

EFTA SURVEILLANCE AUTHORITY

PERSONS, SERVICES AND CAPITAL MOVEMENTS DIRECTORATE

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Dear Sir,

Subject: Acquisition of real estate in Norway – request for additional information

I refer to the meeting between representatives of the Norwegian Ministry of Agriculture and the Authority in Brussels on 21 February 2002, where certain aspects of the Norwegian legislation relating to acquisition of real estate, in particular the Concession Act of 31 May 1974 no 19, were discussed.

As agreed upon during that meeting, the Authority invites the Norwegian authorities to reply to the following questions and to provide the Authority with the necessary information enabling it to continue its assessment.

I. The relevant EEA Law

The Authority recalls the prevailing EEA Law in the field of capital movements. Article 40 of the EEA Agreement provides that there shall be no restrictions between the Contracting Parties on the movement of capital belonging to persons resident in EC Member States or EFTA States.

Council Directive 88/361/EEC for the implementation of Article 67 of the Treaty, as adapted by way of Protocol 1 to the EEA Agreement is referred to in point 1 of Annex XII to the EEA Agreement. Article 1 of the Directive recalls the obligation of the EFTA States to abolish restrictions on movements of capital taking place between persons resident in the EEA States. Annex 1 to the Directive lays down a non-exhaustive nomenclature of operations that constitutes capital movements.

Investment in real estate on the territory of a Contracting Party to the EEA Agreement falls within the scope of the provisions of the EEA Agreement on capital movements. Consequently, the provisions of the Norwegian Concession Act fall within the scope of application of Article 40 of the EEA Agreement and Directive 88/361/EEC.

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According to Article 2 of the Concession Act, any acquisition of real estate in Norway is subject to requirement of authorisation from the competent authorities, unless otherwise is provided for by the Concession Act. Pursuant to a ruling by the Court of Justice of the European Communities, prior authorisation procedure is, by its very purpose, a restriction on the free movement of capital that can only be acceptable on certain conditions¹. The restriction must be justified by a non-economic aim in the general interest, be applied in a non-discriminatory manner and be proportional to the aims pursued. This principle applies to the EEA Agreement. There is no doubt that the Norwegian Concession Act provides, in principle, for a prior authorisation to acquire real property because such an authorisation is a precondition to register the acquisition in the land register (cf. Article 22 of the Concession Act). As such this rule constitutes a restriction on the free movement of capital, unless it fulfils the conditions laid down by the Court of Justice for the European Communities.

II. The questions addressed in the meeting

1. Data and statistics

- 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.)?
- 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?

2. The aims of the legislation

The aims of the Concession Act are laid down in Article 1 of that Act. For agricultural land, some additional aims are laid down in Article 1 of the Act of No 23 of 12 May 1995 relating to Land.

- 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?
- ii) Are there any other considerations that are being taken into account on a general basis?
- 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?
- iv) As regards agricultural land, is the aim of having persons residing on the property more important than having the land actually cultivated?

3. Rules of procedure

Rules of procedure are found in Chapter 6 of the Concession Act.

¹ See Case C-302/97 *Klaus Konle v Republik Österreich* [1999] ECR I-3099, paragraph 39, and joined Cases C-515/99, C-519/99 *Hans Reich* [2002], dated 5 March 2002, not yet reported, paragraph 32. (The judgment is available at this website: <http://www.curia.eu.int>)

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- i) In relation to the authorisation procedure, could the Norwegian authorities explain how the tasks are divided between the local and the regional authorities?
- ii) Could the Norwegian authorities explain the procedure for handling complaints? How long does the handling of a complaint regarding a decision of the local or regional authorities normally take before it is settled by the Ministry or other competent authority?

4. The question of proportionality

In short, real property with an area less than 20 dekar² is exempted from the authorisation requirement (the limit is 2 dekar³ for dwelling lots). In areas where it is deemed necessary to avoid that houses for permanent living are being used as secondary residences (holiday homes), the freedom from the authorisation requirement may be restricted or abolished by regulations, cf. Article 5 third paragraph of the Concession Act. If the acquirer of such a property obliges himself to take permanent residence on the property, the authorisation requirement shall not apply. The authorisation procedure is substituted by a declaration procedure for acquisitions exempted from the authorisation procedure. According to the information provided by the Norwegian authorities in the letter received by the Authority on 11 December 2001 [your ref. 2001/00158], the County Land Board and the Land Commissioner handled 13,793 cases concerning concession during the period 1996-99. In 3.2% of these cases, concession was refused. In 47.7% of the cases concession was granted, but on different conditions.

- 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?
- 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.
- iii) Could public planning be a means of regulating the use of land?
- iv) What is the reason for fixing the thresholds at 2 000 and 20 000 square meters?
- 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.

5. The requirement to take residence on the land

The Concession Act provides for the requirement to take residence on the land in three different situations. For agricultural land, permanent residence on the property is a prerequisite in order to be exempted from the authorisation procedure pursuant to Article 6 first paragraph. Whether the acquirer will take residence on the land is, according to Article 8 of the Concession Act, a circumstance of significance when assessing an application to buy agricultural land. Permanent residence is also a prerequisite in order to be exempted from the authorisation procedure in areas where it is deemed necessary to avoid that houses are being used as holiday homes (cf. Article 5 third paragraph).

- 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

² 20 000 square meters (1 dekar equals 10 ar. 1 are equals 100 square meters)

³ 2 000 square meters

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- if a legal person owns the property in question (cf. Article 4 of the Concession Act)?
- 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?
 - iii) Would not renting the land to a person practicing agriculture be a proper means to achieve the aim of maintaining agricultural land?


6. Acquisition of shares etc

The authorisation procedure applies to the acquisition of shares or holdings in limited liability companies if the companies hold owner rights to property, which the acquirer could not acquire without an authorisation (cf. Article 4 of the Concession Act).

- i) What is the reasoning behind this rule?
- 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?
- iii) Why are the thresholds fixed as they are?

May I ask the Norwegian authorities to provide the above-mentioned information, together with any other observations the Norwegian authorities wish to submit, so as their reply reaches the Authority at the latest by *29 April 2002*.

Yours faithfully,


Jónas Fr. Jónsson
Director