

# Regulatory Headwinds for BNPL

## 1 SUMMARY OF BNPL REGULATION (select markets)

	Geo	Licensing	Product	Price	Disclosures	Responsible lending	Process	Competition
EUROPE	EU	X	X	X	⌚	⌚	X	X
	SE	✓	X	X	✓	⌚	✓	✓
	UK	X	X	X	⌚	⌚	⌚	⌚
	DE	✓	X	X	⌚	⌚	X	X
	IE	X	⌚	⌚	⌚	⌚	⌚	X
Other	US	✓ ⌚	✓ ⌚	X	X	⌚	X	X
	CA	X	X	X	X	X	X	X
	AU	✓	✓	✓	✓	✓	✓	✓

✓ = BNPL regulation in place X = no BNPL regulation ⌚ = BNPL regulation in motion

Note: Licensing=requiring providers to be licensed by a state authority; Product= limiting which products the provider can offer; Price=limiting the prices the provider can charge; Disclosures=specifying the information that providers have to give to prospective customers; Responsible lending= requiring lenders to assess how affordable the product will be to the customer; Process= specifying the way in which the product is sold, applied for, or serviced; Competition= disallowing rules set by providers that limit a merchant's ability to use or accept the product (e.g., prohibiting merchants from surcharging customers for using the provider's payment method)  
Source: Flagship Advisory Partners research

## 2 OBSERVATIONS & OUTLOOK

### HIGHLIGHTS:









- **EU:** likely to include BNPL in the scope of a revised Consumer Credit Directive
- **Sweden:** regulators have prohibited credit (or any payment method that contributes to consumer debt) as the default option at online checkouts
- **UK:** FCA and HM Treasury have indicated greater scrutiny, and have announced that regulation is under way for 2022 (mostly around higher transparency and T&Cs)
- **US:** Consumer Financial Protection Bureau has opened an inquiry into BNPL
- **Canada:** the Consumer Agency of Canada has published a study on BNPL, but no action has taken place yet (recommended to 'keep monitoring')
- **Australia:** AIFA regulation applies to BNPL, providers must adhere to principles including responsible lending and fee transparency. Further tightening is expected

### OUTLOOK:

- We expect that regulation of BNPL will increase as the industry grows and PR scrutiny intensifies. Ultimately, BNPL will likely have a similar regulatory framework to credit cards and other forms of consumer credit
- As BNPL has (arguably) benefitted from less stringent regulation than other types of consumer credit, additional regulation will create headwinds to further growth of BNPL, and favor larger providers who can invest in compliance overhead








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## 3 BNPL REGULATION BY GEO (1 of 2) (select markets and observations)

Geo	Regulation	Current state	Outlook
 EU	 <b>In motion</b>	<ul style="list-style-type: none"> <li>▪ The current credit directive does not clearly define BNPL, and a revision is currently in motion to include BNPL</li> <li>▪ Given that the EU proposes a new directive (not a regulation), gives each member state the opportunity to implement requirements into national strategies. The directive will have limited effect on BNPL until all member states adopt the directive</li> </ul>	<p>Expected revision of the CCD include:</p> <ul style="list-style-type: none"> <li>▪ All credit agreements &lt; EUR 100.000</li> <li>▪ Higher transparency and information to customer</li> <li>▪ Fair advertising of credit agreements</li> <li>▪ Obligation to assess the creditworthiness of the consumer to avoid over-indebtedness</li> </ul>
 SE	✓ <b>Swedish Payments Services Act</b>	<p>In May 2020, regulator announced clear requirements to payment methods offered at online checkout:</p> <ul style="list-style-type: none"> <li>▪ Forbidden to pre-select credit (incl. invoice) as default</li> <li>▪ Must propose payment method which do not indebt consumers, such as Swish</li> </ul>	<ul style="list-style-type: none"> <li>▪ Expected stricter rules on customer information (raising awareness of consequences, e.g. clear explanation of fees incurred)</li> </ul>
 UK	 <b>In motion</b>	<ul style="list-style-type: none"> <li>▪ BNPL is currently unregulated, as they benefit from an exception in the law for short-term credit free payments</li> <li>▪ Primary concern that BNPL providers fail the fairness and transparency requirements for the Consumer Rights Act leading to a potential risk of harm to consumers</li> <li>▪ New regulation is coming, planned for 2022</li> </ul>	<p>FCA to focus on more clearly defined BNPL T&amp;Cs:</p> <ul style="list-style-type: none"> <li>▪ Consequences around what happens when a consumer cancels the contract for purchases funded by a BNPL credit</li> <li>▪ T&amp;Cs enabling companies to terminate accounts and access to services</li> <li>▪ How to cancel continuous payments when consumer puts a card-on-file to pay</li> </ul>
 DE	✓ <b>German Banking Act</b>	<ul style="list-style-type: none"> <li>▪ BNPL is a grey area - it is unclear whether BNPL platforms are considered 'credit institutions' under the German Banking Act; BNPL is <u>not</u> exempt (yet not fully regulated)</li> <li>▪ There is an opportunity to expand into traditional lending activities with low oversight with banking license (i.e. Klarna in Sweden)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Legislators would need to wait for the revised consumer credit directive and amend current regulation based on EU norms</li> </ul>
 IE	 <b>In motion</b>	<ul style="list-style-type: none"> <li>▪ BNPL is currently unregulated</li> <li>▪ Generally, consumer protection laws apply (which also apply to BNPL providers)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Focus on responsible lending regulation by BNPL (credit checks, information availability) and consumer action (awareness, contract understanding)</li> </ul>

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## 4 BNPL REGULATION BY GEO (2 of 2) (select markets and observations)

Geo	Regulation	Current state	Outlook
 <b>US</b>	 <b>In motion / regulation applies in CA</b> 	<ul style="list-style-type: none"> <li>▪ The only state in the US that has implemented BNPL regulation is California :               <ul style="list-style-type: none"> <li>○ Previously, BNPL products were not considered long-term credit (shorter than 4 months), however recent ruling has declared BNPL a credit product</li> <li>○ A license is needed to operate as a credit institution in California</li> <li>○ Control over licensing and product by unsanctioned late-fees has been declared illegal by ruling</li> </ul> </li> </ul>	<p>The Consumer Financial Protection Bureau is taking an active position in order to implement a nation-wide BNPL regulation:</p> <ul style="list-style-type: none"> <li>○ Warning customers about BNPL dangers</li> <li>○ 16th Dec 2021: Sent a formal letter to Affirm, Klarna, PayPal, Afterpay and Zip ordering handover of customer and debt accumulation information and compliance with federal lending laws</li> <li>○ CFPB is generally concerned over 'loan stacking' and over-reliance on BNPL by customers with low creditworthiness / high risk profiles</li> </ul>
 <b>CA</b>	 <b>No regulation</b>	<ul style="list-style-type: none"> <li>▪ Currently BNPL activity is supervised by the Superintendent of Financial Institutions and the Financial Consumer Agency of Canada (FCAC), but no regulation specific to BNPL is currently in place</li> </ul>	<ul style="list-style-type: none"> <li>▪ Financial Consumer Agency of Canada (FCAC) published a Pilot Study on BNPL services in Canada in 2021</li> <li>▪ Regulators expected to keep a close eye (will likely follow the US)</li> </ul>
 <b>AU</b>	 <b>AFIA regulation applies</b>	<ul style="list-style-type: none"> <li>▪ In 2021, Australia the Central Bank prohibited BNPL firms from banning merchants to pass surcharges onto consumers</li> <li>▪ 'BNPL code of practice':               <ul style="list-style-type: none"> <li>○ Focus on customers: quality products</li> <li>○ Honest and ethical dealings</li> <li>○ Clear T&amp;Cs and transparency on installments and fees</li> <li>○ Responsible lending by credit checking</li> <li>○ Review of product/service sustainability: how current customers use service</li> <li>○ Deal with complaints</li> <li>○ Offer financial hardship assistance</li> <li>○ Comply with legal and industry obligation</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Treasury announced potential tightening of regulation</li> </ul>