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The Provision of Legal Services to Consumers Using LawTech Tools: From "Service" to "Legal Product"

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Abstract

We need legal services, but not always and, in any case, lawyers. There are other companies on the market, real business structures, which represent a highly recommended alternative to traditional law firms. These companies, mostly known by the English term "LegalTech" startups, offer their "products" to the final consumer. In this sense, they are able to facilitate access to, for example, writing of documents, the presentation of claims or the possibility to finding a suitable lawyer for the consumer's case for free or at a very low cost. "LawTech" tools are especially suitable for small claims that, otherwise, and despite the European process established for that purpose, would not be suited. On the other hand, the provision of a "legal product" entails the provision of a "digital service or digital content", so the issue should be linked to the recent and controversial Directive (EU) 2019/770, of Parliament European and of the Council of May 20, 2019 regarding certain aspects of the contracts for the provision of digital content and services. To distinguish between the provision of the legal service and the provision of the digital service or digital content is not always an easy task and, nevertheless, it is meaningful because it will affect the determination of the applicable norms; for example, regarding the lack of conformity or the mistakes or biases of the algorithm. Likewise, the explainability of the algorithm is a first-order issue in consumer's protection, in relation to the pre-contractual information that should be supplied to them.

Keywords

Legal Tech Start-Ups, Law Tech Tools, Lawyers, Consumers, Digital Content, Digital Service, Intermediary Platforms, Lack of Conformity, Algorithm's Failures, Algorithm's Explainability, Pre-Contractual Information, European Law

1. Introduction

The goal of this work is to present evidence of the transformation that the legal sector of the economy is undergoing and to study how it can affect Directive (EU) 2019/770, on some aspects of the contract for the supply of digital content and digital service to legal services marketplace. After framing the transformation that is coming in the market of legal services (1.1.), I will proceed to differentiate two terms, that are often used by lawyers, LegalTech and LawTech (1.2.), and to distinguish legal advice from supply of legal information (1.3.).

1.1. Framing the Phenomenon

The legal profession is undergoing major changes leading to a great transformation process that will take place in the coming years [1]. One of the factors, then, there are others such as globalization [2] and liberalization of the professional services sector and, in particular, legal service [3], that is driving the transformation is the implementation of "smart" technology to perform tasks that, recently, were carried out by lawyers or staff working in legal offices (*paralegals*). The development of legal tools based on artificial intelligence [4] is given both for application in law firms, regardless of size [5], although with greater impact on large firms, as to be accessible by the general public, that is, by consumers and small and medium enterprises. In relation especially to consumers and users, their protection appears as one of the purposes that is pursued by the statutory provisions liberalizing the services sector and, in particular, the legal profession. In this way, it can be mentioned the *Legal Services Act* (UK and Wales) that sets forth, in Part I, sec. 1 (1) (d) as one of the objectives of the regulation "*the promotion and protection of consumers*". On its own, the Spanish *Proposed Act* on services and professional associations provides, in Art. 1 para. 2, that public authorities shall ensure the protection of consumers and users in response to the impact that the provision of professional services may have on their rights. Arts. 50 to 53 take care of the quality of service and protection of consumers and users by, first, the need to be informed properly of services and, second, and the creation of certification schemes of services that will be supplied by the new companies that will be constituted under the application of the future Act. Furthermore, the draft outlines that disputes caused by the provision of these services, should be able to be resolved extra judicially.

The emergence of new players in the market that offer legal services without being lawyers [6], based on the creation of legal tools that include "intelligent" components accessible to everyone, leads us, firstly, to shift the focus from LegalTech to LawTech and, secondly, to refer to "provision of legal information" in digital form instead of "legal advice or counsel".

1.2. From "LegalTech" to "LawTech"

The term "LegalTech" is already used among lawyers [7]. It handles with the application of new technologies to the world of law, specifically, to certain tasks that lawyers usually perform, albeit, in the field of justice, are more and more

applied [8]. Practitioners have already been operating, for a long time, with computer programs that facilitate their work, with increasingly sophisticated databases and with electronic communications via *smartphone* (e.g. WhatsApp). This technology is not unknown to them. Currently, it is about going one step further by incorporating high-level technology into their daily work. The algorithm [9] with learning capacity and, more broadly, artificial intelligence [10] will not only enable the work of the lawyer in a sort of human-machine collaboration, but tasks that, until now, human intervention is needed, will be developed—they are already being developed—autonomously [11], such as, the analysis of cases (e.g. E-discovery, Big Data analytics), the drafting of a legal document such as a written complaint, the automated drafting of contracts or legal robots that provide legal information to clients [12]. Scientifics and developers are working on computing models, in relation to the legal reasoning, in order to enable the development of applications that draw legal arguments directly from the legal materials (rules, judgments, journal articles…) so that they can predict judgments, respond to complex legal issues or make decisions with legal relevance [13].

Based on the classification proposed by Solar Cayón, one can expose the legal tasks that are beginning to be automated thanks to artificial intelligence tools [14]: 1) legal research in relation to the tasks of search, selection and analysis of legal information; 2) regulatory *compliance*; 3) *due diligence* or *legal* audit tasks; 4) predictions analyzing the behavior of judges and courts in order to better gauge the success or failure of the action's filing; 5) *E-discovery* or selection of evidence; 6) automate elaboration of personalized legal documents through applications; 7) the resolution of online disputes, which are known as ODR [15].

"Smart" tools have arrived to stay with us allowing lawyers to devote themselves to complex intellectual work that, today, intelligent machines still cannot perform [16]. These tools created by technology companies [17], mainly *starts-up* [18], in which experts in computer science and jurists work together, are often applied in B2B relationships, that is, they are developed for lawyers and their firms. However, frequently, most of these tools are available to the consumer or end-user getting access to certain legal services with no need—always and in any case of a lawyer, for example, a contract review, the drafting by itself of documents with legal information, claims to airlines, chatbots, among others [19]. Notwithstanding, at the beginning, all this set of technological tools, which can be used directly by the client, were bunched within the term LegalTech [20], the truth is that, in recent times, they have been named as LawTech with the clear intention of differentiating them from those addressed to law firms [21]. Therefore, they are considered as B2C legal tools, where the consumer is not properly a "customer" [22], but is a user (current or potential) of automated legal services, under which, legal information is offered instead of legal advice for a small fee or even free of charge. It is because of the low cost that the consumer opts for the provision of online legal services being the digital element as relevant as for deciding to contract such services. If the legal service is not provided online, she

prefers not to get access to the legal service. The "client" would be the person (physical or legal) that requests a specific legal service from an expert, that is, a "personalized" legal service (e.g. advice, taking care of certain affairs).

These are consumers that represent a "latent" [23] or even "non-existent market" [24] for the legal services market. They are citizens who, due to their low incomes, cannot afford attorneys' fees nor to apply for legal aid, for claims that are not of particular worth. This request for *small claims* is not especially worthwhile and sometimes consumers do not have the training to write the document themselves and file the complaint. The legal services provided online, by companies, which are an alternative to the traditional law firm, means for these individuals an attractive choice because it enables the access to justice at low cost [25]. Thus, they provide them directly with automated legal services or access to cloud services where they will find the necessary applications so that the consumer can carry out, himself, tasks that up to now are performed by legal practitioners, sometimes, with the help of a virtual assistant to successfully manage the proposed task.

On these legal services provided using LawTech tools, in relation to the *Directive* (*EU*) 2019/770 *of the European Parliament and of the Council of* 20 *May* 2019 concerning certain aspects of the supply contracts digital content and digital services (OJEU L 136, 05.22.2019), that I will focus in this work. In this sense, I should warn that I will use the term "*legal digital services and legal digital content*" to refer to those that are supplied to the consumer using LawTech tools.

1.3. From Personalized Advice to the Supply of Information as Subject Matter of the Provision of Legal Service: From "Service" to "Legal Product"

The human expert to whom advice is sought in person is giving way to consumers seeking that information directly on the internet. Even, that they look for the professional directly in the network and select it based on the opinions that other consumers have poured, in certain platforms, on him and the service that he has offered. There are price comparators between lawyers and reverse auctions where the professional who offers a lower price for the legal service requested by the consumer is hired. In addition, there is a whole range of technological tools that allow consumers to make themselves tasks (do-it-yourself) that, so far, were entrusted to lawyers. They are quick solutions, at the click of a button, easy and affordable from an economic point of view. Many of them, due to the laid down online reputation system, also generate enough trust in the consumer to make their use reliable.

This digitalization of the legal profession allows practical knowledge to be provided through a process analogous to mass production but covering the specific needs of the consumer. It is what has been called "*mass customization*" [26]. It does not handle, for example, with printing a standardized document in which the consumer just inserts their personal data. It deals with offering computer document assembly systems in which, after a series of questions and user's

answers, amendments are made to the document, clauses are eliminated, or added, generating a document based on the user's personal needs.

The emergence of machines, increasingly able to manage and implement practical and legal knowledge, entails that the provision of human legal advice gives way to the supply of legal information without involving a traditional attorney. This means that practical knowledge is becoming a "commodity", so that routine tasks can become standardized practices, which can be performed by an unqualified person, a layman in law, if he has the right technological tools [27]. The same happens with the intermediation platforms between lawyers and clients, in which the collaborative economy makes that services that were not marketable become one more commodity. This opens the market to the provision of online legal services at very low cost or free of charge, which clearly affects the fees that the traditional lawyer can request from his client, in the sense that he must change the way of charging his services [28]: instead of the traditional per hours, fixed prices are proposed for certain types of services or flat rates are offered [29]. They should face the "more for less" [30].

On the other hand, the provided legal information delivers, in fact, a "consumer product", which is the result of the "practical knowledge", have been digitized. It has become an "information good", a "consumer product" that could be featured as follows: first, it is a *non-rival product*, it does not disappear—it is not spent—if one uses it to solve a problem, anyone can use it after to be used by others; second, it is *non-excludable*, that is, one cannot exclude that other people use it, further, without paying anything in return; third, the *use and re-use* of knowledge gives rise to more and new knowledge [31]. Lawyer not only answers legal questions—that a machine can do now—but also goes further, especially taking into account the interests of his client, reasoning and judging all the elements of the case presented. The separation between the advice and the provision of information is that the former implies the application of legal knowledge to the particular circumstances of each case, that is, advice implies "individualization" [32] that, in the mere transmission of information, it is absent.

In this line of thinking, certain legal tasks into which the provision of a legal service can be broken down, turn into "products" that are "sold" at low cost to the consumer. Thus, within the different tasks that can be distinguished in a legal service, some of them continue being qualified as "services", and while others rather become a "good" to the extent in which they have been "commodified". So, the legal term "service" should be reserved for that task for which, at least, nowadays, human intervention (usually, a lawyer) is necessary; while those originated by intelligent machines should not be properly qualified as services, but as "products" [33]. The provision of a service is shaped by reliability and based on the trust in the one who provides it, usually based on their professional qualities, not being indifferent to the creditor of the service who provides it. Note that I am referring to professional services in which a particular qualification is required, often highly qualification and specialization. I am not referring to unskilled jobs, where the debtor's person may be indifferent. On the other hand,

the service turned into a "product" does not focus on the figure of the latter, but on that of the creditor. It is a standardized service/product, massively developed that is customized according to the interest of the consumer-customer. The epicenter is entirely the consumer, being indifferent who performs the task. Understood in this way the use of the term "service", in these cases, is completely empty of meaning. It is closer to the supply of goods that have yet to be produced instead of the service.

In practice, many of the LegalTech companies that use LawTech tools to give rise to "legal information assets" offer, additionally, legal services in which people (lawyers) intervene, such as acting on behalf of the client in a negotiation or trial [34]. Hence, they offer the consumer a "package" that contains different elements, of which some are "products", others are properly "services". This "package" means a *non-typical contract*, which can be mixed or in-kind, which includes subject matters that correspond to some contractual types. In addition, a particularity is added. Actually, the "product"—which is the "good of legal information"—is produced in digital form, that is, it is digital content, which, in some cases, is preceded by the provision of a digital service.

2. Digital Content and Digital Services

After exposing the concept of "digital content and digital service" settled by Directive (EU) 2019/770 (2.1.), I will present some of the legal tools that already exist in the "legal ecosystem" [35], which can be accessed directly by end-user or consumer (2.2.). The commonly adage in the world of finance ("*banking services are needed*, *but not always banks* [36]), begins to come true in the world of law, that is, "*legal services are needed*, *but not always lawyers*". Finally, I will analyze the relationship between the provision of legal services and the provision of legal digital content and/or services from the standpoint of the legal nature attributed to the contract B2C (2.3.).

2.1. The Concept in Directive (EU) 2019/770: Exclusions

Well-known is the controversy that it has been generated about what exactly should be understood by "digital content", what cases should be embraced or excluded, if "digital services" were implicitly included into the wording "digital content", since Directive 2011/83/EU on consumer rights [37] defined "digital content" as "*the data produced and supplied in digital form*" (Art. 2 para. 11) [38]. Ultimately, Directive (EU) 2019/770 renders the concept of "digital content", provided by Directive 2011/83/EU, encompassing "digital services" (Art. 2 para. 2) only when: a) it allows the consumer to create, process, store or get access to data in digital form, or b) it allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service. It should be remembered that the subjective scope of the Directive corresponds to a trader and a consumer as personal elements of the legal relationship [Art. 2 No. 5 and No. 6 Directive (EU) 2019/770], although the possibility remains open for Member States to include SMEs in the transposition

rule by equating them to the consumer (Recital No. 16).

Recital no. 27 of Directive (EU) 2019/770 clarifies that, if the main purpose of the contract is the provision of professional services—regardless of the legal nature attributed to it by the national law of each Member State (Recital no. 12) in which there is human intervention because they are supplied personally, this contract will be excluded from the scope of the legal provision, even if digital means have been used to obtain the product that will be the matter of the provision. Among the different cases listed in the recital, there is the exclusion of "legal advice", obviously provided by a professional. This rule is reflected in Art. 5 lit. a of the Directive, in which it is stated that "*services other than digital services*" are excluded.

Cases of "digital services" are, for example, video or audio exchange, file hosting, word processing, cloud computing services or social networks [Recital no. 19 Directive (EU) 2019/770] [39].

Based on the above, LegalTech tools, for lawyers or which are implemented in law firms or corporate legal advice firms to relieve them of certain tasks, are outside the scope of this Directive, to the extent that the final product, a result thereof, does not affect the relationship between the attorney and the client, that it is developed as personal advice, no matter the mean by which they communicate in a conventional manner or by electronic means [40].

Another issue is the LawTech tools that an end-user can use with no involvement of a human being or when he or she just supervises the creation of a "product" by, usually, the algorithm that the technological tool in question comprises. This last case would, *prima facie*, be excluded from the scope of the European Directive. Indeed, it could be understood that a digital tool has been used by the human to supply a product that is part of the purpose of providing the legal advice. Thus, it is not in a proper sense a "digital service", albeit the "product" supplied could be understood as "digital content" when dealing with data produced and supplied in digital form. In short, the provision of a "non-digital" service, such as the provision of a legal advice, may include the provision of "digital content or digital service", to which Directive (EU) 2019/770 should apply when the end-user is the recipient of it.

I will focus immediately on LawTech tools that already exist in the market, which consumers can use, when appropriate, in order to defend their legal position with no-human intervention.

2.2. DoNotPay, Lisa, Reclamador.es, ElAbogado.com, Awo, Anwalt.de and Many Others

The studies analyzing intelligent technology, applied to the legal field, refer to a myriad of apps and tools to which the consumer can directly access [41], using its PC, tablet or smartphone [42]. For instance, the review of a lease contract, a document can be automatically written to claim an amount of money from an airline, be advised by a robot, to interact with a virtual assistant or to be driven to a platform through which the consumer can contact a lawyer, who is an ex-

pert in a specific area. Four cases I will discuss more carefully below. Although I will present them as independent LawTech tools; in fact, in practice, they are combined, giving rise for the consumer to "legal products" (e.g. document writing, advice, intermediation, etc…). Thus, the automated process of claim amounts may be preceded by a chat bot with which the end-user interacts and from which he/she can have information about its legal situation.

Legal robots, that process a huge amount of data, can "understand and reason" by issuing a judgment or, even making a decision like, in the medical field, the IBM Watson robot performs, currently, they are only available to some law firms (e.g. Ross) [43]. They are not accessible to citizens, which does not mean that they will not in the future [44]. Therefore, I am not going to treat such kind of robots in this work. Instead, I will pay attention to the supply "legal" digital services (2.2.1.) and to "do-it-yourself" tools (2.2.2.).

2.2.1. Provision of "Legal" Digital Services: Intermediary Platforms of Legal Services

The intermediary platforms, in the collaborative economy, have also reached the area of law practice. Nowadays, lawyers and their firms are not only known for their websites, but also offer their services by being contacted by their clients, through these platforms, talking about the "uberization" of the legal sector. In addition, to facilitating contact between the client and the lawyer, they value and rate them, they offer a very broad base of law firms, make a filtering based on different criteria of the lawyers such as, for example, their expertise and they offer all the information related to schedules, fees, time that the lawyer takes to respond to the message sent by the client, etc… Likewise, the consumer can access the comments that, on the lawyer touched, other clients have left on the platform [45].

In the "terms and conditions of use" of this intermediation service it is stated forth that the service provided is not intended to be a legal advice, but only the provision of legal information. The fact of answer, just in case, some of the questions asked by online users, does not mean that a contractual relationship is concluded between the lawyer and the consumer.

On the Rocket Lawyer Spain website, it is prescribed that: "*Rocket Lawyer does not participate in the lawyer/client relationship. The relationship between the lawyer collaborating with the Rocket Lawyer Service and the subscribed user is totally independent from Rocket Lawyer. The collaborating lawyer is solely responsible for providing legal services*".

The company that manages the platform is usually a technological start-up, instead of a company dedicated to the offer legal services. Some platforms for lawyers, for instance, in Spain are Abogalista, elAbogado.com, tuAppbogado, Abogados 365, etc… Globally, among others, one can quote Rocket Lawyer, Anwalt.de, FlatLaw, LegalZoom, Avvo, Got.Law.

The largest intermediation platform, at present, is Avvo, in the USA. The user has free access to a directory of lawyers, each of whom has a profile in which his

or her expertise stands out. The platform has a system to rate lawyers from 1 to 10 based on an algorithm that analyzes all the data available on the platform and on the Internet (*Big Data*) *about the expert. Thus, it establishes a ranking among lawyers in a given legal area. The income comes from the publicity that lawyers themselves can contract with the platform to offer their services* [46].

In Spain, the most important intermediation platform, currently, is elAbogado.com. In the operation of this platform it is the lawyer who decides the fees he will pay to the owner for each contact with a user that he provides, regardless of whether that user becomes a client or not. Once the contact has been verified, an algorithm decides which professional corresponds to the potential client taking into account a series of elements such as the fees that each lawyer pays to the platform for the contact, their response time or the satisfaction of other users.

The structure of these platforms, as is known, is triangular ("*two-sided market*" [47]) as long as they remain in pure intermediation; in some cases, they may receive remuneration for the performance of their service [48]. When they intervene establishing conditions to the lawyer-client relationship, such as fees or working hours, they become a contractual party face the end-user and as an employer face the lawyer whose services the former has been hired. In this case, the doctrine emanating from the leading case in Europe, about these platforms, which, as is known, is the case of Uber facing the Professional Association of Elite taxis, which resulted in the decision of the European Court of Justice of 20 of December 2017 should be applied. In this sense, one can consider that its provision goes beyond brokerage since they provided the legal services required by the end-user [49].

Thus, for instance, the Legalzoom platform selects and supervises its lawyers. However, the user is advised that the company does not recommend or support any particular lawyer. Specifically, it is noted that: "*When applied, LegalZoom may provide certain services for access to lawyers and present lawyers to our visitors by different means, including as examples* 1) *legal assistance plans*; 2) *lists of directories of third party lawyers*; *and* 3) *contracts of limited scope faced third parties*" [50].

Other platforms have similar "*terms and conditions*" *and, although it is warned that they do not recommend, nor link to anyone, it is affirmed that they verify or select the lawyers who advertise in them. They insist, however, that they do not guarantee or take responsibility for the quality of the information provided or for the specific qualification of those who advertise on their platform and claim to be a lawyer. Thus, for example, Legaliboo makes clear on its website that*: "*Legaliboo does not directly provide legal advice, but rather provides tools for the user to make their own documents, or puts the user in contact with professionals*" [51].

The German Anwalt.de establishes a similar clause in its AGB: "5.1. *Mandatsverhältnisse über Rechstdienstleistungen kommen, auch sofern über anwalt.de vermittelt, nur unmittelbar zwischen dem Kunden als Rechtsanwalt und dem Rechtsratsuchenden als Mandanten zustande*" [52].

For the purposes of this study, it should be noted that the intermediation services of these platforms, which move exclusively in the digital market, are perfectly embedded in the concept of "*digital service*" established by Directive (EU) 2019/770 allowing that the user shares data, store data and interact with other users, as the lawyer who offers legal services or users that look for one. To the legal service itself, that is, to the advice provided by the human lawyer, the corresponding rules are applied according to their legal nature such as, for example, the service contract. Indeed, the platform, at first, provides intermediation services and the fact that its users are lawyers, does not imply that the platform provides any legal service. They operate like *Airbnb*, *Domestika* or *People per hour*.

On the other hand, collision between the use of these platforms and the respect for the ethical code of the legal profession [53] is another issue to deal with (e.g. Art. 21 para. 1 of the Spanish Code on ethics of the legal profession approved by the Plenary of the General Council of the Spanish Bar on March 6, 2019 [54]). Nevertheless, the treatment of this issue moves away from the purpose pursued with this work; hence I will border it. In any case, I would like to point out that these ethical standards are addressed exclusively to lawyers. In the new LegalTech scenario, it makes sense the allusion to general regulatory objectives taking into account a series of principles among of them the protection of consumers and users deserves a special consideration.

2.2.2. "Do-It-Yourself" Tools: Product of Legal Documents by the Consumer

Legal service providers allow the consumer himself to download certain tools directly from his website or from a space in the cloud to make himself, sometimes with the help of a virtual assistant, his own documents, such as a lease agreement, a contract for the purchase of a personal property or a will. This app uses an expert system based on a decision tree, through a series of questions, so that, depending on the user's answers, the document is produced by adding or removing clauses, words, or phrases from the original contract model retrieved. The program is simple and easy in the interaction with the user [55]. These systems employ machine learning and, although they still do not replace legal advice with human intervention, as they become more sophisticated, the latter will become unnecessary.

Legalzoom, an important company in the sector, based in California, allows the platform's users to prepare its documents through web applications. The documents are "personalized" presenting a high quality, thanks to the use of artificial intelligence tools, which have enabled the development of interactive software with the user. It also offers additional legal services such as direct advice by a lawyer. The fees charged vary according to the services provided, but lower if one compares with fees that should be paid if a lawyer were hired.

On its turn, Rocket Lawyer, like Legalzoom, enables that individuals and small business owners can prepare their legal documents based on a document tem-

plate without hiring a lawyer for a small fee ranging between 20 *and* 40 *euros. This company operates in Spain since* 2017. *Other Spanish companies that offer similar services are FormalDoc, Starting Legal and Okidoc* [56].

2.2.3. Provision of Digital Content That Involves a "Legal Product"

Two cases will be presented: the massive processing of identical cases (A.) and virtual assistants and chatbots (B.).

A) Mass processing of identical cases

Some LawTech tools, which end-users can access through the company's website—often a technological start-up, handles with claims of "small" amounts of money or small claims concerning, for example, flight delays, cancellations, lost luggage, fines in public car parks, train delays, etc... [57] On these websites, the user answers a series of questions, through a chatbot, where he basically gives information about his case, similar to hundreds of others and, through an automated process, a document is written that is passed to the user's signature, by virtue of which he authorizes the company to claim, on his behalf, the amount that is considered due. The claim, that is, the legal order, is carried out by lawyers who will defend, where appropriate, the end-user in courts, if an agreement is not reached, which is what is always intended in first place. Therefore, besides the supply of legal service, there is the "provision of digital content", which is the document or documents that the system itself originates to be signed, downloaded and saved by the end-user.

Well-known are the websites, for instance, in the USA, *DoNotPay* or *Flightright*, in Spain, *Reclamador.es* and in Germany, *wenigermiete.de*, which offer panoply of legal services some of which are free of charge.

DoNotPay allows the consumer to claim for undue parking tickets in the UK and in some states in the USA. It was launched in 2015 *on the basis of a computer application created by a student at Stanford University—Joshua Browder—when he was only* 19 *years old. Since* 2015 *it has managed to cancel around* 200,000 *fines worth approximately 4 million dollars, which is a success of* 65%. *The program asks the user a series of questions and, according to the answers he provides, analyzes whether the fine can be appealed or not. If it can be appealed, it break the user about their rights and the legal arguments in order to appeal, which are virtually identical to thousands of cases generating automatically the document to file the appeal by sending it directly to the corresponding municipal office. Originally, the process was done in writing, but now it is a chatbot that processes natural language, so that it maintains a conversation with the user in the style of, for example, Alexa (Amazon). This "service" is free for end-users. Currently, it does not only process claims for parking fines, but has also extended to claims for delays, flight cancellations, claims for repairs that landlords do not make in the flats they have rented or, even, asylum applications. It is easy to see that this expert system can be reached relatively quickly to other legal matters* [58].

On its turn, Reclamador.es, founded by Pablo Rabanal, is a Spanish company

that processes claims online in sectors, such as banking, insurance, and airlines. The company does not charge fees if the case is not won. It concerns usually modest quantities and the system works similarly to the one described for DoNotPay. After a series of questions to the user, based on their answers, the application determines whether the case can be appealed and, if so, informs the user about their rights by automatically generating a document by virtue of which the user authorizes the company, which has lawyers on its staff, to represent the consumer before the competent authority or, where appropriate, in the court. In 2018 *the company managed more than* 109,000 *claims successfully.*

Finally, wenigermiete.de is a German company, based in Berlin, dedicated to processing claims related to lease agreements. It became known by its tool that calculates what the lessee has overpaid if one compares with the rental containment tables. Currently, it also deals with other issues related to urban leases by processing, when necessary, with the intervention of lawyers, the claim settles in court by means of the permission document that produces the tool itself.

B) Virtual assistants and *chatbots*

Both virtual assistants and chatbots are artificial systems that allow humans to have "intelligent" conversations with robots [59]. They can listen, understand, reason (cognitive chatbot) and answer the questions asked. They process natural language and usually work with an artificial intelligence system based on *machine learning* and decision tree. In the legal field, they develop interesting functionalities: from customer service centers to managing the operations of a company through legal advice. With these assistants, the end-user can interact through a website, an application on the smartphone or to chat directly, that is, communicate by voice without writing any text [60].

A well-known case is, in the USA, that of LISA [61], *a combination produced between a virtual assistant and a legal document processor. Indeed, LISA listens to the disputants, their views, their demands, addressed the meeting to, finally, make a settlement proposal generated by the system itself in the form of electronic document. Besides this virtual assistant again it is worth to mention DoNotPay* (*USA, UK*), *Reclamador.es* (*Spain*) *or Lexi the Legal Bot* (*Australia*), *LawGeek LawBot, Docubot and many others.*

When the bot assists the consumer virtually in writing so that one interacts with it, one might think that a digital service is being provided. Nevertheless, according to how they are described in Directive (EU) 2019/770, it does not seem that one is coping with it because it is not a service that serves to create, store, process, check data in digital form or share data uploaded, stored or interact with other users; but rather it seems that one faces with the supply of digital content, which would be the data in digital form that represents the bot written conversation. Therefore, one should distinguish between the automated legal service provided and the provision of digital content, a distinction that is not always evident.

On the other hand, it is not unthinkable that personal assistants as Alexa style,

but that solve legal issues raised by the consumer, are embedded in tangible goods (e.g. loudspeakers like Amazon's Echo Dot) that can be acquired by consumer both in a physical store and online. In these cases, it must be taken into account that if the digital content is embedded in the good so that the absence of this content prevents the good from performing its functions (Art. 2 No. 3 Directive 2019/770), Directive (EU) 2019/770 will not be applied to such content (Art. 3 para. 4). In this case, Directive (EU) 2019/771, of the European Parliament and of the Council of May 20, 2019, concerning certain aspects of the contracts for the sale of goods [62] should be applied (Art. 3 para. 3).

2.3. Contracts for the Supply of "Legal" Digital Service and "Legal" Digital Content: Legal Framework

In relation to the legal nature of the contract for the supply of digital services or digital content, I focus on just some topics that seem to be problematic: first, the non-classification of the contract by the Directives (2.3.1.); second, the contract that contains elements belonging to different contractual relationships (2.3.2.); third, the onerous nature of the supply (2.3.3.) and, fourth and last, I will make some considerations about the lack of conformity (2.3.4.).

2.3.1. The Non-Classification of the Digital Service and Digital Content Contract in Directive (EU) 2019/770

Directive (UE) 2019/770, as Directive 2011/83/EU already did, does not qualify the contract under which digital services and digital content are provided, leaving this to national law [63]. As, clearly, it warns in Recital no. 12: "*This Directive should also not determine the legal nature of contracts for the supply of digital content or services and the question of whether such contracts constitute, for example, a contract of sale, services, rental or an atypical contract, should be left to the determination of national law*". Directive 2011/83/EU deliberately opted not to qualify the contract, so it allows any contract for the supply of digital content to fall under its scope of application in order to protect the consumer. Aspects as important as the conclusion, validity or nullity of these contracts are governed by national law. Accurately, in the study of the Transactional Proposal of June 8, 2017 [64] which has given rise to current Directive, albeit with some amendments with respect to the 2015 Proposal [COM (2015) 634 final], it was stressed, by scholars [65], that the contract for the provision of digital service and digital content could be classified, as the case may be, as a sale, exchange, swap of thing, services, or even bailment. Definitely, it was considered that, most likely, the contract contained elements of some of these contractual relationships giving rise to a "non-typical" contract, whose legal discipline could be extracted based on the known theories of that of absorption, combination or that of the preponderant element [66].

In fact, likely it will be the way to access the content or service the feature that will have a decisive weight when finding the legal nature of the contract that best corresponds to that access [67].

2.3.2. The "Legal" Digital Service and "Legal" Digital Content: Package of Different Elements

The provision of digital content and digital services is part of the contract concluded, in which, additionally, legal services are provided such as legal advice by a lawyer or the defense of the consumer before the corresponding public authority. That is, in addition to the complexity, in terms of the legal nature of the contract for the supply of digital content and digital service aforementioned, it should be noted that, when the digital service or digital content concern the "legal" field, the contract concluded combines different subject matters that do not necessarily all of them include a digital service or digital content rather just some of them. Then, the determination of the legal nature of the contract becomes more difficult.

This issue has not been unnoticed by the European legislator. Actually, Directive (EU) 2019/770 refers to the "package of different elements", that is, from the Law of Contracts approach, one copes with a "mixed" contract (and, therefore, "non-typical" one) that includes the provision of legal services besides the provision of digital services and digital content ("bundle contract"). The European rule (Art. 3 para. 6) must be applied exclusively to those elements of this contract that concerns the provision of digital services or digital content. Other elements of the overall contract for the supply of legal services must be regulated by the norms of national law applicable to those contracts (Recital No. 33). Thus, it will be the national law that will regulate the legal effects, for example, how the termination of one "element" of the "package or bundle contract" can affect on the other "components" of that "package or bundle contract".

In any case, the fact is that this "bundle or overall" contract, that I have classified as "non-typical" contract, will be governed, for the most part, by the "terms and conditions" that, as a general contract conditions, for each case, be established on the website or in the app in question. The distinction between rules that apply to the supply of digital content or digital service and norms that apply to the overall contract is important in several aspects, some of them I will highlight in the next section.

2.3.3. The Onerous Nature of the Supply

Directive (EU) 2019/770 clarifies that it "*shall apply to any contract where the trader supplies or undertakes to supply digital content or a digital service to the consumer and the consumer pays or undertakes to pay a price*" (Art. 3 para. 1). Therefore, only onerous contracts are regulated. In this sense, this provision means a change with respect to Directive 2011/83/EU, which also embraces in its scope of application the gratuitous supply of digital content [68].

In practice, the fact is that the provision, usually, of digital service or digital content to the consumer, and, in particular, in the "legal" domain, which the consumer seems to get access "for free", it is not, since that, in exchange, the consumer transfers his "personal data", transfer that would mean the remuneration, as far as personal data could be considered an "informational good" on

which the consumer holds certain rights [69]. This issue sparked a broad doctrinal debate that would lead to the Transactional Proposal for a Directive, in 2017, admitting, albeit timidly, the possibility that the consumer "personal data" were considered as remuneration for the provision of digital content or digital service [70]. In this line of thoughts, Art. 3 para.1 Section 2 of Directive (EU) 2019/770 admits that the transfer of personal data can be contemplated as remuneration in exchange, even if it does not state it clearly [71]. Based on that, the contract for the provision of digital content or digital service, in which consumers transfer their personal data could be considered, although it is a controversial matter [72], an onerous contract that would move beyond the contract of sale. Maybe, it could be qualified as swap [73]. In any case, personal data as "informational good", which is delivered as remuneration, challenges the Law of Contract [74].

It may be that the data, collected by the provider of the digital content or digital service, does not mean any remuneration in exchange. Hence, the supply is free of charge as in some of the cases of provision of legal digital content or service exposed. Thus, Directive (EU) 2019/770 does not apply.

However, Directive 2011/83/EU could be applied, because it contemplates in its scope of application the supply of digital content for free, as long as the concept of "digital content" settled forth should be regarded as a broadly encompassing "digital services" as well [75]. In any case, aspects related, for example, to the lack of conformity of the digital service or digital content will be governed by national law. Otherwise, consumer will not receive legal protection for the provision of digital service and digital content for free. In this sense, the convenience, in a future modification of the Directives concerned, to consider this point should be highlighted. The fact is that, in the field of provision of digital services or digital content by using LawTech tools, gratuity is increasingly present [76].

2.3.4. The Lack of Conformity of the "Legal" Digital Content or of the "Legal" Digital Service: Algorithm's Failures

The complexity relating the legal nature of the provision of digital service or digital content entails the burdensome of clearly establishing when a lack of conformity refers to the digital component, applying to the consumer protection the rules of Directive (EU) 2019/770, and when the lack of conformity is due to other elements that are part of the "package" [77]. The issue is not irrelevant to the extent that different rules should apply. Thus, in the event that the consumer gets access to a LawTech tool that allows him to create his own legal document, the absence of conformity must refer to the lack of objective or subjective requirements settled by Arts. 7 and 8 of the Directive (EU) 2019/770 [78]. In respect to the "content" of the "digital content" "legal information", that is, for example, incorrect or not updated, it would not be a lack of conformity of the digital content itself, but a lack of conformity of the subject matter of the contract that supply legal services.

However, inaccurate legal information could be due: firstly, to some incorrect

instructions when designing the algorithm that the LawTech tool in question uses; secondly, the instructions being correct, but the system processes the data provided by the consumer incorrectly. Face the latter; it will not be a lack of conformity of the digital content or service. In both cases, it is not a lack of conformity that could be considered of a technical nature [79], which prevents the digital content be suitable for the purpose for which this type of content is intended allowing thus the consumer the exercise of the remedies provided in Directive (EU) 2019/770, rather it handles with a lack of conformity and subsequent non-performance of the contract for the supply of legal services, which is at the base. It has also to be borne in mind that this Directive applies to computer programs, as clearly stated in Recital No. 19, although only when concerns a closed source code (Recital No. 32), which makes perfect sense, given what it means that the source code is open or accessible to third parties that can make changes, in short, can manipulate it. However, the Directive seems to contemplate the "computer program" as digital content or digital service *a se stante*, that is, as "*stand-alone software*", rather than as a core element of the creation of that digital content or digital service but different from this, which is the case that I am referring to.

In any case, the clauses that, in this respect, are settled in the "Terms and conditions" of the providers of the digital content or digital service, that will define the contractual parameters in this regard, must be taken into account. So, a website that provides LawTech tools to the user to generate their own documents (e.g. Legaliboo) establishes, on its "legal notice" label, at the bottom of the website, a disclaimer, both for lack of conformity of the legal information and for lack of conformity of technical aspects regarding the digital content. Indeed, it is noted that:

"*Legaliboo does not provide legal advice services and the client assumes that although the contents* (*contracts and documents accessible for personalization through the web as well as contact with professionals for the resolution of queries and commissioning of matters*) *have been prepared by professionals to try to adapt as much as possible to the specific cases of the users*, *its use does not imply any guarantee*, *nor is there any advice from a professional such as a lawyer* (*as the case may be*) *for the preparation or drafting of the document in question* (*unless expressly agreed otherwise*). *Therefore*, *Legaliboo is not responsible for the use that the client could make of the document concerned*, *nor for its complete update*, *optimization*, *utility for the uses intended by the consumer*, *incorrect data entry by the user*, *etc.*".

Similar clause can be read in the conditions of use of the services provided by Rocket Lawyer Spain: "*Rocket Lawyer is not responsible for the use that the subscribed users and users may make of the contracted document*, *nor for its complete update and utility to the uses provided*, *or incorrect data entry*, *etc.*, *by the subscribed users or users*".

Such a broad disclaimer clause must be questioned in the light of the legislation on unfair contract terms (for Spanish law, Art. 86 paras. 1 and 2 of the Roy-

al Legislative Decree 1/2007 of November 16, Spanish Official Gazette, No. 287, of 30.11.2007).

As I have outlined, the legal service due to the technology ends up "becoming a commodity", that is, a "legal product" at the base of which there is always an algorithm written in computer language, thus it must be considered whether to that "product" Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States regarding liability for damages caused by defective products, could be applied (DOCE L210 7.8.85, 29-33). It should be noted that Art. 2 of Directive 85/374/EEC focus on "movable goods" to refer to "bodily" things. If it deals with a good, in which the software is integrated such as the Echo Dot (Amazon Alexa) loudspeaker, which allows it to function, it is usually considered as a "whole good" to which the Directive is applicable, even if it is only the software that is defective. Controversial issue appears when one copes with the distribution of software that can be purchased directly on the internet and that the user downloads to his or her terminal or it is a digital content for whose generation the software has been used. In these cases, the Directive would not apply because they would be considered as intangible asset. One way to avoid this exclusion would be to broaden the notion of movable good, so that any good—tangible or intangible—that was neither a real estate nor a service would be embraced in the definition, although it was not the notion that they had, at the time, who developed the Directive (even so they introduced "electricity" into their scope of application) [80]. This interpretation of the wording "movable good" means that from the damages caused by defects of the legal content of the "product" that one can assign to the algorithm, that it cannot be regarded as a "lack of conformity" of the digital content or service itself, the consumer could seek compensation, when the supplier of the "legal product" has not designed the algorithm, but a third party, under the law on damage by defective products, if the notion of "producer" would be enlarged to include the "designer engineer" of the algorithm [81] and if damages are those contemplated by the Directive 85/374/EEC, which it will be not always the case. The flourishing of LawTech tools is due, mostly, to technological start-ups, in many of which lawyers are not working. The joint work however between lawyers and computer scientists would be very welcomed.

Given that, in the provision of these digital services and digital content, even more frequently sophisticated algorithms intervene, should have been necessary taking into account its failures as a lack of conformity, at least in the checklist settled by Art. 7 of Directive (EU) 2019/770. However, cases in which the failure of the algorithm could lead to a lack of conformity of the digital content would have to be clarified. How the legal system can deal with the defectiveness of algorithms is nowadays controversial.

What about the biases—some of which are "hidden"—that the algorithm used by the expert system providing the legal digital service or legal digital content could possess [82]? Could they be considered a lack of conformity under Direc-

tive (EU) 2019/770? In my view, in these cases, there is not a lack of conformity, since what is supplied coincides with what was expected, even if there is some bias (*i.e.* higher price is intentionally required for the supply when the algorithm detects, for data obtained, that the consumer belongs to an specific ethnicity) which, subsequently, is discovered. The possible existing bias affects the formation of the will to conclude a contract, a fake mental representation that will allow to filing an action concerning the invalidity of the contract.

On the other hand, in relation to the opacity of the algorithm, one should also take into account the legislation on the protection of personal data, when in the provision of digital services and digital content, these are collected. In the next section, I handle with this issue.

3. Precontractual Information and Explanability of Algorithm

A significant aspect that Directive (EU) 2019/770 does not deal with is that related to information that must be given to the consumer of these "legal products" concerning the technical system and the risks that the algorithm, with which that "product" works, may have. As outlined in Recital No. 20, the application of this Directive should be complemented with other European rules; in particular, with Directive (EU) 2019/771 and Directive 2011/83/EU. The latter refers to the "information" that must be provided to consumers in contracts concluded at a distance and outside a commercial establishment, such as those held in the field of LawTech. Art. 6 para.1 states the need to provide information about, for instance, the functionality of digital content, including applicable technical protection measures (lit. r) and any relevant interoperability of the digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of (letter s).

However, there are no warnings about other technical information that should also be provided to the consumer of "legal products" such as the relevant information about the algorithm used and its possible risks. In this sense, in my opinion, Directive 2011/83/EU should be amended to add as relevant content that the consumer should be informed, both in contracts concluded at a distance and in contracts other than these, all information related to the algorithm, its possible risks, such as the "opacity" [83], used by the firm that provides the digital service or digital content in case of automation. Particularly, if one takes into account that the contract must include the elements resulting from the pre-contractual information that, according to the Directive recently mentioned, is part of the contract [Recital No. 42 Directive (EU) 2019/770].

In Germany, the *Gesetsentwurf zur Modernisierung des Rechtsdienstleistungsrechts* has added a new provision (§11b), which settles the need for information about the risks that the computer system and the algorithm may entail. Indeed, it is noted that: "*registrierte Personen, die Automatisierte Rechtsdienstleistungen erbringen, müssen Ihren Auftraggebern bei Vertragsschluss die Risiken*

von informationstechnischen Systemen im Allgemeinen, das Risiko von Algorithmen im Speziellen, den Umfang der automatisierten Prozesse sowie den Umfang der beruflichen Tätigkeit anzeigen".

A similar norm but concerning any content or service that is offered in an automated way, could be considered, as a rule, in order to amend Directive 2011/83/EU and, in particular, in Spain, could be implemented in a future law of services and professional associations. In short, it deals with the "*explainability of artificial intelligence*" or, in other words, the "*transparency of algorithms*" [84], so that expert systems are developed in such a way that people can understand the basis of their actions [85]. It seeks, in addition to increasing transparency, reducing the risk of bias or error of the algorithm, risks concerning security, protection against malicious uses and discrimination [86]. The information shall embrace the capabilities and limitations of the expert system that, realistically, can be expected from it, the way in which security protocols have been followed in terms of their implementation and, to make it clear to the user the fact that he is dealing with an automatic expert system and not with a human person. Accordingly, one can be "confident" that the artificial intelligence system is "transparent" and "trustworthy".

At present, Lawtech tools are relatively simple so that their computational logic should be transparent and explainable. Notwithstanding, it is possible that soon intelligent machines that learn from the environment and make decisions also break into this area and, then, computational logic will be no longer so easily explainable. In this digital setting the well-known "black box" of the algorithm [87] becomes a reality. In these cases, as noted by the group of high experts in the field of artificial intelligence (AIHLEG), in his "*Ethics Guidelines for Trustworthy AI*": "*other explicability measures (e.g. traceability, auditability and transparent communication on system capabilities) may be required, provided that the system as a whole respects fundamental rights. The degree to which explicability is needed is highly dependent on the context and the severity of the consequences if that output is erroneous or otherwise inaccurate*" [88].

On the other hand, it should be noted that, the online supply of a "legal product", thanks to the LawTech tools, will usually entail the processing of personal data of their users, playing at this respect the algorithm a certainly relevant role. Hence the computational logic must be explained to the individual [89], as required by Art. 14 para. 2 lit. g in relation to Art. 22 of Regulation (EU) 2016/679, on the protection of natural persons with regard to the processing of personal data and on free movement of such dat*a* (hereinafter, GDPR), when the user make decisions based on the automated processing of his data, which has led to the elaboration of profiles, provided that he has not given explicit consent to profiling, and the decisions affect him significantly causing certain legal effects [90]. Information on computational logic, when the conclusion of the contract is concerned, should be considered a pre-contractual duty, which is part of the legal position of the trader who provides, in this case, the so-called, "legal product", which could derive in the invalidity of the contract due, mainly, to a mis-

take, to the extent that this lack of information, creates a fake mental representation that has determined the conclusion of the contract.

4. Outcome

When "legal advice" becomes "legal information"—beyond the scope of the traditional supply of services referring to "automated legal services"—which are more like "products" than "services", there is no problem with the application of the rules of Directive (EU) 2019/770. The fact that the "content" of the "digital content or digital service" is of a "legal" nature adds any special particularity to the case in study. Relevant overall questions that concern the Directive are also the same questions that rise regarding the provision of legal digital service and content. Notwithstanding, I have identified the absence of any reference, on the one hand, to failures of the algorithm as a lack of conformity and, on the other hand, to the pre-contractual information, which leads to propose that, in the future, first, algorithm's failures should be contemplated, in the Directive in hand, as a lack of conformity and; secondly, in a future amendment of the Directive 2011/83/UE, the explainability of the algorithm should be regarded as a pre-contractual duty so that the consumer, who may be affected by automated decisions, can understand the computational logic used. On the other hand, in a broad interpretation of Art. 2 of Directive 85/374/EEC, the consideration of software as "movable good", for the purposes of its application it should be, from the point of view of the end user, very welcomed, although it should be framed in a general review of the aforementioned Directive in relation to robotics and expert systems based on artificial intelligence.

Finally, it should be noted that handling of LawTech tools, to provide automated "legal information" to the consumer, strengthen its protection as far as broad sectors of the population will be able to defend their rights at a cost close to zero by enabling access to the justice or other alternative dispute resolution mechanisms that, with no "smart" tools, would not be possible or at an excessive cost. As I stated at the beginning of this work, this transformation process is driving while "legal services are necessary, not always lawyers are needed". Legal services can be provided by other players in the marketplace with the same or greater quality and efficiency. LawTech tools have a disruptive effect on the work of lawyers and their adaptation to this new environment is crucial for remaining relevant in a technological-driven world.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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