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Collaborative Legal Structures for
Agricultural Enterprises**

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SUMMARY REPORT

OF THE SEVENTH SESSION

(9 – 11 April 2025)

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1. The seventh session of the UNIDROIT Working Group established in partnership with the Food and Agriculture Organization of the United Nations (FAO) and the International Fund for Agricultural Development (IFAD) to prepare a Legal Guide on Collaborative Legal Structures for Agricultural Enterprises (hereinafter “the CLSAE project” or “the CLSAE Guide”) was held in hybrid format from 9 to 11 April 2025 at the premises of UNIDROIT in Rome (Italy) and online. The Working Group was attended by members and observers from intergovernmental organisations, non-governmental organisations, and academic institutes, as well as members of the UNIDROIT Secretariat. The list of participants is available in [Annexe II](#).

Item 1: Opening of the session

2. *The Chair of the CLSAE Working Group* welcomed all participants and thanked the members for their ongoing commitment and work conducted during the intersessional period between December 2024 and March 2025 to prepare the draft discussion papers for the seventh session of the Working Group. The Chair informed the Working Group that the Secretary-General and Deputy Secretary-General were unable to attend the session in person, being on mission in China.

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

3. *The Chair* introduced the annotated draft agenda and the organisation of the session (W.G.7 – Doc. 1). She noted that the agenda had been conceived so as to remain flexible, so that the order of items could be adjusted. She explained that the organisation of the session took two considerations into account: first, that the discussion of the Master Copy, and in particular the draft chapter on comparing and combining the collaborative legal forms, should begin early in order to allow sufficient time for that topic; and secondly, the availability of participants. She informed the Working Group that the annotated draft agenda listed all the documents that would be considered as the basis for discussion and that all documents had been distributed to the Working Group participants by email. The Working Group adopted the agenda and organisation of the session as proposed (available in [Annexe I](#)).

Item 3: Update on intersessional work and developments since the sixth Working Group session

4. *A member of the UNIDROIT Secretariat* updated the Working Group on the intersessional work undertaken since the sixth session, referring to the Secretariat Report (W.G.7 – Doc. 2). It was noted that the Secretariat had continued to provide support to the Working Group for the organisation of intersessional meetings to advance the review and preparation of draft discussion papers. The Secretariat had organised an informal online session in February, for which it had provided background materials including a list of discussion points and tables organised by function, similarities and differences of legal structures. A summary of that discussion had been distributed to the Working Group. The draft Comparative Chapter in the draft Master Copy reflected the suggestions and expert inputs from that informal session.

5. She noted that the two annexes to the previous Secretariat Report prepared for the sixth session of the Working Group, namely the outline of the Master Copy and the Glossary, no longer appeared as annexes, since the draft Master Copy itself (W.G.7 – Doc. 7), was now before the Working Group and the Glossary had been attached to that document. She further noted that the draft chapters on each of the legal structures no longer contained proposed questions for discussion, although questions remained for consideration and would be guided by the Chair.

Item 4: Consideration of work in progress**(a) Draft Discussion Paper on Companies**Overview of the revisions

6. A member of the Subgroup on Companies introduced the sections of the discussion paper that had been further developed during the intersessional period. Content had been added on the formation of partnerships, including the possibility of forming a partnership without any initial contribution, the principle being that the parties come together to work together. The sections on financial rights and on transfer of rights had been developed. Content on fiduciary duties, which had previously been absent, had been developed, as had content on the protection of minority shareholders. The section on dispute resolution had been developed to include references, drawing on previous guides as a model, together with content on remedies specific to company law.

7. A question was raised for the Working Group concerning the appendix to the paper, which contained examples of companies designed for agricultural activities. A member of the Subgroup on Companies asked whether the appendix should continue to be developed, whether it was a useful reference document, or whether it would be deleted from the final version of the chapter and the Guide. She noted that the examples given were specific to the Subgroup's jurisdiction and that, in some cases, content was provided without the advice of a local country expert.

Asset Partitioning

8. A member of the Subgroup on Companies explained the additions made to the treatment of asset partitioning and noted that two interpretations of asset partitioning had been developed in the paper. References were made to the UNIDROIT/IFAD Legal Guide on Agricultural Land Investment Contracts to ensure the rights of legitimate landholders are acknowledged when discussing land contributions in company settings.

9. Another member of the Subgroup on Companies further noted that scholarly definitions of asset partitioning had been included in the discussion paper to explain the legal effects of how the assets are separated once legal personality is formed vis-à-vis the corporation, the shareholders and the company's creditors.

Minority Shareholder Rights

10. A member of the Subgroup on Companies noted the inclusion of a section on minority shareholder rights, listing the basic rights recognised in most jurisdictions, including economic rights such as the distribution of dividends and the receipt of a share upon liquidation, and political rights including the right to attend shareholders' meetings, to vote and to participate in the amendment of constitutional documents, as well as rights to seek the nullification or avoidance of decisions of corporate bodies and to lodge complaints against directors and officers.

Shareholder pooling agreements and voting trusts

11. A member of the Subgroup on Companies noted that the distinction between shareholder pooling agreements and voting trusts had been further developed, the latter being described as affording greater assurance to shareholders that instructions would be carried out by the trustee, and both being noted for their usefulness in retaining control of a company and in providing shareholders with exit mechanisms.

Dispute prevention and resolution

12. *A member of the Subgroup on Companies* pointed out that the section on dispute prevention and resolution aimed at offering guidance for company members with limited resources. The focus was on presenting low-cost mechanisms. The revised discussion paper included a series of variables to evaluate dispute resolution methods, taking into account not only cost and speed but also sector-specific considerations like access to agricultural experts.

13. Additionally, the revised section on dispute resolution included a distinction between private enforcement (proceedings in ordinary courts or arbitration) and public enforcement (involving administrative or governmental agencies, such as securities commissions). Relatively new content was also added regarding mediation and arbitration as relevant dispute resolution mechanisms in the specific context of companies formed by farmers.

Formation

14. *A member of the Subgroup on Companies* explained how the section on formation had been expanded to include information on the formation of partnerships. It was noted that in many jurisdictions, both common and civil law, a partnership can arise without capital contributions or a formal agreement, based simply on mutual intent to collaborate.

Obligations of the board of directors and fiduciary duties

15. *A member of the Subgroup on Companies* noted that the revised paper included a rule existing in certain jurisdictions, referred to as the business judgment rule, which operated as a presumption of good faith or proper conduct on the part of directors and officers and shielded them from liability in the absence of evidence of fraud, misrepresentation or conflict of interest. He observed that a system was required both to discipline directors and officers where they had breached their duties, particularly the duty of loyalty, and to shield them where they had not acted in bad faith.

16. *Another member of the Subgroup on Companies* explained that the discussion of the obligations of the board of directors and of management had been expanded, most jurisdictions imposing an obligation on the board to act in the best interests of the corporation. In some jurisdictions, such as the United States, a fiduciary duty was owed both to the corporation and to shareholders, whereas in others, such as Canada, the duty was owed to the corporation alone. An ongoing debate as to whether duties should extend to other groups, including employees, the community and the environment, was flagged in the paper. The member observed that the point was relevant both to the choice of jurisdiction of incorporation and to those designing new corporate statutes.

17. *In response to a question from a member of the Subgroup on Multiparty Contracts* as to whether shareholders might themselves be subject to fiduciary or other duties in a collaborative structure, *a member of the Subgroup on Companies* explained that the position varied by jurisdiction, and that in Canada the fiduciary duty of the board and management ran solely to the corporation and not to shareholders, creditors or employees. In the civil law tradition, the exclusion remedy permitted the majority to decide on the exclusion of a partner who had failed to fulfil his or her commitments under the agreement, reimbursement being made at fair market value, and this was suggested as a mechanism of possible utility for collaborative structures.

18. *A member of the Subgroup on Multiparty Contracts* stated that many corporate remedies such as those protecting creditors or addressing fiduciary breaches are primarily focused on preserving the financial value of a company. These mechanisms tend to be used when economic harm occurs in the corporate value or a threat to creditors' ability to recover claims. The benefit of

such remedies and how they can be extended to protect small farmers involved in collaborative ventures was questioned, especially in cases where breaches of duty do not directly impact financial value but still harm the integrity or functioning of the collaboration. It was suggested that further reflection was needed to understand whether classical corporate law remedies can address the realities and needs of small agricultural enterprises.

19. *A member of the Subgroup on Companies* noted that the range of remedies was very expansive and courts could apply not only damages but also alternative remedies such as an oppression remedy. However, it was stated that the oppression remedy was developed, in part, to deal with situations where controlling shareholders are redistributing value in a way that hurts a minority shareholder. Even if overall value remains, actions that harm minority shareholders or creditors by diverting value are grounds for legal challenge. It was further emphasised that from a historical point of view, action had to generally be brought on behalf of the company against the directors and this was procedurally complicated and very cumbersome.

Shareholders' financial and transfer rights

20. *A member of the Subgroup on Companies* explained how the section on shareholders' financial and transfer rights had been expanded in the paper. It was noted that partnerships and corporations had been compared to highlight that in partnerships, since they typically begin with equality among members in profit and asset distribution, it was cumbersome to transfer interest. In partnerships, transferring interest would often require unanimous partner consent unless contractually waived, though doing so would introduce transaction costs. In contrast, in the corporate model, entitlements are proportionate to capital contributions, and shares reflect ownership and voting power. These defaults can also be modified, but corporations are structurally designed to facilitate capital attraction. In corporations, share transferability is easier and part of a broader design to encourage external investment.

Mechanisms to induce collaboration and enforcement in partnerships and corporations

21. *The Coordinator of the Working Group* queried whether boards had tools to impose collaboration when cooperation fails among the shareholders or members of a partnership. *member of the Subgroup on Companies* explained that in partnerships, decision-making relies on the voluntary participation of all partners. On the other hand, in corporations, decision-making authority relies on the management team and board of directors. Shareholders don't fully participate in management.

22. *Another member of the Subgroup on Companies* explained that, while corporate shareholders generally have no obligation beyond their investment, partnership law in civil law countries provides an "exclusion remedy," allowing a majority to expel a partner who fails to meet their commitments.

23. *The Coordinator of the Working Group* recalled that, in the CLSAE Guide, the Working Group should focus not so much on the last-resort remedies but on the powers that the entity or the participants have to induce cooperation. Another question was raised as to whether in a partnership, legal action for non-performance lies with the non-breaching parties whereas in a corporation, it is the board that holds the power to enforce cooperation and seek remedies.

24. *A member of the Subgroup on Companies* reiterated that in partnerships, any power to induce action such as through a management board is based on agreements among the partners. In contrast, corporations inherently separate capital providers from management; decision-making power lies with the board, but compelling cooperation among shareholders generally falls outside corporate law and into employment or contractual frameworks. Regarding enforcement of obligations, it was noted that in partnerships, non-breaching partners must enforce obligations, relying on fiduciary duties between partners. In corporations, breaches of duty are pursued by the

corporation itself, or, if necessary, by shareholders through mechanisms if the corporation fails to act.

Voting rights

25. *The coordinator of the Working Group* questioned whether there was a difference in default rules between partnerships and corporations concerning voting rights and whether voting power could be tied not just to shares but to the level of effort or involvement by members.

26. *A member of the Subgroup on Companies* noted that in partnerships, the default model is unanimity, however, partners can contractually modify voting rights, including linking voting power to contributions or effort, as seen in partnership agreements like those in large law firms. Corporations on the other hand, allocate profits and voting rights primarily based on capital contributions with less need for contractual adjustments.

Management structures

27. *The coordinator of the Working Group* questioned whether the delegation of management authority differed significantly between partnerships and corporations. *A member of the Subgroup on Companies* stated that partnerships have equal participation among members. Therefore it requires contractual deviation to create management teams. In corporations, management is statutorily in the hands of the board of directors. Shareholder involvement is limited in companies, unless it is modified by shareholder agreements.

Expanding stakeholder obligations, sustainability and social enterprises

28. *A member of the Subgroup on Cooperatives* raised a concern that the discussion seemed to assume enterprises were "closed shops" ignoring societal obligations regarding sustainability. He stated the need to widen the notion of stakeholders beyond capital providers.

29. *A member of the Subgroup on Companies* pointed out that some jurisdictions had taken small steps to consider broader stakeholders, but social enterprise models were still unevenly developed. While traditional corporate statutes focus on company and capital providers' interests, some jurisdictions have the oppression remedy, which considers the shareholders, as well as debt holders and creditors. It was clarified that these developments largely come from other areas of law (e.g., tort law), not corporate statutes. He agreed that many advocate for embedding such obligations directly into corporate law rather than relying on external legal claims.

30. *Another member of the Subgroup on Companies* recalled that the discussion related to the concept of social enterprises had already been introduced in the CLSAE Guide. It was noted that some laws already established social corporations with environmental or sustainability obligations, and these were mentioned in the draft Companies paper. The growing importance of certification processes like B Corporations, which offer sustainability recognition independently of corporate statutes was also noted. It was suggested that the Working Group should agree on a clearer definition of sustainability and establish common guidelines or a framework to determine how it will be addressed throughout the chapters and the Guide as a whole.

31. *A member of the Subgroup on MPCs* suggested that broader references to social enterprises could be included, such as the European Union recommendation on the social economy and the Italian legislation recognising social-purpose companies.

Relationship between multiparty contracts and partnerships

32. *A representative of FAO* proposed expanding the guidance on how multiparty contracts could unintentionally be classified as partnerships, particularly since national definitions vary.

33. *A member of the Subgroup on Companies* supported the idea, explaining that in common law jurisdictions like Canada, the US, and England, the concept of a multiparty contract is not a distinct legal category. And because of this, if parties entering into contracts and structuring relationships through those contracts in common law jurisdictions, there is a real risk that it will be considered a partnership. The need to advise careful jurisdictional choice when drafting multiparty contracts to avoid unintended legal consequences was also noted.

34. *A member of the Subgroup on MPCs* asked the Subgroup on Companies to provide an example of the risks they should highlight for readers. *A member of the Subgroup on Companies* clarified the reference to the risk of liability for partners' actions in the case of partnership and explained that civil law concepts of multiparty contracts might involve liability similar to partnerships, which doesn't exist in common law. *A member of the Subgroup on MPCs* suggested that partnerships could be seen as a structured evolution of multiparty contracts and supported further explaining in the Guide that, in some legal systems, multiparty contracts might be legally recognised as partnerships and subject to the application of legislation. *A member of the Subgroup on Companies* emphasised that in certain common law jurisdictions lawyers routinely assessed this risk and structured relationships carefully to avoid unintended partnership liabilities—unless the parties formally incorporate.

35. *A member of the UNIDROIT Secretariat* reminded the Working Group that the definition of partnership still needed to be added to the glossary and aligned with the discussion papers, particularly in relation to multiparty contracts.

36. *The coordinator of the Working Group* pointed out that, although the chapters were organised by legal forms, the approach in developing the CLSAE Guide should remain functional rather than doctrinal. It was stated that partnerships should remain in the company chapter but the connection to multiparty contracts needed to be clearly highlighted. The importance of not allowing doctrinal traditions to limit practical solutions for collaboration, especially for farmers seeking flexible structures was stressed.

Agricultural insurance

37. *A representative of FAO* asked whether corporate statutes embedded obligations relating to insurance, given that agricultural risk distinguished agriculture from other sectors, and whether corporate statutes included provisions linking enterprises to regulations such as those governing land tenure and water usage. She also emphasised the importance of making the analysis accessible to legal experts and policymakers across countries and of drawing examples from regions where documentation was less abundant, particularly in developing countries.

38. In response, *a member of the Subgroup on Companies* identified examples of mandatory insurance, including policies requiring corporations undertaking large-scale operations in infrastructure, extractive industries and public utilities to cover environmental damage, compulsory traffic accident insurance, and the growing use of directors' and officers' insurance, the economic rationale for which was to reduce the cost of attracting directors and officers by lowering their exposure. *Another member of the Subgroup* stated that insurance for directors and board members was common practice, that he had no specific knowledge of the agricultural sector but would look into it further. One objective for the next version of the paper was to include more real-life examples. She recalled the decision taken at the previous session not to develop the questions of land and

water usage at length as those matters had been addressed in other UNIDROIT instruments such as the Legal Guide on Agricultural Land Investment Contracts (ALIC Legal Guide).

39. *A member of the Subgroup on Cooperatives* noted that insurance schemes for agricultural risks such as weather events and animal disease had long existed in Europe and that international organisations were seeking to extend them to other regions, and that access to better insurance conditions, whether through improved negotiating power or risk pooling, was a further rationale for collaboration that might be mentioned. *The coordinator of the Working Group* asked the FAO representative whether the insurance referred to was linked to the entity (e.g. a cooperative or company) or to specific projects. *A representative of FAO* clarified that her point concerned the use of corporate statutes as a vehicle to promote the dissemination of insurance tools, so that corporations would be required to manage risk through such tools, and that her reference to cooperatives concerned sustainable, long-term mechanisms rather than project-related cover. She noted that in some countries governments offered crop insurance to cooperatives under cooperative law, that private companies might not have access to the same schemes, and that FAO held materials on agricultural insurance that it would be willing to share.

40. *A member of the Subgroup on Cooperatives* added that in some countries insurance enterprises could be organised as cooperatives while in others they could not.

41. The Working Group noted the revisions made to the discussion paper. It was agreed that the Subgroup on Companies would engage in a sub-comparative analysis between partnerships and companies, indicating how each variable bore upon the choice between them, in order to inform the comparative analysis, irrespective of the final structure of the chapter. It was further agreed that the Company Subgroup would provide examples illustrating core issues where rules were mandatory and could not be excluded by contract, and that the Subgroup would consider the recommendations made concerning insurance, sustainability, and the accessibility of the analysis.

(b) Draft Discussion Paper on Multiparty Contracts

42. *A member of the Subgroup on Multiparty Contracts* reported that the paper had been revised to include a reference to contract farming at the request of FAO and a consideration of the written form of multiparty contracts. She added that the treatment of co-ownership remained open, as the way in which assets were shared and disposed of depended on the applicable law and little comparative research existed.

43. She described the latest developments in the discussion of asset allocation and liability regimes in multiparty contracts in agriculture, and presented the core features of the collaborative multiparty contracts. The implications for asset management were described as the need for a long-term relationship to manage uncertainty as to risk of loss, deterioration of assets and financial distrust, and to preserve the collaboration.

Multiparty contracts, partnerships and joint ventures

44. *A member of the Subgroup on Companies* observed that much of what would be described as a multiparty contract in a common law system would often be treated as a partnership, and asked whether, in a jurisdiction such as Italy, there was a clear delineation between multiparty collaborative contracts and partnerships. He noted that the multiparty contract was not a well-developed concept in the common law and that much of what had been discussed would be encompassed, in a North American context, in a determination whether the arrangement was a partnership and whether the parties were collaborating with a view to profit. In reply, *a member of the Subgroup on Multiparty Contracts* acknowledged that such typologies existed and that partnerships were difficult to categorise, explaining that at the outset of the CLSAE Project it had been decided to use legal personality as a threshold, although the concept differed between jurisdictions.

45. *The Coordinator of the Working Group* responded that the future CLSAE Guide should adopt a functional rather than a doctrinal approach, since otherwise it would be extremely difficult for farmers to choose and to transplant options from one legal system to another. He noted that where a multiparty contract and a partnership performed the same function with the same features, the manner of their categorisation was not material. *A member of the Subgroup on Companies* noted the difficulty that in jurisdictions with partnership law it might not be possible to adopt a multiparty contract without being considered a partnership and subjected to that regime, as one could not contract out of partnership law.

46. *The Coordinator of the Working Group* observed that the resolution of the matter lay instead in the functional approach: that the Restatement of Contracts and conventional common law texts did not address multiparty contracts at all, so that farmers seeking to form one in the United States would find no reference in those sources but would have recourse to the Restatement of Partnership, and that the concept should not be left underused merely because doctrinal and legal traditions did not recognise it in certain jurisdictions. He cautioned that the comparative chapter should not take a doctrinal approach for that reason, and *a member of the Subgroup on Multiparty Contracts* further explained that the notion of a multiparty contract as a general scheme, whereby enterprises committed by contract to collaborate without forming an entity, would encompass arrangements such as a contractual joint venture.

47. *A member of the Subgroup on Companies* expressed difficulty in distinguishing multiparty contracts from de facto companies in the civil law tradition, and from joint ventures in which parties collaborated in a temporary undertaking without intending to create a legal entity, and emphasised the importance of making clear that these were governed by a different set of rules. He noted that the definition of a partnership under United States law, as an association of two or more persons to carry on business as co-owners, raised the question whether ownership differentiated a multiparty contract.

48. *A member of the Subgroup on Multiparty Contracts* suggested that the draft discussion paper be revised to emphasise the differences identified during the session, including as between the notion of a multiparty contract in common law and civil law jurisdictions and its difference from partnership and joint ventures, and proposed that the table used in the companies paper to distinguish sole proprietorships, general partnerships, limited partnerships and shareholder corporations be completed at least in respect of partnerships.

49. The Working Group noted the developments in the discussion paper. It was agreed that the Subgroup on Multiparty Contracts, together with the member of the Subgroup on Companies who had raised the matter, would work on the draft discussion paper so as to emphasise the differences identified during the session, including the difference between the notion of a multiparty contract in common law and civil law jurisdictions and its difference from partnerships and joint ventures.

(c) Draft Discussion Paper on Cooperatives

Definition, cooperative identity and its legal relevance

50. *A member of the Subgroup on Cooperatives* introduced the discussion by noting that the table of contents of the Draft Discussion Paper had been restructured for methodological reasons to render the structure familiar to cooperative law scholars. He addressed the legal relevance of the cooperative identity, referring to the Statement on the Cooperative Identity, which comprised a definition, a set of values and a set of seven principles with explanations, and which was logically interlinked. Its relevance was described as first sociological, in that a very large number of cooperatives subscribed to it, and secondly legal, in that its content had been incorporated in various forms into national and regional laws, into the Articles of Association of the International Cooperative Alliance, and into at least one international instrument, the Promotion of Cooperatives

Recommendation (No. 193) of the International Labour Organization, with an indirect link to the international human rights covenants.

51. He explained that the definition comprised two parts, specifying first the objective, and secondly the form through which the members pursue it. As to the objective, the emphasis was that it was the members who acted for themselves rather than the cooperative acting for the members, from which it followed that members were to be understood as co-entrepreneurs. As to the form, the formula “jointly owned and democratically controlled enterprise” was examined, the presenting member observing that its meaning was not self-evident and that the term “share” in the cooperative context denoted a financial contribution rather than a part of something, and that in some jurisdictions a cooperative might be established with no financial contribution, which raised difficulties in relation to accounting standards and bankruptcy.

52. It was further noted that the objective referred to the economic, social and cultural needs of the members and contained no reference to the pursuit of profit; that the members were accordingly central; and that a cooperative law in its full expression would require a specific or special audit of cooperatives, whereas in most countries cooperatives were audited in the same manner as any other enterprise.

53. *A member of the Subgroup on Multiparty Contracts* expressed appreciation for the presentation of the members of the Subgroup on Cooperatives, noting it helped revisit key cooperative principles through a comparative lens. Several distinctive features of cooperatives compared to companies and multiparty contracts were highlighted: (i) the open-door principle, which, despite conditions, implies a general openness not found in other enterprise models; (ii) the inherent ability of cooperatives to connect and collaborate through second- and third-tier structures; and (iii) the treatment of residual assets, which often remain within the cooperative system even after liquidation—unlike in companies.

Governance and Financial Structure of Cooperatives

54. *A member of the Subgroup on Cooperatives* highlighted the centrality of membership and the variability of minimum membership thresholds, which were typically dictated by national law, some jurisdictions permitting one-person cooperatives while agricultural cooperatives often required seven or more members, creating barriers to formation for smaller groups. He examined the open-door principle, explaining that it did not signify openness to all, the accompanying explanation requiring that members be able and willing to accept the responsibilities of membership, and that existing members should have a say as to whom to admit and whom to exclude; whether the principle conferred an enforceable right of membership raised difficult questions under the freedom of association. He also emphasised that obligations of members should be addressed before their rights, and that governance and participation extended well beyond the “one member, one vote” principle, encompassing the determination of common needs and the education of members necessary for the exercise of control.

55. He cautioned that a specific control risk arose in cooperatives, in that a high aspiration of member involvement might in practice yield a management-driven entity, the causes including the limited knowledge of cooperative principles among management and the insufficient qualifications of members to control management, beginning with access to information. He noted that qualification requirements for management in a cooperative were in a sense double, comprising both the management of an enterprise and the management of a group of persons.

56. He explained the particular difficulty cooperatives faced in accessing financial markets, since a provider of finance acquired no rights in the cooperative, participatory rights being in general limited to members, so that cooperatives were expected to exhaust internal financing mechanisms within the membership before seeking external finance, although this was difficult for the small and

medium farmers concerned. The rationale was the principle of autonomy, external financing tending to confer a factual influence irrespective of voting rights.

57. *A member of the Subgroup on Multiparty Contacts* raised a series of questions as to whether the cooperative model was in that sense inconsistent with access to finance, both as regarded participation and the attraction of external capital; what mechanisms existed to attract investment in innovation within cooperatives; whether there was scope to deviate from the “one member, one vote” principle and whether it was useful to highlight such mechanisms; and how the apparent link between membership and management could be reconciled with the scale of large cooperatives, in which separation of management from membership appeared in practice to arise.

58. *A member of the Subgroup on Companies* asked whether the distinction between the for-profit character of a company and distributions made to members of a cooperative could be sustained on economic grounds, distributions representing an economic benefit to members and having consequences for taxation. In reply, *a member of the Subgroup on Cooperatives* distinguished between profit and surplus, the latter denoting a positive result generated on cooperative terms from transactions with members, a cooperative should by principle make no profit from transactions with its members, and any surplus must be returned to the members, the surplus reflecting a correction in calculation rather than a profit; and observed that income taxation should accordingly not apply to the cooperative at the level of the cooperative, although in practice exemptions were often sought for parts of the surplus, including the indivisible reserve fund.

Digitalisation

59. *An observer of the Working Group* identified two elements that might be emphasised further. The first element concerned digitalisation and the growing debate on the ownership of data, activity in the field producing a large volume of data which was usually extracted by third parties such as the owners of machinery or technology, and there being a debate as to how cooperatives might internalise ownership of data generated by their own activity. It was noted that data cooperatives were foreseen by the European Commission in the Data Governance Act but were required to act as intermediaries and could not coincide with agricultural cooperatives. The second element concerned the European Cooperative Society, of which approximately forty had been established and none by a cooperative, which the member suggested warranted reflection on the typically local character of cooperatives and their limited fit with a legal form designed for the single market.

60. *A member of the Subgroup on Digital Platforms* offered a thoughtful response regarding data cooperatives, expanding on the definitional complexity and evolving practice in this area. It was pointed out that there is a notable divergence between the formal definition of a data cooperative found in the EU’s Data Governance Act—which tends to be more narrow and prescriptive—and the way data cooperatives are self-defined and emerging in practice over the last five or six years, both in Europe and internationally. These self-described cooperatives often go beyond the regulatory framework, experimenting with internal data governance and member-led data processing.

61. *The same member of the Subgroup on Digital Platforms* gave the example of a cooperative initiative that facilitates agricultural data sharing among its members. It was acknowledged that while the concept of data cooperatives is evolving, definitional inconsistencies remain, particularly across different jurisdictions, and these could be taken into account in the paper.

62. *A member of the Subgroup on Cooperatives* acknowledged the potential of digitalisation for enabling member participation in large cooperatives particularly in consumer and banking sectors. He noted that digital tools can’t replace direct participation but can help inform and involve members through platforms. Innovative examples were referenced to illustrate how digitalisation and autonomy over data can intersect.

(d) Draft Discussion Paper on Digital Platforms

63. *A member of the Subgroup on Digital Platforms* presented the latest developments in the discussion paper. It was noted that, whereas regulation of digital platforms had to date largely addressed effects on markets, data, users and workers, it was a novel approach to analyse digital platforms as distinct organisations.

64. The risks for farmers in using digital platforms was emphasised, including loss of operational autonomy through automation and the use of personal and non-personal data by platform operators in opaque and potentially harmful ways. It was noted that digital platforms could exacerbate power asymmetries between smallholder users and the businesses operating them. It was also noted that most platforms in the agricultural sector appeared to be primarily transaction-based, and the definitions most relevant to the CLSAE Project were accordingly those of transactional platforms. The maturity of platforms and their direct and indirect network effects were further elements bearing on value generation, governance and financial viability.

Five factors distinguishing digital platforms from other collaborative legal structures

65. *A member of the Subgroup on Digital Platforms* introduced five factors distinguishing digital platforms from other collaborative legal structures: (i) their capacity to coordinate a large number of participants; (ii) the enabling of multiple layers of collaboration; (iii) the centrality of intermediation; (iv) the relative ease of entry and exit for members and resources; and (iv) governance mechanisms that often differed from those of the platform operator.

66. *A member of the Subgroup on Companies* expressed the view that digital platforms seemed to be more akin to tools than to legal structures, although they were sometimes presented as alternatives to cooperatives, companies and multiparty contracts. *A member of the Subgroup on Cooperatives* agreed, noting that terms such as “platform cooperatives” might appear to denote a new type of enterprise but were probably closer to a tool, that reliance on a third party posed challenges to principles of autonomy and self-determination, and that arrangements described as worker cooperatives might more properly be understood as access service providers for individual entrepreneurs. *A member of the Subgroup on Multiparty Contracts* agreed that digital platforms should not be presented as a fourth legal structure, being more a functional than a formal concept, and suggested that emphasis be placed on their purpose and function in agriculture and that examples from the agricultural sector be used.

67. In response, *the presenting member* explained that one intention of the paper was to examine whether the claim of the digital platform as a distinct organisation could withstand scrutiny, and that a question for consideration was whether to ensure convergence with the other chapters or to focus solely on digital platforms, and whether to provide particular guidance for smallholders facing the challenges of digitalisation.

68. *A member of the Subgroup on Companies* asked whether a distinction existed between for-profit and not-for-profit digital platforms and whether that affected governance. *A member of the Subgroup on Digital Platforms* referred to an example combining foundations, cooperatives and in some cases companies, in which for-profit and non-profit participants used a common open-source platform, contributing to its global governance while their own governance structures differed.

69. *The Coordinator of the Working Group* referred to financial platforms and clearinghouses, in which an underlying organisational structure, usually a corporation, was typically regulated, and asked whether such structures were comparable to the digital platforms under consideration and whether a legal entity lay behind them. He observed that what appeared to be emerging was that the digital platform was not an alternative to a cooperative, a company or an alliance, but a means of developing activities, its novelty complementing rather than replacing traditional structures. A

member of the Subgroup on Digital Platforms responded that many platforms, especially in agriculture, had an operator responsible for privacy policies and terms of use, that the distinction being drawn was between operator-led governance and the growing tendency for platform users who were not members of the operator to be given some control over platform features, and that if the operator were the focus, the question arose whether the discussion should be integrated into the chapters on companies, cooperatives and multiparty contracts, the chapter having remained stand-alone because of the range of issues unique to platforms and the emergence of hybrid super-platforms.

70. *An observer of the Working Group* asked whether digital platforms in agriculture should enjoy special rules comparable to the special tax or bankruptcy rules applying to multiparty contracts or cooperatives, noting that platforms selling both agricultural and non-agricultural products operated without clear sector-specific distinctions. *A member of the Subgroup on Multiparty Contracts* suggested the categorisation and taxonomy of agricultural digital platforms, such as marketplaces, financial services, training and equipment-sharing platforms, in order to establish whether they used cooperative, company or contractual structures or whether new legal structures were emerging.

71. *A representative of FAO* observed that the chapter was pertinent, many countries being concerned by the use of digital platforms and the problems associated with the sale of agricultural inputs, particularly medicines and pesticides. She suggested that the chapter could be more structured, as it currently combined very different realities whose only common nexus was the use of digital means, and that mapping those realities would make the chapter easier to navigate. She proposed that the chapter should provide clarity on the different types of contract through which farmers could engage with platforms and how they might be used; consider platforms governed by third parties and how different countries regulated their obligations as to data collection and transparency, particularly in international trade, digital platforms altering the rules of international food trade by enabling large volumes of food products to bypass import controls where purchases were made individually; reflect on how digital platforms interacted with the rules governing food imports and exports; include a dedicated section explaining blockchain contracts and their potential applications; and expand the section on dispute resolution. *The Coordinator of the Working Group* agreed with these suggestions.

72. *A member of the Subgroup on Digital Platforms* referred to the legal design of digital platforms and to the use by many platforms, including some in agriculture, of open-source licences in contrast to closed-source platforms. He noted that in many regions the platforms most commonly used by farmers were those whose rules were not designed by farmers, in contrast to platforms developed collaboratively where farmers exercised control over governance and decision-making.

Participatory and non-participatory governance

73. *A member of the Subgroup on Digital Platforms* raised a question whether different governance models should be offered according to whether platforms were participatory or non-participatory, the distinction bearing upon liability, entry and exit, the monitoring of conduct and dispute resolution. *A member of the Subgroup on Multiparty Contracts* considered it useful to inform the kind of private ordering involved and whether it was participatory.

74. *A member of the Subgroup on Companies* observed that the question of participation was an important distinction between types of legal vehicle, partnerships being traditionally highly participatory and egalitarian by default though subject to contractual modification, limited partnerships distinguishing between limited partners with more limited participation rights and the general partner, and the corporate model raising the question of the extent to which providers of capital participated. In response, *the presenting member* considered that this was an excellent comparative point, and observed that, empirically, corporate platform operators deployed platforms on terms set by the operator, which the user either accepted or declined, corresponding to the less

participatory model, whereas some platform arrangements adopted more participatory governance, and that the point might properly belong to the comparative chapter rather than to the platform chapter.

75. *A member of the Subgroup on Cooperatives* distinguished between digital platforms and digitalisation, the latter being a different way of carrying out activities, whether in production or in governance, and noted that legal changes had been introduced into cooperative laws, particularly during the COVID-19 pandemic, to accommodate working practices enabled by digitalisation. She noted that the platform itself might be organised as a cooperative, that a cooperative might provide a digital platform, and that digital platforms might render enterprises redundant where economic actors could transact directly through the platform. *A member of the Subgroup on Digital Platforms* responded that the paper addressed such configurations through the taxonomy of applications in section III.B.

76. *A member of the Subgroup on Digital Platforms* observed that on any given platform all three legal structures under discussion by the Working Group might be present, so that the development of a platform might entail a collaboration between them. *A member of the Subgroup on Companies* noted that the same phenomenon arose for partnerships, companies and cooperatives, groups of such entities being able to participate in a platform, and drew attention to the nature of the relationship on a digital platform which, unlike the legal structures governed by statute, was not provided by the legislator but remained a matter of private ordering, resembling a multiparty contract. *A member of the Subgroup on Digital Platforms* explained that the paper illustrated the types of contract and contractual clause used to address the issues identified, including dispute resolution clauses specifying mechanisms such as online dispute resolution protocols which, while resembling mediation or other forms of alternative dispute resolution, operated without reliance on the ordinary means of enforcement or service and rested on a form of private ordering.

Definition of digital platform

77. *A member of the Subgroup on Companies* questioned whether the definition of digital platform set out in the draft paper would be clear to a lay reader. *The Chair* drew attention to the two definitions in the Glossary, one referring to the online nature of the platform and one referring to innovation platform, and suggested that the definitions might be combined. *A representative of FAO* agreed that further work was needed on the definition, as a reader encountering it without the surrounding context would assume that it covered entities other than those under discussion, and that a direct connection to digital or online infrastructure might be required. *A member of the Subgroup on Digital Platforms* noted that the Glossary definitions had been taken from an earlier version of the chapter, and that he would ensure it captured the necessary points while reading more clearly.

78. The Working Group agreed that digital platforms would not be presented as a fourth legal structure, and that this should be clarified in the Master Copy, together with the reasons for devoting a chapter to digital platforms. It was further agreed that the Subgroup on Digital Platforms would reformulate the draft paper on participatory and non-participatory governance so that it might be drawn upon in the comparative chapter and in the chapters on companies and cooperatives. There was also agreement that the definition of digital platform would be revised in consultation with the Secretariat and reconciled with the definitions in the Glossary.

(e) Master Copy - Structure of the future instrument, draft introduction and draft outline of Chapter on comparing and combining the collaborative legal structures

Methodology for the comparative chapter

79. *The Chair* invited the Working Group to consider the draft Master Copy, and in particular the draft chapter on comparing and combining the collaborative legal forms. *A member of the Secretariat* explained that the chapter was a preliminary proposal as to the methodology that might be adopted, containing examples illustrating that methodology, and that the discussion would be directed to the proposed questions relating to each of its sections.

80. *A member of the Subgroup on Companies* proposed that the comparative chapter begin with a simplified comparative analysis of the common and distinguishing features of the structures examined, organised according to the aspects analysed in the chapters, which might be presented concisely in tables. It was suggested that the Working Group could identify a limited number of strategic purposes of collaboration, such as access to international markets, improved access to finance, improved sustainability along value chains, and research and development, and that the analysis be selective as to the elements examined, so as to avoid an unmanageably complex matrix.

81. Another member of Subgroup on Companies supported the proposal and favoured the inclusion in the chapter of a concise presentation of the formal differences between the vehicles so that a reader might gain a rapid appreciation of them. The member observed that identifying the variables on which the second level of analysis would focus would be difficult, the reasons for which parties chose to collaborate being diverse and frequently multiple.

82. *The Coordinator of the Working Group* explained that the distinction between horizontal and vertical collaboration was well established in competition law, horizontal denoting collaboration among enterprises performing the same or similar activities and vertical denoting collaboration between enterprises at different stages, and illustrated the point with examples concerning compliance with technical, environmental, social and safety standards along a supply chain, product pricing, and the use of data. He observed that, depending on the subject matter and the objective of the collaboration, the same instruments or different instruments might be used, and that in the examples given contracts were used more frequently than the other legal structures.

83. He suggested that, while beginning with vertical and horizontal collaboration was a useful way of approaching the vehicles, it risked becoming too simple if the analysis did not proceed to explain that organisational forms were sometimes used for reasons other than the relative ease of operating vertically or horizontally, including the elimination of the transaction costs, and considerations relating to access to capital, which were not reducible to the vertical or horizontal distinction.

84. *A member of the Subgroup on Multiparty Contracts* considered that the examples captured the minimum common context of the ultimate beneficiary of the Guide, the examples concerning farmers, and asked whether there was merit in including existing informal or formal groups of collaboration.

Order and content of the variables

85. *The Chair* invited the Working Group to consider the order in which the variables appeared in the draft, the contextual variables preceding the functional variables, and asked whether a different order would be preferred.

86. *A member of the Subgroup on Multiparty Contracts* observed that what were designated functional variables largely reflected the elements of collaboration examined in the chapters, and suggested that those elements be summarised first in a table comparing the main characteristics of each structure, identifying what was common and what differed, before the contextual variables were introduced.

87. *The Coordinator of the Working Group* raised the question of where the distinction between collaboration requiring shared resources and those not requiring them was addressed, considering it a key variable in the choice among legal forms, and drawing a distinction between material and immaterial resources; and observed that where resources were not shared, contracts were the candidate legal structure, whereas where resources were shared, companies and cooperatives tended to be used more than contracts.

88. *A member of the Secretariat* noted that the question whether resources were to be shared fell within the purpose of the collaboration, which was among the contextual variables identified so far, together with participation in the domestic or international market and the type of commodity, and that the development of what was meant by the sharing of resources would follow within that variable.

89. *A member of the Subgroup on Companies* emphasised that the starting point was the objective, the form being a function of the objective, and that this should be stated at the beginning of the comparative table. The analysis should proceed by asking, for a given objective, what the law provided in respect of each form before comparison began. The member who had proposed the two-level analysis agreed but observed that the term “purposes” was being used in two senses, the first being the purposes associated with the legal definitions of the legal structures, which would belong to the first level of comparison, and the second being the concrete purposes of collaboration in the agricultural field, which would belong to the second level.

90. *A member of the Subgroup on Multiparty Contracts* enquired whether the Working Group was discarding the grouping of the functional variables into three categories, namely internal collaboration, external collaboration, and those variables facilitating collaboration with providers of credit, which had been adopted in response to suggestions made at the intersessional session. Another member understood that the grouping was to be retained, the purpose having been to simplify a long list of variables by categorising them so that the field into which each fell was more readily understood.

91. *A representative of FAO* raised two questions of clarification concerning the contextual variables, asking whether the reference to participation in a domestic or international supply chain was intended, the chapter elsewhere referring to value chains, and whether gaining access to international markets and to local markets were the same. *A member of the Secretariat* stated that the Working Group might better reflect on which topics the chapter should address by reference to the questions that parties contemplating collaboration would themselves ask, with a view to identifying what would make the Guide practical and useful to its intended beneficiaries rather than analysing a long list of variables.

92. *A representative of FAO* suggested that the contextual variables could be derived from the needs and challenges of smallholders and agricultural MSMEs identified in the Introduction, since the purpose of the Guide was to provide guidance on how collaborative legal structures might be used to address those needs, and that the identified needs might be translated into contexts to serve as the variables for the comparative analysis. Two members of the Working Group agreed, one of them observing that the functional variables resulted from the need to address problems of one kind or another, and that describing the problems, followed by the vehicles developed to respond to them, was a logical sequence; and that the contextual variables should accordingly be derived by revisiting the opening parts of the chapter.

93. *A member of the Subgroup on Cooperatives* raised further questions concerning the proposed contextual variables, considering that the purposes should be limited to a small number in order to avoid an excessively generic analysis. Another member of the Working Group observed that value chains were becoming fewer and global, so that participation would probably entail an international dimension, and that the first element to be examined in relation to external collaboration was the value chain leader, a matter which the Working Group had avoided but which would need to be addressed.

Glossary and Structure of the Draft Instrument

94. *A member of the Secretariat* recalled that the Glossary had been prepared to assist the Working Group in securing consistency in the terminology used by the different Subgroups, and that the Working Group had not intended the Glossary to form part of the Guide itself. She invited those who had comments on the revised glossary or wished to suggest addition or removal of terms to communicate their suggestions to the Secretariat, who would incorporate those suggestions in the next draft.

95. *A member of the Secretariat* introduced the preliminary draft structure of the instrument. *A member of the Subgroup on Companies* noted that, as a result of the discussions, access to credit and sustainability were no longer considered exogenous factors, and the draft structure could be revised accordingly. *A member of the Subgroup on Multiparty Contracts* pointed out that the chapter on digital platforms was missing. *The Chair* explained that the proposed chapter on implementation of the CLSAE Guide would be discussed at a later date. In regard to the proposed subsection on challenges due to differences in legal systems, she mentioned that it might be necessary to include something on conflict of laws and party autonomy, which might not be relevant to a domestic collaboration but important in an international context.

Item 5 and Item 7: Organisation of future work and closing of the session

96. *A member of the UNIDROIT Secretariat* explained that intersessional work would continue to include meetings of each Subgroup as well as work on the cross-cutting themes, such as sustainability, access to credit and the chapter on comparing and combining different collaborative legal forms. She proposed that two inter-thematic intersessional sessions be organised, open to the whole Working Group, one on sustainability and access to credit and one on digital platforms and digitalisation. In addition, a third intersessional session on the comparative chapter and the functional variables, following the circulation of the comparative table for completion; and a fourth on the Introduction, the purpose of the Guide and the contextual variables would also be organised. She confirmed, in response to a question from the Chair, that all such sessions would be held online.

97. Moving forward the Secretariat would work principally on the draft Master Copy, integrating the four discussion papers into it. She noted that the papers differing in style and language, some adaptation would be required so as to secure consistency among the chapters. *The Chair* noted that an open drafting meeting would be held that afternoon to oversee the work on the draft Master Copy and the development of the draft Guide.

98. No decision was taken on the dates of the eighth session. The dates proposed in the annotated draft agenda (15 to 17 October 2025) were not adopted, and the Secretariat undertook to revert to the Working Group. *The Chair* informed that the UNIDROIT Secretariat would inform the Working Group of the exact dates at a later stage.

99. In the absence of any other business, *the Chair* thanked all the participants for their input and closed the session.

ANNEXE I**AGENDA**

1. Opening of the session and welcome
2. Adoption of the agenda and organisation of the session
3. Update on intersessional work and developments since the sixth Working Group session (*W.G.7 – Doc. 2 – Secretariat Report*)
4. Consideration of work in progress
 - (a) Draft Discussion Paper on Companies (*W.G.7 – Doc. 3*)
 - (b) Draft Discussion Paper on Multiparty Contracts (*W.G.7 – Doc. 4*)
 - (c) Draft Discussion Paper on Cooperatives (*W.G.7 – Doc. 5*)
 - (d) Draft Discussion Paper on Digital Platforms (*W.G.7 – Doc. 6*)
 - (e) Master Copy – outlining proposed structure of the future instrument and containing Draft Introduction, Draft Glossary, Draft outline of Chapter on comparing and combining the collaborative legal forms (*W.G.7 – Doc. 7*)
 - (f) Other matters identified by the Secretariat
5. Organisation of future work
6. Any other business
7. Closing of the session

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

Ms Maria Ignacia VIAL UNDURRAGA <i>Chair</i>	Professor of Law Universidad de los Andes
Mr Fabrizio CAFAGGI <i>Coordinator</i> <i>remotely</i>	Judge at the Council of State Italy and Professor at the University of Trento and LUISS
Mr Virgilio DE LOS REYES <i>remotely</i>	Dean De La Salle University
Ms Isabelle DESCHAMPS <i>in-person</i>	Lawyer, Consultant Law and development, Canada
Mr Matteo FERRARI <i>excused</i>	Professor University of Trento
Ms Cynthia GIAGNOCAVO <i>remotely</i>	Professor Universidad de Almeria
Mr Hagen HENRY <i>in-person</i>	Professor University of Helsinki
Ms Paola IAMICELI <i>in-person</i>	Professor University of Trento
Mr Georg MIRIBUNG <i>remotely</i>	Professor Eberswalde University for Sustainable Development
Mr Morshed MANNAN <i>remotely</i>	Lecturer in Global Law and Digital Technologies Edinburgh Law School
Mr Francisco REYES VILLAMIZAR <i>in-person</i>	Adjunct Professor, University Javeriana Partner at Francisco Reyes & Asociados SAS
Mr Carlo RUSSO <i>excused</i>	Professor University of Cassino and Lazio Meridionale
Ms Dongxia YANG <i>remotely</i>	Professor China University of Political Science and Law

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