DET KONGELIGE
LANDBRUKSDEPARTEMENT

The Royal Ministry of Agriculture

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EFTA Surveillance Authority
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Subject: Acquisition of real estate in Norway – request for additional information.

Reference is made to your letter of 13. March 2002, in which the ESA asked for certain information pertaining to the acquisition of land in Norway. In the following we give answers to your questions, which we trust will be to your satisfaction.

For your information, please find enclosed the "discussion document" with proposals for changes to the existing Concession Act (available only in Norwegian). The document has now been sent on a public hearing, with deadline for replies on 3. September 2002.

We also refer to your letter dated 19. April 2002 in which you inform us of a complaint against Norway in relation to the Concession Act, in particular in respect of the requirement to take up residence on and to operate a farm during a certain period of time. To the extent that you have asked for comments and explanations to our current legislation, please consider the following comments to address also the questions in that letter.

Most of the questions forwarded in your letter of 13. March are formed in a general manner, and our answers are also general in the sense that they give information on the legislation as such. In each particular case the result will depend on an overall judgement in light of the relevant fact of that particular case.

Question 1 i): Even though "agricultural land" is not a legal term, do the Norwegian authorities have any data as regards how much of the total area of Norway is not deemed agricultural land but is still subject to prior authorisation? Where is most of this land situated? What type of land would this be (industry, building land etc.)?

We do not have data that show how much of the total area of Norway that is subject to concession due to the Concession Act. The different parameters for exceptions in Article 5

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and 6 are not only connected to areas, but also to the new owners' status, to regulation due to the Planning Act, and other parameters. This makes it impossible to make a register that may show any concise figure regarding the percentage of the total land area that is covered by the regulations of the Concession Act.

Question 1 ii): Do regulations laid down pursuant to Article 5 third paragraph of the Concession Act exist for many municipalities? In which part of Norway are they situated? What is the rationale behind this rule?

At present, 77 municipalities have regulations pursuant to Article 5 third paragraph. Most of these are situated along the coast from the Oslo-fjord to Mandal[1], but some are situated even as far north as the county of Nordland. The municipalities are situated in areas that attract people who want secondary residences, many along the waterside, but quite a few also in areas with good opportunities for winter sports.

The regulation implies that the acquirer needs a concession if the intention is to use a house that has been or is used as a domicile, for leisure purposes. The acquirer must make sure that the house will be used as a residence for someone; he does not need to live there himself.

The aim is to preserve permanent population, and to avoid that houses made for living are converted into summer homes. Today's planning regulation cannot secure that houses made for living are inhabited. Municipalities where the settlements are decreasing, suffer various problems. Important problems are that the local population have problems to run schools, welfare institutions etc. When houses are converted into summer homes, a similar effect on the society occurs during the winter season.

It must be emphasized that it is the municipalities themselves that decide whether they need such regulations, and that their decision is made according to an open and democratic prosess. The decisions are regarded as a vital part of local self-government. If the municipality find that the regulations may improve their problems, they apply for rules according to Article 5 third paragraph.

Question 2 i): Are some of these aims more important than others? Are the aims in the Concession Act applied in the same order and weight when non-agricultural property is assessed as when agricultural property is assessed?

We are not sure whether we understand this question. The Concession Act Article 1 does not give priority to any interest or aim that is mentioned. The main aim of the Act is to get the best possible ownership and the best possible use of the land to the benefit of the society as a whole. The interests mentioned in no. 1-3 are not ranked in any priority list. Number 4 and 5 are aims, but they are not recognized as more or less important than other aims that may be relevant. The aims of Article 5 third paragraph are more specific than the aims in Article 1, but they are of course within the general aim.

As you can see from the proposals for a new Act, Article 1 number 4 is of more importance in relation to agricultural property than that of non-agricultural property.

[1] A small town situated close to the southern point of Norway.

Question 2 ii): Are there any other considerations that are being taken into account on a general basis?

Some of the considerations that are taken into account are not explicitly mentioned in the article, but they are, of course, covered by the wording of Article 1. An example is a sceptical attitude to joint ownerships in relation to agricultural properties. Such considerations are, however, in accordance with the superior aim in the Concession Act and the Land Act, which is to get the best possible ownership to the benefit of the society as a whole.

Question 2 iii): One of the aims laid down in Article 1 of the Concession Act is to ensure sound and socially orientated price development on real property. How is this aim applied to land other than agricultural land?

The practice of the price-control is described in the discussion document in section 5.3.2. When it comes to plots for building of one house, a price that corresponds with market price has been regarded as a sound socially orientated price. Normal market price is also accepted when it comes to larger properties that can be built on. Weight has therefore been put on the municipality's experience and opinion related to the prices of similar properties.

As you can see from page 46 in the discussion document, the Ministry proposes to omit price control for other properties than agricultural and forestry properties.

Question 2 iv): As regards agricultural land, is the aim of having persons residing on the property more important than having the land actually cultivated?

The Concession Act Article 1 does not give priority to either of these aims. They are both of equal importance.

In St.meld.no 19 (1999-2000) About Norwegian agriculture and food production the different aims in agricultural policy is described. The different aims are, as in the Concession Act, regarded as equal. It is focused on the strong links between agriculture production of food and fibres and the production of public goods.

Question 3 i): In relation to the authorisation procedure, could the Norwegian authorities explain how the tasks are divided between the local and the regional authorities?

An application for concession shall be addressed to the mayor in the municipality where the property is situated. An exception is applications concerning shares.

The local municipality has, according to Article 21 first paragraph in the Concession Act, an obligation to handle the case. In the majority of the cases the municipality does not, however, make the decision. According to regulations given 30. May 2000 the municipality has the task to make decisions in following cases:

1. If the application is part of a building area mentioned in the Planning Act Article 20-4 first paragraph no. 1, or in the same act Article 25 first paragraph no. 1.
2. Applications concerning a plot less than 2000 square metres for building a dwelling or leisure house. (The acquirer needs a concession if the family already own a similar unbuilt plot).

3. Applications concerning properties that are regulated by Article 5 third paragraph.
4. Applications concerning development contracts mentioned in Article 3 second sentence.
5. Applications concerning non-residents purchase, Article 5a.

Where the local municipality does not have the right to decide, the applications are sent further to the regional commissioner. The regional commissioner serves as a secretary for the County Land Board, which make decisions in the rest of the cases.

Question 3 ii): Could the Norwegian authorities explain the procedure for handling complaints? How long does the handling of at complaint regarding a decision of the local or regional authorities normally take before it is settled by the Ministry or other competent authority?

Complaints related to cases concerning concession where the municipality has made the decision have to be handled by the regional commissioner. Complaints regarding the municipality's decisions about the duties to take up permanent residence on the farm and run it, is handled by the County Land Board. Complaints related to cases where the County Land Board makes the decision have to be handled by the Norwegian Agricultural Authority.

We do not have information on how long the handling of a complaint regarding a decision of the local or the regional authorities normally take. Complaints in this field are as other complaints and cases treated according to the Public Administration Act of 1967, after which cases shall be decided without undue delay.

Question 4 i): Is the authorisation procedure considered to be a successful means to achieve the aims set out in the Concession Act, and with regards to agricultural land in addition to the aims set out in the Act relating to Land?

The authorisation procedure gives the authorities the opportunity to handle each case individually. In the Ministry's opinion, that means that the optimal balance between the individual and social interests and needs can be found in each case. This, including the use of appropriate conditions, has been a successful means to achieve the aims in both the Concession Act and the Land Act.

Question 4 ii): Does not the low percentage of rejections imply that the authorisation procedure is excessive? Has the possibility to make use of the declaration procedure also for properties larger than 20 000 square meters been explored? Please reply for agricultural land and non-agricultural land respectively.

In the Ministry's opinion the difference between an authorisation procedure and a declaration procedure is the pre- and post-control of whether the relevant conditions are fulfilled in each particular case – *inter alia* the residence requirement. It is these criteria that are important to fulfilling the aims of the Concession Act. In this respect the Ministry feels that it is easier to ensure fulfilment of the criteria with a prior authorisation procedure than with a declaration procedure with post transaction verifications. It should be evident that it is easier to reject an application than to evict the new owner thereafter.

The discussion document with proposals for a new Concession Act follows enclosed. The proposed changes are:

1. plots intended for building of houses for dwelling or leisure purposes may be bought without a concession needed if the plot does not excess 1000 square metres. Concession will not be needed even if your family already own similar plots.
2. plots intended for building of houses for dwelling or leisure purposes may be bought without concession regardless of size, if the plot is regulated by a plan founded on the Planning Act § 20-4 no. 1 or § 25 no. 1, and the size of the plot is accepted in the plan.
3. unbuilt areas situated in areas covered by a plan founded on the Planning Act, if the area is meant for other purposes than agriculture. In these situation concession is not needed unless the new owner does not intend to use the area in accordance with the plan.
4. property with buildings on it may be bought without concession if the property does not exceed 1.000.000 square metres (100 dekar), and does not exceed 20.000 square metres (20 dekar) of fully cultivated area. Concession is not needed unless the new owner does not intend to use the area in accordance with specific plans that may cover the property. The plans must be founded on regulations in the Planning Act § 20-4 no. 2 or § 25.
5. shares may be bought without concession.
6. non-residents may buy property for leisure purposes without concession.

In the "Discussion document" there are no proposals for changes in Article 5 third paragraph. The Ministry has given a description of different problems that has been registered, and has asked the public to reply on whether these problems should be regulated in the new act.

Question 4 iii): Could public planning be a means of regulating the use of land?
As shown in the proposals above, public planning can provide for necessary regulations of the use of non-agricultural land in certain cases. Public planning cannot, however, substitute the role of the Concession Act when it comes to ensuring *inter alia* permanent residence, pricing regulations or that the farmer farms his own land.

Question 4 iv): What is the reason for fixing the thresholds at 2000 and 20 000 square meters?

The threshold of 2000 square metres is supposed to sort out normal plots for dwelling or leisure purposes. If the property is regulated by a plan according to the Planning Act, there is no area limits, i.e. that the size of the plot is a question of planning. If the unbuilt plot is not regulated, the threshold should, according to the discussion document, be reduced to 1000 square metres. The reasoning behind this reduction is to protect areas with potential for agricultural production and environmental advantages. In addition, it is an aim that the use of all land should be regulated according to the Planning and Building Act, and to ensure that land suitable for building purposes is used in a resource-economic and cost-effective way.

The threshold of 20.000 square metres is supposed to keep small agricultural properties away from the obligation for concession. In the St.meld.no. 19 a parallel was drawn between the threshold in the Concession Act and which agricultural properties that should be entitled to

economic support. As stated above one has now proposed to increase the treshold to 100 000 square meters on certain conditions.

Question 4 v): Why could not a declaration procedure be a proper means to achieve the aims in the Concession Act? Please reply for agricultural land and non-agricultural land respectively.

A declaration procedure and a concession procedure have, in the Ministry's opinion many similarities. According to the Concession Act most transactions do not need a concession. The buyer verifies this by a written declaration, which is also verified by the municipal authorities. The function of this procedure is to sort out which transactions where concession is needed. Declaration procedures, like the procedure in Act 23. Dec. 1994 no. 79, has, in fact, a similar function. You can see from the "Discussion document" with proposals for change in the existing Concession Act that the Ministry propose that less transactions than today should need a concession.

During the proposal process the Ministry has considered whether a declaration procedure could give any advantages when dealing with the rest of the transactions. In the Ministry's opinion a declaration procedure would be more unpredictable for the citizens, and less effective for the authorities. The Ministry finds it more difficult to evict unsuitable owners than to prohibit the initial transfer. The first method could cause unnecessary losses in connection with a sale, and does not allow for exemptions in special cases. The method would not provide for legal security in borderline cases where it is uncertain whether the conditions are satisfied. Thus, it could be viewed as a stronger restriction of the movement of capital than a concession system. Due to these circumstances, the Ministry has not forwarded any proposal in that direction. In the Ministry's opinion only a procedure of prior authorisation for the acquisition of land will enable the national and local authorities to retain control over the achievement of the aim pursued, and that would also be the least restrictive means.

Question 5 i): In relation to agricultural properties, what is the reasoning behind the residence requirement? Please reply for the different types of agricultural land respectively (farming land, forests, etc.) How is this requirement to be fulfilled if a legal person owns the property in question (cf. Article 4 of the Concession Act)?

Buyers of agricultural properties usually get concession on one condition. The condition is that the new owner for 5 years shall live on the property himself, and also run the farm himself. The condition correspond to Article 8 no. 2, and the general requirement in Article 6 no. 1 and 2 for buyers that do not need a concession. The reasoning behind the condition can be divided into two main groups.

- it has been experienced that an owner that live on the farm tend to keep the farm and the buildings on it in better shape than owners that do not live on the farm. It is thus considered as a highly estimated value that the farmer must be self-employed and own the farm he cultivates. This is also part of the system of ownership that the Norwegian society wants for agricultural property.
- it is essential to keep up vivacity in the local society. This aim is mainly relying on a regional policy and a country planning objective, such as maintaining, in the general interest, a permanent population at the countryside and an economic activity in certain regions and socially viable local communities.

The reasoning does not vary in respect of different sorts of agricultural land.

A legal person purchasing an agricultural property will need a concession. Because of this, § 6 no. 1 and 2 does not apply to these transactions. During the concession process the authorities will consider whether the legal person should fulfil some sort or residence requirements or not. The decision relies on different parameters both connected to the legal person, the purpose of the purchase and to what kind of property that is at hand.

Question 5 ii): Why is the acquirer according to Article 6 first paragraph obliged to take residence for at least five years and to operate the property himself for the same period of time?

The reasoning behind the residence requirement for agricultural properties in Article 6 is connected to the allodial system and to the needs of the local society (regional settlement policy), cf. the answer to the preceeding question.

The allodial system is formed to give the family members in a certain priority the right to own and use the property as their home and their working place. A family member not fulfilling the residence requirement run the risk that another member of the family may claim the property.

The regional settlement policy is reflected in St.meld.no. 19 (1999-2000) About Norwegian agriculture and food production.

> "Agriculture is important in regional policy. Economic activity in rural areas is the bases for Norway's decentralised pattern of settlement. Agriculture plays a prominent part in the economic life of many municipalities. The Government intends agriculture to continue to have a leading role in regional policy. The goal of sustaining active farming across the country is part of its overall regional policy, the objective of which is to maintain the principal features of the settlement pattern."
>
> "All farm properties comprising of dwellings can serve a purpose where settlement in rural areas is concerned. On many farm properties, the means of production have been leased, so that the property principally serves as a dwelling. The Ministry of Agriculture will contribute to settlement on such farms when designing its agricultural policy instruments. A prerequisite for succeeding in this is for the agricultural policy to be seen as closely related to the genereal regional and industrial policies intended to enhance employment opportunities in rural areas."

Before 1995 the reasoning was also built on an assumption that a farmer that lived on the farm would run the farm in a better way than a farmer that did not live on the farm. This reasoning was to a certain extent left in 1995. Now the new owner may fulfil the obligation to run the farm by leasing it to a neighbour for 10 years.

The reasoning behind the obligation is also based on a wish to guide agricultural properties to active farmers. The 5 years requirement is formed in order to balance two considerations. On one hand it is an aim to support the settlements, and it is experienced that stable use as a

dwelling for some years may lead to that. On the other hand it is regarded as not acceptable to create regulations that implies adscription.

Question 5 iii): Would not renting the land to a person practicing agriculture be a proper means to achieve the aim of maintaining agricultural land?
Renting the land may serve as an adequate way of keeping agricultural land. Experience show, though, that the renters investments in ditches, houses, fertilizer and so on, tend to be less than that of owners. In areas where renting of land is usual, the productivity of the farms that are rented has been reduced by the years.

Question 6 i): What is the reasoning behind this rule? (Article 4 of the Concession Act).
Question 6 ii): Why is it deemed necessary to require authorisation of the shareholder in addition to the legal person already holding an authorisation? What is the added value?
Question 6 iii): Why are the thresholds fixed as they are?

The Ministry propose to abolish Article 4. Because of this we assume that it is not necessary to give a full answer to these questions. The thresholds in § 4 correspond with the thresholds in Act 14. Dec. 1917 (industrikonsesjonsloven) § 36.

Yours sincerely,

Inger Grette e.f.

Ingrid Aasen

ENCLOSURE