

From Compliance to Conscience:

Multinational Companies and Due Diligence Practices in Russia

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EXECUTIVE SUMMARY

Since the start of Russia's full-scale invasion of Ukraine, B4Ukraine - a global coalition of civil society organisations united to block the financial and material resources fuelling Russia's war - has engaged with over 120 multinational companies to call for a responsible business exit from Russia and ask them to meet their obligations under the international business and human rights framework.

Contacted companies: 125

Responses: 50

Meetings: 15

Findings:

Multinationals doing business in Russia may be compliant with sanctions, but they are failing to meet their obligations to protect human rights.

Despite Russia's annexation of Crimea in 2014, the majority of companies we have engaged were unprepared to handle the heightened risk of operating in the Russian Federation. They were largely unaware of their "obligations" under the international humanitarian, human rights, and business and human rights frameworks, as well as their potential contributions to the suffering of the Ukrainian people. This indicates that companies are not observing heightened human rights due diligence and are not applying a conflict-sensitive approach. Companies appear to be either unaware, indifferent to or dismissive of these obligations.

No company that we engaged with recognised that Russia's 'aggressor state' status imposes a duty on them to, at a minimum, assess, avoid or mitigate their connection to the war efforts of the aggressor country to "ensure that they do not exacerbate the situation."

Companies cite three main reasons to remain.

The most common justification for continuing operations in Russia is the 'essentiality argument'. Notably, companies in the pharmaceutical, fast moving consumer goods (FMCG), and food and beverage sectors, which make up a significant part of those still operating in Russia, exploit the essentiality argument to justify their position.

Companies who do not have an option of using this argument as their operations cannot even remotely be considered essential, opt for the 'employee obligations' and other arguments.

Companies, particularly those in the unsanctioned sectors, have been found to express a need for stricter regulations (either genuinely or to justify ongoing operations). They contend that their legal obligations, such as contractual commitments and responsibilities to shareholders, oblige them to continue operating in the country unless overridden by obligatory legislation or sanctions.

Recommendations:

State action is needed

The G7 and allied countries urgently need to address the role that unsanctioned business sectors are playing in Russia today. They should look beyond sanctions compliance to better define and regulate the expected standard of corporate conduct, encourage responsible disengagement from Russia, and promote ethical business practices that align with internationally accepted and endorsed human rights principles. This includes, but is not limited to, issuing business advisories, further reinforcement and implementation of existing regulations, and additional guidance and regulations. Further legislation with regards to business operations in aggressor states and obligatory implementation of heightened human rights due diligence must be introduced.

Wider transparency and accountability must be imposed to compel companies to implement heightened human rights due diligence when operating in conflict-affected and high-risk areas (CAHRA), as well as in overall operations. Mechanisms of assessment and monitoring of business activities in CAHRA (and particularly aggressor states) must be implemented, which includes regular and mandatory reporting.

Governments are encouraged to introduce deterrent measures such as financial penalties, restriction of access to public procurement opportunities, exclusion from state-owned investment funds and greater disclosure for companies continuing to operate in aggressor states.

INTRODUCTION

On February 24, 2022, Russia initiated a full-scale invasion of Ukraine, flagrantly violating Ukraine's territorial integrity, sovereignty, and the Charter of the United Nations, in an act that has been recognised by the UN as aggression. The invasion was followed by an unprecedented scope and scale of international sanctions aimed to “impose severe consequences on Russia for its actions” and “cripple the Kremlin’s ability to finance the war.”

Since the invasion, there has been a strong spotlight on international business operations in Russia, on a scale not yet seen in other international conflicts. This is largely due to the severe economic sanctions placed on the Russian Federation, state owned entities, and individuals close to the Kremlin. Nevertheless, the focus has highlighted the extent to which corporate operations fund and support oppressive regimes.

While extensive in scope, the sanctions packages do not apply to certain sectors. Companies in ‘unsanctioned’ sectors must decide for themselves whether to ‘self-sanction’ and cut ties with Russia or continue business.

Initially, it was widely reported that over 1,000 multinational companies were voluntarily exiting the Russian market. Since then, however, doubts and disputes have arisen regarding the true extent of corporate exits. While some significant players, such as Société Générale and FMC, promptly followed through on their pledge to leave Russia, many large multinational corporations and well-known brands have scaled back operations, but continue to do business with Russia in some form. Others who suspended operations temporarily at the start of the war, have since quietly returned to the market. Meanwhile, the Russian government has placed obstacles in the way of those trying to cut ties, slowing the path to exit for many.

According to the data collected by the Kyiv School of Economics, which analysed 3,316 multinational companies and their position on the Russian market, only 254 companies that had a local Russian subsidiary at the start of the war fully exited the country (as of July 02, 2023). In contrast, 1,352 companies have decided to stay and continue their operations in Russia, while 1,710 foreign companies have reduced, suspended, or ceased operations in the country. It is important to note that the latter group is highly diverse, ranging from companies who maintain a minimal presence in Russia, to those who claim to have suspended advertising and media spending or new investments.

In 2022, global corporations made over \$213.9 billion in revenues through their local Russian businesses. **\$14.1 billion of this was net profit**, and we know that they paid **\$3.5 billion in profit taxes** on those takings. This figure is likely only the tip of the iceberg as it does not include data on other significant taxes levied on Russian companies, such as those related to employees' salaries or sales, like income tax and VAT.

These companies continue to pay taxes in Russia, indirectly financing the war and the severe breaches of international human rights and humanitarian law that we see in Ukraine today.

By examining the impact of the B4Ukraine Coalition's engagement with companies in the Russian market, we can shed light on the progress made towards responsible divestment and identify the challenges that lie ahead.

INTERNATIONAL STANDARDS ON BUSINESS AND HUMAN RIGHTS

Whether a business meets its responsibility to respect human rights is a distinct consideration from whether a business has complied with a state's regime for sanctions. When assessing their human rights responsibilities for ongoing operations in and with Russia, companies should use the United Nations Guiding Principles on Business and Human Rights (UNGPs).

The UNGPs recognise an independent responsibility on all businesses in all industries and all contexts to respect human rights, regardless of any state's willingness or ability to enforce their responsibility. Unanimously endorsed by the UN Human Rights Council, the UNGPs now set the standard for responsible business conduct both in and outside conflict.

The UNGPs clarify that in conflict-affected territories, businesses are to undertake 'heightened human rights due diligence' to address both their impacts on individuals and on the conflict, and should account for not only human rights but international humanitarian law. Where a business causes or contributes to a negative impact on human rights, they owe remedies and reparations.

Where they are only directly linked to a harm by a business relationship, businesses have a responsibility to use their leverage to affect change. Where the use of leverage is impossible or where violations are particularly severe, the UNGPs recognise a responsibility on businesses to terminate relationships or operations so as to ensure they do not 'contribute to' a harm.

According to the UNGPs and the United Nations Working Group on Business and Human Rights, a business that was only 'directly linked to' a harm may start 'contributing to' it (and incur a responsibility to provide remedies) if in situations of widespread or severe breaches of international human rights and humanitarian law the business fails to use leverage appropriately or remains in a relationship it should have exited.

B4Ukraine believes that standard applies in the situation of multinational or transnational businesses that have stayed in Russia without adequate justification. Throughout the conflict, evidence indicates that Russia is engaged in widespread and systematic violations of human rights and humanitarian law, often arising to the level of international crimes. Businesses that cannot or do not use their leverage to stop such violations are now contributing to those violations and owe reparations for the harms Ukrainians are experiencing.

While operating in conflict-affected and high-risk areas, companies must exercise heightened human rights due diligence based on four processes:

1. Identifying and assessing actual or potential adverse conflict and human rights impacts,
2. Acting on the findings from impact assessments across relevant functions and company processes,
3. Tracking the effectiveness of measures and processes to address adverse conflict and human rights risks or impacts,
4. Communicating on how risks or impacts are being addressed and showing proof of adequate policies and practices in place.

Building off the UNGPs, the OECD has developed Guidelines for Multinational Enterprises and Due Diligence Guidance for Responsible Business Conduct, as well as other guidance and regulation (some specifically for Ukraine), to promote responsible business conduct and respect for human rights. The Guidelines are binding for signatory governments, which must ensure that they are implemented and observed. The OECD identified three fundamental questions to help assess potential negative impacts:

- 1) Do the company's actions, omissions, products, or services have an actual or potential adverse impact on human rights or the conflict?
- 2) If so, do the company's activities, including actions or omissions, increase the risk of the adverse impact occurring?
- 3) If so, are the company's activities, including actions or omissions, alone enough to result in that impact?

Businesses operating in Russia, apart from adhering to guidelines for conflict-affected and high-risk regions, must recognize the fact that they are operating within an aggressor state. Aggression is defined as the "use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations." Russia's invasion violated the UN Charter (Article 2(4)), which prohibits the aggressive use of force without legal justifications, thus constituting the most severe violation of international law - aggression. While the UNGPs do not directly address the question of operating in an aggressor state, the interpretation of Principle 23 states that "if the use of force - the war - is deemed unlawful under international law, in addition to respecting human rights and international humanitarian law, at a minimum, business should assess, and avoid or mitigate its connection to the war efforts of the aggressor country to "ensure that they do not exacerbate the situation."

Given the impact of the war between Russia and Ukraine on the global economy, it is imperative that the existing guidelines be further reinforced, and additional suggestions considered and implemented. As such, the B4Ukraine Coalition's direct engagement and bespoke research into the activities of 125 companies in the context of the war in Ukraine offers insight that is valuable for the further development of this field.

B4UKRAINE AND METHODOLOGY

B4Ukraine has three key asks for companies in Russia:

1) Exit the Russian Market: We request identified companies to end their business/trade/investment in Russia and fully exit the Russian market. This entails a clear commitment to cease all operations and presence in Russia.

2) Commit to Staying Out: In addition to the exit, we urge companies to refrain from engaging in any future business/trade/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.

3) Conduct Heightened Human Rights Due Diligence: Companies should establish and implement comprehensive human rights due diligence measures for any exit from or re-engagement with Russia.

Beginning in October 2022, B4Ukraine undertook efforts to directly contact companies regarding their ongoing business activities in Russia. Companies were initially chosen through independent research conducted by member organisations of B4Ukraine, and subsequently narrowed down based on collectively agreed criteria, namely:

- 1. Presence:** Evaluating whether the company is still operating in Russia and scrutinising justifications provided. We also seek clarification from companies claiming to provide essential goods and services to understand the criteria and process used to reach that conclusion.
- 2. Power and influence:** Assessing the company's status as a leader in its sector and examining how it leverages its influence to set an example and positively impact others.
- 3. Profit:** Analysing the company's contribution as a significant taxpayer and/or employer in Russia. We consider the potential economic impact of their exit, including the loss of payroll and corporate taxes to Russia's state coffers, on its ability to sustain the war in Ukraine.
- 4. Proximity:** Investigating whether the company has any formal or informal relationships with value chain partners involved in human rights violations in Ukraine. We also explore if the company's activities or those of its value chain partners cause, contribute to, or are directly linked to human rights harms in Ukraine.

These criteria led to a list of 100 companies, identified as key targets. The list was amended as new information came to light, such as potential continued operations contrary to public statements, re-entry into the Russian market, or a company exit.

Prior to engaging with potential businesses, B4Ukraine conducted thorough research for each targeted company. Working groups composed of B4Ukraine partners and experts analysed the findings and strategized on the best approach for contacting the companies, such as establishing connections through investor groups or by direct letter correspondence. In researching individual companies and compiling information for bespoke letters, the B4Ukraine Business Engagement working group used various sources, including:

1. [The KSE Institute Leave-Russia database](#)
2. [The Yale School of Management database](#)
3. [The University of St. Gallen analysis paper](#)
4. [Squeezingputin.com](#)
5. [epravda.com.ua](#)
6. Coalition member input
7. Russian customs data
8. Companies' documents such as financial reports, statements, locations, offices, and job listings in Russia
9. Open-source information in English, Ukrainian, Russian, and local languages.

BUSINESS ENGAGEMENT LETTERS:

When direct contact was chosen as the best means of contacting the company, B4Ukraine used several letter formats across the engagement period:

1. The first letter focused on pointing out the inconsistencies between the companies' internal human rights policies (usually found in the companies' Human Rights Reports, Sustainability Reports, ESG Reports, Modern Slavery Reports, etc.) and their continued operations in Russia.
2. The second letter highlighted the many legal, financial, and reputational risks companies face while continuing their Russian businesses. This second letter was only introduced to companies contacted after the first anniversary of the war in February 2023.
3. Letters to companies who have exited Russia to welcome the move and urge them to stay out until the territorial integrity of Ukraine was restored, reparations paid, and accountability imposed. The letters contained an invitation to discuss obstacles faced while exiting with the purpose of analysing best practices.

Upon gathering tailored information concerning the company's business operations in Russia, including any changes in scope since the invasion, as well as identifying any discrepancies between their statements and the research findings, we request companies to:

- Address specific questions aimed at explaining the identified inconsistencies.
- Provide additional clarification regarding their rationale for maintaining a presence in Russia.
- Arrange urgent meetings with us to discuss and explore potential solutions to the identified issues.

The letters were addressed to key individuals within the company, including members of the Executive Team, the Board of Directors, and other relevant personnel, such as those in investor relations and media teams.

After sending the initial letter, we allowed a two-week timeframe for companies to provide a response. In the event that no response was received within this period, we followed up with a subsequent letter requesting their response. If the company still did not respond, we forwarded the letter to the Business and Human Rights Resource Centre, a B4Ukraine Coalition member, for further follow-up and engagement.

The letters and responses are available at the [B4Ukraine website](#).

Outreach and Responses:

The B4Ukraine Coalition actively engaged with and sent tailored letters to 125 companies from October 2022 to June 2023, aiming to address their business operations in Russia.¹ Throughout this period, a total of 150 letters were sent, accounting for instances where multiple outreach attempts were made due to evolving information, inclusion on the NACP sponsors of war list, or requesting a comment to specific publications containing allegations regarding their activities in Russia.

Out of the 125 companies contacted, we received responses from 50, resulting in a response rate of approximately 40%.

We have arranged and held meetings with 15 companies, making the meeting rate approximately 12%.

These responses varied in nature and were classified into three categories: dismissive, substantive, and mixed. Dismissive responses encompassed cases where companies failed to address any of the questions raised, referred us to their existing statements on the war or provided minimal information. On the other hand, substantive responses indicated companies' willingness to engage by answering questions, sharing non-public information, explaining their due diligence procedures, discussing complexities encountered during the exit process, or providing rationale for their continued presence. Mixed responses fall between these categories, with companies partially addressing the questions but refusing further engagement with B4Ukraine.

1. See annex

Furthermore, we proactively reached out to companies that had successfully exited Russia, as classified by the KSE Leave Russia tracker, and demonstrated good practices. The objective was to gain insights into best practices and challenges faced during the exit process, aiming to establish a comprehensive understanding and formulate broader recommendations. As expected, we received fewer responses in this area of engagement (letter format 3). The following analysis focuses on responses received on letter formats 1) and 2).

ANALYSIS - COMMON TRENDS, JUSTIFICATIONS, AND ISSUES

Essentiality

Overwhelmingly, the companies engaged by the B4Ukraine Coalition in the Russian market utilised the "essentiality" argument to justify their continued presence in the country.² This line of argumentation was seen predominantly in the FMCG, food and beverage and pharmaceutical sectors. Companies claiming that they are providing essential goods and services in Russia include Unilever and Mondelez, both of whom continued producing and selling sweets, chocolates, and ice creams in Russia, under a blanket argument that these items are essential. There is obviously no merit to these claims, as Oreos and Cornettos cannot be considered essential.³ While there are some guidelines highlighting which goods can be considered essential, most notably with regards to medicine (WHO model list of essential medicines), the lack of clear guidance and definitions allowed many companies to use the argument to hold on to market share, rather than taking a more responsible approach to business operations.⁴ These companies have amassed significant profits in Russia, with their taxes indirectly contributing to the war in Ukraine.

The key takeaway is that, despite relying on this justification to continue operations in Russia, when we asked specific questions on the processes used to determine which products are considered essential, companies failed to provide details. For example, companies did not answer questions such as: "Can you provide your definition and list of goods considered essential in light of the particular circumstances of this conflict; Can you provide a list of goods that you stopped producing since the outbreak of the war because they are not considered essential; Has the company considered whether its goods can be replaced with local substitutes; Has the company applied a conflict-specific approach in determining the essentiality of its products?"

None of the companies approached provided their definitions and extensive lists of essential goods, but companies in the pharmaceutical sector provided slightly more clarity than food and beverage companies. For example, Novartis, Bayer, and Pfizer offered further explanations on which products in the pharmaceutical and agricultural sectors were suspended and which were considered essential.⁵

2. It is important to note that some companies have refrained from using the term 'essential goods' and opted for utilising euphemistic language that bears the same sentiment, such as 'basic foodstuff' or referring to the 'responsibility to the food/agricultural supply chain'.

3. While a unified list of all essential foods does not exist in the international regulatory framework, there are sources which could be applied through analogy in determining which foodstuffs are considered essential (in conjunction with other international business and human rights legislative and regulatory documents): Sphere, "The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response," 2018, <https://spherestandards.org/handbook-2018/> (accessed May 4, 2023); WHO, "Technical note Supplementary foods for the management of moderate acute malnutrition in infants and children 6–59 months of age," 2012, <https://apps.who.int/iris/handle/10665/75836> (accessed May 4, 2023).

4. B4Ukraine, "The Business of Leaving: Barriers to a responsible exit from Russia and how to overcome them," forthcoming.

5. B4Ukraine has not received responses from these companies, therefore they offered no further clarification on their public statements regarding essentiality.

Other pharmaceutical companies likewise utilise this argument but with less clarity, failing to provide thorough lists and definitions, including Johnson & Johnson, Kimberly-Clarke, Eli Lilly, Abbott, and others.

Companies like Mars, Nestle, Auchan, PepsiCo, Cargill, and Procter & Gamble, have not provided answers or specificity to this question.

Employee safety

Companies also significantly cited their obligations to their employees and argued that their staff should not be held accountable for the actions of the Putin regime. Contacted companies failed to answer our inquiry on whether they have considered other options of safeguarding their employees before deciding to stay in the Russian market.

Russian legislation obliges all organisations, including international businesses that are currently operating in Russia, to conduct military registration of the staff if at least one of the employees is eligible for military service. 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.

The same legislation makes it almost impossible for companies to completely avoid contributing to the war efforts and following their obligations of implementing heightened human rights due diligence, including towards their employees in Russia.

In some cases, companies citing their obligations to their employees did not know whether any of their Russian employees have been drafted, and when enquired, most admitted to complying with the Russian law in delivering summons of conscription. This was revealed in our meetings with at least 5 companies, adding that they are attempting to minimise their obligations, without providing further details.⁶ All of the companies failed to definitively answer questions regarding employee safety such as: “Can you clarify how the business and human rights framework and human rights due diligence processes were used to minimise the risks and impacts to your employees; Has the company received requests to deliver conscription notices in line with Russian legislation; How many notices has the company delivered; How does the company reconcile its claims of concern over its Russian employees with their continued operations in the country which obliges them to deliver conscription notices; How many employees have been drafted, sent to the battlefield, and killed?” Some additional companies that cited employee welfare but have not provided further clarification regarding conscription and due diligence include Philip Morris, Pernod Ricard, JTI,⁷ Heineken, Danone, Mondelez.

6. None of the companies were prepared to share details and specific numbers of delivered notices and drafted employees.

7. B4Ukraine has not received responses from these three companies, therefore they offered no further clarification on their public statements regarding employee safety.

Furthermore, companies such as Raiffeisen Bank International⁸ highlighted the increased barriers to making an exit from Russia - citing the complexity of the legal, administrative, and regulatory framework in Russia. While it is true that ending operations in Russia presents significant challenges, timely actions towards divestment could have simplified the process. Moreover, the regulatory landscape is continuously evolving, making any further delays or attempts to prolong operations increasingly problematic. Some companies that have cited 'complexity' as a reason for continued presence in Russia include Mondi, Fortum, Siemens Energy, Carlsberg.⁹

Existing legal obligations

Interestingly, companies not subject to sanctions have been found to express a desire for more stringent regulation, whether genuinely or as a justification for continuing business. They argue that their legal obligations, including contractual agreements and responsibilities towards their shareholders, compel them to maintain operations in the country. In other words, companies state that they can only fully exit the Russian market if more stringent sanctions or hard law are implemented, which would override their contractual obligations to customers and contractors in Russia, as well as their duty to shareholders to maximise profits.

For example, the CEO of Accor stated that pulling out of Russia is “not an option” until there is a legal basis to do so, otherwise, the “fiduciary duty to make money for shareholders holds sway.” Likewise, Metro AG confirmed that staying in Russia was the “right decision, not only, but also in the interest of preserving the value of this company for its shareholders.” Philip Morris International, one of the biggest revenue generators in Russia in 2022, said that it would “rather keep” its Russian business due to the “duty to shareholders to recover value.” Yves Rocher cited “the preservation of the private interests of the Rocher Group” as one of its primary objectives.

Sanctions compliant but failing to meet human rights responsibilities

Some companies justify their ongoing business activities in Russia by claiming compliance with sanctions. Essentially, they argue that because they adhere to sanctions, they are entitled to continue operating in the country. All of the examined companies confirm that they are compliant with sanctions in continuing operations in Russia.

While compliance with sanctions is essential and obligatory, it should not be confused with fulfilling a company's responsibilities under the international standards for business and human rights. Observing and respecting the sanctions regime is complementary, but distinct, from observing and respecting responsibilities as outlined in the internationally endorsed and accepted UNGPs. Therefore, a company's compliance with its human rights responsibilities is not met by respecting sanctions alone.

8. Emphasised in the meeting between B4Ukraine and Raiffeisen Bank International.

9. Carlsberg has since reached a deal to sell its Russian business and is in the process of withdrawing from Russia.

This situation raises questions about the effectiveness of current sanctions regimes and the need for comprehensive guidelines to guide responsible business conduct in conflict-affected regions, particularly in cases of aggressor states. It underscores the importance of establishing a detailed legal framework that addresses the complexities of operating in conflict zones and provides clear guidelines for responsible disengagement. Such guidelines should clearly emphasise that compliance with sanctions does not substitute responsible business conduct and other obligations under the UNGPs. The notion likewise highlights the complexities arising between legal obligations and ethical considerations, as well as compliance with the letter of the sanctions and the ‘spirit’ of them. Companies should not solely rely on compliance with sanctions as a justification for their continued presence, but rather explore ways to align their actions with broader internationally endorsed principles.

Our business engagement demonstrates a need for international stakeholders, including governments, regulatory bodies, and industry associations, to collaborate and develop comprehensive guidelines that clarify the expectations for responsible business conduct which highlight and confirm that sanctions compliance is the bare minimum and businesses operating in aggressor states must go beyond them. Such regulation should not only provide companies with a legal basis for disengagement but also ensure that their actions are aligned with international human rights standards. Particularly businesses operating in unsanctioned sectors have demonstrated a lack of cooperation with international efforts to curtail economic resources flowing into Russia with the ultimate goal of ending the war. This demonstrates the urgent need for market guidance and increased accountability measures within the unsanctioned sector, including clearly outlining: expectations around carrying out heightened human rights due diligence; defining terms such as ‘essentiality’; cautioning risks such as mobilisation and other risks amounting to complicity and complacency; and responsibly terminating existing legal obligations.

Overarching Findings

A general and alarming pattern seen in most companies is their failure to apply a conflict-sensitive approach and heightened human rights due diligence as prescribed by international frameworks such as the UNGPs and the OECD guidelines. Overall, B4Ukraine’s business engagement has found that companies have not conducted a thorough evaluation of the conflict dynamics and related risks particular to the war against Ukraine. The conflict-sensitive analysis should include an evaluation of the “underlying drivers of conflict, as well as potential flash-points or triggers of violence, alongside human rights abuse which must be avoided,” it should be ongoing, clear, and built on engagement with relevant stakeholders. Whether they have decided to leave or stay, and whatever their reasoning, businesses are not neutral actors even when they appear as to not have taken sides.

None of the companies that we have engaged with have acknowledged the fact that they are operating in an aggressor state: “In this case, in addition to respecting human rights and international humanitarian law, at a minimum, business should assess, and avoid or mitigate its connection to the war efforts of the aggressor country to “ensure that they do not exacerbate the situation.”

Overall, the analysis reveals several key points:

1. The lack of binding and non-binding guidance with regard to business in CAHRA (and aggressor states in particular) allowed companies to exploit loopholes in justifying their continued operations in the country. The exploitation of loopholes includes, but is not limited to, using blanket arguments, such as essentiality, employee, or contractual obligations, to justify ongoing operations.
2. A significant proportion of both sanctioned and unsanctioned companies are operating within the confines of sanctions as a routine and acceptable practice, rather than treating compliance with sanctions as necessary but not sufficient to comply with their obligations to respect human rights under the UNGPs and OECD guidelines.
3. Companies are failing to conduct heightened human rights due diligence and are not using a conflict-sensitive approach.

CALL TO ACTION – ENFORCEMENT AND GUIDANCE

While civil society’s efforts to engage with companies operating in Russia have yielded valuable insights, a more substantial impact can only be achieved through robust intervention from governments and regulatory bodies.

The analysis of our business engagement reveals that a significant portion of companies justify their presence in the Russian market by relying on the blanket argument of providing essential goods and services, employee safety concerns, and legal/administrative/regulatory complexities that are only due to increase as time passes and war continues. As established, much of these arguments are unwarranted, unsubstantiated, and, in certain cases, cynical.

Considering this, we emphasise the urgent need for governments to take decisive action by implementing more stringent regulatory measures, guidance, and laws to discourage company engagement in and compel their exit from the Russian market. This conclusion is grounded in the existing international legal and regulatory framework governing business and human rights, which encourages government action in the prevention of corporate abuses of human rights.

1. Strengthening International Legal Frameworks:

The current international regulatory framework governing business and human rights is largely based on voluntary contributions and self-regulations by businesses themselves. While many companies have adopted policies, principles, and tools to implement human rights due diligence, ESG or SDG goals, the ultimate driving mission of a corporation as a legal entity is maximisation of profit. Hence, it is not realistic to expect companies to efficiently self-regulate in conditions which promise high profitability, as is evident from the examples of Mars, Mondelez, Japan Tobacco International, or Philip Morris, all of whose revenue reportedly increased in 2022.

It is clear that these companies, like countless others, have not considered the voluntary international business and human rights framework in making their decision to stay in the Russian Federation. The importance of thorough human rights due diligence and a conflict-sensitive approach was disregarded, resulting in a failure to acknowledge the severe consequences of the war. This includes overlooking war crimes and widespread human rights abuses, neglecting the principle of proportionality, and lacking evidence of meaningful engagement with relevant stakeholders during the decision-making process. Furthermore, the potential negative impacts of operations, such as funding the war, were disregarded.

Therefore, there is an urgent need for mandatory, legally binding regulation in the field of business and human rights that will hold companies accountable for complicity in human rights abuses, in this case, contributing to the Russian economy and financing Kremlin's illegal war, and for operating in aggressor states in the future.

- In line with their obligations, governments must issue business advisories for businesses operating in areas of heightened risk of human rights abuses, particularly aggressor states. This would oblige companies to understand and act in accordance with the heightened legal, operational, reputational, and political risks that arise from operating in such areas. Business advisories would encourage companies to align and inform their actions with the spirit of the sanctions, and follow the UNGP principles with higher diligence.
- Governments should actively reinforce and expand the existing international legal framework, including the UNGPs and the OECD Guidelines. These frameworks outline the responsibilities of businesses to respect human rights and the corresponding obligations of states to protect against human rights abuses. Governments must ensure that these principles are effectively implemented and enforced, emphasising the extraterritorial application of human rights obligations to prevent complicity in human rights abuses.

2. Enhancing Regulatory Oversight:

Governments and regulatory bodies should adopt a more proactive approach to monitor and assess the conduct of companies operating in high-risk regions, particularly aggressor states, including Russia. The regulatory oversight can be strengthened by establishing:

- Clear guidelines and expectations for companies regarding their responsibilities to respect human rights, conduct due diligence, and assess the potential adverse impacts of their operations. A mapped-out guideline of processes that companies need to develop and implement, in collaboration with experts and appropriate stakeholders. Some of these are already outlined in various guides provided by the UNDP or the OECD, however an obligatory reporting mechanism coupled with deterrent and punitive measures and increased scrutiny would require companies to approach the issues with greater urgency. For example, there should be a clear expectation from companies to create lists of what they consider 'essential goods and services', what operations have they stopped, and which ones have continued.
- Requiring regular reporting to ensure compliance, transparency, and accountability. Requiring companies to establish processes to regularly monitor the complexities of a conflict and answer the questions outlined by the UNDP and OECD with regard to their contribution to the conflict and report them to regulatory bodies available for public scrutiny may highlight companies in need of further oversight.
- Regulatory bodies should collaborate with civil society organisations to gather and assess information on companies' activities in conflict-affected areas and aggressor states and ensure adherence to international sanctions. In doing so, respecting sanctions should be a bottom line, rather than encouraged behaviour. Rather companies should be compelled to act in a way that does not undermine the effects of the sanctions (i.e., acting in line with the 'spirit' of the sanctions). For example, while foodstuffs and medicine are exempt from sanctions, companies should be encouraged to provide the goods that are truly essential to the local population, rather than continuing business as usual, increasing net profits, and contributing to the aggressor's treasury, simply because they are sanction compliant.

3. Introducing Deterrent Measures:

Governments should go beyond voluntary guidelines and implement deterrent measures to encourage companies to withdraw from the Russian market. These measures can include financial penalties, restrictions on access to government contracts, and exclusion from public procurement processes, and greater transparency. These measures will create a stronger deterrent effect and incentivize companies to align their operations with international standards and goals.

- **Financial Penalties:** Governments can impose financial penalties on companies that continue to operate in the Russian (aggressor state) market. These penalties should be proportionate to the proximity and duration of activity and should impact a company's profitability.
- **Restricting Government Contracts and Exclusion from Public Procurement and state-owned investment funds:** Governments should incorporate provisions that prohibit companies engaged in business activities in aggressor countries, such as Russia, from accessing government contracts. This restriction sends a strong signal that companies that contribute to human rights abuses and conflict will face exclusion from lucrative public procurement opportunities. Clear guidelines and criteria should be established to determine the eligibility of companies, ensuring that only those committed to responsible business practices can access public procurement opportunities and state-owned investment funds.
- **Greater Disclosure:** Governments can create the framework to raise awareness and expose companies involved in unethical practices or violations of international sanctions. Governments should encourage transparency and promote the disclosure of information related to companies' operations, supply chains, and engagement in aggressor countries. This information can empower consumers, investors, and other stakeholders to make informed decisions.

By implementing deterrent measures, governments can send a strong message that business operations in aggressor states are unacceptable and come with significant consequences. These measures, coupled with enhanced regulatory oversight and international cooperation, will exert greater pressure on companies to withdraw from the Russian market, thereby cutting off financial resources that contribute to Russia's war against Ukraine. It is through the collective efforts of civil society organisations, governments, and regulatory bodies that a more substantial impact can be achieved in fostering responsible business conduct and advancing peace and human rights.

CONCLUSION:

Since the annexation of Crimea in 2014, businesses have had 9 years to assess the high-risk environment and evaluate their potential contributions to human rights violations by Russia in Ukraine. With this in mind, it is unacceptable that the majority of companies were utterly unprepared to deal with the heightened risk of operating in the Russian Federation, their responsibilities under the international business and human rights framework, and potential contributions to the suffering of the Ukrainian people.

The analysis of B4Ukraine's research on and outreach to 125 companies has shown that companies failed to observe heightened human rights due diligence and adhere to the non-obligatory guidance provided in the current business and human rights framework, demonstrating the necessity for stringent and obligatory regulation. Companies did not apply a conflict-specific approach and have not taken the fact that they are operating in an aggressor state into account when continuing business in Russia.

Further guidelines and enforcement mechanisms are necessary, and regulations particularly in the area of essentiality and employee obligations are crucial in preventing companies from contributing to Putin's war efforts. Likewise, companies must understand that operating in line with sanctions is a minimum requirement, rather than acceptable practice, and that they should do more in order to align with the purpose of sanctions to block access to economic resources that are fuelling Russia's aggression.

Businesses must understand that they are not mere bystanders but potential contributors to the illegal war against Ukraine. The devastating toll of this aggression on Ukrainian lives cannot be overlooked. With over 24,000 innocent civilians killed or injured and the number of reported war crimes exceeding 95,000, the human suffering is unimaginable.

The time has come for businesses to grasp the gravity of their actions and their moral responsibility in the face of such atrocities. By choosing to continue their operations in Russia, these companies inadvertently support and enable the continuation of this destructive conflict. They become accomplices, directly or indirectly, to the suffering and loss experienced by countless Ukrainian families.

The choice is in the hands of businesses. Will they continue to prioritise profit at the expense of human lives, or will they rise above? The decision they make today will shape the lives of countless Ukrainians. We implore them to choose wisely.

ANNEX I

The tables below show contacted companies, categorised into responders (companies who have responded to the B4Ukraine letter) and non-responders (companies who have not provided a response). Whether or not the company has met with us to further discuss is also indicated. The responses are categorised into substantive, dismissive, and mixed responses. Dismissive responses are the ones that have not even attempted to answer any of the issues raised in the letter, or merely reiterated the company's public statements on the war. Substantive responses are those that have at a minimum attempted to provide some further explanation. It is important to note that none of the companies provided substantive answers to all of the questions. Mixed responses are those that could not be categorised as either entirely dismissive or substantive.

Some contacted companies (marked *) have exited the Russian market at the time of sending the letter, according to the KSE Institute Leave Russia tracker.

| RESPONDERS: | MEETING: | TYPE OF RESPONSE: |
|---------------------------------|-----------------|--------------------------|
| <u>Airbus</u> | N | Substantive |
| <u>Analog Devices</u> | N | Dismissive |
| <u>Auchan</u> | N | Mixed |
| <u>Barilla</u> | N | Dismissive |
| <u>Bayer</u> | Y | Substantive |
| <u>Carlsberg</u> | N | Substantive |
| <u>ComNav Technology</u> | N | Dismissive |
| <u>Danieli</u> | N | Substantive |
| <u>Danone</u> | N | Mixed |
| <u>Delta Tankers</u> | N | Dismissive |
| <u>Deutsche Telekom*</u> | Y | Dismissive |
| <u>Electrolux*</u> | Y | Substantive |
| <u>Fortum</u> | N | Substantive |
| <u>GE Healthcare</u> | N | Substantive |
| <u>General Electric Company</u> | N | Substantive |
| <u>Glencore</u> | N | Dismissive |
| <u>Heidelberg Cement</u> | N | Dismissive |
| <u>Heineken</u> | N | Substantive |
| <u>Hugo Boss</u> | N | Mixed |

RESPONDERS:**MEETING:****TYPE OF RESPONSE:**

| | | |
|--------------------------------------|---|-------------|
| <u>Infineum</u> | N | Substantive |
| <u>Intel</u> | ✓ | Substantive |
| <u>Keysight Technologies</u> | ✓ | Substantive |
| <u>LEGO</u> | N | Dismissive |
| <u>Lubrizol</u> | N | Substantive |
| <u>Match Group</u> | ✓ | Substantive |
| <u>METRO AG</u> | ✓ | Substantive |
| <u>Michelin</u> | ✓ | Substantive |
| <u>Mondelez</u> | N | Dismissive |
| <u>Mondi</u> | N | Mixed |
| <u>Nestle</u> | N | Substantive |
| <u>Novartis</u> | ✓ | Substantive |
| <u>OBI Group*</u> | N | Substantive |
| <u>OpenWay Group</u> | N | Substantive |
| <u>OTIS*</u> | N | Dismissive |
| <u>Peninsula Petroleum</u> | ✓ | Substantive |
| <u>PepsiCo</u> | N | Dismissive |
| <u>Pfizer</u> | N | Substantive |
| <u>Qualcomm</u> | ✓ | Substantive |
| <u>Raiffeisen Bank International</u> | ✓ | Substantive |
| <u>Rockwool</u> | N | Dismissive |
| <u>Rolls Royce</u> | N | Substantive |
| <u>Shell*</u> | ✓ | Substantive |
| <u>Siemens Energy AG</u> | N | Dismissive |
| <u>STMicroelectronics</u> | N | Mixed |
| <u>Texas Instruments</u> | N | Dismissive |
| <u>The Coca-Cola Company</u> | ✓ | Substantive |
| <u>Trafigura</u> | N | Substantive |
| <u>Traton Group*</u> | N | Dismissive |
| <u>UniCredit</u> | N | Substantive |
| <u>Vitol</u> | ✓ | Substantive |

NON-RESPONDERS:

Abbott

AbbVie

Afton Chemical Corp.

Accor

Apple

Atlassian

Auma Riester

Baker Hughes

Ball Corporation*

BNY Mellon

Bonduelle

Calian Group

Cargill

Chevron Oronite

CISCO

Claas

Deloitte*

Deutsche Fußball Liga

DP Eurasia

Dr. Oetker*

Dynacom Tankers
Management

Elanco

Eli Lilly

Fédération Française de
Football

Guess

Haas Automation

Harrods

IGP&I

Infosys

Johnson & Johnson

JP Morgan

Japan Tobacco
International

Kimberly-Clark

Kingspan*

Kirei Chemical

KPMG*

Lacoste

Legrand

Lenovo

Leroy Merlin

Liebherr

Luxoft*

Mars

Marsh McLennan*

Mazda

Microsoft

Minerva Marine

Mulliez Group

OnlyFans

Paul Smith

Pernod Ricard

Phillip Morris
International

Philips

Procter & Gamble

Publicis Groupe*

PwC*

Renault*

Schneider Electric*

Société Générale*

SLB

Starbucks*

Tesla

Thenamaris Ship
Management

TMS Tankers

Unilever

Wells Fargo

Yves Rocher

Zurich Insurance*

3M*

AirBorn

Bourns

Holt Integrated Circuits

Kyocera AVX

Vishay

Intertechnologies

Laird Connectivity

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