

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.)

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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 Member 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.)

2

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)

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 A-2 which foresee that such contracts should no longer be concluded under the amended SM rules.

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

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 the 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 RAM 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.a 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

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.)

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.)

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.)