



ROYAL NORWEGIAN
MINISTRY OF AGRICULTURE AND FOOD

EFTA Surveillance Authority
Rue Belliard 35
B-1040 BRUSSELS
Belgium

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**Complaints against Norway concerning residence requirement –
Follow-up of the package meeting in Norway, November 2011**

We refer to the follow-up letter from the EFTA Surveillance Authority of 2 December 2011. Based on previous correspondence and the meeting held on 10 November 2011 in connection with the annual package meeting, the Authority has requested additional information from the Norwegian Government.

The Authority has posed the following questions:

- 1) To further substantiate on the reasoning for maintaining a personal residence requirement, including the stable settlement- and viability-objectives allegedly pursued by this rule. If available, also submit research and/or studies in support of the information and arguments presented.*
- 2) To elaborate on the connection to the Allodial Act, and the implications the allodial institute may have for the application of the personal residence requirement under Section 5(2) of the Concession Act.*
- 3) If available, present statistics over the handling of applications for concession under Section 9 of the Agricultural Act.*
- 4) To explain the reasoning behind the limited personal scope of Section 5 of the Concession Act/the concession requirement for all non-relatives (falling outside the personal scope of Section 5) which acquires agricultural properties (not falling under Section 4), even if the acquirer intend to personally reside at the property?"*

Postal address
PO Box 8007 Dep
0030 Oslo

Office address
Akersgt. 59

Telephone
+47 22 24 90 90
Org. no.:
972 417 874

Department of Forest- and
Natural Resource Policy
Telefax
+47 22 24 27 53

Our officer
Kristian Buan
+47 22249158

Regarding question 1

Provisions concerning residence requirement

The Concession Act section 2 states as a main rule that acquisition of real estate is subject to prior authorisation in form of a concession. There are several exemptions from this general principle as mentioned in our previous letter of 8 November 2010.

An explanation of the effects of introducing a concession system is found in the preparatory work of the Concession Act of 1974 (Ot.prp.nr.6 (1972-1973) page 36)
"It is also to note that the fact that an acquisition is made conditional upon a concession, of course does not mean that a concession will not be granted. But it means an assessment of the acquisition in each case and provides opportunities for any conditions for the acquisition, if deemed necessary or appropriate."

All concession cases are based on a concrete individual assessment including an assessment of the necessity of a residence requirement. Thus, a residence requirement can be a condition for an exemption of the concession requirement or be a part of the concession granted. The local authority must also consider whether a residence requirement shall be personal or impersonal.

The residence requirement can be divided into three categories.

The first category is the Concession Act section 5 (1) point 1 and 2 which states that a concession is not needed when a close relative of the owner or a person with allodial rights acquires an agricultural property. Section 5 (2) states that if the property consists of a dwelling and is of a certain size¹ the acquirer must personally take residence at the property for at least five years when using this exemption. This is known as a statutory personal residence requirement. If the acquirer does not intend to take residence at the property, he or she must apply for a concession, cf. section 9 (4).

The second category is based on the Concession Act section 11 where the local authority can decide that a personal or impersonal residence requirement is a condition for granting a concession when someone acquires an agricultural property sold in the open market. This provision gives the local authority the legal base for setting the necessary conditions in concession cases in order to fulfil the objectives mentioned in section 1.

The residence requirements mentioned above are both pursuing the objectives of settlement, an overall resource management and of the cultivated landscape, cf. section 11 (2). These objectives and the objectives of the Concession Act section 1 must also be seen in relation to the objectives in the Land Act. Both acts pursue the objective of stable settlement across the country.

¹ Land area over 25 decares fully cultivated or surface cultivated land, or more than 500 decares of productive forest.

The third category concerns municipalities that have adopted local regulations, cf. section 7, where a concession is needed unless the acquirer commits himself to use the property as a year-round residence for himself or others – also known as an impersonal residence requirement. The scope of this provision is to prevent regular properties that should be used for year-round residences from being used for recreational purposes.

It is a national goal that agricultural properties to the greatest extent are owned by natural persons who inhabit and operate the properties, as this has shown to be the most stable and efficient way of running agricultural properties. Section 9, third paragraph, opens however for granting concession to companies with limited liability where this offers advantages compared to traditional forms of ownership. This may be the case where there is a need to exploit the resources through joint action. A personal residence requirement will not be applicable as a condition for acquisition in such cases.

A recent study conducted by *Norsk senter for bygdeforskning*² based on a questionnaire shows that the emotional bindings to agricultural properties are generally quite strong. There are several factors affecting people's decisions, and this is a very complex theme. The authors of the study have emphasized that ownership is largely about social relationships in relation to an object, not the one-to-one relationship between the owner and a property object. This hampers efforts to develop or adapt policy and legal instruments that will affect owners' actions. Such measures are to a large extent forced to deal with the formal representations of ownership and property in a way this is described in legislation and other formal documents. Research has also previously shown that the degree of consistency between the way the ownership is formally represented through legislation and other public documents, and how ownership actually is experienced, is important for the success of political and legal instruments. The fact that an owner sees himself as managing the property on behalf of the family, and will thus not feel free to make decisions without the backing of the whole family, can be difficult to take into account in various formal provisions. A question posed by the authors is: How can public authorities regulate the feelings of the people? The study also shows that the family connection to the property is by far the most important reason why uninhabited properties are not offered for sale. There are also emotional reasons for the properties remaining in the owner's possession. In addition, there are many who wish to keep properties as recreational residences. Issues related to laws and regulations (residence requirements, government price control of agricultural properties and municipal planning) is subordinate and of marginal significance when explaining why uninhabited properties are not offered for sale.

There are several challenges related to legal regulation of the acquisition of agricultural properties. A study conducted by *Norsk senter for bygdeforskning*³ underlines that the effect of the residence requirements must be understood in relation to other rules,

² The report "It's about feelings – a study of vacant agricultural properties" (Report 3/2011)

³ "Boplikt i landbruket – bolyst eller botvang?" (Report 2/2009)

especially the Allodial Act and price control on agricultural properties. This means that it is difficult to isolate the effect of the residence requirement - it works together with other legal regulations. Moreover, it works within the cultural norms that exist in Norwegian agriculture, and the strongest of these appears to be the norm that agricultural property shall remain in family ownership.

Since the introduction in 1974 there is a reason to believe that the residence requirement has had a positive impact on the objectives pursued, i.e. stable settlement and viable communities. Although this has not been conclusively documented, the above mentioned study conducted by *Norsk senter for bygdeforskning* supports this view to a great extent. The practical effect, and hence the positive impact of the residence requirement is described in Ot. prp. 44 (2008-2009) page 37 where it is stated that "many will in future family disposals channel the property to a person within the family who wants and is able to take residence at the property."

On the other hand the residence requirement provisions have been heavily debated in media and amongst those political parties in Norway who want to abolish the provisions. An abolishment of the residence requirement would probably lead to irreversible consequences. There are no comparative analyses conducted regarding such a scenario, but an abolishment would most probably have negative consequences regarding the objective of stable settlement, especially where properties are acquired in the open market. In such cases there would be a risk that a majority of the properties would be used for recreational purposes instead of year-round settlement.

The Norwegian Government has refrained from making significant changes or abolish the resident requirement provisions due to the possible negative impacts such changes could imply. The current provisions on residence requirements were adopted by a broad majority in the Norwegian Parliament no later than June 2009. In the white paper on the agricultural and food policy (Meld. St. 9 (2011-2012)) recently presented to the Norwegian Parliament, the Norwegian Government has not proposed any changes to the residence requirements;

"(Page 258) Major changes in the property and housing legislation were adopted in 2009. In light of the changes made, the discussion in Section 10.4 to 10.6 is based on the fact that the legal instruments in the real estate policy are updated in relation to current needs. Size limits for concession and the rules of residence requirement and the obligation to run the farmland will remain unchanged."

The white paper will be reviewed by the Norwegian Parliament during spring 2012.

The personal residence requirement

A personal residence requirement can be made applicable with a legal base in section 5 (2) or section 11 depending on the background of the acquirer.

The reasoning behind the personal residence requirement is further explained in the preparatory work of the 2009 revision of the Allodial Act, the Concession Act and the Land Act (Ot. prp. 44 (2008-2009) page 37-38).

“.. the residence requirement in the Allodial Act and in the Concession Act affect all who wish to acquire agricultural land, and thus how the properties will be used. When the residence requirement is a condition for acquiring a property without a concession many will in future family disposals channel the property to a person within the family who wants and is able to take residence at the property. In addition, the residence requirement can bring some of those who are in doubt as to moving to a property, to make the move. The residence requirement will also make someone who does not want to reside, sell the property to those who wish to take residence and run the property. Thus the rules have a direct impact on settlement and district policy.

The owner will generally have a different and stronger connection to the property, and in normal cases have a greater interest in making long-term investments and other improvements with the property. The Ministry would point out that the attitudes of Norwegian society to owning their own home means that people who rent housing are often interested in more permanent solutions where they own their homes themselves. These facts indicate that the rental of a dwelling on agricultural land from both the landlord and the tenant's point of view will be considered as a temporary solution. Personal residence may in this perspective lead to more stable settlement than if the residence requirement should be based on the use of tenants. This would *inter alia* strengthen the social and cultural activity that is important to ensure a viable community.

Consideration of settlement, overall resource management and cultivated landscape are important social considerations that must be weighted heavier than the owner's right to dispose the property in a way he or she wants.

Whether the settlement considerations or other considerations indicate that it is necessary that the owner lives on the property, or whether the concern is addressed adequately by a tenant living there, must be assessed in each case. Personal residence of the owner is appropriate where there is concrete evidence that the concerns would be better served if the owner lives on the property instead of tenants (if leasing in the particular case is a real alternative).”

These views are also reflected in Circular letter M-2/2009 paragraph 8.4.2. According to the circular letter, a residence requirement conditional upon the owner's use may be

laid down if it is obvious that it protects the objective of a stable settlement on the property in a better way than if someone else takes residence on the property. The same applies if it is obvious that the property will be better taken care of if the owner personally takes residence on the property, or if such a requirement is considered crucial to enhance activity in the local community. We refer to Circular letter M-2/2009 for further examples of cases where a residence requirement is considered appropriate.

Research conducted by *Østlandsforskning (Report 01/2008)* shows in general that little resources are spent on upgrading the farmhouse among tenants or others who do not live permanently on the property. The survey also shows that owners who have acquired a property after the residence requirement was introduced in 1975, on average, have invested more in the maintenance of the farmhouse in the last 5 years (2001-2006) than owners who acquired without a residence requirement in the years before.

The time limit for the personal residence requirement is 5 years. After this period, the owner is free to use the property for recreational use, leasing, or to continue residence. A survey from 2009⁴ shows that most owners (87,8 percent) continue to take residence on the property after the 5 years period. The survey also indicates that during the period of the personal residence requirement, the owner's affection for the property is strengthened, and hence the wish for permanent residence – resulting in an enhanced settlement stability.

Accordingly, the Norwegian Government maintain the view that the personal residence requirement provisions in the Concession Act are justified, necessary and proportionate in order to fulfil the objectives of stable settlements and viable communities. The provisions have a certain degree of flexibility, and exceptions can be granted by the administrative authority if the judicial criteria are fulfilled and based on a concrete assessment in each case.

Regarding question 2

The Concession Act of 1974 introduced a personal residence requirement for acquirers who were close relatives of the owner, cf. section 6 (1) no. 1, similar to the provision in the Allodial Act, section 27 (2) concerning acquirers with allodial rights. The residence requirements in both acts were also connected to a personal obligation to operate the farmland. Experience had shown that persons with no connection to agriculture had displaced owners of agricultural properties in an unfortunate way. Legal measures were therefore taken to change this development.

In 1995 the provision regarding the personal obligation to run the farmland was changed. The main rule was still a personal obligation, but the obligation could also be fulfilled through renting out the land to others who were capable of managing it

⁴ Norsk senter for bygdeforskning (Report 2/09)

properly. Agricultural properties in Norway are in general quite small in size⁵. In order to create rational production units some properties need to expand their production area. In the preparatory work⁶, the Ministry of Agriculture stated that the objective of the changes relating to the obligation to run the farmland was to secure active farmers an access to additional farmland in order to increase their production. The Ministry said that it was still appropriate to consider the residence requirement and the obligation to run the farmland in context, and stated that the change was not aimed at undermining the purposes of the residence requirement and the obligation to operate the farmland. Furthermore, the Ministry said that the actual conditions in the agricultural sector made it necessary to differentiate between the residence requirement and the obligation to operate the farmland.

The residence requirement provision in the Concession Act of 1974 remained unchanged in the Concession Act of 2003. After the revision in 2009 the personal residence requirement provisions in both the Concession Act and the Allodial Acts were gathered in the Concession Act section 5. At the same time the provisions in the Concession Act and the Allodial Act regarding the obligation to run the farmland were moved to the Land Act, and a new sanction system was introduced in order to secure a proper management of the farmland.

The allodial institute has a long tradition in Norway, and is also enshrined in the Constitution. Values related to the allodial tradition are of great importance for the socialization in agriculture, and hence the choices made by the owner. The allodial institute results in a strong management attitude. Recent research⁷ also shows that this management attitude includes a strong affiliation to the property, family esteem and responsibility for future generations. This characterizes many owners' relationship with his or hers property. As mentioned in the answer to the previous question, these attitudes are *inter alia* of great importance for their decisions regarding the use of the property, for example when it comes to sale, leasing or settlement of the property.

Regarding question 3

As mentioned in our letter of 8 November 2010, section 9 of the Concession Act must be considered when deciding applications for concessions in respect of acquisition of property to be used for agricultural purposes. Special emphasis in favour of the applicant shall be placed on the following

1. whether the agreed price provides for a socially justifiable price development,
2. whether the acquirer's purposes will take into account the interests of settlement in the area,
3. whether the acquisition involves an operationally satisfactory solution,
4. whether the acquirer is regarded as qualified to work the property, and

⁵ 54 percent of Norwegian agricultural properties with farmland are between 5-49 decares.

⁶ Ot.prp. nr. 72 (1993-1994) page 69

⁷ "Geography, Law and Emotions of Property" (Frode Flemsæther 2009)

5. whether the acquisition ensures the interest of an overall resource management and the cultivated landscape.

If a close relative of the owner or a person with allodial rights acquires a property with a residence requirement and wants an exemption to this requirement, a prior authorisation in the form of a concession is needed, cf. section 9 (4). In such cases the above sentences 2, 3 and 5 shall be taken into consideration as well as, among other factors, the size of the property, earning capacity of the property and the conditions of the buildings. The applicant's attachment to the property and circumstances of life may be taken into consideration as adjusting elements in the assessment of prior authorisation.

According to the report from the KOSTRA monitor system on concession cases in 2010, as described in our letter 3 January 2012, the municipalities handled 845 applications for concession from close relatives or people with allodial rights who had acquired an agricultural property, but did not want to take residence there. These are cases handled according to the new regulations that came into force on 1 July 2009.

Total no. of applications handled	Total no. of permits without requirement	Total no. of permits with requirement	No. of permits with requirement to live on the property personally	No. of permits with requirement to live on the property	No. of permits with a postponed residence requirement	No. of refusals
1	2	3	4	5	6	7
845	270	533	218	59	174	42 (4,97 %)

According to the table, approximately 32 % of the applications were granted concession without any requirements. A personal residence requirement was given in 218 cases according to column 4. Expressed as a percentage this constitutes 26 % of the cases handled in 2010. In comparison this was the case in 35 % of the cases handled in 2009.

An impersonal residence requirement was given in 59 cases, while a postponed residence requirement was given in 174 cases according to column 5 and 6. This shows that in approximately 21 % of the cases the municipalities accepted that the applicant should move to the property at a later time. In approximately 5 % of the cases the application was denied.

Regarding question 4

When a close relative of the owner or a person with allodial rights acquires an agricultural property they do not need a concession as long as they fulfil the residence requirement (c.f. section 5). In such cases they only need to document this through a prior notification form (Egenerklærings skjema). On the other side, persons who acquire an agricultural property in the open market (c.f section 11) are always obliged to be granted a concession before taking over the property.

The reason for this difference is not explicitly stated in the preparatory work of the Concession Act of 1974⁸. There is, however, a clear intention from the legislator to differentiate based on the background of the acquirer. This difference can also be traced back to the relevant acts containing concession requirements in the early 20th century.

Even though the preparatory work does not give much information about the reasoning for the difference in the concession requirement, the Ministry is of the opinion that there is less "risk" involved when an agricultural property is acquired by a close relative of the owner or a person with allodial rights. The reason for this is based on family traditions as mentioned in question 2, that the family in most cases is involved in the acquisition and has a strong interest in the new owner being capable of and competent for taking over the farm. Based on the objectives of the law, the Ministry therefore believes that it is not necessary to make concession requirement applicable in these cases.

An acquisition in the open market does not include this "family safety net", but the mandatory concession requirement gives the local authority a possibility to assess whether the new owner is capable and competent, thereby reducing the risk of accepting an owner who should not be preferred in light of the objectives that the concession system is meant to pursue.

Yours sincerely,


Inger Grette
Deputy Director General


Kristian Buan
Adviser

⁸ Ot. prp. nr. 6 (1972-1973), chapter 6