

The Wirecard PR Court

About an obscure questioning of a Wirecard lawyer

#Wirecard #Munich

Witness hearing of the Wirecard lawyer Ferdinand Fromholzer on June 19, 2024.

The facts listed here do not guarantee a complete record of the hearing, they serve to provide a detailed insight into the questioning of Wirecard witnesses. Due to the complex and sometimes verbally rapid questions and witness statements, minor errors may have crept in. Please contact us at news@sun24.news if you have any improvements or can suggest important additions.

Ferdinand Fromholzer, a lawyer at Gibson Dunn, was also responsible for ad hoc communications for investors at Wirecard and overlooked them from a legal perspective. He is being questioned about a merchant list that was created in connection with the 2019 Softbank investment into Wirecard. Representatives of Softbank questioned Marsalek regarding this "*intensively and briskly*", Fromholzer stated.

The Softbank list came from Marsalek, as did the explanations to Softbank representatives about how exactly the Wirecard third-party partner (TPA) business worked. When the judge throws a list on the court projector, Fromholzer credibly explains that he cannot identify it precisely. The judge then asks whether he knows what Wirecard did with the almost 1 billion Euro Softbank investment. Fromholzer says that he does not know exactly, he states there were allegedly talks with Commerzbank about repurchases.

Rajah and Tann was the area of responsibility of the Wirecard lawyer. The questioning quickly moved on to the ad hoc statements around April 2020 in connection with the special audit by KPMG. His contacts in this regard were the legal department, Goerres and von Knoop. Fromholzer's task was to approve these Wirecard ad hoc reports for the outside world from a legal perspective. The judge immediately asked directly and rather awkwardly whether Dr. Braun had **"interfered and ordered to create the ad hoc statements"**.

Fromholzer replied calmly and convincingly that Dr. Braun had **"understandably come out strongly"** regarding the Wirecard ad hoc statements. He could not remember any specific process in this regard. Steidl, Marsalek and especially von Knoop specifically coordinated drafts with him, Stöckl was also involved with her PR department. After a brief excursion to Rajah and Tann, Fromholzer was suddenly asked by the judge how he would **"view the relationship between Dr. Braun and Ms. Stöckl, Braun allegedly acting very bossy"**. For information: this has already been refuted several times by a number of witnesses, it is incomprehensible to observers why the judge keeps asking questions here. Obviously this is done to a) direct the press representatives in the court room, b) manipulate the witness and c) possibly even indirectly influence the judge's own substitute and assistant judges present.

Like other witnesses, Fromholzer confirmed that he had not observed any particularly **"domineering behavior"** on the part of Dr. Braun, who he described as mostly **"acting intelligently and prudently"**. It is not unusual, but rather the task of the Executive Board to determine the content of Wirecard's PR messages - something the judge apparently still does not want to know. The judge also asked whether Fromholzer could observe meetings with Dr. Braun and Stöckl at all. Fromholzer stated that he was often at the headquarters in Aschheim and witnessed such interactions. He also stated that he was often present at Wirecard meetings regarding ad hocs, including with Rajah and Tann, and that there were also remote communications in which he was also involved with Ms. Stöckl.

The judge asks whether Fromholzer knows who exactly initiated the KPMG special audit. Fromholzer credibly states that he does not know exactly. He had also recommended clarifications in the Project Tiger and with regard to the FT reports, he had discussions with lawyers from Softbank. Once again, the judge conspicuously asks about Dr. Braun's alleged influence, whether he, quote, "**wanted to stop the KPMG special investigation**", this has also been refuted several times by other witnesses. Fromholzer states that Braun "**was dissatisfied with the situation**".

The judge goes on to ask rather aggressively and incomprehensibly for trial observers whether Dr. Braun had, quote, "**gave instructions to prepare the 2019 financial statements first and then the results of the KPMG special audit**" in 2020. The witness unequivocally denies this, stating that Braun had briefly suggested "**stricter financial audits**" with stricter requirements, but that, to his recollection, Braun had not opposed a KPMG special audit.

The first KPMG report, dated February 18, 2020, is now being examined by the judge. Fromholzer remembers it and explains it briefly. A KPMG document dated March 2, 2020 is then projected onto the screen. In it, KPMG lists various missing documents. Fromholzer also explains the Board's efforts to provide them. The KPMG minutes of March 2020 show that in addition to the Chairman of the Supervisory Board Eichelmann and the COO Steinhoff, two lawyers from Clifford Chance were also involved and informed about missing documents for the KPMG special audit, namely Ms. Gärtner and Markus Stephanblome.

The KPMG minutes state in one line that Dr. Braun ***"informed that he had been assured that the missing documents had been delivered"***. A letter from the Chairman of the Supervisory Board, Thomas Eichelmann, dated February 25, 2020, is then projected onto the screen, in which he complains about missing documents for the special audit. Fromholzer is then asked whether he knew about the test bank wire transfers from the trust accounts overseas. He had heard that EY had suggested the trust accounts for annual audits in the past, but of course he could not say who exactly had the originating idea. A total of 4 different bank transfers were proposed by EY for testing purposes from the trust accounts to temporary accounts in Munich, each requesting the transfer of 110 million Euros to EY and then back. Hence, 1.9 billion were not even needed to verify the trust accounts at that time.

A decision on the postponement of the publication of insider information dated March 11, 2020 is projected onto the court's projector, stating that Dr. Braun continued to hope for important information in the coming days that would exonerate Wirecard. Thomas Eichelmann and KPMG had ***"not shared this view"***, the presiding judge told the witness. After that things get important because Fromholzer explains that they naturally hoped to receive reassuring information for the financial market from Wirecard the day after, on March 12, 2020. Otherwise, this would have had a strong negative impact on the share price, ***"so why confuse the market"***, Fromholzer states.

Instead of going into more detail and depth about this important responsibility of the former CEO, Dr. Braun, the presiding judge downgrades and blurs these things and states somewhat fancifully to the witness, quote, ***"why wait for the information, the market will find out how it is anyway"***. He then focuses on an email from Fromholzer dated March 12, 2020, in which the witness writes: ***"Only the review of external third-party documents is missing, not that of internal documents"***. The judge becomes demanding and angry, asking Fromholzer pointedly and with his eyes fixed on how ***"statements from third party partners [from abroad] are not considered internal documents"***.

The former public prosecutor under long-time Wirecard prosecutor Hildegard Bäumler-Hösl further inquires ***"that the transaction data for the KPMG special audit was also not handed over"***. Fromholzer credibly explains that he was aware of the data, but had no specific knowledge of its origin or nature. Fromholzer confirms that there was a phone call between KPMG and Thomas Eichelmann around March 17, 2020. The judge then asks who allegedly assured what and how regarding the missing documents, he asks Fromholzer quite briskly, quote, ***"how he came to comment on the KPMG audit at all in his email"***.

Fromholzer now laughs out loud and calmly goes on to say that ***"there was criticism of the KPMG report"***, including some of the points made in it. He was not present at the KPMG meeting on April 17, 2020, he had not been invited, which the judge found strange. However, he received the minutes of the meeting the same evening. The judge now quotes from the minutes that Dr. Braun requested a ***"capital market oriented reporting structure"*** of the KPMG audit, which the judge found to be strange. Fromholzer reports on the COVID period at the time and how a release was set for April 22, 2020 with capital market corrections.

The judge now throws a document from March 2020 onto the projector, in which the witness states that ***"the accuracy and completeness of the sales revenues for all periods can be fully verified"***. The judge now asks, somewhat angrily, how he arrived at this conclusion. Fromholzer replies with irritation that ***"it came from the company"***, that it was a weeks-long back-and-forth, and that ***"at some point this was found to be okay"***. On March 21, 2020, Thomas Eichelmann then announced that an ad hoc notification was necessary, which initially ***"very much surprised"*** witness Fromholzer.

According to Fromholzer, the Executive Board responded immediately to Eichelmann's request for further information that others did not have and that would clarify certain facts. The witness correctly states in an e-mail that "**communication with the capital market is the responsibility of the Executive Board**". Another lawyer named Rüdiger Aslioni from the Eichelmann agency also stated in an email to the witness that, quote, "**everything fits with KPMG**" regarding the publication of the report and Braun's coordination with KPMG. KPMG's Leitz was also involved, according to the document.

Fromholzer asked and was assured that communication with KPMG had been coordinated. They had been able to convince KPMG that everything was now in order, that there was no longer an obstacle to the audit. When questioned, this seemed "**surprising, but not impossible, after all, we wanted to solve things**", so Fromholzer. The judge asked whether he knew that Dr. Braun had recommended the obstacle be omitted from the report. Fromholzer replied in the negative.

The judge went on to explain that some witnesses stated that Dr. Braun had taken the ad hoc report "**on his own head**", how the witness saw this. Fromholzer stated that this could not be completely ruled out. KPMG was finally persuaded to support the text, apparently also in a telephone call. The draft was eventually approved. The judge now states "**everyone was stunned when the report was circulated at night**".

Thomas Eichelmann had sent an e-mail to Braun at 1:20 a.m. asking for clarification that the report was insufficient to the Supervisory Board. Braun had also sent an e-mail to the witness, stating that KPMG would support the draft. On the following Monday, the focus was on the Supervisory Board meeting. Discussions were held with KPMG, where among other things it was discussed how capital market communications should look like - which had been unclear up to that point. On April 24, 2020, two days

after the ad hoc announcement, a meeting was held with Mr. Leitz of KPMG.

The December 2019 transaction data is now being discussed, which, according to the minutes and reports, contributed to KPMG's change of opinion regarding the statement, the data made a **"huge difference"** according to KPMG protocols. Could KPMG have used this slice of data to draw conclusions about the 2016 - 2018 period ? Fromholzer does not recall, but he says that KPMG expressed that they were unable to perform a full forensic investigation from 2016 onward because the amount of data was too large. Hence, there was a subset of the data.

The Judge notes that the Supervisory Board meeting continued to believe that the ad hoc report was inadequate and incomplete. Could the witness explain why this was the case ? Fromholzer says that he doesn't remember much about it, that they were **"working very hard into the future"** at that stage. He went on to say that **"KPMG considered completely replacing the team at that stage(!) to get better people"**, which caused quite some surprise in the court room.

The judge goes on to explain that after all this, KPMG suddenly announced that the obstacle to the audit had not been removed. The witness is asked why this was the case. It was not until April 27, 2020, that Fromholzer realized that **"KPMG had made no progress"**, which was a shocking moment for him. They had previously considered replacing the entire KPMG team and approved the statement, but ultimately nothing happened, the witness said. The aforementioned Rüdiger Aslioni is also briefly mentioned in this context.

The judge now asks Fromholzer whether there had already been a discussion about removing CEO Dr. Braun at this time. The witness says that he was not aware of this at the time, which is confirmed a day later by witness Christine Gärtner. However, he had noticed a shift of responsibility to Mr. von Knoop.

When asked about the third party business, Fromholzer did not have the impression that the third-party business did not exist. The court hearing ends with the witness's impressions of people and relationships at Wirecard.

Before the end of the main hearing, the defense filed a supplemental motion to summon witnesses from the Secret Service, as the defense of Dr. Braun had requested a week earlier.

<https://www.sun24.news/en/the-wirecard-pr-court-about-an-obscure-questioning-of-a-wirecard-lawyer.html>