

## Open Access and current legislation – Good practices in Italy

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The products of the research, designed and published outside of the projects funded by the European Union must follow the directions provided by the Italian law on Open Access n° 112, 7 October 2013.

The law derived from the conversion of the decree DL. August 8, 2013 n. 91: *"urgent provisions for the protection, the enhancement and the recovery of property and cultural activities and tourism."*

The full text of the law is available at

<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2013;91>

The law is still considered a very partial application of the Recommendation of the EU. The standard is mandatory and constrained, although in compliance with the autonomy of the *"public entity responsible for the provision or the management of the funding of scientific research."* It addresses not only the borrowers but also the lenders (e.g. MIUR and its activity in funding the research activity of universities and institutions) that will still be able to adapt their obligations to their needs and specificities.

The term "article" is to be interpreted broadly. In practice, only books are kept out of the range of the law (particularly those having educational purposes).

The Italian legislator chooses to indicate two roads: "gold" and "green" for the "accomplishment" of the open access<sup>1</sup>. "The road systematically followed by universities and research institutions is currently the "green" one".

In detail, the regulation of the green way provides for the re-publishing of the article with non-profit purpose in institutional or disciplinary repositories.

The publications must be available free of charge at a place and in a time individually chosen within eighteen (18) months from the first publication in scientific, technical, and medical subject areas, and twenty-four (24) months in humanities and social sciences subject areas.

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<sup>1</sup>The two roads to Open Access:

- "Green Road": self-archiving of articles pre-prints of in Open Archives, in accordance with the copyright policies of the publishers. This means that authors can continue to publish in traditional journals, but they can "make free" their article by storing it in an open archive.
- "Gold Road": to publish in Open Access journals, peer-reviewed and accessible without subscription; the author retains the copyright on their work. Although recent, these journals have excellent indexes of Impact Factor. They have a different model of economic sustainability: 23% of the journals ask for the payment of the costs of publication. These expenses are covered by the research budget. Worldwide there are over 6,000 Open Access journals.

This means that the authors will not have to completely surrender their rights to the publishers; they should provide some amendments to the contracts, taking account of the embargo period required by the law.

The products of the research, designed and published within projects funded by the European Union must follow the directions provided by the Recommendations of the European Communities of 17 July 2012.

The Commission's objective is to maximize the impact of publicly funded scientific research, developing and implementing open access to the results of the research deriving from projects supported by the EU research framework, such as FP7 and Horizon2020.

For FP7 the Commission provided an Open Access pilot project, supported and monitored through the project OpenAIRE, which involves seven operating segments:

- Energy
- Environment
- Health
- Information and communication technologies (Cognitive systems, Interaction, Robotics)
- Research infrastructures (e-infrastructures)
- Science in society
- Socioeconomic sciences and humanities

In FP7 the costs of Open Access "gold" (ie immediate and open access to the publications, provided by the publisher in exchange of authors' payment) are eligible for reimbursement. Details for the refund request can be retrieved at

[ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-annex2-v3\\_en.pdf](ftp://ftp.cordis.europa.eu/pub/fp7/docs/fp7-ga-annex2-v3_en.pdf)

The European Community has continued to pursue the goal of open access also in the next HORIZON2020 (hereinafter H2020), with the desire to maximize the impact of scientific research funded by public funds. In practice, in H2020 Open Access becomes a default. Anyone funded in H2020 will have to deposit their works in open access.

Recommendations issued by the European Union provide that the published works are deposited in an online repository and made available in an open and free format within 6 months from the publication, in the scientific area, and 12 months in the socio-economic and humanities areas.

## **Concluding**

The maximum terms (18 and 24 months) dictated by the Italian law for the re-publication stand beyond the parameters set by the EU Recommendation (6 and 12months). A legislative amendment to the rule would be desirable, although these are maximum time limits. Given the programmatic nature of the rule, the addressees (including the MIUR) must apply the necessary measures and put shortest deadlines in order to align with EU Recommendations.

## Suggestions

It's advisable to submit the articles to OA journals, if appropriate in their field. For this purpose, it is advisable to consult the [Directory of Open Access Journals](#).

The author who publishes on a traditional journal must become aware of his/her own intellectual property rights and preserve them. Therefore, if the contract with the publisher has not been concluded yet, it is possible to ask for retaining the copyright.

In order to allow the reuse of the work, in the conclusion of the contract with the publisher, the author has to give only some rights needed for the publication.

To do this, it is sufficient to enter some Addenda using, for example, the forms produced and provided by the EU under the Seventh Framework Programme (annexed to this document: model of cover letter for amendment and addendum to publication agreements). They can be used to "amend" the publishing contract between authors and publishers. The letter is considered a preparatory document prior to the dispatch of the addendum that constitutes, therefore, the real "act" that integrates and improves the provisions of the contract between author and publisher.

If the author has a contract and has assigned the copyright to the publisher, the author needs the permission to publish in Open Access format on a specific journal. For editorial policies relating to copyright and self-archiving, its suggested consulting the database of the Project Sherpa <http://www.sherpa.ac.uk/romeo.php>.

If the author has already handed the copyright to the publisher and the publisher does not allow storing the postprint, the author can archive the institutional full-text by choosing an option of "restricted access" instead of "open access". In this way, the article will be made available on the Intranet and, if the publisher allows the publication in Open-Access after a period of "embargo", it'll be more rapid to transform the article access from "restricted" to "open".

**Annex 1 - Model of cover letter for amendment**

*(Publisher's contact details):*

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.....  
.....  
.....

*(Place and date):*

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Dear Sir/Madam,

I am contacting you concerning the following article to be published by your publishing house for which I am the corresponding author:

Title: \_\_\_\_\_

Corresponding Author: \_\_\_\_\_

Journal: \_\_\_\_\_

The research underlying this article [is being] [has been] co-funded by the 7<sup>th</sup> Framework Programme (FP7) (<http://cordis.europa.eu/fp7>) of the European Commission, and more specifically under one of the programmes covered by the Open Access Pilot in FP7 ([http://ec.europa.eu/research/science-society/open\\_access](http://ec.europa.eu/research/science-society/open_access)). Under this pilot, articles are to be deposited in an electronic repository upon publication and are to be made open access, either immediately if the article is published open access by the publisher, or after an embargo period of 6 or 12 months depending on the area of research. The wider goal of this pilot is to improve access to the results of publicly funded research.

In order to comply with the policy of the European Commission, I wish to opt for an addendum to the publication agreement. I am attaching this document for your consideration and signature.

I look forward to your reply, and thank you for your support and collaboration on this matter.

Sincerely yours,

*(Name and signature of corresponding author)*

Enclosures:

- Signed publication agreement
- Signed addendum to the publication agreement for signature by publisher

## **Annex 2 – Addendum**

### **Addendum to Publication Agreement**

1. This Addendum modifies and supplements the attached Publication Agreement concerning the following article:

Title: \_\_\_\_\_

Journal: \_\_\_\_\_

2. The parties to the Publication Agreement are:

Corresponding author: \_\_\_\_\_

Publisher: \_\_\_\_\_

3. The parties agree that wherever there is any conflict between this Addendum and the Publication Agreement, the provisions of this Addendum are paramount and the Publication Agreement shall be construed accordingly.

4. Notwithstanding any terms in the Publication Agreement to the contrary, the author retains the following rights:

- to deposit an electronic copy of the published version (if permitted by the publication agreement) or the final manuscript (after peer review) accepted for publication in an institutional and/or subject-based repository at the moment of publication.
  
- to provide free of charge access to this electronic copy to anyone through this repository:
  - o immediately if the scientific publication is published "open access", i.e. if an electronic version is also available free of charge via the publisher, or
  - o within [6] [12]<sup>1</sup> months of publication.

5. For record keeping purposes, the author requests that the publisher sign a copy of this Addendum and return it to the author. However, if the publisher publishes the article in the journal or in any other form without signing a copy of this Addendum, such publication manifests the publisher's assent to the terms of this Addendum.

AUTHOR

PUBLISHER

\_\_\_\_\_  
(corresponding author on behalf of all authors)

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

<sup>1</sup> Choose 6 months for publications resulting from projects in the thematic areas "Health", "Energy", "Environment (including Climate Change)", and "Information & communication technologies" (Challenge 2) and the activity "Research infrastructures" (e-infrastructures). Choose 12 months for publications resulting from projects in the thematic area "Socio-economic Sciences and the Humanities" and the activity "Science in Society". The number of months selected should be identical to the number of months found in the relevant 7<sup>th</sup> Framework Programme Grant Agreement (see Special Clause 39).