

1. HETA ASSET RESOLUTION AG  
Alpen-Adria-Platz 1  
9020 Klagenfurt

2. Creditors of the eligible liabilities of  
HETA ASSET RESOLUTION AG which  
are covered by the decision

DEPARTMENT Integrated Supervision  
Ref. FMA-AW00001/0001-ABB/2015  
(please quote in all correspondence!)

E-DELIVERY: ERsB (Supplementary  
Register of Other Data Subjects) NO.  
9110020375710

VIENNA, dated 01.03.2015

### **Administrative ruling**

The FMA, in its capacity as resolution authority pursuant to § 3 (1) of the Austrian Federal Act on the Recovery and Resolution of Banks, BGBl. (Federal Law Gazette) I No. 98/2014 (BaSAG), and in consequence of the fulfilment of the preconditions for resolution within HETA ASSET RESOLUTION AG, Alpen-Adria-Platz 1, 9020 Klagenfurt, Commercial Register no. FN 108415, (hereinafter "HETA") pursuant to § 50 (1) no. 2 in conjunction with § 58 (1) BaSAG, orders the following measures with immediate effect in respect of HETA and all creditors of the eligible liabilities of HETA which are covered by the decision:

I.

The maturities for all debt securities issued by HETA and for all other liabilities, and the dates on which the interest accruing thereon is to be paid, are (insofar as the due dates of the debt securities or liabilities or interest accruing thereon would otherwise be earlier and these debt securities, liabilities and interest have not already been paid off) amended with immediate effect pursuant to § 58 (1) no. 10 BaSAG, and are deferred until the end of 31.05.2016, provided that the liabilities in question are not non-eligible liabilities pursuant to § 86 (2) BaSAG:

1. secured deposits;

2. secured liabilities;

3. any liabilities arising from the management by HETA of customer assets or customer monies, including customer assets or customer monies which have been lodged in the name of UCITS pursuant to Art. 1 (2) of Directive 2009/65/EC, or in the name of AIFs pursuant to Art. 4 (1) a of Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010, OJ No. L 174 of 1.7.2011 page 1, insofar as rights to separation or recovery are applicable in regard to such customer assets or customer monies, or the customer assets or customer monies in question are subject to comparable protection under insolvency law as applicable;

4. any liabilities arising from a trustee relationship of HETA (as trustee) and another person (as beneficiary), insofar as the beneficiary is able to assert rights to separation or recovery or is subject to comparable protection under insolvency law as applicable;

5. liabilities owed to institutions or enterprises pursuant to § 1 (1) nos. 2 to 4 BaSAG – except for enterprises which are part of the same group – with an original term of less than seven days;

6. liabilities with a residual term of less than seven days owed to payment systems and securities settlement systems, the operators or other participants in such systems, if the liabilities in question result from participation in the system;

7. liabilities owed to

a) employees as defined in the Austrian Labour Constitution Act (Arbeitsverfassungsgesetz);

b) other employees on the basis of outstanding wage or salary claims, pension payments or other fixed remunerations, except for variable remuneration components, unless these are governed by collective agreement or constitute a variable remuneration component for persons bearing a significant risk pursuant to § 39b of the Austrian Banking Act (BWG);

c) business or trade creditors, on the basis of deliveries and services which are of considerable importance for the day-to-day business operation of HETA, including IT services, utility services and the leasing, management and maintenance of buildings;

d) tax and social insurance authorities, insofar as the liabilities in question have priority status according to applicable law;

e) deposit guarantee schemes, on the basis of due contributions pursuant to Directive 2014/49/EU.

## II.

This amendment of the maturities and the dates on which the interest is payable relates in particular to the debt securities and liabilities listed below and to the interest accruing thereon, insofar as the maturity of the debt securities or liabilities or interest accruing thereon would otherwise be earlier:

## 1. Bonds payable, subordinated capital and bonded loans:

ISIN/No. Type	Issue	Final maturity	Curre ncy	Current nominal amount in currency	Currently outstanding volume in EUR per 27.02.2015
<b>Bonds</b>					
XS0289201484	HBInt_EUR_3m-Euribor_2007-2015	06.03.2015	EUR	450,000,000.00	450,000,000.00
XS0292051835	HBInt_EUR_3m Euribor_2007-2015	20.03.2015	EUR	500,000,000.00	500,000,000.00
XS0217836179	HBInt_EUR_3moEuribor_2005-2015	22.04.2015	EUR	20,000,000.00	20,000,000.00
XS0293593421	HBInt_CHF_6mLibor_2007-2015	23.04.2015	CHF	200,000,000.00	188,040,616.77
XS0217878841	HBInt_EUR_Inflationsgelinkt_2005-2015	04.05.2015	EUR	80,000,000.00	80,000,000.00
XS0218884194	HBInt_EUR_3moEuribor_2005-2015	06.05.2015	EUR	20,000,000.00	20,000,000.00
XS0219714564	HBInt_EUR_10YCMS_2005-2015	27.05.2015	EUR	5,000,000.00	5,000,000.00
XS0169594057	HBInt_EUR_4,25%_2003-2015	16.06.2015	EUR	25,000,000.00	25,000,000.00
CH0028623145	HBInt_CHF_2,76_2007_2015	12.08.2015	CHF	600,000,000.00	564,121,850.32
XS0219079794	HBInt_EUR_3moEuribor_2005-2016	06.05.2016	EUR	20,000,000.00	20,000,000.00
XS0268565586	HBInt_JPY_1,905_2006-2016	29.09.2016	JPY	5,000,000,000.00	37,299,515.11
XS0272401356	HBInt_EUR_4.25%_2006-2016	31.10.2016	EUR	1,250,000,000.00	1,250,000,000.00
XS0232733492	HBInt_EUR_3,42%_2005-2016	07.11.2016	EUR	25,000,000.00	25,000,000.00
XS0210195003	HBInt_EUR_3moEuribor_2005-2017	24.01.2017	EUR	25,000,000.00	25,000,000.00
XS0210264411	HBInt_EUR_3moEuribor_2005-2017	24.01.2017	EUR	50,000,000.00	50,000,000.00
XS0210372065	HBInt_EUR_3,90%_2005-2017	24.01.2017	EUR	10,000,000.00	10,000,000.00
XS0281875483	HYPO ALPE-ADRIA ANL.07/17_EUR	24.01.2017	EUR	2,000,000,000.00	2,000,000,000.00
XS0184652567	HBInt_EUR_3moEuribor_2004-2017	09.02.2017	EUR	10,000,000.00	10,000,000.00
XS0184385937	HBInt_EUR_3mEuribor+15BP_2004-2017	17.02.2017	EUR	65,000,000.00	65,000,000.00
AT0000A00EZ4	HBInt_EUR_3,72%_2006-2017	15.03.2017	EUR	20,000,000.00	20,000,000.00
XS0187818595	HBInt_EUR_3moEuribor_2004-2017	15.03.2017	EUR	20,000,000.00	20,000,000.00
XS0215451633	HBInt_EUR_4,07%_2005-2017	21.03.2017	EUR	5,000,000.00	5,000,000.00
XS0293591995	HBInt_EUR_CMS-linked_2007-2017	29.03.2017	EUR	100,000,000.00	100,000,000.00
XS0293592613	HBInt_EUR_CMS-linked-2007-2017	29.03.2017	EUR	70,000,000.00	70,000,000.00
XS0147028061	HBInt_EUR_6mEuribor+17BP_2002-2017	10.05.2017	EUR	20,000,000.00	20,000,000.00
XS0147142276	HBInt_EUR_6mEuribor+17BP_2002-2017	17.05.2017	EUR	25,000,000.00	25,000,000.00
XS0203692727	HBInt_EUR_6moEuribor_2004-2017	17.05.2017	EUR	23,000,000.00	23,000,000.00
XS0147285547	HBInt_EUR_12mEURIBOR&CMS_2002-2017	29.05.2017	EUR	50,000,000.00	50,000,000.00
XS0149185745	HBInt_EUR_6,94%_2003-2017	10.06.2017	EUR	5,000,000.00	5,000,000.00
XS0148839243	HBInt_EUR_Range_2002-2017	12.06.2017	EUR	5,000,000.00	5,000,000.00
XS0148494320	HBInt_EUR_5,80%_2002-2017	17.06.2017	EUR	25,000,000.00	25,000,000.00
XS0169594727	HBInt_EUR_4,4%_2003-2017	20.06.2017	EUR	25,000,000.00	25,000,000.00
XS0170738263	HBInt_EUR_6mEuribor+15BP_2003-2017	01.07.2017	EUR	30,000,000.00	30,000,000.00
XS0149819004	HBInt_EUR_fix_2002-2017	05.07.2017	EUR	10,000,000.00	10,000,000.00
XS0209755981	HBInt_EUR_3moEuribor_2005-2017	18.07.2017	EUR	50,000,000.00	50,000,000.00
XS0171833030	HBInt_EUR_6mEuribor+15BP_2003-2017	28.07.2017	EUR	50,000,000.00	50,000,000.00
XS0210342316	HBInt_EUR_3moEuribor_2005-2017	01.08.2017	EUR	25,000,000.00	25,000,000.00
XS0198512732	HBInt_EUR_3moEuribor_2004-2017	11.08.2017	EUR	50,000,000.00	50,000,000.00
XS0151684981	HBInt_EUR_6mEuribor+19BP_2002-2017	12.08.2017	EUR	75,000,000.00	75,000,000.00
XS0173650028	HBInt_EUR_6mEuribor+17BP_2003-2017	21.08.2017	EUR	50,000,000.00	50,000,000.00
XS0244768635	HBInt_EUR_CMS-Spread-CAP	23.08.2017	EUR	100,000,000.00	100,000,000.00
XS0191139574	HBInt_EUR_6mEuribor+16BP_2004-2017	28.08.2017	EUR	25,000,000.00	25,000,000.00

XS0200438223	HBInt_EUR_4,54%_2004-2017	22.09.2017	EUR	20,000,000.00	20,000,000.00
XS0232318831	HBInt_EUR_CMS-Spread_2005-2017	29.09.2017	EUR	50,000,000.00	50,000,000.00
XS0232319300	HBInt_EUR_CMS-Spread_2005-2017	29.09.2017	EUR	50,000,000.00	50,000,000.00
XS0232727411	HBInt_EUR_CMS-Spread_2005-2017	29.09.2017	EUR	50,000,000.00	50,000,000.00
XS0232727684	HBInt_EUR_CMS-Spread_2005-2017	29.09.2017	EUR	50,000,000.00	50,000,000.00
XS0161493811	HBInt_EUR_6mEuribor+17BP_2003-2018	10.02.2018	EUR	50,000,000.00	50,000,000.00
XS0162348857	HBInt_EUR_6mEuribor+17BP_2003-2018	04.03.2018	EUR	25,000,000.00	25,000,000.00
XS0162472517	HBInt_EUR_4,625%_2003-2018	04.03.2018	EUR	50,000,000.00	50,000,000.00
XS0163390163	HBInt_EUR_6mEuribor_2003-2018	10.03.2018	EUR	60,000,000.00	60,000,000.00
XS0163694895	HBInt_EUR_6mEuribor+17BP_2003-2018	02.04.2018	EUR	25,000,000.00	25,000,000.00
XS0163694978	HBInt_EUR_4,70%_2003-2018	02.04.2018	EUR	25,000,000.00	25,000,000.00
XS0165821074	HBInt_EUR_6mEuribor+18BP_2003-2018	09.04.2018	EUR	35,000,000.00	35,000,000.00
XS0165935247	HBInt_EUR_5,10%_2003-2018_ZERO	17.04.2018	EUR	36,367,778.59	36,367,778.59
XS0165863233	HBInt_EUR_6mEuribor+18BP_2003-2018	22.04.2018	EUR	50,000,000.00	50,000,000.00
AT0000345483	HBInt_EUR_5,04%_2003-2023	11.02.2023	EUR	30,000,000.00	30,000,000.00
XS0165190066	HBInt_EUR_CMS_2003-2023	17.03.2023	EUR	25,000,000.00	25,000,000.00
XS0165060012	HBInt_AUD/JPY-linked_2003-2033	23.02.2033	JPY	500,000,000.00	3,729,951.51
XS0164569187	HBInt_EUR_6mEuribor+20BP_2003-2043	12.03.2043	EUR	20,000,000.00	20,000,000.00
XS0166422823	HBInt_EUR_3mEuribor+22BP_2003-2043	09.04.2043	EUR	20,000,000.00	20,000,000.00
XS0166280346	HBInt_EUR_6mEuribor+22BP_2003-2043	26.09.2043	EUR	50,000,000.00	50,000,000.00
<b>Subordinated capital</b>					
XS0139343635	HBA_EUR_5,73%_2001-2021	10.12.2021	EUR	15,000,000.00	15,000,000.00
XS0142938686	NR HBInt_EUR_5,92%_2002-2022	22.02.2022	EUR	15,000,000.00	15,000,000.00
XS0863484035	HAA Lower Tier2 Gov.Guarnt. 2012-2022_GGB	13.12.2022	EUR	1,000,000,000.00	1,000,000,000.00
AT0000327101	NR HBInt_EUR_7,5%NR_1994-2024	27.05.2024	ATS	60,000,000.00	4,360,370.05
XS0165863316	NR HBInt_EUR_5,27%_2003-2028	07.04.2028	EUR	10,000,000.00	10,000,000.00
XS0097058720	NR HBInt_EUR/USD-linked_1999-2029_ZERO	07.05.2029	EUR	13,846,292.50	13,846,292.50
XS0121202658	NR HBInt_EUR_3mEuribor+49BP_2000-2030	18.12.2030	EUR	14,890,000.00	14,890,000.00
XS0158550292	NR HBInt_EUR_FRN NR_2002-2032	29.11.2032	EUR	20,000,000.00	20,000,000.00
<b>Bonded loans</b>					
SSD_138	SSD_EUR_4,28%_2007-2015	02.03.2015	EUR	25,000,000.00	25,000,000.00
SSD_140	SSD_EUR 6m Euribor_2007-2015	23.03.2015	EUR	30,000,000.00	30,000,000.00
SSD_135	SSD_EUR_4,25%_2007-2015	23.07.2015	EUR	15,000,000.00	15,000,000.00
SSD_135	SSD_EUR_4,25%_2007-2015	23.07.2015	EUR	14,000,000.00	14,000,000.00
SSD_135	SSD_EUR_4,25%_2007-2015	23.07.2015	EUR	11,000,000.00	11,000,000.00
SSD_135	SSD_EUR_4,25%_2007-2015	23.07.2015	EUR	25,000,000.00	25,000,000.00
SSD_135	SSD_EUR_4,25%_2007-2015	23.07.2015	EUR	35,000,000.00	35,000,000.00
SSD_139	SSD_EUR_4,20%_2007-15	01.09.2015	EUR	1,000,000.00	1,000,000.00
SSD_139	SSD_EUR_4,20%_2007-15	01.09.2015	EUR	4,000,000.00	4,000,000.00
SSD_139	SSD_EUR_4,20%_2007-15	01.09.2015	EUR	1,000,000.00	1,000,000.00
SSD_139	SSD_EUR_4,20%_2007-15	01.09.2015	EUR	3,000,000.00	3,000,000.00
SSD_139	SSD_EUR_4,20%_2007-15	01.09.2015	EUR	1,000,000.00	1,000,000.00
SSD_139	SSD_EUR_4,20%_2007-15	01.09.2015	EUR	40,000,000.00	40,000,000.00
SSD_134	SSD_EUR_4,41%_2007-2015	15.09.2015	EUR	17,000,000.00	17,000,000.00
SSD_134	SSD_EUR_4,41%_2007-2015	15.09.2015	EUR	23,000,000.00	23,000,000.00
SSD_134	SSD_EUR_4,41%_2007-2015	15.09.2015	EUR	10,000,000.00	10,000,000.00
SSD_67	SSD_EUR_3,91%_2005-2015	18.09.2015	EUR	10,000,000.00	10,000,000.00
SSD_91	SSD_EUR_3,545%_2003-2015	30.11.2015	EUR	10,000,000.00	10,000,000.00
SSD_95	SSD_EUR_3,7%_2006-2016	29.01.2016	EUR	15,000,000.00	15,000,000.00

SSD_96	SSD_EUR_3,7%_2006-2016	02.02.2016	EUR	10,000,000.00	10,000,000.00
SSD_97	SSD_EUR_3,7%_2006-2016	02.02.2016	EUR	15,000,000.00	15,000,000.00
SSD_98	SSD_EUR_3,7%_2006-2016	02.02.2016	EUR	2,500,000.00	2,500,000.00
SSD_99	SSD_EUR_3,7%_2006-2016	02.02.2016	EUR	10,000,000.00	10,000,000.00
SSD_102	SSD_EUR_3,725%_2006-2016	08.02.2016	EUR	10,000,000.00	10,000,000.00
SSD_60	SSD_EUR_3,97%_2005-2016	26.02.2016	EUR	10,000,000.00	10,000,000.00
SSD_61	SSD_EUR_3,97%_2005-2016	26.02.2016	EUR	1,000,000.00	1,000,000.00
SSD_103	SSD_EUR_3,83%_2006-2016	09.03.2016	EUR	5,000,000.00	5,000,000.00
SSD_63	SSD_EUR_4,015%_2005-2016	16.03.2016	EUR	25,000,000.00	25,000,000.00
SSD_107	SSD_EUR_4,27%_2006-2016	29.06.2016	EUR	5,000,000.00	5,000,000.00
SSD_109	SSD_EUR_4,39%_2006-2016	18.07.2016	EUR	10,000,000.00	10,000,000.00
SSD_111	SSD_EUR_4,31%_2016	26.07.2016	EUR	20,000,000.00	20,000,000.00
SSD_101	SSD_EUR_3,74%_2006-2016	16.08.2016	EUR	15,000,000.00	15,000,000.00
SSD_62	SSD_EUR_4,02%_2005-2016	07.09.2016	EUR	25,000,000.00	25,000,000.00
SSD_82	SSD_EUR-CMS-Spread_2005-2016_AO	10.10.2016	EUR	50,000,000.00	50,000,000.00
SSD_86	SSD_3,50%_2005-2016	19.10.2016	EUR	15,000,000.00	15,000,000.00
SSD_87	SSD_EUR_6MEuribor+3,10%_2005-2016_AO	28.10.2016	EUR	50,000,000.00	50,000,000.00
SSD_114	SSD_EUR_4,00%_2006-2016	01.12.2016	EUR	20,000,000.00	20,000,000.00
SSD_114	SSD_EUR_4,00%_2006-2016	01.12.2016	EUR	10,000,000.00	10,000,000.00
SSD_114	SSD_EUR_4,00%_2006-2016	01.12.2016	EUR	5,000,000.00	5,000,000.00
SSD_114	SSD_EUR_4,00%_2006-2016	01.12.2016	EUR	5,000,000.00	5,000,000.00
SSD_110	SSD_EUR_4,40%_2006-2016	01.12.2016	EUR	13,000,000.00	13,000,000.00
SSD_110	SSD_EUR_4,40%_2006-2016	01.12.2016	EUR	25,000,000.00	25,000,000.00
SSD_110	SSD_EUR_4,40%_2006-2016	01.12.2016	EUR	10,000,000.00	10,000,000.00
SSD_110	SSD_EUR_4,40%_2006-2016	01.12.2016	EUR	2,000,000.00	2,000,000.00
SSD_100	SSD_EUR_3,75%_2006-2016	15.12.2016	EUR	10,000,000.00	10,000,000.00
SSD_59	SSD_EUR_3,785%_2005-2016	16.12.2016	EUR	10,000,000.00	10,000,000.00
SSD_69	SSD_EUR_3,76%_2005-2016	29.12.2016	EUR	5,000,000.00	5,000,000.00
SSD_116/1	SSD_EUR_4,34%_2006_2017	13.01.2017	EUR	50,000,000.00	50,000,000.00
SSD_116/2	SSD_EUR_4,34%_2006_2017	13.01.2017	EUR	5,000,000.00	5,000,000.00
SSD_118	SSD_EUR_4,254%_2006-2017	13.01.2017	EUR	10,000,000.00	10,000,000.00
SSD_118	SSD_EUR_4,254%_2006-2017	13.01.2017	EUR	17,000,000.00	17,000,000.00
SSD_118	SSD_EUR_4,254%_2006-2017	13.01.2017	EUR	3,000,000.00	3,000,000.00
SSD_118	SSD_EUR_4,254%_2006-2017	13.01.2017	EUR	10,000,000.00	10,000,000.00
SSD_122	SSD_EUR_4%_2006-2017	07.02.2017	EUR	15,000,000.00	15,000,000.00
SSD_122	SSD_EUR_4%_2006-2017	07.02.2017	EUR	10,000,000.00	10,000,000.00
SSSD_123	SSD_EUR_4,05%_2006-2017	14.02.2017	EUR	1,000,000.00	1,000,000.00
SSSD_123	SSD_EUR_4,05%_2006-2017	14.02.2017	EUR	5,000,000.00	5,000,000.00
SSSD_123	SSD_EUR_4,05%_2006-2017	14.02.2017	EUR	5,000,000.00	5,000,000.00
SSSD_123	SSD_EUR_4,05%_2006-2017	14.02.2017	EUR	2,000,000.00	2,000,000.00
SSSD_123	SSD_EUR_4,05%_2006-2017	14.02.2017	EUR	12,000,000.00	12,000,000.00
SSD_119	SSD_EUR_4,16%_06-17	28.02.2017	EUR	2,000,000.00	2,000,000.00
SSD_45	SSD_EUR_4,605%_2004-2017	08.03.2017	EUR	10,000,000.00	10,000,000.00
SSD_115	SSD_EUR_4,10_2006-2017	13.03.2017	EUR	40,000,000.00	40,000,000.00
SSD_84	SSD_EUR_6mEuribor+3,7%_2005_2017_AO	18.04.2017	EUR	50,000,000.00	50,000,000.00
SSD_92	SSD_EUR_6,72%_2005-2017_AO	24.04.2017	EUR	15,000,000.00	15,000,000.00
SSD_93	SSD_EUR_6,72%_2003-2017_AO	24.04.2017	EUR	15,000,000.00	15,000,000.00
SSD_94	SSD_EUR_6,72%_2005-2017_AO	24.04.2017	EUR	20,000,000.00	20,000,000.00
SSD_83	SSD_EUR_CMS-Spread_2005-2017_AO	10.06.2017	EUR	50,000,000.00	50,000,000.00

SSD_124	SSD_EUR_4,10%_2006-2017	14.06.2017	EUR	10,000,000.00	10,000,000.00
SSD_125	SSD_EUR_4,3%_07-17	30.06.2017	EUR	50,000,000.00	50,000,000.00
SSD_126	SSD_EUR_4,3%_07-17	30.06.2017	EUR	25,000,000.00	25,000,000.00
SSD_127	SSD_EUR_4,3%_07-17	30.06.2017	EUR	25,000,000.00	25,000,000.00
SSD_128	SSD_EUR_4,3%_07-17	30.06.2017	EUR	150,000,000.00	150,000,000.00
SSD_129	SSD_EUR_4,32%_2007-2017	30.06.2017	EUR	20,000,000.00	20,000,000.00
SSD_129	SSD_EUR_4,32%_2007-2017	30.06.2017	EUR	20,000,000.00	20,000,000.00
SSD_129	SSD_EUR_4,32%_2007-2017	30.06.2017	EUR	10,000,000.00	10,000,000.00
SSD_130	SSD_EUR_4,28%_2007-2017	30.06.2017	EUR	10,000,000.00	10,000,000.00
SSD_130	SSD_EUR_4,28%_2007-2017	30.06.2017	EUR	20,000,000.00	20,000,000.00
SSD_131	SSD_EUR_4,275%_2007_2017	30.06.2017	EUR	10,000,000.00	10,000,000.00
SSD_132	SSD_EUR_4,275%_2007_2017	30.06.2017	EUR	10,000,000.00	10,000,000.00
SSD_89	SSD_EUR_CMS-Spread_2005-2017_AO	07.07.2017	EUR	25,000,000.00	25,000,000.00
SSD_90	SSD_EUR_6,74%_2005-2017_AO	07.07.2017	EUR	25,000,000.00	25,000,000.00
SSD_108	SSD_EUR_4,44%_2006-2017	10.07.2017	EUR	5,000,000.00	5,000,000.00
SSD_23/1	SSD_EUR_4,705%_2004-2017	14.07.2017	EUR	20,000,000.00	20,000,000.00
SSD_23/2	SSD_EUR_4,705%_2004-2017	14.07.2017	EUR	20,000,000.00	20,000,000.00
SSD_22	SSD_EUR_4,725%_2004-2017	01.09.2017	EUR	20,000,000.00	20,000,000.00
SSD_41	SSD_EUR_4,735%_2004-2017	01.09.2017	EUR	1,000,000.00	1,000,000.00
SSD_39	SSD_EUR_4,735%_2004-2017	01.09.2017	EUR	1,000,000.00	1,000,000.00
SSD_24	SSD_EUR_4,69%_2004-2017	01.09.2017	EUR	14,000,000.00	14,000,000.00
SSD_40	SSD_EUR_4,68%_2004-2017	01.09.2017	EUR	1,000,000.00	1,000,000.00
SSD_46	SSD_EUR_4,68%_2004-2017	01.09.2017	EUR	10,000,000.00	10,000,000.00
SSD_21/54	SSD_EUR_4,735%_2004-2017	01.09.2017	EUR	5,000,000.00	5,000,000.00
SSD_21/54	SSD_EUR_4,735%_2004-2017	01.09.2017	EUR	8,000,000.00	8,000,000.00
SSD_44	SSD_EUR_4,70%_2004-2017	15.09.2017	EUR	7,000,000.00	7,000,000.00
SSD_9	SSD_EUR_5,125%_2003-2018	08.01.2018	EUR	20,000,000.00	20,000,000.00
SSD_1	SSD_EUR_5,16%_2003-2018	08.01.2018	EUR	10,000,000.00	10,000,000.00
SSD_49	SSD_EUR_5,16%_2003-2018	08.01.2018	EUR	10,000,000.00	10,000,000.00
SSD_11	SSD_EUR_4,7%_2003-2018	27.03.2018	EUR	15,000,000.00	15,000,000.00
SSD_14	SSD_EUR_4,7%_2003-2018	27.03.2018	EUR	15,000,000.00	15,000,000.00
SSD_18	SSD_EUR_4,7%_2003-2018	27.03.2018	EUR	5,000,000.00	5,000,000.00
SSD_19	SSD_EUR_4,7%_2003-2018	27.03.2018	EUR	15,000,000.00	15,000,000.00
SSD_15	SSD_EUR_4,67%_03-18	30.04.2018	EUR	1,000,000.00	1,000,000.00
SSD_16	SSD_EUR_4,67%_03-18	30.04.2018	EUR	4,000,000.00	4,000,000.00
SSD_17	SSD_EUR_4,67%_03-18	30.04.2018	EUR	5,000,000.00	5,000,000.00
SSD_12	SSD_EUR_4,67%_2003-2018	30.04.2018	EUR	10,000,000.00	10,000,000.00
SSD_20	SSD_EUR_4,67%_2003-2018	30.04.2018	EUR	30,000,000.00	30,000,000.00
SSD_5	SSD_EUR_4,67%_2003-2018	30.04.2018	EUR	20,000,000.00	20,000,000.00
SSD_28	SSD_EUR_4,67%_2003-2018	30.04.2018	EUR	5,000,000.00	5,000,000.00
SSD_29	SSD_EUR_4,67%_2003-2018	30.04.2018	EUR	5,000,000.00	5,000,000.00
SSD_36	SSD_EUR_4,67%_2003-2018	30.04.2018	EUR	5,000,000.00	5,000,000.00
SSD_32	SSD_EUR_4,67%_2003-2018	30.04.2018	EUR	15,000,000.00	15,000,000.00
SSD_147	SSD_EUR_4,039163%_2005-2022_ZERO	04.11.2022	EUR	2,549,724.37	2,549,724.37
SSD_13	SSD_EUR_4,835%_2003-2023	14.03.2023	EUR	25,000,000.00	25,000,000.00
SSD_52	SSD_EUR_4,835%_03-23	14.03.2023	EUR	25,000,000.00	25,000,000.00
SSD_4	SSD_EUR_5,58%_2003-2023	03.04.2023	EUR	10,000,000.00	10,000,000.00
SSD_76	SSD_EUR_4%_2005-2025	15.08.2025	EUR	10,000,000.00	10,000,000.00
SSD_77	SSD_EUR_4%_2005-2025	15.08.2025	EUR	10,000,000.00	10,000,000.00

SSD_78	SSD_EUR_4%_2005-2025	15.08.2025	EUR	2,000,000.00	2,000,000.00
				<b>TOTAL in EUR</b>	<b>9,847,706,099</b>

Source: PMS/Treasury Market Risk Control

EURCHF	1.0468
EURJPY	133.08

2. Claims of Pfandbriefbank (Österreich) AG, the Pfandbriefstelle der österreichischen Landes-Hypothekenbanken (mortgage bond division of regional public banks), the member institutions of the Pfandbriefstelle der österreichischen Landes-Hypothekenbanken and their guarantors against HETA, arising from or in connection with the following debt securities issued by the Pfandbriefstelle der österreichischen Landes-Hypothekenbanken:

ISIN/No. Type	Issue	Final maturity	Currency	Current nominal amount in currency	Currently outstanding volume in EUR per 27.02.2015
<b>Pfandbriefstelle issues</b> (Issuer: Pfandbriefstelle/joint and several liability of all Pfandbriefstelle members)					
XS0215066720	PFBST_JPY_ÖPfbSt_2005-2015	10.04.2015	JPY	1,000,000,000.00	7,459,903.02
XS0221101792	PFBST_JPY_CMS_2005-2015	15.06.2015	JPY	1,000,000,000.00	7,459,903.02
XS0221472698	PFBST_EUR_3mEuribor_2005-2015	15.06.2015	EUR	580,000,000.00	580,000,000.00
XS0226436490	PFBST_CMSSpread+2,41%_05-15_EUR	10.08.2015	EUR	30,000,000.00	30,000,000.00
CH0020769045	PFBST_CHF_2,5_2005-2015	30.12.2015	CHF	50,000,000.00	47,010,154.19
XS0241945079	PFBST_EUR_3MEuribor_2006-2016	26.01.2016	EUR	125,000,000.00	125,000,000.00
CH0022975624	PFBST_CHF_2,125_2005-2016	07.11.2016	CHF	75,000,000.00	70,515,231.29
SSD_65	SSD_EUR_2005-2017	22.03.2017	EUR	5,000,000.00	5,000,000.00
SSD_68	SSD_JPY_1,525_2005-2017	26.04.2017	JPY	3,000,000,000.00	22,379,709.06
XS0221826174	PFBST_JPY_4920YCMS_2005-2017	29.06.2017	JPY	500,000,000.00	3,729,951.51
CH0016253640	PFBST_CHF_2,875_2003-2017	21.07.2017	CHF	110,000,000.00	103,422,339.23
SSD_55	SSD_EUR_3,765%_2005-2017	12.09.2017	EUR	10,000,000.00	10,000,000.00
XS0215154005	PFBST_EUR_3mEuribor_2005-2017	18.09.2017	EUR	200,000,000.00	200,000,000.00
XS0207820647	PFBST_EUR_4,20%_2004-2017	26.09.2017	EUR	15,000,000.00	15,000,000.00
XS0143697679	PFBST_JPY_USD/JPY-linked_2002-2027	04.03.2027	JPY	1,500,000,000.00	11,189,854.53
				<b>TOTAL in EUR</b>	<b>1,238,167,046</b>

Source: PMS/Treasury Market Risk Control

EURCHF	1.0468
EURJPY	133.08

3. The following other eligible liabilities, irrespective of the applicable provisions of the Austrian Federal Act on Restructuring Measures for HYPO ALPE ADRIA BANK INTERNATIONAL AG (HaaSanG), BGBl. (Federal Law Gazette) I No. 51/2014 and the FMA Regulation on the Performance of Recovery Measures pursuant to § 7 (2) in conjunction with § 3 and § 4 (1) HaaSanG (HaaSanV), BGBl. (Federal Law Gazette) II No. 195/2014:

(a) Claims arising from expiring liabilities as defined in § 1 HaaSanV in conjunction with Annex 1 to HaaSanV in the version applicable at the time of the issuance of this administrative ruling;

(b) Claims arising from deferred liabilities as defined in § 2 HaaSanV in conjunction with Annex 2 to HaaSanV in the version applicable at the time of the issuance of this administrative ruling.

4. Eligible liabilities of Bayerische Landesbank, Anstalt des öffentlichen Rechts.

5. The following other eligible liabilities:

(a) Payment obligations of HETA arising from or in connection with the Support Agreement between HETA (present name) and Hypo Alpe-Adria (Jersey) Limited, dated 13 July 2001, concerning the “EUR 75,000,000 7.375 per cent Series A Non-Cumulative Non-Voting Preferred Securities issued by Hypo Alpe-Adria (Jersey) Limited”, most recently amended on 29.02.2012.

(b) Payment obligations of HETA arising from or in connection with the Support Agreement between HETA (present name) and HYPO ALPE-ADRIA (JERSEY) II Limited, dated 7 October 2004, concerning the “EUR 150,000,000 Fixed/Floating Rate Non-Cumulative Non-Voting Preferred Securities issued by Hypo Alpe-Adria (Jersey) II Limited”, most recently amended on 29.02.2012.

(c) Payment obligations of HETA arising from or in connection with the suretyship agreement of 28 December 2010 with addendum of 15 April 2011, concluded between the Republic of Austria (the Federal Government) as surety and HETA (present name) as beneficiary in regard to the liability of the Republic of Austria (the Federal Government) for claims of HETA against borrowers in the maximum amount of EUR 200 million, in particular the claim for recourse of the Republic of Austria (the Federal Government) pursuant to Clause 1 (8) and the entitlement of the Republic of Austria (the Federal Government) to payment of a liability fee pursuant to Clause 3 of the suretyship agreement.

(d) Payment obligations of HETA arising from or in connection with the guarantee agreement of 7 December 2012 concluded between the Republic of Austria (the Federal Government) as guarantor and HETA (present name) as obligor concerning the Subordinated Government Guaranteed Bond 2012-2022 (ISIN XS0863484035), in particular the repayment claim of the Republic of Austria (the Federal Government) pursuant to Clause 6 of the guarantee agreement and the entitlement of the Republic of Austria (the Federal Government) to payment of a guarantee fee pursuant to Clause 3 of the guarantee agreement.

(e) Payment obligations of HETA arising from or in connection with the default guarantee of the Province of Carinthia contained in § 5 (2) of the Law of the Province of Carinthia dated 13 December 1990 concerning the contribution of the banking undertaking of Kärntner Landes- und Hypothekenbank to a corporation (Aktiengesellschaft) and the main provisions concerning the continued existence of Kärntner Landes- und Hypothekenbank - Holding (Kärntner Landesholding-Gesetz – K-LHG), LGBl (Provincial Law Gazette) No 37/1991 as amended, in particular the compensation claim of the Province of Carinthia and an entitlement of the Province of Carinthia to payment of a liability commission.



(f) Payment obligations of HETA to Norica Investments Ltd arising from or in connection with (in particular) the Security Borrowing Request, the Cash Borrowing Request and the Global Master Securities Lending Agreement, Fees and Rates Letter, concluded between HETA (present name) and Norica Investments Ltd, and the Shareholders Agreement concerning Norica Investments Ltd, concluded between HETA (present name) and Credit Suisse International.

6. Profit shares which would in any event have been payable in respect of the following participation capital issued by HETA:

(a) EUR 900,000,000.00 participation certificate issue 2008 of Hypo Alpe-Adria-Bank International AG (now: HETA), ISIN AT0000A0CKR9, reduced to EUR 275,111,072.56 by resolution of the general meeting of the company on 30.05.2011, and

(b) Participation capital 2013 of Hypo Alpe-Adria-Bank International AG (now: HETA) in the nominal amount of EUR 800 million (no ISIN).

### **Justification**

In the course of provisional inquiries, the FMA has obtained information from the following documents in particular:

1. Expert report statement of OeNB, received on 28.02.2015;
2. Provisional evaluation pursuant to § 57 BaSAG of BDO, received on 01.03.2015;
3. Statement from the sole owner, the Republic of Austria, dated 01.03.2015;
4. Statement by HETA dated 01.03.2015;
5. Additional information obtained from HETA;
6. Inspection of relevant bank supervision records.

### **On the basis of the foregoing, the FMA sees the factual situation as follows:**

Hypo Group Alpe Adria (subsequently: Hypo Alpe Adria; hereinafter: HAA) is a credit institution group at the head of which stands Hypo Alpe-Adria-Bank International AG ("HBInt"). Following a capital increase of EUR 600 million in 2007, which was provided by the former shareholders Bayerische Landesbank AG ("BayernLB") and Grazer Wechselseitige Versicherungs AG ("GRAWE"), and a further capital increase of EUR 700 million in 2008, which was almost entirely provided by BayernLB, the Austrian Federal Government subscribed EUR 900 million of participation capital in HBInt (18,000 HBInt participation certificates each worth EUR 50,000) on 29.12.2008.

On 29.04.2009, the Republic of Austria sent the European Commission a Viability Report for HAA. By decision of 12 May 2009 the European Commission instituted the formal investigation procedure against Austria. At this time, the procedure concerned the recapitalisation of HBInt by the subscription of EUR 900 million in participation capital by the Federal Government.

In December 2009, HAA was nationalised. Agreement was reached that the Federal Government would take over all shares in HBInt in return for payment of EUR 1 to each of the former owners.

On 23.12.2009 the EU Commission provisionally approved the measures taken by the Republic of Austria for a period of up to six months, and instructed the Republic of Austria to present a well-founded **restructuring plan** for HAA in the first six months of 2010.

Between December 2008 and April 2014 the following capital measures have been implemented by the Federal Government in connection with HAA:

<b>Date</b>	<b>Type of measure</b>	<b>Amount of obligation</b>
December 2008	Participation capital	€ 900,000,000.00
June 2010	Participation capital	€ 450,000,000.00
December 2010	Deficiency guarantee	€ 200,000,000.00
December 2012	Guarantee for subordinated capital providers	€ 1,000,000,000.00
	Shareholder contribution	€ 500,000,000.00
September 2013	Capital increase	€ 700,000,000.00
November 2013	Shareholder contribution	€ 250,000,000.00
December 2013	Participation capital	€ 800,000,000.00
April 2014	Capital increase	€ 750,000,000.00
<b>Total</b>	<b>Total in EUR</b>	<b>€ 5,550,000,000.00</b>

On 03.09.2013, the European Commission reached a final decision concerning the subsidies provided in favour of HAA. In a **resolution of 03.09.2013**, the restructuring plan as notified by the Republic of Austria on 29.06.2013 with addendum dated 27.08.2013 was approved. The resolution covers the approval of all state subsidies provided to HAA up to that time, future capital for the resolution of HAA in the amount of up to EUR 5.4 billion, and future liquidity for the resolution of HAA in the amount of up to EUR 3.3 billion

The resolution strategy comprised:

- 1) the sale of the Austrian subsidiary Hypo Alpe-Adria-Bank AG (HBA),
- 2) the sale of the SEE network and
- 3) the resolution of the wind-down portion.

To expedite the sale of the SEE network in its entirety, SEE Holding was formed as a subsidiary of HBIInt. Even before the SEE subsidiaries were contributed to SEE Holding, the sale process was initiated by HBIInt at the end of 2012, and the first non-binding offers both for the entire network (including the offer from Al Lake (Luxembourg) S.a.r.l.) and also for individual subsidiaries were received by mid-February 2014.

In implementation of the restructuring plan, by resolution of 12.03.2014, the Federal Government authorised the Minister of Finance, in consultation with the Federal Chancellor, to implement capital strengthening measures at HBIInt pursuant to § 2 (1) of the Austrian Financial Market Stability Act (FinStaG), subject to observance of the upper limit envisaged in § 2 (4) FinStaG. At a **press conference on 14.03.2014**, HVK Minister of Finance Dr. Spindelegger pledged himself to implementing a resolution solution in the form of a state-owned corporation. By decision of the Council of Ministers of 18.03.2014, the implementation of the resolution solution avoiding bankruptcy was decided. As part of this solution, the SEE participations were to be contributed to an SEE holding company with a bank licence and sold by mid-2015. The remainder of HBIInt with a volume of around EUR 18 billion was to be liquidated as a wind-down vehicle without a bank licence. A general settlement with BayernLB was to be aimed for. The possibility of participation by subordinate creditors was to be examined, as was a participation by the Province of Carinthia.

On 11.06.2014, the Council of Ministers agreed on a **special law for the resolution of HAA**. The law was to guarantee, in the interest of the taxpayer, a) the best possible realisation of the assets of the Bank and b) a participation by former owners and subordinate creditors in the costs of the Hypo solution.

In implementation of this decision, on 08.07.2014 the following laws were adopted by the National Council:<sup>1</sup>

### **Federal Act on Restructuring Measures for HBIInt (HaaSanG)**

According to the associated materials (178 of schedules XXV. GP), the law serves to implement the measures envisaged in Directive 2001/24/EC of the European Commission of 04.04.2001 on the reorganisation and winding-up of credit institutions. According to the materials, a contribution is generally to be made to the financial reorganisation of HBIInt, initially by the shareholders and subsequently by those creditors that were either in a close relationship with HBIInt when the relevant loan was provided or are subordinate to other creditors (including creditors of equity-replacing loans) by virtue of contractual or statutory provisions.

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<sup>1</sup> Federal Act by which the Federal Act on the Creation of a Wind-Down Unit (GSA), the Federal Act on the Establishment of a Wind-Down Holding Company of the Federal Government for HYPO ALPE-ADRIA-BANK S.P.A. (HBI-Bundesholdinggesetz), the Federal Act on the Establishment of a Wind-Down Participation Corporation (Abbaubeteiligungsaktiengesellschaft) of the Federal Government (ABBAG-Gesetz) and the Federal Act on Restructuring Measures for HYPO ALPE ADRIA BANK INTERNATIONAL AG (HaaSanG) are enacted, and by which the Austrian Financial Market Stability Act and the Austrian Financial Market Supervisory Authority Act are amended.

According to § 3 HaaSanG, reorganisation liabilities for which the present due date is before the moratorium date, and which are not disputed liabilities pursuant to the statutory definition of § 2 no. 5 HaaSanG, are extinguished upon the announcement of an FMA regulation pursuant to § 7 HaaSanG. Similarly, the moratorium effects of § 4 HaaSanG arise upon announcement of the FMA regulation. The regulation of the Financial Market Supervisory Authority (FMA) concerning the execution of reorganisation measures pursuant to § 7 (2) in conjunction with § 3 and § 4 (1) HaaSanG (HaaSanV) was published in the Federal Law Gazette on 07.08.2014.

Under HaaSanG, risk capital providers and former owners are called upon to make contributions in the total amount of around EUR 1.6 billion for the wind-down of Hypo. The moratorium affects around EUR 1.5 billion in loans made to HAA by BayernLB before state aid was granted by the Republic of Austria.

### **Federal Act on the Establishment of a Wind-Down Holding Company of the Federal Government for Hypo Alpe Adria Bank S.P.A. (HBI-Bundesholdinggesetz)**

Under this law, the Federal Minister of Finance was empowered to form a separate holding company to take over the Italian subsidiary of HBIInt.

### **Federal Act on the Establishment of a Wind-Down Participation Corporation (Abbaubeteiligungsaktiengesellschaft) of the Federal Government (ABBAG-Gesetz)**

Under this law, the Federal Minister of Finance was empowered to form a separate holding company to take over a wind-down unit (HBIInt following deregulation) (ABBAG) and to contribute the shares in HBIInt to the ABBAG.

### **Federal Act on the creation of a wind-down unit (GSA)**

The Federal Act on the Creation of a Wind-Down Unit ("GSA") was published in the Federal Law Gazette, BGBl. I No. 51/2014, on 31.07.2014 and came into force on 01.08.2014. According to the associated materials (178 of schedules XXV. GP), the creation of the GSA was intended to make it possible to continue HBIInt in the form of a wind-down unit the sole purpose of which would be the long-term realisation of the portfolio. This would necessitate the creation of a suitable set of tools to ensure that the winding down of the portfolio could take place as smoothly as possible, with additional public funds only being used in the smallest possible extent. At the same time, a necessary basic framework of applicable supervisory law provisions had to be established which would guarantee effective activity-based supervision. In particular, those regulations that are aimed at unrestricted sustainable business activity could be disregarded in this context.

As a framework condition for the wind-down company, special regulations were agreed in the GSA which were intended to serve the realisation of the company purpose. For example, **under § 7 GSA an application for the institution of insolvency proceedings can only be submitted on the basis that incapacity to pay has arisen.** Overindebtedness is not relevant as far as the institution of insolvency proceedings is concerned. According to the FMF, this is intended to ensure that any temporary valuation undertaken for purposes other than the purposes of the medium-term realisation at break-up values does not lead to overindebtedness and insolvency of the wind-down company. However, it is a requirement that the wind-down unit should be capable of making payment at all times. According to § 3 (4) GSA, the provisions of the Austrian Banking Act (BWG) (with the exception of § 3 (9), § 5 (1) nos. 6-13, § 28a, § 38, §§ 40 to 41, § 42 (1) to (5), §§ 43 to 59a, § 65, §§ 66 and 67, § 70 (1), (4) nos. 1 and 2 and (7) to (9), § 73 (1) nos. 2, 3, and 6 concerning the occurrence of incapacity to pay, and 8, § 73a, § 75, § 76, §§ 77 and 77a, § 79, §§ 98 to 99e, § 99g and §§ 101 and 101a BWG) are not applicable to the wind-down unit. In particular, the provisions concerning early intervention pursuant to § 44 et seq. BaSAG are also not applicable. In addition, a Government Commissioner cannot be appointed pursuant to § 70 (2) BWG (for example), neither can application can be made for the supervised management procedure as envisaged in § 83 (1) GSA. Neither does the wind-down unit have any access to the Emergency Liquidity Assistance (ELA) of the ECB.

The supervision of the observance by the wind-down unit of the remaining applicable provisions of supervisory law is undertaken by the FMA with the involvement of OeNB.

According to § 2 (1) GSA, the FMA must immediately, by a ruling, determine the date from which HBInt no longer operates any **deposit business** pursuant to § 1 (1) no. 1 BWG and no longer has any **qualifying holding in a credit institution or an investment firm**. These preconditions made it necessary for **shares of HBInt in Hypo SEE Holding AG (now: HGAA) to be sold to Finanzmarktbeteiligung Aktiengesellschaft (FIMBAG) and the shares of HBInt in Hypo Alpe-Adria-Bank S.p.A (“HBI”) to be sold to HBI-Bundesholding AG** on 30.10.2014. The plan is for HGAA to be privatised by the end of 2015 (closing) at the latest.

In submissions of 16.10.2014 and 30.10.2014, the members of the Executive Board of HBInt provided a statement and certification of non-operation of deposit business and confirmation of the absence of qualifying holdings in credit institutions and investment firms. The **deregulation ruling was finally issued by the FMA on 30.10.2014** and became legally enforceable. As a consequence of the legal force of the ruling, **the bank licence issued to HBInt pursuant to BWG ended on 30.10.2014** and HBInt is now being continued as a wind-down unit under the name of **HETA Asset Resolution AG (“HETA”)**.

The constitutionality and legality of GSA, HaaSanG and also HaaSanV are currently being examined by the Constitutional Court.

Since the deregulation, the extensively realised structure is as follows (restricted to the principal companies):

Republic of Austria				
FIMBAG			ABBAG	HBI-Bundesholding AG
SEE-Holding/Hypo Group Alpe Adria AG			Heta Asset Resolution AG	Hypo Alpe-Adria-Bank Italia S.p.A
Hypo Alpe-Adria-Bank d.d. (Croatia)	Hypo Alpe-Adria-Bank d.d. (Slovenia)	Other SEE subsidiaries		

In an **e-mail of 27.11.2014**, the Deputy State Commissioner presented a report of the meeting of the HETA Supervisory Board held on 26 November 2014, providing the following information:

- As regards the drafting of the wind-down plan required under GSA, the timetable drawn up by the advisers envisaged that this would be finalised by the end of April 2015.
- The legal adviser of HETA stated that for the Executive Board members of HETA there was a risk that the continuation of the wind-down in spite of the foreseeable future incapacity to pay could be regarded as ‘dishonest economic management’. If the wind-down plan were to reveal a liquidity gap, it would no longer be possible automatically to service all liabilities. In the past, the owner (the Federal Government) had always advanced capital when this was necessary.
- As regards the sale of HGAA, it was reported that the limited periods for agreement to the purchase agreement ended on 27.11.2014. Consequently, the Executive Board must prepare itself for the fact that if agreements were not received in a timely manner a wind-down loss of EUR 900 million – EUR 1.5 billion would have to be entered in the accounts on 28.11.2014. If a further extension were to be granted, the HETA committees would have to take a resolution on this matter on 27.11.2014. In this case, FIMBAG also would need authorisation from the Federal Minister of Finance to extend the period.

In an **e-mail of 02.12.2014**, the Executive Board of HETA passed on to the FMA, for information, a letter from HETA to the Federal Minister of Finance (“FMF”) dated 02.12.2014. In summary, the letter states as follows:

- HETA informed the FMF that because the disposal authorisation had expired without a sale agreement having been concluded in regard to HGAA, the consequential effects of the “Related Company Agreement” (Verschwesterungsvertrag) with FIMBAG had arisen. Accordingly, an assumed resolution scenario applied with regard to the calculation of the purchase price for the transfer of the shares in HGAA. It was to be assumed at that time that a loss of around EUR 1.30 billion would arise for HETA, which would have to be taken into consideration. This loss, which would have to be recorded, would have a direct effect on the equity capital as shown in the separate accounts drawn up in accordance with UGB (Austrian Business Enterprise Code)/BWG, which per 30.09.2014 amounted to EUR 1.35 billion. In addition, there were provisions in the amount of EUR 450 million
- In consideration of the fact that considerable negative effects were to be expected on the basis of the group-wide Asset Review which had already been commissioned, the Executive Board pointed out that in the annual financial statements per 31.12.2014, because of the low equity level of EUR 0.50 billion, a negative equity according to UGB/BWG was likely.

In an **e-mail of 09.12.2014**, the Executive Board of HETA passed on to the FMA, for information, a letter from HETA to the FMF dated 09.12.2014. In summary, the letter states as follows:

- In order to fulfil the statutory instruction contained in § 3 (1) GSA, in the currently ongoing Asset Quality Review the assets should be valued so that the majority can be made liquid in a period of two to three years, in the form of either individual transactions or portfolio sales.
- As regards the liquidity situation, it was to be confirmed that the liquid funds (including liquidity reserves) currently stood at around EUR 3.3 billion and thus there would be no liquidity requirement in the short term. However, a liquidity requirement would arise over the next two and a half years as a result of the repayment requirement for liabilities with government guarantees.
- To close this funding gap, the restructuring plan submitted to the EU Commission in June 2013 also envisaged – in addition to the granting of liquidity-affecting equity injections of EUR 5.4 billion (of which EUR 2.5 billion was received) – liquidity subsidies of between EUR 2.5 billion and EUR 3.3 billion (peaking in 2017). This would result in total potential liquidity measures in the amount of EUR 6.2 billion. Consequently, in accordance with the EU restructuring plan and the decision of the EU Commission of 03.09.2013, HETA would continue to depend on external capital and liquidity subsidies from the Federal Government for the repayment of the liabilities with government guarantees, more and more of which would mature in the next few years.
- In addition to the risk of HaaSanG being rescinded by the Supreme Court, as a result of which liabilities of EUR 1.6 billion could be reactivated, in regard to the BayernLB loans (which are not covered by HaaSanG) in the amount of around EUR 1.5 billion, there would be certain risks that the German courts would not regard these loans as equity-replacing loans within the meaning of the Austrian Equity Substitution Act (EKEG). In such a scenario – also in the event of a general agreement with BayernLB, which would lead directly to payment obligations on the part of HETA – these repayments would reduce the existing liquidity reserves in a corresponding extent.

In an **e-mail of 09.12.2014** HETA sent a warning letter from the auditors pursuant to § 273 UGB, dated 9 December 2014, for information. In particular, the letter addressed the subjects that had also been the subject of the letter from the HETA Executive Board to the FMF dated 09.12.2014. Inter alia it emerged from the warning letter that the existence of HETA was regarded as being at risk.

In an **e-mail of 10.12.2014**, HETA sent a letter concerning the suspension of an ad hoc notice pursuant to § 48d (2) of the Austrian Stock Exchange Act (BörseG). The HETA letter stated that no ad hoc notice concerning the warning letter from the auditors should be published before a final clarification had taken place with the owner. HETA was contacting the FMF as the owner's representative, and HETA had already pointed out to the FMF the necessity of implementing measures to mitigate a liquidity gap arising in the medium term.

In a **telephone conversation on 16.12.2014**, HETA stated inter alia that meetings of management bodies of HETA had been arranged for 22.12. and 23.12.2014, in the context of which HETA was again to be used as the seller of HGAA, through a disposal authorisation. The final offers of the three remaining bidders were to be submitted by 6 pm on 17.12.2014. The signing was envisaged for 23.12.2014. If a sale of HGAA were to take place through HETA, according to Mr. Holzer that would mean that HETA could once again depart from the present resolution scenario and return to the sale scenario. That would lead to an improvement in HETA's position amounting to approx. EUR 800 million.

In an **e-mail of 16.12.2014**, the State Commissioner submitted a report on the meeting of HETA's management bodies on 15.12.2014 and presented a notice pursuant to § 76 (8) BWG, since he had had the impression that the fulfilment of obligations towards the creditors, and in particular the security of the assets entrusted to him, could no longer be guaranteed. The e-mail indicated the following:

- The Executive Board of HETA had stated that on the basis of the Asset Review currently being carried out a depreciation requirement was likely, although no figure could as yet be put on this.
- According to the funding plan presented, from 2016 onwards a negative closing balance of EUR -629 million (2017 -3,442 million) would arise. It would not be possible to close the funding gap through the wind-down of the portfolio.
- The legal adviser of HETA stated on this subject that in the context of a merely temporary liquidity gap it was still possible to assume that the Federal Government would provide the necessary refinancing. On the other hand, in the event of a permanent liquidity gap in value terms it could not be assumed that the Federal Government would implement the necessary measures (in particular on the basis of BaSAG which was to come into force shortly). Consequently, the Executive Board ought not to service the bonded loans due on 30.12.2014 if it had to assume that a permanent liquidity gap in value terms would arise.

In a **telephone conversation on 17.12.2014**, the State Commissioner informed the FMA that at the Supervisory Board meeting on 15.12.2014 the question had been discussed as to whether the bonded loans coming up for payment on 30.12.2014 ought to be serviced by HETA.



A letter from HETA dated 18.12.2014 indicated as follows:

- Initial interim results from the Asset Review were expected in January/February 2015. If these showed that the losses to be expected were greater than the equity value of EUR 1.3 billion, it was intended that talks should start with the owner immediately in order to put compensatory measures in place.
- The Executive Board of HETA still assumed that the commitment of the Federal Government to the avoidance of insolvency would continue to apply. In regard to the next contractual servicing of a senior liability (EUR 10.0 million nominal bonded loans), which would have to be undertaken on 30.12.2014, the Executive Board assumed that the contractual servicing would take place, provided that potential threats did not materialise. In the event of this bonded loan not being serviced in a timely manner, then on the basis of the contractual regulations in § 9 of the Debt Issuance Programme, the investors in question would have a right of extraordinary termination on the basis of a "Cross Default Clause". Thus, in the worst case, creditors could make use of this termination right in the total extent of around EUR 7 billion and call in their claims against HETA.

In a **letter of the FMA dated 18.12.2014**, the FMF as representative of the owner of HETA was requested to inform the FMA immediately if the Federal Government's commitment to the continued existence of the company (as assumed by HETA) no longer applied. No such information was received by the FMA.

In an **e-mail of 30.12.2014**, HETA stated the following:

- At the General Meeting of HETA which was held on 22.12.2014, the signing of the 2<sup>nd</sup> addendum to the SEE Related Company Agreement was approved by the Republic of Austria, under which HETA in turn received power of disposal to conclude the sale contract concerning HGAA.
- In its report to the General Meeting, the Executive Board again informed the owner concerning the temporary liquidity gap arising from the liquidity and funding planning. According to the funding planning, a bridging financing requirement in the amount of around EUR 3.4 billion had been calculated for the years 2016 and 2017, which would be covered within the framework provided by the law and the regulations on subsidies. In addition, the owner was informed about the current status concerning the Asset Review which had been commissioned, the initial interim results of which were expected in January/February 2015. On this subject the Executive Board stated in its report to the General Meeting that in the event of the losses to be expected being greater than the equity value of EUR 1.3 billion, compensatory measures would have to be put in place by the owner (as had been the case in the past). The motion for resolution put forward by the Executive Board at the General Meeting was subject to the proviso that the decision of the Council of Ministers of 18.03.2014, and the commitment to the wind-down model and the avoidance of insolvency contained therein, was still applicable without change per the date of the meeting, and would therefore continue to apply. The General Meeting unanimously agreed to the conclusion of the 2<sup>nd</sup> addendum, subject to the considerations and preconditions as represented by the Executive Board in its report to the General Meeting being taken into account.

- In consideration of the resolutions adopted at the General Meeting of HETA, the servicing of the due bonded loan in the amount of EUR 10 million would take place.

The **Share Purchase and Transfer Agreement of 22 December 2014 (“Adria Project”)** states: On 22.12.2014 the purchase agreement concerning HGAA was signed by HETA as seller and Al Lake (Luxembourg) S.a.r.l. as purchaser, the closing has not yet taken place and is subject to a number of conditions precedent.

The agreement provides as follows:

#### *11.2. Conditions to Closing*

*The obligation of HBlnt. to sell and transfer Shares to the Purchaser and the corresponding obligation of the Purchaser to acquire and accept the Shares from HBlnt. (based on the Power to Transfer) pursuant to section 4.1. and 4.2. of this Agreement shall be conditional on the following conditions precedent having been fulfilled and remaining fulfilled or having been waived in accordance with this Agreement (the “Closing Conditions”)...”:*

Following this, in section 11.2.9. of the agreement, the conditions (events or incidents) are listed, including: *“There has been no Material Adverse Change”*, the absence of which has to be confirmed by the parties in the Closing Memorandum.

Section 11.2.9 provides: *“There has been no Material Adverse Change. For purposes of this section 11.2.9., “material Adverse Change” means any of the following events or incidents, the absence of which shall be confirmed by the Parties in the Closing Memorandum:*

*Section 11.2.9. I provides: “... the application of filing for the opening of insolvency proceedings or restructuring proceedings (Sanierungsverfahren) under the Austrian Insolvency Act with respect to HBlnt. or any Member of the Target Group or the declaration of insolvency of HBlnt. or any Member of the Target Group by any competent Governmental Authority or the voluntary dissolution of HBlnt. or any Member of the Target Group...”.*

The Federal Act on the Recovery and Resolution of Banks (BaSAG) came into force on **1 January 2015**. This law transposes Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, OJ L 2014/173, 190 into national law. § 162 (6) BaSAG provides as follows: *“The powers and instruments as regulated in the 4<sup>th</sup> part of this Federal Act apply to [...] the wind-down unit as envisaged in § 2 of the Federal Act on the Creation of a Wind-Down Unit – GSA, BGBl. (Federal Law Gazette) I No. 51/2014. § 51 (1) no. 2 is not applicable to the wind-down unit as envisaged in § 2 GSA.”*

At a **meeting of the FMA and OeNB with the Executive Board of HETA on 16.01.2015**, HETA stated as follows:

- Regarding the sale of HGAA, HETA still had many matters to deal with in regard to the closing. In the purchase agreement, a collateral instrument is provided as of the date of the closing under which the Federal Government would take over certain liabilities towards the purchaser; however, the liability of the Federal Government applies only if HETA is not able to pay. In the event of any insolvency of HETA between the signing and the closing, the closing would not take place.

- The liquidity currently available to HETA is approx. EUR 3.15 billion. Over the whole of 2015, EUR 2.703 billion has to be paid back in liabilities. Thus, there is no liquidity bottleneck in the short term.
- Concerning the Asset Quality Review, it was stated that the assets of HETA were to be revalued. The results of the Asset Quality Review were to be incorporated into the annual financial statements of HETA and into the wind-down plan to be drawn up. The annual financial statements for HETA would be drawn up by the end of April 2015 at the latest. The possibility could not be excluded that the revaluation of the assets in the course of the Asset Quality Review would result in an overindebtedness of HETA. In this case HETA would approach the owner and request a postponement of priority in connection with the subordinated capital bond guaranteed by the Republic of Austria in the amount of EUR 1 billion (term 2012-2022). The possibility could not be excluded by the Executive Board of HETA that in spite of a postponement of priority by the Republic of Austria an overindebtedness of HETA could still arise.
- Regarding the liabilities due in March 2015, in the total amount of EUR 1.005 billion, it was stated that prior to any servicing of this claim the subject of the continuing viability of HETA must be clarified. With the resolution of the Council of Ministers of 18.03.2014 the owner had stated that it was against any insolvency of HETA (at that time HBIInt). The question now arose as to whether this commitment still applied. In principle, the extension of HETA's power of disposal for the purpose of the sale of HGAA represented a clear sign on the part of the owner. As a result HETA's equity had risen again to EUR 1.3 billion. In the context of the resolution adopted at the General Meeting on 22.12.2014, in which the extension of HETA's power of disposal for the purpose of the sale of HGAA was decided, it had been pointed out by HETA in the Executive Board's motion for resolution that this motion was only being put forward subject to the proviso that the commitment of the Federal Government to the wind-down model and the avoidance of insolvency remained intact and would continue to apply. The General Meeting gave its unanimous agreement. Although "overindebtedness" as a reason for insolvency was excluded in the GSA, under insolvency regulations the members of the Executive Board were still bound by duties of care. Lawyers whose services had been engaged by HETA would take the view that any indebtedness of HETA would be a clear indication that no further liabilities ought to be serviced unless it was ensured that the owner would stand by HETA. The Executive Board of HETA therefore wanted to have full clarity by the end of February 2015 as to whether the owner would continue to make liquidity available even in the event of HETA's overindebtedness.
- In September 2013, the EU Commission had approved additional capital measures (up to EUR 5.4 billion, of which EUR 2.5 billion had already been provided) and liquidity measures (up to EUR 3.3 billion). The wind-down costs for HETA would continue to be within the framework of the EU restructuring plan. In addition, HaaSanG had led to a reduction in liabilities. No assurance of any kind was forthcoming from the FMF that the funds approved by the EU Commission would actually be paid by the Republic of Austria to HETA.

In an **e-mail of 24.02.2015**, the State Commissioner for HETA informed the FMA that on the basis of the meeting of the Supervisory Board of HETA on 23.02.2015 he had gained the impression that the fulfilment of the obligations of HETA towards its creditors, and in particular the security of the assets that had been entrusted to HETA, could no longer be guaranteed. He said that the Executive Board had stated that the initial indicative results of the Asset Quality Review were to be expected on 27.02.2015, and would indicate that the existing equity of HETA in the amount of EUR 1.1 billion would presumably not be sufficient to cover the losses, and also that on 23.02.2015 the FMF would be informed that support from the Federal Government might be necessary. The entire framework including the subordinated capital of the Federal Government (which could form the subject of a postponement of priority) amounted to EUR 2.9 billion, but in the event of HaaSanG being rescinded by the Constitutional Court would be reduced to just EUR 1.3 billion. The Executive Board went on to state that if the Federal Government did not act promptly in the event of overindebtedness (i.e. within hours), notification pursuant to BaSAG would be necessary.

In a communication of 27.02.2015 at 9:20 pm, HETA notified the FMA pursuant to § 114 (1) BaSAG in conjunction with § 51 (1) no. 3 BaSAG that HETA was likely to fail, because although HETA was currently still able to settle its debts and liabilities on the due date, according to § 51 (1) no. 3 second half sentence BaSAG there were objective indications that this would cease to be the case in the near future.

The initial results of the Asset Quality Review indicate an additional value adjustment requirement in a loss range of between EUR 5.1 billion and EUR 8.7 billion, so that provisionally an asset-based overindebtedness ranging between EUR 4 billion and EUR 7.6 billion will arise for the company. In addition, it is clear from the company's liquidity planning that a liquidity gap will arise in 2016 at the latest, which would in any event have to be temporarily closed by means of external measures carried out by the owner. To date, HETA has assumed that the sole owner (the Republic of Austria) would close this liquidity gap.

On the basis of the initial results of the Asset Quality Review, which now indicate not only the liquidity gap but also a considerable overindebtedness of the company in terms of its assets, HETA informed the sole owner (the Republic of Austria) on 27.02.2015 that there was an asset shortfall. At the same time, HETA asked the representative of the Republic, the Federal Minister of Finance, whether there was any willingness on the part of the owner to rectify the existing capital shortfall by means of capital measures, and also to eliminate any liquidity bottlenecks that may arise in future, as had been the case in the past.

Immediately following receipt of the notification from HETA, the FMA, in a letter of 27.02.2015, 11:48 pm, also asked the sole owner to make a statement regarding the notification. The letter also asked whether the owner was willing to make good the existing capital shortfall by means of capital measures and to continue to rectify any liquidity bottlenecks arising in future.

In a letter of 01.03.2015, 12:24 pm, the Federal Minister of Finance stated that no further capital or liquidity measures would be implemented in accordance with FinStaG.

In a letter also dated 01.03.2015, 1:40 pm, the Executive Board of HETA stated that on the basis of this decision of the sole owner, the Republic of Austria (the Federal Government), no further liabilities would be serviced as of Monday, 02.03.2015.

Thus, a bonded loan falling due on Monday, 02.03.2015, in the amount of EUR 25 million would not be paid. Similarly, two further bonds and a bonded loan in a total amount of EUR 980 million would also not be paid in March 2015. As a result of the non-servicing of the bonds, existing "Cross-Default Clauses" would be triggered, and HETA's insolvency would arise significantly earlier.

In addition, the non-servicing would in any event be classified as default pursuant to ISDA and would justify the contracting parties in existing derivatives contracts in terminating their contracts immediately.

HETA currently provides the following services for HGAA and its subsidiaries (hereinafter the "SEE network"):

- HETA currently provides HGAA with over 100 **employees through employment contracts**. In addition, HGAA currently works with **IT systems** of HETA. Any immediate separation of these dependencies (systems and employees) in the event of the bankruptcy of HETA would mean that HGAA could not ensure the regulated operation of the credit institutions of its Group.
- Since HGAA as a newly licensed credit institution does not yet have a high level of market confidence enabling it to conclude **derivatives for the securing and hedging of foreign currency and interest change risks**, and also as strategic positions, with capital market participants, HETA makes itself available as a counterparty for this function (and in turn concludes back to back transactions). At the present time HETA has concluded 92 derivative transactions with 12 counterparties on behalf of HGAA. If this service were immediately to cease being provided, or if the existing derivatives agreements were terminated by the counterparties, this could put the banks of the SEE network at risk, and subsequently could lead to violations of national supervisory law regulatory standards.
- In addition, HETA, via Citibank, offers the SEE network **access to the Continuous Linked Settlement system (CLS)**. The FX clearing of the banks of the SEE network and HETA and of HGAA are processed via this system, by which payment and counter payment are effected simultaneously out of the available cover, so that the trading partners do not have to bear any performance risk. The banks of the SEE network and HGAA currently only have access to this system through HETA. A dissolution of the agreement would lead to HGAA having to seek a new business partner that would offer HGAA an alternative system, or finding counterparties that execute FX transactions without using this system. Without HETA, HGAA and the SEE network have no access to FX payment transactions and can no longer process FX payment transactions. In the Share Purchase and Transfer Agreement of 22 December 2014 ("Adria Project"), HETA undertook to provide this service for 24 months following closing.

- HETA has made extensive refinancing lines available to HGAA and the SEE network, around EUR 2 billion of which is currently being used, and which upon completion of the HGAA sale will have to be available in an amount varying between EUR 2.1 billion to EUR 2.4 billion.

From the Share Purchase and Transfer Agreement of 22.12.2014 (“Adria Project”) it is apparent that:

The purchase agreement concerning the SEE network was signed on 22.12.2014 by HETA as seller and Al Lake (Luxembourg) S.à.r.l. as purchaser. The closing has not yet taken place and is subject to a number of conditions precedent. One of these conditions envisages that no insolvency proceedings are instituted or applied for in regard to HETA up to the closing. The absence of insolvency proceedings is a condition for the closing of the agreement. From the economic point of view, bankruptcy and the resulting non-execution of the closing of the agreement would be the most disadvantageous result for HETA. In addition, the non-execution of the closing would have the consequence that in all probability the SEE network would have to be wound up. This would have considerable disadvantageous effects on the financial stability of the countries affected (particularly the Member States Croatia and Slovenia).

In the e-mail of 01.03.2015, BDO Financial Advisory Services GmbH sent the FMA a provisional valuation pursuant to § 57 (1) BaSAG. In his valuation, the expert concludes, on the basis of the provisional results of the AQR and the calculations and liquidity planning of HETA, that in the event of the opening of insolvency proceedings the realisation proceeds would with a probability bordering on certainty be significantly lower than the calculated AQR values in the context of the resolution pursuant to BaSAG.

On the basis of the information provided by HETA, in any event the eligible liabilities as listed in section II of the judgement apply; this has also been plausibilised in the context of the provisional valuation.

**On the basis of this factual situation, our considerations are as follows:**

Through the GSA, BGBl (Federal Law Gazette) I No. 51/2014, HBInt was continued as a wind-down company pursuant to §§ 2 et seq. GSA under the name of HETA. According to § 162 (6) BaSAG, the 4<sup>th</sup> part of BaSAG is applicable to HETA. The application of the resolution provisions of BaSAG is also required under Union law. The measures put in place by the FMA are measures within the spirit of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD).

According to § 49 (1) BaSAG, the resolution authority has to order resolution measures in regard to an institution if the following preconditions are fulfilled:

*“1. The FMA has established, after hearing the resolution authority, or the resolution authority has established, after hearing the FMA, that the institution is failing or will probably fail;*

*2. due consideration being given to time constraints and other relevant circumstances, according to reasonable discretion there is no prospect that the failure of the institution can be averted within a reasonable time frame through alternative private-sector measures, including measures in the framework of institution-related collateral systems, or through other supervisory measures, including early intervention measures pursuant to § 44 BaSAG or the writing down or conversion of relevant capital instruments pursuant to § 70 BaSAG, undertaken in regard to the institution, and*

*3. Resolution measures are necessary in the public interest.”*

### **Re. precondition 1 (failure or probable failure)**

According to § 51 (1) no. 3 BaSAG, an institution has failed or will probably fail if (inter alia) the institution in question is not able to settle its debts or other liabilities as they fall due, or there are objective indications that this will be the case in the near future. The definition contained in § 51 (1) no. 3 BaSAG is based on the existence of objective indications.

On the basis of the notification of HETA containing the maturity profile of the debt securities and the liquidity planning of HETA, it was to be assumed that incapacity to pay would arise in 2016. This alone would already have been sufficient to establish incapacity to pay in the near future as envisaged in § 51 (1) no. 3 BaSAG.

The situation has been further exacerbated by the fact that based on the statement by the sole owner, the Republic of Austria, that it would not implement any further capital and liquidity measures, the Executive Board of HETA has stated that as of 02.03.2015 it will no longer be servicing liabilities as they fall due. The “Cross Default Clauses” triggered thereby in the near future would bring about HETA’s actual incapacity to pay significantly earlier.

The occurrence of incapacity to pay in the near future is also supported and plausibilised by the results of the provisional valuation report pursuant to § 57 BaSAG.

Within the framework of the time available, the valuation auditor appointed in accordance with § 57 BaSAG has addressed the AQR process, the valuation principles and methods and the consulting companies involved and their tasks. Basically, the AQR process is a suitable means for providing a basis for the assessment of valuation issues pursuant to § 55 BaSAG. In addition, the use of external consultants in the valuation of clusters 1 through 3 (“performing loans”), “non-performing loans” and “other assets” (real estate, equity interests) ensures an objective valuation of the assets contained therein. It must however be stated that the current statements regarding the AQR result merely represent an intermediate result of the analyses performed to date, and the final values will deviate from the values as communicated on 27.02.2015. However, in regard to the statement as a whole, the interim results already represent a clear and reliable indication of the possible final result.

On the basis of the standards and methods applied by the valuation auditor, the calculated values are acceptable as far as the FMA is concerned. However, the possibility cannot be excluded that in the context of the final valuation lower valuation amounts will be achieved. The valuation auditor therefore applies a further reduction of 15% to all assets (with the exception of the existing liquid means). This reduction amounts to EUR 1.4 billion and includes (inter alia) reductions for portfolio disposals and market disruptions, non-execution of the HGAA sale, and a reduction based on the provisional AQR results.

In the opinion of the valuation auditor, not all liabilities and obligations of HETA have been included in the maturities analysis undertaken by HETA. Thus, the maturities analysis only contains the main obligations.

The maturities analysis is therefore not complete, and the possibility cannot be excluded that (particularly over the coming years) additional payments will arise on existing liabilities and obligations.

As far as the FMA is concerned, the statements and results of the valuation auditor are conclusive and acceptable.

On the basis of the provisional results of the AQR and the calculations of the Executive Board of HETA, and the provisional valuation pursuant to § 57 (1) BaSAG, the FMA assumes that a state of overindebtedness has already arisen for HETA.

In the HETA liquidity planning for 2015 to 2017, the Executive Board of HETA assumes that in 2016 at the latest it will no longer be possible to service the liabilities of HETA which will then have fallen due. Since HETA cannot undertake any further capital market issues or other refinancing, and cannot undertake deposit business, HETA will not be able to rectify this insufficient cover by itself. This is also clear from the provisional valuation pursuant to § 57 (1) BaSAG.

Thus, if no measures are put in place by the authorities, in addition to the current overindebtedness of HETA it is to be assumed that incapacity to pay will arise in the near future (from 2016 at the latest). On the basis of this conclusion, the resolution authority has consulted the FMA in its capacity as banking supervisory authority, and it has been jointly concluded that a threat of incapacity to pay in the near future does exist and therefore HETA will probably fail.

The precondition for resolution as set out in § 49 (1) no. 1 BaSAG is therefore fulfilled in the present case.



## **Re. precondition 2 (no alternative private sector measures)**

HETA is a wind-down company pursuant to § 2 GSA. Its main purpose is the realisation and winding down of assets. It is prohibited from receiving monies from the public. Its main aim is thus its orderly dissolution in the long term. In view of the special urgency (maturity of the first liabilities per 2 March 2015), the only alternative private-sector support measure to be considered pursuant to § 49 (1) no. 2 BaSAG would therefore have been support provided by the sole owner. The statement by the Republic of Austria that it would not provide any further financial support thus acquires central importance in the context of the assessment of the precondition set out in § 49 (1) no. 2 BaSAG.

Due consideration being given to time constraints – in consequence of the negative judgement of the sole owner (the Republic of Austria) and the resulting imminent threat of HETA's incapacity to pay – according to reasonable discretion there is no prospect that the failure of the institution can be prevented by alternative private-sector measures (such as a takeover or capital participation) or financing through the private sector of the economy.

The precondition for resolution as set out in § 49 (1) no. 2 BaSAG is therefore fulfilled in the present case.

## **Re. precondition 3 (resolution measures are necessary in the public interest)**

If the preconditions of § 49 (1) no. 1 and no. 2 BaSAG are fulfilled, the resolution authority has to order resolution measures in relation to an institution pursuant to § 49 (1) no. 3 BaSAG, if such measures are necessary in the public interest. According to § 49 (2) BaSAG, a resolution measure is in the public interest if it is necessary for the achievement of one or more resolution objectives and is proportionate in view of these objectives, and if this would not be the case in the same extent in the context of realisation of the institution by way of bankruptcy proceedings.

According to § 48 (2) in conjunction with (4) BaSAG, the resolution objectives, which are of equal importance, are:

- 1. to ensure the continuity of critical functions,*
- 2. to avoid significant negative consequences for financial stability, in particular by the prevention of any contamination (of market infrastructures for example) and by the maintenance of market discipline,*
- 3. to protect public funds by reduced utilisation of extraordinary financial support out of public funds,*
- 4. to protect depositors covered by Directive 2014/49/EU and investors covered by Directive 97/9/EC, and*
- 5. to protect the monies and assets of customers.*

On the basis of the results of the provisional valuation, the FMA concludes that, if insolvency proceedings were opened, although all liabilities of HETA would be due, the realisation of the assets by the insolvency administrator would probably take a number of years because of the complexity of the realisation measures. Accordingly, in this scenario proportional payments would probably only be made to creditors after a realisation process of some years' duration, so that the deferment of liability does not represent any disadvantage to the creditors in comparison to the opening of insolvency proceedings.

The calculations contained in the AQR have shown that the realisation proceeds to be expected in the event of bankruptcy are significantly lower than the realisation proceeds with HETA undergoing resolution in accordance with BaSAG.

The FMA shares the valuation auditor's view that in the event of the opening of insolvency proceedings the realisation proceeds would with a probability bordering on certainty be significantly lower than the calculated AQR values in the context of resolution pursuant to BaSAG, and so the creditors would in any event not be placed in a worse position in the context of resolution pursuant to BaSAG as far as the potential realisation result is concerned, as compared with the opening of insolvency proceedings.

The other justifications for the advantageousness of the resolution of HETA in accordance with BaSAG, as listed in the HETA communication pursuant to § 114 (1) in conjunction with § 51 (1) no. 3 second half sentence and no. 4 BaSAG (in particular the successful completion of the HGAA SEE Holding AG transaction), are conclusive and acceptable as far as the FMA is concerned.

Thus, the disadvantages of insolvency as compared with a measure as envisaged in BaSAG can be summarised as follows: (i) there is a greater risk of insolvency for the banks of the HGAA Group; (ii) all claims will immediately fall due, which is likely to have disadvantageous consequences on financial stability; and (iii) insolvency would make it impossible to effect the phased wind-down aimed at best possible realisation, and would lead to additional value destruction which in turn would have negative effects on financial stability.

The resolution authority has to effect a reasonable balance between the resolution objectives. According to § 3 (7) BaSAG, in the context of its judgements the resolution authority must also take into account the potential effects of its decision in all Member States in which the affected institution or group operates, and must endeavour to ensure that the negative effects on financial stability and the negative economic and social consequences in the Member States are kept to a minimum.

*The resolution objective of ensuring the continuity of critical functions pursuant to § 48 (2) no. 1 BaSAG*

According to § 2 no. 37 BaSAG, critical functions are "activities, services or transactions the suspension of which, because of the magnitude, market share, external and internal interlocking, complexity or cross-border activities of an institution or a group, will probably lead to the disruption, in one or more Member States, of services which are essential for the real economy, or a disruption of financial market stability, particularly with a view to the substitutability of these activities, services or transactions". The purpose of Directive 2014/59/EU, which forms the basis of BaSAG, is to maintain systemically relevant functions by means of resolution actions (recital 1 of Directive 2014/59/EU).

The resolution regulations of Directive 2014/59/EU are based (inter alia) on the realisation that the insolvency of one enterprise in a group can rapidly impair the solvency of the entire group and consequently can exert a separate systemic influence. The resolution authorities should therefore prevent any such contagion by means of effective possibilities for action (recital 11 of Directive 2014/59/EU).

Since 30.10.2014 HETA has not belonged to the same credit institution group as HGAA and the SEE network, but it is still closely interlinked with them. This deconsolidation was effected in anticipation of a resolution as envisaged in Directive 2014/59/EU and BaSAG. GSA makes reference at several points to the continuing dependency of the former subsidiaries of HETA even after the deconsolidation: thus one of the tasks of HETA as set out in § 3 (2) GSA is the provision of transition services to third parties which were included in the consolidated financial statements of HBInt per 31.12.2013 or which had been founded as companies of the HBInt Group between 31.12.2013 and date on which the ruling pursuant to § 2 (1) GSA became legally enforceable. Transition services are services which were being provided on a contractual basis per the date on which the ruling pursuant to § 2 (1) GSA became legally enforceable, and concerning the continuation of which a legal duty applies. Such services may be provided for a maximum of two years after the date from which the Federal Government no longer has any direct or indirect interest in the recipient of the services. In addition, HETA may acquire assets from these legal entities and include these in the portfolio wind-down (§ 3 (3) GSA).

According to the facts as determined, HETA provides essential services in several respects for the SEE network for its banking operation on the basis of these provisions.

If no resolution measures are carried out, then pursuant to § 66 of the Austrian Insolvency Act (IO) in conjunction with § 7 (1) GSA bankruptcy proceedings would have to be opened in respect of HETA in the event of its incapacity to pay. According to § 80 (1) IO, an insolvency administrator is to be appointed in bankruptcy proceedings. One of the tasks of the insolvency administrator is to examine whether the insolvent enterprise in bankruptcy can be continued (§ 81a (3) IO). The insolvency administrator is authorised, in the relationship with third parties, to undertake all legal transactions and legal acts associated with the fulfilment of the obligations of his office (§ 83 (1) IO); according to IO he has extended special termination rights and dissolution options. In the exercise of his activity the insolvency administrator must act in the common interest of the parties concerned (§ 81 (2) IO). The main focus is exclusively on the interests of the creditors; in addition, the insolvency administrator must also take into account the interests of the employees of HETA (*Hierzenberger/Riel in Konecny/Schubert*, KO §§ 81, 81a margin no. 9). The insolvency administrator is not permitted to act contrary to the common interests of the parties concerned in order to continue functions which are critical for the maintenance of financial stability.

There is no certainty that in bankruptcy proceedings the aforementioned services would continue to be provided in the period of time necessary for the HGAA Group to be able to find a substitute. This applies in particular in respect of services involving the intensive use of staff, such as making large numbers of employees available, which would hinder the insolvency administrator in making reductions in staff which might be necessary in the context of any individual consideration of HETA. Only if there were no danger of the failure being exacerbated for the creditors as a result of the services being provided to HGAA and the banks of the SEE network would the insolvency administrator decide in favour of the agreements in question being fulfilled.

Contrary to the case of insolvency, according to § 3 GSA, the planned and gradual reduction of the services temporarily made available by HETA, and the possibility of fulfilling existing contractual obligations arising from the Adria agreement remains permissible.

It is also to be assumed that in the event of HETA's bankruptcy the repayment of the utilised refinancing lines would be made more difficult.

In addition, in its expert report statement on the repercussions on financial stability OeNB states (conclusively, in the FMA's view): "*In the course of the separation of the SEE network from the group of credit institutions of Hypo Alpe Adria and the resulting establishment of HGAA as an independent credit institution at the end of October 2014, numerous activities were transferred to HETA by means of outsourcing agreements (Service Level Agreements – SLA). The volume of outsourced activities is still considerable at the present time. There is a danger that in the event of HETA's bankruptcy HGAA would not be able to carry out the outsourced activities itself, at least over a certain period of time.*" This, too, confirms the importance of the services described.

Thus, in regard to the resolution objective of ensuring the continuity of critical functions, resolution is reasonable, since the objective in question cannot be achieved in the same extent in bankruptcy proceedings, and the probability of safeguarding the identified critical functions of HETA is increased in the context of resolution pursuant to BaSAG.

*The resolution objective of avoiding significant negative consequences for financial stability pursuant to § 48 (2) no. 2 BaSAG*

Recital 3 of Directive 2014/59/EU indicates that the failure of a credit institution operating on a cross-border basis influences the stability of the financial markets in the individual Member States in which it operates. The banks of the SEE network operate in the Member States Slovenia and Croatia. The possible significant negative consequences for financial stability must therefore be considered.

The following statements are based on the conclusive and well-documented expert report statement of OeNB.

The bankruptcy of HETA and the resulting probable winding up of HGAA and the SEE network, as well as the non-provision of agreed services for the SEE network in the Balkans, would have considerable negative consequences on financial stability in these Member States. The SEE network has significant market shares in deposit business, 6% in Croatia and 4% in Slovenia. In non-EU states in which the SEE network is active, the subsidiaries also hold significant market shares: 3% in Serbia, 6% in Bosnia and 5% in Montenegro.

In the event of bankruptcy the following risks are likely to materialise:

- a bank run on the respective subsidiaries (involving customer monies in the converted amount of EUR 4.1 billion);
- associated with a bank run, a heavy burden may be placed on national collateral systems, which subsequently
- may give rise to the risk of intervention by the respective governments and regulators, possibly leading to compulsory nationalisation.

The failure of HGAA and its subsidiaries in Slovenia and Croatia would not only have direct negative effects on the financial markets of these Member States, but also, possibly through second-round effects arising from the collapse of other banks in the SEE network, would in the relevant extent be detrimental to financial stability. As has been shown, HGAA and the SEE network are particularly dependent on HETA.

There is also the risk of a negative contamination effect on the other Austrian banks and parent banks operating in these countries, which hold local deposits in this region in the converted amount of EUR 28.5 billion. In the countries referred to, Austrian subsidiary banks are among the pillars of the financial system, so that the financial stability of these countries would be additionally at risk as a result of these negative contamination effects.

The SEE network is the subject of the purchase agreement between HETA and Al Lake (Luxembourg) S.à.r.l. of 22.12.2014 (the "Adria purchase agreement"). The closing has not yet taken place. If the sale of the SEE network is not completed by 31.12.2015 at the latest, HGAA and the SEE network will on the basis of the decision of the European Commission of 03.09.2013, C (2013) 5648, be subject to a restriction of new business and would have to be wound down, which would have considerable disadvantageous effects on the financial stability of the Member States. The completion of the Adria purchase agreement is therefore of decisive importance for the continued existence of HGAA and the SEE network.

The closing of the Adria purchase agreement is subject inter alia to the condition precedent that no insolvency or restructuring proceedings have been opened or applied for in regard to HETA or a member of the HGAA Group up to the closing. Consequently, if insolvency or restructuring proceedings as envisaged in IO are opened in regard to HETA or a member of the HGAA Group, the purchase agreement will not (subject to any waiver on the part of the purchasers) be legally valid. No express regulation exists in regard to resolution as envisaged in Directive 2014/59/EU or BaSAG. Any further sale in the course of insolvency would only (if at all) be brought about with considerable additional guarantees provided by the Federal Government as owner.

In connection with any liabilities of HETA arising towards the SEE network, the FMA will undertake an evaluation, on a situation-related basis, as to whether or not resolution measures in this regard will be necessary in the interest of HETA's creditors.

If the sale of HGAA (as parent company of the SEE network) fails in consequence of any bankruptcy of HETA, and HGAA is placed in resolution, this would have negative effects for Austria: the endangerment of the refinancing lines of HETA towards HGAA (approx. EUR 2 billion); the need for the subsidiary banks of the HGAA parent company in Austria to be devalued (approx. EUR 1.1 billion), and the imminent incapacity to pay of HGAA.

As a result of the potential resolution of a credit institution newly licensed as recently as September 2014 that would be associated with this, the reputation of the Republic of Austria would be under threat. In the event of a resolution of the SEE network, this would also lead to an increase in government debt.

In the event of the bankruptcy of HETA, the claim of Pfandbriefbank Österreich AG against HETA in the amount of EUR 1.2 billion, which is secured with a suretyship from the Province of Carinthia, would also immediately fail. If the suretyship from the Province of Carinthia is not recoverable in a sufficient amount, the Pfandbriefstelle would fail, and the cost of this would have to be jointly and severally borne by the guarantors and the other member institutions. This in turn would affect the Landeshypothekenbanken.

Thus, in regard to the resolution objective of avoiding considerable negative effects on financial stability, resolution is necessary since the objective cannot be achieved in the same extent in bankruptcy proceedings, because in the event of the bankruptcy of HETA considerable negative effects on financial stability in Croatia and Slovenia would be likely. In addition, negative (consequential) effects on financial stability in Austria would also be very likely.

*The resolution objective of protecting public funds by reduced utilisation of extraordinary financial support out of public funds pursuant to § 48 (2) no. 3 BaSAG*

The purpose of Directive 2014/59/EU is to avoid, as far as possible, using taxpayers' money to rescue banks (recital 1 of Directive 2014/59/EU).

A bankruptcy would have direct consequences for the creditors of HETA, which include Austrian banks and insurance companies; the total volume involved being approx. EUR 2 billion. Some of these claims are secured by guarantees provided by the Province of Carinthia, which would become effective in the event of bankruptcy. The present liabilities of the Province of Carinthia amount to about EUR 10.2 billion. For affected creditors, the question would arise as to the recoverability of the claim amounts and the possible need for value adjustment.

If the Province of Carinthia were to become insolvent as a result of its liability for the HETA issues that are backed by guarantees provided by the provincial government, this would also give rise to negative effects for the financial market, as well as bringing fiscal consequences in its wake. This could lead to the value of provincial guarantees generally being called into question, which in turn could result in the refinancing costs of the provincial governments being increased.

Thus, in regard to the resolution objective of protecting public funds, resolution is necessary since the objective cannot be achieved in the same extent in bankruptcy proceedings, and on the basis of our findings and considerations resolution pursuant to BaSAG reduces the likelihood of further public funding being necessary.

The resolution conditions as set out in § 49 (1) no. 3 BaSAG is therefore fulfilled.

Each of the stated resolution objectives taken on its own justifies the application of the resolution measures as ordered.

The institution of the procedure as envisaged in BaSAG is therefore necessary in the public interest on the basis of the present factual situation.

**On the basis of the above considerations, the conclusions of the authority are as follows:**

Since the preconditions for resolution pursuant to § 49 BaSAG are fulfilled, the FMA is able pursuant to § 50 (1) BaSAG to order all measures necessary to achieve the resolution objectives pursuant to § 48 BaSAG. In particular, the FMA can:

- 1. order the application of one or more of the resolution tools pursuant to § 74 (2);*
- 2. in regard to or in addition to orders pursuant to 1., issue orders in accordance with the powers envisaged in § 58 to 69.*

With the issuing of this administrative ruling, the FMA is making use of the powers envisaged in § 58 (1) no. 10 BaSAG to change the maturity of the debt securities issued by an institution in resolution and other eligible liabilities, or the interest amount payable on the basis of the corresponding debt securities and other eligible liabilities, or the date on which the interest is to be paid, except in the case of secured liabilities pursuant to § 86 (2) BaSAG.

The debt securities, liabilities and interest referred to in the judgement are those which have been issued by HETA (formerly HBIInt.) or have been transferred to HETA by measures executed in accordance with company law.

The change to the maturity is being used to prepare for or to support the application of resolution tools. The selection of the specific resolution tool must be preceded by an intensive evaluation and resolution planning based on the valuation by the valuation auditor. This resolution planning presupposes a careful and detailed evaluation. In addition, a detailed description must be provided for the various resolution strategies that could be applied in the context of the various possible scenarios (§ 20 (5) no. 3 BaSAG).

The resolution measures ordered, which include the resolution tools and the exercise of resolution powers (§ 2 no. 42 BaSAG), must be necessary for the achievement of one or more resolution objectives, and must be proportionate in consideration of these objectives.

This corresponds to the examination, as required in the context of any interference in fundamental rights under Austrian constitutional law and the Charter of Fundamental Rights of the European Union, of whether the measure being implemented is in accordance with the principle of proportionality, i.e. whether it is suitable, necessary and appropriate (cf. concerning Austrian constitutional law *Öhlinger/Eberhard*, Verfassungsrecht 10, margin no. 715 et seq.; concerning the Charter of Fundamental Rights of the European Union, *Rumler-Korinek/Vranes* in *Holoubek/Lienbacher*, GRC Kommentar, Art 52 margin no. 15 et seq.).

A resolution measure is suitable if it is able to further the resolution objective aimed for, i.e. it is suitable for achieving the resolution objective.

The moratorium is suitable for furthering the resolution objectives, because as a result of the moratorium the temporary continuation of the critical functions and the stability of the financial markets in the Member States can be ensured without public funds having to be spent.

A resolution measure is necessary if there is no alternative means by which the resolution objective being pursued can be equally well achieved, and which would interfere less in the rights of the affected party.

The moratorium is necessary because it represents the least possible interference in the rights of the creditors of these debt securities, in order to prevent the occurrence of incapacity to pay and the insolvency of HETA. If the maturity of the debt securities and liabilities together with the interest thereon were not deferred, and if HETA were therefore obliged to continue to pay the debt securities, liabilities and interest upon maturity, this would undermine any orderly resolution and ultimately lead to disadvantage for the creditors. On the basis of the principle of the equal treatment of creditors, and because of the urgency of the measures ordered, all eligible debt securities and liabilities within the meaning of § 86 (1) BaSAG must be covered by the measure pursuant to § 58 (1) no. 10 BaSAG.

A resolution measure is appropriate if the disadvantages arising are in reasonable proportion to the realisation of the objective achieved by the measure.

The question of how long a moratorium of repayments can generally last is not elucidated any further in § 58 (1) no. 10 BaSAG. An individual assessment has to be made in each separate case.

The period of 15 months was chosen in order to make it possible for a prompt valuation of the assets and liabilities of HETA to be carried out on the basis of the annual financial statements per 31.12.2014, to be drafted by 30.04.2015, and for a strategy for the further resolution of HETA to be determined, and for a period of one month to be available for consideration of the annual financial statements per 31.12.2015.

In order to assess the appropriateness of the duration of the moratorium, the FMA also took into account the regulations on the supervised management procedure pursuant to § 86 BWG and the measures envisaged in § 70 (2) BWG. According to § 86 (1) BWG, once the supervised management procedure becomes legally effective the moratorium applies to all claims against the credit institution that have arisen previously. According to § 90 (2) no. 2 BWG, the supervised management procedure has to be rescinded by the court after one year (except in the case of subsequent bankruptcy).



The measures envisaged in § 70 (2) BWG, which can be applied in regard to a credit institution if there is any risk regarding the fulfilment of its obligations to its creditors, or if it is necessary in order to guarantee the stability of the financial sector, include a prohibition on capital and profit disbursements and a ban on business operation. These measures cease to apply at the latest 18 months after they have become legally effective.

The moratorium ordered is also appropriate because the change in maturity does not constitute any encroachment on the actual portfolio of claims. The claims continue to apply. The maturity has simply been changed to a later date in the extent necessary. On the basis of the principle of equal treatment of creditors as set out in § 53 (1) no. 6 BaSAG, all liabilities of HETA (unless excluded pursuant to § 86 (2) BaSAG) must be made subject to the resolution measure and circumscribed according to class.

The moratorium which has now been imposed until 31.05.2016 will ensure that a valid, viable and considered resolution strategy can be drawn up. The moratorium period is within the framework of what is envisaged in supervisory law for other encroachments on fundamental rights of comparable seriousness.

Against this background, it is also important to point out that the creditors of the debt securities, even in the event of HETA's insolvency, would not be able to expect payment on their claims before the end of the present moratorium, because of the likely complexity and length of the proceedings.

Concerning the urgency of the measures ordered, reference is made to the notification received from HETA, according to which it would in the near future no longer be able to settle its debts and other liabilities as they fall due. It was therefore necessary, on the basis of the requirement of equal treatment of creditors, to order a deferment of maturity pursuant to § 58 (1) no. 10 BaSAG immediately, in light of the fact that liabilities arising from bonded loans would fall due in the immediate future, starting with 02.03.2015. Without the deferment of maturity pursuant to § 58 (1) no. 10 BaSAG, as ordered in the administrative ruling, the creditors of these liabilities could demand payment in full, even though it is already established that the total assets of HETA will not be sufficient to settle all currently known liabilities. As a result, creditors of liabilities falling due in the immediate future would be given preferential treatment over creditors of liabilities falling due at a later date, without there being any substantive reason for this. Although the Executive Board of HETA has stated that provisionally all interest and capital repayments arising from the debt securities could still be paid in 2015, in consideration of the incapacity to pay arising in 2016 HETA will not now pay the liabilities falling due in the near future, in order to avoid any preferential treatment of individual creditors.

Because a conclusive assessment of the completeness of the claims, other liabilities and interest amounts payable thereon is not possible in light of the required urgency, these are designated in section I of the judgement on the basis of class, in accordance with § 116 (2) BaSAG.

A specific demonstrative designation (insofar as is known) is provided in section II of the judgement.

Section II. 1. covers bond liabilities, subordinated capital and bonded loans.

Section II. 2. concerns obligations of HETA arising from liability for issues of the Pfandbriefstelle der Österreichischen Landes-Hypothekenbanken, executed by the latter in accordance with § 1 (2) of the Austrian Pfandbriefstelle Act (Pfandbriefstelle-Gesetz), BGBl (Federal Law Gazette) I. 2004/45, the proceeds of which have been made available to HETA as a loan.

Section II. 3. concerns liabilities which have been extinguished in accordance with the Federal Act on Restructuring Measures for HYPO ALPE ADRIA BANK INTERNATIONAL AG (HaaSanG), BGBl. (Federal Law Gazette) I No. 51/2014 and the FMA Regulation on the Performance of Recovery Measures pursuant to § 7 (2) in conjunction with § 3 and § 4 (1) HaaSanG (HaaSanV), BGBl. (Federal Law Gazette) II No. 195/2014, or which are subject to a moratorium (§ 3 in conjunction with § 2 no. 4 HaaSanG; § 4 in conjunction with § 2 no. 5 HaaSanG). Since the possibility cannot be excluded that these provisions will be found to be unconstitutional in any subsequent review proceedings carried out under constitutional law, precautionary measures need to be taken to ensure that in such a case these claims do not become due for payment by HETA and thus put the orderly resolution of HETA at risk.

Section II. 4. concerns liabilities of HETA towards Bayerische Landesbank Anstalt des öffentlichen Rechts ("BLB"), in regard to which a legal dispute is pending between HETA and BLB as to whether this equity is equity-replacing within the meaning of the Austrian Equity Substitution Act (EKEG). Irrespective thereof, and irrespective of the differing legal viewpoints of HETA and BLB concerning these liabilities, a moratorium on this claim is necessary in order to create legal certainty in regard to the maturity of these claims of BLB, which has thereby been deferred.

Section II. 5. concerns possible obligations arising from other eligible liabilities.

Section II. 6. concerns profit shares which may be payable in respect of issued participation capital.

Finally, it is noted that in regard to HETA the resolution measures ordered in this administrative ruling, including any event directly connected with the application of any such measure pursuant to § 63 BaSAG,

a) are not to be regarded as a realisation or termination case within the meaning of Directive 2002/47/EC of the European Parliament and the Council of 27.06.2002 on financial collateral arrangements, OJ No. L 168 of 27.06.2002 page 43;

b) are not to be regarded as insolvency proceedings within the meaning of Directive 98/26/EC of the European Parliament and the Council on settlement finality in payment and securities settlement systems, OJ No. L 166 of 11.06.1998 page 45;

c) do not provide any justification for exercising rights of termination, suspension, alteration, retention, or offsetting;

d) do not provide any justification for obtaining property of HETA, exercising control over HETA, or asserting claims arising from collateral, and

e) do not provide any justification for impairing any contractual rights of HETA;

provided that the main payment obligations arising from the agreement, including payment and performance duties, and the duty in regard to the provision of collateral, continue to be fulfilled.

On the basis of the measures put in place pursuant to BaSAG and the present factual situation, the FMA assumes that a direct fiscal consequence as envisaged in § 3 (6) BaSAG applies. The agreement of the Federal Minister of Finance therefore had to be obtained. This agreement was issued on 01.03.2015 at 3:20 pm.

The decision to be taken was therefore in accordance with this judgement.

### **Notification of right of appeal**

Objections may be presented to the FMA against this ruling issued in administrative proceedings pursuant to § 116 (1) to 4 of the Federal Act on the Recovery and Resolution of Banks (BaSAG), BGBl. (Federal Law Gazette) I No. 98/2014 as amended, in accordance with § 116 (8) BaSAG as amended, by HETA and by all other parties whose rights are affected by the resolution measures ordered in this ruling, in particular shareholders and creditors of HETA, within a period of three months following publication of the edict concerning the measures.

This ruling will give rise to direct legal effects for HETA ASSET RESOLUTION AG and for the creditors and shareholders affected.

Objections are to be presented to the FMA in writing. Verbal presentation of objections is not possible.

If technical transmission possibilities (e.g. electronic mailbox, fax, e-mail) are also available for written submissions, this is stated with our address as additional information. However, please note that the sender bears the risks associated with the transmission method used (e.g. transmission error, loss of document).

The FMA business hours are decisive in regard to the legally valid submission of electronic and written petitions (§ 13 (1) of the Austrian General Administrative Procedures Act (AVG) as amended) to the Austrian Financial Market Supervisory Authority – FMA. These business hours correspond to the specified opening times for public offices and are as follows:

Monday to Thursday: 8:00 am to 5:30 pm

Friday: 8:00 am to 4:00 pm

(except for statutory public holidays, 24 December and 31 December)

The FMA's receiving devices for communications by electronic mailbox, fax and e-mail are also able to receive communications outside of the above stated business hours, but are only managed during business hours. Petitions which are transmitted to these devices outside of business hours are therefore only deemed to be delivered (and received) with legally valid effect (even if they are already in the FMA' sphere of disposal) upon the recommencement of business hours, and will (only) be dealt with from this time onwards (§ 13 (2) in conjunction with (5) AVG).

Petitions will also not be received outside of business hours (§ 13 (5) AVG).

Objections do not have any deferring effect, which means that the ruling can be enforced immediately, in spite of an objection having been lodged.

Any objection which is submitted late will be rejected.

Financial Market Supervisory Authority  
For the Executive Board

Dr. Oliver Schütz  
Head of Division

Dr. Karin Zartl, LL.M