Regarding complaint alleging failure by Norway to comply with Directive 2000/60 in relation to a mining project in Western Norway

Dear Madam/Sir,

The Ministry of Climate and Environment refers to the letter from the EFTA Surveillance Authority dated 23 January 2015, and will in the following clarify the issues raised in the letter.

1. THE CURRENT STATUS OF THE APPLICATION

There has not been granted a license to the proposed mining project in Engebøsfjellet, County of Sogn and Fjordane. The proposed mining project requires a license under the Pollution Control Act (Act of 13 March 1981 No. 6 relating to protection against pollution and relating to waste), and a zoning plan under the Planning and Building Act (Act 27 June 2008 No. 71 relating to planning and the processing of building applications). According to the Water Resources Act (Act 24 November 2000 No. 82 relating to river systems and groundwater), process water cannot be extracted without a licence from the Norwegian Water Resources and Energy Directorate (NVE) if the extraction may be of appreciable harm or nuisance to any public interest in watercourses. According to the Minerals Act (Act 19 June 2009 No. 101 relating to the acquisition and extraction of mineral resources), the extraction of mineral deposits totalling more than 10,000 m³ of matter requires an operating license from the Directorate of Mining.

On 11 and 12 May 2011, the Municipalities of Naustdal and Askvoll adopted a zoning plan
which allocates a specific area to the proposed mining project. The Directorate of Fisheries (West Region) made objectiones to the proposal for a zoning plan in 2010. The objection is currently being processed by the Ministry of Local Government and Modernisation.

On 8 August 2008, the applicant filed an application for a license under the Pollution Control Act. This application is currently being processed by the Ministry of Climate and Environment.

It is not possible for the Ministries to indicate when a decision will be taken.

Nordic Mining ASA has not yet sent an application to the Norwegian Water Resources and Energy Directorate (NVE).

Applications concerning operation licenses under the Minerals Act can not be considered before a zoning plan which allocates the specific area to the proposed mining project is adopted. Nordic Mining ASA has not sent an application to the Directorate of Mining yet, because the objection relating to the proposed zoning plan is currently being processed by the Ministry of Local Government and Modernisation.

2. OVERVIEW OF THE POSSIBILITY TO APPEAL

2.1 Zoning plan under the Planning and Building Act

According to Article 12-13 and Article 5-4 of the Planning and Building Act, affected central government and regional bodies may make objections to a zoning plan in issues that are of national or significant regional importance, or which for other reasons are of significant importance to the sphere of responsibility of the body in question. Other municipalities may make objections to a zoning plan in respect of issues that are of significant importance to the municipality’s inhabitants, for business and industry or for the natural or cultural environment in the municipality, or for the municipality’s own activities or planning. The Sami Parliament may make objections to a zoning plan in respect of issues that are of significant importance to Sami culture or the conduct of commercial activities. If the planning proposal is contrary to provisions of the Planning and Building Act, regulations, central government planning guidelines, central government or regional planning provisions, or a general plan, objections may be made.

According to Article 12-13, the Ministry of Local Government and Modernisation shall decide whether the objections shall be upheld and may in that connection make such alterations to the zoning plan as are considered necessary. The Ministry’s decision may not be appealed.
2.2 License under the Pollution Control Act

According to Article 28 of the Public Administration Act (Act of 10 February 1967 relating to procedure in cases concerning the public administration) an individual decision may be appealed by a party or another person having a legal interest in appealing the case, to the administrative agency (the appellate instance) which is the immediate superior of the administrative agency that made the administrative decision (the subordinate instance). A decision under the Pollution Control Act is such an individual decision, and may therefore be appealed. In this particular case, the application is being processed by the Ministry of Climate and Environment, and the appellate instance would therefore be the King in Council.

2.3 License under the Water Resources Act

Article 28 of the Public Administration Act also applies to licenses under the Water Resources Act. Decisions by the Norwegian Water Resources and Energy Directorate (NVE) relating licenses may be appealed to the Ministry of Petroleum and Energy. According to Article 24 of the Water Resources Act, the same bodies that may make objections according to the Planning and Building Act may also appeal the NVEs decision under Article 28 of the Public Administration Act.

2.4 Operating license under the Minerals Act

Article 28 of the Public Administration Act also applies to operating licenses under the Minerals Act. Decisions by the Directorate of Mining relating to operating licenses may be appealed to the Ministry of Trade, Industry and Fisheries.

2.5 Access to bring a decision before a national court

In general, a decision made by the public administration may also be brought before a national court in accordance with the general provisions in the Dispute Act (Act 17 June 2005 No. 90 relating to mediation and procedure in civil disputes).

3. RIVER BASIN MANAGEMENT PLAN

The area in question falls under Sogn and Fjordane River Basin District. To gain experience in river basin management planning, Norway performed a voluntary pilot phase implementation of the Water Framework Directive in selected sub-districts across the country from 2009 to 2015. The water body in question, "Førdefjorden Ytre", was not included in the Pilot River Basin Management Plan (RBMP) for the West River Basin District. The first ordinary RBMPs for Norway will be approved in 2015 and apply to the period 2016 to 2021. A draft RBMP for Sogn og Fjordane River Basin District has been sent out for public consultation. We have enclosed the draft.
Hopefully this information sufficiently addresses the questions posed by the Authority. The Ministry will be happy to provide the Authority with any additional information considered necessary.

Yours Sincerely,

Eline Lyngby
Director General

Lindis Nerbo
Deputy Director General