

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Findings & Issues (continued)

- In one case, a service provider contract was for research and communication work but also included paying agent services. A single monthly lump sum in excess of €5 600 covered all of these items - including the transfer to cover employers' liability for tax and social security - but was not itemised among them.
- A best practice was noted on the website of one Member for which a parliamentary allowance payment was included in the audit sample¹³. The site made available a certification by external auditors on the use of the Member's parliamentary assistance allowance, in 2004, in accordance with the PEAM rules.

Internal Audit notes that these anomalies were identified from a representative sample of service provider contracts. There is a reasonable likelihood of similar cases occurring elsewhere in the total population of such contracts. Internal Audit also considers that these cases - especially those described under the second and third indents above - raise issues of potential non-compliance with the principle of sound financial management.

In his note of 20 December 2007 on the third draft of this report, the authorising officer by delegation stated that "further retroactive clarification (of these anomalies) is not supported by a legal basis in the rules". Nevertheless, he acknowledged that such problems remain as a management risk and confirmed that, wherever possible in the future, his services will address these in a better way. He also noted that the Bureau's recent decision to "reopen the regularisation procedures for 2004-2005 (is) a priority for the management service".

Implications

Lack of assurance that the salaries or fees covered by the parliamentary assistance allowance represent an appropriate level of remuneration for the tasks performed.

Potential breach of the provisions of the Financial Regulation (Article 27) on the use of budget appropriations in accordance with the principle of sound financial management.

Inconsistency between the procedures that apply to contracting by the Parliament and contracting by Members whereas the cost of all those contracts is financed from the general budget of the European Union to which a single Financial Regulation applies.

In the case of contracting by the Parliament:

- The Staff Regulations determine the grading and corresponding remuneration of staff employed by the Parliament.
- Contracts with service providers are, as a general rule, awarded by the Parliament under procedures conducted in accordance with public procurement rules (Financial Regulation, Directives) and with the principles of sound financial management.

By contrast, the PEAM rules foresee no limits to the remuneration that can be paid by a Member to a single assistant or service provider, other than the annual ceiling of the parliamentary assistance allowance (€150 912 for the transactions when initially examined, now €185 952).

Lack of transparency on the use of funds when a single contract covers both provision of parliamentary assistance services and those of a paying agent.

¹³ The auditors do not exclude that similar best practices are being implemented by other Members who were not in the sample.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Action Plans

Preamble:

As explained under action plan C-4.1:

- parliamentary assistants should, as a rule, be contracted as employees;
- contracts with service providers should only be used to cover paying agent services or the purchasing of specific services under short-term contracts.

B-2.1 A framework for the financial conditions of employment of assistants, aimed at adequate and consistent levels of remuneration, needs to be established. Internal Audit notes that the CODEX for the parliamentary assistants adopted by the Bureau on 25/09/2006 introduces, in its Article 9, the possibility for the Quaestors to recommend salary scales. While acknowledging that this provision of the CODEX constitutes progress, Internal Audit is however also of the opinion that the purely indicative nature of these scales is unlikely to solve the issue in a consistent way.

In the opinion of Internal Audit, in a first step, the framework for the financial conditions should be provided by the PEAM rules. It should include:

- The definition of professional function groups reflecting the assistants' different levels of qualification.
- A scale of maximum allowable monthly remunerations per function group. Amounts in this scale would constitute the ceilings up to which a single assistant's salary could be covered by the parliamentary assistance allowance.

(See also action plan B-4.2 relating to "one-off" end-of-year payments.)

Function groups and levels of remuneration could be based on the conditions of employment for contract staff of the European Communities. (It is recalled that these conditions provide for the remuneration of contract staff to be weighted depending on the living conditions in the place of employment. They would therefore reflect the different employment conditions prevailing in Brussels and in the constituency of a Member.)

DG Finance should draft, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, the proposal for a corresponding amendment of the PEAM rules which would confirm the principles mentioned above.

A second stage could consist in a fundamental revision of the legal framework for parliamentary assistance as described in action plan A-3. This action plan foresees that the Conditions of employment of other servants of the European Communities would apply to parliamentary assistants.

B-2.2 As already mentioned (see action plan A-3), 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 from external service providers when corresponding tasks cannot be performed by the Member's parliamentary assistant(s). DG Finance should draw up, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, the proposal for an amendment to the CODEX that would provide a new legal framework for these contracts. Under these amended rules, the following general principles should apply to contracts for the provision of services as from the 7th parliamentary term:

- They should only be concluded for short term assignments and to cover tasks requiring specific expertise. The cumulative duration of the services provided under such a contract should not exceed a duration to be specified in the CODEX (one year would seem to be an appropriate maximum).
- They should foresee the provision of clearly identified contractual deliverables that will condition the payment (see also findings reported under point B-1). *(continued)*

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Action Plans (continued)

- Contracts for the provision of services that foresee, as the principal contractual task, the placing of staff at the Member's disposal should explicitly be excluded by the CODEX¹⁴. (Only employment contracts should be used.)
- The total cost should not exceed the amount foreseen in the Financial Regulation's Implementing Rules (Article 129.3) for contracts that may be awarded on the basis of a single tender (currently €5 000).

2
The CODEX should allow for exceptions to the restrictions on the duration and amount. Any such exceptions should, however, be based on a reasoned request from the Member and the subject of a formal agreement by the authorising officer responsible. These would, in particular, confirm compliance of the proposed contracting of services with the purpose of the parliamentary assistance allowance and with the principle of sound financial management. Exceptions that could lead to a circumvention of the principle that assistants ought to be contracted as employees should not be allowed.

(For both actions, DG Finance confirmed that the Members' Statute Working Party is currently considering a number of proposals in relation to the status and the working conditions of Members' assistants and that its work is likely to cover the options raised by Internal Audit. DG Finance therefore considers it appropriate to wait for the outcome of those deliberations.)

¹⁴ 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 3: Key Findings and Detailed Action Plans

B-3 CLARIFYING THE PRINCIPLES UNDERLYING THE ENTITLEMENT TO "LAY-OFF" PAYMENTS

Findings & Issues

Under Article 15.3 of the PEAM rules, it is foreseen that the parliamentary assistance allowance:

"... shall be eligible for reimbursement for a period of three months following the month in which a Member's term of office comes to an end, unless:

- (a) the Member is immediately re-elected to the subsequent Parliament;*
- (b) the Member has served for less than six months before the end of the current parliamentary term;*
- (c) the assistant concerned is in receipt of other remuneration from any Community institution, or*
- (d) the assistant is employed by another Member during the period in question."*

It is also foreseen that additional expenses can be reimbursed, should a Member who has terminated the contract before the expiry of his or her mandate "...be legally bound under the relevant employment legislation to pay supplementary expenses above the amount corresponding to three months" (Internal Audit underlining).

These payments made after the end of term of a Member are known as "lay-off" payments.

The audited lay-off payments were made under a regulatory framework which:

- did not include an explanation of the objectives of the "lay-off" payments,
- did not indicate the types of assistance contracts which can (or cannot) benefit from "lay-off" payments, and,
- did not require the submission of a formal request by the Member justifying the "lay-off" payment.

For assistants' employment contracts, "lay-off" payments can be considered to be consistent with the provisions of labour legislation foreseeing indemnities for employees whose contracts are terminated. (Article 15.3 of the PEAM rules contains explicit references to the employment of assistants and to the relevant employment legislation.)

However, the motivation for the automatic entitlement of a service provider to a "lay-off" payment was less clear. Such an entitlement may well be justified on specific grounds, for example when paying agents continue to manage assistant's employment contracts during their three months "lay-off" period.

But an automatic payment of three months' additional fees or indemnities to service providers after the normal termination date of their contract would not appear to be justified by normal business practice. This appears to have been acknowledged in the CODEX for parliamentary assistants adopted on 25 September 2006 which specifies (Article 8.3) that these payments *"shall effectively be used by the Member to cover payments to be made to assistants under the applicable national labour law"*. It is Internal Audit's understanding that these new provisions do not allow lay-off payments to be made to service providers. In order to make that requirement more explicit, DG Finance has meanwhile obtained a legal opinion of the Legal Service with a view to proposing, to the Quaestors, the implementing provisions for this article of the CODEX. (Internal Audit has taken that legal opinion into account in the present report.)

(continued)

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

**C. SERVICE CONTRACTS FOR THE PROVISION OF
PARLIAMENTARY ASSISTANCE**

C-1 COMPLIANCE OF SERVICE PROVIDERS WITH THE APPLICABLE NATIONAL LAWS

Preamble - The legal framework

Service providers have an obligation to comply with applicable national legislation. The PEAM rules (Article 14.5) foresee an explicit mention of that requirement in contracts with service providers. The model service and paying agent contracts provided by DG Finance similarly confirm the need for the service provider "...to comply with all the social security, taxation and other obligations".

On 21 July 2004, the Secretary-General commissioned the Legal Service to conduct a study into the requirements governing the provision of services in the Member States and, in particular, (i) the rules by which the status of service provider is determined and (ii) the VAT requirements applicable to service providers. The report on the study (for which the Legal Service could call on external expertise) was to be made available by the end of November 2004. This study was later abandoned due to the complexity of the matter and the regular changes of legislation in that area. However, on 6 March 2006, the Legal Service provided an opinion (SJ-0133/06) on the treatment of VAT in the framework of the reimbursement of parliamentary assistance costs. This legal opinion confirmed the following points:

- Any invoice which does not mention the applicable VAT rate or the legal grounds for an exemption from VAT does not constitute a valid supporting document under the PEAM rules.
- In accordance with the sixth Directive on VAT, this requirement also applies to invoices drawn up by legal persons (including foundations or "asbl") that put staff at the disposal of Members to perform parliamentary assistance tasks.
- The Protocol on privileges and immunities of the European Communities²⁰ does not grant Members a VAT exemption.
- The "intra-Community" character of the provision of services does not justify exemption from VAT.
- Following a reasonable transition period (the Legal Service suggests three months), any invoice that does not comply with the above-mentioned requirements should be refused and payments already made should be recovered.

It flows from the Legal Service's opinion that under the sixth VAT Directive, a trader or person who provides parliamentary assistance as a service provider is, as a general rule, liable to VAT and has to register for it. National legislations may foresee a number of exceptions to this general principle. However, a service provider who claims, because of such an exception, not to be liable to VAT, should then be able to provide a precise and valid legal reference for this exemption.

Internal Audit also notes the new requirement on VAT identification introduced through the Bureau's adoption of the CODEX on 26/09/2006. It requires, among the essential details required in a service contract (Article 7) "...where provided for by the national legislation to which the service provider is subject, the VAT registration number and the business registration number".

(continued)

²⁰ Protocol on the privileges and immunities of the European Communities annexed to the Treaties establishing the European Community and the European Atomic Energy Community

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Preamble - The legal framework (continued)

Whilst it is not the European Parliament's role to substitute for national fiscal authorities, it should however:

- have reasonable assurance that the service provider complies with VAT legislation, and,
- avoid provisions in contracts financed by the EU budget (in particular payment conditions), which could be interpreted as being impediments to the application of taxation legislation. For the parliamentary assistance allowance, this could be the case especially when the remuneration of a service provider is not paid on a bank account which is located in the country of the registered office (or, in the case of an employed assistant, on a bank account located in the country of his/her residence).

Article 23.2 of the PEAM rules opens the possibility of payments to bank account located in other countries under certain conditions, as follows: *"Sums due in respect of the parliamentary assistance allowance shall be paid in accordance with Article 14(7)²¹ by way of bank transfer on the fifteenth day of the month in question to a bank account (or bank accounts) specified by the Member in the Member State in which the assistant concerned mainly carries out his/her work or in the Member State in which the social security contributions must be paid or in the Member State to whose law the contract is subject."*

The following general requirements applicable to service providers can also be identified:

- A service provider who claims to be established as a legal person should be able to specify in the contract the legal form that is an integral part of his name.
- A self-employed person has to be registered under a social security regime for independent workers and be able to provide evidence for this.
- Whether mandatory or not under the applicable law, a service provider entrusted with parliamentary assistance tasks should also be required to contract a professional third-party liability insurance which covers possible damage caused. (Such damage could also occur in the premises of the Parliament.)

Internal Audit also draws attention to the fact that a useful summary of the procedures required to register a business in a selection of countries is made available, by the World Bank, on its "Doing Business" website²². This website covers 24 of the 27 Member States²³.

²¹ It should be noted that, until the Bureau decision of 13 December 2004, Article 14(7) covered all payments made under the parliamentary assistance allowance. Since that decision, Article 14(7) only relates to payments for occasional research, assistance, documentation or consultancy work connected with a Member's official duties which may be reimbursed without submission of a copy of a written contract.

²² <http://www.doingbusiness.org/Main/About.aspx>

²³ Luxembourg, Malta and Cyprus are not covered.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Findings & Issues

The audited sample of service contracts²⁴ gave rise to the following findings

- In 122 (79%) of the 155 sampled payments where VAT should apply (based on the general principles of the sixth VAT Directive), the available documentation did not show that the service provider was registered for VAT, nor did it provide a valid explanation for a possible exemption:
 - For 111 of those 155 cases, no VAT number was provided either in the file, or in the specific field for the VAT number foreseen on the application form, which was left blank.
 - For the other 44 cases where a VAT number was provided, its validity was checked through the European Commission's Taxation and Customs Union website²⁵ "VIES" (which enables the VAT numbers issued by any Member State to be validated). In 11 of those cases (25%), the validity of the VAT number indicated by the service provider was not confirmed.
- Seven payments of fees to service providers were made to bank accounts located in a country other than the one of the registered office. Those seven payments could all facilitate non-compliance with the relevant national legislation on taxation and social security, even though two of them were compliant with the formal requirements of Article 23.2 of the PEAM rules (payment was made in the country of the law of the contract). For the other five cases, there was no evidence which might have justified payment to bank accounts in another country. (Two such cases were also found for employed assistants.)
- Ten (11% of the sample) of the contracts concluded with legal persons did not identify the legal form of the contractor. (It is acknowledged that four of those files did include other documentation related to the legal form.)
- For 44 contracts concluded with self-employed persons (representing 90% of the 49 such contracts in the sample) there was no evidence of the mandatory coverage by a social security scheme for self-employed persons.
- Neither the PEAM rules nor the model contracts foresee an explicit requirement for service providers to establish that their professional civil liability is covered by a specific insurance policy. (There is only a general obligation to comply with applicable legislation.) None of the audited files provided an indication of such cover.

The examples that follow also illustrate the lack of assurance on the legality of service provider's activity that results from relatively simple checks:

- A contracted company provided its full details (VAT number, legal form, address, etc.), but the following findings raised doubts about the existence of that company:
 - the validity of the VAT number was not confirmed by "VIES",
 - the company's name could not be matched to a record in the national company register,
 - the telephone number indicated in the application form corresponded to a company with another name located at another address (checked with a telephone directory),
 - the legal representative of the company was resident in a city that is situated a considerable distance from the city where the contracted company was supposed to be located.

(continued)

²⁴ Includes the services provided by paying agents.

²⁵ http://europa.eu.int/comm/taxation_customs/vies/en/vieshome.htm

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Findings & Issues (continued)

Since 01/07/2003, all legal entities and all individuals who provide services in Belgium have to be registered in the national database "Banque-Carrefour des Entreprises - BCE". Internal Audit used the public search available on that database to check the registration of all service providers included in the audit sample for which the contractual workplace was Belgium. Out of 42 such cases, 35 (83%) could not be matched to a record in the database.

Implications

Risk that the courts could, under applicable national labour law, re-define contracts for the provision of services as being employment contracts.

Risk that Members could conclude contracts with, and Parliament would make payments to, service providers who contravene (or facilitate non-compliance with) the relevant national legislation on taxation and social security.

Associated legal, financial and reputational risks.

Action Plans

Preamble:

As a result of implementing action plans A-3 and B-2.2 which foresee that parliamentary assistants should be hired under employment contracts and not contracted as service providers, the number of new contracts for the provision of services concluded would decrease. However, there will still be a need to contract paying agents and, possibly specific, limited short term services.

To protect both the Members and the Institution from legal, financial and reputational risks, DG Finance should obtain reasonable assurance that service providers that have been or will be contracted by Members comply with applicable law.

Actions

C-1.1

New contracts or amendments to existing contracts:

- The existence of a valid VAT number should be used as a primary means of obtaining reasonable assurance that the service provider's activity has been registered in accordance with the law. In view of the requirements of Article 7 of the CODEX, the provision of the VAT registration number should be considered mandatory on the application form for the reimbursement of parliamentary assistance expenses and in the corresponding contract. This requirement should also apply to requests for changes to be made to that reimbursement.
- DG Finance should return application forms and contracts with missing VAT numbers to the Member with the request to get from his service provider either his VAT number, or a detailed reference to the legal provisions that exempt him from VAT registration.
- Each VAT number provided should be checked by DG Finance through the European Commission's Taxation and Customs Union website²⁶ "VIES". When the VAT number's validity is not confirmed by VIES, DG Finance should ask the Member to request clarification from his service provider.

(continued)

²⁶ http://europa.eu.int/comm/taxation_customs/vies/en/vieshome.htm

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Action Plans (continued)

- When the service provider claims to be exempt from VAT, the legal references of that exemption should be checked for their plausibility. (As the findings reported under point C-2 show, in several cases, the reasons provided for VAT exemption provided on invoices were found to be inadequate.)
- In view of the requirements of Article 7 of the CODEX, when there are doubts that a contractor's activity as a service provider has been registered in accordance with applicable law (in particular when no valid VAT number can be provided):
 - In the case of legal entities and individuals who provide services in Belgium, their registration in the national database "Banque-Carrefour des Entreprises - BCE" should be checked.
 - For services provided in other Member States, additional evidence of the contractor's registration should be requested by DG Finance. The World Bank's "Doing Business" website already mentioned under the findings section can be used to determine the nature of the evidence that is most relevant.
- If the service provider is a company, the systematic mention of its legal status on the application form and in the contract provides additional assurance of proper registration. (Internal Audit notes positively that Article 7 of the CODEX for parliamentary assistants adopted by the Bureau on 25/09/2006 confirms that the legal status of a service provider has to be included in the contract so that it may be classified as a parliamentary assistance contract.)
- DG Finance should reject applications for the reimbursement of parliamentary assistance expenses as long as it does not have reasonable assurance that the provision of services complies with applicable law.

(In his latest reply of 19 November 2007, the Authorising Officer by Delegation draws attention to the fact that the CODEX has 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 and business registration number (where provided by national law). He also considers that it would be appropriate to test these new provisions over a period of time and that, should they be found to be insufficient, additional measures may be considered.)

C-12

Existing contracts:

- DG Finance should extract from CID a record of all service providers and paying agents which have concluded a parliamentary assistance contract with Members. This record should distinguish between contractors for whom a VAT number has been entered in CID (as declared in the application form) and those for whom no such number is available²⁷.
- As a first step, available VAT numbers should be checked through the European Commission's Taxation and Customs Union website²⁸ "VIES".

(continued)

²⁷ This action plan does not apply to paying agent arrangements with the administration of the "Deutscher Bundestag" (see findings reported under point E-3).

²⁸ http://europa.eu.int/comm/taxation_customs/vies/en/vieshome.htm

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Action Plans (continued)

- Then, for contractors which have provided no VAT number or an invalid VAT number, DG Finance should inform the Member that his service provider should:
 - either provide clarification as regards the performance of his activity in compliance with applicable legislation
 - or regularise his situation as a service provider with the competent national authorities.
- The Member should be informed at the same time that, if no satisfactory clarification is provided or action taken by the service provider within a specified period of time (for example, a maximum of three months as suggested by the Legal Service in its opinion), which would be indicative of a lack of reasonable assurance that the service provider complies with applicable legislation, DG Finance will:
 - Invite the Member to cancel that contract without delay on the grounds of breach of the contractual requirement to comply with applicable legislation. (In accordance with Article 14.5 of the PEAM rules, service contracts must include a clause that confirms the service provider's obligation to comply with applicable legislation.)
 - No longer reimburse expenses incurred under that contract from the parliamentary assistance allowance. (However, contractors' fees that would still be due by the Member despite her/his efforts to cancel the contract would be reimbursed.)

(DG Finance indicated that it has already started checking the VAT numbers of invoices held in its database against the Commission's VIES website.)

C-1.3 The PEAM rules (Article 23.2) should be amended to include the provision that the remuneration of a service provider (or the fee of a paying agent) is to be paid on a bank account which is located in the country of the service provider's registered office. (Similarly, the rules would also be modified to require that payments to an employed assistant would have to take place on a bank account which is located in the country of the assistant's residence.)

DG Finance should submit, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, the proposal for a corresponding amendment of the PEAM rules which would confirm this principle.

(DG Finance indicated that a similar proposal is included in the draft of the implementing measures for the Members' Statute that will be submitted to the Working Party.)

C-1.4 The CODEX should be amended to require service providers who can still be contracted under amended PEAM rules (see C-4.1) to contract a professional insurance policy covering the third-party liability arising from the contract and provide evidence of that insurance.

(Internal Audit does not exclude that such insurance could also be relevant for Members who employ accredited assistants.)

(DG Finance indicated that this proposal could be put forward for discussion within the terms of the social dialogue between the members of the Bureau responsible for matters relating to assistants and the elected representatives of the assistants, as provided for in Article 21 of the CODEX.)

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

C-2 INVOICING OF PARLIAMENTARY ASSISTANCE SERVICES PERFORMED FOR MEMBERS

Preamble: the regulatory framework

The Financial Regulation and its Implementing Rules

The Financial Regulation governs all payments made out of the general budget of the European Communities. Article 75.1 stipulates that "every item of expenditure shall be committed, validated, authorised and paid".

Before authorising the parliamentary assistance allowance for payment, the authorising officer responsible must first validate it. Article 79 of the Financial Regulation defines the act of validation as follows:

"Validation of expenditure is the act whereby the authorising officer responsible:

- a) verifies the existence of the creditor's entitlement;
- b) determines or verifies the reality and the amount of the claim;
- c) verifies the conditions in which payment is due."

The validation of expenditure is thus a cornerstone of the procedures aimed at ensuring compliance with the principle of sound financial management and with the requirements of legality and regularity.

The rules also require that the validation of any expenditure shall "...be based on supporting documents within the meaning of Article 104 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" (Article 97, Financial Regulation Implementing Rules).

The rules oblige the authorising officer to "personally check the supporting documents or... on his own responsibility, ascertain that this has been done, before taking the decision validating the expenditure".

The supporting documents for the payment must provide proof that the services, supplies or works have been carried out in accordance with the terms of the contract or otherwise justify the creditor's entitlement to payment. In order to attest that the services foreseen in a contract have been "actually rendered" or that the payment is justified on other grounds (as when, for example, a "pre-financing" payment is foreseen in the contract), Article 98 of the Financial Regulation's Implementing Rules requires the submission of an invoice drawn up by the contractor and foresees that the validation procedure which precedes the authorisation of payments (see findings reported under point C-3) shall include a mandatory 'certified correct' endorsement of the invoice. In the case of services, this endorsement "...shall certify that the services provided for in the contract have been properly provided".)

In accordance with those provisions, at paragraph 56 of the resolution accompanying its decision on the 2003 discharge²⁹, the European Parliament in plenary stated in respect of the parliamentary assistance allowance:

"Points out that Article 79 of the Financial Regulation and Articles 98 and 104 of the Implementing Rules on the validation of expenditure require the authorising officer to verify a creditor's entitlement on the basis of supporting documents; reminds the Administration of the need to insist on the submission of invoices or fee-statements as a condition for making payments under service contracts (Article 14(6) of the Rules on Members' expenses and allowances)."

(continued)

²⁹ European Parliament decision on the discharge for implementing the general budget of the European Union for the financial year 2003, Section I - European Parliament (C6-0015/2005 - 2004/2041(DEC))

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Preamble: the regulatory framework (continued)

An additional requirement of the Financial Regulation relates to the recording in the accounts of "pre-financing" payments. In accordance with the PEAM rules, there is a need to regularise:

- payments relating to service providers' fees made without the prior submission of an invoice covering the tasks performed,
- transfers to paying agents of funds to be managed on behalf of the Members.

Such payments awaiting regularisation are to be considered as "pre-financing" payments to which the requirements of Article 81 of the Financial Regulation apply. These foresee that pre-financing payments need to be identified separately in the accounts at the time they are made. The purpose of this distinct recording is, in particular, to allow the regularisation of pre-financing payments to be monitored.

Rules governing the payment of expenses and allowances to Members ("PEAM")

The PEAM rules reflect the general principles on which the Financial Regulation rules on validating expenditure are based.

Under Article 14.1 of the PEAM, Members shall be entitled to reimbursement of expenses arising from the employment, or from the engagement of services, of one or more assistants. In either case, the Member is required to conclude a private-law contract with the employee or service provider in accordance with the national law applicable³⁰.

For service contracts concluded by the Member, Article 14.6 of the PEAM states that payments shall be made directly to the service provider on the personal instructions of the Member and on his or her responsibility. The PEAM also lays down that invoices or fee statements showing the provision of services shall be drawn up in accordance with the national law applicable and for a period not exceeding twelve months³¹.

The minimum requirement for an annual invoice foreseen in the PEAM rules also implies that "advance" (or pre-financing) payments are made during the year. For each such payment, the Financial Regulation foresees the submission of an invoice by the service provider. The annual invoice then establishes the final amount due and determines the balance payable or recoverable, after taking into account the advances paid. (This is now explicit in Article 14.6 of the Rules, but the same principle underlies previous versions of the Rules.)

The PEAM rules also provide that, at the request of a Member, payments in respect of employed assistants may be made to a paying agent contracted by the Member to handle, in whole or in part, the administrative management of the employment contracts. The PEAM stipulates that, at least once a year³², paying agents shall forward to the Member (with a copy to the management service in Parliament), statements of expenditure incurred in respect of salaries, social security contributions, tax payments or any other refundable expenditure.

(continued)

³⁰ By way of exception, Article 14.7 of the current version of the PEAM rules provides for payment on the basis of an original invoice, without submission of the contract, for "occasional research, assistance, documentation or consultancy work connected with a Member's official duties".

³¹ Before the Bureau decision PE 359.163 of 22/06/2005 amending the PEAM rules, the requirement was for invoices covering periods not exceeding six months. The Quaestors communication 32/05 from 13/07/2005 extended to 01/11/2005 the deadline for submitting invoices or fee statements relating to the period between the start of the parliamentary term and 30/06/2005. The Bureau decided on 03/07/2006 to extend until 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".

³² Before the Bureau decision PE 338.886 of 13/12/2004 amending the PEAM rules, the requirement was for a submission twice a year.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Preamble: the regulatory framework (continued)

Model contracts provided by Parliament's Administration

The model paying agent and service contracts have been drawn up in accordance with the PEAM rules and after consultation of the Legal Service. These contracts confirm the requirement for the submission of invoices covering all the services carried out (including VAT, if applicable).

Findings & Issues

The PEAM rules do not require service providers to submit invoices to Members before payment is made to them. In accordance with Article 14.6(b) of the rules, this submission can take place up to 12 months in arrears.

The rules do not foresee a formal endorsement of the service provider's invoices by Members which would confirm the performance of the services in accordance with the provisions of the contract.

On 13/12/2006, the Bureau also adopted a revision of Article 14.6 of the PEAM rules which 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:

- "a. The service contract may provide for monthly payments being made as advance payments. The invoices or fee statements showing the provision of services and, where appropriate, regularising the advance payments made and determining any outstanding balance, shall be drawn up, in accordance with the national law applicable, for a period not exceeding 12 months. The Member shall keep the invoices or fee statements for the period laid down by the applicable national legislation and for no less than one year after the end of the parliamentary term.
- b. The service provider shall forward to the Member at least once a year, as well as on expiry of the contract, a statement of the amounts invoiced, accompanied by a declaration certifying that all tax and social security obligations resulting from the applicable national legislation are complied with. The Member shall forward a copy of the statement and the accompanying declaration to the management service, authorising the regularisation of the advance payments made."

When invoices are not submitted to DG Finance, 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.

The audited sample of payments gave rise to the following findings:

- 134³³ payments in the audit sample covered fees, of which 29 related to paying agent contracts and 105 to service provider contracts. In accordance with the Financial Regulation (see the preamble on the regulatory framework), such payments should only be made following prior submission of an invoice drawn up by the contractor and establishing his entitlement to payment. This should be the case both for "advances"³⁴ and for payments covering services actually rendered. (See also findings reported under point C-3.) In practice, such prior invoicing was found in 3 cases.

(continued)

³³ In eleven additional cases of paying agent contracts, it was not possible to establish if the contractual amount included a fee.

³⁴ "Pre-financing" payment in the terminology of the Financial Regulation.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Findings & Issues (continued)

- Of the 105 payments related to service contracts, 75 were made from the parliamentary assistance allowance of Members elected under the 6th Term and 30 were "lay-off" payments to service contracts of Members who were not re-elected. Six months after the conclusion of the contracts, contrary to what was foreseen by the PEAM rules applicable at the time, invoices had been made available for only 11³⁵ of the 75 audited files relating to service provider contracts of Members elected under the 6th Term.
- The Bureau decision of 22 June 2005 extended the submission period for invoices to 12 months and an additional deadline until 01/01/2007 was subsequently granted by Bureau decision of 3 July 2006. Additional audit testing was performed in early January 2007 to establish, for the audit sample, an updated record of the invoices submitted. It was found that invoices had not been provided for 63³⁶ of the 105 service contracts. (Of those 63 cases, 35 related to the allowance of Members elected under the 6th Term and 28 to "lay-off" payments.)
- In only five of the 42 (105-63) service contracts for which invoices were supplied did these appear to include all the minimum details required for valid invoices as laid down in Council Directive 2001/115/EC³⁷. Relevant issues noted (with some files evidencing more than one such issue) were as follows:
 - In 24 cases, the invoices did not appear to include a valid VAT identification number.
 - In 15 cases, whereas no VAT was included on the invoice, the mandatory reference to any provision justifying VAT exemption was not provided. In four cases, such a reference was provided but it was invalid (it referred to the VAT exemption of the Parliament).
 - Other issues noted include the absence of the mandatory number which uniquely identifies the invoice (12 cases) and where the Parliament is mentioned as the client rather than the Member or no recipient is indicated (six cases).
- As the PEAM rules do not foresee a formal endorsement of the service provider's invoices by Members, such endorsement was, in general, not found in the audited sample of payments. (However, six cases where such an endorsement by Members was found constituted a positive exception.)
- The payments in the audit sample made without prior invoicing and the transfers of funds to paying agents, which both need to be regularised through the submission of either an invoice or a statement of expenditure, were not recorded separately in the Parliament's official accounting system as pre-financing payments. However, DG Finance explained that the local IT application it uses to manage the parliamentary assistance allowance:
 - allows a distinction between payments made upon presentation of an invoice and the pre-financing payments which are made on the basis of a submitted contract;
 - contains a module that allows DG Finance to monitor the regularisation of the payments in accordance with articles 14.5.c and 14.6.b of the PEAM rules.

³⁵ In two further cases, receipts were provided which do not, however, constitute invoices

³⁶ In six of those cases, receipts or statements were provided which do not, however, constitute invoices

³⁷ Council Directive 2001/115/EC of 20 December 2001 amending Directive 77/388/EEC with a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Implications

Breach of the provisions of the PEAM rules on the submission of invoices, applicable to the audited transactions (Article 14.6.b).

Contradicts the provisions of the Financial Regulation (Article 79) and of its Implementing Rules (Articles 97 and 98) which require, prior to payment being made, the validation of expenditure relating to the procurement of services on the basis of supporting documents that attest the creditor's entitlement and provide positive proof that the services were actually rendered.

Inefficient assurance regarding the service provider's entitlement to payment following services rendered in conformity with the requirements of the contract.

Lack of assurance regarding the entitlement of the service provider to the pre-financing payments received because:

- the absence of invoices prevents reconciliation between the sums received and the services provided, and,
- the absence of distinct recording in the accounts is an obstacle to a reliable and comprehensive monitoring of the regularisation of such pre-financing payments.

Breach of the provisions of the Financial Regulation (Article 81) which require that a distinction shall be made in each Institution's accounts between the different types of payment (entire amount, pre-financing, interim payments and balance payment) at the time they are made.

Action plans

C-2.1 DG Finance should draw up a record of all contracts for the provision of services concluded under the sixth term where payments made have not been regularised by the submission of either invoices or statements of the amounts invoiced, accompanied by a declaration certifying that all tax and social security obligations resulting from the applicable national legislation are complied with, drawn up in accordance with the provisions of Article 14.6.b of the PEAM rules as last amended by the Bureau decision of 13/12/2006.

This list would form the basis of a proposal for a Quaestors' decision which would foresee that cases of non-compliance should be notified to the Members who have concluded the contracts with the request that missing invoices or statements of amounts invoiced regularising payments made so far should be provided to DG Finance within two months (if required, after having requested them from the service providers).

C-2.2 The proposal for a decision mentioned under action plan C-2.1 should confirm that, after expiry of the deadline set and pending submission of the required documents, DG Finance should suspend all payments of fees to service providers for whom the regulatory obligation to submit invoices or statements of the amounts invoiced has not been complied with.

(For actions C-2.1 and C-2.2, DG Finance indicated that similar proposals are being included in the draft of the implementing measures for the Members' Statute that will be submitted to the Working Party.)

C-2.3 The proposal for a decision should also confirm that, if required invoices or statements of the amounts invoiced are not submitted within a month of that deadline, DG Finance should initiate the procedure to recover the amounts that have not been regularised.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Action plans

C-2.4 In order to:

- ensure compliance with the provisions of the Financial Regulation and of its Implementing Rules,
- increase assurance regarding the entitlement of the service provider to the pre-financing payments
- prevent the reported situations where invoices required to regularise pre-financing payments are not submitted and
- avoid management inefficiencies linked to the follow-up of pre-financing payments,

the payment of fees to a service provider should, in the future, only be performed following the prior submission to the Member, with a copy to DG Finance, of a regular invoice complying with the minimum requirements of Council Directive 2001/115/EC and covering work actually performed. DG Finance should submit, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, the proposal for a corresponding amendment of the PEAM rules.

(The Authorising Officer by Delegation confirmed that, should the final conclusion of the Members' Statute Working Party retain the possibility of engaging service providers, he will consider the adequacy of the safeguards that will have been adopted in this respect and will, if he judges it necessary, submit proposals for further tightening of the relevant rules.)

C-2.5 The PEAM rules should require an endorsement, by the Member, prior to payment, of the service provider's invoices. This endorsement would certify that the service provider has performed the tasks for which he requests the payment of his fees in accordance with the provisions of the contract. The certification could either take the form of an endorsement 'certified correct' on the invoice itself or be confirmed in a document signed by the Member and accompanying the invoice received.

DG Finance should submit, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, the proposal for a corresponding amendment of the PEAM rules which would confirm this principle.

(DG Finance indicated that it is now established practice that Members sign the invoices submitted for reimbursement, indicating their approval of the payment and of the invoice.)

C-2.6 To deal with the requirement of the Financial Regulation to record pre-financing payments in the accounts separately and to comply with the principles of accruals accounting, the required action includes the development necessary to ensure that the data available in DG Finance's local IT application for managing the parliamentary assistance allowance is used as a basis for recording all such payments in the Parliament's official accounting system at the time the payments are made. This can be envisaged in the context of the proposed upgrade of the official accounting system in 2008 to reflect the requirements of accruals accounting.

C-2.7 Pre-financing payments to paying agents which cover expenditure incurred in relation to the management of employment contracts on behalf of the Members are unavoidable. However, pre-financing payments do not appear to be a necessity for the paying agent's fees. DG Finance should therefore foresee that the payment of the fees will take place in arrears, on the basis of an invoice, after submission of the periodical cost statements showing the use of funds managed on behalf of the Members.

(For contracts for the provision of services, the limitations on their use foreseen in actions plans A-3 and B-2.2 and the requirement for the invoicing of fees relating to work performed prior to payment (action plan C-2.4) should lead to a situation where pre-financing payments are no longer made.)

(DG Finance has indicated that it now requests a statement of forecast expenditure from all paying agents at the beginning of the contractual relationship.)

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

C-3 INCLUDING THE REQUIREMENT FOR VALID INVOICES AND STATEMENTS OF EXPENDITURE IN THE CONTRACTS

Findings & Issues

The PEAM rules foresee that payments to contractors have to be supported by a valid invoice and/or statement of expenditure. The model contracts provided by DG Finance correctly take account of this requirement. However, as these models are not mandatory, the rules can be circumvented and undermined by the failure to transpose the invoicing requirement into the contract concluded with the assistance provider. When this is the case, DG Finance explained that it is not in a position to reject the corresponding contract as the obligation to submit an invoice is not included in the list of obligatory clauses as set out by the PEAM rules.

Out of the 146 cases in the audit sample for which paying agent or service contracts were concluded, it was found that 85 (58%) of those contracts did not include a proper requirement for the submission of an invoice or statement of expenditure by the contractor. Of these 85 contracts:

- 17 did not include any requirement for the submission of invoices or statements of expenditure;
- 68 did include such a requirement but did not specify the periodicity for the submission of invoices or statements.

(See also findings under point C-2.)

Implications

Contracts with service providers that do not foresee the submission of invoices and/or cost statements, or do not mention the periodicity of their submission:

- undermine the enforcement of the PEAM rules, and,
- are in contradiction of the relevant principles of the Financial Regulation on the validation of expenditure.

The fact that the PEAM rules themselves do not require the submission of invoices prior to the payment of "advance" payments being made to service providers:

- Is in contradiction with the relevant principles of the Financial Regulation on the validation of expenditure
- Requires putting in place and managing specific recording and monitoring systems to ensure that regularisation takes place through the subsequent submission of invoices. This is a source of management inefficiency.

Associated risk that the implementation of the budget is not in compliance with the principle of sound financial management and the requirements of legality and regularity.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Action Plans

C-3.1 DG Finance should submit, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, a proposal for an explicit requirement on invoicing to be included in the list of essential details to be provided in a service contract as set out by Article 7.1 of the CODEX. It should ensure that all new applications for the reimbursement of parliamentary assistance expenses relating to the provision of services (including paying agent services) are supported by contracts that comply with the requirements on the submission of invoices and cost statements as defined by the PEAM rules (including the explicit indication of the periodicity). (See also action plan A-2 which foresees the mandatory use of the model contracts provided by DG Finance.)

In the case of paying agents providing their services against a fee, these contractual requirements should cover both the submission of invoices (fee element) and of cost statements (use of the funds managed on behalf of the Member).

When an application for the parliamentary assistance allowance relates to a contract which does not comply with the regulatory requirements, DG Finance should request an amendment to that contract before granting the allowance. The same principles should apply when changes are made to an application for the reimbursement of parliamentary assistance expenses.

(The Authorising Officer by Delegation considers that the CODEX (Article 7) requirement for service providers' contracts to comply with the national law applicable and provide a VAT registration number represents 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 an explicit 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.)

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

C-4 RISK THAT EXISTING SERVICE CONTRACTS ARE DE-FACTO CONTRACTS OF EMPLOYMENT

Findings & Issues

Under the PEAM rules (see also findings reported under point A), the contractual relationship between the assistance provider and the Member can be that of an employee or of a service provider. These two types of contract are subject to fundamentally different requirements under both national law and the PEAM rules. Those fundamental differences must be reflected both in the terms of the contracts and in their subsequent implementation.

However, it was found that audited service contracts presented characteristics that could indicate de-facto employment relationships (particularly when several characteristics applied to one contract).

The risk that a contract for the provision of services covers in reality an employment relationship is particularly marked when one or more of the issues listed below occur in contracts concluded with natural persons³⁸. This was found to be the case in 53 (51%) of these contracts.

The following issues were noted:

- Contracts with self-employed individuals foresee full time work for the Member, meaning that these service providers have no other clients and are economically dependent upon the Member.
- Contracts for the provision of services have been concluded on a long-term basis (in general for the duration of the Member's mandate) which, if combined with full-time work for the Member, confirms economic dependency. In the audited sample more than half of the contracts for the provision of services were for the full mandate.
- The work of the service provider is performed in the Member's office (in particular the one put at the disposal in the Parliament's premises).
- In general, the remuneration foreseen in the service contracts does not depend on a volume of services provided but is fixed and paid according to a predefined schedule.
- Available documentation does not provide assurance that the contractor is registered as a service provider under applicable national law (see also related findings under point C-1).

Autonomy in the performance of the tasks is also an important factor in assessing the nature of a contractual relationship.

In this respect, the (non-compulsory) model contracts for the provision of services established by DG Finance state that "*The service provider shall carry out his activities without any chain of authority or management (with the Member) and without being an employee (of the Member)*". They also foresee that the law governing employment contracts (in the State to be mentioned) does not apply.

However, these clauses are unlikely to offer legal protection in the case of dispute with an assistance provider on the nature of the contractual relationship (employee or service provider). In view of the case-law in this area, it has to be expected that courts would, under applicable national labour law, consider the facts of the contractual relationship rather than any formal statements in the contract.

(continued)

³⁸ On the basis of the audit sample, contracts with individuals represent about half of all contracts for the provision of services.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 3: Key Findings and Detailed Action Plans

Findings & Issues (continued)

In the case of parliamentary assistance, although the absence of "any chain of authority or management" between the Member and the service provider is mentioned in most contracts, it lacks plausibility when the nature of the services and deliverables to be provided is not defined with precision in the contract. In 91% of the audited contracts for the provision of services, the description of the service provider's duties appeared to be too imprecise to allow an autonomous performance of the tasks without management supervision by the Member (see also findings reported under point B-1).

It was also noted that 28 Members (18.5% of the Members in the sample) paid the full amount of the monthly parliamentary assistance allowance (€12 576) to one service provider and could therefore not have any employed assistant. Valid arrangements may explain this situation in specific cases. However, parliamentary assistance includes the ability to respond on a day-to-day basis to a Member's needs.

It is unlikely that this aspect of parliamentary assistance can be provided exclusively through contracts for the provision of services from which, by definition, "any chain of authority or management" should be prohibited.

For eight contracts for the provision of services in the audit sample, it appeared that their purpose is to place staff at the Member's disposal and manage the corresponding employment contracts. Descriptions of the service provider's duties found in such contracts include "putting at the disposal staff" or "employment of staff on behalf of the Member".

In four of these cases, staff put at the disposal would perform the assistance tasks in the workplaces or the premises of the Parliament while the service provider's registered office would be located in a different place. This implies, in practice, the Member's direct authority over the daily performance of tasks by staff.

Implications

Risk that the courts could, under applicable national labour law, re-define contracts for the provision of services as being employment contracts.

Risk that the contracting of parliamentary assistants as service providers contravenes the relevant national legislation on social security.

Associated legal, financial and reputational risks in the case of disputes or complaints.