ORDER OF THE COURT (Second Chamber)

23 September 2004 *

In Joined Cases C-435/02 and C-103/03,

REFERENCES for a preliminary ruling under Article 234 EC from the Landgericht Essen (Germany) and the Landgericht Hagen (Germany), by orders of 25 November 2002 and 11 February 2003, registered at the Court on 2 December 2002 and 5 March 2003 respectively, in the proceedings

Axel Springer AG

v

Zeitungsverlag Niederrhein GmbH & Co. Essen KG (C-435/02)

and

Axel Springer AG

v

Hans-Jürgen Weske (C-103/03),

* Language of the case: German.

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, J.-P. Puissochet, R. Schintgen, F. Macken and N. Colneric, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having informed the national courts that the Court proposed to give its decision by way of reasoned order in accordance with Article 104(3) of the Rules of Procedure,

having invited the interested parties referred to in Article 23 of the EC Statute of the Court of Justice to submit any observations which they might wish to make in that regard,

after hearing the Advocate General,

makes the following

Order

1 These references for a preliminary ruling concern the validity of Council Directive 90/605/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives (OJ 1990 L 317, p. 60).

2 The references were made in the course of proceedings brought by Axel Springer AG ('Springer') against Zeitungsverlag Niederrhein GmbH & Co. Essen KG ('Zeitungsverlag') (C-435/02), and against Mr Weske, the manager of Radio Ennepe-Ruhr-Kreis mbH & Co. KG ('Radio Ennepe') (C-103/03), in relation to requests made by Springer to inspect the annual accounts of Zeitungsverlag and Radio Ennepe.

Legal framework

Community legislation

3 Under Article 54(3)(g) of the EC Treaty (now, after amendment, Article 44(2)(g) EC), the Council of the European Union and the Commission of the European Communities are to work to abolish restrictions on the freedom of establishment by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 (now the second paragraph of Article 48 EC) with a view to making such safeguards equivalent throughout the Community.

4 The purpose of Directive 90/605 is to amend the scope of inter alia Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11) ('the Fourth Companies Directive').

5 The Fourth Companies Directive lays down measures for the coordination of national provisions concerning annual accounts of capital companies. In Germany, it applies to the following types of company: the Aktiengesellschaft (public limited company), the Kommanditgesellschaft auf Aktien (limited partnership with a share capital) and the Gesellschaft mit beschränkter Haftung (private limited liability company).

6 Articles 1 and 2 of Directive 90/605 extend the application of the coordination measures laid down in the Fourth Companies Directive to certain types of partnerships, which include, in Germany, the Kommanditgesellschaft (limited partnership), where, inter alia, all the members having unlimited liability for the debts and obligations of that firm are capital companies of one of the types mentioned in the preceding paragraph of this judgment.

7 Directive 90/605 thus extends, in Germany, the application of the coordination measures laid down in the Fourth Companies Directive to, inter alia, firms constituted as a limited partnership all of whose members having unlimited liability are private limited liability companies ('the GmbH & Co. KG').

8 That type of partnership is therefore subject inter alia to Article 47(1) of the Fourth Companies Directive, as amended by Article 38(3) of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ 1983 L 193, p. 1), which states:

'The annual accounts, duly approved, and the annual report, together with the opinion submitted by the person responsible for auditing the accounts, shall be published as laid down by the laws of each Member State in accordance with Article 3 of Directive 68/151/EEC.

The laws of a Member State may, however, permit the annual report not to be published as stipulated above. In that case, it shall be made available to the public at the company's registered office in the Member State concerned. It must be possible to obtain a copy of all or part of any such report upon request. The price of such a copy must not exceed its administrative cost.'

9 Article 3(1) to (3) of the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English Special Edition 1968 (I), p. 41) ('the First Companies Directive') states:

'(1) In each Member State a file shall be opened in a central register, commercial register or companies register, for each of the companies registered therein.

(2) All documents and particulars which must be disclosed in pursuance of Article 2 shall be kept in the file or entered in the register; the subject matter of the entries in the register must in every case appear in the file.

(3) A copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable by application in writing at a price not exceeding the administrative cost thereof.

...'

10 Article 2(1)(f) of the First Companies Directive provides:

'Member States shall take the measures required to ensure compulsory disclosure by companies of at least the following documents and particulars:

...

(f) The balance sheet and the profit and loss account for each financial year ...'.

National law

11 By its judgment in Case C-272/97 *Commission* v *Germany* [1999] ECR I-2175, the Court held that Directive 90/605 had not been transposed into German law within the prescribed period.

12 German legislation, in particular the Handelsgesetzbuch (German Commercial Code) ('the HGB') has since been amended so that the coordination measures laid down in the Fourth Companies Directive now extend inter alia to the GmbH & Co. KG (Paragraph 264a of the HGB).

13 That new legislation also provides that breaches of the obligations laid down will incur administrative fines of a minimum of EUR 2 500 and a maximum of EUR 25 000, to be imposed by the Amtsgericht (Local Court) (Germany), which is the court responsible for maintaining the commercial register.

14 However, such fines may only be imposed pursuant to an application brought before that court. On the other hand, there is no restriction on the status of those who may bring such an application, and accordingly any person is authorised to do so (Paragraphs 335a and 335b of the HGB).

The main proceedings and the questions referred

15 By applications brought before the Amtsgerichte having territorial jurisdiction, Springer requested that Zeitungsverlag and Radio Ennepe, undertakings which carry on business in the press and publishing fields and in sound broadcasting respectively, be ordered to produce their annual accounts on pain of payment of a fine, so that Springer could inspect them.

16 The courts before which the proceedings were brought granted the requests by orders making the directions applied for and imposing on the administrators of those partnerships, Mr Glandt and Mr Weske respectively, an administrative fine of EUR 5 000 in the event of failure to lodge the documents concerned within the prescribed period.

17 As those annual accounts were not lodged within the prescribed period, the fines were imposed by subsequent orders.

18 Zeitungsverlag and Mr Glandt, on the one hand, and Mr Weske, on the other, then brought proceedings to contest the last-mentioned orders before the appropriate appeal courts.

19 Those courts consider that the cases before them give rise to doubts as to the validity of Directive 90/605.

20 In Case C-435/02, the Landgericht Essen (Essen Regional Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Directive 90/605 ..., in conjunction with Article 47 of Directive 78/660 ..., compatible with the fundamental Community right of freedom to exercise a trade or profession in so far as limited partnerships whose personally liable partner is a private limited liability company are obliged to publish their accounts and annual report, in particular without any restriction being imposed on the group of persons entitled to inspect those documents?

(2) Is Directive 90/605 ..., in conjunction with Article 47 of Directive 78/660 ..., compatible with the fundamental Community rights of freedom of the press and radio in so far as limited partnerships whose personally liable partner is a private limited liability company and which are engaged in the press and publishing sector or the radio broadcasting sector are obliged to publish their annual

accounts and annual report, in particular without any restriction being imposed on the group of persons entitled to inspect those documents?

(3) Is Directive 90/605 ... compatible with the general principle of equal treatment in so far as it places at a disadvantage those limited partnerships whose personally liable partner is a private limited company as compared with limited partnerships whose personally liable partner is a natural person, even though creditors of a limited partnership whose personally liable member is a private limited liability company are better protected by the duty of disclosure imposed on private limited liability companies than are creditors of a limited partnership whose personally liable partner, as a natural person, is not under any duties of disclosure?'

21 In Case C-103/03, the Landgericht Hagen also decided to stay the proceedings and to refer the same three questions to the Court, adding an initial question, which reads as follows:

'Was the European Community entitled to take Article 54(1), in conjunction with Article 54(3)(g) of the EC Treaty as a basis when it adopted ... Directive 90/605 ..., even though Directive 90/605 ... also grants inspection rights to third parties which do not require protection?'

22 In the light of the connection between them, Cases C-435/02 and C-103/03 were joined for the purposes of the order.

The questions referred

23 Since it considered that the answer to the first question referred to the Court in Case C-103/03 may clearly be inferred from the judgment in Case C-97/96 *Daihatsu Deutschland* [1997] ECR I-6843 and that the answers to the other questions put in Case C-103/03 and those put in Case C-435/02 leave no room for reasonable doubt, the Court informed the national courts in accordance with Article 104(3) of its Rules of Procedure that it proposed to give its decision by way of reasoned order and invited the interested parties referred to in Article 23 of the EC Statute of the Court of Justice to submit any observations they might wish to make in that regard.

24 As regards Case C-435/02, the Council replied to the Court's invitation, stating that it had no objection to the Court giving its decision by way of reasoned order. By contrast, as regards Cases C-435/02 and C-103/03, Zeitungsverlag and Mr Weske expressed some objections in that respect, referring to the arguments raised in their written observations. However, those factors have not persuaded the Court to depart from the proposed procedural approach.

The first question in Case C-103/03

25 By its first question in Case C-103/03, the national court is essentially asking whether, to the extent that it follows from Directive 90/605 that any person may inspect the annual accounts and annual report of the types of partnerships referred to in it, without having to establish a right or an interest requiring to be protected, that directive could validly be adopted on the basis of Article 54(3)(g) of the Treaty.

26 Mr Weske submits that the circle of third parties entitled to protection under Article 54(3)(g) of the Treaty encompasses persons having a current legal relationship with the partnership as well as persons wishing to establish such a relationship and thus also potential members, employees or creditors.

27 However, that provision cannot be interpreted so as to define the circle of third parties in a way that would include any persons, whatever their status. The broad interpretation of the concept of third parties, given in the *Daihatsu Deutschland* judgment therefore gives rise to some concern.

28 It must be pointed out in that regard, as the Council and the Commission submit, that the answer to that question may be clearly inferred from the judgment in *Daihatsu Deutschland.*

29 It is apparent from paragraphs 19 and 20 of that judgment that the very wording of Article 54(3)(g) of the Treaty refers to the need to protect the interests of 'others' generally, without distinguishing or excluding any categories falling within the ambit of that term, and consequently the 'others' referred to in that article cannot be limited in particular merely to creditors.

30 At paragraph 21 of that judgment, the Court held, moreover, that the objective of abolishing restrictions on freedom of establishment, which is assigned in very broad terms to the Council and the Commission by Article 54(1) and (2) of the Treaty, cannot be circumscribed by the provisions of Article 54(3) thereof, since that article merely sets out a non-exhaustive list of measures to be taken in order to attain that objective, as is borne out by the use in that provision of the words 'in particular'.

31 The Court also expressly stated at paragraph 22 of that judgment that Article 3 of the First Companies Directive, which provides for the maintenance of a public register in which all documents and particulars to be disclosed must be entered, and pursuant to which copies of the annual accounts must be obtainable by any person upon application, confirms the concern, expressed in the fourth recital to the preamble to that directive, to provide information for all third parties who do not know or cannot obtain sufficient knowledge of the company's accounting and financial situation.

32 In the same paragraph, the Court added that that concern also finds expression in the recitals in the preamble to the Fourth Companies Directive, which refer to the need to establish in the Community minimum equivalent legal requirements as regards the extent of financial information that should be made available to the public by companies that are in competition with one another (see, in particular, the third recital).

33 It thus follows clearly from the judgment in *Daihatsu Deutschland* that the disclosure obligations laid down in Article 3 of the First Companies Directive, to which Article 47(1) of the Fourth Companies Directive refers and which have been extended by Directive 90/605 to certain types of partnerships, such as that at issue in the main proceedings, mean that any person may inspect the annual accounts and annual report of the types of partnerships that that directive refers to, without having to establish a right or an interest requiring to be protected.

34 It is also clearly apparent from paragraphs 21 and 22 of that judgment that a Community act laying down such disclosure obligations could be adopted on the basis of Article 54(3)(g) of the Treaty, since that provision, which confers broad powers on the Community legislature, refers to the need to protect the interests of 'others' generally, without distinguishing or excluding any categories falling within

the ambit of that term, so that the 'others' referred to in that article includes all third parties. It follows that that term must be interpreted broadly and that it extends in particular to competitors of the partnerships concerned.

35 The answer to the first question put in Case C-103/03 must therefore be that, to the extent that it follows from Directive 90/605 that any person may inspect the annual accounts and annual report of the types of partnerships referred to in it, without having to establish a right or an interest requiring to be protected, that directive could validly be adopted on the basis of Article 54(3)(g) of the Treaty.

The first two questions in Case C-435/02 and the second and third questions in Case C-103/03

36 By the first two questions referred in Case C-435/02 and the second and third questions referred in Case C-103/03, which should be considered together, the national courts are essentially asking whether, to the extent that it follows from Directive 90/605 that any person is entitled to inspect the annual accounts and the annual report of undertakings constituted as one of the types of partnerships referred to in it and which carry on business, as in the present case, in the press, publishing or sound broadcasting sector, without having to establish a right or an interest requiring to be protected, that directive is compatible with the general Community law principles of freedom to exercise a trade or profession and freedom of the press.

Observations submitted to the Court

37 Zeitungsverlag and Mr Weske submit that Directive 90/605, in conjunction with Article 47 of the Fourth Companies Directive, pursues a legitimate objective in the public interest, to the extent that the disclosure obligations which it lays down aim to protect the members, employees and creditors of the partnership.

38 The extension of the circle of persons authorised to inspect the documents in question to any persons having an interest, including competitors, represents, however, a disproportionate burden having regard in particular to the legitimate interests of the partnership in keeping certain information secret. Directive 90/605 is thus incompatible with the Community principle of freedom to exercise a trade or profession and is accordingly invalid.

39 Zeitungsverlag and Mr Weske also argue that freedom of expression, as a fundamental right guaranteed by Community law, protects all the activities of the press and sound broadcasting undertakings.

40 As Directive 90/605 and the Fourth Companies Directive do not provide any protection which is specific to press and sound broadcasting undertakings, in the form of exceptions to the disclosure obligations laid down in those directives, they are incompatible with the principle of freedom of opinion.

41 The Belgian Government argues that the obligation to publish annual accounts imposed by Directive 90/605 is justified by the fact that, as regards the partnerships

covered by it, third parties have only limited recourse against their members, as they are legal persons having limited liability.

42 The Commission refers to the first three recitals in the preamble to the Fourth Companies Directive, which make it clear in particular that the provisions as to publication of annual accounts and annual reports are required because the types of partnership to which they apply offer no safeguards to third parties beyond the amounts of their net assets and it is necessary to establish in the Community minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by companies that are in competition with one another.

43 The inclusion, in particular, of competitors in the circle of persons authorised to inspect those documents is both a necessary and appropriate means of achieving the objective which both those recitals and Article 54(3)(g) of the Treaty, as interpreted by the Court in the *Daihatsu Deutschland* judgment, seek to achieve, namely the protection not only of members, but also of third parties.

44 The Commission also submits that the question relating to freedom to exercise a trade or profession under Community law covers, in the present case, the same issues as the question relating to the general principle of the freedom of the press.

45 The Council argues that Directive 90/605 does not constitute an unreasonable and unacceptable measure which undermines the very substance of freedom to exercise a trade or profession.

46 The Council submits in addition that the disclosure obligation laid down in Directive 90/605 does not undermine in any way the freedom of the press as guaranteed inter alia by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as it has no effect on the content of the information or the ideas communicated by a partnership which is subject to that directive.

Findings of the Court

47 As a preliminary point, it must be stated that the question relating to the compatibility of the disclosure obligations imposed on the partnerships in question in the main proceedings with freedom of expression cannot be separated from the question relating to the compatibility of those obligations with the freedom to exercise a trade or profession. Those obligations apply to every undertaking in the form of a partnership, irrespective of the nature of its activities. Furthermore, they do not have any sufficiently direct and specific links to an activity falling under freedom of expression. Essentially the obligations constitute rules that affect the partnerships concerned regardless of the economic activity involved.

48 The Court has held that both the right to property and freedom to pursue a trade or profession form part of the general principles of Community law. However, according to that case-law, the exercise of those rights may be restricted, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference, impairing the very substance of the rights guaranteed (see Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 78; and Joined Cases C-20/00 and C-64/00 *Booker Aquaculture and Hydro Seafood* [2003] ECR I-7411, paragraph 68, and the case-law cited there).

49 In those circumstances, even if the disclosure obligations at issue in the main proceedings have a sufficiently direct and significant effect on freedom to exercise a trade or profession, the restriction they impose, in particular the restriction on the right of an undertaking to keep secret certain potentially sensitive information, appears on any analysis to be clearly justified.

50 The first three recitals in the preamble to the Fourth Companies Directive show that the provisions as to disclosure which it imposes on certain types of capital companies pursue the double objective of public interest laid down by Article 54(3)(g) of the Treaty, that is to say the protection of third parties against the financial risks involved with those types of companies which offer no safeguards to third parties beyond the amounts of their net assets, and the establishing in the Community of minimum equivalent legal requirements as regards the extent of the financial information that should be made available to the public by companies that are in competition with one another.

51 According to the first five recitals in the preamble to Directive 90/605, a particular objective of that directive is to remedy a practice on the part of a substantial and constantly growing number of partnerships and limited partnerships of circumventing the rules by constituting themselves as partnerships all the fully liable members of which are capital companies in order to avoid the application of the disclosure provisions imposed on the latter. That practice fails to have regard to the abovementioned objective of the Fourth Companies Directive of protecting third parties against the financial risks presented by those types of companies and partnerships which offer no safeguards to third parties beyond the amount of their net assets.

52 It follows that the measures imposed by Directive 90/605 do indeed correspond to the objectives of Article 54(3)(g) of the Treaty, and accordingly to the objectives of general interest pursued by the Community as referred to in the case-law cited in paragraph 48 of this order.

53 Moreover, any prejudice that may arise as a result of the obligations imposed by the disclosure rules appears to be of a limited nature. It seems doubtful that those rules are capable of altering the competitive position of the partnerships concerned, unlike the situation which gave rise to the judgment in *Germany* v *Council*, paragraph 81.

54 That approach is confirmed by the actual provisions of the Fourth Companies Directive, in particular Articles 11, 27 and 44 to 47, which allow for a reduced amount of information to be included in the annual accounts and annual reports of companies which do not exceed the limits of specified criteria and for restricted publication of the accounts of those companies. Furthermore, a particular aim of Article 45 of that directive is to avoid the disclosure of certain information being seriously prejudicial to the undertakings concerned.

55 It should also be pointed out that Article 46 of that directive allows the information which must appear in the annual report to be provided in general terms, so that, contrary to what Mr Weske and Zeitungsverlag suggest, it is not necessary to provide detailed information as to certain sensitive matters which might disclose, for example, the basis on which prices are calculated.

56 Furthermore, the publication of the annual accounts of capital companies (in the present case, private limited liability companies) which are the only fully liable members of a partnership subject to Directive 90/605, such as those constituted as GmbH & Co. KG in question in the main proceedings, in itself only provides information as to the position of those members and not that of the partnership. It does not therefore render the publication of the annual accounts of such a company superfluous in any way.

57 Moreover, Article 57a, inserted in the Fourth Companies Directive by Article 1(4) of Directive 90/605, allows partnerships, such as the GmbH & Co. KG in question in the main proceedings, to be relieved of their disclosure obligations if their accounts must be published with those of one of their members having unlimited liability or where they are included in the consolidated accounts of a group of companies.

58 In those circumstances, the obligation imposed on partnerships, such as those legally constituted as GmbH & Co. KG in question in the main proceedings, as to disclosure of the annual accounts and annual report does not amount to a disproportionate and intolerable interference, impairing the very substance of the freedom to exercise a trade or profession.

59 Having regard to the above, the answer to the first two questions referred in Case C-435/02 and the second and third questions referred in Case C-103/03 must be that their consideration in the light of the general Community law principles of freedom to pursue a trade or profession and of freedom of expression has not disclosed anything that is capable of affecting the validity of Directive 90/605.

The third question in Case C-435/02 and the fourth question in Case C-103/03

60 By the third question referred in Case C-435/02 and the fourth question referred in Case C-103/03, the national courts are essentially asking whether Directive 90/605 is

compatible with the principle of equal treatment in so far as the directive requires the publication of annual accounts of limited partnerships all of whose fully liable members are private limited liability companies. Those partnerships are thus placed at a disadvantage as compared with limited partnerships having at least one fully liable member who is a natural person and which are not subject to those obligations, even though creditors of the first type of partnership are better protected than those of the second type, as their members are, as private limited liability companies, subject to those disclosure obligations, and those obligations do not apply to natural persons.

Observations submitted to the Court

61 Zeitungsverlag and Mr Weske submit that the disclosure provisions at issue give rise to serious inequality of treatment between limited partnerships having at least one fully liable member who is a natural person and limited partnerships all of whose fully liable members are private limited liability companies, such as a GmbH & Co. KG, and that that situation imposes serious disadvantages on those partnerships.

62 The Council submits that the first three recitals of the preamble to Directive 90/605 show that its purpose is to fill a gap arising from the Fourth Companies Directive that was considered by the legislature to be contrary to the spirit and objectives of the latter, since a constantly growing number of partnerships such as the limited partnerships in question in the main proceedings were not subject to the disclosure obligations, while their creditors could proceed only against their fully liable members constituted as private limited liability companies, and, accordingly, no safeguards were offered to third parties beyond the amount of the net assets of those companies.

63 As regards third parties, there is a fundamental difference between such limited partnerships and partnerships having at least one fully liable member who is a natural person all of whose assets are available to meet the debts of the partnership.

64 Accordingly, the imposition of disclosure obligations on limited partnerships all the fully liable partners of which are private limited liability companies, such as the GmbH & Co. KG, and not on other limited partnerships is objectively justified.

65 The Commission refers to the same objective distinction which exists between the different limited partnerships and concludes from that that Directive 90/605 is not discriminatory.

Findings of the Court

66 As a preliminary point, it must be stated that the general principle of equal treatment, which is one of the fundamental principles of Community law, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, inter alia, Case C-304/01 *Spain* v *Commission* [2004] ECR I-7655, paragraph 31).

67 As paragraph 51 of this order makes clear, the distinction made by Directive 90/605 between the partnerships covered by it, such as the GmbH & Co. KG, and limited

partnerships which include among their fully liable members at least one natural person falling outside the scope of that directive, is based on the consideration that the first category of partnerships indirectly exposes third parties to the same risks as the capital companies covered by the Fourth Companies Directive, that is to say that they offer no safeguards to third parties beyond the amounts of their net assets. That is not the case as regards the second category of limited partnerships.

68 Directive 90/605 follows the same reasoning as the Fourth Companies Directive, the circumvention of which it seeks to avoid and to which it is, in that respect, purely ancillary. Seen from that perspective, Directive 90/605 supplements the Fourth Companies Directive, so that the privilege of limited liability from which certain types of company benefit goes hand in hand with appropriate disclosure, intended to protect the interests of third parties.

69 The distinction made by Directive 90/605 between the two types of limited partnerships mentioned in paragraph 67 of this order in relation to the application of the scheme of the Fourth Companies Directive and the disclosure obligations imposed by that directive is thus objectively justified by considerations in respect of protecting the interests of third parties, such protection being an essential aim of Directive 90/605 and the Fourth Companies Directive.

70 That assessment is not called into question by the fact, mentioned by the national courts, that the creditors of the limited partnerships covered by Directive 90/605 are already protected by virtue of their members being already subject as private limited liability companies to the disclosure obligations laid down in the Fourth Companies Directive, whereas those obligations do not apply to natural persons.

71 As was already held at paragraph 56 of this order, publication of the annual accounts of capital companies which are the only fully liable members of a partnership covered by Directive 90/605, such as those constituted as a GmbH & Co. KG at issue in the main proceedings, of itself merely provides information as to the position of those members and not as to those of the partnership.

72 Having regard to the above, it does not appear that Directive 90/605 infringes the principle of equal treatment.

73 In those circumstances, the answer to the third question in Case C-435/02 and the fourth question in Case C-103/03 must be that their consideration in the light of the principle of equal treatment has not disclosed anything that is capable of affecting the validity of Directive 90/605.

Costs

74 Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **To the extent that it follows from Council Directive 90/605/EEC of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those Directives that any person may inspect the annual accounts and annual report of the types of partnerships referred to in it, without having to establish a right or an interest requiring to be protected, that directive could validly be adopted on the basis of Article 54(3)(g) of the EC Treaty (now, after amendment, Article 44(2)(g) EC).**

2. **Consideration of the first two questions referred in Case C-435/02 and the second and third questions referred in Case C-103/03 in the light of the general Community law principles of freedom to pursue a trade or profession and of freedom of expression has not disclosed anything that is capable of affecting the validity of Directive 90/605.**

3. **Consideration of the third question in Case C-435/02 and the fourth question in Case C-103/03 in the light of the principle of equal treatment has not disclosed anything that is capable of affecting the validity of Directive 90/605.**

Signatures.