Litigation Chamber

Decision on the merits 162/2022 of 16 November 2022

File number: DOS-2021-05803

Subject: Investigation into the sharing of accommodation data via the platform

Airbnb

The Litigation Chamber of the Data Protection Authority, composed of Mr Hielke

Hijmans, chairman, and Messrs Frank De Smet and Jelle Stassijns, members.

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the

protection of natural persons with regard to the processing of personal data and

to the free movement of such data, and repealing Directive 95/46/EC (General Regulation on the

data protection), hereinafter "GDPR";

Considering the law of December 3, 2017 establishing the Data Protection Authority, hereinafter

"LCA";

Having regard to the internal regulations as approved by the House of Representatives on

December 20, 2018 and published in the Belgian Official Gazette on January 15, 2019;

Considering the documents in the file;

Made the following decision regarding:

The defendant :

Tourism Vlaanderen, having its registered office at 1000 Brussels, Rue du Marché

with Herbs, 61 and

the company number 0225.944.375, below

"the defendant".

Facts and procedure

1.

On January 14, 2022, the Management Board of the Data Protection Authority (hereinafter:
"APD") decides to contact the Inspection Service under Article 63, 1° of the LCA because
of a practice likely to give rise to a violation of the fundamental principles of
protection of personal data.
The subject of the procedure concerns the approach used to request personal data
staff of accommodation operators via the Airbnb platform as part of
"surveys" conducted by the defendant
with different intermediaries. This practice continued after a court judgment
of first instance in which it was held that such polls could only take place
in very limited cases. This procedure also concerns the fact that no opinion of the
data protection officer has been requested in this regard.
2. On 27 January 2022, the investigation by the Inspection Service is closed, the report is attached to the
file and it is transmitted by the Inspector General to the President of the Chamber
Litigation (art. 91, § 1 and § 2 of the LCA).
The report includes findings relating to the subject of the decision of the Committee of
management and concludes that:
To.
there is a violation of Article 5, paragraph 1, a) and c) and paragraph 2, of Article 6,
paragraph 1, Article 24, paragraph 1 and Article 25, paragraphs 1 and 2 of the GDPR;
b.
there is a violation of Article 12, paragraphs 1 and 6, of Article 13, paragraphs 1 and 2, of
Article 14, paragraphs 1 and 2, Article 5, paragraph 2, Article 24, paragraph 1 and
of Article 25, paragraph 1 of the GDPR;
vs.
there is a violation of Article 38, paragraphs 1 and 3 of the GDPR;
d.

there is a violation of Article 4.11), of Article 5, paragraph 1, a) and paragraph 2, of Article 6,

paragraph 1, a) and Article 7, paragraphs 1 and 3 of the GDPR for the use of cookies

not strictly necessary.

3. On February 4, 2022, the Litigation Division decides, pursuant to Article 95, § 1, 1° and

article 98 of the LCA, that the case can be dealt with on the merits.

4. On February 4, 2022, the defendant is informed by e-mail of the provisions as set out in

article 95, § 2 as well as article 98 of the LCA. He is also informed, by virtue of

Article 99 of the LCA, deadlines for transmitting its conclusions.

With respect to findings within and outside the scope of the decision of the

Management Committee, the deadline for receiving the conclusions in response from the

respondent was set for March 18, 2022.

5. On February 8, 2022, the Respondent accepts all communications relating to the case by way of

electronic.

6. On February 25, 2022, the defendant requests a copy of the file (art. 95, § 2, 3° of the LCA), which

was transmitted to him on February 25, 2022.

7. On March 17, 2022, the Litigation Chamber receives the submissions in response from the defendant

concerning the findings relating to the subject of the decision of the Management Committee.

These conclusions also include

the respondent's reaction to

THE

findings made by the Inspection Service outside the framework of the decision of the

Management Committee. The respondent first asserts that the processing on its part is

lawful data processing. Second, the Respondent argues that the treatment

data in question constitutes correct and authorized data processing and that the

data minimization principle of Article 5(1)(c) GDPR is complied with,

what he can moreover demonstrate. Third, the Respondent argues that its statement of confidentiality is transparent and understandable, that it contains information accurate and complete and that he can also demonstrate it. Fourth, the defendant affirms that he was not required to seek prior advice from the Data Protection Officer. data concerning the Memorandum of Understanding (hereinafter "MoU", memorandum of understanding). Finally, the defendant specifies that on its website, only cookies strictly necessary or functional are active, for which no consent is required.

According to him, no cookies not strictly necessary were active. Therefore, the communication of (transparent) information about such cookies was, in his view, not topical. Still according to him, it is not a legal obligation either.

8. On September 14, 2022, the respondent is informed that the hearing will take place on October 21, 2022.

9. On October 21, 2022, the party appearing is heard by the Litigation Chamber. At the time of the hearing, the defendant explained the steps he has already taken in terms of the protection data since the decision of the Management Committee and the inspection survey. Thus, the Litigation Chamber was able to observe during the hearing that almost all of the grievances of the Management Committee decision and action points from the inspection report have been addressed by the defendant.

10. On October 25, 2022, the minutes of the hearing are submitted to the respondent.

11. On October 29, 2022, the Litigation Chamber received some remarks from the defendant relating to the minutes that it decides to include in its deliberation.

Motivation

12. The Litigation Chamber assesses below each of the findings set out in the inspection report in the light of the pleas put forward in this respect by the defendant.

I.1. Article 5, paragraph 1, a) and c) and paragraph 2, article 6, paragraph 1, article 24,

paragraph 1 and article 25, paragraphs 1 and 2 of the GDPR

I.1.1. Article 5, paragraph 1, a) and c) and Article 6, paragraph 1 of the GDPR

13. The Litigation Chamber recalls that the principle of Article 5, paragraph 1, a) of the GDPR is that personal data can only be processed lawfully.

This means that there must be a legal basis for the processing of personal data personal, as referred to in Article 6(1) GDPR. To flesh out this principle of basis, Article 6(1) of the GDPR provides that personal data shall not can only be processed under one of the legal bases set out in this article.

14. During the inspection investigation, the Respondent explains that he invokes Article 6, paragraph 1, c) of the GDPR with regard to the request to Airbnb to provide it with data relating to operator and accommodation. The Inspection Service finds that the defendant starts from a too broad interpretation of its legal obligation and that it does not demonstrate for which reasons the processing of personal data is necessary in the context of a survey. On the basis of these elements, the Inspection Service finds a breach of Article 5, paragraph 1, a) and c) and Article 6, paragraph 1 of the GDPR.

15. The Litigation Chamber recalls that in order to be able to lawfully invoke the basis legal basis of Article 6, paragraph 1, c) of the GDPR, the personal data may be processed only if this is necessary to fulfill a legal obligation to which the controller is subject. The treatment must in these cases always have a basis in the law of the European Union or in that of the Member State in question, in which the purpose of the processing must also be stated. Therefore, it must be checked that the conditions provided for in that article are indeed met in the present case.

16. In accordance with Article 6.3 of the GDPR, read in conjunction with Article 22 of the Constitution and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, a standard legislation must define the essential characteristics of data processing necessary for compliance with a legal obligation, whether it is included in Union law

European Union or in the law of the Member States1. In the aforementioned provisions,

emphasizes in this regard that the processing in question must be framed by a standard

sufficiently clear and precise, the application of which must be foreseeable for the persons

1 See in particular decision 149/2022 of October 18, 2022 and decision 48/2022 of April 4, 2022.

concerned. However, the GDPR does not require a specific legal provision for each

individual treatment. A legal provision may be sufficient to establish several operations of

processing based on a legal obligation to which the controller is

submitted.

17. The Litigation Chamber will assess below the conditions of legal basis and necessity.

A clear, precise and predictable legal basis

18. In accordance with recital 41 of the GDPR, this legal basis or legislative measure

should be clear and precise and its application should be foreseeable for litigants,

in accordance with the case law of the Court of Justice of the European Union and of the Court

European human rights.

19. Recital 41 of the GDPR specifies in this regard: "Where this Regulation makes

reference to a base

legal or to a measure

legislative, this does not mean

necessarily that the adoption of a legislative act by a parliament is required, without

prejudice to the obligations provided for under the constitutional order of the Member State

concerned. However, this legal basis or legislative measure should be clear and

precise and its application should be foreseeable for litigants, in accordance with the

case law of the Court of Justice of the European Union (hereinafter referred to as "Court of

Justice") and the European Court of Human Rights". Furthermore, under

article 22 of the Belgian Constitution, it is necessary that the essential elements of the

data processing are defined by means of a formal legal standard (law, decree or prescription)2.

20. The Litigation Chamber refers more particularly in this respect to the Privacy judgment International3 of the Court of Justice of October 6, 2020, in which the Court affirms that the legislation in question must contain clear and precise rules "governing the scope and application of the measure in question and imposing minimum requirements, so that the persons whose personal data are concerned have sufficient guarantees to effectively protect this data against the risks of abuse." And the Court added: "These regulations must be legally binding in domestic law and, in particular, indicate in what circumstances and under what conditions a measure providing for the processing of such data can be taken, thereby ensuring that the interference is limited to what is strictly necessary. (…) These considerations apply in particular when the protection of this particular category of personal data is at stake personal sensitive data."

2 “Everyone has the right to respect for his private and family life, except in the cases and under the conditions established by law. The law, decree or rule referred to in Article 134 guarantee the protection of this right.".

3 CJEU, C-623/17, 6 October 2020, Privacy International v Secretary of State for Foreign and Commonwealth Affairs a.o.

21. The defendant's mission is, in particular, to increase the attractiveness of Flanders as a destination4. In order to carry out this mission, article 5 of the decree establishing the agency autonomous body endowed with the legal personality "Toerisme Vlaanderen" (Office of the Tourisme de la Flandre)5 imposes on the defendant tasks that he must fulfill, including tasks in total quality management. This includes: ensuring the development and promotion of total quality management within the framework of the competences attributed by

the legal and regulatory provisions in force and future, with regard to the

following matters: (a) tourist infrastructure, subsidies, participations and other

initiatives and (b) communication of information, services, training and branding, as well as

any other initiative to improve the quality of the supply of tourist products.

In execution of the foregoing,

the decree relating to

tourist accommodation

5 February 2016 (hereafter: the Accommodation Decree)6 (and its implementing decrees) defined

several conditions that all tourist accommodation must fulfill in the Flemish Region in order to

to be able to be approved as tourist accommodation and then be operated as

such. The defendant is responsible for executing this Accommodation Decree, whose approval as

as tourist accommodation and the control of compliance with these conditions of approval.

22. To be approved as tourist accommodation, the accommodation must therefore meet the

conditions as defined in Article 6 of the Accommodation Decree. The test to find out

whether the conditions for approval are met is governed by Chapter 5 of the Accommodation Decree.

Article 10 of the Accommodation Decree stipulates that the Flemish Government may appoint

persons authorized to monitor and control compliance with the provisions of the Decree

accommodation (i.e. inspectors within Toerisme Vlaanderen who can be

appointed by the Flemish Government).

23. As part of this supervisory and control power, Article 11 of Decree

accommodation is worded as follows:

"Art. 11. The intermediaries, referred to in Article 2, 5°, must, for accommodation

tourists located in the Flemish Region for which they act as intermediaries or

carry out a promotion policy, communicate, upon written request, the data of

operator and contact details of tourist accommodation to police officers

federal and local authorities and to authorized persons, referred to in article 10. These data may

be collected by survey or when there is doubt that the accommodations

tourists meet the conditions of this decree and its implementing decrees,

or in the event of a complaint made against a tourist accommodation."

4 Article 4 of the decree of 19 March 2004 creating the internal autonomous agency with legal personality

"Toerisme Vlaanderen" (Flanders Tourist Office) (hereafter: the Decree of creation).

5 MB, April 29, 2004.

6 M.B., March 8, 2016.

24. Article 11 of the Accommodation Decree therefore prescribes that intermediaries7, as in

the Airbnb occurrence, must provide operator data and contact details

tourist accommodation for officials authorized by the Flemish Government

when asked to do so. In view of the foregoing, the Respondent argues that through the

above-mentioned authorized officials, he can request data in a targeted manner

with an intermediary such as Airbnb in at least three cases:

- within the framework of a clearly delimited survey;

-

when there is doubt that the tourist accommodation meets the conditions of the

Accommodation decree and its implementing decrees;

-

in the event of a complaint against a tourist accommodation.

25. Contrary to the findings of the Inspection Service, the Respondent considers that it

does not interpret Article 11 too broadly. The Respondent refers in this regard to the documents

parliamentary preparations for the Housing Decree which specify the following:

“[t]he written request referred to must be used in a reasonable and

proportionate. The data must be requested in a targeted manner, i.e. in the

framework of a clearly delimited survey (for example one or more accommodations in the

same city, town or region), when there is doubt that the tourist accommodation

meet the conditions of this decree and its implementing decrees or in the event of

complaint against these tourist accommodations." [Editor's note: all the passages from

of the file are free translations carried out by the translation service of the Secretariat

General of the APD, in the absence of an official translation]8.

26. According to the Respondent, this view is also consistent with the report issued on behalf of the

Committee on Foreign Policy, European Affairs, International Cooperation,

Tourism and Real Estate which specifies the following:

“[…] Each tourist accommodation can at any time be checked as to the standards

basic. The control is carried out at the request of an accommodation operator (with

possibility of approval) or at the initiative of the public authority (by means of a survey, in the event

doubt or complaint) [...]"9.

7 Article 2, 5° of the Accommodation Decree: "5° intermediary: any natural or legal person who, for remuneration,

intervenes to provide tourist accommodation on the tourist market, to ensure the promotion

tourist accommodation or to provide services whereby operators and tourists

can come into direct contact with each other.”

8 Explanatory memorandum to the proposed decree on tourist accommodation, Doc. Parl., Parl. flemish, 2015-16,

No. 499/1, p. 13.

9 Report on behalf of the Committee on Foreign Policy, European Affairs, International Cooperation, Tourism and

Real estate heritage on the proposal for a decree relating to tourist accommodation, Doc. Parl., Parl. flemish 2015-16,

n° 499/3, 6, available at the following address: https://docs.vlaamsparlement.be/pfile?id=1139307.

27. In its Opinion No. 35/2015, the Commission for the Protection of Privacy (CPVP), predecessor

in DPA law, took the same view: “The data must be requested from

targeted manner, within the framework of a clearly delimited sample, in case of doubt or

complaint”10.

28. The Inspection Service asserts, however, that this is an erroneous reading of Article 11 of the Accommodation decree and refers in this respect to a judgment of the court of first instance of Brussels11. In this judgment, the court concluded that there were only two cases in which the data could be requested from intermediaries: (1) when it is doubtful that the accommodation meets the conditions of the decree, and (2) in the event of a complaint made to against tourist accommodation. According to the court, the survey does not constitute a concrete situation whose conditions may or may not be met, but only a particular method prescribed by the decree legislator which can be used in one of the two hypotheses for claiming information.

29. In accordance with this judgment of the Court of First Instance of Brussels, the defendant entered into an agreement ("MoU") with Airbnb by which it undertakes to apply in a manner operational this provision on a voluntary basis and in good faith. The MoU governs several methods concerning the transmission of data relating to the operator and accommodation in connection with a claim made by the defendant under Article 11 of the Accommodation Decree. Thus, in particular, the data that the defendant will claim are specifically named and the number of claims and the delimitation geographic location of a request are specified.

30. The Litigation Chamber notes that the text of Article 11 of the Accommodation Decree has been drafted in such a way that there may be confusion as to the cases in which the personal data may be requested from intermediaries by the respondent. This is evidenced by the fact that the defendant gives in article 11 of the Accommodation Decree a different interpretation from that of the Court of First Instance of Brussels in the judgment cited above. In order to find the intention of the legislative legislator, the Chamber Litigation refers to the preparatory work of the Accommodation Decree.

31. The preparatory works of the Accommodation Decree specify in this regard that in the practice, we see that more and more intermediaries such as rental offices

tourism and Internet platforms, such as Airbnb, offer accommodation

on the market without mentioning the concrete (contact) data of the accommodation

tourist or

the contact details of

the operator. This complicates (or even prevents)

there

location or control of these accommodations, even in the event of complaints. Article 11 of

10 Opinion of the Commission for the protection of privacy on the proposal for a decree relating to tourist accommodation,

available at the following address: https://www.autoriteprotectiondonnees.be/publications/avis-n-35-2015.pdf.

11 Brussels Court of First Instance, case A.R 2018/3527/A.

Decree accommodation tries to take this problem into account and offers people

authorities in charge of monitoring and controlling the Accommodation Decree (in addition to the

mandated officials named above, also federal and local police officers)

the possibility of requesting, via a written request, the data relating to the operator and the

contact details of tourist accommodation located in the Flemish Region with these

intermediaries such as Airbnb. The written request in question must be used

reasonable and proportionate manner. Data must be requested in a manner

targeted, i.e. within the framework of a clearly delimited survey (for example one or

several accommodations in the same city, town or region), when there is doubt that the

tourist accommodation meets the conditions of the Accommodation Decree and its

implementing decrees or in the event of a complaint issued against these accommodations

tourism12.

32.

Given the foregoing, the Litigation Chamber concludes that the intention of the decree legislator

was to provide for at least three distinct cases in which the personal data

could be requested in a targeted manner from an intermediary:

- within the framework of a clearly delimited survey;

-

when there is doubt that these accommodations meet the conditions of the Decree

accommodation;

-

in the event of a complaint against a tourist accommodation.

33. This interpretation also meets the requirement of foreseeability as defined in

Article 6.3 of the GDPR. As already explained, Article 6 of the Accommodation Decree

defines the conditions for approval of tourist accommodation. These conditions concern

in particular the safety of the users of the accommodation, such as fire safety.

As soon as these conditions are no longer met, in accordance with Article 12 of Decree

accommodation, an administrative fine may be imposed. Furthermore, one can also

order the cessation of the operation of the tourist accommodation (art. 14 of the Decree

accommodation). By virtue of the foregoing, it is therefore foreseeable for persons

concerned that compliance with the registration conditions must be able to be checked by the

authorized officials, both during approval and afterwards.

34. The Litigation Chamber notes that this interpretation also allows the defendant

to intervene proactively in the context of its activity of applying the

legislation through clearly delineated polls. If the defendant could not intervene

that in case of complaint or doubt, he would not have the necessary tools to execute

correctly its obligation of decree control. The polls are therefore indeed

12 Proposed decree on tourist accommodation, Parl. Flemish 2015-16, n° 499/1, p. 13.

necessary for the defendant to be able to carry out a good enforcement policy.

legislation and therefore fulfill its legal obligation.

35. To the extent necessary, and as also mentioned by the

respondent, the Litigation Chamber points out that on February 9, 2021, the Decree of

amendment13, which amends Article 11 of the aforementioned Accommodation Decree as follows, has

was adopted:

"Art. 11. Intermediaries communicate, for tourist accommodation located in

Flemish Region for which they act as intermediaries or carry out a policy of

promotion, on written request, the data of the operator and the contact details of the

tourist accommodation for federal and local police officers and people

mandated, referred to in Article 10.

The data, mentioned in the first paragraph, may be requested in the following cases:

1° as part of a survey to check whether the tourist accommodation for which

the intermediary acts as an intermediary or conducts a promotion policy have been notified

with Tourism Vlaanderen. In the context of a survey, we ask at most the

data of all operators and tourist accommodations in the same city or

common. Several surveys can be carried out by the same intermediary;

2° when there is doubt that a tourist accommodation for which the intermediary is in

intermediary or conducts a promotional policy meets the conditions mentioned

in this decree and its implementing decrees;

3° in the event of a complaint against tourist accommodation."

The Litigation Chamber points out in this respect that this new legislation has been

published after the disputed data processing and therefore does not apply to the processing

in this case. Consequently, the Litigation Division did not rely on

this new legislation to arrive at this decision.

Need

36. Under Article 6(1)(c) GDPR, processing is lawful if and to the extent

where it is necessary for compliance with a legal obligation to which the controller

is submitted. Where personal data is processed, it must therefore

be adequate and relevant to the purpose. Furthermore, we cannot treat more

personal data only what is necessary for the purpose (art. 5.1.c)

GDPR).

13 In full: decree amending the decree of 5 February 2016 relating to tourist accommodation and repealing the decree of July 18, 2003 relating to residences and associations active within the framework of "Toerisme voor Allen" ("Tourism for All"), Doc. Speak. Speak. Flemish, 2021-22, n° 1028/6, p. 3 [Only available in Dutch].

37. According to the inspection report, the Respondent does not show why the

processing of personal data in the context of a survey is necessary

as required by Article 5, paragraph 1, c) of the GDPR as part of its mission to

monitoring and control.

38. The Respondent submits that the need to request the data relating to the accommodations

tourist attractions is clear from the fact that without these data, the defendant (1) cannot control the

tourist accommodation that is offered on the market via intermediaries and (2) does not

cannot contact their operators. The defendant claims to claim only the minimum of

data he needs to be able to identify a tourist accommodation and contact his

operator in order to be able to check whether the conditions of the Accommodation Decree and its decrees

of execution are complied with. Without this possibility of control and contact, the defendant

cannot verify whether the aforementioned conditions of the Accommodation Decree and its

implementing decrees are complied with. In this context, the Respondent points out that this is

all the more necessary specifically in the case of Airbnb. Indeed, Airbnb does not

generally communicates no contact details of the accommodation, nor any name or

contact details of the operator on its website.

39. Based on the Respondent's submissions, the Litigation Division finds that the

following data is requested:

-

-

-

-

the name of the tourist accommodation (name of the accommodation on Airbnb);

the address of the tourist accommodation (street, house number, etc.);

the capacity of tourist accommodation (in the context of fire safety);

the name of the operator of the tourist accommodation (the first and last name of the operator,

to the extent Airbnb has it) and the online hostname;

-

the contact details of the operator of the tourist accommodation (the e-mail address of

operator).

40. The Litigation Chamber considers that these data are necessary for a

correct identification of the tourist accommodation to contact the operator in order to

check whether the conditions of the Accommodation Decree and its implementing decrees are

respected.

I.1.2. Article 5, paragraph 2, Article 24, paragraph 1 and Article 25, paragraphs 1 and 2 of the

GDPR

41. The controller must respect the fundamental principles of Article 5 of the

GDPR and be able to demonstrate this compliance. This stems from responsibility in the sense of

Article 5, paragraph 2 juncto Article 24, paragraph 1 of the GDPR. Under Articles 24 and

25 GDPR, each controller must take technical and

organizational arrangements to ensure and be able to demonstrate that the

processing is carried out in accordance with the GDPR. As already explained, this

case concerns the transfer by Airbnb (as an intermediary) of data relating to

operator and accommodation to the defendant. This transfer took place at the request of the respondent.

42. As part of its investigation, the Inspection Service assessed the extent to which the defendant took the necessary technical and organizational measures to satisfy the principles of lawfulness and minimization of data in the context of this request for transfer. In this regard, the Inspection Service concludes that the defendant has not demonstrated any convincingly that he took the necessary measures to ensure that the disputed processing take place in accordance with Article 5, paragraph 1, a) and c) and Article 6, paragraph 1 of the GDPR, given that the Inspection Service has come to the conclusion that the processing did not conform to these principles.

43. In part I.1.1, the Litigation Division found no violation of Article 5, paragraph 1, a) and c) and Article 6, paragraph 1 of the GDPR. Therefore, there is no need nor to examine a violation of the principle of responsibility. Therefore, the Chamber Litigation considers that the defendant has convincingly demonstrated that he respected indeed its responsibility and therefore that no violation of Article 5, paragraph 2, of Article 24, paragraph 1 and Article 25, paragraphs 1 and 2 of the GDPR had been committed by the defendant regarding the lawfulness and data minimization of the disputed processing.

I.2. Article 12, paragraphs 1 and 2, Article 13, paragraphs 1 and 2, Article 14, paragraphs 1 and 2, Article 5, paragraph 2, Article 24, paragraph 1 and Article 25, paragraph 1 of the GDPR

I.2.1. Article 12, paragraphs 1 and 2, Article 13, paragraphs 1 and 2 and Article 14, paragraphs 1 and 2

44. In compliance with the principle of transparency of Article 5, paragraph 1, a) of the GDPR, on the basis of Article 12, paragraph 1, of Article 13, paragraph 1 and of Article 14, paragraphs 1 and 2 of the GDPR, it is necessary that the data controller, in this case the defendant, provide data subjects with

concise, transparent and

understandable about the personal data being processed. In his quality of

controller, the respondent must enforce Articles 12, 13 and 14 of the GDPR.

45. In the present case, the Inspection Service concludes that the defendant committed a

violation of Article 12, paragraphs 1 and 2, of Article 13, paragraphs 1 and 2, of Article 14,

paragraphs 1 and 2, Article 5, paragraph 2, Article 24, paragraph 1 and Article 25,

paragraph 2 of the GDPR since the "Privacy statement on the Uitbatersportaal"

(operator portal) contains inaccurate information and is incomplete.

Decision on the merits 162/2022 - 13/24

46. Pursuant to Article 12(1) of the GDPR, the onus is on the defendant to take

appropriate measures to provide any information referred to in Articles 13 and 14 of the GDPR

in a concise, transparent, understandable and easily accessible manner in terms

clear and simple, in writing or by other means, including electronically.

47. With regard to the content of this information, the points listed in paragraphs 1

and 2 of both Article 13 and Article 14 of the GDPR had to be communicated to persons

concerned because not all the information was collected directly from them14.

48. First of all, the inspection report concludes that the "privacy statement on the

Defendant's Uitbatersportaal" is neither transparent nor comprehensible, as required

article 12, paragraph 1 of the GDPR, and contains inaccurate information, from the point of view of

data protection, due to the following findings:

To. The "Privacy statement on the Uitbatersportaal" contains information

irrelevant and confusing, such as a reference to the "Privacy Act of 1992", the

mention of hyperlinks without any explanation or clear link to the text, and a reference

to ‘part 9’ of the "privacy statement on the Uitbatersportaal" which does not

contains no part 9.

b. The defendant's "privacy statement on the Uitbatersportaal" wrongly creates

the perception in the eyes of data subjects that the GDPR is respected, which

would be misleading given that the Inspection Service found several

GDPR violations.

vs. The defendant's "privacy statement on the Uitbatersportaal" does not

does not mention, and this is a mistake, the possibility for the persons concerned

lodge a complaint with the DPA. However, there is indeed mention of

the possibility of lodging a complaint with the Vlaamse Toezichtcommissie

(VTC or Flemish Control Commission).

d. Finally, the Inspection Service notes that the "privacy statement on the

Uitbatersportaal" is unclear and therefore not transparent with regard to

concerned :

i.

the purposes and legal bases of the processing; we do not specify which

legal obligations requiring the processing of personal data

personnel the defendant must respect;

14 Article 29 Group, legal predecessor of the EDPB, Guidelines on Transparency within the meaning of Regulation (EU)

2016/679, WP 260, revised version of April 11, 2018 (taken over by the European Committee for the Protection of

data): https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=622227 (item 23).

ii.

exercising the rights of data subjects; we don't specify what

a data subject can concretely expect from the

defendant if it exercises its rights; And

iii.

the adaptations that have been made: it is not indicated when

adaptations have been made, what exactly has been adapted and via which

"common communication channels" the persons concerned are

informed.

49. Second,

the Inspection Service also notes that

the "declaration of

confidentiality on the Uitbatersportaal" of the defendant is incomplete because all the

information which must be mentioned pursuant to Articles 13 and 14 of the

GDPR are not in fact, since no information is communicated

re :

To.

the purposes of the processing as well as the legal basis for the processing;

b.

the fact that the persons concerned have the right to withdraw at any time a

consent given;

vs.

the fact that data subjects have the right to lodge a complaint with the

ODA; And

d.

the source from which the personal data originates and, if applicable, whether

they are taken from publicly available sources.

50. Given that the defendant performs a large number of data processing operations, implying that a

large amount of information must be communicated to the persons concerned, the

Litigation Chamber considers that a data controller such as the defendant must

use a multi-level approach:15

- On the one hand, the person concerned must immediately have clear information and

accessible on the fact that information on the processing of his personal data

(privacy policy) exist and where it can find them in

their entirety.

- On the other hand, without prejudice to the easy accessibility of the privacy policy

in its entirety, the person concerned must, from the first communication of the

controller with it, to be informed of the details of the purpose of the

processing concerned, the identity of the controller and the rights to which it

has.

15 See along the same lines: decision 81/2020 of the Litigation Chamber (points 53 and following) and decision 76/2021

(points

:

https://www.autoriteprotectiondonnees.be/citoyen/publications/decisions.

searchable

following),

following

link

58

via

And

THE

Decision on the merits 162/2022 - 15/24

51. The importance of providing this information at several levels stems in particular from the

recital 39 GDPR. Any additional information necessary to enable the

data subject to understand, based on the information provided at this first level,

what the consequences of the processing in question will be for her must be added.

52. The Respondent considers that the information it provides to the data subject meets the

requirements of Articles 12, 13 and 14 of the GDPR. In this regard, the Respondent emphasizes that it seeks

to strictly comply with data protection legislation and collaborates in this

effect closely with its data protection officer. The defendant argues that

since the inspection report was written, it has adapted the "privacy statement on the

Uitbatersportaal" in consultation with the Data Protection Officer. In its

findings,

the defendant explains how

the new "declaration of

confidentiality on the Uitbatersportaal" has been amended.

53. With regard to

the transparency of

the "privacy statement on

THE

Uitbatersportaal", the defendant specifies that he has adapted it since the drafting of the report

inspection: there is no longer any reference to the Privacy Law which has been repealed but only

to the GDPR, the confusing reference to a non-existent part 9 has also been removed,

the reference to the contact possibilities of the defendant have also been adapted. As it concerns

the possible confusion relating to the hyperlinks without further explanation, the defendant argues

that in the passage appearing above the hyperlinks, it is indeed explained for which

reasons the respondent is processing the personal data, with explicit reference to the

Accommodation decree and in the basic register of the Flemish accommodation offer. In this

framework, the respondent points out that he has not yet received any questions or comments

in this regard. He therefore wonders if this is really a confusion. Under the title “Wat zijn

jouw rechten en hoe kan je deze uitoefenen (What are your rights and how to exercise them)”,

the new privacy statement now provides (in addition to the VTC) also the mention of

DPA in the exercise of the rights of data subjects16.

54. To the extent necessary and in accordance with its previous decisions, the

Litigation Chamber specifies that the APD, as a federal supervisory authority, is what

who is competent to monitor compliance with the GDPR17. This is also the case if the

data processing relates to a matter which is the responsibility of the communities or regions

(federal authorities) and/or if the data controller is a public authority under the

16 See in particular the judgment of the Cour des marchés, 2022/AR/457 of October 26, 2022 as well as the following decisions of the

Litigation Chamber: decision 62/2022 of April 29, 2022, decision 31/2022 of March 4, 2022, decision 15/2020 of

April 15, 2020.

17 The decision of the Market Court of October 26, 2022 (2022/AR/457) confirms the jurisdiction of the DPA with regard to proceedings

Flemish.

communities or regions, even if the federated entity has itself created a

control within the meaning of the GDPR.

55. Next, the Respondent sets out in its pleadings the following arguments to demonstrate

that the finding of the Inspection Service relating to the alleged incompleteness of the

privacy statement is incorrect.

56. With regard to the statement on the purposes and legal bases of the processing, the

Respondent clarifies that this has been dealt with previously [see section II.1]. Then the

defendant asserts that the possibility of filing a complaint and therefore also of opposing

has been explicitly included in the "privacy statement on the Uitbatersportaal".

The new "privacy statement on the Uitbatersportaal" takes up the passage

following :

“Right of opposition: If you believe that your personal data does not

can no longer be processed due to your particular situation, you can

object to such processing, in connection with the products and services that we

propose in the general interest."

57. The Litigation Chamber notes that in part 6 of the former "declaration of confidentiality on the Uitbatersportaal", the person concerned was informed of his rights that she could exercise against the defendant. The Litigation Chamber refers to the passage relevant which was worded as follows: "Regarding your personal data, you you always have the right [...] to lodge a complaint relating to the processing of your data at personal character [...]. All requests to exercise the aforementioned rights may be introduced via the channels mentioned in part 9 of this declaration of privacy. If we cannot reach a solution together, you also have the right to lodge a complaint with the Vlaamse Toezichtcommissie [...]".

58. The Litigation Chamber notes that in the former "confidentiality statement on the Uitbatersportaal", the defendant did not use the correct terminology, which may lead to confusion. confusion. Insofar as necessary, the Litigation Chamber recalls that a complaint and an objection (both named in the "privacy statement on the Uitbatersportaal") do not cover the same concept within the meaning of the GDPR and that each controller must use the correct terminology. A data subject has the right to ask a data controller to no longer use their personal data staff. This is called the right to object. Under Article 21 of the GDPR, the right of opposition can only be exercised if the processing is based on one of the bases legal requirements: the legitimate interest and the execution of a mission of public interest or relating to the exercise of public authority. In other cases, the person concerned does not cannot oppose because there are alternatives for the other legal bases for

achieve the same purpose: in the event of consent, the data subject may withdraw it; the data subject cannot object to the processing required by law. If the person data subject does not agree with the way in which a data controller treats its

personal data and that no solution can be found with the

controller, the data subject may lodge a complaint with

ODA. In the initial "privacy statement on the Uitbatersportaal", it would therefore have

it had to be specified that the person concerned had the right to object to the defendant, and

where appropriate, to lodge a complaint with the DPA. In the new "Declaration of

privacy on

the Uitbatersportaal", this distinction is indeed applied

correctly, despite the fact that the two terms are used incorrectly in the

conclusions.

59. The Respondent also considers that

the "privacy statement on

THE

Uitbatersportaal" explicitly mentions the source of the personal data

as well as the fact that the public data is available via the basic register of the offer

of Flemish accommodation with indication of a link to the basic register. The new

"privacy statement on the Uitbatersportaal" explicitly mentions under the title

"Waarom verwerken wij jouw persoonsgegevens (Why do we process your data at

personal character)" the following text:

“Toerisme Vlaanderen may obtain the following personal data from

three

(3) ways, viz.

: on paper, through

operator portal

(uitbatersportaal) or via the Internet service of the Crossroads Bank for Housing

(Kruispuntbank Vakantiewoningen) (CIB Vlaanderen (Confederatie

van Immobilieënberoepen or Confederation of Real Estate Professions in

Flandre) is available and accessible free of charge via the website of Toerisme Vlaanderen (click here)).”

60. In conclusion, the Respondent therefore asserts that the new "privacy statement on the Uitbatersportaal" is transparent and understandable and contains accurate and complete information, at least that the finding of the Inspection Service is become irrelevant given the modifications made to the new "declaration of confidentiality on the Uitbatersportaal".

61. The Litigation Chamber considers that the new "confidentiality declaration on the Uitbatersportaal" does now contain the elements required by Articles 13 and 14 of the GDPR. The Litigation Chamber is also of the opinion that, as required by Article 12, paragraph 1 of the GDPR, the defendant has ensured to use, in its privacy policy, mainly simple, clear and direct language to inform data subjects of the data processing it operates.

Decision on the merits 162/2022 - 18/24

62. However, the Litigation Chamber also finds that in the past, the defendant made evidence of negligence, as is also apparent from the findings of the inspection report. Specifically, the "privacy statement on the Uitbatersportaal" contained irrelevant and confusing information, such as a reference to a part 9 non-existent and a reference to the Privacy Act of 1992. In addition, the "privacy statement on the Uitbatersportaal" was incomplete and non-transparent, in particular because of the absence of a reference to the possibility of lodging a complaint with the DPA, of a reference imprecise to the purposes and legal bases of the processing and to the exercise of the rights of the data subject and the use of incorrect terminology.

63. The Litigation Division nevertheless underlines in this respect that the defendant provided efforts to correct information that must be provided under Articles 12, 13 and 14 GDPR, albeit after having received the comments of the Inspection Service.

64. The Litigation Division therefore notes that initially, the "declaration of confidentiality on the Uitbatersportaal" did not meet the requirements of Articles 12, 13 and 14 of the GDPR, thus implying a violation of these articles. The fact that it has been rectified in the meantime does not change that.

I.2.2. Article 5, paragraph 2, Article 24, paragraph 1 and Article 25, paragraph 1 of the GDPR

65. With regard to liability (as defined above in part I.1.2) relating the defendant's obligations of transparency, the Inspection Service finds that the latter was not complied with by the defendant. This stems from the aforementioned violation of the articles 12, 13 and 14 of the GDPR.

66. The Litigation Chamber considered in part I.2.1 that it was indeed a question of a violation of the transparency obligations within the meaning of these articles. The Litigation Chamber finds therefore that the defendant has not been able to demonstrate that he took the necessary measures technical and organizational requirements necessary to meet the obligations in terms of transparency as defined in Articles 12, 13 and 14 of the GDPR. The Litigation Chamber therefore concludes that there is a violation of Articles 12, 13 and 14 of the GDPR. The fact that this has been rectified in the meantime does not change that.

I.3. Article 38(1) and Article 39(1) GDPR

67. The Inspection Service report finds that the Respondent did not comply with the requirements regarding the function of the data protection officer under Article 38, paragraph 1 of the GDPR nor the tasks of the data protection officer under Article 39(1) GDPR.

68. With regard to the data protection officer, the Inspection Service makes the following findings, as summarized below:

To. The defendant mentions in his response to the Inspection Service during the investigation

that he has not obtained the opinion of his data protection officer concerning

data processing between Airbnb and itself. According to the defendant, this was not

not necessary as the legal basis was already defined in Article 11 of the Decree

accommodation.

b. The defendant mentions in this same answer that he did not obtain the opinion of

its data protection officer on the interpretation of the term "survey" of

Article 11 of the Accommodation Decree.

69. The Inspection Service therefore concludes that the Data Protection Officer was not

associated, in an appropriate and timely manner, in the context of this file. The opinion of

October 11, 2021 which was provided following the DPA letter of September 10, 2020 is not sufficient

not to be able to speak of appropriate and timely (documented) involvement.

Consequently, the Inspection Service finds a violation of Article 38, paragraph 1

and Article 39(1) GDPR.

70. The Litigation Chamber recalls that Article 38, paragraph 1 of the GDPR requires that the

controller ensures that the data protection officer is involved,

in an appropriate and timely manner, to all questions relating to the protection

personal data. On the basis of article 39, paragraph 1 of the GDPR, the

data protection officer shall (a) inform and advise the data controller

processing on its obligations under the GDPR or other provisions of the

Union or Member State law relating to data protection and (b)

monitor compliance with the GDPR, other provisions of Union law or state law

members with regard to the protection of personal data, including with regard to

concerns the distribution of responsibilities, awareness and training of staff

involved in processing operations, and related audits.

71. Regarding the function of the Data Protection Officer under Article 38,

paragraph 1 of the GDPR, the defendant points out that in his view it was not necessary

to involve the data protection officer in the conclusion of the MoU. As
all other intermediaries, Airbnb is obliged to provide the defendant with the data relating
to the operator and the accommodation since the entry into force of the Accommodation Decree on
April 1, 2017. The legal basis for the communication of this data to the defendant is based
therefore on Article 11 of the Accommodation Decree and not on the MoU to which the Inspection Service
refers to. Be that as it may, the defendant immediately implicated the delegate to the
data protection after the letter of September 10, 2020 from the APD. The delegate to the
Decision on the merits 162/2022 - 20/24
data protection then issued a favorable opinion. Furthermore, the defendant states that he
applied the term "poll" in accordance with the intent of the legislative decree of
Article 11 of the Accommodation Decree. Finally, the respondent asserts that the Housing Decree
date before the GDPR, given that it entered into force on April 1, 2017 while the GDPR
has applied since May 25, 2018. Therefore, according to the defendant, it cannot be a
violation of Article 38(1) and Article 39(1) GDPR.

72. The Litigation Chamber recalls that the GDPR recognizes that the Data Protection Officer
data is a key figure with regard to the protection of personal data
staff, whose designation, function and missions are subject to rules.
These rules help the data controller to fulfill their obligations under the GDPR
but also help the Data Protection Officer to properly exercise his
assignments. The Data Protection Officer must be involved in all matters
relating to the protection of personal data. The fact that the legal basis has
defined in a legal norm does not constitute an exception to this principle.

73. Based on the defence, the Litigation Chamber finds that this is precisely the purpose of the
MoU to define between the parties in which cases the transfer of personal data
can take place and under what conditions. Therefore, the conclusion of the MoU concerns the
Respondent's GDPR compliance policy within the framework of its competences of

enforcement of legislation. Article 11 of the Accommodation Decree establishes that

data may be claimed by the defendant from Airbnb through surveys

clearly delineated but the MoU elaborates what the parties are to understand by these

clearly delineated polls. The Data Protection Officer therefore had to be

appropriately and timely associated with the drafting of the MoU. About the

make that

the Accommodation Decree had already been in force since 2017,

bedroom

Contentious emphasizes that since the implementation of the GDPR, each manager of the

processing is required to comply with the obligations that the latter imposes on it. The defendant

had to compare this legal basis that he wishes to invoke with the legal standard

superior in order to verify whether the claim of personal data complies

to GDPR. This is also a question to which the protection delegate should be associated.

Datas.

74. Considering the foregoing, the Litigation Division finds, with regard to Article 38,

paragraph 1 of the GDPR, that the data protection officer has not been sufficiently

associated with several data protection issues. It emerges from the parts of the

defendant only with regard to the data processing operations examined in this

case, the Data Protection Officer was only involved after the first letter

of the Inspection Service.

Decision on the merits 162/2022 - 21/24

75. In view of the foregoing, the Litigation Division considers that there is a violation of Article 38,

paragraph 1 and Article 39, paragraph 1 of the GDPR.

I.4. Violation of Article 4.11), of Article 5, paragraph 1, a) and paragraph 2, of Article 6,

paragraph 1, a) and Article 7, paragraphs 1 and 3 of the GDPR

76. The inspection report finds that no legally valid consent within the meaning of

Article 4.11) of the GDPR is only required of visitors to the website for the use of cookies not strictly necessary. The persons concerned would in fact not see themselves offer free choice, by the defendant, regarding the use of cookies not strictly required. In this respect, the inspection report states the following: "The two possibilities of choice for the use of non-strictly necessary cookies that are offered by the respondent to data subjects in the cookie window (i.e. "no, provide me more information" and ""yes, I agree") are not presented in the same way manner. The possibility of choosing "yes, I agree" does not specify any information additional for the persons concerned. Also, in the cookie window, there lacks a possibility of choice allowing the persons concerned to refuse immediately the use of cookies that are not strictly necessary." In addition, the Service of Inspection notes that no transparent information is provided concerning the manner in which a consent given for the use of cookies not strictly necessary must be removed.

77. In its conclusions, the Respondent objects that the supplementary finding has no legal basis, which implies that it must be rejected from the procedure. The service d'Inspection indeed refers to Article 72 of the LCA to establish this finding.

The decision of the Management Committee to refer the matter to the Inspection Service, in accordance with however, article 63, 1° of the LCA defines the subject of the investigation and therefore the scope of the investigation must, according to the Respondent, remain limited to the framework resulting from the decision of the direction.

78. In the alternative, the Respondent refutes the finding of the Inspection Service. The defendant points out that on its website only strictly necessary cookies or cookies functions for which no consent was required were active. This is not either refuted by the Inspection Service which does not demonstrate that cookies not strictly necessary were also active on the defendant's website at

time of findings. On February 25, 2022, the defendant launched its new site

Internet with a new cookie window that provides the user with the information

necessary and the choices regarding the cookies used at that time. According to the defendant,

on the new website, the persons concerned are informed in a way

transparency of the use of cookies by means of a new declaration in terms of

Cookies. Since no cookies not strictly necessary were active on the website of the

Decision on the merits 162/2022 - 22/24

defendant at the time of the investigation carried out by the Inspection Service, the communication

information about such cookies or requesting consent for such cookies

were not relevant at that time.

79. In response to the Respondent's assertions, the Litigation Chamber first refers to

Article 72 of the LCA worded as follows:

“Without prejudice to the provisions of this chapter, the Inspector General and the inspectors

may carry out any investigation, any control and any hearing, as well as collect any

information that they consider useful in order to ensure that the fundamental principles of

protection of personal data, within the framework of this law and the laws

containing provisions relating to the protection of the processing of personal data

staff, are effectively respected.”

80. It follows from this provision that the Inspection Service is not bound by the scope of the

complaint nor by the scope of the decisions of the Management Committee. The Inspection Service

determines itself the scope and modalities of the investigation, taking into account the principle of

proportionality and necessity as defined in the Charter of the Inspection Service18.

81. Based on the inspection report, the Litigation Chamber concludes that the finding of the

Inspection service concerning

the actual use of cookies not strictly

necessary has not been sufficiently supported by evidence19, making it impossible to

continuation of the treatment of this file within this framework.

Therefore, the Litigation Chamber proceeds to a classification without follow-up with regard to

the finding of the Inspection Service relating to Article 4.11), Article 5, paragraph 1,

a) and paragraph 2, in Article 6, paragraph 1, a) and in Article 7, paragraphs 1 and 3 of the GDPR.

II. Penalties

82. On the basis of the documents in the file, the Litigation Division finds that there is a question of

two violations of the GDPR: on the one hand, the violation of Article 12, paragraphs 1 and 2, of

Article 13, paragraphs 1 and 2, Article 14, paragraphs 1 and 2, Article 5, paragraph 2,

of Article 24, paragraph 1 and Article 25, paragraph 1 of the GDPR and on the other hand that of

Article 38(1) and Article 39(1) GDPR. Although the defendant has

remedied these violations, it is established that violations of the right to data protection

took place. As already stated, the principle of transparency is one of the principles

of

charter

Service

18

https://www.autoriteprotectiondonnees.be/publications/charte-du-service-d-inspection.pdf..

19 See Section A.1 of the Dismissal Policy of the Litigation Chamber of June 18, 2021, available at

the next address

: https://www.autoriteprotectiondonnees.be/publications/politique-de-classement-sans-suite-de-la-

litigation-chamber.pdf.

inspection,

available

the address

next

2022,

fundamentals of the GDPR. The data protection officer also plays a role

crucial in the protection of data with a data controller.

83. The Litigation Chamber considers that there are sufficient elements to formulate a

reprimand, which constitutes a mild sanction and is sufficient in light of the violations

of the GDPR observed in this file. When determining the penalty, the Chamber

Litigation takes into account the fact that the defendant has already rectified the situation and has

submitted evidence. In addition, the Litigation Chamber emphasizes that it is not

competent for

impose an administrative fine on public bodies,

in accordance with Article 221, § 2 of the Data Protection Act20.

84. The Litigation Chamber proceeds to a classification without follow-up with regard to the other

grievances and findings of the Inspection Service because, on the basis of the facts and documents of the

file, it cannot conclude that there is a violation of the GDPR. These grievances and

findings of the Inspection Service are therefore considered to be clearly

unfounded within the meaning of Article 57, paragraph 4 of the GDPR21.

Publication of the decision

85. Given the importance of transparency regarding the decision-making process of the Chamber

Litigation, this decision is published on the website of the Protection Authority

of the data, mentioning the identification data of the defendant. This statement is

justified by the general interest of this decision within the framework of the function of example of the

defendant as a public service on the one hand, and by the inevitable re-identification of the

defendant in case of pseudonymization on the other hand.

20 Law of 30 July 2018 on the protection of individuals with regard to the processing of personal data staff, M.B., September 5, 2018.

21 See point 3.A.2 of the Dismissal policy of the Litigation Chamber, cf. footnote 19 of the this decision.

Decision on the merits 162/2022 - 24/24

FOR THESE REASONS,

the Litigation Chamber of the Data Protection Authority decides, after deliberation:

- pursuant to Article 100, § 1, 5° of the LCA, to issue a reprimand to the defendant with regard to the violation of Article 12, paragraphs 1 and 2, of Article 13, paragraphs 1 and 2, Article 14, paragraphs 1 and 2, Article 5, paragraph 2, Article 24, paragraph 1 and Article 25(1) GDPR;
- pursuant to Article 100, § 1, 5° of the LCA, to issue a reprimand to the defendant with regard to the violation of Article 38, paragraph 1 and Article 39, paragraph 1 of the GDPR;
-

pursuant to Article 100, § 1, 1° of the LCA, to file without further action with regard to all other findings.

Pursuant to Article 108, § 1 of the LCA, this decision may be appealed to the Court of Markets (Brussels Court of Appeal) within thirty days of its notification, with the Data Protection Authority as defendant.

This recourse can be introduced by means of a contradictory request which must repeat the particulars listed in article 1034ter of the Judicial Code22. The contradictory request must be filed with the registry of the Markets Court in accordance with article 1034quinquies of the Code judicial 23, or via the e-Deposit computer system of Justice (article 32ter of the Judicial Code).

(Sr.) Hielke HIJMANS

President of the Litigation Chamber

22 "The request contains on pain of nullity:

the indication of the day, month and year;

1°

2° the surname, first name, domicile of the applicant, as well as, where applicable, his qualities and his national register number or

Business Number ;

3° the surname, first name, domicile and, where applicable, the capacity of the person to be summoned;

4° the object and the summary statement of the means of the request;

5° the indication of the judge who is seized of the application;

6° the signature of the applicant or his lawyer."

23 "The request, accompanied by its appendix, is sent, in as many copies as there are parties involved, by letter recommended to the clerk of the court or filed with the registry."