EFTA SURVEILLANCE AUTHORITY DECISION

of 15 May 2018

closing a complaint case arising from an alleged failure by Norway to comply with Directive 2000/60

THE EFTA SURVEILLANCE AUTHORITY

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Article 31 thereof,

Whereas:

On 10 March 2011, the EFTA Surveillance Authority (“the Authority”) received a complaint against Norway on behalf of the Norwegian Association of Municipalities hosting Hydropower Plants (LVK), the Liaison Committee of Nature Conservation (SRN), the Union of Outdoor Recreation Organizations (FRIFO), the Norwegian Biodiversity Network (SABIMA) and Norwegian Salmon Rivers (Norske Lakseelver). The complaint alleges that Norway has not correctly implemented the Water Framework Directive 2000/60 (WFD).\(^1\)

According to the complaints, regulated water courses used for hydropower production, which appear to have been generally classified as heavily modified water bodies, will not be subject to the procedures foreseen by Articles 4 and 11 of the WFD. They will continue to be subject to autonomous national procedures, which do not comply with the requirements of the WFD.

1 The Authority’s action

On 14 March 2011\(^2\), the Authority wrote to the Norwegian Government informing them of the receipt of the complaint and on the same date, the Authority sent a letter of acknowledgement to the complainants\(^3\). On 25-26 October 2012, representatives of the Authority travelled to Norway to meet with the Norwegian Government to discuss the case. By letter dated 22 February 2012, the Authority asked the Norwegian Government to


\(^2\) Doc No 590196.

\(^3\) Doc No 590204.
provide information regarding the implementation of the WFD⁴. Norway requested two extensions of the deadline to respond to that letter and a response was received by letter dated 31 May 2012⁵.

By email received on 30 June 2012, the complainants submitted comments to Norway’s response in a letter dated 29 June 2012.⁶ By letter dated 5 October 2012, the complainants submitted follow up comments to the Norwegian Government’s letter of 29 June 2012⁷. On 22 November 2012, the case was discussed with the Norwegian Government in Oslo. By letter dated 14 January 2013, the complainants provided further information regarding the screening process⁸.

On 13 May 2013, the Internal Market Affairs Directorate sent a pre Article 31 letter to the Norwegian Government⁹. By letter dated 23 May 2013, the Norwegian Government requested an extension of the deadline to reply to that letter¹⁰. Norway submitted its observations to the Directorate’s pre-31 letter by letter dated 31 July 2013¹¹. On 25 November 2013, the complainants submitted further comments regarding sections 28 and 66 of the Water Resources Act¹². On 20 December 2013, the Authority received a further letter from the Norwegian Government by way of follow up to the package meeting in November 2012 and to the complainant’s letter of 25 November 2012¹³.

On 14 May 2014, representatives of the Authority met with the complainants at our offices in Brussels. By email dated 2 May 2014, SABIMA submitted a further letter of concern regarding the case. By letter dated 4 July 2014, the Norwegian Government wrote to the Authority to provide further clarification regarding the classification of heavily modified water bodies¹⁴. The case was subsequently discussed with the Norwegian Government in Oslo on 16-17 October 2014. By emails dated 20 February 2016¹⁵, 17 August 2016¹⁶ and 24 October 2016¹⁷ the complainants provided further information regarding the complaint. The case was then discussed with the Norwegian Government in Oslo in meetings on 27-28 October 2016. A further meeting took place with the complainants in Oslo on 27 October 2017.

By email dated 30 June 2017, the complainants submitted a further letter to the Authority regarding the ongoing issues related to the original complaint¹⁸. At that point, reflecting on the ongoing dialogue between the Authority and the Norwegian authorities on the implementation of the WFD and conscious that, as Norway finally adopted its River Basin Management Plans (RBMP) on 4 July 2016, the Authority now has a basis on which to assess whether the elements of the WFD relating to RBMPs have been correctly and effectively implemented in Norway, the Authority took the decision to open a new

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⁴ Doc No 607006.  
⁵ Doc No 636436.  
⁶ Doc No 639662.  
⁷ Doc No 648988.  
⁸ Doc No 659138.  
⁹ Doc No 671404.  
¹⁰ Doc No 673121.  
¹¹ Doc No 679742.  
¹² Doc No 714965.  
¹³ Doc No 793285.  
¹⁴ Doc No 814990.  
¹⁵ Doc No 825764.  
¹⁶ Doc No 867177.
complaint case to deal with the ongoing issues set out in the complainants’ letter of 30 June 201719.

The Authority informed the complainants of its decision by letter dated 18 August 201720. On the same day, the Authority wrote to Norway to inform them that a new case had been opened21. The issues raised in the new complaint were discussed with the Norwegian Government on 26-27 October 2017 in Oslo. Those same issues were discussed with the complainants at a meeting which took place in Oslo on 26 October 2017.

2 Relevant law

The Joint Committee Decision which incorporated the WFD into the EEA Agreement entered into force on 1 May 2009. It contains a number of adaptations, in particular as regards the time limits mentioned in the Directive, meaning that, in respect of the EEA EFTA States, the time limits prescribed by the relevant provisions of the WFD started to run from the compliance date, i.e. 1 May 200922.

Article 4 of the WFD lists the “environmental objectives” of the Directive. Article 4(1)(a)(iii) establishes that in making operational the programmes of measures specified in the river basin management plans for surface waters Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of the Directive.

According to Article 4(4), the deadlines established under paragraph 1 may be extended for the purposes of phased achievement of the objectives for bodies of water, provided that no further deterioration occurs in the status of the affected body of water when certain conditions specified in the Directive are met.

Article 5(1) lays down the obligation of the Member States to carry out certain technical analyses in order to achieve the environmental objectives of the Directive. According to this provision each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory an analysis of its characteristics, a review of the impact of human activity on the status of surface waters and on groundwater, and an economic analysis of water use is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of the Directive.

Article 11(1) sets out the obligation for each Member State to ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives established under Article 4. Such programmes of measures may make reference to measures following from

19 Case No 81034.
20 Doc No 870421.
21 Doc No 870427.
22 According to Article 1(1)(b) of the Joint Committee Decision “The time limits mentioned in Articles 4(1)(a)(ii) and (iii), 4(1)(b)(ii), 4(1)(c), 5(1) and 5(2), 6(1), 8(2), 10(2), 11(7) and 11(8), 13(6) and 13(7) as well as 17(4) of the Directive, which run from the date of entry into force of the Directive shall be understood to run from the date of entry into force of the Decision of the EEA Joint Committee No 125/2007 incorporating this Directive into the Agreement.”.
legislation adopted at national level and covering the whole of the territory of a Member State.

Article 11(5) establishes that where monitoring or other data indicate that the objectives set under Article 4 for the body of water are unlikely to be achieved, the Member State shall ensure that relevant permits and authorisations are examined and reviewed as appropriate.

3 Assessment

Throughout the discussions of the case, the Norwegian Government have maintained that the existing tools in the Norwegian legal framework are sufficient to ensure implementation of the WFD.

It is to be noted that the obligations provided for in Article 4 of the WFD are only applicable from the point at which the river basin management plans become operational. In other words, the conservation measures which States are bound to adopt under Article 4(1) WFD are conditional upon the prior existence of management plans for the river basin concerned.

The time limit granted to the EFTA States to publish RBMPs expires on 1 May 2018. Norway undertook a voluntary implementation of the WFD in selected sub-districts across the country in the period 2009-2015, the so-called “voluntary pilot phase”. On 4 July 2016, the Norwegian Government issued approval letters adopting the remaining river basin management plans for the whole country. With the adoption of these river basin management plans, the Authority now has a basis from which to scrutinise and to assess Norway’s compliance with its obligations under the WFD.

4 Conclusion

In view of the developments that have occurred since the original complaint was lodged and in the interests of good administration, the Authority took the decision to open a new complaint case. The intention is to assess the ongoing issues raised in this complaint in that case.

By letter of 5 February 2018, the Internal Market Affairs Directorate informed the complainants of its intention to propose to the Authority that the case be closed. The complainants were invited to submit any observations on the Internal Market Affairs Directorate’s assessment of the complaint or present any new information by 7 March 2018.

The complainants did not reply to that letter.

There are, therefore, no grounds for pursuing this case further.

23 Doc No 877157.
HAS ADOPTED THIS DECISION:

The complaint case arising from an alleged failure by Norway to comply with Directive 2000/60 is hereby closed.

For the EFTA Surveillance Authority

Bente Angell-Hansen  Frank J. Büchel  Högni Kristjánsson
President  College Member  Responsible College Member

Carsten Zatschler
Countersigning as Director,
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This document has been electronically authenticated by Bente Angell-Hansen, Carsten Zatschler.