



European Materials Handling Federation

FEM position

Building the European Data Economy

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FEM represents manufacturers of equipment that enables the movement, storage, control and protection of materials, goods and products. The European materials handling industry is very diverse with various sub-sectors ranging from mass manufactured products (e.g. certain types of forklift trucks or mobile elevating work platforms) to unique tailor-made systems (intralogistic systems). Our members deliver organisational and technical solutions for efficient and sustainable materials flow. Materials handling equipment is often integrated into complete systems that provide tailor-made solutions for complex production, storage and logistic requirements. In addition to mechatronic products, special attention is given to system controls, information processing and telecommunication.

Despite the variety in types of materials handling equipment, a common feature is that it is or has become smart. Sensors and other devices make it possible to monitor the activity and performance of equipment and also perform some services remotely, such as maintenance and repair. Materials handling equipment in operation thus generates substantial quantities of industrial data, either collected and managed by manufacturers directly or through third-party data service providers.

>>> Preserving the freedom of contract >>>

The European materials handling industry is a world leader largely because of its ability to innovate. Data has now become an essential innovation driver that creates better machines, new services and new business models. Our companies have generally embraced the digital revolution; some are even driving it. In this context, European and national legal frameworks must be supportive and preserve companies' ability to make the most of the opportunities that digitisation offers. To this end, bearing in mind that materials handling equipment manufacturers operate exclusively in a B2B environment, it is absolutely essential to preserve the freedom of contract that governs B2B commercial relationships and provides the necessary flexibility for companies to find the arrangements that best suit their needs.

>>> Removing unjustified national requirements on data localisation >>>

A supportive legal framework must first enable easy storage and free flow of non-personal industrial data. Materials handling companies typically operate at supranational level, managing several operation centres across the European Union. Consequently, data generated by their equipment is normally stored in several locations. In this context, different national requirements on data localisation generate administrative burdens and extra costs for the management and process of data transmission. This also makes it more

difficult to enter new EU markets or launch new products or services. Therefore, unjustified national requirements on data localisation must be removed.

As far as access to data is concerned, our companies experience various scenarios. Data often belongs to the user of the machine and therefore the manufacturer can only access it through a licence for development, service and statistical purposes.

>>> Preserving the right to licence (or not) the use of non-personal data >>>

As regards the use of data owned by the manufacturer, practice is also quite diverse across the materials handling industry. Whilst licensing may be close to inexistent for some, others practise it whether in a limited way (within the same group for instance and by means of specific contracts) or more widely through paying arrangements.

The decision on licensing data may of course be dictated by strategic reasons but it is interesting to note that it can also be the result of some uncertainty about the level of control or extent to which the data can be used. Indeed, the ownership of the data (including that which is machine-generated) and therefore its management can appear as uncertain from a legal point of view. This, in turn, leads to unclear scenarios regarding liability. An additional difficulty is that a large amount of machine data has a personal dimension in that it can also say something about the machine operator. There is then uncertainty as to how such a personal dimension is impacted by privacy laws, since the definition of personal data is wide.

FEM generally believes that the trading and sharing of non-personal machine-generated data should indeed be better enabled, facilitated and incentivised. At the same time, investments in data collection capabilities and data assets should be protected and sensitive business and confidential data should always be safeguarded.

FEM is therefore strongly opposed to any obligation to license the use of non-personal data for public sector bodies or for scientific research. Public order is the only acceptable reason for making data available to public authorities in exceptional circumstances. There is no reason for the EU to take action on access to non-personal data for public entities.

>>> Providing guidance on data ownership and management >>>

As regards access for other commercial entities, the aforementioned legal uncertainty on data ownership and management means that companies without appropriate knowledge fear risk more than opportunity. Therefore, guidance may facilitate a common understanding and introduce a harmonised approach among the different industries. It would help companies decide whether or not to share data and what kind of information can be shared.

FEM must stress that guidance is preferable to regulation as it enables and preserves contractual freedom and flexibility. It is essential that contractual freedom is not limited by legal provisions. Indeed, contractual freedom gives control to the parties involved and enables a flexible and tailored definition of usage and distribution according to the intended purpose.

Guidance could however be complemented with model contracts or voluntary standard clauses to be developed by the industry – something FEM is considering.

Guidance would also be preferable to setting legal obligations that would rigidly govern the use of data generated by machine. Indeed, a general obligation granting some kind of exclusive right to a party would systematically discriminate against other parties which are involved in the generation of the data. Preserving the freedom of contract is therefore preferable so as to provide tailor-made solutions for each situation.

Finally, FEM would like to point out that it fully supports the position of Orgalime, of which it is a member.