JUDGMENT OF THE COURT

28 April 2026[*†]

(*Directive 2001/42/EC (Strategic Environmental Assessment Directive) –Plans and programmes – Environmental assessment – Reasonable alternatives – Regularisation*)

In Case E-17/25,

REQUEST to the Court under Article 34 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice by Oslo District Court (*Oslo tingrett*), in the case between

Redd Ullevål Sykehus

and

the Norwegian State, represented by the Ministry of Local Government and Regional Development (Staten v/ Kommunal- og distriktdepartementet),

concerning the interpretation of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, in particular Article 2(a) and Article 3(2) thereof,

THE COURT,

composed of: Páll Hreinsson, President, Bernd Hammermann (Judge-Rapporteur) and Michael Reiertsen, Judges,

Registrar: Ólafur Jóhannes Einarsson,

[*] Language of the request: Norwegian. Translations of national provisions are unofficial and based on those contained in the documents of the case.

[†] Rectified.

having considered the written observations submitted on behalf of:

– Redd Ullevål Sykehus ("the Plaintiff"), represented by Helge Skogseth Berg, advocate;

– the Norwegian State ("the Defendant"), represented by the Ministry of Local Government and Regional Development, represented by Ida Thue, acting as Agent;

– the EFTA Surveillance Authority ("ESA"), represented by Kyrre Isaksen, Johannes Kohler and Melpo-Menie Joséphidès, acting as Agents; and

– the European Commission ("the Commission"), represented by Inês Melo Sampaio and Dorota Milanowska, acting as Agents,

having heard oral arguments of the Plaintiff, represented by Helge Skogseth Berg; the Norwegian State, represented by Ida Thue; ESA, represented by Kyrre Isaksen and Johannes Kohler, and the Commission, represented by Inês Melo Sampaio, at the hearing on 18 December 2025,

gives the following

JUDGMENT

I INTRODUCTION

1 This request for an advisory opinion concerns the interpretation of Article 2(a) and Article 3(2) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment ("Directive 2001/42" or "the SEA Directive"). The case primarily concerns which factors are relevant when considering whether certain national measures, individually or collectively, constitute a "plan" within the meaning of those provisions.

2 The request has been made in proceedings before Oslo District Court (*Oslo tingrett*) brought by Save Ullevål Hospital (*Redd Ullevål Sykehus*) concerning the validity of two State zoning plans adopted by the Ministry of Local Government and Regional Development for the Gaustad and Aker areas of the City of Oslo and construction commencement permits issued pursuant to those zoning plans.

II LEGAL BACKGROUND

EEA law

3 The first paragraph of Article 3 of the Agreement on the European Economic Area ("the EEA Agreement" or "EEA") reads:

The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement.

4 Directive 2001/42 (OJ 2001 L 197, p. 30; and Norwegian EEA Supplement 2003 No 23, p. 433) was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 90/2002 of 25 June 2002 (OJ 2002 L 266, p. 63; and Norwegian EEA Supplement 2002 No 49, p. 47) ("JCD No 90/2002"). JCD No 90/2002 inserted the SEA Directive as point 2i of Annex XX (Environment) to the EEA Agreement. Constitutional requirements were indicated by Iceland, Liechtenstein and Norway. The requirements were fulfilled by 7 March 2003 and the decision entered into force on 1 May 2003. Decision of the EEA Joint Committee No 12/2006 (OJ 2006 L 92, p. 35; and Norwegian EEA Supplement 2006 No 17, p. 13) ("JCD No 12/2006") restructured Chapter I of Annex XX and, as a result, the SEA Directive is now referred to at point 1g of Annex XX (Environment) to the EEA Agreement.

5 Article 1 of JCD No 90/2002 reads, in extract:

...

The provisions of the Directive shall, for the purposes of the present Agreement, be read with the following adaptations:

(a) Article 3(2)(b) of the Directive shall not apply.

(b) The words ', such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC' shall be deleted from point d of Annex I (Information referred to in Article 5(1)) to the Directive.

6 Recitals 4 and 5 of the SEA Directive read:

(4) Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.

(5) The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision making. The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.

7 Article 1 of the SEA Directive, entitled "Objectives", reads:

The objective of this Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations

into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that, in accordance with this Directive, an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment.

8 Article 2(a) and (b) of the SEA Directive, entitled "Definitions", reads:

For the purposes of this Directive:

(a) "plans and programmes" shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:

- which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and

- which are required by legislative, regulatory or administrative provisions;

(b) "environmental assessment" shall mean the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with Articles 4 to 9;

9 Article 3 of the SEA Directive, entitled "Scope", reads, in extract:

1. An environmental assessment, in accordance with Articles 4 to 9, shall be carried out for plans and programmes referred to in paragraphs 2 to 4 which are likely to have significant environmental effects.

2. Subject to paragraph 3, an environmental assessment shall be carried out for all plans and programmes,

(a) which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and which set the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC, or

...

3. Plans and programmes referred to in paragraph 2 which determine the use of small areas at local level and minor modifications to plans and programmes referred to in paragraph 2 shall require an environmental assessment only where the Member States determine that they are likely to have significant environmental effects.

4. Member States shall determine whether plans and programmes, other than those referred to in paragraph 2, which set the framework for future development consent of projects, are likely to have significant environmental effects.

5. Member States shall determine whether plans or programmes referred to in paragraphs 3 and 4 are likely to have significant environmental effects either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose Member States shall in all cases take into account relevant criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive.

...

8. The following plans and programmes are not subject to this Directive:

...

- financial or budget plans and programmes.

...

10 Article 5(1) and (2) of the SEA Directive, entitled "Environmental report", reads:

1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

2. The environmental report prepared pursuant to paragraph 1 shall include the information that may reasonably be required taking into account current knowledge and methods of assessment, the contents and level of detail in the plan or programme, its stage in the decision-making process and the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment.

11 Article 6(1) of the SEA Directive, entitled "Consultations", reads:

1. The draft plan or programme and the environmental report prepared in accordance with Article 5 shall be made available to the authorities referred to in paragraph 3 of this Article and the public.

12 Article 11(1) and (2) of the SEA Directive, entitled "Relationship with other Community legislation", reads:

1. An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive 85/337/EEC and to any other Community law requirements.

2. For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation in order, inter alia, to avoid duplication of assessment.

13 Annex I to the SEA Directive, entitled "Information referred to in Article 5(1)", reads:

The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;

(b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

(c) the environmental characteristics of areas likely to be significantly affected;

(d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance;

(e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;

(f) the likely significant effects [Footnote: These effects should include secondary, cumulative, synergistic, short, medium and long-term permanent and temporary, positive and negative effects] on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;

(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties

(such as technical deficiencies or lack of know-how) encountered in compiling the required information;

(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;

(j) a non-technical summary of the information provided under the above headings.

14 Annex II to the SEA Directive, entitled "Criteria for determining the likely significance of effects referred to in Article 3(5)", reads:

1. The characteristics of plans and programmes, having regard, in particular, to

- the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources,

- the degree to which the plan or programme influences other plans and programmes including those in a hierarchy,

- the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development,

- environmental problems relevant to the plan or programme,

- the relevance of the plan or programme for the implementation of Community legislation on the environment (e.g. plans and programmes linked to waste-management or water protection).

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to

- the probability, duration, frequency and reversibility of the effects,

- the cumulative nature of the effects,

- the transboundary nature of the effects,

- the risks to human health or the environment (e.g. due to accidents),

- the magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected),

- the value and vulnerability of the area likely to be affected due to:

- special natural characteristics or cultural heritage,

- exceeded environmental quality standards or limit values,

- intensive land-use,

- the effects on areas or landscapes which have a recognised national, Community or international protection status.

15 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1; and Norwegian EEA Supplement 2017 No 29, p. 826) ("Directive 2011/92" or "EIA Directive") was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 230/2012 of 7 December 2012 (OJ 2013 L 81, p. 32; and Norwegian EEA Supplement 2013 No 18, p. 38) ("JCD No 230/2012") and is referred to at point 1a of Annex XX (Environment) to the EEA Agreement. No constitutional requirements were indicated. JCD No 230/2012 entered into force on 8 December 2012.

16 The EIA Directive was amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ 2014 L 124, p. 1; and Norwegian EEA Supplement 2019 No 77, p. 1017) ("Directive 2014/52"). Directive 2014/52 was incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 117/2015 of 30 April 2015 (OJ 2016 L 211, p. 76; and Norwegian EEA Supplement 2016 No 42, p. 73) ("JCD No 117/2015") and is referred to at point 1a of Annex XX (Environment) to the EEA Agreement. Constitutional requirements were indicated by Iceland and Liechtenstein. The requirements were fulfilled by 24 November 2015 and JCD No 117/2015 entered into force on 1 January 2016.

17 Article 14 of the EIA Directive reads:

Directive 85/337/EEC, as amended by the Directives listed in Annex V, Part A, is repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex V, Part B.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

18 Point 10(b) of Annex II to the EIA Directive, entitled "PROJECTS REFERRED TO IN ARTICLE 4(2)", reads:

10. INFRASTRUCTURE PROJECTS

...

(b) Urban development projects, including the construction of shopping centres and car parks;

19 Annex VI to the EIA Directive, entitled "Correlation table", reads, in extract:

Directive 85/337/EEC	**This Directive**
...	...
Annex II, points 3-12	Annex II, points 3-12

National law

20 Section 75(d) of the Constitution of the Kingdom of Norway reads:

It devolves upon the Storting:

...

d. to appropriate the moneys necessary to meet government expenditure;

...

21 Section 41 of the Public Administration Act (*forvaltningsloven*), entitled "Effects of procedural errors", reads:

If the rules of procedure set out in this Act or regulations made in pursuance thereof have not been observed in dealing with a case concerning an individual decision, the administrative decision shall nevertheless be valid when there is reason to assume that the error cannot have had a decisive effect on the contents of the administrative decision.

22 The SEA Directive and the EIA Directive were implemented into Norwegian law by the Planning and Building Act of 27 June 2008 (*Lov om planlegging og byggesaksbehandling (plan- og bygningsloven) 27. juni 2008 nr. 71*) ("the Planning and Building Act") and the Environmental Impact Assessment Regulation (*konsekvensutredningsforskriften*).

23 Chapter 11 of the Planning and Building Act sets out rules on municipal master plans, whereas Chapter 12 of the Planning and Building Act sets out rules on zoning plans. According to Section 6-4 of the Planning and Building Act, the central government may itself prepare and adopt plans pursuant to Chapters 11 and 12 of the act.

III FACTS AND PROCEDURE

24 It appears from the case file that South-Eastern Regional Health Authority Health Enterprise (*Helse Sør-Øst Regionalt Helseforetak,* "HSØ") and Oslo University Trust (*Oslo Universitetssykehus Helseforetak*, "OUS"), a health enterprise owned by HSØ, have for many years explored options for the new Oslo University Hospital (*Nye Oslo Universitetssykehus*).

25 Since 2011, a number of internal reports and papers have been issued setting out different location solutions for new hospital buildings. During the winter of 2016, three possible solutions emerged in OUS's ideas phase: (1) continuation of the existing structure; (2) a shared solution between Ullevål, Aker and Gaustad; and (3) partial concentration at Gaustad with local hospitals elsewhere.

26 On 24 June 2016, the HSØ health enterprise meeting adopted a target image for a new hospital structure for the new Oslo University Hospital, consisting of regional hospitals with local hospital functions at Gaustad, a local hospital at Aker and a specialised cancer hospital at the Norwegian Radium Hospital. The target image entailed the HSØ working towards developing hospital operations in Gaustad and Aker, inter alia, by submitting applications to public authorities for the necessary permits to develop the plots of land (zoning plan proposals, building permit applications).

27 In practice, the new hospital structure entails Ullevål Hospital being replaced by hospitals at Gaustad and Aker, through the partial demolition and development of existing hospital buildings, as well as the construction of new buildings.

28 In November 2018, the City of Oslo Planning and Building Services (*Oslo Plan- og bygningsetaten*) concluded that there were considerable zoning risks concerning a number of points because the plots of land at Gaustad and Aker were considered to be too small. As a result, there has been a protracted back-and-forth process between the HSØ, as developer, and the City of Oslo, as planning authority.

29 In parallel with the work towards the zoning plans, the HSØ tabled a motion to apply for a loan for the construction project in the 2020 State budget. In October 2019, the Norwegian Parliament approved a loan guarantee capped at around NOK 29.1 billion concerning stage 1 of the new Oslo University Hospital.

30 On 1 April 2022, the Ministry of Local Government and Regional Development took over as planning authority. On 28 February 2023, the Ministry of Local Government and Regional Development adopted two State zoning plans for the areas of Gaustad and Aker in Oslo. According to the referring court, the zoning plans for both areas follow the main features and frameworks of the City of Oslo's master plans and strategies.

31 Subsequently, construction commencement permits were issued pursuant to those two zoning plans.

32 In the main proceedings, the Plaintiff, Save Ullevål Hospital, an association with more than 1000 paying members whose purpose is to prevent the closure of Ullevål Hospital, contests the validity of the zoning plans and the construction commencement permits issued pursuant thereto. It argues, in particular, that the zoning plans and the corresponding permits are invalid because the former should have been subjected to an environmental assessment pursuant to the SEA Directive. This entails the invalidity of the zoning plans and, consequently, that of the corresponding permits.

33 The Defendant contends, in essence, that the zoning plans fall within the scope of the EIA Directive and have been subjected to a thorough environmental impact assessment in accordance with that Directive. It further argues that the zoning plans fall outside the scope of the SEA Directive, as do all the other decisions taken in the context of establishing the new Oslo University Hospital. In the alternative, the Defendant submits that, in any event, the reports prepared under the auspices of the HSØ satisfy the requirements of the SEA Directive. In the further alternative, the Defendant submits that any possible procedural errors that occurred did not affect the substance of the decisions taken, and the zoning plans can thus be deemed valid pursuant to Section 41 of the Norwegian Public Administration Act.

34 Against this background, Oslo District Court decided to request an advisory opinion from the Court. The request, dated 8 July 2025, was registered at the Court on 15 July 2025. Oslo District Court has referred the following questions to the Court:

> *1. Which factors are relevant in the assessment of whether the following decisions (individually or collectively) constitute a "plan" under Article 2(a) and Article 3(2) of Directive 2001/42/EC: 1) a health enterprise's decision on a target image for a new hospital structure, adopted on the basis of its autonomy under private law; 2) a zoning plan; 3) State financing in the form of a loan limit decision?*
>
> *For the assessment under question 1:*
>
> *- Does it affect the assessment if a health enterprise's decision on a target image for a new hospital structure is adopted by the State as owner of the health enterprise on the basis of autonomy under private law (that is to say, not the State as planning and building authority)?*
>
> *- In the assessment of the term "plans and programmes" under Article 3(2)(a), of what significance is the project's size and nature?*
>
> *- Is the question whether or not the SEA Directive applies affected by whether an assessment has been carried out under the EIA Directive where the assessment under the EIA Directive does not include "reasonable alternatives" (see Article 5(1))?*
>
> *2. Is it compatible with the EEA Agreement, including Article 3 thereof, for a national court, in proceedings involving alleged infringement of rules laid down*

in Directive 2001/42/EC, to apply a national rule providing that an administrative decision is valid if a court decides, on the basis of an overall assessment of the evidence in the case and without placing the burden of proof on the private party, that the error in question cannot have affected the substance of the decision?

In the assessment of question 2:

- which legal criteria are relevant in such an assessment?

35 Reference is made to the written observations published on the Court's website for a fuller account of the arguments and proposed answers submitted to the Court. Arguments of the parties are mentioned or discussed hereinafter only insofar as is necessary for the reasoning of the Court.

IV ANSWER OF THE COURT

Question 1

36 By its first question, the referring court asks, in essence, which factors are relevant in the assessment of the term "plans and programmes" set out in Article 2(a) and Article 3(2)(a) of the SEA Directive with regard to three decisions at issue in the main proceedings and whether the project's size and nature are of significance for this assessment.

37 At the outset, the Court recalls that the delimitation of the definition of plans and programmes in relation to other measures not coming within the material scope of the SEA Directive must be made with regard to the specific objective laid down in its Article 1, namely to subject plans and programmes which are likely to have significant effects on the environment to an environmental assessment. Consequently, given the objective of the directive, which is to provide for a high level of protection of the environment, the provisions which delimit the directive's scope, in particular those setting out the definitions of the measures envisaged by the directive, must be interpreted broadly (compare the judgment of 27 October 2016 in *D'Oultremont and Others*, C-290/15, EU:C:2016:816, paragraphs 39 and 40 and case law cited).

38 The strategic environmental assessment has to be made in accordance with Articles 4 to 9 of the SEA Directive. For plans and programmes to be subject to an environmental assessment, four cumulative conditions, set out in Article 2(a) and Article 3(2) to (4), must be satisfied. While Article 2(a) sets out two conditions by defining plans and programmes, Article 3 outlines the scope by specifying the kind of plans and programmes which require an environmental assessment.

39 Within the meaning of the SEA Directive, its Article 2(a) defines plans and programmes as being those which satisfy the two cumulative conditions set out in that provision, namely that they are subject to preparation and/or adoption by an authority at national, regional or local level, or are prepared by an authority for adoption, through a legislative

procedure by parliament or government (the first condition) and that they are required by legislative, regulatory or administrative provisions (the second condition) (compare the judgment of 9 March 2023 in *NJ and OZ*, C-9/22, EU:C:2023:176, paragraph 27 and case law cited).

40 Furthermore, according to Article 3(1) of the SEA Directive, an environmental assessment shall be carried out for plans and programmes referred to in paragraphs 2 to 4 of that article which are likely to have significant environmental effects. Hence, the environmental assessment must be carried out for plans and programmes that are prepared for the sectors referred to in Article 3(2)(a) (the third condition) and set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive (the fourth condition).

41 With regard to the referring court's question whether a zoning plan, such as those which are at issue in the main proceedings, constitutes a "plan", the Court recalls that any assessment of the facts of the case is a matter for the national court or tribunal, which must assume responsibility for the subsequent judicial decision, and it is that court or tribunal which has the task of interpreting the provisions of national law at issue and ultimately determining their compatibility with EEA law. However, in order to give the national court or tribunal a useful answer, the Court may, in the spirit of cooperation with national courts and tribunals, provide it with all the guidance that it deems necessary (see the judgment of 20 November 2024 in *Bygg & Industri Norge*, E-2/24, paragraph 31 and case law cited).

42 According to the referring court, the work on the zoning plans for Gaustad and Aker began as a planning process with HSØ as proposer and the City of Oslo as the planning authority under the Planning and Building Act. Subsequently, the Ministry of Local Government and Regional Development took over as planning authority and both zoning plans were finalised as State zoning plans. The Court observes that such zoning plans fulfil the first condition in Article 2(a) of the SEA Directive, i.e. being plans subject to adoption by an authority at a national, regional or local level.

43 In terms of the second condition, a plan or programme is required by legislative, regulatory or administrative provisions if there exists a particular legal basis in national law authorising the competent authorities to adopt that plan or programme, even if such adoption is not mandatory (compare the judgment of 22 March 2012 in *Inter-Environnement Bruxelles ASBL and Others*, C-567/10, EU:C:2012:159, paragraph 28). Subject to the verification of the referring court, the legal basis for the zoning plans seems to be found in the Planning and Building Act and the second condition also appears to be satisfied.

44 Furthermore, it is for the referring court to ascertain whether the zoning plans in question are plans or programmes prepared for the sectors referred to in Article 3(2)(a) of the SEA Directive, i.e. that it concerns one of those sectors. In that regard, it should be noted, that "town and country planning or land use" is not limited to land use *stricto sensu*, namely the dividing of land into areas and the determination of the activities permitted within those areas, but is necessarily broader in its scope (compare the

judgment of 22 February 2022 in *Bund Naturschutz in Bayern*, C-300/20, EU:C:2022:102, paragraphs 49 and 50 and case law cited).

45 Furthermore, pursuant to Article 3(2)(a) of the SEA Directive read in conjunction with Article 14 of the EIA Directive, the referring court has to verify that the zoning plans in question set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive. It is apparent from the request that the zoning plans in question concern urban development projects, which are listed in point 10(b) of Annex II to the EIA Directive.

46 The Norwegian Government submits that the City of Oslo must approve applications for building permits which are in accordance with the detailed zoning plans. Nevertheless, according to the Norwegian Government, only the part of the municipal master plan that concerns land use is subject to the SEA Directive, but not a detailed zoning plan, which must be consistent with the municipal master plan.

47 The concept of plans and programmes that set the framework for future development consent for projects covers any measure which establishes, by defining rules and procedures for scrutiny applicable to the sector concerned, a significant body of criteria and detailed rules for the grant and implementation of one or more projects that are likely to have significant effects on the environment. The concept of "a significant body of criteria and detailed rules" must moreover be construed qualitatively and not quantitatively. That body must constitute a framework, not necessarily exhaustive, but sufficiently significant for the determination of the conditions for consent to be granted (compare the judgment of 25 June 2020 in *A and Others (Wind turbines at Aalter and Nevele)*, C-24/19, EU:C:2020:503, paragraphs 67, 70 and 71 and case law cited).

48 Therefore, a zoning plan that lays down detailed rules for the grant and implementation of one or more projects within the framework of a municipality land use plan falls within the scope of the SEA Directive. The Court notes also that it is not disputed that subsequent construction commencement permits were issued pursuant to the two state zoning plans.

49 In addition, the referring court must ascertain, whether the zoning plans are likely to have significant environmental effects. Moreover, plans and programmes referred to in Article 3(2) of the SEA Directive, which determine the use of small areas at local level or minor modifications of plans and programmes, shall, according to Article 3(3), require an environmental assessment only where the EEA State determines that they are likely to have significant environmental effects. This shall be determined, according to Article 3(5), either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches. For this purpose, EEA States shall in all cases take into account the criteria set out in Annex II, in order to ensure that plans and programmes with likely significant effects on the environment are covered by this Directive. Given the objective of the SEA Directive, as set out in its Article 1, a provision that exempts plans and programmes from the obligation to carry out an environmental assessment must be interpreted narrowly.

50 It is against this background that the question of the referring court, whether the project's size and nature is of significance, becomes relevant.

51 Under the SEA Directive, plans determining the use of small areas at the local level are not automatically exempt from environmental assessment. Competent authorities are legally required to carry out a prior examination to determine if the plan is likely to have significant effects, taking into account the criteria in Annex II (compare the judgment of 21 December 2016 in *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraphs 50 and 51).

52 According to the request, the zoning plan for Gaustad provides for approximately 414 900 m^2 of usable area, in addition to the protected Gaustad Hospital. Alternative 1A, which was adopted, allows for building heights of up to 55 metres, corresponding to 12 stories, with two helicopter landing pads on the roof. The proposed plan for Aker provides for building a total of 247 050 m^2 of usable area. With two towers, the main building is 15 and 13 stories high. The taller tower is to have a helicopter landing pad and the maximum height is to be 77.2 metres. According to the plaintiff's view as set out in the request, the development affects nature at Gaustad and Aker and adjacent areas. Many buildings must be demolished to make room for new construction.

53 While it remains unclear whether it is in dispute in the main proceedings that the zoning plans are likely to have significant environmental effects, the narrow exception of Article 3(3) of the SEA Directive would, in any case, not seem to apply to a situation such as that in the main proceedings.

54 With regard to whether a health enterprise's decision on a target image for a new hospital structure, adopted on the basis of its autonomy under private law, or state financing in the form of a loan limit decision constitute a "plan" under Article 2(a) and Article 3(2) of the SEA Directive, the Court understands that these questions arise in the context of the plaintiff's submission that the defendant may not circumvent the requirements of the SEA Directive by splitting the decisions into stages and the corresponding submission of the Norwegian Government that the SEA Directive does not apply to the decision of 24 June 2016 of the health enterprise's meeting, the two zoning plans, or Parliament's loan limit decision.

55 As is apparent from Recitals 4 and 5 of the SEA Directive, the environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption. The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision making.

56 In this context, it should be borne in mind that the fundamental objective of the SEA Directive is to ensure that plans and programmes which are likely to have significant

effects on the environment are subject to an environmental assessment when they are prepared and prior to their adoption. In that regard, it is apparent from Article 6(2) of the directive that the environmental assessment is supposed to be carried out as soon as possible so that its conclusions may still have an influence on any potential decision-making. Indeed, it is at that stage that the various alternatives may be analysed and strategic choices may be made (compare the judgment of 7 June 2018 in *Inter-Environnement Bruxelles ASBL and Others*, C-671/16, EU:C:2018:403, paragraphs 62 and 63 and case law cited, and the judgment of 8 April 2019 in *Verdi Ambiente e Società*, C-305/18, EU:C:2019:384, paragraph 58 and case law cited).

57 It must further be recalled that the adoption of the SEA Directive was motivated, in particular, by the fact that experience had shown that when projects were assessed, significant effects on the environment had already been established on the basis of earlier town and country planning measures and that, consequently, although it was possible to study those effects in the context of that assessment, it was no longer possible to take them fully into account when authorising the project at issue, so that it was more prudent to examine such effects at the time of the preparatory measures and to take them into account in that context (compare the judgment in *NJ and OZ*, C-9/22, cited above, paragraph 58).

58 Therefore, it is necessary to avoid strategies which may be designed to circumvent the obligations laid down in the SEA Directive by splitting measures, thereby reducing the practical effect of that directive (compare the judgment in *D'Oultremont and Others*, C-290/15, cited above, paragraph 48 and case law cited).

59 If a decision on a target image for a new hospital structure, such as that in question in the main proceedings, is considered in isolation, it appears that such a target image does not fulfil the second or fourth conditions set out above. If, however, the adoption of such a target image has an effect on the preparation of zoning plans in such a way that a subsequent environmental assessment cannot influence any potential decision-making because with the adoption of the target image strategic choices have in fact become binding on the authorities with power to grant development consent, the obligations of the SEA Directive would be circumvented by splitting the measure in question (compare, to that effect, the judgment in *NJ and OZ*, C-9/22, cited above, paragraphs 49 and 50).

60 Moreover, a parliamentary decision on a loan guarantee, such as that at issue in the main proceedings, does not set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive (the fourth condition). In addition, it must be borne in mind that financial and budget plans and programmes are not subject to the SEA Directive according to its Article 3(8).

61 Turning to whether the applicability of the SEA Directive is affected by whether an assessment has been carried out under the EIA Directive which does not include reasonable alternatives, the Court recalls that the obligation to carry out an environmental assessment follows from the conditions and the scope of the SEA

Directive as such. Therefore, the fact that an assessment under the EIA Directive was carried out cannot affect the requirements flowing from the SEA Directive.

62 Furthermore, according to Article 11(1) and (2) of the SEA Directive, an environmental impact assessment carried out under the EIA Directive does not dispense with the obligation to carry out an assessment required under the SEA Directive as the assessments differ for a number of reasons and it is necessary to comply with the requirements concurrently (compare the judgment of 22 September 2011, *Valčiukienė and Others*, C-295/10, EU:C:2011:608, paragraphs 57 to 60, the judgment in *Inter-Environnement Bruxelles ASBL and Others*, C-671/16, cited above, paragraph 66 and case law cited, and the judgment in *Verdi Ambiente e Società*, C-305/18, cited above, paragraph 56 and case law cited).

63 The Court observes, however, that for plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other relevant EEA law, such as the EIA Directive, EEA States may, pursuant to Article 11(2) of the SEA Directive, provide for coordinated or joint procedures fulfilling the requirements of the relevant EEA law in order, inter alia, to avoid duplication of assessment. It is for the referring court to assess whether an assessment which has been carried out pursuant to the EIA Directive may be the result of a coordinated or joint procedure and whether it already complies with all the requirements of the SEA Directive (compare the judgment in *Valčiukienė and Others*, C-295/10, cited above, paragraph 63). Consequently, an assessment carried out under the EIA Directive cannot be deemed to satisfy the requirements of a joint procedure if it failed to evaluate reasonable strategic alternatives, as this constitutes a fundamental and independent obligation under the SEA Directive.

64 Hence, the answer to the first question must be that for plans and programmes to be subject to an environmental assessment in accordance with the SEA Directive, four cumulative conditions have to be satisfied. Article 2(a) defines plans and programmes as being those which satisfy the two cumulative conditions set out in that provision, namely that they are subject to preparation and/or adoption by an authority at national, regional or local level or are prepared by an authority for adoption, through a legislative procedure by Parliament or Government (the first condition), and that they are required by legislative, regulatory or administrative provisions (the second condition). The third condition is that plans and programmes are prepared for the sectors referred to in Article 3(2) thereof and the fourth condition is that such plans and programmes set the framework for future development consent of projects listed in Annexes I and II to the EIA Directive.

Question 2

65 By its second question, the referring court asks, in essence, whether it is compatible with EEA law for a national court to apply in proceedings involving an alleged infringement of rules laid down in the SEA Directive a national rule, according to which an administrative decision is valid if a court decides, on the basis of an overall assessment of the evidence in the case and without placing the burden of proof on the

private party, that the error in question cannot have affected the substance of the decision.

66 Neither the SEA Directive nor the EIA Directive specify the action that should be taken in the event of not carrying out an environmental assessment in line with the Directive. However, the Court recalls that EEA States are required to nullify the unlawful consequences of a breach of EEA law under the principle of sincere cooperation, laid down in Article 3 EEA. It is the responsibility of the national courts, in particular, to provide the legal protection that individuals derive from the EEA Agreement and to ensure that rules of EEA law are fully effective. This must necessarily entail that the obligation to take all measures necessary to remedy a failure to carry out an environmental assessment is also incumbent upon national courts before which an action against a national measure on this basis has been brought (see the judgment of 21 May 2025 in *Greenpeace Nordic*, E-18/24, paragraphs 103 and 104 and case law cited).

67 The detailed procedural rules applicable to such actions are a matter for the domestic legal order of each EEA State, under the principle of procedural autonomy, provided that they are no less favourable than those governing similar domestic actions (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by EEA law (the principle of effectiveness) (see the judgment in *Greenpeace Nordic*, E-18/24, cited above, paragraph 105 and case law cited).

68 It is for the national court, as far as possible, and where there has been a breach of EEA law, to interpret and apply the relevant provisions of national law in such a way that it is possible to nullify the consequences of that breach of EEA law. Such measures may include, inter alia, the revocation or suspension of a consent already granted, in order to carry out an assessment of the environmental effects (see, to that effect, the judgment in *Greenpeace Nordic*, E-18/24, cited above, paragraphs 106 and 107 and case law cited).

69 According to the request, the referring court is considering whether to apply Section 41 of the Public Administration Act, according to which an administrative decision is valid if a court decides, on the basis of an overall assessment of the evidence in the case and without placing the burden of proof on the private party, that the error in question cannot have affected the substance of the decision.

70 The Norwegian Government argues that the European Court of Justice has considered similar provisions in the context of the EIA Directive, referring in particular to the judgment of 7 November 2013 in *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, and the judgment of 15 October 2015 in *Commission* v *Germany*, C-137/14, EU:C:2015:683, and that these judgments support the view that the rule contained in Section 41 of the Public Administration Act may be applied in the main proceedings.

71 However, as this Court has already stated in *Greenpeace Nordic*, the considerations in *Gemeinde Altrip and Others* and *Commission* v *Germany* related to the right to review of decisions and cannot be transposed to a case which concerns the requirement to conduct an environmental impact assessment under Article 3 of the EIA Directive. This vital aspect of environmental protection could well be compromised if development projects were to be authorised in the absence of an assessment which meets the appropriate legal standards. Concluding that such an omission could not have impacted the development consent would have undermined the purpose of the EIA Directive, which is to assess the environmental impacts of a project and take these assessments into consideration during the development consent procedure. The Court further found that a national court cannot retroactively dispense with the obligation to assess the direct and indirect effects on the environment of a project under Article 3(1) of the EIA Directive (see the judgment in *Greenpeace Nordic*, E-18/24, cited above, paragraphs 113 to 116 and case law cited).

72 The same considerations apply *mutatis mutandis* with respect to an environmental assessment not carried out in accordance with the requirements of the SEA Directive. As stated above, the fact that an assessment of the effects on the environment was carried out under the EIA Directive for a project cannot lead to an exemption from the obligation to carry out the environmental assessment of the plan required by the SEA Directive for the purposes of addressing the environmental aspects particular to the SEA Directive.

73 In particular, according to Article 5(1) of the SEA Directive, the environmental report should identify, describe and evaluate reasonable alternatives taking into account the objectives and the geographical scope of the plan. The authorities referred to in Article 6(3) and the public shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or its submission to the legislative procedure according to the consultation requirement of Article 6. In particular, the absence of an identification, description and evaluation of reasonable alternatives cannot be treated as a mere procedural defect which has no consequences that could possibly affect the purport of the contested decision.

74 In light of the above considerations, a ruling by a national court to the effect that the lack of an environmental assessment in accordance with the rules of the SEA Directive cannot have affected the substance of the decision, and that the decision is therefore valid, would dispense with the application of the SEA Directive as a whole. Applying a national rule such as Section 41 of the Public Administration Act in situations where an environmental assessment under the SEA Directive has not been conducted would thus not nullify the consequences of the breach of EEA law.

75 With regard to the possibility of regularisation through conducting an environmental assessment while a project is under way or even after it has been completed, the Court has held with regard to the EIA Directive that such a regularisation, which should remain the exception (compare the judgment of 12 November 2019 in *Commission* v *Ireland*, C-261/18, EU:C:2019:955, paragraph 76 and case law cited), is not precluded

on the twofold condition that (i) national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EEA law or to dispense with applying them and (ii) any subsequent or ancillary assessment carried out for regularisation purposes is not conducted solely in respect of the project's future environmental impact, but must also take into account its environmental impact since the time of initiation of that project (see the judgment in *Greenpeace Nordic*, E-18/24, cited above, paragraph 120).

76 It follows from the above that the answer to the second question must be that a ruling by a national court to the effect that the lack of an environmental assessment in accordance with the rules of the SEA Directive cannot have affected the substance of the decision, and that the decision is therefore valid, would dispense with the application of the SEA Directive as a whole. Applying a national rule such as Section 41 of the Public Administration Act in situations where an environment assessment under the SEA Directive has not been conducted would thus not nullify the consequences of the breach of EEA law.

77 The possibility of regularisation through conducting an environmental assessment while a plan is under way or even after it has been completed should remain the exception but is not precluded on the twofold condition that it does not provide the parties concerned with an opportunity to circumvent the rules of EEA law or to dispense with applying them and that any subsequent or ancillary assessment carried out for regularisation purposes is not conducted solely in respect of the plan's or programme's future environmental impact, but must also take into account its environmental impact since the time of implementation of that plan or programme.

V COSTS

78 Since these proceedings are a step in the proceedings pending before the national court, any decision on costs for the parties to those proceedings is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds,

THE COURT

in answer to the questions referred to it by Oslo District Court hereby gives the following Advisory Opinion:

1. **For plans and programmes to be subject to an environmental assessment in accordance with Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, four cumulative conditions which are set out in Article 2(a) and Article 3(2) to (4) of the directive have to be satisfied. Article 2(a) defines plans and programmes as being those which satisfy the two cumulative conditions set out in that provision, namely that they are subject to preparation and/or adoption by an authority at national, regional or local level or are prepared by an authority for adoption, through a legislative procedure by Parliament or Government (the first condition), and that they are required by legislative, regulatory or administrative provisions (the second condition). The third condition is that plans and programmes are prepared for the sectors referred to in Article 3(2) and the fourth that they set the framework for future development consent of projects listed in Annexes I and II to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.**

2. **A ruling by a national court to the effect that the lack of an environmental assessment in accordance with the rules of Directive 2001/42/EC cannot have affected the substance of the decision, and that the decision is therefore valid, would dispense with the application of Directive 2001/42/EC as a whole. Applying a national rule such as Section 41 of the Public Administration Act in situations where an environmental assessment under Directive 2001/42/EC has not been conducted would thus not nullify the consequences of the breach of EEA law.**

3. **The possibility of regularisation through the conducting of an environmental assessment while a plan is under way or even after it has been completed should remain the exception but is not precluded on the twofold condition that it does not provide the parties concerned with an opportunity to circumvent the rules of EEA law or to dispense with applying them and that any subsequent or ancillary assessment carried out for regularisation purposes is not conducted solely in respect of the plan's or programme's future environmental impact, but must also take**

into account its environmental impact since the time of implementation of that plan or programme.

Páll Hreinsson Bernd Hammermann Michael Reiertsen

Delivered in open court in Luxembourg on 28 April 2026.

Ólafur Jóhannes Einarsson
Registrar

Páll Hreinsson
President