



**Australian Government**

**The Treasury**

Australian National Contact Point  
for the OECD Guidelines for Multinational Enterprises

# Final Statement

This complaint was submitted by Mr Robert Palin, on behalf of the descendants of the Oswald Weiss Estate, against Deutsche Bank Australia, a subsidiary office of Deutsche Bank Germany.

Published 13 December 2019

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# EXECUTIVE SUMMARY

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1. On 14 July 2019, the Australian National Contact Point (AusNCP) received a complaint from Mr Robert Palin (the notifier), against Deutsche Bank Australia (the enterprise), which is a subsidiary office of Deutsche Bank Germany. In the complaint, Mr Palin states he is acting on behalf of the descendants of the Oswald Weiss Estate.
2. The notifier alleges that during World War Two, in the former state of Czechoslovakia, Deutsche Bank was directly involved with the German National Socialist Regime in the illegal and forced expropriation of substantial financial assets belonging to the Weiss family, namely family-owned company shareholdings in Erste Böhmisches Glasindustrie AG (EBG, also known as First Bohemian Glassworks Ltd and the Olovi factory).
3. The notifier further alleges that Deutsche Bank was directly involved in: illegal transfers of EBG funds; charging unreasonable fees without crediting any interest on EBG deposit accounts between 1939 to 2016; freezing Weiss family personal shares in EBG for the entire war period, resulting in the total loss of value of these shares; and blocking Weiss family personal deposits and transferring these deposits to the Gestapo.
4. Regarding outcomes sought from the AusNCP process, the notifier maintains the claims of the Weiss family for the cash deposits which were held by Deutsche Bank. The notifier hopes to achieve an early compromise settlement by way of mediation and has sought the AusNCP's assistance to pursue a claim for restitution.
5. Deutsche Bank's position is that it has undertaken a thorough review and investigation of the claims made by the notifier, and having done so, denies those claims.
6. The AusNCP spoke with both parties during the Initial Assessment process, to share and clarify relevant information. The information provided by the notifier was shared by the AusNCP with the enterprise and with permission from the notifier. The AusNCP is satisfied that the information provided by both parties was sufficient to undertake a thorough initial assessment.
7. The AusNCP has considered the six admissibility criteria<sup>1</sup> as part of the Initial Assessment process and determined not to accept this complaint. The following observations were made during the assessment.

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<sup>1</sup> See section 4.10 of the AusNCP Complaint Procedures, September 2019.

- 7.1. The complaint does not relate to the implementation of the OECD Guidelines. The Guidelines did not exist at the time of the alleged original actions that underpin the overall claim.
- 7.2. Due to the significant passage of time, it is difficult for a non-judicial mechanism such as an NCP (particularly the Australian NCP) to independently verify the direct links<sup>2</sup> in the relationships between the enterprises and the alleged actions, and the ownership of relevant accounts.
- 7.3. The AusNCP notes that, in a series of correspondence between the enterprise and the notifier between December 2017 and January 2019, the majority of contact has been between the notifier and the German enterprise headquarters and not the Australian subsidiary.
  - 7.3.1. In a phone call with the AusNCP on 28 November 2019, the notifier was unable to make apparent how the Australian subsidiary has either caused or contributed to any harm being suffered by the descendants of the Oswald Weiss Estate.
8. The AusNCP is satisfied that the Australian subsidiary of the enterprise has sufficiently engaged with the notifier, by providing him with information sourced from its German head office.
9. The AusNCP understands that the notifier may be able to access other avenues in Europe to pursue a financial settlement. To support the notifier in this regard, the AusNCP sought advice from its Governance and Advisory Board, relevant Australian Government agencies, the OECD and other NCPs. This information was conveyed to the notifier on 12 November 2019.
10. The Initial Assessment process included contact with the enterprise to notify them a complaint had been filed; provide a copy of the complaint and subsequent information provided by the notifier; and seek information regarding their communication with the notifier on this matter to date<sup>3</sup>.
11. The AusNCP consulted with the US NCP, the German NCP and the Czech NCP, particularly regarding the scope of the Guidelines and discussed the possibility to transfer the case.<sup>4</sup> The AusNCP also consulted with the OECD Secretariat in the early stages of the Initial Assessment, with regard to precedent cases of this nature.

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<sup>2</sup> See section 3.4, AusNCP Complaint Procedures, September 2019.

<sup>3</sup> See sections 4.8 and 4.9, AusNCP Complaint Procedures, September 2019.

<sup>4</sup> See section 4.7 and 6.2, AusNCP Complaint Procedures, September 2019.

12. As the AusNCP's current procedures entered into force during the AusNCP's consideration of this case, the Initial Assessment gave consideration to relevant parts of the revised procedures, including provision to identify the enterprise in this statement<sup>5</sup>. The AusNCP followed the new complaint procedures in all steps, except that the decision maker for this case remains the Treasury, as the Independent Examiner had not commenced at the time the complaint was received. The AusNCP Governance and Advisory Board was also consulted in the formulation of this assessment<sup>6</sup>.
13. The AusNCP notes that this outcome is not a determination on the merits of the claims presented, nor is it an assessment of whether the enterprise's actions are consistent with the OECD Guidelines.

This statement is available on the AusNCP website at [www.ausncp.gov.au](http://www.ausncp.gov.au).

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<sup>5</sup> See section 4.8, AusNCP Complaint Procedures, September 2019.

<sup>6</sup> See 6.6, AusNCP Complaint Procedures, September 2019.

# Publications

<http://mneguidelines.oecd.org/database/>

<http://www.ausncp.gov.au/content/Content.aspx?doc=publications.htm>

## Schedule of events

Submission	Date
• Complaint submitted to the AusNCP.	14 July 2019
• Complaint acknowledged by the AusNCP and further information sought.	19 July 2019
• AusNCP notified the MNE.	12 August 2019
• Governance and Advisory Board notified by the AusNCP.	19 August 2019
Initial Assessment	
• AusNCP phone call with US NCP.	30 August 2019
• AusNCP emails to German NCP and Czech Republic NCPs.	3 September 2019
• AusNCP received response from Czech Republic NCP.	9 September 2019
• AusNCP email update sent to the notifier.	9 September 2019
• AusNCP received response from German NCP.	17 September 2019
• AusNCP email update sent to the notifier and the enterprise.	14 October 2019
Final Statement	
• Draft final statement provided to the Governance and Advisory Board for advice.	24 October 2019
• Draft final statement provided to other NCP's and the OECD Secretariat for comment.	24 October 2019
• AusNCP contacted both parties regarding its preliminary decision.	12 November 2019
• Draft final statement provided to the parties for comment and emails exchanged regarding an optional phone call with the AusNCP.	12 November 2019
• AusNCP phone call with the notifier.	28 November 2019
• AusNCP finalised Final Statement and provided an advance copy to the parties and the Governance and Advisory Board.	12 December 2019
• Final Statement published on <a href="http://www.AusNCP.gov.au">www.AusNCP.gov.au</a> and reported to the OECD.	13 December 2019

# INSTITUTIONAL ARRANGEMENTS

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9. The Australian Government is committed to promoting the use of the OECD Guidelines and implementing them effectively and consistently. Through business cooperation and support, the OECD Guidelines can positively influence business conduct and ultimately economic, environmental and social progress.
10. The OECD Guidelines are recommendations on responsible business conduct addressed by governments, including Australia, to multinational enterprises. Importantly, while the OECD Guidelines have been endorsed within the OECD international forum, they are not a substitute for, nor do they override, Australian or international law. They represent standards of behaviour that supplement Australian law and therefore do not create conflicting requirements.
11. Companies operating in Australia and Australian companies operating overseas are expected to act in accordance with the principles set out in the OECD Guidelines and to perform to — at minimum — the standards they recommend.
12. The OECD Guidelines can be seen as:
  - a useful aid to business in developing their own code of conduct (they are not aimed at replacing or preventing companies from developing their own codes);
  - complementary to other business, national and international initiatives on corporate responsibility, including domestic and international law in specific areas such as human rights and bribery; and
  - providing an informal structure for resolving issues that may arise in relation to implementation of the OECD Guidelines in specific instances.

# GOVERNANCE

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13. Countries adhering to the OECD Guidelines have flexibility in organising their National Contact Points (NCPs) and in seeking the active support of social partners, including the business community, worker organisations, other non-governmental organisations, and other interested parties.
14. Accordingly, the OECD Guidelines stipulate that NCPs:
  - i) will be composed and organised such that they provide an effective basis for dealing with the broad range of issues covered by the OECD Guidelines and enable the NCP to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government;
  - ii) can use different forms of organisation to meet this objective. A NCP can consist of senior representatives from one or more ministries, may be a senior government official or a government office headed by a senior official, be an interagency group, or one that contains independent experts. Representatives of the business community, worker organisations and other non-governmental organisations may also be included; and
  - iii) will develop and maintain relations with representatives of the business community, worker organisations and other interested parties that are able to contribute to the effective functioning of the OECD Guidelines.
15. The [AusNCP Governance and Advisory Board](#) (the Board), which includes non-government members as well as representatives from key government agencies, provides advice and assistance to the AusNCP Secretariat in relation to the handling of complaints. The Board was consulted in the development of this statement.
16. The Board helps to ensure that the AusNCP is visible, accessible, transparent and accountable, in accordance with its obligations under the OECD Guidelines for Multinational Enterprises. Members may be called on to conduct procedural reviews of AusNCP complaints and may be consulted on various operational and administrative matters as needed.
17. From September 2019, all new cases will be managed by an Independent Examiner, who will be supported by the AusNCP Secretariat and the Board. The Australian National Contact Point, held by a Senior Executive official in the Treasury, retains responsibility for current cases submitted prior to September 2019.