

Energy and Nature Conservation

***Perspectives on habitats and species
protection in times of energy crises***

Presentation at 10th EELF Conference

***Environmental Law in Transformation
Legal Implementation and Impacts of the
European Green Deal***

Leipzig 30 August – 1 September 2023

***Emeritus Professor Jan Darpö
Juridicum/Uppsala Universitet***

Ed. 30/8-23



The Starting Point

Invasion of Ukraine / Energy crises

v.

Biodiversity

- ***...critical viewpoints from a “green perspective” (CBD and biodiversity targets, Bern Convention, EU Biodiversity strategy, nature conservation directives)...***
- ***...viewed from a Nordic country by me 😊...***
- ***...ex wind farming (**Wi**), solar panels (**So**), hydro power (**Hp**) and mining (**Mi**)...***



Overarching question

Is biodiversity thrown under the bus

...or more precisely...

...sacrificed (together with other interests) on the energy altar..?



REPowerEU

Affordable, secure and sustainable energy for Europe

Key components/general trend:

***Reg 2022/2577, REDIII, Council's endorsement
16 June 2023, COM communications, etc.***

- **Loads of political mumbo-jumbo, very little analysis, avoidance of systematic issues...**
- **Reg 2022/2577 – very little impact...**
- **...but REDIII..!**



REDIII...

- **Planning, designate go-to-areas (Renewable Acceleration Areas, RAA) to meet 2030 RES targets...**
- **Coordination (contact point) and simplification / streamlining of permit procedures...**
- **"Good and relevant" basis for decision-making (SEA and EIA)...**
- **Time frames and positive silence rules...**
- **Energy production is Overriding Public Interest (OPI)...**



Opposing/Competing Interests

Conflicts between different environmental interests...

On the one hand: Energy supply, climate change, urgent need of green transition, and

On the other:

- ***Biodiversity (species protection & nature conservation): Wi, Hp, Mi, (So)***
- ***Water quality: Wi, Hp, Mi***
- ***Soil quality (environmental liability): Mi***



Other fundamental interests

- National (NATO) defence: **Wi, So**
- Landscape, cultural heritage: **Wi, Hp, Mi**
- Food safety, farmland: **So**
- Local opinion, municipal interests: **Wi, Hp, Mi**
- Sami land-use rights: **Wi, Hp, Mi**



Discussion points

- **Who's in charge..?**
- **Planning, RAA...**
- **Overriding Public Interest (OPI)...**
- **Deliberate...**
- **Set time frames for decision-making...**
- **Systematic issues...**



Her master's voice?

*Lengthy administrative procedures are one of the key barriers for investments in renewables and their related infrastructure. These barriers include the complexity of the applicable rules for site selection and **administrative authorisations** for projects, the complexity and duration of **the assessment of the environmental impacts of the projects**, grid connection issues, constraints on adapting technology specifications during the permit-granting procedure, or staffing issues of the permit-granting authorities or grid operators. In order to accelerate the pace of deployment of renewable energy projects it is **necessary to adopt rules which would simplify and shorten permit-granting processes.***

Ex. Convergence programme of SE 2023



Permit regime in RAAs

- **SEA for each or all RAAs, ensuring appropriate mitigation measures...**
- **EIA; reversed burden of proof (“highly likely”...”significant adverse effects”); separate decision...**
- **Repowering: EIA only for extension...**
- **Time frames: Validation of application: 14 days; screening 30(15) days; decision: 1 year (6 months)...**

Environmental concerns, simplification..?



Overriding Public Interest

- **All renewable energy projects = OPI**
(**Preamble:** except when clear evidence of major adverse effects on the environment...cannot be mitigated or compensated...simplified assessments)...

Nature conservation directives (92/43, 2009/147), but also WFD (2000&60)...

Allows for “simplified assessments”..?



Deliberate

- **Not deliberate if appropriate mitigation measures and closely monitored, takes further measures if damage...**

In line with administrative practise and case-law in most MS...



Time frames for decision-making outside RAA

- **Validation: 1 month; decision: 2 years (1 year)...**
- **Positive silence rules ("tacit agreement")...**

Requires an independent procedure for the validation of the EIA (only for renewables)..?



Systematic issues

- **Public Participation & Access to Justice;**
SEA v. EIA
- **Different directives (and Regulations):**
Synergies or contradictions, CJEU's case-law



Conclusion

A shift from the “no harm principle” to the “not know principle”,

or the EU Principle of Ignorance..?



....and finally...

THANK YOU FOR LISTENING..!



jan.darpo@jur.uu.se

[www.jandarpo.se/In English](http://www.jandarpo.se/In%20English)