



ROYAL NORWEGIAN MINISTRY  
OF THE ENVIRONMENT

EFTA Surveillance Authority  
Rue Belliard 35, 1040 Brussels  
Belgium

Your ref

Our ref  
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**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](http://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