

National legislation for the promotion of Open Access in EU countries

Memo to the LIBER Board

This memo presents the cases in Europe where there is national legislation that promotes, either by permit, or by obligation, Open Access and it could be regarded as an instrument for the introduction of the Secondary Publisher Right. This memo presents only national/public initiatives, while other -private- funders' policies are not within its scope.

European Commission

Recommendation on access to and preservation of scientific information

[\[Link\]](#)

- all scientific publications resulting from publicly-funded research are made available in open access as from 2020 at the latest,
- whatever the channel of publication (scientific journal, digital infrastructure, multimedia channels, or any new and experimental methods of scholarly communication), open access to publications resulting from publicly funded research be granted as soon as possible, preferably at the time of publication, and in any case no later than six months after the date of publication (no later than 12 months for social sciences and humanities)

Germany

Act on Copyright and Related Rights - (Urheberrechtsgesetz – UrhG), Section 38, par. 4

[\[Link\]](#)

The author of a scientific contribution which results from research activities at least half of which were financed by public funds and which was reprinted in a collection which is published periodically at least twice per year also has the right, if he has granted the publisher or editor an exclusive right of use, to make the contribution available to the public upon expiry of 12 months after first publication in the accepted manuscript version, unless this serves a commercial purpose. The source of the first publication must be cited. Any deviating agreement to the detriment of the author shall be ineffective.

Baden-Württemberg: Law on the Universities of Baden-Württemberg 44(6)

[\[Link\]](#)

(unofficial translation)

The universities shall oblige the members of their scientific staff by statute to exercise the right to non-commercial secondary publication after a period of one year after the first publication for scientific contributions that have arisen within the scope of the service duties and published in a periodically appearing at least twice a year collection. The articles of association regulate the cases in which the fulfilment of the duty under sentence 1 can exceptionally be waived. It may regulate that the secondary publication must be made on a repository in accordance with § 28 (3).

Belgium

Code of Economic Law, Art. XI.196 § 2/1 (voted by Belgian parliament 19 July 2018)

[\[Link\]](#)

In Article XI.196 of the same Code, inserted by the Act of 19 April 2014, a paragraph 2/1 is inserted, reading:

(unofficial translation)

§ 2/1. The author of a scientific article that is the result of at least half of the research funded by public funds retains, even if, in accordance with article XI.167, he has alienated his rights to a publisher of a journal or has an ordinary or exclusive license. the right to make the manuscript available free of charge in open access to the public after a period of twelve months for human and social sciences and six months for other sciences after the first issue, in a journal, provided the source the first edition is mentioned.

The publishing contract may provide for a shorter term than that stipulated in the first paragraph. The King can extend the term stipulated in the first paragraph. No waiver can be made from the right in the first paragraph. This right is mandatory and applies regardless of the law chosen by the parties as soon as a connecting factor is located in Belgium. The law also applies to works that have been established before the entry into force of this paragraph and that are not in the public domain at that time.

France

Article L533-4 of the Research Code

[\[Link\]](#)

(unofficial translation)

I. When a scientific writing resulting from a research activity financed at least half by endowments from the State, local authorities or public institutions, by grants from national funding agencies or by funding from the European Union is published in a periodical published at least once a year, its author has, even after granting exclusive rights to a publisher, the right to make available free in an open format, digitally, subject to agreement of potential co-authors, the final version of its manuscript accepted for publication, provided that the publisher makes the latter available for free by digital means or, failing that, on the expiry of a current from the date of the first publication. This period is a maximum of six months for publication in the fields of science, technology and medicine and twelve months for the publication of the humanities and social sciences.

The version made available pursuant to the first paragraph may not be exploited in the context of a publishing activity of a commercial nature.

II. When data from a research activity financed at least half by endowments of the State, local authorities, public institutions, grants from national funding agencies or funds from European Union are not protected by a specific right or regulation and have been made public by the researcher, the research establishment or body, their reuse is free.

III. The publisher of a scientific writing mentioned in I can not limit the re-use of research data made public as part of its publication.

IV. The provisions of this article are of public order and any clause contrary to them is deemed unwritten.

Italy

Law incorporating urgent provisions for the protection, enhancement and revitalization of cultural assets and activities and tourism. (Law of October 7, 2013, n. 112, G.U. n. 236, 8.10.2013) Art.4.2.
[\[Link\]](#)

(unofficial translation)

Publications that document the results of research financed for a sum equal to or greater than fifty percent with public funds, regardless of the format of the first publication and the modalities of its distribution or making available to the public, must be filed, not more than six months after publication, in institutional or industry electronic archives, prepared in such a way as to guarantee open, free and gratis access, from the place and at the moment chosen individually, the interoperability inside and outside the European Union and long-term preservation in electronic format. The subjects responsible for the provision or management of funding take the necessary measures to implement open access to the results of publicly funded research.

Netherlands

Dutch Copyright Act, Article 25 fa (Open Access)
[\[Link\]](#)

(unofficial translation)

The maker of a short scientific work, the research for which has been paid for in whole or in part by Dutch public funds, shall be entitled to make that work available to the public for no consideration following a reasonable period of time after the work was first published, provided that clear reference is made to the source of the first publication of the work.

Spain

Act 14/2011, 1 June 2011, on Science, Technology and Innovation (LCTI), article 37
[\[Link\]](#)

(unofficial translation)

Article 37. Dissemination in open access

1. The public agents of the Spanish System of Science, Technology and Innovation will promote the development of repositories, own or shared, with open access to publications of its research staff, and will establish systems that allow them to connect with similar initiatives national and international.
2. Research personnel whose research activity is financed mainly with funds of the General State Budgets will make public a digital version of the final version of the contents that have been accepted for publication in research publications serial or periodic, as soon as possible, but not later than twelve months after the official date of publication.
3. The electronic version will be made public in open access repositories recognized in the field of knowledge in which the research has been developed, or in institutional repositories of open access.
4. The public electronic version may be used by Public Administrations in their evaluation processes.
5. The Ministry of Science and Innovation will facilitate centralized access to repositories, and their connection to with similar national and international initiatives.
6. The foregoing is understood without prejudice to the agreements by virtue of which they may have been attribute or transfer rights to publications to third parties, and will not apply when rights over the results of the research, development and innovation activity are susceptible to protection.

Europe

Plan S. Includes UKRI (Not law, but national funders policy)

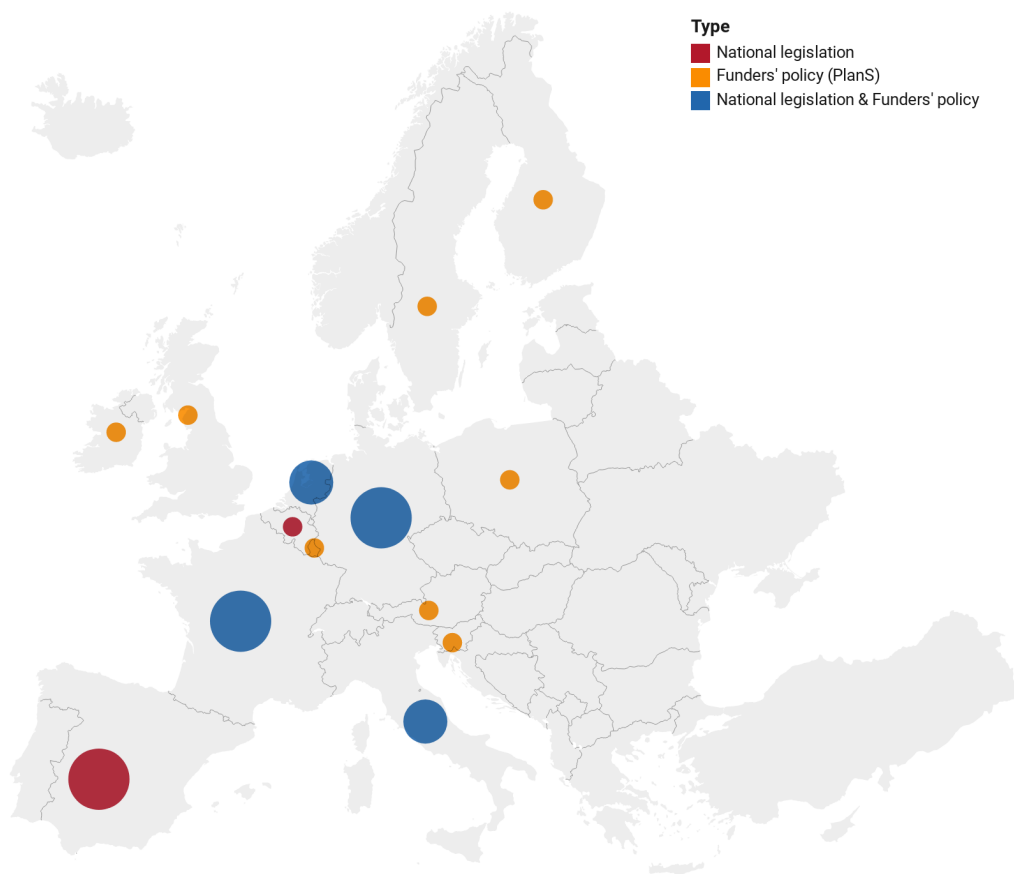
[\[Link\]](#)

All scholarly articles that result from research funded by members of cOAlitionS must be openly available immediately upon publication without any embargo period.

In the geographical visualization below one can see the scarcity of national legislation in promoting Open Access. Many of the North-Western countries have opted for a policy driven promotion of OA, whereas countries of the Central and South Europe have either only law driven or a mix of approaches, with several public research funding organisations supporting the immediate OA in the frame of PlanS. However one can easily see that the Eastern/South-Eastern countries are totally lacking of national legislation or funders' policies.

Open Access legislation

National legislation that promotes OA, together with national Funders' policy under PlanS.



Created with Datawrapper

In the image above, the size of the circle relates to the number of months when a publication can/has to be open by, while the colour relates to the type of legislation, national, national funders' policy under PlanS or both. The range of months is zero, six and 12. The EU Horizon2020 policy is not depicted in the visualization above.