



European Materials Handling Federation

**European Commission proposal for a "Regulation on
harmonised rules on fair access to and use of data (Data Act)" (COM (2022) 68 final)**

FEM position paper

14/05/2022

Main points

- FEM welcomes the European Commission's proposal to foster the EU data economy. The transition of the EU to a data-driven economy will generate a considerably positive impact on the future growth and competitiveness of European industries. Materials handling equipment in operation has already 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 consequently generates a substantial quantity of industrial data. Data has now become an essential innovation driver, and our companies have generally embraced the digital revolution, while some are even driving it.
- While supporting the objectives of the proposed Data Act, FEM believes that some of its provisions would disproportionately limit the potential for our companies to use data to drive their innovation and competitiveness. A data-driven economy cannot function efficiently without a legal framework that stimulates a competitive data market. FEM therefore suggests a number of modifications.
- Business-to-Business (B2B) and Business-to-Consumer (B2C) relations have different features, which should be reflected in the legislation through a differentiation between B2B and B2C data transactions. The more sensitive B2B data transactions should be regulated by ensuring a more equitable balance between data holder and data user, allowing for data usage on both sides under conditions of contractual freedom.
- FEM believes that freedom of contract is necessary in a B2B data economy. Freedom of contract is the optimal principle for contractual arrangements to be tailored to the specificities of every market scenario. We therefore oppose the mandatory data sharing in B2B, as freedom of contract is a sufficient basis for an efficient flow of data.
- The definition of data provided by the Commission is too general. FEM calls for a horizontal and better fine-tuned definition of data, which should align the definitions of data present in all existing legislation (notably the General Data Protection Regulation, the Free Flow of Data Regulation and the upcoming e-Privacy Regulation), to avoid fragmentation.
- In the definition of data holder, the term "ability" needs to be accompanied by clarification on whether it is intended to as technical or legal ability, to avoid vague terms that could lead to wrong interpretations. Related responsibilities should be clarified.
- The legislation should only apply to products that are owned on a contractual basis. Products that are leased or rented should be excluded from the scope of the Data Act. Data that manufacturers use to control and monitor the usage and functionality of the machine are essential from both a technical and business model development perspective. For this reason, such sensitive information should be disclosed carefully and on certain legal basis, upon contractual agreement.
- Rights for manufacturers to get access to data generated by the use of their machines should be included in the legislation. Such data is an essential driver of manufacturers' innovation, enabling them to improve their products and services, and ultimately benefit consumers.



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- The safeguards proposed throughout the Data Act should be strengthened and extended to include non-patented know-how. Stakeholders should be free to agree on the ownership and use of data of the inventions achieved in joint activities by private contracts.
- Exchange of data from and to Europe, and from and to non-European countries should be clarified in the legislation. The respect of EU legislation on exchange of data from non-EU market players shall be ensured by EU authorities, to support competitiveness and a level playing field.
- The Data Act should avoid overlaps and be aligned with already existing EU legislation, or EU legislation which is currently being revised, addressing data. Notably, alignment of the Data Act should be ensured with: the Free Flow of Data Regulation regarding the definition of data and exchange of data with non-EU players; the General Data Protection Regulation on the definition of data and on the transition period; the Machinery Product Regulation on provisions on manufacturers obligations and users' protection; and the AI Act, providing a clearer link between AI based solutions and the use of data.
- Finally, FEM believes that the transitional period before the start of application of this regulation should be at least two years after the date of its entry into force, as implemented with the General Data Protection Regulation. One year is insufficient for the adaptation of products already in the market to the new requirements on the design of connected products.