

## **Negotiations 2021 Guidelines for 2022 agreements**

With this scoping letter, the department of documentary negotiations (DND) of the Couperin.org consortium provides the elements that should guide the negotiations during 2021 (for 2022). The considered electronic resources are online journals and books, databases and hybrid resources.

### **Nature of price agreements and requirements**

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Changes in publication methods, alongside Europe and France's willing adoption of Open Science, mean stronger demands are being placed on publishers regarding the content of cost agreements and conditions proposed to members of the Couperin.org consortium.

For electronic journals, publishers' proposals must comply with the requirements of Plan S and be in line with the national plan for open science.

Publishers are encouraged to think outside the box regarding their proposals for providing access to content on a subscription basis, and for safeguarding the transition towards Open Access. The consortium expects publishers to submit proposals which consistently include some element relating to Open Science.

The proposals, which facilitate the development of Open Science, will be looked into for a fixed cost, that is, on the condition that **no cost increase is incurred**.

In the absence thereof, regarding the renewal of pre-existing agreements, the proposals whose subject matter is limited to subscription to electronic journals access will only be approved on **a cost-reduction basis**: they must therefore include a clear reference to the percentage by which the cost will be reduced, at the end of the contract.

For other types of resources such as e-books, databases, or any other hybrid resource, **cost stabilization** will be the minimum goal.

These consortial objectives adopted last year are further reinforced by the current health crisis, which is putting a heavy strain on the budgets of higher education and research institutions. More than ever, science must be open and accessible to all.

### **Digital accessibility and disability**

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Access to electronic resources by people with disabilities is an important element that the consortium wishes to focus on.

Providers and publishers of digital resources are invited to make known their degree of compliance with the 'référentiel général d'amélioration de l'accessibilité [RGAA Version 4.1](#) '(General Accessibility Guidelines Version 4.1 ) by providing an accessibility statement.

For providers who choose to refer to international digital accessibility standards rather than the French standard, their web content and services can be evaluated based on the Web Content Accessibility Guidelines (WCAG) 2.1. We ask providers to present the results of this evaluation.

## French scientific production

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The [plan national pour la science ouverte](#) (national plan for open science) is built around many proposals, including the implementation of a quantitative monitoring system of the state of progress of the open access dissemination of national scientific literature. French institutions and national operators (ABES, Inist-CNRS...) must be able to receive each year and reuse freely (CC-0 license) the following elements of the French scientific production:

- The metadata of articles with at least one author affiliated to a French institution, in particular to ensure a good referencing of French scientific production in the tools used by higher education and research institutions and an increased worldwide visibility,
- The list of articles published with at least one author belonging to a French institution, specifying for each article whether or not the publication was made in open access gold and its DOI.

Whatever the nature of the agreements negotiated (traditional subscription or including an open access component), these elements must be provided.

The technical modalities for the transmission of these data as well as the periodicity of data delivery will be discussed once the general principles have been agreed upon.

## Plan S compliance: required criteria

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Read Agreements:

As part of the subscription agreements, proposals will have to comply with the [Plan S retention strategy](#) regarding authors' rights: all publications (at least the versions accepted for publication) from projects funded by ANR, ERC or any research funder member of the S Coalition will have to be under a CC-BY license, allowing immediate deposit of the full text in an open archive, either directly in HAL or through a local institutional archive.

For other publications, authors may publicly disseminate their scientific writings under the conditions of Article 30 of the [de la Loi « Pour une République numérique »](#) (Law For a Digital Republic).

Read and publish agreements:

Proposals for transformative agreements will have to fit within the criteria meeting Plan S, in particular:

- They will be temporary and valid for the duration of the contract. They cannot commit future contracts.
- They will aim for 100% open access French publications. The progressive release of French articles is not to be favored.
- The associated licenses will be CC-BY, allowing authors to keep their rights
- The costs and details of the transition will be transparent and public. The content of the contracts can be made freely available.
- The transition phase of the transformation cannot be at a cost higher than the subscription expenses for the (hybrid) journals of the initial perimeter (current contract). It must include a mechanism to control the evolution of the cost of publication and reading.

## Data requested from academic journal publishers

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Regardless of the nature of the agreement with Couperin.org, publishers must provide information each year to assess their publication activity and the share of French production, based on several parameters. The data requested are:

Overall publication activity:

- The total number of articles published by the supplier in the subscribed contents,
- The total number of articles published in access only by subscription,

- The total number of articles published in gold open access in hybrid journals,
  - The total number of articles published in gold open access in fully open access journals,
- Publications related to the French Higher Education and Research:
- Publication activity: list of articles with at least one author affiliated with a French institution.

Data to be provided: DOI, title of the article, authors, title of the journal, ISSN, nature of the journal (subscription only, hybrid, pure open access), indication of the mode of publication of the article (OA, non-OA), associated license (copyright, Creative Common with indication of the license used)

- APC expenses: list of articles whose corresponding author is affiliated with a French institution for which an APC has been paid.

Data to be provided: DOI, amount paid before and after tax, contact information of the payer

- APC expenses broken down by institution of the French higher education and research

Data to be provided: name of the institution, number of articles published, and annual amount of the expenditure.

The data collected will be used in part for the annual publication of French APC expenditures on the Open APC website, and to feed the French system for rapid and transparent monitoring of expenditures related to Article Processing Charges (APC)

## Workflow tool for APCs

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In the case of a transforming agreement, the characteristics of the tool for monitoring open access publications (submission of the request by the researcher, administrative validation, invoicing, access to reports, etc.) will have to be discussed and adapted to the French situation.

## Negotiation of fully open access journals

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Journals that offer only open access publication belong either to publishers for whom this is the exclusive model, or to traditional publishers who also offer subscription or hybrid journals.

These journals rely on various economic models:

- Payment of publication fees

The negotiation of publication fees (APC) can then be considered on the basis of different criteria. For example, the Couperin.org consortium may examine proposals with particular attention to the quality of the selection process (existence of a scientific committee, review process, type of license, etc.) and the associated business model (fee-for-service, flat rate, etc.).

- Subscribe to open

Model based on the maintenance of the amount of expenditure linked to subscriptions with a switch of the journal to an open access model at no cost to the authors and readers (other than the institutions providing the funding).

- Diamond or platinum

A model based on institutional support for publishers or platforms ensuring open access at no cost to authors and readers.

The consortium wishes to support and consider agreements with publishing initiatives and models that enable quality open publishing without hindrance to authors and based on a business or partnership model whose costs are justified and bearable.

## Archives: access to the previously subscribed resources after unsubscribing

In order to enable the institutions which chooses to end its subscription to a given documentation to retain access to documentation published during their period of subscription, suppliers must state the terms and conditions guaranteeing this access.

The consortium now includes in the agreements signed with suppliers, **the possibility to have the data and metadata available for upload on the national archive platforms** which will be in charge of data storage of these contents in the French territory, and of secured access management. Extended rights have to be granted and access management entrusted to the consortium or the designated operator, who will provide reports to suppliers. This last resort measure is meant to ensure sustainable data record in the French territory through a government (and therefore, sustainable) institution.

Depending on the case, an agreement may be signed between the publisher and Inist-CNRS for the PANIST platform, which manages the rights of former subscribers, or any other platform that may replace it.

## Open access

We draw the publishers' attention to the fact that, in compliance with article 30 of the law of 7 October 2016 for a Digital Republic "French Digital Law" and in compliance with article L. 533-4.-I of the Code of Research, the authors of scientific papers that have been granted at least 50% public funding are authorized to submit the final version of their research publications to the open archiving warehouse of the institutions within 6 months after publication for science and technology and within 12 months for humanities and social sciences. This obligation is consistent with the requirements of the ANR and all Coalition S funders.

## Multi-campus institutions and experimental organizations

Some institutions operate on several campuses that can be quite distant from one another. They are part of a single homogeneous administrative structure with a global management system and they must be considered as a single entity.

The number of students and faculty is identified and reported at institution level. Consequently, the access to resources is available to the community as a whole, whatever the location of the people concerned by the offer. Each subscribing institution shall declare the number of students and people on its staff.

Multi-campus institutions should not be charged with higher subscription prices based on having several locations; the prices on offer only and exclusively take into account the number of students and people on the payroll. The prices cannot and must not depend on the number of campuses that are part of an institution. Should any financial proposition fail to comply with this principle, it will be not be approved by the consortium.

## Statistics

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The Couperin.org consortium collects and centralizes usage data for online resources by higher education and research institutions (ESR) in a national repository, ezMEASURE, to provide access to a dynamic cartography-type visualization and national, regional, and institution-specific indicators.

Suppliers commit themselves to deliver monthly or at least annually detailed statistical report on the use of each resource, in compliance with the COUNTER 5 requirements.

These COUNTER 5 reports will be provided in a spreadsheet-readable format (.csv or .xls files) as well as in .json format, and made accessible through a REST query interface (API) as described in the associated SUSHI protocol.

Moreover, a consortium access will be granted to Couperin.org in order to facilitate access to the detailed information per institution and to the overall Consortium amounts.

For each resource, the providers commit to provide the Couperin.org consortium with the complete usage traces (raw logs) generated by the use of each of the subscribers with rights.

All information is available on the official website [www.projectcounter.org](http://www.projectcounter.org) and on the Couperin website <http://www.couperin.org/groupes-de-travail-et-projets-deap/statistiques-dusage/counter>

Additional relevant information is available to the non-compliant publishers: [http://www.couperin.org/relations-editeurs/counter-pour-les-editeurs](http://www.couperin.org/rerelations-editeurs/counter-pour-les-editeurs)

## Inter-library loans (ILL)

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Suppliers authorize the use of licensed resources in order to meet inter-library loans needs provided the use remains strictly limited to Higher Education and Research institutions. Suppliers are requested to provide the negotiator(s) with detailed information on the type of loan allowed (electronic loan, printed version...).

For e-books, the suppliers will indicate the conditions for delivering part or all of the document to a third-party library user unless they do not hold these rights, in which case they will facilitate the evolution of the service delivered in collaboration with the rights' holders.

In general, we ask content providers to validate the principle of electronic delivery of documents at least between libraries allowing quick and easy transmissions in relation to the digital nature of the medium.

## Reporting in referencing tools

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French subscribing institutions should be able to integrate metadata for items subscribed to each year into their local catalog or discovery tool. Structured, open and documented metadata (e.g., in XML) should be available for integration into all union catalogs (e.g., SUDOC and WorldCat) and the national knowledge base BACON. The metadata will be placed under the Etalab open/open license.

The publisher agrees to make the necessary computer developments so that its resource can be integrated and agrees to provide all necessary technical information at no cost. This information will be made public on the Couperin.org website. In particular, publishers are invited to comply with the KBART recommendation (in line with the Knowledge Base And Related Tools recommendation) and to provide updated content description files for the negotiated resources.

## Technical access

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The provider commits to provide accesses intended to verify the adequacy of the resources provided to the terms of the agreement, to develop, if necessary, dedicated services for the right holders and to inform the right holders about their accesses and rights.

These accesses will be exclusively reserved for Couperin.org personnel in charge of services, foresight and negotiations, as well as for those of the Agence bibliographique de l'Enseignement Supérieur (ABES) in charge of purchases and reporting services associated with purchases, for Inist-CNRS agents in charge of implementing archiving and permanent accesses, or for any other institution in charge of 'pooling of orders' (groupement de commandes).

### Circulation of the offers: contents description and pricing model

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In order to enable the circulation of offers among the members of the Couperin.org consortium, publishers must give the following information, both to the DND and the negotiator:

Amounts currently charged and cost proposals:

- For each resource:
  - A table of orders placed during the current year (2021), presented in the format of the DND model. The submission of this table is a prerequisite for initiating negotiations for 2022, and should include a list of current orders or obligations (whether charged or not) for all members of the consortium.
  - A precise and comprehensive description of the content and the proposed cost model. In case of renewal, any change must be specified, whether that be a change in the number of titles, cost bracket, cost, or the conditions for degressive prices.
  - The supplier must *at the very least* provide a cost proposal based on an outline of institutions for the current year (2021). This can be completed with proposals for any additional institutions. The proposal must include the cost for each institution, except when the allocation of costs between members falls under an internal consortium model.
  - The negotiator will be routinely informed of any individual cost estimates which arise once an offer has been made by Couperin.org. The proposed costs for each institution must be in line with the offer confirmed in the letter of agreement.

**N.B.: If a supplier were to make a member of the consortium a better offer than the one previously agreed by the consortium ("direct" renegotiation), the conditions of this new offer would have to be automatically extended to the other members.**

Specific cases must be negotiated via the negotiator, not directly with the institution itself.

Open access, hybrid titles, and the existence of transitional agreements:

- Where necessary, the content description should include information on the percentage of content subject to payment (publications subject to a paywall), the percentage of freely accessible publications (pay as you go, publications which are out of copyright), and the percentage of content which falls under the scope of transitional agreements signed abroad.
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### Standard-license

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Providing a license is mandatory. We draw the publishers' attention to the fact that, in compliance with act n° 94-665 dated August 4<sup>th</sup> 1994 dealing with the use of the French language in French administrations, the institutions' accountant officers can require a license written in French before authorizing the payment of invoices.

In order to avoid any payment problems, suppliers are requested to provide a license in French. If it cannot be obtained in French, it must be accompanied by an indicative translation into French (at the supplier's expense).

Similarly, should parties fail to find an amicable solution to any dispute or litigation (as per the Public Procurement Code regulating the agreements and contracts between French public institutions and private sector providers), the latter shall fall within the jurisdiction of the Administrative Court of the subscriber and be solved according to the law and regulations applicable in France. If a license bears mention to a foreign Court, the legal departments of the institutions are entitled to reject it.

From now on and upon request of the negotiators, contract documents may be checked by a specialized expert legal service after approval of the department of documentary negotiations (DND) officer.

## Letter of agreement

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For all the deals which do not involve order groupings, a formal letter of agreement will be signed by Couperin.org and the supplier. This document will formalize the supplier's commitment and define the scope of the offer, the authorized users, the documents-related rights, the terms and conditions and the duration of the agreement... This document will serve as a reference framework in case of litigation and for future deals and will also provide a valuable objective and common tool for negotiators. It must be signed by the negotiator and by a representative of the publisher and appended to the commercial offer and the license.

These documents are a pre-requisite to the circulation of offers among members.

## Public access to documents (included in the negotiations)

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Couperin.org implements both the relevant European and French rules on the freedom of information in subscribing public institutions and the provisions of the Code of relationships between the public sector and the administration. Only the data concerning the exceptions duly mentioned in the French regulations in force shall be considered as confidential (damage to the financial interests of the holder and business secrecy).

Hence, confidentiality clauses will be excluded both from the contracts and from the agreements.

By agreeing to a consortial negotiation, the vendor agrees to provide the consortium with a list of Couperin.org member institutions and the amounts invoiced.

This position is consistent with the French government's commitments under the Open Government Partnership, and in particular commitment 18 "Building an ecosystem of open science".

## Invoiced amounts

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The Couperin.org consortium has a mandate from its member institutions to collect information from suppliers regarding the costs charged at each institution, in compliance with the member's charter.

In accordance with the letter of agreement signed by the supplier, the latter shall provide Couperin.org with the comprehensive list of the institutions that have subscribed to a negotiated or non-negotiated offer, and with the invoiced amounts.

The amounts paid by the various institutions are published annually on the open data site of the Ministry of Higher Education, Research and Innovation.

The contracts signed with the publishers will be freely accessible on the consortium's site, only the price lists can be the subject of a diffusion restricted to the members of the consortium.

## VAT

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All agreements for 2022 must incorporate the rate in accordance with the “Code général des Impôts” (French General Tax Code).

As per the French General Tax Code, a 5.5% reduced VAT rate is applicable to most digital publications negotiated within the framework of the Couperin.org consortium. A 2.1% rate may be applied in some other cases.

Justification of the application of any other VAT rate or breakdown between the two VAT rates in force will be requested.

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