Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

16 June 2022 (*)

(Reference for a preliminary ruling – Taxation – Common system of value added tax (VAT) – Directive 2006/112/EC – Articles 2, 24 et 43 – Place of supply of services – Technical support services provided to a company established in another Member State – Abuse of rights – Assessment of the facts – Lack of jurisdiction)

In Case C?596/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the F?városi Törvényszék (Budapest High Court, Hungary), made by decision of 28 September 2020, received at the Court on 12 November 2020, in the proceedings

DuoDecad Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,

THE COURT (Tenth Chamber),

composed of I. Jarukaitis (Rapporteur), President of the Chamber, M. Ileši? and D. Gratsias, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– DuoDecad Kft., by Z. Várszegi, ügyvéd,

– the Hungarian Government, by M.Z. Fehér and G. Koós, acting as Agents,

– the Portuguese Government, initially by L. Inez Fernandes, R. Campos Laires and P. Barros da Costa, and subsequently by R. Campos Laires and P. Barros da Costa, acting as Agents,

– the European Commission, by V. Uher and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 February 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(1), Article 24(1)

and Article 43 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).

2 The request has been made in proceedings between DuoDecad Kft. and Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Administration, Hungary; 'the Appeals Directorate') concerning the payment of value added tax (VAT) relating to the services provided by DuoDecad in the years 2009 and 2011.

Legal context

European Union law

3 Pursuant to Article 2(1)(c) of Directive 2006/112, the supply of services for consideration within the territory of a Member State by a taxable person acting as such is subject to VAT.

4 Article 24 of that directive states:

'1. "Supply of services" shall mean any transaction which does not constitute a supply of goods.

2. "Telecommunications services" shall mean services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or reception, with the inclusion of the provision of access to global information networks.'

5 In the version of the VAT Directive in force from 1 January 2007 until 31 December 2009, Article 43 provided:

'The place of supply of services shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides.'

6 Council Directive 2008/8/EC of 12 February 2008, amending Directive 2006/112 (OJ 2008 L 44, p. 11), replaced, with effect from 1 January 2010, Articles 43 to 59 of Directive 2006/112. Article 44 of Directive 2006/112, as amended by Directive 2008/8, provides:

'The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to a fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his permanent address or usually resides.'

7 In that version, Article 45 of Directive 2006/112 states:

'The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.'

8 In the version of the VAT Directive in force from 1 January 2007 until 31 December 2009, Article 56 provided:

‘1. The place of supply of the following services to customers established outside the [European] Community, or to taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his business or has a fixed establishment for which the service is supplied, or, in the absence of such a place, the place where he has his permanent address or usually resides:

…

(k) electronically supplied services, such as those referred to in Annex II;

…’

9 In that version, Directive 2006/112 mentioned, in Annex II thereto, entitled ‘Indicative list of the electronically supplied services referred to in point (k) of Article 56(1)’, inter alia, ‘website supply, web-hosting, distance maintenance of programmes and equipment’ and ‘supply of images, text and information and making available of databases’.

10 Article 59 of Directive 2006/112, as amended by Directive 2008/8, provides:

‘The place of supply of the following services to a non-taxable person who is established or has his permanent address or usually resides outside the Community, shall be the place where that person is established, has his permanent address or usually resides:

…

(k) electronically supplied services, in particular those referred to in Annex II.

…’

Hungarian law

11 In the version applicable to the facts of the dispute in the main proceedings, the az általános forgalmi adóról szóló 2007. évi CXXVII. törvény (Law CXXVII of 2007 on value added tax (*Magyar Közlöny* 2007/155) (XI. 16.)) provided, in Paragraph 37 thereof:

‘(1) In the case of supplies of services to a taxable person, the place of supply of services shall be the place where the customer is established for the purpose of engaging in an economic activity or, in the absence of such economic establishment, the place where he has his permanent address or usually resides.

(2) In the case of supplies of services to a non-taxable person, the place of supply of services shall be the place where the supplier is established for the purpose of engaging in an economic activity or, in the absence of such economic establishment, the place where he has his permanent address or usually resides.’

12 In that version, Paragraph 46 of that law stated:

‘(1) For the services referred to in this Paragraph, the place of supply of services shall be the place where, in this context, the non-taxable customer is established or, in the absence of establishment, the place where he has his permanent address or usually resides, provided that this is outside the territory of the Community.

(2) The services to which this Paragraph applies are as follows:

…

(k) electronically supplied services.

…’

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

13 DuoDecad is a company registered in Hungary, the main activity of which is computer programming. DuoDecad provided technical support services to Lalib – Gestão e Investimentos Lda. (‘Lalib’), a company established in Madeira (Portugal), providing entertainment services by electronic means, which is its main customer. In that respect, DuoDecad issued, between July and December 2009 and for the whole of 2011, invoices amounting in total to EUR 8 086 829.40.

14 Following an inspection carried out at DuoDecad for the second half of 2009 and for the whole of 2011, the first-tier tax authority ordered DuoDecad, by decision of 10 February 2020, to pay arrears of VAT amounting in total to 458 438 000 Hungarian forints (HUF) (approximately EUR 1 286 835), a tax fine in the amount of HUF 343 823 000 (approximately EUR 964 767) and default interest in the amount of HUF 129 263 000 (approximately EUR 362 841), taking the view that the actual recipient of the services provided by DuoDecad was not Lalib but WebMindLicences Kft. (‘WML’), a commercial company registered in Hungary which is a holder of a know-how for the entertainment services supplied by electronic means and which entered into a licence agreement with Lalib for the purpose of exploiting that know-how.

15 Since that decision was, following a complaint by DuoDecad, upheld by the decision of the Appeals Directorate of 6 April 2020, DuoDecad brought an action before the F?városi Törvényszék (Budapest High Court, Hungary), the referring court, challenging the latter decision.

16 In support of that action, DuoDecad submits that the technical support services at issue in the main proceedings must be regarded as having been provided to Lalib, in Portugal, since all the conditions laid down in that regard by the Court are satisfied. DuoDecad considers that the decision of the Appeals Directorate is erroneous in that that decision wrongly identifies the content of those services as being the direct technical operation of the websites concerned, and thus fails to take into consideration that Lalib had available to it the human and material resources necessary for the provision of the services which it supplies. DuoDecad argues that it provided its support services directly to Lalib and not to WML, and played an active role in tasks which were not covered by the know-how licence agreement concerned. In order to do so, Lalib inspected, supervised and gave instructions to DuoDecad, whereas WML did not appear to be a customer and could not, therefore, have addressed to it any requests or have given any instructions.

17 DuoDecad also argues that, according to the replies given by the Portuguese tax authority in response to the Hungarian authorities’ request for international cooperation in the course of the proceedings concerning WML, the Portuguese authorities clearly stated that Lalib was established in Portugal, where it performed an actual economic activity at its own risk, and that it had all the technical and human resources necessary to exploit the know-how that it had acquired.

Furthermore, the place of supply of the entertainment services at issue in the main proceedings could not be in Hungary, owing to the existence of an objective obstacle, namely the lack of any financial institutions enabling payment to be made by bank card on websites for adults. DuoDecad adds that Lalib (i) appeared to the outside world as being the provider of those entertainment services, (ii) concluded the contracts in its own name, (iii) held a database of customers paying for those services, (iv) had at its disposal the revenue generated by those services, (v) exercised control over the development of the know-how concerned, and (vi) made decisions regarding the implementation of that know-how. In addition, it was Lalib's headquarters which was stated to be the physical customer service centre.

18 The Appeals Directorate states that it carried out an investigation at WML, during which it became apparent that the entertainment services at issue in the main proceedings were provided not by Lalib but by WML, from Hungary, and that the licence agreement concluded between those two companies was, in its view, 'fictitious'.

19 The referring court notes that the Court interpreted, in particular in the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), the relevant provisions of Directive 2006/112, but considers that a further interpretation is necessary in the main proceedings, since the Portuguese tax authority and the Hungarian tax authority have, despite that judgment, treated the same transaction differently from the point of view of tax.

20 According to that court, in the light of the information provided in the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), the question arises as to whether the place of supply of entertainment services at issue in the main proceedings may be in Hungary, despite the fact that Lalib was the centre of a complex network of contracts and services essential to that provision of services, and that it provided the conditions necessary for that supply, in the form of its own databases, its IT software and suppliers that were either third parties or members of the Lalib group or of DuoDecad's group of undertakings, and thus took on itself the legal and economic risk inherent in the supply of that service, and notwithstanding even the fact that subcontractors affiliated to the group of undertakings of the 'proprietor' of the know-how concerned took part in its technical implementation, and that that 'proprietor' had an influence on the operation of the know-how. The question also arises as to how to assess whether Lalib had the necessary premises, infrastructure and staff in Portugal.

21 Referring to paragraph 51 of the judgment of 18 June 2020, *KrakVet Marek Batko* (C?276/18, EU:C:2020:485), the referring court considers itself bound to make a reference to the Court for a preliminary ruling, primarily owing to the different tax classifications made by the Hungarian and Portuguese tax authorities. The referring court asks the Court to clarify whether the declaration of liability to tax by both the Hungarian tax authority and the Portuguese tax authority is lawful, whether the transaction at issue in the main proceedings may be legitimately taxed by the former or the latter, and what weight may be attached to the various criteria concerned.

22 It is in those circumstances that the F?városi Törvényszék (Budapest High Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must [Article 2(1)(c), Article 24(1) and Article 43] of Council Directive 2006/112 be interpreted as meaning that, since the acquirer of a know-how licence – a company established in a Member State of the European Union (in the case of the dispute in the main proceedings, Portugal) – does not provide the services available on a website to end users, it cannot be the recipient of the service of technical support for that know-how that is provided by a taxable person established in another Member State (in the case of the dispute in the main proceedings, Hungary) as a subcontractor, that service being provided, rather, by the taxable person to the grantor of the

know-how licence established in the latter Member State, in circumstances in which the acquirer of the licence:

(a) had rented offices in the first Member State, IT and other office infrastructure, its own staff and extensive experience in the field of e-commerce, as well as an owner with extensive international connections and a qualified e-commerce manager;

(b) had obtained know-how reflecting the processes for operating the websites and making updates to them, and issued opinions on, suggested modifications to, and approved those processes;

(c) was the recipient of the service that the taxable person provided on the basis of that know-how;

(d) regularly received reports on the services provided by the subcontractors (in particular, on website traffic and payments made from the bank account);

(e) registered in its own name the internet domains allowing access to the websites via the internet;

(f) was listed on the websites as a service provider;

(g) took steps itself to preserve the popularity of the websites;

(h) itself concluded, in its own name, the contracts with partners and subcontractors that were necessary in order to provide the service (in particular, with banks offering payment by bank card on the websites, with creators providing content accessible on the websites and with webmasters promoting that content);

(i) had a complete system for receiving revenue from providing the service in question to end users, such as bank accounts, full and exclusive powers of disposal over those accounts, an end user database enabling end users to be invoiced for that service and its own invoicing software;

(j) indicated on the websites its own headquarters in the first Member State as the physical customer service centre; and

(k) is a company independent of both the grantor of the licence and the Hungarian subcontractors responsible for carrying out certain technical processes described in the know-how,

given also that: (i) the circumstances set out above were confirmed by the relevant authority in the first Member State, in its capacity as the appropriate body to establish the presence of those objective and externally verifiable circumstances; (ii) the fact that the company in the other Member State could not access a payment service provider able to guarantee receipt of payments by bank card on the website, with the result that the company established in that Member State never provided the service available on the websites, either before or after the period under examination, constituted an objective obstacle to the provision of that service in that other Member State via the websites; and (iii) the company acquiring the licence and its related undertakings derived a profit from the operation of the website that was higher overall than the difference between applying the rate of VAT in the first Member State and in the second respectively?

(2) Must [Article 2(1)(c), Article 24(1) and Article 43] of [Directive 2006/112] be interpreted as meaning that, since the grantor of the know-how licence – a company established in the other Member State – provides the services available on a website to end users, it is the recipient of the service of technical support for that know-how provided by the taxable person as a subcontractor,

that service not being provided by the taxable person to the acquirer of the licence, established in the first Member State, in circumstances in which the company granting the licence:

(a) had resources of its own consisting solely of a rented office and a computer used by the company manager;

(b) had as its own employees only a manager and a legal adviser who worked a few hours a week on a part-time basis;

(c) had as its only contract the know-how development contract;

(d) ordered that the domain names that it owned be registered by the acquirer of the licence in its own name in accordance with the contract concluded with the latter;

(e) never appeared as the provider of the services in question in dealings with third parties, in particular end users, banks offering payment by bank card on the websites, creators of content accessible on the websites and webmasters promoting that content;

(f) has never issued any supporting documentation in relation to the services available on the websites, other than the invoice for the licence fees, and

(g) did not have a system (such as bank accounts and other infrastructure) for receiving revenue from the service provided via the websites; given also that, in accordance with the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), the fact that the manager and sole shareholder of the company granting the licence is the creator of the know-how and, moreover, that that person exercises influence or control over the development and exploitation of that know-how and over the supply of the services based on it, with the result that the natural person who is the manager and owner of the company granting the licence is also the manager and/or owner of those subcontracted commercial companies (and, therefore, of the applicant), which work together to provide the service, as subcontractors, on behalf of the acquirer of the licence and perform the abovementioned functions for which they are responsible, does not appear to be decisive in itself?'

Consideration of the questions referred

23 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(1)(c), Article 24(1) and Article 43 of Directive 2006/112 must be interpreted, in the light of a whole series of circumstances mentioned in those questions, as meaning that it is not the company acquiring a know-how licence enabling entertainment services to be supplied by electronic means which actually provides those entertainment services, so that it cannot be regarded as the recipient of the technical support services for that know-how provided by a taxable person established in another Member State, but that it is in reality the company granting that licence, also established in that other Member State, which is the actual provider of those entertainment services, so that it is that latter company which is the recipient of those technical support services.

24 It is apparent from the request for a preliminary ruling that, by those questions, the referring court seeks to ascertain, following the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), whether it is Lalib or whether, although the know-how enabling those entertainment services to be supplied was the subject of a licence agreement concluded between WML and Lalib, it is WML which must be regarded as the actual provider of the entertainment services at issue in the main proceedings.

25 It should be recalled that, when asked, in the case giving rise to the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), about the relevance of certain facts in order to determine whether a licence agreement, such as that concluded between WML and Lalib, arose from an abuse of rights designed to benefit from the fact that the rate of VAT applicable to the entertainment services concerned was lower in Madeira than in Hungary, the Court, in paragraph 34 of that judgment, stated that it was for the referring court to assess the facts which are placed before it and to determine whether action constituting an abusive practice has taken place, although the Court, when giving a preliminary ruling, may provide clarification designed to give the referring court guidance in its interpretation.

26 In paragraph 35 of that judgment, the Court recalled, inter alia, that the principle that abusive practices are prohibited, which applies in the sphere of VAT, leads to the prohibition of wholly artificial arrangements which do not reflect economic reality and are set up with the sole aim of obtaining a tax advantage.

27 After noting, in paragraph 43 of that judgment, that it was apparent from the documents before it that Lalib was a company separate from WML, as it was not a branch, subsidiary or agency of the latter, and that it paid VAT in Portugal, the Court stated in the following paragraph of the judgment that, in those circumstances, in order to find that the licence agreement concerned arose from an abusive practice designed to benefit from a lower rate of VAT in Madeira, it was necessary to establish that that agreement constituted a wholly artificial arrangement concealing the fact that the services concerned were not actually supplied in Madeira by Lalib, but were in fact supplied in Hungary by WML.

28 In paragraph 45 of the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), the Court clarified that, in order to determine whether that agreement constituted such an arrangement, it was incumbent upon the referring court to analyse all the facts placed before it, examining, in particular, whether the establishment of Lalib’s place of business or fixed establishment in Madeira was not genuine, whether that company, for the purpose of engaging in the economic activity concerned, did not possess an appropriate structure in terms of premises and human and technical resources and whether it did not engage in that economic activity in its own name and on its own behalf, under its own responsibility and at its own risk.

29 Furthermore, in paragraph 46 of that judgment, the Court stated that, on the other hand, the fact that the manager and sole shareholder of WML was the creator of WML’s know-how, that it exercised influence or control over the development and exploitation of that know-how and over the supply of the services which were based on it and that management of the financial transactions, staff and technical instruments necessary for the supply of those services was carried out by subcontractors, and the reasons which may have led WML to make the know-how concerned available to Lalib instead of exploiting it itself, did not appear decisive in themselves.

30 In addition, in paragraph 54 of the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832) the Court held that EU law must be interpreted as meaning that, if an abusive practice is found which has resulted in the place of supply of services being fixed in a Member State other than the Member State where it would have been fixed in the absence of that abusive practice, the fact that VAT has been paid in that other Member State in accordance with its legislation does not preclude an adjustment of that tax in the Member State in which the place where those services have actually been supplied is located.

31 In paragraph 59 of that judgment, the Court, however, held that Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax (OJ 2010 L 268, p. 1) must be interpreted as meaning that the tax authorities of a

Member State which are examining whether VAT is chargeable in respect of supplies of services that have already been subject to that tax in other Member States are required to send a request for information to the tax authorities of those other Member States when such a request is useful, or even essential, for determining that VAT is chargeable in the first Member State.

32 Noting that the Hungarian tax authority and the Portuguese tax authority have, following the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), and despite the information provided by the latter authority to the former authority in response to a request for international cooperation, treated the same transaction differently, which led to the collection of the VAT applicable to that transaction in both Hungary and Portugal, the referring court states that a ‘further interpretation’ is necessary and that it considers itself bound to make a reference to the Court of Justice for a preliminary ruling, owing to, principally, different classifications of the facts made by those tax authorities.

33 However, it must be noted, first, that the referring court does not set out the reasons why the details given in the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), are insufficient in order to determine whether it is WML or Lalib that must be regarded as the actual supplier of the entertainment services at issue in the main proceedings. Furthermore, the request for a preliminary ruling does not contain any analysis of the factual evidence obtained by the Hungarian tax authority from the Portuguese tax authority or of all the factual evidence referred to in the decision of the Appeals Directorate of 6 April 2020, currently contested before that court, or any other evidence available to that court.

34 Thus, the referring court merely identifies a large number of circumstances without indicating how they raise a difficulty in interpreting the provisions of Directive 2006/112 to which it refers in its questions, so that it appears that the referring court is in fact asking the Court of Justice not to interpret that directive but to determine itself, in the light of those circumstances, whether it is WML and not Lalib which must be regarded as the true supplier of the entertainment services at issue in the main proceedings, from which it would follow that that the licence agreement concluded between those companies was a wholly artificial arrangement.

35 Second, in paragraph 51 of the judgment of 18 June 2020, *KrakVet Marek Batko* (C?276/18, EU:C:2020:485), the Court has already held that, where they find that the same transaction has been the object of a different tax treatment in another Member State, the courts of a Member State before which a dispute raises issues involving an interpretation of provisions of EU law and requiring a decision by them have the power, or even – depending on whether there is a judicial remedy under national law against their decisions – the obligation, to refer a request for a preliminary ruling to the Court.

36 However, it does not follow from that judgment that, where national courts find that the same transaction has been the object of a different tax treatment in another Member State, they have the power or obligation to refer a request for a preliminary ruling to the Court, not for the purpose of interpreting EU law, but for the purpose of assessing the facts and applying that law in the main proceedings.

37 In proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it. The Court of Justice has no jurisdiction to apply rules of law to a particular situation, since Article 267 TFEU empowers the Court only to rule on the interpretation of the Treaties and of acts adopted by the EU institutions (see, to that effect, judgments of 21 June 2007, *Omni Metal Service*, C?259/05, EU:C:2007:363, paragraph 17, and of 6 October 2021, *W.?. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C?487/19, EU:C:2021:798, paragraphs 78 and 132).

38 It is recalled in that regard, in paragraphs 8 and 11 of the Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1), that the request for a preliminary ruling cannot concern the issues of fact raised in the main proceedings and that the Court does not itself apply EU law to that dispute.

39 It follows that, in the present case, the Court has no jurisdiction to answer the questions referred.

40 Moreover, it should be noted that those questions are based on the premiss that the recipient of the technical support services at issue in the main proceedings, namely Lalib, cannot be regarded as the recipient of those services if it is not that company but WML which was in fact providing the entertainment services concerned, so that the licence agreement concluded between WML and Lalib is an artificial arrangement arising from an abuse of rights and that that abuse necessarily affects the contractual relationship between DuoDecad and Lalib and, consequently, the rights and obligations of those companies under Directive 2006/112. As the Advocate General noted, in essence, in points 63 and 65 of her Opinion, it is for the referring court to assess whether the contract between DuoDecad and Lalib arises itself from an abuse of rights in the sphere of VAT, which could be the case, in particular, if it were to be found that there is a wholly artificial arrangement, which does not reflect economic reality, involving, in particular, WML, Lalib and DuoDecad, which was drawn up with the sole aim of obtaining an advantage in the sphere of VAT.

41 It must be recalled, in that regard, that, as it was noted in paragraph 36 of the judgment of 17 December 2015, *WebMindLicenses* (C?419/14, EU:C:2015:832), in the sphere of VAT, an abusive practice can be found to exist only if, first, the transactions concerned, notwithstanding formal application of the conditions laid down by the relevant provisions of Directive 2006/112 and the national legislation transposing it, result in the accrual of a tax advantage the grant of which would be contrary to the purpose of those provisions and, second, it is apparent from a number of objective factors that the essential aim of the transactions concerned is solely to obtain that tax advantage.

Costs

42 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 (Tenth Chamber) hereby rules:

The Court of Justice of the European Union has no jurisdiction to answer the questions referred by the F?városi Törvényszék (Budapest High Court, Hungary), made by decision of 28 September 2020.

[Signatures]

* Language of the case: Hungarian.