

How to use eco-labels to procure sustainable furniture?

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Abstract

The research question of this thesis is how eco-labels can be used to procure sustainable furniture and to address what the limitations to the use of eco-labels are when contracting authorities procure furniture with environmental or sustainable objectives. There are three levels of limitations on the use of eco-labels in the Public Procurement Directive: the basic principles of public procurement, the conditions for the use of labels in Article 43, and the scope for the use of label requirements with environmental or social characteristics in the three criteria which allow to require labels. Eco-labels can be used in the procurement of sustainable furniture, to the extent that they do not violate the basic principles of public procurement. But it still requires a case-by-case analysis based on the conditions of the eco-label required.

Foreword

To my dear girls, Isabelle and Elenora,

*all the efforts for sustainable development are for a better living environment for
you and your friends.*

Abbreviations

AC	Award Criteria
CP	Contract performance
CSR	corporate social responsibility
EU	European Union
FSC	Forest Stewardship Council
GDP	gross domestic product
GPP	Green Public Procurement
IEC	International Electrotechnical Commission
ISO	International Organization for Standardization
LOU	Lagen om offentlig upphandling (the Public Procurement Act in Swedish)
MEAT	most economically advantageous tender
NGO	Non-governmental organisation
PPA	Public Procurement Act
SDGs	Sustainable Development Goals
TS	Technical Specifications

1. Introduction

1.1 Purpose and Research Questions

The “environment” and “development” are inseparable because “development” is the effort we all make to improve our lives in the “environment” we all live in.¹ In order to keep current economic development without compromising the planet’s resources for future generations, people need to make development sustainable.² The Sustainable Development Goals (SDGs) of the 2030 Agenda were set up by the United Nations General Assembly and are designed to be ‘the blueprint to achieve a better and more sustainable future for all’.³ The core of the SDGs for the 2020-2030 decade is ‘the need for action to tackle growing poverty, empower women and girls, and address the climate emergency’.⁴ In order to achieve the goals, both public sector and private sector have responsibilities to do business, invest and innovate.⁵

EU’s Public Procurement Directive was revised in 2014 and increased the ‘importance placed on green, social and innovative considerations in the public procurement processes.’⁶ When the public sectors procure works, supplies, or services and the value of the contract is estimated to exceed the thresholds, the contracting authorities are required to select the economic operator(s) in accordance with the procedures of the Public Procurement Directive and then obtain the works, supplies or services through public contracts.⁷

Public purchasers use different tools to identify the qualifications of suppliers in public procurement. Eco-labels are used by contracting authorities to obtain information on the environmental characteristics of products and services.⁸ This is because eco-labels shall provide ‘verifiable and accurate information, that is not misleading, on environmental aspects of products and services’ in order to stimulate the potential for market-driven sustainable

¹ World Commission on Environment and Development (WCED), Report of the World Commission on Environment and Development: Our Common Future (1987), <<http://www.un-documents.net/our-commonfuture.pdf>> accessed 3 December 2021, p7.

² Ibid, 16.

³ UN <<https://www.un.org/sustainabledevelopment/sustainable-development-goals/>> accessed 24 May 2022.

⁴ UN <<https://www.un.org/sustainabledevelopment/development-agenda/>> accessed 24 May 2022.

⁵ SDG <<https://sdgs.un.org/topics/trade>> accessed 17 May 2022.

⁶ Marta Andhov, ‘Contracting Authorities and Strategic Goals of Public Procurement – A Relationship Defined by Discretion?’ (2019) in *Discretion in EU Public Procurement Law*, IECL Series (Studies of the Oxford Institute of European and comparative law: volume 26), p117.

⁷ Article 1(1), (2) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L94, 28.3.2014, 65-242.

⁸ Bogdana Neamtu & Dacian C. Dragos, ‘Sustainable Public Procurement: The Use of Eco-Labels’ (2015) 10 Eur Procurement & Pub Private Partnership L Rev 92, p92

environmental improvement.⁹ In the *Dutch coffee* case, The Court held that the Max Havelaar eco-label had social objectives and was produced in accordance with fair trade principles, and therefore had no link to the subject matter of the contract.¹⁰ Attorney General Kokott, however, considered fair trade to be relevant to determining the “best value for money” and noted that:

Of course, the taste of sugar does not vary depending on whether it was traded fairly or unfairly. A product placed on the market on unfair conditions does however leave a bitter taste in the mouth of a socially responsible customer.¹¹

Responding to the increased social and environmental requirements demanded for sustainable development, Green Public Procurement (GPP) has been developing to contribute to sustainable consumption and production by using the purchasing power of Europe’s public authorities to choose environmentally friendly goods, services and works.¹² Private regulations and standards can help promote goals and strategies of sustainable development, as well as make efforts to achieve them.¹³ As such, contracting authorities are increasingly relying on private standards, certification and other transnational private regulations in their procurement policies at all levels of governance.¹⁴ However, private regulations and standards have been criticized as barriers that distort international competition, ‘as in any process where general requirements must be turned into explicit conditions, there is room for discretion.’¹⁵

Scholars have contributed many articles arguing that labeling as a standard or private regulation affects international trade positively or negatively.¹⁶ In 2014, the Public Procurement Directive revised and added a separate article on labels and scholars analyzed the purpose of using labeling and its impact, also pointing out that the label article still has a lot of uncertain

⁹ It is identified by the International Organization for Standardization (ISO). In Global Ecolabelling Network (GEN), Information Paper: Introduction to Ecolabelling, 2004. <<https://globalecolabelling.net/assets/Uploads/intro-to-ecolabelling.pdf>> accessed 14 May 2022. See Ibid, 94.

¹⁰ Case C-368/10, *Commission v. Netherlands* [2012] EU:C:2012:284.

¹¹ Ibid, para 110.

¹² COM 2008/400, GPP is a voluntary tool led by DG JRC on behalf of DG Environment of the European Commission. See in Europa, <https://ec.europa.eu/environment/gpp/index_en.htm> accessed 13 May 2022.

¹³ The standards set up by various labeling organisations ‘has serious trade implications: at the same time, it represents both a trade barrier and a trade enhancer in the globalisation of the supply chain’ in M. A. Corvaglia, ‘Public procurement and private standards: Ensuring sustainability under the WTO Agreement on Government Procurement.’ *Journal of International Economic Law* 19.3 (2016) 607-627. ISSN 1369-3034 <<https://doi.org/10.1093/jiel/jgw053>> accessed 15 April 2022.

¹⁴ Ibid, 4.

¹⁵ Jörgen Hettne, ‘Public Procurement and European Standards: Fair Competition or Limits to Discretion?’ In *Discretion in EU public procurement law* (2019). Hart Publishing (Studies of the Oxford Institute of European and comparative law: volume 26). 158.

¹⁶ T. Büthe, and W. Mattli, ‘International Standards and Standard-Setting Bodies.’ (2010) *Oxford University Press* <doi: 10.1093/oxfordhb/978019214273.003.0020> accessed 15 April 2022. And Haryo Santoso, Sudharto Hadi and Purwanto, ‘Understanding and Efforts of Furniture Industries Facing Eco-Labeling in Central Java and Yogyakarta-Indonesia’ (2016) *International Journal of Technology*, 7(5), pp. 810–818. <doi: 10.14716/ijtech.v7i5> accessed 15 April 2022. 370.

information and needs to rely on subsequent cases for further analysis.¹⁷ In practice, the Swedish Procurement Monitor summarizes some of the most frequently asked questions regarding misuse or sources of legal uncertainty in 2020, one of which is ‘*How can sustainability criteria be used to promote environmental and social sustainability without violating the principles and public procurement rules?*’¹⁸ This shows that it is still uncertain to use eco-labels to achieve the purposes of this directive.

This thesis aims to consider the space, implementation of use eco-labels in public procurement and study how and to what extent the use of eco-label in public procurement procedures can lead to violations of the principles and public procurement rules. Because the life cycle of each product and service is different, the eco-labels and GPP criteria are tailored according to the unique characteristics of each product type.¹⁹ Furniture is not only one of the sectors covered by the GPP criteria, but also the only sector in which contracting authorities apply the “circular procurement” approach in GPP Good Practices.²⁰ Furniture is one of the priority sectors of the circular economy.²¹ The furniture industry has a great potential to improve the circularity of the market through innovation, ecolabelling integration, training of public personnel, and policy development aspects.²² Therefore, furniture is chosen as the focus of the study. The problem this thesis addresses is figuring out what are the legal limitations of using eco-labels in procuring furniture. The research question below is formulated to achieve this aim:

How to use eco-labels to procure sustainable furniture?

¹⁷ A. Semple, *A practical guide to public procurement* (1. ed. Oxford University Press 2015). And Marta Andhov, “Commentary to article 43” and “Commentary to article 70” in R. Caranta, A. Sanchez-Graells (eds.) *Commentary of the Public Procurement Directive (2014/24/EU)* (Edward Elgar 2021). Also Jason J. Czarnecki, *Green Public Procurement: Legal Instruments for Promoting Environmental Interests in the United States and European Union* (2019) 130.

¹⁸ Sweden - Procurement Monitoring Report, In view of the Member States' reporting process under the Directives 2014/23/EU, 2014/24/EU and 2014/25/EU. Dokumentdatum: 07/12/2021.

<<https://ec.europa.eu/docsroom/documents/47783/attachments/1/translations/en/renditions/native>> accessed 16 April 2022. 7.

¹⁹ Europa EU Ecolabel <https://ec.europa.eu/environment/topics/circular-economy/eu-ecolabel-home/product-groups-and-criteria_en> accessed 28 April 2022. Europa GPP criteria <https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm> accessed 28 April 2022.

²⁰ ‘Circular procurement can be defined as the process by which public authorities purchase works, goods or services that seek to contribute to closed energy and material loops within supply chains, whilst minimising, and in the best case avoiding, negative environmental impacts and waste creation across their whole life-cycle.’ In *Public Procurement for a Circular Economy, Good Practice and Guidance* < https://ec.europa.eu/environment/gpp/pdf/Public_procurement_circular_economy_brochure.pdf> accessed 24 May 2022. Europa GPP Good in Practice < https://ec.europa.eu/environment/gpp/case_group_en.htm> accessed 18 April 2022.

²¹ M. Braulio-Gonzalo, and M. D. Bovea, ‘Criteria analysis of green public procurement in the Spanish furniture sector’ (2020) *Journal of Cleaner Production* 258. doi: 10.1016/j.jclepro.2020.120704.

²² *Ibid.*

1.2 Methodology

In order to analyze the EU legal system which is relevant to public procurement and green public procurement, the doctrinal approach is adopted. *The doctrinal approach* is probably best described as research that addresses uncertainties and gaps in existing law, and thus provides a systematic articulation of the principles, cases, and concepts that govern a particular area of law or institution, and an analysis of the relationships among those principles, cases, and concepts.²³ Furthermore, the engagement with legal practice by responding to changes in the law by legislators and courts (e.g. recent case law and legislation) makes legal doctrine a living system capable of adapting to social change and development.²⁴ The Court of Justice of the European Union (CJEU) has ‘laid much of the groundwork for the GPP principles found in the Public Procurement Directive’.²⁵ Under the Directive 2014, the EU is in effect giving greater sovereignty to the member states to solve environmental issues through economic means.²⁶ By analyzing cases, CJEU can narrow or widen the scope of Member States’ discretion.

An empirical method is used, but not formally, as no quantitative research method (e.g. survey research) nor qualitative research method (e.g. interview) is used. The author met the purchasers from the public procurement department of Malmö City, at the event Career Day, where they presented their performance in procuring for the public sectors in Malmö, such as schools and offices.²⁷ Author had a conversation with them and emailed them some questions. In this thesis, the answers to the questions in the email are quoted, as it is the “Mirror of Reality”.²⁸

1.2.1 Sources of materials

This thesis uses material from a variety of sources. In order to select relevant materials from the various sources, some choices need to be made. Legal materials mainly include relevant binding case laws and EU Public Procurement Directive. Materials outside the scope of the law include green public procurement instruments and private regulations related to eco-labels. In addition, doctrinal sources in the form of textbooks and academic articles are selected in accordance with the subject of the (eco)labels, label requirements and standards. Additionally,

²³ Jan M Smits, ‘What is legal doctrine? On the aims and methods of legal-dogmatic research’ (2017) in Van Gestel, Rob, Hans-W. Micklitz, and Edward L. Rubin, eds. *Rethinking legal scholarship: a transatlantic dialogue*. (Cambridge University Press, 2017). p210.

²⁴ CALD Statement on the Nature of Legal Research (2005). See in *ibid*, 211.

²⁵ Jason J. Czarnezki, *Green Public Procurement: Legal Instruments for Promoting Environmental Interests in the United States and European Union* (2019) Available at SSRN 3504676. p26.

²⁶ *Ibid*, 24.

²⁷ Career Day Event in Lund University on 20 April 2022.

²⁸ F. Avelar Pereira, *Global framework agreements. [Elektronisk resurs]: a response to urgent global labour concerns* (2021) Lund University (Media-Tryck). <<https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip.uid&db=cat07147a&AN=lub.6994609&site=eds-live&scope=site>> accessed 14 May 2022. p49.

theoretical materials in the form of textbooks and academic articles are used to help to explain why the use of eco-labels is encouraged and restricted.

Binding Sources

There are three sources of EU law and they are all important in the analysis by the doctrinal approach. *Primary sources of EU law* include the founding treaties, the treaties between the Member States, the treaties between the EU and third parties and the general principles of law established by the CJEU; *secondary law* includes regulations, directives, decisions and opinions of the Court of Justice; The *supplementary sources of law* constitutes case law and the general principle of law which is unwritten sources of law developed by the case-law of the CJEU.²⁹ In this thesis, EU Public Procurement Directive as secondary legislation will be the main legal source.³⁰ It includes definitions of “label” and “label requirements”, and label provisions to instruct contracting authorities to use labels in an appropriate manner. The Directive is binding on all member states but leaves the national authorities the discretion to choose the form and method.

All Member States should have transposed it into national laws, the national Public Procurement Act (PPA). In this study, the Swedish and Danish PPAs are used as complements to get how Member States use discretion to address the uncertainties in the Directive 2014. The Sweden public procurement website with the legislator's interpretation of the Swedish PPA was provided by the procurers of the public procurement department of Malmö. The source of Danish PPA is obtained from Andhov's article.

Preambles in directives are also often used because they express the legislator's intention and include the relevant treaty principles.³¹ And case law drives the development of a green procurement policy is used to clarify the purpose and issues of the directive and policies.³² In particular, the *Dutch Coffee* case was a major turning point in the establishment of the article of label in the Directive 2014.

²⁹ Sources of European Union Law <<https://eur-lex.europa.eu/EN/legal-content/summary/sources-of-european-union-law.html>> accessed 30 April 2022.

³⁰ Directive 2014/24/EU on public procurement: EU countries had until April 2016 to transpose the new rules into national law (except with regard to e-procurement where the deadline was October 2018). Use of labels: Conditions for using labels are laid out in Article 43 of Directive 2014/24/EU.

³¹ A. Semple, *A practical guide to public procurement*. (2015) 1. ed. Oxford University Press. 4.

³² Hana Schebesta, 'EU Green Public Procurement Policy Modernisation Package, Eco-Labeling and Framing Measures' (2014) in S. Schoenmakers, W. Devroe and N. Philipsen (eds.), *State Aid and Public Procurement in the European Union*.

Non-binding sources

Since furniture is the category that is the focus of this paper, non-binding sources related to furniture can indicate how furniture relates to eco-labels and public procurement, such as the furniture technical background report,³³ the staff working document on the EU GPP criteria for furniture issued by the European Commission, and Sweden's sustainability criteria for furniture which referred labels such as Möbelfakta, Nordic Swan Ecolabel,³⁴ FSC and PEFC. Therefore this paper uses those eco-labels as examples to explain the features and functions of eco-labels and study how to use them in various criteria.

As many labeling organisations (e.g., FSC) have established private standards that are seen as private regulations, and ISO, as a private sector, has established the principles and procedures for eco-labeling programs, the materials related to private regulations and standards can be important to understanding labels.

1.3 Delimitation

This paper focuses on the public procurement rules and cases in the EU; the WTO Agreement on Government Procurement and cases involving members outside the EU will not be referred to. Many scholars have contributed to the comparison of the Directive 2004/18/EC and the Directive 2014/24/EU and analyzed the differences between them and their causes and the potential problems in the current Directive.³⁵ This paper does not deal with this comparison but refers to the contributions of scholars in order to understand the objectives of the Directive 2014.

The accuracy and justification of labels' certifications are often questioned and doubted by consumers and researchers as to whether "greenwashing" is involved, but this does not discuss in this thesis. The EU regulation of standards and the ISO governance and classification of eco-labels are covered in this thesis, but there will be no further discussion of the meta-regulation that regulates, monitors, and examines label governance and implementation.

³³ S. Donatello, M. G. Caldas, and O. Wolf, 'Revision of EU Green Public Procurement (GPP) criteria for Furniture' Technical Report: Final version, EUR 28729 EN, Publications Office of the European Union, Luxembourg, 2017, ISBN 978-92-79-71863-2, doi:10.2760/14246, JRC107824. <https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm> accessed 28 March 2022.

³⁴ Nordic Swan Ecolabel: The official ecolabel of the Nordic countries www.nordic-ecolabel.org accessed 27 March 2022.

³⁵ A. Semple (n 31). Marta Andhov, 'Contracting Authorities and Strategic Goals of Public Procurement – A Relationship Defined by Discretion?' (2019) in *Discretion in EU Public Procurement Law*, IECL Series (Studies of the Oxford Institute of European and comparative law: volume 26). Roberto Caranta, 'The changes to the Public Contract Directives and the Story They tell How EU Law Works' (2015) *Common Market Law Review* 52.2.

1.4 Outline

The next section introduces the background of the study, explaining furniture, green public procurement and (eco)labels, as well as the relationship between them; and the criticized voices of (eco)labels in the global trade market and the “public procurement” market to understand the necessity of limiting the use of eco-labels. Section 3 delves into labels, understanding them in terms of definition, type, and function. Labels (or label requirements) and standards are different by definition but are cross-referred by contracting authorities. Section 4 is to answer the research question, starting with the principles, and conditions to require labels, then how to use them in the three criteria, and last but not least, review GPP's guidelines on using eco-labels to procure sustainable furniture, with Sweden as an example. Section 5 concludes the above findings and analysis.

2. Background

2.1 Why contracting authorities should procure sustainable furniture?

‘A greener, low-carbon transitioning towards a net zero carbon economy’ is one of the five priorities for supporting the growth in Europe between 2021 and 2027.³⁶ The EU has been committed to sustainable development since 1999.³⁷ In 2008, The Commission recommended setting up the common EU GPP criteria in order to achieve ‘public procurement for a better environment’ and to promote the inclusion of green requirements in public tender documents,³⁸ as ‘public requirements create clear incentives for manufacturers, reduces their market risk, and enables early economies of scale and learning’³⁹

The EU spends approximately €2 trillion annually on the purchase of services, works, and supplies, representing approximately 14% of GDP; in some countries, this can approach 20% of GDP.⁴⁰ In Sweden, for example, the estimated value of public procurement reached SEK 782 billion in 2018, representing 18.3% of GDP (in fixed prices).⁴¹ As a result, the public sectors provide a huge market. Public procurement, in turn, becomes an instrument supported

³⁶ 2021-2027 EU cohesion policy, <https://ec.europa.eu/regional_policy/en/policy/how/priorities> accessed 27 April 2022.

³⁷ The Treaty of Amsterdam (1999) ‘enshrines sustainable development as an overarching objective of the European Union’ Then the European Council adopted the EU Strategy for Sustainable Development (EU SDS) in 2001. See in BMK <<https://www.bmk.gv.at/en/topics/climate-environment/sustainable-development/eu-sds.html>> accessed 14 May 2022.

³⁸ Europa, EU GPP criteria, <https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm> accessed 27 March 2022.

³⁹ J. Edler, and L. Georghiou, ‘Public procurement and innovation — resurrecting the demand side’ (2007) *Research Policy* 36, 949–963.

⁴⁰ Europa, public procurement, <https://ec.europa.eu/growth/single-market/public-procurement_en> accessed 27 April 2022.

⁴¹ Sweden - Procurement Monitoring Report, Dokumentdatum: 07/12/2021.

<<https://ec.europa.eu/docsroom/documents/47783?locale=sv>> accessed 28 March 2022.

by a market base that can be used to achieve smart, sustainable and inclusive growth on the basis of ensuring the most efficient use of public funds,⁴² so that companies can be motivated to innovate for sustainable development.⁴³

The EU GPP criteria aim to achieve ‘a good balance between environmental performance, cost considerations, market availability and ease of validation’.⁴⁴ With regard to “environmental performance”, the intention is to promote the purchase by public authorities of products, services and works that have a low environmental impact.⁴⁵ Contracting authorities can choose to include all or only certain requirements in their tender documents, depending on their needs and requirements.⁴⁶

The revised Public Procurement Directive reinforces the balance between economic and non-economic objectives so that costs are not simply counted as prices but as the best value for money,⁴⁷ and thus GPP becomes “more mainstream”.⁴⁸ For example, the EU GPP criteria encourage the production of durable products that are easy to repair in order to extend product life to the maximum.⁴⁹ It is also important to note that in order to meet the requirements of the legal framework, GPP criteria must be verifiable when applying environmental factors and should be developed as selection criteria, technical specifications, award criteria or contract performance clauses.⁵⁰

The GPP criteria for EU product and service groups are supportive and voluntary measures to assist contracting authorities with GPP and have been adopted for several target groups,⁵¹ and furniture is one of them. The previous EU GPP criteria for furniture were mainly aimed at the procurement of new furniture.⁵² However, organisations are increasingly aware of ‘the potential cost and environmental savings that can be achieved by extending the life of furniture’, for example, by refurbishing or repairing furniture.⁵³ Current GPP criteria for furniture have covered three sections: a refurbishment service for existing used furniture, the procurement of

⁴² Recital 2 Directive 2014/24/EU.

⁴³ Simon Lester, Bryan Mercurio, Arwel Davies, ‘World Trade Law: Text, Materials and Commentary’ (2018) *Hart*, 3d edition. p757.

⁴⁴ Europa, EU GPP criteria, <https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm> accessed 27 April 2022.

⁴⁵ European Commission, Commission staff working document of 27 July 2018 ‘EU Green Public Procurement criteria for Furniture’, Brussels, SWD (2017) 283 final/2, 2. In short words: ‘GPP criteria for furniture’

⁴⁶ Europa, EU GPP criteria, <https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm> accessed 27 April 2022.

⁴⁷ J. Hettne, (n 15) 152.

⁴⁸ Jason J. Czarnecki, ‘EU and US Discretion in Public Procurement Law: The Role of Eco-labels and Life-Cycle Costing’, In *Discretion in EU public procurement law* (2019). *Hart Publishing (Studies of the Oxford Institute of European and comparative law*: volume 26). 228.

⁴⁹ S. Donatello, M. G. Caldas, and O. Wolf, (n 33).

⁵⁰ Europa, GPP, <https://ec.europa.eu/environment/gpp/commission_guidance_en.htm> accessed 27 April 2022.

⁵¹ Europa, EU GPP criteria, <https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm> accessed 27 March 2022.

⁵² S. Donatello, M. G. Caldas, and O. Wolf, (n 33) 2.

⁵³ *Ibid.*

new furniture items and the procurement of furniture end-of-life services.⁵⁴ Researchers have found that purchasing new furniture in accordance with GPP requirements can significantly reduce the environmental impact, because 80-90% of the environmental impact of furniture is related to the materials and components used to produce it, and the environmental impact of furniture is almost zero when it is put into use.⁵⁵ Refurbishing furniture, meanwhile, can double the lifetime of the furniture and reduce CO2 emissions by at least 20%.⁵⁶

In the EU, the furniture industry is labour-intensive and dynamic, employing about 1 million workers in 130,000 companies and dominated by small and medium-sized enterprises (SMEs) and micro-companies.⁵⁷ However, SMEs do not always have the capacity to implement social and environmental requirements, because they lack the knowledge to understand them or have difficulty addressing the increased costs.⁵⁸ A specific challenge is the lack of information on the chemical composition of furniture materials which makes it difficult for economic operators to know whether these materials meet the requirements of public procurement contracts.⁵⁹ And due to high environmental, sustainability and technology standards, operating costs in the EU are higher than those of competitors in the global market, therefore mostly compete in the high-end segment of the market.⁶⁰ Green procurement by public authorities in Europe may provide a huge market to encourage them to produce sustainable furniture products.

2.2 Why hesitate to use (eco)labels?

Even though eco-labels have an undeniable positive impact on the environment and social awareness,⁶¹ many doubts have been raised about them.⁶² A typical negative view of labeling in international trade is that “Northern private standards” are a way to discourage “Southern

⁵⁴ European Commission, ‘GPP criteria for furniture’ (n 45).

⁵⁵ Ibid, 2; also in Good Practice

<https://ec.europa.eu/environment/gpp/pdf/news_alert/Issue_88_Case_Study_169_Malmo.pdf> accessed 27 April 2022.

⁵⁶ S. Donatello, M. G. Caldas, and O. Wolf, (n 33) 3.

⁵⁷ [Furniture industry \(europa.eu\)](https://europa.eu), accessed 27 April 2022.

⁵⁸ D. A. Baden, I. A. Harwood, and D. G. Woodward, ‘The Effect of Buyer Pressure on Suppliers in SMEs to Demonstrate CSR Practices: An Added Incentive or Counter Productive?’ (2009) *European Management Journal* 27 (6): 429–441. see in Rébecca Stekelorum, ‘The roles of SMEs in implementing CSR in supply chains: a systematic literature review’ (2020) *International Journal of Logistics Research and Applications*, 23:3, 228-253, DOI: 10.1080/13675567.2019.1679101.

⁵⁹ E. Vanacore, *et al.* ‘Circular Economy & the Furniture industry: The state-of-the-art in the EU & Sweden’ (2021) *RISE Rapport*. <<https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip,uid&db=edsswe&AN=edsswe.oai.DiVA.org.ri.54515&site=eds-live&scope=site>> accessed 26 March 2022.

⁶⁰ ‘The EU is a world leader in the high-end segment of the furniture market. Nearly two out of every three high-end furniture products sold in the world are produced in the EU.’ [Furniture industry \(europa.eu\)](https://europa.eu), accessed 27 April 2022.

⁶¹ M. Yokessa and S. Marette, ‘A Review of Eco-labels and their Economic Impact. *International Review of Environmental and Resource Economics*’ (2019) 13 (1-2), pp.119-163. ff10.1561/101.00000107ff. fffhal-02628579f. p5

⁶² Haryo Santoso, Sudharto Hadi and Purwanto, ‘Understanding and Efforts of Furniture Industries Facing Eco-Labeling in Central Java and Yogyakarta-Indonesia’ (2016) *International Journal of Technology*, 7(5), pp. 810–818. doi: 10.14716/ijtech.v7i5.370. p815.

exports”.⁶³ Suppliers and retailers continue to have reservations about the use of labels. Firstly, when retailers require producers to comply with standards and certify to multiple standards, production costs increase.⁶⁴ The increased cost is not only the cost of certification, but also the investment required to make changes to meet private standards. Second, they argue that certification conflicts with the free movement of goods, the principle of free trade.⁶⁵ Some scholars, therefore, see labeling as 'a modern day a societal movement for self-protection'.⁶⁶

Some businesses will avoid the high cost of applying for certification and labels in an effort to invest in markets that do not have labeling requirements. Only when it is unavoidable, for example, that companies will suffer reputational damage that affects business interests if they do not adopt voluntary regulation, and when it can create business benefits above and beyond the inputs, businesses are willing to apply for certification and labels.⁶⁷ Therefore ‘the main reason for certification is business advantage rather than environmental awareness.’⁶⁸ Public procurement with green criteria is just such an attractive market to promote companies to apply for labels and certifications for meeting the requirements of procurement to ensure they meet higher environmental and social standards.⁶⁹

By the same token, the success of eco-labels depends on market demand; if consumers do not make them a condition of purchase, eco-labels may be in jeopardy.⁷⁰ A market in demand will drive suppliers to certify themselves with eco-labels.

The other reason the label is questioned is that because labeling organisations are governed by various stakeholders, its certainty is not always guaranteed.⁷¹ In order to meet public procurement requirements, PFEC revised its governance mechanisms after CPET (the body established by the UK government to assess certification schemes) concluded that PEFC was not compliant because of ‘unbalanced governance, inadequate public consultation during the certification process, and lack of public disclosure of audit findings.’⁷² This case demonstrates

⁶³ Ibid.

⁶⁴ Y. Naiki, ‘Meta-Regulation of Private Standards: The Role of Regional and International Organisations in Comparison with the WTO’ (2021) *World Trade Review*, 20(1), pp. 1–24. p4.

⁶⁵ D. Humphreys, ‘The Certification Wars: Forest certification schemes as sites for trade-environment conflicts.’ (2005) *Conference Papers -- International Studies Association*, pp. 1–45. <https://search-ebscohost-com.ludwig.lub.lu.se/login.aspx?direct=true&AuthType=ip,uid&db=poh&AN=27157864&site=eds-live&scope=site> accessed: 9 April 2022. p14.

⁶⁶ J. Guthman, ‘The Polanyian way? Voluntary food labels as neoliberal governance’ (2007) *Antipode*, 39(3), pp.456-478. p458.

⁶⁷ Haryo Santoso, Sudharto Hadi and Purwanto, (n 62) 815.

⁶⁸ Ibid.

⁶⁹ Christopher McCrudden, ‘Human Rights Codes for Transnational Corporations: What Can the Sullivan and MacBride Principles Tell Us?’, (1999) *Oxford Journal of Legal Studies*. 167 See in M. A. Corvaglia, (n 13) 6.

⁷⁰ Haryo Santoso, Sudharto Hadi and Purwanto, (n 62) 810.

⁷¹ Hanna Schebesta, ‘EU Green Public Procurement Policy: Modernisation Package, Eco-Labeling and Framing Measures’ (2014) in S. Schoenmakers, W. Devroe and N. Philipsen (eds.), *State Aid and Public Procurement in the European Union*.

⁷² L. H. Gulbrandsen, ‘Dynamic governance interactions: Evolutionary effects of state responses to non-state certification programs’ (2014) *Regulation & Governance*, 8(1), pp. 74–92. doi: 10.1111/rego.12005. p83.

that when labeling is actively recommended in government procurement, government procurement can directly influence the governance and enforcement of labeling organisations and, indirectly, suppliers of products, such as legally logged timber, and that it is necessary for contracting authorities to engage not only in the substantive specifications set for a particular product or production process, ‘but to equally review the governance of the private bodies that set standards and govern labels and certificates’.⁷³

2.2.1 Why hesitate to use (eco)labels in public procurement?

Labels can assist contracting authorities in reducing the regulatory burden, lowering the administrative costs of monitoring and verification,⁷⁴ and then efficiently achieving the goal of the best value for money.⁷⁵ Hettne credits ‘the ambition from the Commission to put more emphasis on standards as a policy tool is of great interest’, such a development can increase the discretion of contracting authorities when it comes to considering beyond economic factors in public procurement.⁷⁶ While the use of labels by contracting authorities needs to take into account the risk of violating the EU public procurement principles.⁷⁷ The obligation to comply with those principles is the core of the public procurement directives, which aim to promote the development of effective competition in its field of application and sets out the criteria for contract awards designed to ensure such competition.⁷⁸ In the latter case of *Lloyd's of London v Agenzia Regionale*, the Court emphasized that ‘the EU rules on public procurement were adopted in pursuance of the establishment of a single market, the purpose of which is to ensure freedom of movement and eliminate restrictions on competition’.⁷⁹

But given the role of labels, it is still important to provide contracting authorities with the opportunity to effectively use labels to demonstrate environmental or/and social standards.⁸⁰ The Public Procurement Directive was revised and updated to include provisions for labels.⁸¹ The basic purpose of these provisions is to attempt to balance the advantages of labels in reducing the overhead costs associated with verifying environmental criteria with the potential for abuse.⁸² Obviously, striving for balance is because it is difficult to achieve it.

⁷³ H. Schebesta, (n 71).

⁷⁴ *Buying Green Handbook*, 3rd Edition, 37.

⁷⁵ The second recital in the Directive 2014/24/EU.

⁷⁶ J. Hettne, (n 15) 158.

⁷⁷ A. Semple, (n 31) 189. See in M. Andhov, ‘Commentary to article 43’ in R. Caranta, A. Sanchez-Graells (eds.) *Commentary of the Public Procurement Directive (2014/24/EU) (2021) Edward Elgar*. 43.03.

⁷⁸ Case C-513/99, *Concordia Bus Finland*, EU:C:2002:495, para 81.

⁷⁹ Case C-144/17 *Lloyd's of London*, EU:C:2018:78, para 33.

⁸⁰ A. Semple, (n 31). See in M. Andhov, (n 77).

⁸¹ A. Semple, (n 31) 189.

⁸² A. Semple, (n 31) 189. Also see in See in M. Andhov, (n 77) 1.

Green criteria are encouraged to be used in public procurement to assist sustainable growth. Recital 95 calls on the Commission to ‘continue on that path, leaving it to sector-specific legislation to set mandatory objectives and targets in the function of the particular policies and conditions prevailing in the relevant sector and to promote the development’, which if continued, could lead to the evolution of GPP from voluntary to mandatory. There may be a shift from pursuing a balance between fair competition and sustainable development to pursuing a more sustainable development bias.

In this section, it is explained why labels cannot be used without restraints even though they have a positive impact on the sustainable development strategy. The next chapter looks at labels to understand what it means to use them in public procurement procedures.

3. Label

Before analyzing how to use labels, it is useful to understand labels, what they are, what labels are available, what they do, and why the Commission encourages contracting authorities to use them in public procurement.

3.1 Definition of “label”

Unlike “label” on a commodity product, which means ‘any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to the packaging or container of food,’⁸³ “Label” in the context of the Government Procurement means ‘any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements.’⁸⁴ The latter “label” will become the previous “label” after it is applied to the procured commodity product.

Labels such as FSC and Möbelfakta are brands standing for sustainability.⁸⁵ Business operators and these labeling organisations themselves define “label” in a way that is consistent with the definition of commodity product labels. Those labeling organisations are accreditation organisations, not certification organisations.⁸⁶ Such labeling organisations set up standards and

⁸³ Article 4(4) in Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008, PE/75/2018/REV/1, OJ L 130, 17.5.2019.

⁸⁴ Article 2 (1)(23) Directive 2014/24/EU, also in Swedish Public Procurement Act.

⁸⁵ ‘Möbelfakta is a brand that stands for quality, environmental awareness and social responsibility.’ Möbelfakta <<https://www.mobelfakta.se/declaration.html>> accessed 11 April 2022.

⁸⁶ D. Humphreys, (n 65) 14.

accredit independent third-party certifying organisations to certify according to their standards.⁸⁷ It seems that to distinguish labeling criteria from other standards (e.g. quality assurance standards and environmental management standards),⁸⁸ use “label requirements” in the Directive, defined as ‘the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned’.⁸⁹ Thus, in the Directive, “label” is defined in light of the function of the label in the public procurement process analyzed in later paragraphs.

3.2 Types of labels

Labels can be created by public sector (e.g. EU Ecolabel), private sector (e.g. FSC), or joint public and private sectors (e.g. Nordic Swan Ecolabel). Private regulations are led by NGOs or multi-stakeholders, who are the new players outside the field of merchant law but entering the regulatory space.⁹⁰ Different governance schemes make the content behind the labels potentially very different in terms of management and enforcement.⁹¹ Private regulations, which are voluntary, usually have stricter standards than public regulations, which provide only the minimum mandatory common standards.⁹²

The author considers that when regulation, standard, and label (or label requirement), especially private ones, are cross-referenced in one content, the relationship between them should be sorted out at first. According to the typology of Bütthe and Mattli, private regulations can be categorized into two types: “private market-based regulation”⁹³ and “private nonmarket-based regulation”.⁹⁴ “Private nonmarket-based regulation” refers to regulation by the International Organization for Standardization (ISO) and the International Electrotechnical Commission

⁸⁷ Ibid.

⁸⁸ “Standard” is defined as ‘a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory ...’ in ANNEX VII Directive 2014/24/EU. Also see definition of Standard can be found in Article 2 Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council Text with EEA relevance.

⁸⁹ Article 2 (1)(24) Directive 2014/24/EU.

⁹⁰ F. Cafaggi, ‘New Foundations of Transnational Private Regulation’ (2011) *Journal of Law and Society*. p21.

⁹¹ H. Schebesta, (n 71).

⁹² F. Cafaggi, (n 90) 21.

⁹³ Explained as ‘rule-making by firms or other bodies competing, individually or in groups, to establish their preferred technologies or practices as the de facto standards through market dominance or other strategies’ in T. Bütthe, and W. Mattli, ‘International Standards and Standard-Setting Bodies’ (2010) *Oxford University Press*.

doi: 10.1093/oxfordhb/9780199214273.003.0020. p456.

⁹⁴ Ibid.

(IEC), whose activities are essentially recognized by the WTO as international standards.⁹⁵ The market-based private standard-setting is one of the features of corporate social responsibility (CSR) and environmental sustainability standards, which are developed by civil society-based non-governmental organisations (NGOs).⁹⁶ The well-known case of such private standards with labels the Forest Stewardship Council (FSC) for forestry, which was initially funded primarily by foundations and a few governments to appease environmentalist demands, has been successful in the marketplace to the extent that it has prevailed over attempts to develop such standards through intergovernmental organisations.⁹⁷ Therefore, the author concludes the relationship between private regulations, private standards, and private labels as below Table 1:



Table 1: Relationship among private regulation, private standards, and private labels.

The public sectors have also established labels to promote their policies and strategies. Labels developed by specific national or government entities or organisations involved in label requirements can also be used for procurement by public authorities, and these entities or organisations do not lose their status as third parties.⁹⁸ The EU Ecolabel, for example, is a voluntary eco-labeling scheme established by the European Union and connected to other EU policies, such as GPP and Eco-design of energy-using products.⁹⁹ It is administered by the European Commission and the national authorities of each member state.¹⁰⁰ In such a case, the rules regarding conflict of interest (Article 24 Directive 2014/24/EU) should be followed.¹⁰¹

Labels have various scopes, some focus on one specific sector, and some cover a large range of sectors of products and services. FSC and PEFC are for paper and wood products that are

⁹⁵ “In the US–Tuna II (Mexico) case. Appellate Body Report, United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (US–Tuna II (Mexico)), WT/DS381/AB/R (16 May 2012), para. 359. In other words, ‘the body’s standardization activities are recognized, for example, if a large number of WTO Members participate in the development of the standard, and acknowledge the validity and legality of the standard’. Appellate Body Report, US–Tuna II (Mexico), para. 394” in Y. Naiki, (n 64) 5.

⁹⁶ T. Bütthe, and W. Mattli, (n 93) 457.

⁹⁷ Ibid.

⁹⁸ Recital 75 Directive 2014/24/EU.

⁹⁹ Europa, ecolabel, <<https://ec.europa.eu/environment/ecolabel>> accessed 12 April 2022.

¹⁰⁰ European Parliament and Council of the European Union (2010-01-30). ‘Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel’. Eur-Lex. Retrieved 2017-02-05.

¹⁰¹ M. Andhov, (n 77) 43.23.

relevant to furniture and other products made by wood; EU Ecolabel and Nordic Swan Ecolabel cover a wide range of products and services; Möbelfakta is specific to the sector of furniture.

Labels can cover only one or several criteria.¹⁰² These criteria are usually related to society and the environment. Labels enable consumers to identify precisely which products have been produced complying with specific social or environmental standards. Some environmental labels can be useful to ‘distinguish products and services which will save energy and water, or which are produced in a more sustainable way’.¹⁰³ To meet the requirements from various stakeholders, and to increase the effectiveness of consumers’ choices,¹⁰⁴ ‘sustainability standards increasingly combine environmental, social, managerial, qualitative and ethical requirements.’¹⁰⁵ And that is the most common type of label used in public procurement.¹⁰⁶ Möbelfakta, as an example, labels furniture according to three criteria: quality, environment, and sustainable supply chain.¹⁰⁷ The reason for covering many criteria may be to meet various public procurement requirements for furniture.¹⁰⁸ Below is the in-depth analysis of eco-labels that is relevant to the research question.

3.2.1 Eco-labels

Eco-labeling organisations are proliferating and growing rapidly, having reached 455 ecolabels in 199 countries, and 25 industry sectors.¹⁰⁹ European standards, more than just harmonized standards, take a prominent place in public procurement.¹¹⁰ New “local” standards are being developed in developing countries to compete with existing “global” standards.¹¹¹ To avoid confusion, trade barriers and unfair competition, there must be a way to demonstrate the reliability of self-declared information, and ISO 14020, ‘has been adopted as the benchmark for environmental labels by the Global Ecolabelling Network, an international federation of ecolabelling bodies’.¹¹² ISO classifies three types of environmental labels:

¹⁰² Europa, ecolabel, <<https://ec.europa.eu/environment/ecolabel/>> accessed 12 April 2022.

¹⁰³ *Buying Green Handbook*, 3rd Edition, 55.

¹⁰⁴ M. Yokessa and S. Marette, (n 61) 7.

¹⁰⁵ H. Schebesta, (n 71).

¹⁰⁶ *Buying Green Handbook*, 3rd Edition, 18; see in M. Andhov, (n 77).

¹⁰⁷ Möbelfakta <<https://www.mobelfakta.se/Vara-krav.html>> accessed 12 April 2022.

¹⁰⁸ According to information published on Möbelfakta website, it is easy to see the label is designed especially for public purchasers to use in public procurement procedures. For example, it tells public purchasers: How to use Möbelfakta's requirements? <<https://www.mobelfakta.se>> accessed 1 May 2022.

¹⁰⁹ EcolabelIndex <<https://www.ecolabelindex.com/>> accessed on 1 May 2022.

¹¹⁰ J. Hettne, (n 15) 158.

¹¹¹ Y. Naiki, (n 64) 5.

¹¹² *ISO environmental labels*, <<https://www.iso.org/publication/PUB100323.html>> accessed 12 April 2022; see in Marta Andhov, (n 77).

- Type I environmental labelling for eco-labelling schemes where there are clearly defined criteria for products (ISO 14024¹¹³)
- Type II self-declared environmental claims for products and services where there are neither criteria nor labelling schemes
- Type III environmental declarations for specific aspects of products using a life-cycle approach¹¹⁴

There are various eco-labels, and most Type I eco-labels can meet the requirements in the Public Procurement Directive for contracting authorities able to refer to them,¹¹⁵ and from a public procurement perspective, ‘the most valuable labels are based on objective and transparent criteria and awarded by an independent third party’.¹¹⁶ According to GPP criteria for furniture, public purchasers may require tenderers to provide verification which holds ‘the EU Ecolabel or another *relevant ISO 14024 Type I Eco-label* (according to ISO 14024)’ to fulfill the same specified requirements.¹¹⁷ This shows that contracting authorities prefer to use such eco-labels.

Eco-label is introduced in the previous Public Procurement Directive, which allowed contracting authorities to use the detailed specifications defined by the eco-label as a reference when specifying ‘*environmental characteristics* in terms of performance or functional requirements.’¹¹⁸ While eco-labels have been evolving to include criteria other than environmental to meet the requirements of various groups of stakeholders. Wood, as a common material for furniture, needs to be obtained from responsible sources. Labels such as FSC and Möbelfakta have requirements for this. In its environmental criteria, Möbelfakta requires that routines must be established ‘to ensure that wood and wood-based materials are traceable and come from legal and acceptable sources.’¹¹⁹ Compliance with ‘applicable national and local laws and regulations on use, environment, labor and welfare, health and safety, and other

¹¹³ ‘ISO 14024:2018 establishes the principles and procedures for developing Type I environmental labelling programmes, including the selection of product categories, product environmental criteria and product function characteristics, and for assessing and demonstrating compliance. ISO 14024:2018 also establishes the certification procedures for awarding the label’ ISO Standard, <<https://www.iso.org/standard/72458.html>> accessed 12 April 2022.

¹¹⁴ *ISO environmental labels*, <<https://www.iso.org/publication/PUB100323.html>> accessed 12 April 2022.

¹¹⁵ A. Semple, (n 31) 190.

¹¹⁶ M. Andhov, (n 77) 3.

¹¹⁷ European Commission, ‘GPP criteria for furniture’ (n 45).

¹¹⁸ Article 23(6) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (no longer in force) (emphasis is marked).

¹¹⁹ Requirement list of Möbelfakta: Sector 2.1.2 Wood and wood-based material, Origin of wood-based material. Möbelfakta, <https://www.mobelfakta.se/uploads/files/1022_amendmentdocument_2021-11-01.pdf> accessed 2 April 2022.

aspects' is one of the important factors to be an "acceptable source".¹²⁰ The environment is the main, but not the only, subject of the eco-label.

3.3 Functions of labels

The label, as pointed out in its definitions and types sections, can establish private standards, can promote public and private standards to the private sectors, and can demonstrate that a product meets its requirements. Label requirements benefit not only consumers and society, but also corporations.¹²¹ They provide visibility and technical certainty, help economic operators in the value chain to interoperate easier, and become a precondition for economic operators to invest in innovation.¹²²

Eco-labels can lead the furniture supply chain to more sustainability. Eco-label requirements can impact furniture operators' decisions regarding durability, long-term warranties, and related service support requirements.¹²³ Furniture can be designed to meet environmental standards at an early stage through eco-design strategies such as 'reduced material use' and 'reduced environmental impact during use'.¹²⁴ Eco-label requirements can also influence the environmental management in the furniture industry, as demonstrated by the application of cleaner production associated with the principles of reduction, reuse, and recycling.¹²⁵ Eco-labeling certification bodies, along with government and educational contexts, play important roles in influencing the management of the environmental impact of the furniture industry in the country of origin.¹²⁶

In public procurement procedures, labels can be used to define the required criteria and prove compliance with the technical specifications, award criteria or contract performance terms, when contracting authority purchases works, supplies or services with specific environmental, social or other characteristics.¹²⁷ As labels can provide 'valuable information concerning the

¹²⁰ Ibid.

¹²¹ COM (2016) 0358, *Final European Standards for the 21st Century*, see in Discretion in EU public procurement law (2019). *Hart Publishing* (Studies of the Oxford Institute of European and comparative law: volume 26).

¹²² Ibid.

¹²³ K. Parikka-Alhola, 'Promoting environmentally sound furniture by green public procurement' (2008) *Ecological Economics*, Volume 68, Issues 1–2, Pages 472-485, ISSN 0921-8009, <<https://doi.org/10.1016/j.ecolecon.2008.05.004>> accessed 13 April 2022. p474, 482.

¹²⁴ Ibid.

¹²⁵ B. Thorpe, 'Citizen's guide to clean production' (1999) University of Massachusetts, Lowell Center for Sustainable Production. See in Haryo Santoso, Sudharto Hadi and Purwanto, (n 62) 816.

¹²⁶ Ibid.

¹²⁷ Article 43 Directive 2014/24/EU, also see in A. Semple, (n 31) 189.

production of the procured products and services'¹²⁸ and 'the additional guarantee of third-party certification'.¹²⁹

The contracting authorities intend to achieve the best value for money by maximizing efficiency.¹³⁰ Best value should be measured after economic, social and environmental objectives have been achieved. Label becomes one of the means to increase efficiency. The public purchasers are 'tasked with monitoring and verifying predefined sustainability criteria among a variety of competing subcontractors'.¹³¹ Labels mostly rely only on the third parties to inspect,¹³² thus can help contracting authorities to save time while 'ensuring high environmental standards are applied in public procurement'.¹³³ The use of labels in public procurement is therefore primarily intended to reduce the regulatory burden and lower the administrative costs of monitoring and verification, so as to achieve the best value for money.

4. Use eco-labels to procure sustainable furniture

In the labels' article, the contracting authority is permitted to "require" labels, and the change in wording indicates the EU legislator's ambition to shift the use of labels from voluntary to mandatory,¹³⁴ and this ambition may be due to the EU's role as "green" leader in the world.¹³⁵

In this section, the principles related to public procurement directives are firstly introduced, followed by the analysis of the conditions which limit the use of labels by contracting authorities and whether the conditions set by the EU legislators for the use of labels achieve the purpose of encouraging the use of labels without violating the principles. Then it analyzes how (eco)labels are used in different criteria. Lastly, the focus is on the use of eco-labels to procure furniture.

¹²⁸ A. Semple, 'The Role of Environmental and Social Labels in Procurement', *Public Procurement Analysis*. <<https://www.procurementanalysis.eu/app/download/5804183001/Environmental%2Band%2Bsocial%2BLabels%2Bin%2Bprocurement.pdf>> accessed 14 April 2022. Also 'Labels are information shortcuts' see in Roberto Caranta, 'Changes to the Public Contract Directives and the Story They Tell about How EU Law Works' (2015) *The Common Market Law Review*, 52(2), pp. 391–460. 420. And Roberto Caranta, 'Labels as Enablers of Sustainable Public Procurement', in Beate Sjafjell and Anja Wiesbrock (eds), *Sustainable Public Procurement under EU Law: New Perspectives on the State as Stakeholder* (Cambridge: Cambridge University Press, 2015) 99–113. See in M. A. Corvaglia, (n 13) 613.

¹²⁹ M. A. Corvaglia, (n 13) 611.

¹³⁰ *Ibid.*

¹³¹ A. Semple, (n 146). See in M. A. Corvaglia, (n 13) 612.

¹³² M. A. Corvaglia, (n 13) 612.

¹³³ *Buying Green Handbook*, 3rd Edition, p37.

¹³⁴ S. Arrowsmith, 'The Law of Public and Utilities Procurement – Regulation in the EU and UK' (2018) Vol.2 (Sweet & Maxwell 3rd ed.) 20-95. See in M. Andhov, (n 77) 43.12.

¹³⁵ 'Since the early 1990s, the European Union (EU) has presented itself as a leader on climate change.' B. Kilian, and O. Elgström, 'Still a green leader? The European Union's role in international climate negotiations' (2010) *Cooperation and conflict*, 45(3), pp.255-273.

4.1 Principles of awarding contracts

Article 18 in the Public Procurement Directive includes two principles. One is the necessity for public authorities to adopt appropriate methods to ensure that ‘economic operators of public contracts comply with applicable obligations in the field of environmental, social and labor law’ at various levels;¹³⁶ and the Article 57 allows the contracting authorities to exclude economic operators (or to replace subcontractors) which breach this principle from participation in a procurement procedure with sufficient evidence.¹³⁷ The other is to require public authorities to comply with the principle of fair competition¹³⁸ consistent with the principle of the EU Treaty (non-discrimination) and the other general principles of law merged from the case law (equal treatment, transparency and proportionality),¹³⁹ to prevent “artificial narrowing of competition” for public contracts which can cause negative effects,¹⁴⁰ such as restricting innovation.¹⁴¹

The rules of public procurement are essentially ‘the concrete expression of fundamental freedoms, in particular the provision for the free movement of goods and services.’¹⁴² The procedure for awarding public contracts is designed to remove barriers to the free supply of services and goods, thus protecting the interests of businesses established in one Member State that wish to supply goods or services to the contracting authority of another Member State.¹⁴³

In the cases of *EVN*¹⁴⁴ and *Dutch Coffee*, those contracting authorities misused the environmental or social criteria and were judged to have breached the principles and caused anticompetitive effects.¹⁴⁵ *Concordia*¹⁴⁶ and *Evropaiki*¹⁴⁷ provide insight into how to appropriately assess environmental criteria without violating the principles.¹⁴⁸ Public

¹³⁶ Article 18 (2) Directive 2014/24/EU.

¹³⁷ Economic operator in Article 57 (4)(a) Directive 2014/24/EU; subcontractor in Article 71(6)(b) Directive 2014/24/EU. Need to notice that in Article 57(6) contracting authorities should allow economic operators to provide evidences and avoid being excluded. See Case C-395/18, *Tim SpA - Direzione e coordinamento Vivendi SA v Consip SpA and Ministero dell' Economia e delle Finanze*. EU:C:2020:58. para 56.

¹³⁸ Article 18 (1) Directive 2014/24/EU, also mentioned in Recital 1, 68, 90, 114 Directive 2014/24/EU.

¹³⁹ Government UK <<https://www.gov.uk/guidance/public-sector-procurement-policy>> accessed 4 May 2022.

¹⁴⁰ J. Hettne, (n 15) 158.

¹⁴¹ Recital 75 Directive 2014/24/EU.

¹⁴² B.J. Drijber, and H. Stergiou, ‘Public procurement law and internal market law’ (2009) *Common Market L. Rev.*, 46, p805. also in cases: Case C-598/19, *Conacee v Feacem*, ECLI:EU:C:2021:810, para 33. (see, by analogy, Case C-285/18 *Irgita*, EU:C:2019:829, paragraph 48.; judgments of 9 July 1987, 27/86 to 29/86, *CEI and Bellini*, EU:C:1987:355, paragraph 15; of 7 December 2000, Case C-324/98, *Telaustria and Telefonadress*, EU:C:2000:669, paragraph 60; and of 10 September 2009, Case C-573/07, *Sea*, EU:C:2009:532, paragraph 38).

¹⁴³ Case C-380/90, *University of Cambridge*, [2000] ECR I-08035, para 16.

¹⁴⁴ Case C-448/01, *EVN AG and Wienstrom GmbH v Austria*, EU:C:2003:651.

¹⁴⁵ Case C-448/01, *EVN AG and Wienstrom GmbH v Austria*, EU:C:2003:651, para 69; Case C-368/10, *Commission v. Netherlands*, EU:C:2012:284, para 97. see in A. Sanchez-Graells, “Some Reflections on the ‘Artificial Narrowing of Competition’ as a Check on Executive Discretion in Public Procurement” (2018) in S Bogojević, X Groussot & J Hettne (eds), *Discretion in EU Public Procurement Law*, IECL Series (Hart, Forthcoming). p83-84.

¹⁴⁶ Case C-513/99, *Concordia Bus Finland*, EU:C:2002:495.

¹⁴⁷ Case T-331/06, *Evropaiki Dynamiki v European Environment Agency*, EU:T:2010:292.

¹⁴⁸ Europa, GPP case law, <https://ec.europa.eu/environment/gpp/case_law_en.htm> accessed 14 April 2022.

purchasers need more cases to guide them in identifying the requirements as goodwill for sustainability or a risk to fair competition.

In Directive 2014, EU legislators seem to signal that the scope of strategic and sustainable procurement is allowed to be larger than it actually is.¹⁴⁹ Semple contended the article of labels provides contracting authorities with the opportunity to efficiently use labels to certify environmental or/and social standards with a reduced risk of violating the principle, non-discrimination.¹⁵⁰ It seems to have achieved a clever balance between the two objectives. However, more observations are needed to see the outcomes in practice.

4.2 Conditions to use Labels

Article 43(1) in Directive 2014/24/EU makes it possible for contracting authorities to require specific labels when the labels met the following cumulative conditions, which are tightened compared to directive 2004/18/EC:¹⁵¹

- (a) the label requirements only concern criteria which are *linked to the subject-matter* of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract;
- (b) the label requirements are based on *objectively verifiable* and *non-discriminatory* criteria;
- (c) the labels are established in an *open and transparent procedure* in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;
- (d) the labels are *accessible* to all interested parties; and
- (e) the label requirements are set by a *third party* over which the economic operator applying for the label cannot exercise a decisive influence.¹⁵²

In order to be able to use labels when these conditions are met, the contracting authorities need to have some level of knowledge of the label requirements and the award process.¹⁵³ The last three of these conditions address the governance of labels and allow for indirect control over the transparency and legitimacy of private standardization bodies.¹⁵⁴ ISO standards provide the basis for transparency and legitimacy of eco-labels and help contracting authorities exclude non-compliant labels. For example, under condition (d), the ISO 14024 standard requires that information on the development process and rules for specific programs should be available,¹⁵⁵

¹⁴⁹ J. Hettne, (n 15) 156.

¹⁵⁰ A. Semple, (n 31) 189. See in M. Andhov, (n 77) para 43.03.

¹⁵¹ M. Andhov, (n 77) 3.

¹⁵² Article 43(1) in Directive 2014/24/EU (emphasis added).

¹⁵³ A. Semple, (n 31) 7.35.

¹⁵⁴ H. Schebesta, (n 71).

¹⁵⁵ N. Minkov, V. Bach, and M. Finkbeiner, 'Characterization of the cradle to cradle certified™ products program in the context of eco-labels and environmental declarations. Sustainability' (2018) 10(3), p.738. p12.

as well as information on funding and pricing.¹⁵⁶ Even so, not all ISO 14024-compliant labels meet these conditions, and still require careful selection by contracting authorities.¹⁵⁷ While that may increase the administrative costs associated with the implementation of public procurement;¹⁵⁸ that also may make contracting authorities more favorably use the labels that are already widely recognized, then public procurement may lose its role as a market to incentivize the development of the other labels.

To avoid violating the relevant principles, labels should be “accessible”¹⁵⁹ to all interested parties.¹⁶⁰ While the cost of obtaining a label has been questioned whether it would be a particular burden on SMEs.¹⁶¹ Recital 75 states that labels required should be *accessible* and *available* by all interested parties,¹⁶² indicating that there is a distinction between “accessible” and “available”, and that both need to be met. Marta suggests that it must be assessed on a case-by-case basis whether it is permissible to be required to pay to obtain label or certification in cases of mandatory.¹⁶³ In order to reduce inaccessibility due to cost, the price of obtaining eco-labels varies depending on the size of the company and its annual turnover,¹⁶⁴ while there is no proof that it is effective. In the Sweden PPA (English version), “available” is required, not “accessible” (see Appendix I).¹⁶⁵ Swedish Public Procurement Department notes that licensing cost or similar is not a barrier to the accessibility.¹⁶⁶ Moreover, the required labels should be non-discriminatory in terms of access. In the case of *Dutch Coffee*, the Dutch eco-label required by the contracting authority was more easily accessed by Dutch economic operators, which was unfair to bidders from other countries.¹⁶⁷ Contractors are required to be on terms that maintain a level playing field, that is, when the label required is not accessible, the other appropriate

¹⁵⁶ Ibid, 9.

¹⁵⁷ A. Semple, (n 31) 7.36.

¹⁵⁸ Ibid.

¹⁵⁹ Article 43(1)(d) Directive 2014/24/EU.

¹⁶⁰ M. Andhov, (n 77) 43.22.

¹⁶¹ Ibid.

¹⁶² Recital 75 Directive 2014/24/EU (emphasis added).

¹⁶³ M. Andhov, (n 77) 43.22.

¹⁶⁴ For example, Nordic Ecolabel for furniture <<https://www.svanen.se/en/how-to-apply/criteria-application/furniture-and-fittings-031/>> accessed 7 May 2022; and Möbelfakta pricelist <<https://www.mobelfakta.se/uploads/files/5042-Appendix%202%20Fees%20for%20M%C3%B6belfakta%202021-07-05.pdf>> accessed 7 May 2022.

¹⁶⁵ In Sweden PPA, the condition for using the label, “available” are slightly different from the word “accessible” in the Directive 2014, and then by viewing the LOU (Swedish PPA) where the word “tillgänglig” includes both meanings. Appendix I contains the label articles in the three sources.

¹⁶⁶ ‘Licenskostnader inget hinder: Tillgänglighetskravet tar huvudsakligen sikte på att det ska vara möjligt att ta del av märkningskraven, exempelvis utan avgift eller att man registrerar sig. Att märkningen därefter inte är gratis utan innebär licenskostnader eller liknande, är inte något hinder.’ Translated by the authour ‘Licensing costs not a barrier: The main aim of the requirement for accessibility is that it should be possible to access the label requirements, for example without paying a fee or registering. The fact that the label is not free but requires a license fee or similar is not a barrier.’ <<https://www.upphandlingsmyndigheten.se/om-hallbar-upphandling/stall-hallbarhetskrav/anvandning-av-markning/>> accessed 17 May 2022. Thanks Malmö Public Procurement Department provided this source of information to me.

¹⁶⁷ V. Ihamäki, E. van Ooij, and S. van der Panne, ‘Green public procurement in the European Union and the use of eco-labels’ (2014) State aid & Public Procurement in the European Union, IER, 4014. p30.

means of proof should also be adopted.¹⁶⁸ This has also been questioned as reducing the attractiveness of labels to economic operators.

After ascertaining that the label required is in compliance, it is necessary to check compliance with the label requirements used according to conditions (a) and (b), because the provisions require that label requirements that are not linked to the subject-matter of the contract should not be included.¹⁶⁹

Eco-labels provide lists of criteria for specific products or services in accordance with ISO 14024 standards, and constantly update label requirements in the light of new science and new legal and market requirements.¹⁷⁰ Therefore contracting authorities can improve efficiency by using the list of labeling requirements to quickly find out the relevant criteria for the required product or service, selecting from them the ones that are *linked to the subject-matter* and do not cause *discrimination*, and using the label as evidence of compliance at a later stage.¹⁷¹

4.2.1 Non-discriminatory criteria

Condition (b) indicates that the label requirements should comply with the principle of non-discrimination.¹⁷² Simultaneously according to Article 18 (2), contracting authorities can require economic operators to comply with the laws ‘established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions’ (e.g. the eight fundamental conventions of ILO). Those laws are not clearly defined, but Article 18 (2) creates the discretion for contracting authorities to include any of the instruments in the EU environmental and social legislations which impact on public procurement, such as Timber Regulation, Packaging and Packaging Waste Directives, Ecolabel Regulation, and EU Eco-management and Audit Scheme (EMAS) Regulation.¹⁷³ In terms of social considerations, when the contracting authorities require all employees in the supply chain to be paid more than the minimum wage required by the law of the countries where the employees work and live,¹⁷⁴ even if the intent is to ensure that the employees are reasonably compensated, it is judged to be

¹⁶⁸ Article 43 and Recital 74 Directive 2014/24/EU.

¹⁶⁹ Article 43 (2) Directive 2014/24/EU.

¹⁷⁰ Möbelfakta <<https://www.mobelfakta.se/Kriterier%C3%A5det.html>> accessed 7 May 2022.

¹⁷¹ Article 43 Directive 2014/24/EU.

¹⁷² M. Andhov, (n 77) 43.21.

¹⁷³ A. Semple, (n 31) 174, para 7.42.

¹⁷⁴ Bundesdruckerei views as ‘indirect discrimination with respect to tenderers who supply their services in other Member States with very different cost structures’ in Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund*, EU:C:2014:2235, para 17. Also in A. Semple (n 31) 4.39 notes that ‘in order to comply with the rules on technical specifications (and Treaty principles), care must be taken to avoid any formulation which is directly or indirectly discriminatory against undertakings established in other Member States.’

a restriction on the freedom to provide services.¹⁷⁵ Since such protection goes beyond what is necessary under the national laws of the locality,¹⁷⁶ it imposes additional cost burdens on other countries and reduces their attractiveness and competitiveness in trade.¹⁷⁷

In order to achieve the goals of sustainable development, the contracting authorities would establish requirements that go beyond what is required by law, such as private standards, yet those attempts were judged to be in violation of the principles.¹⁷⁸ In terms of technical specification, private standards can have a direct impact on the entry level of tenderers,¹⁷⁹ and therefore ‘the CJEU has consistently emphasized the obligation of Member States to respect the presumption of conformity of products produced in accordance with harmonised standards,’¹⁸⁰ which can contribute to the equal treatment of tenders and help achieve the goal of fair competition.¹⁸¹ The inclusion of private standards as award criteria may also lead to unnecessary restrictions on competition.¹⁸² Therefore, the use of label requirements that may be higher than harmonized standards may potentially be discriminatory criteria for some bidders.

However, those decisions were made before the Public Procurement Directive was updated and involved violations of requirements that were covered under the technical specifications and were considered to be only eligible for use in other stages as *Concordia* (award criteria)¹⁸³ or *Conacee* (performance of contract)¹⁸⁴. The updated directive opens up the possibility to require environmental and social criteria in all three stages (further analysis in next Section 4.2),¹⁸⁵ but “link to the subject-matter” is the decisive factor.

¹⁷⁵ Article 56 TFEU. See in C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund* EU:C:2014:2235, para 37 and Case C-346/06, *Dirk Rüffert v Land Niedersachsen* EU:C:2008:189, para 44.

¹⁷⁶ Case C-549/13, *Bundesdruckerei GmbH v Stadt Dortmund* ECLI:EU:C:2014:2235, para 34.

¹⁷⁷ Case C-346/06, *Dirk Rüffert v Land Niedersachsen* ECLI:EU:C:2008:189, para 37.

¹⁷⁸ In *Elliott*, the Court of Justice has held that European harmonized standards are part of EU law. Case C-613/14, *James Elliott Construction* EU:C:2016:821. See in Sarah Schoenmaekers, ‘Standards on the Rise in Procurement Procedures: Are Legitimacy Concerns Justified?’ (2020) In *The Legitimacy of Standardisation as a Regulatory Technique*. Edward Elgar Publishing. p208.

¹⁷⁹ Gabriela Alvarez and Oliver Von Hagen, ‘When Do Private Standards Work? Literature Review Series on the Impacts of Private Standards; Part IV’, International Trade Centre, Stephen Brammer and Helen Walker, ‘Sustainable Procurement in the Public Sector: An International Comparative Study’, International Journal of Operations and Production Management 452 (2011). Albert Sanchez Graells, ‘More Competition-Oriented Public Procurement to Foster Social Welfare’, in K.V. Thai (ed.), *Towards New Horizons in Public Procurement* (Boca Raton, FL: PrAcademics Press, 2010) 81. See in M. A. Corvaglia, (n 13) 613.

¹⁸⁰ Case C-6/05, *Medipac and Commission v Greece* (see section II.C), also see Case 815/79, *Cremonia and Vrankovich*, EU:C:1980:273, para 10 and Case C-112/97, *Commission v Italy*, EU:C:1999:168, para 39. See in J. Hettne, (n 15) 150.

¹⁸¹ J. Hettne, (n 15) 150.

¹⁸² M. A. Corvaglia, (n 13) 613.

¹⁸³ Case C-513/99, *Concordia Bus Finland*, EU:C:2002:495.

¹⁸⁴ Case C-598/19, *Conacee v Feacem*, EU:C:2021:810.

¹⁸⁵ Article 43 (1), also Recital 74, “The technical specifications drawn up by public purchasers need to allow public procurement to be open to competition as well as to achieve objectives of sustainability.”

4.2.2 Link to the subject-matter

The concept of the link to the subject matter was brought up in *Concordia* and like a “snowball” influenced subsequent cases (e.g. *EVN and Wienstrom*¹⁸⁶ and *Dutch Coffee*) and was even repeated in various provisions in the new Directive, including the article of labels,¹⁸⁷ in which it determined directly whether a label or label requirement could be referred to. It is defined in the Directive 2014 as bellows:

... where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life cycle, including factors involved in the specific process of production, provision or trading of those works, supplies or services (a); or a specific process for another stage of their life cycle (b); even where such factors do not form part of their material substance.¹⁸⁸

The definition can be interpreted strictly or loosely, but there are risks to both.¹⁸⁹ An overly narrow interpretation of the requirement could lead contracting authorities to apply alternative approaches to GPP implementation, which would be more restrictive of competition and detrimental to ‘the transparent and effective pursuit of complex environmental and social objectives’.¹⁹⁰ A looser approach, on the other hand, may threaten the additionality of the GPP's targeted benefits and may make verification more difficult in some cases, while provisions such as labels and life-cycle costing may help contracting authorities to address these risks.¹⁹¹ Further evaluation through other terms or methods is therefore still required.

There are some mentions in the Directive that the description and presentation of products, including packaging requirements, are linked to the subject-matter of the contract;¹⁹² conversely, standards and conditions related to general company policies are not linked to the subject-matter of the contract.¹⁹³ Moreover, in terms of “technical and professional ability” of economic operators, the contracting authorities may require the economic operators to provide proofs,¹⁹⁴ such as ‘an indication of the environmental management measures that the economic

¹⁸⁶ Regarding the absence of a sufficient link to the subject matter of the contract, the Court of Justice considered that such award criterion was incompatible with the EU public procurement rules due to its anti-competitive effects. Case C-448/01, *EVN and Wienstrom*, EU:C:2003:651. paragraph 69. Also see in A. Sanchez-Graells, (n 135).

¹⁸⁷ A. Semple, (n 31) 112.

¹⁸⁸ Article 67 (3) Directive 2014/24/EU, also have similar text Article 42(1), Article 70 referring from Article 67 (3) Directive 2014/24/EU.

¹⁸⁹ Semple opined that the scope of the link to subject-matter of contract in Directive 2014 had been looser than in Directive 2004. A. Semple, ‘The Link to the Subject-Matter: A Glass Ceiling for Sustainable Public Contracts?’ (2014) In University of Oslo as part of the European Law Conference. p18.

¹⁹⁰ *Ibid.*

¹⁹¹ *Ibid.*

¹⁹² Recital 75 Directive 2014/24/EU, see in M. Andhov, (n 77) 43.10.

¹⁹³ Recital 97 Directive 2014/24/EU, also see M. Andhov, (n 77) 43.19.

¹⁹⁴ Article 58(4) Directive 2014/24/EU.

operator will be able to apply when performing the contract'.¹⁹⁵ It is also linked to the subject-matter of the contract if the tender documents can state that the criteria are specifically imposed as the abilities that the bidders must demonstrate that they have or will have to perform the contract in required time.¹⁹⁶ Although this is specified in the selection criteria where (eco)labels cannot be required, it may also be possible to use (eco)labels or label requirements to require criteria in contract performance.

In addition, the Court in *EVN* and *Dutch Coffee* cases applied a loose approach to the test for the link to the subject matter, which is very close to the general proportionality test that the Court has applied in many areas¹⁹⁷ of the proportionality principle which aims at balancing the interests of economic operators and contracting authorities.¹⁹⁸ In the *Roche Lietuva* case,¹⁹⁹ the Court also suggested complying with the principle of proportionality to examine whether the detailed technical specifications required were necessary to achieve the objective, while allowing some discretion to the Member States, as they should decide the level of public health protection they should provide.²⁰⁰ Thus, there is still space to determine the link of subject matter, as the member states can measure it according to the national laws and standards.

When a label fulfills the conditions in points (b), (c), (d) and (e) in Article 43 (1), but includes requirements which are not linked to the subject-matter of the contract, contracting authorities shall not require the label but can define the technical specifications (but also award criteria or performance conditions) by reference to the label requirements linked to the subject-matter of the contract.²⁰¹ Simultaneously, equivalent labeling requirements should be accepted,²⁰² which raises the question of whether this increases the burden on the contracting authorities, and how this "burden" should be approached.

4.2.3 Whose “burden” is it?

Label or certification is a tool to help public purchasers accomplish their jobs and be more efficient, but it is often a burden to economic operators. And the non-use or reduced use of certifications will be a burden on the work of purchasers. Obviously, both economic operators and purchasers need to shoulder some of the burden, which also is the responsibility.

¹⁹⁵ Part II of Annex XII, Directive 2014/24/EU.

¹⁹⁶ Case C-927/19, *Klaipėdos regiono atliekų tvarkymo centras' v UAB*, ECLI:EU:C:2021:700, para 86.

¹⁹⁷ A. Semple, (n 179) 18. The other example: Case C-6/05, *Medipac*.

¹⁹⁸ M. Andhov, (n 77) 43.22.

¹⁹⁹ Case C-413/17, *Roche Lietuva*, EU:C:2018:865. See in S. Schoenmaekers, (n 178) 206.

²⁰⁰ Case C-413/17, *Roche Lietuva*, EU:C:2018:865. para 41-43.

²⁰¹ Article 43 (2) Directive 2014/24/EU, also see M. Andhov (n 77) 43.19.

²⁰² Article 43 (1) Directive 2014/24/EU.

Article 43, besides enumerating the conditions for the use of labels and label requirements, also indicates that the contracting authorities shall accept all labels confirming that the works, supplies or services meet equivalent label requirements and when the economic operator is unable to obtain a specific label or equivalent label specified by the contracting authorities within the time limits concerned, ‘the contracting authorities shall accept other appropriate means of proof, which may include the technical dossiers’ provided by the manufacturers.²⁰³ Equivalence may be difficult to measure for economic operators and contracting authorities.²⁰⁴ To reduce the risk regarding the expected outcome of the contract, the contracting authority may prefer tenders which have standardized solutions that they are already aware of.²⁰⁵ Economic operators need to consider such risks.

Semple noted that ‘the wording (in Article 43(1)) is misleading’.²⁰⁶ The “time limit” is not clearly interpreted, and if the limited time is from the publication of the tender to the closing date of the tender according to the general understanding, then it is usually too short time to obtain a label for an economic operator.²⁰⁷ Then, the economic operators only have to provide other appropriate means of proof, such as the manufacturer's technical files, thus also lose interest in investing to obtain the labels.²⁰⁸ That may result in a significant workload for public purchasers and require specialized competence to conduct the certification process for products (or services) and suppliers (or/and sub-suppliers) by themselves,²⁰⁹ also ‘may increase costs and administrative burdens for contracting entities, which may also lack necessary expertise’.²¹⁰ Since it is such a hassle to accept other proofs, why do contracting authorities do so?²¹¹ This is because ‘the contracting authority cannot know in advance whether any economic operator will come forward and plead the impossibility of obtaining the label’,²¹² thus providing start-ups, micro and SMEs with the opportunities to compete for the tenders. Market dialogue in advance or/and require eco-labels in contract performance (see section 4.3.3 for details) can limit the impact of this condition.

²⁰³ Article 43 (1) Directive 2014/24/EU, also in Recital 88 (eco-labels and environment protection) of Directive 2014/24/EU.

²⁰⁴ S. Schoenmaekers, (n 178) 208.

²⁰⁵ *Ibid.*

²⁰⁶ A. Semple, (n 31) 189.

²⁰⁷ *Ibid.* Also see to notice that according to the condition (c), the tender should adopt an open procedure, and in Article 27(1), ‘The minimum time limit for the receipt of tenders shall be 35 days from the date on which the contract notice was sent’, 15 days with conditions Article 27(2), 10 days with conditions Article 27(4).

²⁰⁸ A. Semple, (n 31) 184, also see in M. Andhov, (n 77) 43.18.

²⁰⁹ Jason J. Czarnecki, (n 48) 229.

²¹⁰ Jason J. Czarnecki (n 48) 229; also see in M. Andhov, (n 77) 43.17.

²¹¹ M. Andhov: “One question of interpretation is whether the contracting authorities always have to accept other means of proof of compliance with label requirements than the label itself, or not.”, and one of two issues: “whether the contracting authority needs to be in a position to do so” (n 77) 43.16.

²¹² M. Andhov, (n 77) 43.16.

The updated directive has strengthened the ability to insist on third-party certification compared to the 2004 directive, because economic operators can only rely on the in-house system if they can prove that they are unable to do so due to "non-attributable" factors,²¹³ that is a shift of the burden of proof from an unconditional to a conditional limitation.²¹⁴ Under Recital 74, economic operators shall have the following responsibilities:

- to prove equivalence with the requested label with third-party verified evidence;
- to prove that the products or services meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions under the conditions:
 - no access to such certificates or test reports, or
 - no possibility of obtaining certificates or test reports within the relevant time limits.²¹⁵

Further rules may be set by the Member States as a solution to limit the burden on the economic operator or/and the contracting authority, depending on their capabilities. For example, the Danish Public Procurement Act (Article 46.4 (2)) applies the principle of proportionality by providing that the contracting authority will allow the economic operators to use other means of proof than a specific or different label,²¹⁶ if ‘the resources spent by the contracting authority are found in a specific assessment not to exceed the resources which the contracting authority would have been required to spend in order to verify that the tenderer was in possession of the required label to an inexpedient degree.’²¹⁷

Another solution may be that the labeling organizations make their schemes functional for economic operators. For example, Möbelfakta, which furniture designers and operators are willing to use because they can use its schemes to design and manage their products and to directly meet the environmental and social requirements of the public procurement market.²¹⁸

With the understanding of the conditions required for the use of the label and the possible controversies over these conditions, the use of the label is discussed below.

4.3 Use eco-labels in three criteria

According to Article 43 (1) in Public Procurement Directive, labels in public procurement have two roles to play: firstly ‘to determine technical specifications/award criteria/contract

²¹³ ‘Compare Annex XII, Part II, point (g) Public Procurement Directive with Art 50 Directive 2004/18/EC.’ A. Semple, (n 31) 104.

²¹⁴ Article 23(6) of Directive 2004/18/EC, final indent. See in A. Semple, (n 31) 189.

²¹⁵ Recital 74 of Directive 2014/24/EU.

²¹⁶ M. Andhov, (n 77) 43.22.

²¹⁷ Danish PPA <[The Public Procurement Act \(kfst.dk\)](https://www.kfst.dk)> translate by Marta. See in M. Andhov, (n 77) 43.17.

²¹⁸ Möbelfakta, <<https://www.mobelfakta.se>> accessed 9 May 2022.

performance clauses in order to define the characteristics of the goods or services purchased’; and ‘to verify compliance with these requirements, by accepting the label as a means of proof of compliance’.²¹⁹ As analyzed in section 4.1, in order to avoid violating the principles while also requiring the use of environmental criteria, it is necessary to understand which label requirements can be used in each of these three criteria: technical specifications, award criteria, or contract performance conditions. Table 2 concludes the difference among those three criteria according to Schebesta:²²⁰

Technical specifications	The “ture” requirements
Award criteria	The “preferences” subject
Contract performance	‘Not verifiable at the tender stage, and therefore are a much more evasive kind of criteria than the previous two.’

Table 2: The difference among three criteria: TS, AC and CP

Unlike award criteria and contract performance, if the technical specifications, the mandatory requirements, are not fulfilled, the tenderer will be excluded from the procedure of procurement.²²¹ In the Dutch Coffee case, the Court distinguished between the two eco-labels, EKO and Max Havelaar, referring to environmental factors linked to the product itself and social factors linked to the governance of the product's management.²²² Depending on the different linkages, the Court also made different decisions on their use in different criteria, and this will be specified in the following paragraphs.

4.3.1 The use of eco-labels in technical specification

The judgment in the Dutch Coffee explained that the technical specifications should be set at a minimum level of technical capability and that the requirement for the tenderers to comply with ‘criteria of sustainable procurement and socially responsible business’ (in Max Havelaar) exceeded the suitability requirements and the minimum level of capability stated in the specifications applicable to the contract.²²³ EKO eco-label (referring to environmental factors) is allowed to be used as a technical specification because the court found the link to the product itself, but the instructions need to be followed that the detailed requirements of the label would be specified and equivalent labels or other means of proof would be accepted.²²⁴ That decision is consistent with the Directive in 2004 and the one revised in 2014.

²¹⁹ M. Andhov, (n 77) 43.08; also see in *Buying Green Handbook*, 3rd Edition. p37.

²²⁰ H. Schebesta, (n 71), also see in S. Schoenmaekers, (n 178) 204.

²²¹ Case C-368/10, *Dutch coffee*, EU:C:2012:284, para 74, see in A. Semple, (n 31) 4.34.

²²² V. Ihämäki, E. van Ooij, and S. van der Panne, (n 167) 27.

²²³ ‘A minimum level of technical ability not recognized by Articles 44(2) and 48 of Directive 2004/18 by requiring’ in Judgement of Dutch Coffee. Case C-368/10, *Dutch coffee*, EU:C:2012:284.

²²⁴ Case C-368/10, *Dutch coffee*, EU:C:2012:284, para 94, also see in V. Ihämäki, E. van Ooij, and S. van der Panne, (n 167) 29.

According to the new Directive's technical specifications for the formulation of the requirements, environmental characteristics (expressly indicated) can be included in terms of performance or functional requirements, without prejudice to mandatory national technical rules, also in conformity with Union law.²²⁵ Legislators also encourage purchasers to use this functional and performance-related requirements as widely as possible, which includes those developed 'on the basis of performance criteria linked to the life cycle and the sustainability of the production process of the works, supplies and services'.²²⁶ The Court also has admitted the "broad discretion" to formulate technical specifications in public contracts.²²⁷ However, these technical specifications need to comply with the principle of equal treatment in Article 18 (1), which allows economic operators to have equal access to the standards²²⁸ and cannot directly or indirectly discriminate against the tenders that do not strictly comply but meet the equivalent requirements.²²⁹ Therefore, a specific requirement in the technical specifications is not mandatory and the equivalent solution must be accepted,²³⁰ as is the case with the eco-label requirement. Contracting authorities have to refer to the underlying technical specifications, not only require a standard or label requirement to be met.²³¹

According to Semple, since the article of labels covers not only eco-labels but also social labels referring to social factors, and they can be applied to technical specifications, social label requirements (in the eco-label Max Havelaar) may be adopted into technical specifications as long as the labels comply with the transparency principle and conditions (in section 4.2).²³² Considering the wage and employment conditions, the criteria can only be required to comply with the national law of where it takes place, and the criteria of the contracting country cannot be required to be given effect to the criteria concerned in other countries where the manufacture and supply takes place.²³³ (Cases *Rüffert* and *Bundesdruckerei*, see section 4.2.1) If the bidder violates the wage and employment laws of the local country, it can be excluded under Article 18(2) and Article 57,²³⁴ therefore these requirements can be included in the technical

²²⁵ Article 42 (3)(a) Directive 2014/24/EU.

²²⁶ Recital 74 Directive 2014/24/EU.

²²⁷ Case C-413/17, *Roche Lietuva*, EU:C:2018:865, para 29.

²²⁸ *Ibid*, para 32, 33. In the Dutch Coffee case, the Court held that the three important principles of technical specifications: equality of treatment, non-discrimination and transparency. See in *Ibid*, para 34.

²²⁹ Article 42(6) Directive 2014/24/EU, Albert Sánchez Graells, 'Public Procurement and the EU Competition Rules' (2015) 2 edn. *Hart Publishing* 336. See in S. Schoenmaekers, (n 178) 207.

²³⁰ S. Schoenmaekers, (n 178) 208.

²³¹ *Ibid*.

²³² A. Semple (n 31), 4.35.

²³³ A. Semple (n 31), 4.38.

²³⁴ It is also possible to exclude under Article 56(1) and Article 69(3) Public Procurement Directive, see in A. Semple, (n 31) 110, footer 55.

specifications,²³⁵ also for eco-labels that include such social requirements; if such social requirements are “truly voluntary”,²³⁶ using them in award criteria or contract performance clauses can reduce the risk of violating the principles. Semple opined that if label requirements are used to formulate technical specifications, reference should be made to the fundamental standards, not just the label itself.²³⁷ The situations may be different when labels are referred to in the award criteria and contract performance clauses, as the contracting authority has greater discretion in their formulation.²³⁸

As mentioned in the condition of “link to the subject-matter”, sustainability as a general policy cannot be required,²³⁹ nor does the GPP criteria for furniture include the criteria that wood should be sourced from sustainable forestry, since so far there are no precise requirements with detailed elements complying with the rules of public procurement at EU level (see Appendix II).²⁴⁰ “Sustainable source” is also emphasized to “go beyond” the legal requirements.²⁴¹ Instead, member states can be ambitious in laying down such criteria at the national level. For example, the Municipality of Aalborg (Denmark) required the contracting authority to ‘ensure that at least 70% of wood used comes from sustainable sources.’²⁴² Eco-labels such as FSC and PEFC can provide sufficient assurance of compliance with the national standards.²⁴³

4.3.2 The use of eco-labels as award criteria

According to the Public Procurement Directive, the award criteria shall be the “most economically advantageous tender” (MEAT) calculated by means of a cost-benefit approach (e.g. life-cycle costing in Article 68).²⁴⁴ Price is therefore not the only determining factor, but the criteria linked to the subject-matter of the public contract, including quality, environmental and/or social aspects, can also determine the outcome.²⁴⁵ The scope of the link to subject-matter is enlarged from only a portion of the “material substance” of a particular product or service²⁴⁶ to include environmental and social factors related to the governance of the product

²³⁵ A. Semple (n 31), 4.39.

²³⁶ A. Semple (n 31), 4.39 ‘If the application of such standards is truly voluntary, then it may be preferable to address them in award criteria, as this affords the opportunity to assess their impact on other qualitative aspects of tenders and costs.’

²³⁷ A. Semple (n 31), 4.27.

²³⁸ A. Semple (n 31) 105, footer 39.

²³⁹ Recital 97 Directive 2014/24/EU.

²⁴⁰ European Commission, ‘GPP criteria for furniture’ (n 45) 14. Appendix II lists legal aspects and standards related to furniture. See in S. Donatello, M. G. Caldas, and O. Wolf, (n 33) 10.

²⁴¹ S. Donatello, M. G. Caldas, and O. Wolf, (n 33) 10 and Appendix II.

²⁴² This requirement was included in the Technique Specifications. *Circular procurement for a sustainable learning environment, Municipality of Aalborg (Denmark) GPP In practice Issue No.79 March 2018*, p2.

²⁴³ European Commission, ‘GPP criteria for furniture’ (n 45) 14.

²⁴⁴ Article 67(2) of Directive 2014/24/EU.

²⁴⁵ Article 67(2) of Directive 2014/24/EU.

²⁴⁶ Case C-368/10, *Dutch coffee*, EU:C:2012:284, para 91.

management.²⁴⁷ In the *Dutch Coffee* case, the Court rejected Attorney General Kokott's opinion (see section 1) under the 2004 Directive, which may be viewed differently under the revised Directive (2014).²⁴⁸ Although more label requirements can be referred, the requirement of general corporate policy, such as ‘contributing to the improvement of the sustainability of the coffee market and to the environmentally, socially and economically responsible production of coffee’²⁴⁹ is still beyond the scope of the contract.²⁵⁰

As Schebesta described, unlike technical specifications which are the absolute requirements, award criteria show contracting authorities’ preferences.²⁵¹ Their preferences on environmental or social factors provide the margin for discretion, which is always contested by economic operators.²⁵² Transparency of information can reduce the risk of discrimination. When the contracting authorities decide to use MEAT as award criteria, tenderers should be clearly informed of relevant information, such as which factors are significant and their weighting, and the method of calculation.²⁵³

Contracting authorities can require (eco)labels or (eco)label requirements in award criteria but must be precise and objective in their scoring to ensure that equal treatment is achieved.²⁵⁴ The *Evropaiki* case is a good example, as the court found that not all tenderers without certification received the same score, indicating that the European Environment Agency had evaluated the tenders comparatively.²⁵⁵ Furthermore, the contracting authorities can use the market dialogue in advance to inform the economic operators about their objectives to use specific labels,²⁵⁶ thereby giving the economic operators the incentive to obtain eco-label certification.²⁵⁷

A number of award criteria are set in the GPP criteria for furniture to encourage furniture manufacturers to innovate in areas that are closely related to the environmental impact of furniture and be more competitive in tenders.²⁵⁸ Many of these criteria are already specified in ISO 14024 Type I eco-labels, strengthening the impact of these voluntary initiatives on the

²⁴⁷ Article 67(3) of Directive 2014/24/EU.

²⁴⁸ A. Semple (n 31) 4.43.

²⁴⁹ Case C-368/10, *Dutch coffee*, EU:C:2012:284, para 108.

²⁵⁰ Recital 97 of Directive 2014/24/EU, mentioned in Chapter 4.1. And V. Ihamäki, E. van Ooij, and S. van der Panne, (n 167) 32.

²⁵¹ H. Schebesta, (n 71).

²⁵² A. Semple, (n 31) 4.47.

²⁵³ Article 67(5), and Article 68(2) Directive 2014/24/EU.

²⁵⁴ Case C-368/10, *Dutch coffee*, EU:C:2012:284, para 93.

²⁵⁵ Case T-331/06, *Evropaiki Dynamiki v European Environment Agency*, EU:T:2010:292, para 76, see in Europa, <https://ec.europa.eu/environment/gpp/case_law_en.htm> accessed 11 May 2022.

²⁵⁶ EU Commission, GPP Interview, “Making the most of Ecolabels in public procurement”, Issue no.100 November 2020 p.2., see in M. Andhov, (n 77) 43.15.

²⁵⁷ *Ibid.*

²⁵⁸ S. Donatello, M. G. Caldas, and O. Wolf, (n 33) 16.

furniture industry.²⁵⁹ For example, plastic marking (in Award Criterion 2) is against by stakeholders in various reasons, such as since furniture may contain plastic parts that are not suitable for marking either because ‘there is not sufficient clear and flat surface area available or for aesthetic reasons,’ or plastic parts are ‘generally sorted and separated by automated systems.’²⁶⁰ While plastic recyclers opined that it would be useful if large plastic components would be labelled to ‘indicate the type of filler or any other additives used, such as flame retardants or plasticisers.’²⁶¹ Therefore, for ‘plastic can be separated and recycled in the optimum way at the end of life’, plastic parts need to be correctly marked.²⁶² The Nordic Swan Ecolabel criteria for furniture and fitments includes the requirement that plastic parts must be marked in accordance with ISO 11469 when they reach a weight.²⁶³

When the award criteria refer to the characteristics of goods or the manner which services or works are to be performed, they cannot be verified at the award stage, as they relate to future events.²⁶⁴ In such case, the criteria shall be understood as commitments to perform the services or works in a particular manner and should be monitored or verified during the contract execution via the contract performance clause.²⁶⁵

4.3.3 The use of eco-labels in contract performance

Conditions for contract performance have the same extent of “link to the subject-matter” as other criteria (see section 4.2.2), which also can be used to enforce environmental and social objectives.²⁶⁶ The contracting authority may set special conditions relating to the performance of the contract,²⁶⁷ but “special conditions” are not defined, even though examples exist.²⁶⁸

²⁵⁹ Ibid.

²⁶⁰ Ibid, 85.

²⁶¹ Ibid.

²⁶² The end-of-life of product is relevant to GPP. Ibid.

²⁶³ ‘The Nordic Ecolabel criteria for furniture and fitments (version 4.9, Dec. 2011) states that plastic parts >50g must be marked according to ISO 11469, including details of any fillers and reinforcements used. Furthermore, surface treatment of plastics shall only be permitted if it does not adversely affect the recyclability of the plastic. No PVC plastic is permitted in Nordic Ecolabel furniture.’ Ibid, 86. The condition is changed in the new version. Parts that contain plastic and weigh more than 100 g must be clearly labelled in compliance with the ISO 11469 and ISO 1043 standards. An exemption is made for plastic in rolls, e.g. edge trim. An exemption may also be made if it is technically difficult to label, e.g. because of lack of space or the production method. In such cases, it must be explained why labelling is difficult and the exemption must be specifically approved by Nordic Ecolabelling’ in *Nordic Ecolabel criteria for furniture and fitments* (version 5.2, 31.08. 2021), <<https://www.nordic-ecolabel.org/product-groups/group/?productGroupCode=031>> accessed 18 May 2022.

²⁶⁴ Ibid, 7.

²⁶⁵ Ibid.

²⁶⁶ M. A. Corvaglia, (n 13) 618.

²⁶⁷ Article 70 Directive 2014, also see in Case C-927/19, ‘Klaipėdos 36egion atliekų tvarkymo centras’ v UAB, EU:C:2021:700, para 16.

²⁶⁸ A. Semple (n 31) 5.20.

The functions of performance conditions are as follows:

- to be used as a contractual clause to attach additional enforcement of the contract for those awarded in countries where enforcement is weak, in order to ascertain that the awarded tenderer has complied with the mandatory laws.²⁶⁹
- to avoid non-performance by linking to sanctions or incentives.²⁷⁰
- to enforce subcontractors to implement performance conditions.²⁷¹

The performance conditions cannot be verified at the tender stage, so there is a problem that is easier to be evaded than the first two criteria.²⁷² The contracting authorities need to “Follow Up”²⁷³ to verify the performance of the awarded tenderers. Malmö public procurement department provided information as follows:

In practice, we discuss the options with the future supplier/tenderer. Maybe the tenderer tells us that the label will take 9 months to get. Then we can decide that the requirement in the tender is that they need to have the label at least after 12 months of the contract start. This means that if the contract starts 1st of January year 2022 the supplier needs to have the label on the 1st of January 2023. If the supplier does not have the label at this point, we will charge them a penalty (= vite) to get them to get the label as soon as possible.²⁷⁴

Therefore, in the scenario where tenderers are unable to obtain the specific eco-labels at the tender stage, the contracting authority may require the eco-labels in the conditions of contract performance, which need to “follow up” to ensure that the awarded tenderer implements the “contract clauses”. This also reduces the burden on tenderers at the tender stage, as only the awarded tenderer needs to apply for the required label or verification.

Eco-labels can be used in different scopes in the three criteria above. It is important to be aware that the use of eco-labels in any criteria first needs to comply with the principles (in section 4.1) and fulfill the conditions (in section 4.2). The next section is devoted to furniture and looks at how eco-labels can be used to procure furniture under the guidance of the GPP.

²⁶⁹ Marta Andhov, ‘Commentary to article 70’ (2021) in R. Caranta, A. Sanchez-Graells (eds.) *Commentary of the Public Procurement Directive (2014/24/EU)* (Edward Elgar 2021). 70.12.

²⁷⁰ *Ibid* 70.13.

²⁷¹ *Ibid* 70.14.

²⁷² H. Schebesta, (n 71).

²⁷³ See “follow up” in the national agency for public procurement’s sustainability criteria for Furniture.

Upphandlingsmyndigheten <www.upphandlingsmyndigheten.se/en/criteria/> accessed 5 April 2022.

²⁷⁴ Answers (by Email) from Annika Hjort, Sektionschef – inköpsområde förbrukningsvaror in MALMÖ STAD, Stadskontoret Upphandlingsenheten. My question is in LOU When the supplier has not been able to obtain the labelling within the time limit... ‘Could you please explain in practice, how identi’y ‘time li’t here? Translated from LOU ’16 § När en leverantör inte inom den angivna tidsfristen haft möjlighet att få tillgång till den märkning...’.

4.4 Procuring sustainable furniture

The EU GPP criteria for furniture aim to promote the purchase of furniture products and services by public authorities with low environmental impact.²⁷⁵ During its lifetime, furniture's environmental impact is mainly (80-90%) due to furniture materials and components.²⁷⁶ The criteria thus also affect suppliers' choice of materials. For example, the use of specified recycled materials contributes to reducing the environmental impact caused by the materials.²⁷⁷ Wood has lower embodied energy than metals and plastics, but durability and recyclability also need to be considered.²⁷⁸

Generally, furniture is characterized by a longer lifetime than other commodities, and its durability can largely reduce its environmental impact,²⁷⁹ especially for high-quality furniture that can be continuously maintained and repaired to prolong its lifetime.²⁸⁰ Thus, GPP has divided furniture procurement into three categories of subject matter: refurbishment, procurement of new, and recycling.²⁸¹ The Directive 2014 provides contracting authorities with the discretion to identify the subject matter of the contract.²⁸² "Purchase of sustainable furniture" have been as the subject matter of contracts in good practice.²⁸³

Each category includes technical and award criteria, and for each set of criteria, there are two levels to choose from: core criteria and comprehensive criteria.²⁸⁴ Contracting parties can choose between these two levels, depending on their demands for environmental performance.²⁸⁵ Fewer criteria also reduce the management costs for companies.²⁸⁶ The structure of the EU's GPP criteria for furniture is summarized as bellows:²⁸⁷

²⁷⁵ European Commission, 'GPP criteria for furniture' (n 45) 2.

²⁷⁶ *Ibid.*, 3.

²⁷⁷ *Ibid.*

²⁷⁸ *Ibid.*

²⁷⁹ *Ibid.*, 2.

²⁸⁰ *Ibid.*, 28.

²⁸¹ *Ibid.*, 2.

²⁸² A. Semple, (n 189).

²⁸³ *Circular procurement for a sustainable learning environment, Municipality of Aalborg (Denmark) GPP In practice Issue No.79 March 2018. And Piloting sustainable school furniture procurement in Latvia, Smiltene County (Latvia) GPP In practice Issue No.103 March 2021.*

²⁸⁴ European Commission, 'GPP criteria for furniture' (n 45) 2.

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ According to text in Introduction in EU Green Public Procurement criteria for Furniture, European Commission, 'GPP criteria for furniture' (n 45).

The subject matter of the contract ²⁸⁸	Criteria	Levels of criteria ²⁸⁹
a refurbishment service for existing used furniture (A.), the procurement of new furniture items (B.) or the procurement of furniture end-of-life services (C.).	Technical Specifications (TS)	The Core criteria
		The Comprehensive criteria
	Award Criteria (AC)	The Core criteria
		The Comprehensive criteria

Table 3: Structure of EU's GPP criteria for furniture

GPP recommends highlighting eco-labels as a means of proof that furniture with an eco-label can be deemed to comply with the relevant criteria.²⁹⁰ For example, upholstery coverings are used not only for new furniture (B) but also often for refurbishment (A), and the difference between the technical specifications and the award criteria is from the requirement of its durability (A:TS-2, B:TS-6) to the preference of upholstery coverings with only a low level of chemical residues (A:AC-1, B:AC-3).²⁹¹ Also, timber as a common material used in furniture is only concerned in subject matter B and its relevant criteria, likely because timber is more durable than upholstery coverings and thus less in need of refurbishment.²⁹² The use of upholstered coverings can improve the comfort of use and so is unavoidable, especially for products required high comfort, such as office chairs.²⁹³ The eco-labels can also verify that the source of timber is legal (CPC1) and that the formaldehyde emission of the wood-based panels complies with the required criteria (B:AC-1).²⁹⁴

The following terms are used throughout the relevant criteria in order to implement the principles of equal treatment and non-discrimination:

... verification based on furniture holding the *EU Ecolabel* or *another relevant ISO 14024 Type I Eco-label* (according to ISO 14024) fulfilling the same specified requirements... Please also note that, ..., contracting authorities shall accept *other appropriate means of proof*.²⁹⁵

As discussed in section 4.2.3, it is necessary to limit the burden on both the tenderers and the contracting authority. According to the GPP recommendation, which is also in consistent with the objective of the Directive 2014,²⁹⁶ in order to reduce the burden of proof on both tenderers

²⁸⁸ 'The criteria are split into three broad sections depending on whether the subject matter of the contract'. Ibid.

²⁸⁹ There is a choice between two ambition levels for each criteria. Ibid.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ That is consistent with Art. 44 (2) and Article 43(1) of Directive 2014/24/EU, European Commission, 'GPP criteria for furniture' (n 45).

²⁹⁶ A. Semple, (n 31) 198.

and public authorities, a self-declaration could be sufficient when submitting a tender.²⁹⁷ At the tendering stage, the tenderer with MEAT should be required to provide proof of compliance with the technical specifications and award criteria required.²⁹⁸ Test results can be requested during contract execution for one or several products delivered under the contract.²⁹⁹ The clauses of contract performance need to be made explicit, e.g., the contracting authority has the right to conduct random verification tests at any time during the contract period to ascertain that the product or service meets all set criteria.³⁰⁰ Especially, when procuring new furniture (B), it is required in the technical specifications that the timber used in the furniture must be from legal sources, in compliance with Regulation (EU) No 995/2010, and at the tendering stage, only self-declaration is required; therefore the contract performance clause is necessary to provide the contracting authorities with the right to “follow up” by requiring proof, valid EU FLEGT licenses or relevant CITES permits and certificates.³⁰¹ “Sustainable source” can be set up at national level according to the Member State’s legislation (see section 4.3.1).

Sweden as “the home of high-quality eco-certification labels”³⁰² is among the most advanced EU countries in terms of GPP implementation.³⁰³ The next section looks into Sweden's sustainability criteria for furniture (see Appendix III), and how the contracting authorities in Sweden use eco-labels.

4.4.1 Sweden uses eco-labels to procure sustainable furniture

‘Sweden has three levels of government: national, regional and local.’³⁰⁴ The central government is generally responsible for ensuring that local governments operate in a manner consistent with a balanced economy, which contributes to green procurement efforts.³⁰⁵ The municipalities and regions have the right of independent and free self-determination within the framework set by the central government, so they have various levels of competence in the engagement of GPP.³⁰⁶

²⁹⁷ European Commission, ‘GPP criteria for furniture’ (n 45) 4.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ European Commission, ‘GPP criteria for furniture’ (n 45) 13-14.

³⁰² Jason J. Czarnecki, (n 25) 138.

³⁰³ OECD Environmental Performance Reviews: Sweden 2014.

³⁰⁴ Sweden Government < <https://www.government.se/government-policy/municipalities-and-regions/?page=2> > accessed 20 May 2022.

³⁰⁵ Ibid. Also see Jason J. Czarnecki, (n 25) 138.

³⁰⁶ Ibid.

The use of eco-labels has a long history in Sweden and is steadily growing.³⁰⁷ Sweden's sustainability criteria for furniture in Appendix III have been designed on the basis of the GPP guidelines and set up three levels (core, advanced and spearhead) in the criteria, to reserve discretion for contracting authorities in various levels to match their diverse ambitions for sustainability.³⁰⁸ Environmental requirements in public procurement are not mandatory for municipalities,³⁰⁹ which may be due to the fact that the difficulties included in green procurement can be a burden on municipal authorities and that national authorities have a greater impact on the environment through their purchasing power because of the larger value of the procurement.³¹⁰

Unlike the GPP criteria, Sweden's sustainability criteria include only one award criterion which aims to 'obtain information about the climate impact of products from a life-cycle perspective and to send a signal to the market that this information is in demand'.³¹¹ It also notes that 'the requirement is not to be placed without having performed a market analysis'.³¹² It can thus be seen that the Swedish contracting authorities use award criteria to prompt furniture manufacturers to innovate according to the "spearhead requirement".

There are many criteria in the technical specifications (in Sweden sustainability criteria), even including the award criteria in GPP. The "labeling of plastic parts" in the award criteria in GPP (see section 4.3.2) is a core requirement of the technical specifications in the Sweden sustainability standards, requiring products to comply with ISO standards or equivalent standards.³¹³ Eco-labels that fulfill this requirement, such as Möbelfakta, Nordic Swan Ecolabel or EU Eco-label, can be used as verification that the product meets this requirement.³¹⁴ The contracting authorities are able to set this requirement in the technical specifications because

³⁰⁷ Since 2002, in the region Västra Götaland, 'the share of products meeting eco-label criteria have been steadily increasing. ... In 2008, eco-labelled products accounted for 33% of the purchase value, with the figure increasing to 41% a year later,' and then reached 57% in 2012. *Green procurement of furniture and fabrics for public buildings and offices*- region Västra Götaland, GPP In Practice, Issue no. 35, October 2013.

³⁰⁸ Sweden sustainability criteria for furniture. <<https://www.upphandlingsmyndigheten.se/en/criteria/office-and-textiles/furniture/>> accessed 4 April 2022.

³⁰⁹ 'Environment in the Swedish Act on Public Procurement (2016:1145), 4 kap 3 § (noting that a procuring authority should take environmental, social and workers' rights aspects into account at public procurements, if the character of the procurement motivates this)' see Jason J Czarnecki, (n 25) 140.

³¹⁰ Jason J. Czarnecki, (n 25) 140.

³¹¹ Sweden sustainability criteria for furniture, Requirement ID: 10034:2, <<https://www.upphandlingsmyndigheten.se/en/criteria/office-and-textiles/furniture/>> accessed 21 May 2022.

³¹² Ibid.

³¹³ 'Plastic parts with a weight greater than 100 g shall be marked in accordance with the standards "Generic identification and labelling of plastic products" (SS-EN ISO 11469:2016) and "Plastics – symbols and abbreviations" SS-EN-ISO 1043:2011 /Amd 1:2016 (parts 1-4) or equivalent standards.' Sweden sustainability criteria for furniture, Requirement ID: 10032:2, <<https://www.upphandlingsmyndigheten.se/en/criteria/office-and-textiles/furniture/>> accessed 21 May 2022.

³¹⁴ Ibid.

the article of technical specifications (Chapter 9, Section 4 in the Swedish PPA) allows the contracting authorities to refer to the following criteria and assessments:

Swedish standards that correspond to European standards (1), European technical assessments (2), common technical specifications (3), international standards (4), another technical reference system drawn up by a European standardisation organisation (5), or another Swedish standard, Swedish technical approval or, in the case of works or usage of a product, a Swedish technical specification for design, calculation and execution (6).³¹⁵

The purchase of legal timber for furniture production is also a core requirement in technical specification in the Sweden's sustainability criteria, which is consistent with the relevant GPP criteria (see section 4.4).³¹⁶ The difference is that Sweden's sustainability criteria mention that eco-labels can be used to prove that furniture meets the requirements and gives the four examples of eco-labels: Möbelfakta, Nordic Swan Ecolabel, FSC and PEFC.³¹⁷ The Swedish contracting authorities have no requirements for the "sustainable source" of wood, but the use of eco-labels as a means of proof can indirectly contribute to that.

Möbelfakta is also referred to in the requirement "labeling for identification of the furniture" to prove each delivered piece of furniture is marked with information including production time, model and manufacturer and/or the company that sold the furniture on the market.³¹⁸

Sweden, as the country with 'the highest level of green criteria in tender offers in the EU',³¹⁹ uses most sustainability criteria as technical specifications and can directly exclude tenders that do not meet the requirements. Eco-labels are referred to in many criteria to be used to prove that products meet requirements, such as proving that the product carries the material information or product information needed or the legal source of the wood. There is no evidence that more technical specifications referring to eco-labels could influence the impact of eco-labels, and vice versa. The eco-label may become popular with economic operators when it meets most of the requirements in the tender offer. According to the basic principles of public procurement, the contracting authority must accept other means of proof, so the eco-label would not become mandatory.

³¹⁵ Chapter 9, Section 4 in the Swedish PPA (2016:1145).

³¹⁶ Sweden sustainability criteria for furniture, Requirement ID: 11472

<<https://www.upphandlingsmyndigheten.se/en/criteria/office-and-textiles/furniture/>> accessed 5 April 2022.

³¹⁷ Ibid.

³¹⁸ Sweden sustainability criteria for furniture, Requirement ID: 11474

<<https://www.upphandlingsmyndigheten.se/en/criteria/office-and-textiles/furniture/>> accessed 5 April 2022.

³¹⁹ Jason J. Czarnezki, (n 25) 138.

Sweden provides wide discretion to contracting authorities at all levels via its PPA. Sweden's National Public Procurement Authority assesses that 'it is possible to set requirements that go beyond EU legislation' as long as the fundamental public procurement principles are complied with.³²⁰

5. Conclusion

Eco-labels have a positive impact on promoting sustainable development but need to be driven by market forces. GPP instructs Europe's public authorities to procure environment-friendly goods, services, and works, that directly or indirectly provide the market for eco-labels to develop.³²¹ The article of labels set up in the Directive 2014 provides contracting authorities the opportunity to use labels to verify environmental and social criteria with reduced risk of violating the principles.³²² As both legislators and the Court have allowed "broad discretion" to contracting authorities in the Member States,³²³ it is important to address what are the legal limitations in using eco-labels.

The study is approached from the perspective of the furniture industry, which is important in the circular economy. The aim of this thesis is to consider the space and implementation of the use of eco-labels in the public procurement of sustainable furniture and to study how and to what extent the use of eco-labels in public procurement procedures can lead to violations of the principles and rules of public procurement. The research question of this thesis is how eco-labels can be used to procure sustainable furniture, in other words, what are the limitations to the use of eco-labels when contracting authorities procure furniture with environmental or sustainable objectives.

To answer this question, this thesis is first to understand labels. As labeling organizations are also involved in the standards formulation and formulate and plan label requirements by referring to different levels of standards, label requirements are similar to technical standards in public procurement, but it needs to check the standards set or referred to by the label requirements. Eco-labels include environmental criteria, and may also include social or other criteria, in order to meet the needs of the market. Besides helping the contracting authorities to

³²⁰ Upphandlingsmyndigheten <https://www.upphandlingsmyndigheten.se/en/sustainable-public-procurement/?t_hit.id=Boilerplate_Epserver_Features_EpserverFind_Models_EpserverFindDocument/604_en&t_q=sustainability%20criteria> accessed 21 May 2022.

³²¹ COM 2008/400, GPP is a voluntary tool led by DG JRC on behalf of DG Environment of the European Commission. See in Europa, GPP, <https://ec.europa.eu/environment/gpp/index_en.htm> accessed 13 May 2022.

³²² A. Semple, (n 31) 1, 189. See in M. Andhov, (n 77) para 43.03.

³²³ Recital 74 Directive 2014/24/EU. And Case C-413/17, *Roche Lietuva*, EU:C:2018:865, para 29.

identify criteria for products and services, (eco)labels can be used to prove that products or services meet the requirements.

There are three levels of limitations on the use of eco-labels in Directive 2014: the basic principles of public procurement, the conditions for the use of labels in Article 43, and the scope for the use of label requirements with environmental or social characteristics in the three criteria which allow to require labels.

In order to prevent “artificial narrowing of competition” for public contracts which can cause negative effects, contracting authorities should comply with the principles of public procurement and the other EU Treaty principles. Sweden has very high-level green criteria in tender offers and even allows the contracting authorities to set criteria that go beyond the EU legislation, while the principles are the limitations of their use of sustainability criteria.³²⁴

Article 43 has six conditions to limit the use of labels and label requirements. Three conditions are related to the governance of labels.³²⁵ Eco-labels with ISO 14024 certification are commonly considered to meet these conditions.³²⁶ The cost of obtaining a label has been questioned as a barrier for SMEs to access the labels,³²⁷ that should be accessed case by case.³²⁸ In Sweden, licensing cost or similar is not considered as a barrier to the accessibility.³²⁹

“Link to the subject-matter of the contract” has become a very important condition since the case *Concordia*. According to the *EVN*, *Dutch Coffee* and *Roche Lietuva* cases, the scope of “Link to the subject-matter of the contract” can be framed in a loose approach, but contracting authorities need to use the proportionality test or similar test to examine whether the interests of economic operators and contracting authorities are balanced.³³⁰ There is space for contracting authorities to decide the link of subject matter, as the Member States can measure it according to national laws and standards. The proportionality test is also adopted by Danish public procurement to measure the burden of proof caused by the requirement in Article 43 “or equivalent”.³³¹

The eco-label requirements complying with the principles and fulfilling the conditions to use can be used in different scopes in the three criteria: technical specifications, award criteria, and

³²⁴ Upphandlingsmyndigheten, (n 320).

³²⁵ H. Schebesta, (n 71).

³²⁶ N. Minkov, V. Bach, and M. Finkbeiner, (n 155) 12.

³²⁷ *Ibid.*

³²⁸ M. Andhov, (n 77) 43.22.

³²⁹ Upphandlingsmyndigheten, (n 320).

³³⁰ M. Andhov, (n 77) 43.22.

³³¹ M. Andhov, (n 77) 43.17.

contract performance. The technical specifications are the entry-level criteria, which should be based on the legislation at all levels. Award criteria are used to encourage economic operators to innovate for sustainability. Labels can help contracting authorities “follow up” on the performance of the contract.

GPP provides two levels of criteria for the Member States to apply according to their ambitions. Sweden as the pioneer of green procurement and home of eco-labels has the great ambition that allows the contracting authorities to have discretion to widely use sustainable criteria through the PPA.³³² The Directive provides broad discretion to the Member States. Member state needs to state which levels of criteria to apply in the PPA, to give the contracting authority a basis to use environmental or social criteria.

Eco-labels can be used in the procurement of sustainable furniture, to the extent that they do not violate the basic principles of public procurement. But it still requires a case-by-case analysis based on the conditions of the eco-label required. Finally, “or equivalent” should always be available when using eco-labels or eco-label requirements as standards or as proof in order to avoid violating the principle of non-discrimination.

³³² Upphandlingsmyndigheten, (n 320).

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Appendix I: Compare Directive, Sweden PPA and LOU

Article 43	Swedish Public Procurement Act	Lag (2016:1146) om upphandling
Labels	Labelling	Märkning
	Chapter 9 Section 12 Labelling means any document, certificate or attestation confirming that the supplies, services, works or processes or procedures in question meet certain requirements.	13 § Med märkning avses alla dokument, certifikat eller intyg som bekräftar att varor, tjänster, byggentreprenader eller processer eller berörda förfaranden uppfyller vissa krav.
43(1). Where contracting authorities intend to purchase works, supplies or services with specific environmental, social or other characteristics they may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, provided that all of the following conditions are fulfilled: (a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract; (b) the label requirements are based on objectively verifiable and non-discriminatory criteria; (c) the labels are established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate; (d) the labels are <i>accessible</i> to all interested parties; (e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence. Where contracting authorities do not require the works, supplies or services to meet all of the label requirements, they shall indicate which label requirements are referred to.	Chapter 9 Section 13 A contracting authority may in the technical specification, the award criteria or the contract performance conditions require a certain label as proof that the supplies, services or works correspond to the required characteristics, if 1. the label requirements only concern criteria which are linked to the subject-matter of the contract, 2. the label requirements are appropriate to define characteristics of the works, supplies or services that are the subject-matter of the contract, 3. the label requirements are based on objectively verifiable and non-discriminatory criteria, The Public Procurement Act 57 4. the label is established in an open and transparent procedure in which all parties may participate, 5. the labels are <i>available</i> to all interested parties, and 6. the label requirements are set by a body over which the party applying for the label cannot exercise a decisive influence. If a contracting authority does not require the subject-matter of procurement to meet all of the label requirements, it shall indicate which label requirements should be met.	14 § En upphandlande enhet får i de tekniska specifikationerna, tilldelningskriterierna eller villkoren för fullgörande av kontraktet kräva en viss märkning som bevis för att varan, tjänsten eller byggentreprenaden motsvarar de egenskaper som krävs, om 1. kraven för märkningen endast rör kriterier som har anknytning till det som ska anskaffas, 2. kraven för märkningen är lämpliga för att definiera egenskaperna hos den vara, tjänst eller byggentreprenad som ska anskaffas, 3. kraven för märkningen grundas på objektivt kontrollerbara och icke-diskriminerande kriterier, 4. märkningen har antagits genom ett öppet och transparent förfarande i vilket samtliga berörda kan delta, 5. märkningen är <i>tillgänglig</i> för alla berörda, och 6. kraven för märkningen fastställs av ett organ som den som ansöker om märkningen inte har ett avgörande inflytande över. Om en upphandlande enhet inte kräver att det som ska anskaffas har alla egenskaper som krävs av en märkning, ska den ange vilka krav för märkningen som ska uppfyllas.
43(2). Where a label fulfils the conditions provided in points (b), (c), (d) and (e) of paragraph 1 but also sets out requirements not linked to the subject-matter of the contract, contracting authorities shall not require the label as such but may	Where a label fulfils the conditions given in the first paragraph items 3–6, but the label requirements also sets out requirements not linked to the subject-matter of the purchase, the contracting authority shall not	Om en märkning uppfyller villkoren i första stycket 3–6, men kraven för märkningen även rör kriterier som inte har anknytning till det som anskaffas, får den upphandlande enheten inte kräva märkningen för varan, tjänsten

<p>define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts thereof, that are linked to the subject-matter of the contract and are appropriate to define characteristics of this subject-matter.</p>	<p>require the label as such for the supplies, services or works. It may, however, define the technical specification by reference to those of the detailed specifications of that label that are linked to the subject-matter of the purchase.</p>	<p>eller byggtreprenaden. Enheten får dock fastställa de tekniska specifikationerna genom hänvisningar till sådana detaljerade specifikationer för märkningen som har anknytning till det som ska anskaffas.</p>
<p>43(1). Contracting authorities requiring a specific label shall accept all labels that confirm that the works, supplies or services meet equivalent label requirements.</p>	<p>Chapter 9 Section 14 A contracting authority requiring a specific label in accordance with Section 13 shall accept another label if the requirements for that label are equivalent with the requirements of the required label.</p>	<p>15 § En upphandlande enhet som kräver en viss märkning enligt 14 § ska godta en annan märkning om kraven för den märkningen är likvärdiga med kraven för den angivna märkningen.</p>
<p>43(1). Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.</p>	<p>Chapter 9 Section 15 When a supplier cannot obtain the specific label required by the contracting authority or an equivalent label within the relevant time limits for reasons that are not attributable to the supplier, the contracting authority shall accept other appropriate investigation. This investigation shall show that the supplies, services or works satisfy the requirements of the indicated label or, in the cases indicated in Section 13 second paragraph, the specific requirements for the label.</p>	<p>16 § När en leverantör inte inom den angivna tidsfristen haft möjlighet att få tillgång till den märkning som den upphandlande enheten kräver eller en likvärdig märkning och detta inte beror på leverantören eller något förhållande på leverantörens sida, ska den upphandlande enheten godta annan lämplig utredning. Denna utredning ska visa att varan, tjänsten eller byggtreprenaden uppfyller kraven för den angivna märkningen eller, i de fall som anges i 14 § andra stycket, de särskilt angivna kraven för märkningen.</p>

Appendix II: Legal aspects and standards relevant to furniture³³³

REACH Regulation (1907/2006)	Regarding the definition and use of hazardous substances, the importance of the REACH Regulation (1907/2006) and the CLP Regulation (1272/2008) must be highlighted.
CLP Regulation (1272/2008)	CLP Regulation (1272/2008) on classification, labelling and packaging of substances and mixtures
VOC Directive (1999/13/EC)	Other more specific legal instruments include the VOC Directive (1999/13/EC) for installations where significant quantities of VOC containing compounds (e.g. formaldehyde resins for wood-based panels or surface coating chemicals for furniture) are handled and the Biocides Regulation (528/2012) which lists authorised active ingredients in biocidal products as a function of the application (for example Product Type 8 biocides apply to wood and Product Type 9 can apply to leather and textiles used in furniture ¹⁵).
Biocides Regulation (528/2012)	
Regulation 995/2010 (the EU Timber Regulation)	For wood and wood based materials, Regulation 995/2010 (the EU Timber Regulation) outlines the requirements for any timber to be legally sold on the EU market and links with existing processes for FLEGT licenses and CITES permits.
FSC and PEFC certification schemes	<i>Going beyond</i> legal requirements, the most relevant programmes for demonstrating that wood and wood based materials are from sustainably managed forests are the FSC and PEFC certification schemes.
EN standards such as EN 622 and EN 717	Across the EU, wooden particleboards, fibreboards and panels, are classified as E1 (0.1ppm) or E2 (0.1-0.3ppm) based on their release rates of formaldehyde as assessed by relevant EN standards such as EN 622 and EN 717.
EN 527 for work tables and desks in offices	A large number of EN standards exist that are specifically designed for individual product types such as EN 527 for work tables and desks in offices, EN 581 for outdoor tables and sets, EN 747 for bunk beds and EN 1335 for office chairs.
EN 581 for outdoor tables and sets	These standards are important from an environmental point of view when they refer to durability or performance-based aspects of the furniture.
EN 747 for bunk beds	In terms of national fire regulations, another important standard that applies to upholstered furniture is EN 1021.
EN 1335 for office chairs	
EN 1021 for upholstered furniture	

³³³ S. Donatello, M. G. Caldas, and O. Wolf, (n 33) 10.

Appendix III: Sustainability criteria for purchasing Furniture³³⁴

Criterion	Level	Type
Labelling for identification of the furniture	Core	Technical specification
Purchase of legal timber for furniture production	Core	Technical specification
Labelling of plastic parts	Core	Technical specification
Use and care instructions	Core	Technical specification
Formaldehyde in furniture textiles, hides or leather	Core	Technical specification
Contents of metals in finished hides and leather	Core	Technical specification
Surface treatment of wood, plastic and/or metal	Core	Technical specification
Restriction of biocides	Core	Technical specification
Furniture textile dyes	Core	Technical specification
Plasticisers in plastics and upholstery materials	Core	Technical specification
Content of plastics	Core	Technical specification
Glues used in the manufacture of furniture	Core	Technical specification
Formaldehyde in wood-based panels	Core	Technical specification
Requirements for furniture quality, function and safety	Core	Technical specification
Flame retardants in textiles, plastics and upholstery materials	Core	Technical specification
Design that facilitates repair	Advanced	Technical specification
Emissions from upholstery materials	Advanced	Technical specification
Formaldehyde in wood-based panels	Advanced	Technical specification
Substances hazardous to the environment and health in plastics and upholstery materials	Advanced	Technical specification
Plasticisers in plastics and upholstery materials	Advanced	Technical specification
The product's climate impact	Spearhead	Award criteria
Quality assurance procedures	Core	Qualification requirement
Sustainable supply chains	Advanced	Special contract terms
Systematic work with accessibility and universal design	Advanced	Special contract terms
Product warranty	Core	Special contract terms
Requirements under the ILO core conventions	Core	Special contract terms
Restriction of substances of very high concern	Core	Special contract terms
Accessibility advice	Spearhead	Special contract terms

³³⁴ Upphandlingsmyndigheten, criteria for furniture, <<https://www.upphandlingsmyndigheten.se/en/criteria/office-and-textiles/furniture/>> access 5 April 2022.

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