
Internal Audit Report no. 06/02 to the Institution

Audit of the Parliamentary Assistance Allowance

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9 January 2008

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

Table of Contents (1 of 2)

	<u>Page</u>
PART 1: REPORT TO MANAGEMENT	
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
PART 2: SUMMARY OF ACTION PLANS	34
PART 3: KEY FINDINGS AND DETAILED ACTION PLANS	
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>
PART 3: KEY FINDINGS AND DETAILED ACTION PLANS <i>(continued)</i>	
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 Member¹. 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.
- 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.

¹ 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 1: 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.
- 1.5 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 were 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 authorities².
- 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"*.
- 1.9 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.

² 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 1: 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 Framework³.
- 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.

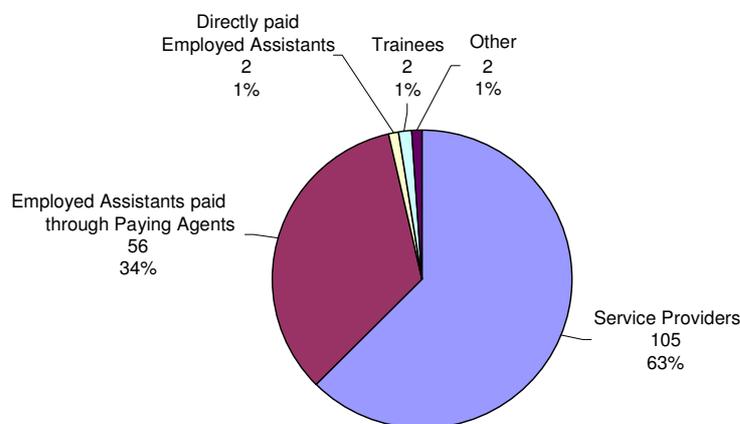
2.4 The analysis showed that the inherent risks linked to service contracts were higher than those of the two other categories of contract. It was therefore decided to test a proportionally higher number of service contracts. Another outcome of the risk analysis was that the "one-off" payments at year-end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

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

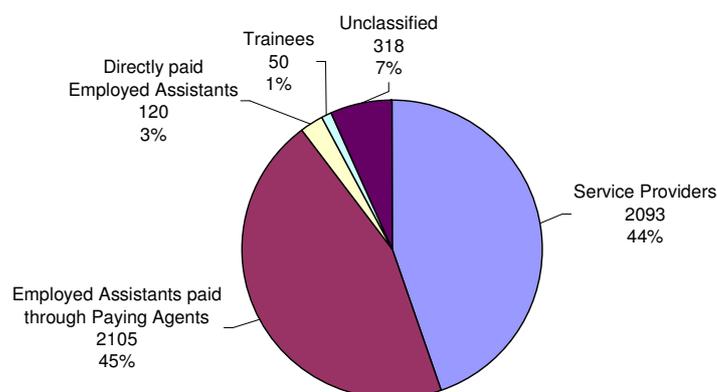
Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 1: Report to Management

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.

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)



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.
- 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" payments⁴ 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,

⁴ 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 1: 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 2001⁵. 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)⁶.
- 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.

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

⁶ 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.
- 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 Statue 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 providers⁷;
 - 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;

⁷ 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.)

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*⁸". 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);

⁸ 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 1: Report to Management

- 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 1: Report to Management

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.)

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.)

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 1: 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 1: 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 1: 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.)

(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".

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

- 5.4.2 Similar provisions appear in the model contract for legal persons placing human resources at the Member's disposal.
- 5.4.3 The audit found that most contracts in this category made some provision for the absence of any chain of authority or management. But in 91% of the audited service contracts, the description of the tasks to be carried out and the areas of responsibility were too imprecise and/or inadequate to enable a service provider to operate autonomously and without close management supervision by the Member. (See also 4.1.3.)
- 5.4.4 Moreover, some 51% of the audited contracts with individual service providers contained one or more of the following elements, which are substantially the same as appear in an employer-employee relationship:
- Individual service provider works full-time for, and is thus economically dependent upon, the Member
 - Contract is concluded for duration of parliamentary mandate
 - No documentation to prove proper registration as a service provider under national law
 - Remuneration is fixed and does not depend on the volume of services to be provided
 - Work performed in the Member's office.
- 5.4.5 The reality of parliamentary assistance is that the assistant must be able to respond to the day-to-day needs of Members and that this can only be done by being under the Member's direct authority. The main risk associated with the contracts described above is that, in the event of dispute, a court would take into account the substance of the contractual relationship rather than its form. On the basis of the factors described in the preceding paragraphs, this could lead to the relationship being re-defined as one of employment, to which national tax and social security could apply.
- 5.4.6 Under the action plan, parliamentary assistants should, as a rule, be contracted as employees. To this effect, DG Finance would draw up, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, proposals for the use of service provider contracts to be restricted to (i) the purchase of specific deliverables under short-term arrangements, in which payment would be made only on the basis of the presentation of those deliverables, and, (ii) the contracting of paying agents, recognised as such by national legislation, for the administrative management of the contracts of employed assistants. As described under 3.8 and 4.2.5, the longer term action consists in employing all assistants under the conditions applicable to other servants engaged under contract by the European Communities.

(The Authorising Officer by Delegation confirmed his agreement in principle with Internal Audit's proposal. He also considers it appropriate to await the outcome of the Working Party's deliberations, which could reflect the same concerns.)

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

5.5 Preventing the risk of making ineligible allowance payments

- 5.5.1 For seven of the service provider contracts in the sample, the audit identified the risk of a conflict of interest in the relationship between the Member and the contracted service provider. As a result, it was not possible to conclude that the payments made to the contractor were wholly, exclusively and necessarily incurred for the purpose of parliamentary assistance.
- 5.5.2 In one of those seven cases, the audit established that the legal entity contracted as service provider was, in fact, owned by the Member (now former Member) concerned. On Internal Audit's recommendation, the case was referred to OLAF and is still under investigation.
- 5.5.3 The PEAM Rules prohibit the conclusion of service contracts with political groups (which can, however, act as paying agents). This restriction does not apply to national political parties.
- 5.5.4 Six of the payments in the sample were to national political parties. In another 41 audited cases, there were close links between the contractors and national political parties. Again, this is not contrary to the PEAM Rules. However, as detailed in Part 3 of the report, these included some payments for which it was not possible to conclude that the allowance paid had been incurred wholly, exclusively and necessarily for the purpose of parliamentary assistance. This concerned, in particular, payments made to political bodies that were in the nature of flat-rate contributions, rather than of consideration for specific assistance provided to an individual Member.
- 5.5.5 The action plan contains a combination of measures to be proposed by DG Finance, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, aimed at reducing the risk of making ineligible payments in such cases. These include improvements in the detailed description of assistance tasks appearing in the contracts, obtaining reasonable assurance that service providers are in compliance with national law, and as from the 7th parliamentary term, replacing service provider contracts by employment contracts and restricting the use of service contracts to specific short-term deliverables (see also 5.4.6).

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

6. Parliamentary assistance provided under a contract of employment
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6.1 Obtaining evidence of employed assistants' social security cover

- 6.1.1 Article 14.5 of the PEAM Rules requires documentary proof of an employed assistant's affiliation to a social security scheme to be furnished within three months of the assistant taking up his/her duties. When applicable under national law, a certificate of insurance covering accidents at work must also be provided. Failure to submit these documents shall, under the PEAM Rules, lead to the suspension of all payments to the assistant concerned.⁹ On 3 July 2006, the Bureau extended the deadline for submitting relevant supporting documents to 1 January 2007.
- 6.1.2 The PEAM Rules also require evidence that social security contributions have been paid where the employment contract is managed by a paying agent or where a service provider places staff at the Member's disposal.
- 6.1.3 After updating the examination to the beginning of January 2007, it was found that, more than 24 months after the date on which the audited employment contracts had been signed, certificates of affiliation to a social security scheme had not been furnished in 26% of cases (see also 6.2.2 below).
- 6.1.4 The absence of proof that the employed assistant is covered for social security is a serious breach of the PEAM Rules, and carries associated legal and financial risks for the Member and the assistant concerned.
- 6.1.5 Under the action plan, DG Finance would examine all existing employment contracts to ensure that the necessary social security documents have been made available. Where that is not the case, Members would be asked to furnish the missing documents within a specified period, failing which, in application of the PEAM Rules, all payments to the assistant concerned would be suspended. The DG should also put in place internal and management control procedures that ensure better enforcement and monitoring of the Article 14.5 requirements.

⁹The rules applicable in October 2004 provided for documentation to be submitted in two stages. Before any payment could be made to the assistant, it was necessary to submit both a copy of an official declaration to the body responsible for social security and the certificate of insurance covering accidents at work. A period of 12 months from the date of signing the employment contract was allowed for the certificate of affiliation to the social security scheme to be presented.

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

(DG Finance stated that when the evidential requirements on social security are not complied with, Members are formally requested to provide this evidence. Should the evidence not be furnished, DG Finance indicated that suspension procedures would be launched against the Members concerned. DG Finance accepts documents other than a certificate of membership of a social security scheme - such as a salary slip - as admissible evidence, whereas Internal Audit's view is that this is neither conclusive nor compliant with the PEAM Rules.)

6.2 Ensuring that employed assistants' social security coverage complies with Community legislation

6.2.1 Council Regulations (EEC) numbers 1408/71 and 574/72 define the basic principles underlying the application of social security schemes to employees and self-employed persons. Of particular relevance to the employment of assistants are the following:

- an employee shall be subject to the social legislation of a single Member State, which is usually that of his place of employment;
- if a person is normally employed in the territories of two or more Member States, he shall be subject to the legislation of the State in which he resides and pursues at least part of his activity;
- special rules can apply to temporary assignments abroad if these are of less than 12 months' duration; exceptionally, these may be extended to 24 months, subject to the approval of the host Member State¹⁰.

6.2.2 As explained in 6.1, for 26% of the relevant cases in the audit sample, the social security cover of the assistants concerned was not evidenced by certificates of affiliation to a social security scheme. Of the remaining cases (43 contracts or 74% of the employment contracts in the sample) for which social security certificates *were* furnished, the audit showed that 15 of these did not appear to comply with the applicable social legislation, as the actual place of employment and duration of the contract would have required social security cover in Belgium, whereas the assistants concerned were all covered in another Member State.

¹⁰ Internal Audit notes that the CODEX for parliamentary assistance, adopted by the Bureau on 25 September 2006, draws attention to a proposed amendment of Regulation no. 1408/71, whereby assistants could exercise a right of option on the social security scheme to be applied to them. This amendment has not yet been adopted by Council and Parliament.

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

- 6.2.3 The action plan foresees improved guidance for Members in order to determine which Member State's social legislation should apply in the case of his/her employed assistant, given the terms of the contract and the actual places of work. In accordance with revised PEAM rules, the authorising department would screen all new applications for conformity on the basis of the certificate furnished and inform Members promptly of cases of non-compliance. The Institution would ensure that Members receive appropriate professional advice on the action required to regularise non-compliance within a short time-period.

(DG Finance indicated that a guidance note on social security obligations will be transmitted to Members once a legal opinion has been obtained. It also considers that the necessary revision of the PEAM rules should be preceded by wide consultation of Members and assistants' representatives.)

6.3 Ensuring the consistent and transparent application of the PEAM Rules on travel and subsistence allowances

- 6.3.1 Article 14.5(d) of the PEAM Rules confirms that travel and subsistence expenses incurred by an assistant may be eligible for reimbursement. The article also states that such reimbursement to the Member is conditional upon "production of original, duly receipted supporting documents". However, it does not provide guidance on the principles governing the payment of such costs or on the nature of the supporting documents to be submitted in cases where such payments are to be made directly to the assistant.
- 6.3.2 Fifteen of the audited employment contracts contained a clause for the reimbursement of assistants' travel and/or subsistence costs. Of these, seven contracts provided for monthly payment on a fixed rate basis without any obligation to furnish supporting documents. There were no such documents on file. The monthly amounts being paid varied considerably: in one case, it was found to be three times the amount of the assistant's salary.
- 6.3.3 In these cases, there is insufficient assurance that payments for travel and subsistence costs cover travel that has actually taken place and are in line with real costs incurred. There is also a risk that such fixed, unsupported payments could be assimilated to additional remuneration, with tax and social security implications. The action plan foresees that the authorising department would make proposals, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, to clarify the application of Article 14.5(d) by specifying the conditions under which such costs can be claimed and setting out precisely the nature of supporting documents that need to be furnished in support of each claim and the maximum reimbursable amount. These amendments could be established by analogy to the rules set out in the Staff Regulations.

(The Authorising Officer by Delegation's view is that these matters should first be submitted for consultation between the members of the Bureau responsible for matters relating to assistants and the elected representatives of the assistants.)

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

7. Paying agents contracted to handle the administrative management of assistants' employment contracts
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7.1 Submission of statements of expenditure incurred by paying agents

- 7.1.1 Under Article 14.5 of the PEAM Rules, Members may ask for payments to be made to a paying agent "contracted ... to handle, in whole or in part, the administrative management of his or her parliamentary assistance expenses." In such cases, all or part of the allowance is paid to the paying agent who, in turn, undertakes to use these funds to pay the salaries and employer contributions and to cover his agreed fee for administrative management.
- 7.1.2 Article 14.5 states that the paying agent shall forward to the Member, at least once a year, statements of expenditure incurred in respect of salaries, social security contributions, tax payments or any other refundable expenditure. Copies of those statements must be provided to the authorising department.
- 7.1.3 The audit sample included 56 payments to paying agents. The initial rules required statements of expenditure to be forwarded at least once every six months¹¹. The audit initially showed that none of these payments complied with that requirement. An additional examination of the files in early January 2007 showed that these paying agents had not furnished statements in 36 cases (64%).
- 7.1.4 The absence of statements of expenditure incurred means that it is not possible to establish that the amounts paid to the paying agents have been used to pay the salaries and related costs arising from the employment contracts of the assistants concerned. This is a breach of the PEAM Rules and of the rules on validating expenditure contained in the Financial Regulation (see also Section 5.2 above). Without such regular reconciling statements, the use of funds disbursed to third-party paying agents cannot be properly accounted for.
- 7.1.5 Under the action plan, DG Finance would submit, for adoption by the Quaestors, a draft decision to request that all missing statements must be provided within two months, in accordance with the provisions of the PEAM rules. Thereafter, in cases where the documents are not furnished, the DG would suspend payments to the paying agents concerned until the statements are provided.
- 7.1.6 Failure to submit the statements after these measures should result in the recovery of the non-regularised sums that had been advanced and an invitation to the Member concerned to cancel the paying agent's contract and to conclude a contract with a new paying agent.

(DG Finance indicated that similar proposals to those under 7.1.5 and 7.1.6 are included in the draft of the implementing measures for the Members' Statute that have been submitted to the Working Party.)

¹¹ On 13 December 2004, the Bureau decided to extend this periodicity to once annually.

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

7.2 Establishing transparent and secure arrangements for the management of assistants' employment contracts

- 7.2.1 The regular amount that Parliament pays to the paying agent on a Member's behalf is based on an estimate of the amounts required to manage one or more employment contracts. The contractual arrangements between Member and paying agent ought to ensure that the latter can be held fully accountable for the use of the funds thus advanced.
- 7.2.2 In 75% of the audited paying agent contracts, the agreed amount of the regular transfer to the agent could not be reconciled with the salaries foreseen in the employment contracts to be managed. Whereas in most cases, the origin of the difference between the figures may be the employer's contributions for social security, there was no documentation and insufficient information to enable this to be established.
- 7.2.3 In 28% of the audited cases, the employees whose contracts were to be managed were not named or otherwise identified in the paying agent contract. (Although cases where only a general reference is made to all assistants' contracts concluded by the Member do not appear to be in breach of the PEAM rules, this approach does not facilitate transparency.) In 26% of cases, the contract did not specify the period to which the paying agent's fee pertained.
- 7.2.4 The main part of the action plan is to ensure that the paying agent contract provides the details necessary to reconcile the amounts advanced with those appearing in the related employment contracts. Such compulsory details to be foreseen in the rules would include:
- the calculation of the estimate on which the regular transfer is based should be documented for each managed employment contract and included as an annex to the paying agent contract;
 - such a calculation document would be based on a mandatory template, to be developed by DG Finance, that would identify gross and net salary amounts, agent fees and other items comprised in the initial transfer;
 - the paying agent contract must identify the assistants and the period of their contracts;
 - any changes to the transfer amounts would be formalised by an annex to the initial contract.

(The Authorising Officer by Delegation indicated that there is now a procedure to request such details and that he has suggested additional specific provisions to that end to the Members' Statute Working Party.)

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

7.2.5 The action plan also includes measures to improve the recording of "pre-financing" transfers to paying agents in Parliament's accounts. (See also 5.2.10.) To improve transparency further, the required action would restrict such transfers to the sums required to cover salaries and employers' on-costs. The fees charged by paying agents would be invoiced and paid separately, after the service has been rendered.

7.3 Further improving existing good practices for specific categories of paying agent

7.3.1 The audit found evidence of good practices for two specific categories of paying agent. Approximately 8% of all Members use State-approved agencies ("*Secrétariats sociaux agréés*") to manage employment contracts concluded under Belgian law. Some 30% of German MEPs use the paying agent services of the German Federal Parliament ("*Deutscher Bundestag*").

7.3.2 The arrangements in both these categories provided significantly enhanced transparency and assurance in regard to the use of the allowance. These include the systematic calculation and documentation of the employees' deductions and the employers' on-costs, which provides a clear basis for the employment contract, for payment and for regular reconciliation of the sums transferred by Parliament. The arrangements also cover all the formalities imposed on the employer by social legislation.

7.3.3 The *Deutscher Bundestag* provides its services free to German Members. The audited contracts involving *Secrétariats sociaux* indicated that the fees charged were relatively modest.

7.3.4 The existing good practice would be further enhanced:

- by Parliament's conclusion of a framework agreement with the administration of the *Bundestag*, which would formalise the principles governing its intervention as a paying agent, and,
- for the individual *Secrétariats sociaux*, DG Finance should establish in co-operation with the Members concerned and, if appropriate, through direct contact with the "*Secrétariat social agréé*", a comprehensive record of the contractual documentation that governs the legal relationship with this category of paying agents.

(The Authorising Officer by Delegation indicated that he would contact the Bundestag accordingly. He also confirmed that the required comprehensive record will be established.)

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

8. Conclusion

- 8.1 The key objective of internal controls over the parliamentary assistance allowance is to ensure that it is used only to meet the costs that are wholly, exclusively and necessarily incurred by Members in employing or engaging the services of assistants to help them perform their Parliamentary duties.
- 8.2 Since the European Court of Auditors published its Special Report no. 10/98 on Members' expenses and allowances, in 1998, there have been significant improvements, both in the PEAM Rules and in the internal management and controls put in place by DG Finance.
- 8.3 Notwithstanding these continued improvements, this audit has shown that the key control objective identified above is not being attained on a consistent basis. This applies especially to the requirements to submit supporting documents as proof that costs have been incurred and are properly chargeable to the allowance.
- 8.4 This recurrent lack of proof is in conflict with the Financial Regulation, which governs the implementation of the budget. It means, for many of the fees paid to service providers, that there is no documentary proof that the service has been rendered. Similarly, for funds transferred to the majority of paying agents to manage employment contracts, the absence of requisite statements means that the funds thus advanced cannot be properly accounted for. In both cases, until the appropriate supporting documents are furnished, the payments made remain in the nature of advances awaiting regularisation.
- 8.5 Moreover, in those cases where employees' social security status has not been documented and where the compliance of service providers with national law remains in doubt, there are associated legal, financial and reputational risks.
- 8.6 The outcome of the audit also confirms the initial risk analysis that the current use of full-time service provision contracts for the duration of the parliamentary term is the single most significant potential risk to the achievement of the key control objective. The action plans foresee, in a first phase, the withdrawal of service provider contracts and their replacement by employment contracts for parliamentary assistants. In a second phase, the objective would be to appoint assistants under the conditions applicable to contract staff of the European Communities.
- 8.7 The phased action plans include short-term improvements in controls in order to enforce current PEAM Rules. Over the period to the end of the current parliamentary term, the action plans also focus on more fundamental measures to revise the current highly complex internal regulatory framework. (These also recognise the important work that has been conducted by the Working Party on Members' Assistants and is currently being addressed by the Members' Statute Working Party.)

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

- 8.8 The outcome of the extensive consultation process between Internal Audit and the Directorate-General for Finance has been a broad level of consensus on the substance of the action plans proposed. However, the Authorising Officer by Delegation has also made it clear that he cannot commit himself to actions other than those which are within the scope of his Directorate-General to accomplish. This is because progress on many other actions will require reform of the current regulatory framework and thus depend on a prior decision by the political authorities.
- 8.9 Internal Audit acknowledges that position. This report draws a clear distinction between actions requiring a decision of the political authorities and those that can be achieved through autonomous action by the Administration. It also incorporates the detailed views expressed by the authorising department on the proposed actions. Where applicable, the report also explains why Internal Audit does not share the views expressed. Taken as a whole, the action plans reflect the Internal Auditor's independent opinion of the measures which he considers necessary to address the findings and related risks set out in this report.
- 8.10 The ultimate objective of the action plans is to provide, with effect from the start of the seventh parliamentary term in July 2009, a simplified framework which would guarantee the Members' discretion in choosing their assistants and rationalise the administrative burden, while providing reasonable assurance of full transparency, accountability and compliance with all legal and regulatory requirements. The revised framework would reflect the reality of parliamentary assistance, which is that the assistant must be able to respond to the Member's day-to-day needs and that this can only be done by the assistant being placed under the Member's direct authority.

Robert Galvin

9 January 2008

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 2: Summary of action plans

PART 2: SUMMARY OF ACTION PLANS

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 2: Summary of action plans

**A. SIMPLIFYING THE ADMINISTRATIVE MANAGEMENT OF
PARLIAMENTARY ASSISTANCE**

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

A-1 DG Finance to draw up proposals for updating the guide providing Members with guidance and advice on contracting parliamentary assistance and obtaining reimbursement of corresponding costs. The updated guide to be submitted to the Quaestors for decision.

A-2 The use of model contracts provided by DG Finance to be made mandatory by the Institution.

A-3 Fundamental revision of the legal framework for parliamentary assistance based on the following principles:

- in a first stage, single contractual relationship for parliamentary assistants who should only be hired under employment contracts;
- in a second stage, taking into account the potential legal and financial implications, the Administration should examine how the employment of parliamentary assistants could be ruled by the (possibly amended) conditions of employment that apply to other servants engaged under contract by the European Communities, (Members to retain full autonomy in the choice of their assistant(s)), with a view to making a corresponding proposal to the political authorities;
- if the Community rules can be applied, Parliament to contract the assistants and take care of all the administrative management issues;
- contracting with external providers limited to the purchase, within budgetary limits, of specific services when corresponding tasks cannot be performed by the parliamentary assistant(s).

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 2: Summary of action plans

B. DEFINING THE SCOPE OF ASSISTANCE TASKS AND QUANTIFYING THE RELATED COSTS THAT CAN BE REIMBURSED UNDER THE ALLOWANCE

B-1 PROVIDING A PRECISE CONTRACTUAL DEFINITION OF THE ASSISTANCE WORK TO BE PERFORMED

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

B-1.1 DG Finance should propose, for decision by the Quaestors, the addition to the CODEX of guidelines to Members on the level of detail that should be included in the job descriptions of employed assistants and in the definition of the tasks to be performed and/or of the deliverables to be provided by service providers.

B-2 ENSURING THAT LEVELS OF REMUNERATION ARE PROPORTIONATE TO THE TASKS PERFORMED

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

B-2.1 Parliamentary assistants should, as a rule, be contracted as employees. This should be done under a harmonised framework for the financial conditions of employment of assistants, aimed at adequate and consistent levels of remuneration.

In a first stage, this framework could be provided by the PEAM rules and should include the definition of professional function groups reflecting the assistants' different levels of qualification and a scale of maximum acceptable monthly remuneration per function group. Subsequently, a second stage could consist in a fundamental revision of the legal framework for parliamentary assistance. This foresees the application of the Conditions of employment of other servants of the European Communities to parliamentary assistants.

B-2.2 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 short-term services when the corresponding tasks cannot be performed by the Member's parliamentary assistant(s).

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 2: Summary of action plans

B. DEFINING AND QUANTIFYING THE ASSISTANCE TASKS THAT CAN BE REIMBURSED UNDER THE ALLOWANCE

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

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

B-3.1 Clarify, in the implementing provisions of the CODEX, (i) the purpose and beneficiaries of the lay-off payment (which should cover only employees' indemnities arising from the national law applicable, the fees of paying agents and, for as long as such contracts exist, payments to be made under national labour law by service providers who place human resources at the disposal of a Member, to employed assistants whose contract they manage) and (ii) the entitlement to lay-off payments in the case of several part time employment contracts.

B-4 JUSTIFYING "ONE-OFF" PAYMENTS AT THE END OF THE FINANCIAL YEAR

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

B-4.1 Clarify the PEAM rules to ensure that "one-off" payments can only be made if there is reasonable assurance that these comply with the provisions of the Financial Regulation on the use of budget appropriations in accordance with the principle of sound financial management.

B-4.2 Restrict, in the PEAM rules, the scope for "one-off" payments to employed assistants to duly supported cases (such as the reimbursement of travel and subsistence expenses and payments which have their origin in there relevant labour-law).

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 2: Summary of action plans

C. SERVICE CONTRACTS FOR THE PROVISION OF PARLIAMENTARY ASSISTANCE

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

AUTONOMOUS ACTION BY THE ADMINISTRATION:

C-1.1 For new contracts or amendments to existing contracts, set of verification procedures to be performed by DG Finance to obtain assurance that a contractor's activity as a service provider has been registered in accordance with applicable law. Rejection of applications for the reimbursement of parliamentary assistance expenses when there is no reasonable assurance that the provision of services complies with applicable law.

C-1.2 For existing contracts, DG Finance should (i) check the validity of VAT numbers provided (VIES database) and (ii) perform an inventory of cases where no VAT number has been provided.

For missing or invalid VAT numbers, service providers are to clarify their VAT status and, if required, regularise the situation with the competent national authorities.

Failing such clarification and/or regularisation, DG Finance should invite Members to cancel corresponding contracts and should stop payments relating to non-compliant contractors.

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

C-1.3 PEAM rules to be amended to foresee that the remuneration of a service provider is to be paid on a bank account which is located in the country of the registered office (payments to an employed assistant to take place on a bank account located in the country of residence).

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

C-2 INVOICING OF PARLIAMENTARY ASSISTANCE SERVICES PERFORMED FOR MEMBERS

AUTONOMOUS ACTION BY THE ADMINISTRATION:

C-2.6 Use the data available in DG Finance's local IT application for managing the parliamentary assistance to record pre-financing payments separately in the Parliament's accounting applications FINORD/FINICS at the time such payments are made.

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

C-2.1 DG Finance to propose to the Quaestors that missing invoices or statements of the amounts invoiced regularising payments made to service providers should be provided by Members to DG Finance within two months of the corresponding notification.

C-2.2 The proposal to the Quaestors should foresee that, after expiry of the deadline, the authorising department would suspend payments of fees to service providers for which the regulatory obligation to submit invoices or statements of the amounts invoiced has not been complied with.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 2: Summary of action plans

C. SERVICE CONTRACTS FOR THE PROVISION OF PARLIAMENTARY ASSISTANCE

C-2 INVOICING OF PARLIAMENTARY ASSISTANCE SERVICES PERFORMED FOR MEMBERS (cont.)

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES (continued):

- C-2.3 The proposal to the Quaestors should foresee that the authorising department would initiate the recovery of amounts that have not been regularised through the submission of invoices or statements of the amounts invoiced within a month of the deadline.
- C-2.4 Amendment of the PEAM rules foreseeing all payments of fees (including advances) to service providers to be made only following the prior submission to the Member of a regular invoice with a copy thereof to DG Finance.
- C-2.5 PEAM rules to foresee endorsement of the service provider's invoices by the Member, prior to payment.
- C-2.7 Payment of fees to paying agents only to take place after the submission of related statements of expenditure.

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

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

- C-3.1 DG Finance to propose an amendment to the CODEX that makes the regulatory requirements on invoicing and statements an essential clause of service contracts. DG Finance should only accept applications for the reimbursement of parliamentary assistance expenses relating to the provision of services supported by a contract that complies with the requirements on the submission of invoices and cost statements.

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

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

- C-4.1 Under amended PEAM rules, parliamentary assistants to be contracted as employees. Contracts with service providers should only be used for paying agent services and the purchasing of specific services under short term contracts

C-5 PREVENTING THE RISK OF MAKING INELIGIBLE ALLOWANCE PAYMENTS

Issues raised by these findings are adequately addressed by action plans A-3, B-1.1, C-4.1, C-1.1 and C-1.2

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 2: Summary of action plans

D. PARLIAMENTARY ASSISTANCE PROVIDED UNDER A CONTRACT FOR EMPLOYMENT

D-1. OBTAINING EVIDENCE OF EMPLOYED ASSISTANTS' SOCIAL SECURITY COVER

AUTONOMOUS ACTION BY THE ADMINISTRATION:

D-1.1 DG Finance to identify contracts for which the evidential requirements on social security cover have not been complied and ask Members to provide the required certificates within two months of the corresponding notification. After that date, initiation of the procedure for suspending the payment of the parliamentary assistance allowance.

D-1.2 DG Finance should put in place internal management and control procedures which provide assurance that the regulatory requirements on social security cover are complied with.

D-2 ENSURING THAT EMPLOYED ASSISTANTS' SOCIAL SECURITY COVERAGE COMPLIES WITH COMMUNITY LEGISLATION

AUTONOMOUS ACTION BY THE ADMINISTRATION:

D-2.1 DG Finance to provide guidance to Members on the determination of the legislation applicable to employed assistants' social security coverage.

D-2.2 DG Finance to propose an amendment to the PEAM rules confirming that, for new applications for the reimbursement of parliamentary assistance expenses, DG Finance needs to ensure that the correct national social security scheme has been selected.

D-3 ENSURING THE CONSISTENT AND TRANSPARENT APPLICATION OF THE PEAM RULES ON TRAVEL AND SUBSISTENCE COSTS

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

D-3.1 PEAM rules to include provisions giving reasonable assurance that reimbursements of assistants' travel and subsistence costs are in line with real costs incurred and that these reimbursements are made on a consistent basis.

D-3.2 Specific measures to evidence travel that has taken place by car.

D-3.3 PEAM rules to clarify the nature of miscellaneous expenses of parliamentary assistants (such as removal expenditure) that are eligible for reimbursement.

Internal Audit Service
Internal Audit Report no. 06/02 to the Institution
Part 2: Summary of action plans

**E. PAYING AGENTS CONTRACTED TO HANDLE THE ADMINISTRATIVE
MANAGEMENT OF ASSISTANTS' EMPLOYMENT CONTRACTS**

E-1 SUBMISSION OF STATEMENTS OF EXPENDITURE INCURRED BY PAYING AGENTS

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

- E-1.1 DG Finance to submit for decision by the Quaestors that Members should provide DG Finance with missing statements of expenditure from paying agents, within two months of being notified of the absence of those statements.
- E-1.2 After expiry of the deadline, pending submission of required statements of expenditure, transfers of funds (including fees) to the paying agent should be suspended.
- E-1.3 For statements of expenditure not submitted within a month of the deadline, DG Finance to initiate recovery procedure of the amounts that have not been regularised and invite Member to conclude a new paying agent contract.

**E-2 ESTABLISHING TRANSPARENT AND SECURE ARRANGEMENTS FOR THE MANAGEMENT OF
ASSISTANTS' EMPLOYMENT CONTRACTS**

ACTION REQUIRING A DECISION BY THE POLITICAL AUTHORITIES:

- E-2.1 Set of specific actions (based on mandatory templates) to be required in the CODEX to ensure that contracts with paying agents include all the details required to reconcile the amounts transferred on a provisional basis to the paying agent with the remuneration foreseen in the managed employment contracts.

**E-3 FURTHER IMPROVING EXISTING GOOD PRACTICES FOR SPECIFIC CATEGORIES OF PAYING
AGENTS**

AUTONOMOUS ACTION BY THE ADMINISTRATION:

- E-3.1 DG Finance should establish a comprehensive record of the contractual documentation that governs the legal relationship with the "Secrétariats sociaux agréés".
- E-3.2 DG Finance to draw the attention of the Members to the fact that the calculation sheets provided by the "Secrétariats sociaux agréés" should always name the employed assistant to whom they relate.
- E-3.3 Framework agreement to be concluded between DG Finance and the administration of the Bundestag formalising the principles governing the latter's intervention as a paying agent.

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

PART 3: KEY FINDINGS AND DETAILED ACTION PLANS

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

A. SIMPLIFYING THE ADMINISTRATIVE MANAGEMENT OF PARLIAMENTARY ASSISTANCE

Findings & Issues

The administrative management of parliamentary assistance is a complex issue both from the Members' and from DG Finance's points of view. This complexity has its origin in several characteristics of the parliamentary assistance allowance's legal framework (known as the "PEAM rules"¹²):

- Parliamentary assistance can be contracted in very different ways. These include:
 - . the direct employment of assistants and management of corresponding contracts by Members
 - . the use of paying agent services to manage assistant's employment contracts
 - . the provision of services by self-employed persons
 - . the provision of services by legal persons whose duties can also consist in the employment of staff on behalf of the Member.

Specific legal requirements apply to each of these different types of contracts both under labour or commercial law and under the PEAM rules.

- Not only are there substantial differences in the legal requirements depending on the type of contract, but these legal requirements vary among the 27 Member States.
- Supporting documentation that is required for the management of the parliamentary assistance allowance can be established in 22 languages. It is understandable that staff in the Parliament's service responsible for managing the Parliamentary Assistance Allowance may not always be in a position to cover all of these languages.
- Although model contracts which take account of the PEAM rules are provided by DG Finance, there is no obligation to use them. They may therefore be modified by contracting parties or not used at all. Both situations arise in practice.
- Payments to service providers can be made either following the prior submission of invoices or according to a fixed contractual schedule. In the latter case, the payments have to be regularised through a subsequent submission of invoices and/or statements of expenditure. Ensuring that this regularisation takes place requires the putting in place of adequate recording and monitoring systems covering all such payments made.

Implications

The complexity of the parliamentary assistance allowance's present legal framework leads to management inefficiency and ineffectiveness.

To be consistent with the Secretary-General's "Raising the Game" initiative which aims to make the most effective and efficient use of Parliament's resources to offer better assistance to Members, DG Finance's objective should not be limited to ensuring that payments for parliamentary assistance costs formally comply with the PEAM rules. Even if the Parliament does not itself contract parliamentary assistance, its management and control system should protect both the Institution and individual Members against financial, legal and reputational risks that could materialise in the area of parliamentary assistance. Under the present legal framework, to achieve this objective, management and control systems would need to provide reasonable assurance that the contracting and the implementation of parliamentary assistance comply:

¹² Rules Governing the Payment of Expenses and Allowances to Members

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

Implications (continued)

- with the fundamental principles of legality and sound financial management foreseen in the Financial Regulation, but also
- with the relevant provisions of the 27 different national legislations applicable to the employment of staff and the provision of services.

Providing such reasonable assurance for the whole range of individual contracts concluded by the Members under the different national legislations would be a particularly complex task. It would require the Parliament to allocate the management of the parliamentary assistance allowance (including the provision of advice on a case-by-case basis to individual Members) to a large team of highly qualified specialists with extensive expertise in all relevant areas of legislation.

The detailed audit findings presented in this audit report lead to the conclusion that the current allocation of resources does not meet this criterion. The implication for the Parliament are:

- lack of reasonable assurance that the implementation of parliamentary assistance and the management of the corresponding allowance comply with applicable rules and laws on a systematic basis,
- exposure of the Institution and of its Members to financial, legal and reputational risks.

Action Plans

Preamble:

Under the present PEAM rules, a substantial increase in the level of resources allocated to management and control of the area would be necessary to provide reasonable assurance that the implementation of parliamentary assistance and the management of the corresponding allowance comply, on a systematic basis, with the relevant regulations and laws.

However, overcoming difficulties that have their origin in the present PEAM rules by an increased allocation of resources would neither constitute efficient management nor allow any administrative simplification.

Achieving such reasonable assurance while at the same time simplifying the administrative management will inevitably require a revision of parliamentary assistance's legal framework.

Actions:

A-1

As an accompanying measure to the implementation of the action plans that are developed in the different sections of this report, DG Finance should draw up proposals to publish an updated "Guide to Members on the provision of parliamentary assistance", and submit these to the College of Quaestors for decision. This would provide Members with precise guidance and advice on contracting parliamentary assistance and obtaining reimbursement of corresponding costs in compliance with both the PEAM rules and the main requirements of applicable national legislation.

(DG Finance, while drawing attention to the guidance on the adapted PEAM rules that is provided in Communication 44/06 of the Quaestors and to additional guidance offered on the Intranet, confirmed that further guidelines would follow after completion of the work of the Members' Statute Working Party.)

(continued)

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

Action Plans (continued)

A-2

The findings and related action plans developed in the different sections of this report also show that:

- simplification of the administrative management of the allowance, and,
- increased assurance that the contracted provision of assistance comply with relevant requirements,

imply the systematic use of the model contracts developed by DG Finance, both for the employment of assistants and for the contracting of services.

DG Finance should therefore draw up, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for decision, a proposal to make the use of the model contracts mandatory.

It is acknowledged that some tailoring of these model contracts may be required to satisfy specific requirements of the national legislations. (Templates per country or group of countries may be required). To facilitate this, the action could be implemented in two phases:

- to adopt, as a priority, the models which will apply to the particularly significant population of assistants working in Belgium under Belgian legislation, and,
- in a second stage, to establish the models for the contracts of assistants working in the country of the Member's constituency.

To accommodate specific provisions which Members might want to include, the contract templates could include an optional article "special conditions". Such special conditions should not, however, conflict with the contract's standard clauses.

(The Authorising Officer by Delegation recalled that the compulsory use of model contracts was previously examined by the Bureau and the Quaestors, which rejected this idea as interfering with the principle of contractual autonomy of the parties. He has also drawn attention to the significant differences among the 27 national legislations on employment and contract law. Whilst he considers that the principles of the Financial Regulation may be safeguarded by adherence to the requirements of PEAM rules and the Codex, without the compulsory use of model contracts, he confirmed his readiness to put the proposal anew to the Members' Statute Working Party.)

A-3

However, a genuine simplification and rationalisation of the administrative management of parliamentary assistance requires a more fundamental revision of its legal framework. Such a revision should be based on the following principles:

- To allow a genuine simplification of management processes, a single contractual relationship for parliamentary assistants should be foreseen.
- In a first stage, to be consistent with the inherent nature of parliamentary assistance which requires assistants to work under the authority of the Member, parliamentary assistants should be hired under employment contracts, not contracted as service providers. (See findings reported under point C-4.) (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.)

(continued)

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

Action Plans (continued)

- In a second stage, to avoid the complexity induced by the application of up to 27 national labour legislations, the Administration should examine how the employment of parliamentary assistants can be ruled by the conditions of employment that apply to other servants engaged under contract by the European Communities. DG Personnel, DG Finance and the Legal Service should examine jointly whether:
 - . one of the contract types foreseen under the present regulation on the conditions of employment of other servants is appropriate for parliamentary assistants, or
 - . one of those contract types would be suitable but requires a prior adaptation of the regulation in the form of special provisions applicable to parliamentary assistants, to accommodate any specific requirements that may apply to them, or
 - . a new type of other servants engaged under contract specifically covering parliamentary assistants would need to be introduced in the regulation.

The choice of one of these options will have to take into account the need for the Member to retain full autonomy in choosing who will be his parliamentary assistant(s).

- A direct consequence of the employment of parliamentary assistants under a Community regulation would be that the Parliament would contract the assistants and take care of all the administrative management issues. This would allow for rationalising management, ensure consistency of treatment and relieve Members as far as possible from dealing with issues of a purely administrative nature. As it means that Parliament would assume directly all obligations and liabilities arising out of the contractual relationship, DG Finance, after consulting DG Personnel and the Legal Service, should however also examine the potential legal and financial implications of that approach.
- The results of these analyses would form the basis for a proposal by DG Finance on the possible employment of parliamentary assistants, to be ruled by the conditions of employment that apply to other servants engaged under contract by the European Communities. This would be submitted, for discussion, to the Members' Statute Working Party and for subsequent decision to the Bureau.

A contractual relationship with parliamentary assistants based on those principles would not exclude the possibility for Members to purchase, within budgetary limits, specific services from external service providers when corresponding tasks cannot be performed by their parliamentary assistant(s). However, this possibility should only apply to short term services requiring specific expertise and foreseeing the provision of clearly identified deliverables that would condition the payment (see also findings reported under point B-1).

(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.)

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

**B. DEFINING THE SCOPE OF ASSISTANCE TASKS AND
QUANTIFYING THE RELATED COSTS THAT CAN BE
REIMBURSED UNDER THE ALLOWANCE**

**B-1 PROVIDING A PRECISE CONTRACTUAL DEFINITION OF THE ASSISTANCE WORK
TO BE PERFORMED**

Findings & Issues

Article 14.5 of the PEAM rules foresees that:

- Assistants' employment contracts must include a summary job description.
- Service contracts must include a description of the services to be provided.

A precise contractual definition of the assistant's tasks raises assurance that:

- The parliamentary assistance allowance is used to cover costs which are wholly, exclusively and necessarily incurred for the purpose of parliamentary assistance.
- The Member has adequate legal protection in the case of a dispute with the assistance provider.

The PEAM rules do not provide guidance to Members as to the level of detail that is needed in task descriptions to contribute effectively to the above mentioned objectives.

(A guide to the rules which would have been suitable to provide such guidance existed in the past but has not been updated to reflect the revised PEAM rules.)

In addition, the (non-compulsory) model contracts provided by DG Finance do not prompt Members to insert precise descriptions:

- Model employment contracts already include a default generic subject "*parliamentary assistant to assist him/her[the Member] in connection with the exercise of the office of Member*" and do not provide for a more detailed job description (for example: the precise nature and level of duties).
- Model contracts for the provision of services foresee a space to mention the service provider's area of responsibility and activities. The default space available is, however, too limited to provide sufficient details about contractual tasks and deliverables.

The audited sample of employment and service contracts gave rise to the following findings:

- For most of the employment contracts no job description (other than the generic one included in the model contract) was established.
- In 91% of the contracts for the provision of services (96 cases), the description of the service provider's duties was imprecise. At best it would list the broad natures of task that can be entrusted to the service provider. But it could also be as limited as, for example: "Research", "Advice", "Missions", "Collection and assessment of information", "Assist the MEP", or "Studies".

Sometimes, DG Finance requested additional clarification from the Members on the nature of the work to be performed. However, the additional explanations provided were never formalised in more precise contractual provisions.

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

Implications

Imprecise contractual definitions of the assistance work to be performed:

- Reduce assurance that the parliamentary assistance allowance is only used to cover costs which are wholly, exclusively and necessarily incurred for the purpose of parliamentary assistance.
- Limit the assurance as regards the adequacy of the contractual remuneration.
- Limit the Member's legal protection in the case of a dispute with the service provider on the satisfactory performance of tasks.

Action Plans

B-1.1 DG Finance should draw up, for discussion in the Members' Statute Working Party and for subsequent submission to the Quaestors for decision, a proposal to include in the CODEX guidelines to Members on the level of detail that should be provided:

- in the job descriptions of employed assistants
- in the definition of the tasks to be performed and/or of the deliverables to be provided by service providers.

It is acknowledged that the nature and extent of the information to be provided in the description can differ between employment and service contracts. (The latter would in principle require a more precise definition of deliverables, whereas the job descriptions in employment contracts should be sufficiently broad to cover the Member's range of needs). This guidance should, however, ensure for both types of contracts that the following general objectives are met:

- Provide legal protection in the case of dispute over the satisfactory performance of tasks.
- Establish that these tasks are wholly, exclusively and necessarily incurred for the purpose of parliamentary assistance.
- Provide reasonable assurance concerning the adequacy of the remuneration foreseen (see also findings under point B-2 and B-4).
- Be consistent with the nature of the contractual relationship. In particular, for contracts for the provision of services, contractual tasks should not imply links of subordination with the Member as these are a characteristic of an employment relationship (see also findings under point C-4).

(The Authorising Officer by Delegation indicated that, as a first step, he has submitted proposals for a general definition of the scope of the parliamentary assistance allowance. He also confirmed that, once the Members' Statute Working Party has concluded its work, guidelines on the tasks and job descriptions of parliamentary assistants can be drawn up and submitted for approval to the Quaestors.)

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

B-2 ENSURING THAT LEVELS OF REMUNERATION ARE PROPORTIONATE TO THE TASKS PERFORMED

Findings & Issues

The audit showed significant differences in the remuneration levels of service providers. Obvious explanations for such differences can be, for example, the number of monthly working hours, the number of assistance providers among whom tasks are shared, the nature of tasks, the level of professional qualification or the general levels of remuneration in the country of work.

These possible explanations combined with the generally weak definition of contractual tasks (see findings reported under point B-1) made an assessment of the adequacy of remuneration levels difficult. Notwithstanding this difficulty, a number of anomalies were identified. They confirm the risk that the remuneration levels of certain service providers may not be justified by the purpose of providing parliamentary assistance:

- Despite a weak definition of tasks (no specification of required input or precise definition of deliverables), almost all contracts for the provision of services foresee a flat-rate remuneration and do not provide for its adjustment to the actual level of parliamentary assistance provided.

One example taken from the audit sample illustrates the issue: whereas, in that case, the contractual fee (€12 576 which was the full monthly assistance allowance at the time of the initial audit testing) was fixed for the entire duration of the Member's mandate, the contractual definition of the service explicitly left open how many persons the service provider would have to put at the Member's disposal for that fee (in practice, the Member appears to have had only one accredited assistant). (It is noted that the PEAM rules do not oblige the contracting parties to disclose more details concerning the assistants placed at the disposal of a Member by a service provider.)

- In two cases, although the full monthly parliamentary assistance allowance was paid to a service provider and the corresponding contracts explicitly foresaw putting staff at the Member's disposal, no assistants are accredited to the Parliament for these Members.
- In one case, the service provider (a company), which is also being paid the full assistance allowance, did not, according to extracts from its balance sheet (2004), appear to have any tangible activity (total assets: €23, trade debtors: €1). This company was registered two days before the conclusion of the initial contract with the Member, at the end of May 2001, and the contract start date was set retroactively to 01.01.2001, which is five months before the registration of the company and the signature of the contract.
- In two other contracts for the provision of services, the audit showed that the service provider's areas of business seemed to have little relevance to the provision of parliamentary assistance.

In the first case (fee equal to the full assistance allowance and no assistant accredited), that business is to provide services for children and the family, in particular day care services for children. (The manager was also identified as a local politician from the Member's political party.)

In the second case, the business appeared to be the trading of wood.

(continued)

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 €6 600 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).

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 month's 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

Findings & Issues (continued)

The audit sample contained 42 "lay-off" payments (representing 25% of the audited transactions). For these 42 items, audit findings which are specific to the regulatory framework of "lay-off" payments can be summarised as follows¹⁵:

- 27 of the "lay-off" payments in the sample were not made on the basis of a formal request by the Member.
- All the audited "lay-off" payments complied with the regulatory requirement that they have to be made in respect of a Member who has not been re-elected and who had served for at least six months under the 5th term.
- However, one fifth of the "lay-off" payments (9 cases) were made for terminated contracts of assistants or service providers who continued to receive, for the same period, a normal "non lay-off" payment from other previously existing contracts which had been extended from the 5th to the 6th term. (See also the explanations relating to DG Finance's present practice under action plan B-3.1.)
- As illustrated by one audited case, there is also lack of assurance that an assistant does not accumulate, for the same period, lay-off payments and payments from newly concluded assistance contracts. In the specific case audited, the assistant had concluded under the 5th parliamentary term part-time contracts with nine Members (total monthly remuneration: €5 355). Six of those Members were not re-elected. During the lay-off period, this assistant not only benefited from lay-off payments by five of the Members not re-elected and from his regular remuneration by three re-elected Members, but he also received new remuneration for four contracts concluded with newly elected Members. In the lay-off period, he thus accumulated from 12 Members the relatively high monthly remuneration of €8 890. This does not comply with Article 15.3.(d) of the PEAM rules.
- Two cases were also noted where, on request of the Members, the assistant's monthly remuneration for the lay-off period was substantially increased above the level of the regular monthly remuneration previously paid. This monthly increase (which was explained by the Members on the ground of additional work performed) was of €4 408 (+ 71%) in one case and of €3 212.80 (+ 117 %) in the second case. These increased payments were established in such a way that the balance left on the Member's annual entitlement to the parliamentary assistance allowance was equal or very close to zero.

(An additional case involving a one-off bonus payment during the lay-off period is reported under point B-4.)

Implications

A lack of precision of the regulatory framework regarding:

- the purpose of the "lay-off" payments,
- the type of assistance contracts for which those payments are intended, and
- the entitlement to lay-off payments of assistants working under several part-time contracts for different Members, when only some of these part-time contracts are terminated,

and the automatic nature of lay-off payments, entail a risk that such payments do not always comply with the provisions of the Financial Regulation (Article 27) on the use of budget appropriations in accordance with the principle of sound financial management.

The accumulation of lay-off payments and payments for newly concluded contracts, over the same period, does not comply with the PEAM rules.

¹⁵ Issues which are not specific to lay-off payments are dealt with under the other chapters of this report.

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

Action Plan

B-3.1 DG Finance's proposal to the Quaestors for implementing provisions relating to Article 8.3 of the CODEX should clarify the following points:

Purpose and beneficiaries of the lay-off payment:

Lay-off payments should only be foreseen in the two following situations:

- As an employee's indemnity arising from the national law applicable, following the termination of employed assistants' contracts when a Member's term of office ends. Lay-off payments on these grounds should be excluded for service providers. (See also the action plan A-3 which foresees that parliamentary assistants should, as a rule, be contracted as employees.)
- To cover the fees of paying agents who continue to manage an employed assistant's contract during the lay-off period (see above). (This would also apply to the case of service providers who place human resources at the disposal of a Member (for as long as such contracts would continue to exist - see action plan A-3), but only in so far as this is necessary to cover payments to be made under national labour law to employed assistants whose contracts they manage.)

Entitlement to lay-off payments in the case of several part-time employment contracts:

The implementing provisions should specify which of the following alternative principles applies:

- First option (DG Finance's present practice):
In the case of several part-time contracts concluded between one assistant and several Members, each terminated part-time employment contract entitles the assistant to a corresponding lay-off payment on condition that:
 - . no additional employment contract is concluded by the assistant with a Member during the lay-off period, and,
 - . no increase in the remuneration of another part-time contract of the assistant (other than the normal indexation) takes place during the lay-off period.
- Second option: Any part-time employment contract that runs during the lay-off period excludes the assistant from the benefit of lay-off payments for the termination of another employment contract. (This is the case even if that running contract was in force simultaneously with the terminated contract and does not therefore compensate the loss in remuneration.)

To simplify the procedures both for the Members and DG Finance, the entitlement to lay-off payments should flow from the CODEX 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 (elections in Bulgaria and Romania) clarify these provisions. However, Internal Audit notes that neither communication appears to add significant clarification to the provisions already included in Articles 15.3 PEAM and 8.3 CODEX. In particular, the specific points included under the detailed action plan above are not mentioned. **In addition, the fact that these communications are intended for the Members representing Bulgaria and Romania does not make them binding - legally or otherwise - on all Members.** For these reasons, Internal Audit maintains the action as proposed above.)*

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

B-4 JUSTIFYING "ONE-OFF" PAYMENTS AT THE END OF THE FINANCIAL YEAR

Findings & Issues

Internal Audit performed an analytical review of the monthly consumption, in 2004 and 2005, of appropriations under budget item 3910¹⁶ (covering the parliamentary assistance allowance). The year 2004 shows several monthly increases in consumption which are explained by the increase in the number of Members after enlargement and the "lay-off" payments following the election of a new Parliament (see also findings under point B-3). However, both at the end of 2004 and 2005, increases that have no such specific rationale were also noted. As 2005 was (unlike 2004) a "normal" year with no other sources of increase, it illustrates the issue with particular clarity. The monthly average of payments for January 2005 to October 2005 was €9 851 304. For November it had risen to €11 108 576 (an increase of 13%). The highest total amount of parliamentary assistance allowances was paid in December: €17 851 719, which is 81% above the average for January to October. The total amounts above the average for November and December 2005 represent almost a full average monthly payment (94%).

This increase at year end has its origin in a high number of "one-off" payments made during that period to assistance providers.

It was decided to perform a review of extra payments made in November and December 2004 on the basis of a specific sample¹⁷ which included the following items:

- the ten highest one-off payments,
- three additional payments among the ones exceeding €12 576 (the monthly amount of the allowance at that time),
- eight one-off payments selected (irrespective of their amount), from a list of unusual payments established by DG Finance.

In addition, the main sample already included an extra payment to an assistant made in October 2004 which resulted in an overall total of 22 audited "one-off" end-of-year payments.

For 16 of those 22 cases it was noted that the amount of the extra payment was established in such a way that the balance left on the Member's annual entitlement to the parliamentary assistance allowance was less than €40. (In eight of those cases, the balance was less than €1.)

The PEAM Rules do not include provisions that would require "one-off" payments to be supported by documented evidence covering the tasks performed and justifying the amount of the additional payments. For 18 of the 22 payments, there was no supporting evidence that would explain satisfactorily either the reasons for the payment or its amount.

The following cases illustrate the main issues identified:

Employment contracts:

- Five of the audited one-off payments ranging between €5 000 and €22 707 were made to assistants in addition to their normal salary. These payments were equivalent to between three and 19.5 times the normal monthly salary foreseen in the employment contract. A justification for these payments was either not provided at all (two cases) or was very succinct ("*End of year bonus*", "*Christmas bonus*", "*Job has developed...*")¹⁸

¹⁶ Under the 2006 Budget this is now item 4200

¹⁷ In addition to the main sample.

¹⁸ DG Finance indicated that it only accepts "bonus payments" for employees, not for service providers.

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

Findings & Issues (continued)

- In another case, a one-off bonus was paid to an assistant, in October 2004, in addition to his last lay-off payment. The bonus represented 1.8 times the monthly lay-off payment. Whereas the lay-off payment was made through a paying agent taking into account social security deductions, the bonus was paid directly to the assistant, without such deductions. It was also noted that, in contrast to the lay-off payment, the bonus was not paid on a bank account in the assistant's place of work and residence but on an account in another country.

Service providers:

- Seven one-off end-of-year payments (total amount: €206 677) made to service providers (in November and December 2004) were based on contracts which were only submitted to DG Finance at the end of November 2004, even though they all indicated a start date for the work of July or August 2004. (There are no provisions in the PEAM rules which would foresee that contracts for the provision of services need to be presented to DG Finance before the starting date of work of the service provider.) In two of these cases, the date of signature mentioned on the contract was the end of November 2004, which was four to five months after the supposed start of work.
- In four other cases, the following issues relating to the justification of the service provider's fees were noted:
 - . €44 223 were paid to an association for secretarial, press and research services (no precise deliverables) lasting from mid-November to end of December 2004 only. There appears to be a mismatch between these fees and the work foreseen.
 - . An additional year-end payment of €30 238 was made to an individual service provider. This amount represented almost six times his normal monthly fee. DG Finance tried to get from the Member additional explanation prior to making the payment but that request remained unanswered.
 - . Two one-off end-of-year payment of €28 838 and €12 390 were made on the basis of an invoice and a receipt slip, respectively. No contract for the provision of services was submitted, which is an infringement of the version of the PEAM rules applicable when these payments were made¹⁹.

Implications

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.

Lack of assurance that the one-off payments from the parliamentary assistance allowance are wholly, exclusively and necessarily justified by the provision of parliamentary assistance.

One-off payments made to assistants who are employees of the Member:

- without social security deductions, or,
- on a bank account outside the assistant's country of work and residence,

increase the risk of non-compliance with the relevant national legislation on social security and taxation.

¹⁹ The current version of the PEAM rules (Article 14.7) foresees, by way of exception to paragraph 14.2.a. and to the first indent of paragraph 14.3, that "...invoices or fee statements for occasional research, assistance, documentation or consultancy work connected with a Member's official duties may be reimbursed without submission of a copy of a written contract." Only the payment based on a receipt slip would not have complied with this version of the rules.

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

Action Plans

B-4.1 Pending the implementation of action plans C-4.1 and B-2.2, DG Finance should 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. These provisions should ensure that "one-off" payments are only accepted if there is reasonable assurance that these comply with the provisions of the Financial Regulation (Article 27) on the use of budget appropriations in accordance with the principle of sound financial management. This means in particular that:

- Each application for a "one-off" payment should be supported by:
 - . A detailed explanation covering, in particular, the nature of the related assistance tasks performed.
 - . A justification of the amount. This justification should, in the case of a bonus payment to an employed assistant, also establish its reasonableness compared to the regular salary. (Any bonus exceeding one month's salary would be unlikely to be compliant with the principle of sound financial management.)
- After the Member's term of office ends, only the "lay-off" payments foreseen in Article 15 of the PEAM rules should be payable from the parliamentary assistance allowance for an amount equivalent to the normal contractual remuneration of the employed assistant (unless, as foreseen in the PEAM rules, the Member is legally bound under the relevant employment legislation to pay supplementary expenses).
- "One-off" payments which constitute an additional remuneration of employed assistants ought to be the subject of social security deductions and employers' contribution in the same way as the normal monthly salary payments.

"One-off" payments should be made on the same bank account as the regular payments (see also action plan C-1.3).

(The Authorising Officer by Delegation shares the concern of ensuring at all time compliance with the Financial Regulation. However, he considers that the latter's provisions on sound financial management do not provide a sufficient legal basis for setting a limit to "one-off" payments or for applying restrictions that go beyond the PEAM rules. Nevertheless he concurs with the need to adopt guidelines on the issue of remuneration. As it considers that a change to the new framework for the PEAM Rules in this domain is necessary to ensure compliance with Article 27 of the Financial Regulation, Internal Audit maintains the proposed action.)

B-4.2 As foreseen in action plan B-2.2, a framework setting out the financial conditions for the employment of assistants and aimed at appropriate and consistent levels of remuneration needs to be established. In a first phase, it is proposed in action plan B-2.2, that these financial conditions could be based on the conditions of employment for contract staff of the European Communities. To be consistent with the conditions applicable to staff of the European Communities (which would apply in a second, later phase) and to provide assurance of compliance with the principle of sound financial management, the framework of financial conditions for the employment of assistants should restrict the reimbursement of "one-off" payments to employed assistants to duly supported cases. Admissible payments could include the reimbursement of travel and subsistence expenses that are eligible under the PEAM rules or payments that 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 such requests for "one-off" payments.)

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*".

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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-1.2

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".

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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)."

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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.

Insufficient 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.

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

Action Plan

C-4.1 The inherent requirements of parliamentary assistance include the ability of the assistant to respond on a day-to-day basis to the Member's needs and therefore work under his direct authority. This chain of authority is, under labour law, a fundamental characteristic of an employment relationship between the Member and the assistant. Parliamentary assistants should therefore, as a rule, be contracted as employees. In a first step, (see action plan B-2.2), the employment contracts would continue to be ruled by national law. In a second step (see action plan A-3), the employment of parliamentary assistants could be ruled by the conditions of employment that apply to other servants engaged under contract by the European Communities.

As a result, contracts with service providers should only be used in the following two situations:

- To contract the services of paying agents who are entrusted with the administrative management of the employed assistant's contract.
- To cover the purchase of specific services under short-term contracts. This would, for example, be the case for a study requiring specific expertise that the Members' assistants do not possess. Such contracts would need to define the precise deliverables to be provided and payment would take place on submission of those deliverables.

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 this principle.

(The Authorising Officer by Delegation confirmed his agreement in principle with Internal Audit's proposal. He also indicated that, as the Members' Statute Working Party is currently examining a number of proposals in relation to the status and the working conditions of Members' assistants, he considers it appropriate to wait for the outcome of that work which could reflect the same concerns.)

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

C-5 PREVENTING THE RISK OF MAKING INELIGIBLE ALLOWANCE PAYMENTS

Findings and Issues

The risk that payments made are not wholly, exclusively and necessarily incurred for the purpose of parliamentary assistance could increase if there is a potential conflict of interest³⁹ arising from the relationship between the Member and the contracted assistance provider. This risk becomes particularly relevant if other issues arise simultaneously as, for example, the lack of precision in the definition of the assistance work to be performed (see also findings reported under point B-1) or the relative completeness of a Member's declaration of financial interests (including the lack of such a published declaration as was noticed on Europarl in 5% of the audited cases).

The following issues identified in the audit sample illustrate the risk of conflict of interest:

- In one case, it could be established that the legal entity contracted for the provision of parliamentary assistance belonged to the (former) Member.
This case presented such a high conjunction of serious issues,⁴⁰ that Internal Audit advised the Authorising Officer by Delegation to refer the case to OLAF. The Authorising Officer by Delegation agreed and duly sent the case to OLAF, which is still investigating the matter.
- Another Member concluded two contracts for the provision of services with two individuals. The contractual definition of the tasks was very vague and there was no evidence of the self-employed status of the individuals. The audit showed that the Member was a director in an investment consulting company and that the two contracted individuals are senior managers in that same company.
- Another Member concluded a contract for the provision of services with an individual whose name is identical to that of his wife. The Member's curriculum vitae mentions his wife's professional activity: it is not one of a self-employed service provider.
- In three cases, it was noted that payments to the assistance providers were made, as per the contract, on bank accounts that were also found to be registered (or to have been registered) in the CID application of DG Finance as belonging to the contracting Member.

For six payments in the audit sample, the contractors were national political parties and for another 41 payments, links were found between the contractors and the national political parties. This is not forbidden by the PEAM rules (the only restriction that the rules foresee applies to political groups in the Parliament, which can only act as a paying agent).

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³⁹ Article 52.2 of the Financial Regulation defines the conflict of interest as a situation "...where the impartial and objective exercise of functions is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary."

⁴⁰ Transfer of the entire allowance to a company which, on the basis of available annual accounts, does not appear to conduct regular business, is wholly owned by the Member, established in another country than his place of residence and not mentioned in his declaration of financial interests.

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

Findings and Issues (continued)

However, certain audit findings reduce the assurance that such payments always cover costs which are wholly, exclusively and necessarily incurred for the purpose of parliamentary assistance. The following was noted:

- Political bodies contracted as service providers received from several Members identical monthly payments, which presented characteristics of a flat-rate contribution to the political body rather than being the remuneration for specific parliamentary assistance provided to the individual Member. The following examples illustrate this issue:
 - . All the Members of one national political party have requested an identical amount to be paid monthly to an association linked to that party.

According to the available documentation, these payments are based on contracts in which the description of tasks is one of a paying agent for employed assistants and which foresee that received amounts are to be managed on a trust basis. But for the two corresponding payments included in the audit sample, no link could be established with the employment of assistants. Moreover, minutes of a members' assembly of the association indicate that the payments from the parliamentary assistance allowance cover in fact a membership fee to the association and finance its running costs.
 - . Two payments of the full monthly assistance allowance (€12 576) were made on behalf of two Members to a political body. The two corresponding contracts for the provision of services foresee that the assistance tasks are to be performed by staff put at the disposal of the Member.
- It was found in the audit population that the full monthly allowances of 21 Members from the same national political party are paid to that political body. However, whereas the contractual fee was identical, the number of accredited assistants put at the disposal of each Member by the service provider in return for that fee differs significantly: two Members had three such assistants, ten Members two assistants and nine Members only one.
- Service providers who are not political bodies can have links to political parties. Following are examples of such cases:
 - . In one case, a contract for the provision of services was concluded with an association for the purpose of "managing and writing an Internet site" (without mentioning explicitly that it would be the Member's Internet site). That association had been created three months earlier to promote the opinions of a national political movement through the Internet.

No Internet site of the former Member (who was not re-elected under the sixth term) could be identified. But it was found that the national political movement had set-up such an Internet site which it ran until November 2005 (since closed).
(Following the query, DG Finance indicated that Members who conclude contracts relating to the Internet are now required to sign a declaration that the services are intended solely as an aid to their parliamentary mandate and that they will not be used for the benefit of the political group or party to which the Member belongs, or for election campaigning at either national or European level.)
 - . In two cases, contracts for the provision of services (with a weak definition of tasks) were concluded with individuals for whom there was no evidence of an activity as a professional service provider. But these people were found to be, respectively, a regional representative and a regional politician of the Member's political party.

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

Implications

Reduced assurance that the parliamentary assistance allowance is only used to cover costs which are wholly, exclusively and necessarily incurred for the purpose of parliamentary assistance.

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.

Associated legal, financial and reputational risks.

Action Plans

Several action plans which have been developed to address other issues identified in this audit report also contribute to preventing situations of conflict of interest. This is in particular the case for the following action plans:

- A-3 which aims at a genuine simplification and rationalisation of the parliamentary assistance's administrative management through the employment of parliamentary assistants under the conditions of employment that apply to other servants engaged under contract by the European Communities.
- B-1.1 which relates to the provision of adequate detail in the contractual definition of tasks to be performed.
- C-4.1 which foresees restrictions on the use of contracts for the provision of services, parliamentary assistants having, as a rule, to be contracted as employees.
- C-1.1 and C-1.2 which cover the measures required to get reasonable assurance that the contracted service providers comply, for their activity, with applicable law.

Action plans A-3 and C-4.1 also imply that the scope for concluding service contracts with political bodies should be restricted in the future.

Taken together, these action plans would be sufficient to address the issues relating to potential conflicts of interest and to the contracting of political bodies identified in the present audit report. No additional specific action is therefore proposed.

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

**D. PARLIAMENTARY ASSISTANCE PROVIDED UNDER A
CONTRACT FOR EMPLOYMENT**

D-1. OBTAINING EVIDENCE OF EMPLOYED ASSISTANTS' SOCIAL SECURITY COVER

Findings & Issues

Article 14.5 of the PEAM Rules sets out the documentary evidence that must be provided to prove that employed assistants are covered for social security⁴¹:

- *"The employment contract must include the following details:...*
 - *social security scheme of which the assistant is a member*
- *Within three months of the assistant taking up his or her duties, the Member shall forward to the management service a certificate of the assistant's membership of a social security scheme and, where the national law applicable so provides, a certificate of insurance covering accidents at work, failing which payments relating to the assistant concerned shall be suspended."*

When the employment contract is managed through a paying agent, Article 14.5(e) of the PEAM rules foresees, in addition, that the paying agent has to forward at least annually⁴² to the Member statements which include expenditure incurred in respect of social security contributions.

Similar provisions to those for employed assistants apply under the PEAM rules (Article 14.6(c)) where a service provider places human resources at the disposal of a Member for a period exceeding six months. In such a case *"the relevant invoices or fee statements shall be accompanied by statements certifying that the staff concerned are duly affiliated to a social security scheme and that tax and social security contributions have been duly paid"*.

On 03/07/2006, the Bureau decided 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"*.

The audited sample of employment contracts gave rise to the following findings:

- Whereas, for 58 contracts for the employment of assistants, more than 2 years had elapsed between the conclusion of the contracts and the drafting of the present audit report, in 15⁴³ (26%) of these cases, no certificate of the assistant's membership of a social security scheme had been submitted as of January 2007 (when the situation was reviewed by Internal Audit). DG Finance explained that, because the PEAM rules do not specify who should establish that certificate and what form it should take, the managing services accept other documents as proof of the assistants' membership in a social security scheme, such as salary slips mentioning a social security registration number or declarations of registration with social security established by the employer.

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⁴¹ The rules that were applicable when the audited payments were made foresaw:

- *"The application [for the parliamentary assistance allowance] must specify the social security scheme of which the assistant is a member. No payment shall be made unless the application is accompanied by a copy of the official declaration made to the national body responsible and by a certificate of insurance covering accidents at work.*
- *"A certificate of the assistant's membership of a social security scheme must be submitted to the management services no later than 12 months following the conclusion of the contracts failing which the procedure for reimbursing the Member for his parliamentary assistance expenses shall be suspended."*

⁴² Before the Bureau decision PE 352.406 of 13/12/2004 amending the PEAM rules, the requirement was for a submission twice a year.

⁴³ It is acknowledged that, for one of those cases, the Member held office for less than three months and that, for another case, management obtained the relevant documentation in August 2007.

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

Findings & Issues (continued)

Following a review of those cases, Internal Audit is of the opinion that such documents do not have the same evidential value as a certificate established by the social security body and should therefore not be considered to constitute a certificate of the assistant's membership in a social security scheme as foreseen in the PEAM rules.

In the case of the paying agent contracts, statements of expenditure showing also payments made for social security had not been provided in 36 cases (64 % of the audited cases) as of January 2007.

As regards service providers placing human resources at the disposal of a Member, 22 cases (relating to the 6th Term) were identified in the audit sample, for which it could be concluded that the accredited assistants were put at the Member's disposal by the contracted service providers concerned, as these were paid the full parliamentary assistance allowance. However, in 11 of those cases (50%), the statements certifying that the staff concerned were duly affiliated to a social security scheme, and that tax and social security contributions had been duly paid, had not been provided as of January 2007.

Implications

Risk that the Members do not comply with the relevant national legislation on social security applicable to the employment of staff.

Associated legal, financial and reputational risks.

Action Plans

D-1.1 DG Finance should review all cases of employed assistants in order to ascertain that a certificate of the employed assistants' membership in a social security scheme have been provided for all employment contracts concluded at least three months previously.

Where the required supporting documentation has not been made available, Members should be asked to provide it within two months of the corresponding notification at the latest.

Where Members fail to comply with that request in respect of a contract concluded at least three months before, the procedure for suspending reimbursement of parliamentary assistance expenses (see Article 27.4 of the PEAM rules) should be initiated by the Authorising Officer by Delegation.

(See also action plans D-2.1 to D-2.2 relating to the legality of the social security coverage.)

(DG Finance indicated that there are well established procedures to identify contracts for which the evidential requirements on social security have not been complied with. In such cases, Members are requested by formal letter to provide this evidence. It is DG Finance's view that there are currently very few isolated cases of Members who have not yet provided the required documents. For those cases, DG Finance indicated that, should the situation remain unchanged, suspension procedures would be launched. See also the observations after D-1.2 below, which describe the differing interpretations of DG Finance and Internal Audit as to what constitutes sufficient evidence.)

(continued)

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

Action Plans (continued)

D-1.2 DG Finance should put in place internal management and control procedures which provide assurance that:

- Applications for the reimbursement of parliamentary assistance expenses relating to the employment of assistants are not accepted if they are not accompanied by a contract that specifies the social security scheme of which the assistant is a member and by a certificate of insurance covering accidents at work.
- The provision of a certificate of the assistant's membership in a social security scheme that has been established by the responsible social security body, no later than three months following the conclusion of the contract, constitutes the general rule. This should include the sending of reminders to the Members who have not complied with that obligation, preferably before the three months have elapsed.

(DG Finance indicated that Article 14.5. of the PEAM rules only mentions that "...the Member shall forward to the management service... a certificate of the assistant's membership of a social security scheme...", without specifying who should establish that certificate and what form it should have. DG Finance explained that its established practice is to accept as proof of assistants' social security coverage documents such as salary slips, provided the name of the assistant and his/her registration number with a social security scheme are indicated. It is DG Finance's view that these kinds of documents provide sufficient evidence of the assistant's social security coverage. DG Finance has also drawn attention to the different situations on social security that can apply in the Members States and to the fact that, in some cases, certificates are delivered too late.)

Internal Audit does not share the view that the provision of a certificate established by the social security body would imply too much bureaucracy for the Member. Social security bodies provide a certificate of coverage to their affiliates. In practice, the assistant just has to provide a copy of the certificate he has either received automatically or requested. Internal Audit considers that the acceptance of such evidence as a salary slip does not meet the PEAM requirements or provide conclusive proof of affiliation. In particular, for the majority of the assistants who work in Brussels (and for whom Belgian social security cover would be required - see Section D-2), provision of such a certificate should not be a problem. However, Internal Audit agrees that, if the timely provision of such a certificate presents, in certain Member States, a genuine problem, alternative interim means of proof could be considered pending the establishment of the certificate by the social security body and its presentation by the assistant.

Action plans C-2.1 to C-2.3 and E-1.1 to E-1.3 address the issues arising from the failure to submit the supporting documents required by the PEAM rules, both for service providers placing human resources at the disposal of a Member and for paying agents.

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

D-2 ENSURING THAT EMPLOYED ASSISTANTS' SOCIAL SECURITY COVERAGE COMPLIES WITH COMMUNITY LEGISLATION

Findings & Issues

Council Regulations (EEC) No 1408/71⁴⁴ and 574/72⁴⁵ define the fundamental principles underlying the application of social security schemes to employed (and self-employed) persons including, in particular, the legislation applicable. Provisions which appear to be particularly relevant for assistants' employment contracts can be summarised as follows:

- The general principle is that a worker shall be subject to the social legislation of a single Member State. As a rule, this is the legislation of the Member State in the territory of which he is employed (place of work). This remains the case even if the worker resides in the territory of another Member State.
- A person normally employed in the territory of two or more Member States shall be subject to the legislation of the Member State in whose territory he resides, if he pursues his activity partly in that territory.
- Special rules may apply to temporary assignments abroad if these are for less than twelve months only. (Under exceptional circumstances this duration can extend to up to 24 months, but this requires the consent of the competent authority of the State in whose territory the worker is posted.)

In 15 of the cases of employed assistants in the audit sample, at the time these were audited, no information at all was available about the social security cover (see findings under point D-1). However, for the cases where such information was available, the audit of employment contracts showed 15 cases which, based on the available information, did not appear to comply with the rules relating to the social legislation⁴⁶. The following issues were identified:

- An employed assistant who is resident in Brussels and whose usual contractual workplaces are Brussels and Strasbourg was covered by social security in another country (the home country of the Member employing the assistant). This does not appear to comply with applicable legislation: residence and workplace in Brussels would require Belgian social security cover.
- In 14 cases, the assistant's employment contract mentioned that the tasks would be performed in the Parliament's places of work, whereas the employee's residence was indicated to be in another Member State. The social security cover was in the country of residence. As the contracts were of unlimited duration, social security cover in an (alleged) country of residence different from the country of work does not appear to comply with applicable legislation: work in Brussels (with temporary presence in Strasbourg) would require Belgian social security cover.

⁴⁴ Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community

⁴⁵ Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71

⁴⁶ The CODEX for parliamentary assistants in the European Parliament adopted by the Bureau on 25/09/2006 acknowledges the existence of an issue as regards determination of the applicable social security scheme legislation. It draws attention to a proposed amendment of Regulation (EEC) No 1408/71 which would allow parliamentary assistants to exercise a right of option on the social security system to be applied to them. This amendment has not yet been adopted by the Council and the Parliament.

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

Implications

Risk that the Members would not comply with the relevant national legislation on social security applicable to the employment of staff.

Associated legal, financial and reputational risks.

Action Plans

D-2.1 DG Finance should provide guidance to Members on the determination of the legislation applicable to employed assistants' social security coverage.

(DG Finance indicated that a guidance note on social security obligations has recently been prepared in cooperation with the relevant department of the Belgian government. The opinion of Parliament's Legal Service will be obtained before it is transmitted to Members and their assistants.)

D-2.2 DG Finance should submit, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, a proposal for the PEAM rules to confirm that, for new applications for the reimbursement of parliamentary assistance expenses relating to the employment of an assistant, DG Finance needs to ensure that the correct national social security scheme has been selected (based on the mandatory official declaration made to the national body responsible). If this is not the case, DG Finance should draw the Member's attention to the issue, provide specific guidance and insist on a declaration being made to the correct national body (which could include the granting of an exception to the standard rules by the competent authority). Applications for the reimbursement of parliamentary assistance expenses should only be accepted if the application for social security coverage has been made under the correct legislation applicable.

(It is the Authorising Officer by Delegation's view that a wide consultation must be sought on this important matter before putting forward specific proposals. As a first step, he considers that the issue should be submitted 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.)

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

D-3 ENSURING THE CONSISTENT AND TRANSPARENT APPLICATION OF THE PEAM RULES ON TRAVEL AND SUBSISTENCE COSTS

Findings & Issues

15 of the audited employment contracts foresee the reimbursement of assistant's travel and/or subsistence costs.

Four payments in the audit sample specifically covered the reimbursement of costs incurred by employed assistants. One was for removal expenses and the three others were for travel costs.

Article 14.5. (d) of the PEAM rules confirms that assistants' travel and subsistence costs are eligible expenditure. Article 14.5. (d) also specifies that such expenditure may only be reimbursed to the Member "on production of original, duly receipted supporting documents". However, no further guidance is provided by the rules as to the principles governing the payment of such costs and the nature of the supporting documents to be provided when such payments are made directly to the assistant.

The audit gave rise to the following findings:

- Seven of the audited employment contracts foresee that the monthly payment of travel costs is made on a flat rate basis without a requirement to submit supporting documents. It was found that supporting documentation confirming at least formally that corresponding travel had actually taken place was not available to DG Finance.
- The amount of contractual monthly flat rates covering reimbursements of travel costs was found to be variable, ranging from €350 to €2 200. Such differences may partly be explained by the number and nature of journeys made. However, it was also found that the methods applied to define the amount of the flat rate payment are specific to each contract (for example: amount per km, national scale, daily rate). In four of the cases, no explanation of the basis for calculation was provided.
- In one case, the amount of the contractual travel and subsistence costs payment was found to be three times higher than the salary of the assistant.
- As regards the reimbursement of the assistants' removal costs, it is not evident from the PEAM rules that these constitute eligible expenditure.

Implications

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 of treatment between parliamentary assistants.

Risk of allowing the legislation on social security and taxation to be circumvented, if high travel costs paid on a flat rate basis cover in reality a portion of the parliamentary assistant's remuneration.

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

Action Plans

D-3.1 The provisions of the PEAM rules should ensure that:

- there is reasonable assurance that payments for assistant's travel and subsistence costs foreseen in contracts cover travel that has actually taken place and are in line with real costs incurred;
- travel costs are reimbursed under the parliamentary assistance allowance on a consistent basis.

To this effect, the rules should specify the conditions for the reimbursement of travel costs (other than the one already foreseen under Article 15.5 for the twice-annual home return of assistants) and subsistence costs. They should include the maximum level of reimbursement and the supporting documents to be presented. The reimbursement of travel expenses should be made on the production of supporting documents (as is already the case in Article 14.5.(d) for the reimbursement of such expenses to Members). Parliamentary assistance contracts that provide for the periodic (for example monthly) payment of travel costs on a flat rate basis without the need to provide any supporting documents should not be allowed.

These rules could be established by analogy to the rules foreseen in the Staff Regulations.

This approach would be consistent with the action plan A-3 which aims at having the employment of parliamentary assistants ruled by the conditions of employment that apply to other servants engaged under contract by the European Communities. As is also the case under the Staff Regulations, this approach would not exclude the reimbursements of certain expenses on a lump sum basis. However, in such a case, DG Finance should at least be provided with confirmation that travel has actually taken place.

D-3.2 One purpose of the provision of travel supporting documents (tickets) is to provide evidence that the travel has actually taken place. When travel takes place by car, supporting documents evidencing the travel should consist either of a corresponding hotel invoice showing the dates of stay, or, if not available, the assistant should be required to provide a formal confirmation by the contracting Member that the travel has taken place as declared.

D-3.3 The PEAM rules should be amended to clarify the nature of miscellaneous expenses of parliamentary assistants (as, for example, removal expenditure) that are eligible for reimbursement and which provisions apply to such reimbursements. This clarification could either take the form of a restrictive list of expenses or provide the criteria which expenses have to fulfil to be eligible.

(For the three actions D-3.1 - D-3.3, the Authorising Officer by Delegation considers that, as the underlying issues affect directly the working conditions and terms of remuneration of assistants, the proposals should first be submitted for consultation between the members of the Bureau responsible for matters relating to assistants and the elected representatives of the assistants within the terms of the social dialogue in accordance with 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

**E. PAYING AGENTS CONTRACTED TO HANDLE THE
ADMINISTRATIVE MANAGEMENT OF ASSISTANTS'
EMPLOYMENT CONTRACTS**

E-1 SUBMISSION OF STATEMENTS OF EXPENDITURE INCURRED BY PAYING AGENTS

Findings & Issues

As regards expenditure incurred by paying agents in relation to assistants' employment contracts (payment of salaries, social security, etc.), the PEAM rules that were initially applicable when the audited payments took place laid down that a statement of expenditure would have to be provided by the paying agent twice a year. The audit showed that none of the contracts in the audit sample complied with this initial requirement. Following the Bureau decision of 13/12/2004, this periodicity was then extended to once a year (see also point 2.9 of the Report to Management for further details on the successive extensions of deadlines).

The audit sample included 56 paying agent contracts for which a first payment had been made at least twelve months previously (46 of these related to the parliamentary assistance allowance of Members elected under the 6th Term and 10 were "lay-off" payments to paying agents of Members who were not re-elected). As of January 2007, out of these 56 cases, the regulatory requirement for the submission of a statement of expenditure has not been complied with in 36 cases. (Of those 36 cases, 27 related to the allowance of Members elected under the 6th Term and 9 to "lay-off" payments.)

DG Finance's position, which was expressed in its reply to the first draft of this audit report, is that:

- as the deadline to present the statements of expenditure by the paying agents was modified several times by the Bureau and the Quaestors in 2005 and 2006;
- as the Bureau decided at its meeting of 13/12/2006 to amend the PEAM rules to the effect that the requirements concerning the supporting documents which need to be submitted by Members have changed;
- as, according to DG Finance, a majority of Members had already introduced documents for 2004 and 2005;

it was clear from the debate of the Quaestors' meeting of 13/12/2006 that no further action should be taken in relation to the documents that had to be submitted for the years 2004 and 2005.

Internal Audit notes, however, that:

- the requirement for the paying agent to provide a statement of expenditure at least once a year and of the transmission of a copy thereof to DG Finance has remained unchanged in the latest version of the PEAM rules (Article 14.5);
- as the audit shows (see above), a substantial proportion of the payments made to paying agents at least twelve months ago is not supported by statements of expenditure and does therefore not comply with the PEAM rules.

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 statements of expenditure incurred by paying agents (Article 14.5).

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 due to:

- the lack of assurance regarding the entitlement of the paying agent to the pre-financing payments received because the absence of statements of expenditure prevents reconciliation between the sums received and the expenditure incurred by the paying agent;
- the associated risk of undue payments.

Action plans

E-1.1 DG Finance should draw up a record of all contracts with paying agents where transfers of funds to be managed on behalf of the Members made have not been regularised by the submission of statements of expenditure drawn up in accordance with the provisions of Article 14.5 of the PEAM rules as last amended by the Bureau decision of 13/12/2006.

This list would form the basis for the proposal of 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 statements of expenditure should be provided to DG Finance within two months (if required, after having requested them from the paying agents).

E-1.2 The proposal for a decision mentioned under action plan E-1.1 should confirm that, after expiry of the deadline set and pending submission of the required statements of expenditure, DG Finance should suspend all transfers of funds (including the payment of fees) to the paying agent.

E-1.3 The proposal for the decision should also confirm that, if the required statements of expenditure are not submitted within a month of that deadline, DG Finance should:

- Initiate the procedure to recover the amounts that have not been regularised.
- Invite the Member to cancel the contract with the paying agent and conclude a contract with a new paying agent to ensure that all obligations relating to the payment of the remuneration, social security and taxes for the employment contract(s) concluded by the Member are complied with.

(For actions E-1.1, E-1.2 and E-1.3, DG Finance indicated that similar proposals are included in the draft of the implementing measures for the Members' Statute that have been submitted to the Working Party.)

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

**E-2 ESTABLISHING TRANSPARENT AND SECURE ARRANGEMENTS FOR THE
MANAGEMENT OF ASSISTANTS' EMPLOYMENT CONTRACTS**

Findings & Issues

Paying agent contracts:

Allowance payments to paying agents are based on estimates of the funds required for the administrative management of one or more employment contracts concluded by the Member. A major internal control objective is to obtain assurance that the amounts of these payments to paying agents are wholly, necessarily and exclusively justified by the management of identified parliamentary assistants' employment contracts. One condition for the achievement of this control objective is the provision, with paying agent contracts, of all the details required to reconcile the amounts transferred to the paying agent with the remuneration foreseen in the managed employment contracts.

The (non-compulsory) model paying agent contract provided by the Parliament contains requirements that contribute to that objective:

- the indication of the name(s) of the assistant(s) whose employment contract is managed by the paying agent, and,
- the provision, in an annex to the paying agent contract, of a copy of the managed employment contract.

However, other characteristics of the model contracts applicable during the audited period did not facilitate transparency. For example, the standard text provided for the paying agent's own fee to be mentioned, but not the amount of funds managed on behalf of the Member.⁴⁷ Moreover, where the model contract was used, several of its provisions were simply left blank in the signed version.

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

- The assistants whose employment contract were to be managed by the paying agent were not named in the paying agent contract in 14 cases, representing 28% of the cases for which such contracts were available. The corresponding field was left blank, and the contract included only a general reference to the assistants' contracts concluded by the Member. This does not facilitate transparency and provides insufficient assurance that the amounts transferred on a provisional basis to the paying agent can be reconciled with the remuneration of the employed assistants. (Internal Audit notes that DG Finance accepts such cases as being in line with the minimum legal requirements.)
- In 13 cases, the contract did not specify to which period the stated fee related (monthly, yearly, etc.).

⁴⁷ This has since been improved in new versions of model contracts.

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

Findings & Issues (continued)

- The sums transferred to paying agents usually agreed to the corresponding allowance application form. However, reconciliation between these transfers of funds and the salary foreseen in the managed employment contract(s) cannot be done systematically. Most frequently, the difference between the amounts is likely to have its origin in the additional employer's on-costs for social security. However, neither adequate explanations nor supporting documentation were provided for this in 42 cases (75%) of the audited paying agent contracts (see also findings under point E-1).

Contracts for the provision of services:

Although apparently not in breach of the PEAM rules, additional issues of transparency can arise when services contracted in relation to the employment of assistants not only cover paying agent tasks but also the conclusion of the employment contracts by service providers on behalf of the Member.

For eight cases in the audit sample, this appeared to be the purpose of the contract for the provision of services.

With one exception, none of these contracts for the provision of services specified the number of staff employed to assist the Member.

In general (2 exceptions were found), they did not distinguish between the sums to be used to remunerate the staff employed to assist the Member and the service provider's own fee.

(See also findings relating to contracts for the provision of services under point B-2 "Ensuring that levels of remuneration are proportionate to the tasks performed".)

Implications

Lack of assurance that the parliamentary assistance allowance is only used to cover costs which are wholly, exclusively and necessarily incurred for the purpose of parliamentary assistance.

Legal insecurity as regards the fees to which paying agents are entitled.

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.

Action plans

E-2.1 The present action plan covers specific action required to ensure that contracts with paying agents include all the details needed to reconcile the amounts transferred on a provisional basis to the paying agent with the remuneration foreseen in the managed employment contracts. To provide reasonable assurance of the justification for pre-financing payments to paying agents before they are made, this reconciliation has to be possible at the time of concluding the paying agent contract (notwithstanding the later submission of statements of expenditure by paying agents).

To this effect, DG Finance should submit, for discussion in the Members' Statute Working Party and for subsequent submission to the Bureau for adoption, a proposal for the CODEX to foresee that any new contract and any amendment to an existing contract with a paying agent need to comply with the following requirements:

- The assistants whose contracts are managed by the paying agent have explicitly to be identified and the period covered by their employment contract mentioned in the body of the contract. General references to "all assistant contracts concluded by the Member" or to employment contracts provided in annex do not provide sufficient transparency and are therefore not acceptable.

(continued)

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

Action plans (continued)

- There needs to be a clear contractual distinction between the paying agent's fee and the funds managed by the paying agent on behalf of the Member.
- The calculations on which the transfer of funds to paying agents is based need to be formalised for each managed employment contract in annexes to the paying agent contract. These annexes should preferably be based on a template provided by DG Finance.
- Changes to the contractual amounts to be transferred to paying agents need to be formalised.

DG Finance should provide corresponding updated templates of paying agent contracts.

As foreseen under action plan A-2, in order to provide assurance that paying agent contracts comply, in the future, with all the mentioned requirements, the use of these templates should be made mandatory. To accommodate specific provisions which Members might want to include, these templates could include an optional article "special conditions". Such special conditions should not, however, be in conflict with the contract's standard clauses.

DG Finance should reject contracts which do not comply with the requirements.

(The Authorising Officer by Delegation indicated that the required details are already being requested on the basis of an established procedure and that he has suggested additional specific provisions to this end in the framework of the work of the Members' Statute Working Party.)

As regards the issues linked to service contracts covering the conclusion of the assistants' employment contracts by service providers on behalf of the Member, see action plans A-3 and B-2.2 which foresee that such contracts should no longer be concluded under the amended PEAM rules.

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

E-3 FURTHER IMPROVING EXISTING GOOD PRACTICES FOR SPECIFIC CATEGORIES OF PAYING AGENTS

Findings & Issues

Some 30% of the German Members of the European Parliament use the administration of the "Deutscher Bundestag"⁴⁸ as a paying agent.

Approximately 8% of all the Members of the European Parliament use the paying agent service provided by so-called "Secrétariats sociaux agréés" for assistants' employment contracts concluded under Belgian law.

The audit findings relating to the use of both types of paying agents are positive: arrangements were found to provide a level of transparency and assurance as regards the use of the parliamentary assistance allowance that is considerably above that found in other contracts in the audit sample. The following aspects are noteworthy:

- By law, the administration of the Bundestag provides the paying agent service for assistants of the Members of the Bundestag. This service is also available to German Members of the European Parliament for their assistants employed under German law.
A good practice of the administration of the Bundestag is that it systematically provides a detailed calculation of the employee's deductions and employer's on-costs. This calculation constitutes, for the Member, a clear basis for concluding the employment contract and completing the allowance application form and for DG Finance to make payments. It allows the reconciliation of the transfer of funds to the administration of the Bundestag acting as paying agent with the salary foreseen in the managed employment contract (in contrast to paying agents where no such calculation is provided, see findings under point E-2). In addition, the paying agent services provided by the administration of the Bundestag to the Members are free.
- Similar advantages were noted in the case of paying agent services provided by so-called "Secrétariat sociaux agréés" for employment contracts concluded under Belgian law.
These organisations are officially approved by the Belgian Social Security (ONSS) and perform, for employers, the formalities required by the social legislation. They provide detailed calculations of social security contributions which allow the reconciliation between transfers to the "Secrétariat social" and the salary foreseen in the managed employment contract. The fee claimed appears to be modest (see also findings reported under point B-2).

Two issues were nevertheless identified which, if addressed, would even further improve these arrangements:

- Both in the case of the Bundestag and of the "Secrétariats sociaux agréés", the contractual paying agent arrangements do not appear to have been formalised in accordance with the PEAM rules (Article 14.5.e). These foresee that parliamentary assistance allowance payments may be made to a paying agent "At the Member's request and on submission of a copy of the contract concluded with the paying agent".
For the 12 allowance payments made to these paying agents which were included in the audit sample, such a contract was not available.
- Calculation sheets provided by the "Secrétariats sociaux agréés" did not always name the employed assistant to whom they were supposed to relate.

⁴⁸ The German Federal Parliament.

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

Implications

Formal breach of Article 14.5.e of the PEAM rules which requires the submission of the contract with the paying agent prior to corresponding allowance payments being made.

Associated potential legal insecurity as regards the obligations of the paying agents.

Action plans

E-3.1 DG Finance should establish in co-operation with the Members and, if appropriate, through direct contact with the "Secrétariat social agréé", a comprehensive record of the contractual documentation that governs the legal relationship with these categories of paying agents.

(The Authorising Officer by Delegation confirmed his positive view of this action. Due regard being given to the management service's prioritisation of tasks and assuming the cooperation of the Members concerned, a comprehensive record of the contractual documentation governing the legal relationship with the different "secrétariats sociaux" used by Members will begin to be established.)

E-3.2 DG Finance should draw the attention of the Members to the fact that the calculation sheets provided by the "Secrétariats sociaux agréés" should always name the employed assistant to whom they relate.

(The Authorising Officer by Delegation confirmed his positive view of this action. He will examine the feasibility of holding discussions with Members and staff of the "secrétariats sociaux agréés" in order to work collectively on this matter.)

E-3.3 Considering the specific legal framework of the services provided by the administration of the Bundestag, the use of a standard paying agent contract is unlikely to constitute an appropriate means to formalise the contractual relationship between the administration of the Bundestag and the individual Members. DG Finance should therefore conclude with the administration of the Bundestag a framework agreement which would formalise the principles governing its intervention as a paying agent. This agreement should:

- Confirm the general principles that apply to the paying agent services provided by the administration of the Bundestag for all German Members of the European Parliament (nature, extent).
- Define the supporting documentation that the administration of the Bundestag will furnish in respect of services provided and payments made, both to the Member concerned and to DG Finance.
- Agree the conditions governing (i) the pre-financing payments made to the administration of the Bundestag, (ii) the regularisation of these pre-financing payments and (iii) the reimbursement of any amounts received in excess.

(The Authorising Officer by Delegation indicated that the management service had a meeting with the Bundestag in 1999 where its representatives expressed opposition to the prospect of contracts with either the German Members or the European Parliament. However, the Authorising Officer by Delegation also confirmed that he will contact the Bundestag to examine a possible change in its position.)