

A New Financial Method: Buy Now Pay Later - From the view of Europe and Türkiye

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Overview

The "Buy Now Pay Later" ("**BNPL**") market has experienced significant growth in recent years, driven by changing consumer preferences and the rise of e-commerce. According to a report by Global Data, the BNPL market has witnessed a surge in usage ranges, with a compound annual growth rate of 25.5% between 2022 and 2026, leading to an estimated market size of \$565.8 billion by 2026.^[1] The significant growth observed in the BNPL market can be attributed to various factors that have resonated with consumers. These factors include the convenience and flexibility offered by the BNPL services, allowing individuals to repay their purchases in a manner that suits their financial circumstances. The popularity of the BNPL has surged during the COVID-19 pandemic, driven by its advantages such as settling online purchases after evaluating the goods and the ability to return items without incurring financial obligations. The BNPL market is expected to continue its upward trajectory in the foreseeable future, presenting favorable opportunities for both merchants and consumers alike.

What is the BNPL?

The BNPL, as a widely adopted payment method globally, offers consumers the ability to defer immediate payment for purchases, presenting an alternative to conventional credit cards and installment plans. This option allows consumers to divide their payments into installments over a specified period, providing flexibility and bypassing upfront costs and traditional credit arrangements. The BNPL has gained popularity worldwide due to several reasons that make it a suitable payment method for consumers across different regions.

- One of the key reasons behind the popularity of the BNPL is the convenience and flexibility it offers. By allowing consumers to acquire desired goods or services without immediate payment, it eliminates the need to pay the full amount upfront. This feature is particularly attractive for individuals who may not have readily available funds or prefer managing their expenses over time.
- Another advantage of the BNPL is its accessibility, as it eliminates the need for traditional credit checks and extensive documentation typically associated with loans or credit cards. This makes the BNPL available to a broader range of consumers, including those with limited credit histories or lower credit scores. During the checkout process, the BNPL schemes require a *soft credit check*, which, as a general rule, does not affect the consumer's credit score or rating. Consequently, the BNPL provides opportunities for individuals who may have been excluded from traditional financing options.
- The BNPL often provides interest-free installment plans, allowing consumers to spread their payments over a specific period without incurring additional costs. This is particularly beneficial for budget-conscious individuals who prefer predictable and manageable payment structures, as it enables them to plan their finances effectively.
- The BNPL is well-suited for the growing online shopping landscape. As e-commerce gains momentum globally, consumers have embraced the convenience of making purchases online. The BNPL aligns with this trend by offering a seamless payment option during the checkout process, ensuring swift and secure transactions.
- The BNPL offers a level of buyer protection. Consumers have the opportunity to receive and inspect the purchased goods before making full payment. If they are dissatisfied or need to return items, they can often do so without incurring any financial obligations.

In summary, the convenience, accessibility, interest-free installment plans, compatibility with online shopping, and buyer protection features make the BNPL a suitable payment method for consumers worldwide. Looking ahead, the BNPL is expected to continue growing and evolving, potentially integrating with mobile wallets and offering enhanced customization options.

Legislation in European Union

In the European Union ("**EU**"), legislation pertaining to the BNPL is regulated through various legal frameworks that encompass consumer credit, licensing, banking, and payment entities. The primary directive that governs consumer credit in the EU is the Consumer Credit Directive ("**CCD**"), which establishes a common set of rules and requirements for credit agreements across member states. However, it is important to note that the CCD does not specifically address the BNPL services in its current form.

The CCD sets out provisions regarding pre-contractual information, the right of withdrawal, the calculation of the annual percentage rate of charge, and responsible lending practices. It aims to ensure transparency and consumer protection in credit transactions, including installment credit arrangements. While the CCD provides a general framework for consumer credit, the BNPL services may fall outside its scope due to their unique characteristics and payment structures. The BNPL 2022 study by Deloitte Legal examined^[2] the BNPL regulations in twenty-four European jurisdictions and found that the consumer credit model is commonly used. This model aligns with the CCD, which safeguards consumers by promoting financing awareness and preventing excessive financial burdens. Unlike traditional credit products, the BNPL offers a streamlined activation process without extensive personal information and integrates seamlessly with merchants. Nevertheless, complying with the CCD's requirements may create differences in user experience compared to traditional credit products in terms of ease of use and integration with e-commerce.

In addition to the CCD, other legal frameworks and regulations, such as Germany, Sweden, the BNPL providers may be required to obtain authorization from a supervisory body or regulatory authority. This authorization is typically aimed at ensuring consumer protection, financial stability, and compliance with applicable laws and regulations. The supervisory body oversees and regulates the operations of the BNPL providers to ensure they operate in a fair, transparent, and responsible manner. The BNPL providers may need to apply for a specific license or registration with the relevant regulatory authority. The application process usually involves providing detailed information about the company's ownership structure, business model, risk management practices, and consumer protection measures.

The BNPL services may also involve partnerships or collaborations with banking and payment entities. These entities may have their own regulatory obligations, such as complying with anti-money laundering and know your customer requirements, as well as adhering to payment regulations and standards such as the Payment Services Directive.

Overall, while there is no specific legislation solely dedicated to the BNPL services in the EU, the BNPL providers must navigate and comply with existing legal frameworks, including the CCD, finance, licensing requirements, and applicable rules for banking and payment entities. Compliance with these regulations ensures consumer protection, responsible lending practices, transparency, and the overall stability of the financial system. In EU, ongoing regulatory discussions and initiatives are actively addressing the unique challenges and emerging issues associated with the BNPL services.

Regulatory Efforts Regarding the CCD in the EU

The EU has comprehensive consumer protection frameworks in place to safeguard the rights and interests of consumers. These frameworks ensure transparency, fair treatment, and adequate information disclosure from providers of financial services, including those offering the BNPL options. Financial institutions and providers offering the BNPL services in the EU must comply with applicable regulations, such as the CCD.

The CCD, which has been in force since 2008, regulates consumer credit at both national and EU levels. Due to emerging issues and insufficient harmonization, the European Commission has proposed a new directive to update and expand the CCD, including bringing crowdfunding within its scope and introducing new obligations for creditors. [3] The proposal is currently being examined by the co-legislators, with the European Parliament's IMCO committee adopting its report on 12 July 2022, and a provisional agreement reached by the Council and Parliament on 2 December 2022 in order to strengthen consumer protection and expand its scope. The proposed changes aim to regulate credit agreements that are currently not covered by the CCD, such as short-term high-cost loans below Euros 200 and interest-free loans that can result in high fees or interest charges for consumers. The Commission seeks to increase transparency, enhance consumer protection, and foster consumer confidence by including these types of agreements within the CCD's framework. The proposed revision would significantly broaden the CCD's coverage to encompass credit agreements ranging from under Euros 200 to Euros 100,000 leasing agreements with purchase options, interest-free credit agreements, and credit agreements with repayment periods of three months or less and insignificant charges. This expansion would also cover the BNPL products. The new rules would require the BNPL providers to provide consumers with easily accessible and comprehensive information about the credit and its total costs, presented in a digital and user-friendly format. Additionally, the BNPL providers would need to assess consumers' ability to repay the credit in advance, taking into account their interests, income, expenses, and other relevant financial circumstances.

In response to the inherent risks associated with the BNPL structures, certain EU Member States have recognized the need for regulatory action and have taken steps to amend their national legislation. The enactment of the Consumer Protection Act 2022 in Ireland has broadened the definition of credit to encompass interest-free deferred payment arrangements, resulting in heightened oversight and supervision of the BNPL providers by the Central Bank. Similar concerns have been expressed in other EU Member States. The Swedish Financial Supervisory Authority is actively exploring measures to enhance consumer protection and regulate the BNPL sector, while the Dutch Authority for the Financial Markets, the French government, and the Belgian Financial Services and Markets Authority are also assessing the need for regulatory oversight to address potential risks and safeguard consumer interests. These efforts reflect a growing recognition among EU Member States of the importance of regulating the BNPL services to protect consumers and ensure compliance with financial regulations.

Legislation in Türkiye

There is no specific legal regulation specifically designed for the BNPL within the scope of Turkish legislation. There are certain considerations that BNPL providers need to pay attention to in accordance with specific regulations, including their authorization, installment terms, and monetary threshold limits when offering their services.

BNPL, in general, is evaluated within the framework of financing agreements and consumer credit agreements. A consumer credit agreement refers to a contract where the creditor provides credit to the consumer through deferred payment, borrowing, or similar financing methods in exchange for interest or similar benefits. It is also governed by the Consumer Protection Law numbered 6502 ("**Consumer Law**") The creditor is the other party to the consumer credit agreement. According to Article 3(k) of Law numbered 6502, the creditor is defined as "banks, private finance institutions, and financial companies authorized to provide cash credit to consumers under the relevant legislation." As consumer transactions fall within the scope of Law numbered 6502 when one of the parties is a consumer, consumer credits can be offered by banks, private finance institutions, and financial companies recognized as "creditors" under Article 3(k).

In practice, it is mainly provided by financial companies and is subject to the Financial Leasing, Factoring, and Financing Companies Law numbered 6361 ("**Law numbered 6361**") and the Regulation on the Principles of Establishment and Activities of Financial Leasing, Factoring, and Financing Companies ("**Regulation**"), as it involves financial contracts. Therefore, a company offering the BNPL services must fulfill the necessary obligations under the relevant legislation and obtain establishment and operation authorization from the Banking Regulation and Supervision Agency ("**BRSA**"). The Türkiye Fintech Guide published by the Presidency of the Republic of Türkiye, Financial Office, also states that the BNPL business model is implemented by banks and financial companies in

Türkiye, in accordance with Law numbered 6361 and the Regulation. The BRSA regulates and limits the maturity of consumer credits. In its statement dated 9 June 2022^[4], the BRSA has set the general maturity limit for consumer credits at 24 months for amounts ranging from TRY 50,000 to TRY 100,000 , and 12 months for amounts exceeding 100,000 Turkish Lira.

The "Regulation Amending the Regulation on Measures for the Prevention of Money Laundering and the Financing of Terrorism" prepared by the Ministry of Treasury and Finance and supported by the Financial Crimes Investigation Board (*also known as MASAK*) introduces the obligation of identity verification and information authentication for institutions and organizations in order to prevent the laundering of proceeds of crime and the financing of terrorism. Banks, financial companies, capital market institutions, insurance companies, and various other organizations are required to obtain and authenticate the identity information of customers in transactions amounting to TRY 185,000 or more. Furthermore, as of February 2023, the threshold for identity verification in electronic transfers has been increased from TRY 7,500 to TRY 15,000.

What is next?

The BNPL industry has experienced significant growth and is poised for further evolution and expansion in the future. As technology advances and consumer preferences evolve, we can expect to see continued innovation in the BNPL services, including potential integration with mobile wallets and increased customization options. The existing legal regulations, however, need to be reconsidered to create a framework that effectively supports the development of new business models while ensuring robust consumer protection.

The unique service model offered by the BNPL, which focuses on providing low-value loans to consumers without extensive financial investigations, poses a challenge in aligning it with existing regulations and financial legislation. Although the BNPL swiftly provides cash to consumers without involving interest calculations or credit score assessments, its compliance with current regulations and the expected benefits of the BNPL business model may be incomplete. The current state of the EU financial regulatory framework lacks harmonization when it comes to the regulation of the BNPL providers. The existing regime, based on the CCD, does not fully apply to the most common credit structures used by the BNPL providers. This discrepancy particularly applies to credit agreements with credit amounts below Euros 200, interest-free terms, and repayment periods of three months or less. As the BNPL covers lower amounts and shorter repayment periods, discussions are underway to propose amendments to the CCD to address this misalignment.

In the near future, it is expected that legislation will be introduced to regulate the BNPL business model. The current CCD's limitations in fully encompassing the BNPL practices and the resulting discrepancies among EU member states necessitate the establishment of a legal framework that ensures adequate consumer protection, resolves legal uncertainties for investors, and realigns the BNPL with its intended purpose. It is crucial for both Türkiye and the EU to address the BNPL as a new business model within a comprehensive legal framework that promotes responsible and sustainable growth while safeguarding the interests of all stakeholders.

The situation in Türkiye, much like in the EU, necessitates the implementation of specific regulatory measures. The applicable legal framework is subject to assessment within the scope of both consumer and financial law, with due to the conformity with both legislations. The BNPL services are offered by regulated entities operating in the financial sector. Nonetheless, this circumstance gives rise to certain inconsistencies with the inherent nature of the BNPL. As explained in detail above, the BNPL facilitates rapid and short-term provision of small amounts to consumers without involvement in the conventional credit process. However, if the BNPL were to be provided by regulated market players, it may encounter challenges in upholding the anticipated expediency and credit procedures. Correspondingly, it is anticipated that Türkiye's legal landscape will encompass specific regulatory provisions aimed at safeguarding consumer rights and enabling them to avail themselves of the benefits afforded by the BNPL services.

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[1] For further information, see Global Data. (2023, 5, 19). *Buy Now Pay Later (BNPL) Market Size, Share, Trends and Analysis by Spend Category (Clothing and Footwear, Furniture, Travel and Accommodation, Sports and Entertainment), Region and Segment Forecast to 2026*.

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[3] For further information, see European Parliament. (2021). Briefing EU Legislation in Progress of Consumer Credit Directive [PDF].

[4] The specified maturity and limits are the most up-to-date information of BRSA as of the date of writing this paper.

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