



**Norges  
Naturvernforbund**  
Friends of the Earth Norway



**NORSKE  
LAKSEELVER**

**SABIMA**  
SAMARBEIDSRÅDET FOR  
BIOLOGISK MANGFOLD



**EFTA Surveillance Authority**

Re. Case No: 69544

Oslo, 29<sup>th</sup> of June 2012

## **THE COMPLAINANTS' COMMENTS TO ENVIRONMENTAL OBJECTIVES IN REGULATED WATERCOURSES AND THE MINISTRY OF THE ENVIRONMENT'S LETTER OF 31 MAY 2012 TO ESA**

### **1 INTRODUCTION**

We hereby refer to the complaint of 10 March 2011 lodged by the undersigned NGOs (hereinafter "complainants") to ESA, ESA's preliminary assessment with questions of 22 February 2012 to the Norwegian authorities, and the Norwegian Ministry of the Environment's reply to ESA in a letter dated 31 May 2012.

The Ministry of the Environment's reply makes it necessary for the complainants to come forward with their comments, partly factual and partly legal.

In the first voluntary planning period in respect of the selected watercourses, the Government stated the following regarding environmental objectives and measures in regulated watercourses:

*"The management plans must be comprehensive and ecosystem based. The management plans may suggest a future environmental condition that modifies the minimum environmental water flow. Environmental objectives for regulated watercourses in the 6 year period of the plan shall be based on existing conditions in the licenses. Amendments of the conditions in the licenses will be decided with binding effect by the authorities setting licenses upon revision of said conditions. The 6-year objectives will be reported to the EFTA Surveillance Authority as binding objectives."*

This understanding of the relationship between the EU's Water Framework Directive and the revision of terms brought about our complaint to ESA on the following grounds:

1) *The Government sets environmental objectives based on the status quo in regulated watercourses*

In the complainants' opinion, the fact that the environment objective for regulated watercourses is to be based on *the existing conditions in the licenses*, is an incorrect understanding of the Water Framework Directive. It is not in accordance with the Directive Articles 4 and 11. The environmental objective is to represent the expected status after all measures that are feasible and not disproportionately expensive, have been implemented by the deadlines provided in the Directive. This also includes measures that imply modernizing the conditions in the licenses by changing the water flow and by placing restrictions on the reservoirs, although that will influence power production and the balancing capacity. When defining environmental objectives for heavily modified water bodies, the authorities have to include all measures except those which lead to *significant* adverse effect on the use of water. The Norwegian Parliament (the Storting) has determined that there is a major potential for environmental improvements in many regulated watercourses even if small releases of water are imposed. The Government's interpretation of the law implies that the general clause of revision of terms will work as a formal hindrance to desired environmental improvements in line with the objectives of the Water Framework Directive.

2) *Environmental measures only to be implemented by revising the conditions*

As a ground for basing the determination of environmental objectives on existing conditions in the licenses, the Government refers to the fact that environmental improvements are to be assessed and carried out in accordance with the established arrangement for revising conditions. According to this arrangement, environmental improvements *can only be obtained when a license is taken up for revision* for the first time after 50 years, then every 30 years. In the complainants' view, this is not in compliance with the six-year cycles of the river basin management plans. The complainants also disagree with the Government's explicit perception that the sector authority is not bound by the guidelines included in the river basin management plans when conditions in the licenses are revised at the time of revision.

3) *Water flow changes will only be imposed as in exceptional cases upon amendment of the conditions*

The Government has taken as its basis that changes to the water flow by way of requirements for increased minimum water flow and restrictions on reservoirs can only be made in "*special cases*", as the Norwegian Ministry of Petroleum and Energy has expressed in the revision case related to the Vinstra Watercourse (Vinstravassdraget). It is the complainants' opinion that such a "*particular qualification requirement*" can neither be derived from the Water Framework Directive nor from the revision system, but that the question of increased or new minimum water flow must be decided based on a broad weighing up of interests, where the consideration for the power production will be one of several relevant considerations to be taken.

Our complaint therefore, is about both the material question of determining the environmental objective and about the procedural question of the implementation of measures. In the complainants' opinion, the Government's view will lead to the Norwegian institution of revision being made into a hindrance for both the identification and implementation of desired environmental improvements, as the Water Framework Directive indicates. The general clause of the revision of terms thereby becomes *a barrier against and not an instrument for* desired environmental improvements in regulated watercourses.

In its reply of 31 May 2012 to ESA the Ministry of the Environment sticks to those aspects that form the basis of our complaint. As further grounds for its interpretation of the law the Ministry refers to a set of other legal instruments in addition to the general clause of revision of terms. In the complainants' view, the Ministry's account wrongfully elevates what has previously been defined as "*safety valves*" to general instruments for implementing environmental improvements in all regulated watercourses. Against this background, the Ministry of the Environment's reply makes it necessary for the complainants to comment.

## **2 THE WATER FRAMEWORK DIRECTIVE IS A DYNAMIC ENVIRONMENT TOOL**

When it comes to the relationship between the timing specified in the Water Framework Directive and the so-called "screening process", the Government replies as follows:

*"The timing of the screening process (intended to be completed within a year) corresponds very well with the deadlines for determining environment objectives and preparation of management plans for the next planning phase foreseen in the WFD. The deadlines in the Directive also correspond very well with the opportunity to start revision of the licensing terms in Norway. Taking into account the WFD Article 4.4, the extension of deadlines for maximum two times six years, and the fact that Norway's first ordinary attainment of the objectives in accordance with Directive is 2021, Norway will be well within the limits for fulfilling its obligations by 2027 or 2033."*

In this the Government is losing sight of a fundamental aspect of the Water Framework Directive: The Directive is not a one-off tool. It is a *dynamic tool for continuous assessments* of the potential for environmental improvement every six years. It is of no significance in principle to the understanding of the relationship between the general clause of revision of terms and the Water Framework Directive that Norway should comply with the deadlines in the Directive for *first-time* environmental improvements as long as new environmental measures cannot be implemented until 30 years later. The intervals between environmental improvements in the Water Framework Directive are actually ignored in the Government's interpretation of the relationship between the general clause of the revision of terms and the Water Framework Directive.

As a further objection the complainants refer to the fact that the screening only relates to those hydro power facilities that can be revised under the Watercourse Regulation Act by 2022. The Water Framework Directive applies to all watercourses regardless of whether there happens to be leave for revision for the hydro power plants in the watercourse under the Watercourse Regulation Act. The Water Framework Directive also applies to watercourses with hydro power facilities where for various reasons one does not have leave

to make environmental improvements by 2022 in accordance with the general clause of revision of terms, such as for instance:

- Licenses that have already been revised (in the Government's opinion, Vinstra and Tesse cannot be revised again until 2038 and 2041)
- Licenses issued after 1992
- Licenses issued pursuant to the Water Resources Act (see clause 6 below)
- License-free power plants – no license to revise (see clause 7 below)

The planned screening will thus be *incomplete* compared to the processes on which the Water Framework Directive provides guidance.

The fact that the established revision arrangement is not suited to meet the Water Framework Directive's requirements is also illustrated by the fact that *individual licensing assessments* are made that do not correspond with the ecosystem-based and holistic water management that the Directive provides for: In many regulated watercourses there will be several regulation licenses that impact on the total watercourse ecology. The timing of the revision of the various licenses will be determined by the timing of the licenses and their revision. As an example: The Tesse revision was finalised in October 2011, after 20 years procedure. At the same time, revision of the Veo transfer license was requested. The Veo transfer became licensed in 1960 and can now be revised (from 2010), more or less at the same time as the Tesse revision was finally completed. The Veo-transfer influences on the water environment in Tesse. In their time the interests affected requested that revision of the two licenses should be combined – specifically based on the need for an overall assessment. Their request was turned down by the licensing authority.

The fragmented assessment implies that it will not be possible in a watercourse with several regulation licenses to achieve total environmental improvement before the last license in the regulated watercourse is taken up for revision. Nor will it be possible to consider total solutions for the watercourse in the individual revision. In addition is the fact that revision of old conditions in the licenses is not mandatory: The individual license is only taken up for revision if representatives of the public interest submit a claim to that effect, and the licensing authority makes a decision at its discretion that a revision case is to be opened.

This illustrates that the current revision arrangement with separate assessments linked to the individual license with "random" revision times and long intervals *is not a suitable legal tool* for safeguarding holistic, catchment and water area-based management.

*In the complainants' view, the priority the Government gives to the national general clause of revision of terms at the expense of the Water Framework Directive is not consistent with Norway's obligations under the EEA Agreement.*

### **3 WATER FLOW CHANGES AS A BASIS FOR STIPULATING ENVIRONMENTAL OBJECTIVES RESERVED FOR "SPECIAL CASES"**

The Government's plan is that measures involving a changed water flow may only in exceptional cases form a basis for setting the environmental objective.

Only if a watercourse is “prioritized” through the said screening can a set environmental objective include a requirement for changed water flow. In the large majority of regulated watercourses that will not be prioritized there will be no room for environmental measures as increased minimum water flow or restrictions on reservoirs.

The arguments in the Ministry of the Environment’s letter are in line with the Government’s practice for revision cases established through the revisions of Vinstra (2008) and Tesse (2011) and in the new guidelines for revision of the conditions in the licenses (25 May 2012).

In the Vinstra revision the Government states (*our bold lettering*):

*“It may be relevant to order minimum water flows or make adjustments to previously set minimum water flows. However, one must be cautious about setting new, stricter conditions for releasing water. These are orders that could lead to major production losses. Stricter conditions regarding minimum water flows should therefore only be set when **special considerations** suggest such orders.”*

In the Tesse revision of October 2011 the Government similarly argued against ordering minimum water flow, except in special cases (*our bold lettering*):

*“The revision provides an opportunity to set new conditions for rectifying [any] damage and inconvenience to the public interest that have occurred as a result of the regulations but basically changes are not to be significant for the licensee. One societal inconvenience will typically be lost power production. The licensing authorities will be restrictive when it comes to setting new, stricter requirements for releasing water and this will only be ordered **in special cases**. A weighing-up must be carried out between the advantages a relevant measure entails and the disadvantages of a possible loss of power production, see St meld. No137 (2000-2001) The Hydro power report, which i.a. reads as follows:*

*“When addressing both revision and renewal of regulation licenses the Government will place great emphasis on maintaining the existing production basis for hydro power production”*

*The Storting adopted this clause in the report, see Innst. S. no. 263 (2000-2011).”*

In its new guidelines of 25 May 2012 the Ministry of Petroleum and Energy establishes what was practised during the Vinstra and Tesse revisions (page 27 clause 9.2.): *“Minimum water flow and restrictions on reservoirs will be laid down where **special considerations** so warrant.”* Given the Ministry’s restrictive views on the requirement for increased minimum water flow, such a measure will only be relevant in a minority of special cases considered to be “prioritized”.

The Water Resources Act of 24 November 2000 provides a good status for basic environmental requirements in regulated watercourses. Section 10 has the following requirement for minimum water flow:

*“When taking out and leading away water that changes the water flow in rivers and streams with regular, annual water flow, at least the general low water flow should remain (...) The conditions for minimum water flow will be set subsequent to a specific assessment.”*

The provision shows that imposing minimum water flow is the *general rule in new licenses* unless other weighty considerations argue against it. This should also be the basis for water management when modernizing old licenses in accordance with today’s environmental standard. According to the Water Framework Directive an environmental measure can only be omitted if it has a significantly adverse effect on other use. In other words, a significantly adverse effect is required if one wants to refrain from the desired measures, put differently – “weighty considerations argue against it”. Both more recent Norwegian legislation and the Water Framework Directive thus shows that it should be an exception to *refrain from imposing* minimum water flow and not the opposite as the Ministry takes as its basis in its revision practice.

#### **4 THE SECTOR AUTHORITY DOES NOT CONSIDERS ITSELF BOUND BY THE RIVER BASIN MANAGEMENT PLANS**

The Ministry of Petroleum and Energy says that the sector authority is free to change the conditions in a license and consequently also environmental terms and conditions in a revision case, irrespective of any adopted management plans. The Ministry’s new guidelines read as follows (page 19, our bold lettering):

*“The sector authorities are responsible for reporting on the premise for environmental objectives within their areas of responsibility (the Water Regulation Section 22) as part of the work on the management plans. If more thorough reports are made as part of the revision process and new conditions are set, the environmental objectives will be adjusted in the next planning phase. By way of a revision of the conditions in a hydro power license the basis for new environmental objectives and remedial measures will be thoroughly evaluated and established.*

*An approved regional plan will form part of the basis for the licensing authority’s processing of a revision case. In this processing work further clarifications will be carried out as well as concrete assessments of the advantages and disadvantages of the various measures until a final decision is made on implementing the measures. The licensing authorities may therefore pass decisions that **are not consistent with the plan**. If during the revision work it becomes necessary to depart from the assumptions in the approved plan, the authority in question is to ensure that the river basin authority is informed. The reason why the plan has been departed from must be described when reporting the implementation of the measures and the next time the plan is rotated. The management plan is to be updated every six years. New conditions that are provided through a revision are to be included in this updating and **the environmental objectives in the management plan are to be adjusted in accordance with new conditions**.*

*Measures and appurtenant instruments are to be considered every six years when updating the management plans. Instruments other than revision can be used*

*irrespective of the time of the revision if environment-improving measures are to be given priority.*

*Topics that have not been covered complement in the management plan may be important considerations linked to user interests (e.g. transport and aesthetic aspects). National considerations such as supply security and national commitments linked to share of renewable energy could also **be weighted differently in the revision**. These may be some of the reasons why conditions imposed in connection with revision differ from those recommended in the management plan.*

*Norway is more dependent on hydro power than any other country in Europe. Reservoirs and power that can be regulated are essential to a safe supply of energy where the amount of water varies a lot through the year and from one year to the next. It is necessary to household the water strictly with water in order to obtain the greatest possible advantage. This requires thorough assessments of the licensing authority through the revision process.”*

The balancing on which guidance is given in the revision case (environmental gain measured against lost power production) is an aspect that is considered in the intersectoral river basin management plans following input and participation by all interests concerned, including the energy authorities that are responsible for reporting on the premises for the environmental objectives within their areas of responsibility.

*If the Ministry’s understanding of the relationship between the Water Framework Directive and the general clause of revision of terms is taken as a basis, this means that processes and decisions based on the Water Framework Directive are reduced to non-binding expressions of opinion for the sector authority as regards regulated watercourses and questions regarding changes in the water flow.*

## **5 PART 2 OF THE MINISTRY OF THE ENVIRONMENT’S LETTER**

Part 2 of the Ministry’s letter gives an account of the so-called toolkit, the total Norwegian body of rules which ostensibly is to document the fact that there is a correlation between this body of rules and the Water Framework Directive. The complainants deem it necessary to comment on the account and will follow the Ministry’s chronology:

### **5.1 The general clause of revision of terms**

We refer to the above account in which it appears that the general clause of revision of terms is not suited to safeguard the environmental objectives on which the Water Framework Directive is based. The Ministry states that *“this instrument can be used to ensure implementation of any mitigation measures mandated by the Programme of Measures as foreseen by the Directive”*. It is the complainants’ view that the general clause of revision of terms cannot safeguard the Water Framework Directive’s objectives in regulated watercourses either materially or timewise.

In addition to long intervals which make it impossible to implement measures in a manner that is loyal to the Directive, it must be said that there are a number of hydro power facilities that will not be covered by the revision rules. This both applies to hydro power facilities

with a license that is in accordance with the Water Resources Act (see our comments in clause 6 below) and the license-free power plants (see our comments in clause 7 below).

The complainants wish to remark that the general provision for a revision to be carried out after 50 years and subsequently every 30 years applies to licenses issued both before and after the amendment to the Act in 1959. Leave to revise the conditions of already existing licenses thereby also took effect for licenses that had already been issued but for which revision had not been envisaged at the time of the license. The intervals between the revisions were correspondingly reduced to 30 years by the 1992 amendment to the Act, with effect for all given licenses in the future. These examples show that the licensor is not protected against new regimes being established for environmental improvements in existing licenses, see also the complainants' account in their complaint of 10 March 2011.

The Ministry states that restrictions on reservoirs and minimum water flows are important tools in the general revision:

*“The imposition of such limitations of the manoeuvring are, together with minimum flow release important tools in the revision of terms.”*

The complainants consider there to be poor harmony between this statement and the Ministry of Petroleum and Energy's statements that are included in clause 3 above, namely that minimum water flow and restrictions on reservoirs are reserved for “*special cases*”. The complainants find no reasonable justification for expounding specific exception rules as “*important tools in the revision of terms*”.

The Ministry of the Environment claims that “*regardless of the revision of terms, it is possible to change any environmental conditions in a license. Revision of terms is not the only way to change the environmental conditions of a license as described in the answers to question 1*”.

The complainants cannot see that the Ministry's allegation is correct and deem it necessary to give an account to this in the following.

## **5.2 Test maneuvering programme**

As far as the complainants know, there are only a small number of watercourse licenses that have so-called test maneuvering programmes and there are several examples of the licensing authority having turned down claims for such a test programme with reference to the licensee's interests. When the Ministry says that “*These clauses have often been used where they are appropriate and have been laid down individually*”, the Ministry should have given an overview of how big a percentage of the total Norwegian hydro power production has been subject to such conditions. In addition, from what we have been informed, there are only a few licenses which are still in the probation period and where such programmes *today* represent a separate legal instrument for introducing new environment requirements. It is also a fact that such test programmes regularly are of a limited duration, e.g. the first 5 or 10 years of operation.

*The complainants cannot see that the so-called test maneuvering programmes have much relevance when it comes to ESA's questions.*



### **5.3 Clause in the rules of maneuvering**

The Ministry states that the clause in question is to be found *“almost every license issued in accordance with the Watercourse Regulation Act”*. As far as the complainants know this is not correct. A not insignificant part of current hydro power production is condensed before the clause in question was introduced as a standard clause in the rules of maneuvering.

In the Ministry of Petroleum and Energy’s report of October 2007 on the framework for the use of reservoirs, the Ministry stated the following in clause 3.8.2. on page 30:

*“To a varying degree, old licenses have clauses that allow for changes to the rules of maneuvering or other conditions. The oldest licenses did not allow for changes at all and do not mention anything about being allowed to change either conditions or rules. The principle of starting to allow changes was gradually introduced in the period before the war. The final breakthrough for a modern revision clause finally came in the period between 1948 and 1950.”*

As a suitable legal instrument for implementing environment objectives the same argument applies as for the so-called test maneuvering programmes: They do not apply to the old watercourse licenses where the need for environment improvement is most pressing for instance in the case of dried-out riverbeds. Nor are the complainants aware of the licensing authority having used such clauses to any significant extent to impose increased minimum water flow or changes to the water level in the reservoirs. In said report the Ministry states the following:

*“This applies to most licenses of more recent dates but as far as licenses without this clause are concerned there seems to be little opportunity for parties other than the regulator itself to bring up a possible change to the rules (outside of the time for general revision). (...) This authority for change of an existing rule has hardly ever been applied in practice (...) There are different views regarding to what extent this authority can be used beyond being a pure safety valve in cases where serious and totally unexpected consequences were discovered after the rules had been implemented.”*

### **5.4 Standard environmental terms**

The complainants wish to point out that such standard conditions do not apply to all licenses. There is reason to ask to be informed about the degree to which the licenses have such standard conditions and how extensive they are. According to Ministry of Petroleum and Energy’s guidelines, valid licenses from before 1973 only have a small degree of legal basis for standard conditions. A lot more than half of the licenses lack such standard conditions and will only get them when there is a revision.

The decisive factor, however, is that these standard conditions do not comprise changes to the water flow. Neither a requirement for increased minimum water flow or changes to the water level in the reservoirs can be carried out based on such terms. It is the need for such environmental improvements that have a central position in the Water Framework Directive when it comes to heavily modified water bodies.

The Ministry ends its review of the legal “toolkit” with the following summary:

*«By using the clause in the rules of maneuvering (type 3) together with standard environmental terms (type 4), all types of relevant measures determined in accordance with the procedures prescribed in the Directive can be implemented.»*

The complainants cannot see that this information harmonizes well with previous management practice or the individual instruments’ scope.

## **6 THE WATER RESOURCES ACT SECTION 28 ON REVERSAL**

The Ministry of the Environment has been asked to make an assessment of the scope of the Water Resources Act Section 28, which reads as follows:

*“In particular cases the watercourse authority may revoke or change conditions or impose new conditions out of consideration for general or private interests. The loss that a change will inflict on the licensor is to be taken into consideration as well as the disadvantages that the change as such will bring about. The provision does not apply to measures that have been dealt with under the Act of 14 December 1917 no. 17 on Watercourse Regulations.”*

The Ministry of the Environment holds that the Water Resources Act Section 28 as a basis for imposing environment conditions for hydro power licenses, pursuant to the Water Resources Act, does not involve any restrictions on implementing mitigating measures if there is a need for improvement because of the environment objectives that are laid down in the River Basin Management Plan and that revision of the conditions can be revised at any time.

First the complainants wish to underline that the provision does not apply to hydro power plants licensed under the Watercourse Regulation Act, where the need for environment-improving measures will generally be greatest. Subsequently, in the complainants’ view, the Ministry’s description of the scope of the provision does not correspond with the wording of the provision which limits the leave for reversal to “*particular cases*”. This is also underpinned by the provision’s travaux préparatoires which gives an account of its scope see *Ot. prop. nr. 39 (1998-1999)*, remarks regarding the provision to be found on pp 345-46 (our bold lettering):

*«The provision does not aim for a systematic revision after a certain time of licenses granted. If this is going to take place, it must be established as a condition in the license(s), see Section 26 fourth paragraph second sentence. If the license is time-limited under Section 26 fourth paragraph first sentence, the watercourse authority will be a lot freer when the license expires than in a reversal case. On the other hand, a time limitation could mean that one has to be more careful with a reversal while the license is running, particularly when it has a fairly short time left. (...)*

*A reversal may be relevant because circumstances have changed, because the knowledge base has improved, or because the original circumstances were misjudged*

*on the basis of the general insight one had at the time of the license. Leave of reversal due to changes in values and social perceptions is in a different position. (...)*

*A reversal may take place out of consideration for both public and private interests. "Private interests" also include reversals to the benefit of the licensor itself. The leave to reverse is nevertheless limited to **particular cases**. The provision will therefore not allow a standard reversal of all or most running licenses."*

## **7 THE WATER RESOURCES ACT SECTION 66 ON NOTICE OF LICENSING**

The Ministry of the Environment has been asked to comment on the scope of the Water Resources Act Section 66 regarding the leave to give notice to license-free power plants that licensing will take place, so that necessary measures can be mandated in a license. The provision reads as follows:

*"Old watercourse measures that did not need permission under previous watercourse legislation may continue without a license under Article 8. In particular cases, the watercourse authority may nevertheless provide in individual decisions that the measure must have a license and that the measure becomes illegal if an application is not sent by a specific deadline."*

The travaux préparatoires state that it is *"only relevant to demand licensing when there are strong environmental concerns. A concrete assessment has to be made and licensing can only be imposed by way of an individual decision."*

This provision has up until now not been used since the threshold for the condition about "particular cases" for giving notice to license-free power plants that licensing will be carried out is very high even though strong environmental concerns have manifested themselves.

## **8 THE WATER RESOURCES ACT SECTION 66 ON NOTICE OF LICENSING**

The Ministry of the Environment refers to the fact that this possibility exists without specifying the extent of it. Despite the fact that requests have been made for such reversal, the complainants are not aware that the permission has been taken into use. The reply below from the Ministry of Petroleum and Energy may illustrate the management practice:

In the summer of 2006 there was a critical situation in many Norwegian hydro power reservoirs. The water level in the reservoirs was very low, which resulted in major environmental costs.

The Norwegian Association of Municipalities hosting Hydropower Plants (LVK) pointed at the need to consider more stringent restrictions on the reservoirs in order to avoid extensive damage to the environment and on 4 September 2006 it sent a letter to the Ministry of Petroleum and Energy with reference i.a. to the Public Administration Act's non-statutory conversion right, and other possible legal grounds, which are also mentioned in the Ministry of the Environment's account now to the ESA. In his letter of 19 January 2007, the then Energy Minister Mr Odd Roger Enoksen replied:

*"I am otherwise able to accede to reversal in principle taking place on one or more of the grounds to which LVK refers. On the other hand, I miss a significant basis for*

*reversal which is an important element for interpreting the extent of a reversal. Following the Watercourse Regulation Act Section 10 no. 3 first paragraph, and the Industrial Licensing Act Section 5a, there is statutory leave for reversal by way of general revision. When there is a statutory revision of terms that establishes that it will be allowed to make changes to the conditions in the licenses within certain limits at specific intervals of 30 or 50 years, **the other grounds for reversal pointed out by LVK will have very modest significance and scope.** I also wish to remind you that the travaux preparatoires of the revision regulations lay down relatively narrow limits for changes that lead to lost power production.*

*During the period between revisions there may be a need for **safety valves** in order to be able to carry out any changes to the conditions which it may be necessary and reasonable to make in individual cases based on **very special circumstances** and needs following a specific assessment of the individual watercourse and the individual case. There are not, however, grounds to use the safety valves to make general changes such as introducing new mandatory measures for all the existing licenses.”*

## **9 SUMMING UP**

In the complainants’ opinion the supplementary legal basis to which the Ministry refers and which has previously been designated as having “*very modest significance and scope*” is without true and practical significance as a tool for implementing the Water Framework Directive. It will be a basis that will be used only in exceptional, particular cases and will not be used on a general basis for environmental improvement in the vast majority of regulated watercourses.

The complainants have no objections to the Ministry of the Environment’s account of the different legal instruments Norway has in order to interfere in existing hydro power licenses. The complainants do however believe that the Ministry’s account leaves an incorrect impression when it comes to the scope and use of these legal instruments, and that the different qualification requirements for using them are undercommunicated.

It is the complainants’ opinion that the Ministry’s account shows a complex “patchwork” of different legal bases which separately have limited significance and which *neither individually nor combined can replace the body of rules for environmental improvement processes that the Water Framework Directive represents.* Even the different approach, through the individual licenses in relation to the Norwegian body of rules and through waterway, eco-system and catchment in relation to the Water Framework Directive shows this.

The undersigned organisations look forward to the further processing of the case by ESA.

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**Best regards**

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Christian Steel, Manager of the Norwegian Biodiversity Network (SABIMA)

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A copy of this letter is sent to:

The European Commission – DG Environment

The Ministry of Environment (MD)

The Norwegian Directorate for Nature Management (DN)

The Ministry of Petroleum and Energy (OED)

The Norwegian Water Resources and Energy Directorate (NVE)