

General Data Protection Regulation (GDPR): Information on data processing within the meaning of Art. 13 and Art. 14 GDPR

Version: May 2018

The following information sheet provides information concerning the processing of your personal data by HETA ASSET RESOLUTION AG (“HETA”) and your rights under data protection law in regard to your data. The content and extent of the processing of your data are essentially determined by your business relationship with HETA, and also by the statutory wind-down task for HETA pursuant to § 3 (1) GSA.

A. Data controller

The data controller is:

HETA ASSET RESOLUTION AG
Alpen-Adria-Platz 1
9020 Klagenfurt
Tel.: +43 (0) 50209 – 0
Email: holding@heta-asset-resolution.com
www.heta-asset-resolution.com

The Data Protection Officer at HETA is:

Name: Richard Joham, Akad.Vkfm.
Tel: +43 (0)50209 4616
Email: richard.joham@heta-asset-resolution.com

Any data subject as defined by the GDPR can contact the Data Protection Officer directly at any time in the event of queries or suggestions on the subject of data protection.

B. HETA – an overview

HETA is a partially regulated wind-down unit pursuant to the Austrian Federal Act on the Establishment of a Wind-down Unit [*Bundesgesetz zur Schaffung einer Abbaueinheit (“GSA”)*]. The business purpose of HETA is the complete winding down of its assets. According to § 3 (1) GSA, as a wind-down unit, HETA has to ensure “an orderly and active disposition of its assets on the best terms possible” (portfolio wind-down). The portfolio wind-down has to be carried out in accordance with a wind-down plan as set out in § 5 GSA, and is to be achieved as quickly as possible within the framework of the wind-down objectives. Following the wind-down of the assets, HETA is to be liquidated. For HETA, in addition to a ban on any new business in general there is, in particular, a requirement that the assets be wound down in a way that preserves capital and value.

HETA terminated its banking licence in October 2014, and since then has in accordance with § 3 (4) GSA been subject to the provisions of the Austrian Banking Act

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[*Bankwesengesetz (“BWG”)*] on a restricted basis. Within this framework, on the basis of the “legal licence” [*Legalkonzession*] envisaged under GSA, HETA is entitled to undertake banking or leasing transactions which serve its wind-down purpose.

Directive 2014/59/EU (“BRRD”), together with Regulation (EU) No. 806/2014 (“SRM”), as a common regime for the recovery and resolution of banks, forms the so-called “second column” of the European Banking Union, and follows on from the regulations of the Single Supervisory Mechanism for banks (“SSM”), the so-called “first pillar”. With the requirements of the BRRD, substantive regulations for the recovery and resolution of banks in the Member States are brought together in a minimal harmonisation. In Austria, the BRRD has been implemented through the Federal Act on the Recovery and Resolution of Banks [*Bundesgesetz über die Sanierung und Abwicklung von Banken (“BaSAG”)*], which came into force on 1 January 2015. The national resolution authority is the Austrian Financial Market Authority [*Österreichische Finanzmarktaufsicht (“FMA”)*], which, as the competent supervisory authority pursuant to § 8 GSA, also supervises the fulfilment of the applicable provisions of BWG.

Against this background, the FMA, in its function as resolution authority, has issued administrative rulings and additional administrative decisions concerning the challenge procedure [*Vorstellungsbescheide*] in regard to HETA. With the rulings and decisions, resolution measures such as the “haircut” instrument pursuant to BaSAG have been imposed on HETA. The rulings and decisions of the FMA can also be found on the HETA website under www.heta-asset-resolution.com and on the FMA website under <https://www.fma.gv.at/heta-asset-resolution-ag/>.

C. Type and origin of the data processed

HETA processes personal data which it has received from you in the course of the business relationship or in the course of setting up a business relationship with you. In addition, HETA processes data it has received from affiliated companies and credit agencies (Kreditschutzverband 1870) and from publicly accessible sources (such as commercial registers, land registers, the media), which HETA has received on a legally permissible basis and is permitted to process such data. As of the reference date 31 December 2017, HETA is represented by local subsidiaries in Austria, Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, Germany and Hungary (see page 83 of the HETA annual report for 2017: http://www.heta-asset-resolution.com/sites/hypo-alpe-adria.com/files/content/file/file_download/heta_jahresabschluss_2017_geschaeftsbericht.pdf)

Personal data in this connection can be: personal details (e.g. first name and surname, address, contact details, date and place of birth, nationality, etc.), proof of identity data (e.g. passport details), or authentication data (e.g. signature sample). In addition, personal data can include order data and data derived from the performance of contractual obligations, documentation data, register data, visual and audio data, processing results which have been generated by HETA, and data for the fulfilment of statutory and regulatory obligations, in particular the fulfilment of the statutory HETA wind-down task.

D. Purposes and legal basis of data processing

The processing of personal data is carried out in accordance with the provisions of the EU General Data Protection Regulation (GDPR), the Austrian Data Protection Act (DSG), the

Privacy and Electronic Communications Directive (E-Privacy Directive), the Austrian Telecommunications Act 2003 and all additional relevant laws, for the following purposes:

D.1. Where you have given your consent (Art. 6 (1) a) GDPR):

If you have given HETA your consent to the processing of your personal data, your data will only be processed according to the purposes as specified in the declaration of consent and in the extent agreed therein (e.g. registration/newsletter of www.aaaplatform.com). Any consent given can be withdrawn at any time with effect for the future. Withdrawal of consent does not affect the lawfulness of the data processing carried out on the basis of the consent as provided up to the time of withdrawal.

D.2. For the fulfilment of (pre-)contractual obligations (Art. 6 (1) b) GDPR):

Your personal data are processed in order to carry out the legal relationship between you and HETA, and to perform all necessary activities in connection with the operation and management of HETA for the fulfilment of the statutory wind-down task pursuant to § 3 (1) GSA, i.e. the termination of the contractual relations. The purpose of the data processing is based primarily on the specific legal relationship (e.g. lending/leasing business) and the wind-down strategy of HETA in the particular case and the associated operational tasks. The wind-down strategy is derived from the HETA wind-down plan, and represents the quantitative and qualitative implementation of the wind-down task (such as sale of loans, loan collateral and other assets of HETA).

D.3. For the fulfilment of legal obligations / performance of a task carried out in the public interest (Art. 6 (1) c) and e) GDPR):

The processing of personal data is necessary for the purpose of the fulfilment of various statutory obligations (in particular the execution of the statutory wind-down task pursuant to GSA and BaSAG, but also including the obligations arising from the Austrian Banking Act (BWG), the Austrian Financial Market Money Laundering Act (FM-GWG), etc.) and also supervisory regulations to which HETA is subject. According to § 3 (4) GSA, HETA is subject, on a restricted basis, to the provisions of BWG, and accordingly has certain reporting and notification duties (e.g. in regard to the FMA, Oesterreichische Nationalbank (OeNB), etc.).

The purposes of the data processing are based primarily on the specific legal relationship and the statutory wind-down task of HETA. According to § 3 (1) GSA, the statutory wind-down task envisages that HETA must ensure an orderly and active disposition of its assets on the best terms possible. It is intended that the entire HETA portfolio is to be wound down in this way. The wind-down is to be carried out in accordance with a wind-down plan, and is to be achieved as quickly as possible within the framework of the wind-down objectives (see section B above on this point).

D.4. For the safeguarding of legitimate interests (Art. 6 (1) f) GDPR):

If necessary, in the context of a balancing of interests in favour of HETA or a third party, the processing of data can go beyond the fulfilment of the contract to include the safeguarding of legitimate interests of HETA or third parties. The following cases may be involved here (legitimate interests):

- measures for Group-wide business and risk management of the wind-down activity (portfolio wind-down)

- in the context of legal prosecution (assertion of lawful claims and defence in the context of legal disputes, management of claims/complaints, forensic investigations)
- consultation and data exchange with credit agencies (e.g. Kreditschutzverband 1870)
- transmission of data within the HETA Group for internal administrative purposes
- measures for the protection of employees and property of HETA
- measures to prevent and combat fraud
- measures to combat money laundering and terrorist financing
- planning, execution and documentation of audit measures, conformity with reviews carried out by authorities
- guaranteeing EDP/IT security and operation
- measures to ensure the safety of buildings and equipment

E. Passing on of data

Within HETA, those departments and employees have access to your data, who need such data to fulfil contractual, statutory and supervisory law duties and also to fulfil legitimate interests. In addition, service providers acting on HETA's instructions (such as attorneys, notaries, tax advisers, public accountants, other advisers and valuation experts) and persons processing data on HETA's behalf (in particular IT service providers) receive your data insofar as they need such data for the provision of their respective services. To the extent that service providers and processors acting on HETA's behalf are used, they are placed under a contractual obligation to treat your data confidentially and to only process your data within the framework of the provision of services. Agreements have been concluded with processors concerning the processing of data on behalf of HETA.

With regard to the passing on of data to affiliated companies and other third parties, we would like to point out that even as a wind-down unit HETA has to observe bank secrecy as envisaged in § 38 BWG, and is therefore under an obligation of secrecy concerning all customer-related information and facts that have been entrusted to or made accessible to HETA on the basis of the business relationship. Consequently, HETA only passes on your personal data if you have expressly and in writing released us from bank secrecy in this regard beforehand, or if HETA is obliged or authorised to do so by law or under supervisory regulations, and/or the transmission of the data is necessary for the fulfilment of contractual obligations or to fulfil HETA's statutory wind-down task. If data are passed on in the context of a joint responsibility as envisaged in Art. 26 GDPR, HETA will conclude an agreement with the affiliated company in question and/or the other third parties, specifying which of them has to fulfil which obligation pursuant to GDPR (in particular as far as the safeguarding of the rights of the data subjects is concerned) and which of them fulfils which duties of information pursuant to Articles 13 and 14 GDPR. Notwithstanding the details of any such additional agreement, under Art. 26 (3) GDPR, a data subject can assert his or her rights in the context of GDPR in respect of and against each of the controllers that are jointly responsible for the data processing operation in question.

If a statutory obligation or an obligation under supervisory regulations applies, public bodies and institutions (such as the FMA, the Austrian Federal Ministry of Finance, the court of auditors, criminal prosecution authorities, administrative authorities, courts) can be recipients of your personal data, to the extent that this is necessary. Other banks and financial institutions or comparable organisations can also be recipients of personal data, as well as (potential) purchasers of assets of HETA to whom data are transmitted for the fulfilment of HETA's statutory wind-down task.

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F. Data transmission to third countries

Data transmission to countries outside of the EU and the EEA (so-called third countries) only takes place insofar as this is necessary for the execution of your orders or if required by law (e.g. reporting duties under tax regulations), or if you have given us your express consent to such transmission, or if this is necessary for the fulfilment of HETA's statutory wind-down task, or in the context of data processing carried out by processors on HETA's behalf. Similarly, any transmission of data to affiliated companies in third countries only takes place in accordance with these criteria.

The transmission of personal data to a third country takes place only on the basis of an adequacy decision of the EU Commission with effect for the EU, or on the basis of appropriate safeguards as envisaged in Art. 46, 47 (e.g. binding internal data protection rules or standard EU data protection clauses) or in Art. 49 (1) GDPR (e.g. attorneys, public accountants, notaries, creditors, courts and other public authorities, if this is necessary for the fulfilment of the respective contract or for the assertion, exercise or defence of legal claims).

G. Duration of storage

HETA processes and stores your personal data for as long as is necessary for the fulfilment of our contractual and statutory duties, normally for the duration of the entire business relationship (i.e. until a contract is ended, e.g. as a result of restitution or sale) and also beyond that period, in accordance with contractual and statutory duties of preservation and documentation, which are based *inter alia* on the Austrian Commercial Code (UGB), the Austrian Federal Tax Code (BAO), the Austrian Banking Act (BWG), the Austrian Financial Market Money Laundering Act (FM-GwG) and the Austrian Securities Supervision Act (WAG).

The statutory limitation period for the assertion of legal claims is between three and thirty years. For as long as is necessary, depending on the potential claim and for the exercise of HETA's legal claims, HETA can preserve any personal data of yours which is required for the assertion of such claims. A longer preservation period can, in particular, also arise against the background of HETA's wind-down activity.

H. Data protection rights

You have the right at any time to have access to your stored personal data, and to require rectification, erasure and restriction of the processing of your data. You have a right to object to the processing of your data, a right to data portability, and a right to measures in connection with automated decisions in the individual case, including profiling, in accordance with the requirements of data protection law.

To assert these rights, contact our Data Protection Officer (see section A of this document). You can address any complaints to the Austrian Data Protection Authority, Wickenburggasse 8-10, 1080 Vienna (www.dsb.gv.at).

I. Obligation to provide data

In the context of the business relationship, you must provide HETA with the personal data which are required for the acceptance and execution of the business relationship, and which HETA is obliged by law to collect (e.g. according to BWG, FM-GWG).

If you do not provide such data to HETA, HETA will normally have to refuse to conclude the contract or refuse to execute the order, or HETA will no longer be able to continue to execute an existing contract and will therefore have to terminate it. However, you are not obliged to issue your consent to the processing of data which are not relevant to the fulfilment of the contract or which are not required by law or regulations.

J. Automated decision making (including profiling)

HETA does not use any automated decision making within the meaning of Art. 22 GDPR in order to bring about a decision concerning the establishment and execution of the business relationship.

As HETA is a wind-down unit, new business is not undertaken as a matter of principle. Exceptions are only possible in very rare cases, if this is expedient for the implementation of the wind-down. In such cases, HETA is obliged to act in accordance with the EU state aid decision and the provisions of GSA.
