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

***Fourth session (hybrid)***  
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**SUMMARY REPORT**  
**OF THE FOURTH SESSION**  
**(8 – 10 November 2023)**

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1. The fourth 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 LSAE Project” or “the Working Group”) was held in hybrid format from 8 to 10 November 2023 at the premises of UNIDROIT in Rome (Italy). The Working Group was attended by 45 participants, comprised of members and observers from intergovernmental organisations, farmers’ associations, non-governmental organisations, academic institutes, and the private sector, as well as members of the UNIDROIT Secretariat. The list of participants is available in [Annexe II](#).

**Item 1: Opening of the session and welcome**

2. *The UNIDROIT Secretary-General* opened the session and welcomed all participants. He thanked the members of the Working Group for the work conducted during the intersessional period between June and October 2023 to prepare the draft discussion papers for the fourth session of the Working Group. He acknowledged the different levels of detail and structure of the papers and noted the potential need for alignment to allow for cross-comparison. Because of time-zone differences, he informed the participants that he would co-chair the session together with Mr Ricardo Lorenzetti, member of the UNIDROIT Governing Council and Chair of the LSAE Working Group, who would attend remotely. He also welcomed and appreciated the participation of two representatives of the Government of Singapore, one of UNIDROIT’s most recent Member States. In addition, he informed that a new candidate for UNIDROIT’s Governing Council from Chile would be participating as an observer.

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

3. *The UNIDROIT Secretary-General* introduced the annotated draft agenda and the organisation of the session ([UNIDROIT 2023 – Study LXXXC – W.G.4 – Doc. 1](#)). He informed the Working Group that the documents that would be the basis for the discussion were: (i) Secretariat’s Report ([UNIDROIT 2023 – Study LXXXC – W.G.4 – Doc. 2](#)); (ii) Draft Discussion Paper on Corporations (UNIDROIT 2023 – Study LXXXC – W.G.4 – Doc. 3 ); (iii) Draft Discussion Paper on Cooperatives (UNIDROIT 2023 – Study LXXXC – W.G.4 – Doc. 4); and (iv) Draft Discussion Paper on Multiparty Contracts (UNIDROIT 2023 – Study LXXXC – W.G.4 – Doc. 5), which 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: Adoption of the Summary Report of the third session of the Working Group**

4. *The UNIDROIT Secretary-General* noted that the Secretariat had shared the Summary Report of the third session of the Working Group, held on 8-9 May 2023, with all participants. *The Working Group confirmed the adoption of the Summary Report* ([UNIDROIT 2023 – Study LXXXC – W.G. 3 – Doc. 3](#)).

**Item 4: Update on intersessional work and developments since the third session of the Working Group**

5. *A member of the UNIDROIT Secretariat* introduced the Secretariat’s Report ([UNIDROIT 2023 – Study LXXXC – W.G.4 – Doc.2](#)), noting it contained information related to the background of the project and a summary of decisions made by the Working Group in previous sessions. The distinction between the target audience and the protected interest group, which included smallholders and agri-Micro, Small and Medium-sized enterprises (MSMEs) was raised.

### Purpose of the LSAE Guide

6. It was explained that the Working Group had thus far agreed that the purpose of the LSAE Project was not to identify the best collaborative legal form but rather to inform the target audience of the available options of collaborative legal forms to enhance sustainable agricultural development in supply chains and contribute to the transformation of agrifood systems, such as by: (i) increasing efficiency, (ii) improving access to market resources and finance, (iii) exploring innovation and opportunities offered by digitalisation, (iv) addressing power imbalances, and (v) proposing remedies for unfair commercial practices.

7. It was noted that, in previous sessions, the Working Group had decided that different collaborative legal forms would be analysed as complementary vehicles to maximise opportunities and to meet the needs of the actors aimed to be protected in the Guide. The Project would cover, in particular, three collaborative legal forms: multiparty contracts, cooperatives, and corporations.

8. At the fourth session of the Working Group, it was clarified that the goal of the Guide would not be to determine if what was possible in multiparty contracts could be replicated in cooperatives or companies. Instead, the focus would be on exploring which instruments could be used by farmers and smaller enterprises to achieve their objectives and needs. If a certain need could not be achieved through a cooperative, for example, it would not hinder farmers from creating a company and using multiparty contracts for individual activities. However, some participants of the Working Group emphasised the mutual exclusivity of having the same collaborative relationship structured both as a company and a cooperative. Additionally, it was highlighted that, among other factors, liability could be considered as one of the defining factors to decide between a company, cooperative, or a multiparty contract.

9. The Working Group agreed that by providing the target audience with a menu of illustrative collaborative legal forms, the LSAE Guide would demonstrate that the choice and decision-making process among these legal forms might be driven by third parties and also influenced by external factors like sustainability requirements, digitalisation and access to credit. Therefore, legal guidance would be provided on how to improve collaboration through different legal forms and between different agrifood supply chain actors. The Working Group also agreed on the relevance of further considering the possibilities of combination of all the collaborative legal forms analysed in the Guide.

### Target audience

10. Regarding the target audience of the LSAE project, it was explained that in the previous legal guides developed under the tripartite partnership between UNIDROIT, FAO and IFAD, namely the [Legal Guide on Contract Farming](#) and the [Legal Guide on Agricultural Land Investment Contracts](#), the target audience had been legal professionals, legislators and policymakers working in the field of private law and agricultural development. It was noted that the LSAE Guide would not automatically be self-applicable, and that the target audience would need to translate the content to each country's context to assist the target audience in making sure that the most suitable type of collaborative legal form be adopted by the actors included in the protected interest group.

11. The Working Group discussed the difference between the prospective target audience of the LSAE Guide and the protected interest group, as well as further reflected upon the actors and stages of the agrifood chain that the LSAE project would focus on. The necessity of clearly defining the needs of the protected interest group to further understand the purposes of collaboration and the different legal solutions that the Guide would propose in terms of best practices was noted.

12. During the fourth session of the Working Group, it was clarified that the "target audience" represented for whom the Guide would be intended (the addressees) and would include the potential actors in an advisory capacity and certain stakeholders that have a role in shaping future legislation

and drafting policies, as well as at delineating internal regulations, contracts and bylaws. It was suggested that the addressees of the LSAE Guide could include not only legislators, lawyers, counsellors, and judges but also 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. It was noted that these representatives could be perceived as the facilitators, intermediaries and/or translators of the guidance instrument.

13. Additionally, agricultural educational institutes and/or vocational institutions specialised in agriculture were also recommended to be included among the potential target audience of the LSAE Guide because of their local influence and to acquaint them with the work of UNIDROIT, FAO and IFAD in the field of private law and agricultural development.

14. The Working Group acknowledged that broadening the scope could make it challenging for policymakers to effectively use the Guide due to the lack of coordination among various ministries in the agrifood system. The divide between different ministries and legislators regarding on-farm and off-farm agricultural activities was also explained.

15. *In general, the experts of the Working Group agreed with the proposal to broaden the target audience beyond legal professionals to include non-governmental organisations, associations, and other intermediaries that often played a more direct role in assisting small enterprises due to their accessibility.*

#### Protected interest group: smallholders and agri-MSMEs

16. During the fourth session of the Working Group, participants observed that defining “protected interest group” would contribute towards the definition of the subjective scope and content of the Guide (e.g., development of legal guidance for individual smallholders, agri-MSMEs or the entirety of the agrifood chain). Some experts explained that many businesses in the agrifood supply chain were informal, small, and often included family enterprises. The issue of informality when focusing on micro-level entities and how this could pose different challenges was also raised. Additionally, some experts noted that the continuous nature of agricultural activities and the unique challenges smaller actors encountered would need to be considered to point out their limitations and unequal bargaining power. Accordingly, it was proposed that one way forward could be to focus on the smallest businesses and provide this group guidance on the various aspects of collaborative legal forms. However, within the context of poverty reduction, the risks of focusing on the smallest enterprises, often referred to as the cottage industry in the agrifood sector, was also pointed out.

17. Participants discussed the different levels of formality of agricultural enterprises and their ability to access services and contribute to social and economic development. It was noted that moving from highly informal to semi-formal or formal enterprises allowed for better access to resources, funding, and services, enabling these entities to contribute more substantially to society and the economy. The need to further define whether to prioritise micro-size firms or those which were semi-formal/formal was reiterated, with some participants emphasising that supporting the latter could uplift smaller enterprises from the poverty trap.

18. Considering the substantial gap in support for smallholder organisations and the lack of voice and representation of smaller entities despite their substantial contribution to the economy, particularly in the informal sector, participants emphasised the importance of developing guidance which promoted those interests principally. Additionally, it was noted that the guidance instrument should be supply-driven to ensure that the interests of these smaller enterprises were adequately represented. *A representative of IFAD* emphasised the importance of precisely identifying the smallholders’ needs together with their input, rather than thinking for them. To illustrate, it was noted that, in the financial services space, IFAD and FAO had conducted a study which showed that access to loans was not one of the key factors that influenced investment decisions for smallholders.

The key factor, and the most important in terms of priority, had been access to viable markets.

19. Certain participants noted the need to further explain the diversity within the protected interest group of the LSAE Guide, as it seemed to include smallholders and agri-MSMEs operating in both farm and off-farm settings. The distinction between the LSAE Project and the previously-developed UNIDROIT/FAO/IFAD [Legal Guide on Contract Farming](#) was recalled to emphasise the LSAE Guide's intention to extend the analysis beyond the production stage to encompass various segments within the supply chain.

20. Concerning the need to further clarify whose interests the LSAE Guide envisaged to protect and consider, it was recalled that the prospective Guide's purpose was not solely about interest protection, as other elements of the supply chain would also be addressed, such as organisational matters and efficiency aspects. Additionally, it was noted that the challenges faced by larger entrepreneurs could also be considered, as these actors could assist smallholders and support smaller enterprises. The UNIDROIT/IFAD [Legal Guide on Agricultural Land Investment Contracts](#) was introduced to illustrate how targeting the guidance toward larger investors ultimately had a positive impact on smaller entities and local communities.

21. Experts pointed out a potential conflation between the target audience and the protected interest group. Some experts expressed concern regarding the feasibility of developing legal guidance for the range of actors proposed in the LSAE Project, spanning farmers, traders, and processors across the formal, semiformal, and informal sectors.

22. The Working Group decided to further consider the needs of the actors on the ground to decide whether it would be necessary to further reduce the broad range of actors considered within the category of the "protected interest group".

#### Consideration of larger enterprises

23. The inclusion of "big players" and value chain leaders in the analysis of the LSAE Project was supported by some experts, who recognised the importance of understanding their perspectives, actions, reasoning and instruments, in particular their terms and conditions. The necessity of empowering smallholders by facilitating collaboration among themselves first, allowing for a strengthened collective voice, was emphasised. This collective strength could then enable them to engage more effectively within the broader value chain, as individual smallholders might struggle to negotiate directly with value chain leaders. It was suggested that the Working Group could further explore how various collaborative structures like multiparty contracts, cooperatives, and corporations could interact with larger enterprises, and emphasise the importance of discussing the nuances involved in these interactions.

24. Regarding the proposal to include larger enterprises and the supply chain approach, some participants expressed some uncertainty about the Guide's direction and questioned whether the Guide should be developed for larger enterprises who wished to engage with small agricultural enterprises, or for smaller actors who wanted to engage with retailers. It was clarified that the Guide's intention would be to consider various parts of the supply chain and that it would not be focused on the farm business itself, as smallholders and agri-MSMEs might wish to participate in different stages of the value chain depending on the collaborative arrangements established.

25. *The Working Group agreed to develop guidance mainly for smallholders and agri-MSMEs but to also take into account the perspectives of larger enterprises, as understanding their practices would be crucial to creating a Guide that effectively served the needs of smaller enterprises which operated within these value chains.*

### Nature of the future Guide

26. It was clarified that the nature of the future LSAE Guide would be a soft-law international instrument and not a treaty or any other type of hard-law instrument. It would be based on the previously adopted legal guides, developed under the tripartite relationship between UNIDROIT, FAO and IFAD. A question was raised regarding the role of the Guide as a soft-law instrument and whether it would be more useful to (i) provide menus of options for parties when drafting contracts or establishing companies or cooperatives or (ii) provide some preferred default rules where an optimal solution exists. It was clarified that the legal guides developed by UNIDROIT, FAO and IFAD were most useful when they included express recommendations. However, it was noted that in order for such recommendations to be made, the Working Group would need to reach consensus on a single optimal default rule to recommend.

### Language of the future Guide

27. In relation to the language and level of sophistication of the future Guide, participants discussed the need for the Guide's language to be tailored to a broader audience by adopting less sophisticated legal language. The importance of adopting clear legal concepts and terms while acknowledging that different levels of sophistication existed among stakeholders was emphasised. It was recommended that the Working Group review the interchangeable use of terms like smallholder and small enterprise to adopt a glossary with clear definitions.

28. It was noted that, in order to be implemented effectively, the Guide would need to be subject to not only linguistic but also conceptual translation. While acknowledging the complexity of the Guide for those with no legal education, especially those who were illiterate, some experts recommended the development of media tools (perhaps to be developed by FAO or IFAD) to simplify the content of the Guide and make it accessible to a broader audience.

### Legal frameworks considered

29. The Working Group was encouraged to adopt a more inclusive approach to acknowledge diverse legal frameworks beyond the scope of traditional state law. The Working Group did not need to refrain from developing guidance and identifying best practices also based on non-state laws.

30. The Working Group agreed to further develop the processes that led towards collaboration, as well as to consider practices that were not necessarily recognised by state law and the existence of informal forms of collaboration and more traditional practices to showcase wider examples to the target audience. For example, it was noted that the challenges that customary law might create for women to join cooperatives without the permission of their husbands or because of the lack of recognition of their land tenure right could be further considered. Therefore, the Working Group was recommended to consider other forms of law (not extra-legal) and not to adopt a purely geographical perspective to differentiate the collaborative practices analysed.

### Empirical evidence

31. In relation to the empirical evidence requested by the Working Group, a representative of IFAD explained that the mandate of IFAD did not comprise the collection of raw data but rather the design of rural development projects and reporting on project progress. However, it was noted that IFAD had produced technical reports (e.g., on different types of rural organisations, on the potential beneficiaries along a typical commodity value chain, and on multi-stakeholder platforms), as well as operational guidelines on IFAD's engagement in pro-poor and smallholder value chain development that could provide information related to the processes undertaken in agrifood supply chains, including the reasons and eventual barriers to collaboration. It was noted these documents could help the Working Group tailor the LSAE Guide to the categories of stakeholders or value chain players

of the smallholder and agri-MSME community.

32. A representative of FAO noted that additional data could potentially be provided by liaising with decentralised offices and by sharing information on relevant publications, online tools and repositories. The Working Group was requested to provide FAO with a list of questions to further specify the required data in advance of the next session of the Working Group.

Definition of collaboration

33. A member of the UNIDROIT Secretariat referred to Part III of the Secretariat Report, in particular sections A and B, which addressed the definition of collaboration and the types of collaborative legal forms considered in the LSAE Guide. It was noted that the working definition of collaboration agreed upon during the third session of the Working Group had been:

a form of interaction among two or more parties with common objectives, overlapping needs, interrelated interests, and/or shared risks that may be limited to the exchanges of goods and services or imply an engagement in projects within a value chain with or without shared resources.

34. The Working Group was invited to confirm its agreement with the revised definition and to inform whether further clarifications were needed to avoid misunderstandings. The importance of differentiating collaboration from integration and coordination was emphasised; however, it was pointed out that sometimes collaboration could manifest as a form of integration despite the distinction (e.g., collaboration amongst cooperatives). The necessity of adopting a comprehensive definition for collaboration was questioned as some experts considered the description of the three specific legal forms of collaboration to be sufficient. Concern was expressed that having a specific definition of collaboration could potentially limit discussions.

35. It was highlighted that the Guide was not meant to be confined to only three legal forms, namely multiparty contracts, cooperatives and corporations; other forms of collaboration could also be considered if they proved significant, especially for smallholders and smaller enterprises. The functional definition of collaboration served two purposes: first, it permitted a meaningful comparative analysis, focusing not just on the legal structures but also on the function and different ways collaboration occurred; secondly, it permitted identifying the differences that took place between vertical and horizontal forms of collaboration. It was noted that collaboration had very different features depending on varying levels of bargaining power and, therefore, the adoption of a flexible definition capable of capturing the various relationships and agreements established along the supply chain, as well as the equality and inequality in bargaining power among collaborating parties, was recommended.

36. The initial discussions of the Working Group around the term “collaboration” in earlier meetings were recalled to point out the divergence in interpretation between legal professionals and social scientists, which led to the necessity of defining the term. While the definition seemed general and somewhat contrived, its broadness could support the usability of the Guide across different disciplines.

37. It was suggested that the discussion focus on the usefulness of adopting a working definition of collaboration for the purposes of developing the Guide and that the decision on whether to include a definition of collaboration in the final instrument could be left for a later stage. Certain Working Group participants underscored the utility of a working definition of collaboration, emphasising its significance in providing clarity to individuals engaging with the Guide. Its role in distinguishing between collaborative scenarios and situations that would not qualify as collaboration, such as those involving power imbalances or potentially illegal activities, particularly in the context of competition law were also highlighted.



38. Most experts agreed on the usefulness of retaining the working definition of collaboration despite its current broadness and undefined terms as it could aid in further clarifying various aspects of the LSAE Guide, including its scope and the purpose of the analysis of different legal forms. The Working Group was recommended to further reflect upon some of the definition's key elements, particularly concerning the phrases "form of interaction" and "imply an engagement in projects within a value chain", which one participant found ambiguous.

39. Lastly, the need to contextualise discussions regarding collaboration within the realities faced by smallholders and the practices of smaller enterprises was reiterated, and it was recommended that collaboration could be considered in two stages: first by incentivising smallholders and agri-MSMEs to collaborate and then by considering the implications when they integrated into value chains. It was noted that while value chains themselves might not have a specific legal structure, they were bound by national legal systems, posing complex challenges that needed to be further considered. Additionally, it was recommended that the Working Group also consider developing guidance on the potential problems in collaboration as well.

40. *For the time being, the Working Group agreed to keep the working definition of collaboration as proposed during the third session and to further define some of its elements during the fifth session of the Working Group.*

## **Item 5: Consideration of work in progress**

### **(a) Draft Discussion Paper on Corporations**

41. *The Chair of the Working Group directed the participants' attention to the Draft Discussion Paper on Corporations, which had been distributed via email to the Working Group, and invited the Chairs of the Subgroup to introduce the work conducted during the intersessional period between June and November 2023.*

42. An overview of the document and its role as an outline of topics for further development was provided. It was clarified that the initial goal of the Draft Discussion Paper was to provide comprehensive coverage of legal entities except cooperatives. Additionally, it was noted that the Subgroup, initially labelled as "Subgroup on Corporations", had contemplated using the term "companies" instead of "corporations" due to its broader and more neutral connotations, encompassing various forms beyond corporations, such as partnerships. The Working Group was invited to discuss whether it agreed with the proposed broadening of the issues covered, and consequentially with the proposed change in the title of the Subgroup.

43. It was explained that Part II of the Draft Discussion Paper contained an overview of enterprises operating in the agrifood supply chain across the world to capture the context in which the LSAE Project took place. It was noted that most enterprises operating in the agrifood supply chain were informal, vulnerable and predominantly small. In addition, the Draft Discussion Paper had been developed with a broader perspective to include off-farm enterprises. The subsequent sections addressed the purpose of the chapter, the taxonomy of legal forms for companies operating in the agrifood supply chain, membership and members' contribution, governance and management, legal personality and liability of members, financial rights, and dissolution and division of common assets. It was noted that the document posed several questions for the Working Group's consideration.

44. The need to differentiate between discussing companies as a form of agricultural enterprise and as a form of collaboration was emphasised. The Draft Discussion Paper did not cover collaboration among companies but focused on addressing companies as a form of collaboration. The variety of company-like legal forms that could exist in different jurisdictions was pointed out, and it was explained that the Draft Discussion Paper did not contain an exhaustive list of legal forms. Additional examples could be added by considering the relevant literature and international agricultural

organisations' database. For example, a table enumerating different legal forms and their pros and cons across jurisdictions could be added to the Draft Discussion Paper to reflect a practical approach for readers to consider when choosing a legal form for collaboration. The Working Group was invited to further discuss the depth of the analysis that needed to be undertaken for each legal form illustrated.

45. In the ensuing discussion, the Working Group discussed whether the term “companies” would adequately include associations and advocacy groups. Some participants expressed concern that the emphasis on profit might inadvertently exclude collaborative efforts not solely driven by profit motives but still beneficial to smallholders (e.g., for infrastructural development or community-driven programmes).

46. It was explained that the choice to use “companies” was to encompass a wider array of entities. As to the inclusion of associations and advocacy groups, it was clarified that while the Guide would primarily focus on entities with defined legal structures, it could potentially include advocacy groups formed by smallholder farmers if they possessed a distinct legal personality in their jurisdiction.

47. With respect to the inclusion of partnerships into the definition of a company, some participants noted the distinction between partnership law and company law in various jurisdictions, highlighting the potential confusion in conflating general partnerships with entities possessing features like legal personality and limited liability. It was recommended that the Guide focus on limited liability partnerships as opposed to general partnerships. A potential approach to reconcile the use of the terms “company” and “partnership” within a more inclusive view could be by acknowledging both in the document and separately discussing the differences between them. This distinction could involve exploring issues like limited liability and variations in legal personality across jurisdictions for partnerships.

48. Additionally, the Working Group observed that the distinction between companies and cooperatives might not be clear-cut, and it was proposed to shift the focus towards distinguishing between investor-owned firms and non-investor patron members. Some participants expressed openness to alternative titles like “investor-owned firms”; however, some hesitation was nonetheless expressed in relation to the potential confusion arising from newer, less familiar terms. The importance of focusing on substance rather than getting entangled in philosophical discussions about the purpose and nature of firms was emphasised.

49. Some participants pointed out that profit would not be a reliable criterion to differentiate between different forms of companies due to various ways entities allocated their surplus, sometimes not aiming for direct dividends but distributing profits through salaries or other means. Participants discussed the background of basic entities that acted as a default or fallback in certain legal systems if specific form requirements were not met, emphasising the importance of form in protecting the interests of creditors or third parties. The challenges in creating a clear taxonomy for different types of entities due to the complexity of their legal and operational structures was reiterated, especially concerning profit allocation and the various ways entities operated within the supply chain.

50. Noting the difficulties encountered in identifying common terminologies and acknowledging the limitations of considering the profit purpose as a differentiating criterion, the Working Group considered the possibility of further analysing the different elements that constituted a separate legal entity, focusing on aspects like: separate legal personality, actions attributed externally, the allocation of risks internally, separate patrimony and limited or non-limited liability. It was noted that understanding these diverse elements could provide more practical guidance depending on the level of integration desired, rather than attempting to universally classify companies or corporations under one legal entity type. However, some experts noted that while unpacking various legal elements could be interesting, in terms of practicality it could seem too abstract for the users of the Guide.

One expert proposed a more focused approach that would distinguish between different legal entity types based on their defining features, such as investments, control dynamics, and incentives.

51. The Working Group discussed the importance of including sole entrepreneurs within the discussion due to their prevalence among small agri-entrepreneurs and their significant participation within the supply chain despite functioning as individual entities. It was noted that the analysis regarding sole entrepreneurs could possibly be included within the context of recognising informality and to demonstrate how formalising as sole entrepreneurs might lead to growth or collaboration with other entities. Some participants considered that sole entrepreneurs could be further explored to the extent relevant in the context of collaboration.

52. Additionally, participants considered whether to further analyse the concept of corporate groups, acknowledging scenarios where the supply chain involved multiple companies within the same group, often treated collectively for certain legal and tax purposes. The inclusion of a section on conversion, merger, and division in the Draft Discussion Paper was also discussed to explore how entities might transition or transform.

53. The Working Group considered the working definition of the term “agricultural company”, which had been proposed in paragraph two of the Draft Discussion Paper: “any type of legal form that may, in accordance with the applicable law, be used to pursue a business activity in the agricultural sector with a view of profit”. Some experts urged for a clearer distinction between the legal entities that would be covered and cooperatives. In particular, further clarification was sought regarding the terms “any type of legal form” and whether that referred to legal entities, noting the limited number of legal persons through which an enterprise could be recognised as such. Additionally, it was suggested that the working definition’s mention of “profit” could be further explained and, alternatively, a broader concept could be considered to encapsulate positive outcomes beyond solely financial returns.

54. The potential misleading use of the term “members” and “membership” in the context of corporations or companies was also discussed. Some experts considered the term to be generally used to define participation in cooperatives and queried whether other terminology could be used moving forward. In response, it was noted that the term “members” was also often used in international legal reform, for example by the World Bank and the International Monetary Fund, to refer to partners within an organisation. It was further noted that the term “shareholder” would not have broad coverage.

55. The Working Group considered the work developed by the United Nations Commission on International Trade Law (UNCITRAL) regarding simplified forms of organisation and the Legislative Guide on Limited Liability Enterprises and discussed whether it could be further considered in the Draft Discussion Paper to address simplified versus ordinary forms of collaboration.

56. It was noted that the distinction in collaborative arrangements might vary depending on the types of entrepreneurs involved in the supply chain, such as collaboration among farmers or among farmers and processors or farmers and retailers. Some experts recommended further considering the differences between horizontal and vertical collaboration in the Draft Discussion Paper to further explain the difference (if any) between a company among farmers, and a company among farmers, processors and distributors. It was also pointed out that the Draft Discussion Paper could further address the relevance of legal personality and how it might differ concerning access to finance or access to other resources like patents, know-how, or seeds. He encouraged focusing on whether these distinctions in corporate forms affected market access or resource availability rather than delving into comparative law issues about what should or should not be included in the Guide.

57. *The Working Group tentatively agreed to change the title of the Draft Discussion Paper on Corporations and also, consequently, the name of the Subgroup from “corporations” to “companies”,*

*noting the need to further distinguish the use of certain terms, such as "company", "partnership" and "corporation". The Subgroup on Companies would continue focusing its work on agricultural enterprises "other than cooperatives" and would further develop the working definition of "agricultural companies".*

58. *Acknowledging that developing a sort of "anatomy of corporate law" would be difficult to formulate and unnecessary, the Working Group agreed that the chapter on companies would not follow a textbook approach but would consider collaboration through an organisational law lens. A selective rather than a comprehensive coverage would be considered by focusing on aspects relevant for collaboration.*

59. *The differences between horizontal and vertical forms of collaboration in the context of companies would be further considered to explain the difference (if any) between a company among farmers and a company among farmers, processors and distributors. Besides further developing the core elements of the company-like entity (e.g., legal personality, liability, etc.) the Subgroup agreed to add a discussion regarding collaboration by sole entrepreneurs and corporate groups, as well as reflect on the inclusion of a new section on conversion, merger, and division.*

60. *In addition, the distinction between simplified versus ordinary forms of collaboration based on UNCITRAL's work would be considered to the extent necessary. A discussion on whether company law might be used to address breach through a specific set of remedies and potential legislative obstacles would also be further evaluated to confirm whether or not contractual remedies would need to be used.*

#### **(b) Draft Discussion Paper on Cooperatives**

61. At the invitation of the UNIDROIT Secretary-General, the Chairs of the Subgroup on Cooperatives introduced the Draft Discussion Paper, noting the different types, forms and variations of cooperatives by activities and sector. The Working Group was informed that the paper had focused on cooperatives which were recognised and registered as a legal persons. While the notion of agricultural cooperatives varied, the paper demonstrated that cooperatives contributed substantially to the production, processing and distribution of food around the world.

62. A definition of cooperatives was proposed based on the International Cooperative Alliance's (ICA) legally binding Statement on Cooperative Identity, also known as the Cooperative Principles and the International Labor Organization (ILO) Promotion of Cooperatives Recommendation No. 193.<sup>1</sup> It was noted that a crucial aspect of the identity of cooperatives was membership, co-entrepreneurship, and cooperation among cooperatives. Additionally, it was emphasised that cooperatives, as enterprises, should be considered as a means to achieving the objectives and common needs of their members. Cooperative members explicitly formed cooperatives to meet common economic, social, and cultural needs and aspirations. The Working Group was advised to further consider this explicit intention when distinguishing cooperatives from the other collaborative legal forms considered in the LSAE Guide.

63. The Working Group further addressed the main differences between cooperatives, corporations and multiparty contracts. It was highlighted that corporations were generally return-on-investment-oriented and that contracts were used to balance opposing interests of the parties. Overall, the Working Group considered the need to avoid adopting a cooperative-versus-company discourse when developing the LSAE Guide, as both legal forms, together with multiparty contracts,

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<sup>1</sup> ICA's definition of cooperative: "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", see the [1995 International Cooperative Alliance Statement](#) on the co-operative identity. See also the 2002 International Labor Organization Promotion of Cooperatives Recommendation No. 193.

should be considered complementary in several aspects.

64. With respect to the differences between cooperatives and corporations, the Subgroup was recommended to further distinguish cooperatives from smaller corporations and companies moving forward. To illustrate, the Subgroup was invited to further consider smaller corporations, partnerships and family-led companies, which were generally limited liability companies, member-centred and without the distribution of dividends as their main purpose. However, drawing on the discussions held during the first day of the fourth session of the Working Group, some participants observed that such differentiation would only be possible once the Working Group agreed upon the types of companies that would effectively be analysed (e.g., if it would include partnerships, stock companies, etc.). A query was raised as to whether the focus on mutualistic exchange could be useful to further distinguish between cooperatives and companies.

65. Regarding the boundaries between cooperatives and multiparty contracts, a *participant* of the Working Group noted that the differences, as presented in the Draft Discussion Paper, seemed to take into account mainly the conventional opposition between contracts intended as a bilateral exchange structure and cooperatives as a membership-based structure. In contrast, it was suggested that, for the purposes of the LSAE Project, such distinction could be based on the assumption that both cooperatives and multiparty contracts were collaborative legal structures suitable for the pursuit of common interests. It was recalled that in previous sessions the Working Group had clarified that multiparty contracts should not be considered as merely an instrument for exchange, nor only suited to transactional purposes.

66. The topic on the taxonomy of cooperatives was introduced and the variety of criteria that could be considered to classify cooperatives was pointed out (e.g., economic activity and/or cooperative characteristics and/or membership types such as homogeneous or multi-stakeholder cooperatives). The member-centred nature of a cooperative and some of its key features were explained to illustrate that cooperatives are organisations with legal personality that function according to specific principles and follow specific objectives related to their member-users' needs. A distinct organisational typology of agricultural cooperatives, based on the perspective of ownership and control rights and not on the member-centred criteria was also considered. However, it was noted that this perspective had not been emphasised in the draft discussion paper as it was largely based on larger cooperatives often operating in common law settings. The Chairs of the Subgroup considered it to be limited for the purposes of analysing smaller and developing-economy cooperatives.

67. In relation to the formation of an agricultural cooperative, participants discussed the need for registration, and it was clarified that this was a matter that depended on the jurisdiction. For example, in some States, cooperative law required registration as such in order for an association to call itself a cooperative. In others, special laws on the registration of companies might prevent certain entities from using the term "cooperative" in order to prevent confusion for the public or third parties. Finally, it was noted that some countries had a neutral standpoint and allowed associations to call themselves "cooperatives" as long as they were not registered.

68. The governance and management structure of cooperatives was also discussed, and it was noted that generally it allowed for members to have a voice and managers to understand what the real interests of the members were. The importance of the principle of business judgment in cooperative governance and the fact that the governance structure could increase in complexity in light of heterogeneous membership with different interests needing to be protected by the cooperative system were also emphasised. A query was raised in relation to the principle of democratic governance and the areas in which it had an impact (e.g., right to entry, obligations not to discriminate, etc.), as well as regarding the correlation (if any) between the democratic principle and the possibility to choose between heterogeneous and homogeneous membership and conflict resolution mechanisms. Some concern was expressed regarding the academic and theoretical nature

of the questions raised. Nonetheless, in response it was noted that generally there was no specific right to enter cooperatives and granting such right vis-à-vis external persons that were not yet cooperative members could create challenges and risk conflicts. It was further noted that a right to be treated in a fair way could be granted, but that was something different. The Subgroup was encouraged to include a more detailed analysis of the instruments that might be used to allow for effective participation of cooperative members in decision-making processes to build trust into the institution (e.g., social accountability mechanisms).

69. The Working Group was informed that breach of cooperative regulations and membership responsibilities could be addressed through the lens of the overall objective of protecting the cooperative members' interests. The Subgroup was encouraged to think more about the ways in which conflicts in cooperatives were solved and to further discuss what the applicable framework would be for minority protection in relation to the democratic principle and to other cooperative principles considering the collaborative conflict standpoint. As an example, *a participant* pointed to a situation where most of the members of cooperatives would agree to move towards the production of organic agricultural products to increase profitability and queried whether cooperatives would have instruments to protect the minority that had not opted to produce organic products (e.g., by providing additional resources or technologies for them to invest in something different that would be as profitable).

70. In other terms, it was suggested that the Subgroup further consider the instruments and policies within cooperatives that would ensure minority protection while preserving the incentives to collaborate. To consider the points raised, it was highlighted that it would be important to investigate the process of decision-making and to differentiate between production and marketing cooperatives. Additionally, it would be relevant to consider the connection of the questions raised to instruments of management and how member protection was put into practice in cooperatives.

71. In response to the question regarding what was meant to be protected when protecting minorities as an incentive for collaboration, *a participant* noted that it could refer to specific investments (not necessarily financial investment but also training and adaptation of production methods) made by the members of cooperatives. Still on the issue of minority protection, *a participant* pointed out that a distinction needed to be made between two situations: (i) one where there was a change of policy of the cooperative by which the investment of the minority was not fully implemented; and (ii) another where internal regulations were made which discriminated against a minority of members. It was suggested that in these two cases the rules might differ: minority-protection rules in the first situation versus anti-discrimination rules in the second.

72. The Working Group also briefly addressed the relevance of considering alternative dispute resolution to continue the business and to continue the relationship among cooperatives. Referring specifically to the role that arbitration could play, *a participant* explained that, based on the principle of cooperation among cooperatives, fora had been created to resolve disputes among members, and between members and the cooperative. It was recalled that the general assembly also had a role to play in solving potential disputes.

73. The importance of understanding the factors determining the choice of agricultural cooperatives and leading to the choice of one legal form of collaboration over the other was highlighted. It was noted that among the generally accepted reasons why one would opt for engaging in cooperatives, the following reasons could be distinguished: to increase bargaining power; democracy and operation transparency; higher farmers' profits or returns; improved quality of products; lower expenses on input supplies; to achieve economies of scale, larger markets and better competition; and to obtain needed services, such as technical, infrastructure or legal support. The fact that actors constantly repositioned themselves in supply chains in response to what was happening in the rest of the supply chain and to what was happening with respect to the internal governance and the institutional environment, was also pointed out as a factor that could influence

the choice of legal form. The Subgroup was encouraged to further explore the use of cooperatives as collateral to access credit as one of the reasons for joining cooperatives.

74. The Working Group was informed that cooperatives often operated in areas where other enterprises were unable to reach and were chosen as the legal form to govern collaborative activities inscribed on UNESCO's representative list of intangible heritage of humanity (e.g., the extraction and marketing of argan oil in Morocco). It was also illustrated that cooperatives had often been chosen in India, in particular in the dairy sector, as a response to inflated prices of essential commodities. The empowering role played by cooperatives, through the integration of education, training, information-sharing policies, and the value of self-responsibility, was also emphasised.

75. Regarding some of the barriers or challenges that might discourage people from getting involved in cooperatives, it was noted that in certain developing-world jurisdictions the culture of mutual trust between members did not always exist and that often there was mistrust of the institution. In addition, the Subgroup was also recommended to reflect on the barriers faced by cooperatives and not only their members, namely in terms of administrative and bureaucratic issues (e.g., unstructured legislation and extensive state control).

76. A query was raised regarding the factors that determined the choice of establishing an agreement between cooperatives or the creation of a second-level or third-level cooperative. It was queried whether agreements were more used in global supply chains than second-level cooperatives when the collaboration took place among cooperatives belonging to different jurisdictions. The Subgroup was encouraged to consider adopting a definition of agreement that was broader than the notion of contract.

77. It was clarified that the structure of cooperation among cooperatives should take the structure of primary cooperatives into account, as that structure might vary and almost no law regulates it in a specific way. Additionally, it was further explained that cooperation among cooperatives at the third level was slightly different because it was not focused on economic activities, as that at the second level, but on strengthening representation, namely for political reasons. In relation to the question regarding whether the transnational or cross-border dimension of cooperation among cooperatives led to the adoption of more agreements than integration, it was noted that in some jurisdictions primary cooperatives were not allowed to integrate into other structures and foreign members were not permitted as cooperative members; consequently, that automatically excluded the use of trans-border unions, and alternative agreements and contracts would often be adopted.

78. While it was recognised that legislation could be considered as a barrier for second-level cooperatives in trans-border contexts, *a participant* sought further explanation as to whether agreements among cooperatives could replace second-level forms of integration. In response, it was noted that those countries which did not allow cross-border integration or even foreigners to be members of cooperatives would likely not allow their cooperatives to enter into agreements across borders.

79. It was reiterated that it would be helpful if the Subgroup considered further describing the process and practices commonly used in specific countries, as well as the motivations for and obstacles to collaboration. Mindful that the discussion paper on cooperatives would evolve, *a representative of FAO* suggested that the Subgroup consider including more examples to reflect the realities of cooperatives in different parts of the world, as well as the challenges and barriers that some farmers faced to joining cooperatives. The Working Group was informed that FAO could recommend some definitions and working concepts adopted at the international level and could also provide information on interesting cases from developing countries with which FAO had worked. *One of the Chairs of the Subgroup on Cooperatives* explained that the Draft Discussion Paper had not been drafted with a Eurocentric perspective, as it had been largely based on the findings of the ICA

Law Committee, which was composed of lawyers from different jurisdictions.

80. Finally, it was indicated that the Draft Discussion Paper had also addressed the topic of dissolution of cooperatives and, in particular, the Subgroup was recommended to further consider the differences regarding the share of remaining assets. Other topics covered by the Draft Discussion Paper included financing cooperatives and the opportunities – as well as risks – brought by digitalisation.

81. *After the discussion, the Working Group agreed to take into account the definition of cooperatives as adopted by the ICA Statement and the ILO Recommendation, as well as to consider their principles and values when developing guidance on cooperatives in the LSAE Project. The experts of the Subgroup on Cooperatives agreed with the recommendation of the Working Group to further distinguish cooperatives from smaller corporations and companies. It was decided that the revised Draft Discussion Paper would clarify the definition of certain terms based on working concepts adopted at the international level and would avoid the overlapping use of small-scale farmers, smallholders and family farmers.*

82. *In addition, with the contribution of all Working Group participants and, in particular, FAO and IFAD, real-life examples would be added as much as possible to render the LSAE Guide more practical and user-friendly. For this purpose, the Working Group would also consider non-state law perspectives and more traditional practices. Further information on the needs and barriers to joining cooperatives in certain parts of the world, mainly beyond Europe and the global North, would be provided.*

83. *In relation to the boundaries between cooperatives, multiparty contracts and corporations, the Working Group generally agreed to propose other differentiating criteria to move beyond the consideration of contracts as an exclusive instrument for exchange and to consider the usefulness of adopting the focus on mutualistic exchange to further distinguish cooperatives and companies. The Working Group acknowledged the need to further elaborate on the questions regarding who determined the needs which cooperatives were required to satisfy and who controlled their fulfilment.*

### **(c) Draft Discussion Paper on Multiparty Contracts**

84. *The Chair of the Working Group then drew the attention of the participants to the Draft Discussion Paper on Multiparty Contracts and invited the Chairs of the Subgroup to further explain the results of the intersessional work.*

85. It was noted that the Draft Discussion Paper did not provide a full and comprehensive analysis of all issues related to multiparty contracts but focused on the main features affected by collaboration. It was clarified that non-collaborative contracts were not analysed and that the Draft Discussion Paper did not intend to be a draft of the guidance that would eventually be included in the Guide but was rather a tool for discussion. The Working Group was introduced to three dimensions to decide whether they could be considered as a taxonomy for comparison between the three collaborative legal forms analysed in the LSAE project: (i) strategic/non-strategic collaboration; (ii) independent/interdependent performances; and (iii) long-term/short-term collaboration.

#### *Independent and interdependent performances*

86. A distinction was drawn between strategic and non-strategic collaboration based upon two key dimensions: investment specificity and interdependencies. In relation to specific investments made for projects which were not easily redeployed, the strong collaborative nature yet also high exit costs were indicated. As for interdependencies, the difference between independent performances, where the execution of performance by one contracting party did not depend on the execution of performance by another, as compared to interdependent performances, where the



performance of one party depended on the performance of another (for example, a sequential multiparty contract where an input provider delivered seeds, which a farmer would use to produce a commodity, which the processor would then process) was also explained. It was noted that the degree of collaboration was much higher in the case of interdependent performances than in the case of independent performances.

87. An example of five wine producers operating in five different European countries that wanted to access the Chinese market was introduced to illustrate an example of independent performance. It was noted that in this situation the production of each wine would be independent from the others, but collaboration would still be important to maximise the likelihood of success of access to the foreign market. As such, breach by one party would undermine the collaboration but not the performance of the other parties. In relation to the role of the buyer and whether its performance would be interdependent on the performances of the sellers, it was clarified that the discussion covered in the Draft Discussion Paper was limited to interdependency of performances within the multiparty contract, to which the buyer of the wines in the above-mentioned situation would not be party, as there would be separate sales contracts in place.

88. A query was raised as to whether it would be more interesting to analyse non-strategic collaborative contracts in the LSAE project, as they were perhaps more common and posed greater difficulties to collaboration.

#### Long-term collaboration

89. It was noted that multiparty contracts, particularly those adopted in the agricultural sector, were long-term contracts characterised by a high degree of uncertainty. The distinction between endogenous uncertainty (i.e., uncertainty arising from the contract itself) and exogenous uncertainty (i.e., uncertainty arising from external factors such as weather conditions, climate change, wars, pandemics, etc.) was explained. The high level of uncertainty could negatively affect contract completion and could increase the risk of opportunism and undermine collaboration. In this regard, the importance of addressing the issue of uncertainty in the contractual design to preserve collaboration was underscored. In addition, it was observed that the way in which contractual parties dealt with uncertainty would differ from the way members in companies or cooperatives did so and, as such, the Working Group was invited to further discuss how the different forms of collaboration considered in the LSAE Project dealt with uncertainty in economic terms (e.g., how innovation, as an example of uncertainty, affected the financial and non-financial investments to be made).

90. It was therefore proposed that the Working Group focus on long-term contracts and on the need to incorporate tools to deal with the effect of high degrees of uncertainty on collaboration. Additionally, it was suggested that the Working Group focus more on interdependent contracts because the need for collaboration was clearer.

#### Governance in multiparty contracts

91. The Working Group turned to the discussion of governance in multiparty contracts. It was emphasised that the contracting process did not occur in a vacuum but within supply chains, and therefore contracting parties often did not have much freedom of contract but instead adhered to the general terms and conditions dictated by chain leaders. The issue of sustainability and the cascading effect of breaches of sustainability obligations along the supply chain was also noted as a governance related matter. Moreover, in collaborative multiparty contracts, higher exit costs increased the importance of governance.

92. A question was raised about the need for parties to adhere to the terms and conditions of chain leaders and whether imbalances of power should be taken for granted or whether the Working Group should try to propose counterbalances, especially given that this was historically – and even

today – one of the main *raisons d'être* for setting up a cooperative. On the issue of counterbalancing, *one participant* argued against including recommendations in the Guide regarding the asymmetry of power. *The Secretary-General* advised that this was a matter to be decided by the entire Working Group.

93. The issue of right to exit with reimbursement of financial investments made by parties was raised, and it was noted that, in the case of strategic collaboration, this would not be sufficient as the cost of exit would ideally also include the specific investments made by the contracting parties. It was argued that if the exit option was not available, governance mechanisms would play a key role in protecting minority interests because otherwise they would likely lose their voice and have no incentive to collaborate. The importance of designing multiparty contracts that protected minorities' specific investments to maximise the results of collaboration was thus emphasised.

94. It was explained that the notion of governance was very rare in contract law jargon, as bilateral contracts did not generally have a governance structure. Therefore, the notion of governance as generally reflected in company and cooperative law would need to be imported and adapted to fit the purposes of multiparty contracts. The importance of rules on voting was noted and it was noted that a good practice would consist in not providing for a single default rule for voting, but instead to adopt a menu of options of default rules for parties to choose from. While the participants of the Working Group agreed with the proposal to develop guidance on a menu of default rules for decision-making, some experts cautioned that the extent of autonomy of the parties as prescribed by law varied greatly depending on the jurisdiction. Additionally, different options to address decision-making by parties to multiparty contracts were outlined, including by unanimity and majority. Some experts questioned what was intended by majority and whether it should be based on the number of members or the amount of capital contribution.

95. The issue of customary law and the ways in which legal and customary rules should be balanced in relation to governance was also discussed. *A participant* recommended further distinguishing between "customary law" and "customs", noting that "customs" were a source of state law and "customary law" was a category of non-state law. It was noted that the Working Group would need to decide whether to consider these rules.

96. Moreover, the notion of delegation was described as the degree of distribution or concentration of decision-making power. In this regard, attention was drawn to an important distinction between collaboration and participation. It was argued that concentrated power/delegation/unanimity could be more beneficial than democracy/participation/unanimity in preserving collaboration. As such, it was suggested that the menu of options could include more participatory models, where the parties themselves governed the contract; an intermediate model, where a board or other body oversaw governance; or a third model in which one party (either a party to the contract or an independent project manager) concentrated the decision-making power. Finally, it was noted that how fiduciary duties and accountability mechanisms would be imposed upon the decision maker would depend upon which of these models was chosen by the parties as the governance model for the multiparty contract.

97. In relation to the issue of the delegation of power, *one participant* noted that, in the case of cooperatives, a distinction was made between business decisions (as the responsibility of the management) and basic decisions (as to dissolve or change the objective of the cooperative, which should be voted upon by members). Another participant then further discussed the degree of control and the issues over which control could be exercised.

98. The participants' attention was drawn to the relationship between digitalisation and collaborative governance and an example was given of concentration of decision-making power through the use of artificial intelligence as a governance structure. The Working Group was encouraged to have a more in-depth discussion about the impact of digitalisation on governance of

companies and cooperatives, as well as multiparty contracts. One participant referred to new digitally enabled cooperatives that had access to many digital tools for governance, including artificial intelligence and blockchain technology, but still suffered from problems with participation, as those tools were not utilised. It was recommended that this issue to be taken into account in relation to all three collaborative legal forms considered in the LSAE Guide. A *participant* sought clarification on the use of the terms “digitalisation” and “artificial intelligence”, pointing out the importance of being clear about what those terms meant. It was suggested to avoid skipping from talking about digitalisation to talking about AI and governance.

99. The importance of discussing the digital divide was also highlighted, especially in relation to the target audience and protected interest group of the Guide. The need to adopt language that was appropriate to the Guide’s target audience and protected interest group was reiterated, and the Working Group was encouraged to replace the term “digitalisation” with “Information and Communication Technology for Development”, which was also a well-developed term. It was noted that the extent to which governance should be digitalised should be written into the contract and decided by the parties, given that it would be a key strategic decision.

100. Additionally, it was suggested that transaction costs, which had come up repeatedly throughout the Working Group discussion, could be more explicitly considered as a common thread to tie together cooperatives, companies and multiparty contracts and render these three collaborative legal forms more comparable. Some participants expressed disagreement with the idea of focusing on transaction costs as a common thread, as this could limit the discussion. Others expressed concern with the use of transaction cost economics in the Guide and emphasised that the Guide should not seek alignment with any academic theory but should instead use the contributions of different academics where useful.

101. A question was raised as to whether multiparty contracts could be presented to smallholders and smaller enterprises, as the notion of multiparty contracts seemed relatively new compared with cooperatives and companies. In response, it was noted that such notion could likely be understood even by illiterate farmers who potentially understood related concepts (e.g., opportunistic behaviour, specific investment, etc.). However, it was clarified that the language used in the Draft Discussion Paper on multiparty contracts would be simplified in the final version of the LSAE Guide and then further simplified in communication to farmers. The Subgroup on Multiparty Contracts was encouraged to consider not only simplifying the language but also adopting and harmonising the contractual terminology with other UNIDROIT instruments, such as the UNIDROIT Principles on International Commercial Contracts.

102. It was noted that some disagreement among participants of the Working Group could be due to the fact of viewing multiparty contracts as an alternative to companies and cooperatives, where in reality several legal forms could be used at once to complement one another, rather than as substitutes. *One participant* attempted to clarify this by explaining that companies and cooperatives were specific vehicles for collaboration, whereas multiparty contracts were considered a more open approach.

#### *Execution of multiparty contracts and the impact of digitalisation on breach detection*

103. Participants then continued the discussion, focusing on the execution of multiparty contracts. Two variables which the Subgroup on Multiparty Contracts had identified to measure the level of interdependence were introduced: (i) the number of parties and (ii) the impact of breach on the final product or service. The link between interdependencies and systemic goals (those which required systemic effort by multiple parties at the same time in order to achieve the desired result) was highlighted. A real-life example was given of a plant disease in Italy that could have been eradicated either by the use of a harmful pesticide or by a more environmentally friendly technique which required one hundred percent of farmers to implement in order to prevent the disease from

proliferating, thus requiring a very high level of interdependence to achieve the systemic goal.

104. The important relationship between interdependencies and monitoring was noted, as well as the relevance of transparency and the free flow of information, especially in the case of interdependent obligations, for example if defective raw materials had an impact on subsequent processes. The Working Group was invited to consider which instruments would be most effective in the given context to manage interdependencies in contract execution.

105. Additionally, the different criteria for allocating costs and benefits equally or proportionally among parties was discussed. The importance of good faith and fairness in governing long-term contracts was also noted, and the possibility of introducing specific clauses to include such principles, as well as renegotiation clauses to allow parties to address unanticipated circumstances, was also introduced. Then, the different possible regimes governing resource sharing was further explained (e.g., collective ownership or the creation of a company for the sole purpose of owning the resource). The role of data as an important shared resource and as a necessary tool for contract execution was presented. Some legal issues relating to data creation and management, including personal data protection laws, intellectual property laws and even the possibility of establishing data cooperatives to collect, manage and control data, were discussed.

106. The need to interact with third parties, such as certification bodies, to execute the contract was highlighted. It was noted that different mechanisms could be envisaged to validate such interaction. The Working Group was invited to further discuss the ways in which control and management architectures of shared resources could affect contract execution.

107. In relation to the influence of technology on contract execution, participants discussed the difference between digitisation (the process of converting and recording data) and digitalisation (the process of changing manual systems to digital), as had been outlined in a footnote on page 17 of the Draft Discussion Paper. The impact of digitisation on contract completion was also considered, particularly its ability to reduce completion costs (e.g., through digital monitoring and the automated provision of additional services which algorithms may recommend based on anomalies in production processes). The importance of digitisation in fostering the exchange of information and in facilitating changes and adaptations to contract incompleteness was also pointed out. It was illustrated that to control disease in organic production, digitisation could facilitate: (i) the automatic transmission of information about the quantity of pesticide used and the time it was used; (ii) the apportionment of costs, for example the cost of additional treatment to eliminate pesticide residue; and (iii) the avoidance of rejection of the products at a later stage.

108. In relation to the impact of digitisation on the redistribution of decision-making power between farmers and technology providers or data management enterprises, it was explained that this could occur to a smaller extent (e.g., using drones or sensors to collect field data) or to a larger extent (e.g., artificial intelligence). An example was provided of a tractor equipped with sensors to collect data which could be used by farmers to identify an appropriate strategy to deal with a soil deficit, but which could also recommend solutions to the farmers or even automatically apply the treatment, for example by spraying fertiliser to compensate the deficit in the soil. The impact of digitisation in enhancing the role of the chain leader was also mentioned (e.g. by monitoring farmers and directly imposing on them what to do in real time). On the one hand, farmers could lose their autonomy and become passive agents of the chain leader, but, on the other hand, there could be improved collaboration, as chain leaders could focus more on monitoring the final output, leaving farmers free to decide how to arrive at that output.

109. The Working Group also touched upon the increasing power of digital service providers and explored the notion of a tripartite distribution of power between the farmer, the chain leader, and the service provider. Following this, the different ways in which digitisation could impact the performance of interdependent obligations was explored by certain participants who noted that it

could facilitate the exchange of information and allow for better management of the supply chain through the sharing of know-how. It could also inform other collaborators of changes during the production process, as well as potential consequences and countermeasures.

110. Additionally, it was noted that digitalisation might be used to automate the setting of prices and allocation of costs by monitoring the input and output of each participant. It might even correct breaches in performance through direct intervention or, where the level of automation was not so high, by facilitating collaborative remedies where the non-breaching party shared information to the breaching party to assist with resolving the problem. Furthermore, digitalisation might facilitate breach detection, for example if there were sensors collecting data in the field and sending it to data processing stations, where it would be compared with standard agronomic practices to identify discrepancies which might signal the potential presence of a breach.

111. Finally, several solutions that could be implemented by data processing stations in the case of breach were outlined, such as asking the farmer to provide additional data to better assess the breach, recommending the implementation of corrective remedies and requiring farmers who did not adopt these recommendations to justify why, asking farmers to provide data about the solution they intended to use to resolve the problem, or even automatically implementing corrective measures.

112. In the ensuing discussion, a question was raised as to whose benefit digitalisation was for and for whom it reduced risks. The issue of abuse of digitalisation within supply chains was raised, and it was noted that the LSAE Guide could focus on making some recommendations on data rights to protect smallholders and agri-MSMEs as a starting point. An example was cited of farmers who had only recently gained the right to disconnect data-collecting devices from their tractors and previously could have been imprisoned for doing so. It suggested that the Working Group could further consider the ways in which digitalisation could benefit smallholders to put in place a conducive digital ecosystem with sufficient educational tools to address the digital divide. Some participants reiterated that digitalisation should not be viewed as a way to control farmers by obliging them to hand over their data, but instead as a way to add value for smallholders and agri-MSMEs.

113. Regarding the need for strong data protection rights, it was further added that the issue of who would be establishing those rights was also a topic for the Working Group to further consider. It was observed that codes of conduct made by self-regulating organisations did not provide any protection of data rights for farmers; however, data rights established by States or international bodies such as the European Union (e.g., the recent EU regulation on interoperability of non-personal data) could not provide the right level of regulation or intervention, either. Therefore, it was advised that the Working Group further consider the competition between public and private regulators in this domain.

114. The Working Group also discussed the issue of who should bear the cost of the infrastructure for implementation of such data protection and digital education, as well as how privacy laws would regulate the matter. The example of the impact of digitalisation on breach detection was reiterated, as technologies could be used to reduce the cost of managing performance (e.g., parties could chose to use a tractor equipped with “breach-technology” to monitor the farmer). It was also clarified that the party who monitored performance (e.g., digital service provider) was not itself a party to the multiparty contract. Working Group participants questioned whether digitalisation only existed as a tool for facilitating breach detection in the hands of chain leaders or whether it could also serve as a tool for farmers to detect breach of the contract. It was recommended that the LSAE Guide should not cover digitalisation in a separate chapter, but instead integrate the discussion throughout the analysis of each collaborative legal form, as had been done in relation to contract execution and remedies.

115. It was explained that the use of digital technologies required coordination among the parties (a combination of individual and collective interests), and it required the monitoring of abuses in

order to prevent unfairness. The Working Group agreed that digitalisation was a cross-cutting issue to be dealt with in each of the chapters dedicated to the different collaborative legal forms. The Subgroups on cooperatives and companies were encouraged to analyse how cooperative- and company-specific rules would best help align the multiple interests relating to digitalisation.

#### Remedies for breach of multiparty contracts

116. After the discussion on governance and execution of multiparty contracts, as well as the impacts of digitalisation, Working Group participants discussed the progress made regarding the analysis of remedies for breach of multiparty contracts. *One of the Chairs of the Subgroup on Multiparty Contracts* began by noting that breaches could be understood as supervening incidents which could potentially have an impact on both individual and collective interests, as well as cascading effects on collaboration along the supply chain. The importance of addressing remedies against breaches through both judicial and extra-judicial means was highlighted. An example involving farmers, digital device suppliers, digital service providers, and a financing party collaborating on a digital infrastructure project was given to illustrate breaches affecting individual and collective interests.

117. It was observed that remedies should not only address the consequences but also the causes of breaches, aiming to prevent future breaches and restore cooperation among parties. The multifaceted functions of remedies were outlined, encompassing correction of mistakes, enhancing trust, and influencing potential entrants' decisions to join multiparty contracts. The importance of considering how remedies were enforced was highlighted to further understand who facilitated this process and the different types of remedies (e.g., corrective, termination, damages, restitution, post-contractual obligations).

118. One participant highlighted the apparent disconnection between the discussion on remedies for contractual breaches and the choice of an organisational structure (such as cooperatives or companies), expressing doubts about their correlation and raising a concern regarding the feasibility of analysing and comparing the topic on remedies from a company and cooperative law perspective. The need to clarify the relevance of the discussion on contractual remedies for agricultural development was also emphasised to further explain how a similar analysis could be conducted by the other Subgroups on cooperatives and companies. In response, *one of the Chairs of the Subgroup* explained that the discussion on remedies in multiparty contracts was not solely meant to be about providing solutions in case of disruptions but also about influencing the design and structure of collaboration. In relation to the specificities of remedies in agricultural contracts, it was noted that in a collaborative agricultural contract, knowing beforehand the procedures for handling mistakes or accidents offered reassurance to parties involved, ensuring that a mistake would not immediately lead to expulsion or the loss of investments made. Thus, understanding the hierarchy of remedies and having procedures to address problems proactively could significantly shape how parties engaged in the collaboration.

119. The members of the Subgroups on Cooperatives and Companies were invited to explain how such collective damages could be handled. The importance of the concept of traceability to prevent and address damages within cooperatives was noted, and participants' attention was drawn to the potential reputational damages. The feasibility of forming a company between a service or machine provider and individual farmers was questioned, and it was noted that in such cases, remedies would primarily remain contractual rather than relying on corporate law. The empirical nature of the discussion was emphasised, and it was suggested that the focus of the discussion should be on whether the legal framework posed any normative objection to employing a company or cooperative structure to address certain types of breaches. The example of consortia or joint ventures used in certain legal systems, notably Italy and the US, were pointed out, and it was noted that, generally, a joint venture was not considered a company but rather a contractual relationship. Some participants maintained the view that the remedies, despite the legal structure, would always be

rooted in contract law rather than corporate law.

120. *One of the Chairs of the Subgroup on Multiparty Contracts* emphasised the need to focus on redress and restoration rather than punishment or compensatory measures. It was explained that corrective remedies aimed to restore collaboration and were particularly important considering sustainability plans and collective interests. Termination needed to be considered as a last resort and could be further categorised into partial and total termination, where the latter could severely disrupt collaboration and should be cautiously used. Additionally, it was highlighted that voluntary exit or exclusion of a party due to fundamental breaches could impact collaboration and should be balanced within the multiparty contract. Lastly different types of “damages” were addressed to consider their role as alternative or complementary remedies and their application in situations where correction or termination would not be feasible or overly detrimental to collaboration. The Working Group also discussed who provided the rules of remedies and who would be responsible for choosing among the different types of remedies.

121. One participant highlighted the broader applicability of the proposed remedies beyond just multiparty agricultural contracts and acknowledged the alignment of these remedies with developments in various legal systems and uniform laws, especially concerning corrective measures and contract value preservation. It was suggested to further consider whether and how this approach related to remedies could be extended to the other legal structures analysed in the LSAE Project.

122. It was highlighted that the Draft Discussion Papers on Cooperatives and Companies had also, to a different extent, covered breach-related topics, such as suspension or expulsion of members and mechanisms for non-compliance with duties. Nevertheless, it was suggested that the Subgroups could further develop these points to cover the mechanisms used when things went wrong (and potential remedies). However, *one expert* cautioned against a control-centric approach in discussing remedies, emphasising the need to prioritise collaborative structures rather than punitive measures. It was highlighted that while discussing termination or damages, their application should be seen as a last resort or complementary to other solutions. It was further added that it would be important to consider the need for cost coverage in the process of correction, not necessarily involving legal proceedings, but rather a practical arrangement to handle expenses and ensure collaboration for reaching desired results.

123. *One expert* recommended framing the discussion under a broader title such as “dispute resolution”, noting it could better encompass and overlap the various vehicles discussed across different legal structures. The need to consider the context within which disputes and breaches occurred was emphasised and it was suggested to include caveats or explanations at the outset of the discussion on remedies. It was also stressed that the availability and feasibility of remedies were highly dependent on the actors involved, their level of specification, the costs associated, and the capacities of local legal systems. Drawing on examples of local associations providing tailored credit options versus formal micro-credit institutions imposing penalties, the same expert explained the significance of tailoring remedies to suit the actors involved, particularly considering the preferences and capacities of small farmers or less sophisticated collaborators.

124. It was also proposed to make explicit references to relational contract theory, acknowledging that even in larger organisations, organic problem-solving methods often came into play. Additionally, the importance of reputational damage was pointed out as a strong deterrent in many cultural contexts, both among partners and within communities, suggesting further discussion on this aspect within the Draft Discussion Papers.

125. Regarding damages and penalty clauses, *one of the Chairs of the Subgroup on Multiparty Contracts* queried whether penalty clauses, instead of discouraging breaches or termination, could deter entry into collaborations. It was noted that clauses on limitation of liability or addressing caps on damages could disincentivise entry into collaborations due to the fear of unpredictable

consequences and extensive liabilities, particularly when there were interdependencies and concerns about the ripple effects of breaches across various stages of collaboration. It was recommended that the Working Group further consider how correction plans and breach situations were handled in practice by farmers' associations. All participants of the Working Group were requested to assist in further identifying the approach adopted in different legal systems, in particular in African countries.

126. *The representative of ICA* explained the notion of legal funds often used in cooperatives and their functions to cover legal costs rather than damages, serving as a pre-emptive measure in case of legal disputes. It was suggested that such legal funds could potentially serve a similar purpose within multiparty contracts. *One of the Chairs of the Subgroup on Multiparty Contracts* recalled that a section on the use of a fund within multiparty contracts had been added to the Draft Discussion Paper. However, it was highlighted that it would be important to distinguish between a fund for contract execution resources and one for self-insurance purposes in case of liabilities or problems.

127. *One of the Chairs of the Subgroup on Cooperatives* emphasised that in the cooperative model there was a strong emphasis on prevention, education, and incentives to avoid reaching the corrective stage. It was noted that cooperative structures often employed non-contractual approaches to address issues with members before they escalated to corrective measures. Additionally, it was emphasised that the aim of remedies was not primarily for court resolution but rather for defining rules to solve problems, providing a framework for parties to understand the consequences of breaching, and making informed decisions. While acknowledging that internal regulations within cooperatives could potentially incorporate corrective actions as part of the preventive strategy, it was noted that incidents might still occur which necessitated corrective actions. Therefore, the Working Group was encouraged to develop a comparative study to explore how these internal regulations differed. Lastly, it was illustrated how cooperative legislation could delineate matters within the business and affairs of cooperatives, potentially excluding them from the jurisdiction of civil courts. This type of provision would allow for internal resolution of issues, offering a potential model for other organisational structures or contracts. The need to consider the distinction between local customary remedies and issues that might involve civil or criminal courts was also stressed.

128. *One of the Chairs of the Subgroup on Companies* emphasised the existence of mechanisms in corporate law aimed at preventing breaches, such as supervisory committees and audit systems. It was highlighted that while these internal structures did not guarantee zero conflicts, they seemed to effectively manage and reduce disputes, leading to fewer cases reaching court.

129. To finalise the discussion, *one of the Chairs of the Subgroup on Multiparty Contracts* highlighted two key areas that needed further development within the remedies section in the Draft Discussion Paper on Multiparty Contracts, namely regarding (i) contractual clauses concerning sustainability and identifying and whether there were specific remedies for breaches related to social and environmental sustainability; and (ii) the concept of cascading effect to consider cases where a breach in a multiparty contract might have broader consequences beyond the parties involved, necessitating consideration of appropriate remedies.

130. *One of the Chairs of the Subgroup on Cooperatives* highlighted the complex nature of multiparty contracts, suggesting that its analysis should not be confined to a single chapter but rather encompassed within the other chapters as a transversal topic. It was noted that compartmentalising the analysis into distinct chapters might seem somewhat artificial because a multiparty contract inherently involved an array of entities interconnected within a supply chain. Additionally, some experts noted that multiparty contracts could be inclusive of cooperatives and other entities, rather than being a separate form that needed to learn from them.

131. It was clarified that the focus might not solely be on incorporating cooperatives within multiparty contracts but rather on examining how a collaborative relationship could be structured



independently by using a cooperative or corporate entity and employing its internal mechanisms for decision making and problem solving. The potential comparison between establishing a collaborative relationship through a contract involving various entities versus structuring it directly within a cooperative or company and utilising their respective legal mechanisms was emphasised as one of the key objectives of the Guide. The challenges posed by rigid company laws, which might require structuring collaborative relationships through shareholders' agreements within the framework of a corporate structure, were also pointed out as topics to be further discussed by the Working Group.

132. *One of the Chairs of the Subgroup on Multiparty Contracts* highlighted the potential relationship between contract law and company or cooperative law, suggesting that while termination and expulsion might have parallels in these different legal structures, aspects like damages or corrective measures might require borrowing from contract law. Internal regulations within companies or cooperatives, such as articles of organisation, were pointed out as forms of private autonomy agreed upon by the parties.

133. The role of articles of association in defining decision-making processes within companies was emphasised to highlight that while company law often did not involve shareholders performing specific actions, they were typically represented by the company in dealings with third parties. When members were required to actively participate, it was challenging to rely solely on internal company structures, as these might have rigidities, and challenging decisions would usually involve legal recourse. It was suggested that using shareholders' agreements could be a more flexible way to regulate the functions of a company in situations requiring active participation from its members.

134. *One of the Chairs of the Subgroup on Multiparty Contracts* made a proposal on how to address these topics in the Draft Discussion Papers on Cooperatives and Companies. It was suggested to start with the analysis of articles of association and to investigate provisions related to issues like expulsion or suspension. Internal regulations, which were different from the articles through which cooperatives or companies were established in the first place, could also be analysed.

135. *The Working Group agreed with the general approach proposed for the analysis of governance, execution, and remedies for breach in multiparty contracts. It was agreed that corrective measures should have priority regarding other last-resort remedies, and there was acceptance that the topic of remedies could be further addressed in the Draft Discussion Papers on Cooperatives and Companies.*

136. *The Subgroup on Multiparty Contracts agreed to tailor the discussions more to the needs of smaller enterprises and to highlight the specificities of multiparty contracts adopted in the agriculture sector.*

**(d) Exogenous factors: digitalisation, sustainability and access to credit**

137. *A member of the UNIDROIT Secretariat* noted that the contractual arrangements, cooperatives, and companies established for collaboration along the agrifood chain were constantly being adapted to new needs, such as to the Sustainable Development Goals, new digital technology scenarios, legislative demands, and finance opportunities. These factors could either accelerate or slow down the dynamics of collaboration envisaged in the LSAE Project. The Working Group was invited to further consider how these so-called "exogenous factors" should be considered in the Guide and whether it would be necessary to develop a specific chapter on each of these issues or whether it would be preferable to continue developing them within the chapters of each collaborative legal form.

138. *One of the Chairs of the Subgroup on Cooperatives* reiterated the complexities of the digitalisation topic and noted that the notion of "Information and Communications Technology for Development", commonly known as ICT4D, mainly considered digital technologies as tools or as services. The ICT4D would not capture all the digital phenomena that the Working Group wished to

analyse, in particular how digital technologies changed or affected supply chains.

139. *One of the Chairs of the Subgroup on Companies* expressed concern with the proposal to discuss digitalisation within the chapters on the legal forms and noted that it could be more relevant if presented in the general introduction of the Guide and then addressed in the chapters to mention the extent to which the legal form could or could not address these challenges. It was noted that many different questions were arising and clarification was sought as to what would be the limit of the mandate of the Working Group regarding the analysis of the exogenous factors, in particular digitalisation.

140. *One of the Chairs of the Subgroup on Cooperatives* encouraged the topic to be considered in each chapter, emphasising the importance of thinking about the relations created over data and how to address issues related to privacy, ownership, and property in the perspective of each legal form covered in the LSAE Guide. It was illustrated that cooperative legal structures had been adapted to allow farmers to enter their data and maintain control over who could use their data and for which purposes. As a new business activity, it would be important to further consider how agricultural cooperative legislation allowed this practice and how it was being adapted.

141. *One of the Chairs of the Subgroup on Multiparty Contracts* agreed that it would be important to address the exogenous factors within the three chapters and not as a separate chapter. It was noted that the issues of digitalisation and sustainability could be analysed in two ways: first, by considering that they could be the very object of the collaboration and would require best practices in terms of management and governance, as well as on remedies and exit (e.g., exiting from collaboration where data had been shared would be a very critical strategic decision); and, second, by considering that digitalisation and sustainability were not the very object of the collaboration of the legal structure but had an impact thereon.

142. In relation to data and digital governance, *a participant* noted that it would be important to further consider the distribution of power as the actors who developed artificial intelligence or blockchain products, for instance, became very relevant stakeholders and could influence how governance was done and how data were collected. It was also pointed out that the boundaries of the firms could be affected, noting the emergence of decentralised autonomous organisations which to a certain extent had been covered in the Draft Discussion Paper on Cooperatives. Still in relation to the challenges to the boundaries of the firm, it was highlighted that the issue of liability also needed to be closely considered because of the challenges to attribute liability when boundaries started to become more porous. To conclude, attention was drawn to the need to further consider the digital gender divide.

143. Further clarification was sought on the difference between data and other products that could be the property of an entity or the product of multiparty contracts. In response, it was clarified that the difference depended on whether ICT4D tools were considered or whether it would be data related to digitalisation of supply chains, as the latter would have a structural influence in terms of changing power and knowledge relationships. In relation to this question, it was further noted that the Working Group needed to clarify whether the Guide would aim at educating farmers, particularly women farmers, to enable them to use digital services or whether it would be focused on evaluating the imbalances of power in the supply chain and/or the possibility of data aggregation. Lastly, *certain Working Group participants* noted the relevance of data when it came to the dissolution of entities and that the same rules concerning dissolution for data would not apply in the different legal forms, as well as for other types of assets.

144. The experts were invited to further clarify how the topic regarding access to credit could be covered in the Guide. The importance of access to credit to channelling entrepreneurship in the agriculture sector was emphasised, and it was noted that the legal structure adopted as a vehicle for a collaborative project could influence access to credit. It was recalled that in previous intersessional

meetings representatives from the World Bank had, however, informed that the legal structure used (e.g., cooperative, limited liability company, multiparty contract, etc.) was not the main determinant of access to credit, but rather formality versus informality. Despite this reflection, it still seemed important to consider access to credit in the LSAE Guide.

145. *One participant* queried whether the Working Group would be focusing on debt and equity finance. In response, it was noted that any type of finance could be considered; however, it was likely that debt finance would be more discussed. From the cooperative point of view, *a participant* noted that access to credit had been a long-standing conundrum, and this had resulted in various initiatives at both legislative and practical levels to change the traditional structure of cooperatives so that they could, among other things, issue bonds and have non-member investors.

146. *The representative of IFAD* highlighted the need to clarify on which perspective of finance the Guide would focus, as it could be related to many different types of access to credit, such as access to loanable resources, savings facilities, digital services and so on. Additionally, some participants referred to the need to consider the issue of land and how it related to access to credit for agricultural enterprises (e.g., use of land as collateral).

147. *In relation to exogenous factors, most experts agreed to further explore the pros and cons of digitalisation, sustainability, and access to credit on the collaborative legal forms considered in the LSAE Guide. The Working Group decided to consider in more detail the impact that these factors would have on governance and dispute resolution mechanisms, as well as to take into account the digital gender divide. Additionally, the Working Group would consider how the different collaborative legal forms related to third parties.*

148. *It was agreed that the expression ICT4D would be preferred and used to the extent possible. The difference of data vis-à-vis other products that could become the property of an entity or the product of multiparty contracts would also be further explained. Therefore, key questions to be further analysed would include how the different legal forms addressed data rights, ownership control in terms of use of data and transfer of data.*

149. *The Working Group agreed to further consider how the different legal forms influenced access to credit and to give particular attention to alternative forms of finance, noting their possibilities but also their risks, especially to vulnerable parties and smallholder groups.*

#### **(e) Proposed Table of Contents, Introduction and Glossary of the Legal Guide**

150. Upon invitation by the Chair, *a member of the UNIDROIT Secretariat* introduced a Draft Table of Contents proposed for the entire Guide, included in the Annexe of the [Secretariat's Report](#). The Working Group was invited to consider whether any additional content needed to be included, or any chapter order rearranged. It was noted that the structure proposed had largely been based on the table of contents of the previous legal guides jointly developed by UNIDROIT, IFAD and FAO.

151. *A participant* perceived the draft table of contents as being more aligned with a legal guide on forms of agricultural enterprises rather than focused on legal forms of collaboration. It was suggested that the guidance be developed in a two-level approach to give smallholders and smaller enterprises a voice to negotiate effectively within the value chain. *Another participant* recalled the proposal to address collaboration in two layers: to first consider how smallholder farmers and smaller enterprises might organise to collaborate and then consider how these forms of collaboration integrated into the value chain.

152. A question was raised as to whether there were any doubts or reservations in relation to the current structures proposed for the chapters on the three collaborative legal forms, in particular in

terms of usefulness for the future comparative analysis. It was recommended, as a preliminary exercise, to further discuss the needs assessment conducted by FAO, IFAD, and other organisations at the next session of the Working Group to ensure that the experts of the Working Group agreed on what the needs were (as well as their priority) before reflecting upon the content for the comparative analysis. In addition, it was suggested that the comparative part of the Guide could have headings based on the needs assessment, and then it could draw from the content developed in the other three chapters on each collaborative legal form.

153. It was noted that the needs-based approach had been included in the working definition of the purpose of the Project, as stated in paragraph 41 of the Secretariat's Report:

to develop guidance, primarily from a private law perspective, on collaborative legal forms for agricultural enterprises to enhance sustainable agricultural development in supply chains and contribute to the transformation of agrifood systems by: (i) increasing efficiency; (ii) improving access to market, resources and finance; (iii) exploring innovation opportunities offered by digitalisation; and (iv) addressing power imbalances and remedies for unfair commercial practices.

154. A *participant* then noted that, while the purpose of the Project was clear, certain general terms such as "efficiency" required further clarification and contextualisation. Another *participant* pointed out that additional "needs" could be included in the working definition of the purpose of the Project as its development evolved.

#### Electronic platforms in agriculture

155. With respect to additional content to be considered in the Guide, the participants' attention was drawn to the issue of electronic platforms, and it was queried whether it would deserve a separate chapter. The strategic nature of electronic platforms as an instrument for collaboration and the increasing relevance of electronic platforms in agriculture was explained. It was noted that the legal structure of platforms potentially deserved specific examination, as they would not fit within any of the other legal forms considered in the Project.

156. A *participant* informed the Working Group that platforms could be set up in the form of cooperatives and recommended that, similar to digitalisation, platforms could be addressed as another technique to implement collaboration within the other chapters of the Guide. Another *participant* recognised the recent developments, in particular in the field of economics and management, regarding platforms as a novel form of organisation and new type of business model. It was noted that a part of the emerging legal literature about platforms made a distinction between centralised and decentralised platforms and, especially in the case of the former, there was a discussion about how centralised platforms could be controlled by a corporation or a cooperative. The need to consider what control or ownership meant in these cases was also mentioned (e.g., in terms of how a particular platform's licensing worked or how the terms of service determined who was able to use the platform). A question was raised as to what was meant by an electronic platform that would not be controlled by a company or by a cooperative and that would perhaps be considered a separate entity in itself.

157. It was explained that one thing was the extent to which electronic platforms were used in the field of cooperatives and companies and another matter was whether they were set up or owned by cooperatives and companies. Additionally, it was noted that no examples of electronic platforms organised through multiparty contracts had been identified. Methodologically, having a separate chapter on electronic platforms in the LSAE Guide would not imply that they should not be addressed in the other chapters, but a specific chapter would highlight the importance of electronic platforms and their own independence from other activities. In relation to the legal and non-legal literature explaining electronic platforms, it was noted that they were generally configured in a hybrid form. Finally, it was noted that digitalisation and electronic platforms were very different and should not

be confused. Electronic platforms were an instrument of collaboration, whereas digitalisation was a technology of collaboration.

158. It was recommended that the Working Group prepare a specific and descriptive discussion paper for the fifth session to delineate the status quo and develop a taxonomy on electronic platforms to showcase their general objectives, content and legal forms. This would permit the Working Group to decide whether the topic required a separate chapter or not.

159. In relation to the idea of preparing a glossary, *a member of the UNIDROIT Secretariat* recalled the request of the Working Group to further explain and align certain terminology used throughout the Guide. It was noted that, for the following session of the Working Group, a list of key terms could be proposed for further deliberations.

160. *Participants expressed support for the development of a brief discussion paper on electronic platforms and the development of a glossary as proposed by the Secretariat.*

**Item 6: Organisation of future work**

161. It was announced that the fifth Working Group session would be held at the premises of UNIDROIT in Rome from Monday 18 to Wednesday 20 March 2024.

**Items 7 and 8: Any other business. Closing of the session**

162. In the absence of any other business, *the Secretary-General* thanked all the participants for their participation and fruitful discussions.

163. *The members and observers of the Working Group* expressed their gratitude to the UNIDROIT Secretariat for the hospitality and the great amount of work accomplished.

**ANNEXE I****AGENDA**

1. Opening of the session and welcome
2. Adoption of the agenda and organisation of the session
3. Adoption of the Summary Report of the third session ([Study LXXXC – W.G. 3 – Doc. 3](#))
4. Update on intersessional work and developments since the third Working Group session
5. Consideration of work in progress
  - a. Draft Discussion Paper on Corporations
  - b. Draft Discussion Paper on Cooperatives
  - c. Draft Discussion Paper on Multiparty Contracts
  - d. Exogenous factors: Digitalisation, Sustainability and Finance
  - e. Other matters identified by the Secretariat
6. Organisation of future work
7. Any other business
8. Closing of the session

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

Mr Ricardo LORENZETTI <i>Chair (remotely)</i>	Justice Supreme Court of Justice of Argentina
Mr Fabrizio CAFAGGI <i>Coordinator (in-person)</i>	Judge Italian Council of State and Professor 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>(in-person)</i>	Professor University of Trento
Ms Cynthia GIAGNOCAVO <i>(in-person)</i>	Professor Universidad de Almeria
Mr Hagen HENRÿ <i>(in-person)</i>	Professor University of Helsinki
Ms Paola IAMICELI <i>(in-person)</i>	Professor University of Trento
Mr Georg MIRIBUNG <i>(in-person)</i>	Professor Eberswalde University for Sustainable Development
Mr Siniša PETROVIĆ <i>(remotely)</i>	Professor University of Zagreb
Mr Carlo RUSSO <i>(remotely)</i>	Professor University of Cassino and Lazio Meridionale
Ms Dongxia YANG <i>(remotely)</i>	Professor China University of Polical Science and Law

**INSTITUTIONAL PARTNERS**

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)	Mr Buba BOJANG Legal Officer (LEGN) <i>(remotely)</i>
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Ms Carmen BULLON  
Legal Officer  
(*remotely*)

Mr Simon BLONDEAU  
Legal Officer (LEGN)  
(*in-person*)

Ms Siobhan KELLY  
Agribusiness Officer  
Food Systems and Food Safety Division (ESF)  
(*in-person*)

Ms Elena ILLIE  
Food System expert (ESF)  
(*remotely*)

Ms Cecile BERRANGER  
Rural Institutions and Services specialist  
Inclusive Rural Transformation and Gender  
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Ms Sara HASSAN  
Family Farming Engagement and Parliamentary  
Networks (PSUF)  
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(PSU)  
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INTERNATIONAL FUND FOR AGRICULTURAL  
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Mr Ebrima CEESAY  
Legal Counsel  
(*remotely*)

Mr Jonathan AGWE  
Inclusive Rural Financial Services  
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### **INSTITUTIONAL OBSERVERS**

ASIAN FARMERS' ASSOCIATION FOR  
SUSTAINABLE RURAL DEVELOPMENT (AFA)

Ms Esther PENUNIA  
Secretary-General  
(*remotely*)

INTERNATIONAL COOPERATIVE ALLIANCE  
(ICA)

Mr Santosh KUMAR  
Director of Legislation  
(*in-person*)

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Ms Inmaculada DEL PINO ALVAREZ  
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INTERNATIONAL LABOUR ORGANIZATION (ILO)	Ms Simel ESIM Head - Cooperatives Unit (COOP) <i>(remotely)</i>
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)	Ms Monica CANAFOGLIA Legal Officer <i>(remotely)</i>
WORLD FOOD LAW INSTITUTE	Ms Marsha ECHOLS Professor Howard University School of Law <i>(remotely)</i>

### INDIVIDUAL OBSERVERS

Mr Jongseok LEE <i>(remotely)</i>	Agricultural Sector Advisor International Cooperative Alliance
Mr Morshed MANNAN <i>(remotely)</i>	Research Fellow Robert Schuman Centre for Advanced Studies - European University Institute
Mr Alphonse MBUYA <i>(remotely)</i>	Lecturer, Researcher and Consultant Department of Law Moshi Cooperative University
Ms Sharon ONG <i>(in-person)</i> <i>Accompanied by Yihong LI</i>	Director-General (International & Advisory) Director of Legal Services Legal Services Regulatory Authority The Treasury Singapore
Ms Roberta PELEGGI <i>(remotely)</i>	Associate professor University of Rome La Sapienza
Mr Sukhpal SINGH <i>(remotely)</i>	Centre for Management in Agriculture Indian Institute of Management
Mr Willy TADJUDJE <i>(remotely)</i>	Associate Lecturer, University of Yaoundé Associate Lecturer, University of Luxembourg African Institute for Cooperative Law and Governance
Ms Jeannette TRAMHEL <i>(remotely)</i>	International Consultant, Former Senior Legal Officer - Organization of American States
Mr Edward Kyei TWUM <i>(remotely)</i>	PhD Candidate University of Cassino and Lazio Meridionale
Ms María Ignacia VIAL <i>(in-person)</i>	Professor of Law Universidad de los Andes Santiago of Chile

**UNIDROIT SECRETARIAT**

Mr Ignacio TIRADO	Secretary-General
Ms Anna VENEZIANO	Deputy Secretary-General
Ms Priscila PEREIRA DE ANDRADE	Legal Officer
Ms Philine WEHLING	Legal Officer
Mr Keni KARIUKI <i>(remotely)</i>	MAECI-UNIDROIT Chair
Ms Brita JELEN	Intern
Ms Daphné SCHOCH	Intern
Mr Jack KILLOH	Intern