



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
HUMAN RESOURCES AND SECURITY
The Director-General

Brussels, 28 August 2020
HR/GI

Ms Vicky CANN
CEO
Rue d'Edimbourg 26
1050 Brussels
By email: ask+request-8367-2c61bc10@asktheeu.org

Subject: Your application for access to documents – Ref /GestDem No 2020/4378

Dear Ms CANN,

I refer to your e-mail, dated 16 July 2020 and registered on 17 July 2020 under reference number 2020/4378, in which you make a request for access to documents.

Your request concerns "*[...] documents relating to any article 16, article 12B or article 40 (Staff Regulations) applications made by Roberto Scazzola when he left DG Grow to take up employment at the Association Internationale de la Savonnerie, de la Détergence et des Produits d'Entretien (A.I.S.E.) in May 2016. In particular, I request a note of all Mr Scazzola's job titles at the Commission including dates held; copies of any application(s) that he made under article 12b, 16 and 40 to undertake the new professional activity; the date of issuing the authorisation; any assessments of the compatibility of his new role with his DG Grow role; and all documents (correspondence, emails, meeting notes etc) related to the authorisation of the new role.*".

In addition, your request also covers "*all declarations of interest made by Roberto Scazzola when he rejoined the Commission from A.I.S.E. in 2019. I would also like to receive all Commission documents including any emails, letters, minutes of meetings which discussed the risk of conflicts of interest in this case, and a note of any restrictions which were applied to Mr Scazzola when he rejoined the Commission.*".

I have examined your request under the provisions of Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

I understand that your request refers to documents relating to the new role and new professional activity of Mr Scazzola after leaving the service in 2016, as well as his return to the Commission in 2019.

In this context, the documents identified in the framework of your request are:

- a document extracted from the relevant staff database listing the job titles of Mr Scazzola;
- a declaration form submitted by Mr Scazzola in the framework of Article 16 of the Staff Regulations (SR);
- the related decision from the Appointing Authority;
- the declaration of conflict of interest by candidates for the recruitment of non-managers in the framework of articles 11 and 11a SR; and
- e-mail exchanges within Commission services and between Commission services and Mr Scazzola concerning the request for authorisation and the related Appointing Authority decision based on Article 16 SR.

In accordance with Article 4(1)(b) of Regulation (EC) 1049/2001, it is the Commission's obligation to ensure that the privacy and the integrity of the EU staff member concerned, including in his professional capacity, are correctly protected. The documents you requested contain personal data relating to the past and present occupational activities of Mr Scazzola, the disclosure of which would entail a transmission of personal data falling under the provisions of Regulation (EU) 2018/1725¹.

In the case *EC v Bavarian Lager*², the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EU) 2018/1725 becomes fully applicable³. Pursuant to Article 9(1)(b) of that Regulation, personal data shall only be transferred to recipients if they established the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

In your request you did not establish the necessity of having the data transferred and I consider that the legitimate interests of the individual concerned would be prejudiced by the disclosure of his personal data. Consequently, I consider that the exception provided for in Article 4(1)(b) of Regulation (EC) No 1049/2001 applies to all the identified documents.

As for the correspondence between the Commission services and Mr Scazzola, in addition to the protection of personal data, the second subparagraph of Article 4(3) of Regulation (EC) 1049/2001 applies. That exception is related to the protection of the Commission's decision-making process even after the decision of the Appointing Authority has been taken. As no overriding public interest in disclosure has been identified in the present case, that exception to the right of access cannot be waived.

While I have also considered the possibility of granting partial access on the basis of Article 4(6) of Regulation (EC) No 1049/2001, I have concluded that this would equally undermine the protection of personal data.

¹ Regulation (EU) No 2018/1725 of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data (OJ L 295, 21.11.2018, p. 39).

² Judgment of 29 June 2010, Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, ECLI:EU:C:2010:378, paragraph 59.

³ This judgment specifically cited Regulation (EC) No 45/2001, which was repealed by Regulation (EU) 2018/1725. In accordance with Article 99 of that latter Regulation, references to Regulation (EC) No 45/2001 should be construed as references to Regulation (EU) 2018/1725.

Against this background, in order to address your query to the extent possible, and after having consulted and with the agreement of Mr Scazzola, I can nevertheless provide you with the following general information on the process to which your request relates.

Mr Scazzola was initially employed by the Commission with a temporary contract (Temporary Agent from 2011 to 2016). Before the expiry of his contract, Mr Scazzola provided his resignation.

In this framework, Mr Scazzola's declaration to engage in a remunerated occupational activity after leaving the Commission (pursuant to Article 16 SR) was received on 26 February 2016. He requested to perform a remunerated occupational activity as "Scientific and Technical Affairs Director" for a long term period with an envisaged starting date of activity of 15 May 2016. The main activities of his role would be to manage, coordinate and control all activities related to technical and scientific questions, including organizational efficiency and managing of resources. Mr Scazzola declared that the remunerated occupational activity would not include lobbying activities.

Following the general rules concerning the consultation process for this type of request, on 29 March 2016, the Appointing Authority gave its approval to carry out the activity including the following condition and reminders:

- Mr Scazzola was requested to inform the Commission if, during the first six months after leaving the service, he would have to meet former colleagues in the context of his new occupational activity or if, during the first two years after leaving the service, he would be faced with a situation of potential conflict of interest.
- Mr Scazzola was reminded about his obligations under articles 16, 17 and 19 SR concerning his duty to behave with integrity and discretion, unauthorised disclosure and participating in legal proceedings.

In 2018, following the successful completion of an Administrator competition, Mr Scazzola was offered a position as Scientific Policy Officer in 2019.

Mr Scazzola's conflict of interest form upon recruitment was received on 21 June 2019. He declared in his self-assessment not to have any personal interest that could lead to a potential or actual conflict of interest in the context of the specific position offered. The service requesting his recruitment did not identify any personal interest that could lead to a potential or actual conflict of interest.

Furthermore, I can provide you with some information on the last posts held by Mr Scazzola. With regard to the relevant period assessed as regards any potential conflict of interest in the framework of Article 16 SR, he worked as a Policy Officer – Chemicals, in DG Enterprise between 15 May 2013 and 31 December 2014 and in DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) between 1 January 2015 and 15 May 2016. With regard to his current position, he works as Policy Officer – Scientific Policy Officer in DG GROW (in the Unit in charge of cosmetic products Regulation).

I would like to remind you that Corporate Observatory Europe remains subject to the provisions of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data

Protection Regulation⁴) according to which personal data must, *inter alia*, be processed fairly and lawfully and subject to the unambiguous consent of the data subject concerned.

Finally, please be informed that a copy of this letter will be sent to the person concerned.

In accordance with Article 7(2) of Regulation (EC) 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission
Secretary-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Brussels

or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

(e-signed)

Gertrud INGESTAD

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.