Permanent Mission
of the Federal Republic of Germany
to the United Nations
New York

Pol-2-1
Note No. 376/2016

<u>Verbal Note</u>

The Permanent Mission of Germany to the United Nations presents its compliments to the Security Council Committee established under UNSCR 1540 and has the honour to transmit the attached document resulting from Germany' s work with Industry in the fields of Export Control and in particular through the "Wiesbaden Process".

For the purpose of the objectives set in operative paragraph 12 of resolution 1977 (2011), States, among others, are invited to share with the 1540 Committee any relevant experiences, lessons learnt and effective practices, in the areas of resolution 1540 (2004).

Germany delivers the attached document outlining lessons learnt and effective practices in the areas covered by UNSCR 1540, especially related to export control measures in accordance with operative paragraph 3 (d) of resolution 1540 (2004) and related to programmes and tools to work with and inform the private sector, in accordance with operative paragraph 8 (d) of resolution 1540 (2004).

The document, entitled 'Private sector engagement in strategic trade controls" is a follow up to the document "Export Controls: The Importance of Engaging Industry' conveyed by Germany together with Australia in May 2014.

It seeks to share experiences and is intended to be used by States on a voluntary basis in implementing UNSCR 1540.

The Permanent Mission of Germany to the United Nations avails itself of this opportunity to renew to the Security Council Committee established under UNSCR 1540 the assurances of its highest consideration.

New York, 10 June 2016

Ambassador Roman Oyarzun Marchesi
Chair
Security Council Committee established under UNSCR 1540
by E-Mail: sc-1540-Committee@un.org

"Private Sector Engagement In Strategic Trade Controls: Recommendations For Effective Approaches On United Nations Security Council Res. 1540 (2004) Implementation"

The private sector is an important stakeholder and partner to governments in combating the proliferation of weapons of mass destruction, as it has to implement the laws which have been adopted by Member States. According to Germany's Experience an effective partnership between states and private sector industry is vital for successful non-proliferation efforts.

UN Security Council Resolution 1977 (2011) "encourages the 1540 Committee, at its discretion, to draw also on relevant expertise, including, from civil society and the private sector, with, as appropriate, their State's consent." On these grounds the German Government, in cooperation with the United Nations Office for Disarmament Affairs, initiated the Wiesbaden process, focusing on private sector engagement in the specific context of resolution 1540 (2004). It has so far hosted four international 1540 industry outreach conferences from 2012-2015, which were held in Wiesbaden and Frankfurt, Germany. The Wiesbaden process has become a successful model, synonymous with the outreach of the 1540 Committee and its Expert Group, Member States and relevant international organizations to private sector entities from appropriate industry sectors to support the implementation of resolution 1540 (2004).

The fourth Wiesbaden Conference in 2015 was entitled, "Private Sector Engagement in Strategic Trade Controls: Recommendations for Effective Approaches on United Nations Security Council Resolution 1540 (2004) Implementation". The objective of the conference was to contribute to the UNSCR 1540 Comprehensive Review 2016 by recapitulating the findings of previous conferences and by focusing on the lessons learned.

Germany would like to share these outcomes, which were compiled together with Industry representatives, to be used by other States on a voluntary basis in implementing resolution 1540:

I. Key elements of effective industry compliance practices (ICP programmes) to be used by companies

II. Key elements for effective cooperation with and outreach to industry by governments (from the industry's perspective)

I Key elements for effective industry compliance practices (ICP programmes), to be used by companies

1. Building of leadership and corporate governance (culture/policy)

- **Self-restrictions and ethics** are a decisive factor in combating the proliferation of weapons of mass destruction
- **High-level awareness and responsibility** in companies needed
- **Management commitment/top-level policy statement**
- **Social responsibility** should not be delegated or outsourced — as everywhere the individual contribution matters
- Additional **benefits of export-control-related compliance measures for company should be highlighted** (such as propriety of information, protection of know-how, etc.)

2. Identifying the scope of regulatory requirements

- Starting point: careful **assessment of the scope of regulatory requirements**
- Need to **be aware of relevant regulations in all countries of operation** (broadest legal coverage possible/greatest common denominator) including follow-up on licences and authorizations obtained and retaining appropriate records
- Advantages of global, group-wide solutions
- **Scope of compliance needs to be comprehensive**: importing, exporting and re-exporting goods, technology, software, services and financial transactions

3. Organizational structure and chain of responsibility

- **Sufficient human resources are needed**
- Appoint a **Chief Export Control Officer**
- **Establish a compliance organization and give it time/power/resources/clear competencies**
- Define **clear roles/responsibilities** through **guidelines** and job descriptions — and **communicate these rules** within the company
- Establish and make available written guidelines within the company — request guidance if necessary
- Information Technology support is essential
- **Industry compliance practices (ICPs) have to be adapted to the scale and size of individual business**

4. Transactional due diligence

- **Check the export classification** of the product, software, service or technology **prior to export** to determine whether any authorization is required
- **Screening of transactions against all applicable rules (adherence to national and international legal requirements)**
- **Screen customers**/"know your customer"/know your business

- Carefully watch for **warning signs or "red flags"**
- Follow your business process to ensure jurisdiction and classification are determined prior to export
- **Secure compliance at all relevant units in company for licensing procedures, reports and record keeping**
- Support the export control system by **electronic data processing**

5. Documentation and archiving

- **Define period of safe-keeping**
- Define scope of documents
- IT support

6. Training and human resources matters

- Important: **selection of staff/skills**; experience and knowledge of staff
- **Training of all staff concerned**: hold seminars for compliance staff, in-house training for operating personnel
- Hold **general export control awareness seminars** for remaining staff

7. Monitoring and audits

- Provide for **checks and surveillance** of workflow within company
- Provide for corrective action and **conduct audits of ICP** on a regular basis
- Provide for escalations/whistleblowing

II Key elements for effective cooperation with and outreach to industry by Governments

1. Refinement of legislation according to businesses' needs
   - Business and administration need good, coherent and workable provisions which are easy to understand and provide a reasonable level of control ("keep it simple")
   - Export-control-related regulations should reflect and consider the reality of systems, business models, and operations. Legislation (and its implementation) should be appropriate and risk-based
   - Effective implementation and legal certainty are crucial: need for a clear assignment of responsibilities to each actor — export control authorities, trade industry, financial institutions, etc.
   - Companies need good administration, i.e. quick, reliable and transparent application procedures
   - A solid legal framework and agreed procedures are required to exchange sensitive procurement data/attempts (information technology within companies)
   - Legislation and information need to be published and be easily accessible — ideally in different languages. Avoid unconsolidated publications, provide consolidated versions of legislation (e.g. sanctions lists); information provided to economic operators must be actionable
   - A global supply chain calls for common and harmonized rules: eliminate conflicting and contradictory regulations; harmonize interpretation of rules between jurisdictions; harmonize regulations and control lists; streamline the regulatory regime so that it is fit for purpose; avoid use of undefined terms (otherwise no level playing field, but risk of market disparities and risk of penalization for misinterpretation)
   - Consider developing more harmonized rules, possibly International Organization for Standardization (ISO) standards
   - Take into account that small to medium-sized enterprises might need different approaches
   - Address the gaps in the international regulatory regime: where deficiencies are found they may be addressed through international collaboration
   - Consider common and general certification of suppliers, vendors, manufacturers and facility operators/mutual recognition of security management programmes
   - International organizations (including the 1540 Committee) should create better opportunities for regional cooperation and sharing effective practices
   - The 1540 Committee could help to compile examples of legislation, regulations and voluntary initiatives and list them on the website

2. Active involvement of industry
   - A regular dialogue and mutual exchange of information with government authorities is key to discussing current developments in legislation and practice
   - Consultation mechanisms between Governments and industry need to be strengthened, especially when it comes to developing regulations. Allow industry to

comment on new concepts, and subject new concepts to test runs together with industry before implementation

- Useful: participation in expert hearings, ability to provide written submissions, position papers/participate in conferences, seminars etc.
- Keep industry informed about upcoming changes
- Work with industry regarding issues for industry/"Sharing is Caring" — governmental authorities and industrial players can form a trustful partnership

3. Rewards

- Compliance is in itself rewarding — but Governments might set up encouraging programmes to combat illicit procurement
- Mandatory versus voluntary measures (e.g. codes of conduct) — authorities should acknowledge industry voluntary compliance initiatives and praise industry for accomplishments once in a while
- Penalties and fines should be a last resort