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Norway
ENVIRONMENT

Contributor

Kvale Advokatfirma DA

Gry Bratvold

Partner | gbr@kvale.no

Yngve Bustnesli

Partner | ybu@kvale.no

Anne Kaurin

Senior Lawyer | aka@kvale.no

This country-specific Q&A provides an overview of environment laws and regulations applicable in Norway.

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NORWAY
ENVIRONMENT

1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

Norwegian legislation regarding the environment comprises a large number of acts and regulations. Norway is not a member of the European Union (EU), but must as a party to the European Economic Area Agreement ("EEA Agreement") implement relevant EU single market legislation into Norwegian law. Many EC Directives applicable to the environment are therefore also forming part of Norwegian environmental law. The Pollution Control Act from 1981 (*Forurensningsloven*), with accompanying regulations, seeks to prevent and reduce all kinds of pollution. The Act sets forth the general principle that no one must have, do or implement anything that may cause pollution unless such action is allowed by law or permission. The Act and its accompanying regulations cover i.a. emissions to air, water and soil, noise pollution and waste management.

The Planning and Building Act from 2008 (*Plan- og bygningsloven*) ensures that environmental aspects are taken into account in public plans and building projects through i.a. regulations regarding mandatory permissions, environmental impact assessments and requirements to document safeguarding measures in respect of flood, landslides, avalanches, etc.

The Nature Diversity Act from 2009 (*Naturmangfoldsloven*) seeks to preserve nature's biological and geological diversity and ecological processes. The Act contains regulations regarding the preservation of animal- and plant species, landscapes and nature types and requires that biodiversity principles are considered in the decision process of all public authorities.

Sustainable use and preservation of water resources and groundwater are regulated by the Water Resources Act from 2000 (*Vannressursloven*). The Act contains regulations regarding i.a. mandatory permissions for measures that affect the water resources such as hydropower installations, security- and clean up measures and regulations regarding liability for damages.

The Climate Change Act from 2017 (*Klimaloven*) aims to promote the implementation of Norway's climate targets as part of its transformation process to a low-emission society by 2050. The purpose of the Act is also to promote transparency and public debate on the status, direction and progress of this work.

The legal framework for trading with greenhouse gas emissions is found in the Greenhouse Gas Emission Trading Act from 2004 (*Klimakvoteloven*). The purpose of this Act is to limit emissions of greenhouse gases in a cost-effective manner by means of a system involving the duty to surrender greenhouse gas emission allowances and freely transferable emission allowances.

The Environmental Information Act from 2003 (*Miljøinformasjonsloven*) requires both public authorities and private companies to obtain and have knowledge of certain environmental information pertaining to its operations and entitles anyone to get access to such information from the relevant authority or company.

The right to a healthy environment and an aim to preserve nature and natural resources, and a right to relevant information, including an obligation for the authorities to take necessary measures for the implementation of these principles, has been set forth in Article 112 of the Norwegian Constitution.

The number of climate lawsuits is rising in Europe, and this trend is also seen in Norway. The Norwegian Supreme Court has, in a high profiled ruling from 2020, stated that Article 112 of the Constitution imposes duties applicable to the Norwegian State. The Supreme Court emphasised that Article 112 does normally not give an individual right to legally challenge decisions by public authorities regarding environmental measures, unless such authority has grossly neglected its duties. The Supreme Court's judgement has been brought in before the European Court of Justice, and the final conclusion of this lawsuit is therefore still pending. More details about this case are included in chapters 9.5 and 16.

In addition, there are a number of regulations regulating environmental matters. The most central regulations are the Pollution Control Regulations and the Waste Regulations, both adopted under the Pollution Control Act. EU Directives are normally also implemented in Norway through regulations, i.a. the REACH (Registration, Evaluation, Authorization and restriction of Chemicals) Regulation and the CLP (Classification, Labelling and Packaging) Regulation.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

Legislation, in the form of general acts, is adopted by the Parliament. Regulations are adopted by other public authorities pursuant to delegated powers.

Laws and regulations are administered by various public authorities. It is the Ministry of Climate and Environment that has the overriding responsibility for the Government's environmental policy. Environmental policy goes beyond the ministerial boundaries and involves issues that fall within the responsibility of several different ministries. The Environment Agency (subordinate to the Ministry of Climate and the Environment), is the general executing environmental authority on a state level. The Environment Agency is responsible for a large number of environmental regulations, issuing permits to pollute, administrating the Product Register (which is the official register of hazardous chemicals in Norway), in addition to various other environmental tasks. The state administrator, the county municipality and the various municipalities are acting as local environmental authorities.

The relevant authorities enforce environmental requirements through issuing permits, supervision and sanctions. Breaches of environmental legislation may be considered a criminal offence.

3. What is the framework for the environmental permitting regime in your jurisdiction?

Most activities that may involve pollution or otherwise affecting the outer environment or nature will require a permit under various legislation.

Permission to start and carry out polluting activities can be obtained under the Pollution Control Act *(Forurensningsloven*). The Planning and Building Act (*Plan- og bygningsloven*) requires permission for a number of activities affecting the ground such as i.a. building, changes to existing buildings and installations, changed use of buildings and material interventions to the terrain. Measures that affect the water resources, such as hydropower installations, require permits under the Water Resources Act.

In addition to permit requirements, a number of activities are subject to reporting duties.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Whether or not a permit can be transferred will follow from the permit itself. Obligations to report to the authorities when a permit is transferred is common.

In case a permit states that it is non-transferrable, consent may be obtained upon application to the issuing authority.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

Pursuant to the Public Administration Act (*Forvaltningsloven*), decisions can be appealed to a superior authority. Public decisions may also be brought before the courts after the right of appeal is exhausted.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

The authorities are, pursuant to the Planning and Building Act (*Plan- og bygningsloven*), obliged to provide EIAs for regional plans and zoning plans that comprise development areas and may affect the outer environment.

A number of larger building projects, installations and activities also require the developer to prepare an EIA to be submitted together with the application for a permit for the project. The authorities may also demand an EIA as part of applying for a permit for polluting activities under the Pollution Control Act (*Forurensningsloven*). The obligation to prepare the EIA is regulated in the law regulating the relevant project, i.a. the Planning- and Building Act, the Water Resources Act

(*Vannressursloven*) or the Pollution Control Act, and in the EIA Regulation from 2017 (*Forskrift om konsekvensutredninger*).

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

The general principle set forth in Section 7 of the Pollution Control Act (*Forurensningsloven*) is that no one must have, do or implement anything that may cause pollution unless such action is allowed by law or permission, also applies to contamination of soil and ground water. Hence, anyone who violates this principle may be considered liable for pollution.

Specific regulatory requirements to prevent ground water contamination, such as mandatory permissions to carry out measures that may affect the ground water and safety regulations for drilling operations, are found in the Water Resources Act.

Developers have a specific duty to assess and investigate if the ground within the development site may be contaminated, cf. below.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

In connection with the planning of, and effectuating building-, digging or other projects affecting the terrain, the developer must assess if the ground may be contaminated and effectuate necessary investigations. In case contamination is discovered, the developer must prepare an action plan regarding remedial measures, such plan to be submitted to the municipality.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

If acute pollution, meaning significant pollution that emerges suddenly, is discovered, the person responsible for the pollution is, pursuant to the Pollution Control Act (*Forurensningsloven*) , obligated to report to the local police authorities. Leakage from oil tanks in the ground may be considered acute pollution activating the reporting duty.

In connection with the planning of and effectuating building-, digging or other projects affecting the terrain, the developer must assess if the ground may be contaminated and effectuate necessary investigations. In case contamination is discovered, the developer must prepare an action plan to be submitted to the municipality. All activities that may cause the discovered pollution to spread shall be immediately terminated.

If a pollution permit is given for the relevant land, specific reporting duties may follow from such permit.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Pursuant to the Pollution Control Act (*Forurensningsloven*), anyone who has, does or implements something that may cause pollution may be held liable for clean-up costs. If there are more than one liable party, the parties may be considered jointly responsible. If only one of the responsible parties has covered the cost related to clean-up or other preventing measures, such party may seek recourse against the other party(ies) pursuant to general recourse principles.

When land is transferred, the purchasing contract should regulate whether Buyer or Seller is responsible for costs and losses caused by the detection of contaminated soil.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The overarching regulatory regime for waste is the Pollution Control Act (*Forurensningsloven*). The Act provides to a large extent the fundamental principles and applicable framework for waste handling. The more detailed regulatory basis for waste handling is regulated through the Regulations on Waste Handling (*Avfallsforskriften*), which supplements the provisions in the Act.

The Regulations on Waste Handling implements several key EU waste law directives. Consequently, the directives are important for understanding the Norwegian regulatory framework for waste handling. The

importance of EU law in the field of waste is significant, and the Norwegian waste framework is considered to be aligned with EU law.

The Norwegian Environment Agency is responsible for enforcing the Norwegian waste regulation.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

In accordance with the Pollution Control Act (*Forurensningsloven*), a producer of trade waste must ensure that the waste is brought to a legal waste facility or undergoes recycling. The Act does not set out if the liability of the producer of waste remains after it has been brought to an approved waste facility, however the main rule appears to be that the delivery of waste to a legal waste facility takes place with exonerating effect, which means that the waste producers have no further legal or financial obligations for the waste following the rules of the Pollution Control Act.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

The first schemes for extended producer responsibility in Norway were established in the 1990s, as industry agreements entered into between the Ministry of the Environment (now Ministry of Climate and Environment) and the players in the industry. Today, most of the schemes are anchored in EU regulations, with some special schemes not being directly linked to requirements from the EU. The schemes for extended producer responsibility have been introduced for seven product types, and all are regulated in the Regulations on Waste Handling (*Avfallsforskriften*). The seven product types are electrical and electronic products (EE), batteries, vehicles, tires, packaging for beverages, packaging (other than for beverages), and PCB-containing insulating glass panes.

Through Directive 2018/851/EU, which amends the framework directive on waste, new requirements for extended producer responsibility have been introduced, including minimum requirements for schemes for extended producer responsibility. The Directive introduced minimum requirements to achieve increased harmonisation, and improve governance and transparency. The EU also wants to reduce costs, improve results, ensure a level playing field and avoid obstacles to a well-functioning internal market.

In the opinion of the Norwegian Environment Agency, all current producer responsibility schemes in Norway are to be regarded as schemes for extended producer responsibility according to the definition in the Waste Framework Directive. This means that Norway must meet the new minimum requirements by 5 January 2023. Whether amendments are required in the legislation to fulfil these minimum requirements, is currently under review by the Norwegian Environment Agency. In their preliminary review, the Norwegian Environment Agency has identified a general need to assess whether it would be appropriate to establish a joint high-level regulation for the producer responsibility schemes in Norway due to several updates being required in the Regulation on Waste Handling. Consequently, the regulation for extended producer responsibility may be subject to further change over the next year.

As of 1 January 2023 changes were made in the Regulations on Waste Handling (*Avfallsforskriften*). The changes require businesses that produce household waste to meet the new requirements regarding sorting the waste correctly. There is as of January 1st not allowed any food or plastic related waste sorted in residual waste. The aim of the changes is to achieve a recycle rate of 65% by 2035 and to recycle 70% of all packaging by 2030.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

In principle, both the use and handling of asbestos and asbestos-containing material is prohibited in Norway in accordance with the Regulations concerning the Performance of Work (*Forskrift om utførelse av arbeid*).

Therefore, all companies that carry out the demolition, repair, or maintenance of asbestos-containing material must have a permit from the Norwegian Labour Inspection Authority. In order to obtain a permit from the Norwegian Labour Inspection Authority, the company must be able to document several conditions that will ensure that no one is exposed to asbestos. In their application to the Norwegian Labour Inspection Authority, the company must document that they have sufficient competence to work with asbestos safely. This applies, among other things, to the methods and training of the employees. The regulations have requirements for

what must be included in an application for a permit for asbestos work.

The duties concerning asbestos focus on the legal person responsible for the execution of work (employers) and are regulated under the Regulations on the Performance of Work. Employers are obliged to examine how and to what extent employees risk getting exposed to asbestos or other materials that can cause employees health damage. If employers find asbestos on the premises, they must inform public authorities. Furthermore, employers must establish routines for the safe handling of biological factors on the worksite and provide employees exposed to asbestos with a suitable health examination.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

The Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), is implemented in Norway through the Norwegian REACH Regulation. Companies must register their substances with the European Chemicals Agency ECHA. They must document the properties of the substances and show how these can be handled in a safe way for health and the environment before they can be sold on the market. The obligation to register applies to those who make or import (to the EU/EEA) annual quantities of 1 ton or more of a substance, alone or in a mixture. In some cases, the obligation also applies to substances included in solid products if the substances are released from the product on purpose. Suppliers of hazardous chemicals must deliver safety data sheets (SDS) to their customers. A safety data sheet provides information on properties and indicates protective measures for those who work with or in the vicinity of hazardous chemicals. Both manufacturers, importers and distributors are subject to an obligation to keep information and documentation necessary to fulfil the company’s obligations under REACH for at least 10 years.

The Classification, Labelling and Packaging (CLP) Regulation ((EC) No 1272/2008) has become Norwegian law through the CLP Regulation. CLP Article 45 regulating notifications to Poison Centers in Europe are also valid in Norway. The Norwegian Environment Agency is together with the Norwegian Poison Information Centre the appointed bodies. Notifications according to CLP Article 45 have to be done in the ECHA portal for Poison Notifications (PCN-portal) from 1 January 2021. The duty to declare chemicals to the Product Register is set out in the Norwegian declaration regulation (see below).

The Product Regulation regulates several hazardous substances and electronic equipment and set requirements for the sale of biofuels and liquid biofuels. The regulation contains obligations in respect of production, distribution, import, export and labelling of various substances and products.

Mandatory declaration of chemicals to the Product Register is set out in the Norwegian declaration regulation. Where the regulation applies, companies that manufacture or import chemical products must submit a declaration detailing the substance or mixture to the Norwegian product register. This is a national regulation that applies in addition to the common European chemicals regulations CLP and REACH, where, among other things, obligations are laid down for the submission of information to the European Chemicals Agency ECHA (see above).

Regulation (EC) No 528/2012 of 22 May 2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products is implemented in Norwegian law through the Biocide Regulation. The regulation imposes an obligation in respect of packaging and labelling of biocide products. Import, distribution or use of biocide products in the Norwegian market shall be reported to the Product Register.

Under Norwegian law, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade is implemented through the Regulation on notification for exporting certain hazardous chemicals. Consequently, and depending on the type of chemical exported, applications and approvals must be sought from the responsible authorities prior to any exportation from Norway.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

While Norway is not part of the EU, the EEA Agreement makes Norway an integral part of the EU’s internal market. All EC Directives considered to be relevant under the EEA Agreement shall therefore be implemented into Norwegian law. Consequently, the European requirements for energy performance of

buildings (Directive 2002/91/EC) are fully implemented in the Energy Act (*Energiloven*) and the Regulations concerning Energy Labelling and Standard Product Information of the Consumption of Energy (*Energimerkeforskriften for bygninger*). The energy performance labelling determines specific requirements for the energy quality of (new and existing) buildings and an assessment of the building's energy efficiency and the use of renewable energies. The Energy Labelling Regulation aims to generate interest for energy efficiency measures, including changing to renewable energy sources.

It should, however, be noted that the Directive 2012/27/EU on energy efficiency as amended by the Directive (EU) 2018/2002, is still not implemented into Norwegian law. Consequently, if considered relevant under the EEA Agreement, also these Directives must be implemented into Norwegian law in the time to come.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

The Climate Change Act (*Klimaloven*) is Norway's first legislation regulating the country's climate goals. The Act entered into force on 1 January 2018, and applies to the emissions and removals of greenhouse gases covered by Norway's first nationally determined contribution submitted under the Paris Agreement of 12 December 2015.

As set out in the Act, Norway's target goal is reducing greenhouse gas emissions by 50 to 55% by 2030 and by 90 to 95% by 2050 compared to the 1990-levels. These target goals were updated in June 2021 and represent an increase in ambitions from 2018, where the goals were a 40% reduction by 2030 and 80 to 95% by 2050.

Furthermore, through the Paris Agreement, Norway has vowed to limit the rise in temperature to 1.5 degrees Celsius.

Through the EEA Agreement, Norway is a member of the EU Emission Trading System (EU ETS), starting with the second phase of the system, (i.e. since 2008). Approximately half of the Norwegian emissions are currently covered by the system, mainly from activities in the onshore industry and the offshore oil and gas industry. Norway's participation in the EU ETS is an important part of Norwegian climate policy and the strategy for fulfilling the 2030 commitment. Norwegian companies can buy and sell allowances in this system. Quotas issued in accordance with rules applicable under the EU Climate Quota Directive are approved as settlements for Norwegian companies' quota obligation. The Norwegian regulation mainly consists of the Climate Quota Act (*Klimakvoteloven*) and the Climate Quota Regulations (*Klimakvoteforskriften*). These implement the EU rules partly through transformation and partly through incorporation.

The Clean Development Mechanism (CDM) is also implemented in Norway. It allows for investments in specific projects that reduce greenhouse gas emissions and sustainable developments. It is a quota system where the quotas are used to cover emission commitments.

Norway supports the increased use of renewable energy sources, and one of the measures to ensure increased use of renewable energy is electricity certificates ("el-certificates"). El-certificates are a technology-neutral support scheme that makes it profitable to invest in power production based on renewable energy sources, such as water, wind, solar and bioenergy. Through the system with el-certificates, the producers get additional income from the sale of el-certificates in addition to the price of electricity, which increases profitability. The scheme is regulated in the Electricity Certificates Act (*Lov om elsertifikater*) and regulations on electricity certificates (*Forskrift om elsertifikater*). From 1 January 2012, Norway became part of a common electricity certificate market with Sweden. Power plants approved in the scheme will be awarded electricity certificates for up to 15 years. Norwegian power plants must have been put into operation by the end of 2021 to be approved in the scheme.

In Norway, there is a strong focus on reducing overall carbon emissions, illustrated by the world's first full-scale carbon capture and storage (CCS) facility being under construction (Project "Langskip" (Longship)) in Norway. The Norwegian legal framework for carbon capture, transport and storage is to a large extent based on Directive 2009/31/EC of the European Parliament and the Council of 23 April 2009 on the geological storage of carbon dioxide. The Directive has been implemented in Norway through several different regulations, including but not limited to the Regulations on the utilisation of subsea reservoirs on the continental shelf for storage of CO2 and on the transport of CO2 on the continental shelf (*Lagringsforskriften*), the Petroleum Regulations (*Petroleumsforskriften*), the Pollution Control Regulations, and the Regulations on impact assessments (*Konsekvensutredningsforskriften*).

Wind power development follows licensing processes.

The licensing process for wind power on land is mainly regulated in the Energy Act (*Energiloven*) and the Plan and Building Act (*Plan- og bygningsloven*). The key legislation for offshore wind in Norway is the Offshore Energy Act (*Havenergiloven*) and the Offshore Energy Regulation (*Havenergiforskriften*).

In recent years, the development of land-based wind power in Norway has led to increasing opposition to new development projects among municipalities, strong dissatisfaction in the affected counties as regards the case handling, extensive use of formal complaints and lawsuits in the courts, and large protests, which in some cases have included civil disobedience and sabotage. The reasons for the dissatisfaction are many and include; negative consequences for biodiversity and for reindeer owners, complaints from neighbours, impacts on tourism, the desire to preserve the landscape and untouched nature, limited local benefits, foreign ownership, centralised, lengthy and unpredictable decision-making processes and inadequate impact assessments. The Norwegian Government has not yet set a firm goal for onshore wind capacity in Norway.

The focus on offshore wind has drawn extensive interest over the last years, especially due to the Norwegian Government in June 2020 announced that two offshore areas shall be opened for renewable energy production; Utsira Nord and Sørlige Nordsjø II. In December 2022, the Government informed that the goal is to formally announce these areas opened for application within end of first quarter 2023, and that award of licences in specific geographical areas shall take place during 2023.

The only full scale commercial offshore wind project in Norway is currently Hywind Tampen. Aiming at partially powering the Snorre and Gullfaks offshore oil and gas fields with floating wind, the construction of the project was subject to the Norwegian Petroleum Act rather than the Offshore Energy Act. The first turbine started production on 13 November 2022, and the 11 units has a combined capacity of 88 MW.

18. Does your jurisdiction have an overarching “net zero” or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

The Climate Change Act (*Klimaloven*) is Norway’s first law regulating the country’s climate goals. The law entered into force on 1 January 2018. The Act applies to the emissions and removals of greenhouse gases covered by Norway’s first nationally determined contribution submitted under the Paris Agreement. As set out in the Act, Norway’s target goal is reducing greenhouse gas emissions by 50 to 55% by 2030 and by 90 to 95% by 2050 compared to the 1990-levels. These target goals were updated in June 2021 and represent a relatively significant increase in ambitions from 2018, where to goals were a 40% reduction by 2030 and 80 to 95% by 2050.

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as “green”, “sustainable” or similar terms? Who are the regulators in relation to greenwashing allegations?

There are no specific regulations governing “green” or “sustainable” claims in Norway, but the use of such claims will be assessed according to the general rules on marketing. The Marketing Control Act (*Markedsføringsloven*) regulates misleading acts and unfair commercial practices, and environmentally friendly claims that give the impression that a product has specific environmental qualities must be supported by documentation in order not to be misleading. Such claims have gained a lot of attention from the Consumer Authority in the past years, and they have issued a general guideline for the use of eco-claims, which illustrates that the rules will be strictly interpreted.

It is worth noting that there is a Nordic environmental certificate called the swan certificate that requires the product to be sustainable throughout its life cycle. The swan certificate has different requirements for different products. There is also a European certificate, which is widely used, called the EU Ecolabel. The EU Ecolabel has criteria regarding pollution, environmental damage and recyclability.

Furthermore, Norway has a voluntary certification scheme for companies to become Eco-lighthouse companies. Even though it is voluntary, it is widely used, and several of the largest companies in Norway have strived to become certified. The Eco-lighthouse scheme is based on a set of general requirements. The general requirements are both related to a company’s systems and guidelines like health, environment and safety, environment etc., but also related to the work environment and procurement, transport, waste, the company’s aesthetics and general environmental aspects. In addition, the Eco-lighthouse certificate also has specific criteria for different industries.

20. Are there any specific arrangements in

relation to anti-trust matters and climate change issues?

N/A

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

In parallel with the growing climate challenge and the development of climate policy internationally and nationally, a “legalisation” of this policy area takes place both through the development of relevant legislation and through lawsuits for international and national courts. Norway is following the same trend related to climate-related legislation and climate litigations.

In December 2020, the Norwegian Supreme Court, in plenary, rendered a judgement in the climate lawsuit against the Norwegian state. The case was heard between the Norwegian state represented by the Ministry of Petroleum and Energy and Greenpeace Nordic, Nature & Youth Norway (and other environmental organisations).

The case concerned the alleged violation of Article 112 of the Constitution and Article 2 of the ECHR on the right to life and Article 8 on the right to private and family life. The plaintiff claimed that the administrative decision for ten production licenses in the Barents Sea in the 23rd licensing round was invalid.

Article 112 of the Constitution states that every person has the right to an environment conducive to health and a natural environment where productivity and diversity shall be maintained. Furthermore, it states that Natural resources shall be managed based on comprehensive long-term considerations that will safeguard the right to a clean environment for future generations. As formulated by the Supreme Court, the central question was whether the Constitution Article 112 gives individuals rights that can be tried before the courts.

The majority of the Supreme Court acquitted the state and rejected the appeal. However, a minority believed that there had been a procedural error when the licences for among others conducting seismic surveys and drilling exploration wells were granted. The Supreme Court’s judgment has been brought in before the European Court of Justice, and the final chapter in this high-profile climate lawsuit is therefore still not written.

A second important Supreme Court case was rendered on 11 October 2021. The question before the Supreme Court, in plenary, concerned the validity of decisions on licensing and expropriation for wind power development on the Fosen Peninsula. The key question was whether the discretion must be denied as a result of the development being in breach of the protection of the reindeer husbandry industry under the UN Article 27 of the Convention on Civil and Political Rights (SP).

The Supreme Court unanimously concluded that the wind power development would significantly negatively affect the reindeer owners’ opportunity to cultivate their culture at Fosen. Without satisfactory mitigating measures, it was considered that the wind power development is in violation of SP Article 27, and the licensing decision is therefore invalid.

The primary risk for companies, directors and the board is incorrect of insufficient ESG-disclosures resulting in losses that could have been avoided if such disclosure was correct and complete. However, with the implementation of Regulation (EU) 2020/852 and Regulation (EU) 2019/2088, asset managers and in-scope companies will be subject to more regulation on how they brand their financial products or business activities in terms of how “green” they are. This may contribute to increasing the liability risk towards end-investors relating to misclassification and/or inability to deliver on promises relating to “green” deliveries.

As a generic remark, litigating actions based on reporting deficiencies remain rare under Norwegian law, and it is still not rendered any notable judgements in Norway related to claimed incomplete or incorrect ESG-disclosures.

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

Prior to COP26, Norway had already announced that it would increase its ambition to reduce greenhouse gas emissions. The Climate Change Act was updated in June 2021, with the goal of reducing greenhouse gas emissions by 50 to 55% by 2030 and by 90 to 95% by 2050 compared to the 1990-levels. This represents an increase in ambitions from 2018, where the goals were a 40% reduction by 2030 and 80 to 95% by 2050. The Climate Change Act was again updated in December 2023, where the goal for reducing gas emissions by 2030 was adjusted to be at least 55 %.

Even though Norway strengthened their ambitions, the

legislation has been focused on reducing greenhouse gas emissions. It is therefore not expected that substantial legislative changes or reforms will be introduced in the near future. However, implementing environmentally-focused legislation will likely continue. EU law is also likely to significantly impact the legislative change or reforms to come in relation to climate change going forward through Norway's commitments under the EEA Agreement.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

Liability for breach of environmental law or pollution is imposed on "the one who" violates the relevant legislation.

Hence, a company carrying out activities in breach of relevant legislation can be subject to liability. Criminal liability for companies can be imposed even if no individual representing the company meets the culpability or the accountability requirement under Norwegian criminal law.

A director may be held liable if such individual has contributed to a violation of environmental regulations and fulfils the relevant culpability requirements. Criminal liability has also been imposed on personal shareholders by Norwegian courts.

There is no general legislation regarding criminal liability for other entities, including banks etc. To the extent that such entities, through agreements or other cooperation with the company, are considered to have contributed to a criminal offence, such entity may also be held liable under the Norwegian Penal Code (*Straffeloven*).

Norwegian legislation related to liability for pollution is based on the polluter-pays-principle, but the scope of potential responsible parties is very broad and will, according to Section 7 of the Pollution Control Act (*Forurensningsloven*), govern anyone who "have/*possess, do, or initiate anything that may entail a risk of pollution.*"

Financial liability for costs related to environmental investigations and clean-up of contaminated soil has under the Pollution Control Act also been imposed on parent companies as the parent company has been considered to "have" a polluting instrument through its subsidiary who owned land with contaminated soil or initiated activities causing contaminated soil. However, the threshold for "*piercing the corporate veil*" is very high and has up until now only taken place in a few cases where the subsidiary responsible for the pollution is unable to carry the economic costs related to such measures.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

If environmental liabilities have incurred on a company, such liabilities will remain with the company after a share sale. In the event of an asset sale, liabilities arising from the transferred assets will vest with the owner of the asset as per the time the liability arose. The buyer and seller may regulate where potential costs related to such liability shall rest, but the authorities are not bound by such agreement.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

Some level of environmental due diligence is standard practice in transactions. The scope and intensity of the due diligence will depend on the type of transaction and value. Transactions involving real property or industrial operations will hence require more comprehensive due diligence on environmental matters. It is customary that environmental matters are subject to warranties and representations or indemnities in the sale & purchase contract.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

Environmental risks can be covered by insurance in Norway.

A company may obtain general liability insurance, normally covering pollution qualified as sudden and accidental. However, such liability insurance will not cover pollution related to asbestos, PCB or pollution that is not sudden and accidental or damage to biodiversity.

A separate insurance cover can be purchased by a company for its liability under the Biodiversity Act (*Naturmangfoldsloven*), referred to as environmental insurance. The Biodiversity Act provides for strict liability for companies for damage to nature. This means that a company will be responsible for environmental damage, whether or not it is caused by negligence. A company may also be liable if it has not sufficiently tried to avoid damage to biodiversity. In the event of damage, the company may be required to pay for clean-up, in addition to the cost of restoring nature as it was before the injury. The insurance covers the costs of restoring nature as it was before the damage.

To what extent such environmental insurance arrangements are normal is unknown, and the need for such insurance will highly depend on the type of business a company conducts.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Environmental authorities collect and store various environmental information. Some information is accessible online, and some information can be required under the Environmental Information Act, cf. below.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

Pursuant to the Environmental Information Act from 2003, anyone is entitled to receive certain environmental information from both public authorities and private companies. “Environmental information” under the law comprises;

- facts and assessments regarding the outer environment;
- factors that affects or may affect the outer environment, hereunder planned activities or actions, products used by the business, the operations of the relevant body and decisions; and
- human health, safety and living conditions to the extent that these are affected by such aforementioned factors

The obligation to provide information is more comprehensive for public authorities than private companies. The deadline for providing information is 15 business days for public authorities and one month for private companies.

29. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

In parallel with the growing climate challenge and the development of climate policy internationally and nationally, a “legalisation” of this policy area takes place both through the development of relevant legislation and through lawsuits for international and national courts. The same trend can also be seen in Norway, both in the legislation and through climate lawsuits. Another clear trend within environmental law in Norway is the significant impact of EU legislation through the EEA Agreement.

On 1 January 2018, the Act relating to Norway’s climate targets (Climate Change Act) entered into force. The purpose of the Act is threefold. The Act is to promote the implementation of Norway’s climate targets as part of its process of transformation into a low-emission society by 2050, it shall promote transparency and public debate on the status, direction and progress of this work, and it is set out not to preclude the joint fulfilment with the EU of climate targets set out in or adopted by the Act. In June 2021, the Norwegian climate targets were adjusted from the initial levels from 2018 to more ambitious levels. The Act’s initial goal set out in 2018 was a reduction in greenhouse gas emissions by 40% by 2030 and 80 to 95% by 2050 compared to the 1990-levels. These goals are now updated to the target goal of reducing greenhouse gas emissions by 50 to 55% by 2030 and by 90 to 95% by 2050 compared to the 1990-levels.

The collaboration is significantly expanded through the climate agreement entered into in the fall of 2019 between the EU and Norway. Formally the agreement was made through a resolution in the EEA Committee on 25 October 2019 (Decision of the EEA Joint Committee, No 269/2019, amending Protocol 31 of the EEA Agreement, on cooperation in specific fields outside the four freedoms). It is important to note that this expands beyond what would accompany the necessity of the EEA

Agreement. The EEA Agreement does not imply an obligation to enter into such an agreement. This is an independent, bilateral (Norway/Iceland and EU) Agreement that is in addition to the EEA Agreement.

In December 2020, the Norwegian Supreme Court rendered a judgement in the climate lawsuit against the Norwegian state. The specific risk at stake was that the award of production licences in the 23rd licensing round could be declared invalid. The case was heard between the Norwegian state represented by the Ministry of Petroleum and Energy and Greenpeace Nordic, Nature Youth Norway (and other environmental organisations).

The case concerned the alleged violation of Article 112 of the Constitution and Article 2 of the ECHR on the right to life and Article 8 on the right to private and family life. The plaintiff claimed that the administrative decision for ten production licenses in the Barents Sea in the 23rd licensing round was invalid.

Article 112 of the Constitution states that every person has the right to an environment conducive to health and a natural environment where productivity and diversity shall be maintained. Furthermore, it states that Natural resources shall be managed on the basis of comprehensive long-term considerations that shall safeguard the right to a clean environment for future generations as well. As formulated by the Supreme Court, the central question was whether the Constitution Article 112 gives individuals rights that can be tried before the courts.

The majority of the Supreme Court acquitted the Norwegian state and rejected the appeal. However, a minority found that there had been a procedural error when the production licences were granted. The Supreme Court's judgment has been brought in before the European Court of Justice, and it therefore remains to be seen whether the final chapter has been reached in this high-profile climate lawsuit.

Contributors

Gry Bratvold
Partner
gbr@kvale.no

Yngve Bustnesli
Partner
ybu@kvale.no

Anne Kaurin
Senior Lawyer
aka@kvale.no