

Update on Wirecard case: public hearing



This paper updates and summarises earlier briefings on the Wirecard case, ahead of a public hearing on 23 March organised by the JURI and ECON Committees of the European Parliament. It also describes the most recent developments on the basis of information available in the public domain.

The insolvency of Wirecard

Wirecard AG is a German FinTech company that provided electronic payments processing services and operated internationally. Listed in the Frankfurt Stock Exchange, from September 2018 to August 2020 it was included in the DAX30, the German blue-chip stock market index.

On 25th June 2020, Wirecard AG filed an application for the opening of insolvency proceedings. The insolvency follows the revelation of a multiyear accounting fraud. The Financial Times (FT) has reported inconsistencies in Wirecard accounting since 2015, and whistleblower allegations of fraud followed in 2019. In June 2020, the company announced that EUR 1.9 bn, supposedly held by an escrow account at Singapore's OCBC Bank, did not exist and the fraud was exposed. For further details and information on the case, see the related [EGOV](#) briefing.

Box 1: Recent commitments on the Wirecard case

Since the revelation of the Wirecard scandal, the European Commission (EC) has committed to investigate how such a large-scale accounting fraud was made possible and to prevent future similar instances of inadequate audits and supervision failures. In the EC September 2020 [Communication](#) on "Capital Markets Union for people and businesses-new action plan", the EC committed to "work towards an enhanced single rulebook for capital markets", including a careful assessment of the implications of the Wirecard case for the regulation and supervision of EU capital markets and potential shortcomings in the current EU legal framework.

Moreover, in October 2020, the then to be nominated Commissioner [Mairead McGuinness committed](#) to "look carefully at what comes out of... the investigations around Wirecard and act accordingly" in order to prevent future financial fraud in the rising FinTech industry. In the EP plenary debate held in the same month, [Valdis Dombrovskis stated](#) that it is "essential to investigate fully whether EU investors were fully protected in the Wirecard case as provided for by European legislation" by scrutinising three lines of defence for investors, namely (i) an independent audit committee within FinTech companies, (ii) auditors' signalling of suspected financial irregularities to authorities, and (iii) national competent authorities' supervision of market players' activities to ensure orderly markets and investor protection.

Lastly, in the [EP Resolution of 8 October 2020](#) on the further development of the CMU from September 2020, it is asserted that the Commission and the EU competent authorities need to "assess to what extent this scandal can be attributed to deficiencies in the EU regulatory framework in the area of audit and supervision, and whether national and EU supervisors are sufficiently equipped to effectively supervise big crossborder financial institutions with complex business models... reiterates in particular its call on the Commission to look into ways of improving the functioning of the accounting sector, including through joint audits."



From the supervisory standpoint, the Wirecard scandal has raised numerous concerns notably related to the adequacy and application of the accounting and auditing frameworks and anti-money laundering legislation. Moreover, it raises concerns regarding: (i) the relationship between supervised entities and national competent authorities; (ii) the legal framework for payments institutions; (iii) the short selling regulation and its impacts on market stability and liquidity; (iv) rules of conduct and investor protection; and (v) ringfencing. Lastly, the collapse of Wirecard highlights the challenges in how to classify, supervise and regulate FinTech.

In that context, BaFin, the German supervisor authority, and the Financial Reporting Enforcement Panel (FREP) are under scrutiny, in particular to assess if there have been legal or administrative impairments that obstructed their activities. Moreover, the role of auditors is under scrutiny as Ernst & Young (EY), the company in charge of auditing Wirecard, failed to request suitable evidence on funds allegedly held in Singapore bank account for several years.

To shed light on the case, the EC invited the European Securities and Markets Authority (ESMA) on the very day ([25 June 2020](#)) that Wirecard filed for insolvency to conduct a fact-finding analysis of the Wirecard case with the aim of establishing whether there had been supervisory failures.

Committee of Inquiry of the German Bundestag on the Wirecard case

The German Bundestag set up a Committee of Inquiry, which is actively investigating the Wirecard case since October 2020. Its composition, mandate, proceedings, and reception by the press are summarised in the following section. The summary below is extracted from and based on information on the [German Bundestag website](#).

Composition of the Committee of Inquiry

The Committee of Inquiry of the German Bundestag, which deals with the Wirecard case, has 9 members, namely Mr Gottschalk (AfD; Chairman), Dr Michelbach (CDU/CSU, Deputy chairman), Mr Güntzler (CDU/CSU), Mr Hauer (CDU/CSU), Ms Kiziltepe (SPD), Dr Zimmermann (SPD), Dr Toncar (FDP), Mr De Masi (The Left Party), and Dr Bayaz (Alliance 90/The Greens).

Mandate and proceedings

The Committee of Inquiry has a wide mandate to examine the events surrounding the Wirecard Group collapse, notably the conduct of the Federal Government and its executive agencies to fulfil their obligations in terms of financial supervision, money laundering supervision and tax law. The inquiry shall examine whether the Federal Financial Supervisory Authority (BaFin) identified any criminal and/or manipulative actions, or could have identified such actions earlier, to reduce the scale of investors' financial losses. Furthermore, the inquiry shall examine whether the executive agencies properly reviewed the external auditors' work; given the importance of the reliability of auditor-certified financial statements for financial supervision and stock market supervision, the inquiry shall examine whether the auditors possibly broke the law or breached accounting or auditing standards in relation to their audits and to what extent, if any, possible conflicts of interest played a role in that.

The [mandate](#) is more precisely set out in 48 specific paragraphs and entails many detailed questions, for example: whether authorities should have classified the group as a financial holding company under the German banking law; what communication took place on that matter between the executive agencies and ESMA and the ECB¹; what information was available to justify the short-selling ban and what communication took place on this matter with ESMA and the ECB; whether the non-classification as a payment service

¹ As regards the role of the ECB, one may note that BaFin conducts the day-to-day supervision of Wirecard Bank AG under the supervisory oversight of the ECB. On 5 August 2020, [Andrea Enria replied](#) to corresponding questions by the MEP Schirdewan and set out the ECB's responsibilities and involvement in the Wirecard case in more detail.

provider, electronic money institution or financial holding company resulted in a different treatment in terms of supervisory or auditing measures, and what information was available to intelligence services and other federal security authorities about the Wirecard Group; what conclusions were drawn and what steps were taken as a result thereof.

The constituent session took place on 8 October 2020. In the period between 8 October and 12 March 2021, that committee met in total 31 times; 17 meetings were dedicated to hearings of in total 68 witnesses, among those former executive and supervisory board members of Wirecard, public prosecutors, as well as representatives of the audit firm EY and the law firm Baker Tilly, of federal ministries and of federal agencies (notably BaFin, the federal agency for financial market stabilisation), of the Bundesbank, Frankfurt stock exchange, and of private and public banks. Annex 1 lists the dates of the hearings and the names and association of the witnesses heard.

The first hearings of witnesses were organised with executive and supervisory board members of Wirecard, and representatives of EY, who audited Wirecard's books, and Baker Tilly, who consulted the company. Members of the committee complained that some witnesses made excessively use of their privilege to refuse to give evidence, and the committee notably imposed administrative fines on two representatives of EY and a representative of Baker Tilly for their refusal to give evidence in the hearing ([see here](#)).

Reception in the press

The FT, which contributed to unearth Wirecard's fraudulent accounting in the first place, also has reported on some findings that come out of the hearings held by the Committee of Inquiry.

The FT [reported](#) on 4 February that according to documents it has seen, BaFin gave the European Securities and Markets Authority selective and incomplete information when making its case for the ban on short-selling Wirecard shares, also citing related criticism from members of the inquiry committee.

On 29 January, the FT [reported](#) that criminal prosecutors in Munich decided not to request an arrest warrant against Jan Marsalek and other executives on the day Wirecard disclosed that €1.9bn of cash was missing, arguing that the potential crime was not serious enough to justify immediate police custody. Mr Marsalek, the then-suspended chief operating officer absconded to Belarus, where all trace of him was lost.

On 25 January, the FT [reported](#) that Mr Hufeld, president of BaFin, still suggested that Wirecard might be the victim of an elaborate plot by short sellers, even after the group's auditor EY had been informed that documents showing cash position allegedly held abroad were "spurious", raising that view in a phone call with the chairman of Wirecard's supervisory board, Mr Eichelmann. On 12 January 2021, the FT also [reported](#) that Commerzbank already warned BaFin in early 2020 about money laundering risks at Wirecard, underlining how fears about the payments group were building months before it collapsed.

On 11 February, an article in the FT titled "*Accounting watchdog told Wirecard it did 'not want' to investigate fraud*" [reported](#) that the Financial Reporting Enforcement Panel, a private-sector body commissioned to ensure the correctness of financial reports, told Wirecard in 2016 that it did "not want" to formally investigate fraud allegations raised by short sellers and therefore asked the company to prepare arguments "why the accusations are unfounded".

On 26 November 2020, the FT [reported](#) not only that EY was criticised for its audit work at one of the parliamentary hearings, but also that APAS, the federal Auditor Oversight Body, informed prosecutors that EY may have acted criminally during its work for Wirecard, a step that significantly escalates the legal and reputational risks for the accounting firm.

Media reports that BaFin President Felix Hufeld and his deputy Elisabeth Roegele [resigned](#) from their positions.

ESMA assessment

On November 3rd 2020, ESMA² published its [Fast Track Peer Review](#) Report (FTPR) assessing the effectiveness of the supervisory response of BaFin and FREP to the Wirecard case. The main findings of the FTPR, as summarised in this [EGOV briefing](#), are:

- BaFin and FREP have adequate resources for their regular function, but they may not have the necessary powers to effectively investigate suspicion of criminal activity;
- BaFin is at heightened risk of being influenced by the Ministry of Finance and it lacks information on its employees' shareholding;
- FREP should have picked up the signals from international media and paid more attention to whistle-blowers' allegations as red flags on the Wirecard's fraudulent business model were present well before 2019;
- The confidentiality requirements have prevented a free flow of information between FREP and BaFin, there have also been procedural inefficiencies and lack of coordination.

ESMA's FTPR was presented on [2 December 2020](#) in ECON. Recording of the meeting can be found [here](#) and the ESMA Chair's initial statement [here](#).

Following the FTPR, on February 15th 2021, the ESMA Security and Markets Stakeholder Group (SMSG) has published an [own initiative report](#) with recommendation to the ESMA and other European institutions.

The key recommendations are the following:

- In order to harmonise their competences in the case of accounting fraud, the ESMA should develop guidelines to (i) promote an NCA culture which avoids conflict of interest (ii) make NCAs investigation more transparent and standardised (iii) foster exchange of information across different authorities;
- In the area of market abuse, ESMA should use its tools to improve (i) effective scrutiny of allegation of market manipulation and (ii) publication of information about enforcement;
- Concerning auditing, which played a crucial role in the Wirecard case, the EC should clarify the duties of auditors to report on irregularities and to grant corresponding powers (such as the right to access information). ESMA could have a role in examining and supervising big auditing firms.

Building on the findings from the FTPR report, in a letter addressed to the EC, ESMA has presented a proposal to [improve the Transparency Directive \(TD\)](#). The proposal aims at achieving four goals:

- Enhancing cooperation between authorities across the EU via, among other things, eliminating confidentiality impediments;
- Coordination of enforcement of financial information at national level between central competent authorities and delegated entities/designated authorities via, for instance, provisions to eliminate confidentiality impairments;
- Strengthening the independence of NCAs;
- Strengthening the harmonised supervision of financial and non-financial information across the EU.

² ESMA is one of the institutions comprising the European System of Financial Supervision (which integrates as well EIOPA and EBA, responsible for insurance and pension institutions and banks, respectively). ESMA is the European authority responsible for enhancing the protection of investors and promoting stable and orderly financial markets. The three institutions were created following recommendations to reinforce the European framework of financial supervision made by the Larosiere Report in the aftermath of the global financial crisis.

European Parliament commissioned external papers on Wirecard

In November 2020, ECON requested external experts to provide expertise on the Wirecard case, which are summarised in [this thematic digest](#). The papers addressed (i) the current supervisory landscape for FinTech companies like Wirecard, (ii) the advantages and disadvantages of weaker or less intrusive supervision of FinTech companies that provide financial services (“regulatory sandbox approach”), and (iii) a general reflection on the wider supervisory implications of the Wirecard case level for FinTechs, suggesting ways forward at EU to prevent similar situations in the future, if possible.

[The first paper](#) by Langenbacher et al. argues for various policy recommendations to address the shortcomings of the current national and EU legal frameworks: the encouragement of whistle-blowing, more restrictive short-sell bans, the strengthening of external audit accountability, the enhancement of internal control and supervisory board oversight, a reform in the enforcement of financial reporting in Germany, the strengthening of BaFin powers, and the creation a single EU market oversight agency and the EU oversight architecture establishment with the existing national agencies as branches of an integrated European supervisory network.

Moreover, [the second paper](#) by Navaretti et al. proposes six lines of action to reinforce the FinTech framework: avoiding regulatory arbitrage, having a clear understanding of what FinTechs do, combining the oversight of entities with the oversight of activities, mastering the technology used by FinTechs, harmonising and coordinating international rules on FinTechs, and coordinating national competent authorities.

Lastly, [the third paper](#) by García Osma et al. criticises the system of national public audit oversight boards (POBSAs) as fragmented and overly complex, characterised by limited responsiveness to red flags and apparent lack of communication among the POBSAs, and with other supervisors. The paper’s authors call for enhanced supervisory coordination, clear action triggers and improved transparency to allow for evidence-based policy making.

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Annex 1: Witnesses heard by the Committee of Inquiry between 8 October 2020 and 12 March 2021

6th meeting on 19 November 2020 ([link](#))

Witnesses heard: Dr. Markus Braun (former CEO of Wirecard), Tina Kleingarn (former member of the Wirecard's supervisory board), Stephan Freiherr von Erffa (former manager at Wirecard), Oliver Bellenhaus (former manager at Wirecard), Wulf Matthias (former member of Wirecard's supervisory board), Thomas Eichelmann (former member of the Wirecard's supervisory board)

8th meeting on 26 November 2020 ([link](#))

Witnesses heard: Alexander Geschonneck (KPMG), Dr. Christian Orth (EY), Dr. Stefan Heissner (EY), Andreas Loetscher (EY), Martin Dahmen (EY), Frank Stahl (Baker Tilly)

10th meeting on 10 December 2020 ([link](#))

Witnesses heard: Naif Kanwan (Federal Office for Economic Affairs and Export Control), Martin Kocks (ditto), Ralf Bose (ditto), Kirsten Glückert (Federal Ministry for Economic Affairs and Energy), Dr. Sabine Hepperle (ditto)

13th meeting on 17 December 2020 ([link](#))

Witnesses heard: Karl-Theodor zu Guttenberg (advisor), Michael Papageorgiou (Deutsche Bundesbank), Jan-Ole Peters (Finance attaché), Wolfgang Schmidt (Federal Ministry of Finance), Prof. Dr. Lars-Hendrik Röller (Federal Chancellery), Joschka Langenbrinck (Von Beust & Coll. consulting firm), Ole von Beust (Von Beust & Coll. consulting firm)

14th meeting on 12 January 2021 ([link](#))

Witnesses heard: Prof. Lars-Hendrik Röller (advisor to the Federal Chancellery), Joschka Langenbrinck (Von Beust & Coll. consulting firm), Ole von Beust (Von Beust & Coll. consulting firm)

16th meeting on 14 January 2021 ([link](#))

Witnesses heard: Marcus Kramer (BayernLB), Dr. Marcus Chromik (Commerzbank), Martin Zielke (Commerzbank), Christian Sewing (Deutsche Bank), Dr. Wolfgang Fink (Goldman Sachs Bank Europe), Rainer Neske (Landesbank Baden-Württemberg), Klaus Michalak (Landesbank Baden-Württemberg)

17th meeting on 15 January 2021 ([link](#))

Witnesses heard: Klaus Michalak (Landesbank Baden-Württemberg), Dr. Wolfgang Fink (Goldman Sachs Bank Europe)

19th meeting on 28 January 2021 ([link](#))

Witnesses heard: Alexander von Knoop (former CFO/management board member of Wirecard), Martin Mulzer (District Council of Lower Bavaria), Waldemar Kindler (former Police Superintendent in Bavaria), Joachim Herrmann (Secretary of State for the Home Department in Bavaria), Dr. Florian Herrmann (Head of the Bavarian State Chancellery)

20th meeting on 29 January 2021 ([link](#))

Witnesses heard: Matthew Earl (shortseller ShadowFall), Christof Schulte (Head of the Financial Intelligence Unit), Hildegard Bäuml-Hösl (senior public prosecutor)

22nd meeting on 11 February 2021 ([link](#))

Witnesses heard: Prof. Dr. Edgar Ernst (president of the Financial Reporting Enforcement Panel), Andreas Mitschke (head of the Trade Surveillance Office of Börse Frankfurt), Tarek Al-Wazir (Minister of Economic Affairs, Hesse), Herbert Strunz (academic professor), Dr. Toni Kapfelsperger (Bavarian Ministry of Economic Affairs, Energy and Technology), Hans Martin Lang (BaFin)

23rd meeting on 12 February 2021 ([link](#))

Witnesses heard: Matthias Bühring (public prosecutor), Hildegard Bäuml-Hösl (senior public prosecutor), Sebastian Kimmer (BaFin)

25th meeting on 25 February 2021 ([link](#))

Witnesses heard: Rainer Wexeler (former executive board member of Wirecard Bank AG), Mario Vinke (former VP Group Audit of Wirecard Bank AG), Joachim du Buisson (BaFin), Franziska Folter (Bundesbank), Dr. Andreas Guericke (Bundesbank)

26th meeting on 26th February 2021 ([link](#))

Witnesses heard: Jochem Damberg (BaFin), Dr. Thorsten Pötzsch (BaFin), Raimund Röseler (BaFin)

28th meeting on 4 March 2021 ([link](#))

Witnesses heard: Martin Wieland (Bundesbank), Dr. Nikolaus Dötz (Bundesbank), Fahmi Quadir (Safkhet Capital), Evert van Walsum (ESMA), Marie Christine Geilfus (BaFin)

29th meeting on 5 March 2021 ([link](#))

Witnesses heard: Julian Hessenthaler (advisor), Dr. Benjamin Weigert (Bundesbank), Prof. Dr. Claudia Buch (Bundesbank)

30th meeting on 12 March 2021 ([link](#))

Witnesses heard: Stephan Freiherr von Erffa (former manager at Wirecard), Thomas Eichelmann (former member of the Wirecard's supervisory board), Daniel Steinhoff (former manager at Wirecard), Sandra Schuster (staff at Wirecard), Heike Pauls (former Commerzbank analysis)

31st meeting on 12 March 2021 ([link](#))

Witnesses heard: Dr. Christian Orth (EY), Hubert Barth (EY), Sven Hauke (PricewaterhouseCoopers)