



GOVERNING COUNCIL
94th session
Rome, 6-8 May 2015

EN

UNIDROIT 2015
C.D. (94) 3
Original : English
April 2015

**Item No. 4 on the agenda: Private Law and Agricultural Development –
Adoption of a Legal Guide on Contract Farming**

(prepared by the Secretariat)

<i>Summary</i>	<i>Report on the state of preparation of a Legal Guide on Contract Farming</i>
<i>Action to be taken</i>	<i>The Council is invited to approve the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming</i>
<i>Mandate</i>	Work Programme 2014-2016 (UNIDROIT 2013 – A.G. (72) 4) pp. 10-11.
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	UNIDROIT /FAO/IFAD Legal Guide on Contract Farming (version 3 April 2015) <i>Dissemination documents:</i> Leaflet : <i>Creating a Favourable Legal Environment for Contract Farming</i> – Brochure : <i>UNIDROIT/FAO/IFAD Legal Guide on Contract Farming: an Overview</i>

INTRODUCTION

1. In 2010, the General Assembly included a general subject “Private Law and Agricultural Development” in the Work Programme for the triennial period 2011-2013. As the first subject to be addressed, the Council considered that UNIDROIT could bring its expertise to bear on the area of contract farming arrangements and decided to authorise the establishment of a Working Group for the preparation of a legal guide on contract farming, inviting the interested international organisations to participate in its work. The high priority status for this project in the Work Programme 2014-2016 responds to the high level of interest shown at the 91st session of the Governing Council (see UNIDROIT 2012 – C.D. (91) 15, paras. 91-95).

I. – UNIDROIT WORKING GROUP FOR THE PREPARATION OF THE LEGAL GUIDE

2. The Working Group was composed of contract law experts, representatives of the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) as partner organisations and co-authors of the Guide, as well as observers from other intergovernmental organisations, representatives of agricultural producers and agribusiness and national institutions.

3. The Working Group was composed of contract law experts representing different jurisdictions and legal backgrounds:¹ Professor Michael Joachim Bonell * (emeritus, University of Rome I “La Sapienza”, Italy; Consultant, UNIDROIT), Professor Fabrizio Cafaggi * (National School of Administration / University of Trento - on leave), Italy), Mr Eduardo Alexandre Chiziane (Lecturer, Eduardo Mondlane University, Maputo, Mozambique) Professor A. Bryan Endres (University of Illinois, USA), Professor Marcel Fontaine (emeritus, Catholic University of Louvain Law School, Belgium); Professor Henry D. Gabriel (Elon University School of Law, Greensboro, USA; UNIDROIT Governing Council member); Professor Paola Iamiceli (University of Trento, Italy), Professor Horacio Roitman (National University of Cordoba, Roitman Abogados, Cordoba, Argentina), Professor Paripurna P. Sugarda (University of Gadjah Mada Faculty of Law, Yogyakarta, Indonesia); Professor Kassia Watanabe (São Paulo State University - UNESP, Brazil). The Working Group was chaired by Professor Henry D. Gabriel.

4. The Working Group counted upon the active participation of the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) as partner organisations and co-authors of the Guide: the legal discussion and analysis within the Working Group benefitted immensely from FAO’s high level of expertise on contract farming theory and practice and of IFAD’s experience in sustaining the inclusion of smallholder farmers in the value chains. Furthermore, IFAD awarded a grant to support UNIDROIT’s activities on contract farming in 2014. The grant, which was administered by FAO, went towards funding two meetings of the Working Group, four stakeholder consultation meetings, as well as a consultant to assist the Secretariat in the review of the drafts and preparation of the final publication.

5. The following intergovernmental and non-governmental organisations were also represented in the Working Group: the World Bank / International Finance Corporation, the World Food Programme, the Technical Centre for Agricultural and Rural Co-operation (CTA) (ACP-EU Cotonou Agreement). Representatives from the World Farmers’ Organisation (WFO), as well as two Experts from the Food Manufacturing and Marketing Industry took also an active part in the Working Group. Finally, the following national institutions were represented as observers: the *Fondation de droit continental* (France), the *World Food Law Institute* (USA), the *National Court Administration* (Republic of Korea).

6. The Working Group held two sessions in 2013 (28-31 January² and 3-5 June³) and two sessions in 2014 (3-7 March⁴ and 17-20 November⁵).

¹ The asterisk after the name of a member of the Working Group indicates that the member’s involvement as a main contributor to the drafting of the Guide.

² The report of the first meeting is available on the UNIDROIT website at: <http://www.unidroit.org/english/documents/2012/study80a/wg01/s-80a-02-e.pdf>

³ The report of the second meeting is available on the UNIDROIT website at: <http://www.unidroit.org/english/documents/2013/study80a/wg02/s-80a-07-e.pdf>

⁴ The report of the third meeting is available on the UNIDROIT website at: <http://www.unidroit.org/english/documents/2014/study80a/wg03/s-80a-wg03-16-e.pdf>

⁵ The report of the fourth meeting is available on the UNIDROIT website at: <http://www.unidroit.org/english/documents/2014/study80a/wg04/s-80a-26-e.pdf>. For an overview of the session, see the Unidroit Annual Report 2014, p. 11.

II. – CONSULTATION EVENTS

7. A round of consultations, with audiences made up of farmers' representatives, industry stakeholders, interested Governments, IGOs and NGOs, was organised with the following objectives: promoting awareness and understanding of the economic, social and legal dimensions of contract farming; discussing the diversity of approaches of several countries in the legal framework applicable to contract relations between producers and buyers; sharing stakeholders' experiences, recommendations, and best practices focusing on contract negotiation and conclusion, performance of parties' obligations, as well as non-performance and dispute resolution; informing the content, scope, and purpose of the forthcoming Guide and seeking feedback on the Guide's adequacy to meet practical needs. One additional important objective was to explore the future use of the Guide and serve to build a network within target groups that will participate in the future implementation of the Guide.

8. Regional workshops were thus held in South America (Buenos Aires, 25 March 2014), Asia (Bangkok, 26 September 2014), and Africa (Addis Ababa, 31 October 2014), and a consultation event focused on the private sector interest was held in Rome, on 10 October 2014. Finally, an Internet Consultation took place from 24 September to 31 October 2014, inviting interested stakeholders to submit comments on the Zero Draft of the Legal Guide.⁶

III. – FINALISATION AND ADOPTION OF THE GUIDE

9. Since the fourth and final meeting of the Working Group, the Secretariat proceeded with the finalisation of the Guide by giving effect to the decisions of the Group and circulating the revised draft to the drafters for a last round of comments. The editorial process included the addition of cross-references, the preparation of an analytical index, and several readings to ensure internal consistency. The preparation of a French version of the Guide was commissioned to an external translator, with the financial support of IFAD and FAO.

10. The Legal Guide on Contract Farming is submitted to the UNIDROIT Governing Council for consideration. Although sponsored also by FAO and IFAD, no formal endorsement is required by these organisations. As soon as adopted by the UNIDROIT Governing Council, the Legal Guide will be published both on paper and in electronic format.

IV. – PROGRAMME OF ACTIVITIES FOR THE IMPLEMENTATION OF THE LEGAL GUIDE IN 2015-2016

11. At its fourth and final meeting, the Working Group agreed that an essential dimension of the effectiveness of the Guide will rely on making the Guide accessible, not only through the dissemination of the publication, but also through knowledge and implementation tools designed to be used in field projects. The Guide should also garner interest from local legal communities, academics and practitioners alike – including those involved in litigation and alternative dispute resolution – to foster a better understanding and enforcement of sound legal rules for contract farming operations.

⁶ For an overview of the various consultations, see the UNIDROIT Annual Report 2014, p. 9. The full reports on the various consultation events are available on UNIDROIT website: [Buenos Aires, 25 March 2014](#) – [Bangkok, 26 September 2014](#) – [Addis Ababa, 31 October 2014](#); Private Sector Consultation: [Rome, 10 October 2014](#).

A. Drafting of a set of Recommendations

12. At the above-mentioned meeting, the Working Group agreed that the set of recommendations, which were originally intended to be included in the Guide at the end of each Chapter, should rather be drafted as a stand-alone instrument accompanying the Legal Guide. It was felt that, in view of the authoritative tone that the recommendations would have and their use in facilitating dissemination of the Guide, it would be justified to devote more time to their development and consultation to ensure that they receive a similar depth of treatment to the rest of the Guide.

13. It was suggested that the Secretariat could organise Internet consultations on the recommendations among the members of the Working Group, and that the text of the recommendations could be finalised and adopted at a restricted meeting of the Working Group (possibly to be held in conjunction with the launch event of the Guide, on 8 October see below).

B. Partnership with multilateral and other organisations

14. The key players for the implementation of the Guide are the partner organisations in the preparation of the Guide, which are involved in development operations at country level. FAO has submitted a proposal to IFAD to fund a series of activities aiming at the preparation of implementation tools and organising capacity building projects. The World Farmers' Organisation (WFO) is also providing significant support to implementation events.

15. As a major initiative to gain visibility in the area, UNIDROIT is taking the lead in setting up a Community of practice within the World Bank Global Forum on Law Justice and Development (GFLJD) for the promotion of its contract farming activities, intended as a platform of exchange and knowledge sharing between core partners (i.e. FAO, IFAD and the World Bank) and other interested stakeholders.

16. The nature and scope of UNIDROIT's involvement will depend on the particular activities to be developed and the resources needed to implement them.

C. Meetings, conferences and promotion events

17. The ongoing work on the Legal Guide was presented in the following occasions:

- Visit of a delegation from the Philippines: On 18 February 2015, Mr Virgilio R. de los Reyes, Secretary for Agrarian Reform, and Mr Francis N. Pangilinan, Secretary for Food Security and Agricultural Modernization of the Philippines, accompanied by Embassy representatives met with Secretariat officers to discuss UNIDROIT activities in the area of agricultural development with particular relevance for the Philippines.
- Perugia 5 March 2015 – "Through the Lens of the Contract: Regulating AgriFood Systems in the Future of Europe", organised by the Department of Agricultural, Food and Environmental Sciences, University of Perugia

18. Prospective events where the Legal Guide will be presented and discussed include:

- IMF/World Bank Spring Meetings, Washington - 14 April session on "Contract Farming as a Tool for Economic and Social Development" – organised by UNIDROIT and GFLJD, with the participation of FAO, WB/IFC and WFO. [Flyer](#) (also available on UNIDROIT website).
- WFO General Assembly, Milan Expo - 24-26 May. Workshop (on 24 May) to focus on inclusive value-chains including a session on Contract Farming (details to come)
- Meeting organised by the Italian Ministry of Foreign Affairs together with the other international legal organisations based in Italy to be held in the context of Milan Expo in 2015 (date to be determined)

- Launch event of the Guide: one day workshop to take place at UNIDROIT, 9 October (tentative date)
- Side event within the meeting of the Committee on Food Security, Rome, 12-15 October – focusing on the Legal Guide and the Principles for Responsible Investment in Agriculture and Food Systems (“RAI Principles”) adopted in October 2014 (to be confirmed)
- Law, Justice and Development (LJD) Week 2015, – World Bank in Washington D.C, 16-19 November (to be confirmed)

V. – POSSIBLE FUTURE WORK IN THE AREA OF PRIVATE LAW ASPECTS OF AGRICULTURAL FINANCING

19. At its 67th session (1 December 2010), the General Assembly included the subject of “Private law aspects of agricultural financing” in the UNIDROIT Work Programme. Building upon the contributions made at the November 2011 Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects”⁷ as well as on consultations with potential partner intergovernmental organisations, the Governing Council, at its 91st session (Rome, 7-9 May 2012), decided on a course of action as regards the subjects that may be developed in this general area.

20. The Council decided that the first subject to be addressed should be the preparation of a Legal Guide on Contract Farming. It identified as another topic which might be addressed next the possible preparation of an international guidance document on land investment contracts. It also noted that other areas might be amenable to future work by UNIDROIT, which included the reform and modernisation of land tenure regimes; the legal structure of agricultural enterprises; an international guidance document to agricultural financing. Future work in the field of private law and agricultural development features in the 2014-2016 UNIDROIT Work Programme with a low priority.

21. Due to the intense work required for the preparation of the Legal Guide on Contract Farming over 2013 and 2014, the Secretariat has not been able to devote attention to the prospective subjects in the area of “Private law aspects of agricultural financing”. The Secretariat submits that the experience gained during the preparation of the Guide constitutes a sound entry in the agricultural area and that 2015 will be useful to consolidate UNIDROIT’s position and initiate dialogue with existing and new partner organisations regarding other agricultural related work, in particular the preparation of an international guidance document on land investment contracts.

22. The Secretariat therefore proposes to prepare a preliminary study on possible future work in the area of private law aspects of agricultural financing, in particular regarding the preparation of an international guidance document on land investment contracts, for the next session of the Governing Council in 2016.

VI. – ACTION TO BE TAKEN

23. *The Governing Council is invited to consider and adopt the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, and to take note of the programme of activities for the implementation of the Legal Guide in 2015-2016.*

24. *The Council is requested to give the Secretariat mandate to engage in consultations with relevant stakeholders and proceed to the preparation of a preliminary study on possible future work in the area of private law aspects of agricultural financing, in particular regarding the preparation of an international guidance document on land investment contracts, to be submitted to the Council at its next session in 2016.*

⁷ The Acts of the Colloquium were published in the *Uniform Law Review* 2012-1/2.