

University governance reforms in Portugal

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ABSTRACT

This paper is to analyze the 2007 reform of the higher education system in Portugal (RJIES), which envisioned fundamental changes in the governance of universities, the option given to higher education institutions (HEIs) to be transformed into public foundations being only one element of the reform. Based on desk research, the key elements of the reform, the process of designing and introducing it and an assessment of its impact are presented. We may conclude that the governance reform has led to more effective management of universities regardless of their legal status, but the new, foundation form has not fulfilled the expectations regarding the more autonomous and flexible operation of the transformed HEIs, due, to a large extent, to the financial restrictions brought about by the global crisis.

KEYWORDS

higher education, governance, autonomy, foundation university, board, managerialism

INTRODUCTION

There has been an evident transition in the governance of European higher education institutions (HEIs) in the last decades, including and resulting in a different relationship between the universities and the state, new, more indirect ways of state supervision, a different distribution of power in the institutions with a stronger role of external members and professionals in decision-making and shrinking power of the traditional academic actors and bodies, more

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emphasis on market and efficiency considerations. In some countries, the abovementioned reforms included the establishment of a new legal status for higher education institutions: the foundation university. Portugal is not an exception; the new law for higher education of 2007 established a new legal regime for higher education institutions (Regime Jurídico das Instituições de Ensino Superior – RJIES). RJIES opened the path to modify the governance and management system of universities and allowed the institutions to assume the legal form of public foundation.

The purpose of the present paper is to discuss the key elements of the Portuguese reform, the process of designing and introducing RJIES and its impact.

Up to now, besides Finland, Portugal has been the country in Europe where several former state universities were transformed into foundations, thus, it has the most extensive experience in such a structural reform. In Hungary, the legal status of the universities has been modified recently, transforming the majority of the universities into foundations. Thus, the Portuguese case may provide some noteworthy aspects for the actors and researchers of the Hungarian process.

First, a short snapshot of Portuguese higher education is given, and then the two most important elements of RJIES, namely the new governance system and the new legal status is presented. Then, the process of designing and introducing RJIES is analyzed, including the role and attitude of the different actors and the political context. After that, the impact of the reforms is assessed. The analysis is based on desk research, building on literature, legal and institutional documents, and reports.

CONTEXT OF THE REFORMS

Governance-related trends in European higher education

With the massification of higher education, it uses an enormous amount of public resources in each country, and its quality impacts the socio-economic development of nations and regions significantly, thus, states and governments are permanently seeking the most effective setup and way of operation of their higher education system in the actual social, economic and political context. The relationship between the state and its HE system, and the external and internal governance of universities are continuously evolving along these lines.

In Europe, till the 1960s, the relationship between the state and higher education was based on trust and the belief that academics are the most competent to rule the universities. Later, the trust in the efficiency of academics-led universities evaporated, and the expectations of society changed (Carvalho, 2018). „Governments and other stakeholders are increasingly asking whether higher education is functioning efficiently, whether the sector is an effective tool for stimulating the economy, whether students learn enough during their studies, and whether universities and colleges can support national aims of modernisation of, and innovation, in our societies” (Stensaker & Harvey, 2001 p. xii). Thus, state control of higher education and its institutions became more intensive till the beginning of the 1980s. Because of the budgetary consequences of the continuously increasing size of public higher education, higher education has become more politically salient. National governments have become more concerned about costs and the efficiency of higher education. This increasing focus on accountability and performance has led to the introduction of new funding arrangements: diversification of funding base, more performance- and competition-based financing and expanding student support systems (Bleiklie & Kogan, 2007).



Since the 1990s the relationships in governing universities have become more complex. In many countries, coordination has changed from a classical form of regulation dominated by a single actor, the state, to forms in which various actors at various system levels coordinate higher education. We can call it 'multi-level multi-actor governance' (van Kersbergen & van Waarden, 2004). Shift from state control to state supervision (Vught, 1989) has become the dominant philosophy of national governments (Teichler, 2019). Nevertheless, this does not mean the absence of government; through national agenda setting and macro steering mechanisms, governments still play a vital role in higher education (Goedegebuure et al., 1993).

In recent years, the following trends characterise the external governance of universities (based on Pruvot & Estermann, 2018).

- New legal status and institutional forms for universities (public foundations, public corporations, mergers, etc.).
- New ways of financing universities (diversification of funding base, performance-based contracts) with stricter accountability measures.
- Rationalization, centralization of higher education provisions.
- A series of reforms, implemented rapidly in some countries.

The abovementioned changes in the relationship between the state and its institutions and the alteration of external governance necessarily brought along the modification of the internal governance of the universities. Gornitzka, Maassen, and de Boer (2017) identified the following changes:

- Replacement of democratic councils by executive boards.
- Increased formal external involvement in university governance.
- Centralisation of formal decision-making power.
- Shift from collective to individual responsibility.

Practically it means the switch from the traditional, continental model of internal university governance to the Anglo-Saxon model of shared governance (see Chapter 2.2) in Western Europe, and lately in the Middle-Eastern European countries as well (For details see Keczer, 2020).

University governance models

In the modern history of universities, two models of governing systems have developed according to the possession of power: the traditional continental European system where academic actors possess the power and the shared governance in England and the USA where the power is possessed by several internal and external actors. The main characteristics of these systems are as follows.

In the traditional continental European model, the senate with the representatives of faculty members and students has authority in all types of issues, including strategic, financial and personal affairs. Rectors are rather 'primus inter pares' (first among equals) than an executive leader (Bleiklie & Kogan, 2007) elected by the senate, thus he is depending on the interests of the professors (Capano, Regini, & Turri, 2016). So are the other administrative leaders. There are no external stakeholders in the governance (Donina & Paleari, 2018). In the shared governance model, there are at least three authorities that share the power: the governing board (of trustees, regents, etc.), the faculty (represented in the senate) and the administrative leaders (president,



provost, deans, heads of administrative units) (AAUP, 2022). The board has fiduciary responsibility for all that goes on in the university, decides on major strategic and financial issues and controls their implementation. It elects the president who reports to it. The president often appoints a team including central administrators and vice-presidents that oversees the university. The senate has authority only over academic issues. External stakeholders are present in the governance of the universities: they execute control in the name of the public via the boards.

In practice, both models have different configurations. Pruvot and Estermann (2018) differentiate between unitary and dual systems. In a unitary system, one body – be it a senate or a board – makes the decision on major issues and oversees the operation of the institution; in a dual system, a senate-type and a board-type body share the power. A dual system may be traditional, where the powers of the senate and the board are approximately equal, or asymmetric, where one body has a larger share of the responsibilities (Pruvot & Estermann, 2018). Universities with boards may have a one-tier system where there is only one board, or a two-tier system, where there is both an executive and a supervisory board (see the governance of Dutch universities). Trakman (2008) distinguishes the different systems according to the dominant actors in the governing bodies. There are faculty; corporate; trustee; stakeholder; and amalgam systems.

Higher education in Portugal

Until the beginning of the 1970s, there were only four – and only public – universities in Portugal, and until the mid-1980s, Portuguese higher education had been small and elitist. After that, the expansion was significant both in the number of institutions and of students enrolled, several public and private universities and polytechnic institutes were created (Assunção & Teixeira, 2018). As a result, in 2021 14 public universities (including those operating as a foundation), 7 private universities, 20 public politechnics, 40 private politechnics and 4 military and police HEIs provide higher education in Portugal.¹

Portugal is a centralized state; local authorities have limited responsibilities. The central government holds exclusive responsibility for higher education, which is under the control of the Ministry of Science, Technology and Higher Education. The Directorate-General of Higher Education holds responsibility for the design, implementation, and delivery of policy. The ministry holds a central role in the administration of the higher education system (OECD, 2021).

The autonomy of public universities is sanctioned by the constitution and the University Autonomy Act of 1988 guarantees that public universities have statutory, scientific, pedagogic, administrative, financial, and disciplinary autonomy. They have the right to elaborate their statutes. The staff of public universities are civil servants. Private institutions have complete autonomy on financial and personnel matters. However, private institutions are also obliged to get permission from the Ministry before starting any new degree or changing their study programs (Ministry of Science, Technology & Higher Education, 2006). Quality assurance is based on the evaluation and accreditation of higher education institutions and their study cycles. Independent external evaluation is mandatory, through the Portuguese Higher Education Evaluation and Accreditation Agency (EC, 2010).

¹<https://www.scholarshipsineurope.com/list-of-university-in-portugal/>.



Before 2007 the governance of the Portuguese HEIs was based on short-term decision-making processes coming from large university assemblies (in some cases, with more than 300 members), members elected by direct voting from academics, students and non-academic staff (Rendas, 2019).

THE KEY ELEMENTS OF RJIES

In 2005, a new government with a socialist majority was elected. In 2006 it commissioned the OECD to review the national higher education system. The report, among other issues, covered the institutional governance of Portuguese universities. It raised several concerns (for details see OECD, 2007) and recommended that the institutional organization and legal status of universities should be reformed (Kauko & Diogo, 2011). The draft of the OECD report was discussed at the national level, having a major influence on the legislation (Rendas, 2019). Law 62/2007 was accepted, which allowed the implementation of new governance structures and gave higher education institutions the option to choose between two different institutional models: public foundation operating under private law and public institute operating under public law (Bruckmann & Carvalho, 2014). These two aspects of the reform, namely the new governance structures and the new legal status will be discussed in the next chapters.

The new governance system of universities

Law 62/2007 imposed a new configuration on higher education governance and management structures and a new institutional division of power (Santiago & Carvalho, 2012).

According to the new governance framework, universities are governed by the following bodies:

- general council,
- rector,
- management board.

The university statutes may provide for the creation of an academic senate consisting of representatives of the organizational units, which acts as an obligatory advisory body to the rector on matters defined in the institution's own statutes (EC, 2010). In foundation universities, there is an additional body, the board of trustees (see later).

The general council is the most important decision-making body. The law guarantees its rights in several issues, item by item. As Amaral, Tavares, and Santos (2013) summarize, the council ratifies alterations to the statutes, elects or dismisses the rector and appraises his decisions. The council ratifies the proposals presented by the rector on matters such as the plan of action for his mandate and medium-term strategic plans, annual activity plans and reports; budget proposals and annual consolidated accounts; creation, transformation or closing of organizational units; the purchase or sale of the institution's assets and its credit operations; the value of tuition fees.

General councils consist of 15–35 members: representatives of teachers and researchers, students and “individuals of recognized merit who have the relevant knowledge and experience but who do not belong to the institution”. The general council may include members elected by non-teaching and non-research staff. Representatives of teachers and researchers must



constitute more than half of the total number of members of the council. They are elected by all the teachers and researchers in the higher education institution using a system of proportional representation. Students' representatives must constitute at least 15%, and external stakeholders at least 30%. External stakeholders are co-opted by teachers-researcher and student representatives by absolute majority. The mandate for general council members is four years, except for students, for whom it is two years ([Act 62/2007 Article 81](#)).

The rector is elected by the general council for a 4-year mandate that can be renewed only once. In the case of universities, rectors may be professors or researchers from within the institution or from other Portuguese or international institutions. The rector presents proposals to the council and holds decision power on matters that were previously under the remit of the senate ([Law 62/2007 Article 86](#), [Amaral et al., 2013](#)).

The management board is appointed and presided over by the rector and consists of a maximum of five members, including the vice-rector and a director. The management board is responsible for the administrative, asset and financial management of the institution, in addition to the management of human resources and for establishing charges and salaries ([Law 62/2007 Article 94](#)).

HEIs have room of manoeuvre to develop their own statutes, including the definition of the structures at the middle management level when the sub-units (faculties, schools, departments) have self-governing bodies. "This brings to the fore the institutional leadership in determining the internal governance structures of their institutions" ([Magalhaes, Veiga, Ribeiro, & Amaral, 2013](#), p. 252).

This new framework imposed the following changes on the governance of all universities in Portugal ([Amaral et al., 2013](#); [Bruckmann & Carvalho, 2014](#); [Donina & Hasanefendic, 2018](#); [Kauko & Diogo, 2011](#); [Santiago & Carvalho, 2012](#)):

- The general council has replaced the two previous main collegial governing bodies: the general assembly and the senate, detaining most of their powers.
- The size of the main decision-making body is limited by the regulation, and it has reduced student participation and increased the participation of the external members.
- Having a senate is no longer mandatory. It is a voluntary decision of the universities to establish collegial bodies, including a senate, but only with an advisory capacity.
- The presence of external stakeholders has become mandatory in top management bodies such as the general council.
- An executive dimension has been added to the role of the rector; thus, the rector has more powers than under the former legislation, which reflects a concentration of power in the central administration.
- A management council has been created with extended powers over all administrative and financing matters. It replaced administrative councils with identical functions, i. e. they are responsible for the administrative and financial management of the institution, as well as human resources.

"In general, the new regulations replace collective decision-making by centralization of power in individual decision-makers." ([Assunção & Teixeira, 2018](#), p. 138)

Within the framework provided by law, there are differences between the institutions in designing their governance structures. Carvalho and Santiago observe that the presence of the



senate in four out of six of the universities that they surveyed “may be interpreted as an attempt to mask the presence of a more linear way of decision-making in these universities, and in this case, one can infer that the new managerial model is not completely institutionalized, and institutions are making an effort to demonstrate to their members that they are still ruled as a loosely coupled system and not as an integrated, unitary organization” (Carvalho & Santiago, 2010 as cited in Bruckmann & Carvalho, 2014, p. 200).

Foundation universities

A major change brought by the new legal framework is the possibility of a public HEI transforming into a public foundation status. The objective was to give HEIs greater operational autonomy, particularly in the areas of financial management and staffing, by allowing them to make use of the greater flexibility afforded by the employment, accounting and procurement legislation applicable to the private sector in Portugal (OECD, 2019).

According to the regulations, following a duly justified proposal from the rector approved by an absolute majority of members of the general council, public higher education institutions may request alteration of their status to foundations governed by private law. To attain foundation status, the HEI (either a university or a polytechnic) must propose the transformation to the government, which decides if it accepts that. The transformation should be justified based on the advantages of adopting this managerial model and legal framework for the pursuit of its objectives. The proposal should be supported by a study of the implications of this institutional change for the organization, management, financing and autonomy of the institution or organizational unit. After the government has agreed to this institutional change, an agreement is signed with the entity which is to be the object of the transformation which covers the institution’s plan, the development program, the statutes of the foundation, the basic organizational structure and the transitional process, in addition to the circumstances under which it may return to non-foundation status. (Law 62/2007 Article 129) After the economic crisis stroke, a new requirement has been added as a condition to transform to a foundation. Since then, evidence is needed of the institution’s capacity to raise half of its annual income² through sources other than government transfer through the funding formula (Assunção & Teixeira 2018; OECD, 2021).

In other aspects of the higher education provision, the same regulatory framework applies to foundations, regarding for example access and quality assessment. According to Assunção and Teixeira „the government was quite cautious in the institutional variability it was allowing when setting the framework for the new system. Most of the regulations defined for other public institutions also apply to public foundations” (Assunção & Teixeira, 2018, p. 140)

Taking up the foundation status has been slow and limited. By now, five public universities have obtained foundation status – University of Porto, University of Aveiro, University Institute of Lisbon in 2009, and two others, University of Minho and New University of Lisbon in 2015 and 2016. Most recently, the Polytechnic Institute of Cávado and Ave attained foundation status in 2018. The requirement of the 50% non-governmental income challenges the ability of some HEIs to meet the qualification threshold, particularly those with fewer links to the private sector,

²The revenues generated by the institutions besides the government’s transfers accounts for an average 30% (Assunção & Teixeira, 2018).



and as a result, lesser capacity to generate investment. Though, it is noteworthy that the institutions that have attained foundation status include five of the country's ten largest universities (representing 25% of the country's HE student population in 2016 and employing 29% of the public higher education faculty workforce in 2018) (OECD, 2019, 2021).

Foundation universities operate under private law, while public universities under public law. The intention, as we mentioned before, was to ensure a greater autonomy in financial matters, multi-annual public funding on a contract basis, and greater flexibility for staff recruitment and management (Bruckmann & Carvalho, 2014). When RJIES was adopted – and in the early years of its implementation – it permitted foundation institutions to operate with far wider financial and managerial autonomy than was previously the case and created a new framework of financial management that was substantially outside the fiscal perimeter of the state. Key aspects of this wider autonomy included certain exemptions from public procurement; authorization to manage real estate, physical assets, and financial assets by private financial management rules; exemption, in part, from the obligation to render accounts according to the Official Plan of Public Accounting for the Education Sector; authorization to make financial investments according to the best offers on the market (rather than holding assets in cash or government bonds); exemption from the requirement of annual budgetary balance, permitting the institution to carry forward a surplus or deficit from one fiscal year to the next; permission to borrow without authorization by ministries; authorization to hire teaching and non-teaching staff under private law and authorization to buy and sell real estate with the approval of the institution's board of trustees instead of the ministry (OECD, 2019). The new legal status does not imply that the HEIs are independent of the government in terms of funding (Rendas, 2019). They receive state transfers through pluriannual performance contracts lasting not less than three years (Amaral et al., 2013).

As far as human resources are concerned, the degree of freedom of HEIs to recruit and manage human resources has been traditionally rather limited in Portugal, restricted by the legal framework applied to civil servants. It prevents HEIs from negotiating individual salaries, specific duties, and possible fringe benefits and makes it impossible to hire specific academics and pay them differently according to their quality. The foundation status has opened an opportunity for greater institutional autonomy in staff management (Assunção & Teixeira, 2018). It permits HEIs to employ academic and non-academic staff independently under private employment law, outside the scope of civil service procedures, pay-scales, and without centralized ministry approvals for staffing level changes. It is important that the adoption of foundation status does not result in the automatic conversion of current staff to private sector employment law. Specific action on the part of the institution has been required to change the status from civil service to private or to hire new positions under private law (OECD, 2021). Thus, foundation institutions may establish parallel careers with different conditions only for new staff members or those renouncing their civil service status (Assunção & Teixeira, 2018). For faculty hired before the transition to the foundation status had the right to maintain their careers within the general regime of public institutions (EC, 2010). Nevertheless, the law defined that both carriers must be 'comparable', strongly reducing the scope for introducing significant differentiation (Assunção & Teixeira, 2018).

To confirm the above-listed opportunities opening up for institutions with the adoption of foundation status, we obtained information from one of the foundation HEIs. They confirmed what other sources state – that the institution opted for foundation status with the goal of having



large autonomy and flexibility from the rules for public administration in terms of employment of human resources, acquisitions, and budget.

The governance of foundation universities

The only difference between the governance of a foundation HEI and a public institution is that foundations have one extra governing body: the board of trustees. Trustees are appointed by the government on the recommendation of the institution. Trustees must be external; the office of trustee is not compatible with any other simultaneous binding employment relations with the institution. They have a five-year mandate which may be renewed once only and may not be dismissed by the government without due cause. As far as the composition of the board is concerned, the law defines its members “of high merit and professional experience recognized as being particularly relevant” (Law 62/2007 Article 131).

The role of the board of trustees lies primarily in ratifying decisions and directions set by the general council, such as the election or removal of the rector, approval of the annual plan and the report of activities, the budget and the financial report – some of which, in the case of non-foundation universities, are subject to ministerial approval (Amaral et al., 2013; Bruckmann & Carvalho, 2014). The board of trustees is responsible for appointing and dismissing the management board (under the recommendation of the rector), proposing or authorising operations of real estate assets and credit operations as well (Amaral et al., 2013). These duties do not interfere with daily management, at least in nominal terms (Assunção & Teixeira, 2018).

According to Assunção and Teixeira, the fact that the university leadership can handle some issues directly with the board of trustees instead of the ministries creates some advantages and has the potential for greater autonomy in critical aspects, as long as there is reasonable alignment between the rector, the board of trustees and the general council. Initial experiences indicate that boards of trustees “tended to adopt a low-profile attitude, but with time those HEIs that adopted foundation status have been learning to deal with it and to take advantage of it.” (Assunção & Teixeira, 2018, p. 140)

It is noteworthy that the foundation status has not modified the governance of the universities radically. On the one hand, it has not been compelled by the law, on the other hand, the institutions have not opted for a fundamentally new setting even within the flexibility of the law. As Bruckmann and Carvalho observe, even foundations “avoided a radical departure from previous organisational models, maintaining some traces of collegiality” (Bruckmann & Carvalho, 2014, p. 204). It is manifested for instance in the suspension of the senate (even in universities transformed into a foundation³), the high participation of teachers/researchers and in some cases even students in the general council. In line with it, several studies show that the differences in the chosen governance models of Portuguese universities are not related to their legal status, but to other characteristics, such as size and tradition. Bruckmann and Carvalho (2014) compared the statutes and regulations of 3 foundation and 3 non-foundation HEIs and found that elements of a managerial and a more collegial model of governance are to be found in both types of institutions. Donina and Hasanefendic concluded that “the room for manoeuvre left by the law ... mostly translated in conservative institutional interpretations, namely in solutions that represent a continuation with past tradition” (Donina & Hasanefendic, 2018, p. 13). This is in accordance

³University of Porto, University of Minho and University Institute of Lisbon have a senate.



with the observations of [Rendas \(2019\)](#): although the new law allows for the rector to be external to the university, to be non-academic and even be recruited internationally, this has not occurred until now.

As a summary, [Table 1](#) below shows the difference between the pre-RJIES and post-RJIES governance of Portuguese universities, including foundation institutions.

DESIGNING AND INTRODUCING RJIES

As mentioned earlier, the OECD played an important role in RJIES.⁴ Regarding this, two interrelated questions arise. To what extent have been the recommendations of the OECD followed in RJIES, and how to interpret the role of the international organization in the higher education reforms of Portugal. According to [Donina and Hasanefendic \(2018\)](#) and [Rendas \(2019\)](#), the OECD recommendations were only partially followed. They mention the following issues: election remained the selection method for the executive authority, it has not been replaced with the appointment; the OECD's request on the optimal size of the main governing board has been toned down, allowing it to go up to 35⁵; the request for a majority share of lay members was also toned down to a minority (30%) compulsory presence, preserving the academic majority in the general assembly; the election for internal board members was kept instead of replacing it with the appointment; the new regulations have not restricted student participation to an advisory role. In other aspects, especially in the option to choose between two institutional models, namely, a public institute or foundation, RJIES copied the recommendations. This partial implementation of the recommendations may support what [Teixeira et al.](#) note: "one should be cautious of seeing international agencies as leaders of change in higher education systems. Instead, they seem to be brought in by national governments within a certain context with the specific purpose of legitimizing certain policy options" ([Teixeira, Amaral, & Rosa, 2003](#), p. 201). Or what [Kauko and Diogo](#) conclude when comparing HE reforms in Finland and Portugal: "both countries have used OECD policies essentially as a lever to obtain legitimization" ([Kauko & Diogo, 2011](#), p. 128).

The most important characteristic of the political context of the reform is that the new regulations represented the intentions of the government alone. There was an insufficient degree of political consensus, and since the socialists had an absolute majority in parliament between 2005 and 2009, they did not depend on a consensus with other parties ([Assunção & Teixeira, 2018](#)). Even though during the debate in the parliament some changes were made (the scale of external member involvement in university governing bodies was reduced compared to their initially proposed rate), the process was "one of direct implementation of a set of reforms through legislative powers of a majority government" ([OECD, 2021](#), p. 123). All opposition parties at the time opposed RJIES ([Kauko & Diogo, 2011](#)). Formal consultations surrounding the proposed law did not take place, although there were parliamentary hearings, local institutional debates, and media dialogue. The initiative was moving forward with relative speed ([OECD, 2021](#)). The RJIES was

⁴Besides OECD, ENQA and EUA also contributed to promoting a certain agenda for change ([Assunção & Teixeira, 2018](#)).

⁵Although RJIES significantly downsized it – earlier there were more than 300 members in university assemblies in some cases (see [OECD, 2021](#)).



Table 1. University Governance Bodies before and after the Reform

Pre-RJIES	Post-RJIES
University assembly (64-331 members in 14 largest universities): (primary governance body)	General council composed of 15-35 members. In the case of foundation status institutions, board of trustees (5 members) sits above general council it is appointed by the government upon recommendation of the general council.
Rector selected by university assembly	Rector selected by the general council (ratified by the board of trustees in the case of foundation institution).
University assembly contains 40% academic staff, 40% students, 20% other staff	General council must have a majority of academic staff. 30% external members and 15% students Internal members select the external.
Academic senate (36-179 members in 14 largest universities) with managerial authorities (e.g. budget proposals and annual accounts) - could include up to 15% external members. Senates could include faculty representation. Administrative council responsible for current financial administration	Management council (maximum five members, chaired and appointed by rector) holds authorities with respect to administration, finances, assets and human resources. In the case of foundation status institutions, the board of trustees approves the rector's recommended appointments to the management council. Academic senates may be established as a consultative body
Collegiate governance bodies were mandated at the faculty level by legislation, held managerial authorities, and selected their leadership	Academic structures are decided by universities within their statutes. Teaching and research units must have a single-member executive. They may have a representative collegiate body (they have generally chosen to do so), which has the function of selecting the executive. If there is a representative collegiate body, it must have 15 members or less, have at least 60% teacher and researcher members, and include students, non-academic staff and external representatives. Scientific and technical council and pedagogical councils with membership specified in RJIES play guidance and advisory roles at the teaching and research unit level.

(OECD, 2021, p. 103).

adopted despite pressure to amend it and the disapproval of the opposition parties, the National Council of Education, the Council of Rectors of Portuguese Universities and the polytechnics' coordinating council, faculty and staff unions, as well as student organizations and the higher education institutions (Kauko & Diogo, 2011).

The attitude of the academe towards the reforms was rather dismissive. Faculty and staff unions, as well as student organizations, opposed the law (Kauko & Diogo, 2012). If the most important counterarguments are accounted for, it can be concluded that most of the concerns are related to the foundation status:

- The reform might be motivated by a 'privatisation agenda' and it carries the risk of submitting to private interests (Kauko & Diogo, 2012). This view seems to prevail, making it still impossible to discuss the option of foundation status in some institutions. (OECD, 2021)



- Governments may feel less responsible for the funding of these institutions and they will face significant pressure to find alternative sources of income and rethink their priorities based on their financial returns. (Assunção & Teixeira, 2018)
- Introducing the foundation model can lead to a full liberalization scenario, with tuition fees fixed for all studies, and the deregulation of employment conditions for employees, which would undermine professional autonomy, academic and intellectual freedom. (Kauko & Diogo, 2012)
- The foundation status would lead to a two-tiered system of elite and non-elite institutions. (OECD, 2021)
- There is a significant degree of uncertainty about the foundation model. (Assunção & Teixeira, 2018)
- Foundation status could undermine the public ethos and mission of those institutions since they would operate under private law. (Assunção & Teixeira, 2018)
- Reductions in former faculty and student representation, often with parity of representation, in governing bodies could lead to inequality and less democratic participation in institutional management. (Kauko & Diogo, 2012)

Rectors were in favour of streamlining institutional governance bodies and reducing their size but otherwise opposed the reforms (OECD, 2021). At the same time, Assunção and Teixeira (2018) note that the role of the national Rectors' Conference was important for the final design of RJIES, through the proposal of amendments and strong interaction with political parties in parliament. They also observe that – although there was intense discussion within HEIs – the decisions in the general councils have been less divisive than one could anticipate.

Legal uncertainty and, probably, insufficient communication have been shadowing the reforms concerning the foundation status. It manifests in at least three aspects, as the OECD report (2019) summarizes. Uncertainty about the extent to which staff working under public and private labor law must have parallel conditions for advancement and compensation has led institutions to eschew private law hiring. Uncertainty about whether tuition fees are to be considered private revenues or not has led to confusion about which institutions have sufficient non-state funds to satisfy the requirement for seeking foundation status. Uncertainty about private donations being treated as fully fungible with public funds has hampered the development of private donations to universities.

THE IMPACT OF THE REFORMS

Experiences of the 15 years of RJIES are two-faced. As the 2019 review of the OECD concludes, the goals underlying the 2007 legal framework for higher education institutions, the RJIES, have been only partly realized (OECD, 2019). The governance changes were more completely implemented, but the foundation status has accomplished less than expected.

Considering the overall picture, HEIs are seen now as “more governable” according to some stakeholders interviewed by the OECD team:

- Mandates to engage bodies with hundreds of people in strategic and routine managerial decisions are no longer required.
- External members now have an embedded role in governance.



- Accountability of rectors and executives has increased through clearer lines of responsibility.

RJIES brought minor autonomy gains for HEIs that did not transition to foundation status, including broader flexibility to recruit staff and base funding as a single grant (as opposed to separate core line items). But these flexibilities did not have a major practical impact because of overall budgetary reductions. The elimination of large collegial bodies (assemblies) has resulted in a loss of forums where institutional matters can be discussed, resulting, in some cases, in a lack of understanding of institutional direction among faculty, staff, students and organizational units (OECD, 2021). Though, a case study of the New University of Lisbon, which transformed into a foundation in 2017, indicates that there are different experiences. The new governance “led to a new leadership approach which unified and centralized decision-making processes and allowed the strategic application of university autonomy, which supported a better system of internal management and allowed for more commitment to society (Rendas, 2019, p. 196).

Other concerning issues are related to the role of external members in university governance. In this sense, phenomena reported by stakeholders to the OECD are very similar to concerns regularly emerging in literature and surveys concerning lay members in boards. That is the lack of engagement in, commitment to, and familiarity with the institution and higher education as such. Their key value, according to the report, is also mirroring international experience, i. e. their independence from internal institutional concerns (OECD, 2021).

One of the areas in that the new legal status has not brought on the supposed advances is human resources. As Assunção and Teixeira observe, although foundations have formally greater potential to differentiate their human resources, in practice this is still rather limited. Partly, this is due to the regulations discussed in chapter 3.2. – a high degree of convergence between public and private tracks legally imposed. Plus, “the inertia of many decades of legal homogeneity and the pressure of certain groups has hindered thus far the possibility of differentiated human resources management in Portuguese public higher education” (Assunção & Teixeira, 2018, p. 146). Private law hiring at foundation universities is far more prevalent for researchers than for instructional faculty (OECD, 2021). Although foundation status allows universities to develop an institutionally-based career system governed by private rather than public employment law, foundation universities have done so in a timid and belated way (CCHE, 2017⁶ as cited in OECD, 2019).

The effects of the global recession had a serious impact on the funding and financial autonomy of the institutions, regardless of their legal status. As Rendas (2019) notes, the crisis had serious repercussions in Southern Europe between 2009 and 2015, and this was exactly the period of the implementation of RJIES in Portugal. According to Assunção and Teixeira, the initial contracts agreed between foundations and the government were not fulfilled by the government, and the recently created foundations did not have access to a funding deal. The severe budget cuts (around 30%) imposed severe constraints on HEIs’ financial autonomy regardless of their legal status (Assunção & Teixeira, 2018). This is in line with the observations of the OECD. As they conclude, exemptions from procurement codes, from controls on investment options, permission to carry forward budgetary balances, independent authorizations to take on debt, and to buy and sell real estate were all effectively suspended. The financial and

⁶CCHE (2017, unpublished), Assessment on the Public Foundations under private law in the universe of Portuguese Higher Education, CCHE [Co-ordinating Council for Higher Education].



managerial autonomy envisioned for foundation-status HEIs was largely upended (OECD, 2021). The foundation universities had been “integrated again into the state budget perimeter” (OECD, 2019, p. 15). Additionally, the first wave of foundation-status universities was supposed to receive an initial grant committed by the government to support the development of independent endowments. Although universities have met their agreed requirements for the release of these funds, the committed investments were not delivered as a result of public sector financial controls in the 2011–14 period (CCES, 2017⁷ as cited in OECD, 2021). Such support has not been offered to other HEIs transitioning to foundation since this time (OECD, 2021). Though, there are different experiences, as well. As Rendas states in a case study about the New University of Lisbon, “the new legal framework proved to be useful in preserving institutional autonomy” (Rendas, 2019, p. 200).

All in all, comparing the outcome to the initial vision, foundation status proves to be both harder to attain and offers fewer benefits than originally planned (OECD, 2021). The information obtained from the University Institute of Lisbon confirms that. Jorge Costa, Vice-Rector for Research and Technological Modernization informed us that “with each national financial crisis, the level of autonomy has been reduced and, in some respects like acquisitions and budget, we are again in a similar situation as the rest of the public administration. We maintain some flexibility in having our own salary policy for human resources but being very limited by public budget policies we cannot use the full potential of the foundation autonomy remaining.”

In the previous chapter, we indicated that RJIES was the manifestation of the intentions of the majority socialist government that did not obtain the support of the other political parties. The OECD draws the attention to the fact that reforms continue to be understood through a highly political lens, and “the relative merit of core elements of RJIES, including HEI governance reforms and foundation status, continues to be controversial within the higher education sector, and within wider political debates in Portugal. This continues to affect the legal regime’s legacy” (OECD, 2021, p. 123). Again, a different view must be presented. According to Rendas, “the different parties did not significantly alter the legislation approved in 2007 when they assumed governmental power, pointing to a reasonable consensus at the national level with regard to HE policies” (Rendas, 2019, p. 200).

CONCLUSIONS

RJIES aimed to move the higher education system of Portugal from elected to selected leadership; simplify internal governance in terms of levels and structures; reduce the size of key governance bodies; increase the participation of external stakeholders significantly; enhance institutional autonomy; and provide the opportunity for HEIs to apply to become public foundations governed by private law – a move that would significantly expand their flexibility in human resource management, the spending of non-public resources, and the disposal of assets (OECD, 2019).

⁷CCES (2017, unpublished), The independent legal status in Portuguese higher education: Public Foundations, Conselho Coordenador do Ensino Superior [Coordinating Council for Higher Education], Lisbon, document provided to OECD for the project “Improving Higher Education in the Slovak Republic.”



When comparing RIJES with the international trends discussed in Chapter 2.1. it may be concluded that the reforms are in line with the paradigm shift regarding the external and internal governance of universities. The new governance system and legal status reflect a clear shift from state control to state supervision (Vught, 1989) that characterized the 1990s. But it must be added that the economic crisis inflicted budgetary and administrative restraints even on foundational universities, resulting in more direct ways of state control once again. The reforms created a multi-actor governance system (van Kersbergen & van Waarden, 2004) with a shift towards shared governance in the case of public institutions and a more evident transformation in the foundational ones. Public institutions have a unitary system with general councils making decisions on all major issues and including a minority of external members. The establishment of management boards added an executive dimension to the role of the rector and resulted in the centralization of power – also in line with international trends. Foundational universities are symmetric dual systems (see Chapter 2.2) with a board of trustees and a general council sharing the responsibility of operating and overseeing the university.

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