

Air France-KLM S.A.  
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France



Brussels  
7 December 2020

To the attention of Mr Benjamin Smith  
Chief Executive Officer of Air France-KLM

Dear Mr Smith,

Western Sahara Resource Watch (WSRW) is privileged to present you with our compliments. We are writing to inquire about the commitment of Air France-KLM to its passengers and cabin crew when flying to areas that are not covered by an aviation agreement.

We note that both Air France-KLM and its subsidiary Transavia offer flights to Dakhla, a town that is located along the mid-coast of the part of Western Sahara that is under Morocco's military occupation. On the websites of both Air France and Transavia, Dakhla is erroneously and misleadingly referred to as located in Morocco.

As you will know, the ceasefire agreement between Morocco and Frente Polisario has come to a halt mid-November, and armed conflict has been resumed in Western Sahara. Accordingly, Transavia is now flying into a war zone. This highlights the need for Air France-KLM to provide clarifications on its operations in the territory and their legal framework.

Recent years have witnessed an emerging body of law pertaining to Morocco's claim to the territory. In four consecutive rulings, the Court of Justice of the European Union (CJEU) has concluded that Morocco has no sovereignty over Western Sahara, nor any international mandate to administer it, as the territory is separate and distinct from Morocco. As a consequence, the Court ruled, EU agreements with Morocco cannot be extended to Western Sahara in a lawful manner, unless with the explicit consent of the people of the territory – the latter being the natural corollary of the people of Western Sahara's right to self-determination, which is backed by the entire international community (except Morocco).<sup>1</sup> The CJEU as such echoed the Opinion of the International Court of Justice, which could find no evidence of any ties of sovereignty between the two territories and reaffirmed the Saharawi people's right to self-determination.<sup>2</sup>

One of these CJEU rulings specifically dealt with EU's aviation agreement with Morocco<sup>3</sup>. That judgment specified that the territory of Morocco must be understood as "referring to the geographical area over which the Kingdom of Morocco exercises the full range of powers recognized to sovereign entities by international law, to the exclusion of any other territory such as that of Western Sahara" (para. 27). The Court added that including Western Sahara infringes on the rules of international law that apply to the relations between the EU and Morocco, "notably the principle of self-determination referred to in Article 1 of the United Nations Charter and the principle of the relative effect of the treaties" (para 27). "The European Union cannot validly share an intention of the Kingdom of Morocco to include the territory in question in the area of application of the Agreement" (para. 33).

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<sup>1</sup> The Rulings for cases T-512/12, T-180/14, C-266/16 and T-275/18 can be accessed at the site of the EU Court of Justice, <http://curia.europa.eu>.

<sup>2</sup> International Court of Justice, Advisory Opinion of 16 October 1975, Western Sahara, <https://www.icj-cij.org/files/case-related/61/6197.pdf>

<sup>3</sup> Order of the General Court of the EU, 30 novembre 2018, Front POLISARIO/Council, T-275/18, EU:T:2018:869, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=208458&pageIndex=0&doclang=fr&mode=lst&dir=&occ=first&part=1&cid=16639656>.

Earlier this year, the European Commission acknowledged that it is not seeking to renegotiate “in order to include the Western Sahara in an aviation agreement (like it was done in the case of agricultural products and fisheries, which are pending before the General Court).”<sup>4</sup>

The Commission underlined that "any airline certified by an EU Member State has to comply with EU rules concerning, in particular, the safety of its operations, the licensing of its crew and the maintenance of its aircraft, irrespective of the territory in which the airline operates".

As it stands, Western Sahara is thus clearly not part of the territorial scope of the EU-Morocco aviation agreement. WSRW is concerned that Air France-KLM is thus operating in Dakhla without a legal framework in place.

We would be grateful if Air France-KLM could answer the following questions:

1. Which authority, recognised by the European Union, has authorised Air France-KLM to land in Dakhla?
2. Has Air France-KLM obtained the consent of the people of Western Sahara, through their UN recognised representation Polisario Front, for operating flights to and from Dakhla, in Western Sahara?
3. In Air France-KLM’s view, which country’s legislation applies if an airplane of your company has an accident in Western Sahara?
4. According to Air France-KLM, which country controls the airspace over Western Sahara?
5. Have staff of Air France-KLM been notified that flights to Western Sahara are taking place to a location not covered by an aviation agreement?
6. Have staff of Air France-KLM been notified that flights to Western Sahara are taking place to a location where armed conflict – involving heavy artillery – has been resumed?
7. Which Ground Handling Company does Air France-KLM use in Western Sahara to issue Air Cargo documents and to process passenger information? How does Air France-KLM consider the legal validity these documents, considering they are issued by a Ground Handling Company operating outside of the international borders of any ICAO member state?
8. Taking into consideration that as an airline, Air France-KLM is responsible for providing thorough document control, which state’s entry regulations does Air France-KLM believe to be relevant for passengers and crew arriving with flights to and from Dakhla, located outside of Morocco’s internationally recognised borders?
9. To which body of which country does Air France-KLM pay landing fees in Western Sahara? If such fees are paid to Morocco, does Air France-KLM consider that there are any problematic aspects in your company financially contributing to Morocco’s illegal occupation of the territory?

We plan to publish an article on the matter and wish to include your views. As such we’d be grateful for your response before 1 January 2021.

Looking forward to hearing from you,

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<sup>4</sup> Letter from the European Commission 06.03.2020, [https://www.wsrw.org/files/dated/2020-11-17/20200306com\\_eu-moroccoaviation-ws.pdf](https://www.wsrw.org/files/dated/2020-11-17/20200306com_eu-moroccoaviation-ws.pdf)