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Internal Audit-Service  
The Internal Auditor

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# Internal Audit Report no. 06/02 to the Institution

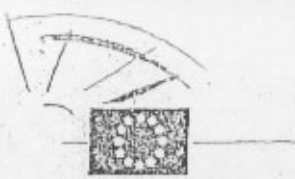
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## Audit of the Parliamentary Assistance Allowance

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FINAL

9 January 2008



Internal Audit Service  
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FINAL

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Table of Contents (1 of 2)

	<u>Page</u>
<b>PART 1: REPORT TO MANAGEMENT</b>	
1. Introduction.....	5
2. Audit Objectives, Scope and Methodology.....	7
3. Simplifying the administrative management of parliamentary assistance.....	11
4. Defining the scope of assistance tasks and quantifying the related costs that can be reimbursed under the allowance .....	14
5. Service contracts for the provision of parliamentary assistance .....	20
6. Parliamentary assistance provided under a contract of employment ...	26
7. Paying agents contracted to handle the administrative management of assistants' employment contracts.....	29
8. Conclusion.....	32
<b>PART 2: SUMMARY OF ACTION PLANS .....</b>	<b>34</b>
<b>PART 3: KEY FINDINGS AND DETAILED ACTION PLANS</b>	
A. <u>SIMPLIFYING THE ADMINISTRATIVE MANAGEMENT OF PARLIAMENTARY ASSISTANCE</u> .....	43
B. <u>DEFINING THE SCOPE OF ASSISTANCE TASKS AND QUANTIFYING THE RELATED COSTS THAT CAN BE REIMBURSED UNDER THE ALLOWANCE</u> .....	47
1. Providing a precise contractual definition of the assistance work to be performed .....	47
2. Ensuring that levels of remuneration are proportionate to the tasks performed .....	49
3. Clarifying the principles underlying the entitlement to "lay-off" payments .....	53
4. Justifying "one-off" payments at the end of the financial year.....	56

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution

Table of Contents (2 of 2)

	<u>Page</u>
<b>PART 3: KEY FINDINGS AND DETAILED ACTION PLANS (continued)</b>	
C. <u>SERVICE CONTRACTS FOR THE PROVISION OF PARLIAMENTARY ASSISTANCE</u> .....	59
1. Compliance of service providers with the applicable national laws.....	59
2. Invoicing of parliamentary assistance services performed for Members..	65
3. Including the requirement for valid invoices and statements of expenditure in the contracts .....	71
4. Risk that existing service contracts are de-facto contracts of employment .....	73
5. Preventing the risk of making ineligible allowance payments .....	76
D. <u>PARLIAMENTARY ASSISTANCE PROVIDED UNDER A CONTRACT FOR EMPLOYMENT</u> .....	79
1. Obtaining evidence of employed assistants' social security cover.....	79
2. Ensuring that employed assistants' social security coverage complies with Community legislation .....	82
3. Ensuring the consistent and transparent application of the PEAM rules on travel and subsistence costs .....	84
E. <u>PAYING AGENTS CONTRACTED TO HANDLE THE ADMINISTRATIVE MANAGEMENT OF ASSISTANTS' EMPLOYMENT CONTRACTS</u> .....	86
1. Submission of statements of expenditure incurred by paying agents ....	86
2. Establishing transparent and secure arrangements for the management of assistants' employment contracts.....	88
3. Further improving existing good practices for specific categories of paying agents .....	91

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

PART 1: REPORT TO MANAGEMENT

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

1. Introduction

- 1.1 Each Member is entitled to a monthly parliamentary assistance allowance to cover expenses arising out of the employment or use of the services of one or more assistants, whom the Member may choose at his or her discretion. In 2006, the monthly allowance was €15 222 for each Member<sup>1</sup>. The total appropriations entered on the relevant budget article (422) in 2006 amounted to €136 289 000, representing some 10.3% of the European Parliament's budget. *106.3 mio.*
- 1.2 The Authorising Officer by Delegation with responsibility for implementing the parliamentary assistance allowance, in accordance with the Financial Regulation and its Implementing Rules, is the Director-General for Finance. The regulatory framework for the allowance includes provisions adopted by the Bureau and set out in the Rules governing the Payment of Expenses and Allowances to Members (hereinafter referred to as the "PEAM Rules").
- 1.3 The initial period covered by the audit of the parliamentary assistance allowance was the last quarter of 2004 and the first half of 2005. The re-scheduling of other audits and a shortage of the IAS' resources during that period meant that the finalisation of the audit was deferred until 2006. This has allowed the IAS to take account of important and relevant changes in the PEAM Rules and in the requirements for the periodic submission of supporting documents by Members. As foreseen in the Internal Auditor's 2006 Work Programme, the main audit procedures have been updated to reflect the new requirements and, in particular, the current status of the supporting documents for the expenditure on parliamentary assistance.
- 1.4 This audit report comprises three parts, as follows:
- Part 1 - Report to Management: This describes the audit objectives, scope and methodology and presents, on the basis of the specific control objectives of the management and control process, a summary of the key findings, the action plans formulated by Internal Audit to address these and, where applicable, the authorising department's comments thereon. This part also contains the audit conclusion.
  - Part 2 - Summary of Action Plans: This is a compendium, in summary form, of the principal action plans to be implemented in order to address the identified issues. The action plans are categorised on the following basis:
    - action that can be taken in the short-term by DG Finance without modification of the regulatory framework, and,
    - action requiring the prior submission of proposals (by 30 June 2008) for decision by the political authorities, so that the action can be implemented by the start of the next parliamentary term in July 2009.

<sup>1</sup> Since the start of the 6th parliamentary term, the corresponding figures were €12 576 in 2004 and €14 685 in 2005. The allowance was increased to €15 496 in 2007.

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part I: Report to Management

- Part 3 - Key Findings and Detailed Action Plans: This provides a comprehensive description of the audit findings and issues, explains the implications of, and risks associated with, the findings, presents the detailed action plans proposed by Internal Audit to address the identified risks and, where applicable, the authorising department's comments thereon.

- 1/11/2006
- 1.5 The first draft of this report was sent to the Authorising Officer by Delegation on 14 November 2006. On 16 February 2007, Internal Audit sent him an update with the findings from the additional audit procedures conducted in January 2007. On 15 May 2007, the Authorising Officer by Delegation provided detailed comments on that first draft.
- 1.6 The Internal Auditor took account of those comments in a second draft, which he sent to the Authorising Officer by Delegation on 31 July 2007. Following the receipt of additional information from DG Finance on 31 August 2007, Internal Audit added some limited statistical updates to that draft, which where sent to the Authorising Officer by Delegation on 11 September 2007.
- 1.7 On 19 November 2007, the Authorising Officer by Delegation provided his comments on that second draft. These comprised observations on each of the proposed action plans, which showed a broad level of consensus on the substance of most of the actions proposed by Internal Audit. For those actions on which the Authorising Officer by Delegation took a different view, the response explained why. The Authorising Officer by Delegation also stated that he could not commit himself to implementing actions which depended on decisions of the political authorities<sup>2</sup>.
- 1.8 In a third draft report issued on 4 December 2007, the Internal Auditor acknowledged the position of the Authorising Officer by Delegation and incorporated the detailed observations of the authorising department into the text. In reply, by note of 20 December 2007, the Authorising Officer by Delegation provided further comments on specific aspects of the third draft version. He also reiterated his "... services' determination to work together with the IAS towards a framework which ensures at all times the transparency, legality and sound financial management of the allowance for parliamentary expenses, in the best interests of the Institution and its Members".
- 1/1/2008
- 1.9 The Authorising Officer by Delegation also confirmed his understanding that the IAS would now proceed to amend the draft for his latest comments, where it considered this to be necessary, and then adopt the report without a further exchange of drafts. Having carried through these final adjustments, the Internal Auditor adopted the amended third draft as the definitive version of the report on 9 January 2008.

<sup>2</sup> The Authorising Officer by Delegation stated in his note of 19 November 2007: "...dans bon nombre des plans d'actions que vous me préconisez, ce n'est pas tant la faisabilité technique qui est en cause sinon l'absence de base réglementaire, laquelle ne peut évoluer qu'à condition de rencontrer une certaine volonté politique".

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part I: Report to Management

2. Audit objectives, scope and methodology

2.1 The main objectives of the audit were as follows:

- To review the operation of departmental management and control procedures in the area of the parliamentary assistance allowance in order to evaluate the extent to which those procedures succeeded in achieving the key objectives of the Internal Control Framework<sup>3</sup>.
- To verify the compliance of the allowance payments made to Members with the applicable regulations, including the Financial Regulation and the Rules Governing the Payment of Expenses and Allowances to Members adopted by the Bureau (hereinafter referred to as the "PEAM Rules").

2.2 The IAS' approach entailed:

- An analysis of the legal and regulatory framework for the parliamentary assistance allowance
- Discussions with relevant personnel to obtain an understanding of how management and control procedures are designed to operate
- An analytical review of the overall utilisation of the parliamentary assistance budget
- Substantive testing on an extensive sample of parliamentary assistance payments to determine how the management and control procedures operate in practice.

2.3 As a first step, the IAS analysed the risks linked to the three categories of contracts under which parliamentary assistance is implemented (employment, service and paying agent contracts). The results of that analysis formed the basis for determining the nature of audit procedures and the composition of the sample of transactions to be tested.

*three types of contracts*

2.4 The analysis showed that the inherent risks linked to service contracts were higher than those of the two other categories of contract. It was therefore decided to test a proportionally higher number of service contracts. Another outcome of the risk analysis was that the "one-off" payments at year-end presented specific risks that needed to be examined separately.

*!*  
*0 (1)*

<sup>3</sup>(i) Compliance with applicable laws, regulations and policies (ii) Reliability of management information and recording (iii) Economy, effectiveness and efficiency of operations.



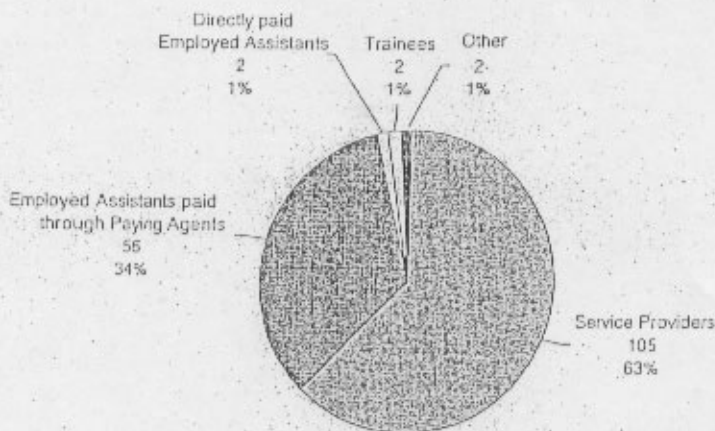
Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

*sample  
167*

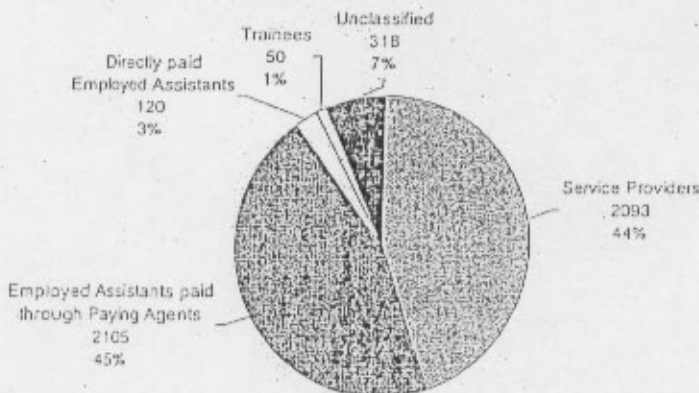
2.5 A main sample of 167 allowance payments was drawn from the October 2004 population of payments. This sample was segmented to ensure all types of contract were covered. To reflect the higher risk profile of service provider contracts, the sample included a higher representation of those contracts than contained in the total population. For each type of contract, the audit sample was established on a purely random basis, using audit software. The total sample size was sufficiently large to enable the audit objectives to be attained without having to rely on the underlying internal controls in place. The charts that follow show the composition both of the sample and of the related global population.

*D*

Audited Sample of 167 PAA Payments made in October 2004 (by numbers of payments)



Total population of the 4686 PAA Payments made in October 2004 (by numbers of payments)



*4686  
PAA payments  
in Oct. 2004*

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

2.6 Starting from the payments in the sample, the audit procedures covered the corresponding contract(s), application(s) and all available supporting documents required for granting the parliamentary assistance allowance. (For employment contracts managed through paying agents, this implied that both the employment and the paying agent contract were audited.) Each of the 167 payments in the random sample was subject to 70 individual audit procedures.

2.7 The audit of "one-off" payments at year-end was based on an additional sample of 21 transactions drawn from key items (high amounts and unusual payments identified by DG Finance). These transactions (and a 22nd "one-off" payment already included in the general sample) were the subject of specific audit procedures.

2.8 The recurrent changes to the legal framework provided by the PEAM Rules necessitated certain important changes to the nature, timing and extent of the planned procedures and had a significant impact on the formulation of the report's proposed action plans.

*Member  
paying  
changes*

When initial audit procedures started, in October 2004, the specific legal framework for parliamentary assistance was governed by the following two Bureau decisions:

- Decision of 15 December 2003 (PE 338.767) which adjusted the monthly ceiling for reimbursement of parliamentary assistance expenses in 2004 to €12 576.
- Decision of 9 February 2004 (PE 338.886) which amended, with effect from 1 July 2004, the PEAM Rules applicable to the parliamentary assistance allowance under the 6th term. These rules foresaw in particular that:
  - paying agents shall forward to the Member at least twice a year statements of the expenditure incurred, and,
  - invoices from service providers shall cover periods not exceeding six months.

The previous version of the PEAM Rules, which were adopted in 2001 and remained unchanged for the remainder of the 5th parliamentary term, continued to apply to the "lay-off" payments<sup>4</sup> of the parliamentary assistance allowance made, until 31 October 2004, to Members who had not been returned at the 2004 election.

2.9 The main decisions taken during the period of the audit can be summarised as follows:

- 13/12/2004: Bureau decision (PE 352.406):
  - the monthly ceiling for reimbursement of parliamentary assistance expenses in 2005 is increased to €14 865,

<sup>4</sup> In its Opinion SJ-0386/07 of 6 July 2007, the Legal Service advises against using the term 'lay-off' as it is inappropriate in this context. Instead, it would be preferable to refer to the 'reimbursement of additional expenses on expiry of a Member's term of office'. Internal Audit agrees with the Legal Service's observation, but has employed the term 'lay-off' in this report as it is in common usage.

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

the minimum periodicity for the submission of paying agents' statements of expenditure is extended from at least twice a year to once a year,

for employment contracts, the Member has to provide, within three months of the assistant's taking up his/her duties, a certificate of the assistant's membership of a social security scheme; (the previous requirement had been for each application for the allowance to be accompanied by a copy of the declaration made to the national social security body and for the certificate of membership to be provided no later than twelve months following conclusion of the contract).

(In the audit report, unless stated otherwise, references to articles of the PEAM Rules are to the 13/12/2004 version of the rules.)

- 22/06/2005: Bureau decision (PE 359.163) extending the deadline for the submission of supporting documents concerning expenses incurred in connection with the provision of services from six to twelve months.
- 13/07/2005: Quaestors' communication 32/05 (PE 358.990) extending to 1 November 2005 the deadline for the submission of invoices relating to the period between the start of the parliamentary term and 30 June 2005.
- 12/12/2005: Bureau decision (PE 364.483) adjusting the monthly ceiling for reimbursement of parliamentary assistance expenses in 2006 to €15 222.
- 03/07/2006: Bureau decision (PE 375.125) extending to 01/01/2007 the deadline "for presenting the supporting documents accompanied by the appropriate declarations according to the relevant rules on reimbursement of parliamentary assistance expenses".
- 25/09/2006: Bureau decision (PE 377.687) adopting the "CODEX for parliamentary assistants in the European Parliament" (hereinafter "the CODEX").
- 11 and 13/12/2006: Bureau decisions (PE 380.280) amending the PEAM Rules following the adoption of the CODEX and adjusting the monthly ceiling for reimbursement of parliamentary assistance expenses in 2007 to €15 496.
- 10/01/2007: Quaestors' communication 44/06 (PE 383.215) extending to 31 March 2007 the deadline for the submission of "Documents regularising the parliamentary expenses, in accordance with Article 14 PEAM, for the year 2006".

2.10 In particular, the decisions amending the requirements for the submission of supporting documents had a significant impact on the audit process. These changes had to be taken into account in order to establish the definitive findings and to define corresponding action plans. Additional audit procedures were thus conducted in early January 2007 to take account of the revised regulatory requirements, and the findings were updated to reflect the situation as of January 2007.

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part I: Report to Management

3. Simplifying the administrative management of parliamentary assistance

- 3.1 The current system for managing parliamentary assistance is highly complex, both for Members and for the Administration. This reflects the complexity of the regulatory framework, which allows a wide diversity of contractual arrangements between Members and their assistants. Specific requirements apply to each type of contract, both under the PEAM Rules and under the relevant national laws. Such requirements can vary among the 27 Member States.
- 3.2 The PEAM Rules provide that parliamentary assistance shall be the subject of a private-law contract concluded by the Member with an employee, paying agent or service provider. The Rules state that the European Parliament may "under no circumstances" be deemed to be a party to any of these contracts, or to be an employer or a paying agent. It is expressly provided in the PEAM that the Member and those contracted to him/her must comply with the applicable laws, including taxation and social security provisions.
- 3.3 DG Finance has confirmed to Internal Audit that the unit responsible for managing the parliamentary assistance allowance has continued to apply instructions issued by the Secretary-General on 12 February 2001<sup>5</sup>. Those instructions stipulated, *inter alia*, that "...the obligation of the responsible services within Parliament's general secretariat shall consist exclusively in ascertaining the existence of the required copy of the contract, that the latter contains the minimum required set of data, and that the information indicated in the application corresponds with those given in supporting documents..." According to DG Finance, this means that the "service has had to limit itself to the control of the formal requirements of Article 14 PEAM" (which contains the main provisions concerning the allowance)<sup>6</sup>.
- 3.4 However, all expenditure financed by the General Budget of the European Union has to comply with the Financial Regulation. Under the Financial Regulation, the Authorising Officer by Delegation is responsible for implementing expenditure and revenue in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with. The authorising officer's internal management and control systems should therefore provide assurance of achieving these objectives when committing, paying and (where necessary) recovering the parliamentary assistance allowance.

only formal checks?

<sup>5</sup> Instructions issued at the time a previous version of the PEAM Rules was adopted, with effect from 1 January 2001.

<sup>6</sup> DG Finance note sent on 15 May 2007 (D(2007)27407) replying to the first draft of the present report.

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

- 3.5 The authorising department (DG Finance) is thus responsible for monitoring the legality, regularity and sound financial management of the Members' contractual arrangements. A key issue emerging from the audit is how this can be done such as to provide reasonable assurance of compliance, not only with the Financial Regulation and the PEAM Rules, but also with the rules applicable to the employment of staff and the provision of services as set out in 27 sets of national laws.
- 3.6 To do so effectively under the current regulatory framework would require a large team of highly qualified specialists with extensive expertise in all relevant areas of the legislation. The detailed findings of the audit lead to the conclusion that the current allocation of resources does not meet this criterion. As a result, the existing system can not provide reasonable assurance of compliance with the applicable rules and principles. There is a corresponding increase in the exposure of the Institution and its Members to financial, legal and reputational risks. risk
- 3.7 The possible solution of a major and permanent allocation of specialised resources to the management and control of the allowance is not advocated in this report. This would not necessarily be cost-effective, nor would it contribute to the simplification of administrative management.
- 3.8 Achieving the required level of assurance, while also rationalising and simplifying administrative management, will necessitate a revision of the legal framework for parliamentary assistance. The report sets out the principles on which such a revision could be based and the actions that would be required to reach that goal when the Statute for Members takes effect under the 7th parliamentary term in July 2009. These include:
- in a first phase, a single contractual relationship for parliamentary assistants, who should be hired under employment contracts and not contracted as service providers<sup>7</sup>;
  - in a second phase, to examine how the employment of parliamentary assistants could be governed by the conditions applicable to other servants engaged under contract by the European Communities. This would mean that Parliament would conclude contracts with the assistants directly and take care of all administrative management issues on the Members' behalf.

The Administration needs therefore to examine:

- the scope for such employment under existing regulations and determine whether amendment of these is required to guarantee the Members' full autonomy to choose their assistants or to provide for other specific requirements;
- the potential legal and financial implications of Parliament assuming directly all obligations and all liabilities arising out of the contractual relationship;

<sup>7</sup> The only exception to this general rule would be where the applicable labour law of a Member State would not allow a natural person - the Member - to act as an employer.

**Internal Audit Service**  
**Internal Audit Report no. 06/02 to the Institution**  
**Part 1: Report to Management**

- these measures to be combined with a restriction on the use of bought-in services to short-term contracts for identified deliverables, within budgetary limits, where such services cannot be performed by parliamentary assistants.

*(DG Finance has confirmed that the Members' Statute Working Party is currently considering a number of proposals which are likely to cover the options raised by Internal Audit.)*



6

3.9 These measures would be complemented by the following actions with general application:

- DG Finance to draw up and submit to the Quaestors a proposal for the publication of updated and comprehensive guidance that will provide Members with advice on implementing all aspects of the PEAM Rules.  
*(DG Finance confirmed that further guidelines would follow after completion of the work of the Members' Statute Working Party.)*

- Based on a proposal by DG Finance, the use of approved model contracts for employment, service provision and paying agents should be made mandatory by the Institution.

*(The Authorising Officer by Delegation confirmed his readiness to put this proposal to the Working Party, while recalling that the political authorities have rejected similar proposals in the past.)*



3.10 The report also sets out the measures that should be taken in the shorter term to raise the present level of assurance. These action plans focus on improvements to the internal management and control systems in order to ensure better enforcement of existing PEAM Rules.

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

4. Defining the scope of assistance tasks and quantifying the related costs that can be reimbursed under the allowance

4.1 Providing a precise contractual definition of the assistance work to be performed

4.1.1 As stated in the relevant remarks column of the European Parliament's budget, the purpose of expenditure on parliamentary assistance is "*to cover expenses relating to the recruitment and employment of one or more assistants*"<sup>8</sup>. In view of the principles of specification and of sound financial management enshrined in the Financial Regulation, it follows that a key control objective for the Institution should be to ensure that the parliamentary assistance allowance is used only to meet costs that are wholly, exclusively and necessarily incurred in employing or engaging the services of assistants to help Members to perform their duties.

4.1.2 An essential first step in achieving that objective is to include, in the contract between Member and assistant, a clear, precise and comprehensive definition of the tasks to be carried out. Article 14.5 of the PEAM Rules requires that employment contracts include a "*summary job description*" and that service contracts contain a "*description of the services provided*".

4.1.3 There is little or no formal guidance available to Members on the level of detail to provide in defining the assistant's tasks. The model employment contract contains a generic job description "*to assist (the Member) in connection with the exercise of the office of Member*". The audit found that most employment contracts contained only that text to describe the assistant's tasks. In the model service contract, a limited space is left for the services to be described. In 91% of the audited service contracts, the service provider's tasks were found to be either imprecise and/or limited to a single word or phrase.

4.1.4 Under the action plan, the authorising department would draw up a proposal for detailed guidelines on the contractual definition of assistance work which are to be included in the CODEX. These draft guidelines would be presented, for discussion, to the Working Party on Members' Statute, Assistants and Pension Fund (hereinafter "the Members' Statute Working Party") and then submitted to the Quaestors for adoption. The proposal would also foresee corresponding adaptations of the model contracts, the use of which would be made mandatory (see 3.9). This action would aim to ensure that:

- the tasks are wholly, exclusively and necessarily performed for the purpose of assisting the Member in his/her duties;
- the Member is provided with adequate legal protection in the event of dispute over performance;
- there is reasonable assurance that the related remuneration is adequate (see also 4.2);

<sup>8</sup> General Budgets of the European Union for 2006 and 2007, Section Parliament, Item 4220 "Parliamentary assistance" remark.

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

- the tasks are consistent with the nature of the contractual relationship (especially in the case of service contracts, for which the contractual tasks should not imply a relationship of subordination between Member and assistant - see also 5.4).

*(The Authorising Officer by Delegation confirmed that, in line with the Members' Statute Working Party's conclusions, guidelines on the tasks and job descriptions of parliamentary assistants can be drawn up and submitted for the approval of the Quaestors.)*

4.2 Ensuring that levels of remuneration are proportionate to the tasks performed

4.2.1 The PEAM Rules do not place limits on the remuneration that can be paid to a single assistant or service provider, other than the fixed monthly ceiling for the allowance (currently at €15 496, equivalent to €185 952 per annum for each Member). The audit showed that there are significant variations in the remuneration levels of assistants. Whereas these may be attributable to the number of assistants actually under contract, differences in working hours, the nature of the tasks, the level of professional qualifications, or the general salary levels in Member States, this could not be established.

4.2.2 These factors, together with the generally weak definition of contractual tasks (see 4.1), make it difficult to conduct an overall assessment of the proportionality of the relationship between tasks performed and remuneration paid. The audit nevertheless revealed a number of anomalies that confirmed the risk that the remuneration paid may not always be justified by the real costs of providing parliamentary assistance. This was especially the case for service providers.

4.2.3 Almost all audited service provision contracts were based on a flat-rate fee that did not foresee adjustment to the actual level of assistance provided. The following audited cases illustrate the implications:

- one contract stipulated that the full allowance was to be paid to a service provider (legal entity) throughout the parliamentary mandate and expressly left open the number of persons to be put at the disposal of the Member, who was found to have only one accredited assistant;
- in two similar cases of full payment to a service provider firm, no assistants are accredited for the Members concerned;
- in another case, the firm in receipt of the full allowance did not appear, according to its 2004 accounts, to have any tangible activity;
- in two other service provision contracts, the activities of the firms in receipt of the allowance appeared to have little or no relevance to the provision of parliamentary assistance.



Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part I: Report to Management

- action plan*
- 4.2.4 The action plans aim to provide reasonable assurance that salaries and fees covered by the allowance represent a fair and proportional level of remuneration for the tasks performed.

*(The Authorising Officer by Delegation confirmed his support for the proposed improvements to the legal framework for payment of the allowance.)*

- 4.2.5 As described under 3.8, the appropriate action would be, from the beginning of the 7th parliamentary term onwards, to engage all parliamentary assistants as employees. This should be done within a harmonised framework for the financial conditions of employment of assistants, to be adopted by the Bureau, aimed at adequate and consistent levels of remuneration.

In a first stage, this framework could be provided by the PEAM Rules. This would include (i) the definition of professional function groups that reflect the assistants' different qualifications and experience, and, (ii) a scale of maximum allowable monthly remuneration per function group.

*!*  
A second stage would consist in a fundamental revision of the legal framework for parliamentary assistance, involving the application of the Conditions of employment of other servants of the European Communities to parliamentary assistants.

- !*  
4.2.6 The CODEX should provide a new legal framework for service contracts (other than paying agents). With the exception of paying agent services, contracts for the provision of services covered by the parliamentary assistance allowance should only be used to purchase, within budgetary limits, specific services where the corresponding tasks cannot be performed by the Member's parliamentary assistant(s). In practice, such contracts would be for short-term assignments requiring special expertise and resulting in identifiable deliverables. DG Finance would draw up the corresponding proposal, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, with effect from the 7th parliamentary term onwards.

*(DG Finance indicated that the Members' Statute Working Party is currently considering a number of proposals which are likely to cover the options raised by Internal Audit under 4.2.5 and 4.2.6.)*

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part I: Report to Management

lay-off  
payments

4.3 Clarifying the principles underlying the entitlement to "lay-off" payments

- 4.3.1 Article 15.3 of the PEAM Rules provides, subject to a number of exceptions, that the parliamentary assistance allowance can be paid for a period of three months following the month in which the Member's term of office comes to an end. These "lay-off" payments are not payable if: the Member is immediately re-elected; he/she has served for less than six months before the end of the term; the assistant concerned is being paid by another Community institution; or if, during the 3-month period, the assistant is employed by another Member.
- 4.3.2 At the time of the audit fieldwork, the regulatory framework did not specify the objectives of the lay-off payments or the types of assistance contracts to which they apply. The provisions on lay-off were consistent with general principles of labour law for employment contracts. But it was not evident why service providers should also have automatic entitlement to "lay-off" payments for a period of three months after the expiry of their contracts. Since the completion of the audit fieldwork, the CODEX has introduced more restrictive provisions. It now specifies that the lay-off payments "...shall effectively be used by the Member to cover payments to be made to assistants under the applicable national labour law".
- 4.3.3 The audit sample contained 42 lay-off payments. In breach of the PEAM Rules, ten of these were made in respect of assistants who continued to receive "normal" assistance payments from other contracts that had been extended from the fifth to the sixth parliamentary term.
- 4.3.4 In one such case, an assistant was under part-time contract with nine Members at the time of the election. During the three months thereafter, he accumulated lay-off payments from five Members who had not been returned, normal payments from three who had been re-elected, and further remuneration under contracts with four newly elected Members. This resulted in a relatively high monthly remuneration of €8 890 during the lay-off period. In two other cases, Members requested substantial increases in the salary paid to two assistants during the lay-off period (increases of 71% and 117%, respectively) such that the balance on their entitlement was substantially used up.
- 4.3.5 The action plan foresees that DG Finance would submit draft implementing provisions relating to Article 8.3 of the CODEX, for adoption by the Quaestors. These would include a clearer and more restrictive definition of the purpose of the payments and their beneficiaries. The lay-off payments would, in future, be paid only as employees' indemnities or to cover the fees of paying agents who continue to manage the contracts of assistants affected by the lay-off. (Pending the implementation of the action proposed under 3.8 above, which would place strict limits on the future use of service provider contracts, the lay-off payments could also apply to service providers who place human resources at the disposal of a Member, in so far as this is necessary to cover payments to be made under national labour law to employed assistants whose contracts they manage.)

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Decision  
plan

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

4.3.6 The implementing provisions would also define the entitlement to lay-off payments where the assistant has several part-time employment contracts. (With a view to presenting the implementing provisions for adoption, DG Finance has meanwhile obtained an opinion of the Legal Service. Internal Audit has taken that legal opinion into account in the present report.)

To simplify the procedures both for the Members and DG Finance, the entitlement to lay-off payments should flow from the implementing provisions in a way that enables DG Finance to establish that entitlement without the requirement for a specific formal request from the Member.

*(It is DG Finance's view that the Quaestors' Communications 09/07 and 38/07 on the elections in Bulgaria and Romania clarify these provisions. Having reviewed those documents, Internal Audit maintains the proposed action described in paragraph 4.3.5.)*

*off payments*

4.4 Justifying "one-off" payments at the end of the financial year

4.4.1 A month-by-month comparison of the monthly consumption of appropriations under the budget item for the parliamentary assistance allowance showed increases in the last two months of both 2004 and 2005 that could not readily be explained by such factors as lay-off payments or the addition of new Members after Enlargement. The increases were in fact attributable to a high number of "one-off" payments made to assistance providers during that two-month period in both years.

4.4.2 A more in-depth examination of "one-off" payments, based on exceptionally large items and a random representative sample of others, was conducted for November and December 2004. For 16 of the 22 payments thus examined, the payment had the effect of using up the balance on the Member's allowance entitlement for the year. The PEAM Rules do not include provisions which would require "one-off" payments to be supported by documentation covering the tasks performed and justifying the amount of the additional payments. In 18 of the 22 cases, Internal Audit did not find supporting evidence that would provide a satisfactory explanation for the payments. These included five one-off payments to employed assistants of between 3 and 19.5 times the amount of their normal monthly salary, which were either not explained or based solely on a succinct description such as "end-of-year bonus". In another case involving an employed assistant, the payment was made - without deductions for tax or social security - to a bank account in a country other than that of the assistant's residence and place of work.

4.4.3 Seven of the 22 payments audited were made to service providers based on contracts submitted to the authorising department in November 2004. Two of those were also signed in November 2004, with start-dates retroactive to July or August 2004. In four other cases involving service providers, the payments were either materially disproportionate to the limited supporting evidence provided or were not based on the contracts (in breach of the PEAM Rules applicable at the time).

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part I: Report to Management

4.4.4 Under the action plan, DG Finance would draw up, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, a proposal for provisions on "one-off" payments to be included in the new framework for the PEAM Rules. To ensure compliance with the Financial Regulation's provisions on sound financial management, these would foresee that:

- "One-off" payment proposals should be supported by documented explanations covering the tasks performed that justify the amount of the additional payment.
- The reasonableness of any 'bonus'-type payments should be justified in relation to the normal salary of the assistant.
- "One-off" payments to employed assistants should always be subject to tax and social security and be paid to the same bank account as for the normal salary.

*(The Authorising Officer by Delegation concurs on the need to ensure compliance with the Financial Regulation at all times and therefore supports the adoption of guidelines on the issue of remuneration.)*

4.4.5 In order to be consistent with the Conditions for the employment of contract staff of the European Communities, if and when these should be applicable to parliamentary assistants, the new framework to be adopted by the Bureau (foreseen at 3.8 above) would restrict such "one-off" payments to employed assistants to duly supported cases, such as the reimbursement of travel and subsistence expenses allowable under the PEAM Rules and payments which have their origin in the relevant labour-law.

*(The Authorising Officer by Delegation has indicated that he will, in consultation with the Legal Service, consider the prospects for requiring more detailed information to accompany requests for "one-off" payments.)*

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

5. Service contracts for the provision of parliamentary assistance

5.1 Compliance of service providers with the applicable national laws

5.1.1 The PEAM Rules stipulate that each contract for parliamentary assistance shall be a "private-law contract duly concluded in accordance with national law". The Member and those contracted to him "...shall be required to comply with applicable laws, including tax and, where applicable, social security provisions."

5.1.2 Under the Sixth Council Directive on Value Added Tax ("VAT"), the provision of services is subject to VAT. As a general rule, legal entities and individuals who provide parliamentary assistance under such contracts are liable to VAT and must register for it.

5.1.3 Although the legislation of an individual Member State may foresee exceptions to this general rule, a service provider who thereby claims exemption from VAT must provide the legal grounds for that status.

5.1.4 In 122 of the 155 audited payments (79%) to which the VAT rules applied, the available documents did not provide evidence of either registration for, or exemption from, VAT.

5.1.5 The audit also examined other indicators of compliance with the applicable laws. The sample included 49 service contracts with individual (self-employed) providers. For 44 (90%) of those contracts, there was no evidence of mandatory coverage by a social security scheme for self-employed persons.

5.1.6 All legal entities and individuals who provide services in Belgium are required to register in a national database. A search of the database did not reveal any evidence of registration for some 83% of the service providers whose contracts indicate Belgium as the place of work.

5.1.7 These and similar findings detailed in Part 3 indicate a significant risk that many service providers remunerated under the allowance may not comply with the applicable national laws. To address this, the report sets out a series of actions for the authorising department to implement. These focus on systematic prior checks of the service provider's VAT status, including the grounds for any claimed exemption, before approving new applications for the allowance. (It is noted that the CODEX adopted on 13 December 2006 now requires the VAT registration number to be mentioned in the contract.) DG Finance would also carry out a comprehensive review of existing contracts in order to identify cases requiring regularisation.

*(In his reply of 19 November 2007, the Authorising Officer by Delegation drew attention to the fact that the CODEX had not yet been notified to the Members and that DG Finance has therefore not been in a position to call for its implementation. He confirmed that, when it comes into force, the CODEX will provide the basis for requesting a number of safeguards including the service provider's VAT registration number.)*

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part 1: Report to Management

- 5.1.8 For the specific service provider contracts that would still be allowed under the revised rules (see 5.4.6 and 5.5.5 below), the action plan also envisages that DG Finance would draw up, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, proposed amendments of the CODEX to require all those service providers to contract professional third-party liability insurance, and for the service provider's remuneration to be paid to a bank account located in the country of its registered office.

*(DG Finance indicated that the proposal on third-party liability insurance could be put forward for discussion between the members of the Bureau responsible for matters relating to assistants and the elected representatives of the assistants. As regards the bank account on which remuneration is to be paid, it confirmed that a similar proposal is included in the draft implementing measures for the Members' Statute that will be submitted to the Working Party.)*

5.2 Invoicing of parliamentary assistance services performed for Members

- 5.2.1 Under the Financial Regulation and its implementing rules, the authorising officer must validate each item of expenditure before authorising it for payment. The validation of expenditure must be based on adequate supporting documents attesting the creditor's entitlement to payment. In order to establish that the services foreseen in a contract have been actually rendered, the rules require the submission of an invoice drawn up by the contractor.
- 5.2.2 Article 14.6 of the PEAM rules lays down that invoices or fee statements showing the provision of services must be drawn up for a period not exceeding twelve months. That same article allows for monthly advance payments to be made, provided these are foreseen in the contract.
- 5.2.3 The PEAM rules do not require an invoice to be issued for each advance payment. Instead, it allows for payments to be made "on the personal instructions of the Member". The periodic (minimum annual) invoice would then "regularise" the advances made and determine the outstanding balance.
- 5.2.4 The audit sample included 105 individual payments which covered fees to service providers, 75 of which related to the parliamentary assistance allowance of Members elected under the 6th Term. The rules in force at the time of payment, for the 6th Term, had required invoices to cover a period not exceeding six months. On the expiry of that period, service providers had furnished invoices for only 11 of these 75 payments. None of those 11 invoices appeared to contain all the minimum details required for a valid invoice, as set out in the applicable Council Directive.

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part I: Report to Management

- 5.2.5 To allow for the change to a twelve-monthly invoicing period and for successive extensions of the deadlines by which invoices were to be submitted to the authorising department, Internal Audit carried out a further examination of the 105 payments to service providers in January 2007. It was found that the authorising department had received invoices for 42 files, including the original eleven. (Of those 42 invoices, only five appeared to include the minimum details required for valid invoices as laid down in the relevant Council Directive.)
- 5.2.6 A further development on this issue is that, on 13 December 2006, the Bureau adopted a revision of Article 14.6 of the PEAM rules, which now only requires Members to submit to DG Finance a copy of the service provider's statement of the amounts invoiced, but not copies of the invoices drawn up in accordance with the national law applicable.
- 5.2.7 When invoices are not submitted to DG Finance or when these are not valid, it means that it is not possible for the Authorising Officer by Delegation to verify the creditor's entitlement or to establish that the services paid for have been rendered. This is a breach of the Financial Regulation. Moreover, the correct application of the Financial Regulation would require the service provider to issue an invoice in respect of each advance claimed under the contract, thus attesting his entitlement to that pre-financing.
- 5.2.8 Under the action plan, DG Finance would review all cases where valid invoices or statements of amounts invoiced had not been submitted and submit to the Quaestors, for decision, a proposal to notify the Member concerned of the final deadline by which the service providers should comply. The decision should also foresee that, thereafter, the department would suspend payments to service providers who have not complied and initiate the procedure to recover unregularised advances.

*(DG Finance indicated that similar proposals are being included in the draft implementing measures for the Members' Statute that will be submitted to the Working Party.)*

- 5.2.9 DG Finance would also draw up for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, a proposal to amend the PEAM rules so that payments could be made only on the basis of prior submission of valid invoices. The amendment would also provide for the Member to endorse the invoice as confirmation that the services have been carried out in accordance with the contract and for copies of the endorsed invoices to be submitted to DG Finance.

*(As regards prior invoicing, the Authorising Officer by Delegation stated that, in line with the Working Party's conclusions on service provider contracts, he would make the necessary proposals for further tightening of the relevant rules. As far as the endorsement of invoices by Members is concerned, he indicated that this has now become established practice.)*

Internal Audit Service  
Internal Audit Report no. 06/02 to the Institution  
Part I: Report to Management

5.2.10 To ensure compliance both with the Financial Regulation requirements on pre-financing and with the principles of accruals accounting, the required action also includes the necessary IT development to ensure the separate recording of advance payments to service providers and paying agents in the Parliament's official accounting application at the time such payments are made.

5.3 Including the requirements for valid invoices in the contracts with service providers

5.3.1 The audit showed that the PEAM Rules can be circumvented and undermined by the failure to transpose their requirements on invoicing into the contracts signed with service providers. (This applied equally to the requirements on statements in paying agent contracts.)

5.3.2 Although the non-mandatory model contracts provided by DG Finance foresee the need to submit invoices, a majority of the relevant signed contracts in the sample (85 out of 146) did not contain a clause that properly reflected the PEAM requirements. One-fifth of those cases had no invoicing requirements at all. The remaining cases had an invoicing clause but this did not mention any periodicity for the submission of invoices or fee statements. There was thus no contractual means of ensuring that the service providers would respect the conditions set out in the PEAM Rules.

5.3.3 The action plan foresees the inclusion of explicit requirements on invoicing in the list of essential details to be provided in a service contract as set out by the CODEX. The inclusion of the clause on invoicing in the contract should be a prerequisite for acceptance of the application. At the time of application, DG Finance would therefore request that any contracts without such a clause be amended accordingly. (Under a related action plan, the use of model contracts containing that clause would become mandatory - see also 3.9.)

action plan

*(The Authorising Officer by Delegation considers that the CODEX (Article 7) requirements represent an implicit obligation to submit invoices. He confirmed that, in line with the conclusions of the Members' Statute Working Party, he will propose that the model contracts be amended to include a reference to the requirement for invoicing. He also indicated that, in the framework of future developments in relation to the Members' Statute, he would consider an explicit reference to this in the CODEX or its implementing modalities.)*

5.4 Risk that existing service contracts are de facto contracts of employment

5.4.1 The model contract for the provision of services by a self-employed person lays down that the "service provider shall carry out his activities without any chain of authority or management and without being an employee". He/she would have the "freedom and autonomy of a self-employed person or trader" and be "completely free and independent in carrying out his duties and organising his work".