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European Union Taxonomy—Can It Be an Effective Instrument for Legal Protection of Investors Against Greenwashing?

Abstract: The article addresses legal issues related to Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088. The regulation is analysed in the context of greenwashing with a view to determining whether it can be an effective legal protection instrument for investors in the financial products market. The provisions of the Regulation are analysed from a legal-dogmatic perspective, according to linguistic, functional and systemic interpretation, without skipping social and economic aspects. The text discusses greenwashing itself and its legal qualification under Polish and EU law. It also compares the legal situation of consumers and investors, focusing on the scope of legal protection that both groups could benefit from in the event of suffering damage.

Keywords: taxonomy, sustainable investments, greenwashing, stakeholders, financial market

Introduction

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020¹ establishes a framework to facilitate sustainable investment. In its context, greenwashing should be considered first and foremost by referring to the formal circle of addressees of the Regulation—entities of the financial market.

However, it is also worth considering the informal addresses scope of the Regulation. As the taxonomic requirements are applied by financial institutions, some entities not covered by the Regulation, wishing to obtain financing for their investments, may also start to voluntarily apply the taxonomic classification.² This would involve obtaining financing on preferential terms, such as lower interest rates on loans. With this in mind, it is also possible to consider whether the attempt to reduce greenwashing has the potential to have an impact on a wider scale, beyond financial institutions.³

A broader perspective on the framing of this problem is important for two reasons. Firstly, it allows the legal protection of consumers and investors against

¹ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, pp. 13–43), hereinafter: the Regulation, Taxonomy or Taxonomy Regulation.

² Marleen Och, *The Taxonomy Regulation and the Prevention of Greenwashing* (Jean Monnet Centre of Excellence on Sustainable Finance and Law, 2024), 6.

³ Och, *The Taxonomy Regulation and the Prevention of Greenwashing*, 6.

the effects of greenwashing to be contrasted. Thus, the legal protection instruments available to both groups can be compared. In addition, when analysing the situation of investors in the financial market, one cannot ignore the consumer protection acquis, which can also be drawn upon when shaping the legal situation of investors.

Secondly, the Taxonomy itself has the potential to have an impact on minimising the negative effects of greenwashing in industries other than just financial. For this reason, it is also necessary to consider the impact of the Taxonomy on improving the legal position not only of investors, but also of consumers. Although the Taxonomy imposes public disclosure obligations on financial market operators and Member States, other businesses wishing to demonstrate the sustainability of their operations can also act in accordance with its provisions.⁴

This article has been developed using the legal-dogmatic method, taking into account linguistic, functional and systemic interpretation, as well as socio-economic context. It is also important to verify whether the provisions of Taxonomy are likely to have an impact on the market and in what way, and therefore it is necessary to take the sociological impact of the law into account.

The conclusions of this study are relevant in view of the prevalence of greenwashing and the potentially existing loopholes in the legal system for investor protection from greenwashing in the financial market. The aim of the study is to broaden the legal perspective of the impact of greenwashing beyond consumers to investors and to add to the emerging literature on this subject.

Although there are some legal doubts as to the range of entities qualifying as consumers, also in the context of a possible extension of consumer protection to retail investors, the issue of such qualification is not the subject of this article. For the purposes of this analysis, based on the applicable legal provisions, the concept of a consumer and an individual investor as a client of a financial institution should be separated.

This paper describes the framework from the perspective of an investor using investing products, i.e. an individual investor who makes their own investment decisions based on the information provided to them by issuers. However, individual investors can use a number of different investment products, such as stocks, mutual funds or ETFs.

1. Greenwashing Phenomenon

Greenwashing is a marketing effort to create the perception in the minds of consumers that a product or service is green.⁵ The actual environmental impact of the

⁴ Och, *The Taxonomy Regulation and the Prevention of Greenwashing*, 7.

⁵ Zuzanna Ochońska, "Ochrona konsumentów w branży mody," *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Prawa Własności Intelektualnej*, no. 3 (2021): 161.

product remains irrelevant, and the viewer only receives a message that they are dealing with a ‘green,’ ‘ecological’ or ‘environmentally sustainable’ product.

Greenwashing can take the form of direct lying or misrepresentation in relation to the manufacturing process of a product or the materials from which it is made.⁶ For example, the recipient may receive false information that the product is made from recycled materials or that the local ecosystem or its animals were not harmed during the production process.⁷

In the context of the financial market, misleading information may refer to the untruthful composition of an investment portfolio or an investment fund that does not fund sustainable investments at all. In the context of the Regulation, information on an organisation’s human and labour rights compliance practices and corporate governance is also relevant. Therefore, transparency of information provided to investors is to be multi-faceted and sustainable.

Greenwashing mainly refers to environmental misstatements, but in this context, it is increasingly a matter of falsification of corporate governance and social factors (also called bluewashing). If companies fail to comply with financial law or prevent money laundering, they will also be fined for greenwashing.⁸

Greenwashing has grown in popularity as the demand for environmentally sustainable products has increased. This was primarily influenced by the tendency of consumers to pay more attention to important non-financial values.⁹ Consumers began to pay attention to products in line with respect for the environment and human rights.¹⁰

Green investments have also gained in importance, and investors are more likely to direct their capital into profitable as well as sustainable ventures. Capital from sustainable financial instruments already represents an incalculable value on the capital markets in Poland and worldwide, and investors are also showing interest in instruments with a low climate risk that provide sustainable, long-term returns.¹¹ An investment strategy based on long-term investment in sustainable financial instruments appears to investors as low-risk. However, a prerequisite for such an investment to yield a stable return is the reliability of the information provided with regard to sustainability.

⁶ Ochońska, “Ochrona konsumentów w branży mody,” 161.

⁷ Célia Santos et al., “A Systematic Literature Review on Greenwashing and Its Relationship to Stakeholders: State of Art and Future Research Agenda,” *Management Review Quarterly* 74, 2024: 1398, <https://doi.org/10.1007/s11301-023-00337-5>.

⁸ “Deutsche Bank-Owned Asset Manager DWS Fined \$27 Million for Greenwashing,” Reuters, published 2 April 2025, <https://www.reuters.com/sustainability/german-asset-manager-dws-fined-25-mln-eur-greenwashing-case-2025-04-02/>.

⁹ Santos et al., “A Systematic Literature Review on Greenwashing and Its Relationship to Stakeholders,” 1398.

¹⁰ Magdalena Mikołajek-Gocejna, *Europejski rynek inwestycji społecznie odpowiedzialnych: perspektywa rynku kapitałowego* (Oficyna Wydawnicza SGH, 2021), 11.

¹¹ Katarzyna Szwarz and Stanisław Stefaniak, *Klimatyczne wyzwania na rynku finansowym w Polsce* (Instrat Foundation, 2020), 63.

2. Negative Effects of Greenwashing

The biggest risk to the consumer from greenwashing is that he or she will be misled and support unreliable traders. For the consumer, therefore, it is primarily moral damage. However, greenwashing can also be considered through the prism of adverse disposal of consumer resources. A disproportionately high price usually has to be paid for falsely green products and consumers are statistically willing to accept a higher price in return for the product being in line with their world view.¹² However, receiving an unethical product, at an inflated price, can be seen as damage to the consumer's property.

However, the immediacy of this harm is minimised due to the fact that the consumer is the final recipient of the product in the supply chain. Nonetheless, consumers are given special protection in the market: the legislation ensures that they are protected from greenwashing and can seek redress if they suffer damage. In the case of investment in a negatively impacting activity, this harm already directly impacts the investor and the capital that could have been invested in a socially responsible activity. Investing capital in a product that is not environmentally responsible has an impact on the exploitation of the environment and human resources, potentially at all stages of the value chain. Furthermore, the relationship of the investor with the financial institution is more direct than that of the consumer with the entrepreneur. Investors also bear the risk associated with changes in capital market trends, which, in the case of climate risk, can change dynamically. The fact that greenwashing is disclosed may also initiate a downward trend in the instrument concerned.¹³

The risks posed by greenwashing are therefore multifaceted. Greenwashing threatens the interests of consumers and investors and violates the principles of fair competition in the market.¹⁴ In the case of investment activities, which are themselves associated with risk taking, it appears to be an additional nuisance and a brake on the promotion of environmentally sustainable investments. In the context of EU climate policy, it should also be emphasised that greenwashing can have a negative impact on financing the green transition. Indeed, greenwashing provides a source of financing for investments based on low-carbon and environmentally friendly technologies. However, investor awareness of greenwashing practices may create an aversion towards green financial instruments and cause investors to abandon investing in this sector altogether.

Greenwashing is therefore unequivocally negative for the market and should be combated both through education and awareness-raising for all market participants,

¹² Mark Segal, "Consumers Willing to Pay 12% Premium for Sustainable Products: Bain Survey," ESG Today, published 14 November 2023, <https://www.esgtoday.com/consumers-willing-to-pay-12-premium-for-sustainable-products-bain-survey/>.

¹³ Santos et al., "A systematic Literature Review on Greenwashing and Its Relationship to Stakeholders," 1398.

¹⁴ Santos et al., "A Systematic Literature Review on Greenwashing and Its Relationship to Stakeholders," 1410.

but also by providing appropriate legal protection instruments. As greenwashing causes damage to both the environment and individuals, they should be able to seek redress under existing law.

3. Legal Context of Greenwashing

The problem of greenwashing has so far been most strongly regulated in competition and consumer protection law. This is due to the need to extend special legal protection to consumers to counterbalance their unequal position *vis-à-vis* companies. However, in the financial market, this problem has not yet been particularly recognised and nor have investors themselves been covered by such protection, with the legal position of investors *vis-à-vis* issuers also remaining unequal.

Moreover, for the investor, the only source of knowledge about a particular financial instrument is often the issuer itself, which can shape this information in any way it wishes. The supply chain for consumer products usually involves more actors, which also increases the chance of the consumer being able to independently verify information about the alleged environmental performance of a product. All it takes is for one of the actors in the supply chain to appear to be an unreliable supplier, which can already lead the consumer to suspect greenwashing.

It is only with the development of the concept of sustainable finance that attention has turned to ensuring that sustainability information provided to investors is transparent and subject to scrutiny by regulators. The regulation of sustainability disclosure in the Taxonomy is intended to serve this purpose. The Regulation is therefore an attempt to fill this regulatory gap and represents an important step towards extending legal protection to investors. This deserves attention especially in view of the fact that consumers enjoy relatively broad protection.

The fight against greenwashing on the Polish financial market is dealt with by the Komisja Nadzoru Finansowego (KNF, Financial Supervision Commission). It is therefore possible to distinguish at least two public authorities in Poland that deal with combating greenwashing—the Financial Supervision Commission and the Urząd Ochrony Konkurencji i Konsumentów (UOKiK, Office for the protection of Competition and Consumers).

However, it should be emphasised that there are few bodies in Poland dedicated to combating greenwashing, and for both the KNF and the UOKiK, this is only a minor part of their activities. The nature of actions taken by these authorities to combat greenwashing varies. Most investigations are undertaken by the UOKiK *ex officio*.¹⁵ Victims can notify the Office of a trader's unfair practices, although the

¹⁵ "Komunikat w sprawie działalności UOKiK w 2022 roku," UOKiK Archive, published 7 March 2023, https://archiwum.uokik.gov.pl/aktualnosci.php?news_id=19396.

percentage of cases initiated on the basis of a notification is significantly lower. This confirms the active role of the UOKiK in identifying and combating greenwashing on the consumer market.

Unlike the UOKiK, the KNF initiates its proceedings primarily on the basis of notifications coming from interested parties. Due to the fact that the KNF's actions are, as a rule, covered by professional confidentiality, in the case of a notification of irregularities, the notifying person will not receive a response to the information he or she has sent, nor will he or she receive a communication on how the commission uses the information. The proceedings are therefore less transparent than in the case of consumers. This has a negative impact on identifying possible damages and claims by investors.

There is also an arbitration court within the KNF that supports the resolution of disputes in the financial market. The KNF additionally supports consumers with its activities, for example, by providing Banking Consumer Arbitration services. An aggrieved person can also obtain free legal assistance from the Financial Ombudsman. Thus, within the framework of financial supervision, the KNF ensures that consumers can pursue their claims. However, the above-mentioned institutions are not directed at the legal protection of investors in the financial market.

Nevertheless, KNF independently monitors and detects manipulation or greenwashing. The KNF undertakes appropriate verification activities, such as requesting additional explanations or providing evidence supporting the disclosures in the reports,¹⁶ and in case of a crime being suspected, it may file a notice to law enforcement organs. The KNF also stresses the importance of including climate risks in financial reports.¹⁷ Supervisors can verify issuers disclosed commitments to climate targets to prevent the occurrence of greenwashing.

Under EU law, consumers are comprehensively protected from greenwashing. The most important EU document shaping the legal situation for consumers is the new 2020 Consumer Agenda. The programme identifies five key areas of the internal market that require action, including green transformation, redressability and enforcement of consumer rights.¹⁸ It is pointed out that providing consumers with better protection against greenwashing and premature obsolescence of products will strengthen their role in the process of developing a sustainable economy.¹⁹ However, it should be noted that the role of investors in the green transition is equally important, however, this is not enough to provide similar protection to this group.

¹⁶ "Europejskie wspólne priorytety nadzorcze w odniesieniu do rocznych raportów finansowych za rok 2022," Komisja Nadzoru Finansowego, last modified 17 October 2025, https://www.knf.gov.pl/dla_rynku/regulacje_i_praktyka/dokumentyESMA.

¹⁷ "Europejskie wspólne priorytety nadzorcze w odniesieniu do rocznych raportów finansowych za rok 2022."

¹⁸ Communication from the Commission to the European Parliament and the Council, "New Consumer Agenda Strengthening Consumer Resilience for Sustainable Recovery," Brussels, 2020, 1.

¹⁹ "New Consumer Agenda Strengthening Consumer Resilience for Sustainable Recovery," 12.

Consumers are protected by such legal measures as the Directive on unfair business-to-consumer commercial practices. EU rules provide consumers with a right to proportionate and effective remedies, in particular, to compensation or a price reduction or the possibility to terminate the contract with the trader.²⁰ They therefore provide the basis for claiming liability for damages for greenwashing practices.

Greenwashing in Poland is considered unlawful under the Act on Combating Unfair Competition, as an act of unfair competition.²¹ Indeed, greenwashing consists of disseminating false or misleading news about one's business for the purpose of gaining an advantage, which fulfils the statutory definition of this tort.²² Importantly, businesses are not required to provide information that is completely false about the environmental aspects of their business for their action to be deemed unlawful. It is sufficient for it to be partially incomplete, untrue, manipulated or made available in such a way as to be intentionally misleading. The information made available by traders may relate to the persons in charge of the enterprise, the products or services manufactured, the prices charged, or the economic or legal situation.²³

Particularly relevant in the environmental context is the fact that the use of false attestations, unreliable test results or information on distinctions or labels for products or services, also fulfils the elements of a tort.²⁴ Thus, within the consumer market, the legal qualification of greenwashing is unambiguous and such practices are considered incompatible with EU and Polish law. The Taxonomy, by setting out obligations to ensure transparency in product certification and labelling, also attempts to combat greenwashing. It extends its scope to the financial market, filling a hitherto existing gap in the law.

Although greenwashing practices undertaken on the consumer and financial markets are, in essence, no different, investors cannot expect protection similar to that of consumers, and financial supervisory institutions in Poland do not specialise in combating greenwashing. The disproportion regarding the regulation of greenwashing is therefore apparent, even taking into account the different nature of the activities undertaken by investors and consumers.

The main manifestation of greenwashing of financial instruments in the Taxonomy's concept—the use of inconsistent, misleading labels and certificates intended to confirm the environmental performance of products—if it referred to consumers, would also be qualified as a prohibited act under Polish legislation.

²⁰ "Nieuczciwe praktyki handlowe," Your Europe, https://europa.eu/youreurope/citizens/consumers/unfair-treatment/unfair-commercial-practices/index_pl.htm, accessed 27 March 2025.

²¹ Ochońska, "Ochrona konsumentów w branży mody," 162.

²² Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji (consolidated text Journal of Laws of 2022, item 1233 as amended).

²³ Ustawa z dnia 16 kwietnia 1993 r. o zwalczaniu nieuczciwej konkurencji (consolidated text Journal of Laws of 2022, item 1233 as amended).

²⁴ Igor B. Nestoruk, "Marketing ekologiczny w prawie polskim—przegląd regulacji," *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Prawa Własności Intelektualnej*, no. 3 (2011): 156.

Therefore, it is worth emphasizing the relevance of the Taxonomy regulation, in the context of addressing this problem. The overarching goal of the Regulation is to eliminate situations in which an entrepreneur would use false data. Restricting similar practices would be valuable not only for the investors themselves, but also for the green transition process, by increasing capital flows to sustainable investments.

4. Legal Qualification of Greenwashing Under the Provisions of the Taxonomy

The standards regulated by the Regulation are of a public law nature. While it is businesses that are required to implement and adhere to the classification of the Taxonomy, member states and the EU itself are addressees of certain provisions of the Regulation.²⁵ The competent authorities of the states and the EU use the Taxonomy system to determine whether a business qualifies as environmentally sustainable, in any new labelling schemes for financial products or corporate bonds labelled as sustainable.

Competent authorities should therefore apply their authority to all measures regarding the systematics of sustainable activities. When creating any new designation of a product or service as environmentally sustainable, EU and EU countries must create it in accordance with the taxonomy classification. The obligation of member states to use uniform indicators of environmentally sustainable activities is an expression of strong regulatory harmonization and is intended to prevent fragmentation of rules operating within the internal market.²⁶ However, not all member states agree with the taxonomy classification, which has even led to judicial conflicts at the EU level.²⁷ The conflicts mainly concern the recognition of gas and atom as sustainable energy sources.²⁸

Fragmentation of regulations in this area, potentially progressing in the future, could lead to damage to investors' interests. Differentiating the systematics of sustainable activities, would significantly hinder the undertaking of environmentally friendly investments.²⁹ It would also translate into an insufficiently transparent information policy towards investors. It would also be easier to mislead investors or manipulate certain non-financial information.

²⁵ Och, *The Taxonomy Regulation and the Prevention of Greenwashing*, 3.

²⁶ Radosław Maruszkin et al., *Taksonomia: komentarz do rozporządzenia 2020/852 w sprawie ustanowienia ram ułatwiających zrównoważone inwestycje* (C.H. Beck, 2022), 34.

²⁷ Action brought on 7 October 2022—*Austria v. Commission* (Case T-625/22) (OJ C 24, 23.1.2023, pp. 43–45).

²⁸ Rafał Bujalski, *UE będzie wspierać inwestycje w atom i gaz* (LEX/el., 2022).

²⁹ Och, *The Taxonomy Regulation and the Prevention of Greenwashing*, 3.

Entrusting competent state authorities, under the provisions of the Regulation, with the supervision of information obligations of entrepreneurs is a way to increase investor awareness and legal protection, while at the same time securing financing for the green transition from private sector funds. Supervisors have the duty to verify and control the information provided to investors by issuers.

Greenwashing, as a problem requiring public regulation, is addressed in Article 4 of the Regulation. While standards for transparency of pre-contractual information made available by businesses and in periodic reports are regulated in other provisions of the Regulation, Article 4 sets out the competence of Member States and the EU to create a taxonomy-based qualification of business activities as environmentally sustainable.

This is a key instrument needed to ensure uniform regulations aimed at qualifying and reducing greenwashing in the financial market sector. The commitment of countries to a uniform classification system is intended to allow investors to safely undertake sustainable investments while minimizing the risk of greenwashing.³⁰ In addition, ensuring public oversight of the information made available to investors in progress reports and before entering into a contract with an investor can be an effective way to control greenwashing.

Requiring member states to transpose the taxonomy's systematics into national labelling or certification systems significantly reduces the risk of entrepreneurs using unreliable green credentials. An important question, however, remains how broad the scope of information disclosed by entrepreneurs will be, and whether it will actually coincide with the requirements of the Taxonomy.

Additionally, the ability to verify the authenticity of information presented to investors may prove to be problematic. This is likely to be the most important function of regulators and auditors, given that investors have limited ability to confirm all information presented to them. Investors may also find it difficult to verify information, especially if sustainability reports do not reference the necessary source documents.³¹ Auditors will continue to attest ESG reports under the rigor of limited liability for another two years. National sustainability attestation standards are being created for the first time and will probably be refined over time, with the auditors likely taking their first attestation applications in 2025.³²

In the event of possible non-compliance with the Taxonomy, financial market regulators are also competent to impose sanctions on traders. However, as a result of the above, supervisors and auditors themselves first need to learn how to practically confirm the information provided by traders in order to be able to effectively apply

³⁰ Maruszkin et al., *Taksonomia*, 35.

³¹ Och, *The Taxonomy Regulation and the Prevention of Greenwashing*, 12.

³² Ustawa z dnia 11 maja 2017 r. o biegłych rewidentach, firmach audytorskich oraz nadzorze publicznym (consolidated text Journal of Laws of 2024, item 1035 as amended).

sanctions for violations, in particular, regarding the disclosure of information that is only partially true or manipulated, qualifying as greenwashing.

Thus, the above comments reveal a certain weakness of the Regulation's provisions. The issues of creating a unified systematics and paying attention to the issue of legal protection of investors in the financial market, were comprehensively addressed in the Taxonomy. However, despite the fact that member states and businesses have been obliged to comply with specific standards, supervisors and auditors may not be equipped at the outset with adequate tools to verify information relating to sustainability.

The preamble, as well as the legal provisions of the Regulation, indicate that greenwashing is the most important problem addressed by the Taxonomy.³³ However, this does not change the fact that simply designating public oversight of the information in question may not be sufficient to address it. Consequently, the actual level of investor protection against greenwashing across EU member states, may vary.

5. Issuers' Liability for Damages in the Context of Greenwashing

It is also important to consider the position of investors in light of the provisions of the Regulation itself. By designating public-law obligations, the Taxonomy also shapes the relationship between investors and entrepreneurs, thus penetrating the realm of private law. The provisions of the Regulation directly affect what information will go to investors and what quality that information will be.

Investor protection under the Regulation is based on the assumption that the Taxonomy will be uniform for the entire internal market. The Regulation also sets identical standards of protection for all member states, imposing the same obligations on supervisory authorities. However, it should not be overlooked that in each country the supervisory authorities may shape their policies differently. In particular, the authorities' powers or the level of education and awareness of individual investors may differ. It is therefore possible that the Taxonomy will prove insufficient for some countries to provide investors with adequate protection. An adequate level of investor protection can only be ensured in countries with a developed financial market.

Ultimately, a country's legal system is shaped in such a way that the law is as convenient as possible for the interests of the party currently in power.³⁴ Importantly, it is most often in the interests of the political parties in power to make relatively uncontroversial decisions and changes, which can make the implementation of

³³ Och, *The Taxonomy Regulation and the Prevention of Greenwashing*, 1.

³⁴ Zygmunt Ziemiński, *Problemy podstawowe prawoznawstwa* (Państwowe Wydawnictwo Naukowe, 1980), 23.

Taxonomy and ESG-related legislation more difficult. We already witnessed the first wave of withdrawal from sustainability reporting this year, with the proposals included by the European Commission in the Omnibus I package.³⁵

It is also necessary to consider whether investors have the possibility of pursuing their claims on the basis of issuers' liability for damages at all. This is because there is no doubt that an investor acting under the influence of greenwashing and failing to receive adequate information about a financial instrument may suffer damages. If an investor decides to invest in environmentally sustainable instruments and the issuer fails to fulfil its obligations, this will constitute a violation of the Regulation.

It would seem, therefore, that in addition to sanctions from supervisory authorities, issuers could be liable under Articles 415 et seq. of the Polish Civil Code. However, in practice, demonstrating an adequate causal link between the violation of disclosure obligations and the investor's damage could be a significant impediment to pursuing claims.³⁶ This is because an investor would have to show that if the issuer had properly performed its disclosure obligations, the investor would not have made a risky investment decision. However, information relating to sustainability is general information and does not bear the hallmarks of a recommendation to a specific investor. Therefore, as a rule, such information should not be the primary and decisive factor in making a particular investment.

As mentioned earlier, it can be difficult for individual investors to verify the information presented by issuers. Investors often show too much trust in intermediaries, thereby failing to assess the risks associated with certain financial instruments.³⁷ For this reason, the vast amount of information pertaining to sustainability can constitute an additional factor creating uncertainty for the investor and may result in a hasty or risky investment decision. Under such conditions, investors may be particularly susceptible to greenwashing.

Consideration should also be given to whether investors could benefit from the protection against market manipulation provided by EU law.³⁸ Although the Market Abuse Regulation sets out a list of circumstances that may constitute manipulation, though not an exhaustive one, it is difficult to find greenwashing-re-

³⁵ Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements, Brussels, 26.2.2025, COM/2025/80 final.

³⁶ Tomasz Sójka et al., *Cywilnoprawna ochrona inwestorów korzystających z usług maklerskich na rynku kapitałowym* (Wolters Kluwer Polska, 2016), 99.

³⁷ Tomasz Sójka et al., *Cywilnoprawna ochrona inwestorów korzystających z usług maklerskich na rynku kapitałowym*, 99.

³⁸ Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, pp. 1–61).

lated phenomena there. Indeed, protection is provided against manipulation that is strictly related to the trading of financial instruments or the dissemination of information that is intended to facilitate the manipulation of asset prices. Greenwashing, on the other hand, should be considered more broadly, since a strategy based on it may also have long-term objectives, rather than short-term price fluctuations or share buybacks.

A distinction must also be made here between an investor using a brokerage service and one merely purchasing investment products. Although it is common to use brokerage services, not every investor wants to do so or trusts them. Even though an investor may use brokerage services, it is still the issuer that is held accountable for its legal obligations on delivering information to investors. The issue of the unreliability or unverifiability of data published as a part of the taxonomy reporting is not a matter of brokerage services, but issuer liability.

Not every investor will decide on brokerage services; after all, these also do not give full assurance of the success of the investment and do not fully reduce the investment risk. The financial market is only to a certain extent guided by technical analyses or trends, but is also driven by emotions, both of the investors themselves and the whole public mood caused by the current socio-economic context and unexpected events, including armed conflicts, impulsive political decisions, or volatile behaviour from the commodities market or currencies.

Investors may be particularly susceptible to aggressive marketing policies pursued by issuers of financial instruments. The practice of supervisory inspections will also assess whether the information provided by traders will be truly verifiable and objective. Indeed, entrepreneurs may engage in mere formalistic compliance with sustainability reporting, or may be more eager to incur financial sanctions than to comprehensively prepare such reports.

Disclosure obligations are intended as an instrument to protect investors in an unequal relationship with the issuer. It is also the only form of legal protection provided to investors under the Regulation. The entrepreneur's communications should be shaped in such a way as to prevent the exploitation of the unequal position in the market of these entities through the use of unethical promotional activities³⁹ such as greenwashing. Under the provisions of the Regulation, such protection is provided to investors both at the pre-contractual stage and at the time when the issuer is already providing brokerage services to the investor. In contrast, the possibility of asserting investor claims on the grounds of issuer liability for damages, in practice, may be extremely difficult or impossible to achieve.

³⁹ Tomasz Sójka et al., *Cywilnoprawna ochrona inwestorów korzystających z usług maklerskich na rynku kapitałowym*, 106.

Summary

In conclusion, it should be said that information obligations may have only limited effectiveness in protecting individual investors. Among the abundance of information about financial instruments, non-professional investors may not be able to select information that is key to assessing the risk of a particular investment. At the same time, however, the risks faced by investors are higher than those faced by consumers.

Investor protection in the financial market is therefore limited in nature and effectiveness. Although the provisions of the Taxonomy provide a certain standard of investor protection under disclosure obligations, they may be insufficient for effective enforcement of investors' claims. Also noteworthy is the disparity in the legal protection of investors and consumers from the risks arising from greenwashing. Comparing the potential losses and risks taken, the scope of protection and redress mechanisms is clearly disproportionate for both groups.

However, financial market regulators possess the tools to enforce greenwashing, and the fines imposed on companies for such practices are increasing. It is not only the taxonomic disclosures that are subject to supervisory review, but also the indicated risks and climate targets. Investors also have other legal mechanisms for their protection besides the corporate social responsibility or taxonomic regulations. Yet a more serious approach to sustainability at the EU and national level is a trend that is conducive to building broader legal protection for investors in the financial market against greenwashing and manipulation.

BIBLIOGRAPHY

- Bujalski, Rafał. *UE będzie wspierać inwestycje w atom i gaz*. LEX/el., 2022.
- Dampere, Juan, Ebrahim Alamash, and Paulo Mattos. "Uneiliving the Truth: Greenwashing in Sustainable Finance." *Frontiers in Sustainability* 5 (2024): 1362051. <https://doi.org/10.3389/frsus.2024.1362051>.
- Maruszkin, Radosław, Jakub Bednarek, Magda Biernat-Kopczyńska, Tomasz Lasecki, and Tomasz Tamecki. *Taksonomia: komentarz do rozporządzenia 2020/852 w sprawie ustanowienia ram ułatwiających zrównoważone inwestycje*. Wydawnictwo C.H. Beck, 2022.
- Mikołajek-Gocejna, Magdalena. *Europejski rynek inwestycji społecznie odpowiedzialnych: perspektywa rynku kapitałowego*. Oficyna Wydawnicza SGH, 2021.
- Nestoruk, Igor B. „Marketing ekologiczny w prawie polskim—przegląd regulacji.” *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Prawa Własności Intelektualnej*, no. 3 (2011): 143–67.
- Och, Marleen. *The Taxonomy Regulation and the Prevention of Greenwashing*. Jean Monnet Centre of Excellence on Sustainable Finance and Law, 2024.
- Ochońska, Zuzanna. „Ochrona konsumentów w branży mody.” *Zeszyty Naukowe Uniwersytetu Jagiellońskiego. Prace z Prawa Własności Intelektualnej*, no. 3 (2021): 148–62.
- Santos, Célia, Arnaldo Coelho, and Alzira Marques. "A Systematic Literature Review on Greenwashing and Its Relationship to Stakeholders: State of Art and Future Research Agenda." *Management Review Quarterly* 74, 2024: 1398–421. <https://doi.org/10.1007/s11301-023-00337-5>.

- Sójka, Tomasz, Katarzyna Kłafkowska-Waśniowska, Maciej Mataczyński, and Rafał Sikorski. *Cywilnoprawna ochrona inwestorów korzystających z usług maklerskich na rynku kapitałowym*. Wolters Kluwer Polska, 2016.
- Szwarc, Katarzyna, and Stanisław Stefaniak. *Klimatyczne wyzwania na rynku finansowym w Polsce*. Instrat Foundation, 2020.
- Ziemiński, Zygmunt. *Problemy podstawowe prawoznawstwa*. Państwowe Wydawnictwo Naukowe, 1980.