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ABB
Ethics & Compliance
Affolternstrasse 44
8050 Zürich

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Localisation of the ABB project with S2H2+Bm

Dear Ethics and Compliance Team

Since 2023, it has been known that the Swedish company S2H2+Bm intends to build a green hydrogen plant in Morocco. ABB is named as a long-standing partner in this project. However, current information from a S2H2+Bm whitepaper[1] suggests that the planned project is not located in Morocco, but south of it in Western Sahara. We therefore kindly ask you for clarification:

Is the planned project located within the internationally recognised borders of the Kingdom of Morocco or in Western Sahara, a non-self-governing territory under international law?

Morocco has occupied the territory since 1975. International courts and the United Nations have repeatedly confirmed that Western Sahara is a non-self-governing territory, separate and distinct from Morocco. Morocco has no sovereignty or administrative mandate over the territory, and all economic activities there require the consent of the Sahrawi people, represented by the Polisario Front.

To clarify this, here are a few of the relevant judgments of the European Court of Justice.

- The territory of Western Sahara constitutes a territory distinct from that of the Kingdom of Morocco.[2]
- Morocco has no sovereignty[3] or administering mandate[4] over Western Sahara.

[1] https://s2h2plusbm.com/concept/
[2] 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
[3] Judgment of 10 December 2015, EU:T:2015:953, §241. Considered a settled matter in subsequent rulings.
[4] "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.

- Consequently, the waters adjacent to Western Sahara cannot be regarded as part of the Moroccan territorial waters, exclusive economic zone, fishing zone or any other notion used to describe Morocco's role vis-à-vis the waters off Western Sahara.[5]
- 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.[6]
- The Court is clear that the right to consent resides with the people of Western Sahara, and not with the population of the territory.[7] 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."[8] 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."[9]
- The Court has firmly established the position of Polisario Front, 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.[10]
- In Case C-399/22, which specifically dealt with the labelling of products from Western Sahara, the Court again emphasized 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.[11]

We are convinced it is not in ABB's interest to be associated with the occupation of Western Sahara, and we trust your company will adopt a clear stance in line with international and EU law.

We therefore respectfully seek clarification regarding the location of the aforementioned project: Is it located within the borders of the Kingdom of Morocco or in Western Sahara?

Sylvia Valentin Head of Development Policy
sylvia.valentin@terredeshommes.ch

[5] Judgment of 27 February 2018, EU:C:2018:118, §67-85. Considered settled in subsequent rulings.
[6] Judgment of 21 December 2016, EU:C:2016:973, §104. Reiterated and refined in subsequent rulings.
[7] Judgment of 4 October 2024, EU:C:2024:833, §180-181. Judgment of 4 October 2024, EU:C:2024:835, §152-153.
[8] Judgment of 4 October 2024, EU:C:2024:833, §157. Judgment of 4 October 2024, EU:C:2024:835, §128.
[9] Judgment of 4 October 2024, EU:C:2024:833, §158. Judgment of 4 October 2024, EU:C:2024:835, §129.
[10] Judgment of 4 October 2024, EU:C:2024:833, §96-138, Judgment of 4 October 2024, EU:C:2024:835, §70.
[11] Judgment of 4 October 2024, EU:C:2024:839, §89.