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**Item No. 4 on the agenda: Ongoing legislative activities carried over from the
2020-2022 Work Programme**

(c) Collaborative Legal Structures for Agricultural Enterprises

(prepared by the Secretariat)

<i>Summary</i>	<i>This document provides an update on the Collaborative Legal Structures for Agricultural Enterprises project</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the progress made by the Working Group established for the development of the project on Collaborative Legal Structures for Agricultural Enterprises</i>
<i>Mandate</i>	<i>Work Programmes 2020-2022 and 2023-2025</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	<i>UNIDROIT 2019 – C.D. (98) 14 rev. 2</i> ; <i>UNIDROIT 2020 – C.D. (99) B.5</i> ; <i>UNIDROIT 2021 – C.D. (100) B.5</i> ; <i>UNIDROIT 2021 – C.D. (100) B.24</i> ; <i>UNIDROIT 2021 – A.G. (80) 10</i> ; <i>UNIDROIT 2022 – C.D. (101) 21</i> ; <i>UNIDROIT 2022 – A.G. (81) 9</i> ; <i>UNIDROIT 2023 – C.D. (102) 9</i>

I. INTRODUCTION

1. The development of the project on Collaborative Legal Structures for Agricultural Enterprises project (hereinafter “the LSAE project”) constitutes the third project developed within UNIDROIT’s area of work on private law and agricultural development. The LSAE project is undertaken in partnership with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD). It is a follow-up from the UNIDROIT/FAO/IFAD [Legal Guide on Contract Farming](#) (finalised in 2015) and the UNIDROIT/IFAD [Legal Guide on Agricultural Land Investment Contracts](#) (finalised in 2020).

2. Compared to the Legal Guide on Contract Farming, which focused on bilateral agricultural production contracts between farmers/producers and buyers, the LSAE project adopts a broader scope to cover “collaborative legal forms” that support smallholders and agri-MSMEs to enhance sustainable agricultural development in value chains and contribute to the transformation of agri-food systems.

3. The legal guidance under development will mainly cover three collaborative legal forms: (i) cooperatives, (ii) companies and (iii) multiparty contracts. The analysis is premised on complementarity rather than on the disparate collaborative legal forms being separate alternatives. The project presupposes that the needs of smallholders and agri-MSMEs to overcome challenges posed by global value chains can be addressed through collaboration by: (i) improving access to viable markets, market resources and inclusive financial services; (ii) exploring the enormous innovation opportunities while giving due consideration to the risks created by digitalisation, digitisation and electronic platforms; (iii) addressing power imbalances and increasing participation in decision-making; and (iv) proposing remedies for unfair commercial practices.

4. The future instrument is targeted for legal professionals, legislators, and policymakers (i.e., actors in an advisory capacity and certain stakeholders that have a role in drafting legislations and policies, as well as in delineating bylaws, internal regulations, and contracts). In addition, the Guide will be potentially useful for representatives of international organisations, chambers of commerce, local associations of agricultural entrepreneurs and organisations of producer, as these actors provide guidance to smallholders and agri-MSMEs.

5. This document provides an update on the work conducted by the Secretariat and the LSAE Working Group, in particular since the 102nd session of the Governing Council held in May 2023. It briefly recalls the background of the project and composition of the Working Group (Section II), provides information on the main outcomes of the Working Group sessions (Section III), describes the expected content of the future instrument (Section IV), and suggests next steps (Section V).

II. BACKGROUND AND COMPOSITION OF WORKING GROUP

6. The LSAE project was included in UNIDROIT's Work Programme for 2020-2022, following the recommendations of a Colloquium held in Rome on 8-10 November 2011 on "Promoting Investment in Agricultural Production: Private Law Aspects"¹ and proposals received from the United States Department of State and the Ministry of Justice of Hungary ([UNIDROIT 2019 – C.D. \(98\) 14 rev. 2](#)). As a first step, the Secretariat prepared a [feasibility study](#) in 2020 and organised a [consultation webinar](#) in 2021. Subsequently, the project was assigned high-priority status by the Governing Council ([UNIDROIT 2021 – C.D. \(100\) B.24](#)) and General Assembly ([UNIDROIT 2021 – A.G. \(80\) 10](#)). In 2022, the development of the LSAE project was carried over to the 2023-2025 Work Programme by the Governing Council ([UNIDROIT 2022 – C.D. \(101\) 21](#)) and General Assembly ([UNIDROIT 2022 – A.G. \(81\) 9](#)).

7. Consistent with UNIDROIT's established working methods, the Secretariat set up a Working Group in 2022, chaired by Governing Council Member *ad honorem* Justice Ricardo Lorenzetti (Supreme Court of Argentina) and coordinated by Professor Fabrizio Cafaggi (Council of State of Italy and Professor at the University of Trento). The Working Group is composed of ten members selected for their legal expertise in contract law, corporate law, and cooperative law, as well as for their knowledge in economics, finance, digitalisation, and sustainability with regard to the agricultural sector and value chains.

8. The Working Group also includes representatives of FAO and IFAD's legal departments and technical experts from other departments, such as FAO's "Agrifood Economics Division", "Food Systems and Food Safety Division", and "Inclusive Rural Transformation and Gender Equality Division", as well as IFAD's "Research and Impact Division" and "Inclusive Rural Finance, Markets and Value Chains Division". A significant number of observers, representing international and

¹ 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. The summary report of the Colloquium is available on [UNIDROIT's website](#) and on the [Uniform Law Review](#), Volume 17, Issue 1-2, January 2012.

regional intergovernmental organisations, farmers associations, non-governmental organisations, and the private sector, also participate in the Working Group. Generally, the Working Group sessions are attended by an average of 40 participants. The complete list of members and observers of the LSAE Working Group is available on the [LSAE project's dedicated webpage](#).

9. In addition, within the framework of a Chair Programme supported by the Directorate General for Development Cooperation of the Italian Ministry of Foreign Affairs and International Cooperation, a senior researcher and a senior legal consultant have been assisting the Secretariat with the development of the LSAE project. For more information on the MAECI-DGCS/UNIDROIT Chair Programme, see the document regarding the UNIDROIT Academy ([UNIDROIT 2024 – C.D. \(103\) 21](#)).

III. SESSIONS OF THE WORKING GROUP AND INTERSESSIONAL MEETINGS

10. Five sessions of the Working Group were held between February 2022 and March 2024.²

A. First session of the Working Group (23–25 February 2022)

11. During the first session of the Working Group, participants were welcomed by opening remarks from the UNIDROIT Deputy Secretary-General Professor Anna Veneziano, FAO Legal Counsel Ms Donata Rugarabamu, and IFAD General Counsel Ms Katherine Meighan. The discussion covered (i) the issue of formality and informality of actors operating in the agri-food value chain; (ii) the realities and challenges faced by actors operating in the midstream segment, 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 agrifood sector and how it affected the internal and external functioning of agricultural enterprises. Participants favoured focusing the analysis on “collaborative legal forms” and on three categories in particular: (i) multiparty contracts, (ii) companies, and (iii) cooperatives.

12. The Working Group supported the idea that the content of the future instrument would be evidence-based and agreed to decide upon the methodology for the empirical research as the work progressed. A general overview of endogenous and exogenous factors influencing the choice between and within collaborative legal forms was presented, and it was recognised that it would be worth considering the effects of digitalisation, sustainability, and access to finance in the LSAE project.

13. After the first Working Group session, the UNIDROIT Secretariat agreed with FAO and IFAD to undertake intersessional meetings to advance the work on the LSAE 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 second intersessional meeting took place on 22 September 2022 and focused on agricultural cooperatives; and the third intersessional meeting took place on 30 September 2022 and focused on corporations, digitalisation, and access to credit and financing.

B. Second session of the Working Group (2–4 November 2022)

14. The second Working Group session was held on 2-4 November 2022. Participants further explored (i) the notion of agricultural enterprises; (ii) the features of horizontal and vertical collaboration; (iii) multiparty contracts in agriculture; (iv) cooperative governance systems and

² The Working Group documents and summary reports for each session are available on the [LSAE webpage](#).

internationally recognised cooperative principles and values; (v) the challenges of implementing sustainable practices across the supply chain.

15. It was clarified that the notion of “agricultural enterprises” would be considered mainly in the economic perspective to capture business activities of individual entrepreneurs and not only activities of legal entities. The Working Group considered adopting a “functional and needs-based approach” to compare the collaborative legal forms analysed in the LSAE project. The identification of “functionally equivalent categories” (e.g., taxonomy, formation, entrance, governance, liability, exist, dissolution, etc.) was discussed to ensure comparability between different concepts in the respective fields of contracts, cooperatives, and companies.

16. It was agreed that instead of focusing on understanding when one of the three collaborative legal forms should be used, the Working Group would focus on analysing when a specific legal structure would not be suitable for a specific situation. By way of illustration, the prospective guidance instrument would describe how a cooperative might not be the most suitable legal structure for a group of heterogeneous farmers, unless they adopted an effective conflict of interest mechanism.

17. During its second session, the Working Group mainly discussed the use of multiparty contracts and agreed to examine the modalities in which multiparty contracts might help producers and other businesses operating in agri-food markets to collaborate and implement strategic projects, with special regard to those that improved social and environmental sustainability in agriculture. Participants supported further distinguishing between exchange contracts and associative contracts. The Working Group decided to reassess the adaptability of the proposed structure of analysis for multiparty contract with regard to the other legal forms considered in the project at its third session.

18. Following the second session of the Working Group, the Secretariat established three thematic Subgroups to advance the work during the second intersessional period: (i) Subgroup 1 on Cooperatives, (ii) Subgroup 2 on Companies, and (iii) Subgroup 3 on Multiparty Contracts. Between January and April 2023, the members of the Subgroups developed discussion papers to guide the discussions of the Working Group in relation to the topics and methodology proposed for the analysis of multiparty contracts, cooperatives, and companies.

C. Third session of the Working Group (8–9 May 2023)

19. The Working Group held its third session on 8-9 May 2023, during the same week of the 102nd session of UNIDROIT’s Governing Council. During this session, the Working Group further discussed the differences between multiparty contracts and legal entities and also the fundamental differences between the legal forms, in particular regarding the objectives and interests concerned.

20. The working definitions of “collaboration”³ and “multiparty contracts”⁴ were further discussed. 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

³ For the purposes of the LSAE project, “collaboration” has been defined 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 or services or imply an engagement in projects within a value chain, with or without shared resources.” Horizontal collaboration occurs among businesses that operate at the same level of the supply chain, such as collaboration among farmers. Vertical collaboration occurs at different levels of the supply chain, such as collaboration between farmers and processors or between input providers and retailers. For more information, see: [Study LXXXC - W.G.3 - Doc.3](#), paragraph 110.

⁴ For the purposes of the LSAE project, “multiparty contract” has been defined as a contract concluded by a producer with another two or more parties for collaboration to fulfil common objectives, realise a common project or carry out common activities; can be concluded either in verbal or written form; and is usually conducted over a long term. A contract with less than three parties can qualify as a multiparty contract as long as it is open to the participation of a third party. For more information, see: [Study LXXXC - W.G.3 - Doc.3](#), paragraph 67.

previous title, “Legal Structure of Agricultural Enterprises”, did not reflect the content that was actually being developed.

21. During the third intersessional period (June-October 2023), additional efforts were made to gather empirical evidence on the use of the legal forms covered in the LSAE project. 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. It was informed that the multiparty contracts considered in the project were equivalent to “contractual joint ventures” to facilitate data gathering. Notwithstanding this attempt, FAO was not able to identify further examples of multiparty contracts beyond the ones available at the contract farming resource centre⁵ which had already been shared with the Working Group in previous sessions.

D. Fourth session of the Working Group (8–10 November 2023)

22. At its fourth session, the Working Group discussed general matters regarding the purpose and target audience of the future instrument and also considered the issues raised in three Draft Discussion Papers prepared by the members of the Subgroups. Additionally, the Working Group discussed the level of sophistication of prospective users of the future Guide and the need to develop a glossary with clear definitions and to adopt a more inclusive approach that would acknowledge diverse legal frameworks beyond the scope of traditional State law.

23. It was decided that the Subgroup on Companies would continue to focus its work on agricultural enterprises “other than cooperatives” and would further develop the working definition of “agricultural companies”. The differences between horizontal and vertical forms of collaboration in the context of companies would be considered to explain the difference (if any) between a company among farmers and a company among farmers, processors and distributors. Besides developing the core elements of the company-like entity (e.g., legal personality, liability, etc.), the Subgroup would add a discussion regarding collaboration by sole entrepreneurs and corporate groups, as well as reflect on the inclusion of a new section on conversion, merger, and division. Lastly, the Subgroup would consider whether company law might be used to address breach through a specific set of remedies. Potential legislative obstacles would also be evaluated to confirm whether contractual remedies could be used to supplement statutory remedies.

24. In relation to the work done by the Subgroup on Cooperatives, the Working Group considered the alternative list of topics proposed for the analysis and agreed to take into account the definition of cooperatives as adopted by the International Cooperative Alliance (ICA) Statement and the International Labour Organization (ILO) Recommendation No. 193, as well as to consider their principles and values when developing guidance on cooperatives in the LSAE project. It was agreed that the Subgroup would provide further information on the need for -and barriers to- joining cooperatives in certain parts of the world, particularly beyond Europe and the global North. Finally, the Working Group acknowledged the necessity to further develop the questions regarding who determined the needs that cooperatives were required to satisfy and who was responsible for fulfilment of these needs.

25. The discussion regarding Multiparty Contracts focused on issues related to governance, execution, and remedies for breach. It was agreed that corrective measures should have priority over disruptive remedies. The Subgroup on Multiparty Contracts agreed to tailor the discussions more to the needs of smaller enterprises and to further highlight the specificities of multiparty contracts adopted in the agriculture sector.

⁵ For more information, see: <https://www.fao.org/in-action/contract-farming/zh/>.

26. In relation to the impact of digitalisation, sustainability, and access to credit, the Working Group decided to consider in more detail the impact that these factors would have on governance and dispute resolution mechanisms, as well as to take into account the digital gender divide. Key questions would include how the different legal forms addressed data rights. Additionally, the Working Group would further consider if a separate chapter was needed to address the issue of electronic platforms.

27. Between December 2023 and March 2024, additional efforts were made to gather empirical evidence on the use of cooperatives and companies in the agricultural sector. The Rome-based FAO Development Law Service reached out to regional and country-level offices for data and facts regarding persons involved in agricultural cooperatives and the advantages and barriers for farmers in joining cooperatives. IFAD shared a database of some private sector and farmer organisations that IFAD has worked with to help the Working Group identify the legal structures commonly adopted.

E. Fifth session of the Working Group (18-20 March 2024)

28. At its fifth session, the Working Group heard presentations from each of the three Subgroups based on the discussion papers that had been circulated, as well as a presentation on digital platforms. Discussions were also held on certain exogenous factors that could affect the choice of legal structure, namely, sustainability and access to credit, and how to combine and compare the three forms.

29. Regarding Multiparty Contracts, the focus of the discussion was on exit, both voluntary and forced, and dissolution, with a view towards enabling comparison of these issues across all three structural forms. The first matter considered was in which cases voluntary exit from all three collaborative structures should be deemed warranted and how to avoid this becoming a disruptive event so that collaboration could be preserved. Both a liberal and a restricted exit strategy were seen as justifiable, depending on circumstances, and differentiated exit based on the type of party was also considered appropriate in certain cases. The second matter concerned forced exit as an important tool in terms of governance within the Multiparty Contract and how abuses related to such exclusion could be avoided. The third matter discussed was whether dissolution was an important consideration in the choice of legal structure and to what extent certain obligations should survive the dissolution of a collaboration. The discussions on multiparty contracts highlighted what was identified as one of the most important questions for the LSAE Project, namely, to determine whether, when either a cooperative or a company entered into an agreement (e.g., to sell milk or apples), that agreement would be subject to the law of contracts, to company law, or to the framework regulating cooperatives.

30. The Working Group also considered the distinction between cooperatives focused solely on production and those integrating production, processing, and distribution. It was noted that this topic could be further developed to understand how vertical integration within cooperatives affects collaboration as compared to horizontal cooperation among farmers. The potential differences in collaboration based on whether cooperatives are small or large was discussed. Moreover, the origins and actors behind the foundation of cooperatives was explored to understand the differences in terms of the type of collaboration between cooperatives that are driven by buyers and cooperatives that are driven by farmers or international organisations. The dynamic nature of addressing breaches in cooperatives was emphasised, and particular attention was given to the concept of a right to cure for member breaches.

31. Regarding companies, the substantive similarities between partnerships and limited liability companies was discussed and it was proposed that, for purposes of the LSAE project, the term “company” could be used to refer to all types of legally recognised business organisations—including partnerships—whose foundational purpose is to generate profit. The Working Group discussed core

features of companies that may be considered by agri-businesses when deciding whether or not to form a company in order to collaborate. Experts also considered how these features may vary from one type of company legal form to another and acknowledged the importance of further comparing the different types of companies that can be used in agri-food collaboration.

32. Additionally, the Working Group further discussed how sustainability (encompassing all three aspects of economic growth, social inclusion and environmental protection) could influence the choice of legal structure. It was noted that during this period of societal transformation, conflicts might arise between business viability and environmental or social sustainability, which raised an important policy consideration to be included in the future Guide. Moreover, many chain leaders were based in jurisdictions that required compliance with emerging sustainability requirements that, in turn, would be imposed on suppliers. This, too, raised issues of public policy, extraterritoriality and applicable law.

33. Another exogenous factor that was considered of vital importance for the future Guide was access to credit. The question for the Working Group was whether the structural form of the entity used by the agri-entrepreneur would have an impact on its ability to obtain financing and whether various aspects of that form, such as limited liability, separate legal personality, etc., would make a difference. It was pointed out that, as not all credit was provided by institutional lenders, mention should also be made of numerous types of informal sources of finance accessed by MSMEs, smallholders and agri-entrepreneurs.

IV. OVERVIEW OF THE STRUCTURE OF THE FUTURE INSTRUMENT

34. During its last session in March 2024, the Working Group considered a preliminary draft structure of the future instrument and proposed to further consider whether any rearrangement of chapters was needed and if additional content should be included.

35. At this stage of the project, it is expected that the future Guide will have a preface, introduction and six chapters, respectively, devoted to: Multiparty contracts (Chapter I); Cooperatives (Chapter II); Companies (Chapter III); Digital platforms (Chapter IV); Comparing and combining different collaborative legal forms (Chapter V); and a final chapter on the Implementation of the Guide. The Annexe to this document, available to Governing Council Members only, contains a list of topics that will likely be covered in each chapter of the Guide. The Working Group also considered the draft Glossary that had been provided as guidance for the internal discussions and to promote use of consistent terminology.

V. PROPOSED NEXT STEPS

36. The tentative calendar for the LSAE Project envisages the preparation of the draft instrument over seven Working Group sessions, followed by a period of consultations before submitting the complete draft for adoption by UNIDROIT, FAO and IFAD. Therefore, the Secretariat suggests that at least one more Working Group session be held in 2024, and another one in early 2025. The sixth session of the Working Group is tentatively scheduled to take place in October 2024.

VI. ACTION TO BE TAKEN

37. *The Governing Council is invited to take note of the progress made by the Working Group established for the development of the project on Collaborative Legal Structures for Agricultural Enterprises.*