



United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

May 10, 2004

Mr. Heinz Hilbrecht
Director, Land Transport
European Commission
Rue de la Loi/Wetstraat 2000
B-1049 Brussels
Belgium

Dear Heinz:

I am pleased that our delegations were able to reach an referendum agreement on the text of the Agreement on the Promotion, Provision and Use of Galileo and GPS Satellite Navigation Systems and Related Applications. We are proceeding here with the internal approvals necessary to authorize conclusion of the agreement.

On behalf of the United States Government, I want to confirm several points made by the U.S. delegation during the discussion of a "mixed agreement" structure for the text. Although the U.S. Government is able to accept in this case use of a mixed format as proposed by the European Commission, we are able to do so only in light of the specific circumstances of this agreement. Thus, we do not view the provisions contained in this text as a precedent for future agreements between the United States and the European Community. The use of a mixed format in future agreements will have to be subject to case-by-case review.

In addition, as we have stated several times during the course of the negotiations, the United States views this as a multilateral agreement. The State Department will report it to Congress as such and will also list it as a multilateral treaty in official publications. In our view, the EC Member States, all of which will sign and ratify the agreement, have consented to be bound and thus, following the agreement's entry into force, will be individually responsible under international law to the United States for obligations within their competence.

Sincerely,

Ralph Braibanti
Head of Delegation for
GPS-Galileo Negotiations



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY AND TRANSPORT

DIRECTORATE E - Inland Transport
The Director

Brussels, 29 June 2004
TREN E/MH/sy D(2004) 11096

Mr. Ralph Braibanti
Head of Delegation for
GPS-Galileo Negotiations
United States Department of State
Bureau of Oceans and International
Environmental and Scientific
Affairs
Washington D.C. 20520

Dear Ralph,

Thank you for your letter of 10 May.

I am also very pleased that we reached agreement on the text of the Agreement on the Promotion, Provision and Use of Galileo and GPS Satellite Navigation Systems and Related Applications. It is a proper recognition for hard work on both sides that the Agreement was signed at the EU/US Summit on 26 June.

On behalf of the European Commission I note your statement that the US was able to agree to a "mixed agreement structure" of the agreement in the light of the specific circumstances and that the US does not regard this as a precedent for the future.

I would only point out that the "mixed format" for agreements concluded by the Community and the Member States is a simple necessity in cases where the Community powers in the field of external relations do not fully correspond to the projected scope of the desired agreement. In such a situation it is unlikely that there is really a choice that can be made: the Community and the Member States must pool their respective foreign relations powers in order to cover the subject matter of the agreement. Other treaty partners have always accepted the need for, and practicality of, this approach.

I also note your position that the United States views this as a multilateral agreement. What the US authorities need to report to Congress and how they list the Galileo/GPS agreement in internal publications is certainly important under US law, but in the view of the Commission of no consequence to the true nature of the agreement under international law. Under international law the agreement is "between the United States of the one part" and "[the Member States] and the European Community of the other part", as the heading of the agreement states.

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Finally I take note of your statement that "the EC Member States ... will be individually responsible under international law to the United States for obligations within their competence. This assertion can only be valid without prejudice to the provisions of Articles 18 and 19 of the agreement, and in particular it neglects Article 19(2) that provides for a procedure for determining who will be charged with responsibility for breach of different provisions of the agreement and to the *bona fide* application of which the Commission attaches great importance.

Yours Sincerely

A handwritten signature in dark ink, appearing to read 'H. Hilbrecht', with a stylized, flowing script.

Heinz Hilbrecht
Head of Delegation for the
Galileo/GPS Negotiations



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Washington, D.C. 20520

July 26, 2004

Mr. Heinz Hilbrecht
Director, Land Transport
European Commission
Rue de la Loi/Wetstraat 2000
B-1049 Brussels
Belgium

Dear Heinz:

Thank you for your letter dated June 29, 2004, which was faxed by the European Commission delegation on July 16.

We share your satisfaction that the Secretary of State and his counterparts were able to sign the Agreement on the Promotion, Provision and Use of Galileo and GPS Satellite Navigation Systems and Related Applications on June 26 at Dromoland Castle. It is an important achievement.

We read with interest the comments in your letter concerning the "mixity" issue. Those comments do not, however, alter our views as set forth in my letter to you of May 10. In particular, I note that our views on the status of the Agreement as a multilateral instrument are based on international legal principles and not U.S. domestic law. In addition, our views on liability and responsibility of individual Member States, also based on international law and principles of treaty interpretation, take into account all provisions of the Agreement including Articles 18 and 19.

While this question will no doubt require discussion in the context of future negotiations of mixed agreements, I do not believe that it is necessary to address further the mixity issue in the context of this Agreement.

Sincerely,

Ralph Braibanti
Head of U.S. Delegation
for GPS-Galileo Negotiations