

# Single Rulebook Q&A

<b>Question ID</b>	2021_5850
<b>Status</b>	Final Q&A
<b>Legal act</b>	Directive 2014/92/EU (PAD)
<b>Topic</b>	Payment accounts
<b>Article</b>	5
<b>Paragraph</b>	2
<b>Subparagraph</b>	-
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Regulation (EU) 2018/33 - ITS with regard to the standardised presentation format of the statement of fees
<b>Article/Paragraph</b>	10
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<b>Disclose name of institution / entity</b>	Yes
<b>Name of institution / submitter</b>	Czech National Bank
<b>Country of incorporation / residence</b>	Czech republic
<b>Type of submitter</b>	Competent authority
<b>Subject matter</b>	Display of negative interest rate in statement of fees
<b>Question</b>	How should a fee corresponding to negative interest (in case of negative policy interest rate of the respective central bank) be displayed in the Statement of Fees (SoF) pursuant to Article 5 Payment Accounts Directive (PAD) and in accordance with Commission Implementing Regulation (EU) 2018/33 (ITS on SoF)?
<b>Background on the question</b>	1. In civil laws of some Member States "negative interest" cannot be construed as an interest, but as a fee. In these Member States, payment services providers cannot debit "negative interest", but may charge the corresponding fee instead. Reasoning: - interest is to be paid to the payment account owner - title to interest forms accessory of the claim of the account holder against his bank, and as such may be transferred by the account holder to the third person without consent of the bank, while - fee as well as "negative interest" is to be paid by the payment account holder - "title to fee"

as well as "title to negative interest" forms liability of the account holder towards his bank and as such may not be transferred by the account holder to the third person without consent of the bank . 2. From the definition of credit interest rate in PAD ("any rate at which interest is paid to the consumer in respect of funds held in a payment account") it seems that PAD also considers "negative interest rate" not being part of the "credit interest rate" and therefore "negative interest" not being part of the interest shown in the statement of fees (SoF). Anyway, we believe that in case "negative interest rate" (in the form of fee or whatever) is charged to a consumers account, it shall be somehow included in the SoF, otherwise information given by the SoF could be absolutely misleading. Article 5(2) PAD states that " The statement of fees shall specify at least the following information" a) the unit fee charged for each service and the number of times the service was used during the relevant period, and where the services are combined in a package, the fee charged for the package as a whole, the number of times the package fee was charged during the relevant period and the additional fee charged for any service exceeding the quantity covered by the package fee; b) the total amount of fees incurred during the relevant period for each service, each package of services provided and services exceeding the quantity covered by the package fee; c) the total amount of fees charged for all services provided during the relevant period. Therefore we believe that "negative interest rate" shall be displayed in SoF among the fees charged for each service. 3. The only service defined by the Commission Delegated Regulation (EU) 2018/32 that may be somehow associated with the "fee corresponding to negative interest" is item 1 of the Annex table "Maintaining the account" which is defined as "The account provider operates the account for use by the customer." However, in our opinion the "fee corresponding to negative interest" is not paid for the operation and use of the account, rather it is paid for depositing funds in the circumstances of negative policy interest rates of the respective central bank.

**Final answer**

Article 5 paragraph 2 of Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (the "PAD") provides for the minimum amount of information that shall be specified in the statement of fees.

'Negative interest' (in case of negative interest rate policy of the respective central bank) cannot be considered either as an interest or as a fee considering how these two terms are defined by PAD.

PAD does not include a definition of 'negative interest rate'. Article 2 point (16) of the PAD contains the definition of 'credit interest rate', which means any rate at which interest is paid to the consumer in respect of funds held in a payment account. Therefore Article 2(16) PAD does not cover such negative interest rate as no interest is paid to the consumer.

Also, interest charged according to Article 5(2)(c) pertains to the total amount related to the overdraft, but not to negative interest rate.

The wording of the Payment Account Directive reflects a period of time where negative interest rates were not used, but the current wording of PAD is clear.

A negative interest rate applied to the consumer does not generate a payment but a charge. That charge is not a fee within the meaning of Article 2(15). According to this Article, ‘fees’ means all charges and penalties, if any, payable by the consumer to the payment service provider for or in relation to services linked to a payment account. A negative interest rate cannot be considered as a fee since it is not a charge paid in relation to a service. The application of a negative interest is merely the result of a monetary policy of negative interest rates, designed to spur economic growth through spending and investment

In conclusion there is no mandatory obligation to state the negative interest in the statement of fees according to Article 5 paragraph 2 of Directive 2014/92/EU. Given that a negative interest is not a fee in the sense of PAD (as it is not related to a service), the negative interest cannot be included in the statement of fees.

Information on negative interest should however be included in the contract. In addition, the banks may provide consumers with information about the exact negative interest which is being applied on a regular basis in the way they choose, but not in the disclosure document under “statement of fees”.

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The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.

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