

Enver Halilovic
Director
Agency for Development of Higher Education and Quality Assurance of Bosnia and Herzegovina (HEA)
Akademika Jovana Surutke Street 13
BA – 78000 Banja Luka, Bosnia and Herzegovina

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Subject: HEA's appeal to ENQA and decision on HEA's membership in ENQA

Dear Dr. Halilovic,

I am writing to inform you of the outcome of the ENQA Board's decision of 22 February 2018 regarding the appeal HEA lodged against the ENQA Board's decision of 13 September 2017 not to grant HEA membership due to insufficient overall level of compliance with the ESG.

On 27 November 2017, HEA submitted an appeal against this decision. In a letter of 11 December 2017 the President of ENQA informed the ENQA Appeals and Complaints Committee (hereafter: ACC) of the appeal, requesting the ACC to review the Board's decision. Enclosed in the President's letter to the ACC were:

- The ENQA Board's decision letter to HEA dated 29 September 2017
- HEA's letter of appeal dated 27 November 2017
- The scrutiny report of ENQA's Review Committee
- The expert panel's review report

The ACC gave their statement to the ENQA Board on 13 February 2018 in which the committee recommends the Board to reject the appeal and stand by its initial decision not to grant HEA membership at this stage.

Following this, the Board took a decision at its meeting on 22 February 2018, in which it follows the statement of the ACC i.e. the Board rejects HEA's appeal and stands by its initial decision not to grant HEA membership in ENQA. According to the Rules of Procedure of ENQA, the decision of the ENQA Board is final and non-appealable. Should HEA wish to re-apply for ENQA membership in the future, this can be done in two years' time from the Board's initial decision.

Please find the summary of the ACC's findings as an appendix to this letter. This letter will be published on the ENQA website together with the final review report as well as the Board's initial decision.

For any questions, do not hesitate to be in touch with the ENQA Secretariat.

Yours sincerely,



Christoph Grolimund
President

Annex: Summary of findings

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The ACC concluded that the decision of the ENQA Board should stand in the context of evidence provided and evaluated against the appropriate criteria, standards and guidelines (ESG):

ESG 2.2 Designing methodologies fit for purpose

The Review Panel's statement

The panel had a number of significant concerns regarding the rules and procedures developed by HEA and their overall fitness for purpose. They considered these to be **numerous**, and questioned if **the effects of these rules completely fulfil the purpose**, to regulate and develop. The designed processes, with all the rules and procedures, were considered to be **burdensome on the institutions** in terms of administration and wondered if the system is **fit to be also developmental** in addition to regulatory as per stated objectives. The panel also referred to **the multiplication and overlapping of particular documents and criteria** – criteria for accreditation of HEIs; criteria for accreditation of study programmes and the Minimum standards in HE. All of these **criteria cover a very similar scope**, areas of evaluation and checking, and the panel concluded there is room for incoherence as the criteria are too generic and open to the discretion of each particular committee to decide about their fulfilment. Essentially the panel concluded that the outcomes could potentially be quite different (inconsistent) with such open interpretation of process recommendations. The panel recommended a thorough review of the different documents related to the methodology of external QA in BiH (Bosnia and Herzegovina), with special regard to **multiplication and overlapping; number, content and interpretation of criteria**; level of generalisation; and sensitivity to substandard operations and conclude that the agency is partially compliant with this standard.

ENQA Review Committee's statement (scrutiny report)

The ENQA Review Committee agreed with the panel and highlighted the fact that the outcomes of the 27 agency evaluations have resulted in **positive recommendations** and accreditations, and thus raised the question as to whether the QA system is **sensitive enough to spot the problems**.

The Board's statement

The Board shared the Panel's concern that the **designed processes seem to be quite burdensome** in terms of administration, which raises the question of their fitness for purpose.

HEA's appeal response

HEA's appeal concedes that it would be best if the accreditation process was described by one document (to avoid duplication and multiplication) but this is not under the control of HEA but stipulated by the Framework Law of Higher Education (FLHE). However, it also states that *"two out of four documents that the panel analysed are not related to the accreditation process at all"* and implies that the panels judgement based on two of these four documents was outside the terms of reference of this review. It also says there was not enough discussion around the purpose of reviewed documents

and that these describe the process itself¹ overall. HEA argues that the criteria are generic and specific enough for the size and diversity of institutions and a list of structures, and improvements have been put in place by HEIs since 2011. Hence, HEA argues that the processes are fit for purpose, as the agency is achieving results. HEA also focuses on clarifying the specific outcomes of the 27 evaluations by highlighting that 20 out of 27 evaluations resulted in positive recommendations; however, 7 of these positive outcomes were conditional accreditation or included *a letter of expectations*. HEA concluded that the remainder of the HEIs in BiH probably have not applied for accreditation since they assessed they are not yet ready for accreditation.

ACC's assessment

ACC focussed its consideration on the fact that the methodology used by the agency is designed specifically to ensure its fitness to achieve the aims and objectives set for it. This includes all aspects of the review not just the outcomes or results of the process itself. The agency's response is almost implying that the evaluation itself was outside the remit of the terms of reference to focus on the "Accreditation of Higher Education Institutions". In the appeal, justification focuses on the possible lack of understanding by the panel on the accreditation process in BiH and the different roles played by HEA and CEAs. The committee found the report to be quite clear overall. The panel understood the complexity of the system and was able to differentiate between licencing and the accreditation of HEIs early on. The panel seemed to understand the extent of involvement of the HEA in both processes. The report described this initial context (p. 9-10) and outlines HEA's involvement and institutional/CEAs responsibilities. As the report progresses through analysis of other ESGs, the panel refers to the criteria and outcomes for the *accreditation of higher education institutions* - indicating that the panel's focus is in keeping with the ToR and this main accreditation process.

In a view of ACC, fitness for purpose is also questioned by the fact that the FLHE prescribes obligatory accreditation (for all HEIs 2 years after 2007) but HEA indicates that some institutions are not ready. The panel also addresses this highlighting that there are no consequences for those institutions that do not submit themselves to the process. This raises the question as to whether the process is obligatory or not – in implementation it appears not to be actually fit for the purpose of regulation in addition to development.

The ACC agrees that the current state of development of QA in BiH would need more specific criteria, the current methodology does not appear to take into account the needs and the stage of development of higher education in BiH. Reports checked by the ACC also indicated the evaluations identified anomalies in the operations of the HEIs but the overall judgements were still positive, although conditional. This in itself is not a big issue as conditions and expectations are expressed (although not all are published). The concern relates to the fact that the panel considered the criteria to allow for incoherence in the evaluation process due to the broad generic criteria and potentially different approaches of evaluation committees. Its duplication and overlap was also considered

¹ FLHE prescribes accreditation of HEIs and study programmes and instructs competencies to HEA and CEAs. CEA – refers to Competent Educational Authority.

burdensome for HEIs. In conclusion, the committee agrees that the judgement of partial compliance is justified.

ESG 2.3 Implementing Processes

The Review Panel's statement

The review panel has identified two main issues with follow-up and consistency. HEA supports its expert panels via information and documents but it does not accompany them to the site visits, nor does it serve as committees' secretary. The secretary is decided among the members themselves not HEA. After the briefing, panel is left to perform the site visit alone. The reports differ between each other in terms of depth of analysis. HEA is trying to work towards consistency of decisions in the external evaluation reports (see ESG 2.6 for issues related to the reports). The panel recommends a stronger consultative and supporting role for the **coordinating staff member** of the HEA to ensure the consistency of accreditation procedures are further improved. Although this is not a direct responsibility of HEA, the panel finds it necessary that BiH authorities consider updating the FLHE and corresponding rules to at least give the responsibility to HEA of monitoring the follow-up procedures and reacting if needed with consequences for HEIs. The review panel concludes with partial compliance.

ENQA Review Committee's statement (scrutiny report)

Review Committee members agree with the review panel that at present the responsibility to monitor the follow-up is not prescribed and is therefore inconsistent across the country. They conclude that consistent follow-up for all practical purposes is non-existent, thus partial compliance is justified.

The Board's statement

The Board is concerned that a consistent follow-up is not ensured and agrees with the panel's decision.

HEA's appeal response

HEA disagrees with the conclusion of partial compliance and considers that substantial compliance is a more appropriate outcome – stating that *“such overall judgment is not in line with evidences and analyse provided in the External Report. It is undoubted that three out of four main steps of the external process are in line with the legal framework in BiH as well as reliable, useful, pre-defined, implemented consistently and published”*. HEA does acknowledge that the fourth step (follow-up) is not consistently implemented. However, it is claimed to be nonetheless reliable, useful, pre-defined and published.

ACC's assessment

The ACC considers that there are two issues. The first is consistent follow-up, which does not appear to be in place and is a fact acknowledged by HEA. The second is that QA processes are not consistently implemented, mainly because of the multiple responsibilities spread between the different authorities. Complications arise because of the involvement of 12 CEAs who do not carry out their duties in the same way and are not necessarily aligned to HEA's expectations and regulations. The ACC considers that HEA brings no new evidence for this standard nor a different interpretation to the existing ones in the report which would help to reconsider the judgement. The AAC concludes that partial compliance is justified.

ESG 2.5 Criteria for Outcomes

The Review Panel's statement

The panel recommends that HEA further considers and implements mechanisms for (i) consistency of accreditation criteria interpretation by expert committees and (ii) consistency of judgements of expert committees. Moreover, the panel suggest that HEA considers how to make accreditation criteria more explicit. The review panel concludes that HEA is in Substantial compliance with this ESG, which is different from the opinion of Review Committee and the final decision of the Board (which is **Partially Compliant**).

ENQA Review Committee's statement (scrutiny report)

Two (out of three) Review Committee members disagree with the panel's judgement of substantial compliance. Challenges in consistent interpretation of criteria, and in the judgements of committees are referenced (other arguments point to sections of the review report).

The Board's statement

The Board's consideration here differs from the review report and downgrades the finding to partially compliant overall. The board repeats the fact that HEA's external evaluation reports *"vary in terms of depth of analysis"*. The panel mentions, *"albeit reports identify anomalies in HEIs' operations, they still have positive judgements"*. The problem of consistency of judgements is further elaborated in the review report as follows: *"The panel found that each particular expert committee seems to agree on how to interpret criteria on their own at the preparatory meeting on the first day of the site visit without having guidance from HEA. The further inconsistency is also about which criteria are used in their work, namely do they use the 'accreditation criteria' or also 'norms on minimum standards'. They should be using both, but in practice this is not always happening."* Thus concerning this standard, the Board concluded that the findings lead to partial and not substantial compliance, as recommended by the Panel.

HEA's appeal response

HEA argues that in coming to this decision the ENQA Board did not take into consideration the range of activities HEA has conducted to strengthen consistency of judgements and reporting, which were described in panel's report. *"Such judgement, in which only the facts that are not in favour are taken into account, but ignore the facts that are in support, could not be treated as a fair"*. HEA argues it has implemented two initiatives to offset this problem of inconsistency – (1) *Instruction on issuing recommendation on accreditation of higher education institutions and study programmes in Bosnia and Herzegovina* and (2) *Methodology for writing report*. The agency organises briefings on the consistent understanding of criteria for panels, other means to ensure consistency are also listed. HEA considers being at least substantially compliant with this standard.

ACC's assessment

The ACC considers the review report has indeed acknowledged the efforts and range of activities initiated by HEA to *contribute* to better consistency of judgements and in its most recent attempts (2017) to focus the training of experts on the “*coherence of interpretation of the criteria*”. In addition, the report is very careful about describing in some detail the history of the development of the criteria, recent revisions, current status and applicability. The review report cannot be faulted here in tracking developments and indeed neither can the efforts of the agency who are aware of its deficiencies and is motivated to address them. It is quite understandable that the sum of the agency efforts to tackle inconsistency are more than commendable. However, despite the efforts, the standard guides that the outcomes of reviews have a significant impact on institutions that are evaluated and judged. In addition to being based upon pre-defined and published criteria (which is evident here), the impact requires that they are interpreted consistently and are evidence-based. The ACC is interpreting that this standard is assessing the consistency of EQA outcomes rather than the developmental activities initiated by the agency to ensure consistency. Having considered a number of HEA reports (evidence of outcomes) the committee fully agrees that they vary a lot in terms of depth of analyses, and many have “full accreditation” as an actual outcome. The ACC concludes that the agency is only partially compliant with the ESG 2.5.

ESG 2.7 Complaints and Appeals

The Review Panel's statement

The panel recommends that HEA considers how it can establish a complaints and an appeals process for the QA procedures that it is responsible for. The procedure would include more than a possibility to comment on a draft external review report and the general possibility for appeals in the administrative court.

ENQA Review Committee's statement (scrutiny report)

One Review Committee member suggests that HEA might be even considered non-compliant with this standard. Other two members is in agreement with the panel findings and judgement of partial compliance.

The Board's statement

The ENQA Board reiterate the panel finding that complaints and appeals procedure needs further refining as recommended by the Panel.

HEA's appeal response

The agency in its appeal indicates that “*[...] such overall judgment is not in line with evidences and analyse provided in the External Report. The issue of complaints and appeals is fully covered by the acts of the Agency [...]. In the meantime, the Professional Board of the Agency has set a more detailed procedure of complaints and appeals throughout the accreditation process in a document Rulebook on solving issue of dealing with complaints and appeals in process accreditation of higher education institutions and study programmes*”.

ACC's assessment

In its appeal, HEA refers to the *“Rulebook on solving issue of dealing with complaints and appeals in process accreditation of higher education institutions and study programmes”*, which has been set *“in the meantime”*. The review panel indicated that at present the HEIs have the right to appeal the accreditation decisions (made by CEAs, but not by HEA) based on the general administrative law. However, at the time of the site visit HEA did not have a complaints/appeals procedure for the processes it is responsible for. The report did reference the fact that *“HEA stated that the new norms on minimum standards, which are soon to be adopted, introduce the appeals procedure”*. This implies to the ACC that the rulebook was not in place or established by HEA at the time of the visit but was subsequently established after the review visit took place. It does not appear to be published on HEA website at present. The review panel can only conclude on what is in place at the time of the visit and ACC concludes that partially compliant is a fair judgement.

ESG 3.3 Independence

The Review Panel's statement

The panel recommends that the composition of the Steering Board (SB) should be more balanced, not to only have members coming from HEIs (public universities), especially where those members do not have any leadership positions at their HEI. The panel suggests that HEA takes over the whole responsibility for creating the national list of experts and then appointing expert committees in the accreditation procedures. The panel recommends the accreditation decisions to be taken by the SB of HEA. The overall finding is partially compliant.

ENQA Review Committee's statement (scrutiny report)

Two Review Committee members are in agreement with the panel findings and judgement of partial compliance. One member suggests that HEA might be even considered non-compliant with this standard. Shortcoming described in the review report are referenced.

The Board's statement

The Board notes that HEA is working in a special national setup and legal regulatory environment and some issues related to its independence are not in HEA's direct power to determine or change. Nevertheless, the Board is of the opinion that HEA should work further on strengthening its **organisational as well as operational independence** as recommended by the Panel. The Board agrees with Partial compliance.

HEA's appeal response

The appeal response indicates that HEA is established under statute and these legal structures imply independence. The agency says it is operationally independent as it *“[...] prescribes all its procedures and working methods and appoints an external commission of experts independent of third parties. Although the Committee of Experts Externally Assessing the Quality of HEIs and Study Programs [...] the final outcome of the quality assurance process is the responsibility of the Agency, in particular: giving recommendations on accreditation, assessment of compliance of the decision on accreditation and enrolment of accredited institution and study program in the State Register of accredited institutions and study programs in BiH. The state level of BiH does not have a higher education institution which*

whom it is founder. That means that HEA BiH has no conflict of interest in institutional accreditation or accreditation of study programs between HEA and HEIs”.

ACC’s assessment

The panel concludes that HEA’s independence is not as straightforward as defined by the law. The agency does not have the full responsibility for its operations and the outcomes for those operations without third party influence. This refers to both organisational independence, for example, the SB is appointed by the Parliamentary Assembly (each of the ‘three constituent peoples’ of BiH have three representatives), (at the moment) all members are HEI professors and are representative of only four public universities. Most importantly there is no stakeholder representation.

Operational independence refers to matters such as defining procedures and criteria. However, the selection of experts is influenced by the 12 CEAs for adoption and approval on to the experts list. In addition, BiH Council of Ministers is legally required to give consent to the agency’s Statute and to the *Rulebook on Internal Organisation*. Also, HEA is not independent in its own recruitment process. All of which are significant. ESG guidance indicates that Independence is important to ensure that any procedures and decisions are solely based on expertise.

Although it is difficult to form a clear picture on the ownership of the final outcome, as to whom is making and adopting, endorsing and presenting the final outcomes, even if this is firmly in the hands of the agency (and they dispute it is), they cannot justify independence on all of these other matters beyond the panel conclusion of Partially Compliant - and ACC agrees with this conclusion.

Final remarks and conclusion

In arriving at its decision, the ACC focused on the points that the Board of ENQA and the review panel found problematic, to consider if the final decision of the Board has been appropriate and if HEA in their appeal have brought any new clarifying evidence that would contribute additional information for the possible endorsement of the appeal.

The most significant issue for HEA appears to be its position and role inside the national legislative framework. The Agency seems to be placed in a position of expected cooperation and support rather than a clear and through comprehensive authoritative role covering the core basics of ESG expectations. HEA is thus ‘losing’ a lot of important tasks that an independent quality assurance agency should normally execute, according to the ESG.

The review panel includes a wide range of recommendations aimed at helping HEA to implement the necessary corrective measures to strive to reach the desired position of being able to apply successfully in a timely manner for ENQA membership.

The ACC concludes that the Board should reject HEA’s appeal and stand by its decision not to grant HEA Membership at this stage.