

Official response of the Government of Poland

In response to the alert of 23 June 2016 entitled “New Anti-terrorism Law Allows Blocking of Online Media” published on the Council of Europe Platform to promote the protection of journalism and safety of journalists

“In response to the media alert on the Council of Europe Platform to promote the protection of journalism and safety of journalists entitled: “New Anti-terrorism Law Allows Blocking of Online Media”, the Government of the Republic of Poland would like to reiterate that the alleged threats to the safety of journalists and freedom of speech, expressed in the alert, are unjustified and do not reflect the substance of the provisions of the anti-terrorism law in Poland.

The primary objective of the Act of 10 June 2016 on anti-terrorism operations is to improve the efficiency of Polish anti-terrorism mechanism with a view to increasing the safety of all citizens of the Republic of Poland. These objectives will be achieved by inter alia clarifying the roles of various institutions and services and the rules of cooperation between them; providing opportunities for effective actions in case of suspected terrorist threats; ensuring response mechanisms and adjusting penal provisions adequately to new types of terrorist threats.

One of the main aims of the Act of 10 June 2016 on Counter-Terrorist Operations was to implement the provisions of the Additional Protocol of 2015 to the Council of Europe Convention on the Prevention of Terrorism adopted on 16 May 2005 in Warsaw. The Protocol provides for penalization of a range of actions preceding terrorist offences and taken to prepare terrorist offences, including being recruited for terrorist purposes, receiving terrorist training or travelling abroad for terrorist purposes. In that respect the Act introduced changes into the Act of 6 June 1997 – the Polish Penal Code, by setting out provisions that define new types of offences and respond to the actions of the so-called foreign terrorist fighters.

Referring to the concerns over the right to “order the blocking or demand that the electronic open source service administrator block access to information data”, it should be underlined that the possibility to order the blocking of certain data or telecommunication services (the so called "access blocking") is strictly limited to situations where such data serve to or are used to cause incident of a terrorist nature.

Moreover, such possibility is limited to the cases strictly prescribed by law, and its application is verified by the court ex ante authorizing that the access blocking decisions are in compliance with the law.

New anti-terrorist law confers the power of the "access blocking" to the District Court in Warsaw. Only in very urgent cases the "access blocking" may be ordered by the Head of the Internal Security Agency (ABW) after having obtained the written consent of the Prosecutor General. In this case, the head of the ABW asks at the same time the District Court in Warsaw for permission to undertake this measure. If not authorized within 5 days, the "access blocking" is to be terminated.

Therefore, it should be noted that the procedure of “access blocking” for up to five days has a special character and can be used only in situations of urgency. Even if such urgent “access blocking” would be terminated earlier than in 5 days, it’s legality is still subject to judicial review. It should also be emphasized that the alert contains an inaccurate information about granting permission to continue "access blocking" after five days. In fact, this competence belongs solely to, as indicated above, the District Court in Warsaw. ”