Answers of the board of directors of HeidelbergCement to questions of Dachverband der kritischen Aktionärinnen und Aktionäre at the AGM on 12 May 2022

Unofficial translation by WSRW

1) HeidelbergCement operates two cement grinding plants through a subsidiary in Western Sahara, which is occupied by Morocco in violation of international law. The building materials produced in the plants are essential for the infrastructure expansion carried out by the occupying power, which according to the Research Services of the German Bundestag substantiate a war crime.

On the other hand, in its ruling of 29 September 2021, the General Court of the European Union (ECJ) annulled trade agreements between the EU and Morocco because they violate the right of self-determination of the people of Western Sahara without their consent. In HeidelbergCement's opinion, what is the relevance of the following key statements of the judgment for its activities and those of its subsidiaries in Western Sahara and how do you justify this?

a) Western Sahara has a separate and distinct status from Morocco and the people of Western Sahara are recognized as having the right to self-determination [T 279/19, ECLI:EU:T:2021:639, para. 301 and para. 92 respectively].

b) the inclusion of Western Sahara in economic agreements requires the consent of the people of Western Sahara [T 279/19, ECLI:EU:T:2021:639, para. 194]

c) the consent of the people of Western Sahara cannot be replaced by that of the local (largely Moroccan) population [T 279/19, ECLI:EU:T:2021:639, paras 337 and 371].

In relation to the two grinding mills in Western Sahara, we are aware of the special status of the territory, which becomes evident for example by the fact that we specifically address and discuss the situation of Western Sahara in our human rights risk assessments. In your reference to the judgment of the Court of the European Union, we share the concerns expressed by the European Commission and the European Council. We believe it is reasonable to wait and see whether the European Court of Justice will uphold the complaints of the Commission and the Council.

2) According to its own statement, HeidelbergCement had no contact with Polisario Front and justified this at last year's Annual General Meeting as follows: "We have no contact with Frente Polisario in this context, as they have only been recognized as a political representation for international law issues."

In the above-mentioned judgment, the European Court explicitly recognized the "representativeness" of Polisario Front for the people of Western Sahara in the context of the economic agreements [T 279/19, ECLI:EU:T:2021:639, para. 108].

Does HeidelbergCement respect the ruling of the European Court and will it contact Polisario Front now? If not, why not?

You continue to refer to the judgment of the Court of the European Union of 29 September 2021, and ask whether we would respect this judgment and contact Polisario Front, which according to the EU has been granted representativeness for the people of Western Sahara. I would like to draw your attention to the fact that the EU Commission has already filed an appeal against the decision of the Court in Case T-279/19 on December 14. This is filed under C-779/21 P: the EU Commission here doubts the representativeness and party capacity of the Frente Polisario that you cited. The German government signaled in December ’21 to recognize Morocco’s 2007 proposal. This proposal states that Western Sahara should be granted an autonomy status. I am therefore cautiously optimistic that a settlement of the
conflict will be reached. However, as a private company, we do not wish to go further into the political aspects in this regard.

3) In addition, HeidelbergCement 2021 replied, "We nevertheless assume that the local population agrees with our business activities. On the one hand, minority shareholders of the local Sahrawi population are invested in our business, and on the other hand, we have been granted the necessary approvals by the official representatives elected by the local population."

a) Does HeidelbergCement mean by "local population" the majority of Moroccan settlers currently living in the occupied territories?
b) Does HeidelbergCement assume that it is representative of the Sahrawi people?
c) Does HeidelbergCement assume that consent of the local population would be sufficient for its projects if the court ruled that the consent of the Sahrawi people cannot be replaced by that of the local population in economic agreements?
c) Were the aforementioned permits issued by authorities of the occupying power, Morocco?

In your further question, you refer to statements from the last Annual General Meeting, which I quote again: "We nevertheless assume that the local population agrees with our business activities. On the one hand, minority shareholders of the local Sahrawi population are invested in our business, and on the other hand, we have been granted the necessary approvals by the official representatives elected by the local population." You ask who HeidelbergCement means by the local population and whether they are representative for the Sahrawi people. For us, the local population is all people who live in the range of influence of our business activities and thus become stakeholders for us. It is beyond our knowledge whether the majority of these people are of Moroccan descent. We are committed to the rights of all of these people, I repeat, all of these people, but we place particular emphasis on protecting the rights of the Sahrawi population. For example, about two-thirds of the employees and external workers we employ are Sahrawi. The question of what is representative of the Sahrawi people and who represents the people is political in nature.

You continue to ask whether HeidelbergCement considers the consent of the local population to be sufficient for corporate projects, whereas the European Court does not consider consent of the Sahrawi people to be substitutable by the local population in economic agreements, and you ask whether the permits for our grinding plants were issued by Moroccan authorities.

You correctly state that the court is referring to two inter-state treaties; to apply this view by analogy to the authorization of a private sector business does not seem reasonable to us. The permits for our business activities in Western Sahara are issued by the Moroccan authorities responsible there.

4) According to HeidelbergCement, the subsidiary active in occupied Western Sahara buys "additional raw materials from companies in Sahrawi ownership" for cement production.

a) What raw materials are involved and in what quantities?
b) Which raw materials and how much of them does HeidelbergCement purchase from Western Sahara?

You are asking about raw material purchases by our subsidiary in the territory of Western Sahara from companies in Sahrawi ownership. Our subsidiary purchases about 150,000 tons of limestone and pozzolans annually from local suppliers for cement production in the Western Sahara area. For local ready-mix concrete production, all necessary aggregates are also sourced locally. We do not export any raw materials out of the Western Sahara region; all production is for the local market.