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## Workshop 2: ESG in the distribution and retail chain



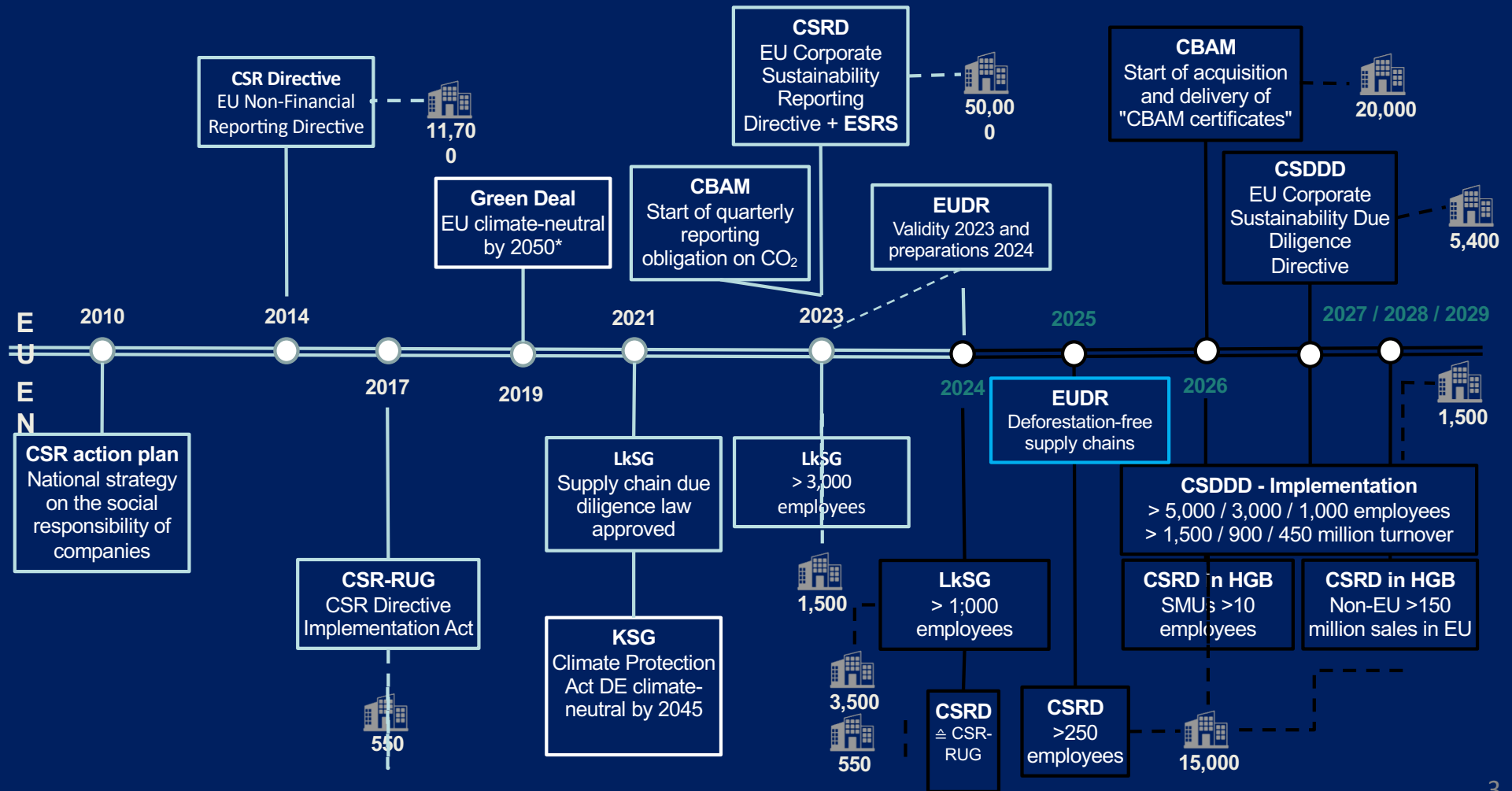
# **Working across the sector with (potential) competitors towards ESG**

## **Agenda**

- 1. ESG is on the rise**
- 2. Competition law framework**
  - 2.1 Verticals**
  - 2.2 Horizontals**
- 3. Examples**
- 4. Overall discussion**

# 1. ESG is on the rise – and so is regulation

ESG Regulations in the EU and Germany, focusing (only) on LkSG, CSDDD, CSRD (ESRS), EUDR, CBAM





International Distribution Institute

## 2. Competition law framework



WHO WE ARE

WHAT WE DO

COALITIONS & PROJECTS

EVENTS

RESOURCES

CONTACT

JOIN A COALITION

BECOME A MEMBER

### Our Vision : Better Lives Through Better Business

Our Mission : Bringing together consumer goods manufacturers and retailers in pursuit of business practices for efficiency and positive change across our industry benefiting shoppers, consumers and the world **without impeding competition.**



400

MEMBERS



70

COUNTRIES



4.6

TRILLION EUROS IN  
COMBINED SALES



1500

EXECUTIVES INVOLVED



by each part of the flexible packaging value chain

CEFLEX

## 2.1 Verticals

***How to achieve ESG compliance in a vertical relationship?***

1. Selective Distribution
2. Franchise
3. Exclusive Distribution



## 2.2 Horizontals

### ***Revised Guidelines on horizontal cooperation agreements***

- The Guidelines provide general guidance on the competition law assessment of agreements between competitors that pursue sustainable development objectives.
- The notion of sustainability objectives includes, but is not limited to, addressing climate change (for instance through the reduction of greenhouse gas emissions), reducing pollution, limiting the use of natural resources, upholding human rights, ensuring a living income, fostering resilient infrastructure and innovation, reducing food waste, facilitating a shift to healthy and nutritious food, ensuring animal welfare, etc.
- Sustainability agreements are defined as “*any horizontal cooperation agreement that pursues a sustainability objective, irrespective of the form of the cooperation*”.

## 2.2 Horizontals

### *Revised Guidelines on horizontal cooperation agreements*

- Horizontal cooperation agreements that restrict competition cannot escape prohibition simply by referring to a sustainability objective.
- Sustainability agreements between competitors that do not negatively affect parameters of competition such as price, quantity, quality, customer choice, or innovation, do not raise antitrust concerns.
- The Guidelines give examples of agreements that are unlikely to raise concerns, for instance:
  - agreements that concern the internal conduct of undertakings rather than their market activity;
  - agreements relating to the organization of industry-wide awareness campaigns or campaigns raising customers' awareness.
- Sustainability standardization agreements are specifically addressed.

## 2.2 Horizontals

### *French Competition Authority and sustainability*

- On 27 May 2024, the FCA published a notice providing a framework for the provision of information guidance to companies with questions on the compatibility of their sustainability projects with competition rules.
- Self-assessment of the competitive risk of the projects is the first step: requests for informal guidance may only be made afterwards, if questions are unanswered.
- The notice outlines the conditions under which undertakings may submit a request to the General Rapporteur, in terms of the nature of the project and the supporting information to be provided. Practical information on how to contact the FCA is also provided.
- An informal guidance letter can be issued by the General Rapporteur with regards to the status of the project and its possible implementation and, where applicable, in the event of any subsequent proceedings before the Board of the FCA



## 2.2 Horizontals

### ***Dutch Competition Authority (ACM) and sustainability***

- ACM launched as first competition authority in Europe new rules on sustainability agreements between businesses (even before European Commission).
- On 4 October 2023, ACM published **the *Policy rule ACM's oversight on sustainability agreements***. The policy rule follows the approach to sustainability agreements that the European Commission explains in its Guidelines horizontal cooperation agreements.
- The policy rule also explains that ***ACM will not take enforcement action in two situations:***
  1. Businesses can agree to comply with a binding national or European sustainability rule that is not (or cannot be) fully implemented or enforced – e.g, in the area of waste recycling; and
  2. Businesses can agree to efficiently achieve environmental goals, such as reduction of CO2 emissions, if the consumer receives an appreciable and objective part of the benefits.
- The policy rule explains how businesses can contact ACM if they have questions about sustainability collaborations, the process of informal guidance by ACM and what information businesses will need to submit for such informal guidance. The policy rule also (further) explains **under what circumstances ACM will not impose fines.**

### 3. Examples



Shell/Total Energy  
CO2 Storage (NL)



Due Diligence  
Information Sharing



Waste Collectors  
(NL)

#### 4. Sharing and discussing practical insights

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Should competition laws / authorities ***provide more flexibility for cooperation?***

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Is ESG collaboration ***just a marketing strategy*** – or will it benefit consumers?

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A ***business*** point of view?



**Thank you!**

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