

EFTA SURVEILLANCE AUTHORITY

PERSONS, SERVICES AND CAPITAL MOVEMENTS DIRECTORATE

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Dear Sir,

Subject: Restrictions to the acquisition of real estate in Norway – Request for information

The EFTA Surveillance Authority has opened an own initiative case concerning the Norwegian legislation relating to the acquisition of land and real estate in Norway.

The Norwegian Act of 31 May 1974 No 19 on Concession for Acquisition of real estate (*Lov om konsesjon ved erverv av fast eiendom*) sets out provisions regarding authorisation to acquire property in Norway. Any acquisition of property in Norway is subject to authorisation unless law or regulation lay down exemptions.

It should be recalled that EEA rules on capital movements (cf. Article 40 of the EEA Agreement and Directive 88/361/EEC for the implementation of Article 67 of the Treaty) stipulate that there shall be no restrictions on the movement of capital belonging to persons resident in EEA States. The rules do also prohibit any discrimination based on nationality or on the place of residence of the parties or on the place where such capital is invested. Capital movements include investments in property on the territory of an EEA State by non-residents, as well as investment in real estate abroad by residents.

Furthermore, the free movement of capital guaranteed by the Article 40 of the EEA Agreement also encompasses national measures that discourage trade between Member States, even if they are non-discriminatory.

In order for the Authority to assess further the Norwegian legislation regarding the acquisition of property the Norwegian Government is invited to provide the following information:

1. Article 5 of the Norwegian Concession Act lays down certain exemptions from the requirement of concession due to the characteristics of the property in question. However, according to Article 5a of the Concession Act, these exemptions do not apply to non-residents, unless the property is intended as a necessary whole year residence or as a

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necessary condition of exercising independent business activities or for carrying out services, or the non-resident has resided in Norway for at least 5 years prior to the acquisition. This provision seems to favour Norwegians, as they in general will fulfil the residence requirement, whilst other nationalities in many cases will not fulfil the requirement.

- a. What is the reasoning behind the residence requirement in Norway or the requirement to previously have resided for at least five years in order to be exempted from authorisation requirements in the same manner as residents? Could the objective(s) be achieved by other less restrictive means?
- b. Which criteria have to be fulfilled in order to deem a property as a *necessary* whole year residence or condition for the exercising of business activities or the carrying out of services?
- c. Are there any statistics regarding the total numbers of nationality of the non-residents applying for concession? Is there any information on how many non-residents have been granted concession? Please communicate any information available on applications for authorisation from non-residents that have been refused. If such information is available, please describe the cases, including possible outcome, as well as any rulings or court decisions.
- d. Is there any information on how many non-residents have been granted authorisation to acquire agricultural property? Please communicate available information on refusals for such authorisation as well.

2. According to Article 7 of the Norwegian Concession Act, concession shall not, as a general rule, be granted if there is reason to suppose that the primary aim of the acquirer is to invest capital in the property, or if the acquisition may be regarded as a stage in a process of amassing property. Concession shall further not be granted if there is reason to suppose that the acquirer aims to make a profit by the selling the property within a short period of time.

- a. What are the reasons behind this provision?
- b. In the event that a non-resident acquires property that is subject to exemption from concession pursuant to Article 5 of the Act, but is still obliged to apply for concession pursuant to Article 5a of that Act, how shall the acquirer prove his intention? Please communicate all relevant documents, including English translations, if available.
- c. What procedure shall be followed to demonstrate the acquirer's aim regarding the property? In particular, how shall the acquirer prove his intention of not selling the property after a short period of time, or that he will not amass property? Please communicate all relevant documents, including English translations, if available.
- d. What kind of documents is necessary to demonstrate such evidence? Please communicate all relevant documents, including English translations, if available.

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3. According to Article 8 of the Norwegian Concession Act, special attention should be paid to, *inter alia*, whether the acquirer is regarded as being suitably qualified to run the property, when deciding on the application for authorisation to acquire agricultural property.

- a. Are there any rules or guidelines as to how such an assessment should be carried out? In particular, are there any guidelines or practises as regards the assessment of foreigners' and non-residents' ability to operate an agricultural property?
- b. How many concessions to acquire agricultural property have been granted or refused to non-residents over the last 5 years?

Please communicate any relevant documents, including English translations, if available.

4. Article 21 of the Norwegian Concession Act concerns the procedural bodies. According to the first paragraph of that Article, the county council (*kommunen*) shall submit the application to the regional commissioner (*fylkesmannen*) and express its opinion on the concession question. Further rules on procedural matters and the delegation of authority are found in the Regulation No. 620, laid down by the Ministry of Agriculture on 30 May 2000 pursuant to Article 21 of the Concession Act. According to Article 1-1 first paragraph number 5 of the Regulation, the county council has authority to grant concession regarding property exempted from authorisation requirement pursuant to Article 5 of the Concession Act, but where the acquirer is a non-resident and thus need an authorisation pursuant to Article 5a of that Act.

- a. According to the legislation in force, it seems to be only one deciding body to each case, i.e. there is no requirement to be granted concession from two separate bodies. Could Norway confirm this?
- b. Is there any information on how long time the handling of applications for concession takes, in particular applications from non-residents?
- c. Is there any information on how many cases the regional commissioner decide against the opinion of the county council, or is the regional commissioner prone to follow the opinion of the county council in most cases?

Please communicate any relevant documents, including English translations, if available.

5. According to Article 23 of the Norwegian Concession Act finer may be imposed in case of infringements of the Act. Are there any rules or guidelines as to what types of infringement should be fined and on the amount of such fines? Are there any types of infringement more liable to fines than others?

6. According to Article 24 of the Norwegian Concession Act, both the regional commissioner and the county council shall supervise that the conditions laid down for the various concessions are fulfilled. Could the Norwegian authorities explain how the supervision is divided between these bodies? In particular, are there any property subject to supervision by both the regional commissioner and the county council?

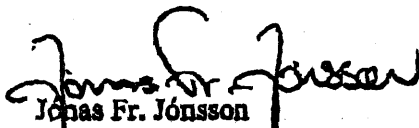
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May I request your Government to submit the above mentioned information, together with any comments or observations it wishes to present, so that it reaches the Authority at the latest by 26 November 2001.

Yours faithfully,


Jonas Fr. Jónsson
Director

