

Georgia Augusta Excellent in Public Law Foundation

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As part of the Excellence Initiative put in place by the Federal government and states, the Universität Göttingen (University of Göttingen) is successful in all three funding areas. With its future-oriented concept, Georgia Augusta relies on its particular strengths as a Research University with a diverse range of subjects, on its close ties with an outstanding research environment outside of the University and, last but not least, on its autonomy as a Foundation University.

1. Overview

The Universität Göttingen has been a Foundation University for nearly five years now. This means that a Public Law Foundation has been added to the University (which has not been closed down but still exists) as a Public Law Corporation. The aim of this Foundation is to support and promote the university it is responsible for. Opting out of having the government as the body which is legally responsible for it and transferring this responsibility into an independent Public Law Foundation has allowed the Universität Göttingen to increase the autonomy of the corporation and supplement that of its maintaining body.

The main pillars of the Foundation model of Lower Saxony for the promotion of university independence and self-responsibility are as follows:

- the transfer of the responsibility for the Universität Göttingen to a Public Law Foundation allowed the Georgia Augusta to achieve legal independence vis-a-vis the government as a Foundation University. This is accompanied by a much larger degree of freedom as regards independent organisation than was previously the case. For example, the Foundation University is no longer subject to the supervision by the relevant Ministry.
- The Foundation University manages its own accounts and runs its finance and liquidity management independently. Its economic management and accounting system comply with commercial principles. As a result, the State Budget Regulation (*Landeshaushaltsordnung*) is no longer used.¹
- The responsible Foundation is the principle of its civil servants as well as employer of its pay-scale employees. This makes independent personnel management possible. The Presidential Board appoints professors in agreement with the Foundation's University Committee (*Stiftungsausschuss Universität*).
- The property required to run the Georgia Augusta is transferred to the property of the responsible Foundation. It forms the basic assets of the Foundation. The Foundation independently manages full facility management: it efficiently plans, constructs, modernises and manages the university on its own initiative.
- It is important that the Foundation's University Committee links university and society with its honorary members from the fields of economy, science and culture.
- The Foundation as an institution of civil society brings with it the opportunity for students, personnel as well as former students to identify more strongly with their Foundation University than before.

- The Foundation University works on developing Foundation assets which are not dependent on government financing and can also use the benefits of the Foundation Tax Law when doing so. Donations received do not replace government funds but supplement them.

The Göttingen Foundation model will be explained in more detail in the following using important construction elements, Foundation purpose, Foundation assets and Foundation organisation.

2. The Aim of the Foundation

The Foundation is responsible for the Georgia Augusta, i.e. it maintains and promotes the University in its capacity as a Public Law Corporation. This includes, in particular, the safeguarding and further development of the University in its functions of research, teaching, health care, services in the public health system, 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 education in the Universität Göttingen through a responsible and efficient use of the funds transferred to it.

According to the Law pertaining to the Universities of Lower Saxony, the Foundation deals with the respective government matters under its own responsibility. In this respect, the Foundation University Göttingen is no longer subject to the supervision by the relevant Ministry.² The Foundation itself is only subject to the legal supervision of the relevant Ministry.

3. The Foundation's Assets

At the time, the legislator stipulated that the state of Lower Saxony would transfer the ownership of property required for the operation of the University under the responsibility of the Foundation to the responsible Foundation. Today, this property forms the basic assets of the Foundation. The content of the local basic assets was specified in law and a regulation issued by the Federal government. The Foundation filed appropriate applications for adjustments to the land register (notarial official acts were not necessary). It was exempt from legal costs.

For the time being, the annual financial requirements of the Universität Göttingen cannot be financed by revenue from the basic assets of the Foundation alone. The property in the basic assets is used to run the University and does not yield any revenue. In addition, funding the organisation of the Göttingen University solely from capital yield would probably require a basis amounting to tens of billions. Such a method would not only be illusive in Lower Saxony but also unnecessary.

It is much more important that the Universität Göttingen used the statutory option of transferring its responsibility into a so-called revenue-based Foundation which obtains the funds necessary to meet the aim of the Foundation first and foremost from an annual financial subsidy from the state of Lower Saxony. Consequently, the University Law mentions this entitlement to an annual financial subsidy from the state even before the revenue of the assets and the additional donations of third parties. The Foundation University continues to be under government responsibility, which also includes its funding.

The assumption that a Foundation University can achieve full financial independence from the government from its first day was and is still not in touch with reality. The reform structure from the

government alone is not in a position to achieve this. Anyone who calls the Foundation model "deceptive packaging" is overlooking the real issue.

What is much more important, both in the case of Foundations under private law and Foundations under public law, is the tasks they face and the way they handle them. The Foundation model allowed the Universität Göttingen to become less bureaucratic in order to fulfil its tasks even more successfully than before. The fact that it does this as a revenue-based Foundation is of secondary importance in relation to this.

At the same time, the perspective of the Foundation demands vigilance if the efficiency of the responsible Foundation basically depends on an extensive and regular financial subsidy from the government. The reduction in bureaucracy and the independence laid out in the Foundation model of Lower Saxony must therefore actually (be able to) be realised. The other (contractual) commitments in the state of Lower Saxony also play an important role in this regard.

The local Foundation model is therefore supported by a modern State University Law which is characterised by the following pillars, amongst others:

- The government renounces sovereign powers and focuses on a result-oriented implementation of the state university planning; it primarily manages state universities through target agreements, performance incentives and results monitoring. The government therefore hands over the operative business to the university.
- As membership-based corporate bodies under public law, the universities shall set their own constitution within a framework of fewer 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.
- All universities in Lower Saxony have overall budgets with commercial bookkeeping, cost accounting and the possibility of creating reserves.

Furthermore, the state government of Lower Saxony has given the state universities planning security as regards funding and state university planning under contracts (so-called future contracts). The contract will last until 2010 and should be extended after this.

3. The Organisation of the Foundation University

a) Presidential Board

The responsible Foundation (without the Universitätsmedizin Göttingen) (*University Medicine Göttingen*)³ contains the Presidential Board (*Präsidium*) (operative level) and Foundation's University Committee (*Stiftungsausschuss Universität*) (supervisory level) as organs. The five-member Presidential Board⁴ is responsible for managing the Universität Göttingen. It organises its development and ensures that the University fulfils its tasks. The Presidential Board is responsible for all matters which are not allocated to any other organ. In particular, it decides upon:

- the conclusion of a target agreement,
- the financial plan,
- the task and performance-related assessment of funds in the University,
- the establishment of, change to and removal of faculties and other organisational units,

- the division of a faculty at the proposal of the respective Dean's Office,
- the introduction of, significant change to and closure of courses of study as well as
- the approval of examination regulations.

Moreover, in the Foundation model, the Presidential Board manages the day-to-day business of the Foundation, prepares the resolutions of the Foundation's University Committee and executes these.

b) Foundation's University Committee

The Foundation's University Committee advises the University, resolves matters relating to the Foundation which are of significance, monitors the work of the Presidential Board and has the following competencies, in particular:

- to nominate or appoint and dismiss the members of the Presidential Board of the University,
- to decide upon changes to and debits from the basic assets as well as the borrowing of loans,
- to agree on the economic plan,
- to accept the report from the Presidential Board,
- to create the annual statement and ease the workload of the Presidential Board of the Foundation,
- to agree to found businesses or to participate in businesses through the Foundation,
- legal supervision of the University,
- to decide on changes to the Foundation byelaw as well as to release, change and withdraw other byelaws of the Foundation.

In the scope of the appointment of professors, the Presidential Board shall seek agreement with the Foundation's University Committee.

The Foundation's University Committee consists of seven members:

- five honorary members familiar with the University system, who do not belong to the Georgia Augusta, primarily from the fields of economy, science and culture,
- a representative of the Senate of the Universität Göttingen,
- a representative of the relevant Ministry.

4. Controversial legal questions

The argument that the fundamental framework or even constitutional objectives stood in the way of the Foundation model of Lower Saxony⁵ has not been convincing. In fact, 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 is organised in its internal structure as a Foundation and not the University itself.

Nevertheless, a (proportionately small) group of Göttingen University lecturers is trying to oppose their transfer into the service of a Foundation which is associated with the transfer from the University into the Foundation model using legal assistance. With decisions from spring 2006, the administrative court Göttingen granted the corresponding lawsuits in the first instance.

With the transfer orders published at the beginning of 2003, those concerned were transferred to the service of the University Foundation. They therefore withdrew from the direct state service and became indirect state civil servants.

Based on the opinion that changing the maintaining bodies only resulted in a transfer of tasks from the state to the responsible Foundation, the Administrative Court Göttingen has stated that there is a lack of transfer orders on the necessary basis for such authorisation. In Article 128, para. 4, former version 3 of the Federal Civil Service Framework Act (*Beamtenrechtsrahmengesetz*) (BRRG), a transfer of civil servants by a new legal personality is planned in the event of a partial transfer of tasks from one corporation to another corporation. However, according to the jurisdiction from 1981, this only applies to civil servants whose area of responsibility is actually affected by the transfer of tasks. This requirement is not fulfilled as regards the University lecturers who teach and carry out research at the Universität Göttingen.

In accordance with this, according to the Administrative Court Göttingen, their transfer from direct state service into the service of the maintaining body is unlawful. In addition, the administrative court Göttingen based its decisions on a supposed lack of responsibility of those acting at that time within the Foundation organisation.

The decisions of the administrative court Göttingen are not final and absolute. The maintaining body has successfully applied for the approval of the appointment. In three examples cases, the Higher Administrative Court Lüneburg (*Oberverwaltungsgericht Lüneburg*) has recently completely revoked the first instance decisions and rejected the lawsuits against the Foundation model.

In its appeal, the responsible Foundation previously highlighted the following serious doubts about the correctness of the Göttingen jurisdiction: the Administrative Court misjudges the requirements for the transfer according to Article 128, para. 4 of the BRRG, when it links the transfer of civil servants according to Article 128, para. 4 of the BRRG to a further unwritten legal prerequisite in general, without any differentiation. According to the Administrative Court, the transfer in accordance with Article 128 para. 4 of the BRRG requires the area of responsibility of the civil servant to be actually affected by the transfer of tasks. However, this view lacks the overall context and the starting point for debatable implementations of the Federal Administrative Court. On the one hand, a selection decision as in the cases decided upon by the Federal Administrative Court was not to be made by the responsible Foundation. On the other hand, it cannot be assumed that the Federal Administrative Court of 1981 wanted to have the facts of Article 128, para. 4 of the BRRG expanded by a further unwritten legal prerequisite.

This personnel-related and not particularly Foundation-specific controversial subject will probably only be able to be clarified through high court jurisdiction as the Higher Administrative Court has approved the verification of the decision by the Federal Constitutional Court.

5. Conclusion

The Foundation model of Lower Saxony is permitted by law and is of interest for university politics. In this model, the Georgia Augusta is noticeably exempt from government requirements and has special potential for attracting private donations. Its transfer into the responsibility of an independent Public Law Foundation has proven to be an important step on a forward-looking path for the Georg-August-Universität Göttingen, but also and especially for everyday life.

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1 With the exception of a few cases: Articles 39, 49, 55 and 110 of the State Budget Regulation of Lower Saxony.

2 Exceptions: Implementation of Federal Laws and exercising legal supervision over the Universität Göttingen by the responsible Foundation.

3 The Foundation Universität Göttingen is divided into a non-medical part and the Universitätsmedizin Göttingen. Here it is only the non-medical part which is taken into consideration.

4 The Presidential Board consists of two full-time and three part-time members.

5 According to Behrends and Kaluza.