

BRCGS

80 Victoria Street

London SW1E 5JL

United Kingdom

Att: Amanda McCarthy, Technical Operations Director

Brussels, 29.11.2024

REGARDING BRCGS CERTIFICATIONS OF COMPANIES IN OCCUPIED WESTERN SAHARA

Dear Mrs. McCarthy

Western Sahara Resource Watch (WSRW) is privileged to present you with its compliments. We are writing to inquire about BRCGS certificates issued to companies in occupied Western Sahara or sourcing fish products from the territory.

The background for our request is that we are publishing a report on the certification schemes involved in the problematic trade of fisheries products from Western Sahara on our websites www.vest-sahara.no and www.wsrw.org in approximately a month from now, and we are going to include references to BRCGS in the report.

We have several questions in relation to the certification of a set of particular companies, outlined further below, that we hope you will have a chance to respond to, **prior to 15 December 2024**.

Specifically, we are reaching out in relation to the following cases, found in your registry of certified establishments on your website.¹

- Comptoire commercial et industriel derham, 16, Avenue Hassan El Ouazzani, Elmassira indutiel area Dakhla, 73000 , MOROCCO, Issue date: 08.02.2024, Expiry date: 06.02.2025. Certification Body: SYGMA Certification SL, <https://directory.brcgs.com/site/1360038>
- Conserverie de Oued Eddahab, Zone Industrielle Essalam Dakhla-Oued Eddahab, Dakhla, 73000, MOROCCO, Issue date: 19.09.2024, expiration date, Certification body: Eurofins Certification, <https://directory.brcgs.com/site/10004595>
- Conserveries Rio De Oro Sarl, LOT N°6, ZONE ANP DAKHLA , Dakhla, 73000, MOROCCO, Issue date 03.07.2024, expiration date 04.08.2024, Certification Body: SYGMA Certification SL <https://directory.brcgs.com/site/10001619>
- Damsa SA, LOT 59 A, Z.I EL MARSA, Laayoune, 72000, MOROCCO, Issue date: 25.10.2024, Expiration date: 30.10.2025, Certification Body: SYGMA Certification SL, <https://directory.brcgs.com/site/1906272>
- ERG Conserve, Dakhla:No.234-325-Hay Salam-Dakhla Oued Eddahab, 234 – 235 Zone Industrielle, Dakhla, 73000, MOROCCO, Issue date: 24.09.2024, Expiry date: 30.09.2025, Certification Body: Eurofins Certification <https://directory.brcgs.com/site/3356685>
- Gold Sea Fish Sarl, 234-235 Quartier industriel- ESSALAM, DAKHLA, 73000, MOROCCO, Issue date: 07.12.2024, Expiry date: 14.01.2025, Certification Body: Eurofins Certification, <https://directory.brcgs.com/site/1704287>

¹ <https://directory.brcgs.com/>

- Nouvelle Conserverie de Boujdour Sarl, Lots n° 45, 46, 47, 63, 64, 65 - Z.I 2ème Tranche, Nouveau Port, BOUJDOUR, 71000, MOROCCO, Issue date: 26.01.2024, Expiry date: 26.01.2025, Certification Body: SYGMA Certification SL, <https://directory.brcgs.com/site/10012149>
- Oceamic Laayoun E II Sarl, LOT 60 ZONE INDUSTRIELLE EL MARSA LAAYOUNE PORT, LAAYOUNE, 70002, MOROCCO, Issue date: 16.09.2024, Expiry date: 24.12.2024, Certification Body: Eurofins Certification, <https://directory.brcgs.com/site/9085682>
- Pelagic Pro Sas, LOT 04 Z.I. PORT DE DAKHLA, DAKHLA (OUED EDDAHAB), 73000, MOROCCO, Issue date: 28.06.2024, Expiry date: 13.07.2025, Certification Body: SYGMA Certification SL, <https://directory.brcgs.com/site/10005338>

We fail to understand how BRCGS has come to the conclusion that these establishments in the occupied territory of Western Sahara could go through a certification procedure. Furthermore, we are surprised to see the companies – which are located in the city of Dakhla or El Aaiún – are referred to as being located in «Morocco» on your website.

The geographical error, failing to relate to the UN maps and rulings of international courts on the matter of Western Sahara, as we see it, could constitute an act of gross negligence.

Allow us to first contextualise our query. The United Nations consider Western Sahara to be a non-self-governing territory without an administering power in place. The International Court of Justice has confirmed that Morocco has no sovereignty over the territory, and that the people of Western Sahara have a right to self-determination – the right to determine the future status of the territory.² In 1988, the UN was able to broker a ceasefire arrangement between Morocco and the Western Sahara liberation movement, Polisario, in which both parties agreed to hold a referendum on self-determination.³ To that goal, a UN mission (MINURSO) has been deployed to the territory, but it has not been able to organise a referendum as Morocco continues to block any effort that offers a choice beyond integration. In November 2020, the ceasefire collapsed after the Moroccan army seized a section of the UN buffer zone to break up a Saharawi protest.⁴

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice⁵ and the African Court on Human and People's Rights⁶, all underline that Morocco has no sovereignty or administering mandate over Western Sahara, Morocco continues to militarily control about three-quarters of the territory. Incentivized by its exploitation of the territory's resources, Morocco has little interest to genuinely take part in the UN-mediated peace process. Meanwhile, the lingering conflict continues to have a high human and humanitarian cost: over 170,000 Saharawis are stuck in refugee camps in neighbouring Algeria, surviving in harsh desert conditions and dwindling humanitarian aid. Saharawis who live under the yoke of Morocco's occupation are victims of serious human rights violations that have been reported by the UN Human Rights Committee, UN Working Group on Arbitrary Detention, the UN Special Rapporteur on Human Rights Defenders, in addition to credible international organisations such as Human Rights Watch, Amnesty International, and others. In 2023, the UN High Commissioner for Human Rights lamented the fact that his Office has not been allowed to visit Western Sahara for the last eight years.⁷ Year after year, Western Sahara is ranked among the worst countries and territories in terms of political rights and civil liberties, on par with countries and territories like North Korea, Syria, Afghanistan and Crimea.⁸

The status of the territory comes with repercussions for business activities. As established in 2002 by the UN Legal Counsel at the request of the Security Council, any economic activity in the territory would be in violation of international law if not undertaken in accordance with the wishes and the interests of the people of the

² International Court of Justice, Western Sahara, <https://www.icj-cij.org/case/61>

³ The "settlement proposals" are included in the Report of the UN Secretary General on Western Sahara of June 1990, available here: https://minurso.unmissions.org/sites/default/files/unsg_report_18_june_1990.pdf

⁴ WSRW, 19.11.2020, Saharawi gov calls for halt of all activity in Western Sahara over war, <https://wsrw.org/en/news/saharawi-gov-calls-for-halt-of-all-activity-in-western-sahara-over-war>

⁵ The Rulings for cases T-512/12, T-180/14, C-266/16, T-275/18 and combined cases T-344/19, T-356/19 and T-279/19 can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

⁶ African Court on Human and People's Rights, 22.09.2022, Ruling on Application N° 028/2018 <https://www.african-court.org/cpmt/storage/app/uploads/public/632e0f3ad632e0f3ad580e748464681.pdf>

⁷ OHCHR, 07.03.2023, Global update: High Commissioner outlines concerns in over 40 countries, <https://www.ohchr.org/en/statements-and-speeches/2023/03/global-update-high-commissioner-outlines-concerns-over-40-countries>

⁸ <https://freedomhouse.org/countries/freedom-world/scores?sort=asc&order=Total%20Score%20and%20Status>

territory.⁹ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights¹⁰ and of the UN Human Rights Committee¹¹, which have both emphasized the need of obtaining the Saharawi people's "consent to the realization of developmental projects and [resource] extraction operations". In this context, it is important to stress that the rights of the people of Western Sahara should not be viewed through the concept of FPIC, as they are not an indigenous people with a certain rights to a part of a territory in a state that they recognise as such - the people of Western Sahara are the holders of the sovereign rights to Western Sahara as a whole. Their homeland is in part under foreign occupation, but the right to self-determination - the right to decide the status of the territory as a whole, and of the resources harboured therein - lies with the Saharawi people. The UN treats the unresolved conflict in Western Sahara through the right to self-determination as the cornerstone principle, and does not regard this as an indigenous peoples issue.

Recent years have witnessed an emerging body of law pertaining to Morocco's claim to the territory. Since 2015, in ten (!) consecutive rulings, the Court of Justice of the European Union has concluded on the following points as settled:

- The territory of Western Sahara constitutes a territory distinct from that of the Kingdom of Morocco.¹²
- Morocco has no sovereignty¹³ or administering mandate¹⁴ over Western Sahara.
- Consequently, the waters adjacent to Western Sahara cannot be regarded as part of the Moroccan fishing zone, territorial waters, exclusive economic zone, or any other notion used to describe Morocco's role vis-à-vis the waters off Western Sahara.¹⁵
- The people of Western Sahara are to be regarded as a third party to the EU's agreements with Morocco, and that as such, no agreement can affect their territory without their consent, as a corollary of the right to self-determination.¹⁶
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.¹⁷ The Court stipulates that "a majority of the population of Western Sahara is not part of the people holding the right to self-determination, namely the people of Western Sahara. That people, which for the most part has been displaced, is the sole holder of the right to self-determination with regard to the territory of Western Sahara."¹⁸ The Court adds that "there is a difference in that regard between the concept of the 'population' of a non-self-governing territory and of the 'people' of that territory. The latter refers to a political unit which holds the right to self-determination, whereas the concept of 'population' refers to the inhabitants of a territory."¹⁹
- The Court has firmly established the position of Front Polisario, the UN-recognised representation of the people of Western Sahara to be able to bring cases before EU Courts on behalf of the Saharawi people, and that it has access to the Court to defend their right to self-determination.²⁰
- In Case C-399/22, which specifically dealt with the labelling of products from Western Sahara, the Court again emphasised the separate and distinct status of the territory in relation to Morocco, and concluded that at the stages of import and sale to the consumer, the labelling of the goods from Western Sahara must indicate Western Sahara alone as the country of origin of those goods.²¹

Against that backdrop, we have several questions about the decision to certify companies active in or importing from the territory.

⁹ UN Security Council, 12.02.2002, Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161, <https://undocs.org/S/2002/161>

¹⁰ UN Economic and Social Council, 22.10.2015, Concluding Observations on the fourth periodic report of Morocco, E/C.12/MAR/CO/4*, §6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fMAR%2fCO%2f4&Lang=en

¹¹ UN Human Rights Committee, 01.12.2016, Concluding Observations on the sixth periodic report of Morocco, §10, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/MAR/CO/6&Lang=en

¹² Judgment of 21 December 2016, EU:C:2016:973, §92, and reiterated in the Judgment of 27 February 2018, EU:C:2018:118, §62, Judgment of 4 October 2024, EU:C:2024:833, §163, Judgment of 4 October 2024, EU:C:2024:839, §85 and Judgment of 4 October, EU:C:2024:835, §134.

¹³ Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.

¹⁴ "Account must also be taken of the fact that the Kingdom of Morocco does not have any mandate granted by the UN or by another international body for the administration of that territory, and it is common ground that it does not transmit to the UN information relating to that territory, such as those provided for by Article 73(e) of the UN Charter." Judgment of 10 December 2015, EU:T:2015:953, §233. Considered a settled matter in subsequent rulings.

¹⁵ Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.

¹⁶ Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.

¹⁷ Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.

¹⁸ Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.

¹⁹ Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.

²⁰ Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70-109.

²¹ Judgment of 4 October 2024, EU:C:2024:839, §89.

Regarding BRCGS and international law:

1. Does BRCGS agree with the ICJ, CJEU, UN and the African Court on Peoples' and Human Rights that Western Sahara is not part of Morocco?
2. Does BRCGS agree with the CJEU that the waters offshore Western Sahara do not belong to Morocco's EEZ?²²
3. Does BRCGS agree with the ICJ²³ that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?

Regarding the certification:

4. We have found the above-mentioned certificate holders in the easy-to-use directory on your website, but have not been able to locate or view the BRCGS certificates themselves, and as such, do not know whether they contain further details besides what is presented in the directory.
 - a. Do the certificates include the physical address of the certified establishments, in the same way as written on the summary of each certificate on your website?
 - b. Can you send to us copies of the certificates of the above-mentioned establishments?
 - c. Have the certification bodies - such as Eurofin, Sygma or possibly others - ever informed BRCGS that the physical address of the above-mentioned establishments is incorrect, through placing geographical locations in Western Sahara within the country of "Morocco"?
5. In the cases when certification bodies issue certifications for BRCGS, but place the certified entity in the wrong country or territory, without taking into account the United Nations maps, does BRCGS consider this an act of proven negligence committed by the certification body?
6. Which countries' laws regulate the contracts between the European certification bodies and the establishment located in Western Sahara?
7. Did the auditors of Eurofin and Sygma physically travel into the occupied territory as part of the BRCGS certification?

Regarding the standard:

8. Can you send us the full standard and its related manuals, for review?
9. Does the BRCGS standard expect that the certified organisations comply with all applicable legal requirements in the countries where they operate?
 - a. If yes to the above, which country's laws apply to Western Sahara, according to BRCGS?
10. If national authorities are to be expected to have undertaken controls or sanitary checks as part of the standard, which legal validity does BRCGS believe that these government inspections or approvals or certificates have if they are issued to establishments based in the non-self-governing territory of Western Sahara by an entity of the neighbouring country of Morocco?
11. If BRCGS believes that the Moroccan government's regulations, laws, checks or permits are legally valid even in Western Sahara, how does that match with the position of the ICJ and UN which do not regard Morocco as having sovereignty or an administering power capacity over Western Sahara, and as such do not consider Western Sahara to be part of Morocco?
12. Does the BRCGS Standard contain provisions (including to prevent food fraud) that require certificate holders to correctly reflect country of origin or country of production?
13. All the companies in your directory with an address in Western Sahara are involved in the processing of fisheries products.

²² Judgment of the Court (Grand Chamber) of 27 February 2018, ECLI:EU:C:2018:118, §67-69, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266>

²³ <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

- a. Are there clear criteria to assess the legality of the related fisheries practices in the waters off Western Sahara, under international law, taking into account that these waters are not Moroccan?
 - b. If yes, how does BRCGS consider Morocco's government's legal standing in terms of issuing fisheries licences in the waters offshore Western Sahara?
- 14. There are numerous BRCGS certified establishments in Morocco proper (such as in Agadir, Tan Tan etc) that source raw materials from Western Sahara.
 - a. How are these establishments ensuring legal compliance in the supply chain?
 - b. How are these establishments ensuring that the products are labelled correctly?
- 15. Does the BRCGS standard expect human rights in general to be respected? If yes, is the right to self-determination among those rights?
- 16. We have not assessed your directory of certified companies for European food distributors/retailers, such as Spanish octopus distributors. What checks have been taken, if any, to ascertain that European distributors are not including in its supply chain products that originate from Western Sahara, or that are incorrectly labelled?

Regarding credibility of the standard:

- 17. Does BRCGS consider it relevant to correctly reflect the country in which the certified establishments are located on its website?
- 18. European consumers have the right to know the origin of the products that they purchase. The exporters in Western Sahara are falsely labelling the products with the wrong country origin. What reputational risks does BRCGS consider it might have for the standard that its certificates and website are placing the certified establishments in the wrong country?
- 19. What reputational risks does BRCGS consider it might have for the standard that the websites of the certified companies, the website of BRCGS and the BRCGS certificates themselves - mislead the consumer about the country of origin of the products that are being marketed?
- 20. We notice that Bureau Veritas is among the certification bodies that are, in general, approved to do checks in accordance with the BRCGS standard. Bureau Veritas has a highly political position on the conflict, recognising Western Sahara as part of Morocco. This is not in line with the international courts or the UN. The company refers to Western Sahara as Morocco's "Southern Provinces".²⁴ We cannot see whether it has similar positions on the occupations of other territories or countries.
 - a. Taking into account that Bureau Veritas fails to relate to basic principles of international law, how can Bureau Veritas be trusted in terms of certifications in general, if they are to assess aspects of legal compliance?
 - b. Will BRCGS suspend accepting further certifications issued by Bureau Veritas until they have positions that align with international law and court rulings, by clarifying that the territory of Western Sahara is not part of Morocco?

Regarding your role:

- 21. We notice on your website that you have one or more BRCGS consultants in Morocco.
 - a. Are these consultants instructed to work in Morocco only, or are they also open to consult outside of Morocco's internationally recognised borders?
 - b. How are they guided in terms of what advice to give Moroccan establishments with physical addresses in Morocco that source raw materials from Western Sahara?
- 22. The BRCGS Global Standard Ethical Trade and Responsible Sourcing (ETRS) explicitly addresses human rights as part of its framework. Does BRCGS consider itself being required to follow the ETRS by not

²⁴ <https://www.bureauveritas.ma/newsroom/bureau-veritas-morocco-africa-business-days> and <https://en.yabiladi.com/articles/details/156253/french-business-delegation-visits-dakhla.html>

contributing to the involved companies undermining the Saharawi people's right to self-determination and removal of natural resources?

23. Has BRCGS ever sought to find out whether the issuing of certificates to Moroccan companies in occupied Western Sahara is something that the Saharawi people have consented to?
24. According to its website, "BRCGS Global Standards are a market-leading global brand that helps build confidence in the supply chain". How does this statement match with the fact that facilities in an occupied territory are certified as if they are located in the country of the occupier, contrary to the rights of the people of the territory and to international law?
25. As companies on the European market are now obliged to label goods from Western Sahara as from "Western Sahara", and specifically not from "Morocco", is there a risk that the application of this ruling in Europe is undermined by the issuing of BRCGS certificates claiming that geographical locations in Western Sahara are in fact located in Morocco?
26. What credibility does a BRCGS certificate have for EU-based companies, now having to comply with EU-law on correctly labelling products from Western Sahara, when seeking to import from Morocco, given that the certificates themselves do not correctly reflect the location of a potential exporter?
27. How does the erroneous labelling risk undermining the credibility of BRCGS vis-à-vis EU consumers, who have the right to buy products on the EU market that are labelled in line with EU laws, including on correct country origins?
28. What is the risk that the certification of the companies in question, that operate in accordance with the strategies of the Moroccan government, could cause damage to the Saharawi people who are the legitimate owners of the territory and resources?
29. Which steps will you take vis-à-vis the certificates, the certification bodies and the certified establishments as a consequence of our request to you?

We'd be grateful for your response. Any answer from your company will be included in the report. We'd appreciate answers prior to 15 December.

A copy of this letter is sent to Western Sahara Campaign UK

Looking forward to hearing from you,

Sincerely,

Erik Hagen

Western Sahara Resource Watch

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www.wsrw.org