

C-442/02 Caixa-Bank [2004]

Facts: The applicant was a company governed by French law (and a subsidiary of a Spanish-law company) which marketed a sight account remunerated at a rate of 2% annually of balances over EUR 1500 in France. A French law prohibited credit establishments from paying remuneration on such funds above a prescribed limit. Such a prohibition applied to all residents in France opening an account, irrespective of their nationality. The applicant contended that this contravened its freedom to establishment under Art. 49 TFEU.

Advocate General Tizzano, arguing against the restrictions approach to barriers to the freedoms espoused in cases like *Case C-55/94 Gebhard* [1995] ECR I-4165, contended that taking such an approach would enable economic operators to take advantage of the Treaty freedoms and easily challenge any national laws which aimed to narrow profit margins and reduce the lucrative nature of economic endeavours, regardless of the policy considerations. A better approach would be the market access approach, whereby as long as the principle of non-discrimination is respected, a national measure cannot be described as a restriction unless the measure directly affects market access.

Held: The Court held that a prohibition on the remuneration of sight accounts such as that laid down by the French law was, for companies from Member States other than the French Republic, a serious obstacle to the pursuit of their activities via a subsidiary in the latter Member State, affecting their access to the market. That prohibition was therefore to be regarded as a restriction within the meaning of the Treaty. The effect of allowing this law to stand would be to stifle competition.