



Eni positioning paper
with respect to the EU call for contributions on
Competition Policy supporting the Green Deal

1. Introduction

Eni SpA (Eni) welcomed the EU Green Deal as a growth strategy that will make the EU's economy climate neutral by 2050 while ensuring its global competitiveness, turning environmental challenges into opportunities and making the transition just and inclusive for all. Yet, as these objectives are turned into targets for 2030 and 2050, large investments will be required, while the economy is facing now a downturn linked to the COVID crisis, the extent of which is still to be fully appreciated. Under the circumstances, it is important to couple the need to quickly make progress on the decarbonization agenda while supporting the economic recovery means, **paying specific attention to the cost effectiveness of measures, to the principle of technology neutrality, and focusing on the delivery of immediate results.**

As an integrated energy company, Eni fully embraces this challenge and the profound change that this entails, which affects the energy sector specially. This is why the company embarked as early as 2014 on a great transformation journey, which oriented its business model toward the creation of long-term value, combining economic/financial and environmental sustainability.

Eni's Long Term Strategy presented in February 2020 defines strategies and operational objectives for 2035 and 2050, which will make possible to achieve an 80% reduction by 2050 in net emissions referable to the whole life cycle of the energy products sold by 2050, including Scope 1, 2 and 3 emissions and a 55% reduction in emissions intensity compared to 2018.

Aimed at actively contributing to the achievement of the SDGs and in line with the new EU policy agenda, the strategy is based on a more efficient use of resources, cutting pollution, moving to a clean circular economy and restoring biodiversity. The actions taken to achieve these goals include:

- growing the incidence of the production of gas (which has a lower carbon intensity compared to oil) and progressively reducing overall hydrocarbon production after 2025;
- reducing upstream GHG emissions' intensity and upstream fugitive methane emissions;
- converting EU traditional refineries to plants fed by organic or alternative materials, for the production of fuels additives, biomethane, hydrogen, methanol and other products from recycling of waste materials;
- developing CO₂ capture, usage and storage projects;
- progressively increasing power production from renewable sources;
- expanding retail activities for the supply and distribution of "bio" and renewable products;
- participating in forest conservation projects to compensate CO₂ emissions.

All these initiatives bring a decisive and progressive contribution to the achievement of EU objective to have a net zero GHG emissions economy by 2050 and at the same time generate other positive

externalities in terms of achievement of other Green Deal goals, as they leverage on existent infrastructure (for producers, shippers and users), enhancing a more efficient use of already available resources (energy sources, soil, waste, hard to abate emissions, ...), with the full involvement of local communities.

Even though Eni already committed to spend approximately 4.9 billion euros for decarbonization, circular economy and renewables initiatives in the four-year period 2020-2023, **such initiatives would not deliver to their full potential if Competition Policy rules were not revised to recognize major technology, market, policy and regulatory-driven changes, thus preventing access to the required financial resources, appropriate market supporting mechanisms and/or cooperation with other market players, where needed.**

Therefore, Eni welcomes the EU Commission's reflection on how Competition Policy may better support – or at least not hinder – the achievement of the Green Deal's objectives and appreciate the opportunity to contribute to this exercise by replying to the questions raised in the Call for contributions *Competition Policy supporting the Green Deal* published on 13 October 2020 (Call for Contributions).

2. Eni initiatives with possible State aid or antitrust implications linked to positive environmental externalities

The following paragraphs outline some of the initiatives Eni is engaged in, which are fully consistent with and contributing to the Green Deal objectives. These initiatives provide concrete examples of situations in which State aid and/or antitrust rules risk hindering the achievement of the Green Deal objectives and help giving a reasoned answer to some of questions raised in the Call for Contributions.

a) Waste to fuel

With the purpose of reducing GHG emissions in the transport sector, over the past years Eni has been more and more engaged in the production of innovative biofuels and so far converted two of its traditional refineries into bio-refineries. These refineries have already started processing waste feedstock such as used cooking oil (UCO) and will be palm oil free by 2023. At the same time Eni is actively carrying out research and development activities to exploit new sustainable feedstocks and intermediates/by-products.

Fuel production from waste generate a number of positive externalities falling under the scope of the Green Deal, which, however, do not have the same relevance under the current State aid legal framework. Indeed, biofuels are not only a way to reduce GHG emissions linked to their usage. Rather, in the case of Eni's projects, their production has implied the conversion of existing traditional refineries (avoiding new soil consumption and the use of tons of building materials) and it has given added value to waste materials through the creation of a circular economy. Moreover, these initiatives also help the development of the communities where they are located and contribute to the security of supply of energy sources.

All waste to fuel projects, including those mentioned in the following paragraphs, often need large volumes of feedstocks in order to reach viable volumes of production and corresponding scale economies. Securing adequate feedstocks for these projects may thus require long term supply agreements for large volumes of waste materials.

b) Biomethane

Another source of sustainable energy Eni is working on is biomethane produced from biogas. The production of biomethane is indeed part of a circular economy model, which uses agricultural and water waste as feedstocks, thus reinforcing the relationship between agriculture and the energy sector, in a long-term sustainability perspective. Also in this case, in a Green Deal perspective the positive externalities of biomethane production do not only stem from lower emissions associated to this kind of fuels compared to other fuels, but are also related to the benefits that derive from a circular economy model.

c) Waste to methanol and hydrogen

Eni is also studying innovative technology solutions to transform waste to methanol and to hydrogen, again in a circular economy approach. The project aims at producing methanol and hydrogen by high-temperature gasification of mixed plastics (plasmix) and secondary solid fuel (SSF) coming from unsorted municipal solid waste, both generally either used in incinerators or sent to landfills. It is yet another case where cleaner and more sustainable energy would be coupled with other positive environmental externalities, that also need to be fully taken into account by State aid rules.

d) Carbon Capture, Usage and Storage

Other crucial activities Eni is engaged in in the path towards net zero emissions are those related to the capture, transportation, usage or alternatively storage of carbon dioxide emissions (so called CCUS). A range of scenarios, such as IEA's 2020 World Energy Outlook, have shown that CCUS is an integral part of meeting the targets set under the Paris Agreement. Technologies grouped under the label of CCUS can simultaneously

- reduce emissions from existing installations (that would otherwise continue to emit until life end)
- abate emissions from heavy industries (for which there is no alternative technology option to reduce process-related emissions at the scale needed in the long term) and
- support a rapid scale-up of low-carbon hydrogen production, meeting the future demand from transport, industry and building, as well as creating the conditions (demand and infrastructure in particular) for renewable-based hydrogen to be marketed.

However, in order to be viable, CCUS projects need to be allowed the same level of public support as other zero emissions projects and also need various forms of cooperation among different companies in all the stages of the value chain (e.g. to pool carbon emitters, to allow joint use of transportation and storage infrastructures where those are owned or need to be developed by different companies or to secure long-term supply of CO₂ emissions).

e) Low carbon hydrogen

Hydrogen is a key lever for the decarbonization of the economy. The EU Commission in its Strategy on hydrogen takes into account all sources of production of decarbonized hydrogen. In particular, in the short mid-term, blue hydrogen (i.e. hydrogen produced from natural gas steam reforming combined with CCS) will remain the most competitive option. Eni's decarbonization strategy is also based on low carbon hydrogen. Hydrogen is indeed a key low-carbon energy carrier which can be used in a number of applications. However, both investments and operating aids are still needed to foster the development of these applications.

f) Recycling

Eni pursues the Green Deal objectives also through its chemical company, Versalis (fully owned). In this business, particular attention is devoted to projects on the recycling of plastic materials, in line with a circular economy model. However, in the context of these initiatives, there is a strong need for a clear framework, able to guarantee a level-playing field among recycling technologies and between imported and exported materials.

It is therefore crucial to ensure a consistent, technology neutral approach across Europe, which recognizes multiple recycling technologies (chemical, mechanical) in line with the Waste Framework Directive.

On the other hand, clear standards, certifying and recognizing multiple calculation methodologies for recycled content such as mass balance, would further ensure equal treatment of both imported and domestic plastic production.

3. How to improve consistency of State aid rules and Green Deal

Further to the launch of Next Generation EU, consistency and complementarity between State aid rules and the European Green Deal Investment Plan (EGDIP) becomes crucial for mainstreaming sustainability in all public and private funds available for investing. Such a shared effort to mobilize and channel an unprecedented amount of financial resources for fostering sustainable investment might have distorting effects on basic markets functioning, especially for energy markets, which should remain firmly anchored to the logic of competition and economically efficient choices. At this stage as never before it is important for State aid to target precisely the activities which in fact need such aid, i.e. activities that are not yet economically viable but deserve State support because of their sustainability potential or, on the contrary, activities that would currently be economically viable but need public support to fund transformative activities to reduce their environmental footprint and reach sustainability targets.

In this perspective, the following paragraphs provide inputs on some of the questions raised in the Call for Contributions, with particular reference to those where stakeholders are asked:

“What are the main changes [they] would like to see in the current State aid rulebook to make sure it fully supports the Green Deal?”

“How should we define positive environmental benefits? Should it be by reference to the EU taxonomy and, if yes, should it be by reference to all sustainability criteria of the EU taxonomy? Or would any kind of environmental benefit be sufficient?”

As mentioned above, it is important to guarantee a consistent approach between State aid rules and the Green Deal. The EU taxonomy in its current form is well designed to capture sustainable activities in term of climate change mitigation and adaptation (the first two foreseen objectives), but it is still to be developed for the remaining four objectives included in the Green Deal and specifically for incorporating transition objectives (i.e. activities that aim to transition the energy sector from current emissions level to net zero) and social objectives, clearly specified in approved EU Taxonomy Regulation.

For these reasons and in order to also abide by the Better regulation strategy – according to which “*EU action must lead to a simple, clear, stable and predictable regulatory framework for businesses, workers and citizens*”¹ – revised **State aid rules should not restrict their perimeter to the EU taxonomy per its current form, but should redefine their scope in order to be consistent with the stated EU Green Deal goals to implement the United Nation’s 2030 Agenda and the United Nation Sustainable Development Goals (UN SDGs).**

Considering UN SDGs and related KPI/Indicators as a perimeter for sustainable activities/projects to be supported will allow State aid rules **to be consistent** not only with EU Green Deal objectives but **also with financial markets standard, based on Environmental, Social and Governance (ESG) performances and internationally adopted ratings.** More specifically, priority areas for State aid consistent with EU Green Deal should address the following issues.

a) Transition activities

The EU Member States have recently endorsed the objective to achieve carbon neutrality by 2050 and 2030 energy and climate targets are currently being revised accordingly. Such steeper GHG reduction trajectory requires major abatement in the short term and thus an even stronger focus on Transition activities, i.e. activities that can reduce current emission levels more rapidly and progressively down till accomplishment of net zero emissions goal, through the ramp-up of quickly available greener energy sources and/or the use of technologies to capture carbon emissions. Transition activities are often based on investments that are neither competitive nor economically viable, while being essential for sustainability targets. The importance of supporting Transition activities has been recently stressed by the IEA 2020 World Energy Outlook, showing that: “*Avoiding new emissions is not enough: if nothing is done about emissions from existing infrastructure, climate goals are surely out of reach. Detailed new analysis shows that, if today’s energy infrastructure continues to operate as it has in the past, it would lock in by itself a temperature rise of 1.65 °C.*”

In the EGDIP there is a specific fund aimed at financing Transition activities, namely the Just Transition Mechanism, which aims at meeting the need to channel investment into Transition activities. **To reinforce consistency and complementarity between Green Deal and State aid rules,** this same need should be recognised by revised State aid rules, which should enable investment aimed at making current energy infrastructures compliant with EU emissions goal or to facilitate the progressive downturn of non-sustainable energy infrastructures. To this purpose, since time is of essence when dealing with climate change related issues, **State aid rules should also take into account the timing in which the supported measures would be able to effectively contribute to the lowering of net carbon emissions.**

b) Circular economy

Circular economy initiatives aimed at enhancing fuels production from waste and residue play a strategic role in defining the energy transition path. Moreover, they represent a virtuous model of collaboration among different stakeholders while pushing territorial development in achieving climate

¹ European Commission, Commission Staff Working Document, Better Regulation Guidelines, 7 July 2017 (<https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-better-regulation-commission.pdf>).

objectives set by Green Deal. On this basis, Eni believes that any form of support mechanism must reward the production of fuels that come from by-products, waste and processes linked to circular economy. It is evident that those solutions favour simultaneously the compliance of a dual objective: on one side, the decarbonisation of the waste sector and on the other the reduction of environmental pressure coming from waste management systems that have impacts on soil, air and water.

To enhance these solutions, it is necessary to rethink not only the best available technologies model but also the calculation methods of GHG savings. The enhancement of technologies able to balance a limited release of CO₂ emissions (compared to technologies currently used for waste treatment) with their environmental benefits should be taken into account.

Current Guidelines on State aid on energy and environment 2014-2020 already embrace the circular economy principle, but only with respect to aids to waste management. Eni endorses the strengthening of this principle for all the sectors covered by the aforementioned guidelines. Indeed, **circular economy indicators should be evaluated in the assessment of all industrial initiatives, in order to take into account all the positive externalities stemming from such initiatives, from an environmental, social and economic point of view.**

c) Research & Development activities

At present, more than ever before, the importance of supporting Research & Development (R&D) investments with low, if any, immediate return but great future potential is directly proportional to the technological challenge that the energy sector is facing in reshaping the whole range of technologies for producing, transporting, transforming, using and recycling energy. In the R&D space State aid rules should share same principles used for the Green Deal.

The political agreement behind the Green Deal and one of the key principle of EU policy making is technology neutrality. This should remain so and be consistently applied across the board, especially in the face of the major challenge to decarbonize the EU economy and production system in full. It is largely the task of the industrial sectors to develop the most suitable technologies to achieve the objectives set in each Member States in compliance with the said EU objectives and evaluation criteria, as well as national policy choices. The same technology neutral approach should be reflected in State aid rules, equally supporting any technology capable of reducing emissions down to set goals according to their contribution.

Technological neutrality is key also taking into account the particular challenge that the energy sector is facing. This relates to the fact that here multiple technological routes are being pursued simultaneously and in a competitive dynamic, while in other sectors one single technological development drove the whole sector towards the same transformation pathway. This was the case, for example, of the telecommunications sector, for which the transition from fix to mobile telephony was based essentially on a single technology. In the case of the energy sector, the technological challenge to achieve the sustainability objectives is perhaps even more significant than the financial challenge to support the necessary investments. A testimony to this is the large variety of technological alternatives under evaluation and development within the R&D portfolio of a large integrated energy player such as Eni: the range of technologies varies from nuclear fusion to organic photovoltaics, from the hydrogen supply chain to the exploitation of the tides. Some technologies, which are still under-

treated today, have the potential to offer a decisive contribution for achieving decarbonisation objectives, for example blue hydrogen chain connected to fuel cells and eventually, in the longer term, nuclear fusion. It is therefore essential to allow technology-based assessments defining the optimal mix of technologies suitable for achieving sustainability targets, while making sure that policies create the best conditions for European companies to use their technical and financial resources to solve the technological problem. This means reorienting their investment from more mature but less promising sectors in terms of sustainability, and focusing on technologies that will become the critical factor for Europe to be competitive globally.

d) Green activities

Net zero emission goal by 2050 requires the combination of reducing current emission levels, via Transition activities, and ensuring that no new emissions are created, via green activities. This is why all efforts should be made for attracting public and private capital to finance green activities. But when it comes to State aid rules for supporting green activities, it is also important for such State aids to be selective and “predictably” flexible, so not to distort competition on energy markets.

A selective approach is needed because State aid should be targeted to those green activities that currently show too low/no economic returns, so not to create undue advantageous positions, which could last for a long time. **In time, State aids should be progressively reabsorbed when green activities will become gradually more self-sustaining/economically viable, and the more environmental externalities will be fully reflected in energy prices.** In order to orientate long term investment decisions, the State aid framework should be stable and predictable by investors: this is the reason why State aid rules for green activities should clearly state from the very beginning the principle of aid progressive reduction, when economic and market conditions allow for it.

e) CCUS

Current Guidelines on State aids on energy and environment 2014-2020 already consider CCS projects. The following points should be considered in order to improve States’ intervention for the creation of a CCUS market:

- **recognize Carbon Capture and Utilisation (CCU)** as another technology effectively contributing to decarbonization, thereby allowing State aids to also be channeled to CCU projects.
- **CCUS Value Chain:** in the 2014-2020 Guidelines on State aids CCS projects are considered as virtually integrated projects, with all parts of the CCS value chain (capture, transport and storage of CO₂) integrated in a single initiative. Incentive Schemes, based on business models to be defined, should be thought for all the stages of the value chain, from the generation and capture to the transport and storage and should consider both construction and operating. Incentives from States can be Funds, Tax credits, Operational Subsidies (such as contract for difference mechanisms that can cover the cost differential between the higher generation costs and the market price) and Regulatory Standards (RAB models).
- **Generation and Capture:** the 2014-2020 Guidelines consider CCS primarily as a technology to produce low-carbon electricity with CO₂ transport and storage infrastructure tied to a gas/coal-fired power plant. CCUS is an important option (sometime the only possible) to a wider range of emissions generators. CCUS clients can be grouped as follows: existing energy infrastructure, heavy

industries/hard-to-abate sectors (cement/iron/steel/chemicals industries), blue hydrogen production, emissions in atmosphere. However, a market cannot exist if there is no demand. This is why it is of utmost importance to have mechanisms that incentivize upstream the decision to decarbonise emitters' production plant.

- **Transportation and Storage:** the current Guidelines do not consider for example that for the decarbonisation of industrial clusters, CCS transport and storage infrastructure will most likely receive CO₂ from multiple capture facilities. The construction or retrofitting of such shared CCS infrastructure may benefit the decarbonisation of several industrial processes. CCS infrastructure should therefore be included in the infrastructure section of the revised Guidelines.

f) Low carbon hydrogen

As mentioned under paragraph 2, letter e), above, for hydrogen to effectively contribute to lower carbon emissions, the use of this energy carrier shall be appropriately stimulated. To this purpose State aid rules should **allow investment and operation aids to all phases of the hydrogen chain**. Also in this case **a technologically neutral approach is required**, which means that aids to low carbon hydrogen shall not vary according to the technology used for its production.

4. How to improve consistency of antitrust rules and Green Deal

Paragraph 2 above also included examples of cases in which the implementation of Green Deal related projects may require several forms of cooperation among different companies and, sometimes, even among competitors. The following paragraphs instead provide inputs with respect to other antitrust related questions raised in the Call for Contributions.

“Please explain the circumstances in which cooperation rather than competition between firms leads to greener outcomes (e.g. greener products or production processes)”

As a general remark, it is to be noted that, for as long as markets do not provide adequate incentives to private investments made for the R&D of greener products, such investments will not be able to generate viable solutions and effective competition will never rise in this field. Even though many public policy measures exist to stimulate greener industry outcomes (e.g. regulation, taxation and State aids), such instruments often take time to be defined and implemented. In addition, with specific reference to State aids, it is also noteworthy that, as President Ursula von der Leyen observed just a couple of months after the beginning of the Covid-19 crisis, *“each Member State has a different fiscal space - so the use of state aid is very different”* and *“what we start to observe now is an unlevelling of the playing field in our Single Market”*². Indeed, as a matter of fact, even the best shaped State aid framework would inevitably also entail a certain degree of market distortion, in favour of companies operating in Member States offering more generous aids.

In this context, where public support is not needed and/or is not yet adequately available, business led initiatives may be of great help to address climate related issues – which require immediate action – as businesses may sometimes effectively intervene sooner than public measures. At the same time,

² Speech to the European Parliament on 13 May 2020 (https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_877).

however, any business initiative in this field would be largely ineffective and completely at loss if it were to be adopted by few companies only. These companies would indeed face increased costs that could not be recouped as long as a sufficiently large number of users were not ready to voluntarily pay an adequate reward for their environmental efforts (the so called first mover disadvantage).

With respect to certain initiatives, cooperation among businesses is thus needed to timely and effectively tackle climate change. This is also true where such cooperation involves otherwise competing businesses. Indeed, in many cases, absent an initial cooperation among competitors, new markets would never develop, let alone competition would develop in these markets. Moreover, cooperation among competitors in this field should be assessed also taking into account that the impact of such cooperation on competition could be even less distortive than State aids, that are never granted in the same amount by all Member States.

“Should further clarifications and comfort be given on the characteristics of agreements that serve the objectives of the Green Deal without restricting competition? If so, in which form should such clarifications be given (general policy guidelines, case-by-case assessment, communication on enforcement priorities...)?”

Decades of severe antitrust enforcement made many companies scared of any kind of cooperation with competitors, even where such cooperation would not raise any appreciable effect on competition. This sometime results in businesses deciding not to engage in joint projects or to adopt over-cautious antitrust compliance approaches, which make projects slower, more costly and with a much more limited scope, without a solid antitrust reason for it.

In this context, **clarifications from the Commission on the extent to which competing companies may work together to achieve Green Deal objectives without breaching antitrust rules would be very welcomed.** Given the currently pending review of many Commission’s antitrust regulations and guidelines, the said clarifications could be provided by the revised versions of such documents, which should also include as many examples as possible of cooperative agreements aimed at the achievement of Green Deal objectives. In the await of the conclusion of the review procedure of the said regulations and guidelines and considering the need to urgently act against climate change, it would be particularly useful if the Commission could as soon as possible issue an *ad hoc* communication dedicated to business cooperation to achieve environmental benefits, as the one issued “for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak”³. This communication could indeed already send a strong message to foster businesses’ collaboration addressing climate change and to help change businesses’ perception that antitrust authorities would always view their collaborations in this field with suspicion, as potential disguised cartels.

The guidance sought should help clarifying, on the one hand, when cooperative projects with the purpose to achieve environmental benefits fall outside the scope of Article 101.1 TFEU (e.g. which kind

³ Communication from the Commission on a *Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak* (Official Journal C1161, 8 April 2020).

of information can be shared among competitors) and, on the other hand, when projects falling under Article 101.1 TFEU may be justified under Article 101.3 TFEU.

With respect to the application of Article 101.3 TFEU to agreements aimed at achieving environmental benefits, in line with the approach recently suggested by the Dutch competition authority⁴, the assessment to be carried out under such provision should **balance the harm caused to competition against the positive benefits that the agreements at stake would bring to society as a whole**, rather than just to users. This assessment should also **take into account medium/long-term benefits**, rather than only benefits occurring at the same time of anticompetitive effects. Moreover, the assessment shall **not only focus on monetary benefits**, as the protection of the environment is first of all a qualitative improvement that may often be difficult to quantify in monetary terms. Accordingly, environmental benefits should be assessed only qualitatively where they overall look *prima facie* capable of outweighing the harm caused to competition or when the combined market share of the parties involved is below a certain threshold. When defining such threshold, the Commission should also consider that usually environmental agreements are likely to effectively bring benefits to the environment only if a large number of market players are involved. Low market share thresholds would thus make environmental agreements meaningless.

The approach suggested above for the application of Article 101.3 TFEU to environmental cooperative agreements should also be followed when assessing vertical agreements that may have restrictive effects on competition while achieving environmental benefits (e.g. supply agreements of waste materials with exclusivity clauses) and/or cooperative agreements that bring environmental benefits even though they have a different aim (e.g. an agreement to share the logistic among competitors could be primarily thought to gain efficiencies, but at the same time it could also have significant spillover effects on the environment).

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⁴ Draft guidelines *Sustainability agreements – Opportunities within competition law* issued on 9 July 2020 (<https://www.acm.nl/sites/default/files/documents/2020-07/sustainability-agreements%5B1%5D.pdf>).