**Competent authority or competent authorities?**

Issues of coherence and attracting consumers

* aim of directive: make sure ADR entities function properly and effectively
* means: monitoring mechanism
* each MS has to designate competent authorities (CA) that monitor ADR entities
* directive gives leeway to States as regards the number of CAs a State may designate (article 18 para. 1)
* But: Might there be a case for giving preference to one CA over many CAs? Or the other way round?
* there would be a case, if one or the other model would achieve the aims CAs are set up for more easily or more efficiently than the other
* that means we have to have a closer look at the monitoring functions CAs are to exercise
* two main tasks
* 1. assess
  + whether a given dispute resolution entity is an ADR entity in the meaning of the directive
  + whether it complies with the directive’s quality requirements
  + = **sort of accreditation and permanent control of individual ADR entities**
* 2. on the basis of information furnished by ADR entities draw up a report on the development and functioning of ADR entities
  + identify best practices
  + point out shortcomings
  + make recommendations on how to improve the effective and efficient functioning of ADR entities
  + = **future-oriented task: general assessment and recommendations**
* these two tasks might be more easily accomplished if there is only one CA:
* advantage with respect to control of individual ADR entities: same control standards applied to all entities
* advantage with respect to the more future-oriented task: CA has more material to draw on and gets a better overview
* but there also might be reasons for having more than one CA
* let me explain this from a Government’s perspective
* not possible to design an entirely new ADR system
* rather, build on existing ADR schemes
* in Germany, there were a number of statutory ADR schemes for specific sectors (ex.: transport, energy, banking, telecommunications) supervised by the Federal Government
* these schemes worked well, so we decided to keep them on: supervising authorities are now CAs in the meaning of article 18
* in addition, we have one CA that is responsible for all other ADR entities
* sectoral CAs do have advantages
* sector-specific expertise
* advantage with respect to control of individual ADR entities: control standards adapted to sector’s distinctive features
* advantage with respect to the more future-oriented task: recommendations and solutions tailored to the sector’s specific needs
* in Germany, we also had to take into account the constitutional structure: Germany is a federal State and in principle the federal states are responsible for executing statutes
* for this reason, the first draft of the implementation law provided for one competent authority in each federal state
* that means we would have had 16 CAs + the sector-specific CAs I mentioned before
* argument: monitoring is easier if CA is close to ADR entity
* arguments against (federal states)
  + ADR entities offer online dispute resolution => closeness is not a relevant factor
  + danger of divergent standards: ADR entities that offer their services nation-wide might be accredited in some States, but not in others
* discussion linked to another discussion: whether to have one residual ADR entity or 16 (one for each federal state)
* first draft attributed responsibility for setting up residual ADR entities to the federal States
  + same argument: closeness to consumer is good for dispute resolution
* heavily criticized (by federal states as well as consumer NGOs) with the following arguments:
  + leads to a fragmentation of dispute resolution offerings that is confusing for consumers
  + danger of divergent outcomes
* we ended up with a package deal: one CA at level of Federal Government (no regional CAs) and federal states remain responsible for providing for residual ADR entities
* but until 2019, the Federal Government will subsidize an ADR entity that offers its services nation-wide (=> no need for residual ADR entities)
* subsidized ADR entity = object of a research project
  + aim: provide federal states with a basis for deciding on how to provide residual ADR services from 2020 on
* reasons for recounting the German experiences with the implementation of the directive:
* 1. decision on one or many CAs depends on a) pre-existing ADR landscape and b) constitutional structure
* 2. different ways of having more than one CA: a) sectoral CAs and b) regional CAs (other examples?)
* 3. arguments used in the debate show that both models have their advantages
  + one CA: coherence more easily achieved
  + sectoral CAs: sector-specific solutions
* I would like to end with two points I would like to hear your views on:
* 1. in case of multiple CAs: Might there be a role for the single point of contact in ensuring coherence?
* 2. Does the decision on the number of CAs really have an impact on consumers?
* direct impact -, as consumers generally do not have dealings with CA