

*The Royal Ministry of Agriculture and Food*

EFTA Surveillance Authority  
Rue Belliard 35  
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Your ref  
Cases No: 2123 and 3040, Event no:  
312682

Our ref  
200500590-/IAA

Date  
September 30, 2005

**Subject: Application of the personal residency and farming requirements for agricultural and forestry land in the Concession Act**

Reference is made to previous correspondence on this matter, first of all to your letter dated 16 March 2005 and our letter of 15 April 2005. In your letter you asked several questions regarding how the new Concession Act has been practised since it entered into force on 1 January 2004. The Ministry of Agriculture and Food informed you that statistical information was not available in April, but that the Ministry would collect the information and give you information on the questions in September /October this year.

The Ministry has, with the assistance from the Norwegian Agricultural Authority (Statens Landbruksforvaltning), addressed the County Land Boards and the municipalities, and is now able to present some information.

The Ministry has not collected similar information from the period prior to 2004. Consequently it is not possible to compare the collected figures to figures that illustrate practice from any year before the new Concession Act entered into force. The changes in practice emphasized in Circular M-5/2003, are therefore not visible through the information in this letter.

**Question 1: Does the Norwegian government have information on how many applications have been submitted to the Norwegian authorities under the new Concession Act, where the applicant sought to get concession for acquisition of agricultural and forestry land (landbrukseiendommer) without having to personally reside on and/or farm the property himself?**

*Table 1. Cases concerning agricultural and forestry property handled during the year 2004. Applications where the applicant sought to get concession for acquisition without having to personally reside on and/or farm the property himself. Divided into groups showing the municipalities decision.*

No. of applicants seeking for concession:	Total no. of applications handled	No. of permits without a requirement to live on or farm the property	No. of permits without a personal requirement to live on or farm the property	No. of refusals
1.without having to personally live on or farm the property	103	86	11	6 (5,83%)
2.without having to personally live on the property	265	249	5	11 (4.15%)
3.without having to personally farm the property	73	31	41	1 (1,37%)
4.Total	441	366	57	18 (4,08%)

The figures illustrate that concession was granted to most of the applicants without any requirements at all. 441 applications were processed, and 366 got concession without any requirement to live on or farm the property. The rate of refusal is low, close to 5% and less. The figures in the column for refusals contain cases where concession was refused, and cases where the applicant received concession with some sort of condition – conditions that either have nothing to do with the requirements to live on or farm the property or conditions with a personal requirement to live on or farm the property.

In comments received from the County Land Boards we have been informed that a substantial amount of the cases concern purchase of additional property (the applicant already is the owner of agricultural property, and buy more such property with an intention to enlarge his/her estate). We have reason to believe that these applicants may hold the majority of group 2; that is applicants seeking for concession without having to personally live on the property (these applicants normally live on the property they already own).

Your question was limited to concessions where the applicant sought concession without having to personally live on or farm an agricultural property. The municipalities were therefore not asked how many concession cases that totally were handled during 2004. Due to this we do not know the percentage of applicants that sought to get concession without having to personally reside on and /or farm the property themselves. We do assume, however, that the total amount of cases that were handled in 2004 is considerably lower than the amount in 2003 – before the new Concession Act entered into force<sup>1</sup>.

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<sup>1</sup> During 2003 2.223 cases were handled at County level. (The municipalities did not decide in cases regarding agricultural property at that time.) In 788 cases concession was given without any conditions, in 1.372 cases concession was given with different kinds of conditions, and in 63 cases (2,83%) concession was denied.

**Question 2: How many cases, defined under point 1, have been appealed to a higher administrative authority, and, or a court?**

The information from the municipalities (table 1) illustrates that the rate of refusal in these cases is very low. Indeed, almost all the applicants got concession without any such requirements. Due to this no cases have been appealed to a higher administrative authority. There have been no court cases related to this question in the period after the new act entered into force.

**Question 3: Please provide, if possible, information on how many of the applicants were individuals, companies, Norwegian nationals and/or residents and nationals and/or residents of other EEA States than Norway.**

As pointed out to you in our previous letter it is impossible to gather information on the question of citizenship unless we directly contact each applicant. We have, however, asked the municipalities to gather information about the applicants' postal-address stated in the application forms.

*Table 2. Cases concerning agricultural and forestry property handled during the year 2004. Applications where the applicant sought to get concession without having to personally reside on and/or farm the property himself. Divided into groups showing the applicants and their postal address.*

	Total no. of applications handled	Individuals		Companies	
		Postal address in Norway	Postal address in other country	Postal address in Norway	Postal address in other country
No. of applicants seeking for concession:					
1.without having to personally live on or farm the property	103	89	0	14	0
2.without having to personally live on the property	265	254	1	10	0
3.without having to personally farm the property	73	73	0	0	0
4.Total	441	416	1	24	0

The information from the municipalities shows that most applicants are individuals, and that they have their postal address in Norway. 25 out of a total of 441 were not in this category. One of these applicants (one person, living in USA) had her home address abroad. She originally got concession with residency and farming requirements. After concession was granted she applied for a change, and then the requirement to live on the property was dropped by the municipality. 24 companies applied for concession. All of them had their postal-address in Norway.

**Question 4: What was the outcome of the applications defined in points 1 and 2?**

Table 1 illustrates the outcome of the applications defined under point 1. The table illustrates that most applicants got concession even if they applied for concession without residence or farming requirements. The rate of refusals is less than 6 %, and most of the applicants got concession without any sort of residence or farming condition.

The decision of a concession case shall be based on an assessment of the applicants' purposes when buying the property, and be weighed according to the public needs put forward in the Concession Act section 1. According to section 9, which is a section regarding agricultural and forest property, 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 settlements in the area,
3. whether the acquisition involves an operationally satisfactory solution, and
4. whether the acquirer is regarded as qualified to work the property.

We have asked the municipalities about the reasons for the refusals. The reasons for the refusals do, of course, vary. In some cases where concession has been refused the reason has been that a personal requirement to live on the property gives better opportunities for a stable settlement in the area than a non-personal requirement. In other cases the reason has been that a personal requirement to live on the property can make sure that the property is better taken care of. Finally in some cases it is said that a personal requirement to live on the property increases the activity in the local community. In cases where the applicant has sought concession without a personal requirement to farm the property himself, the reasons behind the refusals have been that a personal requirement gives a better security for a proper farming of the property. We must add that this information has been collected in a statistical way, we do not have the municipalities' decisions.

The question of outcome can as you can see from the information in this letter be summed up in a statistical way. This method cannot, however, give an image of the total picture of the use of the Concession Act. It does not show how the individual case is handled by the municipalities, or which relevant data that has been essential to make the decision. The ministry's long experience in handling and administering concession cases has taught us that the relevant facts and the intentions of the applicants vary from case to case. The regulations in the act give a lot of freedom of assessment. A thorough examination of each case handled would therefore be necessary if the intention is to make certain that every decision is acceptable within the frames of the EEA-treaty.

We hope that this question can be discussed further when we meet later this autumn, and we will, in particular, draw attention to this in connection with the ministry's plans for future monitoring of the regulations of the Concession Act (as a part of the so-called KOSTRA). A brief overview of the KOSTRA system and the plans to use it are enclosed.

Yours sincerely,

Ellen Hambro  
Director General

Inger Grette  
Deputy Director General

Enclosure:

1. Overview of the KOSTRA system and the plans to use it as a monitoring tool.