



PRACTICE OF THE PROFESSION

Scope of Service (SoS) and Liability & Insurance (L&I)

Position paper for a fees policy (national level)

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1. Introduction

Architects' scope and price of service have high variation in Europe but common challenges. The purpose of this position document is to communicate arguments and possible strategies within the profession concerning the use of fee scale in design practice. The idea is to exchange experiences and a common sense to develop basic strategies. Triggers for this have been the currently on-going discussions in the individual Member States (MS). We have to bear in mind that the discussion of fees has two main points elements. On the one hand it concerns three vital aspects: the quality of work and the outcome, limitation of growth in rents and adequate remuneration. On the other hand this thematic area is under careful observation of the European and national competition authorities. Nevertheless there is a need for the legislator to recognize that excessive economic liberalism in all areas of economy does not always lead towards a functional and sustainable situation. This applies particularly to environmental engineering to which construction design belongs. The importance of architectural quality in Europe has been recognised by the European Council in its Resolution of 12 February 2001 (2001/C73/04). In some countries, the quality of work, scope of services and fees are also approved in "Architecture Policies" published by the various governments.

2. Historical background

Just over 10 years ago the Commission published the "Report on competition in professional services"
http://ec.europa.eu/competition/sectors/professional_services/reports/reports.html

Quote:

Commission reports

The Commission adopted a report on Competition in Professional Services in 2004, setting out its position on the need to reform or modernise specific professional rules. A follow-up report 'Scope for more reform' was adopted in 2005.

Both reports explained that the Commission is not opposed to all regulation as there are legitimate arguments in favour of certain regulations in the professions. However restrictive regulations should only exist where they provide an effective and proportionate means of protecting consumers. The Commission invited regulatory authorities in the Member States and professional bodies to voluntarily review existing rules taking into consideration whether those rules are necessary for the public interest, whether they are proportionate, justified and necessary for the good practice of the profession, and to reform or eliminate those rules that are unjustified. It also sets out the legal framework in which these rules and regulations should be analysed and how the EC Competition rules apply to regulation in this sector.



The 2005 follow-up report gave an overview of progress made during 2004-05 by Member States in the review and removal of unjustified regulatory restrictions in the professions.

Among other issues the core of this initiative is the abolition of any kind of mandatory or non-mandatory fee scales. Supplemented by the “Ehler-report” of the European parliament, consequence was the abolition of all kind of fee scales in the European countries. Germany is a slightly different case, as the fee scale is published by the federal state under the umbrella of a federal law.

In the first instance, the representative organisations of liberal professions (architects included) were targeted, then the Member States. Just recently Germany has been attacked by the Commission with the possible abolition of the HOAI (German fee scale for architects and engineers) as a consequence.

As a result of this development the honoraria of our profession has generally gone down. Unfortunately there is no comprehensive study about the matter and the impact on quality of the work and service.

There are examples in many countries that experienced clients are not willing to commission on the basis of lowest price (as they are very well aware of relation between price and quality) but rather orientate on the basis of “former” fee scales. This includes the disadvantage of loss for the service-provider due to inflation.

3. Quality-price relation in creative services

The essence of creative services is the impossibility to describe the product beforehand. The bigger the influence of the creative acts within the service, the lesser the knowledge about the outcome. Further, the amount of hours invested in the work doesn't necessarily have to do with the quality of the product – unlike goods which can be described by normative tools - by data, by weight and volume etc., so it makes sense to ask for the price only. The market may (but doesn't always) regulate the adequate price-level. But even here the market is powerless without the descriptions mentioned before.

4. Arguments provided by the commission

Quote from page 3 of the above mentioned report:

On the other hand, there are essentially three reasons why some regulation of professional services can be necessary: 1) asymmetry of information between customers and service providers, as a defining feature of professional services is that they require practitioners to display a high level of technical knowledge which consumers may not have; 2) externalities, as these services might have an impact on third parties; 3) certain professional services are deemed to produce ‘public goods’ that are of value for society in general. Proponents of restrictive regulations argue therefore that such regulations are designed to maintain the quality of professional services and to protect consumers from malpractice.

The argument concerning the asymmetry of information means that the client doesn't know what he is buying, what the provider is to deliver as his service and therefore the client has not sufficient knowledge to assess the price. This argument is valid only when concerning private individual clients. On the one hand we know from the sector study, that these clients represent a remarkable share of the market, but the argument has less weight for big companies and contracting authorities.



Quote from page 12, p.39

In markets where search costs are high, it may indeed be advantageous for consumers to have access to accurate information about typical prices. However, there are alternative methods of providing price information. For example, the publication of historical or survey-based price information by independent parties (such as a consumer organisation) might provide a more trustworthy price guide for consumers, which distorts competition to a lesser extent.

Quotes above were mainly the basis of several initiatives taken by some member organisations during the past years.

5. General argument

We have experienced the functioning of the market, which is supposed to regulate the economy and this with a minimum of control by the state and other regulating parties. Nowadays we are informed by economists with a different approach, having analysed the history of economy more thoroughly and based on facts, as for example Thomas Piketty (Le Capital, chroniques 2012-2015 et autres). Going further, and bearing in mind the special features of creative works, the inability of regulating architectural quality by pure market-tools is evident and well-arguable.

6. Allies

We have potential allies:

Big clients, experienced with several kinds of procurement measures. The Commission's argument about the asymmetry of information, is valid in the relation between a service provider and a individual client, who once in his life needs a certain service, not really knowing about the content, volume and expertise needed, but wouldn't be applicable to experienced clients. These contracting bodies have a clear picture of the service needed and the value of good creative solutions, and actually willing to pay an adequate remuneration - well aware that in other case they lose both quality and money. As mentioned before, it might be still an option to use the old fee scales, but over time, they are becoming really out of date, starting with the changing specifications of service, its presentation, etc (BIM, energy issues, life cycle costing, etc).

Consumer organisations, where the argument of the asymmetry is stronger: clear and comprehensive specifications, updated to the actual state of the art are an urgent need for any possible commission.

Public procurement. To evaluate the various thresholds, described in the relevant regulations, there exists an obvious need for standard/average assumptions of planning costs.

Legal entities. Court decisions of any kind of legal cases are difficult if in a certain field no clear descriptions of the above mentioned issues exist.

Others.... To be continued

7. What do we need?

>observing the development of the last 10 years we must state that there is no need and no way to achieve something like the former fee-scales.



The profession urgently needs tools to explain and describe its service, to describe it in a standardised way, and to offer tools to roughly define a band of possible costs.

Examples of existing methods

The most common methods for defining the architect's fee are:

- a) **Time spent** (de facto working time, the final statement is made retrospectively);
- b) **Time estimate charge** (using historical data);
- c) **Floor Area related Fee** (per m²);
- d) **Percentage Fee**
- e) **Lump Sum Fee**
- f) **Incentive fee**

>Clear and unambiguous specifications of the architectural service:

In former times these specifications were in many cases rather diffuse and general, this is even an urgent work to do, bearing in mind the changes in our performance. Here the ACE can elaborate guidelines; the scope of work in the European countries varies a lot.

>As far as the legal background is concerned, these descriptions of our performance can be published by the architects' representative organisations themselves.

>Involve independent bodies that are able of elaborating ways of calculating adequate honoraria, undertake studies about the time and effort needed to provide architectural services, and involve other stakeholders in this process on a scientific basis.

>The outcome of these studies can be published by such independent bodies or others, but under no circumstances by the representative organisation itself.

This kind of work cannot be done by the ACE. ACE can provide information about the situation, describe optional ways of achieving our goals and offer legal expertise on competition issues. But it is up to the Member Organisations to find their own particular way, taking into consideration their specific national situations.