

# **Long-term Agreement on Energy Efficiency for ETS enterprises (LEE)**

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## **Explanatory Notes**

# Long-term Agreement on Energy Efficiency for ETS enterprises (LEE)

## PARTIES

1. the Minister of Economic Affairs, Ms M.J.A. van der Hoeven, the Minister of Agriculture, Nature and Food Quality, Ms G. Verburg, and the Minister of Housing, Spatial Planning and the Environment, Ms J.M. Cramer, the State Secretary of Finance, Mr J.C. the Jager, jointly acting in their capacity as representatives of the State of the Netherlands and in their capacity as government body, hereinafter jointly referred to as: **the Ministers**;
2. the Confederation of Netherlands Industry and Employers (VNO-NCW), which has its official seat in The Hague, represented in this matter by its chairman Mr Wientjes, hereinafter referred to as: **VNO-NCW**;
3. the Trade Associations and Commodity Boards that by signing or joining are a party to the Benchmarking Covenant, hereinafter referred to as: **the Trade Associations and Commodity Boards**;
4. any enterprise that has joined this sector agreement through a facility mentioned in a declaration of participation, hereinafter referred to as: **the ETS enterprise**.

## RECITALS

In the EU Climate and Energy Package of 23rd January 2008 the European Member States concluded that the industrialized countries should make a joint commitment to reduce their greenhouse gas emissions by 30 percent in 2020 compared to 1990 within the framework of a meaningful global climate treaty. As long as that treaty has not been established, the EU unilaterally commits itself to a reduction of at least 20 percent in 2020 compared to 1990. Furthermore, the package includes the objective to improve energy efficiency by 20 percent in 2020 (compared to 2005) and to achieve a share of 20% Renewable Energy in 2020. On 12th December 2008 the European Member States reached an agreement about the EU Climate and Energy Package. The European Parliament approved the package on 17th December 2008.

The Coalition Agreement of 7th February 2007 between the government majority parties has set an objective to reduce greenhouse gas emissions by 30 percent in 2020 compared to 1990, preferably within a European context and to achieve a share of 20% Renewable Energy in 2020 and an energy conservation rate of 2% per year on average during the period 2011 - 2020. That means doubling the national average efficiency improvement rate of 1 percent per year.

The ambition is for the Netherlands to have one of the most sustainable and efficient energy supply facilities of Europe in 2020.

In the Sustainability Accord (*Duurzaamheidsakkoord*) between the national government and the business community of 1 November 2007, VNONCW, MKB Nederland and LTO Nederland endorsed the need to pursue an active and progressive climate policy in the Netherlands and in Europe. The government undertook to ensure to the best of its ability that enterprises will be able to continue to operate on a level European and global playing field.

The Sustainability Accord gives direction to additional concrete agreements for the sectors: built environment, energy, industry, traffic and transport, agriculture and horticulture, and for

medium-sized and small businesses. The Sustainability Accord provides for an evaluation of the progress of the programme Clean and Economical (*Schoon en Zuinig*) in 2010, which will include an evaluation of the progress of the sector accords, including this sector accord.

The sector accord Energy 2008-2020 of 28th October 2008 contains agreements between the national government and the energy sector. One of the agreements in that accord is that the national government may in the long term implement an obligatory share of sustainably generated energy, in principle in a European context.

The sector accord Industry contains various components. On 1<sup>st</sup> July 2008 the Long-term Agreement 3 (LTA3) was entered into with the industries that had not participated in the Benchmarking Covenant. An intensification of the energy savings in the small and medium-sized businesses sector was also initiated through the Energy Centre for Small and Medium-sized Enterprise.

For companies, in so far as they and their facilities are obliged to take part in the European system of trade in greenhouse gas emission rights (ETS enterprises), the sector accord Industry is implemented in two ways.

In the first place all participating ETS enterprises must comply with a CO<sub>2</sub> reduction obligation because they are part of the system of CO<sub>2</sub> emission trade. In that way they make an important contribution to the performance of the EU Climate and Energy Package and the Sustainability Accord.

In the second place the Benchmarking Covenant of 6<sup>th</sup> July 1999 is amended with this sector accord as referred to in article 20 of that covenant. That means that the participating ETS enterprises assume a commitment obligation in the field of energy efficiency, aimed at achieving a substantial improvement of the energy efficiency in the period up to 2020. At the time of signing of this sector accord the Ministers do not intend to impose obligations regarding renewable energy on ETS enterprises that participate in the sector accord. Because the sector accord focuses on ETS enterprises, participation by non-ETS enterprises that have joined the Benchmarking Covenant is not continued in this sector accord. Those enterprises are encouraged to take part in LTA3. Added value may, however, be generated if a non-ETS enterprise that will only become an ETS enterprise after 2012, or that is part of a group, continues to participate in the LEE after notifying the Competent Authority.

Parties are aware that improving the energy efficiency for ETS enterprises will require considerable effort and commitment. In the first place this concerns ETS enterprises that have to participate in the European system of trade in CO<sub>2</sub> emission rights, which entails considerable obligations with respect to the reduction of their CO<sub>2</sub> emission. In the second place a number of the ETS enterprises are already among the world's best in terms of energy efficiency. That limits the possibilities for further efficiency improvement. In the third place efficiency improvements are also included in the chain in this sector accord. That is a new element compared to the Benchmarking Covenant. Implementing and working out the chain approach in detail may involve a great deal of time and effort for realizing concrete projects and results. The impact on efficiency improvement is difficult to assess beforehand. Finally, the Trade Associations, Commodity Boards or participating ETS enterprises will set up a preliminary study to find out if and to what extent a roadmap will provide new insights into possible energy efficiency improvements in the long term. Based on the results of this study,

the efforts already made by the ETS enterprises and the relation with ETS, it will become clear what efficiency improvements are feasible for the participating ETS enterprises in the medium and long term.

Partly as a result of this sector accord, ETS enterprises will have to make substantial investments in CO<sub>2</sub> reduction and energy efficiency improvement. Both objectives may influence each other in either a positive or a negative way, in which case avoidance of the emission of CO<sub>2</sub> and other greenhouse gases will remain the primary goal. It is up to the parties themselves to create the necessary preconditions to realize the ambitions formulated in the sector accord. In any case the agreements in the EU Climate and Energy Package will be worked out in more detail during the coming period, including the possibility of compensating those ETS enterprises that are confronted by higher electricity rates as a result of the trade in emission in the electricity sector.

## **THE PARTIES AGREE AS FOLLOWS**

### **1. GENERAL**

#### **Definitions**

##### **Article 1.1**

In this sector accord the following terms have the following definitions:

***Benchmarking Covenant:*** the Energy Efficiency Benchmarking Covenant of 6th July 1999.

***Renewable Energy:*** energy generated from renewable energy sources: energy generated by facilities using only renewable energy sources and the share in calorific value of the energy generated with renewable energy sources in hybrid facilities that also use conventional energy sources. This includes renewable electricity used for accumulation systems, but not the electricity originating from such systems.

***Energy Efficiency:*** the ratio between the performance, service, goods or energy obtained and the energy supply required for that purpose. This could involve process efficiency, chain efficiency and renewable energy.

***Energy Efficiency Improvement (EEI):*** an increase in end-use energy efficiency as a result of technological, behavioural and/or economic changes.

***Energy Consumption:*** the energetic consumption of fuels. This does not include non-energetic consumption in the form of fuels used as inputs (feedstock). The energy consumption of secondary fuels is calculated back to the calorific value (the lowest calorific value) of the primary fuels. The net purchased electricity is calculated against an energy yield of 40 percent, unless it can be demonstrated to the satisfaction of SenterNovem that a different yield applies to a specific unit. Heat that is bought or sold is calculated against a yield that must be approved by SenterNovem. SenterNovem's approval is required for the calculation of the share of energy consumed by each relevant process unit that involves feedstock.

**ETS enterprise:** an enterprise that has joined this sector accord and which has exclusively or primarily one or more facilities as referred to in article 1.1 of the Environmental Management Act ('Wet milieubeheer'), containing one or more greenhouse gas units as referred to in article 16.2 of the Environmental Management Act, for which participation in the European system of trade in greenhouse gas emission rights (Emission Trading Scheme = ETS) is mandatory.

**Chain Efficiency:** the ratio between the performance, service, goods or energy obtained in the overall chain, from raw materials to disposal, and the energy supply for that purpose.

**Process Efficiency:** the ratio between the performance, service, goods or energy obtained and the energy supply for that purpose within a facility.

## **Objective**

### **Article 1.2**

The objective of this sector accord is to ensure that the ETS enterprises make a significant contribution to improving energy efficiency for their facilities in the period up to and including 2020 in accordance with the agreed procedures in this sector, by:

- a. adopting profitable measures aimed at improving the energy efficiency at their facilities and in the chain;
- b. investigating at strategic level what the energy-saving possibilities are in the long term.

## **2. OBLIGATIONS**

### **Obligations of ETS enterprises**

#### **Energy Efficiency Plan (EEP)**

##### **Article 2.1**

1. Each ETS enterprise undertakes to draw up an Energy Efficiency Plan (EEP) and to implement it.
2. Each ETS enterprise shall draw up a draft Energy Efficiency Plan for its facilities by 1<sup>st</sup> January 2010 at the latest, which shall at least contain an overview of:
  - a. possibilities for adopting profitable measures at existing facilities at the time of joining and the result of those measures, expressed in the percentage of energy efficiency improvement per year and the avoided CO<sub>2</sub> emission related to that;
  - b. the goal for the energy efficiency improvement and the avoided CO<sub>2</sub> emission related to that during the period to which the Energy Efficiency Plan applies, including an indication of which measures are to be taken at which time.
3. Profitable measures are taken to mean measures that have a positive net cash value at an internal interest rate of 15 percent. Alternatively, a cost recovery period of 5 years may be applied.
4. Each ETS enterprise will bring its Energy Efficiency Plan up to date by 1st October 2012 at the latest for the period 2013-2016 and by 1st October 2016 at the latest for the period 2017-2020.
5. If required, SenterNovem will assist with the drafting of an Energy Efficiency Plan.

6. SenterNovem shall advise the ETS enterprise within 6 weeks about the draft Energy Efficiency Plan.
7. Each ETS enterprise shall give sound reasons if the annual monitoring round reveals that the achieved energy efficiency improvement falls short of the planned energy efficiency improvement.

## **CHP consultation group**

### **Article 2.2**

In terms of the consultation group that the energy sector will set up on the basis of the Sector Accord Energy 2008-2020 of 28<sup>th</sup> October 2008, the relevant ETS enterprises shall:

- a. participate actively to create a view shared by the sectors of the potential of heat and electricity for the industry and facilitate in the mapping out of the industrial Combined Heat and Power potential;
- b. as quickly as possible set the preconditions which have to be met in order to realize the potential of energy savings through existing and newly built industrial Combined Heat and Power (CHP) units. In this context attention will be focused on optimum regulatory options for electricity production.

## **Obligations of the Confederation of Netherlands Industry and Employers (VNO-NCW), Trade Associations and Commodity Boards**

### **General**

### **Article 2.3**

VNO-NCW, Trade Associations and Commodity Boards undertake to:

- a. encourage their members to participate in and implement this sector accord;
- b. inform their members about the subject of this sector accord;
- c. participate in the LEE Committee;
- d. act as spokesperson on behalf of the ETS enterprises towards the Ministers.

### **Preliminary study**

### **Article 2.4**

1. Each Trade Association or Commodity Board shall carry out one or more preliminary studies together with the ETS enterprises affiliated with that Association or Board by 1<sup>st</sup> January 2010 at the latest to investigate if and to what extent a roadmap will provide new insights into possible energy efficiency improvements in the long term.
2. One or more ETS enterprises can undertake to carry out a preliminary study as referred to in the first paragraph.
3. The results of a preliminary study shall be discussed with the Ministers.
4. If required, SenterNovem will assist with the carrying out of a preliminary study.

### **Roadmap**

### **Article 2.5**

1. If required in light of the outcomes of the preliminary study and the consultations with the Ministers, the Trade Association or Commodity Board concerned, together with the ETS enterprises affiliated to them, will jointly draw up a roadmap.
2. A roadmap is a strategic vision for 2030, which sets out how to give substance to the working hypothesis of achieving an Energy Efficiency Improvement of 50 percent at the facilities and in the chain by 2030 compared to 2005. The strategic study is confidential.
3. If required, SenterNovem will assist with the drawing up of a roadmap.

## **Long-term Plan (LTP)**

### **Article 2.6**

On the basis of the Energy Efficiency Plans, the outcome of the preliminary studies and possibly the roadmaps, a Trade Association or Commodity Board can draw up a Long-term Plan (LTP) that contains the quantitative and qualitative objectives for the energy efficiency improvement.

## **Obligations of Ministers**

### **Article 2.7**

1. Notwithstanding their obligations set forth elsewhere in this sector accord, the Ministers will endeavour to ensure that no additional specific national measures aimed at further energy efficiency improvement or CO<sub>2</sub> reduction are imposed on ETS Enterprises. This shall not affect the powers of Parliament or the powers and obligations of the Ministers to implement international legislation.
2. The Ministers will endeavour to the best of their ability to ensure that enterprises can continue to operate on a level European and global playing field. Whenever new climate and energy measures are adopted, the effects on the level playing field will be mapped out for the ETS enterprises and discussed by the Parties. If necessary, relevant policy solutions will be sought to prevent adverse effects on the competitive position, preferably in a European context. If necessary, measures that might lead to insurmountable problems may be waived.
3. The Ministers will endeavour to ensure that government policies that have an effect on this sector accord will facilitate the realization of the energy and environmental objectives of this sector accord. The effects on the realization of the energy and environmental objectives of this sector accord will therefore be reviewed and discussed beforehand by the Parties. The point of departure will remain - in accordance with the Coalition Agreement and the budget memorandum for 2008 - that the business community will, on balance, remain free from extra burdens and be able to continue operating on a level European and global playing field. The collective ETS enterprises will let the realization of the environmental and energy objectives of this sector accord partly depend on the compatibility of the government policy that has an effect on this sector accord with the investment efforts made pursuant to this sector accord.
4. The Ministers undertake (to continue) to provide support with respect to research and development and incentive programmes
5. The Ministers will exert their influence to resolve any constraints of a non-financial nature in so far as these are within the sphere of influence of the Ministers.

6. The Ministers shall encourage and support the development and use of chain efficiency and renewable energy
7. The Ministers shall ensure that SenterNovem is called in to carry out the tasks assigned to the Ministers pursuant to this agreement. At the least this will pertain to:
  - a. drafting, updating and evaluating Energy Efficiency Plans and Long-term Plans and advising and appraising their implementation;
  - b. monitoring of and reporting on this sector accord;
  - c. developing knowledge on energy efficiency, chain efficiency and renewable energy;
  - d. knowledge transfer among all the parties;
  - e. secretariat of the LEE Committee and the LEE Consultative Groups.
8. The Ministers shall endeavour to provide sound policy instruments aimed at encouragement, facilitation and enforcement that are well aligned with and reinforce this sector accord.
9. The Ministers shall expand the support and facilitation of the Parties by SenterNovem within the framework of this sector accord. The Ministers will support the creation and implementation of Energy Efficiency Plans by ETS enterprises, of Long-term Plans by Trade Associations and Commodity Boards, as well as of preliminary studies and roadmaps by Trade Associations, Commodity Boards and/or ETS enterprises whenever possible and legally permitted.
10. Upon the materialization and implementation of European, national and local legislation, the Ministers will endeavour within the scope of their authorities and possibilities, to promote that such legislation supports the feasibility of the ambitions of energy conservation and energy efficiency improvement of the ETS enterprises, concurs with this sector accord, reinforces this sector accord, and limits the additional administrative burden of this sector accord for ETS enterprises to a minimum.

### **3. MONITORING and REPORTING**

#### **Monitoring**

##### **Article 3.1**

1. ETS enterprises shall submit a report to SenterNovem, annually on 1st April at the latest, in a manner that enables SenterNovem to report in a consolidated form to the LEE Committee about the progress of the objectives of this sector accord.
2. The LEE Committee shall draw up a Monitoring Protocol on behalf of the ETS enterprises, with due regard to that which is stipulated in the first paragraph.

#### **Reporting**

##### **Article 3.2**

1. SenterNovem shall provide a consolidated report to the relevant LEE Consultative Group annually, on 15 June at the latest, without publication of confidential data that may be traced to ETS enterprises concerning the progress made in the previous calendar year in respect of:
  - a. the implementation of the Energy Efficiency Plans;
  - b. the implementation of the Long-term Plan (if any);



- c. the energy efficiency improvement achieved and the CO<sub>2</sub> emissions avoided as a result of a and b;
  - d. preliminary studies and roadmaps.
2. SenterNovem shall submit a consolidated report to the LEE Committee annually, on 1st September at the latest, concerning the progress made in the previous calendar year in terms of this sector accord as referred to in the first paragraph.
3. The Ministers will inform the Second Chamber of Parliament about the progress made in the previous calendar year in terms of this sector accord as referred to in the first paragraph.
4. The reports referred to in paragraphs 1 to 3 may not contain any information concerning individual ETS enterprises, or information that can be traced back to individual ETS Enterprises.

## **4. CONSULTATION**

### **LEE Committee**

#### **Article 4.1**

1. There is an LEE Committee consisting of a chairperson and representatives of the Parties, for which the Minister of Economic Affairs, the Minister of Agriculture, Nature and Food Quality, the Minister of Housing, Spatial Planning and the Environment and the State Secretary of Finance shall each appoint a maximum of two representatives, and for which VNO-NCW, each participating Trade Association and/or Commodity Board shall appoint one representative.
2. Parties shall jointly appoint an independent chairperson.
3. The committee determines its own working method and seeks to reach consensus.
4. The committee shall be assisted by SenterNovem.

### **Duties of the LEE Committee**

#### **Article 4.2**

The duties of the LEE Committee are:

- a. to discuss constraints of a general nature that occur in practice during the implementation of this sector accord, to discuss solutions and if necessary to formulate guidelines for this;
- b. to submit proposals to amend this sector accord;
- c. to implement, with due regard for article 6.3 second paragraph, agreed amendments to this sector accord;
- d. to compile and publish an annual report on a yearly basis.

### **LEE Consultative Group**

#### **Article 4.3**

1. Each Trade Association and Commodity Board shall set up an LEE Consultative Group together with the Ministers.
2. Each Consultative Group shall consist of a chairperson and representatives of the Trade Association or the Commodity Board and the Ministers.

3. The Trade Association or the Commodity Board shall appoint the chairperson of the Consultative Group.
4. Each Consultative Group shall meet at least once a year, determine its own working method and seek to reach consensus.
5. Each Consultative Group shall be assisted by SenterNovem.

### **Duties of the LEE Consultative Group**

#### **Article 4.4**

1. The duties of the LEE Consultative Groups are:
  - a. compiling the sector-specific reports for the LEE Committee;
  - b. discussing developments in the field of systematic energy management, process efficiency, chain efficiency, renewable energy and other matters relevant to this sector accord.
2. Article 3.2, fourth paragraph, is correspondingly applicable.

## **5. JOINING AND TERMINATION**

### **Joining by Trade Associations, Commodity Boards and ETS enterprises**

#### **Article 5.1**

1. A Trade Association or Commodity Board may become party to this sector accord by means of a registered letter to the LEE Committee stating that it unconditionally accepts the obligations arising for it from the sector accord.
2. An ETS enterprise may become a party to this sector accord by means of a registered letter to the LEE Committee stating that it unconditionally accepts the obligations arising for it from the sector accord with respect to the facilities mentioned by name.
3. Notwithstanding the foregoing, an ETS enterprise that gave notice or has been given notice of termination of this sector accord as referred to in article 5.6 will not be able to rejoin until the relevant Minister has given permission in writing. The Minister will be advised in this by the LEE Committee.

### **Continuation of participation by ETS enterprises**

#### **Article 5.2**

A Trade Association, Commodity Board or ETS enterprise shall be deemed to have joined this sector accord if, at the time that this sector accord is signed, it is Party to the Benchmarking Covenant. Trade Associations, Commodity Boards or ETS enterprises shall be deemed never to have joined the sector accord if they have declared their intention to terminate their participation as referred to in article 21, third paragraph, of the Benchmarking Covenant to the LEE Committee by registered letter within six weeks of the time that this sector accord is signed.

### **Continuation of participation by non-ETS enterprises**

### **Article 5.3**

1. An enterprise that does not qualify as an ETS enterprise at the time that this sector accord is signed shall be deemed not to be Party to this sector accord as from that time.
2. In deviation from the first paragraph and article 1.1, an ETS enterprise in this sector accord shall also be taken to mean an enterprise that has joined this sector accord and that has exclusively or primarily one or more facilities as referred to in article 1.1 of the Environmental Management Act ('Wet milieubeheer'), containing one or more greenhouse gas units as referred to in article 16.2 of the Environmental Management Act, for which participation in the European system of trade in greenhouse gas emission rights (Emission Trading Scheme = ETS) is mandatory after 2012.

### **Public record of Parties**

#### **Article 5.4**

The LEE Committee shall maintain a public record of ETS enterprises, Trade Associations and Commodity Boards that have joined the sector accord.

### **Termination**

#### **Article 5.5**

1. A Party may terminate this sector accord in respect of one or more facilities effective immediately, for specified reasons.
2. The LEE Committee shall be notified of every instance of termination.

### **Breach of contract**

#### **Article 5.6**

1. In the event that an ETS enterprise in the opinion of the LEE Committee is culpably remiss in complying with its obligations, the Ministers shall terminate this sector accord with respect to that ETS enterprise.
2. Before the Ministers apply the first paragraph, they shall consult with the ETS enterprise concerned and offer that ETS enterprise a reasonable term in which as yet to comply with its obligations.
3. Article 5.5, second paragraph, is correspondingly applicable.

## **6. MISCELLANEOUS PROVISIONS**

### **Costs**

#### **Article 6.1**

1. The Ministers shall bear the costs of setting up and supervising this sector accord, including the costs of SenterNovem and the LEE Committee.
2. The ETS enterprises shall bear the costs of implementing the Energy Efficiency Plans in respect of their facilities

## **Evaluation**

### **Article 6.2**

1. Parties shall evaluate the implementation and operation of this sector accord every four years, for the first time on 1st April 2013 at the latest.
2. As soon as there is sufficient clarity about ETS, a worldwide climate treaty and other relevant developments, but in 2012 at the latest, Parties shall decide whether or not the sector accord – possibly in amended form - shall be continued.

## **Amendments to the sector accord**

### **Article 6.3**

1. In the event that a Party expresses the wish to amend this sector accord, the Parties shall enter into consultations within four weeks after that wish has been expressed.
2. Parties are authorized to amend this sector accord.
3. In this article a Party is taken to mean a Party designated as such in article 4.1, first paragraph.

## **Disclosure and confidentiality**

### **Article 6.4**

1. Confidential information is taken to mean all company secrets and security data designated as confidential by an ETS enterprise as referred to in chapter 19 of the Environmental Management Act or, respectively, operating and manufacturing data as referred to in the ‘Wet openbaarheid van bestuur’ (freedom of information legislation).
2. Parties are obliged to observe confidentiality with respect to all confidential information, except in so far as disclosure is required under statutory provisions or by this sector accord.
3. The Ministers shall ensure that SenterNovem – in so far as legally permissible - shall observe confidentiality with regard to confidential information that is provided to it within the framework of the implementation of this sector accord.

## **Term**

### **Article 6.5**

1. This sector accord amends and replaces the Benchmarking Covenant.
2. The amended Benchmarking Covenant shall be cited as Long-term Agreement Energy Efficiency ETS enterprises (LEE).
3. The LEE enters into effect on the day after it is signed and ends on 31<sup>st</sup> December 2020.

## **Legal form**

### **Article 6.6**

1. This sector accord is an agreement under civil law.
2. The obligations mentioned in this sector accord are best efforts obligations unless the obligations are expressly described as performance obligations.
3. This sector accord does not affect the Parties' obligations arising from regulations and legislation.

Thus agreed and signed in six original copies in The Hague on 1st July 2008

M.J.A. van der Hoeven  
EZ

J.M. Cramer  
VROM

G. Verburg  
LNV

J.C. the Jager  
Financiën

B.M. Wientjes  
VNO-NCW

H. Wiegel  
CBK

P. van Rhede van der Kloot  
VNG

A.J. Markusse  
Suikerindustrie

M.J. Hartvelt  
VNP

G.A.F. van Harten  
VNCI

W.J.H.M.B. Hamers  
VNMI

G. Ruitinga  
VNPI

## Explanatory notes

### 1. General

On 6<sup>th</sup> July 1999 the Minister of Economic Affairs, the Minister of Housing, Spatial Planning and the Environment, IPO, VNO-NCW, VNCI, NIJSI, NFI, VNPI, VNP and Sep signed the Benchmarking Covenant (CBE). Later, individual companies and municipalities joined the CBE. Each co-signee and joiner is a party to the CBE. Article 20 of the CBE expressly states that the power to amend the CBE does not lie with all parties (i.e. including individual companies and municipalities), but with the parties that are represented in the Benchmarking Committee, namely the above-mentioned co-signees and the Trade Associations and Commodity Boards that have joined (article 13, second paragraph, CBE). Article 20 contains no restrictions with respect to the powers of amendment. The amendments introduced by parties are not independently formulated but included in the consolidated version of the CBE, which is called the Sector Accord Energy Efficiency ETS enterprises (LEE).

This procedure means that in consequence of the amendment the CBE no longer exists in its original form (CBE), but only in the form as amended by the parties (LEE). At the time that the amendment becomes effective no rights and obligations exist any longer for parties, such as individual ETS enterprises, on the basis of the original (unchanged) CBE. That means that a CBE party cannot hold one or more other CBE parties to the unchanged CBE.

For companies that had become party to the CBE (CBE enterprises), the amendment has the following consequences:

1. Participation in the LEE is open to ETS enterprises. In the first place this concerns enterprises that have exclusively one or more facilities with one or more greenhouse gas units (art. 5.2/ art. 1.1).
2. Participation in the LEE is also open to ETS enterprises with one or more facilities in which not all facilities contain one or more greenhouse gas units, but that can be construed to be enterprises that essentially consist of facilities containing one or more greenhouse gas units (art. 5.2/ art. 1.1).
3. Individual CBE enterprises that qualify as ETS enterprises, as referred to above under 1 and 2, thus also remain party to the amended CBE (the LEE) (art. 5.2). Nonetheless, they have the right to terminate their participation in the LEE as from the time at which the amendment of the original CBE becomes effective, that is the time at which the LEE is signed (art. 5.2).
4. Individual CBE enterprises that do not qualify as ETS enterprise are deemed not to be party to this sector accord as from the time that the LEE is signed (art. 5.3). Those enterprises are encouraged to take part in LTA3. However an exception applies to non-ETS enterprises that will qualify as ETS enterprise after 2012. They may join, but must notify the competent authority of this (art. 5.3, second paragraph). That is because for this category of companies the competent authority is empowered to include regulations in the Environmental Management Act permit with respect to energy efficiency. It is up to the competent authority to assess whether the efforts of the companies and the Energy Efficiency Plan, compiled with the assistance of SenterNovem (art. 2.1, fifth paragraph), comply sufficiently with the obligations of the Environmental Management Act (art. 2.1, fifth paragraph).

The objective of the LEE is to improve the energy efficiency of ETS enterprises. This concerns energy efficiency improvements at the facilities and in the chain. Implementing and working out the chain approach in detail may involve a great deal of time and effort for ETS enterprises in order to realize concrete projects and results. The potential for efficiency improvement in the chain is great, but for many ETS enterprises it is still uncharted territory. The effect on the improvement in efficiency is difficult for ETS enterprises to assess beforehand. It will take time and effort before this will lead to concrete results. The potential for efficiency improvement in the chain is great, but ETS enterprises have never yet calculated the efficiency improvements and savings in the chain that are the result of their own efforts, or incorporated them in their own results. Consequently, the parties will develop a transparent and verifiable calculation model for calculating the efficiency improvement in the chain. The parties have already been working together on the basis of projects within the framework of energy transition to achieve the technological and non-technological breakthroughs that are necessary for this goal in the long term.

## **2. By article**

### *Article 1.1*

Under the CBE, the entire organization takes part, i.e. not just the ETS facilities within the organization but also the non-ETS facilities, in other words also those units of the organization that do not qualify as greenhouse gas units and consequently do not (cannot or may not) participate in the European system of trade in greenhouse gas emission rights. Some organizations within the CBE even participate with their entire group.

Strictly speaking, an ETS enterprise may opt not to participate in the LEE but instead in the LTA3, however that is not what is intended. After all, the LEE is focused explicitly on ETS enterprises.

Added value may, however, be generated if a company that will only become an ETS enterprise after 2012, or that is part of a group, joins the LEE before 2012. In that case the competent authority will have to be notified in writing beforehand (art. 5.3, second paragraph).

### *Article 1.2*

The objective of the LEE is that the participating ETS enterprises make a significant contribution to improving energy efficiency. In order to realize this improvement the approach used in the long-term agreements (LTAs) is applied.

That means that every ETS enterprise periodically draws up an Energy Efficiency Plan for each of its individual facilities and then implements that Energy Efficiency Plan. Each Energy Efficiency Plan contains objectives for energy efficiency improvement and the avoided CO<sub>2</sub> emission related to that in the period to which the Energy Efficiency Plan applies.

Improving energy efficiency in the chain may be achieved, for example, by adjusting the specifications of a product – in consultation with suppliers and customers – at the production stage at the company itself, for example by the use of lighter materials so that the product leads to energy savings in the user phase (at another company further along in the chain). The supply of residual heat to companies is another example of a measure that leads to improved energy efficiency in the chain.



In addition, each Trade Association or Commodity Board carries out preliminary studies together with the ETS enterprise affiliated with that Association or Board. Depending on the outcome of these studies roadmaps are compiled. On the basis of the Energy Efficiency Plans, the preliminary studies and possibly the roadmaps, a Trade Association or Commodity Board can draw up a Long-term Plan (LTP) that contains the quantitative and qualitative objectives for the energy efficiency improvement. In that way the exchange of knowledge among affiliated enterprises is facilitated. That will lead to an increase in the range of measures that can be adopted.

The parties believe that the combination of agreed procedures, exchange of knowledge and long-term studies will lead to improved energy efficiency. Consequently the parties expect that the LEE will be able to provide a significant contribution to the energy efficiency objectives of the Cabinet and the European Union.

#### *Article 2.2*

Utilization of the economic CHP potential is extremely important for realizing the efficiency objectives. CHP is also an important tool for reducing CO<sub>2</sub> emission during electricity production. The parties will jointly consider what preconditions are required to be able to make the desired investments.

#### *Article 2.5*

The working hypothesis mentioned of 50 percent in 2030 compared to 2005 is emphatically not a veiled objective. The important thing is to give companies a stimulus to think ‘out of the box’: is it possible to realize an energy efficiency improvement of 50 percent by 2030 and if so, what would it take to achieve that?

ETS enterprises can work together, possibly assisted by SenterNovem, to carry out preliminary studies and draw up roadmaps. The ETS enterprises must, of course, ensure that these activities are compatible with the ‘Mededingingswet’ (Competition Act).

#### *Article 2.7, second and third paragraphs*

In the Sustainability Accord the government promises to make every effort to ensure that enterprises can continue to operate on a level European and global playing field. Naturally that also applies to the ETS enterprises.

#### *Article 3.1, first paragraph*

The LEE can be regarded as ‘agreements made within the framework of Our Minister of Economic Affairs, Our Minister of Housing, Spatial Planning and the Environment, Our Minister of Agriculture, Nature and Food Quality or Our Minister of Transport and Public Works’ in the sense of article 65, first paragraph, of the Wbm (Environmental Tax Act). Pursuant to article 65 of the Wbm exemption may be granted under certain conditions for paying energy tax on electricity. In the context of that regulation, SenterNovem will annually issue a progress statement as referred to in article 1, item a, of the ‘Besluit vrijstelling energiebelasting op elektriciteit bij convenanten’ (provision on exemption from energy tax on electricity for covenants) to the ETS enterprises for their participating facilities.

#### *Article 6.2*

During the evaluation as referred to in this article the results of the implementation of the Energy Efficiency Plans and the roadmaps are mapped out. The parties will also look at the way in which this sector accord should be evaluated.

The Sustainability Accord also provides for an evaluation of the progress of the programme ‘Schoon en Zuinig’ (Clean and Economical) in 2010, in which such aspects are examined as the progress of the sector accords, including this sector accord. In the course of 2010 more light will also be shed on the results of talks on an international climate treaty (Copenhagen), the effects of the financial crisis on this sector accord and the reform of the European ETS. On the basis of an evaluation of these three relevant developments for the ETS enterprises in the course of 2010, further consultations may be held about the objectives and implementation of this sector accord during the period 2010-2020.

Finally, this article does not preclude an evaluation of the progress of this sector accord at an earlier time.

#### *Article 6.3*

Article 6.3 offers parties the possibility of amending the LEE. It was decided not to mention foreseen and unforeseen circumstances in order to allow the parties as much freedom as possible. For example the parties acknowledge that due to the credit crisis capital-intensive investments are under pressure at many companies. At the time of signing of the LEE, however, it is impossible to foresee what the consequences of this will be for the realization of the objectives in the medium and long term. Moreover, at the time of signing of this sector accord the government has no intention of imposing extra sustainability requirements on ETS enterprises.

#### *Article 6.4*

When exchanging information in the context of the LEE the parties shall take the competition laws into account.