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**L'AFFECTATION ET LA PROTECTION DU TERRITOIRE
RURAL – USE AND PROTECTION OF LAND IN THE
COUNTRYSIDE – NUTZUNG UND SCHUTZ DES BODENS IM
LÄNDLICHEN RAUM**

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PART I

A. General Background Information

1. How is your country positioned within the framework of the European Union (EU) or the European Economic Area (EEA) policies and legislation specifically in terms of rural territory?

Although Norway is not member of the EU, the EEA-agreement is incorporated in Norwegian law. The most interesting question is therefore whether some of the regulations for ownership of agricultural property are incompatible with free movement of capital.

In Norway, 78.4 per cent of the agricultural estates have less than 10 hectares of cultivated land, although the average operating unit is about 21.2 hectares. The income from the smallest estates is not sufficient for a modern family. In spite of this, most of these estates are not sold to active farmers in order to supplement their need for more cultivated land. Instead the area is rented out to neighbours. The problem is that land leasing does not solve the active farmers need for long term development and economic sustainability. Thus, the increasing degree of leasing leads to further liquidation of agricultural businesses, especially in marginal areas. As a consequence more cultivated land is taken out of agricultural production.

The purpose of The Concession Act is to regulate and control the sale of real property in order to achieve an effective protection of agricultural production areas and such conditions of ownership and utilization that are most beneficial to society. For example the legislators want to secure food production on cultivated land, preferably by its owner.

Amongst the instruments provided for by the Concession Act, is the right to grant concession on conditions deemed necessary by the authorities. A common condition is that the acquirer of an agricultural property of some size should be taking up residence on the property within one year, and that he or she lives there for a minimum of five years. This condition secures that the owner either settles down on the estate or sells the property to someone who wants to settle down or who needs the property as a supplement to another estate.

The Supreme Court of Norway has stated¹ that the obligation to stay on the property is not in conflict with the European Convention on Human Rights. The reason for this is that the person in question is free to choose whether he or she wants to acquire the estate or not.

The Supreme Court also considered the *Festersen case*² from the European Court of Justice, but found – of the same reason as mentioned above – that a requirement of residence does not represent any *interference* in the acquirers' right to freely choose his or her place of residence.

Another instrument in the Concession Act is the right to control whether the agreed price provides for a socially justifiable price development. The rationale for this rule is that financially sustainable land prices are necessary in order to secure the farmers a decent income. This instrument does not seem to be contradictory to the EEA-agreement article 40.

2. Is your country participating in other modes in European regional cooperation – if not European, which other geographical entities?

The Nordic countries (Norway, Sweden, Finland, Iceland and Denmark) cooperate on some legislation processes and other areas through the Nordic Council of Ministers. In the present context, the cooperation includes issues like rural development and sustainable production conditions.

3. Constitutional conditions for rural businesses. Are there constitutional rights safeguarding freedom of rural activities – what are the suppositions for this (ownership of land, land resources)?

Norway has some articles in our constitution from 1814, which at least formally secure free enterprise and free ownership of agricultural property.

First of all, article 105 in the Constitution is quite similar to the European Convention of Human Rights, Protocol 1, article 1 first paragraph second

¹ The *Frøholm case* (HR-2011-476-A).

² C-370/05.

sentence. The rationale is that no one is to be deprived of his or her property in public interest, without compensation to cover the loss. This general rule still applies in full surrender of land. When it comes to exploitation potential however, the compensation has – through case law during the last decades – been dependent on whether the right is already exploited, or at least there are actual plans to exploit the right. Thus, the exploitation potential is not being compensated. Neither is disposal restrictions compensated. Restrictions on agricultural operations in the breeding season for example, will in principle not be compensated.

Secondly, the Constitution article 107 protects the allodial right as a system. Allodial right is amongst the oldest legal rules in Norway and protects the family's ownership to a certain farm. Despite the allodial right, the owner may be forced to dispose of the property, unless he or she is willing to taking up residence on it. See the discussion under question one above.

Thirdly, the Constitution article 108 prohibits creation of new earldoms, baronetcies etc. The background for this rule (in 1814) was mainly to avoid major acquisition of land resources by a small number of people. Such acquisitions would have constituted a serious threat to the social and economic structure in a country where farmers owning their own land had long had a prominent role. The focus on allodial rights was probably particularly important at the time, as the king in Copenhagen in practice had abolished allodial rights three years previous in order to secure possibilities of major land acquisition in Norway.

Lastly, Norway is committed to respect human rights according to the Constitution article 110c. Among the Conventions Norway has ratified is the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4. Is there a planning or allocation system for agriculturally suitable areas?

The Norwegian Forest and Landscape Institute provides national mapping programmes related to e.g. forestry and agriculture. Part of this work is to identify agricultural and other land, suitable for agricultural purposes. Area for agriculture and forestry purposes is also designated in the Planning and Building Act, by the land-use element of the municipal master plan.

According to the Land Act, cultivated land must either be grown by the owner or a person in his service or it has to be rented out to another farmer. However, it is up to the owner of the estate whether he or she chooses to cultivate new land.

Previously Norwegian authorities had pre-emption on agricultural properties sold outside the family, if deemed necessary to use the land as a supplement to other agricultural units. In addition, there was legal authority to expropriate agriculturally suitable areas, if necessary and proportional. These rules however, were considered too radical and were abolished.

In large areas of Norway, agricultural units have certain rights on public or common land, e.g. the right to necessary timber for maintenance of farming buildings. Furthermore, the farmer may apply for additional land suitable for cultivating. This land will not necessarily be part of the farmer's estate, but may be used as supplement to the farms own resources indefinitely.

5. Describe briefly the system of authorities and courts which are decisive for matters of rural territory issues.

Matters regulated by public law are usually settled by municipal or other authorities. Those who are directly affected by the decision may appeal to the superior public authority. If the appeal fails, the part in question may appeal again to the Civil Ombudsman, which can give an opinion on the question. Furthermore, proceedings may be brought to court with or without the Ombudsman's opinion.

Public proceedings may – at most – go through three bodies; District Court, Court of Appeal and the Supreme Court of Norway. Basically the same applies for civil proceedings, although many of these need to go through a conciliation council before District Court.

In addition there is a special Land Consolidation Court for specific issues, such as land consolidation and reallocation, borderlines and limited rights over another person's property.

B. Rural Territory and Land Use

6. *Is there a legal definition of rural territory in the legislation? If not, is there a political content of this concept and in what connections is it used?*

According to the Norwegian Planning and Building Act, the land use element of the municipal master plan shall to the necessary extent show six main land-use objectives (which again may be broken down into sub-objectives). Amongst these objectives are «*Agricultural, nature and outdoor recreation objectives and reindeer husbandry*». This is the closest we come to a legal definition of rural territory in Norway. The category in question is often areas «left over» when other interests are designated.

7. *Do you feel that agricultural practices and forestry should have a safeguard against environmentally based intervention – or should these practices have the same environmental position as any other operation or activity?*

A viable countryside depends on a bearable level of restrictions. On the other hand, long-term agriculture and forestry also depend on sustainable operations. Based on these conditions, it seems only natural to have a certain level of environmental protection.

However, it also has to be taken into account that some forms of production provide better protection of environmentally central values, such as important biotopes, than pure conservation. The farmers often have knowledge of sustainable production in harmony with preservation needs. This point often seems to be ignored by the authorities and lawmakers.

In Norway, ordinary agricultural pollution is accepted even if the pollution reaches beyond the limits that otherwise apply. The main problem however, is the limitations on the freedom to adopt new farming methods, particularly in forests and uncultivated land where environmental authorities emphasize environmental awareness and outdoor recreation. In addition traditional methods, such as outfield grazing, are made impossible or increasingly difficult due to the reintroduction of predators. As a result, some farmers feel that the level of interference is close to a limit where it is no longer

possible to continue production in an economically feasible way. In fact, in some areas, the production on most farms is terminated for this reason.

On this basis, and due to the dependence of territory, the farming and forestry industry is far more vulnerable than other economic activities. At the same time, with reference to food production and biodiversity, this industry is more important than most other productions.

In conclusion; agricultural practices and forestry should have a better safeguard against environmentally based intervention, than other activities.

8. General structure of land use planning: does it cover all areas (cities, countryside) or is there a sectoral approach (agriculture, forestry, nature conservation etc.)?

As described in the answer under question six above, the Planning and Building Act divides the area into six major categories, which again may be broken down into sub-objectives. This means that the planning approach is basically sectoral.

The main categories are (1) Buildings and installations (meaning urban, suburban and industry areas), (2) Transport and other infrastructure, (3) Green structures (4) Military areas (5) Agriculture, nature and reindeer husbandry. This category also contains scattered housing etc in rural areas. (6) Water areas with shore zones.

However, there are also some cross-sectoral regulatories in order to safeguard special considerations. Examples of this are the Water Directive and protected landscapes, such as cultivated land that are important in «... *ecological or cultural terms, as a source of enjoyment or as a basis for forming an identity ...*» [sic].

C. Position of Agricultural Units

9. In terms of property law, what is the position of agricultural units?

Basically agricultural units have the same legal status as other real estates, but there are still some special regulations.

The Concession Act is already mentioned in the answer under question one above, the Allodial Act in the answer under question three and the Land Act in the answer under question four.

Another intention with the Land Act is to preserve cultivated and other fertile land for future food production and other needs. Therefore it is prohibited to divide a real estate suitable for agricultural purposes, unless the authorities give their consent. Such consent may only be given in case of societal considerations of considerable weight, or when division is justifiable in view of what the property can yield.

10. In terms of land use planning, how are agricultural areas identified?

Agricultural areas are basically identified as described in the answer under question six above. It is also an option to describe the areas more accurately, for example as cultivated land, forestry land, equestrian center, agriculturally based tourism or health care, etc.

11. What law is regulating lease of agricultural land? Are there specific rules on rural lease?

Norway has no specific rules on rural land lease in general. Lease of land for agricultural purposes however, is to some extent regulated.

Lease of cultivated land as a supplement to own cultivated land, is briefly regulated in the Land Act. Essentially it is a requirement that the agreement shall have duration of at least ten years, and that the agreement will lead to operationally acceptable practises.

Lease of one or more buildings together with cultivated or forestry land is a more traditional form of land tenancy. This type of agreement is governed by a separate law, partly in order to protect the tenant. Amongst other regulations there are provisions on accession and resignation discretion, operation, compensation, cancellation and termination of the agreement.

12. Under the CAP subsidy regime, how is the relationship between land lord and tenant regulated?

Norway is not subject to the CAP subsidy regime since the country is not a member of the EU.

Furthermore there are no regulations specifically directed against neither land lord nor tenant within the Norwegian agreement of agricultural subsidies.

PART II**A. Rural Business Law**

13. Are there political instruments for the development of rural areas?

In Norway a state owned company named Innovation Norway helps release the potential of different districts and regions by contributing towards innovation and promotion. Among other purposes the company offer expert and financial support within agriculture, tourism and environment. The company is funded partly by government grants, and partly by annual negotiations between agricultural organizations and the government.

The annual negotiations mentioned in last paragraph, also contributes more directly to agricultural units through the Norwegian Agricultural Authority, and through various support schemes. An example of this is special environmental measures in the agricultural landscape, which is given to e.g. a farmer or a municipality in order to facilitate recreation and tourism.

14. Is rural development part of your country's regional development programmes?

See the comments to question 13 above.

In addition Norway participates in 11 INTERREG-programmes through the EU-system.

15. In scarcely settled regions, are there specific models for supporting viability of villages and population?

Norway has both legal and financial instruments that may be used to promote settlement and viability in densely populated areas. Although most of the instruments in question seem district-neutral, the level of financial support and enforcement of regulations increases farther from central areas.

The legal instruments are mentioned earlier, namely the acquirer's duty to taking up residence on the property and live there for a minimum of five years, and the owner's duty to use or lease out cultivated farmland.

The financial instruments are more complex and of a wider scope. First of all some measures are aimed at the population's income, and one of the most important of these in recent years, is relocation of public sector activities in order to secure the establishment of jobs within rural areas. Moreover, Innovation Norway offers investment grants and interest support for the establishment of certain small and medium-sized companies. There is also an increased level of transport and agricultural subsidies in more marginal areas.

There are also some measures aimed at highly educated individuals, who are required to live in the northernmost parts of Norway for a certain period. An example of the benefits such persons receive is exemption from interest and principal payments on loans from the State Educational Loan Fund. Another example is reduced tax for as long as the person lives in the area.

16. Is sustainability an objective for land use planning in rural areas?

The Norwegian Constitution states that every person has the right to a healthy and sustainable environment, and to protection of the biodiversity.

Thus, sustainability is very much an objective by land use planning in Norway and especially in rural areas. This is made clear by the first sentence of the Planning and Building Act, which states that the Act shall promote sustainable development in the best interests of individuals, society and future generations.

The Nature Diversity Act has a similar provision, and states that the «... *purpose ... is to protect biological, geological and landscape diversity and ecological processes through conservation and sustainable use*».

Corresponding provisions are found in both The Concession Act and the Land Act, besides a number of other regulations.

B. Nature Conservation and Rural Business

17. Nature conservation areas are often created on state-owned land. In your country, can agricultural land or other land in economic rural use be taken for conservation purposes?

In Norway both agricultural and other land in private ownership may be taken for conservation purposes. This applies regardless of whether the land is in economic use or not. Indeed, the intention may sometimes be to preserve cultivated land. However, the conservation is not due to the value of the soil in food production, but the significance of cultural or ecological values, or «... *as a source of enjoyment or ... a basis for forming an identity* ...». Thus, some protection-based restrictions permit continued traditional use, but neither more efficient operations nor innovation.

Compensation for such disposal restrictions depends of the actual utilization or plans of utilization, at the time of preservation. Exclusion of more modern farming methods as a result of technological development provides no basis for compensation.

18. Old villages often have a cultural value which may invite for tourism and other business, Has this approach relevance for your regional policies or land use planning?

There are very few villages of this kind in Norway, due to land reallocation and consolidation over a long period. Still, there are some villages and areas in towns, of cultural value, which are often conserved by use of the Cultural Heritage Act. Such places often become tourist attractions, which then tends to result in the establishment of local tourist industries. A development like this is often encouraged by local and regional authorities, both politically and economically. Furthermore, loans and other financial support for such purposes may be provided by Innovation Norway.

Tourism-based businesses are often located outside the conservation area, but may be permitted a limited use inside the area, where the objectives are in harmony with each other.

19. Tourism in natural areas may affect and harm natural values but bring improvement for local economies. What kind of balancing instruments does your system provide for?

The Norwegian Outdoor Recreation Act gives the public access to all nature in the nation, except cultivated land. Formally, any person has a duty to act with care and avoid causing damage to the nature, but in reality this is wishful thinking. In theory, any damage or inconvenience caused by a person during stay on another person's property may be compensated.

On rare occasions with especially vulnerable nature values, the authorities may prohibit or regulate activities, access or passage, which alone or when combined with other use, may undermine the purpose of protection. Specific rules may be prescribed for different parts of the area.

According to the Planning and Building Act, respect zones may also be created in the area around the vulnerable nature.

20. Are there any restraining factors available? Is there a distinction between natural forests (involving values of biodiversity) and economic forests?

Restraining factors are described under the answer to question 19 above.

Approximately 28 per cent of the Norwegian mainland is subject to various forms of protection. These areas consist both of virgin and coniferous forests. Protection of forest areas can be either compulsory or voluntary. In recent years, voluntary forest protection has been so favourable that it has increased in scope.

About 38 per cent of the Norwegian mainland is covered by forests, whereof about 23 per cent is productive (or economic) forests and 15 per cent unproductive forests (mostly in coastal or mountainous areas). However, productive areas may be taken for conservation purposes and wood from unproductive areas may be used for economic purposes.

According to the Nature Diversity Act, protected natural forests are most often defined as (or rather within) national parks, nature reserves or habitat management areas.

21. Is it possible for rural land owners to enter agreements with nature conservation authorities in order to limit damage caused by their land use (land use restrictions involving temporary compensation)?

There are no legal hindrances for agreements between land owners and conservation authorities in Norway, but it has not been very usual so far.

However, the recently adopted Nature Diversity Act contains provisions that public authorities may enter into agreement with the landowner regarding management of an area with specific ecological functions, where active management or other types of measures are essential.

C. Land Use and Development

22. The EU and also other international organisations support regional development. The EU has several development programmes with financial support (e.g. Life). – Please give a short report about the importance and content of these instruments for your country and its regions.

Norway participates in the Interreg-program. Most available assessments appear to apply to co-operation between Norwegian and Swedish regions.

An evaluation³ based on 44 completed projects within the program, summarizes that the programme is of great regional significance. The program has led to the establishment of 48 new companies, and contributed to the establishment or maintenance of 224 jobs. Amongst other activities, 950 private and public organisations have participated in 93 new networks.

In spite of this, the program seems to have an even larger potential than those used today. For example, the report concludes that it would be an

³ ØF-report nr. 22/2005 (Østlandsforskning)

advantage if the program was anchored in regional strategies, in order to strengthen synergies between Interreg and other regional initiatives.

Another improvement opportunity would be to increase project quality by using experiences from earlier projects. This could be done by publishing a manual and by providing training for new project managers.

The users find that the programme is handled smoothly and professionally from the funding authorities.

23. The EU Natura 2000 network supports and sets mechanisms especially for the protection of biotopes and sites. In what manner has this regulation been transposed and administrated in your country (especially art. 3 and 6 of the Habitat Directive 1992)?

As Norway is not an EU-member, neither the Natura 2000 network nor the Habitat Directive applies in our country. However, Norway is part of the Emerald network as a Bern Convention party and co-operates with Sweden on the issue of predators.

The parliament has designated predator zones particularly in border areas with Sweden, where there should be viable populations of predators. Despite this, it is still possible to apply for permission to hunt individual predators which do considerable harm to livestock.

24. To what extent does your Natura 2000 list of designated areas cover land in agricultural use (including olive oil and wine areas)?

This question is not applicable to Norway.

The predator zones, however, affect large areas of agricultural production and animal husbandry. This has resulted in large losses of livestock every year. As a result, a high number of farms have been terminated.

25. Are there measures for the protection or reconstruction of natural sites damaged by forest fires?

Norway has a private forest insurance company (Skogbrand) and a national Natural Disaster Fund. Beyond this, there are none special measures for reconstruction of natural sites damaged by forest fires.

Besides, forest fires are not a large problem in Norway, which has a relatively humid climate.

26. What instruments does your system provide for, in order to protect rural waters and natural areas against diffuse (non-spot) emissions caused by local activities?

Apart from the pollution from transport and other ordinary activities common in a modern society, all pollution is prohibited in Norway unless the pollution control authority has decided to grant permission. When considering permission, the authorities must pay particular attention to any pollution-related nuisance arising from the project compared with any other advantages or disadvantages arising. Such nuisance also includes degradation of waters, waterways and other natural areas.

Despite this initial principle, ordinary agricultural pollution is permitted by law. However, the EU Water Directive also applies in Norway. This means that agricultural-based pollution within previously accepted levels, in some areas has to be reduced in order to be brought in harmony with the Water Directive.

27. What planning instruments do you have for villages and other populated rural areas?

This is referred to in the brief description of the municipal master plan under the Planning and Building Act, in answer to question number six above. This master plan comprises a social element with an implementation element and a land-use element.

The next level is a zoning plan, a land-use plan map with appurtenant provisions specifying use, conservation and design of land and physical surroundings. A zoning plan is required for the implement of major building and construction projects and other projects which may have substantial effects on the environment and society.

Zoning plans are divided again into area zoning plans where needed to clarify land use in greater detail, and detailed zoning plans when required to specify architectural details etc.

28. How are rural actors (local or their organisations) involved in the development of programmes and land use plans?

In Norway, annual negotiations are conducted between the two main agricultural organizations and the government. The framework of current programs are often defined, modified and improved during the negotiations. This includes a number of programs in Innovation Norway.

When it comes to land use planning, both individuals affected by the plans and their organizations, have the right to be heard during the process. However, only individuals whose property is directly affected may complain to superior authorities if they are dissatisfied with the outcome.

In legislative processes, both individuals and organizations are considered a consultative body.

Final Remarks

You may here give your thoughts about the situation in your country, the ongoing discussion and future aspects. Has traditional countryside a future?

In many ways the situation is acceptable for rural areas in Norway. It is still possible to make a living by the income from agricultural units, primarily because of customs and subsidies from the government.

However, the farmers are facing ever increasing challenges.

Firstly, there are often debates about high food prices. In such contexts, the Norwegian prices are often compared to the prices in Sweden and other European countries. On such occasions it is conveniently forgotten that Norway is a high cost country in most sectors, and that the food prices necessarily reflect the costs that farmers have with the production of food. Of course, this is not expressed by claiming that farmers have too high incomes, but that they are not sufficiently effective.

Obviously, this is not correct. Norwegian farmers have doubled their productivity over the past 20 years, far more than any other sector, and agriculture is now the most work-efficient industry in the country. The problem is that the topographic and structural conditions make it hard to be even more efficient, without investments too large to be economically feasible. On this basis, lower food prices can only be achieved either if the farmer pays through higher debt ratio, or if we allow increased imports with increased liquidation extent as a consequence.

Secondly, when farmers try to maintain or increase their income by innovative production or services, they either run into problems with very restrictive conservation laws or rigid rules for what is perceived as multi-functional agriculture. Against this background it is very difficult or expensive to exploit the economic potential of the property. Unfortunately, also this problem is increasing with an increasingly urbanized population which strongly distrusts the farmers' abilities to care for the environment and the interests of outdoor recreation. It does not help the situation that the lawmakers fail to see the challenges from the agricultural side, but solely from an urban perspective.

Thirdly, we know that there is a need for a significant increase in world food production over the next few decades. Norway is one of the countries with least cultivated land per capita in the world. Furthermore, due to the location so far north, the produced volume of food per hectare is less than most other places. At present, the Norwegian self-sufficiency rate for food is only 50 per cent.

Despite these facts, downsizing of cultivated land continues unabated. The reason is partly that the environmental authorities consider all other areas of greater value (including the more or less 50 per cent of Norway which is totally unproductive), and partly because it is more expensive to use other areas as building sites.

In conclusion, even if the agricultural sector in Norway has some difficulties these days, the future seems to be brighter for producers of food. Thus, rural areas and businesses in general seem to have a future. In my opinion, it is also likely that food production will be resumed at remote farms in the future, because of the need for increased food production.