

IFS Management GmbH

Am Weidendamm 1A, 10117 Berlin

Germany

Att: Stephan Tromp, Managing director

Brussels, 29.11.2024

REGARDING IFS FOOD CERTIFICATIONS AND THE OCCUPATION OF WESTERN SAHARA

Dear Mr. Tromp

Western Sahara Resource Watch (WSRW) is privileged to present you with its compliments. We are writing to inquire about IFS Food 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 IFS Food 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**.

We fail to understand how IFS has come to the conclusion that establishments based in the occupied territory of Western Sahara could go through a certification procedure. Furthermore, providing it is correct, we are surprised to see one company with address in Western Sahara is displaying a certificate suggesting that it is based in «Morocco». Such a geographical error, failing to relate to 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.¹ 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.² 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.³

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice⁴ and the African Court on Human and People's Rights⁵, 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

¹ International Court of Justice, Western Sahara, <https://www.icj-cij.org/case/61>

² 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

³ 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>

⁴ 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>.

⁵ 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/632/e0f/3ad/632e0f3ad580e748464681.pdf>

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.⁶ 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.⁷

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 territory.⁸ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights⁹ and of the UN Human Rights Committee¹⁰, 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.¹¹
- Morocco has no sovereignty¹² or administering mandate¹³ 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.¹⁴
- 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.¹⁵
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.¹⁶ 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."¹⁷ The Court adds that "there is a

⁶ 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>

⁷ <https://freedomhouse.org/countries/freedom-world/scores?sort=asc&order=Total%20Score%20and%20Status>

⁸ 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>

⁹ 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

¹⁰ 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

¹¹ 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.

¹² Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.

¹³ "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.

¹⁴ Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.

¹⁵ Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.

¹⁶ Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.

¹⁷ Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.

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.”¹⁸

- 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.¹⁹
- 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.²⁰

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

Regarding IFS and international law:

1. Does IFS 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 IFS agree with the CJEU that the waters offshore Western Sahara do not belong to Morocco’s EEZ?²¹
3. Does IFS agree with the ICJ²² that the right to self-determination of a people of a non-self-governing territory constitutes a fundamental human right?

Regarding the certifications:

4. The company Conserveries Rio de Oro SARL – which is based in the occupied territory - claims to have obtained an IFS Food certificate, issued by Eurofins²³. Is this correct?
5. Can you confirm whether Univela Morocco (which has agents in Dakhla and Laayoune) has obtained an IFS Food certificate?²⁴, ²⁵ If yes, which certification body issued it? Would you share with us a copy of the document?
6. Can you confirm whether the fish processing company Abelta Canning - which has a factory in El Aaiún - has obtained an IFS Food certificate?²⁶ If yes, which certification body issued it? Would you share with us a copy of the document?
7. Can you confirm whether the wholesaler and distributor of octopus Discefa has obtained an IFS Food certification?²⁷ There is a Bureau Veritas logo right next to the IFS logo on Discefa’s website, but it is not apparent if Bureau Veritas was the certification body for the IFS Food certificate. Which certification body issued it? Would you share with us a copy of the document?
8. Can you confirm whether the company Oceamic II in El Aaiun has an IFS Food certificate?²⁸ If yes, which certification body issued it? Would you share with us a copy of the document?
9. Can you confirm whether the company Unimer Group - that receives most of its landings in Laayoune and Dakhla ports - has obtained an IFS Food certificate?²⁹ If yes, which certification body issued it? Would you share with us a copy of the document?

¹⁸ Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.

¹⁹ Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70-109.

²⁰ Judgment of 4 October 2024, EU:C:2024:839, §89.

²¹ 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>

²² <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-00-EN.pdf>

²³ <https://www.conserveries-riodeoro.com/>

²⁴ <https://univela-morocco.com/about/>

²⁵ <https://univela-morocco.com/products/seafood/squid/>

²⁶ <https://frozensardinesexport.com/about.html>, <https://atcanning.com/certificates.html>

²⁷ www.discefa.com/en/quality

²⁸ <https://www.oceamic2.com/>, <https://www.oceamic2.com/en/quality-certification/>

²⁹ <https://unimergroup.com/i/rapports/2023/Rapport-Financier-Annuel-et-ESG-2023.pdf>

10. Can you confirm whether the Spanish importing company Merpacífico - which sources products in Western Sahara, including “the Moroccan octopus with its most valued variant: the Dakhla octopus” - has obtained an IFS Food certificate? ³⁰ If yes, which certification body issued it? Would you share with us a copy of the document?
11. The Andorran company Congelats del Nord writes on its website that it “dedicates itself to the distribution of our quality products that our Octopus, Cuttlefish and Squid in the worlds best known waters – Dakhla, Morocco. Congelats Del Nord – Your Trusted Partner in Premium Cooked Octopus Distribution with its own plant in Dakhla, Morocco. We are committed to excellence through having a totally vertically integrated business model, ensuring that every product meets the highest standards. Having our own plant in Dakhla, Morocco means that everything stays “In-House” ensuring full traceability at all times.”³¹ Directly underneath, it states that “Certified under international standards complying with the diversity of our target markets. IFS Food certified with state of the art facilities offering our clients complete traceability and peace of mind.” Can you confirm whether Congelats del Nord has obtained an IFS Food certificate? If yes, which certification body issued it? Would you share with us a copy of the document?
12. According to the certificate that was issued for Conserveries Rio de Oro SARL, the city of Dakhla is located in “Morocco”. Has the relevant certification body for that certificate - Eurofin - ever informed IFS that the physical address of the above-mentioned establishments is incorrect, through placing geographical locations in Western Sahara within the country of “Morocco”?
13. Which countries’ laws regulate the contracts between the European certification bodies and the establishments located in Western Sahara?
14. Did the auditors of Eurofin or other certification bodies physically travel into the occupied territory as part of the IFS certification procedure?
15. In the cases when certification bodies issue certifications for IFS, but place the certified entity in the wrong country or territory, without taking into account the United Nations maps, does IFS consider this an act of proven negligence committed by the certification body?

Regarding the standard:

16. The IFS Standard, version 8, Paragraph 1 “Governance and commitment” notes the following:
 - 1.1.1 “The senior management shall develop, implement and maintain a corporate policy, which shall include, at a minimum:
 - food safety, product quality, legality and authenticity”³²
 - a. Which country’s laws apply to Western Sahara, according to IFS?
 - b. If IFS 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 CJEU which does not regard Morocco as having sovereignty or an administering power capacity over Western Sahara, and as such does not consider Western Sahara to be part of Morocco?
17. Conserveries Rio de Oro SARL - which has an address in Western Sahara - is involved in processing and sales of fisheries products.
 - 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 IFS consider Morocco’s government’s legal standing in terms of issuing fisheries licences in the waters offshore Western Sahara (particularly in view of the CJEU

³⁰ <https://merpacifico.com/en/calidad/>

³¹ <https://congelatsdelnord.com/>

³² The IFS Standard defines Food Authenticity in the following way: “The characteristic of a food in relation to its origin, and/or process of production and/or its inherent properties (e.g. organoleptic or chemical).”

rulings Joined Cases C-778/21 P and C-798/21 P³³ of 4 October 2024 and of C-266/16³⁴ of 2018 (particularly paragraph 67-69) and that the Saharawi people have not consented to it)?

18. The IFS Standard contains several paragraphs on Food Fraud.

Paragraph 1.2.5 notes:

“The senior management shall maintain a system to ensure that the company is kept informed of all relevant legislation, scientific and technical developments, industry codes of practice, food safety and product quality issues, and that they are aware of factors that can influence food defence and food fraud risks.”

“4.20 Food fraud

4.20.1 The responsibilities for a food fraud vulnerability assessment and mitigation plan shall be defined. The responsible person(s) shall have the appropriate specific knowledge.

4.20.2 A documented food fraud vulnerability assessment, including assessment criteria, shall be documented, implemented and maintained. The scope of the assessment shall cover all raw materials, ingredients, packaging materials and outsourced processes, to determine the risks of fraudulent activity in relation to substitution, mislabelling, adulteration or counterfeiting. “

In this regard, and taking into account the clear ruling from CJEU on correct labelling of products originating from Western Sahara, what measures have been taken by IFS to avoid that goods from the certified factories reach the European market labelled as from “Morocco”?

19. The IFS standard paragraph 4.4 Purchasing , states:

4.4.1 “A procedure for the sourcing of raw materials, semi-finished products and packaging materials and the approval and monitoring of suppliers (internal and external) shall be documented, implemented and maintained. This procedure shall contain, at a minimum:

- raw materials and/or suppliers’ risks
- required performance standards (e.g., certification, origin, etc.)...”

4.4.2 “The purchased materials shall be assessed, based on risks and suppliers’ status, for food safety, product quality, legality and authenticity....”

Among the specific companies we have mentioned above, all claiming IFS certification, some are based in Morocco proper. These source raw materials from Western Sahara. How are these establishments ensuring legal compliance in the supply chain, and that the products that are exported from Western Sahara into Morocco are labelled correctly?

20. The IFS standard paragraph 1.2.6. states that “The senior management shall ensure that the certification body is informed of any changes that may affect the company’s ability to conform to the certification requirements”. Have the certification bodies been informed by the certified companies about the three CJEU decisions of 4 October 2024, which has a direct effect on the labelling of the products and the understanding of the legality of the fisheries in the territory?
21. Some of the companies that refer to the IFS standard are clearly selling products from Western Sahara as if they were Moroccan. What checks have been taken, if any, to ascertain that the certified distributors are not including in its supply chain products that originate from Western Sahara, or that are incorrectly labelled?

Regarding credibility of the standard:

22. 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.
- a. What reputational risks does IFS consider it might have for the standard that the websites of the certified companies - and also possibly the IFS certificates themselves - mislead the consumer about the country of origin of the products that are being marketed?

³³ <https://curia.europa.eu/juris/document/document.jsf?text=&docid=290676&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4034966>

³⁴ Judgment of the Court (Grand Chamber) of 27 February 2018.

Western Sahara Campaign UK v Commissioners for Her Majesty’s Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs, ECLI:EU:C:2018:118, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266>

- b. What reputational risks does IFS consider it might have for the standard if the IFS certificates mislead potential EU-based importers about which country an exporter is located in, particularly when importers have to comply with EU law on labelling of origin for products from Western Sahara?
- 23. We notice that Bureau Veritas is among the certification bodies that are, in general, approved to do checks in accordance with the IFS Food 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".³⁵ 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 IFS 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:

- 24. Has IFS ever sought to find out whether the issuing of certificates to Moroccan companies in occupied Western Sahara, or to foreign companies sourcing the products from Western Sahara, is something that the Saharawi people have consented to?
- 25. According to its website, IFS is to assist "companies increase the trustworthiness of their products". How does this aim 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 and EU case-law?
- 26. 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 IFS certificates claiming that geographical locations in Western Sahara are in fact located in Morocco?
- 27. 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?
- 28. 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 and as a consequence of the 4 October 2024 CJEU rulings?

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.

Looking forward to hearing from you,

Sincerely,

Erik Hagen

Western Sahara Resource Watch

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³⁵ <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>