

2. Action 2: Propose an EU copyright and data legislative and regulatory framework fit for research

1.1. Purpose of the Action and expected outcomes

This action aims to propose an EU copyright and data legislative and regulatory framework fit for research.

It should enable, among other:¹

- Access to (including open access) and reuse of publicly funded R&I results;
- Access to (including open access) and reuse of publications and data for research purposes;
- Data services and infrastructures managed for the benefit of research stakeholders; and
- Flow of research knowledge and data across the EU.

Barriers and challenges to achieve these objectives, however, currently exist. To address this situation, the expected outcomes of the ERA Action 2 are twofold:

(i) identify barriers and challenges to access and reuse of publicly funded R&I results and of publications and data for scientific purposes, and identify potential impacts on research, through an analysis of relevant provisions under EU copyright and data legislation and related regulatory frameworks, and of relevant institutional and national initiatives;

(ii) propose legislative and non-legislative measures to improve the current EU copyright and data legislative and regulatory frameworks. 14 Member States have committed to this action: Austria, Belgium, Czechia, Denmark, Estonia, France, Germany, Hungary, Italy, the Netherlands, Portugal, Slovakia, Slovenia, and Spain. Seven ERA Forum stakeholders have also committed to Action 2. These are: CESAR, EU Life, European University Association, Science Europe, SPARC Europe, The Guild, and YERUN.

1.2. Implementation of the Action

There are two key parts to Action 2: **copyright legislation** and **data legislation** (data access infrastructures). As foreseen, in 2021, four independent expert studies were commissioned by DG RTD and published in 2022 to examine the existing and possible upcoming barriers:

- Study on EU copyright and related rights and access to and reuse of scientific publications, including open access - Exceptions and limitations, rights retention strategies and the secondary publication rights;
- Study on EU copyright and related rights and access to and reuse of data;
- Study on the Open Data Directive, Data Governance and Data Act and their possible impact on research;
- Study on the Digital Services Act and Digital Markets Act and their possible impact on research.

¹ European Commission (2021), European Research Area Policy Agenda – Overview of actions for the period 2022-2024, p.5.

The study on EU **copyright and related rights and access to and reuse of data**,² as well as the study on EU copyright and related rights and access to and reuse of scientific publications, including open access³ examined the impact on access to data resources for scientific research and whether EU copyright legislation in place (e.g. Information Society Directive, Directive on Copyright in the Digital Single Market) fosters the reuse of scientific publications, as well as fundamental rights of both authors and researchers within this framework.

There are legal barriers encountered by researchers and institutions when obtaining access to scientific publications due to the copyright and licensing conditions in publishing agreements. Non-legislative and legislative solutions are discussed including: rights retention strategy; targeted harmonisation of copyright contract law; making mandatory the scientific research exception of Article 5(3) (a) ISD; introducing an EU-wide Secondary Publication Right (SPR); and a European harmonisation of authorship and first ownership of copyright, in general or in scientific publications.⁴ Some Member States have already introduced amendments into their national copyright legislation enacting an SPR for publicly-funded scientific publications.⁵

In terms of **data legislation**, two of the studies published in 2022 in turn examine the Open Data Directive, Data Governance Act, and Data Act,⁶ and the Digital Services Act and Digital Markets Act,⁷ and their impacts on research. This includes access to data, research data sharing and reuse, impact on research performing organisations, research funding organisations, and research infrastructures.

Key challenges highlighted involve the fact that researchers feel a strong sense of ownership towards their research data and value 'trust' in data sharing; researchers criticised the lack of clear and specific legal framework for opening datasets, especially where there are regional specific policies and regulations to consider. For example: having few common standards in terms of structures, formats, language, security is an obstacle to sharing data; researchers indicate they do not always know how and under what conditions they can share confidential data; and researchers say that they have difficulties choosing appropriate data licenses.⁸

As a continuation and accompaniment to these studies, there have been two workshops with ERA Forum representatives, experts, and other stakeholders. The first workshop, in June 2022, presented and discussed the results of the four expert studies. The second workshop, in February 2023, further identified barriers, challenges and potential measures to support an EU copyright and data legislative and regulatory framework fit for research. This was especially pertinent in light of the recent adoption of the Digital Markets Act and Digital Services Act, as well as the Open Data Directive, Data Governance Act and Data Act. The discussion highlighted that the differences in national rules regarding copyright and data legislation is making it difficult for the international research sector to access and share data in a secure and useful way.⁹

Two new studies have been launched in 2023. One regarding EU copyright legislation to: i) evaluate the concrete effects of the EU copyright framework on research, including evidence/data gathering (literature review, consultation, interviews etc.) on concrete impacts on researchers, research funding and performing organisations and on other affected stakeholders, including copyright right holders; ii) to further elaborate on areas in need of improvement; and iii) to evaluate the effects of potential interventions.

The other concerned EU data and digital legislation to: i) identify the relevant provisions for researchers, research organisations, research infrastructures and research services providers under specific EU data and digital legislation; and ii) assess and present how they can comply with the obligations and benefit from the rights they may have under these acts.

² European Commission (2022), Study on EU copyright and related rights and access to and reuse of data, available at: <https://op.europa.eu/en/publication-detail/-/publication/5c5153a4-1146-11ed-8fa0-01aa75ed71a1>

³ European Commission (2022), Study on EU copyright and related rights and access to and reuse of scientific publications, including open access – Exceptions and limitations, rights retention strategies and the secondary publication right, available at: <https://op.europa.eu/en/publication-detail/-/publication/884062d5-1145-11ed-8fa0-01aa75ed71a1>

⁴ Ibid.

⁵ European Commission (2021), European Research Area Policy Agenda – Overview of actions for the period 2022-2024, p.5.

⁶ European Commission (2022), Study on the Open Data Directive, Data Governance and Data Act and their possible impact on research, available at: <https://op.europa.eu/en/publication-detail/-/publication/a313139b-1147-11ed-8fa0-01aa75ed71a1>

⁷ Ibid.

⁸ Ibid., p. 11.

⁹ Science Europe (2023), An EU Copyright & Data Legislative Framework Fit for Research?, available at: <https://www.scienceeurope.org/news/an-eu-copyright-data-legislative-framework-fit-for-research/>

This further work will feed into the proposals for legislative and non-legislative measures in 2024, which is the main aim of Action 2. Action 2 also contributes to various existing EU policies. These include the EU's Open Science Policy, the EU's Action Plan on Intellectual Property, and the Commission Recommendation on access to and preservation of scientific information. The way in which Action 2 contributes to these policy initiatives is detailed below.

An important aspect affecting the implementation of Action 2 is the close relationship of the ERA to the **EU's Open Science policy**, which aims to foster a standard method of working under research and innovation programmes, improving the quality, efficiency, and responsiveness of research. Access and reuse of publications, data and other research results are at the core of Open Science and of the EU's Open Science policy. As such, Horizon Europe beneficiaries are required to ensure immediate open access to scientific publications and the management of research data according to the FAIR principles.

The work under ERA Action 2 is also linked to the **EU's Action Plan on Intellectual Property**. This was designed to help companies, in particular SMEs, to make the most of their inventions to ensure that these benefit our economy and society. The Plan aims to not only protect intellectual property, but also to boost the uptake of intellectual property by SMEs and facilitate the sharing of intellectual property to increase technological uptake in industry.

This further links to ERA Action 7 and the development of the **Code of Practice for the Smart Use of Intellectual Property** by the Commission's Community of Practice dedicated to identifying best practices that can effectively boost intellectual asset management.¹⁰

Further related to the management of intellectual property rights and promoting open access is the **2018 Commission Recommendation on access to and preservation of scientific information**.¹¹ This asks Member States to:

- Set and implement clear policies (as detailed in national action plans) for the dissemination of, and open access to, scientific publications resulting from publicly funded research;
- Ensure, in compliance with the EU acquis on copyright and related rights, that as a result of these policies or action plans, researchers, when entering into contractual agreements with scientific publishers, retain the necessary intellectual property rights, inter alia, to comply with the open access policy requirements. This concerns in particular self-archiving and re-use (notably through text and data mining);
- Ensure that research funding institutions responsible for managing public research funding and academic institutions receiving public funding implement the policies and national action plans at national level in a coordinated way by providing guidance to researchers on how to comply with open access policies, and supporting them to do so, especially regarding the management of their intellectual property rights to ensure open access to their publications.

¹⁰https://research-and-innovation.ec.europa.eu/research-area/industrial-research-and-innovation/eu-valorisation-policy/knowledge-valorisation-platform/code-practice-smart-use-intellectual-property_en#:~:text=Contact,.About%20the%20code%20of%20practice.an%20online%20community%20of%20practice.

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018H0790>