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**Note Verbale**

The Permanent Mission of the Federal Republic of Germany to the United Nations presents its compliments to the Chair of the 1540 Committee and has the honour to submit a working paper titled "*Cooperation and Coordination between the Private Sector and the Regulators: Recommendations and Perspectives for Effective Approaches on the Implementation of UN Security Council Resolution 1540 (2004)*" as a contribution to the Comprehensive Review.

The Permanent Mission of Germany to the United Nations avails itself of this opportunity to renew to the Chair of the 1540 Committee the assurances of its highest consideration.

New York, 31 May 2022



To the  
Chair of the 1540 Committee

# **Cooperation and Coordination between the Private Sector and the Regulators: Recommendations and Perspectives for Effective Approaches on the Implementation of UN Security Council Resolution 1540 (2004)**

## **I. Introduction**

The legally binding UN Security Council Resolution 1540 (2004) requires all member states to adopt and enforce appropriate and effective measures to prevent the proliferation of nuclear, chemical and biological weapons, their delivery systems and related materials to non-state actors. It recognizes the importance of cooperation with the private sector as an important stakeholder and partner in countering the proliferation of weapons of mass destruction, since the private sector is the key actor in the production and trade of dual-use items that could be used for proliferation purposes.

The paper aims to support the 1540 Committee in fulfilling its mandate to identify, collect and promote effective practices for the implementation of UN Security Council Resolution 1540 (2004) with a special focus on outreach to industry.

## **II. Outreach to industry - the importance of a consultative approach**

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 strong cooperation with the United Nations Office for Disarmament Affairs, initiated the Wiesbaden Process in 2012.

During the period under review, two global Wiesbaden Conferences were conducted in 2017 and 2019. The title of the conference in 2017 was "industry engagement in strategic trade controls: Recommendations for effective approaches to implementing United Nations Security Council Resolution 1540 (2004) - due diligence / supply chain / internal compliance" and the focus in 2019 was on the financial sector, research and development and simplified procedures.

The Wiesbaden Conferences reflected the conflicting interests of industry and regulators. While regulators seek to maintain high levels of security, the industry requires consistent rules to operate. For this reason, industry representatives repeatedly demanded the enhancement of cooperation and partnership between industry and regulators ensuring clearer, standardised and harmonised legislation focusing on export control lists in order to facilitate compliance without hampering business procedures.

At the same time, the participants identified the importance to intensify non-proliferation related information-sharing among industry representatives. The exchange of such information is – despite of business competition – in the interest of all private sector actors.

Moreover, compliance is a shared responsibility between the governmental actors and the private sector. A consultative approach between both parties ensures that the industry's needs and interests are adequately addressed and taken into account by the regulators.

The cooperation in a global context was completed by regional organized events in Livingstone, Zambia (2019), Mexico City, Mexico (2017), New Delhi, India (2018) and Seoul, Republic of Korea (2016/2018). This initiative opened the opportunity to address regional challenges and particularities as well as adapting the spirit of the Wiesbaden Process to regional specifics. The results and knowledge from those events have created important input for international activities in other regions in light of the Wiesbaden Process and for the global conferences.

The coordination of outreach activities on a global and regional level with strong interaction between all relevant stakeholders should be seen as a successful solution to support the implementation of UN Security Council Resolution 1540 (2004) from all perspectives.

### **III. Engaging with the private sector: new aspects and challenges**

The key elements of a consultative outreach to industry approach have already been highlighted in previous consultations.

The strong cooperation between industry and regulators fosters a shared sense of responsibility amongst both parties. Such a cooperation process includes discussing the consideration of current business and trade trends including new challenges. The following aspects should be emphasized in particular:

#### 1) Supply chain

All stakeholders in the supply chain have a strong interest in preventing the delivery of items for weapons of mass destruction. This is due to their compliance requirements – since illicit exports or other activities like transit/transshipment, brokering or technical, financial or legal assistance may also result in penal and administrative consequences – and the preservation of their reputation.

Therefore, the Wiesbaden Process invited all actors within the supply chain, including freight forwarders and the financial sector, to participate in the seminars. A special forum with the title “Challenges in conducting due diligence for financial institutions - exchange of information with other actors in the supply chain (exporter, forwarder, consignee)” aimed at the financial sector in 2019 and highlighted its role to counter proliferation activities.

It is recommended to continue the outreach activities to all stakeholders of the supply chain. Of course exporters are the key players within export controls. Their contribution and law-abiding behaviour are crucial in ensuring compliance throughout the supply chain, including freight forwarders, the finance sector and their recipients. Ways to share due diligence checks within the supply chain by using new technologies like block chain technology could be discussed in further events.

## 2) Establishing a network

An effective partnership between government and industry as well as inside the private sector – including both large and small and medium sized enterprises – is the key for successful non-proliferation efforts.

Therefore, the participants of the Wiesbaden Process suggested the idea to create a global industry compliance network for exchange among private sector representatives as well as with national regulators.

Such a compliance network would complement the consultations of the 1540 Committee, the Wiesbaden Conferences and other international fora by constituting a public-private partnership for continued non-proliferation related dialogue between regulators and industry. Such pool of experts should represent each sensitive industry sector, different types of enterprises especially from interested smaller companies and start-ups. In this regard, industry representatives pointed out that the effectiveness of such network would depend on its diversity rather than the number of participants.

The organisers of the Wiesbaden Process especially noted the challenges to integrate smaller and medium size companies in such an environment. Two reasons can be cited for this: First, personal and second, financial limited resources. One solution could be the cooperation with trade associations and chambers of commerce acting as multipliers. Examples therefore are the Wiesbaden Conferences in 2017 and 2019 as well as the Regional Wiesbaden Conference in India (2018), where such relevant multipliers actively participated.

This network would ensure that regulators and the private sector could address all non-proliferation related topics, including legal and administrative challenges and the implementation of internal compliance programs (ICP).

The stakeholders pointed out, that joint outreach activities by industry and regulators to newcomers would be more effective than measures conducted by state actors only. The understanding of business processes ensures the implementation of needs-based and tailor made ICP structures and with that, greater compliance with UN Security Council Resolution 1540 (2004).

The Wiesbaden Process demonstrates that presentations given by direct market competitors receive strong interest by all participants. Sharing best practices within the community of the private sector creates value for all stakeholders.

As a result the institutionalisation of a network in strong cooperation with the 1540 Committee and managed by the organizers of the Wiesbaden Process is recommended.

## 3) COVID-19 pandemic and outreach activities

All stakeholders recognized that COVID-19 risks also slowed down the efforts to maintain and further improve outreach activities.

Coronavirus-related restrictions limited our usual interactions with all partners in times where it was of specific importance. With the world adapting to the rapidly changing landscape created by the COVID-19 pandemic, supply chain disruption has become a top-of-mind concern for exporters and all other actors of the supply chain around the globe. Despite these disruptions, however strategic trade regulations and their accompanying obligations remain in place.

On a national basis our experience resigned to the current situation, bringing interactions online and continuing to deliver during the pandemic. This was necessary to support the practical knowledge to implement strategic trade controls.

Engaging, insightful and well-planned experience exceeded all our expectations and was well received by exporters. Keen to avoid it being a non-interactive virtual experience, breakout groups focused on different topics, where exporters could also raise specific questions. This well shaped approach for a virtual get together allowed us to ensure people weren't overwhelmed by potentially unfamiliar ways of working and be respectful of the many issues people may face, from lack of technology, caring responsibilities or inability to travel due to sharing a "bubble" with vulnerable individuals.

These experiences have helped to understand the multidimensional challenges that people face as the pandemic changes the ways of interaction. Apart from considering technology's limitations, exploring its potential is the next step: Digital interventions may enable regulators to work with exporters we might struggle to reach in person (for example small and medium size companies or start-ups), and better interactivity could enrich what authorities can offer to them.

Those new industry outreach efforts hold the potential for innovation, particularly in conducting online meetings as well as facilitating participation from abroad.

During the pandemic many exporters were facing export control obligations with limited resources, posing serious revenue and business continuity risks. In light of these risks, industry outreach and engagement are an increasingly high priority for export control authorities and governments.

Furthermore, this facilitated access to information from authorities, without forgoing the advantages of face-to-face events like the Wiesbaden Process. The always desired direct contact to the decision-makers is an indispensable part of the interaction between exporters and regulators. The same applies to networking and the constructive bilateral exchange during breaks. In addition to the known communication channels, such as the homepage, leaflet or newsletter, the information process can be initiated quickly and up-to-date with a virtual event. On a second level, a targeted and direct dialogue can be continued by holding face-to-face or hybrid events. The coordination between known and newly developed formats will point the way to the future of modern outreach activities to support the implementation of UN Security Council Resolution 1540 (2004).

#### **IV. Perspectives / Outreach to academia**

Since 2016 outreach activities are not only dedicated to industry in a narrow understanding. The focus of outreach activities to industry is not only referring to manufactures, producers or distributors. New important actors were identified by the regulators: Research and development companies and the academia sector. A new “outreach sector” was created, “outreach to academia”, reflecting a growing concern over unauthorized access to technology at universities and other academic institutions.

The Wiesbaden Process had identified the need to enhance non-proliferation-related information sharing among the academic sector and to raise the awareness of universities and research institutions for the aims of export control and to support the implementation of UN Security Council Resolution 1540 (2004). A special session with the title „research & development, academia and technology transfer - special requirements for an internal compliance programme?“ initiated the discussion in 2019. The participants pointed out the need for tailored guidance for the academia – adapting their language – in applying export controls; e.g. to address specific challenges for the academic sector.

The following specific challenges were highlighted by the academic sector:

- Freedom of research vs. Strategic Trade Controls - challenges to balance scientific publishing and proliferation risks
- The “traditional” core elements of ICP are sometimes difficult to implement in the research sector
  - Transaction screening: Most problematic issue for academia, since universities and research organisations do not work with tangible transactions with dedicated end-users, but more with intangible transfers (e.g. scientific publications or presentations)
  - Management commitment/structure: Academia are more bottom up than bottom down organised
- Ongoing development of entirely new/advanced technology increases complexity of compliance
- Strong interaction with or employing of foreign nationals