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Item No. 6 on the agenda: Ongoing legislative activities carried over from prior Work Programmes

(a) 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>UNIDROIT 2024 – C.D. (103) 6</i>

I. INTRODUCTION

1. The development of the project on Collaborative Legal Structures for Agricultural Enterprises (hereinafter “CLSAE Project”, or “the future instrument”) constitutes the third project developed within UNIDROIT’s area of work on Private Law and Agricultural Development. The 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 2021).

2. This document provides an update on the work carried out by the Secretariat and the Working Group since the 103rd session of the Governing Council held in May 2024. It briefly recalls the background of the Project and composition of the Working Group (Section II), offers an overview of the main outcomes of the sixth and seventh sessions of the Working Group (Section

III), describes the expected content of the future instrument (Section IV), and suggests next steps for the consideration of the Governing Council (Section V).

II. BACKGROUND OF THE PROJECT AND COMPOSITION OF THE WORKING GROUP

3. 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, the development of the CLSAE Project began during the 2020-2022 UNIDROIT Work Programme, initially with a medium-priority level,² and was elevated to the high-priority level for the 2023-2025 Work Programme by the UNIDROIT Governing Council³ and General Assembly.⁴ As a first step for the development of the CLSAE Project, the Secretariat prepared a [feasibility study](#) (2020) and organised a [consultation webinar](#) (2021) to identify the main legal issues in which UNIDROIT, in cooperation with FAO and IFAD, could make a meaningful contribution and avoid overlap with existing international initiatives.

Purpose

4. The aim of the CLSAE Project is to support smallholders and agricultural Micro, Small and Medium Enterprises (“agri-MSMEs”) to enhance sustainable agricultural development in agri-food value chains and contribute to the transformation of agri-food systems. It is presupposed that some of the challenges to integrate into agri-food value chains, in particular Global Value Chains (GVCs), can be addressed through the adoption of collaborative legal structures to:

- (i) improve access to viable markets, market resources and inclusive financial services;
- (ii) explore the innovation opportunities while giving due consideration to the risks created by digitalisation, digitisation and digital platforms;
- (iii) address power imbalances and increase participation in decision-making; and
- (iv) propose remedies for unfair commercial practices.

5. The purpose of the future instrument is to provide a “menu” of illustrative collaborative legal structures, not with the intention to promote one legal form over another but rather, to outline the various options.

Scope

6. While recognising that a variety of forms of collaboration and many different types of business organisations and commercial contracts may be used for carrying out activities such as production, processing and distribution in the agricultural sector, the legal guidance under development mainly covers three collaborative legal structures: (i) cooperatives, (ii) companies and (iii) multiparty contracts. In addition, taking into account that many of the cooperatives, companies and contracts managing agricultural activities are being digitalised across the globe, the CLSAE Project also analyses digital platforms as a form of collaboration. However, digital platforms are not conceived as a fourth legal structure of collaboration, formally distinct from the three

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.

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

³ [UNIDROIT 2022 – C.D. \(101\) 21](#).

⁴ [UNIDROIT 2022 – A.G. \(81\) 9](#).

collaborative legal structures covered in the CLSAE Project. Indeed, digital platforms are operated by legal structures, such as cooperatives and companies (*i.e.*, “platform operators”).

7. The analysis is premised on complementarity of the collaborative legal structures rather than seeing them as distinct alternatives. The fundamental similarities and differences between the legal forms covered in the CLSAE Guide are explained by considering their purposes; formation and entry requirements; governance and decision-making procedures; scope of liability; remedies and sanctions for breach; as well as the requirements for exit and dissolution.⁵

Target audience

8. The primary audience of the future instrument is government officials and legal professionals who have an advisory capacity and stakeholders that have a role in drafting legislations and policies, as well as in delineating bylaws, internal regulations, and contracts. It is expected that the CLSAE Guide will be potentially useful for local associations of agricultural entrepreneurs and organisations of producers, as well as representatives of international organisations and chambers of commerce, as these actors provide guidance to smallholders and agri-MSMEs.

Working Group

9. Pursuant to the mandate received from the Governing Council, the Secretariat set up a Working Group in 2022 which was initially chaired, until the end of 2023, by then Governing Council Member Justice Ricardo Lorenzetti (Supreme Court of Argentina). As of May 2024, the Working Group is chaired by Governing Council Member Professor Maria Ignacia Vial Undurraga (Chile). The project is coordinated by Professor Fabrizio Cafaggi (Judge at the Council of State of Italy and Professor at the University of Trento and LUISS, Rome). The Working Group is composed of experts selected for their expertise in the fields of contract law, corporate law, cooperative law, property law, digital technology, and sustainability. Non-legal experts, such as economists, have also been invited to participate in the Working Group.

10. The Working Group 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.

11. Furthermore, within the framework of the MAECI-DGCS/UNIDROIT 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 joined the UNIDROIT Secretariat to assist with the development of the CLSAE Project.⁶

⁵ These topics reflect the features to be considered in the comparative chapter and will be updated as work progresses.

⁶ For more information on the MAECI-DGCS/UNIDROIT Chair Programme, see the document regarding the UNIDROIT Academy (UNIDROIT 2025 – C.D. (105) 24).

12. The complete list of participants in the Working Group is available at the CLSAE Project's dedicated [webpage](#).⁷

III. SESSIONS OF THE WORKING GROUP AND INTERSESSIONAL MEETINGS

13. Seven sessions of the Working Group have been held between February 2022 and April 2025.⁸ This section describes the main topics discussed and recommendations made during the sixth and seventh session of the Working Group which were held after the 103rd session of the Governing Council. For more information on the work undertaken in the previous Working Group sessions and intersessional periods, see the CLSAE Project's dedicated [webpage](#).

A. Sixth session of the Working Group (20 – 22 November 2024)

14. The sixth session of the Working Group was held from 20 - 22 November 2024 and was attended, remotely or in person, by 37 participants. The Working Group considered the progress made by the four thematic Subgroups⁹ and discussed the ongoing development of the future instrument.

15. Among the topics discussed was the Draft Discussion Paper prepared by the **Subgroup on Companies**. Although the Working Group acknowledged that an individual could enter into a collaboration in a number of different forms, including as a natural person, sole proprietor or single-member entity, these did not constitute a collaborative legal structure in the sense given to it by the project. Notwithstanding this approach, it was noted that the analysis of this case, which arguably entails the majority of agri-businesses in the world, could not be left out of the CLSAE Project.

16. It was agreed that the paper should reflect the idea that while companies were primarily profit-oriented entities, they could also accommodate broader sustainability goals and collaborative purposes. Additionally, the Working Group recommended that the paper could be further enriched with examples of companies designed specifically for agricultural activities. It was also emphasised that although many people intuitively understood that limited liability facilitated the raising of equity capital from investors, it was not as obvious that incorporation also increased, in all cases, access to credit and this concept had to be conveyed as simply as possible.

17. The Subgroup on Companies was requested to provide additional clarification on the differences between partnership forms in common and civil law systems. Furthermore, it was suggested that the paper include an overview of the minority shareholder protections found in most legal systems and that the concept of corporate or social interest doctrine in European corporate law might be considered in relation to fiduciary duties. With reference to voting trusts and pooling agreements, the Subgroup was asked to clarify the remedies and enforcement in the breach of such agreements with illustrative examples to differentiate these two alternatives. It was noted that shareholders' agreements could offer useful protection, especially in situations where the farmer might be the minority shareholder and a larger entity held control, despite the lack of balance in ownership and bargaining power.

⁷ The Secretariat notes that the composition of the Working Group is an open process and additional members and observers may be added as needed.

⁸ The Working Group documents and summary reports for each session are available on the [CLSAE webpage](#).

⁹ The intersessional work of the CLSAE Working Group is conducted through four thematic Subgroups: Subgroup 1 on Multiparty Contracts; Subgroup 2 on Cooperatives; Subgroup 3 on Companies; and Subgroup 4 on Digital Platforms.

18. Furthermore it was suggested that the paper include some guidance as to how the type of company might influence transfer and exit for purposes of the comparison and to assist in the choice among the different company types or other collaborative legal structures.

19. The Working Group noted that, as there were two distinct interpretations of asset partitioning, a brief explanation of the alternative should also be included. It was suggested that the CLSAE Guide might explain that, by default, assets would become the property of the company and that if the objective was to protect and preserve rights over certain assets, a contractual arrangement might be the preferred choice. Another consideration was how the domestic law allowing in-kind contributions in exchange for shares and valuation of such contributions would affect the comparison.

20. The **Subgroup on Multiparty Contracts** (MPCs) presented the advancements that had been made on the discussion paper, specifically on asset allocation related to liability regimes. The paper addressed questions of whether MPCs allowed the sharing of tangible and non-tangible resources for collaboration and which options were available; how parties to an MPC could ensure that shared assets would be used for the common purposes without being easily reappropriated and redirected by the parties and seized by their personal creditors; to what extent MPCs could limit parties' liability for obligations inherent to their collaboration within the limit of shared resources (i.e., the common fund); and to what extent the choice of a scheme that allowed for limited liability facilitated access to credit.

21. The Working Group suggested that, to better illustrate the distinction between multiparty and bilateral contracts, brief reference could be made to the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming and the characteristics of contract farming as a paradigm bilateral agreement between a producer and a buyer. It was also suggested that consideration be given to recommend that, given their complexity, it was preferable that multiparty contracts be in written form.

22. The discussion of the paper prepared by the **Subgroup on Cooperatives** focused on several key areas. It was suggested that the definition of an agricultural cooperative be refined and that the paper include a description of the governance organs, such as the General Assembly and Board (or equivalent). It was also suggested that the explanation of democratic governance be expanded and that a distinction between internal governance rules and external regulatory requirements be further elaborated. It was pointed out that the functions of primary, secondary and tertiary cooperatives required clarification and to do so perhaps these terms could be defined.

23. The Working Group discussed the concept of cooperative ecosystems and it was proposed that the paper emphasise how these ecosystems drive collective action and resource optimisation, particularly in addressing the financial needs of smaller members. Pointing to the trend wherein cooperatives have established joint-stock companies to overcome operational or legal barriers, especially in international trade, it was suggested that this be considered in conjunction with the resulting tensions between cooperative principles and corporate ownership.

24. It was acknowledged that both internal and external financing of cooperatives had yet to be addressed. In that regard, the Working Group suggested the paper consider, in addition to member contributions, the role of capital formation through transactions that generate surplus. It was also suggested that the Subgroup further explore how reserves strengthen cooperatives and their role in promoting intergenerational longevity and sustainable development.

25. The Working Group suggested that the paper distinguish different types of breaches, re-group and clarify termination and dissolution. While the paper touched upon these issues, it was pointed out that the sanctions applicable to members who violated such rules could be considered further.

26. The Working Group emphasised the importance of a comparative approach in identifying best practices for cooperatives, noting that the project should incorporate key elements of cooperative typologies even if they were not explicitly part of the international definition. Lastly, it was pointed out that digital tools could enhance governance by improving transparency and streamlining democratic processes. A suggestion was made that the Subgroup might wish to consider this and also the role of digitalisation in enhancing market opportunities for cooperatives.

27. The **Subgroup on Digital Platforms** was encouraged to emphasise the purpose and function of digital platforms adopted specifically in the agriculture sector. It was suggested that the paper include a taxonomy of agricultural digital platforms and further explore whether these platforms used cooperative, company, or contractual structures, or whether new legal structures were emerging. Overall, it was recommended that the Subgroup improve the structure of the paper to provide clarity that digital platforms should not be presented as a fourth collaborative legal structure in the future CLSAE instrument. Accordingly, it was suggested that the paper should provide clear indications of the specific challenges associated with digital tools in collaborative mechanisms and potential legal solutions at the national and international levels. Finally, it was also suggested that the paper include a dedicated section to explain blockchain contracts and that the section on dispute resolution be expanded.

28. Regarding the cross-cutting issues such as sustainability, the Working Group agreed that its direct connection to collaboration would be explained in the Introduction to the CLSAE Guide and that each of the chapters on the different collaborative legal structures would illustrate how these can affect or foster sustainability, all of which would be taken into account in the comparative chapter. Within each chapter, it was suggested that sustainability matters could most effectively be considered in the sections regarding purpose, governance, and in relation to post-contractual obligations.

29. Regarding access to credit, it was explained that the intention was to examine to what extent the choice of collaborative legal structure could influence access to credit. It was also noted that it might be necessary to differentiate between private and public financing, such as multilateral institutions and national schemes that support agricultural development, and that perhaps another consideration would be differences in the size of borrowers, as this impacted the type of mechanism that would be available.

30. For more information, reference is made to the Summary Report of the Working Group's sixth session ([Study LXXXC – W.G.6 – Doc. 7](#)).

B. Seventh session of the Working Group (9 – 11 April 2025)

31. During its seventh session, the Working Group continued to discuss the progress made by the four Subgroups. Additionally, a draft Master Copy outlining the proposed structure of the future instrument and containing a draft of the Introduction and Glossary, as well as of the Chapter on the comparison of the different types of collaborative legal structures was considered.

32. The Working Group appreciated the efforts made by the **Subgroup on Companies** to further clarify the meaning of asset partitioning and the differences between partnership forms in civil and common law systems, as well as the differences between voting trust and pooling agreements in the event of breach and in-kind contributions. Additionally, the Working Group noted that consideration of minority shareholder protection was added to the revised discussion paper. The section on transfer of rights, exit and withdrawal was further revised and a new section on dispute resolution was developed.

33. The **Subgroup on Multiparty Contracts** included additional references to the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming to further differentiate multiparty and

bilateral contracts for collaboration. The formation process of a multiparty contract was further explained with the addition of clear recommendations on the use of written forms of multiparty contracts. The topic on collective ownership was also clarified to better describe how resources could be shared to perform the contract. The Working Group recommended the Subgroup to further differentiate multiparty contracts from partnerships.

34. The **Subgroup on Cooperatives** reorganised the structure of the paper and considered aspects that had been suggested for further analysis. The definition of an agricultural cooperative was refined, description of the governance organs was included, democratic governance was further explained, internal governance rules and external regulatory requirements were further elaborated, and the functions of primary, secondary and tertiary cooperatives were clarified. Cooperative ecosystems and their importance for resource optimisation were explained. A description of internal and external financing was developed, which elaborated on member contributions, capital formation through transactions, and the unique aspects of reserves in strengthening the resilience of cooperatives. Different types of breaches were further explained, including possible sanctions, and sections on termination of membership and cooperative dissolution.

35. The **Subgroup on Digital Platforms** explained the importance, purpose and function of digital platforms in the agricultural sector and included more examples throughout the paper. A taxonomy of agricultural digital platforms was developed, which included marketplaces, financial services, training, and equipment-sharing, among others, and the paper was further developed to explore the functional and legal aspects, and distinctions between the platform's operational purpose and its structural legal framework. The structure of the chapter was revised with a focus on explaining digital platforms and how they could be used by farmers. The chapter now also considers platforms governed by third parties and how the topic of the project might be affected by the countries' regulatory systems, concerning, for example, regulation on data collection and transparency. The section on dispute resolution was expanded and the paper also addressed specific challenges associated with digital tools in collaboration.

36. Lastly, the Working Group discussed the outline and methodology for the last chapter of the future instrument on comparing and combining the collaborative legal structures. It was agreed that the contextual framework of the collaborative legal structure is key and should be considered prior to, or contemporaneously with, any comparative analysis on the basis of functional variables. The contextual variables that have been identified thus far by the Working Group include the following: purposes of the collaboration; participation in domestic or international value chain; type of product; type of resources (tangible and intangible); status of participants (horizontal/vertical integration); duration of the collaboration; and legal and policy framework. It was decided that these contextual variables would be explained in the general introduction and that the comparative chapter would focus on the analysis of the functional variables of the legal structures (purposes of the collaborative legal structure; formation and costs of formation; legal personality; ease of entry, exit and transfer of rights; governance and internal rules; decision-making; protection of weaker parties; liability regimes; dispute resolution).

37. The draft Introduction and glossary were also considered and the Working Group agreed that moving forward the content developed in the four draft discussion papers would be transposed to the draft Master Copy for further consideration at the eighth session.

IV. OVERVIEW OF THE STRUCTURE OF THE FUTURE INSTRUMENT

38. At this stage of the Project, it is expected that the future CLSAE Guide will have a Preface, Introduction and five chapters, respectively, devoted to: Multiparty contracts (Chapter I);

Cooperatives (Chapter II); Companies (Chapter III); Digital platforms (Chapter IV); and a final chapter on Comparing and combining different collaborative legal forms (Chapter V).

V. TIMELINE OF THE PROJECT AND PROPOSED NEXT STEPS

39. At least one more Working Group session will be held in 2025. The eighth session of the Working Group will likely take place on either October 22-24 or November 19-21. For the next intersessional period, the Secretariat suggests: (i) retaining the four Subgroups on Cooperatives, Multiparty Contracts, Companies and Digital Platforms; (ii) organising virtual intersessional meetings to further develop the content of the draft “Master Copy” of the instrument.

40. In total, the Secretariat envisages organising nine Working Group sessions, followed by a period of consultations before the complete draft is submitted for adoption by UNIDROIT, FAO, and IFAD in 2026.

VI. ACTION TO BE TAKEN

41. *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.*