

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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SPAIN

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European Center for
Not-for-Profit Law

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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?

In general, it is not required to be physically present in Spain to open a bank account.

However, foreign CSOs that intend to carry out activities in Spain on a stable or long-term basis shall set up a delegation within the Spanish territory which will be constitutive of their domicile, in accordance with the article 9.3 of the Spanish Organic Law 1/2002, of 22 March, regulating the Right of Association and the article 7 of the Spanish Law 50/2002, of 26 December, on Foundations.

Please note that the term used for “associations” is stable or on a long-term basis, and for “foundations” is only stable. However, these terms are not defined by law, but they could be understood as an activity sustained over the time, on a long-term basis. We have amended it in our answer for the sake of clarity

The term ‘delegation’ is not defined by law either, but we understand that it would be sufficient the presence of a representative or proxy, with the authorisation of the foreign foundation and a permanent establishment in Spain.

For those purposes, a permanent establishment is defined by the Spanish Tax Authorities as:

“It is understood that a natural or legal person that carries out economic activities operates through a permanent establishment in Spanish territory, when by any title it has there, on a continuous or habitual basis, installations or workplaces of any kind, in which it carries out all or part of its activity, or acts there through an agent authorised to contract, in the name and on behalf of the non-resident, who habitually exercises such powers.

More specifically, the premises that constitute a permanent establishment are: executive headquarters, branch offices, offices,

factories, workshops, warehouses, shops or other establishments, mines, petroleum or gas wells, quarries, farm, forest, livestock or other holdings or any other place used for the survey or extraction of natural resources, as well as construction, installation or assembly work with a duration of more than 6 months.

The permanent establishment has no legal personality of its own. Permanent establishments of non-resident entities do not have a legal personality distinct from that of their head office.”

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)

Yes, there are specific requirements to open bank accounts in Spain that will eventually depend on each bank’s internal regulations.

In general, they are aimed to identify and verify the existence of the CSOs and their representatives, which imply that a CSO would be likely requested to provide all or part of the following documentation:

- Name, legal form, status, registered address and proof of incorporation of the CSO, through a copy of its foundation act (*acta fundacional*) and/or its certificate of incorporation and/or its by-laws, as applicable (likely translated into Spanish if they are in another language, notarized and apostilled);
- Nature and purpose of the activities of the legal entity and its legitimacy, which can include for established corporate entities the financial situation of the entity through a copy of the latest financial statements (audited, if available);
- The company registration number and the Spanish tax identification number (NIF);

In case of being a non-Spanish CSO the NIF needs to be requested to the Spanish Tax authorities by providing:

1. A copy of the proof of incorporation of the CSO and/or its by-laws sealed and approved by the Register of Associations/Foundations (translated into Spanish if they are in another language, notarized and apostilled);
2. [An official form provided by the Tax Authorities](#);
3. A copy of the power of attorney that allows the representative/s and/or authorized person/s to request for the NIF; and

4. A copy of the Spanish identification card (DNI) or the Spanish identification number for foreigners (NIE) of such representative/s that is/are going to sign the form (as described in section (v) below).
- The power of attorney that allows the representative/s and/or authorized person/s to open the bank account on behalf of the CSO;
 - A copy of the DNI or the NIE of the representative/s and/or authorized person/s of the CSO who is/are opening the account.

As mentioned, if the representative is not a Spanish resident, he/she will have to request for the NIE, for which it is needed to:

1. Provide a copy of his/her passport duly notarized and apostilled;
 2. Communicate the reasons behind the request; and
 3. Submit a form available through this link: <https://extranjeros.inclusion.gob.es/es/InformacionInteres/InformacionProcedimientos/Ciudadanosnocomunitarios/hoja091/index.html>.
- Identity of relevant persons holding senior management positions, and/or the identity of the beneficial owners of the CSO.

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 authorized person/s will be the representative/s of the CSO duly authorized to act on behalf of the CSO for these purposes (for example, through a power of attorney), and they need to comply with some requirements: generally being of legal age (18 years at least) and duly identify themselves by providing their DNI or NIE, as mentioned in the answer to question 1.a.ii.

In respect to the face-to-face requirement, it will depend on the elected bank, which can require the representative to be physically present in order to confirm his/her identity or, by the contrary, permit the representative/s to open it online through some application. For the sake of clarity, nowadays several Spanish banks provide solutions that allow non-residents in Spain to open a bank account without being physically present.

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?

This is usually a straightforward process once the CSO provides the required documentation for setting up the bank account which can take from hours to days. However, final timing can vary depending on the elected bank.

In respect of the need of holding an interview in the bank, it will depend on each bank's internal policies, as set out in the answer to question 1.a.iii.

2. BANKING ACTIVITIES

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

CSOs are obliged subjects under the Spanish anti-money laundering and terrorism financing ("AML") regulations, in accordance with the article 2.1.x) of the Spanish Law 10/2010, of 28 April, on the prevention of money laundering and terrorist financing ("Law 10/2010"), and they are also subject to the special regime as stated in its article 39 and the article 42 of the Spanish Royal Decree 304/2014 of 5 May on the adoption of Regulation of Law 10/2010.

This implies that CSOs shall ensure that they are not used for money laundering or to channel funds or resources to individuals or entities linked to terrorist groups or organizations.

In accordance with that, CSO shall:

- Identify and verify the identity of all persons receiving funds or resources gratuitously. For then, when the nature of the project or activity make individual identification unviable or when the activity entails a low risk of money laundering or terrorist financing, the group of beneficiaries and counterparties or collaborators in the project or activity shall be identified;
- Identify and verify the identity of all persons who provide funds or resources gratuitously in an amount exceeding EUR 100;

- Implement the following measures:
 1. Implementing procedures to ensure the suitability of the members of the governing bodies and other positions of responsibility within the organization;
 2. Implementing counterparty due diligence procedures, including a suitable professional background and the honorable reputation of managers;
 3. Implementing appropriate systems, depending on the risks, to control the effective performance of their activities and the proper allocation of the funds.;
 4. Keeping for a period of ten years documents or records evidencing the allocation of funds to different projects;
 5. Reporting to the Spanish Executive Service of the Commission events that could constitute indication or evidence of money laundering or terrorist financing; and
 6. Cooperating with the Commission and its supporting bodies.
- CSOs shall keep records for a minimum period of ten years, identifying all persons who contribute or receive free funds or resources from the CSO.

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

Please see the answer to question 2.a above.

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, the banks are subject to the restrictions related to AML regulations and financial sanctions established by the European Community regulations and agreements established by the Spanish Council of Ministers in application of resolutions by the United Nations Security Council and the countermeasures adopted by the Spanish Council of Ministers with respect to third countries.

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

A consolidated list of the jurisdictions subject to such restrictions/limitations can be found through General Secretariat of the Treasury and International Finance website, which is the competent Spanish authority for the purposes of the financial sanctions: <https://www.tesoro.es/en/prevencion-del-blanqueo-y-movimiento-de-efectivo/sanciones-financieras-internacionales>.

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

In such cases, the banks would not be allowed to initiate or keep business relationships with those persons.

The measures to be applied to those persons would vary depending on the specific situation, but the most common financial sanctions are:

- Blocking (freezing) the assets, which is the most common measure and important one;
- The prohibition of making available funds or economical resources;
- Restrictions in a wide variety of markets and financial markets like the prohibition to invest or restrictions to access to capital markets;
- Instructions to cease with the relationships and banking activities;
- Requirements to notify or request authorization before making some payments; and
- Restrictions on the provision of financial, insurance or advisory services.

Consequently, if the banks receive a payment from those persons or entities subject to restrictive measures or that possess funds or economical resources shall proceed to immediately freeze them and communicate it to the Secretariat of the Treasury and International Finance. However, there can be some exemptions and conditions when those funds or economical resources could be released but it shall be subject to the prior authorization of the Spanish authorities, and in accordance with the applicable regulations.

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, unless there is any AML issue in respect of the final client (CSO client) that needs to be reported to the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offenses (SEPBLAC, from its initials in Spanish).

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

The banks are subject to the data protection regulations (including Regulation 2016/679 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 the Spanish Organic Law 3/2018, of 5 December, on the Protection of Personal Data and Guarantee of Digital Rights), which impose, among others, the obligation to comply with the following in respect of the personal data: (i) it shall be processed fairly, lawfully and transparently; (ii) collected for specific, explicit and legitimate purposes and not processed in a manner incompatible with those purposes; (iii) the personal data shall be adequate, relevant and not excessive; (iv) it also shall be accurate and, where necessary, up to date, and banks shall keep it secure and in an identifiable form for no longer than necessary.

In addition, the Spanish bank supervisor, the Bank of Spain, is subject to the obligation of secrecy, as stated in article 82 of Law 10/2014, of 26 June 2014, on the regulation, supervision and solvency of credit institutions sets out that all data, documents and information held by the Bank of Spain by virtue of the exercise of its supervisory functions or any other functions entrusted to it by law shall be used exclusively by it in the exercise of those functions, they shall be confidential and they may not be disclosed to any person or authority. Such data, documents and information shall cease to be confidential when the parties concerned make public the facts to which they relate. All data, documents and information on the procedures and methods used by the Bank

of Spain in the exercise of the above functions shall likewise be confidential, unless the competent body of the Bank of Spain expressly decides that this is no longer the case.

However, there are some exceptions to that obligation of secrecy, like where the interested party expressly consents to the disclosure, publication or communication of the data or information requested by the competent judicial authorities in criminal proceedings.

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

No, there aren't besides the ones highlighted hereby.

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

The SEPBLAC has published an update in respect of the international financial sanctions imposed by EU regulations in connection with the Ukraine conflict, available following this link:

<https://www.sepblac.es/en/2022/04/18/information-on-international-financial-sanctions-imposed-by-eu-regulations-in-connection-with-the-ukraine-conflict/>



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