



Audit conclusion from audit no.

14/20

State funds spent on development, operation and using of data centres services

The audit was included in the audit plan of the Supreme Audit Office (“SAO”) for 2014 under number 14/20. The audit was managed and the audit conclusion drawn up by SAO member Ing. Daniel Reisiel, MPA.

The aim of the audit was to scrutinise the management of funds spent on building and operating the national data centre (hereinafter “STC¹ data centre”), including the expenditure of selected organisational units of the state on buying hosting, server-housing and other related services.

The audited period was between 2010 and 2014; where relevant, the preceding period was also scrutinised.

Audited entities:

Ministry of the Interior (“MoI”);

Ministry of Finance (“MoF”);

STÁTNÍ TISKÁRNA CENIN, state firm (state banknote printing firm, hereinafter “STC” or “the state firm”).

The audit was conducted from June to December 2014.

Objections lodged against the audit protocol by the MoF and STC were dealt with by the heads of audit teams by means of decisions on objections. The MoF’s appeal against decisions on objections were dealt with by a resolution of the SAO Board.

At its 5th session held on 30 March 2015 the SAO Board issued resolution no. 12/V/2015 *approving* the **audit conclusion** worded as follows:

¹ The STC data centre comprises both server rooms in production plant III in the STC building in Na Vápence street and a newly built building at the same site.

I. Introduction

Data centres are specifically designed premises fulfilling a number of technical, physical and organisational security parameters (e.g. availability of electricity supply, required temperature, building security etc.). Data centres are used to house and run computer technologies and may take the form of a building or separate room. The basic services of data centres include the renting of computing performance and disk space in computer equipment owned by the data centre operator (known as hosting) and the lease of the data centre's capacity for the purpose of housing and running an entity's own equipment (known as housing).

Data centres are currently one of the important components of the secure and reliable operation of modern information systems ("IS"). The need for secure and reliable operation of IS applies to the entire state administration. State administration bodies and other state organisations operate IS by building their own data centres or buying the relevant services from suppliers. The importance of data centres is underscored by the fact that they were included on the list of critical infrastructure elements in 2010².

On 23 October 2000 the Office for Public Information Systems was set up as a central administrative authority for the creation and development of public administration information systems. Its chief tasks included drafting strategic documents in the area of public administration information systems in collaboration with the state administration authorities, including the documents on security of these systems. It was also tasked with presenting these documents to the government and monitoring and analysing the information requirements of public administration and the state of public administration information services. In January 2003 these tasks were transferred to the newly established Ministry of Informatics and when that was abolished, i.e. in June 2007, to the Ministry of the Interior. The MoI thus became the principal coordinator for information and communication technologies. Data centres take on particular importance in connection with the operation of IS that provide information and data support to the state administration authorities and services provided to the public by the state administration, i.e. e-government.

The issue of IS and the related need for data centre services has been targeted by several SAO audits. Above all, these were audits nos. 12/36, 13/12 and 14/02. These audits revealed that the state administration authorities were forced to deal with the requirements for IS operation and data storage individually by hiring services or building their own data centres. The basic registers IS, for example, i.e. the population register, register of persons and register of rights and obligations, is operated in the STC data centre; the data boxes IS is operated in the data centres of Česká pošta (Czech Post); and the Register of Territorial Identification, Addresses and

² This is a list of elements whose disruption could have a serious impact on state security, provision for the fundamental needs of the population, the health of persons or the national economy. The content of the list, which also mentions data centres, is determined by government resolution no. 432/2010 Coll., on the criteria for defining elements of critical infrastructure.

Real Estate is operated in the data centre of the State Administration of Land Surveying and Cadastre and in the data centre of an external contractor.

A new state firm called Státní pokladna Centrum sdílených služeb (State Treasury - Shared Services Centre) was established by being hived off from STC on 1 January 2015 to provide data centre services to state administration bodies.

In addition to the construction and operation of the STC data centre, this audit also scrutinised the strategic management of state administration in the area of the use of data centres.

NB: All the legal regulations mentioned in this audit conclusion are applied in the wording effective for the audited period.

II. Audit findings

1. Strategic management of the development of IS in public administration

From the time it took over responsibility (in June 2007) for the coordination of information and communication technologies (“ICT”) on the basis of the amendment of the Competences Act³ to the completion of the audit, the MoI did not propose a strategy governing the use of data centres at national level for approval by government resolution. Even the adoption of a document called *Strategic Framework for the Development of the Czech Republic’s Public Administration for the Years 2014-2020* (“the Strategic Framework”), which the government approved by resolution no. 680 of 27 August 2014⁴, did nothing to change this fact. At present, therefore, **no system for the development of the sustainability of data centres’ shared services has been put in place; the coordination of the building and development of data centres is undefined; where existing and new information systems should be operated has not been specified; and there are no rules for public administration’s switch to data centres operated by Czech Post or STC.**

The adoption of the Strategic Framework divided ICT competences between the MoI and MoF, whereby the MoI is the coordinator of information systems serving the general public (e.g. the IS of data centres, the basic registers, CzechPoint) and arranges the backbone infrastructure for them⁵. The MoF is in charge of IS in the areas of financial management, tax, the state treasury

³ Act No. 2/1969 Coll., on the establishment of ministries and other central organs of the state administration of the Czech Republic; the MoI’s responsibility for coordinating ICT was underlined by the amendment of the Competences Act no. 110/2007 Coll., on certain measures in the system of central organs of state administration linked to the abolition of the Ministry of Informatics and amending certain acts.

⁴ Government resolution no. 680 of 27 August 2014 regarding the *Strategic Framework for the Development of Public Administration of the Czech Republic for the Years 2014-2020 and on the establishment of the Government Council for Public Administration*

⁵ The term “infrastructure” denotes a set of interconnected computer and communication apparatus, systems and applications that enable the working of the relevant ICT services.

and other ICT support in the context of management processes at the level of state administration and the backbone infrastructure for services used by bodies of state administration.

The Strategic Framework does not specifically define how data centres for the operation of public administration information systems are to be coordinated or any rules for their use.

Data centres were defined as elements of critical infrastructure on the basis of government resolution no. 432/2010 Coll.⁶. Drawing up the list of these elements is the responsibility of the MoI⁷. The SAO audit found that this list approved by government resolution no. 934 of 14 December 2011⁸ does not give a full and reliable overview of data centres falling within critical infrastructure, as it does not include the STC data centre where, among other things, the basic registers and state treasury are operated. In the event of an extraordinary event, in which a state of danger, a state of emergency or a state of threat to the state is declared, the incompleteness and unreliability of the information on this list could have a negative impact on the handling of crisis situations. For example, the availability of essential services the state provides for citizens (registers, CzechPoint etc.) could be fundamentally compromised.

An obligation to inform the government about how selected ICT services used by state administration are secured was only imposed on the MoI⁹ and only with regard to services provided by Czech Post, even though STC, a firm established by the Ministry of Finance, has also provided key services for state administration bodies since 2009 (see Section 2.2). **The government is thus unable to get hold of complete information about the securing of ICT services in state administration.**

2. Data centres in the department of the Ministry of Finance

As the principal coordinator of information and communication technologies, the MoI did not define a strategy for the creation and use of data centres by public administration. The MoF therefore responded to its own need to operate IS and store data by building a data centre in collaboration with STC.

Act No. 365/2000 Coll.¹⁰ provides that the MoI should issue statements on the acquisition, renewal and operation of information and communication technologies financed out of the

⁶ Government resolution no. 432/2010 Coll., on the criteria for defining elements of critical infrastructure.

⁷ The responsibility is determined by Act No. 240/2000 Coll., on crisis management and amending certain acts (Crisis Act).

⁸ Government resolution no. 934 of 14 December 2000 Coll., *regarding a determination of elements of critical infrastructure whose operator is an organizational component of the state*, updated by government resolution no. 681 of 4 September 2013.

⁹ The obligation was laid down by government resolution no. 224 of 4 April 2012, *regarding information on the securing of selected services of information and communication technologies used by the state administration*.

¹⁰ Act No. 365/2000 Coll., on public administration information systems and amending certain acts.

state budget; simultaneously, a government resolution¹¹ provides that the MoI should issue opinions on ICT projects funded with European Union finances. As STC funds the creation of data centres without using state budget and European Union funds, the MoI made no statement on the building of the STC data centre and did not issue an opinion, even though the MoI's coordination role is defined in the Competences Act. This coordination role is meant to ensure the MoI is aware of the building of data centres and the execution of ICT projects by public administration bodies. The MoI cannot successfully coordinate this area without full knowledge of ICT investments. As the coordinator, the MoI therefore failed to put in place sufficient conditions to allow it to fulfil its coordination role as laid down by the Competences Act.

2.1 Implementation of the departmental data centre of the Ministry of Finance

In its departmental strategic and conceptual documents since 2002 the MoF had already stated its intention to build two data centres for departmental use (use by organisations subordinated to the MoF). The MoF expected work on the development of the first data centre to start in 2004 and end in 2005. From 2005 to 2011 the MoF paid CZK 32.3 million, including VAT, for the elaboration of strategic documents, concepts, studies for the building of data centres and other documents linked to the preparation for the use of the departmental data centre and to the preparation of contract documentation for the use of the data centre's services, including related consulting services. Information about the preparation of the second data centre is presented in Section 2.4.

Although the MoF's first intention was that the first data centre would be completed in 2005, it was not until July 2005 that the MoF informed STC of the decision to build a data centre inside the complex of this state firm. STC put the part of the data centre necessary for the operation of the *Integrated Information System of the State Treasury* ("state treasury operation") into operation in the existing building in 2009. STC wanted to build other premises as a new building in its complex. The delays in the preparation of the data centre were accompanied by insufficient cooperation between the MoF and STC. Despite being repeatedly urged by STC, the MoF did not sign a cooperation agreement with the state firm covering the building of the data centre and the MoF did not define the technical requirements and present them to STC until the middle of 2007.

In September 2005 the MoF signed a contract with an external contractor for an initial study dealing with the construction of the data centre. STC received this study from the MoF and assigned the elaboration of project documentation for zoning proceedings to the same contractor. STC then commissioned the drawing up of an opinion from the Czech Chamber of Certified Engineers and Technicians Active in Construction with the conclusion that the author's

¹¹ Government resolution no. 854 of 9 July 2008, regarding the *Strategy for the Development of Information Society Services in the Czech Republic for the Years 2008-2012*.

invention was incorporated into the study and project documentation for zoning proceedings, so the author has the right to use copyright. Based on this opinion, STC awarded the elaboration of project documentation for building permission and construction work in non-public procedure with reference to copyright. The general project designer of the data centre construction project was consequently the company that drew up the initial study and project documentation for zoning proceedings.

STC removed the elaboration of project documentation, which covered selected parts of the data centre technologies (including UPS back-up sources¹²) from the scope of the aforementioned contract for the elaboration of project documentation for building permission and construction work. In the contract documentation STC specified as the supplier of this part of the project documentation the company that had been advisor for construction and technology since the initial phases of the data centre preparation and subsequently won the contract for the building contractor. To STC's order this company drew up the said part of the project documentation for building permission.

STC concluded seven addenda to the contract with the general project engineer. One of them covered the elaboration of project documentation for the construction of the technological part. **STC was in breach of the Act on Public Procurement, as it awarded the elaboration of this documentation in a procedure without publication, even though the conditions for this type of public contract were not in place.** In the audited case the elaboration of construction documentation for the technological part was a necessary component of the project work, so the need for it could not have been caused by circumstances that were objectively unforeseeable¹³. What is more, the obligation to draw up this documentation was set out in the contract documentation and contract for the elaboration of project documentation for the construction of the data centre.

STC conducted the public contract for the construction of the data centre in the form of an open procedure.

In the contract documentation STC required candidates to supply such technological equipment (including UPS back-up sources) as satisfied precisely defined technical parameters or, where appropriate, to offer such equipment as displayed better parameters than those defined.

Three candidates submitted bids. Two of these candidates' bids, which were approximately CZK 50 million cheaper, were excluded on the basis of expert findings on the grounds that these bids did not meet the contract conditions, particularly in the technological part comprising UPS sources. In other words, **the only candidate not excluded during the procurement procedure was the supplier of the project documentation for building permission concerning this**

¹² UPS stands for Uninterruptible Power Supply.

¹³ See Section 23 (7) (a) of Act No. 137/2006 Coll., on public procurement.

technology. That candidate's bid corresponded exactly to the parameters in the contract documentation that arose out of the project documentation created by the candidate.

STC paid a total of CZK 386 million, including VAT, for the preparation and execution of the construction of the data centre.

2.2 Operation and use of the data centres of Státní tiskárny cenin

STC has provided the MoF with data centre hosting services since 2009 for the state treasury operation, simultaneously providing it with related Service Desk services (see Section 2.3.1 for more). In 2011 STC started to provide data centre services to two other entities. In the middle of 2012 STC put a new data centre into pilot operation and signed a contract with the Basic Registers Administration for the operation of the basic registers. Pilot operation in the newly built premises commenced in the second half of 2012. After standard operation was launched at the start of 2013, STC signed three more contracts for the provision of data centre services.

According to the STC business plan that was based on the MoF department's ICT strategy¹⁴, hosting, especially for the MoF department, should be the basic data centre service provided. With the exception of contracts concluded with the MoF and dealing with the provision of hosting services, at the time when the SAO's audit finished all the other contracts dealt with housing. Under most contracts, therefore, STC provided services with lower added value.

At present a private company can buy data centre services from STC and sell them on to another state administration body. The SAO already drew attention to this situation in the audit conclusion of audit no. 12/35, which stated that the information systems for the pay-out of Ministry of Labour and Social Affairs benefits are operated through a private company in the STC data centre. **The SAO has repeatedly flagged up the possible risk of uneconomical spending of state funds in cases where state administration bodies using data centre services are sold services bought from a state firm through an intermediary that is a private company.**

From the start of live operation to the end of this audit, the occupancy rate of the newly built data centre was around 50%. At the time of the completion of the audit, approximately half of this data centre's capacity had thus been unused for almost two years.

In the SAO's opinion, the following are the main reasons for the low occupancy rate of the new STC data centre:

- insufficient coordination by the MoI and the absence of any regulation defining which IS are to be operated in data centres under state control¹⁵;

¹⁴ *ICT Strategy of the Department of the Ministry of Finance of the CR for the Years 2009–2013.*

¹⁵ I.e. in the cases of entities where the state has sole property rights.

- the higher price of the services provided, especially at the start of operation of the new STC data centre, compared to data centres run by private entities, as STC initially based the prices of its services on costs linked to the current occupancy rate of the data centre¹⁶.

2.3 Use of STC data centre services by the Ministry of Finance

2.3.1 Service Desk services and state treasury operation

In 2009 the MoF signed two contracts with STC for the use of data centre services. The first contract is for Service Desk services in the MoF department, which includes the administration of ICT incidents¹⁷ and ensuring the renewal of services in the event of stoppages. The second contract is for the service of providing an environment and computer capacities for the state treasury operation.

Conclusion of the contracts

The MoF awarded the contract for Service Desk services to STC on the basis of an exemption from the Act on Public Procurement¹⁸ as a classified contract¹⁹. This exemption could be used for public contracts covering classified information or if the publishing of the public contract award conditions or execution of the public contract could jeopardise classified information. The contract documentation for awarding the contract, including one annex defined as “restricted”, was drawn up by an external entity. In 2009 the MoF signed a Service Desk contract with STC for an indefinite period and started using the Service Desk in 2010. STC delivered the solution and services for the Service Desk through a contract with an external entity and again making use of an exemption under Section 18 (1) (a) of the Act on Public Procurement. STC justified the selection of this company by its up-to-date knowledge of the security of data networks at the MoF, among other things. **The service subcontractor was the company that prepared the procurement procedure for the MoF for the Service Desk services contract and was also the originator of the classified documents on whose basis the contract was awarded in a classified procedure.**

The MoF also awarded the public contract for the state treasury operation by classified procedure making use of an exemption from the Act on Public Procurement. The MoF subsequently signed a contract with STC in November 2009 for an indefinite period.

The classified part of the contract documentation of both contracts falls under the specification of classified information as per government resolution no. 522/2005 Coll.²⁰ This specification

¹⁶ In October 2013 STC adopted a measure on whose basis STC was meant to reckon with the 100% occupancy of the data centre when setting prices for housing services.

¹⁷ An incident is a non-standard event that could cause a reduction in the quality or availability of the ICT service in question.

¹⁸ Act No. 137/2006 Coll., on public procurement.

¹⁹ Under Section 18 (1) (a) of the Act on Public Procurement.

²⁰ Government resolution no. 522/2005 Coll., laying down a list of classified information.

was added to the government resolution at the time when the contract documentation for the aforementioned public contracts was being prepared. SAO audit no. 12/09 dealing with the delivery of the *Integrated Information System of the State Treasury* revealed that this contract was awarded in an open procurement procedure. The contract for the operation of this IS was subsequently awarded in classified contract procedure, however.

In 2009 the Act on the Protection of Classified Information²¹ enabled the MoF, as the awarding entity, to classify a document which, in its opinion, contained information specified in the list of classified information and subsequently to award a contract in the appropriate degree of secrecy to a selected candidate. On 1 January 2012 an amendment of the Act on the Protection of Classified Information²² entered into effect, requiring a contract awarding entity to notify the National Security Office in writing of the intention to award a contract on the grounds of the protection of classified information. These contracts concluded for an indefinite period were awarded before this amendment took effect, however, and the law does not oblige the National Security Office to retrospectively check the justification of classifying information and the consequent awarding of these contracts in classified mode.

Consulting services linked to the operation of Service Desk services

When the Service Desk service was being introduced, the MoF signed a contract to support its introduction by an external entity worth CZK 2.2 million including VAT. Approximately 1.5 months after this contract expired, the MoF signed another contract with the equivalent content as the previous one. Approximately 1.5 months after the second contract expired, the MoF concluded a third contract. The total value of the contracts was CZK 5.5 million. The MoF concluded the contracts on the basis of separate procurement procedures in the form of small-scale contracts and by contacting three candidates, or five in the case of the last contract. All three contracts were won by the same candidate. **The MoF violated the provision of Section 13 (3) of the Act on Public Procurement by awarding the second and third contracts as small-scale public contracts.** In doing so, the MoF split the subject of the public contract, thus reducing the expected value below the financial limit specified in the Act on Public Procurement.

Costs of the use of services and how STC's profit was set up

The MoF pays STC a monthly flat rate for the use of Service Desk services. From 2010 to 2014 the amount changed from CZK 1.7 million including VAT to CZK 2.2 million including VAT. The MoF paid STC a total of CZK 125.2 million including VAT from January 2010 to September 2014. In the same period **STC paid the subcontractor that authored the classified document on**

²¹ Act No. 412/2005 Coll., on the protection of classified information and security eligibility (Act on the Protection of Classified Information).

²² Act No. 255/2011 Coll., amending Act No. 412/2005 Coll., on the protection of classified information and on security eligibility, as amended, and Act No. 634/2004 Coll., on administrative fees, as amended.

whose basis the contract was awarded in classified mode CZK 56.4 million including VAT, which is 45% of the amount received from the MoF.

The MoF pays STC a monthly flat rate for the state treasury operation. Over the years the amount has increased from CZK 17.2 million including VAT in 2009 to CZK 17.8 million including VAT in 2014. During the implementation of the contract, i.e. from 2009 to 2014, the state treasury operation cost CZK 1.031 billion including VAT. STC hired a subcontractor to provide selected services under the contract in question. That subcontractor was the company supplying the *Integrated Information System of the State Treasury* for the MoF. In the same period **STC paid this company CZK 703.5 million, which is almost 70% of the amount STC received from the MoF.**

As the MoF awarded both contracts to STC in classified mode, STC had to follow the same procedure when awarding the contract to the subcontractor supplying the relevant services. It follows from the above that these subcontracted services had a major role in the services STC provided to the MoF.

STC did not have an effective pricing directive either when preparing the bid or at the time of signing of the contract for the state treasury operation and for the provision of Service Desk services. The main pricing difference between printing services and ICT services was that indirect overheads were assigned to individual contracts and a different approach was taken to defining the level of profit from the contracts. STC thus had to define prices and profit levels individually for the two contracts in question. The profit actually achieved by STC from the two contracts was significantly different.

In the case of Service Desk services, the profit level was defined directly in the contract and amounted to approx. CZK 6 million, i.e. 6% of the total price for the five-year period. The actual profit of CZK 11.75 million that STC achieved a year before it stopped providing the service exceeds the profit as defined in the contract by 78%. For STC to achieve the agreed profit level, in 2014 it had to achieve 38% lower costs than the average annual costs for the period of service provision.

2.3.2 Use of STC employees for securing the operation of the Ministry of Finance's ICT

Under mandate contracts STC provided the MoF ICT services from the year 2000. According to the MoF, the ministry needed these to ensure the proper operation of the information systems in its charge.

STC did not provide the MoF with specific services and invoice the MoF for these specific services - it invoiced the MoF for the work performance of its employees.

Over the last ten years, 32 STC employees in total carried out contractual activities for the MoF; 12 of these employees were original employees of the MoF. As part of the implementation of the contract, the MoF paid a flat rate of CZK 95,000 not including VAT (CZK 82,000 not including

VAT up to 2002) per STC employee. This amount is not consistent with these STC employees' pay, however, as the SAO audit found that their **pay, including payments to the state required by law, was less than 50% of the amount paid by the MoF.**

The MoF justified concluding a mandate contract instead of using its own employees by the need to satisfy the requirements of a number of government materials on reductions in the workforce of ministries and also by economic advantages. The MoF's arguments indicate that the **MoF transferred its employees to STC in order to fulfil government regulations and was not, according to the MoF, capable of securing the standard operation of the ministry without them. The course of action chosen by the MoF was uneconomical, as the MoF paid these employees double the amount they were paid by STC (and previously by the ministry itself).**

Assigning ordinary tasks to another employee was permitted by the Act on Employment up to the end of 2006. By not using its own employees from 2007 the MoF **obviated the Act on Employment²³ and the Labour Code²⁴**. In connection with the implementation of the mandate contracts STC repeatedly signed work contracts for a period of one calendar year, i.e. for a fixed period, with most of the employees working for the MoF. STC thus repeatedly violated the Labour Code, which does not permit the manner of concluding fixed-term work agreements described above.

Based on the mandate contract, STC invoiced the MoF a flat rate per employee on the basis of attendance sheets, which were part of the invoicing, without specifying the work done by the employee. The MoF was therefore hiring STC employees.

The MoF paid the full flat rate for STC employees even in periods when they were not doing any work for the MoF, e.g. when they were on leave or maternity leave, when they were incapacitated for work, visiting a doctor or on non-training work trips. The MoF paid at least CZK 4,611,034 including VAT for this work absence²⁵.

The MoF paid a total of CZK 253,894,984 including VAT for the implementation of the mandate contract from 2004 to September 2014. By not using state budget funds of CZK 4.6 million in line with substantive performance and not proceeding in the most economical manner when carrying out certain tasks, the MoF was in breach of budgetary discipline²⁶ and violated the Act on the Property of the Czech Republic²⁷.

²³ Act No. 435/2004 Coll., on employment.

²⁴ Act No. 65/1965 Coll., the Labour Code, or Act No. 262/2006 Coll., the Labour Code.

²⁵ The amount does not include "leave" as a reason for absence.

²⁶ Under Act No. 218/2000 Coll., on budgetary rules and amending certain related acts (the Budgetary Rules).

²⁷ Under Act No. 219/2000 Coll., on the property of the Czech Republic and representation of the Czech Republic in legal relations.

2.4 Preparation of a back-up data centre

In 2002 the MoF intended to build a second data centre for its department by June 2009 in collaboration with STC. Minutes of a session of the STC supervisory committee attended by MoF representatives revealed that the STC management only informed the supervisory committee of the building of the back-up data centre in October 2011, i.e. at a time when the MoI Strategic Framework had not been approved. In the years 2012 to 2014 STC commissioned the elaboration of all parts of the project documentation and commenced preparatory demolition work in Zeleneč on land it had bought from the MoI. STC paid a total of CZK 63.3 million including VAT for the preparation of the back-up data centre in Zeleneč and for the land. The construction of the back-up data centre was expected to take place in three stages. Its total area was to be three times bigger than that of the existing STC data centre.

The occupancy rate of the existing STC data centre in September 2014 was around 50%. The presented documentation does not justify the parameters of the intended project for the data centre in Zeleneč (e.g. the selected location, the size of the data centre), in particular given the state of affairs whereby the use of data centres by state administration bodies is not effectively coordinated and governed by regulations.

In this context, the SAO audit found that documents related to the MoF's checks whether STC's business activities were being provided efficiently and economically for the state's requirements under the Act on State Firms²⁸ did not contain any conclusive record that these kind of checks had been performed.

III. Summary and assessment

Data centres are currently one of the important components of the secure and reliable operation of modern IS of public administration. The SAO audit focused on STC data centres, their construction and operation. The audit also scrutinised how strategies were defined for the use of the data centres by state administration bodies.

The MoI was supposed to make a statement on the acquisition, renewal and operation of information and communication technologies financed out of the state budget and to issue an opinion on ICT projects funded by the European Union. The building of STC data centres is funded by STC, so the MoI made no statement and issued no opinion on the projects. The MoI's coordination role in this area is determined by the Competences Act. In this case, the MoI failed to apply it.

Data centres are a component of critical infrastructure elements¹. The audit found that the lists of critical infrastructure elements do not give a complete and reliable overview of data centres, which could have a negative impact on crisis management.

²⁸ Act No. 77/1997 Coll., on state firms.

The first strategic document mentioning data centres as the third layer of e-government architecture was approved by the government in 2014²⁹. This strategy divided ICT competences between the MoI and MoF, but it does not specifically define how the building of data centres is to be coordinated or what rules are to govern their use by state administration bodies.

Government resolution no. 224 of 4 April 2012 tasked the MoI with informing the government about how selected ICT services used by the state administration were secured. This government resolution, however, does not make allowance for the fact that the state firm STC (established by the MoF) has operated key ICT services for state administration bodies since 2009 in the same way as the MoI.

As at the end of the audit, the MoF had not achieved the originally intended purpose of the use of the data centre in its department it decided to build and operate through STC, as only selected IS of the MoF department were operated in it.

SAO audit no. 12/35 and the STC documentation revealed facts indicating the possible risk of economical spending of state funds in cases where state administration bodies using data centre services are sold services bought from a state firm through an intermediary that is a private company.

One of the general contractors for the building of the data centre was a company that helped define the parameters of the data centre's technologies. Its bid that won it the contract to build the data centre was the only bid that exactly matched the parameters required in the contract documentation, which was based on materials drawn up by this company. The total cost of building the new STC data centre, including pilot operation (CZK 386 million) and buying land in Zeleneč, including preparing documentation for the construction of a back-up STC data centre (CZK 63.3 million) was CZK 449.3 million including VAT.

From the start of operation (January 2013) to the end of the audit, the newly built STC data centre had an occupancy rate of approximately just 50%.

Subcontractors played a major role in supplying solutions for the provision of Service Desk services and in the state treasury operation. Without a procurement procedure the MoF concluded two contracts in classified procedure, making use of an exemption in the Act on Public Procurement:

- In the case of the contract for the provision of Service Desk services, **the contract documentation, including its classified part, was drawn up by the company that subsequently, without a procurement procedure, became the subcontractor** for this

²⁹ Government resolution no. 680 of 27 August 2014 regarding the *Strategic Framework for the Development of Public Administration of the Czech Republic for the Years 2014-2020 and on the establishment of the Government Council for Public Administration*.

service for STC, and STC paid it 45% of its related revenues from the MoF (CZK 56.4 million as at September 2014).

- In the case of the contract for the state treasury operation, **STC's subcontractor chosen without a procurement procedure was the company that supplied the *Integrated Information System of the State Treasury* to the MoF on the basis of an open procedure** (expenditure on this contract was CZK 2.25 billion from 2008 to 2011; see SAO audit no. 12/09), and STC paid the subcontractor 70% of its revenues from the MoF for the state treasury operation (i.e. a further CZK 703.5 million as at September 2014).

To date STC has thus paid CZK 760 million to companies to which it awarded public contracts in classified procedure without contracts. Since 2012 the awarding entity has been obliged to notify the National Security Office in writing of an intention to award a contract in classified procedure on the grounds of protecting classified information. The aforementioned contracts concluded for an indefinite period were awarded before this amendment took effect and the law does not oblige the National Security Office to retrospectively check the justification of classifying information and the consequent awarding of contracts in classified mode.

In the case of three public contracts for the same work in securing Service Desk services worth a total of CZK 5.5 million the MoF contacted three candidates, or five in the case of the third public contract. The MoF violated the provision of Section 13 (3) of the Act on Public Procurement by awarding the second and third contracts as small-scale public contracts. In doing so, the MoF split the subject of the public contract, thus reducing the expected value below the financial limit specified in the Act on Public Procurement.

Facts discovered during the audit at the MoF indicated that the ministry implemented a government resolution on reductions in workforce numbers by transferring some of its employees to STC. It then paid more than double the amount for their work: their pay, including mandatory payments to the state, was less than 50% of the amount paid by the Ministry of Finance for the execution of the contract in question. **From 2004 to September 2014 the MoF paid a total of CZK 254 million for STC employees.** The MoF's arguments indicate that the MoF transferred its employees to STC in order to implement government resolutions and without them it would not have been able to ensure the standard operation of the ministry, according to the MoF. The course of action chosen by the MoF was uneconomical, as the MoF paid these employees double the amount they were paid by STC (and previously by the ministry itself).

Assigning ordinary tasks to another employee was permitted by the Act on Employment up to the end of 2006. **By not using its own employees from 2007 the MoF obviated the Act on Employment and the Labour Code.**

From the year 2000 STC repeatedly signed fixed-term work contracts with employees working for the MoF on the basis of the mandate contracts. In doing so it violated the Labour Code.

The MoF paid for STC employees even when they were not doing any work for the MoF (e.g. when on leave, when ill, when visiting the doctor). The MoF did not use state budget funds

totalling CZK 4.6 million in line with its substantive performance and thus did not carry out its tasks in the most economical manner.

Based on the shortcomings identified by the audit the SAO makes the following recommendations:

- the right conditions should be put in place for coordinating the construction and operation of data centres of state administration bodies, including in cases where the projects are not co-funded by the EU;
- information systems which must be operated in state-controlled data centres should be defined¹⁵;
- “in-house exemptions” in the Act on Public Contracts should be modified so that they categorically enable public administration bodies to award a public contract for IS operation in state-controlled data centres¹⁵;
- rules should be worked into the Act on Public Procurement governing participation in a contract for entities that have already participated in the preparation of the contract and subsequently, in accordance with the existing legislation, apply to take part in the contract in a way that does not compromise economic competition and ensures equal access to information, putting an end to the advantaging of companies collaborating with the awarding entity before the public contract is awarded. The proposed procedure should be consistent with the new European public procurement directive of the European Parliament and Council (2014/24/EU³⁰), which is to be transposed into Czech law in April 2016. Equivalent rules are applied in Germany, for example (see section 2.7 of the joint report on a parallel audit with the Bundesrechnungshof³¹).

³⁰ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.

³¹ *The award of public contracts for construction work and preventing corruption*. Joint report on a parallel audit conducted by the Czech Supreme Audit Office (SAO) and the German Bundesrechnungshof (BRH) from 2013.