

To the attention of Ms Nicole Notat  
President, Vigeo Eiris

Oslo,  
23 December 2016

**Re: Vigeo Eiris Maroc certification of bonds for energy production in occupied Western Sahara**

Dear Ms. Notat:

We have for reply your letter dated this 19 December, in response to ours of 17 November 2016. Thank you for taking the time to write.

In your letter you confirm that Vigeo Eiris has taken part in the certification of bonds relating to energy production at Boujdour and El Aaiun in Western Sahara. These projects, it should be noted, are managed by the Moroccan government, in a territory that Morocco holds by occupation contrary to international law.

We fail to understand why the CBI principles to which you refer are relevant to the question of how come Vigeo Eiris would certify Moroccan projects outside of that country. Environmental sustainability is evidently important, but that is not what is at issue in our correspondence. We express some doubt over the claims that Vigeo Eiris is supportive to human rights, and propose to address the matter below.

As mentioned in our previous letter, we were surprised to learn that your Moroccan subsidiary could have taken part in such certification, as we believed Vigeo Eiris had a certain sensitivity not only to human rights concerns, but also matters relating to occupied territories and international law. In your letter you confirm the involvement and furthermore that you were aware of it being in Western Sahara. It can be noted that other certifying companies, *e.g.* DNV-GL, has refused to carry out certifications of renewable energy in the territory due to the aspects mentioned in this letter. This is largely covered in reports on our website.

In your letter to us, your company's references to the status of the territory *could have* referred to the General Assembly resolutions on the territory being under Moroccan occupation, it *could have* referred to International Court of Justice opinion that Morocco has no legal right to be there, and it *could have* referred to the right to self-determination of the people of the territory.

Such things have been definitively pronounced upon in a judgement issued by the Court of Justice of the EU on 21 December 2016 in the case concerning EU-Moroccan trade relations. The Court was clear that agreements pertaining to Western Sahara cannot take place without the consent of the representatives of the people of the territory, which representative organization is the Polisario Front. The UN Human Rights Council has said as much in its 2015 and 2016 ICESCR and ICCPR reports on Morocco. We commend a careful reading of such reports and the CJEU judgment to you.

Instead, your 19 December letter claims that the Polisario Front "asks for a referendum of self-determination" and that Morocco's suggestion of a solution is somehow serious and credible. Your reference to UN Security Council resolutions are selective and tendentious. Vigeo Eiris's references to the territory echoes that of the Government of France in its reaction to the Court of Justice judgement this week. The French government is a strong supporter of Morocco and has a tradition for actively undermining the rights of the Saharawi people.

Maybe this very coloured and politicized position is the reason why Vigeo Eiris on a map on its website includes Western Sahara as part of Morocco? This was done both on previous website (e.g. [http://wsrw.org/files/dated/2016-12-23/vigeoeiris\\_release\\_20151012.pdf](http://wsrw.org/files/dated/2016-12-23/vigeoeiris_release_20151012.pdf)) and at the new website ([www.vigeo-eiris.com](http://www.vigeo-eiris.com)) which you launched this month, after our sending the previous letter. Please note that such maps are in contradiction to the UN maps and not reflecting the CJEU judgment from 21 December 2016. Find a United Nations map here: <http://www.un.org/Depts/Cartographic/map/profile/africa.pdf>

WSRW is concerned that Vigeo Eiris may have been poorly advised on matters relating to the Western Sahara issue. You will find useful this instructive report prepared in 2015 by the Policy Department of the European Parliament, regarding international law and the occupations of Crimea, Palestine and Western Sahara: <http://wsrw.org/a243x3428>

There is another aspect of your letter to WSRW which leaves us even more baffled than we were when we first contacted you. Your claim, that “to refuse such opportunities could also be seen as a political decision” is not something we had expected to hear from your company. What is political, Ms. Notat, is to certify bonds of a project operated by the Moroccan government outside of the international borders of Morocco, on a territory under foreign military occupation. The argumentation that it is a matter of politics *to avoid* taking on an assignment for the Moroccan government in Western Sahara, strains credulity.

We have a number of questions regarding the contract, your policies and your interpretation of international law.

Regarding the contract

1. Has Vigeo Eiris been in contact with representatives of the people of Western Sahara prior to or during the certification process, to seek permission to carry out such certification?
2. Was the contract with MASEN for the certifications of bonds relating to projects in Western Sahara *the same contract* as the one relating to the projects in Morocco?
3. How much was Vigeo Eiris paid by MASEN for carrying out this certification of the projects on the occupied land?
4. As mentioned in our previous letter to you, we would appreciate if you could send us the terms of reference of the contract you had with MASEN.

Regarding Vigeo Eiris understanding of international law

5. We note that Morocco on the website of Vigeo Eiris is not in line with UN maps. Does Vigeo Eiris agree that Western Sahara is not part of Morocco, but a separate territory, under process of decolonisation?
6. Does Vigeo Eiris agree with the Court of Justice of the EU that the Polisario Front has to be consenting for activities to be legal?
7. Is it of Vigeo Eiris’s opinion that Article 1 of the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights establishes peoples’s right to self-determination?
8. You state that your task is to “deliver assessments in line with” a number of principles on guidelines” (e.g. OECD, ISO 26000, CBI, UNGP), “which provide processes to ensure that conventions are respected”. It should be noted that commentary to UNGP Principle 12 underlines the respect for the ICESCR and the ICCPR. How does your firm’s contract with MASEN respect the principle of self-determination in the Article 1 of those two covenants?
9. In your letter to us, you state that “we question and evaluate all companies under review” on matters of human rights. The ICESCR and ICCPR UNHRC committees in 2015 and 2016 in their

evaluations of Morocco's obligations under the two covenants found that consent had not been sought by Morocco in its dealings in the territory. The Saudi company ACWA, which won the tenders in El Aaiun and Boujdour that you certified, has not responded to question from WSRW whether they sought the consent of the people of Western Sahara. Has Vigeo Eiris tried to determine whether MASEN or ACWA have respected Article 1 of these covenants prior to its undertaking of this assessment?

10. Based on the previous question, how does this analysis (or lack of analysis) by Vigeo Eiris on whether or not a consent had been sought correspond with Vigeo Eiris's claim to support human rights and evaluating companies' human rights performance, in line with UNGP?

Regarding Vigeo Eiris' policies

11. Does Vigeo Eiris have a policy on whether it can certify projects on illegally occupied territories?
12. Does Vigeo Eiris have a policy on whether it can certify companies with operations on illegally occupied territories?
13. Does this (as mentioned in 11 and 12 above) apply also to the subsidiary Vigeo Eiris Maroc?
14. We note that Eiris Foundation has worked on advising investors on Palestine and Crimea, but not yet Western Sahara. We understand from your website that Vigeo Eiris has an office and a large presence in Morocco. Would you say that there is a risk that your company's presence in Morocco limit the credibility of your company and the Foundation to provide proper ethical advice on occupied territories in general, and on Western Sahara in particular?
15. Has Vigeo Eiris to this date given certifications to any kind of projects, including to green bonds, to programmes run by the Israeli or Russian government in occupied Crimea and Palestine?

Lastly

16. We know that Eiris has been administrating a newsletter which it sends to investors news coverage from mainstream media relating to companies' ethical behavior. The *EU Observer* wrote today that Siemens and Enel are being alerted by the Polisario Front that they have 15 days to depart the territory. <https://euobserver.com/foreign/136401> We invite you to send this news item out on the newsletter to your clients.
17. Will Vigeo Eiris rectify the maps on its website, so that they are in line with international law?
18. On its Ranking Emerging 70, Vigeo Eiris includes companies such as Lafarge Ciments and BMCE Bank. [http://www.vigeo-eiris.com/wp-content/uploads/2016/10/Finale\\_Ranking\\_template\\_EM70\\_072016.pdf](http://www.vigeo-eiris.com/wp-content/uploads/2016/10/Finale_Ranking_template_EM70_072016.pdf) The former is planning to operate in Western Sahara, while the latter is one of two Moroccan banks securing credit to the controversial green energy programmes in Western Sahara after European investors have refused to allocate such money due to responsibility policies (read about that in our report 'Powering the Plunder' in [www.wsrw.org](http://www.wsrw.org)). We would like to underline that these two Moroccan companies are controversial, and that they deserve to be filtered out of ranking of that reason. If this notification is not sufficient, we would appreciate a clarification as to what further information would be needed to have them removed from this ranking, and what mechanism we should proceed with to file this request as a controversy sufficient enough for exclusion from that list. (On another, general note, we are baffled to see so many controversial companies on that particular ranking, the most prominent being Cemex in occupied Palestine and Ecopetrol in Colombian rainforest, we recommend you to study the methodology of that ranking).

Perhaps Vigeo Eiris already is aware that WSRW and its member associations over the last 15 years have been working closely with the investor community in Europe. We are minded – pending your reply to the questions presented above – to call upon banks to refrain from buying the bonds that Vigeo Eiris has certified. Such financial instruments obviously undermine the peace process and international law. In other

words, WSRW is contemplating approaching all banks *likely to be the future purchasers* of such bonds – particularly banks and investors with ethical and green profiles in Europe.

We should note this: Leading activists from Western Sahara, including the secretary-general of the Committee for the Protection for Natural Resources in Western Sahara, Mr. Sidahmed Lemjiyed, has been sentenced to life in jail by the occupying Moroccan authorities. His case, and that of others, comes for appeal this 26 December. Most of the group of 25 activists were sentenced to prison for periods ranging from twenty years to life for having organized a protest against their socio-economic marginalization in 2010. The treatment against them to date is a grave testimony to the situation facing those who oppose projects of the kind that Vigeo Eiris have facilitated to give a semblance of acceptability.

**Our essential point is this. Vigeo Eiris has no right to certify projects in Western Sahara under a contract with MASEN. We express profound concerns about what may be a case of “greenwashing” in the industry in the territory. The proper course is that your company immediately withdraw the certification, based on the principles of international law and conclusions outlined by the CJEU in its 21 December judgment.**

We look forward to hearing from you at your early convenience, both for answer to our questions, as well as regarding our request that the certification for the two projects located outside of Morocco be withdrawn.

Sincerely

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