

Equivalent Labels

Report on regulatory framework and practical guidance

Commissioned by ModUpp2030



Foreword

The benefits of independent third-party certifications

Regardless of whether a public procurement concerns products, food, raw materials, services or building works, the public sector faces significant environmental and social challenges. By addressing these challenges, public procurement contributes to the achievement of the sustainable development goals. This requires thoughtful and effective working methods in procurement and purchasing. Established ecolabels and sustainability certifications are important tools in this work. The labels bring together up-to-date and ambitious requirements that help contracting authorities and other procuring organisations set clear, well-founded requirements in accordance with the legal framework. This simplifies the process because the requirements have already been developed, quality-assured and adapted to market conditions.

A key strength of independent third-party certifications is that requirements are checked and reviewed by an independent party. This creates the conditions for reliable contract follow-up, greater transparency and good traceability. It reduces the resources needed for verification, while maintaining high requirements for environmental and social sustainability. In addition, the criteria are continuously developed through open and transparent processes, based on science and taking account of both the environment and human rights. Overall, this helps make sustainable procurement more efficient, legally robust and effective in the public sector.

Upcoming strengthening of environmental claims to the public sector

The public sectors procurement of supplies and services plays an important role in environmental and sustainability development. On 1 January 2027, a new EU directive, Empowering consumers for the green transition, is proposed to enter into force in Swedish legislation. The directive regulates how companies may make general environmental claims to consumers. The Consumer Empowerment Directive aims to give consumers better opportunities to make more sustainable consumption choices through stricter rules on the use of environmental and sustainability arguments in marketing. General environmental claims may only be used if they can be substantiated. However, these requirements do not cover business-to-business transactions or communication directed at the public sector.

ModUpp2030* recommends that the rules applicable to consumer communication should also be used by companies in their communication with the public sector in order to facilitate sustainable choices in the procurement of products and services. In this context, the public sector can require labels in order to create guiding norms for companies when communicating with the public sector.

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*ModUpp2030 is a collaboration between the following labels in Sweden: Nordic Swan Ecolabel, EU Ecolabel, Good Environmental Choice, TCO Certified, KRAV, Fairtrade-certification and Marine Stewardship Council (MSC).

More information is available at <https://modupp.se/>.

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Summary of the report

ModUpp2030's report on equivalent labels analyses the meaning of Chapter 9, Section 14 of the Swedish Public Procurement Act (2016:1145), LOU, according to which a contracting authority is obliged to accept a label that is equivalent to the label required by the contracting authority. The provision means that the contracting authority must, where relevant, assess whether another label is equivalent.

Neither LOU nor Directive 2014/24/EU on public procurement answers the question of how this equivalence assessment is to be carried out. The inadequate guidance in the statutory wording creates a risk that courts will make overly superficial equivalence assessments and accept weaker labels as equivalent. One example is a judgment from the Administrative Court in Stockholm in 2025, where Rainforest Alliance was considered equivalent to Fairtrade-certification for coffee. A superficial equivalence assessment in case-law may lead contracting authorities to refrain from requiring labels at all. It also creates a risk that suppliers who have invested in the label specified by the contracting authority will be outcompeted by suppliers offering a less comprehensive label with lower environmental and sustainability benefits.

A further risk is that authorities will not be satisfied with requiring a particular label, but will also describe the content of the label in detail in order to avoid having to accept less far-reaching labels.

Such a development would be unfortunate, because it would miss the EU's purpose behind the rules on labels. Through those rules, the EU intended to make it simpler for contracting authorities to require labels. The simplification consists in enabling labelling organisations to relieve procurers both in writing requirements and in carrying out follow-up. Labelling organisations define and develop the label requirements and verify that they are met. The procurer need only require the label and verify that the building works, supplies or services carry the label.

It is therefore fully sufficient for a contracting authority to require, in a single sentence, that the supply or service bear a specific label, provided of course that the label fulfils the criteria in Chapter 9, Section 13, first paragraph, LOU. A label requirement need not be more detailed than that.

The report illustrates the EU's aim of simplification by comparing the current rules with the complicated regulations under the previous directive. The Court of Justice judgment in MAX HAVELAAR is discussed, as it clearly illustrates how the previous regulations made it difficult for authorities to require labels.

The report reaches the following conclusions:

- 1) It is fully sufficient for a contracting authority to require that the product bear a specific label. The authority does not need to set out in detail which label requirements are included in the label.

- 2) The equivalence assessment must reach a certain level of thoroughness. The fact that the label requirement is not written in more detail does not justify a superficial equivalence assessment.
- 3) A trade or brand name under Chapter 9, Section 6 LOU is not the same as a label under Chapter 9, Section 13 LOU, among other things because the content associated with a trade name or brand name is not generally accessible.

The report also contains recommendations on how contracting authorities can require labels. The main recommendations are:

- As a general rule, the contracting authority should specify only one particular label, not several labels.
- The contracting authority may, but is not required to, write the requirement for a specific label in a more detailed way, for example by identifying label requirements it considers particularly important.
- The contracting authority may require tenderers to submit, already with the tender, evidence that another label is equivalent.
- Contracting authorities should consider requiring the label as a contract performance condition, since this gives suppliers more time to obtain the specified label or an equivalent label.
- A raw-material label should not be accepted as equivalent to a label covering the entire final product.

Equivalent Labels – the report

Report for ModUpp2030

The assignment

Under Chapter 9, Section 14 of the Swedish nation public procurement act (LOU), a contracting authority requiring a specific label “*must accept another label if the requirements for that label are equivalent to the requirements for the label indicated*”. The provision implements the third subparagraph of Article 43(1) of Directive 2014/24/EU on public procurement, adopted on 26 February 2014¹.

The meaning of the provision is as stated: a contracting authority that requires a specific label is obliged to accept another label if that other label is equivalent.

Neither the directive nor LOU explains what determines whether another label is equivalent. Nor is there any precedent from the Court of Justice of the European Union or from higher Swedish courts answering the question.

The ModUpp2030 labelling network, consisting of the Nordic Swan Ecolabel, EU Ecolabel, Good Environmental Choice (Bra Miljöval), MSC, TCO Development, KRAV and Fairtrade-certification, perceives that the uncertainty about what constitutes an equivalent label affects contracting authorities' willingness to require labels. ModUpp2030 also sees a risk that non-equivalent labels may be accepted. This concern is not unfounded. The report discusses a judgment in which the Administrative Court in Stockholm found that Region Gotland was entitled to regard Rainforest Alliance as equivalent to fair trade label/Fairtrade-certification².

The report analyses the meaning of the rule that the other label must be equivalent. It also provides practical guidance on how contracting authority can ensure that only labels they consider equivalent are accepted. Suppliers holding the specified label have an interest in not being outcompeted by undertakings whose label is, in the supplier's view, not equivalent. The report also provides guidance on how they may act.

Since the LOU provision implements the third subparagraph of Article 43(1) of the 2014 directive, the analysis should begin there.

Because there is no clear guidance in legislation or case-law, the analysis will be resonating.

¹ DIRECTIVE 2014/24/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 February 2014 on public procurement and repealing Directive 2004/18/EG.

² The Administrative Court in Stockholm, judgment 2025-07-10, case no. 12597-25.

The provision on equivalent labels

Chapter 9, Section 14 LOU implements the third subparagraph of Article 43(1) of the 2014 directive³, using the following terminology:

Contracting authorities that require a specific label must accept all labels that confirm that the building works, supplies or services meet equivalent label requirements.

The Swedish provision is similarly written:

A contracting authority requiring a specific label under Section 13 must accept another label if the requirements for that label are equivalent to the requirements for the label indicated.

If a tenderer relies on a label other than the one specified by the contracting authority, the contracting authority must therefore carry out an equivalence assessment. The other label is to be accepted only if its requirements are equivalent to the requirements for the specified label.

As a main rule, the contracting authority need not assess evidence other than a label. There is, however, an exception: if a supplier has not been given sufficient time to obtain the specified label or an equivalent label, the contracting authority must also assess other appropriate means of proof submitted by the supplier. This follows from the fourth subparagraph of Article 43(1) of the 2014 directive and Chapter 9, Section 15 LOU.

A key question is how thorough the contracting authority's equivalence assessment must be.

In its judgment of 10 July 2025 in case 12597-25, the Administrative Court in Stockholm held that Region Gotland could accept Rainforest Alliance as equivalent to fair trade label/Fairtrade-certification for coffee. A tenderer whose coffee was Fairtrade-certified applied for review because the region had accepted another tenderer's Rainforest Alliance-labelled coffee, which the applicant argued was not equivalent. In the procurement, Region Gotland had stated that the coffee *"must be fair trade label, Fairtrade-certification or equivalent"*. The region had not specified which requirements characterise a fair trade label/Fairtrade-certification, nor which requirements another label would have to satisfy to be considered equivalent. This absence of further specification appears to have influenced the court's assessment.

The Administrative Court justified its opinion that the region was allowed to accept Rainforest Alliance as equivalent to fair trade label/Fairtrade-certification for two reasons:

- 1) First, that a contracting authority has a degree of interpretative precedence regarding the wording of its own procurement documents, provided that this does not breach the principles of EU law; and

³ Proposition 2015/16:195, page 1048.

- 2) Second, that the label requirement did not contain more detailed criteria or mandatory requirements such as economic and social protection, a minimum price or producer influence.

According to the court, the contracting authority therefore had a "*degree of interpretative precedence*". In the court's view, an assessment that another label is equivalent would have to deviate "*significantly*" from the criteria in the procurement documents to breach LOU⁴. That reasoning supports the view that a contracting authority may make a superficial equivalence assessment.

There are for certainty several Swedish judgments that express the view that if a requirement can be interpreted in different ways, the contracting authority has a certain prerogative of interpretation.⁵ The fact that the Region had not specified the requirement for labelling would therefore, according to the Administrative Court, have given the Region greater freedom of choice as regards the assessment of equivalence. According to the Administrative Court, the requirement that coffee should be fair trade label, Fairtrade-certification or equivalent was so imprecisely designed that "*only a label or certification of the products was required*".⁶

However, this view may be questioned in light of the EU's Court of Justice's judgment in Case C-27/15 *Pizzo*. In *Pizzo*, the EU Court clarified that requirements in procurements must be interpreted strictly according to their wording and must not be given a narrower or wider meaning. According to the EU Court i *Pizzo* must requirements and criteria in the procurement be written in the procurement documents "*in a clear, precise and unequivocal manner*" so that all tenderers "*know exactly what conditions apply*".⁷

The question is therefore whether the region's requirement that coffee should be fair trade label, Fairtrade-certification or equivalent was sufficiently clear, precise and unequivocal. In my view, the answer is yes. The requirement corresponded to the wording of Chapter 9, Section 13, first paragraph LOU and to the purpose behind the rules on labels. As discussed below, the EU's purpose in Article 43 of the 2014 directive is to simplify the use of labels by contracting authorities, both in writing requirements and in evaluation. The wording and purpose therefore show that the region did not need to formulate the requirement in more detail.

Region Gotland and the administrative court were accordingly obliged to carry out an equivalence assessment. The next question is whether that assessment was sufficient. My answer is no. The analysis below shows that their assessments were too superficial, and that the absence of a more detailed requirement did not entitle the authority or the court to treat the task lightly.

⁴ The Administrative Court in Stockholm, judgment 2025-07-10, case no. 12597-25, p. 4.

⁵ See the Administrative Court of Appeal in Stockholm's judgment 2023-03-06, case 6510-22 and judgment 2025-11-03, case 5515-25.

⁶ The Administrative Court in Stockholm, judgment 2025-07-10, case no. 12597-25, p. 5.

⁷ Judgment of the Court of Justice of the European Union of 2 June 2016, Case C-27/15 *Pizzo*, p. 36

Equivalence assessments in case-law

The word equivalent also appears in other provisions of LOU. For example, Chapter 9, Section 6 LOU generally prohibits references to a brand or trade name and similar matters. If it is not possible to describe the subject of the procurement sufficiently clearly in another way, such a reference may nevertheless be made if accompanied by the words or equivalent. Under Chapter 9, Section 7 LOU, contracting authorities setting performance or functional requirements must accept equivalent solutions.

In procurement practice, contracting authorities often describe the products they wish to purchase by reference to a brand or trade name, despite the main rule in Chapter 9, Section 6 LOU. It is also common to require reference assignments to be equivalent to the assignment or delivery covered by the procurement.

There is therefore case-law on whether an offered product or reference assignment is equivalent. The report reviews examples of this case-law.

In its judgment on 2013-01-14, case 2685-2687-12, the Administrative Court of Appeal in Sundsvall made a fairly thorough equivalence assessment in a procurement of dental care equipment if the syringe offered by the applicant was equivalent to the multi-purpose syringe specified by the county councils. The reason for the thorough equivalence assessment is probably that the county councils had set a number of requirements regarding the function of the syringe, for example that the blaster should be rotatable, that the outer casing of the blaster could be removed and that re-suction could not occur. The offered syringe was considered to be equivalent.

On the other hand, the Administrative Court of Appeal in Gothenburg in its judgment 2009-10-30, case 5832-09, made a more superficial equivalence assessment in a procurement of trades services. In the procurement, the City of Gothenburg had demanded "*work environment certification according to OHSAS 18001 or AFS 2001:1 or equivalent*".⁸ The applicant considered that Gothenburg city should not have accepted the tender of a competitor relying on a certification that was not issued by an authorised and accredited third party and was therefore not equivalent. The Administrative Court of Appeal noted that it was unclear whether the winning bidder had a certification issued by an accredited body, but at the same time noted that it did not appear that the certification "*must be issued by an authorised third party*". According to the Administrative Court of Appeal, a management system that had not been issued by an authorised third party was therefore also to be regarded as equivalent.⁹

The Administrative Court of Appeal in Gothenburg's judgment 2014-12-17, case 3608-14, concerned a procurement of digital information signs to be set up along the E18. In the procurement, there was a requirement that the LEDs should be of a certain trade name "or

⁸ AFS stands for *Arbetsmiljöverkets författningssamling*, (Swedish) which is the Swedish Work Environment Authority's collection of occupational health and safety regulations.

⁹ Administrative Court of Appeal in Gothenburg, judgment 2009-10-30, case 5832-09, p. 3.

documented equivalent quality." Since the contracting authority had not specified in more detail how the equivalence should be documented, the Administrative Court of Appeal found that *"documentation of basically any kind [must] be accepted."*¹⁰

The above case-laws indicate that the equivalence assessment has often depended on how much guidance the contracting authority provided in the procurement documents, for example through mandatory functional requirements. If the contracting authority had contained little guidance in the procurement document, the court's assessment of equivalence became more superficial. Conversely, if the procurement document contained, for example, several mandatory functional requirements, the court's equivalence assessment was also more thorough. The judgments refer to previous legislation, more specifically the Swedish Public Procurement Act (2007:1091), which was an implementation of the EU Directive 2004/18/EC¹¹, (hereinafter: the 2004 Directive).

Case-law relating to the corresponding provisions in the Swedish Public Procurement Act (2016:1145), which is an implementation of the 2014 Directive, shows that the courts' attitude to the equivalence assessment in these respects has not changed.

In its judgment 2022-05-31, case 255-22, the Administrative Court of Appeal in Jönköping appears to have made a superficial assessment of whether the applicant's reference assignment concerned equivalent packaging for food distribution. The Administrative Court of Appeal found that the tenderer had referred to two certificates from the reference person and an agreement with the referee company according to which the reference assignments were equivalent, and added that, according to the Administrative Court of Appeal, *"no reason has arisen to question the certificates or the agreement"*.

The Administrative Court in Gothenburg found in judgment 2025-01-28, case 12199-24, which concerned the application of the corresponding provision in the Act (2016:1146) on Procurement in the Utilities Sectors (LUF), that the applicant had not proven to have a quality and environmental management system that was equivalent to ISO 9001 and ISO 14001 respectively. The contracting authority had required that another system must be approved by an accredited body of auditors or system-approved issuer and that an approved certificate of third-party certification should be attached to the tender in order to be equivalent. The applicant's system was *'signed in his own hand'* and thus not equivalent.

There is thus case-laws that speaks in favour of the principle that the equivalence assessment should depend on how detailed the contracting authority has written the requirement. If the procurement document lacks information that provides guidance on what is equivalent, the equivalence assessment may be more superficial.

¹⁰ The Administrative Court of Appeal in Sundsvall, judgment 2014-12-17, case 3608-14, p. 7.

¹¹ 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.

In its judgment on whether Rainforest Alliance was equivalent to fair trade label, Fairtrade-certification or equivalent, the Administrative Court in Stockholm appears to ¹² have applied the same approach despite the fact that the case concerned the application of Chapter 9, Section 14 LOU on equivalent labelling.

Should this approach apply, contracting authorities, who want to ensure that only truly equivalent labels are accepted, will have to formulate the labelling requirement in a more detailed, or, if desired, complicated way. The contracting authority might have to list the detailed specifications of the specific label that another label must meet in order to be considered equivalent.

Similarly, a supplier who has spent costs on obtaining the indicated label must be active and ask questions during the tender period to ensure that less far-reaching labels are not accepted as equivalent.

There are several reasons why the practice that applies to the general rule on references to brand or trade names, etc. in Chapter 9. Section 6 of the Public Procurement Act shall not also apply to the equivalence assessment to be made pursuant to Chapter 9. 14 § LOU.

Chapter 9, Section 6 LOU is an exception. References to trade or names and similar matters are prohibited as a general rule. A trade or brand name will normally not meet the criteria for a sustainability label within the meaning of Chapter 9, Section 13 LOU. For example, a commercial label is normally not accessible to all interested parties. Unlike sustainability labels covered by Chapter 9, Section 13 LOU, trade and brand names are often trade secrets.

By contrast, the rule on labels in Chapter 9, Section 13 LOU is not an exception. It is a main rule. A contracting authority may require a specific label according to Chapter 9, Section 13 first paragraph LOU. The same provision states that the requirement does not need to be elaborately formulated. It is sufficient to require a specific label¹³. The authority may appropriately add that equivalent labels are accepted, although this is not a legal requirement.

The wording of Chapter 9, Section 13 LOU therefore does not require a contracting authority to formulate label requirements in detail. This also follows from the purpose of the corresponding provision in Article 43 of the 2014 directive. To understand that purpose, it is useful to consider the earlier regime under the 2004 directive, which forced authorities wishing to use ecolabels to do so in a very cumbersome way. The judgment of the EU Court of Justice in case C-368/10 MAX HAVELAAR put the spotlight on the bureaucratic rigidity that applied under the 2004 directive to the conduct of procurement in general and the possibility of using labels in particular.

¹² The Administrative Court in Stockholm, judgment 2025-07-10, case 12597-25.

¹³ Of course, provided that the label meets the criteria in Chapter 9. Section 13, first paragraph, LOU.

MAX HAVELAAR¹⁴

MAX HAVELAAR arose from a procurement carried out by the Dutch province of Noord-Holland for the operation of coffee machines. The contract included replenishing the machines with coffee, tea, milk, sugar and cocoa. The Commission considered that the procurement breached several provisions of the 2004 directive and brought proceedings against the Kingdom of the Netherlands.

Among the requirements challenged by the Commission were the requirements that coffee and tea bear the EKO¹⁵ label and the MAX HAVELAAR¹⁶ label, and that sugar, cocoa and milk powder carrying those labels would receive additional points in the evaluation.

The EU Court of Justice held that the mandatory requirement relating to the EKO ecolabel for coffee and tea was a technical specification, since technical specifications concern characteristics of the product. Environmental characteristics, such as the environmental impact of a production method, are such characteristics¹⁷.

Under the 2004 directive it was possible to use ecolabels. In Article 23(6) in 2004 directive there was a complicated rule about using ecolabels in technical specifications. According to the provision, it was admittedly permissible to set requirements for environmental characteristics in the form of performance or functional requirements that were contained in an eco-label that met requirements for, among other things, suitability, scientific and accessibility.

However, what made the provision complicated was that the contracting authority was not allowed to require the eco-label as such. Instead, the contracting authority would list the detailed specifications of the ecolabel.¹⁸

In addition, the eco-label could also be used as one of several possible means of proof, not only other labels but also *'technical documentation from the manufacturer or a test report from a recognised body'*.

Article 23(6) of the 2004 Directive thus provided for a complex system of both requirements and evaluation. It was not just for the contracting authority to demand an eco-label. The demand needed to be made in a much more detailed and complicated way. In the evaluation, other evidence also had to be accepted.

¹⁴ Judgment of the Court of Justice of the European Union 2012-05-10, Case C-368/10 European Commission v Kingdom of the Netherlands.

¹⁵ A label run by a Dutch foundation whose purpose is to promote organic farming.

¹⁶ In Sweden, Max Havelaar is the equivalent of Fairtrade-certification (formerly Fair trade label), which labels products that meet four trade criteria: cost-covering minimum price, mark-up on the world market price, pre-financing and long-term trade relations between the producer and the importer.

¹⁷ See Annex VI Definition of certain technical specifications to the 2004 Directive.

¹⁸ *'It is clear from the wording of the first subparagraph of that provision [Article 23(6)] that, as regards environmental characteristics, contracting authorities are thus given the option of using detailed specifications relating to an eco-label but not requiring an eco-label as such'*, MAX HAVELAAR, p. 63.

Had the province then correctly applied Article 23(6) of the 2004 Directive? The EU Court of Justice's answer was no. The requirement could be interpreted as meaning that only coffee and tea that had the EKO label were accepted.¹⁹

During the tender period, the province did indeed send out an information notice informing it that other equivalent labels were also accepted. However, this correction could not be taken into account. Under Article 39(2) of the 2004 Directive, the contracting authority was entitled to provide only “*additional information*” during the tender period, but not to change the content of the procurement document. The provincial information notice was a change.²⁰ Thus, under the 2004 Directive, it was not possible to change the content of a call for tenders once it had been advertised.

Even in other respects the requirement that coffee and tea bear the EKO label was contrary to Article 23(6) of the 2004 Directive, since the province had not listed all *the detailed specifications* for the EKO eco-label. Thus, the 2004 Directive did not allow only a certain label to be required. All labelling requirements also had to be specified.

This part of MAX HAVELAAR is noteworthy because the EU Court of Justice and Advocate General Juliane Kokott took different views. The Advocate General considered that a reference to an ecolabel should be sufficient.

If a contracting authority were required to disclose all detailed specifications of the label it would “*impose an administrative burden*” disproportionate to the objectives pursued, according to the Advocate General and would be overly formalistic. It was, according to her, “*too formalistic to require the contracting authority to provide all the specifications in detail*”.²¹

The EU Court of Justice did not share that view. According to the EU Court of Justice Article 23 (6) of 2004 directive should not be interpreted so freely. Suppliers must obtain all the necessary information from the procurement document and not have to seek information from other sources on their own.²²

An example of what this meant is the criteria document for the Nordic Swan Ecolabel of cleaning products, which is just over 40 pages.²³ The 2004 Directive therefore required the reproduction of that document in its entirety in the procurement document.

As we shall see, the EU has tried to remedy the rigidity of the previous directive through the 2014 directive. Under Article 47(3) of the 2014 Directive, it is now possible, as a general rule, to make changes during the tender period, including substantial changes, provided that the tender period is extended in proportion to the weight of the change.

¹⁹ MAX HAVELAAR, pp. 52-53.

²⁰ MAX HAVELAAR, pp. 54-55.

²¹ MAX HAVELAAR, Opinion, p. 57.

²² MAX HAVELAAR, p. 67.

²³ Nordic Swan Ecolabel for cleaning products, version 6.15 • 7 November 2018 – 31 August 2027.

This change reflects a broader EU legislative ambition to simplify procurement procedures. As shown below, that ambition applies in particular to the possibility of requiring labels.

The province had also required coffee and tea to carry the MAX HAVELAAR label. MAX HAVELAAR is a fair trade label corresponds in Sweden to Fairtrade-certification. It is therefore not an environmental label but rather a label that relates to social sustainability. The label concerned the conditions under which the supplier procured the goods from the manufacturer, for example at a cost-covering minimum price.²⁴

According to the EU Court of Justice, this was not a technical requirement but a condition for the performance of a contract.

However, we do not get any wiser than that. The EU Court of Justice also found that the Commission had argued on Article 26 of the 2004 directive too late, which is why the Commission's action in that part was simply dismissed.²⁵

However, the EU Court of Justice considers the Commission's next complaint, namely that *the award criteria* that products should be labelled with EKO and MAX HAVELAAR were unrelated to the subject matter of the contract, since they, and in particular MAX HAVELAAR, related to the general policy of the tenderers.

The Commission's argument was rejected by the EU Court of Justice, which stated that award criteria did not have to relate to the characteristics of a product as such in order to be linked to the subject-matter of the contract.

Furthermore, according to the EU Court of Justice, it was clear that the award criteria related only to *“the ingredients to be supplied within the framework of the contract and that they do not in any way affect the tenderers' general purchasing policy”*.²⁶

The requirement for a link or connection to the subject matter was therefore not as strict if the requirement for labelling was an award criteria. There is much to suggest that the EU Court of Justice had made the same assessment regarding the conditions for the performance of contracts.

In a previous report for Ecolabelling Sweden and the Swedish Society for Nature Conservation,²⁷ I argue that the fact that a label contains detailed specifications that can be regarded as company-general does not automatically mean that the label has no connection when the label is used as an award criteria or condition for the performance of a contract.

There is no need to repeat in detail what is in that report. I will suffice to note that the EU Court of Justice clarifies in *MAX HAVELAAR* that the concept of “link” (or “connection”) to the subject

²⁴ *MAX HAVELAAR*, pp. 73-74.

²⁵ *MAX HAVELAAR*, p. 79.

²⁶ *MAX HAVELAAR*, pp. 90-91.

²⁷ Requirements for labelling in public procurement, Report for Ecolabelling Sweden (MISAB)1 and the Swedish Society for Nature Conservation, 25 February 2025.

matter does not have the same meaning for award criteria as it does for technical specifications (the same is still true under the 2014 Directive).

According to the EU Court of Justice, the province's award criteria were nevertheless contrary to the 2004 Directive, partly because the province had not specified the detailed specifications for the label, partly because the province had required a certain label as the only acceptable means of proof.²⁸

In summary, the EU Court of Justice's judgment in *MAX HAVELAAR* points out a number of bureaucratic obstacles in the 2004 directive for contracting authorities that wanted to require labels. These obstacles consisted of:

- 1) That contracting authorities were not allowed to require a label; Instead, they had to list the detailed specifications of the label.
- 2) That contracting authorities must accept in the evaluation all appropriate means of proof, not only labels but also evidence such as technical documentation from the manufacturer or a test report from a recognised body.

In addition to those two obstacles, which concerned precisely the possibility of requiring labelling, *MAX HAVELAAR* highlights another obstacle of a more general nature, namely that the possibility under the 2004 Directive to change the procurement document once the contract had been advertised was close to zero. If the contracting authority wanted to change a requirement, it was just to cancel the procurement and advertise again.

MAX HAVELAAR is thus an important background document to the 2014 directive. It does not take much imagination to understand that, through the amendments to the 2014 Directive, the EU legislature has sought to remedy the bureaucratic obstacles that existed in the 2004 directive and which were painfully clear in the *MAX HAVELAAR*.

The 2014 directive

Although the 2014 directive does not state this explicitly, the provision on labels should, in my view, be read in light of *MAX HAVELAAR*. The purpose is to simplify and expand the possibilities for requiring labels. Under the 2014 directive, contracting authorities may now require a label.

The 2014 directive contains no equivalent to the complicated rule in Article 23(6) of the 2004 directive, which required contracting authorities to list the detailed specifications of an ecolabel regardless of whether the requirement formed part of the technical specifications or an award criteria.

That rule has been replaced by Article 43, under which it is permissible to require a label in the technical specifications, award criteria or contract performance conditions. The contracting authority no longer needs to list the detailed specifications of the label. It is sufficient to require “*a specific label*”.

²⁸ *MAX HAVELAAR*, p. 94 and p. 97.

The possibility of using a label in the technical specifications is not limited to ecolabels. Article 43(1), first subparagraph, allows labels relating to environmental, social or other characteristics. It is a weakness that this is not reflected clearly in the wording of Chapter 9, Section 13 LOU.

This does not mean that it is unrestrictedly possible to require a label such as Fairtrade-certification. Requirements for Fairtrade-certification cannot be included in the technical specifications. Under Article 42 technical specifications must concern characteristics of the subject-matter of the contract. Fair trade is not a characteristic of the product in the sense of Article 42. However, a label such as Fairtrade-certification can be used as an award criteria or a contract performance condition²⁹.

It is notable that neither Article 43(1) nor Chapter 9, Section 13 LOU requires the label requirement to be accompanied by the words or equivalent. There is therefore no obligation to state that equivalent labels are accepted, although it may be appropriate to do so.

In evaluation, the contracting authority must accept labels that meet equivalent label requirements, but there is no obligation to say this in the procurement documents.

As a main rule, contracting authorities may now require labelling. It may not be excluded that a requirement for labelling, despite the fact that they correspond to the wording of Chapter 9, Section 13 LOU, would nevertheless be contrary to the Swedish Public Procurement Act, more specifically the principles of procurement law according to Chapter 4. 1 § LOU.³⁰ However, such a situation appears to be rare, not least in light of the Supreme Administrative Court's ruling 2010 ref. 78, where the Supreme Administrative Court states that the contracting authority "*has the great freedom*" to determine the subject matter of a procurement.

The possibility of requiring labelling under Article 43 of the 2014 Directive also simplifies the evaluation as the contracting authority does not have to examine evidence other than a label, as a main rule.

Here, too, there is an exception in the fourth subparagraph of Article 43(1) for the situation where the supplier has not been given sufficient time to obtain the label or an equivalent label. In that case, the supplier may rely on other evidence that the products comply with the specifications of the specific label.

However, this can be avoided by designing the requirement for labelling as a condition for the performance of contracts. Such a condition must be fulfilled at a later date than the last day of bidding, normally at the start of the contract. Moreover, there is nothing to prevent the procurement document from specifying an even later date. On the Nordic Swan Ecolabel's website, for example, there are suggestions on how requirements for labelling as a condition for the performance of contracts can be set to avoid the exemption being applicable.³¹

²⁹ See recital 97 of the 2014 Directive

³⁰ These principles are the principle of equal treatment, the principle of transparency, the principle of non-discrimination on grounds of nationality, the principle of mutual recognition and the principle of proportionality.

³¹ <https://www.svanen.se/inkop-och-upphandling/sa-staller-du-krav-pa-miljomarkning/kontraktsvillkor/>

The equivalence assessment under Article 43(1)

The main purpose of Article 43 of the 2014 directive is to simplify the use of labels by contracting authorities. The EU legislature appears to have accepted the Advocate General's view that a reasonably well-informed and normally diligent tenderer should be able to determine, on its own, what is required to obtain the specified label.

The same appears to apply to the assessment of whether another label is equivalent. A reasonably well-informed and normally diligent supplier should be able to obtain, from publicly available sources, information about what is required for another label to be accepted, since the label must be accessible to all interested parties. The supplier should also be able to obtain assistance from the labelling organisation. A tenderer relying on another label should bear the burden of proving that the other label is equivalent³².

A reasonable interpretation of Article 43 is that not every label can be regarded as equivalent. Even if a label fulfils the criteria in Article 43(1), including connection to the subject-matter of the contract, suitability, transparency and accessibility, that is not necessarily sufficient for it to be considered equivalent.

A supplier wishing to invoke another label must therefore assess whether that label is equivalent to the one specified by the contracting authority.

The contracting authority must also carry out an equivalence assessment if a tenderer invokes another label. While the contracting authority generally don't need to examine other means of proof than labels, it must determine whether another label meets equivalent label requirements.

The contracting authority can simplify matters for itself by requiring that the tender include evidence of equivalence.

According to the judgment of the EU Court of Justice in case C-14/17 *VAR srl*, a tenderer who offers a product other than the one specified and which the tenderer claims are equivalent must prove this already in the tender. According to the same ruling, it is for the contracting authority to require proof of equivalence. *The VAR srl* concerned a different directive and provision, namely Article 34 on technical specifications of Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors. It is therefore uncertain what scope should be given to the decision.

VAR srl nevertheless provides support for the view that a contracting authority should be entitled to require the tender to include evidence demonstrating that the other label is equivalent. The contracting authority should also be permitted to provide examples of what such evidence could consist of, for example a valid licence/certificate issued by an independent labelling organisation.

³² It is a general principle that tenderers must prove that requirements are met, see the Administrative Court of Appeal in Gothenburg, judgment 2013-05-07, case 661-13. See also JP Infonet legal commentary to Chapter 9. 14 § LOU.

The next question is how thorough the equivalence assessment should be. This will naturally depend on the subject matter of the procurement and on the label specified by the contracting authority.

The Swedish National Agency for Public Procurement has stated in a reply on 26 March 2019 in its FAQ portal that there is no guiding case-law on what constitutes an equivalent label, and that “*equivalent*” does not mean “*exactly the same*”. Swedish National Agency for Public Procurement has also suggested that the assessment may consider whether the requirements of the other label address the same environmental problem and produce a corresponding effect, but by different methods³³.

In any event, the equivalence assessment must reach a certain level. The fact that the contracting authority has not specified the requirement beyond naming a specific label does not mean that the assessment may be superficial.

In my view, neither Region Gotland's nor the Administrative Court's equivalence assessment in the coffee case mentioned above reached an acceptable level. According to the region, the requirement that coffee should be fair trade label, Fairtrade-certification or equivalent only meant that the label should cover areas such as sustainability and social responsibility. The Administrative Court considered that the requirement “*had not been written with more detailed criteria or mandatory requirements such as economic and social protection, minimum price or producer influence*”³⁴. The lack of further clarification meant, according to the Administrative Court, that “*only a label or certification of the products was required.*”³⁵

Both the region's and the Administrative Court's equivalence assessments were insufficient. The Administrative Court seems to consider that the equivalence assessment may be superficial since the Region has not specified any detailed specifications for the special label required by the Region. By implication, labelling requirements need to be more detailed in order to justify a more rigorous equivalence assessment.

The Swedish National Agency for Public Procurement seems to share that view. In response to a question about the Nordic Swan Ecolabel, The Swedish National Agency for Public Procurement expresses itself in a way that can be interpreted as meaning that the contracting authority is obliged to specify in more detail which labelling requirements another label must meet in order to be assessed as equivalent.³⁶ It would therefore not be enough to indicate only a certain label.

However, that is an approach which is not consistent with the wording or the purpose of that provision. Should this approach determine the Swedish courts application of Chapter 9 Section 14 LOU on equivalent labelling, there is a risk that the 2014 provisions on simplifying

³³ [Is Type I certification system \(ISO 14024\) equivalent to the EU Ecolabel? | National Agency for Public Procurement](#).

³⁴ The Administrative Court in Stockholm, judgment 2025-07-10, case 12597-25, p. 2.

³⁵ The Administrative Court in Stockholm, judgment 2025-07-10, case 12597-25, p. 5.

³⁶ [Can you set requirements for the Nordic Swan Ecolabel? | National Agency for Public Procurement](#) Answer to question asked 2019-08-12.

the possibility of requiring labelling will not have an appropriate effect in procurements made in Sweden. This means that contracting authorities must require labels in a way that is reminiscent of the system under the old directive, a system that the EU has wanted to get away from.

According to Chapter 9. 13 § 1 LOU, it is quite sufficient to require a certain labelling. No further clarification is needed. A more detailed specification is only necessary if the contracting authority does not require that the object to be procured has all the characteristics required by the label; In that case, it must specify the labelling requirements to be met.³⁷

It can be repeated that one of the criteria for being an acceptable label is that the label is accessible to all concerned. A reasonably informed and normally diligent supplier can thus obtain information on his own and from open sources about what is required to obtain the label or whether another label is equivalent.

In the region's procurement, the requirement was that coffee should be labelled with Fairtrade-certification. There is no lack of sources of information to determine what is required to obtain Fairtrade-certification or whether the Rainforest Alliance is equivalent:

- 1) In MAX HAVELAAR, the EU Court of Justice specified the criteria that distinguish the MAX HAVELAAR label, i.e. Fairtrade-certification. According to the EU Court of Justice, the label included the four criteria of fair trade, i.e. (1) a minimum price, (2) a mark-up on the world market price, (3) pre-financing and (4) long-term trade relations between the producer and the importer.
- 2) By studying the labelling requirements for Fairtrade-certification and Rainforest Alliance on the organisations' respective websites, it was possible to get a picture of both labels and whether Rainforest Alliance was equivalent to Fairtrade-certification.
- 3) There was also information at The Swedish National Agency for Public Procurement. According to an answer given by The Swedish National Agency for Public Procurement to a questioner on 22 April 2022, The Swedish National Agency for Public Procurement states, among other things, that the Rainforest Alliance includes social sustainability aspects that correspond to The Swedish National Agency for Public Procurement's "base level" but that Fairtrade-certification contains *"more far-reaching requirements for, for example, minimum wages, extra price premiums for the farmer and fair trade"* and is therefore proof of compliance with The Swedish National Agency for Public Procurement's advanced level of socially responsible farming.³⁸

Thus, there was publicly available information also for the region and the Administrative Court in order to be able to make a more thorough equivalence assessment. A reasonably informed and normally diligent supplier is expected to have this external monitoring. What applies to a

³⁷ Article 43(1), second subparagraph, of the 2014 Directive and Chapter 9. Section 13, second paragraph, LOU.

³⁸ [Proposal for proof of sustainable production of coffee/tea/cocoa | National Agency for Public Procurement.](#)

reasonably informed and normally diligent supplier should also apply to the contracting authority or, for that matter, the court.

Swedish case-law on equivalent labels

As mentioned, there is no guiding practice regarding the provision in Chapter 9. Section 14 of the Swedish Public Procurement Act LOU) on equivalent labelling. Judgments from the first instance are presented below.

In its judgment 2020-07-01, case 2193-20, the Administrative Court in Falun seems to consider that the Toy Safety Directive was a label that was equivalent to FSC labelling. The assessment is strange because the Toy Safety Directive is not a label but a piece of legislation that specifies safety requirements for toys.

The Administrative Court in Karlstad found in its judgment 2022-01-10, case 2476-21 that the municipality's requirement that bicycles, in a play material procurement, should have the Nordic Swan Ecolabel or other equivalent label was proportionate despite the applicant's claim that only one supplier had Nordic Swan Ecolabelled bicycles. According to the Administrative Court, a contracting authority had a great deal of freedom to decide how the procurement document should be written and choose which requirements should be met and rejected the applicant's action. The Administrative Court could have added that the Nordic Swan Ecolabel, unlike a commercial brand, is available to all concerned, including the supplier who complained about the procurement.

In the Administrative Court of Malmö's judgment 2022-11-30, case 7963-22, the applicant's objection that a municipal real estate company only accepted electricity with the Good Environmental Choice label and not another equivalent label (which, incidentally, was disputed by the municipal real estate company). The Administrative Court found that the applicant's tender satisfied that requirement and therefore did not suffer any harm.

The Administrative Court in Malmö's judgment 2024,11-07, case 9272-24 see, etc., concerned a supplier's objection that its ISO 14001 certification was equivalent to the Nordic Swan Ecolabel of conference facilities. The Administrative Court rejected without further justification. A possible justification could have been that ISO 14001 is a certification of the organisation's environmental management system and thus not a product label as referred to in Chapter 9. Section 13, first paragraph, LOU.³⁹

The Administrative Court in Stockholm's judgment 2021-09-23, case 5462-21, concerned a municipality's procurement of cleaning services where tenders could receive a value-added deduction if the cleaning service was Nordic Ecolabelled. In an information message during the tender period, the municipality had added that equivalent "*certification*" was accepted and that the EU Ecolabel,⁴⁰ was an example of an "*equivalent certificate*". The applicant claimed

³⁹ That the provision in Chapter 9. Section 13 of the Public Procurement Act refers to product labelling, for example, is stated in the first paragraph, paragraph 2, according to which the requirements for the labelling must be appropriate to define the characteristics of the product, service or work contract to be procured.

⁴⁰ EU Ecolabel.

that the requirement for the Nordic Swan Ecolabel should have been accompanied by the words “or equivalent” and that evidence other than a certificate must also be accepted as equivalent. The Administrative Court found that the applicant had submitted a certificate from an independent consultant, which was not equivalent. The application was rejected.

Recommendations

The case-law reviewed above shows assessments of varying quality. There is therefore no guarantee that courts in future will carry out a more thorough equivalence assessment than the Administrative Court in Stockholm did in the coffee case mentioned above.

The discussion above shows that both contracting authorities and courts must carry out an equivalence assessment if a tenderer relies on another label. It is not possible to give a general answer to how thorough such an assessment must be, but the assessment in the coffee case was insufficient.

An obvious example of a non-equivalent label would be a procurement where the contracting authority requires a furniture label covering the product's environmental characteristics from a life-cycle perspective, including chemicals, textiles, circular design and recycling, and the tenderer relies on a label covering only the wood raw material.

The lack of uniform case-law means that contracting authorities may feel compelled to formulate label requirements in greater detail. If a contracting authority wishes to ensure that it does not have to accept labels it does not consider equivalent, it may need to supplement the requirement for a specific label by identifying label requirements it considers particularly important.

For example, the contracting authority may emphasise that another label must cover the entire final product from a life-cycle perspective.

The way and frequency with which the labelling organisation carries out audits may also be something that the contracting authority wishes to highlight. It is an important point with labels that the contracting authority does not have to follow up on the products' compliance with the labelling requirements themselves. The contracting authority only needs to check that the product has the label. The labelling organisations take care of the rest.

A requirement for cleaning services could be written to state that the cleaning service must be labelled with the Nordic Swan Ecolabel or an equivalent label, and that another label, to be equivalent, must contain equally strict requirements concerning consumption of chemical products, greenhouse gases, transport and garbage bags.

The procurement documents may also require the tender, where relevant, to contain evidence that another label is equivalent.

As a general rule, the contracting authority should specify only one (1) label. This follows from the wording of Chapter 9, Section 13, first paragraph LOU, which states that a contracting authority “*may require a **specific label** as means of proof that the building works, supplies or services correspond to the required characteristics*”.

In some cases, specifying several labels may be unproblematic because the labels are equivalent in content and level. This may be the case for the Nordic Swan Ecolabel and Good Environmental Choice for cleaning products/chemical products. It is more problematic if a contracting authority specifies both the Nordic Swan Ecolabel and FSC in a procurement of furniture, since FSC concerns only the wood raw material.

If the authority specifies several non-equivalent labels, this may create uncertainty about which other labels should be considered equivalent. Since labels may have different levels of environmental or sustainability performance in different respects, a requirement listing several labels may both create uncertainty about equivalence and allow suppliers to choose labels that meet only the lowest levels of each specified label.

The contracting authority should also avoid giving advance decisions during the tender period on whether another label is equivalent. Tenderers offering products with another label bear the burden of proving equivalence. The contracting authority should therefore not give advance guidance that reduces that burden.

However, in response to questions during the tender period, the authority may provide examples of label requirements it considers especially important, which should then affect the equivalence assessment.

The label requirement should preferably be a contract performance condition. This gives suppliers more time to obtain the specified label or an equivalent label, reducing the risk that the authority must assess other means of proof.

A supplier that has invested in the specified label may act proactively during the tender period by asking which detailed specifications of the label another label must meet to be considered equivalent, in order to avoid less far-reaching labels being accepted as equivalent.

Conclusions

There is a justified concern that the simplification introduced by the EU through Article 43 of the 2014 directive will not be fully reflected in public procurement in Sweden.

One example concerns the criteria that a label must meet under Chapter 9, Section 13, first paragraph LOU. One criteria is that the label requirements concern only criteria linked to what is being procured.

According to a previous report⁴¹, the Swedish National Agency for Public Procurement appears to overinterpret the so-called link to subject matter requirement. Under this interpretation, label requirements may not relate to the company's general policies, regardless of whether the requirement to use a label is set as technical specifications, a contract performance conditions or award criteria. As noted in the previous report, such an interpretation would mean that very few labels could be used.

⁴¹ Labelling requirements in public procurement.

Report for Ecolabelling Sweden (MISAB)1 and the Swedish Society for Nature Conservation, February 2025.

This report concerns Chapter 9, Section 14 LOU, under which contracting authorities must accept other labels if those labels are equivalent. Here too there is a risk of over-interpretation, namely that contracting authorities may not simply require a specific label but must also set out the detailed specifications of the label.

Such a development would be unfortunate. It may lead contracting authorities to refrain from requiring labels. It may also make label requirements unnecessarily complicated and prevent the simplification intended by the EU's label rules in the 2014 directive from being realised.

There is also a risk that Swedish case-law will accept overly superficial equivalence assessments. This could dilute sustainability requirements in procurement and distort competition, as suppliers that have invested in the specified label may be outcompeted by undertakings offering a less comprehensive or less far-reaching label. This report argues that contracting authorities and courts should carry out a more thorough equivalence assessment than was carried out by the Administrative Court in the previous mentioned coffee case.

According to this report, it is fully sufficient for a contracting authority to require a specific label without listing all label requirements or specifying what another label must satisfy to be considered equivalent.

Nevertheless, contracting authorities may highlight particularly important label requirements in order to avoid having to accept labels they do not consider equivalent. They may also add the wording or equivalent label and require evidence that another label is equivalent.

Stockholm, 11 June 2026

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