



B4Ukraine Coalition Letter to Bayer AG

Dear Sir or Madam,

Thank you for your letter dated March 17, 2023, to our CEO Werner Baumann and further Bayer colleagues.

From the outset of Russia's invasion of Ukraine, Bayer has condemned the brutal aggression against the sovereign nation of Ukraine.

Respecting human rights is of utmost importance to us.

In my role, I am responsible for overseeing our global human rights due diligence efforts and would welcome speaking with a representative of your coalition. In order to organize a call, you may propose 2-3 dates in April / May that would be feasible for you.

Yours sincerely,

Dr. Cristina Alonso Alija
SVP, Head of Sustainability, Safety, Health and Environment
Bayer AG

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March 31, 2023

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Bill Anderson
Chief Executive Officer
Bayer A.G.
Kaiser-Wilhelm-Allee 1
51373 Leverkusen,
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RE: Bayer A.G.'s business operations in Russia

March 17, 2023

Dear Mr. Anderson and Bayer A.G. Leadership Team,

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 Bayer A.G.'s (Bayer'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 that Bayer has policies in place to guide the company toward ethical behaviour. In its Human Rights Policy, the company clearly indicates its commitment to human rights:

"As founding member of the United Nations Global Compact, Bayer already committed itself in the year 2000 to its ten principles² derived from the Universal Declaration of Human Rights.

In addition to these guidelines, we support the United Nations Guiding Principles on Business and Human Rights - also known as the "Ruggie Framework" - which provides global standards for preventing and addressing the risk of adverse impacts on human rights linked to business activity."¹

Bayer's commitment to human rights is further emphasised in the company's Annual Report, where the company commits to respecting the OECD Guidelines for Multinational Enterprises, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the core labour standards of the International Labour Organization (ILO).²

¹ Bayer, "Bayer Human Rights Policy," <https://www.bayer.com/en/sustainability/bayer-human-rights-policy> (accessed March 17, 2023).

² Bayer, "Annual Report 2020," <https://www.bayer.com/sites/default/files/2021-02/Bayer-Annual-Report-2020.pdf> (accessed March 17, 2023).

Bayer also pledges to conduct its business according to applicable law and company rules.³

It has been over one year since Russia invaded Ukraine and the devastating impacts continue to shock the global conscience and shake the global economy. Russia is violating international humanitarian law (IHL), including war crimes and crimes against humanity, through attacks on civilians and civilian infrastructure (e.g., mass executions, sexual violence, torture, and forcible transfer of civilians). More than 21,793 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 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.⁴ 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.

A new decree issued by President Vladimir Putin on March 3, 2023, enables the Russian government to suspend shareholders' rights and implement external management in companies that don't fulfil state defence contracts under conditions of martial law. By specifying the process of appointing Russian government representatives to manage businesses that fail to meet state orders, the latest Decree effectively creates a scenario of "partial nationalization." "The growing set of risks associated with continuing operations in Russia are now foreseeable, predictable, and largely avoidable. Companies must act now or risk enabling Russian war crimes as well as the material interests of their shareholders."⁵

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

³ Bayer, “Corporate Compliance Policy,” <https://www.bayer.com/en/corporate-compliance/corporate-compliance-policy> (accessed March 17, 2023).

⁴ 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 January 2, 2022).

⁵ B4Ukraine, “New Kremlin regulation raises risks for the 1600 international companies left in Russia,” March 7, 2023, <https://b4ukraine.org/whats-new/new-kremlin-regulations> (accessed March 13, 2023).

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,” 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 January 2, 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 January 2, 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 January 2, 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 January 2, 2022); Sherpa, “Aiding and

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 (KSE) #LeaveRussia [company tracker](#), Bayer has decided to scale back some of its Russian operations, while continuing others.⁹

Prior to the invasion, Bayer had significant business operations in Russia, which included independent subsidiaries Bayer JSC and Bayer CropScience LLC, as well as a network of regional representatives.¹⁰ As of March 17, 2023, Bayer also seems to be in search of new employees in Russia.¹¹

In March 2022, Bayer issued a statement condemning the invasion of Ukraine and expressing the various ways in which it continues to provide support to the country.¹² The company confirmed the suspension of all advertising and other promotional activities, delivering of all non-essential products, capital investments, and new business opportunities in Russia and Belarus. However, Bayer continues to deliver essential health and agricultural products to Russia.¹³

In August, Bayer reversed course on its March comments that the supplies for 2023 would be contingent on Russia stopping its attacks on Ukraine, and decided to continue supplying Russia with essential agricultural inputs.¹⁴ We understand that Bayer claims that its reason for continuing operations in the country is the fact that the company is providing essential goods: "Withholding essential healthcare and agriculture products from the civilian populations – like cancer or cardiovascular treatments, health products for pregnant women and children as well as seeds to grow food – would only multiply the war's ongoing toll on human life."¹⁵

However, these activities risk enabling and financing Russia's violations of IHL and human rights law during the ongoing invasion and occupation of Ukraine and violating Bayer's commitment to abiding by the UNGPs. It remains to be seen how directly Bayer will be impacted by the partial nationalisation, partial mobilisation, and the heightened legal, regulatory, operational, and financial risks associated with companies being required to provide direct support to the internationally sanctioned Russian military. Bayer reportedly stated that it had requested an exemption from the mobilisation list for its employees. However, evidence shows the limited effectiveness of the

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, 2022).

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 January 2, 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."

⁹ KSE, Leave Russia, "Bayer," <https://leave-russia.org/bayer> (accessed March 17, 2023).

¹⁰ Ibid.

¹¹ Bayer, "Вакансии Bayer в России," <https://www.bayer.ru/ru/vacancies> (accessed March 17, 2023).

¹² Bayer, "Bayer Statement on Ukraine," <https://www.bayer.com/en/ukraine> (accessed March 17, 2023).

¹³ Ibid.

¹⁴ Reuters, "Bayer says it will continue supplying Russia with agricultural inputs," August 15, 2022, <https://www.reuters.com/business/healthcare-pharmaceuticals/bayer-says-it-will-continue-supplying-russia-with-agricultural-inputs-2022-08-15/> (accessed March 17, 2023).

¹⁵ Bayer (n 11).

request. For example, despite Raiffeisen Bank putting one of their employees on the exemption list, this employee was still conscripted and killed in Ukraine.¹⁶

Furthermore, the ‘essentiality’ argument is under increasing scrutiny. For example, Professor Jeffrey Sonnenfeld of Yale University challenges these explanations by stating that the reasons are “misguided at best, cynical in the medium case, and outright deplorably misleading and deceptive.” Sonnenfeld goes on to state:

“Russians are put in a tragic position of unearned suffering. If we continue to make life palatable for them, then we are continuing to support the regime [...] These drug companies will be seen as complicit with the most vicious operation on the planet. Instead of protecting life, they are going to be seen as destroying life. The goal here is to show that Putin is not in control of all sectors of the economy.”¹⁷

We are writing now to seek clarification on several points regarding Bayer’s policy on essential goods, as follows:

Can Bayer provide its definition and list of goods it considers essential in light of the particular circumstances of this conflict?

Has Bayer considered whether its goods can be replaced with local substitutes?

Has Bayer considered all the circumstances and complexities of the war in Ukraine in determining to continue providing these goods within Russia?

We seek to understand how Bayer has conducted and continues to conduct heightened human rights due diligence and how the findings of such a process have 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.

In consideration of the above points and B4Ukraine’s Declaration,¹⁸ we request an urgent dialogue with Bayer’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, March 31st, 2023.

Please do not hesitate to get in touch if you require any further information.

Sincerely,

¹⁶ Business and Human Rights Resource Centre, “Hundreds of companies operating in Russia bolstering war efforts without examining risks,” February 21, 2023, <https://www.business-humanrights.org/en/from-us/media-centre/ukraine-russia-war-companies-operating-in-russia-bolstering-war-efforts-without-examining-risks/> (accessed March 17, 2023).

¹⁷ Sarah Varney, “Which Companies Aren’t Exiting Russia? Big Pharma,” *KHN*, March 10, 2022, <https://khn.org/news/article/big-pharma-reaction-russia-ukraine-war/> (accessed March 17, 2023).

¹⁸ B4Ukraine, “About,” <https://businessforukraine.info/about> (accessed January 2, 2022).

The B4Ukraine Coalition