

# **Energy Efficiency Benchmarking Covenant**

**6 july 1999**



# Energy Efficiency Benchmarking Covenant

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# The Parties

## 1. Government parties

- a) The Minister of Economic Affairs, A. Jorritsma-Lebbink, and the Minister of Housing, Spatial Planning and the Environment, J.P. Pronk, acting in their capacity as representatives of the State of the Netherlands and their capacity as administrative bodies, hereinafter referred to as **'the Ministers'**;
- b) The Inter-Provincial Consultative Forum (IPO) alliance, representing the provincial authorities, as shown by the decision of the Executive of the IPO dated 24 June, hereinafter referred to as **'the provincial authorities'**;

and

Private sector parties:

- a) The Confederation of Netherlands Industry and Employers VNO-NCW, with its registered head office, pursuant to the Articles of Association, in The Hague, jointly represented for the purposes of this Covenant, in accordance with the Articles of Association, by its Chairman and General Manager, J.C. Blankert, hereinafter referred to as **VNO-NCW**;
- b) The Netherlands Chemical Industry Federation (VNCI), with its registered head office, pursuant to the Articles of Association, in Leidschendam, represented for the purposes of this Covenant, in accordance with the Articles of Association, by its Chairman, R.M.J. van der Meer;  
The Netherlands Iron and Steel Producing Industry Association (NIJSI), with its registered head office, pursuant to the Articles of Association, in Velsen Noord, represented for the purposes of this Covenant, in accordance with the Articles of Association, by its Chairman, A. van der Velden;  
The Netherlands Non-Ferrous Industry Association (NFI), with its registered head office, pursuant to the Articles of Association, in Zoetermeer, represented for the purposes of this Covenant, in accordance with the Articles of Association, by its Chairman, R.B. Frankena;  
The Netherlands Petroleum Industry Association (VNPI), with its registered head office, pursuant to the Articles of Association, in The Hague, represented for the purposes of this Covenant, in accordance with the Articles of Association, by its Chairman, J.H. Schraven;  
The Netherlands Paper and Cardboard Manufacturers' Association (VNP), with its registered head office, pursuant to the Articles of Association, in Hoofddorp, represented for the purposes of this Covenant, in accordance with the Articles of Association, by its Chairman, W.J. Emmen;  
The Naamloze Vennootschap Samenwerkende electriciteitsproductiebedrijven (SEP), with its registered head office, pursuant to the Articles of Association, in Arnhem, represented for the purposes of this Covenant, in accordance with the Articles of Association, by its director, R. Feith;  
hereinafter referred to as: **the sectoral organisations**;
- c) The Companies that join this Covenant when it is signed, in respect of their energy-intensive facility/facilities, as named in a Participation Statement, hereinafter referred to as **'the Companies'**.

Note:

Item 2c: 'Company/Companies' (with a capital letter) is used to refer to companies that have signed the Covenant or that join it at a later date. In other cases, 'company/companies' (lower case) is used.

## Whereas

During the Climate Conference in Kyoto (10 December 1997), the Netherlands and the European Union (EU) undertook important commitments to reduce emissions of CO<sub>2</sub> and other greenhouse gases.

Improving energy efficiency is one of the key tools for reducing CO<sub>2</sub> emissions.

Companies have declared themselves willing to make a cost-effective contribution to reducing such emissions from their energy-intensive facilities, by taking measures to comply with the best international energy efficiency standards via a benchmarking process. This is included as the Benchmarking Ambition in the Environment and Economy Paper of 18 June 1997.

By participating in the benchmarking operation, the said Companies aim to ensure that their energy-intensive facilities comply with the best international energy efficiency standards, so making the greatest possible contribution to realising the national CO<sub>2</sub> objectives. This creates a situation that benefits both the environment and the economy. After all, it is better if these Companies' facilities produce in the most efficient possible way in the Netherlands than less efficiently elsewhere. This is also consistent with their efforts to realise the lowest possible costs per unit of product.

In the Environment and Economy Paper the Government stated that, in this situation, it would not impose on these facilities any additional specific national measures aimed at further energy conservation or CO<sub>2</sub> reductions. This in any event means that there will be no specific national energy tax for the Companies, no compulsory ceiling for CO<sub>2</sub> emissions, no additional compulsory energy-efficiency or CO<sub>2</sub> targets, no additional conservation commitments and no additional CO<sub>2</sub> or energy requirements.

Furthermore, the costs of the commitments undertaken by the Dutch Government in relation to Joint Implementation, the Clean Development Mechanism and emission trading will not be borne directly by the said Companies.

The deployment of renewable energy and measures designed to influence fuel consumption are not included in the above consideration. Furthermore, this Covenant will not alter the fact that the Government will develop energy conservation activities in relation to the said facilities that do not relate to the energy efficiency of processing plants, as described in the 1998 Energy Paper of 7 April 1998 (Section 4.3). When applying such instruments, the Government will always take account of the consequences for the Companies. Moreover, this Covenant does not affect the levy of general energy taxes. When imposing general energy taxes, the Government will always take account of the consequences for the Companies, or will attempt to exempt the Companies as far as possible.

The Parties take the view that compliance with the requirements of or pursuant to the Environmental Management Act in relation to due care for efficient energy consumption is realised by means of benchmarking.

The provisions of this Covenant are consistent with the law of the European Communities, in particular with regard to the rules on notification (Directive 98/34/EC of 22 June 1998 (OJ L 204), as last amended by Directive 98/48/EC of 20 July 1998 (OJ L 217), competition (Articles 85 and 86 of the EC Treaty) and state aid (Articles 92 and 93 of the EC Treaty).

On 20 April 1999 a draft version of this Covenant was sent to the Second Chamber of Parliament, which did not raise any objections to its signature.

# Hereby agree as follows

## Definitions

### Article 1

The following definitions shall apply for the purposes of this Covenant:

- a) Energy-intensive facility: A facility, within the meaning of Article 1.1 of the Environmental Management Act, that is located in the Netherlands and that, on joining this Covenant, consumes at least 0.5 PetaJoules (PJ) of energy per year.
- b) Participation Statement: A Company's written statement, as referred to in Article 3, Clause 2, of the energy-intensive facilities with which it participates in this Covenant.
- c) Company: A legal entity, established in the Netherlands or elsewhere, which participates in this Covenant in relation to one or more of the energy-intensive facilities under its control, as listed in the Participation Statement.
- d) Group: A legal entity that has control over one or more Companies, together with those Companies.
- e) Participating facility: An energy-intensive facility listed in a Participation Statement.
- f) Processing plant: A complete plant for the production or processing of a particular product. If a Company states that benchmarking will apply for the entire facility, the term 'processing plant' will refer to the entire facility for the purposes of this Covenant.
- g) Participating processing plant: The processing plant of a facility for which the best international standard must be determined.
- h) Best processing plant: The processing plant with the highest energy efficiency, successfully operated in the Netherlands or elsewhere by a financially sound company.
- i) Energy consumption: The consumption of energy from energy carriers. This does not refer to non-energy consumption in the form of feedstocks.  
The energy consumption from secondary energy carriers will be allocated back to the net caloric value (lowest combustion value) of the primary energy carriers. Net electricity purchases will be offset at a generation yield requiring the approval of the independent authority. The determination of the proportion of feedstock in energy consumption for each relevant processing plant requires the approval of the independent authority.
- j) Energy efficiency: energy consumption per unit of product.
- k) Competent authority: The competent authority for the participating facility (Ref. Environmental Management Act).
- l) Benchmarking Commission: the Commission referred to in Article 13.
- m) Independent authority: the authority appointed by the Ministers in compliance with Article 15.
- n) Benchmarking System: A system designed to compare processing plants world-wide in terms of energy efficiency.
- o) Best international standard: the energy efficiency standard determined in compliance with Article 4.
- p) Gap from the best international standard: the difference between the energy efficiency of a processing plant and the (higher) best international standard determined for that plant.
- q) Protocol on determination of best international standard: the protocol contained in Appendix 2 of this Covenant.
- r) Protocol on energy efficiency plan: the protocol contained in Appendix 3 of this Covenant.
- s) Protocol on monitoring and reporting: the protocol contained in Appendix 4 of this Covenant.
- t) Group approach protocol: the protocol contained in Appendix 5 of this Covenant.
- u) Joint Implementation: investments by a donor country in a host country (Annex I countries of the Kyoto Protocol), through which (some of) the reductions realised in the host country in the 2008-2012 period can be included in the realisation of the donor country's national target.
- v) Emission trading: trading of emission rights between the Annex I countries of the Kyoto Protocol.

- w) Clean Development Mechanism: investments by the donor country in host countries (countries not included in Annex I of the Kyoto Protocol), in which (some of) the CO<sub>2</sub> reductions realised in the host country in the 2008-2012 period may serve to help the donor country realise its national target.
- x) Confidential information: Confidential business information and security information, within the meaning of Section 19 of the Environmental Management Act, which is defined as such by the provider.

#### Notes

Clause 1a: The limit of 0.5 PetaJoules (PJ = 10<sup>15</sup> J) was chosen because it has been calculated that the facilities consuming more than 0.5 PJ of energy will jointly account for about 80% of industrial energy consumption.

A facility where consumption falls below 0.5 PJ as a result of energy efficiency measures can nevertheless remain a party to the Covenant.

Clause 1b: The principle is that the Government and companies will reach agreements on energy efficiency. This can take place through benchmarking or through a new generation of multi-year agreements (MJAs), after the current ones expire. According to the Ministers, the second generation of MJAs for industry will focus more on individual companies. The agreements will require greater effort from the companies than the current MJAs, because the yield criteria will be raised. Themes other than process efficiency will also be considered. Companies or groups consisting entirely of energy-intensive facilities (> 0.5 PJ) that wish to participate in an energy efficiency agreement will do so by becoming party to this Covenant. Companies or groups consisting entirely of non-energy-intensive facilities (< 0.5 PJ) that wish to participate in an energy efficiency agreement will do so by signing an MJA. Companies or groups with both energy-intensive and non-energy-intensive facilities that wish to participate in an energy efficiency agreement will do so by becoming party to this Covenant in relation to their energy-intensive facilities. They will be given scope for a company or group-wide integrated energy policy, in which the commitments for the non-energy-intensive facilities can be met through the approach followed for the MJAs.

As benchmarking must be a meaningful activity and add value through a realistic comparison with similar activities elsewhere in the world, in certain cases, variations from the 0.5 PJ limit are possible if there are grounds for this. This means that a facility that consumes less than 0.5 PJ, but that is otherwise comparable with other energy-intensive facilities concerned in terms of product and operations in the world market, can apply to the Benchmarking Commission to join the Covenant (see Article 3, Clause 6). At the same time, an international comparison may not be meaningful for a facility that consumes more energy than 0.5 PJ. This may be the case, for example, if it applies a unique production process or if the facility's market for raw materials or products is determined locally. In this situation, the company can request the Minister of Economic Affairs to contract an MJA. This request must be supported with an advisory report from the independent authority on the possibilities for benchmarking the applicant. In that case, the performance in return will apply for all facilities taking part.

Finally, a situation may arise in which only a small number of facilities in a sector consume more than 0.5 PJ. The Minister of Economic Affairs can then consider granting a request from the sector to contract an MJA on these grounds.

The Parties have agreed that a supra-facility group approach is possible within the boundaries of the current Environmental Management Act. This is developed in Appendix 5, 'Group Approach'. The Environmental Management Act is currently being examined for any problems relating to a group approach and if necessary, potential solutions for these will be defined.

More than one legal entity may operate within a group, and in turn, may have control over one or more facilities. A situation in which more than one legal entity has control over a single facility can also arise: in both cases, there will then be more than one signatory within the group.

Clause 1f: Depending on what is customary in the relevant benchmark, a proportion of the utilities' energy consumption can also be attributed to the processing plant. It follows from the second sentence that a company has the freedom to benchmark the entire facility, or only the energy-intensive processing plant(s). In the latter case, the provisions of Article 5, Clause 3 apply for the remaining part of the facility.

## **Objectives**

### **Article 2**

The purpose of this Covenant is that as many processing plants of the participating facilities as possible realise the best international energy-efficiency standards, in accordance with the procedures agreed in this Covenant, at the earliest opportunity and no later than 2012, in order to contribute to the realisation of the Dutch CO<sub>2</sub> targets in relation to improved energy efficiency.

#### **Notes**

The principle is a result commitment to realise the best international standards. It is difficult to determine with any certainty at the time when the Covenant is signed whether a Company will actually have realised the best international standard by the year 2012. Failure to do so because of a shortcoming attributable to the Company will constitute non-compliance with the commitments of the Covenant. Naturally, all kinds of circumstances could change in the period up to 2012. Provision has been made for this situation in Article 19, with the possibility for consultation, and in Article 21, with the possibility for individual Companies to withdraw from the Covenant. The Parties expect the implementation of this Covenant to lead to a substantial reduction in their CO<sub>2</sub> emissions. The report of (date) from the University of Utrecht anticipates a maximum energy saving of 51-124 PJ in 2012, assuming organic development of energy efficiency in the Netherlands: this is consistent with a maximum reduction in CO<sub>2</sub> emissions by five to ten megatons of CO<sub>2</sub> in 2012.

## **Participation**

### **Article 3**

1. Sectoral organisations, municipal authorities and companies, in respect of one of more energy-intensive facilities, may become party to this Covenant after it is signed, if they accept their commitments arising from this Covenant without reservation.
2. The legal entities referred to in Clause 1 shall notify the Benchmarking Commission of their desire to join this Covenant by registered letter. Companies will also state the energy-intensive facilities with which they wish to take part (Participation Statement).
3. Where relevant, the Benchmarking Commission will assess whether the legal entity wishing to join the Covenant complies with Clause 1 and shall notify the legal entity in question whether it meets the requirements by registered letter, within four weeks of receiving the notification referred to in Clause 2 of this Article. The Commission may extend this period of four weeks with no more than four weeks.
4. If the notification referred to in Clause 3 of this Article shows that the requirements of Clause 1 are met, the relevant party's rights and commitments pursuant to this Covenant shall take effect from the date on which the notification is received.
5. The rights and commitments of provincial authorities shall apply likewise for municipal authorities that join the Covenant.
6. By way of departure from the provisions of Clause 1, companies may also become party to this Covenant in respect of non-energy intensive facilities after the date on which it takes effect, providing that they:  
a show that participation is effective, stating the reasons,

- b accept their commitments arising from this Covenant in relation to the facilities they identify as such in their Participation Statement without reservation, and
  - c that they are accepted by the Benchmarking Commission.
7. Clauses 2, 3 and 4 apply likewise. For the purposes of this Covenant, admitted facilities will be regarded as energy-intensive facilities.
  8. The Benchmarking Commission shall keep a record of Companies, branch organisations and municipal authorities that join the Covenant. The participating facilities for each Company will be listed. This record will be open for public inspection. Appendix 1 of this Covenant contains a list Companies and sectoral organisations that join the Covenant when it is signed.

#### Notes

In order to ensure that as many companies and sectoral organisations as possible become party to this Covenant, they may also sign as parties to it after the date of signature.

Clauses 4 and 5: If companies with energy-intensive facilities for which a Municipal Council is the competent authority join the Covenant, the relevant competent authority must also join. The provisions of the Covenant relating to provincial authorities shall then apply likewise for the Municipal Council (municipal competent authority).

Clause 6: Unlike Clause 1, this relates to a company that does not wish to take part with energy-intensive facilities (see the Notes to Article 1b). If, in practice, many companies wish to avail themselves of this possibility, the Benchmarking Commission could formulate guidelines. If the relevant company's request is rejected, it has recourse to the civil courts.

### **Determination of the best international standard**

#### **Article 4**

1. A Company undertakes to commission an expert third party to perform a study of the best international energy efficiency standard for its participating processing plants once every four years, as far as is reasonably possible, in accordance with the procedure described in this Covenant and at its own expense. The Protocol on determination of best international standards will be taken into account in this study.
2. The expected natural developments in the energy efficiency of the relevant processing plant(s) during the life of this Covenant will be included in the calculations for the determination of the best international standard, as a separate item.
3. For the study, a Company undertakes to provide the expert third party with all the relevant information at its disposal, on request. Article 17 shall not apply.
4. The Company shall send the results of the study to the independent authority.
5. The independent authority shall verify the accuracy and completeness of the expert third party's methods and the result of the study referred to in Clause 1 in terms of the Protocol on determination of best international standards, and shall notify the Company of the outcome of this assessment.

#### Notes

Clause 1: For technical reasons, every company is required to commission a consultant to determine the best international standard. In practice, Companies will issue joint instructions to a consultant, complying with existing benchmarking systems as far as possible. Sectoral organisations may not or cannot act for their members, but will play a co-ordinating and supporting role in this.

Clause 3: This provision regulates the relationship between the consultant and the Company.

## Methods for determination of the best international standard

### Article 5

1. Companies shall determine the best international standards for the relevant processing plant(s) in one of the two following ways:
  - a. Determination of the regions outside the Netherlands that are comparable with the Netherlands in terms of size and number of processing plants, and which may meet the best international standards. The average energy efficiency of similar processing plants in these regions will be determined. The best international standard is the average energy efficiency in the region with the best average.
  - b. Determination of the energy efficiency of comparable processing plants outside the Netherlands. These will be ranked according to energy efficiency levels. The best decile of these processing plants in terms of energy efficiency will then be determined. The best international standard is at least the value of the energy efficiency within that top 10%. If Companies or sectors can support a claim that in their situation, a different percentage than the 10% mentioned above is the determining factor for realising a similar effort with the method described in Clause 1a, this percentage shall apply. The Benchmarking Commission will determine whether sufficient support has been provided for the claim, after receiving recommendations from the independent authority.
2. If a fully-developed benchmarking system, as referred to in Clauses 1a or 1b, is not available, the energy efficiency of the best processing plant outside the Netherlands will be determined. The best international standard will then be 10% below the energy efficiency of the best processing plant. If Companies or sectors can support a claim that in their situation, a different percentage than the 10% mentioned above is the determining factor for realising a similar effort with the method described in Clause 1a, this percentage shall apply. The Benchmarking Commission will determine whether sufficient support has been provided for the claim, after receiving recommendations from the independent authority.
3. In as far as particular units within a participating facility are not benchmarked, the Company shall estimate the potential energy efficiency improvements for these units by applying the energy efficiency requirements to be imposed by or pursuant to the Environmental Management Act.
4. On the basis of the studies referred to in Clauses 1 and 2, and the estimate referred to in Clause 3, the total target for energy efficiency improvements for the entire facility will be determined. This target will be determined by the weighted average of the calculated energy efficiency figures.
5. For the processes for which no fully-developed benchmarking system is available, the relevant Companies will make efforts to develop a system such as that referred to in Clauses 1a and 1b, if this can reasonably be deemed to be feasible. The Benchmarking Commission will advise as to whether this is the case on request.

### Notes

The application of the methods described in Article 5, Clauses 1 and 2, must first be considered in conjunction with Article 2, which provides that as many as possible of the processing plants of the facility in question must meet the best international standard. 'As far as possible' relates to the availability of the methods referred to in Article 5 for the various processing plants in the facility. Where these methods are not available for a processing plant (e.g. because it is unique), the energy efficiency review referred to in Article 5, Clause 3 applies, so that in combination with the study based on the methods described in Article 5, Clauses 1 and 2, a complete picture is always obtained of the energy efficiency of the participating facility.

As a consequence of the foregoing, no fixed percentage of the facility's energy consumption is covered by the methods referred to in Article 5.

Depending on the availability of the methods, this percentage varies from one facility to another. A participating facility that largely has unique participating processing units, and that cannot be compared with the best international standard on the basis of the best practice method either, will therefore be assessed almost entirely by means of the review referred to in Article 5, Clause 3.

Clause 1: The determination of the best international standard is based on the most energy-efficient process for the production or processing of a particular product or particular products. The correction factors referred to in the Protocol for the determination of the best international standard, including the differences in the input of raw materials, are taken into account in the benchmarking process.

Clause 1a: In view of the Parties' intention that Companies aim to realise the best international standards, regions that can be expected to have high energy efficiency, and within which the best region must be sought, will be pre-selected.

Clause 1b: A decile is a figure that is divided into ten groups with an equal number of elements, by statistical distribution.

Clause 2: The method based on the best processing plant can generally be applied with the aid of a literature study, providing that the best processing plant, in accordance with the definition, is operational somewhere. Various benchmarking studies show that the spread between the best and worst processing plants in terms of energy efficiency quickly proves to be a factor of two. On the basis of statistical experiences, this means that a level of ambition equal to the best region will be consistent with about 90% of the energy efficiency of the best practice. In the approach based on the best processing plants, the best international standard is therefore fixed at 90% of the energy efficiency of this best plant. This does not alter the fact that situations may arise in which 90% is too stringent a requirement, for example if there is only one unit in the world with substantially higher energy efficiency than all the other existing ones. In these cases, if sufficient evidence is provided, variations from this percentage are possible, with a level of ambition equal to that of the regional approach always serving as the reference. Again, the support for this claim must be assessed by the Benchmarking Commission. In (many) cases, the Benchmarking Commission can also draw up guidelines for the supporting evidence for this. In any event, the Commission should not be provided with any data that can be converted to the facility.

Clause 5: For example, if there are no similar facilities.

## **Determination of the gap from the best international standard**

### **Article 6**

1. A Company undertakes to commission an expert third party to perform a study of the difference between the energy efficiency of the processing plants of its participating facility or facilities and the best international energy efficiency standard, once every four years, as far as is reasonably possible, in accordance with the procedure described in this Covenant and at its own expense. The Protocol on determination of best international standards will be taken into account in this study.
2. The independent authority shall verify the accuracy and completeness of the expert third party's methods and the result of the study referred to in Clause 1 in terms of the Protocol on determination of best international standards, and shall notify the Company of the outcome of this assessment.
3. The Company shall notify the competent authority for the facility or facilities in question of the results of the studies referred to in Article 4, Clause 1 and Article 6, Clause 1, and of the results of the verifications referred to in Article 4, Clause 5 and Article 6, Clause 2. The Company shall state which unit or units of the facility have not been subject to a study as referred to in Article 4, Clause 1 and the energy consumption of the units in question.
4. A Company undertakes to provide the competent authority with all the relevant information for the study at its disposal, on request. Article 17, Clause 1 shall apply likewise to this information.

## **Terms and measures for realising the best international standard**

### **Article 7**

1. After dispatch of the notification referred to in Article 6, Clause 3, and within 18 months of the date on which this Covenant takes effect, the Company has a result commitment to submit a draft energy efficiency plan for each individual participating facility to the competent authority. The competent authority will notify the Company of its findings on the plan. The Benchmarking Commission may allow one or more Companies to vary from the term set in the first sentence, on request, in the interests of the practical implementation of this Covenant.
2. The Company will send the draft energy efficiency plan to the independent authority, which will assess the draft plan for compliance with the Protocol on energy efficiency plans.
3. As a result commitment, the Company must state in the energy efficiency plan the term within which it will realise the best international standard, including, where relevant, the interim targets for 31 December 2005 and 1 January 2008. The energy efficiency plan will also include the measures to support the said result commitment and will state which actual CO<sub>2</sub> emissions are expected to be avoided as a result of implementing the plan.  
The expected natural developments referred to in Article 4, Clause 2 will be taken into account in the determination of the said term.
4. The energy efficiency plan must comply with the requirements laid down in the Protocol on energy efficiency plans and Article 8.
5. The independent authority will advise the competent authority within four weeks of the notification, referred to in Article 7, Clause 2, of the application of Article 8 and the support provided for this by the Company. The advice will be confined to energy efficiency. At the same time, the independent authority will notify the Company of this advice and the result of the assessment referred to in Clause 2.
6. Within 12 weeks of the notification referred to in Clause 1, the competent authority will report its findings on the draft energy efficiency plan to the Company. The Company can then modify the plan accordingly. The Company and the competent authority will aim to reach agreement. The competent authority will co-ordinate its final assessment with the opinion-making processes of other relevant administrative organisations concerned.
7. The Company will submit the final energy efficiency plan to the competent authority within 12 weeks of receiving the competent authority's findings on the draft plan.
8. The competent authority will assess whether the final energy efficiency plan submitted by the Company complies with the licensing requirement based on the Environmental Management Act, that conditions providing for the best possible environmental protection must be attached to the licence, unless this cannot reasonably be required. The provisions of Article 8 of this Covenant provide the basis for the assessment. The competent authority will notify the Company in writing of its approval or rejection of the final energy efficiency plan at the earliest opportunity, and in any event within eight weeks of receiving the final plan.
9. If the competent authority approves the final energy efficiency plan, it shall notify the Company accordingly, in writing, and shall make efforts to take account of the approved plan in licensing procedures for the facility in question, and shall not impose any compulsory ceiling for CO<sub>2</sub> emissions, or any additional compulsory energy efficiency or CO<sub>2</sub> targets, additional conservation commitments or additional CO<sub>2</sub> or energy requirements in the environmental licence. The principle is that the company can realise the targets in the energy efficiency plan without the competent authority prescribing the exact means for this in regulations.
10. If the competent authority approves the energy efficiency plan, it shall state whether and, if so, how the proposals of the energy efficiency plan will be formalised in the environmental licence, after consulting the Company for the facility in question. In as far as formalisation of the proposals in the plan is at issue, in principle this will take place when there is certainty about the term within which these proposals, or parts thereof, can be realised in practice.

11. The Company is required to fulfil the result commitment laid down in the approved energy efficiency plan, and in principle, can itself select the measures to realise that result.
12. After the relevant competent authority has notified the Company of its approval of the energy efficiency plan, the plan shall be made public, with the exception of any confidential information, reporting the approval of the plan by the competent authority in question. If the plan contains confidential information, the Company shall provide a public summary of the plan on request, at cost price.
13. If necessary, the Company will update the energy efficiency plan after the best international standard has been re-determined, within the meaning of Article 4, Clause 1. Articles 4 to 7 shall apply likewise.
14. When drawing up the energy efficiency plan, the Company or the group may also take into account the energy efficiency improvement efforts at other facilities belonging to the same Company or the same group (group approach), in order to support the phasing of measures for the facility. Further details of the possibilities of a group approach are provided in Appendix 5.

**Notes:**

Clause 1: An explicit choice was made to retain the 18-month limit for parties who join the Covenant at a later date. Potential participants will therefore have only a limited time to decide whether to join. An extension would be more reasonable for companies that participate with new facilities after the Covenant has been signed. Another reason for an extension could be that the period is too short, for example because the energy efficiency plan has to be approved by various business units.

Clause 3: The principle is that the best international standard should be realised as soon as possible, and no later than 2012. If the best international standard for 2012 later proves to be substantially higher than was originally estimated, unforeseen circumstances are involved (Article 19) and renegotiations are required. The years mentioned (2005 and 2008) are in line with the years used in the Kyoto agreements.

Clause 4: The Notes or a Protocol should state how this should take place. A review based on the criteria in the Ministers' Energy in Environmental Licenses Circular is one possibility.

Clause 5: It is not the intention that the independent authority advises on all issues which the competent authority should consider.

Clause 8: The issue of an environmental licence is based on an integrated assessment of the environmental problem. The integrated approach may mean that a Company cannot, or cannot yet, meet the best international standard, for example because more energy is required for certain environmental measures.

Clause 9: If the competent authority does not approve the plan, the Company may withdraw from the Covenant (Article 20), the competent authority can tighten the environmental licence requirements and the Government can, if necessary, take other measures.

However, an integrated assessment as part of the environmental licensing process may mean that a facility has to be less ambitious than the plan and the Covenant could require it to be.

Clause 12: Draft energy efficiency plans are not public.

**Phasing of measures**

**Article 8**

1. The following provisions shall be taken into account when energy efficiency plans are drawn up.
2. If the gap with the best international standard can be bridged through cost-effective measures, these measures shall be taken as soon as possible, and in any event by 31 December 2005. 'Cost-effective measures' are deemed to be all measures with an internal rate of return of 15% after tax.
3. If the available cost-effective measures are not sufficient to bridge the gap with the best international standard, less cost-effective measures must be taken as soon as possible, and no later than in the year 2008, in order to realise the best international standard. 'Less cost-effective measures' are deemed to

be measures that do not meet the minimum profitability requirements of the Company facility in question, but which do meet the expected average cost rate for borrowed capital in the sector. This will be determined by a simple method included in the Protocol on energy efficiency plans.

4. Whether a measure is taken 'as soon as possible', within the meaning of Clauses 2 and 3 of this Article, in any event depends on the remaining life of existing investments, investment plans, planned production stops, other environmental measures, technologies still in development and available cash assets.
5. If the best international standard cannot be realised with the measures referred to in Clauses 2 and 3 of this Article within eight years, the Company shall take measures to realise the best international standard as soon as possible, and in any event in the year 2012, or realise a comparable energy efficiency result by other acceptable means. These can include settlement with the results of other facilities or Companies, or the application of flexible tools such as Joint Implementation, the Clean Development Mechanism and emission trading.
6. If the measures referred to in Clauses 2, 3 and 5 lead to consequences that cannot reasonably have been intended, this may provide grounds for talks between the Company concerned and the competent authority in order to realise an alternative that produces comparable results and that avoids the consequences in question.
7. For the purposes of this Article, 'measures' refers to all types of measures that the Company can take and that directly or indirectly improve the energy efficiency of the relevant processing plant(s).

#### Notes

This Article develops the 'as fast as reasonably achievable' (AFARA) principle, which is used in relation to the phasing of measures.

Clause 2: If the Covenant is signed on 1 June 1999, the draft plan must be submitted no later than 1 December 2000.

Clause 5: The Government must ensure that these tools can be applied in law. The final sentence of this Clause relates to instruments that do not exclusively concern energy efficiency. At present, the Ministers assume that no exchanges between CO<sub>2</sub> and other greenhouse gases will be permitted. The private sector explicitly wishes to keep this option open. The Parties consent to this, as this issue could be a subject of the evaluation referred to in Article 18.

Clause 7: Replacement investments are not excluded from this. In appropriate cases, the Company should also take measures of this kind into consideration and include them in the energy efficiency plan where relevant. The competent authority cannot unilaterally impose replacement investments. Many factors will play a role in corporate decisions, such as those mentioned in Clause 4.

### **Role of VNO-NCW and sectoral organisations**

#### **Article 9**

1. VNO-NCW and the sectoral organisations undertake to:
  - a. Encourage their members to participate in and implement this Covenant.
  - b. Take part in the activities of the Benchmarking Commission
  - c. Actively inform their members of the subject of this Covenant.
  - d. Act as a point of contact for the Government Parties to the Covenant on behalf of the private sector.
2. The sectoral organisations undertake to play a co-ordinating role in:
  - a. The selection of the expert third parties referred to in Article 4, Clause 1 and Article 6, Clause 1.
  - b. The development of new benchmarking systems referred to in Article 5, Clause 5.
  - c. The implementation of this Covenant.

## **Government consideration**

### **Article 10**

1. The Ministers will aim to prevent the imposition of any additional specific national measures aimed at further energy conservation or reductions in CO<sub>2</sub> emissions on the participating facilities of the Companies as from the time that they become party to this Covenant.  
For the purposes of this Covenant, this in any event means no specific energy tax for the Companies, no compulsory ceiling on CO<sub>2</sub> emissions, no additional compulsory energy efficiency or CO<sub>2</sub> targets, no additional conservation commitments and no additional CO<sub>2</sub> or energy requirements. Furthermore, the costs arising from the commitments that the Dutch Government undertakes in relation to Joint Implementation, the Clean Development Mechanism and Emission Trading shall not be borne directly by the Companies.
2. The commitments referred to in Clause 1 do not relate to the deployment of renewable energy, fuel consumption and activities that do not relate to the energy efficiency of processing plants, as described in the 1998 Energy Conservation Paper. In applying such general instruments, the Government shall always take the consequences for the Companies into consideration.
3. Furthermore, this Covenant shall not affect the levy of general energy taxes. In applying general energy taxes, the Government shall always take the consequences for the Companies into consideration, or shall aim to exempt the Companies as far as possible.
4. The Ministers will make efforts to ensure that such legislation, if necessary, is formulated in such a way as to enable the Companies to meet their commitments pursuant to this Covenant and that relevant Government policy is consistent with it.
5. The Ministers shall make efforts to ensure that national or European measures do not interfere with the implementation of this Covenant, and that they support it where possible.

#### **Notes**

Clause 1: In accordance with the Instructions for Covenants, 'aim to prevent' provides here for the presentation of a proposal to the Cabinet. This does not interfere with the powers of the Second Chamber or the European institutions.

Clause 2: If the Government avails itself of these possibilities, this could give rise to unforeseen circumstances (see Article 19).

Clause 3: It is not the intention of this provision that existing legislation in general should be reviewed and adapted where necessary, but that before the Covenant is signed, the parties determine whether existing legislation presents any problems that could prevent the Covenant from being implemented in full.

Clause 5: The Dutch Government attempts to realise a particular policy in Europe. With regard to the energy-intensive facilities, this policy focuses on meeting the conditions set in the Coalition Accord for the 6% target.

This relates in particular to the introduction of a European energy tax of a significant amount, including for large-scale consumers and sufficient scope for the deployment of flexible instruments. The Dutch government will take a positive view of a harmonised European exemption for energy-intensive facilities that are party to compulsory agreements on energy efficiency improvements similar to this Covenant.

## **Monitoring**

### **Article 11**

1. Each Company will report to the independent authority and the competent authority no later than 1 April of each year, starting on 1 April 2002, on the (improvements in) energy efficiency at the participating

facilities during the preceding calendar year, as well as the related prevention of CO<sub>2</sub> emissions). The reports will also state the extent to which the improvements are consistent with the energy efficiency plan.

2. Reports will comply with the Protocol on Monitoring and Reporting.
3. For facilities for which government reports are required pursuant to Article 12.4 of the Environmental Management Act, reporting in compliance with Clause 1 of this Article shall take place as part of the government report.
4. The independent authority will verify the reports on the basis of the Monitoring and Reporting Protocol and will simultaneously notify the competent authority and the Company of its findings.

## **Reporting**

### **Article 12**

1. Every four years, starting on 1 April 2001, the independent authority will report to the Benchmarking Commission on the energy efficiency improvements to be expected by 31 December 2005, 1 January 2008 and 31 December 2012 through the implementation of the energy efficiency plans, in aggregate form, and on the related avoidance of CO<sub>2</sub> emissions.
2. The independent authority will report to the Benchmarking Commission annually, in aggregate form, on the implementation of the energy efficiency plans and the energy efficiency improvements realised by the participating facilities, by sector or by type of plant, and on the related avoidance of CO<sub>2</sub> emissions.
3. The Benchmarking Commission will report to the parties annually, no later than 1 July, on the preceding year. The Ministers will inform the Second Chamber of Parliament of these reports.
4. The report shall in any event include the aggregate information referred to in Clause 1. The report may not contain any information that can be traced to an individual company or enable the deduction of information on individual companies.

## **Membership of the Benchmarking Commission**

### **Article 13**

1. A Benchmarking Commission shall be formed.
2. The Commission will consist of a chairperson and representatives of the parties to this Covenant, who will be appointed as follows:
  - Two by the Minister of Economic Affairs
  - Two by the Minister of Housing, Spatial Planning and the Environment
  - Two by the provincial authorities
  - One by the Confederation of Netherlands Industry and Employers VNO-NCW
  - One by each participating sectoral organisation.
3. The parties referred to in Clause 2 of this Article shall jointly appoint an independent chairperson.
4. The Commission shall determine its own working procedures and if necessary, shall draw up house rules. The Commission shall aim for consensus.
5. The Commission may form project groups to prepare for decision-making by the Commission or to implement its decisions.

## **Tasks of Benchmarking Commission**

### **Article 14**

The Benchmarking Commission shall in any event be responsible for:

- a) The co-ordination of work and activities for the implementation of this Covenant.
- b) The discussion of problems of a general nature that arise in practice in the implementation of this Covenant, the discussion of solutions and if necessary, the formulation of guidelines for these.
- c) Monitoring progress of the implementation of this Covenant.
- d) Making proposals for the amendment of this Covenant.
- e) Amending the Protocols appended to this Covenant in as far as this serves purely to facilitate its practical implementation.
- f) Advising the Ministers about the independent authority.
- g) Maintaining contacts with public organisations.
- h) Deciding on applications to join the Covenant, within the meaning of Article 3.
- i) Preparing and updating the list of Companies, sectoral organisations and municipal authorities that are party to the Covenant, as referred to in Article 3, Clause 7.
- j) Determining whether the supporting evidence referred to in Article 5, Clauses 1 and 2, is sufficient.
- k) Advising on the feasibility referred to in Article 5, Clause 5, on request.
- l) Approving variations from the term within which energy efficiency plans must be submitted, within the meaning of Article 7, Clause 1.
- m) Preparing and publishing annual reports, within the meaning of Article 12.

### **Independent authority**

#### **Article 15**

1. The Ministers shall appoint an independent authority when this Covenant is signed.
2. The Ministers may alter the appointment referred to in Clause 1 of this Article only after affording the Benchmarking Commission an opportunity to advise on this within three weeks.

### **Costs**

#### **Article 16**

1. The parties shall bear their own costs.
2. The Ministers shall bear all costs for the preparation and supervision of this Covenant, such as the costs of the independent authority and the Benchmarking Commission.
3. The Companies shall bear the costs of determining the best international standards for their participating facilities, the preparation and implementation of energy efficiency plans and the organisation, and if necessary, the development of a new benchmarking system.

## **Disclosure and confidentiality**

### **Article 17**

1. The parties to the Covenant are required to protect the confidentiality of all confidential information, except in as far as disclosure is required by law or by this Covenant.
2. The Ministers and the Companies shall ensure that the independent authority or the expert third party or parties undertake to protect the confidentiality of the confidential information provided to them in relation to the implementation of this Covenant.
3. The list referred to in Article 3, Clause 87 shall be public.
4. The Commission's annual reports shall be public, subject to the provisions of Article 12.
5. The Commission's evaluation report shall be public.

## **Evaluation**

### **Article 18**

1. The parties shall evaluate the implementation and effects of this Covenant every four years, for the first time no later than 1 April 2004.
2. The evaluation referred to in Clause 1 of this Article shall in any event cover:
  - a. The avoidance of CO<sub>2</sub> emissions actually realised or expected by the parties as a result of the implementation of this Covenant.
  - b. The protocols.
  - c. The preparation and implementation of energy efficiency plans.
  - d. Developments in national and international CO<sub>2</sub> energy conservation policy, including the tools to be deployed for this purpose, such as Joint Implementation, the Clean Development Mechanism, emission trading, general energy taxes and the question of whether and if so, how the exchange of commitments resulting from this Covenant with additional commitments relating to the reduction of other greenhouse gases can be realised.
3. The Benchmarking Commission shall perform the evaluation referred to in Clause 1 and draw up a report on it, which shall be sent to the parties.
4. The Benchmarking Commission shall make the report referred to in the preceding Clause of this Article generally available as soon as possible after it has been sent to the parties.
6. On the basis of the evaluation, the parties concerned, as referred to in Article 13, Clause 2, may open talks to consider whether the contents of this Covenant require amendment. Article 19, Clause 2 shall apply likewise.

### **Notes**

Clause 2d: The evaluation in 2004 will also include the deployment of flexible tools in the second phase from 31 December 2005.

## **Altered circumstances**

### **Article 19**

1. If one or more of the following change of circumstances arises and has material consequences for the implementation of this Covenant:
  - a) The number of Companies or the energy consumption represented by those Companies diminishes in comparison with the situation when the Covenant takes effect to the extent that continuation of the Covenant can no longer reasonably be required;
  - b) The completion of one or more of the conditions for the Dutch Kyoto target set in the 1998 Coalition Accord;
  - c) A significant future change in the best international standard initially determined on the basis of Articles 4 and 5, or the deployment of the instruments referred to in Article 10, Clause 2;
  - d) A significant change of policy in relation to energy, the environment, and technological insights in this field;
  - e) Changes in legislation relating to levies and the environment, and in the jurisprudence;
  - f) The avoidance of CO<sub>2</sub> emissions actually realised or expected by the parties through the implementation of this Covenant is significantly less than anticipated;
  - g) Changes in economic growth, the international competitive position and movements in company profits;
  - h) Unforeseen circumstances; the parties appointed pursuant to Article 13, Clause 2, will open talks on the potential amendment of this Covenant.
2. The parties appointed pursuant to Article 13, Clause 2, will open talks within four weeks of receiving written notification of the desire to do so from one of the parties.

#### Notes

Clause 1b: The Coalition Accord lists a number of conditions that represent determining factors for the Dutch effort. If these conditions are met, or are not met, this can provide grounds for talks. The conditions in question are the ratification of the Climate Convention by the US and Japan, actual implementation of Community measures such as a promotion of renewable energy, energy conservation, combined heat and power (CHP), traffic and transport, measures, measures in the waste processing, industrial and agricultural sectors, the introduction of a European energy tax of a significant amount, including for large-scale energy consumers, no later than in 2002, and sufficient scope (some 50%) for the deployment of flexible instruments such as Joint Implementation, the Clean Development Mechanism and emission trading.

## **Amendment of the Covenant**

### **Article 20**

The parties appointed pursuant to Article 13, Clause 2 are authorised to amend this Covenant.

## **Withdrawal**

### **Article 21**

1. A Company may withdraw one or more facilities from this Covenant with immediate effect, stating the reasons, if:
  - a. It sees reasons not to draw up an initial energy efficiency plan.
  - b. The competent authority does not approve the first or updated final energy efficiency plan, or does not do so within the term agreed in this Covenant.
  - c. An irrevocable environmental licence that conflicts with the approved energy efficiency plan takes effect.
2. If the talks referred to in Article 18, Clause 5 or Article 19, Clause 1 do not lead to agreement as to whether the Covenant should be amended within three months after one of the parties referred to in Article 13, Clause 2 has given notice of its desire for talks, each party to this Covenant has the right to withdraw with immediate effect, stating its reasons in writing.
3. A Company may also withdraw one or more facilities from this Covenant with immediate effect, stating the reasons, if it announces that it cannot agree to the outcome of the talks referred to in Article 18, Clause 5 or Article 19, Clause 1, or if such talks fail to produce agreement as to whether the Covenant should be amended within three months.
4. The Benchmarking Commission shall be notified of any withdrawal.

## **Sanctions**

### **Article 22**

1. If a Company fails to comply with its commitments pursuant to this Covenant, for reasons for which it can be held responsible, each of the government parties shall make efforts to tighten the terms of the Company's current environmental licence in a unilateral action, or to deploy other instruments.
2. Before a government party avails itself of the sanctions described in Clause 1 of this Article, it shall open talks with the Company concerned and allow the Company a reasonable period within which it can still comply with its commitments.
3. The provisions of Clauses 1 and 2 of this Article are without prejudice to the parties' rights to claim compliance.

## **Life**

### **Article 23**

1. This Covenant shall take effect as from the day immediately following that on which it is signed and shall expire on 31 December 2012.
2. The parties shall open talks on any potential continuation of this Covenant no later than 1 April 2011.

## **Appendices and Notes**

### **Article 24**

The Notes and Appendices attached to this Covenant form an integral part of this Covenant.

### **Legal status**

#### **Article 25**

1. This Covenant is a civil law agreement.
2. This Covenant is without prejudice to the rights and commitments arising under the Environmental Management Act.
3. The commitments referred to in this Covenant are effort commitments unless they are explicitly defined as result commitments.

As agreed and signed in quadruple in The Hague on 6 July 1999.

# Appendix 1

## List of Companies and Sectoral Organisations that are signatories to this Covenant

### 1. Sectoral Organisations

- a) The Netherlands Chemical Industry Federation (VNCI) in Leidschendam.
- b) The Netherlands Iron and Steel Producing Industry Association (NIJSI) in Velsen Noord.
- c) The Netherlands Non-Ferrous Industry Association (NFI) in Zoetermeer.
- d) The Netherlands Petroleum Industry Association (VNPI) in The Hague.
- e) The Netherlands Paper and Cardboard Manufacturers' Association (VNP) in Hoofddorp.
- f) The Naamloze Vennootschap Samenwerkende electriciteitsproductiebedrijven (SEP) in Arnhem.

### 2. Companies

to follow

### 3. Municipal authorities

to follow

## Appendix 2

### Protocol on determination of best international standards

In compliance with Article 4 of the Covenant, an expert third party will determine the best international standard on the instructions of a Company. The independent authority will verify the completeness and accuracy of the method and results of the study into the best international standard. In view of this, the following issues are regulated in this Appendix:

1. The requirements to be met by the expert third party.
2. The requirements to be met by the expert third party's study.
3. The verification by the independent authority.

The requirements are listed below.

#### 1. Requirements to be met by the expert third party

- Absence of conflicting interests.
- Good image and impeccable reputation.
- Enjoys the confidence of the Companies taking part and the independent authority.
- Experience with international projects.
- Sound continuity prospects.
- Deployment of employees with competencies (to be defined).
- Application of professional standards (preferably international standards) for the work to be performed (e.g. ISO 9000).
- Willingness to work in accordance with the requirements of the independent authority.
- Technical and business economic know-how relating to the processing plants to be studied.
- Willingness to allow inspection of research results on Dutch processing plants
- Willingness to allow inspection of research results on foreign processing plants if the owner companies have no objection. (NB: Naturally, these data must be available in aggregated and anonymous form).
- Ability to issue recommendations for improvements.
- Ability to meet various practical implementing requirements, such as deadlines, reporting methods and interim reports.

Depending on the situation, a greater or lesser emphasis will be placed on certain requirements. For example, image and reputation will be obvious requirements in the case of an existing, internationally respected benchmark.

#### 2. Requirements to be met by the expert third party's study

- Corporate acceptance of the methods. Compatibility with existing methods will be sought wherever possible.
- Comparison of similar types of processes (including similar treatment of batch processes and continuous processes). Availability of a large enough number of processing plants.
- Comparability of processing plants and sufficient insight to make differences between processing plants transparent and comprehensible. This results in requirements regarding:
  - Availability of sufficient data
  - Accuracy
  - Completeness
  - Accessibility
  - Definitions

- Application of correction factors for:
  - Composition/quality/conditions for raw materials
  - Level of extraction of intermediate products
  - Product qualities
  - Storage of raw materials and products
  - Terms of delivery
  - Climatic conditions
  - Environmental measures taken
  - Capacity utilisation
  - Scale.

The correction factors should be definable in unambiguous, quantifiable, objective and clear terms, and should be applied to all facilities included in the benchmarking process.

- Valuation of electricity purchases and CHP units (still to be determined).
- Determination of organic developments in energy efficiency.

### **3. Verification by the independent authority**

The independent authority verifies the determination of the best international standard prior to, during and after completion of the study. The independent authority's activities at each of these three stages are listed below. The philosophy is that the final test, following the completion of the study, can be limited if the right tests are performed in advance and during the study. The advantages of this are time savings and avoidance of extensive corrections after the event.

#### Prior to the study

- Determine that the requirements for the expert third party are met (see above). The working methods used here include:
  - Inspection of documents (such as ISO 9000 certificate, internal procedures etc.).
  - Taking up references (e.g. from past customers).
  - Interviewing the expert third party's employees.

The expert third party will be required to provide a signed statement to the effect that it meets the requirements, and a description of the design of the study.

- Design of the study.

#### During the study

The independent authority will attend critical meetings with the company or companies, such as the intake meeting and the presentation of the final report. The independent authority also has the right to observe the performance of the study and to request information on the methods, etc.

#### On completion of the study

The independent authority will check whether the final report is complete and reliable and whether it meets the requirements set, and will compare it with monitoring reports and any earlier studies. To this end, the independent authority must have access to all the data used in the study.

## Appendix 3

### Protocol on energy efficiency plans

After the gap from the best international standard has been determined, the Company draws up an energy efficiency plan (Article 7 of the Covenant). This plan must contain the following points, in line with the Corporate Energy Plan (BEP) from the 'Energy in Environmental Licences' Circular and the energy efficiency MJAs. The independent authority checks whether the plan meets the requirements (Article 7 of the Covenant). If the plan contains confidential information, the Company draws up a public summary of the plan, in addition to the detailed plan. Both plans cover the same issues.

- General particulars of the Company.
- Life of the plan
- Provisions for interim realisation
- Objective: bridging the gap with the best international standard (no later than 31 December 2012), with the interim targets to be realised by 1 January 2005 and 31 December 2008
- Energy consumption, CO<sub>2</sub> emissions and history
- Energy management measures and expected effects, including on CO<sub>2</sub> emissions.
- Energy conservation projects.
- Other projects that lead to energy conservation (but that are not implemented primarily for that reason)
- Research and development activities (that may lead to further energy conservation in due course)
- Time plans for the activities
- Reporting and monitoring (see also Appendix 4 of the Covenant).
- Energy balance sheet.

## Appendix 4

### Monitoring and reporting protocol

In order to provide an insight into the implementation of the energy efficiency plans and the results realised, Article 11 of the Covenant contains monitoring and reporting commitments. On the basis of these requirements, Companies must report to the independent authority and the competent authority by 1 April of each year. The independent authority verifies the report. The monitoring and reporting procedures are developed in this protocol.

For each participating processing plant, monitoring and reporting will cover:

- The energy efficiency index, determined by a method selected by the independent authority.
- Underlying data for the determination of the energy efficiency index:
  - The total net primary energy consumption and the standard consumption with the corrections applied in the calculation.
  - Any different conversion factors for primary energy.
  - Production volumes.
- Activities performed:
  - Energy management measures and their effects, including CO<sub>2</sub> effects.
  - Energy conservation projects and their effects.
  - Other projects that have led to energy conservation, and their effects.
  - Research and development activities.
- Any changes in the time plans for activities still to be performed as part of the energy efficiency plan.

# Appendix 5

## Group approach

### 1. Introduction

The Benchmarking Covenant allows scope to follow a group approach. As a result, a Company can, for example, decide to give priority to energy efficiency improvements at a specific facility elsewhere in the Netherlands. In this way, the group has an opportunity to co-ordinate its commitments under the Covenant with its own investment policy. The group's MJA commitments can also be involved in this process. It is therefore important to provide scope for the group approach, but this must be subject to conditions based on the legal position.

### 2. Legal position

The provisions on the licensing regime of the environmental laws are based on the term 'facility'. This public law term cannot be equated with terms that are common in other fields of law, such as the term 'legal entity' or 'group'. Pursuant to the Environmental Protection Act, facilities listed in the Facilities and Licences Decree (as 'facilities that can cause detrimental consequences for the environment') require licenses. Generally, these are business locations. Application of the statutory provisions relating to Environmental Management Act licences must therefore be based on the above definition of a facility. Pursuant to the Environmental Management Act, this means that if detrimental consequences for the environment cannot entirely be avoided, the licence must be made subject to conditions that provide the greatest possible protection against those consequences, unless this cannot reasonably be required. As in the case of all other provisions relating to 'facilities' (e.g. the provisions on general rules or enforcement), this principle must be applied to the public law term 'facility'. If a group consists of more than three facilities subject to the Environmental Management Act, one cannot therefore require that nothing need be done at one facility to reduce air pollution purely because good results have been (or will be) realised in this respect at another facility (belonging to the group). The above applies regardless of the nature of the environmental impact.

The equality principle must be applied to the term 'facility', which means that facilities that are not materially different in terms of their nature and size, must realise the same level of environmental protection. An example should make this clear. The Environmental Management Act requires the installation of vapour return systems at petrol stations, and oil companies cannot omit to do so at the petrol stations that they own because additional reduction efforts are being made elsewhere in the group, when independent petrol stations do have to comply with this requirement. Allowing such actions would also create problems from the point of view of competition law. Objections can therefore be raised to a permanent distinction between the environmental protection levels required of facilities that, in principle, are similar.

These objections do not apply if no distinction is made between facilities in terms of the level of protection to be realised, but only in the phasing within which the level is realised. The foregoing leads to the conclusion that the scope for a group approach lies mainly in the phasing of measures.

### 3. Conclusions

- a) There is scope to realise the implementation of the Covenant in a group approach. However, this scope is limited by a number of constraints arising from the Environmental Protection Act, which must be taken into account.
- b) A group approach must not lead to legal inequalities at the level of facilities, within the meaning of environmental law.

- c) The Environmental Management Act does permit a group approach to primarily provide support for the phasing of measures described in the energy efficiency plan for the facilities forming part of that group.
- d) As there is no government umbrella organisation that can test the group approach, it is up to the group to convince the independent authority of the need for and, if this has been shown, then the reasonableness of the phasing of measures from the group's point of view. A plan describing the main points of the group's environmental policy may be necessary for this purpose. The provincial authorities are aware of the need to be able to realise a group approach and approve the use of this possibility to phase the implementation of measures. The provincial authorities will also co-ordinate the assessment of a group's energy efficiency plans.