

**Case C-210/09**

**Scott SA and Kimberly Clark SAS, formerly Kimberly Clark SNC**

**v**

**Ville d'Orléans**

(Reference for a preliminary ruling from  
the cour administrative d'appel de Nantes)

(State aid — Regulation (EC) No 659/1999 — Article 14(3) — Recovery of aid —  
Principle of effectiveness — Assessments vitiated by a procedural  
defect — Annulment)

Judgment of the Court (Third Chamber), 20 May 2010 . . . . . I - 4615

**Summary of the Judgment**

*State aid — Recovery of unlawful aid — Application of national law — Conditions and limits  
(Art. 88 EC; Council Regulation No 659/1999, Art. 14(3))*

Article 14(3) of Regulation No 659/1999 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 for formal defects by the national court of assessments issued in order to recover the unlawful State aid, when 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.

Article 14(3) of Regulation No 659/1999 reflects the requirements of the principle of effectiveness, according to which a Member State that, 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.

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 formal requirements of national law must be viewed simply as an expression of the principle of effective judicial protection, which is a general principle of Union law. However, such annulment might, in principle, confer an advantage on a recipient of aid 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. It is therefore necessary for national law to have 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 must therefore be able to rectify the procedural defect vitiating those assessments, without being required to pay once again to the recipient of the unlawful aid, even provisionally, the sums reimbursed by the latter pursuant to that assessment.

(see paras 20, 21, 25-27, 33, operative part)