

had ever been made in respect of TI Media. In order to substantiate such *obiter dictum* concerning the purported 'strong position' of TI Media on the market, the Commission relied on a misinterpretation of Decision 544/07/CONS, totally failing to take account of the results of the market test.

Lastly, the applicants submit that the Decision is unlawful on grounds of failure to investigate adequately and to state reasons, in so far as, with regard to the definition of the criteria for the award of the contract, it was based on an incorrect and misleading interpretation of the content of Decisions 181/09/CONS and 427/09/CONS. Contrary to the claims made by the Commission, those decisions defined the award criteria with reference to frequency Lots (A, B and, optionally, C) without distinguishing national operators per category and, essentially, without defining TI Media as a vertically integrated operator.

<sup>(1)</sup> OJ 2004 L 24, p. 1.

<sup>(2)</sup> OJ 2008 C 267, p. 1.

**Action brought on 18 October 2010 — Département du Gers v Commission**

(Case T-502/10)

(2010/C 346/105)

*Language of the case: French*

**Parties**

*Applicant:* Département du Gers (Auch, France) (represented by: S. Mabile and J.-P. Mignard, lawyers)

*Defendant:* European Commission

**Form of order sought**

— annul Decision 2010/428/EU of the European Commission of 28 July 2010 authorising the placing on the market of products containing, consisting of, or produced from genetically modified maize 59122x1507xNK603 (DAS-59122-7xDAS-Ø15Ø7xMON-ØØ6Ø3-6) pursuant to Regulation (EC) No 1829/2003 of the European Parliament and of the Council;

— order the Commission to pay the costs.

**Pleas in law and main arguments**

The pleas in law and the main arguments raised by the applicant are identical or essentially the same as those raised in Case T-478/10 *Département du Gers v Commission*.

**Action brought on 21 October 2010 — IDT Biologika v Commission**

(Case T-503/10)

(2010/C 346/106)

*Language of the case: German*

**Parties**

*Applicant:* IDT Biologika GmbH (Dessau-Roßlau, Germany) (represented by: R. Gross and T. Kroupa, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Annul the decision of the Delegation of the European Union to the Republic of Serbia of 10 August 2010 rejecting the tender submitted in respect of Lot No 1 by IDT Biologika GmbH in response to the call for tenders (reference EuropeAid/129809/C/SUP/RS) for the supply of rabies vaccines to the beneficiary Ministry of Agriculture, Forestry and Water Supply of the Republic of Serbia, and awarding the contract to a consortium of various firms led by 'Biovet a.s.';

— order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant challenges the European Commission's decision of 10 August 2010 to choose a tenderer other than the applicant in the context of a call for tenders for the supply of rabies vaccines (publication reference EuropeAid/129809/C/SUP/RS).

In support of its claim, the applicant alleges infringement of Article 252(3) of Regulation (EC, Euratom) No 2342/2002, <sup>(1)</sup> in that the chosen tender does not satisfy the technical requirements specified in the tender dossier with regard to the requisite non-virulence to humans of the vaccines offered or with regard to the requisite authorisations and should, therefore, necessarily have been disregarded.

Further, the applicant alleges infringement of the principles of equal treatment and transparency under Article 89(1) of Regulation (EC, Euratom) No 1605/2002, <sup>(2)</sup> since the applicant's tender alone satisfies all the requirements with regard to the technical specifications and yet another tender was chosen.

<sup>(1)</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).

<sup>(2)</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1).