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EUROPEAN COMMISSION
Directorate General Financial Stability, Financial Services and Capital Markets Union
Horizontal Policies
The Director

Brussels,
FISMA/B3/

Ms Ulla Brøns Petersen
Director
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Subject: Interpretation of the Payment Accounts Directive (PAD) – Negative interest rates

Dear Ms. Brøns Petersen,

Thank you for your letters of 24 November and 3 December 2021 to Eric Ducoulombier, Head of the Retail Financial Services Unit in DG FISMA. You asked for our views on the compatibility with the Payment Account Directive (PAD) of charging negative interest rates on payment accounts.

Based on our information, three large Danish banks charge negative interest rates (-0.6 or -0.7%) already for deposits of at least 100.000 Danish kroner. In other Member States where negative interest rates are also observed, these thresholds are much higher (50.000 or 100.000 euros) which limits substantially their impact, notably from a financial inclusion standpoint. National law in some Member States restricts the application of negative interest rates on deposits. In several Member States however, the application of such charges is allowed. I understand that in the view of the Danish FSA, Article 18 of PAD does not prevent credit institutions from charging negative interest rates on deposits in a payment account. The FSA's reasoning is the following:

"*Article 18 only regulates fees for the specific services referred to in article 17. These services only relates to the transactions that a basic payment account must include. Therefore, according to this interpretation the PAD directive does not regulate negative interest rates.*"

I note that the Danish Consumer Ombudsman reached, in a memo dated 3 December 2021, a conclusion which is the exact opposite of the one given by the FSA. As evidenced by these two diametrically opposed conclusions, the answer to this question is not straightforward. At the time of the adoption of PAD, interest rates were clearly understood as interest paid by a bank *to* the customer. The possibility of charging negative interest rates was definitely not envisaged by the co-legislators. Article 2 (16) PAD which defined "credit interest rates" confirms this by referring to interest "*paid to the consumer in respect of funds held in a payment account*". This excludes negative interest rates but admittedly it does not, as such, ban them.

The main question is rather whether negative interest rates could be considered as a "fee" in the sense of Article 2 (15) PAD. On the one hand, one could argue that the term "fee" ought to be interpreted in a broad way, given the objective of PAD (and in particular the basic bank account) to ensure financial inclusion. Following this reasoning, negative interest rates would be regarded as a fee linked with the service of placing funds (cf. Article 17§1, b). On the other hand, one could argue that the legislators clearly wanted to distinguish between fees for a specific service and interest rates, which are not linked to a specific service. We note in this respect that the directive contains a definition of both "fees" and "credit interest rate". Negative interest rates would not be considered as a fee since it would not be a charge paid in relation to a service. In fact, negative interest rates are only to be paid in case of a positive balance. Yet holding a positive balance on a basic account does not feature among the basic services listed in Article 17. In principle, consumers could obtain all the services covered by the Directive without holding a positive balance on their account. Such an interpretation would also support an effective monetary policy.

Having examined all the arguments, DG FISMA leans towards a conclusion whereby negative interest rates are not to be considered as "fees" in the sense of PAD and do not thus need to comply with the "reasonableness" criteria in Article 18. However, the final assessment of this question and the final interpretation of PAD of course lies with the European Court of Justice.

Yours sincerely,

(e-signed)

Marcel Haag

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