



European Space Policy Institute

## USA seeking support for recovery and use of space resources

### 1. *The Executive Order and a broader rationale behind it*

On April 6, 2020, the U.S. White House issued an “Executive Order on Encouraging International Support for the Recovery and Use of Space Resources”. In line with provisions of the 2015 U.S. Commercial Space Launch Competitiveness Act granting American citizens and companies the right to engage in commercial recovery and use of space resources, the Executive Order tasks the Secretary of State, in consultation with other federal Departments, to encourage international support for the public and private recovery and use of resources in outer space, consistent with the official U.S. position.

The Executive Order explicitly rejects the 1979 Moon Agreement (which the USA never ratified), argues the USA does not view outer space as a global commons but also reaffirms U.S. commitment to the 1967 Outer Space Treaty. The main objective of the Executive Order is to ensure a conducive environment for space resources exploitation, including for business purposes, and simultaneously to seek international support of likeminded partners.

Various Space Policy Directives and Executive Orders adopted over the last few years, including the recent Executive Order, are as many steps of a consistent and persistent implementation of clear U.S. ambitions and plans for the space sector. The U.S. National Space Strategy is a good starting point to understand the rationale behind this Executive Order and the language used already in 2018 leaves little room for interpretation:

*“we will streamline regulatory frameworks [...] to better leverage and support U.S. commercial industry and we will pursue bilateral and multilateral engagements to enable human exploration”.*

Comparably to the posture adopted in other domains such as Space Traffic Management, the White House seeks global leadership through national initiatives expected to stimulate international discussions and establish the U.S. posture as a norm against which other countries would have to position themselves. It is also important to recall that this posture fits in the “America First” policy of the Trump administration. The U.S. National Space Strategy already made clear that international agreements should put the interests of American people, workers, and businesses first.

### 2. *No new U.S. stance on the 1979 Moon Agreement and “Outer Space as a Global Commons” argument*

Providing unambiguous and perhaps also a controversial argumentation, the recent Executive Order brings no novelty to the U.S. position on utilization of space resources and related international legal documents and principles. The United States have neither signed nor ratified the Moon Agreement, which enjoys the support of only 18 ratifications, compared to more than 100 state parties to the 1967 Outer Space Treaty. Furthermore, some would argue, the USA already adopted policies in contradiction with the provisions of the Moon Agreement (e.g. the concept of Common Heritage of Mankind, which the Moon Agreement introduced to space law), such as the 2015 Commercial Space Launch Competitiveness Act enabling commercial recovery and use of space resources for U.S. entities.

At the IISL Galloway Space Law Symposium in 2017, Dr. Scott Pace, Executive Secretary of the U.S. National Space Council, already declared that “outer space is not a ‘global commons,’ not the ‘common heritage of mankind,’ not ‘*res communis*,’ nor is it a public good” explaining that these concepts were not part of the Outer Space Treaty and recalling that the United States had consistently taken the position that these ideas do not describe the legal status of outer space. Indeed, the United States have repeatedly taken position against multilateral frameworks that may constrain U.S. activities or impede U.S. vested interests, not only in the outer space domain but in other fields of international law as well.

### **3. *In-situ resources utilization – a necessity for future endeavours lacking legal clarity and broad international convergence***

Mastering the recovery and use of space resources, in particular in-situ, will be essential for various activities related to future space exploration missions such as life support, power generation or even the production of propellant or replacement parts. The Hague International Space Resources Governance Working Group recently defined space resource as an extractable and/or recoverable abiotic *in-situ* resource in outer space. Beyond this effort, today there are no actual legal instruments with broader international support, that would explicitly set down the core legal terms of space resources utilisation.

With this Executive Order the White House put on the table the high-level principles that will shape the U.S. approach to the issue. This will unquestionably prompt international discussions. Russian officials quickly expressed disapproval of U.S. Executive Order. As of mid-April, statements of other major actors, particularly those partnering with U.S. on lunar exploration, have not yet been made.

The international dimension of U.S. lunar plans calls for reaching a consensus on the legal framework applicable to space resource exploitation, at least among the partners involved. A possible situation where partner agencies and companies would have different rights for recovery and use of resources would certainly lead to unwished-for tensions hampering the cooperative vision. Hence, international partners will need to converge on a common set of rules and principles governing the use and recovery of resources on the Moon and to fill in the gaps existing in the current international space legal regime.

Come what may, the Executive Order undoubtedly shapes the evolution of space economy and space law. It clarifies U.S. position on the legality of space resource extraction and underscores U.S. ambitions in this domain, in particular with regards to the development of commercial options. This will likely lead to growing business ventures as it provides a more fertile ground for commercial endeavours and some solid arguments for investment.

### **4. *What about Europe?***

European actors, particularly ESA, are vital contributors to U.S. lunar exploration plans embodied in the Artemis program and Lunar Gateway. ESA is also committed to other ambitious exploration plans, (ExoMars mission with Roscosmos, Mars Sample Return Mission with NASA, Solar Orbiter, Bepi-Colombo...) and continues to nurture its own Moon Village initiative. Two weeks after issuing the recent U.S. Executive Order, there is no European statement (ESA or EU) or official position by a major European spacefaring country publicly available. One possible reason for this might also be the postponement of UNCOPUOS sessions in April and June 2020, which would have had served as a diplomatic platform for exchange of views on this issue. On legal terms, since 2017 one European country – Luxembourg, has elaborated a comparable legal framework on the recovery and use of space resources to the U.S. one. More recently, few other European countries (Portugal, Poland, Czechia) as well as ESA have signed MoUs with Luxembourg to cooperate on space resources utilisation.

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Schwarzenbergplatz 6 • A-1030 Vienna • Austria

Tel: +43 1 718 11 18 -0 / Fax: -99

Email: [office@espi.or.at](mailto:office@espi.or.at)

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