

Advisory Bulletin – September 2026

Getting Back on Track: Articles 4(38); 25a; 88 *bis*

Privacy Next recommends substantially modifying Article 4(38) on scientific research; deleting Article 25a in favour of retaining the relative approach to identifiability in Article 4; strengthening Article 88bis by providing unambiguously for AI processing as a legitimate interest under Article 6(1)(f).

Key Points

- The current compromise text considerably narrows how businesses can use data for research, innovation and AI development.
- Article 25a adds complexity to the fundamental question of when information is personal data, Article 4(38) introduces unnecessary conditions around what qualifies as scientific research, and Article 88 *bis* adds no legal certainty beyond the existing Article 6(1)(f) test.
- Taken together, the three provisions move the GDPR reform away from the ***One Europe, One Market Roadmap*** strategy and objectives agreed by the EU Institutions.

Rationale

The European Parliament, Council and Commission have already agreed that the *One Europe, One Market Roadmap* strategy commits the EU to simplifying rules, accelerating the digital and AI transformation, and strengthening European competitiveness. The Digital Omnibus should give that strategy practical effect. Instead, the evolution of the Council text suggests that negotiations have focused too heavily on preserving and extending data protection safeguards, without giving equivalent weight to legal certainty, innovation, economic growth, and European companies' ability to use data responsibly.

Article 25a illustrates this shift. The Commission originally sought to clarify the definition of personal data in Article 4. Successive Council texts have moved from that approach, through Article 29a, to an increasingly qualified framework under Article 25a. Privacy Next recommends deleting Article 25a, retaining the relative approach to identifiability in Article 4 and addressing genuine circumvention risks through targeted safeguards.

Article 4(38) expressly recognises commercial and technological research but adds requirements which risk narrowing the concept of scientific research. In particular, requiring “verifiable and transparent results” creates unnecessary uncertainty for commercial R&D. Research does not always guarantee conclusive, publishable, or commercially viable results. The requirement should therefore be deleted before it impedes legitimate research and investment.

Article 88 *bis* recognises legitimate interests as a basis for AI processing. However, stating only that such processing “may” be carried out under Article 6(1)(f) provides little practical improvement on the existing position. The provision should state clearly that AI development and deployment constitute a legitimate interest, subject to the existing balancing test and appropriate safeguards. Without that clarity, European businesses will continue to face uncertainty at a critical stage of AI development.

Taken together, these provisions could make the GDPR more restrictive for companies seeking to use data to research, innovate and compete. This is not the path promised by the *One Europe, One Market Roadmap* strategy.

The Council should bring the negotiations back into line with the strategy it has already agreed with the Parliament and Commission, i.e. strong protection for individuals within a clearer framework that enables European innovation and competitiveness.