

The notion of compliance: definitions and examples

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Compliance with what?

As the review is for membership of ENQA, we are talking about compliance with the ENQA membership criteria

ENQA membership criteria encompass and build on the ESG

ESG – European Standards and guidelines

“The (ESG) report* sets its face **against a narrow, prescriptive and highly formulated approach to standards**. In both the standards and the guidelines, the (ESG) report prefers the **generic principle** to the **specific requirement**”

[http://www.enqa.eu/files/ESG_3edition%20\(2\).pdf](http://www.enqa.eu/files/ESG_3edition%20(2).pdf)

*ENQA (2005)

For the purposes of this training, we are using the current* (October 2009) operational guidance

“Guidelines for external reviews of quality assurance agencies in the European Higher Education Area” (ENQA)

Panels are asked to present a conclusion (**judgement on compliance**) in respect of **each** criterion/ESG standard.

<http://www.enqa.eu/files/Guidelines%20for%20external%20reviews%20of%20quality%20assurance%20agencies%20in%20the%20EHEA.pdf>

**ENQA (Oct 2009)*

Updated version available (Oct 2012)

The current guidance provides that these judgements on compliance are:

fully compliant: the Agency is **entirely in accordance** with the criterion/ESG standard, which is implemented in an effective manner

substantially compliant: the Agency is **to a large extent** in accordance with the criterion/ESG standard, the **principle/spirit** of which is followed in practice

partially compliant: **some aspects** or parts of the criterion/ESG standard are met while others are not.

non-compliant: the Agency **fails to comply** with the criterion/ESG standard.

“Levels” of compliance

- In 2011, ENQA published* an evaluation of the reports on agency reviews (2005-2009)
- The report suggests that any upcoming review of the ESG “should consider providing greater guidance to panels on reaching conclusions about ‘level of compliance’ ”
- More fundamentally “(any such review) might wish to reconsider the use of the term ‘compliance’ to provide more transparency and consistency”

http://www.enqa.eu/files/ENQA_Occasional%20paper_16.pdf

*ENQA (2011)

Standards and guidelines

Standard:

- an acknowledged measure of comparison for quantitative or qualitative value; a criterion
- a degree or level of requirement, excellence, or attainment

Guideline:

- Recommended practice that allows some discretion or leeway in its interpretation, implementation, or use

ESG – European Standards and guidelines

- The **standards** are not quantitative
- The **guidelines** develop the **standards**
- In some cases, the guidelines **clarify** the standards
- In other cases, they **illustrate** the standards

Only permissible conclusions for a panel (currently)

The agency is **fully compliant**
substantially compliant
partially compliant
non-compliant
with a specific criterion for membership

Remember: The ENQA Board will have to make a yes/no decision as to whether an agency complies with the membership criteria

The panel has to be clear in their conclusions!

Mind your language!

Conclusions such as:

- “sufficiently complies”
- “essentially met”
- “the criteria are largely met”
- “full compliance has not been achieved”
- “not yet fully compliant”

Are unhelpful!

Fully compliant : The Agency acts entirely in accordance with the criterion/ESG standard, and its implementation is effective

Mostly where the existence of something has to be proved (legal basis, appeals procedures, activities undertaken etc.). If an agency fully complies, there should be no need for any recommendation from the panel.

Example: (3.2 – Official status)

“(the agency) was founded by agreement in 2001. The law 3/2003 ... formally established (the agency) as the external assessment body for the university system of the region ...”

Panel Assessment: “The panel considers it evident that (the agency) functions on a clear and established basis ...”

Evaluation: Fully compliant

Non compliant : The Agency fails to comply with the criterion/ESG standard

Mostly where the existence of something has to be proved (legal basis, follow-up procedures, activities undertaken etc.) Applicant agencies rarely fail due to non compliance with a specific standard, as it should be clear to the agency before application if it cannot prove the existence of something

Example: (ESG 2.5 – Reporting)

Reports should be **published** ...

Example: (ESG 2.6 – System-wide analyses)

Quality assurance agencies should **produce** from time to time **summary reports** describing and analysing the general findings of their reviews

Substantially compliant : The Agency is, to a large extent, in accordance with the criterion/ESG standards, the principle/spirit of which is followed in practice

Example: (3.6 – Independence)

“(the agency) is funded by subscriptions from the universities and by an annual grant from the (higher education funding authority)”

Panel Assessment: “The panel made specific recommendations on the future development, funding and governance of the (agency) and was satisfied that implementation would allay any lingering concerns about independence, including the substantial financial contributions made by the universities”

Evaluation: Substantially compliant

In this case, the Board expects the panel to make a recommendation as to what changes would be necessary to turn substantial compliance into full compliance

Substantial compliance is an issue but is fixable!

Partially compliant : Some aspects or parts of the criterion/ESG standard are met while other are not

There are a number of standards that contain discrete sub-standards:

Example: (3.4 – Resources)

“Agencies should have adequate and proportional resources, **both** human **and** financial, to enable them to organise and run their external quality assurance processes in an effective and efficient manner“

Example: (3.6 – independence)

“Agencies should be independent to the extent **both** that they have autonomous responsibilities for their operation **and** that the conclusions and recommendations cannot be influenced by third parties ...”

Evaluation: Partially compliant: it is possible that an agency complies with only one part of the sub-standard.

Partial compliance is a problem!

Substantially compliant v. Partially compliant: Interpretation

Some standards contain multiple discrete/distinct sub-standards:

Example: (3.8 – Accountability procedures

The agency has in place, and enforces, a no-conflict of interest mechanism in the work of its external experts

The agency has reliable mechanisms that ensure the quality of any activities and material produced by subcontractors

The agency has in place an internal feedback mechanism

The agency has in place an internal reflection mechanism

The agency has in place an external feedback mechanism

A criterion with several features is complied with in all but one/a few features. Is the decision around overall compliance jeopardised? Are the features that are not complied with critical or is it still clear that the criterion is complied with in essence?

Substantial or partial? (these are the types of issue that must be addressed in the ESG revision)