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Legal Structures for Agricultural Enterprises**

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**SECRETARIAT'S REPORT ON THE BACKGROUND, STATUS OF THE PROJECT AND
INTERSESSIONAL DEVELOPMENTS**

1. The International Institute for the Unification of Private Law (hereinafter "UNIDROIT" or "the Institute"), in collaboration with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD), have undertaken a joint project to develop an international legal guide on [Collaborative Legal Structures for Agricultural Enterprises](#) (hereinafter "LSAE", "the Project", or "the future Guide").

2. This report provides an update on the work carried out by: (i) the Working Group established in 2022 and (ii) the three informal Subgroups established in 2023. The update is mainly based on the outcomes and developments after the third session of the Working Group held on 8-9 May 2023 (see the Summary Report: [Study LXXXC – W.G.3 – Doc. 3](#)) and the intersessional work undertaken between June-October 2023. It contains questions the Working Group may wish to consider relating to general matters (e.g., regarding the target audience, the purpose and format of the future Guide, as well as the organisation of future work).

3. This document is mostly aimed at clarifying the scope of the Project and the content of the future Guide. This document does not intend to provide an exhaustive list of issues nor a full legal analysis of each topic. Rather, its purpose is to provide guidance for the Working Group's deliberations. This report is accompanied by additional documents, which will be the main object of discussion at the fourth Working Group session.

- Draft Discussion Paper on Corporations (Study LXXXC – W.G.4 – Doc. 3);
- Draft Discussion Paper on Cooperatives (Study LXXXC – W.G.4 – Doc. 4);
- Draft Discussion Paper on Multiparty Contracts (Study LXXXC – W.G.4 – Doc. 5);
and
- Draft Table of Contents of the Guide (Annexe to this document).

4. Each of the above-mentioned documents contain a description of issues and questions to guide the discussion of the Working Group during the fourth session. This document is divided into two main sections: (i) preliminary matters and (ii) general matters concerning the scope of the prospective guidance instrument.

TABLE OF CONTENTS

I.	PRELIMINARY MATTERS	3
	A. Background of the Project	3
	B. Organisation of the work	4
	1. Composition of the Working Group	4
	2. Methodology and timeline of the Project	4
	C. Working Group sessions and intersessional work	5
	1. First Working Group session (23 – 25 February 2022)	5
	2. Intersessional work (April – November 2022)	5
	3. Second Working Group session (2 – 4 November 2022)	6
	4. Intersessional work (January – April 2023)	7
	5. Third Working Group session (8 – 9 May 2023)	7
	6. Intersessional work (June – October 2023)	7
	7. Next sessions of the Working Group and intersessional work	8
II.	GENERAL MATTERS CONCERNING THE INSTRUMENT	8
	A. Purpose of the Project	8
	B. Target audience	9
	C. Format and structure	10
	D. Title	11
	E. Methodology	11
III.	CONTENT OF THE INSTRUMENT	13
	A. Definition of “collaboration” in relation to the Project	13
	B. Types of collaborative legal forms covered	14
	C. Definition of “agricultural enterprises” in relation to the Project	15
	D. Multiparty contracts	15
	E. Agricultural cooperatives and corporations	18
	F. Impact of “Exogenous Factors” on collaborative legal forms: digitalisation, sustainability and access to finance	19
ANNEXE		23

I. PRELIMINARY MATTERS

A. Background of the Project

5. The development of the UNIDROIT/FAO/IFAD Project on “Collaborative Legal Structures for Agricultural Enterprises” began during the 2020-2022 UNIDROIT Work Programme, initially with a medium-priority level,¹ and was elevated to the high-priority level for the 2023-2025 Work Programme by the UNIDROIT Governing Council² and General Assembly.³ The LSAE Project is the third project undertaken in partnership with FAO and IFAD in the field of private law and agricultural development. It is a follow-up from the [Legal Guide on Contract Farming](#) (finalised in 2015) and the [Legal Guide on Agricultural Land Investment Contracts](#) (finalised in 2020).

6. UNIDROIT’s work in the field of Private Law and Agricultural Development began in 2009 when the Governing Council and General Assembly agreed that UNIDROIT’s broad mandate gave the Institute a wide range of opportunities to contribute to the Sustainable Development Goals (SDGs) and to create new synergies with other Rome-based intergovernmental organisations, in particular those focusing on agricultural development.⁴

7. In 2011, the UNIDROIT Secretariat organised a Colloquium on “Promoting Investment in Agricultural Production: Private Law Aspects” (Rome, 8-10 November 2011). The Colloquium focused on the following potential areas of work: (a) title to land, (b) contracts for investment in agricultural land, (c) legal structure of agricultural enterprises, (d) contract farming, and (e) the financing of agriculture.⁵ The tripartite partnership between UNIDROIT, FAO, and IFAD was established after the above-mentioned Colloquium.

8. As a first step for the development of the LSAE Project, the UNIDROIT Secretariat analysed the existing international initiatives to avoid overlap and duplication of previous efforts.⁶ A feasibility study⁷ was prepared for the 99th session of the Governing Council (23-25 September 2020), suggesting that the LSAE Project could investigate and make recommendations on how smallholders and agricultural Micro-, Small-, and Medium-sized Enterprises (agri-MSMEs) can: (i) improve market access; (ii) improve forms of aggregation and coordination of agricultural enterprises through the use of contractual networks, the development of corporate governance rules and the delineation of ownership; (iii) ease access to critical resources and insurance through investment vehicles and (iv) address unfair commercial practices and cases of abuse of power or dominant position through the existing dispute settlement mechanism and other remedies so as to obtain more responsible business conduct.⁸

9. The Governing Council authorised the Secretariat to continue its consultations to identify the main legal issues in which UNIDROIT, in cooperation with FAO and IFAD, could make a meaningful

¹ [UNIDROIT 2019 – C.D. \(98\) 14 rev.2](#), paras. 78-82 and [UNIDROIT 2019 – A.G. \(78\) 12](#), para. 51.

² [UNIDROIT 2022 – C.D. \(101\) 21](#).

³ [UNIDROIT 2022 – A.G. \(81\) 9](#).

⁴ [UNIDROIT 2009 – C.D. \(88\) 17](#), para. 88 and [UNIDROIT 2009 – C.D. \(88\) 7. Add.6](#).

⁵ The Acts of the Colloquium were published in the [Uniform Law Review](#), Oxford University Press, Volume 17, Issue 1-2 (2012).

⁶ For more information on the relationship between the LSAE Project and other international initiatives, as well as a description of international instruments that should be taken into account by the Working Group when developing the guidance document see section E of the [Issues Paper](#) prepared for the first Working Group session, paras. 24-31.

⁷ [UNIDROIT 2020 – C.D. \(99\) B.5](#).

⁸ Committee on World Food Security (CFS), [Principles for Responsible Investment in Agriculture and Food Systems](#) (2014), paras. 50-52.

contribution. Accordingly, on 15 and 16 April 2021, a Consultation Webinar was co-organised to discuss the LSAE Project and, notably, to outline the possible topics to be addressed in the prospective guidance instrument.⁹

10. The conclusions and recommendations of the Consultation Webinar were presented to the Governing Council at its 100th session (22-24 September 2021), which endorsed the LSAE Project and upgraded its priority to high.¹⁰ At its 101st session (8-10 June 2022), the Governing Council was informed by the Secretariat that a Working Group had been established to carry out the Project.

B. Organisation of the work

1. Composition of the Working Group

11. Consistent with UNIDROIT's established working methods, the Secretariat set up a Working Group composed of experts selected for their expertise in the fields of contract law, corporate law, commercial law, property law, agricultural law, digital technology, and sustainability. Non-legal experts, such as economists, have also been invited to participate in the Working Group. Experts participate in a personal capacity and represent the world's different legal systems and geographic regions.

12. The Working Group also includes representatives of the legal departments of FAO and IFAD, as well as technical experts from other departments, such as FAO's "Agrifood Economics Division" and "Food Systems and Food Safety Division" and IFAD's "Research and Impact Division" and "Inclusive Rural Finance, Markets and Value Chains Division." Moreover, a number of international and regional intergovernmental organisations, farmers associations, non-governmental organisations, academic institutions, and private sector representatives have also been invited to participate as observers in the Working Group. It is expected that, in addition to contributing to the discussions of the Working Group, the participation of these stakeholders will assist in the promotion, dissemination, and implementation of any international instrument that is ultimately developed and adopted.

13. Furthermore, within the framework of a Chair Programme in the field of private law and sustainable agricultural development supported by the Directorate General for Development Cooperation (*Direzione Generale per la Cooperazione allo Sviluppo* - DGCS) of the Italian Ministry of Foreign Affairs and International Cooperation (*Ministero degli Affari Esteri e della Cooperazione Internazionale* - MAECI), a senior researcher joined the UNIDROIT Secretariat in November 2022 to participate in the Working Group and assist with the development of the LSAE Project.

14. The Working Group is chaired by UNIDROIT Governing Council Member Justice Ricardo Lorenzetti (Supreme Court of Argentina) and coordinated by Professor Fabrizio Cafaggi (Judge at the Council of State of Italy and Professor at the University of Trento and LUISS, Rome). The list of members and observers of the Working Group is available at the [LSAE Project's dedicated website](#).¹¹

2. Methodology and timeline of the Project

15. The LSAE Working Group undertakes its work in an open, inclusive, and collaborative manner. As consistent with UNIDROIT's practice, the Working Group has not adopted any formal rules of

⁹ The [Summary Report](#) is available on UNIDROIT's website and a [video](#) recording of both days of the Consultation Webinar is available on UNIDROIT's YouTube channel.

¹⁰ [UNIDROIT 2021 – C.D. \(100\) B.24](#), para. 80.

¹¹ The Secretariat notes that the composition of the Working Group is an open process and additional members and observers may be added as needed.

procedure and seeks to make decisions through consensus. Working Group meetings are held in English without translation.

16. The Working Group meets twice a year for two or three days in Rome, Italy, at the premises of UNIDROIT. Remote participation is possible, although experts are expected to attend in-person if circumstances permit.

17. The documents for the Working Group meetings will generally be distributed at least one week in advance of each session. After each meeting, the UNIDROIT Secretariat will share a summary report with all participants on a confidential basis for internal purposes of the Working Group only. A separate, high-level summary of the meetings is published on the UNIDROIT website.

18. The LSAE Project is a high-priority project on the current UNIDROIT Work Programme for the period 2023-2025. It is expected that the preparation of the LSAE Guide will require six Working Group sessions, followed by a period of consultations before the complete draft is submitted for adoption by UNIDROIT, FAO, and IFAD in 2025.

C. Working Group sessions and intersessional work

1. First Working Group session (23 – 25 February 2022)

19. The first session of the LSAE Working Group took place in a hybrid format, in Rome at UNIDROIT and via videoconference, from 23 to 25 February 2022. The Working Group was attended by 40 participants who were welcomed by opening remarks from UNIDROIT Deputy Secretary-General Professor Anna Veneziano, FAO Legal Counsel Ms Donata Rugarabamu, and IFAD's General Counsel Ms Katherine Meighan. The discussions were guided by an Issues Paper ([Study LXXXC – W.G. 1 – Doc. 2](#)) prepared by the Secretariat in collaboration with FAO, IFAD and a number of experts of the Working Group.

20. As further detailed in the Summary Report of the Working Group's first session ([Study LXXXC – W.G. 1 – Doc. 3](#)), among other topics, participants discussed (i) the issue of formality and informality of actors operating in the value chain; (ii) the realities and challenges faced by actors operating in the midstream segment of the agri-food supply chain, beyond the "production stage" and in low- and middle-income countries; (iii) issues relating to market structure and coordination; and (iv) the digital transformation underway in the agri-food sector and how it affects the internal and external functioning of agricultural enterprises.

21. The Working Group discussed that the LSAE Project could start by focusing on the transformations in the agri-food supply chains and their effects on the choice of legal forms of efficient commercial collaboration among agricultural enterprises, including both horizontal and vertical collaborative ventures. Addressing both horizontal and vertical collaborative ventures would contribute to a systems perspective in terms of collaboration, as opposed to the more value chain linear collaboration lens.

22. Other matters examined during the first session included the impact of market structure on agricultural enterprises, the role of midstream agri-MSMEs in contributing to rural transformations, the contractual arrangements for collaboration in agri-food supply chains, particularly regarding the use of multiparty contracts, and the impact of technology, sustainability, green finance, and insurance on the structure of agricultural enterprises.

2. Intersessional work (April – November 2022)

23. After the first Working Group session, the UNIDROIT Secretariat agreed with FAO and IFAD to undertake intersessional meetings to advance the work on the Project. Between March and November

2022, nearly all Working Group members and observers were involved in an intense working schedule. Three intersessional meetings were organised. The first intersessional meeting took place on 16 June 2022 and focused on approaches to gather empirical evidence for the LSAE Project. The Working Group reconvened for the second intersessional meeting on 22 September 2022 and focused on agricultural cooperatives. Finally, the third intersessional meeting took place on 30 September 2022 and focused on corporations, digitalisation, and access to credit and financing.

24. The purpose of the first intersessional meeting was to (i) collect empirical evidence on the use of the three categories of collaborative legal forms (multiparty contracts, cooperatives, and corporations), (ii) analyse the legal differences between the three categories of collaborative forms, and (iii) discuss the definition of certain key terms that remained unclear (i.e., agricultural enterprise, agricultural markets, midstream segment in agri-food chains, family enterprise, community-based enterprise).

25. The purpose of the second intersessional meeting was to reflect upon the differences and main challenges stemming from the legal structure of agricultural cooperatives composed of only farmers and those including other participants (e.g., input providers, processors, retailers). In addition, the meeting aimed to collect empirical evidence to understand the role of agricultural cooperatives in the promotion of collaboration in agri-food value chains versus other legal forms, such as multiparty contracts and corporations. A number of experts were invited to examine the specific and unique aspects of the cooperative enterprise operating in the agricultural sector across different jurisdictions.

26. The third intersessional meeting discussed how corporations operate as instruments of collaboration among producers and other actors. It also examined the relevance of digitisation and digitalisation in defining the choice of legal forms and the factors that limit and improve access to credit and financing.

3. Second Working Group session (2 – 4 November 2022)

27. The second hybrid session of the Working Group was held in Rome and remotely between 2 and 4 November 2022. The Working Group was attended by a total of 44 participants, and the discussions during this session were guided by a Revised Issues Paper ([Study LXXXC – W.G.2 – Doc. 2](#)). The Summary Report of the second session is available in [Study LXXXC – W.G.2 – Doc. 3](#).

28. During the second session, participants further explored: (i) the notion of agricultural enterprises, (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 of implementing sustainable practices across the supply chain and to access finance.

29. With regard to cooperatives, participants considered: (i) the internationally recognised cooperative identity and principles¹², (ii) the reasons why cooperatives are an adequate legal form to collaborate in the field of agriculture, (iii) cooperative governance, finance and the federated cooperative structure and (iv) the different forms of participation of cooperatives in the supply chain.¹³

30. With regard to multiparty contracts, participants considered the concept of what constitutes a multiparty contract and its boundaries/relationships with the other legal forms considered in the

¹² Seven cooperative principles and values were discussed, such as self-help, self-responsibility, democracy, equality, equity and solidarity.

¹³ See the [Summary Report](#) of the second session of the Working Group, paras. 68-121.

LSAE Guide. They also discussed the core aspects and key issues worth considering¹⁴ and proposed eleven topics for the analysis of multiparty contracts in the LSAE Guide.¹⁵ The Working Group 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 its third session.

4. Intersessional work (January – April 2023)

31. One of the key resolutions of the Second session of the Working Group was the creation of three subgroups that would advance their respective topics, namely: cooperatives, corporations and multiparty contracts. It was envisioned that despite not planning any intersessional meeting in the period November 2022 to May 2023, these subgroups would start developing discussion papers for the third Working Group meeting.

5. Third Working Group session (8 – 9 May 2023)

32. The Working Group held its third session on 8-9 May 2023. The Working Group was attended by 40 participants, and the discussions were guided by a Revised Issues Paper ([Study LXXXC – W.G.3 – Doc. 2](#)) and a (confidential) Draft Discussion Paper on Multiparty Contracts. The Summary Report of the third session is available in [Study LXXXC – W.G.3 – Doc. 3](#).

33. During this session, the Working Group further discussed the general focus on legal forms for collaboration and the differences between contracts and legal entities. A list of topics and key concepts to be addressed in each of the chapters dedicated to the different collaborative legal forms was also analysed. The Working Group considered the fundamental differences between the legal forms, in particular regarding the objectives and interests concerned. The Subgroup on Cooperatives proposed to develop an alternative, complementary list of topics to the one that had been proposed for the analysis of multiparty contracts.

34. The Working Group revisited the notion of “collaboration” deciding to slightly adapt it to: “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.” Other matters examined during the third session included the issues of informality and semi-formality in agri-businesses. Lastly, the Working Group decided to propose to the UNIDROIT Governing Council a new working title for the Project: “Collaborative Legal Structures for Agricultural Enterprises”, as the previous title, “Legal Structure of Agricultural Enterprises”, did not reflect the content that was actually being developed.

6. Intersessional work (June – October 2023)

35. During the third intersessional period, additional efforts were made to gather empirical evidence on the use of the legal forms covered in the Project. Particularly in relation to multiparty contracts, during the months of June and July, the Rome-based FAO Development Law Service sought further empirical evidence on the use of multiparty contracts in agriculture by reaching out to regional and country-level offices. They queried whether there was awareness of the use of contracts in agri-food systems with more than two contracting parties. It was decided that the multiparty contracts considered in the Project could also be called “joint ventures” or similar to facilitate data gathering. Notwithstanding this attempt to obtain further empirical evidence, FAO was not able to identify

¹⁴ See the [Summary Report](#) of the second session of the Working Group, paras. 22-67.

¹⁵ Id. para. 38.

further examples of multiparty contracts beyond the ones available at the contract farming resource centre¹⁶ and that had already been shared with the Working Group in previous sessions.

36. At the end of the month of August, upon invitation by the International Cooperative Alliance (ICA-Africa and the ICA Cooperative Law Committee), the UNIDROIT Secretariat participated in the Pan-African Parliament Model Law Consultations. This model law is meant to be a benchmark and guideline in developing or reviewing cooperative legislation in Africa. Some convergences between this initiative and the LSAE Project were pointed out during the event held in Nairobi, Kenya.

37. In addition, the Secretariat organised online meetings with the experts of the Subgroups to further delineate the topics and advance the drafting of the discussion papers on multiparty contracts, cooperatives, and corporations.

7. Next sessions of the Working Group and intersessional work

38. The Secretariat suggests that at least two more Working Group sessions be held in 2024. It is proposed that the fifth session of the Working Group take place on 18-20 March 2024.

39. The continuation of the intersessional work is also highly encouraged. For the next intersessional period, the Secretariat suggests: (i) retaining the three Subgroups on Cooperatives, Multiparty Contracts, and Corporations; (ii) considering the establishment of a Drafting Committee to start preparing a first draft of the complete instrument based on the discussions and input collected so far, and (iii) organising virtual intersessional meetings on specific issues, if needed.

Questions for discussion

- The Working Group is invited to agree upon the dates proposed for the fifth Working Group session (tentatively scheduled for 18-20 March 2024).
- Does the Working Group agree with the proposed approach for the next intersessional period?

II. GENERAL MATTERS CONCERNING THE INSTRUMENT

40. This section describes the general matters related to the scope of the future Guide. It takes into account what the Working Group has already discussed in previous meetings, as well as proposes new questions for deliberation during the fourth session of the Working Group.

A. Purpose of the Project

41. The purpose of this UNIDROIT/FAO/IFAD Project is to develop guidance, primarily from a private law perspective, on “collaborative legal forms for agricultural enterprises” to enhance sustainable agricultural development in supply chains and contribute to the transformation of agri-food systems by (i) increasing efficiency, (ii) improving access to market, resources and finance, (iii) exploring innovation opportunities offered by digitalisation, and (iv) addressing power imbalances and remedies for unfair commercial practices.¹⁷

¹⁶ For more information see: <https://www.fao.org/in-action/contract-farming/zh/>.

¹⁷ This non-exhaustive list of objectives, common needs and shared interests to be achieved through collaborative legal forms is continuously being adapted as the work of the Working Group progresses. See [Summary Report](#) of the third session of the Working Group, para. 110.

42. By further investigating how economies of scale and access to markets, in particular to global markets, may be reached through different collaborative legal forms, the Project aims to elaborate guidance on how to improve collaboration between different agri-food supply chain actors. The intention of the LSAE Guide is 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. The purpose is not to identify the best collaborative legal structure but to inform the target audience of the available options.¹⁸

43. In addition, the Guide aims to demonstrate that the choice and decision-making of the legal form might be driven by third parties and influenced by external actors, factors, and incentives (e.g., regulators, insurance and financial institutions, buyers, input, and service providers, final retailers, certifiers, etc.). These different scenarios on how the choice of collaboration might be made (independently, driven by third parties, or a mix of the two) will be further analysed and dealt with vis-à-vis all the legal forms and in the comparative analysis.

44. As further explained below, the Project is considering, in particular, the role of multiparty contracts, cooperatives, and corporations as legal tools to improve aggregation and coordination of agricultural enterprises. Through a functional and purpose-driven approach, the overall objective of the LSAE Guide is to analyse how different legal forms may be used as complementary vehicles to maximise opportunities and meet the needs of the target audience, as well as to respond to new trends regarding digitalisation, sustainability, and access to finance.

B. Target audience

45. In previous meetings, the Working Group generally agreed that the relevant target audience of the Guide could be smallholders and agri-MSMEs¹⁹ that are working towards higher degrees of formality, as addressing the challenges they face to grow could eventually stimulate the formalisation of informal enterprises. The main target audience, therefore, could be those actors of the agri-food chain that have the potential to grow and contribute to rural and urban sustainable development but because of a disabling business environment, are impeded from fully leveraging their potential to do so.

46. Therefore, the Guide is intended to be drafted for smallholders and smaller agricultural enterprises (including family-owned enterprises). However, the challenges faced by agri-food supply chain leaders operating downstream (e.g., large retailers) may also be considered, as these enterprises usually impose the rules for collaboration on smaller enterprises. In addition, the framing of the LSAE Project should resonate with the realities and challenges faced by actors operating mainly in the midstream segment of agri-food value chains²⁰ and in low-and-middle-income countries.²¹ The guidance developed should encourage larger enterprises to formulate rules that do not harm smaller enterprises.²²

¹⁸ [Summary Report](#) of the third session of the Working Group, paras. 20, 25, 35.

¹⁹ During its first session, the Working Group discussed that the definition of agri-MSMEs varied between countries but was generally accepted to refer to those actors that operate close to the farm gate and are made up of agro-dealers, truckers, processors, wholesalers and street vendors, among others. See the [Summary Report](#) of the first session of the Working Group, para. 45.

²⁰ The role of midstream agri-MSMEs in contributing to rural transformation, in particular their potential role in accelerating pro-poor and sustainable growth in the agri-food systems was discussed during the first session of the Working Group. See the [Issues Paper](#), paras. 50-58 and the [Summary Report](#) of the first session of the Working Group, paras. 43-54

²¹ See the [Issues Paper](#), para. 13 and the [Summary Report](#) of the first session of the Working Group, para. 21.

²² [Summary Report](#) of the third session of the Working Group, para. 18.

47. Consistent with all UNIDROIT instruments, the prospective Guide should be relevant to all jurisdictions irrespective of their legal tradition. Guidance will be developed for legal professionals representing smaller enterprises (including community-based enterprises and family farmers) and, to a certain extent, for legislators and policymakers.²³ However, the final instrument should also be drafted in an accessible manner to extend its use to a broader audience beyond legal professionals.

48. While discussing the target audience, the Working Group considered the heterogeneity of the rural market space where smallholders operate and recognised the complementary and contradictory functions that agricultural enterprises may exercise at the same time (e.g., a producer may simultaneously be an input provider and a consumer depending on the perspective of analysis). During its first session, the Working Group discussed the impact of market structure on agricultural enterprises²⁴ and the interdependences among different supply chain actors. Compared to the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming, which covered agricultural production contracts between farmers and buyers, there was general agreement among Working Group participants that the prospective LSAE Guide could consider actors operating beyond the “production stage.” The focus should be on the challenges not only faced by producers but also by actors that add the most value to agri-food products and who operate at stages beyond the farm gate (e.g., input providers, processors, traders, and retailers). Therefore, determining which collaborative legal structure for agricultural enterprise is appropriate would require an analysis of the possible interactions that may take place among different market players.

Questions for discussion

- The Working Group is invited to consider whether the Guide’s target audience needs to be revised and to reflect on the actors and stages of the agri-food chain to further distinguish between the target audience and the protected interests.

C. Format and structure

49. The Working Group was mandated to develop a soft law international guidance instrument. Following previous practice under the partnership with FAO and IFAD, the UNIDROIT Secretariat proposed to the Governing Council that the instrument could take the form of a legal guide, similar to the [Legal Guide on Contract Farming](#) and the Legal Guide on Agricultural Land Investment Contracts.

50. The participants of the first Working Group session favoured developing the LSAE guidance instrument as a “legal toolbox,” which would showcase the most useful collaborative legal forms that parties can use for different purposes. The instrument would seek to empower smallholders and agri-MSMEs to adopt enterprises that provide them with better access to markets and benefit their needs.²⁵ The Guidance Document should be flexible enough to transcend international, national, regional, and sub-regional levels, as well as adaptable to at least three different variables: geography, commodities, and communities. In the first session, the Working Group supported the idea that the Guidance Document should be evidence-based and agreed to revisit the methodology for the empirical research once the work progressed.²⁶ As a soft law instrument, the Guidance Document is not intended to be binding, and it will not have a prescriptive function.

²³ [UNIDROIT 2022 – C.D. \(101\) 10](#), paras. 11-12

²⁴ During the first session, the Working Group considered a number of issues relating to market structure and coordination to understand how the legal structure could be affected, see the Issues Paper [UNIDROIT 2022 – Study LXXXC – W.G.1 – DOC. 2](#), paras. 38-49, as well as the [Summary Report](#), paras. 39-41.

²⁵ See the [Summary Report](#) of the first session of the Working Group, paras. 27 and 29

²⁶ See the [Summary Report](#) of the first session of the Working Group, paras. 33-34.

51. During its previous sessions, the Working Group did not discuss the table of contents for the overall guidance instrument in detail. At its second session, the Working Group began to deliberate on a proposed structure that could be adopted. 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 of multiparty contracts, cooperatives, and corporations; and (iii) the third section could address the peculiarities and features that distinguish the three legal forms. Therefore, the Working Group may consider agreeing upon a draft table of contents for the overall guidance document based on what was suggested, or an alternative structure may also be proposed (see Annexe I to this document).

Questions for discussion

- The Working Group is invited to further reflect on the draft table of contents for the entire Guide to facilitate the work after the fourth session (see Annexe).

D. Title

52. At its second session, the Working Group considered that the initial working title of the Project, “Legal Structure of Agricultural Enterprises,” needed to be adapted to reflect the content that would actually be covered in the guidance instrument. It was suggested that the working title of the Project could be changed to “Collaborative Legal Instruments for Individual and Collective Agricultural Enterprises.”²⁷ This new title was proposed to highlight the focus on legal forms of collaboration and not on the legal forms of agricultural enterprises. The Secretariat clarified that the new working title would need to be approved by UNIDROIT’s Governing Council and that the final title of the Guide would be determined once the entire document is finalised.

53. During its third session, the Working Group further discussed the need to specify “individual and collective agricultural enterprises” in the title and agreed that a more concise title could be proposed to the UNIDROIT Governing Council. The Working Group decided to propose to the UNIDROIT Governing Council the following new working title for the Project: “Collaborative Legal Structures for Agricultural Enterprises.” The UNIDROIT Governing Council approved said recommendation during its 102nd session.²⁸

E. Methodology

54. In terms of methodology, while recognising the challenges of comparing different legal forms, the Working Group generally agreed that by utilising a “functional and purpose-driven approach,” it would be possible to compare multiparty contracts, cooperatives, and corporations used for collaboration and sustainable agricultural development, as proposed in the LSAE Project.

55. At its second session, the Working Group considered that the comparison between different legal systems and jurisdictions would not be doctrinal; however, the functional approach would require the identification of “functionally equivalent categories” (e.g., formation, entry, governance, exit, dissolution, etc.) to ensure compatibility between different legal concepts developed in the respective fields of contracts, cooperatives, and corporations.²⁹ A comparison of different legal institutions, such as contracts and organisations would seem to be admissible under a functionalist

²⁷ See the [Summary Report](#) of the second session of the Working Group, para. 187.

²⁸ [UNIDROIT 2023 – C.D. \(102\) 25](#), para. 147.

²⁹ See the [Summary Report](#) of the second session of the Working Group, para.57.

approach and purpose-driven approach, as long as the business organisations fulfil the same functions.

56. At the third session of the Working Group, it was recommended that the three types of structures for agricultural enterprises be presented independently before making a comparison across the forms of collaboration. The Working Group agreed to develop separate chapters for each collaborative legal form to describe their fundamental nature and point out their incentives, risk factors, motivations, and purposes.³⁰

57. In addition, it was 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 would ideally include information on how a multiparty contract should be drafted, how a cooperative statute should be drafted, and how a company's bylaws should be drafted. It was noted that these two approaches could be combined. While the final approach of the guidance instrument will depend on how the Project progresses, the Working Group has generally accepted that it would be more useful if the LSAE Guide is structured in line with the second approach.³¹

58. At the first stage, simple examples of collaboration (e.g., joint production and sale of an agricultural product) could be used to demonstrate to the target audience of the prospective legal guide that they may adopt alternative (and complementary) legal forms to organise the same type of collaborative activity. In the 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 may vary if, for example, there is an interest among smallholders and smaller enterprises to engage in a new technological process or to become compatible with an organic standard and certified by third parties.³²

59. In addition, a number of participants proposed to adopt a systematic approach when developing the Guide to address issues raised beyond the context of supply chains. A more holistic, circular, cross-sectoral and community-based approach could be used. Hence, it would be important to consider the interrelationship between the different collaborative legal forms analysed.³³

60. When discussing the approach to be adopted for the development of the Guide, the Working Group noted a number of caveats and limitations that may need to be taken into account and explained in the general introduction, including, among others: (i) that the guidance developed should allow for national, local and, sectoral adaptations and that no legal form fits all purposes; (ii) that there is limited empirical evidence on how smallholders and smaller enterprises organise themselves globally; (iii) that only a list of possible collaborative legal forms would be covered in the Guide and that these should be considered along the applicable laws.³⁴

Questions for discussion

- The Working Group may consider further clarifying the approach proposed for the development of the Guide.
- The Working Group may further discuss the caveats and expected limitations of the Guide.

³⁰ See the [Summary Report](#) of the third session of the Working Group, para. 13.

³¹ See the [Summary Report](#) of the second session of the Working Group paras. 60-62.

³² See the [Summary Report](#) of the third session of the Working Group, para. 19.

³³ See the [Summary Report](#) of the first session of the Working Group, paras. 32.

³⁴ See the [Summary Report](#) of the third session of the Working Group, paras. 21, 26.

III. CONTENT OF THE INSTRUMENT

A. Definition of “collaboration” in relation to the Project

61. During its first session, the Working Group agreed that instead of incorporating into larger enterprises the best way to improve access to finance, international markets services and resource, while respecting the small size of smallholders and agri-MSMEs, would be through the enhancement of collaboration. For instance, it was noted that collaboration may be necessary to access and/or manage resources when it is too expensive to deploy the same resource individually.³⁵

62. At the second session of the Working Group, it was noted that collaboration is important because there is increasing competition between value chains, supply chains, networks of relationships, knowledge flows and management. It was therefore suggested that the LSAE Guide could analyse legal forms of collaboration not only along the value chain but consider the value chain as a whole in order to understand how it could function in a satisfactory manner.³⁶

63. The definition and framing of the notion of collaboration was further addressed during the third session of the Working Group. Based on the outcomes of the discussions during the second session of the Working Group, it was proposed that collaboration could be understood 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”³⁷ The Working Group revisited the notion of collaboration proposed, deciding to slightly adapt it to reflect that: (i) not only “common objectives” should appear in the definition but also “common needs,” “common shared interests” and “shared risks”; (ii) the definition of collaboration could refer to collaboration that takes place “between two or more players,” instead of “among multiple players”; (iii) the terms “stakeholders” or “parties” could be more appropriate than the term “multiple players,” and (iv) the focus on collaboration taking place “within the value chain” could be included.³⁸

64. Therefore, the Working Group agreed that 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”.³⁹

65. Collaboration in this sense proposed in the LSAE Project would differ from mere coordination, where parties may have conflicting objectives and interests. Collaboration implies the existence of common activities, whereas coordination occurs among totally independent activities. Collaboration usually takes place when there is a need to share resources or a common objective that cannot be achieved individually.

66. Therefore, collaboration is not only aimed at sharing resources but also at achieving common objectives that would not otherwise be achieved (for example, for the purchase of inputs at a lower

³⁵ It should be noted that the legal forms to govern the collaborations will differ depending on the characteristics of the resource. There is a distinction between sharing material or immaterial resources and, within the latter, between immaterial resources like technology and know-how that can be subject to appropriation and data that cannot or should not be subject to appropriation. This distinction not only features different ownership regimes but may also have an impact on the legal forms (such as on the structure of the contract and its governance).

³⁶ See the [Summary Report](#) of the second session of the Working Group, para. 75.

³⁷ See the [Issues Paper](#) prepared for the third session of the Working Group, para. 52.

³⁸ See the [Summary Report](#) of the third session of the Working Group, para. 101.

³⁹ See the [Summary Report](#) of the third session of the Working Group, para. 110.

cost when parties can buy a larger quantity and to access new markets by providing quantities of products or complementary products that individual producers would not be able to provide).

Questions for discussion

- The working may wish to confirm agreement with the revised definition of “collaboration”.
- To align the terminologies used in the Guide, the Working Group may consider further clarifying the differences between the notions of collaboration, integration and coordination within the agri-food value chain, as well as the features of horizontal and vertical collaboration and how that may influence the choice of a legal form.
- The Working Group may consider the need to develop a “glossary” in the Guide, and if so, whether the definition of certain terms may be extracted from an already developed glossary such as the “Glossary of Key Terms and Concepts by the Development Co-operation Directorate of the OECD”, or others developed by the FAO Termportal, World Bank, Donor Committee for Enterprise Development, etc.
- The different types of collaboration and whether it is led by downstream actors, intermediaries-led or farmer-led could also be discussed to decide if the Project has to adopt a certain perspective.

B. Types of collaborative legal forms covered

67. The focus of the LSAE Project is on the legal forms of collaboration and not on the legal forms of agricultural enterprises. While recognising the variety of forms of collaboration and the existence of many different types of business organisations for agricultural production, processing and distribution, the Working Group has favoured focusing the LSAE Project on the analysis of three categories of collaborative legal forms: (i) multiparty contracts; (ii) cooperatives; and (iii) corporations. In previous meetings, it was noted that the three legal forms selected would merely serve as archetypes rather than as an exhaustive list of different options of legal forms available. Other types of structures, beyond contracts, corporations, and cooperatives, would only be considered where relevant and practical.

68. During the second session of the Working Group, it was acknowledged that the three legal forms should not be seen as alternatives from the point of view of smaller enterprises in the value chain and should be analysed as complementary building blocks of the value chain itself. It was suggested that instead of focusing on understanding when one of the three collaborative legal forms should be used, the Working Group could focus on analysing when a specific legal form would not be suitable for a specific situation. By way of illustration, the prospective guidance instrument could describe how a cooperative may not be the most suitable legal structure for a group of farmers that are highly heterogenous, unless they adopt an effective conflict of interest mechanism.

69. While the LSAE Guide could generally state that all three legal forms can be used as vehicles to maximise opportunities for the transformation and sustainability of agricultural systems, the comparative analysis could still be envisaged to suggest to the reader that not all three legal forms can be used in any given situation. There may be cases where the guidance instrument may suggest to the reader that they may not only prefer to use one legal form but that that legal form is the only available option to suit certain purposes.

70. In its third session, the Working Group discussed: (i) the factors and incentives that influence the choice of legal forms (e.g., the position in the agri-food supply chain, nature of the product, internal governance, etc.); (ii) the fundamental differences between multiparty contracts, cooperatives and corporate entities, and (iii) the potential compatibility and interaction between the three legal forms within supply chains. Acknowledging the heterogeneity of the legal forms

considered in the Project, 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, liability, etc.).

Questions for discussion

- Based on the draft discussion papers prepared for each legal form, the working may wish to further discuss the envisaged methodology to compare and combine the different collaborative legal forms considered in the LSAE Project.
- The Working Group may further discuss inter-organisational collaborative arrangements.
- The Working Group may also further reflect on (i) the factors that influence the choice of legal form and (ii) the purposes of collaboration (e.g., financial services; inputs supplier; knowledge provider; production of agricultural products; collection and distribution of agricultural products; logistics and transport; processing and marketing of agricultural products; export of agricultural products; etc.).

C. Definition of “agricultural enterprises” in relation to the Project

71. While the definition of “agricultural enterprises” for the purpose of the LSAE Project may still be revised, during the second session of the Working Group, it was highlighted that the notion of agricultural enterprises should be considered mainly from the economic perspective to capture business activities of individual entrepreneurs and not only activities of legal entities, such as companies. This notion was not discussed during the third session of the Working Group.

72. During its fourth session, the Working Group may consider whether the notion of agricultural enterprise can be understood as “the carrying on by one or more persons of an organised economic activity, consisting of producing, administering or alienating property, or providing a service in the agri-food chain.” The term “enterprise” in this sense would be used to describe any organised economic activity, whether or not it is commercial in nature. This would include multiparty contracts, cooperatives, and companies, as well as informal structures and other semi-formal arrangements.

73. Given that some of the enterprises discussed in the Guide may not be agricultural *stricto sensu* (e.g., a trucking company that transports agricultural goods) and/or would be categorised as being part of the industry sector, the Working Group may consider whether this should be reflected in the terminology used throughout the Guide by using, for example, “enterprises operating in the agri-food supply chain” or other broader terms than “agricultural”. It may also be necessary to specify if the focus is on agricultural enterprises or on agri-food enterprises.

Questions for discussion

- The Working Group may consider further discussing the working definition of “agricultural enterprises” and decide whether it can be understood as covering the variety of actors intervening in the agri-food chain and the target audience of the Guide.

D. Multiparty contracts⁴⁰

74. Multiparty contracts may be used to specify the internal organisation and management of agricultural enterprises (e.g., membership, representation, decision-making process, a form of management, the share of profits and losses, exclusion and withdrawal of a party, termination,

⁴⁰ The issues raised in this section should be considered in conjunction with the “Draft Discussion Paper on Multiparty Contracts” sent to members and observers to the Working Group.

dispute resolution, etc.). Associative contracts may also be important instruments to facilitate commercial collaboration and cross-border trade relationships. The LSAE Project aims to cover the basic terms, general principles, and guidelines that might be addressed in these contracts, including information on how contracts can be designed to assist smaller enterprises to become contract-makers rather than just contract-takers.

75. Contracts vary substantially depending on whether we consider global value chains as either highly formalised chains led by major agribusinesses, or in terms of the realities of the vast majority of smallholders that operate in local and often more informal markets. Approaching agricultural enterprises from the perspective of smaller enterprises rather than a leading firm could therefore give rise to a different set of contractual issues. Contracts also vary depending on commodities, jurisdictions, social contexts and the value chain segment to which they refer.

76. Contractual issues may often relate to the process through which contracts are developed and implemented. Determining which contracting party has decision-making capacity over a particular issue and at which stage can thus ultimately affect smaller enterprises' ability to shape contractual terms. Therefore, it may be helpful to consider matters related to processes and power distribution in relation to both contract development and contract formalisation initiatives.

77. Unlike the bilateral contractual relationships addressed in the [Legal Guide on Contract Farming](#) (agricultural production contracts), the LSAE Project intends to cover different contractual arrangements established in the case of integrated relations, where a legal dependency among contracting parties is created. In this context, among other aspects, it is important to pay attention to how the balance between the different contracting parties is maintained. The major risk may be that smallholders and agri-MSMEs lose any real power they may have if a joint or common venture is created with a more powerful party, which may essentially dictate the course of action.

78. During the first session of the Working Group, participants discussed the notion of interdependence and interconnectedness in the chain of contracts, with terms cascading down from one contract to the other. One of the problems identified was the lack of effective coordination in the value chain in the alignment of different contractual requirements, such as pricing standards, delivery, product specification, force majeure, etc. Moreover, distributive dimension problems had also been identified, in particular in terms of the distribution of benefits, costs, and risks. Therefore, the coordination of the different levels of interdependent contracts was signalled as a key issue to be analysed in the LSAE Project.

79. During its second session, the Working Group discussed a proposed structure for the analysis of multiparty contracts in the LSAE Guide, composed of eleven key issues worth considering, as follows :

- Taxonomy – to distinguish between several typologies of multiparty contracts from both a functional and a structural perspective;
- Contract formation – to inform when a multiparty contract is formed and what the boundaries are between pre-contractual negotiations and contractual formation;
- Entrance – to distinguish between the first phase, when a multiparty contract is concluded, and later stages, where additional participants can be added;
- Content definition – to inform what content should be included to ensure the contract is effective and functional, as well as the techniques that may be used to define the contents of the multiparty contract, whether it be through negotiation of participants, framework contracts, or standard terms;
- Governance – to clarify who should define the governance structure of multiparty contracts, considering its long-term nature and whether the

- implementation should be entrusted to one manager or committees who bear the last resort decision-making power;
- Execution – to inform the main aspects of execution to be considered when implementing a horizontal or vertical multiparty contract given the strong interdependences among contractual performances;
 - Change of circumstances and supervening impossibility – to verify the extent to which well-established legal rules surrounding bilateral contracts are applicable and whether there are specific characteristics of force majeure and contractual impossibility in long-term multiparty contracts designed to establish collaboration;
 - Breach – to inform how breach should be defined and fundamental breach be distinguished from other forms of breach (in particular, how the definition of breach correlates with contractual interdependencies);
 - Liability – to clarify how liability for breach of multiparty contracts should be defined and allocated internally and towards third parties;
 - Remedies – to inform what the available remedies are for breach of multiparty contract and how remedies for the collaboration and remedies for individual harm suffered by each participant should be distinguished; and
 - Exit, dissolution and post-contractual obligations – to inform whether parties can exit the contract before dissolution and the differences between voluntary and forced exit.

80. The Working Group agreed with the proposed outline of issues as well as 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.

81. The eleven topics mentioned above were further developed and presented by the Subgroup on Multiparty Contracts during the third session of the Working Group. Participants further discussed (i) the working definition of multiparty contracts; (ii) the differences between bilateral and multiparty contracts; (iii) the differences and complementarity between multiparty contracts and the two other collaborative legal forms considered in the Project (cooperatives and corporations); (iv) taxonomy of multiparty contracts; (v) elements that could influence the design of multiparty contracts; (vi) parties, and (vii) liability. For the complete overview of the topics discussed, see the Summary Report of the third session of the Working Group. It is expected that during the fourth session, the Working Group will focus the discussion on the topics of governance, execution and remedies for breach of multiparty contracts.

Questions for discussion

- The Working Group is invited to consider the topics and questions proposed in the Draft Discussion Paper on Multiparty Contracts, sent separately to the Working Group members and observers.

E. Agricultural cooperatives and corporations⁴¹

82. Depending on their activity, smallholders and agri-MSMEs may be part of multiple business organisations. Different parts of the agri-food supply chain may require the establishment of different legal entities (e.g., cooperatives, corporations, non-profit or for-profit organisations, limited liability organisations, community interest corporations, etc.). Capital-centred enterprises, such as stock companies, are investor-driven and supposed to produce shareholder value, whereas person-centred enterprises, such as cooperatives, are driven by member needs and are supposed to produce member value. When further discussing the correlation between corporations and cooperatives the Working Group may consider whether limited liability, transferable ownership interests, and legal personality constitute the key similarities between corporations and cooperatives, and how the two entities differ in terms of voting systems, organisational purpose, and access to finance.

83. An efficient and effective collaboration within the value chain would depend on how these legal structures address complex and diverse situations, such as: (i) diversity of activity (production, transformation, and processing); (ii) degree of integration (operational or organisational); (iii) degree of heterogeneity of the participating entities, and (iv) participants' interests. Collaboration through cooperatives and corporations in the value chain could take form, for example, through aggregation of capital and human resources.

84. Cooperatives are debatably one of the most prevalent organisational forms used throughout agricultural markets.⁴² Cooperatives can collaborate downstream, upstream and with other companies. A clear understanding of their definition, identity, functions, governance, etc., is paramount to providing an outline for their analysis in the LSAE Project, to ensure that they continue following their principles and values for their members when participating in value chain arrangements.

85. In previous meetings, 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.⁴³ The Working Group was encouraged to further consider the similarities and distinctions between cooperatives, and corporations, and also the different types of corporations that the LSAE project could focus on.

86. During the fourth session, the Working Group will consider, among other topics: (i) the definition of cooperatives; (ii) the taxonomy of cooperatives; (iii) the formation of agricultural cooperatives; (iv) agricultural cooperatives membership; (v) cooperative governance and management; (vi) breach of cooperative obligations and membership responsibilities, and (vii) forms of collaboration among cooperatives and inter-organisation collaboration. In relation to corporations, the Working Group will consider (i) an overview of enterprises operating in the agri-food supply chain; (ii) taxonomy; (iii) membership; (iv) organisation ; and governance; (v) liability issues and dissolution and division of common assets. The purpose and outline of each chapter dedicated to cooperatives and corporations will also be discussed.

⁴¹ The issues raised in this section should be considered in conjunction with the "Draft Discussion Papers on Cooperatives and Corporations" sent to members and observers to the Working Group.

⁴² Valentinov, Vladislav, Why are cooperatives important in agriculture? An organizational economics perspective, in: *Journal of Institutional Economics* 2007 (3), 55-69.

⁴³ See the [Summary Report](#) of the second session of the Working Group, paras. 104-106, 112, 121.

Questions for discussion

- The Working Group is invited to consider the topics and questions proposed in the Draft Discussion Papers on Cooperatives and Corporations, sent separately to the Working Group members and observers.

F. Impact of “Exogenous factors” on collaborative legal forms: digitalisation, sustainability, and access to finance

87. The different types of contractual arrangements, corporations, and cooperatives entities established for collaboration along the agri-food supply chain, are constantly transforming and being adapted to new needs, such as to the Sustainable Development Goals and new digital technology scenarios, as well as to new legislative demands and green finance. These factors can either accelerate or slow down some of the dynamics of collaboration envisaged in the LSAE Project, and may entail an additional set of challenges in terms of skills and know-how that smallholders and agri-MSMEs may need to develop to become active players and not passive receivers of, such transformations.

88. In previous Working Group sessions and intersessional meetings, the Working Group discussed and generally supported the idea that both endogenous and exogenous factors influencing the choice between and within collaborative legal forms would be further described in the guidance instrument according to the different needs of the addressees. However, it was noted that the endogenous and exogenous factors would not be the main focus of the Project but would rather help analyse the different choices of legal structures that serve the purpose of collaboration among actors operating in the agri-food chain.

Digitalisation

89. With regard to digitalisation, so far participants have discussed how it has reorganised agri-food chains into new chains and how decentralised chains have become more centralised. In addition, the possibility to market products through digital platforms may exclude or reduce the role of some traditional intermediaries while allowing new intermediaries to emerge, such as digital service providers. One of the questions considered by the Working Group is whether disintermediation is modifying the legal forms of collaboration (and if digitalisation is favouring the creation of cooperatives and/or the emergence of new digital intermediaries that directly connect input providers and farmers). The impact of digital platforms, the increasing value of farming data, outsourcing via digital services, precision agriculture, and digital farming are among some of the main topics discussed so far.

90. Digital technologies are increasing the level of vertical integration among agri-food chain actors along the lines of “traditional’ integration,” with a chain leader exercising pressure, directly or indirectly, to adopt some form of digitalisation. In other cases, however, an increase in the level of horizontal cooperation may be identified, with the aim of optimising the production line (e.g., for the reduction of waste or to offer benchmarking services). This trend has an impact on collaborative legal forms for agricultural enterprises from both an internal and an external perspective. Internally, it determines better management of some of the risks that are specific to the agri-food sector, while at the same time it also causes a compression of the farmers’ degree of autonomy. From an external perspective, agricultural enterprises become one of the nodes of a complex web in which information is collected, stored, and processed, with significant implications in terms of procurement processes, traceability and business development models. The following issues warrant further analysis by the Working Group.

91. Along with the inputs that are traditionally employed in the agri-food supply chain (seeds, agrochemicals, fertilisers, agricultural machinery), data is gaining importance as a new production factor capable of changing the structure and operational routines of agricultural enterprises. This is due to the fact that farming is becoming increasingly reliant on the digitisation of data and the digitalisation of its processes and operations. The digital transformation underway in the agricultural sector increasingly involves the generation of huge volumes of data, which can be stored and shared among different stakeholders, such as providers of agricultural services, farmer cooperatives, public bodies, etc. Like in other economic fields, agri-food related data is also becoming an increasingly precious asset that must be processed at an aggregated level in order to fully exploit the potential interconnections that can be generated. Within this scenario, big data analytics represent a way of developing new products and services that can make the agri-food supply chain safer more secure, sustainable and efficient.

92. The degree of freedom that agricultural enterprises enjoy increasingly depends on the amount of control that can be exercised over data. If the control of data is placed outside of the agricultural enterprise, the enterprise's autonomy will be more limited. The question of data control is therefore crucial from a legal standpoint.⁴⁴

93. While digital platforms create organisational models that may be regarded as economic units in the market, generally they are not incorporated companies but rather private contractual systems. The platform may provide the terms and conditions that will regulate users' dealings on the platform, with the platform operator supervising compliance with those rules and overseeing dispute resolution to promote trust in the market.

94. Therefore, platforms can simultaneously operate in a regulatory and transactional capacity and may be characterised as a centralisation model based on contracts, with the centralisation feature distinguishing them from other models, such as distributed and decentralised models (distributed ledger technologies and blockchain). The legal analysis of the centralisation model would require the identification of the platform's operator to determine who is in charge of regulating and managing the platform.

95. The Working Group is considering how the increasing use of these digital technologies impacts smallholders and agri-MSMEs to evaluate how they have improved the level and intensity of collaboration (horizontally and vertically). For example, the Working Group considers the role that cooperatives play in the adoption of digital technologies by farmers in developing countries⁴⁵ and the features of SmartAgriHubs headed by producer organisations.⁴⁶

Sustainability

96. Since the beginning of the LSAE Project, the Working Group participants have acknowledged that the legal forms for agricultural enterprises could have implications for the achievement of Sustainable Development Goals (SDGs)⁴⁷, particularly for SDGs 1 (No poverty), 2 (Zero hunger), 5 (Gender equality), 8 (Decent work and economic growth), and 12 (Responsible consumption, and production). In previous sessions, the Working Group discussed how sustainability should be

⁴⁴ For a more detailed description of the topics and questions related to - Data as a new production factor, see the Issues Paper prepared for the first session of the Working Group [UNIDROIT 2022 – Study LXXXC – W.G. 1 – Doc. 2](#), pages 18-23.

⁴⁵ United Nation Development Programme, [Precision Agriculture for Smallholder Farmers](#), 2021.

⁴⁶ See the Summary Report of the second session of the Working Group [UNIDROIT 2022 – Study LXXXC – W.G. 2 – Doc. 3](#), para. 99.

⁴⁷ United Nations General Assembly, Resolution adopted by the General Assembly on 25 September 2015, [Transforming our world: the 2030 Agenda for Sustainable Development](#)

considered an opportunity for market growth and innovation rather than a barrier to accessing supply chains.

97. The discussion initially focused on the new types of markets and increasing interdependence among supply chain actors, as well as on how legal structures for agricultural enterprises are affected by sustainability requirements, consumer expectations and the use of Environmental, Social and Governance (ESG) standards. It was generally accepted that agricultural enterprises cannot solely focus on environmental dimensions when working towards sustainability, but must also consider socio-economic, nutritional, and social justice perspectives. It was suggested that the LSAE Guide could provide a range of legal instruments to assist smallholders and agri-MSMEs to address sustainability challenges, from the institutional, organisational, and transactional perspective by considering: (i) the role of cooperatives, corporations, networks and clusters to support compliance with sustainability standards and (ii) the role of multiparty contracts to fairly distribute the allocation of costs of compliance.

98. During the previous sessions of the Working Group, participants discussed the shift of sustainability from public international law to specific rules of private law and the impact that new supply chain due diligence requirements could have on MSMEs. The increase in responsible investment through the development ESG and sustainability certification schemes was also pointed out.⁴⁸ The Working Group considered whether a specific legal structure better encapsulated this increasing trend towards greater sustainability requirements. It was noted that the contractual structure could ensure adherence to sustainability requirements through the inclusion of specific clauses, but there might be high transaction and coordination costs associated with monitoring sustainability performance. In the case of corporate forms, the participants considered that agricultural enterprises could also be structured as hybrid entities and include the “for benefit purpose”. Transaction costs associated with corporations including sustainability requirements in their company documents were also considered.

99. While acknowledging the challenges of coordinating individual rights and public interests, the Working Group considered it important to further reflect upon the question of who bears the risk and cost of transitioning to sustainable practices within the supply chain, with respect to both 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. Some participants noted the need to further consider the incentives, profitability, and returns on investment for smallholder farmers, and cooperatives when discussing the costs of implementing sustainable practices.

100. It was generally accepted that the Working Group would continue discussing the variables that need to be considered in terms of sustainability. However, the UNIDROIT Secretariat 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.

Access to Finance

101. In previous session, participants discussed good practices to increase accessibility to critical financial resources. They considered how producers may transition to more formal enterprises in an inclusive way. In addition, during the third intersessional meeting, organised in September 2022, it was noted that to understand the impact finance, it is important to determine whether the agricultural enterprise operates for production or post-harvest purposes, as agricultural enterprises involved in

⁴⁸ See the [Summary Report](#) of the second session of the Working Group, para. 124

primary production are seen as riskier to provide credit to than those dedicated to food processing, logistics, and storage.

102. Based on the discussions held so far, it seems that lenders are less concerned with the legal structure of the agricultural enterprise and more focused on its formality, as informal organisations are less likely to provide financial statements and a business plan, nor are they likely to have assets to pledge as collateral. Further, lenders are ordinarily more likely to provide short-term loans (under a year) for working capital rather than long-term financing as the maturity of those loans carries greater risk. The specifics of the legal and tax environment in which agricultural producers operate have significant bearing on whether they are able to obtain loans for machinery, particularly if the jurisdiction's regime allows leasing solutions for equipment.

103. Overall, the Working Group has recognised the need to explore innovative approaches to financing primary producers that go beyond the use of State programs. Participants discussed that many small farmers are unable to access credit since they are cash-based businesses. For a financial institution, it was noted that it is difficult and costly to lend to individual farmers, but easier to lend to a group of individuals as a legal entity. The impact of digitalisation on access to finance issues was also previously considered. It was noted that farmers' data is important for traceability and for opening up development programmes and opportunities. Therefore, digitisation of data may also contribute to accessing finance, as digital data information could be extracted in real time thus making it possible to reach small farmers.

Questions for discussion

- The Working Group is invited to further discuss how the "exogenous factors" should be considered in the Guide, and if it is necessary to propose a specific chapter on digital platforms.

ANNEXE**DRAFT TABLE OF CONTENTS****UNIDROIT/FAO/IFAD's future Legal Guide on Collaborative Legal Structures for Agricultural Enterprises**Question for discussion

- The Working Group is invited to discuss the draft table of contents proposed for the Guide and consider any additional content that should be included, as well as any rearrangements of chapters as appropriate.

PREFACE [see, e.g., Legal Guide on Contract Farming, Preface]

- Overview and purpose
- Overview of the tripartite partnership between UNIDROIT, FAO and IFAD in the field of private law and agricultural development
- Purpose of the LSAE Guide
- Relationship between the LSAE Guide and the previous UNIDROIT/FAO/IFAD legal guides (Contract Farming and Agricultural Land Investment Contracts)
- Target audience
- Approach and how to use the LSAE Guide

INTRODUCTION

- General introduction to agri-food chains and how they are structured, as well as of the role and position of the “target audience” of the Guide within the chain
- Recognition of the large informality and semi-formality of agricultural enterprises
- Description of the intensive organisational integration into global value chains and the growing de-organisation of traditionally organised entrepreneurship
- Recognition that different parts of the agri-food supply chain may require the establishment of different collaborative legal forms
- Acknowledgement of the issue of unfair commercial practices and unbalanced powers of supply chain actors, operating downstream and upstream. Draw attention to actors operating in the middle segment and explain how collaboration and organisation is important to counterbalance the power that chain leaders generally have
- Definition of key notions adopted in the Guide (e.g., agricultural enterprises; collaboration and the difference between collaboration, aggregation, integration, coordination; etc)

- Presentation of key issues to be potentially accomplished through collaboration (common objectives, needs, shared interests and risks) regarding (e.g., access to market, power imbalance, digitalisation, finance, sustainability, etc.)
- Clarification that the Guide endorses “collaboration” to the extent that it is consistent with competition law and other bodies of law
- Description of the complex legal framework applicable to the collaborative legal forms addressed in the Guide. Acknowledgement of the existence of different legal systems and applicable laws potentially varying along the global agri-food value chain due to differing jurisdictions of the actors involved. Indication of the relevance of default rules in the fields of contract, cooperative and company law
- Exogenous factors’ impact on collaboration of agricultural enterprises: sustainability, digitalisation and access to finance

CHAPTER I – Multiparty Contracts

[see, table of contents proposed in the Draft Discussion Paper on Multiparty Contracts]

CHAPTER II – Cooperatives

[see, table of contents proposed in the Draft Discussion Paper on Cooperatives]

CHAPTER III – Corporations

[see, table of contents proposed in the Draft Discussion Paper on Corporations]

CHAPTER IV – Comparing and combining different collaborative legal forms

CHAPTER V – The implementation of the Guide: standard contracts and bylaws