

Croix, le 11 Juillet 2023

Objet : Votre courrier du 30 juin 2023

Madame, Monsieur,

Votre courrier du 30 juin 2023 m'est bien parvenu et j'en ai pris connaissance avec la même attention que lors de votre premier envoi en janvier dernier.

Depuis le début de la guerre, Auchan a choisi de maintenir ouverts ses magasins en Ukraine et en Russie. Ce choix est clair, assumé, et s'inscrit dans le cadre strict du droit international et des engagements que nous avons pris. Il s'appuie d'une part sur notre volonté de ne pas abandonner nos employés locaux, d'autre part notre engagement de maintenir l'accès des populations civiles à des produits de première nécessité, notamment alimentaires.

Je vous ai adressé à cet égard une première réponse le 26 janvier de cette année, et me suis exprimé à plusieurs reprises depuis le commencement de la guerre en Ukraine.

Auchan respecte à la lettre les embargos et sanctions en vigueur. Le Groupe Auchan a stoppé tout investissement et soutien financier à sa filiale russe, et celle-ci opère en totale autonomie.

A l'inverse, depuis juillet 2022, le groupe Auchan contribue au fonctionnement de sa filiale ukrainienne et à la reconstruction de l'Ukraine. Quatre magasins ont été ouverts sur le sol ukrainien depuis le début du conflit, en particulier à Irpin et à Butcha. Auchan a reconstruit puis ré-ouvert en mai 2023 son magasin d'Odessa, détruit dans un bombardement en avril 2022. De même, nous préparons la réouverture d'un de nos magasins de Kharkiv, également endommagé par les combats. Ce soutien sans faille d'Auchan pour sa filiale ukrainienne et ses collaborateurs, j'ai eu l'occasion de le leur réaffirmer lors de mon déplacement à Lviv, Irpin et Kyiv en février 2023.

Je vous rappelle enfin que les informations de presse dont vous faites mention ont toutes été démenties à plusieurs reprises, que ces assertions étaient sans fondement, et que les investigations internes menées depuis ont confirmé notre position. Auchan ne conduit, ne soutient, ni ne finance aucune collecte pour les forces armées russes.

Nous sommes en lien à ce sujet avec les autorités françaises et ukrainiennes, et nous restons très attentifs aux évolutions de la situation sur le terrain.

En vous remerciant de nous avoir écrit, je vous prie d'agréer, Madame, Monsieur, l'expression de mes sentiments les meilleurs.

Yves CLAUDE

Président-Directeur Général

Yves Claude
Chief Executive Officer
Auchan S.A.
40, avenue de Flandre
59170 Croix
France

June 30, 2023

RE: Auchan's business operations in Russia

Dear Mr. Claude,

We are writing to follow up on our previous correspondence with Auchan dated 13th January 2023 regarding potential inconsistencies between Auchan's obligations, as articulated in the UN Guiding Principles on Business and Human Rights (UNGPs), and the company's ongoing business operations and relationships in Russia that may contribute to, or be linked with, human rights harms. While we received a response to our first letter answering some of our questions, we are writing once again to formally notify you on the serious and increasing risks the company faces by continuing its operations in Russia that may amount to complicity in human rights abuses committed by Russia,¹ and to urge Auchan to:

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

It has been over one year since Russia invaded Ukraine and the devastating impacts continue to shock the global conscience and shake the global economy. Russia is violating international humanitarian law (IHL), including war crimes and crimes against humanity, through attacks on civilians and civilian infrastructure (e.g., mass executions, sexual violence, torture, forcible transfer of civilians). More than 24,000 Ukrainian civilians have been killed and injured and millions more have been forced to flee their homes, creating one of the largest humanitarian and refugee crises of modern times. In recognition of the severity of abuses, in March 2023 the International Criminal Court issued an arrest warrant for Vladimir Putin to answer war crimes charges.²

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

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

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

On September 21, President Vladimir Putin escalated the war by announcing a “partial mobilisation” of the Russian population. The accompanying legislation ([Article 9 of Federal Law No. 31-FZ](#)) mandates all organisations, including the more than 1,500 international companies that are currently operating on a full or limited scale in Russia, to conduct military registration of the staff if at least one of the employees is eligible for military service.³ They must also assist with delivering the military summons to their employees, ensure the delivery of equipment to assembly points or military units, and provide information, buildings, communications, land plots, transport, and other material means of support to the war effort.

A new decree issued by President Vladimir Putin on March 3, 2023, enables the Russian government to suspend shareholders' rights and implement external management in companies that don't fulfil state defence contracts under conditions of martial law.⁴ By specifying the process of appointing Russian government representatives to manage businesses that fail to meet state orders, the latest Decree effectively creates a scenario of "partial nationalization."

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

³ Federal Law No. 31-FZ of February 26, 1997 "On mobilization training and mobilization in the Russian Federation" (as amended), <https://base.garant.ru/136945/> (accessed November 14, 2022).

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

⁵ International companies remaining in Russia are now at a greater risk of violating sanctions regimes as implementation of the legislation will likely involve transacting with sanctioned individuals or entities. Furthermore, new domestic civil and criminal cases against companies involved in violations of international law demonstrate the risk of significant liability for facilitating state-sponsored human rights abuses abroad (e.g., Lafarge case, Lundin case, Castel Group indictment, Nevsun holding, and Dassault Aviation, Thales, and MBDA France criminal complaint.) Victoria Riello and Larissa Furtwengler, "Corporate Criminal Liability for International Crimes: France and Sweden Are Poised To Take Historic Steps Forward," *Just Security*, September 6, 2021, <https://www.justsecurity.org/78097/corporate-criminal-liability-for-human-rights-violations-france-and-sweden-are-poised-to-take-historic-steps-forward/> (accessed November 14, 2022); The Sentry, "Breaking: France Opens War Crimes Inquiry Focused on Iconic Food and Beverage Conglomerate," July 1, 2022, <https://thesentry.org/2022/07/01/7216/breaking-france-opens-war-crimes-inquiry-focused-iconic-food-beverage-conglomerate/> (accessed November 14, 2022); Rfi, "French technology firm charged over Libya cyber-spying," July 2, 2022, <https://www.rfi.fr/en/business-and-tech/20210701-french-tech-firm-charged-over-libya-cyber-spying> (accessed November 14, 2022); Preston Lim, "Canadian Supreme Court Allows Corporate Liability for International Law Violations," *Lawfare*, March 12, 2022, <https://www.lawfareblog.com/canadian-supreme-court-allows-corporate-liability-international-law-violations> (accessed November 14, 2022); Sherpa, "Aiding and abetting war crimes in Yemen: Criminal complaint submitted against French arms companies," June 2, 2022, <https://www.asso-sherpa.org/aiding-and-abetting-war-crimes-in-yemen-criminal-complaint-submitted-against-french-arms-companies> (accessed November 14, 2022).

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

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

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

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

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

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

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

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

¹⁰ FATF (n 8).

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

¹² Venable LLP, "Do You Contract with State Governments? If So, Beware of Emerging State Sanctions' Obligations Related to Russia and Belarus," *JD Supra*, June 3, 2022, <https://www.jdsupra.com/legalnews/do-you-contract-with-state-governments-6537229/> (accessed November 14, 2022).

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

sector with goods and services of critical purpose, as well as [those that] contribute to the Russian budget.”¹⁴ Auchan, as well as the company’s CEO, Yves Claude, its Western Territory Director, Philippe Courbois, and Communication Director, Antoine Pernod, are currently on the list as sponsors of war.¹⁵

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

In response to this unprovoked and unjustified war¹⁶ many other companies have already left Russia. According to the Kyiv School of Economics Institute's #LeaveRussia [company tracker](#), Auchan has decided to stay and continue its operations in Russia.

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

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

1. On March 27th, 2022, Auchan announced that it is continuing its Russian operations in order to “meet the essential food needs of the civilian population.”¹⁷ In the statement, Auchan noted that it will stop investments to its Russian branch, but at the same time, all existing stores will continue their work and there are no plans to close them.¹⁸

-Can Auchan provide its definition and list of services or goods it considers essential in light of the particular circumstances of this conflict?

-Can Auchan provide a list of services or goods that it stopped distributing or producing since the outbreak of the war because they are not considered essential?

-Has Auchan considered whether its services or goods can be replaced with local substitutes?

-Which stakeholders has Auchan engaged with in determining its policies and the decision to stay in the market?

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

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

¹⁵ NACP, “Sponsors of War – Auchan,” <https://sanctions.nazk.gov.ua/en/boycott/17/> (accessed June 30, 2023).

¹⁶ 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.”

¹⁷ Auchan, “Position of Auchan Retail on the pursuit of its activities in Ukraine and Russia,” March 27, 2022, https://www.auchan-retail.com/wp-content/uploads/2022/03/2022_03_27-memo-de-position-Ukraine_Russie_UK.pdf (accessed June 27, 2023).

¹⁸ Iz.ru, “Auchan and Metro announced their intention to stay in Russia,” May 5, 2023, <https://iz.ru/1508752/2023-05-05/ashan-i-metro-zaiavili-o-namerenii-ostatsia-v-rossii> (accessed June 30, 2023).

2. In March 2023, reports indicated that Auchan may be opening a new private label store in Russia.¹⁹ Auchan denied this allegation and stated that it is rebranding an existing store. In the statement, Auchan noted that it “respects the terms of the current embargoes and sanctions to the letter, and operates within the strict framework of the law.”²⁰ However, while compliance with sanctions is essential and obligatory, it should not be confused with fulfilling a company’s obligation 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.
 - How is Auchan ensuring its compliance with the UNGPs, the OECD guidance, and other internationally recognised standards on business and human rights?
 - Does Auchan recognise that it is operating in an aggressor state and that the UNDP requires companies in this case, in addition to respecting human rights and international humanitarian law, at a minimum, to assess, and avoid or mitigate its connection to the war efforts of the aggressor country to ensure that they do not exacerbate the situation?
3. Auchan has recently faced significant reputational damage because its goods were sent to Russian troops in Ukraine.²¹ Evidence confirms that Auchan was aware that the products marked as “humanitarian aid” were destined for the military. Auchan denies these allegations.
 - How has Auchan practised due diligence in preventing the direct supply of its products to the Russian military?
 - Does Auchan have policies, mechanisms, and tools in place to carry out enhanced due diligence of supply chains, intermediaries, customers, and end-users to prevent the supply of goods to the Russian army?
 - If so, how were they utilised for defining business connections that involve the Russian government, its agencies, and state-controlled or sanctioned organisations?
4. We understand and agree that Auchan has obligations towards its 30,000 employees in Russia. These obligations are laid out under the UNGPs and in the wider international human rights legal and regulatory framework.
 - Can Auchan clarify how it is working to minimise the risks and impacts to its employees?
 - How has the company applied heightened human rights due diligence to its operations in Russia considering the new Russian legislation requiring businesses to help conduct military registration, deliver the summons to its employees, and provide resources where required?
 - Has Auchan received any such requests, and if so, how has the company responded to them?
 - What is Auchan doing to safeguard its employees from mobilisation?
 - Have any of your employees been mobilised and, if so, what was Auchan’s role in the process?

¹⁹ Reuters, “French retailer Auchan to open private label store in Russia,” March 9, 2023, <https://www.reuters.com/business/retail-consumer/french-retailer-auchan-open-private-label-store-russia-2023-03-09/> (accessed June 30, 2023).

²⁰ Reuters, “Auchan denies opening new store in Russia, says rebranding existing one,” March 12, 2023, [https://www.reuters.com/business/retail-consumer/auchan-denies-opening-new-store-russia-says-rebranding-existing-one-2023-03-12/#:~:text=PARIS%2C%20March%2012%20\(Reuters\),re%2Dbranding%20an%20existing%20store.](https://www.reuters.com/business/retail-consumer/auchan-denies-opening-new-store-russia-says-rebranding-existing-one-2023-03-12/#:~:text=PARIS%2C%20March%2012%20(Reuters),re%2Dbranding%20an%20existing%20store.) (accessed June 30, 2023).

²¹ Business and Human Rights Resource Centre, “New evidence reveals Auchan was fully aware of destination of its goods supplied to Russian army,” March 3, 2023, <https://www.business-humanrights.org/en/latest-news/russia-auchan-allegedly-supports-soldiers-fighting-in-ukraine-despite-french-management-denials-recent-investigation-reveals-more-proofs/> (accessed May 4, 2023).

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

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

6. In contrast to many companies exiting the Russian market or minimising their Russian operations, Auchan is reported to be expanding its product portfolio in the country and was expecting to double its online sales in Russia in 2023.²²

-How does Auchan respond to these reports which are in apparent contradiction to its statement to stop investment in Russia and the expansion of its Russian business?

7. Auchan is one of the largest foreign companies still operating in Russia. In 2022, the company's annual revenue in Russia amounted to over \$3.46bn, which is an increase from £3.1bn in the previous year. Considering its significant position in the Russian economy, Auchan is a significant taxpayer in Russia. This could make the company indirectly involved in financing Russian aggression since corporate taxes are estimated to make up a significant proportion of Russia's GDP.

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

-How does Auchan reconcile this information with its March 2022 claim that Auchan Russia is not making any profit and is forecasting losses for 2022?

8. Auchan is a globally recognised name and one of the largest European retailers. By choosing to continue operating in Russia, the company inadvertently grants the regime a sense of legitimacy and approval. By leveraging the power and reputation of its name, Auchan indirectly expresses support for the regime's actions, which could be interpreted as condoning the war. The continued presence of Auchan stores in the Russian market creates a perceived association between the company and the Russian government, which may not align with the values of its customers.

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

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

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

We request an urgent dialogue with Auchan's relevant senior management and staff to discuss the company's ongoing activities and relationships in Russia and associated risks to the people of

²² Bohdan Miroshnychenko, "Шерше ля "Ашан". Замість виходу французька компанія розширює бізнес у Росії," *Economic Truth*, October 13, 2022, <https://www.epravda.com.ua/publications/2022/10/13/692564/> (accessed June 30, 2023).

Ukraine and the company. Please contact the B4Ukraine Coalition at contact@b4ukraine.org to schedule a call. We kindly ask for your response by 5:00pm CET, July 14th, 2023.

Sincerely,

The B4Ukraine Coalition

Business 4 Ukraine

Croix, le 26/01/2023

Objet : Votre courrier du 13 janvier 2023

Madame, Monsieur,

Votre courrier du 13/01/23 m'est bien parvenu et j'en ai lu attentivement son contenu.

Je me suis déjà largement exprimé depuis le commencement de la guerre en Ukraine, le 24 février dernier, pour expliquer les raisons de notre choix de maintenir ouvertes nos activités en Ukraine et en Russie tout en appelant, dès le début, à la paix dans cette région du monde. Notre métier premier est d'apporter aux populations, quel que soit le pays de présence, une alimentation de bonne qualité à un prix accessible. C'est ce que nous faisons au quotidien quelles que puissent être les difficultés rencontrées.

Depuis le 24 février, nos magasins sont restés ouverts en Ukraine malgré les combats et nos collaborateurs ukrainiens ont fait preuve d'un courage et d'un professionnalisme remarquables. Ils ont pu compter sur l'appui permanent de notre groupe, tant pour maintenir la chaîne alimentaire que pour soutenir les réfugiés et les populations en difficultés. Nous avons ainsi depuis le 24 février, directement ou au travers d'ONG, fourni 2300 tonnes d'aide alimentaire et 5,5 millions de dons en numéraire.

Cette volonté de continuer à nourrir, en Ukraine, les populations et de venir en aide à nos collaborateurs dans le pays guide également notre choix concernant nos activités en Russie au service de la population et de nos collaborateurs qui n'ont aucune responsabilité dans le déclenchement de cette guerre. Dans le même temps, nous avons, dès les premiers jours, stoppé totalement nos investissements dans notre filiale russe. Elle fonctionne aujourd'hui en autonomie maximale et ne bénéficie d'aucun apport financier de sa maison mère.

C'est la raison pour laquelle nous ne partageons nullement votre analyse telle que vous l'exprimez dans votre courrier. Nous restons néanmoins très attentifs aux éventuelles évolutions de la situation.

En vous remerciant de nous avoir écrit, je vous prie d'agréer, Madame, Monsieur, l'expression de mes sentiments les meilleurs.

Yves Claude

Yves CLAUDE
SIEGE SOCIAL AUCHAN RETAIL
40 AVENUE DE FLANDRE
59170 CROIX

CC: Auchan' s Executive Team and Board of Directors

13/12/22

RE: La présence opérationnelle d'Auchan en Russie

Cher Yves CLAUDE,

Nous vous écrivons au nom de [B4Ukraine](#), une coalition d'organisations de la société civile ukrainienne et internationale travaillant à limiter les ressources financières permettant de faciliter l'invasion russe de l'Ukraine. La coalition s'attend à ce que les entreprises démontrent leur soutien pour le peuple, la démocratie, l'intégrité territoriale de l'Ukraine, l'opposition à la guerre d'agression russe et un respect des principes directeurs des Nations unies relatifs aux entreprises et aux droits de l'homme (UNGP). Un tel soutien démontre aussi un respect des droits humains fondamentaux de tous les peuples, d'un ordre international basé sur des règles de droit et d'une économie internationale prospère.

Nous demandons un dialogue urgent concernant les opérations commerciales d'Auchan en Russie qui sont susceptibles de contribuer aux violations des droits de l'Homme.

En tant que participants du Pacte mondial,¹ nous reconnaissons l'engagement d'Auchan en faveur des droits de l'homme. En vertu des principes fondamentaux du Pacte,² l'entreprise doit se conformer, en particulier, au Principe 1 (Les entreprises sont invitées à promouvoir et à respecter la protection du droit international relatif aux droits de l'homme dans leur sphère d'influence) et au Principe 2 (veiller à ce que leurs propres compagnies ne se rendent pas complices de violations des droits de l'homme).

Comme vous le savez probablement, cela fait neuf mois que la Russie a envahi l'Ukraine. Elle continue de commettre des crimes de guerre et des crimes contre l'humanité à travers des attaques contre des civils et infrastructures civiles, des exécutions de masse, des bombardement d'écoles, d'hôpitaux et d'immeubles d'habitation, des violences sexuelles, la torture et le transfert forcé de civils. Plus de 20 000 Ukrainiens ont été tués ou blessés, et des millions d'autres ont été forcés de fuir leurs maisons, créant l'une des plus grandes crises humanitaires et de réfugiés de notre époque.

¹ United Nations Global Compact, Our Participants, <https://www.unglobalcompact.org/what-is-gc/participants> (consulté le 30 novembre 2022).

² The Ten Principles of the UN Global Compact, <https://www.unglobalcompact.org/what-is-gc/mission/principles> (consulté le 30 novembre 2022).

Le 21 septembre dernier, le président Vladimir Poutine a pris la décision de provoquer une escalade supplémentaire de la guerre en annonçant une « mobilisation partielle » de la population russe. La législation afférente ([Article 9 of Federal Law No. 31-FZ](#)) donne mandat à toutes les organisations, y compris les quelques 1 610 entreprises étrangères présentes en Russie, à conduire un recensement militaire de leur personnel si au moins un de leurs employés est éligible au service militaire.³ Elles doivent également aider à distribuer les convocations militaires à leurs employés, assurer le transport d'équipement à des points de rassemblement ou à des unités militaires et fournir des informations, des bâtiments, des communications, terrains, transport et autres moyens matériels pour soutenir l'effort de guerre.

Cette législation implique des risques juridiques importants et nouveaux pour les entreprises encore présentes en Russie, dont une responsabilité civile et pénale potentielle sous les régimes de sanctions et la récente jurisprudence rendant responsable les entreprises et leurs dirigeants pour les violations de droits humains à l'étranger.⁴ Les entreprises peuvent également être exposées à des risques financiers matériels à travers des restrictions opérationnelles telles que la limitation de contrats publics futurs.⁵

³ Federal Law No. 31-FZ of February 26, 1997 "On mobilization training and mobilization in the Russian Federation" (as amended), <https://base.garant.ru/136945/> (consulté le 14 novembre 2022).

⁴ Les entreprises restant en Russie sont désormais plus exposées au risque de violer les régimes de sanctions, puisque l'implémentation de cette législation impliquera probablement de réaliser des transactions avec des individus ou entités sanctionnées. En outre, de nouvelles affaires civiles et pénales nationales contre des entreprises impliquées dans des violations du droit international démontrent le risque d'une responsabilité importante de ces entités pour avoir facilité des violations des droits de l'homme parrainées par l'État à l'étranger (par exemple l'affaire Lafarge, l'affaire Lundin, l'inculpation du groupe Castel, la holding Nevsun et Dassault Aviation, Thales et MBDA France plainte pénale.)

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/> (consulté le 14 novembre 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/> (consulté le 14 novembre 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> (consulté le 14 novembre 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> (consulté le 14 novembre 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> (consulté le 14 novembre 2022).

⁵ 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/> (consulté le 14 novembre 2022).

En réponse à cette guerre non provoquée et injustifiée,⁶ des centaines d'entreprises se sont engagées à quitter la Russie. Pourtant, selon le tracker d'entreprise [#LeaveRussia](#) du Kyiv School of Economics Institute, Auchan a décidé de rester dans ce pays. Selon le tracker, Auchan emploie un peu plus de 41 000 personnes dans 311 magasins en Russie.⁷ L'entreprise réalise un chiffre d'affaires de 3,5 milliards de dollars en Russie,⁸ donc doit payer des impôts au gouvernement russe qui participent nécessairement au financement de l'effort de guerre.

Selon l'UNGP, lorsqu'une guerre est illégale en vertu du droit international, les entreprises devraient, **au minimum**, évaluer et atténuer son lien avec les efforts de guerre du pays agresseur pour "s'assurer qu'ils n'aggravent pas la situation". Lorsque le conflit armé russo-ukrainien est évalué en lumière des différentes catégories établies par l'UNGP, il relève de la catégorie "élevée,"⁹ vue la gravité des violations des droits de l'homme. Cela signifie que des mesures urgentes doivent être prises par les acteurs impliqués (même indirectement) dans la guerre.

Les activités d'Auchan en Russie financent, et risquent donc de contribuer à la violation du droit international humanitaire et des droits de l'homme par la Russie, de part son invasion et son occupation en cours de l'Ukraine. Il reste à voir dans quelle mesure l'AFM sera directement impacté par la mobilisation partielle et les risques juridiques, réglementaires, opérationnels et financiers accrus associés aux entreprises tenues de fournir un soutien direct à l'armée russe, qui est sanctionnée internationalement.

Nous cherchons à comprendre comment Auchan mène une diligence raisonnable en matière des droits de l'homme, comme l'exige le Pacte mondial, et comment les conclusions d'un tel processus ont abouti à la poursuite de ces activités et de ces relations commerciales. Comme indiqué par l'UNGP :

...plus l'atteinte est grave, plus rapidement l'entreprise devra procéder à des changements avant de prendre une décision sur le fait de savoir si elle devrait mettre fin à la relation. Dans tous les cas, tant que l'atteinte se poursuit, et que l'entreprise demeure dans la relation, elle devrait pouvoir démontrer les efforts constants qu'elle a menés pour atténuer l'incidence et être prête à accepter toutes les conséquences – en matière de réputation, du point de vue financier ou juridique – du maintien de ce lien.

En ayant à l'esprit les points évoqués ci-dessus et la [Déclaration](#) de B4Ukraine, nous demandons un dialogue urgent avec les cadres dirigeants d'Auchan pour échanger sur sa présence opérationnelle et

⁶ 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."

⁷ French giants Leroy Merlin, Auchan and Decathlon under fire for Russia ties, <https://www.rfi.fr/en/international/20220323-french-giants-leroy-merlin-auchan-and-decathlon-come-under-fire-for-russia-ties> (consulté le 29 novembre 2022).

⁸ Don't Fund War, "Full list of companies", <https://www.dontfundwar.com/directory> (consulté le 28 novembre 2022)

⁹ Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide | United Nations Development Programme, pp 30-31 <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide> (consulté le 29 novembre 2022).

ses relations de l'entreprise avec la Russie, les risques pesant sur le peuple ukrainien et l'entreprise, ainsi que les étapes potentielles pour atténuer ces risques. Vous pouvez nous contacter à enichol@b4ukraine.org Je vous prie de bien vouloir répondre avant 17h (heure d'Europe centrale), le 4 Janvier, 2022.

N'hésitez pas à nous contacter pour toute information supplémentaire.

Sincèrement,

Eleanor Nichol
Executive Director
The B4Ukraine Coalition