

To the attention of Ms Nicole Notat  
President, Vigeo Eiris

Oslo,  
14 February 2017

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

Dear Ms. Notat:

We write to you to request an answer to the letter we've sent you on 23 December 2016, as we cannot see having received a reply. The mentioned letter to Vigeo Eiris was published on our website: <http://wsrw.org/a105x3704>

We did notice that a letter was sent from Vigeo Eiris to the Business and Human Rights Resource Center (BHRRC) on 27 January 2017, making reference to our letter to you. As that letter from Vigeo Eiris is addressed to BHRRC, carrying the BHRRC file name, was not sent to us, and as the letter to BHRRC fails to address the questions we raised in our letter to you, we take it for granted that this letter we now observe on BHRRC's website is not an answer to our letter to you of 23 December 2016.

With this letter to Vigeo Eiris today, we underline that we look forward to receiving an answer to our letter and the questions that we raise. It is a matter of urgency to us and to the people of Western Sahara.

While awaiting your response, we want to comment on some aspects of your letter to BHRRC.

**1. Missing the critique**

In the letter that Vigeo Eiris sent to BHRRC, it seems that Vigeo Eiris is missing the main point of our concern. We are not enquiring whether the certified projects outside of Morocco's international borders, are sustainable or not. Nor are we questioning whether or not they are in line with the CBI standard.

What we are questioning is how come Vigeo Eiris has proceeded to certify these projects in the first place. We contend that Vigeo Eiris does not have the right to facilitate Moroccan government projects in Western Sahara – outside of Morocco's international borders – without first seeking the consent of the representatives of the people of the territory. The principles that this concern is based on are very clearly spelled out in the judgement of 21 December 2016 of the Court of Justice of the European Union (Case C-104/16 P, Council v Front Polisario).

Vigeo Eiris notes in its letter to BHRRC that WSRW opposes "the renewable energy developments financed by the bond, due to the location of some of the projects". We would like to underline that this is not a precise representation of our concern. WSRW has no objections regarding the projects in Morocco proper. Such projects, and connected bonds, may well constitute valuable contributions to Morocco's transition to renewable energies. Vigeo Eiris's representation of our letter, could indicate that we are either demanding a boycott of Morocco or of renewable energy – we do neither. Our letters of 18 November 2016 and 23 December 2016 are clear that we are against the *certification of*

*the projects in Western Sahara*. We question the legality, ethics and practices of the work undertaken by Vigeo Eiris upon certifying two very specific Moroccan projects in a territory under occupation, outside of Morocco's internationally recognised borders. We have expressed no opinion on the energy developments of Morocco in Morocco proper.

We notice that you refer to an article from the news service of the Algerian government in order to refer to our concern. We do not find that necessary. The content of that mentioned news item does not well represent what we have written in communication to you nor on our website, and it does not correctly reflect the involvement of Vigeo Eiris in the certification of the bonds.

## **2. Vigeo Eiris continued pro-Moroccan terminology**

In its letter to BHRRC on 27 January 2017, Vigeo Eiris seeks to clarify that it is an independent institution and that it strongly disagrees with WSRW's concerns that its activities are detrimental to the rights of the Saharawi people.

But ironically, in its letter of 27 January 2017, Vigeo Eiris is applying even more pro-Moroccan terminology and representations of the conflict than it had already done in the past. We lament Vigeo Eiris's continued use of such terminology.

We had not expected to read Vigeo Eiris labelling "Western Sahara" as "the region of Sahara". This is a pure Moroccan way of representing the territory, and not the one of the United Nations. For instance, the Moroccan suggestion to include Western Sahara into the Moroccan kingdom, presented to the UN Secretary General in 2007, is officially called "Proposal for the Negotiation of a Statute of Autonomy for the region of Sahara".

This way of representing the territory underlines the point from our previous letter, and strongly indicates that your company is poorly advised in matters of international law and human rights pertaining to Western Sahara. *As a very minimum*, and particularly after the email exchange we've already had, one could expect that Vigeo Eiris applied the United Nations terminology to the territory itself.

We must warn you that such references to the territory will be seen as offensive to people of Western Sahara, whose rights to consent are already violated through these Moroccan energy projects and its related financing and certification.

Even foreign oil companies operating with the Moroccan state owned companies, having been excluded by a large number of institutional investors internationally, do not present the territory in such highly pro-Moroccan and deeply political terms.

Your formulation that the "administrative status is the subject of a long-standing dispute between Morocco and Polisario" is not well representing the status of the territory, nor the work of the United Nations.

It is not the administrative status which is under dispute. The administrative status has been clearly established by the UN: Morocco is not the administrative power of the territory. You find information about all the remaining non-self-governing territories on the website of the United Nations, as well as a clear indication that Morocco is not the administrative power:

<http://www.un.org/en/decolonization/nonselvgovterritories.shtml>

The UN is engaged in assisting the parties in the realisation of self-determination for the people of Western Sahara. We observe a total absence of references both to the people of Western Sahara and to their right to self-determination in your correspondence.

Based on Vigeo Eiris's terminology of the territory and the conflict, and your company's function to facilitate Moroccan projects in Western Sahara, we cannot but underline our point from our previous letter, that your company has a very tendentious reading of the conflict. Your letter to BHRRC further contributes to raise questions regarding your claimed role as "independent". We would also stress that it is a far more political act to certify such Moroccan projects in Western Sahara than to *not* certify them, as your company argues.

We also observe that three months after first contacting your company and after Vigeo Eiris having remade its entire website, the maps of Morocco on your website are still wrong and not in line with UN cartography. We believe that an independent research institution with competence in international law would not have such maps on its website nor apply such terms as Vigeo Eiris does.

### 3. Vigeo Eiris's view on MASEN in Western Sahara, and its own obligations

Based on your letter to BHRRC, we remain concerned about Vigeo Eiris's minimising of its own responsibilities. It seems from the letter that it is leaving it to MASEN and to other stakeholders to address the issues which, we believe, Vigeo Eiris would need to assess themselves. This underlines the relevance of the questions we asked in our previous mail.

The words "legitimate interests of all stakeholders" in the following sentence in your letter to BHRRC open up for two equally concerning interpretations (our bold):

"Our primary responsibility is to provide material and independent information to investors and corporates, taking into account the **legitimate interests of all stakeholders** without exception, to underpin their judgements, rather than to decide on what projects should be financed and what should not".

If these "stakeholders" refer to "investors and corporates", then Vigeo Eiris is leaving it to other parties to address the problematic aspects of a financing mechanism which Vigeo Eiris has been key in setting up. It must be underlined that Vigeo Eiris has an obligation, on its own, to make sure that its activities are not violating its obligations vis-à-vis human rights. This is a very basic aspect of the UN Guiding Principles. On this basis, we asked questions relating to Vigeo Eiris's policies, to which we look forward receiving a response. Vigeo Eiris's interpretations of international law are essential in understanding whether the material it has presented to investors is credible. The website of CBI is describing the verifier's report as concerning projects in "Morocco". If this reference represents the content of the "independent" material made by Vigeo Eiris, this is a reason for serious concern. We have asked CBI for access to the verifier's report, and are awaiting an answer.

If the "legitimate interests of all stakeholders", on the other hand, are referring to Morocco or MASEN or Moroccan nationals having moved into Western Sahara in violation of the Geneva Conventions, then one would believe that Vigeo Eiris has concluded that the interests of Morocco and MASEN in Western Sahara are "legitimate" and that they have a competence in addressing "the socio-economic

conditions of the local populations". This would be of great concern, and of relevance to our questions in the previous letter.

Elsewhere in your letter, Vigeo Eiris notes that "we will closely observe MASEN's commitment and capacity to report on the contribution of eligible projects in improving both the carbon footprint of their regions of implementation, and the socio-economic conditions of the local populations". This illustrates that Vigeo Eiris might have taken a stance on the mandate that MASEN or Morocco has in terms of protecting the well-being of "local populations".

Indeed, the matter of legitimacy of Morocco/MASEN in Western Sahara goes into the core of the letter that we sent you on 23 December 2016, and is related to questions 5 through 10 in that letter.

It can be added that the statements of Vigeo Eiris furthermore ignore all aspects relating to self-determination or the right to consent, and solely rely on the Moroccan government body MASEN. The judgement of the Court of Justice of the EU, 21 December 2016 (§ 106) concludes that all debates regarding such "benefits" or harms are not even necessary to address. The main point is to seek the consent of the representatives of the people:

"third party may be affected by the implementation of the Association Agreement in the event that the territory of Western Sahara comes within the scope of that agreement, without it being necessary to determine whether such implementation is likely to harm it or, on the contrary, to benefit it. It is sufficient to point out that, in either case, that implementation must receive the consent of such a third party. In the present case, however, the judgment under appeal does not show that the people of Western Sahara have expressed any such consent."

Your formulations such as "stakeholders" or "local populations" furthermore indicate that Vigeo Eiris has an opinion as to whom the stakeholders and the population of the territory really are. Only after addressing the questions regarding the status of the territory, and the rights of the people of the territory stemming from being from such a territory, as we request in questions 5 through 10, we would welcome a discussion on how "stakeholders" or "local populations" can be operationalised.

#### **4. Requesting more information**

We have noted that you write "Our primary responsibility is to provide material and independent information to investors and corporates".

On this basis, WSRW would like Vigeo Eiris to forward to us the material and information that you send to investor and corporates regarding the bonds and projects in Western Sahara.

We would expect that, for instance, as a very minimum, the projects are labelled as being in the right country. The sooner Vigeo Eiris forwards us this information, the better, as we would need to contact institutional investors internationally alerting them that the information which Vigeo Eiris is producing might be erroneous.

We also notice that the letter sent from Vigeo Eiris to BHHRC on 27 January 2017 is co-signed by a Mr. Fouad Benseddik, as Vigeo Eiris's Director of Methods and Institutional Affairs. We notice that the same Mr. Benseddik is an active member of the *Conseil Économique, Social et Environnemental du*

*Maroc* (CESE). We would like to underline that CESE is a state Morocco agency with a very problematic role in the conflict today. In October 2013, CESE published a report mapping out the development model for the Moroccan occupied parts of Western Sahara, which boasted widespread consultations and dialogue with representatives of civil society in the territory. None of the Saharawi groups, associations and individuals that WSRW has contacted was approached by the CESE. Nevertheless, the work of the CESE is increasingly used to try to legitimize Morocco's exploitation of Western Sahara's resources, as it creates an illusion that the Saharawis' views have been heard. In 2016, the CESE annual meeting condemned the UN Secretary General for his approach to the conflict.

We would appreciate a clarification from Vigeo Eiris as to whether Mr. Benseddik holds this position in this Moroccan state body in the capacity of director of Vigeo Eiris, or whether it is in his personal capacity.

In addition to copying in the CC's addresses from last letter, a copy of this letter is also sent to the OECD NCP of UK and France,

Sincerely

/sign/

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