

Managing the unmanageable: perceptions on institutional change of a Portuguese university foundation

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Managing the unmanageable: perceptions on institutional change of a Portuguese university foundation

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The Law 62/2007 led to governance and statutory changes in Portuguese HEIs. Among others, universities were given the choice to either remain public institutes or become a public foundation operating under private law. University foundations had greater expectations in terms of enhanced financial and administrative autonomy. Nevertheless, the analysis of this reform cannot be dissociated from the economic crisis and political changes that the country underwent during that period. This paper is based on the study of a Portuguese university that became a foundation and a series of interviews with key system and institutional actors. Additionally, the study considered the analysis of legal documents that provide a better understanding of the change process. It also attempts to illustrate how actors perceive changes created by the law, namely whether interviewees' expectations on the law and its unfolding were fulfilled. Bearing this in mind, the following research questions are addressed: how are these changes in HE legislation interpreted and lived by academia? How do actors perceive reforms in the sector? Ultimately, the analysis points to a mismatch between interviewees' expectations and the effective changes induced by the law to HEIs.

Keywords: institutional change; Portuguese higher education; RJIES; university foundation; governance and management.

Introduction

Portuguese HE has been reforming since the mid-1970s. However, since the late 1990s, as in most European countries, the pace of change has accelerated due to the massification and internationalisation of the sector and legislative reforms that nation-states are enforcing on their higher education (HE) systems.

In a scenario of growing globalisation and Europeanisation, the construction of competitive knowledge societies placed increasing attention on the economic side of HE, viewed now as essential to promote national competitive economies and for

individual life changes (Barr 2009, p. 201). Simultaneously, and increasingly more, HE has become a market-determined process, replacing the near monopoly enjoyed by the state (Varghese, 2009). In turn, changes in HE should be framed alongside with modifications in the public sector, namely from the social-political context of growing contestation towards the welfare state and its bureaucratic-professional regime (Clark and Newman, 1997). An environment of distrust and discontent was fertile for the neoliberal culture and the New Public Management (NPM) credo appeared as a kind of recipe for steering public organisations in a more professional and responsive way (Bruckmann and Carvalho, 2014).

Portugal is not an exception to the rule. Throughout the 1990s and 2000s the country embraced NPM ideology and practices. The financial crisis that started in 2008 led to a decrease in public funding and the emergence of austerity measures triggering reforms in HE systems including Portugal.¹ Change started to be prepared in 2005 when a new government came into power with parliamentary majority and commissioned the OECD to evaluate the national HE system. Outcomes of these international assessments were a series of HE reforms that emerged in 2007, of which the new legal framework for HEIs (RJIES – Law 62/2007 of 10th September) is highlighted as the legal basis of discussion in this paper.

RJIES reflects NPM ideology, as well as OECD recommendations. Indeed, Law 62/2007 is the perfect example of managerialism, as can be seen by the following measures: a) an increase in tuition fees, b) the loss of public servant status for both academic and non-academic staff, c) non-applicability of public accountancy rules to the institutions, d) changes in the institutional organisation, e.g. a reduction in the number of the constituent elements of the governance bodies, a change in their composition by means of a greater intervention by civil society, including external stakeholders in HEIs' governance bodies, e) a shift from a collegial model of governance to a more managerial one accompanied with an increasing professionalisation of institutional management and stronger leadership, f) the possibility given to universities to become public foundations under private law, and initiatives for transforming the funding system into performance-based funding.

Bearing this in mind, the following research questions are addressed in this paper: how are these changes in higher education (HE) legislation interpreted and lived by academia? How do actors perceive reforms in the sector? Based on a case-study of a Portuguese university that became a foundation, the paper attempts to illustrate how actors perceive changes brought by RJIES, taking into account adverse external environment, namely the present financial crisis in the country.

The next sections provide a conceptual and theoretical framework based on shifts in governance, usually referred in the literature as NPM (Clark and Newman, 1997; Pollitt, 2003), followed by a contextualisation of the Portuguese HE system and the methodological approach used. The last parts are devoted to discuss the main findings and conclusions.

Governing Change

Salamon (2002, p. 37) refers that (new) governance theory has to deal with differentiated and complex societies, which arise due to a variety of factors: the growing fragmentation of political power, the increased complexity of public problems, the recent scepticism of the government, the preoccupation with efficiency and improving performance as the major criteria for public action and, more recently, concerns regarding financial constraints. To deal with such complexity, governments have been reinvented, have moved towards models closer to self-regulation and self-governance (Salamon, 2002) and have then elaborated on several tools to cope with a multiplicity of scenarios, actors and problems. Nevertheless, despite the advantages these tools have (e.g. more autonomy in allocating new talents and resources to the tasks of public problem solving) they have the disadvantage of perverting public purposes and fairness criteria (*ibid*). It is amidst this fundamental rethinking of governing societies that liberal economic theories gained strength. In turn, reforms have been legitimised by market mechanisms, usually referred in the literature as NPM/new managerialism and managerialism (Reed, 2002), impacting the institutional restructuring of HE as part of the public sector.

Although there is no clear consensus in the literature as to what NPM actually means (Pollitt, 2003), there is a general discourse that the old bureaucratic public administration archetype was no longer suitable to govern the increasing complexity of

societies. As such, it should be substituted by a more economic model, able to reduce wasteful public spending, to create greater transparency and accountability in government affairs, and to steer public services more efficiently (Kersbergen and Waarden, 2004, p. 145). In turn, this efficiency would be achieved through the implementation of private-sector discipline. By advocating that private sector values and practices, as well as management tools, should also be adopted by the public sector, NPM “(...) has become a normative model, one signalling a profound shift in how we think about the role of public administrators, the nature of the profession, and how and why we do what we do” (Denhardt and Denhardt, 2000, p. 550).

In Reed’s (2002) conceptualisation of NPM, one of its structural elements is this generic narrative of strategic change, aiming at establishing a distinctive organisational form that allows for “change to happen” through practical control technologies (2002, p. 164-165). In this way, managerialism pushes universities towards increasing competitiveness by means of growing accountability measures, stronger emphasis on national and international quality assurance mechanisms and pressures for institutional efficiency.

This new governance rationale, enforced by management through contracts, controls, regulations and their cultures (Reed, 2002), impacts on professionals’ working practices and in the organisation of their work. Whether the nature of academic work has not changed significantly, the culture and environment where it is building in is now rooted in performance assessment exercises, contracts based on productivity goals and incentives for competition, where efficiency and accountability became dogmas in HEIs’ life. In fact, following NPM ideology, there have been trends for increased job insecurity among academics with substantial devaluation of tenure positions and replacement of the ‘public employment’ condition (public servant) by the ‘institutions’ employment’ contracts (Amaral, 2007).

In Reed’s words, the strong faith on market mechanisms and competition to solve “bureaucratic rigidity and professional intransigence” attempted thus to weaken the regulatory structures of professional elites (2002, p. 166). Professional academic work is then regulated through the design, implementation and monitoring of various control mechanisms with the purpose of auditing it in relation to various externally-determined

performance measures (2002, p. 171), so that more competitive and entrepreneurial institutions emerge (Clark, 1998; Pinheiro and Stensaker, 2013).

Hoping to understand how the academia of a university foundation perceives legislative changes imposed to its governance model within the present financial crisis, the idea of 'shared governance' might bring some light into the discussion. This is because a common observation is that a move from the 'republic of scholars' ideal towards the 'stakeholder organization' model of governance has occurred within HE and yet, another one is about to come or 'to consider moving back': shared governance (Shattock, 2002, p. 240). The idea is to include a greater diversity of actors in decision-making processes (top management administrators/managers, senior academics, external stakeholders, senior and younger researchers, non-academic staff and students) instilling on them proactive and responsible behaviours. Nevertheless, from the literature review and data collected, shared governance, as a pure model of governance, exists only theoretically. On the other hand, it seems that the ideology (and practices) of shared governance, albeit with less diversity of actors, were also present during collegial times. Hence Shattock's words when he referred that another move in HE governance is about 'to consider moving back'. As such, it is possible to talk about hybrid models of institutional governance, with a mix of elements from all these forms. This coexistence of traditional collegial powers with stakeholders' guidance and managerial self-governance was evidenced in previous studies on Portuguese HEIs (Santiago and Carvalho, 2004). As Lima (2012, p. 299) explains "(...) there is a certain degree of hybridism and some tension deriving from the clash between the collegial-participative model of governance (political system and organised anarchy) and the managerialist pattern (tight coupling and hyper-bureaucracy)".

By collegiality we refer to the governance model usually called professional bureaucracy (Mintzberg, 1979) where decision-making is shared by equals - academics - who take management roles only temporarily and have relative autonomy in time, teaching and research management (see also Tapper and Palfreyman, 2010).

Governance and Management Reform in Portuguese HE

Portugal has a binary HE system since the early 1970s, composed of university and polytechnic subsystems, with a total of 40 public institutions (14 universities, 1 public university institute, 5 police and military institutes, and 20 polytechnics) and 94 private institutions (38 within the university subsystem and 56 within the polytechnic subsystem) (DGES, 2012).

The 1974 revolution marks a turning point in Portuguese HE, enabling what was an elitist system to evolve into one of mass HE (Amaral and Carvalho, 2003). The first Portuguese Constitution after the 1974 Revolution was drawn in 1976 and some of its principles came to shape Portuguese HE. Among these, we highlight explicit protection of university autonomy and free (of charge) access to HE. The Portuguese Constitution set out scientific, pedagogic, administrative and financial autonomy for universities (Amaral and Carvalho, 2003). There was, however, no specific law setting out autonomy to universities by that time. Autonomy Law came to be a reality in 1988 for universities (Law 108/88) and in 1990 for polytechnics (Law 54/90). Since then, Portuguese HEIs are considered to have a high degree of autonomy, and apply a collegial governance model (Amaral and Carvalho, 2003). However, collegiality has been challenged since 2005. According to Amaral (2007), by this time, several problems could be identified in Portuguese HE: a lack of clarity in the binary system, a network of HEIs as well as a high number of HE programmes without any coherence and with little or no demand at all, some HEIs in deep financial crisis, low equity in accessing the system, an ineffective quality assessment framework, low international competitiveness, the absence of effective state regulation, a mismatch between supply and demand and between demand and the labour market's needs.

It is in this scenario that the 2007 legislative reforms emerged, influenced by NPM ideology and consequently by the OECD's country review team suggestions. Examples of OECD recommendations in Law 62/2007 refer to an increase in tuition fees, the loss of public servant status for both academic and non-academic staff, non-applicability of public accountancy rules to the institutions, changes in the institutional organisation and reform of the legal status of universities to self-governing foundations (OECD, 2007, p. 141).

The most striking change introduced by Law 62/2007 is the possibility given to HEIs to opt for one of the two possible institutional models: the traditional public institute or public foundation under private law. University foundations assume a hybrid entity. As such, hybrid organisations relate differently with the state: instead of the traditional hierarchical model, a university foundation uses (quasi-) market mechanisms, e.g.: contracts to set objectives, target agreements and multi-annual budgets (Palandt, 2003). So far, only three HEIs made this choice, but two more have internally approved to become a foundation recently.

Another important change introduced by this law concerns the institutions' governance and management models. Until recently, Portuguese HEIs organisational structures were based on collegiality with amply participated management and governing boards. Now they are faced with a power concentration in three governing boards (instead of the four to five they used to have) to which a restricted number of representatives is elected from the several university bodies that constitute it. External stakeholders, whose presence in HEIs was greatly increased (as recommended by the OECD), which might bring changes in the way these institutions have been acting so far. This is a drift away from the bureaucratic model that had characterised the governance archetype of the Portuguese University. From a governance pattern ruled by academics, a new model emerges in which professionals have to share the power of decision on university management issues with external stakeholders, coming from different realities outside academia.

The new governance and management model imposed by RJIES shows not much difference between the two possible institutional models. Public institute HEIs and foundational model HEIs share the main management bodies: general council, rector and management board. Foundation institutions have an extra governing body: the Board of trustees (Brückmann and Carvalho, 2014). Besides the governing bodies imposed by RJIES, HEIs may choose to have others, but these can only be of consultative nature (e.g. the academic senate). The presence of external stakeholders in top governing bodies was made mandatory by RJIES. At least 30 per cent of the general council members must be external. Nevertheless, academics still hold the majority of seats (>50 per cent), and students secure ≥ 15 per cent of seats. The presence of non-

teaching staff is optional. The Board of Trustees is composed exclusively by external members appointed by the government under proposal of the HEI.

The advantages of the foundational model, as presented by its proponents, were, among others:

- Possibility of getting additional financing, including from private sources;
- Multi-annual state financing through contracts, enabling greater financial predictability and stability;
- Flexibility in personnel recruitment and management;
- University foundations get to avoid the public accounting regime, prior supervision by the Court of Auditors and public tenders in public contracts;
- Efficiency and competitiveness gains in what concerns management (Moreira, 2011).

With RJIES, the university foundations signed a multi-annual contract with the government, which should last no less than 3 years and 5 years maximum, establishing the goals to be achieved and the penalty in terms of financing, in the event of default by the institution (Amaral, 2007). Indeed, this new form of control - performance-based funding - reveals that public funding for HEIs has changed not only in quantity, but also in nature and form (EUA, 2011). There is a considerable decrease in public funding from all sources: government, private sector and households. Simultaneously, the forms in which funding is provided to HEIs has been accompanied with growing accountability requirements.

Research Approach

In order to approach our study object, we combined document analysis and interviews. Data consists of face-to-face semi-structured interviews to key actors of system and institutional levels during the year 2012. Actors were carefully chosen due to their roles and degree of involvement in the study object, both at system and institutional levels. System level interviewees are HE policy makers and at the institutional level we picked top-management actors (university's rector and vice-rectors), middle-management actors (heads of departments and polytechnic schools), academics and administrative staff. Supplementary inputs were obtained through literature review, document analysis

and theoretical discussions to set the study in context in relation to the influence of NPM in recent reforms of Portuguese HE.

The University analysed here became officially a foundation in 2009, allowing us some comparison throughout different periods of its life path. This institution is also exceptional in its organisational structure: not following a traditional faculty arrangement, basic units are organised around university departments and polytechnic schools in a matrix structure. The polytechnic is considerably smaller than the university, which explains fewer interviews from this subsystem. Departments have similar levels of scientific and pedagogical autonomy as classical faculties. However, with respect to administrative and financial issues, their autonomy is more restricted, being under university's central administration. University's departments and polytechnic schools' basic common governance bodies are the Director, the Executive Board and the Unity Council (*Conselho de Unidade*). Collegiality is present in the University through scientific and pedagogical management councils and through advisory bodies as the ethics boards, the cooperation council and the disciplinary committee.

Institutional level interviews were conducted at the Physics, Languages and Engineering Departments and at the Nursing and Management Polytechnic Schools (i.e. soft and hard disciplines), with the objective of grasping different realities across disciplinary fields as well as a variance in professionals' ambitions and concerns.

The perceptions quoted here aim at clarifying on the level of action – system (**S**) and institutional. System level interviewees provide complementary realities of the country and the HE system. Institutional actors were then classified according to the type of institution they work in, university (**U**) / polytechnic (**P**), and on their main role (Table 1). The following identification is used:

- Top-management (**Utm/Pm**): Rector, Vice-Rectors, Pro-Rectors and external members;
- Middle management (**Umm/Pmm**): Heads of Departments and Polytechnic Schools;
- Academics universities / Polytechnics' lecturers (**Ua/Pl**), and

- Administrative staff (**Ut**).

The numbers placed before the letters indicate different interviewees. Some actors may ‘accumulate’ more than one role, e.g. a top management actor who works in close cooperation with the Ministry and lectures at the university. These interviewees are identified with a *. However, only their main activity is explicit.

Table 1 – Interviewees’ Sample

System Level		Institutional Level				Total
	Type of Institution	Top Management	Middle Management	Academics / Lecturers	Technostructure (Administrative staff)	
Portugal	University	5	4	6	3	19
	Polytechnic	-	4	3	-	7
Total						31

Content analysis was carried out through thematic coding with the help of qualitative data analysis software Atlas.ti 7. Two dimensions (Schreier, 2012) were selected: the first discusses why and how RJIES emerged and the second dimension explores actors’ perceptions on the institutionalisation of the foundational status.

Change is understood here as the result of the implementation of Law 62/2007, in a period of historical financial difficulties for the country, being thus intrinsic to policy making (Saarinen and Välimaa, 2012).

The new legal framework for HEIs – why and how?

The implementation of RJIES mixes with the national environment of political and economic crisis, a fact that cannot be dissociated from the law itself and its unfolding. As acknowledged by interviewees, regardless of their role, this scenario eased up change, both at system and institutional levels.

“It is obvious that during crisis moments, situations get complicated but also opportunities for change are created. People in situations of need are more willing to change and that needs to be taken into account to do the necessary changes” (4S).

Alongside with the national context, RJIES was also *sponsored* by OECD's feedback, a fact that provided legitimacy for reform (Kauko and Diogo, 2011; Torgal, 2012), as confirmed by most system and middle management actors:

“Almost all the reforms of the former Portuguese HE Minister are dictated by OECD studies” (4Utm).

“In Portugal it is evident that there is a direct influence when Portugal makes changes based on studies of committees and/or groups of organisations as the OECD” (6S).

Data shows that interviewees perceive the government's discourse on the need to shift HE governance and HEIs *modus operandi* to be aligned with the European Commission's discourses that urge HEIs to *modernise*, i.e. to professionalise management, which also provided legitimacy for reform. In fact, the Bill (Government of Portugal, 2007) presented the reform as an unprecedented opportunity for HEIs that would take place in parallel with the modernisation of knowledge societies. Interviewees pointed to the critical and charismatic role of the previous Minister of HE in coercing change by inflicting severe financial constraints on HEIs. Along these lines, the *weak* social and economic context of Portuguese HE allowed for introducing changes in the way HEIs are steered and funded that otherwise would be troublesome to accept.

A paradoxical aspect emerges when we confront interviewees' discourse about RJIES with the 2007-2009 scenario, when the Law was drafted and implemented. RJIES was adopted in 2008 despite pressures to amend it with all opposition parties having voted against it and the National Council of Education, faculty members, staff and student unions and HEIs disapproving it. Nevertheless, in 2012, system level interviewees, as well as top-management and some middle-management respondents showed overall satisfaction with the law. This might be due to the fact that interviews were conducted in a university that adopted the foundational status. Indeed, some interviewees even regret that the original idea of RJIES, which was ‘much more tough’ was not taken to its final potentialities.

“If the initial project would have gone forward, it would have taken more into account a greater participation of the external society in HEIs' management bodies. Then, there were of course some vested interests – sort to speak – and

the law became what it is. In my opinion, from the political point of view, this was what was possible to do” (4S).

However, it was also mentioned that the restrictions HEIs face in terms of fiscal policy do not allow for an accurate analysis of the changes brought by RJIES as the law was held back in its implementation. Succinctly put, whereas those interviewees supporting RJIES acknowledged that this was not the best time to assess the potentialities of such a legislative instrument, those opposing to the law questioned its value and legitimacy, especially in the current environment of crisis.

The positive aspects of RJIES that gathered general consensus were: it aligns the statutes relative to public and private institutions, it updates legislation concerning public and private universities’ and polytechnics’ autonomy and fairer quality assurance, and the presence of external members in HEIs’ governance bodies. RJIES is perceived as being a necessary tool for a different type of management, gathering several elements of Portuguese HE in one single document that were previously scattered in different legislative pieces.

“Initially, we all applauded RJIES due to a very simple question: it placed public and private institutions in the same legal situation” (3S).

Consecutively, more critical interviewees were also consensual when complaining about the nature of RJIES. The law was perceived as too extensive, too cumbersome, and too much prescriptive, not allowing HEIs to do anything without previous consultation and approval. Another critic points to the legislator, who did not take account for the diversity of the national institutional landscape, i.e. RJIES did not consider universities that integrate polytechnics. As such, it is unclear how these institutions should arrange their governance structures. The university of this case-study chose to set up a single set of mandatory governance bodies as demanded by the law (namely a single general council) for both the university and the polytechnic schools.

Both system and institutional level actors expressed distressing views on the fact that they spend a lot of time and energy (trying) to understand and contextualise RJIES within the national legislative framework:

“What I think is the less productive aspect – and that is not only related to HEIs but mostly to the country – is that rectors, presidents and their teams spend a lot of time (for almost no return for the institution) trying to understand RJIES regarding to the laws of the country. We spend a lot of time to know what can be done or not, whether it’s legal or not, etc. (1S)”.

By arguing that RJIES was motivated by a privatisation agenda, interviewees believe that the foundational status could lead to an even greater reduction of state funding based on arguments that universities are able to sustain themselves. Furthermore, most faculty members foresee a significant reduction in academic endeavour as well as lower participation in decision-making by researchers, students and staff. They also anticipate an excessive concentration of power in universities’ general councils and in sole proprietorship positions, i.e. rectors, polytechnics’ directors, deans/departments’ heads.

Towards this scenario, the great majority of interviewees (including external members) look at RJIES as a ‘lost opportunity’ of doing something simple, but quite oriented and practical, which simultaneously would allow and demand HEIs to be more transparent and accountable. The result of this hybrid situation is a document perceived as reflecting the Portuguese society: afraid of creating a total (and necessary) rupture with the past, legislators tried to find a balance which would please everyone without causing too much discordance and/or insurgency.

“I can imagine how challenging it must be, trying to make a system that without implementing major disruptions, requires external individuals in governance bodies. So we stood midway between other models: in England, boards are composed solely by externals, and here we have a mixed situation in the general council where the participation of external members is not dominant, but allows for some openness”(3Ut).

Thus, the same way interviewees see RJIES as an ambiguous law, the composition and mission of the general council was also criticised due to its hybridity:

“The law was made pending a bit to the right and tending a bit to the left... What happened, then? One couldn’t define what a general council is. Is it a strategic body to guide the university or a supervisory body of the rector? There’s this ambiguity. If it’s meant to be a strategic body, there are few external members;

if it's a supervisory body of the rectory team, they are too many. There shouldn't be so many watchdogs for the rector, right?. But as I said, there wasn't a rupture, a breaking point so that a very well defined and clear body could emerge" (5Utm*).

This allows us to conclude that it is not possible to separate cultural factors from the way political processes are designed and implemented. Thus, some of the criticisms to the legislation and to the way RJIES has unfolded are mostly critics to national politicians, to the way processes are conducted, and to the lack of perspective and uncertainty the country presents. What seems to be common in the literature (Varghese, 2009) and in interviewees' discourses is the need of *opening* the university to the civil society. As such, the majority of respondents welcomed this change; even if the 'cut' with the previous governance model is not always clear. This allows us to infer that changes' outcomes are accommodated with old elements of previous reforms and policies. This might also be explained by the fact that interviewees guide their interpretations and actions through different norms, rules, values and belief systems (Peters, 2005). Such diversity is then translated in the way actors operationalise change. Now, it remains to know, as Tapper and Palfreyman (2010) ask, whether it makes sense to retain the idea of collegiality in such context, as NPM pressures for more efficiency and accountability have overthrown collegiality.

Institutionalising the foundational model in the actual economic context

The perceived increase of institutional autonomy in terms of financial and human resources management that university foundations seemed to enjoy is what pushed universities to adopt this new institutional model. Additionally, the perspective that obtaining lump-sum funding through multi-annual contracts would enable greater financial predictability and stability appeared quite enticing for HEIs, especially during uncertainty moments. Therefore, as highlighted during interviews, being a university foundation became a hallmark, a kind of quality and innovation label for universities, a sign of progression and adaptation to the 'new times'. As such, in the following years, opinions changed and "(...) those who were fierce opponents during the campaign period started to pay more attention and aimed at internally revising this process" (5Ua). These positive perceptions are based on the requirements that (only) excellent and/or very good HEIs fulfil, e.g.: solid self-financing capacity which should be increased by

raising institutions' own revenues (university foundations need to obtain at least 50 per cent of external revenues) and scientific soundness which should be proved through the number of accredited 3rd study cycles, the qualifications of the faculty and development of top-level research (Law 62/2007). Those advocating the foundational model, evoke technical arguments, increased flexibility and streamlining management processes, i.e., *managerialism* per excellence. Nevertheless, it is important to refer that for most interviewees it is not clear what is a "public foundation operating under private law".

"Even from the legal viewpoint, it was never well defined what is a public foundation operating under private law, and therefore one cannot clearly understand which influences and changes this brings for institutional management, hiring processes, etc." (3Pmm).

This situation not only implies on their legal and administrative procedures, but also on decisions and activities that are carried out. Considering that the foundational status is the main difference and 'originality' of RJIES, it seems problematic whether, within a university foundation, institutional level actors do not feel acquainted with the changes such status entails and/or do not know if the foundational status is effectively in place.

"We don't really know how things are, if we're still a university foundation or not, and if the others who wanted to become a foundation still want that" (2Ua).

This creates uncertainty and hinders institutions' possibilities and freedom of manoeuvre. Simultaneously, one needs to remember that the Law 62/2007 appears in a moment of change also for public administration, namely with respect to the rules of hiring staff, funding issues, etc. In this way, in the last two years, university foundations have been increasingly more included in the state domain, like other public institutions. Consequently, regarding financial and accountability issues (and almost 5 years passed) different institutional actors perceive that the university foundation does not exist:

"In practice, the foundational regime is suspended, except for aspects related with assets. This means that regarding financial management, university foundations are again in the perimeter of the state budget and therefore they have to check the rules, standards and all requirements as any other university. So, according to the Finance Ministry, from the financial management viewpoint, universities were left with very little difference in relation to other institutions" (4Utm).

Thus, whereas on one hand granting independent legal status is one mean of giving greater autonomy to institutions, making them legally responsible for the operationalisation of their mission and tasks does not exclude institutions from an indirect state administration. It is argued that by presenting the foundational status as the ideal governance model for HEIs, the government intends to increase its control over HEIs by appointing the board of trustees under rectors/presidents proposals.

Linked with the ambiguity loaded in the term *public foundation under private law* is the climate of uncertainty and instability that creates anxiety to people working in academia. Even the most enthusiastic interviewees, i.e. top-management actors, showed their concerns regarding the durability of Law 62/2007:

“The problem of RJIES is that we don’t know if it is to stay or not. Actually, this is always a problem in Portugal: how long it will last?” (1PUtm).

These feelings about the stability of the system and the endurance of RJIES are certainly not unfounded. Shortly after interviewees were conducted, the new government elected in 2011 announced the abolition of the foundational system and its replacement by a model of ‘enhanced autonomy’ (Bill 275/201, 3rd July 2013). Nevertheless, at the present, university foundations continue to operate as such, and this new status was not enforced. Additionally, the overlap of obligations between public administration institutions and foundations raised complaints towards the fact that the specific nature of HEIs was not taken into consideration when drafting RJIES:

“Changes in public administration and instruments designed for public administration in general were brought into universities without taking into account that public institutions are different from General Directorates and these instruments do not work in HEIs and they never will! This wounds autonomy! Basically, there’s a fundamental disrespect towards the nature of the institution and its autonomy” (6S*).

Considering the cumbersome nature of RJIES, the changes in public administration that had an impact on HEIs and the bill to amend RJIES has so far only brought more confusion and suspicion towards the Ministry’s intentions, which makes the interviewees’ disillusionment with the foundational status understandable. They accuse

both the Government and the Minister of making excuses to not fulfil their obligations and promises.

This context of change, historically unique in the country, raises many questions regarding the foundational status, namely how a university foundation operates in such a political and economic instable environment. Interviewees envision a situation where a supposed increase of autonomy without the necessary resources will lead to a greater dependency on the state or other external organisations that have the power to provide the necessary resources the university needs. Additionally, there is a general feeling from both types of HEIs' actors that despite less state intervention and more financial autonomy, the institution is losing its freedom of manoeuvre. The main rationale for this, "regardless of RJIES, this complete subversion to the financial system is what apparently forces universities to lose much of their autonomy" (1Pmm). Thus, on one hand, more institutional autonomy could relieve the state's burden and encourage universities to develop different survival strategies, but on the other hand the economic crisis swapped these premises:

"We feel that there isn't autonomy: there is autonomy when there is money, but when one speaks about funding, it disappears" (4Umm).

Concurrently, another question surfaces: how can a tool like RJIES be useful if economically sound universities, like the one analysed in this study, lose financial autonomy and risk being treated similarly with other public institutions and universities that are not so careful with their finances? Furthermore, institutional interviewees also mentioned that this situation perverts/ invalidates RJIES' character of fairness, one of its major strengths – as all HEIs are treated the same way in terms of financial issues. This leads us to wonder whether it is possible to assess or even talk about fairness criteria in a scenario involving the whole country and almost all sectors of activity.

The loss of autonomy appears as the main concern and critique for middle management interviewees and academics who feel tied up in their role, both as managers and/or academics. Indeed, these findings corroborate the idea that more targeted funding has given governments increased steering power over universities, which in turn can hinder HEIs ability to act more autonomously (EUA, 2011). If institutional and financial

autonomy are considered crucial prerequisites to successfully overcome the crisis by allowing universities the freedom to allocate their funds strategically (*ibid*), what happens when institutions are constrained by this ‘blurred’ financial autonomy?

The change in the traditional organisational forms of the university represents the political hybridism of the country. It is a clear example of steering from a distance, where the government attempts to control public institutions by transforming them into foundations with an *agency* character. Reed (2002) also described this phenomenon as the ‘centralisation of decentralisation’.

Interviewees referred that these times certainly do justice to the expression: “necessity is the mother of invention” (4Umm), but such flexibility and adaptability cannot be enhanced for longer in an environment of constant financial suffocation for HEIs. In this scenario, it is easy to predict a race for the commercialisation of universities’ activities and consequently to resemble them, even more, to entrepreneurial organisations. It is believed that this possibility would be easier to achieve within the foundational model. Data reveals extreme positions on this subject according to interviewees’ roles. While external members (e.g. board of trustees) support the idea that universities should seek their own revenues and conduct research that generates income, on the other extreme, some academics and middle management actors strongly manifest their disagreement with such a transformation. They advocate that “managing a university is not like managing a bank or a supermarket” (5Ua). Associated with this discussion, most institutional level interviewees criticised the immense increase of administrative and bureaucratic workload (paradoxically, the reason why a new *entrepreneurial* model of governance needed to be implemented):

“It’s the main complaint from the faculty: the increasing bureaucracy and workload... there’re so many things that a professor and a director of a programme is required to do. Everything needs to be computerized (...). In the end, a person spends hours and hours filling time-sheets” (6Utm).

Some respondents went further and lamented that the increase of bureaucracy is the most visible change brought by RJIES:

“But it is curious that, with few exceptions, I don’t feel huge differences with respect to the management of the academy as a whole. I mean, there are

different governance bodies for different purposes, but in my daily activities, I don't feel these differences. I feel that what has changed more is the increase of the bureaucratic burden. But...I don't know if I can connect this to RJIES" (1Ua).

It is worth to note that some of the criticisms and/or dissatisfactions with RJIES and with HEIs *modus operandi* are not necessarily related to the law. As aforementioned, the reform in public administration included HEIs, and therefore, changes in human resources management and performance assessment exercises that enforced managerialism practices also apply to academia. University foundations were spared neither from the economic crisis, nor from the changes affecting the public sector. Thus, interviewees feel that due to their specific nature, HEIs should not be treated as other public administration agencies. In this scenario, control technologies might have the disadvantage of perverting public purposes.

Managing the unmanageable?

The latest national HE legislative reforms are aligned with international trends and combine managerialism with OECD and EU recommendations and pressures for an efficient use of public resources. We believe this represents a changing pattern in HEIs dynamics, where one finds a mix of old and new elements of governance models. This goes much in line with the historical and cumulative nature of institutions, making change slower but also more possible (Peters, 2005).

This case-study exemplifies that institutional reform tends to be imposed from outside. Wishes to change the universities *status quo*, combined with international pressures and a crisis environment, legitimised decisions from international organisations that advocate more professional and entrepreneurial management for HEIs. Subsequent adjustments in universities' mission also reflect a change in the way HEIs are viewed by their environments and how the economic rationale assumed greater importance, obliging institutions to be creative in order to survive. This paper suggests that although the economic crisis has provided momentum for change, it also hindered the implementation of RJIES (in public foundations). On the other hand, the success of its implementation was also determined by actors' beliefs, willingness and sense of obligation towards the Ministry orders and institutional leaders' commandments.

Naturally, it can be argued that it is challenging to assess the impact of RJIES due to the difficulty in separating its implementation from financial constraints. This obstructs the ‘interesting possibilities’ that the law could bring. In turn, funding shortages perverted control technologies as performance assessment exercises and impacted on human resources management. Additionally, salary cuts and freezing hiring and career progression were applied to the whole public sector, and university foundations were not spared from austerity measures. This is probably the reason why some actors feel that there are no big differences when comparing the foundational model with the previous one, which allows for the belief that university foundations do not seem to be in (much) better conditions than their counterparts that chose to remain as public institutions.

Especially disquieting is the feeling of losing institutional autonomy, which, among other consequences, curtails institutional leaders’ behaviour due to uncertainty. Uncertainty moments that last too long harm institutional autonomy as it seems challenging to govern an institution in such terms. It might be that NPM, also visible in the changes introduced in university foundations’ governance bodies, works strategically to comply with this scenario, although bureaucracy is perceived as having increased.

The influence of managerialism within HEIs is also notorious in the shift from a collegial model of governance to a more managerial one, which might lead to a loss of academics’ participation in decision-making processes and more hierarchical decisions. Indeed, the majority of respondents believe current decision-making is far more top-down than it used to be and they shared the opinion that there is an increasing professionalisation of institutional management. We can thus observe a hybrid logic underlying not only in the HE sector, but also regarding public administration in general.

In conclusion, budgetary constraints are perceived as having prevented university foundations to enjoy what seemed to be the advantages of the foundational model and which led universities’ preference when adopting this status. RJIES had the magic wand of gathering in one document several aspects that were scattered in different legal documents, but it dashed all the expectations in terms of increased (financial)

autonomy, and institutional actors see that institutions went back to the state perimeter. Though unevenly, the economic crisis affected all scientific areas and faculties/departments had to reinvent their activities in order to manage the unmanageable.

¹ In 2011 Portugal received external economic support provided by three entities: the European Financial Stabilisation Mechanism (EFSM), the Security Financial Stabilisation Fund (SFSF) and the International Monetary Fund (IMF).

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