

Research Article

LEGAL LIABILITY FOR GREENWASHING ACTIVITIES IN THE FINANCIAL SECTOR

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ABSTRACT

Background. This article analyses greenwashing as an evolving legal concept in the EU financial sector. While the topic is studied across disciplines, a legal-theoretical perspective is applied here, arguing that within the EU regulatory framework, greenwashing is primarily defined and developed through "soft law" instruments such as regulatory guidance, interpretative materials, and supervisory opinions, rather than consolidated in binding legal acts.

Methods. The research employs a legal-doctrinal approach supported by qualitative analysis combining linguistic, logical, and systematic interpretation of EU legislation with a review of supervisory authority reports, national laws, and selected court cases. This assessment is further complemented by academic and policy research.

Results and Conclusions. EU legal acts do not provide a consolidated definition of "greenwashing" that applies uniformly to all market participants and stakeholders. Given its open-ended nature, specific liability for greenwashing activities is not clearly established in the laws regulating

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financial market participants' activities, leaving uncertainty about what kind of liability may be imposed. The analysis concludes that key features for avoiding greenwashing include transparency, accountability, certainty, and clarity (reliability), and good governance by financial market participants. Liability may be imposed indirectly through other legal provisions, such as consumer protection, misleading advertising, or environmental law. Enforcement practice suggests that reputational risk often outweighs formal sanctions, with supervisory and law enforcement bodies assuming broader roles.

1 INTRODUCTION

Nowadays, everyone can express an opinion on terms such as "sustainability," "greenwashing," or "ecological," and other concepts closely related to environmental protection. The use of these terms has been associated with the Sustainable Development Goals (SDGs), introduced in the General Assembly Resolution and European Parliament Recommendations for the European Union's future integrated policy on climate change.¹ As a result, these terms are no longer novel in society and are widely used and analysed. However, not everyone can explain how they specifically relate to the financial sector.

The financial sector might be defined as one of the key factors influencing the implementation of the SDGs within European Union (EU) policies and mitigating the negative effects of climate change. It plays a critical role in financing the transition to greener projects and overcoming the so-called "green finance gap",² i.e., the lack of sufficient financial resources to be directed toward green investments. Moreover, public funds are insufficient; mobilising private capital could significantly boost sustainable investments, i.e., investments in green and sustainable projects, and help reduce the negative environmental changes.³ As outlined in the European Union Green Deal,⁴ the EU and its Member States should coordinate their support to engage with partners to bridge the funding gap by mobilising private finance.

- 1 UNGA Res 70/1 'Transforming our World: The 2030 Agenda for Sustainable Development' (25 September 2015) <<https://sdgs.un.org/2030agenda>> accessed 30 April 2025; European Parliament Res 2008/2105(INI) '2050: The Future Begins Today – Recommendations for the EU's Future Integrated Policy on Climate Change' (4 February 2009) <https://www.europarl.europa.eu/doceo/document/TA-6-2009-0042_EN.html> accessed 30 April 2025.
- 2 Paola D'Orazio and Lilit Popoyan, 'Fostering green investments and tackling climate-related financial risks: Which role for macroprudential policies?' (2019) 160 *Ecological Economics* 25. doi:10.1016/j.ecolecon.2019.01.029.
- 3 European Commission, Communication 'Next Steps for a Sustainable European Future: European Action for Sustainability' (COM(2016) 739 final, 22 November 2016) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016DC0739>> accessed 30 April 2025; European Commission, Communication 'The European Green Deal' (COM(2019) 640 final, 11 December 2019) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52019DC0640&qid=1759306008713>> accessed 30 April 2025.
- 4 European Commission, COM(2016) 739 final (n 3).

The regulation of sustainable activities by financial market participants⁵ in the EU started relatively recently. It is considered that in the finance sector, the first sources that introduced the considerable importance and meaning of sustainability and the term "greenwashing" were the Taxonomy Regulation,⁶ adopted in June 2020, and Regulation on Sustainability-Related Disclosures in the Financial Services Sector⁷ (SFDR), adopted in November 2019. When adopting these legal acts, the legislator included the greenwashing concept as an inseparable part of the sustainable activities of the financial market participant.

Despite the gradual development of regulatory frameworks, these frameworks are already in force and shall be respected. In practice, financial market participants face many questions regarding the (non)applicability of greenwashing: What constitutes greenwashing? Who is responsible for the supervision? What liability arises from greenwashing activities? This article analyses the concept of greenwashing from an EU legal perspective and identifies the legal consequences of non-compliance with the restriction on carrying out greenwashing acts.

The urgency of addressing greenwashing is supported by empirical evidence. For instance, the EU financial sector accounts for a higher share of the total alleged greenwashing cases reported by stakeholders on EU companies. In 2022, it represented 23% of the total alleged greenwashing cases involving EU companies, including 9% involving EU banks.⁸ Quantitative studies within the EU further show a clear rise in potential greenwashing cases across multiple industries, including the banking sector. ESMA has emphasised that greenwashing, whether intentional or inadvertent, has the potential to undermine trust in sustainable finance markets and policies, underscoring the necessity of enhanced supervisory oversight and verification of ESG claims.⁹

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- 5 In the context of this study, financial market participants are defined as financial market participants providing investment services.
 - 6 Regulation (EU) 2020/852 of the European Parliament and of the Council 'On the Establishment of a Framework to Facilitate Sustainable Investment, and amending Regulation (EU) 2019/2088' (18 June 2020) [2020] OJ L 198/13.
 - 7 Regulation (EU) 2019/2088 of the European Parliament and of the Council 'On Sustainability-Related Disclosures in the Financial Services Sector' (27 November 2019) [2019] J L 317/1.
 - 8 European Banking Authority (EBA), 'EBA Progress Report on Greenwashing Monitoring and Supervision' (EBA/REP/2023/16, 31 May 2023) 23 <https://www.eba.europa.eu/sites/default/files/document_library/Publications/Reports/2023/1055934/EBA%20progress%20report%20on%20greenwashing.pdf> accessed 30 April 2025.
 - 9 European Securities and Markets Authority (ESMA), 'Progress Report on Greenwashing: Response to the European Commission's request for input on "greenwashing risks and the supervision of sustainable finance policies"' (ESMA30-1668416927-2498, 31 May 2023) 12 <https://www.esma.europa.eu/sites/default/files/2023-06/ESMA30-1668416927-2498_Progress_Report_ESMA_response_to_COM_RfI_on_greenwashing_risks.pdf> accessed 30 April 2025.

It is considered that, since the greenwashing phenomenon is relatively new in the regulatory environment of the finance sector, the liability for performing greenwashing activities in the EU finance sector is not explicitly defined. Legal consequences may arise indirectly through other violations influenced by greenwashing acts. This article is important because there is limited legal analysis on enforcement measures for financial market participants in greenwashing. Such a situation arises as the regulation is relatively new, and there is limited experience on how to prevent such activities.

This research employs a legal-doctrinal research method, supported by qualitative analysis. It reviews EU legislation, reports and guidance from supervisory authorities, selected national laws and court cases, as well as academic and policy literature. The research question focuses on how liability for greenwashing arises when there is no stand-alone offence, and what practical steps could be taken to reduce regulatory fragmentation. Greenwashing is analysed as a broad concept encompassing all ESG factors—environmental, social, and governance.

2 METHODOLOGY

This research is based, *inter alia*, on the doctrinal legal method, along with systematic, logical, and linguistic analysis, and is supported by qualitative analysis. It reviews EU legislation, reports and guidance from supervisory authorities, selected national laws and court cases, as well as academic and policy literature. Such an approach suits an open-textured and evolving field, enabling both explanation of the current regulatory framework and noting areas where further clarification or convergence may be needed.

3 THE GREENWASHING AS A LEGAL CONCEPT

This research employs systematic, logical, and linguistic methods to select and review legal materials, enabling a qualitative evaluation of the greenwashing legal concept as a phenomenon in financial regulation from the perspective of legal theory. As expressed by Colaert, law and economics can be used to explain financial regulation (explanatory function), but also to evaluate whether such regulation is justified (evaluative function), or to assess whether additional, alternative, or even less regulation is necessary (normative function).¹⁰

One of the first legal acts to influence the activities of financial market participants was the Sustainable Finance Disclosure Regulation (SFDR). While the term "greenwashing" is not *expressis verbis* included in this document, a systematic analysis of its provisions and related

10 Veerle Colaert, 'The Changing Nature of Financial Regulation: Sustainable Finance as a New Policy Objective' (2022) 59(6) *Common Market Law Review* 1669. doi:10.54648/COLA2022115.

supplementing documents indicates the legislator's intent for financial market participants to avoid greenwashing practices. For instance, Article 13 of SFDR provides that financial market participants and financial advisers shall ensure that their marketing communications do not contradict the information disclosed under this Regulation, i.e., to disclose all information as determined by SFDR.

In June 2020, the SFDR was supplemented by the Taxonomy Regulation, which identified the term "greenwashing" *expressis verbis*. The term is defined in the preamble of the regulation as the practice of gaining an unfair competitive advantage by marketing a financial product as environmentally friendly when basic environmental standards have not been met.¹¹ The Taxonomy Regulation, together with the SFDR and accompanying legislation such as SFDR RTS,¹² aims to clarify the concepts of sustainable investment and sustainable, environmentally friendly activities. Provisions such as the principle of doing no significant harm," linked to specific sustainability indicators in the SFDR RTS, are designed to minimise the opportunity for possible greenwashing activities by financial market participants.

The rapidly evolving sustainable financial policy underscores the importance of identifying and regulating greenwashing for both markets and regulatory institutions. However, the introduction of the term in legal acts has sparked significant debate in society. As several authors note, the Taxonomy Regulation and the SFDR RTS place definitions of greenwashing in recitals, which are not formally binding but can inform purposive interpretation.¹³ Moreover, the initial focus of greenwashing definitions was primarily on environmental matters, leaving behind the other two spheres of sustainability¹⁴—governance and social aspects, equally important in the context of ESG.¹⁵ However, it should be noted that the legislator, responding to the emerging discourse on the value of each ESG principle, has recently incorporated the other ESG aspects—social and

11 Regulation (EU) 2020/852 (n 6) preamble (11).

12 European Commission Delegated Regulation (EU) 2022/1288 'Supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports' (6 April 2022) [2022] OJ L 196/1.

13 Tadas Zukas and Uwe Trafkowski, 'Sustainable Finance: The Regulatory Concept of Greenwashing under EU Law' (2022) 2 EuZ - Zeitschrift für Europarecht C14.

14 Chrysa Alexandraki, 'Sustainable Finance Law: The EU Paradigm and the Way Forward' (ORBilu-University of Luxembourg, 24 March 2021) 6 <<https://orbilu.uni.lu/handle/10993/46661>> accessed 30 April 2025.

15 Georg Kell, 'The Remarkable Rise of ESG' [2021, December 10] Forbes <<https://www.forbes.com/sites/georgkell/2018/07/11/the-remarkable-rise-of-esg/?sh=36e772f61695>> accessed 30 April 2025.

governance—in the applicable regulation.¹⁶ Such a set of events demonstrates that legislators and policymakers (in this case, policymakers focused on the EU's transition to a low-carbon economy under the European Green Deal) are responding to market changes and input from financial market participants, experts, and scientists.

Debates in legal discourse suggest that the term "greenwashing," as provided in the Taxonomy Regulation and other legal acts, may appear broad and vague, and is therefore, in some cases, interpreted broadly. Scientists and regulatory institutions aim to provide a precise definition of greenwashing and identify its key features—essentially, what constitutes such activity—so that financial market participants can identify and avoid possible greenwashing practices. This illustrates how the rule of law evolves: a legal norm cannot anticipate and regulate every possible scenario; rather, it should establish a framework, leaving its application to interpretation by institutions and scientists. At the intersection of normative interpretation, it is important to recognise that a higher norm cannot define the act of its application in all aspects. Some discretion must be preserved so that the overarching norm serves as a guiding framework, within which specific acts must operate. Even the most detailed orders leave room for judgment by the individual implementing them, as decisions often depend on external circumstances that the issuing authority could not fully foresee.¹⁷

Accordingly, while the Taxonomy Regulation does not provide a clear definition of greenwashing—and its scope may initially seem too narrow for certain aspects of financial service business regulation—regulatory institutions or courts may have the ability to provide a broader explanation of the greenwashing term adopted to the currently evolving financial market. Moreover, as sustainability regulation evolves, the concept of greenwashing has taken a more defined shape. It is increasingly understood as a practice in which sustainability-related statements, declarations, actions, or communications fail to clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or services, potentially misleading consumers, investors, or other market participants.¹⁸

At the early stage of the sustainability regulation in the finance sector, the focus of greenwashing was primarily on environmental aspects, marketing activities, and financial products. Today, regulators recognise that greenwashing can encompass all ESG factors, and its scope has expanded to cover not only individual financial products but also entities and the overall "sustainable investment value chain,"¹⁹ without distinguishing any particular activities. This paper focuses on the financial sector, where greenwashing may take many forms.

16 Directive (EU) 2022/2464 of the European Parliament and of the Council 'Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting' (14 December 2022) [2022] OJ L 322/15.

17 Hans Kelsen, *Pure Theory of Law* (University of California Press 2002) 278.

18 EBA (n 8) 9.

19 ESMA (n 9) 5.

Academic and policy literature has attempted to categorise greenwashing into typologies such as greenrinsing, greenlabelling, and greenlighting. However, applying these categories too strictly may unintentionally narrow the legal understanding of greenwashing. If authorities were to enforce regulation based solely on fixed categories, it could create legal loopholes for financial market participants to exploit and hinder regulators' ability to interpret sustainability misconduct dynamically. It is stated by European Securities and Markets Authority (ESMA), greenwashing may be defined in a number of ways, but it intuitively refers to market practices, both intentional and unintentional, whereby the publicly disclosed sustainability profile of an issuer and the characteristics and/or objectives of a financial instrument or a financial product either by action or omission do not properly reflect the underlying sustainability risks and impacts associated to that issuer, instrument or product.²⁰

This article does not attempt to propose a single binding definition. However, for the purposes of this research, greenwashing in the financial sector can be formally understood as a practice whereby sustainability-related statements, disclosures, or actions of a financial market participant do not accurately or fairly reflect the underlying sustainability profile of the entity, product, or service. This definition integrates elements from EU regulations and supervisory interpretations and is tailored to the legal analysis undertaken here. In a broader sense, the scope is not limited to environmental misrepresentations but extends across all ESG factors—environmental, social, and governance. Greenwashing is thus framed as a legally relevant but not yet fully consolidated category, with its contours shaped dynamically by regulators, courts, and market practice.

Legal scholars emphasise the explanatory and evaluative function of financial regulation, yet the literature is divided on whether current "soft law" approaches are adequate. Some view the lack of a binding definition as a necessary space for regulatory discretion and interpretative evolution, while others see it as creating grey areas and uncertainty for both regulators and market participants.

More broadly, greenwashing has not been formally adopted through binding legislation; it is expressed in the preamble of a regulation, in supporting documents, or otherwise in "soft law". As financial markets develop rapidly and greenwashing now extends beyond the activities of financial market participants, the concept has increasingly been examined in an interdisciplinary manner, encompassing political, financial and legal dimensions. Supervisory authorities' interpretations of greenwashing create mandatory compliance requirements within the financial sector, guiding participants to minimise potentially destructive behaviour.

20 European Securities and Markets Authority (ESMA), 'Sustainable Finance Roadmap 2022-2024' (ESMA30-379-1051, 10 February 2022) <https://www.esma.europa.eu/sites/default/files/library/esma30-379-1051_sustainable_finance_roadmap.pdf> accessed 30 April 2025.

Beyond the EU's regulatory approach, several international organisations are playing a growing role in addressing greenwashing on a global scale. The International Sustainability Standards Board (ISSB), established after COP26, seeks to unify ESG disclosure standards globally. The Glasgow Financial Alliance for Net Zero (GFANZ) brings together over 450 financial institutions across 45 countries committed to net-zero targets. The European Supervisory Authorities (ESAs) have contributed through joint progress reports on greenwashing in 2023. These organisations signal the move toward more harmonised, international ESG governance and underscore that greenwashing is now addressed not only as a regional but also as a global financial and legal challenge.

4 THE GREENWASHING PREVENTIVE MEASURES

Identifying greenwashing in the finance sector is generally more complex than in other business sectors. Greenwashing is habitually associated with marketing activities (in the European Parliament Resolution of 4 February 2009²¹ only reference to marketing materials is provided) where businesses create the impression of sustainability, environmental friendliness without substantiation. A classic non-financial example would be green-coloured cosmetics packaging, implying that a product is natural. Evidence of greenwashing in traditional sectors can be seen, heard, or otherwise identified,²² whereas in the financial sector, such conduct may not be immediately apparent. Greenwashing may only be identified later through audit results, annual reports, after systematic monitoring of the financial market participant or disclosed to regulatory institutions or publicly by a whistleblower, stakeholder or another person who notices possible signs of greenwashing.

A notable case in Germany²³ illustrates this complexity: following a whistleblower report, authorities investigated a financial market participant providing investment services. The greenwashing activity was suspected since the investment product's documents (prospectuses and others) presented incomplete information about the sustainable investment product. The funds of these investors were not directed to such sustainable activities. This case demonstrates that greenwashing in financial services is often not visible at first glance.

Greenwashing detection in the finance sector might be a complex procedure due to several reasons. Third-party ESG ratings can vary depending on methodology, and companies often provide self-reported data without concrete standardisation. For example, a bank may finance an offshore wind project that is marketed as a fully green project due to zero carbon

21 European Parliament Res 2008/2105(INI) (n 1).

22 Sebastião Vieira de Freitas Netto and others, 'Concepts and Forms of Greenwashing: A Systematic Review' (2020) 32 *Environmental Sciences Europe* 6-10. doi:10.1186/s12302-020-0300-3.

23 'Germany: Deutsche Bank Raided in "Greenwashing" Probe' (DW, 31 May 2022) <<https://www.dw.com/en/germany-deutsche-bank-raided-in-greenwashing-probe/a-61986810>> accessed 30 April 2025.

emissions, yet it might cause severe biodiversity loss in marine ecosystems (which in some cases might not even be considered). The question arises whether such a financial project would be qualified as greenwashing. This type of dilemma illustrates how financial market participants frequently lack the technical expertise to evaluate environmental or social impacts and must increasingly rely on external specialists: engineers, ecologists, ethicists and others, to navigate ESG trade-offs.

When considering the opinions of regulatory institutions and scientists, the following indicators of greenwashing behaviour are emphasised most: transparency, accountability, certainty, clarity (reliability), and good governance.

To assess the sustainable activities of financial market participants, first, such activities must be transparent. This requirement comes from the regulation itself. Both the SFDR and the Taxonomy Regulation clearly and unambiguously establish the legislator's requirements for transparency, including: a transparent and disclosed sustainability risk policy, transparent disclosure of information at the entity and product levels, transparent remuneration policies, and other related requirements. Transparency obliges financial market participants to disclose all information about their operations and products—ranging from contractual conditions of the financial product and investment policies to fees and taxes—so that clients (e.g., investors) can assess all possible investment risks and make informed investment decisions. Any deviation from this factor may constitute a greenwashing act and result in liability for the financial market participant.

As noted by the International Organization of Securities Commissions (IOSCO) in 2021 in the Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management, all of this, combined with a lack of commonly agreed-upon terminologies and investor education on sustainable products, has led to the risk of greenwashing and investor confusion. This may result in investors purchasing products that do not meet their expectations from a sustainability perspective which, over time, may lead to an undermining of investor confidence in this segment of the market.²⁴

Non-compliance with the principle of transparency can be illustrated by the following example of greenwashing: an asset manager makes public commitments to sustainability-related disclosure frameworks for positive media coverage but fails to comply with those frameworks on an ongoing basis.²⁵ As IOSCO points out, adherence to transparency principles provides investors with insight into how asset managers address sustainability in their risk management processes and may help investors and regulators assess whether

24 International Organization of Securities Commissions (IOSCO), *Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management: Final Report* (FR08/21, OICU-IOSCO 2021) 11 <<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD688.pdf>> accessed 30 April 2025.

25 ibid 14.

these practices support their sustainability-related claims and disclosures. This could help prevent greenwashing at the asset manager level.²⁶

The accountability preventive indicator follows the transparency requirement. Transparency can only be meaningful when the accountability of the financial market participant is ensured, i.e., a detailed and periodic presentation of information on the entity and product level is provided. This can be achieved through periodic reports.

However, to implement this requirement, there is at least one problematic area: financial market participants often self-select the ESG indicators they plan to adhere to and prepare their reports internally. This creates a grey area regarding objectivity and accuracy. This grey zone also creates space for greenwashing activities. For example, financial market participants, to attract more attention from investors, may present a slightly "polished" version of a report, omitting even minor deviations from stated investment strategies. As noted by IOSCO, periodic reporting requirements can help prevent greenwashing by reducing information asymmetries. A product with stated sustainability-related investment objectives may fail to follow those objectives in practice.²⁷ Therefore, in this case, as it is said, technology also plays a relevant and vital role: easier, more standardised data submission reduces errors, lowers costs, and improves the accuracy of information for supervisory authorities.

Certainty and clarity (reliability) as preventive indicators are distinguished from accountability, though they are closely related to accountability and transparency. Accountability is ineffective if the reported information is inaccurate or even falsified. Ensuring accountability involves establishing clear reference points, definitions and quantitative metrics at the outset. If the numbers are considered, any financial projection depends on the reference point taken and how one interprets the information (the numbers). Therefore, clear limits and reference numbers established in the initial stage would help ensure more transparent monitoring and reflection in periodic reports, thereby reducing areas for greenwashing.

From a legal perspective, certainty and clarity as preventive indicators can be analysed through the presentation of information in policies, pre-contractual documents, contracts, and marketing materials. Insufficient detailing in investment strategies, inadequate disclosure of fees, or even the non-disclosure of management voting procedures can all create conditions conducive to greenwashing.

For example, a product may be labelled "sustainable," yet its disclosure may state that ESG factors may be considered in the product's investment strategies, without any binding commitment.²⁸ Similarly, a product's marketing materials may indicate that the product

26 *ibid* 22.

27 *ibid* 50.

28 *ibid* 29.

uses corporate engagement, proxy voting, and shareholder proposals to achieve its socially responsible investment objectives, while its prospectus fails to disclose these methods in its investment strategy, and its proxy voting policy summary does not explain how proxy voting supports those objectives.²⁹

The authors also identify good governance as a preventive indicator against greenwashing. This involves systematic and deliberate efforts to prevent possible greenwashing acts in the company at the governance level, including unconscious activities as a human factor, through training, monitoring, and implementation of legal acts, monitoring activities of partners, and monitoring and analysing greenwashing activities on the market.³⁰

If the activities of financial market participants (or their products) are transparent—meaning that all necessary information is properly disclosed, clear, verifiable, and accessible to regulatory institutions and stakeholders—these serve as essential indicators of compliance with regulations designed to prevent greenwashing.

5 LEGAL LIABILITY FOR GREENWASHING ACTIVITIES

In its review, the ESMA³¹ provided a comprehensive analysis of greenwashing based on available practice and insights from financial market participants and other stakeholders. However, as ESMA itself points out, it is still difficult to identify the responsibility for greenwashing, since this term is not sufficiently disclosed, and many factors are important for its identification.³² Consequently, imposing sanctions for greenwashing is challenging, as liability must be clearly and precisely defined in legal acts.³³ For now, liability for greenwashing can only be applied indirectly—through existing provisions on other types of violations.

As with other forms of liability, it is necessary to assess whether the party acted with fault or with a conscious intention to act unlawfully. As expressed by Colaert and others, in identifying greenwashing, it is important to consider aspects such as intentionality, negligence, or the lack of robustness and appropriateness of due diligence efforts, which may, where relevant, constitute aggravating factors in the context of supervisory and enforcement actions.³⁴

29 *ibid* 31.

30 Michael Watson and Tom Nener, 'Greenwashing in the European Financial Services Sector' (*Pinsent Masons*, 7 July 2022) <<https://www.pinsentmasons.com/out-law/analysis/greenwashing-european-financial-services>> accessed 30 April 2025.

31 ESMA (n 9).

32 *ibid* 71.

33 Kelsen (n 17) 125.

34 Veerle Colaert and Florence De Houwer, 'Greenwashing' in the Financial Sector: A Critical Evaluation of the Current Legal Framework (Working Paper Series no 1, Jan Ronse Institute for Company and Financial Law 2025) 18. doi:10.2139/ssrn.5148813.

The principal legal acts determining sustainability requirements for financial market participants—such as the Taxonomy Regulation or the SFDR—do not prescribe concrete penalties for non-compliance with these provisions. Regulatory institutions guide the application of this regulation. The supervision for compliance with the set regulatory standards and non-compliance with greenwashing activities is under the scope of national institutions. However, there is no clear liability identified in national legal acts for performing the greenwashing act in the financial sector, and possible liability may arise from other legal acts that are not directly applicable to financial market participants.

For example, the Climate and Resilience Law adopted by the French Parliament in 2021 indirectly applies to greenwashing. It provides that the misrepresentation of “the scope of the advertiser's commitments, in particular concerning the environment, the nature, the process or the reason for the sale or the provision of services” may qualify as a misleading practice. Violation of such provisions is punishable by imprisonment of up to two years and a fine of EUR 300,000.³⁵

Therefore, in practice, a question arises: what is the specific liability for non-compliance with these legal acts and/or for the performance of greenwashing in the financial sector? Opinions on this vary. Some view such regulatory measures as a deterrent, while others regard them as an opportunity, where the possible benefit or gain may outweigh the cost of liability. Moreover, since liability provisions are often not directly applied to financial market participants, some actors may assume that such measures fall outside the scope of their operations.

Greenwashing practices may, however, be linked to several existing offences, depending on the jurisdiction. For example, misrepresenting the environmental characteristics of a financial product may amount to a misleading commercial practice under consumer protection law. False or incomplete disclosure of sustainability information may be considered fraudulent misrepresentation or violations of securities laws, particularly where price-sensitive sustainability claims mislead investors. When documents are intentionally altered to conceal unsustainable activities, this may amount to document falsification. Where greenwashing directly contributes to ecological damage, liability may also extend to environmental offences, including illegal pollution or non-compliance with emission standards. Administrative liability may also arise from breaches of financial supervision rules, such as non-compliance with information disclosure obligations—for which national regulators may impose fines, public warnings, or other restrictions that may adversely affect the reputation of the financial market participant.

35 Celine Bey and others, 'Greenwashing: Exploring the Risks of Misleading Environmental Marketing in China, Canada, France, Singapore and the UK' (Gowling WLG, 25 September 2023) <<https://gowlingwlg.com/en/insights-resources/articles/2023/the-regulation-of-greenwashing>> accessed 30 April 2025.

At the EU level, the primary institutions that should be responsible for detecting and enforcing compliance with greenwashing regulations include the ESMA, EBA, and EIOPA, as well as consumer protection agencies, competition councils, environmental inspectorates, and financial supervisory authorities of financial market participants, such as the Bank of Lithuania, Federal Financial Supervisory Authority in Germany (i.e., BAFIN) or Autorité des Marchés Financiers in France (i.e., AMF).

However, since the Taxonomy Regulation defines greenwashing as “marketing a financial product as environmentally friendly,” if consumer rights are violated or the rights of other market participants are violated, other institutions, such as the consumer rights protection service, may also initiate investigations. Although the proposed Green Claims Directive³⁶ explicitly excludes financial services, financial instruments, and financial products from its scope (Article 1), it could nonetheless serve as an interpretive reference or be applied indirectly by analogy in relevant cases. It is also worth noting that greenwashing activities may cause administrative or criminal liability for certain entities or individuals if such activities cause damage to nature.

Greenwashing regulation is expanding globally, with jurisdictions increasingly adopting binding measures to address misleading sustainability claims. In the United States, the Securities and Exchange Commission (SEC) established a Climate and ESG Task Force in 2021 to detect and sanction inaccurate ESG-related disclosures. Although the unit was dissolved in 2024, its functions were integrated into the agency’s broader enforcement framework.³⁷ In the United Kingdom, the Financial Conduct Authority (FCA) has proposed restrictions on the use of terms such as “sustainable” and “ESG” in investment product marketing.³⁸

Within the EU, the proposed Green Claims Directive remains pending, with negotiations suspended. If adopted, it would permit fines of up to 4% of annual turnover for false environmental claims, excluding financial products (Article 17(3)).³⁹ Moreover, in the context of greenwashing, investigations may not necessarily be initiated by the regulatory authorities supervising financial service providers, but rather by other competent law enforcement bodies, such as the police or environmental protection inspectorates.

36 European Commission, ‘Proposal for a Directive of the European Parliament and of the Council on Substantiation and Communication of Explicit Environmental Claims (Green Claims Directive)’ (COM/2023/166 final, 22 March 2023) <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:52023PC0166>> accessed 30 April 2025.

37 ‘SEC Announces Enforcement Task Force Focused on Climate and ESG Issues’ (*US Securities and Exchange Commission*, 4 March 2021) <<https://www.sec.gov/newsroom/press-releases/2021-42>> accessed 14 August 2025.

38 Financial Conduct Authority (FCA), ‘Consultation on Sustainability Disclosure Requirements (SDR) and Investment Labels’ (Consultation Paper CP22/20, October 2022) <<https://www.fca.org.uk/publication/consultation/cp22-20.pdf>> accessed 14 August 2025.

39 Green Claims Directive (n 36).

Recent enforcement trends illustrate this shift toward stronger accountability. In 2023, one of Germany's biggest investment companies received sanctions from the SEC (USD 19 million) and from prosecutors in Germany in 2025 (EUR 25 million) for misleading ESG disclosures.⁴⁰ Likewise, another leading global investment company faced SEC action for procedural failures in governance documents.⁴¹ These examples indicate a shift from voluntary ESG frameworks to enforceable obligations, often enforced under general consumer protection or anti-fraud provisions.

The form of liability applied depends on the institution initiating the investigation and the nature of the violation. Responsibility may rest with the financial market participant as a legal entity, or its shareholders/founders, or with employees responsible for making investment decisions. In some cases, even an employee who unintentionally commits a greenwashing act may be implicated. For example, in the famous Shell case, the company's shareholder sued its board of directors for failing to manage climate-related risks adequately.⁴²

Liability for greenwashing may vary from a certain percentage of the company's income to a personal fine for a natural person, punitive measure, or other sanctions. However, it is often the reputational damage that leads to the biggest losses. Once credibility is lost, likely, existing and potential investors will not risk transferring their funds to a financial market participant that fails to address sustainability risks or is perceived to abuse the market or sustainability-related claims.

Another prominent case is the Volkswagen case in 2015, in which the company was accused of falsifying nitrogen oxide and CO₂ emissions data for 11 million Volkswagen cars globally, including approximately 500,000 units in the United States.⁴³ The company's emissions were found to be up to 40 times above official estimates, concealing roughly one million tons of air and climate pollution. Following the scandal, the company's share price dropped by 22%⁴⁴ and continued to decline further, illustrating the devastating reputational and financial consequences of environmental misconduct.

40 Mark Segal, 'Deutsche Bank's DWS Fined \$27 Million for Greenwashing' (*ESG Today*, 2 April 2025) <<https://www.esgtoday.com/deutsche-banks-dws-fined-27-million-for-greenwashing/>> accessed 14 August 2025.

41 'SEC Charges Goldman Sachs Asset Management for Failing to Follow its Policies and Procedures Involving ESG Investments' (*US Securities and Exchange Commission*, 22 November 2022) <<https://www.sec.gov/newsroom/press-releases/2022-209>> accessed 14 August 2025.

42 Sam Meredith, 'Shell's Board of Directors Sued Over Climate Strategy in a First-Of-Its-Kind Lawsuit' (*CNBC*, 9 February 2023) <<https://www.cnn.com/2023/02/09/oil-shell-board-of-directors-sued-by-investors-over-climate-strategy.html>> accessed 30 April 2025.

43 Richard Matthews, 'Lessons Learned from Volkswagen's Epic Greenwash' (*Change Oracle*, 3 February 2016) <<https://changeoracle.com/2016/02/03/fallout-from-volkswagens-epic-greenwash/>> accessed 30 April 2025.

44 'Volkswagen AG Shares Drop 22% After Admitting it Cheated on Emission Tests' (*National Post*, 21 September 2015) <<https://financialpost.com/news/transportation/volkswagen-ag-shares-drop-22-after-admitting-it-cheated-on-emission-tests>> accessed on 30 April 2025.

Financial market participants may face even greater liability when affected clients seek compensation for losses due to greenwashing activities, including indirect losses, particularly where contractual provisions are insufficient to protect the firm's interests. Moreover, when such greenwashing acts cause damage to nature, the damage must be assessed and compensated accordingly by relevant specialists.

For instance, in 2021, the Department of Environmental Protection in Lithuania imposed a EUR 4,400 fine on a cardboard production company for an incident during which untreated sewage entered the Curonian Lagoon. At the same time, a criminal case was filed against the company's shareholder, board chairman, executive officer, and former executive officers for abuse, falsification, and disposal of documents and violations of environmental protection rules. In the same criminal case, the Department of Environmental Protection in Lithuania has submitted a civil lawsuit exceeding EUR 48 million to compensate for environmental damage.⁴⁵ Nevertheless, the imposed penalty for environmental pollution, a civil lawsuit, and impending criminal liability during the incident resulted in the company's shares dropping by 30%.⁴⁶

Assessing whether greenwashing has occurred often depends on the subjective opinion of regulatory institution representatives. The application of liability to financial market participants depends on many factors, including the qualifications of the persons conducting the investigation—specifically, their knowledge of greenwashing practices and greenwashing terms, sustainable regulation, and financial market dynamics. Supervisory authorities and courts face significant challenges when handling such cases, as they must integrate complex expertise from multiple domains and rely on evolving standards. The novelty of greenwashing as a legal and market concept further complicates this task, as there is no clear practice yet that could be used to analyse specific activities of financial market participants as greenwashing activities.

The current EU legislative framework, while steadily expanding, remains insufficient to provide legal certainty regarding liability for greenwashing in the financial sector. Reliance on indirect mechanisms—such as consumer protection, advertising law, or environmental damage provisions creates fragmented enforcement and uneven supervisory practice across Member States. This patchwork approach risks undermining investor confidence and hindering the credibility of the sustainable finance markets.

45 Case No eI3-6716-583/2022 (Regional Administrative Court, Chamber of Klaipėda (Lithuania), 13 December 2022); Valdas Pryšmantas, 'Teisme – aplinkosaugininkų ir "Grigeo Klaipėdos" ginčas dėl 4,4 tūkst eurų baudos' (15min, 1 May 2023) <<https://www.15min.lt/naujiena/aktualu/lietuva/teisme-aplinkosaugininku-ir-grigeo-klaipedos-gincas-del-4-4-tukst-euru-baudos-56-1990222>> accessed 30 April 2025.

46 Jurgita Šimelevičienė, '"Grigeo" baudžia ir investuotojai: akcijos biržoje per pusvalandį smuko trečdaliu' (15min, 1 October 2020) <<https://www.15min.lt/verslas/naujiena/bendroves/grigeo-akcijos-birzoje-per-pusvalandi-smuko-40-proc-663-1258460>> accessed 30 April 2025.

A more pragmatic way forward would focus on convergence rather than full unification. This could involve defining minimum criteria for identifying greenwashing across sectors, encouraging proportional sanctioning principles without prescribing identical penalties, and fostering more structured information-sharing between national supervisors. While such steps would not create a perfect one-size-fits-all model, they could reduce fragmentation and provide greater predictability for financial market participants.

6 CONCLUSION

Greenwashing is a broad and interdisciplinary concept. Based on available materials and existing practices, four key aspects of greenwashing prevention can be distinguished: transparency, accountability, certainty, clarity (reliability), and good governance. Adherence to these principles enables conscientious financial market participants to significantly reduce the potential risks of engaging in greenwashing.

However, in the absence of specific regulation of greenwashing activities in the financial sector, naturally, only conscious financial market participants who understand the ultimate consequences for humanity caused by greenwashing (effects of climate change) will choose to comply with the requirements of "soft law". Others may instead rely on the SFDR's principle of "comply or explain," which allows financial market participants to be more lenient in assessing their commitments to sustainability.

At present, liability for greenwashing activities in the financial sector can be imposed only indirectly, i.e., when liability for other violations is applied. Supervisory authorities of financial market participants should remain the main subjects for imposing liability measures for non-compliance with legal acts regulating the activities of financial market participants. However, greenwashing activities can extend beyond financial activities or inaction—it may also involve environmental harm, deficiencies in company management, or adverse social impacts. Therefore, greenwashing may give rise to not only administrative but also criminal liability for certain activities. In such cases, investigations may be initiated by law enforcement institutions.

Moreover, the assessment of greenwashing acts depends heavily on the background and professional experience of the supervisory authority's representatives or experts. Evaluating financial market participants' activities in many cases requires financial knowledge, and currently, there are few practical cases to draw upon. This lack of experience may lead to inconsistent application of liability for greenwashing across different cases.

The application of liability for greenwashing in the financial sector can take several forms. It may be imposed on the financial market participant as a legal entity, on its shareholders or founders, or on employees responsible for making investment decisions. In some instances, even an employee or related subject who unintentionally

commits a greenwashing act may be held liable. Additionally, it is worth noting that financial fines are not the most significant loss for financial market participants or their representatives. Rather, the reputational damage and loss of existing or potential investors can have far greater losses.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЮРИДИЧНА ВІДПОВІДАЛЬНІСТЬ ЗА ГРІНВОШІНГ У ФІНАНСОВОМУ СЕКТОРІ

Даля Кубілюте

АНОТАЦІЯ

Вступ. У цій статті аналізується грінвошинг як правова концепція, що розвивається, у фінансовому секторі ЄС. Хоча ця тема вивчається в різних дисциплінах, тут застосовується теоретико-правовий підхід, згідно з яким у нормативно-правовій базі ЄС грінвошинг переважно визначається та розвивається за допомогою інструментів «м'якого права», таких як нормативні вказівки, тлумачні матеріали та висновки наглядових органів, а не є закріпленим в нормативно-правових актах.

Методи. У дослідженні використовується доктринальний підхід, що підтримується якісним аналізом, який поєднує лінгвістичне, логічне та систематичне тлумачення законодавства ЄС з оглядом звітів наглядових органів, національного законодавства та

окремих судових справ. Ця оцінка додатково доповнюється академічними та політичними дослідженнями.

Результати та висновки. Правові акти ЄС не містять консолідованого визначення «грінвошингу», яке б однаково застосовувалося до всіх учасників ринку та зацікавлених сторін. З огляду на його відкритий характер, конкретна відповідальність за грінвошинг не чітко встановлена в законах, що регулюють діяльність учасників фінансового ринку, це спричиняє невизначеність щодо того, який вид відповідальності може бути застосований. Аналіз показує, що ключовими характеристиками уникнення грінвошингу є прозорість, підзвітність, визначеність та ясність (надійність), а також належне управління учасниками фінансового ринку. Відповідальність може бути покладена опосередковано через інші правові положення, такі як захист прав споживачів, оманлива реклама або екологічне законодавство. Практика правозастосування свідчить про те, що репутаційний ризик часто переважає формальні санкції, а наглядові та правоохоронні органи беруть на себе ширші функції.

Ключові слова: учасник фінансового ринку; грінвошинг; відповідальність; дотримання правил; прозорість.