

# EUROPEAN BANKING GUIDE FOR NONPROFITS

## *HOW TO OPEN AND MANAGE AN ORGANIZATIONAL BANK ACCOUNT*



European Center for  
Not-for-Profit Law



**PILnet**



**ROMANIA**

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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 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 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?

From a legal perspective, civil organisations set up in one EU Member state should take the benefit of free movement of services rules and be able to open bank accounts in any other EU Member State.

For organisations which are not from the EU, this does not apply. Banks may structure their own policy in this respect subject to observance of “know your customer” requirements and other Romanian banking regulations as in force.

Some Romanian banks tend to require physical presence of legal representatives, while others do not. This is not a regulatory requirement so banks may apply their own policy in this respect.

In theory, a power of attorney from the statutory representative should be acceptable, but (1) it is always recommended to have this notarized (and apostilled if the case) with the highest form of notarization available in that country, and (2) some banks might require that a statutory representative be present in certain circumstances.

### 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)

We are not aware of banks applying this type of requirement when opening accounts with CSOs. Banks will typically ask for constitutive documents and other information required by anti money laundering and terrorist financing regulations (including info on the ultimate beneficiary, type and nature of activity performed, etc.)

According to the Guidelines of the Basel Committee on Banking Supervision, banks may ask for additional information (on the basis of risk) for financial statements and source of funds information.

**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?**

See answers to question i., above.

According to Romanian regulations, bank accounts can be opened by the legal representative or a duly appointed attorney. Whether someone is a legal representative or not is a matter determined by the law of the CSOs jurisdiction of incorporation.

**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?**

For retail customers, generally, it is typical for accounts to be opened relatively quickly (i.e. same or next business day) and some banks allow for the procedure to take place online.

For legal entities, opening of accounts can take more time due to complications resulting from fulfilling “know your customer” requirements and providing the necessary documents required in connection with the ultimate beneficial owner. Some banks report that the process can take weeks but this is generally due to client delays in providing the requested documents.

Bank interviews for the opening of the account are relatively common practice but not a regulatory requirement.

## **2. BANKING ACTIVITIES**

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

Romania has implemented the [EU Anti-money laundering directive \(2015/849\)](#) and the customer due diligence requirements are typically aligned.

Applicable customer due diligence requirements can be (a) standard, (b) simplified or (c) enhanced. Banks may assess which requirements are appropriate (and should comply with EU level risk factor guidelines) but in some circumstances,

enhanced due diligence requirements are mandatory, such as when (i) politically exposed persons are involved, or (ii) the entity belongs to a state which does not apply, or insufficiently applies international standards in respect of combating money laundering and terrorist financing.

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

Romanian banks are required to follow the Joint Guidelines under Articles 17 and 18(4) of Directive (EU) 2015/849 (JC 2017 37) on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions. This is available [here](#).

The Romanian money laundering authority also published suspicious transaction guidelines (available only in Romanian [here](#)) which single out as being suspicious the following circumstances:

- Different non-profit organizations have the same address, managers or personnel, or transfer money from one to another, without there being a justifying connection between them.
- Large amounts of money (especially cash) are declared as being collected from various private individuals or from communities of a certain ethnicity or religion, but the amounts do not seem to have an economic justification by reference to the purpose or declared activity of the non-profit organization or the community from which the funds originate.
- A sudden increase in frequency of financial transactions and amounts credited to or from the non-profit organization.
- Operations or transactions from or to countries with high risk (including operations to directors from such countries).



**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?**

The European Union Consolidated Financial Sanctions List is available [here](#) (note that this is updated periodically).

The website of the Romanian anti-money laundering authority also includes a variety of sanctions lists [here](#).

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

Banks are generally required to report suspicious transactions to the Romanian money laundering authority and may not implement such transactions until either a certain period of time has passed (typically 24 hours or more if the period is extended) or until the money laundering authority communicates to the reporting entity that the suspicion is not confirmed.

The jurisdiction where the funds are to be transferred is not, in itself, a reason for suspicion, unless the bank suspects or has reasonable grounds to suspect that the assets are related to a criminal offense or financing terrorism.

However, the terms of certain international sanctions may provide that transfers dealing with certain entities based in sanctioned jurisdictions are in and of themselves prohibited.

This is the case with respect to the EU sanctions against Russia (Regulation (EU) No 833/2014 of 31 July 2014) (which are applicable to Romanian banks) – this regulation prohibits, among others, engaging in any transaction with legal persons, entities established in Russia which are over 50% under public ownership, or with which the Russian government has a substantial economic relationship.

### 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?**

Banks are typically required to observe bank secrecy rules and must keep confidential all facts, data and information obtained in connection with their clients, or their clients' property, activity, business, personal or commercial relationships, account details, services rendered or contracts concluded.

However, banks are required to disclose information that would otherwise fall under bank secrecy in circumstances such as:

- i. where the credit institution justifies a legitimate interest
- ii. at the written request of an authority or institution who is authorized by law to request and receive this type of information (i.e. the Romanian courts of law, the National Supervisory Authority for Personal Data Processing, the National Bank of Romania)
- iii. at the request of a court of law, in relation to a case pending before that court. There is no authoritative guidance on what legitimate interest means in this context. This is ultimately a matter of interpretation by Romanian courts of law. However, there is case law whereby legitimate interest could mean the interest of the bank to recover its debts. Under Romanian law, banks are allowed to enter into debt assignment agreements both with regard to performing and non-performing debts.

As there is no legal or regulatory provision establishing only certain ways of recovering claims or excluding the conclusion of assignment agreements, a bank can resort to any legal way of collecting its debts, including by entering into such agreements on the basis of which they undertake to submit the documentation representing the title to that particular claim (as well as any other related information).

Credit institutions are also required to observe the Romanian legislation implementing the general data protection (hereinafter referred to as GDPR). GDPR applies to all companies or organizations operating within the EU. Companies and organizations, including banks, should regularly carry out a data privacy impact assessment. This is a systemic evaluation of new personal data to determine its risk and consequences of breach. As per GDPR provisions, data controllers and processors should comply with the general principles of GDPR and prove their compliance. If the controller is undertaking high-risk data processing, they should consult the national Data Protection Authority.

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

Romanian banks have generally adapted their policies in order to comply with the new sanctions regime. Whether this is related is a matter of interpretation, but we have noticed that know your customer checks procedures tend to be more stringent and last more time than before.

On 4 March 2022, the European Commission announced the introduction of the EU Sanctions Whistleblower Tool. According to the Commission, the tool can be used to report on “past, ongoing or planned” EU sanctions violations, as well as attempts to circumvent these. This is of course also applicable to credit institutions and in this respect the National Bank of Romania points to this tool on its designated page addressing international sanctions.

Also in 2022, the European Banking Authority issued a call on financial institutions to ensure compliance with sanctions against Russia following the invasion of Ukraine and to facilitate access to basic payment accounts for refugees. Banks are encouraged to carefully consider the prudential and business impact of the short and longer-term risks they face in light of these geopolitical developments. This includes the broader impact of economic and political sanctions, as well as the increased economic uncertainty and vulnerabilities arising from the current situation.

There is not much visibility to internal developments within banks. Therefore, we are not aware of specially designated Romanian regulatory developments addressing the Russian sanctions, as the legal regime in this area is largely adopted at EU level.





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