

Peter Feld
Chief Executive Officer
Barry Callebaut AG
Hardturmstrasse 181
8005 Zurich
Switzerland

August 29, 2024

RE: Barry Callebaut's business operations in Russia

Dear Mr. Feld and the Barry Callebaut Leadership Team,

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 are writing to formally notify Barry Callebaut 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 Russia¹ and to urge you 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 two and a half years 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 30,000 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, the 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 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 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 Further, reports show that Russia poses a "real threat to global financial integrity, as well as to national security more broadly."¹⁰

Additionally, the revelation by the Russian president confirming that the internationally recognized transnational criminal organization known as the "Wagner Group" is funded by the Russian government has brought to light a range of alarming risks related to money laundering, terrorist financing, and other financial crimes for businesses involved in or working with Russia.¹¹ It is now a distinct possibility that businesses continuing their operations and paying taxes in Russia may be providing financial support to the Wagner Group, a notorious paramilitary organization.

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

In response to this unprovoked and unjustified war¹³ many other companies have already left Russia. According to the Kyiv School of Economics Institute's #LeaveRussia [company tracker](#), Barry Callebaut has decided to stay and continue its business operations 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.

⁶ For example, the French company Lafarge is charged for complicity in war crimes and crimes against humanity in Syria.

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

¹¹ Telegram, "Встреча Путина с военными и его заявления по поводу ЧВК "Вагнер," June 27, 2023, https://t.me/rian_ru/207202 (accessed July 3, 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 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."

As reported by *Confectionery Production*, Barry Callebaut has expanded its operations in Russia as late as 2021, opening its third confectionery manufacturing facility in Kaliningrad, which employs around 40 people to serve the local region. Additionally, the company operates facilities in Chekhov, Moscow region, and Kasimov, Ryazan, which remain operational. Barry Callebaut also runs a Chocolate Academy in Moscow, offering training to chocolatiers, which is understood to still be in operation.¹⁴

In response to the ongoing war, Barry Callebaut expressed that the company is “profoundly impacted by the images of people having to leave behind their homes, families, and friends due to the military attack on Ukraine.”¹⁵ Yet, the company has decided to continue its operations in Russia, stating: “Our primary focus today is to continue to supply food products, and chocolate is part of the daily diet for many, and to support our people and their families,” only suspending new capital investments.¹⁶

While we do not deny that some goods and foodstuffs are essential in preventing food shortage and undernutrition of the local population, products like sweets and chocolates, like those produced and sold by Barry Callebaut in the Russian market, cannot be and are not considered essential. In determining which products are essential, businesses should consider the nutritional needs of the affected population, focusing on nutrient dense foods, such as foods rich in proteins, vitamins, and minerals, including a mix of cereals (such as maize, wheat, rice, or millet), pulses (such as lentils, beans, chickpeas, or peas), oil, and fresh or processed fruits and vegetables.¹⁷ Businesses should also consider the availability of other sources of food, the availability of local substitutes, and the potential human rights risks and impacts associated with their operations.

Further, data shows that Barry Callebaut increased its exports to Russia in the years following the full-scale invasion of Ukraine, at points increasing by 145%.¹⁸

The Ukrainian government’s [National Agency on Corruption Prevention](#) (NACP) held 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.”¹⁹ These companies were recognised as international sponsors of war. The NACP noted that the list consisted of “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.”²⁰

¹⁴ Confectionery Production, “Barry Callebaut suspends capital investment in Russia, responding to Ukrainian conflict” March 25, 2022, <https://www.confectioneryproduction.com/news/39048/barry-callebaut-suspends-capital-investment-in-russia-responding-to-ukrainian-invasion/> (accessed August 29, 2024).

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ 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).

¹⁸ Squeezing Putin, “Barry Callebaut Exports to Russia,” <https://squeezingputin.com/support.html#Chocolate18May23> (accessed August 29, 2024).

¹⁹ NACP, “International Sponsors of War,” <https://web.archive.org/web/20240126215632/https://sanctions.nazk.gov.ua/en/boycott/> (accessed August 28, 2024).

²⁰ 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,

As you know, in January 2024, the NACP included Barry Callebaut on the international sponsors of war list.²¹ Among other reasons, the NACP states:

“Shortly after the start of the full-scale invasion, the company announced the supply of essential goods to Russia: "chocolate is part of the daily diet of many". However, this statement is manipulative, as according to the legislation of the aggressor country, neither chocolate nor cocoa-containing food products are considered essential foodstuffs. At the same time, the company's CEO, Peter Boone, stated that "The military operation in Ukraine was launched by the Russian government, not the Russian people. This is a distinction that we have kept in mind as we make these difficult decisions. Furthermore, we are a company that will support its customers. It does not seem right for us to disengage from our customers and leave them without products from customers who did not ask for this military operation."

In Russia, Barry Callebaut operates through:

- Barry Callebaut NL Rasha LLC (5048014441). Revenue of Barry Callebaut NL Rasha LLC in 2022 increased to 21.9 billion rubles or \$312 million, net profit increased by 59% to 2.7 billion rubles or \$38 million, taxes paid in the amount of 2.32 billion rubles or \$33 million.
- Barry Callebaut Kaliningrad LLC (3906401039). Barry Callebaut Kaliningrad LLC's revenue amounted to RUB 646 million, net profit was RUB 114 million, and taxes were paid in the amount of about RUB 6 million.

Barry Callebaut NL Rasha LLC is also the founder of Inforum-Prom CJSC (producing chocolate and sugary confectionery) and Gor Trade LLC (building residential and non-residential buildings). The companies' revenues amounted to about RUB 150 million, net profit was RUB 73 million, and taxes paid were about RUB 43 million.

Barry Callebaut continues to be an active participant in import and export operations. In particular, in 2023, the company imported goods worth more than \$94 million to the Russian market, which is more than 3 times higher than in 2022, when imports to Russia amounted to \$29 million. Among the imported goods are confectionery, dry mixes, cocoa, cocoa butter, palm oil, fat from Belgium, Switzerland, Estonia, the Netherlands, Germany, Italy, India, and Spain.

For example, on 09.11.2022 and 21.11.2022, Barry Callebaut COCOA AG (France) supplied its products (cocoa paste, oil) to the Russian confectionery factory Vernost Kachestva LLC (taxpayer ID: 6226005883), whose chocolate is included in army dry rations (sets with the Army of Russia logo from Voentorog), for a total amount of about \$180 thousand.

Thus, Barry Callebaut continues to actively support the Russian economy and, accordingly, sponsor aggression against Ukraine, and there have been no attempts by the company's management to condemn Russia's attack on Ukraine.”²²

Considering the aforementioned risks and the company's continued presence in Russia, we would like to pose the following questions to Barry Callebaut:

1. Can Barry Callebaut provide its definition and list of goods it considers essential in light of the

<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/?hilite=sponsor+of+war> (accessed February 6, 2023).

²¹ NACP, “Barry Callebaut – International sponsor of war,”

<https://web.archive.org/web/20240119103203/https://sanctions.nazk.gov.ua/en/boycott/1033/> (accessed August 28, 2024).

²² Ibid.

particular circumstances of this conflict? Can Barry Callebaut provide a list of goods that it stopped producing since the outbreak of the war because they are not considered essential? Has Barry Callebaut considered whether its goods can be replaced with local substitutes?

2. How has Barry Callebaut practised due diligence in preventing the supply of its products to the Russian military? Does Barry Callebaut 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?
3. Which stakeholders has Barry Callebaut engaged with in determining its policies and the decision to stay in the market?
4. Has Barry Callebaut considered all the circumstances and complexities of the 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?
5. How do these practices align with Barry Callebaut's due diligence policies and mechanisms, as well as its heightened human rights due diligence policies that considers a conflict-sensitive approach related to the war against Ukraine?
6. Does Barry Callebaut 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?
7. Can Barry Callebaut 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 Barry Callebaut received any such requests, and if so, how has the company responded to them? What is Barry Callebaut doing to safeguard its employees from mobilisation? Have any of your employees been mobilised and, if so, what was Barry Callebaut's role in the process?
8. How much tax has Barry Callebaut paid in Russia in 2022 and 2023? How does Barry Callebaut comment on its significant contributions to the Russian state coffers and potential contributing to the financing of the aggression against Ukraine?
9. How is Barry Callebaut ensuring that it does not align itself and the names of its brands with the war and the Putin regime?
10. Considering these developments and the rising number of reported human rights abuses and war crimes, has Barry Callebaut considered fully exiting Russia so as not to be even indirectly or remotely associated with these crimes?

Other companies have faced legal, administrative, and ethical challenges and still committed to, and fully exited, Russia. Barry Callebaut has decided to continue supplying the Russian market, even after two years of the war, over 100,000 reported war crimes, over 30,000 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.

In consideration of the above points, we request a dialogue with Barry Callebaut'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 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, September 12, 2024.

Please note that this letter and any response provided by Barry Callebaut will be published on B4Ukraine webpages. If the company decides to join the proposed meeting, the meeting will be held under Chatham House Rules.

Sincerely,

The B4Ukraine Coalition