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Should Scope 3 Emissions be Assessed?

A Comparative Analysis of Norway and the United Kingdom

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Abstract

This article examines the ongoing legal developments and pressures to include Scope 3 greenhouse gas emissions (downstream combustion emissions) as part of the Environmental Impact Assessment (EIA) for oil and gas licensing. Primarily focusing on the Norwegian Continental Shelf, this article focuses on Norwegian laws and compares them against those in the United Kingdom (UK). A brief analysis will also be provided on the Supreme Court's decision in the landmark case of *R (Finch) v Surrey County Council and others* [2024] UKSC 20, which established that Scope 3 emissions are to be a mandatory component in completing an EIA in the UK. Finally, this article also considers the advisory opinion put forward by the International Court of Justice on climate change. All these factors will be considered before assessing what these legal developments mean in practice for oil and gas companies preparing a license application on the Norwegian Continental Shelf.

Keywords: Environmental Impact Assessment, greenhouse gas emissions, gas, Norway, Norwegian Continental Shelf, oil, United Kingdom.

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Introduction

The aim of this article is to provide a strategy for a company's current position when preparing an application for oil and gas activities in the Norwegian Continental Shelf. This article will therefore provide an overview of the current application process, which will be supported by legal evidence and an advisory proposal for future steps.

A Push to Include Scope 3 Emissions

Greenhouse gases (GHGs) are gases that trap heat within the earth's atmosphere.[2] On a global level, it is now recognised that human activities have increased GHG concentrations, leading to a rise in global warming and climate change issues. In response, there has been an international drive towards reducing these emissions. Norway, for instance, aims to become a net zero society by 2050.[3] Trying to achieve these goals will require stronger measures to cut and identify emissions. One such measure is to try and make Scope 3 GHG emissions a requirement of the Environmental Impact Assessment (EIA). This assessment is the global standard for measuring GHG emissions and is set out in the Greenhouse Gas Protocol.[4] Scope 3 (combustion) emissions cover all indirect emissions not accounted for by Scope 2 (emissions generated by the energy bought and used).[5] In 2023, it was found that Scope 3 emissions accounted for as much as three-quarters of total emissions.[6] As most companies do not report Scope 3 emissions, actual emission figures are likely to be much higher than officially reported.[7] This reinforces the drive for making Scope 3 emissions reporting mandatory. Greater transparency will allow for the implementation of effective reduction measures.[8]

Scope 3 Emissions in EIAs: Legal Status and Timing

In the case of *Greenpeace Nordic and Nature & Youth v Energy Ministry*, Greenpeace and Nature & Youth argued that the Norwegian Energy Ministry acted unlawfully in

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[2] National Grid, 'What are Greenhouse Gases?' (NG, 2023) <https://www.nationalgrid.com/stories/energy-explained/what-are-greenhouse-gases> accessed 2 October 2025.
[3] Klimautvalget 2050, 'Mandate' (2023) <https://klimautvalget2050.no/mandate/> accessed 2 October 2025.
[4] Greenhouse Gas Protocol, 'A Corporate Accounting and Reporting Standard' (WRI, 2004) <ghg-protocol-revised.pdf> accessed 3 October 2025.
[5] Normative, 'Scope 1,2, and 3 Emissions Explained' (2026) < Scope 1, 2 and 3 Emissions Explained: Complete Guide - Normative> accessed 3 October 2025.
[6] Mia Emborg, Shannon Lloyd and Stig Olsen, 'Why Process -Level Scope 3 Accounting is Needed for Delivering Supply Chain Greenhouse Gas Emission Reduction' (2023) *Integrated Environmental Assessment and Management* (19, 2023), 1165.
[7] Mathilde Augustin, 'Not All Companies Disclose Emissions From Their Investments, and That's a Problem for Investors' (The Climate News, 2024) <Not All Companies Disclose Emissions From Their Investments, and That's a Problem for Investors - Inside Climate News> accessed 3 October 2025.
[8] (n6), 1165-1167.

their approval for the development and operation of three oil and gas fields.[9] They argued that the EIAs failed to include Scope 3 emissions, which resulted in a breach of the government's obligation under the EU Directive,[10] the Petroleum Act,[11] and the Norwegian Constitution, all of which guarantees a citizen's right to a healthy environment.[12] In January 2024, the Oslo District Court agreed with Greenpeace, which effectively halted the project.[13] The government appealed this decision and in October 2024, the court overturned the suspension of the three oil fields.[14] Further to this, the court argued that it is for Parliament and government to assess these petroleum policies, not the judiciary.[15]

A Debated Matter

The above-noted case was also referred to the European Free Trade Association (EFTA) court for an advisory opinion.[16] The court clarified that GHGs released from the combustion of petroleum products are considered 'effects', which are in line with the purpose of the EU, EIA Directive. For this reason, they should be included in the EIA.[17] It is important to note that this opinion is advisory and not legally binding. Thus, until it is adopted into Norway's national law, it does not become enforceable. Given Norway's obligation under the European Economic Area (EEA) Agreement, there is a duty to both implement and apply these directives to ensure uniformity of EU Law.[18]

In April 2025, the Supreme Court overturned the ruling and sent the case back to the Court of Appeal. It emphasised that its purpose is to protect EEA rights where there may be a breach of the EIA Directive, which may lead to significant environmental harm from the lack of an adequate impact assessment.[19] At the time of writing, the matter is still pending and remains unresolved. The decision of the Court of Appeal will determine whether Scope 3 emissions must be formally included in an EIA. During

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[9] *Greenpeace Nordic and Nature & Youth v Energy Ministry* [2023] Norwegian Supreme Court 24/464.
[10] Directive 2014/52/EU of the European Parliament and of the Council, amending Directive 2011/92/U on the assessment of the effects of certain public and private projects on the environment.
[11] Norwegian Offshore Directorate, Act 29 of November 1996 No 72 relating to petroleum activities.

[12] Norwegian Constitution, s 112 (NHRI, 2025) <4. Section 112 of the Norwegian Constitution - NIM> accessed 4 October 2025.
[13] *Greenpeace Nordic and Nature & Youth v Energy Ministry* [2023] Norwegian Supreme Court 24/464.
[14] ibid
[15] (n13)
[16] *The Norwegian state represented by the Ministry of Energy v Greenpeace Nature and Youth Norway* [2025] EFTA Court E-18/24.
[17] Agreement on the European Economic Area, European Union Treaties 1992, Article 7.
[18] Greenpeace, 'Victory for Youth and Environmentalists in Norwegian Supreme Court: Illegal Oil and Gas Fields Must Halt (2025) <Victory for youth and environmentalists in Norwegian Supreme Court: Illegal oil and gas fields must halt - Greenpeace International> accessed 22 August 2026.
[19] Norwegian Offshore Directorate, 'Act 29 November 1996 No 72 Relating to Petroleum Activities' (2024) section 3-1, <Act 29 November 1996 No. 72 relating to petroleum activities - The Norwegian Offshore Directorate> accessed 22 August 2026.

this period of uncertainty, licenses may still be applied for and granted without incorporating Scope 3 emissions in the EIA. Following the EFTA Court's Advisory Opinion, it is anticipated that the requirement will soon be adopted and integrated into Norwegian national law. Until the courts deliver a final ruling, the inclusion of Scope 3 emissions will remain unsettled and a debated legal matter, not currently mandatory in the EIA.

When to Assess Scope 3 Emissions

Under the Petroleum Act 1996, before a new area is to be considered for licensing, the state must conduct an evaluation on the socio-environmental effects of the proposed petroleum activities.[20] After this is completed, a company may then participate in a licensing round. If successful, the company will be granted a production license. If a company subsequently finds a petroleum deposit and wants to develop it, they will be required to submit, well in advance, a proposed programme for conducting an EIA.[21] The EIA must be prepared and interpreted in line with the corresponding EU law directive,[22] After the EIA is completed and submitted, the licensee is then required to submit a plan for development and operation (PDO) to the Ministry for approval, outlining how the petroleum deposit will then be developed and operated.[23] If Scope 3 emissions are to be assessed, they will be accounted for at the stage prior to a submission of a PDO, and be submitted with the EIA.

Other North Sea Countries

There is currently another North Sea country that requires Scope 3 emissions to be assessed in the EIA. This country is the UK. In 2024, the UK Supreme Court concluded that Scope 3 emissions are required to be assessed in the EIA.[24] The UK had previously transposed the EU Directive into national law prior to the ruling.[25] The Court emphasised that there is a presumption that extracted oil and gas will be refined, which would result in eventual combustion. This would therefore have an indirect effect on the environment and would also increase global GHG. For this reason, the Court ruled that Scope 3 emissions must be included in the EIA.[26] Although this was an onshore oil and gas project, the Court's interpretation would also apply to offshore projects.[27] As the highest judicial body in the UK, this ruling would also bind future cases. As

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[20] Norwegian Offshore Directorate, Act 29 of 1996 No 72 relating to petroleum activities, s 22.
[21] Directive 2011/92/EU as amended by Directive 2014/52/EU [2014].
[22] Directive 2011/92/EU as amended by Directive 2014/52/EU [2014] Article 3.
[23] (n19), s 4-2.
[24] The Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020.
[25] *R (Finch on behalf on the Weald Action Group & Others) v Surrey County Council (& Others*) [2024] UKSC 20.
[26] ibid
[27] *Petitions by Greenpeace Limited* [2025] CSOH 10.

countries become more responsible for the effects of burning fossil fuels, there will undoubtably be a push to make licenses align themselves more with climate targets, such as the Paris Agreement and Norway's own 2050 net zero commitment, as discussed above. By incorporating Scope 3 emissions, countries will be able to meet these goals more efficiently.

After initial approvals for a project that intended to extract oil and gas, two oil fields in Scotland (Rosebank and Jackdaw) were also recently challenged due to a lack of compliance.[28] Bound by the ruling of the above-noted case, the Outer Court of Session (Scotland's highest court for civil disputes) held that Scope 3 emissions must be included in EIAs.[29] Following the decision, the UK Government issued further supplementary EIA guidance, which focused on seven key areas of the EIA.[30] This, again, emphasises the growing need for Scope 3 emissions to be included in the EIA for the purposes of reducing global emissions.

Although other North Sea countries (such as the Netherlands, Denmark, and Germany) have no specific regulations with respect to Scope 3 emissions and their inclusion in EIAs, they are continuing to develop new technologies to try to process and reduce GHG emissions, such as carbon capture and windfarms. Norway, however, will likely follow the UK and require companies to include Scope 3 emissions to be included in their EIAs. It can be predicted based on the data we have today, that as more countries require this transparency, companies that fail to comply will suffer delays and extra costs associated with their projects.

Rejection of Licenses

In Norway, there are currently no restrictions on being granted a license if a company generates a large amount of Scope 3 GHG emissions. The idea behind Scope 3 emissions is that companies can become more responsible and aware of their pollution and, in doing so, can implement effective reduction measures such as electrification and carbon capture. After the EFTA Court's advisory opinion (making Scope 3 emissions mandatory in the EIA) the Norwegian Government still has the right to either grant or refuse a license after weighing up the environmental effects against the benefits gained. The UK's *Finch*[31] case established that a company cannot be refused a license if it produces environmental effects (such as GHG emissions). Instead, consent is to be given with full knowledge and understanding of the adverse effects that it causes. Therefore, if a company generates large amounts of Scope 3 emissions, this does not prevent an oil and gas license being granted.

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[28] ibid
[29] (n27).
[30] Clifford Chance, 'New EIA Guidance for Assessing Scope 3 Emissions in UK Offshore Oil and Gas' (2025) < 2025-EIA-Guidance-on-Scope-3-Emissions-in-Offshore-Oil-and-Gas-Projects.pdf> accessed 10 October 2025.
[31] (n25)

The International Court of Justice & Their Advisory Opinion on Climate Change

In July 2025, the International Court of Justice (ICJ) gave an advisory opinion about the obligations and legal consequences of states that fail to protect the climate system and environment from GHG emissions caused by humans, as requested by the UN General Assembly.[32] It was determined that each state, regardless of whether they were a part of any climate change treaties, had a duty to prevent significant harm.[33] The ICJ has urged countries to take fast and reasonable steps to help reduce global GHG emissions.

There is a duty on more affluent and resourceful countries to exercise a higher standard of care, however, there is still a caveat to this as there is only a duty to act within each country's own capabilities.[34] To achieve these goals, countries need to collaborate through international law, treaties, and agreements. Norway, for instance, is part of the Paris Agreement and is committed to reducing its GHG emissions by 50-55% from 1990 levels by 2030.[35]

Although the ICJ has not imposed a legally binding obligation on states to become more responsible for their GHG emissions, the international community maintains a high regard to such opinions. It is therefore likely that countries will adopt policies in conformity with such opinions. This will hopefully create a situation where countries around the world will include scope 3 emissions within EIAs and licence grants for future oil and gas projects. Looking to the future optimistically, as climate policies become more embedded in the oil and gas application process, there will also be an enhanced application process with reduced costs and delays. Regarding the EIAs themselves, this will likely enhance the application process by reducing associated costs and prevent delays. Finally, there is also an expectation for additional safeguards to be implemented before a Plan for Development and Operation (PDO) is granted.

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[32] O*bligations of States in Respect of Climate Change* (Advisory Opinion) [2025] ICJ Rep.
[33] ibid
[34] (n32).
[35] Ministry of Climate and Environment, 'Norway's first Biennial Transparency Report under the Paris Agreement' (*Government.no,* 4 February 2025) <Norway's first Biennial Transparency Report under the Paris Agreement - regjeringen.no> accessed 11 October 2025.