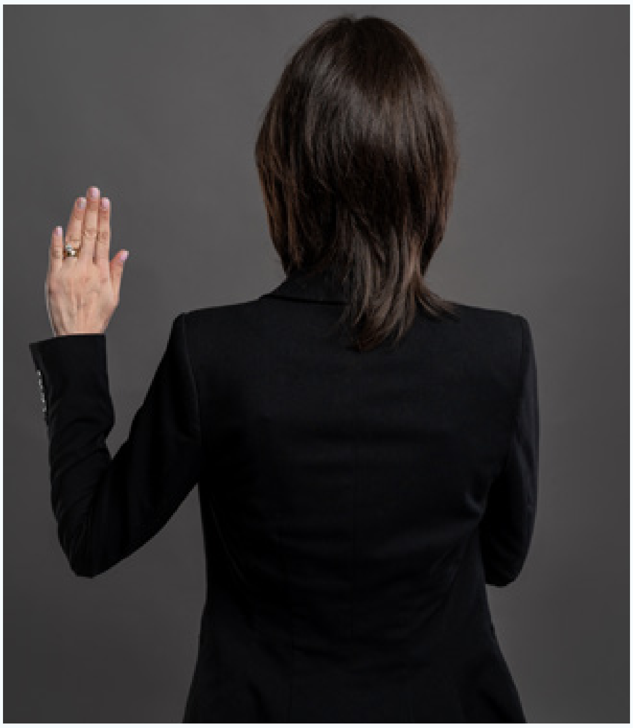
NEWSletter

Nr 6 - July 2026

NON-CONTRACTUAL LIABILITY AND THE BANKING OATH

The CNCK is concerned about the increased liability of managers and proposes solutions.

Belgian legislation has strengthened the individual liability of employees, and particularly managers and professionals, taking into account their expertise and responsibility for teams.



This increase in liability has been introduced without any corresponding compensation in terms of remuneration or legal protection, despite the risks it creates for their careers, jobs and financial situations.

Across all sectors, reference can be made to the Act of 7 February 2024 introducing Book 6 "Non-Contractual Liability" of the Belgian Civil Code, which entered into force on 1 January 2025.

One of the major changes introduced by this legislation is the disappearance of the quasi-immunity traditionally enjoyed by employees and other persons involved in the execution of contracts with regard to third parties.
In certain cases, a third party may now bring a direct claim against an employee based on non-contractual liability. Collectively, employers should be encouraged to limit this risk through their terms and conditions. However, there is a real possibility that a customer may choose to sue an individual manager rather than the company itself.

Adequate protection is therefore essential.

In the banking sector, the introduction of the Banking Oath goes even further (see the second part of this newsletter for further details). The combination of the Banking Oath, the FSMA disciplinary framework and non-contractual liability significantly increases the personal exposure of professionals and managers in the financial sector, both from a disciplinary and civil liability perspective. The FSMA may prohibit an individual from exercising a banking profession, and in practice employers may terminate employment on grounds of serious misconduct or force majeure, without compensation.

While we understand and support the objective of sanctioning individuals who fail to uphold the integrity of their profession, it is unfair that employees and managers should bear additional personal liability for decisions that are often the result of corporate policies. Employees working under constant pressure may lose their jobs following an error, without any guarantee that their employer will defend them.

Furthermore, employers have not systematically provided coverage for this additional risk. Many retain the discretionary right to decide whether or not to provide legal support to employees. In our view, independent legal protection insurance, free from any conflict of interest with the employer, is necessary. Ideally, employers should fund such insurance, but this is not yet the case everywhere.

The main risk lies in the increased individual liability of employees without additional protection.

At the CNC, we offer our members a DAS social law option at the advantageous additional price of EUR 35/year, in addition to the legal protection included in the membership. As a reminder, the membership fee will be EUR 90/year in 2027.

We have checked with our DAS broker that the disciplinary procedure with the FSMA is included.

The Banking Oath in Belgium

The Banking Oath is a legal obligation introduced in Belgium to reinforce public confidence in the financial sector following several banking crises that damaged the reputation of financial institutions. Individuals covered by the legislation commit to exercising their profession with honesty, integrity, competence and professionalism, while placing the client's interests at the centre of their actions.

The obligation does not apply to all banking staff, but mainly to senior management, control function holders, certain managers and employees directly involved in banking activities or customer services. The implementation started in 2025, but the largest group of affected managers will be impacted by the 15 July 2026 rollout wave.

For those concerned, the oath is far more than a symbolic formality. It is linked to a genuine disciplinary framework supervised, among others, by the FSMA. Breaches of professional conduct rules may lead to sanctions ranging from a warning or reprimand to a professional ban in the most serious cases.

Professionally, the Banking Oath strengthens the individual accountability of employees. They must be able to demonstrate that they act ethically, transparently and in the best interests of clients. Financial institutions are also expected to reinforce training programmes and internal controls to ensure compliance with these new requirements.

In conclusion, the Banking Oath represents a major evolution in the governance of the Belgian financial sector. It seeks to foster a culture of accountability and ethics, provide greater customer protection and restore long-term public trust in banking institutions. For the professionals concerned, it implies increased personal responsibility and constant vigilance in the performance of their duties.

Risks and Criticism of the Banking Oath

Although the Banking Oath aims to strengthen ethics and trust within the financial sector, it has also raised concerns among professionals. The main risk lies in the increased individual responsibility imposed on employees. They may be subject to personal disciplinary proceedings independently of their employer's responsibility. Some observers fear that this heightened accountability may create legal uncertainty or encourage overly cautious behaviour in dealings with clients.

Others highlight the potential tension between commercial objectives imposed by financial institutions and the ethical obligations imposed on employees.

Finally, the possibility of sanctions, including professional bans, may have significant consequences for the careers and employability of the individuals concerned. For the system to be accepted and effective, it is essential that the rules be applied transparently, proportionately and fairly.