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Banking Secrecy in Comparative Perspective: Remarks on the Background of French and Czech Law

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Abstract: Banking secrecy is an institution that is well known in many European legal systems, as its regulation is an important element of the creation of a legal framework for the protection of individual data of national citizens. The method of regulating the described secrecy is always referring to some type of compromise between the public and the private interest of the economic actors in the given national system. The purpose of this article, in which the authors use the dogmatic, historical-descriptive method and, above all, the comparative method, will be to compare the way and scope of introducing the definition of banking secrecy in French and Czech law. The comparative analysis will allow for the drawing of a number of conclusions in the discussed scope, including the response to the question if despite European Union regulations, we can observe some important differences in that field at the national level. Another issue is related to the technological neutrality of the language that is being used, as an element that could give the response about the compatibility of national regulations to current technological evolution. The different ways of regulating banking secrecy in France and in the Czech Republic, presented in this paper, can be an interesting element of a broader discussion of the changes that may be needed in other national systems of EU member states.

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1. Introduction

In the EU countries, banks are being very often considered as business entities having a specific role and function.[1] As banking secrecy is one of the crucial elements of a given national banking system, the Authors would like to present this comparative study in order to formulate the response for several scientific questions. Namely, it would be interesting to check if, despite the European Union general framework, we can observe some important differences in that field at the national level. Another issue is related to the technological neutrality of the language that is being used, as an important element of ensuring the compatibility of national regulations to current technological evolution.

The choice of the French and Czech law as the examples of comparative analysis was already done in other several studies[2] and was also motivated by some historical reasons. Also, the Authors think that the juxtaposition of two countries, where one is representing the western EU countries and other central and eastern EU countries, could contain some interesting conclusions in the analysed field.

In this aspect, it would be interesting to verify, if in terms of banking secrecy, we can observe the process of harmonization rather than unification of national regulations. The above mentioned purpose of the study can be achieved by the description of the French regulations and, secondly, its equivalent in the Czech Republic. The methodology used in the article will also give the possibility to reveal some substantive differences between these two legal systems, as, in general, national specifics were detected in the doctrine of several nations.[3] The present article may also be an interesting supplement for the comparative studies in the field of banking law

1 Kristina Kocisova, Beata Gavurova, and Marcel Behun, "The Evaluation of Stability of Czech and Slovak Banks," *Oeconomia Copernicana* 9, no. 2 (2018): 205, https://doi.org/10.24136/oc.2018.011.

2 Michał Mariański and Richard Bartes, "The Financial Law in the Constitution from a Comparative Perspective. Reflections Based on the Example of France and Czech Republic," *Przegląd Prawa Konstytucyjnego*, no. 6 (2024): 287, https://doi.org/10.15804/ppk.2024.06.20.

3 Zana Pedic, "Interconnectivity and Differences of the (Information) Privacy Right and Personal Data Protection Right in European Union," *Review of European and Comparative Law* 30, no. 3 (2017): 125, https://doi.org/10.31743/recl.4264.

that were already done, and where also the comparison between the Czech Republic and other EU countries was described.[4]

As already mentioned, banking secrecy is an institution present in many European legal systems, but its regulation is very difficult due to the fact that in this matter we have both public and private interests that compete with each other. This is also one of the main characteristics of financial market law, including banking law, that was underlined several times by the European doctrine.[5] In relation to the topic of this study, the comparative method, used by the authors, will not limit the analysis to only one legal system but to present the view from the supranational perspective, i.e., related to more than one legal system. The comparative method is especially important for the analysis of legal provisions that are potentially having a cross-border nature and, in consequence, are subject to the freedom of capital movement. In the doctrine, this aspect was already underlined, and banking law as a part of financial market regulations was described as a challenge for the national and European legislator.[6]

Regarding the information used by banks, first, it is necessary to clarify the relationship between the legal regulation of banking secrecy and the general regulation of the processing of personal data. The term personal data is defined in Article 4, point 1 of the General Data Protection Regulation (GDPR)[7] as any information relating an identified or directly identified or indirectly identifiable natural person. Information protected by banking secrecy is basically all data relating to clients or former clients using or interested in using a payment service provided by the bank. In the

4 Ewa Kowalewska, "The Role of the Central Bank in Foreign Exchange Inspection in Selected Countries of the European Union – as Seen in the Example of Poland, the Czech Republic and Germany," *Review of European and Comparative Law* 45, no. 2 (2021): 183, https://doi.org/10.31743/recl.12282

5 Mariola Lemonnier, "Prawo publiczne a prawo prywatne. Uwagi prawnoporównawcze na podstawie prawa francuskiego," *Studia Prawno-Ekonomiczne* 100 (2016): 67.

6 Michał Mariański, "Freedom of Establishment and Freedom of Capital Movement as a Limitation to Excessive Regulation of the Financial Market," *Prawo i Więź* 49, no. 2 (2024): 27, https://doi.org/10.36128/PRIW.VI49.845

7 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L119, 4 May 2016).

case of clients (natural persons), these two sets of information overlap to a large extent.

2. Banking Secrecy in French Law

First of all, it is important to underline that the Banque de France, founded by a decree of the 19th century, was originally independent of the French government, as it was a private enterprise.[8] Due to the above, the regulation of banking secrecy, especially in French law is another example of an already-mentioned compromise between private and public law regulations. This is also one of the four main obligations of the banking sector that is described by French doctrine, next to the right to information, principle of non-interference and the duty of vigilance.[9]

Generally in France, banking secrecy is a professional secret like any other[10] and is regulated in the French Monetary and Financial Code (fr. *Code monétaire et financier*), where in Title I of Book no V, was created Section V related to professional secrecy (fr. *Le secret professionnel*).[11] In this section there ae two main articles: L511–33, that was modified recently in April 2024,[12] and L511–34 that was modified in February 2020.[13]

The first of the above-mentioned articles, in its point I, states that any member of a board of directors, a supervisory board, and any person who, in any capacity, participates in the management or administration of a credit institution, a financing company, or an organization referred to in paragraphs 5 and 8 of Article L. 511–6, or who is employed by one of them, is bound by professional secrecy.

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8 Richard Bartes, "Public Property in the French Law," in *Public Economics and Administration 2021: Proceedings of the 14th International Scientific Conference: 8th September 2021, Ostrava, Czech Republic* (Ostrava: VŠB Ostrava, 2021), 36.

9 Thierry Bonneau, *Droit bancaire*, 15th ed. (Paris: LGDJ, 2023), 462.

10 See more about the different types of secrecy in France: Michał Mariański and Ewa Piechota-Ołoś, "Prawno-porównawcze aspekty regulacji tajemnicy skarbowej," *Studia Prawnoustrojowe*, no. 68 (2025): 305–20, https://doi.org/10.31648/sp.11117.

11 Alexandre Peron, *L'essentiel du droit bancaire*, 3rd ed. (Paris: Gualino, 2023), 139.

12 Loi n° 2024–317 du 8 avril 2024 portant mesures pour bâtir la société du bien-vieillir et de l›autonomie, JORF n°0083 du 9 avril 2024 [Act no. 2024–317 of 8 April 2024].

13 Ordonnance n° 2020–115 du 12 février 2020 renforçant le dispositif national de lutte contre le blanchiment de capitaux et le financement du terrorisme, JORF n°0037 du 13 février 2020 [Ordinnance no. 2020–115 of 12 February 2020].

In this point it is also underlined that, apart from cases where the law so provides, professional secrecy cannot be invoked against the Prudential Supervision and Resolution Authority (fr. *Autorité de contrôle prudentiel et de résolution*),[14] the Banque de France, the Overseas Departments Issuing Institute, the Overseas Issuing Institute, the judicial authority acting in criminal proceedings, or the commissions of inquiry established pursuant to Article 6 of Ordinance No. 58–1100 of November 17, 1958, relating to the functioning of parliamentary assemblies.[15]

Credit institutions and finance companies may also communicate information covered by professional secrecy; on the one hand, to rating agencies for the purposes of rating financial products and, on the other hand, to persons with whom they negotiate, conclude or carry out the operations set out below, provided that this information is necessary for them for one of seven enumerative cases. First is related to credit transactions carried out, directly or indirectly, by one or more credit institutions or finance companies. The second case is related to transactions involving financial instruments, guarantees, or insurance intended to cover a credit risk. The third situation covers acquisition of an interest or control in a credit institution, an investment firm, or a finance company. The fourth point alluded to disposals of assets or goodwill, and fifth to the assignments or transfers of receivables or contracts. The penultimate point refers to service contracts entered into with a third party with a view to entrusting them with important operational functions. Finally, the seventh situation covers facts when studying or preparing any type of contract or transaction, provided that these entities belong to the same group as the author of the communication.

In the fourth indention of Article L.511–33, the French legislator specifies that when dealing with financial contracts, the credit institutions and finance companies may also disclose information covered by professional secrecy when legislation or regulations of a State that is not a member of the European Union provide for the reporting of such information to a central repository. This information should constitute personal data subject to

[14] See more: Michał Mariański, "Uprawnienia i kompetencje francuskiego pomocniczego organu nadzoru nad rynkiem finansowym Autorité de contrôle prudentiel et de resolution," *Przegląd Prawa Handlowego*, no. 4 (2023): 38–44.

[15] Ordonnance n° 58–1100 du 17 novembre 1958 relative au fonctionnement des assemblées parlementaires.

French Law No. 78–17 of January 6, 1978, relating to information technology, files and freedoms, and its transmission must be carried out under the conditions provided for by above-mentioned law.[16] Also, the French Court of Cassation[17] confirmed in its judgment from 2024, that banking secrecy is the obligation for all members of the management and supervisory bodies of credit institutions, as well as their employees carrying out banking activities, to keep confidential information they hold about their clients or third parties.[18]

The fifth indention of Article L.511–33 precises that, in addition to the cases set out above, credit institutions and finance companies may communicate information covered by professional secrecy on a case-by-case basis and only when the persons concerned have expressly authorized them to do so.[19] They may also communicate, only with the victim's consent, this information to the authorities mentioned in Article L. 119–2 of the Social Action and Families Code (fr. *Code de l'action sociale et des familles*) within the framework provided in Article L. 119–2, when this information concerns acts of mistreatment having an impact on the financial situation of an adult in a vulnerable situation, in particular due to their age or physical or mental incapacity. What is important, is that the persons receiving information covered by professional secrecy, which has been provided to them for the purposes of one of the operations set out above, must keep it confidential, whether or not the aforementioned operation is successful. However, in the event that the aforementioned operation is successful, these persons may in turn communicate the information covered by professional secrecy under the same conditions as those referred to in this article to the persons with whom they negotiate, conclude or carry out the operations mentioned above.

Another aspect of banking secrecy is regulated in Article L511–34 of Monetary and Financial Code. In this regulation, we can read that companies established in France and which are part of a financial group or a group including at least one financing company, or a group within the

16 Loi n° 78–17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés (JORF du 7 janvier 1978).

17 Cour de cassation is the highest court in the French judicial system.

18 Judgment of Cour de cassation, civile, Chambre commerciale, 27 March 2024, no. 22–15.797

19 This was confirmed by several judgments such as: Cour d'Appel de Poitiers, 2e ch. civ., on 17 January 2023, no. 22/01081 and Cour d'Appel de Paris on 10 May 2023 no. 21/15894.

meaning of Article L. 356–1 of the Insurance Code, or a mixed group or a financial conglomerate to which regulated entities within the meaning of Article L. 517–2 belong,[20] notwithstanding any provisions to the contrary, are required to transmit to companies in the same group four types of information.

First type of information is related to their financial situation necessary for the organization of consolidated supervision and supplementary supervision of these regulated entities or finance companies. The second type of information has to be necessary for the organization of the fight against money laundering and terrorist financing. The third type of information that companies are required to transmit has to be necessary for the organization of the detection of market abuse referred to in Article 16 of Regulation (EU) No. 596/2014 of the European Parliament and of the Council of April 16, 2014, on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC. The last type of information refers to data necessary for the management of conflicts of interest within the meaning of Article L. 533–10 of the French Monetary and Financial Code.

It is also stated in the second part of Article L511–34 that this information may not be communicated to persons outside the group, with the exception of the competent authorities of the States referred to in the first paragraph. This exception does not extend to the authorities of States or territories whose legislation is recognized as inadequate, or whose practices are considered to hinder the fight against money laundering or the financing of terrorism, as determined by the international body for consultation and coordination on combating money laundering. The list of such States and territories is updated by order of the Minister of the Economy. Persons receiving this information are bound by professional secrecy under the conditions and subject to the penalties mentioned in Article L. 511–33, for any information or documents they may receive or hold. The provisions of this article do not preclude the application of already-mentioned Law

[20] With their registered office in a Member State of the European Union or a State party to the Agreement on the European Economic Area, or in a State where the agreements provided for in Articles L. 632–7, L. 632–13, and L. 632–16 of this Code are applicable.

No. 78–17 of January 6, 1978, relating to information technology, files, and civil liberties.

According to French doctrine, the banking secrecy is regulated in a very specific way, where one important restriction is present and related to certain administrations that automatically have access to the information they request.[21] Under the term of certain administrations, the French legislator understand not only tax and customs authorities, but also the financial market institutions like Banque de France, the Financial Markets Authority (AMF), and the Prudential Supervision and Resolution Authority (ACPR). It is also worth to underline that the ACPR authority is the main supervisory authority in relation to the banking sector.[22]

Furthermore, it should be underlined that courts may have access to information subject to banking secrecy in the context of criminal proceedings. Bank secrecy may, in very certain specific cases, also be lifted when the request comes directly from the beneficiary of the bank account, and when the bank is a party to the proceedings. Generally in France, the government has the right of direct access, without judicial review, to information held by banks and, as a consequence, the banking secrecy is, as a general rule, limited to the professional secrecy of its agents.[23]

3. Banking Secrecy in the Czech Republic

The legal institution of banking secrecy is defined relatively briefly in the Czech Republic. According to Section 38(1) of the Banking Act, banking secrecy applies to all banking transactions and monetary services of banks, including account balances and deposits. In other words, the Institute of Banking Secrecy protects information about bank clients, their assets, products used, and banking transactions. The Czech Banking Act devotes much more attention to individual exclusions from the prohibition on providing information protected by banking secrecy to other persons without the client's consent. In addition, the Banking Act generally authorizes banks to collect and further process personal data, including personal identification

21 Jérôme Lasserre Capdeville, *Le secret bancaire. Approches nationale et internationale* (Paris: Revue Banque, 2014), 12.

22 Alexandre Quiquerez, *Droit bancaire. Établissements, régulation, opérations de paiement et de financement* (Paris: Gualino, 2024), 113; Bonneau, *Droit bancaire*, 456.

23 Quiquerez, *Droit bancaire*, 155.

numbers, necessary for providing transactions without disproportionate risks for the bank (Section 38). However, banking secrecy in the Czech Republic is defined much more broadly by the doctrine of financial and commercial law.[24] At the same time, banking secrecy has been the subject of definition for a long time.[25]

It is clear from the purpose of banking secrecy and the wording of the breakthroughs that only bank information that can directly or indirectly identify a bank client or the fact that a certain person as bank client is protected. Subject to the protection of banking secrecy are also any information related to banking transactions or client assets managed by the bank, information about the payment card holder issued for the relevant client account, information about the client's personal situation obtained within the framework of the relationship with the client, data on the personal identification number, if assigned, on the client's financial circumstances, fingerprints and other biometric data, if available to the bank, any video recording of the client and all other information from which the bank's client or the fact that a certain person is a bank client can be directly or indirectly identified.

If the data protected by banking secrecy contains personal data of natural persons, in addition to banking secrecy under the Banking Act, the legal provisions on the protection of personal data, in particular the GDPR, apply. Certain data may also be protected as a trade secret or a contractual agreement. The bank may disclose data protected by banking secrecy to a third party only in cases where the law expressly provides for it or if the client agrees to the disclosure of data.

In the case of banks that are obliged entities under the Freedom of Information Act (especially state-established and controlled banks), the protection of banking secrecy constitutes an additional exception to the obligation to provide information.[26]

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24 Josef Bejcek, "On the Issue of Bindingness and Banking Secrecy," *Taxes: A Professional Journal for Tax Law and Practice*, no. 3 (1995): 2.

25 Johan Schweigl, "The Fundamental Events within the Development of Central Banking in the Czech Lands," *Journal on European History of Law* 7, no. 1 (2016): 136.

26 Provincial Administrative Court in Prague, Judgment of March 31, 2016, Ref. No. 6 A 84/2012 – 43, unreported.

The first condition related to legal breakthroughs in banking secrecy is related to the provisions of Section 38, and paragraphs 2–6, 8, 9, 11, and 12, as well as Section 38b of the Banking Act. In these regulations the legislator defines breaches of banking secrecy, i.e., cases where the provision of data protected by banking secrecy without the client's consent by the bank is not a breach of a legal obligation. This primarily concerns the provision of data protected by banking secrecy to a person entrusted with the performance of banking supervision (the Czech National Bank)[27] or supervision of compliance with regulations in the area of AML/CFT[28] (the Financial Analysis Bureau), to criminal authorities when filing a criminal complaint, or to some other public authorities.[29] A bank does not violate the law if it provides information protected by banking secrecy because it has such an obligation under the legal system of another country where it does business. Although the list of breakthroughs in the Banking Act should be exhaustive, it cannot be completely ruled out that there are other legal regulations that clearly regulate the obligation of a bank to transfer certain data or the authority of the competent authority to request data protected by banking secrecy. Such another breakthrough into banking secrecy is represented, for example, by the Act on International Cooperation for Tax Administration in Section 13k of the Act on the Processing of Personal Data in the Section 58(1).

A specific case of a breach of banking secrecy is further specified in Section 3(2)(o) of the Act on the Register of Contracts, according to which the obligation to disclose applies if the contract is between a bank and a person specified in Section 2(1) of the Act on the Register of Contracts, which concerns the use of public funds; this does not exclude the possibility that some information contained in such a contract is nevertheless not disclosed in the register for reasons pursuant to Section 3(1) of the Act on

27 Michael Kohajda, "Central Bank Independence – From the European Union Law to the Czech Republic Example," *European Studies* 9, no. 1 (2022): 234, https://doi.org/10.2478/eustu-2022-0011.

28 Anti-Money-Laundering/Countering the Financing of Terrorism.

29 Section 38(3) of the Banking Act obliges the bank to provide this data, for example, to a court for the purposes of civil proceedings, to tax administrators under the conditions set out in the Tax Code, and to a financial arbitrator deciding a dispute under a special legal regulation.

the Register of Contracts[30] (e.g., for reasons of protection of trade secrets within the meaning of Section 504 of the Civil Code).

In the case of protecting the health or life of the population in emergency situations, another breakthrough can be considered – the authorization for some authorities to issue emergency measures in the event of an epidemic and the risk of its occurrence. However, it always depends on the formulation of the specific measure and the specific request to the bank. The Bank may also provide data subject to banking secrecy to the extent necessary to the court in legal proceedings in order to exercise its right to judicial protection. The Bank may use not only data about the person who is a party to the proceedings, but also data about other persons, if this is useful in the context of evidence.

The second condition is related to the client consent to the transfer of data protected by banking secrecy and is regulated in Section 38(1) of the Banking Act. According to this act, a bank may generally disclose a client's data that is subject to banking secrecy upon request or with his consent. If the client agrees to the disclosure of data held about him, there is nothing to prevent the bank from complying with such a request. The client's consent may be granted generally, i.e., for all cases of a certain type (e.g., for the purpose of assigning a claim against the client if the client defaults on an obligation), or it may relate only to an individual case (e.g., for the purpose of a specific request from a police authority pursuant to Section 8(1) of the Criminal Procedure Code). The client may give his consent to the bank directly or the client's consent may be submitted to the bank by a third party. However, it is not contrary to the Banking Act if the bank insists that the client submit the consent himself. Although banks usually figure as honest entities satisfying liquidity needs via issuance of demand deposits and other short-term liabilities,[31] within the limits of the contract with the client, the bank also has the right to assess what procedure it considers sufficiently prudent in terms of documenting the consent (Section 12 of the Banking

[30] Section 3(1) of the Act on the Register of Contracts: "Information that cannot be provided in accordance with the regulations governing free access to information shall not be published through the register of contracts."

[31] Timothy Jackson and Laurence J. Kotlikoff, "Banks as Potentially Crooked Secret Keepers," *Journal of Money, Credit and Banking* 53, no. 7 (2021): 1593, https://doi.org/10.1111/jmcb.12841.

Act) and the bank cannot be accused of greater prudence from the perspective of the Banking Act.

The Banking Act does not regulate the form or other requirements of a client's consent to the provision of his data protected by banking secrecy to a third party. The client's consent must always meet the general requirements for legal acts set out in the Civil Code (i.e., the requirements for freedom of will, seriousness, certainty and comprehensibility of legal action). The consent granted must clearly state to whom the data will be transferred, the scope of the transferred data and the purpose for which the third party will process the data. It can be considered prudent within the meaning of Section 12(1) of the Banking Act if the consent is in written form and there is no doubt about its authenticity, i.e., it is usually associated with the reliable identification of the client.

The client's consent may take the form of a unilateral legal action. It may also be part of a contractual agreement between the client and the bank, and it is not entirely excluded that it may also be included in the terms and conditions. In such a case, however, its content may not represent a so-called surprise clause within the meaning of Section 1753 of the Civil Code. For example, it could be surprising for the client if the consent entitles the bank to broad or unlimited processing of their data.

Additional conditions for proper consent may arise from the GDPR. It should be noted that the client's consent to the provision of their data protected by banking secrecy to a third party needs to be distinguished from consent as a title for the processing of personal data under the GDPR. However, it is not excluded that in practice the client's consent to the provision of their data protected by banking secrecy to a third party under the Banking Act will also meet the conditions of consent under the GDPR. In other words, although consent to the disclosure of information subject to banking secrecy and consent to the processing of personal data are procedures under two different legal regulations (the Banking Act and the GDPR), these two regulations are, in fact, very close. If consent is granted by a natural person, he or she can express it in one act (e.g., through one form). In such a case, it is important that this act meets the requirements of both regulations and is transparent. It must be clear to the client what information he or she is consenting to be disclosed and that it concerns both his or her personal data and information of a banking secrecy nature.

Today, banks are part of the digital age and use digital technologies to reduce costs and streamline their processes.[32] The issue of comprehensibility in contracts concluded with consumers by adhesive means was addressed by the Constitutional Court in the Czech Republic, according to which the arrangement of the text is an expression of the principle of fairness: "contractual provisions must have a sufficient font size, they must not be significantly smaller than the surrounding text, they must not be placed in sections that give the impression of an unimportant nature."[33]

In the context of banking secrecy rules, a bank client can be considered anyone who has or had a business relationship with the bank (i.e., has concluded a contract, written, oral, or even implied), and has negotiated with the bank about establishing a business relationship (concluding a contract), regardless of whether the business relationship was ultimately established. According to Section 38(1) of the Banking Act, banking secrecy applies, among other things, to all banking transactions. The provisions of the Section 38(2) et seq. of the Banking Act introduce breaches of banking secrecy. Given the meaning of banking secrecy, which consists in protecting the legitimate interests of persons providing banks with information about themselves, their transactions or property circumstances (i.e., in particular the interest that this information is not provided by the bank to other entities), it is necessary to interpret the term "client" in a broader sense than simply as a designation of a person who currently has a business relationship with the bank and/or uses its services. The protection necessarily also applies to persons who have already terminated their business relationship with the bank or are currently negotiating or have negotiated to conclude it.

This may cause some interpretation problems. In particular, for persons who use a one-time payment service where they do not need to be identified, it may be complicated to obtain their consent to use information subject to banking secrecy. If a bank intended to use this information without having any of the legal titles listed in the Banking Act, it would be very difficult in practice to obtain demonstrable consent from such clients.

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32 Sylwia Wojciechowska-Filipek, "Automation of the Process of Handling Enquiries Concerning Information Constituting a Bank Secret," *Banks and Bank Systems* 14, no. 3 (2019): 175, http://dx.doi.org/10.21511/bbs.14(3).2019.15.

33 Czech Constitutional Court, Judgment of 11 November 2013, Ref. No. I. ÚS 3512/11, unreported.

The client is not only the debtor, but also, for example, the guarantor. At the moment of the guarantee, a legal relationship arises between the bank and the guarantor, in which the bank collects data subject to banking secrecy pursuant to Section 37(2) of the Banking Act. It is also irrelevant whether the business relationship arose directly or, for example, on the basis of an assignment of a receivable, even if it concerns receivables assigned to the bank within the framework of factoring. Banking secrecy applies to a bank even if its ATM is used by a person who has an account with another bank, as such a person is also a client of the monetary service provided by the bank operating the ATM.

These conclusions are important in terms of clients' trust in the institution of banking secrecy, but also in terms of sharing data on the creditworthiness and trustworthiness of clients in the so-called credit registers (Section 38a, paragraphs 1 and 2 of the Banking Act). Temporary storage and sharing of data on the payment history of clients even after the end of the business relationship (e.g., after the loan has been repaid), is desirable not only as a warning against the problematic payment history of some clients, but also for credit risk management for clients with a positive repayment history who can obtain a loan on more favorable terms in the future.

Temporary storage and sharing of information about clients who are negotiating with the bank to establish a business relationship is important in particular as a prevention of possible over-indebtedness of the applicant, an increase in the credit risk of creditors in the event of a successful loan application authorizing subsequent drawdown of credit from several banks at once, and also as a prevention of credit fraud. As for clients who have failed in their loan application, temporary storage of their data may be important as a warning that the creditworthiness or trustworthiness of the applicant may not be in order. This interpretation is also in line with the meaning of the provisions of Section 38a, paragraphs 1 and 2 of the Banking Act, which breaks bank secrecy in order to fulfill the obligation of prudent business conduct of banks

4. Conclusion

The topic of banking secrecy can also be linked to the field of economics, or to performance measurement.[34] In general, banking law issues in the Czech Republic belong to the non-fiscal part of financial law.[35] In French law, the regulation of banking secrecy is partly private law and partly public law regulation, while in the Czech Republic it is exclusively public law regulation. Another difference is the detail of the legal regulation. While in France, banking secrecy is regulated in the Monetary and Financial Code, where it is defined quite comprehensively within two main articles; in the Czech Republic, banking secrecy is regulated relatively briefly in only one paragraph of the Banking Act. As for banking secrecy as a legal institution, it can be examined according to European law[36] and national law, as it was done in the present study.

If a bank client or a person interested in a bank product is a natural person, then information about their use of banking products and related facts can largely be classified as both personal data and information protected by banking secrecy.

On the other hand, personal data also includes data on non-clients of the bank that the bank has at its disposal, or data on clients who use certain specific services, in particular identification or services of a public administration contact point. From the opposite point of view, it can be stated that information on legal entities such as (current or former) clients of the bank or those interested in banking products is information of a banking secrecy nature, but not personal data under the GDPR regime. The GDPR only affects information relating to natural persons.

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34 Sundus H.M. Al-Badri and Haidar J.M. Al-Fraiji, "The Role of Banking Secrecy in Improving Banking Performance," *Al-Ghary Journal of Economic and Administrative Sciences* 17, no. 4 (2021): 323, http://dx.doi.org/10.36325/ghjec.v17i4.13805.

35 Richard Bartes, "Guarantees of Legality and Selected Aspects of Legal Liability in Subsidy Law," *Financial Law Review* 17, no. 1 (2020): 1, https://doi.org/10.4467/22996834FLR.20.001.12042.

36 See more: Marek Ryszard Smarzewski, "Obtaining Evidence Protected by Banking Secrecy through European Investigation Order in Preparatory Proceedings. Remarks from the Polish Perspective," *Review of European and Comparative Law* 54, no. 3 (2023): 195, https://doi.org/10.31743/recl.16210.

In practice, it is therefore necessary, in every process that involves disclosing information about bank clients to other entities, to first assess whether the information is subject to banking secrecy or personal data. Subsequently, it is necessary to apply one or both of the relevant regulations. The Banking Act, which contains primarily a list of legal titles for disclosing protected information, for banking secrecy and the GDPR with its detailed rules for processing personal data.

As for the main differences between French and Czech law, it should be noted that we have the systems where in France the concept refers rather to the professional secrecy of its agents, while in the Czech Republic it is related to professional secrecy of the institution. The liability of employees of Czech banking institutions is then regulated through labor law liability. Despite this conceptual difference, the scope of banking secrecy seems to be very similar and in both cases the legislator is trying to use the technologically neutral language that is adapted to current technological evolution. However, due to the technological progress and changes in legal relations related to it, that are becoming increasingly dynamic and technology-dependent, the intervention of case law in clarifying the indicated regulations seems necessary. In this aspect, French law seems to be better adapted to this process as the jurisprudence plays a very important role in creating and clarifying the legal provisions introduced in France. It also seems that the important role of the jurisprudent can be a factor accelerating the adaptation of current regulations to new challenges, for example related to new legal concepts[37] or to the so-called sustainable development and ESG criteria.[38]

On the contrary, a legitimate common feature is the breach of banking secrecy, for example in the case of criminal proceedings. In both countries, it is possible for bank institutions to disclose the content of banking secrecy to the law enforcement authority in the event of a criminal complaint or criminal proceedings, regardless of the clients' consent.

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37 Michał Mariański, "The Phenomenon of Decausalization as a Challenge for Financial Market Regulation," *Studia Iuridica Lublinensia* 34, no. 1 (2025): 198, http://dx.doi.org/10.17951/sil.2025.34.1.195-211.

38 Magdalena Fedorowicz and Anna Zalcewicz, "Challenges Posed to the EU Financial Market by the Implementation of the Concept of Sustainable Financing," *Białostockie Studia Prawnicze* 29, no. 1 (2024): 48, https://doi.org/10.15290/bsp.2024.29.01.03.

Nevertheless, the method of defining the scope of banking secrecy in France and the Czech Republic is very interesting from the point of view of other European Union countries, like Poland. In this context, the present study may therefore constitute one of the elements of the discussion on the potential amendment of regulations in other countries in this aspect and conducting further extended comparative research.

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