FACULTAD DE DERECHO

PAX MOOT COURT 2025

Case study analysis in Private International Law

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5º E-3 Analytics

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Madrid

April 2025

“All human beings have the right to just and favorable

conditions of work”, UDHR, Article 23

ABSTRACT:

During this thesis we will be conducting an extensive analysis of a case of Private International Law, from both perspectives: the Applicant and the Respondents side. We will be answering to the main three questions of every PIL case, which court holds jurisdiction, which is the applicable law and if any previous judgment must be recognized and considered in the present assessment.

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CHAPTER 1. PRIVATE INTERNATIONAL LAW

In the following study, we will focus on analyzing a Private International Law case. However, before proceeding, we will first provide context on the nature of this legal area.

1.1 Introduction

So, a lot of you may be asking, what is Private International Law (hereinafter PIL)? This legal area, also known as conflict of laws, is a set of rules that governs legal disputes between different countries. It applies when a legal dispute has an international element. This mostly includes cross-border divorces, transnational civil and commercial lawsuits, contracts, marriage and child adoption.

In a private dispute between different countries, it dictates which court has jurisdiction, which is the applicable law and if and how a foreign court's judgment will be enforced in another country, these questions will be the ones asked in the case that we will be solving below. According to the Peace Palace Library (n.d.), national laws remain the primary source of Private International Law. The scope of PIL varies from country to country and each jurisdiction has its own rules.

It is a key part of our legal system because it ensures that conflicts between different countries are solved fairly and accommodates legitimate differences in their fundamental values.

1.2 Private International Law & the technological world

Nowadays, with the rise of digital innovations, the emergence of e-commerce and globalized markets is being led by the latest tech and most recently artificial intelligence; and therefore, PIL faces a great number of challenges. Giacalone and Giacalone (2023) discuss how emerging technologies challenge the traditional frameworks.

The first challenge that we should be highlighting would be the jurisdiction in the cyberspace arena, in which courts have to decide with country is applicable on digital disputes, that can have no geographical boundaries or even could be considered to be

in various geographies at the same time, as the software many times is in the cloud, and this has no determined territory.

The second issue that could arise would be the recognition of digital labor rights, as the ones in the case that we will be discussing moreover. In which the integration of teleworking has caused some uncertainties around labor regulation.

The third problem is the harmonization's efforts that these innovations require, as more countries engage in these digital services, the push for uniform international rules becomes more apparent. And this can rise even more questions when immersing into the substance of the matter, not only regarding on how it should be done, but also on who should be responsible for this task, or even whether it is legitimate and necessary to carry it out.

1.3 Pax Moot Case actors

The present case involves legal entities from four key jurisdictions, one on the Applicant's party:

- The Netherlands (Safe Socials Foundation)

And the three remaining ones on the Respondents' side:

- France (Telerel S.A.)
- Ireland (Watermelon Information Technology Ltd.)
- United Kingdom (Watermelon IT Platforms Ltd.)

At this juncture, we shall proceed to examine the development and effects of the PIL in each one of them.

The Netherlands, France and Ireland, as they are all members of the EU, they will have no conflict in respect of the choosing of regulation in order to answer the questions; these will be Brussels I Bis, Rome I, Rome II and the 2019 Hague Judgments Convention. However, the Brexit complicates jurisdictional and enforcement questions pertaining to the UK subsidiary.

CHAPTER 2. INTRODUCTION TO THE PAX MOOT CASE 2025

2.1 Jurisdiction and applicable law analysis

There are then, as mentioned before, four jurisdictions involved in the case at hand: the Netherlands, France, Ireland and the United Kingdom. The main problem would be to see if the Dutch court (where the case was filed) has jurisdiction over all the parties involved in the case, or if it should be heard in any of the other countries.

To determine whether the Dutch court has jurisdiction we must study the following legal documents:

2.1.1 Brussels I Bis (Council Regulation (EC) No 1215/2012)

This text regulates every civil and commercial matter that occurs within the European Union. It establishes rules about the jurisdiction of its various members when the law from each of these countries collide.

The general rule is the "domicile of the defendant", where a defendant that is domiciled in the EU must be sued in that state's courts. In addition to this forum, the law provides alternative grounds based on a close connection between the country and the dispute. This means that it takes into account, in order to decide the jurisdiction on a specific case, the characteristics of importance that are related to other countries.

2.1.2 The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019)

This is an international treaty designed to facilitate cross-border recognition and enforcement of court judgments. The Convention seeks to create a uniform legal framework that allows the different countries to reduce legal barriers and make decisions on the application of the resolutions on the same case from different courts. Its main purpose is to simplify and standardize the process for recognizing and enforcing foreign judgments in civil and commercial matters.

2.1.3 Rome I & Rome II

Both of regulations establish uniform rules for determining the applicable law in commercial European conflicts. The difference resides that while the first one attends to contractual law, the second one regulates non-contractual obligations.

Timewise, Rome I apply to contracts concluded after 17th Dec 2009 as the ones before that date are governed by the 1980 Convention on the law applicable to contractual obligations. Rome II governs events that occur after its entry to force, hence, after the 11th of Jan 2009. During the case we will be using both regulations extensively in order to give an answer to both parties.

Other relevant international and European labor laws:

- ILO Conventions: No 155 (Occupational Safety and Health) and No 190 (Violence and Harassment in the Workplace)
- Universal Declaration of Human Rights (UDHR), Article 23:
  "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work.
  Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests."
- EU Charter of Fundamental Rights
- EU Working Time Directive (Directive 2003/88/EC)
- Dutch labor laws

2.2 Brexit's impact on the case

The United Kingdom's departure from the EU has altered the private law framework significantly, affecting key areas of the case in place, particularly the UK High Court settlement and the Watermelon IT Platforms Ltd. (based in the UK)'s role.

Before 2020, as a member of the EU, the country was bound to its regulation, making the process of determining the applicable jurisdiction and law relatively predictable, taking part on regulations as some of the ones mentioned before (Brussels I Bis). As Ungerer *(2019)* points out, Brexit risked the return to outdated 1968 Convention, complicating jurisdictional and enforcement of judgment matters.

However, in 2021 the UK left the European Union causing a series of consequences, some that will be affecting our case. Now, in order to create balance between other countries, the UK relies on its domestic law and international conventions. Regarding internal laws, its traditional common law follows jurisdiction, giving it a greater weight compared to regulation. As is it not included as a member in Brussels I Bis, this weakens the enforcement of the Dutch court in the country, making it harder for the Applicant to enforce a Dutch judgment against Watermelon IT Platforms Ltd. Also, this last could argue that the UK courts are the proper forum, given its previous High Court settlement.

Concerning the applicable law, as Layton *(2020)* explains, the UK has chosen for now to retain Rome I and Rome II in its legal system, meaning that the Dutch court might still apply these rules to determine the applicable law.

Lastly, it is relevant to mention that in July 2025 the UK and the EU will enter the 2019 Hague Judgements Convention, which would simplify the enforcement of EU court rulings. Although this recognition will happen after the events on the case, for the sake of the argument the case states that we should consider them both under the Convention.

2.3 Clarification that both sides must consider

First of all, the plaintiff or Applicant (SSF) is an organization created by various former content moderators that were affected by the mental issues that the job causes. When acting in every matter they act as an individual, not as the content moderators and their objective is always to solve general corporate behavioral matters, not to get any personal compensation to identified members.

Secondly, the Telerel company is the one responsible of announcing the position for content moderatos via their website, making the interviews, closing the contract, providing healthy working conditions, setting the 400 tickets a day target and paying the workers. However, it is very important to highlight that these content moderators are not contracted by Telerel as employees, but as self-employed moderators.

Lastly, Watermelon IT Platform Ltd. UK is the one that has a contract with Telerel SA, the subsidiary, not the Ireland headquarters. Watermelon UK's obligation resides in organizing the content moderators, supervising their work, imposing their required standards ("average handling time") and, to an extent of Telerel's obligations, providing a healthy working environment. The content moderators are contracted by the Watermelon company as employees, with all the consequences that this may cause.

Now we can start solving the case at hand for each of the parties, first we will be answering for the Applicant, and next for the Respondents. *The case text is provided in the Appendix 1.*

CHAPTER 3. APPLICANT MEMORANDUM. SAFE SOCIAL FOUNDATION (SSF)

3.1 Statements of the facts

- Safe Social Foundation ("SSF" or "Applicant" or "Plaintiff") is an organization created by several former content moderators who suffered severe mental issues because of their work. It is under Dutch Law and has its statutory seat in Maastricht, the Netherlands. SSF aims to provide a safe social media environment and to fight for content moderators labor rights.
- Watermelon Information Technology Ltd. ("Watermelon Ireland" or "Respondent" or "Defendant") is the headquarters of a digital tech company based in Cork, Ireland, that operates with social media internationally.
- Watermelon IT Platforms Ltd. ("Watermelon UK" or "Respondent" or "Defendant") is the UK based subsidiary of Watermelon HQ, it has its administration in London.
- Watermelon's content moderator activity resides in Watermelon UK, with a small number of moderators working from there, but most of them are contracted through Telerel S.A.
- When talking about the haul company we will be calling it "Watermelon".
- Telerel S.A. ("Telerel" or "Respondent" or "Defendant") is a French company stablished in Lille that provides digital services to other companies such as outsourced content moderators for Watermelon UK under a contract.

- Telerel hires approximately 2,000 people as self-employed content moderators to work with Watermelon UK. These are considered “digital nomads”, as they can work from anywhere remotely, provided they have a laptop and internet connection. Their contracts do not specify where or when their work must be done, only their daily target, of 400 tickets (videos). Many of them operate from the Meuse-Rhine Euroregion (EMR).
- Moderators contracted from Telerel are classified as self-employed.
- The EMR includes the three countries of Belgium, Germany and the Netherlands and the cities of Maastricht, Liège, Aachen, Hasselt and Eupen.
- The contractual framework between Telerel and Watermelon UK requires Telerel to ensure a healthy work environment and access to medical care. However, in practice, these safeguards are not implemented correctly.
- Moderators contracted by Telerel, and Watermelon UK are known to struggle with different mental health disorders such as a result of their work. This is because they are exposed daily to harmful content like suicide, graphic violence and child sexual exploitation. And in addition, they are under significant time pressure, with an average handling time of 55-65 seconds per item.
- In August 2024, Watermelon UK reached a settlement before the High Court in London for 55 for the UK based moderators to be compensated and to enforce that Watermelon protects adequately its workers, either they are employed directly or indirectly (outsourced).
- On 25 October 2024, SSF filed a claim with the court of first instance in Maastricht against Telerel, Watermelon Ireland and Watermelon UK. SSF alleges that the Respondents failed to properly protect their content moderators against severe phycological harm and imposed excessive performance standards.
- SFF seeks: (i) a declaratory judgement that Respondents breached their duty of care by imposing harmful work conditions, and (ii) and order for the Respondents to take adequate measures to prevent mental harm by reducing the “average handling time” and providing medical care.

3.2 Jurisdiction

3.2.1 Applicability of Brussels I Bis Regulation

The subject of the dispute is within civil and commercial matters with EU members as parties, therefore Brussels I Bis (Regulation (EU) No 1215/2012) will

take an important role in order to determine who must have its jurisdiction. Telerel is domiciled in France while Watermelon Ireland is based in Ireland, being both countries within the EU members, satisfying the main requirement of Article 4.1 of this regulation. Article 63.1(a) defines what domiciled exactly means, it dictates that the corporation is domiciled where it has its statutory seat, which for Telerel is France and for Watermelon Ireland, Ireland. So, there is no dispute that both Respondents are under domiciled in the EU. This is also applied to the Applicant as its statutory seat is in Maastricht. However, since the Brexit, Watermelon UK is not directly governed by Brussels I Bis as this country is no longer part of the EU. In this case, as we will be explaining in detail in Section 3.2.3, the Dutch court could assume jurisdiction, given that all claims are heard together.

3.2.2 Jurisdiction over EU-domiciled; France & Ireland

Article 7.2 from Brussels I Bis dictates that: *"in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;".* The base of SSF's claim is the failure from the defendants to prevent the personal injury done by the harmful content to the moderators, in other words, the psychological harm. A defendant that is domiciled in the EU may be sued in another EU country if its where the harmful was committed or where it may occur. In the case at hand, we must apply the "ubiquity principle". In Handelskwekerij Bier v. Mines (1976) the CJEU established this principle, it was a case in which a Dutch plaintiff was able to sue a French company. This case stablished the ubiquity principle, where an action or omission in one country can damage another, covering both the place of the event and the place where the damage was materialized. In the Pax Moot Case, the damage (this is, the several mental disorders caused to the content moderators, the psychological harm) can be argued to be done in the Netherlands, among other countries. The case describes how "Many Watermelon digital nomads in Europe tend to flock together and live or spend long periods of time in the Meuse–Rhine Euroregion (EMR)", so as many lived and worked there, many of them also experience the trauma there. The Netherlands was one important locus of where the damage occur.

According to Brussels I Bis, jurisdiction at the place of damage is territorially limited to the forum, this is called "mosaic", from the Shevill principle, a

jurisdiction rule that allows plaintiffs to sue in multiple jurisdictions for online defamation Shevill v Presse Alliance *(1995)*. Basically, it's based on the idea that the information on the Internet has access worldwide, meaning that courts in multiple states have still the jurisdiction to hear the case. However, SSF is not claiming individual damages for specify content moderators but seeking an indivisible injunction or declaration as a haul. Having the Netherlands, the sufficient importance in the case to be considered the central location of the EMR region, therefore, having sufficient basis to adjudicate the entire claim to the court.

In addition, the place where the event occurred, the place of the "event giving rise to the damage", could also be considered the Netherlands, as it is the place where the excessive "average handling time" and the inadequate safe social work environment is implemented by Watermelon and where it is coordinated. Its where the actions are happening physically, where the content moderators are sitting in from of their laptops working with these restrictions. The phrase "significant number in Maastricht" indicates that a significant part of the harm that is being condemned is being done there, the Netherlands is the focal point where the lack of care is being manifested.

Even if we take into account that the corporate decisions of these requirements were made in Ireland or in the UK, the injure is still materialized in the Netherlands in the form of psychological trauma, so applying Article 7.2 Maastricht's court must claim jurisdiction.

Furthermore, assigning jurisdiction to the Dutch court is consistent with the reasonable expectations of the Respondents. Telerel and Watermelon knew that many moderators were working from the Netherlands and within the tri-state region anchored by the Dutch city of Maastricht, so it is foreseeable that any failure related to these workplace conditions would be the result of a vast part of the harm being materialized in this territory, giving precedent for legal action there. This is not a fortuitus decision, but a direct consequence of how the content

moderators is geographically organized and respect the "legal certainty" principle[1].

Lastly, none of the exclusionary or overriding jurisdictional rules apply. The subject matter to the claim is the workplace's health and safety for content moderators. There is not any forum selection clause in the contracts or arbitration agreement indicating a different forum, so SSF is not bound by any agreement to be heard in a specific country. Plus, in Brussels I Bis there are some matters that are under expectations such as the rights in rem in property[2]. However, the matter of this case is not included in one of them, so the general jurisdiction rules of the Brussels I Bis apply.

3.2.3 Jurisdiction of the UK defendant

The third and last Respondent is Watermelon UK, after the Brexit, this subsidiary is not considered to be domiciled in the EU. Nevertheless, the court's jurisdiction can be established under the Dutch law, that is consistent with Brussels I Bis. Article 6.1 of Brussels I Bis states that if the defendant is not domiciled in a country member of the EU, the jurisdiction of each member's court shall be governed by that state's own law. Dutch law allows jurisdiction over foreign Respondents in the cases that are sufficiently connected to the Netherlands. Here, Watermelon UK is integrally connected in the same factual matrix as the rest of the Respondents as it directly oversaw all the content moderator standards that were previously contracted with Telerel. All the claims directed to every one of the Respondents are closely connected, as once again, the SSF is not seeking induvial results but to hold all of them accountable for their inadequate role.

Additionally, this jurisdiction provides judicial economy and avoids inconsistent judgments to try these claims in one forum. Some could go think of applying Article 8.1 from Brussels I Bis, that allows the joint of multiple respondents in the forum of one's domicile, provided that the claims are so closely connected that it

[1] The "legal certainty" principle ensurhat the law is clear, predictable, and that people can know how to comply with it. It is a fundamental principle of international and public law.
[2] Granted on behalf of owners with absolute ownership over their assets that are temporarily handing over their immediate and direct power over something.

is expected to determine them together avoiding the risk of irreconcilable judgements from separate proceedings. This argument cannot be applied to the case at hand as none of them is domiciled in the Netherlands. Nonetheless, we can see that the spirit of this regulation tends to support hearing the claims jointly, as it does not intend to leave non-EU countries out of the reach when they are co-defendants. Telerel and Watermelon Ireland are regulated by the Article 7.2, as explained before, and thus it is efficient to extend the court's jurisdiction as well to Watermelon UK rather than trying them in through two separate courts. Also, Watermelon UK has been notified of the proceedings and can defense itself, so there is no prejudice by litigating in the Netherlands alongside its co-defendants, especially as it most likely shares counsel and interest with its Irish parent.

Importantly, Brussels I Bis does not prohibit the court from exercising jurisdiction over a non-EU member defendant. Both recital 14 and article 6 are in line with preserving national jurisdiction rules in said cases. Consequently, the Dutch court can rely on national law to assert its jurisdiction over Watermelon UK. In practice, this legislation assumes jurisdiction over a non-EU member when there is a necessity to ensure access to justice and to avoid irreconcilable judgments (analogous to the doctrine of forum necessitatis[3]). SSF is a Dutch entity that will face significant and unnecessary hurdles suing the UK branch in a foreign separate court and, as the crux of the case is already before the Dutch court, we find it reasonable for them to take jurisdiction over all three Respondents.

In *Owusu v. Jack (2005),* the Court of Justice of the European Union (CJEU) held that when the EU court has jurisdiction under the Brussels regime, as it happens with France and Ireland, it cannot decline jurisdiction on the ground that a non-EU forum might be more appropriate, as the presence of the EU must not deprive the EU court of its duty to exercise by Brussels I Bis over the EU parties. As a result, there is no question of forum non conveniens dismissal[4] or transfer to the UK, Brussels I Bis ensures that the Dutch court remains competent in the case taking place.

[3] Legal principle that allows a court to exercise jurisdiction when there is no other available forum.
[4] When a court dismisses a case because another court would be more appropriate to hear it. The term comes from Latin and means "inconvenient forum.

It is also key to highlight the fact that SSF has not pursued any other claims in the rest of the countries, so there are no parallel proceedings. There is no lis pendens [5]or related actions conflicts. The jurisdiction in Maastricht does not cause any complications with other courts.

The conclusion to the question about jurisdiction will then be that all of the three Respondents are properly subjected to the jurisdiction of the Maastricht court. Telerel and Watermelon Ireland under the Article 7.2 Brussels I Bis, while Watermelon UK under the Dutch law, compatible with Brussels I Bis. This is something reasonable, with grounded arguments in its favor and necessary in order to maintain judicial economy and to avoid incompatible court decisions.

3.3 Applicable Law

3.3.1 Characterization of the claims; Rome I & Rome II

Before answering to the question, we must ask us which substantive law governs SSF's claims, Rome I (contractual law) or Rome II (non-contractual law). SSF will argue for Dutch law, while the counterparty will want to apply the law of another country such as France, Ireland or the UK; this is going to be determined by the choice of law instruments that each party choses.

The claim of SSF is essentially a non-contractual civil claim, as we recall it was the breach of tortious or statutory duties to ensure a safe working environment and preventing these psychological disorders. As it is non-contractual, we will be applying Rome II (Regulation (EC) No 864/2007). The claim seeks a declaratory and injunctive relief for failure to prevent the personal injuries caused by the job, so it is better classified under a matter of negligence or breach or breach of statutory duty rather than a breach of contract. It is key to understand that SSF is not suing a party to any contract and the individual moderators are not formal parties of the lawsuit. If this were the case, individual content moderators would have sued to the different breach of contracts with each of the defendants, as it was done in August 2024 in the UK settlement, where 55 content moderators

[5] A pending legal action, or a formal notice of one.

based in the UK sued Watermelon UK for not taking care of them adequately as it was stated in their contracts. In the present case of October 2024, SSF does not reach for individual compensations but for a general public result, so it is best characterized as a tort rather than as a breach of contract.

The Respondents may argue that it should be a contractual matter, maybe pointing out the contract between Watermelon UK and Telerel or the one between Telerel and the content moderators. Yet SSF is not a party on any of those contracts and its objective is to enforce a duty of care owed to the general workers and to the public rather than seeking for a compensation because of a breach of contract. Even if there are some contractual duties in the background of the matter, such as the Telerel promise to ensure a safe social environment for the content moderators to work in, the cause of action is independent to this, and it's aimed to protect workers health and safety. Therefore, Rome II would be the appropriate course of action, although for the sake of the argument and in order to confirm this beyond any doubt we will be analyzing the Rome I in Section 3.3.3.

3.3.2 Application of Rome II. General Rule

Once decided that we will apply Rome II, the article in which this is laid down is the Article 4. At a first read, the subsection 1 dictates: *"Unless otherwise provided for in this Regulation, 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"*. In this case, the damage occurs in the Netherlands, as we have stated before while answering to the jurisdiction question, and it is because a large part of the harm was done there. Dutch courts recognized that in cross-border personal injuries, the place where the victim suffers the injury is a principal connecting factor under Rome II and Dutch law is prima facie [6]the law governing SSF's claims.

[6]"At first sight" or "on the face of it". It's a Latin phrase that's used to describe a claim that has enough evidence to support it.

But of course, we must acknowledge that the moderators are dispersed in different countries and have worked in multiple places within the EMR region or even outside of it, and this fact, them not being all in one place, increases its complexity. If we apply the Article 4.1 in a rigidly, we may get to the conclusion that this law suggests that for each of the countries the law applicable is the one of that country. This fragmentation is impractical, is the thing that we have been trying to avoid during our haul dissertation, and it is also undesirable as the SSF is seeking a collective claim and common course of action for all of the Respondents.

Nevertheless, the law itself provides the solution to this problem; it is called the "escape clause"[7]. It is established in the Article 4.3 from the same regulation, Rome II: "Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than what is indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question. The damage occurred and therefore, the claims are manifestly more closely connected to the Netherlands than to the rest of the countries, as we have previously explained. As a result, all of the facts point to the Dutch law as the most appropriate one.

The center of the claim is in Maastricht as the EMR region is the center of gravity for many of the 2,000 content moderator activities, it is mentioned in the case as a working hub. No other country is said to host as much of activity as this one, so no other country has been said to host as much of the harm caused to the workers. The content moderators do not work in offices provided by Telerel (France), they are said to work remotely, only needing a laptop and internet connection. Also, Watermelon Ireland may be the headquarters, but it is not where the employees perform their tasks. The impact of the tort is deeply rooted to the Netherlands.

[7] A provision that allows the court to use the law of a country other than the one normally applicable.

In addition, although there is no direct contract between SSF and any of the Respondents, the work relationships between the content moderators and their objectives are completely aligned. They were all hired by Telerel in order to work for Watermelon UK and to be coordinated by the latter. All of these agreements were set against the backdrop of the EMR region, which is an international economical and social region. Many of the moderators organized to work there, creating a community between them. SSF emerged from that community, that was its starting point, and it is based in Maastricht, so there is an undeniable relationship and link to this region. The unifying factor to the tort is the collective nature of the harm, as all of the affected has the same cause (the harmful videos added to excessive standards and to a lack of mental care), plus a collective response throughout the Dutch foundation, that it is fighting in favor of all content moderators. It is clear from all circumstances that one of the legislations stands out over the others in terms of connection to the case and should be the one to govern it, the Dutch law.

Furthermore, if we chose French, Irish or English law this would generate an unworkable patchwork. It would be arbitrary to apply to part of the harm one law and to the other part another, without taking into account all of the countries in which the content moderators work, this means in which the harm has been done that aren't mentioned in the case, this would be a total chaos and completely underproductive. Article 4.3 prevents this inconsistency or any of these arbitrary results, applying the clearest connection to the case, that is the Dutch law. This uniform solution is better for the administration of justice and for the benefit of both parties. The Respondents will not be surprised of this result as they are being sued in this country, so one would think that it is reasonable to apply its standards.

We could also argue that the Netherlands is the safest friendly country attending to this case, as it has a profound public interest in this matter, the welfare of every individual that works there. Dutch law has strong regulations on occupational health and on the safety of every laborer, recognizing and protecting physical and psychological risks. By contrast, none of the other jurisdiction's interests are as directly engaged. France's interest is more limited to Telerel's corporate liability, and Watermelon may be more concerned about the same issue, plus the interest

that the UK subsidiary might have in the settlement that was already recognized this last August. The Dutch public interest is more in line with safeguarding its workers, making it the best law to apply.

Consequently, according to Article 4.3 of Rome II, Dutch law would be the applicable law in the present case. This approach is comparable to the one taken in Owen v. Galgey *(2020)* by the English High Court, where the English court applied French law because the tort was more closely connected to France.

3.3.3 Respondents Rebuttal

The defense may argue that the law that should be applied is the one from any other countries such as France, Ireland or the UK. This may be done using Rome I, arguing that because of one or all of the existing contracts in the present case between the content moderator and Telerel or Watermelon and Telerel, this is a contractual matter. Nonetheless, we will shortly see why none of these displace Dutch law.

First of all, the French law. Of course, we agree that there are existing individual contracts between each of the content moderator and Telerel, but these contracts lack a choice of law in case of a proceeding. According to the Article 4.1 from Rome I, if these where service contracts[8], one could infer the applicable law to the habitual residence of the service provider (content moderators) or of the client (Telerel). Many of the content moderators have no habitual residence, having a nomadic nature, but Telerel resides in France. Being this the only residence that we can know for sure, one could suggest that the French law should be the one applied, as it is most likely the law that governs the ongoing agreements. However, SSF is not suing a breach of contract in these agreements, the claim is centered in the sought of a general wellbeing and none of the content moderators are included individually in the claim. SSF claims torts, demanding duties that may arise from the existing contracts so Rome I would not apply directly. The thing is that even if we consider a contractual context Article 4.3 of Rome II

[8] Serviced contracts are governed by the law of the country where the service provider is habitually resident. This applies when the parties have not agreed on a governing law.

allows the court to have in mind a closely contractual connection when choosing the applicable law. The contracts made between content moderators and Telerel being French does not bar the application of the Dutch law to a bigger question about the duty of care that every company must have.
If we look into the contract between Telerel and Watermelon UK some might argue that the applicable law should be the French one because of default or the English law because of maybe the language used in the contract, but still, SSF seeks to enforce the underlying duty not this individual contract, therefore we will be applying Rome II. Even if Article 4.1 from Rome II considered French law because of the event that made the damage and not where the damage itself was made, the manifestly closer connection still points out to the Netherlands, being this country the only one that can arguably say that has it.

Secondly, Watermelon Ireland could give us doubts about applying Irish law. This is because as Watermelon's corporate decisions, the aggressive performance standards without proper safeguards, could have been made there. Following the Bier doctrine *(Bier v. Mines de Potasse d'Alsace, 1976)*, the claimant can choose between the place of act and the place of harm. SSF has chosen the place of harm, defending that this the Netherlands because of its connecting factor, added to the fact that the content moderators were not known to have worked in Ireland, and least in the Ireland headquarters, as the operations were delegated to its subsidiary in the UK. As a result, Article 4.1 from Rome II does not apply, at best we could use Article 4.3 if the claims were more connected to Ireland in some way, this is not the case. We can't deny that this country is an important figure as one of the defendants of the case, but it is not where the content moderators worked, nor where they were harmed. Ireland's connection is not manifestly closer than the Netherlands.

Lastly, what about the English law? This was the law used in the case solved in August 2024 between 55 UK based content moderators and Watermelon UK, so one could assume that we should use the same law here. However, is the very existence of this case that gives us the defense to argue the contrary. As in this case there was a claim for individual compensations of 55 workers based only in the UK, so there was no question about the applicable law. While the present case

at hand is a general claim for all moderators made by a Maastricht based foundation against three different respondents seated in three different countries. So here it has more logic to attend to the place of damage, that is where the claim puts the focal point on. As the damage occurred was outside the UK; the "average handling time" although it was supervised by the operators from Watermelon UK, it was implemented in the countries where the content moderators were; we cannot make the manifestly closer connection to this country. Moreover, the 55 applicants from the UK settlement have already been compensated two months ago, so we could think that SSF was looking for also the fight of rights of the moderators that were outside this proceeding.

Applying Dutch law does not prejudice the Respondents as Dutch law, like other European legislations, recognizes the basic duty of care of employers and the safeguards of the workplace. It is also worth to mention the Dutch overriding mandatory rules (Article 9 from Rome I and Article 16 from Rome II), these are laws that protect the fundamental political and economic structures of a state. SSF through, for example Article 16, Rome II: *"Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation",* could ask for the recognition of Dutch working safety regulations for the work that took place in the Netherlands.

In conclusion, the Dutch law is the one that should be applicable to the case, according to Article 4.3, Rome II, as the Netherlands is the place that has a manifestly closer connection with the claims.

3.4 Recognition and enforcement of the United Kingdom settlement under the 2019 Hague Judgments Convention

The third question that we are presented with is either if the UK settlement from August 2024 should be recognized or not in the Netherlands while assuming both, the UK and the Netherlands to be contracting states of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgements in civil and commercial matters. When answered, we will be analyzing what is the effect on the present case.

3.4.1 The UK settlement as a judgment on the 2019 Hague Convention (HCCH 2019)

As stated in the case, the settlement was reached during proceedings before the High Court of London. Although it is described as such rather than as a judgment, Article 11 from HCCH 2019 dictates: *"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".* As the settlement was reached during the proceedings, we can assume that it has been made enforceable, so it has the same consequences of a judgment.

In Article 4 of the same regulation, we will find the general rule, that states that every judgment contracted in a country that its part of the convention shall be recognized and enforced in another country, with the exception of some circumstances that are specified in the regulation. The subject that was before court at the UK proceedings was the employment health obligations Watermelon UK had with 55 of its employers. This is a civil or commercial matter and according to Article 2 from the HCCH 2019, these are not excluded from the Convention. Consequently, the UK settlement must be recognized in the Netherlands.

Article 7 lays down all the possible grounds one might use in order to refuse recognition, however, none of them are triggered in the October case. The settlement was not a default judgment, but an agreed resolution made between the two parties, so there is nothing that could suggest fraud or dishonesty. Also, there is no violation of Dutch law and there is no earlier judgment from the Netherlands made between the same parties and for the same cause. Lastly, all formal requirements described in Article 12 can be met by producing a complete and certified copy of the judgment and a certificate of the court of origin stating that the judicial settlement is enforceable. Once this is done, there will not be any barriers to recognize the settlement in the Netherlands and therefore, make it enforceable.

3.4.2 Effects of the recognition on the Maastricht proceedings

Watermelon UK may argue that because of the existence of this previous settlement the current SSF's case is duplicative or unnecessary, requesting it is dismissed or stayed. Nevertheless, while the settlement is recognizable in the Netherlands (which supports SSF's claims), this does not mean that resolves the case. This is supported by three main reasons that we will be now analyzing.

The first reason is that the parties from both cases are not the same and although some may coincide, most of them were not part of the UK settlement. SSF is a foundation that is not included, as it has been explained, it does not fight for specific content moderators, so even if some of them were involved in the foundation, it does not mean that they are the ones presenting the claims. On the other side, from the three Respondents only one of them (Watermelon UK) is included in the settlement, while Telerel and Watermelon Ireland are not. The exception from Article 8 from the HCCH 2019 for conflicts because of some parties is not applicable here. Also, a foreign judgment cannot bind a non-party so SSF, Watermelon Ireland and Telerel cannot say they have already been trialed in London.

The second reason is that the subject made in both cases are not identical. The UK settlement aligns with what SSF seeks, but the foundation goes one step further, asking for responsibility from Telerel and Watermelon Ireland too. Recognizing the settlement will make enforceable the obligations that Watermelon UK has with the content moderators, but it will leave Telerel and its parent out. SSF's objective is to fill the gap generated in this case and bring responsibility from these two parties as well. The subjects from the August case are private individual claims for compensation and obligation of change in the lack of care, while SSF seeks a general public failure in the health and safety of content moderators.

The third point is that there is no automatic dismissal in the HCCH 2019, it does not mandate to stay or dismiss a case when recognizing a judgment in the country.

There is no lis pendens[9], as the case from the UK settlement has already been closed. HCCH's objective is to prevent re-litigation over the same parties and the same dispute, but as it has already been said, this is not the case. In the practice, the Dutch court could recognize the settlement and even enforce it over Watermelon UK if the obligations have not been met, but it still has to resolve for the rest of the Respondents, even add to Watermelon UK's responsibilities, if it considers it necessary.

So, its recognition can indirectly benefit SSF's cause, as Watermelon UK must be held to its obligations in the Netherlands, not only in London. However, we must take into account that, as SSF is not part of the settlement, the foundation might lack of legitimacy to enforce it. By obtaining a fresh injunction, SSF has a clear standing to monitor these obligations over all of the Respondents.

In conclusion, as stated in the HCCH 2019, the UK settlement must be recognized in the Netherlands before the Dutch court, but this does not mean the present case must be dismissed or closed, as the parties and claims have sufficient differences between both cases. The Dutch court may enforce the obligations from the settlement for Watermelon UK as complementary, but it must also solve for the rest of the parties.

3.5 Petitum

The Applicant respectfully requests the Court to: (1) dismiss any objections to the Court's jurisdiction and affirm that the court of first instance in Maastricht has international jurisdiction over all of the Respondents, (2) declare that in accordance to Rome II the applicable law is the Dutch law, (3) acknowledge the recognition and enforceability of the UK High Court settlement from August 2024, (4) declare that the Respondents failed to procure a safe workspace and prevent them from psychological harm and (5) order the Respondents to take concrete measures to prevent the future harm of more content moderators with a mandatory injunction requiring them to: reduce their strict and excessive standards and provide all necessary medical care.

[9] A pending legal action, or a formal notice of one.

CHAPTER 4. RESPODANTS MEMORANDUM. WATERMELON IT PLATFORMS (UK), WATERMELON INFROMATION TECHNOLOGY LTD. (IRELAND), AND TELEREL SA (FRANCE)

4.1 Statement of facts

The facts from both Applicant and Respondent's memorandums are very similar, however we will see that they have some differences between what facts to highlight or give importance.

- Watermelon is a social media company which's main headquarters is based in Corn, Ireland, this is the parent company Watermelon Information Technology Ltd. ("Watermelon Ireland" or "Respondent" or "Defendant"). It has an English subsidiary from which all content moderator's activity operates that has it domicile in London; this is Watermelon IT Platforms Ltd. ("Watermelon UK" or "Respondent" or "Defendant"). It's important to highlight for the present case that Watermelon is not known to have any entity based in Dutch territory, so it has no corporate domicile there.
- Telerel S.A. ("Telerel" or "Respondent" or "Defendant") is a company based in Lille, France, that provides services and tools for social media companies, such as content moderators.
- The content moderators oversee filtering social media content, working with large volumes of traumatic videos or images such as violence, child exploitation, sexual abuse, suicides, plus many other disturbing contents. This has resulted in them having serious mental disorders and needing consistent psychological care. Many of the content moderators are known to reside in the EMR region, specifically in Maastricht.
- Telerel has a contract with each of the content moderators, these can work remotely from wherever they prefer, giving that they will meet the objectives.
- Telerel and Watermelon UK have a contract for 2,000 content moderators provided by Telerel, in which is described some of the obligations and rights. Telerel must provide a safe workplace and appropriate medical care for the moderators, while Watermelon is the one that decides the objectives these workers must meet, with an "average handling time" of 55-65 seconds per video and having to process at least 400 videos per day (this is set by Telerel). However, these strict restrictions added to the

consequences of consuming this harmful content and without an adequate safe workplace has caused many of the moderators to develop mental disorders.

- In August 2024, 55 of the content moderators based in the UK that worked for Watermelon UK sued the company claiming that they were not taking proper care of their employees and that they were implementing excessively hard standards. A settlement between both parties was reached in which these moderators were giving an individual compensation and Watermelon UK was required "to adequately protect the health of content moderators it employs either directly or indirectly (outsourcing)".
- Safe Socials Foundation ("SSF" or "Applicant") is an organization founded by former content moderators based in Maastricht. Its goal is to promote safe working conditions and mental health support under Dutch law and to the public interest. It is not a direct employer or trade union, but an advocacy group for all content moderators.
- 25 October 2024, SSF filled a lawsuit before the court first instance in Maastricht against Watermelon Ireland, Watermelon UK and Telerel; claiming (i) a declaratory judgement that the Respondents "failed to properly protect content moderators against psychological harm" by imposing excessive performance standards and (ii) and injunction order for the Respondents to take adequate measures to prevent this from happening again.

Following this, there has been three questions about the October case presented to us and we will be analyzing the law and jurisdiction for each one of them from the Respondents' point of view. As a reminder, the three questions are: which jurisdiction applies to the case, which is the applicable law and if the UK settlement reached in August 2024 is recognizable and enforceable in the Netherlands and what are the effects.

4.2 Jurisdiction

If the Dutch court has international jurisdiction over all three of the Respondents must be answered separately for the EU based members and for the non-EU members.

4.2.1 No jurisdiction of the Dutch court under Brussels I Bis (Regulation (EU) No 1215/2012)

According to Article 4.1 of Brussels I Bis, *"Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State"*. Telerel is based in France, while Watermelon Ireland is based in Ireland, therefore as neither of them are domiciled in the Netherlands, the Dutch court has no general jurisdiction over the proceedings against these entities and SSF must rely in other grounds as an exception to Brussels I Bis' general rule. This could have been Article 7.2 from the same regulation, which states that in matters related to torts or delicts (as the case at hand) the jurisdiction could be assigned to the court where the harmful event occurred. CJEU jurisdiction has defined where this means and has laid out two possibilities, this is where the damage occurred or the place of the event giving rise to the damage. In the October case the first one refers to where the psychological harm was done, every country where the content moderators worked from; while the second one to where the alleged illegal conduct was made, this means where the decisions about the excessive standards and lack or care occurred, mainly in the UK or in France.

When the alleged tort damage occurs in different states, each states' court have jurisdiction over the tort that occurred in its territory. Shevill v. Presse Alliance *(1995)* was a newspaper defamation case where the newspapers were produced in France but, as they were distributed to different countries, the damage of reputation was made in all of those places. In this case the CJEU ruled that the jurisprudence should go to a different country of the causal act. A plaintiff may sue in each of the countries where there has been damage, but the court's jurisdiction is only limited to the harm happening in its own territory and only a court at the place of the event giving rise to the damage can judge the haul harm, as it is connected to all the incidents. Analogously, the Dutch court could only, at most, claim jurisdiction over the harm made in Dutch territory to the content moderators that where at that moment working from there. It cannot assume over the entire claim which involves harm in various countries.

SSF claims are not limited to Dutch based content moderators or only to Dutch territory, in fact quite the opposite, it seeks a declaration and an injunction over all Watermelon and Telerel activities related to content moderators. The relief would

affect all of them, irrespective of their work location. So even by using Article 7.2 from Brussels I Bis, the Dutch court could only claim jurisdiction over part of the claim, part of the harm, the one made in its territory, not having jurisdiction to grant relief over the broad SSF's request, which includes transnational workers harmed outside the Netherlands.

In addition, content moderators in the Netherlands are not unequivocal of the place where the damage occurred. This is because these workers are not fixed residents tied to one permanent Dutch territory, they have a nomadic nature. So, one might be working today in Maastricht and tomorrow move to work from another EMR location or to Madrid. This makes it difficult to pin down a single location where the harm was down even for one content moderator. Mental disorders are a harm that is prolonged on time, the moderator's disease will not disappear when moving to for e.g., Madrid, as the root of the problem is its work, and this can be done remotely from any location and in this location the disorder may get worse. There is no clear timeline for when the harm is worsening, therefore there is no clear way of saying in which location it was produced, only if the moderator has only worked from one place. This means that each of the locations where they worked could claim jurisdiction over the damage occurred in their territory and the Respondents could be sued in a lot of countries of the same conduct, even with the same parties, undermining the predictability and the assurance that Brussels I Bis look for in order to provide safe regulations.

From the Respondents' point of view, being held into a Dutch court is not foreseeable or predictable in any way. Brussels I Bis emphasizes that the special jurisdiction under Article 7.2 should be applied in a way that a defendant can reasonably foresee where they might be sued, this principle is called legal certainty. Telerel and Watermelon UK could have predicted a litigation process in France as that where Telerel headquarters are or in Ireland, where the parent company is based, or even in the UK (outside the EU), because is where the operations occurs and where the last lawsuit pertaining the same matter occurred. Also, litigation brought by individual content moderators for its individual harm where it occurred, because of their working location. But it is not reasonable to predict that an independent Dutch foundation (which they may not know about)

would be suing them from the Netherlands, far from all of its operations, when none of the corporate actors (the Respondents) are based in the Netherlands.

So, Article 7.2 does not give jurisdiction to the Dutch court over Telerel or Watermelon. It allows content moderators to sue for themselves in their country, as it could be in the Netherlands if a worker based there was the one suing these companies. But this is not the present case, as it is a global claim, and this article cannot be applied without fragmenting the case in all of the different locations where the damage occurred. It is the Foundation itself the one that claims to be for the general public and for all content moderators not only for Dutch workers, so the Dutch court has no jurisdiction over the haul claim. As we do not know the number of moderators working from here, we can't take this a proof of the country's relevance to the case.

Article 8.1 from Brussels I Bis does not apply here, as to sue against multiple Respondents in a single forum it requires at least one of the co-defendants to be domiciled in said forum's state. This is not the case as none of them are based in the Netherlands, so this article cannot be invoked. This was made to avoid irreconciled judgments, not as a tool for the Applicant to bring the case home when none of the Respondents are seated there. Protective jurisdiction rules for contracts of employment (Section 5, Brussels I Bis) do not support SSF, cause even if some content moderators were to be considered "employees" of Watermelon UK or Telerel, the regulation allows the employee to sue its employer from its habitual work location, but this is not the case as SSF is not an employee and the content moderators do not have only one work location.

In conclusion, under Brussels I Bis, the Dutch court lacks international jurisdiction over Watermelon Ireland and Telerel. The proper forums are France and Ireland, under the general rule of Article 4.1, they must be sued where they are domiciled, and SSF's choice to sue them in the Netherlands is inconsistent with what the regulation dictates.

4.2.2 Non-EU states, UK's Respondent jurisdiction

As after the Brexit the UK is not part of the EU, it is no longer part of the Brussels I Bis regime. Article 6.1 from this regulation does not apply to a non-EU country. If the Dutch court can hear the claim, it will be by applying the Dutch law to decide this.

According to the Dutch Civil Code Procedure *(Wetboek van Burgerlijke Rechtsvrdering)*, and in absence of any applicable treaty or regulation, contains provisions that mirror the EU legislation. For example, jurisdiction can be obtained in the Respondents domicile or in tort cases on the place where the harm occurred. It also allows what's called "forum necessitatis", this is the jurisdiction over a foreign country in the Netherlands if the case is sufficiently connected to the country and there is no other forum available. In this case, Watermelon UK has no domicile in the Netherlands so the potential ground would be the place where the damage occurred. As analyzed before, the harm did not occur only in the Netherlands and we cannot point down one place, but the actions that caused the harm have a clear location, the UK. The reasoning would be that the Dutch court could take only jurisdiction over the harm occurred in the Dutch territory, while the haul claim could be taken by the English court, or even the Irish court, if one would be suing the parent company. The Netherlands has at best an incidental connection.

The doctrine named "non forum conveniens", recognized by the Dutch law for non-EU disputes, dictates that the Dutch court cannot decline jurisdiction over EU cases because of Brussels I Bis (Owusu principle), but this does not bind non-EU situation. In this case there is a UK defendant with a large part of the illegal conduct made in the UK by this defender so a Dutch court could consider that it's not the convenient court for this situation as the core issues happened in the UK and to a globally distributed workforce. Actually, the forum with the most connection has already addressed the matter in August 2024.

Going back to the doctrine of "forum necessitatis", it allows the Dutch court to try a claim if the Applicant could not obtain trial elsewhere for reasons that are beyond its control. This is not the case, SSF could have pursued legal actions in the UK (as is has been already done by some content moderators), Ireland or

France. There was no necessity to use the Dutch court, this was a choice made by the foundation, presumably for strategic reasons. SSF is Dutch and operates from Maastricht, but a claimant's domicile is mostly irrelevant to determine its jurisdiction under Brussels I Bis. The focus is on the Respondents' domicile and where the tort has been made or the damage caused, so it's no reason for the Dutch court to have jurisdiction over the claim.

Dutch national law does not provide enough reason to provide jurisdiction to the Dutch court over Watermelon UK. The connection of the Respondent to the Netherlands is too small as any alleged illegal conduct was done from the UK by an English company.

4.2.3 Abuse of process and forum shopping centers

SSF's choice appears to be motivated by forum shopping[10]. The Netherlands is globally known for its friendly regulation on collective actions (expanded by the WAMCA[11] 2020) and the possibility of giving a global injunctive relief. By giving jurisdiction to the Dutch court, SSF seem to benefit from this despite the limited connection of the Respondents with this location. EU legislation discourages such manipulation tactics. In the Recital 7 from Rome II, it talks about the relevance of preventing forum shopping in applicable law, Brussels I Bis' goal is to also eliminate this and obtain a fair balance between the Applicant and the Respondent by not overreaching for a jurisdiction that is favorable to only one party.

CJEU acknowledged EU general perspective as the law cannot be used in order to give oneself an advantage. The CJEU's doctrine of abuse of rights was developed in Emsland-Stärke *(2000)* and it sustains that where the claimants use strategies to force one jurisdiction over others is an abuse. It defines an abuse as an objective situation were the conditions for invoking a rule are fulfilled only by artificially creating the conditions, plus a subjective intent to obtain improper advantage.

[10] Legal practice where a party chooses a court to hear their case based on which court will rule in their favor.

[11] The Wet afwikkeling massaschade in collectieve actie (WAMCA) is a Dutch law that came into effect on January 1, 2020. It allows for collective actions to seek damages for mass damage claims. The WAMCA is also known as the Settlement of mass damages in collective action Act.

Here, SSF is attempting to use some content moderators based in the Netherlands in order to obtain Dutch jurisdiction over an international matter, possibly also being the organization founded there because of the same reason.

While SSF's intent to protect content moderators seem genuine, the procedural strategies it used aren't, as they are trying to try Irish, English and French companies in the Netherlands for actions that occurred in numerous countries. This raises doubts about the integrity of its actions. The doctrine of non-intervention, used in public international law, prevents a state from intervening in any internal affairs of other states. Through analogy we can determine that a Dutch court should not be exercising jurisdiction over foreign companies for foreign actions.

Consequently, the court should be more aware of its jurisdictional limits, as the case could be more properly resolved in a location that has a direct relation with the matter, as the connection with the Netherlands is incidental and if SSF had been founded in Madrid and its national laws favor the content moderators, the foundation would have most likely presented the lawsuit there, justifying itself because of the moderators based in Madrid. Under Article 4 and 7 from Brussels I Bis the court has no jurisdiction over Telerel and Watermelon Ireland as they should be sued where they are domiciled. And under Dutch law there is not enough justification on why the jurisdiction over Watermelon UK must be obtained by the Dutch court, as the actions SSF are condemning have been made by this company in English territory.

4.3 Applicable Law

In order to determine the applicable law to the claims SSF might argue for Dutch law, probably to favor from Dutch legislation. However, the Respondents state that Dutch law is not applicable for the present case for the reasons that we will now explain.

4.3.1 Characterization of the claim (contract or tort)

First of all, we must decide if the SSF claims should be considered contractual or non-contractual obligations. The subject is the failure to prevent psychological harm on its workers imposing over the top standards and not providing the

adequate mental care. This can be seen through two different points of view, from the contractual perspective and from the non-contractual one. From the first one because the employees or contractors have duties that appear explicitly or implicitly in their contracts, such as the duty of care. The contract between Watermelon UK and Telerel had this laid out (explicit) in a concrete clause. The second position is that independent to any existing contract, an entity can owe a duty of care to those that are affected by its actions, being liable in negligence for the harm caused to its workers.

SSF is not a party in any of the relevant contracts, this is the main reason why it is considered to be under non-contractual matters, being a tort. The claims and the relief sought is typically sort for torts, not for a breach of contract. Nevertheless, the existing contracts are of high importance as they may contain choice of law clauses, or they could be subject to a specific law throughout Rome I. Also, Rome II provides in Article 4.3 the consideration of a preexisting relationship between parties, such as a contract, as a factor that might point out to a specifically national law because of its closer connection, this can influence on the applicable law decision.

4.3.2 Contracts with content moderators and between the Respondents

The contracts highlighted in this case are the ones made between each one of the content moderators and Telerel, and the one made between Telerel and Watermelon UK. All EU contracts are under Rome I (Regulation (EC) No 593/2008). We understand that the claims made by SSF are not for a breach of contract, but it is important to consider its implications, as these detail the duties by which Telerel and Watermelon were held for and which, presumably, they did not meet. Also, if Dutch law did not govern any of the existing contracts, this decreases its reasons to be the one that should be applies in a case in which these unmet duties are the center of the claim.

First, the contracts between the content moderators and Telerel. Each content moderator working with Telerel had an individual contract, as Telerel is a French company and the moderators are self-employed, the contract is most likely to be governed by French law. The moderators do not fall under the category of

"individual employment contracts" so they should be considered as service contracts between a company that is Telerel and a sole proprietor that would be each one of the content moderators. It is possible that a choice of law exists, although it's not mentioned in the case. However, if existing, it would probably state French law, as the moderators work remotely and it would be a challenge fitting every contract to the places where they are going to be working from and a problem if they move form that location, so the easiest and logical solution is to apply French law in case of a dispute. What we can know almost for sure is that they would not have used Dutch law, as they had no clue that this was the place from where some of them would be working. As we have no evidence that this clause was made, the court can infer that as there was no explicit clause, the default rules apply and also point to French law.

The default rule of Rome I is that if there is no choice of law clause in a contract for services, it is generally governed by the law of the country where the party required to perform has its habitual residence. This is according to Article 4.1(b), "a contract for the provision of services shall be governed by the law of the country where the service provider has his habitual residence". The performance of the contract is the service of moderation provided by each of the content moderators. One might think that then the residence is from where they worked, having not only one place, but several locations as the habitual residence. This is difficult to apply so as an alternative one could also argue that Telerel is the one providing the service to Watermelon in this case through its content moderators, and this would again point to French law. Rome I offer an alternative, Article 4.3 allows to apply the law of the employer's domicile when the workers country cannot be determined.

Even when the content moderators are not "employees" one could think that they have a habitual workplace and consider applying Article 8 from Rome I, this was held by CJEU in Koelzsch v. Luxembourg *(2011).* Applied for a truck driver with international routes, it was stated that one identifies the country from with the worker does its main activities or from where it has its permanent base. Some content moderators are in the Netherlands, but many of others are elsewhere so,

according to the CJEU in Mulox IBC Ltd. v. Geels *(1993),* if no single habitual location can find them, we would follow the employer's residence, this is France.

The contract between Watermelon UK and Telerel had a clause for Telerel to provide a safe workplace and adequate mental healthcare plus another one that described the strict standards imposed by Watermelon UK; both of them intricate to the claims. Same as in the contracts from before, if there were a choice of law clause it would have likely been English or French law, but what it will not have been chosen is Dutch law. As there is no choice of law, Rome I dictate service contracts as this one where Telerel is the provider and Watermelon UK the client will be ruled by 4.1(b) the employee's habitual residence, so in this case Telerel's residence, France.

It is important to highlight that the contractual obligation in which the claims done by SSF are founded are rooted to matters that happened in a foreign country and that have a close connection with these countries, but even so, SSF decided to pursue the claims in the Netherlands. However, as we have seen, it will not find support in the contract made between the Respondents or any on the one made with content moderators that are not based in the Netherlands.

Article 9 from Rome I allow sometimes the application of overriding mandatory provisions of the forum in a contractual dispute. Nonetheless, Dutch employee's safety status would only apply to content moderators that are working in the Netherlands, not to the haul claim. While those not based in Maastricht will not be governed by Dutch law as it does not usually govern French companies. Article 9.3 states that courts may give effect to the mandatory rules of the place of the performance of a contract which in this case it varies and has been done mainly through virtual tools, not in the Netherlands. There is no Dutch mandatory rule that displaces the applicable foreign laws for the contracts of the case at hand.

4.3.3 Applicable law for non-contractual liabilities

We have determined before that the action sought by SSF is considered a tort, as it is not a part of any of the contracts and it has a global objective, this means that we must apply Rome II (Regulation (EC) No 864/2007).

The general rule is laid down in Article 4, the applicable law must be the one from where the damage occurs (lex loci damni), this is where the psychological harm occurs. As detailed in previous sections, this has not one location, but all of the countries from where the content moderators worked from. When applying Article 4.1 rigidly, we conclude that for each of the damage we must apply the law of each one of the countries, even when one person has worked in various places. However, it has no sense to divide the harm in three places if a moderator has been in three countries, this would be un unworkable job. As a solution we have Article 4.3, that dictates that in the cases where there are several locations, we can concentrate the claim in the one which has a "manifestly closer connection". Applying Dutch law would also contradict Recital 7 from the same regulation, as the parties must have foreseeability of the applicable law and avoid in every possible way forum shopping practices.

"Manifestly closer connection" could be based on "a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question". There are multiple relationships in the claim, the one between Telerel and every content moderator, the one between Watermelon UK and Telerel, and lastly, the one between Watermelon UK and Watermelon Ireland, being its corporate parent. The tort is deeply connected to these locations: France, UK and Ireland; being these laws more appropriate for the case at hand rather than the Dutch law.

French law has a great connection as it is where Telerel has its headquarters and having therefore, foreseeable liability there. Only some of the damage was produced in the Netherlands, while the whole lack of care from Telerel's part occurred in France, being more closely connected. In addition, French law probably governed Telerel's contracts, and it is not denied in the case that some of the content moderators worked from there, being very plausible as it is a French company.

English law is also closely connected as Watermelon UK is based in London, generating the same situation as for Telerel in France, plus the excessive standards

and lack of care was also generated there. Additionally, it is the only country where there has already been a trial on the same matter for some of the same parties, so it is understandable to think other trials could be held in the same location by the same law. Dutch law has no sense for the UK company for UK actions.

Lastly, Irish law, because of the parent company. This would only be the case if it is claimed to have independent negligence, done in Ireland, where the headquarters are located, although the Respondents sustain that Watermelon Ireland owed no duty of law to the content moderators. But it still has more connection in disputes against the company rather than Dutch law. All of these align with the reasonable expectations of the parties, creating legal certainty, while the Dutch law does not, only SSF prefers it because it works in its advantage, the Netherlands connection to the Respondents is weak.

We must also look at Article 16 and Article 26 from Rome II. In this case there are relevant relations from EU members or former EU members, and the laws from these countries are developed as the Dutch law is. There is no suggestion or any proof that applying them will violate Dutch principles as all of them here have evolved labor rights and protections that requires duty of care for their employees or workers, being very similar to Dutch law. Even if Dutch law is a little bit more protective and favorable over working conditions, it is no reason to apply these overriding mandatory rules. If done, everyone would choose their law based on their needs and based on the solution they prefer, this is what is called forum shopping a practice, already explained and which EU law is trying to avoid.

Moreover, Article 17, in which the Dutch court should consider French regulations for Telerel's actions or UK legislations for the actions from Watermelon UK at the time of giving responsibility to their actions, would also not right to apply. In the case that Dutch law is applied, we could look into it, but as stated before there is no sufficient connecting reason with this country to apply this law. So, it would be more logical to directly apply French or English law for French or English matters.

To conclude, the use of Dutch law in this case for the haul claim is unfounded and following Rome II, as Article 4.1, the law of the place where the damage was made, would provide too many divisions, we must apply Article 4.3 in which France, or the UK have a manifestly closer connection with the tort.

4.4 Recognition of the August 2024 UK settlement under the 2019 Hague Judgments Convention

4.4.1 Recognizability of the settlement

The 2019 Hague Judgments Convention is a treaty that allows for the recognition and enforcement of foreign judgments in civil and commercial matters. The convention was adopted on July 2, 2019. While answering this question we will assume that both countries, the UK and the Netherlands, are under this treaty. Although the truth is that even though the Netherlands is, the UK will not properly start being a part of it until 2025.

Article 4.1 of this Convention dictates its general rule, in which a judgement recognized by a member of the HCCH 2019 shall be also fully recognized and enforceable in other country that's also member and recognition may be only refused in specific grounds, being the exception. Although here we are talking about a settlement, Article 11 of the same Convention solves this matter by dictating that any settlement made enforceable at court shall be considered a judgement and have its same effects. As the UK settlement was probably recorded in a consent order [12]or a tomlin order[13] it is enforceable by the High Court of London, the 55 consent moderators that were included in the settlement should apply to the High Court to enforce it if Watermelon UK was not completing its obligations.

The HCCH 2019 is applied to civil and commercial matters, and as the settlement asked for the compensation of 55 individual content moderators and for an obligation for Watermelon companies to adequately protect the health of content

[12] A legally binding agreement between two or more parties that is approved by a court. It can be used in a variety of situations, including divorce, workplace discrimination, and government regulation.
[13] A court order that records an agreement between parties to settle a dispute. It's a type of consent order that allows the parties to avoid starting new proceedings.

moderators it employs either directly or indirectly (outsourcing), it is included in these matters. There are some areas that are specifically excluded from the Convention such as family matters, but this is not the case.

Article 5 lays out the grounds in order to be recognized, specifically 5.1(a), where Watermelon must have been in the UK at the time or 5.1(f), where Watermelon must have participated and then settled. Both of these conditions were met in the UK settlement. Also, there is no mandatory refusal grounds, included in Article 7, but none of them apply.

In conclusion, once all the formal requirements are met (Article 13, HCCH 20219) the court must recognize the UK settlement under the HCCH 2019, it cannot even postpone its recognition as the UK case is already finalized. This means that it must accept the determination of the parties involved, its rights and its obligations.

4.4.2 Effects on the Maastricht proceedings

Once clarified that the settlement must be recognized by the Dutch court, we must also analyze how will this affect the procedure of the case at hand, which will be its effects in the Netherlands.

The settlement seeks a compensation to the moderators included as a party and a general obligation for Watermelon UK to adequate protect the health of all of its content moderators by either seeking doing it itself or outsourcing it (as it could be done with Telerel). This is a very general obligation not limited only to UK based moderators and including indirect workers, so Telerel, although it is not included in the settlement directly, it is implicitly greatly affected by it, as one could think by inferring, from the content from the Watermelon UK and Telerel's contract, that Watermelon will outsource this duty of care to Telerel by increasing the conditions already made in the health clause. Generating then obligations to Telerel throughout the settlement. Therefore, the settlement has legal effect directly over Watermelon UK, and indirectly over Watermelon Ireland (being its parent) and Telerel. In addition, this obligation is enforceable in any country included in the HCCH 2019, as the Netherlands.

SSF's main objective is to ensure the protection of content moderators, but the UK settlement already provides most of that relief, maybe being the only thing that is not included, the declaration of the lack of care, as in the settlement it is not directly stated as such. However, this can only be justified by SSF as for a doctrinal purpose or moral victory. All 2,000 content moderators are included in the settlement, on whose SSF is fighting for in the lawsuit. Thus essentially, by wanting another resolution, seeking more than what SSF needs to fulfill its goal. Once the settlement is recognized the court should decline to impose any potential duplication or inconsistent obligations to the Respondents.

We agree that Telerel is not a direct part of the settlement, but Watermelon UK is, and with its recognition, it would have under the Netherlands regulation what is called "res judicata[14]" for Watermelon UK obligations. They could argue that they already have a judgment that obligates to do what SSF is asking, not needing unnecessary extra litigation. In addition, there is a principle to avoid double litigation or contradictory judgments and as the settlement is fairly general what "adequately protect" means to the High Court and to the Dutch court could be completely different, being at risk of this happening if the latter re-litigates the subject. According to Article 7.3 from the HCCH 2019, this must be prevented when the litigations have the same parties or the same subject. And although both cases did not have the same parties, they did have the same subject. So, there is no need for duplicative reliefs as SSF's interests have already been met and secured by the UK settlement, and the solution for it not being completed is to enforce the existing judgment, not create a new one. The enforcement mechanism in the Netherlands would be the Dutch court, as by complimenting the requirements from Article 14, they could enforce the UK settlement as if it were one of its own judgments.

The doubts that may rise for the Applicant are the ones pertaining the implication that Telerel has in the settlement, as it is not a direct party. However, as it has been explained previously, following Watermelon UK's modus operandi we can

[14] A matter that has been adjudicated by a competent court and therefore may not be pursued further by the same parties.

suppose with a lot or certainty that a vast part of the obligations required for Watermelon UK will be met throughout the outsource to Telerel, fulfilling also then SSF's goal. The settlement creates a chain of accountability for all the Respondents.

Then, what the Dutch court must do is dismiss or stay the present case with SSF. In the first option, the Respondents will submit that the effect of the UK settlement's recognition is that the Dutch proceedings should be terminated or at least severally reduced, as there is little point in confirming the same decisions that have already been taken by other court when these are fully enforceable in the country. The second option is to stay the proceedings, under Article 7.1(e), as it is not the same parties and supposedly, the High Court of London is monitoring the obligations imposed to Watermelon UK, Dutch court actions should freeze at least until it is clearly proved that the company is not meeting these requirements, and when confirming it, enforcing it throughout the recognized settlement.

In addition to all of this, it aligns with the principle of judicial economy, a goal of the HCCH 2019 Convention and encourages parties to settle, as this encouragement could be undermined if after happening for these parties, they have to face nearly the same proceeding before a different court.

To conclude, we acknowledge full recognition of the August 2024 UK settlement in the Netherlands throughout the HCCH 2019 and we find that there is no need to issue a separate Dutch judgment over the same matter as the claim and objectives of the Applicant are already met in this settlement.

4.5 Petitum (relief sought by Respondents)

The Respondents respectfully request the Court to: (i) decline Dutch court jurisdiction over all three Respondents, (ii) declare that the Dutch law is not applicable to the case for any of the Respondents, (iii) acknowledge the recognition and enforceability of the UK High Court settlement from August 2024, and (iv) dismiss the claims made by SSF under the grounds that they were already met in the UK settlement.

CHAPTER 5. FINAL CONCLUSIONS

5.1 Applicant's memorandum

The Applicant respectfully requests the Court to: (1) dismiss any objections to the Court's jurisdiction and affirm that the court of first instance in Maastricht has international jurisdiction over all of the Respondents, (2) declare that in accordance to Rome II the applicable law is the Dutch law, (3) acknowledge the recognition and enforceability of the UK High Court settlement from August 2024, (4) declare that the Respondents failed to procure a safe workspace and prevent them from psychological harm and (5) order the Respondents to take concrete measures to prevent the future harm of more content moderators with a mandatory injunction requiring them to: reduce their strict and excessive standards and provide all necessary medical care.

5.2 Respondents' memorándum

The Respondents respectfully request the Court to: (i) decline Dutch court jurisdiction over all three Respondents, (ii) declare that the Dutch law is not applicable to the case for any of the Respondents, (iii) acknowledge the recognition and enforceability of the UK High Court settlement from August 2024, and (iv) dismiss the claims made by SSF under the grounds that they were already met in the UK settlement

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Appendix 1. Pax Moot 2025 Case

Applicant: *Safe Socials Foundation (NL)*

Respondents*: Telerel SA (France); Watermelon Information Technology Ltd. (Ireland) and Watermelon IT Platform Ltd. (UK)*

1. Content moderation

Content moderation is a critical part of the data flow reaching social media users' devices. Without content moderation, social networks cannot exist.

Content moderation is typically a combined effort of technology (algorithms) and human intervention (content moderators). The work of a content moderator is very demanding. They are continuously faced with "the worst of humanity". As one content moderator said in a recent interview: "We don't choose what to see, it just comes in randomly: suicide videos, graphic violence, child sexual exploitation, nudity, violent incitement... They flood into the system". Furthermore, content moderators work under considerable time pressure, with sometimes an "average handling time" of 55 to 65 seconds per video or "ticket" assigned to

them. That amounts to anywhere between 387 and 458 tickets viewed per moderator each day.

Often, platforms outsource content moderation to independent service providers, who in turn hire the actual content moderators either as employees or self-employed contractors.

2. Safe Socials Foundation

A number of former content moderators who suffered severe mental issues because of their work establishes the "Safe Socials Foundation" (SSF) with the aim of improving both the safety of social media and the working conditions of content moderators. SSF is incorporated under Dutch law and has its statutory seat in Maastricht, the Netherlands. According to its Articles of Incorporation, the SSF's purposes are:

- *To contribute to a safe social media environment for both its users and content creators;*
- *To promote recognition of the pivotal function of content moderators to create and maintain a safe social media environment;*
- *To actively pursue content moderator's right to enjoy just and favourable conditions of work, including a fair wage for employees or adequate income for self-employed workers, and safe and healthy working conditions;*
- *To take all further actions that are related to the foregoing in the broadest sense or that may be conducive thereto.*

3. Watermelon

Watermelon is a digital tech company operating a successful social media platform worldwide. Its main office, Watermelon Information Technology Ltd., is headquartered in Cork, Ireland. Watermelon IT Platforms (UK) Ltd. is one of its subsidiaries. Watermelon IT Platforms (UK) Ltd. has its principal place of administration in London, United Kingdom. Watermelon's content moderation activities are organised by Watermelon IT Platforms (UK) Ltd. It employs a small number of moderators, all of whom are based in the UK. The main contingent of content moderators, however, is obtained through the digital services company Telerel SA.

4. Telerel

Telerel SA, a French company established in Lille, specialises in providing digital services to other companies. For its contract with Watermelon IT Platforms (UK) Ltd., it hires around

2000 people as self-employed content moderators to work exclusively for the Watermelon platform. These content moderators are "digital nomads," They can work from anywhere provided they have a laptop and internet connection. Nothing in their contract with Telerel specifies where and when their work is to be performed exactly. Each worker has a daily target of 400 tickets. Many Watermelon digital nomads in Europe tend to flock together and live or spend long periods of time in the Meuse–Rhine Euroregion (EMR), which spans three countries, five regions, three languages, four million inhabitants and the cities of Maastricht, Liège, Aachen, Hasselt and Eupen. Each of them carries out their moderating activities for some period of time from a Dutch location.
While the contract between Watermelon IT Platforms (UK) Ltd. and Telerel provides that Telerel must arrange for a healthy workplace and ensure mental care where needed, it is common knowledge that many moderators of Telerel struggle with mental health disorders: depression, anxiety, post-traumatic stress disorder, and suicidal ideation are common side-effects of their work.

The settlement

In August 2024, a settlement was reached during proceedings before the High Court in London between Watermelon IT Platforms (UK) Ltd and 55 of the UK based content moderators it employs. The settlement provides not only for the 55 moderators to be compensated but also for an obligation for Watermelon companies to adequately protect the health of content moderators it employs either directly or indirectly (outsourcing).

The claim

On 25 October 2024, SSF filed a claim with the court of first instance in Maastricht against Telerel SA as well as Watermelon Information Technology Ltd., Cork (Ireland) and Watermelon IT Platforms Ltd., London (UK). The Foundation requests the court:

- *to declare that Respondents failed to properly protect content moderators against severe psychological harm by imposing excessive demands on "average handling time" resulting in an excessive exposure to material adversely affecting their psychological health;*
- *to order Respondents to take adequate measures to prevent mental harm by reducing the standards on "average handling time" and to provide all necessary and appropriate medical, psychiatric and psychological care to content moderators.*

The court is facing several issues of private international law. On behalf of the Applicant and on behalf of Respondents, your team is invited to submit arguments on the question:

Whether the court has international jurisdiction.

Which law is applicable to the merits of the case, whereby the Applicant argues for the applicability of Dutch law and Respondents argue for the applicability of another law or laws.

Whether a request by Watermelon for the recognition of the UK settlement in the Netherlands be granted and, if so, what the effects of the recognition are for the Maastricht proceedings. This question is to be addressed assuming the 2019 Judgments Convention is binding in the UK and The Netherlands at the time of your legal assessment.