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## The Bank of Italy's Communication on Buy Now Pay Later (BNPL)

On October 28, 2022, the Bank of Italy published a communication on Buy Now Pay Later (the "Communication"). The Buy Now Pay Later ("BNPL") is a form of credit that allows consumers to purchase goods or services by also deferring the purchase price through an installment plan.

At the current stage, BNPL is not subject to specific regulation and, therefore, the applicable regulations and protections are different depending on the specific configuration of the BNPL transaction.

The easy access to this type of product as well as the possible consequences that may result from its incorrect use (incentive to purchases that are not fully sustainable and exposure to the risk of over-indebtedness) have led the Bank of Italy to warn consumers about the risks they may incur in accessing BNPL and remind them of the protections provided by the banking transparency rules.

With the Communication, the Bank of Italy outlines the main BNPL models, recalling their main characteristics: small amount; no interest or charges (in most cases), but fees in case of late or non-payment; fast procedures; no creditworthiness assessment or very simplified assessment. The Communication defines the general outline of the BNPL transaction, which involves three parties:

- (i) the consumer who wants to buy goods or services;
- (ii) the seller who places such goods or services;
- (iii) a third party who grants the consumer deferred payment, including on the basis of an installment plan, subject to agreement with the seller.

There are two main models of BNPL:

- (a) payment deferral granted directly to the consumer by a bank or financial intermediary under an agreement with the seller;
- (b) combination of payment deferral granted directly by the seller to the consumer (without interest or other charges, but fees in the event of late or non-payment) and a non-recourse assignment of the credit from the seller to a bank or financial intermediary immediately following.

In case *sub (a)*, the full consumer credit rules apply (except as provided for in Art. 122 of the Italian Consolidated Banking Act).

In case *sub (b)*, on the other hand, since the payment deferment is granted directly by the seller, it is subject neither to the application of the rules provided by the Consolidated Banking Act nor to Bank of Italy controls. However, the circumstance that the deferment is granted by sellers of goods and services, but subsequently the credit is assigned to banks/financial intermediaries could generate the consumer's mistaken belief that the protections typical of the bank-customer relationship apply, exposing the consumer to a twofold risk: (i) of not being able to identify the counterparty with whom he or she is entering into the payment deferment; and (ii) of not understanding the intermediary's role in the transaction.

Bank of Italy concludes the Communication by stating that the BNPL phenomenon will be subject to constant regulatory and normative monitoring to understand its impacts.

In addition, the Communication points out that the BNPL product could be expressly included in the scope of the new consumer credit regulation. Indeed, the European Parliament's proposal for a directive on consumer credit, in order to ensure greater transparency and better consumer protection, would bring within its scope "potentially detrimental products" due to the high costs they entail or onerous charges in the event of non-payment, and these products include BNPL.

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