

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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CZECH REPUBLIC

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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?

No, physical presence is not a legal condition for opening a bank account with a bank operating in the Czech Republic, however, the CSO will need to justify to the relevant local bank why such an account is required. There is no rule prohibiting an entity, such as a CSO, to operate in country X, but have a bank account in the Czech Republic. As the local banks will need to avoid the risk of money laundering and/or terrorism financing, they may be reluctant to open and maintain such bank account if there is no reasonable justification (in their view) for the CSO to have such account in the Czech Republic while the CSO has no other activities in the Czech Republic.

In addition, since the anti-money laundering rules require that the first identification of a client (CSO) need to be done in person (unless an exemption applies), it is likely that local banks will require a statutory representative of the CSO to be physically present at the bank when opening the account.

The Czech AML Act recognizes the following exemptions from the obligation of the first identification in person, the application of which in a specific case is to be pre-approved with the respective bank:

- CSO meets criteria for a simplified identification and due diligence¹;

¹ These criteria may apply if:

- customers, business relations, products, or transactions of CSO have potentially lower risk of abuse for money laundering or financing of terrorism and the lower risk was duly justified by the risk assessment prepared by the obliged entity (bank) in accordance with the Czech AML Act;
- they were not perceived as a risk by the risk assessment at the level of the Czech Republic; and
- there are no circumstances under which enhanced identification and customer due diligence must be performed (such as CSO residing in a high-risk third country, transaction related to a high-risk third country, or a transaction with a politically exposed person).

- Identification by a take-over of identification carried out by a credit institution or financial institution in the Czech Republic or other country with at least corresponding AML requirements. The take-over of identification assumes a consent of the client and the agreement with the relevant credit/financial institutions carrying out the identification;
- Identification by means of electronic identification which comply with:
 1. technical standards of means of electronic identification under the EU Regulation eIDAS and are applied pursuant to the qualified system in line with the Act on Electronic Identification, or
 2. conditions of electronic identification carried out by a bank under the Act on Banks;
- Identification by a notary or other public body in a public deed drafted and issued by the notary (public entity) confirming the identity of the relevant natural person;
- by an external service provider (outsourcing of identification/due diligence) on behalf of the relevant bank under an agreement between the obliged entity and the outsourcing service provider. The service provider must follow the relevant internal AML procedures of the obliged entity;
- by way of a payment confirmation procedure as follows:
 1. customer sends all required identification details supported by two ID cards;
 2. a written agreement is entered into with the customer;
 3. the customer demonstrates that it has opened in its own name a bank account with a bank in the EU;
 4. first payment (however small, e.g. CZK 0.01) under the above agreement is made by the customer from the above account to the obliged entity;
 5. if the payment system allows it, the first payment should be accompanied with details on the purpose of the identification, the name of obliged entity as well as the name of the individual giving the payment order; or
- by way of specific communication with electronic signature.

It is possible to open a bank account through an authorization, in which case, the authorized person (an attorney) needs to demonstrate his/her right to act on behalf of the client and will need to be present in person for the purposes of the first

identification. Any individual person acting with the bank for the first time will need to be identified in person (unless an exemption applies).

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)

No specific requirements (compared to other legal entities) are known to us. Similarly to other legal entities, CSO as a client must be properly identified and the bank will need to carry out a due diligence. The scope and required details will depend on the risk category to which the CSO will be classified by the relevant bank.

CSOs may be classified differently by different banks in accordance with their internal AML risk assessment policies.

In any case, years of operations, annual turnover, or having a director or member of governing body to be national of the country are not statutory conditions for opening and/or maintaining the bank account in the Czech Republic, however these points will also be reviewed by the bank to classify the client into the appropriate AML risk category.

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?

In most cases the physical presence will be required for the first identification at the bank. Online opening is technically possible if the CSO has an account with another bank in the EU/EEA and the local bank will accept to use the statutory exemption (confirmation of identification through a payment or by way of taking over the identification/due diligence carried out by another EU/EEA credit or payment institution).

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?

Bank account is set up upon an agreement between the client and the bank. For the bank to accept a new client, it must carry out identification and due diligence relating to the client before the bank account agreement (in general any service) can be provided to the client.

The first identification and due diligence may take a few days or a week, depending on the client's AML risk category and documents required. It is therefore recommended that a CSO will have prepared all documents necessary for its identification as up-to-

date as possible (please see below the scope of data and documents usually required).

Usually, no interview with the bank is required, however a physical visit of the bank for the purpose of the first in-person identification will likely be required (unless an exemption applies).

2. BANKING ACTIVITIES

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

The requirements are mostly identification and due diligence of the client. If the client does not or cannot properly identify itself and/or provide necessary and reliable information for the due conduct of the due diligence, the bank will not open the account for such client.

For the purposes of identification of legal entities, the following customer's identification data are to be gathered by local banks:

- essential identification details of the legal entity, like the name or title including appendices indicating its legal form or other titles, its registered office, and its identification number or similar identification number given pursuant to the respective foreign legislation;
- data necessary to identify and verify identity of individuals who are members of its governing bodies; and
- essential identification data of a legal entity, which is a member of its governing body, and data necessary to identify and verify identity of an individual who is a member of the governing body of such legal entity or who was authorized by the said legal entity to represent it in the governing body.

Similarly to the steps to be taken in respect of the individuals, the bank needs to identify the person acting on its behalf in person.

Under Section 8(2)(b) of the Czech AML Act, when identifying a legal entity, banks shall record the required identification data and verify them from the proof of existence of the legal entity received from a reliable source (e.g. an official extract from a public register) and, to the extent applicable to individuals as clients, perform identification of the individual acting on behalf of such legal entity in respect of the given transaction or business

relationship. It is necessary to check and verify whether the person acting on behalf of the legal entity has the right to do so (i.e. by way of their registration with the relevant public register, power of attorney or other authorisation).

Czech AML Act and other AML related rules can be found in English at the following address: <https://www.financnianalytickyurad.cz/en/national-legislation>

With respect to legal entities (CSOs), the following points are to be included in the Customer Due Diligence:

- gathering and assessment of information concerning the purpose and intended nature of the transaction or business relationship as well as information on the nature of the customer's business/activities;
- ongoing monitoring of the business relationship including review of transactions undertaken throughout the course of that business relationship with the purpose of detecting whether these transactions are consistent with the bank's knowledge of the client, their business, and risk profile;
- verification of identity of its beneficial owner (at least the name, date of birth and address of residence) and measures to verify their identity from reliable sources (i.e. public sources and/or from the client, if necessary); if the client is registered in the register of beneficial owners or a similar database, the bank shall always verify the beneficial owner at least from this register or database and from one more source; the bank should also check whether the beneficial owner is not a politically exposed person or a person against whom the Czech Republic applies international sanctions;
- verification of the ownership and control structure of the customer and check whether persons in these structures are not individuals against whom the Czech Republic applies international sanctions;
- review of sources of funds or other property affected by the transaction or business relationship; and
- in case of a business relationship with a politically exposed person, also adequate measures for identification of the origin of their funds.

The above CDD is to be carried out to the extent necessary to determine the potential risk of money laundering and financing of terrorism based on the type of customer, business relationship, product or transaction.

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

Under Czech AML Act, suspicious transaction means a transaction made under circumstances raising suspicion of attempted legitimization of proceeds of crime, suspicion of terrorist financing or a link or connection to financing of terrorism and/or other facts that can raise such suspicion, primarily the following:

- withdrawals or transfers to other accounts made by a customer immediately after cash deposits;
- multiple transactions not typical for a customer made in one day or in several subsequent days;
- multiple accounts opened by a customer which do not correspond with their standard business activity or financial situation;
- transfers of assets without obvious economic reason and/or complex or sizeable transactions;
- assets handled by a customer are in obvious discrepancy with the nature and scope of their business or financial situation;
- an account is used contrary to its declared purpose;
- a customer engages in activities that may be intended to help conceal the identity of the customer or a beneficial owner;
- a customer or beneficial owner are nationals of a country that insufficiently enforce or fails fully to enforce measures to counter legitimization of proceeds of crime and financing of terrorism;
- an obliged entity has doubts concerning accuracy of customer’s identification data received;
- a customer refuses due diligence or rejects to disclose identification data of a person on whose behalf they are acting;
- a customer, person in the ownership or control structure of the customer, beneficial owner of the customer, person acting on behalf of the customer or a person who is otherwise involved in the transaction and is known to the obliged entity be a person against whom the Czech Republic had imposed international sanctions pursuant to the Sanctions Act, or a transaction concern goods or services against which the

Czech Republic imposed sanctions pursuant to the Sanctions Act.

In addition to the list above, each bank will have its own internal set of suspicious behavior that will be detected and evaluated. These are not publicly available. None of these are specifically related to CSOs to our knowledge, but the bank may have different thresholds and red flags with respect to non-business/non-profit entities, such as CSOs.

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).

Yes, they do. These are not published in a specific list, but the banks are following international sanctions that prevent transfers and transactions to or with certain countries (e.g. Iran, North Korea, Russian Federation, etc.). Transaction or a transfer to a high-risk country will likely be considered as suspicious transaction triggering assessment by the bank and possibly refusing to carry it out (and perhaps reporting the transaction as suspicious to the Czech AML Authority). If such a transaction or a transfer is to be carried out to a country or entity subject to international sanctions, the transaction will not be carried out.

According to the Sanctions Act, the Czech Republic applies the sanctions imposed by the Security Council of the UN and the EU. The binding sanctions lists are the sanctions lists published by:

- the Czech Government in the form of a Governmental Decree – currently there is one such list under Decree no. 210/2008 Coll., which incorporates the mutual position of EU Council No. 2001/931/SZBP dated 27 December 2001; and
- directly applicable legal acts of the EU.

According to the Czech AML Authority, the UN sanctions lists are not directly applicable in the Czech Republic, but these are usually implemented by the directly applicable legal acts of the EU. Until these sanctions are implemented by the EU acts, the AML Authority requires that the obliged entities need to assess such transactions as suspicious and report them to the AML Authority.

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?

No such reporting is required on a regular basis. However, in general, if the Czech AML authority is investigating a suspicious transaction, it may require from the bank any relevant information and documents available for due assessment of the suspicious transaction and the bank needs to provide such documents. The above applies similarly to investigations of other Czech authorities, such as the financial police, state attorney's office, intelligence service, etc.

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

Bank secrecy rules are quite strict in the Czech Republic. In general, Czech banks may not provide any information about their clients, assets and bank transactions to any third party unless the client provides his/her consent. However, there are certain exceptions, in which banks are required by law to provide such information, in principle to law enforcement agencies, and Czech authorities for the purposes of accomplishing their tasks.

For completeness, the following authorities are authorized to request the bank data from the bank under Czech law:

- a court of law for the purposes of civil proceedings;
- a criminal law enforcement authority under criminal proceedings act;
- the tax authorities under tax proceedings act;
- the financial arbiter when making decisions in disputes between a petitioner and an institution;
- the Czech AML Authority under AML Act;
- the social security authorities, in matters of proceedings concerning social security payments and contributions to the state employment policy owed by the client, and the social security authorities or municipal authorities in matters of

proceedings concerning overpayments of social security benefits, or state welfare bodies in matters of proceedings concerning overpayments of welfare benefits which the client is obliged to return;

- health insurance companies in matters of proceedings concerning public health insurance;
- a judicial bailiff authorized to perform execution;
- a labor office in matters of proceedings concerning the return of funds provided to the client from the state budget;
- Czech state intelligence service;
- the Czech Authority overseeing Financing of Political Parties for the purpose of supervision of the financing of political parties;
- the National Security Authority, intelligence service or Ministry of Internal Affairs for purposes of security proceedings;
- the Police for the purposes of searching for a missing person or anti-terrorism purposes;
- the General inspection of security forces for the purposes of searching for a missing person;
- Ministry of Finance for the purpose of financing of the export with state support;
- Insolvency trustee appointed by the insolvency court with respect to the relevant debtor.

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

We are not aware of any other information duties in addition to the above.

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

We understand that due to the Russian sanctions, transactions with rubles are suspended by Czech banks and transfer of any assets to the Russian Federation is prohibited or very strictly limited. There may also be other consequences as applicable from the EU sanctions.



European Center for
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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