

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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SERBIA

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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?

Organizations do not have to be physically present in the country to open a bank account. They can operate in a country other than Serbia, and have a non-residential bank account in Serbia.

However, please note that although the opening of the accounts online without the presence of a person is developing in Serbia (mostly for the natural persons for now), the organizations should still factor in local presence at least for the signing of the specimen card (see answer under 1 a iii. below).

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 to open accounts by law, and we are not aware of any specific requirements asked in practice.

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?

Under Decision on detailed conditions and manner of opening, maintaining and closing current accounts (RS Official Gazette, Nos. 55/2015, 82/2017 and 69/2018) the request for opening a current account and the signature specimen card may be signed by the following persons:

1. the applicant's legal representative;
2. another person that, subject to an appropriate document or a decision issued by a competent authority, is authorised to grant authorisation for the disposal of the funds in the current account, in accordance with the general terms of operation of the bank with which the account is being opened.

While most of the documents needed for opening of the account can be provided online, at least for the signing of above mentioned documents (the request for opening a current account and the specimen card), the respective person needs to be present in the country and sign in person.

It cannot be fulfilled by signing the paperwork at an embassy or notary.

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 whole process takes a couple of days provided that the organization has already obtained/prepared all the necessary documents.

The first step would be preparation of the necessary documents. Most banks have on their websites a list of all the necessary documents, sometimes even a template agreement for opening of an account, so the clients can obtain all the documents necessary and prepare to apply for opening of the account.

After that the applicant shall submit the request for opening the account (sometimes this step may not be required).

Some of the banks accept the documents sent by mail, but they can also be submitted in person during the signing of the agreement for opening of the account.

The final step is signing of the agreement for opening the account and accompanying documents.

Please find attached examples of lists of necessary documents for opening an account from a couple of banks available online:

- [Banca Intesa Necessary documents](#)
- [Pro credit-Documents necessary for non residents](#)
- [OTP Documents necessary for non residents](#)
- [OTP Documents necessary for residents](#)

2. BANKING ACTIVITIES

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

The Serbian Act on Prevention of Money Laundering and the Financing of Terrorism (“AML Act”) provides broad obligations for banks to identify and know their customers, to monitor transactions undertaken using their services and to report any suspicious transaction.

Actions and measures for the prevention and detection of money laundering and terrorism financing cover all bank's customers and shall be taken before, during the course of, and following the execution of a transaction or establishment of a business relationship with customers.

In particular, Article 7 of the AML Act obliges the bank to:

- identify the customer;
- verify the identity of the customer based on documents, data, or information obtained from reliable and credible sources or by using electronic identification devices in line with the law;
- identify the beneficial owner and verify their identity in accordance with the AML Act;
- obtain and assess the information on the purpose and intended nature of a business relationship or transaction, and other data in accordance with the AML Act;
- obtain and assess the credibility of information on the origin of property which is or which will be the subject matter of the business relationship or transaction, in line with the risk assessment;
- regularly monitor business transactions of the customer and check the consistency of the customer's activities with the nature of the business relationship and the usual scope and type of the customer's business.

Additionally, according to Article 38, paragraph 1 of the AML Act, the bank is required to determine the PEP status the following persons:

- Customers, meaning any natural person, entrepreneur, legal entity/company, person under foreign law or person

under civil law that carries out a transaction or establishes a business relationship with the bank;

- Beneficial owner of a customer, meaning the natural person who indirectly or directly owns or controls the customer, whereby:
 - beneficial owner of a company or other legal person means the following: (i) a natural person who owns, indirectly or directly, 25% or more of the business interest, shares, voting rights or other rights, based on which they participate in controlling the legal person, or who participates in the capital of the legal person with 25% or more of the interest, or a natural person who indirectly or directly has a dominant influence on business management and decision-making; (ii) a natural person who has provided or provides funds to a company in an indirect manner, which gives him/her the right to influence substantially the decisions made by the managing bodies of the company concerning its financing and business operations; and
 - beneficial owner of a trust means its settlor, trustee, protector, beneficiary if designated, and the person who has a dominant position in controlling the trust; the provision of this item also applies on the beneficial owner of other persons under foreign law;

Additionally, the National Bank of Serbia prescribed in its Decision on Guidelines for the Application of the Provisions of the Law on the Prevention of Money Laundering and Terrorism Financing for Obligors Supervised by the National Bank of Serbia (“NBS Decision on AML Guidelines”) that when the bank is not able to determine the beneficial owner, it shall determine the identity of one or several natural persons having the function of the top management of the customer.

A politically exposed person (PEP) under the Serbian law includes the following persons:

- official of a foreign country;
- official of an international organisation;
- official of the Republic of Serbia;
- close family members of an official (i.e. the spouse or extra-marital partner, parents, brothers and sisters, children, adopted children and stepchildren, and their spouses or extra-marital partners);

- close associate of an official (i.e. any natural person who draws common benefit from property or from a business relationship or who has other sort of close business relationship with the official.)

After the opening of the account the impact of such customer due diligence procedures on civil society organizations' banking activities is mostly reflected in regularly monitoring the business transactions of the civil society organization and checking the consistency of the organization's activities with the nature of the business relationship and the usual scope and type of the organization's business.

Please find attached examples of lists of necessary documents to be filed regarding the KYC procedure which are available online:

- [Banca Intesa KYC for non residents](#)
- [Banca Intesa KYC for residents](#)

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

Please find attached the lists of the indicators for recognising suspicious transactions published by Ministry of Finance, Administration for the Prevention of Money Laundering (the APML):

- [Indicators for recognising suspicious transactions related to terrorism](#)
- [Indicators for banks](#)

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).

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

Please see the attached documents above for 2 b.

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

Please see the answer to question no. 3 a. below.

In addition to that, the APML may:

- request data, information and documentation necessary for detecting and proving money laundering or terrorism financing, from the state authorities, organizations and legal persons entrusted with public authorities;
- issue a written order to the obliged entity for a temporary suspension of a transaction, including access to a safe-deposit box
- issue a written order to the obliged entity to monitor all transactions or business operations of such persons that are conducted in the obliged entity
- initiate a procedure to collect data, information and documentation as provided for in the AML Act, and take other actions and measures within its competence, at a written and justified initiative of a court, public prosecutor, police, Security Information Agency, Military Security Agency, Military Intelligence Agency, Tax Administration, Customs Administration, National Bank of Serbia, Securities Commission, competent inspectorates and state authorities competent for state audit and fight against corruption.

If the APML finds, based on the obtained data, information and documentation, that there are reasons to suspect money laundering or terrorism financing in relation to a transaction or person, it is required to inform the competent state authorities thereof in writing, so that they may undertake measures within their competence, and provide them with obtained documentation.

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?

Article 73 of the AML Act provides that If the APML finds that there are reasons to suspect money laundering or terrorism financing in respect of certain transactions or persons, it may

request the following from the obliged entity (in this case the bank):

1. data from the customer and transaction records kept by the obliged entity;
2. information about the customer's money and assets held with the obliged entity;
3. data on turnover of customer's money or assets by the obliged entity;
4. data on other business relations of a customer established by the obliged entity;
5. other data and information necessary for detecting or proving money laundering or terrorism financing.

The APML may also request from the obliged entity data and information referred to in paragraph 1 of this Article concerning the persons that have participated or cooperated in transactions or business activities of a person in respect to whom there are reasons to suspect money laundering or terrorism financing.

In the cases referred to in paragraphs 1 and 2 of this Article, the obliged entity is required to provide the APML, at its request, with all the necessary documentation.

The obliged entity is required to provide the APML with data, information and documentation referred to in this Article without delay but no later than eight days following the reception of the request, or to enable the APML to access the data, information or documentation electronically, free of charge. The APML may set in its request a shorter deadline for providing data, information and documentation if it is necessary for deciding on a temporary suspension of a transaction or in other urgent cases.

The APML may, due to the size of documentation or for other justified reasons, set a longer deadline for the obliged entity to provide documentation, or inspect the documentation on the obliged entity's premises. The APML's staff inspecting the documentation will present the official identity card and badge with ID number.

The data, information and documentation from this Article are provided in the manner prescribed by the Minister, at the proposal of the APML.

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

Under Article 46 of the Serbian Banking Act, a bank secret is a business secret. The following is considered to be a bank secret:

1. data known to a bank relating to personal data, financial condition and transactions, as well as to ownership or business relations of the clients of such bank or another bank;
2. data on balances and flows on individual deposit accounts;
3. other data obtained by the bank in operation with clients.

The following is not considered to be a bank secret:

1. public data and data accessible from other sources to interested persons with legitimate interest;
2. consolidated data that do not disclose individual client identity;
3. data on bank shareholders and the amount of their participation in the bank's share capital, as well as data on other persons holding participation in the bank and data on such participation, regardless of whether they are the bank's clients;
4. data relating to timeliness in the fulfilment of the client's obligations towards the bank.

The Article 47 of the Banking Act provides that the bank and members of its bodies, shareholders and employees, as well as the bank's external auditor and other persons who, due to the nature of the activities they perform, have access to data specified in Article 46, paragraph 2 of this Act, may not disclose such data to third parties, use such data against the interest of the bank and its clients, nor may they enable third parties to have access to such data.

The obligation to keep the bank secret for persons referred to in paragraph 1 hereof shall not cease even after termination of their status based on which they had access to the data specified in that paragraph. Unless otherwise prescribed by this or other law, client data considered a bank secret may be disclosed to third parties only based on the client's approval in writing.

The Article 48 provides the exemptions from obligation to keep a bank secret. The obligation to keep bank secret shall not apply if data are disclosed:

1. based on the decision or request of the competent court;
2. for the needs of the ministry competent for internal affairs, the authority competent for combating organised crime and the authority competent for money laundering prevention, in accordance with regulations;
3. in connection with the property procedure, based on a request of the guardian of assets or consular representative offices of foreign states, upon submission of written documents showing legitimate interest of those persons;
4. in the case of the competent authority's enforcement against assets of the bank's client;
5. to regulatory authorities of the Republic of Serbia for the purpose of performing activities within their field of competence;
6. to a person established by a bank for the purpose of collecting data on the total amount, type and timeliness in the fulfilment of obligations by natural and legal persons that are bank clients;
7. to a competent authority for the purpose of performing supervision of payment transactions of legal and natural persons conducting their activities, in compliance with payment transactions regulations;
8. to the tax administration pursuant to regulations governing the activities within its field of competence;
9. to the authority competent for the supervision of foreign exchange operations;
10. upon the request of the organisation for deposit insurance, in accordance with the law on deposit insurance;
11. to a foreign regulatory authority under the conditions stipulated by a memorandum of understanding, concluded between that authority and the National Bank of Serbia.

Notwithstanding paragraph 1 hereof, a bank has the right to disclose the data that represent a bank secret to the investigative judge, public prosecutor and courts, and/or other bodies that have public authorities, solely for the purpose of protecting its rights, in accordance with law.

The National Bank of Serbia, courts and other bodies vested with public authorities may use the data obtained in accordance with Article 47 of this Act exclusively for the purpose for which such data were obtained, and may not disclose such data to third parties or enable third parties to learn and use such data, except in cases envisaged by law.

The provisions of paragraph 1 hereof shall accordingly apply to persons who are employed, and/or were employed in the authorities referred to in that paragraph.

In addition to the above, The Serbian Act on Personal Data Protection (“**Data Protection Act**”), which is based on the EU General Data Protection Regulation (**GDPR**), regulates the right to protection of natural persons with regard to the processing of personal data and the free movement of such data, the principles of processing, the rights of data subjects, the responsibilities of controllers and processors, the code of conduct, the transfer of personal data to third countries and international organisations, monitoring of compliance, remedies, liabilities and penalties for the violation of rights of natural persons with regard to personal data processing and specific processing situations.

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

There are no specific reporting obligations for banks to inform governments on civil society banking in certain circumstances prescribed by law other than the obligations mentioned above in 2.a prescribed by the AML Act (obligations for banks to identify and know their customers, to monitor transactions undertaken using their services and to report any suspicious transaction).

However, in recent years it appears that the legal mechanisms prescribed by the AML Act are not always used for the prescribed purposes. Namely, Article 73 of the AML Act stipulates that the APML may require the bank to submit data if it assesses that in connection with certain transactions or persons there are grounds for suspicion of money laundering or terrorism financing. However, it has been shown that such procedures are sometimes initiated without legal grounds for suspicion, and that the abuse of prescribed legal mechanisms and institutions may sometimes be used to unlawfully put pressure on civil society organizations and media.

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

Yes, all banks in Serbia with a European presence are aligning their policies with the EU sanctions regime with respect to Russian citizens/companies.



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