

**SELECTED PRACTICES FROM THE NETHERLANDS, FRANCE,  
BRAZIL AND THE UNITED STATES WITH REGARD TO THE  
ORGANIZATION OF PUBLIC PARTICIPATION IN (WATER  
RELATED) DECISION MAKING OR ADVISING**

**Final Report  
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**New York University School of Law  
Regional Environmental Center for Central and Eastern Europe  
Resources for the Future**

Send comments to: Ernestine Meijer (New York University School of Law,  
meijere@juris.law.nyu.edu)



## **I. Introduction**

In the context of the UNDP/GEF Danube Regional Project, Project Output 3.4, the Consortium of the Regional Environmental Center for Central and Eastern Europe, Resources for the Future and New York University School of Law are assisting government officials and environmental NGO representatives from Bosnia and Herzegovina, Bulgaria, Croatia, Romania and Serbia in enhancing access to information and public participation in water related decision making. In each of these countries activities have been initiated on those subjects that are most important for the country.

In Romania, participants in the project have chosen to focus on the functioning of the eleven Romanian River Basin Committees. These River Basin Committees (RBCs) have advisory responsibilities in the field of water management. These responsibilities increasingly involve issues from the European Water Framework Directive (WFD) such as the creation of river basin management plans.

The Romanian RBCs were introduced in Water Law no. 107/1996 and put into place in 2001 on the basis of Governmental Decision no. 1212/2000 which provides procedures for the organization and functioning of the RBCs.

A questionnaire<sup>1</sup> recently submitted to members of all Romanian RBCs about their current practices shows at least three distinct issues of concern:

1. According to the applicable law, an election must be held for some representatives of specific interest groups to act as members of an RBC. Thus, all environmental and consumer NGOs working in a particular basin are to elect a representative to be member of the RBC. The law does not provide any details on how and by whom these elections should be organized. This has led to situations where persons sit on RBCs as NGO representatives without having been elected in a satisfactory way by the other NGOs in the river basin. Local authorities have not always been of assistance in making this process more satisfactory. At this moment, the relevant NGOs (as well as other identified stakeholder groups) must come up with a way of electing a representative.
2. Some of the current representatives of interest groups do not consult the organizations/groups they represent (their 'constituency') about decisions to be taken in the context of the RBC. No rules or guidance exist for such consultation.
3. Some of the current representatives of interest groups do not report back to their constituency about RBC meetings and the decisions taken in those meetings. No rules or guidance exist for such reporting back.

Although the answers to the questionnaire show that these problems apply to more categories of RBC representatives, not just those representing NGOs, the purpose of this report is to examine this issue with respect to the NGO representatives because these organizations have been our focus in project activities on the national level and on the local (demonstration project) level.

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<sup>1</sup> An analysis in Romanian of the answers to this questionnaire can be found at <http://www.recromania.ro/programe/drp/drp.htm> (last visited on 25 September 2006).

For the three issues of concern listed above, this report looks into how the representation of NGOs is organized in commissions / committees used as vehicles for implementation of water laws and regulations, in three different countries: the Netherlands, France and Brazil. It also discusses the example of the Clean Air Act Advisory Committee from the United States; an advisory committee with a membership that is to some extent comparable to the Romanian RBCs. In France a structure of RBCs (and smaller committees on a sub-basin level) is used. The Romanian model has been inspired by this French model and the Brazilian model is also similar. The organizational structure used in the Netherlands is different from Romania. The example from the US is also different, but it is useful for some of its organizational aspects. Detailed accounts of practices in Romania, the Netherlands, France, Brazil and the US are added as annexes I to V.

In the following, options based on practices from these four other countries are presented for each of the three issues of concern. These options are not always suitable to be transposed directly into Romanian practice. Some might be adapted and some could serve as ideas for further developing the election and functioning of NGO representatives on Romanian RBCs. It is of course up to the RBCs to see if and how these options and ideas could be used in their particular contexts.

## **II. Options, possibilities and ideas for Romanian RBCs**

### **1. Election of NGO representatives as RBC members**

The consumer and environmental NGO representative on a Romanian RBC is elected by the consumer and environmental NGOs working in the river basin.<sup>2</sup> This person therefore not only represents his/her own organization but officially represents all these NGOs working in the river basin. Because it is the responsibility of this person to officially represent the other NGOs in the river basin, he/she needs a real mandate from those other NGOs. This raises two issues:

- a. How do you identify the fully representative group of NGOs who would be entitled to vote (no major/important NGOs should be 'missing')?
- b. What could be a useful process for such elections?

#### *a. Representativity of organizations/entities that vote*

Practices from the countries investigated show a variety of approaches.

- **Option 1:** Criteria for which entities are eligible to vote are contained in a law or regulation; the RBC keeps a register of the entities that fulfill the criteria of the law/regulation.

This option reflects the practice of Water Boards in the Netherlands. Under Dutch law, criteria for who is allowed to vote are laid down in the Law on Water Boards. Those who fulfill these criteria must pay water taxes to the Water Board. They are allowed to vote and

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<sup>2</sup> The requirement that the NGO representative has to be from an environmental or a consumer protection, having its headquarters in the respective river basin, can be found in Governmental Decision no. 1212/2000 for the organization and functioning of the RBCs.

they are, in principle, also allowed to be elected. The Water Board itself keeps official registers of the persons /entities that fulfill the criteria for voting (and being elected).

To use this approach in Romania (for the question of which NGOs can vote for a representative on the RBC) would require a law or regulation that defines exactly which are the criteria to be allowed to vote. The RBC itself would keep (and update) a register of the specific entities that fulfill all criteria. Part of this should be a process in which NGOs have the opportunity to address the RBC and request to be placed on the register (in order to play a role in the election of their representative).

Advantage:

- This approach provides a considerable amount of legal certainty and transparency: criteria are laid down in a law and, based on those criteria; a list of NGOs is kept by the RBC.

Disadvantages:

- It is a highly formal approach. The process is drawn from an institutional structure that includes taxes and related rights from paying taxes.
- Most of the responsibility for ensuring that all relevant NGOs working in the river basin can in fact vote is placed with the RBC and not with the NGOs.
- The financial and organizational burden for keeping and updating a register of NGOs would be completely with the RBC.
- NGOs in the river basin would have little control over who is on the list.

- **Option 2:** An assembly or sub-assembly of NGOs (or a river basin-branch of that assembly) is created to include all or most of the NGOs working in the river basin as its members. It ensures that a representative number of NGOs elect the NGO representative.

This option reflects French practice. France Nature Environnement (FNE) is the association of Environmental NGOs (ENGOS) in France. It is a formal assembly of ENGOS, with a fixed internal structure, elections for internal positions and an established role within French society. Although not required by law, in practice the regional branches in the river basins of this organization are responsible for suggesting ENGO candidates on RBCs. The reason for this role is that FNE is considered to represent all, or almost all, ENGOS.

Elements of the French example can be useful for Romania so long as some differences are acknowledged. French RBCs have separate seats for NGOs that represent different sectors (e.g. *environmental*, *consumer*, *fisheries* etc). Therefore an organization like FNE can coordinate the nomination of the *environmental* NGO candidate, while the association of consumers coordinates the nomination of the *consumer* NGO candidate and the fisheries association coordinates the nomination of the *fisheries* representative, etc.. In Romania, each RBC has one seat for a representative of both environmental and consumer NGOs working in the river basin. If an organization would coordinate the election of the NGO representative on an RBC, it would have to be an organization representing all relevant environmental and consumer NGOs.

In as far as the available information on Romania shows, there is no national organization for both consumer and environmental NGOs. There is however a national NGO website [www.ngo.ro](http://www.ngo.ro), which seems to cover a number of subject areas, but this website does not seem to provide a national institutional structure comparable to FNE. If the consumer and environmental NGOs in the river basins have organized themselves in the form of an assembly, such an organizational structure could play a coordinating role in the election of NGO representatives and could ensure that a representative number of organizations participate in the election process. Another option would of course be to set up a structure similar to FNE for all (consumer and environmental) NGOs in Romania or a structure for these NGOs in different regions/river basins.

Advantages:

- Once the structure is in place (on a basin level and/or on a national level) it can be used not only to coordinate the election of the NGO representative on the RBC but also for other purposes.
- Such a structure would give the NGOs full control over the election process.

Disadvantages:

- This option is a relatively formal one that depends on the availability of a formal association of NGOs.
- The financial and organizational burden of ensuring representativity (including costs for going to assembly meetings) would be on the NGOs in the river basin; it may be difficult to generate the necessary resources on a continuing basis.

- **Option 3:** the consumer and environmental NGOs in the river basin use the national NGO website (or create a similar website on the river basin level) to get together electronically and ensure that a representative group is available to elect a representative on the RBC.

An ‘electronic variation’ on the French theme of a basin level branch of a formal assembly could involve the Romanian NGO website. At this moment, for example, a Romanian network of a large number of environmental NGOs is linked to the national NGO website. They use this website and different electronic mailing lists for communication and discussion on different environmental issues, including water issues, preparation for events, campaigns, etc. Bringing together all relevant NGOs (environmental and consumer) in a river basin or sub-basin in order to get them to vote on a representative could take place through a network linked to this national website or a specific river basin website. This could be another way of ensuring the representativity of the group of NGOs.

Advantages:

- Using a website is an easier way to get a representative group of NGOs together than setting up a formal assembly structure.
- Once the electronic structure is in place it can be used not only to coordinate the election of the NGO representative on the RBC but also for other purposes.

Disadvantages:

- This option requires that NGOs have easy and well functioning internet access; the option excludes those NGOs that do not have such access.

- The financial and organizational burden of keeping in place such an electronic network would be on the relevant NGOs in the river basin; it may be difficult to generate the necessary resources on a continuing basis.
- **Option 4:** A stakeholder analysis is conducted to identify all interested consumer and environmental NGOs; the resulting assembly of interested NGOs elects a representative on the RBC.

This option is based on practice of the Miranda RBC in Brazil. Over a three year period, the NGOs in this river basin themselves conducted something that could be characterized as a stakeholder analysis and constituted an assembly of all relevant and interested organizations. This assembly of NGOs officially elected its representatives on the RBC.

Transposing this practice to the Romanian situation would mean that in each river basin consumer and environmental NGOs should organize themselves together and make an inventory of all relevant and interested NGOs. These NGOs would eventually play a role in the process of electing a representative on the RBC. In order for such an approach to succeed, one or two NGOs would have to take the lead and start the process of bringing together the relevant and interested NGOs. This may not be easy in all river basins.

Advantage:

- This option gives the consumer and environmental NGOs in the river basin full control over the election process.

Disadvantage:

- The financial and organizational burden of organizing such a stakeholder process, falls on the NGOs and it may be difficult to find funding for this.

*b. Voting process*

- **Option 5:** Criteria for applying as a candidate are set by law/regulation and/or by the RBC; the RBC puts into place a formal voting process; and the RBC establishes who will be the NGO representative based on the votes.

As explained above, Romanian law requires that the NGO representative be elected by the environmental and consumer NGOs working in the river basin. Examples from the four other countries, that show more informal ‘elections’ or processes that are not elections but nominations, therefore do not apply. Within the countries researched, this leaves us with only one directly applicable example: the election of the members of Dutch Water Boards.

Persons who wish to be elected as members of Dutch Water Boards make themselves available for election in an individual capacity (they are not representing one or more organizations). Only persons fulfilling certain criteria and having a number of ‘support votes’, can be candidates in the election. The Water Boards decide themselves on how many support votes are needed as a minimum. Printed voting cards are sent to all those who are allowed to vote. They have to fill in the card and send it back to the Water Board within a certain time period. The Water Board counts the votes and determines who the

winners are. In the case of one specific Dutch Water Board, the Rhineland Water Board, internet voting was used as an alternative to paper voting.

Some of the elements of this formal Dutch voting process may be useful for the situation of Romanian RBCs. However, as discussed in the previous subsection, such formal elections require a well defined and representative group of voting NGOs. We assume here that this can be done in Romania. It should also be noted that the Dutch Water Boards have more extensive responsibilities than the Romanian RBCs which more easily justifies the formality and cost of their selection process.

If the idea to have criteria for candidates would be transposed to Romanian RBCs, it would mean that consumer and environmental NGOs working in the river basin, or individual persons from these NGOs, would have to present themselves as candidates for the position of NGO representative on the RBC. They would need a minimum number of ‘supporters’ (other consumer and environmental NGOs supporting the candidacy) to become official candidates - if a person or an NGO would present him/her/itself as a candidate, but no other NGOs would support the candidacy, the candidacy would fail. This is a practical solution to keep the list of candidates limited. The minimum number of support votes could be set by each individual RBC (like in the Dutch situation) but it is also possible to set a general minimum in a law or regulation.

The RBC would have voting cards printed listing all candidates, and send these out to all NGOs working in the river basin. These cards would have to be returned to the RBC within a set time, and the RBC would announce the ‘winner’. Alternatively, the RBC could provide the option of internet voting.

This approach for the choice of candidates brings advantages and disadvantages.

Advantage:

- It allows the relevant NGOs to have full control over who are presented as candidates for NGO representative.

Disadvantage:

- A process such as the one suggested here may be too complicated and too formal for the Romanian situation. The option may be too much linked to the specific role and responsibilities of the Dutch water Boards.
- It puts the burden of organizing and financing on the individual NGOs working in the river basin. However, the financially most burdensome activity, i.e. the organization of the actual elections (sending out cards, counting votes etc.), would be on the RBC and not on the NGOs. Since one of Apele Romana’s recent proposals for change for Romanian RBCs is to provide RBCs with a proper budget for their activities, it may be more realistic that the RBCs carry this financial burden.

- **Option 6:** Criteria for applying as a candidate, and the formal voting process are organized by the collectivity of consumer and environmental NGOs; based on the votes, the NGOs themselves establish who will be their representative on the RBC.

An option very similar to the one presented above (option 5), would designate the collectivity of consumer and environmental NGOs working in the river basin, rather than the RBC, to organize the election process. This is more or less the basis on which the current demonstration project for the Mures RBC (mentioned above) is functioning.<sup>3</sup> It would mean that the entire process, from presenting candidates for election, to the final election of a representative, would be the responsibility of the NGOs. The electronic network, discussed above under option 3, could be used by the NGOs to organize elections and even to create an online voting process.

Advantage:

- The NGOs themselves have full control over who will be their representative.
- If an online network would be used, costs might be less than with a 'regular' voting process.

Disadvantage:

- The entire financial burden of elections is put on the NGOs.
- If an online network is used, relevant NGOs in the river basin that do not have proper internet access will be excluded from the voting process.

## 2. Consultation of NGO constituency before RBC meetings

- **Option 7:** The NGO representative consults specific NGOs on specific topics to be discussed in the upcoming RBC meeting.
- **Option 8:** The NGO representative sends an open invitation to all NGOs to meet before an RBC meeting to come to a common point of view on topics to be discussed in the upcoming RBC meeting.

Most of the examples from the other countries researched provide little help on the issue of constituency consultations prior to a meeting.<sup>4</sup> Most of the examples show no obligation to consult and no practice to do so. A relatively useful example is the situation described by one of the French ENGO representatives on the Loire-Bretagne RBC. He explained that although he is under no legal obligation to consult his constituency, he conducts informal consultation from time to time before RBC meetings. He mentioned two examples. The first one was that he will contact and consult specific organizations if he anticipates they will have a particular interest or knowledge in specific issues to be discussed in an upcoming RBC meeting. Second, he sometimes sends an email to the other ENGOS in the river basin, proposing to them to get together some time before the actual RBC meeting to discuss one or more of the subjects that are on the RBC agenda. He preferred the 'individual consultations' over a more general consultation of all ENGOS on all RBC agenda items because it would be too time consuming to consult everyone and many of the subjects on the agenda of the RBC were not of interest to the entire ENGO community in the basin.

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<sup>3</sup> For a short English summary of the demonstration project, see [http://www.focuseco.ro/?page=rec\\_en](http://www.focuseco.ro/?page=rec_en) (last visited on 21 September 2006).

<sup>4</sup> This includes consultation of only one organization (by the person who sits on the commission/committee as a representative of only that organization) and consultation of a group of organizations (by the person who sits on the commission/committee as a representative of this group of organizations).

Both practices may be useful as examples for Romanian RBCs. The NGO representative on the RBC could consult specific individual NGOs on specific issues that are on the RBC agenda.

Advantages:

- The NGO representative acquires first hand input by an interested and knowledgeable NGO and can on this basis give an informed point of view in the RBC meeting.
- Consultation is targeted and limited and therefore does not impose too high a financial burden and does not take up too much time.

Disadvantages:

- This approach presupposes that the NGO representative has in-depth knowledge about all the NGOs he/she represents and what their areas of expertise and interest are.
- It requires a well defined and organized group of NGOs and accessible information on expertise and interests of each of them. This may not be possible on all river basins. However, making an inventory of all relevant NGOs (as was done in the Miranda River Basin in Brazil) to list experience and expertise, would be a significant step in the right direction.
- If an NGO can pick and choose who he/she consults, this may lead to a situation where some NGOs are never consulted even though they would want to.

The other example mentioned could also be transposed to the Romanian situation: before each RBC meeting the NGO representative on the RBC could send an invitation to *all* consumer and environmental NGOs working in the river basin, inviting them to meet shortly before an RBC meeting and discuss the relevant issues on the RBC agenda.

Advantage:

- A general consultation ensures that *all* these NGOs have the opportunity to be heard by the representative on an issue. The representative cannot pick and choose.

Disadvantage:

- A general consultation may be burdensome and time consuming for the representative.

Especially for a more general consultation of *all* consumer and environmental NGOs, it is important that the NGOs and their representative agree on beforehand on terms of reference or rules on what the responsibilities of the representative with regard to consulting his/her constituency.

### **3. Reporting back to NGO constituency after RBC meetings**

Unfortunately no examples were found of practice for reporting back after meetings, much less any legal or other *obligation* to report back. Where a person is only representing his/her own NGO, this is understandable and a matter of internal organization. The same goes for a person who serves on a commission/committee/board only in an individual capacity and who has no constituency to report back to. However, these situations are different from the situation of an NGO representative on a Romanian RBC, who officially represents a group of consumer and environmental NGOs.

Even for a situation comparable to that of the NGO representative on a Romanian RBC, the practices from the other countries provide no useful options. In the case of the French ENGO representative on the Loire Bretagne RBC, the information shows that there is no formal obligation to report back and the person interviewed indicated that he only occasionally reported back because doing so on a regular basis would be too time consuming and expensive.

#### **4. RBC information provision as a complement to consultation and reporting back**

As discussed in sections 2 and 3, the examples from other countries show that very little has been done there to put in place formal structures of consultation and reporting back. The examples do not show well organized informal practice either. In this respect the examples from the other countries are not very different from the current situation of the NGO representatives on the Romanian RBCs.

- **Option 9:** The RBC provides information to the public on upcoming meetings, allows for comments on documents regarding this meeting and afterwards makes available minutes and decisions of this meeting.
- **Option 10:** The NGO representative provides information to the public on upcoming meetings, allows for comments on documents regarding this meeting and afterwards makes available minutes and decisions of this meeting.

Examples from the other countries do show is that the respective commissions/boards etc. *themselves* have taken on a role of some importance in information provision. Often, the agenda and other relevant documents for commission/board meetings are put on a website by the commission/board, rather than the individual members of the commission/board, so that everyone interested can find out what will be discussed in an upcoming meeting. After the meeting, minutes of the meeting are also posted to provide information to the public about discussions and decisions.

It should be noted right away that such information provision by the commissions/boards cannot be a substitute for consultation of or reporting back to specific constituencies by their (elected) representatives. However, this information provision can function as a complement to consultation and reporting back. And in the absence of consultation or reporting back, it can temporarily fill a void.

The most advanced example of this is the United States Clean Air Act Advisory Committee (CAAAC). The agenda for CAAAC meetings is published on the Committee's webpage about 15 days before a meeting. Any member of the public has the right to comment (by letter, email etc.) on the agenda. Minutes of a meeting are also placed on the webpage (but only after they are approved by the administration of the EPA, the overarching governmental organization). Members of the public also have the right to comment on the minutes. However, there is no obligation for the administration to respond to these comments.

A similar approach could be useful in the Romanian context. RBCs are required by law to ensure public information, to make available a period of time for receiving public

comments, to arrange public hearings on all the subjects proposed for approval by the RBC, and to ensure the public access to its documents. As a first step, and awaiting more elaborate rules and practices on consultation and reporting back of the members, the Romanian RBCs could each have a webpage for routine provision of all relevant documents and the agenda some time before an RBC meeting, to allow members of the public to comment (by letter or email) on these documents, and to make sure that after each meeting, the minutes of that meeting as well as a list of decisions that were taken during the meeting, are placed on this webpage.

Another option would be to designate the NGO representative to provide this information and collect comments. He/she could put the relevant documents on his/her own webpage or send them to one or more networks of NGOs, accompanied by an invitation to provide comments.

Advantages:

- The approach makes the activities of the RBC more transparent.
- It provides insights to RBC process that one cannot get otherwise.

Disadvantage:

- Collecting the comments and putting them to good use for RBC decision making is very time consuming and expensive for the RBC or the NGO representative.

### **III. Conclusion**

In the above, three issues of concern with regard to the functioning of Romanian RBCs are discussed: the election process of NGO representatives in Romanian RBCs; consultation by the NGO representative of his/her constituency, and reporting back to his/her constituency by the NGO representative.

Based on research of comparable commissions/boards in the Netherlands, France, Brazil and the United States, a number of options have been provided for each of these issues and with each option advantages and disadvantages are given, some of which are specific to the situation of Romanian situation.

The options are not all suitable for direct application to Romanian RBCs, but they can be used as a source of inspiration for further developing the rules and practices of Romanian RBCs and more particularly of the functioning of NGO representatives on Romanian RBCs.

<b>ANNEX 1</b> <b>River basin committees in Romania</b>
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Under its current water legislation,<sup>5</sup> Romania has been divided into eleven river basins. A River Basin Committee (RBC) has been appointed for each of these basins.<sup>6</sup> RBCs have advisory powers with regard to water management issues.<sup>7</sup> RBC members serve on the RBC for a period of four years and they can be re-elected or re-nominated. RBC members can be replaced by those who selected or elected them. RBCs generally have 4 meetings per year.

<sup>5</sup> Water Law no. 107/1996 with modifications and amendments (Law no. 310/2004), Governmental Decision no. 1212/2000 for the organization and functioning of the RBCs.

<sup>6</sup> Someș-Tisa, Crisuri, Mures, Banat, Jiu, Olt, Arges-Vedea, Buzau-Ialomita, Siret, Prut-Barlad, Dobrogea -Litoral.

<sup>7</sup> Responsibilities of the RBCs under the Water Law are:

- to agree with the accidental pollution prevention and control plans, developed in consistency with the relevant river basin conditions;
- to propose review of norms and standards for water management and, if necessary, to elaborate effluent quality norms specific to the river basin (which norms may be more stringent than those at national level);
- to establish special norms for wastewater discharges and, if necessary, norms for compliance with water quality regulations;
- to approve the identification of the watercourses quality classes from the relevant river basin;
- to recommend priorities concerning the financing and compliance, in order to carry out the development programs of the water works, installations, and arrangements;
- to ensure public information, and to guarantee a period of time required to receive public comments, to arrange public hearings on all the aspects proposed for approval, and to ensure the public access to its documents;

In 2004 through Law no. 310/2004, the 1996 Water Law was revised so as to harmonize the Law with the European Water Framework Directive (WFD). The following new tasks were added to the existing tasks of the RBCs:

- to agree with the river basin management plans and the programs of measures created to achieve the objectives specified under the river basin management plans and to carry out water management works, installations and arrangements (the river basin management plans and the programmes of measures are developed and reviewed by the National Administration “Apele Romane”, and approved through Governmental decision).
- to approve the local schemes through setting up the technical and financial priorities and to integrate the local schemes into the river basin management plans;
- to agree on a list of protected areas and to establish ecological reconstruction measures for the proposed zones;
- to involve the central public authorities, county councils and local councils in producing, reviewing and updating of the river basin management plans (these authorities are required to make available all useful information that is within in their competence).
- to ensure that, through their own website, they make available for comments to the public, for at least six months:
  - a timetable and work programme for the production of the river basin management plan, including an overview of the consultation measures to be taken, at least three years before the date of approval of an updated river basin management plan;
  - an interim overview of the significant water management issues identified in the river basin, at least two years before the date of approval of an updated river basin management plan;
  - draft copies of the river basin management plans, at least one year before the date of approval of an updated river basin management plan.

An RBC has a permanent technical secretariat of 3 – 5 persons, provided for by the River Basin Directorates of the National Administration “Apele Romane”.

When carrying out the activities within their mandate RBCs have access to the information and resources of any public institution.

Each RBC has the following members:

- 2 representatives of the central public authority responsible for water and environmental protection, one of which shall be from, and nominated by, the Environmental Protection Agencies in the relevant river basin;
- 1 representative from the central public authority in the health field, selected from the County Health Police and Preventive Medicine Inspectorates of the relevant river basin;
- 1 prefect from the relevant river basin nominated by the local Public Administration Department;
- 1 prefect, nominated by the central public authority responsible for public administration;
- 2 representatives of the National Administration “Apele Romane”;
- 1 county council president, elected by the presidents of the county councils in the river basin;
- 1 representative from the National Authority for the Consumers Protection, nominated by this Authority;
- 3 mayors (2 from municipalities and 1 from a village), elected by the mayors from the river basin;
- 1 representative of NGOs (environmental or consumer protection NGOs) elected by the NGOs working in the river basin;
- 3 representatives of water users within the river basin, elected by the water authorities.

The current RBCs are serving their first term. For reasons of practicality some of the NGO members of these ‘first term RBCs’ who, according to the rules must be elected, were not elected but appointed by the government as RBC members. This was because no process or infrastructure was in place yet for such elections. However, even though it requires certain members to be elected, Romanian legislation does not provide any details with regard to the election. It merely states that these representatives ‘are elected’ without specifying what this election process should look like or who would be the ones electing this representative. The fact that there are no rules in place for the election of the one NGO representative has led to criticism from other NGOs. They have complained that they were not involved in the election of their representative and/or that the election process was deficient.

Similar criticisms have been voiced with regard to the way the members of the RBC consult the interest groups they represent in order to come to a common understanding/point of view on issues that will be discussed in an upcoming RBC meeting. The answers to the questionnaire presented to all the RBC members, shows that although RBC members are representing interest *groups* (a group of organizations, not ‘just’ the interests of their own organization), they do not regularly consult members of their group on issues that are to be discussed in upcoming RBC meetings. The situation is comparable for reporting back after an RBC meeting: there is little of that.

Following up on some of these criticisms, a local demonstration project in the context of UNDP/GEF Danube Regional Project, Project Output 3.4 is focused on improving the information to and participation of NGOs in the context of the Mures RBC and on improving the election process for an NGO representative (by providing draft election rules).<sup>8</sup>

Recently the National Administration “Apele Romane” has proposed the following changes so as to improve the organization and functioning of the RBCs:

- To increase the number of RBC members by allowing new stakeholders involved in the elaboration of river basin management plans<sup>9</sup> as members;
- To ensure that a budget is available for those expenses necessary for the proper functioning of the RBC;
- To provide a session allowance for RBC members;
- To cover travel and accommodation expenses of RBC members;
- To provide a monthly allowance for members of the Permanent Technical Secretariats of the RBCs;
- To ensure that during working sessions of the RBCs, each representative of an interest group has the possibility to present the observations and opinions of his/her group on issues discussed in previous working sessions.

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<sup>8</sup> For a short English summary of the demonstration project, see [http://www.focuseco.ro/?page=rec\\_en](http://www.focuseco.ro/?page=rec_en) (last visited on 21 September 2006).

<sup>9</sup> These include County offices for agriculture and rural development, Forestry Divisions, territorial committees of the Romanian Water Association, County offices for pedological and agrochemical studies.

<b>ANNEX II</b> <b>Practices in the Netherlands</b>
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Participation of representatives of certain interest groups in water decision making has been common practice in the Netherlands for a number of years in so-called ‘waterschappen’ or Water Boards. This participation existed long before the WFD instituted requirements in this respect. However, the WFD has led to the creation of additional bodies for participation of the public and civil society, in addition to the already existing ones. In the following, we shall first discuss the Dutch Water Boards and then look at WFD-inspired participation initiatives in the Netherlands.

## **1. Waterschappen**

Water Boards are the organizational structures for water decision making that have been functioning for a long time in the Netherlands. They are considered government agencies. There are 27 Water Boards in the Netherlands. This is an example of representatives elected from particular stakeholder groups who are not required to consult with their constituencies. The Water Boards fulfill a very important role in Dutch governmental culture.

Water Board members represent specific groupings of stakeholders. If you are part of a specific group of stakeholders, you pay water taxes to the Water Board and if you pay these taxes you are entitled to representation on the Water Board. The (tax paying) interest groups that have representation on Water Boards are:

- those who own immovable property (land) or have certain specific rights with regard to this immovable property in the geographical area of the Water Board;
- those who own movable property (houses, buildings) in the area of the Water Board;
- those who are inhabitants of the area of the Water Board;
- those who use their immovable property in the area of the Water Board for business purposes (‘business property’).

The total number of members of a Water Board is based on the size of the geographical area the board covers. The number of representatives of each category on a Water Board is decided based on the importance of their interests in the Board’s activities (taking into account the amount of taxes paid by the category). Each Water Board decides for itself on the number of representatives. Provincial authorities play a role in this decision making.

Any person who is a member of one of the above mentioned categories and who pays taxes for that category can be elected on the Board. Members of each category who make themselves available for election have to show they fulfill the requirements for that category. The Water Board itself also keeps a register of persons for each category. A person who, wrongly, is not on the register can request the Water Board to be placed on the register. In order to be eligible for election, a person has to have the support of a certain number of other members of the category (each Board decides for itself how many of those ‘support votes’ are needed). Those who are available for election *qualify* because they belong to one of the categories described above. However, it is important to note that these persons serve on the Board in an *individual* capacity. This means they are not required to

consult their 'constituency' for decision making. Once the constituents have given them the trust of their vote, the representative is free to operate on his/her own and has no obligation to consult their constituency (the constituency being the other members of the category).

Elections for the Water Board are organized by the Water Board itself. Those who fall within the categories mentioned above and are allowed to vote get a voting card by mail. In practice the number of people who actually vote for Water Boards is small. In general, most people do not have much of an idea what Water Boards are about and how they can take decisions that affect their interests.

Once a Water Board is established it serves for four years. Several meetings are held each year. Meetings are public unless one fifth of the Board members present or the chairman decides the meeting should be closed. All documents discussed in the meeting, and the reports of the meeting are public unless special circumstances require their secrecy or secrecy of part of the documents.

Take for example the Water Board of Rhineland, one of the larger Water Boards in the country. The Board has 36 members: 6 members of the category immovable property, 8 for movable property, 18 representing the inhabitants and 4 representing business property. Because the area of the Water Board is relatively large, it has been cut up in three election districts (north, middle and south). The representatives of each category not only represent their category but also a geographical part of the Board's area. Of the 18 representatives of inhabitants, for example, 6 are to represent district south, six the middle and six represent north.

Although those who are available for election on the Water Board do this in an individual capacity, at election time they often make clear that they have the support of certain organizations. Some members of the Rhineland Water Board, for example, have the endorsement of environmental organizations, of agricultural organizations, the local Chamber of Commerce etc.

In the most recent elections for the Rhineland Water Board in 2004, a special website [www.rijnlandkiest.nl](http://www.rijnlandkiest.nl) ('Rhineland elects') was dedicated to the elections. On this website each candidate had his/her own webpage where they explain who they are, which issues they consider important, why people should vote for them, which organizations endorsed them, etc. In addition, there was an internet debate where the candidates presented and discussed their views. Also a 'candidate journal', with information on the candidates was distributed in the Water Board area.

In 2004, those allowed to vote in the Rhineland Water Board area could either vote by mail or (a novelty!) through the internet. On average 17% of those eligible to vote did so.

The Rhineland Water Board will meet 8 times in 2006. Its agenda and minutes of its meetings are found on its website, as well as other relevant documents.

## **2. Klankbordgroepen**

Under the WFD, the Netherlands has been divided into 4 river basin districts: Rhine, Meuse, Scheldt and Ems. All are part of larger international river basins. For each of these districts, a governmental policy and decision structure has been set up, including a Regional Administrative Consultation (RAC). Attached to these government structures are one or more ‘klankbordgroepen’ or sounding board groups (SBGs) for each district. There are four SBGs for the Rhine district, one for Meuse, one for Scheldt and two for the Ems district. The SBGs consist of representatives of specified stakeholder organizations.

In order to organize the public participation component of the WFD within the Netherlands a national working group on communication coordination was established by the national government. This working group created a tentative list of organizations which it thought important to involve in policy and decision making.

These SBGs are meant as a first start in the participation of interest groups in WFD based policy and decision making. They have an informal character and have only recently started functioning. There is hardly any information publicly available about them; apart from lists of the members of some SBGs. Informal communications with the secretariats of two of these SBGs has provided some more information.<sup>10</sup>

#### *a. Scheldt SBG*

An SBG was established for the Scheldt River at the initiative of provincial authorities. These provincial authorities have deliberated on the different organizations that should be part of the SBG and have invited them to participate. Only NGOs representing a more overarching interest (environment, tourism, agriculture etc.) were invited. Smaller groups of inhabitants, for example, could not participate in this SBG. The interests represented include environment, drinking water, agriculture, commerce, fisheries, recreation and national parks. Each of the NGOs sends a representative to the SBG whenever subjects are on the agenda that are of interest to the organization. These representatives report back to their organization in any way they want. There are in fact no rules for the functioning of this SBG. It is important to note that the members of the SBG represent only their own specific organizations, not groups of organizations.

In 2006 the Scheldt SBG will meet 6 times. This is equal to the number of times the RAC takes place. The SBG advises the RAC. The agenda for the SBG is largely dominated by issues that will come up in the RAC. However, it is possible for SBG members to add subjects. This way, the SBG advises on these ‘new’ subjects and they are brought to the attention of the RAC.

At the end of a meeting, the SBG comes up with “advice” for the RAC. This advice does not have to be unanimous and can contain diverging opinions. The RAC is under no obligation to follow the advice of the SBG. However, practice so far shows that in most cases the RAC takes serious notice of this advice and follows it. According to the person I spoke to, this may have to do with the fact that no controversial issues have been on the agenda yet.

The agenda and minutes of the SBG meetings are public documents. The idea is that all of these are easily available on the website of the SBG. At this moment these documents are

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<sup>10</sup> Communications from Rob Immink, Provincie Gelderland and Jacques Hamelink, Provincie Zeeland.

not there. When asked, it was explained that the website is still in an early phase and that these things will change soon.

*b. Rhine-West SBG*

On the Rhine West SBG specific individual NGOs (N.B. again, not interest groups consisting of *several* organizations), similar to those on the Scheldt SBG are represented. The SBG was established by the coordination entity of the regional administrative entities. The lists provided by the national communications group, referred to above, were used as a first start. The entities have invited more organizations and some organizations have themselves indicated an interest in participating in the SBG. There is no time limit to the participation of these representatives. Most aspects of the organization of this SBG are similar to the Scheldt SBG. Like for the Scheldt SBG, there are no specific rules for the functioning of this SBG, the SBG advises the RAC and this advice does not have to be unanimous.

*c. Caveat*

Both contacts at the SBGs emphasized that the phenomenon of the SBG has little real power. SBGs are meant to make a first start with involving interest groups in certain policy questions and to get a clear idea of which are the interests involved. SBGs can exert some pressure on decision making but not very much. In 2008/2009 when the WFD requires full public participation on river basin management plans, the general Dutch rules on public participation will apply. These rules provide a strict format, with set procedures and deadlines.

**ANNEX III  
Practices in France**

Romanian RBCs have looked for inspiration to the system of RBCs in France. In France, water management has been organized since 1964 according to six main catchment areas.<sup>11</sup> Within each of these six river basins an RBC and a public Water Agency were set up. The Water Agency, together with the *Conseil d'Administration* forms the 'executive' when it comes to water issues in the basin, while the RBC functions more or less like a 'parliament'.

The French RBCs have the following members:<sup>12</sup>

	Region	Departments	communities	Water users and competent persons	State	professionals	total
Adour-Garonne	6	20	12	38	19	6	101
Artois-Picardie	3	17	9	29	15	2	75
Loire-Bretagne	8	29	12	49	23	8	129
Rhin-Meuse	3	16	7	26	15	3	70
Rhône-Méditerranée-Corse	6	29	13	48	22	6	124
Seine-Normandie	7	26	12	45	21	7	118

The Council of each of the Water Agencies consists of:

- representatives of local territorial government entities (region, department etc.) , chosen from and by the local collectivité representatives that sit on the RBC
- representatives of water users, chosen from and by the water user representatives that sit on the RBC<sup>13</sup>
- representatives of the State (different Ministries)<sup>14</sup>

Publicly available information on the functioning of RBCs in France is somewhat limited. In order to obtain more information, I contacted an employee of the RBC for the Loire-Bretagne basin and two members of this RBC who are representatives of Environmental NGOs (further "ENGOS").<sup>15</sup>

<sup>11</sup> Adour-Garonne, Artois-Picardie, Loire-Bretagne, Rhin-Meuse, Rhône-Méditerranée-Corse, Seine-Normandie.

<sup>12</sup> Décret no 99-764 du 6 septembre 1999 modifiant le décret no 66-699 du 14 septembre 1966 relatif aux comités de bassin créés par l'article 13 de la loi no 64-1245 du 16 décembre 1964.

<sup>13</sup> Among these there should be at least one representative of:

- a fisheries organization;
- a nature and environment conservation organization;
- a national consumer organization.

<sup>14</sup> Décret no 99-765 du 6 septembre 1999 modifiant le décret no 66-699 du 14 septembre 1966 relatif aux agences financières de bassin créés par l'article 13 de la loi no 64-1245 du 16 décembre 1964.

<sup>15</sup> Marion Robiliard, Agence de l'Eau Loire-Bretagne, Martin Arnoult, WWF, Bernard Rousseau, FNE.

## 1. Comité de Bassin Loire-Bretagne

The Loire Bretagne RBC consists of representatives of three different groups, identical to the groups on the water Agency:

- representatives of local territorial government entities (region, department etc.);
- representatives of water users (agriculture, industry, consumers organizations, nature and environment organizations, fisheries organizations);
- representatives of the State (different Ministries)

All members are appointed by the ‘coordinating prefect’ in the basin for six years and can be re-appointed.

The representatives on the RBC are nominated by the groups they represent and the official appointment is done by the ‘coordinating prefect’ in the basin. So, for example, the representative for the mayors of municipalities is nominated by the Mayors Association of France, the representative for agriculture is nominated by the Chamber for Agriculture and the representative for industry is nominated by the Chamber for Industry. The representatives for ENGOs are nominated with the help of the regional water-branch of ‘France Nature Environnement’ (FNE) which is the national coordinating organization for ENGOs in France. FNE is an association of ENGOs and most of the French ENGOs are part of FNE. There are five representatives of ENGOs on the RBC.

I asked a representative of FNE how this association picks the ‘environmental representatives’ for the RBCs. He told me that FNE has several working groups. These groups discuss possible nominations, looking at the qualities of certain people, their political weight, and the time they have available (being a member of the RBC is a voluntary activity, the person is not getting paid). They also try to achieve some kind of geographical balance. There is no official process in place for the designation of these nature and environment candidates. So far it has been difficult to find enough qualified people to fill the available seats on the RBC, so there has never been a need for a more official (election) process. After internal deliberations, FNE draws up a list of persons and the prefect officially nominates them.

Within the current five members of the RBC that represent nature and environment interests, it was pointed out that there are some subtle differences. The positions taken by the two ENGO representatives I talked to demonstrate these differences. The representative of FNE explicitly stated that he sits on the RBC as a representative of all the ENGOs that are part of FNE. His explanation was that he is a volunteer who was elected in a position within the FNE. Because of this election he has an official mandate to represent these organizations within FNE, therefore as a member of the RBC he can do the same. However, this is somewhat different for the other representative (representative for WWF) on the RBC that I talked to. WWF is part of FNE, but this person is a paid official of WWF, and he is not in any elected position within FNE. Therefore he only sits on the RBC as a representative of his own organization: WWF. His mandate is therefore more limited.

The RBC has quite a significant role in water decision making:

- it is consulted on all major political decisions on water in the river basin
- it approves the “intervention programmes” of the water Agency
- it gives a binding opinion on water taxes

- it follows the execution of the Nature Plan for the region
- it sets up the river basin management plan and is involved in its execution
- it puts in place information, participation and consultation as required by the WFD
- it advises on projects of the management plan and on the so-called 'water contracts'<sup>16</sup>

The RBC meets two or three times per year. The president of the RBC decides together with the prefect what will be on the RBC agenda. RBC members can propose agenda items and the president decides on whether these will be discussed. Minutes of the meetings of the Loire Bretagne RBC are available on the internet ([http://www.eau-loire-bretagne.fr/b/fr\\_b2.htm](http://www.eau-loire-bretagne.fr/b/fr_b2.htm)).

When asked about the functioning of the RBC, the WWF representative gave me a very pessimistic account. He explained that within the group of water users, representatives of for example agriculture, industry, consumers and environment nominally have the same voting power. However in practice the votes of consumers and ENGOs were far less influential than votes by the representative(s) of agriculture and industry. According to this representative, this had to do with the fact that the agriculture and industry sectors were far more powerful and had more funds for their organization. He explained that until the current French administration was chosen, an administration was in place that was far more favorable to 'green interests'. As a result ENGOs had more funds to spend on their representation in RBCs. Generally, interested environmental organizations would get together for half a day, previous to a RBC meeting to discuss upcoming issues in this RBC meeting and to try and come to a common position on these issues. This enabled them to present a united front in the RBC meeting. However, under the current administration funds diminished considerably and no such meetings have taken place.

When asked whether the WWF representative consulted within his organization before an RBC meeting and reported back on the meeting afterwards, answers were equally pessimistic. Since WWF considers itself relatively powerless in the RBC it wants to spend as little time possible on RBC issues. Therefore only the very delicate issues are discussed on beforehand within WWF, while time spent on reporting back was kept to a minimum. Most of the time, when reporting back was considered useful, reports drawn up by the representative of FNE (if these are available) are used within WWF.

The account of the FNE representative was more positive with regard to consultations before the RBC meeting but similar with regard to reporting back after the meeting. His experience is that the volume of the RBC agenda is large, that the issues cover the entire basin, which is large and that the number of different issues is large. In order to fully participate as member, a person needs to be very well informed about a great many issues. Because of the fact that such a broad range of relatively detailed issues is discussed, he stated that consulting all FNE members within the basin before an RBC meeting would be impractical. He said he did, however, consult with individual organizations on certain specific subjects their organization had an interest in, or knowledge about. If a more

<sup>16</sup> A water contract is an agreement on technical and financial issues between local territorial entities (municipalities, regions etc.), the State, the Regional Council, The Water Agency, the water users (agriculture, fisheries, industry, nature conservation, consumers etc.). The contract is generally meant to cover a period of 5 to 7 years. The contract is concluded after consultations on a draft and is eventually signed by all contract partners.

general consultation takes place, it is generally done by sending an email about a week before an RBC meeting requesting those interested to get together an hour before the RBC meeting.

With regard to reporting back after the RBC meeting, he explained that the environmental organizations, much like the consumer organizations and fisheries organizations represented on the RBC, have insufficient funds and man power to set up a reporting system. Only the more affluent interest groups (agriculture, industry) can afford to have a sophisticated consulting and reporting system in place. He only occasionally reported back to his organization and/or the FNE members in the basin.

## ANNEX IV Practices in Brazil

Brazil too has water laws in place that promote the river basin as the unit for management of water resources. Since the law on water resources was passed in 1997, a significant number of river basin authorities, including RBCs, have been established in the country. RBCs do not have legal existence/personality under Brazilian law. They are coordinating organizations that bring together stakeholders for discussion of and decisions on water related issues.

The information available in English about Brazilian RBCs is scarce and at times confusing. For this reason I contacted one of the people involved at WWF Brazil who were involved in the very recent creation of an RBC, the Miranda River RBC. Through a translator, he gave me more detailed information on this RBC.<sup>17</sup>

The Miranda RBC was approved by the Water Resources Council of the province of Mato Grosso do Sul in October 2005. This RBC has 33 members. 11 of these are government representatives (federal, state and municipal), 11 are so-called basin users and 11 are representatives of civil society (including but not limited to ENGOs but also other NGOs).

The Brazilian law on water resources does not prescribe the number of persons for each interest group on the committee, or the criteria for their appointment. It is up to the relevant local entities to do this.

Over a period of 3 years an inventory was made of all interested entities. These entities were registered and three assemblies were created (one for the government officials, one for users and one for civil society). Each assembly elected its 11 representatives. Officially, each representative only represents his/her own organization. However, in practice they consult the other organizations they represent in order to present a common point of view.

The RBC members officially started working on June 5<sup>th</sup> 2006. The first meetings will be used to set up internal regulations for the RBC. During these meetings they will also decide on how frequently they get together. The RBC has decision making power on a number of subjects prescribed by law. These include the creation of a River Basin Management Plan. In the fields where it does not have official decision making power, the RBC can only try to influence governmental decision making.

As stated before, the RBC members are supposed to consult the other organizations that are part of their interest group, with regard to decisions to be made in the RBC context and to report back to them on the results of the RBC meetings. However, since the RBC only started functioning very recently, there is no established practice on these issues yet.

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<sup>17</sup> Angelo Lima, WWF Brazil, with help in translating from Waldemar Gadelha Neto, WWF Brazil.

<b>ANNEX V</b> <b>Practices in the United States</b>
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In the United States the Federal Advisory Committee Act (FACA) regulates the work and organization of committees that are instituted to advise the federal government on all kinds of issues. FACA ensures that federal advisory committees are accountable to the public. It ensures public access to advisory committee deliberations and tries to minimize the influence of specific special interests by making sure that the committee membership is balanced.

Some of the basic requirements of FACA for advisory committees are that they:

1. develop a charter and publish notice of the establishment of the committee. A charter is a two to three page document that specifies the mission and general operational characteristics of the committee;
2. balance the points of view represented by the membership of the committee in relation to the function the committee is to perform;
3. announce meetings in the Federal Register in advance of the meeting;
4. open the meetings to the public and allow the public to send in or present comments;
5. keep minutes of each meeting, make committee documents available to the public, and maintain the committee's records;
6. appoint a Designated Federal Officer (DFO) to manage the committee.

Within the US Environmental Protection Agency there are 24 committees and 37 subcommittees governed by FACA. One of these Committees is the Clean Air Act Advisory Committee (CAAAC). For this report I spoke with the DFO for the CAAAC and with an NGO member of the committee.<sup>18</sup> The following is based on information from the EPA website and information given by these two contact persons.

The CAAAC has three meetings per year. The CAAAC has its own webpage (<http://www.epa.gov/air/caaac> ). The agenda for the meeting is published on the webpage about 15 days before the meeting. Minutes of the meetings have to be reviewed by the administration and after the administration's approval most of them are published on the website. Any member of the public has the right to comment on the agenda or the minutes (although under FACA there is no obligation for the administration to respond to these comments).

The CAAAC provides recommendations to the government. Its recommendations are unanimous. On controversial issues the advice often contains an annex where members can express that they dissent on parts of the advice or where they can provide individual comments to show they do not fully agree with the advice.

The CAAAC consists of representatives of specific interests. With these interests represented (and the number of people representing a certain interest), the CAAAC is supposed to provide a balanced total. Interest groups are:

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<sup>18</sup> Mr. Pat Childers, Senior Advisor at the Office of Air and Radiation at US EPA, Ms. Janet McCabe, Executive Director of Improving Kids Environment (IKE).

- state local and tribal government (8 persons represent these interests in the current CAAAC)
- academic institutions (5 persons)
- unions (2 persons)
- environmental/public interest groups (7 persons)
- trade associations (5 persons)
- utilities (3 persons)
- industry (10 persons)
- lawyers/consultants (9 persons)

Membership of the CAAAC is for three years and can be renewed. Once the CAAAC needs more members, there is a public notification of the fact that there are open positions and interested qualified people are requested to apply by sending in their resume. Those persons that can ensure that the CAAAC membership remains balanced are chosen by the EPA (and formally appointed by the EPA administrator) as members. The DFO informally consults the sitting members of the Committee on who to appoint as new members.

It is not completely clear whether the CAAAC members sit on the Committee as representatives of the organization they work for, or in an individual capacity. The DFO explains that this depends on the issues discussed. Depending on the issue, the members are more or less likely to explicitly speak on behalf of their organization. However, as the DFO explained, from the minutes of meetings it becomes clear that most members indicate whether they speak in an individual capacity or whether they are voicing the point of view of their organization. When asked about consulting and giving feed back, the NGO representative explained that under the CAAAC's rules she has no legal obligation to report to or consult anyone within her organization, but that as a matter of practice she consults and reports back to the Board of the organization and to other colleagues, if appropriate.