

Robin Vince
Chief Executive Officer
240 Greenwich Street
New York, NY 10286

January 4, 2023

RE: BNY Mellon's business operations in Russia

Dear Mr. Vince,

We write to you as [B4Ukraine](#), a coalition of Ukrainian and international civil society organizations working to curtail the financial resources enabling the Russian invasion of Ukraine. We expect companies to demonstrate opposition to Russia's war of aggression, public support for the people, democracy, and territorial integrity of Ukraine, and alignment with the UN Guiding Principles on Business and Human Rights (UNGPs). At stake is not only the sovereignty and territorial integrity of a democratic Ukraine, but also the continuity of the rules-based international order and the prosperity of the global economy.

We request an urgent dialogue regarding potential inconsistencies between BNY Mellon's stated policies on human rights and the company's ongoing business operations and relationships in Russia that may contribute to, or be linked with, human rights harms.

We acknowledge BNY Mellon's stated commitment to ethical conduct and "doing what's right"¹ as well as to human rights, the Universal Declaration of Human Rights (UDHR), and the UNGPs in the company's Human Rights Statement.² According to the company's Enterprise ESG Commitment Statement, "as a practicing advocate of health and safety, labor and human rights, environmental sustainability, diversity, equity and inclusion, ethics and other responsible business practices, BNY Mellon holds its suppliers to similar standards of excellence."³ This commitment is again affirmed in the Supplier Code of Conduct, in which the company states it expects both itself and its suppliers to "adhere to the highest ethical standards."⁴

It has been more than ten months since Russia invaded Ukraine and the devastating impacts continue to shock the global conscience and shake the global economy. Russia is violating international

¹ BNY Mellon, "Code of Conduct", <https://www.bnymellon.com/content/dam/bnymellon/documents/pdf/csr/employee-code-of-conduct.pdf> (accessed December 9, 2022).

² BNY Mellon, "Human Rights Statement", February 14, 2022, <https://www.bnymellon.com/content/dam/bnymellon/documents/pdf/csr/bny-mellon-human-rights-statement.pdf.coredownload.pdf> (accessed December 8, 2022).

³ BNY Mellon, "Enterprise ESG Commitment Statement", September 7, 2021, <https://www.bnymellon.com/emea/en/about-us/esg-and-responsible-investment/enterprise-esg/statement.html> (accessed December 8, 2022).

⁴ BNY Mellon, "Supplier Code of Conduct", DATE, <https://www.bnymellon.com/content/dam/bnymellon/documents/pdf/csr/bny-mellon-supplier-code-of-conduct.pdf.coredownload.pdf> (accessed December 8, 2022).

humanitarian law (IHL), including war crimes and crimes against humanity, through attacks on civilians and civilian infrastructure (e.g., mass executions, sexual violence, torture, forcible transfer of civilians, destruction of electricity, heat and water supply lines). More than 17,000 Ukrainians have been killed and injured and millions more have been forced to flee their homes, creating one of the largest humanitarian and refugee crises of modern times.

On September 21, President Vladimir Putin escalated the war by announcing a “partial mobilisation” of the Russian population. The accompanying legislation ([Article 9 of Federal Law No. 31-FZ](#)) mandates all organisations, including the more than 1,500 international companies that are currently operating on a full or limited scale in Russia, to conduct military registration of the staff if at least one of the employees is eligible for military service.⁵ They must also assist with delivering the military summons to their employees, ensure the delivery of equipment to assembly points or military units, and provide information, buildings, communications, land plots, transport, and other material means of support to the war effort.

This legislation entails new and significant legal risks for companies remaining in Russia, including potential civil and criminal liability under comprehensive sanctions regimes and recent international jurisprudence holding corporations and their officers responsible for human rights abuses abroad.⁶ Companies may be exposed to financially material risks through operational restrictions, such as limitations of future government contracts.⁷

In response to this unprovoked and unjustified war⁸ many companies have left Russia. According to the Kyiv School of Economics Institute's [#LeaveRussia company tracker](#), BNY Mellon, though suspending new activities and investments, continues its operations with current clients in Russia. In its March 17 statement on the situation in Ukraine, BNY Mellon declares to "stand united in the face

⁵ Federal Law No. 31-FZ of February 26, 1997 "On mobilization training and mobilization in the Russian Federation" (as amended), <https://base.garant.ru/136945/> (accessed November 14, 2022).

⁶ International companies remaining in Russia are now at a greater risk of violating sanctions regimes as implementation of the legislation will likely involve transacting with sanctioned individuals or entities. Furthermore, new domestic civil and criminal cases against companies involved in violations of international law demonstrate the risk of significant liability for facilitating state-sponsored human rights abuses abroad (e.g., Lafarge case, Lundin case, Castel Group indictment, Nevsun holding, and Dassault Aviation, Thales, and MBDA France criminal complaint.) Victoria Riello and Larissa Furtwengler, “Corporate Criminal Liability for International Crimes: France and Sweden Are Poised To Take Historic Steps Forward,” *Just Security*, September 6, 2021, <https://www.justsecurity.org/78097/corporate-criminal-liability-for-human-rights-violations-france-and-sweden-are-poised-to-take-historic-steps-forward/> (accessed November 14, 2022); The Sentry, “Breaking: France Opens War Crimes Inquiry Focused on Iconic Food and Beverage Conglomerate,” July 1, 2022, <https://thesentry.org/2022/07/01/7216/breaking-france-opens-war-crimes-inquiry-focused-iconic-food-beverage-conglomerate/> (accessed November 14, 2022); *Rfi*, “French technology firm charged over Libya cyber-spying,” July 2, 2022, <https://www.rfi.fr/en/business-and-tech/20210701-french-tech-firm-charged-over-libya-cyber-spying> (accessed November 14, 2022); Preston Lim, “Canadian Supreme Court Allows Corporate Liability for International Law Violations,” *Lawfare*, March 12, 2022, <https://www.lawfareblog.com/canadian-supreme-court-allows-corporate-liability-international-law-violations> (accessed November 14, 2022); Sherpa, “Aiding and abetting war crimes in Yemen: Criminal complaint submitted against French arms companies,” June 2, 2022, <https://www.asso-sherpa.org/aiding-and-abetting-war-crimes-in-yemen-criminal-complaint-submitted-against-french-arms-companies> (accessed January 2, 2023).

⁷ Venable LLP, “Do You Contract with State Governments? If So, Beware of Emerging State Sanctions' Obligations Related to Russia and Belarus,” *JD Supra*, June 3, 2022, <https://www.jdsupra.com/legalnews/do-you-contract-with-state-governments-6537229/> (accessed November 14, 2022).

⁸ The UN General Assembly condemned Russia's "aggression against Ukraine" and demanded that Moscow “unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders.”

of the tragic events occurring in Ukraine" and promises an initial \$1 million donation to "further humanitarian efforts."⁹ In the same statement, and as covered by the *Financial Times*, the company states that it "will continue to work with multinational clients that depend on our custody and record keeping services to manage their exposures."¹⁰

While we acknowledge and welcome BNY Mellon's process of scaling back and its financial support to humanitarian efforts, that statement was made in the weeks immediately following the start of the full-scale Russian military invasion. The war is now in its tenth month. No further official updates have been made by BNY Mellon and the company maintains its current clients in Russia. These activities risk enabling and indirectly financing Russia's violations of IHL and human rights law during the ongoing invasion and occupation of Ukraine and violating BNY Mellon's human rights commitments and responsibilities, as well as its commitment to ethical conduct.

We seek to understand the status of BNY Mellon's exposure to Russia and how the company has conducted and continues to conduct heightened human rights due diligence, per its stated policy and the UNGPs concerning due diligence in conflict-affected areas, and how the findings of such a process has resulted in these continued business activities and relationships. As noted by the UNGPs:

...the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.

BNY Mellon's Human Rights Statement commits the company to adhering to the principles outlined in the UNGPs as well as the Universal Declaration of Human Rights.¹¹ Therefore, in consideration of the above points and B4Ukraine's [Declaration](#), we request an urgent dialogue with BNY Mellon's relevant senior management and staff to discuss the company's ongoing activities and relationships in Russia, associated risks to the people of Ukraine and the company, and potential steps to prevent/mitigate these risks. Please contact B4Ukraine at contact@b4ukraine.org to schedule a call. We kindly ask for your response by 5:00pm CET, January 18th, 2023.

Sincerely,

The B4Ukraine Coalition

⁹ "BNY Mellon Issues Statement on Ukraine," March 17, 2022, <https://www.bnymellon.com/us/en/about-us/newsroom/company-news/bny-mellon-issues-statement-on-ukraine.html> (accessed January 2, 2023).

¹⁰ Financial Times, "BNY Mellon to take 100mn hit to quarterly revenue from Russia pullback," March 17, 2022, <https://www.ft.com/content/30389f47-fba2-47b1-8b9a-c507a9ec74b0> (accessed December 9, 2022).

¹¹ BNY Mellon, "Human Rights Statement," February 14, 2022, <https://www.bnymellon.com/content/dam/bnymellon/documents/pdf/csr/bny-mellon-human-rights-statement.pdf.coredownload.pdf> (accessed December 8, 2022).