

**NORGES DELEGASJON TIL DEN EUROPEISKE UNION,  
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OLJE- OG ENERGIDEPARTEMENTET	
021 2351-44	
DATO 18 feb. 2003	
AN	EKSP.
501 ✓	

DATO: 17. februar 2003

HASTER MEGET

TIL: Utenriksdepartementet v/EØS/EFTA-seksjonen,

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Olje- og energidepartementet v/Energi- og vassdragsavd.

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KOPI TIL:

Intern fordeling: BTG, EW, EAA, JOV

VÅR REF.: TRH

DERES REF.:

**SAK: Grunngitt uttalelse fra ESA vedr. forholdet mellom  
industrikonsesjonsloven og EØS-avtalen  
– spørsmål fra ESA vedr. høringsdokument**

Vedlagt følger delegasjonens brev av 17. februar 2003 vedlagt brev fra ESA. Brevet sendes også med vanlig post.

Med hilsen

  
Trygve Hallingstad

Amb.råd

32 2 2801553



**NORGES DELEGASJON TIL  
DEN EUROPEISKE UNION**

Vår saksbehandler  
Trygve Hallingstad

Vedlegg	/	av:	2
Sak:	02/2351-44		

Vår dato

17.02.03

Deres dato

25.04.02

Vår referanse

200300229- TRH

Deres referanse

00/0386-

Utenriksdepartementet  
Postboks 8114 Dep.  
N-0032 Oslo

VEDLEGG: 1

**GRUNNGITT UTTALELSE FRA ESA VEDR. FORHOLDET MELLOM  
INDUSTRIKONSESJONSLOVEN OG EØS-AVTALEN  
- SPØRSMÅL FRA ESA VEDR. HØRINGSdokUMENT**

Det vises til Utenriksdepartementets brev av 25. april 2002 vedlagt brev fra Olje- og energidepartementet som svar på ESAs grunngitte uttalelse datert 20. februar 2002. Videre vises det til høringsdokument med forslag til endringer i industrikonsesjonsloven som senere er oversendt ESA.

Vedlagt følger brev datert 14. februar 2003 fra ESA med spørsmål til høringsdokumentet.

ESA ber om svar på spørsmålene innen 17. mars 2003.

Med hilsen

*Trygve Hallingstad*  
Trygve Hallingstad  
Amb.råd

Kopi m/vedlegg: Olje- og energidepartementet v/Energi- og vassdragsavdelingen

Vedlegg	2	av:	2
Sak:	02/ 2357-44		



Case Handler: Vincent Kronenberger  
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Brussels, 14 February 2003

Doc. No: 03-773-D

Ref. No: OES-084-400-003

EU-DEL. Brussel

Ref.: 2003 00 229 - 2

17-02-2003

Arkivkode 544.5

Dear Sir,

**Subject: Hearing paper on amendments to the Norwegian Industrial Concession Act**

Reference is made to the Authority's reasoned opinion of 20 February 2002 concerning the acquisition of concessions on waterfalls (Doc. 02-576-D) and Norway's reply (Ref. OED 00/2622 EV AT), as well as to the hearing paper by the Norwegian Ministry of Oil and Energy received by the Authority on 2 December 2002 concerning the proposed amendments to the Industrial Concession Act.

It should be recalled that the Authority does not comment on draft proposals by national authorities since they are part of the legislative process and do not constitute binding acts. Moreover, although an addressee of the hearing paper, the Authority, as an independent international organisation, is not bound by the timeframe set by the Norwegian authorities for reacting to that document. In any event, the Authority's position is clearly laid down in its reasoned opinion mentioned above. However, following a preliminary examination of the hearing paper, the Authority wishes to receive clarifications on the following points:

1. The Authority understands that the hearing paper proposes that privately-owned waterfalls, subject to 60 years concessions, will be running until the end of their current concession and subject thereafter to reversion; the 75 years concession (as proposed in the hearing paper) would only apply after that time.
  - a) In this respect, what will happen to the length of a concession (owned by a private company) currently running for 60 years when the concession is bought by a public undertaking? Will the public undertaking exercise ownership for the remaining time of the concession or will it be granted a 75 years concession?
  - b) What will happen in the same situation if the buyer is a private company?
2. According to the hearing paper, concessions should be granted on objective, transparent and non-discriminatory criteria. Private operators have been complaining (under the current system) of lack of precise criteria concerning the conditions under which concessions are granted. How will this be remedied in the new system? Will there be appeal procedures, in particular before national courts, provided for? Please substantiate your reply by giving, in particular, a list of possible grounds for granting concessions.

Norwegian Mission to the European Union  
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► Page 2



3. Will the new concession system (75 years concessions as from the date of entry into force of the Act) apply to Statkraft, including to waterfalls acquired when that company was part of the State? If no, what are the reasons?
4. What would happen to waterfalls acquired before 1909 but sold under the new system? Would such a sale trigger a 75 years concession? If not, why?
5. The hearing paper proposes to maintain Section 1 (4) of the Industrial Concession Act which allows the Minister, under "particular reasons", to grant exemptions from the concession rules. Why is that provision maintained and which are the "particular reasons" in question? In any event, the Authority points out that an exemption decision should always be compatible with the EEA Agreement.

May I ask you to answer these questions so that your reply reaches the Authority by 17 March 2003 at the latest.

Yours faithfully,

  
Jonas Fr. Jónsson

Director

Internal Market Affairs Directorate