

Less bureaucracy and more privatisation – Georgia Augusta in a Public Law Foundation

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Summary:

The article reports on the Public Law Foundation model for universities of Lower Saxony in accordance with the reformed NHG, Niedersächsisches Hochschulgesetz (Law pertaining to the Universities of Lower Saxony). The main points of the reform act and the Foundation model are presented from the Göttingen perspective. The implementation of the essential elements of the Foundation and the relationship between University and Foundation - dual function of the Presidential Board (Präsidium), work of the Foundation Council (Stiftungsrat), receive critical assessment. The author considers the Foundation model to be permitted by law and to be of interest with regard to university policies. He argues in favour of implementing the Göttingen model with commitment, self-confidence and quality awareness and calls on the present government of Lower Saxony to provide this forward-looking reform with sufficient support.

The Georg-August-Universität Göttingen (University of Göttingen) has been a Public Law Foundation since the 1st of January 2003². The reduction in bureaucracy and increase in privatisation have thereby been consequently implemented for the Georgia Augusta in the shortest conceivable period.

I. The reform law and the Göttingen method of implementing the Foundation model

The reform law is not simply a law to create Public Law Foundations for the universities of Lower Saxony; its main aim is more importantly to analyse the following weak points of the current university system: the internal and external competition is only influenced to a limited extent, the number of international courses of study is insufficient, it lacks clear decision-making structures and, not to forget, lacks adequate funding. Seizing the opportunity for a university to be transformed into a Public Law Foundation at its own request by the state government regulation, should promote the opportunity to raise additional funds to finance universities. Furthermore, the model provides a strong incentive for an internal reform process.⁴

The new legislation can be summarised as follows:

- the government renounces sovereign powers and focuses on a result-oriented implementation of the university planning in the states (*Länder*); it primarily manages universities through target agreements, performance incentives and results monitoring.⁵ The government therefore hands over the operative business of the university.
- as membership-based corporate bodies under public law, the universities should set their own constitution within a framework of few statutory guidelines.

- new courses of study are to be included in the target agreements. However, these will no longer be approved by the states but accredited by an independent central evaluation agency. The examination regulations will be approved by the Presidential Board.
- All universities of Lower Saxony have overall budgets with commercial bookkeeping, cost accounting and the possibility of creating reserves.
- The universities may opt out of having the government as the body legally responsible for them and transfer into the responsibility of an independent Public Law Foundation. The autonomy of the corporate body will be increased and supplemented by that of its maintaining body.⁷

After the relevant Ministry integrated the corresponding government draft as a printed matter of the state parliament (*Landtag*) 14/2541 in the state parliament of Lower Saxony⁸, the next important steps of the Universität Göttingen in the Public Law Foundation were as follows:

- September 2001: The Senate of the Universität Göttingen appoints a working group to examine the possible disadvantages and advantages of the Foundation model for Georgia Augusta. External experts from home and abroad are also consulted.
- July 2002: The Senate votes on negotiating with the state government about the Public Law Foundation with a large majority.
- October 2002: With one adverse vote, the Senate votes in favour of the adoption of the Foundation model by the Universität Göttingen. The application is made in accordance with Article 55 I 1 NHG.
- December 2002: After the state government finalised the results of the negotiation, the Senate resolution from October 2002 is confirmed again with a large majority in another Senate meeting. As a result, the cabinet of the state government decides to transfer responsibility for the Universität Göttingen to a Public Law Foundation on 1st January 2003.
- January 2003: The law concerning the creation and funding of Foundations as bodies responsible for universities of Lower Saxony and the regulation on the establishment of the "Georg-August-Universität Göttingen Stiftung Öffentlichen Rechts" (*Georg-August University of Göttingen Public Law Foundation*) (StiftVO-UGÖ) come into force.
- February 2003: The relevant Ministry transfers the right to appoint professors in agreement with the Foundation Council to the Presidential Board of the Foundation University.
- April 2003: The relevant Ministry appoints the five external honorary members of the Foundation Council in agreement with the Senate. Shortly after this the representatives of the Senate and Ministry are defined in the Foundation Council.
- July 2003: The Foundation Council holds its constituent meeting.

II. The Foundation model in detail

The main pillars of the Foundation model are as follows:

- transferring the responsibility for a university to a Public Law Foundation aims to make the university legally independent from the government and thus create more self-responsibility as regards its organisation. By omitting the ministerial supervision, the Foundation handles the previously governmental matters under its own responsibility. Furthermore, it executes the legal supervision of the university.
- the Foundation University can use the advantages of the new Foundation Tax Law⁹ and develop Foundation assets in the long-term. The revenue supplements the government funding, it does not replace it.¹⁰

- The economic management and the accounting of the Foundation are based on commercial principles. Apart from a few exceptions, the State Budget Regulation (*Landeshaushaltsordnung*) is no longer used.¹¹
- The responsible Foundation is the employer and principal of all employees¹² which provides for a forward-thinking personnel management. The Presidential Board appoints the professors in agreement with the Foundation Council.¹³
- The property required to run the university is owned by the Foundation and forms its basic assets. It can be efficiently managed without bureaucratic restraints.¹⁴
- The Foundation as an institution of civil society brings with it the opportunity for students, former students and employees to identify more strongly with their Foundation University than before.
- The members of the Foundation Council closely interconnect university and society.¹⁵

1. Aim of the Foundation and its tasks

The responsible Foundation "maintains and promotes"¹⁶ the university under its responsibility in its capacity as a corporate body of public law.¹⁷ Based on Article 55 II 2 NHG, Article 2 of the StiftVO-UGÖ and Article 2 of the Foundation byelaw correspondingly phrase the aim of the Foundation as follows: "The Foundation is the body responsible for the Universität Göttingen. The Foundation shall maintain and promote the University in its capacity as a corporate body of public law; this includes, in particular, the safeguarding and further development of the University in its functions, teaching, health care, public health care services, education, advanced training and further training as well as technology transfer. The aim of the Foundation is to increase the quality of research, teaching, studies and further training in the University through a responsible and efficient use of the funds transferred to it."

According to Article 55 III NHG, the Foundation deals with government matters under its own responsibility. The NHG only explicitly mentions supervision in Article 62 II NHG as regards the implementation of Federal laws and the responsible Foundation's legal supervision of the University (Article 55 IV of the NHG). The Foundation itself is subject to the legal supervision of the Ministry alone according to Article 62 I NHG.

2. Foundation assets

The legislator has stipulated that the property of the State of Lower Saxony, which is required to run the university under the responsibility of the Foundation, forms the basic assets of the Foundation.¹⁹ According to the legal regulation, the content of the basic assets is then defined (Article 3 of the StiftVO-UGÖ)²⁰. The real property registers have now accordingly rectified all valid real property entries according to the application.

The annual financial requirements of a university like the Georgia Augusta cannot be solely financed by revenue from the basic assets of a Foundation, neither on the date the Foundation was created nor anytime afterwards; basic assets of over 12 billion are simply not available.²¹ If a sufficient Foundation asset capital was to be provided for all universities of Lower Saxony, this would noticeably exceed the entire state budget of Lower Saxony.

This highlights that transferring the property necessary to run the respective university into the basic assets of responsible foundation concerned does not even come close to achieving the aim of financing the university through the revenue of these basic assets alone. Therefore, in the fourth chapter of the NHG, the local universities were and are given the option of a so-called revenue-based Foundation (*Einkommensstiftung*) which receives the funds necessary for meeting the purpose of the Foundation

first and foremost from a guaranteed annual financial subsidy from the state of Lower Saxony; Article 56 III 1 No. 1 NHG. The law mentions this right to an annual financial subsidy from the state even before the revenue from the assets and the donations and other donations of third parties.²²

Anyone who expects the Foundation University to achieve full financial independence from the government immediately or expects the government to immediately ease pressure on the budget is out of touch with reality.²³ Even the legal form created by the legislator and regulator is not in a position to achieve this. Anyone who calls the Foundation model simple "deceptive packaging", reveals their unreasonably high and illusive expectations.²⁴

However, the fact that the efficiency of the responsible Foundation depends on an extensive and regular financial subsidy of the government to such an extent is obviously not ideal from the perspective of the Foundation. The risk of the Foundation autonomy vis-a-vis the lenders being affected and as a result, this form of Foundation becoming more like that of an institution, must be taken into consideration.²⁵ Whether the privatisation and economic independence laid down in the Foundation model of Lower Saxony can actually be realised (an important test for the Foundation model of Lower Saxony) will be decisively determined by the specific contractual regulations as well as their implementation.

3. Organisation of the Foundation

In its basic model²⁶, the Foundation contains the Presidential Board and the Foundation Council as organs. The Presidential Board of the Foundation in its function as the Executive Committee of the Foundation is identical with the Presidential Board (University management) of the university under the responsibility of the Foundation; Articles 59 I, 37 NHG.²⁷ On the one hand, the Presidential Board is responsible for managing the university and on the other hand, it runs the day-to-day business of the Foundation, prepares Foundation Council resolutions and implements these. The President represents the Foundation to the public.²⁸

The Foundation Council consists of seven members:

- five honorary members familiar with the university system, who do not belong to the university, primarily from the fields of economy, science or culture,
- a representative of the Senate of the university,
- a representative from the relevant Ministry .²⁹

The Foundation Council advises the university, resolves Foundation-related matters of significance and monitors the work of the Presidential Board.³⁰ It makes its resolutions with the simple majority of the votes of its members; Article 11 II 1 of the Foundation byelaws.

III. University and responsible Foundation

The reform law is particularly viewed with criticism from the perspective of the university's right to self-administration and the scientific freedom, most recently discussed by Sterzel and Perels,³¹ who admittedly place the individual at the foreground and (unfortunately) explicitly ignore the question as to whether the Foundation model represents a "reasonable alternative in terms of university policy" to the other legal form of universities practiced.³² For the Foundation model, in its authorisation to make decisions, the management level's commitment to the guidelines of academic self-administration organs as well as the direct line of authorisation when using governmental funds is challenged. The

distribution of powers between the organs of the university and the responsible Foundation is also discussed.³³

1. The Presidential Board: University Management and Executive Committee of the Foundation

Sterzel/Perels assess the regulation of the NHG (which existed before the Foundation model) which stipulates that the Presidential Board shall resolve the economic plan and that the Senate shall only be heard before this resolution is made, as unlawful.³⁴ According to them, the university affiliates and in particular, the professors, must be essentially involved in the creation of the economic plan, which is of considerable significance for determining the scope of the scientific process.³⁵ The same also applies to Article 26 II 5 NHG (a regulation which also existed previous to the Foundation model) which provides for the final decision of the Presidential Board on the appointment proposals. This regulation would eliminate the considerable influence university lecturers have on decision-making.³⁶ The same could also be said as regards the Presidential Board's right to decide upon the conclusion of a target agreement alone and to inform the Senate about the conclusion.³⁸

The relevant guidelines under constitutional law do, of course, have to be observed when managing a university based on the Foundation model; scientific freedom must be mentioned here in particular.³⁹ Nevertheless, the basic form of the university is able to be changed and organised.⁴⁰ The government is not prohibited from making new regulations in the university sector; here it has a much greater scope for individual organisation which is not restricted by a perpetuate protection of certain forms of academic self-administration.⁴¹ The Foundation University does not violate the university's guarantee of self-administration.⁴²

For the main minister for the reform law at the time, Oppermann, it is clear that the NHG strengthens university managements, irrespective of the Foundation model.⁴³ According to the reform law, it is in fact the Presidential Boards that decide upon the conclusion of target agreements, the economic plan and make the final decision on appointment proposals. The Presidential Board should not only be responsible for the development of the university, but it should also possess the competence required for this responsibility.⁴⁴ According to Oppermann, this means renouncing a university constitution in which "everyone is responsible, but in reality, nobody bears the responsibility."⁴⁵

In matters of self-administration, the Presidential Board is, of course, also solely accountable to the Senate in the Foundation model, too.⁴⁶ The Senate is, in particular, responsible for the election and, for the first time, also for the voting out of office of the members of the Presidential Board.⁴⁷

2. The Foundation Council: supervisory organ

The main criticism of the competencies of the Foundation Council is that they lack sufficient factual and democratic legitimation, because, as external honorary persons, the overwhelming majority of the members of the Foundation Council are independent of the orders of the responsible parliamentary Ministry.⁴⁸

This view is not convincing as it does not take sufficient account of the structure of a new management model as illustrated in the Foundation model of Lower Saxony.⁴⁹ Firstly, the establishment of the Foundation Council, including with regard to its external honorary members, lies firmly in the hands of the government (which can also dismiss it).⁵⁰ Furthermore, the government adequately influences the use of funds through the target agreements, which also have to obtain approval of the parliament as the body legislating the budget.⁵¹ Overall, the necessary level of legitimation for the Foundation Council's actions is achieved.

Sterzel/Perels also argue that the interaction between the Presidential Board and the Foundation Council is not cooperative but the result of hierarchic principles. In principle, the Foundation Council is superior to the Presidential Board, which prepares and implements its resolutions. They consider this "transformation of the relationship between the government and University" through a simple law in the framework of government administration to be unlawful.⁵²

In this regard, it must first be noted that the competencies of the Foundation Council as a typical supervisory organ of the Foundation⁵³ relate to the Presidential Board in its function as *Executive Board of the Foundation*. The law states that the Foundation Council shall decide upon *Foundation* matters of significance and shall monitor the work of the *Presidential Board of the Foundation*.⁵⁴ The further statutory list of tasks is also included in this framework. As far as corporation matters are concerned, the competencies of the Foundation Council are solely advisory or for legal supervision.⁵⁵ Even the regulations, according to which the Presidential Board depends on the agreement with the Foundation Council to appoint of professors⁵⁶ and according to which the Foundation Council nominates, appoints or dismisses members of the Presidential Board at the proposal of the Senate, do not indicate any exception to this distribution of power.⁵⁸

The criticism from Sterzel/Perels ignores the fact that in the Foundation model, two different legal persons⁵⁹ must be assumed with a dual function of the Presidential Board⁶⁰. Their observations do not do the Foundation justice as regards the purpose, assets and organisation and being free from members. Its establishment allows the Foundation to replace the government in the field of university administration (previously: public law institution), there is a change in the *maintaining body* of the university, not the organisation of the university in the narrower sense.⁶¹

In contrast to this, Fehling focussed even more intensely on the dual function of the Presidential Board as a management organ of the responsible Foundation on the one hand, and the university as a sponsored corporation on the other hand. Based on the explanatory memorandum that this individual identity should reinforce the autonomy of the university because government jurisdiction was once executed through an organ which is also a university organ,⁶² he exposes the problem of whether this construction could not also conversely allow maintaining bodies of the university (which are admittedly no longer directly governmental) to gain a slight indirect influence on internal university self-administration matters.⁶³ According to Fehling, this threat would exist under two conditions:

- if the Presidential Board primarily bases its decisions on guidelines of the Foundation Council and not on those of the academic Senate and thus be predominantly considered as a Foundation organ despite its formal dual function and
- if an alliance of government and economic interests forms in the Foundation Council at the same time, which depends on the role of the external participants in the Foundation organ.⁶⁴

The previous experience in Göttingen does not confirm these fears which means they are only presented as a theoretical scenario. Moreover, the Foundation is explicitly committed to protecting the right to self-administration of the university according to Article 55 V NHG. Whether, like Fehling, an improvement by the legislator in terms of specific protection for the right to self-administration has to be expected, remains to be seen.⁶⁵

The argument that fundamental framework or even constitutional objections stood in the way of the Foundation model of Lower Saxony has not been convincing, at least for the public version.⁶⁶ The situation is exactly the opposite: an organisation which takes the fundamental legal self-administration guarantee of the corporation into account is only possible when the maintaining body of the university and not the university itself is organised in its internal structure as a Foundation.⁶⁷

IV. Conclusion

How much autonomy a university has vis-a-vis the government, what kind of asset structure it has and to what extent it can rely on a certain amount of annual government funding in the longer term; these important questions cannot be answered using the legal form of the university and its maintaining body alone. The specific relevant University and Contract Law plays a decisive role here.⁶⁸

The Foundation model of Lower Saxony is permitted by law and is of interest in the field of university policies.⁶⁹ Its partial detachment from the government and the potential to acquire private funds signifies a forward-looking step for the Georgia Augusta.⁷⁰ It is important that in Göttingen the Foundation model is implemented internally and externally with commitment, self-confidence and quality-awareness. The Georg-August-Universität Göttingen Stiftung Öffentlichen Rechts (*University of Göttingen Public Law Foundation*) does not just deserve to be "constructively supervised"⁷¹ by the current state government in Lower Saxony, but also adequately supported.

Notes

1. The author works for the business management of the Georg-August-Universität Göttingen Stiftung Öffentlichen Rechts. This article is not, however, to be considered as an official statement. As regards information concerning the laws, the Roman numerals indicate article sections and Arabic numerals without additions indicate article sentences.

2. See

- Articles 55 ff. NHG (Article 1 of the Law on the University reform in Lower Saxony from 24.06.2002 (Nds. GVBl. [*Lower Saxony Law and Ordinance Gazette*] No. 19/2002 from 04.07.2002, P. 286 ff)),
- the law concerning the establishment and funding of Foundations as maintaining bodies of universities of Lower Saxony (Article. 1 of the law on the addition and change to University law and salary regulations from 11.12.2002 (Nds. GVBl. No. 35/2002 from 16.12.2002, p. 768 ff)),
- the order on the new regulation of the body responsible for the Georg-August-Universität Göttingen and the tasks and organisation of its field of human medicine from 17.12.2002 (Nds. GVBl. No. 37/2002 from 30.12.2002, P. 812 ff.) as well as recently,
- the law on the change of the University Law of Lower Saxony and on the change to other university regulations from 22.01.2004 (Nds. GVBl. 3/2004 from 02.02.2004, p. 33 f).

The documents can also be found on the website of the Universität Göttingen under:

<http://www.uni-goettingen.de/de/sh/5830.html>. In addition to the Georgia Augusta, the responsibility for the University of Hildesheim, the University of Lüneburg, the University of Veterinary Medicine Hannover and the Osnabrück University of Applied Sciences was also transferred to Foundations under public law.

3. The fourth chapter of the first part of the NHG offers this option to universities of Lower Saxony. The Senate of the university concerned shall resolve the application with a majority of two thirds of its members; Article 55 I, 1, 2 NHG.

4. Herfurth/Kirmse, WissR 36 (2003), p. 51 ff. (51).

5. For more see Kern, p. 83 ff.

6. Ministry for Science and Culture of Lower Saxony, Law pertaining to the universities of Lower Saxony (NHG). The most important changes, p.4; Oppermann, p. 10 ff. (20ff.).

7. Draft of a Law on the University Reform in Lower Saxony plus justification, state parliament of Lower Saxony - 14th legislative period, parliamentary printed matter 14/2541, P. 62. This component of the reform also illustrates the external structure of the NHG: the first part deals with the universities under government responsibility in four chapters, i.e. the universities which are a part of the state university planning and funding. In its first two chapters, similar to a "General Part", the tasks, membership and organisation of the university as a corporation are regulated. In its third and fourth chapter, the first part distinguishes between special features which result for the universities from the sponsorship of the government or the change to being under the responsibility of a Foundation. These chapters almost form the sponsor-specific "Special Part".

8. It was passed by the parliament around one year later.

9. See, in particular, Law on further tax incentives for Foundations from 14.07.2000

(BGBl. [*Federal Gazette*] p. 1034). According to this, the following are taken into account for funding bodies:

- general deduction for donation to the sum of a max. of 10% of the revenue,
- additional special expenses deduction for subsidies in the amount of 20,450 per year,
- regulation on large donations for sums from 25,565 (distributed over seven years),
- additional donations for a Foundation within one year after it was established up to 307,000 (distributed over 10 years).

Strategically planned and professionally carried out fundraising is an important management task for the Foundation University.

10. Article 57 V NHG; Article 2 VI StiftVO-UGÖ

11. Article 57 II, VI NHG

12. Article 58 NHG; Articles 4, 5 StiftVO-UGÖ

13. Article 58 I, II NHG. In February 2003 the power to appoint was transferred by the minister.

14. Article 55 II 2 NHG

15. Ministry for Science and Culture of Lower Saxony, Law pertaining to the Universities of Lower Saxony (NHG), the most important changes, p.7

16. For more see also Conrads, p. 1003 ff (1006 Fn. 17).

17. Article 55 II 1 NHG

18. According to Article 47 2 NHG, the government matters are:

1. the personnel administration and the management of the state funds allocated to the university, real property of the state and assets,
2. defining educational capacities, registration numbers and awarding student places,
3. the local library and accounting centre cooperation,
4. health care and other tasks in the field of the public health system,
5. the participation in or the implementation of government examinations,
6. university statistics as well as
7. tasks which are carried out by the university in the Federal State Administration (*Bundesauftragsverwaltung*).

19. Articles 56 I; 55 I 4 NHG

20. The property required by the Universität Göttingen includes a total of approx. 5.6 million m² of developed and non-developed areas (incl. experimental property used in agriculture).

21. Herfurth/Kirmse, WissR 36 (2003), p. 51 ff (52 in Fn. 7) assume even higher basic assets. The property value of the Göttingen basic assets (without the field of human medicine and without internal furnishings) is currently estimated at 1 billion. However, the considerable restoration requirements associated with the property must not be overlooked here.

22. Article 56 III NHG: the funds necessary to fulfil the purpose of the Foundation consist of

1. an annual financial subsidy from the state,
2. the revenue from the assets
3. donations and other additional donations of third parties, provided these are not explicitly added to the assets,
4. funds from the law promoting the construction of universities,
5. funds from central promotion programmes and as well as
6. grants for construction investments

The annual financial subsidy includes expenses for the following tasks and areas in particular:

1. teaching
2. basic equipment for research
3. main areas of expertise and special tasks,
4. young scientists,
5. complying with equal rights
6. building maintenance

23. But for this purpose see Behrends, p.11 ff. (17 "Schuldenträgerstiftung") (*Debt-based Foundation*).

24. According to Herfurth/Kirmse, WissR 36 (2003), p. 51 ff. (52).

25. It states in Article 1 III NHG that the Ministry concludes target agreements for several years about strategic development and performance aims for the university and its government financing with each university/Foundation based on the state university planning and the development planning of the respective university. However, according to Article 1 IV NHG as regards their financial regulations, these target agreements are subject to the budgetary authorisation being granted. Based on this conception, the Foundation universities are not currently being offered the desired amount of planning security. For example, there is the risk that the university supported by a revenue-based Foundation will more or less be managed under the "tight reins" of the Ministry of Finance; Fehling, p. 83 ff. (100). However, an advantage which cannot be underestimated is that in the Foundation model, one-sided intervention by the Ministry of Finance in the ongoing state of the Foundation University is not possible. The Foundation University negotiates its target agreements with the Ministry. With a positive decision from the budget legislator on this matter, a binding and justiciable right to grant the agreed financial subsidy develops for the Foundation University - without one-sided opportunities for the Ministry of Finance to intervene later.

26. The Articles 59 III, 60a, 60b NHG provide for other Foundation organs for the Foundation University Göttingen with its integrated human medicine field. (These regulations were originally only made on the level of a regulation issued by the Federal government - which was viewed with some criticism; Sattler, p. 101 ff. Schreiber, *uniinform*, No. 2/2003, July 2003, p.5; Conrads, p. 1003ff (1006 Fn. 21).)

27. The Presidential Board currently includes four vice-presidents in addition to the President. The members of the Presidential Board are responsible for their own departments.

28. Article 61 NHG

29. For participation in the Foundation Council, the following external honorary members can be obtained:

- the chair of the Executive Committee of the energy company EnBW, Prof. Dr. Utz Claassen,
- the secretary general of the Volkswagen Foundation Dr. Wilhelm Krull,
- the former president of the Federal Constitutional Court and the current president of the Goethe-Institut Inter Nationes Prof. Dr. Jutta Limbach,
- the Swiss science researcher Prof. Dr. Helga Nowotny,
- The Heidelberg doctor and Nobel Prize winner Prof. Dr. Bert Sakmann.

The Senate of Georgia Augusta is represented by Prof. Dr. Doris Lemmermöhle, the Ministry is represented by the state secretary Dr. Josef Lange.

30. According to Article 60 II 2 NHG, the tasks of the Foundation Council are as follows:

1. to nominate, appoint and dismiss members of the Presidential Board of the university,
 2. to decide on changes to and debits from on the basic assets as well as the borrowing of loans,
 3. to agree on the economic plan,
 4. to accept the report from the Presidential Board,
 5. to create the annual statement as well as ease the workload of the Presidential Board of the Foundation.
 6. to agree to found businesses or participate in businesses through the Foundation.
 7. legal supervision of the university,
 8. to decide on changes to the Foundation byelaw as well as to release, change and withdraw other byelaws of the Foundation.
31. In particular, see their monograph, "Freiheit der Wissenschaft und Hochschulmodernisierung" (*Freedom of science and university modernisation*) from the year 2003 and the evidence in this. The investigation is carried out on behalf of the Hans-Böckler Foundation, Düsseldorf and the main Executive Committee of the Education and Science Union (GEW), Frankfurt am Main.
32. Sterzel/Perels, p. 30 f.
33. Sterzel/Perels, p. 236 ff.
34. Articles 37 I 3 No. 2; 41 III 2 NHG. In the Foundation model it is then the responsibility of the Foundation Council to decide upon the agreement on the economic plan.
35. Sterzel/Perels, p. 249 ff. (267).
36. Sterzel/Perels, p. 252 ff. (267).
37. Article 1 III NHG: The Ministry makes target agreements for several years about the strategic development and performance aims for the university and its government financing with each university based on the state government planning and the development planning of the respective university. The development planning should define the development and performance aims in their basic outlines. Target agreements with a university sponsored by a Foundation are also made with the Foundation. Subject matters of the target agreements are, in particular:
1. the number of student places as well as the establishment or closure of courses of study,
 2. the reduction of time spent studying and reduction in the number of students dropping out,
 3. the promotion of young scientists and artists,
 4. quality assurance with regard to teaching and research,
 5. defining main areas of research,
 6. further internationalisation and
 7. observing the concept of equal rights in accordance with Article 3 III NHG.
- Article 1 IV NHG: regulations on the government financing contained in target agreements are subject to the budgetary authorisation being granted. The Ministry regularly reports to the state parliament on the implementation of target agreements.
38. Articles 37 I 3 No. 1; 1 III 2 NHG.
39. See BVerfGE (Federal Constitutional Court) 35, 79 ff.
40. Herfurth/Kirmse, *WissR* 36 (2003), p. 51 ff. (52).
41. Geis, p. 22; von Brünneck, *WissR* 2002, 21 ff. (27 ff.).
42. von Brünneck, *WissR* 2002, P 21 ff. (30 ff. 37).
43. Oppermann, p. 21
44. Oppermann, p. 21.
45. For further justification of content see also Science Council, p. 60 ff.
46. See von Brünneck, *WissR* 2002, p. 21 ff. (23).
47. Articles 38 II, 40 NHG.
48. Sterzel/Perels, p. 245 ff. (248 (referring to Geis, p. 92.)); also Thieme, p. 130 ff.
- See also Conrads, p. 1011 ff. on the omission of the supervisory board in the foundation model.

49. Detailed justification with von Brünneck, WissR 2002, p. 1 ff. (40 ff.).
50. Article 60 I 2 No. 1 NHG
51. Herfurth/Kirmse, WissR 36 (2003), p. 51 ff. (59 f.)
52. Sterzel/Perels, p. 255 ff. (267 f.).
53. See Andrick/Suerbaum, p. 19f.
54. Article 60 II 1 NHG.
55. Articles 60 II 1, 2 No. 7; 62 IV NHG
56. Article 58 II 4 NHG.
57. Article 60 II 2 No. 1 NHG
58. Koch, WissR 2001, p. 57 ff. 80; Conrads, 1003 ff. (1010f.). The second aspect is not a problem specific to Foundations, it is also a problem for a university for which a government body is responsible; Fehling, p. 83 ff. (90).
59. University supported by a Foundation as a public law corporation on the one hand and Foundation under public law on the other hand.
60. University management and Executive Committee of the Foundation; Articles 37; 61 NHG.
61. Herfurth/Kirmse, WissR 36 (2003), p. 51 ff. (59).
62. Draft of a law of the reform of Universities in Lower Saxony plus justification, state parliament of Lower Saxony - 14th legislative period, parliamentary printed matter 14/2541, p. 61.
63. The positioning of the Foundation between the government and corporate university may constructively suggest a greater separation of the university from the government, but does not make this necessary, according to Fehling, p. 83 ff. (94).
64. Fehling, p. 83 ff. (91).
65. Fehling, p. 83 ff. (91 ("if necessary")).
66. Fehling, p. 83 ff. (104); Löwer, p. 187 ff. (193, 200 f.). Also according to Sterzel/Perels, at least in the principle, p. 267, Wieland, *passim*. Thieme has doubts on this, p. 130 ff. (132 f), a.A. Behrends, p. 11 ff. (62f.).
67. Fehling, p. 83 ff. (p. 103 f).
68. According to Fehling too, p. 83. ff. (103).
69. According to Löwer too, p. 187 ff. (193, 200 f.).
70. Herfurth/Kirmse, WissR 36 (2003), p. 51 ff (66); Schreiber, p. 38ff. (47).
71. According to coalition agreement between CDU and F.D.P for the 15th legislative period of the state parliament of Lower Saxony 2003-2008, p. 20

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