LAW FACULTY

PAX MOOT COURT 2025
Applicant's Memorandum

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I. Abbreviations

Applicant – Safe Socials Foundation.

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).

CJEU – Court of Justice of the European Union.

Court – First Instance Court of Maastricht.

EU – European Union.

Judgements Convention - Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

Respondents - Watermelon Information Technology Ltd., Watermelon IT Platforms (UK) Ltd., and Telerel SA.

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. Statement of the facts

- The Safe Socials Foundation [“**Applicant**” or “**SSF**”] is a Dutch non-profit organization based in Maastricht, created by former content moderators who experienced serious psychological harm as a result of their work. Its mission includes improving safety on social media and advocating for fair and humane working conditions for content moderators, whose role is fundamental in keeping digital platforms free of harmful content.
- Watermelon operates a global social media platform. Its parent company, Watermelon Information Technology Ltd., is headquartered in Cork, Ireland, while content moderation is organized primarily by its UK-based subsidiary, Watermelon IT Platforms Ltd. Although this entity employs a limited number of moderators in the UK, the bulk of moderation is outsourced to Telerel SA, a digital services company based in Lille, France.
- Telerel SA hires around 2,000 self-employed individuals as content moderators to work exclusively for Watermelon. These moderators, often referred to as “digital nomads,” are free to work remotely, with many choosing to reside or spend significant time in the Meuse–Rhine Euroregion, which includes Dutch cities such as Maastricht. All moderators have, at some point, carried out their duties from Dutch territory.
- Moderation tasks involve reviewing large volumes of graphic and disturbing content under extreme time pressure. Moderators are expected to meet daily quotas of around 400 “tickets,” with average handling times as short as 55 to 65 seconds per video. These conditions have led to widespread psychological suffering amongst moderators, including symptoms of depression, anxiety, PTSD, and suicidal ideation.
- Although the contract between Watermelon IT Platforms Ltd. and Telerel stipulates obligations related to mental health and workplace safety, these safeguards have been insufficient in practice, given the common occurrence of severe psychological harm among the moderators.
- On 25 October 2024, SSF initiated proceedings before the Court of First Instance in Maastricht [“**Court**”] against Telerel SA, Watermelon Information Technology Ltd. and Watermelon IT Platforms Ltd [“**Respondents**”]. The case raises important issues of international jurisdiction, applicable law, and recognition of a UK settlement agreement previously reached between Watermelon and 55 UK-based moderators.

III. International Jurisdiction

1. Applicability of Brussels I bis

The Applicant submits that the 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**"] is applicable as conditions stipulated by Arts. 1 and 66(1) are fully met.

As stipulated in **Art. 1(1)** Brussels I bis, this regulation *"shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority"*[1]. The case at hand is of undeniable civil nature, as it consists of allegations between private individuals, concerning a failure to provide adequate workplace safety and mental health protections for content moderators[2].

Subsection **(2)** sets forth a list of excluded matters: the status or legal capacity of natural persons; bankruptcy, insolvency and analogous proceedings relating to legal persons; social security; arbitration; maintenance obligations; and wills and successions[3]. None of these claims fall within the excluded areas or matters listed in this article.

Furthermore, the case involves parties domiciled in different Member States and harm occurring across borders, which triggers the transnational element that requires the application of Brussels I bis.

Finally, **Art. 66(1)** sets out that *"[t]his Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015"*[4]. This chronological

[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, 1-32, 20 December 2012).
[2] Rogerson, P., "Article 1" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, p. 64; Judgment of the Court of Justice of the European Union, 28 April 2009, *Meletis Apostolides v. David Charles Orams and Linda Elizabeth Orams* (Case C-420/07), ECLI:EU:C:2009:271, paras. 42-46.
[3] Rogerson, P., "Article 1" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp. 70-84.
[4] 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, 1-32, 20 December 2012).

condition is met, as the claim giving place to the Maastricht's First Instance Court proceedings was filed on the 25th of October 2024.

2. Domicile of the involved Parties

The Applicant submits that the domicile of the involved parties, as per Art 63 Brussels I bis, are: the Netherlands for the SSF, France for Telerel SA, Ireland for Watermelon Information Technology Ltd., and United Kingdom for Watermelon IT Platform Ltd.

Determining the domicile of the involved parties is vital for determining the jurisdiction of the 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"*[5]. To determine that a legal person is domiciled in a State, it is only necessary that one of the previous three criteria concurs, as there is no particular hierarchy amongst them[6]. **Art 63(2)** provides that in the case *"of Ireland, Cyprus and the United Kingdom, 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place"*[7].

In the present case, all involved parties are legal persons. SSF, Telerel SA, Watermelon Information Technology Ltd., and Watermelon IT Platforms Ltd. are incorporated companies under Dutch, 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 the Netherlands, as it is incorporated under Dutch law and maintains its statutory seat and principal place of administration in Maastricht. **Telerel SA is domiciled in France**, as its statutory seat, central administration, and principal place of

[5] 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, 1-32, 20 December 2012).
[6] Vlas, P., "Article 63" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp. 994-995; Judgment of the Court of Justice of the European Union, 16 February 2023, *NM v Club La Costa (UK) plc and Others.* (Case C-821/21), ECLI:EU:C:2023:110, paras. 60-63.
[7] 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, 1-32, 20 December 2012).

business are all located there. The company is incorporated under French law as a "Société Anonyme" and is headquartered in Lille, where it presumably coordinates its operations as a digital services provider. **Watermelon Information Technology Ltd. is domiciled in Ireland**, where its statutory seat and central administration are located. The Irish-incorporated company headquarters are in Cork, which also presumably serve as the base for strategic oversight and decision-making related to the global social media platform's operations.

Watermelon IT Platforms Ltd. is domiciled in the United Kingdom, as it has its statutory seat in London -which is the location of their registered offices-. Moreover, it is also the place where it has its principal place of administration and where the company's core activities are developed, which include the organization and supervision of content moderation services for its parent company. This presents a unique situation, as the United 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[8]. However not being a Member State does not mean that Brussels I bis is not applicable to determine the jurisdiction of the Court, as it can be based off of the location *"from where the employee habitually carries out his work"*[9] (further argumentation in §III.4).

3. Jurisdiction of the Maastricht Court with regards to EU domiciled Respondents Ex. Art. 7(2)

The Applicant holds that the Court should assert jurisdiction over the claims brought against Telerel SA and Watermelon Information Technology Ltd. by application of the tort-related special jurisdiction enunciated by Art. 7(2) Brussels I bis.

[8] 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).

[9] 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, 1-32, 20 December 2012).

Art. 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"*[10]. Under this rule: Telerel SA, domiciled in Lille, would be sued in French courts; 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"*[11].

Regarding the place where the harmful events occurred, in *Shevill and Others v. Presse Alliance (C-68/93)* the Court of Justice of the European Union ["**CJEU**"] established that this could mean either the place where the event giving rise to the harm occurred or the place where the damage manifested[12]. 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 which 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 case, in particular on the grounds of proximity and ease of taking evidence"*[13]. 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 the Meuse-Rhine Euroregion, making it easier for them to attend to the Court and participate in the legal procedure, which ultimately results in a

[10] *Ibid.*
[11] *Ibid.*
[12] Judgment of the Court of Justice of the European Union, 7 March 1995, *Shevill and Others v Presse Alliance SA*, ECLI:EU:C:1995:61, para. 20.
[13] 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), ECLI:EU:C:2015:501, para. 40.

"*sound administration of justice and the efficacious conduct of proceedings"*[14]. It also simplifies the collection and submission of evidence, as it minimizes logistical barriers caused by greater traveling distances[15]. 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 to the judicial proceedings 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 Court must assert jurisdiction over the claims regarding Telerel SA and Watermelon Information Technology Ltd.

4. Jurisdiction of the Maastricht Court with regards to third country domiciled Respondents Ex. Art. 21(1)(b)(i)

The Applicant takes the position that the Court should assert jurisdiction over the claims brought against Watermelon Platforms Ltd., despite the company not being located in a Member State, pursuant to Arts. 6(1), 21(2) and 21(1)(b)(i) Brussels I bis.

Because Watermelon IT Platforms Ltd. is domiciled outside the EU, the Court's 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*

[14] Judgment of the Court of Justice of the European Union, 1 October 2002, *Verein für Konsumenteninformation v Karl Heinz Henkel* (Case C-167/00), ECLI:EU:C:2002:555, para. 46; Judgment of the Court of Justice of the European Union, 11 October 1990, *Dumez France SA and Tracoba SARL v Hessische Landesbank and others* (Case C-220/88), ECLI:EU:C:1990:400, para. 17; Judgment of the Court of Justice of the European Union, 19 September 1995, *Antonio Marinari v Lloyds Bank plc and Zubaidi Trading Company* (Case C-364/93), ECLI:EU:C:1995:289, para. 10.
[15] Judgment of the Court of Justice of the European Communities, 30 November 1976, *Handelskwekerij G. J. Bier BV v Mines de potasse d'Alsace SA* (Case C-21/76), ECLI:EU:C:1976:166, para. 17.

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"[16].

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 sued *"in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so"*[17]. For the application of this provision, it is vital to determine the place "*where or from which the employee principally discharges his obligations towards his employer"*[18]. This "effective center" from where the employee performs his work-related activities can be determined by a multitude of factors, that have to be considered *ad casum* by the competent court[19].

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, Eupen and Maastricht. So, any of the three countries that these cities are located in -Germany, Belgium and the Netherlands- are a plausible contender to be the place from where the employee usually carries out their work. However, the Netherlands stands out as the most appropriate jurisdiction within the meaning of Art. 21(1)(b)(i). Maastricht serves as the common nexus lining all relevant locations, as all moderators, at some point during their employment, have worked in this city. This establishes a consistent and central place of work, distinguishing it from other cities where work may have been performed only intermittently or in a fragmented manner.

This combined with the fact that the Applicant is domiciled in Maastricht, and that Maastricht has a central location in the Meuse-Rhine region, further reinforces that the Court should assert jurisdiction over the claims brought against Watermelon Platforms Ltd.

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[16] 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, 1-32, 20 December 2012).
[17] *Ibid.*
[18] Judgment of the Court of Justice of the European Union, 3 July 1993, *Mulox IBC Ltd v Hendrick Geels* (Case C-125/92), ECLI:EU:C:1993:306, paras. 24 and 26.
[19] Esplugues Mota, C., "Article 21" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp. 546-547.

5. Absence of *Lis Pendens*

The Applicant holds that, since the proceedings in England have already finished and there are no other ongoing judicial proceedings, there is no issue of *lis pendens* with the current proceedings in the Netherlands.

IV. Applicable Law

1. Applicability of Rome I and Rome II Regulations

The Applicant alleges that the claims related to the contractual relationships fall within the scope of the 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**"] (Arts. 1, 2, 28 and 29 Rome I); while the claims related to the non-contractual relationship are governed by 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**"] (Arts. 1, 2 ,3, 31 and 32 Rome II).

The nature of the relationships between the content moderators and each of the Respondents determines whether Rome I or Rome II is applicable. The nature of the relationship that the content moderators have with Telerel SA and Watermelon IT Platforms Ltd. is contractual; while the relationship between content moderators and Watermelon Information Technology Ltd. is non-contractual (§IV.2 will further argument the reasoning behind this statement).

Art 1(1) Rome I establishes that *"[t] his Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters"*[20]. Given that the situation it governs -namely, the relationship that the content moderators have with Telerel SA and Watermelon IT Platforms Ltd.- is of a contractual nature and it involves a conflict

[20] 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).

of laws in a civil matter, this condition is met[21]. **Art 1(2) and 1(3) Rome I** set out a list of matters or subjects that are excluded from the scope of this regulation, which this case does not fall within.

Art. 1(1) Rome II states that *"[t]his Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii)"*[22]. The relationship between the content moderators and Watermelon Information Technology Ltd. is non-contractual, and the case at hand involves tortious claims and an international conflict of laws, consequently this condition is met. **Art.1(2) Rome II** provides a list of matters that fall outside the material scope of this regulation which the present case is not included in.

2. Nature of the relationship between the Respondents and Content Moderators

Following CJEU case law, to determine the existence of a contractual relationship the cour must consider the substance of the arrangement itself instead of its formal label, as supported by: Lawrie-Blum v. Land Baden Württemberg (C-66/85) and FNV Kunsten Informatie en Media v Staat der Nederlanden (C-413/13).

In the landmark case of ***Lawrie-Blum v. Land Baden Württemberg*** **(C-66/85)**, the CJEU 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 and professional training rather than employment. However, the CJEU 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

[21] Calvo Caravaca, A.-L. & Carrascosa González, J., "Article 1" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome I Regulation*, Otto Schmidt, Cologne, 2016, p. 60.
[22] 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).

a person performs services of some economic value for and under the direction of another person in return for which he receives remuneration"[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 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 CJEU 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 CJEU 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.

[23] Judgment of the Court of Justice of the European Union of 3 July 1986, *Lawrie-Blum v. Land Baden-Württemberg (C-66/85),* ECLI:EU:C:1986:284, para. 1.
[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), ECLI:EU:C:2014:2411, paras. 51-56.

Following the CJEU case-law principles stated above, the Applicant contends that Telerel SA and Watermelon Platforms Ltd. hold a contractual relationship with the content moderators. However, the Applicant acknowledges that Watermelon Information Technology Ltd. does not hold a contractual relationship with the content moderators.

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

4. Applicability of Dutch Law Ex. Art. 8(2) or 8(4) Rome I

The Applicant submits that the objective applicable law is Dutch Law, as provided by Arts. 8(1) in relation with either 8(2) or 8(4) Rome I, which specifically address conflict of laws regarding individual employment contracts.

Art. 8(1) Rome I stipulates that an employment contract shall be governed by the law chosen by the parties, provided such choice does not deprive employees of mandatory protections provided by another law objectively applicable in the absence of such a choice. Given that there is not a choice of governing law in the contracts, the applicability of this article leads directly to the need to identify applicable law through objective criteria provided in the subsequent paragraphs[25].

[25] *Ibid.*, p. 586.

Art. 8(2) Rome I suggests that, in the absence of a choice of law, the contract is governed by the law of the country where the employee habitually carries out their work. The case at hand presents a particular situation, as the content moderators work in several locations throughout different countries in the Meuse-Rhine region. We must then consider the group of workers and the relationship they hold with their employers as a whole, determining that the place where they have spent the most time performing their obligations will be considered the habitual place of work[26]. Given that the majority of workers have spent most of their time working in the Netherlands, and more specifically Maastricht, the Court should apply Dutch law to the contractual claims of this case.

Should the Court disregard that Dutch law is applicable on the basis of Art. 8(2) Rome I, it should consider applying Art. 8(4) Rome I. **Art. 8(4)** establishes an escape clause, that can be applied when the contract is more closely connected with another country, different from the place where the worker habitually works or the place where the employer is situated[27]. The interpretation of this clause is considerably flexible, as demonstrated in *Anton Schlecker v. Melitta Josefa Boedeker (Case C-64/12)*: where an employee who habitually worked in the Netherlands, despite an initial transfer from Germany, was able to invoke Dutch law due to the closer connection between the Netherlands and the contract[28]. Similarities can definitely be drawn with the case at hand, even if the content moderators work across multiple locations, their professional and contractual ties are predominantly linked to the Netherlands. As it has been reiterated on multiple occasions throughout this memorandum, the majority of moderators have spent time working in the Netherlands, around where their professional community is concentrated. Additionally, SSF is incorporated in Maastricht. In light of these elements, the Court should conclude that under Art. 8(4) Rome I Dutch law should govern the dispute, as the employment contracts are more closely connected with the Netherlands than any of the other locations in which content moderators work.

[26] Judgment of the Court of Justice of the European Union, 15 March 2011, *Heiko Koelzsch v. État du Grand-Duché du Luxembourg* (Case C-29/10), ECLI:EU:C:2011:151, para. 50; Palao Moreno, G., "Article 8" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome I Regulation*, Otto Schmidt, Cologne, 2016, pp. 589-590.
[27] *Ibid.*, pp. 595.
[28] Judgment of the Court of Justice of the European Union, 12 September 2013, *Anton Schlecker v. Melitta Josefa Boedeker* (Case C-64/12), ECLI:EU:C:2013:551, paras. 30-32.

5. Applicability of Dutch Law Ex. Art. 4(3) Rome II

The Applicant contends that pursuant to Art. 4(3) Rome II, Dutch law should be considered applicable to the claims brought against Watermelon Information Technology Ltd., as the non-contractual obligations at issue display a manifestly closer connection to the Netherlands than any other country involved.

As established by Recital (18), Art. 4 Rome II provides a structured method for determining the objective applicable law to non-contractual obligations arising out of tort, in this case those pertaining to the non-contractual relationship between the content moderators and Watermelon Information Technology Ltd[29]. Paragraph (1) lays down the general rule (*lex loci damni*), which designates the law of the country in which the damage occurs[30]. Paragraph (2) creates a specific connection when both parties are subject to the same legal framework, or in other words, have their habitual residence in the same country as the damage occurs[31].

However, **Art. 4(3)** functions as an "escape clause" to these previous paragraphs. It prescribes that where it is clearly established from the circumstances that the tort is more closely connected with a country other than indicated by Paragraphs (1) and (2), the law of that country should apply[32]. It does not only uphold the overarching principle of the closest connection but also allows for the application of a single legal system in circumstances where multiple legal frameworks might otherwise come into play[33]. This especially relevant in a multi-party and multi-victim case that expands across multiple jurisdictions and legal frameworks, like the one at stake. Even though the article also specifies that the closer connection may derive from a pre-existing relationship between the parties, such as contractual ties, it is not limited thereto.

In the present scenario, content moderators predominantly perform their duties within the Meuse-Rhine region, notably spending significant periods in Dutch locations. Although

[29] Plender, R., & Wilderspin, M., "The General Choice of Law Rule for Tort and Delict" in Plender, R., & Wilderspin, M. (eds.), *The European Private International Law of Obligations* (6th ed.), Sweet & Maxwell, London, 2022, Note 18-007.
[30] Magnus, U., "Article 4" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome II Regulation*, Otto Schmidt, Cologne, 2018, pp. 162-163.
[31] *Ibid.,* pp. 177-178.
[32] Judgment of the High Court of Ireland, 15 February 2019, *SPV Sam Dragon Plc v GE Transport Finance Ltd.*, [VLex database., Ref. 793800053], para. 18; Magnus, U., "Article 4" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome II Regulation*, Otto Schmidt, Cologne, 2018, p. 183.
[33] Ibid., p. 185.

Watermelon Information Technology Ltd. is headquartered in Cork (Ireland), it is integral to a larger operational structure fundamentally connected to the content moderation practices that have substantial effects within the Meuse-Rhine Euroregion. It is noteworthy that the SSF itself is a Dutch entity, is incorporated following Dutch law and based in Maastricht. Thus, the establishment and purpose -namely, to support the rights and working conditions of content moderators affected by the Respondents conduct- further substantiate the significant connection to the Netherlands.

Moreover, because all of the content moderators have spent time working at a Dutch location, we can safely assume that the damages sustained by the workers have mostly arisen and had its effects in the Netherlands. Put a different way, content moderators, through the nature of their work, consistently reside and operate within Dutch territory, wherein the psychological harm is predominantly experienced. Hence, although Watermelon Information Technology Ltd. does not engage directly in contractual agreements with the moderators, the harm resulting from the Respondents' collective practices significantly materializes within the Netherlands, thereby creating a substantial and manifest connection.

Altogether, considering these specific circumstances, it becomes evident that the connection of the non-contractual obligations with the Netherlands transcends those that could be determined by the *lex loci damni* criteria established by Paragraph (1), or the *lex domicilii communis* set out by Paragraph (2) of this article.

V. Recognition and Enforcement of Foreign Judgements

1. Applicability of the 2019 Judgements Convention

The Applicant submits that the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ["**Judgements Convention**"] is applicable to this case pursuant to Arts. 1 and 2.

Art. 1 states that *"[t] his Convention shall apply to the recognition and enforcement of judgments in civil or commercial matters"*[34], and more specifically *"to the recognition and enforcement in one Contracting State of a judgment given by a court of another Contracting State"*[35]. In the present case, the settlement sought for recognition pertains to obligations concerning the health protection of content moderators, which falls within the realm of civil matters in the context of this law[36].

It is also worth noting that the UK settlement does not fall within the excluded matters of the Judgements Convention: as it is not one of revenue, customs or administrative matters; nor is it included in the list of specific exclusions delineated by **Art.2** (notably, matters such as the status and legal capacity of natural persons, maintenance obligations, family law matters, wills and succession, insolvency, carriage of passengers and goods, transboundary marine pollution, nuclear damage liability, validity of legal persons, public registers, defamation, privacy, intellectual property, activities of armed forces, law enforcement activities, anti-trust matters, and sovereign debt restructuring through unilateral State measures)[37].

2. Non-recognition of the August 2024 UK Settlement

2.1. Non-recognition Ex. Arts. 3(1)(a) and 11 Judgements Convention

The Applicant urges that the Court should not recognize the UK Settlement as a judgement in the Netherlands, as it does not meet the conditions to be considered a "judgement" under Art. 3(1)(a) Judgements Convention nor can it be enforced under Art. 11 Judgements Convention.

Art. 3(1)(a) states that a *"'judgment' means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses of the proceedings by the court (including an officer of the court),*

[34] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, of 2 July 2019 (Official Journal of the European Union, L 196, 20-44, 14 July 2022).
[35] *Ibid*.
[36] Garcimartín, F. & Saumier, G., *Explanatory Report on the 2019 Judgments Convention*, HCCH, The Hague, 2019, pp. 51-53.
[37] *Ibid*., pp. 56-68.

provided that the determination relates to a decision on the merits which may be recognized or enforced under this Convention"[38]. The UK Settlement between Watermelon IT Platforms Ltd. and the 55 content moderators was a mutually agreed resolution, which cannot be considered final judgement: as it does not directly address Watermelon's liability or the moderators' rights. Such a negotiated settlement is not a judicial determination of the issues and thus falls outside the core definition of "judgement" set in Art.3(1)(a) Judgements Convention, which is further supported by the CJEU's verdict in *Solo Kleinmotoren v. Boch (C-414/92)*[39].

The High Court's involvement does not transform the private agreement into a merits decision, as it only gave effect to the parties' settlement without litigating the facts or law. This involvement could have been either through: a consent order, which once approved by a court is binding and failure to comply can result in enforcement actions; or a Tomlin order, which is a specialized form of consent order with a confidential schedule detailing the settlement terms[40]. Eitherway, neither of these orders can be considered as a decision "on the merits" by a court, further reflecting that the UK Settlement only reflects the parties' compromise, and not a judicial finding, which in turn reinforces that it is a settlement agreement rather than a Judgments Convention "judgement".

Even if the Court were to determine that the UK Settlement qualifies as a "judicial settlement", Art. 11 Judgements Convention allows it to be enforced but not used to preclude new litigation abroad, in fact: *"a judicial settlement from another State may not be invoked in the requested State as, for example, a procedural defence to a new claim"*[41]. Hence the current proceedings should continue on its own merits, unaffected by the UK Settlement.

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[38] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, of 2 July 2019 (Official Journal of the European Union, L 196, 20-44, 14 July 2022).
[39] Judgment of the Court of Justice of the European Union, 23 November 1995, *Solo Kleinmotoren v. Boch* (Case C-414/92), ECLI:EU:C:1995:438, paras. 1-2.
[40] Practical Law, "Glossary: Consent Order", Thomson Reuters Practical Law UK (available at https://uk.practicallaw.thomsonreuters.com/Glossary/UKPracticalLaw/I25019a9de8db11e398db8b09b4f043e0; last accessed 14 March 2025); Practical Law Dispute Resolution, "Settlement: Consent/Tomlin order (with drafting notes)", Thomson Reuters Practical Law UK (available at https://uk.practicallaw.thomsonreuters.com/5-205-2990?transitionType=Default&contextData=(sc.Default)&view=hidealldraftingnotes; last accessed 14 March 2025).
[41] Garcimartín, F. & Saumier, G., *Explanatory Report on the 2019 Judgments Convention*, HCCH, The Hague, 2019, p. 135.

Art. 11 specifically establishes that: *"Judicial settlements (transactions judiciaires) which a court of a Contracting State has approved, or which have been concluded in the course of proceedings before a court of a Contracting State, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment"*[42]. This article provides enforcement but not recognition, as the Judgments Convention drafters deliberately excluded the term "recognition" from this provision, because the legal effects could vary between the Contracting States' legal systems. This means that the UK Settlement cannot be used to defeat the SSF's lawsuit in the Netherlands under the Judgments Convention's terms.

Furthermore, the fact that it is recognized as a "judicial settlement" requires that the UK Settlement should be *"enforceable in the same manner as a judgement in the State of origin"*[43]. It is extremely unlikely that the broad obligation to *"adequately protect content moderator's health"* is enforceable like a traditional judgement in the UK, specially taking into account that consent orders and Tomlin orders typically require further court action to enforce such an obligation.

2.2. Non-recognition Ex. Art. 7(1)(c) Judgements Convention

Should the Court consider that the UK Settlement falls within the definition of judgement under Art. 3(1)(a) Judgements Convention, the Applicant requests that the Court refuses the recognition of said settlement pursuant to Art. 7(1)(c) Judgements Convention, as it is manifestly incompatible with fundamental Dutch Law principles on workers' protection and workplace safety regulations.

Art. 7(1)(c) states that *"Recognition or enforcement may be refused if […] (c) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State and situations involving infringements of security or sovereignty of that State"*[44]. In the Netherlands, the protection of employees from psychosocial risks, including work-related stress, aggression, violence and bullying is a fundamental aspect of public labor

[42] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, of 2 July 2019 (Official Journal of the European Union, L 196, 20-44, 14 July 2022).
[43] *Ibid*.
[44] *Ibid*.

policies[45]. There are multiple provisions and principles across Dutch Law that reflect this protection of workers health conditions that are a direct responsibility of the employers, mainly in the *Arbowet* (Dutch Working Conditions Act), the *Arbobesluit* (Dutch Working Conditions Decree) and the *Arboregeling* (Dutch Working Conditions Regulations)[46].

Art.3 Dutch Working Conditions Act lays down that that the *"employer shall ensure that the health and safety of employees is protected with respect to all employment-related aspects, and to this end shall conduct a policy aimed at achieving the best possible working conditions"*[47]; but it also states that the company *"shall operate a policy aimed at preventing employment-related psychosocial pressure, or limiting it if prevention is not possible"*[48]. Moreover, Art 2(15) Dutch Working Conditions Decree indicates that *"[w]here there is a danger of being exposed to psycho-social workload, information and instructions should be given to employees who carry out such work about the risks of psycho-social workload as well as about the measures aimed at preventing or restricting this load"*[49].

Given these stringent requirements, a foreign judgement or settlement that merely imposes a general obligation for health protection -that is, *"adequately protect content moderator's health"*-, without detailing specific preventive measures and standards to protect employees from severe psychological harm, are manifestly insufficient and incompatible with Dutch labor law principles[50].

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[45] Business.gov.nl, "Physical and psychosocial strain", Netherlands Enterprise Agency (available at https://business.gov.nl/regulation/physical-psychosocial-strain/; last accessed 14 March 2025); Business.gov.nl, "Working Conditions for Employees", Netherlands Enterprise Agency (available at https://business.gov.nl/regulation/working-conditions-employees/; last accessed 14 March 2025).

[46] European Agency for Safety and Health at Work, "National Focal Points: Netherlands" (available at https://osha.europa.eu/en/about-eu-osha/national-focal-points/netherlands; last accessed 14 March 2025).

[47] *Arbowet* (Working Conditions Act), Act of 18 March 1998 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 184, 26 March 1998).

[48] *Ibid*.

[49] *Arbobesluit* (Working Conditions Decree), Decree No. 566 of 15 January 1997 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 60, 4 February 1997).

[50] Garcimartín, F. & Saumier, G., *Explanatory Report on the 2019 Judgments Convention*, HCCH, The Hague, 2019, p. 119.

VI. Petitum

The Applicant respectfully requests the Court to: (1) confirm that it has international jurisdiction over the present case; (2) declare that Dutch law applies to the merits of the case, given the substantial connection between the claims, the moderators and the Netherlands; (3) reject any request by the Respondents to recognize and/or enforce the UK Settlement in the Netherlands.

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LAW FACULTY

PAX MOOT COURT 2025
Respondents' Memorandum

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Madrid
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I. Abbreviations

Applicant – Safe Socials Foundation.

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).

CJEU – Court of Justice of the European Union.

Court – First Instance Court of Maastricht.

EU – European Union.

Judgements Convention - Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

Respondents - Watermelon Information Technology Ltd., Watermelon IT Platforms (UK) Ltd., and Telerel SA.

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).

WIT – Watermelon Information Technology Ltd.

WIP UK – Watermelon IT Platforms (UK) Ltd.

II. Statement of the facts

- Watermelon is a global technology company that operates a successful social media platform. Its parent company, Watermelon Information Technology Ltd. [“**WIT**”], is headquartered in Cork, Ireland, and its subsidiary, Watermelon IT Platforms (UK) Ltd. [“**WIP UK**”], has its principal place of administration in London, United Kingdom. Content moderation for the platform is primarily organized by WIP UK, which directly employs a limited group of moderators based in the United Kingdom.
- To efficiently manage the growing volume of user-generated content and ensure swift moderation, Watermelon outsources part of its moderation services to Telerel SA, a French company established in Lille, which specializes in digital services. Under the terms of its commercial agreement with WIP UK, Telerel engages approximately 2.000 self-employed moderators. These individuals operate with significant autonomy: they are not tied to any specific workplace or working schedule and are free to perform their duties from any location with internet access. Many choose to reside temporarily in various cities of the Meuse–Rhine Euroregion, including Maastricht, Liège, Aachen, Hasselt, and Eupen, though their place of work remains flexible and undefined in their contracts.
- The contract between WIP UK and Telerel includes a general provision encouraging the creation of a healthy working environment, and Telerel SA takes this obligation seriously. Nonetheless, the nature of content moderation can be demanding, especially given the volume of content reviewed by moderators, who have a suggested daily target of approximately 400 tickets. This target is industry standard and reflects the operational needs of platforms at scale.
- In August 2024, WIP UK reached a comprehensive settlement with 55 of its directly employed UK-based moderators in proceedings before the High Court in London. The settlement included both financial compensation and a commitment from Watermelon to continue improving support measures for all content moderators, whether directly or indirectly engaged.
- On 25 October 2024, the Safe Socials Foundation [“**Applicant**”], a Dutch non-profit based in Maastricht, initiated proceedings before the Maastricht first instance court [“**Court**”] against Telerel SA, WIT, and WIP UK [“**Respondents**”]. The Applicant claims to represent the interests of content moderators who have allegedly suffered

harm, despite the Respondents' ongoing efforts to ensure fair working conditions and support mechanisms across the moderation system.

III. International Jurisdiction

1. Applicability of Brussels I bis

The Respondents declare that the 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**"] is applicable as stipulated by Arts. 1 and 66(1) are fully met: the case at hand falls within the material scope of the Regulation and the temporal requirements are satisfied.

Art. 1(1) Brussels I bis stipulates that this regulation *"shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority"*[1]. The present lawsuit is clearly civil in nature, as it involves private parties and no exercise of state authority -a foundation is suing private companies over alleged failures to protect content moderators-[2]. Thus, it falls within the material scope of this regulation.

Art. 1(2) enumerates specific matters that are excluded from the Brussels I bis scope (e.g.: the status or legal capacity of natural persons; bankruptcy, insolvency and analogous proceedings; social security; arbitration; maintenance obligations; and wills and successions)[3]. None of the exclusions are relevant here, as the case is not about social security or any public law matter, but about private law duties to ensure safe working conditions.

[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, 1-32, 20 December 2012).

[2] Rogerson, P., "Article 1" in Magnus, U., & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, p. 64; Judgment of the Court of Justice of the European Union, 28 April 2009, *Meletis Apostolides v. David Charles Orams and Linda Elizabeth Orams* (Case C-420/07), ECLI:EU:C:2009:271, paras. 42-46.

[3] Rogerson, P., "Article 1" in Magnus, U., & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp. 70-84.

Furthermore, the case involves parties domiciled in different Member States and harm occurring across borders, which triggers the transnational element that requires the application of Brussels I bis. Finally, the temporal requirement from **Art. 66(1)** is satisfied. As the claim that initiated the current legal proceedings was filed on the 25th of October 2024, well after Brussels I bis effective date of *"10 January 2015"*[4].

2. Domicile of the involved Parties

The Respondents hold that, pursuant to Art. 63 Brussels I bis, the involved parties are domiciled in: the Netherlands for the Safe Socials Foundation, France for Telerel SA, Ireland for WIT, and United Kingdom for WIP UK.

Under **Art. 63(1)**, the domicile of legal persons is *"the place where it has its: (a) statutory seat; (b) central administration; or (c) principal place of business"*[5]. This domicile definition given by Brussels I bis is autonomous -in the sense that it overrides national concepts to ensure uniform application of this term and to avoid any gaps in jurisdiction- and the criteria contained in it are equal in weight and exhaustive or, in other words, there is no hierarchy amongst them[6]. It is also noteworthy that the concurrence of one of the three criteria suffices to justify that the legal person is domiciled in a given country. **Art 63(2)** establishes that in the case *"of Ireland, Cyprus and the United Kingdom, 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place"*[7].

Telerel SA is domiciled in France, as it is incorporated under French law as a "*Société Anonyme"*. **WIT is domiciled in Ireland**, as it is a company formed under Irish law that

[4] 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, 1-32, 20 December 2012).
[5] 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, 1-32, 20 December 2012).
[6] Vlas, P., "Article 63" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp. 994-995; Judgment of the Court of Justice of the European Union, 16 February 2023, *NM v Club La Costa (UK) plc and Others* (Case C-821/21), ECLI:EU:C:2023:110, paras. 60-63.
[7] 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, 1-32, 20 December 2012).

has its statutory seat in Ireland -as it is the place where it has its registered office-. **WIP UK is domiciled in the United Kingdom**, as it is the place where it has its registered office, which constitutes its statutory seat under Art. 63(2). It is noteworthy that all three Respondents' conduct its principal business in its home jurisdiction, and also have their central administration co-located with their registered offices, given that there are no signs of either of these being otherwise.

Finally, the **Safe Socials Foundation is domiciled in the Netherlands**, as its statutory seat is located in the city of Maastricht. Additionally, its central place of administration and principal place of business -which in this case is advocating for the rights and work conditions of content moderators- are also located in the Netherlands.

3. Non-jurisdiction of the Maastricht Court with regards to EU domiciled Respondents Ex. Art. 4(1)

The Respondents request that the Court declines international jurisdiction in favor of the courts from the Respondents' domiciles, pursuant to the general rule established by Art. 4(1) Brussels I bis.

Art. 4(1) sets the baseline rule in Brussels I bis regarding international jurisdiction, which dictates that ethe *"defendants that are domiciled in a Member State shall be sued in the courts of that Member State"*[8]. Following the argumentation of the previous Subsection regarding the domicile of the involved parties, the European Union ["**EU**"] domiciled Respondents should be sued in: France, in the case of Telerel SA; and in Ireland, in the case of WIT. This general rule ensures predictability and respects the defendants' home *fora*, which Brussels I bis considers the primary venue for litigation. Moreover, deviations from this rule are permitted only in specific and enumerated situations described by Sections 2 through 7 of Chapter II of the regulation. In light of the Regulation's aim of legal certainty and foreseeability for defendants, which is clearly portrayed by Recital

[8] Vlas, P., "Article 4" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, p. 108

(15), these provisions that permit the deviation from the general rule must be strictly interpreted[9].

If we apply the strict interpretation criteria laid down by the Court of Justice of the European Union ["**CJEU**"], none of the special jurisdiction grounds should be applied, as they are exceptions to the general rule that a defendant should be sued in the Member State of its domicile. The special jurisdiction provisions are only applicable when there is a particularly strong and direct connection between the dispute and the forum, which is not the case here. The nature of the claims, the geographic dispersion of the alleged harm, and the lack of a single and clearly identifiable jurisdictional link to the Netherlands all indicate that the standard jurisdictional rules should prevail. The only provisions that could possibly be applied are those related to tort and employment, but we will further elaborate on why it is not the case (see sections 2.2.1 and 2.3.1).

3.1. Inapplicability of the special forum Ex. Art.7(2) Brussels I bis

Should the Applicant try to justify the Court's jurisdiction on the grounds of Art. 7(2) Brussels I bis, the Respondents respectfully contend that the special tort forum cannot be anchored in the Netherlands due to the widespread nature of the alleged psychological harm. Thus, the general rule of Art. 4(1) should remain applicable.

Art. 7(2) Brussels I bis lays down the special jurisdiction for cases involving situations of tort, delict or quasi-delict, in which instance the defendant can be sued *"in the courts for the place where the harmful event occurred or may occur"*[10]. In EU jurisprudence, this rule has a dual test, in which the "harmful event" can refer either to (a) the place where the damage itself manifests, or (b) the place where the harmful event giving rise to the damage occurs[11]. However, the CJEU has restricted the scope of this provision in order to prevent an overly expansive interpretation, by cautioning that "*the term 'place*

[9] Judgment of the Court of Justice of the European Union, 13 July 2000, *Group Josi Reinsurance Company SA v. Universal General Insurance Company* (Case C-412/98), ECLI:EU:C:2000:399, paras. 35-37; Judgment of the Court of Justice of the European Union, 17 November 1993, *Jakob Handte & Co. GmbH v Traitements Mécano-chimiques des Surfaces SA* (Case C-26/91), ECLI:EU:C:1993:368, para. 14.
[10] 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, 1-32, 20 December 2012).
[11] Mankowski, P., "Article 7" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp. 276-277; Judgment of the Court of Justice of the European Union, 7 March 1995, *Shevill and Others v Presse Alliance SA* (Case C-68/93), ECLI:EU:C:1995:61, para. 20.

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"[12]. In other words, a plaintiff cannot sue in a forum only because that forum is where secondary or indirect effects of a harm are felt, if the originating event and the direct harm occurred elsewhere[13].

Applying these principles to the case at hand, the Applicant's possible reliance on Art. 7(2) is misplaced. The alleged "harmful event" is the exposure of content moderators to traumatic material under unreasonable working conditions. That **harm is not geographically concentrated in the Netherlands -much less in Maastricht-**, it is an inherently diffuse harm experienced by moderators in many locations throughout the Meuse-Rhine region. Moreover, under *Shevill's* "mosaic principle", if defamatory material is distributed in multiple Member States and the claimant decides to sue the defendant in the courts where the harmful event occurred or manifested, each State's courts have jurisdiction only over the harm suffered in that state[14]. By analogy, even if some content moderators suffered psychological injuries while working in the Netherlands, the Court could only adjudicate claims for harm that occurred solely in that country. Consequently, the Court would not have jurisdiction over the harm that moderators suffered while working elsewhere. However, the Safe Socials Foundations claim is collective and indivisible, as it seeks a declaration and injunction about global company policies, not relief limited to the Dutch harm. **The Netherlands is also not the place where the event giving rise to the harm was set in motion**, as the content moderation policies creation and implementation decision can be traced back to either Ireland -domicile of WIT- or the UK -domicile of WIP UK-, but definitely not the Netherlands.

Furthermore, the rationale behind Art. 7(2) tort forum -namely, proximity to evidence and the convenience of the forum- does not uniquely point to Maastricht. The moderators are scattered across multiple jurisdictions, and evidence about the companies' conduct will

[12] 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), ECLI:EU:C:2015:193, para. 78.
[13] Judgment of the Court of Justice of the European Union, 19 September 1995, *Antonio Marinari v Lloyds Bank plc and Zubaidi Trading Company* (Case C-364/93), ECLI:EU:C:1995:289, paras. 14 and 15.
[14] Judgment of the Court of Justice of the European Union, 7 March 1995, *Shevill and Others v Presse Alliance SA* (Case C-68/93), ECLI:EU:C:1995:61, para. 33; Mankowski, P., "Article 7" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp. 278-281.

likely be centered in France, Ireland and the UK -where the Respondents and their records are located-. The CJEU has emphasized that special jurisdiction under Art. 7(2) exists only when there is a "particularly close connecting factor" between the dispute and the forum, justifying jurisdiction for reasons of efficient administration of justice[15]. Here Maastricht does not have a uniquely close connection to the entirety of the alleged wrongful conduct or its resulting harm, only being at best one locale among many where the harm occurred.

In sum, Brussels I bis does not provide a basis for suing Telerel SA and WIT in the Netherlands, as the requirements of Art. 7(2) are not met, and no other special jurisdiction provision applies. Consequently, Art. 4(1) remains the best option to determine the international jurisdiction of the case at hand.

4. Non-jurisdiction of the Maastricht Court with regards to third country domiciled Respondents Ex. Arts. 6(1) and 4(1)

The Respondents submit that, pursuant to Art. 6(1) Brussels I bis and the lack of applicable special jurisdiction regimes, the Court should not assert jurisdiction over the claims against WIP UK, and instead a court from one of the Respondents domiciles should assert jurisdiction over the case at hand as established by Art. 4(1) Brussels I bis.

As established in §III.2, WIP UK's domicile is in London (UK). Since the UK is no longer an EU Member State, Brussels I bis' rules apply more narrowly[16]. **Art. 6(1) Brussels I**

[15] Judgment of the Court of Justice of the European Union, 1 October 2002, *Verein für Konsumenteninformation v Karl Heinz Henkel* (Case C-167/00), ECLI:EU:C:2002:555, para. 46; Judgment of the Court of Justice of the European Union, 11 October 1990, *Dumez France SA and Tracoba SARL v Hessische Landesbank and others* (Case C-220/88), ECLI:EU:C:1990:400, para. 17; Judgment of the Court of Justice of the European Union, 19 September 1995, *Antonio Marinari v Lloyds Bank plc and Zubaidi Trading Company* (Case C-364/93), ECLI:EU:C:1995:289, para. 10.

[16] 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, 1-32, 20 December 2012); 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).

bis provides that if a defendant is not domiciled in a Member State, the jurisdiction of each Member State's courts *"shall be determined by the law of that Member State*", subject to certain provisions. In the present case, for a non-EU defendant, we should look to Dutch national law to see if the Dutch courts have jurisdiction, unless the case falls under a special protective regime from Arts. 18(1), 21(2), 24 or 25.

Under Dutch national jurisdiction rules contained in the Dutch Code of Civil Procedure, a Dutch court can take jurisdiction over a foreign defendant in limited circumstances, which are, amongst others: if the defendant has a domicile or establishment in the Netherlands (Art. 2), if a contract was to be performed in the Netherlands (Art.6), if the harmful event occurred in the Netherlands (Art. 6), or under *forum necessitatis* when no other forum is available (Art. 9)[17]. None of those circumstances is present here. WIP UK has no presence *per se* in the Netherlands, and the harmful events were not uniquely located in the Netherlands. There is also no indication that the Netherlands would be the only forum available, on the contrary, the UK (where WIP UK is based), Ireland (where WIT is based) and France (where Telerel SA is based) are obvious competent *fora*. Therefore, Dutch national law does not independently assert jurisdiction over the UK company in this case.

4.1. Inapplicability of the special forum Ex. Arts. 21(1)(b) and 21(2) Brussels I bis

Should the Applicant try to justify the Court's jurisdiction on the grounds of Arts. 21(1)(b) and 21(2) Brussels I bis, the Respondents set forth that no Dutch location qualifies as the habitual place of work, nor can any of the Respondents be considered to be located in the Netherlands.

Section 5 of Chapter II of Brussels I bis provides special jurisdictional rules for individual employment contracts, which are intended to protect employees as the weaker party[18]. **Art. 21(b)(i)** states that an employer domiciled in a Member State may be sued *"in the courts for the place where or from where the employee habitually carries out his work or*

[17] *Wetboek van Burgerlijke Rechtsvordering* (Dutch Code of Civil Procedure), Law of 1 October 1838 (*Staatsblad van het Koninkrijk der Nederlanden*, No. 16, 1 October 1838; latest consolidated version: 8 March 2025).
[18] Esplugues Mota, C., "Article 20" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp 536-537.

in the courts for the last place where he did so"[19]. **Art. 21(2)** extends this protection to employers not domiciled in an EU Member State. In practical terms, this means that even though WIP UK is UK-based, if it were considered an employer of the content moderators (it is established in §IV.2 that it should not) it could be sued in any Member State where those moderators habitually carried out their work. The key question then resides on whether Maastricht or other Dutch location can be considered as the "*place where or from where the employee habitually carries out his work"*[20] in the sense of **Art. 21(1)(b)(i)**.

Maastricht or other Dutch location do not qualify as the "habitual place of work" for the content moderators, as this term entails a center of gravity of the employees' activities: that is, a place where the employee regularly, through the duration of the employment, performs the essential part of their duties[21]. To determine the location of this place, a contextual and fact-based analysis is required, aimed at identifying where the employee has his work base or works most of the time. In the present case, moderators are considered to be "digital nomads", or in other words, itinerant workers; as they are free to work from anywhere with an internet connection. The facts (see Chapter II of this memorandum) show they operated across multiple locations in the Meuse-Rhine Euroregion, mainly in the Netherlands, Belgium and Germany. Each moderator might spend a few months in one country, the move to another, which reflects that no single location appears to dominate as the primary work location for all moderators. Moreover, the Netherlands could only be deemed the habitual workplace if that moderator in fact spent a significant portion of their working time there or treated a Dutch city as a home base. Which the Applicant has not shown is true for any specific moderator, let alone for most or even all of them.

Furthermore, the CJEU has expressly rejected the idea that an employee with multi-territorial activities can have multiple habitual workplaces, in cases where the employee's work is evenly distributed across several countries with no principal place of work[22].

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[19] 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, 1-32, 20 December 2012).
[20] *Ibid*.
[21] Judgment of the Court of Justice of the European Union, 3 July 1993, *Mulox IBC Ltd v Hendrick Geels* (Case C-125/92), ECLI:EU:C:1993:306, para. 24; Judgment of the Court of Justice of the European Union, 9 January 1997, *Petrus Wilhelmus Rutten v. Cross Medical Ltd.* (Case C-383/95), ECLI:EU:C:1997:7, para. 23.
[22] Judgment of the Court of Justice of the European Union, 27 February 2002, *Herbert Weber v. Universal Ogden Services Ltd.* (Case C-37/00), ECLI:EU:C:2002:122, para. 55.

Multiplying jurisdictions must be avoided if there is no single country that stands out as the clear habitual workplace[23]. Here, given the dispersed nature of the work, no country can be deemed as the habitual place of work for these moderators; thus, the Court cannot claim jurisdiction on Art. 21(1)(b)(i) grounds.

In such cases, Brussels I bis' fallback rule is established in **Art. 21(1)(b)(ii)**, and it sets out that the employee may sue *"in the courts for the place where the business which engaged the employee is or was situated"*[24]. In this case, the entities that engaged the moderators -even though content moderators should not be considered employees- would be Telerel SA, WIT or WIP UK, which are located in France, Ireland and the United Kingdom, respectively. By the same token, none of the Respondents are located in the Netherlands, so the Court cannot claim jurisdiction on this basis.

IV. Applicable Law

1. Applicability of Rome II

The Respondents hold that this dispute falls squarely within the material and temporal scope of 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**"], pursuant to Arts. 1, 2 ,3, 31 and 32 of the Regulation.

Art. 1(1) Rome II states that *"[t]his Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (acta iure imperii)"*[25]. To the extent that this case is a civil and commercial matter concerning non-contractual obligations with cross-border elements, which also involves a conflict of applicable laws, this matter falls within the material scope of the Regulation. Because Rome II applies to

[23] Esplugues Mota, C., "Article 21" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Brussels Ibis Regulation*, Otto Schmidt, Cologne, 2016, pp 546-547.
[24] 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, 1-32, 20 December 2012).
[25] 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).

events giving rise to damage occurring after 11 January 2009, the temporal requirement established by **Arts. 31 and 32** is also met.

2. Employment Status of the Content Moderators

The Respondents, pursuant to the criteria displayed below, request the Court to consider that the Content Moderators should be classified as self-employed contractors, rather than employees of any of the Respondents.

The CJEU has developed clear criteria to distinguish a contractual employment relationship from a non-contractual relationship. The most prominent of the essential features of an employment contract is that the person performs services **under the direction or control of another in return for remuneration**[26]. This is why, in EU law, the concept of "worker" is defined broadly and autonomously as someone *"who, for a certain period of time, performs services for and under the direction of another person in return for which he receives remuneration"*[27]; this definition focuses on whether the worker is integrated in the employer's hierarchy and subject to instructions regarding the work.

By contrast, the CJUE did not intend the term "worker" to cover *"independent providers of services who are not in a relationship of subordination with the person who receives the services"*[28]. So, if a person is not in a relationship of subordination, the relationship is one of an independent contractor, not an employment contract, which happens when the person retains significant independence in how, when, and where they perform their work and bear the economic risk of the activity[29].

CJEU jurisprudence expressly looks past the formal label given to a working arrangement to discern its true nature, thus prioritizing **substance over form**. The CJEU has held that calling someone an "independent contractor", or other analogous terms, under national

[26] Judgment of the Court of Justice of the European Union, 3 July 1986, *Lawrie-Blum v. Land Baden-Württemberg* (Case C-66/85), ECLI:EU:C:1986:284, para. 17
[27] Judgment of the Court of Justice of the European Union, 13 January 2004, *Debra Allonby v. Accrington & Rossendale College and Others* (Case C-256/01), ECLI:EU:C:2004:18, para. 67; Judgment of the Court of Justice of the European Union, 12 May 1998, *María Martínez Sala v. Freistaat Bayern* (Case C-85/96), ECLI:EU:C:1998:217, para. 32.
[28] Judgment of the Court of Justice of the European Union, 13 January 2004, *Debra Allonby v. Accrington & Rossendale College and Others* (Case C-256/01), ECLI:EU:C:2004:18, para. 68.
[29] Judgment of the Court of Justice of the European Union, 14 November 2013, *Iraklis Haralambidis v. Calogero Casilli* (Case C-270/13), ECLI:EU:C:2013:882, para. 33.

law does not prevent that person from being legally classified as an employee under EU law if their supposed independence is merely fictional[30].

In sum, the guiding test from EU labor law is a fact-intensive and substance-over-form analysis that must be performed *ad casum* by the national court, in which if the person is essentially working for and under the control of the company, then EU law would deem it a contractual relationship regardless of what the contract is called[31].

Applying the above criteria, we can determine that the **moderators do not meet the EU labor law definition of worker**, hence they should not be classified as employees of Telerel SA, WIT and WIP UK. Rather, they are independent service providers contracting with Telerel SA, that provide services for the French company, and indirectly for the Watermelon companies. This classification carries important legal consequences, as their contracts are not "individual employment contracts" for the purposes of 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**"].

The content moderators working for Telerel SA were engaged on an independent contractor basis, rather than being hired as regular employees. In substance, the work arrangement preserved significant independence for the moderators. Telerel would assign moderation tasks or projects, but the moderators have flexibility in how and when to carry out their review work, subject only to meeting certain performance metrics -namely, a given number of "tickets" per day-. Crucially, they are not integrated into Telerel's corporate hierarchy as ordinary employees, as they do not have fixed working schedules and perform their work remotely from their own equipment. Telerel's role was essentially that of a client or intermediary for whom the moderators provided a service. While the French entity did provide content guidelines and expected results, this is still consistent with a contractor delivering a service to a client's specifications. This latitude in work arrangements is a hallmark of independent contractors under EU law, as the arrangement

[30] Judgment of the Court of Justice of the European Union, 22 April 2020, *B v Yodel Delivery Network Ltd* (Case C-692/19), ECLI:EU:C:2020:288, para. 30.
[31] *Ibid.*, para 27; Judgment of the Court of Justice of the European Union, 14 October 2010, *Union syndicale Solidaires Isère v. Premier ministre and Others* (Case C-428/09), ECLI:EU:C:2010:612, para. 29; Judgment of the Court of Justice of the European Union, 26 March 2015, *Gérard Fenoll v Centre d'aide par le travail "La Jouvene" and Association de parents et d'amis de personnes handicapées mentales (APEI) d'Avignon* (Case C-316/13), ECLI:EU:C:2015:200, para. 29.

lacks the subordination relationship that would be necessary to classify it as an employment contract.

Notably, the moderators have no contract at all with WIT or WIP UK, as they are hired through Telerel SA to provide a moderation service for Watermelon's social media page. Here, any direct employment relationship exists only for the small number of UK-based moderators whom WIP UK directly employs. Moreover, those individuals should not be subject to the current action, as their claim has already been settled by the 2024 UK Settlement, of which we will dive further in §V of this memorandum. The outsourced moderators, by contrast, remain legally strangers to the Watermelon companies except via the Telerel SA's contract. Accordingly, WIT and WIP UK cannot be considered their "employers" in law. At most, WIT and WIP UK are just clients of Telerel SA, who in turn seeks the services of the moderators as independent contractors, from which the Watermelon entities beneficiate.

3. Applicability of French Law Ex. Art. 4(3) Rome II

The Respondents submit that Art. 4(3) Rome II points to French law as the objective applicable law, rather than Dutch law.

The Applicant is suing not for breach of contract, but rather for a declaration of alleged failure to protect moderators from harm, and an order to take remedial measures. Thus, these obligations derive not from a contract, but from a general duty of care owed by companies whose activities might result in foreseeable harm, which fits within the scope of tort or delict under this Regulation. While the Safe Socials Foundation likely advocates that Dutch law is applicable because the damage occurred in the Netherlands, if Rome II Regulation's provisions are correctly applied, they point elsewhere as to what the objective applicable law is.

Art. 4(1) Rome II sets out the general rule which is that *"the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur"*[32]. In a straightforward scenario, unlike the one at hand, this would

[32] *Ibid*.

mean that if a moderator suffered psychological injuries while working in the Netherlands, Dutch law would apply. The Respondents acknowledge that the Netherlands is indeed one *locus* of the damage, but crucially, because of the complex multi-state nature of the alleged injuries, deciding that only Dutch law is applicable on this article's grounds would be incorrect. In such cases of multi-territorial damage, a rigid application of Art. 4(1) would lead to a mosaic of applicable laws, which is contrary to this Regulation's spirit[33].

However, **Art 4(3) Rome II** provides an "escape clause", that allows the court to displace the *lex loci damnis* general rule when *"it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected"*[34] to another country than could be established by Paragraphs (1) and (2) of the same article.

Critically, Art 4(3) Rome II states that a *"manifestly closer connection with another country might be based in particular on a preexisting relationship between the parties, such as a contract, that is closely connected with the tort/delict in question"*[35]. In this case, there is a pre-existing relationship, namely the contracts by which the moderators provided services as independent contractors for Watermelon entities through Telerel SA. This establishes the French company as the common nexus between all the involved parties in this case: on the one hand the Safe Socials Foundation, who represents the moderators as a whole; and on the other hand, the Watermelon entities who beneficiated from the services of moderators engaged by Telerel SA. However, it is required that *"[t]he contract and the tort must be so closely related, that it is reasonable to subject both to the same law"*[36]. The services contract and the alleged torts are very tightly connected, as the alleged torts stem directly from it -despite the moderators not being considered employees as explained in §IV.2-.

The alleged failure to safeguard moderators from excessive workloads is intimately linked to the aforementioned contract, as Telerel's duty to provide a healthy workplace was an integral part of its contractual undertakings to Watermelon UK, and implicitly to the moderators it engaged. This contractual backdrop favors French law for any tortious

[33] Mankowski, P., "Introduction" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome II Regulation*, Otto Schmidt, Cologne, 2018, pp. 6-7.
[34] 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).
[35] *Ibid*.
[36] Magnus, U., "Article 4" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome II Regulation*, Otto Schmidt, Cologne, 2018, pp. 6-7.

liability of Telerel SA. This gives France a strong connection as, not only the place of the tortfeasor's establishment; but also, because presumably the governing law of the contract is French law. These two facts combined make for a stronger connection of the contract and the alleged torts to France than to the Netherlands, which merely has an incidental role in this case -being only one of the places where the damage materialized-. Therefore, French law is more closely connected to the case at hand than Dutch law.

4. Hypothetical application of Rome I

Should the Court find that content moderators can be classified as "employees" of Telerel SA, then the objective applicable law pursuant to Art. 8(3) Rome II is French law.

Under the Respondents' perspective, the only employee-employer relationship that could possibly be found in the case at hand is the one that connects Telerel SA and the content moderators. Because of the arguments used throughout §IV.2, no employment relationship should be established between any of the Watermelon entities and the moderators, as none of the typical elements of an employment relationship could even remotely be found to concur in said cases.

4.1. Applicability of Rome I

The Respondents submit that, in the case that the Court decides that the content moderators are Telerel SA's employees, Rome I is applicable pursuant to Arts. 1, 2, 28 and 29 Rome I.

Art 1(1) Rome I establishes that *"[t] his Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters"*[37]. Given that, hypothetically, the situation it would govern is of contractual nature, and it involves an international conflict of laws in a civil matter, this condition is met[38]. **Art 1(2) and 1(3)**

[37] 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).
[38] Calvo Caravaca, A.-L. & Carrascosa González, J., "Article 1" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome I Regulation*, Otto Schmidt, Cologne, 2016, p. 60.

Rome I set out a list of matters or subjects that are excluded from the scope of this regulation, which this case does not fall within.

4.2. Applicability of French Law Ex. Art. 8(3) Rome I

Even if the moderators where to be found "employees", the Respondents hold that the objective applicable law under Art. 8(3) Rome I is French Law, as it is the place of business of Telerel SA, the alleged employer of the content moderators.

Art 8(2) Rome II *"[t]o the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract"*[39]. In the present case, there is no choice of law clause in the contracts between the moderators and Telerel SA, which would make the law of the country where the worker habitually works (*lex loci laboris*) the objective applicable law[40]. However, it is hard to pin down a single country of habitual work, due to the mobile nature of "digital nomads", that tend to vary their work location frequently.

All moderators have each spent some time working from the Netherlands, but also time in Belgium, Germany or elsewhere in the Meuse-Rhine Euroregion; without having specific evidence that they all spend most of their time in a particular location. The CJEU has instructed that for employees that frequently travel or do not have a specific work location, courts should consider the "habitual workplace" to be the place *"from which the employee carries out his […] tasks, receives instructions concerning his tasks and organizes his work, and the place where his work tools are situated […] and the place to which the employee returns after completion of his tasks"*[41]. From the facts of the case, there is no such single base or place to which the worker usually returns to, nor a location where they spend most of their time[42]. Moderators tend to flock to different locales, and

[39] 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).
[40] Palao Moreno, G., "Article 8" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome I Regulation*, Otto Schmidt, Cologne, 2016, pp. 586-587.
[41] Judgment of the Court of Justice of the European Union, 15 March 2011, *Heiko Koelzsch v. État du Grand-Duché du Luxembourg* (Case C-29/10), ECLI:EU:C:2011:151, para. 49.
[42] Palao Moreno, G., "Article 8" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome I Regulation*, Otto Schmidt, Cologne, 2016, p. 590.

even though the Netherlands is a country that all moderators have been at least once, this is not enough to consider it their habitual workplace by any means.

Because no habitual work country can be singled out, the objective applicable law is *"the law of the country where the place of business through which the employee was engaged is situated"*[43]. In fact, *"this connecting factor can prove to be useful in relation to different highly international labour cases, like those contracts where the 'mobile' worker was engaged by a subsidiary to work for a multinational group of companies in a multiplicity of countries"*[44]. If we draw similarities, we can see how this provision is a perfect fit for the case at hand, as Telerel SA engaged the moderators through its offices in France to work for Watermelon -a multinational group- from an unspecified location, which undeniably points to French law as the default applicable law in absence of choice.

V. Recognition and Enforcement of Foreign Judgements

1. Applicability of the 2019 Judgements Convention

The Respondents hold that the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ["**Judgements Convention**"] is applicable to this case pursuant to Arts. 1 and 2.

Art. 1 states that *"[t] his Convention shall apply to the recognition and enforcement of judgments in civil or commercial matters"*[45], and more specifically *"to the recognition and enforcement in one Contracting State of a judgment given by a court of another Contracting State"*[46]. In the present case, the Settlement pertains to obligations

[43] 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).
[44] Palao Moreno, G., "Article 8" in Magnus, U. & Mankowski, P. (eds.), *European Commentaries on Private International Law: Rome I Regulation*, Otto Schmidt, Cologne, 2016, p. 594.
[45] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, of 2 July 2019 (Official Journal of the European Union, L 196, 20-44, 14 July 2022).
[46] *Ibid*.

concerning the health protection of content moderators, which falls within the realm of civil matters in the context of this law[47].

It is also worth noting that the UK settlement does not fall within the excluded matters of the Judgements Convention: as it is not one of revenue, customs or administrative matters; nor is it included in the list of specific exclusions delineated by **Art.2** -namely, matters such as the status and legal capacity of natural persons, maintenance obligations, family law matters, wills and succession, insolvency, carriage of passengers and goods, transboundary marine pollution, nuclear damage liability, validity of legal persons, public registers, defamation, privacy, intellectual property, activities of armed forces, law enforcement activities, anti-trust matters, and sovereign debt restructuring through unilateral State measures-[48].

2. Recognition of the August 2024 UK Settlement

2.1. Recognition and Enforceability Ex. Art. 4 Judgements Convention

The Respondents submit that the UK Settlement should be recognized and enforced in the Netherlands, pursuant to Arts. 3(1)(b) and 4 Judgements Convention.

First of all, the UK High Court Settlement does fall within the Judgments Convention definition of a "judgement", as the broad wording of **Art. 3(1)(b)** covers *"any decision on the merits given by a court, whatever that decision may be called, including a decree or order"*[49]. Here, the High Court in London was actively seized of the moderators' claims and issued a formal order reflecting the Settlement, which disposed of the proceedings in a final manner: providing compensation and imposing obligations on Watermelon. By issuing an order with substantive terms or an incorporated settlement schedule -typical in consent and Tomlin orders-[50], the High Court effectively rendered a binding decision on

[47] Garcimartín, F. & Saumier, G., *Explanatory Report on the 2019 Judgments Convention*, HCCH, The Hague, 2019, pp. 51-53.
[48] *Ibid*., pp. 56-68.
[49] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, of 2 July 2019 (Official Journal of the European Union, L 196, 20-44, 14 July 2022).
[50] Practical Law, "Glossary: Consent Order", Thomson Reuters Practical Law UK (available at https://uk.practicallaw.thomsonreuters.com/Glossary/UKPracticalLaw/I25019a9de8db11e398db8b09b4f043e0; last accessed 14 March 2025); Practical Law Dispute Resolution, "Settlement: Consent/Tomlin order (with drafting notes)", Thomson Reuters Practical Law UK (available at https://uk.practicallaw.thomsonreuters.com/5-205-

the outcome of the case. Such a consent judgement is still *"given by a court"* and resolves the merits, albeit by agreement, thus fitting Art. 3 Judgements Convention definition of a judgement[51].

Under **Art 4(1)** a judgement from another Contracting State must be recognized and enforced in another without a review of the merits. Given that both the Netherlands and the United Kingdom are bound by the Judgements Convention, the Court must give effect to the UK Settlement. It is also noteworthy that none of the refusal grounds from **Art. 7** are applicable here: the High Court had a clear jurisdictional basis on the matter, as the moderators were all employed in the United Kingdom; the proceedings were fair, as it was a settlement reached during litigation that has never been linked to fraud; the content of the judgement is not contrary to Dutch public policy; etc.[52] In fact, an order to protect workers' mental health aligns with public interest, as portrayed by the *Arbowet* (Dutch Working Conditions Act), the *Arbobesluit* (Dutch Working Conditions Decree) and the *Arboregeling* (Dutch Working Conditions Regulations)[53]. Once recognized, the UK Settlement's terms should be given effect in the Netherlands just as if it were a Dutch judgement[54].

2.2. Enforceability Ex. Art. 11 Judgements Convention

Should the Court view the UK Settlement as a "judicial settlement" rather than a "judgement", the Respondents urge the Court to grant it *res judicata* effect under Dutch national law, as the matters therein already cover the claims brought forward by the Safe Socials Foundation.

Art. 11 provides that *"Judicial settlements (transactions judiciaires) which a court of a Contracting State has approved, or which have been concluded in the course of proceedings before a court of a Contracting State, and which are enforceable in the same*

2990?transitionType=Default&contextData=(sc.Default)&view=hidealldraftingnotes; last accessed 14 March 2025).

[51] Garcimartín, F. & Saumier, G., *Explanatory Report on the 2019 Judgments Convention*, HCCH, The Hague, 2019, p. 73.

[52] *Ibid.*, pp. 115-125.

[53] European Agency for Safety and Health at Work, "National Focal Points: Netherlands" (available at https://osha.europa.eu/en/about-eu-osha/national-focal-points/netherlands; last accessed 14 March 2025).

[54] Garcimartín, F. & Saumier, G., *Explanatory Report on the 2019 Judgments Convention*, HCCH, The Hague, 2019, p. 79.

manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment"[55]. The UK Settlement was concluded in the course of proceedings before the High Court and was judicially endorsed -that is, the case was not simply abandoned, it ended with the court's involvement and decision-. Moreover, the Settlement also is enforceable in the UK, because if WIP UK failed to pay the agreed compensation or honor the health-protection commitments, the moderators could apply to the High Court to enforce the order. Thus, all criteria of a "judicial settlement" are met, which as previously established, must be enforced in the same manner as a "judgement". This combined with the fact that none of the refusal grounds from **Art.7** is applicable, the UK Settlement is enforceable in other Contracting States.

While Art. 11 focuses on enforcement, since some states do not give settlements *res judicata effect*, it *"'does not preclude a court from treating the settlement as a contractual defence to the claim' […] to prove that the matter has already been solved"*[56], nor from granting *res judicata* effect under national law. The Respondents respectfully suggest the Court to do exactly that.

3. Effects of the Settlement's Recognition in the Netherlands

The Respondents urge the Court to treat the UK Settlement as conclusively resolving the issue of moderators' working conditions, or at least to view the obligations therein as satisfying the relief sought.

In practical terms, the recognition of the UK Settlement in the Netherlands should result in the Court precluding or mooting the relief sought by the Applicant. The Safe Socials Foundation is asking the Court to declare failure to protect moderators and to order measures to prevent mental harm, but the UK Settlement already obligates Watermelon to *"adequately protect the health of content moderators it employs either directly or indirectly"*. In other words, the reforms and protections sought by the Applicant are already secured by the High Court's order. Recognizing the Settlement in the Netherlands

[55] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, of 2 July 2019 (Official Journal of the European Union, L 196, 20-44, 14 July 2022).
[56] Garcimartín, F. & Saumier, G., *Explanatory Report on the 2019 Judgments Convention*, HCCH, The Hague, 2019, p. 135.

would, at minimum, allow those obligations to be enforced against Watermelon, and other related companies, on a cross-border basis. The Convention envisions that a party can enforce foreign judgements in another state, promoting *"access to justice globally through enhanced judicial cooperation"*[57]; which here would ensure that Watermelon entities and Telerel SA implement the promised safeguards for all directly employed or and outsourced moderators, all the while improving legal foreseeability and reducing costs for all involved parties.

It would be inefficient and legally unwarranted for the Court to issue a second, potentially overlapping, injunction on Watermelon. Instead, the Court should defer to the existing UK outcome, in order to avoid conflicting solutions and double jeopardy for the Respondents.

VI. Petitum

The Respondents respectfully request the Court to: (1) decline international jurisdiction over the case at hand, in favor of the courts of the Respondents domiciles; (2) declare that French law applies to the merits of the case; (3) recognize and enforce the August 2024 UK Settlement, in order to avoid conflicting resolutions and double jeopardy for the Respondents.

[57] *Ibid.*, p.48.

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