
LAW FACULTY

# PAX MOOT COURT 2025

## Applicant's Resolution

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# I. Abbreviations

**Art.** – Article.

**Arts.** – Articles.

**Brussels I bis** - Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

**DCC** – Dutch Civil Code.

**ECJ** – European Court of Justice.

**EU** – European Union.

**Rome I** – Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

**Rome II** – Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

**SSF** – Safe Socials Foundation.

# II. Introduction

## 1. Statement of facts

- The **applicant**, Safe Socials Foundation [“**SSF**”], is a non-profit organization established under Dutch law that has its statutory seat in the Dutch city of Maastricht. SSF was founded by various content moderators who suffered from severe mental health issues due to the nature of their employment, this is why the foundation´s main goals are: promoting a safe environment on social media, advocating for content moderators fair working conditions and raising awareness of their pivotal role in maintaining digital platforms free of harmful content.
- SSF filed a **claim** at the court of first instance in Maastricht on October 25th 2024, which alleges that Telerel SA, Watermelon Information Technology Ltd., and Watermelon IT Platform Ltd. have failed to effectively protect content moderators from the risk of severe psychological harm associated with their work´s nature.
- This failure to prevent psychological harm arises mainly from the fact that the respondents imposed excessive expectations on content moderators, specifically by setting unreasonable “average handling times” for reviewing highly distressing content, which augmented the probabilities of these workers to develop certain psychological afflictions, such as: depression, anxiety, post-traumatic stress disorder and suicidal ideation.
- The **respondents’ failures** allegedly consist of breaching their duty of care, by failing to effectively provide adequate safeguards against mental health risks to their employees.
- Regarding the location of activities, many of the workers hired by Telerel perform their work from the Meuse-Rhine Euroregion, which includes Dutch territories. Preliminarily, this provides a strong basis for the Maastricht´s first instance court **jurisdiction**.
- The **relief sought** by SSF´s claim is twofold, as it requests the court: to declare the respondents’ failure to adequately set up barriers to protect content moderators from psychological harm; and to order the respondents to reduce expectations related to “average handling time” and effectively provide a comprehensive medical, psychiatric and psychological support to the affected moderators.

# 2. Objectives of the work

The **main objective** of this written memorandum is to assess the legal and procedural validity of the claim filed by the SSF against Telerel SA and certain Watermelon entities (Watermelon Information Technology Ltd. and Watermelon IT Platform Ltd.), in order to do so we must examine three specific topics in the following order:

- Determination of whether the first instance court in Maastricht has international jurisdiction to hear the case in accordance with relevant European Union ["**EU**"] regulations and international conventions.
- Analysis and justification of why Dutch law is applicable to the merits of this case, opposed to other laws for which the respondents argue.
- Evaluation of the implications of recognizing in the Netherlands the settlement reached in August 2024 in the United Kingdom and its potential consequences on the pending proceedings and obligations under the 2019 Judgments Convention.

Furthermore, this case offers us the possibility to explore its broader implications in improving labor rights protection and the delineation of corporate responsibility in cross-border outsourcing scenarios. I firmly believe that these **theoretical objectives** can contribute to the academic discussion on the evolving nature of legal disputes in digital labor and outsourcing contracts under private international law frameworks.

# III. Case Analysis from the Plaintiffs' Perspective

# 1. Jurisdiction Analysis

## 1.1. Preliminary considerations

### *1.1.1 Applicability of Brussels I bis*

As stipulated in **Art. 1(1)** of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ["**Brussels I bis**"], this regulation applies to civil and commercial matters involving parties domiciled in EU Member States[1]. Specifically, the case at hand is of undeniable civil nature, as it concerns allegations of failing to provide adequate workplace safety and mental health protections for content moderators. It is also worth mentioning that these claims do not fall within the excluded areas or matters listed in Art. 1(2)[2]. Furthermore, as the case involves parties domiciled in different Member States and harm occurring across borders, it triggers the transnational element that requires the application of Brussels I bis.

### *1.1.2. SSF´s Right of Action under Dutch Law*

The case at hand can be considered a class action because SSF is pursuing a claim on behalf of a determined group (content moderators) who share common interests and have suffered similar harm (mental health disorders). Under Dutch law, class actions are governed by some of the provisions in Title 3.11 of the *Burgerlijk Wetboek* or Dutch Civil Code ["**DCC**"]. More precisely **Art. 3:305a DCC enables legal entities**, such as foundations or associations, **to pursue claims on behalf of a group if they meet certain requirements**, which are: the legal entity must have a distinct legal personality, its statutory purposes must align with the interests of the group it represents, and the action brought forward by said legal entity must promote the group´s collective interests[3].

[1] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Official Journal of the European Union L 351, 20 December 2012).
[2] *Id*.
[3] *Burgerlijk Wetboek Boek 3* (version of 8 November 2024).

SSF complies with all three of the aforementioned requisites. First of all, SSF has a legal personality because Art. 2:3 DCC automatically grants legal personality to certain types of entities, enabling them to act as an independent legal entity with their own rights and obligations. One of these is a "*stichting*" or foundation, and to be considered as such it must meet certain conditions established in Art. 2:285 DCC, which SSF does: it has been established by a legal act, it does not have any members , and it has a defined set of objectives that are clearly mentioned in its articles of incorporation (e.g.: contributing to a safe social media environment for both users and content creators, promoting the recognition of the vital role of content moderators in creating and safeguarding social media environment, promoting all content moderators' right to enjoy just and favorable work-conditions, and emphasizing proactive measures specifically aimed at achieving the previously mentioned objectives)[4].

The statutory objectives of the SSF align directly with the interests of content moderators, thereby fulfilling the second requirement set out by Art. 3:305a DCC, which establishes that the foundations objectives or purpose must correspond to the interests of the group it seeks to represent. SSF´s Articles of Incorporation explicitly outline its purpose to promote, amongst other objectives, content moderator´s right to enjoy a favorable work environment, which include, but is not limited to: fair compensation for employees or fair income for self-employed or autonomous workers, and an improved protection of worker´s health protection, especially regarding mental health. This objective is inherently linked to the collective interest of content moderators, who face psychological harm on a daily basis, due to excessive demands regarding average handling time, and insufficient or ineffective safeguards for their mental health. By seeking remedies to improve working conditions, SSF legal actions fully align and promote the moderators' basic needs and fundamental rights, thus satisfying as well the third and final legal requirement.

In conclusion, having established that SSF is correctly set up as a foundation or "*stichting*" with legal personality pursuant to Arts. 2:3 and 2:285 DCC, that its clearly defined statutory objectives align with those of content moderators, and that the claims against the Respondents promote the moderators' interests, Art. 3:305a DCC grants SSF right of action in the present matter. In other words, **SSF can bring forward this claim**

[4] *Burgerlijk Wetboek Boek 2* (version of 1 January 2025).

***motu proprio***, as Dutch law expressly allows foundations to initiate collective actions in their own name without being dependent on obtaining authorization or mandates from the individual content moderators they represent. Its claim arises from its statutory purpose to protect their collective rights and promote systemic change by pursuing remedies for the benefit of the affected group as a whole[5].

*1.1.3. Domicile of the involved Parties*

Determining the domicile of the involved parties is important for determining the jurisdiction of the Maastricht first instance court. **Art. 63(1) Brussels I bis** sets out three criteria to establish the domicile of legal persons based on the place where they have their: *"(a) statutory seat; (b) central administration; or (c) principal place of business"*[6].

In the present case, all involved parties are legal persons. As previously established in subsection 1.1.1, SSF qualifies as a legal person under law as it is a *stichting* established by legal act. Similarly, Telerel SA, Watermelon Information Technology Ltd., and Watermelon IT Platforms Ltd. are incorporated companies under French, Irish and UK law, respectively. The incorporation of these entities under national corporate law grants them legal personality, entitling them to act in their own name. This qualification as legal persons ensures that Art. 63(1) Brussels I bis is the relevant provision for determining their domiciles.

SSF is domiciled in Maastricht (Netherlands), where it has its statutory seat. Telerel SA is domiciled in Lille (France), as the company´s operations (i.e.: providing digital services to other companies, such as hiring content moderators) are centralized there. Watermelon Information Technology Ltd. has its domicile in Cork (Ireland), where its strategic policies and oversight of the social media platform operations are based, as it is where the main headquarters are located.

Watermelon IT Platforms Ltd. is domiciled in London (United Kingdom), where its principal place of administration is located. This presents a unique situation, as the United

[5] Voordouw, J., "Public interest litigation before domestic courts in the Netherlands on the basis of international law: Article 3:305a Dutch Civil Code", EJIL:Talk!, 17 June 2021 (available at https://shorturl.at/79N2y ; last accessed on 8 January 2025).
[6] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Official Journal of the European Union L 351, 20 December 2012).

Kingdom is no longer a Member State of the European Union as stated in The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, which entered into force on February 1st 2020[7]. As a result of not being a Member State, the United Kingdom is not directly bound by the jurisdiction provisions contained in Brussels I bis. Nonetheless, this does not mean that the UK based company is exempt from the Maastricht´s Court jurisdiction, as it can be based off of the location *"from where the employee habitually carries out his work"*[8] (see Section 1.3).

### *1.1.4 Tortious nature of the claims*

In tort law, establishing liability requires proving the presence of four core elements: duty of care, breach of duty, damages and causation. In the present case, the claims brought by SSF on behalf of content moderators against the Respondents are based on allegations of severe psychological harm caused by excessive work demands, exposure to traumatic material and a lack of mental health safeguards.

The existence of a **duty of care** is fundamental and arises when one party has an obligation to avoid actions or omissions that could foreseeably cause harm to another. Telerel SA, as the direct employer of the content moderators, has a duty to ensure that their work is performed in conditions that safeguard their physical and mental health. Watermelon IT Platforms Ltd., as the entity organizing and overseeing the content moderation process, has a duty to implement safe operational standards and ensure that its contractual partners (i.e.: Telerel SA) do not subject workers to unreasonable working conditions. Watermelon Information Technology Ltd., as the parent company setting overarching policies, has a duty to monitor and prevent harmful practices implemented by its subsidiaries and contractors if such harm is foreseeable.

Once established that all the respondents have a duty of care towards their employees, and more specifically towards the content moderators, a **breach of said duty** has to be

[7] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (Official Journal of the European Union C 384I, 12 November 2019); Council of the European Union, "The EU-UK Withdrawal Agreement" (available at https://www.consilium.europa.eu/en/policies/the-eu-uk-withdrawal-agreement/; last accessed on 10 January 2025).

[8] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Official Journal of the European Union L 351, 20 December 2012)

demonstrated. A breach of duty occurs when a party fails to meet the required standard of care, resulting in an unreasonable or negligent conduct that exposes others to harm. Telerel SA breached its duty by imposing unreasonable high-performance standards (i.e.: daily ticket targets of 400 minimum) without providing adequate mental health safeguards, despite the evidence that high average handling times in social media content moderation increases the probability of workers developing mental health issues. Watermelon IT Platforms Ltd. breached its duty by failing to averse and regulate Telerel´s practices effectively, despite being in a position of authority and also knowing of the risks inherent to content moderation in social media. Watermelon Information Technology Ltd. also breached its duty of care, as it failed to ensure that its global operations adhered to adequate workplace safety standards, including those of subsidiaries and contractors.

In cases such as Osman v. United Kingdom[9], Budayeva and Others v. Russia[10] or Opuz v. Turkey[11], the European Court of Human Rights has consistently emphasized the obligation of states to prevent foreseeable harm against fundamental rights and freedoms from the European Convention of Human Rights. Despite these cases being primarily between individuals and states, the common principle underlying all of them (i.e.: the duty to take reasonable and preventive measures to avoid foreseeable harm) can be extrapolated to the case at hand: the respondents' failure to establish adequate preventive measures against predictable harms towards the content moderators constitutes a clear breach of their duty of care.

**Damages** refers to the *"material or immaterial harm to a legally protected interest"*[12] suffered by the claimant. In this case the content moderators suffered very evident immaterial/non-pecuniary harm (i.e.: depression, anxiety, post-traumatic stress disorder, suicidal ideation, etc.) to a legally protected interest, in this case: their right to *"fair and just working conditions"* that respect their *"health, safety and dignity"*[13]. In Lazar v.

[9] Judgment of the European Court of Human Rights in Osman v. United Kingdom, 28 October 1998, Application No. 23452/94 [electronic version – HUDOC database. Ref. ECLI:CE:ECHR:1998:1028JUD002345294]. Last accessed: 20 January 2025.
[10] Judgment of the European Court of Human Rights, 20 March 2008, Application No. 15339/02 [electronic version – HUDOC database. Ref. ECHR-2008/15339/02]. Last accessed: 20 January 2025.
[11] Judgment of the European Court of Human Rights, 9 June 2009, Application no. 33401/02, *Opuz v. Turkey* [electronic version – HUDOC database. Ref. ECHR 2009/Opuz]. Last accessed: 20 January 2025.
[12] European Group on Tort Law, *Principles of European Tort Law (PETL)*, European Group on Tort Law (available at http://egtl.org/PETLEnglish.html; last accessed 18 January /2025).
[13] Charter of Fundamental Rights of the European Union, 2012, Official Journal of the European Union, C 326, 26 October 2012, pp. 391–407. Available at https://eur-lex.europa.eu/eli/treaty/char_2012/oj/eng (last accessed: 18 January 2025).

Allianz SpA (C-350/14) the European Court of Justice ["**ECJ**"] established that non-material damages include: *"damage to health (medically certified damage), psychological damage (non-physical pain), and damage to personal relationships (significant impairment of daily life)"*[14]. Applying this principle to the present case, it can be argued that the content moderators suffered significant psychological damage as a result of their working conditions, which fall within the scope of non-material damages.

Finally, **causation** establishes the link between the defendant's breach of duty and the harm suffered by the claimant. In this case, the aforementioned immaterial damage was directly caused by their exposure to psychologically harmful content, under excessively demanding conditions set by Telerel SA and indirectly overseen by Watermelon IT Platforms Ltd. and Watermelon Information Technology Ltd. Furthermore, the respondents were in a position to foresee the risks associated with their policies, but neglected to take reasonable steps to mitigate these risks. Altogether, by failing to establish protective measures, the respondents directly contributed to the moderators' harm, making the resulting damages both predictable and avoidable.

In conclusion, **all four elements of a tort are met, confirming the tortious nature of the claims brought forth by SSF**. The Respondents have a clear duty of care towards the moderators, rooted in their positions of authority or control and consisting in the obligation to protect from foreseeable harm. This duty was breached through the failure to implement adequate mental health safeguards, which resulted in psychological harm that is directly attributable to the Respondents' negligence.

## 1.2. Jurisdiction of the Maastricht Court with regards to EU domiciled Respondents

**Article 4(1) Brussels I bis** provides that *"Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State"*[15]. Under this rule: Telerel SA, domiciled in Lille, would be sued in French courts;

[14] Judgment of the Court of Justice of the European Union of 23 December 2015, *Lazar v. Allianz SpA* (Case C-350/14) [electronic version - EUR-Lex database. Ref. ECLI:EU:C:2015:802]. Last accessed: 20 January 2025.
[15] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Official Journal of the European Union L 351, 20 December 2012).

and Watermelon Information Technology Ltd., domiciled in Cork, would be sued in Irish courts. However, Brussels I bis includes several exceptions that allow for jurisdiction in other Member States in specific circumstances, which given the nature of the claims in this case, the general rule **is displaced by the special jurisdiction provision in Art. 7(2)**, which is applicable in matters of tort or delict.

Art. 7(2) Brussels I bis states that "*A person domiciled in a Member State may be sued in another Member State: […] in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur"*[16]. The claims brought forward by SSF are tortious in nature, as previously established in subsection 1.1.4. Regarding the place where the harmful events occurred, in Shevill and Others v. Presse Alliance (C-68/93) the ECJ established that this could mean either the place where the event giving rise to the harm occurred or the place where the damage manifested[17]. But we also have to take into account that, as substantiated in Holterman Ferho Exploitatie BV v. Spies von Büllesheim (C-47/14), "*the term 'place where the harmful event occurred' cannot be construed so extensively as to encompass any place where the adverse consequences can be felt of an event which has already caused damage actually taking place elsewhere"*[18].

In the present case, **Maastricht qualifies as the place where the harm occurred**, as the psychological injuries endured by content moderators happened while working in Maastricht. Whilst it is also true that Maastricht is not the only city in where the harm took place (i.e.: Liège, Aachen, Hasselt and Eupen), it is presumably the Dutch location from where all of the moderators carried out their work for some period of time (it is mentioned that each of the workers carry out their work from a Dutch location, and Maastricht is the only Dutch city mentioned).

Hydrogen Peroxide SA v Evonik Degussa GmbH and Others (C-352/13) establishes that in *"matters relating to tort and delict and quasi-delict, the courts for the place where the harmful event occurred or may occur are usually the most appropriate for deciding the*

[16] *Id.*
[17] Judgment of the Court of Justice of the European Union, 7 March 1995, Shevill and Others v Presse Alliance SA (Case C-68/93) [electronic version – EUR-Lex database. Ref. ECLI:EU:C:1995:61]. Last accessed on 21 January 2025.
[18] Judgment of the Court of Justice of the European Union, 3 April 2014, Holterman Ferho Exploitatie BV and Others v F.L.F. Spies von Büllesheim (Case C-352/13), para. 78 [electronic version – EUR-Lex database. Ref. ECLI:EU:C:2015:193]. Last accessed: 21 January 2025.

*case, in particular on the grounds of proximity and ease of taking evidence"*[19]. Maastricht´s location, equidistant from the other key cities, reinforces its suitability as the venue for the proceedings. Its geographical position ensures accessibility for affected moderators who worked across these regions, making it easier for them to attend court and participate in the process. It also simplifies the collection and submission of evidence, as it minimizes logistical barriers caused by greater traveling distances. Furthermore, Maastricht is the statutory seat of the applicant, which only strengthens the argument that it holds a particularly close and logical connection to the case at hand.

To sum up, under Art. 7(2) Brussels I bis, claims that are tortious in nature can be brought to the courts where the harmful event occurred. While harm also occurred in other cities within the Meuse-Rhine region, Maastricht holds the strongest connection to the case, this is due to several reasons: each of the moderators worked at some point from there; its central position ensures accessibility and ease of evidence collection, which results in a better access to justice for the moderators; and its status as the statutory seat of the applicant. These factors collectively justify why the Maastricht First Instance Court has jurisdiction over the claims regarding Telerel SA and Watermelon Information Technology Ltd.

## 1.3. Jurisdiction of the Maastricht Court with regards to third country domiciled Respondents

Because Watermelon IT Platforms Ltd. is domiciled outside the EU (see subsection 1.1.3), Maastricht´s First Instance Court jurisdiction has to be justified differently. Art. 6(1) Brussels I bis sets out that *"If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State"*[20]. **Arts. 21(2) and 21(1)(b)(i)** provide that if the employer is not domiciled in a Member State and the employees do not habitually perform their work in a determined country, he can be

[19] Judgment of the Court of Justice of the European Union, 16 July 2015, Hydrogen Peroxide SA v Evonik Degussa GmbH and Others (Case C-352/13), para. 40 [electronic version – EUR-Lex database. Ref. ECLI:EU:C:2015:501]. Last accessed: 28 January 2025.
[20] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Official Journal of the European Union L 351, 20 December 2012).

sued *"in the courts for the place where or from where the employee habitually carries out his work"*[21].

In this case, the content moderators do not habitually work from a fixed location, but instead they are what is known as "digital nomads", this means that they often work from various locations, mainly around the Meuse-Rhine region. The main hubs from where they usually perform the work are located in Aachen, Liège, Hasselt and Maastricht, so any of these four cities could technically be eligible as the place from where the employee usually carries out his work. However, **Maastricht emerges as the most appropriate jurisdiction for several reasons** (see previous subsection for further detail). First, the applicant is domiciled in Maastricht, which results in improved procedural and administrative efficiency in court proceedings. Second, Maastricht´s central location in the Meuse-Rhine region makes it a more practical forum compared to the other cities, which facilitates easy accessibility for content moderators and easiness of evidence collection. Third, each of the moderators has at some point worked in Maastricht, which further reinforces the connection of the city to the case.

# 2. Determination of the applicable Law

## 2.1 Preliminary considerations

*2.1.1. Determining the contractual or extracontractual nature of an employment relationship in EU labor law*

Under European labor law, the existence of a contractual relationship is rather determined by the substance of the arrangement itself rather than its formal label. Extensive case law supports this principle, emphasizing that the true nature of a labor relationship defines its contractual status.

In the landmark case of **Lawrie-Blum v. Land Baden Württemberg (C-66/85)**, the ECJ established one of the fundamental tests for defining a worker under EU law. The case involved a trainee teacher who was denied classification as a worker under German law because of the fact she was a "trainee", which in the traditional sense were not considered to be engaged in any economic activity, as their role was considered part of their education

[21] *Id.*

and professional training rather than employment. However, the ECJ disagreed with this reasoning, arguing that in this context the trainee fulfilled the key criteria of a "worker" under EU law, mainly because "the essential feature of an employment relationship is that a person performs services of some economic value for and under the direction of another person in return for which he receives remuneration"[22].

In **Danosa v. LKB Lizings SIA (C-232/09)**, the ECJ had to determine whether Ms. Danosa, a company director who had been recently fired while she was pregnant, was actually an employee. Latvian law excluded board members from the benefits and protections awarded to "employees", treating them instead as self-employed individuals. Despite this, Ms. Danosa challenged the decision of Latvian courts, arguing that in fact her role as a board member constituted an employment relationship, thus entitling her to protection under EU labor law.

The ECJ used a very similar reasoning to the one established in Lawrie-Blum v. Land Baden Württemberg (C-66/85), giving a definition of "employee"/"worker" independent of its formal denomination or its classification under national law: a "worker" is a person who performs services, for and under the direction of another, and receives remuneration in return. In this case, Ms. Danosa received regular payment for her role as a board member. The court also noted that there was a mutual exchange of obligations, as Ms. Danosa was obliged to perform the duties associated with her role, and the company was obligated to compensate her for the services, being this enough to satisfy the test for mutual obligations inherent in a contractual relationship. Ultimately, the ECJ ruled that she met the definition of a "worker" and was entitled to EU labor law protection, hence making her dismissal unlawful[23].

Another critical case is **FNV Kunsten Informatie en Media v Staat der Nederlanden (C-413/13)**, as it also focuses on the legal characterization of freelance workers and whether they could be classified as employees. FNV, a Dutch trade union and a group of freelance orchestral musicians, who were classified as "self-employed" under their contracts, sought recognition of their ability to engage in collective bargaining for their

[22] Judgment of the Court of Justice of the European Union of 3 July 1986, *Lawrie-Blum v. Land Baden-Württemberg (C-66/85)* [electronic version - EUR-Lex database. Ref. ECLI:EU:C:1986:284]. Last accessed: 8 January 2025.
[23] Judgment of the Court of Justice of the European Union of 11 November 2010, *Danosa v. LKB Lizings SIA (C-232/09)* [electronic version - EUR-Lex database. Ref. ECLI:EU:C:2010:674]. Last accessed: 13 January 2025.

working conditions. Both Dutch and European competition law prohibit agreements that could restrict competition, including collective agreements covering self-employed workers. As a consequence, the crux of the case relies on determining whether these musicians can be considered as proper employees or self-employed individuals.

The ECJ refrained from directly investigating and deciding on the circumstance of the freelance musicians, instead it provided a set of guiding principles on the legal criteria to determine whether an individual or group of individuals qualify as an employee under EU law. They continued with the same line of reasoning established in previous cases, prioritizing substance over form and emphasizing that even self-employed individuals could be classified as workers: if they act under the direction and control of their employer, if they rely economically on the employer for their livelihood, and if they are integrated into the employer´s organization[24].

The cases cited above are just some examples of the extensive jurisprudence available that collectively illustrate the EU´s labor law intention to prioritize the substance of labor relationships over their formal classification. The ECJ has consistently emphasized that a contractual relationship exists when a person provides economic value under the direction of another in exchange for remuneration, with mutual obligations binding for both parties. Moreover, factors such as control, economic dependence, and integration into the employer's organization are also crucial in determining whether an individual should be considered a worker or not. This approach ensures that individuals engaged in employment relationships are protected by EU labor law, regardless of how their roles are labeled by contract provisions or under national legislation.

### *2.1.2 Nature of the relationship between the Respondents and Content Moderators*

Now that we have established the principles used in EU labor law to determine the nature of a labor relationship, we will analyze the specific relationships between the content moderators and each of the respondents.

First, the **relationship between Telerel SA and the content moderators is a contractual relationship** under the aforementioned EU labor law principles, despite the moderators

[24] Judgment of the Court of Justice of the European Union, 4 December 2014, *FNV Kunsten Informatie en Media v Staat der Nederlanden (Case C-413/13)* [electronic version – EUR-Lex database. Ref. ECLI:EU:C:2014:2411]. Last accessed: 13 January 2025.

being formally labeled as self-employed. In this case, Telerel SA engages the moderators to perform content moderation services exclusively for the Watermelon platform, ensuring they meet a daily quota of 400 tickets. This existence of performance metrics and work obligations clearly establishes an exchange of obligations, in which the moderators are required to complete a specific workload, and in turn, Telerel SA is required to compensate them for their services. Furthermore, Telerel SA exercises significant control over the moderators' work, as the latter are not independent agents with discretion over their tasks. Instead, they are bound by company-determined content policies, work standards and strict performance requirements set by the company, which evidences the authority they are subject to. Moreover, the moderators have a pronounced economic dependency, as they work exclusively for Watermelon through Telerel, thus having a single source of income and no alternative source of employment.

Despite presenting a more complex scenario, as the company does not directly hire them, **Watermelon IT Platforms Ltd. and the moderators also hold a contractual relationship**. However, as we have established in the previous subsection, to determine whether a contractual relationship exists we have to look past formal nomenclatures and links that do not exist on paper. The fact that Watermelon IT Platforms Ltd. operates as the core entity responsible for moderation, rather than Telerel, suggests that it functions as the real employer. This is proven by the significant control that it exercises over the content moderators as they oversee performance expectations and ensure that the moderation activities align with its corporate policies, from which the Watermelon group directly benefits. Even though remuneration is channeled through Telerel, the economic dependency of the moderators on the company is tangible, as they would not have work were it not for Watermelon IT Platforms Ltd.'s decisions regarding content moderation policies, outsourcing strategies, and, ultimately, the existence of the social platform.

In contrast to the other two respondents, **the relationship between the moderators and Watermelon Information Technology Ltd. does not exhibit the elements of a contractual arrangement**. One of the reasons is that, unlike Watermelon IT Platforms Ltd. which directly oversees content moderation, Watermelon Information Technology Ltd. does not exercise control over the moderators' work, nor does it impose any specific obligations on them. The ECJ has repeatedly emphasized that for a contractual relationship to exist, the entity must exert a degree of supervision and direction over the worker's activities, which in this case does not seem perform. We see no clear signs that

it is involved in defining the terms of content moderation, assessing moderators' performance or in establishing employment conditions. Additionally, the existence of mutual obligations is weaker in this case, as their work and remuneration system entirely stem from the contractual arrangements with Telerel SA and Watermelon IT Platforms Ltd., as we have argued previously.

Altogether, while the relationship between Telerel SA and the moderators is unmistakably contractual, due to the presence of economic dependency, control and mutual obligations. The same can be argued for Watermelon IT Platforms Ltd., which effectively functions as an employer despite operating through an intermediary. However, no such relationship exists between the moderators and Watermelon Information Technology Ltd., as it neither directs or controls nor directly compensates them.

*2.1.3 Applicability of Rome I and Rome II Regulations*

It was crucial to establish beforehand the nature of the relationships between the content moderators and each of the respondents, as this dictates whether Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) ["**Rome I**"] or Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) ["**Rome II**"] is applicable.

We have previously established that the relationship between the moderators with both Telerel SA and Watermelon IT Platforms Ltd. is contractual. Given that this case involves a conflict of laws in a civil matter, **Rome I is applicable pursuant to Art. 1(1)[25]**. Additionally, it is important to note that the present case does not fall within revenue, customs or administrative matters, nor within the excluded categories listed in Art.1(2)[26] Rome I.

The relationship between the content moderators and Watermelon Information Technology Ltd. is non-contractual, and the case at hand involves tortious claims. Consequently, in accordance with **Arts. 1(1) and 2(1)[27] Rome II is applicable**.

[25] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (Official Journal of the European Union L 177, 4 July 2008).
[26] *Id*.
[27] Regulation (EC) No 864/2007, of 11 July 2007, on the law applicable to non-contractual obligations (Rome II) (Official Journal of the European Union L 199, 31 July 2007).

Furthermore, it is important to highlight that the present case does not fall within the exclusion list of Art.1(2)[28] Rome II, nor it is about revenue, customs, administrative or State liability matters.

### 2.2 Applicability of Dutch Law

In this section we will present the arguments as to why Dutch law should prevail other possible applicable laws, based on the provisions of Rome I and Rome II which together establish the framework for solving conflict of laws problem in International Private Law within the EU. Nonetheless, the application of Dutch law is justified not only under the provisions of these regulations, but also in light of factual circumstances that will all be explained followingly.

# 3. Recognition of the UK Settlement

[28] *Id*.

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