

**Questions referred**

1. On a proper construction of Directive 2006/112<sup>(1)</sup> in general, and Articles 167, 168, 178, 179 and 273 in particular, and the principles of proportionality and neutrality, may a taxable person who satisfies the substantive requirements for the deduction of VAT exercise his right to deduct in a situation where, in a particular context such as that of the dispute in the main proceedings, he is unable to provide evidence, by way of invoices, of input tax for the supply of goods and provision of services?
2. If the first question is answered in the affirmative, on a proper construction of Directive 2006/112 and the principles of proportionality and neutrality, is an indirect assessment method (assessment by means of a court-commissioned expert report), employed by an independent expert and based on the amount of work/labour involved in the construction of buildings as stated in the report, an acceptable and appropriate measure for determining the extent of the right to deduct in a situation where the supply of goods (building material) and the provision of services (labour relating to the construction of buildings) originate from taxable persons liable to VAT?

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

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**Request for a preliminary ruling from the Verwaltungsgericht Minden (Germany) lodged on  
29 December 2016 — Tsegezab Mengesteab v Bundesrepublik Deutschland**

(Case C-670/16)

(2017/C 104/42)

*Language of the case: German*

**Referring court**

Verwaltungsgericht Minden

**Parties to the main proceedings**

*Applicant:* Tsegezab Mengesteab

*Defendant:* Bundesrepublik Deutschland

**Questions referred**

1. May an asylum applicant claim a transfer of responsibility to the requesting Member State by reason of the expiry of the period for making the take charge request (third subparagraph of Article 21(1) of Regulation No 604/2013<sup>(1)</sup>)?
2. If Question 1 is to be answered in the affirmative: may an asylum applicant claim a transfer of responsibility even if the requested Member State is still willing to take charge of him?
3. If Question 2 is to be answered in the negative: can it be inferred from the express consent or the deemed consent (Article 22(7) of Regulation No 604/2013) of the requested Member State that the requested Member State is still willing to take charge of the asylum applicant?
4. Can the two-month period provided for in the second subparagraph of Article 21(1) of Regulation No 604/2013 end after the expiry of the three-month period provided for in the first subparagraph of Article 21(1) of Regulation No 604/2013 if the requesting Member State allows more than one month to pass after the beginning of the three-month period before it makes a request to the Eurodac database?
5. Is an application for international protection deemed to have been lodged for the purposes of Article 20(2) of Regulation No 604/2013 when a certificate of registration as an asylum seeker is first issued or only when a formal asylum application is recorded? In particular:
  - (a) Is the certificate of registration as an asylum seeker a form or a report within the meaning of Article 20(2) of Regulation No 604/2013?

- (b) Is the competent authority within the meaning of Article 20(2) of Regulation No 604/2013 the authority responsible for receiving the form or for preparing the report or the authority responsible for the decision on the asylum application?
- (c) Has a report prepared by the authorities reached the competent authority even if that authority was informed of the main content of the form or the report, or must the original or a copy of the report be communicated to it for that purpose?
6. Can delays between the first request for asylum or the first issue of a certificate of registration as an asylum seeker and the submission of a take charge request lead to a transfer of responsibility to the requesting Member State by analogous application of the third subparagraph of Article 21(1) of Regulation No 604/2013 or require the requesting Member State to exercise its right to assume responsibility pursuant to the first subparagraph of Article 17(1) of Regulation No 604/2013?
7. If Question 6 is to be answered in the affirmative in respect of either alternative: from what time can there be considered to be an unreasonable delay in submitting a take charge request?
8. Does a take charge request in which the requesting Member State indicates only the date of entry into the requesting Member State and the date of submission of the formal asylum application, but not also the date of the first request for asylum or the date of first issue of a certificate of registration as an asylum seeker, comply with the time limit provided for in the first subparagraph of Article 21(1) of Regulation No 604/2013, or is such a request 'ineffective'?

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<sup>(1)</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

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**Request for a preliminary ruling from the Curtea Constituțională a României (Romania) lodged on  
30 December 2016 — Relu Adrian Coman, Robert Clabourn Hamilton, Asociația Accept v  
Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne, Consiliul Național pentru  
Combaterea Discriminării**

**(Case C-673/16)**

(2017/C 104/43)

*Language of the case: Romanian*

**Referring court**

Curtea Constituțională a României

**Parties to the main proceedings**

*Applicants:* Relu Adrian Coman, Robert Clabourn Hamilton, Asociația Accept

*Defendants:* Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne, Consiliul Național pentru Combaterea Discriminării

**Questions referred**

1. Does the term 'spouse' in Article 2(2)(a) of Directive 2004/38/[EC], <sup>(1)</sup> in conjunction with Articles 7, 9, 21 and 45 of the Charter of Fundamental Rights of the European Union, include the same-sex spouse, from a State which is not a Member State of the European Union, of a citizen of the European Union to whom that citizen is lawfully married under the law of a Member State other than the host Member State?
2. If the answer to Question 1 is in the affirmative, do Articles 3(1) and 7(1) of Directive 2004/38/[EC], in conjunction with Articles 7, 9, 21 and 45 of the Charter of Fundamental Rights of the European Union, require the host Member State to confer the right of residence in its territory or for a period of longer than three months on the same-sex spouse of a citizen of the European Union?