judgment

ROTTERDAM DISTRICT COURT

Team commercial and port affairs

case number/ docket number: C/l0/526115 / HA ZA 17-440

Judgment in the procedural issue dated 19 September 2018

in the matter of

STICHTING PETROBRAS COMPENSATION FOUNDATION,
a foundation with registered office in Amsterdam,
claimant in the principal action,
respondent in both procedural issues,
represented by W.P. Wijers LLM of Amsterdam,

versus

1. **PETRÓLEO BRASILEIR S.A. - PETROBRAS,**
a legal entity incorporated and existing under the laws of the Federal Republic of Brazil
with registered office in Rio de Janeiro (Brazil),
defendant in the principal action,
claimant in both procedural issues,
2. **PETROBRAS GLOBAL FINANCE B.V.,**
a private company with limited liability [*B.V.*]
with registered office in Rotterdam,
defendant in the principal action,
claimant with respect to the motion to stay the proceedings,
represented by M.E. Koppenol-Laforce LLM of Rotterdam,
3. **PETROBRAS OIL & GAS B.V.,**
a private company with limited liability [*B.V.*]
with registered office in Rotterdam,
defendant in the principal action,
claimant with respect to the motion to stay the proceedings,
represented by D.F. Lunsingh Scheurleer of Amsterdam,
4. **PETROBRAS INTERNATIONAL BRASPETRO B.V.,**
a private company with limited liability [*B.V.*]
with registered office in Amsterdam,
defendant in the principal action,
claimant with respect to the motion to stay the proceedings,
5. [NATURAL PERSON 1 – identity redacted],
residing in Rio de Janeiro (Brazil),
defendant in the principal action,
claimant in both procedural issues,
6. [NATURAL PERSON 2 – identity redacted],,
residing in Salvador (Brazil),
defendant in the principal action,
claimant in both procedural issues,

represented by (4 - 6) M.E. Koppenol-Laforce LLM of Rotterdam,
7. [NATURAL PERSON 3 – identity redacted],,
residing in Rio de Janeiro (Brazil),
defendant in the principal action,
did not appear,
8. [NATURAL PERSON 4 – identity redacted],,
residing in Canguiri (Brazil),
defendant in the principal action,
did not appear,
9. [NATURAL PERSON 5 – identity redacted],,
residing in Rio de Janeiro (Brazil),
defendant in the principal action,
did not appear,
10. [NATURAL PERSON 6 – identity redacted],,
residing in Rio de Janeiro (Brazil),
defendant in the principal action,
did not appear,
11. [NATURAL PERSON 7 – identity redacted],,
residing in Rio de Janeiro (Brazil),
defendant in the principal action,
did not appear,

The claimant will hereinafter be referred to as the Foundation. The defendants will hereinafter be referred to as Petrobras, PGF, POG, PIB, NP1, NP2, NP3, NP4, NP5, NP6 and NP7.
Petrobras, PGF, PIB, NP1 and NP2 will collectively be referred to as Petrobras et al., while NP3-NP7 will collectively be referred to as the non-appearing defendants.

1. The course of the proceedings

1.1. The course of the proceedings appears from:
- the summons of 23 January 2017;
- the document containing exhibits (1-161), a number of corrections of the summons and comments on the service on the Brazilian defendants of the Foundations;
- the non-appearing defendants being declared in default of appearance;
- the record of the personal appearance of the parties by way of a reply, with case management agreements dated 23 August 2017 and the letters of Petrobras et al. received in reply thereto, also on behalf of POG (of 5 and 11 September 2017) and of the Foundation (of 6 and 11 September 2017);
- the motion contesting jurisdiction, also containing a (partly alternative) request to stay the proceedings of Petrobras et al., with exhibits 162-174;
- the motion contesting jurisdiction, also containing an alternative request to stay the proceedings of POG;
- the Foundation's statement of defence with respect to the motion contesting jurisdiction, with exhibits 175-176;
- the document submitting and explaining exhibits (177-196) of Petrobras et al.;
- the exhibit 197, submitted by the Foundation by B-form of 14 June 2018;
- the document submitting exhibit (198) of Petrobras et al.;
- the memorandums of oral pleading submitted on the occasion of the oral pleadings of 28 June 2018 of Petrobras et al., POG and the Foundation, as well as the document submitted by Petrobras, containing a timeline of the proceedings conducted in the Netherlands and the United States.

1.2. Finally a date was scheduled for judgment to be rendered in both procedural issues.

2. The facts

At this stage of the proceedings the following facts are assumed by the district court.

2.1. Petrobras is one of the largest energy companies in the world. It is engaged in the production of oil in the broadest sense. Among the companies forming part of the Petrobras Group are the Dutch-based companies PGF, POG and PIB, of which companies Petrobras in the period relevant for this purpose, i.e. the period 2004-2014 was (indirectly) the holder of all the shares, whereby it should be noted that since June 2013 Petrobras has (indirectly) been the holder of 50% of the shares in POG. Well over half of the shares in Petrobras are held by the Brazilian state. The remaining (ordinary and preference) shares in Petrobras are listed at the stock exchange in Brazil. The shares are also traded at other markets in the world. Its American Depositary Shares (hereinafter: ADSs) are listed at the New York Stock Exchange in the United States.

2.2. The English-language version of the articles of association of Petrobras as applicable up to November 2016 contains the following passage:
"**Art. 58** - Disputes or controversies involving the Corporation, its shareholders, managers and members of the Audit Board shall be resolved according to the rules of the Market Arbitration Chamber, with the purpose of applying the provisions contained in Law nº 6.404 of 1976, in these Bylaws, in the rules issued by the National Monetary Council, by the Central Bank of Brazil and by the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários - CVM) as well as in all further rules applicable to the operation of the capital market in general, in addition to those contained in the contracts occasionally signed by Petrobras with the stock exchange or an organized over-the-counter market entity accredited at the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários - CVM), with the purpose of the adoption of corporate governance standards established by these entities and of the respective rules on differentiated practices of corporate governance, if such is the case."

2.3. PGF is engaged in raising borrowed capital for Petrobras through the issue of bonds. Within that context prospectuses were published, in which with respect to the bonds issued by PFG Petrobras issued an unconditional and irrevocable guarantee for PGF's obligations towards the bondholders. On 29 December 2014 a merger was concluded between PGF and Petrobras International Finance Company S.A. (another company within the Petrobras Group, which was also active in raising borrowed capital for the benefit of Petrobras), the acquiring company being PGF.

2.4. PIB is the holder of all the shares in PGF. Until 14 June it was also the holder of all the shares in POG. On that date PIB sold half of the shares in POG to BTG Pactual, a Brazilian investment bank, as a result of which PIB currently still holds 50% of the shares in POG.

2.5. POG is engaged in the extraction and production of oil and gas in Africa, among other things in Benin. On 9 July 2015 Benin ceased its business operations.

2.6. In the period relevant for the purpose hereof, or part of that period, NP1, NP2 and the non-appearing defendants formed part of Petrobras' Board of Executive Officers.

2.7. In 2009 a criminal investigation by the name of *Lava Jato* was started in Brazil into the money-laundering practices of criminal organisations. In 2014 this criminal investigation was extended to a building cartel. It emerged that participating construction companies and suppliers had been committing fraud by in the period 2004 through to 2014 (hereinafter also: the

fraud period) overcharging companies, including Petrobras, on top of the normal prices and by subsequently paying kick-back fees to (among others) high-ranking officers with Petrobras and political parties (hereinafter: the fraud). The investigation also targeted the part played in all this by NP1, NP2 and the non-appearing defendants. NP4 and NP6 were criminally convicted, while NP3, NP5 and NP7 were given reduced sentences in exchange for making statements about the fraud.

2.8. Further to the aforementioned investigation, or the outcome thereof, various civil actions were started by Petrobras investors in Brazil and the United States. In the United States class actions have been pending since 8 December 2014 against (among others) Petrobras, PGF, NP1, NP2 and a number of directors or managers, as the case may be, of PGF and/or its legal predecessor (hereinafter collectively: the US Class Action). By way of the US Class Action investors who bought shares, ADSs or bonds at the New York stock exchange want to be compensated.

2.9. On 30 July 2015 it was ruled by the United States District Court southern district of New York that article 58 of the articles of association of Petrobras contains a valid arbitration clause for those who purchased securities at the Brazilian stock exchange, but that this clause does not extend to claims based on the Exchange Act.
On 7 July 2017 the above-mentioned decision of 30 July 2015 was upheld by the United States Court of Appeals for the second circuit.

2.10. On 3 January 2018 it was announced by Petrobras that, for the purpose of putting an end to the US Class Action, it had concluded an agreement which had subsequently been put before the court in order to be approved (hereinafter: the Class Action Settlement). Petrobras agreed to a payment of a total of US 2.95 billion to investors falling within the scope of the Class Action Settlement. The Class Action Settlement was approved by the United States District Court for the southern district of New York.

2.11. The Foundation was incorporated on 12 November2015. In accordance with article 3.1 of its artic les of association its object is:
“a. to represent the interests of those investors who are sustaining damage, are likely to sustain damage and/or have sustained damage as a result of the acts or omissions on the part of one or more Petrobras Entities that give rise to a Claim;
b. to represent the interests of those investors in connection with a Settlement Agreement, which the Court of Appeal is requested to declare binding under the Class Action (Financial Settlement) Act (in Dutch: Wet Collectieve Afwikkeling Massaschade (WCAM));
c. to obtain and distribute financial compensation for all or part of the damage which the investors concerned allege to have sustained, all this with due observance of a Settlement Agreement,
and to do all that is related to the provisions of article 3.1 (a) and article 3.1 (b), or may be conducive thereto, all this in the broadest sense.”

In article 1 of the articles of association the terms “Claim” and “Investors” have been defined respectively as:
“**Claims**: complaints, claims and actions from Investors brought against one or more of the Petrobras Entities in relation to the alleged damage that has been or will be sustained by the Investors as a result of, *inter alia*, the unlawful conduct of a Petrobras Entity, or its policymakers, directors and employees, including, but not limited to, the bribing of officers, the overvaluing of assets of one or more Petrobras Entities as well as any other suspected unlawful conduct, including, but not limited to, the actions which are the subject of the investigation by the authorities in Operation Car Wash (Operagao Lava Jato).” and
“**Investors**: all persons (including legal entities) who have either directly or indirectly traded in ordinary shares and/or preference shares in [Petrobras] and/or instruments derived therefrom and/or bonds issued by [Petrobras, PGF ...], to the extent that these were either directly or indirectly purchased or traded outside the United States, whether or not on a regulated market, prior to the twenty-eighth of July two thousand and fifteen.”

3. The dispute in the principal action

3.1. The Foundation requests the district court, by provisionally enforceable judgment to the extent possible:

I. to rule that:
   a. Petrobras has acted unlawfully towards the Petrobras investors by:
      - complaint I: initiating and perpetuating the large-scale fraud (as described in 11.3 et seq. of the summons);
      - complaint II: the unlawful non-disclosure of the fraud (as described in 11.25 et seq. of the summons);
      - complaint III: the publication of incorrect, incomplete and/or misleading financial information (as described in 11.31 et seq. of the summons);
      - complaint IV: the issue of Petrobras shares on the basis of incomplete, incorrect and/or misleading financial information and causing, or in any case allowing, PGF to issue Petrobras bonds on the basis of incomplete, incorrect and/or misleading financial information (as described in 11.42 et seq. of the summons);
      - complaint V: the issue of Petrobras shares during the fraud period and causing, or in any case allowing, PGF to issue Petrobras bonds during the fraud period (as described in 11.60 et seq. of the summons);
      - complaint VI: deliberately causing undue reliance among investors during the fraud period (as described in 11.63 et seq. of the summons);
      - complaint VII: acting in breach of the applicable regulations, or other applicable regulations (as described in 11.67 et seq. of the summons);

   b. PGF has acted unlawfully towards the Petrobras investors by:
      - complaint I: initiating and perpetuating the large-scale fraud (as described in 11.3 et seq. of the summons);
      - complaint II: the unlawful non-disclosure of the fraud (as described in 11.25 et seq. of the summons);
      - complaint III: the publication of incorrect, incomplete and/or misleading financial information (as described in 11.31 et seq. of the summons);
      - complaint IV: the issue of Petrobras bonds on the basis of incomplete, incorrect and/or misleading financial information (as described in 11.42 et seq. of the summons);
      - complaint V: the issue of Petrobras bonds during the fraud period (as described in 11.60 et seq. of the summons);
      - complaint VI: deliberately causing undue reliance among investors during the fraud period (as described in 11.63 et seq. of the summons);
      - complaint VII: acting in breach of the applicable regulations, or other applicable regulations (as described in 11.67 et seq. of the summons);

   c. POG has acted unlawfully towards the Petrobras investors by initiating and perpetuating the large-scale fraud described in complaint I and, in particular, by acquiring the oil concessions in the republic of Benin at non-arm's length terms and by failing to take measures for the purpose of averting the adverse consequences thereof (see 11.22 et seq. of the summons), as well as by acting in breach of the applicable regulations, or other applicable regulations, as described in complaint VII (see 11 .67 of the summons);

d. PIB has acted unlawfully towards the Petrobras investors by initiating and perpetuating the fraud described in complaint I and by failing to take measures for the purpose of averting the adverse consequences thereof and, in particular, through its involvement in the acquisition of assets situated outside Brazil, such as the concession in Benin and the Pasadena Refinery (see 11.18 et seq. of the summons) as well as by acting in breach of the applicable regulations, or other regulations, as described in complaint VII (see 11.67 of the summons;

e. NP3, NP4, NP5, NP7 and NP6 have individually, or by colluding with each other in any case, acted unlawfully towards the Petrobras investors, by demanding and in the end receiving the kick-back fees (complaint I, described in 12.3 et seq. of the summons);

f. NP1, NP2, NP3, NP4, NP5, NP7 and NP6 have individually, or by colluding with each other in any case, acted unlawfully towards the Petrobras investors, by:
- perpetuating the fraud, or not disclosing it to the Petrobras investors and by failing to take adequate measures for the purpose of putting an end to the fraud, or in any case averting the adverse consequences as much as possible (complaint I, described in 12.3 et seq. of the summons), and/or:
- in their respective positions at Petrobras or otherwise, either directly or indirectly cooperating in, causing or permitting:

(i) complaint II: the unlawful non-disclosure of the fraud (as described in 12.11 et seq. of the summons);
(ii) complaint III: the publication of incorrect, incomplete and/or misleading financial information (as described in 12.12 et seq. of the summons);
(iii) complaints IV and V: the issue of Petrobras securities on the basis of incomplete and/or misleading financial information (as described in 12.15 et seq. of the summons);
(iv) complaint VI: deliberately causing undue reliance among investors during the fraud period (as described in 12.19 et seq. of the summons);
(v) complaint VII: acting in breach of the applicable regulations, or other applicable regulations (as described in 12.24 et seq. of the summons);

II. to order Petrobras et al., POG and the non-appearing defendants jointly and severally, such that payment by one party will discharge the other, to reimburse the extrajudicial costs actually incurred pursuant to article 96 (2) of Book 6 DCC, currently estimated at EUR 200,000, alternatively the maximum fixed rate of EUR 3,210,00 per point, as a second alternative on the basis of the standard fixed rate, or in any case an amount to be determined in the proper administration of justice pursuant to article 97 of Book 6 DCC, all this as explained in chapter 15 of the summons.

4. The dispute in the procedural issues

4.1. Petrobras et al. request that the district court by interim judgment, enforceable with immediate effect to the extent permitted by law:

a) declare that it has no jurisdiction to hear and determine the claims brought by the Foundation against Petrobras, NP1 and NP2;
and/or in any case

b) declare that it has no jurisdiction to hear and determine the claims brought by the Foundation, insofar as these have been brought for the benefit of the shareholders, or former shareholders, of Petrobras;
and/or in any case

c) stay these proceedings to await the outcome of connected disputes already pending abroad;
and/or in any case

d) order the Foundation to pay the costs of the proceedings, plus the subsequent costs in the amount of EUR 131 without service being effected, or EUR 199 in the event that service has to be effected, all this to be settled within fourteen days from the date of the judgment, plus – if those subsequent costs are not settled within that period – the statutory interest on the costs, or subsequent costs, to be calculated from a date fourteen days after date of the judgment.

4.2. POG requests that the district court by interim judgment, enforceable with immediate effect to the extent permitted by law:

1) declare that it has no jurisdiction to hear and determine the Foundation's claims against POG, insofar as these have been brought for the benefit of the shareholders, or former shareholders, of Petrobras, on account of the Arbitration Agreement contained in the articles of association of Petrobras;
or, to the extent that the district court should declare that it does have jurisdiction to hear and determine the case:

2) stay the present proceedings between the Foundation and POG pursuant to article 34 Brussels I Regulation, alternatively, on grounds of case management, until the US Class Action has come to an end, or in any case until the class in the US Class Action has been determined,

3) in all cases ordering the Foundation to pay the costs of the interim proceedings.

4.3. The Foundation moves that the interim applications and requests filed by Petrobras et al. and POG be dismissed, and that Petrobras et al. and POG be ordered jointly and severally to pay the costs of the proceedings incurred by the Foundation.

5. The examination of the procedural issues

introduction

5.1. The interim applications of Petrobras et al. as set forth in 4 above on the one hand concern a motion contesting jurisdiction on account of the absence of international jurisdiction, and on the other hand (but only insofar as filed for the benefit of the shareholders, or former shareholders, of Petrobras) a motion contesting jurisdiction based on the arbitration clause contained in article 58 of Petrobras' articles of association (hereinafter also: the clause).

5.2. The court will first of all deal with the interim application of Petrobras et al. which is based on the absence of international jurisdiction with respect to Petrobras, NP1 and NP2. Within that context the court will also, of its own motion, state its views on the international jurisdiction with respect to the non-appearing defendants.

international jurisdiction

5.3. First and foremost it is noted that, since PGF, POG and PIB are domiciled in the Netherlands, the district court has jurisdiction with respect to these defendants under the principal rule contained in article 2 of the Dutch Code of Civil Procedure (DCCP), which for that matter is not in dispute between the parties.

5.4. When answering the question whether the court has international jurisdiction with respect to the other defendants, it is considered that Regulation (EU) No. 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter: Brussels I Recast) does not apply, since the defendants who have their place of business or residence abroad are not domiciled in the territory of a Member State of the European Union. Other international regimes in the field of the jurisdiction of the courts likewise do not apply in the present case. This means that the international jurisdiction of the district court will have to be assessed on the basis of the Dutch general rules on international jurisdiction as laid down in the Dutch Code of Civil Procedure, i.e. articles 1-13 DCCP. However, for the purpose of interpreting these articles, the articles with a similar scope as contained in Brussels I Recast are not without significance, because, according to legal history, the Dutch lawmaker when drafting article 7 wanted to link up with the regime which has now been included in article 8 (1) Brussels I Recast.

5.5. The district court may examine its international jurisdiction in the light of all the information available to it, including, where appropriate, the defendants'/respondents' allegations. Within that context the district court does not have to accept proof or instruct a party to furnish proof in relation to the disputed facts which are relevant to both the issue of jurisdiction and to the existence of the right of action, nor will the court do so in this case. In this case, in which this judgment is to be regarded as a judgment in a defended action with respect to the non-appearing defendants as well, the court regards it as consistent with the aforementioned assessment framework to also take into account, in the examination of its own motion of the international jurisdiction where the non-appearing defendants are concerned, of that which appears prima facie plausible on the basis of all the information, including the information provided by the defendants that did appear.

article 2 DCCP

5.6. The Foundation has argued that article 2 DCCP confers jurisdiction on the district court with respect to Petrobras, since that party has an office or branch in the Netherlands, while a legal entity is also domiciled in the place where it has an office or branch (article 10 in conjunction with article 14 of Book 1 DCC). Within that context the Foundation has referred to an internet site of Petrobras, which mentions that Petrobras has a representation office in the Netherlands. To the extent that the Foundation claims that the three Dutch companies, or any of these, forming part of the Petrobras Group should be regarded as representing a of Petrobras, it should be noted that those companies are separate legal subjects with their own boards, taking part independently in legal transactions. Contrary to what is argued by the Foundation, the mere mentioning by Petrobras on its internet site of its strategic presence in the Netherlands does not mean that the companies, or any of them, operated as dependent branches of Petrobras within the meaning of article 10 in conjunction with article 14 of Book 1 DCC. Incidentally, to the extent that the Foundation argues that Petrobras has a dependent branch in the Netherlands, it has insufficiently substantiated that allegation. It does not mention any building or space in the Netherlands which is in permanent use by Petrobras in connection with its activities in the Netherlands. For this reason article 2 DCCP does not confer international jurisdiction on the district court.

article 7 DCCP

5.7. The Foundation has furthermore argued that, in accordance with the provisions of article 7 DCCP, the district court has jurisdiction with respect to Petrobras, NP1, NP2 and the non-appearing defendants. Since the Dutch court has jurisdiction with respect to the three Dutch companies, it also has jurisdiction pursuant article 7 (1) DCCP with respect to Petrobras, NP1, NP2 and the non-appearing defendants, provided the claims against the respective defendants are so closely connected as to justify a joint hearing for reasons of efficiency. In view also of the interpretation given to article 8 (1) Brussels I Recast, article 7 (1) DCCP should be interpreted restrictively as an exception to the principal rule of article 2 DCCP.

5.8. Petrobras et al. have argued that the district court has no jurisdiction with respect to Petrobras, NP1 and NP2, because there is no close connection between the claims brought against them and those brought against PGF, POG and PIB. To that end they have alleged that the claims concern different types of securities, purchased or sold in different periods by investors from a large number of different countries, while the alleged damage is the consequence of all types of different facts, which occurred almost exclusively in Brazil. To this should be added that the complaints addressed to Petrobras, NP1 and NP2 are of a different nature compared with those addressed to PGF, POG and PIB. That is why, in the view of Petrobras et al., reasons of efficiency do not justify a joint hearing of the claims.

5.9. The Foundation has disputed the absence of the required connection, if only, according to the Foundation, because of the fact that securities were issued by Petrobras and PGF jointly, with a view to raising borrowed capital for the Petrobras Group, who in so doing acted unlawfully towards the investors, because in the process they provided, either directly or indirectly, misleading, incorrect and/or incomplete information by not-disclosing the fraud, as a result of which the value of the assets – and hence the price of the securities – of Petrobras was kept artificially high. After the fraud had become known, the value of all the financial products of the Petrobras Group fell sharply, as a result of which, in the Foundation's view, all the investors were equally, or similarly in any case, affected. According to the Foundation the Petrobras investors furthermore sustained damage due to the fact that, as a result of the fraud, funds disappeared from Petrobras' capital, for example because inflated prices were accepted for construction projects. All the defendants are held responsible by the Foundation for the unlawful acts and omissions and the resulting adverse consequences for the investors, in respect of which the Foundation, in its capacity as a foundation as defined by article 305a of Book 3 DCC, demands a number of declaratory decisions, in the form of the price fall and/or the withdrawal of funds within the Petrobras Group. According to the Foundation, each claim brought against Petrobras, NP1 and NP2 as well as the non-appearing defendants has also been brought against a defendant domiciled in the Netherlands.

5.10. Contrary to what is believed by Petrobras et al., the district court first and foremost states that, within the context of this examination of the court's jurisdiction, there is no room for an examination of the individual positions of those whose interests the Foundation represents, nor for an examination of the question under which law their individual claims should be heard. According to its articles of association the Foundation represents the similar interests of the Petrobras investors. Whatever may be true of the arguments of Petrobras et al. (inter alia with respect to the floating members), at this stage of the proceedings and in this context it is enough that it may be assumed that there are in fact Petrobras investors who might have a claim and whose interests are represented by the Foundation. At the hearing of 28 June 2018 it was in that respect noted by the Foundation that a number of Dutch pension funds is among the group whose interests it represents. With that argument the Foundation has provided sufficient clarity at this stage of the proceedings about the existence and the identity of Petrobras investors. If necessary, the debate about the

question as to whether there is a similarity between the individual interests of the Petrobras investors may be held at a later stage, when discussing the admissibility of the Foundation.

5.11. According to the Foundation Petrobras, PGF, NP1, NP2 and the non-appearing defendants have unlawfully failed to disclose the fraud (complaint II), have published incorrect, incomplete, and/or misleading financial information (complaint III), have on the basis of such incorrect, incomplete, and/or misleading financial information during the fraud period issued shares (Petrobras), bonds (PGF) or securities (NP1, NP2 and the non-appearing defendants) (complaints IV and V) and in that period have deliberately and wrongly raised expectations among investors (complaint VI). The Foundation has based the claims arising from these complaints on the fact that in the period 2004 - 2014 a large-scale fraud occurred, in which the members of the Brazilian construction cartel and Petrobras et al. were involved. According to the Foundation the fraud inter alia consisted in high-ranking officers of Petrobras, in collusion with the members of the construction cartel, causing companies forming part of the Petrobras Group to enter into agreements with the members of the construction cartel and suppliers who were prepared to pay kick-back fees. According to the Foundation, the parties with which the contracts were concluded structurally raised the invoices intended for the companies forming part of the Petrobras Group by approximately 20% on top of market prices, of which surcharge 1-3% was by way of a kick-back fee paid to officers at Petrobras, such as directors and supervisory directors or other persons involved. It is claimed that Petrobras (and its directors) facilitated this cartel. The Foundation has argued that fraud was inter alia committed 1) on the occasion of the acquisition by way of Petrobras America Inc. (a fully-owned subsidiary of PIB) of an interest of, in the end, 100% in a refinery in Pasadena, Texas, United States, 2) during the construction of a refinery near Recife, Brazil, 3) on the occasion of the construction of oil platforms by the Dutch company SBM Offshore and the leasing of those platforms and 4) during the acquisition by way of POG of an interest of 50% in an oil concession in Benin, where no oil was found. The Foundation takes the view that Petrobras did not disclose the surcharges paid in its accounts, and instead incorporated these in the value of the assets and in the sales figures, and that PGF, when raising borrowed capital, provided incorrect information, as a result of which it facilitated the fraud.

5.12. Petrobras et al. have argued that the fraud concerns all sorts of separate events and that liability for these should be examined per event. The district court does not agree with Petrobras et al. in that respect. The conduct alleged by the Foundation, including a failure to act, is regarded as a series of related (alleged) acts, the purpose of which was at all times to retain the benefits this produced for the persons or legal entities involved, regardless as to where and when an act was performed and who sustained damage as a result; in that respect it was also considered that it has been established that in Brazil under the name Lava Jato a comprehensive criminal investigation has been carried out into this fraud. A part of this coherent whole is the fact that PGF in the fraud period issued bonds on the basis of incorrect, incomplete and/or misleading financial information. It is for this reason that the district court takes the view that complaints II – VI concern the same body of facts. As a matter of law the situation is no different, since on the basis of the conduct described in those complaints, the Foundation requests the court to rule that the defendants have acted unlawfully. The situation also being the same in law is supported by the fact that the US Class Action was brought against Petrobras, PGF, NP1, NP2 and a number of the non-appearing defendants. All this is not altered by the fact that the accusations addressed to the defendants are not literally identical or based on exactly the same ground; each accusation has each time been specified, thus showing the connection between the claims brought against PGF.

5.13. In view of the above the district court takes the view that the claims brought on the basis of complaints II - VI are so closely connected as to justify a joint hearing for reasons of efficiency, in

order to prevent irreconcilable judgments from being given in the event that the cases were heard and determined separately. Accordingly, jurisdiction is conferred on the court by the provisions of article 7 DCCP in respect of Petrobras, NP1 and NP2, to the extent that the claims are based on complaints II - VI.

5.14. Contrary to what is argued by Petrobras et al., the condition that it had to be foreseeable to the defendants that they might be sued in the Netherlands, has been met. Since this concerns the same situation in fact and in law, it might reasonably have been foreseen by Petrobras, NP1 and NP2 that they might be sued for the court of the country where PGF is domiciled.

5.15. In view of the above considerations with regard to the connection between the claims, it cannot be assumed either that the Foundation has brought the claims for the sole purpose of removing one or more of the defendants from the court for his or her place of domicile, as has been argued by Petrobras et al. The district court furthermore considers in that respect that Petrobras has itself stated on its website that it has a strategic presence in the Netherlands.
On the above-mentioned grounds the district court comes to the same conclusion where the non-appearing defendants are concerned.

5. 16. Petrobras et al. have furthermore argued that a connection which may be found by way of another Brazilian defendant only, is not enough. With that argument Petrobras et al. appear to refer to the fact that NP1 and NP2 were directors at Petrobras when Petrobras entered into the agreements and paid the inflated prices. However, the Foundation has argued – without being contradicted – that Brazilian company law contains provisions about the responsibilities of a director, as a result of which the liability of the company and the independent liability under civil law of directors can exist side by side. However that may be, in view of the factual substantiation of the complaints, the connection where these complaints are concerned is sufficiently direct.

5.17. The above does not apply with respect to the claims based on complaint I. The Foundation claims that Petrobras, PGF, POG and PIB, as well as NP1, NP2 and the non-appearing defendants, have acted unlawfully, because they initiated and perpetuated the fraud (complaint I). To that end the Foundation has referred to its submissions in 11.3 et seq. of the summons. However, from what has been argued there, it cannot be concluded that PGF, POG and/or PIB were, according to the Foundation, involved in initiating the fraud within the Petrobras Group, for it cannot reasonably be inferred from those submissions that PGF had provided misleading, incorrect and/or incomplete information when issuing the bonds, nor that in 2006 PIB by way of its subsidiary Petrobras America Inc. acquired an interest in the Pasadena Refinery or that POG in 2011 acquired the concession in Benin. No support for this part of complaint I is to be inferred either from what has thus far been argued by PGF, POG and PIB or from what has otherwise become evident. The expression “initiating and perpetuating” has been presented as one indivisible part (of complaint I) of the claim, which apparently was also the intention, given the contents of the other complaints, since those other complaints concern various aspects of the continuing fraud. Against that background the district court takes the view that, although the Foundation has also based a claim against PGF, POG and PIB on complaint I, it does not in fact accuse them of this, so that there cannot be a connection as referred to in article 7 (1) DCCP. To that extent the Dutch defendants cannot act as anchor defendants and to that extent the district court cannot derive jurisdiction from article 7 DCCP.

5.17 and 5.18. The Foundation has also requested a declaratory decision to the effect that Petrobras, PGF, POG, PIB, NP1, NP2 and the non-appearing defendants have acted in breach of the other regulations, or internal regulations (complaint VII). In that respect all that has specifically been argued by the Foundation is that there was no real bidding and tendering process. However, it has

failed to make clear that, and in which way, PGF, POG and/or PIB were involved in the bidding and tendering process of Petrobras and in so doing acted in breach of the other applicable regulations mentioned by it. Accordingly, there is insufficient ground to assume that the same situation in terms of fact exists in respect of the claims based on that complaint with respect to PGF, POG and/or PIB on the one hand and with respect to Petrobras, NP1, NP2 and the non-appearing defendants on the other hand. It is for this reason that the district court cannot derive international jurisdiction from article 7 DCCP insofar as the claims based on complaint VII are concerned.

5.19. The interim conclusion is that the district court can derive jurisdiction from article 7 (1) DCCP with respect to Petrobras, NP1, NP2 and the non-appearing defendants only, insofar as the claims are based on the complaints II - VI.

article 6 DCCP

5.20. According to the Foundation the international jurisdiction of the district court can also be based on article 6 (e) DCCP, because the place where the harmful event occurred (Handlungsort) and the place where the damage occurred (Erfolgsort) are situated in the Netherlands. In view of what has been held above, this ground remains relevant only with respect to the facts on which the complaints I and VII have been based regarding Petrobras, NP1, NP2 and the non-appearing defendants.

5.21. With respect to the Handlungsort the Foundation has argued that Petrobras' assets are for more than 57% structured by way of the Netherlands and that consequently the fraud has for a substantial part occurred in or by way of the Netherlands. In that respect it refers to the purchase of the Pasadena Refinery by a fully-owned subsidiary of PIB, the purchase of a concession in Benin by POG, the involvement of the Dutch company SBM Offshore and PGF's task of raising borrowed capital, which was subsequently distributed within the Petrobras Group from the Netherlands.

5.22. The district court takes the view that it cannot be concluded from what has been argued by the Foundation that the Handlungsort with regard to initiating and perpetuating the fraud (complaint I) and acting in breach of the other applicable regulations, or internal regulations, is situated in the Netherlands. As already appears from 5.17 and 5.18, the Foundation has not stated enough with regard to the involvement of PGF, POG and/or PIB in the complaints concerned, as a result of which it is not sufficiently likely that the harmful event may be localised in the Netherlands.

5.23. The Foundation furthermore believes that the Erfolgsort is situated in the Netherlands, because affected Petrobras investors who invested by way of an investment account maintained in the Netherlands suffered direct damage as a result of the unlawful practices of all the defendants.

5.24. The district court takes the view that the conclusion that the place where the damage has occurred is situated in the Netherlands, cannot be drawn from the mere circumstance that purely financial damage has directly occurred in the Dutch bank accounts of the (allegedly) affected investor. The Foundation has argued that the following further circumstances should be considered: the bonds were issued from the Netherlands, three defendants are domiciled in the Netherlands, Petrobras had a branch office in the Netherlands, which Petrobras itself referred to as a strategic presence and the transactions which were the subject of the fraud occurred in or by way of the Netherlands. However, these circumstances do not qualify as connecting factors on the basis of which – notwithstanding the aforementioned basic principle – the Erfolgsort with regard to initiating and perpetuating the fraud and acting in breach of the other applicable regulations, or internal regulations, may be regarded as being situated in the Netherlands. In that respect it should be borne

in mind that it has already been concluded that the complaints I and VII, briefly put, do not concern PGF, POG and PIB, while it has been established that the bonds were not listed at a stock exchange in the Netherlands. In view of the above, no more jurisdiction is conferred on the district court by article 6 (e) DCCP than by article 7 DCCP.

article 9 DCCP

5.25. Lastly the Foundation has invoked article 9 (c) DCCP, to which end it has stated that the present case is sufficiently connected with the Dutch jurisdiction and that it is unacceptable to expect from the Foundation that it will put the matter before the Brazilian court in order to be determined. In that respect it has been argued by the Foundation that there is a legitimate fear that it will not get a fair trial in Brazil, on account of the Brazilian state being a majority shareholder in Petrobras, plus the fact that the kick-back fees also ended up in the funds of the largest political party in Brazil. The Foundation furthermore claims that Brazil has a reputation of being a corrupt country and that there are material indications that Brazil's former president (a former CEO of Petrobras) has appointed judges who are sympathetic towards the participants in the fraud. Like article 6 DCCP, article 9 DCCP is relevant only with regard to the facts on which complaints I and VII are based concerning Petrobras, NP1, NP2 and the non-appearing defendants.

5.26. First and foremost it is pointed out by the court that article 9 DCCP should be applied with restraint. Generally speaking, the basic principle is that the competent court under the usual rules of jurisdiction should be referred to. The district court holds that the former president of Brazil was forced to resign further to the fraud, that six of the former directors of Petrobras, one of whom was NP1, stepped back on account of the fraud and related affairs, that a comprehensive criminal investigation took place, which resulted in the criminal prosecution of all sorts of persons and that various individuals (including a number of the defendants) were given long prison sentences on account of their share in the fraud. In that situation it cannot be argued that it is unacceptable to expect the Foundation to put its claims, of which it has been ruled above that they do not fall within the jurisdiction of this court, before the Brazilian court. For this reason no jurisdiction is conferred on this court by article 9 (c) DCCP to hear and determine these claims.

conclusion international jurisdiction

5.27. From all the above it follows that, as far as the Dutch companies are concerned, the Dutch court has jurisdiction pursuant to article 2 DCCP to hear and determine all claims brought on the basis of the complaints I - VII. With regard to Petrobras, NP1, NP2 and the non-appearing defendants jurisdiction is conferred on the court by article 7 (1) DCCP, but only insofar as the claims based on complaints II - VI are concerned.

arbitration

5.28. Petrobras et al. and POG take the view that the district court should declare that it lacks jurisdiction pursuant to article 1074 DCCP to hear and determine the Foundation's claims, to the extent that these have been brought for the benefit of the shareholders of Petrobras. Within that context they refer to article 58 of Petrobras' articles of association (see 2.2 above), which, according to them, contains an arbitration clause. In the view of Petrobras et al. and POG this concerns a valid arbitration clause under Brazilian law. Petrobras et al. claim that, in addition to Petrobras, NP1 and NP2, PGF and PIB are equally entitled to invoke the clause, since it follows from the Foundation's submissions that they have become involved in a dispute which concerns Petrobras, its directors and the shareholders. POG takes the view that it too is entitled to invoke the clause, even if it appears in

the articles of association of Petrobras. According to POG there is reason to do so, because the Foundation accuses POG of having acted in breach of articles 59 and 60 of the articles of association of Petrobras and because POG was a fully-owned subsidiary, or subsubsidiary, of Petrobras at the time of the conduct complained of.

5.29. To that end Petrobras et al. and POG in part rely on the opinion which was commissioned by Petrobras et al. and which was published on 24 November 2017 by N. Eizirik (hereinafter: Eizirik), entitled "*Validity and scope of the arbitration clause provided in the articles of association*" and the additional opinion published by Eizirik on 8 June 2018. The opinion of 24 November 2017 contains a different version of article 58 of the articles of association. The text contained in the expert opinion (page 8, footnote 6) reads as follows:

"Art. 58 -It shall be resolved *by means of arbitration* [italics added, district court], obeying the rules provided by the Market Arbitration Chamber, the disputes or controversies that involve the Company, its shareholders, the administrators and members of the Fiscal Council, for the purposes of the application of the provision contained in Law n° 6.404, of 1976, in this Articles of Association, in the rules issued by the National Monetary Council, by the Central Bank of Brazil and by the Brazilian Securities and Exchange Commission, as well as in the other rules applicable to the functioning of the capital market in general, besides the ones contained in the agreements eventually executed by Petrobras with the stock exchange or over-the-counter market entity, accredited by the Brazilian Securities and Exchange Commission, aiming at the adoption of standards of corporate governance established by these entities, and of the respective rules of differentiated practices of corporate governance, as the case may be."

5.30. The Foundation has disputed that the district court should declare that it lacks jurisdiction. To that end it has inter alia argued that the English version of article 58 of the articles of association is insufficiently clear and specific: there is no designated forum to rule on any disputes covered by the clause. It partly relies on the opinion commissioned by the Foundation and published by prof. Godke Veiga (hereinafter: Godke Veiga) on 26 March 2018 entitled "*On the arbitration provision found in the bylaws of Petrobras*" and on his second opinion dated 14 June 2018.

5.31 With regard to the text quoted by Eizirik the Foundation has stated, without being contradicted, that this is the text as it was reading after the amendment to the articles of association in November 2016. Within that context the Foundation has also argued – again without being contradicted – that a version of the articles of association containing the text referred to in 2.2 had appeared on the Petrobras website until 2016, so that – insofar as shareholders are familiar with the articles of association – they must be deemed to have been familiar with this version; the majority of the shareholders are dependent on the English text, because – as has been argued by the Foundation without being contradicted – they live practically all over the world and as a rule have no command of the Portuguese language.

5.32. At the hearing of 28 June 2018 Petrobras et al. stated that the text in question is an incorrect translation of the Portuguese text, offering to submit a correct translation. Petrobras et al. will not be granted leave to submit the translation which they claim is the correct one, for they have failed to argue that the version in question was known to the shareholders, meaning that it is irrelevant for the purpose hereof.

5.33. The district court takes the view that, given the fact that this is a text which is intended to be consulted by persons all over the world, the English version of article 58 as it appeared on the site in the relevant period 2004 - 2014 and was quoted in 2.2, is the only version which is of significance to the present issue on jurisdiction.

5.34. The parties disagree about the question according to which law the validity of the arbitration clause should be examined. In the absence of a choice of law, article 166 of Book 10 DCC refers to the law of the place of arbitration or to the law applicable to the legal relationship to which the arbitration agreement relates. The district court will first examine the question as to whether his text should be regarded as a valid arbitration clause according to Brazilian law, and subsequently according to Dutch law.

5.35. According to the opinions submitted by both parties it is not in debate that under Brazilian law the rule is that arbitration must have been agreed upon. Both in Eizirik's expert opinion and in Godke Veiga's expert opinion a reference is made to the *Arbitration Law* (Law no 9.307 of 23 September 1996) and both experts have quoted the text of article 4, §1 (in the English translation). Eizirik has done this as follows:
"The arbitration clause shall be stipulated in writing, and it may be inserted in the agreement or in a separate document to the agreement referred thereto."

whereas Godke Veiga's translation reads as follows:
"An arbitration clause will be in writing, and it may be inserted into the contract itself or into a separate document to which it refers."

Both translations show that, if the articles of association themselves fail to provide that a dispute is to be resolved by means of arbitration, the agreement must contain an express reference to the document that does contain the arbitration clause. The opinions provide differing views as to the question if such a provision in the articles of association may qualify as an agreement (an adhesion contract). Clearly, the English-language version of article 58 of the articles of association – as set forth in 2.2 – does not contain any reference to a separate document containing the arbitration clause. The references concern applicable rules, not the arbitration agreement itself, which, for that matter, is not as such in debate between the authors of the opinions. What matters, therefore, is the text of article 58 itself.

5.3 6. Godke Veiga furthermore quotes the definition of the opening lines of article 4 of the Arbitration Law:
"An arbitration clause is an agreement by which the parties to a contract undertake to submit to arbitration any disputes that might arise with respect to that contract."

Eizirik has not contradicted the correctness of this translation in his second opinion, so that the district court takes this translation as its starting point.

5.37. Godke Veiga's opinion explicitly shows that, under Brazilian law, access to the independent national court is regarded as a fundamental right, which is enshrined in the Constitution. Any restrictions of this right should therefore meet the legal requirements (imposed by the Arbitration Law) in order to be constitutionally admissible (under article 5, XXXV of the Brazilian Federal Constitution) and therefore be binding (c.f. page 23 of the opinion).
In the district court's view it arises from this background that the text should clearly and specifically state that any disputes must not be put before the national court, but before an arbitral tribunal. As has been rightly argued by the Foundation, a number of rules has in the present text been declared applicable to (for example) disputes that have arisen between Petrobras and its directors on the one hand and its shareholders on the other hand. However, the text does not say that those disputes are to be resolved by means of arbitration, nor has any arbitrator or arbitral tribunal been designated. This means that the shareholders could not reasonably be expected to learn, by taking note of the

articles of association (on Petrobras' website) that Petrobras wished to submit any disputes with its shareholders to arbitration. In that respect the district court furthermore points out that the essence of arbitration is blocking the route to the national court. However, dispute resolution schemes for shareholders may exist within an enterprise, including the applicable regulations, which (first of all) can or must be complied with, without thereby blocking the route to the national court. The text of article 58 leaves open the possibility that such a scheme was envisaged.

5.38. Accordingly, this text of article 58 under Brazilian law does not satisfy the conditions to be imposed on it and is not valid. Eizirik reaching a different conclusion in his opinion, however that may be, does not alter the above, since he uses a different text of article 58 (the new/correctly translated one). Godke Veiga specifically concentrates on a different aspect (the aspect of the adhesion contract). These opinions therefore do not provide a reason for drawing a different conclusion.

5.3 9. For the same reasons the arbitration clause by analogy is not valid under Dutch law either. Under Dutch law too, giving up the constitutional right of gaining access to the independent national court requires that the clause clearly states that arbitration has been agreed, which clarity is absent in the text quoted in 2.2.

5.40. To the extent that Petrobras et al. and POG wish to argue that the regulations referred to in article 58 provide that disputes are to be resolved by means of arbitration and that an arbitrator or arbitral tribunal has also been designated, thus causing the required clarity to be provided in that way, the district court holds that this is not enough for it to reach a different conclusion. It has to be clear for the present or future shareholder, without conducting a comprehensive investigation, to whom he should turn in the event of a dispute, the more so since the shareholders are located practically everywhere in the world, a fact that Petrobras et al. were aware of as well, this being a consequence of their strategy to raise borrowed capital all over the world. To that should be added that article 58 contains a reference to various schemes.

5.41. Petrobras et al. have furthermore argued that an arbitration clause in articles of association binds all shareholders with effect from the date it has been approved in a shareholders' meeting and that, by buying Petrobras shares, all shareholders are deemed to be in agreement with this. To those who purchased shares prior to 2016 this approval is irrelevant in any event, since it does nothing to remedy the lack of clarity.
The interests of those who did not become shareholders until after November 2016 are not represented by the Foundation, as appears from its articles of association, so that their position is irrelevant.

5.42. Finally, Petrobras et al. have argued that it was ruled by the American court in the US Class Action that under Brazilian law the clause is a valid arbitration clause, which may be enforced against the shareholders of Petrobras (thereby inter alia referring, it would appear, to the decisions referred to in 2.8) and that various Brazilian courts have ruled that the arbitration clause prevents them from assuming jurisdiction. This does not make the above any different, because it does not alter the fact that the English version of Petrobras' articles of association with which the shareholders are familiar, briefly put, does not contain a valid arbitration clause, nor refers to a document that does contain such an arbitration clause. At this stage it is furthermore impossible to establish if these are indeed different rulings, relevant to this case, nor what such different rulings are exactly based on and how the debate developed in that respect, so that these cannot be of conclusive significance. It is fair to assume that the Brazilian text was used as a basis in Brazil, which appears to be different from the English translation; in addition it has been established that interim amendments were made to the text. The submitted decision of 22 June 2018 (exhibit 198) whereby the Settlement Class was

certified and the Settlement agreement and the allocation plan were approved, does not provide a concrete connecting factor for the argument that the American court took the view that a valid arbitration clause was concerned.

5.43. The conclusion is that article 58 of the articles of association as it was reading in the English version until November 2016, does not have as a consequence that with respect to the Petrobras shareholders the district court lacks jurisdiction to hear and determine the Foundation's claims (based on the complaints II - VI).

5.44. Given the district court's conclusion in grounds 5.27 and 5.43, it will hereinafter be examined if the requests to stay the present proceedings may be allowed.

connected actions

5.45. Petrobras et al. and POG take the view that the district court should stay the proceedings on account of lis pendens, until a final decision has been given in the United States - and in Brazil, as has been alleged by Petrobras et al. only - about claims that are virtually identical to those brought by Foundation, or claims related to these. With respect to PGF Petrobras et al. have in that regard referred to articles 33 and 34 Brussels I Recast, and to article 12 DCP where Petrobras, NP1 and NP2 are concerned. POG has referred to article 34 Brussels I Recast, while alternatively invoking the management of the proceedings in relation to the efficient administration of justice.

5.46. In substantiation of their views Petrobras et al. and POG have argued that since 8 December 2014 – so before the Foundation started proceedings against Petrobras et al. and POG – a US Class Action has been pending in the United States, as well as a number of individual actions against, among others, Petrobras, NP1 and NP2. According to Petrobras et al. and POG the actions are greatly connected with the present action, because the issue under discussion is each time the question as to whether investors in Petrobras can, among others, hold Petrobras liable for the fraud, or the consequences thereof. To that Petrobras et al. have added that for the purpose of applying Brazilian law to the claims brought by the Foundation, it will be more efficient to await the hearing on the merits of the Brazilian cases. In the view of Petrobras et al. and POG there is the more reason to stay the proceedings, because the Foundation has defined its members in such a manner that among them are also investors who fall outside the scope of the Class Action Settlement; there are after all investors who do fall under the scope of the US Class Action, but not under that of the Class Action Settlement, particularly because they have made an opt-out statement. Their position has to be clear before the district court gives a ruling on the Foundation's claims.

5.47. The district court holds that, due to the Class Action Settlement, the US court is not in a position to give a substantive opinion on the claims of the investors who initiated the US Class Action. This will be different if investors covered by the scope of the settlement decide to opt-out, as two parties meanwhile appear to have done. However, it is unclear what the further course of these proceedings will be and how long they will continue. For that reason it is also unclear if a judgment in these actions is to be expected at reasonably short notice. In view of all this, the district court will not stay the proceedings on account of the proceedings in the United States (whether within the context of the US Class Action, the Class Action Settlement or the separate proceedings of investors who have decided to opt-out).

5.48. With respect to the actions in Brazil the district court holds that it follows from the submissions of Petrobras et al. that these actions are mainly concerned with the question whether the Brazilian court will declare that it lacks jurisdiction on account of the clause contained in article

58 of the articles of association and that in a number of actions the court has already done so. On the one hand this means that no decision on the substance is to be expected with regard to, briefly put, the acts and omissions of Petrobras, the three Dutch companies, NP1, NP2 and the non-appearing defendants. On the other hand it should be borne in mind that it is not clear if any arbitral awards that may be given in that country will be recognized and will be enforceable in the Netherlands. It is true that Brazil is a party to the New York Convention, but in order for an award to be recognized, there must be a valid arbitration clause and, as has been concluded earlier, article 58 is not a valid arbitration clause; to the extent that other arbitration clauses are at issue there, their relevance to this case will be limited. In view of all this, the district court will not stay the proceedings on account of the actions in Brazil.

5.49. Petrobras et al. have also argued that it is inefficient to answer the question if, after the Class Action Settlement, the Foundation still has a procedural interest in the requested declaratory decisions, before the decision regarding the Class Action Settlement has become final and binding. In view of what has been held in 5.47 above, this view of Petrobras et al. is not accepted. In that respect the court notes that, if a final judgment is given in the United States very shortly, those decisions can of course be introduced in these proceedings at a later stage.

other issues

5.50. Petrobras et al. and POG have challenged the territorial jurisdiction of the district court. Although no claim has been brought in that respect, the district court nevertheless for the sake of completeness holds that it has territorial jurisdiction pursuant to article 99 DCCP in conjunction with article 107 DCCP, because PGF and POG are domiciled in Rotterdam, so that the district court – insofar as it has jurisdiction – also has territorial jurisdiction with respect to the other defendants.

5.51. Petrobras et al. have requested to be given leave to file an appeal against the decision, in the event that the district court were to dismiss their motion contesting jurisdiction or their defences either in whole or in part. In what has been argued by Petrobras et al. the district court sees no reason for setting aside the principal rule, i.e. that an appeal against an interim judgment is brought together with the final judgment.

5.52. The district court will order Petrobras et al. and POG as the more unsuccessful parties to pay the costs of the procedural issues. Since the Foundation has delivered one statement of defence in both procedural issues, the order for costs will be given as if there were only one procedural issue. Petrobras et al. and POG will be ordered jointly and severally to pay these costs, estimated at EUR 1,356 (3 points x rate of EUR 452).

6. The examination in the principal action

6.1. At the personal appearance of the parties of 23 August 2017 it was agreed – to the extent relevant for the purpose hereof – that Petrobras et al. and POG will draw up a brief schematic overview of their expected defences on admissibility and substance (skeleton argument) and that further to that overview, before a statement of defence is delivered, all the appearing parties will consult with each other about the most efficient way of conducting the proceedings, within which context a next case management hearing will if necessary be scheduled. The timeframe included in the record means that Petrobras et al. and POG may submit documents at the cause list hearing of 17 October 2018 (containing the aforementioned skeleton argument), after which at the cause list hearing of 14 November 2018 the Foundation may submit a document containing a reply – also brief and schematic – to the documents submitted by Petrobras et al. and POG, after which, if necessary, a

case management hearing may be held on **18 December 2018**. For this reason the principal action will be referred to the cause list of 17 October 2018, in order for documents to be submitted by both Petrobras et al. and POG, in which they can provide the aforementioned brief schematic overview.

7. The decision

The district court

in the procedural issues

7.1. declares that it has no jurisdiction:
to hear and determine the claims brought against Petrobras, NP1, NP2 and the non-appearing defendants, to the extent that these are based on:
- complaint I: initiating and perpetuating the large-scale fraud;
and:
- complaint VII: acting in breach of the applicable regulations, or other applicable regulations;

7.2. in all other respects dismisses the interim applications of Petrobras et al. and POG;

7.3. orders Petrobras et al. and POG jointly and severally to pay the costs of the procedural issue, thus far estimated on the part of the Foundation at EUR 1,356;

in the principal action

7.4. order that the case will again be placed on the cause list of 17 October 2018 in order for documents to be submitted by both Petrobras et al. and POG, on which occasion each of them may provide a brief schematic overview of the defences on admissibility and substance expected by them, after which the Foundation will be provided with the opportunity (at the cause list hearing of 14 November 2018) to provide a brief and schematic response to those overviews;

7.5. defers any further decisions.

This judgment was rendered by P.F.G.T. Hofmeijer-Rutten, F. Damsteegt-Molier and M.P. van Achterberg and was pronounced in open court on 19 September 2018.
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