

Legal preconditions are crucial for wind power expansion

The design of legal and administrative systems is crucial for the development of wind power. In Swedish law there are several counteracting factors and other barriers for wind power expansion. Less permits and strengthened state controlled planning, as in some other countries, could facilitate expansion.

A slow Swedish wind power development

One starting point for this study is that the Swedish wind power development has been relatively slow in a European perspective, despite the good economic conditions compared to other energy sources, and despite the political objectives existing since the 1970's to increase Swedish wind power production. Another starting point is that the law (legislation, legal principles, etc.) determine the key conditions for the construction and operation of wind turbines. This includes, for example, permits and other decisions required as well as environmental standards that must be met to allow the expansion.

Comparative study of legal conditions including Denmark, Norway and England

The work is carried out as a comparative study of the Swedish judicial system with respect to the development of wind power compared with the corresponding legal functions in Denmark, Norway and England. The purpose is to clarify features in the legal system that may explain differences in the rate of expansion between the countries and, subsequently, in a general way to discuss the appropriate legal instruments for the implementation of wind power development.

Legal barriers for wind expansion in Sweden

The results of the analysis of the Swedish law demonstrate active barriers to an expansion of Swedish wind power. The combined system of concessions and physical planning is probably the main obstacle. Demands for several permits according to the Environmental Code and the Planning and Building Act, and sometimes even detail building plans, implies that the procedure from initial application to final decision often takes more than five years, occasionally ten years or more. The reason is not only the number of permits needed, but also the right to appeal to these decisions, often in several instances.

General rules of consideration (environmental standards) are another important barrier. Quite often, the environmental objective to promote renewable energy is set against other environmental objectives such as protecting the landscape or culture historic environment, or preserving the biodiversity.

Municipalities have strong influence

Another important conclusion is that Swedish municipalities have strong influence over the decisions on wind farms, through the municipal monopoly of land use planning under the Planning and Building Act and by the municipal right of veto under the Environmental Code. A legislative amendment of the Code in 2009 means the municipality must approve any wind project of significance. Moreover, the municipality need not disclose a reason for refusing a wind project.

Long processing might discourage investors

An overall conclusion is that the willingness to invest in wind power is likely to be adversely affected by the risk of long legal/administrative processing and, simultaneously, that the outcome is uncertain because of imprecise rules of consideration (legal uncertainty). Another conclusion is that the location of wind mills in Sweden is not determined solely by the wind conditions and the expected impact on the environment but

also, and perhaps more, of which municipality that is in favour of wind power development.

More straight forward in other countries

The examination of the corresponding legal functions in other countries show major differences compared to Sweden, not least with regard to spatial planning systems. It is likely that the overarching control over the physical planning in Denmark has facilitated the strong wind power expansion. Generally should be noted that there seems to be a connection between state control over land use planning and the ability to effectively implement national objectives at the local level. In addition, municipal veto exists only in Sweden among the countries studied and the number of permits required is lower in Denmark and England than in Sweden.

A realization of the Swedish wind power planning goal will presumably require changes of the law. The legal framework governing the planning and installation processes could be improved by removing the general permit requirement for large wind mills and by breaching the municipal planning monopoly.

