Visas: nationals of a Member State, reciprocity mechanism to be used by a third country on the list in Annex II

2004/0141(CNS) - 07/07/2004 - Legislative proposal

PURPOSE : to amend Regulation 539/2001/EC regarding the reciprocity mechanism in visa arrangements.

PROPOSED ACT : Council Regulation.

CONTENT : Article 1(4) of Regulation 539/2001/EC contains a reciprocity mechanism to be used for the establishment by a third country on the list in Annex II to the Regulation (positive list) of a visa requirement for nationals of a Member State. The mechanism provides, on the request of the "victim" Member State, for a joint response consisting of a series of successive stages. This mechanism has proved unsuitable for dealing with certain situations of non-reciprocity.

Three years after the entry into force of the Regulation, the reciprocity mechanism has never been applied. The Commission examines the reasons for this in the proposal and concludes that the mechanism is too rigid. Because it is virtually automatic, the second stage (provisional introduction by all Member States of a visa requirement for the third country in question) discourages Member States from invoking the mechanism lest they help to cause a major crisis either in external relations with the third country concerned or internally. The mechanism's second stage can be blocked only by a Council decision taken by a qualified majority. In the scheme of the reciprocity mechanism, the taking of such a decision can only be regarded as a refusal by the Member States to act in solidarity with the Member State concerned.

The proposal, basically, seeks to introduce an operational mechanism that is more flexible and more realistic, and hence likely to be used. The current mechanism, since it fails to recognise the political dimension of reciprocity, has been too maximalist and too fraught with political risk to play a useful role. It blindly emphasises reprisal, completely ignoring the diplomatic approach, even though none of the criteria for determining the positive and negative lists has absolute value; those lists are determined "by a considered, case-by-case assessment of a variety of criteria relating inter alia to illegal immigration, public policy and security, and to the European Union's external relations with third countries, consideration also being given to the implications of regional coherence and reciprocity".

To ensure that the third country in question again applies visa-free travel to nationals of the Member States concerned, a mechanism is proposed which will combine measures at variable levels and intensities that can be rapidly carried out. The Commission will take steps with the third country without delay, report to the Council and will be able at any moment to propose that the Council adopt a provisional decision restoring the visa requirement for nationals of the third country in question. Resorting to such a provisional decision will not make it impossible to transfer the third country in question to Annex I of Regulation 539/2001/EC. A decision by a third country to introduce or reintroduce visa-free travel for nationals of one or more Member States will automatically terminate the provisional restoration of a visa requirement decided by the Council.