



European Materials Handling Federation

POSITION PAPER

Proposal for a regulation on a framework for the free flow of non-personal data in the European Union COM(2017) 495

What is the materials handling industry?

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 control systems, 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.

Why is this proposal relevant to us?

FEM has already stressed that 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.

FEM therefore very much welcomes the European Commission's proposal to remove unjustified national requirements on data localisation. Setting free movement of non-personal data as a principle and restrictions as limited and controlled exceptions certainly is the best way to achieve the proposal's objective. FEM also welcomes the intention to proceed with a timely application of this principle thanks to a speedy removal of existing restrictions.

Regarding potential exceptions, FEM agrees that public security prevails over any other interest. Thanks to the proposed prior notification system, the European Commission will be able to assess the reality of public security considerations to justify exceptional limitations.

Finally FEM welcomes and supports the designation of single points of contact at national level as a means to increase both transparency and efficiency.

Personal, non-personal and mixed data

The proposal will be able to express its full effects with data that is entirely of a non-personal nature. However, materials handling equipment includes several types of machines that are operated by humans. For instance, the data generated by many types of mobile materials handling machinery may include information on the operator of the machine. This information can be considered as personal because it relates to an “*identified or identifiable person*”, as defined by Article 4(1) of Regulation 2016/679 (GDPR). Such industrial data then takes a mixed character in that it is essentially of a non-personal nature but may include some personal elements.

Whereas Regulation 2016/679 considers storage and transmission as processing operations, the questions arise whether there can thus be limitations to the free flow of mixed data and, if so, how the current proposal and Regulation 2016/679 will interact.

Such an issue is of substantial importance for manufacturers and, more generally, holders of mixed data, who must know what framework applies. It is equally important to ensure there is a common understanding and practice across the EU so as to avoid diverging national practices with mixed data.

Porting of data

Since materials handling manufacturers generally use several service providers for data storage and processing, they must be able to make full use of the competitive environment. Concretely, this means they should be able to switch providers easily and without any artificial barriers. Such barriers may lay in the absence of clear and comparable information on the providers’ services and on the requirements to make a change.

Therefore, FEM supports the proposal to encourage service providers to equip themselves with self-regulatory codes of conduct at EU level to facilitate switching of providers and data porting for professional users. FEM also welcomes the fact that the Commission will keep a close eye on the materialisation and actual implementation of such soft law instruments.

Committee

The Free Flow of Data Committee will represent a useful tool to keep up-to-date with trends and developments. FEM suggests that the industry, and notably professional users, is represented in this Committee.

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