OSLO COURT

JUDGEMENT AND ORDER

Cancelled:	18 January 2024 in Oslo District Court,
Case no:	23-099330TVI-TOSL/05
Judge:	District Court Judge Lena Skjold Rafoss
The case concerns:	Claim for judgement for invalidity of approval of plan for development and operation (PDO) of oil fields and petition for temporary injunction

The Greenpeace Nordic Association Nature and Youth	Attorney Jenny Arge Sandvig Attorney Jenny Arge Sandvig Attorney Camilla Hagelien (legal counsellor)

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The State v/Ministry of Energy	Attorney at law Gøran Østerman Thengs Attorney Omar Saleem Rathore (legal counsellor)

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The case concerns the validity of the Ministry of Petroleum and Energy's decision to approve plans for development and operation for 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 terms 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. These are the opening of fields, the exploration phase and the production phase. This case concerns the decisions made in the last stage, which is the production phase. The companies must then apply to the Ministry of Petroleum and Energy for approval of the plan for development and operation of a petroleum deposit (PDO). Production of oil and gas requires an approved PDO.

There are currently 93 producing fields 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 been subject to impact assessments by the companies that are operators and licence holders for the fields. However, these impact assessments do not include combustion emissions from the oil and gas produced. The issue is therefore whether there is a legal requirement to conduct an impact assessment of combustion emissions 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 EU Project Directive. It has not been argued that the impact assessments that have been carried out contain deficiencies with regard to other matters. The plaintiffs are of the opinion that combustion emissions should have been assessed. The Ministry of Petroleum and Energy considers it sufficient that combustion emissions have been assessed at a more general level by the Ministry, and that there is no requirement for this to be included in the specific impact assessments.

In the alternative, the plaintiffs have argued that the decisions are in violation of the duty to investigate and give reasons under Articles 2, 8 and 14 of the ECHR. The plaintiffs have also argued that the decisions suffer from errors because the best interests of the child have not been investigated and assessed, and that the decisions are thus in violation of Article 104 of the Norwegian Constitution and Articles 3 and 14 of the UN Convention on the Rights of the Child.
12. In addition, the plaintiffs have argued that the decisions are based on incorrect facts and unjustifiable forecasts.

The plaintiffs have filed a petition for a temporary injunction to secure the claims until the validity of the decisions is legally enforceable.

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 Föreningen Greenpeace Norden and Natur og Ungdom v the Norwegian State represented by the Ministry of Petroleum and Energy, see HR-2020- 2472-P. The case concerned the validity of the 2016 Royal Decree on the award of 10 petroleum production licences in the Barents Sea South and 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 tested in the courts. It was pointed out that the clear starting point is that it is up to the other state authorities to decide which environmental measures are to be implemented. The Supreme Court found that the royal decree was not invalid under Article 112 of the Constitution, and that the decision was not contrary to Article 93 of the Constitution and Article 2 of the ECHR, or Article 102 of the Constitution and Article 8 of the ECHR. A majority of 11 judges found that the decision was also not invalid due to procedural errors. The minority of four judges held that the climate impacts were inadequately analysed in the impact assessment prior to the opening of Barents Sea South-East, and that this must lead to invalidity.

The parties disagree on the interpretation of this judgement. The plaintiffs believe that the judgement must be understood as meaning that the Supreme Court has assumed that combustion emissions must be assessed before a decision is made to approve a PDO. The Ministry of Petroleum and Energy has, among other things, referred to the fact that the plenary case concerned production licences, and that the Supreme Court did not need to take a position on the case management and the impact assessment obligation for the production phase. The Ministry of Petroleum and Energy believes that the judgement must be interpreted as meaning that it is up to the authorities to make an overall assessment of this, and that combustion emissions are not subject to impact assessment requirements, either under the petroleum regulations or the EU's project directive.
The Court will return to the interpretation of this judgement.

1.3 The Ministry's price adjustment after the Supreme Court's plenary judgement

On 18 March 2022, the Norwegian Institution for Human Rights (NIM) submitted a report entitled
"Article 112 of the Norwegian Constitution and plans for development and operation of petroleum deposits" to the Ministry of Petroleum and Energy. Among other things, it was addressed when Article 112 of the Norwegian Constitution can give the state the right

and the obligation to refuse a plan for development and operation for climate and environmental reasons, and the requirements for analysing combustion emissions at the PDO stage.

This led to a public debate. To illustrate this, an article from VG dated 29 April 2022 with the headline "Professor: Far more oil decisions may be illegal". 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 before approving the development of discoveries, including emissions abroad. He argued that the legal situation had been the same since 2014 when the Norwegian Constitution was amended, and that this therefore applies to decisions both before and after the Supreme Court's plenary judgement. He pointed out that this obligation to conduct an impact assessment, which was mentioned by the Supreme Court, had not arisen suddenly, but had been in place since 2014. In the same article, the Minister of Petroleum and Energy commented that the Ministry assessed the climate impact before approving developments. He explained that the ministry had taken a schematic template calculation and defined what it would entail when the oil and gas is 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 was supported by Professor Sigrid Eskeland Schütz. She emphasised that an impact assessment is always prepared by the operator, not the Ministry, and that it must be presented to the public for input. She emphasised that the Ministry's decisions to permit development are not publicly available, nor are their calculations of greenhouse gas emissions.

In April 2022, a written question was put to the Minister of Petroleum and Energy in the Storting on why no climate assessment of the Breidablikk development had been carried out, even though the application was processed after the Supreme Court's plenary judgement in the climate lawsuit. The Minister of Petroleum and Energy responded in May 2022, explaining how the Ministry interpreted the judgement. It emerged that the approval for Breidablikk was granted before the Ministry had considered whether the Supreme Court judgement indicated an adjustment of the case processing of PDO applications. He confirmed that "No explicit assessments have thus been made as part of the case processing in this case". It was also stated that the Ministry would adjust the case processing as a result of the plenary judgement. The Minister stated that the possibility of climate change that may result from combustion emissions from oil and gas in the future will 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 visualised in future in the decisions related to applications for approval of PDOs.

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 mentioned in Meld. St. 11 (2021-2022) - Supplementary report to Meld. St. 36 (2020-2021), and considered by the Storting in Innst. 446 S (2021-2022). It was stated in the

press release that the Ministry had adjusted the case processing for applications for approval of plans for development and operation.

The adjustment was made after the plenary judgement from the Supreme Court. Norway's obligations under the Paris Agreement were explained. It was further stated that after the judgement, the Ministry had assessed whether the judgement indicated an adjustment in the case 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 as of autumn 2021. The Ministry stated that since then, specific calculations and assessments of combustion emissions have been made as part of the processing of applications for approval of PDOs. 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 that have been made for a long time.

The Ministry also stated in the press release that it would make the assessments of combustion emissions visible in future decisions related to applications for approval of plans for development of operations. For developments that are 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 in relation to Article 112 of the Norwegian Constitution. If a PDO has recoverable resources exceeding 30 million standard cubic metres of oil equivalents, the state would also calculate net emission effects. It was stated that the calculations of gross and net emission effects together will provide the basis for the Ministry's assessment against the Norwegian Constitution § 112. 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 may displace other production with higher emissions in the production phase. Another effect is that coal may be replaced by gas in the consuming countries. In addition, factors such as the effect of the EU's quota system and the fact that gas use does not necessarily result in 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 conducted 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 by the Ministry itself carrying out the assessments. The Ministry emphasised that these assessments thus differ from the 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 authorities' view that the EU Project Directive does not require an assessment of combustion emissions in other countries as part of an impact assessment for a PDO.

The adjustment of practice thus meant that the Ministry would make estimates of gross emissions for all PDO applications, and that it would make estimates of possible net emissions for PDO applications with resources exceeding 30 million standard cubic metres of oil equivalents.
However, the Ministry did not want to analyse the climate impact of combustion emissions, either in terms of gross or net emissions. In order to estimate net combustion emissions, the Ministry commissioned a report from Rystad Energy AS in mid-November 2022, following a tender process. 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 Norwegian Oil and Gas Association. In its report dated 15 February 2023, Rystad Energy AS concluded that increased Norwegian production would result in a net global emissions 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. The report from Rystad Energy AS was not submitted for ordinary consultation.
The Ministry sent out the report for "technical input" with a deadline of eight working days. The Ministry rejected requests for an extended deadline. Statistics Norway and several environmental protection organisations provided technical input within the deadline and criticised the report.

Vista Analyse subsequently prepared a report on behalf of WWF, Naturvernforbundet, Natur og Ungdom and Greenpeace. The company had participated in the tender process with the Ministry, but was not awarded the contract. In its report dated 16 March 2023, Vista Analyse concluded that the global net effect of increased Norwegian oil and gas production would be increased greenhouse gas emissions.

1.4 The Storting's consideration of the Ministry's adjusted case management

The Storting has been presented with the Ministry's adjusted case management, and this has been a topic in connection with various committee hearings. However, no legislative matters related to the disputed issues in the case have been submitted.

The adjustment was first mentioned in the white paper Meld. St. 11 (2021-2022) Tilleggsmelding til Meld. St. 36 (2020-2021) Energy for work - long-term value creation from Norwegian energy resources. A further report was submitted to the Storting's Energy and Environment Committee in connection with the committee's consideration of the white paper. The report was considered in Innst. 446 S (2021-2022), and the Storting endorsed the government's proposal.

The Ministry's adjusted case processing has also been considered by the Storting's Control and Constitutional Affairs Committee. This took place in connection with the consideration of the annual report of the Norwegian Institution for Human Rights (NIM), cf. Recommendation no. 425 S (2021-2022). It appears that NIM had, among other things, recommended that the government should investigate a statutory establishment of the 1.5

degree target in the Climate Act. The recommendation was also accompanied by a legal opinion from Professor Eivind Smith of 16 May 2022, which concerned the interpretation of Article 112 of the Norwegian Constitution,

including, among other things, what requirements Article 112 of the Norwegian Constitution is assumed to impose on the investigation of combustion emissions at the PDO stage. The court will return to this.

NIM's recommendations also formed the basis for a representative proposal to withdraw development licences on the Norwegian continental shelf, cf. DOK 8: 236 S (2021-2022). NIM provided written input to the Storting in connection with the proposal, and recommended, among other things, that
"The global climate impact of combustion emissions from exported Norwegian oil and gas must be assessed for each individual project against the remaining carbon budget for the 1.5 degree target". A minority in the Energy and Environment Committee 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 Institute for Human Rights". However, the majority of the Energy and Environment Committee voted against the proposals and endorsed the Ministry's procedure, cf. Innst. 433 S (2021-2022).

As the investment cost for the Yggdrasil development is more than NOK 15 billion, this matter was submitted to the Storting for approval before the Ministry made a decision on the PDO, cf. Prop. 97 S (2022-2023). In connection with the consideration of the matter in the Energy and Environment Committee, a minority proposed to update the PDO guidance with a clarification that "combustion emissions must be analysed for each individual project against the remaining carbon budget for the 1.5 degree target, in line with the Supreme Court ruling in 2020 and the recommendations of the Norwegian Institute for Human Rights", cf. Innst. 459 S (2022- 2023). The proposal was voted down by the majority of the committee.

1.5 The actual case management

1.5.1 Introduction

All the relevant decisions in this case were made after the Supreme Court's plenary judgment of 22 December 2020, cf. HR-2020-2472-P. The decision on the plan for development and operation for the Breidablikk field was made before the Ministry's "course adjustment" as a result of the judgement. Therefore, no impact assessment or other study of combustion emissions for the Breidablikk field has been carried out, nor is this mentioned in the decision. The decisions on the plan for development and operation for Tyrving and Yggdrasil were made after the Ministry's "course correction". 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 discussed in the case presentation 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 of Breidablikk, Yggdrasil and Tyrving.

1.5.2 Wide view

Breidablikk is a pure oil field in the North Sea. The field was previously called Grand, but is now called Breidablikk. Recoverable reserves are estimated at just over 30 million standard cubic metres.

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 most recent impact assessment for Breidablikk is from 2013. Combustion emissions have not been part of the impact assessments. On 29 June 2021, the Ministry of Petroleum and Energy made a decision to approve the plan for development and operation (PDO) for Breidablikk.
Breidablikk was initially expected to start up 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. The production licence states that it was valid from 15 October 2023 up to and including 31 December 2023. Production start-up means that the field has begun producing petroleum for sale to the market. Applications for new production licences are submitted 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 a pure oil 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 licence holders on the field. The impact assessment plan 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 impact assessment programme on 28 October 2021. The impact assessment was completed on 11 March 2022, and was sent out for consultation on the same day.
In June 2022, the operator, on behalf of the licensees, submitted a summary and evaluation of the comments received in the consultation round. 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 Hugin, Munin and Fulla fields, 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. The expected production time is 25 years until 2052.

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

This was considered by the Energy and Environment Committee, which submitted its recommendation on 25 May 2023, cf. Recommendation 459 s (2022-2023). 459 S (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 adopted a decision in accordance with the majority's recommendation.

On 27 June 2023, the Ministry of Petroleum and Energy subsequently issued three decisions approving plans for development and operation for Hugin, Fulla and Munin respectively.

1.6 Briefly about 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 as an "impact case". This means that it may have great significance. The plaintiffs have argued to the ECtHR, among other things, that Articles 2 and 8 of the ECHR require an impact assessment to be carried out as early as possible in connection with the opening of fields. In this connection, the ECtHR has sent several questions to the parties, including whether it is realistic for the climate impact of combustion emissions to be analysed at the PDO stage. The government lawyer responded on behalf of Norway on 26 April 2022. The government lawyer referred to the majority vote in the plenary judgement, 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 government lawyer summarised this as follows in paragraph 116:

> Accordingly, potential emmissions 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.

Government counsel 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 hearing of the complaint pending the

hearing of three Grand Chamber cases on climate. A decision from the ECtHR is expected in 2024.

1.7 The court process

On 29 June 2023, Oslo District Court received a summons and application for a temporary injunction from Föreningen Greenpeace Norden and Natur og Ungdom against the Norwegian State through the Ministry of Petroleum and Energy. Due to the court recess, the deadline for reply was not set until 29 June 2023. At the same time, the court contacted the Government Attorney with a view to scheduling the main hearing. In mid-August 2023, the Government Attorney asked for a postponement of the defence deadline until 19 September 2023. The plaintiffs opposed this. However, the court granted the request and postponed the deadline for defence to 19 September 2023. After some procedural exchanges, the main hearing was scheduled for week 48/49. A planning meeting was held on 25 September 2023. It was clarified that the main case and the injunction case could be heard together during the main hearing, which was scheduled to start on 28 November 2023.

On 1 October 2023, the plaintiffs submitted a process letter stating that the Norwegian Petroleum Directorate on
29 September 2023 had issued a press release on consent for 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 petitioned the court to schedule a hearing immediately in the injunction case regarding Breidablikk. The court requested that the state specifically explain what the start of production entailed. The state stated that the field would start producing for sale to the market, and that average production from Breidablikk is expected to be approximately 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 per cent of Norwegian oil production in this period. The state noted that 15 October 2023 could not be considered a decisive cut-off date that required an immediate injunction. The state further noted that if the court found 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 a letter to the parties in which the decision to hear the main case and the injunction case together was upheld. In this assessment, the court particularly emphasised the nature and complexity of the case, the short time until the main hearing, and the need for proper case management.

On 13 October 2023, the plaintiffs filed a petition for the appointment of experts, cf. Section 25-2 of the Dispute Act. The Plaintiffs proposed that Professors Helge Drange and Dag Olav Hessen be appointed to assess the potential adverse effects of linear and non-linear climate change from emissions from the three oil fields. It was also proposed that Professor Wim Thiery be appointed to assess the potential adverse effects of the fields on living children over their lifetime. The state opposed the petition for the appointment of experts. The court convened a planning meeting on 18 October 2023 on this petition. The court stated that the process of appointing experts could result in the main hearing having to be postponed. Subsequently, the Plaintiffs withdrew the petition for the appointment of experts. Instead, the plaintiffs later called them as expert witnesses. The expert statement from Professor Helge Drange was submitted a few days after the deadline for the

finalisation of the case preparation, and the State therefore filed a motion for

exclusion of evidence. The motion was dismissed by the District Court's ruling of 21 November 2023.

The main hearing was held at Oslo District Court from 28 November to 6 December 2023. The entire main hearing was streamed, cf. section 124a of the Courts of Justice Act. The head of Nature and Youth and the head of Greenpeace Norway gave statements. At the request of the plaintiffs, a director of the Ministry of Petroleum and Energy also gave a statement. A total of nine expert witnesses were called. Reference is otherwise made to the court book.

2 The parties' arguments and claims

2.1 The plaintiffs' arguments

In the following, the Court will provide an overview of the arguments of the Plaintiffs, Föreningen Greenpeace Norden and Natur og Ungdom.

At its core, this case concerns legal rules that the Supreme Court has clarified in plenary session, 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 carry out 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 may actually cause. The omission also means that citizens have not had the opportunity to influence what is being analysed through hearings. By extension, several of the decisions are based on factual errors and unjustifiable forecasts.

Firstly, the decisions are invalid because the lack of an impact assessment of the combustion emissions is contrary to Section 4-2 of the Petroleum Act, cf. Section 22a of the Petroleum Regulations, interpreted in light of Article 112, second paragraph, of the Norwegian Constitution. Section 22a of the Regulations requires an impact assessment of "emissions to [...] air". The expression includes emissions of greenhouse gases through combustion, cf. HR 2020-2472-P paragraph 218, cf. also paragraphs 216, 241 and 246. A unanimous Supreme Court in plenary has clarified that combustion emissions must normally be impact assessed before a decision on a PDO is made. Such interpretative statements in plenary session have decisive legal source weight. 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 shall ensure the citizens' right to knowledge about the effects of a planned environmental intervention, and that decisions are made on a sound and informed basis, cf. Article 112 (2) of the Norwegian Constitution, cf. HR- 2020-2472-P paragraph 183. The error leads to invalidity. There is a "not entirely remote possibility" that the error may have affected the result, see section 41 of the Public Administration Act, see Rt. 2009-661, paragraph 71. Due to the environmental and democratic considerations that the impact assessment regime is intended to safeguard, the path to invalidity "may be short when the procedural error consists of a lack of or inadequate impact assessment", see Rt. 2009-661, paragraph 72. Unlike the majority's assessment at the opening and exploration stage in HR- 2020-2472-P, the lack of assessment at this final stage of the proceedings can no longer be repaired. In any event, the procedural rules in this area must be "enforced particularly strictly", cf. Innst. O. no. 2 (1966-1967) p. 16, cf. the minority in HR-2020-2472-P paragraph 279. The state must have the burden of proving that the error is immaterial.

Secondly, the decisions are invalid as a result of inadequate impact assessment pursuant to Article 4.1 of the EU Project Directive, cf. Article 3.1. The directive requires that

The impact assessment shall 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 CJEU has clarified that the scope of the Directive is to be interpreted broadly, and that it would be too narrow and counterproductive to assess only the direct effects of a project, and not possible environmental effects from the end use. The majority in HR-2020-2472-P suggested, and the minority concluded, that the climate impact of combustion emissions is "undoubtedly" covered by the impact assessment obligation under the corresponding planning directive. Breach of the impact assessment obligation under the Projects Directive entails invalidity.

Thirdly, the decisions are invalid because the lack of an impact assessment of potential adverse effects on life and health from the combustion emissions violates Articles 2 and 8 of the ECHR, in isolation and read in conjunction with Article 14 of the ECHR. The emissions will increase the average temperature and exacerbate climate-attributable extreme weather that already takes lives in Norway due to current warming. The provisions are thus applicable.
According to the ECtHR's case law, environmental impact assessments must be based on "appropriate investigations and studies". Such investigations and studies must 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", and challenge "any decision, act or omission". Where the information provided is "inaccurate or even insufficient", the right is emptied of content. None of these requirements are satisfied here. Violation of the ECHR will result in nullity without further ado.

Fourthly, the decisions are invalid because the long-term consequences of the developments for living children in Norway have neither been investigated nor assessed, cf. 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 on living children beyond 2120. The emissions will also sequester much of the remaining carbon budget, thereby exacerbating the future mitigation burden of living children. The UN Committee on the Rights of the Child 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 of 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 against any conflicting considerations and that the decision states that the best interests of the child have been emphasised as a fundamental consideration, cf. Rt-2012-1985 paragraph 149 and HR- 2015-2524-P paragraph 169.
None of the decisions consider the best interests of the child. This error also leads to

invalidity.

The decisions for Yggdrasil and Tyrving are also invalid because they are based on material errors of fact. The statement of case for Yggdrasil states that calculations of maximum emissions

from the field - 365 million tonnes CO2e - "does not give reason to assume that greenhouse gas emissions from the Yggdrasil development will harm the environment in Norway". The decision for Tyrving states that calculations of maximum emissions from Tyrving - 11.25 million tonnes CO2e - "are not contrary to Article 112 of the Norwegian Constitution". The assessments are the result of an incorrect factual premise that 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 material and leads to invalidity, cf. fvl. § 41.

The decisions for Yggdrasil and Tyrving are also invalid because they are based on unjustifiable forecasts. The Plaintiffs dispute that assumptions about market effects in other countries, so-called "net effects", are to be regarded as indirect environmental effects pursuant to Section 22a of the Petroleum Regulations and Article 3.1 of the Projects Directive. To that end, the assumptions are too derivative, speculative and uncertain, cf. Section 9 of the Nature Diversity Act. In the event that such assumptions are nevertheless relevant, it is argued that the forecast on which the Ministry has based the market effects for Yggdrasil is unjustifiable. Similarly, the forecast in the calculation concerning Tyrving is unjustifiable.
The error leads to invalidity, cf. section 41 of the Public Administration Act.

The plaintiffs have a legal interest in the injunction proceedings against the Norwegian State, cf. section 1-3 of the Dispute Act. The conditions for an injunction are met. The main claim of invalidity has been substantiated, cf. Section 34-2, first paragraph, of the Dispute Act. There is a defence, cf. section 34-1, first paragraph (a) and (b) of the Dispute Act. The defendant's behaviour makes it necessary to provisionally secure the claim because its implementation would otherwise be "significantly impeded", cf. letter a, cf. HR-2007-716-U paragraph 37. Reference is made to the fact that the Norwegian 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 postpone the implementation of complaints pending the court case. In any case, an injunction is necessary to prevent "significant damage or inconvenience" from the extraction of 11, 87 and 365 MtCO2e from the fields, respectively, cf. letter b.
A defence here does not mean that there is a defence for any other domestic greenhouse gas emissions, as the state has claimed. Firstly, the emissions originate from unlawful administrative decisions. Secondly, section 34-1, first paragraph, letter b of the Dispute Act limits the scope of the Act downwards to damage or disadvantages that are not significant. The decisions in question will collectively result in emissions many times the annual territorial emissions from Norway, and correspond to large exceedances of the remaining carbon budget for Norway (per capita) to limit warming to 1.5 degrees centigrade. The adverse impacts the decisions will exacerbate are far above the materiality threshold. Since the emissions cannot subsequently 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 interest the plaintiffs have in an injunction being granted, cf. section 34-1, second paragraph, of the Dispute Act. A unanimous public committee has recently recommended the suspension of all PDO authorisations because they lock in territorial emissions

up to 2050 that prevents the statutory goal in the second paragraph of Article 4 of the Climate Act that greenhouse gas emissions in Norway shall be reduced by "90 to 95 per cent". An injunction will safeguard the democratic considerations on which the Supreme Court's interpretation of the second paragraph of Article 112 of the Norwegian Constitution rests, the rule of law and predictability considerations that compliance with precedents from the Supreme Court must safeguard, cf. Article 88 of the Norwegian Constitution. § Article 88, and the environmental considerations that the impact assessment obligation reflects.

2.2 The plaintiffs' claim

The plaintiffs, Föreningen Greenpeace Norden and Natur og Ungdom, claim the following:
The main thing:

1. The Ministry of Petroleum and Energy's decision of 29 June 2021 to approve the Breidablikk PDO is invalid.
2. The Ministry of Petroleum and Energy's decision of 5 June 2023 to approve the PDO for Tyrving is invalid.
3. The Ministry of Petroleum and Energy's decision of 27 June 2023 to approve the PDO for Munin, Fulla and Hugin (Yggdrasil) is invalid.
4. Orders Föreningen Greenpeace Norden and Natur og Ungdom to pay the costs.

The injunction case:

1. The Norwegian State, represented by the Ministry of Petroleum and Energy, is ordered to suspend the effect of the decision of 29 June 2021 to approve the PDO for Breidablikk until the validity of the decision has been decided with legal force.
2. The state is prohibited from making other decisions that require a valid PDO authorisation for Breidablikk until the validity of the PDO decision is legally enforceable.
3. The Norwegian State, represented by the Ministry of Petroleum and Energy, is ordered to suspend the effect of the decision of 5 June 2023 to approve the PDO for Tyrving until the validity of the decision is legally enforceable.
4. The state is prohibited from making other decisions that require a valid PDO authorisation for Tyrving until the validity of the PDO decision is legally enforceable.
5. The Norwegian State, represented by the Ministry of Petroleum and Energy, is ordered to suspend the effect of the decision of 27 June 2023 to approve the PDO for Yggdrasil until the validity of the decisions is legally enforceable.
6. The state is prohibited from making other decisions that require a valid PDO authorisation for Yggdrasil until the validity of the PDO decisions has been legally enforceable.
7. Orders Föreningen Greenpeace Norden and Natur og Ungdom to pay the costs.

2.3 The defendant's argumentation

In the following, the Court will provide an overview of the arguments put forward by the Ministry of Petroleum and Energy.

The state believes that the 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 decisions are not based on incorrect facts or unjustifiable forecasts. In any event, 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 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 "shall contain a description of [...] commercial and environmental conditions". This includes a requirement for an impact assessment that must "be seen in light of the requirements set out in both national and international regulations for impact assessments, including the provision in Section 110 b of the Norwegian Constitution", cf. Proposition no. 43 (1995-1996), pp. 41-42. Supplementary rules on what is to be included in such an impact assessment are laid down in Section 22 a of the Petroleum Regulations. The provision implements the requirements in the EU's Project Directive, which means that the requirements in the Directive determine the content of an impact assessment carried out pursuant to Section 22 a of the Petroleum Regulations.

It follows from Article 3(1) of the Directive that an impact assessment - where 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". The direct and indirect effects on, among other things, "land, soil, water, air and climate", see Art. 3 no. 1 letters a, c and d. The same largely follows from Section 22a first paragraph of the Regulations. The scope of the assessment obligation is limited to the consequences of a "project". The term "project" is defined in Article 1 no. 2 letter a, as 1) "the execution of construction works or of other installations or schemes", and 2) "other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources". The wording clearly indicates that by "project" the Directive refers to the actual activity to which the authorities' authorisation applies, cf. also the Directive's definition of "development consent", see Article 1 no. 2 letter c. What the Petroleum Act defines as "project" is "development and operation" for petroleum production. That the consequences of such development must be assessed follows from Annex I, point 14 of the Directive. 14 to the directive, which defines "[e]xtraction of petroleum and natural gas for commercial purposes" (of a certain size) as a separate project to be assessed, cf. also Art. 4 and 5.

It follows from this that it is the environmental impacts of the actual development and operation that must be analysed. This is stated in Section 22 a of the regulations, which states

that an impact assessment at the PDO stage "shall account for the effects the development may have on commercial conditions and

environmental conditions, including preventive and mitigating measures". Furthermore, it is stated that the report shall describe "the environment that may be significantly affected, and assess and weigh the environmental consequences of the development". This refers to the development and production emissions that the development and operation will cause in Norway. This is supported by section 4.8 of the PDO guidelines, which operationalises the impact assessment obligation, and at the same time reflects how the regulations have been interpreted over the years. Particular reference is made to page 25, where it is stated that what is to be assessed is "[t]he effects the development may have on environmental conditions, both during the construction period (development, installation and drilling), operation and termination of the activity".

Emissions from the share of Norwegian exported petroleum that is subsequently incinerated have an actual causal link to development and operation in Norway. In legal terms, however, such emissions are not "indirect effects of a project" under the Project Directive. These are not effects of the actual development project in Norway, including production and operation in Norway, but later effects as a result of end users' possible combustion of the products they purchase. In the Norwegian State's view, the fact that the Directive does not cover this type of derived effects follows from a natural and contextual interpretation of the Directive, cf. also the Petroleum Regulations and the PDO Guidance Chapter 4. As far as the Norwegian Government is aware, there are no decisions of the ECJ that support the Plaintiffs' view of the almost unlimited scope of the Directive. Nor is the Norwegian Government aware of any country practising the Directive in the way the Plaintiffs believe it should be interpreted. The broad interpretation of the Directive does not mean that the words "indirect effects of a project" can be given a meaning other than that which clearly follows from the wording of the Directive.

Nor can a requirement to analyse combustion emissions be derived from either Article 4-2 of the Petroleum Act, Article 22a of the Petroleum Regulations, the wording of the second paragraph of Article 112 of the Norwegian Constitution or administrative practice. The Plaintiffs' argument is thus based solely on certain formulations in HR-2020-2472-P. The Norwegian Government is of the view that the judgement - 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 decide 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 as a precedent was the environmental organisations' argument that there is a requirement to investigate combustion emissions prior to a decision to open an area for petroleum activities pursuant to Section 3-1 of the Petroleum Act. The majority found that no such requirement applies at the opening stage, and also stated that the PDO stage would in any case be a more suitable and appropriate time to assess climate impacts in general. As the case was structured by the environmental organisations, the Supreme Court had no basis for generally clarifying which procedural requirements apply at the PDO stage, as this was a very limited issue. It is incorrect for the Plaintiffs to present it as if the Norwegian State should have succeeded in its argument that such a requirement applies at the PDO stage. On the contrary, the Norwegian Government

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, the

paragraph, it must be up to the Storting to decide in which context it should be analysed. The state's view was that this should be done collectively and at an overall level, which the Supreme Court also states that there is an "obvious need for".

Before the Supreme Court, the environmental organisations did not argue that "the impact assessment should contain extensive research", but argued that an assessment "should have pointed to and assessed the effects of combustion abroad". The Supreme Court's assessment of the argument was that "apart from the known effects of combustion of petroleum", it was "difficult" to see what such an assessment should specifically include. In this case, the plaintiffs have a more extensive argument than they had before the Supreme Court, with a requirement for a far-reaching investigation programme in connection with each individual PDO that cannot be anchored in HR-2020-2472-P, even if 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, Innst. 425 S (2021-2022), Innst. 433 S (2021-2022), Innst. 446 (2021-2022) and Innst. 459 S (2022-2023). Since there is no requirement to conduct an impact assessment of combustion emissions abroad in connection with an application for or approval of a PDO, the state's view is that there are no deficiencies 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 it will in that case be up to the authorities to determine how such information is most appropriately obtained and made available. The Ministry's adjusted case processing for PDO applications received after HR-2020-2472-P will, in the state's view, be well within any minimum requirements pursuant to Grl. § Article 112, second paragraph. Reference is also made to the Storting's approval of the adjusted case processing in Innst. 433 S (2021-2022) and Innst. 446 (2021-2022). The fact that, at the time of the PDO processing for Breidablikk, the assessment of any adjustments to the case processing for PDO applications had not been finalised does not, in the State's view, affect the validity of the Breidablikk decision.

In any case, any deficiencies in the impact assessments do not lead to invalidity. The fact that production and combustion of petroleum will result in CO2 emissions has been widely recognised 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 long been anchored in the principles the world's states have agreed on for handling 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 considered and rejected proposals to fully or partially phase out Norwegian petroleum activities due to global CO2 emissions, including not approving new development plans that have been submitted. Subsequent proposals to introduce special requirements to analyse global emissions from combustion have also

been voted down by broad political majorities. For decades, the government's policy has been that measures to reduce global

emissions and their harmful effects shall be implemented in other ways than by reducing or halting petroleum production, see also HR-2020-2472-P para. 243. The state's view is that in order to achieve the world's climate goals, the world must manage to replace fossil energy with renewable energy through measures to reduce demand.

To the extent that it was a procedural error that the impact assessments underlying each PDO did not analyse how any combustion emissions abroad could affect the environment in Norway, it is clear in the State's view that this is an error that cannot have had a decisive effect on the content of the decisions. The decisions are therefore valid in any event, cf. the principle in section 41 of the Public Administration Act. Should the court find that any procedural errors may have had a decisive effect on the content of the decision, the question of invalidity depends on a balancing of interests based on the advantages and disadvantages of recognising the decisions as invalid. The state's view is that the potential financial consequences of any invalidity indicate that the decision should be upheld as valid in any case.

Nor are the decisions based on incorrect facts. The decisions are not based on an assumption that maximum gross emissions will not affect the climate or damage the environment in Norway, neither for Tyrving nor for the Yggdrasil fields. What is stated in the decisions, however, are the Ministry's legal assessments that the developments will not materially violate Article 112 of the Norwegian Constitution. To the extent that the Plaintiffs disagree with this legal assessment, the Plaintiffs could have argued that the decision is invalid as a result of an error of law. The Plaintiffs have not done so, but rather have constructed a fact that cannot be deduced from the decisions and instead argue invalidity based on this allegedly incorrect fact. Any errors of fact on this point cannot in any event have affected the content of the decisions.

The decisions are not based on unjustifiable "forecasts". The decisions are not based on a "forecast" of specific quantified net effects. Of the decisions challenged in our case, it is only for the Yggdrasil fields that calculations of net effects in addition to maximum gross emissions were made in connection with the processing of the PDO application. In the case submission to the Storting, it was explained that there was professional disagreement about the assumptions for the calculations, and how the input submitted by several of the stakeholders that the plaintiffs now present as expert witnesses "helps 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", cf. Prop. 97 S (2022-2023), inter alia, sections 4.4 and 7.5. The Plaintiffs appear to believe that, as a matter of principle, probable net effects should be disregarded, but the expert witnesses invoked by the Plaintiffs also assume global net effects that will always be lower than maximum gross emissions. However, even if one were to completely disregard net effects at all, the Ministry's legal assessment against Article 112 of the Norwegian Constitution would not be any different. In the event that the Court were to agree that the PDO decision for Yggdrasil is based on a forecast that is unjustifiable, it is in any case not an error that may have had a determining

effect on the decision's

content. It is noted in this connection that the Storting's consent to the approval of the PDO for the Yggdrasil fields is not justified with any reference to the calculation of specific net effects, cf. Innst. 459 S (2022-2023).

In the state's view, the ECHR does not apply. In order for Article 2 or 8 of the ECHR to be applicable, it is firstly a requirement to specify that as a subject of rights one is directly and personally affected by the risk of the consequences of an act or omission. Environmental organisations are not protected under Article 2 or 8, and do not become subjects of rights even though organisations in Norwegian law have a procedural right of action under section 1-4 of the Dispute Act, cf. HR-2020-2472-P para. 165. Nor are the rights collectively enforceable and cannot be invoked by the organisations on behalf of the population as such. Consequently, 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. 14. Furthermore, the ECHR contains no right to the environment, and there is no ECtHR case law relating to the effects of global greenhouse gas emissions. The requirement established by the ECtHR for a qualified link between specific acts/omissions and specified effects on individuals' right to life, health, home, etc. in cases concerning local environmental damage (pollution, noise, natural disasters) is clearly not met 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 actualise Articles 2 and/or 8 following an expanded interpretation of these provisions is the subject of three Grand Chamber cases before the ECtHR, where decisions are expected in 2024. It is not the role of Norwegian courts to develop the ECHR, see e.g. Rt-2005-833. In the event that the ECHR were to be applied, the state's view is that there is no violation of Article 2 or Article 8 of the ECHR, alternatively read together with Article 14.

Furthermore, in the State's view, there is no legal basis for imposing an obligation to make a specific 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. Section 104, second paragraph, of the Norwegian Constitution, cf. Article 104 of the UN Convention on the Rights of the Child.
3. Any inadequate investigation of incineration emissions under the ECHR or inadequate justification under 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 are not met. In the state's view, an injunction that requires the court to order the state to suspend the effect of PDO decisions that have entered into force would also entail an injunction on the merits, which is not possible. In the state's view, no errors related to the PDO decisions that could lead to invalidity have been substantiated, and a main claim has thus not been substantiated, cf. Section 34-2, first paragraph, of the Dispute Act. The Norwegian State is furthermore of the opinion that no grounds for security have been established, either pursuant to Section 34-1 (a) or (b) of the Dispute Act. In the Norwegian State's view, the financial loss in the event of a temporary

injunction in line with the Plaintiffs' claim will, in all

be clearly disproportionate to the plaintiffs' interest in an injunction, cf. Section 34-1, second paragraph, of the Dispute Act.

2.4 The defendant's claim

The Defendant, the Norwegian State, represented by the Ministry of Petroleum and Energy, claims the following: The main action:

1. The State v/Oil and Energy Ministry is acquitted.
2. The State v/Oil and Energy Ministry is ordered to pay costs.

The injunction case:

To the petitions for injunctive relief seeking to "order the state to suspend the effect of" the PDO decisions for Breidablikk, Tyrving and Yggdrasil, respectively:

1. Principally: The petitions are dismissed.
2. In the alternative: The petitions are dismissed.

To the petitions for injunctions that the state is "prohibited from making other decisions that require valid PDO approval" for Breidablikk, Tyrving and Yggdrasil, respectively:

3. The petitions are not granted.

In any case:

4. The State v/Oil and Energy Ministry is ordered to pay costs.

3 The court's judgement

3.1 The court's conclusion

The court's conclusion is that the decisions on the plan for development and operation of petroleum deposits for Breidablikk, Yggdrasil and Tyrving are invalid.

The Court has concluded that there is a legal requirement that combustion emissions must be subject to an impact assessment pursuant to Section 4-2 of the Petroleum Act, cf. Section 22a of the Petroleum Regulations, interpreted in light of Article 112 of the Norwegian Constitution. This also follows from Article 4 no. 1 of the EU Project Directive, cf. Article 3 no. 1. No impact assessment of combustion emissions has been carried out in connection with the relevant decisions. Impact assessment is important to ensure an informed and correct basis for decision-making. Impact assessment ensures that opposing voices are heard and assessed, and that the basis for decision-making is verifiable and available to the public. This is important in order to safeguard the need for democratic participation in decisions that may affect the environment. The inadequate impact assessment of combustion emissions and climate impacts thus means that the decisions are invalid.

In the Court's view, there are a number of circumstances that indicate that the decisions for Yggdrasil and Tyrving are based on incorrect facts and an unjustifiable forecast. However, the Court has not had sufficient grounds to decide whether this in itself leads to the decisions being invalid. Nor has this been necessary for the outcome of the case.

The Court has concluded that there is no legal obligation to consider the best interests of children in connection with each individual decision on a plan for development and operation of petroleum activities. The Court has therefore concluded that the decisions are not contrary to section 104 of the Norwegian Constitution and Articles 3 and 12 of the UN Convention on the Rights of the Child.

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

The petition for a temporary injunction is upheld by prohibiting the state from making other decisions that require valid PDO approval for Breidablikk, Yggdrasil and Tyrving until the validity of the decisions has been legally enforceable.

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 explain the result in more detail in the following.

3.2 Legal regulation of petroleum activities in Norway

Petroleum activities are a thoroughly regulated sector. The Norwegian state has ownership rights to subsea petroleum deposits, and exclusive rights to resource management, cf. section 1-1 of the Petroleum Act. Petroleum resources shall be managed in a long-term perspective so that they benefit Norwegian society as a whole. This includes resource management to provide the country with income and contribute to ensuring welfare, employment and "a better environment", and to strengthen Norwegian business and industrial development, while taking necessary account of regional policy interests and other activities, cf. Section 1-2 of the Petroleum Act. No one other than the state may conduct petroleum activities without the permits, approvals and consents required pursuant to the Petroleum Act, cf. Section 1-3 of the Petroleum Act.

Petroleum activities are divided into three phases. These are the opening phase, the exploration phase and the production phase. Different rules have been issued for the individual phases. Before each phase, investigations and assessments are carried out in accordance with the regulations for the relevant phase. The Supreme Court described the background for this in the plenary judgement, cf. HR-2020-2472-P paragraph 65, as follows:

> For the development phase, the main question is whether it is justifiable and desirable to open the area for petroleum activities based on an overall assessment of advantages and disadvantages. Before a licence for exploration and production is granted, the assessment is primarily related to which blocks should be announced, based on the chance of discovery. A block is a defined geographical area. There are public hearings, and the Norwegian Parliament is involved 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. There is a requirement for an impact assessment. The content of the impact assessment obligation for the opening phase was one of the topics in the plenary judgement.
The majority concluded that it was not a procedural error that the climate impacts were not impact assessed at the opening of Barents Sea South-East in 2013, and that it would be sufficient for this to be impact assessed in connection with an application for a PDO, see HR-2020-2472-P paragraphs 241 and 246. The minority held that it was a procedural error that the climate effects of combustion emissions had not been analysed in connection with the opening phase, see 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 for this phase. A production licence gives the licensee the exclusive right to explore, explore for and produce petroleum within

the geographical area covered by the licence, but does not give the licensee the right to initiate development and production.

The production phase is regulated by Chapter 4 of the Petroleum Act, Chapter 4 of the Petroleum Regulations and the EU Project Directive. There is a requirement for an impact assessment. The Ministry is authorised to make decisions on the plan for development and operation (PDO). The Supreme Court described this phase in the plenary judgement, cf. HR-2020-2472-P paragraph 70, as follows:

> If commercially viable discoveries are made under a production licence, a process is initiated towards actual exploitation of the specific discovery. This process is regulated in Chapter 4 of the Petroleum Act and Chapter 4 of the Petroleum Regulations. Among other things, the licence holder must apply for and obtain approval of a plan for development and operation (PDO), based on an impact assessment, before development and operation can be implemented, cf. section 4-2 of the Petroleum Act and sections 22 to 22 c of the Petroleum Regulations.

The Supreme Court's review of the legal regulation shows the context and purpose behind which rules apply at the various stages. The Supreme Court described 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 return to the requirements related to the PDO later in the judgement. The Supreme Court thus made it clear that there would also be statements and guidelines with regard to the PDO requirements, even though the case in question concerned the opening phase and not the production phase.

Petroleum activities are also subject to ongoing licences, approvals and consents. For example, new production licences must be granted for specific periods 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 is authorised to decide that exploration drilling or development of a deposit shall be postponed, cf. Section 4-5 of the Petroleum Act. When there are special reasons, the Ministry may also order the petroleum activities to be halted to the necessary extent or set special conditions for continuation, cf. Section 10-1 third paragraph of the Petroleum Act. The King may also revoke all licences pursuant to the Act, cf. the Petroleum Act § 10-13. The Ministry may also reverse its decisions in accordance with the general and statutory rules on reversal, cf. section 35 of the Public Administration Act.

3.3 Court control of case processing

The courts must be reluctant to overrule political considerations. The clear starting point is that it is the Storting and the Government that must make the political trade-offs and assess specific environmental measures. However, the Supreme Court has emphasised that the courts, on the other hand, should not be reluctant to review 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 a right to knowledge of the effects of planned interventions in nature,

and that the purpose of this is to ensure that citizens can safeguard the right under the first paragraph of Article 112 of the Norwegian Constitution. This can take place, among other things, through hearings during the process. The Supreme Court emphasised that the greater the consequences of a

the more stringent the requirements for clarification of the consequences. Similarly, the greater the consequences of a measure, the more thorough the judicial review of the case processing must be.

For petroleum activities, the constitutional requirements relating to case processing are regulated by the Petroleum Act and the Petroleum Regulations, and the rules must therefore be interpreted and applied in light of Article 112 of the Norwegian Constitution, see HR-2020-2472-P paragraph 184. The Supreme Court found that petroleum activities have a number of consequences, all of which have a major impact on society, and that this is of significance for the requirements imposed on the case processing.
The minority joined the majority's view that the courts should not be reluctant to review the case proceedings. As an extension of this, cf. HR-2020-2472-P paragraph 256, the minority stated that:

> Since the courts' review of the Storting's decision against the substantive content of Article 112 of the Norwegian Constitution is modest, there is all the more reason to review whether the proceedings have been sound.

In this case, it is the Ministry, and not the Storting, that has the decision-making authority. This is thus a difference from the case the Supreme Court heard in plenary session. The Court cannot see that there is reason to be more restrained in the review of the Ministry's case management than in relation to the Storting.

Judicial control of case processing shall ensure that the basis for decisions is sufficiently and properly informed, that opposing voices have been heard and considered, and that the public is informed of the basis for decisions. Sound case management shall in turn ensure that decisions are made on as correct and informed a basis as possible. Since the development and operation of petroleum activities have a major impact on society, the court assumes that judicial control of the case processing must be thorough.

The review of the decisions shall be based on the factual situation at the time of the decision, but later developments may nevertheless shed light on whether the factual assessment at the time of the decision was sound, cf. HR-2020-2472-P paragraph 154. The parties agree that subsequent circumstances are relevant to the impact assessment. The Court will return to this.

3.4 Climate challenges

During the main hearing, quite extensive evidence was presented relating to climate challenges and the effects of greenhouse gas emissions, with a particular focus on the effects on the environment in Norway. This included, among other things, several expert witnesses and extensive documentation, particularly related to the sixth and latest main report from the UN Intergovernmental Panel on Climate Change, cf. IPCC AR6 2021-2023. The parties generally agree that the updated climate science can be used as a basis,

and the Court does not consider it necessary to provide a complete

presentation of this. However, in the court's view, it is essential to present some key points with regard to updated climate science after the Supreme Court delivered its plenary judgement in December 2020. In addition, the court believes it is essential to present information on how combustion emissions abroad will lead to environmental impacts in Norway. Both aspects are important for the requirements that must be set for the case processing.

In the plenary judgement, the Supreme Court explained that there was broad national and international agreement that the climate is changing as a result of anthropogenic 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 more detailed account of this was taken from the Climate Risk Committee's report "Climate risk and the Norwegian economy", cf. NOU:2018:17 chapter 3 pp. 31-53. This report was mainly a compilation of knowledge from the IPCC's fifth main report from 2014 (IPCC AR5) and the special report on 1.5 degrees of warming from 2018 (IPCC 1.5C). The Supreme Court emphasised that the IPCC is a scientific body whose most important task is to regularly assess and compile the current state of knowledge about climate and climate change. The Supreme Court emphasised 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, a new main report has been published by the Intergovernmental Panel on Climate Change. This is the IPCC's sixth main report, cf. IPCC AR6 2021-2023. Climate science has thus been updated since the Supreme Court issued its judgement. Working Group 1, cf. IPCC AR6 WR1, which reviews all available scientific literature on the physical climate system, had 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 anthropogenic emissions from coal, oil and gas, as well as land use, have changed all parts of the Earth's climate. According to expert witness Professor Helge Drange, the second part of the main conclusion shows that there is now sufficient observations, theoretical understanding and modelling to conclude that not only climate, but also extreme weather events, are affected by anthropogenic greenhouse gas emissions. The Court refers to Drange's expert statement p. 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 Intergovernmental Panel on Climate Change, 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 tonne of CO2 emissions will increase global warming. This is expressed as "Every tonne of CO2 emmissions adds to global warming", cf. IPCC AR6 WG1 Summary for Policymakers, Figure SPM.10.

In its plenary judgement, 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 centigrade, and not just 1 degree centigrade. 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. According to the updated report from 2022, the indicators show that anthropogenic warming reached 1.14 degrees centigrade on average during 2013-2022, and 1.26 degrees centigrade in 2022. During the period 2013-2022, anthropogenic warming has increased at a rate of over 0.1 degrees centigrade per decade.

In its plenary judgement, the Supreme Court also 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 in the world, cf. the report of the Supreme Court of Norway.
HR-2020-2472-P paragraph 51. However, updated climate science shows that average global warming may exceed 1.5 degrees centigrade already around 2030, and not around 2040, and that the warming is thus faster than previously expected. This is evident from the IPCC's Sixth Assessment Report and annual updates on global climate change, cf. IPCC AR6 SYR SPM A.1; Forster: 2022. The annual update from 2022 emphasises, 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, in the plenary judgement, the Supreme Court assumed that there would be a real risk that several critical tipping points would be passed if the warming exceeds 2 degrees Celsius, cf. HR-2020-2472-P paragraph 53. The Supreme Court further emphasised that this could mean that extreme weather without historical precedent is likely to occur, and that climate change will have major consequences for marine life and the ability to produce food. However, updated climate science shows that a warming of 1.5 degrees centigrade already represents a threshold for several tipping points, and that this does not only apply at a higher warming of more than 2 degrees centigrade, cf. e.g. McKay et al: 2022.

This updated climate science has also been adopted by the Norwegian authorities. This is explained in more detail in the white paper from the Ministry of Climate and Environment dated 16 June 2023, cf. Meld. St. 26 (2022-2023) "Climate change - together for a climate

resilient society". This white paper came after the relevant

the PDO decisions in this case. It is clear from the references in the white paper that it is largely based on the IPCC's Sixth Assessment Report, cf. IPCC AR6 2021-2023. The introduction to this white paper states that:

> Human-induced climate change has already had serious and sometimes 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. This section explains in more detail that the climate is no longer stable, that warming is most rapid in the north, that Norway has become wetter, that climate change towards the end of this century may be significant, that Norway is getting warmer, that more water is creating more problems, that snow and ice are melting, that the sea is entering a new state, and that coinciding weather events may have major consequences, cf. Meld. St. 26 (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". It states that such tipping points can go from a stable state to a new and different state if global warming passes a temperature threshold, and that this is often a relatively abrupt change that is irreversible on a human timescale. The specific tipping points are described by the fact that ocean circulation in the Atlantic Ocean can slow down significantly, reducing heat transport towards Norwegian latitudes. The ice caps in Greenland and West Antarctica may have already passed a point where they will continue to melt for centuries to come, thus accelerating sea level rise. The permafrost may go from gradual thawing to abrupt thawing as a result of heat waves or forest fires, releasing large amounts of greenhouse gases stored in the ground. The range of the boreal forest may also be significantly altered as a result of heat, drought and forest fires. The white paper also states that more than 15 tilting elements have been identified in the world. Some tipping elements may have already passed the tipping point, while others require higher temperatures. It can take time from the system tilting to observation. 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 centigrade. Further warming increases the risk of passing even more tipping points. According to the white paper, passing tipping points can have major ripple effects on the climate system, including through forest dieback, changes in ice extent and greenhouse gas emissions from thawing permafrost.

The updated climate science set out in the IPCC's Sixth Assessment Report is supported by other reports 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 of 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 provide a brief account of their main conclusions related to the climate challenges. The Court will return to their assessment of the effects of combustion emissions from the specific petroleum fields later.

Helge Drange is 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 Centre for Climate Research at the University of Bergen, and has been a member of its management team. He obtained his PhD on climate modelling in the 1990s, and is co-author of 79 publications in international peer-reviewed journals. He has also been a contributor to the UN Intergovernmental Panel on Climate Change. Among the key climate science starting points, Professor Drange emphasised that all anthropogenic greenhouse gas emissions affect global and local climate. According to Drange, CO2 is the most important of the man-made greenhouse gases, and around 20 per cent of today's CO2 emissions will affect the Earth's climate for a thousand years or more. He said that for the first time, there are now sufficient observations, basic knowledge and good enough models to establish that weather events such as heat waves, extreme precipitation, prolonged droughts and storm surges are directly affected by anthropogenic greenhouse gas emissions. The impact of a warming of 1.5 degrees, 2 degrees or more will make a significant difference to nature and society.

The probability of passing tipping points, i.e. irreversible changes in climate, increases with increasing greenhouse gas emissions. Of seven identified tipping points that can be activated when global warming increases from 1.5 to 2 degrees, five of these will directly affect Norway, according to Drange. This applies to the collapse of the ice cap in West Antarctica, which results in higher sea levels. The thawing of permafrost, which will lead to unstable land/mountain slopes in the mountains and in the north of Norway, and which may contribute to increased methane emissions. 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 proximate tipping point that could be activated when global warming increases from 1.5 to 2 degrees centigrade is the melting of the Greenland ice sheet. However, the melting of the Greenland ice sheet is expected to 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 an increase in sea level far away from the source, such as the tropics and the southern hemisphere. Similarly, the loss of ice in Antarctica will cause 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 over the last 100 years, and by 1.9 degrees over the last 50 years. For Oslo, the average temperature has risen by 1.6 degrees over the last 100 years, and by 1.8 degrees over the last 50 years. In Svalbard, the annual average

temperature has risen by 3.0 degrees in the last 100 years, and 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 a temperature increase 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 per cent over the last 100 years, and by 14 per cent over the last 50 years. The increase in precipitation for Norway is significantly higher than the global average. The number of days with heavy precipitation is increasing. Rising sea levels and storm surges will become an increasing problem for Norway. The greatest challenges associated with this will occur along the southern and western coasts, and in the north of Northern Norway. The challenge will be particularly great if parts of the ice cap in Antarctica were to collapse. Drange also pointed out that the risk of rot damage will increase sharply this century, and that increased greenhouse gas emissions will exacerbate the rot problem. It is estimated that the high risk of rot will increase from the current 600,000 buildings to around 2.4 million buildings.

Drange further explained that there will also be heat waves at sea, in a similar way to those on land. As a result of global warming, marine heat waves are occurring more frequently and with greater intensity than before. In the worst case scenario, a marine heatwave could result in the death of fish. 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 days with a marine heatwave 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 Professor of Biology at the University of Oslo and head of the Centre for Biogeochemistry in the Anthropocene (CBA) research centre. 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 the 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. He also explained that new and more heat-loving species may displace established species. This creates better conditions for new parasites and disease organisms, which in turn could have effects on animals such as moose. According to Hessen, mountain ecosystems in Norway are particularly problematic. "Less snow, more ice and the loss of the 'lemming year' have a ripple effect on many other species. "Icing is a significant problem for reindeer. There is also a mismatch between plants and pollinators.

Furthermore, Hessen described that increasingly warmer oceans are causing key species, such as copepods, to move northwards, with major effects on fish, seabirds and other

species. A warmer sea surface results in reduced uptake of CO2, increases the risk of oxygen-free bottom water and can lead to reduced marine production. More runoff from land also results in increased transport of particles and

coloured water to the sea. Hessen further described that changes in runoff due to drought have major consequences for plant production, including agriculture, and that flooding and heavy rainfall cause crop damage. Hessen described that climate change has particular effects on northern ecosystems and for Sami people groups. Summarising, Hessen explained that there is no doubt that climate change is already affecting Norwegian nature, infrastructure and society in many ways, mostly negatively. He explained that any additional contribution will exacerbate the situation and increase the risk of long-term and partly irreversible damaging effects.

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 has implications for the requirements that must be imposed on the case processing, including the impact assessments.

3.5 The impact assessment obligation

3.5.1 Legal starting points for the impact assessment obligation

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

The EU Projects 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 Projects Directive, but will clarify which parts came after the amendment in 2014.

The Project Directive sets special requirements for environmental impact assessments in connection with development projects, and also applies on the continental shelf. The Project Directive is implemented in Norwegian law through the requirements in the Petroleum Regulations and the Impact Assessment Regulations. In the event of conflict, the provisions of the Project Directive shall take precedence over other Norwegian statutory provisions on the same matters, 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 under the Projects Directive.

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

If the licensee decides to replace a petroleum deposit, the licensee shall submit to the

Ministry for approval a plan for development and operation (PDO) of

the petroleum deposit, cf. Section 4-2 first paragraph of the Petroleum Act. The plan and the requirements for approval are a key regulatory tool. A duty of assessment is imposed on the licence holder 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 producing the petroleum deposit.

Section 4-2 of the Petroleum Act sets out the overall framework and conditions for what the plan shall contain, as well as the requirements for impact assessment and approval by the authorities. Further and more detailed requirements for the plan and the preceding impact assessment are set out in Chapter 4 of the Petroleum Regulations.

The plan for development and operation shall include a description of the development and an impact assessment, and the impact assessment is included in the assessment when 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 assessment programme must be sent to the relevant authorities and interest organisations, which must be given the opportunity to comment. This part of the process is regulated by Section 22 of the Petroleum Regulations. The proposed assessment programme shall, among other things, provide a brief description of the assumed effects on "the environment, including any transboundary environmental effects", and shall also clarify the need for documentation. It is further stated that the proposed assessment programme should, to the necessary extent, include a description of how the assessment work will be carried out, particularly with a view to information and participation with regard to groups that are assumed to be particularly affected.

The licensee shall submit the proposed assessment programme for comment to the authorities and interest organisations concerned, and a reasonable deadline for comments shall be set, which should not be shorter than six weeks. The Ministry shall then adopt the assessment programme on the basis of the proposal and the comments received. In this connection, according to the regulations, an account must be given of the comments received and how these have been assessed and taken into account in the adopted programme. A copy of the adopted programme shall be sent to those who have submitted comments on the matter. In special cases, the Ministry may also decide that the Ministry shall send the proposed assessment programme for consultation.

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

Section 22b of the Petroleum Regulations regulates when an exemption from the

requirement for an impact assessment can be granted, but is not relevant to this case.

The procedural requirements can also be supplemented by the administrative law principle of the general duty to investigate pursuant to section 17 of the Public Administration Act, see also HR-2020-2472-P paragraph 185. This principle means, among other things, that the authorities must ensure that the case is as well-informed as possible before a decision is made.

In principle, licences under the Petroleum Act do not exempt licensees from requirements for licences under other laws, such as the Pollution Control Act, cf. section 1-5 of the Petroleum Act. Petroleum activities 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, decisions pursuant to section 11 of the Pollution Control Act cannot be implemented.

The Nature Diversity Act also contains some general principles that apply to interventions in nature. Public decisions that affect biodiversity 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 essentially states that in the event of a lack of knowledge about the effects on the natural environment, the aim must be to avoid possible significant damage to biodiversity, and that a lack of knowledge must not be used as justification for postponing decisions when there is a risk of serious or irreversible damage to biodiversity. In addition, it is a principle that an impact on an ecosystem must be assessed on the basis of the overall 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 for an impact assessment of incineration emissions?

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

Section 4-2, second paragraph of the Petroleum Act regulates what the plan for development and operation of petroleum activities (PDO) shall contain. It states that the plan shall contain a description of several matters, including "environmental matters". According to the legislative history, this section refers to the general topics the plan shall contain. The purpose of including a detailed description of the matters to be addressed in the plan for development and operation in the actual text of the Act was to emphasise the central importance of these considerations when assessing the question of development, cf. Proposition no. 43 (1995-1996), p. 41. As an extension of this, it is emphasised that the bill does not entail any expansion of the scope of the plan in relation to the practice that has been followed.

According to the wording, the term "environmental conditions" is broad and does not contain any limitation to climate impacts of combustion emissions. In the legislative

history, it is specified that "environmental impacts" are covered by this term, and that the provision thus authorises the requirement to prepare impact assessments, cf. Proposition to the Storting no. 43 (1995-1996)

s. 41. It is further stated that this authorisation must be seen in light of the requirements for impact assessments set out in both national and international regulations, including the provision in Article 110 b of the Constitution, cf. Proposition no. 43 (1995-1996), p. 41. After an account of the relevant international obligations that applied at this time, it appears that the Ministry would consider providing more supplementary rules for the preparation of impact assessments through the regulations to the provision, see Proposition no. 43 (1995-1996), p. 42. The Court understands this to mean that mapping of environmental effects is a central purpose behind the requirement for impact assessment, and that the impact assessment obligation must be interpreted in light of Article 112 of the Norwegian Constitution and international obligations, including the EU's project directive. In addition, the Ministry has issued more supplementary rules for the preparation of impact assessments in the Petroleum Regulations.

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

> The impact assessment must provide information to - and form the basis for public participation in the decision-making process. The assessments must therefore be objective and so comprehensive and complete that they are suitable for providing the public with real insight into the effects of the planned interventions.

The Petroleum Act and the Petroleum Regulations are thus the central legal basis with regard to the impact assessment obligation, but the rules must be interpreted in light of the Norwegian Constitution
§ 112. 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 are grounds for this to be different for the production phase than for the opening phase, which was the subject of the Supreme Court. On the contrary, the production phase has more extensive consequences, and the climate effects of combustion emissions are easier to calculate based on the resources that have been found on the field. This is also the reason why the actual consequences of the extraction can be assessed in more detail and specifically 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 defensible in this phase.

The second paragraph of Article 112 of the Norwegian Constitution states that citizens have the right to knowledge about the state of the natural environment and the effects of planned and implemented interventions in nature, so that they can safeguard the substantive right under the first paragraph. In the legislative history, it is emphasised that the second paragraph of Article 112 of the Norwegian Constitution "ensures the right to information on environmental issues, including the important principle of environmental law concerning the 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 (1991-96) of the Norwegian Parliament. S. no. 163 (1991-92) p. 6.
The second paragraph of Article 112 of the Norwegian Constitution thus shows that the right to information with regard to the environmental consequences of measures is of democratic significance.

In connection with the plenary proceedings, the State argued to the Supreme Court that climate, including greenhouse gas emissions, is outside the material scope of Article 112 of the Norwegian Constitution, see HR-2020-2472-P, paragraphs 146-147. In response, the Supreme Court stated that there is no evidence that climate falls outside the scope of Article 112 of the Norwegian Constitution, see HR-2020-2472-P paragraph 147. As an extension of this, the Supreme Court discussed the question of whether only emissions and climate impacts on Norwegian territory are relevant under Article 112 of the Norwegian Constitution, or whether emissions and impacts in other countries must also be included in the assessment. On this question, the Supreme Court stated in paragraph 149 that:

> Article 112 of the Norwegian Constitution does not generally protect against actions and effects outside the Kingdom. However, if activities abroad that Norwegian governments have a direct impact on or can take action against cause damage in Norway, it must be possible to take this into account when applying Article 112 of the Constitution. One example is the burning of Norwegian-produced oil or gas abroad when it also causes damage in Norway.

The Supreme Court found that around 95 per cent of greenhouse gas emissions from petroleum extraction generally occur through combustion abroad after export. The Supreme Court further stated that although there are no figures on the extent to which emissions after combustion abroad lead to harmful effects in Norway, it is "not doubtful that global emissions will also affect Norway", cf. HR-2020-2472-P paragraph 155. This is supported by the updated climate science from the UN Intergovernmental Panel on Climate Change and the expert witness statements from Professor Drange and Professor Hessen. Nor does this appear to be disputed by the state.

The Supreme Court has thus established 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 procedural rules pursuant to Section 4-2 of the Petroleum Act and the Petroleum Regulations

§ Article 22a is intended to safeguard the right to information pursuant to Article 112, second paragraph, of the Norwegian Constitution, this indicates that incineration emissions are covered by the impact assessment obligation.

With regard to the substantive review under Article 112 of the Constitution, the Supreme Court held in the plenary judgement that the threshold for the courts to set aside a legislative decision or other decisions made 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 disregarded its duties under

Article 112, third paragraph of the Norwegian Constitution, see HR-2020-2472-P, paragraph 142. With this as a starting point, the Supreme Court made a specific assessment of the opening decision in paragraphs 157-163. In this specific assessment, the Supreme Court found 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, see HR-2020-2472-P paragraph 159. The legal starting point with a high threshold for review, and the Supreme Court's subsequent specific assessment of this, was thus related to a substantive review under 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 are of significance for the judicial review of the case management, 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 minority's statements on the distinction between the very limited substantive review under Article 112 of the Norwegian Constitution and the more thorough judicial review of the proceedings, see HR-2020-2472-P, paragraphs 182-184 (majority) and paragraphs 254-256 (minority). The Court also assumes that international agreements on accounting for territorial emissions are different from impact assessments of combustion emissions, and that the Supreme Court's statements on this principle in paragraph 159 must be seen in 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 development and production phase (PDO). The requirements for the content of the impact assessment in the plan for 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 conditions and "environmental conditions", including preventive and mitigating measures. It further states that the impact assessment "shall" describe the "environment that may be significantly affected" and assess and weigh the "environmental consequences of the development", including describing "emissions" to "air". In the court's view, greenhouse gas emissions are clearly covered by the wording "emissions to air".

The state has argued that the provision must be understood to mean that only the environmental consequences of the "development" itself must be assessed. The state has argued that the term "emissions to air" thus only relates to greenhouse gas emissions locally in connection with the actual production (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 shall account for environmental conditions, including that emissions to air shall be accounted for. This clearly includes greenhouse gas emissions. Although the provision refers to "the

development", there is no doubt that production and operation are also covered by the provision. This does not appear to be

disputed, 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 analysed. In the court's view, combustion emissions from the oil and gas produced are at the core of what must be considered environmental impacts of petroleum activities. This thus clearly speaks against a restrictive interpretation of the provision.

The provision must also be interpreted in 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 concluded that both greenhouse gas emissions from petroleum activities in Norway (production emissions) and emissions resulting from the production, export and combustion of petroleum (combustion emissions) are covered by Article 112 of the Norwegian Constitution, see 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 indicates that the impact assessment obligation covers both forms of greenhouse gas emissions resulting from the development and operation of petroleum deposits.

In addition, the state's interpretation is contrary to both the majority and minority's premises in the plenary judgement in connection with the assessment of when an impact assessment of combustion emissions must take place. The Supreme Court assessed the scope of the impact assessment obligation at the opening stage, and in that connection made specific assumptions for the case processing in connection with the plan for 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:

> Firstly, I look at the timing of when the climate impact must or should be assessed. The question in this case is when the assessment of global climate impacts should be carried out in an ongoing process. This is closely related to the question of when the authorities have the knowledge base that is necessary for the assessment to fulfil its purpose - and to form 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 viable, and that the climate consequences were therefore very uncertain. After this, the majority found that the time of any 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 timing of any approval of the PDO must clearly be the most suitable and conceivable time to assess the specific global climate impact of the extraction that is to be considered at that time.

The majority of the Supreme Court considered it "absolutely central" that there will be no significant global environmental consequences of the opening or exploration, and that consequences will only occur if commercially viable discoveries are made, and an application for and a licence for development and operation is applied for and granted, cf. HR-2020-2472-P paragraph 217. The majority of the Supreme Court then referred to the fact that greenhouse gas emissions will be analysed before a decision on a PDO is made. The majority formulated this in paragraph 218 as follows:

> I attach great importance to the fact that a production licence, despite the language used, does not grant an unconditional right to production even if commercially viable discoveries are made. Production requires an approved PDO - pursuant to section 4-2 of the Petroleum Act. The PDO will normally be accompanied by an impact assessment - which must also include emissions to air, cf. Section 22 a of the Petroleum Regulations.
> When assessing the application, the authorities will thus have to consider greenhouse gas emissions.

The Supreme Court thus clearly and unambiguously 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 are also to be regarded as effects of the petroleum activities, see HR-2020-2472-P paragraph 218. In the Court's view, the Supreme Court's assumption and interpretation of the petroleum regulations is clearly formulated, and it appears to be a central assumption for the conclusion. The Court refers to the fact that the majority expressed that "great emphasis" on the fact that greenhouse gas emissions would be analysed in connection with the application for a PDO, and that the authorities, based on this analysis, would have to take a position on the greenhouse gas emissions in question.

After this, the majority of the Supreme Court reiterated that Article 4-2 of the Petroleum Act must in any case be read in the context of 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 the duty not to approve the plan, see HR-2020-2472-P paragraph 222. The majority of the Supreme Court further emphasised that the authorities may have both the right and the duty not to approve the PDO if climate and environmental considerations otherwise indicate this at this time, see HR-2020-2472-P paragraph 223.

In the court's view, all of this supports the Supreme Court's assumption that the climate impact in the form of combustion emissions must be analysed. However, the majority view was that it would be most appropriate for this to take place before the PDO is approved, and not at the opening stage. The environmental organisations believed that it could 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 the 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 paragraphs 222-223. The Court understands this to mean that a real impact assessment must be carried out before approving a PDO, and that a real test must be carried out of whether approval would be contrary to Article 112 of the Norwegian Constitution.

112. Such a real test requires that the consequences of combustion emissions and climate impacts are analysed.

The majority further discussed the content and scope of the assessment of the global climate effects, cf. HR-2020-2472-P paragraphs 224-240. In this 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 there is a need to consider all emissions from Norwegian production of petroleum together. In that connection, the majority stated that it must then be up to the Ministry and the Government to decide whether it was appropriate to refer to climate impacts at an overall level, as part of the Norwegian climate policy, rather than referring to them in the specific impact assessment, see HR-2020-2472-P paragraph 234. The majority again referred to the fact that, at the opening stage, it would be uncertain what would be gross emissions (paragraph 239) and that this applied even more to the assessment of the net effect (paragraph 240).

The Norwegian 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 analysed in an impact assessment. The Court does not agree with this interpretation, and believes that 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 specific assessment of what requirements could be imposed on the content and scope of the assessment at the opening stage, and not at the PDO stage. The majority referred to the fact that both gross and net emissions would be uncertain at the opening stage, and that it would therefore be more appropriate for this to be analysed at the PDO stage. In this connection, the majority stated that at the opening stage it was sufficient that this was done at a more general level, and that it was not impact assessed. 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 to be more uncertain whether the Supreme Court assumed that net emissions must also be impact assessed, or whether this can be done at a more general level. However, considerations of sound case management may indicate that this should be part of the impact assessment, as long as the state considers net emissions to be relevant. The Court will return to this.

Finally, the majority concluded that no procedural errors related to climate impacts were made during the impact assessment for the opening of Barents Sea South-East in 2013. In this connection, the majority reiterated the assumption of an impact assessment of climate impacts in connection with any 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 in relation to climate impacts during the impact assessment for the opening of the Barents Sea South-East in 2013. The climate impacts are continuously assessed politically - and will be analysed in

connection with any application for a PDO. This may also

> does not mean that the decision on the production licence in the 23rd licensing round 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 impact assessment obligation under Article 4-2 of the Petroleum Act, cf. Article 22a of the Petroleum Regulations, interpreted in 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 analysed later in connection with any application for a PDO, and that the climate impacts would also be continuously politically assessed. As mentioned, the court will not overrule the political assessments of this, and will only assess whether there is a requirement for this to be analysed.

In the first translation of the plenary judgement 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 Government Attorney, referred to this wording in its letter of 26 April 2022 to the ECtHR in connection with the ongoing appeal case there. The English translation at the time could be interpreted as meaning that the Supreme Court only assumed a requirement that the climate effects 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 is stated in footnote 2 to the English translation 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 analysed, and not just clarified, in connection with any application for a PDO.

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

> However, I would like to emphasise that in this case, neither the opening in 2013 nor the award decision in 2016 has led to greenhouse gas emissions. Any inadequate

assessment of

> the combustion effect abroad in connection with future extraction of petroleum in the Barents Sea south of Stavanger before the opening in 2013, the authorities will thus be able to correct - "remedy" - through the further process. As mentioned, this could primarily take place at the PDO stage, through the impact assessment that will form the basis for the government's decision on whether to grant a licence for development and operation, and if so, on what terms. However, this can also take place through a general political decision to scale down petroleum activities if the Storting deems it appropriate. This must clearly be sufficient in accordance with the requirements set by the European Court of Justice. The fundamental purpose of the rules is that the environmental impacts must be sufficiently investigated and assessed before they occur. This is captured by the assessment regime that applies in this area, in that a PDO cannot be approved until after an impact assessment. In other words, the authorities have full control over whether or not the environmental effects will actually materialise.

The Court interprets this as a clear and unambiguous assumption that the climate impacts from combustion emissions abroad must either be analysed prior to approval of the PDO, or that, alternatively, a political decision must be made to phase out petroleum activities if the Storting considers this to be correct. The Court cannot see that the majority of the Supreme Court has indicated as an alternative that the Ministry itself may choose to assess the climate impacts at a more general level or similar, as the State has argued. On the contrary, the majority of the Supreme Court has clearly assumed that combustion emissions must be analysed before the PDO is approved.

This is also supported by the minority's interpretation of the majority's statements, see HR-2020-2472-P paragraphs 270 and 283. It is clear from the minority's premises that the disagreement was not related to whether combustion emissions and climate impacts should be analysed, but the timing of when this should take place. The majority believed that it would be sufficient for this to be analysed at the PDO stage, while the minority believed that this should also be analysed at the opening stage.

The Supreme Court's statements that combustion emissions abroad must be subject to an impact assessment in connection with an application for a plan for development and operation of a petroleum deposit (PDO) are clearly formulated, and appear to be central to the justification for the judgement. This understanding of the petroleum regulations seen in light of Article 112 of the Norwegian Constitution appears to be quite clear from both the majority's and minority's premises, and was a key prerequisite for the majority's conclusion.

The Court is therefore of the opinion that the statements on this have precedential effect, cf. inter alia Skoghøy, Rett og Rettsanvendelse 2nd edition 2023 p. 168. It is here assumed that "While the res judicata effect of a judgement is linked to the outcome of the case, the precedent effect of a legal decision is linked to the legal position that forms the basis for the decision".
Furthermore, it is explained that a decision may be based on several grounds. In this connection, it is stated that "If a decision is based on equal grounds for decision, all

grounds for decision must be given precedential effect". To this it is noted that the Supreme Court

could have chosen to only consider the impact assessment obligation at the opening stage. When the Supreme Court has nevertheless made clear statements about the impact assessment obligation at the production stage, and has considered this to be a key prerequisite for the result, the court believes that these premises have precedential effect.

The threshold for departing from previous precedents varies depending on the level of the Supreme Court that made the decision, and the greatest weight is given to decisions in plenary session, cf. section 5, fourth paragraph of the Courts of Justice Act. The threshold for departing from decisions handed down in plenary session is very high due to the function that the Supreme Court in plenary session is intended to fulfil, cf. Skoghøy, Rett og Rettsanvendelse, 2nd edition 2023, p. 168. It is also stated in the same book at s. 178 at:

> As a general rule, precedents should be considered applicable law until the rule is changed by the legislature, or the precedent is deviated from by the Supreme Court itself. Lower courts may argue in favour of deviating from a legal opinion expressed by the Supreme Court, but for the sake 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 5th edition 2001, pp. 160-161 and 179. Among other things, it is stated that the common view 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 judgement that they consider to be a precedent, cf. p. 160. As an extension of this, it is emphasised that no other legal source factors carry 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 judgement handed down in plenary session has later been expressly deviated from, and that in that case it would probably require a new plenary session, cf. p. 161.
s. 179.

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 court users. Moreover, 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 meant that combustion emissions must be impact assessed in connection with the PDO, this would in practice entail a change in the law. The state has argued that this would be stretching the judgement too far. It is noted that the Supreme Court's interpretation of the petroleum regulations is in accordance with the wording, legislative history and purpose of the Act. The Supreme Court's interpretation thus does not entail a need for legislative amendments, neither to Section 4-2, second paragraph, of the Petroleum Act nor 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 interpretation of the regulations.

The Court's conclusion is therefore that there is a legal requirement that combustion emissions must be subject to an impact assessment pursuant to Article 4-2, second paragraph, of the Petroleum Act, cf. Article 22a of the Petroleum Regulations, interpreted in light of Article 112 of the Norwegian Constitution. The Court will return to whether the impact assessment obligation includes both gross emissions and net emissions.

3.5.4 Impact assessment obligation under the EU Project Directive

The rules in the Petroleum Regulations implement the EU Project Directive, and must therefore be interpreted in accordance with the Project Directive. In the event of conflict, the provisions of the Project 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 Project Directive. In the Court's view, a closer interpretation of the Projects Directive confirms the Supreme Court's assumption that combustion emissions from petroleum activities must be subject to an impact assessment.

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

> As to whether that part of the first plea is well founded, it should be noted that it is settled case-law of the Court that, when interpreting a provision of EU law, account must be taken not only of its wording and the objectives it pursues, but also of the context in which it appears and of the provisions of EU law as a whole (see, to that effect, Case 283/81 Cilfit and Others [1982] ECR 3415, paragraph 20). The genesis of a provision of EU law may also provide relevant elements for its interpretation (see, to that effect, judgment of 27 November 2012, Case C-370/12 Pringle, paragraph 135).

The wording is thus central. The same applies to the context and purpose. The legislative history is also relevant, but only to confirm or deny different interpretation alternatives. This method of interpretation is also explained in C-24/19 paragraph 37, HR-2023-1246-A paragraph 41 and HR-2023-2030-P paragraph 165.

Practice from the European Court of Justice is relevant. However, there are no comparable decisions from the CJEU on similar issues as in this case, and the Court therefore sees no reason to go into this in more detail. However, the Court would like to emphasise that the CJEU has held that the scope of the Projects Directive is to be interpreted broadly and that the purpose is very broad, cf. inter alia C-2/07 Abraham et. al. paragraph 42. As an extension of this, it is stated in the same decision that it would be too narrow and contrary to the purpose to only assess direct effects, and not possible effects from "the use and utilisation of the end

product", see paragraphs 42-46. Overall, the Court finds that the case law of the ECJ shows that the wording of the Directive should not be interpreted restrictively.

The lack 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 hearing, the parties have therefore referred to domestic law in other countries, including the USA, Australia, England, Ireland, Scotland and the Netherlands. The Court assumes that the domestic law of other countries in principle has limited weight as a source of law. At the same time, it is worth noting that the USA has rules that the climate impact of combustion emissions must be analysed, and that this has been done, for example for the Willow oil field in northern Alaska. The court also refers to the fact that Australian courts have recognised combustion emissions from coal, for example, as indirect impacts.
The court found 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, paragraph 25-
28) It is also stated that a similar issue as in this case is pending in the UK Supreme Court. The Court of Appeal gave its decision on 17 February 2022 in dissent, and the reference is R (Finch) v. Surrey County Council et al. Court of Appeal. However, the Court sees no reason to go into a comparative analysis of other countries' domestic law as this is of limited significance.

The Norwegian State has further argued that statements in the preamble have limited weight as a source of law. However, the Court assumes that the preamble is relevant with regard to the context and purpose of the Directive, see also HR-2020-2472-P, paragraph 285. In any event, this does not come to the fore in this case because the wording of the Directive is clearly formulated. In any event, the content of the preambles to the 2011 and 2014 Directives 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 Planning Directive, based on the case law of the ECJ, will be interpreted on the basis of the purpose, and that there was no basis for interpreting the wording restrictively, see HR-2020-2472-P paragraph 211, see also paragraph 246. This was also assumed by the minority in the Supreme Court, see HR-2020-2472-P paragraphs 263-267.
In the Court's view, this indicates that the Project Directive must also be interpreted on the basis of its purpose, and that there is no basis for a restrictive interpretation of the wording.

The preamble states, among other things, that the purpose of the Projects Directive is to ensure a high level of environmental protection and effective public participation. Point 16 of the preamble states that:

> Effective public participation in decision-making allows the public to express opinions and concerns that may be relevant to the decisions and that can be taken into account by the decision-maker, thereby promoting accountability and transparency in the decision-making process and increasing public awareness of environmental issues and support for the decisions.

The Court understands this to mean that the process itself is intended to safeguard democratic considerations and increased awareness of environmental issues. The project directive does not provide guidelines for the result, but for the process itself. In addition, point 2 of the preamble states that the project directive is based on the precautionary principle and prevention at source. Section 7 of the preamble further states that authorisations that are likely to have significant effects on the environment should only be granted when these significant effects on the environment have been assessed.

The Projects Directive sets out assessment and information requirements for projects that may significantly affect the environment, cf. Article 1 no. 1. A "project" is defined as the execution of construction works or other installations or works, and other interventions in the natural environment or landscape, including those aimed at "exploitation of subsoil resources", cf. Article 1 no. 2 (a). Authorisation for such projects should only be granted after an impact assessment has been carried out, cf. Article 2 (1). This is also stated in the preamble, which specifies 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. An "authorisation" is further defined as a decision by the competent authority or authorities authorising the developer to "carry out the project", cf. Article 1(2)(c). The Court finds that approval of a plan for development and operation of petroleum activities must be regarded as an authorisation covered by the Projects Directive. This is also not disputed.

The Projects Directive distinguishes between certain projects that, as a 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 shall be subject to an impact assessment in accordance with Articles 5-10. Article 4(2) states that Member States may determine whether projects listed in Annex II shall be subject to an impact assessment. Oil extraction of a certain size is a project that "shall" be subject to an impact assessment, cf. Article 4(1) and Annex I, point 14. 14. The Court assumes that Breidablikk, Tyrving and Yggdrasil are projects covered by Annex I, section 14, and must therefore be subject to impact assessment. 14, and which must therefore be subject to an impact assessment, cf. Article 4 no. 1. Impact assessments of the projects have been carried out, and the disagreement relates only to whether combustion emissions and climate impacts should have been part of the impact assessments.
The projects in Annex I, which are subject to impact assessment, are also mentioned in the preamble, section
8. It states that "Projects within certain categories have significant effects on the environment, and such projects should in principle be subject to a systematic assessment". This shows that the purpose of impact assessment is to carry out a systematic assessment to ensure a sound basis for decision-making. This is presumably considered important for projects that have significant impacts on the environment.

The environmental impact assessment shall consist of identifying, describing and assessing a project's

"significant direct and indirect effects" on several factors listed, including "climate", cf. Article 3(1)(c). The wording of "indirectly" assumes that there is no

directly, and that the impact may occur via one or more intermediaries. This suggests that it cannot be decisive that the combustion emissions do not occur on site in connection with production, and that they instead occur later via one or more intermediaries as combustion emissions elsewhere.

In cases where an environmental impact assessment is required, as is the case for all projects in this case, the developer shall prepare and submit an
"environmental impact assessment report", cf. Article 5(1).
'at least' shall include, inter alia, a description of the 'likely significant effects of the project on the environment' and 'any additional information' referred to in Annex IV that is relevant to the specific characteristics of a particular project or type of project and the 'environment' likely to be affected, as referred to in Article 5(1)(b); and
f). A natural understanding of the wording indicates 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 impacts. The impact assessment must include factors that are particularly characteristic of the effects of this type of project, and the list is only intended as a minimum requirement. In addition, it is stated that the impact assessment must contain "all" information referred to in Annex IV. It thus appears that there is no room for making exceptions if the information is listed in Annex IV.

Annex IV to the Project Directive provides a more detailed overview of the information to be included in the impact assessment, cf. Article 5 (1). 4 provides a more detailed indication of significant direct and indirect effects referred to in Article 3 (1). It is specified that this includes "air, climate (e.g. greenhouse gas emissions, effects 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 is 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, point 5 states that the impact assessment shall include a description of the project's 5 of Annex IV states that the impact assessment shall include a description of the project's expected significant effects on the environment as a result of, inter alia, the cumulation of the project's effects with other existing and/or authorised projects, and the project's "impact on climate (e.g. the nature and extent of greenhouse gas emissions) and the project's vulnerability to climate change", cf. section 5, letters e) and f). 5 (e) and (f). The provision in letter f) was included in the project directive in 2014. In this connection, amendments were made to Annex III, point 1 f) and Annex IV, points 4 and 5 f). 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, point 5 generally provides a more detailed description of the

significant effects that should be included in the impact assessment. 5 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).

climate change impacts, should include 'the direct effects of the project and, where appropriate, its indirect, secondary, cumulative, transboundary, short-, medium- and long-term, permanent or temporary, positive or negative effects'. It also states that the description should take into account the "environmental protection objectives" established at EU or Member State level that are relevant to the project. The wording indicates that it is not only 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 included. This is also supported by the wording in the English translation of the Project Directive, which states that the description must include "any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the project", cf. Annex IV, point 5, last paragraph. 5 last paragraph.

The state has argued that combustion emissions are not effects of the project or the development. The Court does not agree with this, and is of the opinion that this is contrary to the wording of the Project Directive. In the court's view, combustion emissions from petroleum extraction are such a significant and particularly characteristic consequence of such projects that they must clearly be considered indirect climate impacts within the meaning of the Project 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 unavoidable and intended effect of the project. In this connection, the Court also refers to the testimony of the expert witness, Professor Drange. He explained that once the carbon has been extracted, it does not help to store it temporarily or the like. The only sure way to prevent greenhouse gas emissions would be to store it in mines, like nuclear waste. If combustion emissions are not covered, this will mean that the provisions of the Project Directive on the assessment of indirect climate impacts from petroleum activities will in practice have no real content.

In the Court's view, this interpretation is also supported by the fact that the obligation to carry out an impact assessment is determined by the quantity of oil and gas that will be extracted for commercial purposes, cf. Section 14 of Annex I to the Projects Directive, cf. Article 14(1). It appears that projects involving the extraction of oil and natural gas for commercial purposes where the extracted quantity 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 manner in Norwegian law in the Impact Assessment Regulations, Annex I, section 14. 14. The fact that the impact assessment obligation 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 impact assessment obligation to be defined based on the scope and emissions for the development or similar, and not on the amount of oil and gas to be extracted for commercial purposes.

In the Court's view, the interpretation is also supported by several points in the preamble to the Project Directive, and reference is made in particular to point 2 of the preamble. 2, which states that the Union's policy in the environmental field is based on the

precautionary principle, the principle of preventive action, the principle of intervention against environmental damage preferably at source and the polluter pays principle. It further states that environmental impacts should be taken into account at the earliest possible

stage as possible in all technical planning and decision-making processes. In the preamble 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 become more important in policy formulation 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 jeopardise economic development. In this context, assessments should be made of the climate impact of projects (e.g. greenhouse gas emissions) and their vulnerability to climate change.

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

In the court's view, the statements in the preamble to the directive support the fact that a comprehensive and complete analysis of both direct and indirect environmental effects must be carried out, and that combustion emissions must be assessed in connection with authorisation for development and operation of petroleum activities.

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

The majority of the Supreme Court found that the EU Court's position was that the Planning Directive would be interpreted on the basis of its purpose, and that there was no basis for a restrictive interpretation of the wording, cf. HR-2020-2472-P, paragraphs 210-2011. However, the majority did not consider it necessary to decide whether the consequences of greenhouse gas emissions after combustion of exported oil and gas, in EU/EEA countries or other countries, also fell within the scope of the obligation to conduct an impact assessment under the Planning Directive.

The minority of the Supreme Court was in no doubt that incineration emissions are covered by the Planning Directive, cf. HR-2020-2472-P paragraphs 263-267. The minority stated in paragraph 263 that:

> Combustion emissions from Norwegian-produced petroleum are an environmental

consequence of our petroleum industry. The emissions affect the global climate, including the climate in Norway and the EEA area. The climate impacts are "environmental impacts of petroleum activities", cf. Section 3-1 of the Petroleum Act, cf. Section 1-6 litera c, cf. also Section 6 c litera d and e of the Petroleum Regulations.

> of the concept of "environmental effects" in Article 5 of the Planning Directive, cf. its Annex I, letters e and f. I also refer to the footnote in the Annex cited by the author, which states that secondary, cumulative and long-term environmental effects are also covered.

The difference between the Planning Directive and the Project Directive is that it is included "indirectly" in the Project Directive, and specifically states what is decided. The majority also emphasised elements contained in a footnote to the Planning Directive. In 2014, the content of this footnote was included directly in section 5 of Annex IV of the Project Directive. 5. It is thus even clearer from the wording of the project directive that subsequent incineration emissions are covered by the impact assessment obligation. This is also supported by the purpose of the directive.
The minority of the Supreme Court held that it was "unquestionable" that combustion emissions were environmental effects of the petroleum activities. In the court's view, this assessment is even more clear after the wording of the project directive.

The Court's conclusion is that there is a legal requirement for combustion emissions and climate impacts to be assessed in accordance with the EU's project directive.

3.5.5 Significance of subsequent parliamentary consideration, etc.

The state has pointed out that the Supreme Court's plenary judgement etc. has been discussed in the Storting several times since then, and that a majority in the Storting has rejected that the judgement can be interpreted as a legal requirement that combustion emissions must be assessed.

As a starting point, the Supreme Court has held that subsequent statements from the Storting on applicable law in recommendations, 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 reworking of the previous law, which in itself has limited weight", see HR-2021-2572-A paragraph 60. In the Court's view, this indicates that statements from individual representatives in connection with subsequent committee proceedings in the Storting have limited weight as a source of law.

In legal theory, it is furthermore assumed that political signals should not be used as a means of expanding the framework for intervention or curtailing rights, and that in such cases the political majority must accept the possibility of amending the law, cf. Eckhoff v/Helgesen, Rettskildelære 5th edition 2001, pp. 99-100. This means that statements from individual representatives on proposals that have not been dealt with in legislative proceedings cannot be emphasised, regardless of whether the representatives have belonged to the majority in the committees, and regardless of whether the MPs themselves have a legal background. This is also supported by other legal theory, cf. Skoghøy, Rett og Rettsanvendelse 2nd edition 2023 p 99, which states, among other things:

> However, if subsequent legislative statements are to be given authoritative force, this would provide an opportunity - without following the normal procedure for amending

legislation - to amend the law retroactively. This is not acceptable. In areas where there is a

legal requirements, the Supreme Court has therefore completely refused to attribute independent legal source significance to supplementary works to the detriment of citizens.

Against this background, the Court finds it problematic in principle to emphasise the significance of subsequent statements from the Storting, which are not in a legal case, when interpreting the petroleum regulations. This is also supported by the fact that the statements have been made in committee proceedings in another context and, in the Court's view, are not in accordance with the other legal sources, cf. HR-2010-258-P paragraph 172. Although subsequent statements in the Storting do not have legal source weight in the actual interpretation of the petroleum regulations, political signals may have significance as a factor in the impact assessment. The Court will return to this.

Overall, the Court will also note that the Storting must in any case relate to the EU Project Directive, which in the Court's view is at least as clear as the Petroleum Regulations with regard to the requirement that combustion emissions must be impact assessed.

However, for the sake of completeness, the Court will in the following review the parliamentary documents that the state has referred to during the legal process. This mainly concerns subsequent statements from representatives in the Storting on 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 Institution for Human Rights, cf. Recommendation 425 s (2021-2022). 425 S (2021-2022). It is stated on page 5 of this recommendation that NIM recommended that the Storting ask the government to investigate amending the Climate Change Act to enshrine the 1.5 degree target in law and commit to specified annual emission cuts up to zero emissions within a national carbon budget. It is stated on
s. 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 judgement. The majority stated in this connection that NIM's view on the significance of exported combustion emissions can hardly be in line with the premises of the Supreme Court's plenary judgement. In support of this, the majority referred to the report from Professor Eivind Smith of 16 May 2022, which was attached to the recommendation.

The title of Professor Smith's report was "Does Article 112 of the Norwegian Constitution impose a duty on 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 a mandatory consideration, but that it is only a consideration that "must be able to be taken into account" when applying Article 112 of the Norwegian Constitution, cf. HR-2020-2472-) paragraph 149. He further argued that the Supreme Court did not say anything about knowledge being made available in a specific form, such as an impact assessment, and that he himself believed that there was

no reason why consequences in a more general form in white papers etc. could not fulfil the requirements of the Constitution. In addition, he maintained that he could not see that the requirements for sustainability under 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 notes that it appears from the report that he

would look exclusively at questions concerning the interpretation of Article 112 of the Norwegian Constitution, and that he would not go into the obligations that may follow from other provisions, such as the Petroleum Act, the Nature Diversity Act, the Human Rights Act (ECHR), the Climate Act, and the Planning and Project Directive, etc. The objection thus only concerns the interpretation of the Norwegian Constitution § Article 112, and not an interpretation of the petroleum regulations in light of Article 112 of the Norwegian Constitution. In addition, the context was the consideration of NIM's annual report, which included a proposal to legislate the 1.5 degree target. This is not an issue in this case. The plaintiffs have further emphasised that the opinion is based on Professor Eivinds Smith's article in the book "Mellom jus og politik: Grunnloven § 112" 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 the enforcement of Article 112 of the Norwegian Constitution is a matter for impeachment and not for the ordinary courts. However, this view was rejected by the Supreme Court in HR-2020-2472-P paragraphs 138-145. In the Court's view, all of this indicates that the opinion has limited relevance in the specific interpretation of the petroleum regulations and the Project Directive, also in light of Article 112 of the Norwegian Constitution.

The recommendation from the Control and Constitutional Affairs Committee on NIM's annual report was debated in the Norwegian Parliament. Although the annual report concerned several other matters, it was the climate proposal that received the most attention. Several individual representatives believed that NIM had gone too far, while other individual representatives defended the proposal and NIM's assessments. During the legal process, the state has emphasised that several of the MPs from the majority are lawyers and therefore have a good basis for interpreting the Supreme Court's plenary judgment.

It should be noted that this recommendation concerned a proposal that the Storting should ask the government to legislate the 1.5 degree target and commit to annual emission cuts. This is a different topic than the requirements to be imposed on case processing, including whether there is a requirement for combustion emissions to be subject to an impact assessment. The recommendation also concerns a review of NIM's annual report, and is not given in a legal case. With regard to statements from individual representatives on the interpretation of the Supreme Court judgement, the Court cannot see that these statements have any weight as a source of law, regardless of their education and background. The statements appear to be political statements. 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 Project Directive or the interpretation of the Supreme Court's plenary judgement.

The state has also referred to the Energy and Environment Committee's recommendation on several different topics, cf. Recommendation 446 s (2021-2022). 446 S (2021-2022). It

is stated on p. 57 of the recommendation that some committee members proposed asking the Government to amend the PDO guidance to require 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 the impact assessment of plans for development and operation (PDO)

is also analysed the consequences of combustion emissions from extracted fossil resources and whether these consequences are in line with the 1.5 degree target from the Paris Agreement. It is stated on
s. 59-60 of the recommendation that the majority referred to the plenary judgement in the climate lawsuit where the state's view prevailed, and that the Supreme Court judgement has not changed the legal position. The majority was of the opinion that NIM's report had based its interpretation of Article 112 of the Norwegian Constitution on a different interpretation than the Supreme Court had reached in the climate case. The majority referred to the fact that the petroleum legislation requires an impact assessment, but that there is no basis for interpreting this as a formal requirement under 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 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 the proposals to amend the PDO guidance, the proposal for an impact assessment for PDOs, and that it should be assessed whether the consequences of combustion emissions are in line with the 1.5 degree target, etc.

It should be noted that this recommendation and the committee proceedings were not submitted in a legal case, and thus have limited weight as a source of law. In addition, the proposals concerned the legalisation of the 1.5 degree target, etc. which is not the subject of this case. In the court's view, this subsequent committee hearing does not provide a basis for a different interpretation of the petroleum regulations in light of the Supreme Court's plenary judgement.

The state has also referred to the Recommendation from the Energy and Environment Committee on, among other things, development and operation of the Yggdrasil area, cf. Innst. 459 S (2022-2023), cf. also Prop. 97 S (2022- 2023). It is stated on p. 4 of the recommendation that a minority of the Committee referred to the plenary judgement where the Supreme Court ended by stating that combustion emissions must be impact assessed 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 the Norwegian Constitution.
§ Article 112 on the environment. The minority referred to the fact that NIM had subsequently recommended that the state request a study 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 of 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 sees reason to emphasise that case processing requirements, including the requirement that combustion emissions and climate impacts must be assessed, do not prevent the authorities from making political considerations and taking the desired

decisions. However, proper case management and thorough impact assessments must ensure that the basis for decisions is sufficiently broad and informed, that the public has been informed and consulted, that opposing views 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 for case processing must therefore

safeguard democratic considerations, promote public debate and ensure that decisions are made on as correct and informed a basis as possible. It is then up to the authorities to make the political trade-offs and take the desired decisions.

3.5.6 The scope of the impact assessment obligation

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

The starting point is that the regulations on the process for impact assessments that follow from the Petroleum Regulations and the Project Directive must be followed. The process is described in more detail in both the Petroleum Regulations and the Project Directive, and is summarised in Article 1.2 (g) of the Project Directive as a democratic participatory process.
The outcome of this process is not given in advance, and it is therefore not possible for the court to give a complete account of what will be the detailed content of the impact assessment of combustion emissions.

According to the regulations, as mentioned earlier, a proposal for an assessment programme must first be submitted to affected authorities and interest organisations, which shall be given the opportunity to comment, cf. Section 22 of the Petroleum Regulations. The proposal for an assessment programme shall, among other things, provide a brief description of the assumed environmental impacts, including any transboundary environmental impacts, and shall clarify the need for documentation. The proposed assessment programme should include a description of how the assessment work will be carried out, particularly with a view to information and participation from groups that are assumed to be particularly affected. The proposed assessment programme must be submitted for comment to the authorities and interest organisations concerned, and reasonable deadlines must be set for comments, which should not be shorter than six weeks. The Ministry will then adopt the assessment programme on the basis of the proposal and the comments received. In this connection, an account shall be given of the comments received, and how these have been assessed and taken into account in the adopted programme. A copy of the adopted programme shall be sent to those who have submitted comments on the matter. In special cases, the Ministry may also decide that the Ministry shall send the proposed assessment programme for consultation.

The court cannot prejudge the outcome of the process for the proposed assessment programme, beyond the fact that combustion emissions and climate impacts from this must be part of the impact assessment. The whole point of an impact assessment is precisely that the process must be followed, and that the outcome is not predetermined. It is part of the process to obtain statements and the like regarding what is relevant to the assessment of combustion emissions.

The Petroleum Regulations and the Project Directive specifically state that the plan shall account for the effects the development may have on environmental conditions, including preventive and mitigating measures, cf. Section 22a, first paragraph, of the Petroleum

Regulations. The impact assessment shall, among other things, describe the environment that may be significantly affected, and assess and weigh the environmental consequences of the development, including describing emissions to air,

any material assets and cultural heritage that may be affected, and describe possible and planned measures to prevent, reduce and, if possible, offset significant negative environmental impacts.

The impact assessment shall be prepared on the basis of the assessment programme that has been established, cf. Section 22a second paragraph of the Petroleum Regulations. The licensee shall submit the impact assessment for comment to affected authorities and interest organisations. It is further stated that the impact assessment, and as far as possible any relevant background documents, shall 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 that the Ministry will send the impact assessment for consultation. The Ministry shall furthermore, on the basis of the consultation, decide whether there is a need for additional studies or documentation on specific matters, cf. Section 22a, fifth paragraph of the Petroleum Regulations. It is further stated that any additional studies shall be submitted to the authorities concerned and those who have submitted a statement on the impact assessment for comment before a decision is made in the case. The deadline for comments should not be shorter than two weeks.

The Ministry's case presentation shall state how the effects of the statements received have been assessed, and what importance these have been given, cf. Section 22a, sixth paragraph of the Petroleum Regulations. It is further stated that it shall be assessed in the case submission whether conditions aimed at limiting and mitigating negative effects of significant importance shall be set. The Ministry may decide that an environmental follow-up programme shall be prepared with a view to monitoring and mitigating negative effects of significant importance.

The court cannot prejudge the content of the impact assessment, including statements received and the assessment of these, before the impact assessment has been completed. The only thing the court can assume is that combustion emissions and climate impacts from this will be part of the impact assessment, and that the regulations on the process must be followed. The Court therefore sees no reason to specify 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 submitted 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 combustion emissions, so that this can form a sufficient knowledge base for the authorities to carry out a real review under the Norwegian Constitution
§ Article 112, cf. HR-2020-2472-P paragraph 65. In the Court's view, this means in particular that knowledge must be obtained about whether and in what way the incineration emissions may harm the environment in Norway. The Court further assumes

that the impact assessments must be objective and so comprehensive and complete that they are suitable for providing the public with real insight into the climate effects of the combustion emissions, see also HR-2020-2472-P paragraph 255.

The assessment of climate impacts from combustion emissions must be complete and comprehensive, cf. also the Project Directive (2014) and the preamble, sections 7, 13, 22 and 23.
The impact assessment shall consist of identifying, describing and assessing the project's significant direct and "indirect" effects on, among other things, "climate", cf. Article 3(1)(c) of the Project Directive. The impact assessment must include a description of the project's "likely significant effects on the environment", cf. Article 5(1)(b) of the Projects Directive. In addition, the impact assessment must contain a summary of the information and "any additional information" referred to in Annex IV that is relevant to the specific characteristics of a particular project or type of project and the environment likely to be affected, cf. Article 5(1)(e) and (f) of the Projects Directive. The Court has already explained that combustion emissions are considered to be particularly characteristic effects of petroleum activities, cf. also Annex III, point 1(f).

Article 5(3) of the Project Directive contains more 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 Project Directive also contains a more detailed description of the information that must be included. It states that a description of greenhouse gas emissions must be included, cf. Annex IV, point 4. In addition, it is explicitly stated that a description must be included of the project's expected significant effects on the environment as a result of, among other things, the cumulation of the project's effects with other existing and/or authorised projects, as well as the project's impact on the climate, such as the nature and extent of greenhouse gas emissions, cf. Annex IV, point 5 (e) and (f). The description shall include positive, negative, direct, indirect, temporary, permanent, short-term and long-term effects of the combustion emissions, cf. the Project Directive Annex IV point 5 last paragraph, cf. also Section 21 of the Impact Assessment Regulations. It is stated there that the impact assessment shall identify and describe the factors that may be affected, and assess significant effects on the environment and society, including, inter alia, biodiversity, ecosystem services, national and international environmental objectives, pollution, the aquatic environment, and the Sami natural and cultural heritage. In addition, impacts resulting from climate change are a relevant factor, including the risk of rising sea levels, storm surges, floods and landslides.

In the court's view, the principles in the Nature Diversity Act concerning the scientific knowledge base, the precautionary principle and an overall impact may also be relevant to the impact assessments of climate impacts from combustion emissions, cf. sections 8-10 of the Nature Diversity Act.

The Court assumes that the maximum combustion emissions (gross emissions) shall 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 specific 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 project directive limits itself to such assessments, even though these calculations will be more uncertain. This will safeguard democratic considerations by making the information available and verifiable, ensuring that opposing 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 the investigation programme, etc.

3.5.6 Specific assessment of the decisions

3.5.6.1 Wide view

Combustion emissions have not been impact assessed prior to the PDO decision for Breidablikk. Nor are combustion emissions discussed or assessed in any other way in the decision basis or the decision itself.

In December 2018, Equinor Energy AS submitted an application for approval of fulfilment of the duty to assess for development and operation of the field. It was stated that the operator considered the duty to assess to be covered by updated information and reports attached to the application, as well as existing impact assessments, including the impact assessment for Grane (2000), the 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 assessed that Equinor had demonstrated through the information in the application that the development is covered by existing impact assessments, cf. Section 22a of the Petroleum Regulations. Following this, an application for approval of the plan for development and operation (PDO) was submitted on 28 September 2020.

On 28 March 2019, the Ministry decided that the duty to investigate had been fulfilled by existing reports. There was no publicity or right of appeal associated with this. On 29 June 2021, the Ministry of Petroleum and Energy subsequently issued a decision approving the plan for development and operation (PDO) for Breidablikk. The decision referred to the fact that the Ministry had previously demonstrated that the duty to investigate had been fulfilled for the development. It was confirmed that the duty to assess 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 related to combustion emissions and climate impacts.

The Court has concluded 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 reinforced by the fact that this has not been discussed or assessed in any other way.

3.5.6.2 Tyrving

It is clear that combustion emissions were not part of 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 established programme for impact assessment of 28 October 2021, the impact assessment of 11 March 2022, nor of the summary of consultation comments received and evaluation of these 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 associated with Tyrving were first mentioned in an undated table of projects that were "finalised". In this table, gross emissions from Tyrving are stated to be 11.3 million tonnes of CO2. In the text above the table, the 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 about 14.9 million tonnes of CO2 using Rystad Energy's main scenario." Gross combustion emissions for these fields combined were estimated at about 24.1 million tonnes of CO2 per year, or about 341 million tonnes of CO2 over their lifetime.

The estimate of gross emissions is then reproduced in the actual decision on the PDO of 5 June 2023. It appears from the decision that the Ministry, based on the completed impact assessment and the operator's response to the consultation comments received, considered the duty to investigate to have been fulfilled. The decision states the following assessment with regard to combustion emissions:

> In the Supreme Court's judgment of 22 December 2020 regarding the validity of the 23rd licensing round, the question of assessments of the emission consequences of combustion of exported Norwegian petroleum is discussed in relation to Article 112 of the Norwegian Constitution. In the judgement, the Supreme Court holds that in the application of Article 112 of the Norwegian Constitution, it must be possible to consider whether emissions from the combustion abroad of Norwegian-produced petroleum cause damage in Norway. It is uncertain whether new development projects on the Norwegian continental shelf contribute to increased, unchanged or lower global greenhouse gas emissions overall. The Ministry has made an estimate of the gross emissions (without taking into account second-order effects) resulting from the use of the expected recoverable resources from Tyrving. Over the field's lifetime, this is estimated at just under 11.25 million tonnes of CO2, which amounts to an average of about 0.75 tonnes of CO2 per year. Increased emissions from the production vessel 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 authorisation 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. If so, this indicates that it is unclear what the specific calculations of combustion emissions and the climate effects of this are. 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 emissions,

unchanged or lower greenhouse gas emissions overall. The Court will return to this in the assessment of whether the decision is based on incorrect facts below.

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

3.5.6.3 Yggdrasil

Combustion emissions and climate impacts have not been part of the impact assessment for Yggdrasil. However, this is discussed in the case presentation to the Storting and in the decision itself.

Combustion emissions were not included in the proposed programme for impact assessment of
11 October 2021, the adopted programme for impact assessment of 13 May 2022 and the impact assessment of 17 June 2022. A summary of the consultation statements and responses was available around the turn of the year 2022. Neither the impact assessment proposals for the fields nor the impact assessments themselves mention combustion emissions and climate impacts from this. 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 from Yggdrasil were first mentioned in a submission to the Storting of 31 March 2023, cf. Prop. 97 S (2022-2023). At that time, 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, at the end of the Ministry's assessment in section 7.5, it is stated that "the Ministry of Petroleum and Energy will approve the development of Yggdrasil in accordance with the plans submitted by the operator and the comments and conditions set out in this proposition". The Ministry of Petroleum and Energy's assessment of Yggdrasil is set out in section 7.5 of the submission to the Storting. It is stated on pages 94-95 (under section 7.5) in the proposition, inter alia, that:

> No significant negative environmental impacts of the development have been identified, and the Ministry considers the knowledge base to be sufficient to make a decision. Following a balancing exercise in line with the Norwegian Nature Diversity Act, the Ministry's assessment is that the development can be realised.
>
> 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 calculated net greenhouse gas emissions associated with the coordinated development based on a new analysis from Rystad Energy. The calculations show that global greenhouse gas emissions could be reduced by about 52 million tonnes of CO2 equivalents. This type of calculation is uncertain and the results are affected by various assumptions about future developments. With alternative assumptions, the calculated figure would be different.
> The Ministry has also made an estimate of the gross combustion emissions that the

use of recoverable resources from Yggdrasil may cause. Over the lifetime of the fields, this is estimated at around 365 tonnes of CO2, which amounts to an average of around 15.2 million tonnes of CO2 per year. These calculations give no reason to assume that greenhouse gas emissions from the Yggdrasil development will harm the environment in Norway, cf. Article 112 of the Norwegian Constitution.

After the sentence stating that the figure would have been different under alternative assumptions, there is a footnote referring to "the discussion in section 4.4". This part of the proposal is headed "Duty to report - gross and net greenhouse gas emissions from Norwegian oil and gas". This section explains 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. With regard to the basis for these calculations, it is stated on p. 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 commissioned. The report "Net greenhouse gas emissions from increased oil and gas production on the Norwegian continental shelf" was prepared by Rystad Energy and has been made publicly available."
> ...
> There is uncertainty associated with calculations of net greenhouse gas emissions from oil and gas extracted from the Norwegian continental shelf. The results of Rystad's technical report are, like all such analyses, a simplification of complex markets and relationships. 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 updated technical basis for net greenhouse gas emissions. This will be included in calculations and assessments of greenhouse gas emissions when new developments are considered by the authorities.
>
> The report has been made publicly available and the Ministry has received some technical input. In addition, Vista Analyse has conducted a study on the same topic. The Ministry believes that the input helps 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 net global 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 Energy and Environment Committee, which submitted its recommendation on 25 May 2023, cf. Recommendation 459 s (2022-2023). 459 S (2022-2023). It appears from the recommendation that there was disagreement between the committee members in the Storting, including with regard to whether the proceedings were in accordance with the Supreme Court's plenary judgment of 22 December 2022. It is also stated in the minutes of the vote from case no. 27 regarding recommendation 459 S that representatives from the majority considered the project to be "good for the climate". The majority of 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 adopted a decision in accordance with the majority's recommendation.

On 27 June 2023, the Ministry of Petroleum and Energy issued three decisions approving

plans for development and operation for Hugin, Fulla and Munin, respectively. All three decisions contained the same wording with regard to the assessment of combustion emissions, which was as follows:

> The Ministry has calculated gross combustion emissions and net greenhouse gas emissions associated with 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 the authorisation was granted on the basis of the submitted plans, comments and assumptions set out in Prop. 97 S (2022-2023) and Innst. 459 S (2022-2023) with subsequent consideration in the Storting, and on some conditions, which are not relevant to this case.

On this basis, the Court finds that combustion emissions were not analysed for impact, and that no information or opportunity to comment on combustion emissions for Yggdrasil was provided before the decision-making authority had made its decision.

The opportunity was given to provide technical 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, except that, according to the Ministry, it helped to emphasise uncertainty.

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

3.6 Incorrect fact and unjustifiable forecast

3.6.1 Introduction

The plaintiffs' arguments relating to incorrect facts and unjustifiable forecasts are independent grounds for invalidity. The argumentation is also related to the deficient impact assessment. The Court will therefore consider the arguments related to incorrect facts and unjustifiable forecasts before making a concrete assessment of whether the deficient impact assessment has affected the content of the decisions, cf. the principle in section 41 of the Public Administration Act.

3.6.2 Wrong fact

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

However, the plaintiffs have argued that the decisions on the PDO for Yggdrasil and Tyrving are based on incorrect facts. The Norwegian State, for its part, has argued that the allegation of incorrect facts is fabricated. The Norwegian State has, as the Court has understood it, mainly argued that the decisions are not based on a concrete assessment of the facts, and that only a

legal assessment against Article 112 of the Norwegian Constitution. The State has argued that the assessment in the decisions is that the authorisation will not harm the environment in Norway to such an extent that it may violate a material threshold in Article 112 of the Norwegian Constitution. According to the State, this is solely a legal assessment, and not an assessment of the facts.

In the court's view, the state's arguments illustrate that the actual basis for the decisions is not easily verifiable and available to the public. This is again a result of the fact that combustion emissions and climate impacts have not been impact assessed, neither with regard to gross emissions nor net emissions. If this had been analysed, there would have been no doubt as to the facts on which the decisions were based. Instead, the state has only referred to the fact that different calculations have been made, and argued that this is solely 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. For opening and exploration, these will be estimates, while for the production phase there will be specific calculations. In the plenary judgement, cf. HR-2020-2472-P paragraph 227, the Supreme Court stated the following about these calculations:

> It would be fairly simple, in isolation, to calculate greenhouse gas emissions based on estimates for both high and low recovery scenarios. This is done according to guidelines adopted by the UN Intergovernmental Panel on Climate Change, see 2006 IPCC Guidelines for National Greenhouse Gas Inventories. These have since been updated. CO2 emissions are derived from the possible production volumes. This is therefore not a technical discussion of climate impacts based on various possible causal factors, but a calculation based on estimated quantities.

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

The decisions related to the Yggdrasil field contain the same wording with regard to the assessment of combustion emissions. The decisions state that:

> The Ministry has calculated gross combustion emissions and net greenhouse gas emissions associated with 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 the actual calculations that form the basis for the legal assessment. However, the decisions state that the authorisation has been granted on the basis of the assumptions set out in Prop. 97 S (2022-2023) and Innst. 459 S (2022-2023), with subsequent consideration in the Storting. In Prop. 97 S (2022-2023) under section 4.4 and the heading "Duty to report - gross and net greenhouse gas emissions from Norwegian oil and gas", pages 62-64 include an account of the Ministry's course adjustment of the case processing following the Supreme Court's plenary judgement. In addition, an account is given of the instruments Norway has used to reduce greenhouse gas emissions, such as quota obligations 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 instruments. It has also been pointed out that Norway seeks to reduce emissions from other countries through specific measures in its aid and climate co-operation. It has been pointed out that, according to the Supreme Court's judgement, it is the overall climate policy that is important for assessments in relation to 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 global emissions from the use of oil and gas account for about 40 per cent of greenhouse gas emissions, and that Norwegian fields cover about 2-3 per cent of the world's need for oil and gas. It has also been pointed out 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 specific calculations and assessments of gross and net greenhouse gas emissions are made as part of the processing of the PDO", and that this comes "in addition to the more general assessments of greenhouse gas emissions that have been made for a long time in the formulation of Norwegian petroleum and climate policy", cf. Prop. 97 S (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", see Prop. 97 S (2022-2023) s. 63. On this basis, the Court assumes that the Ministry has meant that explicit and specific calculations and assessments of both gross and net greenhouse gas emissions must be made for each specific development project in connection with the PDO, and that this must be accounted for, including in the case submissions related to the development projects to be submitted to the Storting.

Under the Ministry's assessment in Prop. 97 S (2022-2023) section 7.5, it is stated on p. 95 that
"These calculations do not give reason to assume that greenhouse gas emissions from the Yggdrasil development will harm the environment in Norway, cf. Article 112 of the Norwegian Constitution." During the legal proceedings, the state has stated 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 against Article 112 of the Norwegian Constitution. The Government has furthermore expressed agreement that it can be determined with great certainty what the maximum (gross) combustion emissions associated with the resources in a field are, and that there is no professional disagreement on this. However, the Norwegian State has argued that, based on "these calculations", the Ministry has solely conducted a legal assessment against Article 112 of the Norwegian Constitution to assess whether the development may be detrimental to the environment in Norway in such a way that there may be substantive grounds for refusing PDO authorisation. In support of this, the Norwegian State has referred to the Supreme Court's statements in the plenary judgement, see HR-2020-2472-P paragraph 149 and
222. The Supreme Court has stated in these sections that:

> A final question is whether it is relevant to consider greenhouse gas emissions and impacts outside Norway. Is it only emissions and impacts on Norwegian territory that are relevant under Article 112 of the Norwegian Constitution, or must emissions and impacts in other countries also be included in the assessment? Article 112 of the Norwegian Constitution does not generally protect against actions and effects outside the Kingdom of Norway. However, if activities abroad that Norwegian governments have a direct impact on or can implement measures against cause damage in Norway, it must be possible to include this in the application of Article 112 of the Constitution. One example is the burning of Norwegian-produced oil or gas abroad when it also causes damage in Norway." (paragraph 149)
> ...
> "I agree with the Court of Appeal that Article 4-2 of the Petroleum Act must in any event be read in conjunction with Article 112 of the Norwegian Constitution. If the situation at the extraction stage is such that it would be contrary to Article 112 of the Norwegian Constitution to authorise the extraction, the authorities will have both the right and the duty not to approve the plan." (paragraph 222)

The Supreme Court thus held that the burning of Norwegian-produced oil or gas abroad may be included in the assessment under Article 112 of the Norwegian Constitution when this also causes damage in Norway. In addition, the Supreme Court held that the authorities may have a right and duty to reject a PDO application 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 a factual assessment must be made of whether the burning of Norwegian-produced oil or gas abroad will cause damage in Norway. A legal assessment must then be made pursuant to Article 112 of the Norwegian Constitution as to whether the situation has become such that it would be contrary to the provision to approve the plan. In other words, a factual assessment must be made of whether combustion emissions will harm the environment in Norway, and then a subsumption must be made in relation to Article 112 of the Norwegian Constitution. The Court therefore does not agree with the State that this is solely 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 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 as to whether the authorisation would be contrary to Article 112 of the Norwegian Constitution. However, it is unclear which assessments and what threshold is

used as a basis. The wording in Prop. 97 S (2022-2023) p. 95 indicates that it has been assumed that the gross emissions from the Yggdrasil development will not harm the environment in Norway at all. It is directly stated that the calculations "give no reason to assume that greenhouse gas emissions from the Yggdrasil development will harm the environment in Norway". For example, the Ministry has not stated that it will cause some damage to the environment in Norway, but that this will not in any case be contrary to Article 112 of the Norwegian Constitution. In that case, this is at best under-communicated and, in the Court's view, appears to be concealed by the wording used. Based on the wording in the proposition, on which the decisions are based, it is therefore most obvious to assume that the Ministry has meant that combustion emissions will not harm the environment in Norway.

The fact that the assessment of whether combustion emissions cause damage to the environment in Norway is also of a factual nature is also supported by the Ministry's corresponding assessments in other cases, where no reference is made to 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 point 6 on impact assessment. Another example is the Ministry of Petroleum and Energy's decision on approval of the plan for development and operation (PDO) of Oseberg of 1 December 2022 on 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 answer of 21 April 2022 to the Storting to question no. 1809, answered the corresponding question with a factual justification. In that connection, no reference was made to the fact that this is a legal assessment pursuant to Article 112 of the Norwegian Constitution.

The Court has reason to note that it appears problematic that it is unclear what specific facts the decisions are based on, including whether or not the Ministry has assumed that the combustion emissions from Yggdrasil will harm the environment in Norway. It is problematic that it is unclear whether this is a factual assessment or a legal assessment pursuant to Article 112 of the Norwegian Constitution. Decisions to authorise the development and production of petroleum have a major impact on society, and strict requirements are therefore imposed on the case processing, including that it is as clear as possible what facts the decisions are based on. In the Court's view, it is the State that must bear the risk that this is unclear. The Court cannot see that it is clear from the case submission how the climate impact of the combustion emissions has been assessed, and what significance this has been given.

During the legal proceedings, the State has stated that there is no disagreement between the parties as to the cause of climate change, its severity or that climate change will cause damage in Norway. It has also been pointed out that the factual basis for Norway's overall energy and climate policy is not set out in each individual sectoral administrative decision, but that the state's overall policy and the weighting of various considerations are instead described in a number of other documents. In this connection, the government has referred to Meld. St. 14 (2020-2021) Perspektivmeldingen 2021, Chapter 6 Green future. The

government has also referred to Prop. 97 S (2022-2023) and Chapter 2 under the heading "The energy challenge". It is stated on p. 19 of this proposition, among other things, that:

> The world's population and businesses depend on energy to function and to achieve the UN Sustainable Development Goals. Abundant and continuous access to affordable energy is a prerequisite for sustainable economic progress and prosperity. Providing enough energy for a growing population is a major challenge. At the same time, today's complex global energy system is dominated by coal, oil and gas. This results in high greenhouse gas emissions and contributes to global warming, which will have serious and irreversible consequences for animals, nature and people across 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 efficiency improvements in energy use, increased development of renewable energy and the development of new low-emission solutions such as carbon capture and storage. The energy and climate challenges facing the world must be solved in parallel.

The state has also referred to the Government's climate report Meld. St. 26 (2022-2023) "Climate change - together for a climate-resilient society". This report states, among other things
s. 5 that man-made climate change has already led to serious and partly irreversible consequences for nature and society across the globe. It also states that climate change is happening faster and that the consequences are more extensive and dramatic than previously thought. The report is mainly based on the updated climate science from the UN Intergovernmental Panel on Climate Change, to which Norway is an active contributor. The Norwegian Environment Agency is Norway's focal point for the IPCC, and the government has pointed out that inter-agency knowledge 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, an account of Norwegian climate goals, and that the climate quota system is a central part of this, cf. section 2.2.1. Page 96 of the "Green Book" states the following:

> Norway's climate targets and climate commitments under international agreements apply to greenhouse gas emissions that occur within Norway's geographical area. This is mapped through the national greenhouse gas inventory 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 combustion takes place.
> The national accounts do not provide a complete picture of the greenhouse gas emissions that activities in Norway contribute to globally.

A review of the documents to which the state has referred substantiates that the state has a comprehensive climate policy, and that the state is well aware of the updated climate science, including that greenhouse gas emissions have global climate consequences, including on the environment in Norway. The documents show the state's general

assessments of greenhouse gas emissions, which form the basis for Norwegian petroleum and climate policy.

However, nothing is stated about 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 means that explicit and specific calculations and assessments of both gross and net greenhouse gas emissions must also be made for each specific development project in connection with the PDO, cf. Prop. 97 S (2022-2023) p. 63. When the Plaintiffs demand that this must actually be done, the Court cannot see that this can be regarded as a general settlement with the entire environmental, climate or petroleum policy. This case concerns only the validity of the decisions in question, and not the State's policy as such, cf. HR-2020-2472-P paragraphs 148, 161-162.

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

Based on the state's arguments during the legal process, it may appear that there is agreement that greenhouse gas emissions from the Yggdrasil development will harm the environment in Norway. However, the Norwegian State has argued that the Yggdrasil development will not harm the environment in Norway to such an extent that this may violate a material threshold under Article 112 of the Norwegian Constitution. Based on the decisions and the underlying documentation, however, the Court has doubts as to whether the Ministry, in connection with the approval of the PDO, has assumed that the Yggdrasil development will harm the environment in Norway at all. In any event, it is unclear to what extent the Ministry has assumed that the development will harm the environment in Norway.

With regard to the decision on the PDO for Tyrving, reference is made to the Supreme Court's plenary judgement, and that the Supreme Court has held that when applying Article 112 of the Norwegian Constitution, it must be possible to take into account whether emissions from combustion abroad of Norwegian-produced petroleum cause damage in Norway. The Ministry has assumed that it is "uncertain whether new development projects on the Norwegian continental shelf contribute to increased, unchanged or lower global greenhouse gas emissions overall".
The Ministry has subsequently presented an estimate of gross emissions that 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 has been assumed that approval of the development is not contrary to Article 112 of the Norwegian Constitution.

The Court will not examine whether the decision is materially contrary to Article 112 of the Norwegian Constitution. However, it appears that the decision is based on a factual

premise that it is not possible to estimate whether greenhouse gas emissions of 11.3 million tonnes of CO2 from the Norwegian continental shelf will lead to increased, unchanged or lower greenhouse gas emissions overall. By comparison, in a written answer to the Storting on 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 associated with other fields, respectively. The Minister stated in this connection 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 justification in the decision for Tyrving, in conjunction with the Minister's account of other comparable cases, substantiates 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 in violation of Article 112 of the Norwegian Constitution.

The Court therefore sees reason to emphasise that, based on the evidence, it is probable that the combustion emissions from both Yggdrasil and Tyrving (and Breidablikk) are measurable and will cause damage to the environment in Norway. The Court will in the following provide a brief account 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 stated 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 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 of each CO2 emission can be quantified.

In addition, updated climate science shows that risks and projected adverse impacts from climate change escalate with each increase in global warming. The Intergovernmental Panel on Climate Change has stated 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 Sixth Assessment Report, Synthesis Report, Summary for policymakers, section B.2.

According to an expert statement from Professor Drange, the maximum emission from Yggdrasil is expected to result in a global warming of 0.00018 degrees centigrade. The maximum emission from Tyrving is expected to result in a global warming of 0.00001 degrees centigrade. The maximum emission from Breidablikk is expected to result in a global warming of 0.00004 degrees centigrade.
The temperature contribution may initially appear small. However, this must be seen in light of the fact that total global greenhouse gas emissions from the start of the industrial revolution to the present day have contributed to an increase in 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.

Furthermore, Drange has stated that Yggdrasil's warming contribution to the earth's climate is equivalent to 185 times Norway's total annual energy production. According to Drange, the majority of the warming effect of the emissions from Yggdrasil and Tyrving will occur in the ocean as increased sea temperature, and will consequently contribute to increased sea level and impact on marine ecosystems for many hundreds to thousands of years into the future. The emissions from Yggdrasil and Tyrving will contribute to continued acidification of the oceans globally and along the Norwegian coast and in Svalbard. The emissions from Yggdrasil and Tyrving will contribute to a continued increase in average precipitation and more extreme precipitation events in Norway. The maximum emissions from Yggdrasil will reduce the September extent of 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 higher snow levels in Norway. According to Professor Drange, it cannot be ruled out that 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 could occur with a global temperature of between 1.5 and 2 degrees, which would 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, increased sea temperatures will result in more and more intense marine heat waves. For Norway, the Barents Sea is particularly vulnerable, with negative consequences for ecosystems and fisheries.

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

The state has further argued that the calculations are not based on a proportion of the crude oil going to petrochemicals. However, it is stated in the submission to the Storting relating to Yggdrasil that almost 15 per cent of the oil is used in petrochemicals and the production of raw materials for a wide range of products used in households and businesses. It is stated that this includes everything from plastic bags to medical equipment. It is also stated in the proposal 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 through recycling and reuse measures. It is also stated that continued growth is expected for oil for petrochemicals. All of this is stated in Prop. 97 S (2022-2022) section 2.1.2, p.
24-25. However, this information contradicts the expert testimony of Professor Drange. He

explained that a conversion of 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 the reuse of plastic, and eventually the quality will be so low that it will be burned or

similar, and then the CO2 emissions go back into the atmosphere. He explained that the only way to avoid greenhouse gas emissions is to store the plastic (carbon) in mines.

In summary, the basis for the decision is, in the Court's opinion, unclear with regard to the facts on which it is based. If it is assumed that the Ministry has believed 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 facts. If it is agreed that the developments will damage the environment in Norway to the same extent as the Court has explained, the Court shall not conduct a substantive review of whether this is contrary to the Norwegian Constitution.
§ 112. Since this does not affect the outcome of the case, the Court does not consider it necessary to fully consider whether the decisions are based on incorrect facts. The lack of clarity related to the facts is also of significance for the assessment of whether the inadequate impact assessment of incineration emissions may have affected the content of the decisions. The Court will return to this.

3.6.3 Irresponsible forecasting

The Plaintiffs have principally argued that forecasts of market effects are too derivative and uncertain to constitute effects of the project. Alternatively, it has been argued that the state's forecast of global market effects is in any event unjustifiable. For its part, the state has argued that the decisions are not based on a specific forecast, and that the court in all cases has no basis for taking a position on the claim of an unjustifiable forecast.

When reviewing administrative discretion, the legal starting point according to case law is that to the extent that the administrative decision is based on forecasts of future developments, judicial review will be limited to whether the forecasts were justifiable at the time the administrative decision was made, cf. Rt 1982 p. 241 (Alta) at p. 266, Rt 2012 p. 1985 (long-term child I) paragraph 77 and HR-2021-1975-S (Fosen) paragraph 71. 266, 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, see HR-2021-1975-S (Fosen) paragraph 71. Although the court has full jurisdiction, it has also been held that in some contexts a certain restraint should be shown in the review, particularly where assessments are based on the administration's specialised knowledge and broad experience, see Rt 1975 p. 603 (Swingball), HR-2008-1991-A (Biomar) paragraphs 38-40 and HR-2022-718-A (Hyttekarantene) paragraph 75.

The evidence has shown that the assessment by Rystad Energy AS of the calculation of net emissions from Norwegian petroleum activities has been strongly criticised. This criticism and objections would have been clearer if combustion emissions had been analysed in an impact assessment. The Court therefore nevertheless considers it appropriate to give a

relatively

a thorough explanation of the process of calculating net emissions and the various assessments of this.

When the Supreme Court considered whether combustion emissions 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 Kingdom of Norway. As an extension of this, the Supreme Court stated that if activities abroad that Norwegian authorities "have a direct impact on or can take measures against" cause damage in Norway, it must be possible to take this into account when applying Article 112 of the Norwegian Constitution, see HR-2020-2472-P paragraph 149. As an example of what Norwegian authorities have a direct impact on and can take measures against, the Supreme Court referred to the burning of Norwegian-produced oil or gas abroad when it causes damage in Norway. Conversely, it can be argued that Norwegian authorities have little direct impact on market effects abroad, and that this thus limits the access to include this in the assessment to be made under Article 112 of the Norwegian Constitution.

The Supreme Court further noted that the net effect of combustion emissions is complicated, debated and disputed, because it is linked to the global market and the competitive situation for oil and gas, cf. HR-2020-2472-P paragraph 234. The Supreme Court 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 extraction and combustion of gas versus extraction and combustion of coal, cf. HR-2020-2472-P paragraph 240.

The Court cannot see that the Supreme Court has 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, it appears that such calculations should be given limited weight.

The State has argued that the defence of unjustifiable forecast is flawed because the Ministry has not stated a "forecast" that something will or will not happen, but that this is instead based on an "assessment", and that it is clear that the assessment is uncertain.

In the court's assessment, however, the Ministry has emphasised a specific forecast related to net emissions in the decision basis for Tyrving and Yggdrasil. The Ministry's assessment relating to Tyrving is set out in a table showing "the Ministry's calculations of gross and net greenhouse gas emissions in the processing of plans for development and operation (PDO)", and amended plans for development and operation since the case processing was adjusted in autumn 2021 and up to October 2022. The text above this table states that:

> Total expected recoverable resources associated with 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

> emissions reduction of around 14.9 million tonnes of CO2 using Rystad Energy's main scenario.

A footnote to Rystad Energy's main scenario states that the calculations of net emissions are based on the report "Utslippseffekten av produktionskutt på norsk sokkel", 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 result in a significant net reduction in emissions. Although no reference is made to this calculation in the 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 decision on Yggdrasil is also based on, inter alia, a forecast of net emissions is, in the court's view, also supported by the fact that it is explained that the adjusted case processing entails that "explicit and concrete calculations" and assessments of both gross and net greenhouse gas emissions must be made for each specific development project, cf. inter alia Prop. 97 S (2022-2023) p. 63. In addition, this is supported by the fact that the state conducted a tender round with a view to analysing net emissions. 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. The introduction to the report states that the assignment from the Ministry of Petroleum and Energy was to analyse the "net climate effect of increased future Norwegian oil and gas production". The main conclusion of the report was that increased production from the Norwegian continental shelf will reduce global greenhouse gas emissions.

The report from Rystad Energy AS was not sent out for consultation, but a deadline of eight working days was given to provide technical input. The Ministry rejected requests for an extended deadline. Nevertheless, technical input was received from, among others, Statistics Norway, Greenpeace, the Norwegian Society for Nature Conservation, Nature and Youth, WWF World Wildlife Fund and Oilchange International by the deadline of 1 March 2023. The report from Rystad Energy AS was strongly 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, only the forecast from Rystad Energy AS is emphasised. It is stated in Prop. 97 S (2022-2023) p. 95 that:

> The Ministry has calculated the net greenhouse gas emissions associated with the coordinated development based on a new analysis from Rystad Energy. The calculations show that global greenhouse gas emissions could be reduced by

approximately 52 million tonnes of CO2 equivalents. This type of calculation is uncertain, and the results are affected by various

> assumptions about future development. With alternative assumptions, 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 is stated that this type of calculation is uncertain, it is not presented what this uncertainty may consist of. Nor is there an account of the criticism of the report from Statistics Norway and others. After the sentence on "alternative assumptions", there is a footnote referring to the discussion in section 4.4. Section 4.4 states, among other things, that net emissions have been "assessed by various specialised communities that have arrived at different estimates of the net effects". As an 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 submissions have been made partly on the basis of an updated, external study of net emission effects that the Ministry has commissioned from Rystad Energy AS. It is stated that the purpose of the report was to ensure an updated technical basis related to net greenhouse gas emissions, and that this will be included in calculations and assessments of greenhouse gas emissions when new developments are processed by the authorities. It is stated that the report has been made publicly available and that the Ministry has received "some technical input", and that Vista Analyse has also "conducted a study on the same topic". However, no further details are provided on the technical input or the report from Vista Analyse. In the proposition, the Ministry only provided the following assessment of this:

> The Ministry believes that the input helps 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 is stated that there is uncertainty associated with calculations of net emissions, the Court believes 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 comments and criticism of the report are barely mentioned, and no account has been given of the more detailed content of this. Nor has the Ministry's assessment of these contributions been explained, other than that they help to emphasise the uncertainty associated with such calculations. The clear and prevailing impression is thus that the Ministry has mainly based the decisions for both Tyrving and Yggdrasil on the forecast from Rystad Energy AS that increased production from the Norwegian 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 set the tone is, in the court's view, also supported by the subsequent Storting proceedings and the minutes of the vote on case no. 27 concerning Recommendation 459 S. 459 S. It appears that several representatives regarded the

development as a measure that was good for the climate. The Minister gave

in one of their posts the following information about the reports from Rystad Energy AS and Vista Analyse respectively:

> "Calculating the net impact 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 go into, but we see that from the gross emissions calculated for each individual PDO, the net effect - when we calculate it - has a positive impact. There will be emissions, yes, but it has a positive impact. This means that oil and gas from the Norwegian continental shelf is 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 Analysis report.

A member of the Norwegian parliament responded with the following comment:

> Thank you for the Minister's answer. I just want to clarify to the audience, and perhaps also to the Minister, that Vista Analyse - which is only referred to, and the factual basis is not used in the proposal - concludes that the development of the fields we currently approve will lead to net increased emissions globally, i.e. not just a little less good than Rystad Energy. These are two completely different analyses.

Overall, it is unclear whether the Storting had information about, and access to, the report from Vista Analyse and the other technical input from Statistics Norway, among others, when the matter was considered. This was not part of the formal case presentation. 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 an uncertainty associated with net calculations.

During the main hearing, quite extensive evidence was presented in relation to calculations of net emissions. 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 basis to take a position on whether the Ministry's forecast is justifiable, and must also show a certain restraint in overruling this. Nor has this been necessary for the outcome of the case. The Court will nevertheless provide an account of this.

The Court will firstly note that the case processing related to the calculation of net emissions underpins the need for combustion emissions to be impact assessed, and that this is not carried out at a general 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 management has demonstrated limited ability and willingness to ensure public access, adversarial proceedings and evaluation of opposing voices.

The Norwegian State has argued that it appears conspiratorial that the Plaintiffs have questioned the fact that Rystad Energy AS was commissioned to perform the calculations of

net emissions. The court

does not need to take a position on this. However, the Court notes that it is quite clear that two years earlier this company prepared a report on a similar topic on behalf of Norwegian Oil and Gas, which concluded that increased production from the Norwegian continental shelf will lead to a reduction in greenhouse gas emissions. In light of this, the Court considers it natural to question the fact that the same company received a similar assignment from the Ministry of Petroleum and Energy. The Court further refers to the fact that a deadline of only eight working days was given for other technical input to the report, and that the Ministry has not accounted for or made specific assessments of this input, neither in the case presentation to the Storting nor elsewhere. It is therefore unknown to the court whether, and if so in what way, the Ministry has assessed these inputs.

The state has argued that the technical discussion, which emerged during the presentation of evidence, on what is the most accurate net calculation is irrelevant to the court's decision on whether the decisions are valid. The state has argued that it therefore refrained from presenting more expert witnesses on this issue in order to avoid unnecessary elaboration and limit the level of costs. Instead, the state has submitted several newspaper articles to illustrate the debate from Dagens Næringsliv published in the period June-August 2018. The government has also submitted an article from Dagens Næringsliv from 7 March 2023 with the headline "Full krangel om klimaeffekt til norsk olje og gass: - The more, the better, say British energy consultants". The article states, among other things, that:

> Now Rystad has the full support of Wood Mackenzie, the British giant in the field of energy analysis and consultancy - a kind of big brother to the Norwegian challenger established by Jarand Rystad.
> Top analyst Andrew Latham tells DN that he agrees with Rystad that increased production from the Norwegian continental shelf results in lower emissions globally, and vice versa, that reduced Norwegian production results in increased emissions.
> The latter was the conclusion of a Rystad report for Norwegian Oil and Gas (now Offshore Norway) that caused an uproar during the 2021 election campaign. It stood in sharp contrast to an earlier and widely quoted SSB report, which argues that reduced production from Norway leads to lower consumption, and thus lower emissions.

It is therefore clear that there has been a public debate about net emissions, and that these newspaper articles are suitable for illustrating this. The articles presented are also from 2018, and thus long before both reports from Rystad Energy AS. As regards the article from 2023 about the support from Wood Mackenzie, this also supports the fact that the latest report from Rystad Energy AS, which the state has referred to, has been understood as a clear forecast that increased production on the Norwegian continental shelf will lead to a reduction in net emissions.

Without this having any bearing on the court's assessment, it is noted that the state's argument that it has attempted to limit the level of costs related to this topic is not

consistent with the cost claim related to the witnesses from Rystad Energy AS. According to the cost statement, the company has spent a total of 322 hours in connection with the legal process in the District Court. This amounts to a total cost of more than NOK 1.1 million excluding VAT. It is stated that a total of 268 hours were spent on preparation, review of other reports, witness statements and questions. Of this

207 hours relate to the time before the plaintiffs submitted expert statements from their expert witnesses. This thus means that Rystad Energy AS has spent over 200 hours on general preparation and review of its own report. However, the Court cannot see that Rystad's presentation in court contained new updated analyses or assessments. In the Court's view, it appears problematic that the company and the Ministry have considered 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 finalised, and not afterwards. The report from Vista Analyse and the input from Statistics Norway were also known as early as March 2023, and should therefore 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 illustrates that the case processing has been unsatisfactory 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 Norwegian production with oil or gas, and replacing it with a percentage from other suppliers. 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. One of the main findings is that the climate effect of a new field is therefore dependent on the proportion of oil and gas expected to be produced. In this regard, the court notes that both Breidablikk and Tyrving are pure oil fields, while Yggdrasil consists of both oil and gas.

In summary, Rystad Energy AS has concluded that cuts in Norwegian production with very low emissions in the production phase are not a climate measure. This is firstly based on the main finding that increased production from the Norwegian continental shelf results in reduced global greenhouse gas emissions, as explained above. Secondly, it is also based on the main finding that the effect is driven by limited market response, substitution of coal and low Norwegian upstream emissions, which are assessed in the three steps. Thirdly, it is a key finding that increased production from the Norwegian continental shelf has global effects. In particular, it is emphasised that both the oil and gas markets are global markets, and that the price impact of increased supply is therefore global. Furthermore, it is emphasised that the discoveries for oil production are not unique to Norway, but apply generally to new oil production with low upstream emissions. It is also pointed out that Norway is in a special situation with regard to gas, because Norwegian pipeline gas to Europe can outcompete imports of emission-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. However, she believed that the actual quantification leads to a "highly unlikely" emissions effect of increased Norwegian oil production, that it is "particularly unlikely" that global emissions will decrease, and that the estimates chosen result in a "systematic underestimation" of emissions in all three steps. She mainly commented on the oil analysis, not the gas analysis.

Fæhn believed that it was particularly the assumptions and estimates in step 1 on demand elasticity that were decisive. She believed that the demand elasticity that Rystad had arrived at was "very unlikely" low. This was particularly due to the fact that the sample from the literature was systematically taken from the lowest part of the scale, and that the estimates were based on data from before 2009 and cannot represent 2030. Fæhn also pointed out that Rystad justifies using low figures from before 2009 for 2030 by saying that in 2030 there will no longer be any 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, the elasticity of demand increases, but that they have nevertheless retained the lower estimate of 0.11 in their alternative scenario with a slower transition. According to Fæhn, this is "inconsistent" and "highly unlikely".

In addition, Fæhn believes that the supply elasticity in the oil market from Rystad's report is "improbably" high. She justified this particularly on the grounds that the three scenarios Rystad has referred to are climate optimistic compared with the latest literature, and that this probably systematically overestimates the supply elasticity. She also argued that Rystad's estimates of supply elasticities are based on his own modelling calculations for 2030, and that two completely different quantification methods for demand and supply elasticities result in inconsistency. She pointed out that simultaneous estimations are recommended by experts. She believed that these different estimates had led to a systematic underestimation of supply elasticity in Rystad's report.

With regard to step 2 in Rystad's analysis structure, Fæhn did not agree with Rystad that consumers and end users of energy are not affected by increased supply and reduced prices for oil and gas. In his presentation, Rystad pointed out that end users will be little affected by lower oil prices. As examples, Rystad pointed out 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 (which puts more strain on trucks 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 indicates a low elasticity of demand. Fæhn was critical of Rystad's assumptions about this, and believed that this was a systematic underestimation. Fæhn believed that the assumption is not justified and that it conflicts with both economic theory and empirical evidence. She also pointed out that this assumption is made in both the oil and gas

calculations, and that this is most serious for gas, because location 2 is much more important for gas in Rystad's calculation.

With regard to step 1 on supply substitution, Fæhn emphasised that Rystad's assumptions on emissions intensity are much higher than the global average and appear high, and that displacement calculated from step 1 is "very unlikely" to be large. According to Fæhn, the combination of high emissions intensity and high displacement has led to an assumption that many emissions are saved abroad. Her assessment was that Rystad "probably" underestimates 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 specifically 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 used by Rystad 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 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 conducted its own 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 emphasised in particular that Rystad's assumption that total energy consumption is unchanged by increased production and changed prices is based on assumptions, not empirical evidence. It was also emphasised that Rystad has used the year 2030 as the basis for the analysis, and that this will be before 70 per cent of the production in the PDOs under consideration. Vista Analyse, on the other hand, has analysed based 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 used their assumptions to estimate 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 bit, and that is why other players change their behaviour. Consumers demand more, and other producers offer a lot.
If consumers are adaptable, they will buy a good deal more, in which case the elasticity of demand is considered high. If consumers are not very adaptable, they will buy about the same even if the price falls. In this case, demand elasticity is low. Harstad explained that calculations of both supply and demand elasticity are highly 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 consumers will

have time to adapt their habits, electrical goods, transport patterns and energy efficiency measures. Overall, Harstad believed that Rystad's starting point of a demand elasticity of 0.11 was too low, and that this was crucial for their calculation. He also pointed out that this was based on an assumption that total energy consumption is constant and unaffected by market prices, and that this means that the consumers' ability to adapt to higher prices has not been taken into account. He also pointed out that the assumption implies that there is perfect substitution between different energy sources. However, he emphasised that it is well known that gas and coal are substitutes, but that other energy sources are to a lesser extent substitutes for oil.

With regard to supply elasticity, Harstad believed that no account had been taken of the fact that falling prices will not necessarily lead politicians in other countries to reduce their production. As an example, he pointed out that industry organisations in Norway have argued for increased investment when oil prices have fallen, because it has been felt that it is particularly timely to open new fields and invest in the industry so that it does not lose qualified labour. Harstad argued that the calculation should be based on a long-term perspective, i.e. beyond 2030. The fact that oil and gas are renewable resources should also be taken into account. 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 believed that it is important to consider 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 a lack of faith in a future ambitious climate policy, and in addition, Norwegian investments will make such a policy more difficult to implement. According to Harstad, both of these factors could encourage other players to invest more in the extraction of fossil fuels and less in green and climate-friendly technology. He argued that Norwegian investments in future extraction could exacerbate the problems of transition 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 out that Norway extracts a lot and earns a lot from the extraction of fossil fuels. He believes that Norwegian extraction can have a contagious 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 made by Rystad Energy AS were uncertain and speculative, and that almost all the assumptions pull in the same direction. He believed that this has led Rystad to underestimate the demand elasticity, while the supply elasticity is overestimated compared to what is realistic in the long term. According to Harstad, with more realistic assumptions, the climate effect of Norwegian extraction would be far less favourable, and most likely negative. In addition, in his view, the political signalling effects of increased Norwegian oil and gas production must be

taken into account.

Expert witness Michael Lazarus of the Stockholm Environment Institute testified specifically about Rystad's assessment of net emissions associated with Yggdrasil. He used the same three-step model for calculation, but believed that the estimates were not correct. He believed that with more accurate estimates, the conclusion would be that Yggdrasil will increase global net emissions by approximately 80 million tonnes of CO2 over its lifetime. This contradicts 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 believed that Rystad had used too early an 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 believed that Rystad had overestimated how much coal power the gas will displace in the mid-2030s, and underestimated how much production will slow down the transition to cleaner energy. Lazarus argued that Rystad significantly overestimates emission reductions from replacing oil and gas production in other countries. In addition, Lazarus emphasised 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 in turn could undermine Norway's climate leadership.

A review of the presentations and explanations from Statistics Norway, Vista Analyse, Bård Harstad and Michael Lazarus shows that the assumptions used by Rystad Energy AS to calculate net emissions have subsequently been criticised, sometimes strongly. All of them have argued that there are grounds for assuming 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 basis to assess which assumptions or calculations are most correct, nor should it make political considerations related to this. The court thus does not have a sufficient basis for assessing whether the forecast is justifiable or not, and must also show a certain restraint in testing this. This does not affect the outcome of the case, and the court therefore does not need to take a full position on this. However, in the court's opinion, the problem is that these countervotes, and possibly other relevant countervotes, 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), apart from the fact that the input shows that there is uncertainty associated with the calculations. In the Court's view, it is primarily the case processing related to the assessment of this that is problematic.

3.7 Impact assessment

3.7.1 Legal starting points

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

If the rules for case processing have not been complied with, decisions may nevertheless be valid when there is "reason to assume" that the error "cannot have had a decisive effect on the content of the decision", cf. the principle in section 41 of the Public Administration Act. It is settled law that the principle in the provision can be applied by analogy in the event of breaches of procedural rules in other laws and regulations, cf. Rt 1982 p. 241 at p. 262 (Alta) and NOU 2019:5 p. 535. According to this principle, a decision is valid despite a procedural error if the error cannot have had a decisive effect on the content of the decision, cf. also NOU 2019:5 p. 535. The provision does not state that the error must have affected the content of the decision in order for invalidity to occur, but only that the decision is nevertheless valid where the error cannot have had such an impact. The wording of "reason to assume" indicates 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 Supreme Court case law, 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, see Rt 2009 p. 661 (embassy) paragraph 71, Rt 2015 p. 1388 P (internal flight) paragraphs 282 and 300, and NOU 2019:5 p. 535.

The starting point is that the validity of a decision shall 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 impact assessment. The Court agrees that later developments may shed light on whether there was reason to expect that the inadequate impact assessment may have had an impact on the content of the decisions.

In 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. A mandatory impact assessment had not been carried out in connection with the rezoning. The Supreme Court found that this error could not have had a decisive effect on the municipality's rezoning 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 been significant, and that "a not entirely remote possibility" is sufficient, cf. paragraph 71. As regards 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 the errors committed and the nature of the decision. Where the procedural error has led to an inadequate or incorrect basis for a decision on a point of importance to the decision, or where the error in some other way entails disregard of fundamental requirements for sound processing, it generally takes very little. Compared with the interests to be safeguarded through the rules on impact assessment and the complex assessment process envisaged therein, the path to invalidity may therefore be short when the procedural error consists of a lack of or inadequate impact assessment. But there is no question of any automaticity. And in my view, there is no room for a general presumption of impact, as the appellants have argued. Such a presumption

would represent an undue 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 an ordinary planning process. In relation to the impact criterion, one must therefore, in my view, take a concrete approach and link the investigation to the individual alleged deviations from the case processing that should have been followed if an impact assessment had been carried out in the case in question.

The Supreme Court has thus held that an inadequate impact assessment does not automatically lead to invalidity, but that a specific assessment must be made of the case processing that has been carried out compared with the case processing that should have been followed if an impact assessment had been carried out. If the case processing has led to a deficient or incorrect basis for a decision on a point of importance for the decision, or the error otherwise entails disregard of the requirements for proper processing, it takes "little" for the error to lead to invalidity. Applied to this case, the Court finds that an assessment must be made of the Ministry's own case processing with regard to the investigation of combustion emissions against the case processing that should have been followed if this had been part of the impact assessments.

The Supreme Court then made a specific assessment and concluded that the process leading up to the embassy's choice of site was sufficiently documented overall, and that it was justifiable for the planning authority to assume that no relevant alternatives existed, cf. 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 input had been facilitated in several rounds, and that there was no doubt that the critical voices were heard, cf. paragraph 84. The Court interprets this decision to mean that the Supreme Court emphasised that there was no reason to assume that the basis for the decision had been incorrect, and that the process had shown that opposing 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 the reindeer husbandry industry 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 also referred to what had been known to the municipal council about the consequences of the road project for reindeer husbandry, and concluded that there was no "real possibility" that an impact assessment would have led to any change in the decisions made. The lack of an 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 prior to the PDO decisions, and this has also been done. The dispute relates solely

to whether combustion emissions should have been part of this impact assessment.

As regards the legal starting point, the Supreme Court referred to the previous statements in Rt 2009 p. 661 (Embassy). The Supreme Court held that it is sufficient to have "a not entirely remote possibility" that the error has affected the decision, and that it does not take much, but that based on the specific circumstances of the case - the evidence situation - there must be a "real possibility" that the error may have affected the content of the decision, cf. HR-2017- 2247-A paragraphs 93-99. In the specific assessment, the Supreme Court particularly emphasised, among other things, that a number of reindeer husbandry studies had been carried out, that the reindeer husbandry interests' justified views had been included in the impact analysis, that the consequences for the reindeer husbandry industry were known, that the municipal council had always been well aware of the reindeer husbandry's objections and the basis for them, and that it was clear what had been done to take this into account. On this basis, the Court finds that the Supreme Court made a concrete assessment of the case proceedings, whether the basis for the decision was informed and correct, and whether opposing voices had been heard and considered. In other words, a specific assessment was made of whether the proceedings were sound, whether the consideration of the adversarial process was safeguarded, and whether there was reason to assume that the basis for the decision was incorrect.

In the plenary judgement, 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, see HR-2020-2472-P paragraph 242. This was justified in paragraph 243 as follows:

> Impact assessments must, among other things, identify the political trade-off issues that the authorities must consider. In this case, it is the assessment of the combustion effect abroad that has been requested by the appellants. The Storting has nevertheless taken a position on this topic on a number of occasions, as I have mentioned earlier. Some deficiencies in the impact assessment may therefore not have had anything to do with the decision to open the Barents Sea south-east. Considerations other than the impact on the climate were in any case decisive. The government's policy was that measures to reduce global climate emissions and their harmful effects should be implemented in other ways than by halting future petroleum production. The decisions on production licences in the 23rd licensing round are thus valid regardless, cf. the principle in section 41 of the Public Administration Act.

The majority of the Supreme Court thus emphasised that the authorities have had a firm policy that measures to reduce global climate emissions and the harmful effects of this must be implemented in other ways than by halting future petroleum production. This shows that the Supreme Court recognised the authorities' policy in this area as relevant to the impact assessment. At the same time, this statement must be seen as a kind of obiter dictum, and without further discussion than this. The majority of the Supreme Court had already concluded that no procedural errors had been made in relation to climate impacts during the impact assessment for the opening of Barents Sea South-East. In this assessment, the majority had emphasised that the climate impacts are continuously assessed politically, and that they would be assessed in connection with any application for

a PDO, see HR 2020-2472-P paragraph 241. In this connection, the Supreme Court had also emphasised that the calculations of global combustion emissions on

the opening stage would be highly uncertain because at this point it would be unclear whether and how much resources would be found. The assumption was thus that an impact assessment of combustion emissions at the opening stage would not have brought in new information that had not already been assessed and weighed. The Supreme Court did not consider whether an inadequate impact assessment of combustion emissions at the production stage would be irrelevant. Overall, the Court finds that there is thus reason to emphasise the authorities' view of petroleum policy in the impact assessment, but that the Supreme Court's statement on this in paragraph 243 must also be seen in light of the context, and that this assessment was made against the decision at the opening stage.

The minority of the Supreme Court had a different starting point before the impact assessment. The minority had concluded that it was a procedural error that the climate impacts of combustion emissions had not been analysed. The minority did not ignore the fact that the political discussions could have been different if the impact assessment had included a study and assessment of the climate consequences of combustion emissions, see HR-2020-2472-P paragraph 277. The minority also referred to the fact that 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 shelf despite the fact that combustion of Norwegian-produced petroleum has consequences for the climate. The minority therefore considered it "less likely" that the result would have been different if the climate impacts had been part of the impact assessment for the opening of Barents Sea South-East. As an extension of this, the minority stated in paragraph 278 that:

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

The minority then stated that it would in any event be too narrow to apply a pure impact assessment, and that there were two circumstances in particular that indicated that the procedural rules must be strictly enforced in this case, see HR-2020-2472-P, paragraphs 279-282. The minority referred to the fact that, firstly, the duty to investigate must fulfil the requirements under the second paragraph of Article 112 of the Norwegian Constitution. Secondly, it was pointed out that the error related to the implementation of Norway's international obligations or the Planning Directive. In addition, the minority noted that it did not agree with the majority that it would not be sufficient to postpone the investigation to a later stage, including the decision-making process for the PDO, see HR- 2020-2472-P, paragraphs 283-287. The last statement from the minority emphasises that the majority's impact assessment must be seen in 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, see HR-2020-2472-P paragraph 246.

3.7.2 Summary of the court's impact assessment

For a long time, there has been a broad political majority in favour of continuing Norwegian petroleum policy with the extraction of oil and gas. This indicates that it is less likely that the decisions would have been different, regardless of the information that will emerge from an impact assessment of combustion emissions and climate impacts. Nevertheless, after an overall assessment, the Court has concluded 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 emphasised that the case proceedings have shown that the basis for the decision has been poorly informed, verifiable and accessible, and that opposing voices have not been heard and assessed in an open manner. The Court cannot prejudge the outcome and content of the impact assessments that must be carried out. 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 assessments must both ensure an informed and correct basis for decision-making and safeguard the need for democratic participation in decisions that may affect the environment. In the specific assessment, the Court has also particularly emphasised that the procedural rules must be strictly enforced to safeguard the rights under Article 112 of the Norwegian Constitution and Norway's international obligations under the EEA Agreement. The Court has also emphasised that climate science has been updated. In addition, the Court has emphasised that a public committee has recently recommended that the Government prepare an overall strategy for the final phase of Norwegian petroleum activities, including a temporary suspension of PDO decisions until an overall strategy has been finalised. In a specific balancing of interests, the considerations of sound case management, disclosure of the case and democratic considerations must weigh most heavily. Overall, the court has thus concluded that the decisions are invalid. The court will explain the assessment in more detail in the following.

3.7.2 Norwegian petroleum policy

For a long time, there has been a broad political majority in Norway in favour of continuing Norwegian petroleum policy with the extraction of oil and gas. The Storting has rejected all proposals for full or partial phasing out of petroleum activities, including not authorising 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. The Storting considered in Innst. 433 S (2021-2022), the Storting considered a representative's proposal to withdraw development licences on the Norwegian continental shelf that are in breach of the Norwegian Constitution. The recommendation from the Energy and Environment Committee states on page 2 that the majority was of the opinion that the size of Norwegian resources limits the ability 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 also referred to the Ministry's course adjustment, and concluded on page 3 that there were no grounds for cancelling previous applications, not finalising applications under consideration, or not considering new applications.

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 challenge must be solved in

parallel. This is stated, among other things, in the Norwegian Government's supplementary report Meld. St. 11 (2021-2022) to the Solberg Government's Meld St. 36 (2020-2021). This received broad support in Innst. 446 S (2021-2022). The report begins by outlining a broad historical starting point for energy policy, from hydropower development to oil and gas discoveries, and "Norway as a world-leading petroleum supplier". The report states that four goals have been set for energy policy, the fourth of which is to "further develop a future-oriented oil and gas industry within the framework of the climate goals". It also states 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. Page 3 of the recommendation states that the Støre government will pursue an energy policy that contributes to increased value creation and to "fulfil Norway's international climate commitments". It also states that the government will pursue a policy that "the Norwegian petroleum industry should be developed, not phased out", and that the Norwegian continental shelf should continue to be a "stable and long-term supplier of oil and gas to Europe in a very demanding time".

It is also stated on p. 57 and p. 71 of this recommendation that a proposal was submitted that the Storting should ask the Government to amend the PDO guidelines to require 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 impact assessment for plans for development and operation (PDO) also investigates the consequences of combustion emissions from fossil resources, and whether the consequences are in line with the 1.5 degree target from the Paris Agreement. The proposals on this were voted down by the majority of the committee. The Court notes that the proposals imply that the impact assessment should be kept in line with the 1.5 degree target from the Paris Agreement, and thus not only concern the question of whether combustion emissions should be assessed.

The new security policy situation and the energy crisis in Europe following Russia's invasion are also described in more detail in the proposition, which includes the development and operation of Yggdrasil, cf. Prop. 97 S (2022-2023) Chapter 2. Among other things, it is stated on p. 24 that crude oil from Norway is an "even more important source of supply for European users than before". Furthermore, p. 26 states that there are large oil resources around the world, and that they are more than large enough to meet 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 s. 30 that Norway is the only net exporter of gas in Western Europe. It is further stated on s. 31 that the loss of Russian supplies has increased the importance of Norwegian gas and is absolutely critical for Europe's gas supply and energy security. In addition, p. 34 states that Norway's contribution is to "produce as much as possible", and that 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 p. 35 that the EU, in a joint statement with Norway in June 2022, has expressed support

for Norway developing new oil and gas resources to supply the European market. Europe's import needs for gas are expected to remain high over the next decade, even though both the EU and the UK have ambitions to reduce gas consumption.

The government has also emphasised that it is a key consideration 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 petroleum policy is to facilitate profitable production of oil and gas in a long-term perspective", cf. Prop. 97 S (2022-2023) chapter 3.1.

All of this emphasises that the Norwegian authorities have a clear policy of producing as much oil and gas as possible from the Norwegian continental shelf, and that this has been reinforced by the new security policy situation and the energy crisis in Europe. This suggests that there is no real possibility that the decisions would have been different, regardless of the information that would have emerged during the impact assessments on combustion emissions and climate impacts.

The state has also referred to the most recent recommendation from the Energy and Environment Committee on Amendments to the Climate Act (the 2030 climate target), cf. Recommendation no. 38 l (2023-2024). 38 L (2023-2024). As far as the court can see, there is no further discussion of the petroleum activities or the relevant decisions. However, the recommendation contained a proposal for a more legally binding climate law, cf. section 2.7 of the recommendation. The members who highlighted the proposal felt that the Norwegian Climate Act needed to be improved in order for it to fulfil its purpose of promoting the implementation of Norway's climate goals and promoting transparency and public debate on the status, direction and progress of this work. The members believed that it hindered the purpose of the Climate 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 recommendation entailed legislative decisions with regard to climate targets for 2030, cf. the Climate Act
§ In addition, the Energy and Environment Committee proposed that the Storting should ask the Government to return to the Storting in the spring of 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 combustion emissions, among other things, and how Norway as a whole will be able to cut emissions up to 2030 in line with Norway's climate targets.

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 an overall political desire to produce as much oil and gas from the Norwegian continental shelf as possible. This has been reinforced by the new security policy situation and the energy crisis in Europe as a result of Russia's invasion of Ukraine. It has also been emphasised that the petroleum industry is Norway's largest industry in terms of value creation, government revenue, investments and export value. All of this indicates that it is less likely that the inadequate impact assessment of combustion emissions has affected the content of the decisions.

3.7.3 Norwegian climate policy and the importance of updated climate science

Norway has an explicit political goal that the Norwegian petroleum activities should be within the framework of the climate targets, and that the overall energy policy should fulfil Norway's international climate commitments, cf. Innst. 446 S (2021-2022) and Innst. 38 L (2023-2024). It appears that Norway has ambitious climate targets, and that both the government and the Storting wish 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 of the UN Intergovernmental Panel on Climate Change's Sixth Assessment Report above. The Norwegian authorities have recently also recognised that anthropogenic climate change has already had serious and partly irreversible consequences for nature and society across the globe. It has been assumed that climate change is happening faster, and that the consequences are more extensive and dramatic, than previously thought, cf.
Meld. St. 26 (2022-2023) p. 5.

The authorities have also recently received a public report in which the committee recommends that the government prepare an overall strategy for the final phase of Norwegian petroleum activities, cf. NOU 2023:25 p. 171. It further states that the committee recommends that no decisions are made that contribute to investment in new activity until an overall strategy has been finalised. According to the Committee, this means temporarily halting new exploration or production licences (PDO), not granting permits for construction and operation (PIO) and not making decisions on electrification.

The Norwegian authorities' stated plan to follow 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 it is not an entirely remote possibility that the decisions could have been different if combustion emissions and climate impacts for the fields in question had been impact assessed.

3.7.4 Assessment of whether the case processing has otherwise been sound

The decision basis for Breidablikk contains no study, assessment or mention of combustion emissions. Nor is this discussed or assessed in the decision. This indicates that the case processing has not been sound, that opposing voices have not been heard and that the basis for the 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 contains no impact assessment or other study of combustion emissions. This was first mentioned in an undated table with an overview of projects that had been finalised. In this connection, reference was also made to the report from Rystad Energy AS (2021), which stated that the projects as a whole would lead to a

significant reduction in net emissions. In the Court's view, it is unclear what facts the decision is based on with regard to combustion emissions and their climate impact, and what was the factual basis for the legal assessment under Article 112 of the Norwegian Constitution. No consultation rounds were conducted, and information only became known after the project was considered to have been finalised. In the Court's view, these proceedings show that the public was not provided with information, that opposing voices were not heard and assessed, and that there is doubt as to whether the Ministry has based the decision on incorrect facts and an unjustifiable forecast. Overall, this supports the view that it 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 include an 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 the opportunity was given for technical 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 submitted after the Ministry, as the decision-making authority, had made its decision. Despite the fact that the report from Rystad Energy AS had been strongly criticised by, among others, Statistics Norway and Vista Analyse, these comments were not considered and commented on further.
This was therefore not part of the decision-making basis that was available to the public. It was only stated that input had been received that helped to emphasise the uncertainty associated with the calculations. Overall, these proceedings show that the public was not provided with information, that opposing voices were not heard and assessed, and that there i s doubt as to whether the Ministry has based its decisions on incorrect facts and an unjustifiable forecast. This supports the fact that it is not an entirely remote possibility that the inadequate impact assessment may have influenced the decisions on the PDO for Yggdrasil.

Overall, the Court is of the opinion that the Ministry's case management with regard to the assessment of combustion emissions and the resulting climate impacts cannot be regarded as justifiable 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. The dissenting voices have not been given the opportunity to comment on the assessment of gross emissions and the climate impact of this on the environment in Norway. Opposing voices have only been given the opportunity to comment on the report that formed the basis for the calculation of net emissions with regard to Yggdrasil, and then a short deadline of eight days was set to provide technical input. Otherwise, no consultation rounds have been organised with regard to the assessments of combustion emissions and their climate impact, either in terms of gross emissions or net emissions. This in itself indicates that the decision-making basis has not been sufficiently broad and properly informed.

The state has argued that the decisions are not based on any specific forecast with regard to net emissions. However, the key factor in the decision-making basis for both Tyrving and Yggdrasil has been the forecast from Rystad Energy AS that increased production of Norwegian oil and gas will result in a significant reduction in net emissions. Although the report has been criticised by Statistics Norway and Vista Analyse, among others, their input has not been discussed or assessed, other than to highlight the uncertainty surrounding the calculations.

The courts will not make the political trade-offs, 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. It is also challenging to speculate on the outcome of the impact assessments before this has been carried out. However, it is quite clear that an impact assessment of incineration emissions would have ensured that consultations had been carried out with reasonable deadlines, and that consultation input h a d b e e n assessed, commented on and weighed up. The decision-making basis would have been 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 thorough and transparent this can be done within the rules on impact assessment, and that this ensures that the process is reassuring, defensible 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 considered and what trade-offs have been made. In the court's view, it is not sufficient that the updated climate science and general climate impacts of greenhouse gas emissions are described in other public documents, and from other ministries, as the state has argued.

3.7.5 Consideration for safeguarding the rights under Article 112 of the Norwegian Constitution and compliance with Norway's international obligations under the EEA Agreement

In the Court's view, there are two special circumstances that indicate that the procedural rules in this area must be strictly enforced, and that this has significance for the impact assessment, cf. Innst. O. no. 2 (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 impact assessment obligation pursuant to Article 4-2 of the Petroleum Act and Article 22a of the Petroleum Regulations must fulfil the requirements pursuant to Article 112, second paragraph, of the Norwegian Constitution, cf. Proposition No. 43 (1995-1996), pp. 41-42, cf. HR-2020-2472-P paragraph 281. Article 112 of the Norwegian Constitution is intended to ensure that the population has information and knowledge about the effects of planned interventions in nature. The Supreme Court's minority stated in the plenary judgement that the second paragraph of Article 112 of the Constitution therefore indicates that an ordinary assessment cannot be made of whether the error may

have had an effect under the principle of Article 41,

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 impact assessment obligation is part of Norway's international obligations under the EU Project Directive, cf. Proposition no. 43 (1995-1996), pp. 41-42, cf. The EEA Agreement requires that the contracting parties loyally fulfil the obligations arising from the Agreement. The Court finds that this entails an obligation for the courts to rectify breaches of the assessment provisions of the Project Directive as far as possible under national law, compare HR-2020-2472-P, cited above. HR-2020-2472-P paragraph 245 (majority), and paragraphs 286-287 (minority).
The production phase is the last stage in the process, and is therefore the last opportunity to repair 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 international law obligations that follow from the Project Directive and the duty of loyalty under Article 3 EEA. In legal theory, it has been assumed that the duty to repair presupposes that Norwegian courts consider whether the impact assessment can be supplemented with other factors in order to arrive at an EEA-compliant result. When the preparatory works allow for other assessments to be included, the duty to repair presupposes that the possibility is utilised. On this basis, it has been held that the EEA law duty to repair changes a national competence into a duty, cf. Venemyr, Den EØS-rettslige reparasjonsplikten som del av norsk rett - illustrert ved Høyesteretts avgjørelse i HR-2020-2472-P, Lov og Rett, Vol. 60, Issue 5, pp. 310-312. It has been stated in legal theory that a lack of an impact assessment under EEA law entails that the decision must be considered invalid regardless of whether the error may have affected the content of the decision, cf. Venemyr, Om EØS-rettens krav til forvaltningsrettslige følger av feil, PhD thesis, Chapters 4.1 and 5.2.2.

In support of this, the Court also refers to the fact that on 4 November 2021, the EFTA Surveillance Authority (ESA) sent a letter to the Norwegian Ministry of Climate and Environment, requesting information related to the requirements to conduct assessments and impact assessments. Among other things, ESA questioned the practice related to the Projects 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 further 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 or not an impact assessment should be carried out. In addition, the Ministry stated that an inadequate impact assessment in most cases will result in the decision being deemed invalid, regardless of whether or not there is a political majority in favour of the decision itself.

Both the consideration of safeguarding the rights under Article 112 of the Norwegian Constitution and Norway's international obligations under the EEA Agreement thus strongly argue that the inadequate impact assessment should lead to the decisions being considered invalid.

3.7.6 Concrete balancing of interests

In the alternative, the Norwegian State has argued that the decisions should be upheld after a balancing of interests. In this connection, the Norwegian State has referred to the fact that 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 are 0.03 per cent and that a net emission reduction of 0.004 per cent has been calculated. The state has furthermore 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 per cent. The state has also referred to the fact 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 per cent of Norway's total oil production, and that maximum gross emissions from combustion as a share of global annual emissions is 0.008 per cent.

In this regard, the Court finds reason to note that the impact assessment obligation does not prevent the authorities from making the desired political decisions. If the decisions are deemed invalid, this will mean that an impact assessment of combustion emissions and climate impacts 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 opposing voices are heard and assessed, 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 environmental decision-making and that the policy is based on as accurate a basis for decision-making as possible.

In addition, the Court sees reason to note that both the state and the companies that are licence holders and operators have been aware of the Supreme Court's plenary judgment in HR-2020-2472-P since December 2020. All decisions in this case have been made after this judgement. In the court's view, this means that the state and favoured third parties must bear the risk that the legal rules on impact assessment of combustion emissions have not been complied with.

The Court will not weigh the political considerations between the state's investments and revenues from petroleum activities against climate considerations. However, the Court cannot see that the investments in themselves can lead to the decisions nevertheless being considered valid based on a balancing of interests. In the Court's view, the considerations of sound case management, information about the case and democratic considerations must weigh most heavily in this area.

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

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

The question is whether the decisions are invalid because the best interests of the child have not been investigated or assessed, cf. section 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 Project Directive contain a legal obligation to assess the impact on the best interests of children. The Court has interpreted this to mean that the Plaintiffs believe that this should have been analysed and assessed in another way. The Plaintiffs have also argued that the organisation Nature and Youth has the right to be heard.

The best interests of children have not been investigated, assessed or otherwise discussed in connection with the specific PDO decisions. This does not appear to be disputed. The Court will not review the political balancing of what will be in the best interests of

children. The Court shall only assess whether the Ministry has a legal obligation to investigate and assess the best interests of children in connection with decisions on approval of plans for development and operation of petroleum activities. In this connection, the Court shall also consider whether Nature and Youth have the right to be heard.

It follows from the administration's general duty to investigate that minor 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 this provision applies in this case as there are no children who are direct parties.

The starting point is that children have the right to be heard in matters that concern them, and that the best interests of the child shall be a fundamental consideration in all actions and decisions that concern them, cf. section 104 of the Norwegian Constitution. Section 104 of the Norwegian Constitution may thus provide a basis for more general effects that the decision may have on children to be investigated, see also NOU 2019:5 section 21.2.2.2.1.

The principle that the best interests of the child shall 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.

Consideration of the best interests of the child is also related to the principle of the child's right to be heard in accordance with 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 shall, in the event of conflict, 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. Among other things, the Committee on the Rights of the Child publishes general comments that can serve as guidelines for the interpretation and application of the Convention, and these statements should therefore in principle be given relatively great weight when interpreting and applying the provisions of the Convention in practice, cf. Proposition No. 104 (2008-2009), p. 26. At the same time, the Supreme Court has emphasised that pure committee statements are generally not binding under international law, cf. Rt 2009 p. 1261 paragraph 41 and Rt 2015-1388-P paragraph 151. In this connection, the Supreme Court has emphasised the following in 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, one must consider whether the statement must be seen as an interpretative statement, or more as an advice 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 particularly important for general statements that are not related 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" should be understood broadly, and points to
decisions on, among other things, "environment", cf. CRC/C/GC/14 paragraph 30.

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 interpretation statement.

In addition, the UN Committee on the Rights of the Child has found 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 decision must concern a specific child. It is sufficient that the decision concerns children as a group or children in general. This can thus include Nature and youth, which represent a group of children, and children in general.

A key question is whether the PDO decisions are decisions "concerning children". The UN Committee 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 resulting from petroleum activities concern children as a group and children in general.

However, as an extension of this, the UN Committee on the Rights of the Child has stated that all actions taken by a state in reality affect children, but that this does not mean that the state needs to initiate a full and formal process to consider 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 understands this to mean that there is not necessarily a requirement that each 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 children in some areas at a more general level, and not in each individual decision. It also states that if a decision has a major impact on children, a high level of protection and

detailed procedures will be appropriate. This must be assessed specifically based on the significance of the decision for children. The UN's

The 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, which states that the Committee recommends that Norway strengthen its efforts to establish clear criteria regarding the best interests of the child for all authorities making decisions affecting 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. Some of the same is also stated in the UN Committee on the Rights of the Child's General Comment No. 12, CRC/C/12, paragraphs 70-74. On the one hand, this may suggest that Norway should strengthen its efforts to ensure that the best interests of the child are taken into account in absolutely all decisions that are relevant to and have an impact on children. At the same time, this appears to be a general statement on the consideration of the best interests of children, and nothing specific is stated about petroleum activities or climate. Nor does the Court perceive this as an interpretative statement, but more as a general recommendation on optimal practice in the area of the Convention.

There is basically no doubt that children are particularly vulnerable to climate impacts and global warming as a result of greenhouse gas emissions from fossil fuels. 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 specifically concerned this. The Ombudsman has emphasised that the effects of climate change are long-term and that the situation may be very serious for today's children and future generations. The Ombudsman has therefore argued that the state has a duty to assess the consequences for children's rights of new oil and gas extraction in Norway, that the best interests of the child must be a fundamental consideration, and that the assessment must be made visible in the decision that is made. This is stated in written input from the Ombudsman 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 taken into account, inter alia, in decisions in the petroleum area, see Klimarett, Bugge, Universitetsforlaget (2021) at pp. 196-197. This was written by counsel for the Plaintiffs, and the Court therefore does not elaborate on this argument.

In a specific complaint case, reference was also made to how climate impacts generally affect children, cf. CRC/C/88/D/107/2019. Paragraph 9.13 states, among other things, that:

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

For the sake of completeness, the Court mentions that decisions in 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 part of the political considerations that are made.

Overall, there is no doubt that climate impacts 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 imposing a legal obligation to investigate this or to consult children specifically in connection with specific decisions on plans for 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 specific interpretative statements that are of significance to the question in this case. The Court cannot see that the statements apply to the relevant facts and area of law. In the Court's view, decisions in the petroleum area are examples of decisions that in reality affect children, but without this meaning that the state needs to initiate a full and formal process to assess the best interests of the child, see CRC/CGC/14, paragraph 14. In the Court's view, it is more appropriate to assess the best interests of the child at a more general level. This is thus different from the assessment of combustion emissions and their climate impact, which is suitable for a specific impact assessment.

In this assessment, the court has also emphasised that the climate impact of combustion emissions must be assessed. In this connection, children's and youth organisations, such as Nature and Youth, will in any case have the right to express their views, cf. Sections 22 and 22a of the Petroleum Regulations. In the court's view, their right to be heard will thus be safeguarded. The Ministry shall also in any event consider the consideration of future generations in the application of Article 112 of the Norwegian Constitution. In addition, the Petroleum Act states that the resources shall be managed in a long-term perspective so that they benefit Norwegian society as a whole, see Section 1-2, second paragraph, of the Petroleum Act.

The Court has thus concluded that, based on the applicable legal sources, there is no basis for a specific legal duty to consult children, or to investigate and assess the best interests of children, in connection with each individual decision on a plan for development and operation of petroleum activities. If such a legal duty 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 refers to the fact that the Storting has rejected a proposal to ask the Government to amend the PDO guidance with a requirement that considerations for the best interests of children be analysed prior to the final decision, cf. Recommendation 433 S (2021-2022) of the Storting. The Court is not aware of Norwegian case law from the courts of appeal or the Supreme Court that provides a basis for establishing such a legal obligation.

The Court concludes that there is no legal obligation to consult children and that the best interests of the child must be investigated and assessed in connection with decisions on authorisation

of the plan for development and operation of petroleum activities. The decisions are therefore not contrary to section 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 of the European Convention on Human Rights and Article 14

The question is whether the decisions are contrary to Articles 2 and 8 of the European Convention on Human Rights (ECHR), in isolation and in conjunction with Article 14. The Convention applies as Norwegian law and shall, in case of conflict, prevail 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 exercise of rights and freedoms under the Convention shall be secured without discrimination on any ground, cf. Article 14. This provision does not have an independent scope of application and is only applicable in conjunction with other rights provisions.

The European Convention on Human Rights does not have a separate rule on the protection of the environment. The provisions of Articles 2 and 8 may nevertheless, depending on the circumstances, be applicable in environmental cases, and the same applies to the parallel provisions in sections 93 and 102 of the Norwegian Constitution, see HR-2020-2472-P paragraph 164.

There is no doubt that Greenpeace and Nature and Youth as environmental organisations have procedural standing, cf. section 1-4 of the Dispute Act, cf. HR-2020-2472-P paragraph 165. However, a procedural right of action for organisations does not necessarily make them subjects of rights under the ECHR. 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, see, inter alia, Kjølbro, Den europæiske menneskerettighedskonvention (2023), pp. 105-106. In the Court's view, it is therefore doubtful whether the Plaintiffs are in a position to succeed in a claim that the decisions are contrary to Articles 2 and 8.

In its plenary judgment, the Supreme Court concluded that the decision on the production licence in the
23rd Licensing Round was not in breach of Articles 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 of this express applicable law and have transfer value.

The Supreme Court referred to the fact that Article 2 of the ECHR protects the right to life, but that the risk of loss of life must be "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 loss of human life, for example in the event of flooding and landslides. However, the Supreme Court was of the opinion that there was not a sufficient connection between the production licence in the

23rd licensing round and possible loss of human life, so that the requirement of "real and immediate risk" could be considered to be 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 was well into the future, cf. HR-2020-1472-P paragraphs 167-168.

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

The Supreme Court further held that the state's obligations are only covered by Article 8 if there is a direct and immediate connection between the environmental deterioration and private life, family life or the home. The Supreme Court held that it therefore appeared clear that the effects of the possible future emissions as a result of the licence awards in the 23rd licensing round do not fall within the scope of Article 8 of the ECHR, see 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 development and operation of petroleum activities, it still appears doubtful whether there is a sufficiently direct and timely connection between this and the rights to be safeguarded under Article 8 of the ECHR.

The plaintiffs have referred to several decisions of the ECtHR which show that Articles 2 and 8 ECHR protect against real risks of, inter alia, mortality and morbidity due to pollution. However, these cases concern persons who are directly and personally affected by a specific hazard, local pollution or similar. Reference is made to Pavlov and Others v. Russia, which concerned localised 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 specific methane gas explosion at a rubbish dump. The Court agrees that the cases show that Article 2 o f the ECHR protects against risks arising from pollution. However, the cases concern more localised pollution and persons directly affected by this. The Court cannot see that the facts in these cases are comparable to this case.

In addition, the plaintiffs have referred to several decisions of the ECtHR which show that Articles 2 and 8 ECHR impose certain requirements on the decision-making process, including the investigation thereof. However, these cases also concern persons directly affected by a specific hazard, local pollution or the like. Reference is made to Taskin and Others v. Turkey, which concerned pollution from mining operations in the vicinity of the complainants. Reference is made to Dubetska and Others v.
Ukraine, which concerned pollution from a coal mine in the vicinity of the complainants. Reference is made to Di Sarno and Others v. Italy, which concerned health hazards and pollution from local rubbish accumulation. Reference is made to Association Burestop 55

and Others v. France, which concerned lack of

information pursuant to Article 10 of the ECHR concerning a planned storage centre for radioactive waste. The Court agrees that the cases substantiate that there are procedural investigation requirements, but cannot see that the circumstances of the case are comparable to this case.

The Plaintiffs have also 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 the Urgenda case from the Netherlands to have little transfer value, see HR-2020-1472-P, paragraphs 172-173. The Supreme Court referred to the fact that the case concerned the general emission targets set by the Dutch government, and that there was thus no question of prohibiting a specific measure or possible future emissions. The Supreme Court also pointed out that it was not a question of a validity action against an administrative decision. The Court cannot see that this assessment is different for PDO decisions. The Court has not had sufficient 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 following an expanded interpretation of these provisions is the subject of three Grand Chamber cases pending before the ECtHR. This is stated, among other things, by the European Court of Human Rights
"Fact sheet - Climate change" from February 2023. This concerns the cases Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20), Carême v. France (no. 7189/21) and Duarte Agostinho and Others v. Portugal and 32 Other States (no. 39371/20). The ECtHR has postponed the hearing of six other cases pending judgement in these Grand Chamber cases. This includes the appeal against the plenary judgement from Norway, cf.
Greenpeace Nordic and Others v. Norway (no. 34068/21). It is stated that the decisions will be issued during 2024.

On this basis, the Court assumes that the issue will be further clarified by the ECtHR in the course of 2024. This may mean that current law in Norway is upheld, or it may mean that the scope of application of Articles 2, 8 and 14 of the ECHR is extended in climate cases.

In principle, the Supreme Court has held that Norwegian courts must make an independent interpretation of the human rights convention, and in this connection use the same method as the ECtHR. In Rt 2005 p. 833 paragraph 45, the Supreme Court has stated that:

> Norwegian courts must thus relate to the text of the convention, general considerations of purpose and the decisions of the ECtHR. However, it is primarily the ECtHR that must develop the convention. And if there is any doubt about the interpretation, Norwegian courts must be able to draw on value prioritisations that form the basis of Norwegian legislation and legal opinion when weighing up different interests or values.

Although Norwegian courts are to make an independent interpretation of the Convention,

the Court finds that it is primarily the ECtHR that has the task of developing the Convention, see also Rt 2000 p. 966 at pp. 1007-1008 and HR-2019-1206-A, paragraphs 104-105. According to the Court's

view, there is therefore currently no basis for extending the scope of application in climate cases until this has been clarified by the ECtHR.

The Court therefore concludes that the decisions are not in breach of Articles 2, 8 and 14 of the ECHR.

4 Order for temporary injunction

4.1 The injunction requirement

The plaintiffs have filed a petition for the court to issue an order for 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 an alternative claim that the State is prohibited from adopting other decisions that require valid PDO approval until the validity of the decisions has been finally decided. The alternative claim is directed against the state as such, because licences and the like based on PDO decisions are issued by directorates, ministries, etc. that are subordinate to the state.

The state has pointed out that a claim to suspend the effect of a PDO decision presupposes that the court orders the state to use its expertise and how it should be used, and that this will thus entail an injunction on the merits. It has been pointed out that this will in reality be an order for reversal. The state has not raised a similar objection to the alternative claim.

The starting point is that the courts cannot make a decision on the merits unless there is specific authorisation for this, and that this also applies to claims for injunctions, cf. Rt 2015 p. 1376 paragraph 27 and Rt 2009 p. 170 paragraph 52.

The expected start of production for Tyrving and Yggdrasil is 2025 and 2027 respectively, and this will require decisions on production licences etc. The alternative claim will thus be sufficient to secure the main claim with regard to these two fields.

Breidablikk came on stream in mid-October 2023. The last production licence is valid up to and including 31 December 2024. The Court cannot see that there is a legal basis for issuing an order to suspend the effect of the PDO decision, which in practice would be a requirement for reversal. However, further production after the expiry of the last licence is necessary, and the Court will therefore consider the alternative claim with regard to Breidablikk as well.

4.2 The main requirement

A temporary injunction can only be ordered if the claim for which an injunction is sought has been substantiated, cf. section 34-2, first paragraph, of the Dispute Act. The court has concluded that the PDO decisions for Breidablikk, Tyrving and Yggdrasil are invalid. The main claim has thus been substantiated. Reference is made to the assessments of this above.

4.3 Reason for hedging

Furthermore, a temporary injunction can only be ordered if the grounds for the injunction have been substantiated, cf. section 34-2, first paragraph, of the Dispute Act.

In the court's assessment, it is probable that "the defendant's behaviour makes it necessary to temporarily secure the claim because the pursuit or implementation of the claim would otherwise be significantly impeded", cf. section 34-1, first paragraph, letter a) of the Dispute Act. In the legislative history, the implementation of an invalid administrative decision is mentioned as an example of unlawful behaviour, cf. Proposition no. 65 (1990-91), p. 292. In the court's view, a temporary injunction is necessary to ensure that no further production licences etc. are granted before the validity case is finally decided. In another case, the Supreme Court has held that the right to request deferred implementation will not be sufficient, cf. HR-2007-716-U paragraph 37. The Ministry and other government bodies have not yet granted such petitions either. In addition, the Court notes that the production 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 before the licence was granted.

The Court does not consider it necessary to decide whether the conditions for a security interest are met pursuant to section 34-1, first paragraph, letter b) of the Dispute Act.

4.4 Balancing interests

A temporary injunction may not be granted if the damage or disadvantage suffered by the defendant is "manifestly disproportionate" to the interest of the plaintiffs in obtaining an injunction. A natural interpretation of the wording indicates that a concrete balancing of interests must be carried out, and that the threshold is high if the conditions for a preliminary injunction are otherwise met.

In this connection, the Norwegian State has in particular referred to the investment costs, and that, for example, a one-year delay for Breidablikk will be an estimated NOK 2.5 billion. The Court refers to the assessment of the investment costs under the balancing of interests that has already been made under the impact assessment in section 3.7.6.

The Court sees reason to reiterate that the impact assessment obligation does not prevent the authorities from making the desired political decisions. Impact assessments are intended to ensure that case processing is sound and that the basis for decisions is informed, verifiable and accessible. This will safeguard democratic participation in environmental decisions. In the court's view, an injunction is necessary to ensure that no further permits are granted before the validity case is finally decided, so that these considerations can be safeguarded.

For the sake of order, the Court notes that this judgement and order only have res judicata effect for these three fields, and not for other activity on the Norwegian continental shelf. The Norwegian State has stated that the production from Breidablikk constitutes 1-2 per cent of Norway's oil production today, and it is thus a limited part of the total production.

The alternative claim does not entail an immediate shutdown for Breidablikk. It does not prevent production in accordance with the current licence up to and including 31 December 2024. The expected start of production for Tyrving and Yggdrasil is not until 2025 and 2027 respectively. The Court cannot see that the temporary injunction is disproportionate in this time perspective.

In the specific balancing of interests, the Court has also emphasised the recommendations of the public committee that has proposed a temporary suspension of new licences for exploration or production, and that no investments are made in new activity until an overall strategy for phasing out Norwegian petroleum activities is in place, cf. NOU2023:25:

> The current level of activity on the Norwegian continental shelf makes it prudent to introduce a pause for reflection now. Due to the oil tax package introduced in 2020, the investment level in oil and gas production on the Norwegian continental shelf is set to be very high in the coming years.
> Thus, a pause in exploration decisions and investments that are not directly related to existing installations will not challenge European energy security.

Overall, the Court has concluded that the damage or inconvenience caused to the State is not manifestly disproportionate to the interest of the Plaintiffs in obtaining an injunction.

Accordingly, the Court concludes that the petition for a temporary injunction is granted by prohibiting the state from making other decisions that require a valid PDO authorisation for Breidablikk, Yggdrasil and Tyrving until the validity of the decisions has been finally decided.

5 Legal costs

In the main proceedings, the plaintiffs have been fully upheld in the principal claim that the decisions are invalid because combustion emissions and climate impacts have not been assessed. The plaintiffs have also been successful in the alternative claim in the injunction proceedings. The Court therefore finds that the Plaintiffs have been fully or substantially successful in both the main proceedings and the injunction proceedings. 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 opposing party, cf. Section 20-2, first paragraph, cf. the second paragraph, of the Dispute Act.

The plaintiffs' legal counsel has submitted a statement of costs where the total claim is NOK 3 260 427,- incl. VAT. Of this, the fee claim for the legal counsel and others amounts to 3,000,562 incl. VAT, while the rest is related to travel expenses and costs for five of the expert witnesses. No claims for costs have been submitted for three of the expert witnesses. These are Helge Drange, Dag Hessen and Wim Thiery. The Court finds that this has been a labour-intensive and complex case for counsel and others, both during 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 concluded that the costs must be considered reasonable and necessary in connection with the case, cf. section 20-5 of the Dispute Act.

The court has considered whether there are grounds for making an exception to the general rule of full compensation pursuant to section 20-2, third paragraph, of the Dispute Act, but cannot see that this is relevant. Nor has this been argued by the state.

Accordingly, the Court concludes that the State, represented by the Ministry of Energy, is ordered to pay NOK 3 260 427, including VAT, in compensation for legal costs to the Plaintiffs. In addition, the court's fee will also be added.

The judgement was not rendered within the statutory deadline, cf. section 19-4, fifth paragraph, of the Dispute Act. This is due to the scope and complexity of the case, Christmas holidays and other activities.

FINALISATION

In judgement on the main case:

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

In the ruling on the injunction case:

1. The state is prohibited from making other decisions that require a valid PDO authorisation for Breidablikk until the validity of the PDO decision is legally enforceable.
2. The state is prohibited from making other decisions that require a valid PDO authorisation for Tyrving until the validity of the PDO decision is legally enforceable.
3. The state is prohibited from making other decisions that require a valid PDO authorisation for Yggdrasil until the validity of the PDO decisions has been legally enforceable.

Common:

1. The State, represented by the Ministry of Energy, is ordered to pay NOK 3 260 427 - three million, two hundred and sixty thousand, four hundred and twenty-seven - including VAT and with the addition of the court's fee as compensation for legal costs to Föreningen Greenpeace Norden and Natur og Ungdom within 14 - fourteen - days from service of this judgement.

The court cancelled

Lena Skjold Rafoss

Guidance on appeals in civil cases is attached.

Guidance on appeals in civil cases

In civil cases, the rules in chapters 29 and 30 of the Dispute Act apply to appeals. The rules for appeals against judgements, appeals against rulings and appeals against decisions are slightly different. Below you will find more information and guidance on the rules.

Appeal deadline and fee
The deadline for filing an appeal is one month from the day the decision was made known to you, unless the court has set a different deadline. These periods are not included when calculating the deadline (court holidays):

- from the last Saturday before Palm Sunday up to and including Easter Sunday
- from 1 July up to and including 15 August
- from 24 December up to and including 3 January

The appellant must pay a processing fee. You can get more information about the fee from the court that has heard the case.

What must the appeal statement contain?
In the appeal statement, you must mention

- which decision you are appealing
- which court you appeal to
- names and addresses of parties, deputies and legal counsels
- what you think is wrong with the decision that has been made
- the factual and legal justification for the existence of errors
- what new facts, evidence or legal justifications you want to present
- whether the appeal concerns the entire decision or only parts of it
- the claim you are appealing and the result you are demanding
- the basis for the court to hear the appeal, if there has been doubt about the
- how you think the appeal should be handled further

If you want to appeal a district court judgement to the Court of Appeal
Judgements from the District Court can be appealed to the Court of Appeal. You can appeal a judgement if you believe it is

- errors in the factual circumstances described by the court in the judgement
- errors in the application of the law (that the law has been interpreted incorrectly)
- errors in case processing

If you wish to appeal, you must send a written statement of appeal to the district court that heard the case. If you are bringing the case yourself without a lawyer, you can appear before the district court and appeal orally. The court may also authorise non-lawyer counsel to lodge an oral appeal.

It is usually an oral hearing in the Court of Appeal that decides an appeal against a judgement. In the appeal hearing, the Court of Appeal shall concentrate on those parts of the District Court's decision that are disputed and which are in doubt.

The Court of Appeal may refuse to hear an appeal if it finds that there is a clear preponderance of probability that the judgement from the District Court will not be changed. In addition, the court may refuse to hear some claims or grounds of appeal, even if the rest of the appeal is heard.

<u>The right to appeal is limited in cases concerning property values below NOK 250,000</u>
If the appeal concerns a property value of less than NOK 250,000, consent from the Court of Appeal is required for the appeal to be considered.

When the Court of Appeal considers whether to grant consent, it emphasises

- the nature of the case
- the parties' need to have the case retried
- if there appear to be weaknesses in the decision being appealed or in the handling of the case

If you want to appeal a district court's ruling or decision to the Court of Appeal
As a general rule, you can appeal a *judgement* on the grounds of

- errors in the facts described by the court in the judgement
- errors in the application of the law (that the law has been interpreted incorrectly)
- errors in case processing

Judgements concerning case processing, which are based on discretionary decisions, can only be appealed if you believe that the exercise of discretion is unjustifiable or clearly unreasonable.

You can only appeal a *decision* if you think

- that the court was not entitled to make this type of decision on that legal basis, or
- that the decision is manifestly unjustifiable or unreasonable

If the district court has rendered a judgement in the case, the district court's decisions on the proceedings cannot be appealed separately. Instead, the judgement can be appealed on the basis of errors in the proceedings.

You can appeal against judgements and decisions to the district court that made the decision. The appeal is normally decided by a ruling after a written hearing in the Court of Appeal.

If you want to appeal the Court of Appeal's decision to the Supreme Court
The Supreme Court is the appeal body for the Court of Appeal's decisions.

Appeals to the Supreme Court against *judgements* always require the consent of the Supreme Court's Appeals Committee. Consent is only given when the appeal concerns issues that are of importance beyond the case in question, or for other reasons it is particularly important to have the case heard by the Supreme Court. Appeals against judgements are normally decided after an oral hearing.

The Supreme Court's Appeals Committee may refuse to consider appeals against *rulings* and *decisions* if the appeal does not raise issues of importance beyond the case in question, nor do other considerations indicate that the appeal should be reviewed. The appeal may also be refused if it raises extensive questions of evidence.

When an appeal against rulings and decisions in the District Court has been decided by a ruling in the Court of Appeal, the decision cannot, as a general rule, be appealed to the Supreme Court.

Appeals against the Court of Appeal's rulings and decisions are normally decided after written consideration by the Supreme Court's Appeals Committee.