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Manager safety package for the top risks in 2026

- Manager liability, cardinal duties, early risk detection (IDW S 16 new) and D&O insurance in light of current – significantly stricter – case law



Reading time: 10 minutes

#Manager safety package

#Top Risks 2026

#Cardinal Duties

#IDW S 16 new

#Megatrends

#Liability Risks

#Security

#Success

#Reliability

#Structure

Introduction / Summary

The following article¹ deals with megatrends, the current situation in organizations, and the desire of managers² to become more secure and successful. It also presents the top risks for 2026 and the pressure points, as well as the governance obligations of managers. Risk-based management and the importance

¹ This article is based on Scherer, Seehaus, Duty of governance with early risk detection, resilience, and transformation as a cardinal duty of bodies and executives, ZInsO 2025, p. 1515 ff., available for free download on the Internet.

² Gender note: For better readability, the generic masculine form is used in this text. It naturally refers to persons of all genders.

of doing things right could counteract the rising number of manager liability cases. The development of supreme court case law³ on the subject of "*cardinal duties of managers, knowing breach of duty, and impact on D&O insurance*" and the new requirements for early risk detection are exacerbating the situation. Those responsible for quality, risk, compliance, AI, and information security management systems must also take this into account.

A *manager security package* including protection of private assets⁴ and an *integrated (IT/AI) governance compliance management system* effectively and efficiently solve the aforementioned problems and bring security, structure, resilience, sustainability, and success.

Why? We must get ahead of the situation, become more secure and successful

Our organizations, their managers, and other employees must become more secure and successful in order to cope with the demands of various crises and transformations. Constant fears about the future and state of affairs⁵ are detrimental to wellbeing.⁶ It is more efficient to get *ahead of the situation* instead of always chasing after the latest bad news.

Since the hybrid war waged by various nations against Germany and Europe is no longer just a "threat" but an actual event,⁷ the following remarks also *contribute to the defense capabilities of organizations and nations*. A recent study⁸ by the German Economic Institute shows that companies are not adequately prepared for defense.

Current situation and top risks for 2026

The current situation in times of multiple crises, diverse transformations due to numerous megatrends⁹, and numerous armed conflicts is fraught with risks, as shown almost unanimously by the *Global Risks Report 2026*¹⁰, *CEO's Annual Survey 2026*¹¹, and the *Allianz Risk Barometer 2026*¹². However, many new opportunities¹³ are the flip side of this coin if the *future skills*¹⁴ are developed early on.

³ See, for example, *Federal Court of Justice*, judgment of November 19, 2025, ref. IV ZR 66/25 ("ULLA insurance coverage exclusion").

⁴ See *Serbu, Hoffmann, Asset Protection – Schutz für Unternehmens- und Privatvermögen*, Praxis für Unternehmensnachfolge 2026, p. 17 ff. and *Federal Court of Justice*, judgment of September 25, 2025, Ref. IX ZR 190/24, on the insolvency contestability of the conversion of a life insurance policy pursuant to Section 815c (1) ZPO within the scope of the permissible maximum value (currently EUR 7,000 per year and EUR 340,000 maximum amount).

⁵ See *Kolf et al.*, "Structural collapse" – Experts expect record number of large-scale insolvencies, *Handelsblatt.com*, January 8, 2026.

⁶ See *Lux et al.*, Workplace health management in times of crisis, 2025, available for free download on the Internet.

⁷ Hybrid warfare includes cyberattacks, espionage and wiretapping, sabotage, disinformation and propaganda, etc., cf. *Federal Office for Civil Protection and Disaster Assistance*, March 6, 2025, *Hybrid Threats*, accessed on December 13, 2025.

⁸ *Institute of German Economy (IW)*, The Role of the Private Sector in Germany's Overall Defense, 2025, available for free download on the Internet.

⁹ See, for example, the Megatrend Map of the *Zukunftsinstut* with New Work, Future of Jobs, etc., 2025, available for free download on the Internet.

¹⁰ Available for free download on the Internet.

¹¹ Available for free download on the Internet.

¹² Available for free download on the Internet.

¹³ According to the new IDW S 16 (9/2025) on the audit of the early crisis detection system in accordance with Section 1 StaRUG, *opportunities* must also be included in corporate planning. Under certain circumstances, these can also compensate for risks in the context of assessing risk-bearing capacity: "... 45 All relevant and significant future developments must be included in corporate planning. This means that both potential opportunities and risks must be adequately taken into account in the planning in order to be able to analyze the overall risk exposure of the company. (...)".

¹⁴ See *Stifterverband*, Future Skills 2030, 2025, available for free download on the Internet.

According to the *Allianz Risk Barometer 2026*, *cyber risks, business continuity, regulation, and AI* are the top four corporate risks.¹⁵

Quote: "January 2026: (...) In Germany, cyberattacks and business interruptions remain in first and second place – in view of political and regulatory uncertainties, legislative and regulatory changes rise to third place, while AI now ranks fourth. (...)"¹⁶

Pain and governance responsibilities of executives

Appropriately identifying and evaluating the dangers and opportunities and deriving appropriate transformation measures from them in order to secure¹⁷ the existence or resilience of the organization and its employees in the long term is one of the essential governance duties that are often unknown or neglected.

Risk-based approach to doing the important things right

In times of multiple crises and transformation, managing directors, board members, supervisory board members, auditors, compliance and risk managers, ICS managers (as well as other lines of defense functions), other executives, and many more often fail to pay enough attention to the things that really matter because they do not take a risk-based approach.

Those responsible for management systems (occupational safety, environmental, information security, quality, sustainability, energy efficiency, etc.), along with their auditors and certifiers, have not yet fully realized that appropriate compliance and risk management is also a primary and indispensable requirement for the systems they oversee.¹⁸

This often causes financial damage to the organizations concerned, frequently puts them in avoidable existential difficulties, and in most cases constitutes liability-bearing mismanagement¹⁹ on the part of the many responsible managers. In the event of problems, the aforementioned functions will have to defend themselves in their area of responsibility.

Rising numbers of manager liability cases, cardinal duties, and jeopardy of insurance coverage according to current case law

According to the *German Insurance Association*, the number of manager liability cases is rising dramatically.²⁰

In addition to the proven drastic increase in the risk of personal liability, managers and executives face the threat of losing their insurance coverage due to the accusation of "*breach of cardinal duties*" assumed by current case law²¹ and the resulting indication of "*knowing breach of duty*".

¹⁵ See Scherer, Pothorn, Integrated IT (AI) Governance Compliance Management System, 2026, available for free download on the Internet.

¹⁶ Allianz Risk Barometer 2026, available for free download on the Internet.

¹⁷ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 6.11: Long-term Existence and Performance.

¹⁸ See Scherer, The dangerous (old) new thing about ISO 9001:2026 (quality management system), 2026, available for free download on the Internet.

¹⁹ See Scherer, What interests investors: Antifragility and the Achilles heel of the prudent businessman, 2019, available for free download on the Internet.

²⁰ See German Insurance Association (GDV), Liability risks for managers and consultants are increasing, November 13, 2025, available for free download on the Internet.

²¹ See Scherer, Seehaus, Duty of governance with early risk detection, resilience, and transformation as a cardinal duty of executive bodies and managers, ZInsO 2025, p. 1515 ff., available for free download on the Internet.

According to the latest ruling by the *Federal Court of Justice (BGH)*²², the statements made in previous case law on the liability of executives for breaches of duty remain unaffected:

On the one hand, a corporate body (executive board/managing director) may be personally liable for damages for various reasons if it fails to adequately identify risks or crises at an early stage and thereby causes damage to the company (Sections 43 GmbHG, 93 AktG, etc.). Negligence alone is sufficient here.

A recent decision by the 5th Senate of the *Frankfurt Higher Regional Court*²³ stated that *any violation of the principle of legality* constitutes a breach of a cardinal obligation.²⁴

If the managing director/executive board member does not have D&O (manager liability insurance), he or she must personally compensate for the damage and may be dismissed.

If they are insured, the question now arises as to whether the insurance company can refuse payment on the basis of a risk exclusion in the insurance terms and conditions "*due to knowingly violating the law or other obligations.*"

In this regard, the *Federal Court of Justice (BGH)* recently contradicted the opinion of the 7th Senate of the *Higher Regional Court of Frankfurt* that, in the case of knowingly breaching obligations, there is generally an immediate risk exclusion in accordance with the General D&O Terms and Conditions ULLA²⁵. There must be a knowing breach of duty in the sense of direct intent or even deliberation²⁶. Negligence or merely "considering it possible and accepting it"²⁷ is not sufficient.

The *Federal Court of Justice* did not comment on cardinal obligations. Thus, the case law remains that a breach of a cardinal obligation indicates a knowing breach of duty.

Disputes with the insurer and the risk that the insurer will successfully invoke a risk exclusion should be avoided.

This issue has become highly controversial for companies and managers due to another recent decision:

First, a simplified overview of the basic principles of criminal, administrative, and civil liability of organizations and executives:

Managers (executive bodies and executives) and all other employees can be held personally liable under criminal law even in cases of negligence (e.g., negligent bodily injury or homicide²⁸).

In terms of administrative fines, the organization itself can be liable under Section 30 OWiG and executive bodies and exposed executives under Sections 9 and 130 OWiG.

²² *Federal Court of Justice*, judgment of November 19, 2025, ref. IV ZR 66/25 ("ULLA insurance coverage exclusion").

²³ *Higher Regional Court of Frankfurt*, judgment of November 20, 2025, Ref. 5 U 15/25 ("Violation of the principle of legality is a breach of cardinal duty and justifies extraordinary termination of a managing director").

²⁴ ... and justify extraordinary termination of the managing director in this specific case.

²⁵ ULLA: Insurance terms and conditions for financial loss liability insurance for company directors and senior executives

²⁶ Dolus directus 2nd degree (knowingly) or 1st degree (intentionally).

²⁷ Dolus eventualis.

²⁸ See *Beck-aktuell*, Train accident near Garmisch-Partenkirchen: Acquittal, January 19, 2026, available for free download on the Internet: Even if the outcome is an acquittal, criminal proceedings, which are usually accompanied by media reports, are extremely stressful.

Under civil law, the latter may be personally liable to third parties (external liability) or to the organization in which they work if they cause damage to it (internal liability).²⁹

According to a recent decision by the 31st Senate of the *Frankfurt Higher Regional Court* dated October 21, 2025³⁰, which departs from previous case law³¹, the above-described liability for fines for managers is now becoming much more severe in terms of personal liability:

³²If organizations are sanctioned under Section 30 of the German Administrative Offenses Act (OWiG) in conjunction with special laws, they can or must, according to the new case law under Sections 43 of the German Limited Liability Companies Act (GmbHG) or 93 of the German Stock Corporation Act (AktG), seek recourse from managing directors or board members.

Without appropriate protection, the entire private assets of the manager are at risk.

The executive bodies must therefore already "defend" themselves appropriately in the fine proceedings against the organization. Subsequently, attempts will also be made to have the claim against the executive bodies compensated by the D&O liability insurance.

Indirectly, the D&O can reimburse the association fine against the organization if such insurance exists and the objection of a knowing breach of duty within the meaning of the insurance conditions is precluded by an appropriate compliance management system.

New requirements from legislators and auditors for early risk detection

Early risk detection is not only one of the new cardinal duties of managers, but also an indispensable prerequisite for long-term security and economic sustainability. The IDW has provided a detailed and clear description of what constitutes appropriate risk and crisis early detection in a new standard, IDW S 16: 2025, on the audit of crisis early detection systems in accordance with Section 1 StaRUG.

Measures and solutions to be derived

Despite the demands of day-to-day business, executives and managers should take the time to reflect on the risk situation of their organization and themselves in light of the above aspects and make sound business and personal decisions: Prompt installation of a ***manager security package with the following components:***

An appropriate ***risk management process***³³ with analyses³⁴, quantification, aggregation, assessment of risk-bearing capacity, and prioritized risk management (also with regard to *personal risks as a manager*) ensures a legally compliant, risk-based approach.

²⁹ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media Verlag, 2025, Chapter 6.5, p. 138 ff.: Responsibility, Delegation, Liability.

³⁰ Higher Regional Court of Frankfurt, judgment of October 21, 2025, Ref. 31 U 3/25 (BaFin fine against AG (§ 30 OWiG in conjunction with 264 HGB) for failure to take the oath of office can be recourse against the executive board (according to § 93 AktG).

³¹ E.g. in antitrust cases.

³² According to the ARAG-Garmenbeck decision of the *Federal Court of Justice*.

³³ In accordance with the requirements of IDW S 16 new and Section 1 StaRUG. See also Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 6.9: Risk Governance.

³⁴ Organizational/corporate (business model), environmental, stakeholder, risk, and opportunity (SWOT) analysis, cf. Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 3.2: Analyses of the Governance Management System.

The analyses carried out can be used to derive future-proof **goals, strategies, and plans**³⁵ that are adapted to the current situation.

Governance and cardinal duty compliance ensures the most important step toward manager security with a **legal register**³⁶ that not only documents but also controls the fulfillment of the cardinal duties of the executive bodies and managers.

In addition, **insurance coverage** is checked and optimized as needed with liability, D&O, financial loss liability, and criminal defense insurance.

So-called "interaction management"³⁷ ensures legally compliant documentation and implementation of roles, tasks, responsibilities, cooperation, supervision, etc. of the executive bodies and management functions (executive board, managing directors, supervisory board, shareholders, staff units, representatives, department heads, etc.).

The implementation or auditing of **legally compliant organizational structures**³⁸ with job descriptions, complete **delegation of duties**³⁹, etc., and, above all, appropriate **process management**⁴⁰ not only ensures security but also structure.

Certain **areas** will currently show **a need for** further **action** in almost all organizations/companies:

- **Financial governance**⁴¹ ensures that legal and economic obligations, such as economic and liquidity planning, etc., are documented and fulfilled.
- **IT and AI governance**⁴² is a comprehensively regulated management task.
- **Business continuity and crisis governance**⁴³ is also an area that has been neglected by many organizations due to the changed environment.

³⁵ In accordance with the *principles of proper planning* (GoP 2022). See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 6.3: Strategy.

³⁶ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 4.4: Management of current, new, and changed mandatory governance compliance obligations.

³⁷ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 4.3, p. 93 ff.: Interaction Management.

³⁸ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 3.2.2: The framework for the organization derived from analyses.

³⁹ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 4.2, p. 68 ff.: Governance and Delegation.

⁴⁰ See Scherer, The dangerous (old) new thing about ISO 9001:2026 (quality management system), 2026, available for free download on the Internet.

⁴¹ Financial governance includes financial, economic, liquidity, and investment planning, among other things, as well as the consistent implementation of plans, cf. Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 6.2.

⁴² See Scherer, Pothorn, Integrated IT (AI) Governance Compliance Management System, 2026, available for free download on the Internet, and Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 6.8: Data and Decisions.

⁴³ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 6.11: Long-term viability and performance.

An **integrated (IT/AI) governance compliance management system**⁴⁴ incorporates and links the components mentioned in an effective and efficient manner. An **(external) internal audit**⁴⁵ identifies weaknesses that require action and positively documents the existing appropriate components.

A certification body that is also accredited for compliance management systems now offers **ISMS-CMS certifications** according to DIN ISO 37301 and ISO 27001 in a "combination package" with a special scope of **the audit** on **(IT/AI) governance compliance**⁴⁶.

Value contributions

The elements of the "manager security package" described above ensure **the resilience** of the organization, its managers, and its employees.

In addition, **transparent and efficient structures** are implemented or optimized.

Finally, **security in business decisions and legal certainty** are also guaranteed: According to former BGH judge *Raum*⁴⁷, a manager security package with compliance can indicate that any breaches of duty – which remain unavoidable and occur – were not intentional or knowingly committed. This has a dampening effect and could also be used to counter the insurer's appeal to a contractual risk exclusion if necessary.

Last but not least, it also protects **personal freedom and assets**.

⁴⁴ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025.

⁴⁵ See Scherer, Sustainable Management of Organizations (Governance) according to DIN ISO 37000, DIN Media, 2025, Chapter 9: Control and Monitoring.

⁴⁶ Based on DIN ISO 37000 and ISO/IEC 38500.

⁴⁷ See Scherer, Compliance Management System according to DIN ISO 37301, DIN Media, 2022, Introduction chapter, p. 23 ff.