

EUROPEAN BANKING GUIDE FOR NONPROFITS

HOW TO OPEN AND MANAGE AN ORGANIZATIONAL BANK ACCOUNT



European Center for
Not-for-Profit Law



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ITALY

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European Center for
Not-for-Profit Law

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

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1. OPENING AN ORGANISATIONAL BANK ACCOUNT

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

i. Do organisations 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 banks allow online management of current accounts, however, for the account opening stage, which assumes significant importance, banks require the physical presence of the legal representative, who must, among other things, provide his or her signature, as the person in charge.

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 specific requirements for CSOs. In general, in order to open a current account in the name of a legal entity, documents usually required are:

1. articles of incorporation;
2. articles of association;
3. minutes of the Board of Directors conferring signatory powers on the president or delegated director;
4. certificate of VAT number attribution;
5. chamber of commerce certificate and any other document identifying the person performing the functions of management and administration of the entity.

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 legal representative of the organization is authorized to open a current account, i.e. the natural person who has executive and management powers.

By virtue of the role played, banks require the physical presence of the legal representative who is the manager and owner of the account; his or her name is affixed to the account.

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 current account is a very common activity for banks. The time varies, from bank to bank, depending on various factors; firstly a consultation is carried out to choose the type of current account that best suits customer's needs, then it is necessary to collect all the required documentation, fill it in and hand it signed to the consultant. It usually takes from 10 to 30 days to complete the whole process.

2. BANKING ACTIVITIES

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

Customer due diligence (“CDD”) is one of the obligations under the Anti-Money Laundering Law¹ (“AML Law”) that must be performed by banks and other intermediaries.

CDD's purpose is to assist law enforcement authorities in the fight against money laundering and terrorist financing.

In particular, due diligence obligations, provided for in Article 17 of AML Law, are:

1. identifying the customer (if a natural person) or the beneficial owner (if a legal entity; this is the case for CSOs), i.e. the person who has the power of representation or the president of the entity;
2. assessing and obtaining information on the purpose, intended nature of the business relationship and, only for CSOs, information on the class of beneficiaries to whom the activities are addressed;
3. constant monitoring on-going of the relationship with the customer, throughout its duration.

¹ Legislative Decree 21 November 2007, no. 231 in implementation of Directive 2005/60/EC

CSOs are also among the recipients of verification, as customers of the Bank, and they must cooperate with it, providing all requested information and alerting it in case of relevant changes.

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

There are no specific rules for CSOs. Pursuant to Article 35² of the AML Law a wide range of subjects, including banks, must report to the Italian Financial Intelligence Unit (“FIU”)³ suspicious transactions, i.e. transactions in which the subject knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing operations are being or have been carried out or attempted, or that the funds, regardless of their amount, derived from criminal activity.

FIU is competent to draw up models and patterns representing anomalous conduct, anomaly indicators, and case studies from which the suspicion may be inferred. The latter may also be inferred from the characteristics, size and nature of the transactions, their linkage or splitting or any other circumstance known to the reporter.

Although the indicators and schemes play an important role in guiding obliged parties in the assessment of transactions, they are neither exhaustive nor exclusive.

It is not possible, in fact, to define in the abstract all the cases likely to foreshadow the elements of a suspicious transaction of money laundering or terrorist financing. In any case, the criteria are accessible to the public by connecting to the following website <https://uif.bancaditalia.it/>.

2 <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2007-11-21;231!vig>

3 The Financial Intelligence Unit for Italy (“FIU”) was established at the Bank of Italy by AML Law and is endowed with full operational and management autonomy, with functions to combat money laundering and terrorist financing.

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).

Regulation 2016/1675/EU⁴ identifies the list of third-country jurisdictions with strategic deficiencies in their anti-money laundering and counter-terrorist financing regimes that pose significant threats to the Union's financial system, so-called high-risk third countries.

In this regard, Legislative Decree no. 125 of 4 October 2019⁵ has provided for enhanced control measures in the event that Italian intermediaries have dealings with countries defined as high-risk.

Pursuant to Article 25 of AML Act obliged entities, in addition to the obligations (please, see question 2.a), must obtain:

1. additional information on the purpose and nature of the continuing relationship or professional service;
2. information on the origin of the funds and the economic and financial situation of the customer and the beneficial owner;
3. information on the reasons for the transactions envisaged or carried out;
4. authorization of the persons with powers of administration or management, before entering into or continuing an ongoing relationship involving high-risk third countries.

Supervisory authorities may intensify controls by imposing regular reporting requirements on transactions or strengthen controls on correspondent accounts and similar relationships, in order to ensure a constant and reinforced control of the continuing relationship or professional service.

⁴ <https://eur-lex.europa.eu/legal-content/IT/TXT/HTML/?uri=CELEX:32016R1675&-from=EN>

⁵ In implementation of the Directive 2018/843/UE (the so-called "Fifth Anti-Money Laundering Directive") of 30 May 2018.

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?

Banking activity is covered by the so-called banking secrecy, although there is no *ad hoc* rule expressly regulating it.

Bank is not entitled to disclose customer's financial information to third parties, unless it is the judicial authority. Public interest, pursued by legal authority, prevails over private interest.

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

Bank, as controller of personal data, must comply with its obligations under the GDPR⁶, specifically:

1. personal data must be processed lawfully, fairly and transparently;
2. purposes of the processing must be determined, explicit and legitimate;
3. in the event of a data breach (security incidents in which sensitive, protected or confidential data are accessed, copied, transmitted, stolen or used by an unauthorized person, and which result in the disclosure of confidential or sensitive data within an environment lacking security measures), bank is obliged to inform, without delay, both Data Protection Authority ("DPA") and data subject of the processing;
4. bank has an obligation to cooperate with the DPA in the transmission of data when requested to do so;
5. appointment of the Data Protection Officer⁷, who is responsible for information, training, advice and monitoring of obligations.

⁶ Regulation 2016/679/EU 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)

⁷ DPO is a professional figure whose main responsibility is to observe, assess and organize the management and protection of the processing of personal data within an organization (whether public or private), so that they are processed in compliance with European and national privacy regulations.

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

There is no specific obligation to report CSOs' activities to the government, except in the case of suspicious transactions or in case of violation of anti-money laundering and terrorist financing laws (please, see question 3.b).

d. Are you aware of any change in regulation/practice due to the Russian sanctions?

The European Union applied economic and restrictive sanctions on Russia to weaken its ability to finance war.

Among the measures, Ministry of Economy and Finance, in implementation of Regulation 328/2022/EU and Regulation 398/2022/EU, has ordered that, not later than 27 May 2022, banks must submit a list containing a census of bank deposits, exceeding 100,000 euro, held by Russian-Belarusian citizens or natural persons resident in Russia-Belarus, or by legal entity established in the two countries.



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