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