

Serious irregularities in eProcurement

3rd March 2009. ESOP has filed a complaint to the competent authorities regarding serious irregularities in the access to one of the major eProcurement platforms in Portugal. The problem lies in the conditioned access to bid at a public tender, allowed solely to users of a specific software brand. The gravity of this situation gave rise to a written statement sent to the European Commission.

ESOP has filed a complaint to the competent authorities regarding the irregular functioning of the “vortalGOV” platform, held by “Vortal - Comércio Electrónico, Consultadoria e Multimédia S.A”. In the age of Web 2.0, when interoperability and innovation make way for digital progress and standards stimulate free competition, the service Vortal offers excludes every company not running Microsoft-based technology from bidding at a public tender.

Even though this is an online platform available on the Web, therefore in theory universally accessible, only Microsoft browsers and operating systems can in fact gain access to it. All this is contrary to what the best practices for web development suggest, practices whose proper application results in perfectly interoperable and technologically neutral solutions. **Since the deployment of electronic procurement platforms is currently mandatory, this is a particularly serious situation. It entails an artificial constraint on the market induced by a private firm while implementing a service foreseen in “Código dos Contratos Públicos” (Public Procurement Law).** As a result, every public request for tender hosted by the Vortal platform must necessarily be accessed using Microsoft technology, a requirement unlike any of the dispositions contained in [Decree-law n. 143-A/2008](#) and European directives, where non-discrimination, interoperability and compatibility are key criteria.

ESOP obviously does not oppose of a private entity such as Vortal using Microsoft, or any other base technology of their choice, and has no legitimacy to comment upon internal software options. But to impose software of a specific brand onto a third party and thus, in clear opposition to several laws, directly hamper competition through a legally required service is indeed a serious matter. This situation gives rise to a direct interference in the software options of end-customers/enterprises, options which should be based exclusively on regular market functioning, with no restrictions arising from the technical requirements of a public service.

For instance, national companies opting for Linux, Solaris, BSD or Apple-based systems cannot access the platform, and are consequently prevented from bidding at public tenders, unless they acquire Microsoft technology for that purpose. **This situation, harmful for both ESOP's associate companies and their respective customers, has no technical justification whatsoever in light of current technologies.** This is a known fact to any competent IT/web professional; moreover, it is endorsed by the technical opinion of several well-reputed institutions, which has also been provided to the authorities.

ESOP has made numerous contact attempts with Vortal's development team in order to diplomatically reach a solution for this problem. Only after several failed contact approaches, and the acknowledgment of the company's patent disinterest to meet, have national and international authorities been informed of this problem.

ESOP's associate companies may eventually demand compensation for possible client loss and public image damage caused by this situation.

ESOP is undoubtedly in favour of any governmental initiative to dematerialize and improve the awarding of public contracts, but regrets to see the State's technological neutrality abusively put at stake by a company running outside the regulations. The negative impact of this lack of neutrality in the IT market is proportional to the number of companies actually bidding at public tenders.

About us:

ESOP (Portuguese Open Source Business Association) arises from the common will of its founding associates. With view to the encouragement and growth of the Open Source solution market in Portugal, ESOP serves as platform for the promotion of opportunities and synergies within the market, as well as among its associates and partners.

Established by leading companies and based upon highly driven individuals, ESOP brings together a vast array of skills and has on offer a large variety of professional services. From SMEs to major organizations, from associations to the Public Administration, from servers to workstations, ESOP points out reliable and lasting solutions in IT.

Guided by solid principles of competitiveness, ESOP stands for and actively promotes Open Source Software, Interoperability, Open Standards and Platform Independence.

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