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## **ATTEMPTING TO REGULATE DISTANCE HIGHER EDUCATION: REFLECTIONS ON THE PORTUGUESE EXPERIENCE**

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The continuous expansion in the use of digital technology to enhance teaching and learning experiences has led to a major shift in the Higher Education sector across the world. The large impact of new educational practices and forms of education delivery, as exemplified by the Massive Open Online Courses (MOOC) phenomena, has contributed to accelerate dramatically the digital transformation of Higher Education Institutions (HEI). As a result, an increasingly amount of distance and eLearning provision is now part of HEIs mainstream operations. In this new hybrid environment, the border between formal and non-formal education, as well as virtual and face-to-face becomes blurred. Moreover, the development of online learning has set new challenges to European and national regulation bodies as well as quality assurance systems.

Following the publication of the revised Standards and Guidelines for Quality Assurance in the European Higher Education Area – ESG (ENQA, 2015) specific quality standards and criteria have been developed in order to allow for European quality assurance agencies to appropriately evaluate eLearning delivered programmes (Huertas et al., 2018). However, in what regards regulation only a few countries have issued specific legislation on distance higher education and eLearning so far. The most notable cases being Italy and Brazil. These scarce experiences have generated mixed feelings on the part of the academic community. On one hand, the known examples prove regulation allows to assure transversal quality standards by imposing a number of minimum requirements which are mandatory for all providers. On the other hand, they impose strict rules and models which easily become obsolete in such a rapidly changing technological environment thus hindering continuous pedagogical innovation.

In Portugal, the discussion on the need for development of a specific legislation on distance higher education dates back from 2007. It was initiated by Universidade Aberta (UAb), the Portuguese open university, which is the major provider of online learning in the country. Being the dominant force, the institution feared that the entry of new players in an unregulated sector could lower the quality standards. At that time, a provision in the general legislation regulating HEIs has been made stating that a dedicated distance education act should follow up. However, this didn't happen. As all public HEIs started to provide distance and eLearning programmes, though, it became ever more apparent for most members of the academic community that some sort of regulation was in need. This understanding was

shared by the national quality assurance body, the A3ES. The agency felt such regulation was paramount to provide them with a clear framework for evaluating distance and eLearning degrees.

In response to this demand from the stakeholders, the Portuguese Government has drafted a proposal for the Legal Framework for Higher Distance Education (Regime Jurídico do Ensino Superior a Distância – RJED). This is part of the Decree-Law nr. 83/2019. The RJED draft proposal presents a holistic view of how the sector should be regulated, combining a number of requirements for providers, programmes and courses and also a set of criteria to organize its quality assurance. Yet, it also imposes a new strategic ambition for the distance higher education system, by setting a target of 50.000 students enrolled by 2030. In addition, the RJED establishes a new specific role for the UAb within the HEI national public system. According to the draft proposal, the UAb should become the national research and resource centre for distance and eLearning. All other HEIs wanting to provide distance and eLearning are expected to partner with UAb for developing their programmes and courses. The UAb is bound to have all its provision delivered in partnership in order to receive public funding.

This new legislation has been submitted to public discussion in the Spring of 2019 generating significant controversy and wide criticism amongst the higher education system and the academic community. The focal point has been the combination of the regulation of the sector with a restructuring of the UAb mission awarding it a specialized role as a central hub in the distance and eLearning public higher education system.

In this paper, the authors analyse the RJED draft proposal, highlighting its most controversial aspects, as the limitations it imposes to pedagogical innovation and the specialized role it awards to UAb, and discussing the potential impact such regulations can have in the development of the higher education sector in Europe.