



ROYAL NORWEGIAN MINISTRY
OF THE ENVIRONMENT

EFTA Surveillance Authority
Rue Belliard 35, 1040 Brussels
Belgium

Your ref

Our ref
12/3553

Date
31.07.2013

The Norwegian Government's observations on the EFTA Surveillance Authority's preliminary assessment of some aspects amounting to a possible infringement by Norway against Article 4 and 11 of the Water Framework Directive as regards heavily modified water bodies

The Ministry of the Environment (the Ministry) refers to the letters from the EFTA Surveillance Authority (the Authority) dated 22 February 2012 and 13 May 2013 concerning the implementation of the Water Framework Directive (the Directive) for heavily modified water bodies and thanks the Authority for the invitation to submit its observations. In our letter dated 31 May 2012, the Ministry presented available legal instruments to meet the Water Framework Directive's obligations in the hydropower sector. This letter provides an account of how Norway meets the obligations of Articles 4 and 11 in the Directive. Additionally, specifications are given demonstrating how the various processes, assessments and legal instruments work together to meet the obligations in the Directive.

It is the opinion of the Norwegian government that Norway fulfils the requirements of the Directive. We will therefore use this opportunity to clarify the procedures which will be followed in relation to the issues the Agency raises in its letter as regards the following points:

- 1. Norway carries out the processes that the Directive requires (analysis, environmental objectives and Programme of measures) for all water bodies.**
- 2. Norway will undertake the cost-benefit assessments that the Directive**

requires based on updated knowledge related to individually tailored objectives and Programme of Measures for all heavily modified water bodies.

3. Norwegian authorities are responsible for following up the Programme of Measures through appropriate mitigation measures. Norway has sufficient legal instruments in the hydropower sector to do so.

4. Norway intends to comply with the deadlines imposed by the Directive.

Main point 1: Norway carries out the processes that the Directive requires for all water bodies.

The Water Framework Directive is correctly implemented through the Norwegian Water Regulation. The Water Regulation is largely based on a translation of the Directive. The Water Regulation specifies how the various processes are to be executed. The Authority has not previously objected to the organisation of the planning process as embodied in the Water Regulation.

The first ordinary River Basin Management Plans for Norway will be approved in 2015 and apply to the period 2016-2021. Although this time schedule is not mandatory for Norway in the EEA Agreement, Norway chose to follow this schedule which applies for the Member States to benefit from the exchange of European experience.

The River Basin Management Plans provide us with a comprehensive tool for improvement and protection of all water bodies in Norway. The characterisation and knowledge generation are carried out for all water bodies according to Article 5. This has been an ongoing process since 2005. These analyses will be reported to the Authority by 1 August 2013 and will be available on the net (www.vannportalen.no).

Preparatory work to set objectives pursuant to Article 4 and Programme of Measures pursuant to Article 11 has commenced for all water bodies. This will be included in the River Basin Management Plans pursuant to Article 13.

Each of the 11 River Basin Districts in Norway is divided into sub-basins. Detailed analysis related to the Programs of Measures and the associated environmental objectives are carried out in all of the 110 sub-basins. At this level, regional and local authorities participate, together with power companies and environmental non-governmental organisations (NGOs). This ensures broad participation and contributions from all relevant stakeholders in the process, and also ensures that the most updated information is used in the technical analyses.

All water bodies will be part of the River Basin Management Plans, including those that are used for hydropower generation. The plans are prepared in accordance with the Directive, the Norwegian Water Regulation, guidelines of the Common Implementation

Strategy (CIS) and national guidelines. Norway is actively involved in the common European implementation work, and the Norwegian implementation is based on this work. Each water body will be subject to a thorough analysis, regardless of whether or not it has been subject to other regional or national analyses and independent of the influence factors.

The River Basin Management Plans are developed by the River Basin District Board. The board consists of representatives from all relevant authorities at national, regional and local levels. Regional reference groups consisting of various user and interest groups have also been established. The plans are adopted by the County Councils and approved by the Norwegian Government through a Royal Decree.

The Water Regulation states how the management plans will be implemented. Decisions concerning the implementation of measures that are included in the Programme of Measures are made by the competent authorities pursuant to relevant legislation.

Main point 2: Norway will undertake the cost-benefit assessments that the Directive requires based on updated knowledge related to individually tailored objectives and Programme of Measures for all heavily modified water bodies.

The Royal Decree of 2010 regarding the approval of management plans is limited to the current voluntary planning period

The Decree states that the environmental objectives should be set within the existing licensing conditions. This applies only to the environmental objectives that were set in 2009 for the voluntary planning period until 2015. For the first, ordinary planning period of 2015-2021, a new Royal Decree will be passed in 2015. The environmental objectives for the coming periods will be determined prior to the competent authorities' decisions to impose new environmental measures. The environmental objectives for the heavily modified water bodies are set independently from existing conditions given in the water course regulation licenses.

All measures shall be considered as a basis for the environmental objectives
Environmental objectives for heavily modified water bodies will be set case-by-case, based on an assessment of "significant adverse effect". This is in line with guidance from the Common European Implementation Strategy. The level of the environmental objectives will vary in line with the potential for environmental improvements and considerations of significant adverse effect when the benefits of the modification are taken into account. These assessments will be made as part of the management plan process. Environmental objectives will be based on updated knowledge from the analysis according to Articles 5 and 11 of the Directive.

The screening excludes no reviews or technical analysis

Due to a large number of upcoming revision cases in accordance with the Norwegian

Watercourse Regulation Act, it has been considered necessary for the Government to obtain a national overview prior to the processing of individual cases. This screening is being conducted independently of the Directive, and will not replace any part of the national implementation of the Directive in Norway. The screening is an administrative tool related to the individual watercourse regulation licenses.

The screening provides expert advice from the directorates ahead of the completion of the regional River Basin Management Plans (2015) as well as input to the subsequent revision processes where water minimum flow is considered more thoroughly. The characterisation, the development of the Programme of Measures and individually set environmental objectives will be carried out regardless of whether minimum flow is prioritised in the screening or not. Minimum flow will be considered as a measure in the River Basin Management plan, even if the water body is not given priority in the screening.

The consequences for security of supply, requirements according to the Renewable Directive and nationally key environmental values have to be considered also from a national perspective. The Norwegian electricity supply is entirely based on hydropower. The screening provides input on how significant adverse effects and important environmental values are to be considered nationally. It does not affect the requirement of individually set environmental objectives which applies to all heavily modified water bodies

Main point 3: Norwegian authorities are responsible for following up the Programmes of Measures through appropriate mitigation measures. Norway has sufficient legal instruments to do so.

The Norwegian authorities will ensure that River Basin Management Plans are followed up

Existing legislation will be used to implement required environmental measures in all water bodies in Norway. The legislation covering hydropower was presented in the Ministry's letter to the Authority dated 31 May 2012.

The follow up activity is carried out through decisions by different sector authorities, primarily the energy – and water authorities as well as the environmental authorities. These authorities are responsible for implementing the various measures in the River Basin Management Plans. As a general rule, the authorities impose, the developers execute and the authorities supervise the implementation.

Whether to impose mitigation measures or not, is decided based on cost-benefit assessments. The authorities' decisions can be appealed by both the developer and other parties involved. Decisions on revision pursuant to the Watercourse Regulation Act are made by Royal Decree, which is the highest decision level in the Norwegian

administration. This type of resolution may therefore not be appealed, but these resolutions are made following a comprehensive and thorough process, based on a broad hearing of recommendations from the energy- and water authorities. There is a low threshold for starting a revision process. In addition, there is the opportunity to appeal against a decision not to start a revision.

The standard terms ensure individually tailored mitigation measures

A large number of measures can be imposed pursuant to the licenses, primarily associated with standard terms for nature management. The standard terms are in itself no "specific measure" in accordance with Article 11. However, the standard term provides the legal basis for the authorities to impose tailored measures in accordance with Article 11. In cases, where there is no legal basis in the licenses to make the necessary changes, mitigating measures can be imposed using other legal instruments, as described in the Ministry's letter of 31 May 2012.

The legislation to carry out mitigation measures in the hydropower sector is sufficient

The legal framework covering the hydropower sector is, as for many other sectors in the Norwegian legislation, associated with legal standards, such as "special circumstances". These legal standards can be adapted to reflect changes in social opinions or new international legal obligations. This is also ensured through the general principle of interpreting Norwegian legislation so that it matches with the EEA law.

As mentioned in the Ministry's letter to the Authority dated 31 May 2012, the criteria for using the Water Resources Act's Article 28 for amendment of the provision are available if the environmental objectives cannot be otherwise fulfilled. The fact that amendments are needed to fulfil the environmental in the Directive will be defined as a "special circumstance". The same applies to the rules for summoning old unlicensed hydropower according to the Water Resources Act's Article 66. In other words, the preparatory works are not an obstacle for the authorities to apply the provisions where necessary to achieve the environmental objectives. The Norwegian authorities have assessed the existing legal instruments carefully, and have concluded that these are adequate instruments to meet the obligations under the Directive. The use of these instruments will be adapted to meet the requirements of the Directive regardless of previous practice.

Fragmented legislation, but adequate to implement the Directive

The water management legislation is complicated and has been developed stepwise over many years. However, these rules are neither unclear for the authorities that manage them, nor for the stakeholders in the hydropower sector. Extensive information material and guidelines for the stakeholders have also been developed.

Although the instruments in the hydropower sector are to be found in several acts and permits issued pursuant to these acts, the available policy instruments are coherent and

familiar to the stakeholders in the water sector. Prior to the entry into force of the Water Resources Act in 2000, all instruments were reviewed to ensure that there was sufficient legal basis to make the necessary changes as required by a modern and sustainable resource management system. National management ensures that the legislation provides for equal treatment of similar cases.

The cycle for the revision is not an obstacle to the review of permits and imposing of mitigation measures every sixth years.

Upon indication that the environmental objectives under Article 4 are unlikely to be reached, all relevant permits will be reviewed every sixth year in accordance with Article 11 (5) and with the planning cycles of the Directive. This will take place regardless of which legislation the license is pursuant to. Revision pursuant to the Watercourse Regulation Act can be carried out every thirtieth year. Revision is one of a range of instruments described in the letter from the Ministry of 31 May 2012. Other instruments may be used in the period between revisions in order to ensure the fulfilment of the Directive.

Main point 4: Norway intends to comply with the deadlines imposed by the Directive.

Norway intends to comply with the existing deadlines

Norway aims to comply with the deadlines in the Directive. It is however not always possible to predict the need for exemption in terms of extension of the deadline before the environmental objectives and the Programmes of Measures are finalised. If exemptions are to be used, this will be justified in line with the requirements of the Directive and be subject to an assessment case by case.

The capacity of the administration is sufficient to implement the Directive

As described in the letter to the Authority dated 31 May 2012, the revision process according to the Watercourse Regulation Act is comprehensive and time consuming. The first revision cases were unique because the government had to deal with important issues of principle, for instance issues related to cultural heritage and financial compensation.

The guidelines for revision (2012) and the screening (2013) will help to streamline the processing of revision cases through systematisation of knowledge and highlighting of priorities.

Concluding remarks

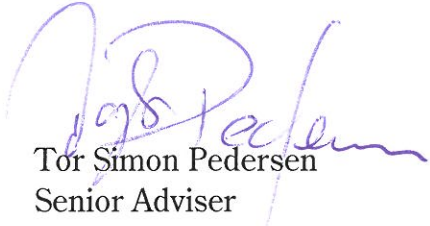
Articles 4 and 11 in the Directive are connected to the River Basin Management Plans. These plans will be completed and adopted by 2015 in accordance with the deadlines in the national Water Regulation. The first pilot plans were developed on a voluntary basis in order to obtain feedback on Norway's interpretation of the application of the

Directive. This feedback, together with the European Commission's country review where Norway also was assessed, enables Norway to adjust the upcoming mandatory plans.

Should the Authority find that there are issues that need further clarification, the Ministry would like to suggest an imminent meeting to address these issues more thoroughly. Before such a meeting, it would be useful if the Authority could make a specification on which particular parts of Articles 4 and 11 of the Directive the Norwegian implementation is considered insufficient.

Yours sincerely,


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Director General (acting)


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Senior Adviser

