15/01/2026

Key arguments European Research Area (ERA) Act - Public Consultation 13 October 2025 – 23 January 2026

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To the ERA Act Public Consultation Questionnaire: European Research Area Act

The article numbers below correspond with the relevant item in the ERA Act Questionnaire.

3.2.2 Challenges (relevant to the ERA Act)

· A lack of harmonisation in approaches to OA and OS between countries complicates collaboration between researchers and slows overall progress towards the clear political priority of advancing OS. In addition, existing EU legislation, such as the Directive on Copyright in the Digital Single Market and Open Data Directives need to far better understand the needs of the research industry and support and strengthen OS policy efforts. Uneven policy implementation and monitoring across Member States further exacerbate disparities, creating uncertainty for researchers and institutions engaged in cross-border collaboration.

· Progress in OS remains uneven across Europe, with significant disparities in policies and incentives between Member States, institutions, and disciplines. This fragmentation hinders the development of a unified and equitable European knowledge ecosystem.

· Current EU copyright law does not match the needs of the science and research sector. As well as the problems caused by variation between national approaches, EU law, by creating a discrimination between non-commercial and commercial approaches, contradicts the strong political and budgetary priority given to supporting collaboration between research and industry, and supporting start-ups, scale-ups and spin-outs. (point that can also be made in the section on knowledge valorisation). The complexity of the legal framework creates uncertainty for researchers regarding access, sharing and reuse of scientific outputs.

· Despite extensive uptake of OA and OS mandates by government, research funders, RPOs, libraries, and publishers and service providers, some economic, organisational and legal barriers to the uptake of OS need to be alleviated for a strong, unified and equitable European knowledge ecosystem; creating a more coherent and level playing field across Europe.

- Researchers remain under pressure too often to hand over their rights over publications and more recently even data, otherwise losing the possibility to publish their work immediately, or only under restrictive terms. Many commercial publisher costs are now unsustainable even for well-resourced disciplines or countries and remain highly inequitable for many, creating more inequities across Europe. These cost structures distort research participation, slow innovation and reinforce dependency on commercial systems that prioritise profit over public value.

- Research organisations are typically disadvantaged in their relations with publishers due to legal and financial capacity constraints, and do not enjoy protection against unfair contract terms, including obligations to maintain confidentiality over terms despite being paid with public funds. The current gap in EU law, which protects companies and consumers against unfair contract terms but excludes research institutions, must be addressed to ensure institutional autonomy and digital sovereignty. Restrictive contractual practices and technological protection measures can further prevent researchers and institutions from exercising lawful access and reuse rights.

- A number of areas of work around OS require stronger impetus in order to achieve progress across Europe, notably around OS Monitoring, the cross-border application of the FAIR principles, investment in vital regional, national and European infrastructure, and above all the modernisation of research assessment. Persistent reliance on journal-based indicators and proprietary metrics continues to shape research careers and institutional behaviour, undermining alignment with OS objectives.

- Additional challenges include:
  - Wider dysfunction in markets for digital content for research institutions
  - The control that commercial players have over research information, processes and results, and the lack of awareness of this among institutions
  - Inadequate funding for the open science transition, including support for institutional policy development and changes in practice across the field (notably to deliver on the Open Data Directive)
  - A need to promote multilingualism in the research field
  - A need to strengthen sovereignty over research data and infrastructure
  - A need to invest in citizen science and science communication
  - Insufficient availability of high-quality, interoperable metadata and trusted repositories, limiting discovery, reuse and effective monitoring of open science practices across Europe

3.2.2 Solutions (via the ERA Act)

- Introduce a mandatory EU-wide Secondary Publication Act. This should cover the widest possible range of content (filling in the gaps left by the Open Data Directive), include

a broad definition of public funding, and come with no embargo period, and open licensing terms that fully enable subsequent use. The right should be unwaivable and exercisable without additional charges for repository deposit or dissemination.

- Introduce a 'negative obligation' around rights retention, ensuring that any laws that stand in the way of retention of rights in works by researchers or institutions, or their subsequent open licensing, can be automatically overridden. A similar provision should override elements of laws and plans that oblige the use of proprietary data and services in the context of research assessment. This would help safeguard academic freedom and institutional autonomy in the digital research environment.

- Update the research exception in Article 5(3)(a) of the InfoSoc Directive in order to match the way that research is done today. This can be done by making the exception mandatory, clarifying that the exception applies to research (not illustration for research), and removing the provision which excludes research with a commercial aspect (such as knowledge transfer or research-industry collaborations). This should be clearly and effectively protected against override by contract terms or the use of technological protection measures, with simple means of circumventing or removing these in place. Clear and consistent implementation of text and data mining exceptions across Member States should be ensured to avoid additional legal uncertainty.

- The current gap in EU law, which protects companies and consumers against unfair contract terms, but not research institutions, should be corrected. There is a need for explicit legal safeguards to protect the independence of the research and education sector, redressing the balance of political or corporate influence on research processes and outputs. Provisions, for example, around access to data in the Data Act, or those of the Unfair Terms Directive, should be extended to research institutions. This should include transparency obligations for large-scale publishing and content access agreements concluded with public institutions.

- Without placing undue restrictions on the development of national open science strategies, countries should be required to have these in place and to update them periodically. Policies and strategies would address Open Science and Open Education where possible, follow the FAIR principles, and include targeting investment into infrastructure and sovereign solutions. Without prescribing how this happens, these strategies should include and align with plans for promoting rights retention, OS monitoring, and the modernisation of research assessment to include research methods, protocols, processes, software, and publication and research data outputs, and rewarding data management plans. Monitoring efforts should be aligned with common principles and supported by open, affordable and interoperable research information and persistent identifier infrastructures.

- Make clear, in the recitals, that open science represents a clear policy goal of the European Union, and that the need to promote it should be taken into account when passing other laws and policies.

See below for suggested summary points.

Suggested Summary Points

3.2.2 Challenges (relevant to the ERA Act)

- EU legislation on copyright and data does not adequately reflect the needs of the research sector, creating complexities and barriers.

- Inconsistent approaches to Open Access and Open Science complicate research collaboration and slow progress towards these goals. Monitoring, FAIR data practices and unreformed research assessment practices need particular attention.

- The policy goal of immediate access to publicly funded research is being undermined by publisher practices, including the demand to surrender rights.

- Research institutions do not benefit from protection against unfair terms in contracts with publishers and others, limiting access to content for researchers.

- Other broader concerns focus on dysfunction in digital content markets, commercial control over research information, insufficient funding for open science, including not for profit publishing, a need for more multilingualism, investment in sovereignty over research data, as well as citizen science, and not enough high-quality metadata and trusted repositories.

3.2.2 Solutions (via the ERA Act)

- A mandatory EU-wider Secondary Publication Right, with maximum scope, zero embargo, open licensing to facilitate subsequent use and no contract override or charging.

- An obligation to remove or prevent practices which stand in the way of rights retention, as well as efforts to modernise research assessment by moving away from the use of proprietary data and services.

- Update the research exception in Article 5(3)(a) of the InfoSoc Directive, making it flexible (principles-based), and meaningfully protecting it against override by contract or abuse of technological protection measures.

- Extend protection against unfair contract terms to research institutions.

- Without prescribing how, mandate that national open science strategies are created and updated, and address funding, rights retention, OS monitoring, and the modernisation of research assessment.

- Establish Open Science as a broader policy priority and promote it, and take it into account when passing other laws and policies.