judgment

DISTRICT COURT OF THE HAGUE

Commercial Law Team

case number/ cause-list number: C/09/477457 / HA ZA 14-1291

Judgment of 20 January 2016

in the case of

the legal entity under foreign public law
THE REPUBLIC OF ECUADOR,
seated in Quito, Ecuador,
claimant,
attorney: *mr.* G.W. van der Bend, practising in Amsterdam,

v.

1. the legal entity under foreign law
CHEVRON CORPORATION (USA),
having its registered office in San Ramon, California, United States of America,
2. the legal entity under foreign law
TEXACO PETROLEUM COMPANY,
having its registered office in San Ramon, California, United States of America,
defendants
attorney: *mr.* G.J. Meijer, practising in Rotterdam.

The parties are hereinafter referred to as Ecuador, Chevron and TexPet.

1. The proceedings

1.1. The course of the proceedings is evidenced by:
- the writ of summons of 7 January 2014;
- the motion submitting Ecuador's exhibits (1-20);
- the Statement of Defence of 31 December 2014, with Exhibits G1-G27;
- the interlocutory judgment of 25 February 2015 and the decision of 6 July 2015, entailing an order for the parties to appear before a three-judge panel;
- the official report of the parties' appearance on 17 November 2015 (compiled outside the parties' presence) and the documents referred to therein, specifically, the motion submitting Ecuador's Exhibits 21-34 and Chevron and TexPet's Exhibits G28-G39;
- the fax of 8 December 2015 containing comments by Chevron and TexPet related to said official report;
- the fax of 9 December 2015 containing comments by Ecuador related to said official report, with two enclosures.
Said faxes have been attached to the official report of the parties' appearance.

1.2. Lastly, a date for judgment was scheduled.

2. The facts

2.1 In 1964, Ecuador granted concessions to TexPet and the Ecuadorian Gulf Oil Company for the exploration and extraction of oil in Ecuador's Amazon region. That same year, the latter two parties agreed to contribute their concessions to a consortium. Following renegotiations, concessions were granted to these parties with regard to part of the aforementioned Amazon region, specifically the Oriente region, in which respect a concession agreement (hereinafter: the Concession Agreement) was signed on 16 August 1973. The expiration date of the Concession Agreement was 6 June 1992. In the years following 1973, the (majority) stake of the Ecuadorian Gulf Oil Company was gradually taken over by the state-owned Ecuadorian Corporation Estatal Petrolera Ecuatoriana (hereinafter: PetroEcuador). In 1990 TexPet, which until then had performed the activities of the consortium, transferred the management to a subsidiary of PetroEcuador. The Concession Agreement ended on 6 June 1992 due to the expiry of its term.

2.2 In 1993, the United States of America and Ecuador entered into a Bilateral Investment Treaty known as "*The Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment*" (hereinafter: BIT), which entered into force on 11 May 1997. The objective of the BIT is to encourage and protect investments made by investors of one party to the treaty in the territory of the other party to the treaty.
In so far as relevant in these proceedings, the text of the BIT reads as follows:

> *"The United States of America and the Republic of Ecuador (hereinafter the "Parties"); Desiring to promote greater economic cooperation between them, with respect reinvestment by nationals and companies of one Party in the territory of the other Party; Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties; Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maxim effective utilization of economic resources; Recognizing that the development of economic and business ties can contribute to the well-being.*
>
> *Have agreed as follows: […]*
>
> *Article 1*
>
> *1. For the purposes of this Treaty,*
>
> *(a) "investment" means every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party, such as equity, debt, and service and investment contracts; and includes:*
>
> *(i) tangible and intangible property, including rights, such as mortgages, liens and pledges;*
>
> *(ii) a company or shares of stock or other interests in a company or interests in the assets thereof;*
>
> *(iii) a claim to money or a claim to performance having economic value, and associated with an investment;*

(iv) intellectual property which includes, inter alia, rights relating to: literary and artistic works, including sound recordings;
inventions in all fields of human endeavor;
industrial designs;
semiconductor mask works;
trade secrets, know-how, and confidential business information; and trademarks, service marks, and trade names; and

(v) any right conferred by law or contract, and any license and permits pursuant to law;

3. Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

Article II
[…]
3. (a) [...]
(b) Neither Party shall in any way impair by arbitrary or discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investments. For purposes of dispute resolution under Articles VI and VII, a measure may be arbitrary or discriminatory notwithstanding the fact that a party has had or has exercised the opportunity to review such measure in the courts or administrative tribunals of a Party.
[…]
7. Each Party shall provide effective means of asserting claims and enforcing rights with respect to investment, investment agreements, and investment authorizations.

[…]
Article VI
1. For the purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national or company; (b) [...]; or (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.
[…]
4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice specified in the written consent of the national of company […] Such consent, together with the written consent of the national or company [...] shall satisfy the requirement for:
(a) written consent of the panties to the dispute […]; and
(b) an "agreement in writing"
[...].
Article XII
1. This Treaty [..] shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter. [...]"

2.3 On 4 May 1995, Ecuador, PetroEcuador and TexPet entered into an agreement entitled "*Contract for Implementing of Environmental Remedial Work and Release from Obligations, Liability and Claims*" (hereinafter: the 1995 Settlement Agreement).

To the extent relevant, Clause 5.1 of this Agreement reads as follows:

> *"On the execution date of this Contract, and in consideration of TexPet 's agreement to perform the Environmental Remedial Work in accordance with the Scope of Work [...] and the Remedial Action Plan, the Government and PetroEcuador shall hereby release, acquit and forever discharge Texpet, Texaco Petroleum Compagny, [...] Texaco, Inc., and all their respective agents, servants, employees, officers, directors [...] beneficiaries, successors, predecessors, principals and subsidiaries (hereinafter referred to as "The Releasees") of all the Government 's and PetroEcuador 's claims against the Releasees for Environmental Impact arising from the Operations of the Consortium, except for those related to the obligations [..] of the Scope of Work, which shall be released as the Environmental Remedial Work is performed to the satisfaction of the Government and PetroEcuador [...] ".*

Clause 9.4 of this Agreement reads as follows:

> *"Benefits for Third Parties — This Contract shall not be construed to confer any benefit on any third party not a Party to this Contract, nor shall it provide any rights to such third party to enforce its provisions."*

2.4 On 30 September 1998, an agreement (hereinafter: 1998 Final Release) was signed on behalf of Ecuador, PetroEcuador and TexPet, which states, in so far as relevant: "*In accordance with that agreed in the [1995 Settlement Agreement] the Government and PetroEcuador proceed to release, absolve and discharge [The Releasees] forever from any liability and claims by the Government of the Republic of Ecuador, PetroEcuador and its Affiliates, for items related to the obligations assumed by TexPet in the aforementioned Contract, which has been fully performed by TexPet, within the framework of that agreed with the Government and PetroEcuador".*

2.5 Chevron has been indirect shareholder of TexPet since 2001.

2.6 In May 2003, a number of Ecuadorian citizens instituted proceedings before the Court of Lago Agrio in Ecuador against Chevron (hereinafter: the Lago Agrio proceedings), contending that TexPet's oil production activities had polluted the environment in the Oriente region. By judgment of 14 February 2011, Chevron was ordered to pay these citizens (hereinafter: the Lago Agrio claimants) damages of USD 8.6 billion and to pay punitive damages of another USD 8.6 billion if TexPet did not offer its apologies within fifteen days. TexPet was also ordered to pay legal costs in the amount of ten percent of USD 8.6 billion. On appeal, this order was upheld by judgment of 3 January 2012. By judgment of 12 November 2013, the Ecuadorian Supreme Court upheld this order in cassation, on the understanding that the order to pay punitive damages be set aside.

2.7 In a Notice of Arbitration dated 23 September 2009, Chevron and TexPet instituted arbitration proceedings against Ecuador based on the BIT. The following claims (Request for Relief) were formulated in the Notice of Arbitration:

> *"(1) A declaration that under the [...] investment agreements, Claimants have no liability or responsibility for environmental impact [...] or for performing any further environmental remediation arising out of the former Consortium that was jointly*

owned by TexPet and Ecuador, or under the expired Concession Contract between TexPet and Ecuador;
(2) A declaration that Ecuador has breached the [...] investment agreements and the [...] BIT [...];
(3) An order and award requiring Ecuador to inform the court in the Lago Agrio Litigation that TexPet, its parent company, affiliates, and principals have been released from all environmental impact arising out of the former Consortium's activities and that Ecuador and PetroEcuador are responsible for any remaining and future remediation work;
(4) A declaration that Ecuador or PetroEcuador is exclusively liable for any judgement that may be issued in the Lago Agrio Litigation;
(5) An order and award requiring Ecuador to indemnify, protect and defend Claimants in connection with the Lago Agrio Litigation, including payment to Claimants of all damages that may be awarded against Chevron in the Lago Agrio Litigation;
(6) An award for all damages caused to Claimants, including in particular all costs including attorneys' fees incurred by Claimants in defending the Lago Agrio Litigation and the criminal indictments;
(7) An award of moral damages to compensate Claimants for the nonpecuniary harm that they have suffered due to Ecuador 's outrageous and illegal conduct;
(8) An award to Claimants of all costs associated with this proceeding, including attorneys' fees;
(9) An award of both pre- and post-award interest until the date of payment; and
(10) Any other relief that the tribunal deems just and proper."

2.8 In the arbitration that followed (hereinafter: the Arbitration), conducted in accordance with the *Arbitration Rules of the United Nations Commission on International Trade Law* (UNCITRAL Rules 1976), the following individuals were appointed as arbitrators: V.V. Veeder QC (Presiding Arbitrator), Prof. Alan Vaughan Lowe QC and Dr. Horacio A. Grigera Naón (hereinafter collectively referred to as the Tribunal). The Tribunal designated The Hague as the seat of arbitration.

2.9 After Chevron and TexPet had sought interim measures in early April 2010 and a debate had been conducted between the parties, the Tribunal ordered in the First Interim Award on Interim Measures of 25 January 2012 (hereinafter: the First Interim Award), inter alia, that Ecuador should take "*all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgement against [Chevron] in the Lago Agrio Case."*

2.10 In the Second Interim Award on Interim Measures of 16 February 2012 (hereinafter: the Second Interim Award), the Tribunal ordered, inter alia, as follows:
"[...] the Tribunal hereby orders:
(i) [Ecuador] (whether by its judicial, legislative or executive branches) to take all measures necessary to suspend or cause to be suspended the enforcement and recognition within and without Ecuador of the judgements [...] of 3 January 2012 and [...] of 14 February 2011 against [Chevron] in the Ecuadorian legal proceedings known as "the Lago Agrio Case";
(ii) in particular, without prejudice to the generality of the foregoing, such measures to preclude any certification by [Ecuador] that would cause the said judgements to be enforceable against [Chevron] ".

2.11 In the Third Interim Award on Jurisdiction and Admissibility of 27 February 2012 (hereinafter: the Third Interim Award), the Tribunal commented on its jurisdiction and rejected the defences conducted by Ecuador in that respect.

2.12 In the Fourth Interim Award on Interim Measures of 7 February 2013 (hereinafter: the Fourth Interim Award), the Tribunal decided, inter alia, as follows:
"The Tribunal declares that [Ecuador] has violated the First and Second Interim Awards under the Treaty, the UNCITRAL Rules and international law in regard to the finalisation and enforcement subject to execution of the Lago Agrio Judgement within and outside Ecuador, including (but not limited to) Canada, Brazil and Argentina."

2.13 In the First Partial Award on Track I of 17 September 2013 (hereinafter: the First Partial Award), the Tribunal held, inter alia, that Chevron and TexPet are both Releasees as referred to in Clause 5.1 of the 1995 Settlement Agreement and that, consequently, both may derive rights on that ground from the latter agreement and the 1998 Final Release and, lastly, that Clause 5 of the 1995 Settlement Agreement does not extend to claims under environmental law for compensation for (future) personal damage, but does extend to diffuse claims under environmental law based on Article 19(2) of the Ecuadorian constitution.

2.14 Previously, on 21 December 2006, based on the BIT, Chevron and TexPet had instituted arbitration proceedings against Ecuador. In that arbitration, Chevron and TexPet took the position that Ecuador is liable for the damage they have suffered due to unacceptable delay in the disposal of seven court cases, conducted before Ecuadorian courts, instituted by TexPet against Ecuador. In those arbitration proceedings, Ecuador was ordered to pay damages. Ecuador sought the setting aside of the (interim) awards handed down in said arbitration proceedings (hereinafter: the first setting-aside proceedings). By judgment of 2 May 2012, this District Court denied the claims seeking the setting aside of the (interim) awards (ECLI:NL:RBSGR:2012:BW5493). By judgment of 18 June 2013 in the appeal, the Court of Appeal of The Hague upheld this judgment (ECLI:NL:GHDHA:2013:1940). By judgment of 26 September 2014, the Supreme Court rejected the appeal in cassation lodged by Ecuador against this judgment (ECLI:NL:HR:2014:2837).

3. The dispute

3.1 Ecuador is seeking an order from the District Court, to be declared immediately enforceable to the extent possible, setting aside the First Interim Award, the Second Interim Award, the Third Interim Award, the Fourth Interim Award and the First Partial Award, ordering Chevron and TexPet to pay the (subsequent) costs of these proceedings, plus statutory interest as from fourteen days of the date of this judgment.

3.2 In summary, Ecuador bases the claims on the following.
Ecuador bases the claims seeking the setting aside of said arbitral (interim) awards on the assertions that there is no valid arbitration agreement (3.2.1), that the awards are in violation of public policy (3.2.2) and that the arbitrators did not comply with their mandate (3.3.3).

3.2.1 According to Ecuador, despite its non-jurisdiction defence, the Tribunal wrongly declared that it had jurisdiction. The Tribunal was unable to derive its jurisdiction from (Article VI of) the BIT as neither Chevron nor TexPet have an investment in Ecuador that falls within the scope of protection of the BIT. That is because the dispute presented to the arbitrators does not ensue from the investment pursuant to the Concession Agreement terminated in 1992,

but from the Lago Agrio proceedings, the 1995 Settlement Agreement and the 1998 Final Release, none of which are an investment. In this respect, Ecuador also invokes the following:

- The Concession Agreement does not fall under the temporal scope in Article XII(1) of the BIT;
- The Tribunal also wrongly ruled that the investment on the basis of the Concession Agreement is revived by the 1995 Settlement Agreement and the investment also cannot revive because of the Lago Agrio proceedings, proceedings between the Lago Agrio claimants and Chevron, and thus between parties that were not a party to the Concession Agreement and the 1995 Settlement Agreement;
- It is insufficient for the application of Article VI(1), opening words and under (a) of the BIT that the dispute is related to the Concession Agreement; after all, the arbitration dispute ensues solely from the 1995 Settlement Agreement, and the words "relating to" in Article VI(1), opening words, of the BIT logically pertain only to the ground that follows (c) and not to (a);
- The life-span theory is contrary to the text of the BIT and the objective of the BIT as worded in the preamble;
- Being a Releasee pursuant to Clause 5.1 of the 1995 Settlement Agreement is insufficient to be able to accept jurisdiction by virtue of Article VI(1), opening words and under (a) of the BIT. Incidentally, Chevron is not a Releasee pursuant to the 1995 Settlement Agreement and certainly not a party to the Concession Agreement.

3.2.2 The Tribunal instructed Ecuador to ensure that the recognition and enforcement of the judgments in the Lago Agrio proceedings handed down by Ecuadorian courts - to which Ecuador is not a party - be suspended both domestically and abroad, and instructed Ecuador not to issue an enforcement certificate. According to Ecuador, by doing so the arbitrators are intervening in the judicial process and wrongly dictating to the Ecuadorian courts and other foreign courts, in an unacceptable manner and, moreover, without substantiation and a proper establishment of relevant facts. All of this leads to a violation of the external independence of the judiciary in Ecuador and the sovereignty and independence of Ecuador. Moreover, the interim measures are disproportionate and unnecessary.
According to Ecuador, moreover, the Tribunal subsequently deprived Ecuadorian citizens of the fundamental right to live in a non-polluted environment (cf. Section 2, Article 19 of the Ecuadorian constitution which already applied in 1995) and, on top of that, the Tribunal decided on the rights of the claimants in the Lago Agrio proceedings without said claimants having been heard. This constitutes an unjustified infringement of third-party rights, also because of the Tribunal's decision, which was of general purport, that diffuse environmental claims were not possible because of the 1995 Settlement Agreement.

3.2.3 According to Ecuador, the Tribunal's decision on the merits regarding Ecuador's violation of the first two Interim Awards, included in the Fourth Interim Award, is not an interim measure and thus could not be granted by Interim Award. As a result, the arbitrators violated the provisions in Article 26(2) of the UNCITRAL Rules 1976.

3.3 Chevron and TexPet conduct a defence.

3.4 In so far as relevant, the parties' assertions will be discussed in more detail below.

4. The assessment

Jurisdiction and applicable law

4.1 The Hague is the seat of the arbitration, so that, pursuant to Article 1073(1) of the Dutch Code of Civil Procedure, the provisions of the first title of Book 3 of the Dutch Code of Civil Procedure (Articles 1020-1073) are applicable to the present proceedings. As this District Court is the district court with whose court registry the Tribunal must file the original of its (partial) final awards, the District Court derives jurisdiction from Article 1064(2) of the Dutch Code of Civil Procedure.

Assessment framework

4.2 Ecuador bases its setting-aside claim on the provisions in (Article 1064 and) Article 1065(1) of the Dutch Code of Civil Procedure. To the extent relevant here, the latter paragraph reads:
"An award may only be set aside on one or more of the following grounds:
a. absence of a valid arbitration agreement;
b. [...]
c. the arbitral tribunal has not complied with its mandate;
d. [...]
e. the award, or the manner in which it was made, violates public policy or good morals."

4.3 The District Court states first and foremost that the possibility of challenging arbitral awards is limited and that the court should observe restraint in its investigation of whether there are grounds for setting aside.
Setting-aside proceedings may not be used as a covert appeal and the public interest in the effective functioning of the arbitral administration of justice also means that the civil court should only intervene in arbitral awards in clear-cut cases.

4.4 With regard to the setting-aside ground which reads that there is no valid arbitration agreement (the (a) ground), however, there is an exception to the restraint referred to at 4.3. The fundamental nature of the right to access to the courts entails that answering the question of whether a valid arbitration agreement was concluded is ultimately up to the court and, further to that, that the court is not obliged to exercise restraint when assessing a claim seeking the setting aside of an arbitral award on that ground (see legal finding 4.2 of the judgment of the Supreme Court in the first setting-aside proceedings). Unlike Chevron and TexPet, the District Court sees no cause in this case to restrict itself to a restrained assessment of this part of the claim. First of all, there is no support for that in the judgment of the Supreme Court in the first setting-aside proceedings. Furthermore, unlike Chevron and TexPet argue, the fundamental nature of the right to access to the courts does not pertain solely to private (legal) persons. That is because in a case such as the present one, the question of whether a valid arbitration agreement was concluded affects the sovereignty of the relevant state and its judiciary (cf. legal finding 6.15 in the Opinion of AG Spier in the first setting-aside proceedings). It is true, for example, that this sovereignty may be waived in a BIT in certain kinds of cases, but answering the question of whether sovereignty has also been waived having regard to the specific case is of a fundamental nature and, consequently, it should be possible not only for arbitrators to assess it in full, but also for the court to do so in connection with assessment of the question of whether a valid arbitration agreement is lacking.

4.5 With regard to the question of whether and, if so, to what extent it is permissible for a party that invoked the absence of a valid arbitration agreement in the arbitration proceedings to

substantiate the invocation of that in the setting-aside proceedings using new factual or legal assertions, there must always be an assessment of whether a new factual or legal assertion, in part in view of the requirements of due process, is in violation of the statutory regulations referred to under 4.1. Possibly relevant in that respect, among other things, is the extent to which the new assertions align with the previous positions (taken in the arbitration proceedings), the reason for not submitting the new assertions sooner, and whether the relevant party was or was not represented by an attorney in the arbitration proceedings.

Article 1065(1), opening words and under (a) of the Dutch Code of Civil Procedure

No res judicata

4.6 The most far-reaching defence of TexPet and Chevron pertains to their invocation of the decisions taken in the first setting-aside proceedings having *res judicata*. TexPet and Chevron are arguing that the present proceedings pertain to the same legal relationship regarding which a decision has already been given in the first setting-aside proceedings; after all, in those proceedings, the question regarding the presence of a valid arbitration agreement was answered in the affirmative by virtue of Article VI of the BIT. Consequently, according to Chevron and TexPet, there is no room in the present proceedings for repeating the parties' debate on the matter. The District Court, however, agrees with Ecuador that the awards do not have *res judicata*, as according to Article VI(1) of the BIT, the question of the validity of the arbitration agreement largely coincides with the question of whether there is an investment dispute and, in the present proceedings, TexPet and Chevron have a different investment dispute in mind than the investment dispute that was at issue in the first setting-aside proceedings. This does not detract from the fact that the District Court, for example in its interpretation of Article VI of the BIT, will (be able to) take the findings from the first setting-aside proceedings as the point of departure.

Article VI of the BIT

4.7 The parties do not dispute that Article VI(4) of the BIT is an open offer by the one party to the treaty to (citizens and) companies of the other party to the treaty to settle any investment dispute through arbitration. The District Court must answer the question of whether this offer also applies to the adjudication of the dispute submitted to the Tribunal.
The Tribunal accepted its jurisdiction based on two separate, independent grounds, namely the ground referred to in Article VI(1), opening words and under (a) of the BIT and the ground referred to in Article VI(1), opening words and under (c) of the BIT.

4.8 Just as the Tribunal did, the District Court will first assess whether the Tribunal can derive jurisdiction from Article VI(1)(c) of the BIT. Along with Chevron and TexPet, the District Court is of the opinion that in so far as the District Court is able to establish that the Tribunal can derive jurisdiction from that paragraph of the Article, assessment against Article VI(1), opening words and under (a) of the BIT may be omitted due to a lack of interest.

4.9 The question of whether the Tribunal has jurisdiction should be answered on the basis of the interpretation of Article VI of the BIT. The interpretation should be made - and that is not being disputed - in accordance with the provisions in Articles 31 and 32 of the 1969 Vienna Convention. In this case, the latter leads to an interpretation of Article VI of the BIT in accordance with the meaning that the wording of this article has in common parlance, but considering the context of the wording - consisting of, among other things, the rest of the treaty, including the preamble - and with due observance of the subject and objective of the treaty. It is evident from the preamble under 2.2 of the BIT that the BIT aims to protect and encourage investments by nationals of a party to the treaty in the territory of the other party

to the treaty by fair and equitable treatment thereof. Lastly, a term in a treaty must be assigned a special meaning if it is established that the parties had that meaning in mind.

Article VI(1), opening words and under (c) of the BIT

4.10 Article VI(1), opening words and under (c) of the BIT reads as follows: "*For the purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to […] (c) an alleged breach of any right conferred or created by this Treaty with respect to an investment.*"

4.11 The District Court agrees with the Tribunal that, unlike Ecuador argues, in this case there is an *investment*.
Article I(1)(a) of the BIT gives a broad definition of the term *investment* ("*means every kind of investment*") and gives a non-exhaustive summary of investments, from which it should be inferred that the term *investment* as referred to in the BIT does not coincide with the meaning that term has in common parlance. In addition, on the basis of Article I(3) of the BIT, an investment does not end because the form of the investment changes. Furthermore, it must be inferred from Article II(3)(b) of the BIT (which conveys protection to the disposal of an investment) and Article II(7) of the BIT (which conveys protection to claims and rights related to an investment) that the term *investment* encompasses the full settlement of an investment. It does not expressly follow from the BIT that necessary conditions for the existence of an *investment* are the fact that an investment is operational or a motive for the investment, nor have any facts and circumstances been advanced from which it can be deduced that the parties to the BIT assigned such a (special) meaning to the term *investment*. Lastly, the broad interpretation of the term *investment* corresponds with the objective of the BIT, which is (the encouragement of new investments by) the protection of investments. The District Court's decision regarding the broad interpretation of the term *investment* is identical to the judgment of the appeal court in the first setting-aside proceedings, which was upheld by the Supreme Court.

4.12 Furthermore, unlike Ecuador, the District Court is of the opinion that the 1995 Settlement Agreement must be viewed in inextricable conjunction with the Concession Agreement (as phrased by the Tribunal: "*a close and inextricable link*"), that the latter agreement concerns an investment is not in dispute. After all, the 1995 Settlement Agreement explicitly refers a number of times to the Concession Agreement and includes, inter alia, a release provided by Ecuador with regard to "*claims [...] for Environmental Impact arising from the Operations of the Consortium*". This release in particular was invoked before the Tribunal and cannot be interpreted other than as "*a claim to performance having economic value, and associated with an investment*" and "*a right conferred by contract*" as referred to in Article I(1)(a) of the BIT. Relevant in this regard is that it has been established that the Lago Agrio claimants have based their claims against Chevron on alleged breaches by TexPet of the Concession Agreement.
In addition, it was not until in September 1998, in the 1998 Final Release - which in turn is closely linked to the 1995 Settlement Agreement and the Concession Agreement - that it was established that TexPet had satisfied its obligations ensuing from the 1995 Settlement Agreement, including the soil remediation obligations. Ecuador insufficiently disputed TexPet's and Chevron's assertion that these obligations had not yet been completely satisfied on 11 May 1997, so that the District Court assumes this to have been established. Satisfaction of these obligations was a prerequisite for (part of) the release invoked before the Tribunal.

4.13 The foregoing leads to the conclusion that at the time of the entering into force of the BIT, on 11 May 1997, an *investment* existed. In light of this finding, Ecuador's reliance on the temporal limitation included in Article XII of the BIT is no longer relevant and no position needs to be taken on whether if, as argued by Chevron and TexPet, this reliance need not be discussed in any event, as it was not discussed before the Tribunal. Lastly, inherent to the District Court's opinion is that no retroactive effect is assigned to the BIT.

4.14 It has been established as unchallenged that TexPet, as investor and party, may derive rights in respect of Ecuador (invoked before the Tribunal) from the 1995 Settlement Agreement. As the dispute with Ecuador pertains in particular to the nature and scope of the rights in respect of Ecuador ensuing from the 1995 Settlement Agreement, in the opinion of the District Court - in light of the findings above - an *investment dispute* existed in the relationship with TexPet to which the arbitration offer in the BIT applies, thereby attaching relevance to the fact that the Lago Agrio claimants have based their claims against Chevron on alleged breaches of the Concession Agreement by TexPet. The dispute between TexPet and Ecuador is therefore related to "*an alleged breach of any right conferred or created by this Treaty with respect to an investment*" as referred to in Article VI(1), opening words and under (c) of the BIT. The fact that not TexPet but its parent company Chevron was summoned by the Lago Agrio claimants cannot change the qualification of the dispute between Ecuador and TexPet as an *investment dispute*. With regard to TexPet, the Tribunal was therefore entitled to accept jurisdiction because there was a valid arbitration agreement. Consequently, there is no longer any need to assess whether there is also an *investment dispute* as referred to in Article VI(1), opening words and under (a) of the BIT with regard to TexPet.

4.15 It has also been established as unchallenged that - as also ruled by the Tribunal within the context of its assessment based on Article VI(1), opening words and under (c) of the BIT - Chevron, as TexPet's parent company, qualifies as *indirect investor* as referred to in Article I(1)(a) of the BIT. However, this establishment of fact cannot lead to the finding that the dispute between Ecuador and Chevron must also be qualified as an *investment dispute* as referred to in Article VI(1), opening words and under (c) of the BIT. In its dispute with Ecuador, after all, Chevron is relying on its own (release) rights ensuing from the *investment* and not only on behalf of its subsidiary, TexPet, on (release) rights that merely protect that subsidiary. It is not in dispute between the parties that the Tribunal stayed its ruling on the question of whether it can base its jurisdiction in the dispute between Ecuador and Chevron on Article VI(1)(c) of the BIT with a view to Chevron possibly being a *direct investor*, and more specifically the question of whether Chevron directly took the place of Texaco - TexPet's parent company from 1964 to 2001 - and, on that basis, may derive independent, own rights from the *investment*. Article 1052(1) of the Dutch Code of Civil Procedure, which provides that a tribunal is entitled (first) to rule on its jurisdiction, therefore prevents the District Court from answering this question. This entails that the District Court must determine whether the Tribunal has jurisdiction in the dispute between Ecuador and Chevron by virtue of Article IV(1), opening words and under (a) of the BIT.

Article VI(1), opening words and under (a) of the BIT

4.16 Article VI(1), opening words and under (a) of the BIT reads as follows:
"For the purposes of this Article, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to (a) an investment agreement between that Party and such national or company".

4.17 The District Court finds with the Tribunal that regarding the Tribunal's jurisdiction in the dispute between Ecuador and Chevron, decisive is the answer to the question of whether Chevron, as Releasee as referred to in Clause 5.1 of the 1995 Settlement Agreement, may independently rely on that agreement. After the Tribunal posed this question in the Third Interim Award and, because of the circumstance that it also plays an important role in the assessment of the dispute on the merits between Ecuador and Chevron, basically answered it *prima facie* in the affirmative, the Tribunal clearly answered this question (on the merits) in the affirmative in the First Partial Award. This District Court finds that with this, the Tribunal has ruled on its jurisdiction in respect of the dispute between Ecuador and Chevron based on Article VI(1), opening words and under (a) of the BIT, so that Article 1052(1) of the Dutch Code of Civil Procedure does not obstruct an assessment by the District Court.

4.18 Firstly, the District Court finds that, contrary to what Ecuador has argued, it does not ensue as mandatory rule from the wording of Article VI(1), opening words and under (a) of the BIT, also considering the meaning assigned to this wording in common parlance, that jurisdiction may only exist in respect of a party that was a party to the *investment agreement* from the very beginning and also signed it, so that Chevron should not be denied reliance on said paragraph of the article for that reason alone. This finding is also based on the (protection) objective of the BIT. In addition, no circumstances have been asserted or demonstrated from which it ensues that the treaty parties envisaged the restrictive interpretation, advocated by Ecuador, of the word "*between*" in said paragraph of the article.

4.19 The District Court finds with Chevron and TexPet that Ecuador may not argue (any longer) that the phrase "*relating to*" from the opening words of Article VI(1) of the BIT logically merely relates to the (c) ground thereafter and not to the (a) ground, because of the criterion given in paragraph 4.5. This finding is based on the ground that it is established as undisputed that Ecuador explicitly argued, within the context of the jurisdiction debate conducted before Tribunal, that said phrase also relates to the (a) ground, while it is not disputed that Ecuador was counselled in the arbitration proceedings by well-versed attorneys.

4.20 The District Court rejects Ecuador's defence that the 1995 Settlement Agreement cannot be considered an *investment agreement*. As a definition of the term "*investment agreement*" is lacking in the BIT, the District Court bases its finding that this phrase should also be interpreted broadly on the broad definition and broad area of application of the term "*investment*" (cf. 4.11), the protective objective of the BIT and the fact that the BIT contains no indications that the term "*investment agreement*" should be interpreted restrictively. It was already ruled above that there is an inextricable link between the Concession Agreement - the qualification of which as investment agreement is not in dispute - and the 1995 Settlement Agreement (cf. 4.12). This link entails that in the assessment of whether there is an investment agreement, these agreements may not be considered separately. In light of the broad interpretation of the phrase just mentioned, this leads to the finding that the 1995 Settlement Agreement is part of an investment agreement as referred to in Article VI(1), opening words and under (a) of the BIT.

4.21 The dispute between Chevron and Ecuador in the arbitration pertains in essence to the question of whether Chevron may derive (release) rights from the 1995 Settlement Agreement and, if so, the extent of those rights. It follows from the foregoing that relevant to the assessment of the Tribunal's jurisdiction is merely the question of whether Chevron may in principle rely independently as Releasee on the contents of the 1995 Settlement Agreement. In this, undisputed between the parties is that this question must be answered

according to the law of Ecuador, and also undisputed is that according to the law of Ecuador, a party may enter into an agreement later and may derive rights from it. If Chevron may be deemed a Releasee as referred to in Clause 5.1 of the 1995 Settlement Agreement, an investment dispute exists as referred to in Article VI(1), opening words and under (a) of the BIT. Also relevant in this regard is the fact that the Lago Agrio claimants have based their claims on, inter alia, breach of a part of the investment agreement, namely the Concession Agreement.

4.22 Chevron and TexPet have substantiated their assertion that Chevron should be deemed a Releasee by relying on the findings of the Tribunal in that regard (in the Third Interim Award and the First Partial Award). Ecuador merely contested this assertion with the argument given in the writ of summons that the Tribunal ruled to that effect wrongly, in substantiation of which it merely referred, without explanation, to procedural documents from the arbitration proceedings. As the precise basis for this defence is thus insufficiently clear to the District Court and the other parties, this unsubstantiated defence must be laid aside (cf. Supreme Court 17 October 2008, ECLI:NL:HR:2008:BE7201). The District Court adopts as its own the finding by the Tribunal entailing that Chevron is a Releasee. Relevant in that regard is that after an extensive debate between the parties and consultation with three (legal) experts, and a comparison of the Spanish and English versions of the 1995 Settlement Agreement, the Tribunal arrived at the finding that Chevron, as TexPet's parent company, falls under the term "principals and subsidiaries" (*principales y subsidiarias*) in Clause 5.1.

4.23 Ecuador has also asserted that it ensues from Clause 9.4 of the 1995 Settlement Agreement that Chevron, as a third party referred to in that paragraph, and despite its capacity as Releasee, ultimately may not derive any rights from the 1995 Settlement Agreement. This argument already needs no discussion because the question of whether Chevron as Releasee may in fact derive rights from the 1995 Settlement Agreement is a substantive matter that is not at issue when assessing the Tribunal's jurisdiction.

Conclusion with regard to the Tribunal's jurisdiction

4.24 Considering the foregoing, Ecuador's claim seeking the setting aside must be denied in so far as it is based on the lack of an arbitration agreement. The dispute between Ecuador and TexPet must (in any event) be qualified as an investment dispute as referred to in Article VI(1), opening words and under (c) of the BIT and the dispute between Ecuador and Chevron as an investment dispute as referred to in Article VI(1), opening words and under (a) of the BIT.

Article 1065(1), opening words and under *(e) of the Dutch Code of Civil Procedure*

4.25 Within the context of its assessment of the claim to set aside the arbitral awards due to violation of public policy, the District Court puts first and foremost that it must observe restraint and that such claims should only be awarded in the event of a violation of a provision of mandatory law that is of such a fundamental nature that compliance with that provision may not be limited by means of procedural restrictions. It is furthermore established case law that violation of the right to equal treatment of parties set out in Article 1039(1) of the Dutch Code of Civil Procedure and the fundamental principles of procedural law laid down therein, including the right to hear and be heard, may lead to the setting aside of an arbitral award due to violation of public policy. There is no room for restraint in the application of Article 1065(1)(e) of the Dutch Code of Civil Procedure in the event of a violation of said right to hear and be heard. Under certain circumstances, the lack of any

(convincing) substantiation of an arbitral decision may lead to its setting aside based on Article 1065(1), opening words and under (e) of the Dutch Code of Civil Procedure.

4.26 Being assessed in that regard are the interim measures granted by the Tribunal in the First and Second Interim Awards - in summary entailing an order for the State of Ecuador to take measures to suspend (or have suspended) the enforcement of court decisions in the Lago Agrio proceedings in order to limit damage and to maintain the status quo - and the declaration granted in the Fourth Interim Award entailing that Ecuador has violated that order.

Sovereignty and independence of the courts

4.27 Ecuador's assertion that, by granting these interim measures, the Tribunal has violated Ecuador's sovereignty and independence in an unacceptable manner cannot lead to setting aside, in the opinion of the District Court, as Ecuador voluntarily, unambiguously and unconditionally bound itself to the BIT, including the provisions concerning arbitration included therein. The District Court also finds that the Tribunal explicating in the Second Interim Award that the order to take measures is also directed at Ecuador's judiciary is not contrary to public policy, as this judiciary is a body that is an inextricable part of the State of Ecuador (bound to the BIT), as that state may be held liable for the conduct of that body, and as reliance on the independence of that body does not constitute a valid reason to allow breaches of obligations under international law to continue to exist. Ecuador has asserted that the independence of the Ecuadorian courts is threatened. Contrary to what this argument suggests, the District Court agrees with Chevron and TexPet that the Tribunal's order cannot be interpreted to mean that (the executive or legislative bodies of) Ecuador should breach the separation of powers at the expense of the judiciary. The order merely refers to the obligations ensuing from international law that also apply to the judiciary. Contrary to what Ecuador asserts, the Tribunal's order cannot be interpreted as a dictate for courts outside of Ecuador, either. That there is no necessity for interim measures, as asserted by Ecuador, is belied by the uncontested findings in the Fourth Interim Award entailing that execution had commenced in a number of countries even after these measures were imposed.

Lago Agrio claimants

4.28 That the interim measures (may) have direct consequences for the Lago Agrio claimants is not in dispute. After all, these (possible) consequences mean that the execution of the Ecuadorian court judgment(s) they obtained will be temporarily suspended. Despite this fact and the circumstance that they were not heard by the Tribunal, it is the opinion of the District Court that in this regard as well, considering the special circumstances to be discussed below, there has been no breach of (national or international) public policy.

4.29 In this, the District Court assigns decisive weight to the fact that the Tribunal's order is comprised of an interim measure of a temporary nature (of course), and that it is evident from the Notice of Arbitration (cited under 2.7) that Chevron's and TexPet's claims in the proceedings before the Tribunal are not directed against the Lago Agrio claimants and apparently are not directed at quashing the Ecuadorian court decisions regarding damages or at ensuring in some other way that these will have no more (or little) effect. In essence, Chevron's and TexPet's claims against Ecuador are directed in essence at obtaining declaratory relief entailing that Ecuador is exclusively liable for the damages awarded in the Lago Agrio proceedings for the benefit of the Lago Agrio claimants, and at Ecuador being ordered to indemnify and protect Chevron and TexPet with regard to those damages. It is in this light that the Tribunal's finding under 4.70 of the Third Interim Award, which is correct in

the opinion of the District Court, must be seen: *"If it should transpire that [Ecuador] has, by concluding the Release Agreements, taken a step which had the legal effect of depriving the Lago Agrio plaintiffs of rights under Ecuadorian Law that they might otherwise have enjoyed, that would be a matter between them and the Respondent, and not a matter for this Tribunal."*

4.30 It is the opinion of the District Court that the interim measures taken by the Tribunal cannot be explained otherwise than by the fact that at the time those measures were taken, the Tribunal apparently had serious indications that the judgment rendered at first instance in the Lago Agrio proceedings, which is the basis for (the suspended) enforcement by the Lago Agrio claimants, came into being fraudulently - including on the side of the Lago Agrio claimants - and under political pressure. In the First Interim Award, the Tribunal considered: "*the Parties' several submissions on their respective applications to the Tribunal and [...] all relevant circumstances current in this arbitration up to the February hearing*". In the Notice of Arbitration of 23 September 2009 (part E: "Ecuador's Misconduct in Connection with the Lago Agrio Litigation"), Chevron and TexPet already extensively discussed the fraud they asserted, and later they submitted many documents in the arbitration proceedings in that regard that were always mentioned in the Procedural Orders that preceded the First Interim Award (including the temporary restraining order by the U.S. District Court for the Southern District of New York of 8 February 2011). This circumstance automatically - even though the Tribunal did not explicate this in the Interim Awards - provides justification for the possible (temporary) consequences for the Lago Agrio claimants of the interim measures, even in the event that these measures - and the District Court does not take a position on this- entail a restriction of any mandatory right of the Lago Agrio claimants of a fundamental nature.

4.31 These indications of fraud have been confirmed in the nearly 500 page judgment of the aforementioned District Court in New York of 4 March 2014 (hereinafter: the New York Judgment), on the basis of which the Lago Agrio claimants are prohibited from cashing in their claims within the United States and in which it is ruled: "If ever there were a case warranting equitable relief with respect to a judgment procured by fraud, this is it." It is established in this judgment - in part based on witness testimony, including from the judge who rendered the judgment at first instance, and technical evidence concerning internal working documents - inter alia:
- that the Ecuadorian judge who rendered the judgment at first instance was bribed by the attorneys of the Lago Agrio claimants with the promise that he would receive USD 500,000 of the revenues from execution of the judgment he was to render;
- that the attorneys of the Lago Agrio claimants themselves had also drawn up the report by the expert appointed by this Ecuadorian judge, against payment of USD 120,000 in bribes to this expert;
- that the judgment at first instance referred to, which was rendered after an exceptionally brief period, was drawn up by the attorneys of the Lago Agrio claimants, and not by the Ecuadorian judge. Regarding the latter, it was established, for example, by means of discovery proceedings that the contents of a number of the Lago Agrio claimants' attorneys' internal working documents that were not submitted into the Lago Agrio proceedings can be found verbatim - in some cases even including typing errors - in the judgment at first instance referred to;
- lastly, that President Correa of Ecuador, who vehemently supported the case of the Lago Agrio claimants a number of times in public, maintained regular contact during the Lago Agrio proceedings with the attorneys of the Lago Agrio claimants, as did other Ecuadorian government representatives.

4.32 In the present proceedings, Ecuador has addressed these and other incriminating findings in the New York Judgment in only two brief paragraphs in its personal appearance notes (nos. 61 and 62) by asserting that there is allegedly new - not specifically named - evidence and that a witness who was heard for the benefit of the New York Judgment and gave incriminatory statements was allegedly bribed by Chevron and had allegedly later admitted that he lied. Ecuador has emphasised that an appeal has been lodged against said judgment and offered to prove its assertions. However, the further provision of proof is not at issue in these proceedings in any way because the substantiation of the offer of proof, in light of the aforementioned evidence used in the New York Judgment, is insufficient and this offer does not prejudice the fact that, as held above, it must be assumed that at the time the interim measures were taken, the Tribunal had serious indications that the judgment rendered at first instance in the Lago Agrio proceedings had come into being fraudulently and under political pressure.

4.33 Under these circumstances, in the opinion of the District Court, the fact that the Lago Agrio claimants were not heard by the Tribunal cannot be deemed contrary to public policy. Also carrying weight is that, as rightly argued by Chevron and TexPet, the fundamental principles of procedural law referred to under 4.25, including the right to hear and be heard, pertain to equal treatment of the parties *to the arbitration*. The Lago Agrio claimants are not parties to the arbitration.

Substantiation of interim measures

4.34 Ecuador deems it contrary to public policy that the Tribunal did not base its decision to take interim measures on any substantiation and also established no facts in that regard. The District Court establishes that in the First Interim Award (in the middle of page 14), mention is made of the receipt of the letters of 4 and 12 January 2012 with enclosures from Chevron and TexPet in which Interim Measures are requested. The latter letter was also quoted, including Chevron's and TexPet's opinion that they therewith "have presented a prima facie case on the merits, including prima facie evidence that the claims involved in the Lago Agrio Litigation have been settled and released by Government, that the Lago Agrio Litigation has been tainted by fraud and/or serious due process violations". The letter of 4 January 2012 submitted into the proceedings as Exhibit R-24 makes clear that, therein, it is already stated with good reason that there had been "ghost writing" of the judgment at first instance and intervention by the Ecuadorian government. After mention in the First Interim Award of inter alia Ecuador's written response to said letters and a procedural meeting, the following finding by the Tribunal is given: "*The tribunal has considered the Parties' several submissions on their respective applications to the Tribunal and further considered all relevant circumstances current in this arbitration [...]*", followed by the interim measures. The Second Interim Award contains similar substantiation.

4.35 It must be agreed with Ecuador that the substantiation in the first two Interim Awards was concise. However, this does not give sufficient cause to conclude that these decisions violate public policy. Relevant in this respect is not only the restraint to be observed by the District Court but also the circumstance that this regards the substantiation of interim measures and not of a decision on the merits. The fact that the assertions on which the request for interim measures was based had yet to be assessed on the merits by the Tribunal, therewith obstructing a firm assessment of the same within the context of interim measures and the establishment of facts of the case, also carries weight.

Right to live in a non-polluted environment

4.36 In connection with the reliance on violation of public policy, the District Court furthermore concurs with Chevron's and TexPet's opinion that Ecuador's assertion that the Tribunal has deprived the Ecuadorian citizens of the fundamental right to live in a non-polluted environment lacks any basis in fact and the law. The fact that the Tribunal ruled in its First Partial Award that the 1995 Settlement Agreement obstructs Chevron and TexPet being sued by Ecuadorian citizens on the basis of so called "diffuse claims" - as the opposite of individual environmental claims (which are, according to the Tribunal, not subject to the 1995 Settlement Agreement), which do involve personal (impending) environmental damage - does not deprive these citizens of the right to lodge such diffuse claims against Ecuador. The District Court likewise shares Chevron's and TexPet's position that Ecuador has insufficiently explained its assertion that such right of any person to a clean environment has horizontal effect (between Ecuadorian citizens and private enterprises like Chevron and TexPet), while the placement of this right in the Ecuadorian constitution - a law that may be assumed to establish (exclusively) the relationship between a state and its citizens - constitutes a key contra-indication for that horizontal effect. As mentioned, the Tribunal's decision does not in any way obstruct the filing of individual environmental claims involving personal (impending) environmental damage.

4.37 The conclusion from the foregoing is that, in the opinion of the District Court, there is no violation of public policy or good morals as referred to in Article 1065(1), opening words and under (e) of the Dutch Code of Civil Procedure. In so far as Ecuador intended to argue that its assertions, discussed in paragraph 4.27 *et seq.*, should (also) lead to the finding that the Tribunal exceeded its mandate, this argument - which lacks any explanation - must be laid aside.

Article 1065(1), opening words and (c) of the Dutch Code of Civil Procedure

4.38 According to Ecuador, the Tribunal's decision regarding Ecuador's violation of the first two Interim Awards, included in the Fourth Interim Award, is not, by its nature, an interim measure, and it therefore could not be granted in an Interim Award. As a result, in Ecuador's opinion, the arbitrators acted in violation of the provisions of Article 26(2) of the UNCITRAL Rules 1976. Chevron and TexPet challenged this assertion with substantiation.

4.39 Article 26 of the UNCITRAL Rules 1976 contains provisions about interim measures and reads:

1. *At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.*
2. *Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.*
3. *A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.*

4.40 The District Court shares Chevron's and TexPet's opinion that, considering the broad authority vested in the Tribunal by virtue of Article 26(1) of the UNCITRAL Rules 1976 ("any interim measures"), it is impossible - absent further explanation, which is lacking - to see why the Tribunal might not be authorised to pronounce the contested finding that the interim measures pronounced earlier had been violated by Ecuador in the context of the same interim measures. Relevant in that regard is the fact that this finding was apparently inspired as a necessary stimulus for Ecuador to comply with the interim measures as yet, therewith establishing the correlation between the interim measures pronounced earlier and the

finding. The District Court therefore finds that the Tribunal has not violated Article 26 of the UNCITRAL Rules 1976 and also has not exceeded its mandate.

Final conclusion and costs of the proceedings

4.41 Because none of the grounds for the setting aside of the arbitral awards put forward by Ecuador hit their mark, the claims will be denied.

4.42 As the unsuccessful party, Ecuador will be ordered to pay the costs of the proceedings. The District Court's determination of the amount of the costs of the proceedings to be awarded to Chevron and TexPet will be based on the underlying material interest of the case. As that interest is certainly higher than the interest required for the application of the highest liquidation rate - one million euros - this highest liquidation rate (rate VIII in the amount of EUR 3,211 per point) will be applied.

4.43 The costs of the proceedings on the part of Chevron and TexPet are estimated to this day at a total of EUR 7,030, of which EUR 608 in court registry fees and EUR 6,422 in attorney's salary (2 points x EUR 3,211), to be increased by the statutory interest claimed and undisputed as from the fourteenth day after the date on which this judgment is rendered.

5. The decision

The District Court

5.1 denies the claims;

5.2 orders Ecuador to pay the costs of the proceedings, estimated on the part of Chevron and TexPet to this day at € 7,030, to be increased by statutory interest as from the fourteenth day after the date of this judgment;

5.3 declares this judgment to have immediate effect with regard to the costs order.

This judgment was rendered by *mr*. D.R. Glass, *mr*. D. Aarts and *mr*. J.W. Boekwinkel and pronounced in public on 20 January 2016.

[signatures]