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ESMA Identifies Deficiencies in German Supervision of Wirecard's Financial Reporting

European Securities and Markets Authority

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ESMA IDENTIFIES DEFICIENCIES IN GERMAN SUPERVISION OF WIRECARD'S FINANCIAL REPORTING

03 November 2020

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The European Securities and Markets Authority (ESMA), the EU's securities markets regulator, has published the results of its [Fast Track Peer Review \(Peer Review\)](#) which assessed the events leading to the collapse of Wirecard AG and the supervisory response by BaFin (Bundesanstalt für Finanzdienstleistungsaufsicht) and the Financial Reporting Enforcement Panel (FREP).

The Peer Review focuses on the application by BaFin and FREP of the [Guidelines on Enforcement of Financial Information \(GLEFI\)](#) and on impediments to the effectiveness of the German two-tier supervisory system for financial reporting in the specific context of the Wirecard case.

The Peer Review, based on the assessment, identifies a number of deficiencies, inefficiencies and legal and procedural impediments. These relate to the following areas: the independence of BaFin from issuers and government; market monitoring by both BaFin and FREP; examination procedures of FREP; and the effectiveness of the supervisory system in the area of financial reporting. The Peer Review provides recommendations to address these shortcomings.

Steven Majoor, Chair, said:

"The Wirecard case has once again highlighted that high-quality financial reporting is essential for maintaining investor trust in capital markets, and the need to have consistent and effective enforcement of that reporting across the European Union."

"Today's report identifies deficiencies in the supervision and enforcement of Wirecard's financial reporting. The Report's recommendations can contribute to the review of the German regime for supervision and enforcement."

Deficiencies identified by the Peer Review

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ESMA identified deficiencies in the application of the GLEFI in the Wirecard case in the following areas:

Independence of BaFin from issuers and government:

- Lack of information about its employees' shareholdings. This raises doubts on the robustness of BaFin's internal control system regarding conflicts of interest of its employees vis-à-vis issuers; and
- A heightened risk of influence by the Ministry of Finance given the frequency and detail of reporting by BaFin, sometimes before actions were taken.

Market monitoring by both BaFin and FREP:

- Non-selection (or non-timely selection) of Wirecard's financial reports for examination based on risks in the period between 2016 and 2018.

FREP's examination procedures of Wirecard financial reports:

- The scope of the examinations did not appropriately address areas material to the business of Wirecard, nor the media and whistle-blowing allegations against Wirecard; and
- The analyses performed (level of professional scepticism, timeliness of examination procedures, assessment of disclosures) and their documentation were insufficient.

Effectiveness of the supervisory system in the area of financial reporting:

- Regarding the respective roles of BaFin and FREP in the case of (indications of) fraud in financial reporting, BaFin and FREP are not aligned in the perception of each other's role and the limitations and possibilities that both have in the context of the two-tier system;
- BaFin was not put in the position to thoroughly assess FREP's examinations of Wirecard, which would have enabled BaFin to determine whether it should take over the examinations from FREP; the strong confidentiality regime, by which both institutions are bound, have hindered the exchange of relevant information between them with other relevant bodies; and the instances of lack of coordination and inefficiency in exchange of information between relevant teams in BaFin.

The report was prepared in response to a request received from the European Commission on 25 June, inviting ESMA to conduct a fact-finding analysis of the events leading up to the collapse of Wirecard AG. This is the first Peer Review carried out by ESMA under the revised ESMA Regulation and the new Peer Review Methodology, in the form of a Fast Track procedure and focusing on only one jurisdiction and one issuer.

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