

ROYAL DECREE 135/2021, OF 2 MARCH 2021, ADOPTING THE GENERAL STATUTE OF THE SPANISH LEGAL PROFESSION

The BOE of 24 March 2021 has published Royal Decree 135/2021, of 2 March, which adopts the General Statute of the Spanish Legal Profession ("EGAE"), approved on 2 March by a meeting of the Council of Ministers. This new EGAE, which enters into effect on 1 July, updates the regulations governing the legal profession, providing it with an innovative text that is in keeping with the current social landscape.

In this Legal Briefing, we analyse the most important aspects of the EGAE, such as (i) the new professional secrecy regulations; (ii) the establishment of restrictions on advertising; (iii) the strengthening of consumer rights; (iv) the creation of professional protocols for reporting unjustified delays and acts of the courts that have restricted the freedom or independence of lawyers to the CGPJ; and (v) the obligation to provide professionals and the public with access to information through the appropriate technological means.

1. Professional secrecy

In an effort to innovate and update the new EGAE, the addition to the legal system of key tenets of professional ethics, as well as the inclusion of professional secrecy, is noteworthy. The 2001 regulations contained only piecemeal references to this right and duty of the legal profession and it was necessary to refer to the Code of Ethics of the Spanish Legal Profession¹ for further clarification of its contents.

Therefore, one of the great innovations with respect to the 2001 regulations is EGAE'S exhaustive coverage of the scenarios governed by professional secrecy. The highlights of these regulations are the following:

- (i) The duty of professional secrecy includes all facts, communications, data, information, documents and proposals that a lawyer, as a member of the legal profession, has known, issued or received in the course of his or her professional practice.
- (ii) The EGAE safeguards the confidentiality of communications between members of the legal profession and requires that conversations held with clients, opposing parties or

¹ Code of Ethics of the Spanish Legal Profession, adopted by the Plenary Meeting of the General Council of the Spanish Legal Profession ("CGAE") on 27 September 2002 and amended by the Plenary Meeting of 10 December 2002.

other lawyers may only be recorded with the prior notice and consent of all those involved.

- (iii) Equally, recordings made by the client, not known to his/her lawyer, even if he/she was not the lawyer or did not participate at that time, of conversations in which the lawyer of the other party participates, are also covered by professional secrecy.
- (iv) The duty of professional secrecy, which extends to all persons who collaborate professionally with a lawyer, remains in place even after the lawyer has ceased to act for the client and is not limited in time.
- (v) Regarding in-house counsel working in a common employment relationship, the EGAE specifies that the basic freedom, independence and professional secrecy necessary for the practice of the profession must also be respected.
- (vi) Regarding online or Internet-based legal services, it provides that lawyers providing online services must adopt the necessary measures to guarantee professional secrecy, including the obligation to encrypt and send confidential communications with a secure electronic signature (provided that the client's circumstances allow it).
- (vii) The EGAE includes the right of legal professionals to request the presence of the dean of their bar association in the event of a judicial search of their office, to ensure the safeguarding of professional secrecy. Furthermore, the EGAE limits this type of search to the files of the case under investigation.

2. Advertising

Another illustration of the regulatory adoption of the legal profession's ethical principles can be found in the EGAE regulations governing the conditions for advertising professional services.

In this regard, essentially maintaining the 2001 regulations, the EGAE is based on the principle of free advertising by members of the legal profession, but always with full regard to the essential principles and higher values of the profession, and subject in any case to certain prohibitions.

Also, as a new feature, the EGAE establishes that legal professionals who advertise as specialists in any area must have specific qualifications in said area, have passed official specialist training courses, or have a professional practice that justifies this.

3. Consumer rights

The EGAE establishes a series of conditions for the lawyer-client relationship, which must be based on mutual trust:

- (i) Lawyers must inform their clients of the viability of the matter entrusted to them, discouraging them from promoting conflicts or bringing unfounded legal actions, and must advise and inform them of alternative approaches for the best fulfilment of their interests.
- (ii) The EGAE states that lawyers must inform their clients of the amount of the fees and the costs of their services through the presentation of an engagement letter or equivalent means. They must also inform clients of the consequences of an award of costs and their approximate amount.
- (iii) It establishes that lawyers must inform clients on a timely basis of the status of the matter in which they are involved and provide them with copies of the documents arising from administrative and judicial proceedings.
- (iv) The EGAE establishes a new feature requiring lawyers to provide their clients with a means of communication - telephone number, e-mail address or postal address - to which they can address their complaints and requests for information regarding the service provided. These complaints must be answered, at the latest, within one month of receipt.

4. Relationship between members of the legal profession and the Judiciary

To guarantee the independence, freedom and dignity of lawyers, the EGAE introduces an option for the Bar Associations to file a complaint before the General Council of the Judiciary ("CGPJ") for repeated unjustified delays or breaches of the freedom or independence of lawyers by judicial bodies.

In this respect, the 2001 regulations are essentially being retained, adding the following as a new feature to the existing option of filing a complaint before the relevant judicial body and a complaint before the Board of Governors of the relevant bar association:

- (i) The EGAE introduces the option for Bar Associations to establish protocols for complaints before the CGPJ when delays suffered by lawyers in their actions before judicial bodies are unjustified and repeated.
- (ii) Furthermore, when judicial authorities behave in a way that restricts the freedom or independence of lawyers or fails to show due consideration for their role, Bar Associations must notify the relevant authorities and may report such conduct to the CGPJ, where appropriate.

5. Modernisation of the Bar Councils and Bar Associations

The EGAE specifically regulates the duty to provide professionals and citizens with access to information through the use of new technologies, as part of a process of consistency with the progress made in the digital transformation of the justice system.

In this regard, the following measures are introduced:

- (i) It provides for the electronic provision of professional services, including obligations such as the duty to adopt the necessary measures to guarantee professional secrecy and the correct identification of the client.
- (ii) One of the functions of Bar Associations is to promote the appropriate use of information and communication technologies by their members in their professional practice and their business relationships.
- (iii) The Bar Associations and the CGAE shall also include the necessary technologies to ensure interoperability between the different systems.

This Legal Briefing was prepared by Lidia González and Sol Sepúlveda, associates of the White Collar Crime and Investigations team.

The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This document was prepared on 26 March 2021 and Pérez-Llorca does not assume any commitment to update or revise its contents.

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