

DVBI

DEUTSCHES VERWALTUNGSBLATT

PUBLISHER

Prof. Dr. Dr. h.c. Thomas von Danwitz, Luxembourg
 Prof. Dr. Dr. Wolfgang Durner, Bonn (Editor-in-Chief)
 Marion Eckertz-Höfer, Leipzig
 Prof. Dr. Stephan Harbarth, LL.M., Karlsruhe
 Prof. Dr. Hans-Günter Henneke, Berlin
 Dr. Caspar David Hermanns, Osnabrück (Editor)
 Prof. Dr. Dr. h.c. Wolfgang Kahl, M.A., Heidelberg
 Prof. Dr. Andreas Korbmacher, Leipzig
 Prof. Dr. Christoph Mönch, Berlin
 Prof. Dr. Hans-Werner Rengeling, Osnabrück
 Prof. Dr. Dr. h.c. Klaus Rennert, Leipzig

FROM THE CONTENT ARTICLES

Thomas Schomerus
 The Aarhus Convention Compliance Committee (ACCC) p. 1313

Johannes Schlautmann
 Ensuring Public Services in the Energy Sector
 Planning, Construction, and Operation of LNG and Hydrogen Facilities p. 1320

Ulrich Arndt
 Agency for Citizen Participation in Baden-Württemberg
 A Developed Approach Between Informal Administrative Action and Classic Administrative Organizational Law p. 1327

Richard Häußler
 Classified Documents in Administrative Proceedings – Recent Case Law on § 99 VwGO p. 1333

CASE LAW
 BVerwG, Decision of 24.07.2024 – 2 VR 5.23
 Prior Service in a Leadership Role p. 1346
 BVerwG, Decision of 14.08.2024 – 6 VR 1.24
 Association Law Prohibition of a Media Company - COMPACT p. 1350
 OVG NRW, Judgment of 16.05.2024 – 11 A 1429/23
 Statutory Autonomy for Special Uses p. 1359
 Bavarian VGH, Decision of 06.06.2024 – 22 A 23.40061
 Declaration of Completion after the Expiry of Authorization for the Operation of a Nuclear Power Plant p. 1361
 VGH Baden-Württemberg, Judgment of 10.07.2024 – 8 S 1529/22
 Buildable Area on a Property p. 1364
 Bavarian VGH, Decision of 23.07.2024 – 4 ZB 22.1293
 Distinction Between Title and Heritage Rights – Changed Legal Belief After Annexation p. 1370
 Lower Saxony OVG, Judgment of 07.08.2024 – 1 KN 33/24
 Inclusion of Outlying Land in a Statute According to § 22 BauGB p. 1372
 Lower Saxony OVG, Decision of 28.08.2024 – 4 ME 136/24
 Complete Closure of a Federal Highway for the Purpose of Holding an Assembly (Rappelling Action with Banners from a Highway Bridge) p. 1375

Works - Online Modules - Solutions
 Wolters Kluwer Administrative Practice
wolterskluwer.com/verwaltungspraxis

Issue 21
 November 1, 2024
 Pages 1313–1376
 Volume 139
 Art.-No. 56412421
 PVSt 2423

21

Carl Heymanns Verlag

Agency for Citizen Participation Baden-Württemberg

A Developed Approach Between Informal Administrative Action and Traditional Administrative Organization Law

by Ulrich Arndt, Stuttgart*

Since November 1, 2023, the Agency for Citizen Participation (hereafter SDB)¹ has been in operation. It is a public institution. At its core, it corresponds to an idea presented at the 69th German Jurists' Forum. The concept is described below, and the article introduces dialogic citizen participation accordingly.

I. The Advantages of the Agency for Citizen Participation

The state government recognized that organizing citizen participation was challenging for authorities in Baden-Württemberg. Smaller municipalities, in particular, lack sufficient personnel for this task. Therefore, since 2017, the idea emerged to provide concrete support to small communities and authorities. Here's a brief overview of the specific benefits of the SDB:

1. Framework Agreement

* The author works as the head of the Agency for Citizen Participation of the state of Baden-Württemberg, based in Stuttgart. He extends special thanks to the office of the German Jurists' Forum (Deutscher Juristentag e.V.) and to Prof. Dr. Brettschneider from the University of Stuttgart-Hohenheim for their helpful contributions and literature recommendations. All internet sources were last accessed on May 2, 2024.

The SDB provides a framework agreement with service providers. The SDB handled the EU-wide tendering process for this, saving local authorities a tremendous amount of effort.

2. Quality Assurance

The SDB ensures the quality of the procedures. This is guaranteed through the tendering process, making the procedures comparable. This is particularly important in citizen participation, where there is an overwhelming variety of methods². Comparability leads to predictability. Predictability creates transparency. Transparency builds trust.

3. Responsibility

The SDB assumes responsibility for the procedures, relieving the burden on the heads of authorities or governing bodies. Citizen participation takes place in a contentious environment, and a distinction is rarely made

¹ Directive of the State Ministry on the Establishment of a Non-Legal Public Institution "Advisory Unit Agency for Citizen Participation Baden-Württemberg" dated 07/22/2022, Joint Official Gazette 2022, 970; online presence: <https://tinyurl.com/5n8cnkhu>.

² A brief insight from "Wegweiser Bürgerschaft": <https://tinyurl.com/3ewzwhwj>.

between citizen participation and the substantive decision itself. Especially in heated situations, it is important that the heads of authorities do not also have to be accountable for the citizen participation process. The decision on the matter is often difficult enough on its own.

4. New Freedoms

The SDB creates freedoms for authorities. They are allowed to present arguments and can explain them well thanks to their expertise. This is important, as public advocates are often lacking. This is because authorities view themselves as neutral in administrative procedures. However, this neutrality applies only to the administrative procedure, not to the political environment. Of course, authorities also have an agenda they are permitted to represent publicly. Neutrality in administrative procedures—particularly in public participation—does not prohibit a factual statement in dialogic citizen participation³. Within the informal procedure of dialogic citizen participation, authorities can be treated as a "party." Therefore, it is necessary to differentiate between public participation and dialogic citizen participation⁴. If an authority is convinced of a project, it should explain and justify this position. Dialogic citizen participation provides space for this, following standard guidelines for the factual nature of statements. The challenge is that authorities often need to explain themselves more thoroughly. Beyond a simple press release, there is often a lack of appropriate project communication.

II. A Look Far Back

To understand the development, it is worth looking back.⁵

In September 2012, the 69th German Jurists' Forum in Munich discussed public participation. This was a direct result of the protests against Stuttgart 21.⁶ The expert for the Public Law section, Prof. Dr. Ziekow, proposed a dedicated hearing authority for citizen participation.⁷ He justified this, among other reasons, with the independence and high level of trust in a government agency.

The records of the 69th German Jurists' Forum reflect the debates of that time. According to them, the idea of a hearing authority was rejected.⁸ We find statements in the records that are still used today as arguments against citizen participation: delays⁹, false hopes¹⁰, bureaucracy/duplication of work/costs¹¹. The counterarguments strictly remain within the framework of

³ BVerfG, DVBl 2018, 1063 para. 39, 43: even with warnings in food law, factual information is permissible, even in cases of suspicion.

⁴ For differentiation: U. Arndt, DVBl 2021, 705 (707).

⁵ Remember also the former Minister President of Baden-Württemberg, Lothar Späth, who recognized the importance of citizen participation as early as the 1980s. As a result of the Chernobyl reactor disaster, he founded the Academy for Technology Assessment, which was discontinued in the 2000s—long before the debates over Stuttgart 21.

⁶ Conference report: C. Sicko JZ 2013, 398 (403 f.).

⁷ J. Ziekow, "New Forms of Citizen Participation? Planning and Approval of Projects in Parliamentary Democracy", Report D to the 69th German Jurists' Forum, 2012, p. 131 (154).

⁸ Proceedings of the 69th DJT, 2012, Vol. II/2, M 183: with 11 yes, 36 no votes, and three abstentions.

⁹ Proceedings 69th DJT (ref. 8), Vol. II/1, M 42.

the administrative procedure system.¹² From this perspective, the counterarguments are still coherent. It is rightly pointed out that project communication is the responsibility of the project sponsors.¹³ However, from today's perspective, two gaps are noticeable: the distinction between administrative procedures and prior public participation, and the role of the public sector as a project sponsor.

At that time, early public participation was naturally not yet codified. However, we now know that, according to § 25 (3) of the Administrative Procedure Act (VwVfG), early public participation takes place before the application is submitted. This casts the previously rejected separation between the hearing authority and the approval authority in a completely different light. The internal logic of administrative procedures does not encompass early public participation. Under current law, the approval authority is only meant to "influence" the project sponsor. Thus, the arguments presented against this separation at the 69th German Jurists' Forum no longer hold.

Additionally, there was a lack of sharp focus on public project sponsors.¹⁴ The records show that the differentiation between public and private project sponsors was quite contentious at the 69th German Jurists' Forum.¹⁵ However, it went unrecognized that the public sector is one of the most important project sponsors. This is notable because Prof. Dr. Ziekow's preparatory report highlighted the role conflict.¹⁶

Many of the most controversial projects are planned and constructed by the public sector itself. Examples include transportation routes, flood protection, cultural and educational buildings, refugee accommodations, and projects or structures for renewable energy. In practice, this led to situations where, within a regional authority, the approvals department would have to remind the planning department to initiate early public participation.¹⁷

As a result, authorities in Baden-Württemberg found themselves needing to develop their own expertise in citizen participation, particularly in departments that act as "project sponsors." This was achieved in the regional councils through new positions, organized in a

¹⁰ Proceedings 69th DJT (ref. 8), Vol. II/1, M 44 f. ("false expectations and frustrations").

¹¹ Proceedings 69th DJT (ref. 8), Vol. II/2, M 50 and Vol. II/2, M 123 and 142.

¹² Proceedings 69th DJT (ref. 8), Vol. II/1, M 41 f., 51.

¹³ Proceedings 69th DJT (ref. 8), Vol. II/1, M 41, 43.

¹⁴ The draft law by the Federal Ministry of the Interior (BMI) for transferring early public participation from § 25 (3) VwVfG to a new § 25a VwVfG commendably highlights the distinction between private and public project sponsors (BR-Drs. 208/24).

¹⁵ Proceedings of the 69th DJT, 2012 Vol. II/2, M 109, 123, 125, 161.

¹⁶ J. Ziekow (ref. 8), p. 131: "That even the project sponsor itself should not be responsible for conducting the participation process, including early citizen participation, follows almost inevitably from the principle of role clarity."

¹⁷ For details, see U. Arndt, VBlBW 2015, 192 (194).

decentralized manner.¹⁸ Staff members engaged in intensive exchanges with the Office of the State Counselor for Civil Society and Citizen Participation through a so-called core group. Effort and costs were additional factors. Public project sponsors rarely budget for the costs of public participation, while private project sponsors are much more sensitive to this aspect.¹⁹

How to handle § 25 (3) of the State Administrative Procedure Act (LVwVfG) has been regulated in Baden-Württemberg by an administrative directive since 2014.²⁰ An evaluation of this directive by the Research Institute for Public Administration revealed interesting results. In 2020, it recommended providing more support to the authorities, and a agency as a service center was already mentioned at that time.²¹

Historically, it wasn't just early public participation in infrastructure planning that came into focus. Citizen opposition increasingly impacted all areas of society—not just those covered by the (L)VwVfG. Examples include opposition to refugee accommodations, cultural buildings (such as the renovation of the Stuttgart Opera House), or industrial zones.²² Additionally, the internet has transformed public discourse.²³ The phenomenon known as "false balance" intensifies perceptions of conflict and polarization. False balance refers to a media phenomenon in which two positions are given equal weight regardless of their actual relevance.²⁴ Moreover, loud, emphatically presented positions—amplified by the internet—gain significant impact. As traditional media face declining print circulation, they often adopt a click-driven approach, with reports that get the most online clicks selling well.²⁵ This favors quotes from loud, sensational voices. This trend is not confined to Baden-Württemberg; it is a global

phenomenon.²⁶ Globally, so-called "mini-publics" serve as a countermeasure.²⁷ In Germany and Austria, these mini-publics are known as "Bürgerrat" (citizens' assemblies). In Baden-Württemberg, we refer to them as "Bürgerforum" (citizens' forum) to avoid any misunderstanding with elected municipal council members. Additionally, the term "council" is otherwise associated with the so-called "council republic".²⁸ Citizens' forums work well because participants are randomly selected, ensuring that the quieter voices from the center of society are also represented—voices that are often overlooked in traditional citizen participation formats, such as young women, people with migration backgrounds or without a high school diploma, and families. This is not representative, but it is diverse. Diversity strengthens debate, and strong debates reduce polarization.

However, this needs to be organized.

III. Establishment of the SDB with Two Units

Therefore, the state government established the SDB. Strictly speaking, there are two units under the umbrella of the Agency. There is a "central procurement office" (§ 120 (4) GWB), structured as a limited liability company (GmbH). However, the primary entity is a non-legal public institution. Its role is to advise authorities, including collaboration with private facilitation offices. Additionally, the institution is responsible for conceptualizing and designing citizen participation processes.²⁹ As resources allow, this institution also undertakes certain tasks with its own personnel. The legal form of the institution was chosen thoughtfully. In the classical sense of administrative organizational law, an institution serves to relieve the immediate state administration.³⁰ The institution was made "non-legal" to

¹⁸ This has been evaluated separately; see K. Masser/I. Hamann/J. Ziekow, Evaluation of the Administrative Directive on Public Participation in Baden-Württemberg, 2015. For the cost debate at the 69th DJT, see Proceedings of the 69th DJT (ref. 8), Vol. II/2, M 159 ff.

¹⁹ Legislative rationale, BT-Drs. 17/9666, p. 15: "The implementation of early public participation is therefore in the well-understood interest of the project sponsor." Also Proceedings of the 69th DJT (ref. 8), Vol. II/2, M 159 ff.

²⁰ On the Administrative Directive on Public Participation: G. Erler/U. Arndt, VBIBW 2014, 81 f.; G. Erler, Democracy in Stormy Times, 2024, p. 103 on the "eroticism of an administrative directive."

²¹ The final report can be accessed here:

<https://tinyurl.com/jz5t32t>. On p. 11, it states: "For further development of public participation as a whole and of individual public participation phases in particular, as well as to adapt the planning guide based on the recommendations, it is recommended to expand the service character. It should be examined how to meet the recurring demand for service-oriented guides and resources. A consulting service center that provides user- and audience-focused information for stakeholders and citizens and offers additional services could potentially meet this demand."

²² For the history of citizen participation specifically in Baden-Württemberg, see U. Arndt, in Heußer/Pautsch/Rehmet/Kiepe (eds.), Taking on More Direct Democracy, 4th ed. 2024, 377 ff.

²³ LT-Drs. 17/3786, p. 9, on changes in public discourse. Available at <https://tinyurl.com/yc7wu898>.

²⁴ Deutschlandfunk describes the origin of the term from science communication, see here: <https://tinyurl.com/57276ea3>.

²⁵ Current empirical findings on the link between negatively connoted or emotional language and increased attention generated

can be found, for example, in C. Robertson et al, 2023, Negativity Drives Online News Consumption, *Nature Human Behaviour* 2023, 812 (815).

²⁶ C. Landfried, Citizen Assemblies as Potential for the Action and Learning Capacity of Democracies, VerfBlog, 2021/12/17, <https://tinyurl.com/kb7h8jj7>, DOI: 10.17176/20211217-172641-0, on the role of public discourse. She seems to view citizen assemblies more as an element for "rationalizing" the political actions of those in power. We now see the need to rationalize discourses from civil society as well.

²⁷ For more on this, see RIFS Potsdam: <https://tinyurl.com/5x69cwex>.

²⁸ B. Grzeszick, in Dirig/Herzog/Scholz (eds.), Basic Law, Commentary, Art. 20 (as of January 2022) para. 72 on council democracy. Also G. Erler (ref. 20), p. 169 on terminology.

²⁹ Administrative Directive of the State Ministry on the Management and Organization of the Non-Legal Public Institution "Advisory Unit of the Agency for Citizen Participation Baden-Württemberg," Joint Official Gazette 2022, 971 ff. Essentially, the SDB does exactly what Ziekow suggested and further explained orally at the 69th DJT: Proceedings of the 69th DJT (ref. 8), Vol. II/2, M 137.

³⁰ K. Schönenbroicher, in Mann/Sennekamp/Uechtritz (eds.), VwVfG, Commentary, 2nd ed. 2019, § 1 para. 55: "Relief effect for state administration." S. Korte, in Wolf/Bachhoff/Stober/Kluth (eds.), Administrative Law, Vol. II, 8th ed. 2023, § 86 para. 7, refers to an apparatus for the effective deployment of skills. In political jargon, the term "competence center" is also used. M. Jestadt, in Voßkuhle/Eifert/Möllers (eds.), Foundations of Administrative Law, 3rd ed. 2022, addresses the classic definition of an institution in § 14 para. 27 f., distinguishing it from a foundation and a corporation, with a particular focus on its special

save time, costs, and effort. The bureaucratic costs of legislative processes would have been too high otherwise.³¹ An institution only becomes legally recognized if established by a legal act.³² Fiscal reasons also played a role.

The future VAT obligations of the public sector had to be considered, as this could have incurred additional costs, for instance, in cases of personnel secondment. Thus, this institution was established by an organizational act of the State Ministry of Baden-Württemberg.³³ In terms of organizational law, it is crucial that the SDB fulfills a function for other entities.³⁴ For the SDB, this is the public task regulated in § 1 (4) of the DBG, which states: "Dialogic citizen participation is a public task that may be carried out voluntarily."

An institution for citizen participation cannot maintain sufficient staff given state budget constraints. This must be sourced from the market. The market for citizen participation service providers has grown³⁵, so there is a supply available.

Research by the Office of the State Counselor for Civil Society and Citizen Participation showed that the quality of services offered by providers varied greatly. There were highly customized concepts that were allegedly tailored specifically to the contracting authority. Authorities were under time pressure when searching for a service provider for citizen participation, with public protest looming over them. The goal, therefore, was to standardize and streamline citizen participation in Baden-Württemberg. Standardization is important to increase trust in the procedures, as it benefits everyone when processes are comparable and replicable. Only comparability ensures neutrality, avoiding any appearance that participation is being steered toward a particular outcome ("nudging"). Streamlining was essential to prevent bureaucracy. Dialogic citizen participation provides quick support; it prepares decisions rather than taking center stage. It is only a tool, not an end in itself, and should therefore be easy to implement. Thus, the SDB, as the procurement office, issued a framework contract through an EU-wide tender.

purpose and, critically, on users rather than members in contrast to a corporation.

³¹ Municipalities can, however, establish an independent public institution according to § 102a GemO BW by means of a statute.

³² S. Korte (ref. 30), § 86 para. 10 (also paras. 24 and 62 on the founding documents) expressly rejects the need for a separate legal act for the existence of an institution. Instead of legal independence, organizational independence is sufficient, such as budget management and the formation of organs and decision-making based on individual responsibilities. H. Maurer/C. Waldhoff, General Administrative Law, 19th ed., 2017, § 23 paras. 55 f., on the non-legal public institution as part of another administrative body (here: the State Ministry).

³³ Administrative Directive of the State Ministry with the Order on the Establishment of a Non-Legal Public Institution "Advisory Unit of the Agency for Citizen Participation Baden-Württemberg," Joint Official Gazette 2022, 970.

³⁴ S. Korte (ref. 30), § 86 para. 11 and para. 42: In the case of the SDB, the task fulfilled is not that of the institution's sponsor, the State Ministry, but of the authorities and public companies based in Baden-Württemberg. S. Korte (ref. 30), § 86 para. 59 on

IV. Why Dialogic Citizen Participation

This section will explain why the Agency should specifically organize dialogic citizen participation. As previously mentioned, public participation was the starting point. Public participation and dialogic citizen participation are similar but not identical.³⁶ The idea of public participation is based on legal concepts, serving to hear those affected and fulfill the purpose of legal protection. Although the concept of affected-party participation expanded, it always remained within the overarching framework of securing individual legal protection. Public participation is important and is not replaced by dialogic citizen participation.

The potential here is illustrated by looking at Denmark. The example of the Fehmarn Belt Tunnel provides a good comparison between Denmark and Germany. Both legal systems are structured similarly in terms of transportation planning. However, the different planning cultures led to massive differences on both sides of the Baltic Sea. In Germany, there were around 16,000 objections, while in Denmark, there were only about 50. Studies show that this is due to a vastly different culture, especially in early public participation. In Denmark, planners are genuinely open to suggestions from the public.³⁷ This openness appears to be lacking in Germany. It is therefore encouraging that the renowned Association of German Engineers (VDI) is addressing this issue. In 2021, they revised their guideline 7001, originally adopted in 2014.³⁸ It is aimed, among others, at technical professionals involved in early public participation. The VDI is also revising guideline 7000,³⁹ which covers project management in early public participation.

All of this concerns public participation in planning. Additionally, every community wishes to address conflicts politically.⁴⁰ As discussed, this has become increasingly difficult with the advent of the internet. This is why citizens' forums are useful. They reveal where the silent majority of the population stands, serving representative democracy above all—less so individual citizens. Citizens' forums correct debates that have reached an impasse, often bringing to light what can be described as "public reason." To ensure the necessary random selection process

oversight arrangements (up to and including waiver) by the State Ministry over the SDB. On institutional responsibility, see M. Burgi, in Ehlers/Pünder (eds.), General Administrative Law, 16th ed. 2022, § 8 para. 14.

³⁵ Proceedings of the 69th DJT (ref. 8), Vol. II/2, M 145 on the role of private service providers.

³⁶ U. Arndt (ref. 4), p. 707. G. Erler (ref. 20), p. 106.

³⁷ C. Chladek, DVBI 2022, 578 (582) on the role of public participation and the underlying open approach in Denmark. K. Meyer-Schilf, "The Two Sides of the Tunnel," TAZ, 06/24/2017, <https://tinyurl.com/2bwjhwp>; C. Madsen, "What Germans Can Learn from Danes—and Vice Versa," Hamburger Abendblatt, 12/22/2022, <https://tinyurl.com/3rb953ra>.

³⁸ VDI, Guideline 7001: Communication and Public Participation in Construction and Infrastructure Projects. Standards for the Performance Phases of Engineers (2021).

³⁹ See the VDI website for more: <https://tinyurl.com/2b4a3z2k>.

⁴⁰ C. Lafont, Deliberative Democracy after the Digital Transformation, Apuz 43–45 (2023), p. 11.

complies with data protection law, Baden-Württemberg has had its own law in place since 2021.⁴¹

This is also where the Agency's focus lies. It is intended to support dialogic formats, which can complement early public participation by a public project sponsor. However, it usually involves conflict resolution at a much earlier stage, long before the first line of a plan is drawn. For example, a citizens' forum might be used to prepare for a decision on a new residential area. Such a citizens' forum would take place before the municipality's decision to initiate the planning process. Only after that would traditional public participation (§ 3 of the Federal Building Code) be considered.

It should be emphasized here that dialogic citizen participation is constitutionally permissible.⁴² Politically, this has occasionally been questioned.⁴³ The very contrived claim is that the free mandate of the representatives is at risk. Therefore, here is a clear quote from the respected Basic Law Commentary by Dürig/Herzog/Scholz (Introduction):

"Commissions, however many there may be, do not threaten the political decision-making ability of the Bundestag, even if they are not established solely to provide independent expertise but for other purposes, such as providing media-effective support for already decided initiatives or influencing public opinion and thereby indirectly shaping decision-making within the representative body."⁴⁴

In Baden-Württemberg, this is not an issue. § 1 (1) sentences 3 and 4 of the DBG state: "The outcome of dialogic citizen participation is recorded in a report. This is not binding for the responsible authorities."

V. What Are the Mechanisms of Citizens' Forums?

Citizens' forums are now widespread, with participants selected by lottery. This is crucial, as it marks a paradigm shift away from personal vested interests. The DBG secures this approach.⁴⁵ It's important to clarify a common misunderstanding here. In relation to random selection, the term "representative" is often mentioned. However, it is essential to differentiate between two concepts of representativeness.⁴⁶ There is statistical representativeness and political-legal representativeness. Citizens' forums are

neither statistically nor politically-legally representative. Statistical representativeness begins with 1,000 participants.⁴⁷ In this sense, even the large German Bundestag is not representative. Then there is the political-legal concept, where representation depends on an electoral act.⁴⁸ Such an electoral act does not exist in random selection. Therefore, criticisms of random selection for not being representative are misleading. Random selection never claims to be representative; it serves other purposes. Above all, it breaks the self-selection that occurs in public information events, where attendees are mostly older individuals, predominantly men over 60. Additionally, the diversity of participants fosters a stimulating environment for forming opinions. In Vorarlberg, just twelve participants are sufficient for this purpose.⁴⁹

Even more relevant is the empirically observed impact of a citizens' forum.⁵⁰ Three main aspects can be identified: filtering, sorting, and taking a long-term perspective.

Filtering involves discarding irrelevant or even manipulative arguments. Sorting focuses on prioritization—determining which arguments are more important than others. Often, we face conflicting goals, where both sides may have valid points. But how are these weighed? In the long term, citizens' forums show an advantage over day-to-day politics. Short-term gains are irrelevant to citizens' forums but are significant for political parties. It's always intriguing to see how objectively a citizens' forum looks far into the future.

The general public has recognized this, and empirical studies confirm it.⁵¹ Interestingly, in these extensive, nationwide surveys, party preferences were also polled. Over the years, it has become clear that only supporters of the Linke and AfD parties mostly favor direct democracy. All other groups vote by a clear majority for the concept of representative democracy supplemented by dialogic citizen participation. The surveys carefully distinguished between the different models.⁵² Notably, the model of "representative with dialogue" for decision-making preparation is clearly favored. Age, gender, or levels of government play little role in this preference.⁵³

VI. What Exactly Does the SDB Do?⁵⁴

⁴¹ Law on Dialogic Citizen Participation (DBG) from 02/04/2021 (Law Gazette 2021, 118).

⁴² A very detailed comparison of the arguments can be found in C. Ernst/E. Friedmann, VerwArch 2024, 16 (23 ff.).

⁴³ M. Friehe, "The Citizens' Council of the Traffic Light Coalition Violates the Basic Law," FAZ objection from 06/02/2023, available at <https://tinyurl.com/5d5tmdu6>.

⁴⁴ H. Klein/K. Schwarz, in Dürig/Herzog/Scholz (ref. 28), Art. 38 (as of January 2021) para. 62; see also U. Arndt (ref. 24), p. 385.

⁴⁵ In detail on the DBG: V. Böhm/J. Kersten, DÖV 2023, 361 ff.; U. Arndt, (ref. 5), p. 705; G. Erler (ref. 20), p. 152.

⁴⁶ Also see C. Ernst/E. Friedmann (ref. 42), p. 22, fn. 44; G. Erler (ref. 20), p. 170.

⁴⁷ On the 1,000-person threshold, see the legislative rationale for the DBG, LT-Drucks. 16/9486 p. 11.

⁴⁸ B. Grzeszick (ref. 28), Art. 20 paras. 68 ff.

⁴⁹ § 3 of the Directive of the Vorarlberg State Government (Austria) on Convening and Conducting Citizens' Councils; available at <https://tinyurl.com/b8p53hnn>.

⁵⁰ According to C. Lafont, (ref. 40), pp. 16 ff.

⁵¹ A. Vetter/F. Brettschneider, "Direct-Democratic or Representative: Which Decision-Modes Do Citizens Prefer?" Der moderne Staat 2023, 40–71. Open Access: <https://tinyurl.com/55zsfs3d>.

⁵² A. Vetter/F. Brettschneider (ref. 51), p. 53, Fig. 2.

⁵³ A. Vetter/F. Brettschneider (ref. 51), p. 56; A. Vetter/F. Brettschneider, "Satisfaction with Democracy and Trust in Institutions in Baden-Württemberg," ZfP 2023 583–607 (594). Open Access: <https://tinyurl.com/msycmk99>.

⁵⁴ Administrative Directive of the State Ministry on the Management and Organization of the Non-Legal Public Institution Advisory Unit of the Agency for Citizen Participation Baden-Württemberg, Joint Official Gazette 2022, 971 ff.

1. Responsibilities

The SDB advises authorities and publicly controlled companies. This distinction is important, as it clarifies that the stages of information and consultation are included. However, the next level, co-determination, is not included.⁵⁵ This pertains to citizen referendums and popular legislation, for which there are legally defined responsibilities (in Baden-Württemberg: §§ 2 sentence 2, 5 (1), 27 (1) sentence 1, 42 (1) sentence 1 of the Referendum Act, and § 21 (6) of the Municipal Code in conjunction with § 41 of the Municipal Election Act).

The Agency not only assists with the preparation of dialogic citizen participation but also supports its implementation. This includes situational analysis, choosing the appropriate participation format, and public communication throughout the process.

Often, however, dialogic citizen participation is not appropriate. This is the case, for example, when there are simply no options for action. In such instances, information becomes even more important (see the stages above). More specifically, this pertains to project communication. Here, too, the SDB provides support, explaining the importance of communication tailored to the audience's perspective.⁵⁶ Authorities and publicly controlled companies often focus on promoting their own messages.

Communication that focuses solely on conveying information falls short. From a citizen's perspective, it often feels like a "perceived special burden."⁵⁷ This pattern recurs in many advisory cases. To address this, it is first necessary to distinguish between types of conflicts.⁵⁸ We primarily observe the following types: goal conflicts (e.g., avoiding land consumption vs. providing sufficient housing), forecast or knowledge conflicts (e.g., how strong the wind will be at a new wind turbine location), and especially distribution conflicts.

An example of a distribution conflict is the construction of a cell tower. Project sponsors emphasize that emission levels are below legal limits. They may point out that a household microwave emits more radiation than a distant cell tower. However, from the perspective of those affected, the issue is not the emission levels but rather a perceived special burden. They feel they must bear the abstract risk of the cell tower for the benefit of many others, while other beneficiaries bear no burden. This is

⁵⁵ Citizen participation stages are often depicted in a pyramid structure, which includes the blocks of Information, Consultation, and Decision. However, there are countless variations of this pyramid.

⁵⁶ See also the debates at the 69th DJT; see Proceedings of the 69th DJT (ref. 8), Vol. II/2, M 138, 146.

⁵⁷ Fundamental perspectives on justice: N. Bandelow/B. Thies, *Perceptions of Justice in Large-Scale Projects as a Cause of Conflict Escalation? Trust and Legitimacy as Moderating Factors Illustrated by the Example of Conflicts Surrounding the Expansion of Frankfurt Airport*, in *Politische Psychologie*, 2014, No. 1, pp. 24–37. On p. 26, it states: "Distributive justice focuses on the relative distribution of goods among each other, procedural justice on the distribution criteria (method and manner), and interactional justice on the process of communicative exchange regarding the

also seen in noise issues. For years, Baden-Württemberg has been trying to find a new training site for the German Armed Forces. The noise from parachute training exercises is not legally significant in terms of disturbance. A new residential area was even built next to the current training site. Yet, wherever a new site is proposed, noise is cited as a concern. Here, too, it is about a perceived special burden. Residents in the proposed county for the new site express solidarity with those nearby, arguing that it is a city-country conflict, with Stuttgart exporting its burdens to the countryside.⁵⁹ Geothermal energy presents a clear example of the special burden debate, highlighted by demands for full insurance against property damage.⁶⁰ The argument that emissions will be within legal limits is unconvincing. Those affected argue that they bear a unique risk for the entire region. The concept of a special burden is not limited to debates on emission limits; it also appears in other disputes. In the citizens' forum on the length of secondary education, the comparison to other states was prominent. Here, the perceived special burden was that students in Baden-Württemberg had to endure more stress in an eight-year gymnasium system than students in other states with a nine-year system.⁶¹ The question was posed: why should Baden-Württemberg economize on education for its children by shortening the gymnasium years? Another example involves a new residential area, where even distant residents feel affected. Their perceived special burden includes concerns about fewer available appointments with their family doctor or increased traffic congestion in the city center.

Knowing such patterns helps improve project communication.⁶² This is also part of what the SDB does.

2. Public Relations

Accompanying communication is of enormous importance in practice. Here, two examples are relevant.

a) Common Attacks

First, there are the usual attacks on dialogic citizen participation. Procedural questions are questions of power, and certain interest groups target dialogic citizen participation. The patterns are always the same and very predictable. There is significant fear that randomly selected citizens might think "differently." This is especially true since dialogic citizen participation covers the full range of perspectives in a dispute. Interest groups of all kinds often "emphasize"—to put it mildly—only one

rules and outcomes of distribution. Perceived distributional justice is particularly central to the experienced trust in an organization."

⁵⁸ Fundamental work by C. Benighaus/H. Kastenholz/O. Renn, *Cooperative Conflict Management for Mobile Phone Transmitter Facilities*, in: Feindt/Saretzki (eds.), *Environmental and Technology Conflicts*, 2010, pp. 277 ff. (280 ff.).

⁵⁹ More on this: <https://tinyurl.com/49hh28xx>.

⁶⁰ Baden-Württemberg Parliamentary Document 16/9511, Link: <https://tinyurl.com/4a5btvuk>.

⁶¹ For the detailed report of the Citizens' Forum on G8/G9 (p. 19 on the comparison of federal states): <https://tinyurl.com/37tmfxcz>.

⁶² As early as the 69th DJT, it was emphasized how important it is to strengthen communication skills in the context of citizen participation, *Proceedings of the 69th DJT* (ref. 8), Vol. II/2, M 110 (as an example).

particular issue. That is their right. We are navigating a tension between civil society and citizen participation, and officeholders need protection. For this reason, the SDB assumes responsibility for the procedures in dialogic citizen participation. Authorities and elected officials already face enough challenges when it comes to deciding and justifying those decisions later on.

b) Prejudices

There are also persistent prejudices that need to be dispelled. A common claim is that dialogic citizen participation delays administrative procedures. This misconception arises simply from confusing dialogic citizen participation with public participation. Public participation is part of formal administrative procedures (§§ 66, 73 LVwVfG).⁶³ Dialogic citizen participation, on the other hand, runs in parallel to or—ideally—before such procedures. It has no impact on deadlines, applications, or administrative procedural decisions (§ 1 (2) DBG).

Instead, it serves decision-makers by helping them better understand public sentiment. Former State Counselor Gisela Erler referred to it as a “societal deep dive.” This metaphor is fitting. Dialogic citizen participation does not make decisions; it has a supporting role. In practice, dialogic citizen participation actually accelerates the process. It sorts through the issues, clarifies, and organizes them. It functions much like project management.

VII. Conclusion

Public discourse is changing. The internet has transformed the culture of debate, impacting administrative procedures. Well-organized citizen participation is beneficial in this context. It helps politically prepare decisions that require careful consideration, uncovers hidden needs, and relieves administrative procedures from proxy debates. It reduces bureaucracy, thereby speeding up decision-making.

⁶³ Critical perspectives on the usefulness of the hearing date: M. Zeccola/L. Augsten, DÖV 2022, 442 ff. P. Durinke/T. Elgeti, NVwZ 2024, 112 (118), are very critical of online consultations according

to § 27c VwVfG, which cannot adequately replace an in-person hearing.