

JUDGMENT OF THE COURT (Third Chamber)

20 May 2010 *

In Case C-210/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Cour administrative d'appel de Nantes (France), made by decision of 29 December 2008, received at the Court on 10 June 2009, in the proceedings

Scott SA,

Kimberly Clark SAS, formerly Kimberly Clark SNC,

v

Ville d'Orléans,

* Language of the case: French.

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, E. Juhász, G. Arestis, J. Malenovský and T. von Danwitz (Rapporteur), Judges,

Advocate General: P. Mengozzi,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Scott SA and Kimberly Clark SAS, formerly Kimberly Clark SNC, by R. Sermier, avocat,
- the City of Orléans, by A. Lyon-Caen, avocat,
- the French Government, by G. de Bergues and B. Beaupère-Manokha, acting as Agents,

— the Polish Government, by M. Dowgielewicz, acting as Agent,

— the Commission of the European Communities, by B. Stromsky and L. Flynn, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of Article 14(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1).
- ² The reference was made in the course of proceedings involving Scott SA ('Scott') and Kimberly Clark SAS, formerly Kimberly Clark SNC ('Kimberly Clark'), on the one hand, and the City of Orléans, on the other, concerning the validity of assessments issued by the City for the recovery of State aid declared incompatible with the common market.

Legal context

European Union legislation

- ³ Recital 13 in the preamble to Regulation No 659/1999 is worded as follows:

‘Whereas in cases of unlawful aid which is not compatible with the common market, effective competition should be restored; whereas for this purpose it is necessary that the aid, including interest, be recovered without delay; whereas it is appropriate that recovery be effected in accordance with the procedures of national law; whereas the application of those procedures should not, by preventing the immediate and effective execution of the Commission decision, impede the restoration of effective competition; whereas to achieve this result, Member States should take all necessary measures ensuring the effectiveness of the Commission decision.’

- ⁴ Under the title ‘Recovery of aid’, Article 14 of that regulation provides:

‘1. Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary ... The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.’

...

3. Without prejudice to any order of the Court of Justice of the European Communities pursuant to Article [242 EC], recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to Community law.'

National legislation

- 5 Article 4 of Law No 2000-321 of 12 April 2000 on the rights of citizens in their dealings with administrative authorities (JORF of 13 April 2000, p. 5646) provides:

'In their dealings with one of the administrative authorities referred to in Article 1, all persons shall be entitled to know the first name, surname, title and administrative address of the officer assigned to deal with their request or deal with the matter pertaining to them; those details shall appear on correspondence addressed them. If grounds of public or personal safety so warrant, the officer's identity shall remain anonymous.

All decisions taken by one of the administrative authorities referred to in Article 1 shall include, in addition to the signature of the author thereof, reference to the first name, surname and title of that person in legible writing.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 6 In 1987, the City of Orléans and the Département du Loiret sold on preferential terms to Bouton Brochard Scott, which has since been succeeded by Scott, owned by Kimberly Clark, a plot of land situated in the La Saussaye industrial estate in Orléans. The City and the Département also undertook to charge a preferential rate for the water treatment levy.
- 7 On 12 July 2000, the Commission adopted Decision 2002/14/EC on the State aid granted by France to Scott Paper SA Kimberly Clark (OJ 2002 L 12, p. 1), declaring incompatible with the common market State aid in the form of a preferential land price and a preferential rate of water treatment levy. Article 2 of that decision states:

‘1. France shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1 and already made available to it unlawfully.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this Decision. ...’

- 8 Scott and the Département du Loiret brought actions against Decision 2002/14 which concern only the recovery claim relating to the aid granted in the form of a preferential price for the land in question. That decision, in so far as it covers the State aid granted in the form of a preferential rate of water treatment levy, which alone is at issue in the present case, will accordingly not be the subject-matter of proceedings before the European Union courts.

- 9 On 5 December 2001, the City of Orléans issued the three assessments which are the subject-matter of the main proceedings ('the assessments in question'), with a view to recovering the aid granted in the form of a preferential rate of water treatment levy. They bear the stamp of the mayor's office, a signature and the words 'appointed deputy on behalf of the Mayor' ('pour le maire, l'adjoint délégué'), but do not refer either to the scope of the powers conferred by the mayor on the deputy who signed the assessments, or to his surname and first name.
- 10 Scott and Kimberly Clark brought actions challenging those assessments before the tribunal administratif d'Orléans.
- 11 Since such actions have automatic suspensory effect under national legislation, namely the second subparagraph of paragraph 1 of Article L.1617-5 of the General Local Authorities Code, the enforceability of the assessments was suspended and they were not initially enforced.
- 12 In the meantime, judgment was delivered against the French Republic in Case C-232/05 *Commission v France* [2006] ECR I-10071 for having failed to fulfil its obligations under the fourth paragraph of Article 249 EC and Articles 2 and 3 of Decision 2002/14. The Court held, *inter alia*, in paragraph 53 of its judgment, that a procedure which provided for the suspensory effect of actions brought against demands for payment issued for the recovery of unlawfully received aid does not fulfil the conditions laid down in Article 14(3) of Regulation No 659/1999 and that, accordingly, the rule providing for such suspensory effect should therefore have been left unapplied.
- 13 On 9 January 2007, the tribunal administratif d'Orléans dismissed the actions brought before it by Scott and Kimberly Clark who, on 7 February 2007, accordingly reimbursed the principal amount of the aid which they had unlawfully received.

- 14 On 8 March 2007, Scott and Kimberly Clark appealed against that judgment before the Cour administrative d'appel de Nantes. In support of their appeal, they alleged, inter alia, infringement of Article 4 of Law No 2000-321, arguing that the requirements of the second paragraph of that article were not complied with, as the surname and first name of the signing officer for the assessments in question are not indicated on them.
- 15 On 8 December 2008, Scott and Kimberly Clark reimbursed the interest on the aid they had received for the period from 1990 to 1 June 2008 and, on 24 March 2009, they paid the interest on the aid for the period from 1 June to 8 December 2008.
- 16 Finding that the assessments in question did not comply with the formal requirements laid down in Article 4 of Law No 2000-321 and that that infringement was liable to lead to annulment of those assessments, the referring court has doubts as to the compatibility of the annulment of the assessments on grounds of procedural defect with Article 14(3) of Regulation No 659/1999.
- 17 In those circumstances, the Cour administrative d'appel de Nantes decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is a possible annulment by the French administrative court of the assessments issued for the recovery of aid declared on 12 July 2000 by the Commission of the European Communities to be incompatible with the common market, on the ground that those assessments infringe legislative provisions relating to the physical presentation of those assessments, given the ability of the competent administrative authority to remedy the vitiating defect in those decisions, such as to hinder the immediate and effective implementation of [Decision 2002/14], contrary to Article 14(3) of Regulation [No 659/1999]?'

The question referred for a preliminary ruling

- 18 By its question, the referring court asks, essentially, whether Article 14(3) of Regulation No 659/1999 is to be interpreted as precluding annulment by the national court of the assessments issued for the recovery of the State aid at issue in the main proceedings on grounds of a procedural defect, given the ability of the competent administrative authority to rectify the assessments.
- 19 In the main proceedings, the assessments were issued in order to ensure implementation of Decision 2002/14. Article 2 of that decision imposes an obligation on the French Republic, pursuant to Article 14(3) of Regulation No 659/1999, to take all necessary measures to recover from the beneficiaries the aid made available to them unlawfully and adds that recovery is to be effected without delay and in accordance with the procedures of national law, provided that they allow the immediate and effective execution of that decision.
- 20 As the Court observed at paragraph 49 in *Commission v France*, Article 14(3) of Regulation No 659/1999 reflects the requirements of the principle of effectiveness laid down previously by case-law (see Case 94/87 *Commission v Germany* [1989] ECR 175, paragraph 12; Case C-24/95 *Alcan Deutschland* [1997] ECR I-1591, paragraph 24; and Case C-209/00 *Commission v Germany* [2002] ECR I-11695, paragraphs 32 to 34); that case-law is therefore relevant to the application of that provision.
- 21 In accordance with the principle of effectiveness, as consistently applied specifically to State aid in the case-law, a Member State which, pursuant to a decision of the Commission, is obliged to recover unlawful aid is free to choose the means of fulfilling that obligation, provided that the measures chosen do not adversely affect the scope and

effectiveness of Union law (see, to that effect, *Alcan Deutschland*, paragraph 24; Case C-209/00 *Commission v Germany*, paragraph 34; and Case C-369/07 *Commission v Greece* [2009] ECR I-5703, paragraph 67).

- ²² A Member State can fulfil such an obligation to recover only if the measures adopted by it are appropriate for the purpose of establishing the normal conditions of competition which were distorted by the grant of the unlawful aid the recovery of which has been ordered by a Commission decision (see, to that effect, Case C-209/00 *Commission v Germany*, paragraph 35).
- ²³ In the present case, as the French Government states in its written observations, the purpose of Article 4 of Law No 2000-321 is, through the lifting of anonymity in dealings between the administrative authorities and citizens, to increase administrative transparency and afford the opportunity to ascertain that an administrative decision was taken by a competent authority. As evidenced by the order for reference, the referring court considers that the assessments in question infringe Article 4 and must accordingly be annulled on that ground.
- ²⁴ It is therefore necessary to examine whether the application of those national provisions, whilst taking account of the general context of national law of which they form a part (see, to that effect, Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 14; Joined Cases C-430/93 and C-431/93 *van Schijndel and van Veen* [1995] ECR I-4705, paragraph 19; and Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 33), is ultimately irreconcilable with the requirement of immediate and effective recovery of aid, as provided for in Article 14(3) of Regulation No 659/1999 and as interpreted in the light of the guidance set out in the case-law referred to in paragraphs 21 and 22 above.

- ²⁵ In that regard, it must be stated at the outset that review by the national court of the formal legality of an assessment issued for the recovery of unlawful State aid and possible annulment of the assessment on grounds of non-compliance with the requirements of Article 4 of Law No 2000-321 must be viewed simply as an expression of the principle of effective judicial protection which, according to the Court's settled case-law, is a general principle of Union law (see Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37 and case-law cited).
- ²⁶ Accordingly, while the annulment of an assessment may not be criticised per se, it should nevertheless be borne in mind that such annulment might, in principle, confer an advantage on an aid recipient who has been successful in legal proceedings in the form of the right to claim, under national law, that sums corresponding to the previously-reimbursed aid be paid out to him once again; that potential consequence must therefore be examined in the light of the obligations laid down in Article 14(3) of Regulation No 659/1999.
- ²⁷ It follows from the very wording of the question referred that the competent authority which issues the assessments in question has the power to rectify the procedural defect vitiating those assessments, which permits the inference that the annulment of the assessments in question will not necessarily lead to the sums which the companies concerned paid pursuant to the assessments being paid once again to the companies. Moreover, the French Government and the Commission have stated in their written observations that French law has the mechanisms necessary to ensure that annulment of an assessment will not automatically lead to immediate restoration of the amount reimbursed by the person liable in order to comply with the assessment. The competent authority will therefore be able to rectify the procedural defect vitiating those assessments, without being required to pay once again to the applicants in the main proceedings, even provisionally, the sums they reimbursed pursuant to those assessments.

- 28 Regarding the implementation of those mechanisms by the competent authority or the national court, it should be borne in mind that the second sentence of Article 14(3) of Regulation No 659/1999 requires the Member States concerned, in the event of a procedure before national courts, to take all necessary steps which are available in their respective legal systems, including provisional measures, in order to ensure immediate and effective execution of the Commission's decision.
- 29 In that regard, the competent authority and the national court are required, *inter alia*, under Article 14(3) of Regulation No 659/1999, to ensure that the decision ordering the recovery of the unlawful aid is fully effective and achieves an outcome consistent with the objective pursued by that decision, namely to ensure that funds corresponding to the aid that has already been reimbursed are not once again made available to the aid recipient, even provisionally.
- 30 If, under national law, the assessments in question may be rectified in circumstances guaranteeing that the previously-reimbursed aid is not, even provisionally, once again paid out to the recipients in the event of annulment of those assessments by the national court, that annulment will not then have any actual effect on the implementation of Decision 2002/14. Those recipients will not have at their disposal, even provisionally, amounts equal to the aid which they reimbursed previously, with the result that they will remain without the competitive advantage which would be unduly conferred on them if they were once again in receipt of those amounts. In those circumstances, annulment alone of the assessments in question will not prevent immediate and effective execution of that decision, as required by Article 14(3) of Regulation No 659/1999.
- 31 If, however, the annulment of the assessments in question were to lead, even provisionally, to a repayment of the aid previously reimbursed by its recipients, they would once again have at their disposal amounts of aid which have been declared incompatible with the common market and would enjoy the resulting unfair competitive advantage. Immediate and stable restoration of the previously existing situation would thus be compromised and the unfair competitive advantage would be re-established in favour of the applicants in the main proceedings.

- ³² Such a consequence would be incompatible with Decision 2002/14 ordering the recovery of the unlawful aid and the obligations stemming therefrom under Article 14(3) of Regulation No 659/1999.
- ³³ In the light of the foregoing, the answer to the question referred is that Article 14(3) of Regulation No 659/1999 is to be interpreted as not precluding, in circumstances in which amounts corresponding to the aid in question have already been recovered, annulment by the national court of assessments issued in order to recover the unlawful State aid on grounds of there being a procedural defect, where it is possible to rectify that procedural defect under national law. That provision does, however, preclude those amounts being paid once again, even provisionally, to the beneficiary of that aid.

Costs

- ³⁴ Since these proceedings are, for the parties to the main proceedings, a step in the action 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 (Third Chamber) hereby rules:

Article 14(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty is to be interpreted as not precluding, in circumstances in which amounts corresponding to the aid in question have already been recovered, annulment by the

national court of assessments issued in order to recover the unlawful State aid on grounds of there being a procedural defect, where it is possible to rectify that procedural defect under national law. That provision does, however, preclude those amounts being paid once again, even provisionally, to the beneficiary of that aid.

[Signatures]