



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

The Director-General

Brussels,  
HOME/C1/MG

**Request for clarification on the enforcement of return decisions issued to illegally staying third-country nationals**

Your Excellency,

The effective return of third-country nationals staying illegally in the European Union is an essential component of a comprehensive and sustainable migration policy. It is also key for reducing irregular migration.

The European Agenda on Migration<sup>1</sup>, adopted by the Commission on 13 May 2015, highlights that one of the incentives for irregular migration is the knowledge that the EU scheme to return irregular migrants is not sufficiently effective. The Agenda on Migration also stresses the need to ensure the full application of the EU Return Directive<sup>2</sup>, to enable a swift return of irregular migrants to their countries of origin, in full respect of the procedures and standards for a humane and dignified treatment of returnees.

Following the invitation by the European Council "*to set up a dedicated European Return Programme*"<sup>3</sup>, the Commission adopted on 9 September 2015 an EU Action Plan on return<sup>4</sup> reiterating the need to systematically and thoroughly apply the EU rules on return in view of increasing the effectiveness of the process, while ensuring the full respect of fundamental rights. To this end, the Commission expressed its commitment to use all available means to support the effective enforcement of these rules.

According to Article 8(1) of the Directive, Member States shall take all necessary measures to enforce return decisions and to return the persons concerned in an effective

<sup>1</sup> COM(2015) 240 final.

<sup>2</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

<sup>3</sup> Conclusions of the European Council of 25-26 June 2015.

<sup>4</sup> COM(2015) 453 final.

*H.E. Martin POVEJSIL*  
*Ambassador Extraordinary and Plenipotentiary*  
*Permanent Representation of the Czech Republic to the European Union,*  
*Rue Caroly 15*  
*1050 Bruxelles*

and proportionate manner. This provision, as clarified by the European Court of Justice in case C-329/11 (*Achughbabian*), "[...] gives rise to the obligation imposed by that article on the Member State concerned to take all measures necessary to carry out removal, namely [...] the physical transportation of the person concerned out of the said Member State."

Full compliance with this obligation by all Member States is the cornerstone of a successful return policy.

In its Action Plan on Return the Commission expressly highlighted in this context that:

- To meet their obligation to enforce return, Member States should use detention, as a legitimate measure of last resort, where it is necessary to avoid that the irregular migrants abscond and to prevent them from moving on to other Member States (secondary movements). As long as there is a reasonable likelihood of removal, prospects for such removal should not be undermined by a premature ending of detention.

- The maximum detention period foreseen by national law should enable Member States' authorities to take the steps that are necessary for the identification of an irregular migrant and the delivery of travel documents by the country of origin.

- Member States' legal and administrative frameworks also play a key role in creating the enabling conditions for an effective return policy. They should ensure brisk action, starting with the identification of illegally staying third-country nationals, the issuing and enforcement of return decisions, and swift legal procedures. (For example, several Member States grant automatic suspensive effect without distinction and in all cases where legal recourse against a return decision is sought. Such practices can cause delay in return procedures. Automatic suspensive effect should only be granted in cases where the principle of non-refoulement is at stake.) For this, Member States must show sufficient resolve and devote adequate resources including funding, staff and detention capacity, to ensure the physical availability of an irregular migrant for return, including through detention if necessary.

In this light, the statistics on return provided to Eurostat<sup>5</sup> by Czech authorities raise an issue that I would like to address.

Figures show a significant difference between the number of return decisions issued to irregularly staying third-country nationals and the number of irregular migrants effectively returned. For instance, in 2014 only 320 out of the 4 430 return decisions issued to irregularly staying migrants (i.e. 13.01%) appear to have been enforced; this seems to have been a recurrent situation in the Czech Republic over the period 2008-2014.

The Commission is aware of the existing obstacles to successfully enforce return decisions, namely the lack of cooperation from irregular migrants and the practical problems in the identification of returnees and in obtaining the necessary documents from non-EU authorities. However, it does not seem that such obstacles can explain

---

<sup>5</sup> Eurostat, data on asylum and managed migration, available at: <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>.

alone the situation described above, given that other Member States facing the same obstacles achieve a significantly higher return ratio<sup>6</sup>.

**Table: Eurostat data on enforcement of immigration legislation**

<b>CZECH REPUBLIC</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<i>TCN ordered to leave</i>	3 770	3 805	2 915	2 520	2 375	2 405	2 460
<i>TCN returned</i>	585	850	920	530	430	330	320
<i>Return ratio</i>	15.52%	22.34%	31.56%	20.03%	18.11%	13.72%	13.01%

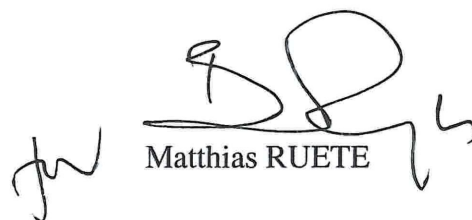
In view of these figures and of the provisions of Article 8(1) of the Return Directive, and referring to the principle of sincere cooperation enshrined in Article 4(3) of the Treaty on the European Union, I would kindly ask the Czech authorities for clarification on:

(A) the reasons for the significant difference between the number of return decisions issued and of the returns carried out; and

(B) the measures taken by the Czech Republic to overcome the challenges related to the practical enforcement of return decisions.

I would kindly ask you to provide these clarifications within one month from receipt of this letter.

Yours sincerely,



Matthias RUETE

---

<sup>6</sup> Relation between third-country nationals returned following an order to leave and third-country nationals ordered to leave.