



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