



SECURE BORDERS: THE EUROPEAN EXPERIENCE

A Roundtable with Jonathan Faull

**Director General Justice and Home Affairs, European Commission
chaired by Mark R. Shulman, EWI's Director of Worldwide Security**

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EWI's New York Center

The EastWest Institute hosted a roundtable discussion with **Jonathan Faull**, Director-General, Justice and Home Affairs (JHA) of the European Commission. Mr. Faull discussed various important, innovative and effective initiatives that JHA is pursuing to cultivate security while promoting freedom and justice throughout Europe and its new neighborhood. He also discussed impending changes to the US visa regime and their potential impact on transatlantic trade, educational and cultural exchanges, tourism and relations generally. Other participants included leading experts and scholars from the media, universities, think tanks, and human rights organizations.

Justice and Home Affairs' mandate is to ensure that the whole European Union is an area of freedom, security and justice. The Directorate-General for JHA is one of the European Commission's 36 departments. The role of the European Commission (EC) is to make proposals for European Union legislation. It also monitors how this legislation is implemented. In the area of justice and home affairs - a new area of European Union competence -- the EC shares its right to make legislative proposals with the member states.

The year **2004** presents a unique set of challenges and opportunities for the European Union: ten new member states are to be admitted in May; the entire European Parliament is up for election in June; a new EU Commission will be seated in November; and negotiations continue on a Constitutional Treaty and also to reunify Cyprus.

Initially Mr. Faull focused on **asylum** issues facing the EC and in particular, on two draft directives, one on procedures and the other on qualifications. Adoption of these directives prior to the May 1 expansion of the European Union is important because the issues will only become more complicated with the accession of ten new member states. Because of the diverse history and constitutional structures of the current member states, agreement on who qualifies for asylum remains an unresolved issue. Likewise, the states' differing legal rulings complicates the task of drafting an EC directive on appropriate procedures, particularly as for the appeals process. Mr. Faull is confident that any directive, even one that is somewhat weak, will mark an important step in the path toward a unified and humane common policy.

Mr. Faull also discussed frankly the tension between the need to secure international borders and traffic while protecting individuals' right to **privacy**. Today's information technology enables states to collect vast amounts of personal information raising issues about how it will be used, how long it will be retained, and with whom it will be shared. New US initiatives such as US Visit and PNR (Passenger Name Recognition) require travelers' personal information to be entered into databases for the purpose of assessing the risk of allowing them to enter the United States. These requirements run up against European legal restraints and cultural norms seeking to insulate personal information for fear that it will be used for oppressive purposes. In fact, agreement between the EC and US may even be subject to challenge in the European Court of Human Rights. Another US initiative, the Computer Assisted Passenger Pre-Screening System (CAPPS II), will likely face similar obstacles.

In the area of **immigration** into Europe, JHA has achieved progress in harmonizing policies for dealing with illegal immigration but less when it comes to legal migration. Because demographic trends predict a dramatic drop in the ratio of workers to retirees over the coming decades, Europe will increasingly rely on immigrants to drive economic growth. While the member states have ceded authority to the EC to harmonize policies on illegal immigration, they have not ceded the analogous authority to negotiate with countries of origin or transit on legal migration. This means that the EC wields only sticks and not carrots in its negotiations with these states.

Visa Waiver Countries, predominantly the wealthier countries of Europe, face a new US imposed deadline of October 26, 2004 for implementation of the requirement to have **machine-readable passports** containing biometrics. Should Congress fail to extend the deadline, these countries will not meet it, necessitating travelers from these countries to acquire visas prior to entering the United States. Long lines for visas and the ensuing frustration will inevitably have some impact on the number of legitimate visitors to the US with implications for trade, tourism, investment, and educational and cultural exchanges.

Mr. Faull expressed the importance of the United States Government **communicating** with the EC in advance of announcing new homeland security initiatives that cross borders, so that the proper groundwork can be established before the news enters the public domain. For instance, JHA first learned of the initiative to arm sky marshals aboard certain European flights through a radio news report that the British pilots union objected to such a measure.

Mr. Faull also addressed Europe's relationship with its **new neighbors** following the May expansion. He and many others are dedicating a great deal of intellectual and financial resources toward shaping friendly but effective borders with Russia, the Western Commonwealth of Independent States, North Africa and the Middle East.

Jonathan Faull has previously served as the EC's Chief Spokesman and Director General of Press and Communications (1999-2003) and as a senior officer of the Directorate of Competition (1992-1999). He speaks six languages and has written widely on EU law and policy. He studied at the Universities of Sussex (BA Law) and Geneva and the College of Europe, Bruges (MA Law / European Studies).

For additional information on this or related events, please contact:

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List of Participants:

- **George Biddle**, Senior Vice President, International Rescue Committee
- **Bobby Block**, Correspondent, *Wall Street Journal*
- **Robert Carey**, Vice President, Resettlement, International Rescue Committee
- **Jenny Falcon**, Reporter, Voice of America
- **Jonathan Faull**, Director General, Justice and Home Affairs, European Commission
- **Maryellen Fullerton**, Professor, Brooklyn Law School
- **Steven Hawkins**, Senior Program Manager, JEHT Foundation
- **Jonna Jeurlink**, Adviser of the Delegation of the European Commission to the United Nations
- **Francesco Mancini**, Program Associate, Worldwide Security Initiative, EastWest Institute
- **Christopher Matthews**, Press and Public Affairs, EU Delegation to United Nations
- **Deborah Pearlstein**, Director, U.S. Law and Security Program, Human Rights First (f.k.a. Lawyers' Committee for Human Rights)
- **Archana Pyati**, Equal Justice Works Fellow, Asylum Program, Human Rights First
- **Mark R. Shulman**, Director, Worldwide Security Initiative, EastWest Institute
- **Christopher Walker**, Director of Studies, Freedom House
- **Tova Andrea Wang**, Senior Program Officer and Democracy Fellow, The Century Foundation