

Dear Ms. da Silva,

Thank you for your message, with the links to your article and letter to the Secretary-General of the European Commission.

I am happy to reply to your questions. My replies follow under each of your questions below.

Yours sincerely,

**Jan E. Frydman**

*Advokat; partner*

Ekenberg & Andersson Advokatbyrå

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**Från:** Margarida Da Silva

**Skickat:** den 21 april 2015 16:58

**Till:** Jan E. Frydman

**Ämne:** New role as Special Adviser to the European  
Commissioner Malmström - a few questions

Dear Mr. Frydman,

I work for an NGO called Corporate Europe Observatory (CEO) which is a research and campaign group concerned with the access and influence enjoyed by corporations and their lobby groups in EU policy-making: <http://corporateeurope.org/>

As you may already know, CEO has published an article on your appointment as Special Adviser to the European Commissioner Malmström and we have sent a letter with requests for clarification to the Secretary-General of the European Commission, Catherine Day. You can read about it [here](#) and [here](#).

I would like to ask you several questions about your appointment as Special Adviser. It would be very useful to have your perspective in case we publish further articles. I would appreciate receiving a response from you as soon as possible and before Tuesday 27 April.

1. What specific tasks will your role as Special Adviser to Commissioner Malmström involve?

I have been asked to advise Commissioner Malmström on trade policy, notably on relations to the United States, since this is an area that I dealt with extensively during my career in the European Commission.

2. What are your specific responsibilities as lawyer and partner at Ekenberg & Andersson?

I have been with Ekenberg & Andersson since I left my position as a judge of the Svea Court of Appeal in Stockholm. It is a small law firm with eight lawyers. I work on general civil (i.e. not criminal) law issues. This means I advise clients on things like contract law (draft or review contracts, for example for the sale and purchase of goods or real estate, cooperation agreements, etc.), company law, liability issues, international private/family law, pension law, citizenship issues, etc. I also do some EU law, in particular related to the internal market, and also work on human rights law (I specialised in human rights law while at law school). I have a particular expertise in transatlantic relations, so I would also be available to advise international clients, including clients in the USA, on Swedish law, and also work with clients in France on Swedish law matters as I speak French.

Importantly, when I retired from the European Commission, I chose not to engage in lobbying activities as I would not feel

comfortable with that given that I worked for almost two decades as a civil servant. I was therefore particularly surprised by your claim that I am now an "international corporate player with a strong pro-ISDS background". First, I left the corporate world some two decades ago. Second, I have never, ever worked on ISDS cases anywhere, nor do I have an opinion pro or against this particular legal issue. On the contrary, neither I nor my law firm work on such matters, and I have no involvement or particular interest in it.

3. Who are your clients at Ekenberg & Andersson and in what policy or legal areas do you advise them?

See above. As we are a small law firm with eight lawyers, our clients are typically small and medium sized enterprises or private individuals. During the time that I have been with the firm, most of my clients have been private individuals. I am not allowed under Swedish law and the ethics rules of the Swedish Bar Association to disclose actual names of clients.

4. What overlaps do you perceive in your work for Commissioner Malmström and your position at Ekenberg & Andersson, especially considering your role on transatlantic trade issues?

Given what I have explained above, I perceive no overlaps at all between what I do at Ekenberg & Andersson and my role as Special Adviser to Commissioner Malmström. As I already mentioned, I don't take on lobbying matters. Moreover, our firm only practices Swedish law. The trade, regulatory or transatlantic issues that I would possibly work on would typically involve advising international, including American, clients on Swedish law and Swedish clients on how the legal system works in the US in cooperation with local US counsel, something I used to do when I practiced law before I joined the European Commission. I would of course never advise clients on anything that involves what I do or have learnt in my role as Special Adviser to Commissioner Malmström.

5. Are there any specific issues which you have agreed with Commissioner Malmström that you will not work on because of the risk of conflict of interests with your work at Ekenberg & Andersson?

See my reply to question 4 above. In addition, I have agreed to follow the rules applicable to Special Advisers and I have signed a Declaration on the Honour to that effect. The rules, and a copy of my signed Declaration, are available on the Commission's webpage.

6. Ekenberg & Andersson's website is now featuring a [footnote](#) stating

that:

*“In March, 2015, our partner Jan E. Frydman was appointed Special Adviser to the European Commissioner for Trade. In this role he is bound by rules on confidentiality and impartiality in accordance with European Union [rules governing Special Advisers](#) and he therefore does not offer expertise covered by such rules.”*

Could you specify which areas of expertise you consider to be covered by such rules and have consequently stopped working on?

First, since I have never worked on these areas at all at Ekenberg & Andersson, I have not “stopped” working on these areas. Second, as I will be advising Commissioner Malmström on trade policy and on trade relations with the USA, I will not advise any clients on anything that would be part of such issues. That is why the firm published on its website an update following my appointment as a Special Adviser so as to avoid any misunderstandings, or even the appearance of a conflict of interest, and be very clear and transparent about this.

7. What involvement have you had, at any point in your career, with transatlantic trade negotiations, regulatory cooperation or investor state dispute settlement?

As a Commission official, I worked for many years on various aspects of transatlantic relations, including trade and regulatory issues.

I have never worked on investor state dispute settlement, nor has Ekenberg & Andersson.

Moreover, you mention in your article that I “coordinated the Trans-Atlantic Business Dialogue (TABD)”. That is not correct. The TABD is a private sector dialogue with the European Commission and the US Government, established by the EU and the US in 1995. The Commission listens to all relevant stakeholders, and the purpose of the transatlantic dialogues, of which there were originally four, was to enable stakeholders to present recommendations on how to improve transatlantic relations in their respective areas of interest. Since each such area of interest is covered by a different DG of the European Commission, my colleagues were coordinating the Commission’s relations with the Transatlantic Consumer (TACD) and, when they existed, the Environmental (TAED) and Labour (TALD) dialogues, while I did the same for the TABD. We cooperated closely to enable the Commission to obtain a balanced view of all transatlantic stakeholders. I thus did not coordinate “the TABD” but the

Commission's work with stakeholders. Incidentally, it was some 10 years ago that I did that.

8. Do you perceive there to be any overlap between your current position at Ekenberg & Andersson and your former roles as Head of Unit for Tourism and Culture and Head of Unit for International Regulatory Affairs and Toy Safety at the Commission?

No, I don't take on any work that would overlap what I did as a former Commission official. And as a former Commission official, I am bound by the rules on external activities of the Staff Regulation and related regulations.

9. What contacts, if any, did you have with Ekenberg & Andersson in your previous positions at the Commission?

I have never had any contact with Ekenberg & Andersson in any of my previous positions at the Commission.

10. How do you respond to concerns that your appointment as Special Adviser whilst maintaining your position at Ekenberg & Andersson could provoke the risk, perception or actuality of conflicts of interest?

According to the rules for Special Advisers as established by the EU, such Advisers are appointed notwithstanding gainful employment in some other capacity. Given that, given the rules that I am bound by, and given what I have explained above concerning what I do - and what I don't do - there would be no such risk, and I do not believe that anybody that knows the truth would perceive such a conflict of interest.

11. Do you have any other comments to make about these issues?

When I read your article and letter to the Secretary-General I was, quite frankly, offended and thoroughly surprised. The way you characterise me and what I do now has very little to do with reality, something that I trust that my replies to your questions have shown. You bring up the fact that I worked for a company called Procter & Gamble 31 years ago, and for a law firm called Mannheimer Swartling 19 years ago, and conclude that because of that I am now an "international corporate player", etc. The truth is that I made a personal choice to leave the corporate world two decades ago to be a civil servant, and later to serve as a judge and now as an independent lawyer that does not do lobbying activities. Your characterization of me is totally unfounded.

I look forward to hearing from you; thank you for your time.

Yours sincerely,

Margarida da Silva

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Margarida da Silva

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