



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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preparation of a Guide on Legal Structure
of Agricultural Enterprises**

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SUMMARY REPORT
OF THE SECOND SESSION
(2 – 4 November 2022)

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1. The second session of the Working Group for the preparation of a Guide on the Legal Structure of Agricultural Enterprises (hereafter the “Working Group”) took place in a hybrid format, in Rome at the seat of UNIDROIT and via videoconference, between 2 - 4 November 2022. The Working Group was attended by a total of 44 participants including Working Group members, representatives from the institutional partners, namely the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), as well as observers, including representatives from international and regional intergovernmental organisations, farmers associations, non-governmental organisations and private sector representatives. The list of participants is available in [Annexe I](#).

Item 1: Opening of the session and welcome

2. *The UNIDROIT Secretary-General* opened the session and thanked all members and observers for the work conducted during the intersessional period since the first session of the Working Group in February 2022.

Item 2: Adoption of the agenda and organisation of the session

3. *The Chair of the Working Group* introduced the annotated draft agenda and the organisation of the session. The Working Group was informed that the Revised Issues Paper prepared by the Secretariat would be considered as a basis for discussion (UNIDROIT 2022 – [Study LXXXC – W.G.2 – Doc. 2](#)).

4. *The Working Group adopted the draft agenda as proposed (UNIDROIT 2022 – [Study LXXXC – W.G.2 – Doc. 1](#), available in [Annexe II](#)) and agreed with the proposed organisation of the session.*

Item 3: Adoption of the Summary Report of the first session of the Working Group

5. *The Chair* recalled that the Secretariat had shared the Summary Report of the first session of the Working Group held on 23-25 February 2022 with all participants (UNIDROIT 2022 – [Study LXXXC – W.G. 1 – Doc. 3](#)). *The Working Group adopted the Summary Report.*

Item 4: Consideration of substantive issues

(a) Summary of the intersessional work

6. *The Chair* referred to the [Revised Issues Paper](#), which summarised the background and progress of the Legal Structure of Agricultural Enterprises (LSAE) project, as well as outlined its target audience, noting that the project was particularly aimed at assisting legal professionals representing smallholders and smaller enterprises (including community-based enterprises and family farmers) in low- and middle-income countries, and to a certain extent, legislators and policymakers. *The Chair* recalled the purpose of the LSAE project, highlighting that the intention was to devise a guidance document that provides parties with good practices, identified in terms of efficiency and distributional values, to generate beneficial outcomes across agri-food systems rather than to identify the best legal structure to be adopted by an agricultural actor. The relevance of empirical data for the project was emphasised.

7. *A Member of the UNIDROIT Secretariat* acknowledged the participation of new members and observers to the Working Group after the first session, as well as welcomed the MAECI-UNIDROIT Chair holder as a new addition to the UNIDROIT Secretariat. In relation to the intersessional work, the participants were informed that three meetings had been organised since the last Working Group session: the first intersessional meeting took place on 16 June 2022 and focused on approaches to

gather empirical evidence for the LSAE project; the second intersessional meeting took place on 22 September 2022 and focused on agricultural cooperatives; and the third intersessional meeting which took place on 30 September 2022 and focused on corporations, digitalisation and access to credit and financing.

(b) *General discussion on the scope of the project*

8. *The Coordinator of the Working Group* emphasised the importance of examining collaboration among different enterprises across supply and value chains in the agricultural sector. It was underlined that collaboration can be horizontal and/or vertical depending on the position that parties have in the supply chain. The Working Group was encouraged to consider the ways in which farm and off farm enterprises, in particular Micro, Small and Medium-sized Enterprises (MSMEs) could collaborate in order to increase efficiency, reduce undesirable distributional effects, access international markets and promote sustainable agricultural development. It was recalled that there was consensus among the Working Group to focus on promoting collaboration and autonomy especially for family, community and small businesses in the agricultural sector. It was noted that the LSAE project could focus on developing instruments concerning multiparty contracts, cooperatives and corporations, and concentrate on the degree to which these legal forms could be used as vehicles for domestic cross-border collaboration within different jurisdictions. The Working Group was invited to analyse the features of collaborative instruments and to identify the main variables that could justify the use of a single or of a combination of different collaborative instruments.

9. *The Coordinator* recalled the need to consider the influence that certain “exogenous” factors such as access to finance, digitalisation, and sustainability may have on both vertical and horizontal collaboration. It was proposed that a “tripartite matrix” of these “exogenous” factors could be used to frame the discussions on the three legal instruments (multiparty contracts, cooperatives and corporations) and examine how they influence collaboration. *The Coordinator* emphasised that all instruments can be used for both horizontal or vertical collaboration and that the instruments can be alternative but also complementary. The same enterprises can choose different forms for different objectives. Therefore, the prospective Guide could define what instrument is appropriate for which set of objectives. It was noted that the Working Group would need to adopt a clear definition of “collaboration”, as different disciplines adopted different interpretations. In addition, it would be important to consider the extent to which each “exogenous” factor could create opportunities or constraints for certain actors when engaging in collaboration.

10. *A Representative of FAO* noted that while it would be valuable to analyse all three legal forms using the “tripartite matrix”, based on FAO’s empirical research, it appeared that guidance was most needed on the contractual models of collaboration and the way such relations support access to finance, services and markets. The Working Group was informed that while FAO had substantial guidance on the use of cooperatives and corporations for formalising and gathering agricultural actors, there was less guidance on the respective use of multiparty contracts. Furthermore, it was noted that although access to finance appears to be one of the few globally applicable limitations for agricultural enterprises, there is less evidence that digitalisation of agriculture is equally relevant in all the countries that FAO works with. It was noted that while promoting sustainability is integral to FAO’s mandate, the term “sustainability” is a multifaceted concept that concerns environmental, economic and social dimensions. Therefore, if the LSAE project was intended to align with the United Nations’ 17 Sustainable Development Goals (SDGs) then the Working Group would need to determine which of those goals the guidance document should focus on as it may be difficult to concentrate on all goals.

11. *A Representative of IFAD* echoed the importance of analysing multiparty contracts that facilitate access to finance, noting the need to examine how different types of contracts have empowered traditionally marginalised agricultural actors. The need to further examine the

formality/informality dichotomy was emphasised, particularly regarding arrangements which do not involve written contracts but form the basis for commercial transactions and significantly impact the ability of various actors to gain access to markets. It was suggested that in addition to economic sustainability, the LSAE project could examine how the promotion of sustainability practices impacts the environment and communities of agricultural actors. Furthermore, the Working Group was encouraged to examine the evolution of agricultural cooperatives, particularly with respect to the increasing role that technology has played in influencing the nature of contractual arrangements and the flow of information on pricing and other areas.

12. In response, *the Secretary-General* noted that consultations with experts from the World Bank during the third intersessional meeting of the LSAE project had revealed that a key issue regarding access to finance concerns the informality/formality of an agricultural enterprise rather than its legal structure. It was noted that there were different types of formality (institutional, i.e. whether a business is registered under company law) and (transactional, i.e. whether an enterprise keeps record of its business transactions and documents its activities). It was queried whether the LSAE project needs to address formality in both meanings.

13. *A Member of the Working Group* highlighted the need to approach multiparty contracts and cooperatives with caution and encouraged the Working Group to consider alternative forms of collaboration such as limited liability organisations. The Working Group was encouraged to examine how policymakers and legislators in different parts of the world could be guided on how to introduce legislative mechanisms to create a pathway to digitalisation and consequently, inclusive finance, for small farmers. It was emphasised that the basic issue with multiparty contracts is that banks and lenders generally prefer to deal with an entity that is registered rather than to refer to a contract for reassurance when providing credit.

14. *An Observer* echoed FAO and IFAD's comments with respect to the issue of informality/formality. It was emphasised that there were often different spectrums for what constitutes formalisation and different dimensions by which it could be analysed. The Working Group was encouraged to further examine: (i) the distinctions between formality and informality; (ii) the added value of a multiparty contract and in what circumstances such arrangements benefit agricultural actors; and (iii) the different instances where multiparty contracts manifest via a top down or bottom-up hierarchy. It was noted that it was important to consider situations where parties do not necessarily enter into a multiparty contract but use a multiparty framework/platform to foster dialogue and clarify relations between each other.

15. *The Coordinator* agreed that informality/formality should not be considered a binary distinction but rather a continuum. Yet the boundaries between formal and informal should be drawn in order to define the scope of the Guidance. The distinction between informality and illegality was clarified and it was emphasised that the degree of formality of collaborative arrangements is connected to the changing role of intermediaries within the supply chain. The changes of intermediaries and the increasing digitalisation of collaborative arrangements has required some degree of formalisation of collaboration. While it was noted that further empirical evidence was required, it was highlighted that multiparty contracts were used extensively among micro-enterprises and it appeared that when the size of an enterprise grew, there was an evolution to a much more structured and formalised entity. It was suggested that the LSAE project could consider only examining informal enterprises that engage into collaborative forms that are legally enforceable. It was suggested that informal, non-enforceable agreements should not be part of the LSAE project's analysis unless they are relevant for examining the three legal instruments of collaboration. There was agreement that the LSAE project may also need to examine the process of contracting rather than analysing specific collaborative legal instruments. It was queried to what extent, when deciding which form of collaboration, the role of intermediaries should be considered as key in the structure of the supply chain and choice of legal instruments.

16. *The Secretary-General* noted that there are agreements that are enforceable that are not formal, usually soft agreements, that provide a framework of exchange and facilitate discussion (i.e., setting up quality standards that are not based on legal requirements but other provisions). It was clarified that while the LSAE Guide could involve a stock-taking exercise to examine what legal instruments are currently being employed for collaboration, including those that are informal and unenforceable, it should not endorse a particular legal structure.

17. *An Observer* agreed with the distinction between informal and illegal activities. It was suggested that because the LSAE Guide would be written in a sophisticated legal style and in the working languages of UNIDROIT (English and French), it would therefore likely target semi-informal entities looking to further formalise their operations.

18. *A Representative of FAO* noted the difficulties of creating a legal guide that addresses both the institutional (legal structures of cooperatives and corporations) and transactional forms (different forms of contracts) of collaboration. It was suggested that it would be more beneficial to focus on multiparty contracts and their transactional nature while accounting for the manner in which different actors along the value chain (corporations, cooperatives and others) could make use of multiparty contracts.

19. *A Working Group Member* noted that while the LSAE project could focus on multiparty contracts, it could also focus on corporations and cooperatives as enablers of interaction amongst producers. On the question of informality, the Member agreed with the proposal to focus on informal but enforceable agreements.

20. *A Working Group Member* noted that the choice of multiparty contracts, cooperatives and corporations, was about how the agri-food activity is organised. The Member highlighted that while cooperatives and corporations can be parties to a contract, the most interesting factor for the Working Group to consider could be how forms of collaboration are created and how they affect the overall outcomes and the implicated actors (i.e. the effect on business models and value creation).

21. *The Chair* invited Prof. Paola Iamiceli (University of Trento) to further present the issues regarding multiparty contracts.

(c) *Discussion on multiparty contracts*

22. *Prof. Iamiceli* presented the main points of a joint proposal elaborated with the Coordinator of the project for the Working Group's consideration on how to address multiparty contracts in agriculture. She noted that the primary objective of the discussion was to:

- i. agree on the scope and the objectives of the analysis of multiparty contracts to be developed in the LSAE Guide;
- ii. agree on the concept of what constitutes a multiparty contract and its boundaries/relationships with the other legal forms considered in the LSAE Guide (cooperatives, corporations); and
- iii. identify the core aspects and the key issues worth considering in the LSAE Guide.

23. *Prof. Iamiceli* noted that a preliminary consideration for the Working Group concerned the interplay between the LSAE Guide and national legislations. She emphasised that the aspects that would be described in the LSAE Guide would not cover the full range of issues concerning multiparty contracts and the guidance would need to be considered in conjunction with general national legislations and other international instruments often dealing with bilateral contracts (e.g., the UNIDROIT Principles on International Commercial Contracts). To illustrate, she noted that the LSAE Guide would probably not cover issues of contractual invalidity. She explained that parties drawing inspiration from the LSAE Guide when drafting contracts would not only have to examine the relevant

national legislation for the remaining aspects not addressed by the Guide, but also for assessing the consistency and lack of conflict with mandatory rules at national levels.

24. She recalled that the LSAE Guide aimed at taking a functional approach when analysing collaborative legal forms and that not necessarily all multiparty contracts would have collaborative functions, as they may also perform other functions in accordance with national legislation. She noted that for the purposes of the LSAE project a multiparty contract could serve as an instrument to collaborate within the agri-food chain and therefore to engage in projects and activities that enable producers and other businesses to further develop and jointly exploit their innovative capabilities, while at the same time preserving independence and autonomy.

25. In light of the Working Group's earlier discussions on informality, *Prof. Iamiceli* noted that the LSAE Guide would even account for informal enterprises that are not enforceable to the extent that such informal/unenforceable agreements have an influence on the construction of either formal or at least enforceable structures. She invited the Working Group members and observers (particularly those with experience from the field) to provide more information on informal and unenforceable agreements, in order to allow the Working Group to incorporate that information for further consideration. She noted that the Working Group should first acknowledge that most collaborations begin informally and then trace the extent to which the informal origins of the collaboration have an impact on later formal collaborations.

26. *Prof. Iamiceli* proposed a definition for the notion of "collaboration" as a "form of interaction among multiple players with common objectives that may be limited to exchanges of goods and services or imply an engagement in projects with or without shared resources". She highlighted that this definition of collaboration differs from mere coordination where parties can have conflicting objectives and interests.

27. Noting the LSAE project's objectives from a functional perspective, *Prof. Iamiceli* commented that it was important for the project to examine the extent to, and the modalities in which, multiparty contracts may help producers and other businesses operating in agri-food markets to collaborate and implement strategic projects with special regard to those that improve social and environmental sustainability in agriculture. She noted that it was also important to examine the extent to which multiparty contracts may prevent or address the occurrence of unfair practices along the chain both in social and environmental sustainability programs but also in other types of programs.

28. *Prof. Iamiceli* noted that additional objectives of the LSAE project were to examine the extent to which multiparty contracts can encourage agricultural actors to explore the innovation opportunities offered by digitalisation as a means for inclusive growth to make farmers active participants in innovative projects and to fairly allocate the results of such innovative practices with due protection of the rights of all parties involved. She highlighted that multiparty contracts can also take the form of electronic platforms for the innovation of agricultural processes.

29. From the perspective of multiparty contracts, *Prof. Iamiceli* commented that another key objective of the LSAE project was to examine: (i) the extent to which multiparty contracts can improve access to finance; and (ii) the extent to which collaboration with financiers may impact on collaboration among businesses within supply chains and improve producers' participation in development programmes, including those in the field of sustainability and digitalisation. She highlighted that financiers may be party to the agreement or external "partners", third parties outside the multiparty contract.

30. *Prof. Iamiceli* provided several examples of multiparty contracts in different jurisdictions. The first example derived from the Italian domestic context where, in 2009, legislation was introduced with respect to network contracts which had a significant impact on the agricultural sector. She illustrated the case study of "Mondobio Network" in which four businesses: a seed provider, a farmer's

organisation, a processor, and a distributor holding a strong trademark all collaborated under one contract in the agri-food sector in Central Italy. She noted that the objective of the “Mondobio Network” was product innovation, product quality enhancement, and access to new markets. She explained that the core of the multiparty contract is to coordinate parties’ activities in order to ensure compliance with high quality standards and respect for the environment.

31. *Prof. Iamiceli* noted another example of the use of multiparty contracts in Kenya which involved collaboration between four parties operating in the cotton production sector: (i) a farmer committee, interested in the promotion, development and production of high-quality raw seed cotton within a so called “Irrigation Scheme”; (ii) a bank, willing to give financial assistance to the members of the farmer committee; (iii) the National Irrigation Board and Cotton Development Authority, willing to give logistical and technical support; and the so called (iv) “Ginners”, willing to provide a market for the seed cotton produced by the members of the farmer committee. She explained that the underlying objective and activity of this vertical collaboration was to support and coordinate the seed cotton production by farmers in the framework of a development programme ruled by the Cotton Development Authority, sustained by the National Irrigation Board and financed by the bank. She highlighted that the exit rules in this particular agreement stipulated that parties could only exit with a 3-month advanced notice or termination in case of a breach that is not remedied within 14 days. She noted that it would be useful to ascertain the degree of formalisation of the farming committee.

32. Citing an example of transnational collaboration, *Prof. Iamiceli* noted that Spread European Safety and Sustainability, a European Economic Interest Grouping, aims to facilitate and develop joint activities for its members to improve their common participation in the most important EU funding schemes (e.g., Horizon Europe and PRIMA Programmes).

33. Outlining the proposed definition of multiparty contracts, she suggested that the LSAE Guide could refer to such forms of agreement as a contract concluded by a producer with one or more parties for collaborating to the fulfilment of common objectives, the realisation of common project(s), or for carrying on common activities in the field of agriculture or agri-food production, processing, and distribution. The contract may be concluded orally or in writing and is usually long-term. Its direction is consistent with the pursuit of common interest objectives (which normally require a certain contract duration).

34. With respect to the conceptual framework, *Prof. Iamiceli* emphasised that the Working Group should not consider multiparty contracts in agriculture as isolated units because multiparty contracts operate within domestic and transnational chains, as well as in production, distribution and other operational segments of the chain. She encouraged the Working Group to conceptualise multiparty contracts as knots in a contractual chain that mirror a chain of enterprises.

35. In discussing the boundaries between multiparty contracts, cooperatives and corporations, *Prof. Iamiceli* noted that, in principle, all three forms may be used to: (i) organise a single collective agricultural enterprise (although rare for multiparty contracts); or (ii) organise a collaboration among distinct agricultural enterprises. She explained that the following common features could be identified:

- i. Suitability to activate and govern collaboration, including strategic collaboration;
- ii. Long-term perspective;
- iii. Collective structure; entry – exit systems normally regulated;
- iv. Governance structure to enable participation to decision-making, to allocate management power internally and to monitor cooperation;
- v. Mechanisms for sharing physical and immaterial assets; and
- vi. Mechanisms for sharing risks, profits and liabilities.

36. *Prof. Iamiceli* emphasised that multiparty contracts are not simply alternatives to cooperatives or corporations or other legal forms of collaboration but may also operate in a complementary way through, for example, the use of multiparty contracts among cooperatives or corporations. She explained, for example, that there may be a cooperative which operates as a first-tier network among agricultural producers such as farmers, and in turn, a second-tier network of cooperatives joined through a multiparty contract. Regarding the distinction between isomorphism or heterogeneity, she noted that one of the issues subject to discussion by the Working Group in previous intersessional meetings concerned whether second-tier networks assume the same legal form as first-tier networks. She highlighted that while it may be common to have first and second-tiered networks of cooperatives, in some instances, a useful alternative may be to establish a second-tier network of multiparty contracts.

37. *Prof. Iamiceli* noted that the main issues proposed for the LSAE Guide in the field of multiparty contracts could be:

- i. What purposes and objectives could multiparty contracts be used for in agriculture?
- ii. How do multiparty contracts ensure due protection of specific investments made by farmers within those projects?
- iii. What are the possible strengths and weaknesses of multiparty contracts compared with cooperatives and corporations?
- iv. How do multiparty contracts enable sufficient opportunities for farmers' participation in the supply chain, upgrades and growth?
- v. How do multiparty contracts foster farmers' participation in sustainability programmes and innovative projects based on the use of digitalisation in agriculture?
- vi. How do multiparty contracts ensure a fair allocation of resources, upgrading of opportunities and profits along the supply chain?

38. She proposed a structure for the analysis of the multiparty contracts instrument in the LSAE Guide as follows:

- i. *Taxonomy* – the LSAE Guide could distinguish between several typologies of multiparty contracts from both a functional and a structural perspective.
- ii. *Contract formation* – when is a multiparty contract formed and what are the boundaries between precontractual negotiations and contractual formation? The LSAE Guide could also consider aspects of multistage formation of the contract and the relationship between framework and executive multiparty contract.
- iii. *Entry into a multiparty contract* – the LSAE Guide could distinguish between the first phase when a multiparty contract is concluded and later stages where additional participants can be added. Who decides about admissibility of new partners when the multiparty contract has been concluded?
- iv. *Defining its contents* – Should there be a minimum content, or should parties be free to determine the elements of the contract? Should the minimum content be determined at time of conclusion or can part of the content, including price, be determined after the conclusion? What is the relationship between general terms and conditions of the supply chain leader and the content of multiparty contracts concluded by parties within the chain? What should the regime be for interdependent performances in both horizontal and vertical multiparty contracts? What techniques should be used to define the contents of the

multiparty contract whether it be through negotiation of participants, framework contracts, standard terms, namely what content must be included to ensure the contract is effective and functional.

- v. *Governing multiparty contracts* – Who should define the governance structure of multiparty contracts. What are the alternative options to define the governance of projects within multiparty contracts? How does the long-term nature of multiparty contracts affect the governance, whether the implementation is entrusted on one manager or on committees and who bears the last resort decision-making power?
- vi. *Executing multiparty contracts* – what is the criteria for the execution of the contract? What are the main aspects of execution to be considered when implementing a multiparty contract given the long-term nature and the strong interdependences among contractual performances? Is there a difference in the execution of horizontal and vertical multiparty contracts?
- vii. *Change of circumstances and supervening impossibility* – what is the distinction between impossibility of individual performance and impossibility of the contract? To what extent should well-established legal rules surrounding changes of circumstances and supervening impossibility in bilateral contracts be incorporated and adapted from international contract law or particular domestic legal systems in multiparty contracts? What are the specific characteristics of force majeure and contractual impossibility in long-term multiparty contracts designed to establish collaboration? In particular should termination of the contract be allowed and when? and what should be the role of renegotiation?
- viii. *Breach of multiparty contracts* – how should breach be defined and fundamental breach be distinguished from other forms of breach? In particular how does the definition of breach correlate with contractual interdependencies?
- ix. *Joint and several liability in multiparty contracts* – How should liability for breach of contract be defined and allocated internally and towards third parties.
- x. *Remedies within the multiparty contract and in relationship with third parties* – What are the available remedies for breach of contract? How should remedies for the collaboration and remedies for individual harm suffered by each participant be distinguished?
- xi. *Exit, dissolution and post-contractual obligations* – Can parties exit the contract before dissolution? What are the differences between voluntary and forced exit? What are the consequences of one party's exit for the remaining parties? When may a contract be dissolved, what are the consequences for the parties' obligation and for the allocation of the financial and physical resources that are left after dissolution? Can the parties be bounded by post contractual obligations after the contract is terminated? What is the impact of the dissolution of the individual multiparty contract upon the wider chain?

39. *Prof. Iamiceli* invited the Working Group members and observers to provide their views on whether the structure of analysis proposed should be integrated with missing key aspects.

40. *The Chair* drew the participants' attention to associative contracts. It was noted that under Chapter 12 of the Argentinian civil and commercial code, the term "associative contracts" applies to all forms of collaboration whether they be organisational or participatory contracts with a community of purpose other than partnership.

41. *A Working Group Member* considered that the proposed structure for the analysis of multiparty contracts (from formation to governance and exit rules) could also be applied to the instruments on cooperatives and corporations. It was suggested that a separate section could address how the reader's preferred legal structure promotes access to finance, sustainability and digitalisation.

42. *An Observer* agreed with the emphasis of the complementarity between the three legal forms. It was queried whether further information could be provided on how the comparative approach between the three legal forms would operate, particularly the comparison of the strengths and weaknesses of each legal form. It was acknowledged that many theoretical concepts from institutional economics (theory of the firm, transaction costs) could influence the choice of an actor as to whether to coordinate vertically through a firm or horizontally through a set of contracts. Regarding the Kenyan cotton production example, the Observer commented that it would be difficult to imagine how a group of farmers, a national irrigation board, a set of companies and a bank could set up a cooperative among themselves as the purpose and nature of the parties are different, and thus demonstrates why the parties would prefer to enter into a multiparty contract instead. The Observer commented that from a practical perspective, it was not entirely evident how the three legal forms could be seen as alternatives from the point of view of small-scale farmers in the value chain as opposed to the complementary building blocks of the value chain itself. It was noted that this may simply be an issue of framing certain questions in a particular manner, suggesting that more questions could be included premised on complementarity rather than on the notion of there being a choice between different legal forms. Finally, it was highlighted that there are many different types of organisations and the three legal forms selected for analysis in the LSAE project merely serve as archetypes rather than an exhaustive list of different organisational forms.

43. In response, *Prof. Iamiceli* explained that while the LSAE Guide could generally state that all three legal forms can be used to foster collaboration, the comparative analysis is envisaged to suggest to the reader that not all three models can be used in any given situation. She noted that there may be cases where the analysis suggests to the reader that they may not only prefer to use one model but that that model is the only available option to be chosen to suit certain circumstances.

44. *A Working Group Member* suggested that the LSAE Guide could avoid referring to the strengths and weaknesses of any particular legal form, but rather describe the appropriateness of a model in a given scenario.

45. *The Secretariat-General* queried whether any experts working in cooperative and corporate law would see it fit to follow a similar type of structure to the one proposed for multiparty contracts when analysing cooperatives and corporations.

46. *A Representative of the International Cooperative Alliance (ICA)* responded to the question regarding whether there were other factors to be added in the analysis structure. It was noted that dispute resolution could be one additional factor as arbitration is particularly linked to the cooperative model. The Representative explained that many cooperatives, whether they be agricultural or not, often have alternative dispute resolution processes embedded within their legal structure which reflects the overriding cooperative philosophy of conducting business based on cooperation and trust. It was noted that other fundamental differences of cooperatives would need to be accommodated, particularly regarding how cooperatives and their individual members can be enabled to access technology, finance and promote sustainability.

47. *A Working Group Member* noted that there are fundamental differences between multiparty contracts and cooperatives from both an institutional and organisational perspective. It was explained that while comparisons of different models can be made at certain levels, the question is, how useful such a comparison would be if the goal is to assess the appropriateness of a particular legal form based on the unique needs of the actor using the LSAE Guide.

48. *A Working Group Member* noted, from an economists' perspective, the importance of distinguishing between organisational arrangements (firms, cooperatives, etc.) and the rules to allocate rights between these different arrangements. For example, a cooperative may be a structure but also a way to allocate rights among members. It was noted that while comparisons between different legal forms may not be useful, in some circumstances it may be valuable to include general principles in the LSAE Guide, for example in instances where the agents/actors are heterogeneous (e.g., cooperatives).

49. *The Coordinator* noted that in new institutional economic theory, contracts and organisations are distinguished in that contracts are seen as tools of exchange whereas organisations as instruments to integrate various activities. However, it was noted that contract theory suggests that contracts can be used to set up more complex projects than simply organising exchanges among parties. Multiparty contracts can define how resources can be shared to pursue common objectives. It was illustrated that in Italy, Spain and in some Latin American countries a distinction exists between exchange contracts and associative contracts (which mirror an organisation rather than an exchange). Commenting on the distinction between organisational arrangements and the allocation of rights, it was noted that the framework proposed to consider multiparty contracts would be hybrid, including exchange and associative objectives. In this perspective multiparty contracts would cover both spot transactions and an organisation perspective.

50. *The Coordinator* noted that governance issues in multiparty contracts are far more complex than in bilateral contracts. It was explained that the structures of multiparty contracts may be composed of many committees which have the main objective of coordinating the activities of each enterprise and solving conflicts between the parties should they arise. The contract design should preserve collaboration, and provide internal dispute resolution mechanisms thereby avoid engaging external actors to resolve the dispute. Accordingly, it was noted that the LSAE Guide could primarily address the issue of conflict resolution as being resolved within the governance part of the contract, with some attention being devoted to mediation, arbitration, and courts as a last resort.

51. *The Secretary-General* noted that the proposed structure of analysis for the multiparty contracts instrument appeared to have similarities with the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (LGCF). It was queried whether the work concerning contracts in the LSAE Guide would be limited to the differences between bilateral and multiparty contracts. In response, *the Coordinator* confirmed that the LSAE Guide would focus on the many differences between multiparty and bilateral contracts and would refer to the LGCF where appropriate.

52. *A Representative of FAO* agreed that while the theoretical framework was extremely comprehensive, the LSAE guidance document should be accessible to people with relatively limited expertise and legal background. The Working Group was encouraged to simplify the language and legal concepts as much as possible, noting that complicated topics relating to contracts but also, cooperatives and corporations should be communicated clearly.

53. *The Secretary-General* noted that the guidance document should not necessarily be designed to be read by farmers but rather by the lawyers drafting contracts for farmers, or by lawyers of small agricultural associations, judges or legislators. However, it was suggested that the LSAE Guide should avoid engaging in complex doctrinal analysis.

54. *A Working Group Member* noted that the most difficult concept to define comprehensively in the LSAE Guide would likely be the concept of "multiparty contracts". The Member suggested that while a comparison should not involve assessing the strengths and weaknesses of different models, it would be useful to distinguish different concepts surrounding multiparty contracts, cooperatives and corporations.

55. *Prof. Iamiceli* agreed, suggesting that one way to improve comprehension of the more complex concepts relating to multiparty contracts would be to gather practical examples of the use of multiparty contracts in different jurisdictions. She emphasised that while there would be clear differences between how the LSAE Guide deals with cooperatives and multiparty contracts, the guidance document would be more user-friendly if the schemes of the different instruments were harmonised as much as possible.

56. *A Working Group Member* agreed that references to the benefits of adopting different legal structures should be framed in terms of their respective appropriateness in addressing the unique needs of different agricultural actors in the supply chain.

57. *The Coordinator* emphasised that the comparison between different legal systems and jurisdictions would be functional and not doctrinal. It was suggested that the LSAE Guide use functional categories (e.g., entry, exit, etc.) and examine them comparatively to ensure compatibility between different concepts developed in the respective fields of contracts, cooperatives and corporations. It was noted that the Guide could have a modular structure to ensure that different level of complexity align with the various readerships.

58. *An Observer* sought clarification on whether a multiparty contract is such because of the nature of what is being agreed upon or because of the number of parties to the contract. It was queried whether the LSAE Guide would place emphasis on the inherent nature of multiparty contracts or the fact that they may have several actors as parties to the agreement.

59. In response, *Prof. Iamiceli* commented that while the number of parties to a multiparty contract may be relevant, she would not suggest stipulating a minimum threshold of parties in the LSAE Guide, as in principle there can be multiparty contracts composed of only two parties. She highlighted that a more important characteristic of multiparty contracts is that they are open to the participation of several parties also during their operation and that the composition of parties in multiparty contracts can change over time. In addition, she noted that through multiparty contracts, parties can collaborate to pursue a common interest, project, purpose and share governance or resources.

60. *The Coordinator* commented that multiparty contracts can be used for exchange purposes (e.g., a vertical contract between a producer, processor and distributor). It was noted that while the pure exchange function should not be ruled out between different actors, the most significant types of multiparty contracts are those in which parties engage in one or more projects that go beyond pure exchange of goods and services. The Coordinator suggested that the LSAE Guide could be structured in two different ways: (i) a scholarly approach focusing on certain functional characteristics (entry, exit, governance) and how they each apply to multiparty contracts, cooperatives and corporations; or (ii) a more practical approach which should ideally include information on how a multiparty contract should be drafted, how a cooperative statute should be drafted, how a company's bylaws should be drafted. These two approaches could be recombined if the Guide includes also model contracts and model clauses. It was noted that in this second approach, there should be a concluding chapter that includes a comparative analysis to assist the reader in determining how they could choose one legal form over another.

61. *The Secretary-General* commented that while UNIDROIT had no particular preference in relation to how the LSAE Guide would be structured, it would be important to clarify FAO and IFAD's perspective.

62. *A Representative of FAO* noted that it would be useful if the LSAE Guide was structured in line with the second approach, namely that it first discusses multiparty contracts, cooperatives and corporations and then includes the comparative analysis.

63. *A Working Group Member* suggested that the first approach may be more useful and convenient from a national implementation level. It was commented that while it will depend on how the LSAE project progresses, it may be more convenient for a corporation, group of farmers, or council of cooperatives to use the LSAE Guide if it analyses certain characteristics as applied to the three legal structures.

64. *A Representative of ICA* suggested that perhaps a scholarly approach could form the basis for a more practical legal guide. It was queried whether pre-entry to contract circumstances and motivations to contract should be included as items to be discussed by the LSAE Guide and whether comparable considerations would be relevant for the analysis on corporations and cooperatives.

65. In response, *Prof. Iamiceli* confirmed that the pre-contractual circumstances may be relevant for defining the scope of the collaboration. *The Coordinator* noted, however, that if there was a clear need to deal with pre-contractual circumstances separately, then they would be amendable to changing the approach based on further consideration and input from the Working Group.

66. *The Working Group decided to reassess the way forward regarding multiparty contracts at the end of the session, after the discussion on cooperatives, corporations and certain exogenous factors.*

67. *The Working Group agreed to examine the modalities in which multiparty contracts may help producers and other businesses operating in agri-food markets to collaborate and implement strategic projects with special regard to those that improve social and environmental sustainability in agriculture. Participants supported further distinguishing between exchange contracts and associative contracts. They decided to reassess the adaptability of the proposed structure of analysis for multiparty contracts with regard to the other legal forms considered in the project at the end of the session, after the discussion on cooperatives, corporations and certain exogenous factors.*

(d) *Discussion on cooperatives and corporations*

68. During the second day of the Working Group, held on 3 November 2022, *the Chair* opened the discussion on cooperatives and corporations.

69. Before introducing the discussion on cooperatives, *Prof. Hagen Henry* (University of Helsinki) informed the Working Group that the LSAE project had been presented at two international events held in Paraguay in the month of October 2022: (i) the International Academy of Comparative Law; and (ii) the VIII Continental Congress of Cooperative Law organised by the Legislative Committee of the Regional Organization of the Americas of the International Cooperative Alliance. He began his presentation by noting the radical change of the food economy, particularly regarding the production, transformation, processing and distribution of food through global agri-food chains. He noted that the links established among different actors operating in the agri-food chain differed depending on the activities undertaken and structures adopted (e.g., some are hierarchically structured, whereas others are not). Often agri-food chains are subject to different national laws, some entities have legal personality and some form part of the informal economy. Global agri-food chains, as a whole, are generally not regulated by any law. Some of the actors operating in agri-food chains may share a common interest, others may have opposing and/or conflicting interests, and often the interests of most of the members of the chain are subject to the interest of one or few leaders of the chain, as well as confronted with the interests of actors outside the chain. Therefore, he observed the importance of collaboration as a means to balance the different interests and to make agri-food chains more effective. He further noted that in discussing cooperatives he would focus on one element of the value chain, namely, agricultural producers which are largely composed of small and medium family-owned enterprises, which sometimes operate without a legal form or legal personality, belonging to the informal economy.

70. *Prof. Henry* sought to define cooperatives by providing a brief historical report on how they were developed. He noted that at the end of the 19th century, the International Co-operative Alliance (ICA) was founded in 1895 and is still the largest and oldest non-governmental organisation regrouping approximately 1 billion individual members, acting as the custodian of the cooperative identity. He highlighted that the meaning of the cooperative identity had evolved over time. The cooperative model, as was seen in the mid-19th century, moved from being limited to specific sectors to being present in all sectors, for single and multiple purposes. In this context, he noted that cooperatives are not limited to poor people in poor countries, or a specific sector. He explained that the most prevalent form or type, and also the most successful are certainly the financial, banking, insurance, all women-run and agricultural cooperatives.

71. *Prof. Henry* pointed out that the cooperative identity is recognised by international, regional and national laws. He noted that in 1995 the ICA adopted a statement on the cooperative identity, composed of three elements: (i) a definition of cooperatives; (ii) values on which cooperatives should be based and values which cooperative members should respect; and (iii) seven principles which put these values of cooperatives into practice. He noted that the statement is legally binding on the members of the ICA as it forms part of the statutes of the ICA, which is an association under Belgian law. Furthermore, he pointed out that the statement of the cooperative identity was legally binding, because it had been recognised by Public International Law, especially by the International Labour Organization (ILO) Recommendation N°193 on 'The Promotion of Cooperatives', adopted in 2002. Therefore, Member States of the ILO need to ensure that their national laws and regulations on cooperatives respect the cooperative values and principles as enshrined in the ICA statement.

72. *Prof. Henry* drew the participants' attention to the definition of cooperative as contained in the ICA statement and integrated into the ILO Recommendation N°193 as an "autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise". He noted that the definition distinguished cooperatives from contracts and commercial companies, as it defines an entity which pursues a precise objective, which is threefold, economic, social, and cultural. Consequently, the legal form of a cooperative is different from that of other enterprise types as it is jointly owned and democratically controlled.

73. He listed six reasons why cooperatives are an adequate legal form to collaborate in the field of agriculture: (i) cooperatives allow members to maintain their independence. It is not the cooperative that serves the needs of the members, but the members themselves that serve their interest by means of a cooperative enterprise; (ii) the objective and form of cooperatives have a high degree of affinity with the activity of agriculture; (iii) through the collective action within cooperatives, individual producers can overcome some of the inherent limitations they generally have to access credit, modern technology, knowledge of the market, know-how to commercialise etc.; (iv) by pooling the economic weight of the members, cooperatives contribute to increase their necessary negotiating power, especially along the chain and towards chain leaders; (v) cooperatives are a tested vehicle to get producers out of informality; and (vi) the cooperative business model has proven its efficiency. It is estimated that about 50% of the food worldwide is produced, processed and/or distributed by or through cooperatives.

74. *Prof. Henry* noted that while globally a small percentage of farmers had founded or joined cooperatives, this relatively low popularity was not due to inefficiencies in the cooperative model. He identified several reasons for this, namely: (i) the cooperative model has been exported from Europe to other parts of the world without much adaptation; (ii) in many parts of the world, the cooperative model has been misused for political ideological reasons; (iii) often some cooperatives do not function well because cooperative laws are not implemented effectively as many nations are multi-jurisdictional and do not have only one type of law, namely State law. Finally, he highlighted the failure of economics and law to embrace the model, noting that research and teaching on cooperatives is highly limited.

75. *Prof. Henry* concluded by highlighting that agricultural producers generally find themselves as part of value chains which are led by other types of enterprises. Historically, the idea was that agricultural producers and cooperatives would have dominated the whole value chain, from producer to consumer. Furthermore, he pointed out potential challenges in developing a legal guide for universal use and noted the need to rethink some of the underpinning assumptions. He recalled that the LSAE project assumes that small and medium family-owned enterprises without legal form or personality operating in the informal economy would want to and be able to collaborate in one of the three legal forms suggested. However, he pointed out that in many instances agricultural producers may not be interested in changing their informal reality and may not accept the legal forms which the Working Group suggests. He concluded his discussions by recommending that the Working Group use the methods of comparative law to identify other laws beyond State law which may contribute to understanding other forms of collaboration that may exist. He also suggested to analyse legal forms of collaboration not only along the value chain but to consider the value chain as a whole in order to understand how it could function in a satisfactory manner.

76. In the ensuing discussion, *the Coordinator* first asked for more information on the figure of 50% of global food production and trade occurring within cooperatives. Moreover, he sought clarification on the difference between purely agricultural cooperatives that sell to commercial buyers and agricultural cooperatives that distribute their products directly to consumers in the final market. Secondly, he asked for further elaboration on the difference between cooperatives and commercial companies by looking at two dimensions: (i) the development of public benefit or social benefit corporations; and (ii) the identification of non-distribution constraints. Thirdly, regarding the social dimension of cooperatives, he queried whether it could be further categorised into two subdimensions: (i) the social dimension concerning the producers; and (ii) the social dimensions concerning the effects of production on the environment and the community. Finally, he asked if there was a difference between the social dimension concerning producers within cooperatives and within companies.

77. *Prof. Henry* pointed out that the 50% formation into agricultural cooperatives was an estimate and the percentages varied across countries. Moreover, he stated that the 50% estimate could be misleading, as it mainly stems from larger cooperatives. He reiterated that the rate of forming cooperatives amongst smaller agricultural producers was very low. He agreed that there was a need to make a more sophisticated distinction between commercial companies and cooperatives. He suggested that the Working Group could consider further identifying the features that may differentiate cooperatives and commercial companies given that more and more enterprises have corporate social, societal, and legal responsibility and in some countries, this had become a legal obligation.

78. *The Coordinator* noted the difference between succession in cooperatives and other commercial companies as one of the potential specific features of cooperatives, highlighting that in order to preserve continuity and the sense of community, a cooperative could buy the land of a farmer that did not have children and redistribute it among the other members.

79. *Prof. Henry* emphasised that the difference was mainly in the objective and that translated into the legal structure of the entities. He noted that the relationship in a stock company between the shareholder and the company was purely financial and not multidimensional as it is in a cooperative.

80. *A Representative of FAO* reiterated FAO's in-house expertise on cooperatives and clarified that FAO considered the discussion on cooperatives as valuable for the LSAE project, particularly through the lens of a collaborative tool.

81. *The Secretary-General* raised a point regarding the differences within corporations (e.g., whether it is a limited liability corporation or a personal corporation) and recommended that the

Working Group consider differentiating not only cooperatives and companies, but also different types of companies. It was suggested that it would be important to explore the different types of companies that are being used for agricultural enterprises in different countries and those that serve similar functions.

82. *A Representative of FAO* noted that while cooperatives are well represented in all sectors and countries, they are still considered niche. She mentioned that there was a need to look at aggregated data and combine it with qualitative data to continue identifying the uniqueness of cooperatives. She discussed the social dimension and whether it could be divided into two subdimensions: (i) the social concerns for the producer; and (ii) the external impact of production on the community. She agreed with the proposed subdivision by stating that another unique aspect of the cooperative is the lack of dichotomy between the entrepreneurs and the producer farmers, because the producer farmers, depending on the type of cooperative, are the owners and therefore the cooperative can be seen as a tool of empowerment. Further, she emphasised that the concern for the community is embedded in the cooperative enterprise model.

83. *The Coordinator* reiterated the issue of non-distribution constraints to seek clarification on the boundaries between commercial companies and cooperatives with regard to the imposition of distribution constraints for the social benefits of farmers and for societal benefits. The issue of exclusivity was pointed out (i.e., members should only deal through their cooperatives and cooperatives should not have any non-member business) and the Working Group was encouraged to further analyse this topic in the LSAE project.

84. *The Chair* then, invited Mr Georg Miribung (Eberswalde University for Sustainable Development) to continue the presentation of topics for the discussion on cooperatives.

85. *Mr Miribung* focused his presentation on issues regarding cooperative governance, finance and the federated cooperative structure. He highlighted the importance of understanding how a cooperative's economic activities should be conducted in the interest of and democratically controlled by its members. He noted that the cooperative governance system and the interaction between the members, the board of directors and the general assembly could be one of the specific features that the Working Group could consider to differentiate cooperatives.

86. *Mr Miribung* pointed out a number of instruments and strategies that could be adopted under different cooperative governance models to safeguard the interests of the members. For instance, he noted that authorisation procedures and the right to information can be used to influence the behaviour of members of the board of directors. With regards to financing of cooperatives, he noted the tension that may exist between the interests of user-members and non-user members. He noted that often user-members seem to be reluctant to invest in their cooperative because of free-riding issues, a lack of specific incentives for older members to invest, and limited planning horizons. Yet, on the other hand, he noted that members still invest because they know that their farm is inherited. In terms of distribution of benefits, he drew the participants' attention to two specific features of cooperatives: (i) the surplus is generally distributed to user-members as refunds (e.g., patronage refunds); and (ii) a part of the surplus is allocated to indivisible reserves, which may be an alternative instrument for internal financing. Further, he explained the notion of disinterested distribution which creates stability and a type of intergenerational patrimony.

87. *Mr Miribung* concluded by stating that cooperatives are normally integrated into a federated system with other cooperatives distributed in primary, secondary and tertiary levels according to their specialised economic activities and key functions. He explained that the secondary cooperatives combine a wide range of primary cooperatives and noted the challenges for primary cooperative members to protect their specific interests and needs. He noted further legal instruments, like plural voting which could be used to maintain democratic control, irrespective of the shares a member holds, with every member having one vote.

88. In the ensuing discussion, the Working Group was invited to further discuss the notion of “collaboration” and its differences in contracts and cooperatives, as this would help explain the issue of distribution of profits in the different legal forms. *The Coordinator* illustrated two different forms of collaboration applied in the production of olive oil and wine in Italy to highlight that the Working Group could consider distinguishing between direct and mediated forms of collaboration. Further, with regards to distribution of losses, the Working Group was invited to discuss how those losses are distributed in the different cooperative governance models and whether they are distributed in the same way as benefits or dividends.

89. *A Working Group Member* noted the challenges of undertaking comparative law research because of the heterogeneity in cooperative and corporate law, as well as the increasing development of hybrid entities, such as B-corporations. It was proposed that the Working Group could focus on identifying the different archetypes for collaboration and how their main features exist within a certain legislative environment.

90. *A Working Group Member* noted that, in the economic field, the distinction usually made between cooperatives and investor-owned firms depended on the factor of production and receivable position. The Member explained that the main difference was the objective and what the entity sought compensation for, if compensation centred on raw materials, then a cooperative would be preferred while a corporation would be chosen to compensate capital. With regards to the notion of collaboration, the Member recalled the example of olive oil and wine in Italy to highlight that, from an economic standpoint, the goals and needs of farmers may be different, in one case it may be more related to sub consumption and small trade, while in the other the distribution may be more global and for larger trade. Therefore, the goal of the collaboration would also affect the modalities of organisation.

91. *A Working Group Member* highlighted that the minimum number of members required to form a primary cooperative could be an issue to be further considered. The Member informed that in The Philippines the minimum number of required members was 15 natural persons and queried whether the other participants could inform if this was also perceived as a potential barrier in other jurisdictions.

92. *The Chair* invited Prof. Cynthia Giagnocavo (University of Almeria) to continue the presentations on cooperatives, focusing on collaborations in the supply chain.

93. *Prof. Giagnocavo* started her presentation by recalling the seven cooperative principles recognised internationally and cooperative values, such as self-help, self-responsibility, democracy, equality, equity and solidarity. She noted that cooperatives participate in many stages of the supply chain with different roles, such as: financial services provider; input supplier; knowledge provider; production of agricultural products; collection and distribution of agricultural products; logistics and transport; processing, marketing and exporting; as well as consumer cooperatives. She emphasised the difficulty of obtaining data on cooperatives worldwide, hence the justification of why the World Cooperative Monitor presented by Mr Miribung focused on the top three hundred cooperatives. She pointed out the limits of analysing cooperatives based on their size as this would not capture many of the activities that the LSAE project would be interested in further considering. She drew the participants’ attention to data gathered by the ICA’s agricultural section. With regards to new trends in supply chains, she noted that large companies have affected forms of integration and collaboration. She explained that internationalisation has led small scale farmers to increasingly form associative and/or collaborative strategies, but that these are constantly being restructured due to changes in other areas of the system.

94. *Prof. Giagnocavo* stated that while cooperatives participate in worldwide food distribution, since they are often suppliers the links established are weak and, therefore, cooperatives tend to either concentrate or cooperate horizontally, although they also engage in vertical collaboration.

Noting the issue of heterogeneity of member's interests, she emphasised that not all collaborative strategies satisfy the needs of all members and the choice of which collaborative relationship to build on and how is fundamental. She further discussed how agricultural cooperatives responded to these new trends by continually adjusting in terms of competition, distribution of market power, alternative governance structures of agri-food chains, and different organisational arrangements. However, she noted the increasing concern over loss of the cooperative "DNA", most importantly on whether the cooperative performs independently as a "firm".

95. *Prof. Giagnocavo* shared examples of agricultural cooperatives that had made adjustments to address the different needs of members by setting up different legal arrangements, for example regarding ownership rights. When considering whether to use cooperatives or participate as shareholders in companies in supply chains, she stated the need to consider: (i) the diversity of activities (supply and services, production, logistics, transformation, etc); (ii) the engagement of entities from different stages of the value chain (upstream or downstream collaboration); (iii) the involvement of heterogeneous players from different sectors; (iv) the horizontal and vertical interdependencies with respect to economic, technical knowledge, investments, etc; (v) the technological organisational and institutional changes; and (vi) the purpose of the value chain.

96. *She* explained the notion of "plural value dimensions" as part of the cooperative "DNA", based on principles and values, noting that cooperatives are embedded in organisational systems along with other legal forms. She noted the differences between cooperatives and business models based on corporate social responsibility. Further, she described different institutional and organisational logics that had categorised cooperatives as hybrids to note that the definition of cooperatives, as well as the definition of the valuation method of supply chains, requires broader analysis to understand what is valued, how, and by/for whom.

97. Different types of value propositions and their translation to business models were presented to emphasise the variety of logics at play (e.g., logic of democracy, logic of state, logic of capitalism). The Working Group was invited to further discuss the definition of "value", drawing attention to Michael Porter's value chain analysis. With regards to sustainability, the Working Group was encouraged to consider analysing business models based on sustainable customer value creation or the economy as firmly embedded within society and the environment.

98. With regards to the relevance of focusing on legal forms for collaboration in the LSAE project, *Prof. Giagnocavo* noted that collaboration is important because there is an increasing competition between value chains, supply chains, networks of relationships, knowledge flows and management. Referring to a study of collaboration within the agri-food supply chain and noting the key points of such collaboration with regard to cooperatives, she pointed out that cooperatives can collaborate downstream, upstream and with other companies. Collaboration could relate to production, sustainability, programming, quality and health, and transport and infrastructure facilities. Collaborations could also be with customers, suppliers, providers and with competing companies. Based on this research, she highlighted the importance of understanding how to support cooperatives to ensure that they continue following their principles and values for their members when participating in value chain arrangements.

99. Finally, *Prof. Giagnocavo* drew the participants' attention to digitalisation and how it has reorganised agri-food chains into new chains and how decentralised chains have become more centralised. She noted the impact of retail platforms such as Amazon and data platforms such as Google Cloud and Microsoft Azure. She also briefly addressed the issue of digitalisation and farm data to note the increasing value of farming data. She noted that it could be relevant to further consider the features of SmartAgriHubs headed by producer organisations and the role of cooperatives in the digitalisation process

100. *A Representative of IFAD* asked for further clarification on what the Working Group meant when referring to the term “cooperative”. The Representative explained that IFAD deals mainly with smallholder farmers who are grouped into farmer second-tier and third-tier cooperatives. It was noted that some cooperatives simply organise farmers’ production while others act as their representatives fulfilling more of an advocacy role rather than organising production, marketing and financial services.

101. *Prof. Giagnocavo* clarified that in her presentation the term “cooperative” had been used according to the ICA’s international definition. She acknowledged that in many different jurisdictions the term “cooperative” and the corresponding regulatory environment varies. She encouraged the Working Group to take into account the level of heterogeneity with respect to the term whilst also abiding by some core common principles, values and features.

102. *A Working Group Member* raised a methodological question regarding the best approach to take when considering “cooperatives” in the LSAE project. It was queried whether the analysis should cover both the internal legal structure aspects and the external relationships and set of relationships that cooperatives may establish with other actors along the chain, and within the agricultural market. She also queried whether a parallel reflection could apply to corporations. A substantive question was raised regarding the engagement of cooperatives in relevant collaborative relations with other actors along the chain and queried how different forms of collaboration could be adopted depending on the drivers and segment of the chain (e.g., upstream or downstream). It was queried whether different choices of instruments for collaboration were observed depending on the needs of actors and whether Prof. Giagnocavo also referred to contractual collaboration such as bilateral contracts, linked bilateral contracts, multiparty contracts, or other means of collaboration.

103. *Prof. Giagnocavo* noted that the internal and external aspects of cooperative structures are interrelated. She suggested that the Working Group could further consider analysing the differences of collaboration through cooperatives in the context of various agricultural sectors. With regard to the different types of instruments that could be chosen for collaboration by cooperatives, she clarified that not only contracts could be used, but also joint ventures, warrants and other types of investment agreements such as equity conversions.

104. The Working Group was encouraged to consider how the LSAE project could define heterogeneity and homogeneity, for example, cooperatives among producers versus cooperatives that include processors and distributors. It was noted that cooperatives that are limited to farmers tend to be more frequent in Africa and Latin America whereas cooperatives that integrate in different stages are more common in Europe and the United States. *The Coordinator* proposed that heterogeneity could be looked at from two different perspectives: (i) the vertical dimension – when different actors in the chain collaborate; and (ii) the horizontal dimension – when the same type of actors collaborate (e.g., producers). It was noted that there were differences in collaboration amongst homogenous smallholders and between smallholders and other entrepreneurs, such as medium-sized enterprises.

105. *A Working Group Member* noted that the difference between heterogeneity and homogeneity is subjective and depends on where the emphasis is placed. It was illustrated that there could be farmers doing the same type of business in the same region/cultural backgrounds and within the same farm size but with different interests and incentives. Further it was highlighted that there could be producers that do not have much in common but have a shared common purpose.

106. The Working Group was invited to decide whether to address the question on heterogeneity versus homogeneity in the prospective guidance document. It was noted that the LSAE project could consider whether certain factors, such as digital technology transformation, are drivers of heterogeneity and have an impact on the ways in which collaboration is defined. *A Working Group Member* noted that the question could be answered by building emblematic scenarios.

107. *A Representative of FAO* noted that over the past 20 years the support from the development community to smallholder production-based systems in developing countries had led to the proliferation of public investment and normative qualitative work regarding commodity platforms. The Representative agreed that digitalisation increasingly supports collaboration across value chains but noted that the evidence on this primarily came from developed countries since the uptake of digitalisation is slower in developing countries.

108. Comparing the LSAE project to the previously developed LGCF, *a Member of the Working Group* noted that the current project was dealing with greater complexity when trying to consider the conditions for an optimal choice. Therefore, it was suggested that instead of focusing on understanding when one of the three legal structures analysed should be used, the Working Group could focus on analysing when a specific legal structure is not suitable for a specific situation. To illustrate, it was noted that the prospective guidance document could describe how a cooperative may not be the most suitable legal structure for a group of farmers that are highly heterogeneous, unless they adopt an effective conflict of interest mechanism.

109. With reference to Prof. Giagnocavo's presentation, *a Working Group Member* noted that the organisation of a cooperative may depend on the goals perceived and the nature of the relationship it seeks to establish along the value chain. The Member gave an example, based on empirical evidence from the fruit and vegetables sector, where the interaction between the members and the cooperative structure depended on the nature of the contract that the cooperative established with supermarkets.

110. *A Representative of IFAD* encouraged the Working Group to design the LSAE Guide with consideration for the implications that the legal structures would have for the whole agri-food system. Information on IFAD's experience was shared on the use of multiparty platforms as a vehicle to address some of the complexities in coordinating different actors along the value chains of agri-food systems. It was noted that an important aspect of the Guide could be to highlight the different approaches to solve challenges that traditional approaches were unable to address. To illustrate, it was noted that digitalisation could be understood as one of those challenges, particularly in developing countries where very few smallholder farmers were being integrated into the digital financial system. It was further noted that multiparty contracts could represent a means to increase their participation. He further suggested that the usefulness of the LSAE Guide could be in the introduction to these different types of legal forms which create opportunities for collaboration, participation and, therefore, allow for greater inclusivity.

111. *The Coordinator* queried whether it was more common to have producers, distributors and processors jointly collaborating in second-tier cooperatives rather than in first-tier cooperatives and if there was any difference in terms of governance in multi-stakeholder cooperatives depending on whether the collaboration was just for one single activity (e.g., production) or various activities (e.g., processing, distribution, etc.)

112. *A Working Group Member* noted that there may be different governance instruments to deal with heterogeneity in multi-stakeholder cooperatives, such as plural voting systems and separate assemblies, where just specific topics and details of the business are discussed as opposed to the general assembly where all members participate. It was noted that in Italy it was more common to have multi-stakeholder cooperatives at the primary level rather than at the secondary cooperative level.

113. *A Working Group Member* shared examples of federated cooperatives in Spain to note that governance is generally based on membership and that different kinds of instruments may be used depending on the decisions that have to be taken at different levels of the supply chain.

114. *The Coordinator* asked whether the relationships between the different actors would still be regulated by cooperative law, or whether there would be a combination between contracts and corporate law. It was queried whether actors in multi-stakeholder cooperatives collaborate only through the internal instruments offered by cooperative law, or through a combination of instruments (e.g., assemblies and internal contracts).

115. *A Working Group Member* noted that it depended on whether or not all entities are cooperatives. If they are corporations or other legal enterprises, they may resort to other instruments such as contracts.

116. *A Representative of ICA* noted that besides multi-stakeholder cooperatives there are also multi-purpose cooperatives where homogeneous groups are organised for multiple purposes. The Representative exemplified the multiple purposes of the Indian Farmers Fertiliser Cooperative and of the Gujarat Cooperative Milk Marketing Federation, noting that in both examples membership was homogenous. The Working Group was informed that primary cooperatives would form cooperative unions, and that both these structures would have distinct legal personalities. It was noted that aside from cooperative law, the bylaws established by all the different legal structures would also need to be taken into account for governance.

117. *A Working Group Member* encouraged the Working Group to further discuss how a system of collaboration could be conceived in circumstances where there are multiple stakeholders. It was noted that it was important to acknowledge the different roles that different types of enterprises may provide to the collaboration. The Member asked whether in different legal systems, there was the possibility to diversify powers and roles across the different cooperative members without establishing a situation of unilateral control of one member over the others.

118. *A Working Group Member* noted that some cooperative legislations may limit the number of votes allowed in a plural voting system to balance power distribution and maintain fundamental principles and values. The Working Group was encouraged to identify the main features of MSMEs operating closer to the production stage as these may pursue similar cooperative principles and values.

119. *A Working Group Member* drew the participants' attention to the legal framework applicable to cooperatives in China and explained certain characteristics of the development trend of specialised farming cooperatives noting that horizontal unions of specialised cooperatives are prominently developing and play a vital role in integrating the resources of industrial and commercial enterprises investing in rural areas.

120. *The Working Group agreed to further identify the similarities and distinctions between cooperatives and corporations, but also the different types of corporations that the LSAE project could focus on. Participants did not support the comparison of the legal forms analysed in the LSAE project to involve an assessment of the strengths and weaknesses of the different collaborative models. It was generally accepted that it would be useful to distinguish different concepts surrounding multiparty contracts, cooperatives and corporations.*

121. *In addition, the Working Group agreed to further define heterogeneity and homogeneity within cooperatives, as well as to take into account the level of heterogeneity with respect to the term cooperative whilst also abiding by some core common principles, values and features. Both the internal legal structure aspects and the external relationships that cooperatives and corporations may establish with other actors along the chain would be considered.*

(e) *Discussion on Sustainability*

122. The meeting continued on the following day with two presentations on sustainability matters and an open discussion on finance.

123. *The Chair* invited Professor Livia Ventura (Adjunct Professor, LUISS University; Senior Research Associate, University of Cambridge Institute for Sustainability Leadership) to present on the link between sustainability, business law and supply chain management.

124. *Prof. Ventura* started by describing the shift of sustainability from general public international law to specific rules of private law and the impact that new supply chain due diligence requirements could have on MSMEs. She drew the participants' attention to the origins of sustainable development as a concept, noting its inclusion in the 1987 Brundtland Report and its reiteration in several other international environmental law instruments. She noted that the adoption of the UN 2030 Agenda for Sustainable Development and the Paris Agreement on Climate Change contributed to a renewed focus on cooperation between governments, the private sector and civil society, with a particular emphasis on the essential role played by business organisations. She highlighted an increase in responsible investment through the development of environmental, social and corporate governance (ESG) and sustainability certification schemes.

125. *Prof. Ventura* noted several sustainability trends inspiring private law such as the: (i) convergence towards sustainable public procurement; (ii) increasing regulation on mandatory disclosures of non-financial information; (iii) development of hybrid entities (e.g., benefit corporation); and (iv) emergence of new mandatory rules regarding environmental and human rights supply chain due diligence. She explained that in order to effectively address societal and environmental concerns, it is necessary for business organisations to adopt and spread sustainable business practices across the entire supply chain, highlighting the development of "preferred procurement" policies such as green and social procurement.

126. She noted that from a legal perspective, a company's procurement strategy should be integrated into the company business model by taking into account multi-level sources such as hard law and soft law instruments, as well as best practices and self-regulation. Citing soft law instruments that have particular influence on procurement strategy, she highlighted the UN Guiding Principles on Business and Human Rights, the Organisation for Economic Co-operation and Development (OCDE) Guidelines for Multinational Enterprises and the International Labour Organization Declaration on Fundamental Principles and Rights at Work along with the Resolution concerning Decent Working in Global Supply Chains and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

127. With regard to the self-regulation, she highlighted that large companies in particular may describe their procurement strategies within their code of ethics, procurement guidelines and supplier code of conduct. She explained that large companies may offer supplier training programs to help small companies in the value chain meet their sustainability requirements. Further, *Prof. Ventura* highlighted that the content of self-regulation requirements may be integrated into specific contractual clauses in agreements with both upstream and downstream suppliers, which creates a binding effect between the parties with the possibility of contractual liability arising in case of breach of contract. She noted that in the area of self-regulation, companies can be certified or require that suppliers be certified by one of the many certification schemes and bodies existing on the market, such as the certification provided by the International Standardisation Organization (ISO) or the B Corp Certification. She highlighted that while self-regulation may help ameliorate the adverse impacts to human rights and the environment by providing stakeholders with an overview of an organisation's operations and risks, it may be insufficient and ineffective in addressing these issues as it does not provide companies with legal certainty regarding their obligations.

128. *Prof. Ventura* emphasised the shift from self-regulation to statute law by introducing three examples of sector specific binding instruments which had an impact on supply chain management: the California Transparency in Supply Chain Act of 2010, the United Kingdom’s Modern Slavery Act of 2015 and Australia’s Modern Slavery Act of 2018. She explained that these types of instruments usually require large company to disclose, through an annual statement, their efforts to eradicate slavery and human trafficking in supply chains. She noted, however, their weaknesses in terms of not creating any substantial obligation and non-compliance being mainly a reputational risk. Therefore, she drew the participants’ attention to the emergence of a new generation of general statutes to regulate supply chain due diligence, such as the 2017 Duty of Vigilance Law adopted in France which establishes an obligation for companies to implement a “vigilance plan” to identify risks and prevent serious violations to human rights and the environment.

129. With regards to enforcement of these new types of legislations, she noted that under civil law, companies in breach could be held liable for compensatory damages under tort law. In addition, she noted that the 2021 German Act on Corporate Due Diligence Obligations in Supply Chains would take effect in 2023 and require large companies operating in Germany to implement management systems to identify, prevent and minimise human rights abuses and environmental risks along their global supply chain. She noted that any violation to this legislation would not create civil liability but possible sanctions from the supervisory authority, the German Federal Office for Economic Affairs and Export Control (BAFA). Finally, she introduced the proposed European Union Corporate Sustainability Due Diligence Directive, published in February 2022. She explained that the Directive aims to impose a general duty on companies and directors to identify actual or potential human rights and environmental adverse impacts arising from a companies’ own operations, or those of their subsidiaries, or established business relationships (direct and indirect suppliers). She noted that the enforcement of this Directive, at the European level, would operate through a double mechanism: (i) public enforcement, with national supervisory authorities being appointed and (ii) civil liability, in case of failure to comply with the due diligence obligation. She noted that the Directive is intended to apply to European and foreign large companies operating in the European market and in high impact sectors, including agriculture.

130. *Prof. Ventura* emphasised that most of the new corporate due diligence regulations only applied to large companies but noted that there could be a trickle-down effect on MSMEs operating in the value chain of the companies covered. Direct and indirect suppliers across the world could be encouraged to implement sustainable practices. She highlighted the importance of including MSMEs in the sustainable supply chain management system in a reasonable and non-discriminatory way.

131. In order to guide the Working Group’s discussions, *Prof. Ventura* queried whether a specific legal structure better encapsulates the increasing trend towards greater sustainability requirements. She noted that the contractual structure could ensure adherence to sustainability requirements through the inclusion of specific clauses but highlighted that there may be higher transaction and coordination costs associated with monitoring sustainability performance. Further, she noted that in the case of corporate forms, agricultural enterprises could be structured as hybrid entities and include the “for benefit purpose”. She noted that, like with contract, there may be transaction costs associated with corporations including sustainability requirements in their company documents. Finally, she noted that internal controls, including members’ controls and the disclosure of non-financial and financial information could encourage companies to adopt sustainable practices.

132. In the ensuing discussion, *the Chair* acknowledged the challenges of coordinating individual rights and public interests. The Working Group was informed that Article 14 of the Argentinian civil and commercial code had introduced a general provision to avoid the abusive exercise of individual rights that may affect the environment and the rights of collective incidence. It was suggested that the LSAE Guide could establish similar general principles in order to assist parties with coordinating the exercise of individual rights and sustainability in each legal form.

133. *A Working Group Member* emphasised that the question of who bears the risk and cost of transitioning to sustainable practices within the supply chain remains significant, both with respect to the negative and positive externalities. It was suggested that the LSAE project could further analyse how the benefits of implementing sustainable practices have been distributed across the supply chain and how they could be distributed more equitably.

134. *A Representative of IFAD* emphasised the importance of the LSAE project considering incentives, profitability and returns on investment for smallholder farmers and cooperatives when discussing the costs of implementing sustainable practices.

135. *The Coordinator* noted that it was important to distinguish between access and participation in supply chains when considering the allocation of costs of transitioning to sustainable practices. Two differences were highlighted between (i) smallholders who are unable to gain access to markets because they cannot comply with the procurement policies and standards of large companies and (ii) smallholders that have access to and participate in the supply chain. It was noted that once an enterprise gains access to the supply chain, the cost of submitting plans to transition to sustainable practices is often partially subsidised by the larger firm that accompanies small firms over their path towards sustainable agriculture. It was underlined that sustainability and human rights protection through due diligence are converging. With respect to the relationship between due diligence duties and the allocation of costs, it was noted that issues regarding liability of the chain leader for violations of suppliers upstream and the imposition of administrative sanctions could also be addressed. Further, it was highlighted that this was important to consider with regard to large companies as they may have to account for the costs of not only monitoring their own operations to meet soft and hard law sustainability requirements, but those of other entities they deal with throughout the supply chain. Finally, the Working Group was encouraged to consider whether the Guide would focus on social and/or environmental sustainability. It was suggested that the Guide could primarily focus on environmental sustainability as the labour dimension of sustainability is particularly complex. The question to be considered would be how sustainability is implemented under each of the legal forms of collaboration analysed.

136. *The Secretary-General* suggested that the LSAE project should confine considerations regarding sustainability to those specifically relating to agricultural production, as the subject matter overlapped with a new UNIDROIT project which would begin in the 2023-2025 Work Programme, on Corporate Sustainability Due Diligence in Global Value Chains.

137. *Prof. Ventura* noted that the issues relating to the cost of implementing sustainable practices had been considered extensively in the context of elaboration of the European Directive, which included provisions enabling States to assist SMEs to facilitate their sustainable and digital transition. She clarified that the mandatory regulations mentioned in her presentation had been adopted in developed economies but had extraterritorial effect which would require the adoption of incentives and support to help smaller enterprises meet sustainability requirements.

138. *The Secretary-General* explained that even without mandatory law, companies may adopt mid-term sustainability practices because it may be in their best interest to do so considering consumer preferences. It was queried how the LSAE Guide could provide guidance when the final price of a product matters more than how it is produced.

139. *A Representative of FAO* queried whether the requirements on sustainability were limited to developed countries and if there was evidence that showed mandatory sustainability requirements being adopted in less developed economies. It was queried whether the LSAE Guide could be forward-thinking in providing guidance on how different legal tools could be used to ensure that no one was left behind, including vulnerable populations outside the value chain.

140. *Prof. Ventura* informed that legislation on hybrid entities and community benefit companies had been introduced in Rwanda in 2021 but did not relate to sustainability in supply chains. She recalled that hybrid entities have a double purpose and sustainability becomes part of the company agreement. Members need to conduct business activity according to certain requirements to fulfil their annual environment and social disclosure obligation. She noted that the company and shareholders can be sued if they do not pursue the benefit purpose but only the profit purpose. She informed that the legal structure adopted in Rwanda had also been used in other countries in Latin America. She encouraged the Working Group to look at hybrid structures as an opportunity to conduct sustainable activities.

141. *The Chair* closed the discussion and invited Ms Cecile Berranger (Rural Institutions and Services Specialist, Inclusive Rural Transformation and Gender Equality Division, FAO) to introduce the discussion on sustainability from the cooperative perspective.

142. *Ms Berranger* gave a broad overview of the variables that the Working Group could consider in terms of sustainability, in particular regarding its impacts for cooperatives. She noted that cooperatives were increasingly recognised as important contributors to inclusive sustainability and discussed that in defining sustainability it was important to consider its three interconnected dimensions: (i) social; (ii) economic; and (iii) environmental. She noted that ICA and ILO both recognised sustainability as an important pillar of the cooperative movement. She informed that cooperatives were facing crucial challenges relating to their infrastructure, limited access to credit, markets, and services. She explained that these barriers faced by smallholders, producer organisations and agricultural cooperatives could have an impact on trade and development. In addition, smallholder farmers and cooperatives commonly experience lack of technical information and knowledge on market standards, trade requirement processes and technologies.

143. *Ms Berranger* emphasised that because of the principle of concern for communities, cooperatives are more concerned with building a better environment and more sustainable food systems. She informed that solidarity funds could be established to support external equality and to facilitate the transmission of financial resources between more and less successful development cooperative firms. Solidarity funds are generally based on the cooperation among cooperatives principle and the value of mutuality. This system generates business growth and contributes to the development of cooperatives in the community, sustaining the movement while creating a solid market environment for cooperatives.

144. *Ms Berranger* informed that in the past twenty-five years, solidarity funds have been allocating large resources, credit financial literacy and building a well-known and internationally recognised sustainable cooperative movement. She explained that solidarity funds promote innovative and inclusive cooperative practices and training and have been crucial to supporting meeting sustainability standards. She noted that cooperatives should support modern ways of accessing certification of sustainability by incorporating risk-based due diligence into their business models.

145. *Ms Berranger* noted that while the trend of corporate sustainability due diligence regulations represents a challenge to smallholders who need to adapt to the required production standards, they also provide new opportunities. She noted that these regulations are often adopted without considering the point of view of smallholders working in low- and middle-income countries. She explained that the increasing due diligence requirements could also support smallholders and cooperatives to seek better opportunities and further engagement in the agri-food value chain by meeting global standards of sustainable agricultural production. Finally, she informed that better access to finance remains crucial for the achievement of sustainability.

146. *A Representative of ICA* informed the Working Group that in the Americas region, multiparty contracts were being considered in the context of collaboration among cooperatives to reduce the

costs of accessing markets, finance, innovation, digital transformation, and sustainability. It was noted that coop-to-coop collaboration could also be looked at in terms of reducing transaction costs for sustainability certification and due diligence by providing a concrete solution for members. It was noted that one way to build trust between cooperatives and other partners was by engaging well-respected intermediaries (e.g., international organisations) to act as independent facilitators between cooperatives and other parties.

147. *The Coordinator* asked the Working Group to further consider the ways in which the issues of sustainability could be integrated into the LSAE project and to consider the differences to implement transnational standards on sustainability by using the different collaborative forms: multiparty contracts, cooperatives and corporations. The ability to coordinate among the different nodes of the supply chain in order to ensure consistency in the interpretation and application of sustainability standards could be analysed in a comparative manner across the three instruments. Compliance could be verified by the chain leader or by third parties. Finally, it was noted that platforms were often being used to implement sustainable practices.

148. *A Representative of IFAD* emphasised that the LSAE Guide should be flexible enough to accommodate the economies of developing countries, particularly those with protectionist tendencies, which need to produce and export to external markets. It was suggested that the LSAE Guide could outline the incentives available for small farmers in developing countries as their small profit margins may make it difficult to absorb the cost of incorporating sustainability practices.

149. *A Representative of the World Bank* noted several limitations to facilitating sustainability practices through the provision of direct financing by financial institutions but also bonds. It was noted that IFC had been working with several Agtech and Fintech firms that do play a role in highlighting and tracking sustainable farming practices to provide different certifications to enable farmers to obtain greater access to finance.

(f) *Discussion on Finance*

150. *The Secretary-General* assumed the role of Chair and invited the Working Group participants to start the discussion of the topic of access to finance.

151. Regarding the finance aspects of cooperatives, *the Coordinator* queried whether the financial resources of cooperatives are drawn differently depending on whether the cooperative is a single-stakeholder or multi-stakeholder. It was queried whether financial institutions that finance cooperatives participate in the cooperative or if financing was supplied externally in the same way that it is done for corporations.

152. Based on IFAD projects, *a Representative of IFAD* informed that cooperatives have internal systems for accessing and managing finance, however these systems could be more or less limited depending on the nature of commodities (e.g., cash crops, export crops). Commodities that are seen to have high returns tend to have higher chances of access to finance. In terms of structures, the cooperatives tend to have better access to finance when they are part of a federated structure. It was noted that the small-scale primary level cooperatives did not have as much access to finance as they tend to be more focused on access to input. The Representative emphasised the need to further consider the differences that may exist in terms of size and structure of cooperatives.

153. *A Working Group Member* encouraged the Working Group to further consider how cooperatives might be engaging the issue of simple bonds as an alternative means of finance. The importance of discussing the challenges of third party investors and matters regarding social finance was also noted.

154. *A Representative of the World Bank* noted that generally the banks that work with the IFC did not consider the specific legal structure when deciding to grant credit to smallholder or micro agricultural enterprises. It was noted that banks usually required information about their client's credit and crop production history. The Working Group was encouraged to examine the role that farmers' registries play in facilitating an agricultural enterprises' access to finance. It was noted that both formal and informal farming entities could register, and that registration provided financial institutions with uniquely identifiable information regarding agricultural enterprises' cash flow, the land being cultivated, as well as performance and payment history. It was noted that informal enterprises and individual sole proprietors were generally dealt with by a bank's retail arm as the credit provided to those types of agricultural businesses was generally akin to a personal loan which entailed a different level of credit analysis. The Representative explained that this type of credit analysis requires different information which generally relates to the producer's household activities rather than their production or business activities. Further, the Representative informed that one way in which informal producer enterprises had been able to gain access to financing was by having an informal purchase or standing order (sometimes an oral agreement) with an offtake aggregator or cooperative that in turn, had a formal contract with a financial institution as a form of cash control.

155. *A Representative of IFAD* commented that IFAD had also noted the increasing use of offtakers as a means of integrating smallholder producers into financial markets. It was noted that while these arrangements came to fruition in an informal manner, through IFAD's assistance, the arrangements were often formalised through the use of multiparty contracts which also assisted with promoting sustainability practices and digitalisation processes. It was noted that in Bangladesh and Cambodia it is more common to see micro-financial institutions working with informal entities and individuals. The Representative explained that micro-financing institutions in these countries used information from farmers' registries and their own private internal bank registries to complete background credit checks which often lower risk premiums on loans making the interest rates quite competitive. It was noted that the LSAE Guide could assist agricultural enterprises with using multiparty contracts to formalise these types of business collaborations.

156. *A Representative of the World Bank* agreed that the ideal approach would be to move towards multiparty contracts. However, the Representative stated that in the absence of that possibility, an interim solution could be that the offtaker could partially formalise the arrangement with the producer through the use of a standing purchase order and then create a separate but linked bilateral agreement with a financial institution. It was noted that the purchase order did not necessarily include the agreed-upon purchase price for the type and quality of agricultural product but consisted a simplified and more formalised agreement to fulfil the financing gap for a small farmer.

157. *A Working Group Member* noted that there were examples of multiparty agreements where banks were party to the contract along with an intermediary (public entity or NGO) in addition to the buyer and seller.

158. *A Working Group Member* queried whether it was possible to analyse other income streams which could be leveraged through an intermediary to finance cooperatives and small farmers.

159. *A Representative of the World Bank* noted a number of challenges associated with securitisation and bonds in the SME debt market. The Representative explained that in recent years IFC had developed a program for SME debt funds, by pulling loan portfolios from financial institutions to SME's and even, in some circumstances having larger SME's, including medium-sized enterprises issue debt securities that can be acquired by a bond or fund themselves. It was noted that while this program had progressed, there had been several challenges with lining up investors and regulatory issues. It was noted that a significant challenge had been to locate the type of borrowers and lenders operating in the SME lending space that comply with ESG practices and other governance requirements. The Representative commented that the challenges that the IFC had observed with regard to the SME debt market had been hugely challenging and that addressing this area from the

standpoint of smallholder farmers would likely produce additional challenges. The Representative recalled another issue previously discussed in the third LSAE intersessional meeting related to cash-flow control, adding that the future UNIDROIT Model Law on factoring will create the framework for using that information to improve access to finance.

160. *A Representative of IFAD* queried how prevalent the use of purchase orders were in different regions throughout the world. *A Representative of the World Bank* informed that in Latin America and the Caribbean written purchase orders were not commonly used by informal smallholder farmers. It was noted, however, that larger offtakers did use purchase orders when working with formal firms.

161. *The Secretary-General* noted that in very informal arrangements for micro-financing in developing countries, a borrower who was unable to pay would often be supported by a larger group that would perform the function of a mutual guarantee scheme. It was queried whether turning such a group into a cooperative in those circumstances would actually lower the chances of the bank recovering the loan.

162. In response, *a Representative of the World Bank* noted that the personal relationship and oral nature of the agreement between the producer and the eventual purchaser of the agricultural products played a significant role in building trust between the parties. The Representative explained that IFC had received some indications that in some cultures and certain circumstances the formalisation of these agreements via a written contract actually undermines the merit of having an actual person providing their word that they will repay the loan.

163. *A Representative of FAO* noted that many of the issues discussed in relation to access finance overlapped with some of the previous work carried out by FAO, IFAD and UNIDROIT in the LGCF, including the notion of introducing a financier as a third party to a contract farming arrangement. It was noted that FAO had done considerable work in helping countries establish farmers' registries and that there were mainly two different types of registries: (i) register of the farmer as a person and (ii) register of the farm as land. The Representative explained that while both types were used extensively throughout the world, whether or not a country adopted one particular type of registry largely depended on the extent to which it suited its own jurisdictional particularities. It was highlighted, however, that in the instances where the farmer was registered, other information was also recorded such as the farmer's agricultural holdings and production activities, as well as financial data. It was suggested that during the upcoming intersessional meetings, FAO could make a presentation on farmers' registries and their links to formality/informality.

164. *The Secretary-General* sought clarification on whether farmers' registries always involved land. In response, *a Representative of FAO* noted that in some instances, such as those involving livestock producers, the registry would not necessarily involve the agricultural holding itself but their livestock operation.

165. *The Secretary-General* encouraged the Working Group to further consider the use of farmers' registries as an important area of analysis when considering issues related to formality and informality and the three collaborative legal forms considered in the LSAE project.

166. *A Representative of IFAD* agreed with the need to acknowledge heterogeneity in the forms of organisation, noting that in addition to farmers' registries, the Working Group could further analyse the use of 'Self-Help Groups', such as the ones established in India and recognised as semi-formalised entities.

167. *The Secretary-General* suggested that the LSAE Working Group could further identify and categorise the different types of informal, semi-formal and formal associations present in the agricultural sector and then decide which require greater analysis. It was highlighted that while legal

personality was attached to limited liability in common law jurisdictions, that was not always the case in civil law jurisdictions and the Working Group could bear this in mind throughout discussions.

168. *A Member of the Working Group* noted the distinction between legal structures and juridical entities to recall that in certain circumstances the land of the farmer may become an asset of the juridical entity.

169. *A Member of the Working Group* noted that while the impact of informality was an undoubtedly important factor to consider when preparing the LSAE Guide, it would be important to clarify how the LSAE project would acknowledge the existence of pre-formal entities.

170. *The Secretary-General* suggested that the LSAE project could first acknowledge the existence of various informal enterprises and then, if the Working Group considers formalisation advantageous, make recommendations for informal enterprises to shift to a path of greater formalisation.

171. *A Representative of ICA* noted that in India, farmers' registries were linked to the national agricultural market and were not specific to any legal personality, as farmers could register themselves as individuals by using E-NAM (National Agricultural Market platform). It was noted that while this registry did not have a registrar, it was managed by the Indian Ministry of Agriculture and the Small Farmers Consortium. It was explained that rather than land being registered, the registry was linked to the market. Further, the Representative explained that the primary purpose of Self-Help Groups in India was to assist members who eventually considered setting up a proper legal form to gain access to finance. It was explained that the linkages between Self-Help Groups and cooperatives were not only for access to finance but also for other purposes. It was noted that while there was no specific Indian legislation on Self-Help Groups, their legality derived from the fundamental right to form an association. The Representative explained that legally, Self-Help Groups were considered to be pre-cooperatives.

Item 5. Organisation of future work

172. Opening the discussion on the organisation of future work, *the Secretary-General* suggested that it would be useful if FAO and IFAD could contact their various local offices to obtain practical information to differentiate the boundaries of the different informal, semi-formal and formal models being used in jurisdictions throughout the world.

173. *A Representative of FAO* noted the lack of success in using surveys and other data collection methods in previous projects and proposed that semi-structured interviews be conducted with selected experts from local offices in different countries/regions to obtain evidence-based data for the LSAE project.

174. *A Representative of IFAD* agreed with the approach proposed by FAO and mentioned that there was limited quantitative data available, at least from the impact assessments that IFAD had conducted. Moreover, the budgetary constraints to conduct primary data collection were noted. It was queried whether there was a budget for an external consultant to implement the semi-structured questionnaire. *The Secretary-General* informed that at present there was no additional budget for external hiring, but it could be envisaged in the future to hire a consultant to carry out more comprehensive data collection.

175. *A Member of the UNIDROIT Secretariat* noted that there were some core issues to decide upon regarding the structure of the Guide and the drafting moving forward with the project. It was queried whether the "tripartite matrix" presented, during the first day of the second session of the Working Group, for the analysis of multiparty contracts could be applied to the analysis of cooperatives and corporations.

176. *A Working Group Member* noted that the structure proposed could be applied to cooperatives, however applying such a structure would not highlight some of the most important features of cooperatives (e.g., why people form cooperatives, the central role of membership and the meaning of cooperative principles). The Member cautioned against addressing cooperatives in reference to contracts and called for further discussion before deciding on the suitability of the proposed structure of analysis.

177. *A Working Group Member* clarified that the core aspects of each legal form would be presented in the part of the structure of analysis dedicated to the definition and taxonomy of the collaborative instrument. The Member queried whether there was any topic in the proposed structure of analysis that would not apply to cooperatives or corporations.

178. *The Secretary-General* recalled that the structure of analysis proposed had been developed based on contractual relationships and did not contain a list of topics that would usually be considered when analysing legal entities. It was noted that while the Working Group could address the topics mentioned in the “tripartite matrix”, at an initial stage, it would not be required to consider how all topics apply to cooperatives and corporations. Specific features could be added.

179. *The Coordinator* explained that the language of the proposed structure of analysis was contractual and referred to the “life” of the contract but could be replicated as a functional equivalent to analyse the “life” of cooperatives and corporations. A glossary could be developed to further explain the functional equivalents for cooperatives and corporations (e.g., entry and exit, governance, ownership of resources that are required to carry out contracts, etc.).

180. *Two Representatives of IFAD* encouraged the Working Group to further discuss the target audience and main outcomes of the LSAE Guide to avoid developing a long depository of legal practice.

181. *A Representative of ICA* noted the need to include reference to some peculiarities regarding cooperatives in the proposed structure of analysis of the collaborative legal forms. The Working Group was encouraged to consider adapting the proposed structure for cooperatives by using the lens of the cooperative principles and values. For example, the analysis related to contractual execution for multiparty contracts could be translated into members’ obligations and self-responsibility as a value when analysing the cooperative legal form. It was proposed that three different sections could be developed in the LSAE Guide: (i) the first section could reflect what happens before the establishment of a formal legal structure, focusing on the analysis of the pre-formal forms of collaboration; (ii) the second section could cover the comparative analysis between multiparty contracts, cooperatives and corporations; and (iii) the third section could address the peculiarities and features that distinguish the three legal forms.

182. *A Representative of the World Food Law Institute* agreed with the proposal to broaden the scope to consider a fourth or preliminary category of collaborative schemes which are reflective of the practices that take place in developing countries. It was noted that it would be useful to expand the notion of “agricultural enterprises” considered in the LSAE project to reflect the types of enterprises that would actually be analysed.

183. *The Secretary-General* agreed with the need to clarify the notion of ‘agricultural enterprises’ adopted in the LSAE project. It was noted that from the beginning the notion of ‘enterprise’ was being used in the economic perspective to also capture the business activities of individual entrepreneurs and not only the activities of legal entities, such as companies. It was suggested that the Working Group could consider changing the working title of the project (“Legal Structure of Agricultural Enterprises”) to better reflect the content that would be developed. The Secretary-General drew the participants’ attention to a new title proposed in the Revised Issues Paper: “Collaborative Legal Instruments for Agricultural Enterprises”. It was clarified that the new working

title would need to be approved by UNIDROIT's Governing Council and that the final title of the guidance document would be determined once the entire document had been finalised.

184. *A Representative of FAO* explained the difficulties that had been encountered in using the title "Legal Structure of Agricultural Enterprises" as it did not reflect the collaborative aspect of legal instruments or contractual arrangements.

185. *The Coordinator* agreed to changing the title according to the proposal and reiterated that it would be possible to change the title again, if necessary, in the future.

186. *The Secretary-General* questioned whether the Working Group would prefer to change the term "enterprise" to avoid any confusion regarding the exclusion of individuals.

187. *The Coordinator* proposed to specify individual and collective enterprises in the title. Seeing no objections, *the Secretary-General* informed that the new working title of the project would be: "Collaborative Legal Instruments for Individual and Collective Agricultural Enterprises".

188. Regarding the next steps, *the Coordinator* invited the participants to further work on adapting the structure of analysis proposed for multiparty contracts to the specificities of cooperatives and corporations. The Coordinator asked the participants to highlight the topics that could be compared and those that are specific to each legal form. It was underlined that the comparative analysis of legal forms is instrumental to make an informed choice about the legal instrument to collaborate or the combination of them.

189. *The Secretary-General* proposed the continuation of intersessional work with the creation of, at least, three sub-groups on multiparty contracts, cooperatives and corporations which would help the Secretariat draft the issues paper that would be considered during the third session of the Working Group. All participants would be invited to express their interest in joining one or more of the sub-group meetings. The participants were informed that the second session of the Working Group would tentatively be held at the end of April or beginning of May 2023.

Item 6 and 7. Any other business. Closing of the session

190. In the absence of any other business, *the Secretary-General* declared the session closed by thanking all the participants for their valuable contributions and a most fruitful three-day discussion.

ANNEXE I**LIST OF PARTICIPANTS****MEMBERS**

Mr Ricardo LORENZETTI <i>Chair</i>	Justice Supreme Court of Justice of Argentina
Mr Virgilio DE LOS REYES	Dean De La Salle University
Mr Matteo FERRARI	Professor University of Trento
Ms Cynthia GIAGNOCAVO	Professor University of Almeria
Mr Hagen HENRÿ	Professor University of Helsinki
Ms Paola IAMICELI	Professor University of Trento
Mr Georg MIRIBUNG	Researcher and Lecturer Eberswalde University for Sustainable Development
Mr Carlo RUSSO	Professor University of Cassino and Lazio Meridionale
Ms Dongxia YANG	Professor China University of Political Science and Law

INSTITUTIONAL PARTNERS

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)	Mr Buba BOJANG Legal Officer (LEGN)
	Mr Teemu VIINIKAINEN Legal Consultant (LEGN)
	Mr Sisay YESHANEW Legal Consultant (LEGN)
	Ms Siobhan KELLY Agribusiness Officer Food Systems and Food Safety Division (ESF)
	Ms Cecile BERRANGER Rural Institutions and Services Specialist Inclusive Rural Transformation and Gender Equality Division (ESP)

INTERNATIONAL FUND FOR AGRICULTURAL
DEVELOPMENT (IFAD)

Mr Ebrima CEESAY
Legal Counsel

Mr Athur MABISO
Senior Technical Specialist

Mr Jonathan AGWE
Lead Regional Technical Specialist
Inclusive Rural Finance, Markets and Value
Chains

INSTITUTIONAL OBSERVERS

EASTERN AFRICA FARMERS FEDERATION
(EAFF)

Mr Hillary Kibet CHERUIYOT

INTERNATIONAL DEVELOPMENT LAW
ORGANIZATION (IDLO)

Mr Giuseppe MARANO
Program Associate
Food Security

Mr Taona MWANYISA
Intern

INTERNATIONAL COOPERATIVE ALLIANCE
(ICA)

Mr Santosh KUMAR
Director of Legislation

INTERNATIONAL INSTITUTE FOR
ENVIRONMENT
AND DEVELOPMENT (IIED)

Mr Lorenzo COTULA
Principal Researcher

ORGANIZATION OF AMERICAN STATES (OAS)

Ms Jeannette TRAMHEL
Senior Legal Officer

UNITED NATIONS INDUSTRIAL DEVELOPMENT
ORGANIZATION (UNIDO)

Mr Dejene TEZERA
Director

Ms Xianyue SUN
Observer

WORLD BANK GROUP

John Wilson
Senior Operations Officer
International Finance Corporation

WORLD FOOD LAW INSTITUTE

Ms Marsha ECHOLS
Professor
Howard University School of Law

INDIVIDUAL OBSERVERS

Ms Roberta PELEGGI	Associate Professor University of Rome La Sapienza
Ms Livia VENTURA	Adjunct Professor, LUISS University Senior Research Fellow - University of Cambridge Institute for Sustainability Leadership
Mr Javier Mauricio Rodriguez OLMOS	Professor University Externado de Colombia
Mr Zhuo GENG	Professor Guangdong University of Foreign Studies
Mr Edward Kyei TWUM	PhD Candidate University of Cassino and Lazio Meridionale
Mr Dante CRACOGNA	Chair – Cooperative Law Committee Cooperatives of the Americas
Mr Danilo SALERNO	Director – Americas Region International Cooperative Alliance (ICA)
Mr Jongseok LEE	Agricultural Sector Advisor International Cooperative Alliance

UNIDROIT SECRETARIAT

Mr Ignacio TIRADO	Secretary-General
Ms Anna VENEZIANO	Deputy Secretary-General
Ms Priscila PEREIRA DE ANDRADE	Legal Officer
Ms Philine WEHLING	Legal Officer
Mr Keni KARIUKI	MAECI-UNIDROIT Chair Holder
Mr Martin GRASSI	Legal Consultant
Ms Nelly ROTICH	Intern
Mr Shengkai XU	Intern

ANNEXE II**AGENDA**

1. Opening of the session and welcome by the Chair of the Working Group and the UNIDROIT Secretary-General
2. Adoption of the agenda and organisation of the session
3. Adoption of the Summary Report of the First session of the Working Group (Study LXXXC – W.G. 1 – Doc. 3)
4. Consideration of substantive issues
 - a. Summary of the intersessional work
 - i. Update on the composition of the Working Group
 - ii. Topics discussed during the three intersessional meetings (Study LXXXC – W.G. 2 – Doc.4; Doc.5; Doc.6)
 - iii. Presentation of the Revised Issues Paper (Study LXXXC – W.G. 2 – Doc. 2)
 - b. Discussion on multiparty contracts (Study LXXXC – W.G. 2 – Doc. 3)
 - c. Discussion on cooperatives
 - d. Discussion on corporations
 - e. Discussion on sustainability, digital technology and finance
5. Organisation of future work
6. Any other business
7. Closing of the session