7) Is national legislation such as that at issue in the main proceedings compatible with Article 1 of Directive 2009/119, in conjunction with Article 2(i) and (j), Article 3(1) and Article 20(1), (3) and (5) thereof, where it provides that emergency stocks are to be established in respect only of certain liquid petroleum products (gasoline, kerosene, gas/diesel oil, fuel oil and liquefied petroleum gas), but economic operators are also obliged to establish and maintain such stocks where they use other types of energy products within the meaning of Chapter 3.4 of Annex A to Regulation (EC) No 1099/2008 by way of importation or intra-Community acquisition (in the present case: petroleum coke), with the result that those economic operators are obliged to hold stocks of the types of product referred to in the national law *but would have no possibility in the future of using those emergency stocks because they do not use the energy products concerned?*

8) *Is a system of penalties for breaches of the national rules on the obligation to establish emergency stocks which provides that economic operators which breach the obligation to establish emergency stocks are to be subject to a fine in a significant amount per tonne of the quantities to be stocked which are the subject of the breach, before a court has ruled on the lawfulness of the administrative act imposing the obligation to maintain emergency stocks, consistent with the principles of effectiveness, proportionality and dissuasiveness* in accordance with recital 11 and Article 21 of Directive 2009/119?

   Is a Member State required to provide, in its national system of penalties, for the duty of the competent authority to examine each separate breach individually and, in determining the amount of the specific fine, to take into account all the facts and circumstances relevant to the breach and the possible consequences of the breach in the light of the objective of the law, including the circumstance that the failure to comply with the obligation to establish and maintain emergency stocks is due to the fact that the Member State does not have the storage capacity needed to stock the stipulated quantities of the product concerned (heavy fuel oil) and that, in order to comply with the obligation imposed on it, the economic operator is required to incur substantial expenditure which jeopardises its financial stability and exposes it to the risk of enforcement proceedings?

(1) Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products (OJ 2009 L 265, p. 9).

(2) Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ 2008 L 304, p. 1).

Request for a preliminary ruling from the Oberlandesgericht Wien (Austria) lodged on 3 January 2023 — FL und KM Baugesellschaft m.b.H. & Co. KG, S AG

(Case C-2/23, FL und KM Baugesellschaft and S)

(2023/C 127/20)

Language of the case: German

Referring court

Oberlandesgericht Wien

Parties to the main proceedings

Appellants: FL und KM Baugesellschaft m.b.H. & Co. KG, S AG

Other party: Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption

Questions referred

Question 1:

Are the provisions of EU competition law — in particular Directive 2014/104/EU (1) and Article 6(6) and (7) and Article 7 (1) thereof, as well as Directive 2019/1/EU (2) and Article 31(3) thereof — to be interpreted as meaning that the protection laid down therein of leniency statements and settlement submissions and information obtained from them has absolute effect, applying also to prosecution authorities (public prosecutors and criminal courts), so that leniency statements and settlement submissions may not be added to the file in criminal proceedings and used as the basis for further enquiries?

Question 2:

Are the provisions of EU competition law — in particular Directive 2014/104 and Article 6(6) and (7) and Article 7(1) thereof, as well as Directive 2019/1 and Article 31(3) thereof — to be interpreted as meaning that the absolute protection of leniency statements and settlement submissions (within the meaning of Question 1) also covers documents and information obtained therefrom which the person lodging a leniency statement or settlement submission has presented in order to explain, specify in detail and prove the content of the leniency statement or settlement submission?

Question 3:

Are the provisions of EU competition law — in particular Directive 2014/104 and Article 6(6) and (7) and Article 7(1) thereof, as well as Directive 2019/1 and Article 31(3) thereof — to be interpreted as meaning that the protection laid down therein of leniency statements, settlement submissions (and documents within the meaning of Question 2) and information obtained therefrom has absolute effect, applying in criminal proceedings, on the one hand, also against accused persons who are not the authors of the respective leniency statement or settlement submission and, on the other hand, against other participants in the criminal proceedings (in particular injured parties asserting claims under civil law), so that accused persons and injured parties are not to be permitted to inspect leniency statements, settlement submissions and the documents presented in that connection and information obtained therefrom?

(1) Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1).

(2) Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ 2019 L 11, p. 3).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 12 January 2023 — FH v Conseil national de l'ordre des médecins

(Case C-8/23, Conseil national de l'ordre des médecins)

(2023/C 127/21)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: FH

Defendant: Conseil national de l'ordre des médecins

Other parties to the proceedings: Ministère de la Santé et de la Prévention, Ministère de l'Économie, des Finances et de la Souveraineté industrielle et numérique

Question referred

May a doctor who is a national of one of the Member States of the European Union and who holds evidence of a formal qualification as a specialised doctor issued in a Member State as referred to in point 5.1.2 of Annex V to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, (1) rely, in another Member State, on the basis of that qualification alone, on the system for the automatic recognition of formal qualifications set out in Article 21 of that directive, even though he or she holds evidence of a formal qualification in basic medical training issued by a third State which has been recognised only by the Member State in which he or she obtained the diploma as a specialised doctor and which is not among those referred to in point 5.1.1 of Annex V to that directive, and Article 25(4) of the directive makes the issuance of evidence of a formal qualification as a specialised doctor contingent on possession of evidence of one of those formal qualifications in basic medical training?

(1) OJ 2005 L 255, p. 22.