

Brussels, 17 April 2015



To the Secretary-General of the European Commission, Ms. Catherine Day

Concerning: inadequate scrutiny of potential conflicts of interest in the appointment of a Special Adviser

Dear Ms. Day,

In early March, the European Commission appointed Swedish lawyer Jan E. Friedman as Special Adviser for Trade Policy and Transatlantic Affairs to EU Commissioner Cecilia Malmström.

We have reasons to believe that the European Commission has not made sufficient efforts to critically scrutinise – and indeed avoid - possible conflicts of interest in this appointment. This points to a violation of the rules, which state that “when appointing an adviser, each Member of the Commission must ensure that there is no conflict of interest between the future duties of his or her special adviser and any outside activities they may have.”[1]

Jan Frydman is a partner at Ekenberg & Andersson law firm in Stockholm where he leads the Firm’s “EU and transatlantic practice”. On March 4th, Ekenberg & Andersson published a press release titled “E&A Partner Jan E. Frydman appointed Special Adviser to the Swedish EU Commissioner Cecilia Malmström”. [2]

In the press release, Thomas Ekenberg, Senior Partner at Ekenberg & Andersson, said: *“We are all glad that Jan, as the only Swedish attorney in such a role, has been appointed Special Advisor to the European Commission. With his vast experience in international trade matters, Jan will support Sweden's EU Commissioner and contribute to the successful implementation of the EU's trade agenda, not least the important negotiations now under way for a Transatlantic Trade and Investment Partnership (TTIP). With continued globalization and increased trade, trade law will become increasingly important, and our Firm is able to offer unique expertise in this area.”* The press release also stated that *“Jan Frydman will advise the European Commission in addition to his regular law practice”*.

Frydman’s double role creates an obvious risk of conflicts of interest. On its website, Ekenberg & Andersson praises its “unique expertise” in “regulations and decisions affecting Swedish business [which] are adopted and taken either in Brussels or in Washington”. The website adds: “This can be expected to increase further as a result of the negotiations between the EU and the U.S. on a free trade agreement (T-TIP).” Indeed, the TTIP negotiations are to a large extent about regulations, both existing and future. For instance, the

regulatory cooperation chapter negotiated as part of TTIP, with the aim to reduce differences in EU and US regulations, is likely to significantly change the way regulations will be decided in the future. As Malmström's special advisor, Frydman will have a unique opportunity to shape the chapter – in the interest of his law firm and its clients. Furthermore, intellectual property rules are a key issue in the TTIP negotiations. The “intellectual property practice” of Frydman's law firm (covering patents, trade secrets and other intellectual property rights) also raises questions about potential conflicts of interests.

Frydman has signed a 'Declaration on the Honour' document stating that he is aware of the obligations following from the function of Special Adviser and that he “confirms that there is no conflict of interest between the future duties of Special Adviser and my other activities”[3]. This is clearly unconvincing as Frydman continues to head the “EU and transatlantic practice” at Ekenberg & Andersson, which per definition creates a serious risk of conflicts of interest. The European Commission appears not to have done a thorough assessment of whether his twin roles could lead to conflicts of interest and if/how this could be prevented.

We have taken note of the footnote published on the Ekenberg & Andersson, presumably posted at a later date in response to an article by Corporate Europe Observatory highlighting the risk of conflicts of interest in Frydman's double roles. The footnote states that:

*\*) Update: 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. [4]*

We do not believe that this short statement is satisfactory. Firstly, stating that Frydman “does not offer expertise covered by such rules” is ambiguous and unclear as the rules do not mention specifically which activities are off-limit. The rules state that he should not deal with any matters in which he has any personal interest such as to impair his independence and should such a situation arise he should inform the Commission “immediately in writing”. As head of Ekenberg & Andersson's “EU and transatlantic practice”, a role which Frydman still holds today, there is an inherent conflict of interest with his role as special adviser for Trade Policy and Transatlantic Affairs. Moreover, even if Frydman would have recused himself from a wide range of clearly defined areas of active work within Ekenberg & Andersson, his role as partner at Ekenberg & Andersson gives rise to potential conflicts of interest, as his advice could be biased towards the wider financial interests of this company (as described above). This is underlined by the fact that Ekenberg & Andersson published a press release about Frydman's announcement, with wording that could be interpreted as an attempt to benefit from Frydman's new role to attract new clients.

According to the rules for Special Advisers, the Commissioner responsible “must establish that there is no conflict of interest regarding the special advisers they have chosen” and “DG ADMIN then checks that there is no conflict of interest between the special adviser's future duties and any outside activities on the basis of the documents provided by the Members of the Commission.” It appears that the Commission may not have undertaken an adequate pro-active and critical assessment of possible conflicts of interest.

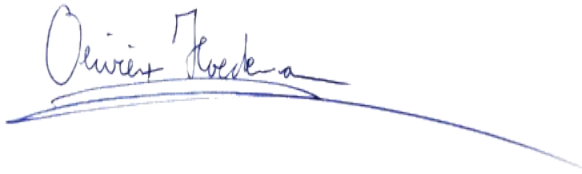
A thorough assessment by the Commission, in our view, would likely have led to the conclusion that conflicts of interest were unavoidable due to Frydman's double roles and that

he was therefore not an appropriate choice as Special Adviser on trade policy to Commissioner Cecilia Malmström. We would also like to point to the fact that Frydman's double roles, in addition to the risk of concrete and material conflicts of interest, clearly leads to the *appearance of conflicts of interest*. For EU citizens concerned about the EU-US trade negotiations (TTIP), the choice of Frydman as Special Adviser is not one that builds trust in the European Commission standing up for the public interest, rather the opposite.

Finally, Frydman's CV published on the Commission's website is far too general and lacks important details. It, for instance, mentions that Frydman has a background at the law firm Mannheimer Swartling. This is the law firm that represents Swedish energy giant in the controversial investor-state challenge against the German government over the nuclear phase-out. Frydman's CV on the Commission website mentions this previous role, but not when this was. It requires further internet search to discover that Frydman worked for Mannheimer Swartling between 1989 and 1996. This and other more specific information should have been mentioned in the CV.

We look forward to your clarifications on these matters as well as to steps that will be taken to avoid that conflicts of interest in Mr. Frydman's role of Special Adviser lead to undue influence over the EU's trade policy-making. We believe that the logical conclusion should be to replace Mr. Frydman with a Special Adviser free from conflicts of interest.

Yours sincerely,

A handwritten signature in blue ink that reads "Olivier Hoedeman". The signature is written in a cursive style and is underlined with a long, sweeping horizontal line.

Olivier Hoedeman  
on behalf of Corporate Europe Observatory (CEO)

**Notes:**

1: Rules on Special Advisers to the European Commission  
[http://ec.europa.eu/civil\\_service/docs/special\\_advisers/comm\\_c\\_2007\\_6655\\_1\\_en.pdf](http://ec.europa.eu/civil_service/docs/special_advisers/comm_c_2007_6655_1_en.pdf)

2: <http://www.ekenbergandersson.com/2015-03-10.aspx>

3: 'Declaration on the Honour'  
[http://ec.europa.eu/civil\\_service/docs/special\\_advisers/2015/frydman\\_decl\\_honour\\_en.pdf](http://ec.europa.eu/civil_service/docs/special_advisers/2015/frydman_decl_honour_en.pdf)

4. <http://www.ekenbergandersson.com/international-trade-and-regulatory-affairs.aspx>