



Council of the
European Union

165592/EU XXVII. GP
Eingelangt am 06/12/23

Brussels, 6 December 2023
(OR. en)

Interinstitutional File:
SEC(2004)1070

12104/04
DCL 1

TRANS 277
MAR 152
AVIATION 160
RECH 162

DECLASSIFICATION¹

of document:	ST 12104/04 RESTREINT UE/EU RESTRICTED
dated:	6 September 2004
new status:	Public

Subject:	Recommendation from the Commission to the Council in order to authorise the Commission to open negotiations for establishing a cooperation agreement with Ukraine on the development of a Civil Global Navigation Satellite System
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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

¹ Document declassified by the European Commission on 3 September 2023.

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COUNCIL OF
THE EUROPEAN UNION

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RESTREINT UE

TRANS 277
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COVER NOTE

from:	Secretary-General of the European Commission, signed by Ms Patricia BUGNOT, Director
date of receipt:	2 September 2004
to:	Mr Javier SOLANA, Secretary-General/High Representative
Subject:	Recommendation from the Commission to the Council in order to authorise the Commission to open negotiations for establishing a cooperation agreement with Ukraine on the development of a Civil Global Navigation Satellite System

Delegations will find attached the Commission document SEC (2004) 1070 final, submitted by a letter of Mrs P. BUGNOT, Director to Mr Javier SOLANA, Secretary-General/High Representative.

Encl.: SEC (2004) 1070 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.9.2004
SEC(2004) 1070 final

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RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

in order to authorise the Commission to open negotiations for establishing a cooperation agreement with Ukraine on the development of a Civil Global Navigation Satellite System

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A. EXPLANATORY MEMORANDUM

1. INTRODUCTION

In January 1998, the Commission presented a Communication entitled 'Towards a Trans-European Positioning and Navigation Network, including A European Strategy for Global Navigation Satellite Systems (GNSS)¹.' This set out a strategy for developing an integrated network of navigation aids, making best use of satellite navigation to achieve an optimal service for the whole of Europe, including the northernmost latitudes, at an acceptable price.

On 10 February 1999, the Commission adopted a Communication entitled 'GALILEO – involving Europe in a new generation of Satellite Navigation Services².' This sets out a strategy for developing GALILEO, a global European component of GNSS-2 in four phases; definition, development and validation, deployment and operational phase. GALILEO will be independent but fully interoperable with the US GPS system and open to cooperation with other third countries.

On 17 July 1999, the Council adopted a Resolution welcoming the Commission Communication and inviting the Commission to explore possibilities for cooperation

On 5 April 2001, the Council adopted a Resolution³ in which it encourages the continuation, under its political control, of the contacts with non-member States that are interested in contributing to the development of GALILEO. Furthermore it called for active preparations to be made for WRC-2003 in order to consolidate the achievements of WRC 2000 by establishing the appropriate common approach for the GALILEO spectrum.

In line with the resolutions of the Council⁴ the Commission has maintained contacts with third countries and detected the interest of Ukraine to participate in GALILEO.

In this context and following the Ukraine-EU joint statement on cooperation on satellite navigation adopted in October 2003 and after several meetings with representatives of the Ukraine, the country has officially expressed the wish to pursue negotiations leading to a final agreement on GALILEO.

2. SATELLITE NAVIGATION IN UKRAINE

Ukraine is one of the eight countries within the world space community demonstrating significant technological background on space programmes and important achievements on GNSS applications, equipment, user segment and regional technology.

The Ukrainian space industry appears among the world's leader in the design and production of launchers (Zenit, Cyclon, Dnepr, Mayak, Svitiaz) and critical GNSS components. Their

¹ COM (98) 29 final of 21 January 1998

² COM (1999) 54 final of 10 February 1999

³ Council Resolution on GALILEO, OJ C 157, 30 May 2001

⁴ Council Resolution 1999/C 221, 19 July 1999 and Council Resolution on GALILEO 7918, 11 April 2001

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space programmes are diversified including development, integration, testing, operation of satellites and satellite launchers.

Due to limitations in technology transfer in the space field, Ukraine has developed its space systems (concepts, software and hardware) in such a way that enables it to be independent, without the need to import "restricted" items.

Ukrainian companies are active on applications and service development sector. GNSS technology is used in a variety of civilian applications such as: transportation, environment, agriculture, engineering, personal outdoor recreation and safety of life systems.

In parallel to their space programmes, the Ukraine has expressed their interest in cooperation with the European Union in the development of GALILEO.

3. EXPLORATORY CONTACTS BETWEEN UKRAINE AND EU

The EU concluded in 1998 a Partnership and Cooperation Agreement with the Ukraine. Since this time the Ukraine is actively moving towards the participation in the European GNSS projects and has developed an own contribution to the EGNOS System Test Bed (ESTB).

On the summit on 7 October 2003 in Yalta the Ukraine - EU Joint Statement on Cooperation in Satellite Navigation was adopted.

The commission services followed the invitation of the Ukrainian Government and presented on 21 June 2004 the GALILEO programme to the Ukrainian Government and industries. The presentations were followed by exploratory talks on the status and objectives of the respective policies on satellite navigation and on possible forms of cooperation. They confirmed the value of the Ukraine for the GALILEO programme (see point 5). The broad scope of an EU-Ukraine cooperation agreement was discussed with a view to recommend it to the respective political authorities.

In the letter of 2 July 2004 the Ukraine asked to start negotiations on a co-operation agreement on EGNOS/GALILEO.

4. COHERENCE WITH OTHER COMMUNITY POLICIES

The promotion of navigation and positioning network in Europe is a central part of the Community's policy to ensure the full integration of land, sea and air transport infrastructure for safe, seamless, economic and environmentally friendly navigation. The following legislation and Communications are relevant to the development of the network:

- Council Resolution (94/C/379/02) of 19 December 1994 on the European contribution to the development of a global navigation satellite system (GNSS);
- Communication from the Commission on a European approach to satellite navigation services (COM (94) 248 final);
- Community Guidelines for the development of the Trans-European Transport Network (1692/96/EC of 9 September 1996);

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- Council Decision of 18 June 1998 on the Agreement between the Community, the European Space Agency and EUROCONTROL on the European contribution to a Global Navigation Satellite System;
- Communication from the Commission to the Council and the European Parliament: ‘Towards a Trans-European Positioning and Navigation Network, including A European Strategy for Global Navigation Satellite Systems (GNSS),’ (COM (1998) 29 final), the Transport Council conclusions of 17 March 1998 and the Resolution of the European Parliament, based on the Langenhagen Report, dated 13 January 1999 (A 4-0413/98);
- Communication from the Commission to the Council and the European Parliament: ‘GALILEO – involving Europe in a New Generation of Satellite Navigation Services,’ (COM (1999) 54 final of 10 February 1999) and the Council Resolution of 17 June 1999¹;
- Communication of the Commission to the European Parliament and the Council on GALILEO, (COM(2000) 750 final) and the Council Resolution of 5 April 2001;
- Communication from the Commission to the European Parliament and Council “State of Progress of the GALILEO programme” COM (2002) 518 Final of 24 September 2002;
- Council Regulation 876/2002/EC of 21 May 2002 setting up the Galileo Joint Undertaking;
- Council Regulation (EC) No 1321/2004² of 12 July 2004 on the establishment of structures for the management of the European satellite radio-navigation programmes.
- Council Regulation (EC) No. 1334/2000³ setting up a Community Regime for the control of exports of dual use items and technology adopted 22 June 2000 and last amended by Regulation 2432/2001 of 20 November 2001 and Regulation 880/2002 of 27 May 2002.
- White Paper – An action plan for implementing the European Space Policy, COM (2003) 673
- Communication from the Commission to the Council and the European Parliament on Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours COM(2003) 104 final, 11.3.2003

5. PROPOSED SCENARIO FOR CO-OPERATION WITH UKRAINE

The scenario of cooperation identified in preliminary talks with Ukraine would include multilateral and industrial cooperation, research and scientific activities especially on standardisation issues, regional integrity monitoring and financial investment in GALILEO.

Multilateral cooperation: A main component should be multilateral cooperation to bring Ukraine’s support to GALILEO in the various international fora such as International Telecommunications Union, International Civil Aviation Organisation, International Maritime

¹ Council Resolution of 17 June 1999 on the Involvement of Europe in a New Generation of Satellite Services – GALILEO – Definition Phase.

² O.J. L246/1 on 20 July 2004

³ O.J. L159 on 30 June 2000

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Organisation and United Nations Office for Outer Space Affairs. As stated by the Ukraine, it is willing to support European position on standardisation and frequencies allocation aimed at promoting the market for GALILEO services.

Industrial cooperation: With regard to industrial cooperation, Ukraine has expressed interest to participate in both the development of the space infrastructure (call for tenders issued by the European Space Agency) and the 6th Research Framework Programme activities, particularly on standardisation, certification issues and development of various applications and value added services.

From the European Union perspective, fruitful cooperation with the Ukraine would entail the adoption of GALILEO services as a basis for civil applications in the Ukraine GNSS market. In fact, the Ukraine is very active on the applications and services development sector and ready to promote GALILEO by integrating this technology to their respective products.

Ukraine and European firms have industrial cooperation in the space sector since several years. There is therefore, a solid basis for extending the cooperation in this area of importance to both parties. The agreement should be harnessed to protect and support this interest and seek further cooperation between companies on both sides.

Science: The EU and Ukraine have agreed to promote cooperation in civil scientific research and technological development under the Partnership and Cooperation Agreement (PCA, art 58.), in force since 1998. A specific bilateral Agreement on science and technology cooperation entered into force in July 2004 and facilitates Ukrainian participation in the EU's 6th Framework Programme and beyond. The EU also provides financial support for scientific cooperation under the multilateral Science and Technology Centre in Ukraine (STCU) and through INTAS, the international association for the promotion of co-operation with scientists from C.I.S countries. A cooperation agreement with Ukraine on the development of a civil Global Navigation Satellite System in the context of the PCA should further promote and reinforce this cooperation on critical and well targeted scientific fields.

Regional integrity: The regional integrity component of this agreement is very important as the Ukraine has expressed the interest to install EGNOS and GALILEO ground systems in their territory and therefore become a regional technological support centre for the GALILEO ground equipment.

Management and financing: Collaboration in GALILEO should require an appropriate sharing of costs of the development, validation, deployment and operational phases of GALILEO. Furthermore, Ukraine's participation in the development phase of GALILEO will need to take into account the GALILEO Joint Undertaking.

Particular attention needs also to be given to Ukraine's commitments to the protection of intellectual property and support for multilateral non-proliferation efforts. The cooperation will need also to abide by the relevant export controls such as the Council Regulation (EC) No. 1334/2000 as modified by Regulations (EC) 2432/2001 and 880/2002¹.

¹ O.J. L159 on 30 June 2000, O.J. L338 on 20 December 2001 and OJ L139 of 29 May 2002

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6. PROPOSED SCHEDULE FOR NEGOTIATIONS

Following the Ukraine-EU joint statement on cooperation on satellite navigation adopted in October 2003 and after several meetings with representatives of the Ukraine, the country has officially expressed the wish to pursue negotiations leading to a final agreement on GALILEO.

Upon endorsement of the negotiation directives, the official EU-Ukraine negotiations would be launched immediately with a view to concluding by end 2004 and to adoption by the Council of the Cooperation Agreement by early 2005.

7. COMPETENCE OF THE COMMUNITY

Community powers to undertake the present international commitment stem from the provision of Articles 133 and 170 of the Treaty establishing the European Community.

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B. RECOMMENDATION

In the light of the above,

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HEREBY RECOMMENDS:

- that the Council authorise the Commission to open negotiations on behalf of the European Community and its Member States with the Ukraine with a view to establishing an agreement concerning the development of a civil Global Navigation Satellite System (GNSS).
- that, since in accordance with the treaty, the Commission will conduct these negotiations on behalf of the European Community, the Council appoint a special committee to assist it in this task, and;
- that the Council issue the appended negotiation directives

Done at Brussels,

For the Commission

Member of the Commission

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ANNEX

NEGOTIATING DIRECTIVES

The Commission shall negotiate a co-operation agreement with the Ukraine on the development of a civil Global Navigation Satellite System (GNSS).

1. PURPOSE

This co-operation will include, as far as possible, the following elements relating to navigation, positioning and timing by satellite:

- scientific and technical co-operation;
- industrial co-operation, fully compliant with existing co-operation agreements and obligations including on non proliferation and export controls¹;
- international co-operation between operators of European GNSS systems and Ukrainian activities on GNSS;
- co-operation on the planning of future developments for a GNSS for civil use and for a co-ordinated approach towards the next generation of a GNSS for civil use.
- economic co-operation and financial participation to the GALILEO programme.

The final agreement shall not conflict with the Council Regulation 876/2002/EC of 21 May 2002 on the establishment of the GALILEO Joint Undertaking² and the Council Regulation (EC) No 1321/2004³ of 12 July 2004 on the establishment of structures for the management of the European satellite radio-navigation programmes and the institutional structure established by them.

The agreement shall exclude from the scope of co-operation technology and items in the following domains:

- (a) sensitive technologies and items under export control regulations applicable in the EU, ESA Member States, MTCR and Wassenaar Arrangement as well as cryptography and information security (INFOSEC);
- (b) the GALILEO System Security Architecture (space, ground & user segments);
- (c) the security control features of the global segments of the GALILEO System;
- (d) the Public Regulated Services in their definition, development, implementation, test and evaluation and operational (management and use) phases.

¹ OJ L 159 of 30 June 2000, OJ L 338 of 20 December 2001 and OJ L 139 of 29 May 2002, Wassenaar Arrangement and Missile Technology Control Regime (MTCR).

² OJ L 138 of 28 May 2002, p. 1.

³ O.J. L246/1 on 20 July 2004

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Classified information relating to GALILEO will only be exchanged with Ukrainian partners if an appropriate security agreement between the EU and Ukraine is concluded.

2. SCOPE

In the context of a possible Ukrainian co-operation in the development, deployment and operational phases of GALILEO, the Agreement will aim at providing primarily for:

- (1) co-operation in market development, the identification of and response to user requirements;
- (2) co-operation in international fora with the view to promote co-ordinated positions;
- (3) bilateral co-operation on frequency issues, without prejudice to EU procedures¹ or interoperability as regards frequency usage with other GNSS systems (i.e. GPS), with co-ordination of frequency planning to allow efficient and interference-free coexistence of European and possible future Ukrainian GNSS systems and access to existing and future radio-navigation frequencies relevant to satellite navigation;
- (4) collaboration in systems and service development where appropriate;
- (5) co-operation to define and adopt an adequate liability regime applicable to GNSS as a whole;
- (6) definition of a limited scope of possible technology transfers taking existing co-operation agreements and obligations into account, including a commitment to non-proliferation and export controls.
- (7) use of GALILEO signals for open, commercial and safety of life purposes;

In addition, the Agreement will also provide for, in particular:

- (8) bilateral co-operation on, and multilateral promotion of GALILEO interoperable ground and space-based systems, as a contribution to the deployment of a future international integrity monitoring network and its future evolution, with a view to setting-up a complementary network of regional systems for augmentation and monitoring of integrity;
- (9) co-operation to support the development of appropriate radio-navigation planning;
- (10) consultation with a view to co-ordinating policies on cost recovery;
- (11) conditions and modalities for industrial co-operation;
- (12) promotion of the development of and access to GALILEO applications in the Ukrainian market
- (13) intellectual property rights concerning GALILEO;

¹ EU spectrum policy based on the Council and European Parliament Decision 676/2002/EC ("Spectrum Decision") which sets out the co-ordination on radio spectrum matters at EU level, including the co-ordination with CEPT's responsibility for technical aspects, and the representation of EU interests within the International Telecommunication Union (ITU).

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(14) co-operation in the development and implementation of a standardisation policy and certification methodology ¹ for equipment and services relating to safety of life and other applications, including consideration of standards, verification and validation techniques and results, system management and maintenance, operational procedures and navigation performance;

(15) training and related exchange of scientists;

(16) possibilities for Ukrainian investment in GALILEO.

3. EVOLUTION

A simplified procedure permitting the technical adaptation of the Agreement in the light of changing circumstances will be included in the Agreement.

4. DISPUTE SETTLEMENT AND RENUNCIATION OF THE AGREEMENT

The Agreement shall also provide for dispute settlement and shall take full account of the dispute settlement mechanism under the PCA, as well as suitable provisions to allow the Parties, if necessary, to terminate the Agreement.

The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiations.

¹ Taking into account the RTTE directive 1999/5/EC on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.