**“Buy Now Pay Later”, social media platforms and consumer protection: a primer**

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Digitalization and rapid innovation are affecting and transforming society as much as financial law. As a result, dynamism has entered policymakers’ agenda, most notably in the area of consumer financial regulation, where there are mounting concerns over the role of social media platforms in offering a novel and valuable source of data for identifying emerging fintech trends and associated consumer risks.

A prime example of the dynamics of social platforms’ content analysis for financial regulation, rapidly attracting the attention of regulators, is the so-called “Buy Now Pay Later” (“BNPL”), which lies between the digital payments and digital lending sectors.

These services are becoming popular among younger Gen-Z and Millennial consumers, who typically use them to purchase low-value fashion items on online retail platforms.

BNPL, also referred to as “Pay in X”, originated around 2012 in its traditional features when it was introduced in Europe by Klarna and consists of short-term financing (no more than three months) of small amounts (on average about €100) to be repaid in a variable number of installments. The first installment is paid at the time of purchase, and subsequent installments are paid at given time intervals.

The BNPL trend has given rise to a debt subculture becoming manifest on social media since creators and fin-influencers frequently discuss their experiences with BNPL products in videos posted to Instagram or TikTok.

It is well understood that the BNPL business model developed and thrived in an economic environment characterized by price stability and low-interest rates, which allowed BNPL platforms to lend at zero interest rates while profiting from the fees charged to merchants.

In response to these uncertainties, on October 27 2022, the Bank of Italy adopted a specific communication on the various forms of BNPL that are most widespread in the Italian market, focusing on the risks and protections granted to consumers by transparency rules.

The Bank of Italy’s communication mentions the following BNPL’s models:

A. the model in which the payment extension is granted directly to the consumer by a bank or financial intermediary, which intervenes in the transaction due to an agreement with the seller. In this regard, if the service provides for: i) a fee charged to the consumer (except for fees of an insignificant amount in the case of contracts to be repaid within three months); and ii) the amount of credit is €200 or more, the consumer credit rules reported in the Consolidated Law on Banking (“TUB”) are applicable;

B. the model involves a combination of a payment extension granted directly by the seller to the consumer, without interest or other fees charged to the latter, and a credit transfer immediately after that from the seller to a bank or financial intermediary. In this case, the consumer protection rules provided by the TUB and the Bank of Italy’s controls are not applicable.

Given the above, BNPL is a rapidly-evolving phenomenon, and there are no specific rules for its regulation either at the European or national level. A recent opinion of the European Banking Authority (“EBA”), while recognizing that the provision of BNPL services often involves payment services, concludes that BNPL is essentially like financing and should, therefore, be considered a credit granting.

A further point relates to the overview of the BNPL service by the EU Commission in the context of the preparation of the new Consumer Credit Directive (2008/48/EC) (hereinafter, “CCD”).

As well known, the CCD was enacted to establish a harmonized EU-wide framework for consumer credit, facilitate the establishment of an internal market and, simultaneously, ensure a high level of consumer protection. In 2020, the EU Commission presented a report on the implementation of the CCD highlighting that it was only partially effective. In particular, several critical issues came up preventing the achievement of some of the objectives initially set by the European legislator such as, *inter alia*, the limited scope of application of the CCD, the provision of information requirements that are not always adapted to market developments, resulting in a lacking of consumer protection, and a risk of fragmentation of the internal market due to differences in the implementation and enforcement of the legislation at the level of each Member State. In addition, technological innovation and the increasing digitalization experienced within the market have significantly changed the credit market on both the supply and demand sides.

On June 30 2021, the EU Commission published a Proposal for a Directive on consumer credits (COM(2021) 347 final) (hereinafter, the “Proposed Directive” or “CCD II), which, unlike the CCD that currently excludes from its scope of application credit agreements of less than €200 or more than €75,000, seeks to expand its range of application by including consumer credit agreements of €100,000 or less. Secondly, the CCD II makes a clear statement about extending its scope to BNPL. The scope of the CCD II should cover some agreements that were previously excluded from the original content, such as consumer credit agreements below the amount of EUR 200. Likewise, leasing agreements, credit agreements in the form of an overdraft facility where the credit has to be repaid within one month, and credit agreements where the credit is granted free of interest and without any other charges, including BNPL schemes, and credit agreements under the terms of which the credit has to be repaid within three months and only insignificant accounts are payable should not be excluded from the scope of application of the CCD. Moreover, all credit agreement up until EUR 100.000 should be included in its scope of application.

In this contribution, we argue that this is likely to raise serious concerns from a consumer protection perspective since the BNPL model could amplify the risk of purchases not proportional to buyers’ spending capacity and the consolidation of an unsustainable overall debt. This circumstance could lead to long-term repercussions, including the inability to repay sums and reimburse debts borrowed over time and, even, the opening of other financing lines to cover BNPL installments. In this regard, a key consumer-related concern is hidden fees since regulators have voiced concern that consumers are being misled by the promise of interest-free credit, underestimating the actual costs of BNPL and incurring unaffordable debts. A further consumer protection concern relates to the use of consumer data, since, as with other fintech “super apps”, many BNPL lenders are using their customers’ payment and credit data to cross-sell products and services.

Nonetheless, in light of implications of the growing intersection between social media platforms and financial markets, we intend to argue that the BNPL service offers a valuable source of data for identifying emerging financial trends and detect consumer risks.

To conclude, these platforms and BNPL services offer fertile ground for understanding the attitudes of credit consumers, digitally native consumers, and the emerging norms of digital credit markets, since consumers increasingly discuss their financial experiences in videos posted on social media platforms. So that the dynamics of BNPL can enable regulators to gain a much more comprehensive understanding of the behavioral debtor-consumer and, if possible, gathering data to help with and support the traditional monitoring and supervision activities.

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