

SGS Société Générale de Surveillance S.A.,
1 Place des Alpes, 1211 Geneva
Switzerland
Att: Mrs. Géraldine Picaud, CEO

Basel/Brussels, 28.11.2024

REGARDING SGS CERTIFICATION OF COMPANIES IN OCCUPIED WESTERN SAHARA

Western Sahara Resource Watch (WSRW) and *terre des hommes schweiz* are privileged to present you with our compliments. We are writing to inquire about certifications undertaken by SGS of companies in occupied Western Sahara.

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 SGS in the report.

SGS del Perú S.A.C. has issued certifications to the company Protein and Oil Industry¹ and to KB Fish in 2022², both in the territory of Western Sahara, outside of the international borders of Morocco. According to the certificate, Protein and Oil Industry sources its sardine and chub mackerel from the Moroccan EEZ, which is also erroneous. The two establishments are, according to the certificates, located in Morocco proper. This is incorrect.

As the compliance check is to assess matters of law and regulations, we believe such failure to relate to the UN maps and rulings of international courts constitutes acts of gross negligence.

Finally, according to the website of the German company KMP, the latter uses SGS for certification of fishmeal from Latin America, both at the source as well as upon entry to Bremen. It is not clear if SGS also is involved in the checks of fishmeal from Western Sahara into Bremen.³

We have several questions in relation to the certification of these particular companies, outlined further below, that we hope you will have a chance to respond to.

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.⁴ 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.⁵ 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.⁶

¹ https://www.marin-trust.com/sites/marintrust/files/2022-10/PELIM_819943202_GenericCertificate_Final.pdf Or download https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1955/673f1884be2c3_MarinTrust_Certif_ProteinAndOilIndustry_2022.pdf

And:

<https://www.marin-trust.com/sites/marintrust/files/2022-08/PROTEIN%20AND%20OIL%20INDUSTRY.pdf> Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1968/673f24bf3c61a_MarinTrust_Certif_ProteinAndOilIndustry_2022b.pdf

² https://www.marin-trust.com/sites/marintrust/files/2022-11/PELIM_819942701_GenericCertificate_Final.pdf Or download https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1959/673f1bf8ed152_MarinTrust_Certif_KBFish_2022.pdf

³ <https://www.kmp-fischmehl.de/en/logistics>

⁴ International Court of Justice, Western Sahara, <https://www.icj-cij.org/case/61>

⁵ 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

⁶ 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>

While well over a hundred of UN Resolutions, and rulings by the International Court of Justice, the European Court of Justice⁷ and the African Court on Human and People's Rights⁸, 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.⁹ 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.¹⁰

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.¹¹ We also refer to the conclusions of the UN Treaty Body on Economic, Social and Cultural Rights¹² and of the UN Human Rights Committee¹³, 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.¹⁴
- Morocco has no sovereignty¹⁵ or administering mandate¹⁶ 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.¹⁷
- 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.¹⁸

⁷ 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>.

⁸ 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>

⁹ 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>

¹⁰ <https://freedomhouse.org/countries/freedom-world/scores?sort=asc&order=Total%20Score%20and%20Status>

¹¹ 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>

¹² 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

¹³ 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

¹⁴ 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.

¹⁵ Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.

¹⁶ "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.

¹⁷ Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.

¹⁸ Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.

- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.¹⁹ 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.”²⁰ 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.”²¹
- 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.²²
- 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.²³

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

1. The MarinTrust certificate relating to Proteine and Oil Industry²⁴, located in Dakhla, makes reference to the sardine and chub mackerel originating from the “Moroccan EEZ”. Does this mean that SGS considers the waters offshore Dakhla to be of Moroccan EEZ?
 - a. Taking into account the conclusions of CJEU, what basis has SGS come to such a conclusion?
2. The certificate of KB Fish SARL explains that sardines originate from sardine stocks in "Central Zone (Zone A+B)" and in "South Zone (Zone C)" within the FAO Fishing Area 34.²⁵ As known, Zone A is offshore Morocco proper, Zone B is offshore both Morocco and Western Sahara (stretching south to the 27° N latitude), whereas Zone C is only offshore Western Sahara. Is KB Fish expected to treat, assess, report on products sourced from the Western Sahara and Moroccan part of these waters in separate and distinct manners?
3. SGS has certified several establishments in South Morocco, such as of Nouvelle Ougala²⁶ in Tan Tan. The latter certificate establishes that the raw materials are supposed to originate from Moroccan EEZ.
 - a. What is done, if anything, to ascertain that the raw materials that are transported to the factory, either by sea or by land, originate from the Moroccan EEZ and not from Western Sahara waters?
 - b. Does Nouvelle Ougala and other companies with SGS approved certifications in Morocco agree with the interpretation of the CJEU that Moroccan EEZ does not extend into Western Sahara?
4. According to the website of the German company KMP, the company uses SGS for certification of fishmeal from Latin America, both at the source as well as upon entry to Bremen. It is not clear if SGS also certifies the goods from Western Sahara.²⁷
 - a. Does SGS certify the products arriving into KMP from Western Sahara?
 - b. If yes, what country of origin are the imports filed as?
5. Apart from the establishments/facilities mentioned in this letter, which other certifications has your company undertaken in the territory of Western Sahara?

¹⁹ Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.

²⁰ Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.

²¹ Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.

²² Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70-109.

²³ Judgment of 4 October 2024, EU:C:2024:839, §89.

²⁴ <https://www.marin-trust.com/sites/marintrust/files/2022-08/PROTEIN%20AND%20OIL%20INDUSTRY.pdf> Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1968/673f24bf3c61a_MarinTrust_Certif_ProteinAndOilIndustry_2022b.pdf

²⁵ https://www.marin-trust.com/sites/marintrust/files/2022-11/PELIM_819942701_GenericCertificate_Final.pdf Or download https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1959/673f1bf8ed152_MarinTrust_Certif_KBFish_2022.pdf

²⁶ <https://www.marin-trust.com/sites/marintrust/files/2022-02/IMPRESION%20DE%20CERTIFICADO%20-%20NOUVELLE%20OUGALA.pdf>

²⁷ <https://www.kmp-fischmehl.de/en/logistics>

Finally, two last elements:

6. SGS is providing the Moroccan government with vehicle control inspections in occupied Western Sahara.²⁸ On what legal basis does SGS include Western Sahara inspections in an agreement with the Moroccan government? Why does the map of Morocco on your website include the territory of Western Sahara?
7. In March 2021, SGS entered into a contract with Morocco's Ministry of Industry, Trade, Green, and Digital Economy to implement a Conformity Assessment Program for industrial products²⁹ This program aims to ensure that exported products meet Moroccan standards before entering the Moroccan market.
 - a. Does this agreement cover only the territory of Morocco, or does it also cover Western Sahara, meaning outside of the internationally recognised borders of Morocco?
 - b. If the non-self-governing territory Western Sahara is included, what legal standing does SGS believe Morocco holds in Western Sahara?

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

A copy of this email is sent to a representative of SGS del Perú.

Looking forward to hearing from you,

Sincerely,

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²⁸ https://www.amanauto.sgs.com/find_us.php Or download: https://vest-sahara.s3.amazonaws.com/wsrw/feature-images/File/1982/673f75d956fa7_SGS_Amanauto_website21.11.2024.jpg

²⁹ <https://www.sgs.com/en-pe/news/2021/03/sgs-to-provide-product-conformity-assessment-services-to-the-kingdom-of-morocco>