

Draft Financial Regulations of ReSPA

[incorporating amendments and changes as decided at Finance meeting held in Podgorica, 4 December 2008].

Introductory Comments

1. This document consists of a draft Resolution of the ReSPA Governing Board adopting the Financial Regulations of ReSPA, which Regulations in preliminary form are annexed to, and form an integral part of, the Resolution.
2. The text of the draft Financial Regulations is accompanied by an explanatory commentary and by a list of comparable financial rules, including the Energy Community Procedural Act on Budgetary Issues and the Financial Rules of the Sava Commission, which texts, together with the requirements of the ReSPA Agreement, greatly influenced the current draft. The commentary and list are designed to assist the Steering Committee in its consideration of the draft Financial Regulations but are not part of the Financial Regulations. The commentary seeks to place the provision concerned in context or to give a brief explanation of its purpose. Where a provision is highly technical, *e.g.*, Regulation 34 on presentation of accounts and Regulation 35 on accounting system, the explanation of the provision in the commentary is often simply a reference to the European Communities Regulation from which it was taken. The commentary may be expanded in the light of further review.
3. 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 rules to assist the Governing Board in its deliberations.
4. Once the text has been adopted by the Steering Committee the Secretariat will prepare an implementing resolution, which explains the features of the Regulation, along the lines of Council Regulation (EC, Euratom) No. 1650/2002 of 25 June 2002 on the Financial Regulations applicable to the general budget of the European Communities.
5. A policy decision has been taken that ReSPA is to operate its accounts on a cash basis because of its small size. The comparator Financial Regulations all operate on an accrual basis. The Secretariat will arrange for accountants to review the draft to ensure that it is consistent with operation of the accounts on a cash basis.

Draft of 2 February 2009

Draft Resolution of the ReSPA Governing Board

1. Whereas Article 15(1) (h) of the Agreement Establishing the Regional School of Public Administration (ReSPA) (hereinafter “ReSPA Agreement”) provides that the Governing Board shall “adopt the Financial Regulations of ReSPA”,
2. 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”,
3. Whereas Article 11(3) of the ReSPA Agreement provides that “Resolutions shall be adopted by unanimity of all Members of ReSPA”,
4. Whereas Article 15(2) of the ReSPA Agreement empowers the Governing Board to create subsidiary bodies to advise the Governing Board and the establishment of a Budget Committee is deemed useful to assist the Governing Board to reach agreement on financial and budgetary matters,
5. Whereas the Governing Board establishes the Budget Committee by this Resolution as a mechanism under the Financial Regulations, with the terms of reference and duties set out in Part III of the Financial Regulations, which Regulations are also adopted by this Resolution,
6. Now, therefore, the Governing Board, by Resolution No. --/2009 of [insert date], adopted by unanimous vote of all Members of the Governing Board, establishes the Budget Committee and also adopts the Financial Regulations of ReSPA, which are set out in the Annex to this Resolution and which Annex is an integral part of this Resolution.

Explanatory commentary

- a) The ReSPA Agreement requires that the Financial Regulations of ReSPA be adopted by Resolution.
- b) The Resolution also establishes the Budget Committee as a mechanism to assist the Governing Board. The terms of reference of the Budget Committee are set out in the Financial Regulations which are an integral part of the adopting Resolution. In particular, the Budget Committee will assist the Governing Board to be able to adopt the Core Budget by unanimous vote as it will involve Members in budget and financial issues well before these matters are presented for decision to the Governing Board.
- c) This Resolution records compliance with the requirements of the ReSPA Agreement for adoption of the Financial Regulations and provides a formal record of compliance with it.

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Draft Financial Regulations of ReSPA

I. Scope

Article 1 Application of Financial Regulations

1. The Financial Regulations lay down the rules for the establishment and administration of the ReSPA Budget, including the Core Budget of ReSPA and donor contributed funds managed by the Secretariat, and all revenue and expenditure operations of ReSPA.

2. Donors or their contractors may manage activities financed by their donations in accordance with agreements entered into with ReSPA. However, the Governing Board on the recommendation of the Budget Committee, referred to in Part III of these Regulations and established by Resolution --/2009, must approve any proposed provision in such agreements that are inconsistent with the basic budgetary principles in Article 3.

Explanatory commentary

- a) Chapter IX of the ReSPA Agreement (Articles 22 to 25) mandates the establishment of Financial Regulations to govern the financial management of ReSPA. Article 15(1) (h) of the ReSPA Agreement states that the Governing Board shall “adopt the Financial Regulations of ReSPA”. And Article 11 requires that these Financial Regulations be adopted by Resolution through a unanimous vote of the Members of ReSPA. Adoption of the Financial Regulations is a consequence of these provisions.
- b) Article 1 defines the scope of application of the Financial Regulations and of the principles that it establishes.
- c) Article 1(1) is a consequence of the direction in Article 24(1) of the ReSPA Agreement that the activities of ReSPA may be financed by donations or by the Core Budget in accordance with the Financial Regulations. The Financial Regulations will govern the contents of the Core Budget pursuant to Article 23(1), directly managed funds pursuant to Article 24(1), in kind contributions under Article 23(6), charges for participation in ReSPA activities authorized by Article 15(1)(g) of the ReSPA Agreement and charges for managing donor funds authorized by Article 24(2).
- d) Normally Financial Regulations of an entity would govern all revenue and expenditure operations affecting the entity. However, Article 24(2) of the ReSPA Agreement expressly permits donors or their contractors to manage ReSPA activities that they finance. Nevertheless, the activities that may be carried out by ReSPA, or under its name, are limited to those established by Article 5 of the ReSPA Agreement. It follows that ReSPA must agree with donors as to any activities that they, or their contractors, will manage to ensure that these activities comply with Article 5. Moreover, the Director

would report on all ReSPA activities, including donor financed activities, pursuant to Article 18(3) of the ReSPA Agreement.

- e) There is an additional consideration. It seems that, in general, the financial management of donor-managed ReSPA activities ought to conform to the core principles established by Part II of the ReSPA Financial Regulations simply because they are activities executed in the ReSPA name. ReSPA activities should be managed and audited in a transparent manner, conforming to the basic principles set out in the Financial Regulations, which adopt European Communities standards. Whether to exceptionally depart from such standards is a political, rather than an executive, decision and, as a result, Article 1(2) lays down that if a proposed system of donor financial management departs from the principles established in Part II of these Regulations the consent of the Governing Board through a recommendation of the Budget Committee must be obtained by the Director before agreeing to the arrangement.

Comparable Financial Regulations

- Articles 1 and 2 of Council Regulation (EC, Euratom) No.1605/2002 of 25 June 2002 on the Financial Regulations applicable to the general budget of the European Communities (European Communities Financial Regulations)¹
- Article 1 of the Energy Community Procedural Act No. 2006/03 (Energy Community Budget Rules)
- Article 1 of the Financial Rules of the Sava Commission adopted by the International Sava Commission River Basin Commission at its Regular Session held in Zagreb on June 27 – 29, 2005.
- Regulation 1.1 of the Financial Regulations and Rules of the United Nations, ST/SGB/2003/7 of 9 May 2003 (UN Financial Regulations)
- Regulation 1.1 of the Regulations and Rules Governing Programme Planning, the Programme Aspects of the Budget, the Monitoring of Implementation and the Methods of Evaluation, ST/SGB/2000/8 of 19 April 2000 (UN Programme Budget Regulations)

¹ These Regulations are supplemented by detailed Rules which, although too detailed for inclusion in the Financial Regulations of ReSPA, will give useful guidance to the Authorizing Officer and the Accounting Officer of ReSPA in establishing procedures to implement the Financial Regulations (see Commission Regulation (EC, Euratom) No. 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) on the Financial Regulations applicable to the general budget of the European Communities).

Article 2: Definitions

“Appropriate price” is the price obtained after the procurement rules and procedures in Part IX of these Regulations are followed.

“Contributions” are the amounts payable by Members of ReSPA to the Core Budget pursuant to Article 23 of the ReSPA Agreement.

“Core Budget” is that part of the ReSPA Annual Budget financed from contributions pursuant to Article 23 of the ReSPA Agreement.

“Director” is the Head of the ReSPA Secretariat pursuant to Article 19 of the ReSPA Agreement.

“Directly managed funds” are funds provided by donors to ReSPA for its activities and managed by the Secretariat pursuant to Article 24 of the ReSPA Agreement.

“Donor managed funds” are funds for ReSPA activities provided by donors and managed by the donor pursuant to Article 24 of the ReSPA Agreement.

“Financial Actors” are the Authorizing Officer and the Accounting Officer and those staff members delegated by them to carry out duties pursuant to the Financial Regulations.

“Independent Auditor(s)” are the auditor(s) nominated by the Governing Board pursuant to Article 15(1)(n) of the ReSPA Agreement.

“Party” means a party to the ReSPA Agreement pursuant to Article 27 of the ReSPA Agreement.

“Whistleblower(s)” are persons providing information pursuant to Article 11 of the Staff Regulations of ReSPA.

“Working Capital Fund” is a fund that may be established by the Governing Board in an amount to be determined from time to time and from which advances can be authorized by the Governing Board to finance Core Budget activities and which Fund is to be repaid as soon as Contributions are made.

Explanatory commentary

- a) Article 2 provides definitions of terms used in the Financial Regulations.

Comparable Financial Regulations

- Article 2 of the Financial Rules of the Sava Commission

Article 3 Obligations of ReSPA Members

1. The Members of ReSPA (“Members”) shall finance the Core Budget in equal share.

2. The Members shall pay their contributions to the Core Budget in Euros during the first three months of the financial year of ReSPA. Contributions in kind shall not be considered as being part of a Contribution to the Core Budget.
3. A party becoming a member of ReSPA pursuant to Article 7 of the ReSPA Agreement shall pay its full share of the Core Budget for the entire year of accession.
4. The Director shall propose a mechanism to the Governing Board to encourage timely payment of contributions.

Explanatory commentary

- a) Article 3 sets out the obligations of Members to finance the Core Budget as established by the ReSPA Agreement. It should be noted that the ReSPA Agreement makes provision for payment of Contributions in 2009. However, this matter is dealt with under Part XIII, Transitional Provisions.
- b) Article 3(1) reflects Article 23(2) of the ReSPA Agreement.
- c) Article 3(2) reflects Article 23(5) of the ReSPA Agreement.
- d) Article 3(3) reflects Article 23(4) of the ReSPA Agreement.
- e) SC10 considered that there should be a mechanism to encourage timely payment of contributions by Members. It was suggested that this mechanism could permit a credit for early payment of contributions before the due date and the payment of interest by a Member who was late in payment. It was envisaged that this mechanism would be developed by the European Institute for Public Administration while preparing a ReSPA Finance Manual in 2009 and that the mechanism could be in the Finance Manual. Draft Article 3(4) reflects the policy decision of SC10. However, the text is in general terms because the mechanism, depending on how it is to be formulated, may require some revisions to the ReSPA Agreement, which envisages payment by Members of contributions that are fixed by the ReSPA Agreement itself for 2009 and 2010. In addition, any changes to start after 2010 may still require a change to Article 23 because, Article 23(2) requires that Members contribute an equal share of the Core Budget fixed by the Governing Board.

Comparable Financial Regulations

- Article 2 of the Energy Community Budget Rules
- Article 5 of the Sava Commission Financial Rules
- Regulations 3.1 to 3.7 of the UN Financial Regulations

II. Budgetary principles

Article 4 The principles and their application

Subject to Article 1(2), the establishment, implementation, revenue and expenditure operations of the Core Budget and any directly managed funds shall comply with the principles of unity and budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency as provided in these Regulations.

Explanatory commentary

- a) Article 4 sets out the standards or principles that are to govern the financial activities of ReSPA, whether financed from the Core Budget, from directly managed funds or from charges or fees earned by ReSPA. The principles in the Financial Regulations are those established in the European Communities Financial Regulations and in the Energy Community Budget Rules. However, Article 24(2) of the ReSPA Agreement expressly permits donors or their contractors to manage activities that they finance. Donors may be governed by different principles and this is why Article 1(2) authorizes the Budget Committee to agree to such principles even though they may depart from the principles applicable to the Core Budget and directly managed funds.

Comparable Financial Regulations

- Article 3 of the European Communities Financial Regulations
- Article 3 of the Energy Community Budget Rules

Article 5 Principle of unity and budgetary accuracy

1. The Budget for each year forecasts and authorizes expenditures for ReSPA activities considered necessary for the proper functioning of ReSPA.
2. The Budget shall comprise:
 - a) The Core Budget;
 - b) Directly managed funds;
 - c) Capital and in kind contributions;
 - d) Revenues earned from ReSPA activities; and
 - e) Carry-over from prior financial years pursuant to Article 5(5).

3. No revenue shall be collected and no expenditure authorized unless earmarked in the budget.
4. The Governing Board may adopt a supplementary budget in the same way as the Budget.

Explanatory commentary

- a) Article 5 seeks to ensure that the Budget fully and accurately records the financial and budgetary activities of ReSPA. It is based on a budgetary principle of the European Communities.
- b) Article 5(2) sets out the elements of the ReSPA Budget. Article 5(2)(a) and 5(2) (b) are a consequence of Article 24 of the ReSPA Agreement. Article 5(2)(c) reflects that capital and in kind contributions (pursuant to Article 23(6) of the ReSPA Agreement) may be made to ReSPA. Article 5(2)(d) is a consequence of 15(1)(g) of the ReSPA Agreement, which permits ReSPA to charge Participants for its services. Article 5(2)(e) is a consequence of the fact that, at times, committed expenditures are not used in a budget period.
- c) Article 5(3) ensures that the Budget is complete. Article 5.3 of the European Communities Financial Regulations and Article 6.2 of the Energy Community Budget Rules provide that an appropriation (i.e., contribution) may not be entered in the Budget for an item that is not necessary but this goes without saying as it is the Members of ReSPA that approve the Budget by unanimous vote.
- d) Article 5(4) enables the Governing Board to adopt a supplementary budget. Article 7 of the Financial Rules of the Sava Commission permits a supplementary budget to be adopted in the same way as the Budget, with an expedited procedure if that supplementary budget can be met from the Reserve Fund.
- e) Both the European Communities Financial Regulations and the Energy Community Budget Rules, as part of the principle of unity and budgetary accuracy, provide that no expenditure may be authorized in excess of appropriations. However, Article 23(5) of the ReSPA Agreement has a less absolute rule by providing that “ReSPA is not permitted to enter into debt, except for operational cash flow purposes, unless decided by the Governing Board by unanimity”. This matter is dealt with in Article 7.2.

Comparable Financial Regulations

- Articles 4 to 6 of the Energy Community Budget Rules
- Articles 4 and 5 of the European Communities Financial Regulations
- Article 5(1) of the Sava Commission Financial Rules

- Regulations 2.1 to 2.3 of the UN Financial Regulations

Article 6 Principle of annuality

1. Appropriations entered into the budget shall be authorized for one financial year, which shall run from 1 January to 31 December. The appropriations authorized in the Core Budget for a relevant year may be used solely to cover expenditure committed and paid in that financial year, and to cover amounts due against commitments from the previous financial year.

2. The Core Budget shall contain administrative appropriations, which are non-differentiated and which shall consist of commitment appropriations and payment appropriations as follows:

- a) Commitment appropriations, which shall cover the total cost of the legal commitments entered into during the current financial year and shall be entered into the accounts when made during that financial year;
- b) Payment appropriations, which shall cover payments made to honour legal commitments entered into during the current financial year and/or earlier financial years. Payments shall be entered into the accounts on the basis of the payments effected by the Accounting Officer by 31 December at the latest.

3. Expenditure arising from contracts that extend beyond the financial year shall be charged to the budget of the financial year in which payment is made.

4. Revenues shall be entered into the accounts of the financial year on the basis of the amounts collected.

5. Appropriations, which have not been used at the end of the financial year for which they were entered, shall be carried over into the following year as revenue and the Budget Committee may at its first meeting of the following financial year permit their use for any authorized ReSPA activity or for payment into the Working Capital Fund. Appropriations so carried over shall be identified in the accounts.

Explanatory commentary

- a) Article 6 sets out the main features of the principle of annuality and follows the approach in Articles 7 to 10 of the Energy Community Budgetary Rules. However, special provision is made in Article 6(5) to “destructure” any unused appropriations carried over to the next financial period and enable them to be used for the ReSPA purposes specified in the provision with the consent of the Budget Committee.
- b) Article 6(1) sets out the basic principle that appropriations are for expenditures committed and paid in that financial year and for payments due under prior

commitments. This is also the approach of Article 23(1) of the ReSPA Agreement which requires an annual Core Budget.

- c) Article 6(2) defines the types of appropriations and requires commitment and payment appropriations to be entered into the accounts in the year made. Article 6(2) provides that ReSPA appropriations shall be non-differentiated because the expenditures of ReSPA are essentially administrative expenditures decided on a yearly basis rather than multi-year programmes committed in the budget year but paid over a multi-year period (so-called “differentiated” appropriations).
- d) Article 6(3) establishes how expenditure pursuant to contracts extending beyond one financial year is to be treated.
- e) Article 6(4) establishes how revenue shall be entered into the accounts.
- f) Article 6(5) attempts to give ReSPA, a small organization, some budgetary flexibility, by enabling unused appropriations not only to be carried over to the next financial year but also to be carried over in a “destructured” fashion which would enable the Budget Committee at the first session of the following financial year to authorize their use for any authorized ReSPA purpose, including payment into a Working Capital Fund which, over the years, may create a reserve which would minimize the need to borrow for cash flow purposes.

Comparable Financial Regulations

- Articles 7 to 10 of the Energy Community Budget Rules
- Articles 6 to 13 of the European Communities Financial Regulations
- Article 4(1) of the Financial Rules of the Sava Commission
- Regulations 1.2, 2.2, 5.1, 5.2, 5.3 and 5.4 of the UN Financial Regulations

Article 7 Principle of equilibrium

1. The budget revenue and expenditure must be in balance.
2. ReSPA shall not enter into debt except that the Director may, with the approval of the Budget Committee, obtain short-term financing to overcome operational cash flow problems caused by late payment of contributions from Members.

Explanatory commentary

- a) Article 7 reflects the principle of equilibrium but takes account of Article 23(7) of the ReSPA Agreement, which permits ReSPA to enter into debt for operational cash flow purposes.
- b) Article 7(1) sets out the basic principle that revenue and expenditure must balance.
- c) Article 7(2) is new and departs from Article 11.2 of the Energy Community Rules which prohibits loans. Article 7(2) is a direct consequence of Article 27(3) of the ReSPA Agreement, which permits debt for “operational cash flow purposes”. Article 7(2) regulates the use of this facility by requiring the Director to obtain the concurrence of the Budget Committee before obtaining such financing. It also limits obtaining financing to cases where the short fall in cash flow has been caused by late payments in contributions by Members to the Core Budget because such contributions are legal obligations. Any donor-financed activities can only occur if financing is in place because promised donations do not normally constitute legal obligations to make those donations.

Comparable Financial Regulations

- Article 11 of the Energy Community Budget Rules
- Articles 14 and 15 of the European Communities Financial Regulations

Article 8 Principle of unit of account

The budget shall be drawn up and implemented in Euro and the accounts shall be presented in Euro.

Explanatory commentary

- a) Article 8 reflects the principle that the budget shall be in a designated unit of account, the Euro. This flows naturally from Article 23(3) of the ReSPA Agreement, which sets an envelope for the Core Budget for 2009 and 2010 in Euro.

Comparable Financial Regulations

- Article 12 of the Energy Community Budget Rules
- Article 16 of the European Communities Financial Regulations
- Article 4(7) of the Financial Rules of the Sava Commission
- Regulation 2.2 of the UN Financial Regulations

Article 9 Principle of universality

1. Total revenue shall cover total expenditure. All revenue and expenditure shall be entered in full without any adjustment against each other.
2. Revenue earmarked for specific purposes in the form of donations may only be used for those purposes and the budget shall carry lines for such assigned revenues. Such revenue must cover all direct and indirect costs associated with the activity or expenditure in question.
3. The Director may accept donations for ReSPA activities. However, donations that involve added expenses for ReSPA that are not covered by the donation shall not be accepted without approval of the Governing Board on the recommendation of the Budget Committee.
4. The Director shall prepare an annual report for submission to the Budget Committee within 60 days following completion of the financial year with full information on donated funds and their usage. He shall prepare an interim report for the initial six months in the financial year for submission to the Budget Committee at its first session in the second half of the year. He shall also present the annual and interim accounts with these reports.
5. The following deductions may be made from invoices and payment requests, which shall then be passed for payment of the net amount:
 - a) Penalties imposed on parties to contracts;
 - b) Adjustments because of prior payments made unduly to the same payee.

Such deductions shall not be recorded as revenue. However, any negative balances shall be entered as expenditure.

Explanatory commentary

- a) Article 9 seeks to ensure that all financial transactions are recorded in the budget.
- b) Article 9(1) provides that the all revenues and expenditures are to be recorded in full so that the budget gives a complete picture of the financial state of ReSPA.
- c) The first sentence of Article 9(2) is a natural consequence of Article 24 of the ReSPA Agreement, which enables donors to finance ReSPA activities. Article 9(2) also requires that any funds earmarked for specific purposes must cover all direct and indirect expenditure incurred by that specific activity or purpose.
- d) Article 9(3) reflects Article 24 of the ReSPA Agreement. However, it adds that if a donation involves added expense for ReSPA, *e.g.*, costs associated with in-kind contributions pursuant to Article 23(6) of the ReSPA Agreement, the approval of the Governing Board on the recommendation of the Budget Committee must be obtained prior to acceptance of the donation. This is necessary because the Governing Board

would not have previously examined those additional expenses in the normal budget process.

- e) Article 9(4) is a consequence of Article 25(2) of the ReSPA Agreement, which requires the Secretariat to prepare reports on directly managed funds and Article 18(3), which requires reports on the Annual Programme of Work. The report on the year's activity is to be presented within 60 days of the end of the financial year. Accountability and oversight will be enhanced by the preparation by the Director of an interim report on the first 6 months of each financial year. The interim report is to be submitted to the Budget Committee at its first session in the second half of the year, or as requested by the Budget Committee.
- f) The purpose of Article 9(5) is to authorize ReSPA to set-off, against any invoices, amounts owed by the same payee on other transactions. However, the provision makes clear that such deductions are not recorded as revenue.

Comparable Financial Regulations

- Articles 13 to 16 of the Energy Community Budget Rules
- 17 and 19 of the European Communities Financial Regulations
- Regulation 3.11 and 3.12 of the UN Financial Regulations

Article 10 Principle of specification

1. The appropriations shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.
2. The Director may transfer appropriations within lines of the budget, excluding the budget line for the Secretariat, up to a total limit of 10% of the appropriations for the financial year. Transfers in excess of this 10% limit and transfers from Secretariat budget lines for salaries require the approval of the Governing Board through a recommendation of the Budget Committee.
3. Appropriations corresponding to revenue for particular purposes may be transferred only if used for the purpose for which the revenue was assigned. Appropriations may be transferred only to budget lines for which the budget has authorized appropriations or a token entry.

Explanatory commentary

- a) Article 10 ensures that, while the Core Budget must have appropriations for specific purposes, there is sufficient flexibility to meet changed or urgent circumstances.

- b) Article 10.1 adopts the organizational structure for the budget documents required by Article 21 of the European Communities Financial Regulations and Article 17 of the Energy Community Budget Rules.
- c) Article 10.2 permits the Director to transfer appropriations, other than those relating to salaries for the Secretariat, between budget lines up to 10 % of total appropriations in a financial year. Transfer of appropriations in excess of this 10% amount or from Secretariat budget lines for salaries requires approval of the Governing Board through a recommendation of the Budget Committee, as does any transfer from budget lines for Secretariat salaries. Use of funds designated for Secretariat posts for other purposes requires the approval of the Governing Board because Article 20(1) of the ReSPA Agreement mandates that there be equal access to employment and using appropriations reserved for staff positions may affect the number of posts available. Accordingly, any such proposed decision should be subject to Member scrutiny through the Budget Committee and ultimately a decision of the Governing Board.
- d) Article 10.3 ensures that funds contributed for particular purposes are used for those purposes and that a transfer can only be to a line approved by the Core Budget for the year in question. This reflects the authority of the Governing Board to establish the annual programme of work pursuant to Article 15(1)(c) of the ReSPA Agreement.

Comparable Financial Regulations

- Articles 17 to 19 of the Energy Community Budget Rules
- Articles 21 to 26 of the European Communities Financial Regulations
- Article 6 of Financial Rules of the Sava Commission
- Regulation 2.3 of the UN Financial Regulations

Article 11 Principle of sound financial management

1. Budget appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by ReSPA for the pursuit of its objectives shall be made available in due time, in the needed quantity and quality and at the appropriate price.
3. The principle of efficiency is concerned with the best relationship between the resources employed and the outputs achieved.
4. The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

5. The annual Work Programme of ReSPA shall contain specific objectives. Performance indicators shall monitor the achievement of these objectives.

Explanatory commentary

- a) Article 11 establishes that the Budget must be administered in accordance with principle of sound financial management. This Article is based on Regulations 27 and 28 of the European Communities Financial Regulations and Regulation 20 of the Energy Community Budget Rules.
- b) Article 11(1) defines the concept of sound financial management.
- c) Articles 11(2) to 11(4) define the principles of economy, efficiency and effectiveness. The appropriate price referred to in Article 11(2) is defined in Article 2 as the price obtained after the procurement rules in Part IX of these Regulations have been properly followed.
- d) Article 11(5) requires that objectives and performance indicators are included in the ReSPA annual Programme of Work to enable performance to be measured.

Comparable Financial Regulations

- Article 20 of the Energy Community Budget Rules
- Articles 27 and 28 of the European Communities Financial Regulations
- Regulation 2.3 of the UN Financial Regulations
- Regulations 2.1, 6.1 and 7.1 to 7.4 of the UN Programme Budget Regulations

Article 12 Principle of transparency

1. The Core Budget and the budget for directly managed funds shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency and shall be published on the ReSPA website within 14 days of adoption by the Governing Board.

2. The Core Budget shall annex full information on any borrowing for cash flow purposes up to the time the Core Budget was prepared.

Explanatory commentary

- a) Article 12 establishes that the Core Budget and the budget for directly managed funds be transparent by requiring their publication when adopted and by requiring the Core

Budget to annex information on any borrowing that has occurred up to the time of submission of the Core Budget to Members.

- b) Article 12 does not deal with Donor managed funds since the way these are to be drawn up and published will depend on the donor.

Comparable Financial Regulations

- Article 21 of the Energy Community Budget Rules
- Articles 29 and 30 of the European Communities Financial Regulations
- Financial Rule 102.3 of the UN Financial Rules

III. Budget Committee

Article 13 Mandate

1. The Budget Committee, established by Resolution --/2009 which adopted these Regulations, shall:

- (a) Review the proposed Core Budget of ReSPA prior to its submission to the Governing Board;
- (b) Review all proposals of the Director concerning or affecting the Core Budget or directly managed funds of ReSPA and make recommendations to the Governing Board;
- (c) Advise the Director upon his/her request on any financial or budgetary matter;
- (d) Supervise the financial and budgetary operations of ReSPA to ensure compliance with the Financial Regulations and make necessary recommendations to the Governing Board;
- (e) Review the Annual and interim Reports submitted by the Director pursuant to Article 9(4) and present any comments to the Governing Board;
- (f) Review the reports and financial statements and accounts submitted by the Independent Auditor(s) and make recommendations to the Governing Board;
- (g) Consider any communications submitted to it by whistle blowers and make recommendations to the Governing Board;
- (h) Recommend transfers of appropriations between budget lines pursuant to Article 10; and
- (i) Upon the request of the Governing Board, advise it on any matter affecting the financial and budgetary operations of ReSPA.

2. The Director shall regularly inform the Budget Committee on any matter that may, in his or her opinion, have a major impact on the financial and budgetary operations of ReSPA, including directly managed funds and donor and contractor managed funds.
3. The Budget Committee is empowered to obtain any necessary information concerning financial and budgetary matters that affect ReSPA, including from the Independent Auditor(s).

Explanatory commentary

- a) Article 15(2) of the ReSPA Agreement empowers the Governing Board to create subsidiary bodies with specific mandates. The Resolution adopting the Financial Regulations establishes a Budget Committee and Article 13, also adopted by the Resolution, sets out the functions of the Budget Committee to assist and make recommendations to the Governing Board to help it in the discharge of its financial and budgetary responsibilities under the ReSPA Agreement. This early involvement of members, through the mechanism of the Budget Committee, may help ensure that when these matters are discussed in the Governing Board there is agreement on the many financial and budgetary matters that must be adopted by unanimous vote of the Governing Board pursuant to Articles 15(1) and 11(3) of the ReSPA Agreement. The Budget Committee will also ensure that the financial operations of ReSPA are properly overseen at a governmental level. It will also provide a convenient access point for any whistle blowers.
- b) Article 13(1) sets out the functions of the Budget Committee. The purpose of the Budget Committee is to ensure that representatives of the Governing Board are fully informed and timely involved in all matters budgetary and financial. The Budget Committee will consider the annual and interim reports submitted by the Director and the reports and financial statements submitted by the Independent Auditor(s) submitted within the time limits established in the Financial Regulations. The annual report is to be submitted within 60 days of the close of the financial year pursuant to Article 9(4) and the financial statements are due within 90 days pursuant to Article 36(3) so the discharge of the Director pursuant to Article 37 would occur some 5 month after the close of the financial year. It might be noted that, in addition to specific functions, Article 13(1)(i) enables the Governing Board to request the Budget Committee to advise it on any other matters affecting the financial and budgetary operations of ReSPA.
- c) Article 13(2) requires the Director to keep the Budget Committee fully informed on all matters financial and budgetary that the Director considers may have a major impact on ReSPA or its operations.
- d) Article 13(3) empowers the Budget Committee to obtain any information on financial and budgetary matters.

Comparable Financial Regulations

- Article 22 of the Energy Community Budget Rules
- Financial Regulations 2.5 and 2.6 of the UN Financial Regulation
- Regulation 3.1 of the UN Programme Budget Regulations

Article 14 Composition and functioning

1. The Budget Committee shall consist of a Representative nominated by each Member of ReSPA. The Budget Committee shall be chaired by the Representative of the Member that is to chair the Governing Board in the following year pursuant to Article 16(3) of the ReSPA Agreement.

2. The Budget Committee may meet immediately prior to sessions of the Governing Board or at any time that it decides to meet. It shall take decisions by a majority of Members and shall establish its own working methods.

3. The Director shall provide secretariat services to the Budget Committee and shall attend meetings of the Budget Committee in an *ex officio* capacity.

Explanatory commentary

- a) Article 14 deals with the composition and functioning of the Budget Committee.
- b) In order to ensure a seamless transition of the work of the Budget Committee to the Governing Board, Article 14(1) provides that the Budget Committee shall be composed of a Representative nominated by each Member. The Budget Committee shall be chaired by the Representative of the Member that is to chair the Governing Board during the following year pursuant to Article 16(3) of the ReSPA Agreement.
- c) Article 14(2) provides that the Budget Committee shall take decisions by a majority of the membership of the Committee and empowers the Budget Committee to establish its own working methods. It is important that it have this flexibility to adapt to the needs of ReSPA in the light of experience.
- d) Article 14(3) requires the Director to provide secretariat services to the Budget Committee and provides that he shall attend meetings of the Budget Committee in an *ex officio* capacity, as he/she does on the Governing Board pursuant to Article 14(5) of the ReSPA Agreement.

Comparable Financial Regulations

- Article 23 of the Energy Community Budget Rules

- Rules 155 to 157 of the Rules of Procedure of the UN General Assembly

IV. Elements of the ReSPA Budget

Article 15 The Annual Budget

The Annual Budget shall consist of the Core Budget, donor funds and miscellaneous funds.

Explanatory commentary

- a) Article 15(1)(c) of the ReSPA Agreement requires the Governing Board to adopt an “annual Programme of Work and Budget”. Article 15(1)(i) requires it to set an envelope for the Core Budget. Article 22 provides that “ReSPA shall be financed from Member contributions and Donors” while Article 24 provides that the activities of ReSPA may be financed from donations and from the Core Budget. Article 15(1)(g) authorizes ReSPA to charge Participants for their participation in ReSPA activities. It follows from these provisions that the ReSPA budget consists of the Core Budget, donor funds and miscellaneous income, such as income generated by courses conducted by ReSPA.

Comparable Financial Regulations

- Article 24 of the Energy Community Budget Rules
- Article 31 of the European Communities Financial Regulations
- Article 4(3) of the Sava Commission Financial Rules
- Regulation 2.2 of the UN Financial Regulations

Article 16 The Core Budget

1. The Core Budget shall consist of the following revenues and expenditures:
 - a) The revenues of the Core Budget shall be contributions from Members, charges on directly managed funds and charges for ReSPA services.
 - b) The expenditures from the Core Budget shall include the costs of the Independent Auditor(s), the Director and Financial Controller and their offices, the costs of liability and property insurance, contributions to the Working Capital Fund and such other expenditures as authorized by the Governing Board by Resolution.
2. The Governing Board shall set an envelope for each annual Core Budget.

Explanatory commentary

- a) Article 23(1) of the ReSPA Agreement provides that the “contents of the Core Budget shall be defined in the Financial Regulations”. The only costs mandated to be in the Core Budget by the ReSPA Agreement are the costs of the Independent Auditor(s), pursuant to Article 23(8).
- b) Article 16(1) sets out the contents of the Core Budget. It is premised on the fact that the Core Budget should contain the core expenses of ReSPA. While there may be some debate as to the extent of those expenses it seems, at least from the point of view of the Financial Regulations, that the expenses of the two key officials designated by the Financial Regulations – which are based on European Communities standards – should be covered, *i.e.*, the Authorizing Officer (Director) and the Accounting Officer (Financial Controller). These officials will necessarily perform their duties with assistance and, as a result, the cost of their offices are also included in the Core Budget.
- c) Article 16(1) also includes the cost for liability and property insurance and contributions to the Working Capital Fund as chargeable to the Core Budget because these costs relate to the enduring capital of ReSPA and its operation and to the accumulation of capital to enable it to operate on a long-term basis.
- d) Article 16(2) is a direct consequence of Article 15(1)(i) of the ReSPA Agreement, which requires the Governing Board to set an envelope for the Core Budget. (except for 2009 and 2010 where the envelope is fixed by Article 23(3) of the ReSPA Agreement, as reflected in Article 39).

Comparable Financial Regulations

- Article 25 of the Energy Community Budget Rules
- Article 32 of the European Communities Financial Regulations
- Article 4(1) of the Financial Rules of the Sava Commission
- Regulations 2.2 and 2.12 of the UN Financial Regulations

V. Establishment and structure of the ReSPA Budget

Article 17 Establishment of Budget and revisions to it

1. The Director shall present to the Budget Committee for its review a draft annual budget prior to the third regular session of the Governing Board in the year preceding that of the draft budget.

2. The draft annual budget shall be accompanied by a memorandum explaining the proposed budget, its line items and variations, if any, from the prior year in such detail as the Budget Committee may from time to time request.
3. The Director may revise the draft budget as proposed by the Budget Committee. In case of divergence, the Director shall explain all differences to the Governing Board in the draft budget that he/she presents to the Governing Board.
4. The Governing Board shall consider and adopt the draft budget at or prior to the final session of the Governing Board in the year preceding that of the draft budget. If a budget has not been adopted prior to the start of the financial year the Governing Board may authorize expenditure on a monthly basis, calculated by reference to one 12th of the prior year's Core Budget, until a Budget is adopted.
5. The Director may submit to the Budget Committee proposed revisions and amendments to the budget during the budget year and, in case of urgency, may request the Budget Committee to consider the proposals by correspondence. The Budget Committee shall review the proposals of the Director and shall decide within 14 days whether or not to recommend those or other amendments to the Governing Board.

Explanatory commentary

- a) Article 17 sets out the process by which the Governing Board is to adopt the annual budget of ReSPA and any revisions to it. The Article proceeds on the assumption that early involvement of Members in the budget process through the Budget Committee is desirable because the budget must be approved by Resolution adopted by unanimous vote of all Members of ReSPA pursuant to Articles 15(1)(c) and 11(3) of the ReSPA Agreement.
- b) Article 17(1) places the responsibility on the Director to submit a first draft of the budget to the Budget Committee. It requires the draft budget to be presented, at the latest, prior to the third session of the Governing Board in the year prior to the year of the draft budget. This would give time to prepare any revisions requested by the Budget Committee. The provision gives flexibility to the Budget Committee to alter the timing if experience suggests that an earlier deadline is needed.
- c) Article 17(2) requires that budget proposals be accompanied by an explanatory memorandum and enables the Budget Committee to specify the detail and content of that explanatory memorandum.
- d) Article 17(3) empowers the Director to revise the draft budget as requested by the Budget Committee but obligates him/her to fully explain any request of the Budget Committee that the Director does not accept so that the Governing Board may take a fully informed decision.

- e) The purpose of Article 17(4) is to try to ensure that a budget is in place at the start of the ReSPA financial year. If a budget is not adopted the Regulations seeks to ensure the continuity of ReSPA by providing that the Governing Board may authorize expenditure on a monthly basis, calculated by reference to one 12th of the prior year's Core Budget, until a Budget is adopted.
- f) Article 17(5) deals with revisions to the budget during the financial year. A number of revisions will be routine caused by the inevitable difference between estimates of income and expenditure and actual income and expenditure. The Article also enables the Director to make proposals to the Budget Committee for urgent revisions to the budget and requires the Budget Committee to make its decision whether to recommend the revision, or a variant of it, to the Governing Board within 14 days.

Comparable Financial Regulations

- Articles 25 and 26 of the Energy Community Budget Rules
- Articles 31 to 39 of the European Communities Financial Regulations
- Article 4 of the Sava Commission Financial Rules
- Regulations 2.4 to 2.9 of the UN Financial Regulations
- Regulation 3.2 of the UN Programme Budget Regulations

Article 18 Structure of the Budget

1. The ReSPA Budget shall comprise a statement of revenue and a statement of expenditure for the Core Budget and for directly managed funds. Annexes shall set out the capital accounts of ReSPA, including any in kind contributions and their utilization, and reports on activities carried out by ReSPA through the use of donor managed funds.
2. The statement of revenue and the statement of expenditure for the Core Budget and for the directly managed funds shall show:
 - a) Estimated revenues and expenditures for the financial year in question and for the prior year;
 - b) Appropriate remarks and explanations on each line item.
3. The statement of expenditure for the Core Budget and for directly managed funds shall show the maximum number of posts authorized for the prior financial year, their costs and period of incumbency together with the number sought for the financial year in question. Any request for additional posts must be fully explained.

4. Any proposal presented to the Governing Board, that in the opinion of the Director may involve expenditure, shall be accompanied by an estimate, prepared by the Director, of the financial implications of the proposal on the ReSPA budget.

Explanatory commentary

- a) Article 18 sets out the basic structure of the ReSPA budget. It is based on Articles 27 to 30 of the Energy Community Budget Rules, which simplifies the structures in Articles 40 to 47 of the European Communities Financial Regulations.
- b) Article 18(1) provides that the ReSPA budget shall contain statements for income and expenditure for both the Core Budget and for directly managed funds together with Annexes containing capital accounts (including in kind contributions) and information on donor managed funds.
- c) Article 18(2) sets out the details needed for the statements of revenue and expenditure.
- d) Article 18(3) sets out information needed concerning any post requirements in the ReSPA budget by reference to the maximum number of post authorized in the prior year. In other words, there will always be a maximum number of posts.
- e) Article 18(4) requires that any proposal, which in the opinion of the Director may involve expenditure, must be accompanied by an estimate, prepared by the Director, of such expenditures so that the Governing Board may take action on the proposal with full knowledge of its impact on the Budget. This Article is similar to Article 28(1) of the European Communities Financial Regulations and helps ensure sound financial management.

Comparable Financial Regulations

- Articles 27 to 30 of the Energy Community Budget Rules
- Articles 28 and 40 to 47 of the European Communities Financial Regulations
- Article 4(1) of the Financial Rules of the Sava Commission
- Regulations 2.2 to 2.3 and 2.10 to 2.11 of the UN Financial Regulations
- Regulations 5.1 to 5.6 of the UN Programme Budget Regulations

VI. Implementation of the ReSPA Budget

Article 19 The Director

- (1) The Director shall send notices of contributions to Members within 7 days of adoption of the Core Budget.
- (2) The Director shall report to the Budget Committee and to the Governing Board at each session on the status of contributions to the Core Budget by Members.
- (3) The Director shall perform the duties of Authorizing Officer, who shall implement the ReSPA Budget in accordance with these Regulations.
- (4) The Director may, with the consent of the Chair of the Budget Committee, contract out for the performance of budget implementation tasks, which involve technical expertise rather than the exercise of discretionary authority as to budget implementation.
- (5) The Director shall report to the Governing Board through the Budget Committee in the Annual and six monthly reports referred to in Article 9(4) on the exercise of duties that have been contracted out pursuant to this Article.

Explanatory commentary

- a) Article 19 concerns the duties of Director of ReSPA pursuant to the Financial Regulations.
- b) In order to facilitate the process of payment, Article 19(1) requires the Director to send notices of contributions to each Member within 7 days of the Core Budget being adopted by the Governing Board pursuant to Article 23(1) of the ReSPA Agreement.
- c) Article 19(2) ensures that the Governing Board is provided timely and regular reports on the status of contributions.
- d) Article 19(3) makes the Director the Authorizing Officer of ReSPA. The duties of Authorizing Officer are described in Article 23.
- e) ReSPA will be a small organization. Accordingly, Article 19(4) enables the Director, with the consent of the Chair of the Budget Committee, to contract out defined duties of budget implementation as long as these tasks are confined to technical matters rather than discretionary powers of judgment relating to budget implementation.
- f) Article 19(5) requires the Director to provide information on budget implementation duties contracted out in the periodic reports referred to in Article 9(4).

Comparable Financial Regulations

- Articles 31 and 34 of the Energy Community Budget Rules
- Article 57 of the European Communities Financial Regulations

Article 20 Conflicts of interest

In addition to the obligations set out in Article 7.3 of ReSPA Staff Regulations, financial actors are prohibited from taking any actions that may bring their interests into conflict with those

of ReSPA. Conflicts of interest arise where the impartial and objective exercise of the functions of a financial actor is compromised because of shared interests with the beneficiary or contractor in the outcome of the action. In such case the financial actor shall recuse himself or herself and report the matter to the Director or, in the case of the Director, to the Governing Board for guidance.

Explanatory commentary

a) Article 20 deals with conflicts of interest that might arise while financial actors exercise functions pursuant to the Financial Regulations. Financial actors, as staff members, are bound by Article 7.3 of ReSPA Staff Regulations which contains rules on conflict of interest but financial actors – because of their fiduciary responsibilities – may not have any common interest with the beneficiary or contractor (such as share ownership) and requires financial actors faced with such a situation to recuse themselves and report the matter and seek guidance from the Director or, in the case of the Director, the Chair of the Governing Board.

b) Financial actors are defined in Article 2 as the Authorizing Officer, the Accounting Officer and those exercising functions delegated by them pursuant to the Financial Regulations.

Comparable Financial Regulations

- Article 33 of the Energy Community Budget Rules

Article 21 Duty to report financial irregularities

Any staff member involved in financial management and control who considers that an action is irregular or contrary to the Financial Regulations shall inform the Director in writing and, if the latter fails to take action within a reasonable period, the Governing Board.

Explanatory commentary

Article 21 requires any staff member involved in financial management and control of financial transactions pursuant to the Financial Regulations to report irregularities to the Director and, if the Director fails to act within a reasonable period, to the Governing Board.

Comparable Financial Regulations

- Articles 39 of the Energy Community Budget Rules
- Article 60(6) of the European Communities Financial Regulations

Article 22 Segregation of functions

The duties of the Authorizing Officer and the Accounting Officer shall be segregated and are mutually incompatible.

Explanatory commentary

Article 22 requires segregation of the functions of Authorizing Officer and Accounting Officer.

Comparable Financial Regulations

- Article 35 of the Energy Community Budget Rules
- Article 58 of the European Communities Financial Regulations

Article 23 Authorizing Officer

- (1) The Authorizing Officer shall be responsible for authorizing the implementation of revenue and expenditure in accordance with principles of sound financial management and for ensuring that the requirements of legality and regularity are respected and shall act in the manner set out in these Regulations.
- (2) The Authorizing Officer may, in writing, delegate defined functions of budget implementation to ReSPA staff members designated in writing who may act only within the limits of their written delegation of authority and who shall be responsible for the proper exercise of those functions.
- (3) To implement expenditure the Authorizing Officer shall make budgetary commitments, legal commitments, validate expenditure, authorize payments and shall undertake the necessary preliminary actions prior to implementation of appropriations.
- (4) To implement revenue the Authorizing Officer shall draw up estimates of amounts receivable, establish entitlements to be recovered and issue recovery orders. He/she shall instruct the Accounting Officer to open a bank account in the name of ReSPA for the deposit of revenues and may authorize the placement by ReSPA's Bank of funds not immediately needed for operational purposes into secure short-term interest bearing deposits.
- (5) The Authorizing Officer is responsible to put into place the structures, internal management and control systems and procedures, whether computerized or manual, for ReSPA. Before any operation is authorized, members of staff other than those who initiated the operation or their subordinates shall verify the operational and financial aspects of the operation. Initiation and verification of any operation shall be segregated functions. The Director shall report to the Budget Committee on the selection of the system and then on its operation in the interim and Annual reports referred to in Article 9(4) or as requested by the Budget Committee.

Explanatory commentary

- a) Article 23 defines the duties of the Authorizing Officer. These duties are standard and are based on the definitions in Articles 36 to 38 of the Energy Community Budget Rules and Articles 59 and 60 of the European Communities Financial Regulations
- b) Regulation 23(1) sets out the core functions of the Authorizing Officer.
- c) Regulation 23(2) permits delegation in writing of defined functions by the Authorizing Officer.

- d) Regulation 23(3) sets out the functions of the Authorizing Officer in connection with expenditures and ensures the separation of functions by limiting the duties of Authorization Officer to the authorization of expenditure and any necessary preliminary actions prior to implementation.
- e) Regulation 23(4) describes the principle types of authorization for revenue operations, including instructing the Accounting Officer to open a bank account in the name of ReSPA.
- f) Regulation 23(5) requires the Authorizing Officer to put control and verification systems in place and seeks to ensure that there is a strict segregation of functions in these control and verification procedures. The system may be manual or computerized. The Authorizing Officer (Director) must report to the Budget Committee on the selection of such system and, subsequently, on its operation in the interim and Annual Reports or as requested by the Budget Committee.

Comparable Financial Regulations

- Articles 36 to 38 of the Energy Community Budget Rules
- Articles 59 to 60 of the European Communities Financial Regulations
- Article 13 of the Financial Rules of the Sava Commission
- Financial Rules 101.1 and 101.2 of the UN Financial Rules

Article 24 Accounting Officer

(1) The Accounting Officer shall be responsible for the following functions in accordance with the Financial Regulations:

- (a) Proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
- (b) Preparing, presenting and keeping the accounts;
- (c) Implementing accounting rules and methods and the chart of accounts;
- (d) Laying down and validating the accounting systems and, where appropriate, the validating systems laid down by the Authorizing Officer to supply or justify accounting information; and
- (e) Treasury management.

(2) Except as otherwise provided in these Regulations, the Accounting Officer is alone empowered to manage monies and other assets and is responsible for their safekeeping.

(3) Subject to prior approval of the Director, the Accounting Officer may, in writing, delegate defined functions to staff members designated in writing, who may act only within the limits of their written authority and who shall be responsible for the proper exercise of their functions.

Explanatory commentary

- a) Article 24 defines the duties of Accounting Officer (in ReSPA, its Financial Controller). These duties are standard and are based on the definitions in Article 41 of the Energy Community Budget Rules, Articles 61 and 62 of the European Communities Financial Regulations and, to a lesser extent, on Article 12 of the Financial Rules of the Sava Commission (which Article is less detailed).²
- b) Article 24(1) sets out the core functions of the Accounting Officer.
- c) Article 24(2) makes the Accounting Officer responsible for money and asset management. The Accounting Officer is responsible for ReSPA assets. Normally, the recording and bookkeeping functions would be performed by someone other than the cashier, who is responsible for cash and asset management. However, this may not be possible in a small organization such as ReSPA. In such a case the control and verification system referred to in Article 23(5) assumes even more importance.
- d) Article 24(3) empowers the Accounting Officer to delegate defined functions in writing.

Comparable Financial Regulations

- Article 41 of the Energy Community Budget Rules
- Articles 61 and 62 of the European Communities Financial Regulations
- Article 12 of the Sava Commission Financial Rules
- Financial Rules 101.1 and 101.2 of the UN Financial Rules

Article 25 Responsibility of financial actors

(1) The responsibility of any staff member acting under the Financial Regulations is personal and, subject to the procedures in the Staff Regulations, a financial actor, including the Authorizing Officer and the Accounting Officer, may be required to make good in whole or in part any loss suffered by ReSPA as a result of misconduct in the course of, or in connection with, performance of duties pursuant to the Financial Regulations.

(2) Without prejudice to any disciplinary action, the Director may withdraw any delegation under the Financial Regulations and designate a temporary replacement, informing the Chair of the Budget Committee of this action. The Budget Committee may withdraw the delegation of the Director under the Financial Regulations and designate a temporary replacement, informing the Chair of the Governing Board of this action.

² The comparator rules use the generic term “Accounting Officer”, which term is maintained in the Regulations. However, the Accounting Officer in ReSPA will be its Financial Controller.

(3) The provisions of this Article are without prejudice to any criminal liability pursuant to applicable law.

(4) The Authorizing Officer who considers that a decision falling under his/her delegation violates principles of sound financial management shall inform the Budget Committee and, if instructed to proceed, is absolved of responsibility under this Article for the consequences of such action.

Explanatory commentary

a) Article 25 defines the responsibility of financial actors exercising functions under the Financial Regulations. Financial actors are defined in Article 2.

b) Article 25(1) makes responsibility for following the Financial Regulations personal because public funds are involved. However, before any monies can be recovered or disciplinary action taken, the procedures in the Staff Regulations, which ensure respect for the right of staff members accused of wrongdoing, must be followed.

c) Article 25(2) permits the Director to withdraw a delegation of authority under the Financial Regulations and designate a temporary replacement, informing the Chair of the Budget Committee. The Budget Committee has similar authority in respect of the delegation to the Director by the Financial Regulations. These actions are not disciplinary actions but constitute a means to ensure protection of ReSPA funds pending completion of disciplinary action or clarification of the situation.

d) Article 25(3) ensures that the Secretariat is aware that their status does not protect them from criminal liability. Engagement in criminal activity by members of the Secretariat is not an official act to which immunity pursuant to Article 26 of the ReSPA Agreement applies.

e) Article 25(4) enables the Authorizing Officer, who is obligated to implement a decision of the Governing Board, to inform the Budget Committee that implementation of the decision would violate principles of sound financial management. If instructed to proceed, the Authorizing Officer is absolved from personal responsibility under this Article for implementing the decision.

Comparable Financial Regulations

- Articles 42 to 46 of the Energy Community Budget Rules
- Articles 64 to 66 of the European Communities Financial Regulations
- Articles 13 and 16 of the Financial Rules of the Sava Commission

VII. Revenue operations

Article 26 Treatment of revenue

1. ReSPA shall receive contributions from Members, fees for its training services, overhead on directly managed funds, and may accept donations for activities consistent with its purposes. Estimates of these receivables shall be in the Budget.
2. The Director shall report to the Budget Committee any uncollected fees and the efforts that have been made for collection. The Budget Committee shall decide on further efforts to be taken, if any, to recover such revenues. The memorandum accompanying the proposed budget for the next financial year shall report on any variation between estimated and actual revenues and account for the difference.

Explanatory commentary

- a) Article 26 deals with revenue operations. The ReSPA Agreement makes clear that, other than contributions from Members and donations, the only revenue operations will be from fees and overhead on directly managed funds pursuant to Article 24(3) of the ReSPA Agreement and fees for participation in ReSPA training services pursuant to Article 15(1)(g) of the ReSPA Agreement.
- b) Article 26(1) sets out the sources of revenue available to ReSPA pursuant to the ReSPA Agreement.
- c) Article 26(2) deals with accounts receivable that are uncollected and requires the Director to report these to the Budget Committee for decision on further recovery action, if any.
- d) The revenue operations of ReSPA, other than contributions and donations, appear to be minimal so detailed rules for dealing with establishment of receivables and recovery have not been included in these Regulations. If revenue operations become detailed rules such as those in Articles 50 to 55 of the Energy Community Budget Rules or Articles 71 to 74 of the European Communities Financial Regulations could be adopted.

Comparable Financial Regulations

- Articles 47 to 55 of the Energy Community Budget Rules
- Articles 69 to 74 of the European Communities Financial Regulations

VIII. Expenditure operations

Article 27 Process leading to payment

1. Every item of expenditure shall be committed, validated, authorized and paid.
2. Every commitment of expenditure shall be justified. However, the annual Work Programme of ReSPA shall be the equivalent to a justified financing decision for the activities and expenditures flowing from it provided they are clearly identified. Administrative appropriations related to the every day operations of ReSPA and authorized by the Budget may be implemented without a prior financing decision.

Explanatory commentary

- a) Article 27 introduces Part VIII of the Financial Regulations, which establishes the process by which payments are to be effected by ReSPA. This process follows the payment authorization system set out in Articles 56 to 65 of the Energy Community Budget Rules and Articles 75 to 83 of the Energy Community Budget Rules.
- b) Article 27(1) sets out the stages in the payment process.
- c) Article 27(2) provides that every commitment of expenditure must be justified. However, when such expenditures relate to matters in the annual Programme of Work (approved by the Governing Board pursuant to Article 15(1)(c) of the ReSPA Agreement) and administrative appropriations related to the day-to-day activities of ReSPA.

Comparable Financial Regulations

- Article 56 of the Energy Community Budget Rules
- Article 75 of the European Communities Financial Regulations

Article 28 Commitment of expenditure

1. The budget commitment is the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment. The budget commitment is individual when the beneficiary and the amount of expenditure is known and is global when at least one of the elements to identify the individual commitment is not known.
2. The legal commitment is the act whereby the Authorizing Officer enters into or establishes an obligation, which results in a charge for the ReSPA budget. The Authorizing Officer must make a budget commitment before entering into a legal commitment.

3. Individual legal commitments shall be concluded by the end of the ReSPA financial year. Legal commitments extending over more than one financial year and the corresponding budget commitments, except for expenditure for staff, shall have a final date for implementation in compliance with the principle of sound financial management. Any parts of such commitments that have not been executed six months after this final date shall be decommitted and any legal commitment that has not resulted in a payment for 2 years shall be decommitted.
4. Global budget commitments shall cover the total cost of the corresponding individual legal commitments in the following budget period. At the end of this period any unused balance shall be decommitted and treated pursuant to Article 6(5).
5. When adopting a budget commitment the Authorizing Officer shall ensure that:
 - a) The expenditure has been charged to the correct item in the Budget;
 - b) The appropriations are available; and
 - c) The expenditure conforms to the applicable rules and regulations, including the principle of sound financial management.

Explanatory commentary

- a) Article 28 deals with commitment of expenditure and follows closely Articles 57 to 60 of the Energy Community Budget Rules and Articles 76 to 78 of the European Communities Financial Regulations.
- b) Article 28(1) defines budget commitment. It is based on Articles 57(1) and 57(3) of the Energy Community Budget Rules and Articles 76(1) and 76(2) of the European Communities Financial Regulations.
- c) Article 28(2) defines legal commitment. It is based on Articles 57(2) and 58(1) of the Energy Community Budget Rules and Articles 76(1) and 77(1) of the European Communities Financial Regulations.
- d) Article 28(3) deals with unused legal commitments, which are carried over and “destructured” pursuant to Article 6(5). The Article provides that commitments that have not been executed 6 months after this final date shall be decommitted and any legal commitment that has not resulted in a payment for 2 years shall be decommitted. A period of 3 years is used in Article 77(3) of the European Communities Financial Regulations and in Article 59(6) of the Energy Community Budget Rules but a period of two years is suggested here because of the relatively small size of the ReSPA budget.
- e) Article 28(4) deals with global commitments. It is based on Regulations 59(2) and 59(4) of the Energy Community Budget Rules.

- f) Article 28(5) spells out the obligations of the Authorizing Officer in adopting a budget commitment. It is based on Article 78(1) of the European Communities Financial Regulations and Article 60 of the Energy Community Budget Rules. It is important that these obligations be explicitly set out in the Financial Regulations because of the personal responsibility of financial actors pursuant to Article 25.

Comparable Financial Regulations

- Articles 57 to 60 of the Energy Community Budget Rules
- Articles 76 to 78 of the European Communities Financial Regulations

Article 29 Validation of expenditure

1. When validating expenditure the Authorizing Officer shall ensure that:
 - a) The existence of the creditor's entitlement is verified;
 - b) The conditions under which payment is due are verified; and
 - c) The reality and the amount of the claim is verified or determined.
2. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.

Explanatory commentary

- a) Article 29 regulates the process of validation of claims for payment sent to the Authorizing Officer by the substantive manager.
- b) Article 29(1) sets out the duties of the Authorizing Officer in the process of validating a claim for payment. It is based on Article 61 of the Energy Community Budget Rules and Article 79 of the European Communities Financial Rules.
- c) Article 29(2) provides that validation must be on the basis of supporting documentation attesting to the creditor's entitlement. It is based on Article 62 of the Energy Community Budget Rules.

Comparable Financial Regulations

- Articles 61 to 62 of the Energy Community Budget Rules
- Article 79 of the European Communities Financial Regulations

Article 30 Authorization of expenditure

Authorization of expenditure is the act whereby the Authorizing Officer, having verified that the appropriations are available and, by issuing a payment order, instructs the Accounting Officer to pay the amount of expenditure that has been validated.

Explanatory commentary

- a) Article 30 describes authorization for payment. It is based on Article 63(1) of the Energy Community Budget Rules and Article 80 of the European Communities Financial Rules.
- b) Articles 63.2 and 3 of the Energy Community Budget Rules deal with the keeping of supporting documents but this provision has not been included in the Financial Regulations because how this is done will depend on the accounting package to be obtained by ReSPA, especially if documents are stored electronically.

Comparable Financial Regulations

- Article 63 of the Energy Community Budget Rules
- Article 80 of the European Communities Financial Regulations

Article 31 Payment of expenditure

1. Payment shall be made upon production of proof that the relevant action is in accord with the provisions of the Financial Regulations or of a contract and shall cover one or more of the following operations:

- a) Payment of the entire amount due;
- b) Payment of the amount due in any of the following ways:
 - (i) In exceptional and justified cases limited Pre-financing of not more than 25%, which may be divided into a number of payments;
 - (ii) One or more interim payments; and
 - (iii) Payment of the balance due.

2. Payment shall be made by the Accounting Officer within the limits of the funds available.

Explanatory commentary

- a) Article 31(1) sets out the modalities of payment. It is based on Article 64 of the Energy Community Budget Rules and Article 81 of the European Communities Financial Regulations, except that pre-financing (or advance payments) have been limited to 25% given the nature of the activities of ReSPA which would not seem to encompass many contracts where advance payments would seem to be necessary.
- b) Article 31(2) ensures that funds must be available for payment to be made. It is based on Article 65 of the Energy Community Budget Rules and Article 82 of the European Communities Financial Regulations.

Comparable Financial Regulations

- Articles 64 and 65 of the Energy Community Budget Rules
- Articles 81 and 82 of the European Communities Financial Regulations

IX. Procurement

Explanatory Commentary

- a) The way in which the Financial Regulations deal with procurement presents some initial questions of policy.
- b) Article 66 of the Energy Community Budget Rules refers the question of procurement to the “relevant provisions for public procurement of the domicile country”. This is an unsatisfactory solution for an international organization with privileges and immunities because laws of the host State, or any other State, proceed on the assumption that local courts will have jurisdiction, which is not the case for an entity with the privileges and immunities set out in Article 26 of the ReSPA Agreement.
- c) Moreover, it is expected that donations will come from the European Communities and it is therefore important that European Community principles apply to the procurement of ReSPA. The draft Financial Regulations thus proceed on the basis of such principles and procedures for procurement. Use of these rules and principles will also ensure transparency and fairness in the use of Member contributions and help meet the objectives set out in Article 4 of the ReSPA Agreement.
- d) Adoption of European Community procurement standards presents a further policy choice. The Financial Regulations could set out a complete code of procurement rules and procedures and even annex sample contracts. However, such documentation would encompass hundreds of pages. Alternatively, it would be possible to follow the approach of the European Communities Financial Regulations. Those Regulations set out basic

principles of procurement and refer to EC directives and procedures for the award of public service and works contracts.

- e) However, the OECD Procurement Service has noted that these EC directives and procedures focus on high-end contracts of more than 5 million Euro and provide guidance on only selected areas of procedure. They recommend that procurement procedures and practices for ReSPA be based on procedures more appropriate to the scale of procurement likely to be used by ReSPA in the foreseeable future and, accordingly, recommend the procurement procedures contained in the *Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries* (C (2007) 2034)³ as explained by the EC Practical Guide to contract procedures for EC external actions (PRAG)⁴. This latter document has detailed procedures to implement procurement and is in effect a complete guide to procurement according to principles adopted by the European Communities.
- f) Part IX of the Financial Regulations, which deals with procurement, follows this approach by setting out basic principles for procurement that are contained in the European Communities Financial Regulations and referring to the detailed rules and procedures in *Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries* and to the procurement procedures in PRAG. The Financial Regulations also empower the Governing Board to adapt those procedures in the light of experience and ReSPA needs, e.g., to require additional publication of procurement opportunities in the region.
- g) It might be observed that the UN has a similar approach in that Regulations 5.12 and 5.13 of the UN Financial Regulations and Rules 105.13 to 105.19 of the UN Financial Rules contain succinct rules for procurement, leaving the detailed procurement procedures for the UN Procurement Manual.⁵

Article 32 Principles of contract award

Contracts awarded by ReSPA shall be awarded to the most economically advantageous tender or offer in accordance with the principles of transparency, equal treatment, non-discrimination and fair competition for potential contractors and shall be awarded on the basis of the rules contained in the *Rules and procedures for service, supply and works contracts financed*

³http://ec.europa.eu/europeaid/work/procedures/legislation/rules_and_procedures/documents/2007_finalannexever1_en.pdf. Reference can also be made to Communities regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council regulation (EC, Euratom) No. 1653/2002 on the Financial regulations applicable to the general budget of the European Communities (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:357:0001:0071:EN:PDF>).

⁴http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/documents/new_prag_final_en.pdf

⁵http://www.unu.edu/hq/procurement/files/admin/UN_Procurement_Manual.pdf

from the general budget of the European Communities for the purposes of cooperation with third countries (C (2007) 2034).

Explanatory commentary

- a) Article 32 sets out the basic principles of contract award by ReSPA.
- b) Articles 104 and 105 of the European Communities Financial Regulations makes applicable to contracts awarded by community institutions on their own account the *Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries (C(2007) 2034)* . These rules are, accordingly, an appropriate base-line choice for ReSPA procurement, as recommended by the OECD Procurement Service. These Rules provide for expedited procedures for small contracts such as service and supply contracts for under Euro 10,000.

Comparable Financial Regulations

- Articles 89 and 104 to 105 of the European Communities Financial Regulations
- Section II.1 of Rules and procedures for service, supply and works contracts financed from the general budget of the European Communities for the purposes of cooperation with third countries (C(2007) 2034)
- Sava Commission Rules of Procurement Procedures, Doc. No. 1S-8-0-07-16/2-3
- Regulations 5.12 and 5.13 of the UN Financial Regulations and Rules 105.13 to 105.20 of the UN Financial Rules.

Article 33 Contracting procedures

1. The Director shall ensure that the procedures adopted by ReSPA to award contracts follow the *Practical Guide to Contract Procedures for EC External Actions (PRAG)*.
2. The Governing Board may require the Director to vary or to adopt additional procedures to those contained in PRAG.
3. The Director may recommend changes to the procedures contained in PRAG more appropriate to the needs of ReSPA. Such recommendations shall first be submitted to the Budget Committee for its views and any recommendation to the Governing Board must take full account of observations in the Budget Committee.

4. The Director shall report to the Budget Committee from time to time on the practicality of the coordination of contracting procedures with other organizations in the region. The Director may recommend formal linkages to such organizations in matters of procurement.

Explanatory commentary

- a) Article 33 establishes the procurement procedures to be followed by ReSPA.
- b) Article 33(1) requires that the Director adopt the procedures in PRAG. The Introduction to PRAG provides as follows:

“This Practical Guide is the first sole working tool, which explains the contracting procedures applying to all EC external aid contracts financed from the European Communities general budget (Budget) and European Development Fund (EDF).

“Since it incorporates the relevant provisions of the legal texts respectively ruling the Budget and the EDF, the purpose for this instrument is to provide all users, in an encompassing manner, with all the information necessary to undertake procurement or a grant procedure from the very first steps to the award of contracts. The annexes cover both the procurement phase and the execution of contracts.”

The utilization of PRAG ensures that ReSPA has the equivalent of a detailed procurement manual from the first day of its operations.

- c) Article 33(2) would enable the Governing Board to request that the Director adopt additional or varied procurement procedures, *e.g.*, to take action to publicize procurement opportunities in designated outlets or websites in the ReSPA region.
- d) Article 33(3) empowers the Director to recommend changes to procurement procedures to better meet ReSPA needs in the light of experience. To ensure that Members have adequate time to examine such proposals, Article 33(3) requires that such proposals first be submitted to the Budget Committee for its evaluation and that any proposal to the Governing Board takes full account of all observations made in the Budget Committee.
- e) Article 33(4) requires the Director to report to the Budget Committee from time to time on the practicality of coordination of contracting procedures with other organizations in the region. The Director is authorized to recommend formal linkages to such organizations in matters of procurement. This is obviously a long-term project but there are evident advantages to coordinated procurement, as evidenced by a similar provision in the UN Financial Rules authorizing cooperation between the UN and Common System organizations in matters of procurement.

Comparable Financial Regulations

- Articles 104 to 105 of the European Communities Financial Regulations

- Sava Commission Rules of Procurement Procedures, Doc. No. 1S-8-0-07-16/2-3
- Rule 105.17 of the UN Financial Rules

X. Presentation of accounts and accounting

Article 34 Presentation of the accounts

1. The annual accounts of ReSPA shall comprise:
 - a) The financial statements; and
 - b) The report on implementation of the Budget.
2. The annual accounts shall be presented to the Budget Committee within 60 days of the end of the financial year, accompanied by explanations of the financial statements. The Budget Committee shall transmit the annual accounts to the Governing Board not later than the time the Budget Committee considers the Annual Budget pursuant to Article 9(4).
3. The financial statements shall be presented in Euro and shall comprise:
 - a) The balance sheet and income statement, which represent the assets and liabilities of the financial year in comparison with the prior year;
 - b) The cash flow statement of amounts collected and disbursed during the year;
 - c) The statement of changes in assets, both movable and immovable, during the year; and
 - d) Any other statements or detail recommended by the Budget Committee
4. The accounts must comply with accounting rules generally acceptable in the European Communities and must be accurate and comprehensive and, in respect of the financial statements, present a true and fair view of assets, liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow; and, in respect of the budget implementation, of revenue and expenditure operations.
5. The financial statements shall be drawn up in accordance with generally accepted accounting principles in the European Communities, namely:
 - a) Going concern;
 - b) Prudence;
 - c) Consistent accounting methods;
 - d) Comparability of information;

- e) Materiality;
 - f) No netting; and
 - g) Fair presentation.
6. ReSPA may use cash-based accounts until otherwise decided by the Governing Board on the recommendation of the Budget Committee.
7. The Budget Committee may request the Director to present other annual accounts.

Explanatory commentary

- a) Article 34 deals with the presentation of the accounts of ReSPA and is based on the principles adopted by the Energy Community Budget Rules and the European Communities Financial Regulations except that, because of the small size of ReSPA, cash based accounting is suggested.
- b) Article 34(1) describes the annual accounts of ReSPA. It draws from Article 121 of the European Communities Financial Regulations and Article 68 of the Energy Community Budget Rules.
- c) Article 34(2) sets time limits for the consideration of ReSPA accounts, which time limits are tied to the time limits for consideration of the ReSPA budget in Article 9(4). The provision thus tries to ensure that the budget is not adopted prior to the closing of the accounts of the prior year.
- d) Article 34(3) defines the financial statements and is based on Article 72 of the Energy Community Budget Rules and Article 126 of the European Communities Financial Regulations. Article 33(2)(d) enables the Budget Committee to ensure that the presentation and detail of such accounts – and sub-ledgers – will be subject to review and will contain the detail as requested by the Budget Committee (many options are usually presented in computerized accounting packages).
- e) Article 34(4) requires ReSPA to follow accounting rules generally acceptable in the European Communities. It is based on Article 73(4) of the Energy Community Budget Rules, although that provision emphasizes international standards. It was considered, however, that reference to the standards of the European Communities encompasses those international standards where adopted, but would also be more appropriate given the emphasis on European standards in Article 4 of the ReSPA Agreement.
- f) Article 34(5) sets out the principles that govern the drawing up of the financial statements. This provision is based on Article 70 of the Energy Community Budget Rules and article 124 of the European Communities Financial Regulations, except that accrual accounting is not used.

- g) Article 70(h) of the Energy Community Budget Rules and Article 124(h) of the European Communities Financial Regulations require the use of accrual based accounting. However, Article 30(6) enables ReSPA to use cash-based accounts because of its small size but enables the Budget Committee to require it to adopt an accrual system.
- h) Article 34(7) empowers the Budget Committee to request that other annual accounts be prepared.

Comparable Financial Regulations

- Articles 68 to 72 of the Energy Community Budget Rules
- Articles 121 to 127 of the European Communities Financial Regulations

Article 35 Accounting system

1. The accounting system of ReSPA is the system (computerized and/or manual) serving to organize the budgetary and financial information of ReSPA. The Accounting Officer shall adopt accounting rules and policies that follow accounting standards accepted in the European Communities. The Director shall report to the Budget Committee on the selection and operation of any computerized accounting system.
2. The accounts shall consist of general accounts and budgetary accounts and shall be kept in Euro on the basis of the ReSPA financial year.
3. The general accounts shall record in chronological order, using the double entry method, all events and operations that affect the economic and financial situation and the assets and liabilities of ReSPA. In particular:
 - a) Movements in the accounts and the balances shall be entered in the accounting ledgers;
 - b) The accounting system must be such as to leave a trail for all accounting entries; and
 - c) The Accounting Officer shall, after the close of the financial year and prior to the presentation of the accounts, make any adjustments that, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts in compliance with the Financial Regulations.
4. The budget accounts shall provide a detailed record of budget implementation and shall record all budget revenues and expenditures.
5. The Accounting Officer shall keep property and other inventories of moveable and immovable property of ReSPA in such detail as from time to time requested by the Budget Committee.

Explanatory commentary

- a) Article 35 deals with the accounting system of ReSPA. It is envisaged that the system will be computerized and will comply with standards acceptable in the European Communities. The Article is based on Articles 73 to 78 of the Energy Community Budget Rules and Articles 132 to 138 of the European Communities Financial Regulations.
- b) Article 35(1) describes the accounting system of ReSPA and requires the Director to report on the selection and operation of any computerized accounting system. The provision refers specifically to computerized accounting packages, adopting the approach of Article 73(1) of the Energy Community Budget Rules.
- c) Article 35(2) defines the types of accounts to be kept by ReSPA. It is based on Article 73(2) of the Energy Community Budget Rules and Article 132(2) of the European Communities Financial Regulations.
- d) Articles 35(3) and 35(4) describe the characteristics of general accounts and budget accounts. These provisions are based on Articles 74 and 75 of the Energy Community Budget Rules and Articles 134 and 135 of the European Communities Financial Regulations. Article 23(1) of the Sava Commission Financial Rules requires that accounting, financial and property records be kept for 10 years and the Steering Committee may wish to include such a provision in the Financial Regulations of ReSPA.
- e) Article 35(5) requires that the Accounting Officer keep property inventories. The detail needed in these inventories will depend upon the type of movable and immoveable property held by ReSPA and the requirements of the Budget Committee when it reviews those inventories. Accordingly, the provision enables the Budget Committee to specify the detail required in the light of experience.

Comparable Financial Regulations

- Articles 73 to 78 of the Energy Community Budget Rules
- Articles 132 to 138 of the European Communities Financial Regulations
- Articles 22 and 23 of the Financial Rules of the Sava Commission

XI. Independent Auditor(s) and discharge

Article 36 Independent Auditor(s)

1. The Governing Board shall nominate an Independent Auditor pursuant to Article 15(1)(n) of the ReSPA Agreement. The Independent Auditor should be from a Member other than that of the Director.
2. The Director, in accordance with the nomination of the Governing Board, shall appoint an Independent Auditor(s) to carry out a financial audit of the annual financial statements of ReSPA, However, audits of donor and contractor managed funds shall be carried out by auditors designated and paid by the donor.
3. The Independent Auditor(s) shall be given any records requested by them and the Director shall ensure that the Independent Auditor(s) receive full cooperation from all members of the Secretariat.
4. The Independent Auditor(s) shall submit the audit report and certified accounts, together with a statement of assurance relating to the reliability of the accounts and the legality and regularity of the underlying transactions, to the Budget Committee and the Governing Board not later than 90 days after the date the accounts were submitted to them.
5. The Governing Board, on the recommendation of the Budget Committee, may decide to request the Independent Auditor(s) to conduct other audits that it considers necessary.
6. The Budget Committee and the Director may make such comments as they wish to the Governing Board on the report and documents submitted by the Independent Auditor(s).

Explanatory commentary

- a) Article 36 deals with the audit of ReSPA books and accounts by an Independent Auditor(s) pursuant to Article 15(1)(m) of the ReSPA Agreement. However, in accordance with Article 24(2) of the ReSPA Agreement audits of donor and contractor managed funds may be carried out by auditors selected by the donor. However, it should be recalled that Article 1(2) ensures that donor and contractor managed funds can only be accepted by ReSPA if their financial management accords with sound financial principles, which would include selection of an auditor acceptable to ReSPA.
- b) Article 15(1)(m) of the ReSPA Agreement requires the Governing Board to decide on the method of selection of the Independent Auditor. Article 36(1) provides that the Director and the Independent Auditor should not be from the same Member. The word “should” is used because ultimately selection of the Independent Auditor is a discretionary decision of the Governing Board pursuant to the ReSPA Agreement itself and to take away that discretion might involve amendment of the ReSPA Agreement.

- c) Article 36(2) provides for the audit of ReSPA by Independent Auditor(s) appointed by the Director in accordance with the nomination of the Governing Board pursuant to Article 15(1) (m) of the ReSPA Agreement. The method of selection of the Independent Auditor(s) is reserved for the Governing Board pursuant to Article 15(1)(m) of the ReSPA Agreement. Presumably the Governing Board would require the Director to utilize the competitive methods established by Part IX, Procurement, of these Financial Regulations in retaining the Independent Auditor(s).
- d) Article 36(3) provides that the Independent Auditor(s) has access to all ReSPA records and that staff are obligated to cooperate fully with them. This is crucial because ReSPA, at least initially, will not have an internal auditor.
- e) Article 36(4) sets the time limit for submission of the report of the Independent Auditor(s), but permits an extension of that time limit. It ties in with the deadlines for submission of the ReSPA reports and accounts in Article 9(4).
- f) Article 36(5) is a recognition of the fact that ReSPA will not have an internal auditor and so the provision gives the Governing Board the ability to request further audits that it considers necessary.
- g) Article 36(6) enables the Budget Committee and the Director to make such comments as they wish on the report of the Independent Auditor(s).

Comparable Financial Regulations

- Articles 79 to 81 of the Energy Community Budget Rules
- Articles 139 to 144 of the European Communities Financial Regulations
- Article 17 of the Financial Rules of the Sava Commission
- Regulations 7.1 to 7.12 of the UN Financial Regulations and the Annex to the Financial Regulations, “Additional terms of reference governing the audit of the United Nations”.

Article 37 Discharge

1. The Governing Board, at its first session after examining the report of the Independent Auditors and their statement of assurance and after examining the certified accounts and financial statements of ReSPA, shall discharge the Director from his/her management and administrative responsibility.

2. The Director shall take all appropriate steps to act on any observations accompanying the discharge and shall report to the Governing Board on the measures taken in the light of these observations.

Explanatory commentary

- a) Article 37(1) deals with discharge of the management and administrative responsibility of the Director following examination of the audited certified accounts and financial statements by the Governing Board and sets a deadline for the discharge of the management and administrative responsibility of the Director.
- b) Article 37(2) provides that the Director shall take all appropriate steps to implement any observations of the Governing Board and report back to the Governing Board on the action taken.

Comparable Financial Regulations

- Articles 82 to 84 of the Energy Community Budget Rules
- Articles 145 to 147 of the European Communities Financial Regulations

XII. Amendments to the Financial Regulations

Article 38 Amendments

The Financial Regulations may be amended by Resolution of the Governing Board taken after the Budget Committee has reported on the proposed amendment.

Explanatory commentary

Article 15(1)(h) of the ReSPA Agreement requires that the Financial Regulations must be adopted by Resolution and Article 11(3) requires that Resolutions be adopted by unanimous vote. It follows that an amendment to the Financial Regulations must also be adopted by unanimous vote. To help ensure that all Members are agreeable to a proposed change, Article 34 provides that the Budget Committee shall report on any proposed amendment to the Governing Board. The Article empowers the Budget Committee to formulate any revisions to the proposed text that it considers necessary.

Comparable Financial Regulations

- Article 89 of the Energy Community Budget Rules
- Article 184 of the European Communities Financial Regulations
- Article 26 of the Financial Rules of the Sava Commission

XIII. Transitional provision

Article 39 Envelope for Core Budget

The Core Budget shall be financed by the budgets of the Members of ReSPA, each of which shall contribute an equal share. The initial envelope for the Core Budget for each Member of ReSPA shall be €120, 000 for 2009, for a total of €840,000 and €150,000 for 2010, for a total of €1,050,000.

Explanatory commentary

Article 39 reflects Articles 23(2) and 23(3) of the ReSPA Agreement. The provision may require adjustment depending on the date of entry into force of the ReSPA Agreement.

Comparable Financial Regulations

- [Not applicable]

XIV. Final provision

Article 40 Entry into force

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

Explanatory commentary

The Article specifies the date of entry into force of the Financial Regulations as the date they are adopted by Resolution of the Governing Board.

Comparable Financial Regulations

- Article 89 of the Energy Community Budget Rules
- Article 187 of the European Communities Financial Regulations