

## Financial Reporting Enforcement Panel - Statement

### Questions and answers regarding the current discussion of the Wirecard case

**Q: Is it true that the FREP did not act quickly enough in the Wirecard case?**

**A:** No, exactly the opposite is the case. In February 2019, immediately upon receipt of the BaFin's request to perform what is known as a request-based examination of the consolidated financial statements as at 30 June 2018 and for the six months then ended, the FREP took the necessary steps, such as obtaining Wirecard's cooperation and staffing the examination team.

**Q: What exactly happened after that?**

**A:** At the beginning of April 2019, we sent out the first list of questions. We received the first responses at the end of April. The consolidated financial statements of Wirecard as at 31 December 2018 and for the year then ended – issued in April 2019 – were analyzed appropriately and carefully, as is usual in such a case. The same holds for EY's long-form audit report on these financial statements, which we received in mid-June 2019. On 18 June 2019, we sent out a second list of questions.

In October 2019, new accusations regarding Wirecard Dubai and Ireland were made in the Financial Times. When it became known on 21 October 2019 that the supervisory board had engaged KPMG to perform a special investigation, we decided to wait for the result of this investigation in order to be able to take any new insights into account. This approach is common and a time-tested practice.

Once we received the complete report on the special investigation at the end of April 2020, we analyzed the report, wrote to Wirecard again and analyzed the responses, so that the examination at the level of the FREP is expected to be completed in July 2020.

**Q: Is it true that only one staff member worked on the Wirecard case? How do you generally ensure speed and quality?**

**A:** The FREP's approach provides for us to perform between 80 and 100 examinations p.a. with approximately 14 panel members, i. e. each panel member is responsible for 6 to 7 cases. Each responsible panel member is assigned a quality control panel member and, where necessary, an additional panel member (consulting member). This approach ensures that all publicly listed companies are examined within a certain cycle – DAX companies, for instance, once in a 4- to 5-year cycle.

Decisions are made by a chamber consisting of the Presidential Board and one additional panel member.

This examination approach is in compliance with the code of procedures approved by the Federal Ministry of Justice and Consumer Protection (*BMJV*) and the Federal Ministry of Finance (*BMF*) as well as with the FREP's principles for random sampling.

In the 15 years of its existence, the FREP has completed more than 1,500 examinations and identified errors in the financial statements of publicly listed companies in approximately 300 cases. The fact that the companies agreed with the finding of an error in 78 percent of the cases in which errors were identified speaks for itself.

Additionally, ESMA, the European authority responsible for supervising the capital markets, which has now been asked to investigate the German enforcement system, has performed a very thorough review of the FREP's work as part of a peer review in March 2017, arriving at highly positive results regarding the quality of the FREP's work. Certain aspects of the work of the FREP were highlighted as being "good practice" (Peer Review Report dated 18 July 2017, par. 289, Annex 4).

**Q: Is it true that the BaFin did not hear from you for months regarding the Wirecard case?**

**A:** Not at all, the BaFin is updated regularly on the status of the examinations in periodic meetings with the BaFin held approximately every 2 to 4 months, as was the case here. In these updates, the FREP reported that it was awaiting the result of KPMG's investigation report.

**Q: Why do some FREP examinations take so long?**

**A:** During the period from 2012 to 2020, the average length of a FREP examination was 8 months, 12 months when there were errors in the financial statements.

There are numerous good reasons for this, for example: the number of lists of questions sent, the availability of company personnel providing responses, and companies engaging external experts. We always have to rely on the cooperation of the company being examined. When a company provides good reasons for extending deadlines, we do not have the right to transfer the case to the BaFin due to a lack of cooperation. In addition, as a private organization we are unable to use any coercive measures to compel swifter responses.

**Q: Where do you see the fundamental problem with cases of suspected fraud?**

**A:** FREP examinations are designed to identify errors in financial reporting; not, however, accounting fraud. In such cases an entirely different examination approach must be applied. This type of examination is referred to as a forensic examination or fraud investigation. These require a significantly different approach, for example, challenging testimonies, inspecting the quality of evidence and much more. In particular, such an investigation requires considerably more personnel and the power to request information from third parties. The legislative authorities did not provide the FREP with such powers to obtain information or to intervene.

Considerations for reform, for instance by transferring cases to the BaFin or another sovereign organization whenever fraud is suspected, should begin there.

**Q: The FREP's acknowledgement agreement was cancelled with proper notice by the Federal Ministry of Justice and Consumer Protection (BMJV) in consultation with the Federal Ministry of Finance (BMF) on 29 June 2020. Did that come to you as a surprise?**

**A:** To our astonishment we also first learned of it through the media.

**Q: And what's next?**

**A:** We are seeking constructive discussions with the Federal Ministries with regards to the future structure of the enforcement system in Germany.