

NEWS

Exploration and production

Elf has just won two oil concessions in the Paris basin, at Croix Blanche and Vert-le-Grand, both for 25 years. The deposit at Vert-le-Grand is the third largest oil deposit in the Paris basin.

Three preliminary prospecting permits for gas or liquid hydrocarbons have been granted for two years in the Mer d'Iroise off the Finistère coast. The three companies concerned are the British company Spectrum, the Compagnie Générale de Géophysique, and Elf Aquitaine Production. TL

GDF acquires interest in Quebec gas holding company

On 1 February 1994 Gaz de France (GDF) signed an agreement in Paris setting its interest in the capital of the Quebec gas holding company Noverco at 23.7 per cent.

This agreement formalises GDF's long collaboration in Quebec. A notable example is the 60/40 joint venture set up by GDF with Soquip to develop Quebec's first underground gas storage depot at Point du Lac; it has been in use since 1990 and has a capacity of 80 million cubic metres. A second storage depot will be set up on the south bank of the St Lawrence at Saint-Falvlen.

GDF's involvement in Noverco will take place within the framework of an increase in reserved capital.

The distribution of Noverco's authorised capital after GDF's entry is likely to be as follows:

- Quebec's Caisse de dépôt et placement: 38 per cent;
- GDF: 23.7 per cent;
- a private brokerage company: a little over 8 per cent.

GDF's investment is close to F.Fr.450 million.

Noverco's activities cover both distribution (in particular it owns 85 per cent of Gaz Metropolitan) and brokerage, developing underground storage and building power stations. Building power stations is at present a growth industry, as seen in the partnership between the General Electric subsidiary GE Capital Corporation, and Quantum Industrial Holding.

The entity created as a result of this agreement, Global Power Investment (GPI), is likely to raise around F.Fr.15 billion to build new power stations or to manage those already in existence.

GPI will begin by investing in Mexico, China, India and Indonesia. TL

Natural gas

Supplies of natural gas in France reached 368.9 GKW/h in 1993, a drop of 5.2 per cent compared with 1992.

In 1993 Russia was the main exporter of natural gas to France, with 31.7 per cent; other sources were Algeria (27.5 per cent), the North Sea (18.2 per cent) and the Netherlands (12.6 per cent).

French production of natural gas, based mainly in Aquitaine, supplied 9.4 per cent of the country's needs. TL

*Appeal against French Competition Council lodged by Elf-Antar and Total
Thierry Lauriol
Jeantet & Associés
Paris*

Elf-Antar France and Total Réunion Comores have appealed against a decision of the French Competition Council which imposed fines on them for having deliberately obstructed the entry of Esso Réunion to the fuel distribution market at Réunion's Saint-Denis airport.

Germany

ENVIRONMENTAL LIABILITY Oil spillage - ownership of Installation

Employee of fuel oil company filling heating oil tanks for own account - no knowledge of this activity by employer - pipe breaking loose - oil spilling - whether employer liable - German Water Resources Act §22(2)

Provincial Court of Cologne, 10 February 1993 reference 11

U 172/92 ZfW 1993/247

Background: § 22(2) of the German Water Resources Act states:

If substances pour into the water without being led or fed into it from an installation which is destined to . . . store . . . transport or drain off such substances, the owner of the installation will be liable for damages which are thereby caused to another person . . .

Facts: The plaintiffs, the owners of a heating oil tank, claimed damages from, amongst other parties, the company which owned a tank lorry. The driver of the lorry used it for the sale and delivery of heating oil which he made on his own account without the knowledge of the defendant. While feeding in heating oil into the heating oil tank, the filler-cap and the attached feed-hose broke loose from the feed-pipe. A substantial amount of heating oil spilled out,

polluting the water and causing damage to the plaintiffs. The plaintiffs asserted that the defendant, as owner of the tank lorry, was liable as the owner of an installation in the sense of § 22(2) of the Water Resources Act.

Held:

In the case of accidents which occur during the filling of tanks, it has to be determined in whose scope of activity the source of the defect is found. If the damage is caused by the leaking oil tank, the owner of the oil tank will be liable. If the porosity of the feed-hose causes the damage, the owner of the tank lorry will be liable. Accordingly, the owner of the tank lorry cannot be held liable in the case of an oil spillage caused by a defective filler-cap.

The Court found that the oil spillage had to be attributed to the plaintiffs as owners of the installation 'heating oil tank' but not to the owner of the installation 'tank lorry':

The reason for the oil spillage was not that the feed-hose of the tank lorry and the filler pistol to which it was attached got loose from the filler cap, being the end of the feed-pipe which belonged to the oil tank'. . . In fact, it is incontrovertible that the fixed connection between the tank-hose and the filler-cap was not interrupted but that the filler-cap which was defectively connected with the feeding pipe 'came out of the wall' either by reason of the tension caused by the feed-hose or more likely by reason of the counter-pressure which the oil, fed into the tank, caused to the feed-pipe . . .

The Court indicated that the defect concerned the feed-pipe of the oil tank and was thus attributable to the customer. The fact that the operation of the tank lorry was a causal connection without which the accident could not have occurred was not sufficient for the assignment of liability to the owner of the tank lorry.

The Court held:

The legal situation would be different if the defendant, by reason of the connection of the feed-hose with the filler-cap of the tank lorry, had become the operator of an undivided unitary installation, if by reason of the connection of both installations a unitary right of control over both elements had been created . . . But this was not the case here. Apart from the filling of the tank the defendant could not exercise any control over the plaintiffs' oil tank. The mere fixed connection of the hose to the oil tank is not sufficient in order to obtain a factual control over the tank . . . Insofar as this was assumed by a court in a particular case . . . this decision was based on different factual circumstances. In that case the customers were not present during the filling of the tank. However, the plaintiffs were present during the filling of the tank on 15 June 1991 and they could exercise the control over this operation by giving orders and looking after their rights and obligations as owners of the heating installation.

Comment: The term installation in the sense of § 22(2) of the German Water Resources Act is broadly defined.¹ The term comprises oil tanks for the heating of houses in private property² and also tank lorries.³ The term owner of an installation in the sense of § 22(2) of the Act is also broadly defined, covering not only its proprietor but also the operator or lessee.⁴

Because the oil spillage was attributable to the plaintiffs as owners of the oil tank, the Court expressly refrained from deciding whether the driver's unauthorised activity deprived the defendant and proprietor of the tank lorry of the status of owner of an installation in the sense of § 22(2) of the Water Resources Act.

The decision clears the issue of the creation of an undivided unitary installation through the connection of two installations. It seems that the test will now be whether the connection of the installations would give rise to a right of control over both elements. According to the judgment of the Court, only in the latter case the assumption of an undivided unitary installation and the joint liability of their owners will be justifiable. AV

1 Gieseke, Wiedemann, Czychowski, *Wasserhaushaltsgesetz*, commentary, 6th edn, C.H. Beck, Munich 1992, No. 43 to § 22.

2 Provincial Court of Frankfurt 4 December 1986, ZfW 1987/196.

3 Federal Supreme Court 23 December 1966, ZfW 1967/92.

4 Federal Supreme Court 17 October 1985, ZfW 1986/305.

**FUTURES
Choice of Law**

Futures trading – contract stating that English law will apply – whether claim could be brought in German courts

Statutory Provisions: The German Introductory Act of the Civil Code states:

Consumer Contracts

(1) in the case of contracts concerning the supply of moveable goods or the rendering of services for a purpose which cannot be attributed to the