

Intensive cultivation of forests

A future scenario in Sweden is a significantly increased intensive cultivation of different kinds of forests. The biomass produce may be used as fuel instead of e.g. oil and coal. What are the legal constraints to such cultivation? Should we relieve existing legal restrictions in order to facilitate implementation of a new energy and climate policy?

The Swedish Ministry of Agriculture has in 2008 assigned to the Swedish University of Agricultural Sciences to carry out a broad survey on the possibilities for intensive cultivation of forests on previous agriculture land or forest land, provided the areas lack high nature conservation values. One part of the commission is to identify legal obstacles and uncertainties. A report is expected in September 2009.

Intensive cultivation of forest varies significantly depending on the crop used. E.g., the circulation period (between harvests) is for Salix (“energy forest”) 3–5 years and for Contorta (pine) 25–40 years.

Forestry or agriculture?

A crucial legal issue is if a certain kind of cultivation should be considered to be a form of forestry or agriculture. Different rules apply to these two forms of land use. If the cultivation is a form of forestry, it will have to comply with the Forest Act’s special rules on forest management and nature conservation. If instead the cultivation is a form of agriculture, there are no management provisions but other specific provisions apply for the conservation of nature and cultural values. There are also specific restrictions for the use of fertilizers in agriculture (based

on EU law). Also, certain EU subsidies apply to agriculture but not to forestry. A reasonable interpretation of the valid law today leads to the standpoint that cultivation of Salix should be regarded as a form of agriculture while other cultivations are to be seen as kinds of forestry.

Should we accept environmental risks for the sake of the environment?

Should we relieve existing environmental legal restrictions concerning e.g. dewatering of wetland, using foreign tree species, cloning pines and fertilizing, if these legal reliefs facilitate the implementation of a new energy and climate policy? Is this the pathway to sustainable development even if it leads to increased water pollution (nutrients), monocultures instead of forest diversity and altered landscape? This is to some extent a matter of national politics, but Sweden can never compromise with the environmental legal requirements from EU; it is e.g. not possible to allow fertilizing that worsens water quality in contravention with so called environmental quality standards adopted according to the Water Framework Directive. Such standards (e.g. limits for the maximum content of nutrients) may indeed serve a considerable obstacle to intensive cultivation of forests in certain areas.

