

EUROPEAN BANKING GUIDE FOR NONPROFITS

HOW TO OPEN AND MANAGE AN ORGANIZATIONAL BANK ACCOUNT



European Center for
Not-for-Profit Law



PILnet



LUXEMBOURG

Law firms participating in this research are not liable towards third parties for the accuracy of the information contained in this guide. The research cannot be considered as legal advice. It was carried out in 2022 and responds to the regulatory framework on organizational banking in this time period. If you have further queries please reach out to our clearinghouse for legal help.



European Center for
Not-for-Profit Law

European Center for Not-for-Profit Law Stichting (ECNL)

ECNL's mission is to create legal and policy environments that enable individuals, movements and organizations to exercise and protect their civic freedoms and to put into action transformational ideas that address national and global challenges. We envision a space in which everyone can exercise their rights freely, work in solidarity and shape their societies.



PILnet

PILnet

PILnet is a global non-governmental organization that creates opportunities for social change by unlocking law's full potential. With programs in Europe & Eurasia, Asia, and at the global level, PILnet aims to reclaim and reimagine the role of law so that it works for the benefit of all. PILnet builds networks and collaborations of public interest and private lawyers who understand how law works when it serves the interests of the privileged and then it uses that knowledge to strengthen civil society and the communities they serve. PILnet not only obtains high-quality, free legal assistance for civil society organizations when they urgently need it but also helps organizations to capitalize on the full range of specialized legal expertise that can be provided by corporate lawyers, including against ongoing, or even yet-to-be-determined, challenges.

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?

It is possible to have a bank account in Luxembourg without being physically present.

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)

There are no local specific requirements for account opening of CSOs in Luxembourg. Nevertheless, the applicable law is the [amended Law of 21 April 1928](#) on non-profit associations and foundations. Please note, however, that there is currently a draft law under discussion at the Chamber of Deputies for several years.

Common onboarding banking practice as part of the due diligence process can require certain documents and conditions such as the articles of association, financial accounts, conditions on the source of funds (e.g. only deriving from banks in certain countries) and the bank can ask for supporting documentation on the target payments. For non-EU CSOs, banks may request additional documentation for such CSOs.

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?

The account is opened by the legal representatives of the CSO – the mode of account opening may vary from bank to bank, but online account opening or account opening without physical presence is not uncommon; in such case, banks may require that documents are sent in original or certified by an authority, and that the money originates from bank accounts in the name of the CSO.

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?

The account opening may take some time (a few weeks, in general 6 to 8 weeks): the collection of the required documents, including the due diligence, the KYC (*Know Your Customer*) and client acceptance by the bank. A personal meeting with the client is not mandatory but might ease the account opening process.

2. BANKING ACTIVITIES

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

Each bank will apply its own client due diligence and client acceptance policy, subject to [AML law of 12 November 2004](#), as amended, so differences between banks are possible but as a standard the following would apply:

Identification and verification of the client that will compromise:

- Constitutional documents of the CSO and excerpt of registration in the companies or business registry (where available)
- Excerpt of the UBO (Ultimate Beneficial Owner) registry or trust registry (where available) Non-profit organizations are subject to the [law of 13 January 2019 establishing a Register of beneficial owners](#). They must therefore determine who their beneficial owner(s) are and declare them to the Register of beneficial owners. To make their declaration, they must complete a form containing the data required by the law. In most cases, CSO will have to register the members of their board of directors.
- Proof of the Ultimate Beneficial Owner of the CSO respectively the Senior Managing Officials
- Proof of the legal representatives (list of directors or managers – this list can be found in the RCS excerpt of the company)
- Copy of a passport or identity card of the legal representatives / ultimate beneficial owner or senior managing officials
- Proof of residence of the legal representatives / ultimate

beneficial owner or senior managing officials

- Information on the source of funds and the purpose of the business relationship with the bank
- Signature card (powers and signatures specimen of the authorized individuals) of the persons involved in the functioning of the account. This should have the form of a dated list on company letterhead of authorized signatories: bearing the full names and signature specimen next to it.
- Financial accounts/audit report (last in date)
- Document for Automated Exchange OF Information (normally banks provide a model template for clients to this end)
- Document for FATCA (US tax reporting) (normally banks provide a model template for clients to this end)

Impact on CSO:

- Any change affecting the functioning and the status of the CSO will need to be communicated to the bank for a proper update
- Depending on the tax status of the CSO, in case of an account in Luxembourg without the physical presence of the CSO in Luxembourg, the Luxembourg tax authorities will report on yearly basis relevant tax information to the tax authorities of the home country of the CSO
- Depending on the US tax status of the CSO and the possible involvement of US persons, the Luxembourg tax authorities will report on yearly base relevant tax information to the US tax authority (IRS)

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

Banks have the obligation to monitor the transactions of the CSO and in case of a suspicion of money laundering or terrorism financing, which may not be removed after investigation, and file a suspicious activity or transaction report to the Financial Intelligence Unit in Luxembourg, in accordance with the [AML law of 12 November 2004](#), as amended.

Banks also have the obligation to screen all parties of the CSO including the ones mentioned in payment transactions against

the EU and UN sanctions list and in case of a hit, report this to the Luxembourg Ministry of Finance and an asset freeze might apply.

The above are obligations for all banks and any data on such reporting is not publicly available but bound by confidentiality rules.

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).

In Luxembourg, there is no local official list of restrictions/limitations of transactions with certain jurisdictions: it is up to each bank to make its own risk assessments of countries and to act accordingly, so each bank might have its own restrictions or limitations. The local supervisor, the CSSF¹, refers to the FATF list of countries not aligning or having structural deficiencies against the FATF recommendations. Banks should at least align their country assessments with these CSSF Circulars.

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

The country list rating of banks is internal confidential information. The references of the CSSF issued through [CSSF circulars](#) are publicly available.

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

CSSF required, in the circular 21/767, to apply enhanced due diligence and monitoring measures with respect to these business relationships and to increase the number and frequency of controls applied, select patterns of transactions that need further examination and obtain information, particularly on the reasons for the intended transactions. Therefore, the bank will ask the CSO details on the jurisdictions the CSO is dealing with, and might impose restrictions to certain jurisdictions and / or require additional (transaction) documentation when certain jurisdictions are involved.

1 Commission de Surveillance du Secteur Financier : CSSF

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 banks are not required to provide reporting on a regular basis about a CSO to a regulatory authority. Such information would be only required in case of demands arising from a judicial authority, a tax authority or a specific request coming from the bank's supervisory authority (the CSSF in Luxembourg).

If not at the bank level, various obligations and reporting requirements do exist at the CSO level : each CSO has to be registered at Luxembourg Business Register (*Registre du Commerce et des Sociétés*); its articles of association deposited at RESA (*Recueil électronique des sociétés et associations*), filing of beneficial ownership details with the Register of beneficial owners; and it has to publish its annual report in case the CSO is a CSO recognized as being of public interest (*ASBL reconnues d'utilité publique*). Besides, it is not exactly a regulatory authority, but each CSO, if member of the label "*Don en confiance Luxembourg asbl*" is expected to respect this asbl's code of conduct which might also include some reporting obligations.)

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

The credit institutions in Luxembourg are bound by a strict professional secrecy obligation, which arises from article 41 of the [law of 5 April 1993](#) relating to the financial sector. Disclosure of a client related information to any third party is, as a matter of principle, prohibited.

Article 41, paragraph 1 of the Law, which belongs to Chapter 5 of Part II of the Law, provides that " Natural and legal persons, subject to prudential supervision of the CSSF pursuant to this law or established in Luxembourg and subject to the supervision of the European Central Bank or a foreign supervisory authority for the exercise of an activity referred to in this law, as well as members of the management body, the directors, the employees and the other persons who work for these natural and legal

persons shall maintain secrecy of the information entrusted to them in the context of their professional activity or their mandate. Disclosure of such information shall be punishable by the penalties laid down in Article 458 of the Penal Code..”. (...) The obligation to maintain secrecy shall “not”²³⁰ exist where disclosure of information is authorised or required by or pursuant to any legislative provision, even where the provision in question predates this Law.

“No person bound by the obligation of secrecy referred to in paragraph 1 who lawfully discloses any information covered by that obligation shall, by reason of that disclosure alone, incur any criminal responsibility or civil liability.”

Article 458 of the Penal Code provides that all the persons who are, by virtue of their situation or profession, depositary of the secrets confided to them and who reveal such secrets, to the exception of the cases where they have to testify in court or are under a legal disclosure obligation, are punishable by eight days' to six months' imprisonment and by a fine of EUR 500. – to EUR 5.000.–.

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

Suspicious transactions and, more generally any suspicions relating to anti-money laundering/fight against terrorisms concerns may give rise to voluntary provision of information by the credit institutions. Otherwise, information has to be provided on demand in case of investigations coming from regulators or public authorities.

See the [Law of 12 November 2004](#) on the fight against money laundering and terrorist financing transposing the Directive 2001/97/EC of the EP and Council) applicable in specific circumstances.



European Center for
Not-for-Profit Law

European Center for Not-for-Profit Law Stichting
5 Riviervismarkt, 2513 AM
The Hague, Netherlands
www.ecnl.org
twitter.com/enablingNGOlaw



PILnet
199 Water Street, 11th Floor
New York, NY 10038 U.S.A.
<https://www.pilnet.org>
twitter.com/PILnet