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## **Alert levels - practical and legal dimensions of their use**

### **Abstract**

Alert levels - as a legal institution currently standardised in Chapter 3 of the Act of 10 June 2016 on anti-terrorist activities, having its origins still in the Act of 26 April 2007 on crisis management - can significantly affect both public administration bodies and many entities and, in certain cases, the general public when applied. Seven years of functioning of the alert levels in the current formula allows an attempt to describe them and make a several-faceted assessment.

The article discusses alert levels on two dimensions, i.e. the actual use of this legal institution, especially the answer to the questions whether and in which cases they are managed, and the adequacy of legal solutions from the perspective of the assumed objectives, taking into account both the practical dimension of the use of alert levels and the structural correctness.

### **Keywords:**

alert levels,  
CRP alert levels,  
Act on anti-terrorist  
activities,  
terrorism,  
terrorist threats

### **Legal basis and essence of alert levels**

From a historical perspective, it should be mentioned that alert levels are not a legal institution that has only been in force in Poland since 2016, i.e. since they were introduced into the Polish legal order by universally applicable law, i.e. the Act of 10 June 2016 on anti-terrorist activities<sup>1</sup>.

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<sup>1</sup> Consolidated text: Journal of Laws of 2021, item 2234, as amended.

For the first time, alert levels in the context of terrorist threats were introduced to Poland by Order No. 74 of the Prime Minister of 12 October 2011 on the list of undertakings and procedures of the crisis management system<sup>2</sup>, which was replaced shortly before the entry into force of the Act on anti-terrorist activities by Order No. 18 of the Prime Minister of 2 March 2016 on the list of undertakings and procedures of the crisis management system<sup>3</sup>. Both of these orders were issued on the basis of Article 7 of the Act of 26 April 2007 on crisis management<sup>4</sup>. They introduced a list of undertakings and procedures of the crisis management system, taking into account undertakings and procedures resulting from the Emergency Response System of the North Atlantic Treaty Organisation (NATO)<sup>5</sup> and defined the bodies responsible for their activation. In addition to the aforementioned list of undertakings resulting from Poland's membership of NATO, it also included alert levels, and since the entry into force of Order No. 18 of 2 March 2016 - also alert levels for threats in Poland's cyberspace, called 'CRP alert levels'.

It should be noted, however, that it was not until the Act on anti-terrorist activities that the system for determining CRP alert levels and alert levels was introduced which would be universally applicable and thus have the valour of effectiveness beyond the authorities, services and institutions also for other organisational units and the public, since (...) *the previous system, applicable on the basis of Ordinance No. 18 of the Prime Minister of 2 March 2016 on the list of undertakings and procedures of the crisis management system covered only the government administration*<sup>6</sup>.

This system was largely transposed from the provisions contained in Annex No. 1 of the aforementioned Order No. 18 of 2 March 2016, which were in force at the time of the entry into force of the Act on anti-terrorist

<sup>2</sup> Unpublished (editor's note).

<sup>3</sup> For the text of the Ordinance see [https://www.stawiguda.pl/userfiles/OC/Komunikaty\\_zew/Zarz%C4%85dzenie%20nr%2018%20Prezesa%20Rady%20Ministr%C3%B3w%20z%20dnia%202%20marca%202016%20r.pdf](https://www.stawiguda.pl/userfiles/OC/Komunikaty_zew/Zarz%C4%85dzenie%20nr%2018%20Prezesa%20Rady%20Ministr%C3%B3w%20z%20dnia%202%20marca%202016%20r.pdf).

<sup>4</sup> Consolidated text: Journal of Laws of 2022, item 261, as amended.

<sup>5</sup> NATO Crisis Response System Manual.

<sup>6</sup> P. Chorbot, *Ustawa o działaniach antyterrorystycznych. Komentarz do niektórych regulacji* (Eng. The Act on anti-terrorist activities. Commentary on some regulations), in: *Uprawnienia służb specjalnych z perspektywy współczesnych zagrożeń bezpieczeństwa narodowego. Wybrane zagadnienia* (Eng. The powers of the special services from the perspective of contemporary threats to national security. Selected issues), P. Burczaniuk (ed.), Warszawa 2017, p. 71.

activities. The justification for making the change in question was that the alert levels apply not only to government bodies, but also to other organisational units and citizens, and it was therefore considered insufficient to regulate them at the level of the Ordinance. At the same time, the introduction of a system of alert levels at the level of a generally binding act made it possible to extend the catalogue of entities obliged to take relevant actions (previously limited to government administration bodies)<sup>7</sup>. In the commentary to the Act on anti-terrorist activities, it was additionally pointed out that specific colours were assigned to particular levels of threat<sup>8</sup>. *In Poland, colour coding was also used in the past; however, the Act on anti-terrorist activities does not introduce such a classification*<sup>9</sup>.

It should also be emphasised, following the explanatory memorandum to the draft Act on anti-terrorist activities, that the system of alert levels is independent of the possibility of introducing states of emergency provided for in:

- The Act of 29 August 2002 on martial law and the powers of the Commander-in-Chief of the Armed Forces and the principles of his subordination to the constitutional bodies of the Republic of Poland<sup>10</sup> - in relation to the threat of terrorism or actions in cyberspace as a premise for the introduction of martial law and the use of the Armed Forces of the Republic of Poland;

<sup>7</sup> Explanatory memorandum to the draft Act on anti-terrorist activities, <https://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=516> [accessed: 2 VII 2022]; cf.: M. Cichomski, M. Horoszko, I. Idzikowska, *Przygotowanie do przejmowania kontroli nad zdarzeniami o charakterze terrorystycznym oraz reagowanie w przypadku wystąpienia takich zdarzeń w świetle rozwiązań ustawy o działaniach antyterrorystycznych – w kontekście zadań resortu spraw wewnętrznych* (Eng. Preparing to take control of terrorist incidents and responding in the event of such incidents in the light of the solutions of the Act on anti-terrorist activities - in the context of the tasks of the Ministry of Internal Affairs), in: *Polska ustawa antyterrorystyczna – odpowiedź na zagrożenia współczesnym terroryzmem* (Eng. Polish Act on anti-terrorist activities - a response to the threat of modern terrorism), W. Zubrzycki, K. Jałoszyński, A. Babiński (eds.), Szczytno 2016, pp. 283–287.

<sup>8</sup> Cf.: *Kolory, stopnie i terminologia NATO. Jak odczytać alerty terrorystyczne* (Eng. NATO colours, levels and terminology. How to interpret terrorist alerts), TVP Info, 23 III 2016, <https://www.tvp.info/24554977/kolory-stopnie-i-terminologia-nato-jak-odczytac-alerty-terrorystyczne> [accessed: 7 XII 2018].

<sup>9</sup> P. Łabuz, T. Safjański, W. Zubrzycki, *Ustawa o działaniach antyterrorystycznych. Komentarz* (Eng. The Act on anti-terrorist activities. Commentary), Warszawa 2019, access through the Legal Information System Legalis, sip.legalis.pl [accessed: 20 VII 2022].

<sup>10</sup> Consolidated text: Journal of Laws of 2017, item 1932, as amended.

- The Act of 18 April 2002 on the state of natural disaster<sup>11</sup> - with regard to a terrorist threat or an event in cyberspace as premises for the introduction of the state of natural disaster and use of the Armed Forces of the Republic of Poland;
- The Act of 21 June 2002 on a state of emergency<sup>12</sup> - in relation to a terrorist threat or an event in cyberspace as a premise for the introduction of a state of emergency and the use of the Armed Forces of the Republic of Poland.

In preparing the solutions of the Act on anti-terrorist activities concerning the system of alert levels, it was assumed that if these instruments were used and proved to be insufficient in preventing or responding to threats, this would constitute a rationale for the introduction of an appropriate state of emergency. Accordingly, provisions relating to terrorist threats were left in the aforementioned laws<sup>13</sup>. This seems obvious both from the perspective of the constitutional foundations of the acts concerning states of emergency (Article 228 of the Constitution of the Republic of Poland of 2 April 1997<sup>14</sup>) and the premises for the introduction of particular states of emergency (especially the state of emergency, which, in accordance with Article 230 of the Constitution of the Republic of Poland, may be introduced in the event of a threat to the constitutional system of the state, security of citizens or public order).

The construction of states of emergency in the light of the regulations of the Act on anti-terrorist activities may be considered on several levels, including:

- subject matter - in this respect, alarm levels *sensu stricto* and CRP alarm levels can be distinguished,
- threat level - on a four-grade scale,
- local - refers to alert levels applicable on the territory of Poland, including the whole territory or specific areas, and outside its borders, but within Polish jurisdiction.

In the case of the first tier, under Article 15 of the Act on anti-terrorist activities, two types of alert levels can be distinguished: (1) alert levels *sensu stricto* (a term introduced for the purposes of this study) and (2) CRP

<sup>11</sup> Consolidated text: Journal of Laws of 2017, item 1897.

<sup>12</sup> Consolidated text: Journal of Laws of 2017, item 1928.

<sup>13</sup> Explanatory memorandum to the draft Act on anti-terrorist activities...

<sup>14</sup> Journal of Laws of 1997, No. 78, item 483, as amended.

alert levels, introduced in the case of a threat of a terrorist event concerning ICT systems of public administration bodies or ICT systems constituting critical infrastructure.

Separation of the categories: “alert levels *sensu stricto*” is due to the fact that the legislator uses the term “alert levels” in two circumstances: (1) in order to define the particular levels that may be introduced in the event of a threat of the occurrence of all categories of terrorist events, and (2) the occurrence of such an event in addition to cyber events - Article 15(1) of the Act on anti-terrorist activities. The legislator also uses this term as a general term applied to the entirety of this legal institution (both alert levels *sensu stricto* and CRP alert levels), which is reflected, *inter alia*, in the title of Chapter 3 of the Act on anti-terrorist activities - *Alert levels*, thus treating collectively all types of alert levels, including CRP alert levels (one may then speak of alert levels *sensu largo*).

When considering alert levels in the context of the degree of threat of a terrorist event, the legislator modelled the terminology on that used within the NATO emergency response system and introduced a four-stage scale of alert levels - similar in the case of alert levels *sensu stricto* and CRP alert levels. In the case of alert levels *sensu stricto*, he distinguished:

- first alert level - ALFA level,
- second alert level - BRAVO level,
- third alert level - CHARLIE level,
- fourth alert level - DELTA level.

For CRP alert levels, respectively:

- first CRP alert level - ALFA-CRP level,
- second CRP alert level - BRAVO-CRP level,
- third CRP alert level - CHARLIE-CRP level,
- fourth CRP alert level - DELTA-CRP level.

The analogy of the adopted systematics is also indicated by the rationale for the introduction of each of the two categories of alert levels, *i.e.* alert levels *sensu stricto* and CRP alert levels, defined jointly for both categories, depending on the intensity of the threat and the detail and reliability of the information about it.

Both the first alert level and the first CRP alert level can be introduced in a situation where information has been obtained about the possibility of a terrorist event, but both the nature of this potential threat and its extent are difficult to predict.

Subsequent alert levels and CRP alert levels are introduced as the detail and reliability of the available information increases, as well as the resulting likelihood of a terrorist event.

BRAVO alert level and BRAVO-CRP alert level are applicable in the case of an increased and predictable threat, when the specific target of an attack is still not identified. On the other hand, the possibility to introduce the CHARLIE and CHARLIE-CRP alert levels was made by the legislator conditional on the occurrence of several prerequisites jointly or separately, the first of which was the actual occurrence of an event confirming the likely target of an attack of a terrorist nature, provided that this attack simultaneously undermines security or public order or the security of the Republic of Poland, or the security of another state or international organisation, but at the same time affects the Republic of Poland and becomes a potential threat to it. In addition, the legislator provided for the possibility of introducing a third alert level (both *sensu stricto* and CRP alert level) in the event that information on a planned terrorist event on the territory of the Republic of Poland is reliable and confirmed. As the third premise, it indicated that the information obtained is credible and confirmed and concerns a planned terrorist event, (...) *the effects of which may affect Polish citizens residing abroad or Polish institutions or Polish infrastructure located outside the borders of the Republic of Poland*<sup>15</sup>.

The prerequisites for the introduction of the fourth level (characterised by the legislator jointly in relation to the levels *sensu stricto* and the CRP levels), similarly to the introduction of the third level, which may occur jointly or separately, are:

- the occurrence of an event of a terrorist nature, whereby, as in the case of the introduction of the third alert level, the event undermines security or public order or the security of the Republic of Poland, or the security of another state or international organisation and at the same time poses a threat to the Republic of Poland;
- information indicating an advanced stage of preparations for an event of a terrorist nature on the territory of the Republic of Poland;
- information indicating an advanced stage of preparations for an event of a terrorist nature which is to be directed against Polish citizens residing abroad or against Polish institutions, or against Polish infrastructure located outside the Republic of Poland, which

<sup>15</sup> Act on anti-terrorist activities, Article 15(5)(3).

at the same time testifies to the imminence of the occurrence of such an event.

For practical reasons, the legislator provided for the possibility of introducing levels both higher and lower than those previously introduced, with the omission of intermediate levels. Importantly - the Act also includes the possibility to introduce the categories of alert levels *sensu stricto* and CRP alert levels separately or jointly, while the level defined for one category does not in any way determine the level defined for the other, e.g. in 2022, the second alert level *sensu stricto*, i.e. BRAVO alert level, and the third CHARLIE-CRP alert level are maintained simultaneously.

In view of the possibility of local conditioning of the scope of validity of a given level, which will be discussed further when discussing the third of the above-mentioned levels of consideration of alert levels, the legislator also provided for the possibility of simultaneous validity of different alert levels in a given area and indicated in Article 15(10) of the Act on anti-terrorist activities that in this type of situation the tasks provided for a higher level should be performed.

Bearing in mind the relationship of alert levels to additional obligations on the part of public institutions and, in some cases, to restrictions on civil liberties, the Act emphasises that both alert levels *sensu stricto* and CRP alert levels shall be revoked (...) *as soon as the threat or consequences of the event giving rise to their introduction have been minimised*<sup>16</sup>. Another intention of the legislator can be discerned here - the alert levels are not intended to serve as a general and current description of the level of terrorist threat in Poland, and should only be introduced in the event of a more or less concrete threat (or in the event of a terrorist event) and revoked as urgently as possible after its cessation (unless a derogatory norm is contained in the order on the introduction of the alert level itself). Accordingly, a 'zero level' construct has not been introduced. Instead, the validity of the alert level itself is intended to oblige certain entities to take actions that are above standard and appropriate to the threat. For example - on the basis of a general assessment of the geopolitical situation in Central and Eastern Europe, it is possible to conclude that the level of terrorist threat in Poland is medium, not negligible or low, and at the same time not to introduce the alert level.

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<sup>16</sup> Ibid., Article 15(10).

Turning to the third level of consideration of the alert levels, it should be noted that Article 16(1) provides for the possibility of an area-based limitation of the place where the introduced alert levels will apply, and in this case, too, the legislator did not limit this possibility only to alert levels *sensu stricto*, but allowed its use to CRP alert levels. In practice, CRP alert levels have so far been ordered only on the territory of the whole country (however, it cannot be ruled out that information about a possible threat could concern, for example, the ICT systems of a specific authority, as a result of which it would be unjustified to introduce a CRP alert level on the territory of the whole country). The Act provides for the possibility of introducing both categories of alert levels:

- on the entire territory of the Republic of Poland,
- on the area of one or several territorial divisions of the country,
- on the area defined in a manner other than by reference to the units of territorial division of the country,
- for specific buildings of organisational units of public administration, prosecutor's office, courts or other objects of infrastructure of public administration or critical infrastructure<sup>17</sup>.

The indicated provision also contains the possibility of introducing the alert level understood *stricto* or the CRP alert level also in the case when (...) *the consequences of an event of a terrorist nature may affect Polish citizens residing abroad of the Republic of Poland or Polish institutions or Polish infrastructure located outside the borders of the Republic of Poland other than foreign posts of the Republic of Poland within the meaning of the Foreign Service Act of 21 January 2021*<sup>18</sup> (i.e. Journal of Laws of 2022, item 1076, as amended – editor's note).

In turn, Article 16(2) of the Act provides for the possibility of introducing the aforementioned categories of alert levels:

- for certain foreign missions of the Republic of Poland within the meaning of the Foreign Service Act ,
- in relation to information and communication systems of the minister in charge of foreign affairs.

The procedure for the introduction of alert levels remains differentiated, but not due to these two subject categories of level

<sup>17</sup> Ibid., Article 16(1)(1-4).

<sup>18</sup> Ibid., Article 16(1)(5).



distinction (alert levels *sensu stricto* and CRP alert levels), but depending on the scope of their territorial validity.

The body introducing the alert levels by means of an ordinance - in a variant which, for the purposes of the article, can be described as basic - is the Prime Minister. In the situations catalogued in Article 16(1), and therefore relating primarily to the national territory, before issuing such an order he shall consult the minister responsible for internal affairs and the Head of the Internal Security Agency - bodies responsible for internal security. Their designation is a logical consequence of Article 3 of the Act on anti-terrorist activities, according to which the Head of the ABW is responsible for the prevention of terrorist incidents, and the minister in charge of internal affairs is responsible for preparing to take control of terrorist incidents by means of planned undertakings, responding in the event of the occurrence of such incidents and restoring the resources intended for responding to such incidents.

In the situations described in Article 16(2), i.e. in the case of the introduction of alert levels in foreign posts of the Republic of Poland or with regard to ICT systems under the responsibility of the minister in charge of foreign affairs (i.e. - as may be assumed - in both cases outside the country's borders, but in the areas of Polish jurisdiction), the entities giving opinions are the minister in charge of foreign affairs and the Head of the Foreign Intelligence Agency.

This solution - in line with the scope of competence of the individual opinion-forming bodies - also has a direct bearing on the variant that we may call the special variant of introducing the alert levels, i.e. in an urgent situation. In the special variant, the alert level, by way of an ordinance, is introduced - respectively, in the areas specified in Article 16, section 1 and in the case specified in the aforementioned Article 16, section 1, item 5 - by the minister in charge of internal affairs after consultation with the Head of the Internal Security Agency, and with regard to foreign posts of the Republic of Poland and information and communication systems - by the minister in charge of foreign affairs after consultation with the Head of the Foreign Intelligence Agency.

In both special variants, depending on the area of validity of the alert levels, the body introducing the alert level shall immediately notify the Prime Minister.

The Prime Minister shall immediately communicate information on the introduction of the alert level, as well as information on the change or

cancellation of the alert level, to the President of the Republic of Poland and to the Marshals of both Houses of Parliament.

At this point, it is worth noting that, prior to the transfer of the alert level system to common law, in the aforementioned orders - No. 74 of 12 October 2011 and No. 18 of 2 March 2016. - the authority that was authorised to introduce the alert was determined by the area of the alert.

While under the current legislation such an authority is the Prime Minister, and in exceptional situations the minister in charge of internal affairs or the minister in charge of foreign affairs, the aforementioned orders provided for the possibility of the introduction of alert levels by the Prime Minister only in a situation where the entire territory of the country or several provinces were affected. In other cases, the right to introduce the alert level was vested in:

- ministers or heads of central offices - in relation to all or selected heads of subordinate, subordinate and supervised organisational units, formations and offices,
- voivodes - in relation to areas, objects and devices according to local jurisdiction, on the area of the whole or part of a voivodeship<sup>19</sup>.

In addition, Order No. 18 of the Prime Minister of 2 March 2016 provides for the possibility of introducing an alert level in Polish diplomatic representations and consular offices by a decision of the minister in charge of foreign affairs.

On the grounds of the Act on anti-terrorist activities, due to the universally applicable nature of the alert levels, the legislator decided to limit the competence in terms of the possibility to introduce them and to centralise the powers.

As already mentioned, the introduction of the alert level *sensu stricto* or the CRP alert level is the basis for the implementation by public institutions, i.e. bodies of public administration and heads of services and institutions competent in matters of security and crisis management, of specific undertakings with the primary aim of minimising the threat. The legislator, taking into account the above-described procedural differences resulting from the competences of individual authorities, depending on the territorial area where the alert level is introduced,

<sup>19</sup> Cf: Annex 5 to Order No. 74 of the Prime Minister of 12 October 2011 and Annex 1 to Order No. 18 of the Prime Minister of 2 March 2016.

provided for separate executive acts regulating the scope of undertakings carried out in individual alert levels *sensu stricto* and CRP alert levels.

In the case of the mode of introducing the alert level referred to in Article 16, paragraph 1, the Prime Minister is authorised to issue a relevant regulation, and in the case of the mode resulting from Article 16, paragraph 2 - the minister in charge of foreign affairs. In the first case, the executive act refers subjectively to the undertakings carried out within the scope of statutory competence by public administration bodies and managers of services and institutions competent in matters of security and crisis management, and in the second case only to the managers of foreign posts of the Republic of Poland. In both situations, the guidelines for the issuance of executive acts are: minimising the consequences of events of a terrorist nature and ensuring the efficiency of information flow.

At the level of the Act, attention has also been drawn to the fact that, in addition to the above-mentioned acts, public administration bodies and heads of services and institutions competent in matters of security and crisis management are also obliged to carry out other undertakings which either result directly from their statutory competences or from crisis management undertakings and procedures - if these have been provided for a given alert level and have not been specified in the above-mentioned executive acts.

At the level of the Act on anti-terrorist activities itself, additional competences and duties of individual authorities are also provided for, depending on the alert levels introduced.

In the aforementioned Chapter 3, entitled *Alert levels*, Article 17 provides for the establishment of the so-called coordination staff, whose statutorily defined tasks include recommending the change or cancellation of the alert level and recommending the forms and scope of cooperation of the services and authorities constituting the staff and participating in its work. The staff is composed of representatives appointed by the special services and by the Police, the Border Guard, the Marshal's Guard, the State Protection Service, the State Fire Service, the General Inspector of Financial Information, the National Revenue Administration, the Military Police and the Government Security Centre, i.e. entities participating in the exchange of information on terrorist incidents coordinated by the Head of the ABW under Article 5(1) of the Act on anti-terrorist activities. In turn, to participate in the works of the staff, the Head of the ABW may appoint, optionally, depending on the type of event which was the basis for the introduction

of the alert level, representatives of other public administration bodies and the Public Prosecutor General. The appointment of a coordination staff is an obligation of the Head of the ABW in the case of the introduction of any of the alert levels - regardless of whether it is an alert level *sensu stricto* or a CRP alert level, and at which level (ALFA, BRAVO, CHARLIE, DELTA) it is set. While this obligation applies only to the levels introduced in the mode referred to in Article 16(1) of the Act on anti-terrorist activities, i.e. on the territory of the country. There is no analogous obligation imposed on the Head of the AW participating in the procedure of issuing alert levels in the mode referred to in Article 16(2) of that Act.

On the introduction of a specific alert level *sensu stricto*, but no longer on the CRP alert level, in further provisions depends:

- **the introduction of a ban on the holding of assemblies or mass events (Article 21 of the Act)** - as a competence of the minister in charge of internal affairs, acting on his/her own initiative or on the motion of the Head of the ABW or the Commander-in-Chief of the Police, in the case of the introduction of the third or fourth alert level. The prohibition territorially refers to the area covered by the alert level, and temporally - to the time for which the alert level was ordered. The rationale for its introduction is the need to protect human life and health or public safety. It is also incumbent on the minister responsible for internal affairs to inform the Marshal of the Sejm and the Marshal of the Senate, who in turn transmit this information to MPs and senators respectively. The prohibition results in the issuing of a decision by the municipal authority to prohibit the assembly or to dissolve it, respectively, in the modes specified in the Act of 24 July 2015 - Law on assemblies<sup>20</sup> or the introduction by the governor, by means of an administrative decision, of a prohibition to hold a mass event or its interruption, in accordance with the provisions of the Act of 20 March 2009 on the security of mass events<sup>21</sup>. These decisions apply to all assemblies and mass events during the alert level and in the area of its validity in the part covered by the local jurisdiction of the public administration body concerned, and are subject to the appeals specified in

<sup>20</sup> Consolidated text: Journal of Laws of 2022, item 1389.

<sup>21</sup> Consolidated text: Journal of Laws of 2022, item 1466.

- the aforementioned Acts - the Law on assemblies and the Act on security of mass events;
- **the use of branches or subdivisions of the Armed Forces of the Republic of Poland to assist the branches and subdivisions of the Police (Article 22 of the Act)** - as the competence of the Minister of National Defence acting on the motion of the minister in charge of internal affairs, in the event of the introduction of the third or fourth alert level. The procedure specified in Article 22 of the Act on anti-terrorist activities is a simplification and, at the same time, an improvement of the procedures in relation to the procedure provided for in the provisions of Article 18 of the Act of 6 April 1990 on the Police<sup>22</sup> thanks to the preparation of the Armed Forces of the Republic of Poland for their use, i.e. commencement of planning, acquisition of information and cooperation with public administration bodies, immediately after the introduction of the third or fourth alert level and prior to the issuance of the decision by the Minister of National Defence. Due to the special category of threats of terrorist events, including the number of victims, which is difficult to estimate, and the unpredictable course and consequences of such events - in the situation of a high probability of the occurrence or occurrence of a terrorist event, which we are dealing with in the third and fourth alert level - the legislator provided for the possibility of using and employing means of direct coercion and firearms. They may be used in counter-terrorist operations by branches and subdivisions of the Special Forces supporting the Police in the manner provided for in the Act of 11 March 2022 on the defence of the homeland<sup>23</sup>, subject to the admissibility of the use of firearms in cases specified in Article 23(1) of the Act on counter-terrorist operations. This means, in practice, that soldiers of the Special Forces will be able to use means of direct coercion and firearms within the scope of their statutory competence, i.e. (...) within the scope of protecting the independence of the state, the indivisibility of its territory and ensuring the security and inviolability of its borders (...) in a manner adequate to the threat and within the limits of the principles defined in ratified international

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<sup>22</sup> Consolidated text: Journal of Laws of 2021, item 1882, as amended.

<sup>23</sup> Journal of Laws of 2022, item 655, as amended.

agreements binding the Republic of Poland and in international customary law<sup>24</sup>;

- **checking the security of objects in the area covered by the alert level (Article 12 of the Act)** - as an obligation of the Police or the Military Police, respectively, in the event of the introduction of a second or higher alert level. The Police have been obliged by the Act to check the security of critical infrastructure facilities, while the Military Police have been obliged to check facilities belonging to organisational cells and units subordinate to the Minister of National Defence or supervised by him, or administered by these organisational cells and units. The obligation is also linked with an additional competence of the Head of the Internal Security Agency, who, in agreement with the minister in charge of internal affairs, may issue a recommendation to the Police to specifically secure individual facilities, taking into account the type of threat of a terrorist event.

Turning from the statutory regulations to the undertakings set out in the aforementioned executive acts, reference should first be made to the Ordinance of the Prime Minister of 25 July 2016 on the scope of undertakings to be carried out in individual alert levels and CRP alert levels<sup>25</sup>. The Ordinance indicates, in accordance with the statutory delegation, that its main addressees are public administration bodies and heads of services and institutions competent in matters of security and crisis management. However, § 1(2) additionally points out that these entities shall carry out undertakings within the framework of individual alert levels and CRP alert levels (...) *in cooperation with the owners, sole holders and dependent holders of critical infrastructure facilities with regard to the protection of these facilities*. Pursuant to § 2(2) of this Regulation, for the purposes of such cooperation, the above-mentioned owners, self-owners and dependent holders of critical infrastructure are even obliged to take into account the detailed scope of undertakings laid down in the Regulation. From the perspective of legislative correctness, this solution may raise doubts as to its compliance with the content of the statutory

<sup>24</sup> Act on the Police, Article 11(4).

<sup>25</sup> Journal of Laws of 2016, item 1101. Amendments were introduced in: Notice from the Prime Minister of 27 July 2016 on the correction of errors (Journal of Laws of 2016, item 1116) and Ordinance of the Prime Minister of 4 March 2022 amending the Ordinance on the scope of undertakings to be carried out in individual alert levels and CRP alert levels (Journal of Laws of 2022, item 538).

mandate, and the above-mentioned obligation imposed on entities not explicitly mentioned in the delegation should rather constitute a statutory norm.

The detailed scope of undertakings was defined in an annex to the regulation in question, while independently of it, in § 3 of the regulation, it was indicated that the public administration bodies and heads of services and institutions competent in matters of security and crisis management will define (...) *the procedures for the implementation of undertakings under individual alert levels and CRP alert levels, including task modules for each level, containing, in particular, the list of tasks to be performed*<sup>26</sup> (it seems that this provision, as imposing certain additional obligations, should be transferred to the statutory ground in the future).

Paragraph 4 of the regulation contains the information obligation imposed on the addressees of the regulation towards the Government Centre for Security. According to the ordinance, upon receiving information on the introduction of an alert level or CRP alert level, public administration bodies and heads of services and institutions competent in matters of security and crisis management shall immediately confirm to the Government Centre for Security the receipt of information on the introduction of an alert level or CRP alert level. They shall also transmit a report on the status of the implementation of the tasks resulting from the introduced level within no more than 12 hours from the commencement of the level. While, from a functional perspective, this provision does not raise any objections and closes the procedure related to the introduction, cancellation and modification of the alert levels and informing the entities competent to take the necessary actions about this fact, from a legal and legislative perspective, it should find precise support in the substantive provisions of the Act, and the possible mode of transmission of information should be included in the authorisation to issue this executive act.

The scope of undertakings contained in the aforementioned annex has been defined separately both for each of the four alert levels *sensu stricto* and for each CRP alert level, while for each successive level, starting from ALFA and ALFA-CRP alert levels, it has been indicated that, in the event of its introduction, the tasks listed for the lower levels of a given category

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<sup>26</sup> An example of this type of procedure is Order No. 16 of the Minister of the Interior and Administration of 2 July 2019 on the implementation of tasks related to the opinion, introduction, change or cancellation of alert levels or CRP alert levels (unpublished).

(either alert levels *sensu stricto* or CRP alert levels) should be performed and the performance of these tasks should be continued or verified.

A similar structure is also provided for in the Regulation of the Minister of Foreign Affairs of 7 June 2022 on the detailed scope of undertakings carried out by managers of foreign posts of the Republic of Poland in particular alert levels or CRP alert levels<sup>27</sup>. The detailed scope of undertakings provided for in the above-mentioned regulations for particular alert levels is presented in the tables below.

**Table 1.** Scope of undertakings provided for in the regulations for alarm levels *sensu stricto*.

| Alert level <i>sensu stricto</i> | Tasks of public administration bodies and heads of services and institutions responsible for security and crisis management <sup>a</sup>  | Tasks of heads of foreign posts <sup>b</sup>  |
|----------------------------------|---|---|
| ALFA                             | <ol style="list-style-type: none"> <li>1) conducting, with the use of the Police, Border Guard or Military Police, increased control of large population centres which may potentially become a target of a terrorist event, including mass events and public gatherings;</li> <li>2) conducting, as part of the implementation of the tasks of facility administrators, increased control of public buildings and other facilities that could potentially become a target of a terrorist event;</li> <li>3) recommending to subordinate personnel to inform the relevant services in the event of noticing: unknown vehicles on the premises of public institutions or other important facilities, abandoned packages and luggage or any other signs of unusual activity;</li> </ol> | <ol style="list-style-type: none"> <li>1) informing members of staff at the foreign post and their family members of the introduction of the first alert level (ALFA level);</li> <li>2) informing members of staff at the foreign post of the need for increased vigilance in the event of suspicious behaviour by persons and the search for suspicious objects;</li> <li>3) introducing permanent 24-hour standby duty for members of staff at the foreign post;</li> <li>4) launching a procedure for increased checks on vehicles and persons entering the premises of the foreign post (paying particular attention to the contents of vehicles and persons' luggage);</li> </ol> |

<sup>a</sup> Annex of the Ordinance of the Prime Minister of 25 July 2016.

<sup>b</sup> Annex 1 of the Ordinance of the Minister of Foreign Affairs of 7 June 2022.

<sup>27</sup> Journal of Laws of 2022, item 1251.



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| <ul style="list-style-type: none"> <li>4) informing subordinate staff of the need to be more vigilant with regard to persons behaving in a suspicious manner;</li> <li>5) ensuring the availability, on an alert basis, of the staff members necessary to reinforce the security of the premises;</li> <li>6) carrying out checks on vehicles entering and on persons entering the premises;</li> <li>7) checking, externally and internally, buildings in constant use for suspicious behaviour of persons and for suspicious objects;</li> <li>8) checking the operation of communications equipment used for security purposes;</li> <li>9) carrying out, as part of the tasks of facility administrators, checks on the operation of alarm systems, the capacity of evacuation routes and the functioning of video recording systems;</li> <li>10) reviewing all procedures, orders and tasks related to the introduction of higher alert levels;</li> <li>11) conducting information and instruction campaigns for the public on the potential threat, its consequences and course of action</li> </ul> | <ul style="list-style-type: none"> <li>5) informing members of staff at the foreign post of the need to carry out checks on vehicles before entering and starting them;</li> <li>6) limiting business travel;</li> <li>7) limiting the movement of vehicles and persons within the foreign post to the necessary minimum;</li> <li>8) reducing to a minimum the number of pedestrian and vehicle entrances used within the foreign post;</li> <li>9) strengthening control of postal, courier and other deliveries arriving at the foreign post;</li> <li>10) strengthening control over activities related to services provided to the foreign post by external entities;</li> <li>11) checking the security of the foreign post outside and inside the buildings;</li> <li>12) closing the entrances and securing the buildings and premises of the foreign post that are not regularly used;</li> <li>13) checking the operation of the communication systems in place for the foreign post;</li> <li>14) reviewing all procedures, detailed personnel and logistical requirements and tasks related to the implementation of higher alert levels;</li> <li>15) checking the operation of alarm systems, video recording systems and the capacity of evacuation routes;</li> <li>16) reviewing alternate energy sources (generators), water tanks, shelters and other places of protection for members of staff of the foreign post;</li> <li>17) inspecting the grounds and building of the foreign post and making necessary repairs and renovations;</li> </ul> |
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|  |  | <p>18) informing the relevant services in the event of noticing: unknown vehicles parked or moving in a suspicious manner (e.g. repeatedly touring the facilities of the foreign post) or abandoned packages and luggage, or other unusual behaviour;</p> <p>19) taking preparatory measures for securing items and materials of particular value;</p> <p>20) undertaking other organisational and executive actions to enhance the security of the foreign post;</p> <p>21) establishing direct contact with local authorities responsible for crisis management and security;</p> <p>22) conducting monitoring of unusual events taking place in the immediate vicinity of the foreign post;</p> <p>23) resigning meetings and special events of an open nature on the premises of the foreign post;</p> <p>24) preparing and transmitting periodic information on the situation in the country of the post to the Ministry of Foreign Affairs, at fixed times;</p> <p>25) preparing and transmitting supplementary and ad hoc information on the situation in the country of post to the Ministry of Foreign Affairs;</p> <p>26) reviewing classified material with a view to selecting material subject to possible evacuation (especially classified documents made in single copy, classified documents necessary for the functioning of a foreign post, log books, protocols for destruction of classified documents) and classified material scheduled for destruction in the event of the introduction of one of the higher alert levels. Assembling classified material in the classified documents handling point of the foreign post;</p> <p>27) reviewing and updating notices and information addressed to Polish nationals travelling to the host country and published on the websites of the Ministry of Foreign Affairs and the foreign post;</p> |
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|       |  | 28) checking the validity of the evacuation plan, and in particular the list of documents and items deemed important due to the interest of the Republic of Poland   |
| BRAVO | <ol style="list-style-type: none"> <li>1) introducing, by the Commander-in-Chief of the Police, the Commander-in-Chief of the Border Guard or the Commander-in-Chief of the Military Police, the obligation to wear long-arms and bullet-proof waistcoats by uniformed officers or soldiers directly performing the tasks connected with securing places and objects which may potentially become a target of a terrorist event;</li> <li>2) introducing additional controls of vehicles, persons and public buildings in the threatened areas;</li> <li>3) strengthening the protection of means of public transport;</li> <li>4) checking the functioning of the emergency power supply;</li> <li>5) alerting staff to possible forms of terrorist incident;</li> <li>6) ensuring the availability, on an alert basis, of personnel designated to implement procedures for dealing with terrorist incidents; and</li> <li>7) checking and strengthening the protection of important public facilities;</li> <li>8) prohibiting access to kindergartens, schools and universities by members of the public;</li> <li>9) verifying the system of protection of facilities protected by specialised armed security formations;</li> <li>10) introducing controls on all mail addressed to the office or institution;</li> <li>11) locking and securing buildings and premises not regularly used;</li> <li>12) reviewing the stock of materials and equipment, including the availability of medical supplies and materials, taking into account the possibility of use in the event of a terrorist incident</li> </ol> | <ol style="list-style-type: none"> <li>1) informing members of staff at the foreign post of possible forms of attack;</li> <li>2) ensuring that members of the personnel of the foreign post necessary for the implementation of activities to strengthen the protection of the foreign post are available on an alert basis;</li> <li>3) strengthening the security of the foreign post;</li> <li>4) checking the foreign post;</li> <li>5) reviewing the security system of the stock of materials and equipment held;</li> <li>6) carrying out, directly at the entrance to the foreign post, checks on persons entering the premises and their luggage;</li> <li>7) introducing irregular patrols to inspect vehicles and buildings used for the foreign post, as well as persons on the premises of the post;</li> <li>8) requesting the local authorities to increase the security of the foreign post and its personnel;</li> <li>9) issuing recommendations to members of the personnel of the foreign post and their family members on limiting or refraining from contact with the local population, as well as leaving the place of residence without good reason;</li> <li>10) agreeing with the Crisis Management Team at the Ministry of Foreign Affairs the possibility of repatriation of those members of the personnel of the foreign post and their families whose further stay at the post is not necessary;</li> <li>11) updating the list of Polish nationals residing in the host country and countries within the territorial jurisdiction of the foreign post;</li> </ol> |

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|  |  | <ul style="list-style-type: none"> <li>12) notifying Polish nationals residing in the host country (irrespective of the purpose of their stay) of a threatening danger and recommending them to return to their country;</li> <li>13) creating conditions for providing assistance to Polish citizens residing in the host country and facilitating their return to the country;</li> <li>14) adapting (if necessary and with the use of available means) basements and other rooms of reinforced construction to be used as shelters or other hiding places of a similar nature;</li> <li>15) replenishing material supplies, including medicines and dressing materials, water, fuel, spare parts for generators and cars, and instructing family members of personnel of the overseas post to gather adequate supplies of their own, especially food, water, medicines and dressing materials;</li> <li>16) stopping all construction, assembly or renovation work of any kind in the facilities of the foreign post, with the exception of work in progress, carried out by national staff delegated by the Ministry of Foreign Affairs or by local staff, if the performance of this work has a significant impact on the security situation of the foreign post;</li> <li>17) recalling members of the staff of the foreign post from leave, with the exception of those residing outside the host country;</li> <li>18) establishing and maintaining constant communication with the Ministry of Foreign Affairs, other Polish institutions and posts abroad and with diplomatic missions of other EU countries, as well as with representatives of the Polish community and Polish citizens residing in the host country;</li> <li>19) preparing the foreign post for the temporary accommodation on its territory of all staff members and their families (excluding local staff) or staff members and their families (excluding local staff) residing in particularly endangered places;</li> </ul> |
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|         |   | 20) destroying selected classified material not qualified for evacuation in accordance with the evacuation plan approved by the head of the foreign post and the destruction protocol  |
| CHARLIE | <ol style="list-style-type: none"> <li>1) introducing, by the order of the minister in charge of internal affairs, 24-hour on-call duties in indicated offices or organisational units of public administration bodies;</li> <li>2) introducing on-call duties for functional persons responsible for the implementation of procedures for action in the event of events of a terrorist nature;</li> <li>3) checking the availability of facilities designated as substitute places of temporary residence in the event of evacuation of the population;</li> <li>4) limiting to a minimum the number of public places in the facility and the area of the facility;</li> <li>5) introducing, where warranted, strict controls on persons and vehicles at the entrance and entrance to the premises;</li> <li>6) restricting the parking of vehicles at protected facilities;</li> <li>7) issuing weapons and ammunition and personal protective equipment to authorised persons designated to perform protective tasks;</li> <li>8) introducing additional round-the-clock surveillance of places that require it, hitherto not covered by surveillance;</li> <li>9) ensuring the protection of means of official transport outside the premises, introducing vehicle checks before entering and starting the vehicle</li> </ol> | <ol style="list-style-type: none"> <li>1) introducing standby duty for those responsible for implementing procedures to deal with acts of terrorism or sabotage;</li> <li>2) limiting to a minimum the number of public areas in the foreign post;</li> <li>3) introducing strict control of persons and vehicles at the entrance and entry to the premises of the foreign post;</li> <li>4) strengthening the security service of the foreign post and increasing the frequency of patrolling the facilities included in the security plans;</li> <li>5) introducing 24-hour manned surveillance of places subject to security;</li> <li>6) reviewing the available medical facilities and resources with a view to their use in the event of a terrorist attack or sabotage;</li> <li>7) preparing, in line with the list referred to in ALFA alert level - point 28, for destruction of documents and items deemed important due to the interest of the Republic of Poland which have not been destroyed after the introduction of BRAVO alert level and have not been earmarked for evacuation;</li> <li>8) carrying out the withdrawal of part or all of the cash at the disposal of a foreign post from banks, after agreement with the Ministry of Foreign Affairs;</li> <li>9) preparing the foreign post for total evacuation;</li> <li>10) carrying out a partial evacuation of members of the personnel of the foreign post whose departure will not disrupt the operation of the foreign post and their families;</li> </ol> |

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|       |  | <ul style="list-style-type: none"> <li>11) checking the possibility of hiding members of the personnel of the foreign post outside the building of the post and obtaining confirmation in this regard from the local authorities;</li> <li>12) terminating the employment contracts of local staff or removing them completely from the substantive tasks of the foreign post;</li> <li>13) securing documents, objects and cultural property in accordance with a predetermined list;</li> <li>14) accommodating in the facilities of the foreign post the members of staff (excluding local staff) residing in particularly endangered places;</li> <li>15) determining the main preparatory undertakings related to the suspension of the activities of the foreign post or its liquidation;</li> <li>16) preparation for evacuation of selected classified material, log books and destruction protocols referred to at ALFA alert level in point 26</li> </ul> |
| DELTA | <ul style="list-style-type: none"> <li>1) implementing, where justified, traffic restrictions in at-risk areas;</li> <li>2) carrying out identification of all vehicles already in the area of the facility and, where justified, relocating them out of the area of the facility;</li> <li>3) controlling all vehicles entering the facility area and their load;</li> <li>4) inspecting all items brought into the premises, including suitcases, bags, parcels;</li> <li>5) carrying out frequent checks outside the building and in car parks;</li> <li>6) limiting the number of business trips by persons employed at the facility and visits by persons not employed at the institution;</li> <li>7) preparing to ensure the continuity of the authority's operations in the event that it is not possible to carry out its tasks at its current place of work</li> </ul> | <ul style="list-style-type: none"> <li>1) providing logistical and medical-sanitary facilities, appropriate to the scale of the possible threat;</li> <li>2) evacuating the foreign post and, if that is not possible, destroying classified material, logbooks and destruction reports in line with the list referred to at alert level ALFA - point 28;</li> <li>3) notifying the competent authorities of the host country of the temporary suspension of activities of the foreign post or the intention to temporarily suspend activities and evacuate the personnel of the post or part of them, as well as requesting protection along the evacuation route and facilitation of border crossings;</li> </ul>   |

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|  |  | <p>4) agreeing with the Ministry of Foreign Affairs on the scope of the evacuation, the place, date and manner of the evacuation, the manner of dealing with the property left behind, the political tasks, and the organisation of communications until the evacuation is completed;</p> <p>5) carrying out a complete evacuation of a foreign post on the order of the Chairman of the Crisis Management Team at the Ministry of Foreign Affairs or his deputy;</p> <p>6) in the event of a lack of communication with the Ministry of Foreign Affairs, taking the evacuation decision independently</p> |
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Source: Own elaboration based on the Ordinance of the Prime Minister of 25 July 2016 on the scope of undertakings carried out in particular alert levels and CRP alert levels and the Ordinance of the Minister of Foreign Affairs of 7 June 2022 on the detailed scope of undertakings carried out by managers of foreign posts of the Republic of Poland in particular alert levels or CRP alert levels.

**Table 2.** Scope of undertakings provided for in the regulations for CRP alert levels.

| CRP alert level | Tasks of public administration bodies and heads of services and institutions responsible for security and crisis management <sup>a</sup>   | Tasks of heads of foreign posts <sup>b</sup>   |
|-----------------|--|--|
| ALFA-CRP        | <p>1) introducing increased monitoring of the state of security of information and communication systems of public administration bodies or information and communication systems forming part of the critical infrastructure, hereinafter referred to as „systems”, in particular using the recommendations</p> | <p>1) informing members of the personnel of the foreign post and their family members of the introduction of an appropriate CRP alert level;</p> <p>2) introducing on-call duties for members of the personnel of the foreign post responsible for the security of information and communication systems or for the performance of tasks related</p> |

<sup>a</sup> Annex of the Ordinance of the Prime Minister of 25 June 2016.

<sup>b</sup> Annex 2 of the Ordinance of the Minister of Foreign Affairs of 7 June 2022.

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|           | <p>of the Head of the Internal Security Agency or units responsible for the response system in accordance with the jurisdiction, and monitoring and verifying that the security of electronic communication has not been breached, checking the availability of electronic services, making changes to the access to the systems, if necessary;</p> <ol style="list-style-type: none"> <li>2) informing the institution's staff of the need to be more vigilant to abnormal states, especially the staff in charge of systems security;</li> <li>3) checking the channels of communication with other emergency responders appropriate to the type of CRP alert level, verifying the established points of contact with the ICT security incident response teams appropriate to the type of operation of the organisation and the minister responsible for information technology;</li> <li>4) reviewing the relevant procedures and tasks related to the implementation of CRP alert levels, in particular verifying the systems backup in relation to information and communication systems included in the critical infrastructure and systems crucial for the functioning of the organisation, and verifying the time required for the system to be restored to proper functioning;</li> <li>5) verifying the current state of security of the systems and assessing the impact of threats to information and communication security on the basis of current information and event forecasts;</li> <li>6) informing, on an ongoing basis, the ICT security incident response teams competent for the type of operation of the organisation and the cooperating crisis management centres, as well as the minister in charge of IT</li> </ol> | <p>to the security of the post in order to analyse and assess states deviating from the accepted standards;</p> <ol style="list-style-type: none"> <li>3) checking channels of communication with other crisis response entities appropriate to the type of CRP alert level, with employees of the department responsible for responding to information and communication security incidents in the cell responsible for information and communication security at the Ministry of Foreign Affairs, and with other entities providing support in the subject area;</li> <li>4) keeping the director of the organisational unit in charge of information and communication security at the Ministry of Foreign Affairs and employees of this unit responsible for matters of responding to information and communication security incidents informed on an ongoing basis about the effects of the actions conducted</li> </ol> |
| BRAVO-CRP | <ol style="list-style-type: none"> <li>1) ensuring that personnel responsible for the security of systems are available on an emergency basis;</li> </ol>  | <ol style="list-style-type: none"> <li>1) ensuring readiness for immediate action by members of the personnel of the foreign post who are responsible for the security</li> </ol>   |



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|             | 2) introducing a 24-hour on-call service for administrators of systems critical to the functioning of the organisation and personnel authorised to make decisions on matters of security of information and communication systems  | of information and communication systems or for carrying out tasks related to the security of the post;<br>2) if necessary, making changes to access to ICT infrastructure in agreement with the director of the organisational unit in charge of ICT security at the Ministry of Foreign Affairs and employees of this unit responsible for matters of responding to ICT security incidents |
| CHARLIE-CRP | 1) introducing a 24-hour on-call service for administrators of systems critical to the functioning of the organisation and personnel authorised to make decisions on system security matters;<br>2) reviewing available back-up resources with regard to the possibility of their use in the event of an attack;<br>3) preparing to put in place plans to enable business continuity after a potential attack has occurred, including: reviewing and possibly auditing contingency plans and systems, preparing to limit operations on servers so that they can be shut down quickly and without failure | preparing to limit operations on servers in order to shut them down quickly and without fail, with the prior approval of the director of the organisational unit in charge of ICT security at the Ministry of Foreign Affairs or employees of this unit responsible for matters of responding to ICT security incidents  |
| DELTA-CRP   | 1) activating the organisation's contingency or business continuity plans in situations of failure or loss of business continuity;<br>2) initiating business continuity recovery procedures as appropriate   | no additional tasks have been defined for the DELTA-CRP level only   |

Source: Own elaboration based on the Regulation of the Prime Minister of 25 July 2016 on the scope of undertakings carried out in particular alert levels and CRP alert levels and the Regulation of the Minister of Foreign Affairs of 7 June 2022 on the detailed scope of undertakings carried out by managers of foreign posts of the Republic of Poland in particular alert levels or CRP alert levels.

In the context of linking legislation to the alert level system, it is also worth noting the solutions adopted in the Act of 5 July 2018 on the national cyber security system<sup>28</sup>. Pursuant to Article 36(7)(5) of that Act, the Critical

<sup>28</sup> Consolidated text: Journal of Laws of 2020, item 1369, as amended.

Incidents Team, which is an auxiliary body for handling critical incidents<sup>29</sup> notified to CSIRT MON, CSIRT NASK or CSIRT GOV<sup>30</sup> and coordinating actions taken by them and the Government Centre for Security, (...) *in the case of a critical incident that may result in a threat of a terrorist event concerning ICT systems of public administration bodies or ICT systems that are part of critical infrastructure, referred to in Art. 15(2) of the Act of 10 June 2016 on anti-terrorist activities (CRP alert levels), prepares, with regard to such an incident, information and conclusions for the minister in charge of internal affairs and the Head of the Internal Security Agency.*

### **Introduction of alert levels – analysis of cases**

The speed of the legislative process related to the preparation of the Act on anti-terrorist activities, as well as the date with which the Act entered into force - pursuant to Article 65 of the Act, with the exception of one article, it entered into force with a *vacatio legis* shortened in relation to the standard one, and resulting from the Act of 20 July 2000 on promulgation of normative acts and certain other legal acts<sup>31</sup>, *vacatio legis*, i.e. after the lapse of seven days from the date of promulgation - were related to the desire of the proponent, in this case the Council of Ministers<sup>32</sup>, to introduce new solutions before specific events held in Poland in 2016: The NATO Summit in Warsaw and the 31st World Youth Day in Kraków.

<sup>29</sup> Critical incident - an incident resulting in significant damage to security or public order, international interests, economic interests, operation of public institutions, civil liberties and rights or human life and health, classified by the relevant CSIRT MON, CSIRT NASK or CSIRT GOV. CSIRT - Computer Security Incident Response Team, explanation of names in the next footnote (editor's note).

<sup>30</sup> CSIRT MON - Computer Security Incident Response Team operating at the national level, led by the Minister of National Defence; CSIRT NASK - Computer Security Incident Response Team operating at the national level, led by the Scientific and Academic Computer Network - National Research Institute; CSIRT GOV - Computer Security Incident Response Team operating at the national level, led by the Head of the Internal Security Agency.

<sup>31</sup> Consolidated text: Journal of Laws of 2019, item 1461. Standard *vacatio legis* - 14 days after the date of announcement - Article 4(1) of the Act on announcement of normative acts and certain other legal acts.

<sup>32</sup> Government project, which was prepared under the responsibility of the Chancellery of the Prime Minister, in cooperation with the Ministry of Interior and Administration - Regulatory Impact Assessment for the draft Act on anti-terrorist activities.

These events, which were particularly difficult in terms of guaranteeing the necessary security measures, were not only organised on the basis of specific and episodic legislation<sup>33</sup>, but also required specific solutions of a systemic nature. The aforementioned events thus became a catalyst for the implementation of a comprehensive reorganisation of legal solutions with regard to the Polish anti-terrorist system. It is worth noting that the original government draft in the version addressed to the Sejm contained an even shorter deadline for the Act to enter into force - the day following the day of announcement, but due to constitutional standards it was prolonged.

Although the justification for the Act on anti-terrorist activities does not directly indicate that the date of entry into force of the Act is closely linked to the aforementioned events, this is obvious both in the context of the course of the parliamentary debate and the normative side itself. Indeed, the Act on anti-terrorist activities amended the Act on special solutions concerning the organisation of the visit of His Holiness Pope Francis to the Republic of Poland and the World Youth Day - Kraków 2016.

In this context, it can be concluded that the legal institution of alert levels was used for the first time on the basis of the provisions of the Act on anti-terrorist activities as part of the safeguards for the aforementioned events.

In the period when alert levels were standardised in orders issued on the basis of the Crisis Management Act, i.e. prior to the entry into force of the Act on anti-terrorist activities, alert levels were introduced only once - in relation to the organisation in Poland of the UEFA EURO 2012 Final Tournament. The introduction of the alert level at that time was connected with the discovery by the Border Guard of a package containing explosives and a telephone with a photograph of the National Stadium, which were placed on a raft floating on the Bug River<sup>34</sup>. As a spokesman for

<sup>33</sup> Act of 18 March 2016 on special solutions related to the organisation of the visit of His Holiness Pope Francis to the Republic of Poland and World Youth Day - Kraków 2016 (i.e. Journal of Laws of 2017, item 685) and Act of 16 March 2016 on special arrangements related to the organisation of the 2016 North Atlantic Treaty Organisation Summit in the Republic of Poland in Warsaw (i.e. Journal of Laws of 2016, No item. 379, as amended).

<sup>34</sup> Cf.: *Tusk: Stopień alarmowy nie zmienia poziomu bezpieczeństwa na Euro 2012* (Eng. Tusk: The alert level does not change the level of security at Euro 2012), *Dziennik Gazeta Prawna*, 28 VI 2012, <https://www.gazetaprawna.pl/wiadomosci/artykuly/628995,tusk-stopien-alarmowy-nie-zmienia-poziomu-bezpieczenstwa-na-euro-2012.html> [accessed: 2 VII 2022]; *Pierwszy stopień alarmowy w Polsce. Grozi nam zamach?* (Eng. First alert level

the Ministry of the Interior at the time pointed out: *After analysing the case, it was concluded that there is no threat to the safety of persons or places in Poland. However, taking into account the fact that this is the first such significant signal during Euro 2012 concerning the possibility of a terrorist event, it was decided to introduce the first alert level on a four-stage scale*<sup>35</sup>.

On the basis of the Act on anti-terrorist activities, alert levels, in addition to the levels referred to in Article 16(2) of that Act, i.e. with regard to foreign posts of the Republic of Poland and the ICT systems of the minister responsible for foreign affairs, were introduced in the following cases<sup>36</sup>:

- **NATO Summit in Warsaw, 2016** - the first alert level (ALFA) was introduced in the area of the capital city of Warsaw, which was in force from 7 to 10 July 2016;
- **31st World Youth Day in Kraków, 2016** - the first alert level (ALFA) and the second CRP alert level (BRAVO-CRP) were introduced on the entire territory of the Republic of Poland, which were in force from 20 July to 1 August 2016;
- **24th session of the Conference of the Parties to the UN Framework Convention on Climate Change (COP24) in Katowice, 2018** - the first alert level (ALFA) was introduced in the area of the Silesian Voivodeship and the city of Kraków, which was in force from 26 November to 15 December 2018;
- **Ministerial meeting on security in the Middle East in Warsaw, 2019** - the first alert level (ALFA) and the second CRP alert level (BRAVO-CRP) were introduced in the area of the capital city of Warsaw, effective from 11 to 15 February 2019;
- **European Parliament elections, 2019** - the second CRP alert level (BRAVO-CRP), which was in force from 23 to 27 May 2019, was introduced throughout the territory of the Republic of Poland;

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in Poland. Are we in danger of an attack?), Wprost, 28 VI 2012, <https://sport.wprost.pl/euro-2012/330817/pierwszy-stopien-alarmowy-w-polsce-grozi-nam-zamach.html> [accessed: 2 VII 2022].

<sup>35</sup> *Pierwszy stopień alarmowy. Znaleźli ładunki wybuchowe* (Eng. First alert level. They found explosives), TVN24, 27 VI 2012, <https://tvn24.pl/polska/pierwszy-stopien-alarmowy-znalezi-ladunki-wybuchowe-ra261245-3500262> [accessed: 2 VII 2022].

<sup>36</sup> *Dotychczas wprowadzane stopnie alarmowe i stopnie alarmowe CRP na terytorium RP* (Eng. Alert levels and CRP alert levels introduced so far on Polish territory), Ministerstwo Spraw Wewnętrznych i Administracji, <https://www.gov.pl/web/mswia/dotychczas-wprowadzane-stopnie-alarmowe-i-stopnie-alarmowe-crp-na-terytorium-rp> [accessed: 2 VII 2022].

- **commemoration of the 80th anniversary of the outbreak of World War II, 2019** - the first alert level (ALFA) and the first CRP alert level (ALFA-CRP), which were in force from 28 August to 3 September 2019, were introduced throughout the Polish territory;
- **Sejm and Senate elections, 2019** - a second CRP alert level (BRAVO-CRP) was introduced on the territory of the Republic, which was in force from 10 to 14 October 2019;
- **ceremonies commemorating the 75th anniversary of the liberation of the Auschwitz-Birkenau German Nazi concentration and extermination camp, 2020** - the second alert level (BRAVO) was introduced in the Małopolskie Voivodeship, the first alert level (ALFA) was introduced in the remaining territory of the Republic of Poland; additionally, the first CRP alert level (ALFA-CRP) was introduced in the entire territory of the Republic of Poland. The alert levels were in force from 23 to 29 January 2020;
- **election of the President of the Republic of Poland, 2020** - a second CRP alert level (BRAVO-CRP) was introduced throughout the Republic of Poland, effective from 26 to 29 June 2020 and from 10 to 13 July 2020;
- **UN Digital Summit - IGF 2021 (the UN Internet Governance Forum) in Katowice, 2021** - the first CRP alert level (ALFA-CRP) was introduced across the entire territory of the Republic of Poland, which was in force from 5 to 10 December 2021;
- **the occurrence of a potential risk to the security of ICT systems due to identified threats resulting from the tense situation in the region:**
  - the first CRP alert level (ALFA-CRP) was introduced across the entire territory of Poland, which was in force from 18 to 23 January 2022 and from 15 to 21 February 2022;
  - a third CRP alert level (CHARLIE-CRP) was introduced across the entire territory of the Republic of Poland, which is in force from 21 February 2022 to 30 November 2022;
- **the occurrence of an increased and foreseeable threat of a terrorist event resulting from a mass influx of refugees from Ukraine to the territory of the Republic of Poland:**
  - on the territory of the Lubelskie and Podkarpackie Voivodeships, the second alert level (BRAVO) was introduced, which was in force from 28 February to 15 April 2022;

- on the entire territory of the Republic of Poland, the second alert level (BRAVO) was introduced, which is in force from 16 April 2022 until 30 November 2022.

Having analysed this overview, it can be concluded that in the vast majority of cases the introduction of the alert level was associated with the organisation in Poland of important events of international dimension or with the participation of representatives of other countries (a total of seven such cases). The nature of these events varied, as did the role of Poland and the state authorities in them - from the organiser (e.g. the celebrations of the 80th anniversary of the outbreak of World War II), co-organiser (e.g. the ministerial meeting on security in the Middle East co-organised with the United States of America, which took place in Warsaw) to the host state or even providing access to its territory, while the event itself was of a quasi-extraterritorial nature (COP24 or IGF 2022, whose organisers were various United Nations agencies).

Alert levels were also introduced on three occasions in connection with elections, while in 2022 they were introduced and then extended (on the basis of separately issued orders of the Prime Minister) due to the situation beyond Poland's eastern border.

The last of these cases is distinct from the previous ones. The first difference is that the alert levels were not introduced as a result of the planned organisation of a particular type of event, such as celebrations, international meetings or elections, but in the context of events beyond the control of the Polish authorities. These events include a deliberate attack by Belarus against Poland and the European Union in general, in the form of a deliberately caused and top-down driven migration crisis on the Polish-Belarusian border, which is at the same time the external border of the EU, to be seen as a hybrid attack. The second event resulting in the introduction of alert levels is the armed attack by the Russian Federation on Ukraine and the resulting consequences - on the one hand, the unprecedented influx of refugees to Poland from the conflict area (Ukraine), and on the other hand, the threat of various types of hybrid actions from Russia, also in cyber space.

The second key difference from the previous circumstances surrounding the introduction of alert levels is the period for which they were adopted. Here, for the first time, they are in force not for a few days or a dozen days, but for several months. As rightly pointed out by the authors

of the commentary to the Act on anti-terrorist activities Paweł Łabuz, Tomasz Safjański and Waldemar Zubrzycki:

Alert levels and CRP alert levels are introduced in justified cases, however, they entail numerous impediments to the functioning of various institutions as well as citizens. Undoubtedly, their implementation also has a huge impact on the functioning of services and formations responsible for ensuring the security of citizens and facilities of the Republic of Poland, also operating in an alert mode, i.e. unusual and unnatural, with regard to abnormal and unconventional situations. Maintaining such a state in the long term will cause significant disruptions to their functioning and may also prove impossible. Therefore, alert levels shall be revoked as soon as the threat or impact of the event that prompted the alert level has been minimised. This may mean either lifting it completely or lowering the alert level on a multi-level scale<sup>37</sup>.

In the case in question, the rationale for the alert level existed for an extended period of time, justifying the maintenance of this level with all its functional challenges for public administration bodies and heads of services and institutions competent in security and crisis management matters, but also, to a certain extent, for the owners, sole holders and dependent holders of critical infrastructure facilities. At the same time, the proclamation of an alert level for a prolonged period of time is subject to the potential risk of routine and thus a decrease in concentration in the implementation of legal undertakings at the individual level, whereas alert levels are precisely intended to provide a heightened degree of preparedness.

From a subject perspective, it can be pointed out that levels have been introduced in various configurations, i.e. both alert levels *sensu stricto* (e.g. NATO Summit 2016 or COP24) and CRP alert levels (e.g. the aforementioned elections) on their own, as well as both types of alert levels at the same time (e.g. World Youth Day) depending on the nature of the threat. When combining alert levels *sensu stricto* and CRP alert levels, usually the CRP alert level was higher on the four-level scale. It is also worth noting that in the case of alert levels *sensu stricto*, the highest one introduced so far is the second alert level BRAVO, while in the case of CRP alert levels, the third alert level CHARLIE-CRP was used.

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<sup>37</sup> P. Łabuz, T. Safjański, W. Zubrzycki, *Ustawa o działaniach antyterrorystycznych. Komentarz...*

Alert levels are therefore a repeatedly used instrument in the preventive dimension - they have so far been used as a tool to raise the level of preparedness in the event of a terrorist event and not as a consequence of a terrorist event. In turn, authorised authorities declare alert levels in a flexible manner, including with regard to:

- the type of circumstances giving rise to their introduction - from safeguarding planned undertakings to responding to external threats;
- territorial scope - applied on the territory of the entire country or specific areas thereof, such as cities or voivodeships, as well as in some Polish outposts abroad;
- determination of the level within a four-grade scale - from the first alert level ALFA to the second alert level BRAVO, and from the first alert level ALFA-CRP to the third alert level CHARLIE-CRP;
- the type of levels applied - alert levels *stricto sensu* and CRP alert levels separately and in combination;
- temporality - the duration adapted to the event to which they are linked or the duration of the threat concerned;
- appropriateness - there have been instances of increasing the level or changing its territorial scope.

### Relevance of solutions – summary

The effectiveness of the mechanisms for the introduction of the alert levels and the relevance of the undertakings carried out after the introduction of the levels was assessed several times within the Interministerial Team for Terrorist Threats<sup>38</sup>. However, the members of the Team did not make any proposals for changes in this respect, which may prove the correct construction of the institution of alarm levels.

The system of alert levels established on the basis of the provisions of the Act on anti-terrorist activities was positively evaluated during the visit of the Executive Directorate of the United Nations Counter-Terrorism Organisation (UN CTED) in December 2019. Its purpose was to evaluate

<sup>38</sup> Established by Order No. 162 of the Prime Minister of 25 October 2006 on the establishment of the Interministerial Team for Terrorist Threats [legal basis for the establishment of the Team: Article 12(1)(3) and (2) of the Act of 8 August 1996 on the Council of Ministers (i.e. Journal of Laws of 2022, item 1188) - editor's note].



the UN Security Council counter-terrorism resolutions implemented into the Polish legal system<sup>39</sup>.

The authors also agree with the position expressed by Piotr Chorbot that the benefit of the introduction of provisions on alert levels and the creation of appropriate behavioural algorithms based on them is the opportunity to practice the coordination of actions of relevant services and other entities, and (...) *any provisions established to create the right attitudes and consisting in the practice of responses to a threat allow better preparation of services to act, and thus - to increase the standard of security of the Republic of Poland*<sup>40</sup>.

Having analysed the speed of activation of the procedure on the introduction of alert levels, it remains worth considering the implementation of a provision unambiguously indicating that the motions and opinions referred to in Article 16 item 1 and 2 of the Act on anti-terrorist activities (motions and opinions of the minister in charge of internal affairs and the Head of the Internal Security Agency constituting the basis for issuing an order for the introduction of the alert level), delivered also orally, by telephone, by means of electronic communication within the meaning of Article 2 item 5 of the Act of 18 July 2002 on provision of services by electronic means<sup>41</sup> or by other means of communication - are deemed to be delivered in an effective manner. Their content and the relevant motives for such settlement shall be recorded in writing. This solution, which is already familiar to national legislation<sup>42</sup>, would make it possible to guarantee speed and efficiency without waiting for the circulation of documents. Although the Act on anti-terrorist activities does not directly indicate the obligation of a written form of presenting the required motions and opinions, taking into account the consequences of the introduction of the level and possible limitations of citizens' freedoms and rights (e.g. prohibition of organising assemblies and mass events - Article 21 of the Act), it seems

<sup>39</sup> Cf.: M. Cichomski, I. Idzikowska-Ślęzak, *Strategic level of the Polish anti-terrorist system - 15 years of the Interministerial Team for Terrorist Threats*, "Terroryzm - studia, analizy, prewencja" 2022, no. 1, p. 306.

<sup>40</sup> P. Chorbot, *Ustawa o działaniach antyterrorystycznych. Komentarz...*, p. 73.

<sup>41</sup> Consolidated text: Journal of Laws of 2020, item 344.

<sup>42</sup> For example, art. 11h(11) of the Act of 2 March 2020 on specific solutions related to the prevention, prevention and control of COVID-19, other infectious diseases and emergencies caused by them (i.e. Journal of Laws of 2021, item 2095, as amended).

that the proposed solution would be significant and would guarantee the effectiveness of the activities carried out.

The provisions of the Act should also unambiguously indicate which body is competent to fulfil the information obligations (listed in Article 16(3) of the Act on anti-terrorist activities) towards the President of the Republic of Poland, the Marshal of the Sejm and the Marshal of the Senate - in the case of the introduction of the alert level in a special mode, i.e. in a case of urgency.

Another topic is the possible, mentioned in the earlier part of the study, clarification of Article 16(4) of the Act, according to which the introduction of the alert level or CRP alert level is the basis for the implementation by public administration bodies and heads of services and institutions competent in matters of security and crisis management of a certain type of undertakings (among others, explicitly indicating among the addressees of this standard the owners, sole owners and dependent owners of critical infrastructure facilities). The current wording of this provision does not correlate with the wording of the implementing regulations issued on the basis of paragraph 5 of this Article. The Prime Minister's Regulation of 25 July 2016 takes into account the role of owners, sole holders and dependent holders of critical infrastructure facilities. This solution reflects the *ratio legis* of the legislator.

With regard to this regulation, in addition to the legal-legislative doubts described in the earlier section, it is also worth pointing out that at least two of the projects contained therein:

- the introduction of a ban on outsiders entering kindergartens, schools and public universities - in the event of the introduction of a second or higher alert level,
- introduction, on the recommendation of the minister in charge of internal affairs, of 24-hour standby services in indicated offices or organisational units of public administration bodies - envisaged for the third alert level

should ultimately become statutory norms.

The first of the undertakings - as encroaching into the sphere of civil liberties and rights - may be implemented in order to fulfil the obligation resulting from Article 31(3) of the Constitution of the Republic of Poland, according to which limitations on the use of constitutional freedoms and rights may be established only by statutory law and only when they are necessary in a democratic state for its security or public order,

for the protection of the environment, health and public morals or the freedoms and rights of other persons. The second one - when there is a need to extend the competences of the minister in charge of internal affairs to entities that are not subordinate to him and are not supervised by him. Moreover, the issues related to the circulation of information on alert levels, included in the regulation referred to above, should find their precise basis in the statutory authorisation.

The directions of possible changes indicated above, however, are only of a supplementary or strictly legal nature and do not affect the overall assessment of the alert levels, which have become one of the most essential elements of the Act on anti-terrorist activities, and the multiple use of this legal institution in various circumstances and variants testifies to the effectiveness and adequacy of the adopted solutions.

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