



Digital Operational Resilience Act (DORA)

■ Why does it matter to intermediaries?

The Digital Operational Resilience Act (DORA) is part of the Commission's Digital Finance that was published in September 2020. DORA aims to establish a comprehensive digital operational resilience framework across the European banking, insurance and investment sectors, requiring financial entities in its scope to comply with digital security and reporting requirements to mitigate their information communication technology (ICT) risks.

Micro and SME-sizes insurance intermediaries, reinsurance intermediaries and ancillary insurance intermediaries are **not in the scope** of DORA and **MiFID II "opt-out investment firms"** are also **exempted** from DORA (small and non-interconnected investment firms that are not under the opt-out provision of MiFID II have a lighter DORA regime). **Large insurance intermediaries** (that are not defined as micro or SMEs³) are **in scope**. DORA rules will, however, be applied in accordance with the principle of proportionality, taking into account the size, the nature, scale and complexity of their services, activities and operations, and overall risk profile.

■ State of play

DORA entered into force on 16 January 2023 and will apply as of 17 January 2025. The Regulation is binding in its entirety and directly applicable in all Member States.

Financial entities in the scope of DORA will have to respect strict common standards to ensure they can withstand ICT-related disruptions and threats. They will have to put in place, amongst others:

- dedicated ICT risk management capabilities,
- harmonised reporting of major ICT-related incidents,
- digital operational resilience testing,
- management by financial entities of ICT third-party risk,
- information sharing among financial entities.

³ DORA contains definitions of micro, small and medium-sized enterprises in article 3, "Definitions":

(60) '**microenterprise**' means a financial entity, other than a trading venue, a central counterparty, a trade repository or a central securities depository, which employs fewer than 10 persons and has an annual turnover and/or annual balance sheet total that does not exceed EUR 2 million (...)

(63) '**small enterprise**' means a financial entity that employs 10 or more persons, but fewer than 50 persons, and has an annual turnover and/or annual balance sheet total that exceeds EUR 2 million, but does not exceed EUR 10 million;

(64) '**medium-sized enterprise**' means a financial entity that is not a small enterprise and employs fewer than 250 persons and has an annual turnover that does not exceed EUR 50 million and/or an annual balance sheet that does not exceed EUR 43 million;

DORA also introduces an EU oversight framework for critical ICT service providers (such as Big Techs which provide cloud computing to financial institutions).

DORA has assigned new tasks and roles to the ESAs, as well as the development of a set of policy mandates before DORA enters into application, i.e. the drafting of Regulatory Technical Standards (RTS) and Implementing Technical Standards (ITS) on certain provisions of the DORA Regulation:

- RTS on ICT risk management framework;
- RTS on simplified ICT RMF;
- RTS to further specify the detailed content of the policy in relation to the contractual arrangements on the use of ICT services supporting critical or important functions provided by third-party providers (TPPs);
- RTS to specify elements when sub-contracting critical or important functions;
- Two RTS on incident reporting;
- ITS to establish the templates for the Register of information and
- by 30.09.2023, the input to the Commission's Call for advice on criticality criteria.

RTS and ITS of the ESAs aim to clarify the provisions of a European legislative text and to ensure a coherent harmonisation of the defined areas. All of the above-mentioned RTS and ITS will be of importance for intermediaries falling under the scope of DORA and having to comply with it. For example, the ESAs' RTS specifying which elements to be included in the ICT security policies, procedures and protocols referred to in DORA to ensuring the security of networks, enable adequate safeguards against intrusions and data misuse.

■ BIPAR's position / key messages

Insurance intermediaries were included in the scope of the Commission's proposal for DORA, together with much larger financial entities such as insurers or credit institutions.

While BIPAR welcomed DORA's objective to increase the digital operational resilience of the financial sector, it informed the EU legislators that the financial sector is not uniform in scale and structure. The incidents experienced by different financial services entities, as well as their consequences (for the financial stability, consumers etc.), differ from one financial services sector to another. DORA's requirements would simply not be operationally and financially sustainable



for insurance or financial intermediaries. DORA's regulatory architecture was not adapted to the insurance distribution sector, and proportionate application of its numerous and detailed requirements will be difficult to ensure in practice (this will be further complicated by the Levels 2 and 3 measures).

For BIPAR and its members, insurance and financial intermediaries (and, in particular, SMEs) had, therefore, to be completely exempted from DORA. This message was successfully relayed to MEPs, the Council and the Commission.

■ Next steps

- DORA will apply as of 17 January 2025.
- The ESAs have started developing technical standards for financial services institutions in the scope of DORA.
- On 26 May 2023, the ESAs published a joint Discussion Paper seeking stakeholders' input on aspects of DORA, and, in particular, regarding the criteria for critical ICT third-party providers (CTPPs) and the oversight fees to be levied on them.
- BIPAR is monitoring the implementation of DORA in Member States and the drafting of Level 2 texts. It will reply to some of the ESAs' consultations on these texts.

■ Links

- [Digital Operational Resilience Act \(DORA\)](#)
- [Commission's Digital Finance](#)
- [ESAs' joint Discussion Paper](#)

Markets in Crypto-Assets Regulation (MiCA)

■ Why does it matter to intermediaries?

The MiCA proposal covers issuers of unbacked crypto-assets, and so-called "stablecoins", as well as the trading venues and the wallets where crypto-assets are held. The proposal covers intermediaries when selling with advice unit-linked life insurance products with crypto-asset funds as underlying investments.

In its position on the MiCA proposal, the EP amended the article on advice on crypto assets of the proposal and introduced a ban on remuneration "*paid or provided by an issuer or any third party or a person acting on behalf of a third party in relation to the provision of the service to their clients.*"

■ State of play

- The final text as adopted in trilogue by the Council and Parliament Plenary did not include the EP proposed general ban on remuneration. Instead, it included – as a compromise – wording that is very similar to MiFID II, namely amongst others, a duty to inform the client if advice is provided on an independent basis. Where independent advice is provided, then commission is banned (also a ban on commission for portfolio management, as in MiFID II).
- The Council of the EU officially adopted and published the MICA text on its website on 31 May 2023.
- MiCA was published on 9 June 2023 in the Official Journal of the EU.

■ BIPAR's position / key messages

BIPAR and its members informed lawmakers that they were opposed to the ban on commission as proposed by the EP and provided arguments against such a ban.

■ Next steps

The rules will start applying on 30 December 2024 (+/- 18 months after entry into force) but with application for certain parts of the Regulation already on 30 June 2024.

■ Links

- [MiCA proposal](#)
- [Final text as adopted in trilogue](#)
- [MiCA text published by the Council](#)