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DECISION OF THE EUROPEAN COMMISSION

**on Former Commissioner Thierry Breton's post term of office professional activity as
member of the Global Advisory Council of Bank of America**

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on European Union,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to the Commission Decision of 31 January 2018 (C(2018) 700 final) on a Code of Conduct for the Members of the European Commission, and in particular Article 11(3) thereof,

Whereas:

- 1) According to the second paragraph of Article 245 of the Treaty on the Functioning of the European Union, the Members of the Commission, when entering upon their duties, shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and, in particular, their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
- 2) Article 339 of the Treaty on the Functioning of the European Union provides that the Members of the institutions of the Union shall be required, even after their duties have ceased, not to disclose information of any kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.
- 3) Article 11 of the Code of Conduct for the Members of the European Commission establishes a specific procedure for the assessment of planned professional activities which the Members or former Members of the Commission intend to take up after they have ceased to hold office. The Commission shall examine the information provided in order to determine whether the nature of the planned activity is compatible with Article 245 of the Treaty on the Functioning of the European Union. If the planned activity is related to the portfolio of the Member or former Member, the Commission shall decide only after having consulted the Independent Ethical Committee unless the planned activity falls within the exceptions set out in paragraph 3, second subparagraph, litt. (a) to (f).

- 4) Article 12 of the Code of Conduct establishes that, on request of the President, the Independent Ethical Committee shall advise the Commission on any ethical question related to the Code and provide general recommendations to the Commission on ethical issues relevant under the Code.
- 5) On 24 October 2024, Former Commissioner Breton informed the Commission of his intention to accept an assignment with Bank of America. He underlined that it would be a non-executive activity as member of its Global Advisory Council consisting of 15 business, academic and public policy leaders who share insights on emerging global trends and issues and who meet in person twice a year, once for a two-day meeting and once for a one-day meeting.
- 6) In his notification, Mr Breton underlined his determination to refrain from any lobbying activities of any kind, especially, but not only, on matters for which he had been responsible within his portfolio, to refrain from disclosing any information of the kind covered by the obligation of professional secrecy and to respect the duty of integrity and discretion in particular covering the duties of collegiality. Mr Breton also underlined that, during his mandate as Member of the Commission, he had had no contact whatsoever with Bank of America.
- 7) Mr Breton shared with the Commission the letter sent to him by the Chairman and CEO of Bank of America, providing additional factual information about Bank of America. The letter underlines that the Global Advisory Council is a non-fiduciary body consisting of internationally recognised business, academic and public leaders, who assist Bank of America on global strategy. The members of the Global Advisory Council offer advice, through senior bank executives, on the Bank's global strategy and operations, provide insight and perspective on local market opportunities and trends and assist the Bank with its relationships and opportunities around the world.
- 8) On the basis of Article 11 of the Code of Conduct for the Members of the Commission, and notwithstanding the Commission's authorisation of comparable activities in the past, the Independent Ethical Committee was requested, on 12 November 2024, to provide its opinion on the compatibility of the notified activity with Article 245 of the Treaty on the Functioning of the European Union.
- 9) Mr Breton was informed about the consultation of the Independent Ethical Committee and, at the request of the Committee, provided additional information on the nature of the envisaged activity. Mr Breton confirmed that his activity would be remunerated in relation to the participation in the two meetings held per year.
- 10) The Committee delivered its opinion on 12 December 2024. The Committee: (1) analysed the nature of Former Commissioner Breton's notified activity against the framework of

Bank of America's Governance Structure and the mandate and working methods of its Global Advisory Council; (2) underlined the link between Bank of America and the European Commission, noting in particular that Bank of America is registered in the Transparency Register of the European Parliament, the Council of the European Union and the European Commission and that 37 meetings were held with Members of the Commission, members of Cabinets and Directors-General, but none with Commissioner Breton or his Cabinet; (3) recalled the legal framework applicable to the assessment of former Commissioners' post term of office activities; (4) drew its conclusions on the restrictions and conditions which the Committee deemed necessary in order to ensure the compatibility of Mr Breton's envisaged activity as member of Bank of America's Global Advisory Council with Article 245 of the Treaty on the Functioning of the European Union.

- 11) As a preliminary consideration, the Committee noted that former Members of the Commission had a right to engage in work and to pursue a freely chosen or accepted occupation after the term of their office. This right needed to be balanced with the obligations set out in Article 245 TFEU and the Code of Conduct for the Members of the European Commission, which develops these obligations in more detail. In the present case, the Committee noted that the broad scope of economic and financial interests of Bank of America indeed entailed the need for a careful assessment of Mr Breton's envisaged activity against the framework of the principles of integrity and discretion established by Article 245 of the Treaty on the Functioning of the European Union.
- 12) The Committee underlined that the tasks of the members of the Global Advisory Council consisted in providing high-level geopolitical and economic outlooks to Bank of America, yet noting that this activity does not involve any obligation or responsibility outside of the meetings.
- 13) The Committee considered that there was a link between Former Commissioner Breton's portfolio responsibilities and the scope of the notified activity: as Commissioner for Internal Market, Mr Breton had wide-ranging responsibilities including guaranteeing the smooth functioning of the internal market, improving access to finance for small and medium-sized businesses and start-ups, enhancing Europe's technological sovereignty, a wide range of digital files, as well as intellectual property, defence and space. These responsibilities, while different from the kind of broad outlook that Former Commissioner Breton would be expected to provide as part of his role as member of Bank of America's Global Advisory Council, were economic in nature and could be highly relevant in geopolitical analyses.
- 14) The Committee went on underlining that specific information or insights that Former Commissioner Breton had obtained during his term of office could be relevant for business and management decisions of the bank that would be informed by the insights

shared within the Global Advisory Council. This could concern information obtained in areas pertaining to Mr Breton's former Commission portfolio or other areas in which he had been involved via his collegial responsibilities within the Commission.

- 15) This led the Committee to conclude that the Commission decision should recall and explicitly spell out a number of restrictions in order to ensure the compatibility of the activity with the obligations applying after the end of Mr Breton's mandate.
- 16) The Committee furthermore considered it important that both Former Commissioner Breton and Bank of America were fully aware of the obligations of former Members of the Commission, which continue to apply after their term of office.
- 17) The Committee deemed it essential that the Commission's decision should explicitly stress the importance of strictly respecting the obligations resulting from Article 339 TFEU, which provides that *'The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components'*.
- 18) In addition, the Commission decision should explicitly recall the importance of strictly complying with the duties of collegiality and discretion, as laid down in Article 11(1) and Article 5 of the Code of Conduct, with respect to the Commission's decisions and activities during Former Commissioner Breton's term of office. This should include not only refraining from disclosing what was said at meetings of the Commission, but also a general duty to apply a high sense of discretion with regard to the use of information and insights that Former Commissioner Breton obtained during his mandate, be it within his portfolio responsibilities or within the College.
- 19) Furthermore, the Committee considered that, while the membership of the Global Advisory Board did not involve lobbying activities on behalf of the Bank, the Commission decision should nevertheless recall explicitly that Article 11(4) of the Code of Conduct for the Members of the Commission also applies to this activity for a period of two years after the end of the mandate, i.e. until 16 September 2026. In view of Former Commissioner Breton's broad responsibilities as Commissioner for Internal Market and of the large scope of the advice he was expected to provide in the course of his envisaged activity, the Commission decision should extend the prohibition of lobbying to all matters in which Former Commissioner Breton was involved at College level, even if he had not been directly responsible for them as part of his portfolio responsibilities.
- 20) The Committee also recommended, in line with previous opinions concerning post-mandate activities in the financial sector, that the Commission decision should include a

condition that Commissioner Breton should share a copy of the Commission Decision with Bank of America and confirm this to the Commission. This would contribute to ensuring full transparency of the applicable obligations, conditions and restrictions and would provide the Commission with an additional assurance that situations which could create a risk for the respect of those obligations would be avoided or addressed by both Former Commissioner Breton and Bank of America.

- 21) The Commission decision should furthermore recall that, in case Former Commissioner Breton had a doubt with regard to his obligations, he had to inform the President of the Commission in a timely manner and before acting on the matter relating to which the doubts arose, according to Article 13(2) of the Code of Conduct.
- 22) The Committee concluded that the Commission could consider Mr Breton's notified activity as compatible with Article 245 TFEU on the condition that the above-mentioned obligations, conditions, and restrictions were explicitly and in full set out in the Commission's decision and brought to the attention of Bank of America by Former Commissioner Breton.
- 23) The Commission has considered the Committee's opinion and shares its conclusions.

HAS DECIDED AS FOLLOWS:

Article 1

Former Commissioner Breton's envisaged post term of office activity as member of the Global Advisory Council of Bank of America, is compatible with Article 245 of the Treaty on the Functioning of the European Union, subject to the respect of the conditions and restrictions set out in Article 2.

Article 2

- 1) In accordance with Article 339 of the Treaty on the Functioning of the European Union, Former Commissioner Breton shall refrain from disclosing or using information of the kind covered by the obligation of professional secrecy that he obtained as Member of the Commission, in particular information about undertakings, their business relations or their cost components;
- 2) In line with Article 11(1) of the Code of Conduct for the Members of the Commission, in conjunction with Article 5 of the Code, Former Commissioner Breton remains bound by the duties of collegiality and discretion, with respect to the Commission's decisions and activities during his term of office. He shall not disclose what was said at meetings of the Commission and shall apply a high sense of discretion with regard to the use of

information and insights that he obtained during his mandate in relation to his former portfolio on the Internal Market, or in general in relation to the performance of his duties as Member of the Commission.

- 3) Former Commissioner Breton shall refrain from lobbying the Commission on behalf of Bank of America on matters for which he was responsible within his former Commission portfolio on the Internal Market and on all matters in which he was involved at College level, for a period of two years after ceasing to hold office;
- 4) Former Commissioner Breton shall share a copy of the present Decision with Bank of America and inform the Secretary-General of the Commission thereof;
- 5) In line with Article 13(2) of the Code of Conduct for the Members of the Commission, Former Commissioner Breton shall inform the President of the Commission, in a timely manner, if and when he has a doubt with regard to the application of the present Decision or the Code of Conduct in general before acting on the matter in relation to which the doubt arises.

Done at Brussels, on 15 January 2025.

The President
Ursula von der Leyen