

Internal Audit Service
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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. D (9)
- 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. (7)
- 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).
- Action Plan*

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6. Parliamentary assistance provided under a contract of employment

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.
- Action plan*
- 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.

⁹ The 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.

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(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.

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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.

action plan

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.)

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7. Paying agents contracted to handle the administrative management of assistants' employment contracts

- 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.

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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.
- Plan* 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.)

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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.)

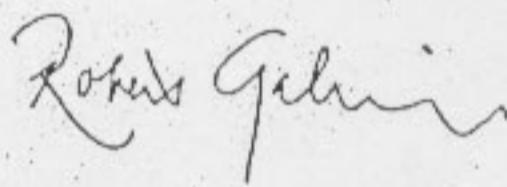
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8. Conclusion

- 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 réquisite 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. 14
- 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.)

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- 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.



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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).

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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).

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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.

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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

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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.

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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.

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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 (know 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

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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.)

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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.)

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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.)

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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.

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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.)

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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.

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