

Wirecard Rogue

About crazy judiciary talks and on-target court motions

#Wirecard #Munich

Facts in or around the Wirecard court on June 5, 2024.

The facts listed here do not guarantee an absolutely complete record of the proceedings before the court; they serve to provide a very detailed insight into the facts and motions of the day. Due to the complex and sometimes verbally rapid presentation of the facts, minor errors may have crept in. Please contact us at news@sun24.news if you have any improvements or important additions to suggest.

After a nearly three-week hiatus, the hearing begins at approximately 1:34 p.m. when the presiding judge enters the courtroom alone, carrying a laptop power supply and no judicial robe. All participants and spectators stand up as usual, the judge grins briefly, apologizes, takes his charger and leaves the courtroom. About 5 minutes later, the entire court enters the courtroom. Earlier, a group of about 15 law clerks - all female - had been waved through the otherwise strict airport entrance controls without any special checks: they were given a free pass on behalf of one of the assistant judges.

The judge explains that there was an extensive legal discussion in the morning. He then begins to read the written summary of the legal discussion at breakneck speed, presumably so that the press and audience cannot keep up to take notes. He also reads the second paragraph of a note on a motion from the morning's discussion. A legal discussion was apparently not particularly desired by Dr. Braun and his defense.

Experienced stenographers note that the presiding judge states that Mr. von Erffa's lawyer suggested the following topics in the legal discussion on which her client could provide detailed clarification:

- a) Cooperation with EY (how was what organized, which audits when at what point in time, what were the issues, tasks and responsibilities)
- b) Procedure for preparing balance sheets
- c) Business transactions, what was communicated to which persons
- d) Software purchases and sales
- e) Group postings
- f) Outstanding receivables (Marsalek)
- g) Cash equivalent
- h) Role of Burkhard Ley, von Knoop, Holten, what role did they played internally
- i) oCap
- j) Softbank, Zitzmann list

The judge continues to read out the report on what happened in the morning at breakneck speed, the prosecution apparently had to think further about a "confession", the presiding judge demanded a "firm confession" and that a sentence should be based on the indictment. A "confession" by von Erffa could allegedly be of "great value", a suspended sentence could be ruled out "if a confession is not valuable". Allegedly, the amount of damages caused by von Erffa stands about 500 million Euros, according to the judge. The prosecution would have to agree to a sentence.

Apparently, there was a lot of negotiation during the legal discussion, a suspended sentence of 2.5 years was apparently proposed by von Erffa's lawyer, a "confession" by von Erffa had no value, she had further referred to von Erffa's willingness and assistance in clarifying the case. The judge, on the other hand, continued to insist on a "necessary confession" by von Erffa, saying that the value of "a

confession" could be discussed once a "confession" had been made. He saw "no indications whatsoever for a suspended prison sentence of 2.5 years" for von Erffa.

Senior Public Prosecutor Buehring stated in the legal discussion that "charges have already been brought against Burkhard Ley", he apparently demanded that the Public Prosecutor's Office "question von Erffa itself" and that the results of the investigation so far could be used generally. The judge went on to say that in view of the personality disorder claimed by von Erffa's lawyer, "in principle no reduction of a sentence is to be expected". The written statements had been examined, every single statement in this regard.

As a general basis for a discussion regarding an appropriate court sentence, the presiding judge gave a range of 6 to 8 years imprisonment in the legal discussion, but only in the case of a "qualified confession", which, according to the presiding judge, had to be made "promptly". This was the general basis. Von Erffa's lawyer thought this was too high. Public Prosecutor Buehring apparently stated that a sentence of 7 years would be the minimum and that this would be discussed with the court.

The reading of the summary of the legal discussion from this morning is now finished, the judge now officially declares that Dr. Braun's former lawyers Dierlamm, Meier, Werning have terminated their mandate. In addition to Theres Krausslach, another public defender by the name of Kalweit has now been appointed, who is already sitting in the courtroom next to Dr. Braun; apparently attorney Werning has also been appointed as a public defender.

Dr. Braun's defense now has the floor and reads several requests for evidence and statements. The first statement refers to the witnesses Brandes and Maurer from Webinc and their contradictory accounts in court. The testimonies were characterized by "withholding of information and massive memory lapses", e.g. the witness Maurer was asked if she knew Jan Marsalek, which she denied. Only after several e-mails were presented, in which even a "flirtatious conversation" between the two was recorded, did Witness Maurer admit that she knew Marsalek and also Ms. Haeuser-Axner. She always stated that she had only met customers, companies and merchants involved with Wirecard or Webinc at trade fairs.

A number of cases have been investigated where the two Webinc witnesses could not recall any payments; or witnesses assigned these payments incorrectly because they could not be merchant payouts since the merchant himself made the payment. For example, Apical, Centurion, Marakkel Management, and others. The Webinc witnesses also stated that they did not know Pittodrie Finance. By reading certain accounts, all controlled by Bellenhaus and Marsalek, it was proven that more than 1 billion Euros (!) were paid into these accounts, mostly from large deposits typical of commission payments from the third party business. According to the defence, it is also proven that merchants from the Webinc customer list made various deposits, in some cases in the hundreds of millions of euros, all into relevant Webinc accounts.

This was followed by the testimony of witness Albrecht, who worked at DWS and was/is responsible for some of the investments in Wirecard shares. During his testimony, the witness explained that the company had invested in WDI shares since 2014. The investment decision was based on consultations with external and internal analysts, all of whom came to the conclusion that Wirecard should be valued with a positive price target. According to the witness, Wirecard AG's share buyback program was also a confidence-building measure with regard to the investment motivation. The Wirecard Vision 2025 with future business projections was positively evaluated by Albrecht and credibly described as in-line with the general online payment market at a growth rate of 28%.

Regular analyst conferences were held with Mr. Albrecht, other analysts and Wirecard AG. For example, on May 6, 2020, after publication of the ad hoc announcement following KPMG's initial presentation of the special audit. Albrecht stated in his deposition that the Chairman of the Supervisory Board, Thomas Eichelmann, was not particularly concerned about the KPMG results. Eichelmann had disagreed with most of the major investors. When Albrecht was asked whether Eichelmann had violated the ad hoc duty, the witness stated that a Hendrik Schmidt had made the note on behalf of DWS and that he should be questioned. It is now requested in court that Hendrik Schmidt be called as a witness, since Eichelmann had testified that there had been no breach of his ad hoc duty.

The defense of Dr. Braun now makes a request for evidence regarding the statements of a certain witness Trümper from Wirecard's legal department. He confirmed that the legal department was neither chaotic nor disorganized. It was by no means badly organized. According to the witness, it was possible to subcontact external lawyers at any time. It was a functioning legal department. The witness was responsible for consulting contracts, which were almost exclusively brought to him by Jan Marsalek; he had no contact with Dr. Braun. The oCap contract was initiated by Jan Marsalek and signed by Wulff Matthias on the Supervisory Board.

According to the defense, none of the relevant Supervisory Board resolutions states that the facts surrounding oCap were chaotic or incorrect, so there was neither pressure nor concealment, nor was anything manipulated by Dr. Braun. A request is now made to inspect the first and last page of a total of 5 Supervisory Board minutes from mostly 2019. This is immediately granted, the respective pages appear on the courtroom projector. All are personally signed by Wulff Matthias, on the first page more or less all members of the Supervisory Board are listed as participants.

Another statement of the defense of Dr. Braun regarding the witness Alina Friedrich is read out. It states that Friedrich mentioned that some of Wirecard's large merchants had been transferred to third-party acquirers, with the witness specifically mentioning Allied Wallet. The witness also confirmed that Häuser-Axtner had described the TPA business in detail and convincingly and had been able to provide information about it at any time. The witness gave misleading information about a "compartmentalization of the TPA business", contrary to the fact that the TPA business was planned in the controlling department during the budget process and that this planning was thoroughly scrutinized from a controlling perspective. It is therefore proposed that a series of e-mails between Oliver Bellenhaus, Steffen Elsner, Jan Marsalek and Brigitte Häuser-Axtner be read out for the court record.

These conversations show that Oliver Bellenhaus had detailed monthly and quarterly plans prepared for the TPA business. This means that one of the key claims of the prosecution's main "crown" witness, Bellenhaus, was false, namely the Bellenhaus claim that he had not submitted any planning figures for the TPA business himself, but had allegedly manipulated the figures provided to him by finance Director von Erffa. The e-mails would also prove that it was not von Erffa who provided Bellenhaus with quarterly figures for the TPA business, but rather that Oliver Bellenhaus, Brigitte Häuser-Axtner and Jan Marsalek prepared annual and quarterly plans for the TPA business, which were then submitted to Controlling.

Furthermore, there were inconsistencies in the testimony of witness Friedrich regarding the merging of various IT systems (data warehousing), which were described as "not supported by the Board of Management", but refused to further elaborate on. According to Dr. Friedrich's defense, Steidl's statements contradict this view. The intention was indeed to set up a central data warehouse planned and promoted by and through the Executive Board, especially after the servers in Asia were regularly - and confirmed - overloaded. It is significant that the representative of a well-known, Munich-based mass media company now leaves the courtroom at exactly 3:01 p.m. to write his article in a small, separate

room. There is no audio or video transmission of the trial to this separate room available. Another mass media reporter also leaves the courtroom a few minutes later.

Dr. Braun's defence continues with a comment on the testimony of witness Franke, who worked in Group Accounting at Wirecard. He testified that the TPA business was not a so-called black box and that, according to his statements, it was not compartmentalized or viewed in isolation. Files relating to the TPA business were stored on a virtual or physical disk to which everyone in Franke's department had access to. At no time was he instructed not to talk about the TPA business, he had explicitly coordinated the figures relating to the TPA business not with von Erffa, but with Oliver Bellenhaus, Franke also regularly contacted Oliver Bellenhaus about the TPA figures, not von Erffa.

Bellenhaus and Ms. Häuser-Axtner were also able to explain the TPA business to witness Franke in an understandable way. According to Franke, the persons involved regarded the TPA business as real, Franke had no doubts about its existence. It was speculation, which the witness Franke also described as such, that Mr. von Erffa had gone to the Board of Directors with the figures for the TPA business in order to discuss or even change them. These assumptions by the witness had already been refuted by von Erffa's defense through various e-mail conversations, the defence states. Preliminary quarterly figures were not presented without the TPA business, according to the defense, which is proven by the timing of the emails.

According to Dr. Braun's defense, witness Franke also gave highly speculative claims that the quarterly figures without the TPA business would have shown the Wirecard company in red numbers. This would not correspond to reality, as more or less every company is loss-making if all costs have already been booked but no significant revenue has yet been recorded. If one compares the figures from the Roedl

expert opinion with the figures from Wirecard's annual financial statements from 2014 to 2018, a completely different picture emerges: even without the TPA business(!), sales had grown enormously.

Excluding the TPA business(!), Wirecard AG's revenues increased from around EUR 290 million in 2014 to around EUR 980 million in 2018, thus tripling; on average, revenues in the non-TPA business increased by 35% per year from 2014 to 2018. Gross profit from the non-TPA business also increased tremendously from 2014 to 2018, tripling from EUR 150 million in 2014 to EUR 400 million in 2018. This was despite the acquisition of the CitiBank portfolio in 2016, which had a negative impact on the balance sheet. In total, around EUR 1.3 billion was generated in the non-TPA business section alone from 2014 to 2018, which means that the entire non-TPA business was extremely profitable and the opposite of loss-making. This can also be seen from the fact that in 2015, before the acquisition of CitiBank, the gross profit margin of the non-TPA business was even higher than that of the TPA business, at around 55%.

Following the acquisition of CitiBank, the gross profit margin fell in 2016, but was back at 40% in the non-TPA business in 2018. Since 2014, the Management Board had also invested heavily in Wirecard's global expansion, especially in Asia. This was achieved not only through company acquisitions, but also through a strong increase in personnel and a vast expansion of infrastructures. The number of employees rose from 1750 in 2014 to 5140 in 2018. Overall, Wirecard's operating costs increased from 119 million euros in 2014 to 392 million euros in 2018.

The defense now explains a key sentence that the two mass media representatives missed because they left the room earlier: a large part of the above mentioned massive investments would not have generated the corresponding revenues until 2020(!), because from 2020 on both the CitiBank acquiring business

and, from mid-2020, the TPA business was to be shifted away from third-party partners to Wirecard's own acquiring licenses or to Bin Sponsorship relationships. The representatives of the mass media also missed the following bombshell motion of Dr. Braun's defense, in which an expert is requested now to determine revenues and gross profit figures for the years 2014 to 2018 in the non-TPA area to confirm the above mentioned claims.

In order to prove that Dr. Braun himself intended to shift the TPA business from the TPAs to Wirecard-owned licenses from mid-2020 on - and thus shifting funds from the trust accounts to corporate accounts - the defence requests that a Bloomberg article from May 2020 be translated and read out for the court records, reflecting statements made by Dr. Braun himself. This article states that Wirecard intended to exit the TPA business entirely. The article will also show that Dr. Braun was convinced of the existence of the TPA business even and especially at that moment.

Dr. Braun's defense also comments on the testimony of the CEO of Wirecard Bank, Rainer Wexeler. According to the defense, the Management Board did not exert any pressure on the bank with regard to the oCap loan, nor did Dr. Braun actively participate in the granting of the loan. Rather, it was initiated and controlled by Jan Marsalek. Wexeler explained that Marsalek sent the initial email regarding the oCap matter and that all subsequent correspondence also went through Jan Marsalek. As evidence, a total of 7 emails from 2017 were requested to be read for the court records, translated into German if necessary. Dr. Braun was first involved through an email dated December 8, 2017, this through a conversation with Burkhard Ley, which is also requested to be read out for the court records, as well as 4 further subsequent conversations involving the Supervisory Board.

The conversations would show that Dr. Braun could not have had any knowledge of any fraudulent

activities in connection with the oCap loan, nor was he in any way involved in the granting of the loan. Wexeler himself testified that he had personally called the Chairman of the Supervisory Board, Wulff Matthias, on November 22, 2018, to inform him that he could only release the loan after the approval of the entire Supervisory Board, which took place on the same day. In March 2019, Wexeler had also agreed to an extension of the oCap loan because, according to Wexeler, oCap's rating had improved. In this regard, it is now proposed to notarize the oCap loan application documents from 2017 and Wexeler's oCap opinion from 2019.

In further elaborations on Wexeler's testimony, Dr. Braun's defense argues that Wexeler confirmed that millions of dollars had flowed through the accounts of the third-party partners Al Alam, PayEasy and Centurion, these numbers were not particularly irregular to him. Wexeler also stated that Wirecard Bank's acquiring volume had increased significantly in recent years and that Wexeler considered the TPA volume figure to be quite realistic. The defence statements end with Wexeler's explanations regarding his personal friendship with Abdallah Turki and his contradictory account of the perception of Dr. Braun's and Jan Marsalek's alleged close friendship.

The defense of Oliver Bellenhaus then takes the floor and also gives explanations regarding Wexeler's statements. A rather hilarious request is now made to have mass media press reports of Rainer Wexler's court testimony from April 2024 be submitted as evidence - which in the opinion of Bellenhaus' defense are thoroughly credible. Press reports by the Frankfurter Allgemeine Zeitung (FaZ) for example, whose journalists had either already left the courtroom hours earlier or were oftentimes not even present in court, are demanded to be taken as evidence to the court. The trial ends some time later and is about to continue Monday.

<https://www.sun24.news/en/wirecard-rogue-about-crazy-judiciary-talks-and-on-target-court-motions.html>