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Commission I – Kommission I

AGRICULTURE, ENVIRONMENT AND FOOD PRODUCTION: THE ROLE AND LIABILITY OF THE FARMER/GROWER

AGRICULTURE, ENVIRONNEMENT, ALIMENTATION: FONCTIONS ET RESPONSIBILITES DE L'AGRICULTEUR

LANDWIRTSCHAFT, UMWELT UND ERNÄHRUNG: ROLLE UND HAFTUNG DES LANDWIRTS

National Report – Rapport national – Landesbericht

Norway – la Norvège – Norwegen

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Norwegian report – Rapport norvégien – Norwegischer Bericht

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1. Are there specific norms in your country dealing with civil liability of farmers?

In Norway, a separate set of rules solely covering civil liability for farmers do not exist. However, there are both statutory and non-statutory legislation that, depending on the circumstances, may be applicable to different occupational groups – including farmers.

For instance, there is regulatory legislation concerning limited parts of, what as a whole will form part of "agriculture", in the broadest meaning of the word. This regulatory legislation is in respect of the liability rules that will apply in those cases where damage arises in connection with carrying out the specific agricultural activity.

One example of regulatory legislation for agricultural activity is the Norwegian law of 16 June 1961 no 12 regarding various questions in connection with pasturage. According to this law, it is the owner or the keeper of a farm animal who is liable for any damage the animal may cause to crops and/or other property where the animal should not be, cf. § 7.

Another example can be found in the Norwegian law of 9 June 1978 no 49 regarding reindeer management. According to the law, it is the owner of the reindeer that will have a strict liability, no matter what the cause of the damage may be, cf. § 25.

The legislation mentioned above, also set out the civil liability that exist in the case where the damage occur in a reindeer pasture, i.e. an area where several farmers let their reindeer graze together. If damage should occur in such a reindeer pasture, there will be a case of joint and several liabilities towards the suffering farmer. Such a joint and several liability means that all the reindeer owners in the district will be responsible one for all and all for one.

Further, civil liability is held in the ordinary Norwegian liabilities law. The Damages Acts § 1-5 imposes on the owner or the keeper of a farm animal strict liability in those cases where the animal causes damage to either a person or a thing.

The examples above indicate that there is regulatory legislation that can impose civil liability on farmers.

In addition to the regulations mentioned above, there is a general rule regarding civil liability for negligent wrongful acts – liability for negligence. This legal principle is expressed in various regulations. As with other occupations or private individuals, a farmer may be deemed to have acted in a way that may be considered negligent, and therefore have a liability towards the suffering party.

A farmer will normally have one or several employees assisting with the agricultural work. In those cases where an employee acts in a way that is considered to be intentional or negligent, and the actions are not outside what it is reasonable to expect from an employee, the farmer may be liable for damages according to the regulations regarding employer's liability, cf. the Damages Act § 2-1.

I would also like to mention the more commercial sides that agricultural activity forms part of. In respect of the management, the farmer will have to enter into different types of agreements with suppliers, contractors and other businessmen. Obviously, the farmer may be hold responsible in connection with failure to meet or non-performance of obligations set out in the different contracts entered into. In such cases, the liability may vary depending on whether the actual situation is covered by the contract itself, mandatory rule of law or by ordinary unwritten legislation regarding civil liability in contractual relationships.

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Further, there are regulations regarding liability both in statutory law and unwritten rules. In particular, there are two sets of rules that may be relevant. Firstly, there is the law regarding product liability and secondly, the Norwegian law regarding protection against pollution and refuse (the Pollution Act) are of importance.

On principle, farmers have an objective liability for damages due to pollution based on the Pollution Control Act. However, in practice this liability is limited as ordinary pollution from agriculture is allowed, cf. question 5.

Under the circumstances, a farmer may also be subject to the rules regarding strict liability. Considering whether a damage falls within strict liability will be a definite consideration. To set out in general the cases where a farmer will be held responsible is therefore rather difficult. The outcome will depend on a balancing of interests where one has to ask the question – which should be carrying the risk for the event that caused the damage – the wrong doer or the suffering party.

2. Does the implementation of Council Directive 85/374/EEC of 25th July 1985 concerning liability for defective products apply to agricultural products?

In the Council Directive 85/374/EEC of 25 July 1985 concerning product liabilities, agricultural products are comprised in the definition, cf. article 2. However, the directive has made an exception for "primary agricultural products", meaning agricultural products that have not been processed in any way, cf. article 2.

According to Article 15 no 1a), the member states may allow for the product liability to also include "primary agricultural products" when carrying out the directive in national legislation.

In Norway, the directive is implemented in the Product Liability Act. This legislation is more extensive than the directive as the law, in accordance to article 15, includes both processed and primary agricultural products cf. the product definition in § 1-2. The reason why both all products are included is that the legislators considered such delimitation for agricultural products difficult. In the legislators' view, the solution chosen in the directive would cause obvious border case problems.

Despite having avoided difficult border cases by including both processed and primary agricultural products, there may be other challenges in respect of faulty agricultural products and when placing the liability.

In modern agriculture, different types of fertilizers, grain feed and chemicals etc are being used to a large extent. When, in this type of agriculture, defective agricultural products arise it is easy to believe that the fertilizer product or the eradicant causes the defect. In these cases it may be difficult to know what is the reason for the defect. However, in those cases where the defect is caused by improper use ofthe substance, the farmer may be liable.

Fruit, berries or vegetables for instance are harvested immediately following spraying at a point where decomposition of harmful substances has not yet taken place. Or the eradicant is being used in a concentration that is too strong. In respect of incorrect use (use contrary to the instructions given by the producer of the eradicant), the farmer will usually have sole liability (as owner, user, seller or producer). Such usage must be considered negligent and will therefore be comprised by the liability regulations also in accordance with the general principles of the law of damages that still are valid in addition to the Product Liability Act.

If the defect is due to a development fault or any other fault to the eradicant, the producer of the eradicant and the agricultural producer may have joint and several liability. If the agricultural producer compensates the suffering party for his loss, he will normally be entitled to legal remedy from the jointly responsible producer of the eradicant. Further, the size of legal remedy will depend on the basis of liability and the conditions otherwise cf Damages Act §5-3 no 2.

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Farmers may be strictly liable for damage caused by an agricultural product, processed or unprocessed, not offering the level of security that a user or the general public within reason could expect, cf. the basis of liability in § 2-1.

3. When implementing Directive 91/676/EEC of 12th December 1991 concerning the Protection of Waters against Pollution caused by Nitrates from Agricultural Sources, are the farmers included as subjects of civil liability for environmental damages?

The nitrate directive has been implemented in Norwegian legislation in the manure regulations, regulation 2002, 02.11 no 337. The regulation is founded on the Pollution Act of 13 March 1981 no 6 and the Agriculture Act of 12 May 1995 no 23. Inter alia, the regulation is aiming at preventing pollution from manure in waterways, groundwater etc.

Chapter 4 of the manure regulations set out conditions regarding liability in those cases where there is a breach of the regulations. Chapter 4 of the regulations does not contain conditions directly imposing liability on the farmer. However, if the farmer acts contrary to the directive other types of sanctions will come into force. A person responsible for pollution may be imposed to pay enforcement damages to the government, and/or lose parts of his subsidies, cf. § 13 of the regulations.

It is worth noting that Norway does not have similar problems to those in Denmark and the south of Sweden. For the latter geographical areas where ground water is the only available source for drinking water, the problems of nitrate emission are substantially more serious. This is due to the fact that in the mentioned areas there also is extensive and dense agricultural activity going on. Those countries that Norway usually compare against has a completely different size of nitrate emissions.

This is mainly due to Norway having alternative sources of drinking water, for example surface water. In addition, one should stress that agriculture in Norway is much more spread out, so that the concentration of pollution/emissions are smaller.

According to the agricultural authorities, it is difficult to imagine tracing nitrate emissions to a specific farmer. In those cases where one finds a polluted well etc it may be traceable, but it is still doubtable whether the farmer would be made liable at law, cf. above.

4. Does a code of good agricultural practices exist in your country? Does it include any regulation of civil liability for environmental damages?

“Good agricultural practice” is a concept we recognise in Norwegian agriculture. The norm is not standard, which means that one has to look at each individual case when considering whether the agricultural unit is run in accordance with good agricultural practice. Whether the practice is in accordance with good agricultural practice will, inter alia, depend on facts linked to the cultivated landscape, biological diversity, run-off, erosion and air pollution.

The concept is reflected in regulatory legislation such as in connection with storage of manure and silage effluent etc., cf. The nitrate directive Article 4 no 1 and Annex 2 A cf. the Norwegian manure regulations mentioned above. In this legislation a type of quality norm exists, indicating what is “good agricultural practice” in each individual case.

As the concept is general, specific sanctions cannot be imposed when there is a breach. Therefore, a farmer cannot be subject to civil liability, however, a breach may be of consequence to subsidy schemes etc.

In addition to the Government preparing guidelines, brochures etc, the industry has prepared its own system – KSL – agricultural quality control (“kvalitetssikring i landbruket”, with the intention of securing good and proper food production etc. This means that

production of plants, farm animals, health, environment and security, and environmental measurers are all covered by the quality control system.

5. Is there any regulation concerning diffuse contamination in your country?

The most important regulations against pollution in Norway will be found in the Norwegian Pollution Control Act ("forurensningsloven"), cf. law of 13 March 1981 no 6. When the law was passed the intention was, inter alia, to gather all regulations against pollution in one and the same law.

The primary purpose of the Pollution Control Act is to prevent pollution as much as possible, cf.§1.

Technically, the law has been drafted for this purpose with an ordinary ban by stating that basically all pollution is prohibited, cf. § 7 first sentence. If pollution is to be allowed, it will need special legal grounds, Such legal grounds may be found in:

– the Pollution Control Act itself, cf. § 8
– regulations based on the Pollution Control Act, cf. § 9
– or by actual permission from the authorities in each individual case - concession, cf. § 11.

As mentioned earlier, ordinary pollution from agriculture is permitted pursuant to this Act insofar no special regulations have been issued pursuant to section 9, cf. § 8 first section. Therefore the provisions are of less importance for the farmer/grower.

In addition to the primary purpose, the law is especially aimed at regulating those cases where pollution has already occurred as well as rules for compensation and punishment when breaching the regulations of the law.

In chapter 10 of the Pollution Control Act, we find the ordinary penal provisions for those who pollute. The first paragraph contains the ordinary sentencing framework – fines or imprisonment of up to 3 months, or both.

The main regulations emerges from paragraph a, which is closely linked to the ordinary ban against pollution in § 7 first sentence. What will be considered pollution is defined in § 6 of the Act. Pollutive activities which are allowed in accordance with the regulations, cf. § 9 or by a one off concession, cf. § 11, are not at variance with the law, and punishment will of course not be considered. On the other hand, there may be punishment if the measures for protection against pollution set out in the concession are not being met.

The violations covered in § 78 are set out as five alternatives. The alternatives do not exclude each other, so it is possible that a breach may be subject to several of the alternatives.

In addition the polluter may be liable to pay compensation for pollution damage regardless of any fault on his part and the authorities may also impose pollution fine payable to the state as well as the authorities may claim the costs, damage or loss pursuant to any arrangements that has been established to prevent pollution on behalf of the polluter, cf. chapter 8 and 9.

The Pollution Control Act is without a doubt the cornerstone of the regulations regarding pollution, but in addition there are other legal regulations that are important.

The Act of 14 June 1985 no 77 – The Planning and Building Act ("plan- og bygningsloven") – contains provisions regarding land disposal and is relevant to the pollution problem. The purpose of the provisions is, inter alia, to promote utilisation of the resources that maintain environmental considerations as well as not to strain the environment unnecessarily. Based on these regulations, different regulative decisions may be passed to prevent environmental pollution, for example through a regulation plan.

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The purpose of law of 11 June 1976 no 79 that controls products, is to prevent that a product causes pollution. Further the law warrants regulations to prevent pollution from products.

6. When using phytosanitary products and pesticides, are there specific limits as to the use in respect to the quantity and in respect to the locations where they can be used?

As chemical pesticides and products may be dangerous to human health and damages the environment, it is important to reduce the use of chemical pesticides in farming. Based on this, there are naturally limitations to the use of pesticides.

The limitations are made especially to cover the use of such pesticides.

The use will vary depending on each individual pesticide. As such, there are no general rules for the use of such pesticides. Norway has a national set of rules for approving pesticides and it can be maintained that we have a restrictive acceptance policy compared to may other countries in Europe. The use of pesticides is, due to the environmental impact, regulated quite extensively.

The individual manufacturer is responsible for labelling the pesticide, and in addition the labelling has to be approved by the Department of Environment, Food and Rural Affairs at the Norwegian agricultural supervisory board ("Landbruksdepartementet v/Statens landbrukstilsyn"). The approval includes class of risk, range of use, taxation class, standardised area dosage, packaging, size of packaging, labelling, user instructions, protective measures etc.

Each individual pesticide has to be labelled. According to the Pesticide Act, cf. the pesticide regulations, it emerges that each pesticide shall be labelled with an exclusively Norwegian text approved by the Norwegian agricultural supervisory board. The label must clearly state where. how and in what dosages the pesticide is to be used.

As stated in § 8 l), it shall clearly state inter alia:

> "indication of where, how and in what proportions the substance should be used (instructions) as well as the following sentence: It is prohibited to use the substance contrary to approved range of use or treatment time limit. or to exceed the maximum allowed dosage/concentration"

Use contrary to the indications set out on the label is prohibited in accordance with regulations of 14 December 2000 no 1545 regarding pesticides, cf. § 18 cf. § 8 l).

In addition, the regulations set out in details how to store pesticides.

Further, not just anybody is allowed to buy and use pesticides. Exceptions have been made for use of macrobiotic substances and substances approved for use in ordinary gardens and for indoor plants etc, cf. § 24, that may be used by everybody.

People that are to purchase and use pesticides for professional usage must be authorised to do so by the authorities. Furthermore, only people over 18 years of age may be authorised to purchase and use pesticides.

The Department of Environment, Food and Rural Affairs informs that on several occasions there have been filed complaints with the police for breach of the regulations.

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7. Are there any vulnerable zones or special zones of protection included in those zones in regard to which the use of chemical products is prohibited or restricted?

The manure regulations of 02.11.2002 no 337 ("husdyrgjødselforskriften"), which implements Directive 91/676/EEC, correspond with the directive in respect of maximum limits for use of fertiliser. In areas that have been defined as vulnerable in the EEC's directive for nitrate, shall the supply of manure not exceed 17 kg nitrogen pr decare.

The above-mentioned limitation applies to areas with run-offs to the Glomma river system, including Lågen and Vorma, the Halden river system and further areas with run-offs to the Oslo fjord between the Swedish border and Strømstadtangen lighthouse as well as the inner parts of the Oslo fjord.

8. In the case of non-compliance with the before-mentioned limitations, is there a civil liability of the farmer or is it considered as a simple administrative infringement?

If the farmer does not act in accordance with the limitations or prohibitions the authorities have drafted in respect of vulnerable or protected areas, the farmer may be held responsible. However, there is no warranted legislation that directly imposes civil liability for damages.

The manure regulations warrant sanctions where the farmer may incur fines as well as deductions in his production subsidies. In addition, it should be mentioned that the Pollution Control Act chapter 10 is applicable in the case of breach of the regulations. As mentioned above, a person held responsible may be given fines or imprisonment of up to 3 months in the case of intentional or negligent conduct.

The circumstances may further be such that the farmer will be considered to have been negligent. In this case one must assume that the person in question may be held responsible by way of claim for damages in accordance to statutory and unwritten law (culpa).

9. Is it planned to provide for licences or administrative authorisations for the realisation of certain activities of the farmer which may affect the environment? If yes: Is the action of the farmer causing environmental damages, even when acting within the limits of the licence, subject to civil liability of the farmer or is it covered by the licence?

Prevailing regulations in Norway regarding activities that may damage or be of hindrance is already based on a licensing system. As mentioned above, in principle, all pollution is prohibited, cf. the Pollution Control Act, cf. clause 5 above.

This principle is valid for different types of activities that the different businesses are responsible for, including agricultural activities. Activities that are to be exempt from the principle of all pollution being prohibited need permission from the authorities. Such permission will be granted by way of a concession, unless the activity is permitted according to the exception rule in the Pollution Act, cf. § 8, or a regulation has been drafted based on the Pollution Act that is exempt from the licensing duty. In addition to concession we are aware of other terms with the same meaning, such as: permission, authorisation, approval, permit, exception, dispensation and licence.

In respect of liability for damages that may be imposed, one has to, according to the Pollution Act, differ between pollution that is prohibited and pollution that is allowed.

When pollution happens contrary to the prohibitions in the law, there is an objective liability for damages. In respect of pollution from a business that has been given permission there would not be possible to impose liability for damages, but this would have to be somewhat modified. Damages may be imposed, but this will presuppose that the pollution is exceeding the critical level set out in § 2 of the neighbour law ("naboloven") of 16 June 1961 no 15 regarding legal relations between neighbours. According to the mentioned legal provision nobody must not have, do or start something unreasonable that is damaging or of hindrance to neighbouring properties.

10. Are there any specific norms of civil liability concerning agricultural activities causing environmental damages within protected areas?

In the Preservation of Natural Resources Act ("naturvernloven") of 19 June 1970 no 63, there are regulations setting out a system ensuring protection of vulnerable natural areas.

The Preservation of Natural Resources Act sets out five different types of area protection. Protected areas may be;

– national parks
– special landscape areas
– nature reserves
– biotop preservation and
– natural environment.

The Preservation of Natural Resources Act set out some, rather vague, framework for what implications preservation regulations may mean in practice. Within these regulations it will be the actual resolution that decides what the actual and practical implications the preservation resolution will have in the particular area. An important reason for deciding upon area preservation is to make sure that one, inter alia, prevent pollution in the area that is to be protected. Based on this, one can imagine that a preservation regulation imposes restrictions or prohibitions regarding use of chemical products in the preservation area.

11. Does the application of the polluter pays principle have any concrete manifestations with regard to agricultural activities?

The principle that – the polluter pays – emerges in the Pollution Act itself, cf. §2 no 5. As mentioned above, the law is in respect of all kinds of activities, including agricultural activities. However, the polluter-pays-principle is to a lesser extent actually reflected in regulations regarding agricultural activities.

The principle is indirectly reflected by imposing environmental tax etc in connection with different types of emissions of pollution. That the principle has been modified is connected with the authorities in many cases has gone for a "carrot" rather than a "whip". In the case of subsidies and similar arrangements the authorities have focused on getting the farmers on the right track regarding environmental issues, rather than focusing on sanctions when the regulations have been breached.

12. Is there any jurisprudence in your country related to the civil liability of the farmer for environmental damages? Which subjects are concerned?

So far our search has not found any specific jurisprudence related to the civil liability of the farmer for damages.