

OPEN ACCESS REGULATIONS 2021

These Regulations were approved and adopted by the **EXECUTIVE BOARD** on **14 October 2021**.

EUROPA endorsed these Regulations on **12 July 2021**.

These Regulations shall enter into force on **1 December 2021**.

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Chapter I – General

Article 1.1 - Definitions

1. For the purposes of these Regulations, the terms below are defined as follows:
 - *Aw*: Dutch Copyright Act;
 - *cao NU*: The collective labour agreement of Dutch Universities;
 - *Employer*: Erasmus University Rotterdam, legally represented by the President of the Executive Board;
 - *Employee*: A person who has or has had an employment contract with the Employer on the grounds of the cao NU;
 - *EUR*: Erasmus University Rotterdam;
 - *Executive Board*: The Executive Board of EUR;
 - *Institutional repository*: Digital archive containing various forms of information (e.g. text, audio, and visual), in which the research output of EUR is stored, administered, and saved;
 - *Open Access*: Free, permanent, online access to reusable scientific information (hereinafter: Short scientific works), which the reader does not have to pay for;
 - *Opt-out*: The possibility of excluding specific Short scientific works from Open Access on the grounds of these Regulations;
 - *Regulations*: Open Access Regulations;
 - *Research output*: (Scientific) Publications and research activities;
 - *Short scientific work*: A result of scientific research that is published in short form and is bibliographically traceable, such as to include a selection of the KUOZ publication types¹, including articles, book chapters and conference publication;
 - *Tacit non-exclusive licence*: consent for the publication of a Short scientific work that is not explicitly granted;
 - *VSNU*: Association of Universities in the Netherlands;
2. The terms used in these Regulations have the same meaning as those in the WHW if such terms also occur in the WHW and have not been included in the definitions.
3. Use of the masculine form in these Regulations can also be understood to mean the feminine form and vice versa.
4. Wherever the singular form is used in these Regulations, this may also be interpreted as the plural form and vice versa.
5. These Regulations are not applicable to employees of the Erasmus MC.

¹In accordance with the definition agreements in the Key Indicators for University Research (KUOZ): <https://my.eur.nl/en/library-employee/research-support/open-access/open-access-eur/open-access-regulation/short-scientific-work>

Chapter II – Background and legal framework

Article 2.1

1. Article 25 fa Aw² entitles researchers to share a Short scientific work without financial consideration following a reasonable period after publication.
2. Pursuant to Article 1.20 cao NU, the Employer can impose reasonable rules in relation to copyright. In that context, rules are set in these Regulations concerning making research output available Open Access.
3. These Regulations facilitate an easy way for the Employee to exercise his rights under Article 25fa Aw.
4. These Regulations implement the vision of the Dutch government and the Dutch Code of Conduct for Scientific Integrity³ that publicly funded research should be as accessible as possible, in relation to which agreements⁴ have been made between the VSNU and the Ministry of Education, Culture and Sciences.

Chapter III – Open Access

Article 3.1

1. The Employer will facilitate the implementation of Article 25fa Aw on the basis of a Tacit non-exclusive licence.
2. The Employee grants the Employer the non-exclusive right to make all Short scientific works, that the Employee has produced and shall produce under employment with Employer, Open Access available in the Institutional Repository following a reasonable period of time after the work was first published and provided that clear reference is made to the source of the first publication of the work, unless the Employee informs the Employer that a particular Short scientific work may not be shared Open Access.
3. A reasonable period, as referred to in paragraph 2, is a period of six months after the first publication. This period can change as a result of changes in the applicable laws and regulations.
4. The Employee shall remain independently authorised to exercise his/her rights under Article 25fa Aw and to make the work publicly available on their own website and/or to give other parties consent to make the works available to the public without financial consideration. The exploitation/economic rights on the Short scientific work shall not be affected, in respect of which the Employer has relinquished the rights to the Employee under the Impact and Innovation Regulations 2021.

² Article 25 fa Aw states: *The author of a Short scientific work, the research for which has been wholly or partially paid for with Dutch public funding, has the right to make that work available to the public for no financial 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.*

³ See starting point 11 under the Standards for Good Research Practice in the Dutch Code for Scientific Integrity: <https://www.vsnunl/files/documents/Netherlands%20Code%20of%20Conduct%20for%20Research%20Integrity%202018.pdf>

⁴ <https://www.rijksoverheid.nl/documenten/convenanten/2018/04/09/sectorakkoord-wetenschappelijk-onderwijs-2018>

Chapter IV – Opt-out

Article 4.1

1. The Employee has the right to exclude each separate Short scientific work from Open Access by opting out. The Employee retains this right also after the reasonable period referred to in article 3.1 has expired.
2. The Employee can inform the Employer which Short scientific work may not be shared Open Access.
3. The Employer can ask the Employee to explain the reasons for Employee's election to opt out.
4. The Employer shall make the Opt-out available via the Institutional Repository and on the website of the University Library of the Employer.

Chapter V - Retroactive force

Article 5.1

1. These Regulations shall apply with retroactive force for Short scientific works produced during the employment contract of Employees with the Employer prior to the date that these Regulations take effect.
2. The Opt-out for the Short scientific works referred to in paragraph 1 of this article will be made available via the Institutional Repository and on the website of the University Library of the Employer.

Chapter VI – Obligations and indemnities

Article 6.1 - Obligations

1. When a work is deposited in the Institutional Repository, the Employer shall in all cases state the source of the first publication of the Short scientific work.
2. The Employer shall not make the short work publicly available prior to the lapse of the period referred to in article 3.1, paragraph 3.
3. The Employer and the Employee shall immediately notify one another of any infringements of the short work or short works, or if a third party makes a claim to the short work or short works, or states that one or more short works constitute an infringement of their rights.

Article 6.2 - Indemnification

1. The Employer shall indemnify the Employee against all claims of third parties resulting from the publication by the Employer of Short scientific works on the grounds of these Regulations unless the claim is to a significant extent the result of wilful misconduct or deliberate recklessness on the part of the Employee.
2. The Employer shall likewise indemnify the Employee against any costs, fines, or damages that have to be paid by the Employee as a result of the publication by the Employer of Short scientific works on the grounds of these Regulations, unless the

- claim is to a significant extent the result of wilful misconduct or deliberate recklessness on the part of the Employee.
3. If a situation occurs as described in paragraphs 1 and/or 2, the Employer shall put forward a defence on behalf of the Employee against such claims, costs, fines or damages, and bear any associated costs.
 4. The provisions stated in this article also apply if, at the moment of publication of the Short scientific work on the grounds of these Regulations, a situation occurs where the Employee is no longer employed by the Employer.

Chapter VII – Scope of application of the Regulations

Article 7.1 – Scope of application of the Regulations

1. These Regulations shall prevail over provisions to the contrary in contracts with third parties.
2. These Regulations shall remain in force regardless of whether or not further, supplementary or differing agreements are made between the Employee and the Employer and shall also remain in force when the Employee exercises the rights described in article 1.22 cao NU.

Chapter VIII - Final and transitional provisions

Article 8.1 – Interpretation

1. In cases related to matters provided for in these Regulations which are not covered by these Regulations, or in cases where these Regulations may be interpreted in several ways, the decision shall rest with the Executive Board.

Article 8.2 – Administration of Regulations

1. These Regulations are administered by: the University Library.

Article 8.3 – Translation

1. If there are any inconsistencies between a translation of these Regulations and the Dutch version, the Dutch version shall prevail.

Article 8.4 – Publication

1. The Executive Board will post these Regulations on the university website.

Article 8.5 – Entry into force

1. After endorsement by EUROPA, these Regulations will enter into force on 1 September 2021.

Article 8.6 – Short title

1. These Regulations are referred to as: **Open Access Regulations**.
2. These Regulations are abbreviated as: **OAR**.

Article 8.7 – Applicable law

1. These Regulations are exclusively governed by Dutch law.