April 11, 2023

RE: Microsoft Corporation’s business operations in Russia

Dear Mr. Nadella,

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. 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 Microsoft Corporation’s (Microsoft’s) obligations under international humanitarian and human rights law and the company’s ongoing business operations and relationships in Russia that may contribute to, or be linked with, human rights harms.

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 22,000 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. 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 for an alleged scheme to deport Ukrainian children to Russia.¹

Moreover, as outlined below, recent developments in Russia point to an expanding universe of financial, legal, and reputational risks facing remaining companies.

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

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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. 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 Putin on March 3, 2023, enables the Russian government to suspend shareholders’ rights and implement external management in companies that don’t fulfil state defence contracts under conditions of martial law. By specifying the process of appointing Russian government representatives to manage businesses that fail to meet state orders, the latest Decree effectively creates a scenario of "partial nationalization."

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. By remaining in Russia, companies face the rising risk of criminal liability for complicity in international crimes, which can be prosecuted by domestic courts outside

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Russia under the doctrine of "universal jurisdiction." ⁵ Companies may also be exposed to financially material risks through operational restrictions, such as limitations of future government contracts. ⁶

Firms which continue to trade with Russia also face high levels of risk attached to financial transactions. 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. ⁷ 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. ⁸ 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.” ⁹ 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, the Ukrainian government’s National Agency on Corruption Prevention (NACP) has created 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.” ¹⁰ These companies are recognised as “international sponsors of war” by the Ukrainian state. 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 21 companies on the list, but the NACP notes that it will be expanded with “international companies that provide the public and private sector with goods and services of critical purpose, as well as [those that] contribute to the Russian budget.” ¹¹

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⁹ FATF (n 7).


In response to this unprovoked and unjustified war many companies have already left Russia. According to the Kyiv School of Economics Institute’s #LeaveRussia company tracker, Microsoft has scaled back some of its operations, but is continuing others.

On March 4th, 2022, Microsoft announced that it suspended all new sales of Microsoft products and services in Russia, as well as stopped “many aspects of [its] business in Russia in compliance with governmental sanctions decisions.” The statement also details Microsoft’s humanitarian aid to the people of Ukraine, as well as the actions the company has taken in order to provide improved cybersecurity to Ukraine, which is commendable.

In June, Microsoft announced further substantial cuts to its business in Russia, but that the company will fulfil its existing contractual obligations with its Russian customers.

In September, Russian customers were reportedly unable to download the new Windows 10 and 11 OS updates. However, Russian media reports that as of December 2022 Microsoft has permitted Russians to download and install its Windows operating system and updates, including Windows 11, 10, Windows 8.1. and Windows 7.

Last week, it was reported that Microsoft has been fined over $3 million for supposedly breaching U.S. sanctions on Russia (and other countries). The reason behind the fine was that Microsoft’s software and services were found to have been acquired by blacklisted individuals and companies in the Crimea region of Ukraine. The breach led to the sale of $12 million in products and services to blacklisted parties between December 2016 and December 2017. The company allegedly uses an indirect resale model in Russia to develop sales leads and negotiate bulk sales with end customers, which ultimately resulted in the failure to obtain accurate information about some of these end users. Some of Microsoft’s Russian employees have reportedly intentionally circumvented the company’s screening procedures. The company’s spokesperson stated: “Microsoft takes export control and sanctions compliance very seriously, which is why after learning of the screening failures and infractions of a few employees, we voluntarily disclosed them to the appropriate authorities.”

In light of Microsoft’s statements and the full-scale Russian invasion of Ukraine, we are writing now to enquire whether Microsoft has reconsidered its business practices that initially led to these sanction violations; what policies and practices has Microsoft employed to prevent such breaches from happening again; and what is the current exposure of Microsoft’s business in Russia.

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

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12 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.”
We seek to understand the status of Microsoft’s exposure to Russia and how Microsoft has conducted and continues to conduct heightened human rights due diligence, and how the findings of such a process have resulted in these continued business activities and relationships. As noted by the UNGPs:

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

In consideration of the above points and B4Ukraine’s Declaration, we request an urgent dialogue with Microsoft’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 the B4Ukraine Coalition at contact@b4ukraine.org to schedule a call. We kindly ask for your response by 5:00pm CET, April 25th, 2023.

Sincerely,

The B4Ukraine Coalition