Raad voor Accreditatie (Dutch Accreditation Council RvA)

RvA approach to applications for accreditation in the context of the ‘Brexit’

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An RvA-Explanatory note describes the policy and/or the procedures of the RvA concerning a specific field of accreditation. In case the policy and/or procedures for a specific field of accreditation as described in an RvA Explanatory note, is documented by EA, ILAC or IAF, the RvA will bring its policy and procedures in line with the EA, ILAC or IAF-document.

A current version of the Explanatory note is available through the website of the RvA (www.rva.nl).

Contents

1 Introduction 5

2 Conditions for accreditation by the RvA 5

3 Applications for the CPR 6

4 Remarks 6

5 Changes compared to the previous version 7

1 Introduction

With the date for the Brexit coming closer, the RvA increasingly receives inquiries from UK-based notified bodies (NBs) about the possibilities of accreditation by the RvA, with the purpose of becoming a NB in the Netherlands.
The RvA will accept such applications under the conditions mentioned in the harmonised standards used for accreditation, taking the RvA policy rules and the requirements for notification into account.

2 Conditions for accreditation by the RvA

The general conditions for accreditation by the RvA are those mentioned in chapter 3 of RvA policy rule RvA-BR002, available from the RvA website:
http://www.rva.nl/en/documents/rules-and-decisions.
The applicant conformity assessment body (CAB) will be assessed against the accreditation requirements, being the relevant harmonised standard for accreditation and the related documents, such as certification schemes, normative documents, the relevant mandatory and guidance documents from the RvA, EA, IAF or ILAC and the applicable (parts of) Union legislation.

UK-based NBs 'moving' to the Netherlands should be able to demonstrate they are capable to meet these requirements. If the CAB wishes to use personnel abroad (outside the Netherlands) special attention should be paid to the structural and resource requirements of the standard(s) used for accreditation.

If the applicant for an EN ISO/IEC 17025 accreditation by the RvA uses a laboratory or laboratories outside the Netherlands (e.g. in the UK), the following rules apply.
Aside from meeting the requirements of EN ISO/IEC 17025, the CAB should also be able to demonstrate it has full control of the personnel and the activities of the laboratory or laboratories. The RvA considers such laboratories to be 'locations with key activities' of the 17025 accredited laboratory, as laid down in RvA policy rule BR003 (Scope of accreditation); policy rule BR007 (Cross frontier accreditation) also applies.
If these requirements are not met, the RvA considers using an outside laboratory to be outsourcing (subcontracting).

N.B. 1
If a CAB wishes to be notified in the situation as referred to in the foregoing paragraph, additional rules apply. Since a NB has to carry out its assessment functions within the jurisdiction of the designating Member State, it has to inform the notifying authority, which must be capable of ensuring the monitoring of the total body as it has to take the responsibility for its operations, if it has activities or personnel outside the Member State, or even outside the Union.

N.B. 2
In 5.2.2 of the “The 'Blue Guide' on the implementation of EU product rules 2016” it is stated: “The body must also have access to appropriate facilities and be able to test or re-test in the EU. Otherwise it will not be possible for the notifying authority to check its competence.” This requirement however is not mentioned in EU legislation such as Decision 768/2008/EC, Regulation (EC) 765/2008 or individual (NLF) directives/regulations regarding CE marking.

Until now this requirement in the Blue Guide has not been used by the RvA or Dutch notifying authorities for accreditation or notification purposes. For the time being we therefore assume we will be able to continue using our present policy regarding the use of laboratories outside the country in which the NB is located, whether the laboratory is inside or outside the Union.

N.B. 3
The general rule for subcontracting (outsourcing) as mentioned in the EC Blue Guide:
Decision 768/2008 Article R17/6: “A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it by … [reference to relevant part of the legislation] and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.” This means a notified body can only subcontract a task for which it has the competence itself. It must not be the case that a notified body subcontracts a part of the work because it does not have the required competence and knowledge. The NB is also responsible for the subcontracted activities.

3 Applications for the CPR

A special situation occurs in case of an application related to the Construction Products Regulation (CPR), especially for system 3 (notified laboratory). The EC Blue Guide does not apply to EU legislation for construction products. The CPR does not have the same limiting requirements as mentioned in the EC Blue Guide, regarding activities or personnel outside the Member State and the ability to test or re-test in the EU.

Therefore the RvA considers it possible to apply for a laboratory accreditation in the Netherlands, using laboratory facilities in the UK, provided all the accreditation requirements are met. The laboratory in the UK will be treated as a ‘location with key activities’ of the Dutch accredited laboratory. See policy rule RvA-BR003 for the rules regarding locations with key activities. Also see the NL Notification procedure for Notified Bodies CPR at:
http://ec.europa.eu/growth/tools-databases/nando/index.cfm?fuseaction=na.detail&na_id=237339

4 Remarks

As mentioned elsewhere in this document, a number of the UK NB’s has or uses laboratory facilities in the UK. The RvA understands the desire to continue using these laboratory facilities after the Brexit.

Union legislation does not explicitly limit the possibilities to do so, provided the NB can take full responsibility for its activities outside the Union and the notifying authority has no objections. It is therefore advisable to contact the notifying authority for the relevant Union legislation before submitting an application for accreditation to the RvA.

The fact that a NB may have activities and/or personnel outside the Netherlands does not mean the RvA is willing to accredit shell companies ('PO Box Companies') in the Netherlands. Only having (or starting) a legal entity in the Netherlands does not make that entity eligible for accreditation by the RvA. The conditions for an accreditation by the RvA are those set out in chapter 2 and 3.

Please be aware that after the Brexit legal entities based on UK law, such as a Ltd., can no longer be 'a conformity assessment body established under national law of a Member State' and therefore probably cannot be(come) a NB in the Netherlands.

In case you have any questions regarding 'Brexit applications', please contact the RvA.
It is strongly advised to organise an intake meeting with dedicated RvA staff before submitting an application for accreditation to the RvA for the purpose of becoming a Dutch NB.

5 Changes compared to the previous version

Not applicable, this is the first version of this document.