Two-And-A-Half Steps Forward and Two Steps Back

Implications of the Norwegian Supreme Court's North Sea Fields Ruling for Climate Accountability

Fergus Green

26.11.2026 doi: 10.59704/5116d3aeeef44d87

With its 13 November 2026 judgement in the *North Sea Fields Case*, the Norwegian Supreme Court invalidated the approvals for production from three Norwegian oilfields. In their thoughtful post, Colombo, Gloppen and Robiou du Pont summarise the factual context, case history and key findings. Here I will critically analyse the Court's findings on the requirements for the environmental impact assessment (EIA) of fossil fuel extraction projects. I argue that, judged in light of the EU EIA Directive's purpose of advancing transparent and democratically accountable environmental decision-making (preamble, recital 16), the judgement contains both advances and setbacks.

Combustion Emissions

The Directive requires that the EIA process "identify, describe and assess in an appropriate manner [...] the direct and indirect significant effects of a project" on various factors, including "climate" (art. 3(1)(c)).

Starting with the steps forward, the Court provides welcome confirmation that the greenhouse gas (GHG) emissions from the combustion of petroleum, including where exported, are indirect "effects" of the project within the meaning of article 3(1) (paras. 143–150). Here, the Court agreed with the EFTA Court's Advisory Opinion, which the Borgarting Court of Appeal had requested at an earlier stage in the case. It is also consistent with the interpretation given to the Directive by the UK Supreme Court in *Finch v Surrey County Council*.

More controversial are the Court's findings on how combustion emissions must be described and assessed under the EIA Directive.

Market substitution

In this regard, the second step forward is the Court's conclusion – again, consistent with the EFTA Court's opinion – that the combustion emissions that must be described and assessed pursuant to article 3(1) are the project's gross combustion emissions (para. 151).

This finding constitutes a decisive rejection of the argument advanced by the Norwegian state that only the project's "net" emissions need be assessed. This "market substitution argument" is widely deployed by governments and fossil fuel producers around the world in EIA processes. Where accepted, the argument obscures the climatic impact of the assessed project via opaque economic modelling exercises. The Court's rejection of it is therefore welcome from a democratic accountability perspective, and joins a growing chorus of jurisprudence sceptical of the evidential, factual, philosophical and/or legal basis of market substitution claims.

Cumulative Emissions

The Directive requires that an EIA report describe the effects of the project on the climate including from "the cumulation of effects with other existing and/or approved projects" (Annex IV, point 5(e); see also Annex IV, point 5 second para.). The Court found that, in the case of a petroleum extraction project, this requires an assessment of the project's emissions cumulatively with the emissions from other petroleum projects on the Norwegian Continental Shelf (para. 178).

Relative to the state's submission that it is sufficient to assess the climate effects of a project's emissions in isolation, the Court's finding advances demo-

cratic accountability, as it goes some way toward mitigating the problem, pervasive in EIA law, of "death by a thousand cuts".

However, in my estimation the Court did not go far enough. I have argued elsewhere that the most appropriate scope of cumulative effects assessment in the climate context is the cumulative historical (past) and reasonably foreseeable (future) emissions from other project-based sources of emissions globally. This approach, I argue, is appropriate in light of the plain fact that anthropogenic climate change is caused by cumulative *global* GHG emissions from *various kinds of projects*. It is also consistent with the Directive's broad definition of "project" (art. 1(2)(a)), the case law (paras. 45–46) of the European Court of Justice (ECJ), and guidance provided by both the European Commission (p. 50, citing the ECJ case just alluded to) and the UK Government (p. 12).

The Norwegian Supreme Court provides two reasons—one principled, one practical—for limiting the scope of the cumulative effects assessment to Norwegian petroleum projects. The principled reason is that the Norwegian petroleum authorities only have jurisdiction to permit petroleum extraction within Norway (para. 167). But this is a *non sequitur*. The requirement in question is to assess the *effects* of a project in light of cumulative emissions. The decision-maker does not need to have jurisdictional authority over any of the other projects that contribute to those cumulative effects to undertake such an assessment.

The Court's reasoning has counterintuitive implications that undermine the informational and environmental purposes of the Directive. Imagine there exists a fragile ecosystem traversing the border between Norwegian and UK waters, and that the UK had approved oil drilling that, cumulatively, would push the ecosystem just shy of collapse. On the Court's logic, the Norwegian authorities would have to ignore those cumulative effects when assessing the local biodiversity impacts of an oil extraction project proposed on the Norwegian side of the border, even if the latter project's impacts would trigger the ecosystem's collapse. That would be absurd (not to mention a *prima facie* violation of Norway's international legal duty to prevent environmental harm).

The Court's practical reason is that expanding the scope to include projects of other kinds and in other jurisdictions would be excessively burdensome (paras. 167–168). However, as I have pointed out, conservative estimates of global project-based emissions from committed fossil fuel projects (i.e. operating projects plus projects that have been approved or received a final investment decision) are readily available at zero cost. The Intergovernmental Panel on Climate Change (IPCC), in its Sixth Assessment Report (AR6), synthesised scientific evidence of cumulative emissions from existing and planned fossil fuel-consuming infrastructure globally, and research since the AR6 has established the equivalent estimates for emissions embodied in fossil fuel-extraction projects. These could be used as conservative proxies (i.e. industry-favourable underestimates) of cumulative emissions from other projects.

The Court's burdensomeness finding is even more puzzling when read in light of its claim, a few paragraphs later, that the requirement to assess cumulative emissions from all *Norwegian* projects would *not* be unduly burdensome (para. 176). Given that no such cumulative emissions estimates currently exist for Norwegian-only projects, carrying out such an assessment would in fact be *more* burdensome than the global approach I propose.

The Court (para. 177) also noted the International Court of Justice's (ICJ) conclusion in its climate change Advisory Opinion (paras. 272–273, 276) that states must assess cumulative effects as part of their duty to exercise due diligence to prevent significant harm to the climate system. However, inexplicably, the Supreme Court appears to have assumed that the Opinion (i) is merely persuasive authority from a different jurisdiction, rather than bearing on the interpretation of the EIA Directive; and (ii) supports the Supreme Court's favoured limitation of the scope of cumulative effects assessment to Norwegian projects, rather than projects globally. Both interpretive assumptions are questionable (space constraints preclude a detailed analysis here, but regarding (i) see

Case C-341/95 para. 20; and regarding (ii) see the ICJ Opinion paras. 276–279 and 298).

Global Carbon Budgets

The Borgarting Court of Appeal held that the EIA must assess the project's emissions in light of a remaining global carbon budget. The Supreme Court disagreed, holding that no such obligation can be derived from the Directive or from Norway's international legal obligations.

In my view, the most natural basis for inferring such a requirement from the Directive stems from the obligation to assess the (likely) *significant* effects of a project in an *appropriate* manner (art. 3(1)), since the assessment of significance necessitates contextualisation of the size of an environmental effect (a scientific matter) with reference to the importance of the relevant environmental receptor (a normative matter) (see, e.g., the EU's EIA reporting guidance, pp. 47–49). Annex IV, point 5 (second para.) of the Directive indicates where to look for the relevant normative benchmark: the description of the likely significant effects of a project on the factors specified in article 3(1) (including "climate") "should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project". The temperature goal of the Paris Agreement (art. 2(1)(a)), as interpreted by the ICJ (para. 224) and endorsed by the Union, is to limit warming to within 1.5°C above pre-industrial levels. That goal is the most relevant environmental protection objective for the purpose of assessing the significance of combustion emissions, especially where exported (since national targets/budgets don't usually count exported emissions). A carbon budget is a scientifically robust, easy-to-understand means of conveying the volume of carbon dioxide that can be emitted while remaining within a specified temperature goal. A remaining global carbon budget for limiting warming to within 1.5°C above pre-industrial levels (with at least a 50% probability – and arguably a higher, more precautionary probability) is, therefore, the most appropriate means of assessing whether the project's emissions (cumulatively with emissions from other existing and approved projects globally) are consistent with achieving the 1.5°C objective.

However, in the Supreme Court's view (paras. 181–183), the word "should" in the quoted sentence of Annex IV indicates that taking account of environmental protection objectives is not mandatory; the Court noted the absence of case law from the ECJ finding that "should", in that sentence, means "shall". Yet, as the Supreme Court acknowledged earlier (para. 163), the ECJ *has* found that the preceding sentence in the same paragraph of the Directive, which states that the EIA "should" cover (among other things) cumulative effects, *is* to be read as "shall". Surely it would be highly unlikely that the EU authorities intended "should" to have two different meanings when used in precisely the same way in two (indeed, the only two) consecutive sentences of the same paragraph? In any event, even if considered non-binding guidance, the reference to environmental protection objectives in Annex IV is better understood as supplying interpretive guidance for the operationalisation of an *appropriate* assessment of *significance*, as indicated above.

The Court also found no basis in international law for the asserted carbon budget requirement. In doing so, the Court perpetuated a myth – often invoked by governments and fossil fuel producers in EIA proceedings – that the Paris Agreement imposes a division of climate mitigation responsibility based on countries' territorial GHG emissions. Actually, as the Queensland Land Court observed in *Waratah Coal* (paras. 674–681, 695), the Agreement only envisages a division of emissions *accounting/reporting* responsibility along territorial lines; *mitigation* responsibilities do not stop at the border. Similarly, the High Court of Australia in *MACH Energy v Denman* found legal error in a planning commission's conflation of the Paris Agreement's division of responsibility for emissions *accounting* with the commission's duty to consider whether to impose *conditions* on the relevant coal project's overseas combustion emissions. Alas, the Norwegian Supreme Court, in uncritically repeating the industry-friendly myth that the Paris Agreement divides *mitigation* responsibilities territorially, has erected a further unjustified obstacle to the use of carbon budgets in

EIA, to the great detriment of democratic accountability.

Consequential Effects of Climate Warming

Finally, the Supreme Court rejected the environmental groups' submission that the EIA process must assess the consequential effects of a project's climate warming on the other factors listed in article 3(1), such as human health (paras. 192–213). The Court reasoned that this more extensive approach was not justified by the preparatory works to the amendments to the Directive that inserted the references to climate change in Annex IV (paras. 203–210), and that it would be unduly burdensome (paras. 202, 211).

Since no court has, to my knowledge, required such detailed, consequential assessment of a project's climate effects on other factors, the Court's ruling on this point can perhaps more aptly be described as a sideways step than a backwards one. Indeed, the Court's approach is broadly consistent with that taken a month earlier by the High Court of Australia in *Denman* when faced with a similar interpretative question concerning New South Wales' EIA regime.

Nonetheless, the finding is a missed opportunity to improve the transparency and democratic accountability of environmental decision-making – especially in light of the Court's finding regarding carbon budget analysis. Ultimately, the decision requires merely the assessment of the global temperature increase caused by the project (in cumulation with other domestic petroleum projects). The gravity of that warming impact to most citizens will mean little if conveyed only as an abstract, small-sounding temperature increment. Public participation in EIA processes would be enhanced if proponents were required to assess the impacts of a climate-affecting project on human life and health (among other factors) – consequences the public can much more readily grasp.

Conclusion

Despite some notable advances, the Supreme Court's judgement falls well short of mandating EIA standards that would significantly advance the public's understanding of fossil fuel projects' full climate implications. In particular, the Court's poorly justified limitation of the scope of cumulative effects assessment and its unwillingness to identify carbon budget analysis as the most appropriate means of assessing the significance of a project's climate effects mean that the true cumulative impact of new fossil fuel projects on achieving the temperature goal of the Paris Agreement will remain obscured from public view. Consequently, it is likely to remain all too politically convenient for energy ministries in Norway and elsewhere to continue rubber-stamping ever more fossil fuel extraction projects, while global temperatures soar past the 1.5°C goal.

Acknowledgments: The author is grateful to Harro van Asselt, Brian Preston and Jenny Sandvig for helpful feedback.

ABOUT THE AUTHOR

Fergus Green

Dr. Fergus Green ist Associate Professor am Department of Political Science und an der School of Public Policy des University College London sowie Honorary Senior Fellow an der Melbourne Law School der University of Melbourne.Dr Fergus Green is an Associate Professor in the Department of Political Science and School of Public Policy at University College London and an Honorary Senior Fellow at the Melbourne Law School, University of Melbourne.

SUGGESTED CITATION

Green, Fergus: Two-And-A-Half Steps Forward and Two Steps Back: Implications of the Norwegian Supreme Court's North Sea Fields Ruling for Climate Accountability, Verfassungsblog, 26.11.2026, doi: 10.59704/5116d3aeeef44d87.

Licensed under CC BY-SA 4.0.