

EUROPEAN BANKING GUIDE FOR NONPROFITS

HOW TO OPEN AND MANAGE AN ORGANIZATIONAL BANK ACCOUNT



European Center for
Not-for-Profit Law



PILnet



FRANCE

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European Center for
Not-for-Profit Law

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1. OPENING AN ORGANIZATIONAL BANK ACCOUNT

a. What are the requirements to open an organizational bank account?

i. Do organizations have to be physically present in the country to open a bank account? I.e., can they operate in country X but have a bank account in country Y? Is the presence of a statutory representative required or can the presence be fulfilled through an authorization?

Many French banks offer their clients to open a deposit account 100% online. Thus, a natural or legal person does not have to be physically present to open a bank account: All formalities are done online.

Thus, a legal representative does not have to be present either.

Any individual or legal entity, under French or foreign law, can request to open a bank account in France.

The bank also has the right to refuse to open the account without giving any reason for doing so. If the bank refuses to open an account only legal entities established in France will benefit from the right to an account ([L. 312-1 of the French Monetary and Financial Code](#)). If the request to open a bank account put in by a legal entity established abroad is declined, such entity would have to have a subsidiary or a branch established in France in order to be able to benefit from this privilege or at least have a domicile in France (L. 312-1, 1° of the French Monetary and Financial Code).

ii. Are there specific requirements for CSOs to open accounts by law or asked in practice by the banks (e.g, years of operations, annual turnover, to have director or member of governing body to be national of the country)?

[DAB Directives from European Union](#) legislation on combating money laundering by criminal law require banks to introduce an efficient internal procedure for detecting suspicious transactions (L. 561-32 of the French Monetary and Financial Code), which implies in particular that when a bank establishes a business relationship with a client, it must ask the client to provide identification papers and information on the nature and purpose of the business relationship.

This information must be updated regularly as long as the bank account is still open ([L. 561-5 and L. 561-5-1 of the French Monetary and Financial Code](#)).

If the client is a legal person, the French Monetary and Financial Code sets forth specific documents that have to be produced:

- On identification: Legal form, name, registration number, address of the registered office;
- For verification: Any deed or extract from an official register less than three months old stating the name, legal form, address of the registered office and the identity of the partners or company directors and legal representatives;
- Commercial data: Suppliers, type of target clientele, services provided, marketing methods, countries in which the activity is directed and/or carried out etc.

For an association, it must in fact be previously declared to the prefecture in order to be able to open a bank account (cf. by this declaration it becomes a legal entity and therefore has the capacity to conclude legal acts in its own name).

Foreign establishments operating in France must be registered with the commercial register and may provide an extract from this register. If the foreign company only carries out a few isolated operations in France and nevertheless opens an account, the bank should ask for other similar documents that establish the information that it needed.

In addition, the bank has to verify that the person opening the account for a legal entity has the standing to do so. In practice, the bank will ask the legal entity to send the company's articles of association and/ or the decision of the executive committee or the board of directors to this effect.

If the bank does not receive this information and/ or these documents, it has to refuse to open a bank account to the respective client.

iii. Who is authorized/required to open a bank account? Can this be done online, or that person needs to be present in the country?

Before opening a bank account, the association's board of directors or officers must:

1. authorize the opening of the account;
2. designate a contact person for the bank who will be responsible for opening and managing the account;
3. set the terms and conditions for managing the account.

The bank must check that these conditions are fulfilled.

The opening of a deposit account can be done online, which excludes any obligation for the representative of the legal entity to be physically present and/or in the country. The necessary documents for the opening of the account can be sent digitally

iv. What is the process of setting up a bank account? E.g., how long it takes, is there a practice to have an interview in the bank?

Opening a bank account process is now fast and simplified. It can be done entirely online in order to reduce the costs and time required when the account is physically opened.

The customer must fill out a registration form to open a bank account and provide all the necessary information set out above.

In practice, the large number of obligations to which the banks are subject in terms of compliance, lead them to ask legal entities for a large amount of information on the activity of the entity, especially on the origin and the destination of funds.

2. BANKING ACTIVITIES

a. What customer due diligence requirements are in place and what is their impact on civil society organizations' banking activities?

DAB Directives from European Union legislation on combating money laundering by criminal law require banks to introduce an internal efficient procedure for detecting suspicious transactions (L. 561-32 of the French Monetary and Financial Code), which implies in particular that when a bank establishes a business relationship with a client, it must ask the client to provide identification papers and information on the nature and purpose of the business relationship (see also above for further details).

This information must be updated regularly as long as the bank account is still open ([L. 561-5 and L. 561-5-1 of the French Monetary and Financial Code](#)).

b. Which internal principles or official (central bank) “suspicious transaction” monitoring criteria are in place affecting the civil society organizations? Is it publicly available?

DAB Directives from European Union legislation on combating money laundering by criminal law require banks to introduce an efficient internal procedure for detecting suspicious transactions ([L. 561-32 of the French Monetary and Financial Code](#)).

Banks have to look for any irregularities in the client’s operations that lead to a suspicion regarding their legality. Transactions can be considered suspicious based on:

- The bank’s up-to-date knowledge about their client, especially when the information on the operations is particularly high-level;
- Operations that do not have any justification;
- The beneficiary localization in a non-EU country.

The bank has to reinforce its vigilance before executing a payment order, which means that it has to ask the client for more information about both the origin and the destination of the funds related to the transaction ([L. 561-10-1 of the French Monetary and Financial Code](#)).

c. Do the banks in the country of operations have any restrictions/limitations to bank transactions and transfers to certain jurisdictions (such as high-risk ones).

A payment order from the client in the agreed form constitutes an expression of consent by the client and the bank generally has to duly execute the payment.

However, when the bank executes transactions to non-EU countries and/or outside the EEA, it has to increase its usual vigilance, i.e. it will ask for more information about the origin and destination of the funds before executing the payment order ([L. 561-10-1 of the French Monetary and Financial Code](#)).

Also, the bank will use the FATF list of high-risk countries established as part of the global fight against money laundering and terrorist financing as an indication. The black list establishes high-risk jurisdictions (Iran, North Korea) and the grey list establishes jurisdictions under surveillance.

- Black list: <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/public-statement-october-2019.html>
- Grey list: <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/fatf-compliance-october-2019.html>

If the legality of the transaction cannot be clarified, the bank has to suspend the execution of the payment order and file a report of suspicious transaction to Tracfin. The client is not made aware of this report in order not to compromise the investigations on the legality of the operations.

If Tracfin confirms the doubt about the illegality of the transaction the bank should block the transaction although this results in conflicting obligations for the bank – which is complicated by the fact the client does not know about the ongoing investigation.

i. If yes, is the list of jurisdictions publicly available?

- Non-European union countries and non-EAA countries are known by all and available for the public;
- The FATF lists on high risk countries are also available for the public.

ii. What would be the procedures the bank would follow in this case for their CSO clients?

- The reporting process is similar for all bank clients, individuals or legal entities, exercising a commercial or a non-commercial activity.
- If Tracfin confirms and requires to block the operation before the bank has executed it, a judge could order a funds sequestration

3. OBLIGATIONS AND REPORTING REQUIREMENTS

a. Are banks required to provide CSO clients' financial information to CSO regulatory authorities or public officials? If yes, under what circumstances must banks do so, and what types of information must they provide?

The bank does not directly inform regulators or government officials about a client's suspicious activities.

As soon as there is reasonable doubt about the legality of the client's operations, whether a natural or legal person, the bank has to file a suspicious transaction report, which is sent to Tracfin for analysis ([Article L. 561-15 of the French Monetary and Financial Code](#); see above).

If Tracfin confirms the existence of a reasonable doubt about the legality of the client's activities, the suspicious transaction report is forwarded to the Public Prosecutor who will conduct more investigations.

However, the French Court of Cassation underlines that credit institutions:

“are not bound by a general obligation to inform the Public Prosecutor of criminal acts which they may suspect their clients have committed, in whose affairs, in the absence of an apparent anomaly, they have no business interfering.”

[\(Commercial chamber of the French Court of cassation, November, 15th of 2016, decision n°15-14.133\)](#)

b. What obligations do banks have to protect the privacy of clients' information?

Bank secrecy is a variation of professional secrecy from [article 57 of the Law on Secrecy \(January, 24th of 1984\)](#), transposed in the French Monetary and Financial code. [Article L. 511-33](#) of this Code provides for a duty of confidentiality concerning the client's information, during their relationship and also thereafter.

The bank can thus legitimately refuse to communicate information on its client to a third party ([Commercial chamber of the French Court of cassation, February 10th of 2015, decision n°13-14.779](#)).

Legal exceptions to bank secrecy are provided. It cannot be used to refuse to give information about the client to the criminal courts in the context of their investigations, the regulatory authorities (Banque de France, ACPR, Trésor, ECB), the tax authorities, and the civil courts in certain circumstances (divorce proceedings, bank account seizure and enforcement proceedings, insolvency proceedings).

Examples for confidential information are account balance, amount of loans granted, transactions carried out.

Violations of bank secrecy are punished by various penal and civil sanctions.

c. Are there specific reporting obligations for banks to inform governments on civil society banking in certain circumstances?

Please see the answers to question no. III. 1. above.



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