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Beyond public and private: legal status and ownership as determinants of institutional differentiation in higher education

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Abstract

This paper examines how legal status and ownership contribute to the differentiation of higher education institutions (HEI), using the Portuguese higher education (HE) system as an empirical context. It aims to move beyond the conventional public–private dichotomy by demonstrating that legal status and ownership are key variables in explaining the diversity and behaviour of private HEI. The study adopts a qualitative research design based on documentary analysis, combining two analytical axes: legal-institutional mapping and ownership mapping. The analysis draws on official and institutional sources, including the Portuguese Official Gazette, the Justice Portal, and the SABI database, covering the period from 2004 to 2021. This allows for both cross-sectional and longitudinal analysis. The findings reveal that private HE is characterised by a high degree of organisational heterogeneity, with multiple legal forms of ownership coexisting. This diversity stems directly from the legal framework governing the sector. The study also shows that ownership in HE should be understood as a system of control rather than merely a formal property relationship. A central finding is the pivotal role of the founding entity in the Portuguese private HE sector, where institutions generally lack autonomous legal personality and effective control is exercised by founding entities that establish and own them.

Keywords: Legal status; Ownership, Institutional differentiation, Private higher education, Portugal

1. Introduction

The distinction between public and private higher education (HE) has, over recent decades, constituted a central axis of research in the field, reflecting concerns related to governance, funding, and regulation of education systems (Levy, 2011, 2018; Levy & Zumeta, 2011; Parada, 2010). However, despite its analytical relevance, this distinction has often been operationalised through binary categories that oversimplify the empirical reality of contemporary systems, which are increasingly characterised by institutional diversity and the emergence of hybrid organisational forms (Amaral & Magalhães, 2023; Diogo et al., 2015; Veiga et al., 2015).

The expansion of private HE, particularly since the second half of the twentieth century, has significantly contributed to the reconfiguration of national systems. This process has been associated with what some authors describe as the decline of the public monopoly in HE provisions (Bertolin, 2011; Levy, 2012; Levy & Zumeta, 2011). It has also led to a diversification of institutional models, including different legal forms, governance structures, and strategic orientations, shaped by both market dynamics and evolving regulatory frameworks.

Despite these developments, much of the literature continues to privilege classifications based on funding sources, institutional missions, or profit orientation (Bartelse & van Vught, 2009; Lepori, 2022; Meek et al., 2000). While relevant, these approaches are often insufficient to capture the structural differences that shape institutional functioning and organisational behaviour. The legal framework plays a crucial role in defining the conditions under which institutions operate (Ferreira-Fernandes, de la Torre García, et al., 2025), thereby influencing their behaviour. This limitation is particularly relevant in the context of broader transformations affecting HE systems worldwide, because despite the rich literature on HE, there is a lack of research on the legal entities under which the HEI are organized (Holmén & Ringarp, 2023). Similarly, the literature on academic capitalism highlights the growing influence of market mechanisms, competition, and resource-seeking behaviour among HEIs (Qureshi & Khawaja, 2021; Song, 2019; P. Teixeira et al., 2014; P. N. Teixeira et al., 2012). Nevertheless, less attention is given to the legal and ownership structures that define who ultimately controls institutional assets, appoints governing bodies of HEI, and exercises decision-making rights. This perspective also complements the growing literature on entrepreneurial universities, often associated with institutional flexibility, diversification, innovation capacity, and strategic responsiveness to external pressures (Chang et al., 2016; Piurcosky et al., 2021; Slaughter & Leslie, 1997). However, the ability of institutions to adopt entrepreneurial strategies is frequently conditioned by their legal status and ownership arrangements. Understanding ownership therefore contributes not only to the analysis of governance but also to the explanation of why institutions differ in their capacity to act entrepreneurially.

In this context, this study argues that legal status and ownership constitute fundamental analytical variables for understanding institutional differentiation in HE. Rather than focusing solely on functional or financial characteristics, this approach emphasises the structural conditions that define organisations. Legal status determines key dimensions such as asset ownership, degrees of autonomy, employment regimes, and tax conditions. These dimensions shape ownership models, which in turn influence control mechanisms and organisational strategies.

These dimensions configure the framework within which ownership models emerge, directly influencing control mechanisms and organisational strategies. In this sense, ownership should be understood not merely as a formal property relationship, but as a system of institutionally and legally structured control. Building on this perspective, this study proposes a reconceptualisation of ownership in HE, understanding it as a hidden strategic determinant whose analysis enables a deeper understanding of governance dynamics, institutional differentiation, and organisational behaviour. While the public-private distinction remains analytically useful, it increasingly fails to capture the diversity of organisational arrangements observed within contemporary HE systems. Institutions classified within the same sector may differ substantially in their legal status, ownership configurations, governance arrangements and strategic capacities. Consequently, relying exclusively on this dichotomy risks obscuring the structural mechanisms that shape institutional behaviour and differentiation.

Empirically, the study focuses on the Portuguese HE system, which constitutes a particularly relevant case for this type of analysis. The Portuguese system is characterised by a high degree of diversity in legal forms, including public institutions under public law, public foundations governed by private law, private institutions operating under different legal forms (cooperatives, associations, foundations, and commercial companies), and religious entities with a specific legal status. This diversity results from a legislative trajectory marked by successive reforms, which have enabled the coexistence of multiple institutional models (Ferreira-Fernandes, García, et al., 2025). From an analytical perspective, the Portuguese case also has several notable features. These include the centrality of the founding entity in the private HE sector, the absence of autonomous legal personality for private HEI, and the coexistence of various governance and funding systems. These characteristics make the Portuguese system an ideal context to analyse the legal status and ownership profiles of HEI.

The central research question guiding this study is: How do legal status and ownership structures explain institutional differentiation and sectoral reconfiguration in Portuguese private HE?

Based on this question, the study has two main objectives. Firstly, it analyses the extent to which the distinction between public and private HE translates into structural differences in terms of ownership and HEI´s operating conditions and autonomy. Secondly, it aims to demonstrate that the private HE sector is not homogeneous but rather comprises a diverse institutional landscape in which different legal forms are associated with distinct ownership and control models. In doing so, the article contributes to literature by proposing an integrated approach that brings together legal status and ownership, offering a new perspective on institutional differentiation in HE. This approach makes it possible not only to understand the observed diversity, but also to identify the structural mechanisms that produce it. It also contributes to ongoing debates on governance, marketisation, institutional diversity, and organisational change in HE by highlighting how legal and ownership structures shape HEI behaviour.

The article is structured as follows: Section 2 develops the conceptual framework, exploring the relationship between legal status and ownership; Section 3 presents the methodology and the data used; Section 4 analyses ownership models in Portuguese PHE in light of the international literature. Finally, section 5 presents the conclusions and implications of the study.

2. Conceptual Framework: Legal Status, Ownership and Institutional Differentiation

The analysis of institutional differentiation in HE has traditionally been structured around the distinction between public and private institutions. This dichotomy, while useful as a starting point, can be questioned as HE systems become more complex, diversified, and permeable to different organisational logics (Holmén & Ringarp, 2023; Jamshidi et al., 2012). The expansion of private HE, the emergence of hybrid forms and the growing influence of market mechanisms have contributed to the rise of institutional configurations that do not fit easily within traditional categories. In this context, the literature has recognised more analytical approaches that can capture not only the formal differences between institutions, but also their underlying governance and control structures. A significant limitation of existing approaches is their tendency to prioritise functional criteria, such as sources of funding or institutional mission (Buckner, 2017; Buckner & Zapp, 2021), over structural dimensions that influence organisational functioning, such as the legal forms and regulatory environment. It is within this framework that the concept of ownership assumes relevance.

Although widely used in the analysis of economic organisations, ownership has been relatively underexplored in the context of HE (Okyere et al., 2026; Zhang, 2006), often being treated implicitly or reduced to distinction between public and private property. As a result, the concept is rarely examined as an independent analytical variable capable of explaining institutional behaviour. This omission is particularly significant because ownership determines who ultimately possesses control rights, allocates resources, appoints governing bodies, and defines strategic priorities. Consequently, institutions operating under similar funding arrangements or pursuing similar missions may nevertheless exhibit substantially different patterns of organisational behaviour due to differences in legal status and ownership structures.

From a theoretical perspective, ownership can be conceptualised as the set of residual control rights, that is, the rights that allow decisions to be made in situations not specified by formal contracts. This approach, developed within the framework of the theory of the firm (Hart & Moore, 1990), makes it possible to move beyond a simplistic view of ownership as mere asset holding, emphasising instead the dimension of effective control. In the context of private HE, this distinction is particularly relevant, insofar as formal ownership does not always coincide with organisational control.

However, unlike in other sectors, ownership in HE cannot be analysed in isolation, but must be understood within the framework of the legal status of HEI and their founding bodies. Legal status constitutes the mechanism through which the law defines the nature of organisations, establishing their rights, obligations, and limits of action. As argued by Bernasconi (2011), the law plays a central role in the construction of institutional categories, determining which organisations are classified as public or private and outlining the consequences of that classification.

In this sense, legal status should not be understood as a merely classificatory variable, but as a structural determinant that conditions the scope for organisational action. More specifically, legal status defines fundamental dimensions such as ownership of assets, degrees of institutional autonomy, human resource employment regimes, and tax conditions. These dimensions directly influence organisational incentives and the strategies adopted by institutions. The relationship between legal status and ownership becomes particularly evident when analysing the differences between public and private HEI (Ferreira-Fernandes, de la Torre García, et al., 2025). In public HEI, assets typically belong to the organisation itself, which holds autonomous legal personality and enjoys significant degrees of administrative and financial autonomy. By contrast, in the Portuguese case, private HEI do not possess independent legal personality, with control exercised by founding entities that hold the assets and the rights to strategic decision-making. This configuration entails a separation between the academic unit and the control structure, with profound implications for governance and organisational behaviour.

Beyond the distinction between public and private, legal status also makes it possible to understand the internal diversity of the private sector. The literature on private HE has increasingly highlighted the heterogeneity of this sector, identifying different types of institutions based on their orientation (for-profit vs non-profit), mission, or governance structure (Levy, 2006; 2018). However, these typologies tend to underestimate the role of legal forms in shaping these differences.

In the case of founding bodies of private HEI, different legal forms, such as cooperatives, foundations, associations, or commercial companies, are associated with distinct ownership regimes, different control mechanisms, and varying constraints on the distribution of profits (D. Meira, 2021; D. A. Meira & Ramos, 2019; D. Meira & Ramos, 2022). For example, cooperatives are based on principles of democratic governance and collective ownership (D. A. Meira, 2018), whereas commercial companies are grounded in capital ownership and the maximisation of returns for investors (Stout, 2017). Foundations, in turn, are characterised by the irrevocable allocation of assets to specific purposes, thereby limiting the private appropriation of results (Gonçales, 2014). These differences reflect not only organisational choices, but above all the legal framework that defines the possible forms of organisation.

In this sense, legal status can be understood as a mechanism of institutional differentiation, structuring ownership and shaping organisational strategies.

This perspective aligns with broader approaches to HE systems, which emphasise the importance of institutional differentiation for system efficiency and diversity (Kwiek, 2015). However, by introducing legal status of ownership as a central variable, the present study proposes an alternative interpretation, in which differentiation is understood not only as the result of strategic choices or market dynamics, but also because of legally defined constraints and opportunities of entities legal form. Based on these premises, the article proposes an integrated analytical framework in which legal status constitutes the structural variable, ownership represents the configuration of control that emerges from this framework and organisational behaviour reflects the strategies adopted by institutions within the group in a context of coopetition. This framework makes it possible to understand not only the differences between institutions, but also the mechanisms that produce them, thereby offering a more robust theoretical foundation for the analysis of institutional differentiation in HE.

3. Methodology and Data

The present study adopts an exploratory qualitative approach, based on documentary analysis and the institutional reconstruction of the private HE sector in Portugal. This methodological strategy is particularly well suited to the object of study, as the central aim is to understand the relationship between legal status, ownership models, and organisational control structures, dimensions that are formally defined and operationalised through legal and institutional frameworks.

The choice of a qualitative approach is also justified by the nature of the phenomenon under analysis. Ownership in HE, understood as a system of control rights, is not directly observable through simple quantitative indicators, requiring instead an in-depth analysis of legal structures, organisational forms, and underlying institutional relationships. In this sense, documentary analysis constitutes a fundamental tool for accessing the formal configuration of HEI and the rules that govern their functioning. Documentary sources provide reliable information regarding formal legal arrangements; however, they may not fully capture informal patterns of influence, personal networks, or governance practices operating beyond statutory provisions. Consequently, the study should be interpreted as an analysis of formal ownership structures rather than a comprehensive account of all dimensions of organisational control.

The methodology is structured around two complementary analytical axes. First, a legal-institutional mapping is conducted, consisting of the identification and classification of HEI according to their legal form. This process makes it possible to reconstruct the institutional architecture of the system, identifying different organisational categories and the key features that define them. Second, an ownership mapping is developed, aimed at identifying founding entities and associated control structures, thereby enabling an analysis of who effectively holds property rights and strategic decision-making authority.

The database was constructed through the systematic identification of all recognised PHEI operating during the study period and their respective founding entities. Data collection is based on the triangulation of official and institutional documentary sources, to ensure the reliability and consistency of the information. The main sources used include the Official Gazette (Portugal), where legal acts relating to the creation, recognition, modification, and closure of HEI are published; the Justice Portal (Portugal), particularly online records of corporate acts, which allow for the characterisation of the legal form of founding entities, and the SABI database (Bureau van Dijk), used to gather information on entities of a corporate nature, including Company Registration Number (NIPC), ownership structures and shareholdings. In addition, institutional websites of HEI were consulted, as well as relevant legislation of the legal framework for HEI in Portugal.

The primary unit of analysis consists of private HEI in Portugal, considered in conjunction with their respective founding entities. This methodological choice stems from a structural characteristic of the Portuguese system: private HEI generally do not possess autonomous legal personality, being legally embedded within the entities that establish them. Consequently, the analysis of ownership requires a particular focus on founding entities as the holders of property rights and control.

The temporal scope of the study covers the period from 2004 to 2021. This delimitation makes it possible to capture a particularly relevant phase in the evolution of the system, including both the period before and after the introduction of the Legal Framework for Higher Education Institutions (RJIES, 2007), the creation the Higher Education Assessment and Accreditation Agency (A3ES), and the implementation of the evaluation and accreditation regime for HEI and their study programmes, as well as more recent dynamics of institutional reconfiguration (Ferreira-Fernandes, Machado-Taylor, et al., 2025).

A central element of the analysis lies in the incorporation of a longitudinal dimension, through the comparison of the distribution of HEI by legal typology in the years 2004 and 2021. This analysis makes it possible to identify patterns of stability, change, and concentration within the sector, providing empirical evidence on the evolution of ownership models. It allows for the assessment of whether certain legal forms have become more predominant, whether processes of consolidation have occurred, or whether new institutional configurations have emerged.

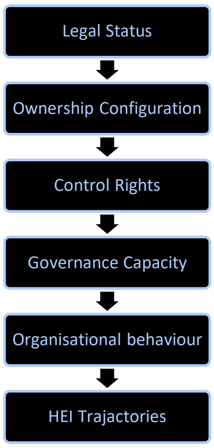
The systematisation of the data was carried out through the construction of an original structured database, integrating information on HEI, founding entities, and their legal characteristics. This database enabled the development of descriptive and comparative analyses, as well as the identification of relationships between entities and potential institutional groups.

From an analytical perspective, the study combines three levels of analysis. First, a descriptive analysis, which characterises the distribution of HEI by legal form and identifies the main ownership typologies. Second, a relational analysis, which examines the links between institutions and founding entities, making it possible to identify patterns of control concentration and the existence of institutional groups. Third, an interpretative analysis, which relates the empirical findings to the theoretical framework, exploring how legal status shapes ownership and organisational behaviour.

It is important to emphasise that the aim of the study is not to produce statistical generalisations, but rather the exploration of structural relationships that may be relevant to other contexts. In this sense, Portugal is used as an empirical case that illustrates particularly clearly the relationship between legal status and ownership, due to the diversity of legal forms and the specificity of its institutional framework.

The analytical model proposed in this study (Figure 1) explains institutional differentiation in HE through the interaction between legal status, ownership, and organisational behaviour. Legal status determines the organisational forms available to higher education institutions and their founding entities, shaping the distribution of property rights and decision-making authority. These ownership configurations influence governance capacity, strategic choices, and the ability of institutions to respond to regulatory and competitive pressures. Organisational outcomes, such as expansion, consolidation, or decline, should therefore be understood not only as the result of managerial decisions or market dynamics but also as consequences of legally structured ownership arrangements. By linking these dimensions, the model provides a framework for understanding how institutional diversity is produced and sustained within HE systems.

Figure 1 – *Analytical model*



Source: Authors' own elaboration

This analytical sequence provides a transferable framework that may be operationalised in future comparative studies by examining the relationship between legal forms, ownership structures and organisational outcomes.

Despite the robustness of the adopted approach, the study presents some limitations. First, the analysis relies predominantly on formal and documentary sources, which reflect legal structures but may not fully capture informal dynamics of control and governance. Second, information on ownership structures in the private sector is not fully transparent, which limits the comprehensive identification of relationships between organisations. Finally, the focus on a single national context limits the generalisability of the findings, although it enables an in-depth analysis of institutional dynamics.

4. Ownership Models in Private Higher Education in Portugal

An empirical analysis of the private HE sector in Portugal reveals a structural pattern throughout the system: the coexistence of multiple legal forms of founding bodies. This results in various ownership structures and distinct organisational control structures. Portugal is characterised by the coexistence of various legal forms, including cooperatives, associations, foundations, commercial companies, and religious entities.

This diversity is not the result of spontaneous or contingent development, but rather of a legal framework that has allowed multiple types of entities to enter the sector as providers of higher education since its liberalisation in the 1970s and 1980s (Ferreira-Fernandes, García, et al., 2025). In this sense, the observed heterogeneity is a direct consequence of the regulatory framework governing the sector, which reinforces the central argument of this article: that legal status is a structural determinant of ownership.

The structuring role of legal status becomes more evident when the key legal distinctions between public and private HEI are considered, as summarised in Table 1. These distinctions affect fundamental organisational dimensions such as governance, control, funding, asset ownership, accountability mechanisms and the legal framework governing institutional activity, and go beyond mere formal classification (Ferreira-Fernandes, de la Torre García, et al., 2025).

Table 1 — *Key Legal Features of Higher Education Institutions in Portugal*

	Public HEI		Private HEI	
Legal Status	**Legal person under public law**	**Public foundation under private law**	**Private-law legal entities**	**Religious corporate body**
Services/Core Mission	Higher education and related activities (research and extension activities)			
Academic degrees and diplomas of higher education	Public and private HEI confer the academic degrees of bachelor, master, and doctor. In polytechnic HEI is also conferred the diploma of professional superior technician is also conferred. Higher education institutions may also award other diplomas not conferring academic degrees. It is reserved for higher education institutions to use the terms 'graduate education', 'postgraduates', and others that suggest that they are in question higher education. There is no distinction between the public and private sectors.			
Requirements of quality assessment, accreditation of study cycles, and authorization of operation	There is no distinction between the public and private sectors.			
Regime/Law	Public (subject to the regime applicable to other legal persons governed by public law of an administrative nature)	Public sector with a private law regime (mainly at the level of asset and financial management, at the level of hiring human resources, and in the acquisition of goods and services).	Governed by private law in all matters not contrary to the Legal regime of higher education institutions (RJIES) - Law No. 62/2007 of 10 September (or other applicable legislation)	HEI has its own legal personality Governed by Concordate between the Portuguese Republic and the Holy See - Resolution of the Assembly of the Republic No. 74/2004 of 16 November
Legal form	* Legal person under public law * Legal person under public law - Chief of the General Staff of the Armed Forces - CEMGFA (Policial and Militar HEI)	Private-law public foundation	*Association *Cooperative *IPSS (Private social solidarity institution) Joint Stock Company *Local government (with no corporate status) *Non-governmental organisation (ONG) *Private foundations *Private limited company *Sole proprietorship by shares	Religious corporate body
Legal body	HEI has its own legal personality	HEI has its own legal personality	The founding bodies of private HEI are the legal persons. TheHEI do not have their own legal personality	HEI has its own legal personality
Status of Public Utility	Yes (Status is automatically acquired)		No Portuguese associations or cooperatives (private non-profit legal persons) may request public utility status, but any has such distinction from the Administration.	Yes (status automatically acquired by Article 2 of Decree-Law 128/90 of 17 April)

Patrimony	The set of assets and rights that have been transferred to it by the State or other entities, public or private, for the the accomplishment of its purposes (art. 109 of RJIES)	* Assets of the IES. In the case of an organic unit, by the assets of the institution that were specifically allocated to its attributions (Article 130, No. 1 of RJIES); * Assets ceded by the state or other entities after the formation of the foundation (Article 130, Nos. 2 and 3 RJIES).	The HEIs do not have their own assets. All assets and rights belong to the founding body, which has to create and ensure the conditions for the normal operation of the IES and allocate adequate facilities and equipment, as well as the necessary human and financial resources.	The Catholic University's patrimony is constituted by all assets and rights that belong directly to it (assets transferred by the Portuguese Catholic Institute, assets donated or left to the Church, or to any of its organisations or authorities with the express mention that they should be applied to the purposes of the Catholic University).
Initiative of creation	By initiative of the state (Art. 54 of RJIES)	The conversion of a public collective person into a public foundation under public law is done by the initiative of the HEI through a reasoned proposal to the government by the rector (or president), approved by the general council by the absolute majority of its members (Article 129, No. 1 of RJIES). Institutional change may also have the goal of creating a new institution as a result of the recomposition of organic units from various public higher education institutions and public or private research and development institutions. Institutional change may also have as its object the creation of a new institution resulting from the recomposition of organic units of various public higher education institutions and public or private research and development institutions.	By entities that have the legal form of: * a foundation, association or cooperative constituted specifically for this purpose, as well as by non-profit cultural and social entities which include higher education among their purposes; * private limited company or a public limited company set up specifically for this purpose (art. 32 RJIES)	By initiative of the Holy See/ Catholic University
Relationship between State and the IES	HEIs under state tutelage and supervision	Based on the contractualisation of multi-annual objectives. State supervision	State supervision	State supervision

Main governing bodies	* General Council * Rector, President or Director * Management Board * Scientific or technical-scientific council * Pedagogical Council	The Board of Trustees, which consists of five external trustees appointed by the institution, The government, upon the institution's proposal, will serve for a period of 5 years. * Management Board (appointed by the Board of Trustees, upon proposal by the rector, director, or president) * Other bodies of public higher education institutions (Article 133, No. 1 of RJIES).	* The founding body's governing bodies * Rector, President, or Director * Management Board * Scientific or technical-scientific council * Pedagogical Council * General Council	The two higher hierarchical organs of the UCP are the Congregation for Catholic Education and the Portuguese Episcopal Conference. UCP's individual governing bodies are the Grand Chancellor and the Rector, with one or more Vice-Rectors. Collegiate governing bodies of UCP. Rector's Council and the Council of Financial Management. Basic Unit Management Body: Director, the Governing Board, and the Scientific Council
Management paradigms	Public Management	Private management	Private management	Private management
For profit	Not for profit		Depending on the legal form of the founding body, they may or may not be for profit	Not for profit
IES autonomy	* Pedagogical, scientific and cultural autonomy * Patrimonial, administrative and financial autonomy		* Pedagogical, scientific and cultural autonomy * No patrimonial, administrative and financial autonomy (competences of the founding body).	Statutory, scientific, pedagogical, patrimonial, administrative, financial and disciplinary autonomy
Tax Exemptions	Exempt, under the same terms as the state, from taxes, charges, costs, emoluments, and stamps		No tax exempt regime	Exemption from: * State and local authority taxes, contributions, or fees, including stamp duty; * Preparation, costs, and justice tax in cases that take place in any court where it is a main party, assistant, or intervening party.
Financing	Allocations from the General State Budget and through own resources (art. 115 of RJIES)	Allocation from the State through multi-annual contracts (not less than less than 3 years - art. 136 no. 1 of RJIES) and throught own resources.	Own resources.	Own resources. The Government may grant subsidies to the Catholic University (article 11 Decree-Law 128/90 of 17/04)

Employment Relationships/ Contractual Regime of Academic Staff	Public employment (civil service regime) - Main Legislation: General Law of Public Service Employment - LTFP	* Public employment (civil service regime) - Main Legislation: General Law of Public Service Employment - LTFP and/or * Individual employment contract (safeguarding the civil service regime for lecturers who already enjoyed this regime before the transformation into a foundation - article 134 no. 4 of RJIES) - Main Legislation: General Law of Public Service Employment and Labour Code - Law n.º 7/2009 of 12/02.	* Individual employment contract - Main Legislation: General Law of Public Service Employment and Labour Code (Law No. 7/2009 of 2 February) and subsidiarity/complementarily * Service Provision Contract - Main Legislation: Decree-Law No. 47344 of November 25, 1996	Individual employment contract - Main Legislation: General Law of Public Service Employment and Labour Code - Law n.º 7/2009 of 12/02 and subsidiarity/complementarily * Service Provision Contract - Main Legislation: Decree-Law No. 47344 of November 25, 1996
Regulation of the Academic Career	* Status of the Scientific Research Career - Decree - Law No. 124/99 of 20 April * Statute of the University Teaching Career, Decree-Law No. 448/79 of 13 November * Statute of the Polytechnic Teacher Career - Decree-Law No. 207/2009 of 31 August		No specific regulation of Academic Carrer (shall be paralell to the he counterparts in public HEI and must hold the same qualifications) - Law unpublished	Has its own status of academic career. This statute follows the principles and norms of the public sector and the norms enshrined in the Code of Canon Law, the specific documents emanating from the Congregation for Catholic Education, and the statutes of the Portuguese Catholic University (UCP).
Academic profissional categories and required qualifications	Definied by Regulation of Academic Carreer		Law unpublihed	Definied by Regulation of Academic Carreer

	Public HEI		**Private HEI**	
Legal Status	**Legal person under public law**	**Public foundation under private law**	**Private-law legal entities**	**Religious corporate body**
Services/Core Mission	Higher education and related activities (research and extension activities)			
Academic degrees and diplomas of higher education	Public and private HEI confer the academic degrees of bachelor, master, and doctor. In polytechnic HEI is also conferred the diploma of professional superior technician is also conferred. Higher education institutions may also award other diplomas not conferring academic degrees. It is reserved for higher education institutions to use the terms 'graduate education', 'postgraduates', and others that suggest that they are in question higher education. There is no distinction between the public and private sectors.			
Requirements of quality assessment, accreditation of study cycles, and authorization of operation	There is no distinction between the public and private sectors.			

Regime/Law	Public (subject to the regime applicable to other legal persons governed by public law of an administrative nature)	Public sector with a private law regime (mainly at the level of asset and financial management, at the level of hiring human resources, and in the acquisition of goods and services).	Governed by private law in all matters not contrary to the Legal regime of higher education institutions (RJIES) - Law No. 62/2007 of 10 September (or other applicable legislation)	HEI has its own legal personality Governed by Concordate between the Portuguese Republic and the Holy See - Resolution of the Assembly of the Republic No. 74/2004 of 16 November
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Patrimony	The set of assets and rights that have been transferred to it by the State or other entities, public or private, for the the accomplishment of its purposes (art. 109 of RJIES)	* Assets of the IES. In the case of an organic unit, by the assets of the institution that were specifically allocated to its attributions (Article 130, No. 1 of RJIES); * Assets ceded by the state or other entities after the formation of the foundation (Article 130, Nos. 2 and 3 RJIES).	The HEIs do not have their own assets. All assets and rights belong to the founding body, which has to create and ensure the conditions for the normal operation of the IES and allocate adequate facilities and equipment, as well as the necessary human and financial resources.	The Catholic University's patrimony is constituted by all assets and rights that belong directly to it (assets transferred by the Portuguese Catholic Institute, assets donated or left to the Church, or to any of its organisations or authorities with the express mention that they should be applied to the purposes of the Catholic University).

Initiative of creation	By initiative of the state (Art. 54 of RJIES)	The conversion of a public collective person into a public foundation under public law is done by the initiative of the HEI through a reasoned proposal to the government by the rector (or president), approved by the general council by the absolute majority of its members (Article 129, No. 1 of RJIES). Institutional change may also have the goal of creating a new institution as a result of the recomposition of organic units from various public higher education institutions and public or private research and development institutions. Institutional change may also have as its object the creation of a new institution resulting from the recomposition of organic units of various public higher education institutions and public or private research and development institutions.	By entities that have the legal form of: * a foundation, association or cooperative constituted specifically for this purpose, as well as by non-profit cultural and social entities which include higher education among their purposes; * private limited company or a public limited company set up specifically for this purpose (art. 32 RJIES)	By initiative of the Holy See/ Catholic University
Relationship between State and the IES	HEIs under state tutelage and supervision	Based on the contractualisation of multi-annual objectives. State supervision	State supervision	State supervision
Main governing bodies	* General Council * Rector, President or Director * Management Board * Scientific or technical-scientific council * Pedagogical Council	The Board of Trustees, which consists of five external trustees appointed by the institution, The government, upon the institution's proposal, will serve for a period of 5 years. * Management Board (appointed by the Board of Trustees, upon proposal by the rector, director, or president) * Other bodies of public higher education institutions (Article 133, No. 1 of RJIES).	* The founding body's governing bodies * Rector, President, or Director * Management Board * Scientific or technical-scientific council * Pedagogical Council * General Council	The two higher hierarchical organs of the UCP are the Congregation for Catholic Education and the Portuguese Episcopal Conference. UCP's individual governing bodies are the Grand Chancellor and the Rector, with one or more Vice-Rectors. Collegiate governing bodies of UCP. Rector's Council and the Council of Financial Management. Basic Unit Management Body: Director, the Governing Board, and the Scientific Council
Management paradigms	Public Management	Private management	Private management	Private management
For profit	Not for profit		Depending on the legal form of the founding body, they may or may not be for profit	Not for profit

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IES autonomy	* Pedagogical, scientific and cultural autonomy * Patrimonial, administrative and financial autonomy		* Pedagogical, scientific and cultural autonomy * No patrimonial, administrative and financial autonomy (competences of the founding body).	Statutory, scientific, pedagogical, patrimonial, administrative, financial and disciplinary autonomy
Tax Exemptions	Exempt, under the same terms as the state, from taxes, charges, costs, emoluments, and stamps		No tax exempt regime	Exemption from: * State and local authority taxes, contributions, or fees, including stamp duty; * Preparation, costs, and justice tax in cases that take place in any court where it is a main party, assistant, or intervening party.
Financing	Allocations from the General State Budget and through own resources (art. 115 of RJIES)	Allocation from the State through multi-annual contracts (not less than less than 3 years - art. 136 no. 1 of RJIES) and throught own resources.	Own resources.	Own resources. The Government may grant subsidies to the Catholic University (article 11 Decree-Law 128/90 of 17/04)
Employment Relationships/ Contractual Regime of Academic Staff	Public employment (civil service regime) - Main Legislation: General Law of Public Service Employment - LTFP	* Public employment (civil service regime) - Main Legislation: General Law of Public Service Employment - LTFP and/or * Individual employment contract (safeguarding the civil service regime for lecturers who already enjoyed this regime before the transformation into a foundation - article 134 no. 4 of RJIES) - Main Legislation: General Law of Public Service Employment and Labour Code - Law n.º 7/2009 of 12/02.	* Individual employment contract - Main Legislation: General Law of Public Service Employment and Labour Code (Law No. 7/2009 of 2 February) and subsidiarity/complementarily * Service Provision Contract - Main Legislation: Decree-Law No. 47344 of November 25, 1996	Individual employment contract - Main Legislation: General Law of Public Service Employment and Labour Code - Law n.º 7/2009 of 12/02 and subsidiarity/complementarily * Service Provision Contract - Main Legislation: Decree-Law No. 47344 of November 25, 1996
Regulation of the Academic Career	* Status of the Scientific Research Career - Decree - Law No. 124/99 of 20 April * Statute of the University Teaching Career, Decree-Law No. 448/79 of 13		No specific regulation of Academic Carrer (shall be paralell to the he counterparts in public HEI	Has its own status of academic career. This statute follows the principles and norms of the public sector and the norms enshrined in the Code of Canon Law,

	November * Statute of the Polytechnic Teacher Career - Decree-Law No. 207/2009 of 31 August	and must hold the same qualifications) - Law unpublished	the specific documents emanating from the Congregation for Catholic Education, and the statutes of the Portuguese Catholic University (UCP).
Academic profissional categories and required qualifications	Definied by Regulation of Academic Carreer	Law unpublihed	Definied by Regulation of Academic Carreer

Note: All the indicated legislation must be considered in its current wording. For simplification, changes to the referenced legal instruments are not listed.
Source: Authors' own elaboration.

Public institutions are subject to direct state control and public accountability mechanisms, and operate under public law. In contrast, private HEI benefit from greater organisational autonomy in terms of governance, financial management and strategic decision-making, operating under private law provisions. These differences have direct implications for ownership. In public institutions, assets and control are internalised within the organisation itself, which has legal personality. In the Portuguese private HE sector, by contrast, HEI generally do not possess autonomous legal personality. They are legally embedded within the founding entities. These entities hold the assets and exercise strategic control. Consequently, ownership is located at the level of the founding entity rather than the academic institution.

Additionally, differences in funding structures reinforce these configurations. Public institutions rely primarily on state funding, whereas private institutions rely on tuition fees and other forms of private financing.

Ownership structures were operationalised through three indicators: (i) the legal form of the founding entity; (ii) the existence of control relationships involving multiple HEIs under the same founding body; and (iii) the concentration of organisational control as reflected in the allocation of decision-making authority and ownership rights established in the relevant legal framework.

Legal status should therefore be understood not merely as a classification variable, but as a structural feature that determines the distribution of control rights, influences governance arrangements and conditioning institutional behaviour.

Diversity of Legal Forms and Implications for Ownership

The analysis of private HEI in Portugal shows that the legal form of the founding entity is the main factor explaining differences in ownership models. Each legal form corresponds to a specific configuration of property rights, control mechanisms and constraints on the distribution of results, which directly influence governance structures and organisational strategies.

Table 2 — *Evolution of the number of Organic Units of Higher Education and Founding Entities in Portugal (2004–2021)*

	2004			2021		
	Nr Foundind entities	**Nr Organic Units**	**Nr Students**	**Nr Foundind entities**	**Nr Organic Units**	**Nr Students**
Association	11	11	3889		2	682
Cooperative	18	45	43122	12	29	36465
IPSS (Private social solidarity institution)	3	3	1560	3	3	1024
Local government (with no corporate status) Total	1	1	1391	1	1	972
Non-governmental organisation (ONG) Total	1	2	811	1	3	1866
Private foundations Total	10	16	16224	7	7	10200
Religious corporate body Total	6	35	12351	4	25	13506
Joint Stock Company Total	14	20	11648	7	14	5301
Private limited company portugal Total	10	14	6645	12	12	10450
Sole proprietorship by shares Total	3	3	1040	3	4	1556
Total	77	150	98 681	50	100	82 022

Source: Authors' own elaboration

Table 2 presents the longitudinal evolution of founding entities, organic units and student numbers between 2004 and 2021, making it possible to identify both sectoral contraction and internal reconfiguration. The data show that the sector contracted significantly between 2004 and 2021. The total number of founding entities declined from 77 to 50, while the number of organic units decreased from 150 to 100. Student enrolment also declined, from 98,681 to 82,022. However, this contraction was not uniform across legal forms. Some ownership configurations lost institutional presence, while others maintained or increased their relative weight. This indicates that legal form and ownership structure are associated with different capacities for adaptation, consolidation and survival.

Cooperatives are the most prominent organisational form in the Portuguese context. Although based on principles of collective ownership and democratic governance, empirical evidence shows that they maintained a dominant position in terms of student enrolment and capital structure throughout the analysed period, despite a reduction in institutional units. The discrepancy between the number of institutions and the volume of students reflects processes of internal consolidation and demand concentration. From an ownership perspective, this suggests that cooperative structures, although formally based on diffuse ownership, can generate effective control mechanisms that support scale and organisational resilience.

Foundations and associations represent typical forms of non-profit organisation, and they are characterised by the allocation of resources to purposes of general interest and by the absence of owners in the traditional sense. However, empirical evidence suggests a decline in their relative importance in PHE, particularly for associations, which are becoming marginalised in terms of both the number of HEI and student enrolment. This suggests that ownership structures with more diffuse governance and lower coordination capacity are at a structural disadvantage in an increasingly regulated and competitive environment.

Commercial companies introduce ownership models based on private capital and the prospect of distributing profits, where control rights are directly linked to shareholding. Data reveals an internal reconfiguration of this segment, characterised by a decline in the importance of joint stock companies and a substantial rise in the significance of private limited companies. This suggests a preference for more flexible organisational forms that combine concentrated control with the capacity to adapt to changing regulatory and market environments.

Religious entities constitute a distinct category, combining a strong, mission-oriented focus with relatively centralised governance structures. Despite a reduction in the number of HEI, the evidence shows that their share of student enrolment is increasing significantly, indicating processes of consolidation and demand concentration. This suggests that these entities benefit from specific advantages, such as reputational capital, organisational stability and network-based coordination.

The Founding Entity as the Core of Organisational Control

One of the most significant findings of the empirical analysis is the central role of the founding entity within the Portuguese system. Unlike in many other contexts, private HEI in Portugal generally do not have legal personality in itself but are legally embedded within the entities that establish them. These entities own the assets, hold administrative and financial authority, and exercise strategic control. This configuration suggests that ownership should be analysed at the level of the founding entity rather than the academic institution. In Portuguese private HE, ownership is therefore structurally external to the institution and is exercised by entities with different legal forms, governance structures and strategic objectives.

The absence of autonomous legal personality means that the effective centre of organisational control is based outside the academic institution. This model contrasts with that of public institutions, where control and assets remain within the organisation. In the private sector, by contrast, the founding entity owns the assets and determines the key strategic decisions. This configuration means that ownership is structurally external to the HEI. The HEI is the academic and pedagogical unit, but the founding entity is the legal and organisational actor. If the unit of analysis is restricted to the HEI, the effective locus of ownership and control remains partially invisible. Shifting the analysis to the founding entity makes it possible to identify who controls resources, who holds decision-making authority and how institutional trajectories are shaped. Consequently, the founding entity emerges as the primary organisational actor, shaping institutional trajectories and influencing the capacity for adaptation, coordination and growth. This finding supports the article's argument that ownership operates as a hidden strategic determinant of institutional behaviour.

Institutional Groups and Ownership Concentration

The analysis of relationships between HEI and their founding entities reveals significant patterns of ownership concentration. Shifting the unit of analysis from the institution to the founding entity makes it possible to identify structures in which a single organisation controls multiple HEI, forming institutional groups. These groups are a central feature of the sector, enabling resource sharing, diversification of academic provision and optimisation of organisational scale. So, institutional groups matter because they transform ownership into an organisational coordination mechanism. Ownership concentration is therefore not merely a legal feature.

The capacity to form or sustain such groups is not homogeneous across legal forms and capital owners. Cooperatives, religious entities and some commercial companies appear more capable of supporting multi-unit structures, while associations and some foundations tend to be more atomised or vulnerable to decline. This differentiation reinforces the argument that ownership structures directly affect organisational capacity.

The analysis at the level of the founding entity shows that these structures are associated with consolidation processes, whereby a reduction in the number of institutional units occurs alongside stability or growth in student numbers.

From a theoretical perspective, these patterns can be interpreted in light of literature on corporate governance and industrial organisation. This literature highlights the importance of scale, coordination and diversification for organisational performance. In the context of HE, institutional groups are an organisational response to regulatory, demographic and competitive pressures.

The capacity to form such groups is not homogeneous across legal forms in Portugal. Cooperatives, religious entities and certain commercial companies are more likely to develop multi-institutional structures, whereas associations and some foundations tend to be more atomised.

This differentiation reinforces the idea that ownership structures directly affect organisational capacity.

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Temporal Dynamics and Sector Reconfiguration

The longitudinal analysis reveals a process of contraction accompanied by structural reconfiguration. As evidenced in Table 2, the number of founding entities and organic units of HEI declined significantly between 2004 and 2021. This contraction is not accompanied by a proportional decrease in the number of students, which stabilises and recovers in the later years. This divergence can be explained by a process of organisational concentration, whereby fewer institutions absorb a significant share of demand, increasing the average size of HEI. These dynamics reflect the combined impact of demographic factors, increased regulation, and intensified competition. The introduction of accreditation and evaluation mechanisms has reinforced selective pressures, favouring organisations with greater capacity to meet regulatory requirements and operate at scale.

From an analytical perspective, this evolution can be interpreted as a process of organisational selection, in which ownership plays a decisive role. Structures characterised by concentrated control, access to resources, and coordination capacity are more likely to survive and expand, whereas more fragmented forms tend to disappear.

The analysis of the distribution of private HEI by type of founding entity, when interpreted based on the number HEI and students, reveals a more concentrated and structurally differentiated sector. Table 2 shows that the distribution of students differs significantly from that based on the number of HEI, highlighting the importance of ownership in the analysis of the PHE sector.

The private HE sectors remains predominantly anchored in non-profit organisations, which enrol most students. This challenges the direct correlation between private provision and market logic, emphasising the persistence of models rooted in social, cooperative and religious missions.

Cooperatives stand out as the dominant model, revealing a high capacity for scale and organisational resilience. Religious entities also exhibit strong consolidation, increasing their share of student enrolment. In contrast, associations and foundations lose relevance, reflecting structural limitations in their capacity to adapt.

Within the for-profit segment, an internal reconfiguration is evident, characterised by the growth of private limited companies, which are becoming the dominant form. This suggests that structures combining concentrated control with organisational flexibility have a competitive advantage.

The analysis at the level of the founding entity further captures internal dynamics that are not visible when HEI are analysed in isolation. As the driving force behind the HEI is held by the original body responsible for its establishment – the founding body – this becomes the most suitable unit for comprehending the way in which an HEI functions, particularly when it is part of a larger group of HEI.

The data reveal different expansion, consolidation and exit trajectories. Cooperatives and religious entities tend to reduce the number of institutional units while maintaining or increasing the number of students, which indicates consolidation. In contrast, associations and some foundations exhibit trajectories of decline or disappearance.

Within the for-profit sector, certain entities, particularly private limited companies, show significant growth, even when operating with a limited number of institutional units. These patterns confirm that organisational outcomes are strongly associated with ownership configurations.

Three main trajectories can be identified: exit, consolidation and expansion. These trajectories are not random, but are instead associated with particular ownership structures, which supports the idea that ownership is a key factor in determining institutional behaviour.

Exit is visible in legal forms that lost both institutional presence and student share.

Consolidation is observed in ownership configurations that reduced the number of units while maintaining or increasing student enrolment. Expansion or relative strengthening is particularly visible among private limited companies, which increased their student numbers despite operating with a limited number of organic units.

The results therefore show that Portuguese PHE remains predominantly anchored in non-profit or mission-oriented forms, particularly cooperatives and religious entities, while also displaying a growing role for more flexible for-profit structures. This finding challenges a simple association between private provision and market logic.

In fact, the restructuring processes in the Portuguese PHE sector reveal coordinated actions between HEI in the same group in terms of competition and cooperation (coopetition).

The results demonstrate that ownership is a key factor in the differentiation of institutions in the Portuguese private HE sector. Legal status defines possible organisational forms, which in turn structure ownership models. Ownership then determines the distribution of control, which conditions organisational capacity and shapes institutional strategic trajectories.

This analytical chain enables us to understand the sector beyond the public/private dichotomy, emphasising the role of ownership, which is grounded in the national legal framework, in shaping patterns of survival, growth and concentration.

Taken together, the results demonstrate that legal status, ownership and organisational behaviour are closely interconnected. Legal status defines the organisational forms available to founding entities; these forms generate distinct ownership configurations; and ownership determines the distribution of control rights, coordination capacity and strategic possibilities. This analytical chain makes it possible to understand the sector beyond the public-private dichotomy and to explain patterns of survival, growth, concentration and sectoral reconfiguration.

5. Conclusions

This article set out to examine how legal status structures ownership models and contributes to institutional differentiation in HE, using the Portuguese system as an empirical case. Moving beyond the conventional public–private dichotomy, the study proposed an analytical framework that places the legal-institutional configuration of organisations at the centre of analysis.

The findings demonstrate that the Portuguese private HE sector is characterised by significant organisational heterogeneity, resulting from the coexistence of multiple legal forms of founding entities, with legal forms observed in several European and Latin American HE systems (e.g. Chau et al., 2022; Franceško et al., 2020; Holmén & Ringarp, 2023) . This diversity is not incidental but is instead a direct outcome of the legal framework governing the sector. In this sense, legal status emerges as a fundamental structural determinant shaping institutional configurations.

Furthermore, the study shows that ownership in HE cannot be reduced to formal property relations. Rather, it should be conceptualised as a system of legally and institutionally structured control rights. Different legal forms, such as cooperatives, foundations, associations, commercial companies, and religious entities, give rise to distinct ownership regimes, which in turn shape governance structures, strategic behaviour, and organisational capacity.

A central contribution of this study lies in highlighting the pivotal role of the founding entity within the Portuguese HE system. The absence of autonomous legal personality among private HEI implies that effective control is exercised externally, by the entities that own assets and hold decision-making authority. These finding challenges conventional approaches that treat HEI as the primary unit of analysis and instead supports a shift towards analysing also ownership at the level of founding entities.

The longitudinal dimension of the analysis further reveals processes of sectoral reconfiguration, characterised by consolidation, concentration of control, and organisational selection. These dynamics indicate that ownership structures are not static but evolve in response to regulatory, demographic, and competitive pressures. Organisational forms associated with concentrated control and coordination capacity appear more resilient and better positioned to expand.

From a theoretical perspective, the article contributes to the literature by reconceptualising ownership as a hidden but decisive determinant of institutional differentiation, structured by legal status. By integrating insights from the theory of the firm with HE research, the study offers a more nuanced understanding of how institutional diversity is produced and sustained.

The article also contributes to the literature by distinguishing between legal status, ownership and governance. Legal status defines the institutional conditions under which HEI operate; ownership determines the allocation of ultimate control rights; and governance concerns the mechanisms through which authority is exercised. Examining these dimensions together provides a more comprehensive explanation of institutional differentiation than approaches based exclusively on funding sources, mission or public-private classification.

Regulatory frameworks frequently treat private HE as a relatively homogeneous category. The results suggest that institutions operating under different ownership arrangements may possess market capacities, governance structures and strategic incentives. Greater attention to ownership diversity may therefore contribute to more differentiated approaches to regulation, evaluation and accountability.

Although grounded in the Portuguese case, the findings have broader implications for the analysis of HE systems. Similar ownership arrangements can also be observed in several European and Latin American higher education systems, particularly where private institutions are legally embedded within foundations, religious organisations, associations, or corporate entities. Findings suggest that legal frameworks should be understood not merely as contextual factors, but as constitutive elements that shape organisational forms, ownership structures, and patterns of institutional behaviour. This perspective opens new avenues for comparative research, particularly in examining how different legal regimes influence HE systems across national contexts. Neverthless, in private HE systems where HEI lack autonomous legal personality, ownership must be analysed at the level of the founding entity, because this is where legal control, assets, and strategic authority are located.

The findings also carry implications for institutional leaders and policymakers. Understanding ownership structures may improve the design of regulatory frameworks, enhance governance arrangements, and support more differentiated approaches to quality assurance and strategic planning within increasingly diverse higher education systems.

Several limitations should nevertheless be acknowledged. The analysis relies primarily on documentary sources and therefore captures formal legal and organisational arrangements more effectively than informal dynamics of influence and decision-making. In addition, the study focuses on a single national context, which limits the direct generalisability of the findings. Future research could extend this framework through comparative analyses of different HE systems, explore the relationship between ownership structures and institutional performance, and investigate how ownership arrangements influence governance practices, strategic decision-making and organisational resilience.

Neverthless, this study contributes to the literature in four ways. First, it demonstrates the analytical limitations of the public-private dichotomy in explaining institutional diversity. Second, it reconceptualises ownership as a system of legally structured control rights. Third, it introduces the founding entity as a relevant unit of analysis in private higher education systems lacking autonomous institutional legal personality. Finally, it proposes an integrated analytical framework linking legal status, ownership and organisational behaviour.

Future research could build on this work by conducting cross-country comparisons and incorporating qualitative approaches, such as interviews with institutional actors, in order to capture informal dimensions of governance and control. Such developments would further enhance understanding of the complex relationship between legal structures, ownership, and institutional dynamics.

In conclusion, this study demonstrates that ownership, as structured by legal status, plays a central role in shaping institutional differentiation and strategic behaviour in HE. By moving beyond the traditional public-private dichotomy and placing the legal framework at the core of analysis, it provides a more comprehensive and theoretically grounded account of contemporary HE systems.

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Authors' contributions (CRediT)

Conceptualization, MEFF, MLMT; methodology, MEFF, MLMT; software, MEFF; validation, MEFF, MLMT; formal analysis, MEFF; investigation, MEFF; resources, MEFF; data curation, MEFF; writing—original draft, MEFF; writing—review and editing, MEFF, MLMT; visualization, MEFF; supervision, MLMT.

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Conflict of interest

The authors declare no conflict of interest.

Data availability statement

An in-depth description of the M&A with chronological and interinstitutional mapping of M&A activities that took place in the PHE sector between 2004/05 to 2021/22 can be provided under request to the corresponding author. Such description focuses on the following characteristics of each M&A: HEI involved, founding body and institutional changes per legal act.

Ethics statement

This study is based exclusively on the analysis of legal acts and publicly available institutional data and does not involve human participants or personal data. Therefore, ethical approval and informed consent were not required. The research was conducted in accordance with relevant institutional and national guidelines for research integrity.

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