

## Draft Staff Regulations of ReSPA

[incorporating changes decided at SC10, version of 2 February 2009.]

### Introductory Comments

1. This document consists of a draft Resolution of the ReSPA Governing Board adopting the Staff Regulations of ReSPA, which Regulations are annexed to the Resolution and form an integral part of the Resolution.
2. The text of the draft Staff Regulations is accompanied by an explanatory commentary and by a list of comparable staff regulations, including the Staff Regulations of the Secretariat of the Sava Commission and the Ministerial Council Decision of the Energy Community on adoption of Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat's Staff of the Energy Community, which rules together with the requirements of the ReSPA Agreement and the standards of conduct promulgated by the UN for its officials, greatly influenced the current text. The commentary and list are designed to assist the Steering Committee in its consideration of the draft Staff Regulations but are not part of the Staff Regulations.
3. Article 20(2) of the ReSPA Agreement envisages that both staff and technical and service employees will be regulated by the Staff Regulations. This is, of course, necessary for a number of matters, e.g., standards of conduct, authority of Director, etc. However, technical and service employees do not enjoy privileges and immunities. It follows that their obligations and rights as employees will also be determined by mandatory norms of local law. It follows that conditions of employment for technical and service employees will have to be closely coordinated with the host State in the context of the negotiations for the host country agreement to ensure that mandatory provisions in the ReSPA Agreement can be effectively implemented (e.g., the requirement in the ReSPA Agreement that candidates from all Members will have access to technical and service employees positions). Accordingly, the issues that affect technical and service employees have been dealt with together in Annex I to the Staff Regulations.
4. It will be for the Steering Committee to decide whether the text that it approves for submission to the first session of the Governing Board is accompanied by an explanatory commentary and a list of comparable staff regulations to assist the Governing Board in its deliberations.
5. At times, the Steering Committee made suggestions as well as taking decisions. The suggestions are canvassed in the Explanatory Commentary.

*Draft of 2 February 2009 incorporating changes decided  
at SC10*

**Draft Resolution of the ReSPA Governing Board**

Whereas Article 15(1)(k) of the Agreement Establishing the Regional School of Public Administration (ReSPA) (hereinafter “ReSPA Agreement”) provides that the Governing Board shall “adopt the Staff Regulations”,

Whereas Article 11(2) of the ReSPA Agreement provides that the “Governing Board shall adopt Resolutions for all matters pertaining to its responsibilities as defined in Article 15(1), including Rules of Procedure, Financial Regulations, Staff Regulations and accession of new Members”,

Whereas Article 11(3) of the ReSPA Agreement provides that “Resolutions shall be adopted by unanimity of all Members of ReSPA”,

Now, therefore, the Governing Board, by Resolution No. --/2009 of [insert date], adopted by unanimous vote of all Members of the Governing Board, adopts the Staff Regulations of ReSPA set out in the Annex to this Resolution and forming an integral part of the Resolution.

**Explanatory commentary**

- a) The ReSPA Agreement requires that the Staff Regulations of ReSPA be adopted by Resolution.
- b) This Resolution records compliance with the requirements of the ReSPA Agreement for adoption of the Staff Regulations and provides a formal record of compliance with it, which may be of importance in the event of challenges by staff in, for example, disciplinary matters.

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**Draft Staff Regulations of ReSPA**

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## Draft Staff Regulations of ReSPA

### I. Application and purpose

#### Article 1 Application

1. The Staff Regulations apply to the Secretariat of ReSPA.
2. The Staff Regulations shall apply to technical and service employees of ReSPA as provided in Annex I to the Staff Regulations, the provisions of which shall be included in all contracts with technical and service employees.

#### Explanatory commentary

- a) Article 1 defines the scope of application of the Staff Regulations and of the principles that it establishes.
- b) Article 17(2) of the ReSPA Agreement provides that the “Secretariat is composed of the Director and the ReSPA staff”. Articles 19 and 20 of the ReSPA Agreement make it clear that the Secretariat is to be administered in accordance with the provisions of the Staff Regulations. Article 1(1) implements this requirement of the ReSPA Agreement.
- c) Article 17(3) of the ReSPA Agreement provides that the “Secretariat shall be supported by technical and service employees”. Article 20(2) provides that both “ReSPA staff and technical and service employees shall be selected in accordance with the Staff Regulations”. It follows that the provisions of Article 20(1) of the ReSPA Agreement are applicable to the hiring of technical and service employees; in particular “equal access to employment, fairness, transparency, diversity and representation from all members of ReSPA.” In addition, as technical and service employees are employees of ReSPA it would appear that they should be required to be subject to the authority of the Director and to conform to the same basic standards of conduct as are applicable to the Secretariat and that some other provisions of the Staff Regulations should be applicable to them (*e.g.*, access to whistle blower protections). In addition, where local law permits, there may be conditions of employment that should be uniform, *e.g.*, annual leave and sick leave. However, the ReSPA Agreement does not extend privileges and immunities to technical and service employees so their conditions of employment must conform to mandatory provisions of the law of the host State, except where otherwise specifically provided by the ReSPA Agreement. Such matters will require specific regulation in the host country agreement to be negotiated between ReSPA and Montenegro.
- d) For the reasons in the preceding paragraph, it appears that technical and service employees should be dealt with separately in the Staff Regulations and, accordingly, Article 1(2) provides that conditions of employment flowing from the ReSPA Agreement as relevant for technical and service employees are set out in Annex I to the Staff Regulations and then made a part of the contract of employment of each technical and service employee. This will require coordination with the host State to ensure that the manner of recruitment of technical and service employees – and their condition of employment – conforms to mandatory provisions of local law and of the

ReSPA Agreement. It should be noted that the host country agreement itself is subject to the approval of the Governing Board pursuant to Article 15(1)(p) of the ReSPA Agreement.

### Comparable Staff Regulations

- Article 1, paragraph 1, of the Rules for Recruitment, Working Conditions and Geographical Equilibrium of the Secretariat's Staff of the Energy Community, adopted by the Energy Community Procedural Act No. 2006/02 (Energy Community Staff Rules)<sup>1</sup>
- Articles 1 and 2 of the Staff Regulations of the Secretariat of the Sava Commission adopted by the International Sava River Basin Commission at its Regular Session held in Zagreb on June 27 – 29, 2005 (Sava Commission Staff Regulations)<sup>2</sup>
- Regulation 1.1 of the Staff Regulations and Rules of the United Nations, ST/SGB/2003/7 of 9 May 2003 (UN Staff Regulations)<sup>3</sup>

### Article 2 Purpose and implementation

1. The Staff Regulations establish the fundamental conditions of service of the ReSPA Secretariat and establish the rights and responsibilities of the staff.
2. The Director shall ensure that the Staff Regulations are applied and enforced.
3. The Director may issue Written Directives that contain procedures to ensure that the principles in specific Staff Regulations are implemented. These Written Directives shall be reported to the session of the Governing Board following their issue. The Governing Board may vary or disallow Written Directives.
4. The Director may delegate duties in writing to designated officials but remains accountable to the Governing Board for any delegated duties. Staff delegated duties by the Director have authority only within the scope of their delegation and are accountable to the Director for the proper exercise of delegated duties.

### Explanatory commentary

- a) It is clear that initially ReSPA will be small and have few staff. It follows that detailed and complex Staff Regulations and procedures commonly found in international organizations would not be a practical solution for ReSPA, at least initially. Article 2(1) provides that the Staff

<sup>1</sup> Available at [http://www.energy-community.org/portal/page/portal/ENC\\_HOME/ENERGY\\_COMMUNITY/Legal/Acts](http://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Legal/Acts).

<sup>2</sup> Available at [http://www.rec.org/rec/programs/sava/pdf/staff\\_regulations.pdf](http://www.rec.org/rec/programs/sava/pdf/staff_regulations.pdf).

<sup>3</sup> The UN Staff regulations are available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/304/51/pdf/N0730451.pdf?OpenElement>. The UN Staff Rules are available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/217/19/pdf/N0221719.pdf?OpenElement>.

Regulations establish the fundamental conditions of service. The Governing Board, in the light of experience, may supplement or change these conditions on a prospective basis.

- b) Many international organizations empower their Head to issue subsidiary “rules”, consistent with the Regulations adopted by their governing body, to implement specific Regulations (*e.g.*, procedures to follow in the recruitment process). However, it would appear that the intent of the ReSPA Agreement is to vest “rule making” authority exclusively in the Governing Board.<sup>4</sup> However, as the Regulations are confined to matters of principle and do not contain detailed elaboration of the procedures to implement its core concepts, Article 2(2) enables the Director to issue Written Directives to enforce and implement the Staff Regulations. To ensure that such Written Directives comply with the Staff Regulations the Director, at the session following their issue, must report them to the Governing Board, which may disallow or vary them.
- c) The way in which this system of Written Directives functions could be reviewed at the end of the first year of operation of ReSPA.
- d) Article 2(4) enables the Director in writing to delegate specific duties to subordinate staff who are accountable to the Director for the proper exercise of these delegated duties. However, the Director is always accountable to the Governing Board for the proper exercise of duties that are so delegated.

### **Comparable Staff Regulations**

- Article 34 of the Energy Community Staff Rules
- Article 2 of the Sava Commission Staff Regulations
- Scope and purpose provision and Regulations 12 to 12.5 of the UN Staff Regulations

## **II. Status and privileges and immunities**

### **Article 3 Status**

Members of the Secretariat are international civil servants. Their responsibilities as staff members of ReSPA are not national but are exclusively international.

### **Explanatory commentary**

- a) Article 1 of the ReSPA Agreement provides that ReSPA is an international organization. Accordingly, Article 3 provides that the Director and staff are international civil servants and that their duties and responsibilities are international rather than national.

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<sup>4</sup> Nevertheless, if such rules are subsidiary to the Staff Regulations and if they are “provisional” until approved by the Governing Board such a mechanism would appear consistent with the ReSPA Agreement.

### **Comparable Staff Regulations**

- Article 4 of the Sava Commission Staff Regulations
- UN Staff Regulation 1.1(a)

### **Article 4 Privileges and immunities**

The privileges and immunities conferred on the Director and the staff members are conferred solely in the interests of ReSPA. These privileges and immunities furnish no excuse to those who enjoy them to fail to observe the laws of the State in which they are located, nor do they furnish an excuse for non-performance of their personal obligations. In any case where an issue arises regarding application of privileges and immunities the staff member shall immediately report the matter to the Director who shall inform the Chair of the Governing Board, which Board alone has authority to decide whether such privileges and immunities exist and whether they should be waived in accordance with the ReSPA Agreement.

### **Explanatory commentary**

- a) Article 4 deals with privileges and immunities.
- b) Article 4 reflects that the attribution of privileges and immunities, pursuant to the UN Convention on Privileges and Immunities, to the Director and the staff by Article 26 of the ReSPA Agreement is not for the personal benefit of the Secretariat but solely in the interests of ReSPA. Accordingly, Article 4 places staff members on notice that the enjoyment of privileges and immunities does not permit them to fail to observe the laws of the host State nor does it furnish any excuse to fail to live up to their civil obligations.
- c) Article 4 provides that any issue concerning privileges and immunities must be immediately reported to the Director who, in turn, must inform the Chair of the Governing Board because the Governing Board has the authority to decide whether the staff member was performing official duties, in which case privileges and immunities apply. In other words, it is not for the staff member unilaterally to assert privileges and immunities: this is a responsibility of the Governing Board.
- d) The Governing Board alone has authority to decide whether to waive privileges and immunities pursuant to Article 26(d) of the ReSPA Agreement.
- e) Rule 7 of the ReSPA Rules of procedure sets out the procedures that will be followed by the Governing Board in dealing with these issues.

### **Comparable Staff Regulations**

- Article 9 of the Sava Commission Staff Regulations
- UN Staff Regulation 1.1(f)

### **III. Standards of conduct and accountability**

#### **Article 5 Core values**

1. Members of the Secretariat shall regulate their conduct with the interests of ReSPA only in view. In particular, they shall respect cultures of all Members and apply principles of equal treatment, fairness and transparency in all dealings.
2. Members of the Secretariat shall not discriminate against any individual or group of individuals, including sexual or gender discrimination or harassment, or otherwise abuse the power and authority vested in them pursuant to these Regulations.

#### **Explanatory commentary**

- a) Article 5 establishes mandatory standards of conduct for the ReSPA Secretariat.
- b) Article 5(1) flows naturally from the core values established by Article 20 of the ReSPA Agreement which requires that employment in ReSPA respect “equal access to employment, fairness, transparency, diversity and representation from all Members of ReSPA”. It is evident that the Staff Regulations should require all ReSPA staff to respect these core values.
- c) Article 5(2) is the obverse of Article 5(1). It specifically prohibits any form of harassment or abuse, including sexual or gender based harassment, in the workplace. This conclusion is inherent in Article 5(1) but specifically stating it puts staff members on notice that such conduct is abhorrent and will not be tolerated. It should be noted that Article 5(2) of the Sava Commission Staff Regulations deals with the matter in a general fashion by providing that “staff members shall carry out their duties professionally” which would be inconsistent with any discrimination and harassment. However, discrimination is specifically prohibited in Article III, paragraph 1, of the Energy Community Staff Rules and by the UN Staff Rules.

#### **Comparable Staff Regulations**

- Article III, paragraphs 1 and 26 to 30 of the Energy Community Staff Rules
- Articles 5(1) and 5(2) of the Sava Commission Staff Regulations
- UN Staff Regulation 1.2(a) and Rule 101.2(d) of the UN Staff Rules

#### **Article 6 Authority and responsibility of the Director**

1. Staff members shall be subject to the authority of the Director and members of the Secretariat shall accept no instructions from any Government or authority external to ReSPA.
2. The Director shall be subject to the authority of the Governing Board and responsible and accountable to it.

**Explanatory commentary**

- a) Article 6 ensures that the Governing Board has final authority over the Secretariat by prohibiting staff from accepting directions external to ReSPA and making the Director subject to the authority of the Governing Board and accountable to it.
- b) Article 6(1) makes the staff subject to the authority of the Director. It also provides that the Secretariat (*i.e.*, the Director and the staff members of ReSPA) must not accept instructions from national governments or sources external to ReSPA as to the performance of their duties.
- c) Article 6(2) provides that the Director is subject to the authority of the Governing Board, and responsible to it.

**Comparable Staff Regulations**

- Article IV, paragraph 32, of the Energy Community Staff Rules
- Articles 5(3) and 5(4) of the Sava Commission Staff Regulations
- UN Staff Regulations 1.2(c) and 1.2(d)

**Article 7 Outside activities and conflict of interests**

1. Staff members shall not engage in outside employment.
2. The Director may authorize staff members to accept unpaid outside *ad hoc* teaching or professional engagements related to the activities or subject matters of interest to ReSPA provided that such engagement or employment, as the case may be, does not interfere with their duties. The Chair of the Governing Board may authorize the Director to accept such *ad hoc* assignments. The Director shall report to the Governing Board on *ad hoc* assignments undertaken during the year. Travel and *per diem*, at rates not to exceed those payable by ReSPA, can be accepted but must be reported by the staff member to ReSPA.
3. No member of the Secretariat shall be associated with the management of any business or activity, or have any financial interest in such business or activity, if, as a result of that person's position, he/she may benefit, directly or indirectly, from such association or interest. Ownership of stock in publicly traded companies doing business with ReSPA shall not automatically be deemed to constitute a financial interest within the meaning of this provision. In such cases, the staff member may apply to the Director for permission to continue to hold that stock.

**Explanatory commentary**

- a) ReSPA is an international organization pursuant to Article 1 of the ReSPA Agreement and the holding of other employment by an international civil servant is not consistent with that status, or with the enjoyment of privileges and immunities. Accordingly, Article 7(1) prohibits ReSPA staff members from holding outside employment.

- b) Article 7(2) enables the Director to authorize *ad hoc* teaching or professional assignments if related to activities or subject matters related to ReSPA and if such assignments do not interfere with official duties. The Chair of the Governing Board may give similar authorization to the Director.
- c) It was suggested at SC9 that the Secretariat be required to donate to charity any outside earnings from authorized *ad hoc* teaching or professional assignments. This suggestion would, of course, ensure that there were no divided loyalties that might arise from two sources of wages. The problem is that the wage would have been earned by the staff member through an authorized activity and then taken away by compulsory assignment to a third party. This sits a little uneasily with notions of charity and with the legal right to enjoy private property. An option that avoids these difficulties is to add the word “unpaid” before the phrase “outside ad hoc teaching or professional assignments” in the opening sentence of Article 7.2. If the Steering Committee finds this option acceptable it might wish to add a new penultimate sentence to the provision along the following lines: “Travel and *per diem*, at rates not to exceed those payable by ReSPA, can be accepted but must be reported by the staff member to ReSPA.”
- d) Article 7(3) seeks to minimize conflicts of interest by prohibiting a staff member to have a management, ownership or financial interest in outside activities from which the staff member may profit because of that staff member’s position, *e.g.*, those involved in procurement obviously can have no interests in the companies they recommend for, or award, contracts with ReSPA. Ownership of stock in companies doing business with ReSPA is not automatically deemed to constitute a financial interest within the meaning of this provision but the staff member has to apply to the Director for permission to continue to hold that stock. In the case of the Director the permission of the Governing Board must be sought.

### Comparable Staff Regulations

- Articles 6(1), 6(2) and 6(3) of the Sava Commission Staff Regulations
- Article VI, paragraph 32, of the Energy Community Staff Rules
- UN Staff Regulations 1.2(m), 1.2(o) and 1.2(p).

### Article 8 Confidentiality

1. Members of the Secretariat shall exercise the utmost discretion with all matters relating to official business. They shall not communicate such information to third parties unless it is public or with permission of the Director. These obligations do not cease for a 5-year period after separation from service of ReSPA.
2. Publication of articles, books or other material by staff members concerning ReSPA or its activities shall require prior permission from the Director.

**Explanatory commentary**

- a) Article 8(1) seeks to ensure that the interests of ReSPA are not harmed by unauthorized disclosure of confidential information.
- b) Article 8(2) requires that the Director grant permission prior to publication of material concerning ReSPA to ensure that the publication by a staff member is in the interests of the Organization.

**Comparable Staff Regulations**

- Article 8 the Sava Commission Staff Regulations
- UN Staff Regulations 1.2(g) and 1.2(i)
- UN Staff Rule 101.2(q)

**Article 9 Proprietary rights**

All rights, including title and copyright, in any work performed by a staff member as part of his or her duties shall be vested in ReSPA.

**Explanatory commentary**

- a) Article 9 seeks to ensure that title and copyright in any official publications or training materials prepared by staff as part of their duties is vested in ReSPA.

**Comparable Staff Regulations**

- Article 7 the Sava Commission Staff Regulations

**Article 10 Accountability and evaluation**

1. The performance and promotion of staff members shall be subject to periodic evaluation and assessment based on the annually agreed job description and objectives.
2. The Director shall establish a performance evaluation system and report it to the Governing Board for approval.
3. Staff members are accountable to the Director for the proper discharge of their functions and for upholding the highest standards of competence and integrity in the discharge of their functions.

**Explanatory commentary**

- a) Article 10 deals with two related matters: the accountability of staff for their actions and the evaluation of their performance.
- b) Article 10(1) is modelled on Article 17 of the Sava Commission Staff Regulations and seeks to ensure that staff members are subject to periodic evaluation and assessment of performance.
- c) Article 10(2) requires the Director to institute a system of performance evaluation and to report it to the Governing Board for approval to ensure that Members are satisfied that it will fairly meet its stated objectives.
- d) Article 08(3) ensures that staff are accountable for their job performance and conduct.

**Comparable Staff Regulations**

- Articles 5(3) and 17 of the Sava Commission Staff Regulations
- Staff Regulation 1.3 of the UN Staff Regulations and Rule 101.3 of the UN Staff Rules.

**Article 11 Whistleblower policy and protection**

1. Staff members may submit any allegations of perceived irregularities in confidence to the Chair of the Governing Board, with a copy to the Independent Auditor(s). Retaliation against whistleblowers is prohibited.
2. The Director shall report to the Governing Board on the feasibility of the establishment of a cooperative agreement with other regional organizations for an institution to investigate whistleblower complains.

**Explanatory commentary**

- a) Article 11 establishes a mechanism for reporting perceived irregularities and for protection from retaliation by ReSPA or its staff for those who avail themselves of this mechanism.
- b) Article 11(1) provides that any staff member may, in confidence, submit allegations on perceived irregularities to the Chair of the Governing Board, with a copy to the Independent Auditor(s). The Article provides a whistleblower with protection against retaliation. Of course, for a staff member to submit knowingly false reports would be a violation of the standards of conduct set out in Article 5 above.
- c) Article 11(2) requests the Director to report on the feasibility of regional cooperation for a separate institution to conduct whistleblower investigations, *e.g.*, use by ReSPA of a whistleblower mechanism established or used by other organizations.

### Comparable Staff Regulations

- Secretary-General's bulletin, *Protection against retaliation for reporting misconduct and for cooperating with duly authorized audits or investigations*, UN Doc., ST/SGB/2005/21 of 19 December 2005<sup>5</sup>

## IV. Recruitment and appointment

### Article 12 Appointment authority

1. The Governing Board shall appoint the Director.
2. The Governing Board shall appoint staff members of ReSPA.
3. The Director shall appoint technical and service employees.
4. The paramount consideration in the selection of staff members shall be the necessity for securing the highest standards of efficiency, competency and integrity.

### Explanatory commentary

- a) Article 15(1)(l) provides that the Governing Board shall appoint and dismiss Director. Article 12 accordingly provides that the Governing Board shall appoint the Director. The appointment of Director is an important decision and the Governing Board will doubtless discuss the procedures it will follow in the selection and appointment process and so none is suggested here. However, it might be noted that Article II of the Energy Community Staff Rules sets out rules for the appointment of its Director as well as staff. The Sava Commission Staff Regulations are confined to the appointment of staff of the Secretariat and do not include procedures for the appointment of the Secretary of the Sava Commission.
- b) Article 20(3) of the ReSPA Agreement provides that "ReSPA staff and technical and service employees shall be selected in accordance with the Staff Regulations". The Steering Committee, at its 9<sup>th</sup> session, decided that the Governing Board shall be the appointing authority for staff members of ReSPA. This decision is reflected in Article 12(2). This is similar to Article 11 of the Sava Commission Staff Regulations, which reserved to itself the power to appoint staff members of the Commission but empowered the Secretary of the Commission to appoint support staff (the equivalent of ReSPA technical and service employees). On the other hand, Article III, paragraph 6, of the Energy Community Staff Rules provides that the Director shall appoint the staff.<sup>6</sup>

<sup>5</sup> Available at <http://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/651/55/pdf/N0565155.pdf?OpenElement>

<sup>6</sup> The UN and most common system organizations vest power of appointment in the Secretary-General or Executive head of the Organizations but Article 4.1 of the Staff Regulations of the International Tribunal for the Law of the Sea vests the power of appointment in the Tribunal on the recommendation of the Registrar.

- c) The Steering Committee, at its 9<sup>th</sup> session, decided that the ReSPA Director shall appoint technical and service employees. This is reflected in Article 12(3), which is similar to Article 11 of the Sava Commission Staff Regulations.
- d) Article 12(4) establishes that the paramount consideration in the appointment of members of the Secretariat is the need for the highest standards of efficiency, competence and integrity. This provision is modelled on Article 11 of the Sava Commission Staff Regulations and on UN Staff Regulation 4.2.

### **Comparable Staff Regulations**

- Article II, paragraph 6, of the Energy Community Staff Rules
- Article 11 of the Sava Commission Staff Regulations
- UN Staff Regulation 4.1

### **Article 13 Recruitment principles**

1. Staff members shall be recruited competitively through a publicly announced competitive system that is available to candidates from all Members of ReSPA. Vacancies shall be publicly announced on websites designated by the Governing Board.
2. Recruitment and selection of staff members shall be based on the candidates qualifications in view of the published job description and shall respect the requirement of equal access to employment, fairness, transparency, diversity and representation from all members of ReSPA.
3. The Director shall chair a selection committee, which shall evaluate the candidates according to selection criteria established by the Governing Board pursuant to Article 14. The selection committee shall pre-select and interview between 3 and 5 of the candidates best meeting the selection criteria. The selection committee shall submit a selection report recommending the 3 top candidates in order of priority to the Governing Board for appointment as a staff member of ReSPA.

### **Explanatory commentary**

- a) Article 20 of the ReSPA Agreement establishes the core concepts that must guide the selection process, *i.e.*, all such actions must be based on merit, and must respect principles of equal access for appointment, fairness, transparency, diversity and representation from all Members of ReSPA. The need for candidates from Members to have full and fair access to compete for employment opportunities is central to the procedures established by the Sava Commission Staff Regulations and the Energy Community Staff Rules.
- b) Article 13(1) requires a publicly announced and competitive selection process and follows closely the system established by Article 12 of the Sava Commission Staff Regulations. Article III, paragraphs 12 and 13, of the Energy Community Staff Rules establish similar public advertising procedures for vacant positions.

- c) Article 13(2) reproduces Article 20(1) of the ReSPA Agreement and sets out the core characteristics of the recruitment and appointment process. The Energy Community Staff Rules has similar provisions in Article III, paragraphs 28 to 31. Article III, paragraph 1, of the Energy Community Staff Rules specifically prohibits discrimination and this is reflected in Article 5(2) above.
- d) Article 13(3) requires the Director to review the candidates and to select the most qualified and experienced candidate for recommendation to the Governing Board. Although the Governing Board is the appointing authority for ReSPA staff members pursuant to Article 12(2), it is clear that it may delegate to the Director intermediate steps on the road to the exercise by it of that appointment authority.

### **Comparable Staff Regulations**

- Article III, paragraphs 28 to 31, of the Energy Community Staff Rules
- Article 12 of the Sava Commission Staff Regulations
- UN Staff Regulations 4.2 and 4.3

### **Article 14 Recruitment procedures**

1. The Governing Board shall establish or approve the vacancy announcement, including job description, salary, other conditions of employment and the closing date for applications, which shall be published on websites designated by the Governing Board.
2. The Governing Board shall establish or approve a mechanism to review the applications and interview the top ranked candidates and make a reasoned recommendation to the Governing Board, which shall make the final decision and inform the candidates promptly.
3. The Governing Board may establish or approve more detailed procedures in the light of experience.
4. The Director may exceptionally directly engage temporary staff on appointments of up to 3 months with the consent of the Chair of the Governing Board. Such temporary appointments shall be reported to the Governing Board at the session following the appointment. Contracts of staff recruited in this way shall provide that they may only receive a regular appointment through open competition in accordance with the procedures in the Staff Regulations.

### **Explanatory commentary**

- a) Article 14 deals with recruitment procedures that will be used to ensure that the criteria for appointment in Article 20 of the ReSPA Agreement are respected. The Governing Board, as appointing authority, must establish these procedures. It may, of course, request the Director to propose procedures for its approval. On the assumption that the Governing Board may wish to request the Director to propose some or all of the procedures, Articles 14(1), 14(2) and 14(3) uses the phrase “shall establish or approve” giving to it the flexibility to draft them itself or ask the

Director to so do and review the proposals as presented. In either case it is the Governing Board that must approve the final text.

- b) Article 14(1) deals with the issue of vacancy announcements, which must be issued in a manner available to candidates from all Members of ReSPA by being published on websites designated by the Governing Board.
- c) Article 14(2) requires the appointing authority to establish or approve a mechanism for review of the applications. The Sava Commission Staff Regulations establish a screening committee of the Commission to review candidates; Article III, paragraph 15, of the Energy Community Staff Rules requires a selection committee to assist the Director in the choice of the successful candidate and ensures that the Presidency and the European Commission are represented, as well as the Secretariat. The UN Staff Rules establish Secretariat “central review bodies” to advise the appointing authority (the Secretary-General). Whatever system is selected by the Governing Board, fairness and transparency will be assisted by the requirement of a reasoned recommendation being made to it for decision.
- d) Article 14(3) enables the Governing Board to establish or approve more detailed procedures in the light of experience.
- e) During the initial stages of ReSPA, the Director will have to quickly appoint certain staff needed to get ReSPA operational. Article 14(4) accordingly enables the Director to appoint staff on a temporary basis for up to 3 months with the consent of the Chair of the Governing Board and obligates the Director to report such actions to the Governing Board. It is similar to Article 15(4) of the Sava Commission Staff Regulations.

### **Comparable Staff Regulations**

- Article 13 and 15(4) of the Sava Commission Staff Regulations
- Rule 104.14 of the UN Staff Rules

### **Article 15 Letter of Appointment**

1. The Director shall issue a Letter of Appointment which shall set out the terms and conditions of the appointment granted by the Governing Board, including:

- a) A statement that the appointment is subject to the ReSPA Staff Regulations, as amended from time to time;
- b) The nature and period of the appointment, the period of probation, if any, and notice required to terminate the appointment;
- c) The title of the appointment, salary and allowances attaching to the appointment; and
- d) Any special terms and conditions.

2. Other than matters governed by the Staff Regulations, the individual terms and conditions set out in the Letter of Appointment shall not be changed except by a written amendment to the Letter of Appointment agreed to by the parties.

3. Staff members shall be provided with a copy of the Staff Regulations with their Letter of Appointment and, upon acceptance of the appointment shall acknowledge in writing that they accept the conditions set out in the Letter of Appointment and in the Staff Regulations.

### **Explanatory commentary**

- a) Article 15 deals with the issue of a Letter of Appointment, which defines the terms of the appointment to the ReSPA Secretariat. The expression Letter of Appointment, rather than contract of employment, is chosen because ReSPA and members of the ReSPA Secretariat enjoy privileges and immunities, which means that the terms of ReSPA appointments are determined by reference to the Staff Regulations rather than local law.
- b) Article 15(1) provides that the Director shall issue the Letter of Appointment on the conditions authorized by the appointing authority, *i.e.*, the Governing Board. Article 15(1) is similar to Article 14.1 of the Sava Commission Staff Regulations and Annex II to the UN Staff Regulations.
- c) Article 15(2) is based on Article 14(2) of the Sava Commission Staff Regulations.
- d) Article 15(3) ensures that staff members are bound by the Staff Regulations which are made part of the appointment itself.
- e) The UN Staff Regulations treat secondment from governmental service as a regular appointment except that the Government must agree to the terms of the appointment. The UN Administrative Tribunal has required that such agreements protect the accrued rights of the staff member on secondment. However, Article III, paragraph 11, of the Energy Community Staff Rules provides that the “seconded shall not be considered as part of the Secretariat’s staff”. The question of secondment is not regulated at this stage in the ReSPA Staff Regulations..

### **Comparable Staff Regulations**

- Article 14 of the Sava Commission Staff Regulations
- Regulation 4.1 and Annex II to the UN Staff Regulations

### **Article 16 Period of appointment**

1. The appointing authority shall appoint a staff member for a period of up to 3 years, following an initial probationary period of 6 months. Appointments may be renewed subject to the performance of the staff member.

2. The Director may appoint technical and service employees for up to 3 years after an initial probationary period of 6 months. The contracts of technical and service employees may be renewed subject to their performance.
3. All appointments shall terminate automatically on the date of their expiration.

### **Explanatory commentary**

- a) Article 16 deals with the period of appointment. The Steering Committee, at its 9<sup>th</sup> session, decided that appointments of staff members and technical and service employees could be for a period of up to 3 years with an initial probationary period of 6 months. Article 16 implements this decision of the Steering Committee.
- b) Articles 16(1) and 16(2) suggest fixed term appointments for up to 3 years for staff and technical and service employees respectively, after an initial probationary period of 6 months. These appointments may be renewed, based on performance.
- c) It should be noted that the provisions of local law will influence the type of appointments available to technical and service employees and this is a matter for discussion with the host State in connection with the negotiation of a host State agreement
- d) Article 16(3) provides that an appointment expires automatically on the date of its expiration.
- e) The Article does not deal with the period of appointment of the Director because this seems to be completely regulated by Article 19(1) of the ReSPA Agreement, which provides that the “Director shall be appointed for a term of five years, renewable once.”

### **Comparable Staff Regulations**

- Article III, paragraphs 8 to 11, of the Energy Community Staff Rules
- Article 15 of the Sava Commission
- Staff Regulations 4.1, 4.5 and Annex II to the UN Staff Regulations

### **Article 17 Medical standards**

As a pre-condition to appointment, a prospective staff member must submit a medical certificate issued by a licensed medical practitioner or medical institution of a Member that the candidate meets the medical standards for appointment to a position as described in the Vacancy Announcement.

### **Explanatory commentary**

- a) Article 17 is modelled on Article 16 of the Sava Commission Staff Regulations and seeks to ensure that a prospective staff member is able, from a medical point of view, to discharge the duties of the appointment being offered. On the assumption that ReSPA will not be in a position

to define such standards (as is done by the UN) the Article proposes that fitness for service for the position as described in the vacancy announcement for the position in question. Article III, paragraph 7, of the Energy Community Staff Rules requires a certification from a medical practitioner “that the appointee possesses the degree of physical fitness needed for his or her post”. Article 16 of the Sava Commission Staff Regulations is similar in effect.

### **Comparable Staff Regulations**

- Article III, paragraph 7, of the Energy Community Staff Rules
- Article 16 of the Sava Commission Staff Regulations
- Staff Regulation 4.6 of the UN Staff Regulations

## **V. Salary and other emoluments**

### **Article 18 Salaries**

1. Salaries and emoluments of members of the Secretariat shall be fixed by the Governing Board of ReSPA at a level that facilitates recruitment of personnel in accordance with the criteria established in Article 20 of the ReSPA Agreement.
2. Salaries and emoluments of the Secretariat are free from national income tax in accordance with Article 26 of the ReSPA Agreement. If a staff member is taxed on his/her ReSPA salary and emoluments he/she shall appeal any such decision and cooperate with the Director in the formulation of the appeal. If such efforts prove unsuccessful ReSPA shall reimburse the staff member for any taxes paid on salary and emoluments.
3. The Director shall propose salary levels for staff members, with and without dependents. When approved by the Governing Board these salary levels will be set out in Annex II to these Regulations.
4. The Governing Board shall, when establishing the Core Budget, review the salaries set out in Annex II to these Regulations in the light of the cost of living for the prior financial year in the host State, as measured by the Montenegrin Statistical Office **[in its {name of data}]**. The Governing Board may, in its discretion, raise the salaries of staff members in the light of this data and the financial status of ReSPA.

### **Explanatory commentary**

- a) The fixation of salaries, especially those of the head of ReSPA, is a matter of judgment that is ultimately for the Governing Board because it must adopt the Core Budget pursuant to Article 15(1)(c) of the ReSPA Agreement, which decision will determine Member contributions.
- b) The basic principle of salary fixation of salaries for the ReSPA Director and staff flows from Article 20(1) of the ReSPA Agreement, which requires “equal access” to employment. This means, as a matter of logic, that salaries for staff must be at a level that can attract qualified candidates from all ReSPA Members, even from the Member with the highest salaries (the

Noblemaire principle).<sup>7</sup> This is the approach of principle taken by Article 18(1). The actual fixation of salaries is a question of judgement that could be guided by reference to salaries and allowances payable by designated comparator international organization(s) in the region.<sup>8</sup>

- c) Article 26 of the ReSPA Agreement provides that salaries of staff members are free from national income tax. Accordingly, Article 18(2) protects staff from actual taxation of their salaries and emoluments. However, they are obliged to cooperate with the Director in efforts to have their salary and emoluments recognized by the taxing authority as tax free.
- d) The fixation of the actual amounts of salary should take into account that ReSPA staff members will enjoy privileges and immunities, which include emoluments free of tax. But if ReSPA staff salaries were subject to tax the staff members would, under most tax systems, have deductions for dependents. It follows that if ReSPA staff members were to be paid only a net salary fixed by reference to the “equal access” principle, unmarried ReSPA staff members would be at a comparative advantage over their married colleagues. However, Article 20(1) of the ReSPA Agreement requires “fairness” as a fundamental condition for the administration of ReSPA personnel. Accordingly Steering Committee, at its 9<sup>th</sup> session, decided that the Director propose to the Governing Board salary levels for staff members with and without dependents. One scale would be for single staff members; the other would be for staff with dependents. The scale for ReSPA staff with dependents would be higher, based on the average value of dependency deductions under the tax systems operating in Members of ReSPA. Article 18(4) reflects this decision of the Steering Committee at its 9<sup>th</sup> session.
- e) Article 18(4) reflects another decision of the Steering Committee at its 9<sup>th</sup> session, namely that salaries shall be reviewed by the Governing Board in the light of inflation as measured by the Montenegrin Statistical Office in **[name of statistical measure to be used]**. The Governing Board shall decide in the context of establishing the Core Budget whether to grant any increase and the amount of that increase. This is the approach of Article 40(3) of the Sava Commission Staff Regulations, which provides that the “Sava Commission shall review periodically the conditions of service of the staff of the Secretariat, including adequacy of the level of remuneration and its affordability in the light of the Sava Commission Commission’s financial situation.”
- f) Salaries and conditions of service for technical and service employees will depend on local conditions and local law (see Annex I to the Staff Regulations).
- g) Article 18 does not deal with the salary of the Director as this seems to be a matter uniquely for the Governing Board to determine at its first session.

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<sup>7</sup> This principle dates from the early days of the League of Nations, having been formulated by a Committee chaired by Georges Noblemaire (see Georges Langrod, *The International Civil Service*, A.W.Sythoff, 1963, at 114 – 116). The Concept Paper uses the term “equal access” because this is the term used in the ReSPA Agreement.

<sup>8</sup> Article 22 of the Sava Commission Staff Regulations provides that the “salaries of staff members shall be in accordance with the salary levels as established by the Sava Commission in relation to comparative international salary levels.” Article 23(1) of those Regulations provides that the “type of allowances available to staff members shall, in principle, be those allowances in force for comparative international civil servants”.

**Comparable Staff Regulations**

- Articles 22, 25 and 40(3) of the Sava Commission Staff Regulations
- UN Staff Regulations 3.1, 3.3(f) and Annex I to the Staff Regulations

**Article 19 Allowances**

1. Official travel, including travel on appointment and/or separation, but not including travel to and from the place of work and home, shall be paid in advance or reimbursed within the limits approved in the budget. Travel shall be by economy air travel where feasible but first class may be utilized for land travel. *Per diem* shall be paid at rates established by the Governing Board from time to time.
2. Members of the Secretariat shall not be entitled to any allowance to the extent that the expenses that these allowances are to cover are paid from other sources.

**Explanatory commentary**

- a) The question of allowances to be provided by the Staff Regulations is essentially a question of policy for the Governing Board. Article 19 reflects decisions taken by the Steering Committee at its 9<sup>th</sup> session.
- b) Official travel will obviously have to be at the expense of ReSPA unless paid by another source. Article 19(1) is based on Article 29 of the Sava Commission Staff Regulations except that no provision is made for use of private vehicles in connection with private travel as this introduces complex insurance problems in the event of accidents, having regard to the privileges and immunities of ReSPA.
- c) Article 19(2) is modelled on Article 33 of the Sava Commission Staff Regulations and seeks to ensure that staff do not receive an allowance if the expenses that are covered by the allowance are paid by another entity. The most common example is if a staff member is invited to speak and the entity making the invitation provides accommodation and/or travel.

**Comparable Staff Regulations**

- Articles 23 to 33 of the Sava Commission Staff Regulations
- UN Staff Rules 103.5 to 103.7, 103.11 and 103.20 to 103.23 of the UN Staff Rules

**Article 20 Currency of payment**

All salaries and allowances shall be paid in Euro.

**Explanatory commentary**

- a) Article 20 sets out the currency of payment of salaries and reflects a decision of the Steering Committee at its 9<sup>th</sup> session.

**Comparable Staff Regulations**

- Article 28 of the Sava Commission Staff Regulations

**VI. Leave****Article 21 Annual and special leave**

1. Staff members shall be entitled to 30 days annual leave per year accumulated at the rate of 2½ days per month, but not more than 30 days may be carried beyond 31 December of any year, unless in the opinion of the Director there are exceptional circumstances. In addition, staff members shall be entitled to official holidays in the host State. The taking of annual leave shall be subject to the exigencies of service and shall be subject to prior approval of the Director
2. The Director may grant staff members, in exceptional cases, special leave for the following reasons:
  - (a) One day in case of marriage of the staff member;
  - (b) One day in case of change of residence of the staff member;
  - (c) Four days in case of death of spouse or a child; and
  - (d) Two days in case of death of a parent or a parent-in-law.
3. The Director may authorize special leave with pay for periods when closures of offices and industry in the host State would make it impractical to keep ReSPA open.
4. Any accumulated but unused annual leave shall be paid on separation from service up to the limit of 30 days set out in paragraph (1) of this Article

**Explanatory commentary**

- a) Article 21 provides for annual and special leave. The Steering Committee at its 9<sup>th</sup> session decided that annual and special leave should be based on the provisions of the Sava Commission Staff Regulations. It is assumed that technical and service employees will get similar leave, subject to verification with the host State in the context of negotiation of the host country agreement that this accords with local law.
- b) Article 21(1) deals with the amount of annual leave and other holidays and follows Article 34 of the Sava Commission Staff Regulations as decided by the Steering Committee at its 9<sup>th</sup> session.

The timing of annual leave is subject to the needs of ReSPA and must be approved by the Director.

- c) Article 21(2) follows Article 35 of the Sava Commission Staff Regulations, as decided by the Steering Committee at its 9<sup>th</sup> session.
- d) Article 21(3) reflects a decision of the Steering Committee at its 9<sup>th</sup> session that the Director be empowered to grant other leave when it would be impractical to keep the ReSPA office open, *e.g.*, during Christmas week.
- e) Article 21(4) reflects Article 21 of the Sava Commission Staff Regulations, as decided by the Steering Committee at its 9<sup>th</sup> session.

### **Comparable Staff Regulations**

- Articles 34 and 35 of the Sava Commission Staff Regulations
- UN Staff Regulation 5.1 and 5.2 of the Staff Regulations and UN Staff Rules 105.1 and 105.2

### **Article 22 Sick leave**

1. Staff members who are unable to perform their duties because of illness or injury or whose attendance is prevented by public health requirements shall be granted sick leave on full pay not exceeding four consecutive months in one year, or fifteen months in any five consecutive years.

1. Staff members absent from work because of sickness or injury of more than 3 consecutive working days shall produce a medical certificate from a licensed medical practitioner stating the probable duration of the incapacity for work. The Director may require a staff member to be examined by a medical practitioner chosen by ReSPA and at the cost of ReSPA.

2. Staff members shall be entitled to three consecutive working days as uncertified sick leave, provided that in one calendar year the total uncertified sick leave does not exceed seven working days.

### **Explanatory commentary**

- a) Article 22 deals with sick leave and follows Articles 36(1) to 36(4) of the Sava Commission Staff Regulations, as decided by the Steering Committee at its 9<sup>th</sup> session. It is assumed that technical and service employees will get similar leave, subject to verification that this accords with local law.
- b) Article 22(1) deals with the amount of sick leave and is based on Articles 36(1) and 36(2) of the Sava Commission Staff Regulations.
- c) Article 22(2) provides for uncertified sick leave and is based on Article 36(3) of the Sava Commission Staff Regulations.

- d) Article 22 (3) empowers the Director to request the staff member to be examined by a doctor chosen by ReSPA. This provision is based on UN Staff Rule 106.2(g) and ensures that, in cases of doubt as to the capacity of a staff member to work, a second medical opinion may be obtained.

### **Comparable Staff Regulations**

- Article 36 of the Sava Commission Staff Regulations
- UN Staff Regulation 6.2 and Staff Rule 106.2 of the UN Staff Rules

### **Article 23 Maternity leave**

1. Staff members shall be entitled to maternity leave for a period of six months on full pay and up to a further three months on unpaid leave.
2. Staff members shall be entitled to paternity leave for a period of two weeks.

### **Explanatory commentary**

- a) Article 36 of the Sava Commission Staff Regulations grants maternity leave for a period of six months on full pay. The UN grants sixteen weeks maternity leave, but annual leave accrues during this period. The Steering Committee, at its 9<sup>th</sup> session, adopted the approach of the Sava Commission. However, it decided to add a further extended period of unpaid maternity leave.
- b) The Steering Committee, at its 9<sup>th</sup> session, decided to permit paternity leave. Article 23(2) is suggested in response to this decision.

### **Comparable Staff Regulations**

- Article 36(5) of the Sava Commission Staff Regulations
- Staff Rule 106.5 of the UN Staff Rules

## **VII. Social security**

### **Article 24 Health and social security insurance**

Staff members shall participate in national health and social security insurance scheme of the host State or their own national health and social security system or in other recognized health and social security insurance system.

**Explanatory commentary**

- a) The Concept Paper pointed out that “Social security is, perhaps, the most difficult condition of service because of the expensive nature of these elements of the compensation package and because host States usually require employers, including international organizations, to provide at least some of these elements for their staff as a condition of operation in the host State.” It “recommended that consultations should be held with the Host State as part of the Host Country negotiations on these issues.”
- b) It was noted at the 9<sup>th</sup> session of the Steering Committee that Montenegro has signed bilateral agreements on social security, which includes pension, disability and health insurance with all ReSPA Members except Albania and Kosovo.
- c) Article 37(1) of the Sava Commission Staff Regulations requires staff and their dependents to participate in either the national health and pensions system of the host state or in another recognized health and pension insurance scheme. Article 24 adopts this core approach.
- d) It is recommended that this matter be discussed with the host State as part of the negotiations for the host country agreement to ascertain what options are available to ReSPA in Montenegro for staff members from Albania and Kosovo.

**Comparable Staff Regulations**

- Article 37 of the Sava Commission Staff Regulations
- UN Staff Regulation 6.1 and Staff Rules 106.2, 106.4 and 106.6 of the UN Staff Rules

**Article 25 Work related accidents**

The Director shall obtain insurance to cover the risks of injury or death connected with official activities of staff members and technical and service employees.

**Explanatory commentary**

- a) Article 38 of the Sava Commission Staff Regulations requires the Secretary to obtain insurance in respect of death or injury connected with the performance of official duties. The Steering Committee, at its 9<sup>th</sup> session, decided that the Director obtain insurance in respect of staff members and technical and service employees.

**Comparable Staff Regulations**

- Article 38 of the Sava Commission Staff Regulations
- Appendix D to the UN Staff Rules

## VIII. Separation from service

### Article 26 Grounds for termination of appointment

1. The appointment of a staff member may be terminated prior to its expiration date by the Governing Board on the following grounds:
  - a) If the staff member has not completed the probationary period satisfactorily;
  - b) If the needs of ReSPA require abolition of the post;
  - c) If the staff member is incapacitated for further service on the grounds of health;
  - d) If the services of the staff member prove unsatisfactory or if the conduct of the staff member does not meet the standards of integrity required by the Staff Regulations; and
  - e) If the staff member has committed a serious breach of the Staff Regulations.
2. In case of abolition of post or termination on grounds of incapacity 3 months notice of termination of appointment shall be given.
3. In the cases specified in subparagraphs (d) and (e) above, the Director may suspend a staff member pending disciplinary action under Article 31 but shall immediately inform the Chair of the Governing Board of this action.

### Explanatory commentary

- a) The application of Part VIII of the Staff Regulations to technical and service employees will be a matter of discussion with the host State because these matters may be subject to mandatory provisions of local law.
- b) Article 26(1) sets out the grounds for separation from service by the Governing Board. It is modelled on Article 18(1) of the Sava Commission Staff Regulations.
- c) Article 26(2) ensures that notice is given to staff members whose appointment is terminated through no fault of their own. It is similar to Article 19(3) of the Sava Commission Staff Regulations.
- d) Article 26(3) empowers the Director to suspend a staff member pending disciplinary action. This provision is modelled on Article 18(2) of the Sava Commission Staff Regulations.
- e) Article 19(5) of the Sava Commission Staff Regulations provides that termination for disciplinary grounds becomes effective one month after notification. However, Articles 26(1)(d) and (e), as drafted, entail that dismissal is effective upon the date of the decision of the Governing Board to the staff member.

- f) It might be noted that the Staff regulations do not deal with dismissal of the Director although Article 12(1) deals with appointment of the Director. In any event, Article 15(1)(l) provides that the Governing Board may dismiss the Director by Resolution.

### **Comparable Staff Regulations**

- Articles 18 and 19 of the Sava Commission Staff Regulations
- UN Staff Regulations 9.1 and 9.3 and Staff Rules 109.1, 109.3, 109.4 and 109.10 of the UN Staff Rules

### **Article 27 Resignation**

1. A staff member may resign upon three months written notice to the Director.
2. The Director may withhold any salary or allowances due in the case of a staff member leaving without the requisite notice, unless a period of lesser notice has been exceptionally agreed by the Director.

### **Explanatory commentary**

- a) Article 27 deals with resignation.
- b) Article 27(1) requires staff to give three months written notice, as decided by the Steering Committee at its 9<sup>th</sup> session, adopting the period selected by Article 20(2) of the Sava Commission Staff Regulations.
- c) Article 27(2) provides a means to enforce the notice period and is based on Article 20(3) of the Sava Commission Staff Regulations.

### **Comparable Staff Regulations**

- Article 20 of the Sava Commission Staff Regulations
- Staff Rule 109.3 of the UN Staff Rules.

### **Article 28 Retirement**

1. The retirement age is 65 years of age.

### **Explanatory commentary**

- a) Article 28 fixes the retirement age from ReSPA service as 65 years of age, as decided by the Steering Committee at its 9<sup>th</sup> session. The UN has a retirement age of 62 years; OECD has a retirement age of 65 years. The Sava Commission Staff Regulations do not deal with the issue.

### Comparable Staff Regulations

- Regulation 9.5 of UN Staff Regulations

### Article 29 Death

1. The right to salary and allowances shall cease on the date of death unless the deceased staff member has dependants on the date of death in which case salary shall cease one month after the date of death.
2. Dependents shall be entitled to payment of return expenses to the staff member's place of recruitment for themselves if travel is undertaken within six months after the date of death.
3. The Director shall reimburse the reasonable costs of transportation of the staff member's body from the place of death to a place designated by the next-of-kin.

### Explanatory commentary

- a) Article 29 deals with separation from ReSPA service because of death. If death was service incurred the dependents or the estate of the staff member would be entitled to the benefits pursuant to Article 25.
- b) Article 29(1) sets the last day for pay purposes. As decided by the Steering Committee at its 9<sup>th</sup> session and in line with Article 27(2) of the Sava Commission Staff Regulations, it provides for one month's extra salary if the staff member was survived by dependents, the amount fixed by Article 27(3) of the Sava Commission Staff Regulations.
- c) As decided by the Steering Committee at its 9<sup>th</sup> session, Article 29(2) provides that dependents shall be entitled to payment of return expenses to the staff member's place of recruitment for themselves if travel is undertaken within six months after the date of death.
- d) Article 29(3) provides that the Director shall reimburse reasonable transportation cost for removal of the body of the deceased staff member, as is provided by Article 27(3) of the Sava Commission Staff Regulations.

### Comparable Staff Regulations

- Article 27 of the Sava Commission Staff Regulations
- Staff Rule 109.10 of the UN Staff Rules. Rules.

## **IX. Staff relations**

### **Article 30 Staff representation**

1. The Director shall facilitate the creation by staff members of a staff representative mechanism through which staff representative(s) shall have the right to discuss matters concerning staff welfare and conditions of service with the Director.
2. The staff representative(s) shall be entitled to make presentations to the Governing Board in accordance with the Rules of Procedure adopted by the Governing Board.

#### **Explanatory commentary**

- a) Article 30 facilitates the creation of staff representative mechanism through which concerns of the staff and technical and service employees may be heard and enables representatives of the staff to address the Governing Board.
- b) The obligations of ReSPA, under Montenegrin law, to its technical and service employees are a matter for discussion with the host State in the context of the host country agreement.<sup>9</sup>
- c) Article 30(1) obligates the Director to facilitate the creation of an internal mechanism by which staff representatives shall have the right to discuss matters of staff welfare and conditions of service with the Director.
- d) Article 30(2) enables the staff representative(s) to make representations to the Governing Board in accordance with its Rules of Procedure.

#### **Comparable Staff Regulations**

- Regulation 8.1 of the UN Staff Regulations

## **X. Discipline and appeals**

### **Article 31 Disciplinary proceedings**

1. The Governing Board shall not separate a staff member for cause or impose a disciplinary measure unless that staff member has been formally notified in writing by the Director of the precise nature and detail of the allegations against him/her, of the right to seek counsel in his/her defence at his/her own expense and has been given a reasonable period to respond to the allegations.

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<sup>9</sup> However, the Governing Board as a principal organ of an international organization can invite whomever it wishes to address it on matters of interest to the Governing Board. Accordingly, Rule 3(9) of the draft Rules of Procedure provide that “Representatives of the Secretariat and of the technical and service employees may attend meetings of the Governing Board and address the Governing Board on matters relating to conditions of service and staff welfare”.

2. If the explanation of the staff member does not resolve the matter the Director may recommend to the Governing Board that it dismiss or impose a lesser penalty on the staff member, who may immediately appeal that decision to the Appeal Board established by Article 31. In cases other than dismissal, the penalty shall be suspended pending decision of the Appeal Board.

### **Explanatory commentary**

- a) Article 32 establishes a mechanism to ensure that before a staff member is charged with misconduct the staff member has an opportunity to respond to a precise written allegation fore imposition of any disciplinary measure. The Governing Board must consider that response prior to taking a decision.
- b) Article 31(1) requires the Director who suspects a staff member of misconduct to notify the staff member of the precise nature of the allegation in writing. The staff member shall be given the opportunity to obtain assistance of counsel and must have a reasonable opportunity to respond to the allegation.
- c) Article 31(2) enables the Governing Board, after having considered the response of the staff member, to dismiss or impose a lesser penalty on a staff member but provides that any penalty other than dismissal, which would be limited to the most serious breaches of the Staff Regulations normally involving fraud or other criminal conduct, shall be suspended pending the decision of the Appeal Board.

### **Comparable Staff Regulations**

- Article 39 of the Sava Commission Staff Regulations
- Staff Regulations 10.1 and 10.2 of the UN Staff Regulations and Staff Rules 110.1 to 110.7 of the UN Staff Rules

### **Article 32 Appeal Board**

1. The Governing Board shall establish an independent Appeal Board to adjudicate any appeal from a final decision taken pursuant to the Staff Regulations by a staff member, former staff member or representative, or next-of-kin, of a deceased or incapacitated staff member. The Appeal Board shall establish its own rules of procedure.

2. The Governing Board shall appoint at least three legal experts to serve on the Appeal Board. The staff representative(s) shall be consulted on the composition of the Appeal Board.

### Explanatory commentary

- a) Article 32 seeks to ensure that the rights of staff to an independent review of decisions affecting conform to the requirements of the European Convention on Human Rights (ECHR).<sup>10</sup> Article 39 of the Sava Commission Staff Regulations permits a dismissed staff member to appeal to the Sava Commission but restricts the right of appeal of serving staff to seeking a review of the decision by the Secretary.
- b) Article 32(1) requires the Governing Board to establish an independent Appeal Board to hear appeals from final decisions taken pursuant to the Staff Regulations. The Appeal Board may determine its own rules of procedure.
- c) Article 31(2) requires the Governing Board to appoint at least three legal experts to serve on the Appeal Board and requires that the staff representative(s) be consulted on the selection of legal experts to serve on the Appeals Board.
- d) It was suggested, during the 9<sup>th</sup> session of the Steering Committee, that the Appeal Board might also be able to provide advice on questions of interpretation of the Rules of Procedure of the Governing Board. It is a principle of international administrative law that a deliberative organ of an international organization, such as the ReSPA Governing Board, is master of its own procedures, subject only to the requirements of its constitutive document. The ReSPA Agreement gives no indication that this power, inherent in an international body such as the Governing Board, has been limited. Moreover, the procedural rules are a mechanism to help the Governing Board achieve its objectives and do not affect substantive rights, as does a proposed disciplinary action. Finally, it is unlikely that an Appeal Board chosen with staff input on the basis of expertise in matters of employment law would be helpful to the Governing Board in applying its Rules of Procedure. It is suggested, at this stage, that this proposal be confined to the explanatory commentary for consideration by the Governing Board. This involves creation of a special body with expertise in procedural matters and very careful formulation of its terms of reference so that the Governing Board could request its advice so that it would not be an appeals mechanism derogating from the inherent power of the Governing Board, as the principal deliberative organ of an international organization, to regulate its own procedures.

### Comparable Staff Regulations

- Article 39 of the Sava Commission Staff Regulations
- Staff Regulation 11.1 and 11.2 of the UN Staff Regulations and Staff Rules 111.1 and 111.2 of the UN Staff Rules

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<sup>10</sup> Article 6, paragraph 1, of the European Convention on Human Rights, provides that “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...”.

**XI. Final provisions****Article 33 Amendments**

1. The Staff Regulations may be amended by Resolution of the Governing Board taken after the staff representative(s) have had an opportunity to make their views on the proposed changes known to the Governing Board.
2. The Director shall submit reports to the Governing Board recommending needed changes, if any, to the ReSPA Staff Regulations and thereafter, from time to time, as circumstances warrant. The report shall attach the views of the staff representative(s) on the proposals of the Director.

**Explanatory commentary**

- a) The Governing Board, having adopted the Staff Regulations, obviously has the right to amend them. However, Article 34 seeks to give the staff an opportunity to present their views on any proposed change to the Staff Regulations.
- b) It seems apparent that the adequacy or otherwise of the Staff Regulations can only be assessed effectively in the light of operational experience. Article 40(2) of the Sava Commission Staff Regulations requires its Secretary to bring to the attention of the Commission “all matters not regulated by these Regulations”. Accordingly, Article 33(2) seeks to ensure that the Staff Regulations are kept under review but ensures that the views of staff representatives are also before the Governing Board.

**Comparable Financial Regulations**

- Article 40 of the Sava Commission Staff Regulations

**Article 34 Entry into force**

The Staff Regulations enter into force when adopted by Resolution of the Governing Board.

**Explanatory commentary**

- a) The Article specifies when the Staff Regulations enter into force.

**Comparable Financial Regulations**

- Rule 112.8 of the UN Staff Rules

## ANNEX I: TECHNICAL AND SERVICE EMPLOYEES

1. The following provisions in the ReSPA Staff Regulations are applicable to technical and service employees and, when so applicable, the expression “staff members” or “staff” in the Regulations shall be deemed to include technical and service employees:

**Part I: Application and purpose,** Article 1(2) and Article 2;

**Part III: Standards of conduct and accountability,** Articles 5 to 11;

**Part IV: Recruitment and appointment,** Article 12(3) and 12(4); Article 13; Article 14; Article 16; and Article 17. *Consultations need to be held with host State to ensure that:*

- a) These provisions can apply to technical and service employees in accordance with local law; in particular, the form, type and length of contracts of employment and whether technical and service employees have a legal right to second jobs or whether this can be restricted by employer and, if so under what conditions;
- b) Establishing procedures to ensure effective implementation of the mandate in Article 20(1) of the ReSPA Agreement that technical and service employee positions must be open to persons from all ReSPA Members, including expedited procedures for any needed work permits and visas and any needed identification cards for technical and service employees so recruited from outside the host State; and
- c) Legal requirements, if any, of local law for temporary appointments prior to establishment of employment policy by Governing Board and consequences for ReSPA if it hires technical and service employees on a temporary basis.

**Part V: Salary, emoluments and conditions of service**

Articles 18(4) and 20. *Consultations need to be held with host State to ensure that:*

- a) These provisions can apply to technical and service employees in accordance with local law; in particular, can ReSPA limit a cost of living inflator by budgetary considerations to, in effect, make its application discretionary.
- b) Establishing any legal requirements in connection with fixation of salary and allowances of technical and service employees in accordance with the “best prevailing rate” in the locality

principle, including any minimum legal requirements for fixation of salary and allowances for technical and service employees; and

- c) Any legal requirements to negotiate or consult with unions of local employees (technical and service employees) on salaries and/or conditions of service.

#### **Part VI: Leave**

Articles 21 to 23. *Consultations need to be held with host State to ensure that these provisions can apply to technical and service employees in accordance with local law.*

#### **Part VII: Social security**

Articles 24 and 25. Consultations need to be held with host State to ensure that:

- a) These provisions can apply to technical and service employees in accordance with local law; and
- b) Establishing any legal requirements in connection with provision of social security benefits to technical and service employees; in particular, those recruited from Members other than the host State and the implications, if any, for ReSPA budget.

#### **Part VIII: Separation from service**

Articles 26 to 29. *Consultations need to be held with host State to ensure that:*

- a) These provisions can apply to technical and service employees in accordance with local law; and
- b) Establishing any legal requirements of the host State in connection with separation from service, especially dismissal for cause.

#### **Part IX: Staff relations**

Article 30. *Consultations need to be held with host State to ensure that:*

- a) This provisions can apply to technical and service employees in accordance with local law; and
- b) Establishing any legal requirements in connection with trade union rights and the implications for ReSPA

#### **Part X: Discipline and appeals**

Articles 31 and 32. *Consultations need to be held with host State to ensure that:*

- a) These provisions can apply to technical and service employees in accordance with local law;

- b) Establishing any legal requirements in connection with discipline and dismissal and appeal rights of technical and service employees under local law.

**Overarching matters resulting from above**

Consultations may have to be held with host State in context of negotiation of host country agreement on any provisions of local law that might affect the independence of ReSPA as an international Organization the budget of which must be devoted to the attainment of its objectives:

- a) Local laws that require ReSPA to pay any employment tax or social security contributions in connection with technical and service employees will entail either that the host State will have to agree to exempt ReSPA from these tax and social security payments or that the Governing Board will have to agree to pay those taxes on a voluntary basis; and
- b) Any legal requirements of the host State in relation to contracting out services that could be performed by technical and service employees, or have been performed by them, including access of potential independent contractors from other Members and implications of such laws, if any, for ReSPA.

**Annex II: Salaries**

**[to be added]**