

Employment in Financial Services

Contributing Editor

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01. What is the primary regulatory regime applicable to financial services employees in your jurisdiction?

Belgium

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Financial services employees are primarily subject to general employment law, such as the Employment Contracts Act of 3 July 1978.

Moreover, sectoral collective bargaining agreements (CBAs) also apply. The main concerned joint committees (JCs) are JC No. 310 for banks (including savings banks and stockbroker companies) and JC No. 341 for banking and investment services intermediaries

JC No. 309 for stockbroker companies is abolished since 1 July 2023 and the employees who were covered by it are now covered by joint committee No. 310. A specific CBA was adopted to regulate employees' rights following this change (Collective bargaining agreement of 3 July 2023 concluded within the Joint Commission for Banks concerning the transfer of stockbroker companies from JC No. 309 to JC No. 310).

Due to the peculiarities of the financial sector, they are also governed by specific regulations, such as Regulation (EU) No. 468/2014 of the European Central Bank; Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms; Directive 2014/65/EU on markets in financial instruments; the Status and Supervision of Credit Institutions Act of 25 April 2014, the Prevention of Money Laundering and Terrorist Financing Act of 18 September 2017; and the Supervision of the Financial Sector and on Financial Services Act of 2 August 2002.

Finally, the regulations adopted by supervisory authorities, such as the National Bank of Belgium (NBB), the European Central Bank and the Financial Services and Markets Authority (FSMA), apply to the sector. The Belgian Financial Sector Federation (Febelfin) also issues guidelines.

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02. Are there particular pre-screening measures that need to be taken when engaging a financial services employee? Does this vary depending on seniority or

type of role? In particular, is there any form of regulator-specified reference that has to be provided by previous employers in the financial services industry?



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Members of management should at all times be of good repute and possess sufficient knowledge, skills and experience to perform their duties (article 91, Directive 2013/36/EU; and article 9, Directive 2014/65/EU).

Anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution must exclusively be natural persons and must at all times have the necessary professional standing and expertise to perform their duties (article 19, Act of 25 April 2014). Since 2023, it is specified that “in particular, these persons must demonstrate honesty, integrity and independence of mind which, in the case of members of the legal administrative body, enable them to effectively evaluate and, if necessary, question the decisions of the actual management and to ensure the effective supervision and monitoring of the management decisions taken” (Art. 19, Act of 25 April 2014).

In addition, they must not have been convicted of any of the offences listed in article 20 of the Act of 25 April 2014. This concerns convictions with a professional ban and violations of financial legislation, company codes and insurance law.

The NBB will verify that these persons meet the conditions listed above. Forms for a new appointment, additional elements during the employment, termination of an appointment or renewal of an appointment are available on the NBB website (www.nbb.be). These forms require information mainly regarding education, past financial services experience, training, any criminal or administrative or civil proceedings or investigations, disciplinary decisions, bankruptcy, insolvency, potential conflicts of interest, and time commitments for the new appointment.

The NBB will assess the ability of the person based on five criteria:

- expertise, covering knowledge, experience and skills;
- professional repute;
- independence of mind;
- time commitment; and
- collective suitability for the board (ie, to verify whether the expertise within the said body is sufficiently guaranteed, given the person’s knowledge, experience and skills (NBB Fit & Proper Handbook of 22 December 2022, 2:26, p. 16)).

Concerning "N-1" effective managers (managers who exercise direct and decisive influence over the management of the institution, but who are not members of the management committee) other than branch managers, the supervisory authority does not have to authorise them (NBB Fit & Proper Handbook of 22 December 2022, 2:9, p. 14). This does not mean that these persons must not have the required expertise and professional reputation, but only that the NBB will not conduct an assessment.

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03. What documents should be put in place when

engaging employees within the financial services industry? Are any particular contractual documents required?



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Regarding anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution, it is necessary to use the forms provided by the NBB to ensure that they are “fit and proper” and are authorised by the NBB (see question 2).

It is also recommended to foresee restrictive covenants in the employment contract, such as confidentiality, other professional activities, non-solicitation, non-competition and intellectual property provisions.

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04. Do any categories of employee need to have special certification in order to undertake duties for financial services employers? If so, what are the requirements that apply?



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Anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution must, at all times, have the necessary professional standing and expertise to perform their duties.

This will be assessed by the NBB through standard forms to complete if there is a new appointment, new elements during employment, termination of appointment or renewal of appointment.

"N-1" effective managers must meet the same criteria, but authorisation by the NBB is not necessary (see question 2).

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05. Do any categories of employee have enhanced responsibilities under the applicable regulatory regime?

 Belgium

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Specifically, employees holding executive, overall management, oversight or control functions in regulated companies are responsible for ensuring that the companies' organization ensures the continued compliance with applicable financial market laws. Swiss financial market laws do not have enhanced responsibilities for different employee categories. Instead, a person's fitness and propriety are assessed within the context of the specific requirements and functions of a given company, the scope of activities at that company, and the complexity of that company.

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06. Is there a register of financial services employees that individuals will need to be listed on to undertake particular business activities? If so, what are the steps required for registration?

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There is no list of financial services employees as such, but the NBB will assess, among others, the experience and the credibility of the person when granting the "fit and proper" authorisation.

This concerns anyone in an executive position (i.e. members of the legal administrative body, the effective management and independent controllers) at a financial institution (see question 2).

However, it should be noted that financial services institutions approved by the NBB are listed on its website. Moreover, banking and investment services intermediaries must be registered and file through an online application to the FSMA (www.fsma.be) documents attesting, inter alia, their knowledge, clean criminal record, and professional liability insurance.

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07. Are there any specific rules relating to compensation payable to financial services employees in your jurisdiction, including, for example, limits on variable compensation, or provisions for deferral, malus and/or clawback of monies paid to employees?

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Specific rules apply to personnel whose professional activities have a significant impact on the company's risk profile (article 92, 2. Directive 2013/36/EU; article 67, Act of 25 April 2014), including:

- all members of the legal administrative body and senior management;
- staff members with supervisory responsibility for control functions or business units;
- employees who received significant remuneration during the previous year (ie, 500,000 EUR or more and equal to or greater than the average remuneration of members of the legal administrative body and senior management) and the employee performs the professional activity in a critical business unit and the nature of the activity is such that it has a significant impact on the risk profile of the business unit concerned.

Variable remuneration is capped at 50% of the fixed remuneration or 50,000 EUR, without exceeding the fixed remuneration, whichever is higher (article 1, Annex II, Act of 25 April 2014). Moreover, it is forbidden to have a guaranteed variable remuneration (article 5). 40% of variable remuneration is delayed for four to five years, with a minimum of five years for members of the legal administrative body and senior management. When the variable remuneration is very high, the percentage of the delayed variable remuneration is 60% (article 7).

The total variable remuneration will be significantly reduced if the company generates a reduced or negative financial return. This applies to variable remuneration not yet earned, variable remuneration earned but not yet paid, and variable remuneration that has already been paid. It occurs through malus or clawback schemes, in particular when the person has participated in practices that have resulted in significant losses, has not respected the “fit and proper” duties or has set up a specific mechanism for tax fraud (article 8).

A termination indemnity is considered a variable remuneration, except for a legal indemnity in lieu of notice or a non-compete indemnity (based on the calculation provided by the Employment Contracts Act). Furthermore, a termination indemnity higher than 12 months, or 18 months for a motivated decision from the remuneration committee, can only be granted subject to the approval of the first ordinary general meeting following the termination (articles 12 and 12/1).

For companies that benefit from government intervention, there is in principle no variable remuneration, except for the person recruited after the public intervention to carry on the restructuring. Moreover, the termination indemnity is capped at nine months, unless the legal indemnity in lieu of notice (based on seniority) is higher (articles 16 and 17).

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08. Are there particular training requirements for employees in the financial services sector?

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To keep the “fit and proper” authorisation, the concerned persons must ensure that they follow the relevant training.

Regarding the prevention of money laundering, financial institutions must ensure that personnel whose

function requires it is aware of the legislation, knows the internal policies, is aware of the internal reporting procedure and receives special continuing education programmes (article 11, §1, Act of 18 September 2017).

At a sectoral level, JC Nos. 310 and 341 provide for an individual right to five days of training per year per full-time equivalent employee.

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09. Is there a particular code of conduct and/or are there other regulations regarding standards of behaviour that financial services employees are expected to adhere to?

Belgium

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The NBB has issued a Fit & Proper Handbook, which was last updated on 22 December 2022.

Besides, Febelfin has adopted codes of conduct and regulations for relations between financial institutions and their customers, which can be considered standard practice in the sector.

Each financial institution may also provide more concrete or more precise quality standards for its clientele.

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10. Are there any circumstances in which notifications relating to the employee or their conduct will need to be made to local or international regulators?

Belgium

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If a new element occurs that can influence one or more of the five criteria assessing the suitability of a person for the “fit and proper” authorisation (see question 2), the financial institution must file the adequate form with the NBB.

Notification to the NBB is also required in the event of termination or reappointment.

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11. Are there any particular requirements that employers should implement with respect to the prevention of wrongdoing, for example, related to whistleblowing or the prevention of harassment?



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EU Directive 2019/1937 on whistleblowing has been transposed in Belgium by the Act of 28 November 2022. Financial services are included in its material scope (article 2, 1°, b)). In general, companies with more than 250 employees had to create an internal whistleblowing system by 15 February 2023. For companies with between 50 and 250 employees, the deadline was 17 December 2023. However, these thresholds do not count for legal entities who are active in financial services, therefore they needed to install an internal whistleblowing system no matter their employee count and respect the deadline of 15 February 2023 (article 57, §3). The FSMA will have to verify whether the financial institutions are respecting their whistleblowing obligations (article 36). Furthermore, persons who report violations relating to financial services receive better protection and are awarded higher lump sum compensation if they are the victim of a retaliation measure (six months gross remuneration; article 27, §3).

Regarding the prevention of money laundering, financial institutions were already required to provide a procedure to enable their personnel, agents or distributors to report a violation of the legislation, through a specific, independent and anonymous channel (article 10, Act of 18 September 2017).

The employer must ensure the wellbeing of its employees, which includes the prevention of harassment. If harassment has occurred, they must provide appropriate support, including remediating measures, protection against dismissal and investigation by a prevention advisor specialising in psychosocial risks (Wellbeing Act of 4 August 1996, Wellbeing Code of 28 April 2017). The procedure must be detailed in the work rules of the financial institutions.

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12. Are there any particular rules or protocols that apply when terminating the employment of an employee in the financial services sector, including where a settlement agreement is entered into?



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If the person concerned is subject to “fit & proper” authorisation from the NBB (see question 2), a form must be filed with the NBB to inform it of the termination.

Furthermore, the settlement agreement cannot include payments that would not respect the caps for remuneration and termination indemnities (see question 7).

Finally, job security clauses have been negotiated at a sectoral level, meaning a specific procedure must be followed for individual or collective dismissal under JC No. 310, with a sanction of six to nine months’

remuneration.

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13. Are there any particular rules that apply in relation to the use of post-termination restrictive covenants for employees in the financial services sector?

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There are no specific rules for the financial services sector, except that they cannot have an effect that does not respect the caps for remuneration (see question 7).

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14. Are non-disclosure agreements (NDAs) potentially lawful in your jurisdiction? If so, must they follow any particular form or rules?

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Employees must not, both during and after the termination of the contract, obtain, use or unlawfully disclose a business secret he or she became aware of in the course of his or her professional activity, or disclose the secrecy of any matter of a personal or confidential nature of which he or she became aware in the course of his or her professional activity (article 17, 3°, a, Employment Contracts Act).

The company can include a NDA in the employment contract to underline what is considered confidential information. A penalty clause (with a lump sum to be paid) can be foreseen in case of a breach after the end of the employment contract, but not during the period of the employment relationship. This is because of the prohibition on restricting the rights of employees or increasing their obligations in comparison with what is foreseen by the Employment Contracts Act (article 6).

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