



# Paradigm shift in the law on EIAs: Implications for EU airport and port expansion

Legal Briefing | July 2025

## Executive Summary

This briefing analyses a paradigm shift in European environmental law following recent rulings on the scope of Environmental Impact Assessments (EIAs). In particular, the advisory opinion of the European Free Trade Association (EFTA) Court in *The Norwegian State v Greenpeace Nordic, Nature and Youth Norway* has confirmed that EIAs must include the scope 3 greenhouse gas (GHG) emissions associated with fossil fuel extraction projects. This precedent, while focused on oil extraction, has significant implications for airport and port expansion projects across Europe. These projects will now need to consider emissions from the eventual use of fuels, such as liquefied natural gas (LNG) and sustainable aviation fuel (SAF), and associated activities.

### Key takeaways

- **Scope 3 emissions must be assessed:** EIAs must cover all scope 3 GHG emissions, including emissions from fuels burned in ships and planes.
- **No exemptions for international transport:** the global nature of aviation and shipping does not exempt individual projects from scrutiny.
- **Uncertainty and complexity are no excuse:** the lack of precise emissions data and potential double-counting do not justify excluding downstream emissions from EIAs.
- **Democratic scrutiny and early disclosure:** developers must present comprehensive climate impacts early in project planning to enable effective public participation and informed decision-making by authorities.
- **'Inevitability' arguments are rejected:** claims that emissions are inevitable because demand would be met elsewhere will not relieve stakeholders of their obligations.
- **Implications for LNG and SAF:** fuels must be scrutinised for their full climate impacts, and partial decarbonisation narratives risk facing legal and public challenge.
- **Regulatory and litigation risk is rising:** authorities and developers ignoring scope 3 emissions face high litigation risk and project delays.

## Current status of EU aviation and shipping projects

The aviation and shipping sectors are undergoing slow decarbonisation efforts across the European Union (EU). However, despite such efforts, both industries are projected to grow substantially in coming decades, with [corresponding increases](#) in GHG emissions. More needs to be done to ensure that aviation and shipping are aligned with national and international climate targets. Yet a wave of new airport and port projects is underway in Europe. From the expansion of [airports](#) and [ports](#), to major [investments in LNG](#), European governments and developers continue to pursue fossil fuel infrastructure growth in the shipping and aviation sectors.

At the same time, developments which implicate substantial GHG emissions are increasingly subjected to scrutiny through litigation and increased regulation. A crucial shift in this regard is signalled by the recent advisory opinion of the EFTA Court in [The Norwegian State v Greenpeace Nordic, Nature and Youth Norway](#). The EFTA Court established that downstream (scope 3) GHG emissions – those resulting from the use of extracted fossil fuels – must be identified, described and assessed as part of EIAs for the purposes of EU law. This briefing explains the legal significance of this landmark precedent, and sets out the practical implications of this decision for stakeholders in the shipping and aviation industries.

## Background and decision of the Court

*Greenpeace Nordic* examined Norway's approval of three new oil and gas fields in the North Sea. Greenpeace argued that the associated EIAs had unlawfully omitted scope 3 emissions, meaning GHG emissions which would be extracted by the projects and eventually burned or used by consumers. The EFTA Court was asked to consider whether the EIA process for oil extraction projects must include such emissions.

This hinged on the interpretation of EU law – namely, Directive 2011/92/EU, as amended by Directive 2014/52/EU (the EIA Directive). Articles 4 and 5 of the EIA Directive specify projects which require an EIA to be undertaken, whereas Article 3(1) requires an EIA to “identify, describe and assess” the “direct and indirect effects of a project” on, amongst other things, the “soil, water, air, climate and landscape”.

The Court decided that scope 3 emissions must be included. It relied on the wording and purpose of the EIA Directive, and emphasised the broad scope of environmental effects that must be considered. This aligns with earlier judgments of the Supreme Court of the United Kingdom (UKSC) in [R\(Finch\) v Surrey County Council](#) (regarding a planning permission for an oil extraction site), and of the Scottish Court of Session in [Greenpeace v Advocate General for Scotland](#) (regarding consent for two new oil and gas fields). Both UK courts have similarly grappled with interpreting the EIA Directive, and similarly concluded that excluding downstream emissions from the EIA of oil extraction projects was unlawful.

Together, the judgments represent a paradigm shift in European environmental law and set a powerful precedent, which is expected to have significant implications for industry in the EU. Whilst an advisory opinion of the EFTA Court is not legally binding, it is an extremely [important source](#) of interpreting EU law in practice. Similarly, the judgments of the UKSC and the Scottish Court of Session are not binding on the EU. Yet, in practice, the alignment of two highly respected senior courts with the EFTA Court on interpretation of the EIA Directive speaks to a robust legal trend. A detailed analysis of the legal findings, and the practical implications for the shipping and aviation sectors, are set out below.

## Legal Analysis

### Causation

A key issue under consideration was whether scope 3 emissions could constitute “direct or indirect effects” of the project for the purposes of the EIA Directive. Thus, the issue of causation was examined in detail. The EFTA Court found that the extraction of oil causes that oil to be burned, with resultant GHG emissions (*Greenpeace Nordic*, paras 69 and 87), since those emissions would not occur if the oil remained in the ground. Similarly, the UKSC has found that the process of refining the oil, which takes place after extraction, does not interrupt the chain of causation between extraction and combustion (*Finch*, paras 118 and 134).

Crucially, the EFTA Court emphasised that EIAs must encompass the impact of the entire project, not just any specific works as narrowly described in the development application (*Greenpeace Nordic*, paras 63 and 93). This makes clear that, in expanding existing infrastructure, the impact of the whole project, not just the expansion itself, must be considered.

Practically, this precedent cements the position that scope 3 emissions of infrastructure projects should be included in EIAs. By extension to shipping and aviation projects, such as ports and airports, this suggests that all downstream emissions produced as a result of the operation of the projects – including passenger and freight transport, and arriving and departing planes and ships.

Indeed, whilst the immediate cases concerned oil extraction, their legal implications are expected to be wide-ranging. Significantly, the EFTA Court has made repeated references to earlier caselaw of the Court of Justice of the EU (CJEU) examining the environmental impacts of [railways](#) and [airports](#), thus showing that the legal reasoning in *Greenpeace Nordic* extends beyond oil projects and particularly into transport. The Court emphasised that, in the CJEU cases, causation was established even though an expansion in operations could not rule out a possible future decrease in operations (*Greenpeace Nordic*, para 85).

The implications of the new wave of legal precedents have already been felt in the aviation industry, for example, where the expansion of Gatwick Airport in London was [delayed](#) to give the stakeholders more time to consider the ramifications of *Finch*. It is only a matter of time until similar repercussions are felt in the aftermath of the more recent *Greenpeace Nordic*.

### Democratic participation and regulatory oversight

The Court’s reasoning highlighted the importance of assessing environmental impacts at the earliest possible stage in order to facilitate effective democratic public participation, and to ensure that the local authorities have access to all relevant information necessary for decision-making (*Greenpeace Nordic*, paras 56, 75–76; 80). This approach was seen as consistent with, and required by, the precautionary principle enshrined in EU environmental law (paras 50–52).

In practical terms, this places an obligation on developers to ensure that detailed information is made available to the decision-making local authority, which may then be supplemented by the authority or the public, at the very early stages of a project proposal.

### Quantifying emissions

The Court clarified that uncertainty as to the precise quantity of emissions that would ultimately be burned does not preclude their inclusion in an EIA. The availability of statistical information and standard methodologies enables developers and authorities to produce sufficiently accurate estimates (*Greenpeace Nordic*, para 88). On the question of proportionality of assessing scope 3 emissions, the EFTA Court opined that the burden imposed on developers and competent

authorities would not be excessive (*Greenpeace Nordic*, paras 88–89). The UKSC reached a similar conclusion (*Finch*, para 81).

This has clear implications for the shipping and aviation sector: stakeholders will need to grapple with complex GHG emission projections data. In particular, the environmental impacts of different kinds of fuels will have to be considered. For example, LNG and SAF are often hailed as more sustainable alternative fuels in the shipping and aviation sectors respectively, even though a true analysis of their climate impact across their full lifecycle shows LNG and certain SAFs to be incredibly problematic and potentially even more polluting than traditional fuel types. A comprehensive EIA will require that the true environmental impacts of those fuels are adequately analysed and reported.

Similarly, the Court firmly rejected the argument that the inclusion of scope 3 emissions would cause double-counting, and therefore be practically unfeasible. It was irrelevant that the GHG emissions could later be considered in another EIA at the point of refining or subsequent processing of the oil (*Greenpeace Nordic*, paras 71 and 73). Thus, in shipping and aviation infrastructure, the fact that the GHG emissions of planes or ships may be accounted for elsewhere would be irrelevant to the obligations on developers and local authorities to report and analyse those emissions as part of EIAs of infrastructure expansion projects.

## Geographical scope and individual responsibility for GHG emissions

Another important aspect of the advisory opinion was confirmation that the Directive imposes no geographical limitations on the scope of the environmental effects that must be assessed. The EFTA Court reaffirmed that the purpose and scope of the EIA Directive are extremely wide and intended to be interpreted broadly (*Greenpeace Nordic*, paras 62 and 84), which was again consistent with the UKSC's approach (*Finch*, paras 97 and 103).

In practical terms, this means that it does not matter that GHG emissions are not localised to the site of the project, but instead travel to the atmosphere and have global effects. This is a powerful rejection of the 'drop in the ocean argument', which contends that the contribution of any single project to global climate change is too small to warrant assessment. The UKSC explicitly stated that such reasoning was inconsistent with the principle that States and corporations may be held individually responsible for their contributions to climate change (*Finch*, para 82), which reflects a broader trend towards recognising individual liability for cumulative and collective impacts, as seen in the recent cases of *Lluyda v RWE* and *KlimaSeniorinnen v Switzerland*. This is particularly important for the shipping and aviation sectors, whose largely international nature has often resulted in a [lack of individual responsibility](#) for GHG emissions.

Additionally, the Court made clear that the existence of separate climate mitigation obligations, including those arising under the Paris Agreement, does not affect the proper interpretation or application of the EIA Directive (*Greenpeace Nordic*, para 73). This means that local authorities, developers, and other stakeholders have direct responsibilities under the EIA Directive which are separate and distinct from international obligations under the Paris Agreement.

Finally, the Court considered the 'market substitution' argument that, if the oil extraction did not go ahead, other oil producers would simply supply the same quantity of oil, rendering the EIA unnecessary. Similar to the UKSC (*Finch*, para 2), the EFTA Court emphatically rejected this argument, finding that any project must be assessed by reference to its own effects, without regard to "knock-on effects from other projects elsewhere" (*Greenpeace Nordic*, paras 95–96). This illustrates that arguments regarding the 'inevitable' growth of the shipping and aviation sector, regardless of whether specific infrastructure projects go ahead, would not be enough to exclude any scope 3 emissions from EIAs.

## About

Opportunity Green is an NGO working to unlock the opportunities from tackling climate change using law, economics, and policy. We do this by amplifying diverse voices, forging ambitious collaborations and using legal innovation to motivate decision makers and achieve climate justice. For the avoidance of doubt, this note is prepared by Opportunity Green for general information purposes only. It does not constitute legal advice and should not be relied upon as such. Opportunity Green is not a law firm and Opportunity Green gives no warranty, express or implied, to the accuracy of the information in this document and does not accept liability for any action made in reliance on this document.

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