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**UNIDROIT Working Group on Collaborative
Legal Structures for Agricultural Enterprises**

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SECRETARIAT'S REPORT

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 "CLSAE", "the Project", or "the future instrument").
2. This report provides an update on the work carried out by the Working Group and the four Subgroups. The update is based primarily on the outcomes and developments after the fifth session of the Working Group held on 18-20 March 2024 (see the Summary Report: Study LXXXC – W.G. 5 – Doc. 7) and the intersessional work undertaken between March and November 2024. It includes two annexes, a draft glossary, and a proposed structure of the future instrument.
3. The report is accompanied by additional documents, which were sent separately to the members and observers of the Working Group and which will be the main object of discussion at the sixth Working Group session.
 - Draft Discussion Paper on Companies;
 - Draft Discussion Paper on Cooperatives;
 - Draft Discussion Paper on Multiparty Contracts; and
 - Draft Discussion Paper on Digital Platforms.
4. Each of the above-mentioned documents contain a description of issues and questions to guide the discussion of the Working Group during the sixth session.

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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 CLSAE 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 2021).

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 CLSAE 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 CLSAE 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 contribution. Accordingly, on 15 and 16 April 2021, a Consultation Webinar was co-organised to

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 CLSAE 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.

discuss the CLSAE 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 CLSAE 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. The Project was extended to the 2023-2025 UNIDROIT Work Programme with high priority.

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 "Results and Impact Assessment (RIA) Division" and the "Sustainable Production, Markets and Institutions (PMI) 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 and a senior legal consultant joined the UNIDROIT Secretariat to assist with the development of the CLSAE Project.

14. The Working Group is chaired by UNIDROIT Governing Council Member Professor Maria Ignacia Vial Undurraga (Chile) 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 CLSAE Project's dedicated [website](#).¹¹

2. Methodology and timeline of the Project

15. The CLSAE 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

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.

of 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 are distributed in advance of each session. After each meeting, the UNIDROIT Secretariat prepares a report with a summary of the discussion for publication on the UNIDROIT website.

18. It is expected that the preparation of the CLSAE Guide will require seven (if needed eight) 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

19. This section describes the main topics discussed and recommendations made during the fifth session of the Working Group. For more information on the work undertaken in the previous Working Group sessions and intersessional periods, see the previous Secretariat Reports and Summary Reports of Working Group available on the [CLSAE Project's dedicated website](#).

1. Fifth Working Group Session (18 – 20 March)

20. The fifth session of the Working Group was held from 18 through 20 March 2024 and was attended, remotely or in person, by 45 participants. The session began with an update on intersessional work since the fourth session. The Working Group considered the progress made in the Draft Discussion Papers prepared by the Subgroups and discussed the ongoing development of the future instrument.

21. The first major topic discussed was the Draft Discussion Paper by the **Subgroup on Companies**, which provided a high-level overview of company forms with a focus on their relevance to smaller actors and it was acknowledged that several sections required further development, particularly concerning issues such as conversion, corporate groups and dispute resolution. It was suggested that fiduciary duties be included among the company features to be considered and to further distinguish the purposes of a company beyond profit as a useful way to frame the discussion on sustainability and public benefit. Discussions highlighted that there had been some “back-and-forth” movement between commercial companies and cooperatives, where the lines between the two legal forms were becoming increasingly blurred. It was suggested that the discussion paper could integrate more information on “public benefit companies” that contemplated the combination of for-profit objectives with positive externalities and could add specific references on how sustainability considerations might affect company structure and operations (e.g., governance, decision-making, board composition, fiduciary duties, liability, and remedies).

22. The Working Group stressed the importance of clear definitions for key terms like “profit,” “non-profit,” and “not-for-profit.” There was debate over whether profit should be viewed strictly as financial surplus or if it could include reinvested earnings aimed at social objectives. It was recommended that a more precise definition of what constituted a “corporate group arrangement” be developed to distinguish it from other forms of company collaboration or coordination and to undertake a comparative legislative analysis to verify how corporate groups were defined in different jurisdictions. On the topic of conversion, it was clarified that the concept could refer to the transformation of one company form into another or into another legal form such as a cooperative and that this discussion could be covered in the chapter dedicated to the comparison and combination of different collaborative legal forms.

1. The concept of the *de facto* company was raised and it was suggested this be considered in relation to the interpretation of multiparty contracts as companies and implications on member liability, with clear distinctions in the terminology as applied to civil and commercial companies. The Working Group had also discussed asset partitioning and contributions, in particular, on what constituted a valid contribution and whether company law or cooperative law provided higher protection for contributions such as work and land. Accordingly, it was recommended this be examined further to distinguish the types of contribution and any required balance to promote collaboration while protecting essential resources.

2. The discussion of the Draft Discussion Paper by the **Subgroup on Multiparty Contracts (MPCs)** focused on key issues such as exit, dissolution, and post-contractual obligations. It was suggested that the analysis of exit could be differentiated based on the type of contracting party because this would be appropriate in multi-stakeholder contracts and would enable comparison with the chapters of the CLSAE Guide on cooperatives and companies where exit regulation was connected with member status or contribution level. It was recommended that the Subgroup could further distinguish the different kinds of regulation of exit and could use a general criterion concerning proportionality between the cost and the price of exit.

23. It was pointed out that one of the key questions of the CLSAE project concerned the situation when either a cooperative or a company entered into an agreement (e.g., to sell milk or apples) and whether that agreement and production specifications would be subject to the law of contract or internal regulations of the company or cooperative. The Subgroup was encouraged to further analyse what such internal regulations entailed and whether their breach would constitute a breach of duties for which expulsion was warranted.

24. Dissolution was recognised as a topic that differentiated the three collaborative legal forms quite significantly and that therefore could also be considered in the comparative chapter of the CLSAE Guide. The need for clear guidelines on when and how a contract should be dissolved was emphasized, and to clarify whether this required a collective decision, either by consensus or majority. The importance of establishing clarity about the consequences of liquidation was also stressed so as to create incentives to collaborate and maintain relationships.

25. Post-contractual obligations were discussed in detail, with examples illustrating how these obligations could ensure the continuation of certain aspects of collaboration even after the formal contract ends. The Working Group debated whether these obligations should be explicitly outlined in the contract while some could be based on general principles like good faith in some jurisdictions. The discussion also raised broader questions about minority rights, the duration of contracts versus companies or cooperatives, and the relationship between initial contributions and ongoing activities. These issues were deemed important for the comparative chapter of the CLSAE Guide, as they could significantly influence the choice of collaborative legal forms.

26. The discussion of the Draft Discussion Paper by the **Subgroup on Cooperatives** focused on several key areas, including the analysis of cooperatives' operations within value chains, governance challenges, collaboration models, and the handling of breaches of cooperative obligations.

27. The Working Group debated the evolving nature of power imbalances in value chains, traditionally linked to capital and labour but increasingly influenced by data usage. The discussion highlighted the need for a deeper understanding of how cooperatives operate, especially regarding their role as intermediaries between members and markets, and the application of non-State law in governing these entities. Three aspects were suggested for further analysis: the distinction between different types of cooperatives (how vertical integration within cooperatives affected collaboration compared to horizontal cooperation among farmers); the impact of cooperative size on collaboration, and the effects of a cooperative's origins (whether driven by buyers, producers, or larger enterprises) on the type of collaboration.

28. Governance issues were another significant focus: the discussion underscored the need for further analysis of internal regulatory documents (e.g., bylaws, contracts) of agricultural cooperatives to identify best practices and develop guidance.

29. The Working Group also discussed breach of cooperative obligations, distinguishing between breaches by management and members, breaches of statute and regulations, and the consequences. It was recommended that the discussion papers on both cooperatives and companies elaborate these distinctions, emphasizing the need to differentiate breach of a project-related rule from breach of organizational rules that could result in more severe consequences, such as suspension or expulsion.

30. **The Subgroup on Digital Platforms** outlined key issues in the Draft Discussion Paper, which included the definition of digital platforms and their differentiation from digital solutions, unique legal and governance challenges, the importance of understanding the stakeholders involved in digital platforms (including operators, developers, and users) and the implications of digital platforms in the agricultural sector, particularly the risks associated with data collection. The evolving concept of data access was noted as a critical issue that needed to be addressed in the Guide.

31. The Working Group discussed whether digital platforms merited a stand-alone chapter and four distinctive features of digital platforms were identified that might warrant separate treatment: (i) the ability to manage large numbers of participants; (ii) the potential for multiple layers of collaboration; (iii) the central role of intermediation, and (iv) the ease of entry and exit for members and resources. While the complexities involved in addressing digital platforms was acknowledged, the Working Group emphasized the need to consider the impact of digitalisation on collaborative legal forms for smallholders and agri-MSMEs, and to identify the features that should be included in digital platforms to meet their needs.

32. Concerning exogenous factors, the Working Group recommended that the topic of sustainability be integrated throughout the CLSAE Guide rather than addressed in a separate chapter, consistent with the approach used in the two previous legal guides on agriculture. It was suggested that the meaning and scope of the term as applied to the CLSAE Project should be clarified in the Introduction.

33. The Working Group agreed that the topic of access to credit should be addressed in the Introduction to explain its importance to smallholders and agri-MSMEs and to cover not only how to finance collaboration, but also whether collaboration served as a driver to enable financing. It was suggested that the question of whether and how the form of the collaborative structure would influence access to credit would be better considered within each chapter.

34. It was agreed that the topic of applicable law should also be developed in the Introduction and that each chapter would refer back to that explanation, as necessary. It was suggested that the Working Group could consider: (i) how a choice of applicable law could lead to possible circumvention of sustainability requirements; and (ii) party autonomy as one of the factors that could determine applicable law.

35. Towards the end of the session, the Working Group reviewed the glossary and preliminary draft structure of the CLSAE Guide. Suggestions were made for further refinement and the potential inclusion of additional content to ensure clarity and comprehensiveness. The Working Group also discussed combining and comparing collaborative legal forms.

36. The session concluded with an agreement on the next steps, including further refinement of the draft discussion papers and continued data collection on the use of cooperatives and companies in agriculture. This data collection was considered crucial for rendering the CLSAE Guide more practical and user-friendly. The FAO and IFAD were requested to reach out to regional offices and private sector entities to collect real-life examples that could inform the Guide's recommendations.

37. For more information, reference is made to the Summary Report of the Working Group's fifth session ([Study LXXXC – W.G.5 – Doc. 7](#)).

2. Intersessional work (April – October 2024)

38. Pursuant to the mandate received at the fifth session of the Working Group, the Secretariat continued to provide support to the Working Group for the organisation of intersessional meetings to advance the understanding of certain issues and for the preparation of draft discussion papers. All four subgroups were able to progress on their respective Discussion papers and continued to contribute to the overall development of the CLSAE Guide.

39. The **SubGroup on Companies** addressed several key issues raised during the previous session with the aim to further develop the various aspects of the legal frameworks for companies. Work continued on the meaning of "profit" and the formation of companies, differentiation between various types of legal forms, such as simplified corporations, single-person entities, partnerships and corporate groups. Aspects of governance, management, and decision-making were further developed, and consideration of shareholder agreements was added. The Subgroup discussed separate legal personality in relation to liability, exit and withdrawal of members and also included consideration of in-kind contributions.

40. The **Subgroup on Cooperatives** considered aspects that had been suggested for further analysis, namely, the distinction between different types of cooperatives (horizontal producer cooperatives and vertically integrated cooperatives), the impact of size on collaboration, and the effects of a cooperative (whether organized by buyers, producers, or larger enterprises) on the type of collaboration. Certain aspects of formation and governance were further elaborated with addition of a discussion on the constituting legal framework. The Subgroup also considered analysis of the internal regulatory documents of cooperatives, such as bylaws and regulations, and emphasized the member-oriented and person-centred structure as governed by democratic principles.

41. The **Subgroup on Multiparty Contracts** advanced its work on exit in situations where the MPC is ancillary to the main contract and the use of trust funds as a financing mechanism. Compliance with production specifications was considered and whether breach thereof would warrant expulsion. As suggested by the Working Group, the objective to preserve the collaboration was emphasized, with loyalty and trust highlighted as key incentives. Also addressed was differentiation of MPCs from the other forms with respect to social aspects (i.e., that parties to an MPC as employees would not enjoy the protections offered by labour law) and ways to ameliorate this difference. Although this would be the subject of the UNIDROIT Project on Corporate Sustainability Due Diligence in Global Value Chains, it was acknowledged that, particularly in transboundary MPCs or those with GVC leaders, incorporation of sustainability considerations into GVC governance was necessary.

42. The **SubGroup on Digital Platforms** developed a chapter outline that formed the basis for their Draft Discussion Paper for use as either a separate chapter on digital platforms or for incorporation into other chapters of the CLSAE Guide. The primary focus was on governance, legal structures, and operational challenges associated with digital platforms in the agricultural sector.

43. To follow-up on the suggestion that had been made by the Coordinator of the Working Group for inputs from entities that operate digital platforms in the agriculture industry (W.G. 5, Doc. 7, para. 143), the Secretariat developed a questionnaire to gain insights on (i) governance, i.e., how digital platforms in the agricultural sector were governed and the application (or not) of other instruments governing agrifood supply chains; (ii) collaboration, i.e., given their position in the value chain, whether digital platforms could serve as enablers of new functionalities and new dynamics; (iii) bridging the digital divide, i.e., how to facilitate access and participation of smallholders to these platforms or create new ones; (iv) differentiation between innovation platforms, transactions platforms and hybrid platforms; (v) emerging technologies, such as AI and blockchain, and the

technological and economic implications for governance, data management and agricultural practices; (vi) differentiation between data ownership and data access and how these concepts affect digital platform operations and farmer participation; (vii) stakeholders, size and membership and in particular, first, differentiation between members and users and any consequences thereof for governance; secondly, although digital platforms address the practical challenges of coordinating large, heterogeneous and geographically diverse members or user groups, whether there were implications for the governance structure, i.e., centralized or decentralized; and thirdly, on entry/exit and compliance, how these aspects were regulated and monitored for members/users. Initial outreach efforts to industry were made but without response to date.

44. As had been explained during previous sessions, managers of agricultural cooperatives observe market signals that, in turn, are conveyed to the members to encourage their response (through changes in production quantity, quality, methods, etc.) and this can be done by using a variety of tools, such as bylaw provisions, internal regulations, contractual terms, or informally. To further the understanding of this issue, the Secretariat sought out examples (from the FAO and otherwise) of the internal normative tools used by cooperatives that were shared with the Subgroup.

45. During the intersessional period, the Secretariat consulted with the FAO and IFAD for information that would help address issues that had been raised by the Working Group and developed a questionnaire that the FAO distributed to its regional and country-level offices. This included questions on (i) how “agricultural activities” were legally defined in different jurisdictions; (ii) whether there were examples of policy recommendations for the use of a certain type of legal structure for collaborative agricultural enterprises of smallholders and agri-MSMEs; (iii) whether cooperatives, or a certain type of company, or contractual multiparty arrangement were encouraged and, if so, for what reasons; (iv) whether corporate group arrangements (i.e., groups of companies, groups of cooperatives, or mixed) were used by, or relevant for, smallholders and agri-MSMEs; and (v) whether in-kind contributions were permissible and under what terms. The Working Group had also requested information, including (i) quantitative data that would illustrate the extent to which smallholders and agri-MSMEs were prevalent in the agricultural sector worldwide, specifically in the global south, as well as any data to indicate whether, over time, their prevalence had been increasing or decreasing in importance to the sector as well as any information to explain this change, such as legislation or policy incentives; (ii) quantitative data on the types and sizes of cooperatives operating in the agricultural sector, particularly in the global south, to illustrate the extent to which the cooperative form was prevalent in the agricultural sector, whether the cooperative form had been increasing or decreasing in importance to the sector and if so, any information that would help to explain this change; (iii) quantitative data to illustrate the extent of digitalisation / digitisation among smallholders and agri-MSMEs in the agricultural sector, and whether this digital prevalence / access to digital tools had been increasing or decreasing over time; and (iv) information on how “digital inclusion and digital divide” was being addressed by cooperatives and/or companies and any examples of legislation or normative requirements to ensure that technological benefits would also reach smallholders and agri-MSMEs.

46. Responses from FAO field offices to several of the above questions were compiled by the FAO and forwarded by the Secretariat to the Subgroups for their consideration. This information was incorporated into the discussion papers, the glossary and draft introduction as appropriate. Responses on some questions remain outstanding.

47. To assist with the development of the comparatives chapter and at the request of the Coordinator, the Secretariat prepared two tables, one on structural aspects and the other on functional aspects of the collaborative legal structures. The Secretariat also advanced the work on the Glossary (Annexe I) and the Introduction to the CLSAE Guide, based on the Draft Structure of the Instrument (Annexe II).

3. Next sessions of the Working Group and intersessional work

48. The Secretariat suggests that at least one more Working Group session be held in 2025. For the moment, it is proposed that the seventh session of the Working Group take place on 9, 10, and 11 April 2025.

49. The continuation of the intersessional work is also highly encouraged. For the next intersessional period, the Secretariat suggests: (i) retaining the four Subgroups on Cooperatives, Multiparty Contracts, Companies and Digital Platforms; (ii) considering the establishment of a Drafting Committee to prepare the first draft “Master Copy” of the instrument based on the discussions of the Working Group 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 take note of the dates proposed for the seventh Working Group session (scheduled for 9-11 April 2025).
- Does the Working Group agree with the proposed approach for the next intersessional period?

II. GENERAL MATTERS CONCERNING THE GUIDANCE INSTRUMENT

50. The general matters related to the scope of the future Guide have been extensively discussed by the Working Group in previous meetings. For a detailed description of the: (i) purpose of the Project; (ii) target audience; (iii) format and title; as well as (iv) the methodology proposed, please see the previous Secretariat Reports and Summary Reports of Working Group available on the [CLSAE Project’s dedicated website](#).

III. CONTENT OF THE GUIDANCE INSTRUMENT

51. The Working Group is invited to consider the topics and questions proposed in the Draft Discussion Papers on Multiparty Contracts, Companies, Cooperatives and Digital Platforms sent separately to the Working Group members and observers. In addition, the Working Group is invited to consider the draft Glossary (Annexe I) and draft Structure of the Instrument (Annexe II).

ANNEXE I**DRAFT GLOSSARY**

Term	Proposed Definition	References
CATEGORY	ENTITIES	
Agricultural Enterprise	Agricultural Enterprise is the carrying on by one or more persons of an organised economic activity, consisting of producing, administering or providing a service in the agri-food chain. The term "enterprise" includes any organised economic activity whether or not it is commercial in nature. See also, discussion in Introduction.	
Agri-MSME	Agricultural Medium, Small or Micro Enterprise (Agri-MSME) is a "profit-oriented enterprise involved in the agricultural value chain either directly or by providing enabling services to value chain actors, which do not have to have ambitions to grow but must be profit-oriented". Agri-SMEs may "include small commercialising farms and farmer cooperative-owned enterprises. However, farmers must sell at least 50% of their production to qualify". Micro-enterprises are "typically informal, focused on income generating activities and have less than five full time equivalent workers" [1] See also, discussion in Introduction.	[1] Smallholder and Agri-MSME Finance and Investment Network (SAFIN), ISF. Learning brief: Agri-SME taxonomy, March 2021, p. 2 Issues Paper WG2, Doc. 2, para. 18
Agricultural Cooperative	Agricultural cooperatives are a type of cooperative essentially involved in carrying out an agricultural activity. The cooperative may also be involved in non-agricultural activities (e.g., data collection or marketing related to the agricultural activity) and/or other activities for the well-being of its members, such as in the areas of health or finance. Agricultural cooperatives are those that either carry out an agricultural activity themselves (as an enterprise) or exclusively or largely process or market agricultural products that are produced or supplied by their members. This is often secondary production or a related activity that is organised in some other way and it is essential that these activities promote the success of primary production.	Cooperative Discussion Paper, WG6, Doc 5, paras 27 & 31
Cooperative	Cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.	International Cooperative Alliance. Cooperative identity, values & principles, cited in Cooperatives Discussion Paper, WG6, Doc 5, para. 8

Company	<p>"Company" encompasses all types of business organisations whose foundational purpose is to generate profit and that operate under legally recognised forms (e.g. forms regulated by State law and, as the case may be, comply with registration requirements). Many jurisdictions offer a choice among different legal forms that include some variation of the following: sole proprietorships, general and limited liability partnerships, limited liability companies and shareholder corporations.</p>	<p>Companies Discussion Paper, WG6, Doc. 3, para.11</p>
De facto Company	<p>A de facto company is where two or more natural or legal persons operate as a company but lacks full legal recognition or legitimacy. Unlike a fully legitimized company (de jure), it is either not recognized by the law or is recognized but has not fulfilled the constituent legal formalities.</p> <p>The term has been used to describe a multiparty contract as actually constituting a <i>de facto</i> company, rather than a contract.</p>	<p>Definition adapted from OHADA Uniform Act on Company Law and Medret Lekunga Ndangoh, "The OHADA Company Law and de Facto Companies," Uniform Law Review 25, no. 2-3 (2020): 308; UNIDROIT, Prel. Study on Unification of Legislation on Commercial Companies, 1948</p>
Multiparty Contract	<p>Multiparty contract is a contract concluded by one or more producers with one or more parties for collaboration to fulfil common objectives, realise common project(s) and/or carry out common activities in the field of agriculture or agr-food production, processing and distribution. It 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.</p>	<p>Summary Report, WG5, Doc 7, paras 27 - 29 Adapted from MPC Discussion Paper, WG6, Doc.4, paras. 5-7</p>
Partnership	<p>General Partnership - In civil law jurisdictions, a partnership generally signifies an agreement between two or more individuals who combine resources to pursue a joint economic goal. In common law jurisdictions, a partnership is typically defined as an association of persons conducting business jointly for profit, governed by mutual agency principles, where each partner may act on behalf of the partnership and bind the other partners. A general definition that cuts across both jurisdictions might be that a partnership is a structured agreement between two or more parties to jointly operate a business and share its profits.</p>	<p>Summary Report WG5, Doc 7, para 187</p>

	<p>Limited Liability Partnership - In civil law systems, liability protection for limited partners depends on their strict non-involvement in management, while common law jurisdictions allow limited partners some managerial input without necessarily forfeiting liability protection. However, the extent of this varies by jurisdiction.</p> <p>In many jurisdictions, limited liability partnerships may only be formed by professionals such as lawyers, accountants, architects, etc.</p>	
Sole Proprietorship	A sole proprietorship is a legally recognized business carried on by an individual natural person.	Companies Discussion Paper, WG6, Doc.3
CATEGORY	CHAINS	
Agrifood System	<p>Agrifood systems encompass the entire range of actors and their interlinked value-adding activities involved in the production, aggregation, processing, distribution, consumption and disposal of food products. They comprise all food products that originate from crop and livestock production, forestry, fisheries and aquaculture, as well as the broader economic, societal and natural environments in which these diverse production systems are embedded. It is a term increasingly used in the context of transforming food systems for sustainability and inclusivity.</p>	<p>FAO, et al (2024), The State of Food Security and Nutrition in the World, Glossary; FAO (2024), The State of Food and Agriculture in the World, Glossary.</p>
Agrifood Value Chain	<p>Agri-food value chains consist of all stakeholders who participate in the coordinated production and value-addition activities that are needed to make food products. This includes primary production, post-farmgate activities (processing, storage, transport, etc.), input/service providers, distribution, retail and consumers.</p>	<p>Bernard, T. & Giraud Héraud, E. 2024. Agrifood value chains in low-income countries –Accounting for market structure to inform policies. FAO Agricultural Development Economics Working Paper 24-03. Rome, FAO. https://doi.org/10.4060/cd0903en Cites FAO (2021), The State of Food and Agriculture</p>
Agricultural Supply Chain	N/A	<p>On the recommendation from the project partners, FAO and IFAD, the Working Group agreed to use the term “agricultural value chain” in lieu of “supply chain.”</p>
Agricultural Value Chain	<p>Agricultural value chain is defined as the sequence of related business activities from the provision of specific inputs for a particular product or product ranging from primary production, transformation and marketing, up to the final sale of the particular product to the consumer.</p>	IFAD, Jonathan Agwe, referring to GIZ

Food Supply Chain	A connected series of activities encompassing the primary production of food from crops, livestock, forestry, fisheries and aquaculture; along with the value-adding activities of storage, transportation, processing, wholesale, retail and food service. This definition differs from that of “food value chains” as proposed by FAO (2014) by excluding food consumption and disposal.	FAO (2021), The State of Food and Agriculture, Glossary
Traditional Food Supply Chains	Spatially short involving a small number of small-scale producers, intermediaries and micro to small enterprises using labour-intensive technology and relying on spot markets. They handle locally produced food with basic processing, storage, logistics and other post-farm activities.	FAO (2021), The State of Food and Agriculture, Glossary
Transitional Food Supply Chains	Spatially long, with many small-scale producers and small to medium enterprises and intermediaries, such as processors, wholesalers and retailers who are fragmented; product diversification and value-addition are relatively high; contracts are used although spot market relations still prevail.	FAO (2021), The State of Food and Agriculture, Glossary
Modern Food Supply Chains	Serve large urban populations; spatially short, long or very long (including transnational); dominated by supermarkets and large processors; technology is largely capital-intensive where cold storage, packaging and private quality standards are very common; contracts dominate but spot markets are used for perishables.	FAO (2021), The State of Food and Agriculture, Glossary
CATEGORY	ACTIVITIES	
Aggregation	In the realm of agriculture and statistics, aggregation typically involves combining individual data points or variables related to agricultural activities to derive summary measures or indicators. This process is crucial for analysing and presenting agricultural data at a higher level of abstraction, facilitating a more comprehensive understanding of trends, patterns, and overall performance in the agricultural sector. Agricultural aggregation may involve combining data on various aspects of farming, such as crop yields, livestock production, land use, and economic indicators. The specific methods and criteria for aggregation can vary based on the goals of the analysis and the available data.	Aggregation in Agribusiness (e-fresco.io)
Agricultural Activities	Most countries adopt broad definitions, encompassing a range of practices that include crop cultivation, livestock farming, aquaculture and forestry. See also, discussion in Introduction.	FAO responses to UNIDROIT Questionnaire, Legislative examples of definitions of agricultural activities.

Collaboration	<p>Collaboration is defined as two 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.</p> <p>Horizontal collaboration occurs among businesses that operate at the same level of the supply chain, such as collaboration among farmers.</p> <p>Vertical collaboration occurs at different levels of the supply chain, such as collaboration between farmers and processors or between input providers and retailers.</p>	Summary Report, WG3, Doc 3, paras.81, 110
Profit (seeking)	<p>“Profit” means any surplus that remains on amounts earned (e.g. revenues or income) after all amounts spent in the operation of business or activity (operating expenses) have been deducted. In companies, profit may be distributed to members but may also be reinvested in the company. While this may also be the case with surplus in cooperatives, the reference to profit generation as a foundational objective of companies is intended to underline the emphasis placed on this objective for companies as not only a means to an end but also as an end in and of itself.</p>	Companies Discussion Paper, WG6, Doc 3, FN 9.
Unfair Commercial Practices Unfair Trade Practices	<p>Unfair trading practice is conduct that deviates from good faith and fair dealing. It includes late payments or unilateral contractual changes, often imposed by larger companies. These practices undermine fairness and stability in the market. In the agri-food value chain, smaller operators are particularly vulnerable due to their weaker bargaining power.</p> <p>This is a legal term and should not be considered as judgmental.</p>	<p>https://agriculture.ec.europa.eu/common-agricultural-policy/agri-food-supply-chain/unfair-trading-practices_en</p> <p>Summary Report WG5, Doc 7, para 193</p>
CATEGORY	PARTICIPANTS	
Farmer	<p>Farmer is a person who is engaged in agricultural activities, either as an owner or a tenant, and who makes decisions related to the use of land, water, and other resources that are necessary for agricultural production. The definition also includes people who are engaged in fishing, forestry, and other related activities.</p>	<p>FAO (2018), “Proposed International Definition of Small-scale Food Producers for Monitoring the Sustainable Development Goal Indicators 2.3.1 and 2.3.2,” (BG-Item3j-small-scale-food-producers-definition-FAO-E.pdf (un.org)) p.3</p>

Smallholder	Smallholders are small-scale farmers, pastoralists, forest keepers, fishers who manage areas varying from less than one hectare to 10 hectares. Smallholders are characterized by family-focused motives such as favouring the stability of the farm household system, using mainly family labour for production and using part of the produce for family consumption. See also, discussion in Introduction.	FAO, Smallholders and Family Farmers Factsheet. https://www.fao.org/3/ar588e/ar588e.pdf
Family Farmer	See discussion in Introduction.	
Peasant	A peasant is any person who engages or who seeks to engage, alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organising labour, and who has a special dependency on and attachment to the land.	United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, Article 1.1
Member	<u>Member (of a cooperative)</u> : A potential member must meet the conditions for membership in the cooperative; the main condition is established by the first ICA Principle that only “persons able to use [the] services [of the cooperative] and willing to accept the responsibilities of membership [...]” may qualify as members. But even those who do fulfil these conditions still have to be admitted as members (arguable). <u>Member (of a company)</u> : State laws establish whether natural persons only, legal persons only or both legal and natural persons may be members of a particular company legal form. Similarly, the laws that govern each legal form establish the number of members permitted.	Cooperatives Discussion Paper, WG6, Doc 5, para 40. Companies Discussion Paper, WG6, Doc. 3, paras 37 and 55
CATEGORY	OTHER	
Digital Platform	A digital platform is a two-sided or multi-sided online marketplace which facilitates value-enhancing transactions between two or more groups. [1]	[1] Evans & Schmalensee 2016 Summary Report, WG5, Doc. 7, para. 189
Innovation Platform	Innovation Platform in the agricultural sector refers to a physical, virtual, or physio-virtual network of stakeholders which has been set up around a commodity or system of mutual interest to foster collaboration, partnership and mutual focus to generate innovation on the commodity or system.[1] Innovation platforms facilitate and strengthen interactions between farmers and other relevant	[1] Adekunle and Fatunbi 2012 [2] Schut et al. 2016

stakeholders for the purpose of agricultural innovation, in both technological and institutional terms. [2]

CATEGORY	FUNCTIONAL APPROACH
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Transformation	Modification (for contracts)
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Summary Report, WG5, Doc. 7, para. 186

	Conversion (for companies and cooperatives)
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Questions for the Working Group:

1. The Working Group may wish to discuss whether to adopt a functional approach, as had been suggested during the previous session.
2. During the previous session it was remarked that the proposed definition of agricultural enterprise is “extremely wide,” which the Working Group may wish to consider.
3. The Working Group may wish to consider whether these terms are appropriate for the Glossary and if there are additional terms to include.

ANNEXE II**Preliminary Draft Structure of the Instrument**

The below draft structure for the UNIDROIT/FAO/IFAD's future Legal Guide on Collaborative Legal Structures for Agricultural Enterprises was prepared based on the discussions of the Working Group, the work conducted by the Subgroups and the previously developed [Legal Guide on Contract Farming](#) and [Legal Guide on Agricultural Land Investment Contracts](#). The issues raised should be considered in conjunction with the "draft discussion papers" on cooperatives, companies and multiparty contracts. The Working Group is invited to consider the draft structure for the future instrument and propose any additional content that should be included as well as any rearrangement of chapters as appropriate.

Section heading	Proposed content
Foreword	<ul style="list-style-type: none"> • Overview of the tripartite partnership between Unidroit, FAO and IFAD in the field of private law and agricultural development
Preface	<ul style="list-style-type: none"> • Purpose of the CLSAE Guide <ul style="list-style-type: none"> ○ Provide guidance on 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 • Relationship between the CLSAE Guide and the previous UNIDROIT/FAO/IFAD legal guides (Contract Farming and Agricultural Land Investment Contracts) • Protected interest group and target audience <ul style="list-style-type: none"> ○ Smallholders and agri-MSMEs, et al. ○ Legal professionals, legislators, policymakers (actors in an advisory capacity and certain stakeholders that have a role in shaping future legislation and drafting policies, as well as in delineating bylaws, internal regulations and contracts). In addition, representatives of international organisations, chambers of commerce, local associations, producer organisations and other bodies, as these actors would also be in position to provide guidance • Approach and how to use the CLSAE Guide <ul style="list-style-type: none"> ○ Functional and needs-based approach
Introduction	<ul style="list-style-type: none"> • Overview of agri-food value chains and the role of smallholders and agri-MSMEs <ul style="list-style-type: none"> ○ General introduction to agri-food chains (e.g., how they are structured; role and position of the "protected interest group" of the Guide within the chain)

Section heading**Proposed content**

- Current reality of smallholders and agri-MSMEs (e.g., data, features and practices of smaller enterprises)
- Recognition of the vulnerability, large informality and semi-formality of smaller agricultural enterprises
- Consideration of larger enterprises to understand their practices would be crucial to creating a Guide that effectively serves the needs of smaller enterprises which operate within these value chains
- Challenges posed by agri-food value chains
 - Description of the trend towards intensive integration into global value chains and the consequences of growing [fragmentation/de-organisation] of traditional forms of organised entrepreneurship
 - Acknowledgement of the issue of unfair commercial practices and unbalanced bargaining power 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 disproportionate power that chain leaders generally have.
- Needs of smallholders and agri-MSMEs to overcome these challenges
 - Description of needs and then each “legal form chapter” can explain how that particular form addresses the need, with a cross-reference to THIS section for more details on the need.
 - Presentation of key issues to be potentially addressed through collaboration (common objectives, needs, shared interests and risks) regarding the following:
 - (i) increasing efficiency (probably delete as limited to economics)/ improving progress towards Good Agricultural Practices;
 - (ii) improving access to viable markets, market resources and inclusive financial services;
 - (iii) exploring innovation, opportunities and risks offered by digitalisation, digitisation and digital platforms;
 - (iv) addressing power imbalances and increasing participation in decision-making;
 - (v) proposing remedies for unfair commercial practices.
 - Acknowledge above list of needs is abstract and intended to support guidance at global level but risks missing information relevant to individual context.

Section heading**Proposed content**

- How collaboration can address “Needs”
 - Definition of key notions adopted in the Guide (*see draft Glossary in Annexe II of this document*)
 - Clarification that the Guide endorses “collaboration” to the extent that it is consistent with competition law and other bodies of law
 - Description of how smallholders and agri-MSMES already collaborate plus acknowledgment that not all want to collaborate, particularly in the context of access to large value chains.
 - Description of obstacles and reasons for resistance to collaboration
- Introduction of the “Collaborative Legal Forms”
 - Differences between cooperatives, companies and multiparty contracts (brief intro to avoid duplication in the following chapters)
 - Recognition that different parts of agri-food value chain may require different collaborative legal forms
- Challenges due to differences in legal systems
 - 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
 - Acknowledgment of extraterritorial effects of domestic laws in relation to global value-chain governance and application of international instruments (e.g., human rights & environment) and noting reference to pending UNIDROIT Project on CSDD.
- Exogenous factors
 - Sustainability
 - Access to Credit (wider understanding encompasses formal and informal credit and access to resources & inputs; enables access to viable markets; credit to finance collaboration and collaboration to access credit)
 - Digitalisation
 - Impact of “exogenous factors” on collaboration
- Summary of findings from the “collaborative legal forms” chapters (*to encourage readers to continue to the Chapters...*)

Section heading	Proposed content
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 – Cooperatives	[see, table of contents proposed in the Draft Discussion Paper on Companies]
CHAPTER IV – Comparing and combining different collaborative legal forms	[to be discussed]
CHAPTER V– The implementation of the Guide: standard contracts and bylaws	[Having noted that the previous two legal guides developed by UNIDROIT, FAO and IFAD did not include such a chapter, the Working Group generally agreed that such a chapter on Implementation would be helpful as its added value would consist in explaining how to use the CLSAE Guide to facilitate collaboration. It would also be very dependent upon the content in the comparative chapter.]