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preparation of a Guide on Legal Structure
of Agricultural Enterprises**

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**SUMMARY REPORT
OF THE THIRD SESSION
(8 – 9 May 2023)**

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1. The third session of the UNIDROIT Working Group established in partnership with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) to prepare a Guide on the Legal Structure of Agricultural Enterprises (hereinafter “the LSAE project” or “the project”) was held in a hybrid format (in person in Rome at the seat of UNIDROIT and remotely via Zoom) on 8-9 May 2023.

2. The Working Group was attended by 40 participants, comprised of members and observers from intergovernmental and other international organisations, farmers’ associations, non-governmental organisations, academic institutes, and the private sector, as well as members of the UNIDROIT Secretariat. The list of participants is available in [Annexe II](#).

Item 1: Opening of the session and welcome

3. *The UNIDROIT Secretary-General* opened the session and welcomed all participants, in particular two new members to the Working Group: Ms Isabelle Deschamps (Faculty of Law - McGill University) and Mr Siniša Petrović (Faculty of Law – University of Zagreb). He thanked all members and observers for the work conducted during the intersessional period between December 2022 and April 2023, noting the particular advancements made for the development of the topic on multiparty contracts in agriculture.

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

4. *The Chair of the Working Group* introduced the annotated draft agenda and the organisation of the session ([UNIDROIT 2023 – Study LXXXC – W.G.3 – Doc. 1](#)). He informed the Working Group that the documents that would be the basis for the discussion were (i) the Revised Issues Paper ([UNIDROIT 2023 – Study LXXXC – W.G.3 – Doc. 2](#)) and (ii) the Draft Discussion Paper on Multiparty Contracts in Agriculture; both had been distributed to the Working Group participants by email. The Working Group adopted the agenda and organisation of the session as proposed (available in [Annexe I](#)).

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

5. *The Chair* noted that the Secretariat had shared the Summary Report of the second session of the Working Group, held on 2-4 November 2022, with all participants. *The Working Group confirmed the adoption of the Summary Report* ([UNIDROIT 2022 – Study LXXXC – W.G. 2 – Doc. 3](#)).

Item 4: Update on intersessional work and developments since the second session of the Working Group

6. Upon invitation by the Chair, *a member of the UNIDROIT Secretariat* recalled the main topics addressed during the second session of the Working Group, namely: (i) the notion of agricultural enterprises, as well as the definition of collaboration; (ii) the features of horizontal and vertical collaboration; (iii) the heterogeneity of legal forms (including the development of hybrid entities, such as B-corporations); (iv) multiparty contracts in agriculture; (v) cooperatives; and (vi) the challenges to access finance and implement sustainable practices across the supply chain. She noted that a structure containing eleven topics for the analysis of multiparty contracts had been proposed.¹

7. She informed the Working Group that during the second intersessional period (December 2022 – April 2023), three Subgroups had been established to advance the analysis of the three main

¹ See paragraph 38 of the Summary Report of the second session of the Working Group, [UNIDROIT 2022 – Study LXXXC – W.G. 2 – Doc. 3](#).

collaborative legal forms considered in the project: Subgroup 1 on Multiparty Contracts, Subgroup 2 on Cooperatives, and Subgroup 3 on Corporations. The Co-Chairs of the Subgroups on Cooperatives and Corporations were invited to assess the applicability of the proposed structure for the analysis of multiparty contracts to the other legal forms and whether the topics needed to be adapted (and if so, how). Finally, she informed the Working Group that the Secretariat had conducted further research on the informal, quasi-formal, and formal types of agricultural enterprises.

Item 5: Consideration of matters identified in the Revised Issues Paper

8. *The Chair* invited the participants to consider the topics and questions proposed for deliberation under section II of the [Revised Issues Paper](#).

(a) Discussion on cooperatives

9. *The Chair* invited the Working Group to further discuss the outline of topics and key concepts to be addressed in the chapter of the guidance instrument dedicated to cooperatives. In addition, he suggested that the Working Group further reflect upon how agricultural cooperatives had responded to traditional challenges and new trends (e.g., digitalisation, sustainability, access to finance) and whether different organisational arrangements had been adopted, and if so, with what new features.

10. *One of the Chairs of the Subgroup on Cooperatives* noted that it had not yet been possible to achieve a conclusion regarding the outline of topics to be considered in the chapter dedicated to cooperatives. He remarked that the three types of collaborative legal forms considered in the LSAE project were fundamentally different, especially regarding their objectives and the interests concerned. He noted that members of cooperatives typically had a common interest and pursued a common need through an enterprise, whereas in contracts, parties generally had opposing interests.

11. With regard to the question of how the analysis of cooperatives could be framed and whether it could be presented according to the criteria which had been proposed for the analysis of multiparty contracts, he noted that while cooperatives were established through contracts, the final product was not a contract, but rather an organisational instrument. He acknowledged that the Working Group was considering developing a comparison of the three collaborative legal forms; however, he proposed that, before comparing, the three types of instruments could be presented independently.

12. He recalled that the definition of cooperatives and its purposes had been established in public international law and specifically drew attention to the 1995 Statement of the International Cooperative Alliance (ICA), which outlined the identity of cooperatives, composed of three elements: (i) a definition of cooperatives; (ii) values on which cooperatives should be based and which cooperative members should respect; and (iii) seven principles which put these values into practice. He emphasised that the content of the ICA Statement was binding upon the members of the ICA and that the values and principles had therefore been largely integrated into cooperative bylaws. As with other international human rights instruments, he noted that the ICA Statement also had great legal relevance for third parties (non-members of the ICA).

13. *One of the Chairs of the Subgroup on Cooperatives* noted the importance of clearly describing the different kinds of collaborative legal forms to understand the nature of these instruments and to clarify their incentives, risk factors, motivations, and purposes. In addition, she highlighted a few issues that could be further considered, such as the compatibility and the interaction of the legal forms within supply chains. Finally, she stressed that the target audience of the Guide should always be kept in mind. As the Guide was intended to be drafted for smallholders and small agricultural enterprises, the Working Group could further investigate how economies of scale and access to markets might be reached through these instruments, as this might occur in very different ways.

14. *One of the Chairs of the Subgroup on Multiparty Contracts* acknowledged that comparing cooperatives and conventional sales contracts would be challenging but noted that by utilising a functional approach, it would be possible to compare cooperatives and the multiparty contracts used for agriculture development, as proposed in the LSAE project. She explained that the types of multiparty contracts considered were those that particularly focused on governing collaboration among actors having a common interest in agricultural development. She recalled the working definition of multiparty contracts that had been discussed in previous Working Group sessions and pointed to the “Italian Network Contract” as an example. She explained that the latter was a collaborative contract, as it was a multiparty arrangement between two or more parties or businesses that pursued a common interest, shared common activities or enacted a common interest programme to pursue common strategic objectives. She suggested that the Working Group further align the terminologies used for the analysis of cooperatives and multiparty contracts.

15. *One of the Chairs of the Subgroup on Cooperatives* highlighted that despite the functional approach proposed, when it came to observing the fundamental nature of cooperatives, membership was paramount, and non-contractual matters would also need to be considered. She recommended that the Working Group further consider how membership might impact governance, the distribution of benefits, and the social capital function.

16. *One of the Chairs of the Subgroup on Cooperatives* noted the importance of acknowledging that the future of the agricultural sector and the nature of organisations, such as cooperatives, was changing due to the influence of digitalisation. He suggested that the Working Group consider analysing the collaborative legal forms beyond the traditional “organisations and contracts” binary to consider innovative arrangements taking place (e.g., the concept of a network between enterprises and the schemes adopted for integrating into value chains, not only operationally through contracts, but also organisationally).

17. *A member of the Working Group* agreed that the target audience of the guidance instrument should be kept in mind when preparing the list of topics that might be addressed in each of the chapters dedicated to the different collaborative legal forms analysed. She informed the Working Group that, in the course of her research, she had identified quasi-formal and other types of collaborative collective vehicles, similar to cooperatives, that could be worth considering further.

18. Noting that large enterprises usually imposed the rules for collaboration on smaller enterprises, *the Coordinator of the Working Group* recommended further distinguishing whether the Guide aimed at protecting micro-, small, and medium-sized enterprises (MSMEs) or whether it was targeted at large enterprises to encourage them to formulate rules that did not harm MSMEs. He clarified that there was a distinction between the target audience and the protected interests. He thus suggested that the Guide’s target audience be revised to also include large enterprises but that the protected interests be those of smallholders and MSMEs.

19. He informed the Working Group that the Subgroup on Cooperatives could propose an alternative list of topics complementary to the list proposed for the analysis of multiparty contracts. He noted that the comparative analysis among legal forms was not something new and suggested that, at a first stage, the functional approach could start from very simple examples (e.g., joint production and sale of an agricultural product) which demonstrated to the target audience of the prospective LSAE Guide that they might adopt alternative (and complementary) instruments to organise the same type of collaborative activity. He emphasised that the purpose of the LSAE Guide should be to compare not institutions but rather instruments to pursue common functions. He noted that, at a second stage, more complex issues related to digitalisation, sustainability, and access to finance could be considered to inform the target audience that the choice of a collaborative legal form might vary if, for example, there were an interest among the smallholders and smaller enterprises to engage in a new technological process to become compatible with an organic standard and certified by third parties. One question that could be considered was whether smallholders who

decided to use a specific technology might do so by having a sub-license contract or simply being a member of a cooperative or a licensed company.

20. *The Chair* recalled that in previous meetings, the Working Group decided that the main focus of the project would be on collaborative legal forms that supported smallholders and agricultural MSMEs to do business with one another, access markets, and improve collaboration with different agri-food chain actors. The purpose would not be to identify the best collaborative legal structure but to inform the target audience of the available options.

21. *One of the Chairs of the Subgroup on Cooperatives* stated that there were many forms of collaboration globally; therefore, the three forms selected for the purpose of the LSAE Guide would require further justification and analysis without any value judgement. He noted the possible limitations of any international guidance document due to the deficiency in practical understanding of how smallholders were organised globally, especially from a sociological perspective.

22. *A representative of the International Cooperative Alliance (ICA)* noted that generally, in a multiparty contract or a corporation, the economic interest prevailed, whereas in a cooperative, the economic, social, and cultural interests and aspirations had to be equally considered. In addition, he pointed out the differences that might exist between bylaws of cooperatives and contracts.

23. *The Coordinator of the Working Group* noted that non-economic values could also be pursued through contracts and companies, as there were no obstacles in contract or corporate law for the incorporation of similar cooperative values. He suggested to further explain in the LSAE Guide that contracts and corporations would not be considered as purely economic instruments.

24. *One of the Chairs of the Subgroup on Cooperatives* recalled that actors operating in the global food value chain were subject to different legal systems, such as global law and, in particular, global commercial law, which was different from national and international law. He noted that the legality of these new global laws was often questioned and suggested that the Working Group could further consider this new normative trend and further contemplate the limitations of providing guidance on certain legal forms traditionally covered by national and international law.

25. *The Coordinator of the Working Group* noted that the reference to global law was also known as transnational private law and that it encompassed not only contracts but also corporations, cooperatives, and other legal forms. He reiterated that the intention of the LSAE Guide would be to provide the target audience with a “menu” of illustrative legal forms without constraining those parties to necessarily choose from one of the legal forms covered within the Guide. In addition, he mentioned that in the case of multiple farmers or producers located in different jurisdictions, the choice of applicable law could maximise their interest. He suggested that the Working Group further consider developing guidance on the use of private international law as an instrument to maximise the opportunities to overcome obstacles presented by national laws.

26. *One of the Chairs of the Subgroup on Cooperatives* emphasised the importance of including a caveat in the LSAE Guide to inform the target audience that only a list of possible collaborative legal forms would be covered and that these should, in any case, be considered along with the applicable law. He also noted that freedom of contract and private autonomy did not exist in many countries.

27. *One of the Chairs of the Subgroup on Multiparty Contracts* agreed that the Working Group should acknowledge the existence of different applicable national laws, potentially varying along the value chain due to differing legal regimes and jurisdictions. She pointed out the relevance of also considering the numerous general default rules that were applicable in the fields of contract, cooperative, and company law.

28. *A member of the UNIDROIT Secretariat* noted that the features of the global agri-food value chain and the complexities of the legal framework applicable to the collaborative legal forms addressed in the Guide, as well as the necessary caveats, could be included in the introductory chapter.

29. *One of the Chairs of the Subgroup on Cooperatives* recommended the Working Group analyse the collaborative legal forms as organisational structures tied to certain strategies and purposes. She drew attention to the importance of understanding the nature of the incentives behind the choice of legal form. Referring to sustainability as an example of purpose, she noted that while corporations could be considered as an option of collaborative legal form, she recalled that in some instances, B-corporations had been created in response to the inability of corporations in certain jurisdictions to effectively carry out certain socio-environmental goals. Therefore, the Working Group could consider further clarifying that the objective of the LSAE Guide, through a functional and purpose-driven approach, would be to analyse the different legal forms and how they tended to be used to meet the needs of smallholders and agri-MSMES to address issues regarding, among other things, (i) their ability to enter into supply chains, (ii) the imbalance of power in supply chains, and (iii) the management of risk. One of the guiding questions could be framed as how to understand the purpose of using cooperatives, multiparty contracts, or corporations in certain circumstances (e.g., sustainability, access to finance, digitalisation).

30. *One of the Chairs of the Subgroup on Multiparty Contracts* queried whether the seven sub-topics described in section II.E of the [Revised Issues Paper](#) would be considered in the chapter on cooperatives: (i) Taxonomy of agricultural cooperatives, (ii) Formation of an agricultural cooperative, (iii) Agricultural cooperative membership, (iv) Governance and finance of agricultural cooperatives, (v) Breach of cooperative obligations, (vi) Liabilities and remedies in agricultural cooperatives, and (vii) Exit and dissolution in agricultural cooperatives.

31. *A member of the UNIDROIT Secretariat* confirmed that it was likely that the seven sub-topics presented in the Revised Issues Paper would be included in the chapter on cooperatives. However, she informed the Working Group that the Chairs of the Subgroup on Cooperatives had pointed out the need to include some further peculiarities regarding cooperatives. Therefore, she informed the Working Group that the outline of topics considered could be slightly different. Moreover, she noted that the Subgroup on Cooperatives had also considered the structure of the Principles of European Cooperative Law (PECOL) as a possible benchmark.

32. *One of the Chairs of the Subgroup on Cooperatives* suggested that the draft chapter on cooperatives be based on the two approaches and consider the sub-topics announced in the Revised Issues Paper, the PECOL, and other international handbooks on cooperative law. He emphasised the importance of first capturing how cooperatives were seen from the point of view of public international law, prior to a comparison with the other legal forms considered in the LSAE Guide.

33. *Another Chair of the Subgroup on Cooperatives* corroborated this statement, mentioning the need to consider the cooperation among cooperatives and the different stages of cooperatives (e.g., second-tier cooperatives), the interaction between consumer and producer cooperatives, and the extent to which the cooperative legal form could regulate vertical coordination, in addition to horizontal coordination. She noted that it would be important for the Working Group to consider developing guidance on supply chains that included cooperatives, corporations, and different kinds of contracts and how to deal with the different kinds of legal instruments in the same supply chain.

34. *One of the Chairs of the Subgroup on Cooperatives* noted the importance of further explaining the difference between collaboration, cooperation, and integration to understand the reality of the interactions that took place in the supply chain. He also mentioned that it would be relevant to consider whether the cooperatives interacting in supply chains operated as separate legal entities in all respects vis-à-vis their members or as “extended arms” of their members. This could entail a

series of different consequences (e.g., who was the contract partner, who was liable, etc.) and, therefore, in addition to the bylaws, the negotiation of separate contracts with cooperative members could become necessary.

35. *The Coordinator of the Working Group* noted that the issue of exclusivity versus non-exclusivity was a key comparative question to be considered in relation to both contract execution and the regulation of membership.

36. *A representative from FAO* proposed further consideration of different value chain actors, beyond producer organisations and cooperatives, that in reality played a key role in the value chain and vertical integration through processing, transportation, and aggregation. Pointing out that producer organisations and cooperatives might simply not have the capacity to deal directly with the buyers and off-takers, she recommended that the Working Group consider developing guidance on the legal instruments to engage with those small and medium-scale intermediary companies as well.

37. *Several participants* agreed that the Working Group could further explore the innovative relationships that were being established in the value chain and the reasons why these new arrangements were being conceived to understand, for example, the different types of instruments (e.g., ancillary contracts, companies, or new cooperatives) to which cooperatives themselves might resort to further participate in value chains.

38. *One of the Chairs of the Subgroup on Cooperatives* explained that there were many reasons why a cooperative might eventually need to resort to other types of legal forms, such as a profit-driven company (e.g., as a vehicle to quickly raise capital and access finance).

39. *A representative from IFAD* noted that the key aspects linked to financing and access to capital could also be considered as one of the variables when comparing the collaborative legal forms covered in the LSAE project.

40. Drawing attention to the different dimensions of collaboration (e.g., organisational and operational collaboration), *the Coordinator of the Working Group* raised a question regarding the legal restrictions that might limit how cooperatives collaborate. He recommended that the Working Group consider focusing more on the operational dimension of collaboration in the LSAE Guide.

41. *One of the Chairs of the Subgroup on Cooperatives* noted that restrictions existed for all the legal forms analysed in the LSAE project, not only cooperatives. She referred to the example in certain jurisdictions of limitations regarding, among other things, the number of external investors in cooperatives and the distribution of voting rights. However, she explained that the cooperative bylaws and articles of association tended to be general, while the more specific rules (e.g., regarding the adoption of quality-related certifications) would be adopted by the members in general assemblies or in special committees for strategic purposes.

42. *The Coordinator of the Working Group* questioned what the applicable law would be (e.g., cooperative or contract law) in the case of a breach of obligations not specifically defined in the cooperative bylaws. In the event of one member's fault, would the cooperative bylaws generally foresee the possibility of replacing a defaulting party, and would other members be called upon to fix, replace, or substitute the defaulting performance? He noted that traditional remedies, such as suspension or exclusion of members, would not benefit the collaborative arrangement, as members were expected to continue collaborating. He queried whether the four types of remedies considered in the context of multiparty contracts could be used for cooperatives to maintain collaboration among members (namely: (i) injunction, (ii) compensation, (iii) correction, and (iv) restitution).

43. *One of the Chairs of the Subgroup on Cooperatives* noted the importance of considering the various levels of breaches and maintaining the cooperative's reputation. She explained that the

analysis of the appropriate sanction in the context of cooperatives would also depend on the decision-making process.

44. *One of the Chairs of the Subgroup on Multiparty Contracts* noted the need to further explain how cooperatives and their internal organisational structures faced cases of misconduct and breach of obligations, to allow for a comparison of the organisational response that each of the legal forms analysed in the LSAE project would permit.

45. Further reflecting on the role of cooperatives in preventing breaches, *a member of the Working Group* highlighted the importance of adopting assistance and monitoring mechanisms within cooperatives to help anticipate breaches. He noted that the methods and approaches for providing assistance differed between multiparty contracts and the other legal forms considered.

46. *A representative from IFAD* noted that some of IFAD's projects had adopted capacity-building mechanisms and employed multiple approaches to provide support to farmers to help them meet requirements and prevent breaches (e.g., mobile-phone based agricultural extension advisory services). If one member failed an obligation, support from other members would often be provided based on mutual understanding and collective cooperation rather than on explicitly stipulated legal documents.

47. *The Coordinator of the Working Group* cautioned the comparison between legal concepts and empirical functions, noting the importance of not misinterpreting the notion of breach from a contractual perspective by functionally considering a default or mistake in the context of cooperatives as an inability to perform. He recommended that when comparing the consequences of a breach in a collaborative legal form – be it within a multiparty contract, cooperative, or corporation – it would be important to consider whether the notion of breach overlapped or differed, and to examine the fundamental nature of a breach. He queried whether, in the context of cooperatives, there was a similar distinction between material and immaterial breach.

48. In addition, with regard to monitoring mechanisms, he proposed that the extent of digital technologies used in digital monitoring could be a topic for further investigation by the Working Group. For instance, in the case of providing data to a cooperative, there might be a sense that members would have more control over how their data compared to providing the same data to an external entity beyond their sphere of control.

49. *A representative from the International Development Law Organization (IDLO)* noted the variety of legal structures adopted for cooperatives in different jurisdictions and recommended that the Working Group consider reflecting this plurality in the LSAE Guide.

50. Referring to research conducted in certain rural areas of Cameroon, *a member of the Working Group* noted that cooperatives often obtained loans from microcredit institutions, and they generally had internal monitoring and enforcement procedures among the members in the event of a breach. Additionally, the agreements with microcredit institutions often outlined the consequences of non-payment or default. These agreements also served to educate the cooperative members about their rights and obligations towards one another.

51. *The UNIDROIT Secretary-General* thanked the Working Group for the rich discussion and queried whether the Chairs of the Subgroup on cooperatives had received enough feedback to move forward and draft the discussion paper on cooperatives for the fourth session of the Working Group. He reiterated that the comparative exercise proposed would be based on a functional approach, and therefore, the Subgroup was not bound by any of the key concepts used to describe the contractual concepts discussed in the multiparty contracts discussion paper.

52. *One of the Chairs of the Subgroup on Cooperatives* confirmed they had the necessary input

to proceed; however, he noted that the methodology and approach of analysis could still change as the Working Group discussed the other two collaborative legal forms, namely multiparty contracts and corporations.

(b) Discussion on corporations

53. *The UNIDROIT Secretary-General* requested that the Working Group members leading the Subgroup on Corporations provide an update on the progress made.

54. *One of the Chairs of the Subgroup on Corporations* informed the Working Group that no Draft Discussion Paper on Corporations had been prepared, as the Subgroup had experienced some delays. He noted that the discussion on cooperatives had been useful and would help them finalise the draft for the fourth session of the Working Group.

55. *The Coordinator of the Working Group* recalled that the focus of the discussion should be on the use of corporations as an instrument of collaboration among enterprises. Therefore, corporate forms adopted by single-entrepreneur entities would probably not be considered. He noted that simplified forms of corporations used for agricultural development could be one of the issues considered, with a focus on corporate forms that permitted more than two entrepreneurs to engage in collaboration. It would be important to define the notion of simplified corporate forms for the purposes of the Guide. The instruments developed by the United Nations Commission on International Trade Law (UNCITRAL), in particular the one developed by its Working Group I on MSMEs, could be complementary in this matter. Lastly, he noted that the Working Group could further discuss whether and how the LSAE Guide would address the distinction between corporate entities with and without legal personality and the topic of limited liability.

56. *The UNIDROIT Secretary-General* noted that since the project was based on legal forms of collaboration, the analysis of single-person entities would make little sense, especially when considering access to credit and, to a certain extent, the transfer of liability. He noted that, when considering the formal, semi-formal, and informal forms of corporations (e.g., de facto entities, civil society, commercial companies, etc.), it would be particularly important to clarify the concepts used as they differed significantly across various legal systems.

57. Noting the importance of differentiating between the functional form of the company and the fiduciary duties that governed the entity, *one of the Chairs of the Subgroup on Corporations* queried whether it would be necessary to consider both aspects in the LSAE project. He noted that exploring corporate formalities, such as limited liability, asset partitioning, legal personality, and tradable shares, would be crucial and would likely involve gathering empirical evidence. He emphasised that there were various versions of corporate entities to choose from, and it would be beneficial to provide information on the similarities and common alternatives in the Guide.

58. *A member of the Working Group* noted that single-member entities had been considered in UNCITRAL's work to encourage informal businesses to register, with the belief that formalisation would facilitate their growth and expansion. She recommended that single-member entities also be considered within the LSAE project to analyse how they collaborate with other entities. Some attention could be given to the incorporation of single-person businesses, at least to indicate that formalisation of such businesses could enable collaboration with others. In addition, with regard to the discussion on limited liability and legal personality, she noted that UNCITRAL's Legislative Guide on Limited Liability Enterprises recommended the adoption of limited liability and legal personality.

59. *A member of the Working Group* reiterated that, in various jurisdictions, the single-member entity could also be an example of a collaborative legal form, in particular when it involved individuals of a family composing an enterprise. These enterprises were particular to the agricultural field, and they could be formally registered as a single-member entity, but they did not necessarily exist in a

type of corporation, partnership, or contractual form. He also noted that depending on the outcomes of the discussions of the Working Group, the future LSAE Guide's envisaged addressees might or might not include single-member entities involved in agriculture.

60. Moving forward, *one of the Chairs of the Subgroup on Multiparty Contracts* recommended that the Working Group agree upon a definition of legal personality and entity for the purposes of the LSAE project.

61. In addition, *the UNIDROIT Secretary-General* suggested further considering issues related to liability and how it might be transferred, especially in relation to third parties and cases involving spouses of entrepreneurs.

62. *The Coordinator of the Working Group* pointed out that the choice and decision-making of the legal form might be driven by third parties and influenced by external actors, factors, and incentives to aggregate (e.g., regulators, insurance and financial institutions, buyers, input providers, final retailers, certifiers, etc.). He recommended that these different scenarios on how the choice of collaboration might be made (independently, driven by third parties, or a mix of the two) be further analysed and dealt with vis-à-vis all the legal forms and in the comparative analysis.

63. *Several participants* noted the importance of further considering the issues of power imbalances and uneven decision-making processes, as well as the difficulties of gaining market inclusion when analysing the factors that might influence the choice of the collaborative legal form. It was suggested that the Working Group could offer guidance in such scenarios to inform the legal approaches that might be employed to ensure equitable benefits, especially when smallholders were involved.

64. It was also recommended that the Working Group further consider corporation documents that established corporate duties and duties of directors towards third parties (e.g., constitutive documents, articles of association, certificate of incorporation, shareholder agreement, etc.). It would be important to understand if corporations had specific instruments to ensure compliance with environmental and social standards or if they needed to rely on separate contractual mechanisms and contractual law to address situations of breach – what the remedies were, and how the entity could take action against a non-compliant shareholder, or vice-versa.

(c) Discussion on multiparty contracts

65. *The Chair* directed the participants towards the Draft Discussion Paper on Multiparty Contracts, which had been distributed via email to the Working Group, and invited the Chairs of the Subgroup to further explain the results of the intersessional work.

66. With the objective of reaching an agreement on, among other things, the working definition of "multiparty contract" and complementing the discussion initiated in the previous Working Group sessions, *one of the Chairs of the Subgroup on Multiparty Contracts* shared a PowerPoint presentation to guide the deliberations of the Working Group.

67. With regard to the definition of multiparty contracts, she noted that progress had been made and that the Subgroup had proposed a revised definition for the consideration of the Working Group: "multiparty contracts are contracts concluded by a producer with two or more other parties (not necessarily farmers) for collaboration toward the fulfilment of common objectives, the realisation of common project(s) or to carry on common activities in the field of agriculture or agrifood production, processing and distribution". She further explained that multiparty contracts were open to the participation of third parties, could be concluded orally or in a written form, and usually consisted of long-term contracts. After having proposed the general concept of multiparty contract, she proceeded by outlining, on the one hand, the differences between multiparty contracts and bilateral contracts

and, on the other hand, the differences between multiparty contracts and the two other collaborative legal forms considered in the LSAE project (cooperatives and corporations).

68. Concerning the difference between bilateral and multiparty contracts, she highlighted the following elements: (i) the number of parties (multiparty contracts being open to more than two parties) and (ii) the interdependencies among the parties (in multiparty contracts, the activity and the pursuit of common objectives depending on the commitment of all parties). She highlighted that multiparty contracts could be distinguished from linked bilateral contracts based on the presence of privity among all parties simultaneously and not only among some of the parties. In addition, in linked bilateral contracts, the transaction costs tended to be lower within each single bilateral relation, but the governance costs necessary to achieve coordination among the parties were generally higher. Conversely, in multiparty contracts, the transaction costs tended to be higher, but governance costs of interdependent parties were generally lower.

69. With respect to the boundaries between multiparty contracts, cooperatives, and corporations, she first highlighted a number of common features among these three forms, such as: (i) their suitability to organise a collective agriculture enterprise and allow for strategic collaboration among distinct and independent agricultural enterprises; (ii) their long-term nature; (iii) the presence of a collective governance structure that normally regulated the entry-exit systems and permitted the participation in decision-making through the allocation of management power internally and monitoring over cooperation; (iv) the possibility of sharing both material and immaterial resources and assets; and (v) their suitability for sharing risks, profits, and liabilities.

70. She then proceeded to illustrate the differences among multiparty contracts, cooperatives, and corporations, noting that their divergences largely depended on the applicable national laws. Accordingly, she distinguished between the differences related to the core elements of collaboration in the three legal forms considered and the differences deriving from the unique features of multiparty contracts. She noted that, generally, multiparty contracts had a more flexible internal structure (both economic and governance-wise) than the other two forms, as national laws usually did not strictly define their structure, whereas cooperatives and corporations were often more widely regulated. Moreover, multiparty contracts did not have legal personality; therefore, the group of enterprises collectively bore the effects of acts and practices engaged in by the group. Multiparty contracts might or might not benefit from asset partitioning and segregation of a common fund. Lastly, multiparty contracts normally bore unlimited liability, although specific models in some legislation might allow for limited liability. She reiterated the relevance of the issue of liability and that of a common fund, noting that it would be less likely that arrangements with limited liability and limited resources would benefit from external financing.

71. To further highlight the complementarity that might exist among the three collaborative legal forms considered in the LSAE project, she noted that all forms could function as second-tier networks whereby, for instance, cooperatives and corporations might collaborate through multiparty contracts. Therefore, she pointed out that the use of different collaborative legal forms in different stages could be advantageous, and these interactions could be further explored. In particular, she recommended that the Working Group investigate whether collaboration among cooperatives should take place through the establishment of a new cooperative or through another collaborative legal form, such as a multiparty contract.

72. Drawing attention to the eleven topics² proposed during the second session of the Working Group and set out in the draft discussion paper on multiparty contracts, she noted that the first topic,

² The eleven topics proposed were: (i) taxonomy; (ii) contract formation; (iii) entry into a multiparty contract; (iv) defining its contents; (v) governing multiparty contracts; (vi) executing multiparty contracts; (vii) change of circumstances and supervening impossibility; (viii) breach of multiparty contracts; (ix) liability; (x) remedies; and (xi) exit, dissolution and post-contractual obligations. For more information, see paragraph 38 of the [Summary Report of the Second Session](#) of the Working Group.

namely the “taxonomy of multiparty contracts”, could be further classified based on three different typologies and perspectives: (i) territorial, (ii) functional, and (iii) structural. Based on the territorial perspective, it would be possible to distinguish between national and transnational multiparty contracts by taking into account the national or cross-border scope of collaboration. If parties to the multiparty contract were mostly established in the same country, then the legal instruments deployed would be mostly regulated by that country’s applicable law. However, if parties to the multiparty contract were established in different countries, then the applicable law and competent jurisdiction would likely follow the rules of private international law. She questioned whether the classification based on the territorial perspective also applied to cooperatives and corporations and whether a comparable approach was possible.

73. Based on the functional perspective, multiparty contracts might have different characteristics depending on whether they governed collaboration among businesses operating at the same level of the chain (horizontal collaboration) or at different and subsequent levels of the chain, including producers, processors, and retailers (vertical collaboration). She further explained that vertical collaboration tended to give rise to more hierarchical contractual structures, whereas horizontal collaboration tended to be more egalitarian. Such empirical differences in the contractual design might suggest that different contractual adjustments would be required for horizontal and vertical multiparty contracts in order to ensure an effective collaboration among the parties involved. Although the distinction between horizontal and vertical collaboration was highly relevant from a functional perspective, other elements could also be taken into account to further classify multiparty contracts, such as the stage on the supply chain at which the collaboration took place (e.g., upstream, midstream, or downstream) and the distinction between the type of objectives pursued (e.g., exchange-oriented, project-oriented, or associative-oriented).

74. Finally, from a structural perspective, she illustrated several elements that could influence the design of a multiparty contract, such as: (i) the number of participants (large or small multiparty contractual arrangement); (ii) the size of participants (multiparty contracts among small farmers, large producers, or both between small producers and large input providers); (iii) the market or the contractual power of participants; (iv) the type of resources provided by each participant (financial, knowledge, service, physical input, etc.); (v) the extent to which common interest resources were also common property; and (vi) the control over innovation, whether retained by each participant or shared among all of them. She queried whether these elements could also be considered when further describing the taxonomy of cooperatives and corporations in agriculture.

75. She suggested that the LSAE Guide could illustrate the usefulness of multiparty contracts (and also of the other collaborative legal forms) for market players in terms of coordination and optimisation of the production, processing, and distribution stages, including through the adoption of new agricultural practices, such as sustainability standards and certification schemes, promotion and marketing, financing, research and development, risk and data management, human resource development, and so on.

76. In the ensuing discussion, *a member of the Working Group* noted that while in multiparty contracts with few parties, governing powers would likely be allocated equally, in more complex contractual arrangements, the allocation of governing powers could become an issue. She asked whether further clarification could be given as to who would generally coordinate the formation and the execution of the contract and supervise its execution. Moreover, she recalled that, in the course of her research, she had encountered examples of collaboration between non-governmental organisations (NGOs) and private actors and thus asked whether the multiparty contracts considered in the LSAE project were meant to include cases where NGOs were involved.

77. *One of the Chairs of the Subgroup on Multiparty Contracts* confirmed that the contracts considered in the LSAE project could include NGOs. She noted that the Subgroup was considering the governance issues separately and not within the context of the taxonomy and that those issues

would be further illustrated later during the Working Group session.

78. *A representative from FAO* warned about the level of complexity in the way multiparty contracts had been described in the presentation and in the Draft Discussion Paper that the Subgroup had provided to the Working Group. He noted that such a level of complexity could render the future Guide difficult to implement in several countries, provided that smallholders and other actors of the supply chain usually did not enter into formal contracts. He further added that in the absence of a pre-existing legal framework – which was, by contrast, usually present for cooperatives and corporations – such complexity could exacerbate power imbalances favouring the stronger and more sophisticated players in the supply chain, at least with respect to vertical collaboration. He thus invited the members of the Working Group to identify mechanisms that offered protection and reduced such risks of power imbalances. He finally pointed out that bilateral contracts could actually increase transaction costs as a whole, while multiparty contracts could reduce them by pooling people together.

79. *The Coordinator of the Working Group* highlighted that public-oriented multiparty contracts that involved a public entity (governmental or non-governmental organisation) could display different features than completely private-oriented multiparty contracts and should thus be considered separately in the project. As this would require an additional level of analysis, he recommended that the Working Group decide whether to include both types of multiparty contracts in the analysis, suggesting that, if included, multiparty contracts with the participation of public entities could be analysed in a different chapter. He also highlighted that NGOs could be seen not as a party to a multiparty contract, but rather as a third-party beneficiary, the legal qualification of which could raise some issues, especially with respect to applicable remedies and standing. In addition, from a methodological standpoint, he noted that it was important for the Working Group to bear in mind the distinction between the complexity of the discussion on multiparty contracts and the content that would actually be included in the final text of the future Guide, which would be drafted in a simplified format.

80. *One of the Chairs of the Subgroup on Cooperatives* asked whether the issue of liability in multiparty contracts could be further clarified, as it could be key for the distinction between multiparty contracts and the other two collaborative legal forms considered by the Working Group. He further asked for clarification on the distinction between vertical and horizontal multiparty contracts and whether the difference was mainly related to governance matters. He also pointed out that, while the role of “common objectives” had been mentioned several times in the Draft Discussion Paper on multiparty contracts, in the context of cooperatives, “common needs” would usually play a larger role, and this could be further taken into account when setting forth the distinctive features. He finally noted that while the role of private international law had been highlighted in the taxonomy perspective, in the context of cooperatives, the major transnational issues would arise in the field of public international law rather than private international law.

81. *One of the Chairs of the Subgroup on Multiparty Contracts* remarked that parties to multiparty contracts were usually individually and unlimitedly liable, as they could not enjoy the benefits deriving from a separate legal personality and a common fund. However, in some countries, such as Italy, certain regulations allow asset partitioning and limited liability for multiparty contracts. She clarified that the distinction between horizontal and vertical regarded the supply chain, whereby horizontal referred to collaboration between players of the same stage of the supply chain and vertical between players of different stages. By contrast, she noted that another way to interpret this distinction could be by considering the level of networks of collaboration, whereby vertical collaboration would arise in different tiers of collaboration and horizontal as a collaboration among independent cooperatives. She suggested that the Working Group further specify and adopt a common understanding regarding the notions of horizontal and vertical collaboration.

82. *A member of the Working Group* emphasised the importance of drawing clear distinctions between the three legal forms considered in the LSAE project. He recalled that the Draft Discussion Paper on Multiparty Contracts illustrated that these distinctions could be qualified differently depending on the jurisdiction. For instance, the Italian legal system contained several forms of multiparty contracts, such as network contracts, while in the German legal system, multiparty contracts took the form of a partnership. The fact that different legal systems legally qualified multiparty contracts in different ways further reinforced the need to draw clear distinctions between the three legal forms considered by the Working Group. Based on these considerations, he queried under which of the three legal forms the European Economic Interest Group would fall. In addition, he asked whether the Chairs of the subgroups could further explain the issue of liability in multiparty contracts and, more specifically, whether this liability operated internally among the parties to a multiparty contract or externally, i.e., between the members and third parties.

83. *A representative from the International Institute for Environment and Development (IIED)* agreed that the three legal forms considered in the LSAE project should not be seen as alternatives. Instead, they should be considered complementary instruments, which very often operated as building blocks of the same overall collaborative arrangement despite being subject to different governance principles and rules. He questioned how the theoretical concepts presented in the Draft Discussion Paper on multiparty contracts would be translated into practical guidance, both with respect to the process of contract formation and the content of the multiparty contract, as they varied based on the parties involved. He noted the importance of the Working Group deciding the level of abstraction to be adopted in the LSAE Guide. As was done for the development of the UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts, he queried whether the Subgroup had already considered concrete examples of multiparty contracts from diverse contexts, especially beyond the practices in Europe and North America. He noted that this would contribute towards the practical examination of their formation, content, and problems and would help identify potential solutions in a very operationally oriented way. He also shared information on IIED's project on Advancing Land-based Investment Governance (ALIGN), which also required gathering several concrete examples from across the world.

84. Replying to some of the questions raised, *one of the Chairs of the Subgroup on Multiparty Contracts* stated that, while the Italian network contract surely fell within the category of multiparty contracts, the European Economic Interest Group had a more hybrid legal form because of its legal personality. She nevertheless questioned whether the European Economic Interest Group was indeed a relevant legal form for the agricultural sector.

85. *The Coordinator of the Working Group* noted that the purpose of providing the examples of multiparty contracts from Italy and Germany in the Draft Discussion Paper was to demonstrate that different national legal systems might suggest different legal forms to fulfil similar functions. He emphasised the importance of the LSAE project being evidence-based. Nonetheless, he informed the Working Group of several difficulties that the Subgroup had encountered in finding concrete examples of multiparty contracts. Therefore, he acknowledged that the content developed in the LSAE Guide would probably go beyond what was available in practice, considering that multiparty contracts seemed to be underused.

86. Recognising the importance of adopting a functional approach to render the three collaborative legal forms comparable, *the UNIDROIT Deputy Secretary-General* noted that the three legal forms might overlap in some cases, as they all could fulfil the same functions. However, in other cases, only one or two of the three forms might be able to fulfil (or better suited to fulfil) a certain function.

87. *The Chair* drew the attention of the Working Group to the Argentine legal system, in particular to its new civil and commercial code, to highlight that it provided a legal framework for several types of multiparty contracts (e.g., organisational and participatory contracts). The new Argentine code

regulated different categories of multiparty contracts, including: (i) joint ventures (where the objective was to carry out one or more operations through a common contribution, without creating a separate legal entity, and the manager of which would have joint and several liability); (ii) collaboration grouping contracts or pools (where the participants established a common organisation in order to facilitate or develop certain phases of a joint activity); (iii) transitory union contracts (where the participants agreed on the development or execution of specific work, services or supplies within or outside the country); and (iv) consortia (where the participants established a common organisation to facilitate, develop, increase, or carry out operations related to the economic activities of its members in order to increase or improve their outcomes). He further added that the new civil and commercial code distinguished between multiparty contracts and relational contracts, whereby the latter consisted of two or more independent bilateral contracts linked by a previously established common economic purpose. He also explained the distinction that existed between multiparty contracts and bilateral long-term contracts, whereby time was essential for the fulfilment of the object, and reciprocity should be maintained.

88. *A representative from FAO* explained that the FAO Development Law Service had not specifically worked on multiparty contracts but noted that the examples given were useful for seeking further empirical evidence through local FAO offices.

89. *A representative from IFAD* also informed the Working Group that they would try to identify examples of multiparty contracts in the projects that IFAD facilitated with various private companies and stakeholders in developing countries.

90. *The Coordinator of the Working Group* invited the participants to further discuss the notion of “governance” in multiparty contracts, noting it could contribute to drawing a clearer line between multiparty contracts and bilateral contracts, as well as between the three collaborative legal forms considered. For the purposes of the LSAE project, he noted that “governance” could be defined as “the different systems through which parties allocated decision-making powers among themselves”. He recalled that, in the Draft Discussion Paper on Multiparty Contracts, two different kinds of governance had been identified, namely: (i) participatory governance and (ii) delegated governance. He clarified that in “participatory governance”, all parties, although not necessarily unanimously, participated in the decision-making process, while in “delegated governance”, parties delegated the decision-making power to an executive committee. In addition, he drew the participants’ attention to the matter regarding the “execution of multiparty contracts” and how the distinction between “independent and interdependent obligations” influenced the execution of the contract, especially with respect to breach of contract. He remarked that the nature of the resource shared (e.g., material or immaterial) could also have an impact on the execution of contracts, as it raised issues regarding the interplay between property and contracts.

91. Finally, he highlighted the need to further discuss the topic of “remedies in multiparty contracts”, noting that the typical contractual remedies (injunctions, corrective remedies, compensatory remedies, and contract termination) might not be as useful in multiparty contracts because of the objective of preserving collaboration among the parties and the need to minimise the impact of a breach on the whole supply chain. As a consequence, he highlighted that corrective remedies should constitute the main form of remedies in multiparty contracts. In case of a breach of contract, corrective remedies would require other parties to intervene to fix the problem caused by the breach of the infringing party. He recalled that corrective remedies could often be found in practice; however, they were rarely set out in the contract and were rather merely social norms. Therefore, he suggested that corrective remedies be addressed as contractual obligations and duties of solidarity or reciprocity.

92. *A member of the Working Group* pointed out that it could sometimes be challenging to convince parties to switch from an informal setting (referring to social norms) to a formal one (referring to legal remedies), as they would rather enjoy the flexibility that social norms provided in

spite of their lack of legal enforceability.

93. *One of the Chairs of the Subgroup on Cooperatives* highlighted that the forms of corrective remedies based on solidarity or reciprocity were frequently translated into legal norms in the cooperative's sector, either through bylaws, decisions of the general assembly, or contractual clauses. However, the progressive integration of cooperatives in value chains could result in an increase in the use of corrective remedies determined by third parties.

94. *The Coordinator of the Working Group* invited the participants to discuss the issues of liability in multiparty contracts. Among the several issues that deserved to be discussed, he proposed to focus on the issue of financial resources and the type of liability regime that would apply to separate common funds.

95. *One of the Chairs of the Subgroup on Multiparty Contracts* recommended that the Working Group further explore whether multiparty contracts could be based on internal or external financing and how they could organise sufficient security for external financing. As the issue of security and asset partitioning greatly depended on the legal framework of the jurisdiction considered, she proposed including a word of caution in the Guide to inform readers that different rules could apply depending on the applicable law. However, she informed the Working Group that while multiparty contracts were not conceived as a means for segregating assets, certain national laws permitted forms of asset partitioning within multiparty contracts (e.g., network contracts and consortia under Italian law).

96. *A member of the Working Group* highlighted that interdependent obligations would likely become more frequent as sustainability was one of the major goals for agricultural enterprises. Therefore, the way contracts internalised socio-environmental externalities could be further analysed as one of the reasons that justified collaboration among several parties. He mentioned the case of water and soil management, where different farmers had to cooperate in order to ensure the quality of the natural resources used.

97. When discussing sustainability standards, *a representative from FAO* proposed distinguishing between "legally mandated sustainability goals" and "voluntary sustainability goals" adopted by the parties. In the first case, he noted that the remedies would likely be imposed externally, while in the second case, the remedies would be most likely agreed internally.

98. The Working Group supported the recommendations made to proceed with the analysis of multiparty contracts and agreed with the methodological proposal to base the analysis of the three collaborative legal forms on a functional approach and empirical evidence while avoiding overly theoretical comparisons.

(d) Discussion on the comparison and combination of different collaborative legal forms

99. *The Chair* drew the participants' attention to point D of the Annotated Agenda on the comparison and combination of different collaborative legal forms. He queried whether the Working Group could agree on the working definition of "collaboration", as proposed in paragraphs 52 and 53 of the Revised Issues Paper: "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."

100. *A member of the UNIDROIT Secretariat* also recommended that the Working Group further discuss the notion of "common objectives", which played a key role in the definition of collaboration. She drew the participants' attention to the non-exhaustive list of objectives in paragraph 50 of the Revised Issues Paper: (i) increasing efficiency, (ii) enhancing sustainable agricultural development,

(iii) exploring innovation opportunities, and (iv) addressing unfair commercial practices.

101. Recalling a previous discussion on the definition of “multiple players”, a member of the Working Group suggested adapting the definition of collaboration to refer to collaboration that took place “between two or more players”, as long as it was open to more players. She questioned the meaning of the term “players”, suggesting that the word “stakeholders” or “parties” would be more appropriate. She finally recalled that, during the previous discussions, some participants of the Working Group had mentioned that not only “common objectives” should be considered in the definition of collaboration but also “common needs and common shared interests”.

102. The Coordinator of the Working Group highlighted that collaboration could also arise in situations of conflicting interests where parties nonetheless reached a compromise through a contract that might not align their interests perfectly but would allow them to pursue common objectives.

103. One of the Chairs of the Subgroup on Cooperatives noted that it would be important to mention the Guide’s focus on collaboration taking place within the “value chain”.

104. A representative from ICA suggested that the notion of common objectives could also include that parties collaborated to “share risks”. He further suggested adding a reference to “interrelated interests” or “overlapping aims” to the definition of collaboration.

105. A representative from FAO argued that the non-exhaustive list of objectives described in paragraph 50 of the Revised Issues Paper (including (i) increasing efficiency, (ii) exploring innovation opportunities, (iii) addressing unfair commercial practices and power imbalances, and (iv) gaining access to resources) all contributed towards the overall objective of enhancing sustainable agricultural development. He queried whether it would be necessary to consider all the objectives at the same level or if it would be possible to address all of them under the lens of the primary objective of sustainable agricultural development (including social, environmental, and economic sustainability). Thus, he suggested considering the transformation and sustainability of agricultural systems as the main and ultimate objective in the working definition of “collaboration”.

106. A representative from IDLO suggested including “maximisation of commercial opportunities” in the notion of common objectives.

107. One of the Chairs of the Subgroup on Cooperatives pointed out that the objective of “maximisation of commercial opportunities” could be problematic in the field of cooperatives, in particular when intended as the generation of profits. He thus suggested leaving out the reference to “commercial opportunities”.

108. A member of the Working Group suggested that it be made clear that the Working Group was endorsing collaboration to the extent that it did not infringe competition law or other forms of market regulation.

109. One of the Chairs of the Subgroup on Multiparty Contracts expressed her concern that excessive additions to the definition of collaboration could create confusion. She pointed out that it should be implied that the definition provided was consistent with competition law and other bodies of law. She also added that the purpose of addressing unfair commercial practices was included under power imbalances and that only the latter should thus be included.

110. The Working Group agreed to adapt the definition of “collaboration”, which had been proposed in the Revised Issues Paper. Moving forward, the working definition of “collaboration” would be understood as “a form of interaction among two or more parties with common objectives, overlapping needs, interrelated interests and/or shared risks that may be limited to exchanges of goods and services or imply an engagement in projects within a value chain, with or without shared

resources”. The three collaborative legal forms considered in the LSAE Guide would be understood as vehicles to maximise opportunities for the transformation and sustainability of agricultural systems. The non-exhaustive list of objectives to be achieved through collaborative legal forms would continue being adapted as the work of the Working Group progressed, in consistency with general rules of law.

111. In terms of methodology for the comparative analysis, the Working Group agreed that further work was required to identify which “functionally equivalent categories” would be considered in the chapters dedicated to each legal form (such as taxonomy, formation, governance, exit, and dissolution).

(e) Discussion on informal and semi-formal forms of agricultural enterprises

112. *The Chair* opened the discussion on informal and semi-formal forms of agricultural enterprises, inviting the participants to decide whether the Guide should devote a special section to the formality/informality distinction. He also highlighted the need to clearly define the concepts of formality and informality, noting that such distinction should not be understood as equivalent to lawful and unlawful.

113. *One of the Chairs of the Subgroup on Multiparty Contracts* noted the importance of clarifying whether the distinction between formality and informality referred to the type of collaboration or to the type of agricultural enterprise. She proposed two possible approaches. Under the first approach, informal forms of collaboration would be covered in the Guide, but the choice between formal and informal structures would be left to the addressees. By contrast, under the second approach, the informal forms of collaboration would be considered as a pre-contextual element, whereas the Guide would mainly focus on promoting formal collaborative legal structures.

114. *The Coordinator of the Working Group* proposed that the introduction of the Guide could mention this distinction without devoting a specific section to it and that the different chapters would deal with it as deemed necessary.

115. *A member of the Working Group* noted that it would be important to agree upon a shared understanding of the concept of informal businesses. She informed the Working Group that in the context of the UNCITRAL Legislative Guide on Limited Liability Enterprises, informality had been primarily used in reference to entities that had not complied with registration requirements. She also emphasised that aspects of informality and formality could be looked at on a relative spectrum, more than as something definite. She agreed that it would be important to specify that the distinction between formality and informality did not concern the legality of the collaboration. She further referred to the definitions of formality and informality provided in paragraphs 101 and 103 of the Revised Issues Paper. She noted that the terms “informal” and “unenforceable” should not be used as synonyms and argued that the level of compliance with the legal and regulatory framework could be sufficient to explain the level of formality of a given enterprise. Finally, she suggested that examples of informal collaboration could be provided in the Guide in order to describe the extent to which informal collaboration worked and how its shortcomings might be tackled through the collaborative legal forms considered in the project.

116. *Another member of the Working Group* reiterated that not being formally registered did not necessarily mean that the business operating purely informally was illegal. He argued that informal structures, such as those that arose in the informal economy and which were not recognised by the State, should not be considered unlawful enterprises. Lastly, he suggested that the Working Group could further reflect on whether the LSAE Guide intended to promote business operations in the formal sector.

117. *A representative from IFAD* noted that in some circumstances, in the agricultural field in particular, even registered enterprises could have informal practices that influenced market decisions (e.g., involvement of family members who were not registered as directors or members of the company). He recalled the fact that in less developed countries, the majority of agricultural enterprises were informal. Therefore, he recommended that the Working Group consider developing guidance to describe the pathways towards formality to make sure that informal businesses understood some of the benefits of formalisation, such as access to credit, access to markets, and other opportunities for sustainable growth.

118. *One of the Chairs of the Subgroup on Cooperatives* recommended that the Working Group consider the notion of formalisation in a broader sense, beyond being registered or not. He noted that informal businesses existed for many reasons (e.g., lack of trust, failures of State authorities) and that formality was not always perceived positively. Moreover, he noted that informal organisations could still be very formal, as they might have their own normative practices. Therefore, while the Working Group could consider developing pathways for formality, it would be important to point out some of the risks of the transition as well. Lastly, he noted that the International Labour Organization (ILO) had done extensive work in this area, and it could be used as a basis for the LSAE project.

119. *One of the Chairs of the Subgroup on Corporations* noted that the issue of formality and informality could be analysed as a question of from where the rules were derived (e.g., State normative system or social norms and customs) and how they were enforced (e.g., formal or reputational sanctions). He agreed with the proposal to develop a pathway to formality in the LSAE Guide, also considering the various instances where informality might exist as a complement to formal legal structures.

120. *A representative from FAO* saw no reason to limit the Guide to formal forms of collaborations, provided that the formal/informal distinction regarded the existence of formalities and not the legal/illegal distinction. He requested clarification on how collaboration would be examined within the context of the formal, semi-formal, and informal spectrum and if collaboration would entail roughly similar choices regardless of registration and/or the overall nature of an entity.

121. *A representative from IFAD* noted that the issue with informality depended on the contextual framework in which entities operated, making a universal application and set of rules difficult. He noted the work of IFAD and how they had operated with informal entities towards formalisation for improved access to finance. He provided an example of a project in Papua New Guinea where farmers had chosen a formal arrangement and had been aggregated into registered entities (e.g., partnerships) to facilitate market and credit access. He noted that the LSAE Guide could highlight informality and consider pathways to move away from it, also respecting that, at times, entities might prefer to remain informal, which should still be supported within the Guide.

122. *One of the Chairs of the Subgroup on Multiparty Contracts* supported the idea that the Guide should address informal collaboration to demonstrate how informal entities might also benefit from the guidance provided.

123. *A representative from FAO* suggested that the Working Group could also consider the issue of formality and informality from the perspective of economic recognition to ensure that informal businesses would not be left behind.

124. *The Coordinator of the Working Group* proposed that each of the chapters dedicated to the three legal forms could address the issue of formality, semi-formality, and informality as they emerged within each legal form.

125. To avoid the development of a legal guide with a high level of complexity and which might

be seen as an obstacle for smallholders and smaller enterprises, the Working Group agreed to further explain the “pathway towards formalisation” in the introduction and within the chapters of each collaborative legal form (multiparty contracts, cooperatives, and corporations). Drafting the Guide in a modular structure would allow readers to access different levels of complexity, starting from a simplified analysis of the three collaborative legal forms, which would increase in complexity as required. A more specific suggestion on the modular structure of the Guide would be presented in the fourth session of the Working Group. It was also agreed that a disclaimer would be added to the introduction of the Guide to inform that the definition of informality would not endorse or suggest illegality in any way.

Item 6: Organisation of future work

126. *A member of the UNIDROIT Secretariat* recalled that during the second session of the Working Group, participants had agreed to propose a new title for the project. She referred to paragraph 47 of the Revised Issues Paper and read out the new title proposal, “Collaborative Legal Instruments for Individual and Collective Agricultural Enterprises”. She further recalled that a change of the title would require the approval of UNIDROIT’s Governing Council and noted that, in the Secretariat’s view, the new title proposed was too long. Therefore, she invited the Working Group to discuss the proposal again to formulate a more concise suggestion. She proposed the title set out in paragraph 48 of the Revised Issues Paper for consideration: “Collaborative Legal Structures for Agricultural Enterprises”.

127. *A representative from FAO* agreed with the proposal to change the project’s title to “Collaborative Legal Structures for Agricultural Enterprises”.

128. *A member of the Working Group* proposed to add a reference to “Micro, Small, and Medium-sized Enterprises (MSMEs)” to the title and queried whether the word “Guide” would also appear.

129. *The Coordinator of the Working Group* remarked that the scope of the analysis should also encompass collaboration with larger firms and not only MSMEs, especially considering that this was often the case in the newest forms of collaboration, such as within digital platforms. He thus noted that it would be preferable if the title did not include a reference to MSMEs. Finally, he supported the inclusion of a reference to “Guide” in the title.

130. The Working Group agreed to propose the following new title for the approval of the UNIDROIT Governing Council at its 102nd session, which would take place on 10-12 May 2023: “UNIDROIT/FAO/IFAD Legal Guide on Collaborative Legal Structures for Agricultural Enterprises”.

131. In terms of next steps, it was announced that the fourth session of the Working Group would be held at the premises of UNIDROIT in Rome on 8-10 November 2023. Until then, the Subgroups would continue their intersessional activity and prepare draft chapters for discussion. The tentative date for the completion of the LSAE Project would be in 2025, following six sessions of the Working Group and a consultation period.

Items 7 & 8: Any other business; Closing of the session

132. In the absence of any other business, *the Chair* and *the Deputy Secretary-General* thanked all the participants for their invaluable contributions and declared the session closed.

ANNEXE I**ANNOTATED AGENDA**

1. Opening of the session and welcome
2. Adoption of the agenda and organisation of the session
3. Adoption of the Summary Report of the second session ([Study LXXXC – W.G. 2 - Doc. 3](#))
4. Update on intersessional work and developments since the second Working Group session
5. Consideration of matters identified in the Revised Issues Paper ([Study LXXXC – W.G. 3 - Doc. 2](#))
 - a. Discussion on cooperatives
 - b. Discussion on corporations
 - c. Discussion on multiparty contracts
 - d. Discussion on the comparison and combination of different collaborative legal forms
 - e. Discussion on informal and semi-formal forms of agricultural enterprises
6. Organisation of future work
7. Any other business
8. Closing of the session

ANNEXE II**LIST OF PARTICIPANTS****MEMBERS**

Mr Ricardo LORENZETTI <i>Chair</i>	Justice Supreme Court of Justice of Argentina
Mr Fabrizio CAFAGGI <i>Coordinator</i>	Judge Italian Council of State and Professor University of Trento and LUISS
Mr Virgilio DE LOS REYES <i>(Excused)</i>	Dean De La Salle University
Ms Isabelle DESCHAMPS	Lawyer, Consultant Law and Development
Mr Matteo FERRARI	Professor University of Trento
Ms Cynthia GIAGNOCAVO	Professor Universidad de Almeria
Mr Hagen HENRY	Professor University of Helsinki
Ms Paola IAMICELI	Vice Rector University of Trento
Mr Matthew JENNEJOHN	Professor Brigham Young University
Mr Georg MIRIBUNG <i>(Excused)</i>	Professor Eberswalde University for Sustainable Development
Mr Siniša PETROVIĆ	Professor University of Zagreb
Mr Carlo RUSSO	Professor University of Cassino and Lazio Meridionale
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