



Economic and Social Council

Distr.: General
4 January 2019

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on the Transport of Dangerous Goods

Joint Meeting of the RID Committee of Experts and the Working Party on the Transport of Dangerous Goods

Bern, 18–22 March 2019

Item 4 of the provisional agenda

Interpretation of RID/ADR/ADN

Undesirable developments in the delegation of inspection tasks in accordance with RID/ADR 1.8.6.4.1: Subcontractors of accredited entities

Transmitted by the Government of Germany^{*,}**

1. With regard to the delegation of inspection tasks to accredited entities in accordance with RID/ADR 1.8.6.4.1, in Germany it has been noticed that in practice, this is increasingly being misinterpreted in two ways:

Interpretation I

2. It is mistakenly assumed that from RID/ADR 1.8.6.4.1, it would ensue that the accredited inspection body's accreditation would indicate not just the entity itself, with its locations, but also external subcontractors (separate legal entities). This is obviously not correct.

Interpretation II

3. Sometimes it is also assumed in the market that RID/ADR 1.8.6.4.1 authorises the accredited inspection body itself to assess the "competence" of its subcontractor in accordance with EN ISO/IEC 17020 or EN ISO/IEC 17025 by carrying out an "audit" in

* In accordance with the programme of work of the Inland Transport Committee for 2018-2019, (ECE/TRANS/WP.15/237, annexe V, (9.2)).

** Circulated by the Intergovernmental Organisation for International Carriage by Rail (OTIF) under the symbol OTIF/RID/RC/2019/4.

accordance with EN ISO/IEC 17020 or EN ISO/IEC 17025, and that accreditation of this subcontractor can then be dispensed with, because “equivalence” has been demonstrated. This is also obviously incorrect.

Justification

4. RID/ADR 1.8.6.4.1 reads as follows:

“Where an inspection body uses the services of any other entity (e.g. subcontractor, subsidiary), to carry out specific tasks connected with the conformity assessment, periodic inspection, intermediate inspection or exceptional checks, this entity shall be included in the accreditation of the inspection body, or it shall be accredited separately. In the case of separate accreditation, this entity shall be duly accredited according to standard EN ISO/IEC 17025:2005 and shall be recognised by the inspection body as an independent and impartial testing laboratory in order to perform testing tasks in accordance with its accreditation, or it shall be accredited according to standard EN ISO/IEC 17020:2012 (except clause 8.1.3). The inspection body shall ensure that this entity meets the requirements set out for the tasks given to it with the same level of competence and safety as laid down for inspection bodies (see 1.8.6.8) and the inspection body shall monitor it. The inspection body shall inform the competent authority about the above mentioned arrangements.”

Comments on Interpretation I

5. In the scope of application of RID/ADR, inspection bodies according to 1.8.6.8 are accredited in accordance with EN ISO/IEC 17020:2012. Such bodies are accredited in accordance with standard EN ISO/IEC 17011:2018. According to Chapter 3.4 of EN ISO/IEC 17011, a body that carries out conformity assessment activities is the subject of accreditation. An inspection body in accordance with Chapter 3.5 of EN ISO/IEC 17020 is such an organisation.

6. According to section 5.1.1 of EN ISO/IEC 17020, this inspection body must be a legal entity or a defined part of a legal entity, such that it can be held legally responsible for all its inspection activities.

7. Consequently, the subject of the accreditation can only ever be this legal entity or the defined part of this legal entity, and can never be another legal entity or organisation.

8. As a result, only the applicant for accreditation (legal entity or part of a legal entity) may be named in an accreditation.

9. Section 7.8.1 of EN ISO/IEC 17011:2018 says that, with a view to identifying the conformity assessment body, the accreditation may only contain the following:

(...)

“b) The name of the accredited conformity assessment body and the name of the legal entity, if different;

(...)

d) locations of the accredited conformity assessment body and, as applicable, the conformity assessment activities performed at each location and covered by the scope of accreditation.”

10. The term “location” according to section 7.8.1 of EN ISO/IEC 17011:2018 corresponds to the term “subsidiary” in RID/ADR 1.8.6.4.1.

11. This results from the systematology of standard EN ISO/IEC 17020, because according to section 6.3.4 of EN ISO/IEC 17020, the inspection body must maintain a register of all subcontractors. This mandatory requirement would be superfluous if the subcontractors were already evident from the accreditation.

12. Insofar as RID/ADR 1.8.6.4.1 says that “this entity shall be included in the accreditation of the inspection body”, reference is clearly being made to Chapter 6.3 (Subcontracting) of standard EN ISO/IEC 17020.

13. As a rule, the accredited inspection body according to section 6.3.1 of EN ISO/IEC 17020 must itself normally perform the inspections that it contracts to undertake.

14. Where an inspection body subcontracts any part of the inspection, it must meet certain requirements in relation to involving subcontractors in the inspection process by means of the accredited management system according to Chapter 8 of EN ISO/IEC 17020 and must hence have “included” these subcontractors in its accreditation. This means that the accreditation authority examines and monitors these inclusion processes in respect of the applicant.

15. In the administrative procedure for accreditation, the inspection body must prove to the accreditation body that for using subcontractors, the following processes, among others, are in hand:

- According to section 6.3.1 of EN ISO/IEC 17020, the inspection body must ensure and be able to demonstrate that the subcontractor is competent to perform the activities in question and, where applicable, complies with the relevant requirements stipulated in this International Standard or in other relevant conformity assessment standards.
- According to section 6.3.4 of EN ISO/IEC 17020, the inspection body must record and retain details of its investigation of the competence of its subcontractors and of their conformity with the applicable requirements of this International Standard or in other relevant conformity assessment standards.
- According to section 6.3.4 of EN ISO/IEC 17020, the inspection body must maintain a register of all subcontractors.
- According to section 6.1.12 of EN ISO/IEC 17020, the inspection body must ensure that all personnel of the inspection body that could influence the inspection activities shall act impartially.
- According to section 6.1.13 of EN ISO/IEC 17020, the inspection body must ensure that all personnel of the inspection body, including subcontractors, personnel of external bodies, and individuals acting on the inspection body’s behalf, shall keep confidential all information obtained or created during the performance of the inspection activities, except as required by law.
- According to section 6.2.11 of EN ISO/IEC 17020, the inspection body must have procedures for the selection and approval of suppliers (including subcontractors).

16. If the inspection body obtains accreditation in accordance with EN ISO/IEC 17020, this ensures that all the subcontractors named in the register according to section 6.3.4 of EN ISO/IEC 17020 are subject to these processes. This is the object of the assessment and ongoing monitoring that takes place as part of the accreditation procedure in respect of the applicant. In this respect, these “entities” are included in the monitoring of the inspection body’s accreditation.

Comments on Interpretation II

17. Insofar as RID/ADR 1.8.6.4.1 says that the inspection body must ensure that “this entity meets the requirements set out for the tasks given to it with the same level of competence and safety as laid down for inspection bodies (see RID/ADR 1.8.6.8))” and the inspection body “shall monitor it”, it **cannot** be concluded from this, that accreditation of this subcontractor to demonstrate competence can be dispensed with in the framework of “monitoring” by carrying out a so-called “audit” in accordance with EN ISO/IEC 17020 or EN ISO/IEC 17025.

18. Three areas that have to be satisfied cumulatively must be separated:

- 1) Establishing competence (= sovereign task of accreditation).
- 2) Including the subcontractor in the body’s QM system.
- 3) Assessing the inspection results in each individual case.

Comments on area 1)

19. The only possible subcontractors of an accredited inspection body that can be considered are always conformity assessment bodies that have accreditation for the specific inspection service or that take part in a system according to EN ISO/IEC 17040, insofar as a legally accepted set of agreements is in place.

20. Therefore, in relation to the “competence” of the subcontractor according to section 6.3.1 of EN ISO/IEC 17020, the accredited inspection body investigates whether the subcontractor is in possession of accreditation or recognition according to EN ISO/IEC 17040 that corresponds to the specific service at the relevant place of business.

21. The inspection body cannot establish this competence itself, because according to Article 4, paragraph 5 of Regulation (EC) 765/2008, accreditation is **a sovereign task and private bodies are prohibited from carrying it out across Europe**.

22. It follows from Part 5 of EN ISO/IEC 17000 that whenever the subject of the confirmation of competence is a “conformity assessment body”, this counts as “accreditation”. According to Chapter 5.6 of EN ISO/IEC 17000, accreditation is defined as third party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks.

Comments on area 2)

23. If the inspection body has had it proved that the subcontractor has the “competence”, by submitting an accreditation, the subcontractor must be integrated into the inspection body’s quality management system (see sections 6.3.1, 6.1.11 to 6.1.13, 6.2.1 a) of EN ISO/IEC 17020). In so doing, it may be necessary, e.g. in order to comply with section 7.1.6 of EN ISO/IEC 17020 in the particular case, to audit the subcontractor. This depends on the subcontract and the organisation of the body and must be judged on a case by case basis.

Comments on area 3)

24. Insofar as RID/ADR 1.8.6.4.1 requires that the inspection body shall ensure that “this entity meets the requirements set out for the tasks given to it with the same level of

competence and safety as laid down for inspection bodies”, this addresses the “equivalence” of the conformity results.

25. In this paragraph, RID/ADR refer to section 6.3.3 of EN ISO/IEC 17020. According to Chapter 7.4 of EN ISO/IEC 17000, “equivalence” means the sufficiency of different conformity assessment results to provide the same level of assurance of conformity with regard to the same specified requirements.

26. This is why section 6.3.3 of EN ISO/IEC 17020 stipulates that whenever subcontractors carry out work that forms part of an inspection, **the responsibility for any determination of conformity of the inspected item with the requirements shall remain with the inspection body.**

27. So the inspection body must itself check and assess the equivalence of the conformity assessment results in each individual case. This means that whenever the subcontractor is accredited or is a member of an agreement group in accordance with EN ISO/IEC 17040, the responsibility for assessing the equivalence of the conformity assessment results provided (result of the subcontract) and the question of whether these can be used in the individual case remains with the accredited body. The conformity assessment body bears full liability to third parties for all services carried out by the subcontractor.

Proposal

28. Germany requests the Joint Meeting to confirm the interpretation set out above.
