

REPORT
**IMPACT OF BANKING RESTRICTIONS
ON NGO'S IN KOSOVO**





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INTRODUCTION

Freedom of association is a right guaranteed by the Constitution of the Republic of Kosovo, respectively in Article 44¹. It includes the right of everyone to establish an organization without obtaining any permission, to be or not to be a member of any organization and to participate in the activities of an organization. NGOs have the right to access different financial resources in order to achieve their goals. This right is guaranteed also by Article 10 of the Law no 06/L-043 on Freedom of Association in Non-Governmental Organizations (“NGO Law”)² on the “Freedom to seek, receive and use resources” according to which the NGO has the right to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the realization of its objectives and activities. The restriction or blocking of an NGO’s access to resources on the basis of nationality or source country origin is prohibited, as well as the stigmatization of those who receive these resources.

Article 23 of the NGO Law regulates the authorized representative of an NGO. According to this Article the authorized representative of the organization shall be responsible for opening and administering the NGO’s bank account. Article 36 on NGO financial transactions requires that all revenues and expenditures of NGOs are carried out through financial institutions licensed by the Central Bank of the Republic of Kosovo (CBK) in the bank accounts opened on behalf of the NGO, apart from exemptions allowed under applicable legislation.

Over the last few years, Kosovo commercial banks, licensed by the CBK, have made it more difficult for NGOs to have access to banking services. Some of the issues that NGOs have been facing with banks include the following:

- **Closing bank account without prior notification (warning);**
- **Requirement for NGO founders to be present while opening a bank account or presenting their ID cards that does not recognize the distinct nature of NGO governance;**
- **Over the last few years some banks have also increased account maintenance fees for NGOs (but not for companies) in amount that is unaffordable.**

Such obstacles for NGOs to have access to banking services do not only infringe their basic rights for freedom of association protected by Constitution of Republic of Kosovo and regulated by the NGO Law but also endanger NGOs to accomplish their public benefit mission. Limited access to banking services may also increase the risk of using alternative forms for turnover of the financial means, something that is against Kosovo legislation and increases the opportunity for abuse.

Both the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association have stressed that financial exclusion falls squarely within their fundamental rights remit and have asserted that the denial of access to financial services to civil society affects a range of human rights, including the right to freedom of association.

¹ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

² Law NO.06/L- 043 on Freedom of Association in Non-governmental Organizations in Republic of Kosovo 2019 <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=19055>

METHODOLOGY

Taking into consideration the issues and challenges that NGOs are facing while accessing the banking services in Kosovo, CiviKos has conducted a research together with few civil society organizations operating in Kosovo. The purpose of the research was to analyze the nature of the issues that NGOs are facing in opening and maintaining the bank accounts. It aims to facilitate discussion among key stakeholders on how to address the issue of bank de-risking so that NGOs have access to financial services on an equal basis with businesses. The questionnaire was completed by 21 NGOs, who declared that they faced difficulties to access banking services with different private banks operating in Kosovo. It included a total of seven questions and all questions are related to the challenges that NGOs face in accessing banking services. The survey was conducted online targeting both member organizations of CiviKos Platform and non-member NGOs part of other networks, altogether around 250 NGOs in Kosovo. Therefore, it is an initial exploratory study to help CiviKos to identify challenges of NGOs in opening and maintaining their bank accounts. The results of the survey were collected and processed by the CiviKos team. It was followed by meetings and focus groups with five NGOs to further discuss this matter.

ISSUES WITH OPENING OF THE BANK ACCOUNTS BY NGOs IN KOSOVO

Documents that are required to open bank accounts for NGOs in Kosovo

The list of documents that commercial banks require from NGOs to open bank accounts is relatively demanding. In addition to basic documents such as registration certificate, fiscal number, statute and confirmation letter for the authorized person, most of the banks also require from NGOs the presence of all founders of the NGOs based on the Statute, their signatures, or copies of their IDs, NGO Statute, the founding act and sometimes the list of the bank or projects they are implementing. As such, the first question was focused on the:

I. Amount of documents that the commercial banks have requested from NGOs when they opened their bank accounts.

The list of documents requested by the commercial banks varies. Each bank has their specific list of documents requested to open a bank account. Henceforth, the NGOs responded as the following:

76% of the NGO representatives answered that banks requested from them the following information and documents:

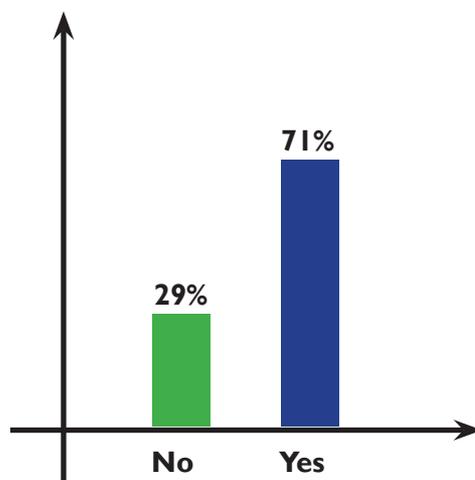
- ID card, fiscal number certificate, registration certificate, contract of the donor for the project, business certificate, document on the beneficiaries of the organization, original statement signed by three founders authorizing the executive director and office coordinator; Statute, authorized person, electricity bill;
- Founding document, certificate from Ministry of Public Administration, copies of the IDs of the founders, authorization from founder, stamp;
- Decision of the Assembly on appointing the director.

Whereas, 24% of the responders said that the banks requested from them the following documents only:

- Certificate of the fiscal number, ID card of the legal person and also IDs of the all authorized persons;
- List of the staff, lists of the board, list of the authorized persons;
- Form for identification of the politically exposed person (PEP) for the founder of the organization and authorized persons, form on source of funds for the founder of the organization and authorized persons, signed forms from CBK by all members of the board.

2. On the 2nd question: whether the bank asked you to regularly update data of the Organization?

71% answered with YES, and 29% answered with NO



2.1. If yes, what were exactly the documents and information requested by the bank?

The list of documents and type of information varies depending on the priorities and internal policies of the commercial banks. The CiviKos team has clustered the answers of the NGOs in two main group such as the following:

52% of the NGO respondents said that their bank requested the following information and documents from them:

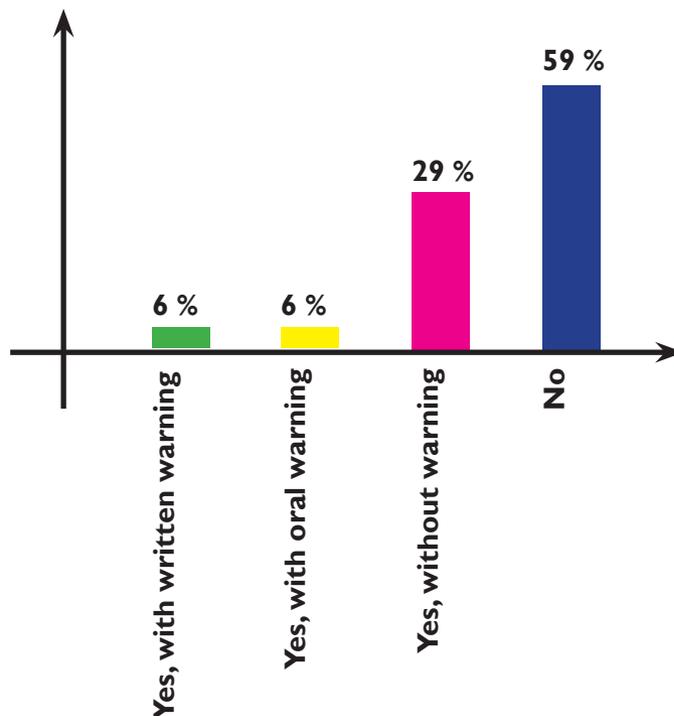
- Exact address validated in the utility bills, full update of the data for authorized persons, filling out some documents that were initially not requested when the accounts were opened.
- Confirmation of potential changes of information i.e. address, contact number and similar info.

48% of the NGO respondents said that their bank requested the following documents from them:

- Registration Certificate, letter of confirmation (not older than 6 weeks), statute, valid ID card or a passport (of the owner or authorized persons), all founders of the organization must be present in the bank for signing;
- Business registration certificate, confirmation of NGO, NGO statute, copies of the IDs from the founders of the organization, copies of the IDs of the authorized persons of the organization, form for identification of the politically exposed person (PEP) for founder of the organization and authorized persons, form on sources of funds for founder of the organization and authorized persons.

3. On the question: Was your bank account ever suspended with or without warning?

29 % answered Yes without warning, 6 % yes with warning, 6% with oral warning, without providing solution to the problems, e.g They requested to bring the founder from France), and 59 % answered with No.



Failure to bring the founders of the NGO to the bank, or provision of their signatures, or copies of their IDs, despite that founders of the NGO did not have a management role has led to suspension of the bank account. The suspension of NGO bank accounts by some of the banks has not only caused inability to operate with financial means but also led to delays with payments of taxes that may trigger fines based on the applicable law in Kosovo.

4. In order to see how did NGOs manage these situations, we asked them: If your bank account was suspended, what actions did you take to reactivate it?

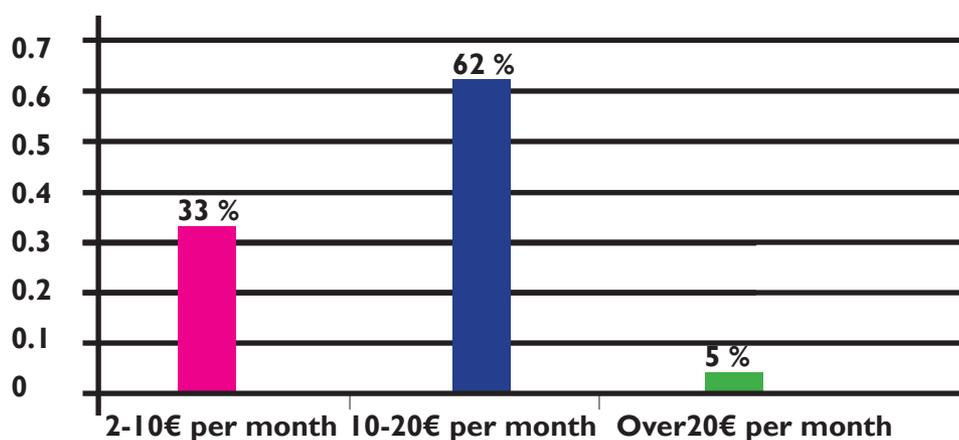
- Organizations who declared that their bank accounts were suspended they took the following actions:
- 6% of the NGO respondent's declared that they got away from the bank.
- 94 % of the NGO respondent's declared that they went through very difficult procedure with the bank, especially explaining to the bank that the founders have no management role in the organization, but in the end they managed to provide with signatures of founders and reactivate the bank account.
- 6% of the NGO respondent's declared that they were forced to change the founders in their statute, collect signatures of the " new founders", even though this is against the law, but the bank did not give them any other option.

In addition to the aggravated access to the bank accounts, and suspension of the accounts, another difficulty that NGOs face is that commercial banks in Kosovo increased the account maintenance fee. During the period 2018-2019 only most of the banks tripled the price for maintenance of the NGO bank accounts, or even increased as much as ten times. The price for monthly maintenance varies from bank to bank in Kosovo and are currently ranging from 2 to 50 Euros per month.

In order to find out how much the NGOs pay for monthly maintenance, we have asked them:

5. How much is your monthly payment maintenance fee for your bank account?

33% answered 2-10 euro per month, 62 % answered -10-20 euro per month and 5 % answered Over 20 euro per month.



At the end we asked the NGO respondents' to share their problems/issues regarding the commercial banks, and we posed the question:

6. Please use this space to share with us problems you have encountered in relation to the commercial banks, where you have your bank accounts, and they answered as below:

- High interest rates for maintenance and transfers and also prolonged waiting in their counters, lack of professionalism during the calls to fix any problems, as well as high fees for the services provided to the needs of the organization, they are not unique while providing information, which causes confusion.
- Fees for NGOs are very high, even higher than for the profitable businesses, problems with changing/replacing authorized persons, problems with access to e-banking even though we pay to use it,
- We made request to open an account in a bank, and despite submitting all the documents that they required the account was not opened with justification that the NGO is seen as suspicious by the senior management staff and they did not make any decision [on this request].
- The main problem remains the fact that banks always require presence of the founders, even though with the statute the authorized person is appointed for contacts with the banks and institutions. The mandate of the founders of an NGO is to establish it and it is not mandatory that they remain permanent members. It is always disturbing and difficult that the bank requires the presence of non-members for every action. Banks must recognize the authorized person legitimate by the statute, and should not ask founders of the organization as they may not be available, might be outside of the country or they might be already dead. This issue bothered us since we established the organization in 2013;
- Suspension of the bank account in one of the banks without a prior notice caused us issues with payments, and obligation by the bank to withdraw money in cash, to be transferred into another bank. After a complaint and non-compliance for cash withdrawal, the bank transferred all the funds to another bank and closed all the accounts of the organization;
- We believe that monthly maintenance fee of 20 Euros is high, especially for an organization like ours that operate through small projects;
- In all commercial banks in Kosovo, NGOs are treated as corporate or businesses and opening an account may last up to two weeks. Furthermore, in one of the banks some time ago we have tried to open an account for the organization, but the officials from this bank informed us that for NGO it is not possible to open an account. We consider this to be illegal and discriminatory towards the clients;
- Time wasting during the process of replacing/changing authorized persons, technical issues with e-banking (slow, freezing, etc.), high fees for international payments and maintenance, lack of bank agents for NGOs;
- Generally there is no flexibility and advanced services. Moreover, suspension of the account without warning caused great damage in the daily work and activities. Considering that we are an NGO with a public benefit status, it is not fair to treat us as small or medium business. There should be a separate price list for NGOs that considers the source of income and purpose of these incomes. NGOs report to the NGO Office each March including narrative and financial reports, therefore CBK and commercial banks may be coordinated with NOG Office to confirm existence of the organization and not to put burden on us with bureaucratic and unnecessary procedures. Another issue with commercial banks is non acceptance of electronic signature, something that is already regulated with possession of biometric ID cards.
- During the application for opening the new organization sub-accounts, new documents were required and we had to wait for the bank to tell us whether we have the right to open these sub-accounts. This caused delays with some activities of our organization.

RECOMMENDATIONS

General recommendation:

- All relevant stakeholders should engage in a constructive and systematic dialogue on mitigating financial access issues that NGOs are currently faced with.

For Central Bank:

- The Central Bank of Kosovo should update the Regulation on Presentation of Money Laundering and Financing of Terrorism³ and specify that the responsible person for opening and maintaining the bank accounts for the NGOs is the authorized person of the organization as stipulated by the Law no 06/L-043 on Freedom of Association in Non-Governmental Organizations, and other governing bodies depending on the form of NGO registration.
- The Central Bank should provide guidance on NGO due diligence for commercial banks.
- The Central Bank should ensure the harmonisation of information that different commercial banks request to ensure parity so that there is no undue burden on NGOs.
- The Central Bank should ensure that the banking fees for NGOs are reasonable and proportionate.

For commercial banks:

- The commercial banks should request information that is tailor-made for the sector and NGOs should not be treated like Small or Medium Enterprises. Importantly, commercial banks should not request the presence of the founders of the organization considering that founders not necessarily have a leadership/governing role in the organization, and they are usually just part of the history of the organization.
- Commercial banks should use the database of the Department for registration of NGOs to verify the data of the organization.
- Commercial banks should not suspend NGO accounts without prior notification, and by that causing them difficulties with their daily operations.

For Government:

- The government should monitor the Central Bank and commercial banks to ensure that NGOs have access to financial services and their operational space is not hindered.
- We recommend considering the creation of an independent ombudsperson role to deal with financial access issues facing NGOs.

For NGOs:

- We recommend that NGOs continue to raise awareness of the challenges that they face with financial access.
- NGOs should be aware of their compliance responsibilities regarding anti- money laundering and counter terrorism financing policies.

³ https://bqk-kos.org/repository/docs/korniza_ligjore/english/11-BQK%20-%20ENG%20-%20Rregullorja%20per%20parandalimin%20e%20pastrimit%20te%20parave.pdf

Annex

Questionnaire

1. What kind of documents commercial banks have requested from you when you opened your bank accounts.
2. Did bank ask you to update data of your organization?
 - 2.1 If yes, what were exactly the documents and information requested by the bank?
3. Was your bank account ever suspended with or without warning?
 - 3.1 If your bank account was suspended, what actions did you take to reactivate it?
4. How much is your monthly payment maintenance fee for your bank account?
5. Please use this space to share with us problems you have encountered in relation to the commercial banks, where you have your bank accounts.

