



Dear B4Ukraine Coalition,

From the very beginning, we have been very consistent in our communication regarding OpenWay's exit from Russia.

OpenWay sold its former subsidiary in Russia back in April 2022, which is confirmed by the latest report "Less than Nine Percent of Western Firms Have Divested from Russia". The independent study, conducted by IMD and University of St. Gallen, clearly states that OpenWay is among 8.5% of Western companies that left Russia.

As of today, OpenWay Group has no business in Russia. The company does not have any business activities, teams, clients, or partners in Russia and doesn't support its former clients in this country.

Together with other Western firms, we support our key customers in Ukraine among them are the leading banks providing stable payment infrastructure in these difficult times for the country.

We kindly ask you to remove our name from your publications as we have left Russia.

Please see the links to the report and our statement:

- Report "Less than Nine Percent of Western Firms Have Divested from Russia":
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4322502
- Atos, Société Générale, OpenWay, and Thales are among the 8.5% who left Russia:
<https://thepaypers.com/online-mobile-banking/atos-deutsche-bank-openway-and-thales-are-among-the-85-who-left-russia--1260088>
- OpenWay's statement on leaving Russia
<https://www.openwaygroup.com/new-blog/2022/6/2/openway-group-is-leaving-russia>

Best regards,

A handwritten signature in blue ink, appearing to read "Pavel Gubin".

Pavel Gubin
OpenWay Group CEO



Pavel Gubin
Chief Executive Officer
OpenWay Group
Axisparc Business Centre,
Rue Emile Francqui, 3,
1435 - Mont-Saint-Guibert,
Belgium

RE: OpenWay Group business operations in Russia

February 14, 2023

Dear Mr. Gubin,

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 OpenWay Group's (OpenWay) statements regarding the invasion of Ukraine 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 OpenWay cares about maintaining high standards of compliance processes and corporate social responsibility.¹

It has been almost 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 18,000 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 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

¹ OpenWay, "OpenWay Group is Leaving Russia," June 2, 2022 <https://www.openwaygroup.com/new-blog/2022/6/2/openway-group-is-leaving-russia> (accessed February 8, 2023).

employees is eligible for military service.² 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.³ Companies may be exposed to financially material risks through operational restrictions, such as limitations of future government contracts.⁴

In response to this unprovoked and unjustified war⁵ many companies have left Russia. According to the Kyiv School of Economics Institute's (KSE) #LeaveRussia [company tracker](#), OpenWay is staying and continuing its Russian operations.⁶

OpenWay states that the company sold its Russian subsidiary OpenWay Service in April 2022, and announces that it no longer has any business in the Russian Federation.⁷ On July 2, the company noted that, while it left Russia in April, OpenWay can:

² 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).

³ 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.iustsecurity.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 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).

⁴ 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).

⁵ 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."

⁶ KSE, Leave Russia, "OpenWay Group," <https://leave-russia.org/openway-group> (accessed February 8, 2023).

⁷ OpenWay, "OpenWay Group is Leaving Russia," June 2, 2022 <https://www.openwaygroup.com/new-blog/2022/6/2/openway-group-is-leaving-russia> (accessed February 8, 2023).

“[N]either legally nor technically [...] stop former customers from using the software, which they purchased in the past, installed and operated on their own infrastructure. Our standard software license agreements are perpetual and do not require periodic license renewal, unlike the agreements of some of our competitors. The customers who bought and installed the software have the rights to use it indefinitely without any further permissions.”⁸

On August 22, 2022, OpenWay further clarified that it:

“[D]ivested local subsidiary and stopped providing any further licenses or services to the former customers in Russia. OpenWay has neither business in Russia nor any direct or indirect ownership by any Russian citizen. While we do not provide further upgrades or maintenance services to former Russian customers, the software, which they purchased in the past and operate on their own infrastructure runs without any involvement from our side.

Our company does not support any violent activities between countries, nationalities, and any other groups of people.”⁹

Prior to the invasion, OpenWay had significant operations in Russia. In 2014, following the annexation of Crimea, OpenWay was engaged to create an alternative payment system Mir, after Visa and Mastercard stopped providing services to the Russian banks in the region.¹⁰ Ukrainska Pravda reports that in order to circumvent sanctions, OpenWay set up a number of shell companies through which it communicated with its sanctioned clients.¹¹ After the full-scale invasion of Ukraine and Visa’s and Mastercard’s complete exit from Russia, Mir has become the Russian nation-wide payment system. Ukrainska Pravda claims that “if the company left the market of the aggressor state after the start of Russia’s armed aggression against Ukraine, the payment system of the Russian Federation would have been paralysed, but this did not happen,”¹² and many large Russian banks continue to use the system. To interact with its sub-sanctioned clients, the firm allegedly uses shell companies owned by local OpenWay managers that still deliver the software product owned by the company. As a result, some say that OpenWay “has been credited with single-handedly propping up much of the Russian financial sector,”¹³ and that the company’s aforementioned statements of April, June, July, and August 2022 are “just a smoke screen as OpenWay Group retains its presence on the Russian market and keeps maintaining the Russian national payment system.”¹⁴

In response, the Ukrainian National Agency for Prevention of Corruption (NAPC) has included OpenWay on the list of international sponsors of the war.¹⁵

⁸ OpenWay, “OpenWay Group is Leaving Russia,” July 2, 2022, <https://www.openwaygroup.com/new-blog/2022/6/2/openway-group-is-leaving-russia> (accessed February 8, 2023).

⁹ OpenWay, “The War in Ukraine has Already Had a Terrible Impact on so Many People’s Lives. Our Official Statement on Leaving Russia,” August 24, 2022, <https://www.openwaygroup.com/new-blog/2022/8/24/openwayleavingrussia> (accessed February 8, 2023).

¹⁰ KSE (n 5).

¹¹ Ukrainska Pravda, “How to drop the Russian banking system at once,” August 1, 2022, <https://www.pravda.com.ua/eng/articles/2022/08/1/7361391/> (accessed February 8, 2023).

¹² Ukrainska Pravda (n 11).

¹³ Dylan Carter, “OpenWay: The Belgian company that saved Russia’s financial system,” *The Brussels Time*, August 17, 2022, <https://www.brusselstimes.com/273082/openway-the-belgian-company-that-saved-russias-financial-system> (accessed February 8, 2023).

¹⁴ KSE (n 6).

¹⁵ NAPC, War & Sanctions, “International Sponsors of War,” <https://sanctions.nazk.gov.ua/en/boycott/> (accessed February 8, 2023).

Due to the apparent inconsistencies between OpenWay's statements and these allegations, we are requesting a clarification from OpenWay on whether it intends to follow through on its commitments and leave the Russian market and how it is practising heightened human rights due diligence in light of the war in Ukraine. 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 the company's commitment to abiding by the UNGPs. It remains to be seen how directly OpenWay 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 OpenWay has conducted and continues to conduct heightened human rights due diligence 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.

In consideration of the above points and B4Ukraine's Declaration,¹⁶ we request an urgent dialogue with OpenWay'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, February 28th, 2023.

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

Sincerely,

The B4Ukraine Coalition

¹⁶ B4Ukraine, "About," <https://businessforukraine.info/about> (accessed January 2, 2022).