



## **Audit Conclusion from Audit No.**

**15/23**

### **Management of the state property and state funds allotted to IT and communication technology projects at the Ministry of Transport**

The audit was included in the audit plan of the Supreme Audit Office (“SAO”) for 2015 under number 15/23. The audit was managed and the audit conclusion drawn up by SAO member RNDr. Petr Neuvirt.

The objective of the audit was to examine whether the Ministry of Transport spends public funds on procuring, operating and developing certain information systems economically and effectively.

The audited period was 2010 to 2015; where relevant, the preceding and following periods were also scrutinised.

**Audited entity:**

Ministry of Transport (“MoT”).

The audit was carried out at the audited entity between June 2015 and January 2016.

Objections lodged against the audit protocol by the MoT were dealt with by the head of audit team by means of decisions on objections. The MoT’s appeals against decisions on objections were dealt with by a resolution of the SAO Board.

At its 5<sup>th</sup> session held on 11 April 2016 the **SAO Board** issued Resolution No. 8/V/2016 *approving* the *audit conclusion* worded as follows:

## I. Introduction

The **Ministry of Transport** is the central public administration authority for transport matters and is responsible for creating state policy in transport and, in the scope of its powers, the execution of such policy. The MoT is the administrator of a number of information systems, which it procured and developed in the audited period to ensure the performance of its agendas and activities through public contracts financed from asset replacement programmes (programme financing).

The MoT information systems are divided up into agenda systems, i.e., information systems dealing with the transport administration agenda, and operating systems. The agenda information systems are used for communicating and handling data within public administration and vis-à-vis the public. The most important of these is the *Central Register of Vehicles* (the “Vehicle Register”) and the *Central Register of Drivers* (the “Driver Register”). These two information systems were originally administered by the Ministry of Interior for the MoT. The last of the information systems (“IS”) to be transferred to the MoT was the Vehicle Register. Such transfer occurred in July 2012.

In the case of a number of information systems, demands are placed on the MoT as regards interoperability<sup>1</sup>, both within the ministry itself and among public administration authorities, and even among EU Member States<sup>2</sup>, to ensure that there is no threat of the Member States opting for different or incompatible solutions, which would create obstacles to mutual electronic communication not only in the field of transport administration agendas. <sup>3</sup>The MoT, when implementing ICT projects, has to respect the requirements arising from European and national regulations.

The SAO discovered that the MoT uses 50 information systems to carry on its activities. One operating information system and four agenda information systems were selected for review. Table 1 provides an overview of these systems. When selecting the IS for review, account was taken of the social importance of these systems and their acquisition or operating costs. When selecting the Vehicle Register into the sample of agenda information systems, account was also taken of the fact that problems accompanied its launch in July 2012.

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<sup>1</sup> Interoperability - the ability of various systems to work together, provide services to each others, and interact synergetically.

<sup>2</sup> Decision No 922/2009/EC of the European Parliament and of the Council of 16 September 2009 on interoperability solutions for European public administrations (ISA); Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC; Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, as amended by Commission Directive 2009/113/EC and Commission Directive 2011/94/EU.

<sup>3</sup> The term “information and communication technology project” includes a whole spectrum of projects, such as communication interface projects, data interface projects, information systems etc. For the needs of the audit, ICT project is understood as an umbrella project under which the respective IS is procured.

**Table 1 IS selected for review (CZK thousands)**

Name of IS	Type of IS	Description	Audited <sup>4)</sup> volume
Integrated monitoring information system	operating <sup>1)</sup>	Includes the economic system and the payroll and HR system	679 209
Central Register of Vehicles	agenda	Record of vehicles with licence plates, identification and technical information, including vehicle operator/owner	131 510
Central Register of Drivers	agenda	Record of information about persons who are the subject of this record under the law <sup>2)</sup> (driving licence, driving authorisation, health restrictions, offences, suspension of driving licences, etc.)	212 316
Digital tachograph	agenda	Administration and records of digital tachograph chip cards, personalisation of chip cards	196 162
Register of Road Transport Operators <sup>3)</sup>	agenda	Administration of information about road transport operators, about responsible transport representatives, records of serious violations, offences and fines imposed on operators; exchange of information regarding regulation violations within the EU; record of taxis; record of taxi drivers.	14 174
<b>Total audited volume</b>			<b>1 233 371</b>

**Source:** MoT information concept and other documents submitted as part of the audit

<sup>1)</sup> Until 31 March 2013, it also included operation of transport administration agendas

<sup>2)</sup> Pursuant to Act No. 361/2000 Coll., on operation of roads and on amendments to certain acts (the Road Traffic Act).

<sup>3)</sup> Register of Road Transport Operators is the successor to the original central register of operators.

<sup>4)</sup> Funds expended by the MoT on procuring and operating IS in 2010-2015

In connection with efforts to increase transparency of use of non-competitive procedures especially in ICT, the obligation to inform<sup>4</sup> the government about public contracts awarded in negotiated procedure without prior publication was introduced in 2010. As of November 2014, the government set up a mechanism to increase transparency and prevent overuse of negotiated procedure without prior publication. Such mechanism consisted in the assessment of the justification for using negotiated procedure without prior publication via the Government Council for Information Society.

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

## II. Summary and assessment of the audit findings

**State funds expended on the implementation of information and communication technology projects at the Ministry of Transport were the subject of the audit. The SAO assessed whether the MoT set conditions for managing ICT projects, whether it managed**

<sup>4</sup> In 2010, such obligation was imposed on members of the Government and, as of 2013, also on the directors of other central public administration authorities.

**the projects in line with such conditions, whether the audited projects were implemented economically and effectively and whether they achieved the stipulated objectives.**

**The SAO, based on the findings of the audit, states that the MoT acted without a concept and without the basic informed decision-making tools<sup>5</sup> when managing the creation and development of information systems. The MoT set and applied the project management procedures only at the moment of conclusion of the respective agreement; thus, under the individual projects, there were no project management procedures prior to conclusion of the respective agreement.**

**The lack of a concept was one of the reasons for the long delays in implementing the Vehicle Register. This is an IS that processes up to 1.7 million database transactions per strong production day.<sup>6</sup> This register was not functional on the required launch date of 1 July 2012. The MoT had to move the launch of live operations to 9 July 2012, and even after this date it encountered a number of problems, which had to be dealt with even on the level of the Government.**

**The lack of concept in the MoT's approach caused the various ICT projects to slow down and, as a result, contributed to the European Commission (the "Commission") taking action against the Czech Republic for its failure to fulfil its obligations under EU<sup>2</sup> law regarding the Driver Register and the Road Transport Operator Register (the "Operator Register") and their connection to the national electronic registers of other Member States, whose authorities have the right to review data recorded in the Czech Republic. This lack of a conceptual approach also contributed to the overuse of negotiated procedure without prior publication although the conditions for its use under the Public Procurement Act were not met and to a snowballing of this approach in the years that followed, which the SAO assessed as uneconomical use of resources.**

**The environment for storing data and for working with data of the transport administration information systems, of which two IS (the Vehicle Register and the Driver Register) fall under critical information infrastructure<sup>7</sup>, is provided by private entities, although State-owned ICT infrastructure that could provide these services exists.**

**The audit examined MoT expenditure of CZK 1 233 million. Of this amount, ascertained shortcomings represented an amount exceeding CZK 425 million and all pertained to a**

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<sup>5</sup> Informed decision-making in the field of ICT has to be built on three main pillars: formulation of a strategic ICT plan (longer-term objectives, responsibilities, time schedule, budgets), determination of IS architecture (data in the structure and in context, data structure rules, data classification, data integrity management) and determination of the technological direction (planning orientation of future technology, monitoring trends and regulations, determining technological standards, logical map).

<sup>6</sup> Strong production day - a day on which municipalities with extended competence are open, where such municipalities carry out a transport administration agenda for end users.

<sup>7</sup> The Vehicle Register and Driver Register are elements of critical infrastructure and fulfil the criteria of Government Regulation No. 432/2010 Coll., laying down the criteria for determination of the critical infrastructure element, according to the following determining criteria: **cross-cutting** (here the impact on the public, with a threshold limit of extensive restrictions on the provision of essential services or other serious intervention in everyday life effecting more than 125,000 people); and **sectoral** (here the information system that is replaceable only by paying disproportionate costs or is replaceable in a time period longer than 8 hours).

**breach of budgetary discipline. With regard to the lifespan of information systems and the amount of funds expended by the ministry on the chosen technological and application solutions, the lack of a conceptual approach was one of the causes of ineffective action and the failure or delay in fulfilment of the set objectives, and even of the failure to observe the required quality of the audited transport administration agendas.**

The MoT arranged the operation of transport administrative agendas, where the audited IS were used for communicating and handling data in public administration and vis-à-vis the public. In the case of two agenda IS, the MoT failed to secure the target state, i.e. ensuring that the respective authorities of the EU Member States are connected and have access to the electronic registers of the Czech Republic.

**1. The MoT did not view the information technology of the department as a single unit when managing it. The lack of an ICT strategy and only a formal fulfilment of statutory requirements for an information concept made it impossible for the MoT to use tools for the effective management of ICT projects.**

The MoT does not have a long-term strategy for planning, managing and developing ICT projects. The MoT prepared the information concept with a delay about five years and only formally fulfilled the requirements of Act No. 365/2000 Coll.<sup>8</sup> The MoT has not described the link between IS in terms of function or technology in the information concept, nor has it provided a detailed IS architecture diagram that would show the relationships between applications or between the main procedures supported by these applications. This state made it impossible for the MoT to make informed decisions in the area of ICT.

**2. The MoT acted uneconomically when it concluded seven public contracts totalling CZK 392 million in negotiated procedure without prior publication, even though it did not have any legal justification for using this procedure, and concluded an operation agreement that bound the MoT to pay CZK 33 million without performance in return.**

From 2012 to 2015, the MoT awarded seven public contracts in negotiated procedure without prior publication without legal justification for doing so. The MoT justified its approach by referencing extreme urgency and time pressure caused by uncertainty arising from a Government resolution<sup>9</sup> that anticipated the merger of MoT with the Ministry of Industry and Trade and in other cases by referring to extreme urgency and time pressure caused by expected new legislation in the area of cybersecurity. The method of awarding public contracts was not in line with the Public Procurement Act<sup>10</sup>, could have influenced the choice of most advantageous offers and led to uneconomical behaviour. The SAO believes that the MoT breached budgetary discipline<sup>11</sup> by its actions. The control mechanisms set by

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<sup>8</sup> Act No. 365/2000 Coll., on public administration information systems and amending certain acts. The obligation to draw up an information concept was imposed as of 1 January 2009.

<sup>9</sup> Resolution of the Government of the Czech Republic No. 37 of 16 January 2013, *on proposed savings measures in the field of simplification of agendas and the elimination of duplicities in public administration for 2014 - stage 1*.

<sup>10</sup> Act No. 137/2006 Coll., on public procurement.

<sup>11</sup> Act No. 218/2000 Coll., on budgetary rules and amending certain related acts (the Budgetary Rules).

Government resolutions<sup>12</sup> and the increase in transparency in the process of awarding public contracts without a tender through negotiated procedure without prior publication were thus not effective at the MoT in the audited period.

In the case of the operating agreement on the provision and development of IT services, the MoT did not arrange that upon-request services would be reimbursed in return for actual performance. By its actions, it breached the obligation to fulfil tasks in the most economical way possible and use funds only to cover essential costs. The SAO believes that the MoT breached budgetary discipline by as much as CZK 33 056 046 by its actions.

**3. The MoT failed to ensure that the transfer of the Vehicle Register from the Ministry of Interior and creation of a new vehicle register was done in time and in the required quality.**

The MoT was aware sufficiently in advance of the transfer of the Vehicle Register from the Ministry of the Interior and on the need to create a new vehicle register, including the need to arrange for its subsequent operation; nevertheless, it awarded the contract just six months before the planned launch into live operation. The MoT used the existing agreement on the provision and development of IT services for the creation of the vehicle register, which fact did not allow the contractual conditions between the MoT and contractor to be set sufficiently. At the same time, the MoT did not analyse the state and quality of the data in the Vehicle Register in time. For this reason, the migration of hundreds of thousands of incompatible records did not take place under the transfer to the new register. These facts led to the new vehicle register not being functional when launched into live operation and to the start of operations to be moved forward by the MoT by more than a week, and even after this date, the application contended with numerous problems. The MoT nevertheless accepted the new vehicle register as being without defects.

**4. At variance with the *National Cybersecurity Strategy*, the MoT was unable to transfer the operation, administration and storage of critical information infrastructure data into an environment set up and managed by the State.**

The environment for storing and using the data of transport administration IS that fall under important information systems<sup>13</sup> and critical information infrastructure is provided by a private entity for the MoT. In 2015, the MoT, in line with the *National Cybersecurity Strategy*, prepared to award the operation, administration and storage of transport administration agenda data to the State enterprise Státní pokladna Centrum sdílených

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<sup>12</sup> Resolution of the Government of the Czech Republic No. 158 of 22 February 2010 *on measures in connection with public procurement*; Resolution of the Government of the Czech Republic No. 246 of 10 April 2013 repealing Resolution of the Government No. 158 of 22 February 2010 on measures in connection with public procurement and imposing obligations in connection with public procurement based on exemption and significant public contracts; Resolution of the Government of the Czech Republic No. 961 of 24 November 2014, *on establishment of a Government Council for Information Society*; Resolution of the Government of the Czech Republic No. 889 of 2 November 2015 on the further development of information and communication technology of public administration services.

<sup>13</sup> Decree No. 317/2014 Coll., on important information systems and their determining criteria, in conjunction with Act No. 181/2014 Coll., on cybersecurity, specifies the status of eleven MoT information systems as important.

služeb outside the regime of the Public Procurement Act through the so-called in-house<sup>14</sup> exemption. With regard to comments<sup>15</sup> made during the external consultation procedure, which called attention to the non-fulfilment of the criteria stipulated for the use of such exemption, the MOT backed down from this intention and continued to use the services of a private entity.

## **5. The MoT did not fulfil the requirement for the interoperability of two IS agendas.**

The limited access to information from the Driver Register and Operator Register for the respective authorities of EU Member States is caused by the non-fulfilment<sup>16</sup> of the obligations under EU regulations. In connection with the long-term failure to fulfil obligations under EU regulations and after unsuccessful preliminary proceedings, the Commission took legal action against the Czech Republic via the EU Court of Auditors. If the verdicts are unfavourable, the Czech Republic may be subject to fines.

In the case of the Driver Register, it is an effort, among other things, to restrict so-called tourism for the purpose of obtaining a driving licence in a Member State where the applicant had committed no traffic offences that would have led to suspension of their licence.

**With regard to the above, the SAO recommends that the MoT**

- create a departmental information strategy and update the information concept on an ongoing basis in connection with the strategic eGovernment document and the current state cybersecurity strategy**
- subject the entire IS procurement and development process to project management from the moment when the project implementation needs were identified to the fulfilment of its objectives**
- transfer, upon the expiration of the agreement on the operation of the Vehicle Register and Driver Register, which belong to critical information infrastructure, these IS into an environment that is established and managed by the State**
- closely follow when planning and further developing departmental IS the requirements under Resolution of the Government of the Czech Republic No. 889 of 2 November 2012<sup>17</sup>, the observance of which is a condition to ensure the economical, effective and efficient nature of the costs of ICT public administration both in the short-term and long-term.**

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<sup>14</sup> In-house exemption - a general exemption under Act No. 137/2006 Coll., laid down in Section 18(1)(e), that can be applied in cases such as the provision of supplies, services or construction work to a public contracting authority by a person that carries out a substantial portion of his activities in favour of such public contracting authority and in which the public contracting authority has exclusive proprietary rights.

<sup>15</sup> Inter alia the comments of the Ministry of the Interior and Supreme Audit Office.

<sup>16</sup> A regulation (here Regulation(EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC) as a secondary legal act of the EU is directly applicable and the obligations from it arise for the MoT directly; a directive (here Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences, as amended by Commission Directive 2009/113/EC and Commission Directive 2011/94/EU) is a primary legal act that requires transposition into the law of the Czech Republic and obligations arise from it for all legislative bodies (ministries, government, parliament, the president).

<sup>17</sup> Resolution of the Government of the Czech Republic of 2 November 2015 No. 889, *on the further development of information and communication technology of public administration services.*

### III. Finding details

#### 1. ICT project management

The MoT does not have a long-term strategy for planning, managing and developing ICT projects. Act No. 365/2000 Coll. tasks public administration authorities with creating and issuing information concepts, applying them in practice and assessing their observance as of 1 January 2009. The MoT did not prepare any information concepts until May 2014. Most audited IS were procured by the MoT still prior to the creation of any information concept.

The information concept, in terms of its structure and content, correspond to the requirements of Act No. 365/2000 Coll. and the related Decree No. 529/2006<sup>18</sup>, but it does not stipulate long-term objectives in the area of information system management and security. In the information concept, information system architecture is drawn up only as a partial diagram of the relationships between the IS of the transport administration agendas. These relationships between the various IS are not described in terms of function or technology and an overall diagram and description of IS architecture that would show the relationships between applications or between the primary processes support by these applications are missing.

The MoT did not draw up security documentation demonstrating staffing of the role of system administrator and security system administrator, nor did it demonstrate through a certification the capacity of the information systems under its administration to implement the link to the information systems of a different administrator through a referential interface, as required by Act No. 365/2000 Coll. As a result of the mentioned state and in connection with the incomplete specification of the security principles for operating IS, the MoT exposed itself to the risk that its approach would lead to the incompatibility of its own IS with the information systems of other public administration authorities and with national electronic registers of the respective bodies of the EU Member States and to a breach of information security.

The data in the MoT information concept does not correspond to the data that the MoT is obliged to publish in IS on Public Administration Information Systems. For example, the MoT mentions the IS *Digital Tachograph* in the information concept as a public administration information system; in IS on Public Administration Information Systems, it does not. By not making access to information on the administered information systems and the data elements used complete, the MoT exposed itself to the risk of incompatibility with any linked IS of other public administration authorities.

To secure the processes related to organising and managing IT projects through contractors, the MoT adopted project management methodology in 2013. This methodology does not

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<sup>18</sup> Decree No. 529/2006 Coll., on requirements for the structure and content of the information concept and operating documentation and on the requirement for security and quality management of public administration information systems (decree on the long-term management of public administration information systems).



describe the connection to the previous internal organisation procedures, e.g., the course of tenders and the creation of tendering documents and the investment plan.

## 2. Implementation of ICT projects

### 2.1 Use of negotiated procedure without prior publication

In the audited period, the MoT concluded the agreements listed in Table 2 based on negotiated procedure without prior publication without legal justification.

**Table 2 – Public contracts awarded in negotiated procedure without prior publication without legal justification (CZK thousands)**

Agreement	Name of agreement	Contractual amount
S-172-330/2012	Operation of the Central Register of Vehicles	32 429
S-108-330/2013	Operation of the infrastructure for the transport administration agenda and the ERP and HR systems	55 969
S-110-330/2013	Operation of the Central Register of Vehicles	37 994
S-110-330/2013	Operation of transport administration agendas at the appointed offices of municipalities with extended competence	8 833
S-41-330/2014	Operation of the infrastructure for the transport administration agenda and the ERP and HR systems	83 953
S-42-330/2014	Operation of the Central Register of Vehicles	61 075
S-239-330/2015	Operation of the infrastructure for the transport administration agenda and the ERP and HR systems	111 938
Total contractual amount		392 191

**Source:** individual MoT agreements

The MoT justified the use of negotiated procedure without prior publication based on which the MoT concluded Agreement S-172-330/2012 by claiming that the original operator (the Ministry of the Interior) had erroneous information about the state and quality of the Vehicle Register and so it was impossible for it to foresee this situation. The SAO assessed this argument as groundless, as at the time when the Vehicle Register was operated by the Ministry of Interior, it was materially responsible for the register. Despite this fact, the MoT, as part of the transfer of Vehicle Register data, did not analyse the state and quality of the data.

The MoT justified the use of negotiated procedure without prior publication based on which the MoT concluded Agreements S-108-330/2013, S-110-330/2013 and S-114-330/2013 by claiming extreme urgency and time pressure caused by uncertainty arising from a Government resolution<sup>9</sup> that anticipated the merger of the MoT with the Ministry of Industry and Trade. The SAO assessed the above argument as groundless, as the MoT already knew at the time of concluding the previous Agreement S-54-330/2010, valid from 1 April 2010 to 31 March 2013, which was the overriding agreement regulating the services required in the mentioned three agreements, that these services would need to be arranged even upon expiration, regardless of the Government's plan to merge the MoT with the Ministry of Industry and Trade.

The MoT justified the use of negotiated procedure without prior publication based on which the MoT concluded Agreements S-41-330/2014, S-42-330/2014 and S-239-330/2015<sup>19</sup> by claiming extreme urgency and time pressure caused by the anticipated new cybersecurity legislation.

The SAO assessed the above argument as groundless, as any information security requirements under the anticipated Cybersecurity Act and related implementing decrees should have been dealt with by the MoT under an agreement concluded based on an open or narrower procedure.

## **2.2 Agreement on the Provision and Development of IT Services**

On 31 March 2010, the MoT concluded Agreement on the Provision and Development of IT Services No S-54-330/2010 with the contractor for a period of 36 months. Through the mentioned agreement, it arranged for application and technical operation services, which were to be paid by way of a fixed monthly amount, and the service of managing and developing ICT services. The management and development services included project management, consulting and training, application development, strategic advisory and methodological management. These services should have been provided upon the MoT's request; however, payment was set as a fixed monthly amount.

The mentioned agreement allowed the contractor to invoice a monthly fix sum of 100% of the agreed fee for the upon-request services even if there was no performance. The agreement was concluded for 36 months and this state lasted for 21 months until the MoT management to develop the vehicle register application under Agreement S-54-330/2010. At this time, the MoT, for example, requested methodological management services in June 2010 only in the amount of 0.2% of the contractually allocated number of man-days and for the remaining 20 months did not use of any of the contractually allocated man-days. Until the time that the development of the vehicle register was successful under the agreement (i.e., over a 21-month period), the MoT paid CZK 85 588 986 through the fixed monthly fee for upon-request services. The upon-request services actually provided (according to the accepted man-days) corresponded to CZK 52 532 940. During 2010 and 2011, the MoT paid CZK 33 056 046 without any return performance.

## **3. Central Register of Vehicles**

Until 30 June 2012, the Vehicle Register was operated by the Ministry of the Interior for the MoT based on an Agreement on Cooperation in Connection with Integrated Operation of Transport and Administration Information Systems dated 31 December 2002. The MoT, as the administrator of the Vehicle Register, was responsible for its management and for the provision of data from the Vehicle Register for the needs of authorised persons. Since 2008,

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<sup>19</sup> Agreement S-239-330/2015 was concluded by the MoT for a definite period of time, specifically from 1 October 2015 to 31 March 2017, with the possibility to extend it by up to six months, i.e., until 30 September 2017. The intention of the MoT to implement a public contract in the form of negotiated procedure without prior publication was assessed by the Government Council for Information Society, specifically by the working group for negotiated procedure without prior publication.

the MoT planned that it would be necessary to transfer the Vehicle Register from the Ministry of Interior and develop a new modern vehicle register.

The transfer of the Vehicle Register from the Ministry of the Interior to the MoT was imposed by Resolution of the Government of the Czech Republic No. 1568 of 12 December 2009<sup>20</sup> as one of the MoT's non-legislative tasks for 2010. The MoT failed to complete this task by the stipulated deadline. A decisive factor for the transfer of the Vehicle Register was withdrawal from the Agreement on Cooperation in Connection with Integrated Operation of Transport and Administration Information Systems with a 19-month notice period. The MoT received notice from the Ministry of the Interior in June 2011. The MoT then had one year (i.e., until 1 July 2012) to arrange the transfer of the data base and to develop and launch the new vehicle register. The request to create a new vehicle register, including the transfer of data, was not made by the MoT until January 2012, six months before the planned launch into live operation.

The MoD chose a solution where the development of a new vehicle register would take place under the existing agreement on the provision and development of ICT services. The new application was awarded based on a change request as part of the service of management and development of ICT services provided as a so-called upon-request service in combination with man-days for the secondary services of project management, consultation and training and especially application development. The result of this solution was unsatisfactory contractual regulation of the conditions between the MoT and the contractor, especially the absence of a guarantee of the quality of the performance and ambiguity in the application of the penalty provisions. The performance quality guarantees in the form of contractual SLAs<sup>21</sup> were stipulated for each of the services separately; for this reason, it was not possible to assess the SLAs in connection with the creation of the new vehicle register, which arose by their being combined. The method of awarding the vehicle register by placing it under the Agreement on the Provision and Development of ICT Services made it impossible for the MoT to use the penalty provisions of this agreement, as these were not applicable to the creation of new IS. By these actions, the MoT breached the obligation to rigorously protect the rights of the State.

The deadline for launching the new application by 1 July 2012 was not met. The MoD did not submit to the auditors any document that would regulate and justify the movement of the deadline. The MoT accepted the transition to the new vehicle register application on 9 July 2012 without reservations. The subject of the acceptance was acceptance testing, migration of operational data and launch of live operation. The MoT does not have at its disposal the testing scenario or the testing protocols based on which the vehicle register application was accepted. The MoT spent CZK 37 209 690, incl. VAT, on development of the new register under the Agreement on the Provision and Development of ITC Services.

Immediately upon the launch of the new vehicle register, the application wrestled with a host of problems. The MoT identified particularly the underestimation of the complexity of

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<sup>20</sup> Resolution of the Government of the Czech Republic No. 1568 of 21 December 2009, *on the government plan for non-legislative tasks for the first half of 2010 and on the overview of topics for the government plan for non-legislative tasks for the second half of 2010.*

<sup>21</sup> SLA (*Service Level Agreement*) – guaranteed level of services.

the migration of the data, failure to test the designed system and insufficient training of users to be the main causes of the problems. For example, user training took place on a version of the application that did not have all agendas implemented. The application was unavailable to the participant in the training, so the training took place only according to user handbooks and not practically in the application. Under crisis management, the MoT set up technical teams after 9 July 2012 that were sent to the various municipalities with extended competence to help users with the new application in specific cases.

Although the assignment for the new register included the requirement for the complete migration of data, upon the launch of the vehicle register into live operation, 800 000 incompatible records were not successfully transferred. The migration of such records was subsequently completed by the contractor for the new vehicle register under the operating agreement.

#### **4. Cybersecurity**

The Czech Government approved by way of Resolution No. 680 of 27 August 2014<sup>22</sup> the *Strategic Framework for Developing Public Administration of the Czech Republic for 2014-2020*, which describes the technological centres and data repositories as one of the layers of Czech eGovernment architecture. The requirement to transfer IS with the status of critical information infrastructure and important information systems to the environment of data centres owned by the State ensued from Government Resolution No. 105 of 16 February 2015, with pertained to the *Czech National Cybersecurity Strategy for 2015-2020*.

*The Czech National Cybersecurity Strategy* (the “CNCS”) also called attention to the need to protect and secure data that are a matter of public interest (data relevant to critical information infrastructure and important information systems) and the need for a transparent security solution. One of the main objectives of the CNCS is to have thorough and trustworthy security of the environment for storing and working with the data of entities of critical information infrastructure and important information systems, with such environment having to be set up and managed by the State.

The MoT, in connection with the CNCS, prepared to award the operation, administration and storage of data that belongs under critical information infrastructure to the State enterprise Státní pokladna Centrum sdílených služeb outside the regime stipulated by Public Procurement Act under its Section 18(1)(e) in the form of the so-called in-house exemption. With regard to comments made during the external consultation procedure, the MoT backed down from this intention and continued to use the services of a private entity to operate the transport administration agendas that fall under mutual information systems and critical information infrastructure. With regard to the need to protect and secure data, this state of affairs is not optimal. The possibility to use general exemptions under the law in connection with public contracts awarded in the framework of special security measures was not analysed by the MoT.

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<sup>22</sup> Resolution of the Government of the Czech Republic No. 2014 of 27 August 680 regarding the *Strategic Framework for the Development of Public Administration of the Czech Republic for 2014-2020 and on the Establishment of the Government Council for Public Administration*.

## **5. Interoperability of the Driver Register and Operator Register on the EU level**

### **5.1 Agenda of the Register of Road Transport Operators**

Under Article 16(5) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator<sup>2</sup>, Member States shall take all necessary measures to ensure that the national electronic registers are interconnected and accessible throughout the Community through the national contact points in such a way that a competent authority of any Member State is able to consult the national electronic register of any Member State.

In the opinion of the Commission, the MoT, into whose remit the mentioned activities fall, did not ensure access to national electronic registers by the requested date. For this reason, on 10 November 2015, the Commission filed a suit against the Czech Republic with the EU Court of Auditors. In addition to the Czech Republic, The Commission filed a suit against three other EU Member States.

### **5.2 Agenda of Driving Licences**

Pursuant to Article 7(5)(d) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences<sup>2</sup>, the Czech Republic should have made use of the EU Driving Licence Network (RESPER) for the purpose of facilitating checks as of the moment of its launch (as of 19 January 2013). As at the date of conclusion of the audit, this connection was not working. The exchange of information about documents under RESPER should have contributed to revealing forgeries of driving licences and preventing so-called tourism for the purpose of obtaining a driving licence in a Member State where the applicant had committed no traffic offences that would have led to suspension of their licence.

The Czech Republic did not fulfil the required measures, and the Commission, after numerous reminders, filed a suit against the Czech Republic with the EU Court of Auditors on 19 November 2015. In addition to the Czech Republic, The Commission filed a suit against six other EU Member States.

## List of abbreviations

EU	European Union
ICT	Information and communication technology
IS	Information system
IT	Information technology
Commission	European Commission
MoT	Ministry of Transport
CNCS	Czech National Cybersecurity Strategy 2015-2020
SAO	Supreme Audit Office
Driver Register	Central Register of Drivers
Vehicle Register	Central Register of Vehicles
Operator Register	Register of Road Transport Operators