

# Wirecard Chances

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Hearing of the witness Christine Gaertner on June 20, 2024.

The facts listed here do not guarantee a complete record of the hearing; they serve to provide a detailed insight into the examination 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](mailto:news@sun24.news) if you have any improvements or can suggest important additions.

Christine Gaertner was employed as a lawyer by the law firm Clifford Chance and acted as an advisor to the Supervisory Board (SB) of Wirecard AG. After the election of Thomas Eichelmann as Chairman of the Supervisory Board in mid-2019, she was frequently and regularly asked for her legal opinion. She was quickly questioned by the judge on the critical KPMG special audit reports around April 2020.

Gaertner begins a nearly 20-minute presentation without being interrupted by the judge. In her rather one-sided experience as an advisor to the Supervisory Board, "the capital market was correctly informed, but the KPMG report did not contain any information that was one hundred percent proven," says Gaertner. The company was not portrayed as worse than it was, but neither was it portrayed as better. After all, the report was not written by lawyers. There were many aspects that left room for interpretation and led to heated discussions. EY was very dissatisfied, did not understand the business model and criticized the presentations in the report, according to the witness. Questions were raised about the accuracy, neutrality and verifiability of the report.

The evening at the end of April 2020, when the ad hoc announcement was published, was an emotional one, Gaertner states, the Supervisory Board was "shocked and confused". Late in the evening, attempts were made to clear up any ambiguities. Eichelmann was in contact with Braun "to exert influence," according to the witness. At the same time, the transaction data were considered valuable. The situation was serious, as it was feared that the board would not publish the report. The focus on how to deal with the situation intensified. Last-minute meetings were held and improvements were made. In the end, the report was released with relief, according to the witness.

Gaertner goes on to explain that in discussions with investors, Supervisory Board Chairman Thomas Eichelmann made it clear that the Management Board still had valid contracts and that an orderly process was important to avoid chaos. The Management Board was subsequently replaced as of mid-June 2020 and a new Managing Director (James Freis) was appointed to handle the business. In the area of compliance, a staff expansion was underway. The first KPMG report finally provided clarity, KPMG conducted further reviews, in particular to review individual transactions to ensure security, according to Gaertner. Marsalek was heavily involved and in contact with business partners. Then "strange things happened", the IT in Frankfurt suddenly stopped working properly, they were told, the witness explains. They were also told that a flu wave was spreading among some merchants, which were allegedly difficult to reach.

The witness further explains that other lawyers were also present at the SB meetings. In the evening, the witness received a call from EY informing her that the allegations were of fraud nature. She immediately informed the board of directors. The witness contacted BaFin, there was a lot of things happening. During a phone call, two letters from EY were presented and great importance was attached to getting everything right. Gaertner says a lot of energy was put into additional forensic investigations. "I never had the impression that anyone had done anything wrong", she states.

After all, the bank confirmations for the trust accounts had to be verified. One evening, there were inquiries from EY to the trustee banks, these inquiries were considered "curious". That evening, the supervisory board informed the board of directors, and EY was on the call. The call was interrupted when Marsalek and Braun intervened. "I don't want to say that anyone felt blindsided," the witness states somewhat curiously. It was also discussed on the call that it was Covid lockdown time and hence difficult to be present at the office at that time.

The witness goes on to explain, without much interruption, that the BaFin was to clarify whether the allegations of fraud were true. It was impossible to explain that the money did not exist because a report had to be published for the capital markets. The following days were stressful and there was little sleep, while the board of directors and the supervisory board worked intensively. The witness suddenly explains that "it became clear that an insolvency application would have to be filed, with little resistance from Marsalek," while Dr. Braun reacted in the opposite. No agreement was signed yet.

The supervisory board had several experts, various consultants and lawyers, not only herself. Shortly before the insolvency, the Supervisory Board wanted to be consulted again, the insolvency administrator was involved at an early stage, there was "no willingness to continue" with Wirecard's business. An Excel spreadsheet was prepared and sent to the Supervisory Board, emails were forwarded to lawyers. The judge finally interrupts now.

The judge now asks about the working methods of the supervisory board. The witness states that the cooperation between the supervisory board and the management board has not been optimal since 2017. Ms Goerres' way of working was perceived by the witness as neither completely right nor completely wrong; according to Gaertner, it took too long for the SB minutes to be available. The Supervisory Board meetings were usually held together with the Management Board, Dr. Braun found it "strange if a meeting was held without the Management Board".

The first meeting of the Supervisory Board regarding the KPMG reports was probably in January, after which Görres was called in and asked to involve the Management Board, in particular Braun. Ms. Mwabeni and Kleingarn complained about missing documents. The members often only found out about board meetings that had been scheduled at short notice and about the outcome afterwards, because the documents were made available very late, according to Gaertner. A letter from Tina Kleingarn dated September 29, 2017, in which she declared her resignation, is now being examined on the court projector.

Dr. Braun's defense attorney is now complaining loudly about the excerpts from the letter of resignation shown on the projector. The statements of the Chairman of the Supervisory Board, Thomas Eichelmann, would prove the exact opposite, this has already been explained several times in court. Dr. Braun's lawyer is visibly angry and says loudly into the microphone that the judge should read the report in its entirety and not just excerpts, as other passages in exactly the same document would exonerate Dr. Braun. This had already been confirmed several times with other witnesses. These demands are completely rejected by the judge, so that the defense attorney again loudly declares into the microphone that the proceedings here would be "a farce". Some time later, the defense attorney quietly leaves the courtroom.

Witness Gaertner further states that she never personally discussed with Mr. von Knopp the reasons for her termination. According to the witness, the induction of new employees was not good and needed to be improved. The situation at BaFin was unusual, with the ban on short selling and investigations by the public prosecutor's office in place at that time. The judge interrupts and asks about the financial statements. The granting of loans by two companies is now being discussed, although the evaluation of loans was not part of the Supervisory Board's tasks. Gaertner explains that there were individual requests from the Supervisory Board and the Management Board, isolated topics, ad hoc requests, such as ATMs on cruise ships.

The judge asks how compliance was set up at Wirecard, Gaertner explains that Mr. Steinhoff was very honest, young, but rather inexperienced. The judge then asks about the number of compliance employees at Wirecard, to which Gaertner replied that there had been talk of 100 people, but that she had not worked at the company and was not in a position to make a precise assessment. As an advisor to the supervisory board, she was very active and there was still hope for improvements.

The judge now asks about James Freis before asking about her knowledge of risk management at Wirecard, which Gaertner denies. The company seemed to be well structured and Braun was a good speaker. Asked about Wulff Matthias, the witness explains that he had certain issues with being critical of Dr. Braun. The judge then asked about Mr. Fichtelberger of EY and Wulff Matthias and how Dr. Braun had communicated with them. Gaertner tells he had hardly seen a decision in which Wulff Matthias actively opposed Braun. allegedly made it difficult to find suitable candidates at the end of 2019.

The judge also asks whether Gaertner was present at every supervisory board meeting, which she denied. However, after Thomas Eichelmann became chairman, she was always present, starting 2020, usually with several lawyers. The judge then briefly discusses the planned changes to the board. In 2019, the first phase of the expansion of the board was not yet very concrete. The judge continues that the SB was set in the second half of 2019, Braun had blocked Mwabeni, which

The judge goes on to talk about individuals, including Braun, Eichelmann and Bellenhaus, and asks whether Gaertner was present at a conference call on May 8, 2020, where a distribution plan was presented. The judge goes on to ask about the Personnel Committee and consultants with compensation agreements in which the witness was not involved. She is also questioned about the presentation of quarterly reports, in which the witness was also not actively involved. The judge also wants to know who presented the quarterly reports, which Gaertner attributed to Dr. Braun. Finally, the judge asks about the third-party partner business, which the witness has known about since 2018.

The judge presents the minutes of April 24, 2019 for the 2018 financial statements, which are projected on the court projector, he uses them to explain that the audit focused on the third-party partner business. Gaertner explains that she herself never received a statement about the TPA business, neither from the Supervisory Board nor from the Management Board. She had only seen documents, but had never audited or legally reviewed them herself. The witness is now asked about credit card processing via the third-party partners Al Alam, Senjo and Payeasy, where there were problematic merchants.

Gaertner recalls that Marsalek was responsible for the resort and that Bellenhaus and EY were also involved in the course of the investigation. She was then asked about Brigitte Häuser-Axner, whom the witness remembered as an employee of Wirecard. In the end, she changed jobs and founded her own

TPA together with another person.

Regarding the trust accounts, Gaertner said that no one had ever explained to her how they worked; she was more focused on the EY accounts. She recalled that Eichelmann had asked KPMG whether it was plausible to have such large amounts in the trust accounts and that KPMG had replied that it made perfect sense. The judge asks whether Gaertner had learned of the change of trustee in 2020, which she confirmed. She had been "irritated" because the trustee functions had simply continued. She had also met the "colorful person Tolentino," whom she viewed very skeptically, and that she had visited the site, which she found bizarre.

The witness recalled that "the MCA Mathematik reports were always presented to the managing board" and that there was an investigation in the Compliance Department underway to clarify further allegations in this regard.

The judge now asks further about the KPMG special audit, whereupon the witness explains that the supervisory board could theoretically conduct a special audit against the will of the board, which she found reassuring. Gaertner stated that "McKinsey was supposed to look at the compliance structure and EY was put on the allegations", while the supervisory board had been very engaged in the meetings. She could not recall anyone not wanting a special KPMG audit, it was not that fraud was suspected, but that everyone assumed that the figures and volumes actually existed. The judge asks whether the nature of the investigation was forensic, which the witness could not rule out, partly because there were different approaches to the audit by KPMG and EY.

The judge reads from the minutes of October 19, 2019, in which the guidelines for the special investigation between the Executive Board and the Supervisory Board were outlined. He also asked about a discussion mentioned in the minutes about a forensic investigation, which Gaertner also did not rule out. She then asked for a diagram from the submitted transcript to be shown on the court projector to clarify the organizational structure, implementation and planning framework, to which the judge replied that he "could not find it at the moment".

The judge then reads from the minutes of a meeting held on April 29, 2020. Gaertner recalls a Clifford Chance document in which it is stated that "Markus Braun was of the opinion that it was a fundamental mistake on the part of KPMG to conduct a forensic investigation". The judge asked whether EY and KPMG were involved at the same time, to which the witness explained that it was initially not entirely clear from a legal perspective whether KPMG was continuing the audit while EY was already preparing the audit opinion. EY was initially aware of this and felt comfortable with what KPMG would come up with. However, EY then took a hard line and refused to issue an opinion without the special report - she could not remember exactly when this occurred.

The judge goes on to ask whether the audit opinion was imminent, to which Gaertner replied that the Supervisory Board was preparing to close the year and would have done so if EY had not said that there were "these two letters" (note: from the trustee banks in Asia). Gaertner added that there was no clear separation between EY and KPMG. The judge confirmed that he understood what she was trying to say, and jumps to the transaction data given to KPMG; whether the December 2019 data slice was relevant. Gaertner could not recall a positive or clear statement from KPMG in this regard.



The judge then asks whether KPMG had somehow communicated that the audit obstacle had been removed by the time of the insolvency, to which Gaertner replied that the audit had always continued, even during her vacation when she spoke to Eichelmann on the phone after the KPMG report was published. She never had the impression that the missing data was not really identifiable. The judge quickly interrupts and reminds the court that this was not the witness's topic.

He then asks about a telephone conversation between witness Gaertner and Mr. Leitz of KPMG at Clifford Chance regarding the TPA business. Dr. Braun had told Mr. Leitz that this business type was real and of which he had "absolute knowledge", according to the witness. The judge asks whether this was "absolute dominating knowledge [Herrschaftswissen]", which Gaertner somewhat bizarrely confirms.

The judge goes on to ask why the appointments had been canceled, recalling a KPMG document on a forensic investigation dated March 18, 2020, which also named Nabila Nouinou, an employee in Dubai. Gaertner recalled that a meeting was scheduled to take place on a yacht in Monaco, which Henry O'Sullivan intended to attend but ultimately did not show up at. The judge goes on to ask if she knew whether EY wanted to talk to KPMG about test bank transfers from the trust accounts. She had spoken briefly with Mr. Orth about this, but did not know definitively. The witness thought it very unlikely that this was Dr. Braun's idea.

The judge then asks whether EY's test transfers of 4 x 110 million had worked out, to which the witness replied: "No idea, probably not". The judge then reads from the KPMG minutes of April 17, 2020, in which Dr. Braun requested a "capital market-oriented reporting structure". Gaertner first strangely explains that she is "not particularly familiar with that term" and that she was not involved in the timing of the reports. The judge asks whether it was a surprise or clear that not all documents were available. The witness replied that they had been promised initially and that the documents were to be delivered, so it was surprising that they were not ultimately available.

The judge goes on to ask if there had been any problems with regard to accessing the documents and missing data, to which Gaertner replies that there had been problems in one category. She explained that it had been clear to her that documents had been requested, but the problem had been in obtaining them. It had not been clear to her in advance that this would be the case until the end, for example with the transaction data. The warnings had always come at the last minute, a hours or days before deadlines.

The judge notes that hundreds of millions of records could not be produced. He asked what KPMG's response had been. To which Gaertner replies that they had been upset, but had taken data despite various missed deadlines. She explains that there had been several deadlines that were pushed back. The witness goes on to say that after the ad hoc report in April, she "checked everything again". The judge asks if the witness worked on the preliminary reports for April 22 and 27. Gaertner states that she indeed had worked on the preliminary reports.

The judge asks how Gaertner confirmed the accuracy of the existing documents for the KPMG report in one of her own protocol reports. Somewhat confused, she replies that this was not her own words, but Wirecard's comments from an earlier KPMG report. The judge now wants to know who exactly had

made such a suggestion, since the Supervisory Board had commissioned the special audit. Gaertner replies that the Supervisory Board had discussed it. The judge then asked whether it could be concluded from this that all documents were confirmed. Gaertner could not recall exactly. The provision of the transaction data had caused a great deal of excitement with regard to the obstacle. It had still not been possible to completely refute or confirm things, but now real transaction data from the past had emerged. The judge also asks whether it would have been different if the data from 2016 to 2018 had been made available, and whether KPMG's position on the obstacle would have changed with a full dataset by April 27, the date ad hoc release was published.

The witness explains that she had no specific recollection, as she was concerned at the time with the transaction data; it was assumed that the audit impediment could be removed by the handover of the data. The judge asks why Eichelmann had initiated an ad hoc release by the Management Board and why he doubted that an ad hoc release would be issued. Gaertner replied that the Supervisory Board had discussed whether the report should be published at all, and that the Supervisory Board's proposal should have been not understood as an instruction to the management board, otherwise the trust between both boards would have been further strained.

The judge wants to know whether there had been a minimum content requirement, to which Gaertner replies that there had been resistance and strong opposition. EY at least was of the opinion at some point that "the Supervisory Board is doing crazy things if it publishes and is doing this", according to the witness. Gaertner explained that she and Markus Stephanblome had assisted the Supervisory Board as legal advisors, and that Glöckner may also have been involved. The judge asks how the Supervisory Board reacted to the fact that the ad hoc meeting would be postponed for a few more hours. Gaertner replied, "sorry, the Supervisory Board cannot make its own ad hoc announcements".

A document dated April 22 is then thrown onto the court's projector, in which the wording and the reference to a clear audit obstacle are missing. Gaertner replies now that the general exchange with the Board of Directors was not an issue, but that in the meantime there was an interim injunction and the question of how to react now, which legal advisors now had which information base. The judge asks what had been said when Dr. Braun was dismissed from his position as CEO, to which Gaertner replied that only Thomas Eichelmann from the Supervisory Board had spoken to Dr. Braun at that time.

The judge also asks whether the witness Gaertner had heard that the ad hoc release had been coordinated with KPMG via a Mr. Aslion, to which she replies that she could not remember. The judge then reacted indignantly that Dr. Braun had given false information to Gibson Dunn's lawyer Fromholzer. The judge goes on to ask if the SB acted unlawfully, to which Gaertner responds with uncertainty. The judge went on to say that Dr. Braun was not dismissed immediately, but only two months later. Gaertner explains that a dismissal had been considered, but that the issue was not current at the time; she did not know what exactly had been discussed in this regard. The judge suggested asking Leitz, again referring to the Clifford Chance minutes of April 29.

The judge then refers to a memo dated April 29, 2020 on the Nidda project, according to which Dr. Braun called in a state of excitement, although the project had already been completed, demanding the Supervisory Board's support for the long-term investment side. Gaertner explains that Thomas Eichelmann had given her the file notes and that she herself had not been present at the meeting. The judge inquires further, he states the lines of the witness "sound like a made up report of her own will", to which Gaertner replies that she had only made the file notes upon Eichelmann's order. Gaertner again emphasizes that she herself was not present at the meeting, which led to the minutes. Only much later, on September 6, 2020(!), she prepared the report on behalf of Thomas Eichelmann. The lawyer of the witness, who is sitting next to her, remains motionless for almost the entire time, without saying much.

The judge now refers to the SB minutes of April 24, 2020, in which Mr. Leitz reports on transaction data slices from 2019, he considers this to be a relevant difference to the status on Monday/Tuesday from KPMG's point of view. Gaertner explains that data was subsequently requested again and that the data sets were not entirely sufficient for Al-Alam's TPA business. The witness continues that the transcript was subsequently made by her on April 24 at 2:30 p.m. and that it would be a fair copy of her transcripts. The judge is now somewhat annoyed, which even forces Dr. Braun's counsel to interrupt the judge: "you don't need to imply that the witness is making up the transcript here now". The judge says into the microphone, "I don't know, did she make it up?" and looks at the witness.

The witness continues, explaining that at a later SB meeting at 5:00 p.m., Mr. Leitz found the newly submitted Wirecard documents to be "very different" now from the first draft of the report. When asked about the major investors and their support for Dr. Baun, Gaertner states that all but one major investor wanted to keep Dr. Braun. The judge then asks the witness what she knew about the MCA business, to which she replies that it was about merchants getting money earlier than usual, namely through pre-financing. Gaertner goes on explaining that the oCap loan had been discussed in the Supervisory Board and that she herself had forwarded documents to KPMG in this regard. Gaertner now reacted somewhat indignantly that the judge was continuing to attack her personally and referred to the previously discussed memo following Thomas Eichelmann's request for a transcript.

Gaertner goes on to tell that Gibson Dunn had made proposals to Clifford Chance regarding the oCap loan for consent modifications - proposals that differed in substance from hers - and that Gibson Dunn had ultimately implemented them. She recalled an excel table of values and figures in this regard. She was confronted with an email dated December 10, 2019, one year after the Supervisory Board's decision regarding the oCap loan, and emphasized that she did not recall that such information had been discussed in the Supervisory Board.

With regard to the loan to MB Beteiligungsgesellschaft, the witness explains that after Thomas Eichelmann became Chairman of the Supervisory Board, he contacted the Supervisory Board in the evening and asked for a loan. Since loans to executive bodies require the approval of the Supervisory Board, the matter was referred to the bank. Gaertner reported that the board meeting had taken place, but no decision had been made on the loan. In the taxi on the way to the hotel, she was told that the loan had been approved, even though no decision had been taken.

The witness explains that she had assumed that the loan was to be repaid on time in March of the following year. Gaertner adds that PwC and Deloitte were asked to investigate problems with the board and other loans, with Deloitte stating that "everything was in order". Concerning Project Ring, EY had conducted another investigation in which Marsalek was asked by EY whether he was involved. Anastasiya Lauterbach had asked for this in the SB; Marsalek vehemently denied it, according to the witness.

The questioning of the judge is now finished and the defense of Dr. Braun now questions the witness. The first question is about cooperation with Andrea Görres, whether the witness still has points of contact with her. Gaertner replies no, and that the minutes of the supervisory board meetings were not written accurately and oftentimes slowly by Görres. Görres was also recommended to attend the SB meetings, Dr. Braun was also considered to be present as often as possible. Dr. Braun's defense points out that the communication between Görres and von Knoop had been strange, Görres had allegedly acted in an authoritarian manner. Regarding the cooperation with Marsalek, Gaertner states that she had not worked with him.

The witness was then confronted with a conversation between Marsalek and her. In it, Jan Marsalek states to a Wirecard employee, quote, "Ms. Gaertner is annoying." The witness answers that she had sometimes reminded Marsalek of missing documents, so in that sense she had been in contact with him. Moreover, the board would not have been particularly fond of external legal advisors attending supervisory board meetings. She recalled working with the young Mr. Steinhoff, who acted as an interface between the Supervisory Board, KPMG, the project office and the Management Board. Gaertner stated that she no longer would have any handwritten minutes in her office.

Von Erffa's defense displays a conversation with KPMG in a big group on April 17, 2020 about missing documents. A minute of a meeting states, quote, "***employees of Wirecard were not aware that documents had been requested by KPMG as part of their investigation***". The document also states: "***The purchase in India is misrepresented. Only 4 of the 6 companies were acquired by Wirecard. The last 2 companies listed by KPMG were not part of the transaction***". A protocol regarding the MCA business followed. On April 21, 2020, a supervisory board meeting was also held in this regard, in which the MCA business was revised.

The long witness interrogation ended soon afterwards.

<https://www.sun24.news/en/wirecard-chances-about-supervisory-board-advising-lawyers.html>