

How Much Will DORA Roil D&O Risks? Be Insurance Ready for the New Regulatory Era

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The Digital Operational Resilience Act (DORA) marks a significant milestone in further strengthening the resilience of the EU's financial sector. DORA requires banks, insurance companies, investment firms and other financial entities in the EU to be prepared to withstand, respond to and recover from Information and Communication Technology (ICT) disruptions -- including cyber attacks -- and to ensure that their vendors, and their vendor's vendors, can do the same.

This raises the bar significantly for firms and their leaders. While a robust internal IT system once satisfied regulatory expectations, today's standard demands scrutiny of every link in the global supply chain. Whether a major bank is contracting a large cloud provider in the US, or a mid-sized asset manager is working with a local IT firm, the responsibility to verify third-party compliance rests squarely with the institution -- and its leadership.

How will this play out in management liability claims? It's still early days. The deadline for DORA implementation has come and gone and most financial institutions are still working to meet the new regulatory bar. Regulators are being patient, for now. But it is clear that DORA's focus on third-party compliance amplifies risk and dramatically expands the perimeter of liability for those at the top of these institutions.

DORA Creates More Personal Accountability

DORA assigns ultimate accountability for compliance to the board and senior officers of financial institutions. In the event of non-compliance -- by their own organization or a provider down the chain -- the institution and the individuals tasked with oversight can face regulatory investigations and fines. The definition of who qualifies as a director or officer is broad. It can include anyone who acts in a decision-making capacity. That can include compliance managers, IT leads, and risk officers.

DORA introduces a new dimension of personal and entity exposure under professional indemnity and D&O liability policies.

Hypotheticals Today, Real Consequences Tomorrow

Failure to comply with DORA doesn't just increase regulatory exposure. It can also invite claims from shareholders, customers and others.

Imagine: a cyberattack hits a major bank's third-party service provider and interrupts the bank's ability to execute trades. Missed trades cost investors millions, triggering professional indemnity claims against the bank and individual asset managers. Investigators find the bank failed to verify the provider's DORA compliance, and the door is open to potential D&O liability claims. DORA introduces a new dimension of personal and entity exposure under professional indemnity and D&O liability policies.

And for small and mid-sized institutions, the burden of rising exposures is particularly pronounced. These firms often rely heavily on external vendors and have more limited in-house compliance resources. Moreover, many of these firms may not be fully aware of their DORA obligations and the personal and company liability that could ensue from a single systems breach.

Being Insurance Ready

As EU-based firms renew their Executive & Professional (E&P) Lines coverage, it's critical they account for DORA's impact. Be on the lookout for any gaps in coverage in any applicable insurance contract that could hinder the policy's ability to respond to scenarios DORA makes more likely.

Engage early and have frank discussions about DORA readiness. At the end of the day, DORA compliance is a strong sign of resilience – and underwriters will take note. Considering insurance holistically in light of DORA compliance is important. Beyond helping to mitigate emerging E&P Lines exposures, compliance can have positive implications in reducing a company's fraud risks and helping to secure more attractive terms and conditions on cyber policies.

As always, BHSI is working closely with our customers and brokers to share information and create strong and lasting partnerships that offer the best protection for all.



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