
**TRANSNATIONAL CIVIL PROCEDURE -
FORMULATION OF REGIONAL RULES
ELI – UNIDROIT Rules of Transnational Civil
Procedure
Steering Committee and Working Groups
Joint Meeting
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WORKING GROUP ON ACCESS TO INFORMATION AND EVIDENCE

PowerPoint Presentation

ELI/UNIDROIT PROJECT ON EUROPEAN RULES OF CIVIL PROCEDURE

WORKING GROUP ON "ACCESS TO INFORMATION AND EVIDENCE"

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1. A Complete and Autonomous Set of Provisions on Access to Information and Evidence

- a) Evidential issues linked to the leading principles of civil procedure (*ex officio* evidence)
- b) Evidential issues linked to the structure of proceedings (moment for evidence, possibility of disclosure or discovery proceedings)
- c) Issues that do not belong exclusively to the scope of evidence (costs, preservation of evidence)

2. The ALI/UNIDROIT Principles (and Rules) as a Starting Point (I)

Some remarks:

- a) Principles and Rules only (or mostly) applicable to transnational litigation (forum law, translation, *amicus curiae*)
- b) Topics more detailed in the Rules than in the Principles: disclosure or discovery of documents
- c) Evidential matters not covered by the Principles, but somehow addressed by the Rules: illegally obtained evidence
- d) Controversial choices in the Principles: *nemo testis in sua causa?*

2. The ALI/UNIDROIT Principles (and Rules) as a Starting Point (II)

d) WG not only to adapt ALI/UNIDROIT Principles. Need for more detail and need to deal with issues not covered by the Principles:

- (i) Filling the gaps: Inspection; New technologies and evidence
- (ii) Suitable issues: Contractual anticipation of evidential issues; Appeals and remedies against decisions on evidence; Consumer matters
- (iii) IBA Rules on the Taking of Evidence in International Arbitration

3. The Five Pillars Structure

- I. Scope of Dispute and Relevance
- II. Claimant's and Defendant's Responsibilities Concerning Evidence and Information
- III. Powers and Responsibilities of the Court for the Gathering and Assessment of Evidence
- IV. Equal Access to Information and to Evidence
- V. Types and Subject-matter of Evidence