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In accordance with Section 3 of the Federal Act on the Restitution of Art Objects from the Austrian Federal Museums and Collections, Federal Law Gazette I No. 181/1998 as amended by Federal Law Gazette I No. 117/2009 (Art Restitution Act), at its session of 29 November 2022, adopted the following

DECISION

It is recommended to the Federal Minister for Art, Culture, Public Service and Sport to not transfer the mummy head, IN 20.498, listed as "Maria and Otto Engländer" in the dossier of the Commission for Provenance Research 14/2022, from the Natural History Museum Vienna to the legal successors of Maria and Otto Engländer.

FOUNDATIONS

The Advisory Board has considered the above-mentioned dossier of the Commission for Provenance Research and established the following facts of relevance to the decision:

The inventory book of the Osteological Collection of the Anthropological Department at the Natural History Museum in Vienna documents the purchase of a 3,000-year-old Egyptian mummy head for the period 1941/42: "Acquired from Mrs. Engländer, Vienna I., Elisabethstr. 16 for RM 50,-". The address information made it possible to identify the seller as Marie Engländer, née Schwach, born in Vienna on 8 May 1883. In 1911 she married Otto Engländer, born in Baden near Vienna on 1 April 1881, who studied mechanical engineering at the Technical Universities of Vienna and Berlin from 1899 to 1904 and finished his state examination in Vienna in 1904. From 1914 onwards, the couple was registered at Elisabethstraße 16 in the first district of Vienna. In the same year their son Georg was born, who was killed in a car accident in 1936. In 1917 their second son Franz was born. On 1 November 1916, Otto Engländer began working at the chemical powder factory Skodawerke-Wetzler AG (SWW) in Moosbierbaum in Lower Austria, where he subsequently rose to the position of director. From 1928 onwards, together with Isidor Pollak, he was one of the two leading general directors of what was then the largest chemical company in Austria.

Hardly any information could be found on the living conditions of the English couple. What is known is that both remained registered at the above-mentioned address in Vienna during and after the Nazi era. However, Otto Engländer, who like his wife was baptised a Roman Catholic, had to be declared a so-called "2nd degree Mischling" since the introduction of the so-called Nuremberg Laws in Austria on 20 May 1938: While both parents and the grandparents on his mother's side were baptised as Roman Catholics, his paternal grandfather, the dentist Adolf Karl Engländer, had converted from Judaism to Catholicism in 1845 before marrying the Catholic Therese Krämer.

(Nazi) sources that confirm that the National Socialist authorities were even aware of this classification could not be found. However, people who were considered "2nd degree Mischlinge" were excluded to systematic discriminatory measures, such as the compulsory wearing of a so-called Jewish star, the adoption of a compulsory first name, the payment of discriminatory taxes or later the deportation to concentration and extermination camps.

Accordingly, after the "Anschluss" of Austria to the National Socialist German Reich, Otto and Maria Engländer did not belong to the group of persons who, according to Section 5 of the Ordinance on the Registration of the Property of Jews of 26 April 1938 in conjunction with the First Ordinance to the Reich Citizenship Act of 14 November 1935, had to submit a declaration of assets.

Nevertheless, Otto Engländer's professional situation changed fundamentally as a result of the "Anschluss". SWW, of which Engländer was General Director, was almost 90 percent owned by the Creditanstalt (CA). However, already as early as 1931, the German chemical company IG Farben had intended to acquire SWW and from 1936 onwards negotiated more intensively with CA about a

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shareholding. Shortly before the "Anschluss" IG Farben planned to merge SWW with three other Austrian chemical companies to form "Donau-Chemie", which failed due to the resistance of CA as the majority owner. In 1947, the former CA Director General Josef Joham recalled in a statement at the Nuremberg trials: "Under no circumstances did we want it [i.e., SWW] to fall into foreign hands."

For this reason, IG Farben initially had to agree to a compromise that was unfavourable to it and which, among other things, provided for CA to retain a majority shareholding in SWW, which would have prevented IG Farben from fully controlling the planned "Donau-Chemie".

As a result of the "Anschluss", IG Farben activated its political connections to the new decision-makers in the former Republic of Austria, such as Vienna's mayor Hermann Neubacher (1893-1960), who had worked for IG Farben already before 1938. In May 1938, the company received permission from the *Staatskommissar in der Privatwirtschaft* (State Commissioner in the Private Sector), Walter Rafelsberger (1899-1989), who also headed the Property Transaction Office founded at that time, to acquire SWW. Shortly afterwards, on 2 June 1938, Rafelsberger approved the merger of several former Austrian chemical companies to form "Donau-Chemie", owned by IG Farben, even before the latter acquired the majority of shares in SWW and the other companies. At the same time, the removal of the negotiating partners of CA and SWW, who were considered Jewish, was consistently pursued. General Director Isidor Pollak was dismissed from the SWW Board. He died of a heart attack during a house search by the Gestapo on 30 April 1938. There were also personnel changes at the level of the SWW Board of Directors: From eight members, seven were forced to resign or gave up their mandates in April and May 1938. These included Franz Rottenberg and Marcel Goldarbeiter, who were persecuted as Jews, three other members who were considered politically unacceptable because of their functions in Austrofascism and two cases in which the motives are unclear.

For the time being, Otto Engländer remained interim General Director of SWW and interim member of the Board of Directors of Chemische Fabrik Wagenmann, Seybel & Co, a subsidiary of SWW. However, he was not considered for either the Executive Board or the Board of Directors of "Donau-Chemie". In the Compass of 1939, a company directory printed in October 1938, he no longer appeared in the management of SWW. The new management level of the future "Donau-Chemie" had already been determined in negotiations between IG Farben and State Commissioner Rafelsberger on 6 October 1938. Since the latter generally tried to appoint NSDAP members who were close to him to the factories belonging to IG Farben, it can be assumed that Otto Engländer's lack of NSDAP membership was an obstacle to his remaining at SWW or "Donau-Chemie". Whether his classification as a "2nd degree Mischling" was also a decisive factor cannot be determined from the sources.

On 21 December 1938, Otto Engländer was confirmed by the SWW Board of Directors as an interim member of the Executive Board. However, he simultaneously lost his position as general director, which was now held by a representative of IG Farben. At the same time, IG Farben made calculations regarding Engländer's possible retirement: Due to the contractual notice period, the earliest possible date was 30 June 1939. Otto Engländer's early retirement at the age of 58 occurred in the same month as the first meeting of the new board of the "Donau-Chemie", which took place - without Otto Engländer - on 7 June 1939. At the same time, CA was forced to sell its majority shareholding in SWW to IG Farben. According to a confidential IG Farben report, the sale of important Austrian chemical companies to "Donau-Chemie" was in some cases "substantially below value". The new supervisory board of "Donau-Chemie", of which Engländer was no longer a member, also met for the first time on 7 June 1939 after the merger at the annual general meeting.

As Otto Engländer stated in 1946, at the beginning of 1939 he was also forced to sell his share of 6.2 percent in the company Sprengstoffwerke Blumau AG. At the beginning of 1938, 50 per cent of the shares were owned by the Austrian state, 25 per cent by SWW, and the remaining 25 per cent were

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distributed among the general directors and members of the board of SWW. Since the explosives factories played a role in the German Reich's war preparations, the German Wehrmacht was interested in acquiring them. IG Farben reached an agreement with the Ministry of Finance on 6 October 1938, as a result of which military production of explosives was transferred to the Wehrmacht, while civilian production remained with IG Farben. This agreement cleared the way for IG Farben to acquire all SWW shares from CA. Thus, in March 1939, the Ministry of Finance announced the "Instruction on the purchase price [...] for the private share package". According to the information provided by the private shareholders after 1945, only 6 percent of the actual value was paid out per share.

After 1945, Otto Engländer registered seizures under the Property Seizure Notification Ordinance (VEAV); a file on proceedings before the Restitution Commission is also available. Accordingly, on 13 November 1946, Otto Engländer stated that he had "6,200 shares and profit participation certificates from Sprengstoffwerke Blumau AG", which had been seized from him in January 1939. He named "IG Farbenindustrie" as the confiscator. Starting in 1954, Engländer also participated in restitution proceedings concerning these Blumau shares, together with all other former private shareholders. The defendant was the Bonn-based Industrieverwaltungsgesellschaft mbH, before 1945 Montan-Industriewerke GmbH, which had acquired the shares before 1945. In November 1956, four of the six applicants, including Otto Engländer, withdrew their application for restitution, as Blumauer Sprengstoffwerke AG had "regrettably gone bankrupt" and therefore there were no more restitutable shares and assets. Only the two heirs of Isidor Pollak continued to litigate. In its decision of 25 October 1957, the Restitution Commission stated that it had "not been proven" that the sale of the shares held by Isidor Pollak "would also have taken place at RM 4 per share independently of the n.s. seizure of power", which would constitute "a null and void seizure in the sense of § 2 para. 1 III RStG.". Ultimately, however, they did not get Isidor Pollak's shares back, as they could not prove which share numbers he had held.

Maria and Otto Engländer did not conduct any further restitution proceedings, nor did they file any applications for compensation or recognition as Nazi victims within the framework of victim welfare. Of the seven members of the SWW Board of Directors who resigned in 1938, only Franz Rottenberg and Marcel Goldarbeiter filed claims for restitution and compensation for property losses in 1945. Thereby they claimed only other losses of assets; their respective resignations from the SWW board of directors remained unmentioned.

No further details are known about the couple's life after this point in time. However, it is known that Otto Engländer died in Bad Ischl in 1959 and Maria Engländer in Salzburg in 1967.

In 1941/42 Maria Engländer sold the Egyptian mummy head in question here to the Natural History Museum Vienna for RM 50. It was subsequently included in the inventory of the Osteological Collection of the Anthropological Department under the inventory number 20.498; it has remained complete and is still in good condition today. Specifically, the entry refers to a "mummy-head - probably from Thebes and the surrounding area", which was dated to the period of the New Kingdom from "1400-1100 B.C.".

When and where Maria (or Otto) Engländer originally acquired it could not be determined. In the 19th century and even in the early 20th century, mummies (or parts of mummies) were often taken home from journeys to Egypt, as they were popular souvenirs. Other sources of supply were antique dealers who bought mummies either directly from Egypt or from bequests. However, the Maria or Otto Engländer could also have had the mummy head from traditional family possessions.

No further contact between Maria or Otto Engländer and the Natural History Museum in Vienna is known of.

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The Advisory Board considered the following:

According to Section 1. (1). 2 of the Art Restitution Act, objects that legally became the property of the State but had previously been the subject of a legal transaction or legal act under Section 1 of the 1946 Nullity Act, or comparable legislation, may be transferred to their original owners or their legal successors *causa mortis*.

According to Section 1 of the 1946 Nullity Act, "legal transactions against payment or free of charge and other legal acts during the German occupation of Austria are null and void, if they were undertaken in the course of its political or economic penetration by the German Reich in order to deprive natural or legal persons of property or property rights which they were entitled to on 13 March 1938". Without prejudice, the Explanatory Notes on the comments on the Nullity Act describe a scenario that is reminiscent of the takeover or merger by the Skodawerke-Wetzler AG and IG Farben to form "Donau-Chemie":

"After the so-called Märztagen of 1938, the Austrian population was horrified to discover that not only political but also economic freedom in the broadest sense of the word had been lost. The sell-out, which had begun *shortly after the occupation of our state by the German troops and was carried out* by a crowd of indiscriminate buyers from the old German troops, soon disillusioned broad sections of the Austrian people and raised, albeit at first timidly, reservations against this kind of business revival."

(Explanatory notes on the government bill: RV 83 BlgNR V. GP, 1.)

From the present dossier it can be seen that the Egyptian mummy head, which is still in the museum today, was sold by Maria Engländer to the Natural History Museum in Vienna for RM 50 in around 1941/42. Thus, in the decision in question, only this sale is to be considered a legal transaction or legal act in accordance with Section 1 of the 1946 Nullity Act. According to the Nazi classification valid in Austria from 20 May 1938 in accordance with the so-called Nuremberg Laws Otto Engländer was considered a "Jewish Mischling" or "2nd degree Mischling". However, whether this fact was of any significance to the Nazi rulers or the decision-makers with regard to the restructuring process of Skodawerke-Wetzler AG or if they were even aware of this fact, is no longer possible to determine. In the (NS) sources not a single assessment in this regard could be found. The Advisory Board does not overlook the economic situation in which Otto Engländer found himself after the "Anschluss" - both in relation to the takeover of SWW and his forced retirement, as well as the sale of the shares in Sprengstoffwerke Blumau AG - but neither Maria nor Otto Engländer were politically persecuted in the sense of the jurisdiction of the restitution commissions:

"2nd degree Mischlinge (Vierteljuden) and the spouses of such do not belong to the group of politically persecuted persons; they were not further restricted economically." (Heller/Rauscher, Die Rechtsprechung der Obersten Rückstellungskommission beim Obersten Gerichtshof IV, 11i on § 2 para. 1 of the Third Restitution Act [= Die österreichischen Wiedergutmachungsgesetze 5a], Vienna 1954). According to the state of contemporary history research, "2nd degree Mischlinge" were in fact not subjected to any systematic persecution or discrimination comparable to that of people classified as "Volljuden" (Full Jews) or "Mischlinge 1. Grades" (1st degree Mischlinge) (see also the recommendation of the Advisory Board of 18 March 2011 on the Czernin Collection).

Therefore, the Advisory Board sees no reason to assume that the legal transactions concluded with these persons are to be assessed as seizures or to extend beyond the jurisprudence of the Supreme Restitution Commission cited. In this respect, the Restitution Commission found that only the sale of shares belonging to Isidor Pollak, who was persecuted as a Jew, constitutes a null and void legal

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transaction. In addition, the sale of the mummy's head in connection with Otto Engländer's wife Maria Engländer took place without any recognizable connection to the takeover by SWW through IG Farben. The Board therefore comes to the conclusion that the sale to the museum in 1941/42 was not the result of politically motivated persecution or hardship. Therefore, it is recommended to the Federal Minister that the property should not be transferred to the legal successors *causa mortis*.

Vienna, 29 November 2022

Prof. Dr. Clemens JABLONER (Chairman)

Members:

Assoz. Univ.-Prof.ⁱⁿ Dr. Birgit KIRCHMAYR

Ministerialrätin Dr. Eva B. OTTILLINGER

A.o. Univ.-Prof.ⁱⁿ Dr. Sabine PLAKOLM-FORSTHUBER

Alternate:

Richterin Mag.^a Eva REICHEL

Hofrat Dr. Christoph HATSCHEK

Hofrat dVwGH Dr. Franz Philipp SUTTER

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