Recent developments, Norway

For the Avosetta meeting, Bremen 2015

(1) International cooperation

Negotiations: Norway launched a successful initiative under the Bonn Convention on Migratory Species to protect polar bears.

In the long-lasting debate between Norway and Sweden concerning management of carnivores, in which a main point of discussion has been the extensive killing of carnivores in Norway, the two countries finally signed a Memorandum of Understanding concerning monitoring. This may be a first step in the direction of improved cooperation between the two countries regarding the management of carnivores.

One topic that has received particular attention by Norwegian environmental authorities in the last year is agreements to protect forest as part of the climate negotiations, in particular rainforest.

Implementation and compliance: Norway has recently taken some action to strengthen its implementation of MEAs, in particular introduction of more severe punishment for violation of the prohibitions against export of hazardous waste, and a proposal for much more extensive government regulations to implement CITES. Norway has finally been successful in complying with its obligations under the NOx-protocol of the LRTAP Convention to reduce emissions of NOx. A complaint has been brought against Norway before the Aarhus Compliance Committee, resulting in the first case to be heard by the Committee against Norway. The undersigned is the complainant. The case concerns access to information and access to justice and will be decided this summer.

(2) Issues under the EEA Agreement

Reinterpretation of the GMO Act: Previously, the GMO legislation has been applied so that applicants would have to submit documentation that GMOs fulfil requirements concerning social usefulness and contribution to sustainable development, in addition to absence of negative effects to health and the environment, when seeking to market GMOs in Norway. According to the new policy, once GMOs are accepted in the EU, they can be lawfully marketed in Norway. It will be up to the government to initiate a government regulation to prohibit the marketing of the GMO. This means that the burden of proof and responsibility for costs associated with the case has been shifted to public authorities. The new policy is in accordance with existing legislation but contrary to previous practice, and it remains questionable whether it is in accordance with previous Norwegian positions in regard to reciprocity between the EU and EFTA countries under the EEA Agreement regarding approval of GMOs. As a result of the new policy, currently nine GMOs can be marketed in Norway.

According to the EFTA Surveillance Authority (ESA), Norway is dragging its feet on two environmental directives: Directive 2009/31/EC on the geological storage of carbon dioxide, and Directive 2012/33/EU amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels. Both directives concern issues of political sensitivity to Norway (see below regarding CCS).

ESA has brought a case to the EFTA Court (E-7/15) regarding Norway's compliance with air quality standards. It claims that the air quality in a number of Norwegian cities and densely

populated areas as regards PM10, SO_2 and NO_2 is not in line with EEA rules on air quality and cleaner air. Norway has failed to develop concrete plans setting out how air quality can be improved, the responsibility for which is placed at the municipality level. The infringement proceedings date back to 2013 and were initiated following a complaint from the Norwegian Asthma and Allergy Association. Although there has been some action in Norway to address air pollution, ESA was of the opinion that the EEA requirements were not fulfilled within a reasonable timeframe.

ESA also issued a reasoned opinions against Norway in which it claims that Norway is in non-compliance with the directives on environmental impact assessment (2011/92/EU and 2001/42/EC) since smaller projects for which an assessment would be required were not always subject to an environmental assessment. As a consequence, Norway amended the government regulation on environmental impact assessment.

(3) Legislation and government regulation
The environmental clause of the Constitution was amended in the context of the general constitutional revision initiated as part of the bicentennial celebrations of the adoption of the Constitution (the provision has been renumbered as article 112). The amendment constituted in strengthening clause of the third paragraph in order to make clear the duty of public authorities to ensure compliance with the substantive (environmental quality) and procedural (access to environmental information) standards. The provision has subsequently been invoked in several controversial cases concerning snowmobiles, investments of the Norwegian petroleum fund, redefinition of the ice-covered areas in the Barents Sea, and a permit to dump mining waste in a fjord listed as a salmon fjord (more on some of these cases below).

A controversial legislative amendment of the legislation on the use of motorized vehicles in rural areas will allow municipalities to establish tracks for snowmobiles to be used for recreational purposes. The amendment was fiercely opposed by environment and recreation NGOs. One important argument in the debate has been that the proposal for the act failed to fulfill the rights to knowledge regarding the environmental and health consequences of the proposal. The case was very divisive, and the constitutional issue was discussed in some detail between the Minister of Climate and Environment and the Parliamentary Committee preparing the case. The constitutional issue remained unresolved, with a significant minority of parliamentarians (a majority in the Committee) arguing that the constitutional rights were not fulfilled.

The first government regulation on alien species is close to finalized under the Nature Diversity Act. It introduces prohibitions against import and release of certain alien species (plant species were most controversial, a total of 31 were prohibited), a general duty of cautiousness, and a duty to notify in cases of importation of certain organisms.

(4) Reorganization of public institutions
The local management reform concerning large protected areas has been extended to all other protected areas with the exception of wetlands of international importance according to the Ramsar Convention. The previous reform (2009) delegated management of national parks and large landscape protection areas to local management boards composed of local and regional politicians. The new reform is adopted in the form of a letter to municipalities asking whether they are interested in taking over management responsibility for other protected areas.

Municipalities are allowed to take over management responsibility if they can demonstrate relevant administrative ability.

(5) Case law and cases
One controversial case pending before Norwegian courts concerns the possibility of accepting exceptions to the rules regarding protected areas according to section 48 of the Nature Diversity Act. The case concerns the construction of a significant power line (420 kV) through a nature reserve. The property owners brought a case arguing that the decision to allow construction of the power line was unlawful. They lost at the first level, but successfully appealed (appeal court decision of 12 March 2015). The case was appealed to the Supreme Court by the Government. The core issue in the case concern the possibility of making very significant exemptions in cases where significant social interests (stability and security of electric power supply) is involved, and where the authorities and company responsible for the project was at least partly to blame for the level of urgency due to late application for exception. The justifies its appeal to the Supreme Court by the need for clarity regarding where to draw the line between exceptions allowed under section 48 and cases where an amendment to the regulation establishing the protected area is needed. In the case, the Ministry argued that it had not sufficient time, given the urgency of the case, to prepare a case to amend the protected area regulation. The government regulation for the protected area was amended to allow for the project on 5 February 2015 (before the decision of the appeals court). The sole reason for the appeal to the Supreme Court is therefore to get its opinion on the scope of section 48 of the Nature Diversity Act.

There have been significant initiatives to facilitate mining for minerals in recent years, including adoption of a new Mining Act in 2009 and a mineral strategy in 2013. One controversial case is dumping of mining waste in the fjords. There are some such waste sites currently in operation (Syd-Varanger Gruver and Rana Gruber) and two significant projects in the pipeline. All these cases have been very controversial, essentially due to conflicts with fisheries (some of the fjords are important to wild salmon stocks), tourism, aquaculture, and protected areas. A permit was recently issued to the establishment of a major waste site in Førdefjorden. The mine will ultimately remove a mountain (Engebøfjellet) and essentially deposit most of it in the fjord. The case has raised interesting issues concerning the division of labor between the Environment Agency (directorate level) and the Ministry of Climate and Environment, in the sense that the Agency first delivered a negative opinion regarding the proposed waste site, based on assessment of environmental consequences, and was instructed by the Ministry to reconsider its opinion in light of broader economic and social interests. The decision-making power in the case rested with the Ministry through the whole process. The relationship to article 112 of the Constitution has also been an issue in the case, as NGOs have argued that the decision is in violation of the environmental standards.

(6) Policy and administrative decisions
After Norway and Russia successfully concluded the marine delimitation issues in the Barents Sea, and Norway was successful in its submission to the Commission on the Continental Shelf, there have been important initiatives to prepare for petroleum exploration in the Barents Sea. Due to the current low petroleum prices, and the high costs of carrying out exploration and exploitation activities in the Barents Sea, the interest has cooled off somewhat. However, Norwegian authorities are promoting the area and have recently opened it up for exploration. In that context, the Government has presented a white paper updating the management plan for the Barents Sea. One main issue has been whether the areas opened for petroleum activities in 2013 were in conflict with the ice covered areas, i.e. where to draw the

line between ordinary sea areas and ice covered sea areas. Ice covered areas has for this purpose been defined as areas in which there is ice more than 30 % of the days of April. This line marks a very productive area in terms of biological resources and it has been a determining factor for which areas are opened for petroleum activities. Due to global warming, ice has retreated northward. The question has been whether the line should be drawn further north as a consequence. The Government decided to redraw the line further north and thus to conclude that petroleum activities could proceed in these areas, despite some scientific advice to the contrary. The ultimate fate of that decision remains uncertain, and NGOs are considering whether a case should be brought to court regarding the lawfulness of the decision. Article 112 of the Constitution has been discussed as a possible legal basis for such a case.

In a new white paper, the government proposes a new management regime for aquaculture. It introduces a classification of coastal areas as “green” – open for increased aquaculture, “yellow” – no increase in aquaculture, and “red” – aquaculture needs to be reduced.

One very controversial case in Norwegian environmental policy was the decision to allow gas power plants to be built in Western Norway. The case led to a parliamentary crisis, and the minority government chose to resign when the majority in the Parliament increased CO_2 and NOx emissions allowed. One condition was to link the power plant to a major plant for carbon capture and storage (CCS). However, the plant has been very difficult and costly to build, and has for all practical purposes been shelved. The Government decided that the conditions related to CCS were to be deleted from permit to run the power plants as a consequence of the elimination of financial support to the CCS-part of the project in the budget for 2014.

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