The function of law in the transition of the Swedish energy system - driver or obstacle?

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Law as a driver in the transition

*Economic incentives (examples)*

- Environmental taxation (e.g. of flights)
- Act on electricity certificates
- Act on emission trading (based on EU directive)
Law as a driver
Standards in connection with licensing etc.

Environmental Code 2:5: Operators etc. shall
- “conserve … energy …”
- ”Preference shall be given to renewable energy sources.”

Land and Environmental Court of Appeal (examples)
- License condition on energy conservation in paper industry:
  Annual average consumption may not exceed 1,2 MWh electricity per ton tissue, nor 6,3 GJ heat per ton tissue (2007:56, Swedish Tissue)
- Court decision on prioritising renewables:
  Operator must substitute oil with heating material containing little or no elements of non renewable resources (2015:27)
“The purpose of this Code is to promote sustainable development …

The Environmental Code shall be applied in such a way as to ensure that:

1. human health and the environment are protected against damage and detriment, whether caused by pollutants or other impacts;

2. valuable natural and cultural environments are protected and preserved;

3. biological diversity is preserved;

4. the use of land, water and the physical environment in general is such as to secure a long term good management in ecological, social, cultural and economic terms

5. reuse and recycling, as well as other rational use of materials, raw materials and energy are encouraged with a view to establishing and maintaining natural cycles.”
Law as an obstacle
Court balances environmental interests

Land and Environmental Court of Appeal cases – examples

- Case 2005:66. Three windmills. Developing of wind power more important than cultural landscape.

- 2011-11-23 (M 824-11 etc.). 80 wind mills more important than reindeer herding and nature conservation values.

- Court argued: Sweden’s international climate policy obligations + national political objectives for wind power more important in the view of “sustainable development”.
Law as an obstacle
Court balances environmental interests

- Cases where location of wind mills was not excepted due to conflicts with other interests + (often) lack of alternative places (in EIA), e.g.;
  - 2017-11-06, M 3892-17 (birds and bats)
  - 2013–08–23, M10072–12 (birds)
  - 2009:48 (off shore, cod nursery ground)
Law as an obstacle species and habitats (biodiversity)


- Protected areas (nature reserves, Natura 2000 etc.)

- General protection of many species – prohibited to “deliberately” damage or disturb the species.

  Case law: “Deliberately” = aware of and accepting the risk of damage or disturbance. Example: locating a wind mill close to eagles nests.
Law as an obstacle
Ecological water status

- Article 4 Water EU Framework Directive

Obligation to not issue a licence if ecological water status is deteriorated = **one** single quality factor in the water body may enter into a lower ecological status class (Weser Case: Case C-461/13).

Affects e.g. new hydro power installations

- Sweden is obliged to obtain “good” water status. Will lead to stricter environmental conditions for many existing hydro power installations

- Swedish legislation is about to change …
Law as an obstacle
Licensing and planning procedures

- Costs and time – hamper willingness to invest?
- Participation and appeals
- Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
Law as an obstacle
Municipal self government

• 1:1 Instrument of Government (regeringsformen)
• Municipal physical monopoly (Plan- and Building Act)
• “Municipal “veto” in connection with licensing of all wind power installations of a certain size (Environmental Code)

Research in environmental law

- What is the legal situation today?
  - What drivers and obstacles can be identified?
  - How does the law implement adopted political decisions?
  - How does Swedish law comply with EU law?

- How should the future law be formulated?
  What are the alternatives? What are the consequences?
Thank you!