ARCHITECTS' COUNCIL OF EUROPE
CONSEIL DES ARCHITECTES D'EUROPE

Professional Practice and Trade In Architectural Services

Work Group Cost Information Systems

CIS Guidance document

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Cost Information Systems (CIS) for architects services are methods available to calculate and explain the resources architects need to deploy on a project. These methods also allow clients and authorities, both consumers of architectural services, to evaluate these services.

Written for the information of ACE-CAE member organisations, this is a working document that attempts to establish the different factors that are taken into account and the various methods available. It draws from national experience, compares the advantages of existing methods and shows how CIS can be established in a transparent way that favours convergence across Europe.

At present, architects in some countries can rely on established methods, some of which are recent, in other countries the profession is in the process of setting up new systems. For various reasons, architects are striving to adapt and improve their practice to ever changing business conditions while at the same time they rightly cherish the continued importance of their contribution to society and the quality of the built environment.

In the last part of this document, a number of key related issues are examined; competition law, data for clients, information technology, time management....

INTRODUCTION

While architects have wider responsibilities to society, they can be considered as service providers that work for and are paid by clients. They design buildings and organise the construction process and as such interact with other professionals involved in building procurement such as contractors, structural engineers, landscape architects and many more. Architects also offer a wide range of other services, ranging from Urban design to building condition surveys, not directly related to building procurement. In both cases, work starts with a statement of requirements or request from the client, though often the architect is called upon to help define the client's needs. The brief can then evolve as work proceeds with optimisation and better understanding of the clients needs.

In this complex process, the cost of services is directly related to the resources that are deployed and thus determined by the scope of those services. A detailed list of tasks to be accomplished and a definition of the size and complexity of the building (or mission) will form the basis of an agreement between the client and his architect and enable both to evaluate the cost of services purchased by the client.[1]

It is important to state that an architect's task is normally to provide a unique response to a client's needs on a specific site. In response to the brief and the budget, solutions provided are tailor made to site conditions, its climate, topography and the immediate physical environment. The task of the architect is to mobilise his creative ability to produce added value for the client.

The cost of resources supplied by the architect to produce these unique solutions are made up of salaries, overheads and profit. Profit should cover the elements of risk that an architect's often needs to face such as unpaid work or abandoned projects.

In special cases, the client may also wish to purchase intellectual property rights, allowing him for example to replicate the project on other locations or to use images of the building for publicity material. He may agree to incentives fees compensating the architect for additional effort provided to meet unreasonable deadlines or rewarding a particularly inventive design that offers the client considerable financial gain.

This document concentrates on the various methods available for architects to plan the resources they offer. It aims to offer guidance to ACE member organisations seeking to create new CIS or reform existing CIS and covers some of the key issues that need to be addressed.

1 Services are paid for with Horonaires, Honorar, Professional fees...in different languages these concepts convey the idea that resources deployed include a high degree of competence, training and professional judgement.

1 PRESENT STATE OF AFFAIRS

1.1 Background to CIS in Europe

The authors of this document come from a significant number of European countries, they form an ACE-CAE work group that started activities by comparing experiences and the situation in their respective countries. The result of this work is available on the ACE-CAE website in two documents that compare the historical background and the present state of affairs concerning CIS for architects in twelve European nations.[2]

1.2 Examples of existing methods

The common methods for defining the architects fee and their characteristics are:

1. **Time spent** (de facto working time, the final statement is made retrospectively)

   The architect charges for his / her work on a hourly / daily / weekly rate. The fee depends on the architects de facto working time input. There remains a high range of uncertainty about the final fee.

2. **Time estimate Charge** (using historical data)

   The architect charges for work on a hourly rate. The charged working time is based on historical data for comparable projects from independent sources or from the architects own records. The working time depends on size, type and other specific characteristics of the project. The final fee can be fixed in an early stage of the project – once the size in m2 or m3 is known.

3. **Floor Area related Fee**

   The architect charges a fixed fee per m^2 gross floor area or useable floor area or per m^3 Volume of the project. The fee unit is usually related to a planning phase. The final fee can be fixed in an early stage of the project – once the size in m^2 or m^3 is known.

4. **Percentage Fee**

   The architect charges a percentage of the construction cost of the building. The percentage is based on historical data from independent sources or from the architects own records. The percentage depends on size, type and other specific characteristics of the project and varies in relation to the construction cost (digressive scale) The exact final fee develops with the construction cost of the project and is not fixed beforehand.

   A variation of the Percentage Fee uses a fixed percentage of the construction cost, independent of the value of the project and sometimes even without relation to the size, type and other characteristics of the project.

5. **Lump Sum Fee**

   The architect charges a fixed lump sum fee which is usually developed by one of the methods 1. - 4. in an early stage of the project.

6. **Incentive fee**

   In some circumstances the profitability of a project or a particular phase of a project may be very high indeed for the client, which could depend on the skill of the architect. In some cases the architect and client may be willing to negotiate a special fee structure to reflect this. This could include an enhanced fee in the case of success and / or a reduced fee (or no fee) in the case of failure.

   All these methods have in common that the development of fees needs two appropriate tools: One to calculate the hourly costs of the architects office and another to enable an advance estimate of the working time and other expenses necessary to accomplish a specific service contract.

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2 Architect's Council of Europe WG CIS; "Work group's task 1 final" and "Work group's task 1 report 2" documents available in French and in English on the following links:

http://www.ace-cae.org/MemberN/Content/EN/toc/toc/mytoc.asp?idt=referencedocuments_costinformationsystems
http://www.ace-cae.org/MemberN/Content/FR/toc/toc/mytoc.asp?idt=referencedocuments_costinformationsystems

1.3 Comparative advantages of existing CIS

A comparison of the advantages or disadvantages of these methods must take into account the following criteria:

a. Transparency, traceability of the formation of the fee

b. Adaptability, flexibility

c. User friendliness

d. Predictability of the final fee

e. Preliminary expense for the development of the method

f. Comparability between countries

g. Compliance with competition law

h. Consumer friendliness

1. Time spent (de facto working time, the final statement is made retrospectively)

a. Once the hourly rate is agreed this method is transparent and traceable as far as the calculation is concerned.

On the other hand the average client cannot judge whether the amount of hours charged is appropriate to the service and resembles effectiveness. Over all the transparency of this method is not satisfactory.

b. Adaptability and flexibility to changing project parameters are high

c. The method is very easy to handle, so the user friendliness is good

d. Non-predictability of the final fee is characteristic of this method. There remains a high range of uncertainty about the final fee for the client, while the architect is vulnerable if there is a dispute.

e. Only tools to calculate the hourly costs of the architects office and for time recording are needed. No survey, no data collecting are necessary.

The necessary preliminary expense for the development of the method is extremely low.

f. The comparability between countries with the same pattern of the architects missions is very good.

g. The method, provided the hourly rate is freely negotiated between the parties and not enforced by state authorities or professional or other organisations, complies with competition law.

h. Due to the deficits in a) and d) this method cannot be judged as consumer friendly.

The time charge fee method has its right of existence as additional auxiliary method to calculate extra time expense in case of unforeseeable disturbances in the regular process of the architects service – unless the architect is responsible for the irregularity.

2. Time Estimate Charge (using historical data)

Time charge fee methods, based on the collection and statistical evaluation of historical data.

The scales show the appropriate average-amount of hours necessary to perform a specific service. The figures depend on the parameters:

- Complexity of the planning task (type of building etc.) including the relationship between construction and mechanical plant as well as the level of interior fit out required.
- Size of building (gross floor area in m2 or volume in m3)
- New building / Reconversion
- Scope of services / special services

a. This method is transparent as far as the calculation is concerned.

The transparency of the statistical evaluation process which has led to the working hour figures cannot disclose itself to the average user of such scales, unless there is a research report attached. A general reference to the representativeness and the reliability of the

statistical basis and the independence of the evaluators will be necessary. Adequate explanations must have the necessary quality to establish the client's trust.

Under these provisions this method is very transparent and its basis traceable.

b. Adaptability and flexibility to changing project parameters are very good as long as they influence the parameters that determine the amount of chargeable working hours.

c. The use of this method is of medium difficulty. The appropriate classification of the complexity of a project will never be absolute. It develops in discussions between client and architect and may take some time.

d. The final fee can be defined at an early stage – once the relevant parameters are clear.

e. The necessary preliminary expense for the development of the method is very high. Data collection and evaluation are very time consuming. Data bases should be permanently expanded and updated.

f. The comparability between countries with the same pattern of the architects missions should be excellent. Differences between countries in the relation between construction cost and cost of the architects office have no effect on the comparability. However differences in administrative procedures, in climate and geology, in client's expectations and other matters make comparison more difficult in reality.

g. A completely and correctly described planning task leads to different charges among market participants, due to their different hourly rates. The method complies with competition law, provided the hourly rate is freely negotiated between the parties and also provided the collection and evaluation of historical data is executed by independent experts and not enforced by professional bodies.

h. The method may be judged as very consumer friendly.

3. Floor Area related Fee

Fixed fees per m^2 gross floor area or useable floor area or per m^3 Volume of the project are a relatively simple method, often used in the absence of more complex systems or fee scales. The parameters mentioned under method 2 could be applied with this method as well and so lead to a great variety of respective values per unit.

While it is possible to combine this method with method 2 and arrive at a time estimate charge in relation to the size of the project by using historical data, de facto in existing examples this method is used in a very simple way. Often examples are not based on historical data and depend mainly on offer and demand respectively depending heavily on the reputation of the architect.

a. This method is transparent as far as the calculation is concerned.

In absence of any historical data basis the formation of the values per unit can be somewhat arbitrary and potentially not transparent.

b. Adaptability and flexibility to changing project parameters are good because there were only very few parameters to influence the calculation unit from the beginning.

c. The use of this method is simple.

d. The fee can be fixed when the design is finished.

e. The preliminary expense for the development of the method is almost nil.

f. A direct comparability between countries with the same pattern of the architects missions and the same method is at hand. However differences in administrative procedures, in climate and geology, in client's expectations and other matters make comparison more difficult in reality.

g. As every market participant forms his personal unit-value, fees may differ considerably. The method complies with competition law. As far as fee values are published by professional or other NGOs and not by state authorities in a legislation-backed process, competition authorities tend to have reservations and in some countries even to forbid the publication of recommended fee scales.

h. The method is approximate and inadequate for the specific characteristics of the project. Therefore it is not especially consumer friendly. But it may be quite useful for standard building types, for example.

4. Percentage Fee

Percentage fee methods which define the fee as a percentage of the construction cost are based on the collection and statistical evaluation of historical data and found as fee scales / fee order as well. The exact definition of 'construction cost' is necessary.

The percentage depends on the parameters:

- Complexity of the planning task (type of building etc.) including the relationship between construction and mechanical plant as well as the level of interior fit out required.
- Scale in xx steps / sliding scale
- Level of construction cost (digressive scale, interpolation for intermediate values)
- New building / conversion
- Scope of services / special services

a. This method is transparent as far as the calculation is concerned.

The transparency of the statistical evaluation process which has led to the percentage values cannot disclose itself to the user of such scales. In absence of a direct relation to a necessary working time input this is clearly more difficult than with method 2 and handicaps the architects argumentation potential in contract negotiations considerably. Even the general reference to the representativeness and the reliability of the statistical basis and the independence of the evaluators does not help very much. As such, this method has limited transparency.

b. Adaptability and flexibility to changing project parameters are good as they usually influence the construction cost. But see d).

c. The use of this method is of medium difficulty. The appropriate classification of the complexity of a project will never be absolute. It develops in discussions between client and architect and may take some time.

d. The characteristic of this method is that the exact final fee is not defined at an early stage. But at least cost calculation and controlling of the project narrows the range in which the final fee will be found in the course of planning process from initially ±10-20% to ±3-5% at the beginning of the construction process.

A weakness of this method is the direct interdependence between construction cost and fee: An architects special effort for cost saving building-design or construction is punished through a lower fee. A negligent handling of these factors by the architect is rewarded with a higher fee. In particular, this effect has proven a psychological handicap of this method for the relationship between architect and client.

e. The necessary preliminary expense for the development of the method is high. Data collection and evaluation are time consuming. Data bases should be permanently expanded and updated.

f. The comparability between countries with the same pattern of the architects missions is only with restrictions. Existing differences between countries in the relation between construction cost and cost of the architects office my considerably distort the comparability. In addition differences in administrative procedures, in climate and geology, in client's expectations and other matters make comparison even more difficult.

g. A completely and correctly described planning task with defined construction cost leads to identical fees for all market participants. The method complies with competition law, provided the collection and evaluation of historical data is executed by independent experts and not enforced by professional bodies.

h. The method is sufficiently consumer friendly, second after method 2.

(The Fixed Percentage Fee method is a sub-method that lacks the variety and high adaptability to project characteristics of the classical percentage fee. This method is found in (Non-European) countries where by government decree the architects fee is always xx% of the construction cost, disregarding parameters like type of building, complexity of the task and level of the total cost. By European standards this method may be regarded as a curiosity. It lacks all characteristics we hold indispensable for a fee calculation method.)

5. Lump Sum Fee

The lump sum fee method is not an independent method in its own. The architect usually uses one or several of the methods 1. - 4. to develop the lump sum. These methods have only an auxiliary function and do not become part of the contract.

With this method contract provisions for the remuneration of special or additional services that occur in the course of the project process are of especially high importance.

a. This method is as transparent as the method used for the formation of the lump sum.

The auxiliary method is here often of only secondary interest to the client. His main interest is the final definition of the fee at an early stage.

Under these provisions this method is very transparent.

b. The adaptability and flexibility to changing project parameters is very poor. The basic idea of this method is, that such adaptability and flexibility is not necessary. Therefore contract provisions for the case of changing project parameters and the remuneration of the additional services are of especially high importance.

c. The use of this method is as simple or as difficult as the method used for the formation of the lump sum. The definition of the lump sum at an early stage is a special challenge to the responsibilities of the architect with regard to the economy of his office.

d. The characteristic of this method is that the final fee is fixed at an early stage, which can be an advantage, especially for the client. Moreover it overcomes the objection raised in for percentage fees, namely that inefficient building cost control by the architect is rewarded with a higher fee.

e. This method has no specific necessary preliminary expense for its development. The comparability between countries with the same pattern of the architects missions is reduced to “less or more” – without any deeper background.

f. A completely and correctly described planning task leads to different fees from market participants.

g. The method complies with competition law.

h. The average client cannot judge, whether the lump sum is appropriate or not. Considering that the client knows at an early stage, what he will have to pay this method is sufficiently consumer friendly.

6. Incentive Fee

The standard criteria do not really fit this method, indeed it could be unlawful or unprofessional in some countries. However it has obvious commercial attractions to both parties since benefits and risks are shared.

Profit share of the value generated to the client (equated with high risk).

Here the architect has to maximise the value generated to the client to get a maximum fee. This can cause conflict of interest (between the public good and the interests of the client, especially in commercial developments) because the architect in some cases has to concentrate on the quantity to generate profit instead of quality of the built environment.

2 BASIC PRINCIPLES OF COST INFORMATION GENERATION

2.1 « Cost Information System » (CIS)

*CIS's are methods available for **clients**, **consumers, authorities** and **architects** to calculate and explain resources needed in a project.*

CIS's take up the recommendations of the report of the EU Commission on "Competition in Services Provided by Freelancers" of February 2004 and be an improvement on pre-existing fee-scales.

CIS's are not regulations. They give information and help to architects to offer individual scopes of work, to estimate the time-expense of their work and calculate their fee on an economic basis.

CIS's are addressed to architects and clients as well as a basis of transparent and equal negotiation of the architect's services.

It should be noted that ***"Cost"*** is not a recommended word in this context because in general costs are always minimised while Investments are optimised. In fact, a "Cost Information System" is a tool or method for making an estimation of the [design effort/ resources - time, money/ etc.] that the architect needs to be able to contribute in accordance with his defined scope of work for a specific project. This estimation tool makes it possible for the architect to offer the "*correct*"[3] resources for his clients' needs.

Clients and the consumers can use CIS to estimate how much they have to reserve resources to be able to manage a project on their part. The clients should also understand that the more they use architects or designers to optimise their resources in a project the better their resources will be allocated and the better the project will fit their needs. Also, In order to be able to make a budget of a construction project the client has to have an understanding of his overall costs – these include the architects' costs.

If a client is looking for a building which is as cheap as possible, there is absolutely no sense in minimising the resources in the design phase because improper design increases the risk of faulty and very expensive decisions. This is particularly disastrous in the design phase because nearly all of the construction costs are fixed during the design.

On the contrary, minimising the construction costs means thinking and allocating everything carefully in advance. Every hour spent in architectural design has the potential of saving ten hours on the construction site.

The biggest risk for the client is communicating the wrong goals to the architect.

Authorities can use CIS to advise the clients on the adequate amount of professional expertise they require for their projects. In public procurement, authorities could use the average time spent as a guideline to avoid unreasonably low pricing in the architectural profession.

Architects should be aware of the amount of resources (working time) they need to complete a certain project. CIS or other ways of estimating the resources (for example Work Input Surveys, WIS) give the architect guidelines of the resources. The knowledge of the resources or the time needed in project serves several objectives for the architect. At first, with time information it is easier for the architect to recognise the minimum acceptable fee and to decide whether a project is economically interesting or not. Secondly it helps the architect to manage his practice in terms of scheduling the project and helps to decide for example if he needs to recruit more staff.

Architects should also know their hourly rate and how the hourly rate is composed. Even when the architect would invoice his projects as lump sums (calculated as a percentage of the construction costs) it is useful to know what are the actual [time based] costs in a project when running an office. Only with the knowledge of the costs of the office can the architect decide whether a project is going is well or if is in danger of ending up unprofitable.

Shared knowledge of the resources needed in projects also helps start ups and new offices to manage their projects and to estimate the time needed to cope with the defined scope of work. A typical first project for an architect is a single family house, If the architect plans insufficient resources, this can lead to painful consequences for consumers.

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3 The "correct" resources here are defined as: **the architect is able to take care of all his duties in a construction project, which are defined in the scope of work, and get paid for it**. According the rules of economy, the business of the architects has to be profitable, otherwise it can not be developed.

Every estimation is founded on information of some sort. An estimation can be created by relying on tacit knowledge gained by experience in practice, looking at a fee-scale or by relying on research. ACE believes that resource estimations must be based on research. [This is also the case for fee-scales/ guidelines etc.].

Cost Information is project-related. The architect or the client can make corrections to the initial estimation in order to take account the special features of a specified project. The Special features can arise form various parameters[4]. To be able to estimate his costs in a project the architect must have an understanding of the project, the scope of his work in that project and the costs of accomplishing his scope of work. It is understandable that the client wants his budget to be as risk-free as possible but it is not just to transfer all economical risks to the architect [or the consultants] by fixing the fee in long projects.

On the other hand, the architect must understand what he promises to do on behalf of the client when he places his offer. The risks mentioned in footnote nr 4 [and possible extra work or extra costs] must be identified, exactly recorded and assigned to the right party. The architect must in each case understand who is causing the extra work.

The *effort needed in a project* and the *cost of the effort* are separate things and they should be kept separate. The underlying principle behind WIS is the separation of the effort needed to reach certain result and the actual cost of the effort.

By separating *effort* and *cost of the effort* they can be negotiated separately. It is easier to accept the need for more resources to meet project objectives than a request for higher fees. The profession of the architect includes the dimension of responsibility to the society. The architect can not blindly accomplish the wishes of the client. *The effort* can be regarded - at least partially – unselfish which is done for the public good. The society has to evaluate the value of the effort of the architects for the society.

Remuneration for the architects is in the hands of the profession. Taking care of reasonable wages for salaried architects is the responsibility of the architects' trade unions, when they exist. Wages are a part of the labour union policy and are subject to wider debate.

Architects' wages can be weighed either against the responsibility of the architect, the profit that architect generates to the client or against the wages of the other professionals in the construction industry.

The parameters from which a data collection system to produce CIS can be constructed are described in an ACE document « *Recommendations how to collect data* » [5]. The main categories of collected data are *Data about the project* , *Data about the consulting assignment* and *data about work input*.

Adjustments to the initial estimation

The initial estimation of the [fee/ cost/ resources] should be double-checked or adjusted to suit the local conditions. The additional parameters which have effect on the [fee/ cost/ resources] can relate to:

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4 The architect can not be held liable for the risks of misestimating or of running out of his resources which depend from **the third parties of the construction project** such as

- ***the public*** (if somebody, in the spirit of democracy, appeals against the presented construction project),
- ***the authorities*** (if the authorities demand extensive accounts or statements relating to the project before granting the building permit),
- ***the client*** (if the client can not make and communicate clear decisions in right time or makes changes in the project when it is in progress),
- ***the contractor*** (depending on the way to organise the construction; lump-sum contract/ project management contract etc),
- ***the user*** (if the user/tenant wants successive modifications to the rented area)
- ***the other consultants*** in the project (if a member of the design team needs some special information or guidance for any reason which could not have been reasonably figured out and taken into account)
- ***or the national or global economical situation***.

It is understandable that the client wants his budget to be as risk-free as possible, but it is not just to transfer all economical risks to the architect [or the consultants] by fixing the fee in long projects. On the other hand, the architect must understand what he promises to do on behalf of the client when he places his offer. Risks [and possible extra work or extra costs] must be identified, recorded precisely and assigned to the right party. The architect must in each case understand who is causing the extra work.

5 Architect's Council of Europe WG CIS; "Recommendations on how to collect data"

Capabilities of the architectural practice

- Is the architect familiar with the requested programme, the contractor, the materials, the construction techniques?
- Size of the office (overhead expenses)
- Who does what in the office? Careful consideration has to be given to which task is executed by which person.
- …..

Project expenses:

- prints, travelling, communication etc.,
- ….

Profit [expected yield]:

- This is the architects margin (for future investments, growth, …)

Building complexity (*compared to an average)*

Site specificity's

- Local building regulations
- Location
- Boundary conditions
- .....

Talent : notoriety, experience, genius, artistic quality:

- so called “soft skills” eg. Problem solving, speaking many languages, mediator, communicator, reliability, being good manager, looking ahead, …
- artistic and creative ability
- marketing, …

2.2 CIS and the design process

Architects’ missions are part of complex design processes. The quality of the design process is crucial for the development of the entire investment process. It is a guarantee for both the architects’ team and the client that they all have the same understanding about the design process as agreed at its inception.

The basis of a contract for a design process, including architect’s missions is:

- A good project brief and scope of works
- A clear definition of the missions to be accomplished in order to deliver the project objectives
- A good comprehensive planning of the design process (project process)
- A good planning of the necessary resources to cover the design process
- A design contract is based on an offer.

The offer (or fee proposal) has to be produced on a clear definition of the missions, the planning of the activities related to the missions and on the provision of the resources. CIS is the tool for such complex planning.

The offer is necessary for any contract. There are 3 possibilities for an offer:

The complete offer from the beginning, based on complete definition of the project (scope, missions, resources, process schedule)

A generic offer, defining most of the process aspects, leaving some missions to be defined, fine tuned and resourced after the project beginning, when the architectural solution gets a contour

An offer for the first stage of the project, conducting to a next stage with enough information available in order to complete the offer according to a description of the process and its resources. This type of offer may set the guidelines for the final offer to be completed later

In the absence of CIS the design offer for a project may be:

- Approximative (appreciated but not calculated)

- Hazardous (with high degree of risk for both client and architect to get uncovered problems by resources for the project)
- Non transparent (no details on the construction of the offer)

How can an offer or fee proposal be produced in the absence of a CIS?

Based on experience. In the absence of such experience a good offer appears impossible to be produced

Based on superficial planning and conducting to pressures to stay in the budget even if it was wrong. This kind of situation leads to the decrease of the quality of the architect work

Based on very simple assumptions, such as very rough calculation such as fees per square meter of project or percentage applied on the overall investment value. These are indicators but not a calculation method.

A defined and declared method for the design development is part of the project management. A good project is not possible without good management. CIS is part of the project management consisting of a calculation of the necessary resources deducted from the project brief and expressed in fees for the project budget, cash-flow and contract.

2.3 Project Costs :

The total cost of input on a project depends on the total effort required (which can be estimated relying on research from historical data) and on the unit cost of that effort. Three distinct elements or parameters can be identified:

1. **the scope of work**

   Professional performance of the architect as defined with the client for a the project.
2. **historical information**

   Survey or office data showing the amount of effort required to fulfil the tasks defined by the scope of work.
3. **office costs**

   The real cost of that effort, most frequently expressed as an hourly or day rate, usually differentiated for several categories of personnel.

2.4 Office Costs :

Office costs are made up of fixed and variable expenditures that can be broken down into:

Salaries; salaries will include social security charges and reflect the level of training and expertise of each member of staff. (Typically for a qualified architect, five years study, two years professional training and several years of experience);

Overheads; including office running costs, tax and professional indemnity insurance;

and **Profit**;

It is important that all costs be accounted for, otherwise the survival of the office and the standard of service cannot be guaranteed. Essential marketing costs in a highly competitive market, staff training, CPD, research, investment in computers, software, documentation etc. must be budgeted and charged onto fee earning work. There are various mechanisms for this to be done.

3 KEY ISSUES

The topics covered in this section are by nature diverse and necessarily incomplete. We have highlighted some of the considerations that we feel important. Caution and care should be deployed when setting up CIS, primarily because of the principle of asymmetry of information whereby the client is less informed than the architect of the nature of the tasks that are required on a particular project. CIS should be transparent, easy to use and historical data should be reliable. Possibilities offered by new information technology help to meet these aims.

CIS should encourage good practice, time management and reduce risk both to the client and to his or her architect. No CIS will be universally applicable and special cases that should be addressed include urban design and some forms of architectural competitions.

Finally, In the context of competition case law and the EC services directive, we have recalled the legal constraints that can hinder progress in this area.

3.1 Principle of asymmetry of information

"Asymmetry of information" is the principle by which the parties involved in a process, whatever its nature may be, have unequal information. It relates to the protection of uninformed consumers.

Regardless of the type or size of consumers (public or private, large or small) this statement is important because we all agree that consumers must know what the professional services offered are. They must be able to understand available CIS and judge the cost of these services. CIS also works as a useful instrument for professionals themselves, for administrative entities at all levels, when procuring services, or for judicial authorities, when dealing with litigation on professional fees. In fact, CIS are necessary for general information and not only as consumer protection instruments.

The degree of information asymmetry is likely to differ according to the type of consumer. Consumers in the commercial and governmental sectors are more likely to be frequent users of services and have the resources and knowledge to research and evaluate the merits of providers of building design. Inexperienced and uninformed customers/clients are likely to be more prevalent in the residential and lower value commercial sectors of the market.

The main arguments in favour of not binding reference fee scales have been that they provide:

- consumer awareness taking into account asymmetry of information
- information to professionals to calculate costs
- information to administrative and judicial authorities

New information systems describing professional services and costs should work according to these principles to be able to successfully replace existing fee scales.

It is fundamental that such a system informs not only about the costs to be charged to the client, but also about the type of services and when they are delivered. Frameworks, norms, parameters, coefficients and related formulae must be defined and applied. Otherwise, the fee system would be useless. In systems where settlement is made according to the hours worked on a project, time spent can be related to reference costs and the basic norms to euro values. Furthermore, the various tasks must be defined with regard to categories and levels of difficulty, phases and levels of performance (complete or part). Calculation methods containing this information have an informative function that aims to reduce "asymmetry of information". As such, they are indispensable and in the public interest.

The calculation method itself has less impact on the issue of competition. If specific frameworks and coefficients, based on square meters or cubic meters enclosed space, levels of difficulty, reference cost estimates, lump sum prices… have been determined with the utmost independence and objectivity, they have no influence on competition and should therefore be of no concern to controlling competition authorities.

In reality, there is much incentive for architects to reduce information asymmetry. The more that clients know about the work that architects do, the more they appreciate the extent of the tasks accomplished. New information systems should consider not only the cost of the project but also the design process, to establish a clearer and more transparent dialogue between designers and clients. This will help overcome "information asymmetry" by making more information available to the client, while recognising the essential intellectual component of an architect's activity.

3.2 Transparency and ease of use for CIS

We can define transparency in terms of good communication and proper relations between the "actors" involved in the process (meaning the owner or client/the architect and all consultants/the contractor). It is important to establish from the beginning (either in the scope of works or in the contract) responsibilities for each part - each part has a particular role to play and specific responsibilities at each step of a project. Many of these responsibilities are quite obvious for everyone involved in the process, but others are substantially less so. It is critical for the client to be aware of and to understand each component of the process - that can be achieved by transparency, because transparency will assure a proper transfer of information between the client, the architect and the contractor.

Transparency ensures access to CIS in order to allow to all interested actors to:

- Anticipate the design costs and to create realistic project budgets
- Compare different elements, which have influence upon the design costs and allow decisions for contracting the architect services
- Check and compare design offers in order to appreciate the win - win situation on the basis of the realistic price instead of the lowest price

Transparency is applicable between:

- Architect and client
- Architect and architect (competitors)
- Architect and general contractor or consultant (how much you have to pay for the architect of the general budget for consulting)

On the contrary, in case of lack of transparency there is a high risk to generate inadequate budgets for projects conducting to low quality. Lack of transparency may generate conflict in the negotiation process and in the end less resources to be transformed into quality.

It may not be necessary that clients, investors and other consultants have full access to the calculation method. Calculating the necessary resources for a project and checking if the proposals or budgets provide for realistic resources requires full knowledge of the process. Independent guidance documents explaining content of the scope of works for the client are essential and calculating the necessary resources for a project can also be a service provided by an architect.

Ease of use is necessary to attract and encourage the users of the CIS method to make accurate calculation of resources. It can help mutual understanding between the architect and his client.

Ease of use does not mean CIS's simplicity - on the contrary it is necessary an algorithm easy to handle, but which have the ability to tone as more specific situations architectural services can be.

- Ease of use avoids manipulation of the cost calculation (all users have to be able to calculate easy the costs without special knowledge and also to understand the calculation of others)
- Ease of use has to conduct to same results in case of same scope of works or similar (essential)
- Ease of use allows direct understanding of the relation between design costs and quality (trough coverage of missions)

On the contrary, in case of lack of ease of use different persons will be tempted to create other simplified indicators, loosing accuracy, leading to errors in budgets.

3.3 Traceability and representitivity of data

Considerable experience has been gained over a long period in the UK, and more recently in Ireland, making historical data available. The particular form adopted presents percentage fees, but the survey techniques and considerations of representivity are both of wider interest and applicable to other forms of resource allocation surveys.

Both the RIAI (Ireland) and the RIBA (UK) commission independent fees and charges surveys as a substitute to supplying traditional fee and charges, based on historical data information to consumers.

These surveys are carried out by internationally recognised research agencies, to a brief prepared, separately, by both institutions. The methods of collecting data are different, in the RIAI case, each and every Practice - approximately 600 - is supplied with the research questionnaire by the research agency; the returned questionnaires are assessed by the agency and the data is then published by the RIAI. The research agency commissioned by the RIBA, chooses a specific number of RIBA Practices, approximately 300 throughout the UK, and it is their returns that are assessed and published. The RIBA commissioned research covers specific regions within the England, Scotland, Wales and Northern Ireland.

Is a Survey Method for Consumer Information Accepted Nationally?

The Commission of Fair Trade in the UK accept that independent fee surveys are an acceptable method of producing consumer information.

> *"RIBA has amended and revised its fee guidance. New fee guidance is based on historical information and the collation of price trends which do not provide a lead on this years prices. The historical information is collated and aggregated by an independent body. OFT considers that this*
> *change meets the competition concerns expressed in the report, progress statement and in subsequent correspondence with RIBA."*

Likewise the Irish Competition Authority in their report "Competition in Professional Services Architects March 2006"

> *"The commissioning of an independent survey on fees by the RIAI has facilitated negotiations between architects and their clients for the provision of architectural services. Buyers are now armed with information on percentage, fixed and time based fees when negotiating with architects. This increased buyers awareness allows them to shop around and negotiate more effectively."*

The Accuracy of the Surveys.

The accuracy may be assessed by the methods used. The RIAI survey contains results from 600 Practices with questionnaire returns about 35% of all Practices, in the RIBA survey; specific Practices numbers are predetermined, 300, with the questionnaire returns less than 1% of all RIBA Practices. By repeating surveys annually or biannually, a level of consistence or inconsistencies can be observed.

The RIAI survey offers the consumer a range of options, i.e. percentage charges based on building costs, lump sums or time charges. The RIBA survey is more extensive as it deals, in addition, with practice salaries and regional fee variations.

Are These Surveys Independent?

Both surveys are commissioned and the questionnaires are predetermined by the commissioning bodies. Neither body sees the questionnaire returns or is aware which practice participated in the survey. The EU Commission, Competition Authorities and National Consumer organisation will carefully look at these surveys for assurance that they are independent. It should be noted that if either of the aforementioned organisations wished to carryout a survey, they would not carryout the survey themselves, but also employ a research agency and they would also set the brief as do the RIAI and RIBA.

3.4 The impact of information technology on gathering information

The impact of computer-based information technology on gathering information to produce "cost information systems" is basically the same as it is for any data collection project which uses IT-technology. Also reasons behind almost every online data collection system have been the same as they are behind CIS. Online data collection has been commonly used for example in market surveys, customer questionnaires or client relationship refinement. Online data collection is usually founded on some kind of solution which uses *database*[6]. *The correctness of the source data is of paramount importance*. Computers can process mountains of erroneous data unquestioningly and produce most nonsensical output in seconds. This principle is generally known as GIGO, "*garbage in, garbage out*".

The impact of the information technology on gathering information can be extracted in the following main points.

6 http://en.wikipedia.org/wiki/Database

- results are always up-to-date and accurate - *supposed that the source data is accurate.*
- internet-based systems are independent from the geographical location and time.
- the data build-up is shared
- storing is automatic and secure
- data accumulation has no delays, the collected data is usable in analysis immediately after it has been inserted into the database
- computer-based analysis of the data can be very versatile, only the resources to build the analyses are the limit
- analyses can be interactive or “built-in”, the analyses can be customised and created “on-the-fly” from a selection of the data filtered by user-selected parameters

The main advantage of computer-based data collection compared to the previous manual data-analysis is the versatility on the analysis. With computers one can scrutinise the collected data, make various analyses from different aspects to be sure that the final analysis is in fact correct.

IT-technology should be more widely used in data collection and especially CIS-data collection because the more the data there is available the sounder the results of the analyses will be. If there would be wide knowledge on the CIS information on the European Union level it would reveal the cultures and the ways of executing architectural projects which are the most beneficial for society from the view of public good. The fostering of our built environment to support society is essential.

3.5 Good practice and time management

“Good Practice” is not rules that are written down, it is generally accepted by the profession as the best way of doing things, “règles d’art” or “regels van de kunst”,

The correct result with the correct working process at the correct price.

For the architect, he needs to give the correct service at the correct price. He must give to the client what was agreed. Therefore he must be efficient in executing his services, being able to survive as a business, to grow and to last as a business. The architectural practice has to be profitable to be able to last and grow. This is at the same time a guarantee for an ongoing service to the client.

Time management

As pointed out earlier in this guidance report, the major determinant to establish the cost of an architectural service are the resources and in particular the “time” invested.

Without decreasing the quality of the architectural service, the only way for an architectural practice to improve revenue lays in the efficiency in executing the services. It is in this area that architectural services compete. This is an unrecognised reality.

In the past, due to wide spread use of fees-scales based on a percentage of the building cost, the question during fee-negotiation was “what is the discount”. The client and the architect had no other points for negotiation. Architects need to be aware of what their fees stand for or what the costs are in processing a project. The discussion with the client will then be about the “scope of works” and not about “discounts”.

However, if an architect negotiates his scope of work with the client and removes tasks leaving them to other consultants - construction managers, life-cycle specialists, workplace-consultants, real-estate brokers etc. who are more than willing to take up tasks which the architect discards, there is danger that the architect will lose influence on the project even though he is still responsible should something go wrong. Ideally, an architect that doesn’t have the "full scope of works" on a project should be in charge of arranging the execution of full scope of works, for example by hiring sub-consultants or by having a co-ordination role.

The cost of a project will depend on the one hand on the time that is being spent on the project which has the danger that the tasks asked of the architect will be reduced or even kept to a minimum. On the other hand, the cost will be depending on the remuneration of the people engaged in the office. Here is the danger of course that less qualified people will be used.

The “cost” of the architectural service should of course be weight off against the “savings” due to the added value. This added value can only be given through know-how, which in its turn is build up by giving more time either directly to the project or to general development.

It is crucial then, for the architectural practice, to know the time needed for a project at different stages. At the start of a new project, the architect must be able to estimate as good as possible the time needed to complete a mission. To know this, it is necessary to have reliable historical data either from other practices or from own experience. During the course of the project time spent must be checked against the estimate and the time still to be spent be determined so that correction be possible where necessary. After the project the time spent is valuable data to be able to learn from for future projects.

Therefore it is CRUCIAL to keep a good record of ALL TIME spent by ALL STAFF IN THE OFFICE.

Time management or managing your time?

Being efficient means using the right people for the right tasks. This means you need to know what the qualities are of the different people in the architect’s team. This calls for the need for coaching and/or assessment tools to be able to assess peoples’ qualities and the need to know which qualities are needed for which job. It is also investing in Continuous Professional Development. (CPD).

When the right person has been appointed for the right job, his/her time must also be managed correctly. This calls for a continuous follow up because idle moments, slaking interest or inefficient work patterns result very quickly in an unforeseen and unnecessary increases in time spent.

3.6 Risk management in service agreements

There are many parameters that influence the time and resources the architect has to put into the project. A Belgian study has already determined about 30 parameters for single housing projects. It is clear that at the beginning of the project, when the fee negotiation takes place, there are very many unknowns. How do these need to be integrated in the fee negotiation?

Apart from a service contract based on hourly rates, it will never be possible to exclude risk. Therefore it is important to be able to estimate or to calculate and manage the risks. At first it is important to define as many unknowns as possible and evaluate their importance and/or impact. (The better you can evaluate your risks, the better you can position yourself in the market.)

Risks can be shared, or impact one party more than the other but if they are not prepared for, both the client and his architect will suffer.

Risk to the client

The fear of any client, be it private or public, is that he will not get what he wants and that he will have to pay more than he expected. Good communication between the client and his architect is the most important factor in assuring a successful project. Transparency, open discussion and mutual understanding are the best ways to arrive at client satisfaction. Well negotiated and fully explained agreements must be made between the client and the architect to enable the client to form a clear picture of what he can and cannot expect.

Clear and precise CIS will help the client to understand for what and how much he will pay. But the main problem remains: the asymmetry of information. The client, unless he is a professional in the building industry, is unclear about the mission of the architect. The relationship between the client and the architect is based on “trust” and this trust cannot be based on the “cost” of the architectural work. Therefore it is very important that the architect explains his mission and the added value his work will bring to the client. The architect will, during the project, help the client to make many decisions of which the client has only the architect’s input to rely on. Another fear of the client is to be left “alone” with problems he is not used to deal with. It is the architect’s “soft skills” that will proof very useful to enhance this trust relationship and put the client at ease.

Risk for the architect

It must be considered that the Architect’s work cannot be detached from the other building partners involved in the building project. Third parties influence the resources and energy an Architect must invest to finalise a mission successfully. Some examples of these are the Client whose decision process may vary, whose demands are not always the same and who may want to execute some of the works himself not always knowing very well what it involves. Preparing a dossier for a public client or for a private client is very different. Working with a careless contractor will increase the time needed

for explaining, checking and correcting the executed works. Some planning departments are easier than others and need less time to negotiate with.

Transport needed to the site and to the client may vary considerably depending on the distance and difficulties of access.

A very particular parameter which nobody has control over is the global economical situation. When the building industry booms, it is very hard to find the right contractors at the right prices. At down turns, contractors go into liquidation and time and energy must be invested in replacing them.

Very often the architect finds himself in a conflict between the client and the contractor and needs to function as a mediator between the two parties. This asks for a deep knowledge of the dossier as well as a good human knowledge (soft-skills) to be able to defuse a difficult situation. Similarly, disputes can occur between the authorities and the client.

A major risk is getting too involved in projects which finally turn out to nothing. These are not necessarily architectural competitions but investment into prospective projects. Clients are sometimes tempted to transfer there own development risk onto the architect by rendering payment on initial stages subject to purchase of land, development approvals or project financing. Even during the execution of a project, alternative solutions need to be presented to the client or to the contractor, they are not always adopted.

One particular risk is the responsibility for damages to the building. In several European countries the architect is responsible for the building, often together with the builder, for many years after the building has been completed. The architect may, even after successful completion of his task, be involved in lengthy lawsuits because of a failing building partner (engineer or contractor). Time and resources put into this can be considerable and are usually not refunded.

Another difficult problem with architectural projects is the time span. Very often between the fee-negotiation and the ending of the project, several years have elapsed and many costs have changed. In a percentage-of-the-building-cost system, when building costs increase, fees raise accordingly but in a work-input-system this is not the case. During a project the tasks may change (e.g. authorities ask for new studies, different legislation…), the hourly rates of workers in the office change, overheads change, …

The issue on cost variations between the architectural practices should also be raised. Are the overheads of a big practice higher or lower than those of a small practice? It can be argued that the more people work together, the more the overheads can be bundled and spread. Running costs may be lower in small practices for other reasons.

3.7 Special cases

Planning and Urban design

For spatial planning (planning dedication of areas, local planning …) estimation or the ascertainment of fees can use values determined by experience for the necessary processing expenditure in relation to the surface area under study. The calculation of hourly rates can be made by absorption costing plus risk and profit, as is the case with other planning tasks.

For urban design, however, standardised estimation of expense is not possible. Tasks covered are varied and important differences occur concerning the degree of difficulty, the scope and the kind of the task. Agreement of lump sums is hardly possible and these planning tasks should be considered as a consultant activity charged in relation to time expenditure with adequate and sufficient hourly rates. At negotiation, a timeframe can be estimated to limit the extent and size of the appointement.

Architectural competitions

Commonly, architectural competitions are advertised based on a feasibility study. By analysis, or with a room schedule and planning regulations, the estimated gross floor area or cubic content of the project can be rated before the invitation for competition submissions. The degree of difficulty can be determined by considering the building type and the client requiements. With this information, the advertiser of the competition has the necessary data at his disposal to be able to estimate the scope of services for project design and for building supervision :

- Project type (office building, school, hospital, …),

- project size (gross floor area or cubic content),
- degree of difficulty (e.g. simple / common difficulty / demanding)

A skilled consultant can recommend a scope of work to the advertiser of the competition on the basis of project data and by means of graphic evaluations of a survey about data of expense and the scope of work of specific project types (such surveys are the main component of CIS's). The standard scope of works (which is usually required) and the optional tasks (which are possibly necessary or desired) can be reported separately.

An adequate and sufficient fee can be specified or recommended by the consultant – for the standard scope of works and for the optional tasks each as lump sum with a breakdown for each work stage. Optional tasks can be invoiced as effective expenditure of time if a suitable hourly rate can be fixed.

After decision of the architectural competition jury, these elements can be used as a reference in the negotiation that follows with the aim of appointing the chosen architect. Finally, an accurate scope of work covering both standard and optional tasks can be stipulated and the fee agreed with the winner of the competition based on his competition winning design.

3.8 Fee scales

Fee scales for architectural services exist or existed in different forms in the European Union. Case law is rich and the recent services directive places this issue in the light of efforts to ensure freedom of establishment for professionals throughout Europe.

Fee scales under EC competition law

The European Commission started combating fee scales in the year 1995 ("COAPI Case") and has since focused its attention on price regulation in the sector of liberal professions and on 24 June 2004, adopted a Decision relating to a proceeding under Article 81 of the EC Treaty concerning the scale of minimum fees drawn up by the Belgian Architects' Association.

In this Decision the Commission sets out that the scale is a decision of an association of undertakings which has the restriction of competition as its object. Although the Belgian Association has described the scale as a 'guideline', and while not all Belgian architects have treated it as compulsory, the evidence indicating that the scale sought to restrict competition includes the intentionally rule-making tone of the title and of the recitals in the preamble, and the fact that for 18 years the Association drew up and circulated a standard contract in which the only option for determining fees was a reference to the scale.

According to the Wouters case, a decision by an association of undertakings does not infringe the EC Treaty when, despite the effects restrictive of competition that are inherent in it, it is necessary for the proper practice of the profession, as organised in the Member State concerned. However, the Commission believed that the establishment of a (recommended) minimum fee scale by the Belgian Architects' Association cannot be considered as necessary to ensure the proper practice of the architect's profession. After receiving the statement of objections, the Association withdrew the scale of fees and took the steps necessary to publicise the fact. The Commission concluded that the infringement had ceased and set out the reasons why it maintained that it should impose a fine of 100 000 euros, it then unanimously approved the fine proposed.

Fee scales and the freedom of establishment or the right to provide services

In a next phase the European Commission argued that government backed fee scales can conflict with European law. The first case of fee scales for architects (Italian fee scales for architects) to come before the European Court of Justice (ECJ), was settled between the Commission and Italy before proceedings were initiated before the Court. However, several rulings of the ECJ concerning binding fee scales for the services of lawyers clarify the situation relating to fee scales for architects' services.

The legal situation has changed with the publication of the Services Directive in December 2006. This Directive specifies the conditions set out in the EC Treaty for the freedom of establishment concerning the right to provide services as well as the right to provide services from one to another EU Member State.

Services provided within the national market (freedom of establishment)

In Chapter III (Freedom of establishment for providers) the directive sets out in Article 15 that fixed minimum and/or maximum tariffs with which the providers must comply, should be non-discriminatory and necessary for the public interest. While there is no problem concerning discrimination as fee

scales address all service providers. More complicated is the question: can fee scales be regarded as necessary under the directive?

Article 4, paragraph 8) defines overriding reasons relating to the public interest as ***reasons recognised as such in the case law of the Court of Justice, including*** *...public policy...**the protection of consumers**, ... fairness of trade transactions...the protection of the environment and the urban environment...and cultural policy objectives.* Consideration n°40 of the Services Directive further explains the concept of overriding reasons relating to the public interest.

The question is whether one of the cited "overriding reasons", namely "consumer protection", can be used to justify legal provisions on fee scales for architects services. The Commission has, in the past, taken another point of view.

In its Communication of February 2004 (Report on Competition in Professional Services[7]) the Commission took a clear position towards price regulations in the sector of professional services:

> *"The fees charged for professional services are negotiated freely between practitioners and clients in most Member States. However, fixed prices and maximum and minimum prices remain in place in a small number of cases. ... Fixed prices or minimum prices are the regulatory instruments that are likely to have the most detrimental effects on competition, eradicating or seriously reducing the benefits that competitive markets deliver for consumers. ... The legal, accountancy, engineering and architectural professions now function effectively without fixed prices in most Member States. This suggests that price controls are not an essential regulatory instrument for these professions and that other less restrictive mechanisms might provide an effective means of maintaining high standards..."*

This point of view has become questionable considering the last ruling of the ECJ on national fee provisions. The Court set out in the Cipolla Case in December 2006 that ruled on minimum fees set by a scale for lawyers' in Italy stating that:

> *"...it is conceivable that such a scale does serve to prevent lawyers, in a context such as that of the Italian market which, ... is characterised by an extremely large number of lawyers who are enrolled and practising, from being encouraged to compete against each other by possibly offering services at a discount, with the risk of deterioration in the quality of the services provided."*

It can be concluded that, depending on the particular national situation, minimum fees scales can be regarded as being necessary if they meet proportionality requirements of the directive. Again the Cipolla judgement can be cited to enlighten the legal situation as concerns fee scales for architects:

> *It is for the national court to determine whether such legislation, in the light of the detailed rules for its application, actually serves the objectives of protection of consumers and the proper administration of justice which might justify it and whether the restrictions it imposes do not appear disproportionate in the light of those objectives."*

It is thus true that EU Member States are still able to maintain provisions on architects fees under circumstances which depend primarily on the current situation within the national market.

3.9 Legal certainty for new form of CIS

When fee scales are not published by state authorities in a legislation-backed process, competition authorities tend to have reservations. Competition rules are more strictly interpreted by the relevant authorities in some countries by comparison with others, as a result of cultural differences and perhaps economic pressures.

Competition rules intend to avoid restrictions that affect the natural running of the market. Most clearly, barriers contrary to competition rules are those aiming to rule or coordinate prices because they directly affect the core of contractual freedom. This is why competition authorities, both at European and national level, consider competition rules incompatible with any agreement on fees, even though those agreements are only non binding fees.

According to these Authorities, mere non binding fees are a "decision of association of undertakings" coordinating professional behaviour on prices, causing an artificial approach to those recommended

7 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004DC0083:EN:HTML

fees and limiting contractual freedom between professionals and clients on what is considered the core of their contractual relation.

Nowadays, we are completely certain that national competition authorities and the EU Commission consider non binding fee scales as incompatible with competition rules and that they cannot be justified as having aims in the general interest. In fact, they consider that proportionality and substitution principles are not satisfied, since information to clients and Administration can be achieved implementing less restrictive barriers to competition, as the case of statistics on prices prepared respecting the principle of independence.

As a possible solution, ACE is promoting either the substitution of fee scales by Cost Information Systems based on historical data or the creation of CIS in the countries where they do not exist. We think that CIS can duly inform professionals, clients and public bodies if their content and structure are appropriate.

Although fees scales cover prices directly and CIS only covers resource allocation, both systems are directly or indirectly related to the estimation of the economic part of the professional services contract. This is why, CIS are also included in the implementation scope of the national and Community competition law and its link to economic aspects of the contractual relation concludes that, in principle, they would be considered as agreements of associations of undertakings.

As Cost Information Systems rely on historical data and as such give “independent” information on market conditions, they can not be considered as agreements of associations of undertakings but rather as consumer information. This view has been confirmed by competition authorities in a significant number of highly deregulated countries. (UK, Finland, Ireland and more recently in Austria).

Another important difference between fees scales and CIS is that these latter do not coordinate, that is, neither establish nor fix any parameter concerning the profit margin each professional wants to achieve and that fundamental part of the estimation, left to contractual freedom, establishes competition among professionals. This margin is limited to the benefit each professional establishes on his/her own for a subsequent negotiation with his/her client, but it should be considered as a substantial part of the contract. As such CIS respect the principle of proportionality.

In short, as we think that as CIS give necessary historical information and leave ample room for full competition allowing each professional to establish his or her profit margins, they should be authorised by the EU Commission and National Authorities, although everyone agrees that they must be included within the implementation scope of competition rules.

For the time being, control authorities have not shown a clear position on compatibility between CIS and Competition Law. There are two reasons for this: on one hand, it is necessary to establish that compatibility in connection with a specific system and, on the other hand, ACE has not officially informed EU Commission about the precise content to be included in CIS. In any case, according to the new control procedures at Community level, control authorities do not act in abstract terms “reassure” market agents by “comfort letters” (as they did before).

Despite all this, contact with DG COMP to discuss these items in depth may be possible. A first attempt was made in the past giving not only weak but rather negative results (DG COMP civil servants warned us about the possible incompatibility between CIS and Competition Law principles). Nevertheless, times change (as civil servants do) and it would be perhaps a good idea to discuss this matter with the EU Commission again, since we are now clearer about what CIS means. Thus, In order to have improved legal certainty concerning compatibility between new forms of CIS and Competition Law, it is advisable to contact control Authorities both at national and Community level.

4 CONCLUSIONS & RECOMMENDATIONS

We have seen that there are different methods available to architects for them to calculate their costs. The term adopted for these methods “CIS” cost information systems is not very poetic, but it encapsulates the idea that there are different ways to arrive at an agreement between an architect and his client. The development of these systems shows that they have been produced to respond to contractual relationships encountered in each country, each system has advantages and disadvantages.

Some systems encourage architects to calculate their costs and the ACE expert work group set up to study CIS believes that this is where the future lies. That does not mean that there is a preferred system, indeed several systems can coexist even in the same office.

After sharing experience from across Europe, the work group came to the conclusion that without a standard scope of work or work plan for European architects, it is not possible nor desirable to produce common CIS at a European level. For this reason, this guidance document is intended as a tool to assist ACE member organisations who wish to set up new CIS or adapt existing CIS. The document forms part of a collection of papers produced by the ACE CIS work group to make information available and these include advice for collecting data to form new CIS and examples from several countries.

Further research is desirable, in particular to find common ground for a shared scope of works, but also to disseminate information on time management tools, sample tools for fee calculation and tools for the calculation of the hourly cost of offices. These tools exist and can be shared or adapted.

The underlying principle for new CIS is better resources produce better results. By producing new CIS, ACE member organisations can take the initiative to provide architects in their country with tools that enable them to define precisely what they will do for clients, and the time and staff that they will need to mobilise to satisfy requirements. Response to pressure from competition authorities to reform existing ways is a secondary consideration.

The choice that faces member organisations is to act or to wait, to continue with existing systems or to change. In a world where the position of the architect is often under threat, preparing new CIS is an opportunity to give architects hope for a better future and a means for their clients to have high expectations for the services they purchase.

5 ACE POLICY

Policy adopted on 18 oct 2004 stated:

"Recommended policy: ACE should acknowledge that different fee systems are used in the different EU member countries based on different methodologies. ACE is aware that a lot of these fee systems will be under the attack of the European Competition Directorate or their national competition authorities. ACE should recognise that it's up to the member organisations themselves and their countries to look for a way how to come along with fee questions. ACE should acknowledge that the fee question is not the question of the single organisation but it's a vital question for all architects. ACE should give help to countries which change their fee systems giving access to experience of other countries. ACE should inform their member organisations on the latest developments on the national levels. ACE should support the policy that fee information and finding systems are a vital element for architects."

DRAFT Recommended Policy in 2009:

Existing ACE policy adopted on 18 Oct 2004 is upheld and endorsed, In particular ACE continues to encourage member organisations to share experience and offer mutual assistance to favour the emergence of common methods and best practice.

ACE recognises that CIS should be available in each country to reflect the services offered by architects in their own cultural and legislative environment.

ACE maintains that there is a clear distinction between the concepts of **CIS** and **Fees**. CIS is collection and evaluation of historical data and it is not fees. Fees can be derived from CIS.

ACE supports systems that can improve cost information available to the profession and promote better understanding by clients, politicians, authorities and the general public of the exact nature of the services that architects can provide. Any such system should take into account that the architect's service is a creative intellectual service that adds value and generates authors rights.

ACE believes that new CIS is an opportunity to modernise the profession and assist architects to manage their practices more efficiently, regardless of the size of their office. ACE recommends the use of software-tools for scopes of work, hourly costs and analysis of time needed for processing projects. Architects should have full knowledge of the real cost of their services so that they can provide high quality of services for the benefit of clients, society and the lasting efficiency of buildings.

ACE recommends that member organisations should provide definition of scope of works, tools to calculate hourly costs and historical resource allocation surveys.