Procedure No.: PS/00204/2020

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on

to the following

BACKGROUND

GENERAL COUNCIL OF THE JUDICIAL POWER (hereinafter, the

FIRST:

claimant) dated 07/17/2019 filed a claim with the Spanish Agency for

Data Protection against E4LEGAL ANALYTICS, S.L. (LEGAL EMERITA) with NIF

B70514831 (hereinafter, the claimed one).

The matter begins as it refers, in the minutes of the DAMAGE PROTECTION COMMITTEE

TOS OF THE GENERAL COUNCIL OF THE JUDICIAL POWER (CPDCGPJ) of 06/13/2019,

indicating that "at the meeting held on 05/29/2019, the Director of the Center for

Judicial Documentation (CENDOJ) informed the rest of the members of the

Committee the existence of the company EMÉRITA LEGAL whose activity consists of the

elaboration of profiles of lawyers and solicitors". "For this and according to the informa-

information that it has facilitated through various means of communication, the staff that

provides its services in the aforementioned company has carried out massive data processing

personal acts in sentences and may have obtained part of these from the pu-

plications carried out by the center. If so, this company could have breached the

reuse standards.

The CPDCGPJ agreed to submit to the Permanent Commission the proposal to open

preliminary investigative actions.

A copy of the internal note, dated 06/26/2019, of "Support for the Permanent Commission" is provided

to a member of the CPDCGPJ informing him of the transfer of the proposal made by

said CPDCGPJ to the AEPD "since there are indications of data processing of a

improper personnel for non-jurisdictional purposes".

SECOND: It appears in the registry, with number XXXXX/XXXX, as an attached document,

printing of the website of the respondent, on 07/26/2019, (with information on 1.

EMERITA LEGAL LEGAL NOTICE in a file, and 2. EMERITA LEGAL PRIVACY

in other):

-1-About LEGAL NOTICE, at https://www.emerita.legal/info/condiciones, about access and

use of the website www.emerita.legal, four pages headed with "CONDITIONS

GENERAL FOR CLIENT USERS", stating as owner the claimed and

a contact address and email. Among all the sections that appear, by being able to

In relation to the claim, the following stand out:

-EXCLUSION OF WARRANTIES AND LIABILITY regarding access to the website and

damages that may occur, and the literal:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/101

"guarantees information related to the experience, specialties and

success rates of the professional on the Website with data extracted from the resolutions

judicial analyzed, information that is within the "statistics" section; without em-

However, it is not responsible for the rest of the information provided by the pro-

professional. In addition, it is noted that the information provided represents a limited sample.

statistics relating to each professional and, therefore, is not exhaustive and does not presuppose the

lack of other areas of professional intervention, which can, for example,

exercise other activities, including advice, in addition to their possible activity

before the courts".

"EMERITA LEGAL makes every possible effort to ensure the accuracy

information, but because there is an immense amount of detailed data,

two by compiling from different data sources, and that the data is obtained from sources

entities not controlled by EMERITA LEGAL, it does not assume any responsibility for

errors, inaccuracies or omissions of the information provided. In the event that

detect errors and inaccuracies in the statistics, the only obligation of EMERITA

LEGAL, after the checks it deems appropriate, will be to introduce your

charge the appropriate corrections.

Except for the correction obligation referred to in the previous section, EMÉ-

RITA LEGAL assumes no responsibility for any errors or omissions included

in the statistics, and especially will not be responsible for the damages of any

nature that are derived for the USER for having relied on the accuracy of the information

mation. In this regard, the parties agree that statistics are one

more of the elements that can be taken into account to make decisions in the

hiring a professional, but these decisions should not be based exclusively on

mind on the information contained in this section. Likewise, we indicate that the

training provided refers only to business activities

or professionals of the people included in it and, therefore, the USER only

may use said information in the business or professional field of the person.

If you find any data that may be subject to revision, please

Please do not hesitate to contact EMERITA LEGAL via email

clients@emerita.legal.

-FREE SERVICE WITH COST FOR ONLINE CONSULTATIONS

The EMERITA LEGAL service is free, EMERITA LEGAL is only

authorized to invoice in the name and on behalf of the lawyers for the legal responses

wales uncovered by the USER in online consultations.

The USER will be able to search, compare and talk with lawyers who have

enabled the online consultation service to consult your doubt or case at no extra cost.

guno. The lawyer will ask you the appropriate questions in order to send you a

tailored response with a budget if considered appropriate and it will be the USER

RIO who will decide if he wants to uncover that answer for the cost prefixed by the lawyer.

lawyer, which will vary depending on whether the query is simple, complex or very complex (the lawyer

do / a will have set a price for each type of consultation previously that the USER

will be able to view)".

-ACCESS KEYS

USERS will choose their own access codes (e-mail and password).

The only criterion used for this purpose is the non-existence of pre-existing access codes.

routes identical to those chosen by the USERS, as well as a minimum number of

required characters."

-2-In the file "PRIVACIDAD EMERITA LEGAL" two pages headed with POLI-

PRIVACY TIC https://www.emerita.legal/info/privacidad on which it is indicated

the verbatim:

"E-4LEGAL ANALYTICS S.L (hereinafter EMÉRITA LEGAL) informs the

users about their policy regarding the treatment and protection of personal data.

ter personal that may be collected in the navigation or contracting of services to

through the Website.

LEGAL EMERITA guarantees compliance with the provisions of the Organic Law 15/1999, of December 13, on the Protection of Personal Data (LOPD), the Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (RGPD) and Law 34/2002, of July 11, on Services of the Information Society. Information and Electronic Commerce (LSSICE or LSSI).

-Collection, purpose and processing of data to web users

LEGAL EMERITA informs web users about the collection of personal data that can be carried out by phone or email or by filling in the forms included on the Website. In this sense EMERITA LEGAL will be considered responsible for the data collected through the means god indicated and brought to your attention that will be used with the following fi- purposes:

-The attention of requests made by client users or pro users. professionals.

-Certification of the specialty or specialties, experience and success rate to professional users.

-Inclusion in the users' contact list and inclusion in the network of professional users.

-Conduct satisfaction and quality surveys on the EMERITA service LEGAL.

-Provide a personalized service to put potential clients in contact clients with professional users and offer them alternatives in case the lawyer or solicitor initially contacted cannot attend to the case or the client is Come and have someone else attend you for reasons such as specialty, proximity, price, etc.

-Keep informed, including by electronic means, about news and

events related to EMERITA LEGAL, as well as related products and services.

marketed both by EMERITA LEGAL and by third-party entities belonging

or directed to the legal sector.

The collection of data within the EMERITA LEGAL website is carried out through

of the following forms:

–Contact form: The name and email are collected in order to

der to respond to the query that the user raises. Another purpose associated with this

form is to include, if the user decides, the contact information in a list of

mail to receive periodic communications.

–Registration form: The name and email are collected with the fi-

purpose of including the user in the system and being able to provide the service. Other purpose

associated with this form is to include, if the user decides, the data in contact

to a mailing list to receive regular communications.

-Chat bot: the name, email and telephone number of the user is collected for the

resolution of queries about the platform that can be raised directly to an operator

pain

According to the provisions of the General Data Protection Regulation of the

EU, the user must receive timely and specific information from the data controller

ment and the uses and purposes thereof. To do this, this list includes the activities

of treatment carried out by the owner of this website:

- Web contacts

- Client and professional users

- Professional natural persons

- Suppliers and collaborating third parties

- Human Resources

-Communication of information to third parties

LEGAL EMERITA will not communicate to third parties the personal data of the users.

users, unless said transfer of data is legally protected or when it is strictly

absolutely necessary for the management of the service.

In order to be able to provide the service, national data communications will be carried out.

navigation, ip and other technical parameters, to Google Analytics, Google, Inc., 1600 Am-

phitheatre Parkway, Mountain View (California), CA 94043, United States ("Google").

-User rights

"Users may exercise their rights of access, rectification, cancellation,

tion and opposition. To make use of these rights, you should contact EMERITA LEGAL

GAL by written communication, providing documentation proving their identity.

identity (DNI or passport) at the following email addresses: clients@e-

merita.legal (for client users) and professionals@emerita.legal (for professional users).

professionals).

This document was last updated on 11/30/2018."

THIRD: On 09/26/2019, the Director of the AEPD agrees to the admission to

limit of the claim.

FOURTH: The Inspector in the phase of preliminary investigation actions, diligence that,

on 10/02/2019, you obtain a printout of the information obtained through https://

www.emerita.legal/info/privacidad, joining the procedure. There are 15 pages

“On the personal data that may be collected in the navigation or

contracting services through the website”, already expressed in the facts according to

do.

FIFTH: Within previous investigation actions, dated 2 and

10/29/2019, information is requested from the respondent on five aspects:

1-Detailed description of data processing of Administration professionals

of Justice, indicating the categories of data.

On 11/18/2019 he answers:

“ A. Categories of data

attorneys

YO.

II.

Personal information:

A name

B. Surnames

Professional data:

A. Bar Association

B. Membership number

C. Address for professional purposes

D. Telephone

E. Professional Email

III. Purely statistical data of the judicial resolutions analysed:

A. Global data:

a. Number of cases analyzed

b. Distribution of the cases analyzed by areas of law

c. Map of cases by court

Lawyers

I. personal data:

A.

Name

B. Surnames

II. Professional data:

A. Bar Association

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

B. Membership number

C. Registration date

D. Address for professional purposes

E.Phone

F. Professional email in case the professional registers

III. Purely statistical data of the judicial resolutions analysed:

A.

Global data:

a. Number of cases analyzed

b. Distribution of the cases analyzed by areas of law

c. Average number of cases analyzed from other professionals of the same type in each area of the

law

d. Map of cases by court

A.

Specific data of outstanding areas or specialties:

a. Featured subjects

b. Number of cases analyzed

c. Average number of cases analyzed from other professionals of the same type in that area of the

law

d. Graph of type of clients and opponents (individuals or companies)

and. Graphs of evolution of the number of cases in the last 5 years

F. Graph evolution of results in the cases that have been carried out in the last 5 years

IV. Scores/Assessments referring to specific area data

highlights or specialties:

A. Score, judicial performance index (IRJ).

B. Success rates calculated globally and differentiating customer profile (individuals

or companies).

C. State/autonomous/provincial positioning ranking. Rankings are created by specialty

ties and always within a category of seniority.

B-Description of data processing

To compose the information shown in the profiles of Emérita Legal,

the following processes:

1. Raw data collection

Two main types of data are collected:

a. We collect millions of judgments and other judicial resolutions from di-

various sources that include the names and surnames of the professionals of the

Justice.

b. We collect the professional data of justice professionals by going to the

official censuses that include the data described in the previous section.

2. First data cleaning

We proceed to the revision and elimination of all those documents that do not

meet the standards for consideration as original judicial resolutions.

original or as "true" copies thereof.

3.

Analysis and extraction of variables

Each resolution is analyzed in an automated way to "mark" in it the

potential participants (lawyers, solicitors...), as well as to identify

the ruling, the court, the number of the process, resolution... and up to 35 other va-

Key variables for the generation of judicial statistics.

4. Linkage, statistical profiling and data minimization

The resulting data is linked with the census data of the professionals to

in order to attribute judicial decisions to one or more lawyers/solicitors

specifically, introducing a series of rules to minimize risks, improve

Reduce disambiguation and improve data accuracy and correctness.

Once the previous process has been carried out, and therefore the statistical profiles of

professionals, we proceed to unlink the census data of all the lawyers

of their statistical profiles in order to minimize the impact of the treatment

at an early stage. The statistical profiles then start to have an iden-

Random identifier made up of a string of numbers and letters.

5. Second data cleaning

We proceed to review and eliminate those resolutions that do not comply with

the quality standard, which seem to have been modified, which has not been po-

possible to attribute to a lawyer with a certain degree of certainty or that they do not have the

key variables for carrying out the process.

6. Classification of resolutions by legal areas

Each resolution is classified into 7 large areas (civil, commercial, criminal,

social...), more than 100 different specialties and almost 2000 legal matters of

according to a system pre-trained manually by our legal team.

co.

7. Quality review and indexing

In this phase, the legal team manually and randomly reviews the results

both of the "marking" of data in the resolutions, of the classification, as well as

of the processes for its attribution; to check the quality of the process and

make the pertinent modifications. In case of making any modification,

restarts the entire process or only on the optimized variables,

depending on the case.

8. Generation of comparative statistics and reference lines

Once the resolutions have been attributed to each statistical profile of lawyers and

pseudonymized curators, classified the resolutions and composed the

their trajectories, this same information is used to extract me-

days, medians... of each specialty in particular, taking into account the

cough only of the professionals who act in it together with other factors

such as location, court, seniority... This allows us, on the one hand,

extract a specific comparative measure of each speciality/type of profession

without the introduction of manual biases, and, on the other hand, delimit the te-

playing field for the application of our judicial efficiency algorithm.

9. Qualification of the trajectory of lawyers. Court Yield Algorithm

(IRJ) and positioning in rankings.

Based on the judicial trajectories analyzed for each of the profiles

statisticians of lawyers (there are only qualifications on this type of profes-

tional), in a specific specialty we proceed to make a comparison

It is based on 5 performance indicators or KPIs. These indicators evaluate:

-The experience of the lawyer (KPI Experience),

-its results, or what is the same, the relation of the results obtained

by a lawyer in cases with certain variables compared to those achieved

two on average by other colleagues in the same specialty (KPI Results);

-its quantitative/qualitative evolution (KPI Progression),

-your degree of knowledge update, (KPI update) and,

- Their degree of specialization, both direct, in the analyzed specialty;

as collateral, in other specialties that have been marked as known

related training (KPI specialization).

From the application of the result obtained in the different indicators, it is calculated

a final result by specialty from 0 to 100 which they call IRJ or index

of judicial performance that serves directly for the positioning of the

Lawyers in the different rankings.

Human intervention occurs only in the configuration and adjustment of the

IRJ algorithm, through its indicators, and which is designed ad hoc and is

transparent, it is not a "black box". Once configured, it applies

plan and under the same conditions for all lawyers without it being possible to

modify any of them in particular, thereby ensuring the

objectivity and equal conditions for all lawyers.

10. Publication "by default" or maintenance of pseudonymous profiles

Applied the IRJ algorithm in each of the more than 100 specialties

analyzed proceed to:

a. Re-linking and publication of the profile.

Yo.

Lawyers. Only those statistical profiles of lawyers are published "by default".

who obtain excellent results in at least one specialty, which we have encrypted

in obtaining an IRJ equal to or greater than 70 points. Verified the above proceed

to link again the statistical profile with the census data of the lawyer, which will be

now identifiable. In addition, only the data of a single source is shown to the end user.

specialty, which is the one in which the lawyer has the best IRJ) (the specialty

tacada), blocking the remaining specialties.

ii.

attorneys. Regarding these professional profiles, for their publication, we proceed

to link the census data of attorneys with their statistical profiles under the sole

criterion that they have a sufficient statistical sample, which varies according to the

ciality and its means/medians.

b.

Maintenance of the pseudonymization of the profile

Those profiles that are not published "by default" remain pseudo-

anonymized, leaving these attributed to a random chain of

figures and letters and being only relevant for statistical and possi-

tioning. The process of linking these profiles, and their publication

tion, can only be carried out through the express and unlawful consent

mistake of the Lawyer himself, through the introduction of his certificate

professional.

This action is due to the execution of the security measures established

established as additional safeguards in our impact assessment,

in relation to the weighting of affected interests. It is published only

mind by default those profiles of professionals who hold a

excellent qualification, and only the data of the class is made public.

specialty in which the professional stands out the most, in order to minimize

Assess as far as possible the possible reputational impact on lawyers.

11. Update, correction, verification and manual verification of the data.

Due to the fact that it is a dynamic system, it has been necessary to integrate in the

flow of treatment, different mechanisms that allow both the possibility of

Introduction of updates, corrections or improvements by the users themselves.

such as the improvement or optimization of the systems by Emérita Legal,

while maintaining a level playing field for all of them and a system

updated data. In addition, to avoid possible fraudulent conduct,

mechanisms are introduced in this phase, both manual and automatic review.

that allow its detection and correction by the team of Emérita Le-

gal.

12. Access to the profile and requests for access, opposition or rectification of data

In order to more easily and quickly secure access rights, as well as

As to protect the information stored in the profiles, the access is allowed.

access to them by professionals through the platform with

your professional certificate (ACA in the case of lawyers).

Each lawyer can directly access their profile after this verification.

tion, being able to hide your profile, correct professional data, correct fields in

resolutions attributed, send new resolutions or proceed to request their

elimination.

ARCO rights, although ACA access, which implies registration, guarantees a manage-

immediate tion of the same.

In the event that the professional requests opposition to data processing,

The anonymization process is cut and the professional data is eliminated, leaving

their anonymized statistical profile, but operating for statistical and possi-

tion, or to put it another way, there comes to be an anonymous lawyer and his position

This information is reserved to guarantee the objectivity of the system.

13. Guarantees and manifestations of the system

a. It is explicitly indicated in each profile the fact that the information provided does not

is exhaustive, is exclusively related to the performance in litigation and refers only to

to the sample of resolutions analyzed by the lawyer in question, in no way

gar to all your cases.

b. The qualifications in the different specialties and the consequent positioning in

the different rankings are made under the direct and immediate application of the IRJ algorithm

and its associated KPIs, without any payment option for repositioning

on the platform.

c. Any professional can participate in Emérita Legal regardless of whether

has obtained, or not, a grade greater than or equal to 70 points in any specialization.

dad. In the cases in which this score is not reached, and, therefore, a

greater reputational risk, express authorization is required through verification

unequivocal of the requesting person (access with their professional certificate).

d. The exercise of the ARCO rights is guaranteed not exceeding its term of execution by

Legal Emeritus, in 90% of the cases, 24 hours or 72 hours if it coincides

on weekend.

and. The general operation of the algorithm is published for its knowledge by

professionals and end users in a preferred section of the website https://www.emeri-

legal/methodology”

C-Purpose or purpose of data processing

“Provide real transparency to the legal sector through open publication

of objective, free and unadulterated information from the analysis of resolutions

judicial.

For this reason, unlike closed systems, prior payment and oriented only to

mind to legal professionals, of legal databases that currently carry out

similar processing of professional data (Vlex, Aranzadi, Tirant, El Derecho...),

or even some that carry out treatments practically identical to ours (such as

JURIMETRY of WOLTERS KLUWER); the legal emerita system provides for

first time information on Spanish justice accessible to anyone in a

free. This greatly strengthens the right to obtain information that,

as a consumer, has anyone in the process of contracting a service

of high value such as the legal profession."

2. Detail of the origin of each one of the categories of data, indicating which data

transferred directly from the interested party and what data is collected by other means.

It answers that: "All categories of data refer to practicing professionals

who participate in legal proceedings (litigators) and come from different sources.

tes that we can classify into 4 classes:

1. Data from the analysis of court decisions compiled from multiple sources-

accessible and indexed in the different search engines or through the incorporation

portioning of their data by the professionals themselves.

a. Personal information

YO.

Name.

II. Surnames.

a. Purely statistical data of the resolutions analyzed

2. Data from the official censuses of lawyers and solicitors (lists of collec-

practicing giados).

a. Personal information

Yo. Name

ii. Surnames

b. Professional data

Yo.

ii.

iii.

IV.

v.

saw.

Law School

Collegiate number

College date

professional direction

Telephone

professional email

3.

nes.

a.

b.

c.

Data from the application of algorithms on the resolution data

Qualifications by specialty (IR).

Success rates by specialty

Positions in specialty rankings

Four.

Data from the interested party

a. Professional email (only in the case of lawyers)

3. Procedure to obtain the consent of the owners of the data in the

If the information comes directly from the interested parties, and details of whether

There is a procedure to inform and obtain consent in the event that

data is extracted from other sources.

He answers that: “The first data processing derived from the analysis of sentences was

carried out without prior and express consent due to the impossibility of generating it

in this way, it does find its basis of legitimacy in the legitimate interest of the user.

final ry in obtaining this information and, what do they have objective information about experi-

court case of the so-called trial lawyers. We could say that there can be

even a public interest. The legitimate interest of Emérita Legal consists in acting as

bridge to provide it, as we legally substantiate below in this

pulled apart.

Since January (he does not indicate which year), nearly 2,000 lawyers have joined

already entered the system and 86 have requested deregistration.

Emérita Legal has carried out an impact assessment reaching the conclusion

that data processing based on legitimate interest passes the weight test

ment for not harming the rights of the interested group (lawyers) having

taking into account the type of published data. Regarding the test, the weight has been

risk that data processing may entail with respect to the rights of data subjects.

lawyers.

If we analyze conflicting rights, the following conclusion is reached:

1. On the one hand, there is the legitimate interest of EMERITA and third parties in obtaining information

training on a specific lawyer from their judicial experience,

2. On the other hand, there is the right of lawyers to privacy, but not as

an abstract, absolute right, since the name and surname appear in different censuses

officers of lawyers that are considered sources of public access, and it also appears in

the judicial resolutions in which it has intervened as a guarantee of the system.

Most of the data published by EMERITA has already been published, as a result of the activity

professional nature of the lawyer, and the rest (e.g. success rate, experience in a certain

mined matter...), with the exception of the IRJ, in reality it is information to which

any user could arrive by manually searching and analyzing a sample of

judicial resolutions of the lawyer published on the Internet. The information provided

we act is purely professional, always linked to the intervention of the lawyer

as a practicing professional. The provisions of art.

Article 19 of Law 3/2018 of 5/12, LOPDGDD, being able then the right of the

lawyers to the protection of your personal data materialize in the right not to

be included in a ranking, unless compared to other professionals, in the right

to honor, if this right has that scope. The fact of appearing in a ranking

does not pose a risk to the rights of lawyers and the right to know the ex-

experience of a lawyer in certain types of cases or to know how many cases he has

with respect to others of the same specialty is legitimate and is in balance with the

right of lawyers to their privacy, especially when their rights are guaranteed

chos of opposition and suppression. The interest pursued by EMERITA is the right to

information about a group within the respect for the specific cases in which

have intervened.

The use as a judicial analytical tool is carried out using only

information related to professional activity, although it requires processing personal data.

personal character, but they have the status of lawyer in their role as collaborators

with the administration of Justice. In addition, users are guided on how to

interpret and use statistics and scores without telling them whether or not to hire a professional.

sional, since objective data is offered with views to take into account when choosing a

professional

The following have been adopted as additional guarantees:

a. Only the profiles of the professionals who

obtain excellent results in at least one specialty 70 or more of the IRJ understands

considering that this generates positive effects on his reputation, being the lawyer himself the

the only one who can see from your account the statistical data and the scores/evaluations

tions of the rest of the specialties that have been generated due to the existence of a sample.

b. Data minimization: the minimum possible data has been included for the

fulfillment of the purpose, offering even the lawyers themselves the possibility

to update, complete or add new data if they so wish, as well as the possibility

ability to hide them (you can "hide" your profile from the privacy settings

available in your account).

c. Transparency in the information provided to lawyers, both so that they

know how the IRJ has been calculated, so that they can see (each lawyer

from your account) the detail of the resolutions to which the analyzed cases refer-

two that have been taken into account to calculate it, as well as for them to exercise freely

you your rights. The will of lawyers in the exercise of their rights is earned

guaranteed quickly and efficiently (especially the right of opposition and suppression).

d. Pseudo-anonymization measures: The data published corresponds only to

it to the best results. The rest of the data is kept hidden and dissociated.

and. An impact assessment has been carried out in order to analyze the risk

of this business model and the means for its management. We consider that they have

adopted measures that mitigate the same from the beginning of the project, and what happens

by a solid legal basis that legitimizes its action", and that "In view of the analyzes

allows us to assume residual risks as probable, but with a moderate impact.

low and therefore at an acceptable level.

Emérita Legal publishes directly on its website the data of part of the lawyers

data analyzed without previously informing the interested parties about the treatment. SW-

on the justification of the exception to the duty to inform according to the provisions of art.

Article 14 RGPD, on the website itself it is reported explaining "how it works, how to access

der and complete the data and the possibility of unsubscribing."

It is impossible to inform the group of all the lawyers in advance. Yes

we refer to the lawyers whose data we publish by default would see us-

We are obliged to notify approximately 25,000, and if we refer to the total they would be

approximately 110,000 lawyers that we would have to notify.

Therefore, they consider that the obligation to inform will not be applicable because

the communication of said information is impossible or supposes a disproportionate effort.

portioned.

Even so, at Emérita Legal different channels of prior communication have been sought,

some of which are still open today in order to channel compliance

of the duty of information:

-Telephone contact: It was not effective since it is very difficult to speak di-

directly with the lawyer, since in most cases it is not the person who

he picks up the phone and it takes many calls to talk to him; apart from that

It was unattainable from an economic point of view.

-Sending letters to 500 lawyers from those published by default: It was not effective

since only 10% were truly informed (or else they did not receive them by

not pass the filter of secretaries or colleagues who discarded them perceiving that

it was publicity or they rejected it directly themselves believing that it was publicity.

apart from the fact that it involved a disproportionate economic effort

-Contacts were initiated with Bar Associations, as well as with the Council of

Galician Lawyers and the General Council of Spanish Lawyers in order to achieve

agreements that facilitate us the possibility of complying with the duty of information. Is

road is still open today.

4.- Procedures to guarantee the correctness and accuracy of the data.

They state that: “As already anticipated in section 1, within the flow of treat-

procedures are established to guarantee the accuracy of the data through

of carrying out updating, correction, verification and/or verification actions

manual data entry, both by EMERITA LEGAL and through the

different options enabled so that the professional user performs autonomously

ma these actions (implementing manual or semi-automatic review mechanisms

for the prevention of inappropriate conduct that contravenes the integrity of the system.

subject matter or that impairs its accuracy or objectivity).

By Emérita Legal or at the request of unregistered professional users:

1. Continuous updating of census data and automated control of changes in type.

professional practice.

2. Update of seniority (if it is prior to the detected registration date) prior

presentation of supporting documentation.

Incorporation of new resolutions for the progressive updating of the sta-

distic

3.

4. Optimization of the settings of the positioning algorithm (IR) or the detection system.

variable protection.

5. Supervision of changes made directly by the user or revision of the suitability

the nature of the requested changes (when they cannot execute it themselves) and execute

tion of modifications, if any.

6. Complete review of the profile and its associated data at the request of the professional.

7. Respond to requests for updating, modifying, correcting fields...

given by professionals who have not registered.

8. Control potential fraudulent activities that impact the integrity, objectiv-

reliability or accuracy of the system.

By the professional user (with or without subsequent review by EMERITA):

Once the professional's first access has occurred through the verification system,

enhanced fication may:

Visualize the detail (extracted data) of the judicial resolutions to which

Complete the different sections of the profile, including a brief description of

Request a change of school, establishing as the main school another in the

Request a change in your registration date, if this is prior to the most recent registration

Modify your contact information, including your professional address, your telephone number,

-

telephone and, if applicable, the contact email.

-

your person, your previous jobs, training, photo...

-

currently listed (requires accreditation).

-

old verified by Emerita (requires accreditation).

-

the analyzed cases that appear in their profile are referred to.

-

Request correction or correct autonomously (editing directly) the

data extracted from the judicial resolutions from which the statistics are generated.

your profile statistics and scores (requires validation by manual team review)

of Emerita).

-

-

for lawyer only) or public (visible to any user).

-

Update your profile with the insertion of data from new resolutions.

Manage the privacy of your profile allowing you to put it hidden, private (visible

Manage your ARCO rights.”

5. Procedures to exercise the right to oppose the processing of data by

part of their headlines:

They state that: “Regarding the right to oppose the processing of data by

part of the professionals, we differentiate:

5.1 Opposition to treatment without prior registration in published profiles.

Professionals can exercise their right to oppose, and where appropriate, su-

pressure, by contacting the addresses info@emerita.legal or professionals@emerita.-

legal. In the event that the origin of the request is not clear, and to avoid

prejudice to the disappearance of his profile to the professional, the accreditation will be required in any case.

disclosure of the identity of the applicant through the sending of the front face of the ACA and not

of the DNI, which allows us to minimize the data processed for this management without including

new data.

The management in this case will go through the execution of the pseudonymization process

of the statistical profile with the simultaneous withdrawal of the same from the public area and with the post-

subsequent elimination of the linking key and the associated census data, leaving

the completely anonymized profile, but computing for statistical and possi-

tioning.,

This process is carried out in 90% of the cases in less than 24 hours,

managing it preferentially, rising to 72h only if the request coincides

on weekend.

5.2

Opposition to treatment without prior registration in pseudonymous profiles.

In this case, the same mechanisms apply with the difference that the

census data of the lawyer are already dissociated and his statistical profile appears pseudo-

doanonymized. Then proceed to the elimination of the private key that would allow

eventually their re-association, as well as the elimination of their census data from

our database. The statistical profile would therefore be anonymized and computed.

do only for statistical and positioning purposes.

5.3

Opposition to treatment with ACA registration and verification.

After the request for cancellation of data, the withdrawal is automatically carried out.

gives the profile of the public area, its pseudonymization and the elimination of passwords and data

censuses of the professional without further formalities. The statistical profile would therefore remain anonymous.

mized and computed only for statistical and positioning purposes.

In conclusion, any professional can exercise their right to object, and

deletion, data processing, as well as any of the other rights

ARCO, without any type of justification of prevailing interest, proceeding Legal Emeritus

to the management of your request in any case and in the shortest possible time.

We want to emphasize that the number of oppositions requested is less than the

professionals incorporated into the system since our launch in January

the former being estimated at 86 lawyers and the latter at almost 2,000 professionals.

nals currently. It should be noted that of the 2,000 registered, approximately half

tad were published by default, and the other half signed up to create their profile.

SIXTH: In the access to the CENDOJ website, as of 09/02/2020, the following warning appears:

I'm legal

“The resolutions that make up this database are disseminated for the purposes of

knowledge and consultation of the decision criteria of the Courts, in compliance

of the competence granted to the General Council of the Judiciary by art. 560.1.10º

of the Organic Law of the Judiciary.

The user of the database will be able to consult the documents whenever

make for your own use.

The use of the database for commercial purposes is not permitted, nor is the

massive download of information. The reuse of this information for the elaboration

creation of databases or for commercial purposes must follow the procedure and

conditions established by the CGPJ through its Judicial Documentation Center.

cial.

Any action that contravenes the above indications may give rise to

gar to the adoption of the appropriate legal measures."

SEVENTH: On 09/02/2020, the website of the General Council of Lawyers is accessed.

Spanish law in order to obtain information on the number of licensed lawyers

two in Spain to contrast it with the number of records (110,000) handled by the

claimed, of which it publishes by default 25,000. Information is accessed at

which is reported from the census as of 12/31/2019. It is incorporated into the file in an Excel file,

indicating that there are 143,398 resident lawyers and 10,898 non-residents.

tes, (both practicing groups) adding a total of 154,296. Thus, the claimed

publishing by default, 25,000, would be a percentage of 16.20% of the total practitioners,

and it would process a total of 71.4% of all practicing lawyers in its systems.

EIGHTH: In order to verify the services offered by the claimed and information,

On 09/04/2020, the Emérita legal website was accessed, https://www.emerita.legal/ containing:

- “5,812,376 judicial decisions analyzed, 108,253 lawyers, analyzed 60 es-

specialties. Your objective reference in the legal sector. “

-There is a box where you can search for a lawyer, by name and surname-

two, by specialty, or with the keyword.

-There is a link that informs about the method of judicial analysis: “We reveal data

never available about lawyers judges and other parties, as well as the areas of the

law from the analysis of millions of judicial decisions. Users and

companies can objectively know the judicial experience of lawyers and law firms

chos, compare their trajectories and hire the most effective lawyer for your case. “

- Figure:

-Make your legal decisions supported by data thanks to our tool

of judicial analytics that extracts information from millions of judicial cases. “

- “Lawyers and law firms can differentiate themselves in a relevant way, demonstrate-

us their specialty and experience in the matter, obtaining an independent reference

tooth that certifies the quality of its trajectory. In addition, they can use our AI le-

gal to optimize strategic decision-making in their judicial processes and

business, making them more efficient and competitive.”

- "HOW IT WORKS we collect millions of sentences and other resolutions

from various web sources, statistics General Council of the Po-

der Judicial legal professionals and other sources. We analyze each resolution identified

ing the participants, the court ruling, as well as other key data and the classifications

camos in the different specialties. We index the information in our database

data under the review of our legal experts to control the quality of the pro-

process we generate statistics applied to each specialty revealing the trajectories

of lawyers offices judges and other parties.”

- “We evaluate the judicial performance of lawyers and law firms, according to their

trajectory we update the profiles periodically incorporating information from new

You go resolutions that we are compiling Our judicial analysis tool

based on machine learning natural language processing technologies

tico is able to read and understand judicial decisions in a similar way to a being

but 1,000 times faster, being able to process millions of resolutions in

a matter of minutes, which makes it the best ally to find the information

what do you need."

-It has an index of FAQs of judicial performance index (IRJ) “which is the index of

court performance? How is the success of a lawyer assessed in a judicial process?

What types of lawyers are evaluated? yes you can change the judicial performance index

of a lawyer a lawyer and his position in the rankings.”

- Likewise, you can also go directly to the ranking in which, determining the ni-

territorial level that you want to search for and the specialty, or by names and surnames. Of-

returns the requested results and the lawyer's profile appears, in some they have their data:

seniority, specialty, your photograph, your office data and email, the

court performance index. It also takes the to the section of online consultations with the

different rates applied.

-There is a section titled digitize your services”. “With our management software

of clients you can:

-connect with your own clients: redirect your clients to your professional profile

in legal emerita from your own website or by WhatsApp email and manage the

complete process of interaction with your customers 100% online through our

other customer management software.

-connect with new clients: sign up for our consultation service on

line expand your network customers potential customers looking for you or looking for specialists

tas in their field could talk to you directly from your profile to make

your queries.

-speak online saves time avoiding numerous calls and invoice emails-

bles to keep your online conversations organized.

-receive documentation

-online consultations

-contract online”

-A section entitled "Legal intelligence" "key information to optimize your

decisions about opponents, judges, courts, as well as the specialties themselves.

A global vision of the trajectory of the parts of the process and the evolution of the

different specialties that allows you to create more successful judicial strategies”.

-In the section “by lawyers for lawyers” it reports “we want to put an end to

services that reduce the value of the profession and lead to low differentiation

based on prices promoting quality solutions based on real information” “not

it is enough to say that you are the best lawyer in your specialty, the key is to prove it”

-In information about “us”, it indicates that they carry out “Big Data” analytics ju-

through its data tool on lawyers, judges, and parties in the cases.

sos, with the mission of providing a transparent vision of the legal sector promoting

universal accessibility to information of public interest, contrasted, objective

independent in the field of justice.

NINTH: On 11/5/2020, the Director of the AEPD agreed:

START SANCTION PROCEDURE against E4LEGAL ANALYTICS, S.L., with NIF

B70514831, for the alleged infringement of the articles:

-6.1 of the RGPD as indicated in article 83.5.a) of the RGPD.

-5.1.d) of the RGPD, as indicated in article 83.5.a) of the RGPD.

-14 of the RGPD as indicated in article 83.5.b) of the RGPD.

For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Procedure

Common Administrative of the Public Administrations, the sanctions that could co-

respond, without prejudice to the instruction of the procedure, would be:

1. 450,000 euros for the infringement of article 6.1) of the RGPD.

2. 50,000 euros for the infringement of article 5.1 d) of the RGPD.

3. 100,000 euros as an administrative penalty for the infringement of art.

article 14 of the RGPD.

TENTH: The respondent files a letter on 11/6/2020 requesting a copy of the file

and extension of the term to make allegations, sending the same and granting the

extension.

On 11/27/2020, the respondent received a written entry announcing the submission of allegations.

tions in paper format, since it had difficulties in its presentation through the mailbox

email from the AEPD, sending proof of its mailing on 11/27/2020

as well as the first page with the postage stamp of that date.

His allegations are broken down into:

A) THE CONCURRENCE OF THE LEGITIMATE INTEREST OF ARTICLE 6.1 F) OF THE

GDPR as an autonomous, sufficient and valid legal basis for data processing

personal. It has added an ANNEX I, a document called: "WEIGHT

OF THE LEGITIMATE INTEREST" "in the treatment of personal data of the

legal professionals lawyers and attorneys who participate in

judicial procedures", of which the following are highlighted:

1. OBJECT

"Analyze the feasibility of protecting the legitimate interest" of the personal data of the pro-

professionals of Law, lawyers and solicitors that appear in judicial resolutions-

them. Additionally, a treatment related to the generation of statistics will be carried out

comparisons and lines of reference between those mentioned, as well as the "qualification of the

trajectory of Lawyers, the "Judicial Performance Index", which allows establishing

a ranking of lawyers by specialties.

2. DETAILED DESCRIPTION OF THE TREATMENT: it is a combination of actions

manual and automated

Reiterates what was already stated in the transfer, regarding the description of the treatment of

data, phases 1 to 11. It is interesting to detail:

3. ADDITIONAL CRITERIA FOR A WEIGHTING

Although in the preceding text you have only explained how the mechanism works without

referring to the specific weighting of legitimate interest, explains:

-Based on the foundations and consequences that are extracted from "opinion 6/2014

of the Working Group “on the legitimate interest of the data controller

data, by virtue of article 7 of Directive 95/46, (hereinafter, “Opinion on the

legitimate interest”) currently applicable in the interpretation of article 6.1.f) of the

RGPD”, after exposing all the factors that influence the assessment of the legitimate interest

example, of citing jurisprudence on “restrictive measures of a fundamental right” with

overcoming the judgment of proportionality, suitability and necessity explains the “triple judgment”

proportionality of the restrictive measure of a fundamental right”,

do:

-SUITABLE, the purpose of EMÉRITA is to "strengthen the rights of consumers",

providing them with “objective information and global comparisons of the performance of the

professionals in the field of justice which will allow you to make informed decisions

in contracting legal services. Provides great value to the user

legal services have this information. The system, although it does not have the

feeling of the professionals, needs to be accepted by the group of professionals,

given that "a massive rejection would lead to its disappearance" so that if

is widely accepted by them

-judgment of NEED: there is no other more moderate measure to achieve the objective.

The minimum possible data has been included for the fulfillment of the purpose offered.

give lawyers the opportunity to update them, complete them by adding new data

if they wish, as well as the possibility of hiding them.

-Judgment of PROPORTIONALITY, “if more advantages or benefits are derived for the inte-

res general”

-Explains as phase one, that the basis of treatment is the legitimate interest that concurs,

There are six more phases:

-Phase two qualify an interest as legitimate or illegitimate, this must be lawful, be articulated

clearly enough to be able to contrast it with the fundamental interests and rights

data of the interested party, represent a real and current interest.

The treatment carried out is lawful by:

- “There is no legal norm that prevents the use of judicial resolutions with

analytics purposes. In fact, several companies already use it and do it "vlex Analytics" or

"Tirant Analytics" and there are already similar tools on the market that allow obtaining

have information on lawyers participating in legal proceedings, for example

“JURIMETRY”

of the entity “WOLTERS KLUWER”

(WK hereinafter).

“The legitimate interest is not only of EMERITA, as an entity, but above all of the

public in general and users of legal services in particular in obtaining information

objective information about the judicial experience of the so-called trial lawyers

we could affirm that there is even a public interest”.

It points out the current existing current in the field of justice of OPEN DATA or

open data, which entails exploitation of data reuse or open data

as a legal security service tool and fundamental rights

It contributes to transparency and accountability.

- To determine if the treatment is necessary to achieve the interest pursued,

referred to the consideration of whether there are other less invasive means to achieve the

intended purpose of the treatment and satisfy the legitimate interest of the data controller.

treatment, “it is concluded that if the scope of the platform is general, throughout the

national territory, you cannot choose other means (request consent of the

lawyers or nurture the platform only of the resolutions that they contribute). In this

case the result would always be partial “and much less objective than if the resolutions

they are analyzed randomly starting from a statistical sample”.

-In assessing whether the interests of the data controller prevail over

the interests or fundamental rights of the interested parties” must be taken into account

ta, that on the one hand there is the legitimate interest of EMERITA and third parties in obtaining informa-

information about a lawyer about his judicial experience, and on the other hand “the right to

Lawyers to privacy” taking into account that it is not absolute, since “it constitutes

in the different official censuses of lawyers -which are considered sources of public access-

public.”

In accordance with the constitutional principle of the publicity of judicial actions,

which for the Constitutional Court, as a pillar of the rule of law, has a

purpose of protecting the parties from a justice subtracted from public control, maintaining the

community trust in the courts, the personal data contained in the re-

judicial solutions in which they intervene, are a guarantee of the system that must act in the

heading of the sentences, collecting the legitimacy and representation in virtue

tude of which they act (LEC art 225.4, and 209), since it constitutes vice of nullity ab-

resolution of the procedural acts when they are carried out without the intervention of a lawyer in the

cases in which the law establishes article 209 of the LEC as mandatory. Consider the

requirement of publicity the character of a fundamental right.

The LOPJ title VII defines them as cooperating with the administration of Justice, in its

function of Lawyers and Attorneys. The General Statute of the Legal Profession, Royal Decree

658/2001 of 06/22 indicates them as “participate in the public function of the Administration

of Justice". Therefore: “the publication of the resolutions containing the identification

tion of the necessary collaborating lawyers in the procedural function of publicity of the

justice, through the internet, is protected by the waiver of the requirement of

consent provided for in the LOPD and in the Data Protection regulations”

- The fact of appearing in a ranking does not imply a risk for the rights of lawyers.

both the right to know the experience of a lawyer in certain types of cases or

know how many cases he has with respect to others of the same specialty is considered

believe that it is legitimate and is balanced with the lawyers' right to privacy,

maximum when your rights of opposition and deletion are guaranteed.

As an additional guarantee, we have chosen to only make the data public by default.

I effect the profiles of those professionals who obtain an excellent result in at

least one specialty, 70 or more of the IRJ, understanding that the publication of the same

we only generate positive effects on its reputation, as well as for making public the damages

statistical data and the scores/evaluations of a single specialty, the outstanding

being the Lawyer himself the only one who can see the statistical data from his account.

tics and the scores/assessments of the rest of the specialties that have been generated

because there is enough sample”

-The interest pursued by EMÉRITA is the right to information about a collective

respecting the specific cases in which it has intervened

The publication of the data of the sentence is done in objective terms.

-As additional guarantees” they offer:

-a-Inclusion of the minimum possible data for the fulfillment of the purpose.

The published data correspond only to the best results, the rest are kept

have hidden and dissociated

-b-Offering the lawyers themselves the possibility of updating, completing or adding

dir new data if they wish, as well as the ability to hide them, also hide

your profile from the privacy settings available in your account.

-c-Transparency in the information provided to the lawyers so that they

know how the IRJ has been calculated so that they can see the details from their account.

lle of the resolutions referred to in the analyzed cases that have been taken into

account to calculate it, as well as to exercise their rights.

-d-The will of the lawyers in the exercise of their rights is guaranteed

quickly and efficiently, especially the right of opposition and suppression.

-e- Conducting an impact assessment in order to analyze the risk-

go of this business model and the means for its management.

“Like any new initiative that involves data processing, there is a com-

speaker of uncertainty and subjectivity in the interpretation of the norm that, not

However, in view of the analyzes it allows us to assume the residual risks as pro-

likely, but with a moderate impact and therefore at an acceptable level.”

- “demonstrate compliance and ensure transparency”

The website itself clearly explains how it works, all the information about

on how the data is processed and the measures to exercise the rights are offered.

- “what happens if the interested party exercises his right of opposition

”

In any case, the will of the right of opposition of the interested party is respected.

intent as an unconditional right, respecting the decision of the affected party, without

make another assessment or take another action.

It is assumed that no lawyer has taken into account all of the

resolutions in which he has participated, introducing the extent that the lawyer

who wants to be in the ranking can provide more information if he considers that it is not

have taken into account all the judicial resolutions in which they have participated to

Complete the profile including the information of more resolutions in which you have participated.

paid.

4. WEIGHTING OF CONCURRENT INTERESTS

a) “There is no prior relationship between EMERITA LEGAL and the interested parties, but there is

relationship between the interested party and the administration of Justice. “

b) Regarding the reasonable expectation of the interested parties that the treatment will be carried out-

being a legal professional, the expectations that your professional data

endpoints are treated with a tool like this, such expectations exist, of course.

how much these professionals know and use analysis tools, statistics, search

you stay personalized Since the implementation of the compendia of jurisprudence in

online format, any professional knows that their data and the issues in which they participate

cipa are going to be published and are readily available to anyone.

B) ABOUT THE ORIGIN OF THE DATA

Data from public sources, noting that, at the tenth open session of

the Spanish Agency for Data Protection, according to the internet, held on 06/4/2018, in

the frequently asked questions section indicated that with the RGPD you cannot talk

of legal concept of sources accessible to the public such as the one that existed in the LOPD or of

that the fact that the data appears in this type of source legitimizes without further ado

treatment.

The RGPD only speaks of public access sources when regulating the right to information

if the data is not collected from the interested party in article 14.

The fact that a piece of data is accessible to anyone can be taken into account when

time to carry out the weighting of article 6.1 f) as stated in the (judgment of the Court

of Justice of the European Union ASNEF) but it does not necessarily imply that the treat-

ment will be lawful, since the remaining principles must be respected within the

GDPR.

As a consequence, the fact that personal data may be processed is not denied.

reported when they come from “sources accessible by anyone”

The LOPDGDD legitimizes the Internet as a source for obtaining the data, as stated

party expressly the third final provision of the LOPDGD by which the

Organic Law 5/1985 of 06/19, of the general electoral regime, which indicates in its point

two of article 58 bis “use of technological means and personal data in the actions

electoral activities”:

"two. Political parties, coalitions and electoral groups may use data

information obtained on web pages and other sources of public access for realizing

political activities during the electoral period”

In other words, the aforementioned law assimilates web pages as sources of public access, leaving

patent that a website is a source of public access, considering the Internet as

public access source specifying Internet pages and others that do not appear

specifically cited.

“The Catalan Data Protection Agency estimates that a publicly accessible source is

refers to “any information that is legitimately accessible by any person

without restrictions”, and the sentences are public in themselves.”

They consider that data obtained from the internet can be processed as long as the processing

be covered by a lawful legal basis.

Statements are public and are reusable. The Agency has considered lawful the publication

Publication of data from judicial resolutions with data from legal professionals.

In fact, in all those reports in which the deletion of data was recommended

data of the parties, the data of professionals has never been referred to by a

principle of legal certainty and publicity.

“Lawyers and solicitors are liberal professionals and they refer to the

Article 19 of the LOPDGDD, in which the legitimate interest of the

data from liberal professionals when they refer to them only in that context.

condition and are not treated to establish a relationship with them as natural persons,

what does EMERITA do”, a data treatment based on the professional performance

tional. In the same way that the processing of business directory data is legitimate,

dams that include the data of managers in their capacity as contact person of the

legal person, the processing of professional data would be legitimate and the expectation

could be equated to the expectation of a company, self-employed, professional to be valued

rated for their professional business activity.

In the report 434/2006, of the Spanish Data Protection Agency on “publica-

tion of the data of lawyers and solicitors in the sentences”, it was finalized indicating-

do that, for the assumption raised, referring to the data of lawyers and solicitors,

It should be considered that its publication is not contrary to the provisions of the LOPD. The

consultation raised certain issues related to publication in the

jurisprudence reports prepared by the data consultant referring to lawyers

two and attorneys who intervene in the process without having the condition of parties in the same. It alluded to the specific case of the publication of Judgment No. 222/2002 of the Constitutional Court in the BOE nº 304, supplement of 02/20/2002, containing the identification of the complainant as a lawyer, and therefore, a necessary collaborator saria in the procedural function of publicity of Justice, and its subsequent publication, through via the Internet, is covered by the waiver of the requirement of consent provided for in the aforementioned article 6 of the LOPD.

It ended by indicating that “it is not appreciated that the publication by the Constitutional Court legal, through the Internet, of the name and surnames of the complainant as such a lawyer supposes a violation of the LOPD.”

“Consequently, and for the assumption raised, referring to the data of lawyers and attorneys, it should be considered that its publication is not contrary to the provisions of Organic Law 15/1999.” Special mention deserves the approval of the Agreement of 07/23/2015, of the Plenary Session of the Constitutional Court, which regulates the exclusion of personal identity data in the publication of jurisdictional resolutions, referring to their resolutions.

More concrete and specific is the opinion CN 16/007 of the Basque Protection Agency of Data, of 03/7/2006, which can be consulted on the internet, which is issued in relation to a query raised by a local administration in relation to the publication of judicial resolutions dicials on the municipal website. One of the points refers to the data of the names that are quoted from Judges, Lawyers and attorneys. After examining the references to the LOPJ, Law 34/2006 of 10/30 on access to the professions of lawyer and solicitor of the courts and the general statute of the legal profession indicates that “Of all these norms more, the control authorities in the field of data protection have deduced the de- the duty of legal professionals to collaborate in the publicity of Justice, authorizing the publication of the names of these people without their consent in the re-

Jurisprudence reports, with the exception of article 6.2 and 11.2 of the LOPD."

C) REGARDING THE LEGITIMATE INTEREST REFERENCED BY THE AEPD IN THE

START AGREEMENT

EMERITA is the vehicle to display information about law professionals.

as a legitimate activity, in the same way that a business directory allows

show you information about their administrators or legal representatives. The interest of

it is specified in such a fact, that is to say, it is the interest in carrying out an activity that

shows the activity of legal professionals to other professionals and to any

ra that you have an interest in it which is exactly the same interest that they may have

other entities that perform analytics such as JURIMETRY

Most of the directories do not charge for this fact, offering separate services of

added value for those who charge, such as the possibility of requesting solvency reports

detailed reports etc. EMERITA has no income from this activity.

It states that if the legitimate interest for legal databases is not questioned,

that allow filtering by lawyer, solicitor, magistrate, judge knowing the number

of resolutions won and lost and the courts in which the cases have been processed.

procedures and specialty of the same, it is not understood that in the case of Emérita

that uses exactly the same criteria is considered unfeasible and subject to a sanction

disproportionate economic

Considers in accordance with article 47 of the RGPD, that the reasonable expectation of the

interested in their data being processed will be greater the greater the degree of

publicity and public exposure of the data of the trial lawyers who know

perfectly that his name appears in court decisions. In fact, it is bas-

It is quite common for lawyers to be contacted because they have been involved in a matter

concrete.

EMERITA's interest as a theoretician cannot be pointed out, when he is providing

transparency to a judicial system that little by little is opening up to the citizen, and

that interest of EMÉRITA coincides with the interest of third parties, of the professionals of the

legal sector and also citizens in general, about "those who operate in the

Administration of Justice and its results.

The justification for showing professional information about the participants in the

public function of the administration of justice, as determined by the General Statute of

the Legal Profession (art 30).

the weighing test

a) On the interested parties themselves and their status as professionals

When carrying out the weighing test, the rights of the

people, and can be classified as mixed data". EMERITA does not process data of

natural persons as such, treats data of professionals, but these professionals at

the same as occurs with administrators, attorneys-in-fact or legal representatives of

companies, also have a facet as individuals who protect the regulations of

Data Protection.

The data is treated with respect, solely and exclusively to the professional facet of the

legal professionals regarding their participation in judicial resolutions

with data made public by the interested parties themselves.

The Agency in its decision R/976/2014 establishes regarding professionals, that

It cannot be stated outright that as a whole, the data from the

individual entrepreneurs and professionals are excluded from the scope of protection of the

LOPD, but rather, it is necessary to differentiate when an employer's data refers to

your professional sphere and when to your private life. The weight of the professional condition of the

data is a decisive element to take into account

On the expectations of the holders and the impact on the interests of rights and freedoms

late

The comparisons offered by EMERITA are based on the judicial resolutions themselves,

that is, with objective data compared to what can be, for example, the

hotel comparators, who are exposed to the valuation of the public in

general with a high subjective component. Innovation is unexpected and therefore requires

a broad and futuristic approach in which information flows and is shared for the benefit

of the society.

EMERITA performs a ranking, although not all resolutions are available,

because even though the resolutions are public, not all of them are published. The same

happens in other tools that use these resolutions such as

JURIMETRY.

As the judicial resolutions are public, the professional is willing to analyze them and

valuation and cannot avoid the fact that its participation in the administration of

Justice is exposed to analysis, comments and criticism or assessment.

The GENERAL COUNCIL OF THE JUDICIAL POWER (hereinafter CGPJ) carries out

their own statistics by Courts, number of resolutions issued, number of

estimated resources, etc. could even extract statistics on the court or

Court that makes the most sentences in a year

This is also done by JURIMETRY with a great level of detail

The AEPD contradicts itself in blaming a lack of transparency for the fact that it only shows

the best positioned lawyers, since in fact these are shown because they are the

who have been involved in more legal proceedings and show everyone who

involved in all matters would not have much interest and could harm

those who have barely participated in judicial matters. However, JURIMETRY

yes it publishes to all even those that appear in few resolutions and that

can harm.

The petitions to EMERITA by the lawyers to request the withdrawal in this

tool are scarce when compared to the requests to complete the profiles

contributing own resolutions especially of first instance that do not usually

be included in the repertoires of jurisprudence and are relevant since they can

become firm in many cases. No group of lawyers has addressed

EMERITA in the form of a complaint and the CGAE itself, the highest collegiate body of

representation of the legal profession awarded the first prize start-up Advocacy

in a year 2019, thereby supporting these new tools at the service of the

society and the profession.

“Continuing with the line of the AEPD, if the lawyer does not expect to be the object of said

information”, nor is it with respect to other analytical tools such as

JURIMETRY. These new tools have a novelty factor and therefore the

expectation is lower. The expectation of the affected to the new profits and the

innovation is not something expected. In addition, the expectation affects the purely

professional, people are not being valued. Reputation in terms of experiences

in court of a lawyer is intrinsic to his professional activity that has to be

objective.

Article 30 of the General Statute of Lawyers indicates that there is an obligation

legal requirement to keep a professional office open for the practice of law, therefore

Therefore, it does not seem very intrusive to show said information associated with professionals.

participating in legal proceedings.

If EMERITA cannot process the data of legal professionals

Based on their legitimate interest, not all databases can do it either.

legal or editorial companies that provide similar information.

The professional activity of a legal professional, insofar as it is public, is

submitted for legal certainty to the scrutiny of society and that is why the

The professional's expectation is not the same as if it were a simple individual.

On the rights and freedoms of professionals. Possible damages

The possible impact on lawyers as a consequence of the

tool, which does not consider theoretical. Summarize possible or actual impacts to effects

of analysis and assessment as follows:

- The lawyer who does not appear in the ranking

The explanation is always objective and is clearly stated on the website when exposing

how the algorithm works and does not prejudice the information on which it is based

it's statistics.

In addition, any lawyer who did not previously appear in the ranking could register

trarse to appear.

Appearing or not in the ranking does not imply having more or less reputation as it can work

be taken from a lawyer who hardly has any activity in court.

- The lawyer appears in the ranking, but with a lower rate than he thinks he deserves

“Given that the number of judicial resolutions that are recorded and that have been

taken into account, if the lawyer so wishes, he can provide others that have not been detected.

das, even hide your profile while not updating it with all resolutions

you want, of course you can also request your withdrawal.”

- The lawyer may not agree with the ranking where the lawyers are shown.

two with the best judicial performance index

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

28/101

The information is based on objective data and is transparently exposed to the methods

used to provide the published results

-No other damages are expected, because the reputation of a lawyer has not been built

only with the number of judicial matters that it processes. It is not decisive at all

judicial performance index, it is just one more element and it is based on data.

“About the consideration that is made in the initial agreement that little is observed

transparency, not knowing the data of others with whom they are compared and those who

not listed, they can also be affected and suffer repercussions not to mention that proba-

Perhaps they are not aware of the existence of the page, they indicate that this is a theoretical impact.

Published lawyers can see what they are compared to in the benchmark figures.

cia that are provided in each profile.

Regarding those not published by default, they can access the same data as the

published and in both cases “verify” which are the resolutions that have been analyzed.

zed to achieve this result, being able to provide more resolutions at no cost,

make your profile visible or hidden or proceed to request its deletion."

"Practice shows that no one suffers repercussions, much less harm, because

Ultimately, the ranking offers demonstrable information. Those who do not appear

they will contribute resolutions, but if their IRJ is low, they will know what it obeys, they are ob-

jectives." Such an impact on lawyers is not relevant to override the legitimate interest.

D) THE TRUTH AND ACCURACY OF THE DATA

Considers that all the data that appears in EMERITA is true and exact because

they come solely exclusively from judicial decisions and from the lists of collegiate members,

there is no other source of information.

In addition, displaying the data clearly indicates that the data and performance index

judicial have been prepared from a sample.

The same is done by other legal tools such as JURIMETRY, as will be seen in

annex two.

No legal database can cover 100% of the cases in which

involving a lawyer, fundamentally because not all judicial resolutions

they are published, especially those of first instance where the largest volume is produced

of official activity. That the data is not complete does not mean that those published

that they are not truthful and exact, which they are, in the indicated circumstances. Provides the

informative clause that indicates on the EMERITA website informing: "this information

represents a sample of statistics and therefore is not exhaustive and does not presuppose the

inexistence of other areas of intervention of this lawyer, which can, for example,

exercise other activities, including advice, in addition to their possible activity

before the courts".

"JURIMETRY does not notice anything in this regard as will be seen in annex two and this

Despite claiming to have analyzed more than 10 million judicial decisions, which

Obviously, they are not all the resolutions issued by courts and tribunals”.

WK, owner of the comparative tool JURIMETRY that obtains judgments directly-
mind of CENDOJ has filed a commercial lawsuit against EMERITA for alleged
unfair competition. The attached documentation contains a comparison between
the tools, his compared to that of EMÉRITA, and the sentences of the CENDOJ
related to several Lawyers. The result is that the number of sentences analyzed
zed by a lawyer is very similar in both cases. Provides a comparative table of
different lawyers comparing the columns "that appear in CENDOJ" against the
cases analyzed according to emerita or the cases analyzed according to JURIMETRY, putting-
it is clear that only three lawyers for EMERITA and two for JURI-
METRÍA exceed CENDOJ in number of cases, the rest of the sentences analyzed
zed would be below the number of sentences that appear in the CENDOJ,
stating that "practically does not include resolutions of first instance or all
resolutions of second and superior instances”.

E) LACK OF PRIOR INFORMATION ARTICLE 14.5 B) RGPD

The initial agreement did not take into account the allegations made by EMERITA of
that it was not possible to inform the group of all the lawyers in advance (it was
would deal with the data of the lawyers that are published by default, approximately
mind 25,000 and referring to the total would be approximately 110,000).

None of those responsible for activities similar to EMERITA offers direct information
Straight to the professionals. They provide a review of the information clause of JURIME-

TRÍA in which it indicates: "in application of the provisions of article 14.5 b) of the RGPD,

We want to make the following information public…"

The information to the lawyers supposes an incomprehensible task for a company of the tab-

management of the media of EMERITA with hardly any income, as it will provide in annexes 7, 8 and

eleven

"This exception is provided for in cases such as the one at hand and is established by the

ordering 62 of the RGPD. Such information is provided on the EMERITA website itself.

The penalty of €100,000 for this lack of information is not sufficiently motivated,

considering that an exception is being invoked.

F) THE EMERITA ACTIVITY IS CARRIED OUT FREE OF CHARGE, NOT

LUCRATIVE AND WITHOUT OBTAINING INCOME. EMERITA HAS NO BILLING

FOR YOUR ACTIVITY.

EMERITA is a micro SME of about 3 years of life whose turnover in 2019

It has been €0. Attached to the annual accounts for the years 2017, 2018 and 2019 in annexes 7, 8 and 11.

"In both exercises the result has been negative."

The complaint has been filed by the CGPJ, a government body with the purpose of

guarantee the independence of judges in the exercise of judicial functions. Not included or provided

a single complaint from the allegedly harmed group, the lawyers. In the years

of activity of EMERITA have only received about 160 requests for rights that are

They are immediately satisfied.

Disproportion between the size of the company, the turnover, the absence of intentional

ity, the data processed that have been from professionals, not from natural persons and the sanctions imposed, which would make it seriously difficult not only to continue with their activity but to deal with the sanction itself.

The principle of proportionality entails an adequate correlation between the seriousness of the constitutive act of the infraction and the sanction applied, considering that the tenances of judicial resolutions are within the reach of any citizen, they are professionals Courts of Justice that have an office open to the public, and data on another kind. Based on this, they request a substantial reduction in the sanctions imposed. you.

G) BOOMING ECONOMIC SECTOR AND ALREADY IN THE PROCESS OF CONSOLIDATION IN SPAIN

The activity carried out by EMÉRITA is not unique in Spain, as there are other entities that carry out the same functions and the same treatments. They can be editorial legal entities that add the offer of services to third parties, which have not been objecti- complaint by the claimant despite the fact that he is perfectly aware of his activities.

CENDOJ, a technical body dependent on the CGPJ, is the only legitimate source for request the information directly from the Courts. However, it is not the only source acquisition of judicial resolutions, although it is the most accessible source if it is It has the appropriate budget.

Only and exclusively is subject to the payment of prices or rates the access to the different resolutions that appear in the CENDOJ databases but not access to any any type of judicial resolution, even when these are published on websites of Public administrations.

These legal publishing companies carry out exactly the same treatment of data made by EMERITA, they pay CENDOJ for accessing and using the resolutions legal documents from its documentary collection. However, “EMÉRITA has always worked with

alternative sources so as not to have to use the documentary collection of CENDOJ".

"There are millions of judicial decisions published on the internet that are not from the background
CENDOJ documentary. There is at least an average of six people in each process
who can publish a judicial decision on the Internet. In addition, there are publications
digital files of thousands of procedural and final resolutions that are published in the BOE, dia-
official rivers, provincial bulletins, municipalities, Constitutional Court, etc."

They consider that EMERITA is becoming itself a new source of ac-
access to judicial information, which puts the CENDOJ revenue model at risk
as the monopoly of access to information that this entity has held until now.
cha. "CENDOJ's strategy is supported by some legal publishers that reach
they carry out the same data processing that EMERITA does, and they are also interested in
sadas in removing EMERITA from the market. This is because it makes use of judgments and resolutions
solutions to provide value-added services to third parties similar to those we are
editorial companies do, but legal publishers charge for their services and EMÉRI-
TA lends them in a free and open access regime".

"The complaint of the CGPJ responds to an issue unrelated to the protection of personal data.
because the activity of EMERITA is identical to that carried out by other companies
that process data of professionals, including judges, magistrates, lawyers and attorneys
dors. Indicating in its complaint the CGPJ that "there are indications of data processing
of an undue personal nature for non-jurisdictional purposes, being these "treatments
also carried out for the same purposes by legal publishers with full knowledge

ment of the CGPJ".

They carry out very similar activities, the WK entity, with its JURIMETRY tool"

which has also initiated legal actions for unfair competition against EMERITA.

This complaint procedure before the AEPD of the CGPJ to EMÉRITA, was "urged by

WOLTERS KLUWER" that makes treatments similar to those of EMERITA, as well as

of the judges.

h)

ABOUT WOLTERS KLUWER'S LAWSUIT AGAINST EMERITA:

-It alleges in its lawsuit that EMÉRITA obtains the resolutions of the documentary fund of the

CENDOJ without paying for it. EMERITA considers that obtaining the data from the

professionals that appear in the judicial resolutions is lawful because it is based on the meeting

use of public information of judicial resolutions regulated by law

37/2007 on reuse of public sector information (LRISP) taking into account

account the annulment by the third chamber of the Supreme Court on 10/28/2011 of the regulation

ment of the CGPJ 3/2010 on the reuse of sentences and other judicial resolutions.

-The judicial resolutions, in accordance with Directive 2019/1024/(EU), of 06/20,

within the general principle that public data should be reusable for purposes

commercial or not, sets out its relationship with data processing in its recital 52

which indicates:

"This Directive does not affect the protection of persons in what

regarding the processing of personal data in accordance with national law and

of the Union, in particular in accordance with Regulation (EU) 2016/679 and the

Directive 2002/58/EC of the European Parliament and of the Council, including any provision

of additional national law. This means, among other things, that the reuse of

personal data is only admissible if the principle of purpose limitation is complied with

provided for in article 5, paragraph 1, letter b), and in article 6 of the Regulation (EU)

2016/679. Anonymous information is information that does not refer to a natural person

identified or identifiable or to personal data that has been anonymized

that the interested party is not identifiable or has ceased to be so. anonymize information

It constitutes a means to reconcile the interests at the time of making the information of the

public sector as reusable as possible with the obligations contracted in

under data protection regulations, but it comes at a cost. Proceeds

consider this cost as a cost element to be taken into account as

part of the marginal costs of dissemination referred to in this Directive.

Despite stating that the data does not come from CENDOJ, it indicates that "the

incompatibility to reuse public sector documents containing data

must be established by national or EU legislation, which is not the

case because there is no such rule that limits the reuse of judicial decisions."

There is no legal rule that limits the reuse of judicial decisions.

The personal data of judges or lawyers are not affected by the limitation of

the use of judgments, since there is a legal obligation to include them in the

themselves.

- The category of data processed is from professionals in their professional and public facet

the statistics extracted are from legal professionals, from professional users

whose expectation of appearing as a lawyer associated with a sentence, a

specialty or an experience is implicit in the very public nature of the

resolutions- article 266 of the Organic Law of the Judiciary- and the activity itself

professional.

- Preliminary proceedings have been opened in the process of WK against EMERITA that pre-

would give in to the demand for unfair competition and since “the origin of the data is relevant

in this proceeding” consider that there is a situation of prejudicial

dad.

- Limits the error suffered in the initial agreement on the distinction between practicing lawyers

resident patients, 143,398, with the number of non-residents, 10,898, noting that

non-resident members of the bar are registered in any bar association.

two from Spain as residents in the college of their professional domicile, so the

actual number of practicing lawyers is 143,398, otherwise double the number would be added.

do 10,898 lawyers. Of all the members, it should be noted that not all of them

dedicated to litigation, and their task may be to provide legal advice to clients outside the legal

litigation bit.

I) ANALYSIS OF DIFFERENT COMMERCIAL TOOLS SIMILAR TO EMERI-

LEGAL TA

The activity carried out by emerita is already being carried out in the market both in Spain

As in other countries of the European Union, they are repertoires of jurisprudence that allow

have the search by professional, some even perform analytics and qualify professionals.

sions based on specialty, sentences won and lost and link them with

the magistrates and judges who have handed down the sentences. Some allow you to see rankings

of magistrates number of sentences, meaning of the ruling, resolution times.

EXAMPLES

JURIMETRY of WK

It is a paid tool that allows extracting statistics and analytics on lawyers.

two attorneys and magistrates. In a separate annex that they provide, it is stated in what

the tool consists Performing a search by area of law, the tool

shows a ranking of lawyers who carry more judicial matters of said matter and

those linked to the magistrates who have intervened in the resolutions, legal cases,

lost and lost among other information. The search can also be done by name.

bre of lawyer and also of magistrate. Provide some screenshots

that are seen graphically, for example, the total sentences distributed graphically in di-

different types of courts by years and by matters with graphic information of estimates

tion rejection or partial estimation.

As a basis of legitimacy, it indicates that it is the legitimate interest and as an exception to the principle

pio of information of article 14.5 b) of the RGPD.

In France, DOCTRINE FR, similar to EMÉRITA, to simplify access to information.

legal information, collect and disclose judicial decisions that may contain personal data.

them. It is based on legitimate interest in reusing public information and responding to interest.

legitimate purpose of informing the public about decisions handed down by the French courts.

ses, freedom of expression and right to information. The names and surnames of the

legal professionals such as lawyers, magistrates or secretaries by default are not

so pseudonymized. Nor on the official public website for disseminating the law, legifrance.-

gouv.fr/. The site reports that in accordance with article 14 of the Law on the Protection of

Personal data, the information on this treatment is made available to the public.

co in this personal data policy since providing this information individually-

mind to each interested lawyer would require disproportionate efforts.

The contact details of the lawyers are taken from the database provided in

data opened by the Government since January 2017 and directories of professionals in the

right provided in open and reusable data.

V LEX ANALYTICS: publication of analytical results of judges and magistrates numbered

number of sentences, percentage of estimates and comparisons between courts, being able to

get to know the productivity of the judges and compare them with similar ones.

TIRANT ONLINE allows the search for lawyers, yielding results on number

of managed matters.

J) ANNEX III-(93 pages in pdf file) ADMISSION DECREE AND DEMAND FOR

WOLTERS KLUWER

Provides a copy of the decree of 11/11/2020 of the Commercial Court number two of Pontevedra

dra, in which the demand of WOLTERS KLUWER España S.A. was examined, demand-

da, the claimed, agrees to its admission for processing.

The copy of the lawsuit, dated 10/21/2020:

- begins by detailing that the plaintiff offers in Spain products that use

legal information, prior payment of the reuse fees, of judicial resolutions

set by the CENDOJ. It tries to put an end to the practice of measures that compete in the

same market consisting of offering products that use legal information par-

I have the same data, but without paying for the reuse of your background. -manifests

that your company has had to pay more than 4 million euros to CENDOJ in order to

commercially reuse the documentary collection that it exploits under a monopoly regime.

Request that the CENDOJ be notified of the claim in case it “wishes to be admitted as a claimant”.

give"

-Affirms that the defendant is commercially reusing judicial resolutions-
from the documentary collection of the CENDOJ and exposes as facts several cir-
circumstances that in his opinion would prove it.
-One of the requests for evidence indicates that, since no information is known,
truthful and plausible information with the complete, qualitative and quantitative identification of the
sources of each and every one of the judicial decisions that he has reused, request
appointment of computer experts to make an expert opinion on the sources
tes used to obtain their resolutions.
-Among the documentation that accompanies the demand is a letter of
06/26/2019 sent by WK to the CGPJ with a copy to CENDOJ, document 11 and in docu-
Document 121 letter from CENDOJ dated 07/30/2019 responding to the above in document
131 letter from WK to EMERITA LEGAL, in document 141 response letter from emerita le-
gal to WK and other exchanges of letters between those involved.
-It is revealed that the CENDOJ website is available to the public to consult the
sentences, has a utility that is the free text search in which, putting the
name of the Lawyer, the judgments in which he has participated appear (folio 54
of 93). Make a list of cases extracted by Lawyer in CENDOJ, by EMÉRI-
TA and by WK and notes that they are very similar analyzed extracted results. Also
underlines that in the response to the preliminary proceedings EMÉRITA “has stated
generically that its sources are free search engines and contributions
of the professionals themselves”, “without having provided any evidence”
K) (ANNEX IV) 13 pages pdf- LETTER FROM WOLTERS KLUWER TO THE CGPJ
-These are two burofaxes of 01/31/2020, to the Secretary General of the CGPJ and co-
pia to CENDOJ. In the letter, (folios 1 to 5) he asks for their collaboration on the informa-
tion of commercial reuse of judicial resolutions carried out by EMERITA LE-

GAL. It tells you that WK is paying the consideration for commercial reuse

of judicial resolutions since 1999, and given the role played by the CENDOJ,

form of exploitation of the tool and web platform of the claimed party. tells you

that it "evaluates the judicial performance of Lawyers through the reuse of re-

judicial solutions", "assuming the use of said jurisprudential acquis" with fi-

clearly commercial" and gives you background on the information that contains it.

cried out. It tells you what it exposes on its website, it informs you about news that appears on

online media. Suspecting an unfair advantage, requests information about

if the reuse by the claimed party has been allowed, and they demand their intervention

"to regularize the activity of reuse of public information" in case it could be

unfair in the industry.

-Also as ANNEX V, a copy of the response letter from CENDOJ of

07/20/2019 to WK in which it indicates that they have requested LEGAL EMERITA to report

on the reuse of judgments and other judicial resolutions, with an indication of

to regularize the situation by obtaining a license for commercial purposes

and payment of consideration, and that the facts have been made known to the

AEPD "when there are indications of improper processing of personal data with

non-jurisdictional purposes.

L) ANNEX VI and VII (43 pages) "JURIMETRY ANALYTICAL JURISPRUDENTIAL

PREDICTIVE" "Predict the result, get your strategy right" up to folio 16, 17 et seq.

ANNEX VII, information on the Mercantile Registry and claimed accounts.

-In ANNEX VI: provides general information on how the "analytical

predictive" offering information on strategies for the successful judicial process

before a court and counterpart. "JURIMETRY is "the jurisprudential analytical tool

most innovative predictive tool on the market", with the following notes:

- "Developed in collaboration with GOOGLE ESPAÑA", web platform, "path

of the Judge" jurisprudential lines around the raised theme" "arguments

most likely to succeed in the procedural context.

-Consists of the following modules:

a) JURIMETRY of the case: "identifying the subject or legal precept on which it deals

the case, indicators can be obtained on the evolution of the number of cases tried

and its probability distribution of appeal in the superior instance number of sentences

for or against even the judges who have issued the most decisions on the matter

all the most active lawyers in this area and their level of success".

b) Jurimetry of the Magistrate: "complete overview of the statistics associated with each

judge or magistrate, evolution of resolved cases distribution by subject and by judge

courts or tribunals in which there has been a sentence, number of resolutions in favor with

against, meaning of the ruling, particular votes and access from each graph to the resolutions

corresponding jurisprudential rules".

c) Jurimetry of the Lawyer: "Broad vision on the volume and typology of matters in the

that the opponent has had a procedural role their levels of success indicators of activity

ity and legal arguments in which it has positioned itself in other lawsuits with access

So to all the sentences in which he has participated.

d) JURISDICTION of judicial activity: "Allows access for the different jurisdictions

access to all the information from the courts and tribunals of Spain, including aspects

as the average duration of the processes the number of cases processed a situation

of congestion and the volume of pending cases"

JURIMETRY at a glance, In a graphic way, with colors, it offers "topics in which

the Lawyer has intervened for years", Graph of magistrates who have received the most sentences

dictated in each topic, For each Court, how many resolutions are appraisal,

dismissals, or results of the appeals filed, analysis of all the issues

cases by court and by judgment.

ON WHAT DATA OPERATES

It systematizes and extracts "the intelligence that resides in a set of more than 10 million

of judicial resolutions from all instances and jurisdictional orders

of Spain" the new parameters of the state are continuously processed and updated.

judicial record all the courts of our country.

M) ANNEX VII, "Copy of the Mercantile Registry" with the activity of the claimed party, section

"account deposit" start of operations 03/10/2017, annual accounts LEGAL EMERITA

2017.

In the form "general identification data and additional information required

rida in the Spanish legislation application of results and average periods of payment to

suppliers", figure that in 2016 there were three permanent employees, in 2017 two.

The annual accounts for the 2017 financial year closed on December 31 of the same year

result for the year was losses amounting to €170.18 in 2000, which was offset

will with future profits

N) ANNEX VIII annual accounts EMERITA LEGAL 2018 (61 pages)

It yields a result in the balance of the profit and loss account of – 49,666.22 euros

Ñ) ANNEX VIII annual accounts EMERITA LEGAL 2019 (folio 32 of 61)

Returns a profit and loss account balance of -94,501.95. It is indicated that in this

financial year there have been successive capital increases, the last one on 07/12/2019 represents

an amount of 14,996.04 euros

ELEVENTH: On 02/10/2021 a letter is received from the party claimed by the venue

electronically in which you indicate that you are aware that personal data included in

judicial resolutions - among them those of judges, lawyers and attorneys - are treated

by the CGPJ through CENDOJ for various non-jurisdictional purposes, such as

offer them to companies for analytical purposes, so that they prepare reports, studies

and profiles of those professionals and officials.

He proposes as evidence for the defense of his interests, "essential for the resolution

procedure", "without prejudice to those proposed at the time the

open the probationary period":

- Letter to the CGP to know:

a) How do the CGPJ or CENDOJ transfer data on judges, lawyers and prosecutors?

that are contained in judicial resolutions to private companies (contractual framework)

and organizational).

b) Purposes of the assignment, indicating which of those purposes are jurisdictional and which

are non-jurisdictional, as reflected in the agreements with the recipients of the data.

cough.

c) How the data that is transferred to these private companies is organized and

technically structured to proceed with the transfer (description of databases, type

file, data organization, data markup language, definition and

identification of labels for data processing).

d) Number of companies to which the aforementioned data is being transferred to fe-

cha of today

e) The contract model used for the transfer of data is attached.

f) The economic structure of the assignment is reported, indicating whether there are prices

different depending on the purpose.

g) The legitimizing basis on which the transfer of these data is made is indicated.

cough.

h) Indicate whether the duty to inform the interested parties (judges,

lawyers and solicitors) in relation to the assignments that are carried out, by virtue of

Articles 13 and 14 of the GDPR.

k) Indicate which aspects of the treatment carried out by Emérita Legal are considered

dera that violate data protection regulations and the reason. In particular, if such in-

compliance arises in relation to the legitimizing basis for the treatment, the information

information to the interested parties, the purpose or any other aspect. In short, to be explained

cite the reasons why the file is transferred to the AEPD."

TWELFTH: On 05/05/2021, the testing period begins, giving

reproduced the claim and its documentation, the documents obtained and generated

by the Inspection Services and the Report of previous Inspection actions that

They are part of file E/09173/2019.

Likewise, the allegations to the initiation agreement PS/00204/2020 are considered reproduced

presented by the claimed party, and the documentation that accompanies them.

In addition, it is decided to perform the following tests:

I-AI CGPJ:

1-On the start of the claim:

As background information related to the matter, you are requested to provide:

-Copy of the minutes of the meeting of the Data Protection Committee of the CGPJ of 13-

1.1

06-2019 and 05/29/2019 in which the intervention of the Director of CENDOJ is collected.

Provides a copy of annexes ONE and TWO containing the meetings in which the

dealt with the intervention of the Director of CENDOJ on 05/29 and 07/8/2019, since the

06/13/2019 there was no meeting.

In Annex ONE, (folio 19 of 41) previously, it is indicated by the Director of the CEN-

DOJ that “they have learned that the LEGAL EMERITA company has been developing

calling an activity aimed, apparently, at profiling lawyers, and

even of judges, on the basis of the massive treatment of existing data, among other

possible sources, in the resolutions published by the CENDOJ. This activity is being

analyzing from the perspective of reuse, whose regulations would be breached,

and from the Data Protection, related to the elaboration of profiles based on

automated treatments. In this regard, the possible confluence of competences

of the Council, derived from the treatments that may affect the members of the career

judicial authority, and the Spanish Agency for Data Protection, as for the rest,

that could advise a joint action based on the collaboration agreement

agreement signed between both control authorities.

On this matter, it is agreed to submit a proposal to the Permanent Commission, which

The members of the Data Protection Committee would sign, for the opening of proceedings

informative, without prejudice to those that could also be carried out by the AEPD to which

will be made aware of these facts.”

In ANNEX TWO, folio 28 of 41, of 07/8/2019, it is indicated that by the Director of the CEN-

DOJ, "the actions resulting from the agreement of the Permanent Commission

adopted with respect to the proposal made by the members of this committee in the matter

of LEGAL EMERITA. In short, such actions would be the following:

Transfer of the agreement and the proposal to the Spanish Data Protection Agency for

the adoption of the corresponding measures, as it does not refer to treatment for legal purposes.

jurisdictional.

Contact with the AEPD to collaborate in the actions that they develop in this matter,

within the framework of the provisions of the collaboration agreement signed between both institutions.

tions.

Formulation of new proposals to the Permanent Commission, in the event that in the

development of the previous actions reveal possible treatments

of the scope of competence of the General Council of the Judiciary.

Notwithstanding the foregoing, the CENDOJ will open proceedings related to the

economic obligations derived from EMERITA LEGAL for the reuse of sen-

holdings.”

-If any action was carried out by the CGPJ before the remission of the claim-

1.2

tion to the AEPD, a copy of it.

It indicates that prior to the referral of the claim to the AEPD:

“From information in networks and media” it is known that “the

staff that provides services in the company EMERITA LEGAL, has carried out a

mass processing of personal data contained in sentences, and there may be

obtained part of these from the publications made by CENDOJ."

-On 05/20/2019 mail is received from the IBERLEY EDITORIAL consulting the CENDOJ about-

on the legality of the activity of the company EMERITA LEGAL.

- On 05/29/2019 the CGPJ Data Protection Committee met and in it, the Director

CENDOJ inspector informs that they have learned that the company EMERITA

LEGAL has been developing an activity directed, apparently, to the elaboration of

profiles of lawyers, and even judges, based on massive data processing

contained, among other possible sources, in the resolutions published by the CENDOJ.

On this matter, it was agreed on 06/13/2019 to submit a proposal to the Permanent Commission.

put on:

A file of previous actions is opened in order to verify if there are indications

either

of breach in the treatment of data by EMERITA LEGAL.

either

The start of these actions is communicated to the AEPD.

-On 06/26/2019, the Permanent Commission of the CGPJ agreed to transfer the proposal made-

given by the members that he points out, to the AEPD, for there being indications of improper treatment of

personal data for non-jurisdictional purposes, considering the applicable article

Article 236 nonies of the LOPJ.

-On 07/19 and 09/26/2019, a letter was sent to the head of EMERITA LEGAL regarding the origins-

ence of the data available, and attaching license for regularization. in writing

reference refers to the 5,812,376 judicial decisions analyzed and data from

millions of judicial resolutions that they advertise on their website. Also to the use that it supposes

that reuse against the legal notice of the jurisprudence page on the website of po-

derjudicial.es, inviting with the sending of the license document to its adoption and payment of

economic consideration. In the second sending, it is indicated that if he does not respond,

take legal action. A response was received on 10/21/2019, stating:

“We do not use, nor have we used, the CENDOJ database, nor do we download

a)

your information in any way.

a)

Regarding the sample indicated on the website, the set of judicial resolutions

It does not refer only to final resolutions-definitive orders, sentences- but also includes

It includes all kinds of resolutions-orders, decrees, ordination proceedings, and also,

include those of other countries, in which "we are currently working to replicate our

model".

“On the origin of the data of the set of resolutions, there are the contributions

b)

by the professionals themselves and on the other, those from the analysis of resolutions

collected from hundreds of websites accessible and indexed in the different motor-

search engines in recent years, which, as we understand, is not and has not

been the case of the CENDOJ database”

"We do not store judicial resolutions beyond the time necessary to

c)

your quality review, we only store the data extracted from them,

given that our objective, as is clear from our website, is not the

construction of a jurisprudential database, but to provide data of great importance

practical relevance for the final consumer as is the experience of lawyers in litigation.

tigios".

2-About the sentences:

2.1 Report the type of resolutions and sentences that are published in the CENDOJ, and the

that are not published. Volume of the total represented by those published. Rank of

antiquity of the sentences and resolutions that appear published, informing if they are

eliminating records, and if in all the sentences the name of the

lawyers, lawyers, (hereinafter legal professionals) given that it is appreciated

that in some only the attorneys appear.

It states that all final judicial resolutions, sentences and

orders issued by the Collegiate Courts-Supreme, National High Court, TSJ and

Provincial Courts-, as well as a selection of judgments of organs

sole proprietorships, mainly of the Mercantile, Social and Contentious Courts-

administrative, as well as those resulting from legal / or social interest, criterion of

assessment that is appreciated either by the Magistrate himself or by the CENDOJ.

The number of judicial resolutions dated 05/12/2021 is:

total number

7,529,617

number of judgments 6,103,739

number of cars

1,425,878

The volume represented by resolutions (judgments and orders) in the documentary collection

Regarding the data of judicial statistics, in data taken from 1997 to 2020

represent.

With regard to collegiate bodies, 65.88% of the total.

Regarding unipersonal bodies, 0.15% of the total.

Taking the data only for the year 2020, the percentages rise:

With regard to collegiate bodies, what is in the documentary collection represents the

67.81%.

With regard to single-person bodies, what is in the documentary collection represents

0.59%

Regarding the seniority range, taking into account the history of the Supreme Court,

the oldest is from 1852. Of the rest of the judicial bodies, not counting the history of the TS,

the oldest is from 1975. Files are not deleted unless errors are detected or

duplicities.

Finally, it indicates that the resolutions in which the original is identified as the

lawyer or other legal professionals are published with the personal data, except

who intervene in the process as a party, witness or other type of intervention that if

require pseudonymization. That is, the personal data of the operators is published

legal-magistrate, Admin lawyers. of Justice, Lawyers, Attorneys - who

appear in the court decision.

2.2 It is requested that they inform the reasons or criteria, need or concurrent purpose

for the personal data of legal professionals to appear and be exposed

and of the solicitors and solicitors (professionals of the solicitor's office) in the publication

on the web (the proof of the identification of the professionals of the legal profession and of the

attorney in the sentences is imposed in the Law of Civil Procedure, it is not deducted

to be published). They are also asked to inform if they have considered indicating in the

foot of the judgments published in the CENDOJ database the inclusion of a warning
legal on the personal data that is contained, for the purposes of the RGPD / LOPDGDD.
They point out that the appearance of names and surnames of the "legal operators" that are
published in judicial resolutions, not pseudonymized, is the result of the "weighting of the
rights that concur in the specific case, basically, transparency,
publicity of the Justice with the protection of personal data."

It states that it must be assumed that legal assistance in court is a public function
essential, the principles of transparency of the public function and publicity of the
judicial resolutions and the exceptions that can be invoked against such principles. The
explanatory statement of the LOPJ refers to Lawyers and Attorneys as
collaborators with the Administration of Justice, and their lack of intervention if the Law
contemplated, may lead to the nullity of proceedings. Also the shape of the
judicial resolutions, according to article 209 of the LEC establishes that these data appear.
"Being manifest, therefore, the constitutional relevance of the defense and assistance
lawyer, the legitimate interest of article 6.1.f) RGPD in relation to article 19
".

LOPDGDD

It refers to a resolution of the AEPD, 3105/2015 in which no infraction is appreciated in the
specific assumption of the publication by the TC through the internet of name and surnames
of a person who intervenes in the process as a lawyer and therefore a collaborator
necessary in the procedural public function of publicity of the Justice, pointing out that such

publication is covered by the waiver of the consent requirement

provided for in article 6 of the LOPD.

Regarding some type of inclusion of legal notice, it indicates that CENDOJ respects the full text

of the sentences, as they are drafted by the head of the referring body,

mentioning article 560.1.10 of the LOPJ that indicates as a function of the CGPJ:

“To take care of the official publication of the sentences and other resolutions that are

determined by the Supreme Court and the rest of the judicial bodies.

For this purpose, the General Council of the Judiciary, following a report from the Administrations

competent, will establish by regulation the way in which the

compilation of sentences, their treatment, dissemination and certification, to ensure their

integrity, authenticity and access, as well as to ensure compliance with the

legislation on the protection of personal data.”

It adds that “Notwithstanding, it is the judicial bodies that establish this warning

in the text of their sentences. As an example, it provides FIVE resolution links.

court cases of CENDOJ.

Once opened, anyone can access, it is observed are sentences that allow

they belong to the documentary collection and thus appear in the “watermark”. The reference to informa-

tion on the processing of personal data indicates:

“The interested parties are informed that their personal data has been incorporated

to the file of matters of this Judicial Office, where they will be kept as con-

confidentially and solely for the fulfillment of the task entrusted to it, under the

safeguard and responsibility of the same, where they will be treated with the utmost diligence.

Inc.

They are informed that the data contained in these documents are reserved or

confidential, that the use that may be made of them must be exclusively

circumscribed to the scope of the process, that its transmission or communication is prohibited

by any means or procedure and that must be treated exclusively for the fi-

responsibilities of the administration of justice, without prejudice to the civil responsibilities

and penalties that may arise from their illegitimate use (EU Regulation

2016/679 of the European Parliament and of the Council and Organic Law 3/2018, of December 6

bre, protection of personal data and guarantee of digital rights".

2.3 Indicate if there is any specific provision that regulates the collection, treatment

and dissemination of judgments and judicial resolutions. (it is mentioned in art 560 10 LOPJ).

Point out the combination of rules:

- Spanish Constitution, art 120,

- LPOPJ:

-arts. 235 bis on dissociation of data in access to texts of sentences,

-art. 236 quinquies on personal data that can be accessed by the parties during

the processing of the process,

-arts. 234 and 266 that must be complied with in the treatment and dissemination of resolutions

judicial, in addition to the provisions of the data protection legislation.

-art. 619 that attributes to the CENDOJ the powers, and its regulation 1/1997 of

05/07/1997

- Agreement of 09/15/2005 of the Plenary of the CGPJ by which the Regulation is approved

1/2005, of the accessory aspects of judicial actions (AAAJ), article 7 that

deals with the manner of compliance with the official publication of sentences and other

resolutions of the TS, establishing the obligation to send copies of the sentences

dictated to the CENDOJ, establishes the incorporation of the sentences to the “Registry Book

of sentences and/or orders”, referred to in article 265 of the LOPJ, (a reply will be

information of said book”, in each judicial body) as aspects prior to sending in

electronically to CENDOJ. “”In said book, the resolutions will be certified

electronically, when the technological state of the computer system allows it”.

3- Related to the reuse of public information, in this case of judgments

and judicial resolutions, (according to the provisions of the Supreme Court ruling,

Third Chamber, Contentious-administrative, Plenary Section, Judgment of 10/28/2011,

Rec. 42/2011, and the literal that appears when consulting the CENDOJ website:

“The user of the database will be able to consult the documents whenever they do so

for your private use.

The use of the database for commercial purposes is not permitted, nor is the download

massive information. The reuse of this information for the elaboration of databases

of data or for commercial purposes must follow the procedure and conditions established

cided by the CGPJ through its Judicial Documentation Center.

Any action that contravenes the above indications may lead to the

adoption of the appropriate legal measures.”

You are requested to report the following issues:

3.1-What is meant by commercial purposes, examples, and what would not be included in the definition, and

if it is understood that it corresponds to the definition of the Law and Directive on the reuse of

public information. What is the procedure and the conditions established by the CGPJ

through the CENDOJ for the aforementioned use of reuse for said purposes, obligations

that are imposed on the user, if he must communicate the products to be marketed, etc., and which

are the legal measures that are executed to correct misuse both in those who

subscribe to the "reuse of information, as in entities that do not subscribe

any agreement and use the databases for commercial purposes.

It states that it is understood both when the reuse of public information forms

part of the economic activity of the reuser, such as when the act of reuse

seeks to obtain economic benefit directly linked to the activity of

reuse. “In any case, the existence of said purpose shall be presumed when the act or

acts of reuse affect more than 100 resolutions in annual computation.

Exceptionally, the CENDOJ may authorize the reuse of documents without

subject to obtaining a license and payment of a fee in cases in which this limit is exceeded.

number when it is proven that it is for “research, educational or other purposes”.

cultural nature”. The positive concept is defined in article 3 of the LRI.

The procedure for processing requests for the reuse of judgments and other

judicial resolutions established is in accordance with article 10 of law 37/2007. The

Requests are addressed to the competent body, the CENDOJ, which resolves, via

appeal before the "Permanent Commission" (art 602-2 LOPJ) (in the regulations of

creation of the CENDOJ Agreement of 05/07/1997 indicated art 1.2. “As a technical body

of the General Council of the Judiciary, the Judicial Documentation Center will develop

such tasks under the direction of the competent Commission of the General Council, in the

terms provided for in the Organization and Functioning Regulations of the latter.”).

As massive download detection systems, they use:

-Manual introduction of the captcha code by the user, “when opening a number

of documents from the public jurisprudence search engine”.

-Control of opening times between documents to avoid massive downloads

by robots, as well as limiting the number of documents per day that can be

open.

-Regarding IPS addresses, “when access to a high number of IP addresses is detected,

documents in a short window of time, they are blocked for a while. Also

repeat offender IPs can be included manually unless they are unblocked manually.

manually."

3.2- Since what year has the use of the CENDOJ database been implemented?

resolutions and sentences for commercial purposes and their conditions?, and if these have

varied throughout its implementation.

He answers that it has been working since the beginning of CENDOJ's activity. materialized in the

prohibition to the judicial organs of the delivery to third parties, not interested in

judicial resolutions.

The rules of reuse "have not changed substantially" in terms of impact

of costs and respect for the fundamental right to the protection of personal data,

considering that in the year following the creation of CENDOJ, the first

directive 2003/98.

3.3-If the information that is transferred to the entities that legally reuse the judgments

or judicial resolutions, is the same as the one that appears to the general public on the web

of CENDOJ. If the requirement is established as a condition in the products offered by the

reusers, to comply with data protection regulations and if they are carried out

periodic verifications, and what elements are used for their verification. If they exist

means of finding out if a reuser is using CENDOJ statements correctly

that the agreement or license for reuse or use has not been signed.

It states that indeed, it is the same information, that it contains information

pseudonymized and made open on the websitepoderjudicial.es. accessing each of

You can see that they have a watermark inserted. Add that the difference

is that the reusers, with prior license, access a search application with

greater possibilities, and they receive the sentences in electronic files, treaties,

homogenized, in order to enable them, among others, their exploitation and elaboration of

Own products with added values.

The obligations established in the licenses include:

-Respect the content of the information, not altering its content or denaturing

its meaning, including electronic scoreboards that for reasons of control and security

entered by the licensor in the computer files containing the judgments

and other judicial resolutions provided. “The licensee may introduce its own

markers for reasons of control and safety of their products, as well as to enrich the

information, emphasizing certain passages, drawing links to other documents or

making other analogous aggregations, provided that they are loyal additions,

so that third parties can clearly perceive that these elements do not form

part of the original information and always with respect for the integrity and meaning of the

documents objects of reuse.”

-Cite CENDOJ as a source of supply.

-Cite the date of the last update of the documents subject to reuse,

as long as it is included in the original document.

-Keep and not alter or delete the metadata on the update date.

-Verify the dissociation of personal data from the material provided by

the licensor.

-It may not be suggested, indicated or insinuated that the state public bodies holding the

information reused participate sponsor or support the reuse that takes place

with her.

-The licensee must bear the claims of third parties that may give rise to the

preparation of value-added products based on judgments and resolutions

object of the contract, in particular it indicates those derived from the provisions of the LOPD.

As for the explanations of whether they can find out if a reuser is using the

judgments of the CENDOJ, even when the agreement or license has not been signed, responds

that “they have a control by which we know what resolutions we have provided to each

reuser” “This control allows us to have a clear procedure when it is detected

an error of pseudonymization or an exercise of rights by an interested party is considered.

It explains the procedure of "error or modification by exercise of rights", which implies

than by having control over who “we have supplied each sentence”. It is observed that

responds to a question other than those questioned, on detected means of the use of

reused information, outside the legal circuit.

I know

Report obtained in

incorporates as evidence

II)

https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/

Activity-of-the-CGPJ/Reports/Report-relative-to-the-effects-of-the-sentence-of-the-full-of-

the-room-3--of-the-TS-of-October-28-2011--declaring-the-invalidity-of-Regulation-3-

2010--on-Reuse-of-Sentences-and-Other-Judicial-Resolutions,

of

02/23/2012, of the Plenary of the CGPJ regarding the effects of the sentence of the Plenary of the room

third of the Supreme Court of 10/28/2011 declaring the nullity of regulation 3/2010

on the reuse of sentences and other judicial resolutions of the CGPJ in which

detail some aspects of the effects of the wastewater reuse regime.

sentences and judicial resolutions that are published by the CENDOJ.

The following consequences are drawn from it:

Internet,

- “As the Judgment itself makes clear, in accordance with additional provision 2ª.2 of the

Law 37/2007 judgments and judicial resolutions are "public sector information"

susceptible to reuse, and the reuse of judgments and judicial resolutions

It is governed by Law 37/2007.”

-The Judgment “decreed the annulment of Regulation 3/2010 based on the lack of understanding

jurisdiction of the CGPJ to regulate the activity of reuse of sentences, understanding

understand that it is an activity carried out by third parties outside the judiciary, and therefore

to is not situated within the institutional cycle of the organs of the Judiciary, specifically

within the action of the Council in matters of official publication or dissemination of the juris-

prudence". “According to the Judgment, additional provision 2ª.2 of Law 37/2007, of

11/16, on Reuse of Public Sector Information, outlines an objective extension

of the application of the Law to judgments and judicial resolutions as susceptible to

reuse, without prejudice to the competence that the CGPJ has for the official publication

and dissemination of jurisprudence, but this does not entail a subjective extension of the understanding

competition to regulate this kind of reuse to the CGPJ.”

However, it should be remembered that Regulation 3/2010 is approved in the context of

a regulatory framework that already existed at the time of its approval, which logically subsists after its annulment, and with respect to which the CGPJ had already been organizing the reuse tion of sentences and other judicial resolutions. That regulatory framework was and is chaired by Directive 2003/98/EC, of the European Parliament and of the Council, of 11/17/2003, regarding the reuse of public sector information (hereinafter the Directive 2003/98/CE) and by the aforementioned Law 37/2007, which transposed the previous one to our internal order."

-"To this must be added the fact that the reuse of judgments and other resolutions judicial –as specified in the second paragraph of that additional provision 2ª.2 LRISP– is activity called to be consistent with the provisions of article 107.10 LOPJ, which attributes to the CGPJ the competence to articulate the official publication of the sentences and other judicial resolutions, which in turn will affect the compilation of the same,

its treatment, its dissemination and its certification, among other things to ensure its integrity, authenticity and access."" It is up to the CENDOJ to articulate that diffusion and promote access to judicial resolutions under the conditions established.

This means that potential statement reusers will only be able to target the CENDOJ to supply them."

-"In the regulatory framework that has just been described, the Council has been managing the reuse of judgments and other judicial resolutions, such as the Judgment itself by certain does not hesitate to point out, being significant that in the Framework Agreement signed between the CGPJ and the Federation of Publishers Guilds of Spain on 05/24/2007, whose purpose,

According to its first clause, it is "to establish a space for collaboration between the CGPJ and the Association of Legal Publishers of the Federation of Publishers Guilds of Spain, in all those functions entrusted to each Entity and that may result from mutual interest for the parties, particularly in matters of jurisprudence and Publications", the third clause, entitled "Scope of the issues to be dealt with in the of the Reuse Directive", it unequivocally proclaimed that "the sentences and judicial resolutions object of treatment and systematization in the CENDOJ, once dissociated from your personal data, become documents that can be reuse under the terms of the Directive [referring to 2003/98/EC].

Naturally, within that same regulatory framework, the Council must continue to manage nating the reuse of sentences and other judicial resolutions because the fact that, As the Judgment has declared, the CGPJ lacks competence to regulate what related to the reuse of sentences and other judicial resolutions does not mean that does not have the competence to carry out the activity consisting of managing said reuse"

-"The main aspects that are regulated in Law 37/2007 are examined, to which the supply activity was already being adjusted for the reuse of sentences and other judicial resolutions carried out by the CENDOJ."

-Refers to the type-license modalities to which some re-users are subject, the conditions incorporated in the licenses adhere to the criteria indicated in article 4.3 of the LRISP.

- "The CGPJ has been applying a public price for the provision of judgments and other judicial resolutions for its reuse, in accordance with the provisions of article 7.1 of Law 37/2007. The quantification of the price and the transparency of the method of calculation have complied with the requirements of sections two and five of that same article 7, differentiating in the public price if it is for a supply of reuse with

commercial or non-commercial purposes.

- "The CGPJ has been demanding that the reusers of judgments and resolutions

court cases that comply with the general conditions set forth in article 8 of the

Law 37/2007 applicable to all reusers whether or not they are subject to special conditions

established in the type licences."

- In the section aspects of the reuse of sentences and other judicial resolutions

that must be reviewed after the annulment of the regulation, it is indicated:

b) Prohibition of supply outside the CENDOJ.

Article 3.5.b) of the Regulations, in order to ensure the publication and dissemination of the

sentences by the CENDOJ under conditions of equality for all potential reuse-

regulators, prohibited "the reuse of sentences and other judicial resolutions not obtained

das through the Judicial Documentation Center, unless it is made from a

previous act that does not constitute reuse, in accordance with the provisions of sections 3

and 4 of article 2". There is not in the LRISP, nor in any other legal body, a prohibition

tion of this species.

The RAAAJ does not foresee it either, limiting itself to imposing an obligation on the

judicial, but not by projecting a symmetrical prohibition on the reusers themselves.

Consequently, we find ourselves with a gap that could become an important stumbling block.

important for the CGPJ when it comes to reorganizing its activity as manager of the reuse

tion of sentences and other judicial resolutions".

III) To the claimed, a report or answer to the following questions is requested:

3.1- How many visits do private users have to make inquiries of the IRJ,

how many of them are professionals from the legal profession, and from the attorney general's office.

Answer on 05/27/2021. States that each month they receive ***AMOUNT.1 “visits, of

users”, data April 21, extrapolates the data to the year stating that they would be something more than

*** AMOUNT.2 “of new visitors per year”.

It adds that, although no type of identification is requested for access to the

public profile information. by the pages visited, the access trend and

other navigation factors make them estimate that around 20% of the traffic comes from

of professionals from the legal sector, (...), of professionals, most of them professionals from the

Lawyers who usually go to the platform to analyze the judicial profiles of their

opponents, search for specialized collaborators or review their qualifications and positions.

This occurs mainly at the beginning of each month, as this is the time when

proceed to recalculate your scores.

3.2- How long do you plan to keep the data of each professional that is

classify?, and motivation for said retention period.

“As explained in the file, the personal data that is published is from

those lawyers for whom, after calculating their judicial experience, an IRJ results

greater than 70%”.

The data of said persons is stored as long as said index is maintained, with the

premise that said professional continues to have judicial activity, for which only

take into account the data of the last TEN years. Data is only kept

professionals who remain registered as practitioners in the census of the college

professional circumstance that is verified daily.

(…)

3.3- Number of petitions for the right to object to appear on lists of professionals

of the EMÉRITA Lawyer, from the beginning of its activity to the present,

separated by years. Report whether or not these people were listed by default as visible

in the ranking obtained, and if in all cases the right was granted, and average time in

carry out the procedure.

manifest

***QUANTITY.3 requests, year 2019

***QUANTITY.4 requests, year 2020

***QUANTITY.5 requests, year 2021

Relate the figures with the degree of knowledge that professionals have of the

tool and that they have been informed “individually of their incorporation into the

system". “Since 2020, December, an effort has been made to report the

data processing to lawyers. “In this first stage as a test of

acceptance in the market, the published lawyers have been informed that

figure around 25,000, having informed, to date, about 20,000 lawyers,

assuming 80% of the published lawyers.”

“The total number of lawyers who have exercised the right to oppose represents 4% of

the total lawyers who have received the information”

Of the total number of lawyers whose data have been collected, during the 3 years of life of the

society, and even after the informative email campaign, a very large number

representative of lawyers, around 9,000 (which represents 45% of those informed)

have taken any positive action regarding the processing of their data by the

Society, of which 7,022 have proceeded to register on the Web (which means more

of 35%). Regarding the exercise and term of the right of opposition, it is reported that

granted this right in each and every one of the cases in which it has been requested, without

request any justification, proceeding to process the request in a period of less than

24 hours on a business day or in the first 24 hours of the business day following that on which the

received the request.

3.4-How the evaluation and comparison of results in the functions is produced

developed by the professionals of the Attorney General's Office.

It states that, in the case of attorneys, the tool does not carry out any type of

assessment or comparison of his judicial career, but, exclusively, it is carried out

an analysis (...) taking into account different parameters such as the number of cases

analyzed, territory, specialty, average/median of the sector. Of these, they are the object

of publication the data of its specialty and the territory in which it develops its activity.

This was stated in the first request for information answered by

letter dated 11/13/2020.

3.5- How do you process and treat the introduction of the Bar Association certificate?

means established to identify themselves by these in the exercise of their rights

so that the same

The professional user certificate issued by the Certification Authority of the

Advocacy (ACA certificate) can be used on the EMERITA LEGAL website with

registration purpose. To more easily and quickly secure access rights,

as well as to protect the information stored in the profiles, access to

the same by professionals through the platform with their certificate

professional (ACA in the case of lawyers). Said certificate allows the verification of the

identity of the user through his public key, through which he will facilitate access to the

profile of the professional thus identified to make it easier for him or her to carry out those

modifications that you decide (hide your profile, correct professional data, correct fields

in the attributed resolutions, send new resolutions or request their elimination).

EMERITA does not store any data derived from the use of the ACA professional certificate. In

In no case is registration necessary for the realization of ARCO rights, although the

ACA access, which implies registration, guarantees and facilitates immediate management of the

themselves.

3.6-In their allegations they indicate:

Raw data collection: Collect millions of sentences and other resolutions

from various sources in which the names and surnames are included

of legal professionals. In parallel, it also collects professional data

of justice professionals by going to the official censuses that include the data

described in the previous section”

You must specify “various sources”, understanding that various sources of origin are not

infinite, and can be specified, which are these specifically.

He stated that the sources for obtaining the data come from:

- Lawyers and attorneys, and their offices, once registered on the platform, as

a service available to you from your account. (…)

It states that "(...)", and that one of the parameters of the starting search is the

avoidance of the domainpoderjudicial.es by default.

With (...) the files linked to those links are downloaded. The next step consists

in identifying which files are judicial resolutions and which are not, and within which

are judicial resolutions which are final and which are not. Lastly, we analyze the

files identified as final judicial resolutions for the indexing of their

data in the database.

Provides an extract from (...) that was provided to the ordinary defense procedure of the

competition YYY/YYYY that is followed before (...), report to which he alluded in his writing of

allegations to the initiation agreement.

The report analyzes (…).

3.7- Regarding the term "professional data of justice professionals

going to the official censuses", the only official census of legal professionals and

The Attorney General's Office is that of the General Council of Lawyers. They are asked to ratify if this is

the census they use.

It states that this is true for Lawyers, while for attorneys it is

hosts the official census of the General Council of Attorneys in Spain, hence the

mention in the plural.

3.8-Regarding the resolution factor or final judgment or against which there is still an appeal,

How is it implemented in treatment, if resources are taken into account?

In the same sense, if the estimation of the claim is partial for the professional of the

Advocacy, how does it compute in the algorithm and result in the index attributed to the Lawyer?

It answers that "as stated in the ranking regulations that are published

on the Web", the system takes into consideration, first of all, the instance that has

dictated the resolution in question, so that "it will have more value, for example, a

judgment issued by the National High Court than by a Court of First Instance".

In the same way, the procedural iter that the same person has had is also taken into account.

case, that is, the different processes substantiated in each of the instances by which

What happens in this particular case? So the system will weight, for example, more

favorably resolutions not revoked by second and subsequent instances, if

well, in the same way, it will take into account the fact that a judgment

unfavorable in the first instance is favorable in second and subsequent instances.

Lastly, the system takes into consideration up to ***QUANTITY.6 types of faults,

among which are included, the partial estimation/rejection, dismissal,

acquittal, conviction, etc. In this way, the partial favorable/unfavorable rulings

will also compute in the system in proportion to the degree of estimation/rejection,

always in relation to your statistical data, as established in the section

IV. Ranking Rules", subsection "2. Results", point "C. basic rules of

application": "The result obtained in each resolution is extracted (mainly) from the

combination of the judicial ruling obtained (detecting up to ***AMOUNT.6 types per

resolution) and the procedural position occupied by the evaluated party"

3.9 -Stated in allegations: "first cleaning of data": they eliminate documents that are not

meet the standards for consideration as original judicial decisions, or

as certified copies. How do you determine which ones are considered original or

as authentic copies of an original and what relevance it has in the treatments that

performed?

"For a document retrieved through search engines or from a

professional is considered SUITABLE, for the purpose of including the information contained

in the same in the database, it is necessary (...).

Resolutions that do not contain a number of key elements are not considered as

resolutions SUITABLE to be integrated into the platform in the first filtering and, therefore,

Therefore, they are excluded from it and their information is never indexed (...) or

compute in the statistics or in the qualifications of professionals.

Regarding the methodology used to carry out the commented work, it is reported that,

Regarding the resolutions provided by the professionals themselves, the service only

supports documents downloaded from Lexnet or originals received from the Attorney.

(…)

“The classification criteria executed through (…).

3.10-Number of legal professionals who are on the EMÉRITA platform

that allows them to attend online services at the request of a user.

It states that the legal professionals who are published on the website

of EMERITA may or may not be registered in it and, additionally, professionals

Registered Lawyers may or may not be subscribed to a payment plan. "The

users can contact all the lawyers that are published on the page

website of EMERITA but not through said website, but using the contact channels

tact that are indicated in the same of each lawyer, that is, the professional postal address

name and telephone number, which correspond to those recorded in the census of le-

tracts of the General Council of Spanish Lawyers. Regarding registered lawyers

two, the users (...).

Additionally, previously, the lawyer subscribed to a payment plan (...).

3.11-Modalities and procedure that the user has through the platform to

contact specifically with professionals of the legal profession that you have selected, through

of your page, and the role played by the EMERITA website, what commissions are charged? would

a “value-added” service? and what does it imply?

State which part is answered in the previous section.

“The EMÉRITA website only provides the contact details of the lawyers and

makes available to the undersigned lawyers (...).”

“Regarding whether it is an added value, we highlight that EMERITA, in the

allegations presented to this AEPD, has used the term of value service

added with two meanings: on the one hand, generically in relation to services

that add value to users and professionals; and, on the other, specifically, in

relation to an additional service to the basic service, for which an amount of

money. For such purposes, the service available to the user to contact the

professionals of the legal profession, it would be a value-added service in the sense of

service that adds value, but not a value-added service in the sense that it is

pay an amount of money.”

3.12-On their website they indicate:

“Transparency in the analysis. We work constantly for the transparency of

our system. Any user can check the number of cases analyzed from

each Lawyer in his profile, as well as his breakdown by specialties and the references

(means of other Lawyers) with which they are compared. In addition, each Attorney in his

private area you can check the details of the resolutions referred to by the

cases that have been analyzed for the elaboration of their profile.”

You are requested to report how this transparency is exercised, an example of which documents

or writings or information is delivered to a petitioner and how many petitions of this type

have

He answers that, as can be seen in any profile on the web, professionals

of the Legal Profession that are published on the EMERITA website through its

public profile can check the number of cases analyzed (judicial resolutions)

as well as its distribution by specialties; also featuring a comparison with the

average number of cases of other lawyers for each specialty, among others. It is attached

Below are screenshots of the EMERITA web page containing the information

mation that can be displayed (a real profile is incorporated for the purpose of strictly showing

of the content of the web within the framework of this procedure): EXAMPLE "PROFILE

PUBLIC of the number 1 in property rights specialty" with an IRJ of 99, in which

view the age and total analyzed cases. Within the totals you can see the divisions

in specialties, and in this case there are more cases in real rights, without prejudice to

that other cases analyzed totaled by other specialties appear. Beside the ca-

own, the comparison of the number of cases of the average of other lawyers.

Likewise, legal professionals from their internal area, in their account, can

review the information extracted from the judicial resolutions that have been analyzed

entering the main identification data such as type of resolution, number, number

of cars, courts, date of the resolution, etc. Provides the impression of a screen

of what can be viewed from the internal area of a lawyer on the EMÉRITA website,

figuring what you have mentioned and entering it you can also see the type of fa-

llo, the type of matter: foreign exchange law, criminal law, fraud crimes, for example.

It indicates that outside the channels mentioned, they have not received any request for information.

information in the form of exercising the right of access on this matter, and in case of

received, the response would be given with the content of article 15 of the RGPD

3.13-How many legal decisions are provided by legal professionals

to complete their profiles. Can they also provide resolutions of others or other

professionals of the same specialty?

It indicates that “The registered lawyers -currently some 7,000- contribute to the system a

average of 5,000 resolutions each month”

“The resolutions that professionals can provide are those that state

their participation or prove their relationship with another judicial document of the same

procedure, and this in order to avoid potential fraudulent behavior

that have the objective of altering the judicial performance index (IRJ) of other lawyers

through the contribution of a biased sample.”

3.14-On its website https://www.emerita.legal/blog/tutoriales/normativa-ranking-EMÉRITA/se

indicates:

“Temporal fork evaluated. Resolutions obtained in the last 10 years are evaluated,

obtaining a greater impact on the qualifications (IRJ), and by extension on the

ranking positions, those obtained in the last 5 years.”

How is this aspect explained in the data processing carried out?

“For the purposes of calculating the judicial performance index (IRJ) are taken into consideration

different criteria, which are developed in more detail in section IV Criteria for

Qualification (IRJ) of the Ranking Norms, which contains the key indicators

see performance. Thus, with respect to the time range evaluated, which appears in the

section “III. Ranking Structure”, this corresponds to the key performance indicator

procedure called Update. This indicator takes into account the date of the

resolutions analyzed within the last 10 years, being weighted to a greater extent

(having more weight) the resolutions that have been issued in the last 5 years than the

older resolutions, that is, those of the preceding 5 years.”

3.15- In the "key performance indicators" used to find the IRJ, they indicate that

The objective of the “updating” factor would be: “Determine the degree of updating of

Lawyer's knowledge of current regulations and jurisprudence". translates into a

greater potential efficiency, in terms of response times, as well as the improvement

potential of its effectiveness by having an updated legal knowledge with the practice

recent. How do you evaluate and affect the treatment of this aspect?

Answer: "As indicated in the previous section, the judicial performance index

(IRJ) is calculated (and recalculated monthly) based on different key indicators

performance. Below is a brief exposition of each of the

indicated, including "Update".

1. Experience

Basic rules of application: All resolutions are taken into account

analyzed (sentences, orders and decrees that put an end to a process in an instance,

as well as the agreements that are judicially approved) of the last 10 years,

regardless of the result obtained.

Evaluation: Each lawyer obtains a score between 0 and 100 for each specialty

taking into consideration the comparison between the cases that have been analyzed of said

lawyer and the average of other lawyers in similar cases of the same specialty.

2.Results (…). Evaluation: Each lawyer obtains for each specialty a

score from 0 to 100 based on the success rate obtained by the corresponding

lawyer in the set of cases analyzed compared to the success rate

average obtained by other lawyers in similar cases.

3. Evolution/Progression (...). Evaluation: Each lawyer gets a score from 0 to

100 in each specialty based on the progression at a quantitative, qualitative level and the relationship between both values compared to the average progression of the other lawyers in Similar cases.

4. Update Basic rules of application: (...) the resolutions issued in the last 5 years provide higher valuation than those of the previous 5 years; so that the more recent will be the set of resolutions analyzed by year in which dictate, the higher the score obtained in this indicator. (...). Evaluation: Every lawyer obtains a score from 0 to 100 in each specialty based on the date of all resolutions analyzed.

5.Specialization Basic application rules: (…). Evaluation: Each lawyer gets a score from 0 to 100 in the specialty evaluated based on the resolutions of the specialty evaluated, as well as resolutions of specialties linked to the specialty evaluated quality.

6. Relevance

(which had not been mentioned in the information he gave in the transfer of the claim) (…). Evaluation: Each resolution obtains an adjustment coefficient variable based on its relevance that acts as a weighting element for the calculation of the preceding indicators.

Calculation of the final score or IRJ. Based on the scores obtained in each one of the indicators mentioned, the final score is extracted by specialty, this is, the judicial performance index (IRJ) on a scale of 0 to 100. It is recorded that the impact of the different indicators from highest to lowest would be: (i) experience, (ii) results, (iii) update, (iv) specialization, (v) evolution and (vi) relevance."

3.16- On obtaining income from EMERITA for the publication of the tool of legal professionals. The possibility that a user makes a query to

a lawyer-lawyer on your page, is it a paid service for said user? East

service, does it depend on the professional staff of the Legal Profession subscribing it? would it be a

value-added service?

Reiterates what was previously answered, that "the EMÉRITA website provides the data

of contact of the professionals of the legal profession and makes available to the professionals

of the legal profession (...)"

3.17-About article 6.4 of the Code of Ethics for Lawyers:

art 6-4 “The mentions that the specialization in certain subjects are included in

advertising must respond to the possession of academic or professional titles, to the

overcoming officially approved professional specialization training courses

two or to a prolonged professional practice that endorse them.”

Regarding the specialty that they extract in the EMÉRITA data analysis, it is requested

that they inform if it coincides with the one that a legal professional can announce in their

own advertising with that analyzed by EMERITA, which takes into account only the results.

They state that considering that the IRJ that is published is because it is equal to or exceeds a

70% “in some specialty of Law, it does not have to coincide with the one that the

professional can decide to advertise. The IRJ deals with the cases in which it participates.

3.18- Regarding the professionals of the Attorney General's Office, given their functions, as

the ITJ or success rate is measured and published.

Reiterates what has already been answered, and attaches a screenshot of the EMERITA web page of the profile of

a solicitor as an example. It is viewed, outstanding specialty, number of cases

analysed, 285, name and surnames and address of the professional office with the addition

that "the analysis of the trajectory by EMERITA has identified it as one of the

best attorneys in contracting law". A second screen breaks down the

cases analyzed in different specialties, highlighting 122 cases in law of the

hiring.

3.19-In their pleadings they indicate that a lawyer can request a sample of the number

of resolutions that are known to him and have been taken into account in order for him to know if

Is there something missing and can I provide it? In this sense, a brief copy of what is provided or

accessible.

He states that he has already answered in a previous point, adding that both the Lawyer

figure published on the website as if not, any lawyer can request a

summary of the analyzed resolutions, and it is provided in Excel format with the same

information to the content that can be viewed by those who do appear and are

they recorded.

a) Indicate if the AI solution has been developed by the same claimed, has been

ad hoc order or has been acquired. What elements are part of this AI? If the

IA solution has gone through any audit related to data protection, copy

Of the same.

They state that the judicial analytics tool has been developed and trained by

EMÉRITA herself, and continues to adapt and retrain herself by EMÉRITA herself

as well as by the Information Technology Group of the University of

***LOCATION.1 with which the Company collaborates; being under supervision, at all

case, of natural persons

“The elements that could be differentiated from the AI would be

(Yo)

(iii)

natural language processing, and

machine learning. “

“On the other hand, according to the audit plan approved by EMERITA, the first

audit will be carried out in the next year (...).”

b)-Indicate in the different treatment operations that you carry out, in the collection of

data from different sources, which are made using AI component, and which are not,

specifying how it performs in this second case. What other applications other than

the members of the AI use.?

It provides a graphic scheme of the steps that lead to being able to have the

"final valid resolutions" transitory process that involves deleting and screening files not

valid.

They state that, regarding (...).

Once the previous operations have been carried out, the treatment related to the

collection. The resolutions considered FIT are manually injected into the

system called "***SISTEMA.1" which is responsible for (...) forming the

"***PROGRAMA.1" which, after indexing (...), will be used in the different operations

of statistical calculation and also for the calculation of the qualification of the professional (IRJ).

(...).

When the sentence is provided by a professional, producing a single operation

(...), applying the same system or "***SYSTEM.2", with the only difference that if the

document is considered a suitable resolution, it automatically goes to the next

stage, the extraction of the relevant data with the ***SYSTEM.1, following the course

common to both collection models until the calculation of scores or IRJ.

(…)

c)-Depending on the fact that your tool uses new technology, such as artificial intelligence,

official, and carries out systematic and exhaustive evaluation of personal aspects of people

that is based on automated processing, creating profiles, it is requested that

provide a copy of the DAMAGE PROTECTION IMPACT ASSESSMENT report.

COUGH.

Provides in ANNEX 1 the document, which is examined in the following ordinal. Add "that

is the updated version of the one made initially, before the start of the activity.

and that new analyses, new risks, new measures and controls have been incorporated.

them". “It includes some mentions of measures that have already been implemented, others that

are ongoing and others to be implemented” to improve and strengthen security.”

d) -It is requested to provide a little more detail on the human interventions that occur in the treatment-

processing of the data, in what phases and for what purpose, what group of people/person

carried out and what criteria they handle.

“(…)”

Manual interventions are currently carried out (...).

“Human intervention does not occur only in those areas where it is used.

AI technologies are used but also in the other processes that precede the calculation

of the judicial performance index (IRJ), also including the intervention in this

phase."

Lists a division of phases in relation to the processes that go from the collection of

the data until the calculation of the judicial performance index (IRJ) and the review of

incidents as follows:

(…)

Initial. (…)

Continuous. (...).

Support for. The person in charge of the database and the systems administrator

load (...).

(…)

3.20-How many legal professionals have requested their right to

opposition to appear in ranking, or your right to suppression of the treatment? what does it mean

this with respect to your data?, indicate if they are kept pseudonymised

(identifiable) counting for purposes of comparative calculations with other Lawyers or

anonymize

The first part has already been answered.

Regarding the conservation modality after the exercise of the right of opposition, there are

two processes depending on the previous state of the lawyer:

● “Hidden lawyer (pseudonymized).

o Previous situation: The lawyer's data is found (...) which contains the professional data

lawyer's endings; (...) anonymous, which contains the results of the analysis of their cases. It is-

these sections are separated and preserved (...).

. It is preserved (...), without

(…)

o Cancellation process: We proceed to the elimination of

the specific lawyer to whom it belongs can be reidentified, thus being anonymous.

ted.

● Visible lawyer, both in the case of having a score equal to or

higher than 70 in the judicial performance index (IRJ) as in the case of

prior express consent, prior registration.

“o Previous situation: The profile of the lawyer is linked and published, unlike what

exposed in the previous section.

o Cancellation process: We proceed to pseudonymize (...), turning it into

(...), proceeding later with the same process exposed for the hidden lawyers,

finally leaving a totally anonymous “(…)”. In these cases, furthermore,

to request the deindexation of the information to the search engines (Google,

Bing…) that usually carry out the process in 24-48 hours.”

3.21 a)-Having seen the accounts sent, they are requested to contribute, on the last two

accounting years, the volume of business, total income received for the realization

of all economic transactions during the specified periods, similar to the

sales volume (total value of goods sold and services provided by the

company within its daily and main activity.)

They state that they provide ANNEX 2 on annual accounts for 2019, as well as a balance of

situation and profit and loss account for 2020, given that the annual accounts of

2020 are not yet approved. “It can be seen that in 2019 the amount of the figure for

business (…).

b) In addition to exposing the data resulting from statistical analysis and data analysis,

the business model offers a platform for consultations from users to people

legal professionals. They are requested to detail the different modalities of

income from the application that they can obtain, what percentage comes from

professionals, and people not belonging to this sector.

“(…)”

In view of this, 100% of EMERITA's income comes, as stated

in the previous section, (...).

IV) The Resolution of 07/06/2017 of the Spanish Agency for the Protection of

Data, by which the Collaboration Agreement with the CGPJ is published. BOE 11/15/2017

which deals, among other issues, with the inspection, files and data processing foreseen

in article 236 nonies, in relation to jurisdictional and non-jurisdictional files,

and powers of the CGPJ and the AEPD.

V). On the evidence proposed by the respondent regarding data processing

of a personal nature with jurisdictional purposes or not, it is a distinction drawn from the LOPJ

that makes competition fall on the CGPJ if the treatments are jurisdictional or with

jurisdictional purposes.

The CGPJ would be the control authority over data processing for purposes

jurisdictional, and those that have a category of non-jurisdictional, would be the competence of

the AEPD.

It requests, considering it essential, that the CGPJ be asked how they transfer data from judges,

lawyers or solicitors that are contained in judicial resolutions to companies

private, and in part that request is granted for a general knowledge of the matter.

However, the petition of the

contract model used for the transfer of data in the data reuse scheme

judgments and judicial resolutions, nor that the indication or estimation of a base

legitimacy on which the assignment is made, contractual and organizational framework, have

to do directly with the imputed infractions, nor does it contribute to their accreditation.

EIGHTH: The IMPACT ASSESSMENT document contains 71 pages in the

pdf file, with the following notable elements:

-Date of discharge 3/12/2028, evaluation date, the same. “Observations: this evaluation

impact assessment is carried out as a consequence of basically legal issues

cas that the activity of E4 LEGAL ANALYTICS SL through its EMERITA application

LEGAL raises”. Promoter of the project, the DPO appears together with legal advice that coordinates

dina the EIPD.

The possible dates on which the modifications could have been implemented are not included.

tions or new measures that the claimed manifests have occurred since the beginning of the

document and that have been launched

-In the Executive Summary of the DPI it appears:

“intends to identify and categorize the privacy risks that may exist when the

personal information is connected to systems and applications that allow data to be processed

on a large scale.”

“will help the data controller in making decisions to help mitigate

the risks detected through the implementation of appropriate procedures and controls.

frames for your application.

“Since our launch, close to 9,000 lawyers have already joined the system,

after a recent information effort to 20,000 published professionals, compared to 852

opposition requests managed, which implies a high degree of acceptance that,

given the innovative and disruptive nature of the system, we believe that it places it in a

good starting point to become a quality reference for the different actions

legal sector players.”

"4. CONSULTATION PROCESS

4.1 Outcome of the consultation process

Before launching the tool, different lawyers were consulted.

giving the modus operandi of the platform, its usefulness and operation. This query

It was carried out by telephone and in person with the closest ones and it focused fundamentally on

mentally in the publication of the data, as well as in the possibility of enriching di-

information by registering on the platform itself after identifying yourself as a lawyer.

two reliably.

The reception was really positive since the majority of those consulted not only considered

They found the platform very useful, but were encouraged to register and provide more information.

training after registration. In a very punctual way (almost testimonial) someone consulted ex-

expressed his desire not to appear on the platform, proceeding, consequently, to ga-

his discharge be guaranteed.”

“Those profiles that are not published “by default” remain pseudonymized, which

giving these attributed to a random string of numbers and letters and being only relevant

for statistical and positioning purposes. The process of linking these profiles, and

its publication, can only be done through the express and unequivocal consent

of the lawyer himself, through the introduction of his professional certificate.

This action is due to the execution of the security measures established as

additional assurances in our impact assessment, in relation to the weighting

of affected interests. Choose to publish only by default those profiles of

professionals who hold excellent qualifications, and choose to make public only

mind the data of the specialty in which the professional stands out the most, we understand

that leads to minimizing as far as possible the eventual reputational impact on lawyers.

two."

Section 5.3 MAIN RISKS DETECTED indicates:

-The data does not come from the interested parties themselves, but has been obtained from reso-

court decisions published to complete such data.

-Information has been obtained from official censuses of lawyers and solicitors, lists of

practicing collegiate,

-The interested parties are not informed in the terms established in article 14 of the RGPD,

neither of modifications, although it is considered that the exception of section 5 b applies

of article 14.

-Profiles of the interested parties are created, although no automated decisions are made

without human intervention.

It rates the risk of large-scale treatment as very high, data that represents

the majority of the people of a specific group of interested parties, which is a treatment

to repetitive (continuous, recurring, constant, periodic), high which is calculated data

that result in additional information. As measures to mitigate it: document the

origin of the legitimating legal basis, document the processes and activity of the

origin of the data and its treatment, giving transparency in the information that is

provides lawyers with information on how the IRJ is calculated, guarantee of exercise of

rights and manage your possibilities from your own profile

GENERAL ANALYSIS OF THE RISKS INHERENT IN STRUCTURAL TREATMENT

RA DATA (page 23/71)

Consider the various scenarios to which it ties: risk, impact, measures, ending

with the value of the residual risk against which it starts. It then goes on to section 6: identification

cation and risk management (38 out of 71) referring again to “treatments with probability

high-risk community,”: scenario: risk, impact, measures and about them, ends by assessing

the "impact and probability of risks" in section 6.2 including appropriate measures.

-SCENARIO USE OF NEW TECHNOLOGIES that process personal data

may affect the rights and freedoms of a group of people, without providing

the due information of the treatment to the interested party.

Impacto the right to honor of the lawyers who are found may be compromised.

train in the following situations:

- They do not appear in the ranking

- That appearing, they are not in the position that they understand corresponds to them

- They don't want to be compared

- Others

Measures: It has been analyzed in depth:

- The legality of the business model

- The basis that legitimizes the treatment

- Exceptions to the duty to inform

Work continues on converting the tool into a useful information mechanism and

transparent.

It is defensible that the information provided does not imply a serious violation. not expected

no impact, since the measures adopted (publication of those with a

above 70, exercise of the right of suppression, etc.) guarantee the protection of the

rights and freedoms of the interested party. If the interested party wishes to exercise their rights,

guaranteed without any problem.

Part of the initial level of unacceptable risk, reaching with the measures implemented, toler-

rable

-INFORMATION TRANSPARENCY SCENARIO The exception may occur

of article 14.5.b) as the information to the interested party supposes a disproportionate effort

of the information, no INFORMATION about the treatment is PROVIDED. It is only done in

Web page. IMPACT may concur the exception of article 14.5.b) by assuming the in-

training the interested party a disproportionate effort.

Measures:

1.- Contact all the recipients (a disproportionate and costly measure, although not

impossible).

2.- Contact the interested parties through the Bar Associations.

3.- Contact the ranked lawyers.

Currently, 80% of the professionals of the published profiles have been notified,

with an express approval of the treatment of 45%, a state maintenance without

reaction or confirmation of 51% and the opposition to the treatment of a

4% of the total.

Part of the initial level of unacceptable risk, reaching with the measures implemented, toler-

rable.

- REPETITIVE TREATMENT SCENARIO (continuous, recurrent, constant, periodic)

co)

Risk When data processing is very frequent

Impact Violation of the rights and freedoms of the interested party.

Measures: It must be guaranteed that continuous data collection does not mean obtaining a

additional information that may affect the rights and freedoms of individuals, for

For example, automated profiling without human involvement.

Part of the initial level of unacceptable risk, reaching with the measures implemented, toler-

rable.

- SCENARIO: CALCULATED DATA WHICH RESULT IN INFORMATION

ADDITIONAL

Risk: Data from the application of algorithms on the resolution data.

nes:

a. Qualifications by specialty (IRJ)

b. Success rates by specialty

c. Positions in specialty rankings

Impact:

No impact is expected, since the treatment is carried out for specific purposes. Single

The data necessary for each of the purposes are processed. It is only published

can IRJs with an index of 70 or higher.

Measures:

The same that have been adopted previously limiting the publication of the indices

Lower.

Part of the initial level of unacceptable risk, reaching with the measures implemented, toler-

rable.

“It is not necessary to carry out a prior consultation with the control authority because the person in charge responsible for the treatment is trained to adopt sufficient measures to mitigate the Anticipated risks in all phases of treatment.

Finally, it states that “all the information and documents provided in this writing (including the Annexes) must be treated confidentially, being provided to the AEPD for the sole purpose of completing the request received and providing the evidentiary support necessary for the resolution of the file. EMERITA considers that any communication of this information without your authorization would harm, or could harm the commercial interests of EMERITA, as well as the safety of its services and systems. Given the nature of the file, and the existence of parties third parties interested in said information, for purely private purposes and competition against EMERITA, it is very important to limit any access to the proceedings. It is not difficult to see that at the beginning of the file (complaint of competitors against the CGPJ, which in turn formulates the complaint that gives rise to the initiation of this file), there are purely commercial interests of those third parties, which may be using this procedure as a tool to achieve information, or directly eliminate a disruptive competitor from the market.”

THIRTEENTH: On 07/05/2021, a resolution proposal is issued for the literal:

“That by the Director of the Spanish Agency for Data Protection, a sanction is made for E4LEGAL ANALYTICS, S.L., with NIF B70514831, by:

1.

- An infringement of article 6.1 of the RGPD as indicated in article 83.5.a) of the

RGPD, with a fine of 450,000 euros, considering the circumstances of the article

83.2.a) and g) of the RGPD.

two.

- An infringement of article 14 of the RGPD as indicated in article 83.5.b) of the

RGPD, with a fine of 100,000 euros, considering the circumstances of the article

83.2.a) and d) of the RGPD

3- An infringement of article 5.1.d) of the RGPD, as indicated in article 83.5.a)

of the RGPD, with a fine of 50,000 euros, considering the circumstances of the article

83.2.a) of the GDPR. “

“In application of article 58 of the RGPD, in section 2 d) the data will no longer be processed.

data for not conforming to current regulations.”

FOURTEENTH: On 07/13/2021, a letter is received from the claimant with

“Additional allegations in the testing phase” that the CGPJ answers deserve

requested in tests that were transferred to him on 06/02/2021.

Manifests:

- "In an apparent meeting of the Permanent Commission on 06/26/2019- the minutes are not attached

of said meeting”, to point out that in the initial agreement there is no mention or reference to

that the aforementioned Permanent Commission met, but rather that it is an "internal note,

of 06/26/2019, of “Support for the Permanent Commission” to a member of the CPDCGPJ”.

He underlines that the decision of the Commission of 26 takes an agreement "different from that suggested in

date 06/13/2019”, “given that instead of opening actions with the purpose of

verification of possible indications of non-compliance with the Protection of

Data, an agreement was adopted in which it was confirmed by the aforementioned Permanent Commission without

consultation with the company EMÉRITA LEGAL or any prior action in this regard, the

existence of indications of improper data processing. It is unknown what were the

additional items that could have been obtained between 06/13 and 06/26/2019

to reach said conviction on the concurrence of the mentioned indications".

when CENDOJ sends a first

-Likewise, it was not until 07/19/2019,

communication to EMERITA to request information on the origin of the data of

available, not on any question of personal data such as

announced the proposal of 06/13". "In any case, the complaint was first forwarded to the

AEPD and subsequently information was requested from EMERITA about the alleged treatment

improper data, without knowing what EMERITA's position was."

-The response from the CGPJ that on 05/20/2019 mail was received from the IBERLEY publishing house

consulting the CENDOJ on the legality of the activity of the claimed, it is not

supported by the contribution of the document, stating that for the defense of their

interest that the CGPJ be required to provide the document"

-Considers that the beginning of the procedure coincides with the claim that WK addressed to the

CGPJ on 06/26/2019, announcing the alleged illegality of its activity, which

coincides with the letter of the Permanent Commission of the same date. no mention

of the correspondence that could have existed between the CGPJ and WK, nor of the answer

from the first to the writing of the second, it is interesting that these communications are required between the

parties and, specifically, "the communications in which the CGPJ itself expresses to WK

that once they obtain information through the file initiated by the AEPD, they will be able to

make other decisions to address the claim of that merchant".

-In addition, for his right to defense, he requests that the CGPJ be required to provide a

following series of documents and information:

“Documents in which the proposal dated 06/13/2019 on the start of the

a)

verification actions and by whom said proposal would have been made”

“Information or documents obtained for the adoption of the agreement contained in

b)

the minutes of the next meeting of the Permanent Commission of 06/26/2019, and

c)

“Minutes of the meeting of the Permanent Commission of 06/26/2019”

d)

Reiterates the request for confidentiality of all the documentation provided in the

file from all sources, and access and subsequent use is prevented

of said information those who are not a party to the CGPJ/CENDOJ procedure, nor with

greater reason to private commercial entities, especially competitors of the

claimed.

FIFTEENTH: On 07/16/2021, the respondent requested the extension of

term to formulate allegations, motivating the circumstances in the number of

offenses, their amount, the complexity and relevance of the matter, responding

reasoned on 07/28/2021 not to extend the deadline to make allegations.

SIXTEENTH: On 07/28/2021 allegations are received to the proposal, in which

which manifests:

1)

The proposal corrects the assumption of the startup agreement, since it no longer appears

cited, which indicated that they were data from judges. This has not been taken into account

to adapt the sanction of the infraction.

two)

As for the justification of the existing legitimizing base by the interest

legitimate, the proposal does not differentiate the basis of legitimacy applicable to the different

phases and operations of the treatment, having to analyze to which phase the

sanction, since there are two phases: data collection and subsequent treatment. These

moments do not appear delimited in the resolution proposal and it must be indicated

which is the deficiency of the legitimate interest both in the first and in the second phase.

The proposal only assesses the adjustment to legitimate interest.

In assessing the balance of the legitimate interests pursued versus those

3)

fundamental rights and freedoms of the interested parties, no more reference is made than

to the lack of expectation of professionals in the treatment of their data by the

claimed. The expectations of the interested parties cannot be described as "very

remote" or none, since in the current environment of legal operators if there is

widespread knowledge of these types of treatments, with more and more

technology tool providers. The proposal mentions the interest

legitimate referencing judgments, resolutions and other documents prior to the

entry in ***LOCALIDAD.1r of the RGPD, considering that it is a base of

novel treatment, “at the same level, if not higher in some areas, than the

consent".

4)

Reiterates the sufficiency of guarantees offered, contrary to what is

underlines in the proposal, and it does not express what guarantees should have been adopted,

although it must be taken into account that these are differentiated elements of the

concurrence of legitimizing base.

5)

Lack of argumentation of the amounts for which the proposed

sanctions. Application of aggravating factors incorrectly in article 83.2.a) of the

RGPD considering that the treatment is taking place continuously and

reaching a temporary space of up to ten years. And of 83.2.g) of the RGPD `by the

categories of data processed, when limited to professional data related to

the exercise of the activity. The extenuating circumstances that the claimed

does not obtain economic benefit from data processing with a very small number of

income, the penalties not being proportionate.

6)

On the infringement of the right of information to those affected, article 14 of the

GDPR is documented in the impact assessment, as a proactive measure, by

take a disproportionate effort. This form of action is referred to in the

Guideline on transparency of WG 29 (item 64). In addition, the website offers

extensive information on the origin of the data, a specific document on the

processing of data for making rankings, not existing a total lack of

informative reference to their holders. To the lawyers who appear published in the

website, they were informed by email, and they proceeded to inform

individual to all the professionals that are in the census of lawyers and

attorneys.

7)

Regarding the infringement of article 5.1.d) of the RGPD, due to the lack of veracity

and accuracy of data, the AEPD confuses accuracy with fullness, since on the sample

analyzes accuracy is guaranteed. Questioning the accuracy of a sample

statistics not because it is exact in itself but because it is not complete,

is to reject statistics itself as a science included within the field of

applied mathematics. In addition, measures are established that take into account the

updating and accuracy of data, even manual supervised by humans,

debugging and corrections, also giving professionals faculties.

In addition, it is reported that the database does not reflect all cases, being the

objective is the creation of a relevant statistical sample.

PROVEN FACTS

FIRST: The defendant is a microenterprise whose corporate purpose, according to the

Mercantile Registry, the "intermediation in services associated with legal activities: the

provision of services related to the professional practice of law, management and

defense of natural or legal persons in all kinds of processes procedures

judicial and extrajudicial, attorney activities", and offers on its website a product

result of "judicial analytics": that extracts information from millions of judicial cases.

SECOND: On its website, in "how it works" the sources of data collection are indicated.

data, most of the internet, without informing that not all that could be obtained

exist. The defendant extracts from the Internet network through (...), resolutions and sentences

and of each judicial resolution, up to 45 variables: date, type of resolution (sentence,

auto…), order, specialty, room, section, judicial body, judges or magistrates,

instance, type of ruling, lawyers, parties (plaintiff, defendant...), role of the parties, procedural position, client profile, role of the parties. This activity began in March 2017.

THIRD: The treatment initially (...). In order to prepare the resolution for the application of (...), with each resolution it creates a (...) formed by a string of numbers and letters, now without the name and surname of the professional (pseudonymized). So for one side moves away and they appear (...):

1-Classify each resolution in (...).

2-Generation (...),

Once the resolutions have been classified and their trajectories have been composed, this same information for (...) specifically, taking into account the data only from the professionals who act in it together with other factors such as the location, the judge-do, seniority... allows, to extract (...) from each specialty/type of professional

3-Based on the (...) of lawyers, (...) they evaluate:

a-The lawyer's experience: (...)

b-(…) (… Progression),

c-(…), (… update),

d- (...) (... specialization).

(…)

4. Publication "by default" on the web with universal access of lawyers whose profiles statisticians obtain results in at least one specialty, from an IRJ equal to or higher than higher than 70 points. (...). Only the data of one specialty is shown, which is that in which the lawyer has the best IRJ) (the highlighted specialty), blocking the res-so many specialties.

In the case of being lower than that index, the rest of the cases, the profiles are maintained. extracted (...)" and would only be published and visible in the same way as those that appear.

appear by default, if the lawyer himself entered the web, registered and put that

setting. Profiles that are not published "by default" (...). This obeys, according to

claimed to reduce the possible negative impact, publishing those that it considers to have

excellent rating based on 70% or higher.

For the staff of the Procuratorate, they would be published linking census data of procurators-

res with their statistical profiles (...).

FOURTH: (…). The defendant informs on its website as of 09/04/2020, that it has analyzed

5,812,376 judicial resolutions of 108,253 lawyers and 60 specialties. Lawyers and

specialties are modified over time, appearing as of 06/29/2021: 123,715

analyzed lawyers and more than 100 specialties.

FIFTH: Each legal professional can enter the website of the person claimed in their

profile, being able to hide it if it comes out by default and you want it, if you access you can see the

resolutions attributed to it and correct them, and can submit new resolutions.

SIXTH: The respondent has information on its website that indicates in the information of the

profiles it offers, "is not exhaustive, it is exclusively related to performance in

litigation and refers only to the sample of resolutions analyzed by the lawyer in

issue, nowhere to all their cases." or also: "Our database does not

reflects all the cases in which each lawyer has participated, but rather their objective

is the creation of a relevant statistical sample that, by detecting

patterns, trends and outliers, allows comparison of lawyers in

terms of equality and objectivity and assumes a highly reliable approximation of the

reality, but not perfect

SEVENTH: The right to oppose the treatment by the professional (...)

EIGHTH: Regarding the information carried out by the claimed collection of

data, not directly from those affected, and their subsequent processing of the data, there is

information on the web in different sections on the calculation of the index of

judicial performance, which uses artificial intelligence, and which compile sentences and

court decisions from various web sources. There is no section

concrete detailing the information and rights specifications for the

legal and procurement professionals. In the document in which the claimed

carries out the data protection impact assessment it is indicated that providing

individual information to each professional requires disproportionate efforts and

The elements of article 14.5.b) of the RGPD concur. The respondent has notified the

information to professionals with a profile published by 80 percent, has taken

Contact the General Council of Spanish Lawyers and the Bar Association of

Galicia in order to comply with the duty to inform and tried some ways that did not work

effective.

NINTH: The respondent uses methods for data processing that are detailed in

the foundation of law VI, “SCHEME OF THE PHASES OF THE TREATMENT: TECHNIQUE

CAS USED data processing processes”, assuming its content has been reproduced.

do.

TENTH: As indicated, the legal professions that are published

on the EMERITA website may or may not be registered on it. The ones I know

register may, be subscribed to (...) -without EMERITA obtaining any commission or

participate in the business relationship between them.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

As for the allegations made about the data publication reservations, of the information contained in this procedure and the reservation of delivery of documents, The following caveats are made.

Article 50 of the LOPDGDD states:

“The Spanish Agency for Data Protection will publish the resolutions of its Presidency that declare there is place or not to the attention of the rights recognized in Articles 15 to 22 of Regulation (EU) 2016/679, those that put an end to the claim procedures, those that file the previous actions of investigation, those that sanction with a warning the entities referred to in the article 77.1 of this organic law, those that impose precautionary measures and others that establishes its Statute.”

The new statute of the AEPD approved by Royal Decree 389/2021 of 1/06, BOE of 2/06, dedicates article 11 entitled: "transparency and publicity" reproducing a Similar content in your first paragraph.

The exposure of data to the knowledge of third parties must be distinguished through the publication cation of the resolution on the website of the AEPD, of access to the file by third parties

once finished.

Regarding the first aspect, in the information given by the respondent, the web offers

Here are some informative details of their systems that, being already sufficiently known,

cides, it is not considered necessary to omit, considering that they affect a large number of in-

interested parties from whom their data is collected. This group also needs to know a

minimum the general aspects of the treatment that affects them, such as the legal basis

or the risks of your treatment.

Regarding internal processes that may be related to third-party competitors,

will proceed to anonymize for your non-knowledge.

Regarding access to the information in the file, once it is finished, the procedure

ment and regulations depend on the Transparency Unit of the AEPD, which foresees in

case of request prior hearing of the affected.

On the allegations received after the testing period has passed,

in fact, since 07/05/2021 in which the proposal for re-

solution, and referring to the urging again to provide certain answers and documents

to the CGPJ, related to the reasons for initiating the procedure, "in the interest of

its defense", it must be agreed that it does not clarify in what sense the

sense that the CGPJ had not carried out previous investigations, even if it were so.

On the other hand, the types of initiation of procedures configured by the LPCAP in the article

54 are ex officio or at the request of the interested party, stating in article 58 that "The

Procedures will be initiated ex officio by agreement of the competent body, either by its own

initiative, or as a consequence of a superior order, at the reasoned request of other organs or by complaint."

The previous actions are regulated in the LOPDGDD, article 64.2:

"two. When the purpose of the procedure is to determine the possible existence of an infringement of the provisions of Regulation (EU) 2016/679 and of this law organic, will be initiated by means of a start-up agreement adopted on its own initiative or as consequence of claim.

If the procedure is based on a claim filed with the Spanish Agency of Data Protection, in advance, it will decide on its admission for processing, in accordance with the provisions of article 65 of this organic law.

Once the claim is admitted for processing, as well as in the cases in which the Agency Spanish Data Protection Agency acts on its own initiative, prior to the initial agreement, there may be a phase of preliminary investigation actions, which will be shall be governed by the provisions of article 67 of this organic law."

Therefore, it is not estimated that the applicable regulations have been infringed in the way of start of the procedure.

III

"Professionals of Law and Procurement, functions and personal data"

The General Statute of the Legal Profession in force at the time of the start of treatment of the data by the claimed, Royal Decree 658/2001 of 06/22, BOE 07-10-2011 (Statute) in its article 68 states:

"The functions of the General Council of Spanish Lawyers are:

"l) Form and keep updated the census of Spanish lawyers; and bring the fi-file and record of sanctions that affect them."

In addition, Law 2/1974 of 02/13, on Professional Associations establishes the association mandatory for legal professionals and regulates the profession. On the other hand, the Es

tatuto configures the profession in its article 1.1:

"1. The legal profession is a free and independent profession that provides a service to society.
in the public interest and that is exercised in a regime of free and fair competition, through
of the council and the defense of public or private rights and interests, through the application
tion of legal science and technique, in order to concord, to the effectiveness of the
fundamental rights and freedoms and justice.”

In guarantee of the defense of rights and freedoms and in compliance with the function
of the Legal Profession, the professionals of the Legal Profession must carry out the interventions
professionals established by law.

Compulsory membership also guarantees whoever attends it their professionalism,
ing the intrusion and verifying that one is in faculties for its exercise.

Royal Decree 1281/2002, of 5/12, approving the General Statute of the
Attorneys of the Courts of Spain establishes in its explanatory memorandum that the
“Civil Procedure Law provides that prosecutors, in their capacity as
representatives of the parties and as professionals with technical knowledge of the
process, receive notifications and transfer writings and documents to the opposing party” and
its article 1 indicates that "The Procurement, as a territorial exercise of the profession of
Attorney of the Courts, is a free, independent and collegiate profession that has
as main mission the technical representation of those who are part of any class
of procedure.”, and his “professional exercise as a cooperator of the administration of
Justice” (art 2). Article 5 indicates that their professional intervention will be mandatory

when so provided by law.

The scope of application of the RGPD indicates article 1:

"1. This Regulation establishes the rules relating to the protection of persons

physical conditions with regard to the processing of personal data and the regulations relating to

you go to the free flow of such data.

2. This Regulation protects the fundamental rights and freedoms of individuals

physical data and, in particular, their right to the protection of personal data."

They are defined as personal data in article 4.1 of the RGPD: "all information about

an identified or identifiable natural person ("the data subject"); person will be considered

identifiable physical person any person whose identity can be determined, directly or indirectly,

mind, in particular by means of an identifier such as a name, a number

identification, location data, an online identifier or one or more elements

own physical, physiological, genetic, mental, economic, cultural or social identity

of said person;

On an issue of personal data-professional data, the Court of Justice ruled

Justice of the European Union, third chamber, in its judgment of 7/11/2013, matter

C.473/12, "Institut professionnel des agents immobiliers" (IPI) entity was created by the

Royal Decree of 02/17/1995, responsible for ensuring compliance with the requirements of

access to the real estate agent profession and for the proper exercise of it. Sentence

has considered personal data those of a real estate agent, a regulated profession

in a matter involving the surveillance of real estate agents.

bile by private detectives, for the verification at the request of the IPI, of behaviors

on the fulfillment of deontological duties of its members. Point out at point 26

“From the outset, it should be noted that some data, such as those that, according to the court, sender, the private detectives in the matter of the main litigation collect, refer- include people who act as real estate agents and affect identifiable natural persons. identified or identifiable. Consequently, they constitute personal data, in the sense of article 2, letter a), of Directive 95/46. Its collection, conservation and transmission by a regulated body such as the IPI or by private detectives acting on behalf of this present, therefore, the character of "processing of personal data", within the meaning of Article 2, letter b), of Directive 95/46 (see the judgment of 12/16/2008, Huber, C-524/06, Rec. p. I-9705, section 43).”

The Charter of Fundamental Rights of the European Union (CDFUE), TWELVE of 12/18/2000, states:

article 7:

“Respect for private and family life

Everyone has the right to respect for his private and family life, his home and your communications.”

article 8:

"Personal data protection

1. Every person has the right to the protection of personal data that they concern.

2. These data will be processed fairly, for specific purposes and based on the consent intention of the affected person or by virtue of another legitimate basis provided for by the law. Every person has the right to access the data collected concerning them and to its rectification.

3. Respect for these rules will be subject to the control of an independent authority.”

This provision, essentially identical to Article 8 of the European Convention for the Protection

tion of Human Rights and Fundamental Freedoms, signed in Rome on

4/11/1950 (hereinafter "ECHR"). They must be taken into account when interpreting the provisions

relevant provisions that oblige Member States to protect, in particular, the right

cho to private life.

It must be considered that the concept of private and family life is extremely broad, such

such as the European Court of Human Rights or the CJEU that in the GOOGLE case

INc v. AEPD and Mario Costeja, case C 131/12, in the conclusions of the Attorney General

General pointed out:

“116. The European Court of Human Rights affirmed in the Niemietz judgment that the

professional and business activities of a person may be included in the

concept of private life, as protected by Article 8 of the ECHR. the same orientation

It has been followed in subsequent pronouncements of said Court.

117. Furthermore, the Court of Justice declared in the judgment Volker und

Markus Schecke and Eifert (80) that «respect for the right to private life as regards

respect to the processing of personal data, recognized by articles 7 and 8

of the Charter, applies to all information [my emphasis] about a natural person

identified or identifiable […], and […] that the limitations on the right to protection of

personal data that can be legitimately established correspond to the

tolerated in the context of Article 8 of the ECHR”.

118. On the basis of the Volker and Markus Schecke and Eifert judgment, I conclude

that the protection of privacy under the Charter, as regards the

processing of personal data, covers all information relating to a natural person,

regardless of whether it acts in the merely private sphere or as an economic operator.

mico, or, for example, as a politician. In light of the broad concepts of personal data

them and treatment in the Law of the Union, it seems to be inferred from the jurisprudence

mentioned above that any act of communication based on automatic means,

such as telecommunications, email or social networks, relating to a natural person

constitutes such a putative interference with this fundamental right that it requires justification.

carse. ”

The protection of personal data contained in the LOPDGDD and derived from the article

18.4 of the CE, extends its scope, not to the intimate data of the person (which is protected

in the right to privacy of article 18.1 of the CE) but to personal data

nal, as already explained, reasoned, the STC 292/2000. And this on the basis that the ga-

guarantee of a person's private life and reputation have a positive dimension

that exceeds the scope of article 18.1 CE and that translates into a right to control over

Open the data. It is intended to guarantee the person, through such control over their data

personal data, their use and destination, with the purpose of preventing their illicit traffic and harmful to the

dignity of the affected, that the data can only be treated and transferred with their consent.

I lie.

Also as an example, the AN, contentious-administrative chamber, section 1 has considered

considered that the "place of exercise of his profession, is a data of a natural person with

a professional activity, whose protection falls within the orbit of the aforementioned Organic Law

15/1999” “as this Chamber has repeatedly stated, for all Judgments of

11/21/2002 and 01/31/2003.”

In relation to the professional character, the protection of the data that is collected as

autonomous fundamental right in article 18.4 of the CE, under the reference to the use of

information technology, has its own content and scope, as stated by the aforementioned STC of

292/2000 “(...) the object of protection of the fundamental right to data protection

It is not reduced only to the intimate data of the person, but to any type of personal data.

whether or not intimate, whose knowledge or use by third parties may affect their rights

rights, whether fundamental or not, because their object is not only individual intimacy, which

for this there is the protection that art. 18.1 CE grants, but the personal data

nal. Consequently, it also reaches those public personal data that, by reason of

fact of being, of being accessible to anyone's knowledge, they do not escape the power of

disposition of the affected party because this is guaranteed by their right to data protection.

Also for this reason, the fact that the data is of a personal nature does not mean that they only have

protection those related to the private or intimate life of the person, but that the data covered

classified are all those that identify or allow the identification of the person,

tending to serve for the preparation of their ideological, racial, sexual, economic or

any other nature, or that serve for any other use than in certain circumstances

circumstances constitutes a threat to the individual”... (sixth legal basis).

Thus, the data of names and surnames of the staff of the Lawyer and of the exercise of

the Procurement, are considered personal data, subject to the scope of application

of the RGPD and the LOPDGDD.

The respondent states that the data of the legal professionals she deals with

Article 19 of the LOPDGDD would apply. Such an article indicates:

“Processing of contact data, individual entrepreneurs and professionals

liberals":

"1. Unless proven otherwise, it will be presumed covered by the provisions of article 6.1.f) of Regulation (EU) 2016/679 the treatment of contact data and where appropriate those related to the function or position held by natural persons who provide services in a legal entity provided that the following requirements are met:

a) That the treatment refers only to the data necessary for its location professional.

b) That the purpose of the treatment is only to maintain relations of any nature with the legal entity in which the affected party renders his services.

2. The same presumption will operate for the treatment of the data related to the individual entrepreneurs and liberal professionals, when they refer to them only in said condition and are not treated to establish a relationship with them as natural persons."

It should be noted first of all that the presumption is, not for all treatment of data that can be made about liberal professionals, when framing or referring to the "contact details". In this case, the data of the legal professionals and proxies are not used to maintain a mere contact. In addition, there is the nuance of that lawyers who subscribe to a payment plan, registered, their data is used not only for the ranking but for contact with customers. For this second option if they are entitled to use them, in accordance with article 19 of the RGPD. out of that scope, this presumption does not apply. It should be added that in addition to a presumption iuris tantum, the mere existence of a legitimizing basis for the treatment does not presuppose that the treatment is in accordance with the regulations, since it should be added that they must comply also the requirements of the principles related to the treatment, determined in the article 5.1 of the RGPD.

Said statement is contained, for example, in the judgment of the CJEU of 11/24/2011, assuming

Cumulative documents C-468/10 and C-469/10, which refers to two others:

“26. Pursuant to the provisions of Chapter II of Directive 95/46, entitled

"General conditions for the legality of the processing of personal data", without prejudice

of the exceptions admitted under article 13, all data processing

must be in accordance, on the one hand, with the principles relating to the quality of

the data, set forth in article 6 of said Directive, and, on the other, with any of the

six principles relating to the legitimacy of data processing, listed in its

article 7 (see, in this regard, the judgments of May 20, 2003,

Österreichischer Rundfunk and others, C-465/00, C-138/01 and C-139/01, Rec. p. I-4989,

paragraph 65, and Huber, cited above, paragraph 48).

65. More particularly, data must be “collected for specified purposes,

explicit and legitimate" [article 6, paragraph 1, letter b), of Directive 95/46] as well as

"adequate, relevant and not excessive" in relation to those purposes [article 6, paragraph

1, letter c)]. In addition, according to article 7, letters c) and e), of the same Directive, the

processing of personal data is lawful, respectively if, "it is necessary for the

fulfillment of a legal obligation to which the person responsible for the

treatment", or if "it is necessary for the fulfillment of a mission of public interest or

inherent in the exercise of public power vested in the data controller [...]

to whom the data is communicated.

IV

“open data”

On the matter of the violation of reuse regulations due to the reuse of

judgments alluded to by the claimant, it should be noted that Law 37/2007 of 16/11, on

reuse of Public Sector Information (RISP) constitutes in turn transposition

tion of Directive 2008/98/EC of the European Parliament and of the Council, of 11/17/2003,

regarding the reuse of public sector information. Said Law, in its article 3

regulates what it qualifies as "Objective scope of application", defines reuse, in its

number 1:

"1. Reuse is understood as the use of documents held by the Administrations.

administrations and organizations of the public sector, by individuals or legal entities, for

commercial or non-commercial, provided that such use does not constitute an authorized activity.

public nistrative. The exchange of documents between

Administrations and organizations of the public sector in the exercise of public functions

that they have attributed.»

The second additional provision No. 2 of Law 37/2007, indicates

«The provisions contained in this Law shall be applicable to sentences and re-

judicial solutions, without prejudice to the provisions of Article 107.10 of the Organic Law

6/1985, of July 1, of the Judiciary and its specific development».

In the Preamble of the Law:

- (Paragraph 3) the distinction between the production and dissemination of documents is clear

generated in the public sector, "to carry out the public service mission that it has

entrusted," and the "use of said documents for other reasons, either with

commercial purposes or not", which "constitutes a reuse".

- In turn, the objective of the legal regulation is set, which is twofold:

“On the one hand, the aim is to harmonize the use of information in the public sector

co, especially the information in digital format compiled by its different organizations

relating to numerous areas of interest such as social, economic, legal,

geographical, meteorological, tourist, on companies, patents and education, etc., to the

to facilitate the creation of document-based information products and services

of the public sector, and to strengthen the effectiveness of the cross-border use of these documents by

part of citizens and private companies to offer products and services

value-added information services.

On the other hand, the publicity of all freely available documents that work in

power of the public sector referring not only to political procedures, but also to

the judicial, economic and administrative ones, is an essential instrument for the development

of the right to knowledge, which constitutes a basic principle of democracy."

The difference emphasizes what document preparation entails within the institutional cycle.

of the public sector and what its subsequent reuse entails, as a pure primary activity.

vada.

The reuse activity is an activity of individuals, natural persons and companies.

sas, not a "public administrative activity", referring to the use of documents (in the case

that we are now dealing with judgments and judicial resolutions) "for commercial purposes or not

trade" other than the original purpose of those documents in the mission of

public service for which they were produced. In other words, and already in reference

specific to judicial resolutions, a use located in a field different from the institutional

tutional of the organs of the Judicial Power, in which the sentences and resolutions are dictated.

Considering that the primary availability of judgments and judicial resolutions is

jurisdiction of the CENDOJ with a specific object or purpose, the judgment that it reviewed,

annulling the agreement of the Plenary Session of the General Council of the Judiciary of 10/28/2010, by which approves Regulation 3/2010 on the reuse of sentences and other judicial resolutions, plenary session of the third chamber of administrative litigation of the Supreme Court, of 10/28/2011, appeal 42/2011, establishes some milestones in the question. The ruling denied the power to regulate ad extra in the field institutional of the CGPJ to extend to the regulation of actions of foreign subjects to this institutional environment. The sentence indicates that it is not convincing to consider “that the reuse is but one mode of disseminating judgments and resolutions judicial, referred to in art. 107.10 L.O.P.J.”, since this can be done through of an accessible online search engine made available to citizens, and given that this does not coincide with the concept of reuse, which implies the action of a third party private, being logical to conclude that this is something different, in terms of "purposes and subjects." "Nope is acceptable so that regulatory regulation of reuse can be development of the legal regulation of the dissemination of judgments”.

Therefore, objective reference is made to the fact that judgments and judicial resolutions are This law applies, that is, the reuse regime regulated in it. Furthermore, and in parallel, it must be understood that the competence attributed by the Organic Law of the Judicial Power to the CENDOJ for the publication and official dissemination of the judgments derived of the powers within the then article 107.10 of the Organic Law of Power Judicial (current art 560.10 LOPJ).

Everything referred to is what the sentence considered to take into account what is the reuse, distinguishing it from the official publication of sentences, and the lack of competence of the CGPJ when attempting to regulate a regulation for the reuse of judgments and court decisions.

With the passage of time, the development of the law, for the scope of the public sector was carried out by Royal Decree 1495/2011, of 10/24, which develops

Law 37/2007, of 11/16, on the reuse of public sector information, and

pending the approval of the law that transposes to the state system the

Directive 2019/1024 of 06/20.

The tenth additional provision of the LOPDGDD indicates:

“Those responsible listed in article 77.1 of this organic law may communicate

the personal data that are requested by subjects of private law when

have the consent of those affected or appreciate that it concurs in the

applicants a legitimate interest that prevails over the rights and interests of the

affected in accordance with the provisions of article 6.1 f) of Regulation (EU) 2016/679.”

Recalling that article 77.1 mentions among those responsible, among others,

“a) The constitutional bodies or those with constitutional relevance and the institutions of

autonomous communities analogous to them.

b) The jurisdictional bodies.”

Likewise, article 86 of the RGPD, states: “Treatment and public access to

official documents: Personal data from official documents held by

any public authority or public body or a private entity to carry out

of a mission in the public interest may be communicated by said authority, body

or entity in accordance with the Law of the Union or of the Member States that

applies to them in order to reconcile public access to official documents with the right

to the protection of personal data under this Regulation.”

The provision must be interpreted from the perspective of recital 86, which states:

“The present Regulation allows that, when applying it, the principle of

public access to official documents. Public access to documents

officials can be considered to be in the public interest. personal data documents

that are in the power of a public authority or a public body must

be able to be publicly communicated by said authority or body if it so establishes

the law of the Union or the Member States applicable to that authority or body.

Both Rights must reconcile public access to official documents and

reuse of public sector information with the right to data protection

personal data and, therefore, can establish the necessary conciliation with the right

to the protection of personal data in accordance with this Regulation. The

reference to public authorities and bodies should include, in this context, all

authorities or other bodies to which the law of the Member States applies

on public access to documents. Directive 2003/98/EC of the Parliament

European and Council does not alter or affect in any way the level of protection of the

natural persons with respect to the processing of personal data in accordance with the

provisions of the Law of the Union and the Member States and, in particular, does not alter

the obligations or rights established in these Regulations. Specific,

that Directive should not apply to documents that cannot be accessed or whose

access is limited under access regimes for privacy protection reasons

personal data, nor to parts of documents accessible under such regimes

that contain personal data whose reuse has been established by law

as incompatible with the law relating to the protection of natural persons with

regarding the processing of personal data.”

Both the current Law 37/2007 and the Directive pending transposition refer to the

application of data protection regulations.

On the other hand, the fact that Public Administrations or, where appropriate, technical bodies

of the CGPJ, not jurisdictional properly speaking, publish documents, or judgments

with personal data does not imply, in any case, that the data subject to treatment

data have the nature of “open data”. Category defined in Annex I, point 1,

of Law 37/2007 as “those that anyone is free to use, reuse and redistribute”.

buir, with the sole limit, where appropriate, of the requirement of attribution of its source or acknowledgment

lie of its authorship”.

When regulating the legal regime of reuse, Law 37/2007 (article 4.6) says: “The reuse

The use of documents containing personal data will be governed by the dis-

placed in the Organic Law 15/1999, of 13/12, on the protection of personal data

no.”

The fact that data is accessible by anyone because it is available to third parties,

for example published on the web, whether or not by its owner, or disseminated by it, can

be taken into account when making different types of weighting in the treatment

of data, as one more element in the weighting of legitimate interest, but only and per

It is not supposed to be a decisive element that can tip to one side or the other the balance of

predominance of the legitimate interest or the right of those affected in order to their treatment.

The fact that the regime established in the aforementioned regulation is applied to the judgments

tive of reuse, supposes that the requirements of this matter and conditions must be

be complied with, not having proven in this case that the claimed party has obtained

the same of any public body, nor specifically of the CENDOJ, so the use

that makes of them cannot be described as such, without prejudice to the fact that in the corresponding headquarters

this question is urged or can be resolved technically and the accessory of whether it proceeds

charge or responsibility for its use. In any case, the legitimacy of the treatment does not

it depends on the payment or not of the rate for reuse to the CENDOJ.

v

Regarding the request for suspension of the proceeding due to the pending issue

commercial civil in which (...), indicate that the issue is not related to the decision of

whether or not the treatment conforms to the RGPD and the LPOPDGDD, since there are objective elements

tives that do not make what is resolved here depend on what is substantiated in it.

Here we are dealing with faits accomplis such as the treatments carried out with the

data of the aforementioned groups, in the process the alleged use of resolutions will be resolved.

tions and judicial sentences that the claimed party has been able to obtain without payment that the re-

claiming if it makes the CENDOJ, branding the action of unfair competition. Nor in the

commercial process is expected to rule on data processing that is not

contains in the request.

The statements of the respondent about the use of other companies related to the

publication of legal data, which make use of similar innovative tools, their

similarities or differences within the world of predictive or legal jurisprudential analytics

tech are irrelevant in the present case, which focuses on their actions and their

responsibility.

The allegation that the imputation of the treatment was taken into account in the initial agreement

data collection of judges, and not so in the proposal, it is not true, I only feel the

terms that the claimant may have used in his claim, and as such has no value

legal by not referring imputation referred to said group.

"Scheme of treatment phases: techniques used"

SAW

The treatment being examined consists of making a ranking of legal professionals

cia a profile of professionals. The one claimed, operates from the start with data from professionals

graduates of the Legal Profession (litigators-those who go to court-) and professionals who practice

Procure, which are contained in judicial resolutions and sentences extracted from the web.

It also has (...).

Warns in the general information on its website the claimed that:

“Our database does not reflect all the cases in which each has participated.

lawyer, but its objective is the creation of a relevant statistical sample that,

by detecting patterns, trends and outliers, allows comparison

of lawyers in terms of equality and objectivity and supposes a highly-

reliable mind of reality, but not perfect

For greater transparency, each lawyer can, through their private area, visualize

zar the resolutions that have been analyzed to establish its trajectory and calculate its

IRJ, as well as proposing some improvement on the detected variables that will be valued

by our legal team.”

The respondent carries out data processing processes that could be summarized

in:

- Through tools called (...)

-(…). The defendant indicates on its website that "of each judicial resolution, our system of

judicial analytics detects up to 45 variables: date, type of resolution (sentence,

auto...), order, specialty, room, section, judicial body, judges or magistrates,

judgment, type of ruling, lawyers, parties (plaintiff, defendant...), role of the parties, position

procedural tion, client profile, role of the parties…. “(…).

-(…)

Regarding legal professionals, global data is extracted:

(…)

Y (…).

For Procura professionals, they are only extracted (...).

-

(…)

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

78/101

b) Success rates, calculated globally and differentiating the customer profile

(individuals or companies).

According to the information of the claimed on its website and what was stated, "the rate of

success is integrated into the results factor, which is evaluated mainly through

two indicators combined: the success rate and the average difficulty.

“The success rate is a percentage that shows how many times the lawyer

obtains a positive result, that is, to what extent is it capable of achieving what

requests for your client based on your procedural position and other variables. Our

judicial analysis system identifies up to 13 different types of rulings in each

resolution evaluating not only the absolute results (win/loss) but also the

partial, procedural...

The success rate alone is not a sufficient indicator, but is valued by the algorithm

always in relation to the average difficulty of achieving that result in each of the

the specialties, subjects, positions, judges, etc…

15% can be a great success rate if the average of other lawyers in cases

similar is 8% and 60% can be low if the average is 90%."

c) State/autonomous/provincial positioning ranking. Rankings are created by

specialties and always within a category of seniority.

(…)

-The publication or appearance on the web of data of the lawyers who obtain an index

higher than 70 in the IRJ or because they have voluntarily registered and have consented

his appearance (...).

It should be noted that a treatment that makes automated decisions using the

artificial intelligence can affect natural persons, such as a system of

user authentication, or may not affect people, such as a control system

industrial. The European Commission works on the definition of an Artificial Intelligence

reliable, and establishes that, for this, it must meet seven key requirements: action and

human oversight, technical robustness and security, privacy and data management,

transparency, diversity, non-discrimination and equity, social and environmental welfare and

accountability.

The five principles of the Ethical Charter on the use of artificial intelligence in

judicial systems and their environment, approved by the Council of Europe at the 31st session

plenary session of the European Commission for the effectiveness of justice (CEPEJ), Strasbourg 3 to

4/12//2018, indicate:

1)

principle of respect for fundamental rights and guarantee that the design and

implementation of artificial intelligence tools and services are compatible with

fundamental rights.

principle of non-discrimination, specifically prevent the development of

two)

intensification of all discrimination between persons or groups of persons.

3)

principle of quality and safety with respect to the processing of decisions

court and data. Use certified sources and intangible data with models

conceived in a multidisciplinary way in a secure technological environment.

principle of transparency, impartiality and equity. make accessible and

4)

understandable data processing methods. Authorize external audits.

principle under user control: prevent a prescriptive approach and ensure that

5)

users are informed agents and control their options.

“Public Access Sources”

7th

Reference to the legal regime prior to the RGPD.

The Organic Law 15/1999, of 13/12, on the protection of personal data (LOPD), which

transposed Directive 95/46/CE, of the European Parliament, into the Spanish internal legal system

and of the Council, of 10/24/1995, established in its article 6:

"1. The processing of personal data will require the consent

unequivocal of the affected party, unless the law provides otherwise.

2. Consent will not be required when personal data is collected

for the exercise of the functions of public administrations in the field

of their competencies; [...] or when the data appears in sources accessible to the public and

its treatment is necessary for the satisfaction of the legitimate interest pursued by the

responsible for the file or by the third party to whom the data is communicated, always

that the fundamental rights and freedoms of the interested party are not violated."

In turn, article 3 of the LOPD defined public access sources as follows:

"j) Sources accessible to the public: those files whose consultation can be carried out, for

any person, not impeded by a limiting norm or without further requirement that, in its

case, the payment of a consideration."

The judgment of the Court of Justice of the European Union of 11/24/2011 (cases

C-468/10 and C-469/10), which resolved the preliminary ruling raised by the

Supreme Court and whose pronouncement was collected in the STS of 02/08/2012 (appeal

25/2008) states (paragraph 36) that "Member States may not introduce, by

under the provisions of Article 5 of Directive 95/46, principles relating to the

legitimacy of the processing of personal data other than those set forth in the

Article 7 of that Directive or modify, by means of additional requirements, the scope of

the six principles established in said article 7. "

It added in paragraphs 38 and 39 that "article 7, letter f), establishes two requirements

cumulative for a processing of personal data to be lawful, namely, by a

part, that the processing of personal data is necessary for the satisfaction of the

Legitimate interest pursued by the data controller or by the third party or third parties

to which the data is communicated, and, on the other, that the rights and

fundamental freedoms of the interested party. And he concluded that: "it follows that, in what

Regarding the processing of personal data, Article 7, letter f) of the Directive 95/46 opposes any national regulation that, in the event that there is no consent of the interested party, impose additional requirements that are added to the two cumulative requirements mentioned in the previous section."

Given the incorrect transposition that was made in the national law of said precept, the STJUE (paragraphs 51 and 55) recognizes the direct effect of article 7.f) of Directive 95/46 with the consequence that from then on it had to be understood as displaced (which annulled) the rule of article 6.2 LOPD in favor of the aforementioned precept.

Until the publication of the judgments of the CJEU and the TS, the AEPD and the Courts of Justice applied article 6.2. LOPD in connection with article 3.j) and concluded without more preamble than the treatment of data obtained from those access sources public was deemed lawful.

As a result of the judgments of the CJEU and the TS, the circumstance that the personal data have been obtained from a public access source defined in article 3. j) LOPD could no longer, by that mere fact, constitute the legal basis for a treatment of personal information.

The relevance that from then on could be attributed to the circumstance that the data object of treatment come from sources of such nature is the one mentioned in paragraph 44 of the STJUE which indicates that with regard to the weighting required Article 7.f) of Directive 95/46 "must take into account the fact that the seriousness of the injury to the fundamental rights of the person affected by said treatment may vary depending on whether the data already appears, or not, in sources accessible to the public."

After the ruling of the CJEU, the National High Court, in a judgment of

05/31/2012, upheld the contentious appeal filed against the resolution issued by the

AEPD that sanctioned for infraction of article 6.1 LOPD, as a consequence of the

treatment of the data of those affected without their consent to those who sent them

emails advertising your candidacy in the elections of a College

professional. The sanctioning resolution had rejected the legitimate interest invoked by

sanctioned as the basis of the treatment on the premise that the data

treatises did not come from publicly accessible sources. The judgment of the Court

National says:

“[...] It is possible, ultimately, and in accordance with said Community Jurisprudence, that there are

processing of personal data that does not appear in one of those that our legislation

internal calls "public access sources" (article 3.f) LOPD and article 7 RLOPD)

but which, however, do not require the consent of the owners of such data

because its treatment is necessary to satisfy a legitimate interest of the person in charge

of the same, or of the transferee, provided that the rights and freedoms of the

interested party [...]” And he adds: “[...] Weighting of conflicting interests [...] will depend on the

specific circumstances of each case and in which, however, it can be taken into

consideration, in order to determine the possible violation of the fundamental rights

of the affected party, the fact that the data already appears, or not, in sources accessible to the public.

Plus it, simply, as one more element of weighting.” (The underline is

our)

In the regulatory framework of the RGPD, the position of the AEPD regarding the so-called sources

of public access is reflected in the Report of the Legal Cabinet number 136/2018, which

remember:

"[...] already in the 10th annual session it was stated that with the GDPR one cannot speak of a

legal concept of public access source as the one existing with the previous LOPD. The

Article 14.1 f) of the RGPD only mentions said concept to establish the obligation

of the data controller to provide the interested party with information on whether their data

personal data come from publicly accessible sources, but without defining these".

In the same sense, the Report of 10/03/2019, (Entry Registration 045824/2019) indicated

that "[...] as of the entry in ***LOCALIDAD.1r of the RGPD, one cannot speak of a

legal concept of "sources accessible to the public" such as the one that existed in the previous Law

Organic 15/1993 [...] The RGPD only speaks of public access sources when regulating the

right to information if the data has not been collected from the interested party".

"Treatment offered. Implications"

viii

The main concern of data protection, the idea with which it was introduced

initially and should be considered was the processing of personal data on a large scale

scale with mechanical and digital media in all its varieties, such as, in

particular, the collection, management and use of large data sets, the taking of

data for use according to its own configuration, the organization and collection of metadata,

etc. generating data different from the original ones. Big data, data intelligence, data

massive, big data that relate a specific and new affectation to the rights

fundamental. Technological advances and the possibilities of analysis of

Big data, artificial intelligence and machine learning have made it easier to create

profiling and have automated decisions, and have the potential to adversely affect

significant to the rights and freedoms of individuals.

However, profiling and automated decisions may raise

significant risks to the rights and freedoms of individuals who require

adequate guarantees.

The wide availability of personal data on the internet, as well as the ability to find

correlations and create links, can allow to determine, analyze and predict, offering

products in which the owner of the data, recipient or not of the resulting service or product

You may not be aware of the processing of your data, voiding the meaning of the principle of autho-

to informative determination of the owner of the data that STCO 292/2000 mentioned as

essential content of the fundamental right.

The GDPR introduces provisions to ensure that profiling and decisions

automated individual sessions (whether or not they include profiling) are not used

in such a way that they have an unjustified impact on the rights of individuals; by

example:

• specific transparency and fairness requirements;

• increased proactive liability obligations;

• Specific legal bases for processing;

• individual rights to object to profiling and specifically to the

profiling for marketing; Y

• if certain conditions are met, the need to carry out an impact assessment

data protection agreement.

The GDPR does not focus solely on decisions taken as a result of data processing.

automated processing or profiling. It applies to the collection of data for the

profile creation.

The treatment offered by the defendant is characterized by:

-It is a massive collection and treatment of data, repetitive because it is periodic and cyclical in the

time, of resolutions and judicial sentences with personal data, in

tenences published on the internet, on material defense issues in the trial of their owners.

holders to clients.

-Using the professional census as data for the identification of the professional author of

the legal assistance that occurs in the litigation, attribute it, together with your data

professionals and generate a profile (...) on which he offers his consultation to third parties, the public

generally free of charge.

- They are extracted by (...)

-The technology used (...). These data that are interpreted are made of what they reflect

the existing resolutions and judicial sentences at all times that appear in inter-

net.

-The service offered by the respondent is not its own service, but is directed to the eventual

hiring a professional that suits the user's needs. The service

It consists of giving varied and extensive information to the user. The user, as detailed in the claim,

are mostly private individuals, but professionals interested in

two.

"profiling"

IX

Profiling, or profiling of a natural person, means any

form of automated processing of personal data consisting of using personal data

to evaluate certain personal aspects of a natural person, in particular

to analyze or predict aspects related to professional performance, economic situation,

nomic, health, personal preferences, interests, reliability, behavior, location or

movements of said natural person, according to the definition given in article 4.4) of the

GDPR.

In this regard, the Guidelines initially adopted should also be taken into consideration.

by the Article 29 Working Group on Automated Individual Decisions

das and profiling, adopted on 10/3/2017, revised on 02/6/2018.

In these guidelines, it is highlighted that in order to detect whether we are dealing with profiling,

Give yourself three notes or requirements. The first of them, which is an automated treatment of

data; the second, that is carried out or carried out on personal data, and the last, that

the purpose of profiling is to assess personal aspects about a natural person.

In discussing this definition, the guidelines note that attention should be paid to the fact

that the definition of profiling refers to the fact that it is all forms of treatment

automated decision-making which, unlike automated individual decision-making,

zed, does not exclude that there may be some form of human intervention. That is, the

profiling is, even if a person intervenes in the automated processing of the data.

personal data for the purpose of evaluating certain personal aspects of the interested party

I personal data are subject to treatment.

As far as its purpose is concerned, and also taking into account the definition given by

the RGPD, profiling can be aimed at evaluating certain personal aspects of a

natural person or make predictions about the natural person whose personal data is

treatment object. The use of the term assess suggests that profiling involves making a

judgment about a person or “make predictions or draw conclusions about a person,

personal aspects of a natural person", that is, the interested party whose personal data they are subject to profiling.

Profiling entails creating "new" personal data that has not been disclosed. directly facilitated by the interested parties themselves, in order to make predictions or determine statistical inferences about their ability to perform a task, their interests, or their behavior future behaviour.

In this sense, the fact that the evaluation or score of the person, including the profiling and prediction, especially of "aspects related to the performance at work, economic situation, health, preferences or interests personal data, reliability or the behavior, situation or movements of the interested party. do" (recitals 71 and 91), are criteria or factors to be considered to determine whether the Processing of personal data entails a high risk for the interested parties. so indicates Working Group 29 in its Guidelines on impact assessment relating to the data protection (EIPD) and to determine if the treatment "is likely to involve a high risk" for the purposes of the GDPR, WP 248 rev.01, adopted on 10/4/2017.

Profiling, like any other processing of personal data, has to comply with the principles required by virtue of the applicable regulations on personal data protection. rights, in particular the GDPR. In this sense, in its guidelines on individual decisions automated and profiling viduals, already mentioned, it is indicated that it has to comply with the principles of legality, loyalty and transparency (art. 5.1.a of the RGPD); purpose limitation (art. 5.1.b of the RGPD); data minimization (art. 5.1.c of the RGPD); accuracy (art. 5.1.d of the RGPD) and limitation of the term of conservation (art. 5.1.e of the RGPD).

In particular, insofar as the processing of personal data complies with the principle principle of legality, loyalty and transparency when profiling the natural person, the guidelines stress the fact that, on occasion, such treatment of personal data is not visible to the interested party, opaque, or not informed, in other words

way, that he is not aware of said treatment, and of the operations that are

accumulate in the treatment (collection, storage, transmission, etc.).

This explains the fact that, specifically, article 13 of the RGPD, regarding the principle

pio of information, requires in section 2, letter f) that the data controller

report on the existence of automated decisions, including profiling

referred to in article 22, sections 1 and 4, and, at least in such cases, inform

significant insight into applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

Likewise, article 14.2.g) of the RGPD includes the same reference when the data

data have not been obtained from the interested party.

“Legitimating basis”

X

The RGPD deals in article 5 with the principles that govern data processing.

General guidelines on their values and demands can be extracted from the

“considering” 39 of the RGPD.

Article 5.1.a) of the RGPD mentions the principles of legality, loyalty and

transparency, which necessarily determines the existence of a legal basis

legitimate to proceed with the processing of personal data. If there is no legitimacy, no

processing of personal data is possible.

Thus, in accordance with article 6.1 of the RGPD, the processing of personal data will be lawful,

“only if you meet at least one of the following conditions” that you list in the

sections a) to f), namely:

“a) the interested party gave his consent for the processing of his personal data for

one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is

part or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the

data controller;

d) the treatment is necessary to protect the vital interests of the interested party or another person.

physical sound;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers vested in the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by

the data controller or by a third party, provided that said interests are not

prevail the interests or the fundamental rights and freedoms of the interested party that

require the protection of personal data, in particular when the interested party is a child.

No.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions.”

That the legitimate interest is not applicable to public entities, in this case, for

example to the CGPJ, in the exercise of its functions, supposes that the public authorities

as a whole are excluded from the application of legitimate interest as a basis

legal, and are then the reasons of "public interest" or "the treatment necessary to
the fulfillment of a mission carried out in the public interest or in the exercise of powers
data conferred on the controller2 (art 6.1.e of the RGPD) those that enter
at stake, and should be interpreted in such a way as to allow public authorities some
degree of flexibility, at least in order to guarantee its management and operation
adequate.

The defendant mentions the legitimizing legal basis in the processing of data of the
legal professionals and solicitors, in what, in their opinion, would be the legitimate interest
mo, article 6.1.f) of the RGPD.

Article 6.1 of the RGPD establishes different legal bases for the lawful treatment of
data distinguishing between six different assumptions. There is no hierarchy among them.
on an equal footing and none has a different privilege over the others. It is about
to adapt the treatment activity to the appropriate legal basis. Nor does he
legitimate interest can or should be considered as the last resort for the treatment
of data. In any case, it is considered that any data processing operation,
(be it the collection, storage, use, disclosure of data, etc.) limits the right
to the protection of personal data, regardless of whether this limitation may
be justified.

Article 6.1.f) of the RGPD is characterized by being a legal basis in which you can
support the processing of personal data by contrasting legitimate interests with
rights and freedoms of the interested parties. Although its wording seems excessively
In general, its application is stricter, since it is subject to carrying out
a balance between the different legitimate interests of the data controller
or of a third party and those of the interested party in such a way that in such weighting the
first on those of the interested party.

The claimed, on the legitimate interest, has a document of "weighing of in-

legitimate interest “provided in evidence, the aspects of which he has basically already reproduced in his

put to the process of transfer of the claim. In short, it bases this interest and its

prevalence over the interests and fundamental rights and freedoms of those affected

ted in:

a) Concurs legitimate interest of the end user, be it public in general or/and users

of legal services in particular in obtaining objective information on legal experience

of the so-called “trial lawyers”. EMERITA acts as a bridge to provide

mention it, giving information about a group that is based on: “The right to know the

experience of a lawyer in certain types of cases or to know how many cases he has

goes with respect to others of the same specialty and keeps balance with the right of

attorneys to your privacy.” This interest is part, according to the claim of the element

suitability and proportionality in what refers to the "triple judgment of proportionality of the

restrictive measure of fundamental rights”, whose doctrine stems from the Constitutional Court

as a mechanism for analyzing prevalence in the event of conflicts of functional rights

damentals. Regarding the element of necessity, it indicates that, in order to achieve the objective,

“there is no other more moderate measure”, and “minimal data have been included” as a sample

that later, “lawyers are offered the possibility of updating them, completing them, adding

giving new data if they wished, as well as the possibility of hiding them.”

b) “the name and surname of a practicing lawyer appears in the official census of lawyers.

two, which are considered sources of public access, and also in judicial resolutions

them in which he has intervened. This information can be found and is available online.

net for anyone.”

“Most of the data it publishes is already published, the result of professional activity.

the attorney's professional, and the rest (e.g. success rate, experience in a given subject matter).

ria...), with the exception of the IRJ, in reality it is information to which any user

could arrive by manually searching and analyzing a sample of judicial resolutions

published on the Internet” “The system does not prejudice the rights of the

lawyers, taking into account the type of data published.”

-The affected rights of the interested parties, are according to the claimed:

-Privacy right, “which is not absolute since they are recorded in official censuses that

They are considered public access sources.

-Appearing in a ranking does not pose a risk to the rights of those who appear.

- “Law professionals have expectations that their data will be treated

in a tool like this, because they know and use them”. “Since the implantation

of online compendiums, any professional knows that their data and the matters in which they

that participate will be published and are available at the hand of anyone. "What

participants in the administration of justice, being public judicial resolutions,

the professional analyzes and values and cannot ignore that their participation is exposed to

analysis, comments and criticism of valuation.”

-

“The impact on reputation is always about the professional aspect and in terms of

of experiences in court is intrinsic to the activity of a lawyer in court.

them, which is objective because it is demonstrable”. Also, not appearing in the ranking can mean

that he hardly has any activity before the courts or that he is not a litigator.

-Details what it considers to be different impacts that can be understood as pro-

are determined when the lawyer appears or not in the ranking. He estimates that, if he does not appear in it, he has

an objective explanation that is based on the statistics that are explained on the web. If it appears

ce, considering that you have less punctuation you can check the resolutions that are

have taken into account and provide the undetected. and depending on the reason behind it

ra you can enter the account and add your own.

- Alludes as guarantees:

“a) Only the profiles of the professionals who obtain

have excellent results in at least one specialty IRJ 70 or more understanding

that this generates positive effects on its reputation and minimizes the eventual impact.

b) Minimization of data: the minimum possible data has been included for compliance

purpose, offering even the lawyers themselves the possibility of acting

update them, complete them or add new data if they wish, as well as the possibility

to hide them (you can "hide" your profile from the privacy settings available

in his account).

c) Transparency in the information provided to lawyers, so that they know how

how the IRJ has been calculated, so that they can see (each lawyer from their account) the de-

detail of the resolutions referred to in the analyzed cases that have been taken into

account to calculate it, as well as to freely exercise their rights.

d) Pseudo-anonymization measures: the data that is published corresponds only to the

best results. The rest of the data is kept hidden and dissociated.”

e) In addition, it alludes in general terms to the fact that the group “can exercise its right to

opposition, and deletion, to data processing, as well as any of the remaining de-

ARCO rights, without any kind of justification of prevailing interest.

It adds that the treatment is lawful because:

a) There is no legal rule that prevents the use of judicial resolutions for analytical purposes.

lytic, and several companies already use it.

a) The tool only uses information related to the professional activity of

a professional lawyer practicing as a collaborator of the administration of Justice

Inc.

b) Information is provided to users so that they know how to interpret and use the

punctuation.

Recital 47 of the RGPD, which serves to concisely motivate the provisions

essential parts of the operative part, states:

“The legitimate interest of a data controller, including that of a data controller

that personal data, or that of a third party, may be communicated may constitute a basis

legal for the treatment, provided that the interests or rights do not prevail and

freedoms of the interested party, taking into account the reasonable expectations of the

data subjects based on their relationship with the controller. Such legitimate interest could occur,

for example, when there is a relevant and appropriate relationship between the data subject and the

responsible, such as in situations in which the interested party is a client or is at the service

of the person in charge. In any case, the existence of a legitimate interest would require a

careful evaluation, even if a data subject can reasonably foresee, in the

time and in the context of the collection of personal data, which may occur

treatment for this purpose. In particular, the interests and fundamental rights of the

data subject could prevail over the interests of the data controller when

personal data is processed in circumstances in which the

data subject does not reasonably expect further processing to be carried out…”

(69) In cases where personal data may be lawfully processed because the

treatment is necessary for the fulfillment of a mission carried out in the public interest

or in the exercise of public powers conferred on the data controller or by

reasons of legitimate interests of the person in charge or of a third party, the interested party must, without

however, have the right to object to the processing of any personal data relating to

your particular situation. It must be the person in charge who demonstrates that their interests

compelling legitimate interests prevail over the interests or rights and freedoms

fundamentals of the interested party.

(71) The data subject should have the right not to be the subject of a decision, which may include

a measure, that evaluates personal aspects related to him, and that is based solely on

automated processing and produces legal effects on it or affects it

significantly similarly, such as the automatic denial of a request for

online credit or network contracting services in which there is no intervention

any human. This type of treatment includes the elaboration of profiles consisting of

any form of automated processing of personal data that evaluates

personal aspects relating to a natural person, in particular to analyze or predict

aspects related to job performance, economic situation, health,

personal preferences or interests, reliability or behavior, situation or

the movements of the interested party, to the extent that it produces legal effects on him or

significantly affected in a similar way. However, decisions should be allowed

based on such processing, including profiling, if you authorize it

expressly the Law of the Union or of the Member States applicable to the

data controller, including for purposes of control and prevention of fraud and

tax evasion, carried out in accordance with the regulations, rules and
recommendations of the Union institutions or supervisory bodies
and to ensure the safety and reliability of a service provided by the
responsible for the treatment, or necessary for the conclusion or execution of a contract
between the interested party and a person in charge of the treatment, or in the cases in which the
interested party has given their explicit consent. In any case, such treatment
should be subject to appropriate safeguards, which should include the
specific information to the interested party and the right to obtain human intervention, to
express their point of view, to receive an explanation of the decision made after such
assessment and to challenge the decision. Such a measure must not affect a minor.
In order to guarantee a fair and transparent treatment with respect to the interested party, taking into account
account the specific circumstances and context in which the data is processed
data, the data controller must use mathematical procedures or
adequate statistics for profiling, applying technical measures and
appropriate organizational measures to ensure, in particular, that factors that
introduce inaccuracies in the personal data and the risk of
error, secure personal data in a way that takes into account the possible
risks to the interests and rights of the interested party and prevent, among other things, effects
discrimination against natural persons for reasons of race or ethnic origin, opinions
politics, religion or belief, union membership, genetic condition or health status, or
sexual orientation, or treatment that gives rise to measures that produce such an effect."
On the legitimate interest of the data controller under article 7
f) of Directive 95/46, the "Opinion on legitimate interest", and the various judgments
that interpret its application and interpretation, from that of the CJEU of 11/24/2011 (cases
accumulated C-468/10 and C-469/10), are the guides that would guide in the fulfillment of
requirements of the current article 6.1.f) of the RGPD, whose literal is similar to that of the Directive.

In the interpretation of article 7.f) of Directive 95/46/CE, the Court of Justice of the

The European Union has indicated, in a judgment of 11/24/2011, that the aforementioned precept

“establishes two cumulative requirements for personal data processing to be

lawful, namely, on the one hand, that the processing of personal data is necessary

for the satisfaction of the legitimate interest pursued by the data controller or

by the third party or third parties to whom the data is communicated, and, on the other hand, that they do not pre-

the fundamental rights and freedoms of the interested party are valid" (section 38),

that it follows that the aforementioned article 7.f) of the Directive «is opposed to any national

that, in the event that there is no consent of the interested party, imposes requirements

additional qualifications that are added to the two cumulative requirements mentioned in the

previous state" (paragraph 39).

“However, that article 7.f) of the Directive does not contemplate the requirement that the data

appear in sources accessible to the public to admit their treatment without the consent of the

interested, does not mean that said circumstance cannot be weighed when examining the

second of the requirements established in the indicated precept, which requires that

prevail the interest or fundamental rights and freedoms of the owner of the data

on the legitimate interest pursued by the data controller. However, it has

It should be borne in mind that the second of these requirements requires a weighting of the

conflicting rights and interests, which will depend, in principle, on the circumstances

specific to the particular case in question and in which framework the person or institution that

carries out the weighting must take into account the importance of the rights that the

articles 7 and 8 of the Charter of Fundamental Rights of the European Union

confer to the interested party.”

Article 6.1 f) of the RGPD requires a weighing test between the legitimate interest

of the data controller or any third party to whom the data is communicated.

interests and fundamental rights of the data subject. The result of this

balancing test will determine whether it can be used as a legal basis for the

treatment, although an appropriate assessment is not a direct weighting test

consisting only of weighing two easily quantifiable and comparable "weights"

on the scales Rather, such an examination requires a full consideration of

a number of factors, in order to ensure that due account is taken of the

interests and fundamental rights of those affected.

In the analysis of legitimate interest, two aspects are included that are valued below.

nuation:

1.Analysis of the alleged legitimate interest and if “the treatment is necessary for the satisfaction

legitimate interests pursued by the data controller or by a third party.

ro”

As for the concept of interest, it is different from the purpose, this is the specific reason why

that the data is processed: the purpose or intention of the data processing. an interest,

on the other hand, it refers to a greater implication that the data controller can

gives to have in the treatment, or to the benefit that the person in charge of the treatment obtains —or

that society can obtain—from the treatment.

Legitimate interest is an indeterminate legal concept, which can be vague

and ambiguous, especially considering that its application requires weighing the circumstances

concurrent instances surrounding a specific data processing operation: the use

quality (material benefit) that one or more specific operations of treatment of damage

third-party personal data reports to the interested party, understood as ideal tools

lines (direct link) to satisfy a need (interest) protected by law, and the

degree to which the rights or legal sphere of the data subject are viewed negatively

affected by said treatments (externality).

When evaluating the legitimate interest of the person in charge or of the third party, it is necessary to observe

that the notion of legitimate interest is quite broad. Its nature plays a crucial role

at the time of weighting against the rights and interests of data holders

cough. In this case, the alleged legitimate interest would authorize the processing of personal data.

personal rights of others, lawyers and solicitors, without the need for the concurrence of the

tad of headlines.

While it is impossible to make value judgments regarding all possible legal interests,

For this purpose, it will be necessary to analyze if any of the following circumstances occur:

1) The exercise of a fundamental right.

2) A general interest.

3) Other legitimate interests.

4) Legally, socially and culturally recognized legitimate interest.

In the present case, the respondent states that its interest is to participate to the users

riors, individuals, companies or professionals who need a professional, be it from the

lawyer, or solicitor, free knowledge as complete as possible of your profile, re-

result of the resolutions available, systematically and graphically, including

by specialty and ordered by ranking at different territorial levels. (...).

Therefore, it refers to a particular interest, as a consumer of legal services, in obtaining

information through a detailed analysis of different facets on very

detailed, within the information society. It alludes to the argument of the trans-

parity of justice as a public service to the particular service of data analysis, ex-

bringing a personal and professional profile that places it permanently compared and clearly

sified through rankings (IRJ and comparative success), nuanced ad hoc, on a

speciality, at different territorial levels, circumstances that are part of the proportion

the nature of the treatment, which may have an impact on the second stage, if these interests

ses are imposed on the fundamental rights or freedoms of the interested parties.

Another part that makes up the analysis of this first section is that "the treatment must

be necessary for the intended purpose or purposes", connecting it with also being "necessary".

sary for the satisfaction of the legitimate interest» pursued by the data controller

ment" or by the third party to whom the data is communicated. If the data controller

ment or the third party to whom the data is communicated has said legitimate interest, this does not

necessarily means that article 6.1 f) RGPD can be used as a basis

legal treatment. The fact that it can be used as a legal basis or not,

will depend on the result of the weighing test.

Necessity supposes here, the fact that the treatment is essential for the satisfaction

faction of the aforementioned interest, so that, if said objective can be achieved in a

otherwise less intrusively reasonable, legitimate interest cannot be invoked. I know

notes that if the legitimate interest is marked by disclosing large amounts of

data elaborated from the same origin, proceeding to extract and analyze numerous elements

cough of the resolution or sentence. The operation of the comparison between professionals does not

is new, since it has been offered for some time by other legal operators,

it is even carried out in other EU countries, such as France.

The identification of the alleged interest supposes an initial threshold for the use of the interest

legitimate, and the legitimacy of the interest of the controller, or of the third party, is only

a starting point, one of the elements to be analyzed under article 6.1

letter f) of the RGPD. Whether the aforementioned article can be used as a legal basis or not

will depend on the result of the following weighing test.

2-“second phase Interest of the third party vs. Interests and fundamental rights and freedoms

of those affected”

Considering the range in which the legitimate interest of the person in charge or of third parties

zeros versus impact on “interests or fundamental rights and freedoms”

of the interested parties, the weighing test provided for in article

6.1.f) of the RGPD when referring to "provided that said interests do not prevail", those

“interests or the fundamental rights and freedoms of the interested party that require the

protection of personal data”. The terms “interests and rights” shall be interpreted

in a broad sense. considering that the 'interest' of the

affected, not only their fundamental rights and freedoms, and does not carry the adjective of legal

legitimacy such as that of the data controller as a sign that it is broader.

The impact on data owners is on the other side of the scale. You have to pay attention

Refer to several elements that can be very useful to weight your weight:

1) Impact evaluation.

2) The nature of the data.

3) The way in which the data is being treated.

4) Period of time contemplated or to which the treatment refers and period of

data retention

4) The reasonable expectations of the interested party.

5) Status of the data controller and the interested party.

The test of weighing between the legitimate interest of the person in charge or of third parties can

vary to different degrees, as does the impact on interests and rights.

Many of those affected can be more or less important, ranging from trivial to very serious.

The legitimate interest of the data controller, when it is minor and not very pressing.

te, in general, only nullifies the interests and rights of the interested parties in cases in which

that the impact on these rights and interests is even more trivial.

Several sentences in the Spanish legal system from 2012, when

the application of the legitimate interest of article 7.f) of directive 95/46 to

through the judgment of the CJEU of 11/24/2011 have analyzed such interest, as a factor

valent and who attends, being all of them from the National High Court, contentious room

so administrative, section 1:

Judgment of 03/15/2012 appeal 390 / 2010, collection and publication of proprietary data

horse dealers on a MELPI web page.

Judgment of 04/11/2012, Rec. 410/2010, CITA, legitimate interest also in relation to

article 20 of the Constitution, freedom of information, exposure of data, images and de-

declarations as experts in court.

Judgment of 05/31/2012, resource 7923 / 2010 use of emails from the school pro-

professional for elections. Sending to members of the college.

Judgment of 03/11/2013 appeal 658/2011, municipal waters, for the provision of

a basic public service, the discussed absence of consent, with the existing indications

tentes applies the legitimate interest that is mentioned.

A ruling, 815/2020 of 06/18 of the Supreme Court, third chamber of the Contentio-

administrative body has considered in the opposite direction that there is no legitimate interest before

the allegation that “said treatment derives from an application that facilitates a means of

leisure in the personal or domestic sphere of people, which constitutes a legitimate interest

scam by MIRACLIA", it is indicated: "The allegation must be rejected. in no

In this case, the performance of a leisure activity could prevail over the protection of

personal data in relation to computer processing thereof. Does not about

to compare the greater or lesser relevance of a leisure activity against the protection

of personal data, but a leisure activity -like any other- must attend to

comply with data protection in the event that said activity involves the internal treatment

formatting of such personal data. And if said treatment and the required consent

If it makes difficult (or unfeasible), a certain activity, this is not a reason to suspend the

effectiveness of the personal data of potentially affected individuals.

For the rest, there are also known cases in which the regulations presume

legitimate interest such as credit information systems, art 20 LOPDGDD, or the

that are cited in the legitimate interest guideline, as a non-exhaustive list of some of the

most common contexts in which the issue of legitimate interest may arise, without

regardless of whether the interests of the data controller will ultimately prevail

instance on the interests and rights of the interested parties when the

balance.

• exercise of the right to freedom of expression or information, including in the

media and the arts

conventional direct marketing and other forms of marketing or advertising

• Unsolicited non-commercial messages, including for political campaigns or fundraisers.

• Enforcement of legal credits, including the collection of debts through legal procedures.

giving of charitable funds

extrajudicial proceedings

physical security, IT and network security

• anonymous internal reporting schemes

•

• processing for historical, scientific or statistical purposes

•

processing for research purposes (including marketing research)

•

city

tion

• prevention of fraud, misuse of services or money laundering

•

monitoring of employees for security or management purposes

Article 52, section 1, of the CFREU establishes that any limitation to the exercise of the

right to the protection of personal data (article 8 of the Charter) must be “necessary”

for an objective of general interest or to protect the rights and freedoms of

plus.

To be lawful, any limitation to the exercise of the fundamental rights protected by

The Charter must meet the following criteria, established in section 1 of article

52 of the Charter:

• must be provided for by law,

• must respect the essence of rights,

• must actually fulfill the objectives of general interest recognized by the Union

or the need to protect the rights and freedoms of others,

• must be necessary – the topic of this Toolkit, and

• must be proportional.

Therefore, the treatment of the data and its elaboration must be contrasted to offer transparency in the field of justice and the user can choose, against any potential or actual consequences of data processing to those affected, encompassing the different ways in which an individual can be affected positively or negatively. The true fact is that it cannot be known or inferred that, because a Professional Lawyer appears published in the IRJ, due to the fact that he has obtained poor results, deriving such an opinion is not fundamentally correct, since it may just be a part of the task to which the professional is dedicated. In addition, the respondent indicates that since the edition of sentences online legal consultants has been spreading the dissemination and knowledge of the same, associated with professionals and therefore have to have the expectation of appearing with your analyzed or referred data. In addition, add a series of minimization mechanisms and additional guarantees.

In this case, it was about providing information to citizens, the general public, general and to the group of interested parties, who can meet the best lawyers in each of the specialties and provinces where they practice, having made the claim gives a treatment of data extracted from judicial resolutions, and value them by carrying out a ranking at various levels and specialty. The data of the lawyers are known since they appear in news, internet, without consultation limitations.

The treatment they have done is necessary to reach the published rankings, since

third parties will not be able to manually carry out the same operations to know

the best lawyers in each specialty.

The work carried out by the respondent has been widely publicized in the legal world, the

“legaltech” sector – reference to the use of technology and software to offer services

legal services- as evidenced by the delivery of the 1st Startup Advocacy award, granted-

do by the General Council of Spanish Lawyers in 2019 to the claimed, so

Affected attorneys and solicitors may have expectations that their data relating to

tioned with the appearance in sentences are treated.

Therefore, having defined the types of interests, the need and the nature of the treatment,

ment, the rights of those affected, the conflict of rights, and respect for the content

essential that of the owners of the data, in this specific case it is appropriate to consider that

there is prevalence of the legitimate interest of the claimed party.

Furthermore, the claimed party deploys a wide variety of international controls.

us, documents them, and grants control to the professionals who own the data they process.

The guarantees offered are, in principle, adequate for the processing and sufficient

that not only refers to professional information, but only the ex-profiles are published.

excellent, treats the minimum possible data, each lawyer can access the way in which

that the result has been obtained, and the rest of the information appears pseudonymized,

with unconditional cancellation guarantees for anyone in a very short period of time.

weather. The risk of damage to the right of the interested party, if it occurs,

is mitigated by the set of means that the defendant has established in different

processes and in different phases.

Finally consider, in line with the allegations to the proposal, that the valuation of the in-
legitimate interest that is carried out cannot be broken down in this case into phases such as pre-
tends the claimed, given the dependence of the result of the treatment and its objective and co-
connection from the beginning with the processes that comprise it. In practice, it can be identified
a treatment as the set of operations aimed at achieving a certain fi-
purpose that are legitimized on the same legal basis. Each treatment will include a series
of operations such as, for example, the collection, registration, organization, structuring,
consultation or use of the data. It is the treatment activity that must be included in
the registration of activities in the previous moment before its start-up,
not its phases.

eleventh

"Right to treatment information"

In the case of the claimed, since March 2017 it has carried out data processing,
crossing those of the census, those of the sentences and those obtained with their tools,
which was basic "information relating to an identified or identifiable natural person"
name and surnames in a sentence or judicial resolution, ends after several processes of
debugging, statistics and algorithmic tools in creating new categories and
data associated with that person.

The guidelines on automated individual decisions and profiling interpret that a
profiling can be described as complex when the following aspects are evaluated

A) the level of detail of the profile

B) the completeness of the profile,

C) the consequences of profiling

D) The guarantees aimed at guaranteeing the loyalty, non-discrimination and precision of the pro-
profiling process

E) Obtaining the data that is treated from sources external to those of the entity that arrives

performs the profiling action, for example, distinguishing for example between clients of

the entity or that they were not.

In any case, it is also that the processing of personal data is

transparent, as provided for in article 12 of the RGPD.

In this case, the profiling carried out is offered on the website of the claimed party as

product to users, including not only people looking for professionals

them, but the professionals themselves, informing the claimed that about SEVEN THOUSAND profes-

professionals of the legal profession are registered in their profile and each month contribute about FIVE

THOUSAND RESOLUTIONS AND JUDGMENTS, accessing estimated each month in

a proportion of 20% of the 180 thousand monthly user visits that occur.

The treatment information is part of the essential content of the right to protection.

data tion. All data processing, including profiling, must be reported.

This obligation implies that the companies that carry out profiling must report

of said treatment with clarity and transparency. To comply with this principle,

companies (as recommended by the AEPD) have the option of making available

of customers the information indicated by the regulations, in particular in art. 11 AM

LOPD and in arts. 13 and 14 of the RGPD, through two information layers. The first

layer would include the essential points of treatment, while the second layer facilitates

would provide complete information on data processing.

Article 13 of the RGPD specifies the information that must be provided to the interested party when

where the personal data is obtained from it: although in this case, they are not obtained by

the one claimed directly from those affected, but through the official page of the Council

General of the Advocacy, and on the web, of other controllers without identifying-

the. Article 14 of the RGPD deals with the Information that must be provided when the data

personal data have not been obtained from the interested party, which would correspond to this

case. Bearing in mind that data is also extracted to profile and rank

professionals, which increases the risk forcing a proactive activity in the

provision of the information.

The absence of information to the interested parties constitutes the imputation of the infraction of the

article 14 of the RGPD, which indicates:

1. When the personal data has not been obtained from the interested party, the person in charge

of the treatment will provide you with the following information:

a) the identity and contact details of the person in charge and, where appropriate, of their representative.

sitting;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined, as well as the basis

legal treatment;

d) the categories of personal data in question;

e) the recipients or the categories of recipients of the personal data, in their

case;

f) Where appropriate, the intention of the controller to transfer personal data to a destination

citizen in a third country or international organization and the existence or absence of

an adequacy decision by the Commission, or, in the case of transfers indicated

given in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to

adequate or appropriate safeguards and the means to obtain a copy of them

or to the fact that they have been lent.

2. In addition to the information mentioned in section 1, the data controller

The process will provide the interested party with the following information necessary to guarantee a

Fair and transparent data processing with respect to the interested party:

a) the period during which the personal data will be kept or, when this is not

possible, the criteria used to determine this period;

b) when the treatment is based on article 6, paragraph 1, letter f), the legal interests

gitimos of the person in charge of the treatment or of a third party;

c) the existence of the right to request from the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, and to oppose the treatment, as well as the right to portability

of the data;

d) when the treatment is based on article 6, paragraph 1, letter a), or article

9, paragraph 2, letter a), the existence of the right to withdraw consent in any

any time, without affecting the legality of the treatment based on consent.

lie before your withdrawal;

e) the right to file a claim with a supervisory authority;

f) the source from which the personal data comes and, where appropriate, if they come from

public access fountains;

g) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases, information

significance on applied logic, as well as the importance and consequences pre-

views of said treatment for the interested party.

3. The data controller will provide the information indicated in sections 1

and 2:

a) within a reasonable period of time, once the personal data has been obtained, and no later than

within a month, taking into account the specific circumstances in which

said data is processed;

b) if the personal data is to be used for communication with the interested party,

at the latest at the time of the first communication to said interested party, or

c) if it is planned to communicate them to another recipient, at the latest at the time

that the personal data is communicated for the first time.

4. When the person in charge of the treatment projects the subsequent treatment of the data

personal data for a purpose other than that for which they were obtained, will provide the

interested party, before such further processing, information about that other purpose and any

any other pertinent information indicated in section 2.

5. The provisions of sections 1 to 4 shall not apply when and to the extent

gives in which:

a) the interested party already has the information;

b) the communication of said information is impossible or supposes an effort

disproportionate, in particular for processing for archival purposes in the public interest.

public, scientific or historical research purposes or statistical purposes, subject to the

conditions and guarantees indicated in article 89, paragraph 1, or to the extent that

the obligation mentioned in section 1 of this article may make it impossible or
seriously impede the achievement of the objectives of such treatment. In such cases, the
responsible shall take appropriate measures to protect the rights, freedoms and in-
legitimate interests of the interested party, including making the information public;
c) the obtaining or the communication is expressly established by the Right of
the Union or the Member States that applies to the data controller and
that establishes adequate measures to protect the legitimate interests of the interested party.
do, or
d) when the personal data must remain confidential on the basis of the
basis of an obligation of professional secrecy governed by Union law or
of the Member States, including an obligation of secrecy of a statutory nature.
estuary."
In relation to 14.2.b), the assumption that concerns us here, for the sake of transparency and
the right to information, the legitimate interests of the person in charge or
a third party, although the European Committee for Data Protection and the Authorities of
Data Protection in its Guide on the duty of information consider as "good
practice" include the weighting performed.
To comply with this principle, companies (as recommended by the AEPD)
have the option of making available to customers the information indicated by the regulation.
tive, in particular in article 11 of the LOPDGDD and in arts. 13 and 14 of the RGPD, to
through two information layers. The first layer would include the essential points of the work.
treatment, while the second layer would provide complete information about the treatment.
data lie.
Recital 60 links the duty of information with the principle of transparency, by
establish that "The principles of fair and transparent processing require that the
interested party of the existence of the treatment operation and its purposes. The person in charge of

treatment must provide the interested party with as much additional information as necessary to ensure fair and transparent processing, taking into account the circumstances and the specific context in which the personal data is processed. It must also be reported the interested party of the elaboration of profiles and the consequences of said elaboration. If personal data is obtained from data subjects, they must also be informed if they are obliged to provide them and the consequences if they do not do so […]".

In this order, article 12.1 of the RGPD regulates the conditions to ensure its effectiveness. materialization and article 14 specifies what information must be provided when the data are not obtained from the interested party.

The respondent alleges that the large number of affected makes disproportionate the fact that addressing each and every one of those affected, has managed to inform a part of the professionals of the legal profession, "after the campaign of sending informative e-mails", and appreciates that you have searched for avenues of information that remain open, including contacts with the Bar Association and the General Council of Lawyers, so that the treatment of data on the group is not unknown.

The defendant explains in a general way for the public on its website the process of

allocation of IRJ and other tool points, but for collection purposes, data processing, exercise of rights and other mandatory aspects of article 14 of the RGPD, it does not, because on the web it is not addressed to legal professionals or of the Procura, neither mentions them nor contains the information elements expressed and unified in a clear and concrete way, in a specific section for those affected. The

documented verification of in the information and in the efforts applied in a way

individual, it is no exception that at least these informative extremes are contained in the

Web.

Considering the provisions of article 58.2 of the RGPD, which establishes:

“Each supervisory authority shall have all of the following corrective powers

listed below:

a) (..)

b) send a warning to any data controller or data processor when

the treatment operations have infringed the provisions of this Regulation;

c)...”

In the case analyzed, efforts are made to provide information

individualized of the group of lawyers and solicitors and the extensive information contained

on the web, together with the contacts and knowledge of the professional bodies represented

sentative. So, although the commission of the infraction of the aforementioned article is proven,

14 of the RGPD, taking into account the circumstances that occur in the entity responsible for

the infraction, given the proactive measures implemented, suppose that the

warning for the infringement of article 14 of the RGPD, as contained in article

58.2.b) of the RGPD that indicates as power of the control authority:

“address to all responsible or in charge of the treatment a warning when the

treatment operations have violated the provisions of this Regulation;”

In addition, related to it, it is also added among the corrective powers that con-

contemplates article 58 of the RGPD, in its section 2 d) the possibility of “ordering the responsible

responsible for the treatment that the treatment operations comply with the

provisions of this Regulation, where appropriate, in a certain way and

within a specified time…”

In this case, considering the circumstances expressed in relation to the

Appreciated non-compliance, from the point of view of data protection regulations

personal, the claimed entity is required so that, within the period indicated in the

operative part, adapt to the personal data protection regulations the information

offered to lawyers and solicitors whose data is processed for the

elaboration of a ranking.

"Accurate and truthful data"

XII

With regard to obtaining and maintaining accurate and truthful data, the

certainty that the tool implemented by the claimed party is fed by data from the

web, and certainly does not extract all the resolutions that could affect the data

resulting from all the professionals who are and are exercising litigation tasks.

The respondent stated that she does not take data from the official publication of judgments of

CENDOJ, a fact that, as stated, would not affect the accuracy of the data since that

information or the like can be obtained through search engines,

circumstance that does not prove. With this, it starts from the basis that the data obtained from

an official source, but of what there is and is found in the search engines.

The RGPD imposes on the data controller the obligation to keep updated

the data because it says that the data will be accurate "and, if necessary, updated";

necessity that is connected with the purpose of the treatment.

The RGPD defines as a principle in its article 5:

"1. The personal data will be:

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the personal data to be erased or rectified without delay

that are inaccurate with respect to the purposes for which they are processed ("accuracy");"

Article 4 of the LOPDGDD indicates the following:

1. In accordance with article 5.1.d) of Regulation (EU) 2016/679, the data will be

accurate and, if necessary, updated.

2. For the purposes provided in article 5.1.d) of Regulation (EU) 2016/679, no

will be attributable to the data controller, provided that the latter has adopted all the

reasonable steps to promptly remove or rectify any inaccuracies in the

personal data, with respect to the purposes for which they are processed, when the ine-

xacts:

a) They would have been obtained by the person in charge directly from the affected party.

b) They had been obtained by the person in charge of a mediator or intermediary in

in the event that the regulations applicable to the sector of activity to which the person responsible

of the treatment establish the possibility of intervention of an intermediary or me-

regulator that collects in its own name the data of those affected for its transmission to the res-

responsible. The mediator or intermediary shall assume the responsibilities that may arise

be used in the event of communication to the person responsible for data that does not correspond

with those provided by the affected party.

c) They were subjected to treatment by the person responsible for having received them from

another responsible by virtue of the exercise by the affected party of the right to portability

conform to article 20 of Regulation (EU) 2016/679 and the provisions of this organic law.

d) They were obtained from a public registry by the person in charge.

Recital 39 adds that all reasonable steps must be taken to

ensure that personal data that is inaccurate is rectified or deleted.

The principle of accuracy implies that the data controller who has

personal information will not use such information without taking steps to ensure,

with reasonable certainty that the data is accurate and up-to-date. In turn, the

The obligation to ensure the accuracy of the data must be considered in the context of the

purpose of the treatment.

For the violation of article 5.1 d) of the RGPD, it was initially considered that the

claimed did not reflect this principle, since not all of the

actions of the professionals who are scaled, being able to harm them

or benefit them, not adjusting to the veracity of the results of the treatments

made to the evaluated lawyers and solicitors.

The respondent has stated that the purpose of the treatment carried out through

its tool grants from the analysis of results comparative indices on

yields, success among other elements, although part of the base that does not contain all

the resolutions that can be issued.

The information included in the ranking of lawyers represents a sample

statistics and, therefore, is not exhaustive and does not presuppose the absence of other areas of

intervention of this lawyer, who may, for example, carry out other activities, including

advice, in addition to its possible activity before the courts.

In one section, the respondent reports the following: “Make your legal decisions

supporting you with data. We give you the information you need to make decisions

more accurate thanks to our judicial analytics tool, which extracts information

of millions of court cases Discover our method” is clicked and reported

“JUDICIAL ANALYTICS. Your decisions based on data “Through our

Judicial Analytics tool we reveal data never before available on

lawyers, judges, and other parties, as well as the areas of law itself, from

of the analysis of millions of judicial resolutions.” In the “how it works” section,

indicate the sources of data collection.

The fact that not all resolutions are analyzed does not mean that the data is not

exact, since it explains how that ranking was reached. Also, any

professional can request rectification by providing new sentences, or request that

remove the information from your data. Thus, there is reasonable certainty of the

their accuracy and updating.

Within the indicated framework and with the information existing at this time, it is considered that

the data included in the ranking of lawyers complies with the principle of accuracy

referenced.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: ADDRESS a warning to E4LEGAL ANALYTICS, S.L., with NIF

B70514831, for an infringement of article 14 of the RGPD, as indicated in article

83.5.b) of the GDPR.

Based on article 58 of the RGPD, in section 2 d), the claimed party is required

to complete the informative literal addressed to the interested parties, granting a term of

two months to send to this Agency the complementary actions carried out

cape. It is also noted that not meeting the requirements of the AEPD may be

considered as a serious administrative infraction by “not cooperating with the Authority of

control" before the requirements made, and such conduct may be sanctioned with

pecuniary fine.

SECOND: FILE the violations of articles 6.1 and 5.1.d) of the RGPD.

THIRD: NOTIFY this resolution to E4LEGAL ANALYTICS, S.L.

FOURTH: In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a period of one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and paragraph 5 of the additional provision

fourth of Law 29/1998, of 13/07, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Registry

Electronic Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through

any of the other records provided for in art. 16.4 of the LPACAP. You must also

transfer to the Agency the documentation that accredits the effective filing of the appeal contentious-administrative. If the Agency was not aware of the filing of the contentious-administrative appeal within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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