



NESTLÉ S.A.

The B4Ukraine Coalition

Vevey, July 11, 2023

Dear B4Ukraine Coalition,

Thank you for your letter dated June 27, 2023, regarding a number of important topics in the context of the ongoing, senseless war in Ukraine. We would like to reassure you that we stand with the people of Ukraine and our more than 5,000 employees there.

Our priority remains to keep our colleagues and their families safe, and to support the people of Ukraine. As one of the few foreign manufacturing companies in Ukraine, we are defying the dangers of the war and continue to run our operations there. We have been rallying our teams across the region to get food and essential supplies to the local people—and to those displaced by the war in neighboring countries.

We continue to support the Ukrainian people through donations to humanitarian relief organizations, such as the International Federation of Red Cross and Red Crescent Societies (IFRC). To date, Nestlé has provided more than 5,300 tons of food donations and delivered more than CHF 18,5 million in contributions. In addition, we are committed to supporting efforts to restore Ukraine's agri-food sector: In December 2022, Nestlé announced a 40 million CHF investment in a new factory in the Volyn region in western Ukraine. With this investment, we hope to contribute to the country's recovery and its path toward a brighter future. The construction has recently started. You can read more about our efforts here: <https://www.nestle.com/ask-nestle/our-company/answers/nestle-support-ukraine>.

Meanwhile, following Russia's invasion of Ukraine, as noted in our letter dated November 21, 2022, we have implemented the actions we announced last March¹. We have significantly scaled back our presence in Russia and refocused our activities on delivering essential and basic foods to the local people as part of ensuring the right to food. This includes suspending the vast majority of our well-known brands in Russia such as Nespresso, S.Pellegrino, KitKat and Nesquik. We have also stopped all non-essential imports and exports into and out of the country. Brands produced under independent business ventures are outside our control. All further capital investments in Russia have been suspended. This includes cancelling the planned construction of the Novosibirsk plant.

We take note of your questions regarding our human rights due diligence approach in view of international sanctions regimes. On this matter, let us assure you that we remain

¹ www.nestle.com/update-russia-and-ukraine



vigilant in monitoring sanctioned individuals, companies, and suppliers, and we have taken steps to ensure we fully comply with all applicable international sanctions on Russia. We do not supply our products to military authorities in the country.

Regarding allegations that some of our suspended brands continue to be available in Russian supermarkets, this may be because of pre-war stock at customer or distributor level that is not within our control, including previously licensed brands in the country. We also cannot rule out that these products may have been imported from third-party countries with no involvement of Nestlé. Moreover, besides the practicalities of addressing such practices, in compliance with EU anti-trust laws, we cannot restrict the actions of distributors or customers outside their territory regarding legally acquired Nestlé products. As a reminder, food products are not included on any international list of sanctioned goods for imports into Russia.

Concerning vacancies listed on the Nestlé Russia website, we confirm that we have halted all advertising activities in the country. Any open positions are in line with the commitments we made last March –namely, to provide the local people with essential and basic foods.

As we noted in our previous correspondence, at Nestlé, respecting human rights has long been an important focus of our work—both in our operations and our value chain. Our approach is aligned with the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, and the Ten Principles of the UN Global Compact (UNGC).

We are committed to embedding human rights standards throughout our organization and supply chain. In 2021, to provide transparency in this regard, we published our human rights framework and roadmap outlining our due diligence approach. Last year, we expanded this work and published a suite of human rights action plans designed to help us address our most salient issues. Human rights standards oblige us to assess the impact of our activities and business relationships on people, including the right to food.

You reference recent amendments to the Federal Law No. 31-FZ. We confirm that Nestlé Russia has not had to provide any of the items listed in your letter. In addition, our human rights due diligence efforts apply to our employees in Russia. We continue to fulfil our employment obligations per local legal requirements, and to act to safeguard the wellbeing of all our people and protect their fundamental rights. We have been clear that we believe our employees in Russia should be considered essential workers given the critical nature of our sector: producing food.

Given the highly volatile nature of the situation in Russia and in Ukraine, we continue to closely follow developments and keep our analysis under review. At this time, we see no inconsistency between our human rights policies and our drastically scaled back presence in Russia.



Finally, in response to your request for our 2022 financial information related to Russia, we do not disclose this data. Given the steps we have taken to drastically reduce our presence in Russia and uphold the commitments we made last March, we believe we are not contributing to the war effort.

We continue to join the international community in calling for peace and stability in the region, and we stand with the people of Ukraine and our more than 5,000 employees there.

Yours faithfully,

A handwritten signature in blue ink, reading "D. Frick". The signature is written in a cursive, flowing style.

David P. Frick
Secretary

Ulf Mark Schneider
Chief Executive Officer
Nestlé S.A.
Avenue Nestlé 55
1800 Vevey,
Switzerland

June 27, 2023

RE: Nestlé S.A.'s business operations in Russia

Dear Mr. Schneider,

We are writing to follow up on our previous correspondence with Nestlé dated 7th November 2022 regarding potential inconsistencies between Nestlé's obligations, as articulated in the UN Guiding Principles on Business and Human Rights (UNGPs), and the company's ongoing business operations and relationships in Russia that may contribute to, or be linked with, human rights harms. While we received a response to our first letter answering some of our questions, we are writing once again to formally notify you on the serious and increasing risks the company faces by continuing its operations in Russia that may amount to complicity in human rights abuses committed by Russia,¹ and to urge Nestlé to:

- Immediately cease all operations and presence in Russia and completely exit the Russian market.
- Refrain from any future business, trade, or investment in Russia until Russia ends its war in Ukraine, territorial integrity of Ukraine is restored, and accountability imposed for war crimes and the destruction of Ukrainian infrastructure and property.
- Establish and implement comprehensive human rights due diligence measures for any responsible exit from or re-engagement with Russia.

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, forcible transfer of civilians). More than 24,000 Ukrainian civilians 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. In recognition of the severity of abuses, in March 2023 the International Criminal Court issued an arrest warrant for Vladimir Putin to answer war crimes charges.²

¹ Andrew Clapham and Scott Jerbi, "Categories of Corporate Complicity in Human Rights Abuses," March 21-22, 2001, <https://media.business-humanrights.org/media/documents/files/reports-and-materials/Clapham-Jerbi-paper.htm> (accessed May 4, 2023).

² International Criminal Court, "Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova," March 17, 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (accessed March 22, 2023).

Moreover, recent developments in Russia point to an expanding universe of financial, legal, and reputational risks facing those left behind.

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.³ 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.⁴ 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."

With new legislation introducing partial mobilisation, nationalisation, and potentially martial law in Russia, it is highly likely that corporations will be unable to prevent or mitigate negative human rights impacts, an obligation imposed on companies by the United Nations Guiding Principles on Business and Human Rights. As such, continuing to conduct business in Russia entails significant legal risks for companies, 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.⁵ Companies face the rising risk of criminal liability for complicity in

³ 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).

⁴ Decree of the President of the Russian Federation No. 139 dated March 3, 2023 "On Certain Issues of Carrying Out the Activities of Business Companies Participating in the Fulfilment of the State Defense Order", <http://publication.pravo.gov.ru/Document/View/0001202303030004> (accessed March 22, 2023).

⁵ 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 November 14, 2022).

international crimes, which can be prosecuted by domestic courts⁶ outside Russia under the doctrine of "universal jurisdiction."⁷

On 24 February 2023, The Financial Action Task Force (FATF) suspended Russia's membership as a result of the war, calling on all actors in the international financial system to exercise extreme caution in all dealings with Russia.⁸ In practice, the decision means that all international banks will scrutinise all Russian payments, making financial transactions more expensive, lengthy, with no guarantee that the transaction will occur at all.⁹ Although FATF has not yet blacklisted Russia, it highlighted the consensus among its 36 member countries that "the Russian federation's actions represent a gross violation of the commitment to international cooperation upon which FATF Members have agreed to implement and support the FATF Standards."¹⁰ Previous practice shows that noncooperative behaviour is one of the reasons for FATF blacklisting. As a result, companies should examine and mitigate the high levels of risk attached to financial transactions with Russia and based on that risk, companies should reconsider all ongoing business operations related to Russia. Additionally, a recent report shows that Russia poses a "real threat to global financial integrity, as well as to national security more broadly."¹¹

Companies may also be exposed to financially material risks through operational restrictions, such as limitations of future government contracts.¹²

Additionally, the Ukrainian government's [National Agency on Corruption Prevention](#) (NACP) is creating a list of "foreign companies that, despite the international recognition of Russia as the aggressor state and the introduced sanctions restrictions, continue to cooperate with it."¹³ These companies are recognised as international sponsors of war. The listed entities will be included into the World-Check database to protect the global financial sector from Russian sponsors of war. Since banks and insurance companies use World-check to assess risks, companies on the list will be limited in freely accessing personal and corporate finances. So far there are 29 companies on the list, but the NACP notes that it will be expanded with "international companies that provide the public and

⁶ For example, the French company Lafarge is charged for complicity in war crimes and crimes against humanity in Syria (will properly link later).

⁷ For example, ongoing proceedings in the US and France against the French multinational Lafarge for complicity in human rights violations in Syria. The Paris Court of Appeal, "La Cour d'appel de Paris confirme la mise en état de la multinationale française Lafarge pour complicité de crimes contre l'humanité commis par l'Etat islamique," May 18, 2022, <https://www.doughtystreet.co.uk/sites/default/files/media/document/Press%20release%20french%20version.pdf> (accessed March 22, 2023); United States Attorney's Office, Eastern District of New York, "Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations," October 18, 2022, <https://www.justice.gov/usao-edny/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terrorism> (accessed March 22, 2023).

⁸ FATF, "FATF Statement on the Russian Federation," February 24, 2023, <https://www.fatf-gafi.org/en/publications/Fatfgeneral/fatf-statement-russian-federation.html> (accessed March 14, 2023).

⁹ Liudmyla Sliptsova, "Russia's membership in the FATF suspended. What does this mean and how ruinous is this for the aggressor's economy?," *Mind*, February 27, 2023, <https://mind.ua/en/publications/20253993-russias-membership-in-the-fatf-suspended-what-does-this-mean-and-how-ruinous-is-this-for-the-aggre> (accessed March 14, 2023).

¹⁰ FATF (n 8).

¹¹ Themis, "Russia; Country Risk Report," June 2023, <https://themisservices.co.uk/country-risk-report-russia> (accessed June 26, 2023).

¹² 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).

¹³ NACP, "International Sponsors of War," <https://sanctions.nazk.gov.ua/en/boycott/> (accessed February 6, 2023).

private sector with goods and services of critical purpose, as well as [those that] contribute to the Russian budget.”¹⁴

Companies that maintain business relationships with Russia risk being perceived as supporting Russia's war effort. This could have a negative long-term impact on sales in other countries and attract investor scrutiny over adherence to ESG principles. The longer it takes for brands to extricate themselves from the situation, the more damaging it will be for their reputation.

In response to this unprovoked and unjustified war¹⁵ many other companies have already left Russia. According to the Kyiv School of Economics Institute's #LeaveRussia [company tracker](#), Nestlé has decided to stay and continue its operations in Russia.

These activities in Russia risk enabling and financing Russia's violations of international humanitarian and human rights law during the ongoing invasion and occupation of Ukraine.

Considering these risks and the company's continued presence in Russia, we would like to pose the following questions to Nestlé:

1. In its updates on Ukraine and Russia, Nestlé announced that it “drastically reduced [its] portfolio in Russia,” and that it “refocused activities on delivering essential and basic foods to the local people and suspended the vast majority of SKUs from [its] pre-war portfolio in the country. [Nestlé] have halted non-essential imports and exports into and out of Russia.”¹⁶ Nestlé reportedly suspended sales of KitKat and Nesquik in the country. However, reports show that Russian store shelves are still stocked long after the company made the announcement of focusing only on essential goods such as infant food and medical/hospital nutrition. Over 50 Nestlé products such as Nescafe, Maggi soups, Bystrow cereals, Purina pet food, Nestea, chocolates and sweets are still allegedly available in Russia.¹⁷ Likewise, Mövenpick ice cream is reportedly still available under a new name (Monterra), and so is imported Perrier water.
 - Can Nestlé provide its definition and list of goods it considers essential in light of the particular circumstances of this conflict?
 - Can Nestlé provide a list of goods that it stopped producing since the outbreak of the war because they are not considered essential?
 - Has Nestlé considered whether its goods can be replaced with local substitutes?
 - Which stakeholders has Nestlé engaged with in determining its policies and the decision to stay in the market?
2. While we do not deny that some goods and foodstuffs are essential in preventing food shortage and undernutrition of the local population, products like Nescafe or Maggi stock cubes that

¹⁴ NACP, “Companies from the NACP list of “International Sponsors of War” are now in the World-check database, used worldwide for reviewing counterparties,” September 7, 2022, <https://nazk.gov.ua/en/news/companies-from-the-nacp-list-of-international-sponsors-of-war-are-now-in-the-world-check-database-used-worldwide-for-reviewing-counterparties/?hilite=sponsor+of+war> (accessed February 6, 2023).

¹⁵ 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.”

¹⁶ Nestlé, "Update on Ukraine and Russia," March 23, 2022, <https://www.Nestlé.com/ask-Nestlé/our-company/answers/update-ukraine-russia> (accessed June 27, 2023).

¹⁷ Markus Ackeret, Matthias Benz, “Russian supermarkets are still filled with Nestlé products – contrary to company announcements,” NZZ, February 7, 2023, <https://www.nzz.ch/english/russian-supermarkets-are-still-filled-with-Nestlé-products-how-does-this-fit-in-with-the-corporations-announcements-ld.1724746> (accessed June 27, 2023); Boycott Russia, April 1, 2023, https://twitter.com/Boycott_RU/status/1509925265425768456 (accessed June 27, 2023).

Nestlé produces and sells in the Russian market cannot be and are not considered essential. In determining which products are essential, businesses should consider the nutritional needs of the affected population, focusing on nutrient dense foods, such as foods rich in proteins, vitamins, and minerals, including a mix of cereals (such as maize, wheat, rice, or millet), pulses (such as lentils, beans, chickpeas, or peas), oil, and fresh or processed fruits and vegetables. Businesses should also consider the availability of other sources of food, the availability of local substitutes, and the potential human rights risks and impacts associated with their operations. Furthermore, when determining the scope and meaning of essential goods, it is crucial to apply a contextual, conflict-sensitive approach. In the context of the war in Ukraine and ongoing operations in Russia, the concept of essentiality should prioritise items such as life-saving medicines that are not manufactured in Russia, while excluding goods such as food and hygiene items that are readily available locally. The continued production, distribution, and import of goods that are available/easily substituted locally and non-essential, in a way that their absence would not be life-threatening to the local population, indirectly perpetuates the conflict by sustaining the resources that enable Russian aggression.

- Has Nestlé considered all the circumstances and complexities of the Russo-Ukrainian war, including numerous human rights violations and war crimes committed in Ukraine, as well as the fact that Russia is an aggressor state, in determining to continue providing these goods within Russia?

3. Some sources indicate that Nestlé has continued to reconstruct its plant in Novosibirsk after it made the announcement of suspending capital investment in the country.¹⁸

-Can Nestlé confirm whether these sources are correct and whether the company has continued the planned construction and opening of the Novosibirsk plant?

4. As a reminder, Bonduelle and Auchan have recently faced significant reputational damage because their goods were sent to Russian troops in Ukraine, some with notes wishing "a speedy victory."¹⁹ Both companies deny these allegations.

-How has Nestlé practised due diligence in preventing the direct supply of its products to the Russian military?

-Does Nestlé have policies, mechanisms, and tools in place to carry out enhanced due diligence of supply chains, intermediaries, customers, and end-users to prevent the supply of goods to the Russian army?

-If so, how were they utilised for defining business connections that involve the Russian government, its agencies, and state-controlled or sanctioned organisations?

5. Nestlé reportedly suspended the import of its Nespresso products. However, these products are still easily available in Russia. For example, Nespresso coffee pods are sold on the Wildberries site.²⁰

¹⁸ Ukraine Action, December 18, 2022,

https://twitter.com/ukraine_action/status/1604545607904817152 (accessed June 27, 2023).

¹⁹ Euromaidan Press, "Bonduelle accused of gifting 10,000 food kits to Russian troops; French office denies," January 3, 2023, <https://euromaidanpress.com/2023/01/03/french-bonduelle-gifts-10000-food-kits-to-russian-troops-wishes-them-victory/> (accessed May 4, 2023); Business and Human Rights Resource Centre, "New evidence reveals Auchan was fully aware of destination of its goods supplied to Russian army," March 3, 2023, <https://www.business-humanrights.org/en/latest-news/russia-auchan-allegedly-supports-soldiers-fighting-in-ukraine-despite-french-management-denials-recent-investigation-reveals-more-proofs/> (accessed May 4, 2023).

²⁰ Wildberries.ru, "Nespresso,"

<https://www.wildberries.ru/catalog/0/search.aspx?search=nespresso#c152550888> (accessed June 27, 2023).

-Which policies, mechanisms, and tools has Nestlé used to carry out enhanced due diligence of its supply chains, intermediaries, customers, and end-users to prevent the parallel supply of goods to Russia?

6. We understand and agree that Nestlé has obligations towards its 7,000 employees in Russia. These obligations are laid out under the UNGPs and in the wider international human rights legal and regulatory framework. In your response to our first letter, when enquired on the application of the Russian Federal Law No. 31-FZ, you stated that Nestlé “has not had to provide any of the things listed,” and that you “continue to act to safeguard the wellbeing of all our people, and to protect their fundamental rights.” However, no detail was provided.

-Can Nestlé clarify how it is working to minimise the risks and impacts to its employees?
-How has the company applied heightened human rights due diligence to its operations in Russia considering the new Russian legislation requiring businesses to help conduct military registration, deliver the summons to its employees, and provide resources where required?
-Has Nestlé received any such requests, and if so, how has the company responded to them?
-What is Nestlé doing to safeguard its employees from mobilisation?
-Have any of your employees been mobilised and, if so, what was Nestlé’s role in the process?

7. The safety of employees is and should be a considerable point of concern and obligations for companies. But in light of the specific context of the illegal war on Ukraine, there are other options for the safeguarding of employees that can and have been used by other international companies in Russia. Many companies have offered relocation packages, or contractual clauses which condition the continued employment and safety of employees remaining in Russia. For example, if Nestlé had decided to sell its Russian business it could have included contractual clauses to ensure the continued safety of its employees, as previously exemplified by the actions of the French Publicis Groupe who employed 1,200 people in the country.

-Has Nestlé considered any of these or other options before deciding to continue operations in Russia?

8. Despite Nestlé’s promise to scale back its operations and suspend all advertising activities in Russia, the company still advertises open positions in the country.²¹

-How does Nestlé reconcile its statements on scaling back its operations with these ongoing employment opportunities in Russia?
-How does Nestlé reconcile its statements on employee wellbeing with continued employment opportunities in light of the new Russian legislation obliging companies to help with the military conscription of its employees?

9. Nestlé is one of the largest foreign companies still operating in Russia. In 2021, the company’s annual revenue in Russia amounted to over \$3bn, and in 2020, the company reportedly paid \$502 million to the Russian budget.²² Considering its significant position in the Russian economy, Nestlé is a significant taxpayer in Russia, although the company declared that it will not be

²¹ HH.ru, “Vacancies – Nestlé,”

https://hh.ru/search/vacancy?L_is_autosearch=false&area=1&ored_clusters=true&employer_id=330 (accessed June 27, 2023).

²² Yuriy Tarasovskyi, “Nestlé does not sponsor war.” The Swiss company declared that it will not pay taxes in Russia,” *Forbes*, May 27, 2022, <https://forbes.ua/news/Nestlé-ne-sponsorue-viynu-shveytsarska-kompaniya-zayavila-shcho-ne-splachuvatime-podatki-v-rosii-27052022-6263> (accessed June 27, 2023).

paying taxes in the country. However, Nestlé has not yet published its revenue and tax data for 2022.

-How much tax has Nestlé paid in Russia in 2022 and 2023?

-Does Nestlé plan to make this data public?

10. Nestlé boasts an impressive portfolio of globally recognized and beloved brands such as Nestea and Nescafe. By choosing to continue operating in Russia, the company inadvertently grants the regime a sense of legitimacy and approval. By leveraging the power and reputation of its brands, Nestlé indirectly expresses support for the regime's actions, which could be interpreted as condoning the war. The continued presence of Nestlé's brands in the Russian market creates a perceived association between the company and its widely known brands and the Russian government, which may not align with the values of its customers.

-How is Nestlé ensuring that it does not align itself and the names of its brands with the war and the Putin regime?

11. Other companies have faced legal, administrative, and ethical challenges and still committed to, and exited, Russia. Nestlé has decided to stay in the country, even after over one year since the start of the war, over 80,000 reported war crimes, over 24,000 Ukrainian civilians killed or injured, and with the head of the Russian state indicted by the International Criminal Court for alleged war crimes, namely the abduction of Ukrainian children.

-Considering these developments and the rising number of reported human rights abuses and war crimes, has Nestlé considered fully exiting Russia so as not to be even indirectly or remotely associated with these crimes?

We request an urgent dialogue with Nestlé's relevant senior management and staff to discuss the company's ongoing activities and relationships in Russia and associated risks to the people of Ukraine and the company. Please contact the B4Ukraine Coalition at contact@b4ukraine.org to schedule a call. We kindly ask for your response by 5:00pm CET, July 11th, 2023.

Sincerely,

The B4Ukraine Coalition



NESTLÉ S.A.

Eleanor Nichol
Executive Director
The B4Ukraine Coalition

Vevey, 21 November, 2022

Dear Ms. Nichol,

Thank you for your letter dated 7 November regarding the war in Ukraine, recent developments in Russia, and the importance of human rights due diligence by companies operating in conflict-affected areas.

We continue to follow the war in Ukraine closely given the seriousness of the situation. We have taken a number of actions in both Ukraine and Russia in response to the invasion. We welcome this opportunity to share more information about these with you.

At Nestlé, respecting human rights has long been an important focus of our work, both in our operations and across our value chain. Our approach is based on the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, and the Ten Principles of the UN Global Compact (UNGC).

Alongside our work to incorporate human rights into 22 of our corporate standards and policies, train our employees worldwide, conduct more than a dozen human rights impact assessments in “high-risk” countries, and integrate human rights into our Enterprise Risk Management system and controls, we have been working, and continue to work, to embed human rights throughout the organization.

As you note in your letter, in 2021, we went a step further and published our Human Rights Framework and Roadmap which outlines our approach to human rights due diligence. As part of this work, we are also developing action plans designed to help us address our most salient issues. These salient issues are areas we have identified where human rights risks could have the most severe negative impact on people as a result of our activities or business relationships—for example, ensuring the right to food and access to nutritious, affordable and adequate diets. The UNGPs are of course well-considered in the development of our salient issue action plans, and we continue to engage with stakeholders to give us confidence in our approach in Russia and in Ukraine.

We do not believe there is any inconsistency between our Human Rights policies and the fact that we are continuing limited operations in Russia. As communicated on our website, we have implemented the actions we announced in March¹ and remain focused on providing food products to the local people in line with our purpose of ensuring the basic right to food. In taking this decision, we have taken steps to ensure that we are fully compliant with all applicable international sanctions on Russia. Given the dynamism of the situation, we are keeping the situation and analysis under review.

¹ www.nestle.com/update-russia-and-ukraine



In your letter you refer to Article 9 of the Federal Law No. 31-FZ which sets out legal obligations for all Russia-based companies. To date, Nestlé Russia has not had to provide any of the things listed in your letter. With regard to our employees, in addition to continuing to fulfil our employment obligations per legal requirements, we continue to act to safeguard the wellbeing of all our people, and to protect their fundamental rights. We have been clear that we believe that our employees in Russia should be considered essential workers given the critical nature of our sector: producing food.

Regarding allegations of the continued presence in Russian supermarkets of some of the brands whose production we suspended, per our announcement in March, we have halted the production of suspended brands like Kit Kat and Nesquik, among others. It is possible that some stock produced before the invasion may still be available in some stores having been acquired and stored by customers and other third parties before our March announcement. We also cannot rule out that they may have been imported from other countries by third parties with no involvement of Nestlé.

In Ukraine, our priority remains to keep our employees and their families safe, and to support the people of Ukraine. We are one of the few manufacturing companies in the country that so far continues to run our operations, and we have been rallying our teams across the region to get food and essential supplies to the local people, and to those in neighboring countries displaced due to the war. We anticipate that these efforts will continue into 2023.

We continue to provide support to the people of Ukraine through donations to humanitarian relief organizations, such as the International Federation of Red Cross and Red Crescent Societies (IFRC) and have provided more than 4,000 tons of food donations. To date, Nestlé has committed more than CHF 15 million in contributions to the Ukrainian people². For ease, we enclose a detailed overview of our support so far to help the people of Ukraine.

Looking ahead, we are committed to working with the wider food industry to support and restore Ukraine's agri-food sector as part of the country's recovery and path toward a brighter future.

We join the international community in calling for peace and stability in the region, and we stand with the people of Ukraine and our 5,800 employees there.

We hope this is helpful and trust that it answers your questions.

Yours faithfully,

David P. Frick
Secretary to the Board

(Encl.: Factsheet)

² www.nestle.com/nestle-support-ukraine

Ulf Mark Schneider
Chief Executive Officer
Avenue Nestlé 55
1800 Vevey, Switzerland

CC: Nestlé Executive Team and Board

07/11/2022

RE: Nestlé business operations in Russia

Dear Mr. Schneider,

We write to you B4Ukraine, a coalition of Ukrainian and international civil society organizations working to curtail the financial resources enabling the Russian invasion of Ukraine. In the spirit of respect for the fundamental rights of all people, the rules-based international order, and a prosperous global economy, we expect companies to demonstrate public support for the people, democracy, and territorial integrity of Ukraine, opposition to Russia's war of aggression, and alignment with the UN Guiding Principles on Business and Human Rights (UNGPs).

We request an urgent dialogue regarding potential inconsistencies between Nestlé S.A.'s (Nestlé) stated policies on Russian aggression, and human rights more broadly, and the company's ongoing business operations and relationships in Russia that may contribute to, or be linked with, human rights harms.

Nestlé's Human Rights Framework formalises the company's commitment "to respecting and promoting human rights in our operations and supply chain, taking action to protect rights holders and to achieving long-term systemic change."¹ Nestlé has centred this framework around conducting adequate human rights due diligence (HRDD), which includes performing human rights impact assessments that identify and report on Nestlé's salient human rights risks.² Finally, we note that Nestlé was an early adopter of UNGPs and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, which guide the development and implementation of its Human Rights Framework.³

It has been eight months 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

¹ Nestlé, "Our approach to identifying and addressing human rights risks"
<https://www.nestle.com/sustainability/human-rights/approach#:~:text=We%20are%20committed%20to%20respecting,a%20particular%20set%20of%20people> (accessed October 31, 2022).

² Nestlé, "Nestlé's Human Rights Framework and Roadmap," December 2021,
<https://www.nestle.com/sites/default/files/2021-12/nestle-human-rights-framework-roadmap.pdf> (accessed October 31, 2022).

³ Ibid.

civilians and civilian infrastructure (e.g., mass executions, sexual violence, torture, forcible transfer of civilians). More than 15,000 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.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.

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.⁵ Companies may be exposed to financially material risks through operational restrictions, such as limitations of future government contracts.⁶

In response to this unprovoked and unjustified war⁷ many companies have left Russia. According to the Kyiv School of Economics Institute's #LeaveRussia [company tracker](#), Nestlé announced in early March that it would be stopping all advertising, capital investments, and plans for further development. Days after Ukrainian President Volodymyr Zelenskyy publicly criticised the company for continuing to do business there, Nestlé further committed to stop importing and/or exporting all

⁴ Federal Law No. 31-FZ of February 26, 1997 "On mobilisation training and mobilisation in the Russian Federation" (as amended), <https://base.garant.ru/136945/> (accessed October 31, 2022).

⁵ 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 October 31, 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 October 31, 2022); “French technology firm charged over Libya cyber-spying,” *Rfi*, July 2, 2022, <https://www.rfi.fr/en/business-and-tech/20210701-french-tech-firm-charged-over-libya-cyber-spying> (accessed October 31, 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 October 31, 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 October 31, 2022).

⁶ 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 October 31, 2022).

⁷ 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 its non-essential products, specifically KitKat and Nesquik.⁸ Nestlé stated that continuing to provide essential goods in Russia would not be profitable and any unexpected profit would be donated to Ukrainian charities, thereby preventing the company from contributing taxes to the Russian state. While we commend these statements, our research indicates that Nestlé is still at risk of proximity to Russia's war of aggression against Ukraine.

Prior to Russia's invasion of Ukraine, Nestlé maintained seven production sites in Russia, employing about 8,000 workers.⁹ Despite Nestlé's promise to stop all advertising activities in Russia, HeadHunter.ru lists several open positions for Nestlé's operations in Russia, including two marketing positions.¹⁰ Similarly, Nestlé brands KitKat and Nesquik are reportedly still available in local super markets, in direct contradiction to Nestlé's commitment to cease production and distribution of all non-essential goods and its specific promise to discontinue those brands.¹¹ While it does not appear that Nestlé has released a comprehensive list of the "essential goods" remaining in the Russian market, it provided "infant food and medical/hospital nutrition" as examples in its official statement. Other reporting indicates the company also continues to provide "cereal, tailored nutrition and therapeutic pet foods."¹² Given Nestlé is hiring new employees, it is unclear the current number of workers at risk of conscription requests. Furthermore, Nestlé has only committed to suspending production, import, and export of certain brands, leaving a significant number of assets in Russia at risk of requests for government use under partial mobilisation.

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 Nestlé's Human Rights Framework and the company's stated commitment to abiding by the UNGPs. It remains to be seen how directly Nestlé will be impacted by the 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.

We seek to understand how Nestlé has conducted and continues to conduct heightened HRDD, 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.

With the above points in mind and in consideration of B4Ukraine's [Declaration](#), we request an urgent dialogue with Nestlé's relevant senior management and staff to discuss the company's

⁸ Nestlé, "Update on Russia and Ukraine," March 23, 2022, <https://www.nestle.com/ask-nestle/our-company/answers/update-russia-ukraine> (accessed November 6, 2022).

⁹ Nestlé, "Nestlé in Russia and Eurasia," <https://www.nestle.ru/aboutus/russia-eurasia-nestle#> (accessed November 3, 2022).

¹⁰ Headhunter, "Nestlé" https://hh-ru.translate.google/employer/330? x tr sl=ru& x tr tl=en& x tr hl=en& x tr_pto=sc (accessed November 1, 2022).

¹¹ B4Ukraine, "Deaths and Treats: How your favorite sweets are a part of bloody war in Ukraine," October 25, 2022, <https://businessforukraine.info/actions/for-every-less-ethical-candy-maker> (accessed November 1, 2022).

¹² Matt Egan, "Zelensky calls out Nestlé over its ties to Russia," *CNN*, March 21, 2022, <https://www.cnn.com/2022/03/21/business/ukraine-nestle-zelensky-russia> (accessed October 31, 2022).

ongoing operations and relationships in Russia, associated risks to the people of Ukraine and the company, and potential steps to prevent/mitigate these risks. Please contact Eleanor Nichol at enichol@businessforukraine.info to schedule a call. We kindly ask for your response by 5:00pm CET, 21 November 2022.

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

Sincerely,

Eleanor Nichol
Executive Director
The B4Ukraine Coalition