and concrete calculations" and assessments of both gross and net greenhouse gas emissions must be made for each individual development project (cf. for example, Proposition no. 97 to the Storting (2022-2023) p. 63). In addition, this is supported by the fact that the State carried out a competitive tender with a view to having net emissions investigated. It is clear from the report from Rystad Energy AS dated 15 February 2023 that it concerns net greenhouse gas emissions from increased oil and gas production on the Norwegian continental shelf. It is stated in the introduction to the report that the assignment 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 set for submission of professional input. The Ministry refused requests for an extended deadline for response. Despite this, professional input was received from, among others, Statistics Norway, Greenpeace, Friends of the Earth Norway, Natur og Ungdom (Young Friends of the Earth Norway) and the World Wildlife 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 Analyse prepared a report dated 16 March 2023 on behalf of the environmental organisations. The report from Vista Analyse concluded that the global net effect of increased Norwegian oil and gas production will be increased greenhouse gas emissions.

In the case presentation to the Storting, which is part of the basis for the PDO decision for Yggdrasil, it is nevertheless only the forecast from Rystad Energy AS that is referred to. It appears from Proposition no. 97 to the Storting (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 assumptions about future developments. If alternative assumptions had been used, the calculated figure would have been different.

The Court perceives this as a clear forecast that the development of Yggdrasil will result in a significant net reduction in emissions. Although it has been stated that this type of calculation is uncertain, it has not been explained what this uncertainty may consist of. Nor is there any 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. Section 4.4 states, among other things, that net emissions have been "assessed by various specialists 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 is also stated that calculations and assessments in the case presentations have partly been made on the basis of an updated, external assessment of net emission effects that the Ministry has commissioned from Rystad Energy AS. It is stated 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 the authorities process applications for new developments. It is stated that the report has been made publicly available and that the Ministry has received "some professional input", and that Vista Analyse has also "conducted a report on the same topic". However, no further information is provided about the professional input or the report from Vista Analyse. In the proposition, the Ministry only gave the following assessment of this:

> The Ministry finds that the input serves to highlight the 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.

Although it has been stated that there is uncertainty related to calculations of net emissions, the Court finds it is clear that the Ministry has based its assessment or forecast on the assumption 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 the comments received beyond the fact that they serve to highlight the uncertainty associated with such calculations. The clear and influential impression is thus that the Ministry has mainly based the administrative 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.

The fact that the basis for the decision was not readily available, and that the forecast from Rystad Energy AS dominated the assessment is, in the Court's view, also supported by the subsequent Storting proceedings and voting report from case no. 27 regarding Recommendation no. 459 to the Storting. It appears that several MPs regarded the development as a measure that would be good for the climate. In one of his speeches, the Minister gave the following information about the studies from Rystad Energy AS and Vista Analyse:

> Calculating the net consequences of oil and gas activity on the Norwegian continental shelf is complicated. There is a difference between the Rystad report and the Vista report, yes, and I accept that there is disagreement about this because it is a very difficult topic to grasp, but we see that from the gross emissions calculated for each individual PDO, the net effect – when we calculate it – is actually 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 we are to trust both the Rystad report and the Vista Analyse report.

An MP responded to this with the following comment:

> Thank you for the Minister's reply. I just want to clarify for the people here today, and perhaps also for the Minister, that Vista Analyse – which is only referred to; their factual basis is not used in the proposition – concludes that recovery from the fields we are currently approving will lead to a net increase in emissions globally, i.e. not just a little less positive than Rystad Energy. These are two completely different analyses.

Overall, it seems unclear whether the Storting had information about, and access to, the report from Vista Analyse and the other professional input from, among others, Statistics Norway when the case was considered there. It was not part of the formal presentation of the case. In all cases, it is unclear whether, and if so in what way, the Ministry itself has assessed this, other than that the Ministry has assumed that the input highlights uncertainty related to net calculations.

During the main proceedings, quite extensive evidence relating to calculations of net emissions was presented. 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 was sound, and the Court must also show some restraint in reviewing 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 case processing relating to the calculation of net emissions underpins the need for an impact assessment of combustion emissions, and that this is not carried out at a paramount level by the Ministry. In the Court's view, maximum emissions (gross emissions) must in all cases be impact assessed. If the Ministry wishes to analyse net emissions and base its decisions on this, the Court has concluded that this should also be part of the impact assessments. The Ministry's case processing has shown limited ability and willingness to ensure public transparency, the right to express opposing views and evaluation of dissenting views.

The State has argued 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 does not need to make a decision on this. The Court notes, however, that it is quite clear that this company produced a report two years earlier 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 Petroleum and Energy. The Court would further point out that a deadline of only eight working days was given for submission of input to the report from other specialist parties, and that the Ministry has not accounted for or made specific assessments of the input received, neither in the presentation of the case to the Storting or elsewhere. It is therefore unknown to the Court whether, and if so how, the Ministry has assessed these inputs.

The State has argued that the professional discussion among relevant specialists, which emerged during the presentation of evidence, about what is the most appropriate net calculation, is irrelevant for the Court's decision as to whether the administrative decisions are valid. The State has claimed that they refrained from calling more expert witnesses on this for this reason, in order to avoid unnecessary elaboration and to limit the costs.

Instead, the State has submitted several newspaper articles to illustrate the debate in the newspaper Dagens Næringsliv published in the period June-August 2018. The State has also presented an article from Dagens Næringsliv from 7 March 2023 with the headline "Full disagreement about the climate impact of Norwegian oil and gas: 'The more, the merrier' say British energy consultants". The article states, among other things, that:

> Now Rystad has the full support of Wood Mackenzie, the British giant in analysis and consulting in the energy field – a kind of big brother to the Norwegian challenger 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 will results in increased emissions. 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 report from Statistics Norway that argued that reduced production from Norway leads to lower consumption, and thus lower emissions.

It is thus very clear that there has been a public debate about net emissions, and that these newspaper articles are well suited to shed light on this. At the same time, it must be noted that the submitted articles are from 2018, i.e. long before both reports from Rystad Energy AS. In respect of the article from 2023 about the support from Wood Mackenzie, this also supports the view that the latest report from Rystad Energy AS, to which the State has referred, has been understood as a clear forecast that increased production on the Norwegian continental shelf 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 claim that they have tried to limit the costs related to this topic is not consistent with the costs 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. The total costs amount to more than NOK 1.1 million excl. 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 relate to the time before the plaintiffs presented expert statements from their expert witnesses. This means that Rystad Energy AS has spent more than 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 analyses or assessments. In the Court's view, it appears problematic that the company, and the Ministry, have deemed it necessary to spend so many 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 Analyse and the input from Statistics Norway were known back in March 2023 and ought therefore to have been assessed by the Ministry when they were received. The cost claim and the time spent by Rystad Energy AS in connection with the legal process thus also illustrate

that the case processing has not been satisfactory with regard to the assessments of net emissions.

Rystad Energy AS has analysed 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 of increasing Norway's production of 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 by 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 oil-only 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 the main finding that increased production from the Norwegian continental shelf leads to reduced global greenhouse gas emissions, as explained above. Secondly, it is based on a main finding that the effect is driven by limited market response, replacement of coal and low Norwegian upstream emissions, as 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 impact of 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, a researcher and environmental economist at Statistics Norway, criticised the report from Rystad Energy AS. She explained that the actual analysis structure used, with three steps and the factors included, is adequate. She believed, however, that the actual quantification leads to a "highly unlikely" 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 result in a "systematic underestimation" of emissions in all three stages. She mainly commented on the oil analysis, and not the gas analysis.

Fæhn held that it was particularly the assumptions and projections in step 1 about demand elasticity that were decisive. She believed that the demand elasticity that Rystad had arrived at was "highly unlikely" low. This was particularly due to the fact that the sample from the literature had been 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 itself 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".

Moreover, Fæhn held that the supply elasticity 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 supply elasticity is thus likely to be systematically overestimated. In addition, she justified this by saying that Rystad's estimates of supply elasticities are based on their 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 Rystad’s analysis structure, 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. In its presentation, Rystad claimed that end users will be little affected by lower oil prices. As examples, Rystad claimed that consumers are unlikely to use more petrol/diesel when the price is low, that consumers are unlikely to fly more when the price is low, that consumers are unlikely to buy more goods (placing a greater burden on lorries and ships) when the price is low, and that consumers are unlikely to 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 held that the assumption is not justified, and that it is in conflict with both economic theory and empiricism. She also pointed out that this assumption is made in both the oil and gas calculation, and that this is most serious for gas, because step 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 improbably" large. 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 individually for each individual PDO.

Expert witness Haakon Riekeles from Vista Analyse was also critical of the report from Rystad Energy AS. He referred in particular to the fact that Rystad operates with a lower demand elasticity and a higher supply elasticity than others. According to Riekeles, it is particularly the demand elasticity that Rystad has used that differs most from other literature. It emerged during the legal proceedings that Vista Analyse and Rystad disagree on which literature is relevant. Vista Analyse was mainly relied on a meta-study from 2018, which in turn is based on 75 underlying research studies. Based on this, Vista Analyse 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 Analyse highlighted in particular that Rystad's assumption that total energy consumption 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 percent of the production in the PDOs that are being considered. By contrast, Vista Analyse has analysed on the basis on production in the period 2030-2040, and also has a long-term version of the scenarios that looks at the period 2040-2060. Specifically, Vista Analyse assessed on the basis of 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, 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 demand elasticity is considered high. If consumers are not adaptable, they will buy roughly the same even if the price falls. Then the demand elasticity is small. 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 energy efficiency 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 pointed out 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 the consumers' ability to adapt to higher prices has not has been taken into account. In addition, he pointed out that the assumption implies that there is perfect substitution between different energy sources. He emphasised, 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 supply elasticity, 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 out that industry organisations 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 held that a long-term perspective should be used in the calculation, i.e. beyond 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 may displace renewable energy more than it displaces other fossil fuels, especially in a long-term perspective.

Harstad also held 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 factors might encourage 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 exacerbate 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 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 favourable, and most likely negative. In addition, in his view, account must be taken of the political signalling effects of increased Norwegian production of oil and gas.

Expert witness Michael Lazarus at the Stockholm Environment Institute gave specific testimony about Rystad's assessment of net emissions linked to Yggdrasil. He used the same three-step model for calculation, but held that the estimates were not correct. He claimed that with more correct estimates, the conclusion would be that Yggdrasil will increase global net emissions by approximately 80 million tonnes of CO2 over 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 over its lifetime. Lazarus held that Rystad had assumed a premature analysis year, when it was based on 2030. He believed that Rystad had underestimated the market, and thus the emission effects of increased oil production. He also held 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 claimed that Rystad significantly overestimates emission reductions from replacing oil and gas production in other countries. In addition, Lazarus highlighted more generally that the development of Yggdrasil will lead to long-term investments in new, fossil fuels using infrastructure that will slow down the transition to clean energy. He emphasised that this could in turn 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 of them have argued that there are grounds to believe that increased Norwegian production, concretised by Yggdrasil, will lead to an increase, not a reduction, in global net emissions. The Court does not have sufficient grounds to assess which assumptions or calculations are 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 reliable or not, and must also show some restraint in testing 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 objections, and possibly other relevant objections, have not been systematically assessed and evaluated. It is unclear whether, and if so in what way, this has been assessed by the Ministry (and the Storting), other than the fact that the input indicates that there is uncertainty associated with the calculations. In the Court's view, it is primarily the case processing linked to the assessment of this that is problematic.

3.7 Whether the procedural error leads to invalidity

3.7.1 Legal points of departure

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

If the rules of procedure have not been complied with, administrative decisions may nevertheless be valid if there is "reason to assume" that the error "cannot have had a decisive effect on the contents of the administrative decision" (cf. the principle in Section 41 of the Public Administration Act). It is established law that the principle in the provision can be applied analogously in the event of a breach of procedural rules set out in other Act and regulations (cf. Supreme Court Law Reports Rt 1982, p. 241 on p. 262 (Alta) and Official Norwegian Report NOU 2019:5, p. 535). According to this principle, a decision is valid despite errors in the case processing if the error cannot have had a decisive effect on the contents of the administrative decision (cf. also Official Norwegian Report NOU 2019:5 p. 535. The provision does not state that the error must have affected the contents of the decision for the decision to be invalid, only that the decision is nevertheless valid where the error cannot have had such an effect. The formulation "reason to assume" implies that it does not have to be proven or substantiated that the decision would not otherwise have been made, but that it is sufficient that there is reason to assume that the error may have affected 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. Supreme Court Law Reports Rt 2009 p. 661 (Embassy), paragraph 71, Rt 2015 p. 1388 P (internal flight), paragraphs 282 and 300, and Official Norwegian Report NOU 2019:5, p. 535).

In principle, 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 to the specific assessment of the effect of the error on the decision. The Court agrees that later developments may shed light on whether there was reason to assume that the inadequate impact assessment may have affected the content of the decisions.

In Supreme Court Law Reports Rt 2009, p. 661, the Supreme Court considered the validity of a decision to change the zoning plan for the construction of a new American embassy. No mandatory impact assessment had been carried out in connection with the re-zoning. The Supreme Court concluded that this error could not have had a decisive effect on the municipal authority's re-zoning decision, and that there were thus no grounds for invalidity (cf. Section 41 of the Public Administration Act). The Supreme Court held that there was no requirement of a preponderance of probability for the error to have had a decisive effect on the decision, and that it is "sufficient to have a not entirely remote possibility" (cf. section 71). With regard to the starting point related to inadequate 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 an insufficient or incorrect basis for a decision on a point of importance for the decision, or the error in some other way involves the disregard of fundamental requirements for sound processing, as a general rule, quite little is required. Seen in the light of the interests that are intended to be safeguarded through the rules on impact assessment, and the complex assessment process that is to be observed, the road to invalidity could therefore be short when the procedural error consists in a complete lack of or an inadequate impact assessment. But there is no question of any automaticity. Furthermore, in my view, nor is there any room for a general presumption that the procedural error has affected the decision, as the appellants have argued. Such a presumption would represent an unjustified weighting of form over content. It cannot be taken for granted that the considerations and interests that are to be safeguarded through the rules for impact assessment, in a specific case, cannot also be safeguarded within the framework of ordinary processing of plans. In relation to the criterion concerning the effect of the error on the decision, one must therefore, in my view, adopt a concrete approach and link the assessment to the individual alleged deviations from the procedure that would have been followed if an impact assessment had been carried out in the specific case in question.

The Supreme Court has thus assumed that an inadequate impact assessment does not automatically lead to invalidity, but that a concrete assessment must be made of the case processing that has been carried out compared with the procedures that would have been followed if an impact assessment had been performed. If the case processing has led to an inadequate or incorrect basis for decision on a point of importance for the decision, or the error in some other way involves disregard of the requirements for proper processing, it takes "little" for the error to lead to invalidity. Transferred to this case, the Court finds that an assessment must be made of the Ministry's own case processing with regard to the assessment of combustion emissions against the case processing that would have been followed if this had been part of the impact assessments.

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 assume that no relevant alternative existed (cf. Supreme Court Law Reports Rt 2009, p. 661, paragraph 82). The Supreme Court pointed out that there was no evidence to suggest that the basis for the decision 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 had been heard (cf. paragraph 84). The Court interprets this decision as meaning that the Supreme Court attached importance to the fact that there was no reason to assume 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 basis in HR-2017-2247-A (Reinøya). This case concerned the validity of an expropriation decision due

to the lack of an 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 reindeer husbandry interests in the area. It was pointed out that the costs were not sufficiently high to justify an impact assessment. The majority of the Supreme Court further referred to what the municipal council had known about the consequences for reindeer husbandry of the road project, and came to the conclusion that there was no "real possibility" that an impact assessment would have led to any change in the decisions that had been made. The lack of impact assessment therefore did not invalidate the expropriation decision pursuant to Section 41 of the Public Administration Act.

By comparison, in this case there is no doubt that an impact assessment should have been carried out before the PDO decisions, and this has also been done. The dispute concerns exclusively whether combustion emissions ought to have been included in this impact assessment. As regards the legal basis, the Supreme Court referred to its previous statements in Supreme Court Law Reports Rt 2009, p. 661 (Embassy). The Supreme Court held that it is sufficient to have "a not entirely remote possibility" that the error has affected 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 content of the decision (cf. HR-2017-2247-A, paragraphs 93-99). In the concrete assessment, the Supreme Court attached particular importance to, among other things, the fact that a number of expert studies on reindeer herding had been carried out, that the reasoned views of the reindeer husbandry interests had been taken into account in the impact analysis, that the consequences for the reindeer husbandry were known, that the municipal council had always been well aware of reindeer husbandry's objections and the basis for them, and that it was clear what had been done to take this into account. Therefore, the Court finds that the Supreme Court made a concrete assessment of the case processing, 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 case processing was sound, whether the right of contradiction had been safeguarded, and whether there was reason to assume that the basis for the decision was incorrect.

In the plenary judgment, the majority of the Supreme Court held that any errors in the 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 paragraph 243 as follows:

> Impact assessments must include identification of the political balancing issues that the authorities must consider. In the case at hand, the appellants seek the assessment of the combustion effect abroad. The Storting has considered this issue on a number of occasions, as I have already mentioned. Possible errors in the environmental assessment can therefore not have been relevant for the decision to open the southeast Barents Sea. Considerations other than the effect on the climate were

> nonetheless decisive. The authorities' policy was that measures to reduce global greenhouse gas emissions and the damaging effects thereof would be implemented by other means than stopping future petroleum production. The decision to award production licences in the 23rd licensing round is thus in any case valid, see the principle in section 41 of the Public Administration Act).

The majority of the Supreme Court thus attached importance to the fact 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 production. This shows that the Supreme Court considered the authorities' policy in the area to be relevant for the assessment of the effect of the error on the decision. 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 no procedural errors had been made related to the climate impacts during the impact assessment for the opening of the Barents Sea South-East. In this assessment, the majority had attached great importance to the fact that the climate effects are continuously assessed politically, and that they would be subject to an 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 emphasised that the calculations of global combustion emissions at the opening stage would be highly uncertain because at this point it would be unclear whether and how much resources would eventually be found. The assumption was thus that an impact assessment of combustion emissions at the opening stage would not provide new information that had not already been assessed and weighted. The Supreme Court did not consider whether an inadequate impact assessment of combustion emissions at the production stage would be without significance. Overall, the Court believes that there is therefore reason to attach weight to the authorities' view of the petroleum policy in connection with the assessment of the effect of the error on the decision, 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 in relation to the decision at the opening stage.

The minority of the Supreme Court had a different point of departure before the assessment of the effect of the procedural error on the decision. The minority had concluded that it constituted a procedural error that the climate effects of combustion emissions had not been subject to an impact assessment. The minority did not rule out that the political discussions might have been different if the impact assessment had contained a study and assessment of the climate effects 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 Storting in recent years, and that there has been a clear majority in the Storting in favour of continued petroleum activities on the Norwegian continental shelf, despite the fact that combustion of Norwegian-produced petroleum has adverse effects on the climate. The minority therefore considered it "unlikely" that the result would have been different if the climate effects had

been part of the impact assessment for the opening of the Barents Sea in the southeast. In extension of this, the minority stated in paragraph 278 that:

> At the same time, it is futile to speculate on how political processes could and would have advanced had the impact assessment had a different content.

The minority then stated that in any case it would be too narrow an approach to consider cause and effect only, and that there were two circumstances in particular that dictated that the procedural rules must be strictly enforced in this case (cf. HR-2020-472- P, paragraphs 279-282). The minority pointed out that the obligation to conduct an impact assessment must firstly meet the requirements in the second paragraph of Article 112 of the Norwegian Constitution. Secondly, it was shown that the error related to the implementation of Norway's international commitment under the SEA Directive. In addition, the minority noted that it did not agree with the majority that it would not be sufficient to postpone the assessment to a later stage, including the decision-making process for the PDO (cf. HR-2020-2472-P, paragraphs 283-287). The last statement from the minority supports the view that the majority's assessment of the effect of the error on the decision 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, the Court again refers to the majority's assessment of this (cf. HR-2020-2472-P, paragraph 246).

3.7.2 Summary of the Court's assessment on invalidity

For a long time, there has been a broad political majority in favour of continuing Norway's petroleum policy with the continued production of oil and gas. This suggests that it is unlikely that the decisions would have been different, regardless of what information might have emerged from an impact assessment of combustion emissions and climate effects. The Court has nevertheless, after an overall assessment, come to the conclusion that there is not an entirely remote possibility that the inadequate impact assessment of combustion emissions may have affected the content of the decisions. In this assessment, the Court has attached importance to the fact that the case processing has shown that the basis for the decision has been poorly informed, verifiable and accessible, and that dissenting voices have not been heard and assessed in a transparent manner. The Court cannot predict the findings and content of the mandatory impact assessments. In the Court's view, however, it cannot be ignored that the public debate and the political considerations could have been different if this had been subject to an impact assessment. Impact assessment must both ensure an informed and correct basis for decision-making, and safeguard 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 Article 112 of the Norwegian Constitution and Norway's international obligations under the EEA Agreement. The Court has also attached importance to the fact that climate science has been updated. In addition, the Court has attached importance to the fact that a public committee has recently

recommended that the Government draw up an overall strategy for the final phase of Norway's petroleum activities, including a temporary halt in PDO decisions until an overall strategy is in place. In a concrete balancing of the various interests, the considerations of sound case processing, disclosure of the case and democracy must be accorded the greatest weight. Overall, the Court has thus concluded that the administrative decisions are invalid. The Court will explain its assessments in more detail below.

3.7.2 Norway's petroleum policy

For a long time, there has been a broad political majority in favour of continuing Norway's petroleum policy with the continued production of oil and gas. The Storting 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, paragraphs 236-237. In Recommendation no. 433 to the Storting (2021-2022), the Storting considered private members' bill to revoke consent for developments on the Norwegian continental shelf that are contrary to the Norwegian Constitution. On page 2 of the recommendation from the Standing Committee on Energy and the Environment, it is stated that the majority was of the opinion that the size of Norwegian resources limits the opportunity of Norwegian resource management to influence global greenhouse gas emissions and thus also possible climate change in Norway, even if only gross emissions from combustion are calculated. The majority went on to refer to the Ministry's course adjustment, and concluded on page 3 that there was no basis for reversing previous applications, not finalising applications that are pending, or not accepting new applications for processing.

There is also a broad political majority in favour of Norway continuing to be a stable and long-term supplier of oil and gas to Europe, and that the climate and energy challenges must be resolved in parallel. This is, for example, stated in the Støre Government's supplementary white paper Report no. 11 to the Storting (2021-2022) to the Solberg Government's white paper Report no. 36 to the Storting (2020-2021). This received broad support in Recommendation no. 446 to the Storting (2021-2022). The Recommendation begins by outlining a broad historical starting point for Norway's energy policy, from hydropower development to oil and gas discoveries, and "Norway as the world's leading petroleum supplier". It is stated that four goals have been drawn up for Norway's 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 is also stated that this is a demanding time with great unrest in the energy markets, and that Russia's military invasion of Ukraine has exacerbated the situation. It is stated on page 3 of the Recommendation 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 whereby "the Norwegian petroleum industry is developed, not phased out", and that arrangements must be made to enable 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 pages 57 and 71 of this Recommendation that a proposal was submitted that the Storting should ask the Government to amend the PDO guide to include a requirement for an impact assessment of all new oil and gas projects, in light of the 1.5 degree target from the Paris Agreement and in light of economic climate risk. It was proposed that the Storting should ask the Government to ensure that the consequences of combustion emissions from fossil resources are also included in the 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. These proposals were voted down by the majority of the committee. The Court notes that these proposals imply that the impact assessment must be in the light of the 1.5 degree target from the Paris Agreement, and thus not only apply to the question of whether combustion emissions should be subject to an impact assessment.

In the Proposition, 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. Proposition no. 97 to the Storting (2022-2023), chapter 2). It is stated on page 24 that crude oil from Norway is "an even more important source of supply for European users than before". Furthermore, it is stated on page 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 utilised first. It is stated on page 30 that Norway is the only net exporter of gas in Western Europe. It is further stated on page 31 that the loss of Russian supplies has resulted in Norwegian gas gaining increased importance and that it is now absolutely critical for Europe's gas supply and energy security. In addition, it is stated 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 is stated on page 35 that in a joint statement with Norway issued in June 2022, the EU expressed support for Norway developing new oil and gas resources to supply the European market. Europe's demand for imported gas is expected to remain high over the next decade, despite both the EU and the UK having ambitions to reduce gas consumption. The Government has also stressed that it is a central factor that the petroleum industry is Norway's largest industry in terms of value creation, government revenues, investments and export value. It is stated that "The main objective of Norway’s petroleum policy is to facilitate the profitable production of oil and gas in a long-term perspective" (cf. Proposition no. 97 to the Storting (2022-2023), chapter 3.1).

All this proves 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 indicates that there is no real possibility that the decisions would have been different, regardless of what information might have come to light during the impact assessments on combustion emissions and climate effects.

The State has also referred to the most recent recommendation from the Standing Committee on Energy and the Environment on amendment of the Climate Change Act (the climate target for 2030) (cf. Recommendation no. 38 to the Storting (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 Recommendation contained a proposal for a more legally binding Climate Change Act (cf. section 2.7 of the Recommendation). The MPs submitting the proposal held that the Norwegian Climate Change Act needed improving in order for it to fulfil its purpose of promoting the implementation of Norway's climate targets and promoting transparency and public debate on the status, direction and progress of this work. The members held that it hindered the purpose of the Climate Change Act that there is no commitment to territorial emission cuts or cuts in the export of combustion emissions, and that there is no statutory obligation for 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 entailed legislative decisions with regard to climate targets for 2030 (cf. Section 3 of the Climate Change Act). In addition, the Standing Committee on Energy and the Environment proposed that the Storting should ask the Government to return to the Storting in spring 2024 with a white paper showing how Norway will cut emissions in the period up to 2030 in line with Norway's climate targets. 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 can cut emissions up to 2030 in line with Norway's climate goals.

The review shows that both the Government and a majority in the Storting have a firm view that the established petroleum policy should continue, and that there is a general paramount political desire for as much oil and gas to be produced from the Norwegian continental shelf as possible. This has been further 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 unlikely that the inadequate impact assessment of combustion emissions has affected the content of the decisions.

3.7.3 Norway's climate policy and the importance of updated climate science

Norway has an expressed political goal that the Norwegian petroleum activities must be within the framework of the climate targets, and that the overall energy policy must fulfil Norway's international climate obligations (cf. for example, Recommendation no. 446 to the Storting (2021-2022) and Recommendation no. 38 to the Storting (2023-2024).

Norway appears to have ambitious climate targets, and that both the Government and the Storting want to further develop the petroleum industry within the framework of the climate targets and 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 Intergovernmental Panel on Climate Change (IPCC)'s Sixth Assessment Report above. The Norwegian authorities have recently also recognised that human-induced climate change has already had 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. the white paper Report no. 26 to the Storting (2022-2023), p. 5).

The authorities have also recently received an official report in which the committee recommends that the Government draw up an overall strategy for the final phase of Norway's petroleum operations (cf. Official Norwegian Report NOU 2023:25, p. 171). The Committee also recommends that no decisions are made that contribute to investment in new activity until a paramount strategy has been finalised. According to the committee, this means a temporary halt in approval of new plans for exploration or development and operation of petroleum deposits (PDO), that plans for installation and operation of facilities for transport and utilisation of petroleum (PIO) are not approved, and that no decisions on electrification are made.

The Norwegian authorities' announced plan to adhere to the climate targets and fulfil the international climate commitments, 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 an entirely remote possibility that the decisions might have been different if combustion emissions and climate impacts for the relevant fields had been impact assessed.

3.7.4 Assessment of whether the case processing has otherwise been sound

The decision basis for Breidablikk does not contain any investigation, assessment or mention of combustion emissions. Nor is this mentioned or considered in the administrative decision. This suggests that the case processing has not been sound, that dissenting voices have not been heard and that the basis for decision has not been sufficiently informed. In the Court's view, this in itself indicates that there is not an entirely remote possibility that the inadequate impact assessment may have influenced the decision on the PDO for Breidablikk.

The decision basis for Tyrving does not contain any impact assessment or other assessment of combustion emissions. This was first mentioned in an undated table with an overview of projects that had been "finished". In this connection, reference was also made 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 is unclear which facts the decision is based on with regard to combustion emissions and their climate effects, and what was the factual basis for the legal assessment pursuant to Article 112 of the Constitution. There was no public consultation, and information only became known after the project was considered to have been processed. In the Court's view, this case processing shows 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 incorrect facts and an indefensible forecast. Overall, this supports the view that there is not an entirely remote possibility that the inadequate impact assessment may have influenced the decision on the PDO for Tyrving.

The decision basis for Yggdrasil does not contain any 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 specifically for Yggdrasil. This report was not submitted for ordinary consultation, but an opportunity was provided 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 proposition 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. They were thus not part of the decision basis that was available to the public. It was only stated that input had been received which served to highlight the uncertainty associated with the calculations. Overall, this case processing shows that the public did not receive information, that dissenting voices were not heard and considered, and that there is doubt as to whether the Ministry has based its decisions on incorrect facts and an indefensible forecast. This underpins the fact that there is not an entirely remote possibility that the inadequate impact assessment may have influenced the decisions on the PDO for Yggdrasil.

All in all, the Court finds that the Ministry's case management with regard to the assessment of combustion emissions and the ensuing climate effects cannot be considered sound compared with the assessment that would have been carried out in accordance with the regulations for impact assessments. The basis for the decision appears to be poorly accessible to the public. Dissenting voices have not been given the opportunity to comment on the assessment of gross emissions and the climate effects of this for the environment in Norway. Opposing voices have only been given the opportunity to comment on the report that was the basis for calculating net emissions with regard to Yggdrasil, and then a short deadline of eight days was set for the submission of professional input. Otherwise, no consultation rounds have been carried out with regard to the assessments of combustion emissions and their climate impact, in terms of either gross emissions or net emissions. This in itself suggests that the decision-making basis has not been sufficiently broad and properly informed.

The State has argued that the administrative 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 criticised by, among others, Statistics Norway and Vista Analyse, their input has not been discussed or assessed, beyond the fact that it highlights the uncertainty surrounding the calculations.

The courts must be cautious when reviewing political decisions, and it is therefore challenging to speculate on how the Ministry, and possibly the Storting, would have assessed the factual basis if combustion emissions and climate impacts had been analysed in an impact assessment. It is also challenging to speculate on the outcome of the impact assessments before they have been carried out. However, it is quite clear that the 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 up. The decision-making basis would be informed, verifiable, accessible and balanced. This is supported by the impact assessments that have been carried out for Tyrving and Yggdrasil, for example, with regard to other environmental impacts. The impact assessments show how thoroughly and transparently this can be done within the rules on impact assessment, and that this ensures that the process is confidence-inspiring, compliant and accessible.

Instead, the factual basis with regard to combustion emissions appears to be sparsely described in the decision basis, and it is challenging to assess what has been assessed and what balancing of various interests and factors has been done. 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 State has argued.

3.7.5 The need to safeguard the rights pursuant to Article 112 of the Constitution and compliance with Norway's international obligations under the EEA Agreement

In the Court's view, there are two circumstances in particular that indicate that the procedural rules in this area must be strictly enforced, and that this has an impact on the assessment of the effect of the error on the decision (cf. Recommendation no. 2 to the Odelsting (1966-1967) p. 16; cf. HR-2020-2472-P, paragraph 279). This includes safeguarding the rights under Article 112 of the Norwegian Constitution and compliance with Norway's international obligations under the EEA Agreement.

The obligation to conduct an impact assessment pursuant to Section 4-2 of the Petroleum Act and Section 22a of the Petroleum Regulations must fulfil the requirements pursuant to Article 112, second paragraph, of the Constitution (cf. Proposition no. 43 to the Odelsting

(1995-1996) p. 41-42; cf. HR-2020-2472-P, paragraph 281). Article 112 of the Constitution is intended to ensure that the public have information and knowledge about the effects of planned interventions in nature. The minority of the Supreme Court stated in the plenary judgment that Article 112, second paragraph, of the Constitution therefore entails that an ordinary assessment cannot be made of whether the error may have had an effect according to the principle in Section 41 of the Public Administration Act, because this could undermine the purpose of the constitutional provision (cf. HR-2020- 2472-P, paragraph 281). This indicates that the procedural rules must be strictly enforced.
In addition, the obligation to conduct an impact assessment is part of Norway's international obligations pursuant to the EIA Directive (cf. Proposition no. 43 to the Odelsting (1995-1996) p. 41-42; cf. HR-2020-2472-P, paragraph 282 et seq.). The EEA Agreement requires that the parties to the agreement loyally meet the obligations arising from the agreement. The Court finds that this entails a duty for the courts to remedy breaches of the EIA Directive's provisions on impact assessment under national law, to the extent possible, (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 remedy procedural errors related to the impact assessment of combustion emissions (cf. HR-2020-2472-P, paragraph 246).

This speaks in favour of interpreting the principle in Section 41 of the Public Administration Act in accordance with the obligations under international law that follow from the EIA Directive and the duty of loyalty under Article 3 of the EEA Agreement. In legal theory, it has been assumed that the duty to remedy requires that Norwegian courts consider whether the assessment of the effect of the error on the decision can be supplemented with other factors, to arrive at an EEA-compliant result. When the preparatory works allow for other assessments to be included, the duty to remedy requires that this option is used. Against this background, it is assumed that the duty under EEA law to remedy changes a national competence into an obligation (cf. Venemyr, The duty under EEA law to remedy as part of Norwegian law – as illustrated by the Supreme Court's decision in HR-2020-2472- P, Lov og rett, Vol. 60, issue 5, pp. 310-312). In legal theory, it is stated that failure to conduct an impact assessment in accordance with EEA law means that the administrative decision must be considered invalid regardless of whether the error may have affected the content of the decision (cf. Venemyr, On the requirements under EEA law for administrative law consequences of errors, PhD thesis, sections 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 impact assessments. Among other things, ESA questioned the practice related to the EIA Directive for situations where an inadequate impact assessment does not lead to invalidity because there is a political majority in favour of the decision anyway. The Ministry of

Climate and 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 impact assessment. The Ministry of Climate and Environment thus confirmed that the legal obligation to carry out an impact assessment applies regardless of whether there is a political majority in favour of the decision, and that it is not left to the discretion of the decision-making authority to assess whether an impact assessment should be carried out or not. In addition, the Ministry stated that an inadequate impact assessment will in most cases lead to the decision having to be deemed invalid, regardless of whether or not there is a political majority in favour of the actual decision.

Both the need to safeguard the rights pursuant to Article 112 of the Norwegian Constitution and Norway's international obligations pursuant to the EEA Agreement thus strongly indicate that an inadequate impact assessment should lead to the administrative decisions being declared invalid.

3.7.6 Specific balancing of interests

The State has subsidiarily argued that the administrative decisions should in any case be upheld after a balancing of interests. In this connection, the State has referred to the fact that the total investments for Yggdrasil amount to 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 State has further referred to the fact that total investments in Tyrving amount to 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 State has also shown that total investments in Breidablikk amount to 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 this regard, the Court finds reason to note that the obligation to conduct an impact assessment does not prevent the authorities from making the desired political decisions. If the administrative decisions are deemed invalid, this will mean that an 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 impact assessments have been carried out. The impact assessment must ensure that the public receives information, that dissenting voices are heard and considered, that the case processing is sound, and that the basis for decision-making 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 the administrative decisions in this case have been made after this judgment. In the Court's view, this implies that the State and the beneficiary third parties themselves must bear the risk that the legal rules on impact assessment of combustion emissions have not been complied with.

The Court does not have the authority to make political balancing between the State’s investments and revenues from petroleum activities on one hand against consideration of the climate on the other. However, the Court cannot see that the investments themselves can lead to the administrative decisions still having to be considered valid on the basis on a balancing of interests. In the Court's view, the considerations of sound case management, information about the case and considerations of democracy must be afforded the greatest weight in this area.

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

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

The question is whether the administrative decisions are invalid because the best interests of the child have not been investigated or assessed (cf. Article 104 of the Norwegian Constitution and Article 3 of the UN Convention on the Rights of the Child).

It has not been argued that the Petroleum Regulations and the EIA Directive contain a legal obligation to assess the consequences of consideration of the best interests of children. The Court has perceived that this means that the plaintiffs hold that this should have been investigated and assessed in a different way. The plaintiffs have also argued that the organisation Natur og Ungdom (Young Friends of the Earth Norway) has the right to be heard.

The consideration of the best interests of the child 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 interests of the child. The Court shall only assess whether the Ministry has a legal obligation to investigate and assess the best interests of the child in connection with an administrative decision on approval of a plan for the development and operation of petroleum activities. In this connection, the Court must also assess whether Natur og Ungdom (Young Friends of the Earth Norway) has the right to be heard.

It follows from the administration's general duty to investigate that underaged parties must be given the opportunity to express their views (cf. Section 17, first paragraph, second sentence, of the Public Administration Act). However, the Court cannot see that the provision applies in this case, as there are no children who are direct parties.

In principle, children have the right to be heard in matters that concern them, and that consideration of the best interests of the child must be a fundamental consideration in all actions and decisions that concern them (cf. Article 104 of the Norwegian Constitution). Article 104 of the Norwegian Constitution can thus provide a basis for the assessment of more general effects that the decision may have on children (cf. also Official Norwegian Report NOU 2019:5, section 21.2.2.1).

The principle that the best interests of the child must be a fundamental consideration is also stated in Article 3 (1) of the UN Convention on the Rights of the Child as 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.

Assessment of the best interests of the child is also related to the principle of the child's right to be heard pursuant 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. Section 2 no. 4 of the Human Rights Act; cf. Section 3).

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

> 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, it must be considered 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, it must be assessed whether the statement applies to the relevant facts and area of law. 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.

The UN Committee on the Rights of the Child has made general comments on the conditions in Article 3. It is emphasised that the term "administrative authorities" must be understood broadly, and refers 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 in principle 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 the Rights of the Child has assumed that the inclusion of the wording "legislative bodies" shows that Article 3 (1) applies generally to children, and not only to the individual child (cf. CRC/C/GC/14, paragraph 31). There 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

Natur og Ungdom (Young Friends of the Earth Norway), which represents a group of children, and children in general.

A central question is whether the administrative decisions on PDOs are decisions "concerning children". The UN on the Rights of the Child 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 impacts 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 best interests of the child (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. 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 perceives that this means that there is not necessarily a requirement that every decision must be based on an investigation and assessment of the best interests of the child, even if they concern children. This argues in favour of considering the best interests of the child in some areas at a more general level, and not in each individual administrative decision. This also means 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 specifically in the individual case based on the significance of the decision for children. The UN Committee on the Rights of the Child has also stated that consideration must be given to whether children are in a vulnerable situation (cf. CRC/C/GC/26 paragraphs 75-76).

The plaintiffs have further 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). Here it is stated that the Committee recommends that Norway strengthen its efforts to establish clear criteria regarding the best interests of the child for all authorities that make decisions that affect children, and ensure that this right is duly incorporated and interpreted and applied consistently in all legislative, administrative and judicial processes and in all policies, programmes, projects and international cooperation relevant to and affecting children. The same is also partly stated in the UN Committee on the Rights of the Child's 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 the best interests of the child are taken into account in absolutely all decisions that are relevant to and affect children. At the same time, this appears to be a general statement on consideration of the best interests of the child, and it does not mention petroleum activities or the climate specifically. Nor does the Court perceive this as an interpretive statement, but more as a general recommendation on optimal practice in the area of the Convention.

There is in principle no doubt that children are particularly vulnerable to climate effects and global warming as a result of greenhouse gas emissions from fossil energy. The 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 concerned this issue specifically. The Ombudsperson for Children has referred to the fact that the effects of climate changes are long-term, and that the situation may be very serious for today's children and future generations. The Ombudsperson for Children 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 best interests of the child must be a fundamental consideration, and that attention must be drawn to the assessment in the decision that is made. This is stated in 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. Klimarett [Climate Law], Bugge, Universitetsforlaget (2021) on pp. 196-197. This was written by the counsel for the plaintiffs, and therefore the Court does not go into this argument in more detail.

In a concrete complaint, reference was also made to how climate impacts affect children in general (cf. CRC/ C/88/D/107/2019). It is stated in paragraph 9.13, for example, 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 would mention that decisions within the petroleum sector may also have an impact on children in other ways, including in the form of revenue to 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 an element in the political balancing of interests that is done.

All in all, 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 are grounds for establishing a legal obligation to conduct an impact assessment on this or to consult children specifically in connection with individual administrative decisions on plans for the development and operation of petroleum activities. The Court perceives the statements from the UN Committee on the Rights of the Child more as advice on optimal practice in the area of the Convention, and not as concrete interpretative statements that have significance for the issue in this case. The Court cannot see that the statements apply to the specific facts and legal area in the case in hand. According to the Court, administrative 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 best interests of the child (cf. CRC/CGC/14, paragraph 14). In the Court's view, it is more appropriate to consider the best interests of the child at a more general level. This is thus different from an assessment of combustion emissions and climate effects thereof, which are well suited for a concrete impact assessment.

In this assessment, the Court has also attached importance to the fact that climate effects from combustion emissions must be subject to an impact assessment. In this connection, children's and young people’s organisations, such as Natur og Ungdom (Young Friends of the Earth Norway), will in any case have the right to express their views (cf. Sections 22 and 22a of the Petroleum Regulations). In the Court's opinion, their right to be heard will thus be safeguarded. Furthermore, the Ministry must also, in any case, consider the interests of future generations when applying Article 112 of the Constitution. In addition, it is stated in the Petroleum Act that the resources must be managed in a long-term perspective for the benefit of Norwegian society as a whole (cf. Section 1-2, second paragraph, of the Petroleum Act).

The Court has thus come to the conclusion that, based on the applicable legal sources, there is no basis for there being a concrete legal obligation to consult children, or to investigate and assess the best interests of the child, in connection with each individual administrative decision on a plan for the development and operation of petroleum activities. If such a legal obligation is to be established, this clarification must, in the Court's view, be made by the legislature or higher courts. In this connection, the Court points out that the Storting has rejected a proposal to ask the Government to amend the

PDO guide to include a requirement that the best interests of the child must be impact assessed in advance of a final decision (cf. Recommendation no. 433 to the Storting (2021-2022), proposal 5). The Court is not aware of any Norwegian case law from the courts of appeal or the Supreme Court that provides a basis for establishing a legal obligation of this nature.

Against this backdrop, the Court concludes that there is no legal obligation for children to be consulted or that the best interests of the child must be investigated and impact assessed in connection with a decision to approve a plan for the development and operation of petroleum activities. The decisions are therefore not contrary to Article 104 of the Norwegian Constitution and Articles 3 and 12 of the UN Convention on the Rights of the Child.

3.9 Articles 2 and 8, and Article 14, of the European Convention on Human Rights

The question is whether the administrative decisions are contrary to Articles 2 and 8 of the European Convention on Human Rights (ECHR), in isolation, and in the context of Article 14. The Convention applies as Norwegian law, and in the event of conflict it shall take precedence over provisions in other legislation (cf. Sections 2 and 3 of the Human Rights Act). Article 2 concerns the right to life, and Article 8 concerns the right to respect for private and family life. The enjoyment of the rights and freedoms resulting from the Convention must be secured without discrimination on any grounds (cf. Article 14). This provision does not have an independent field of application, and can only be applied in conjunction with other rights and provisions.

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

There is no doubt that as environmental organisations Greenpeace and Natur og Ungdom (Young Friends of the Earth Norway) have the right to bring an action (cf. Section 1-4 of the Disputes Act; cf. HR-2020-2472-P, paragraph 165). However, the right of action for organisations under Norwegian law does not necessarily make them subjects of rights pursuant to the ECHR. In order for the provisions to apply, it is in principle a requirement that an individual subject of rights is directly and personally affected by the risk of an act or omission (cf. for example, Kjølbro, Den europæiske menneskerettighedskonvention [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 administrative decisions are contrary to Articles 2 and 8.

In the plenary judgment, the Supreme Court concluded that the decision on the production licence in the 23rd licensing round was not a violation of Article 2 or 8 of the ECHR (cf. HR-2020-2472-P, paragraphs 164-176). The Court assumes that the Supreme Court's statements and assessments express applicable law, and can be applied in the current case.

The Supreme Court pointed out that Article 2 of the 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 lives, for example through floods or landslides. However, the Supreme Court held that there was not an adequate link between the production licence in the 23rd licensing round and the possible loss of human life, such that the requirement of a "real and immediate risk" could be considered met. In this assessment, the Supreme Court emphasised that it was uncertain whether the decision would actually lead to greenhouse gas emissions, and that the possible impact on the climate would be discernible in the more distant 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 effects this will have on the climate. This will also be even more clear after combustion emissions and climate effects have been impact assessed. At the same time, the impact on the 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 immediate link 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, paragraphs 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 is still doubtful whether there is a sufficiently direct and immediate link between this, and the rights that must be safeguarded under Article 8 of the ECHR.

The plaintiffs have referred to several decisions of the ECtHR that show that Articles 2 and 8 of the ECHR protect against real risks of, among other things, death and illness as a result of pollution. However, these cases concern individuals who have been directly and personally affected by a specific hazard, local pollution or the like. Reference is made to Pavlov and Others v. Russia, which concerned local air and water pollution. Reference is made to Cordella and Others v. Italy, which concerned local air pollution. Reference is

made to Budayeva and Others v. Russia, which concerned a specific landslide that had claimed several lives. Reference is made 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 individuals who have been directly affected by this. The Court cannot see that the facts in these cases are comparable to those in this case.

In addition, the plaintiffs have referred to several decisions of the ECtHR that show that Articles 2 and 8 of the ECHR set certain requirements for the decision-making process, including impact assessments. However, these cases also apply to individuals who have been directly affected by a specific hazard, local pollution, etc. Reference is made to Taskin and Others v. Turkey, which concerned pollution from mining in the vicinity of the applicants. Reference is made to Dubetska and Others v. Ukraine, which concerned pollution from a coal mine in the vicinity of the applicants. Reference is made to Di Sarno and Others v. Italy, which concerned health hazards and pollution from local waste accumulation. Reference is made to Association Burestop 55 and Others v. France, which concerned lack of information pursuant to Article 10 of the ECHR regarding a planned storage centre for radioactive waste. The Court agrees that the cases substantiate that there are requirements regarding the procedure for assessment, but cannot see that the circumstances of the case are comparable to those in this case.

The plaintiffs have also referred to the fact that courts in Germany, the Netherlands and Belgium apply the rights to greenhouse gas emissions. In this regard, the Court refers in particular to the fact that the Supreme Court considered that the Urgenda case from the Netherlands had little transfer value (cf. HR-2020-1472-P, paragraph 172-173). The Supreme Court pointed out that the case concerned general emission targets that the Dutch government had set, and that it was thus not a question of prohibiting a particular measure or possible future emissions. The Supreme Court also pointed out that the case did not involve a validity challenge against an administrative decision. The Court cannot see that this assessment will be any different for PDO decisions. The Court has not had a sufficient basis to assess whether the cases from Germany and Belgium have any significant transfer value.

The question of whether global greenhouse gas emissions can trigger 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 ECtHR. This is evident, among other things, from the European Court of Human Rights "Fact sheet - Climate change" from February 2023. The cases are 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 ECtHR has postponed the processing of six other cases pending judgment in these Grand Chamber cases. This includes the appeal

against the plenary judgment 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 the course of 2024. This may mean that the current legal practice 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.

As a general starting point, the Supreme Court has assumed that Norwegian courts must make an independent interpretation of the ECHR, and in that regard use the same method as the ECtHR. For example, in Supreme Court Law Reports Rt 2005, p. 833, paragraph 45, the Supreme Court has stated that:

> Norwegian courts must thus follow the provisions in the Convention, general considerations of objective and the rulings of the Court of Human Rights. Nonetheless, it is primarily the task of the Court of Human Rights to develop the Convention. And if there is any doubt about the interpretation, Norwegian courts must, when balancing various interests or values, be able to rely on value priorities forming the basis for Norwegian legislation and general opinion on what the law should be.

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 Supreme Court Law Reports Rt 2000, p. 966 on pp. 1007-1008 and HR-2019-1206-A, paragraphs 104-105). In the Court's view, there is thus currently no basis for expanding the scope of application in climate cases until this has possibly been clarified by the ECtHR.

Against this backdrop, the Court concludes that the administrative decisions are not contrary to Articles 2, 8 and 14 of the ECHR.

4 Order on temporary injunction

4.1 The request for a temporary injunction

The plaintiffs have submitted a request for the Court to issue an order on a temporary injunction to secure the main claim. In the petition, the plaintiffs have submitted 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 administrative 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 licences etc. based on PDO decisions are issued by directorates, ministries etc. that are subordinate to the State.

The State has argued that a claim to suspend the effect of PDO decisions requires that the Court orders the State to use its competence and how it shall be used, and that this would, therefore, constitute a substantive injunction. It has been pointed out 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. Supreme Court Law Reports 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 licences etc. The subsidiary claim will thus be sufficient to secure the main claim with respect to these two fields.

Breidablikk came on stream in mid-October 2023. The most recent production licence is valid until 31 December 2024. The Court cannot see that there is any legal basis for issuing an order to suspend the effect of the PDO decision, which in practice would be a request for reversal. However, further production after the most recent licence expires is necessary, and the Court will therefore consider the subsidiary claim with respect to Breidablikk as well.

4.2 The main claim

A temporary injunction can only be granted if the claim for which the injunction is requested has been proven (cf. Section 34-2, first paragraph, of the Norwegian Disputes Act). 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.

4.3 Basis for security

Furthermore, a temporary injunction can only be granted if the basis for security has been proven (cf. Section 34-2, first paragraph, of the Norwegian Disputes Act).

In the Court's assessment, it has been rendered probable that "the defendant's conduct makes it necessary to provisionally secure the claim because the action or execution of the claim would otherwise be considerably impeded" (cf. Section 34-1, first paragraph (a) of the Disputes Act). In the preparatory works, the implementation of an invalid administrative decision is mentioned as an example of unlawful conduct (cf. Proposition no. 65 to the Odelsting (1990-91), page 292). In the Court's view, a temporary injunction is necessary to ensure that no more production licences etc. are granted before there is a final and enforceable decision in the validity case. 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 to date not acceded to such requests. In addition, the Court points out that a production quantity licence for Breidablikk was granted despite the validity being under consideration, and despite the fact that the plaintiffs had also applied for a temporary injunction. Nor did the State provide information about this until after the licence had been issued.

The Court does not consider it necessary to consider whether the conditions relating to the basis of security are met according to the Disputes Act 34-1, first paragraph (b).

4.4 Balancing of interests

A temporary injunction cannot be granted if the loss or inconvenience caused to the defendant is "clearly disproportionate" to the interests of the plaintiffs in having the injunction granted. A natural interpretation of the wording implies that a specific balancing of interests must be carried out, and that the threshold is high if the conditions for a temporary injunction are otherwise met.

In this regard, the State has in particular referred to the investment costs, and that, for example, a one-year delay for Breidablikk will roughly cost NOK 2.5 billion. The Court refers to the assessment of the investment costs made during the balancing of interests that has already been done in the assessment of the effect of the procedural error on the decision in section 3.7.6.

The Court finds reason to reiterate that the obligation to conduct an impact assessment does not prevent the authorities from making the desired political decisions. The impact assessment is intended to ensure that the case processing is sound, and 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 purpose of an

injunction is to ensure that no further licences are granted before there is a final and enforceable decision in the validity case, so that these considerations can be addressed.

For the sake of good order, 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 it is thus a small 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 current production quantity licence up to 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 temporary injunction is disproportionate in this time perspective.

In the specific balancing of interests, the Court has also considered the recommendations from the public committee that has proposed a temporary halt in new consent for exploration or recovery, and that no investment be made in new activity until a comprehensive strategy for the phasing out of Norwegian petroleum activities is in place (cf. Official Norwegian Report NOU 2023: 25). It is stated on p. 171 of this report that:

> The current level of activity on the Norwegian continental shelf makes it prudent to introduce a pause for thought now. Due to the oil tax package introduced in 2020, investments in oil and gas extraction on the Norwegian continental shelf are expected to be very high in the coming years. A temporary pause in decisions on exploration and investments not directly related to existing installations will thus not pose a challenge to energy security in Europe.

All in all, the Court has concluded that the loss or inconvenience that the State has incurred, are not clearly disproportionate to the interests of the plaintiffs in having an injunction granted.

Therefore, the Court concludes that the request for a temporary injunction is granted by prohibiting the State from making other administrative decisions that require valid PDO approval for Breidablikk, Yggdrasil and Tyrving until the validity of the decisions has been legally determined.

5 Legal costs

In the main case, the the plaintiffs have been successful in their principal claim that the administrative decisions are invalid because combustion emissions and climate effects have not been impact assessed. The plaintiffs have also been successful in their subsidiary claim in the injunction case. The Court therefore finds that the plaintiffs have been successful in the whole or in the main in both the main case and the injunction case. This means that the plaintiffs are considered to have won the case, and are in principle entitled to full compensation for their legal costs from the opposite party (cf. Section 20-2, first paragraph, of the Disputes Act; cf. the second paragraph).

The plaintiffs' counsel has submitted a statement of costs where the total claim is NOK 3,260,427 incl. VAT. Of this, the claim for fees for the legal counsel and others amounts to NOK 3,000,562 incl. VAT, while the remainder relates 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 labour-intensive and complex case for the legal counsel and others, during both the preparation of the case and the main hearing. In the Court's view, the expert witnesses have also shed light on the disputed issues in 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. Section 20-5 of the Disputes Act).

The Court has considered whether there are grounds for granting exemption to the general rule of full compensation pursuant to Section 20-2, third paragraph, of the Disputes Act, but cannot see that this is relevant. Nor has this been argued by the State.

Therefore, the Court concludes that the State, represented by the Ministry of Energy, is ordered to pay NOK 3,260,427, incl. VAT in compensation for legal costs to the plaintiffs. The Court fee will be added to this sum.

The judgment has not been pronounced within the statutory deadline (cf. Section 19-4, fifth paragraph, of the Disputes Act). This is due to the scope and complexity of the case, the Christmas break, and other commitments.

CONCLUSION

Judgment in the main case:

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

Order in the injunction case:

1. The State is prohibited from making other administrative decisions that require valid PDO approval for Breidablikk until the validity of the PDO decision has been legally determined.
2. The State is prohibited from making other administrative decisions that require valid PDO approval for Tyrving until the validity of the PDO decision has been legally determined.
3. The State is prohibited from making other administrative decisions that require valid PDO approval for Yggdrasil until the validity of the PDO decisions has been legally determined.

In both cases:

1. The State, represented by the Ministry of Energy, is ordered to pay NOK 3,260,427 – three million one hundred and sixty one, four hundred and eighty seven kroner – including VAT plus the Court's fee in compensation for legal costs to Greenpeace Nordic and Nature and Youth Norway within 14 – fourteen – days from service of this judgment.

The Court is adjourned

Lena Skjold Rafoss

Guidance about appeal in civil cases enclosed (in Norwegian).

Veiledning om anke i sivile saker

I sivile saker er det reglene i tvisteloven kapitler 29 og 30 som gjelder for anke. Reglene for anke over dommer, anke over kjennelser og anke over beslutninger er litt ulike. Nedenfor finner du mer informasjon og veiledning om reglene.

Ankefrist og gebyr
Fristen for å anke er én måned fra den dagen avgjørelsen ble gjort kjent for deg, hvis ikke retten har fastsatt en annen frist. Disse periodene tas ikke med når fristen beregnes (rettsferie):

- fra og med siste lørdag før palmesøndag til og med annen påskedag
- fra og med 1. juli til og med 15. august
- fra og med 24. desember til og med 3. januar

Den som anker, må betale behandlingsgebyr. Du kan få mer informasjon om gebyret fra den domstolen som har behandlet saken.

Hva må ankeerklæringen inneholde?
I ankeerklæringen må du nevne

- hvilken avgjørelse du anker
- hvilken domstol du anker til
- navn og adresse på parter, stedfortredere og prosessfullmektiger
- hva du mener er feil med den avgjørelsen som er tatt
- den faktiske og rettslige begrunnelsen for at det foreligger feil
- hvilke nye fakta, bevis eller rettslige begrunnelser du vil legge fram
- om anken gjelder hele avgjørelsen eller bare deler av den
- det kravet ankesaken gjelder, og hvilket resultat du krever
- grunnlaget for at retten kan behandle anken, dersom det har vært tvil om det
- hvordan du mener at anken skal behandles videre

Hvis du vil anke en tingrettsdom til lagmannsretten
Dommer fra tingretten kan ankes til lagmannsretten. Du kan anke en dom hvis du mener det er

- feil i de faktiske forholdene som retten har beskrevet i dommen
- feil i rettsanvendelsen (at loven er tolket feil)
- feil i saksbehandlingen

Hvis du ønsker å anke, må du sende en skriftlig ankeerklæring til den tingretten som har behandlet saken. Hvis du fører saken selv uten advokat, kan du møte opp i tingretten og anke muntlig. Retten kan tillate at også prosessfullmektiger som ikke er advokater, anker muntlig.

Det er vanligvis en muntlig forhandling i lagmannsretten som avgjør en anke over en dom. I ankebehandlingen skal lagmannsretten konsentrere seg om de delene av tingrettens avgjørelse som er omtvistet, og som det er knyttet tvil til.

Lagmannsretten kan nekte å behandle en anke hvis den kommer til at det er klar sannsynlighetsovervekt for at dommen fra tingretten ikke vil bli endret. I tillegg kan retten nekte å behandle noen krav eller ankegrunner, selv om resten av anken blir behandlet.

<u>Retten til å anke er begrenset i saker som gjelder formuesverdi under 250 000 kroner</u>
Hvis anken gjelder en formuesverdi under 250 000 kroner, kreves det samtykke fra lagmannsretten for at anken skal kunne bli behandlet.

Når lagmannsretten vurderer om den skal gi samtykke, legger den vekt på

- sakens karakter
- partenes behov for å få saken prøvd på nytt
- om det ser ut til å være svakheter ved den avgjørelsen som er anket, eller ved behandlingen av saken

Hvis du vil anke en tingretts kjennelse eller beslutning til lagmannsretten
En *kjennelse* kan du som hovedregel anke på grunn av

- feil i de faktiske forholdene som retten har beskrevet i kjennelsen
- feil i rettsanvendelsen (at loven er tolket feil)
- feil i saksbehandlingen

Kjennelser som gjelder saksbehandlingen, og som er tatt på bakgrunn av skjønn, kan bare ankes dersom du mener at skjønnsutøvelsen er uforsvarlig eller klart urimelig.

En *beslutning* kan du bare anke hvis du mener

- at retten ikke hadde rett til å ta denne typen avgjørelse på det lovgrunnlaget, eller
- at avgjørelsen åpenbart er uforsvarlig eller urimelig

Hvis tingretten har avsagt dom i saken, kan tingrettens avgjørelser om saksbehandlingen ikke ankes særskilt. Da kan dommen isteden ankes på grunnlag av feil i saksbehandlingen.

Kjennelser og beslutninger anker du til den tingretten som har avsagt avgjørelsen. Anken avgjøres normalt ved kjennelse etter skriftlig behandling i lagmannsretten.

Hvis du vil anke lagmannsrettens avgjørelse til Høyesterett
Høyesterett er ankeinstans for lagmannsrettens avgjørelser.

Anke til Høyesterett over *dommer* krever alltid samtykke fra Høyesteretts ankeutvalg. Samtykke gis bare når anken gjelder spørsmål som har betydning utover den aktuelle saken, eller det av andre grunner er særlig viktig å få saken behandlet av Høyesterett. Anke over dommer avgjøres normalt etter muntlig forhandling.

Høyesteretts ankeutvalg kan nekte å ta anker over *kjennelser* og *beslutninger* til behandling dersom anken ikke reiser spørsmål av betydning utover den aktuelle saken, og heller ikke andre hensyn taler for at anken bør prøves. Anken kan også nektes fremmet dersom den reiser omfattende bevisspørsmål.

Når en anke over kjennelser og beslutninger i tingretten er avgjort ved kjennelse i lagmannsretten, kan avgjørelsen som hovedregel ikke ankes videre til Høyesterett.

Anke over lagmannsrettens kjennelser og beslutninger avgjøres normalt etter skriftlig behandling i Høyesteretts ankeutvalg.