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‘Buy Now, Pay Later’ Arrangements in the European Union

Regulatory Developments and Consumer Protection

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Master’s Thesis in European and International Trade Law

15 ECTS

HARN63

Spring 2026

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Contents

Abstract

This thesis examines the regulatory framework governing Buy Now, Pay Later arrangements within the European Union, with a particular focus on consumer protection. Buy Now, Pay Later has rapidly emerged as a popular payment method in digital commerce, especially following the growth of online shopping during and after the COVID-19 pandemic. While the service provides consumers with accessible short-term credit and increased purchasing flexibility, it has also raised concerns regarding over-indebtedness, insufficient creditworthiness assessments, and a lack of transparency in contractual terms.

This thesis analyses how Buy Now, Pay Later arrangements are currently regulated under the Consumer Credit Directive and how the revised Consumer Credit Directive II expands the scope of the EU consumer credit framework to include Buy Now, Pay Later products that were previously excluded from regulation. It further evaluates the relevance of the broader EU consumer protection framework for Buy Now, Pay Later arrangements, particularly the Unfair Contract Terms Directive and the Unfair Commercial Practices Directive.

Using the legal dogmatic method, the thesis interprets EU legislation, preparatory works, academic literature, and case law from the Court of Justice of the European Union to assess whether the current and upcoming legal framework adequately protects consumers.

The thesis concludes that the Consumer Credit Directive II significantly strengthens consumer protection by extending regulatory obligations to Buy Now, Pay Later providers and increasing transparency and creditworthiness assessments.

Keywords: Consumer protection, principle of responsible lending, consumer credit, informed decision-making, creditworthiness assessment and buy now, pay later

Abbreviations

BNPL	Buy Now, Pay Later
CCD	Consumer Credit Directive
CCD II	Consumer Credit Directive II
CJEU	Court of Justice of the European Union
CRD	Consumer Rights Directive
EU	European Union
UCPD	Unfair Commercial Practices Directive
UCTD	Unfair Contract Terms Directive

1 Introduction

1.1 Background

"Buy Now, Pay Later" (BNPL) is a type of payment method that has existed since the 2000s, though it only experienced a boom in use during the Covid-19 pandemic due to the increase in online shopping.[1] The crisis reduced household income worldwide and increased the need for liquidity.[2] In 2022 alone, the method held 136 billion SEK in sales volume within Sweden.[3] According to the European Commission, around 7 million European Union (EU) citizens have signed contracts for loans that do not charge interest, which has also accelerated the "new normal" in online shopping for customers purchasing goods through digital payment options.[4]

Such a payment method is read as a form of consumer credit – similar to credit cards – and just as its more well-known counterparts,[5] consumers use it to not have to pay all at once.[6] Though, just as traditional forms of consumer credit payment, it brings about a multitude of issues from consumer and retailer behaviour to regulatory classification and applicability of existing frameworks – such as holding multiple debts and viewing BNPL as payment technology rather than credit.[7] Some key distinguishing points lie in the varying levels of identification checks and the types of products purchased through BNPL arrangements.[8]

BNPL arrangements hold advantages and disadvantages for both consumers and retailers. For consumers, BNPL arrangements offer convenient access to credit without additional costs,[9] and are often viewed as a form of financial support during periods of financial difficulty through the postponed payments capability.[10] Though the ability to push back payments is simultaneously a major problem source, a large quantity of consumers do not perceive BNPL arrangements as credit agreements, rather as a payment method not involving credit, such as Google Pay and Apple Pay

[1] Nanna Svahn *"*Buy now, pay later – a threat to financial stability*?"* (Staff Memo, September 2023), 1, 5 <https://www.riksbank.se/globalassets/media/rapporter/staff-memo/webbrapport---pdf-dokument/2023/230905/buy-now-pay-later--a-threat-to-financial-stability.pdf> Accessed: 12 May 2026; Anna Machura-Urbaniak and Pier Mario Lupinu, "'Buy Now. Pay Later' (BNPL) Payment Services Opportunities and Legal Challenges for EU Consumers and Businesses", (2023) 12(5) Journal of European Consumer and Market Law, 184, 184-5

[2] Svahn, *op. cit.*, 3.

[3] *Ibidem*., 4.

[4] European Commission, *"Commission Staff Working Document. Impact Assessment Report. Accompanying the Proposal for a Directive of the European Parliament and of the Council on Consumer Credits"* SWD (2021) 170 final. 30 June 2021 < https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021SC0170 > Accessed 12 May 2026.

[5] Julia Tomasiak, "Consumer Protection in Buy Now, Pay Later", (2025), IE International Policy Review Vol. 6, Issue 23, 5, 36

[6] Machura-Urbaniak Lupinu, *op. cit.* 185.

[7] Tomasiak, *op. cit.*, 36.

[8] Machura-Urbaniak and Lupini, *op. cit.*, 185; Sahil Soni "Regulating Buy Now, Pay Later: Consumer Financial Protection in the Era of Fintech" (2023), 123 Columbia Law Review 2035, 2043

[9] Financial Conduct Authority, *The Woolard Review: A Review of Change and Innovation in the Unsecured Credit Market*, (2 February 2021), 46. <https://www.fca.org.uk/publication/corporate/woolard-review-report.pdf> Accessed 14 May 2026.

[10] *Ibidem.*

– resulting in decreased caution in practice.[11] A second point to note is assessment strictness. For customers, the soft credit check method employed by BNPL services may be desirable;[12] however, such a method has resulted in BNPL to be used by individuals who may struggle to fulfil the agreed terms.[13] The final issue to note for consumers revolves the marketing antics, which are criticised as misleading by highlighting the advantages without warning of the risks.[14]

On the retailers' side, BNPL usage has effectively secured higher sales rates – instead of passing off the purchase, consumers have the option of dividing the amount.[15] Just as for consumers, the soft credit check mechanism poses a concern for retailers, as the lack of thorough assessment of consumer repayment capabilities may affect profitability.[16] However, when a consumer fails to pay the agreed instalments on time, the retailer gains not only the original transaction fee, but also operating revenue from the late payment.[17]

On whether BNPL arrangements are regulated at the European Union-level, existing EU consumer credit framework, specifically the Consumer Credit Directive (CCD)[18] essentially excludes BNPL from the Union-level framework.[19] At least until the fourth quarter of 2026, when the updated Consumer Credit Directive II (CCD II)[20] comes into effect. Though on the consumer protection side, BNPL providers currently need to adhere to certain requirements already. This study intends to investigate the regulatory framework applicable to BNPL arrangements with a focus on consumer protection.

1.2 Purpose and Research Questions

The purpose of this thesis is to analyse and evaluate the EU consumer credit framework and its application towards BNPL, focusing on consumer protection.

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[11] *Ibidem,* 47; Tomasiak, *op. cit.*, 36.

[12] Abilio Rodrigues, "Open Banking: Shining Light on the Dark Side of Buy Now, Pay Later (BNPL)" (*Go Cardless*, May 2023) <https://gocardless.com/guides/posts/open-banking-buy-now-pay-later/#the-dark-side-of-buy-now-pay-later> Accessed 12 May 2026.

[13] Tomasiak, *op. cit.*, 36.

[14] Financial Conduct Authority, 'FCA Warns Buy Now Pay Later Firms about Misleading Adverts' (19 August 2022) <https://www.fca.org.uk/news/press-releases/fca-warns-buy-now-pay-later-firms-about-misleading-adverts> Accessed 12 May 2026.

[15] British Business Bank, 'Benefits of buy now pay later payment schemes for SMEs' (British Business Bank, 14 March 2024) <https://www.british-business-bank.co.uk/business-guidance/guidance-articles/finance/benefits-of-buy-now-pay-later-payment-schemes-for-smes> Accessed 12 May 2026 ; Stijn Maesen, 'What the rise of buy now pay later means for consumers and retailers' (Imperial College Business School, 17 February 2022) <https://www.imperial.ac.uk/business-school/ib-knowledge/marketing/what-the-rise-buy-now-pay-later-means-consumers-and-retailers/ > Accessed 12 May 2026.

[16] British Business Bank, *op. cit.*

[17] *Ibidem.*; Fady, 'Why Your Business Should Consider Buy Now, Pay Later Models' (Entrepreneur., 4 January 2023) <https://www.entrepreneur.com/money-finance/why-your-business-should-consider-buy-now-pay-later-models/440543> Accessed 12 May 2026.

[18] Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on Credit Agreements for Consumers and Repealing Counsil Directive 87/102/EEC [2008] OJ L133/66.

[19] Tomasiak, *op. cit.*, 36.

[20] Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on Credit Agreements for Consumers and Repealing Directive 2008/48/EC [2023] OJ L2225/1.

The research questions are as follows:

1. How are BNPL arrangements legally regulated under EU consumer credit framework?

2. To what extent does the EU consumer credit framework ensure effective consumer protection in BNPL arrangements?

1.3 Delimitations

To clarify its contents, this thesis focuses on assessing BNPL arrangements, a form of short-term consumer credit arrangement that allows consumers to purchase products or services immediately and pay for them after, usually through instalments.[21] This thesis does not include consumer credit arrangements falling outside the defined scope of BNPL. Regarding the concept of BNPL, as found in CCD II recital 16, it is fundamentally a consumer credit payment agreement method where consumers can opt to pay for a product in instalments without interest.[22] This thesis looks specifically at that method in relation to the overarching legal framework, which encompasses the CCD and CCD II.

Consumer protection in this thesis is guided by the principle of responsible lending, a legal obligation which requires credit providers to ensure that credit agreements are suitable and financially safe for consumers.[23] The principle is utilised in this thesis as both an umbrella term and the departure point of the consumer protection discourse within this thesis. The consumer protection framework in this thesis refers to the Unfair Contract Terms Directive (UCTD)[24] and the Unfair Commercial Practices Directive (UCPD)[25]. In addition, certain articles of the Consumer Rights Directive (CRD)[26] are also examined where relevant to BNPL arrangements. While the two CCD directives contain provisions relating to consumer protection, this thesis views them predominantly as part of the consumer credit framework for analytical purposes. Although the consumer protection framework remains distinct from the consumer credit framework, the two operate alongside each other in the regulation of BNPL arrangements by imposing parallel consumer protection and compliance obligations on BNPL providers. Regarding the term consumer, the key protection figure of the consumer protection framework, this thesis limits the consumer to that which is outlined in both CCD article 3(a) and CCD II article 3(1), as well as other EU law instruments,[27] as a natural person acting for non-economic purposes.

[21] Machura-Urbaniak Lupinu, *op. cit* 185.

[22] See also: Machura-Urbaniak and Lupini, *op. cit.*, 185; Soni, *op. cit.*, 2042.

[23] Financial Services User Group, 'Responsible Lending and Borrowing in the EU Consumer Credit Market' (European Commission 2019) 6-7.

[24] Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts [1993] OJ L95/29.

[25] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market [2005] OJ L149/22.

[26] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights [2011] OJ L304/64.

[27] CRD, art 2(1).

1.4 Method and Materials

This thesis applies the doctrinal research method to examine BNPL arrangements and the impact of the revised CCD II on such arrangements across the EU. As Jan M. Smits argues, the dogmatic method is essential for providing a "systematic exposition" of legal rules, allowing the researcher to identify and resolve gaps.[28] Adding on, the three tenets of the dogmatic method – description, prescription, and justification[29] – allows this thesis to first understand the foundation of EU law, alongside the relevant frameworks chosen for this thesis, before building arguments. The analytical component of this thesis relies on what Lenaerts and Gutiérrez-Fons describe as classical methods of interpretation, namely literal, contextual, and teleological interpretation.[30]

To further expand on the legal dogmatic method, it grants three features to the research study. First, the researcher must adopt an internal perspective by placing themselves inside the context of the legal system.[31] In this thesis, this refers to the aims of EU consumer credit and consumer protection frameworks by studying not only the legal provisions but also the purpose outlined in the preamble alongside the broader objectives of EU law. Secondly, the method reminds writers of the cohesion that is a legal system, which requires interpretation to be done as a whole, sequencing the individual sources.[32] For this thesis, the feature refers to the weaving of provisions, case law, and goals of legislation together. Finally, the legal dogmatic method provides adaptation of the law to context, to physical occurrences.[33]

As mentioned previously, the legal dogmatic method is composed of three tenets: description, prescription, and justification. Through description, a neutral understanding of the law is created,[34] providing a solid basis for interpretation and analysis. With prescription, the research moves onto the analysis component, discussing the norms resulting in decisions.[35] Finally, in the justification step, a rule must be cohesive within the system to be justifiable and be considered a legitimate outcome.[36] For this thesis, the three steps allow the authors to begin from objective ground before moving forward with the analysis.

The relevant sources of law when addressing BNPL arrangements at the EU level include, firstly, the CCD and CCD II. As the CCD II has not yet been fully implemented by the member states, the thesis analyses the directive from a normative perspective. In so doing, the new provisions of CCD II, with the existing CCD provisions, are used to assess the scope of, and development of the regulation of BNPL arrangements within the EU legal framework. To study the consumer protection side of BNPL legal regulation, the UCTD, UCPD, and the CRD are also

[28] J. M. Smits, "What is a legal doctrine? On the aims and methods of legal-dogmatic research" (Maastricht European Private Law Institute Working Paper No 2015/06, 2015), 210.

[29] J.M. Smits (n24), 213-221.

[30] Lenaerts, K and Gutierrez-Fonz, JA., 'To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice' (EUI Working Paper AEL 2013/9, European University Institute 2013), 3.

[31] *Ibidem*, 209-211.

[32] *Ibidem*, 211-212.

[33] *Ibidem*, 212.

[34] *Ibidem*, 214.

[35] *Ibidem*, 217.

[36] *Ibidem*, 219-221.

briefly examined throughout this thesis in order to understand the consumer protection side of BNPL arrangements.

Case law from the Court of Justice of the European Union (CJEU) is also used throughout the thesis, particularly in relation to the creditworthiness assessment. It is relevant to evaluate the cases, since the principal is not legally defined within primary EU sources. Regarding case law and BNPL, since CCD II has not yet been implemented by the member states, there is currently limited practical application and case law concerning those arrangements in relation to consumer protection.

Academic literature forms an important supplementary tool throughout this thesis. Scholarly discussions concerning responsible lending, consumer protection, unfair contract terms, and BNPL arrangements are used to evaluate the adequacy of the current and renewed EU credit consumer framework. In addition, certain studies and reports about BNPL are referenced to contextualise the practical risks associated with BNPL arrangements, particularly regarding over-indebtedness, consumer behaviour, and transparency concerns.

Artificial intelligence, particularly OpenAI's ChatGPT Plus, was used throughout this thesis for language support purposes, including grammar correction, and to aid in the translation of sources originally written in languages other than English.

1.5 Outline

The thesis consists of five chapters. The first chapter consists of background, purpose and research questions, methodology, and delimitations of the thesis.

The second chapter focuses on dissecting the concept of BNPL arrangements academically, functionally and in relation to other forms of consumer credit arrangements.

The third chapter discusses the legal framework governing BNPL arrangements. It compares the CCD and the revised CCD II, focusing on the scope, information obligations, advertising requirements and creditworthiness assessments. The chapter further examines the broader EU consumer protection framework applicable to BNPL arrangements, such as the UCTD and the UCPD, and evaluates potential implications of these frameworks for BNPL providers.

The fourth chapter deepens the analysis of CCD II for BNPL arrangements through the lens of consumer protection, specifically concerning the principle of responsible lending. The principle is found to connect with UCTD stipulations, specifically the principles of transparency and fairness test.

Finally, the fifth chapter consists of the conclusion, which summarizes the thesis findings.

2 The 'Buy Now, Pay Later' Phenomenon

2.1 BNPL: The Concept

"BNPL" is the acronym for "Buy Now, Pay Later" arrangements, a payment option most often used in e-commerce transactions.[37] Although without a standardised definition,[38] the phenomenon is generally understood as consisting of the following elements: being initially interest-free and staying so unless a payment is missed,[39] the total purchase amount is being divided into several payments,[40] general absence of detailed hard credit checks,[41] and customers can receive the product before all the instalments are satisfied.[42]

While there also lacks a concrete definition under EU legal texts, recital 16 of the upcoming CCD II associates such a concept with digital financial tools where consumers can purchase goods or services and choose to fulfil the payment over a period of time, as a default, without interest or surcharges. The recital reflects characteristics commonly recognised as BNPL in practice.

For the purposes of the study, this paper defines BNPL arrangements as having all the following characteristics: 1) when a consumer is offered to complete full payment for a product or service through a short-term instalment period; 2) without initial interest or surcharges; 3) getting the product before all the payments are fulfilled; 4) the process is conducted with minimal background checks.

BNPL arrangements can be categorized by the number of parties involved in the transaction. The two most common structures are two-party (bilateral) and three-party (platform-based) agreements. Platform-based agreements typically involve three participants: the merchant, the consumer, and the BNPL provider. When a consumer chooses BNPL at checkout, the platform assesses and approves a credit line. It then pays the merchant in full and assumes the customer's credit risk. The consumer typically makes an initial payment, with the remaining balance repaid in instalments over a few weeks, though longer terms may be available. These services are generally interest-free if payments are made on time, but late fees or interest may apply for missed payments, similar to traditional credit cards.[43]

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[37] Machura-Urbaniak and Lupini, *op. cit.*, 185; Svahn, *op. cit.*, 5.

[38] Svahn, *op. cit.*, 5.

[39] Machura-Urbaniak and Lupini, *op. cit.*, 185.

[40] *Ibidem.*; Soni, *op. cit.*, 2042.

[41] Machura-Urbaniak and Lupini, *op. cit.*, 185; Soni, *op. cit.*, 2043.

[42] Sahil Soni, *op. cit.*, 2045-6; Lucinda O'Brien, Ian Ramsay and Paul Ali "Innovation, Disruption and Consumer Harm in the Buy Now, Pay Later Industry: An Empirical Study" (2024) University of New South Wales Law Journal, Vol. 47, No. 2 657, 657-8

[43] Giulio Cornelli, Leonardo Gambacorta and Livia Pancotto, 'Buy now, pay later: a cross-country analysis' (BIS Quarterly Review, December 2023) < https://www.bis.org/publ/qtrpdf/r_qt2312e.htm > accessed 12 May 2026.

Article 2(2)(h)(i) of CCD II defines a deferred payment system as an arrangement in which a supplier of goods or services allows a consumer to pay for those goods or services at a later date, without involving any third-party credit provider. This could be interpreted as a bilateral agreement between the consumer and the retailer, which acts as the credit provider. This system operates on the basis that the retailer agrees with the customer that payment for goods can be made in instalments, sometimes under a separate agreement from the terms of sale. Interest, as in platform-based agreements, is typically not charged.[44]

The distinction between bilateral and platform-based agreements further illustrates the structural diversity of BNPL schemes. While bilateral arrangements between the consumer and the supplier align more closely with traditional deferred payment systems, platform-based models introduce a third-party provider that assumes credit risk and facilitates transactions between consumers and merchants. These modular distinctions may give rise to additional regulatory complexities, particularly in light of the distinctions drawn under the CCD II surrounding applicability to BNPL arrangements.

2.2 Comparing BNPL to Traditional Consumer Credit Systems

2.2.1 BNPL Compared to Credit Cards

Like BNPL, credit cards and revolving credit represent additional forms of high-cost borrowing that are also linked to consumer protection concerns. The issues stem from a tendency to overlook long-term consequences and a failure to recognize the gradual accumulation of costs.[45]

A credit card that offers an interest-free period can, in certain ways, resemble a BNPL arrangement. The customer uses borrowed funds to make a purchase and then repays the credit provider later.[46] The main distinction, however, is that credit cards typically begin accruing interest on any outstanding balance after the interest-free period expires, whereas BNPL arrangements usually remain free of interest and additional charges for the full duration of the agreement. BNPL also differs from credit cards in that its instalment payments are spread over shorter time periods.[47]

Another distinction lies in the relevant costs, duration and assessment processes. Credit cards can come with charges, including yearly fees, penalties for late payments, and fees tied to specific uses like foreign purchases or balance transfers.[48]

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[44] Bird & Bird, 'Buy Now Pay Later: How Does It Work and Is It Regulated?' (Bird & Bird, 2021) <https://www.twobirds.com/en/insights/2021/uk/buy-now-pay-later-how-does-it-work-and-is-it-regulated> accessed 12 May 2026.

[45] European Commission, 'Study on possible impacts of a revision of the CCD' (Final Report, May 2021) 15

[46] Di Johnson, John Rodwell, Thomas Hendry, 'Analyzing the Impacts of Financial Services Regulation to Make the Case That Buy-Now-Pay-Later Regulation Is Failing' (2021) 13(4) Sustainability, 2.

[47] Stijn Maesen and Dionysus Ang ,"Buy Now, Pay Later: Impact of Installment Payments on Customer Purchases" (2024) 13, 18.

[48] Fulton Bank, 'Should You Use a Credit Card or Buy Now Pay Later?' (Fulton Bank) <https://www.fultonbank.com/Education-Center/Managing-Credit-and-Debt/Should-you-use-a-credit-card-or-buy-now-pay-later> accessed 12 May 2026.

BNPL is typically a short-term, fixed-purpose loan with set instalments, often interest-fee if paid on time. BNPL providers also tend to utilise soft credit check assessments which is in opposition to credit cards, provide a credit line that can be used repeatedly and require stricter credit checks. Finally, while BNPL focuses on fixed repayment plans for specific purchases, credit cards offer more flexibility in repayment but may incur ongoing interest and additional fees, especially when balances are carried over.[49]

2.2.2 BNPL Compared to Instalment Payments

Some studies have compared BNPL to layaways, the regular instalment procedure[50], while also showing the differences that they hold against credit cards.[51] Layaways are opposite to BNPL as the customer may only receive the product once their payments are made wholly; in regular instalments the customer shall own the product only once all payments are completed – though a key difference lies in the size of the purchase price.[52]

Also comparable is a financial leasing agreement, under which the consumer obtains possession and use of the asset immediately after the first instalment is paid, while ownership generally remains with the lessor until all contractual payments have been completed. Upon fulfillment of the agreement, the lessee may acquire ownership of the asset at its residual value.[53] Whereas within the BNPL system, ownership is transferred through the sales contract with the merchant, while the consumer's payment obligation is owed either to the merchant or to a third-party credit provider under a separate credit arrangement.[54]

A distinction must also be made between financial leasing and operating leasing. In an operating leasing agreement, the primary purpose is the temporary use of the asset rather than its acquisition.[55] The lessor remains the owner of the asset throughout the contract period, and the lessee generally returns the asset at the end of the agreement, although a separate purchase arrangement may sometimes be concluded later.[56] Accordingly, operating leasing resembles a long-term rental arrangement more closely than BNPL financing.

Linking back to the deferred payment method mentioned in the previous section, studies show the viewpoint of BNPL being a form of deferred payment. Studies have coined BNPL as the commonly used term for deferred payments, defining deferred payments themselves as simply a method of short-term borrowing without interest

[49] Bank for International Settlements, *op. cit.*

[50] Machura-Urbaniak and Luninu, *op. cit.*, 186.

[51] Soni, *op. cit.*, 2042.

[52] Jay Johnson, 'Buy Now Pay Later, Regulate ASAP", Ohio State Business Law (2025) 281, 284; Soni, *op. cit.,* 2045-6

[53] Veselin Konstantinov Hristov, 'The Leasing Contract – Concept and Types' (2025) Athens Journal of Law, 12 .

[54] Organisation for Economic Co-operation and Development/FinCoNet, 'Briefing Note: Buy Now Pay Later' (FinCoNet 2024) 16-17 https://www.finconet.org/en/publications/2024/briefing-note-buy-now-pay-later.html?utm_source=chatgpt.com accessed 13 May 2026.

[55] Hristov, *op. cit.*, 12.

[56] *Ibidem.*

and paying back in instalments.[57] Neither the CCD nor the CCD II define the term deferred payment, rather both seem to use it as an umbrella term as part of the procedure of credit agreements.[58] Thus, this thesis follows the academic viewpoint of BNPL being a type of deferred payment.

2.3 Summary

This chapter introduced the concept of BNPL arrangements and their key characteristics, legal context, and similarities to traditional forms of consumer credit. Further, the chapter sets the definition of BNPL arrangements applied throughout this thesis. It also distinguished two main structural forms of BNPL arrangements: bilateral and platform-based agreements. This distinction is relevant in light of CCD II, as it is expected to broaden its scope to include BNPL.

In comparing BNPL to more traditional, similar consumer credit systems, the chapter highlighted both similarities and differences with credit cards, instalment payments, layaway systems and leasing agreements. Unlike credit cards, BNPL arrangements are usually short-term, interest-free, and tied to a specific purchase, though both involve deferred repayment of borrowed funds. Comparisons with instalment systems and leasing arrangements further demonstrated that BNPL occupies a hybrid position between deferred payment and consumer credit.

[57] Ashok Sengupta, Asad K Usmani, Suchita Vishwakarma, Mohammad Anees and Gajraj Singh, 'Deferred Payment Facility – A Mechanism to Ease Purchase Decisions' (2022) 12(1) Adhyayan: A Journal of Management Sciences 6–7; Ayumu Wada, '"BNPL", a New Form of Deferred Payment, and the Future of Consumption and Payment' (BayCurrent, 2022) <https://www.baycurrent.co.jp/en/insights/articles/articles-1424/> accessed 12 May 2026.

[58] CCD Article 3(c); CCD II Article 3(c).

3 Legal Side of BNPL

3.1 Consumer Credit Directive

Authorities encounter struggles when dealing with potential problems arising from BNPL use, such as reckless borrowing and encouraged excessive spending.[59] Such issues are present not only in the EU, but internationally – in Australia, such arrangements are said to operate within a "grey zone" devoid of the need to follow consumer credit laws.[60] Within the EU, consumer credit-related payment methods are regulated by the CCD until the fourth quarter of 2026, when the CCD II comes into force.[61]

Published and came into effect in 2008, its preamble recitals 3 and 4 reveal the CCD to be a response to the global financial crisis and to varying levels of regulation among the Member States regarding credit payments, resulting in distortion.[62] The CCD is primarily based on an information-oriented model of consumer protection.[63] The key goal was to construct increased transparency and efficiency in the specific credit market, as motivated by the desire for a "well-functioning internal market".[64] Other goals found in the directive include increasing confidence of consumers in recital 8, improving the decision-making process for consumers with rules to lower asymmetry in information between parties in recitals 19, 24 and 32,[65] and the setting of consumer protection standards – such as barring them from engaging in "unfair or misleading practices," as stated in recital 18.[66]

As a selective maximum harmonization directive – maximum applicable in areas directly regulated, as shown in article 22 – the CCD sets out a plethora of requirements and functional expectations for consumer credit providers and member states, as part of harmonizing efforts described in article 1. Among existing discourse, the most discussed aspect of BNPL is its limited scope.[67] However, to warrant a proper comparison with the CCD II, this thesis looks beyond the scope and purpose, extending into the required information disclosure and creditworthiness assessments.

The scope of the CCD is set out in article 2, with the statement of its applicability towards credit agreements alongside a series of exceptions. The subsequent paragraphs of exceptions, particularly 2(e) and (f) are points of contention among

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[59] Tomasiak, *op. cit.*, 35, 39.

[60] O'Brien, Ramsay and Ali, *op. cit.*, 662.

[61] Loyens & Loeff "Implementation Decree CCD II and Consultation on the Commission Ruled for Consumer Credit" (*Loyens & Loeff*, 26 January 2026) <https://www.loyensloeff.com/insights/news--events/news/implementation-decree-ccd-ii-and-consultation-on-the-commission-rules-for-consumer-credit/> Accessed 13 May 2026.

[62] Olha O. Cherednychenko and Jesse M. Meindertsma "Irresponsible Lending in the Post-Crisis Era: Is the EU Consumer Credit Directive Fit for its Purpose?" (2019), Journal of Consumer Policy 42, 483, 484.

[63] *Ibidem*, 489.

[64] *Ibidem.*

[65] *Ibidem*, 484.

[66] *Ibidem*, 500.

[67] Macura-Urbaniak and Lupinu, *op. cit.*, 190.

scholars, arguing for them being the source of BNPL exclusion from direct applicability as they exclude credit agreements outside the range of 200 euros to 75000 euros, agreements with lower or no interest rates, unless the consumer fails to make a payment, and which do not last beyond three months.[68] These exceptions contrast with the nature and definition of BNPL arrangements – the characteristics of being interest-free, used for lower-cost products or services, and lasting through a shorter duration.[69] In fact, in the case of *Riverty GmbH v MI*, the CJEU ruled that where fees and extra costs derive only upon non-payment by non-payment of the consumer, they fall under neither "cost of credit" nor "interest".[70] The case concretises a separation of BNPL from CCD applicability.

Despite the inapplicability towards BNPL arrangements, the authors see it necessary to study other provisions of the CCD as a basis for contrasting and understanding the departure point of the CCD II. Therefore, the section continues with analysis of the provisions outlining necessary information for the consumer and requirements for the creditworthiness assessment. The CCD dedicates four full articles to mandatory information to be shared with the consumer, setting down an array of requirements surrounding what needs to be shared and how the sharing must be done.

Continuing with the required disclosed information, the CCD divides all into three narrower categories: general information, pre-contractual information and advertisement form. The list of pre-contractual information is set out in article 5, consisting of nineteen elements to be delivered – such as explanation of the credit type, creditor details, length of the agreement, conditions, amount etc. – which must be provided prior to conclusion of the contract. Though, the provision utilises "in good time" as the phrase of choice rather than offering a specific period frame. The general information required to be provided to the consumer is outlined in articles 10 and 11. The former – titled information to be in agreements – consisting mostly of repetition of informational details outlined in article 5 (pre-contractual information), with notable additions on formal presentation requirements of needing to be "on paper or durable medium" alongside the process of termination and whether there exists a complaint mechanism. Whereas article 11 lays down specifically the need to inform the consumer in advance of any changes to the borrowing rate, which can be done periodically when changes are caused by fluctuations in the reference rate. Whereas information dispersed through advertising pathways are specifically regulated through article 4, with a push towards clarity and transparency – visible through the phrase "clear, concise and prominent" – in their delivery and specific items that need be mentioned.

The last component of analysis from CCD is the creditworthiness assessment in article 8. The article itself contains only two paragraphs, with the language focused on obligations on the Member States to pave facilitation for such an assessment.[71]

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[68] Tomasiak, *op. cit.*, 36.

[69] Bank for International Settlements, *op. cit.*; Stijn Masen and Dionysus Ang, *op. cit.*, 18; Machura-Urbaniak and Lupini, *op. cit.*, 185.

[70] Case C-409/23 Riverty GmbH v MI, paras. 43-45.

[71] *Ibidem.*

3.2 Consumer Credit Directive II

The CCD is often critiqued for its inadequacy to keep up with "digital development" and protection capabilities of consumers due to imprecise wording choices.[72] To resolve such issues, the Union brought about the CCD II – to come into effect in November 2026 – with the aim of easing consumer decision fatigue through detailed rules, minimising asymmetric information structure and enforcing responsible lending.[73] To achieve the goal of responsible lending, three key changes were made in the writing of the updated directive: 1) widening of its scope, 2) tailoring of existing rules and, 3) the addition of new provisions which push the directive towards the modern environment.[74] The key adaptations for analysis in this chapter include: the scope, information to be disclosed and increased requirements for both the creditworthiness assessment as well as advertisement model.[75]

Beginning with the scope of the directive in article 2, immediately the range of credit amounts within a transaction has been altered to no longer have a lower limit and an upper limit extended to 100000 euros, while also accepting interest-free methods. The expansion is noted in academic literature for opening regulatory possibility for more payment methods than allowed in the CCD.[76] Furthermore, this expansion of the scope reflects recital 16, where BNPL arrangements were specifically pointed out as "should" be part of the scope. Another notable addition following the expanded scope lies in article 2(2)(h), whereby deferred payments are to be excluded when three cumulative conditions are satisfied: 1) where the credit is granted by the supplier or service provider without a third-party; 2) without interest or charges except for fees in late payment in accordance with national law, and; 3) the purchase is paid within 50 days of goods delivery or service provision. The change in the scope means that instead of the default exclusion, BNPL arrangements shall face the opposite treatment of inclusion unless the cumulative conditions are fulfilled. While the exception still creates possibilities for BNPL function outside of a Union-level regulatory framework, the CCD II begins from a different point than the CCD, through accepting arrangements of lower credit amounts and interest-free credit.

Moving onto the provisions surrounding information dispersal, the CCD II increases the total number of articles from four to six, two of such provisions belonging to the requirements on advertising. Pre-contractual information is set out in article 10, which stipulated such to be provided prior to the contract conclusion through the Consumer Credit Standard Information Sheet, just as in the CCD, but is specified in the CCD II for the purposes of informed decision-making. Or if the creditor chooses to forego use of the information sheet, article 10(3) lists twelve elements that must be present in the chosen form of presentation, which shadow the elements required by the CCD. The general information required begins directly with the language pushing for clarity and form in article 9, with a list of eleven elements which must

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[72] BCLP "The EU Transparency Revolution: Strengthening Consumer Protection and Fairness in Credit Agreements" (2026) <https://www.bclplaw.com/en-US/events-insights-news/the-eu-transparency-revolution-redefining-fairness-in-credit-agreements.html> Accessed 13 May 2026.

[73] Ibidem; Olha. O. Cherednychenko "On the Bumpy Road to Responsible Lending in the Digital Marketplace: The New EU Consumer Credit Directive", Journal of Consumer Policy 47, (2024) 241, 242.

[74] Cheredynchenko, *op. cit.*, 243.

[75] Tomasiak, *op. cit.,* 37-39.

[76] *Ibidem.*

be included housing both repeated and new elements from those in article 10. Information to be present in the individual credit agreements is stipulated in article 21, housing twenty-four elements, including both those dispersed in previous articles.

Unlike its predecessor which focused on listing the elements and requiring such to be provided to the consumer in a timely manner, the CCD II not only adds new articles but also emphasises for information to be clear and understandable for the consumer. Article 5 creates an obligation for the abovementioned information to be allotted to the consumer free of charge, which is a new addition to the framework revealing the renewed goal surrounding consumer welfare. Furthermore, the need for legibility is dispersed throughout articles within the CCD II as well.

Surrounding advertisement provisions, the CCD II divides requirements between two articles. Article 7 functions primarily laying down the grounds and language chasing clarity within the advertisements – "fair, clear and not misleading" – forbidding those which may have the effect of misguiding the consumer. Article 8 is a detail-included expansion of the previous article, outlining not only specific information to appear in advertisements – such as credit amount, agreement duration, potential advanced payments etc. – but also obliging the inclusion of warning slogans specifically to counteract misconceptions of credit as not borrowing money. The addition creates a striking difference to the CCD, which only mentions standard information and general language surrounding its presentation.

Finally, the surrounding the creditworthiness assessment. Just as in the CCD, the assessment is not strictly defined; however, the CCD II article 18 has detailed the process in comparison. As such, the factors which creditors are to assess have been edited from merely sufficient to considering directly the consumers' income, expenses, overall financial and economic circumstances alongside placing the assessment against necessity and proportionality based on the credit amount. Furthermore, the assessment is stated in article 18(1) to be conducted from the interest of the consumer, which is in line with the directive goal of preventing irresponsible lending. Another addition to the CCD II regarding the creditworthiness assessment, is shared credit information databases in article 19 for cross-border credit agreements.

3.3 General EU Consumer Protection Framework

Alongside sector-specific consumer credit legislation, BNPL arrangements are also governed by a broader framework of EU protection laws, including earlier horizontal consumer protection laws such as the UCTD and the UCPD.[77] These provisions form a complementary system of consumer protection that is also highly relevant to BNPL arrangements.

[77] European Commission, 'Study on the Possible Impacts of the Revision of the Consumer Credit Directive', *op. cit* 11.

The UCTD addresses the substantive fairness of contractual terms in consumer agreements.[78] It prevents traders from using unfair non-negotiated terms in consumer contracts, including credit agreements.[79] UCTD seeks to protect consumers through presuming them as the weaker party while also promoting consistency across the EU, thereby supporting fairness in the internal market.[80] Given that BNPL arrangements are typically based on standard terms which are not individually negotiated beforehand, UCTD is relevant in protecting consumers, therefore the standard terms would follow the provisions and obligations stated in the given directive.

Moving on to the UCPD, which complements the legal framework for BNPL arrangements by regulating the behaviour of traders in the pre-contractual trade. The UCPD constitutes the overarching EU framework governing unfair business-to-consumer commercial practices within the internal market.[81] It prohibits misleading and aggressive commercial practices that may distort the economic behaviour of consumers,[82] mirroring the CCD II advertisement provisions. A key feature of the UCPD is that it applies even in situations where there is no direct contractual relationship yet between the consumer and the trader.[83] Thus, UCPD is relevant, for example, in digital environments, where BNPL options are often integrated into online checkout processes, potentially encouraging impulsive purchasing decisions. By ensuring that consumers are not misled, the UCPD supports informed decision-making and reinforces transparency in the marketing of BNPL services.

Taken together, these directives also form a corresponding legal framework that addresses different stages of consumer transactions in BNPL arrangements. While the UCPD focuses on pre-contractual conduct, while the UCTD ensures the fairness of contractual terms. Even where BNPL arrangements currently fall outside the strict scope of the consumer credit framework, these horizontal instruments currently maintain the baseline level of consumer protection.

3.4 Potential Impacts for BNPL under EU rules

What does the combination of the updated framework and the longstanding frameworks entail for BNPL arrangements? It is clear that the largest impact of CCD II for BNPL providers is the payment method becoming subject to Union-level consumer credit regulation, though the functional application is still to be seen by the end of 2026.[84] Alongside the general inclusion are business working requirements connecting to consumer protection objectives, which are explored in the next chapter.

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[78] European Commission, 'Unfair Contract Terms Directive' <https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-contract-law/unfair-contract-terms-directive_en> accessed 12 May 2026.

[79] Cătălin-Gabriel Stănescu, 'Contractual Pitfalls: The Unfair Contract Terms Directive and Debt-Collection' in *European Fair Trading Law: The Unfair Commercial Practices Directive* (Oxford University Press 2024).

[80] *Ibidem.*

[81] *Ibidem.*

[82] European Commission, 'Unfair Commercial Practices Directive', *op. cit.*

[83] Cătălin-Gabriel Stănescu, *op. cit.*

[84] Tomasiak, *op.cit.*, 40.

Regarding the analysis of the consumer credit framework, several conclusions could be drawn from the comparison. Firstly, the purpose and aim of both CCD directives have not altered from one to the other, which focus on catching up with developing technological advancements and ensuring adequate levels of consumer protection within the internal market through rules preventing irresponsible lending. Secondly, the broadened scope of the CCD II, together with the express reference to BNPL arrangements in recital 16, marks one of the most significant developments, signalling an intention to bring such arrangements within the scope of Union-level regulation. Thirdly, much more detail has been added to both the overall information requirements and the advertisement guidelines in the CCD II. Specifically, the relevant articles have increased the required elements with extra paragraphs and even limited what is allowed in adverts. Finally, the creditworthiness assessment has undergone a significant transformation, with the wording shifting from generic and broad to specific, with the factors considered in the test.

The increased level of detail in the requirements, both regarding the number of mandatory elements and the prescribed wording, indicates a strengthened emphasis on consumer protection, as the amended requirements are largely directive towards safeguarding consumers. Consequently, BNPL providers will likely need to implement a range of internal measures in order to comply with the upcoming CCD II.

Surrounding the UCTD, UCPD, and BNPL, it is clear from the analysis that providers are subject to these directives regardless of the applicability of the consumer credit framework. Therefore, to answer the first research question, it can be said that while BNPL arrangements are currently unregulated on the Union-level within the consumer credit framework specifically, they must still adhere to both the “Unfair” directives.

4 BNPL and Consumer Protection

4.1 Principle of Responsible Lending

The principle of responsible lending, despite its wide recognisability, the principle lacks a precise legal definition under EU law.[85] At its core, responsible lending embodies the notion that creditors should not focus on only on their own commercial interests but also consider the consumer's financial circumstances and well-being throughout the entire lending process.[86] The development of the principle is closely connected to the EU's broader objective of preventing consumer detriment and overindebtedness within increasingly accessible consumer credit markets.[87] Since the expansion of digital credit services and the financialization of everyday consumption, responsible lending has become an important principle within EU financial regulation.

Neither the articles of the CCD nor CCD II explicitly use the term in their provisions.[88] Instead, this principle is only expressly mentioned in the directives' preambles, while its substantive meaning must be inferred from the obligations imposed on creditors throughout the CCD and CCD II.[89] Therefore, responsible lending operates not as a single codified legal rule, but rather as a broader regulatory principle that shapes the interpretation and application of the EU consumer credit framework.

Academic literature has attempted to clarify the content and the scope of responsible lending. An evaluative study of the CCD and other connecting directives[90], concluding that while one may be able to distinguish the general parameters of responsible lending under the perspective of EU law, there is not a specific rule which one can note down directly.[91] The term "responsible lending" also argued to have policy-based origins – used to deliver legislative goals within the financial sector.[92] Taking the policy perspective, it is argued for the common guidelines of responsible lending as obligations in providing information which will aid consumers in making better decisions and prevent overindebtedness.[93]

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[85] Kristiina Koll, 'Vastutustundliku laenamise põhimõte' (2011) 4 *Õiguskeel* 2

[86] Financial Services User Group, 'Responsible Lending and Borrowing in the EU Consumer Credit Market' (European Commission 2019) 6 < http://finance.ec.europa.eu/system/files/2019-04/fsug-opinions-190408-responsible-consumer-credit-lending_en.pdf> accessed 20 May 2026; European Commission, 'Study on the Possible Impacts of a Revision of the Consumer Credit Directive', *op. cit.*, 16-17.

[87] Olha O Cherednychenko, 'The Proposal for a New EU Consumer Credit Directive: Towards Responsible Lending in the Digital Age?' in *EU Financial Regulation and Markets* (2023) 183

[88] *Ibidem.*

[89] *Ibidem.*

[90] Vanessa Mak, "What is responsible lending? The EU Consumer Mortgage Credit Directive in the UK and the Netherlands" (2015), Journal or Consumer Policy 411, 428.

[91] *Ibidem.* References to the Mortgage Credit Directive within the article.

[92] *Ibidem.*, 413

[93] *Ibidem.,* 411-412

Academic discussions further describe the principle of responsible lending as a key driver for the creation of the original CCD.[94] Within this understanding, credit providers are expected not only to protect their own economic interests, but also to take consumers' interests and financial capacities into account throughout the lending relationship. [95] An important aspect of this approach is that lenders must determine whether the borrower is able to fulfil the payment contract without increased hardship.[96] It seems the principle may be connected to the ensuring consumer welfare through, a method of such is stated in the CCD article 8, a creditworthiness assessment.

The principle of responsible lending becomes relevant in the context of BNPL services, as such arrangements are generally characterised by simplified approval procedures and minimal friction during online purchases – soft credit checks.[97] Another relevant concern relates to transparency and information obligations, reflecting the aim to ensure informed decision-making in CCD II recital 15, such as whether consumers are provided with clear and understandable information regarding repayment obligations, fees and the consequences of late payment.[98] Questions may also arise regarding the extent to which BNPL business models may encourage excessive consumption and repeated borrowing, thereby increasing the risk of overindebtedness.

Following the requirement of considering the consumer's capabilities. This thesis takes the position that the principle of responsible lending should be regarded as a fundamental interpretative principle within the EU consumer credit framework, with a focus on in relation to emerging credit products such as BNPL. Although the principle is not codified word for word in the provisions, its underlying objectives can be derived from the creditor obligations set out in the CCD and CCD II, especially those relating to creditworthiness assessments, the goal of ensuring informed decision-making, and the prevention of consumer overindebtedness. Regarding BNPL, the importance of responsible lending is heightened by the structural features of these services. Accordingly, this thesis maintains that the principle of responsible lending provides an essential analytical framework for assessing whether current and future BNPL regulations offer adequate consumer protection.

[94] Cherednychenko and Meindertsma, *op. cit.*, 484.
[95] *Ibidem.*, 487
[96] *Ibidem.*
[97] Anna Machura-Urbaniak and Pier Mario Lupinu, *op. cit.*, 185-186.
[98] *Ibidem.*

4.2 CCD II Efforts towards Consumer Protection

The notion of "consumer detriment" appears repeatedly within legislative rationale surrounding CCD II.[99] The concept generally refers to financial harm or disadvantage suffered by consumers as a result of unfair, unsuitable, or insufficiently regulated credit practices.[100] Thereby, CCD II places a significantly stronger emphasis on "consumer protection", a term which appears repeatedly throughout the text of CCD II.[101]

The strengthened consumer protection orientation of CCD II is closely connected to the principle of responsible lending in relation to BNPL. CCD II operationalises this principle through creditor obligations aimed at increasing transparency, improving informed decision-making, and preventing overindebtedness. As in the context of BNPL, these protections are relevant due to the nature of this type of arrangement. CCD II therefore strengthens obligations concerning creditworthiness assessments, pre-contractual information duties, and the preservation of the 14-day withdrawal right.

4.2.1 Information Obliged to Provide

For consumers to conduct an informed decision-making process is a goal listed throughout the CCD II preamble.[102] This goal reflects a major problem point in need of mitigation in the current BNPL environment, where consumers claim not to be adequately informed of all relevant details prior to concluding the BNPL contract.[103]

The CCD II introduces extensive information requirements intended to ensure that consumers are adequately informed before entering into credit agreements. Recitals 43 and 59 stress the importance of providing contractual information in an accessible and comprehensible manner before the conclusion of the contract. This approach also reflects the transparency standard established under article 5 of the UCTD, requiring contractual terms to be drafted in "plain, intelligible language" as well as article 2(6) of the CCD II itself.

The wording used in recitals 45 and 47 also resembles the principle of responsible lending, as it is stated that the directive seeks to ensure that consumers understand how credit agreements may affect their financial situation, including the legal and economic consequences of failing to comply with repayment obligations. In the BNPL context, this objective is important given empirical findings that many consumers fail to recognise BNPL arrangements as credit products or fully understand the consequences of missed payments.[104]

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[99] Cheredynchenko and Meindertsma, *op. cit.* 486-7; Cherednychenko "The Proposal for a New EU Consumer Credit Directive: Towards Responsible Lending in the Digital Age?" (2021) Law and Financial Markets Review Vol. 15, NOS. 3-4, 183.

[100] European Commission, 'Study on the Possible Impacts of a Revision of the Consumer Credit Directive', *op. cit.*, 16-18.

[101] CCD II Recitals 3, 11, 15, 29, 32, 33, 42, 43, 51, 60, 62, 73 & 93.

[102] CCD II Recitals 36 & 78.

[103] Machura-Urbaniak and Lupinu, *op. cit.*, 187.

[104] Organisation for Economic Co-operation and Development/FinCoNet, 'Briefing Note: Buy Now Pay Later', *op. cit.*, 17-18; Sahil Soni, *op. cit.*, 2060.

To reinforce these protections, articles 5 and 8(3) require information to be provided free of charge and in a clear and accessible manner. Article 7 strengthens consumer protection in advertising by prohibiting misleading commercial practises and imposing stricter requirements concerning the presentation of credit offers. Particularly relevant to BNPL arrangements is article 8(1), which requires a clear warning informing consumers that consumer credit agreements constitute a form of borrowing.

The consumer-protective orientation of the CCD II is further visible in the expanded scope of articles 9 and 10, which significantly increase the amount of information that must be disclosed before the conclusion of a credit agreement.

Article 9 sets out requirements concerning general information, while article 10 outlines pre-contractual information.[105]. Aside from elements required to be disclosed, a notable contribution towards the consumer protection goal is visible through the obligation for such elements to be presented clearly in an understandable fashion from the perspective of consumers, as seen in article 9(1), motivating towards the goal of informed decision-making. These requirements are particularly relevant to BNPL arrangements, where consumers may otherwise underestimate the cumulative costs and risks associated with deferred payment services.

An especially important consumer protection measure concerns the disclosure of additional charges arising from non-payment. Article 9(2)(f) requires consumers to be informed of potential extra costs associated with the agreement, while article 10(3)(g) specifically mandates the disclosure of late payment charges within the Standard European Consumer Credit Information form or another durable medium. This reflects the CCD II's broader objective of ensuring that consumers are aware not only of the benefits of credit, but also of the financial consequences of default.

4.2.2 Creditworthiness Assessment

The requirement to conduct a comprehensive evaluation of a consumer's creditworthiness is a key component of responsible lending.[106] A creditworthiness assessment is a method of consumer protection discussed in many studies – a form of evaluating whether the consumer is able to fulfill the contract obligations without difficulty.[107] Empirical research reveals that existing creditworthiness assessments used in BNPL arrangements lack the needed strictness.[108]

The importance of creditworthiness assessments as a consumer protection mechanism has been recognised within the case law. The CJEU has clarified in *LCL Le Crédit Lyonnais* that the purpose of assessing a borrower's creditworthiness is to protect consumers from the risks of excessive debt and insolvency.[109] In *Consumer*

[105] See chapter 3.2 above.

[106] Organisation for Economic Co-operation and Development/FinCoNet, 'Supervisory Approaches to Consumers' Creditworthiness Assessments' (FinCoNet 2021) 7 <https://www.finconet.org/en/publications/2021/Supervisory-approaches-to-consumers-creditworthiness-assessments.html > accessed 13 May 2026.

[107] Organisation for Economic Co-operation and Development/FinCoNet, 'Briefing Note: Buy Now Pay Later', *op. cit.*, 31.

[108] *Ibidem,* 20.

[109] Case C-565/12 *LCL Le Crédit Lyonnais SA v Kalhan*, para 42.

Finance, the Court further confirmed that the obligations associated with creditworthiness assessment are pre-contractual in nature. [110] These rulings establish that the assessment of creditworthiness is carried out in the consumer's interest and that the duty falls within the realm of private law. The judgments do not fully address, though, what remedies are available for consumers when creditors fail to comply with this obligation.[111]

The updated requirements concerning creditworthiness assessment requirements are set out in Chapter IV of CCD II. Article 18(3) specifies the necessity of an assessment to be conducted in the consumer's interest in order to secure responsible lending and decrease overindebtedness. The provision requires reliance on relevant and accurate information regarding the consumer's financial circumstances, proportionate to the nature and risks of the credit agreement. Although a degree of ambiguity remains within the wording of the article, the provision nevertheless provides examples of the types of information that creditors should consider during the assessment process.

Recital 55 of CCD II states that the assessment must be carried out on the basis of information concerning the consumer's financial and economic state that is considered to be insufficiently appropriate and reliable for evaluating repayment capabilities. Furthermore, recital 57 states that the credit provider is to research the consumer in the relevant databases as part of the assessment. Consequently, it seems that the EU consumer protection goal begins with the principle of responsible lending, anchored as the creditworthiness assessment to search for the consumer's ability to pay the full amount of credit.

The strengthened creditworthiness assessment obligations under the CCD II show that the EU seeks to reinforce consumer protection within increasingly digital consumer credit markets. By requiring creditors to evaluate the consumer's actual ability to repay, CCD II seeks to reduce the risks of irresponsible lending and consumer over-indebtedness. In BNPL arrangements, these obligations are particularly significant due to the speed and accessibility with which such credit may be granted. It must be noted that the strengthened creditworthiness assessment requirements may affect the future understanding and defining characteristics of BNPL.

4.2.3 Right to Withdrawal (14-Day Period)

Article 26(1) of CCD II grants the consumer the right to withdraw from the credit agreement, without providing any reason, within 14 calendar days of signing the contract. The purpose of this provision is to allow consumers time to reconsider after signing the contract, enabling them to cancel the agreement within a set period without being bound by it or required to pay interest.[112] It is relevant in the consumer

[110] Case C-449/13 *Consumer Finance*, para 43.

[111] Federico Ferretti, Rocco Salomone, Holger Sutschet and Vassilis Tsiafoutis, 'The Regulatory Framework of Consumer Over-Indebtedness in the UK, Germany, Italy, and Greece: Comparative Profiles of Responsible Credit and Personal Insolvency Law' (2016) 37(2–3) *Business Law Review* 64.

[112] European Union, 'Returning Goods You Bought Online' (Your Europe) <https://europa.eu/youreurope/citizens/consumers/shopping/returns/index_en.htm> accessed 12 May 2026.

credit framework, where the withdrawal right serves as a consumer protection mechanism by allowing consumers time to reassess potentially complex credit obligations and evaluate whether entering into the agreement remains financially necessary and appropriate.[113]

Under the upcoming CCD II preamble recital 64, to ensure legal certainty, this withdrawal period will, in any case, expire after 12 months and 14 days after the contract is concluded, if the consumer was not properly provided with the required contractual terms and information. However, if the consumer was not informed of their right of withdrawal, the period does not expire.

As BNPL contracts are typically interest-free, there is no interest payment obligation to be waived or discharged.[114] Since BNPL agreements may be a result of impulsive purchases by the consumer, the introduction of a withdrawal right under the new CCD II could help mitigate such risks by allowing consumers a short period to reconsider and cancel the arrangement without adverse consequences.

Applying the right to withdraw from a BNPL agreement would likely have no significant effect on contracts concluded outside business premises under the current regulatory framework. Since BNPL contracts are often linked to a distance or off-premises sales contracts, article 15(1) of CRD provides that, where the consumer exercises the right of withdrawal under the articles 9-14 of CRD, any ancillary contracts, such as a related BNPL agreement, are automatically terminated without cost to the consumer.

The rules on consumer credit may be particularly significant for in-store agreements where a purchase is financed through a connected BNPL arrangement. This would effectively allow consumers to withdraw from such contracts within 14 days, even when the agreement was made at the merchant's physical place of business. Accordingly, both merchants and BNPL providers need to consider that consumers may cancel, within 14 calendar days, even in-store purchase or service contracts financed via BNPL.[115] It must be noted that, according to article 14(2) of CRD, a consumer must compensate a seller for reduced product value after return.

4.3 Unfair Contract Terms and BNPL

CCD II article 32 (1) requires creditors to act honestly, fairly, transparently, and professionally and take into account the rights and interests of the consumers. This standard will be relevant in the context of BNPL, as concerns about potential unfair practises within the BNPL arrangements have been raised.[116] The EU, then the EEC, created the UCTD with the goal of protecting consumers from pre-determined

[113] Peter Mankowski, 'Right of Withdrawal' in *Max Planck Encyclopedia of European Private Law* <https://max-eup2012.mpipriv.de/index.php/Right_of_Withdrawal> accessed 12 May 2026.

[114] Koll, *op. cit.*, 4.

[115] *Ibidem.*, 5.

[116] Financial Conduct Authority, *op. cit.*, 46-49.

contractual terms.[117] It has been said that consumer credit agreements have served as the primary testing ground for the application of the UCTD.[118] While neither the CCD II nor the UCTD directly references each other, they utilise similar, if not mirroring, language surrounding certain provision areas – communication transparency for informed decision-making by the consumer.[119]

The UCTD sets out only a vague list in the Annex of potentially unfair terms.[120] The CCD also does not impose detailed requirements regarding what is seen as unfair, but rather it mandates that creditors must be supervised or regulated by an authority or body that operates independently from financial institutions.[121] One area in which the CJEU has taken a particularly assertive approach relates to the legal consequences that follow when a contractual term is deemed unfair,[122] not what is particularly considered unfair in a loan agreement. Therefore, assessing whether which terms are unfair in consumer credit agreements may differ across member states due to a lack of harmonisation at the EU level.

This reveals a complementary yet fragmented framework for addressing fairness in consumer credit agreements, including BNPL arrangements. The absence of a binding and detailed EU-wide definition of unfair terms within the consumer credit agreements, combined with the list added to the UCTD directive and a case-by-case judicial interpretation, could lead to the assessment of BNPL terms varying across member states, which could result in an imbalance of consumer protection across the EU. However, the main principles for assessing whether a BNPL contract term is unfair remain consistent across the EU, as they are grounded in the transparency requirement and the unfairness test.

4.3.1 The Transparency Principle

UCTD article 5 lays down the need for standard contract terms to be written in "plain, intelligible language" while interpretational direction favouring the consumer. This principle is what provides the terms for individual contracts to be pre-determined, provided the trader gives consumers ample time in advance of signing to read through the terms.[123] If the consumers are sufficiently informed, they may choose to avoid disadvantageous agreements, thereby indirectly incentivizing merchants to adjust their contractual terms.[124] Misleading or false advertising may also undermine the transparency requirement.[125] Particularly, for example, in situations where BNPL

[117] European Commission, 'Guidance on Council Directive 93/13/EEC of 5 April 1993 on Unfair Terms in Consumer Contracts', *op. cit.*; Ola Svensson, 'The Unfair Contract Terms Directive: Meaning and Further Development' *(*2020) Nordic Journal of European Law 24.

[118] Francesco Esposito, 'Loans and the Unfair Contract Terms Directive after C-472/20 *Lombard* – Where Are We Now?' (2024) 15 *Journal of European Consumer and Market Law* 220, 223.

[119] UCTD art. 5; CCD II art. 9-10

[120] Roxana Maria Chirieac, 'Considerations on Unfair Terms in Bank Credit Contracts' (2020) 12 *Technium Social Sciences Journal* 101, 103; Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [1993] OJ L95/29, annex.

[121] Geraint Howells, Christian Twigg-Flesner and Thomas Wilhelmsson, 'Rethinking EU Consumer Law', (Routledge 2018) 223

[122] Esposito', *op. cit.*, 223.

[123] Marco B. M. Loos (2015) "Transparency of Standard Terms under the Unfair Contract Terms Directive and the Proposal for a Common European Sales Law", *European Review of Private Law 2*, 179-181.

[124] Svensson, *op. cit.*, 32.

[125] *Ibidem.* 26.

marketing emphasises benefits, while minimising financial risks associated with BNPL arrangements.

This emphasis on informed decision-making is also reflected in other EU legislations, such as the UCPD, the sector-specific directive CCD, and the upcoming directive CCD II, which similarly aim to ensure that consumers are not misled and can make transactional decisions with full awareness of the relevant information. Compliance with these sector-specific instruments is relevant when assessing whether contract terms meet the transparency requirement under the UCTD.[126] Therefore, in the context of BNPL and the transparency test, even if those sector-specific rules do not impose disclosure obligations on certain aspects under CCDs, such as fees or consequences of late payment, this does not prevent such obligations from arising under the UCTD.

Assessment on the clarity of a term depends on the understanding of the consumer, taking the 'average consumer' benchmark, of the possible consequences by engaging in the contract.[127] The CJEU has clarified that transparency involves more than just clear wording or correct grammar. Contract terms must also set out understandable criteria that allow consumers to assess the financial implications of those terms before entering into the agreement.[128] This means that in the case of BNPL arrangements, consumers must be able to understand not only the basic payment structure, but also the potential financial implications of non-compliance, including late fees, interest, and collection costs. Where such consequences are not presented in a clear and comprehensive manner, the transparency requirement may not be satisfied, opening the door for further assessment under the unfairness test.

4.3.2 Unfairness Test

As mentioned beforehand, the UCTD Annex has a non-exhaustive list of terms deemed as unfair.[129] Additionally, the parameters are set out in article 3, outlining agreements created without intentions of good faith or effectively causes detriment towards the consumer – who is presumed to hold the weaker position.[130] While the Annex is not binding, it plays an important role in signalling which contractual practices are likely to raise concerns under the UCTD. The unfairness test is distinctive because it considers not just a single contractual term, but the contract as a whole as well as the circumstances at the time it was made, allowing for a more detailed and context-sensitive evaluation.[131]

In assessing whether an imbalance between the consumer and the merchant exists, national courts are required to go beyond a purely economic evaluation. The CJEU has clarified that courts should consider the position of the consumer under

[127] *Ibidem,* page 26.

[127] Loos, *op. cit.*, 188.

[128] Case C–186/16 *Ruxandra Paula Andriciuc and Others v Banca Romaneasca SA*, paras 44–45.

[129] UCTD, *op. cit.*, annex.

[130] Svensson, *op. cit.*, 27.

[131] *Ibidem.*, 33.

applicable national law in the absence of the contested term.[132] Where no clear default rules exist, the assessment may instead rely on other reference points, such as generally accepted standards of fair and equitable market conduct.[133]

The requirement of fairness introduces an additional qualitative dimension to the assessment. As reflected in the UCTD's preamble recital 16, factors such as the relative bargaining power of the parties and whether the consumer was encouraged to accept the terms must be taken into account. In this regard, the CJEU has established that national courts must assess whether the merchant could reasonably assume that the consumer would have accepted the term in the context of individual negotiations.[134] The operation of the unfairness test could be illustrated by analogy: where a merchant limits the consumer's legal rights, this may indicate unfairness, especially where such limitations can be found in the Annex. [135] However, this initial indication may be rebutted if the trader can demonstrate that the term reflects fair and equitable dealing and that a consumer could reasonably be expected to accept it in the context of an individual negotiation.[136]

Generally, in BNPL arrangements, contractual terms are drafted in advance and offered on a take-it-or-leave-it basis, meaning the terms are standard and not subject to individual negotiation. Therefore, the terms may fall within the scope of the unfairness assessment. Under article 4 of the UCTD, the assessment of unfairness does not extend to the core elements of the contract, such as the price or the main subject matter, if these are expressed in a clear and transparent way.[137] This implies that in BNPL arrangements, primary obligations like repayment and clearly disclosed fees may escape fairness assessment if they meet the transparency requirement. However, supplementary terms, particularly those relating to late payment fees, collection costs, or default interest, remain subject to scrutiny. Overall, the unfairness test plays an important role in ensuring consumer protection in BNPL arrangements, as it allows to scrutinise standardised contract terms that may obscure disadvantages for consumers in seemingly low-cost credit agreements.

4.4 Implications for BNPL Providers in the realm of consumer protection

As BNPL arrangements are going to fall within the scope of the EU consumer credit framework, providers are required to adapt their business models to align with heightened consumer protection standards. These developments reflect a broader shift from a largely unregulated, convenience-driven model towards a more structured credit environment. The following section outlines the key practical implications for BNPL providers, particularly in relation to responsible lending, transparency, withdrawal rights, and the control of unfair contract terms.

[132] See Case C–237/02 *Freiburger Kommunalbauten GmbH Baugesellschaft & Co. KG. v Ludger Hofstetter and Ulrika Hofstetter*; Case C-415/11 *Aziz* para. 68.

[133] Svensson, *op. cit.*, 33.

[134] Howells et al., *op. cit.*, 148–149; Case C-415/11 *Aziz,* paras. 68-69, 71-74.

[135] Svensson, *op. cit.*, 28.

[136] *Ibidem.*

[137] *Ibidem,* 27.

The implementation of the principle of responsible lending would primarily require creditors to collect and assess consumer data in order to evaluate creditworthiness. While this obligation would undoubtedly create an additional burden for both creditors and consumers, it would not be disproportionate given the importance of the objective pursued - to reduce overindebtness and protect consumers from debt traps. BNPL providers must therefore move away from purely transactional practises and ensure that lending decisions are based on sufficient, accurate, and consumer-focused data. This reduces the risk of over-indebtedness and aligns BNPL practices more closely with traditional credit regulation.

The strengthened information requirements under the new CCD II would require BNPL providers to present contractual terms in a clear, transparent, and accessible manner. In particular, consumers must be able to understand not only the apparent cost-free nature of BNPL contracts but also the potential financial risks, such as late payment fees or collection costs. Failure to adequately disclose such elements may not only breach information obligations but also trigger scrutiny under the transparency requirement of the UCTD.

The provisions on withdrawal rights in consumer credit law are unlikely to significantly affect the BNPL arrangements, since BNPL is typically used for online purchases. In these situations, the underlying sales contract already provides rights applicable to distance selling that are regulated under the CRD provisions.

The implications of unfair contract terms in BNPL arrangements are particularly significant, as such agreements are typically based on standardised, non-negotiated terms. Under the UCTD, BNPL providers must ensure that their contractual provisions do not create a significant imbalance to the detriment of the consumer. This is especially relevant for supplementary terms, such as late payment fees, collection costs, and default interest, which may be subject to scrutiny even where the core elements of the contract fall outside the fairness assessment due to compliance with transparency requirements.

Overall, the current EU consumer credit framework provides only limited consumer protection in BNPL arrangements, as the CCD does not regulate such services. However, this regulatory gap is expected to narrow following the CCD II application beginning in the fourth quarter of 2026, which will introduce stronger transparency, creditworthiness, and fairness requirements. Until then, consumer protection in the BNPL arrangements is dependent on complementary legal frameworks, such as the UCTD, UCPD, and CRD.

5 Conclusions

This thesis aims to dissect the regulatory framework governing BNPL arrangements, a payment method growing in its popularity and user frequency for perceived convenience. Firstly, it explored the concept of BNPL through both academic discourse and comparing the method against more well-known counterparts of credit-based payment. Then, it moved onto a doctrinal analysis of the consumer credit framework, namely comparing the existing CCD against the upcoming CCD II, focusing on the effects faced by BNPL providers. Additionally, the consumer protection framework, which governs BNPL regardless of the consumer credit framework, is also explored. After that, the analysis moved onto an analysis surrounding the consumer protection obligations allotted to BNPL arrangements, focusing on the CCD II and consumer protection framework, guided by the principle of responsible lending.

This study identifies four central characteristics of BNPL arrangements: 1) where the consumer is offered to complete full payment of a product or service through instalments, 2) without initial interest or surcharges, 3) the consumer receives the product or service before all payments are fulfilled, and 4) the process is conducted with minimal background checks. However, through doctrinal analysis of the consumer credit framework, it is revealed that a stricter creditworthiness assessment is likely to be applied, which alters the fourth hallmark of the directive's enforcement.

Through analysing the consumer credit framework, this thesis finds that BNPL arrangements do not fall under the scope of CCD, thus creating an exclusion. However, through contrasting the CCD to the upcoming CCD II, it is revealed that the expanded scope looks to subject BNPL to Union-level consumer credit regulation. It was also found that consumer protection of BNPL arrangements currently relies on complementary frameworks, like UCTD, UPCD, and CRD.

Surrounding consumer protection, the thesis finds that due to the current exclusion of BNPL arrangements from the CCD, limited protection within the consumer credit framework results. While the complementary consumer protection framework does provide safeguards through principles of transparency, fairness of contractual terms, and the right to withdrawal, the framework is not BNPL-specific; therefore, it does not fully address the risks in BNPL use. Though the CCD II extension of responsible lending obligations, stricter creditworthiness assessments, and enhanced information demands do strengthen consumer protection in BNPL to an extent.

The goal of preventing irresponsible lending is prevalent within the consumer credit framework, despite not having a precisely worded definition in EU legislation. Through doctrinal analysis, the principle of responsible lending is identified as a significant motivator for the establishment of the consumer credit framework. Responsible lending is found to be a central principle guiding creditor obligations throughout the directives, as well as to ensure informed decision-making and properly assessing the ability of consumers to pay the credit amount without further detriment.

This study evaluates the current and future state of BNPL regulation within the EU. It finds that the CCD II is an important step towards consumer protection regarding BNPL arrangements. The analysis concludes that BNPL arrangements will be covered by the EU consumer credit framework as the CCD II will be implemented by the end of 2026. However, functional application is still to be evaluated upon actual enforcement. Until then, BNPL arrangements continue to rely on complementary EU consumer protection directives.

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