

# Insurance exclusions for war and terrorism

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**ARE WE PROTECTED?**

## Introduction

The property insurance policies available on the market, such as homeowner's insurance, automobile insurance, coverage of business property, and construction and installation insurance, typically exclude the insurer's liability for loss caused by war, hostile acts, terrorism or sabotage. These clauses have been purely hypothetical, but recent events in Poland are leading to a reconsideration of their interpretation and application.

## Events that have changed the perspective

Over the last year and a half, there have been several serious incidents in Poland in which the prosecutor's office has filed charges of sabotage and terrorist offences in support of Russian intelligence (under Criminal Code Art. 130 §7).

These include damage by explosives to the infrastructure of rail line 7 between Warszawa Wschodnia and Dorohusk (15–17 November 2025), as well as earlier acts of arson at the Marywilska 44 shopping centre in Warsaw (12 May 2024) and the Obi store on ul. Radzywińska in Warsaw (14 April 2024).

There was also a notorious incident during the night of 9–10 September 2025, when Russian drones violated Polish air space, resulting in the destruction of a single-family house in the village of Wryki-Wola in the Lublin area. According to media reports, the roof, walls, ceiling, and interior of the house were damaged, as well as an automobile parked in front of the house.

In such situations, are businesses and individuals protected by their property insurance policies?

## Acts of terrorism

One of the classic exclusions in the general conditions of insurance is the insurance company's lack of liability when losses are caused by acts of terrorism.

The notion of "terrorism" or "acts of terrorism" is usually defined in the general conditions. When defining terrorism, insurers primarily point to the specific nature of the perpetrators' motivations, including political, religious or ideological grounds. Typically, there is an open-ended list of such motivations. Some of the definitions also list ethnic, racial or social motivations.

Some of the definitions expressly state that they refer to actions undertaken by individuals or groups, including those acting for, on behalf of, or in connection with organisations or governments.

The definitions also consistently point to two main aims of terrorist acts: exerting influence over the public authorities, the government, or administrative bodies, and stoking fear in all or part of society. Some of the definitions also mention the aim or effect of inducing chaos or disorganisation of public life. Most of the definitions expressly mention as a typical means of terrorism the actual or threatened use of force or violence.

Definitions of terrorism thus combine five key elements:

- Perpetration by individuals or groups, at their own initiative or instigated by an organisation or foreign state
- Specific political, religious or ideological motivation
- The aim of exerting influence over the authorities, or frightening the society
- The use or threat of violence
- A broad societal impact.

## Can you insure against terrorism?

Terrorism exclusions are universally applied on the Polish insurance market, and insurers generally do not offer to sell coverage against this type of risk.

An exception is certain coverage intended for businesses (including those in selected sectors such as rail or aviation), for example in policies covering the company's property against all risks. These policies may contain special clauses allowing protection to be extended—for an additional premium—to losses caused by acts of terrorism. These clauses provide for a separate limit of the insurer's coverage for terrorism losses. Typically these limits are set individually for each policy. Based on our analysis, however, in a few instances the general conditions refer to a default limit, which is not very high—usually in a range of PLN 500,000–1,000,000. But stating specific limits in the general conditions is not a common practice among insurers. In this case, it may result from a high degree of institutionalisation of coverage against acts of terrorism, as well as the arrangements with reinsurers. These limits can usually be negotiated, but the higher the protection against the risk of terrorism, the higher the premium.

Moreover, the scope of clauses extending protection to terrorist risks differs significantly between insurers. Some clauses do not include any restrictions on the type of terrorist attack, while others exclude coverage of losses due to the use of chemical or biological substances. In one set of general conditions we analysed, the terrorism clause covered only losses due to fire, explosion,

or a crash of aircraft or motor vehicles, when these events were directly due to acts of terrorism. This shows how much the scope of protection offered by various insurers differs. This is why it is always necessary to carefully examine the wording of the specific clause before deciding to purchase additional coverage.

However, clauses extending coverage to the risk of a terrorist attack are not found in policies offered to private individuals, such as homeowner's insurance or comprehensive motor vehicle insurance (*autocasco*).

Interestingly, our examination of the general conditions of *autocasco* coverage revealed some differences between insurers. It turns out that only some of them exclude liability for damage or destruction of the vehicle due to terrorism. Some of the general conditions do not have such an exclusion (or offer broader protection). But in one instance we examined, the insurer worded the clause so that the exclusion applies only when the insured or a person authorised to operate the vehicle took an active part in the act of terrorism or sabotage. This means that *autocasco* policies can be found on the market which also protect against the consequences of terrorist attacks—but the conditions of insurance have to be carefully analysed.

### Does the Marywilka 44 case set a precedent?

It can be expected that in the case of terrorism exclusions, in many less obvious instances the results of investigations by prosecutors, and criminal convictions, will play a key role. It may be assumed that a finding by the court of commission of a terrorist offence will be decisive for determining whether the insurer's liability is excluded.

But what if no such verdict is reached? Are the general conditions of insurance clear enough, or will the civil court have to determine whether a specific act meets the definition of an act of terrorism under the exclusion? In that case, the court will probably stay the civil case until the criminal proceeding is concluded. But then what if the criminal case is discontinued (e.g. because the perpetrators were not identified), and the civil court must then resolve the claim before it?

The arson at the Marywilka 44 shopping centre may serve as a case study. On 18 September 2025 the Regional Court for Warsaw-Praga convicted three people for participation in an organised criminal group involved in sabotage and terrorism (the judgment is still on appeal). According to the National

Prosecutor's Office, all three of the accused were found guilty of participating in an organised group operating in Poland, Lithuania, Latvia, Ukraine and Russia, with the aim of committing sabotage and terrorist acts involving arson of large-scale buildings in countries belonging to the European Union (under Criminal Code Art. 258 §2). These offences were found to be committed for the purpose of spreading fear among numerous people and exerting influence over public opinion.

Although the statement by the National Prosecutor's Office suggests that the court did not convict the accused of direct perpetration and arson of the shopping centre, but only for participation in an organised criminal group involved in sabotage and terrorism, on their face the findings in the judgment of the court of first instance suggest that the court accepted the interpretation that the arson of Marywilska 44 was a terrorist act. In that situation, the owners of the building and the tenants of stands in the building may have great difficulty obtaining compensation if they did not purchase additional coverage of their property against acts of terror.

## War and acts of war

Another classic exclusion in general conditions of insurance is the exclusion of the insurer's liability for losses resulting from war or acts of war.

The term "war" (*wojna*) is most often not defined in the general conditions, which may generate doubts in interpretation. Moreover, some insurers use two concepts simultaneously: "war" and "acts of war" (*działania wojenne*). The purpose of this overlap is clearly to extend the exclusion to the broadest set of situations. It does raise the question, however, of how "war" differs in practice from "acts of war."

Some indication may be found in the area of conflict of laws (private international law). Academic texts assert that a "state of war" (*stan wojny*) differs from armed conflict (*walka zbrojna*), i.e. "acts of war." A "state of war" exists when a war has formally been declared. But military operations are often conducted between states without any declaration of war or introduction of a formal state of war. Thus acts of war typically begin earlier than a state of war, and also end earlier.

But this is only a textbook definition. In practice, sources of public international law such as treaties or international conventions do not contain one

prevailing definition of war. Nor do the Polish legal acts in this area define this notion.

Contemporary public international law tends to use the notions of “armed conflict,” “the crime of aggression,” or “act of aggression,” stressing the actual behaviours rather than the existence of a formal declaration of war. For example, under Art. 8bis(2) of the Statute of the International Criminal Court, an “act of aggression” means “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State....” This definition calls for treating as an act of aggression a range of specific acts, such as invasion or attack by the armed forces of a state of the territory of another state, occupation, bombardment, or blockade of ports—regardless of whether these acts are accompanied by a formal declaration of war.

For this reason, some insurers specify in their general conditions that they will not be liable for losses resulting from war, regardless of whether there has been a declaration of war. Other insurers do not include this reservation, but only state that they will not be liable for losses resulting from war or acts of war. At first glance, this may raise doubts of interpretation on whether, in the absence of a declaration of war, an insurer which has not expressly stated this limitation in the general conditions is required to compensate for losses caused for example by a drone attack on a building.

It should also be borne in mind that the provisions of insurance contracts and general conditions of insurance are interpreted in light of Civil Code Art. 65, which states that if the text of the contract and the parties’ mutual intent is not unambiguous, reference should be made to the general rules of meaning in the Polish language. And when the word “war” is used in common parlance, Polish speakers rarely have in mind a formally declared war, but rather actual acts of aggression by one country against another.

It thus appears that identification of a “war” for purposes of general conditions of insurance should not depend on whether a war has formally been declared. It should also be pointed out that in recent times, official declarations of war have become a rarity, in light of international law regarding an invasive war as a crime against peace. Much more often, wars are conducted these days under the cover of “defence against actions of a hostile regime” rather than being officially declared as a war. Suffice it to say that Russia has not made the official, formal act of declaring war against Ukraine. Instead, on 24 February 2022 Russian President Vladimir Putin gave a televised address in

which he announced the launch of a “special military operation” to protect Russian-speaking territories in eastern Ukraine.

In short, insurers display due caution when they indicate in the general conditions that “war” means both declared and undeclared wars. But in our view, even absent such a reservation, if a loss arises for example as a result of bombardment not preceded by a declaration of war, insureds should not expect their insurer to pay compensation.

### Does Poland have to be a party to the conflict?

Another problem with the war exclusions employed by insurers is that they do not specify whether Poland must be a party to an ongoing war, or whether the acts of war must be directed against Poland. This raises doubts in cases where insureds in Poland suffer losses due to military operations conducted primarily in neighbouring countries.

An example would be the event occurring on 15 November 2022 in the Polish village of Przewodów, about 6 km from the Ukrainian border. What most likely happened was the crash of an air-defence missile launched by Ukrainian forces for defensive purposes. This raises an important question: In the case of an unintended error by the allied forces of a neighbouring country, should the resulting injury be classified as the result of “war” or “acts of war” under the general conditions of insurance? In other words, could the insurer refuse to pay compensation, relying on the war exclusion, even though Poland is not a party to the conflict?

It is hard to answer these and other questions at present merely by analysing the general conditions of insurance. Thus it seems that the Polish Financial Supervision Authority and the Financial Ombudsman are right to call on insurance companies to review and clarify the war exclusions they use.

### Principles of interpreting insurance contracts

In the context of exclusions for war and terrorism, we should also mention that under Art. 15(5) of the Insurance and Reinsurance Act, “Ambiguously worded provisions of an insurance contract, the general conditions of insurance, and other contractual templates shall be interpreted in favour of the person taking out the insurance, the insured, or the beneficiary of the insurance contract.” This means that if ambiguities in an insurance contract or general conditions

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of insurance cannot be eliminated entirely by way of interpretation, then the meaning favourable to the insured should be adopted.

According to the courts, insurance contracts and general conditions of insurance should be interpreted in line with the overriding aim of this type of legal relationship, which is to provide insurance protection. As the Supreme Court of Poland held in the judgment of 10 January 2014 (case no. I CSK 155/13), “The interpretation of an insurance contract must reflect the rule of the insurance company’s liability while restricting the meaning of conditions excluding that liability.” This means that the courts should interpret policies and general conditions in a manner that furthers rather than limits insurance protection.

In summary, if insurers do not phrase their terrorism and war exclusions precisely, the courts will be entitled to interpret them in favour of the insured, consistent with Art. 15(5) of the act and the general protective purpose of an insurance contract.

We can only hope that there will not be any occasion to observe the development of this line of decisions in practice.

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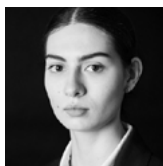


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