

Protected Accounts in the Czech Republic

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Abstract: The focus of the article is the legal regulation of protected accounts in the Czech Republic. A protected account is a bank account shielded by the law from the consequences of debt enforcement (debt collection) procedures. Some banks are legally required to open such an account for the debtor and to allow certain funds to be transferred to the account if certain conditions are met. These funds are not subject to debt enforcement and serve to secure the basic needs of the account holder — the obliged party in an enforcement procedure. The article deals with the conditions that need to be met for an account to be opened, and examines certain issues ensuing from the legal regulation.

Key words: payment account, protected account, debt enforcement, account holder, bank, payment system

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1. Introduction

A new concept — “protected account” — has been introduced to the legal system of the Czech Republic. The account in question is a (bank) payment account which is shielded by the law from debt enforcement (debt collection) procedures and that assures the account holders — debtors — that they will be able to dispose of funds necessary for their basic needs. A further objective of the legal regulation was to support cashless payments, to cut red tape for employers, civilian enforcement officers and courts in conducting the enforcement procedures, and to prevent the circumvention of debt enforcement rules. In practice, employees facing debt enforcement had often been paid in cash or had been employed in violation of the law in order to avoid collection of the creditor’s claim in a debt enforcement procedure.

The enactment of the new legal regulation of protected accounts and its implementation in the Czech Republic was also justified by the cooling economy after the global coronavirus pandemic and the threat of more people being endangered by debts. According to the explanatory memorandum to the given bill, the establishment of protected accounts was intended to prevent a further increase in the number of people at risk of debt in case of more challenging economic conditions, which were to be expected. The Czech Republic thus learned some lessons from the previous economic crisis.¹

An amendment to the Czech Code of Civil Procedure² (the “amendment”) introduced the legal rules for

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¹ Cf. Explanatory memorandum to Act No. 38/2021 Coll., amending the Code of Civil Procedure, the Enforcement Rules and Act No. 119/2001 Coll., ASPI – LIT288513CZ.

² Act No. 38/2021 Coll., Act amending Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, Act No. 120/2001 Coll., on civilian enforcement officers and their activities (the Enforcement Rules), as amended, and Act No. 119/2001 Coll., laying down rules for parallel enforcement of decisions, as amended.

opening “protected accounts” in the Czech Republic. The amendment was passed on 19 January 2021 and was set to take effect from 1 April 2021, but the effective date of the Act was later changed to 1 July 2021³. At the time when this article is being written, the amendment has been in effect for more than a year.

A protected account is intended for private individuals whose payment account has been affected by debt enforcement. It enables its holder to effect cashless transfers in the same way as from the original (unprotected) payment account before it became subject to debt enforcement. That being said, only funds from sources listed by the law can be handled in this account.

2. Legal Regulation of Payment Accounts

Protected account is defined by the amendment as a payment account maintained under special conditions specified by the law.

There is no uniform general definition of current or bank account in doctrine.⁴ For the purposes of this paper, the concept of “account” will be conceived as an obligation arising under an account agreement under the Czech Civil Code. According to the law, the one who maintains an account undertakes, by virtue of an account agreement, to open an account for its holder at a certain point in time and in a certain currency, allow cash to be deposited in or withdrawn from the account, and make transfers of funds from or to the account.⁵ A payment account is one of the types of accounts regulated by the Civil Code.

The Civil Code refers to one of the parties to an account agreement as the one who maintains the account. The circle of persons who may be a party to such an agreement is thus defined in relatively broad terms. The Code of Civil Procedure provides that the enforcement of a decision (debt collection) may only be directed against an account maintained by a financial institution. In the Czech Republic, the concept of “financial institution” comprises branches of foreign banks, savings and credit co-operatives, electronic money institutions and foreign electronic money institutions, payment institutions and foreign payment institutions, and small-scale payment service providers. A financial institution must operate in the Czech Republic.

The other contracting party is denoted by the Civil Code as the account holder. This is a traditional designation, which, however, cannot be understood as meaning that the party actually owns the account. The account holder owns merely the receivable recorded in the account.

The law does not require a written form for an account agreement. This agreement may thus also be concluded in a form other than in writing. However, the parties may agree that their account agreement and any amendments thereto will be made in writing. A part of the contents of an account agreement may also be determined by general terms and conditions, usually of the one who maintains the account. The provisions on consumer protection will apply to an account agreement if the account holder (as one of the parties to the agreement) is in the position of consumer.

³ Act No. 155/2021 Coll., amending Act No. 38/2021 Coll., amending Act No. 99/1963 Coll., the Code of Civil Procedure, as amended, Act No. 120/2001 Coll., on civilian enforcement officers and their activities (the Enforcement Rules), as amended, and Act No. 119/2001 Coll., laying down rules for parallel enforcement of decisions, as amended, and Act No. 191/2020 Coll., on certain measures to reduce impacts of the SARS CoV-2 coronavirus epidemic on persons in court proceedings, aggrieved parties, victims of criminal offences and legal persons, and amending the Insolvency Act and Code of Civil Procedure, as amended.

⁴ E.g., Cranston, R. *Banking Law*, Oxford University Press, London 1997, p. 171, Geva, B. *Bank Collections and Payment Transactions*, Oxford University Press, London 2001, reprinted 2011, pp. 32-33; and Hooley, R.J.A. in *Chitty on Contracts*, Thirtieth Edition, volume II, Specific Contracts, London 2008, Thomson Reuters (Legal) Limited, Sweet&Maxwell, p. 416 (34-308).

⁵ Section 2662 of the Civil Code.

A payment account is subject to both the general legal regulation of accounts enshrined in the Civil Code and the special legal regulation on payment systems.⁶ The Civil Code leaves the regulation of payment accounts to the Payment Systems Act primarily because European Union law puts this field of law in spotlight. The Payment Systems Act transposes the EU Directive on payment services in the internal market.⁷

Payment account is an account that serves for the execution of payment transactions, i.e., for depositing funds into a payment account, withdrawing funds from a payment account and transferring funds, as required.⁸ The conditions for maintaining a payment account may be set out in a framework agreement on payment services. By virtue of such a framework agreement, the payment service provider agrees to execute for the payment service user payment transactions which are not individually listed in the agreement. An account agreement is deemed to be a framework payment services agreement if it provides for a payment account.

Given the fact that, by definition, funds need to be pooled in any account, such funds have to be deposited into the account or transferred there from another account. In these circumstances, virtually every account meets the conditions set out in the definition of payment account. The indefinite specification of the features of a payment account and distinction from an account other than a payment account therefore led the European Commission to adopt interpretation based on the purpose which the account serves. According to the Commission's interpretation, payment accounts are deemed to include all types of current accounts and those savings accounts where the holder may deposit or withdraw funds without any additional act or consent of the payment service provider (the one who maintains the account). An additional act is deemed to mean a situation where the account holder must sign a new contract for each additional deposit or has to pay a penalty for failing to meet the agreed time of withdrawal.⁹ Other accounts are considered non-payment accounts (accounts other than payment accounts). The above criterion is ambiguous and can cause certain difficulties in practice.

3. Legal Conditions for Opening a Protected Account

The basic condition that needs to be met if a financial institution is to open a protected account is that the payment account used by the given private individual has been affected by the enforcement of a decision (debt collection). Based on this fact, the obliged party has the right to request a financial institution to open a protected account for him/her.

The amendment laid down the duty of a financial institution to open a protected account for an obliged party if the institution:

- has received the obliged party's request for opening a protected account;
- has been served with a court order on the enforcement of a decision by the attachment of a receivable from the account of an obliged party who is a private individual;
- has been served with a court notice of the account number of the payer of salary, other income or a pecuniary receivable defined by the law from which (meaning the account), for example, the uncollectible amount remaining from the salary, which shall be re-transferred to the protected account, will be remitted to the account

⁶ Act No. 370/2017 Coll., on payment systems, as amended.

⁷ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC.

⁸ Section 2 (1)(b) of the Payment Systems Act.

⁹ Q 25, 15 July 2008, Q 150, 18 December 2008.

affected by the enforcement procedure.

3.1 Request for a Protected Account

Only a private individual may apply for a protected account under the conditions laid down by the law. The law does not specify the exact formal requisites of a request for a protected account. The explanatory memorandum to the relevant bill explained that the requisites of such a request would be left to the financial institutions' practice.

A request for a protected account submitted to a financial institution comprises the applicant's usual identification details. Along with the data thus disclosed, the financial institution also has available identification details related to an account with the financial institution affected by enforcement of a decision as well as data relating to the identification of all court decisions ordering enforcement by virtue of attachment of a receivable from the account maintained by the financial institution. Indeed, the obliged party always has at least one other account with the given financial institution at the time when a protected account is being opened. If the debt enforcement procedure affects several accounts of the obliged party maintained by the given financial institution, the obliged party shall also specify in his/her request the account from which the funds shall be transferred to the protected account.

The request must be accompanied by the obliged party's declaration that no protected account is maintained in his/her favour as at the date of the request. Such a declaration is required because the law allows for the establishment of only one protected account for any obliged party. If it is found that several protected accounts have been opened for one obliged party at various financial institutions, the court will decide which of these accounts will remain a protected account.

The court may decide *ex post* that an account is not a protected account if it is found that the obliged party provided in the declaration intentionally untrue information to the financial institution or provided intentionally untrue information to the debtor paying protected income in the request for a protected account.

3.2 Court Order on Enforcement of a Decision

Enforcement of a decision by the attachment of a receivable from an account held with a financial institution is regulated by the Code of Civil Procedure.¹⁰ This regulation provides that enforcement of a decision by such attachment may be ordered in respect of a receivable of the obliged party from an account held in any currency with a financial institution operating in this country, unless otherwise provided by the law. Consequently, the enforcement of a decision through the attachment of a receivable can only be carried out to enforce pecuniary receivables that have already become enforceable or will become enforceable not later than on the date of issue of the court enforcement order. The proceedings are initiated only on application of the entitled party, which has to be filed with the court having subject-matter and local jurisdiction. An application for the enforcement of a decision through the attachment of a receivable from an account with a financial institution must also identify the financial institution that maintains the obliged party's account which is to be affected by the enforcement procedure, and if the entitled party suggests that several accounts of the obliged party should be affected, the former must also specify the order in which this should happen. Enforcement through the attachment of a receivable from an account with a financial institution may only be conducted if the obliged party's account is known, because the entitled party must already indicate, in the application for enforcement, the financial

¹⁰ Section 303 *et seq.* of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended.

institution, account number or unique identifier to which the receivable is to be debited.¹¹

In the enforcement order, the court imposes on the financial institution the duty not to pay out, set off or otherwise dispose of funds in the obliged party's account up to the amount of the receivable being enforced and its accessions, from the time when the order is served on the institution. If the court orders enforcement affecting several accounts of the obliged party, it shall also specify the order in which the receivable being enforced will be debited to these accounts.

The court will serve the enforcement order on the entitled party, on the obliged party and on the financial institution. In the case of the financial institution, the order will be served personally on the addressee (into his own hands). The obliged party may not be served with the order before the financial institution. On the obliged party, the enforcement order is served along with the application for the enforcement of a decision.

Once the enforcement order is served on the financial institution, the obliged party loses the right to withdraw funds from the account, to use these funds for payments or to dispose of them otherwise, up to the amount of the receivable being enforced and its accessions; this does not apply in the case of a payment made with a view to performing the obligation being enforced, which is remitted to the account of the entitled party or of the enforcement officer kept by the financial institution.

Once the enforcement order is served, the funds in the relevant account of the obliged party are blocked up to the amount of the receivable being enforced and its accessions. The obliged party loses the right to dispose of the funds thus blocked (the "inhibitorium"), and the financial institution is effectively not allowed to dispose of the blocked funds either (the "arrestatorium"). However, the financial institution is still obliged to receive deposits and payments into the account, and to make withdrawals and payments from the account in accordance with the account agreement, insofar as the funds are not blocked as a result of the court order.

In the enforcement order, the court must advise the obliged party of the possibility and conditions of opening a protected account.¹²

While the enforcement procedure is pending, an account which is subject to the enforcement may be cancelled by agreement on the termination of the obligation under the account agreement or unilaterally by notice; even in that case, however, a sum must be blocked in the account with a view to settling the mutual rights and obligations, up to the amount for which the enforcement is being carried out.

3.3 Notification to the Court

Pursuant to Section 304d (1) of the Code of Civil Procedure, the obliged party's debtor with regard to receivables listed in the law,¹³ the payer of salary or other income,¹⁴ or the debtor of alimony,¹⁵ as the case may be (hereinafter the "debtor paying protected income") shall confirm to the court or to the obliged party, on written request, the number of the account from which these receivables, salary,¹⁶ alimony or other income are paid, and other facts that are to be set out in such a confirmation based on the law (a "confirmation related to a protected account").

The following receivables are not subject to enforcement of a decision:

¹¹ Section 261 (1) of the Code of Civil Procedure.

¹² Section 304e (4) of the Code of Civil Procedure.

¹³ Section 317 (1) to (3), Section 318 or 319 of the Code of Civil Procedure.

¹⁴ Section 299 of the Code of Civil Procedure.

¹⁵ Section 304d (1) of the Code of Civil Procedure.

¹⁶ Salary is remuneration for work performed in an employment relationship, paid in arrears as at the payment date (usually on a monthly basis).

- compensation (indemnity) to be paid by the insurance company under an insurance contract if the compensation is to be used for new construction or repair of a building;
- maintenance and support for a child. A dependent child under the State Social Assistance Act is considered a child in this sense;
 - social welfare benefits;
 - assistance in material need;
 - substitute maintenance and support for a dependent child;
 - tax bonus;
 - housing allowance (social support);
 - one-off State social support and foster care benefits;
- receivables acquired by the obliged party as substitute assets. This does not apply if the obliged party has the right to freely dispose of the receivable or in case of enforcement of decedent's debts or debts related to the necessary administration of objects acquired as substitute assets.

Pursuant to Section 318 of the Code of Civil Procedure, receivables incurred by private individuals operating a business within their business activities are subject to enforcement of a decision only to the extent of two-fifths of their amount; however, if enforcement is applied for with regard to any priority receivables, they are subject to enforcement to an extent of three-fifths of their amount. Priority receivables are as follows:

- claims for maintenance and support;
- claims for compensation for harm caused to the aggrieved party due to personal injury;
- claims for compensation for harm caused by intentional criminal offences;
- claims for taxes, fees and other similar pecuniary performances;
- claims for compensation of overpaid sickness insurance, pension insurance and accident insurance benefits;
- claims for premiums for social security and the contribution towards the State employment policy and claims for premiums for public health insurance;
- allowance to cover the needs of a child placed in foster care;
- claims for compensation of overpaid unemployment benefits and retraining allowance;
- claims for compensation of overpaid State social support benefits;
- claims for recourse compensation under the Sickness Insurance Act;
- claims for compensation for salary, pay or remuneration, and reduced salary or reduced remuneration provided during the first 14 calendar days, and from 1 January 2011 to 31 December 2013, during the first 21 calendar days of temporary unfitness to work or quarantine;
- claims for substitute maintenance under another law.

Receivables for royalties are subject to enforcement of a decision, if the obliged party is an author, only to the extent of two-fifths of their amount; however, if enforcement is applied for with regard to any priority receivables,¹⁷ they are subject to enforcement to an extent of three-fifths of their amount. If remuneration is paid to the author through a collecting society, the court shall also serve the enforcement order on the collecting society, which then has the rights and obligations of the obliged party's debtor. The enforcement order applies both to amounts already deposited with the collecting society for the author's benefit and to amounts that will be

¹⁷ Section 279 (2) of the Code of Civil Procedure.

deposited with the society during the current calendar year. Similarly, the procedure applies to receivables arising from rights of performing artists and industrial property rights.

The provisions on the enforcement of a decision by deductions from salary also apply to the enforcement of a decision by deductions from pay¹⁸, from remuneration under an agreement to perform work or agreement to complete a job, from remuneration for being on call, from remuneration for municipal assembly members in a territorial self-governing unit, and from State social support and foster care benefits which are not paid on a one-off basis. Furthermore, deductions apply to income which replaces the obliged party's remuneration for work or is provided besides such remuneration, as follows:

- compensation for salary or pay;
- sickness benefits;
- maternity benefits;
- pensions;
- scholarships;
- unemployment benefits and retraining allowance;
- severance pay or similar performance provided in connection with the termination of employment, service relationship or discharge of a public office ("severance pay");
- pecuniary performance of a loyalty or stabilization nature provided in relation to employment;
- compensation for a loss of earnings during temporary unfitness to work and compensation for a loss of earnings after the termination of temporary unfitness to work;
- benefits arising from an agreement to establish a reserved right under the Civil Code;
- retirement contribution for professional soldiers or members of security corps;
- allowance towards retirement pension to mitigate certain injustices committed by the communist regime in the social area, and an allowance towards pension and special contribution towards retirement pension under the law on rewarding participants of the national struggle for the formation and liberation of Czechoslovakia and some of their surviving kin.

Further, the confirmation related to a protected account shall also include identification of the obliged party's debtor, payer of salary, payer of other income or debtor of alimony, identification of the obliged party, number of the obliged party's account into which the receivables or income are paid, and the date of issue of the confirmation. The obliged party's debtor, payer of salary, payer of other income or debtor of alimony shall issue the confirmation using a form published by the Ministry of Justice of the Czech Republic in a manner allowing for remote access.

The form includes a confirmation of payment of protected income, including specification of the debtor paying the protected income, identification of the obliged party, the number or unique identifier of the account from which it is remitted, number or unique identifier of the account to which it is remitted, and identification of the person signing the confirmation. The form also contains advice and instructions for filling in the form.

At the obliged party's request, the court shall notify the financial institution without undue delay of the number of the account from which the receivables or income are paid, and the number of the obliged party's account kept with the financial institution in respect of which the debt enforcement procedure is being conducted

¹⁸ Pay means pecuniary performance provided to an employee as remuneration for his/her work for an employer who is a public institution (i.e., public sector — the State or a municipality, region, State fund, contributory organization — where pay is provided from its founder's budget — or an educational legal entity, etc.).

against the obliged party and to which the receivables or income are to be credited. The court will send a copy of the notice to the debtor paying the protected income. When issuing the notice, the court follows from the confirmation related to the protected account. The confirmation issued by the payer of the income or the obliged party's debtor is used by the court as a basis for its notice, which it sends to the financial institution without undue delay at the debtor's request. As stated above, delivery of this notice to a financial institution is one of the conditions for opening a protected account. The notice shall include specification of the number of the account from which the income or receivables to be protected are paid, and the number of the obliged party's account kept with the financial institution to which they are to be credited.

If the account from which the receivables, salary, alimony or other protected income are paid changes during the period from the date of issue of the confirmation related to the protected account to the date when the debtor receives a confirmation of protected income, an updated confirmation related to the protected account has to be issued to the obliged party without delay, even without a request. In the updated confirmation, the debtor paying the protected income will indicate all the details that the confirmation is to contain, updated as of the date of issue of the confirmation.

If the relevant income is paid from several accounts, all these accounts must be listed in the confirmation.

4. Protected Account Agreement

4.1 Opening a Protected Account

A financial institution that is served with a court enforcement order involving attachment of a receivable from an account of an obliged party who is a private individual is legally required to conclude a protected account agreement with the obliged party, at the latter's request. Subject to the set conditions, an obligation of the financial institution to enter into a protected account agreement with a private individual corresponds to the latter's right to request the institution to open such an account. This is a contracting obligation imposed on the financial institution.

A financial institution is not obliged to open a protected account in the following cases, for example:

- if it determines that the obliged party already has some other protected account;
- the enforcement procedure is conducted with regard to a bank pass book or to a savings or deposit account, i.e. an account other than a payment account.

A financial institution also need not enter into a protected account agreement if, by entering into such an agreement, it would violate the law governing measures against money laundering and terrorist financing or some other legal regulation.

Once the relevant agreement is concluded, the financial institution is required to open a protected account within 5 business days of the date when the request was filed and designate it in a unique way so as to make it clear that the account is protected. The law provides that a financial institution is not entitled to charge any fee for opening and maintaining a protected account.

The contractual freedom to negotiate an agreement corresponding to the parties' will is substantially restricted in the case of a protected account agreement. The law provides that the financial institution maintains a protected account under the conditions applicable to the account with regard to which the debt enforcement procedure is being conducted against the obliged party, and thus also restricts the freedom to stipulate the conditions for maintaining a protected account.

The financial institution is required to notify the establishment of a protected account on the basis of a (protected) account agreement to all the courts that have ordered enforcement of a decision by attaching a receivable from an account maintained, at the time of establishment of the protected account, with the same financial institution from which (meaning the account) funds are transferred to the protected account.

4.2 Maintaining a Protected Account

The financial institution maintains a protected account under the conditions applicable to the account with regard to which the debt enforcement procedure is being conducted against the obliged party. This regulation implies, depending on the circumstances, the financial institution's duty to open a protected account for each type of payment account and maintain it under the same conditions as the account affected by the debt enforcement procedure. Given that payment accounts are current accounts, certain deposit or savings accounts, denominated in Czech crowns or in a foreign currency, this requirement is very strict. The nature and purpose of the legislation might be better served in this context by a financial institution's duty to open a protected account only within the scope of a basic payment account.¹⁹ In particular, any requirement for maintaining a protected account in a foreign currency may be technically difficult and very costly to satisfy, as financial institutions might maintain foreign currency accounts denominated in more than 20 different currencies. If an enforcement procedure is conducted with regard to a foreign-currency account and the financial institution provides a protected account only in the Czech currency, the parties must stipulate the rules for currency conversion in their mutual protected account agreement.

4.2.1 Unique Designation of a Protected Account

Financial institutions must designate each protected account in a unique way so as to make it clear that the account in question is a protected account.²⁰ The explanatory memorandum on the relevant bill provided no further explanation regarding this provision. It is clear that the designation as a protected account will be stipulated in the account agreement concluded between the financial institution and the account holder (the obliged party). This arrangement will serve as a basis for the financial institution's designation of the protected account in its internal systems in such a way that it can be distinguished from other accounts kept by the financial institution.

Several rules must be respected with regard to the unique designation of a protected account by a financial institution:

- ensure that the designation complies with the regulations on the exchange of information between financial institutions and civilian enforcement officers;
- harmonise the designation with the rules for account numbers in the payment system;
- make it possible to register of the designation in the Central Bank Account Registry²¹.

It is of key importance that the information that a certain account is protected reaches especially the

¹⁹ Basic payment account is an account maintained in a limited scope pursuant to Section 210 *et seq.* of the Payment Systems Act. A consumer who is lawfully resident in a Member State of the European Union is entitled to have a basic payment account opened for him/her provided that the relevant statutory conditions are met. A basic payment account includes only services defined by the law, such as cash deposits and withdrawals, placing payment orders, outgoing direct debits, issuing and managing debit cards and internet banking services. A bank is required to provide these services to a consumer if it provides them to other consumers for whom it maintains a payment account other than a basic payment account.

²⁰ Section 304c (1) of the Code of Civil Procedure.

²¹ The Central Bank Account Registry is a central database of basic information on accounts and safety deposit boxes maintained by institutions for their clients, i.e., for private individuals, legal persons or other entities. The Registry is kept by the Czech National Bank for the State on the basis of Act No. 300/2016 Coll., on the central bank account registry, as amended.

authorities in charge of debt enforcement procedures. Given the relatively high number of such procedures in the Czech Republic,²² information is exchanged between civilian enforcement officers and financial institutions primarily in electronic form. The legislation specifies the form and structure of the data file containing a request for collaboration and a response to such a request. At an enforcement officer's request, the financial institution must include information that a specific account is a protected account in the prescribed data file of the standardised response.

The rules for creating account numbers are set out in Decree No. 169/2011 Coll., setting the rules for creating account numbers in the payment system, as amended. This Decree sets out the rules for the creation of account numbers in accordance with the International Bank Account Number (IBAN) standard, comprised in ISO 13616 Financial services — International bank account number (IBAN). An account number is a unique identifier serving in payment systems for unambiguous identification of the client's account kept by a payment service provider operating in the Czech Republic. The account number is used in the national format and in the IBAN format. If the account number has both formats, it can be assumed that the unambiguous designation of the protected account must form a part of both formats, albeit probably in a different place each time according to the rules for the creation of the given format.

At the same time, each protected account must be reported in the Central Bank Account Registry; financial institutions are required to report the creation, modification or correction of data relating to the registered accounts in the prescribed format and in the set manner.

For the sake of clarity, it would be advisable for the financial institutions to agree on a uniform way of designating protected accounts they maintain (e.g., in the form of a prefix number). However, no such duty follows for financial institutions from the law.

4.2.2 Payment Transactions in a Protected Account

The financial institution that maintains a protected account will transfer to the protected account funds that have been credited to the account subject to a debt enforcement procedure against the obliged party after the protected account has been opened, coming from the debtors paying protected income, in each case by the end of the business day on which they were credited to the obliged party's account subject to the enforcement procedure. A financial institution may not set off its receivables, with the exception of receivables arising in relation to a protected account, against the obliged party's receivable from the protected account.

The procedure of a financial institution aimed at protection of the obliged party's legally defined income and receivables applies to all enforcement procedures related to the affected account at the time of service of the court's notice on the financial institution, and to further enforcement procedures in which a court enforcement order is served on the financial institution until the protected account loses its status or until the obligation under the protected account agreement terminates.

It follows from the legal regulation of protected accounts that no cash deposits are credited to such an account. Moreover, only certain cashless payments can be credited to a protected account. In addition to the aforementioned obliged party's protected income, the relevant multiple of the subsistence minimum, which is not subject to debt enforcement based on the law and has not yet been drawn by the obliged party from the account subject to debt enforcement, must also be transferred to the protected account. The law²³ also provides that the

²² The Chamber of Enforcement Officers of the Czech Republic states that a total of 4,426,812 debt enforcement procedures were being conducted as at 31 December 2021 against 698,028 obliged parties.

²³ Section 304c (5) of the Code of Civil Procedure.

financial institution shall credit to a protected account funds to which the obliged party becomes entitled vis-à-vis the financial institution in relation to the protected account. The law does not specify explicitly what is meant by the phrase “becomes entitled to in relation to the protected account”. This gives rise to a legal situation where, on the one hand, the financial institution is obliged not to allow any payments other than those specified by the law to be credited to a protected account, and on the other hand, it is required to credit the account with payments defined in such a vague way.

It can be assumed that in connection with payments made in a protected account, the account holder may become entitled to certain funds, e.g., due to corrective settlement, correction of unauthorized or incorrectly executed payment transactions, and a refund of a direct debit or credit card transaction in case of a complaint.

A more complicated situation may arise if a payment that was incorrectly remitted by the account holder is being refunded to the account. In such a case, it will be possible to credit the refund provided that the financial institution is able to identify the payment based on the account number of the unauthorized payee and the amount of the erroneous transaction.

4.2.3 Limitation of the Number of Protected Accounts

Each obliged party may only have one protected account with financial institutions. The law currently does not make it possible to verify whether a protected account is already maintained by another financial institution at the time of the obliged party's request for a protected account. This is why the obliged party's request has to include the obliged party's declaration that no protected account is maintained in his/her favour as at the date of the request.

However, if the financial institution ascertains that another protected account is already maintained for the obliged party, it has to notify the courts accordingly. If it is found in the relevant proceedings that several protected accounts have been opened for one obliged party, the court will decide which of these accounts will remain a protected account. The court may decide that an account is not a protected account if it is found that the obliged party provided intentionally untrue information in a declaration addressed to a debtor paying protected income.

It might perhaps be appropriate to allow financial institutions to make an inquiry with the Central Bank Account Registry, where it would be possible to find out whether or not any given obliged party already has a protected account. However, the Central Bank Account Registry is accessible only to certain entities, and financial institutions are not listed among them. The option to obtain such information from the Central Bank Account Registry would require a change in the law. However, checking an obliged party's request for a protected account against data in the Central Bank Account Registry would probably be more effective than relying on an obliged party's declaration, which is based on trust in this party's honesty.

4.2.4 Price Regulation in the Context of Protected Accounts

Maintaining a protected account is a relatively costly service provided compulsorily by financial institutions. The law is relatively vague as regards the issue of price regulation in the context of protected accounts. On the one hand, it is provided explicitly that a financial institution is not entitled to charge any fee for opening and maintaining a protected account.²⁴ On the other hand, however, under the same provision, a financial institution has to maintain a protected account under the conditions applicable to the account with regard to which the debt enforcement procedure is being conducted against the obliged party. Uncertainty in interpretation relates

²⁴ Section 304c (1) of the Code of Civil Procedure.

especially to the possibility for a financial institution to demand a fee for certain acts falling within the scope of account maintenance. This will include, in particular, services provided by the financial institution to the obliged party (the protected account holder), e.g., in the use of a payment system. Financial institutions inform the holders of protected accounts of the fee for the provision of individual services in their price lists. This may include, e.g., a fee for sending account statements by post, withdrawals from other banks' ATMs or making rush cashless payments.

The law allows²⁵ a financial institution to set off its receivables arising in relation to a protected account against the obliged party's receivable from the protected account. A receivable arising as a result of billing the relevant service to the protected account holder may therefore be set off against the protected account holder's receivable.

The law also provides that the conditions of maintaining an account subject to a debt enforcement procedure against the obliged party may not change depending on whether or not an enforcement procedure is being conducted with regard to the account. As it is more costly for financial institutions to maintain an account subject to a debt enforcement procedure, they usually agreed with the account holders on their right to increase the fee charged for keeping an account subject to enforcement. At the same time, there was a risk that the increased costs associated with maintaining a protected account could be charged by the financial institution to the account subject to enforcement, thus circumventing the price regulation applicable to that account.

5. Obligations of Third Parties

The debtor paying protected income must issue to the court or obliged party, without undue delay and on written request, a confirmation of the number of the account from which such protected income (receivables, salary or other income) is paid. Further, the confirmation shall also include identification of the obliged party's debtor, payer of salary, payer of other income or debtor of alimony, identification of the obliged party, number of the obliged party's account into which the receivables or income are paid, and the date of issue of the confirmation. The court will ask the obliged party's debtor, payer of salary, payer of some other income or debtor of alimony to issue a confirmation at the request of the obliged party.

The debtor paying protected income is required to pay only legally protected receivables, salary or other income into the obliged party's protected account. This measure aims to ensure that the protected account is not misused to hide the obliged party's income from any enforcement procedures ordered. The obligation of the debtor paying protected income to pay funds into the protected account arises on the date of issue of a confirmation of the number of the account from which the protected income is remitted. This obligation continues until the date when a confirmation issued by the given financial institution that the account is no longer protected or that the obligation to maintain the account has expired is delivered to this party.

6. Termination of the Obligation

The law also specifies the procedure applicable in cases where the account from which funds are transferred to the protected account has been cancelled or is no longer subject to a debt enforcement procedure. The special provisions of the Code of Civil Procedure distinguishing a protected account from a standard payment account

²⁵ Section 304c (5) of the Code of Civil Procedure.

cease to apply to a protected account on the date following the date of cancellation of the account or the end of the enforcement procedure affecting the account. The financial institution and the obliged party may agree on termination of the obligation under the protected account agreement. The financial institution shall then issue to the obliged party, at its request, a confirmation that the account which was originally opened as a protected account is no longer subject to the legal regulation of protected accounts or that the obligation under the protected account agreement has ceased to exist; the obliged party shall send the confirmation to the debtor paying protected income without undue delay.

The legal regulation establishing the rights and obligations associated with a protected account terminates on the date following date on which the account from which funds are transferred to the protected account is cancelled or ceases to be subject to a debt enforcement procedure. The financial institution and the obliged party may agree on termination of the obligation under the protected account agreement. The financial institution shall issue to the obliged party, at its request, a confirmation that the account which was originally opened as a protected account is no longer subject to statutory protection or that the obligation under the protected account agreement has ceased to exist; the obliged party shall send the confirmation to the debtor paying protected income without undue delay.²⁶

A financial institution may unilaterally terminate its obligation under the protected account agreement or withdraw from the agreement if, by entering into such an agreement, it would violate the law governing measures against money laundering and terrorist financing or some other legal regulation.

7. Conclusion

The legal regulation of protected accounts aims to increase the protection of debtors — obliged parties — especially in terms of protection of certain income specified by the law from entitled persons (creditors). The newly established concept of protected account not only protects the account holder from debt enforcement through the attachment of the receivable from an account maintained by a financial institution, but also provides the holder, to a certain extent, with the comfort associated with the services provided for the account subject to the enforcement procedure. The law lays down the financial institutions' obligation to enter into the relevant agreement under the set conditions and also introduces a price regulation limiting the financial institution in charging fees for the services it provides. This measure was necessitated by the increasing number of debtors subject to debt enforcement and driven by an attempt to relieve them of the consequences of enforcement procedures affecting income excluded from debt enforcement. However, the amendment was enacted during the coronavirus pandemic, is overly formalistic and involves a lot of red tape. According to information reported in the media, only a few hundred protected accounts had been set up in financial institutions at the beginning of the year and obliged parties still prefer to use cash for their protection against debt enforcement.²⁷ Some of the Deputies who prepared the original draft law introducing protected accounts are allegedly currently considering its amendment.

²⁶ Section 304e (2) of the Code of Civil Procedure.

²⁷ Available online at: <https://zpravy.aktualne.cz/ekonomika/chraneny-ucet-je-propadak-dluznici-o-nej-nemaji-zajem-musi-s/r~a24bbfc87ebd11ec8a24ac1f6b220ee8/>.