



ACCESS TO INFORMATION PROGRAMME

**ACCESS
TO INFORMATION
IN BULGARIA**

2011

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ACCESS TO INFORMATION IN BULGARIA
2011

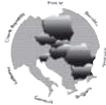
ACCESS TO INFORMATION PROGRAMME

Sofia, 2012

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ACCESS TO INFORMATION PROGRAMME



TRUST FOR CIVIL SOCIETY IN CENTRAL
AND EASTERN EUROPE

Access to Information in Bulgaria 2011 Report

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© **Authors:**

Gergana Jouleva, PhD
Alexander Kashumov
Darina Palova
Kiril Terziiski
Fany Davidova

© **Translation from Bulgarian:**

Diana Bancheva
Tereza Mandjukova

© **Design and prepress:** Vesselin Komarsky

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ACCESS TO INFORMATION IN BULGARIA 2011

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IS THERE GOING TO BE AN OPEN GOVERNMENT WITH WIDE CIVIL PARTICIPATION?

The *Access to Information Programme* report *Access to Information in Bulgaria* published in 2011 called for specific measures for the improvement of the active transparency, control and sanctions for in compliance with the requirements of the Access to Public Information Act (APIA).

The slow, sometimes unnoticeable, opening of the institutions even after the significant amendments of the APIA in 2008, is accompanied by repetitive problems with the implementation. To overcome this clearly emerges the necessity for a public body to oversee and coordinate the work of the institutions in their fulfillment of the APIA obligations. Various practices related to the active publication of information, various practices related to the processing of requests, lack of internal control, unawareness of the litigation and non-execution of court decisions - these are characteristics of the situation. Alongside, there are administrations which have organized well their work - by disclosing information both at a request and on their web sites. It is not clear why these positive models of openness and accountability does not serve as an example to the others.

In a number of cases, institutions which have been awarded on the Right to Know Day deteriorate their transparency indicators with the time.

The major factors for the positive developments in Bulgaria remain the active search of information, the journalistic investigations and publications, the public debates. The use of the APIA has become an everyday routine for the media, as well as for the citizens. In 2011, the Order of the Minister of Finance regarding the fees for the provision of information was amended in line with the current situation. The information requestors and the *AIP* in its reports had recommended such an amendment for years.

The progress in the access to information area is a natural evolutionary process which goes through small crises bringing to the opening of the information resources and data bases and legal changes in favor of the open government. It is not a surprise that the difficult victories of the citizens not always result in satisfaction since the requestors always demand more. Sometimes, the victories come after battles so long, that the winners in the court cannot even feel happy about their success.

In 2011, the Bulgarian government joined the global initiative *Open Government Partnership*. This is a clear political sign that we are in the club of the governments standing for openness, transparency and accountability, and civil participation in the decision making process. In April 2012, the government announced the national action plan with long term measures for achieving more open and accountable government based on public participation and civil control. It is clear to all advocates for open and accountable government that the *open data*, which has become so fashionable today, will not bring to open and accountable government by themselves since the information has always been the means and regarding the government, it is a necessary precondition for citizens' equal participation in the policies affecting all of us.

Is the national action plan going to be implemented? There are several conditions that should be met. One of the most important is that the plan is widely popularized, publicly accepted, and afterwards - its implementation is monitored and controlled by the citizens. Currently, the process is at its beginning.

Still pending is the question when Bulgaria will ratify the first international treaty, not an initiative - the Council of Europe Convention on Access to Official Document? We still have not found anyone to give an answer.

This year again, the *AIP* report starts with recommendations related to the legislation and the implementation practices.

The recommendations are formulated on the base of the analysis of the online published Internal Rules for the Implementation of the Access to Public Information Act, the assessment of the actively disclosed information, the problems stemming from the cases referred to *AIP* for legal help and consultation, and the main trends in the court practices.

The report contains an analysis of the Internal Rules for the Implementation of the Access to Public Information Act, the obligation for having such rules by the executive bodies being introduced with the 2008 amendments. In the beginning of 2012, 55% out of 474 institutions have published their Internal Rules on their web sites. The author of the analysis from the point of view of the standards is Alexander Kashumov.

The second part presents the results from the audit on the online publication of mandatory categories of information by the executive bodies. Darina Palova, Diana Bancheva, Fany Davidova, Gergana Jouleva, Kiril Terziiski, Nikolay Marekov, Nikolay Ninov, Ralitzka Katzarska, Stephan Anguelov, and Tereza Mandjukova evaluated 474 web sites and filed 485 electronic requests. The team of *Svetlozar Online Ltd* developed the software necessary to perform the audit. Gergana Jouleva made the analysis of the results.

The third part of the report makes a review of the cases that *AIP* received for legal consultation from citizens, partner nongovernmental organizations, and journalists. The analysis was made by Darina Palova and Fany Davidova.

The fourth part presents the litigation during the year, gives a short description and analyzes the characteristics of court practices during 2010. The review was made by Kiril Terziiski.

As an appendix to this report, we include the comparative results from the Internet sites audits from 2010, 2011, and 2012, as well as comparative results by type of institutions for 2012.

Our report outlines the problems related to the access to public information and openness of government and gives reasonable recommendations for their overcoming.

April 2012

Gergana Jouleva, PhD

Executive Director of *Access to Information Programme*

RECOMMENDATIONS

RECOMMENDATIONS RELATED TO THE LEGAL REGULATION

- ❑ The government should undertake steps for the signing and ratification of the European Convention on Access to Official Documents.
- ❑ The following amendments to the Access to Public Information Act (APIA) should be drafted and introduced:
 - To authorize a specific public body to supervise and coordinate the APIA implementation activities;
 - To assign the officials responsible for finding and sanctioning non-compliance with the APIA in a way that they shall not coincide with the officials subject to sanctioning;
 - To extend the scope of administrative sanctions under the APIA so that they cover not responding to requests.
- ❑ To amend Art. 46a, Para. 2 of the Administration Act by explicitly entrusting the General Inspectorate at the Council of Ministers with the authority to oversee the work of the inspectorates (the alternative being the establishment of an Access to Information Commissioner, Commission via amendments to the APIA).
- ❑ To amend the Company Register Act or the relevant secondary legal basis in a way that it ensures access by everyone to the online register and to all its records.
- ❑ The scope of the *List of the State Secret* appended to Art. 25 of the Protection of Classified Information Act to be narrowed so that the information collected by special surveillance means for the purposes of criminal proceedings, as well as reports on general data about the application of special surveillance means, not to be subject to classification as *state secret*.
- ❑ To establish that the public body responsible for the supervision and coordination of the APIA implementation activities should issue guidelines to unify the requirements for proactive publication of information under Art. 15 and Art. 15a of the APIA and of the internal APIA implementation rules.
- ❑ To introduce in the Public Procurement Act obligation for publication of the public procurement contracts in their entirety in the online Public Procurements Register.

RECOMMENDATIONS RELATED TO THE INTERNAL RULES FOR THE IMPLEMENTATION OF THE ACCESS TO PUBLIC INFORMATION ACT:

- ❑ Regarding the process of handling requests:
 - Procedure for registering requests filed by electronic mail which excludes the requirement for electronic signature;
 - A place for a review of obtained information (reading rooms) in compliance with § 18 of the Final Provisions of the APIA;
 - Obligation for an informal contact with the requestor (assistance) in the cases when the request has been vaguely or too broadly formulated;
 - The processing of requests to be performed with the active participation of the administrative unit which holds the requested information;
 - The part related to the exemptions should reflect the mandatory instructions delivered by the court in interpretation and application of the law, including the cases of *overriding public interest*;
 - A description of the way by which the factual partial access should be provided (blacking out, etc);
 - A possibility that the requestor authorizes another person to receive the requested information by means of a simple authorization letter and not a letter of attorney;
 - A procedure for provision of information by electronic mail.

- ❑ Regarding the proactive publication of information:
 - Assigning an internal unit to be in charge of and to coordinate the process of active disclosure of public information;
 - The precision of the categories of information subject to active disclosure;
 - The precision of the procedure for active publication of information online and ensuring its timeliness.

- ❑ Regarding the oversight: Assigning the unit within the administration to be responsible for the oversight over the work with the requests and the active publication of information.

OTHER RECOMMENDATIONS

- ❑ Mandatory trainings on APIA should be introduced for officials in the administration with regard to the obligations for active publication of information, the procedure for information provision, the balance of interests test, and the existing litigation.
- ❑ The heads of administrative structures should pay special attention to the fulfillment of the obligations under Art. 26, Para. 2 of the the Law on the Normative Acts regarding the:
 - Online publication of all drafts of legislative acts, including the corresponding inducements;
 - Online announcement of the publication date of the drafts and the timeframes for the public discussion of the drafts;
 - Online publication of the results from the discussion of the submitted statements.
- ❑ The recommendation about starting the imposition of sanctions on officials who do not comply with the provisions of the APIA remains relevant. Information about these sanctions should be published in the annual report *The State of Administration*.

LEGISLATION

ACCESS TO PUBLIC INFORMATION

The Access to Public Information Act (APIA) has not been substantially amended since 2008 when obligations for proactive online publication were established; the scope of obliged bodies was extended; the scope of the trade secret exemption was narrowed and the overriding public interest test was introduced. In 2010, Article 16 of the APIA was amended having regard the closing of the Ministry of State Administration and Administrative Reform (MSAAR). Prior to the amendment, the minister was responsible for publishing an assessment report on the implementation of the APIA (Art. 16 of the APIA). This information was part of the Report on the State of the Administration, drafted on yearly basis under Art. 62, Para.1 of the Public Administration Act. In 2009, the functions for drafting and publishing the report were transferred to the Directorate „Public Administration“ within the Council of Ministers. The current provision of Article 16 of the APIA explicitly provides that the report on the APIA implementation is part of the annual report adopted by the Council of Ministers.

During 2011, the APIA has not been amended. According to AIP, changes are not necessary as with the December 2008 amendments (promulgated in the State Gazette, issue 104, as of December 5, 2008) the Bulgarian legislation was harmonized with the international standards set forth by the Convention on Access to Official Documents (the Convention) adopted in 2008 by the Council of Europe.

On another hand, the administrative and judicial practices reveal persistent problems with the application of the exemptions to the right of access to information. In particular, the question of overriding public interest test when applied to the personal data protection exemption, the protection of third party interests, and the official secret exemption is still tricky.

Another controversial practice relates to the determination of the applicable law. The question whether it is the APIA or a special law that shall be applied in a specific case remains unclear. Another persistent problem is the pending question on the scope of the „public information.“ Important issues such as the protection of personal data of public officials, the difficulty whether the information sought relates to administrative services, therefore is not covered by the APIA, the problem what is special procedure for access to information are still unsettled.

On the other hand, the obligation established in 2008 on the onus of public authorities to adopt internal rules for the implementation of the APIA gave the authorities the occasion to better set-up their own rules and procedures with regard to access to information. The internal rules shall stipulate the way to proceed with requests, the provision of information and the proactive online publication of information. The analysis of the internal rules is relevant for the understanding of some practical difficulties that public authorities face, of the definitions and/or provisions of the APIA that are misunderstood or interpreted differently than the law and the international standards require, and of the obligations shall be more specific.

INTERNAL RULES FOR THE IMPLEMENTATION OF THE APIA

The analysis of some internal rules shows that they regulate the registration and further processing of requests and the proactive online publication. Generally, the first set of questions prevails. They relate to the registration of requests, the consideration of requests, the cost and the form of access and the provision of information itself. Some public authorities take account in their internal rules of the obligation to draft an annual report on the implementation of the APIA.

Registration of requests

Generally, the internal rules provide for procedures of registration of verbal and written requests made under the APIA. Usually, the competent directorates within the institution are the „Records“ Departments, the „Chancellery“ Directorates or the competent for the provision of information public officials. They may instruct the requestor to address the chief officer of the administrative structure who may provide the information verbally right away (Article 10 of the Registry Agency Internal rules). Often, public authorities provide a written blank of request, which is available free of charge. It is not stipulated explicitly whether the use of a blank form is mandatory or not. The requests submitted electronically (via e-mail) are considered as written. According to some rules, requests sent by fax are also submitted electronically (*Audit of EU Funds Executive Agency Internal rules*; *State Agency for Child Protection Internal rules*). Sometimes, requests submitted by e-mail shall be sent to a specific e-mail address. The Internal rules of the Ministry of Transport, Information Technology and Communications stipulate that electronic request shall be sent to a specific e-mail address or to any other e-mail but in the latter case it shall bear an electronic signature. The provision's wording gives the impression that if the request is sent to the explicitly provided e-mail (the first case), an electronic signature is not required.

Who Does Consider the Requests?

Typically, the consideration of requests involves an official from the „Records“ Department, the Secretary General, Heads of administrative units (for example, Heads of Directorates), lower officials, a legal advisor and a political figure (Executive Director (or Deputy Executive) of the respective authority). Usually, requests are registered in the „Records“ Department, afterwards the Secretary General appoints them to the competent Directorate which may hold the information. Within the Directorate, an answer is provided to the questions whether the request is clear and precise and whether the information exists, what type is the information (official or administrative), whether exemptions are applicable. Some authorities require the request to be consulted with an internal legal advisor (The Registry Agency), sometimes even a legal advisor drafts the decision upon the request. In other cases, the legal advisor intervenes at a later stage only if a complaint against the decision is brought (Ministry of Justice, Executive Agency *General Labour Inspectorate*).

Drafting of Decisions Upon Requests

The assessment of the competent directorate is of significant importance for the final decision (the Ministry of Justice, the Executive agency „General Labour Inspectorate“, the Registry Agency). This is especially relevant for information relating to the activities of specialized administration (The *Audit of EU Funds* Executive Agency). Usually, the Directorate decides the questions whether it is clear what information is sought, whether it exists, what nature it is, whether there are any applicable exemptions. On the other hand, sometimes the consideration of requests is assigned to another department - „Public relations“ department (Agency for Social Assistance), department „Relations with other authorities, public information and oversight over access to information“ (East Aegean Sea River Basin Directorate). Pursuant the Internal rules of the Agency for Social Assistance, the PR Department refers the request for an opinion to the Directorate which may have the information. In the latter case, the competent Directorate only decides upon the form of access and the time period within which access should be granted. This suggests that the competent Directorate intervenes only at a later stage when the decision is already taken (Section II, item 2).

Drafting of Decisions Upon Requests

Usually, the decision to grant or refuse access is taken by the Head of the public authority, a political figure (or his/her Deputy). In few cases, a specific public official decides upon the request, for example the appointed officer for the security of information (the Executive agency „General Labour Inspectorate“) or the competent for the access to information officer, who is entirely responsible for the provision of information (the Ministry of Justice).

Proactive Online Disclosure of Information

Not all internal rules specify the obligation for proactive online publication of information. Where such regulation exists it covers the appointment of an officer who proposes publication of information beyond the scope of Article 15 of the APIA, such as „information whose publication and promulgation is not required by law, but is of interest for large number of citizens or organizations“ (the State Agency for Child Protection).

ANALYSIS OF THE INTERNAL RULES

The analysis of the internal rules reveals that usually they comprise both - specific content and verbatim reproduction of the law. Usually, the more difficult substantive matters of law enforcement, such as issues related to exemptions are less detailed. The internal rules provide comprehensive procedure for receiving and registration of requests. The thoroughness of appointment of the competent to decide Directorates and units vary, but some common principles may be drawn-up. Not all public authorities pay sufficient attention to the proactive disclosure of information and the annual reports on the APIA implementation.

On the other side, the analysis reveals that some legal issues do not have common and uniform solutions. Or even if they do, the solution is of questionable legality and contradicts

the spirit and the aim of the APIA. These issues relate to the definition of „public information,“ types of „public information,“ etc.

Some illegal practices occur, such as a requirement for electronic signature, notary certified power-of-attorney for obtaining information.

Scope of the „Public Information“ Definition. Public and Classified Information

The internal rules unanimously deem that the personal data and administrative services are excluded from the scope of the definition of „public information.“ In the meantime, according to some internal rules the classified information is also outside the scope of „public information“ (the State Agency for Child Protection, the East Aegean Sea River Basin Directorate). Some authorities correctly consider that such information is covered by the APIA but access to it is subject to exemption (the Regional government - Sliven). The second assumption is accurate as it is clear from the wording of Article 7, Para. 1 and Article 37, Para. 1, item 1 of the APIA according to which access to public information may be restricted in case it is classified as state or official secret. The same conclusion follows from Article 34, Paragraph 3 of the Protection of Classified Information Act, pursuant to which after the expiration of the term of protection the secrecy grading shall be removed and access to it shall be granted pursuant to the APIA. Therefore, certainly the legislator considers classified information as public, but access to it is provisionally restricted.

Scope of the „Public Information“ definition. Public Information and Personal Data

Often, the internal rules reproduce the provision of the APIA whereby access to personal data shall not be pursued under the APIA (Article 2, Para. 3). The provision and its interpretation are not clear enough. The main issue at stake is whether the legislator meant access to one's own personal data collected and held by the authority or access to any personal data contained in public document. In any case, the Court assumes that data of public figures or holding public office shall be available and access to it shall be granted pursuant the APIA. Information such as name of the person who has signed the act, information about qualifications and diplomas of officials holding high public offices is public. Under the special Public Disclosure of Property Owned by High Government Officials Act, the covered officials publish information which undoubtedly is personal, but is publicly available and access to it shall be granted pursuant the APIA.¹ In the meantime, the exclusion of the data related to the *public identity* from the scope of the protected personal data with a 2005 amendment to the Personal Data Protection Act (PDPA), would mean that this range of information should be considered public.²

¹ The wording of Article 6 reads so, although the declarations are accessible in the Internet for some years now.

² The initial wording of Article 2, para.1 of the PDPA stipulated that the definition of personal data should include the so called „public identity“ (which in fact covers the concept of „social identity“) as well as data relating to „the performance of public functions“. As the latter was manifestly contrary to the Constitution, to the European Convention on Human Rights and to the EU legislation, following a public debate both categories were excluded from the scope of protected personal data with an amendment as of 2005 (PDPA Amending Act, State Gazette, issue 103, 2005).

Scope of the „Public Information“ Definition. Public Information and Administrative Services

Often, the internal rules reproduce the provision of the APIA whereby access to information related to administrative services shall not be pursued under the APIA. In practice, the authorities refuse access when the request is filed by a person who happens to be a party to administrative proceedings, e.g., an interested party to proceedings under the Territory Planning Act, or person who brought a complaint under Art. 107 of the Administrative Procedure Code (APC). In fact, the aim of the distinction drawn by the legislator between access to public information and access to information related to administrative services is not to create additional obstructions to the free access to information and additional grounds to decline inconvenient requests.

The reasoning behind the distinction lays in the difference of volume information due under the APIA, respectively under the special law. A person who is a party to administrative proceedings shall be entitled to all information and documents available in relation thereto. When it comes to access to documents by the party, the exemptions of protection of personal data, preparatory documents, of trade secret do not apply. On the contrary, the party shall be informed at an earlier stage, before the issuance of the administrative act in order to be able to present his/her arguments and to produce evidences - Art. 34, Para. 3 in relation to Para. 1 and Art. 39, Para.1 of the APC.

Public Information and Special Access to Information Procedure

In fact, the APIA covers wide range of information. It covers not only any public information, but also information related to the environment since Art. 26 of the Environment Protection Act refers to the APIA. The same referral is contained in the Access and Disclosure of Documents and Announcing Affiliation of Bulgarian Citizens to the State Security and the Intelligence Services of the Bulgarian National Armed Services Act (Art. 31). The regulations with regard to public registers also refer to the APIA. Some advanced the argument that the APC establishes special procedure for access to information having in mind the disposition of Art. 12, Para. 2.³ However, this argument is not sustained by the following stipulations of the APC as it does not provide for special procedure - it does not contain any provision regarding requests, time frames, and procedures for access to information. Article 12, Para.2 of the APC simply states that parties to administrative proceedings shall access documents pursuant to the APC and all others - pursuant to the APIA. Since the APC does not provide for a special procedure, therefore Art. 46, Para. 2 of the Law on Normative Acts is relevant: *shall apply the provisions applicable to similar cases, if it follows the purpose of the act.* The APIA does establish such provisions. Therefore, in the absence of a special procedure, the general regime of the APIA applies.

³ Providing that „(2) The parties shall exercise the right to access to the information in the proceeding according to the procedure established by this Code, and the rest of the people shall exercise the said right according to the procedure established by the Access to Public Information Act.“

Filing and Registration of Requests

The internal rules set where and to whom verbal requests shall be addressed. Generally, the competent public officer contacts immediately the department which may have the information. In many cases, the internal rules establish procedures dealing with electronic requests. Some provides for the possibility to send a request by fax. The requirement for an electronic signature contravenes the APIA. Article 25, Para. 1 lists exhaustively the requisites of the request and it does not enumerate a signature. Everyone has a right of access to information and legal interest is not to be shown for its exercise. Therefore, identification of the requestor is not necessary. It is well known that not so many people have an electronic signature, thus the practice is discriminatory.

Assisting the Requestors

In previous AIP reports and analysis we noted that the only apparent discrepancy of the APIA with the Convention on Access to Official Documents was the lack of provision requiring the public authority to assist the requestor, as far as reasonably possible, to identify the requested official document (Art. 5, item 1).⁴ A provision in this regard stipulated in the internal rules is the way to fill this gap. So far the obligation to help requestors is modest. It is generally associated with cases where the request is vague or too broadly defined, or in cases of verbal requests. The internal rules shall provide for an obligation to get in contact with requestors if the request is vague or too general instead of using the formal ways of communication provided by the law.

Consideration of Requests

With regard to the processing of requests the internal rules give different approaches and involve different departments. In any event, it is strange when a department which does not have the information sought decides upon the merits of the request, the nature of the information, its existence, or whether the disclosure would harm any third parties' interests. As noted, the department which has the information intervenes at the later stage of providing the information, rather than at the stage of resolution. It is also very strange when the person authorized to decide upon the request is the information security officer. Obviously, and without need of a thorough analysis his/her professional duty is to protect the information, not to provide it. It is very questionable how his/her involvement in the decision-making process contributes to the promotion of openness and the enjoyment of the right to information.

Among the issues which are to be considered is the identification of specific document which may contain the information. This overlook creates significant obstacles to the communication within the administration in relation to the processing of requests and disclosure of information. There are no specific guidelines as to the provision of partial access. Such guidelines are necessary as they would solve practical problems of law enforcement and would guarantee the proper fulfillment of public duties of civil servants under the APIA.

⁴The analysis of consistency of the APIA to the Convention is available at: http://www.aip-bg.org/pdf/consistency_report_conv.pdf

Form of Access

With regard to the form of access, generally, the internal rules reproduce literally the provisions of the law. On the other hand, they do not give answer to a pressing problem - the possibility to receive the information in electronic form. According to the revoked Order 10/2001 of the Minister of Finance the provision of information by e-mail was paid. The newly adopted Order No.1472 of the Ministry of Finance from November 29, 2011 (State Gazette, issue 98/2011) does not provide for this form of access. It is essential that the internal rules expressly stipulate for the free of charge electronic provision of information.

Granting Access to Information

The matter regulating the provision of information identifies two major concerns. One of them is the lack of rules which would facilitate both - the administration and the requestors. The other is the setting up of formalities and additional prerequisites, which are in some cases manifestly contrary to the law. The existence of reading rooms (a legal requirement) where the requestor may review the information provided and the sending of information by e-mail without further formalities fall within the first category of problems. With the IT developments the latter becomes more and more important as it overcomes distances without waste of time and money of requestors.

Disproportionate and illegal is the requirement for a notarized power-of-attorney to receive the information. This approach does not take into consideration that the requirements for notarized signature are exhaustively provided by law. According to Art. 37, phrase 1 of the Obligations and Contracts Act, the authorization for the conclusion of contracts for which the law requires a specific form shall be made in that particular form. This means that in all other cases, a valid empowerment does not require any specific form, particularly not a notarized signature.

EXEMPTIONS TO THE RIGHT OF ACCESS TO INFORMATION

The regulation of exemptions in the internal rules is generally poor. However, a curious approach was noted - some internal rules do not reproduce limitations provided by the APIA. It is interesting to know whether this was an intentional omission or a decision not to apply a restriction - an approach favouring more transparency. Of course, the administration has no discretion with regard to some exemptions. The authority can choose not to apply a limitation only if it has the discretionary power to do so. For example, the internal rules of the State Agency for Child Protection do not list the exemption under Art. 13, Para. 2 of the APIA (preparatory documents and ongoing negotiations). This is an important approach as the protection of information relating to preparatory documents (Art.13, Para.2, item 1) is under the discretion of the competent authority. On the other hand, access to this information is a valuable source of knowledge and enables the stakeholder to efficiently participate in the decision-making process.

Protection of Third Party and Personal Data

Usually, the practice considers that personal data protection is entitled to protection under the defense of third party's interests. The question is not well settled by the law. Article 2, Para. 3 of the APIA states that it does not apply to access to personal data. The case law established that some information relating to public figures and/or holding senior public office is public within the meaning of the APIA. An isolated case as of the beginning of 2012 is a court decision holding that the protection of third party's interest pursuant to Art. 31 of the APIA do not apply to the protection of personal data. It is desirable that the internal rules expressly provide that access shall be granted by blacking out the names and other data of the persons mentioned in the document.

Protection of the Official Secret

The practice usually finds it hard to define what information shall be classified as official secret. The State Commission on Information Security (SCIS) held public discussions in 2010 and 2011 in order to assess the need to issue binding instructions with regard to this classification. The SCIS also organized trainings in 2012 with the participation of AIP. Pursuant to the definition under Art. 26, Para.1 of the Protection of Classified Information Act (PCIA), this is information whose disclosure would adversely affect the interests of the State or harm other legally protected interest. According to Art. 26, Para. 2 of the PCIA, information may be classified as official secret only if provided for by law. Under Art. 26, Para. 3, the Head of the public authority is competent to adopt the list of categories of information which may be classified as official secret.

When we scrutinize the possible overlaps of the classification as official secret with other exemptions, we shall conclude that they are not so many. The very wording of Art. 26, Para.1 of the PCIA does not allow the coincidence between state and official secret. Furthermore, it is not appropriate to protect the personal data under the official secret exemption as personal data shall be protected at least as long as the persona is alive and the information which is official secret is only foreclosed for a period of six months (Art. 34, Para. 1 PCIA).

Hypothetically, it is possible that the preparatory documents fall within the category of official secret. But then a collision between Art. 26 of the PCIA and Art. 13, Para.2 of the APIA arises. The aim pursued by the protection of preparatory documents is to assure independence of the experts involved in the decision-making, therefore this aim is achieved with the adoption of a final act and protection is no longer necessary. Some foreign access to information laws explicitly provide that this exemption is only available till the adoption of a final decision. The APIA gives discretion to the Head of the authority to determine the appropriate period of protection as Art. 13, Para. 2 uses the words „**may** restrict.“ If preparatory documents are protected as official secret, this discretion drops off and the access restriction to such information becomes mandatory. On the other hand, pursuant to Art. 37 of the APIA, the public interest test applies to all exemptions, excluding the state and official secret limitations. The information under Art. 13, Para. 2 is explicitly subjected to the assessment of overriding public interest. It would, therefore, appear a logical contradiction as to which regime shall apply.

It appears that the trade secret exemption is mostly probable to overlap with the official secret. In this case as well, the APIA provides for the assessment of overriding public interest (Art. 17, Para. 2). It is also important to know whether the protection of the trade secret only for six months is appropriate and suitable to all possible scenarios.

Bearing in mind the abovementioned and as far as amendments to the APIA in this regard are not foreseeable, we recommend that the internal rules regulate somehow the practical problems which have been discussed.

Oversight of the Implementation of the APIA

In AIP previous reports, we have recommended adoption of amendments to the APIA with regard to the assignment of specific oversight functions to an authority within the Executive which shall monitor the implementation of the APIA. The reason for this recommendation was the closure in 2009 of the Ministry of State Administration and Administrative Reform (MSAAR). As a result, the publication of information on the implementation of the APIA (Art. 16 APIA) was left without a responsible minister. The competences for drafting the report on the state of the administration, part of which covers the APIA implementation, were assigned to the „State Administration“ Directorate within the Council of Ministers.

In 2011, the oversight of the enforcement of the APIA remains weak and ineffective. There are specific alerts for breaches and negligence but the control and sanctioning functions of Inspectorates within the Ministries are inefficient. The limits of the system were revealed with the failure of the Agency for Social Assistance to execute a court decision. All steps aiming at the execution of the decision were unsuccessful. The Inspectorate General within the Ministry of Labour and Social Policy found that the Agency was not in breach of the law, and the Inspectorate General within the Council of Ministers held that it is not competent to dispose to the Inspectorates within the Ministries how inspection should be carried out and how sanctions should be imposed. The case illustrates that there is no effective mechanism within the public apparatus to ensure the fulfillment of its own legal obligations. It seems that the lack of information for imposed sanctions in all annual government reports on the state of the administration is not a coincidence.

The lack of effective oversight is a serious problem and requires important legislative and governance measures.

In the absence of a competent supervising authority, coordination between institutions on the implementation of the APIA is missing. It can be concluded that the coordination of APIA enforcement is the weakest spot in ensuring the right of access to information.

INFORMATION WHICH SHALL BE PUBLISHED AND PERSONAL DATA PROTECTION ISSUES

The legislation provides for a number of public registers, access to which is free. Most of them are already online.⁵ In the meantime, the adoption of a provision that some information is public but „in respect of the Personal Data Protection Act“ (PDPA) or „without information which is personal data“ is an inappropriate legislative approach. Such wording is used in Art.6 of the Public Disclosure of Property Owned by High Government Officials Act, Art.2, Para. 2 of the Trade Register Act, Art. 17, Para.2 of the Prevention and Determining of Conflict of Interests Act.

Obviously, such wording does not contribute to proper implementation of the law. According to Art.2, Para. 1 of the PDPA, „personal data is any information relating to an individual who is identified or identifiable, directly or indirectly, by reference to an identification number or to one or more specific features.“ The case becomes even more complicated when the Commission for Personal Data Protection, in fulfillment of its obligation to analyze the legal framework related to data protection, gives unclear and/or too general binding guidance and opinions (under Art. 10, Para. 1, Item 1,4 and 5 of the PDPA). For example, the Commission for Personal Data Protection in its statement as of 2009 on the application of Art. 17, Para. 2 of the Prevention and Determining of Conflict of Interests Act, does not indicate what data filled in the conflict of interests declarations is personal, therefore under protection, and what is not personal, therefore is subject to publication. As a result, it becomes more common not to publish the declarations themselves but a list of people who have submitted them.⁶

As a consequence, the administrative practice does not implement the principle laid down in Decision No. 7/04.06.1996 on constitutional case No. 1/1996 of the Bulgarian Constitutional Court and in the European Court of Human Rights case-law according to which „the government as a whole, as well as political figures and public officials, may be subject to a higher degree of public scrutiny than the rest of the individuals“ (Decision No. 7/04.06.1996 of the Constitutional court) as far as they „inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and the public at large“ (case of Lingens vs. Austria, application No. 9815/82, Para. 42).

Particularly illustrative is the issue mentioned in relation to the amendments of the Company Register Act in 2010. Despite the AIP critical statement, the wording of the adopted provisions may bring to inconsistent practices and difference in publication of corporate information entered in the Company Register. An explicit provision should have been stipulated that in this particular case the publicity of traders and management of companies overrides the protection of their personal data; moreover, the relevant European directives do not establish the protection of data as a precondition to publicity. In this regard, amendments to the secondary legislation regulating this subject should also be reviewed and analyzed.

⁵ The results from AIP Audit of the Web Sites of Executive Bodies in Bulgaria is analyzed in the second part of this report.

⁶ See results from AIP Audit of the Web Sites of Executive Bodies in Bulgaria below.

PROBLEMS AND TENDENCIES IN ACTIVE DISCLOSURE OF INFORMATION

In its report *Access to Information in Bulgaria 2010*,⁷ *Access to Information Programme* has analyzed in details the developments of the standards, the driving forces, the elements and the legislation regulating the online publication of specific categories of information. The developments in Bulgaria have also been outlined. Some of the findings signified in the last year's report are valid for this year as well.

THE LEGISLATION REGULATING THE ACTIVE DISCLOSURE OF INFORMATION ONLINE HAS NOT BEEN AMENDED IN 2011

The Access to Public Information Act (APIA), adopted in 2000, introduced the obligation for the heads of executive bodies to publish information related to the powers, the structure, the functions, the responsibilities, the list of the acts issued, the information resources, and contact information (Art. 15). The 2008 APIA amendments complemented the obligation under Art. 15 with the obligation for *Publication in Internet* (Art. 15a, Para. 1) and introduced a new obligation for the maintaining of an *Access to Information* section on the institutional web sites (Art. 15a, Para. 2). The motivation of the legislators behind the introduction of the obligation for an *Access to Information* section apparently was to facilitate the information seekers. In this section, the internal APIA implementation rules and a description of the procedure for accessing the public registers maintained by the administrative structure should be disclosed, as well as the annual reports on the APIA implementation, which the heads of the executive bodies should make and send to be included in the annual report The State of the Administration adopted by the Council of Ministers and presented to the National Assembly.⁸

The legal regulation of the active transparency of public bodies is a complex system. In order to evaluate this system, we have to take into account not only the obligations under the access to information law which covers different aspects of the public bodies' activities. We also have to take into account the obligations under the legal acts of the local government bodies and the secondary legal acts regulating the procedures for publication in the Internet. An important factor for the assessment of the active transparency is also the online availability of a great number of public registers which public bodies should maintain for the purpose of fulfilling their legally prescribed powers and functions.

⁷ http://store.aip-bg.org//publications/ann_rep_eng/2010.pdf

⁸ Pursuant to the *Administration Act*: „Art. 62 (2) (Amended - State Gazette, issue 24/2010) The Prime Minister shall annually, till April 30, present a report on the state of the administration before the Council of Ministers to be adopted by the CoM. The report shall be referred for information to the National Assembly and published on the electronic web site of the Council of Ministers.“ On July 20, 2011, the Council of Ministers adopted The State of the Administration report. The report was published on the web site of the CoM in the end of July 2011: <http://www.government.bg/fce/001/0211/files/AnnReport10.pdf>. In 2010, the report was published in August.

For instance, the obligation of the municipal councils' administrations to publish and announce the acts of the municipal councils via the Internet is provided by the *Local Government and Local Administration Act*.⁹

Accountability and transparency of the activities of the administration - strategies, programs, decisions, reports, contracts, including financial transparency - are still in the sphere of declared policies and not legally bound, with few exceptions like the development plans of the municipality which should be adopted by the municipal council and under the requirements of the *Local Government and Local Administration Act* should be public.¹⁰

The *Public Disclosure of Property Owned by High Government Officials Act* has an important role in the understanding of the active transparency situation. The Chairperson of the National Audit Office is responsible for the implementation of the law. The maintaining of an online accessible register, which contains the lists made under the prescription of the law, the asset declarations, the incompliance reports, and the results from the inspections of the National Revenue Agency, is an important element of the public bodies' transparency.¹¹

Another element of the active transparency is the obligation for publication of the declarations under the Art. 12 of the *Prevention and Determining of Conflict of Interests Act (PDCIA)*. The online publication of these declarations is legally bound.¹²

Budget Transparency

Article 5 of the *Municipal Budgets Act* states that the budget of the municipality should be public without setting forth the channels and the means for guaranteeing the online publicity.¹³

The *State Budget Act* does not set forth the phase in which the draft budget should be public and the means via which this should be done. The law provides that the state budget should be adopted with an act of Parliament and that its implementation should be organised by a Regulation of the Council of Ministers. It does not provide for any details regarding

⁹ *Local Government and Local Administration Act*: „Art. 22 (2) (New - SG, issue 69/ 2006) The acts of the Municipal Council shall be announced to the population of the municipality within the timeframe stipulated by Para. 1 via the mass media, the Internet site of the municipality, and via other appropriate means, specified by the Regulations under Art. 21, Para. 3.“

¹⁰ *Local Government and Local Administration Act*, The Municipal Council whose acts shall be public „Art. 12 (Amended SG, issue 61/ 2007) adopts strategies, forecasts, plans and programs for the development of the municipality which reflects the European policies for development of the local communities.“

¹¹ <http://www.bulnao.government.bg/index.php?p=2345&lang=en>

¹² *Prevention and Determining of Conflict of Interests Act* (SG, issue 94 as of 2008, effective January 1, 2009): „Art. 17 (1) The person occupying a public position shall submit a declaration under Art. 12 of this act to the body which selects or assigns them, or to the respective commission - for a person under Art. 25, Para. 2, items 1 and 3.

(2) The declarations shall be disclosed on the Internet site of the bodies under Para. 1 in observation of the provisions of the Personal Data Protection Act.“

¹³ *Municipal Budgets Act*: Art. 5 (Amended - SG, issue 107/ 2003) The Municipal budget shall be public and shall be overseen by the local community via procedure set forth by the Municipal Council and by legally bound competent bodies.

the publicity of the budget and the possibilities for its discussion, nor does it refer to the *Law on Normative Acts*.¹⁴

Online Public Registers

State authorities collect information about the citizens and the legal entities and their activities which is necessary for the implementation of their powers in the decision making on individual cases or in fulfilling their registration or oversight functions. The number of registers maintained by the public bodies is considerable. Their maintaining in most of the cases is regulated by a law, in some cases - by decisions of the municipal councils or decisions of the heads of the respective public bodies.

In a number of instances, citizens and legal entities cannot refuse to provide the information required from them because they would thus be granted the right to exist in the legal world - for example the civic status registers, the patent registers or the registers of organizations for collective management of rights under Art. 40 of the *Copyright and Related Rights Act*.

Specialized laws regulate the publicity of a number of information volumes, lists, descriptions, counts which should be accessible to the public. Such information resources and data bases may be called public registers. Some normative acts stipulate that the publicity of these registers should be guaranteed through the Internet sites of the institutions. Obviously, such a requirement should be legally bound for all public registers. At the moment, public registers even if not online available are publicly accessible, i.e. everyone can request information from them on the base of the APIA or under a special procedure.

In 2011, an AIP team started a special survey on the legal acts regulating the creation and maintaining of public registers. The legal review was followed by a review of the online available public registers. Among the 3,945 identified public registers maintained by public bodies at a central, regional and local level, 516 should be available online by law. Up to now, 631 online registers have been identified. At its current phase, the survey does not cover the legal acts of the local government bodies, which apparently also regulate the maintaining of public registers online.¹⁵

¹⁴ State Budget Act, Art. 22 and Art. 23.

¹⁵ The results from the legal survey and the review of the online available public registers are incorporated in the portal *Public Registers*: <http://publicregisters.info/>

POLICIES FOR IMPROVEMENT OF ONLINE DISCLOSURE

In 2011, the Bulgarian Government joined the Global Initiative Open Government Partnership.¹⁶

On September 20, 2011, the Open Government Partnership (OGP) was launched at a meeting in New York where 46 states (including Bulgaria then represented by the Minister of Foreign Affairs Nikolay Mladenov and the Head of the Cabinet, Rumiana Bachvarova) joined the initiative officially and adopted an Open Government Declaration.

The decision for Bulgaria's participation in the OGP was taken at a Council of Ministers session as of August 24, 2011. The Council for Development at the Council of Ministers is the responsible body for the coordination of Bulgaria's participation in the initiative. All countries participating in the Open Government Partnership have to develop a National Action Plan based on a wide public consultation. The Council for Development should have drafted and presented such an Action Plan to the Council of Ministers till March 2012.

The Open Government Partnership was initiated by the governments of the USA and Brazil and is a multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. The OGP is coordinated by a Steering Committee of eight states and leading civil society organizations in the area. The start of the initiative was announced by the US Secretary of State Hillary Clinton and the Brazil Minister of Foreign Affairs Antonio Patriota on July 12, 2011 in Washington DC, USA. A one-day meeting with representatives of 80 states supporting the initiative was held.

One of the basic elements of the already adopted national action plans of the states participating in the initiative is the development of active transparency through specific measures.¹⁷

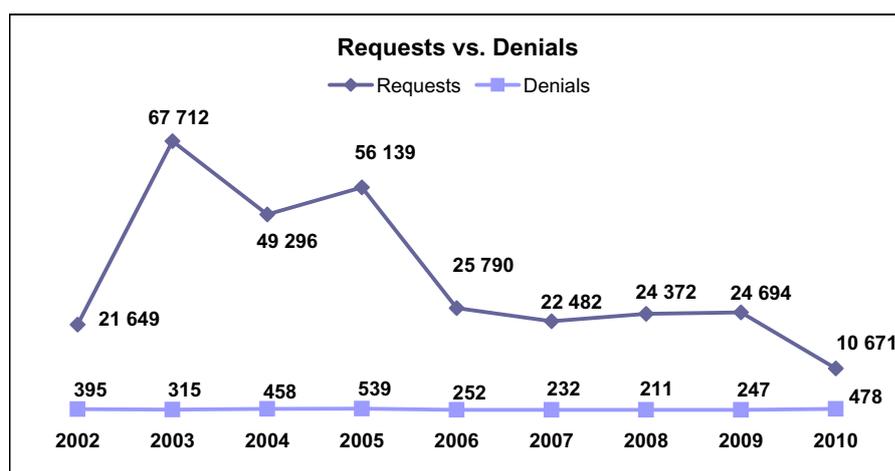
Bulgaria's joining to the global Open Government Partnership initiative shows a clear commitment to the undertaking of specific measures for enhanced government transparency.

¹⁶ www.aip-bg.org/documents/ogp.htm

¹⁷ Information about the Open Government Partnership is available on the special web site of the initiative: <http://www.opengovpartnership.org/> - participating countries, national action plans, statements of the heads of the steering committee states.

Assessment of the APIA implementation According to the Council of Ministers report The State of the Administration 2010¹⁸

The government report *The State of the Administration 2010* was adopted at a session of the Council of Ministers and published in the summer of 2011. Its statistics show a decrease in the number of the filed access to information requests and an increase in the number of refusals in comparison to previous years.



The graph is based on data from the government reports *The State of the Administration 2003 - 2011*. However, no analysis or explanation of this drastic change is given by the report.¹⁹

On the basis of the findings in the report *The State of the Administration 2011*, the following recommendations are formulated:

- „The administrations which have not developed Access to Information Implementation Rules, nor explanatory information for citizens on how to exercise their access to information right, should fulfill this legal obligation and develop such rules and information.
- The administrations which have not yet published on their web sites the categories of information exhaustively listed in Art. 15 of the APIA should undertake measures to fulfill the requirements of this provision.
- It is imperative that a thorough analysis of the transparency of all administrations is performed, the good models are popularized and recommendations are referred to these administrations which did not cover the minimum standards.
- The administrations which do not have an official/s responsible under the APIA should assign such.

¹⁸The report was published on the web site of the Council of Ministers in the end of July 2011: <http://www.government.bg/fce/001/0211/files/AnnReport10.pdf>.

¹⁹The change is drastic as the number of the requests has decreased by half while the refusals have increase with 3% in comparison to previous years. See the Chart Requests v. Refusals above which is based on data from the government reports *The State of the Administration 2003 - 2011*.

- It is necessary to continue the training of officials/departments responsible under the APIA in order to reduce to the minimum the number of court proceedings against decisions for access to information and refusals.²⁰

As far as the trainings for officials are concerned, apparently, the Public Administration Institute has not taken them into consideration. Trainings in legislation and development of transparency systems within the state administration are not among the topics in the catalogue for mandatory trainings provided by the institute.²¹

In 2011 again, no steps were undertaken to start the procedure of signing and ratification of the Council of Europe Convention on Access to Official Documents regardless of the lack of legislative obstacles for Bulgaria's accession to this first binding international treaty on government transparency.²²

The results from the implementation of transparency policies or the lack of such results within the executive bodies can be traced on the basis of AIP performed assessment of institutional web sites. AIP has been performing such an assessment since the APIA amendments in 2008. The results of these assessments are available on the AIP web site.²³

AUDIT ON THE INTERNET SITES OF THE EXECUTIVE BODIES AT CENTRAL, REGIONAL, AND LOCAL LEVEL

Methodology

Within the period January 23 - March 16, 2012, an AIP team has reviewed and assessed 474 web sites out of a total of 487 executive bodies at central, regional, and local level. The web sites were audited on the basis of 39 (40 for the municipalities) indicators, organized in three groups encompassing the obligations under the Art. 15 and Art. 15a of the APIA, and other standards for active disclosure of information, and related to:

- Institutional information - legal basis of the institution, functions, services provided, data bases and information resources;
- Organizational structure and contact information;
- Operational information - acts, strategies, plans, activities;
- Financial and other transparency - budgets and financial reports, contracts, conflict of interests declarations;
- Existence and content of the *Access to Information* sections.

Besides the assessment of the web sites with regard to the obligations for online disclosure of information, the researchers had to review the online public registers of the authorities at regional and local level, where such were available.

²⁰ *The State of the Administration* 2010 report, pp 10-11.

²¹ <http://www.ipa.government.bg/files/custom/news/2012/IPA-catalog-2012.pdf>

²² AIP maintains a special section on its web site in Bulgarian with the history of drafting, the adoption, translation of the Convention on Access to Official Documents and the Explanatory Report, and the report on the compliance of the Bulgarian legislation with the standards set forth by the Convention: http://aip-bg.org/documents/coe_convention_aod.htm

²³ <http://www.aip-bg.org/en/surveys/2012/204468/>

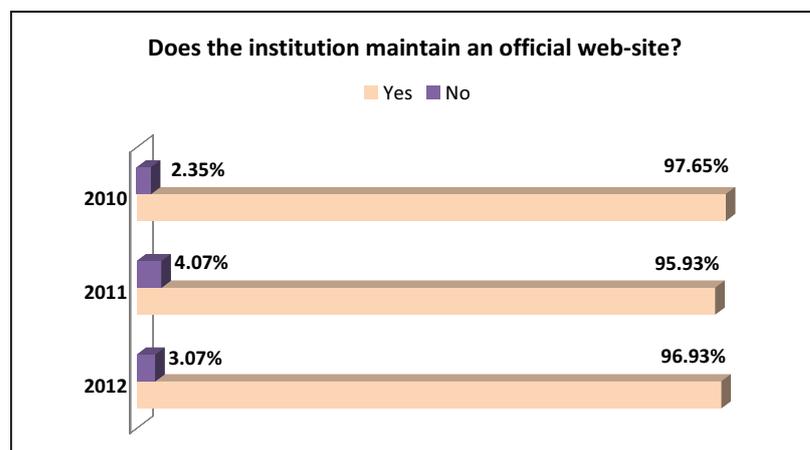
Also, 485 requests were filed electronically for access to information mandatory for online publication, more precisely - for a description of the procedure for accessing the public registers maintained by the respective administrative structure (Art. 15a, Para. 2 of the APIA) in an electronic form or referring to the direct link of the web site of the public body where the information can be found. The responses to those requests have been used to more objectively evaluate the readiness of public bodies to publish online their registers. A lot of the responses described the number of public registers maintained by the respective authority and which of them are available online.

Results

The audit results will be organized like in the last year's report on the basis of the assessment of information actively disclosed on the institutional web sites related to the institutional information, organizational structure, operational information, financial and other transparency, and the special section facilitating the information seekers - *Access to Information*.

Out of the Administrative Register of 487 executive bodies at a central, regional, and local level, 474 institutional web sites were identified.²⁴ The number of public bodies which do not have Internet sites has diminished in comparison to last year. Still without web sites are the Regional Directorate of the Ministry of Interior - Haskovo, the Regional Health Inspections in Blagoevgrad, Sliven, Shumen, Plevan, Haskovo; and the Municipalities of Boinitsa, Bregovo, Valchidol, Gramada, Makresh, Opaka, and Sungurlare.²⁵

Although these 13 institutions do not maintain official web sites, six out of them responded to the electronic requests within the legally prescribed timeframe - the Regional Directorate of the Ministry of Interior - Haskovo, the Regional Health Inspections in Sliven and Plevan; and the Municipalities of Valchidol, Opaka, and Sungurlare.



²⁴The Administrative Register (2006) which substituted the Register of Administrative Structures and Administrative Acts (1998) is maintained by the Council of Ministers: <http://www1.government.bg/ras>. The list of the institutions was integrated in AIP Internal Information System for the purposes of the audit (in Bulgarian): http://www.aip-bg.org/surveys/Pe3yAmamu_no_uhcMumyuu/201077/.

²⁵In order for the requests to be filed, the e-mail addresses of these institutions were sought through other channels - the web sites of the Regional Administrations, the National Association of Municipalities in Bulgaria.

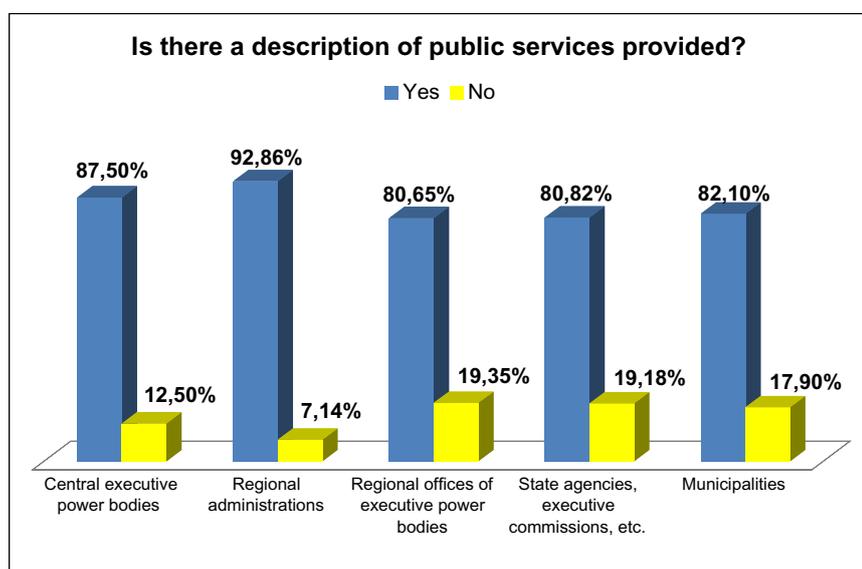
Institutional Information - legal basis of the institution, functions, services provided, data bases and information resources

The obligations of the heads of the executive bodies are to publish online up-to-date information about their powers, functions and the responsibilities of the respective administration. A big part of this information is contained in the legal acts and the regulations of the administration which regulate the establishment and the activities of the institution, complemented with special web site sections where a summary of the functions and responsibilities of the authority are published, as well as the services it provides to citizens and legal entities. With regard to the performing of its functions and fulfilling its responsibilities, the administration also maintains information resources, registers, part of which need to be accessible to the public in order to ensure the freedom of civil and commercial contracting and the exercise of certain rights and regulated activities.

The results from the 2012 February - March audit show that there is not a considerable development in this area. More precisely, the web sites lack a clear description of the legal responsibilities and functioning of the respective authority. There is even a 3% decrease in the level of active disclosure of the legal basis and the functions of the institution, compared to the level of implementation in 2011. On the other hand, the online publication of information about the services provided by a respective institution has increased with 4% and the description of the data bases and the information resources - with 1%, in comparison to 2011.

There is a higher level of implementation of the obligation for online publication of information about the powers, the functions, and the information volumes by the central government bodies, state agencies, commissions, executive commissions, state institutions established by law or by a decree of the Council of the Ministers. The poorest performance belongs to the municipalities (See: Appendix 1 to this Report).

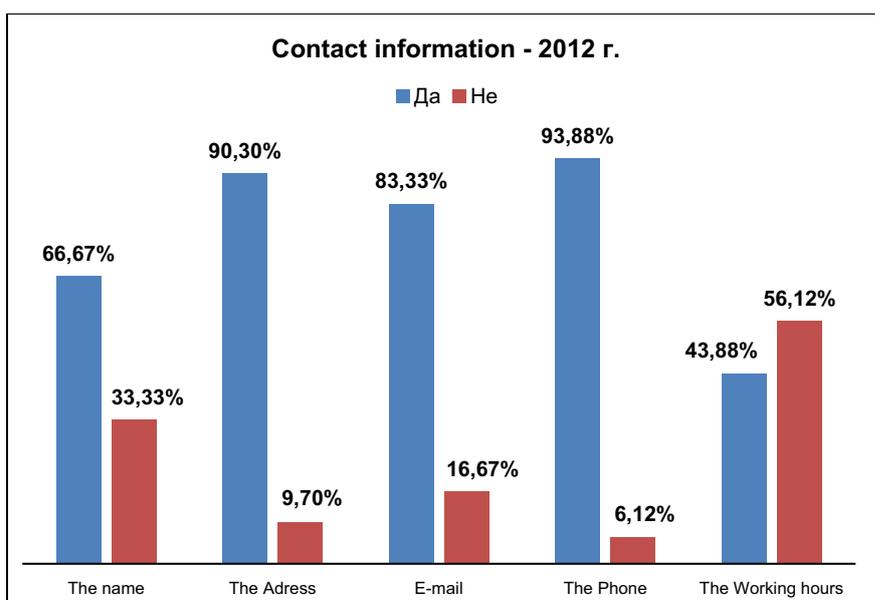
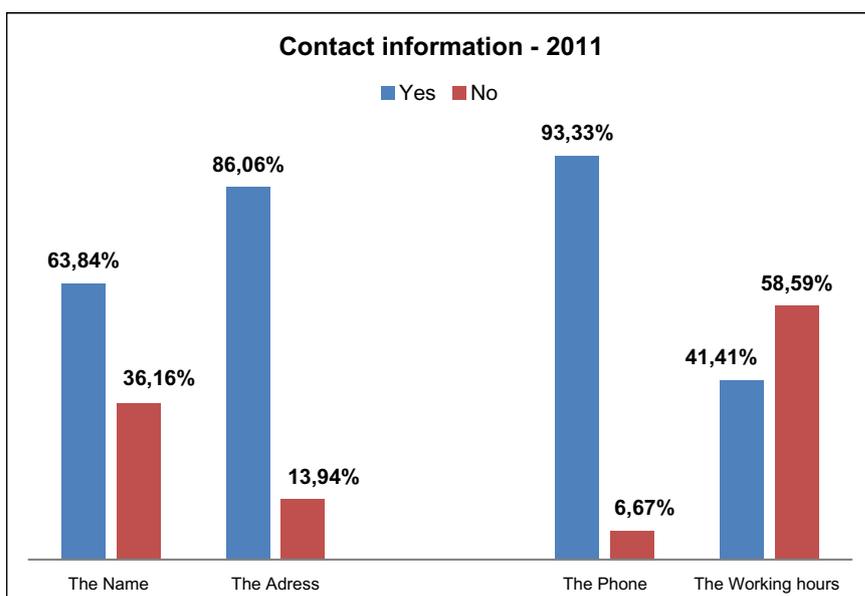
In 2012, the availability of a description of the services provided by the authorities is high at all levels of executive power - central; regional administrations; regional offices of executive bodies; state agencies, commissions, executive commissions, state institutions established by law or by a decree of the Council of the Ministers; the municipalities.



Organizational Structure and Contact Information

The tendency of increasing online availability of information about the structure of the administration stays stable. Almost 92% of the institutions have published their organizational structure. The level of implementation by the central government bodies is 100%, while there is a 7% increase by the municipalities resulting in 89%.

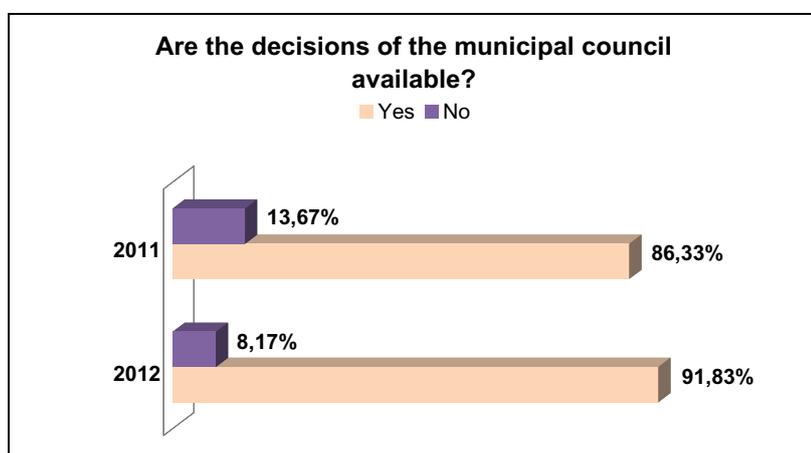
With regard to the contact information which is undoubtedly necessary for citizens and legal entities when they want to address the public body, the volume of its availability has also increased. The lowest level of implementation, this year again, is with regard to information about the working hours of the institution.



Operational Information - acts, strategies, plans, activities and reports

The most considerable development with regard to the active disclosure is in the publication of the acts of the public bodies.²⁶ The APIA establishes the obligation for the publication of lists of acts issued within the implementation of the powers by the heads of the executive bodies. At the same time, much more have been published on the web sites - not just lists, but also registers of the normative and individual administrative acts have been uploaded. A considerable increase in the online maintaining of registers of individual administrative acts is observed - almost 46% of implementation, while in 2011, it was 27%. The highest level of implementation belongs to the municipalities - 55%.

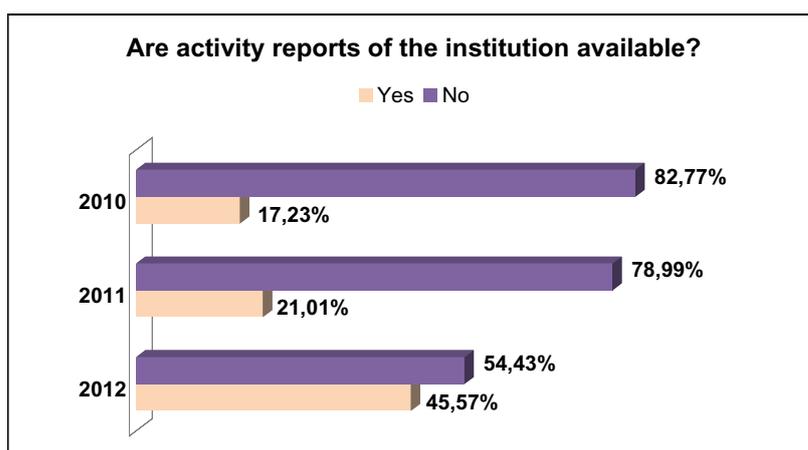
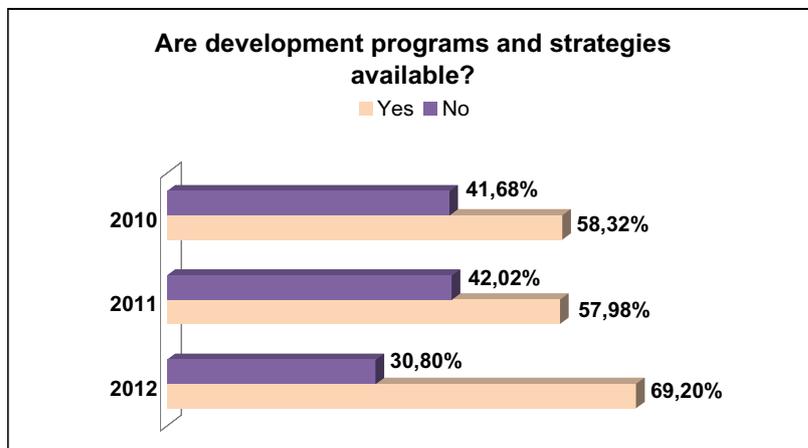
As far as the obligation for publication of the Municipal Council acts in the Internet is concerned, the level of implementation is very high.



We believe that the integration of internal information management systems and the attitude of opening the registers of the normative, general, and individual administrative acts of the municipalities to the public is a big step forward to the operational transparency of the public bodies in Bulgaria.

²⁶ According to Bulgarian general administrative law there are three categories of administrative acts: individual acts are administrative decisions with application to certain individual/individuals; general administrative act is a decision with application to unspecified number of individuals; administrative normative act applies to unspecified number of individuals multiple times i.e. it has the legal character of „rules.“

Development plans and strategies have always been actively and well communicated, in contrast to the activities reports of an institution. This tendency is preserved in 2012 as well, although we have to take in consideration the increase in the activity reports disclosure with almost 24% compared to the 2011 results.



Financial and Other Transparency - contracts, budgets and financial reports, conflict of interests declarations

An important element of the active transparency is the publication of the budget and the financial reports of the public bodies. Moreover, the adoption of the budgets is in its essence a consultative process and includes public discussions, especially with regard to the municipal budgets which implies the participation of the interested parties.

In comparison to the 2011 results, the budget transparency has considerably increased - with 30%. The publications of financial reports have also increased with 20%. 13 ministries have published their budgets, and seven have published their financial reports. 35% of the municipalities have published their budgets, and 24% - their financial reports.

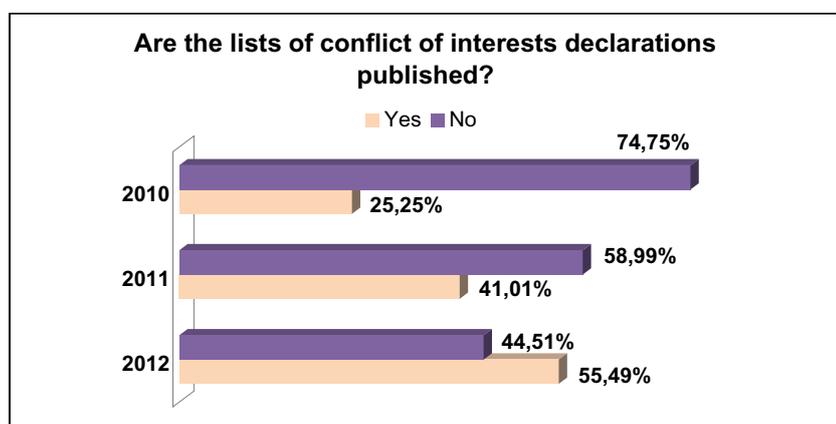
In spite of the considerable increase in the number of administrations which have published their budgets, which is a positive development compared to previous years, half of the administrative structures, including the municipalities, have not yet disclosed this information on their web sites.

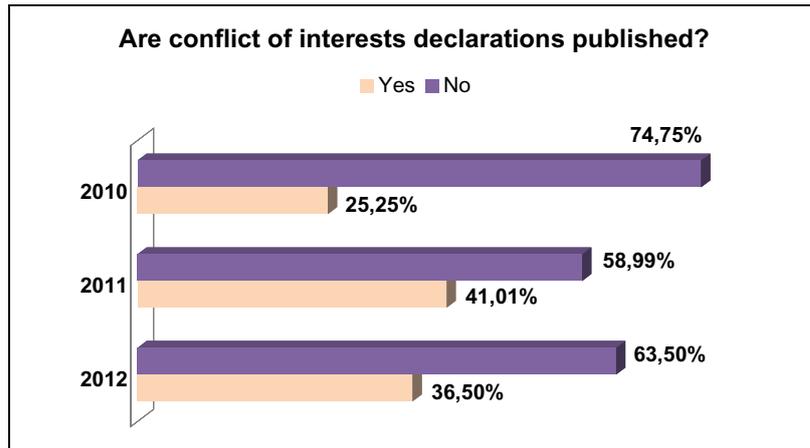
Regarding the transparency of the contracts of the public bodies, this continues to be sensitive information.

In 47% out of all audited Internet sites, a register of the public procurement bids have been published, but only 9% contained information about the contracted public procurements.

AIP experience in providing legal help in specific access to information cases shows that although most of the institutions send the legally required information about the public procurement and concession contracts to the central registers, they resist the provision of the contracts at a request.

With regard to the disclosure of the declarations under Art. 12 of the *Prevention and Determining of Conflict of Interests Act (PDCIA)*, the last year's tendency remains - there is an increase in the disclosure of the lists of officials who have submitted their declarations, but the level of disclosure of the declarations themselves decreases. This apparently is a result of the unclear requirement of Art. 17, Para. 2 of the PDCIA that the disclosure of the declarations should be in compliance with the *Personal Data Protection Act* and the subsequent interpretation of the Protection of Personal Data Commission. In some web sites, one can find a single declaration - of the official who has given their consent for the disclosure in the Internet.

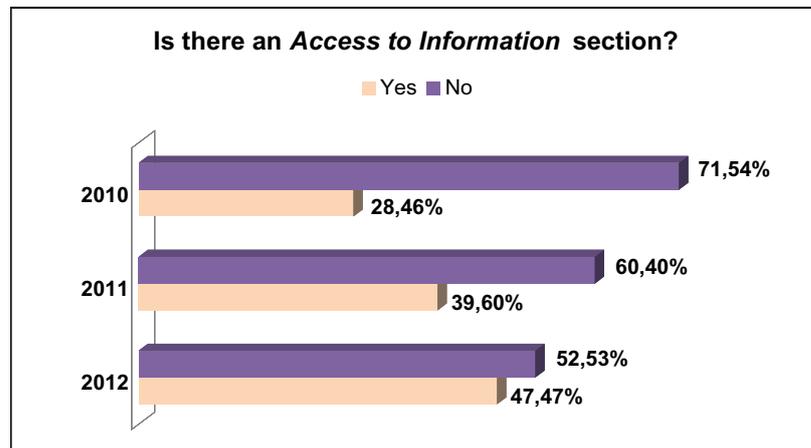




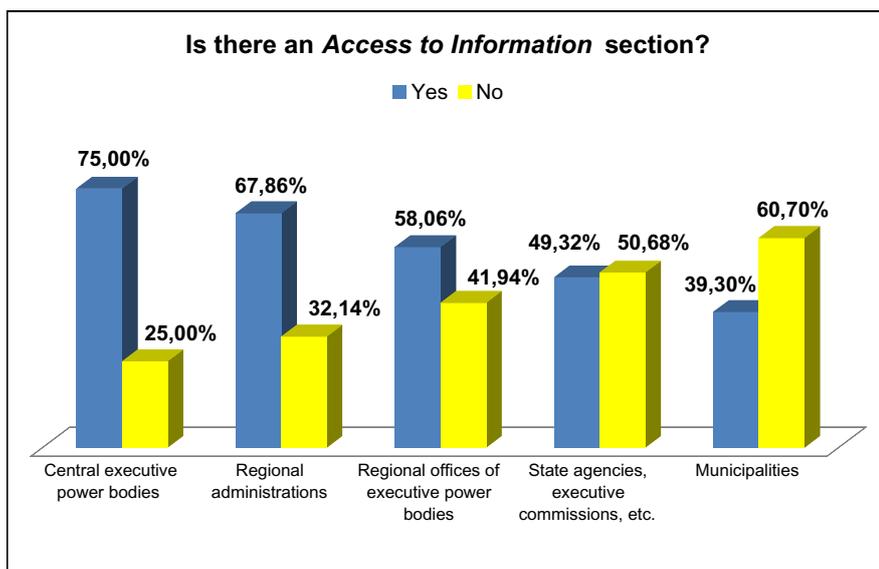
Access to Information Section

The Access to Information section has the purpose to facilitate and assist the requestors or information seekers by clarifying the process within the respective institution and describing the procedure for obtaining access to information, including the procedure for access to the public registers maintained by the authority. The section should also contain the name of the department responsible under the APIA; the official assigned under the APIA; the address, the phone number, and the working hours of the department (See Appendix 1, Charts 56-67). The APIA implementation reports should also be published in the section.

The audit results show that the process of creation of such sections on institutional web sites has been ongoing - the number of institutions having Access to Information sections has increased with 8%.



The results differentiated by types of institutions are the following:



Out of the central government bodies, 12 ministries have *Access to Information* sections in their web sites. The content is various. For instance, instead of the APIA implementation annual report, the *Access to Information* section of the Ministry of Justice contains the biannual activity reports of the Inspectorate at the Ministry.

Apparently, there is no correlation between the existence of an *Access to Information* section and the processing of access to information requests. Out of the 12 ministries having *Access to Information* sections, 4 ministries did not respond at all to the access to information request filed within the audit.

These are:

- Ministry of Justice
- Ministry of Regional Development and Public Works
- Ministry of Transport, Information Technology, and Communications
- Ministry of Labour and Social Policy

The following ministries do not have Access to Information sections:

- Ministry of Interior
- Ministry of Economics, Energy, and Tourism
- Ministry of Agriculture and Food
- Council of Ministers

With the exception of the Ministry of Economics, Energy, and Tourism, which did not provide the requested information electronically, all other ministries without *Access to Information* sections responded within the legally prescribed timeframe to the request filed within the audit providing information about the public registers maintained and the procedure for accessing them.

The Regional Administrations also create and maintain *Access to Information* sections. In 2012, 19 out of 28 Regional Administrations have sections and all of them responded to the request about the public registers they maintain.

Without sections are:

Regional Administration - Varna

Regional Administration - Vidin

Regional Administration - Kuystendil

Regional Administration - Pazardzhik

Regional Administration - Sliven

Regional Administration - Sofia Region

Regional Administration - Sofia City

Regional Administration - Targovishte

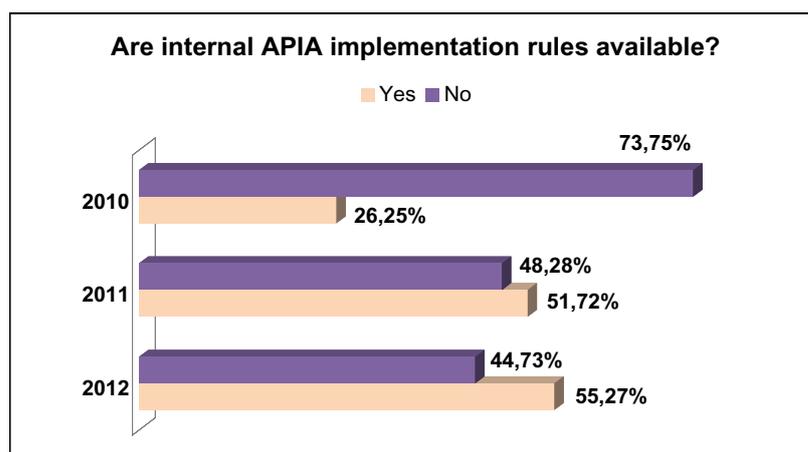
Regional Administration - Shumen (the latter did not respond to the request about the public registers maintained by the institution).

Content of the *Access to Information* sections

One of the most important elements of the section is the Internal Rules for the organization and management of the process for provision of access to information. AIP analysis and the recommendations with regard to the Internal Rules are part of this report.

It has been already mentioned that one of the first recommendations in the Council of Ministers' report *The State of the Administration* from 2011 is the continuation of the development of Internal Rules and explanatory information for the citizens on how to exercise their right of access to information within the respective institution.

The Internal Access to Information Rules have been drafted, adopted and published by a growing number of institutions.



The significance of actively disclosing these rules, however, has not been fully comprehended yet. Only in 67% of the reviewed web sites, the Internal Rules have been published in the *Access to Information* section. In the rest 33%, the rules are either part of the regulations for the work of the administration, or of the *Customer's Charter* and are published in sections which would hardly be found by information seekers not acquainted with the issue.

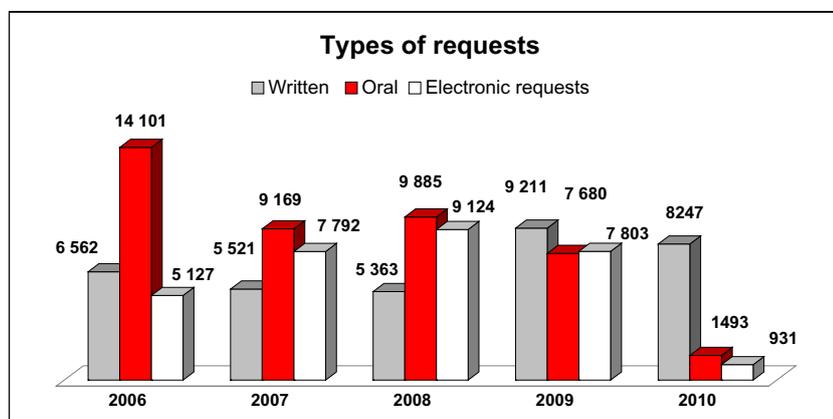
The percentage of the institutions which have published their APIA implementation reports is still low. Only 16% of the audited web sites contain these reports.

Still low is the percentage of the institutions which have published a description of the procedure for access to the public registers they maintain - 16%. One of the explanations might be that the online maintained registers are available in a separate section on the web site of the institution. However, in a few instances these lists, disclosed in a variety of formats, are accompanied by an explanation about the legal ground for their maintaining and about the procedure for accessing those registers which are not available online.

With regard to the obligation for the publication of the name of the department/official responsible under the APIA and their contact information, including the working hours, the situation has gradually been improving (See Attachment 1, Charts 56-67).

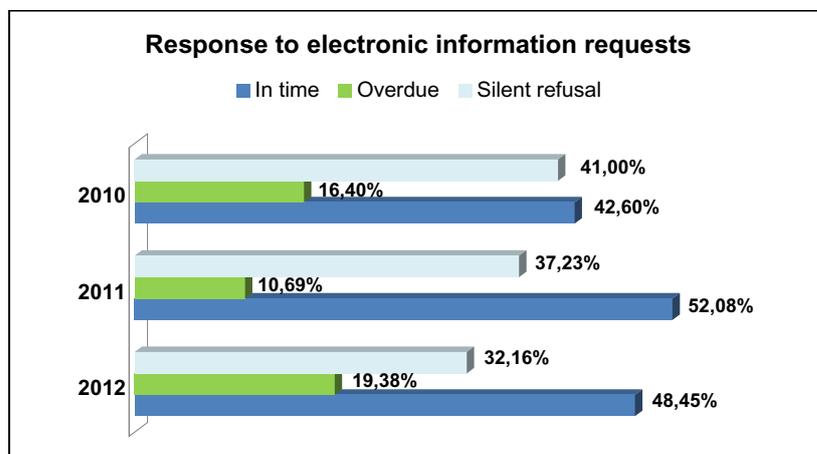
Electronic Requests

In 2012, AIP has filed electronic access to information requests as part of the audit of the web sites of the executive bodies. We have requested information on what public registers does the institution maintain and what is the procedure for access to them. We have presumed that such a request would not be of any difficulty to the APIA responsible official as the information should be published in the Access to Information section of the institutional web site. At the same time, it is high time that the procedure for accepting and responding to electronic requests was unified as in the course of several years we have observed different treatment of such requests and practices contradicting the APIA - an electronic signature is required from the persons filing electronic access to information requests. These contradicting practices resulted in the odd tendency of a decreasing number of requests filed electronically simply because no response is given to them. The chart below summarizes yearly data from the reports of the Minister of Administration, the Ministry of Administration and Administrative Reforms, and the Council of Ministers.



The Chart is based on data from the government reports *The State of the Administration 2007-2011*.

Although the percentage of the institutions which have responded to the electronic requests within the audit has increased from 62.77% in 2011 to 68.45 % in 2012, the percentage of institutions which have responded within the legally prescribed timeframe has decreased.



On the other hand, it should be noted that among those which responded to the request for access to public information, there were 13 responses sent within the timeframe but containing decisions for refusals of access to information. The grounds in most of those cases were that the electronic form of provision of information is not provided by the law. This does not correspond to the truth. Especially diligent in the grounding of their refusals were the Mayor of the Municipality of Blagoevgrad and the Director of the Customs Agency.

Such an attitude does not correspond to any strategies for electronic government and open government policies. Citizens have the right to file requests and obtain access to information electronically. The heads of executive bodies should have established the procedure under which this should be done. The procedure should not infringe the right of access to information guaranteed by the law.

In addition, out of all institutions which have responded - 236 in time and 96 overdue - only 273 responded electronically, the others responded by snail mail.

Active Transparency Rating of the Institutions Based on the Web Sites Audit Results and the Capacity to Respond to Electronic Access to Information Requests

In 2012, AIP made a qualitative assessment of the institutional web sites which resulted in the Active Transparency Rating. The capacity of public bodies to process and respond to access to information requests filed electronically, as well as the provision of requested information electronically, was also assessed.

The highest possible result for an institution which has fulfilled all the obligations for active disclosure is 60.5 points.²⁷

²⁷The Active Transparency Rating of 474 institutions is available in Bulgarian here: <http://www.aip-bg.org/surveys/Peimuhz/202921/>

The first 12 institutions which scored above 40 are listed below.

Municipality of Dobrich **52.0**

Ministry of Defense **49.0**

Ministry of Education, Youth, and Science **46.0**

Municipality of Dve Mogili **45.0**

Ministry of Finance **44.5**

Municipality of Gabrovo **43.7**

Regional Inspection of Environment and Waters - Blagoevgrad **43.6**

Municipality of Mezdra **42.7**

National Institute for Conciliation and Arbitration **42.6**

Municipality of Pirdop **42.5**

Municipality of Kozloduy **42.1**

Regional Inspectorate of Education - Silistra **42.0**

Findings and Conclusions

A great variety in the structure, content and the formats in which the information subject to mandatory online publication is uploaded has been observed. There is no unification of the institutional web sites, with the exception of those of the Regional Administrations and the Regional Health Inspections.

Apparently, few institutions have correlated the process of active disclosure of public information online with the establishment of internal teams whose responsibility is to determine the information mandatory for publication. This conclusion is also drawn on the basis of the review and analysis of the Internal APIA Implementation Rules of a number of public bodies.

A considerable progress is observed with regard to the active disclosure online of the public bodies' administrative acts. The online publication of the decisions of the municipal councils is high. There is an improvement with regard to the disclosure of the budgets, the online availability of registers, the services.

The process of creation of *Access to Information* sections and adoption of Internal APIA Implementation Rules by the public bodies has been ongoing.

There is no unification of the processing of electronic requests and the provision of information via electronic mail.

CASES REFERRED TO AIP FOR LEGAL ADVICE AND CONSULTATION

GENERAL CHARACTERISTICS

Provision of legal help is among the priorities in *Access to Information Programme* activities. That part of the annual report focuses on the cases referred to us for legal consultation by citizens, journalists, and nongovernmental organizations who have had difficulties exercising their right of access to information. In some of these cases, AIP has provided legal help at the initial phase of the search for information and the legal team has given advice and/or has prepared a request for access to information. In other cases, we have helped after a refusal for provision of information.

(See Appendix 2: *Statistics from the Data Base of Access to Information Programme 2011*).

Number of Cases Referred for Legal Help

The number of cases referred to AIP for legal help within the period January - December 2011 is **330**.

Depending on the characteristics and the legal qualification, three types of cases are identified:

- The majority are related to practices of non-fulfillment of the Access to Public Information Act obligations by public bodies - **257** instances;
- Next largest group of cases is related to violations of the right of personal data protection granted by the Personal Data Protection Act - **47** instances;
- In a few cases, we have given legal advice with regard to violation of the right to seek, receive and impart information - **15** instances, etc.

Most Active Groups of Information Seekers

AIP experience shows that most frequently the APIA is used by citizens, journalists and nongovernmental organizations (NGOs). In 2011, again the largest number of consultations was provided to citizens who had sought the assistance of AIP - **203** instances. In **80** cases, journalists and AIP coordinators (all of them journalists) from central and local media asked for legal assistance, while **34** cases were referred to AIP by NGOs.

From Which Public Bodies Do Information Seekers Mainly Request Information?

The number of cases in which information seekers request information from the central executive power bodies and the local self-government bodies (mayors and municipal councils) is the largest - **123** and **100** cases respectively.

Less frequently, information was sought from public-law organizations (**31**), regional units of the executive power bodies (**16**), public-law entities (**13**), from the judicial power bodies (**14**), etc. (See Appendix 2: *Statistics from the Data Base of Access to Information Programme 2011*).

Most Frequently Used Grounds for Refusal

In 2011, the highest number of registered refusals is that of the silent refusals - **32**. Out of the grounded refusals, the most are related to the third party interests' exemption (Art. 37, Para. 1, Item 2 of the APIA) - **18**; and the personal data protection - **15**. Eight are the refusals based on the trade secret exemption and 10 are grounded in the exception provided by Art. 13, Para. 2 of the APIA.²⁸

Specific Characteristics of the 2011 Cases

The continuing tendency of increase in the number of cases referred for legal help compared to the numbers of the previous two years remains. For example, in 2008, the number of cases was **235**, while in 2009 and 2010 the cases were **328** (the number was the same for the two successive years). In 2011, the number is even higher - **330**. The number of cases related to the exercise of the right of access to information has also been increasing - from **151** in 2008; **237** in 2009; **248** in 2010, to **257** in 2011.

In 2011, the number of citizens who sought AIP advice has also increased. In 2010, their number was **144**, while in 2011 it is **203**. More and more citizens, nongovernmental organizations and journalists refer their cases to AIP through the electronic mail. The number of written consultations provided by e-mail in 2010 was **137**, while in 2011 they are **219**.

SPECIFIC EXAMPLES

The specific practical examples illustrate how the APIA is efficiently used by citizens, journalists, and NGOs for making an analysis of important public events, for journalistic investigations, and even for finding a solution of every-day problems.

INFORMATION ABOUT PUBLIC ISSUES AND EVENTS

Journalistic Investigations on the Donations to the Ministry of Interior

In the end of May 2011, journalists from two national dailies - *SEGA* and *Dnevnik*²⁹ have sought information related to a disturbing practice in the work of the Ministry of Interior (MoI), namely the receiving of cash in the form of donations from private donors. The case deserves to be emphasized also because of the impressing persistency of the reporters from the two newspapers to use the APIA to obtain information about specific donations made to police departments in different regions of the country. The initial requests were

²⁸ The article provides that access to administrative public information may be restricted if it:

1. relates to the preparatory work of an act by the bodies, and has no significance in itself (opinions and recommendations prepared by or for the body, reports and consultations);
2. contains opinions and statements related to on-going or prospective negotiations to be led by the body or on its behalf, as well as any data relating thereto, and was prepared by the respective bodies' administrations.

After the 2008 amendments to the APIA an assessment should be made considering the overriding public interest.

²⁹ Journalists from *Dnevnik* and *Mediapool* sought AIP expertise and advice on this case.

filed to the Minister of Interior. Subsequently, the ministry referred the requests to the Regional Police Departments of the MoI. Then, the reporters had to travel hundreds of kilometers to different parts of the country during the summer to receive the information which was valuable not to them, but to the public as it contained data about the received donations.

The revealed information triggered a huge debate on the permissibility of private donations to the MoI which resulted in reforms. Pushed by the grounded criticism that private donations create grounds for conflict of interests and undermine the public trust in the police, the Minister of Interior adopted guidelines for accepting donations. An online National Donations Register was launched on the web site of the Ministry.³⁰

Members of Parliament Declarations Related to Political Parties' Subsidies

In July and August 2011, a public debate was held in the media about the transparency of political parties' financing from the state budget. In the Political Parties Act, there is a norm providing that the state attributes subsidies to the parliamentary represented parties on the basis of their seats in the Parliament. The sum attributed to each MP is defined by order of the Minister of Finance. Therefore, the question was to which parties the 17 independent MPs sent their attributed subsidy. Three different media journalists - one TV (Victoria Petrova from *bTV*), another from a radio station (Ilia Valkov from *Darik Radio*) and the third from a print media (Pavlina Zhivkova from *Banker* weekly) filed similar requests for access to copies of the MPs declarations by which they had declared to which parties their subsidy should be attributed. The ground for the journalists' requests was the public interest in knowing the political party preferences of each of the independent MPs. In practice, the MPs can attribute their subsidy to a certain parliamentary group by only declaring belonging and not necessarily joining it.

The Ministry of Finance rejected on the ground of *personal data protection*. The three denials were appealed in court. The court has ruled on two of the cases judging in favor of the journalists, stating that the requested information did not constitute personal data. In the meanwhile, the National Assembly assigned to the National Audit Office to find out if the allocation, receiving, and spending of state subsidy to the parties to which the independent MPs had declared belonging was lawful.

Information About Public Officials Remunerations

Information about the money received by public officials is often of interest to journalists and citizens. In the beginning of 2011, the citizen Mr. Ivan Dzhabirov filed a request to the National Social Security Institute (NSSI), demanding access to information about the amounts paid to the NSSI officials as *additional material stimulus*. Pursuant to the Social Security Code, 15% of the money collected by the NSSI through material sanctions imposed during completed inspections should be paid to the NSSI officials in the form of *additional material stimulus*. The citizen demanded the total amount of the sum, paid to the NSSI officials beyond their labor remunerations, for *additional material stimulus* for 2009 and

³⁰ http://www.mvr.bg/NR/rdonlyres/2E17C42A-FCCD-49FE-90A7-82319C400D83/0/Darenia_MVR_godishen_update.pdf

2010. The Governor of the NSSI did not respond within the legally prescribed period and the refusal was appealed. The Administrative Court - Sofia City repealed the refusal and Dzhabirov received the information in the midst of the public scandal about the distribution of bonuses within the state institutions.

Consumers' Type of Information on the Prices of Central Heating

The APIA may successfully be used in order to achieve better protection of consumers' rights. The continuous increase in prices of electricity and heating is the occasion on which the lawyer Stoyan Terziiski filed a request to the State Energy and Water Regulatory Commission (SEWRC). He sought access to documents connected with a 2008 decision for raising the prices of energy, including the minutes of the discussion in the commission and the submissions of the heating companies who actually proposed the change. The latter information was denied on grounds of the protection of third party's interests - the energy companies which in fact are in dominant position. The Administrative Court - Sofia City repealed the refusal and compelled the Chairman of the SEWRC to grant full access to the information. The court emphasized that the requestor, as well as any consumer, are entitled to know if and how the Regulatory Commission guarantees the principle of the fair balance between the conflicting interests of consumers' and energy companies. The lack of transparency in determining prices prevents the citizens from their right to know that this determination was based on objective criteria. The court went further by ascertaining that provision of this information is the only way to ensure the principle of transparency in determination of prices.

ACCESS TO INFORMATION AND 2011 ELECTIONS

Transparency of Elections is the ultimate criteria for assessing whether the principles of democracy, the rule of law, the public order and the rights of voters have been respected. The case referred to AIP for legal help and comment related to this topic reveal the main problems and give tips what should be done to enhance greater transparency. In the autumn of 2011 Bulgaria held presidential and local elections.

Publicity of Meetings of the Central Electoral Commission (CEC)

Within the framework of the public campaign of the nongovernmental organization Institute for Public Environment Development, it advocated for the publication in the Internet of the minutes of the meetings of the Central Electoral Commission in order to ensure transparency of decision-making process. According to the stakeholders, publicity is the only way to gain the voters' trust that the Commission took the best decision based on convincing arguments. The CEC remained deaf to this call for more openness. Therefore, the Institute for Public Environment Development filed a request for access to the minutes of key meetings. The CEC formally refused access on the ground that the minutes contain opinions and relate to the ongoing work of the Commission and have no significance in themselves. With the assistance of AIP, the NGO appealed the refusal before the Supreme Administrative Court.

Media coverage of the Elections

At the second round run-off of the local and presidential elections, a journalist from *Lompress* daily was summoned before the regional police department and was handed-in an order prohibiting her to photograph near the regional electoral commissions and to approach the premises of the sitting of regional electoral commissions. According to eye-witnesses, in some electoral sections an undue pressure was exercised over voters. Allegedly, voters had been transported to the electoral section, instructed to vote for specific candidate and their presence had been recorded on printed-out list of names. The journalist alerted the police officers but they did not take any steps to prevent the misconduct. Afterwards, she succeeded to take pictures of this mechanism - she photographed some of the persons and part of the list of names. An hour later, she was called to make depositions at the police station. As a result she was handed the prohibiting order. In practice, the order hindered her right to do her work as a journalist and disseminate information about the election process. With the AIP help, the journalist filed a complaint against the order as unlawful to the Regional Police Department. Two weeks later the head of the police department rejected the complaint. The order was then challenged before the Administrative Court - Montana. The court set aside the order signifying that such measure unproportionally interfered with fundamental rights such as the right to freely receive and impart information, the right to independent journalism and the freedom of media.

CHANGE OF PRACTICES

DISCLOSURE OF INFORMATION AFTER CHANGE OF GOVERNANCE/RESTRUCTION

Our experience through the years enabled us to draw some conclusions and trends in the provision of information practices. One is that the new governance (regardless whether it is new Legislature, Executive or Head of State) is more disposed to provide information related to the previous government at the beginning of the term, or to release information that was persistently kept secret for different reasons. For example, in the case of change of the Executive, the new Government provided information about the repair works of the cabinet of the former Prime Minister; a new Mayor would provide access to documents tenaciously kept hidden by the predecessor, etc. Over the last year again we became witnesses of such practices.

The New President Provided the Guest List of Official Receptions

Mr. Krum Blagov, a journalist, requested from the President's Administration the list of persons invited as guests to three official receptions held by the President. More precisely, he demanded access to the guest lists for Christmas (December 2009), for the National Holiday of Bulgaria (March 3, 2010), and for the Day of Bulgarian Education and Culture (May 24, 2010). According to the media, the receptions were attended respectively by 3,000 and 5,000 people. It was unclear in what capacity some of the guests were invited. Although the receptions were widely covered by the media (which reflects the presence of public interest) and despite the fact that the receptions are funded by the state budget,

access to the information was denied on the ground of personal data protection. The refusal was challenged before the court, the case was heard at two instances but they did not result in disclosure of information. After the Presidential Elections, the journalist filed a new request for the same information to the new administration. The Presidency provided the lists of guest to the last four presidential reception and a list of the invitees to the first reception held by the new President. The names of private individuals have been given only with their initials.

Disclosure of Information on Pardons Granted

The granting of pardons during the two successive mandates of the President Georgi Parvanov provoked a heated debate in 2010 although the interest in transparency of this process came across earlier. For the first time, the issue has been raised in 2009 when the journalist Luben Obretenov (*Sega* daily) filed an access to information request for the names of the members of the Pardon Committee and the names of the persons to whom pardon was granted in 2008 and 2009. The Chief Secretary of the President refused to provide access on the ground of personal data protection. Immediately after the inauguration of the new President, the journalist Dorothea Dachkova with the AIP legal support filed a new request for the same information. She was granted access to the number of pardons issued, the grounds for each pardon, initials of the pardoned persons, and the Rules of Procedure of the Pardon Committee. The disclosure resulted in a number of media publications which triggered a large public debate on the process of granting pardon.

The Bulgarian Food Safety Agency Provided Information on the Activities of the Former National Veterinary Service

The Bulgarian Food Safety Agency (BFSA) provided access to information sought by Ms. Vania Hristova from the former National Veterinary Service (NVS). With a request filed in the beginning of 2011, she requested information about an inspection carried out by the NVS authorities in a dog shelter in the town of Pleven, managed by an *Association for the Protection of Animals - Pleven 2008*. More precisely, Hristova demanded the protocol from the inspection, the directions given on the base of that inspection and an order for stopping the activity of the shelter. The subsequent silent refusal was challenged in court. In the meantime, the NVS was closed and the BFSA was constituted as a party of the litigation being a successor of the NVS. The Administrative Court - Sofia City repealed the silent refusal with a decision as of May 2011, and returned the request to the BFSA for delivery of a decision. Right after the court decision, the Agency granted access to all of the requested information.

BREAKTHROUGHS

In 2010, several cases supported by AIP ended successfully in different areas where traditionally access to information is tough. They relate to information sought from the Prosecution Office and information on the implementation of projects. We present two cases which are breakthroughs.

Nearly 7,000 Pages Project Documentation Provided Under the APIA

The request was filed by a group of active citizens in the town of Lovech. They were interested in the massive construction works and improvements of the infrastructure in the town. It came clear that the repair works are financed under the project *Improvement of the Physical and Vital Environment in the Municipality of Lovech* financed by the EU Operational Programme „Regional Development“ 2007-2013. The funds amounted to nine million BGN for a period of 20 months. However, this information was insufficient to Ms. Yanita Nesheva who was determined to find out exactly how the allocated funds have been spent by submitting an access to information request. She was consulted by AIP legal team and filed crossed requests to the Municipality of Lovech and to the Ministry of Finance. She sought access to the contracts signed within the project, tender procedures, reports on the project implementation, etc. After several months of official correspondence and specifications the Ministry of Finance granted full access to the documents. They provided nearly 7,000 pages (in electronic form) of documents relating to the project among which contracts pursuant to public procurement procedures, technological documentation, certificates of commissions, reports of inspections carried, etc.

Access to Document of the Prosecution Office

In 2011, there was a new tendency to open prosecution authorities' documents to the public upon request. In August 2011, the Deputy Sofia City Prosecutor disclosed documents of check-up related to the Chairman of the District Court of Haskovo on the request of two journalists (Rosen Bosev from *Capital* weekly and Mirela Veselinova from the *Legal World* magazine). The judge was a candidate for a Chairperson of the newly created Specialized Criminal Court (which is competent to hear cases of high public interest as they relate to organized crime). The inspection revealed malfunctioning of the court of Haskovo and violations of the principle of random allocation of court cases (cases of important pecuniary interest were allocated to the Chairman) and often his rulings lacked reasoning and grounds. The documents were subsequently published by the journalists on the website of the *Legal World* magazine.

In late September 2011, the Prosecutor General's Office disclosed an inspection report on a request of the Bulgarian Institute for Legal Initiatives (BILI). It reconsidered its previous denial of the same information only few days later, following the AIP argument adduced by BILI in informal way by e-mail that the court had already declared the denial of such information unlawful in 2010 and that the prosecution office disclosed not less sensitive information in August 2011 (the above described one). It was also argued that the Inspectorate to the Supreme Judicial Council published such reports on its website (but this specific one was not carried out by the Inspectorate so it had to be requested pursuant to the APIA). Based on information collected through the APIA and public registers BILI

maintains a special website³¹ called „Transparent Judicial Appointments Initiative“ which contains the profiles of magistrates who are candidates for administrative chiefs within the judiciary.

GOOD PRACTICES OF PROACTIVE ONLINE PUBLICATION OF INFORMATION

The Public Financial Inspection Agency Started to Publish Online Results from Audit Reports

The Public Financial Inspection Agency (PFIA) started to publish online the results from its from financial inspections and audits. According to amendments to the State Financial Inspection Act which came into force in August 2011, the PFIA is required to publish reports on the audit results till the 10th of each month. The PFIA provides also a summary of data from the reports on the number of infringements, amount of deficiency in accounts caused by wrongfully caused damages. The PFIA also publishes results from audits of public procurement procedures. The former regime of access provided only for the possibility to receive documents pursuant to the APIA. This was not an adequate solution having in mind the importance of the PFIA audits and findings. The Agency is auditing the spending of public funds from the state and municipal budgets and from the European funds and programs. The results of financial audits and inspections are of a serious public interest. Therefore, the online publication of audit results is an important step guaranteeing the standard of transparency of the Agency's activities and the opportunity for the public to get acquainted with them promptly.

The National Audit Office Launched the Unified Public Register for Elections Participants

In early 2011, the new Electoral Code came into force and established an Unified Public Register For Elections Participants. The register contains a list of donations (name of donors, amount, purpose), origin of the funds, list of natural personal providing *pro bono* services for the party and type of the services provided.³² Thus, the information on financing of elections campaigns is easily accessible by everyone. Financial statements on incomes and expenditures for the election campaign shall be submitted to the National Audit Office within 30 days after the Election Day.

Information on Case-law and Courts' Databases

From several years now, the courts have websites and searchable databases of court cases. Article 64 of the Judiciary Act requires the courts to publish online the decisions in due course. As a consequence, the access to information about court cases has been greatly facilitated. During the last year, we have observed new positive developments in the area of proactive publication by administrative courts. For example, besides information on scheduled hearings, some courts also publish the minutes of the court hearing and other acts of the court (Administrative Court - Sofia City, Administrative Court - Burgas, Administrative Court - Smolyan).

³¹ <http://judicialprofiles.bg/pages/terms/>

³² <http://erik.bulnao.government.bg/RegDonors/>

PERSONAL DATA PROTECTION

In 2011 again, the protection of personal data was the subject of some of the cases referred to AIP for legal help and consultation. The people who addressed AIP for assistance in the area were both citizens whose rights were infringed and personal data administrators who needed advice on how to correctly apply the requirements under the Personal Data Protection Act (PDPA). In the current report we would like to pay attention to two specific topics in the protection of the personal data which had been commented by the AIP legal team.

Protection of Personal Data in Street Video Surveillance

Analysis of problems related to Video Surveillance and personal data was part of the last year's report. Then the problems were related to the processing of data collected via CCTV positioned at public places for security purposes. In 2011, the lawfulness of collecting and processing data collected from CCTV was a topic of discussion again. The context was a little different though. AIP legal team was addressed by journalists from the private *TV7* to comment on the following case: A private company sells specialized equipment for secret surveillance - spy cameras, listening and tracking devices, etc. The company has an Internet site showing the efficiency of the equipment. Spy cameras were installed at several public places in Sofia, streaming live images of people and buildings. The testing software allows for a big zoom of the cameras without any blur options which gives the possibility to recognize the passing-buyers and even images in the windows of the targeted buildings. A reasonable question in this case was if the live streaming including real time images of people and vehicles was a violation of the provisions of the PDPA.

In the summer of 2011, the Commission for Personal Data Protection was addressed with a request for an official statement on a similar case by the *Google Ireland Ltd.* The Commission was requested for interpretation of the PDPA with regard to the future plans of the *Google Ireland* to collect street images in Bulgaria for the purposes of the product *Street View*. The images would be uploaded in Google Maps and would be accessible to the customers from all over the world. The images are to be taken by a camera installed at the roof of a car driving in the streets.

In its statement³³ No. 3949 as of October 4, 2011, the Commission for Personal Data Protection assumes that in order for the provisions of the Bulgarian personal data protection legislation to be fulfilled, the administrators should inform the public about the dates of the shooting, the length of the shooting, the schedules and the routes, as well as the places where the cameras would be used. The administrators are also obliged to inform the public about the type of the data that are going to be collected, the rights of the physical persons with regard to the processing of their personal data (right of access to information, of objection, the possibility for removing and deleting images, as well as the means by which they could exercise their rights). Furthermore, measures for blurring the images of physical persons should be taken, especially at places falling under special regime under Art. 5, Para 1 of the PDPA like: religious temples, hospital/clinics, headquarters of political parties, public places which would reveal the sexual orientation and/or the interests of certain physical bodies. The images of physical bodies taken in these specific cases should be completely blurred.

³³ The text of the Statement (in Bulgarian) is available on the CPDP web site:
http://www.cpdp.bg/index.php?p=element_view&aid=670

Protection of Personal Data in TV Games, Lotteries, and Direct Marketing

Out of the cases referred to AIP for legal help, several frequent violations of the PDPA related to the personal data processing for the purposes of TV games, lotteries, and direct marketing.

The Administrator of Personal Data is Not Always Known

Citizens should be able to unambiguously identify who approached them which is sometimes difficult. In one of the cases referred to AIP for legal help, a citizen has received an sms on his mobile phone with offers to take part in a TV game. Simultaneously, an advertisement was going on one of the TVs for the same lottery game. It was not clear which is the legal entity behind that game, consequently, it is not clear who is the data processing administrator. The sms recipient has to guess if it is the TV itself, an advertising company, or a production house.

Personal Data Processed After the Expiration of the Initially Announced Time Period

The above case is an example of violation of another provision of the PDPA. It turned out that the citizen had taken voluntarily part in another game providing his Unified Personal Number. Apparently, the data had been saved for future games. Thus, the provision of Art. 2, Para. 2, Item 2 of the PDPA was violated. It obligates the administrators to process collected data for specific, precisely defined, and legal purposes. After that the data should be deleted.

Physical Persons Targets of Unsolicited Commercial Communications Are Not Always Informed About their Right to Refuse to Receive Such Communication

Interesting is the case when the X Bank used data from a public register to offer its bank services. The bank copied the registers of lawyers from the web site of the National Bureau for Legal Help (three names, registration number in the Sofia Bar Association, address, and phone number) and sent out personal letters to the lawyers offering them a deposit program. One of the recipient lawyers took this approach as unlawful use of his personal data by the bank since he had not given consent for such processing. He addressed the Commission for Personal Data Protection. The Commission assumed that the provision of Art. 34a of the PDPA is violated. The bank, in its capacity of personal data controller had processed the data of the targets of its direct marketing without informing them for their right to refuse commercial communications as required by the provision of Art 34a, Para. 1, Item 2 and Para. 2 of the PDPA. The case was also heard by two instances in the court. The justices upheld the arguments of the Commission. In their Decision No. 15546 as of November, 25, 2011, a Five-member panel of the Supreme Administrative Court emphasized that the data used by the bank had been taken from a public register but nevertheless the data processing should be in compliance with the requirements provided by the Personal Data Protection Act. The condition for processing the data as provided by Art. 4, Para. 1, Item 7 of the PDPA had not been present, thus the bank had unlawfully processed the data. The court also emphasized that in order for the requirements of the PDPA to be fulfilled, it was enough that the personal data administrators informed the citizens about their right to object against the processing of their data.

LITIGATION

STATISTICS

The legal team of AIP has continued to provide legal assistance to citizens, nongovernmental organizations, and journalists bringing cases of information refusal to the court. In 2011, AIP legal team prepared 73 complaints and written defenses on behalf of information seekers - 42 - in cases of citizens, 12 - of non-governmental organizations, 18 - of journalists, and one on behalf of a private company.

In 2011, AIP legal team prepared **53** complaints. Out of this number, the complaints submitted to a first instance court are 31 (Supreme Administrative Court (SAC) - 2, Administrative Court - Sofia City (ACSC) - 20, administrative courts in the country - 9). The court appeals are 11 and the rest 11 are appeals against court rulings.

Out of the **31** complaints filed to the first instance court, 22 were against explicit refusals of access to information, and 8 were against silent refusals. In one of the cases, the complaint is against the authority's omission to act pursuant to Art. 256 of the Administrative Procedure Code (APC).

In 2011, AIP provided court representation in **59** cases in which access to information had been denied. AIP legal team prepared **20** written defenses in court cases assisted by the organization.

Seventy-seven court decisions and rulings were delivered on cases assisted by AIP (Supreme Administrative Court - 38; Administrative Court - Sofia City - 26; administrative courts in the country - 13). In 44 cases, the court ruled in favor of the information requestors, while in 33 in favor of the public authorities.

EXTENDED SCOPE OF OBLIGED AUTHORITIES

In 2011, important case-law on the extended scope of obliged body (pursuant to the 2008 APIA amendments) has been delivered. It should be noted that the ACSC ruled that the Chamber of Architects and the community centers (chitalishte) are obliged bodies under the APIA, although both authorities argued the opposite. Subsequently, the SAC overturned the first instance decision on the Chamber of Architects case, but the decision about the community centres was not appealed and became final.

With decision³⁴ as of December 22, 2012 the ACSC repealed a refusal of the Chamber of Architects. According to the court, the Chambers of Architects and Engineers of Investment Design Act vested the authority with public functions. Therefore, the Chambers are obliged body within the meaning of body subject to public law (public law entity) pursuant to Art. 3, Para. 2, Item 1 of the APIA. On December 22, 2011 the SAC overturned the first instance decision holding that the Chambers of Architects are public law entity within the meaning of the APIA because of the aim which they pursue and the funding they receive.

³⁴ Decision No. 4374 as of December 22, 2010 of the ACSC, Second division, 27th panel, adm. case No. 6720/2010.

With decision³⁵ as of October 12, 2011 the ACSC repealed the silent refusal of the Chairperson of Rayna Knyaginya Community Center in Sofia. According to the court, the community centers are obliged bodies under the Art. 3, Para. 2, Item 2 of the APIA being legal entities with activities funded from the state and/or municipal budget. Therefore, the Chair of the community center, as legal representative of the community center, is required to issue an explicit decision upon access to information request.

In 2011, the SAC, considered several cases as a second instance against the *National Electric Company* (NEC). The cases were brought in 2010 by the *Green Policy Institute Foundation* and the *Institute for Market Economics*. In the end of 2010 and the beginning of 2011, the ACSC terminated all proceedings, ruling that the company was not obliged body under the APIA. Unfortunately, almost all first instance rulings were upheld by the SAC. However, the supreme magistrates repealed one ruling of the first instance court assuming that the National Electric Company was a body obliged to provide information, and more specifically, information about the construction of the project Nuclear Power Plant Belene since the company receives funds from the consolidated state budget for the implementation of the project for the construction of the new nuclear power plant.

With a ruling³⁶ as of May 16, 2011 the SAC repealed the first instance decision for termination of proceedings brought by the *Green Policy Institute Foundation* against the *National Electric Company* (NEC). The NGO sought access to the loan agreement between the NEC and the BNP Paribas for the amount of 250 million Euros for the construction of the NPP *Belene*. In January 2011, the ASCS as a court of first instance ruled that the NEC is not an obliged under the APIA body, therefore terminated the proceedings. The SAC, though, found that the NEC is obliged under the law since the company receives funds from the consolidated state budget for the implementation of the project for the construction of the new nuclear power plant (Ministerial decree No. 259/27.10.2008). The SAC referred the case to the ACSC for judgment. The ACSC dismissed the case on the merits holding that even if the NEC was obliged body the requested information itself was not public within the meaning of the APIA since it was not of the nature to enable the citizen to make personal opinion on the activities of the obliged authority.

Overriding Public Interest

Access to Contracts and Other Commercial Information

In 2011, in several cases, supported by AIP the courts found overriding public interest (introduced with the 2008 APIA amendments) in disclosing the information sought and repealed refusals of the public authorities on this ground. AIP noted that during 2011 the balance of interests and the assessment of the presence of public interest were considered mainly by administrative courts in the country. Twice the Administrative Court - Lovech repealed the refusal of the Mayor to provide access to contracts between the municipality and private companies. The Administrative Court - Smolyan repealed the Mayor's refusal to provide information on the costs of two municipal contracts.

³⁵ Decision No. 4642 as of October 27, 2011 of the ACSC, First division, 16th panel, adm.case No. 4092/2011.

³⁶ Ruling No. 6740 as of May 16, 2011 of the SAC, Fifth division, adm. case No. 3129/2011

With a decision³⁷ as of December 29, 2010, the Administrative Court - Lovech repealed the refusal of the Mayor to provide access to the contract between the municipality and a private company for the repair works of the respite care facility in town. The Mayor grounded his refusal on the fact that the information sought is protected as trade secret and affects third parties who did not consent to the provision of information. The Court found that this consent was not to be solicited since the third party was also required to provide information because it received funds from the municipal budget. The Court emphasized on the presence of overriding public interest in the disclosure of the information.

With a decision³⁸ as of February 2011, the Administrative Court - Lovech repealed the Mayor's refusal to provide a copy of the contract between the Municipality and a private company for the construction and maintenance under the project *Improvement Of The Physical And Vital Environment In The Municipality Of Lovech* financed under Operational Programme „Regional Development“ 2007-2013. The court refuted the arguments that the information was protected as trade secret and held that even if this was the case the Municipality should have assessed the overriding public interest. According to the court, such is undoubtedly present when it comes to public procurement contracts.

With a decision³⁹ as of June 16, 2011 the Administrative Court - Smolyan repealed the Mayor's refusal to provide information on contracts for waste management and waste treatment. The court emphasized that the APIA established a legal presumption of overriding public interest in the disclosure of the requested information.

Revealing Wrongdoings

In two cases the court repealed refusals to provide information on the ground of overriding public interest when the information aimed at revealing wrongdoings.

With a decision⁴⁰ as of January 10, 2011, the ACSC repealed the refusal of the Chief Secretary of the Ministry of Economy, Energy, and Tourism to provide full access to a report on the substitution (with not licensed and not enough risk protected fuel) of nuclear fuel in the Nuclear Power Plant *Kozloduy*. The Court found that there was overriding public interest in the disclosure since the report focuses on specific facts revealing the presence or lack of correction scheme for the replacement of fresh nuclear fuel with recycled.

With a decision⁴¹ as of June 1, 2011, a five-member panel of the SAC upheld the decision⁴² of a three-member panel as of February 2011 repealing the refusal of the Ministry of Agriculture and Food to provide information on the licensing for the selection of the breed Bulgarian Shepherd Dog. The nongovernmental organization *International Association Karakachan Dog*, town of Plovdiv, requested information about the application procedure

³⁷ Decision as of December 29, 2010 of the Administrative court - Lovech, adm. case No. 197/2010.

³⁸ Decision as of February 16, 2011 of the Administrative court - Lovech, adm. case No. 196/2010.

³⁹ Decision No. 195 as of June 16, 2011 the Administrative Court - Smolyan, adm. case No. 169/2011.

⁴⁰ Decision No. 109 as of January 10, 2011 of the ASCS, Second division, 30th panel, adm. case No. 2889/2010.

⁴¹ Decision No. 7619 as of June 1, 2011 of the SAC, five-member panel, adm. case No. 4389/2011.

⁴² Decision No. 2139 as of February 11, 2011 of the SAC, Fifth division, adm. case No. 2342/2010.

for a license for the selection of the breed by another non-profit organization *Bulgarian Cinologic League for Bulgarian Shepherd Dog*, town of Montana. With a decision as of February 2011, a three-member panel of the SAC repealed the refusal of the minister in its part where the complete license application documents submitted by the *Bulgarian Cinologic League for Bulgarian Shepherd Dog* were refused. In their judgment, the justices signify that the public debate for many years on the question if the recently registered breed Bulgarian Shepherd Dog was different or identical to the breed Karakachan Dog clearly emphasize the existence of overriding public interest in the disclosure.

Access to Information - Access to Documents

Although in recent years significant case-law was established that pursuant to the APIA one may seek access to information and/or access to a specific document (as the document contains information but in specific form), in 2011 the court had to repeal twice the refusals of the public authorities grounded in the fact that the requestor sought a specific document.

With a decision⁴³ as of February 23, 2011, a five-member panel of the SAC obliged the Minister of Interior to provide the information sought by the citizen William Popov from the former Ministry of Emergency Situations. He requested a copy of the contract for the design, construction, and maintenance of the Aerospace Observation Center between the Ministry and a private company - „Kontrax.“ Access was denied on the ground that pursuant to the APIA, a requestor may only seek access to information but not access to documents. The Court held that *the obligation for provision of the information does not depend on the material carrier. The material carrier of the information - in the specific case - a document, was not being requested for its material subject but for its information content.* This is the third decision of a five-member panel of the SAC since the adoption of the APIA in 2000 emphasizing that it is irrelevant for the obligation of the authority to provide information whether the requestor has formulated a request for access to information or to a specific document.

With a decision⁴⁴ as of July 7, 2011, the ACSC repealed the refusal of the Sofia Chief Architect to provide a list of documents contained in a file relating to order prohibiting a construction. According to the Chief Architect, the request was not valid under the APIA as it aimed at the provision of a document as a material carrier of the information. The court ruled that the obligation for provision of the information does not depend on the material carrier.

Access to Information and Personal Data Protection

During 2011, AIP supported several cases where the administration refused access to information on the ground of personal data protection. In two cases, the court repealed refusals to provide the names of members of committees. The first case was about the list of persons, invited as guests to three official receptions held by the President. Also, the

⁴³ Decision No. 2761 as of February 23, 2011 of the SAC, five-member panel, adm. case No. 13930/2010.

⁴⁴ Decision No. 3317 as of July 5, 2011 of the ACSC, Second division, 22nd panel, adm. case No. 3009/2011.

³⁹ Decision No. 195 as of June 16, 2011 the Administrative Court - Smolyan, adm. case No. 169/2011.

refusal of a ministry to provide information whether additional benefits were allocated to the civil servants was repealed. Three identical cases were initiated against the refusal of the Ministry of Finance to provide information on the allocation of state subsidy attributed to independent Members of Parliament (MP).

With a decision⁴⁵ as of April 14, 2011, the ACSC partially revoked the refusal of the Chief Secretary of the President to provide information about the names of the members of the Pardons Committee and the names of the persons to whom pardon was granted in 2008 and 2009. The ACSC repealed partially the refusal, assuming that the Chief Secretary of the President should disclose the names of the members of the Pardons Committee, while information about the names of the pardoned persons should be provided but without data identifying these persons. The Presidency appealed the first instance decision. The case was scheduled for hearing at an open court session on May 28, 2012.

With a decision⁴⁶ as of April 21, 2011, the ACSC repealed the refusal of the Ministry of Justice (MoJ) to provide information about the names and the positions of the members of the Ministry of Justice Committee which evaluated the projects submitted by non-profit legal entities applying for funding from the 2010 state budget. The court signified that the requested information could not be defined as personal data since the disclosure of the official position of the persons did not contain identification data about their personal lives.

With a decision⁴⁷ as of June 13, 2011, the ACSC repealed the refusal of the Chief Secretary of the President to provide the list of persons invited to three official receptions held by the President. More precisely, he demanded access to the guest lists for Christmas (December 2009), for the National Holiday of Bulgaria (March 3, 2010), and for the Day of Bulgarian Education and Culture (May 24, 2010). In response, the Chief Secretary of the President granted access to information only about the persons holding high government positions and refused to disclose information about the others, arguing that their names were subject to protection under the Personal Data Protection Act. The refusal was challenged before the Administrative Court - Sofia City with the support of AIP. The court repealed the refusal, assuming that the President's Office should have also provided to the journalist the list of those guests who did not hold high government positions, as well as information about the capacity in which they were invited. The court panel emphasized that the receptions held by the President were covered by all media which resulted in maximum transparency and respectively there is an overriding public interest in the disclosure of the information. Subsequently, the SAC overturned the first instance court decision holding that the overriding public interest test does not apply to personal data exemption. Despite the overruling, the new President (as of October 2011) provided the list of attending persons and the private ones were only identified by their initials.

With a decision⁴⁸ as of October 23, 2011, the ACSC repealed the refusal of the Secretary of the Ministry of Labor and Social Policy to provide information whether bonuses were

⁴⁵Decision No. 1767 as of April 14, 2011 of the ACSC, Second division, 31st panel, adm. case No. 9104/2009.

⁴⁶Decision No. 1902 as of April 21, 2011 of the ACSC, First division, 16th panel, adm. case No. 6954/2010.

⁴⁷Decision No. 2882 as of July 13, 2011 of the ACSC, Second division, 30th panel, adm. case No. 144/2011.

⁴⁸Decision No. 5317 as of November 23, 2011 of the ACSC, Second division, 28th panel, case No. 6487/2011.

allocated to political experts and civil servants within the Ministry. The request was filed by Ms. Dinka Hristova, a journalist from Sega daily. The Chief Secretary refused access on the ground of personal data protection and the lack of consent of third affected parties. The courts stressed on the fact that the requestor did not seek information on bonuses by name, but rather general information whether additional benefits have been allocated and if positive, on what basis and principles. According to the court, this is public information as it enables the citizen to form his opinion on how this authority works and how encourages its employees and on what criteria.

With a decision⁴⁹ as of November 24, 2011, the ASCS repealed the refusal of the Ministry of Finance to provide information on the allocation of state subsidy of independent MPs. In the summer of 2011, a public debate was held in the media about the transparency of political parties' financing from the state budget. The Political Parties Act provides that the state attributes subsidies to the parliamentary represented parties on the basis of their seats in the Parliament. The sum attributed to each MP is defined by order of the Minister of Finance. Therefore, the question was to which parties the 17 independent MPs sent their attributed subsidy. Three different media journalists - one TV (Victoria Petrova from *bTV*), another from a radio station (Ilia Valkov from *Darik Radio*) and the third from a print media (Pavlina Zhivkova from *Banker* weekly) filed similar requests for access to copies of the MPs declarations. The Ministry of Finance rejected on the ground of personal data protection. The denials were appealed on the grounds that the data shall not be regarded as personal; moreover there is an overriding public interest in the disclosure. In its reasoning, the court emphasized on the fact that the declarations in question produced in the course of the proceedings do not contain personal data. The justices point out that the membership in political party is not a personal matter. Moreover, the MPs themselves are obliged to provide information pursuant to the APIA, therefore their consent for the disclosure is not required.

Access to Inspection/Audit Reports

Twice in 2011, the court has repealed refusals of access to audit reports and reports upon inspections. The authorities tried to advance the argument that the reports were exempted as preparatory documents under Art. 13, para. 2, item 1 of the APIA. The justices allied over the view that access to the reports cannot be denied on this ground. They agreed that the reports contain opinions and recommendations, but they also contain establishment of facts and specific findings which have significance on their own. The courts took the view that the reports are the final act of inspections as they do not depend on the adoption of subsequent act and reflect the factual situation at the moment of the inspection.

With a decision⁵⁰ as of March 22, 2011, the ACSC repealed the refusal of the Social Assistance Agency (SAA) to provide access to the report on the activities of social workers in the best interest of children in some specific cases. The Chairperson of the SAA refused access on the ground that the information related to the adoption of subsequent act and had no

⁴⁹ Decision No. 5343 as of November 24, 2011 of the ACSC, First division, 5th panel, adm. case No 7543/2011.

⁵⁰ Decision No. 1348 as of March 22, 2011 of the ACSC, First division, 18th panel, adm. case No. 7863/2010.

significance in itself (Art. 13, para. 2, item 1 of the APIA). The court ruled that the establishment of facts in the report does not fall under the protection of Art. 13, para. 2, item 1 of the APIA. According to the court, even if the report relates to the preparation of subsequent acts, it has an independent significance as it reflects the current situation of the protection of children at the time of the inspection. The decision was not appealed and became final.

With a decision⁵¹ as of October 3, 2011, the Administrative court - Plovdiv repealed the decision of the Chief Secretary of Plovdiv Municipality. The citizen Konstantin Bobotsov requested copy of the report under the improvement of air quality programme in Plovdiv. The decision stated that the citizen is granted full access to the information. However, instead of the information sought, the citizen accessed the response that this information is under preparation. In order to get this notice the citizen was charged 0.14 BGN. The court ruled that the challenged decision is unlawful. The court pointed out that at the time of the request and at the time of the issuing of the decision granting access, the information sought did not objectively exist, therefore there were no grounds to issue a decision granting access to the information. According to the court, the municipality administration should have applied Art. 33, para. 1 of the APIA, according to which the municipality should have informed the requestor that it does not hold the information. The court stresses on the fact that the challenged decision is *contra the spirit and the purpose of the APIA: there is an obvious improper treatment of the requestor's right to information by the obliged authority. It is obvious that the citizen was not given access to the requested information. His right was not exercised, moreover, his entitlement to receive an adequate answer, consistent with the facts and the law was not respected by the administration.*

Silent Refusals

The case-law regarding repealing of silent refusals remains extremely stable during 2011 as well. The courts systematically rule that the silent refusals are unlawful and that the only consistent with the APIA way to proceed with access to information requests is to issue an explicit decision granting or refusing access.

With a decision⁵² as of December 7, 2010, the SAC upheld the decision of the first instance repealing the silent refusal of the Sofia Municipality. The Environmental Association *For the Earth* requested a copy of the contract for Prefeasibility Study and accompanying documents for the project Waste Management of Sofia Municipality financed by EU funds.

With a decision⁵³ as of January 20, 2011, the ACSC repealed the silent refusal of the Sofia Municipality. The information sought related to the municipality investment programme for expropriation. The interest was provoked by the costs incurred by the municipality for the acquisition of private property for the reconstruction of *Lomsko shausse* boulevard.

⁵¹ Decision No. 1500 as of October 3, 2011 of Administrative court - Plovdiv, adm. case No. 989/2011.

⁵² Decision No. 14896 as of December 7, 2010 of the SAC, Fifth division, adm. case No. 11136/2009.

⁵³ Decision No. 301 as of January 20, 2010 of the ACSC, Second division, 27th panel, adm. case No. 8149/2010.

With a decision⁵⁴ as of January 27, 2011, the Administrative court - Varna repealed the silent refusal of the Regional Directorate of the National Revenue Agency. The information sought related to the amount of public revenue of the local judiciary. The court emphasized that the principles of good administration in a democratic society require the public authorities to respect their obligation under the APIA.

With a decision⁵⁵ as of February 14, 2011, the Administrative court - Varna repealed the silent refusal of the Mayor. The request was filed electronically and the information sought related to the construction of buildings in Varna. The court found that the municipality has adopted internal rules according to which an electronic request is considered to be submitted in writing, therefore, the municipality has the obligation to process it and to issue an explicit decision.

With a decision⁵⁶ as of February 21, 2011, the Administrative court - Pazardzhik repealed the silent refusal of the Mayor to provide access to contracts between the municipality and private companies for the supply of goods and/or services for the period 2007-2010. The requestor only asked for the names of the co-contactors and the price of the contract.

With a decision⁵⁷ as of May 9, 2011, the ACSC repealed the silent refusal of the National Veterinary Service (NVS) to provide access to information about an inspection carried out by the NVS authorities in a dog shelter in the town of Pleven, managed by an *Association for the Protection of Animals* - Pleven 2008.

With a decision as of December 12, 2011,⁵⁸ the ACSC repealed the silent refusal of the National Centre for Information and Documentation to provide access to information relating to the qualifications and diploma of the former Executive Director of State Fund „Agriculture,“ Kalina Ilieva. The decision was not appealed and became final. Nevertheless, in the beginning of 2012, the Chairperson of the National Centre for Information and Documentation explicitly refused access on the ground of personal data protection. The refusal was challenged before the ACSC and the case was scheduled for hearing.

Costs in Access to Information Court Cases

In 2011, the AIP noticed a trend of increasing cases in which the court ordered the requestor to pay the costs and attorney fee when the case against the administration was dismissed. For example, the National Movement *Ekogasnost* was ordered to pay the fees for the legal representative of the Ministry of Economy and Energy in the case of the substitution of fresh nuclear fuel with recycled in NPP *Kozlodui*.⁵⁹ Mr. William Popov was also enjoined to pay the costs to the Ministry of Defence. He lost the case against the refusal of the Ministry to provide access to information about shut down military units, weapons and military equipment no longer suitable for use. The journalist *Vesselka Venkova* was ordered to pay

⁵⁴ Decision No. 157 as of January 27, 2011 of Administrative court-Varna, adm. case No. 3250/2010.

⁵⁵ Decision as of February 14, 2011 of Administrative court-Varna, adm. case No. 3831/2010.

⁵⁶ Decision No. 86 as of February 21, 2011 of Administrative court-Pazardjik, adm. case No. 62/2011.

⁵⁷ Decision No. 2191 as of May 9, 2011 of the ACSC, First division, 4th panel, adm. case No. 2109/2011.

⁵⁸ Decision No.5654 as of December 12,2011 of the ACSC, Second division, 24th panel, adm. case No.292/2011.

⁵⁹ Decision No. 5621 as of April 20, 2011, SAC, Fifth division, adm. case No. 8872/2010.

the cost of the case⁶⁰ against the *28th Air Detachment* to provide access on travel expenses for domestic flights of the Prime Minister.

The above mentioned examples are not isolated cases and illustrate a much deeper problem. AIP has expressed concern because such awards of cost in favour of the administration used to be exceptional. AIP observes that this becomes more or less common practice. The roots of the problem lay in the provision of Art. 143 of the Administrative Procedure Code which introduced liability for costs if the challenge (appeal) of the complainant is rejected by the court. In 2007, the Constitutional court dismissed the Ombudsman's complaint⁶¹ to pronounce this provision unconstitutional. In 2010, the SAC adopted an interpretative decision⁶² holding that when the complaint is dismissed or the complainant withdraws his/her complaint he shall bear the litigation cost and pay the administration the legal representative's fee. The most serious issue here is that neither the Constitutional Court nor the SAC make the difference between categories of claimants and cases. And such difference exists and is determined by the question whether the case protects private or public interest.

⁶⁰ Decision No. 3482 as of July 12, 2011, ACSC, Second division, 32nd panel, adm. case No. 6873/2010.

⁶¹ Decision No. 5/2007, constit. Case No. 11/2006.

⁶² Interpretative Decision No. 3 as of May 13, 2010, case No. 5/2009.

APPENDIX 1 COMPARATIVE DATA FROM AIP AUDITS ON EXECUTIVE BODIES WEB SITES 2010 - 2012 AND RESULTS FROM 2012 AUDIT BY INSTITUTION

Chart 1. Does the institution maintain an official web-site?

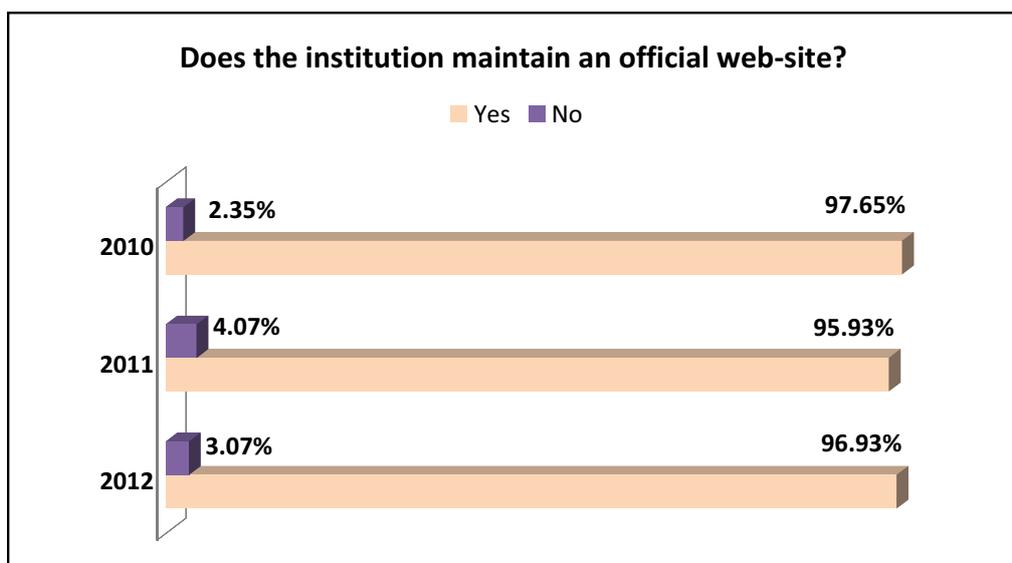
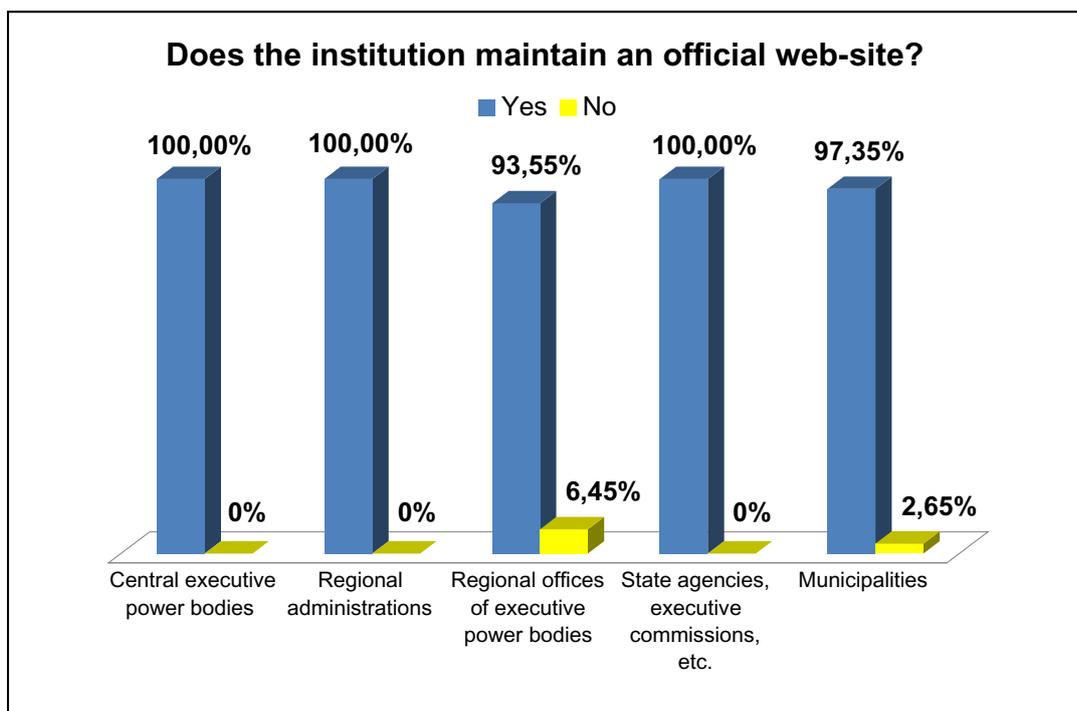


Chart 2. Does the institution maintain an official web-site?
(by type of public body - 2012)



Institutional information - Legal basis of the institution, functions, public services provided, data bases and information resources

Chart 3. Is the legal basis for the powers of the institution available?

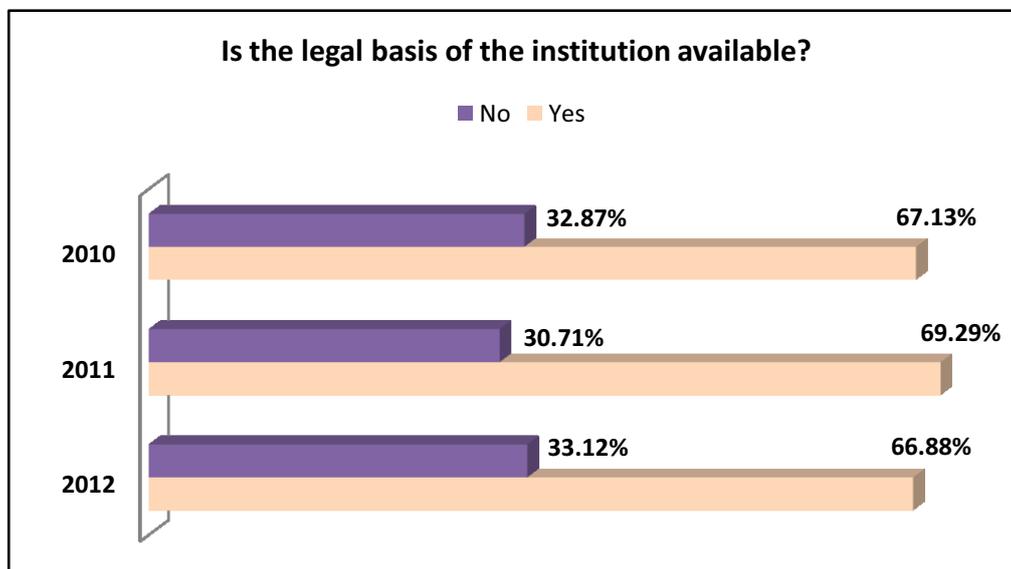


Chart 4. Is the legal basis for the powers of the institution available?
(by type of public body - 2012)

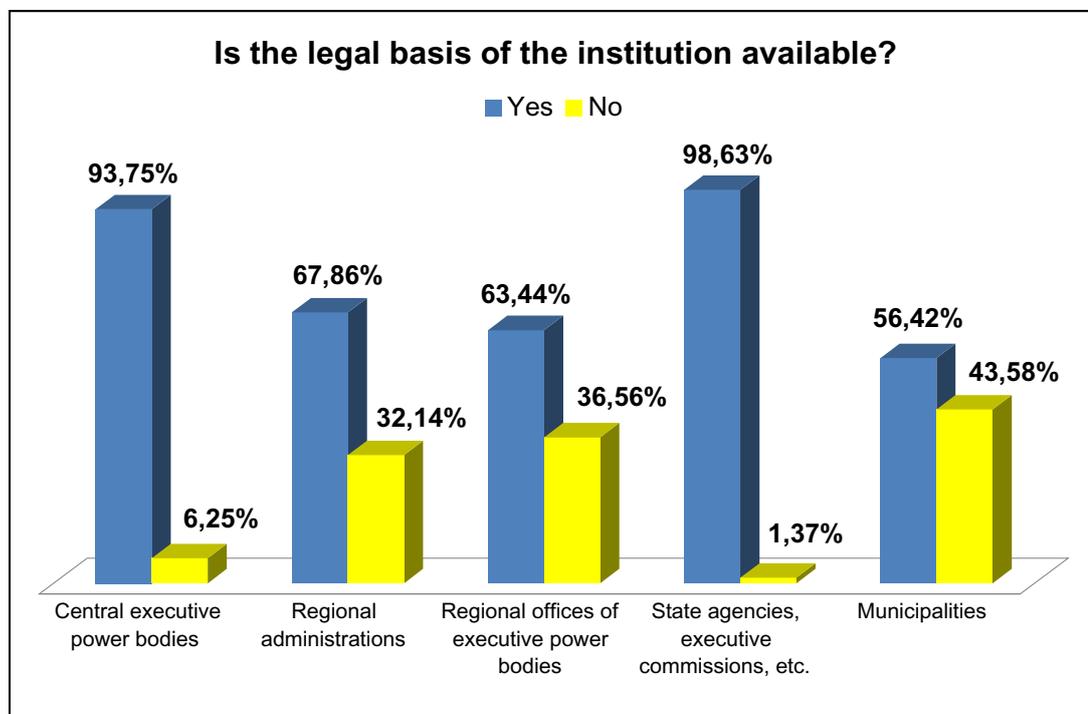


Chart 5. Are the functions of the institution published?

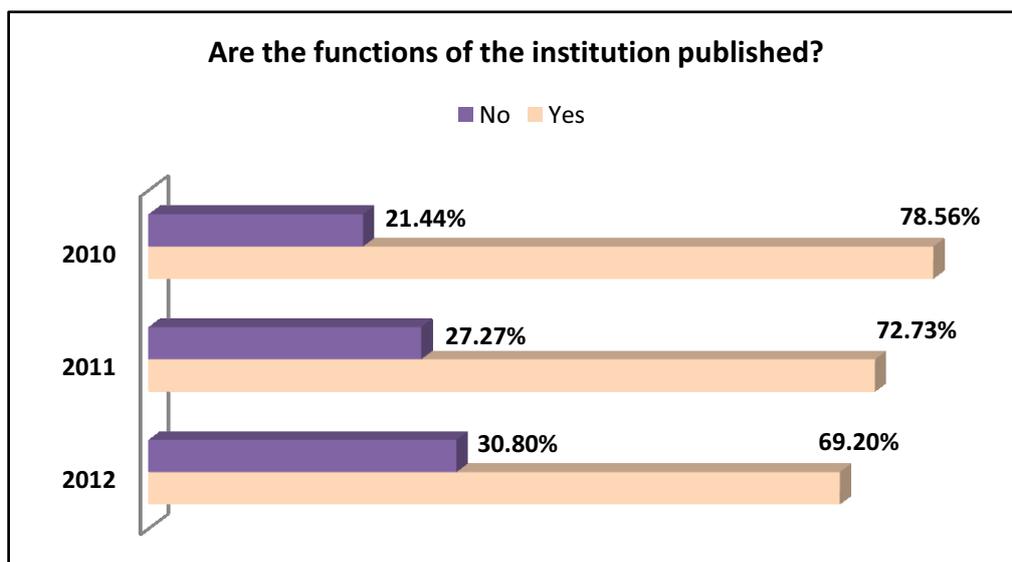


Chart 6. Are the functions of the institution published?
(by type of public body - 2012)

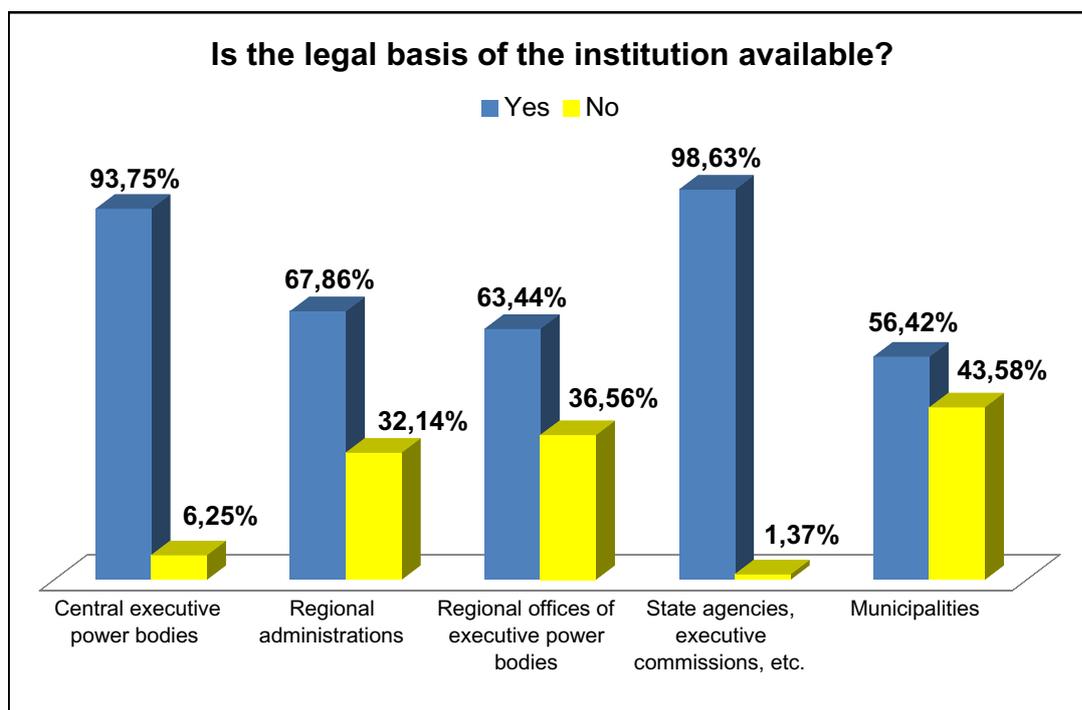


Chart 7. Is a description of the public services provided by the institution published?

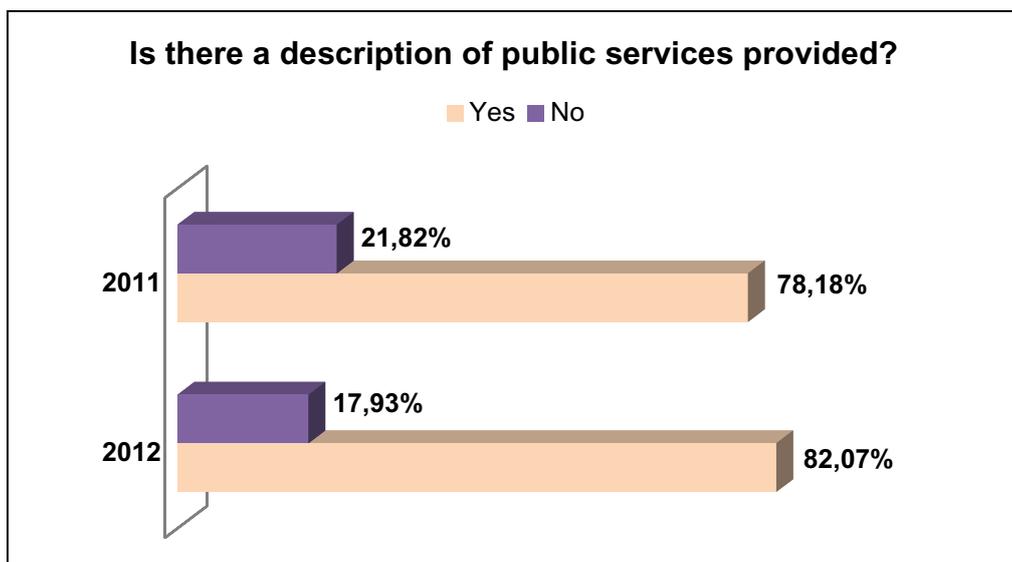


Chart 8. Is a description of the public services provided by the institution published? (by type of public body - 2012)

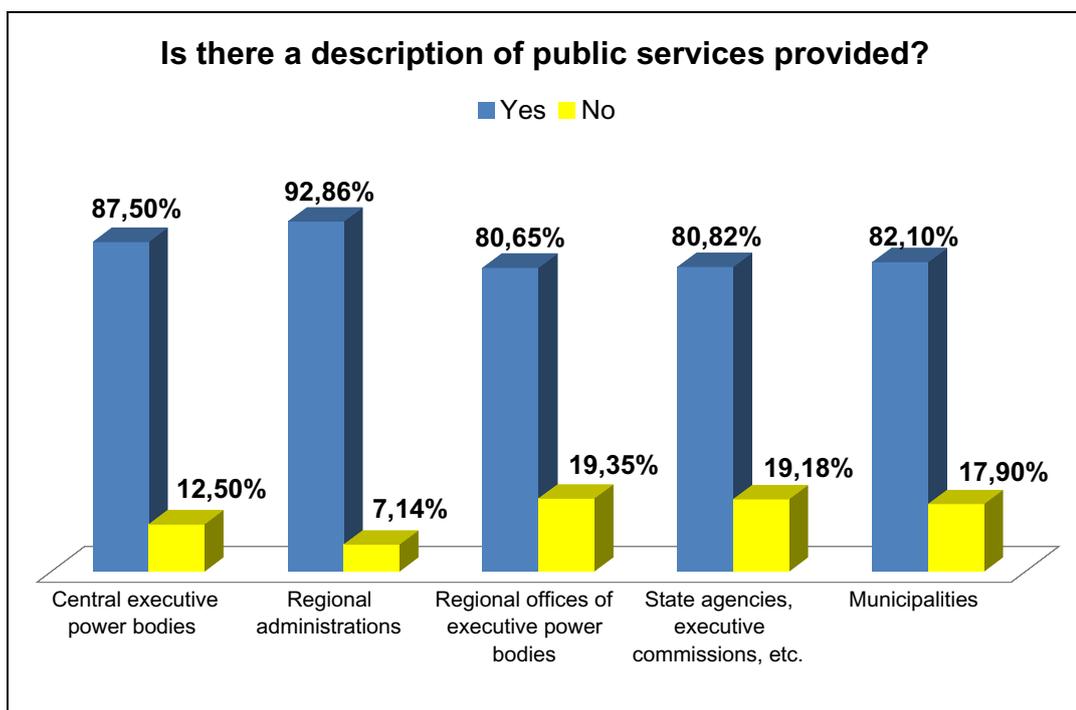


Chart 9. Are information resources and data bases described?

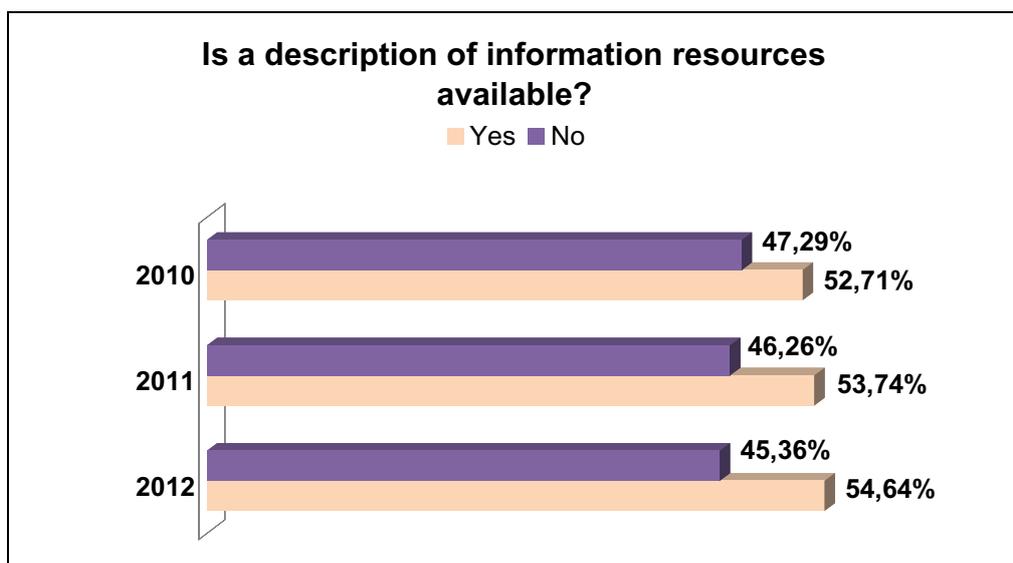
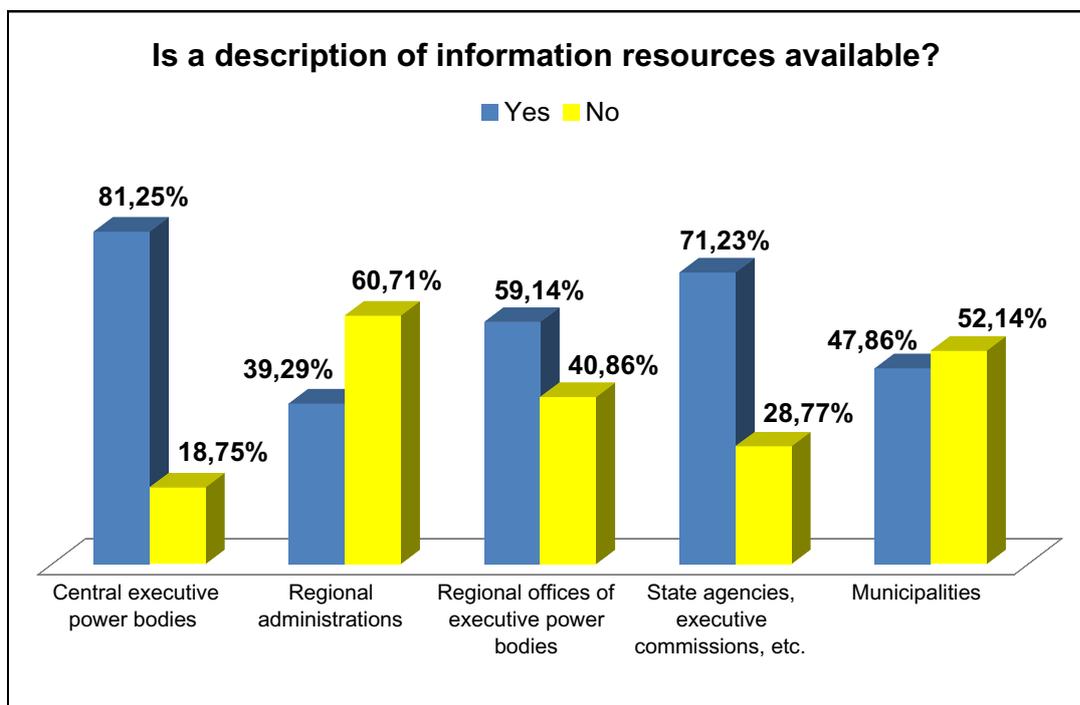


Chart 10. Are information resources and data bases described?
(by type of public body - 2012)



Organizational structure and contact information

Chart 11. Is the structure of the administration published?

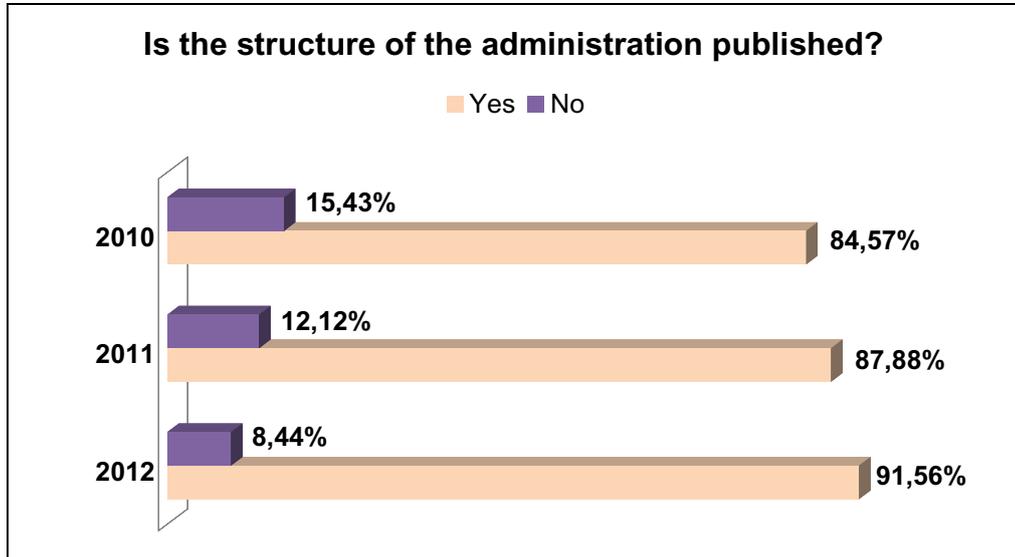
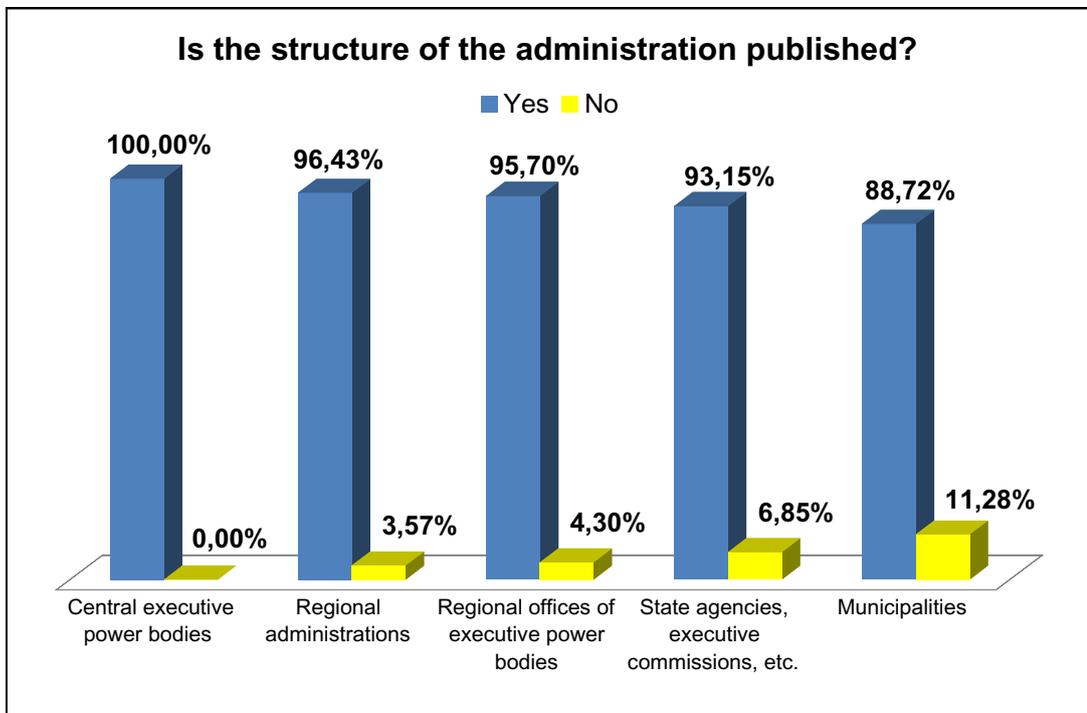


Chart 12. Is the structure of the administration published?
(by type of public body - 2012)



Contact information for citizens

Chart 13. Name of the contact department?

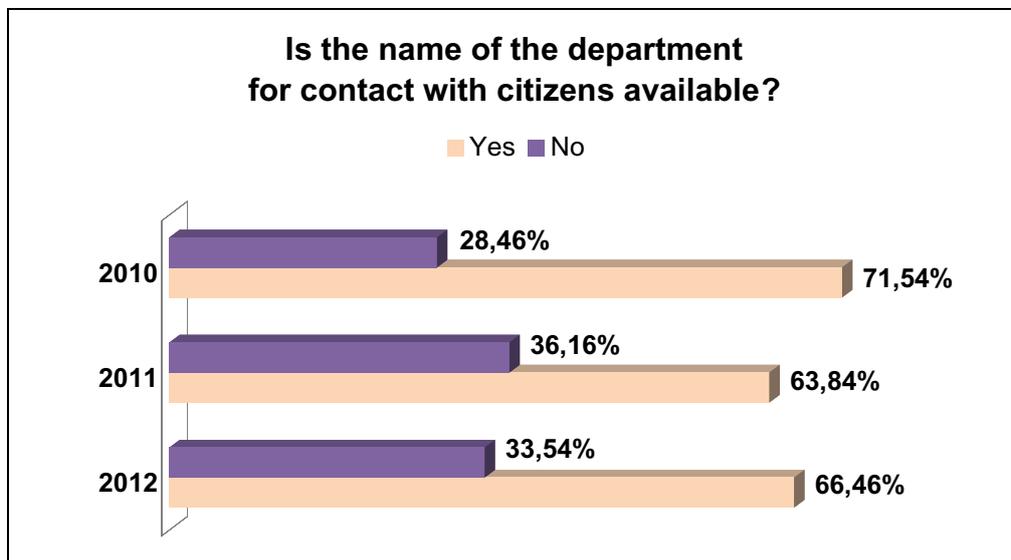


Chart 14. Name of the contact department?
(by type of public body - 2012)

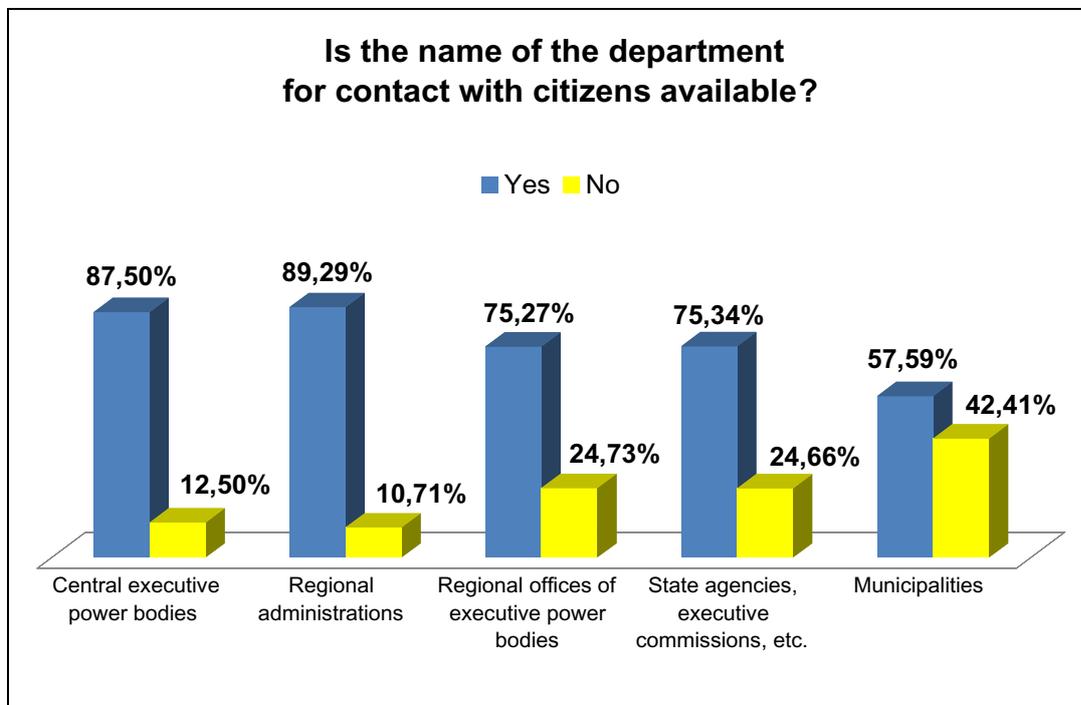


Chart 15. Address of the contact department?

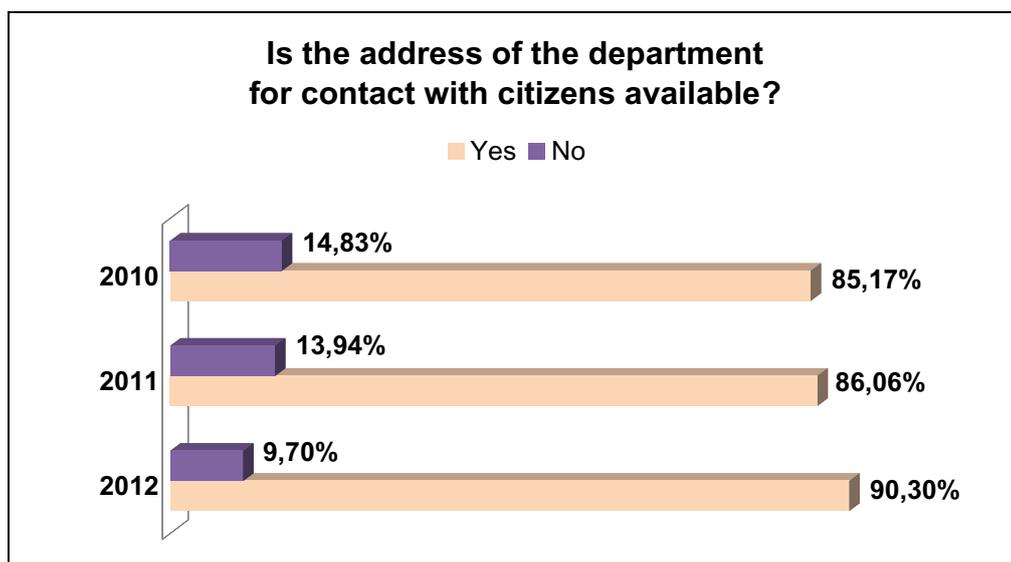


Chart 16. Address of the contact department?
(by type of public body - 2012)

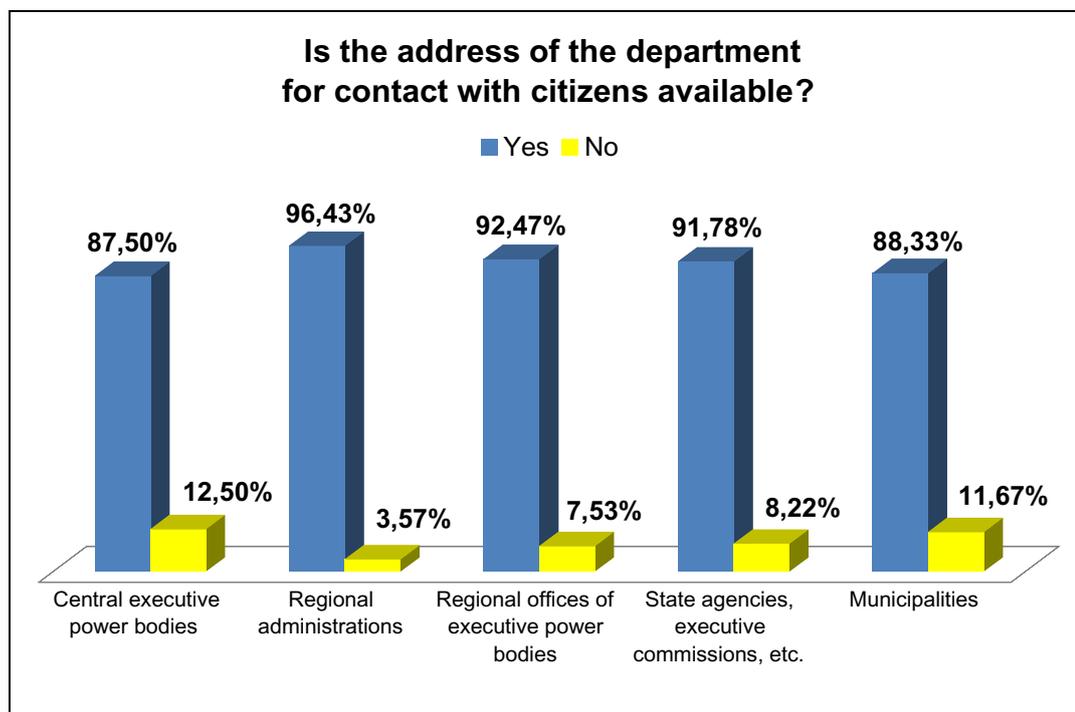


Chart 17. Contact phone number?

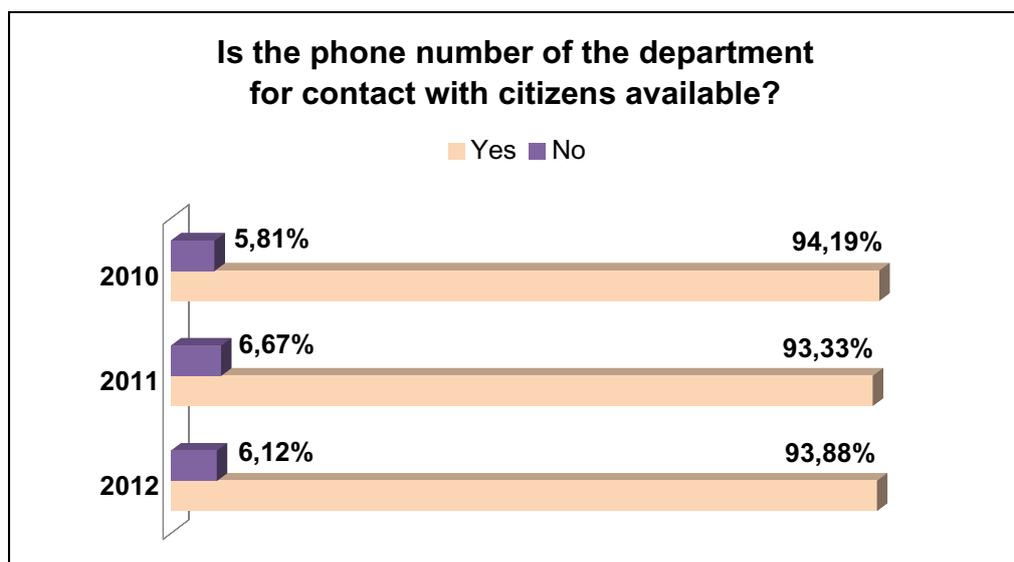


Chart 18. Contact phone number?
(by type of public body - 2012)

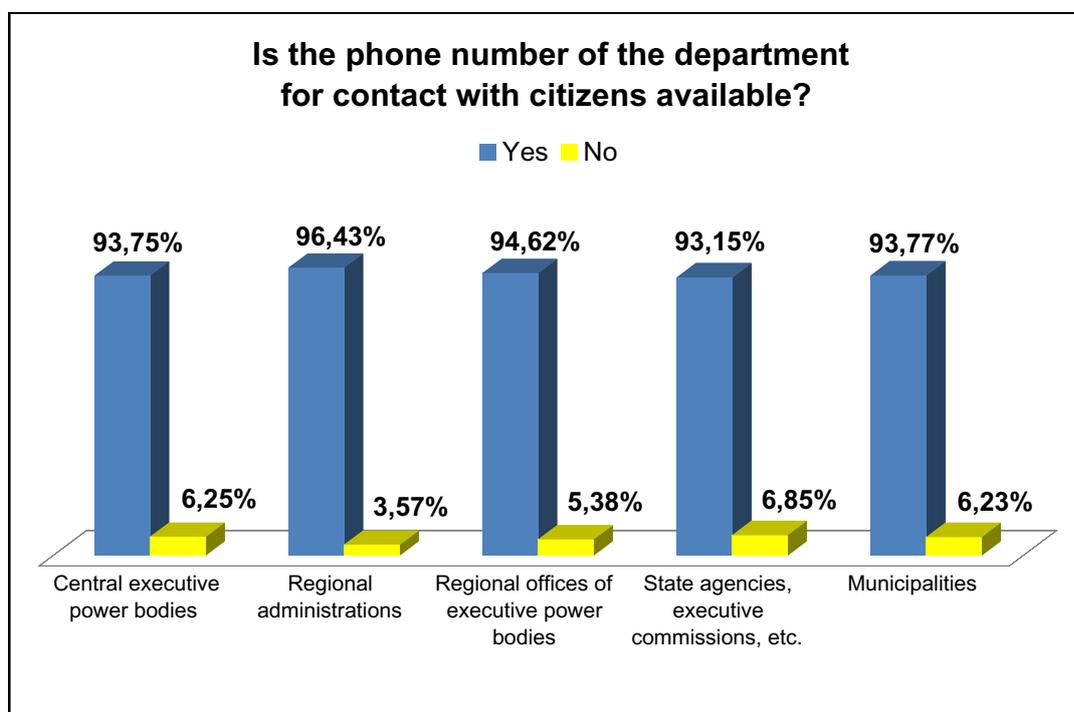


Chart 19. Working hours of the contact department?

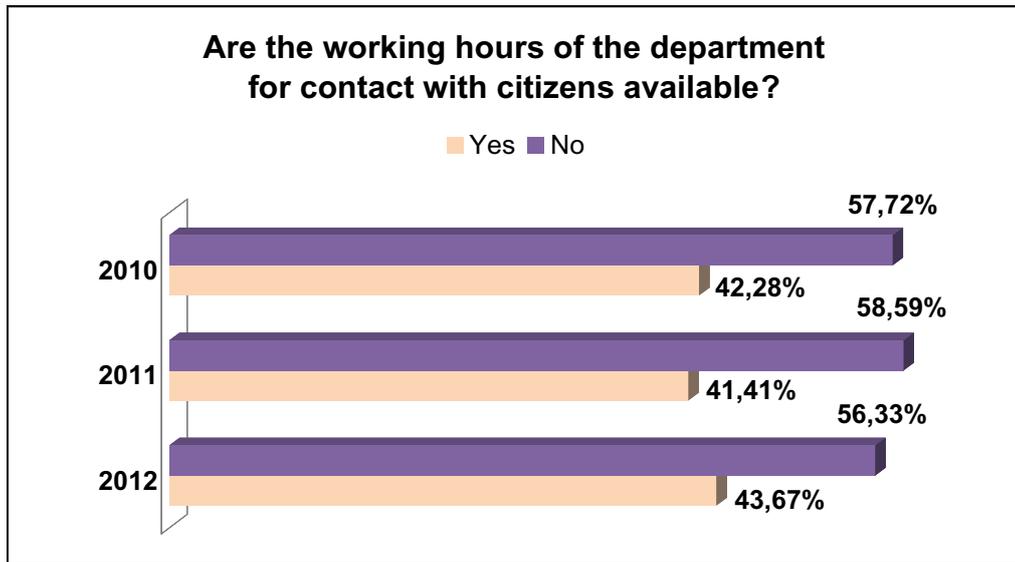
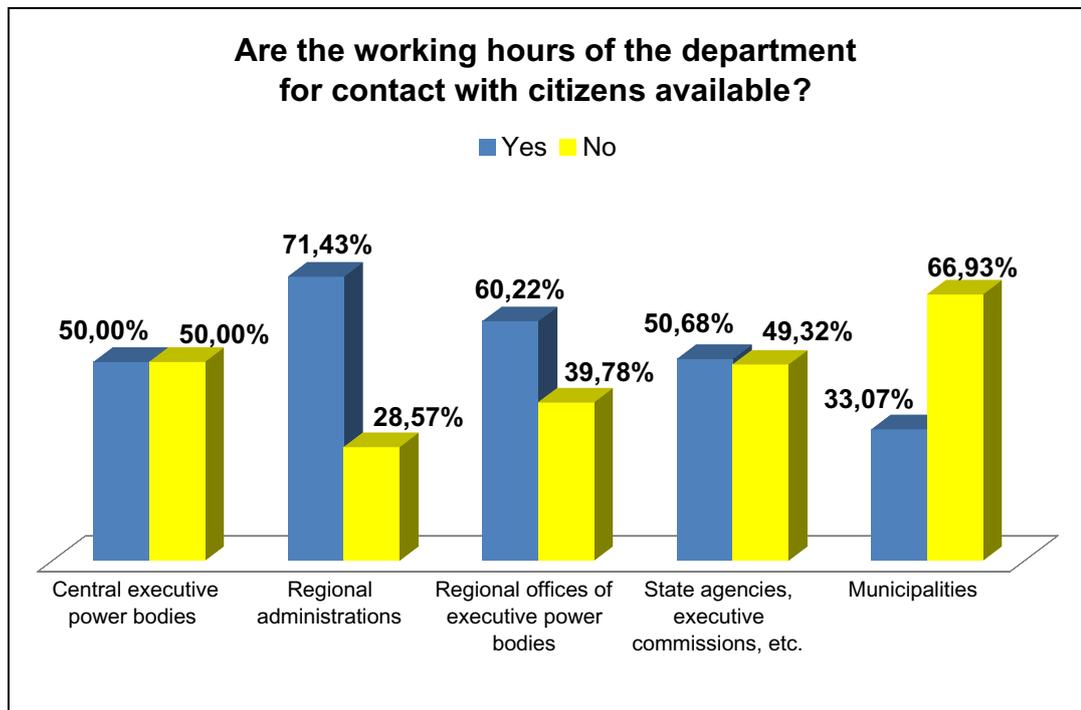


Chart 20. Working hours of the contact department?
(by type of public body - 2012)



Operational Information - acts,⁶³ strategies and plans, activities and activity reports

Chart 21. Is there a list of normative acts?

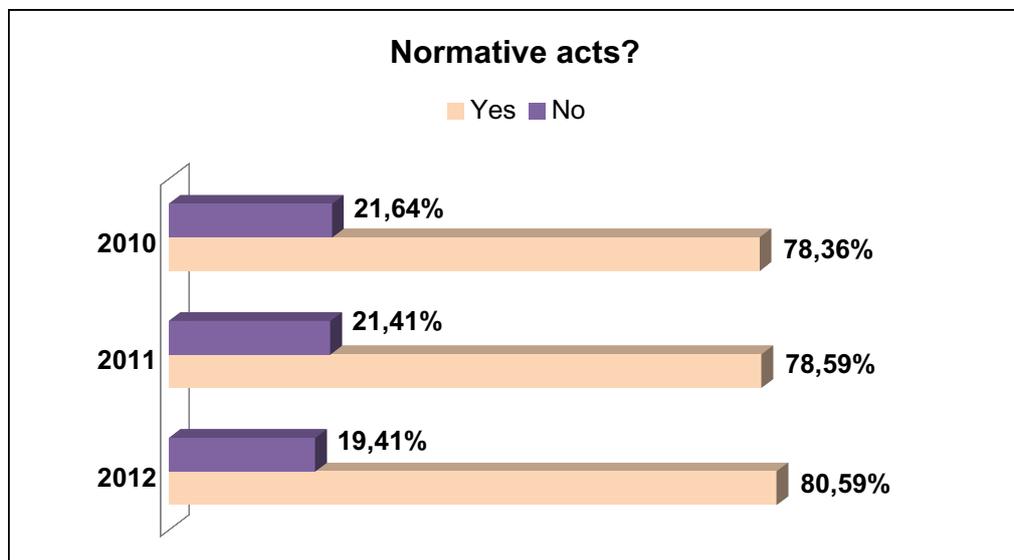
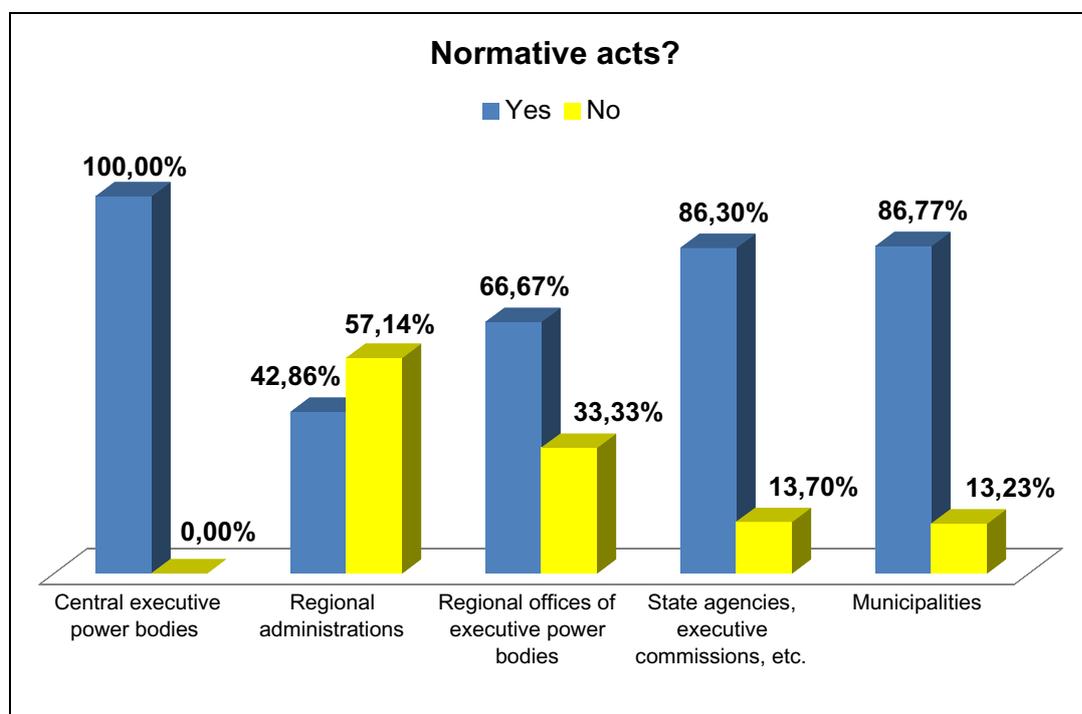


Chart 22. Is there a list of normative acts?
(by type of public body - 2012)



⁶³ According to Bulgarian general administrative law there are three categories of administrative acts: individual acts are administrative decisions with application to certain individual/individuals; general administrative act is a decision with application to unspecified number of individuals; administrative normative act applies to unspecified number of individuals multiple times i.e. it has the legal character of „rules“.

Chart 23. Is there a list of individual administrative acts?

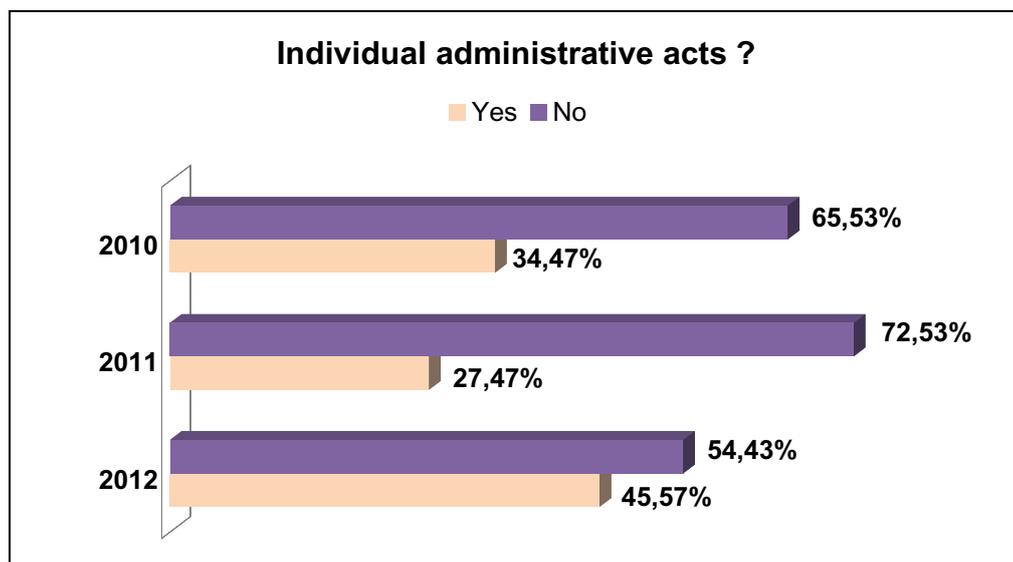


Chart 24. Is there a list of individual administrative acts?
(by type of public body - 2012)

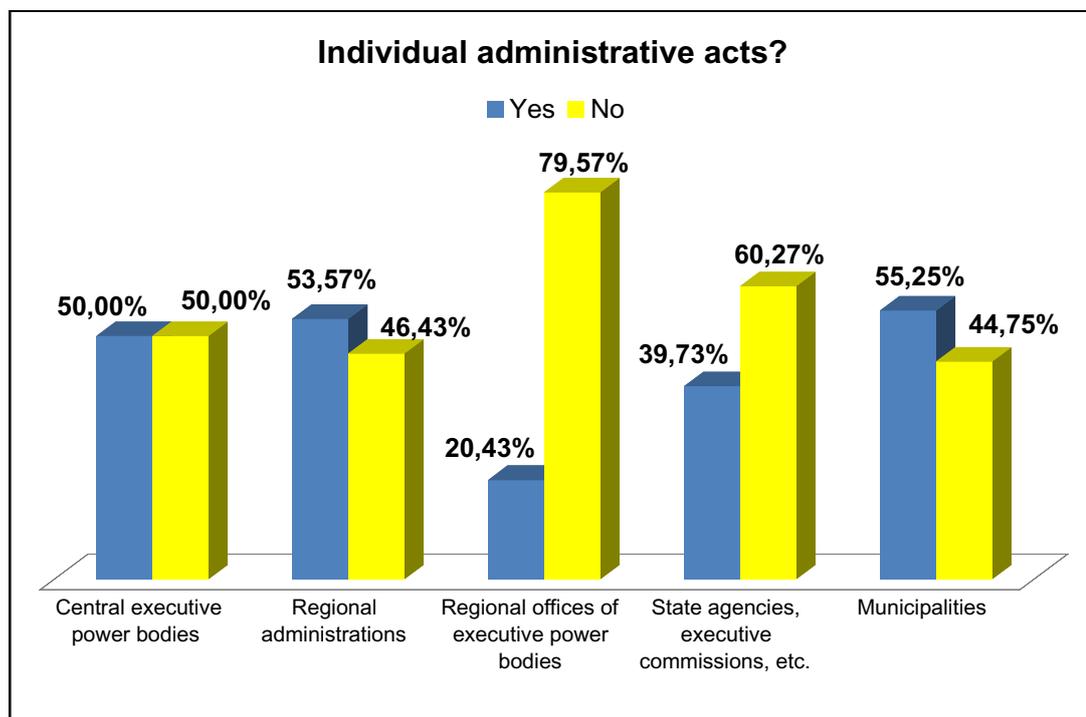


Chart 25. Are the decisions of the municipal council published?
(only for municipalities - 2012)

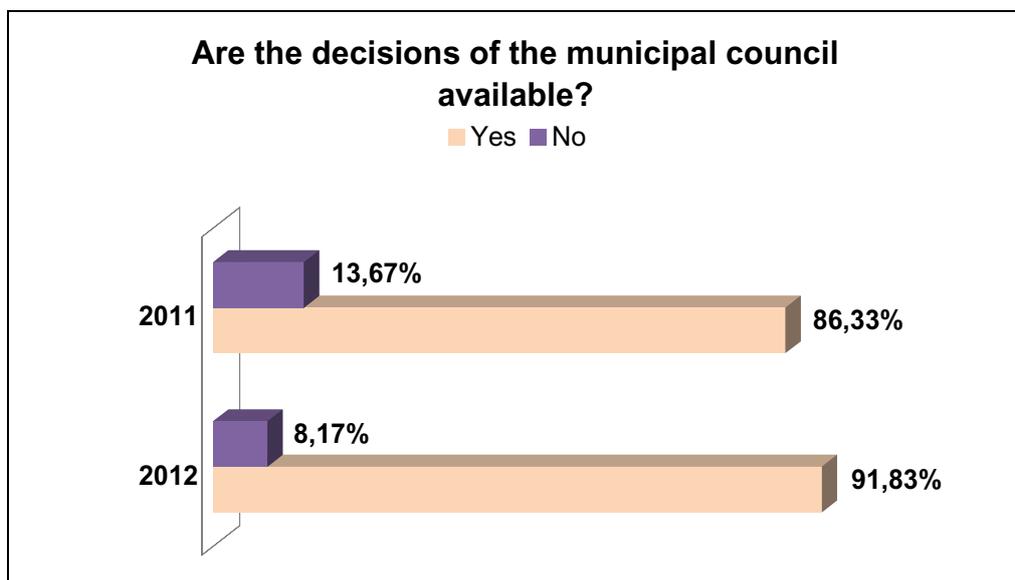


Chart 26. Are development programs and strategies published?

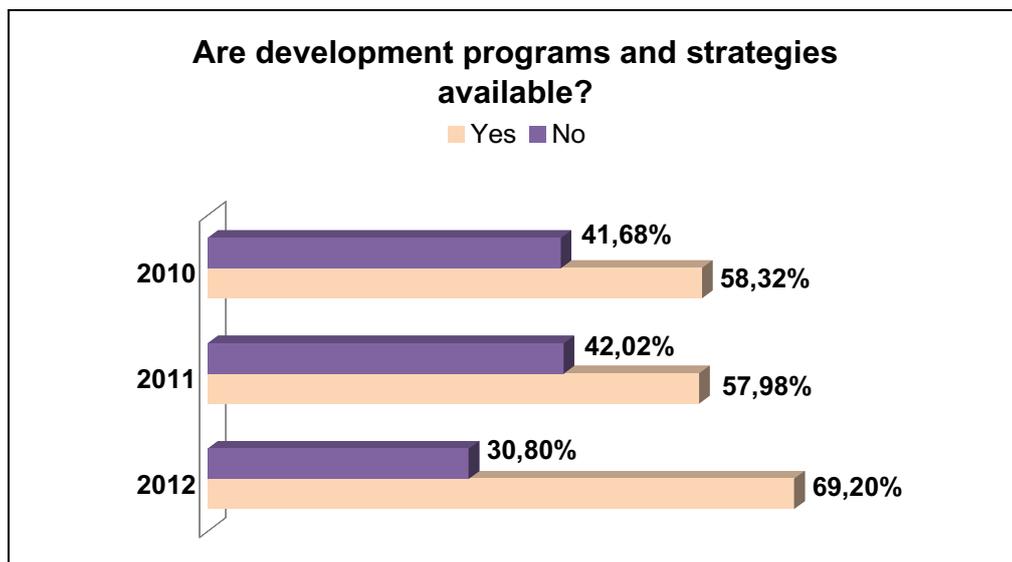


Chart 27. Are development programs and strategies published?
(by type of public body - 2012)

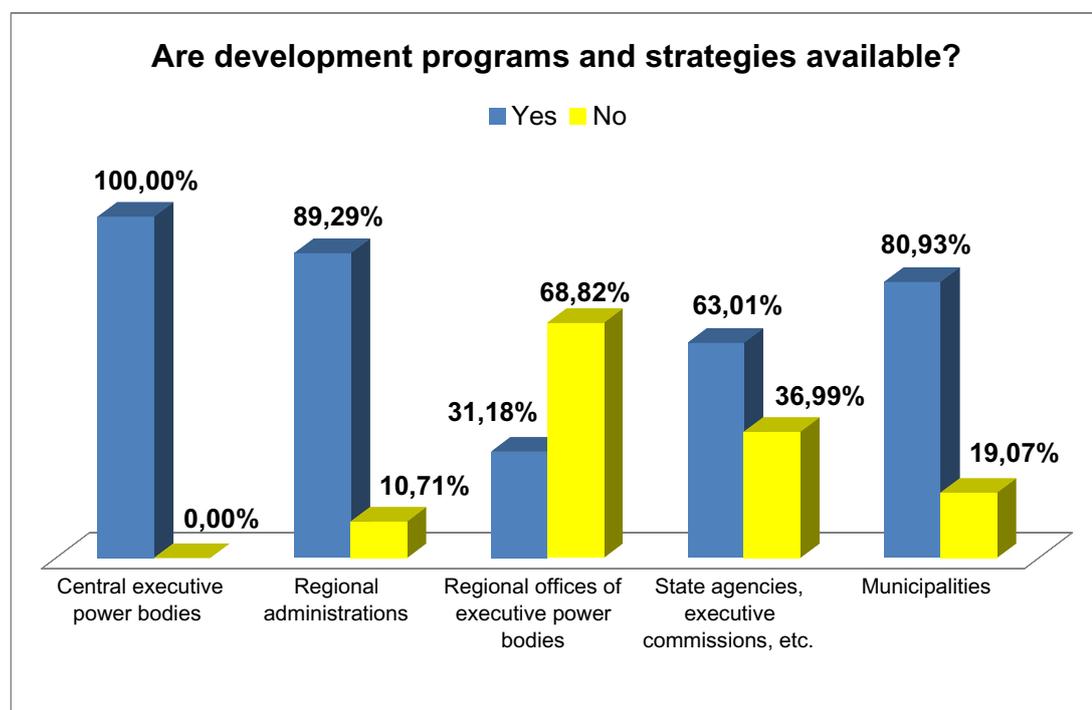


Chart 28. Are activity reports of the institution published?

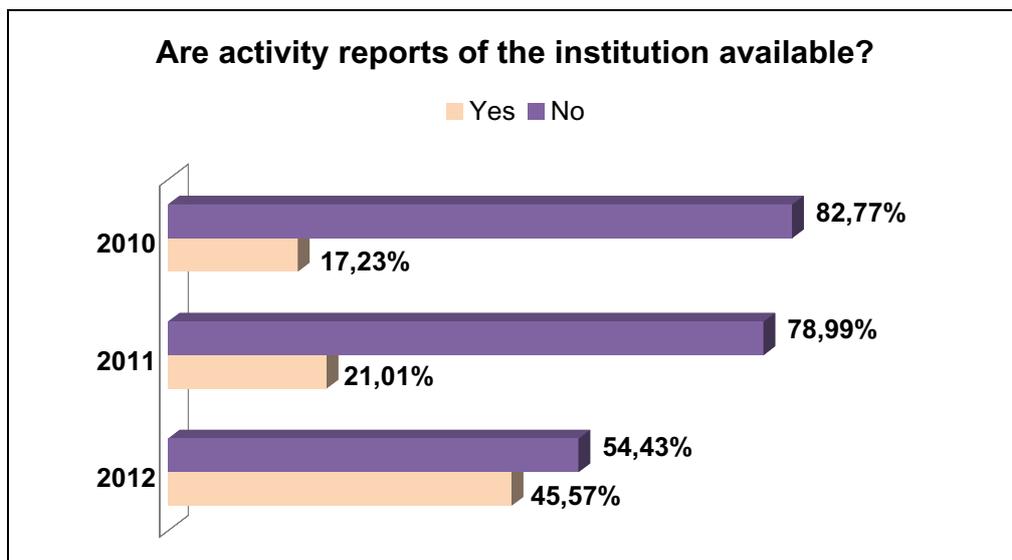


Chart 29. Are activity reports of the institution published?
(by type of public body - 2012)

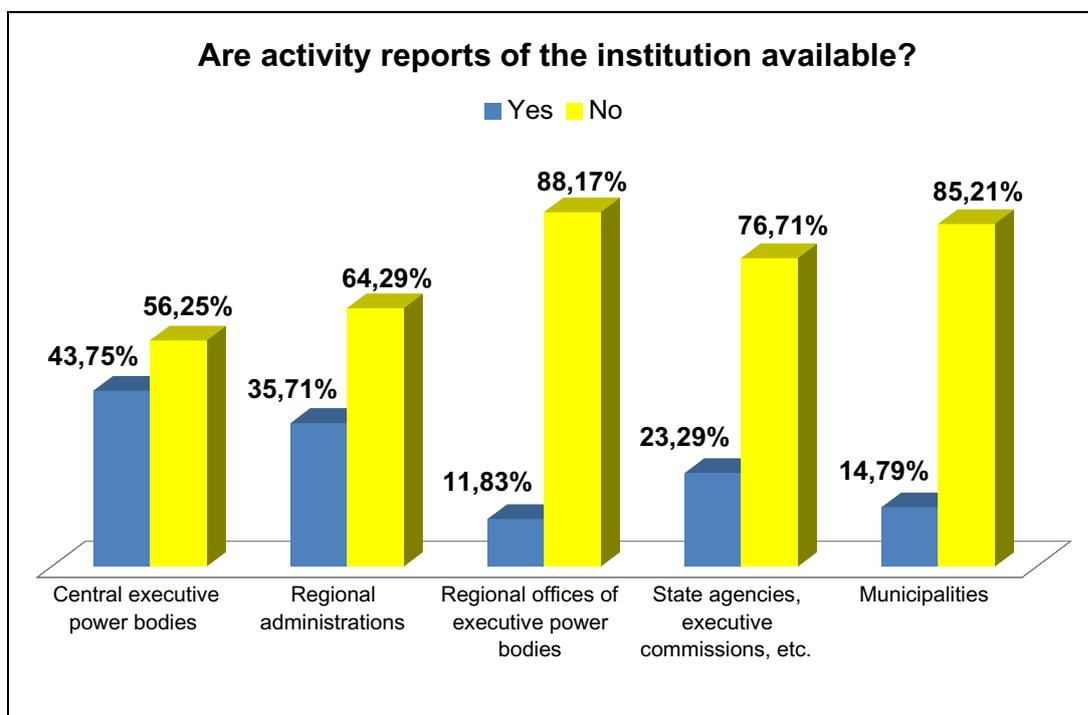


Chart 30. Are drafts of regulations published?

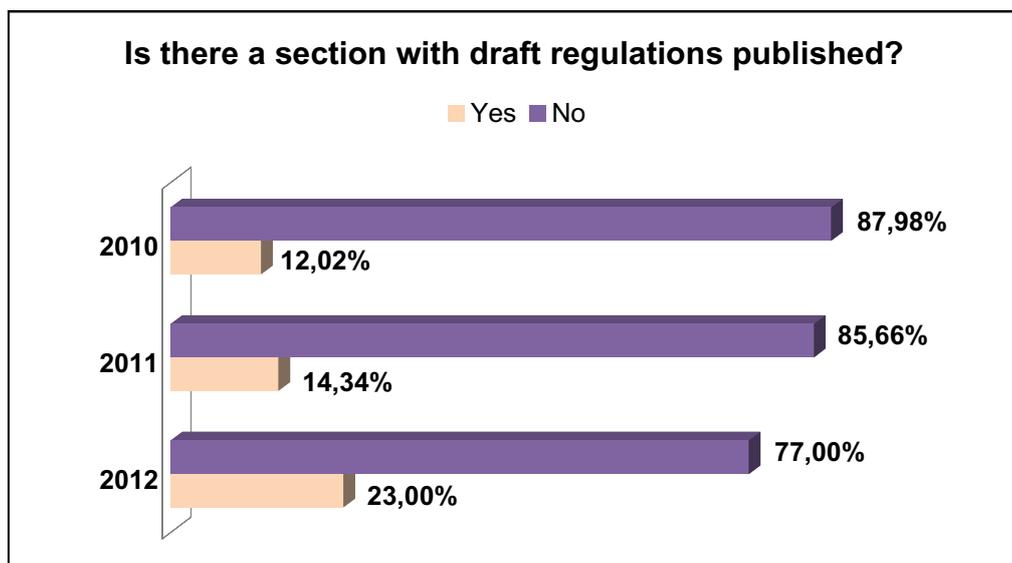
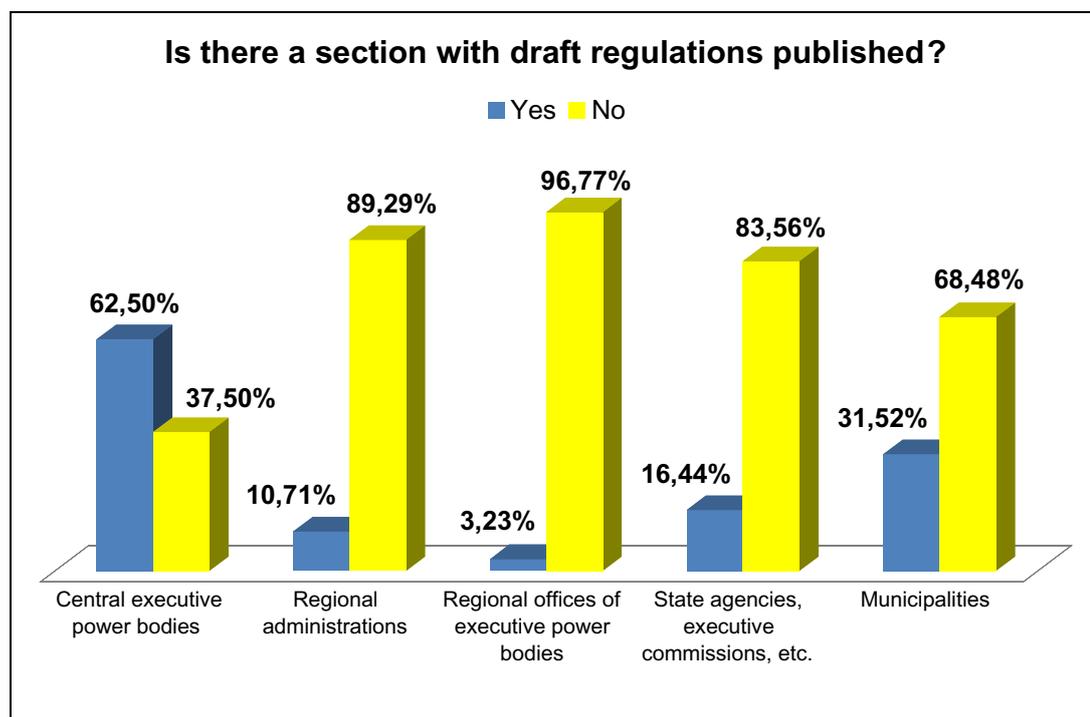


Chart 31. Are drafts of regulations published?
(by type of public body - 2012)



Financial and other transparency - budgets, financial reports, contracts, conflict of interests declarations

Chart 32. Is the budget of the institution published?

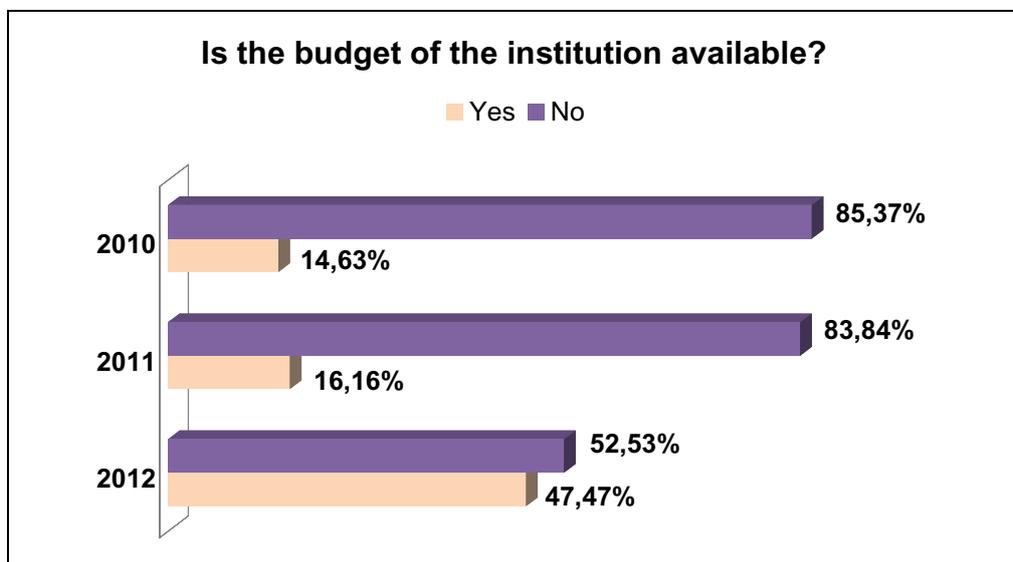


Chart 33. Is the budget of the institution published?
(by type of public body - 2012)

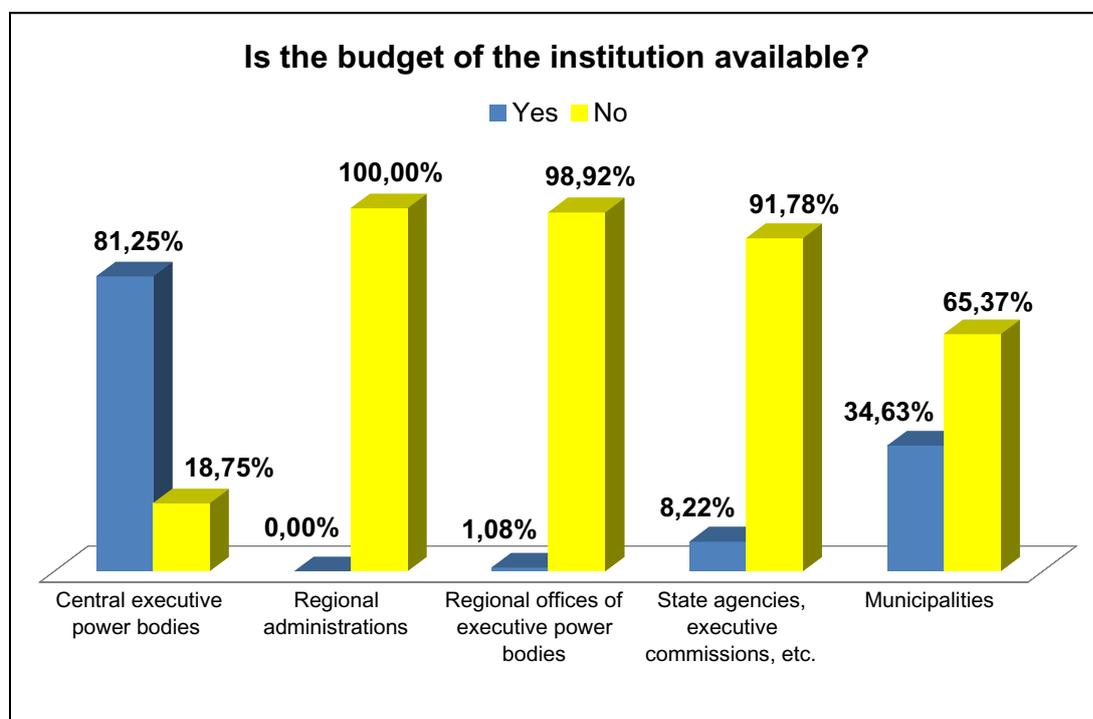


Chart 34. Are financial reports of the institution published?

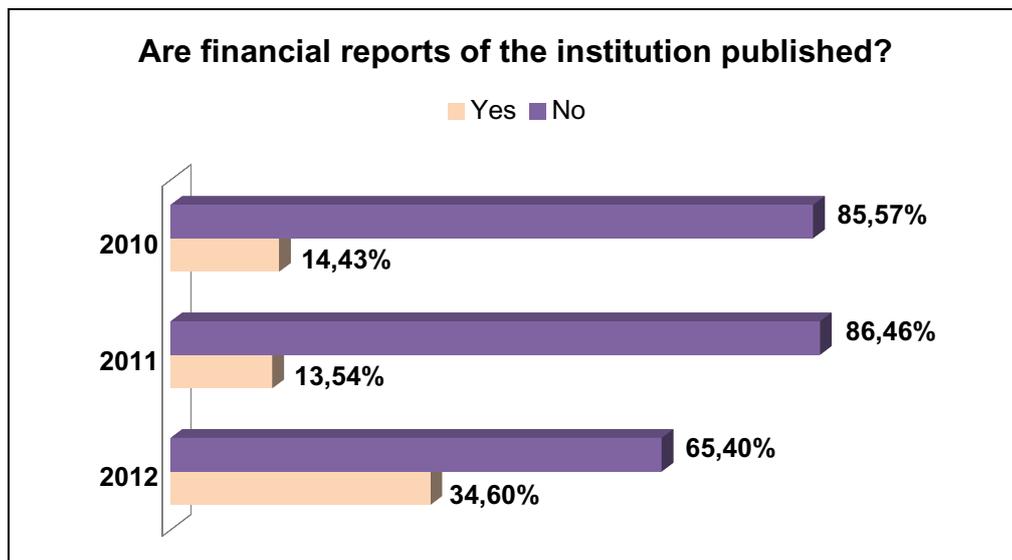


Chart 35. Are financial reports of the institution published?
(by type of public body - 2012)

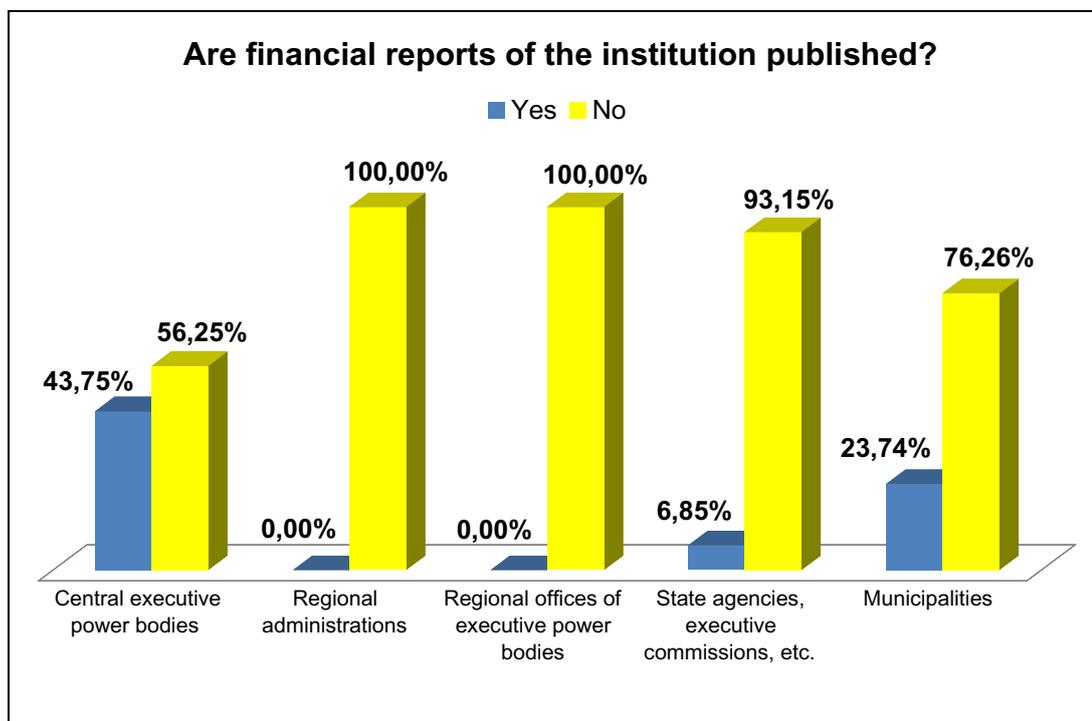


Chart 36. Are contracts of the institution published?

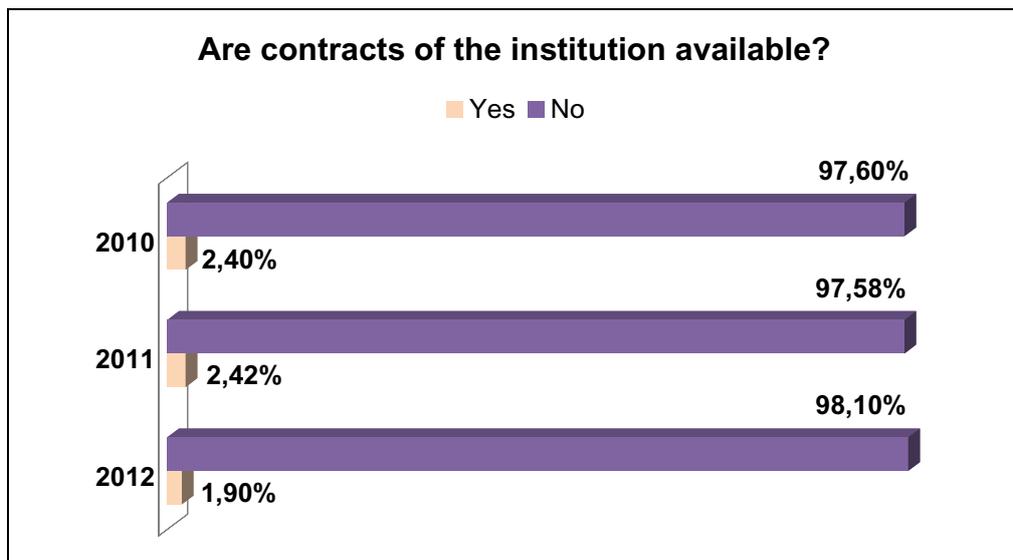


Chart 37. Are contracts of the institution published?
(by type of public body - 2012)

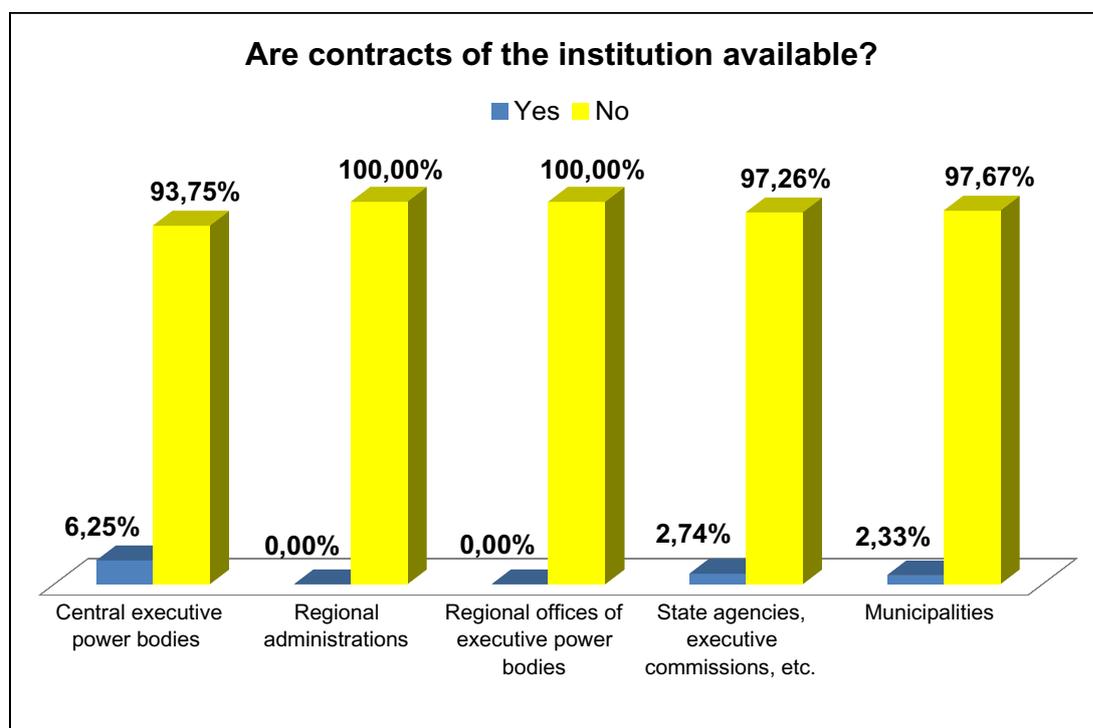


Chart 38. Are asset declarations published?

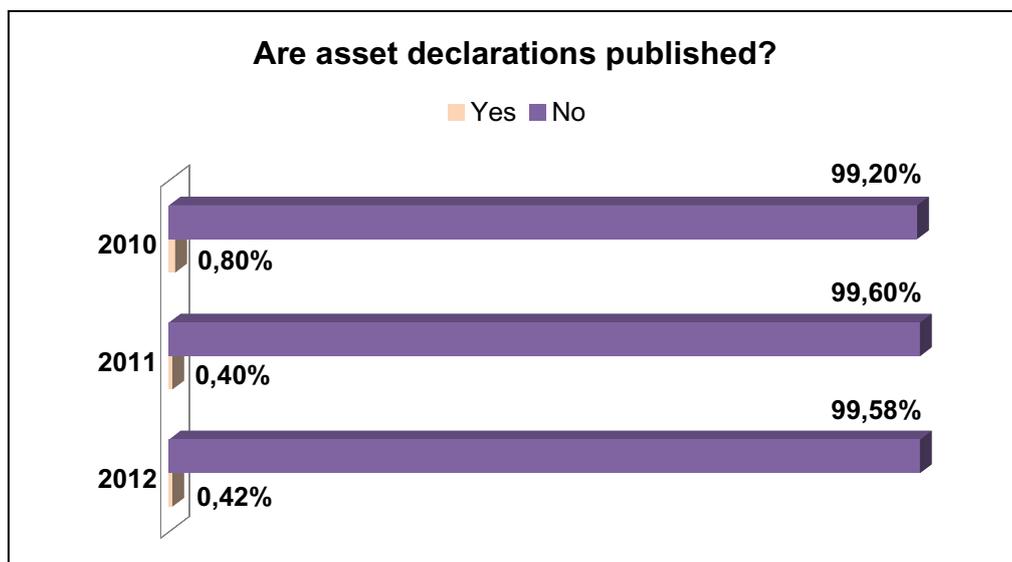


Chart 39. Are asset declarations published?
(by type of public body - 2012)

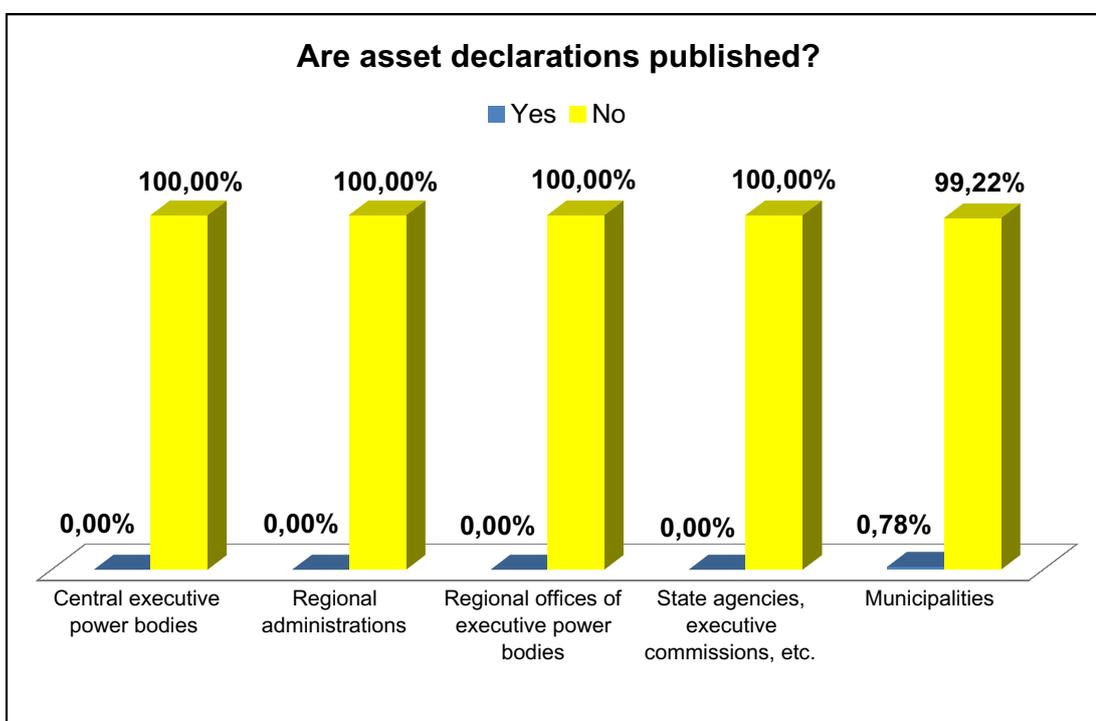


Chart 40. Are conflict of interests declarations published?

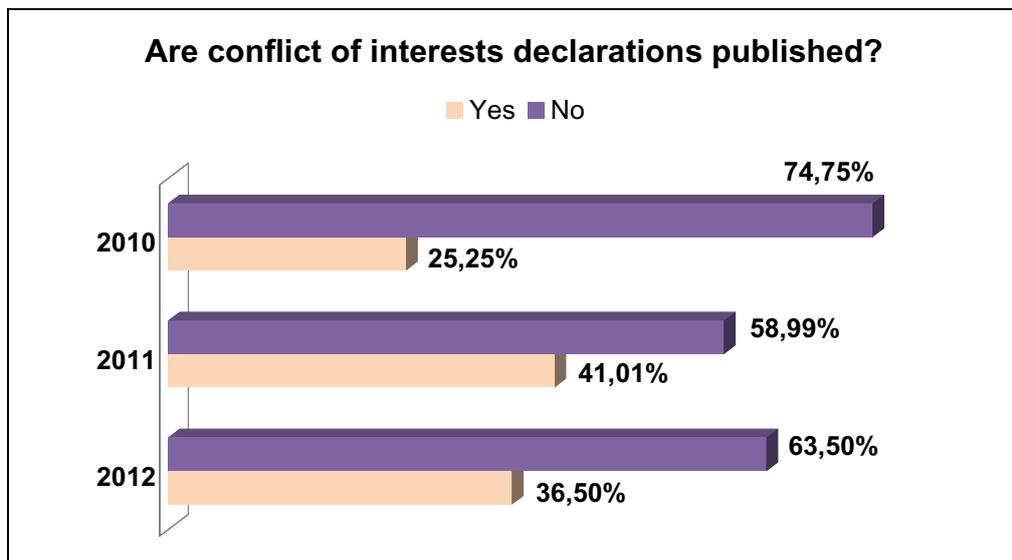
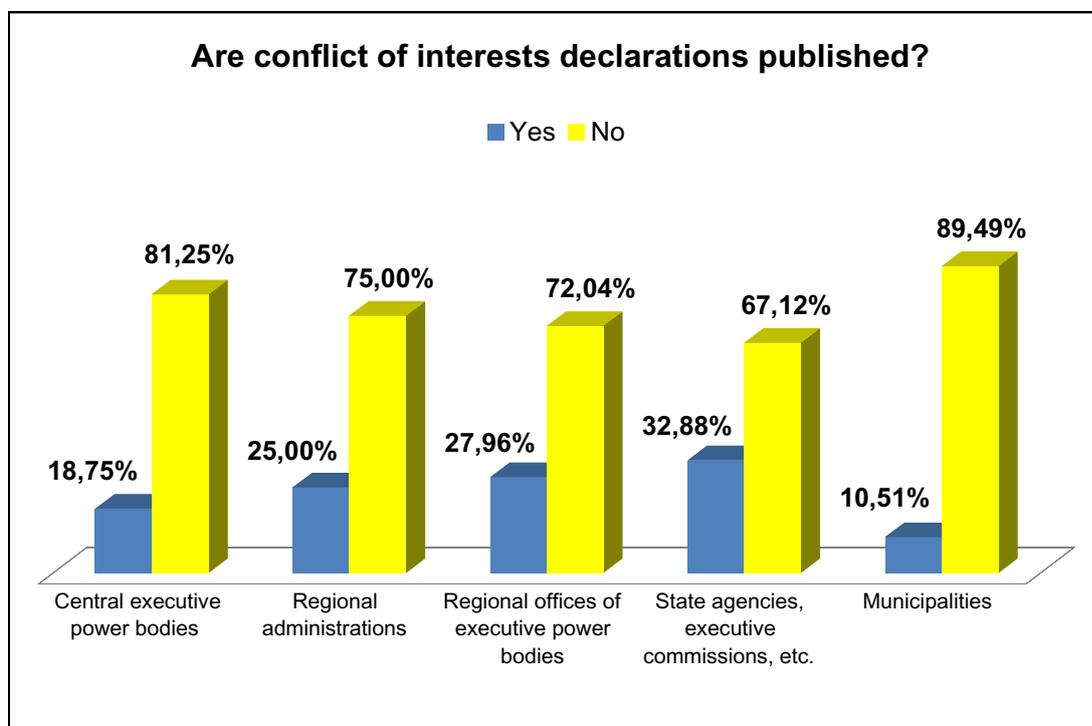


Chart 41. Are conflict of interests declarations published?
(by type of public body - 2012)



Access to Information Sections

Chart 42. Is there an Access to Information section?

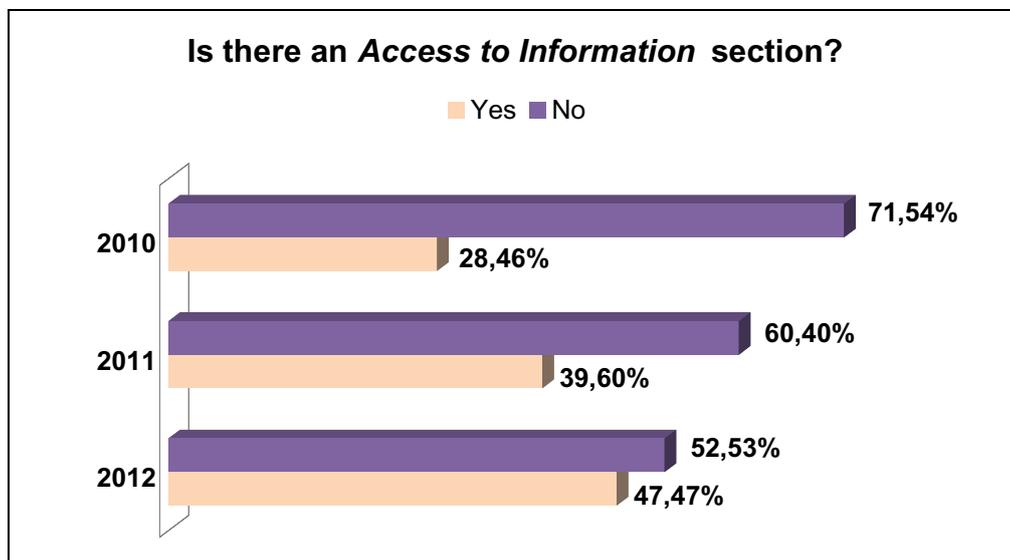
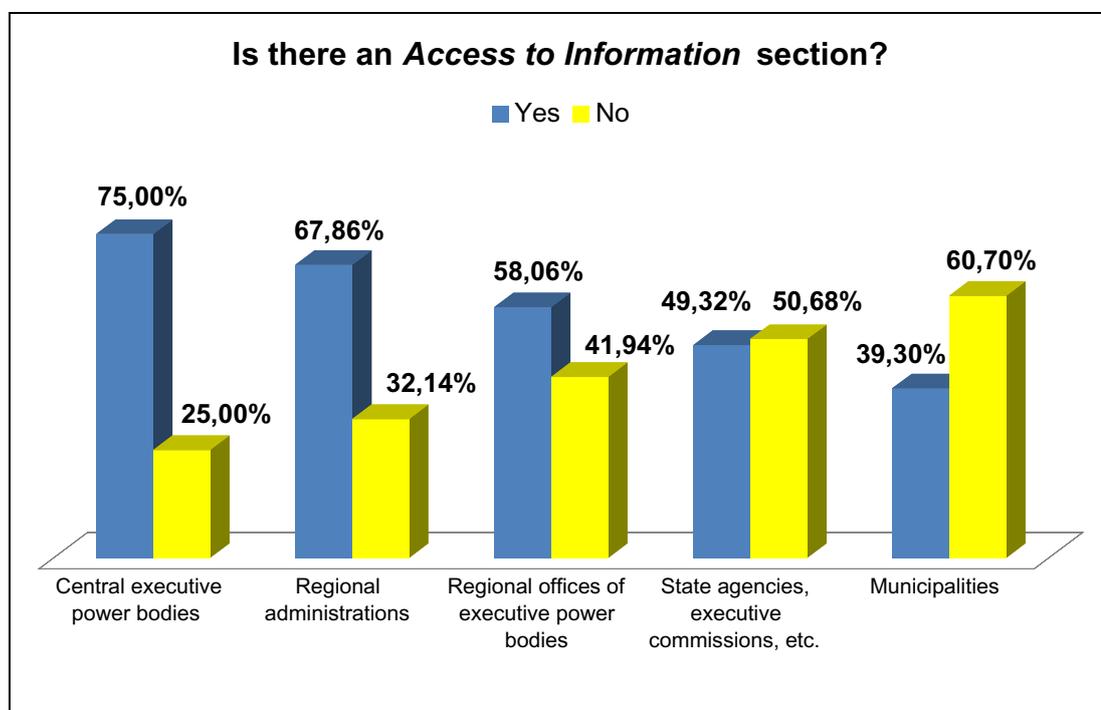


Chart 43. Is there an Access to Information section?
(by type of public body - 2012)



Internal Rules

Chart 44. Are Internal Access to Public Information Act (APIA) Implementation Rules published?

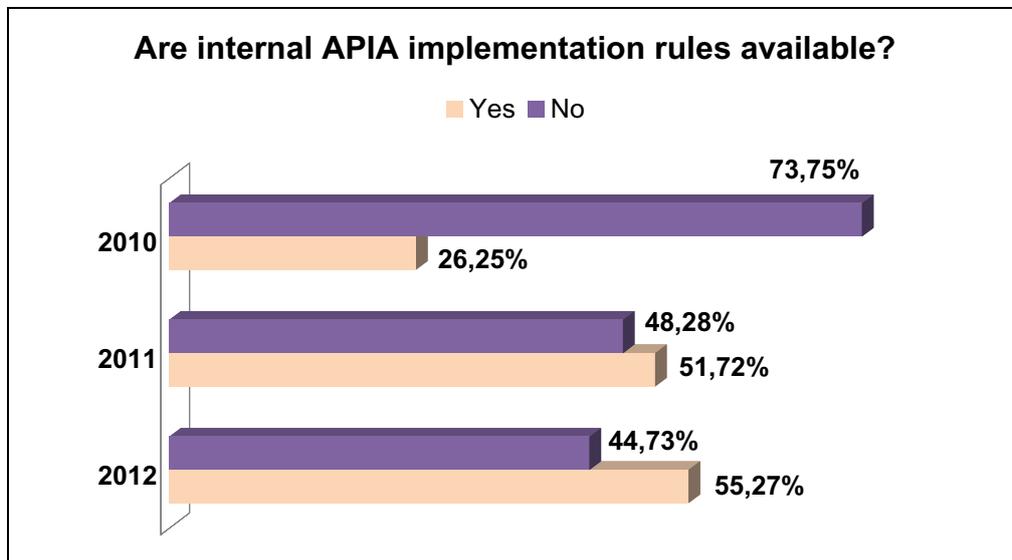


Chart 45. Are Internal APIA Implementation Rules published?
(by type of public body - 2012)

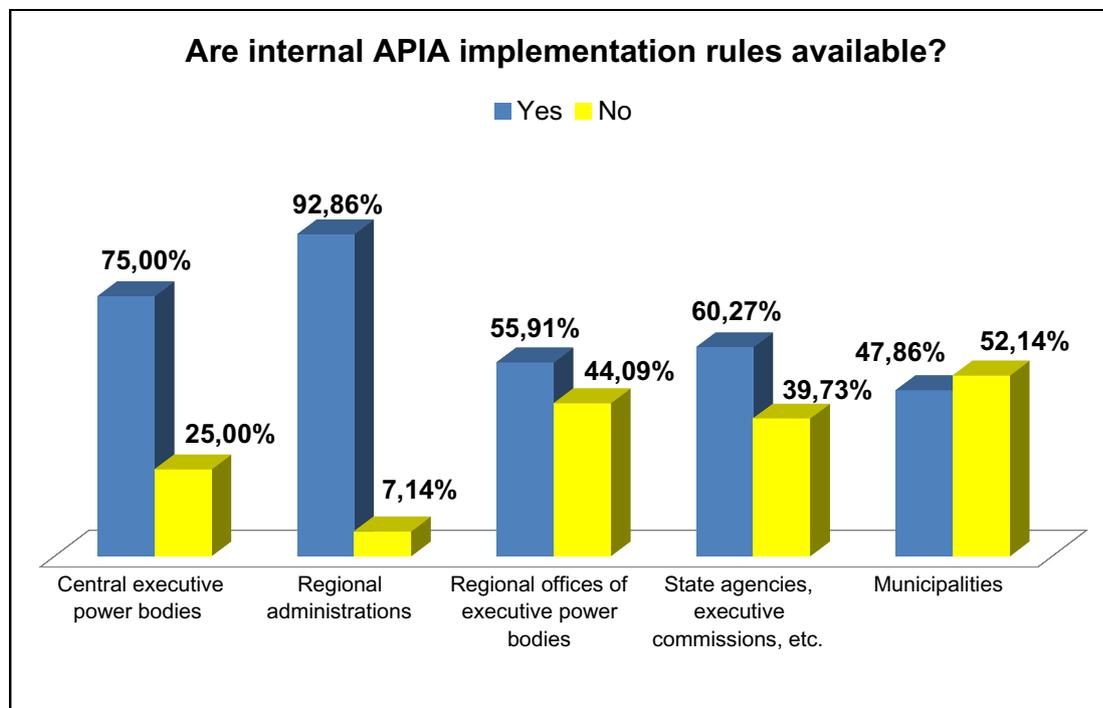


Chart 46. Is there a description of the procedure for access to public registers maintained by the institution?

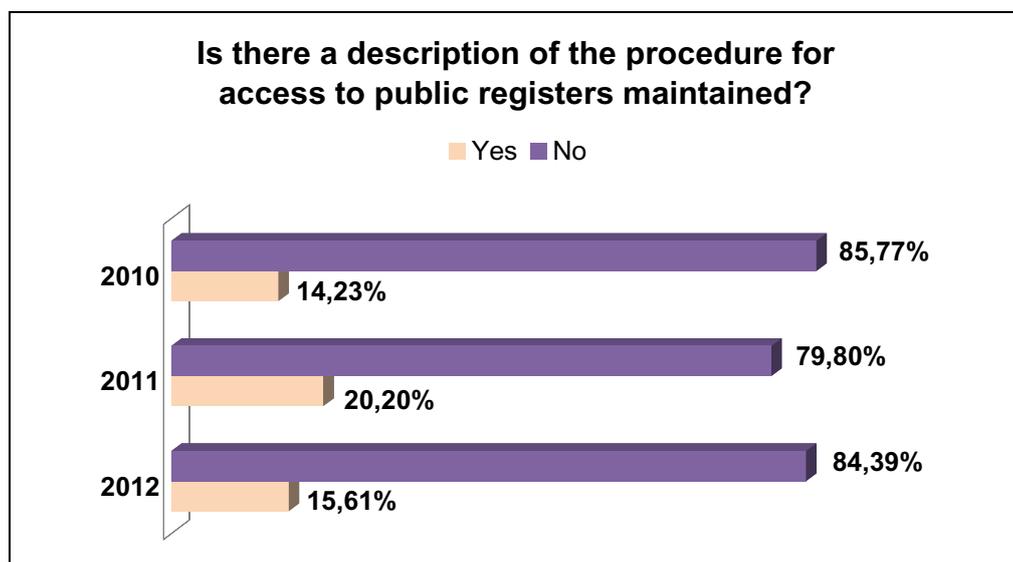
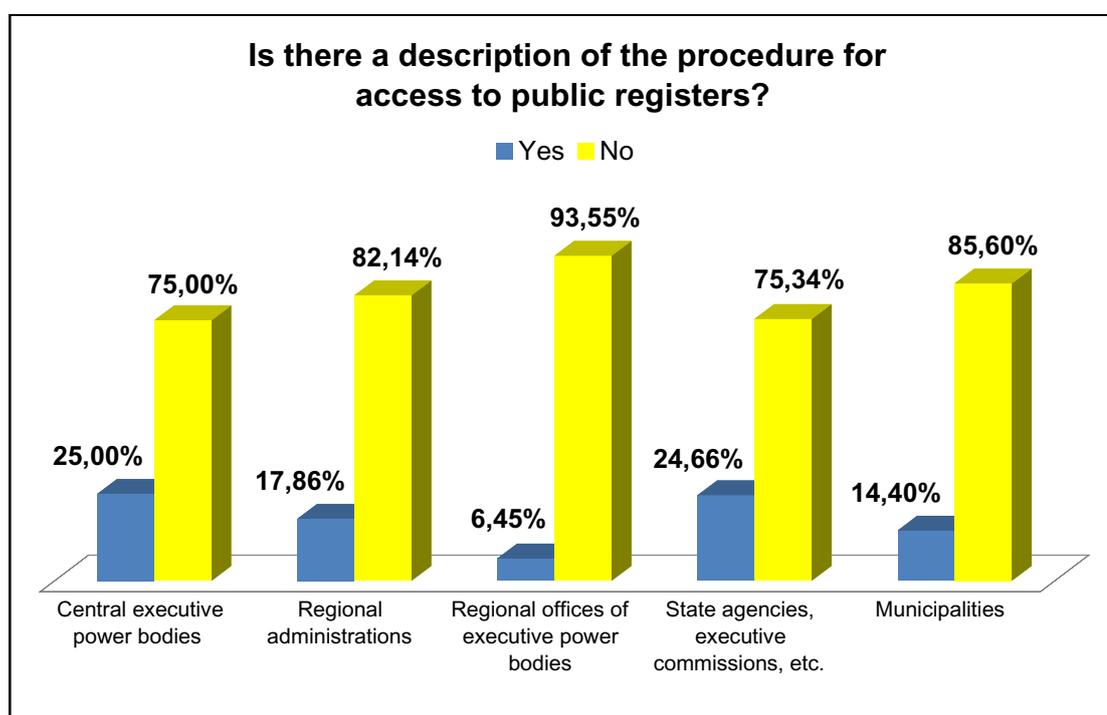


Chart 47. Is there a description of the procedure for access to public registers maintained by the institution? (by type of public body - 2012)



Annual Report on Registered Requests, Decisions for Refusal and Grounds for Refusals

Chart 48. Is the APIA implementation report published?

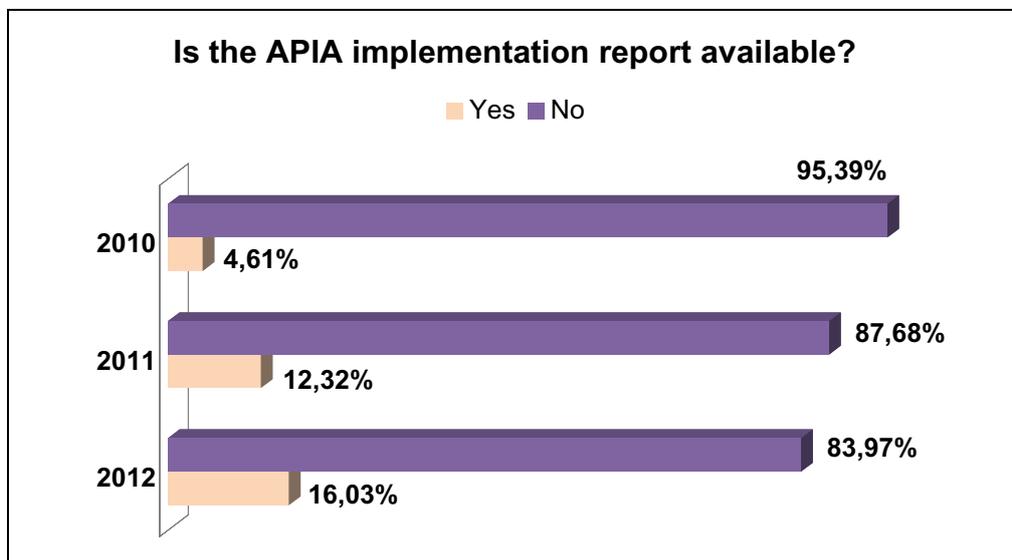


Chart 49. Is the APIA implementation report published?
(by type of public body - 2012)

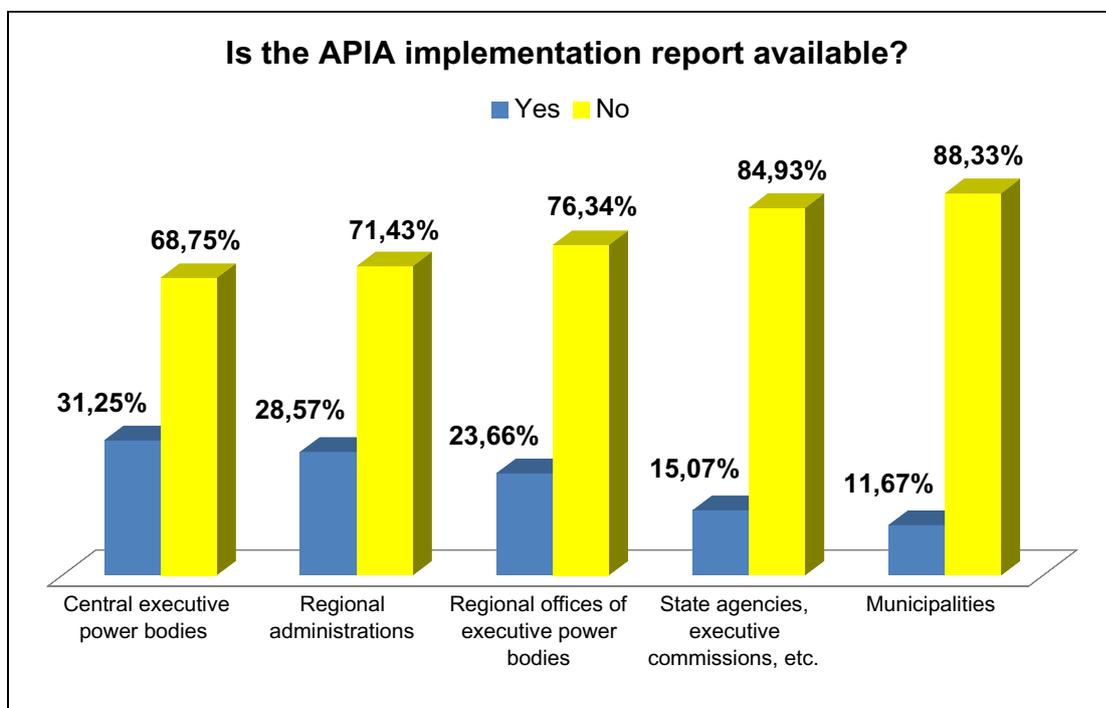


Chart 50. Does the APIA implementation report contain data about registered requests?

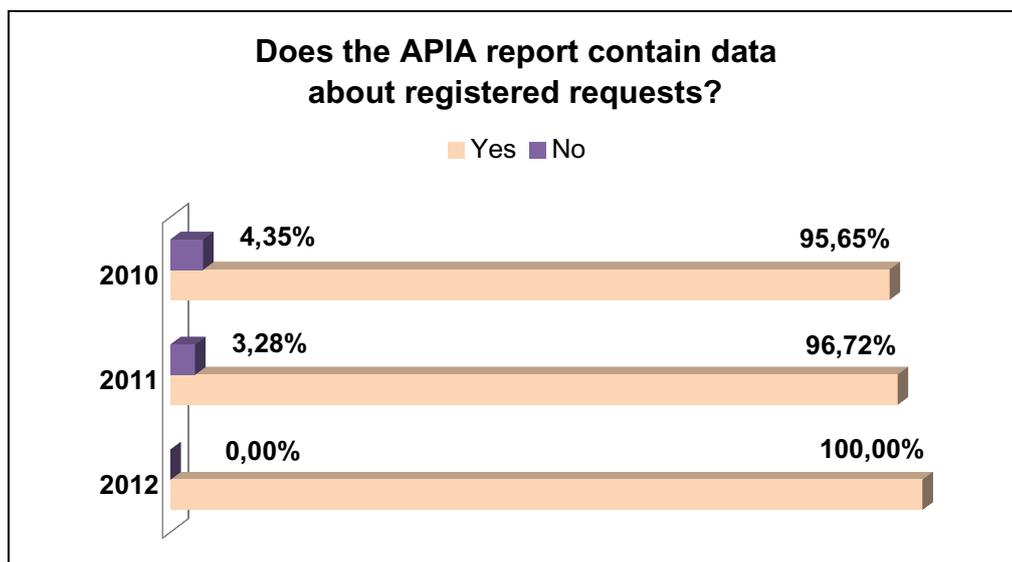


Chart 51. Does the APIA implementation report contain data about registered requests? (by type of public body - 2012)

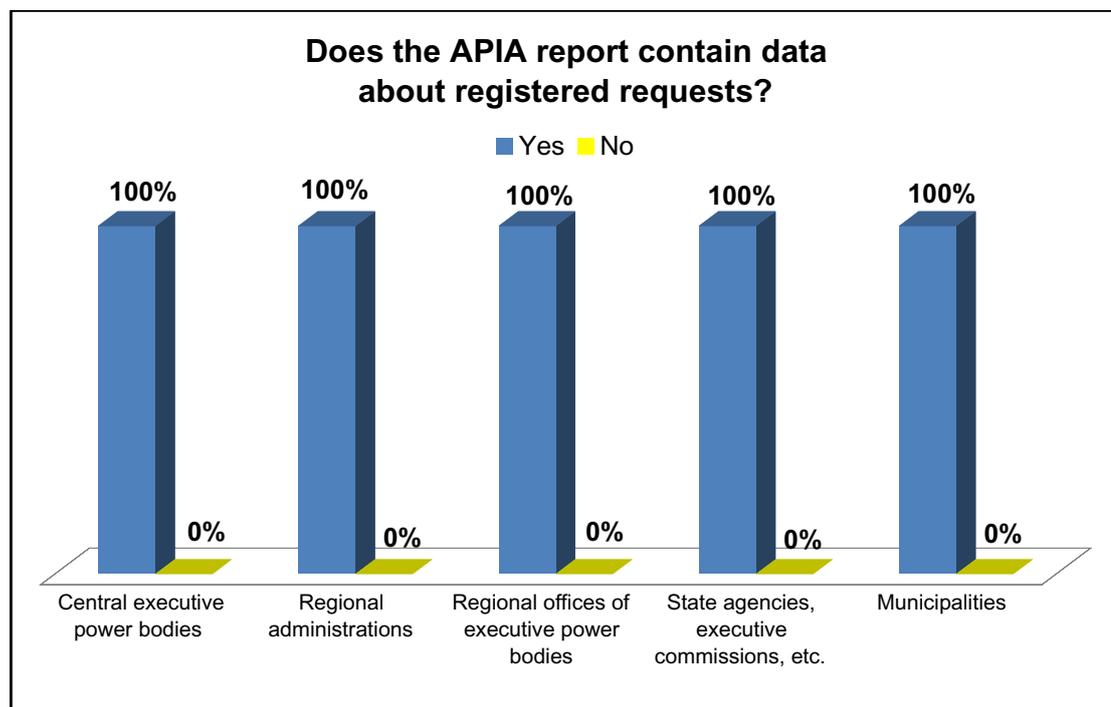


Chart 52. Does the APIA implementation report contain data about refusals on information requests?

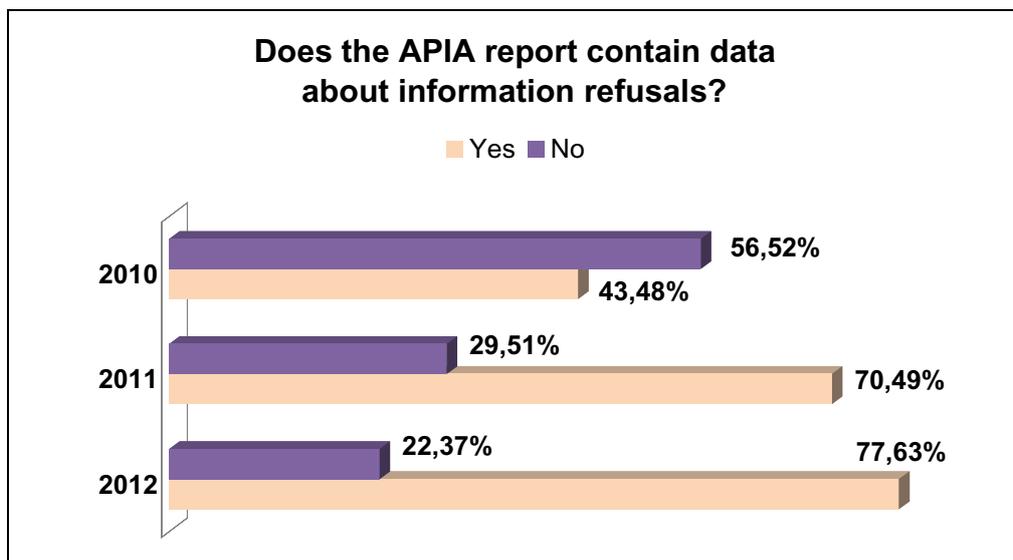


Chart 53. Does the APIA implementation report contain data about refusals on information requests? (by type of public body - 2012)

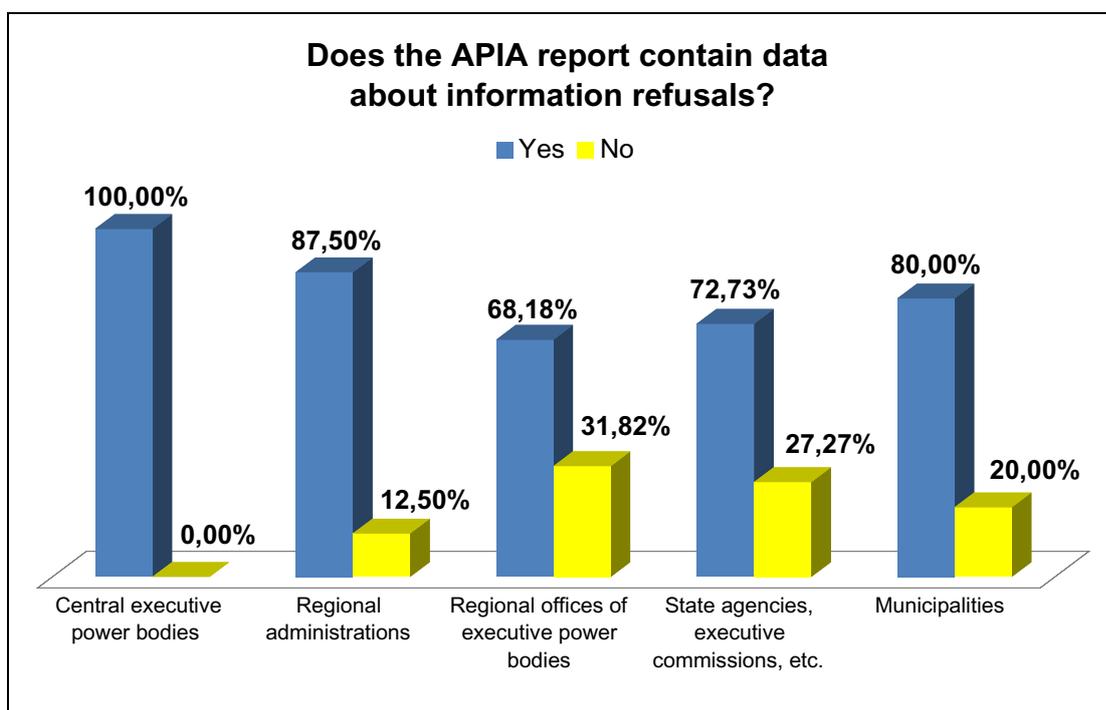


Chart 54. Does the APIA implementation report contain data about grounds on which information refusals were made?

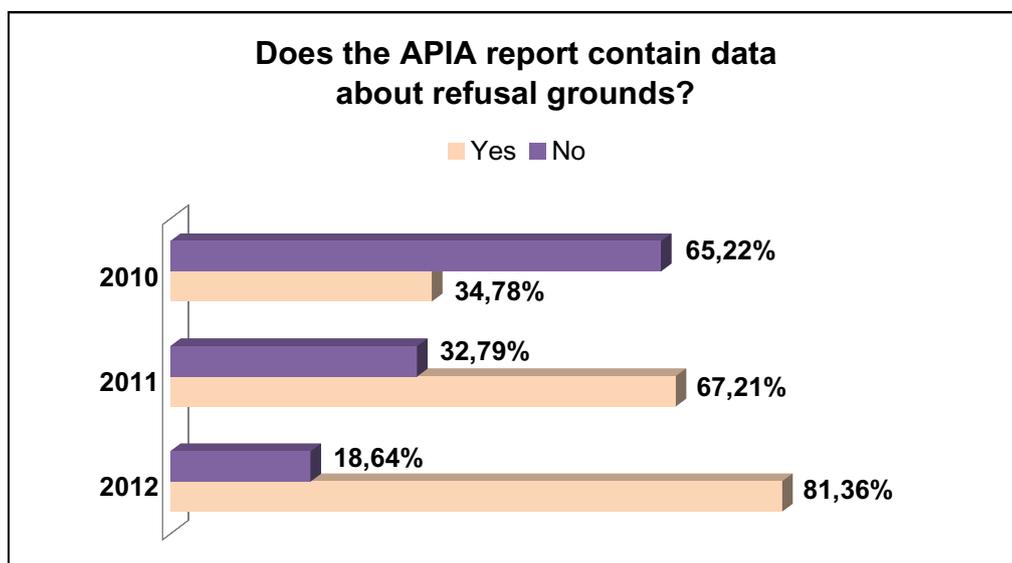
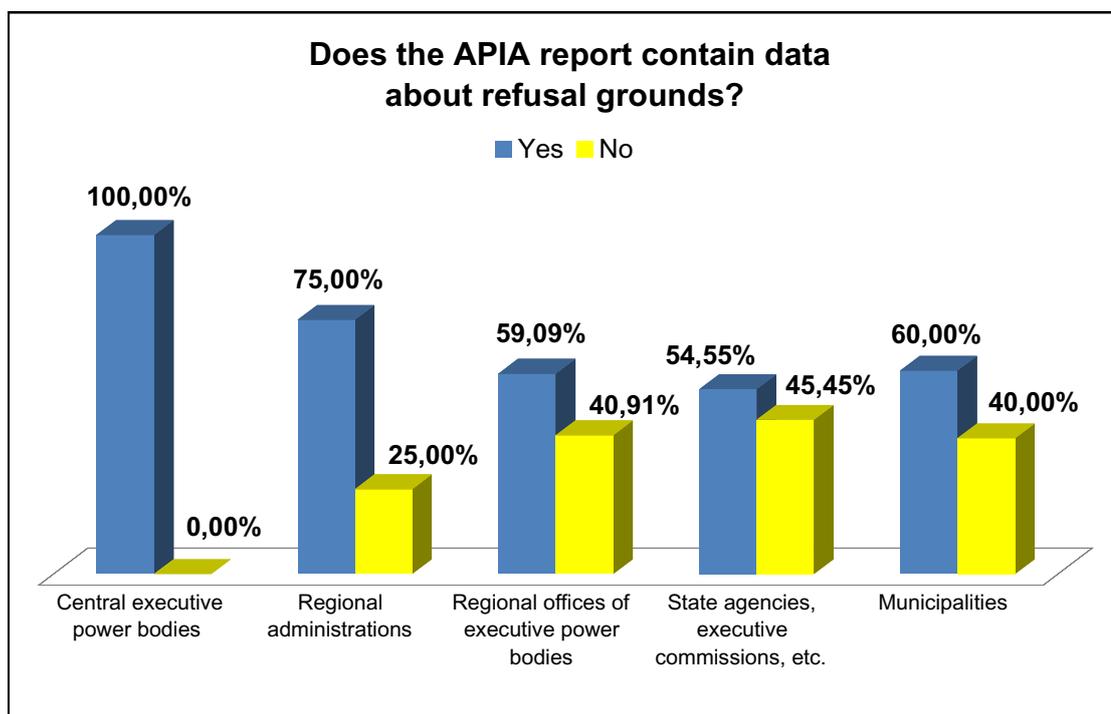


Chart 55. Does the APIA implementation report contain data about grounds on which information refusals were made? (by type of public body - 2012)



Contact Information of the Department/Official In Charge of Access to Information - name, address, phone number, e-mail, responsible official, working hours

Chart 56. Contact information of the APIA department - name?

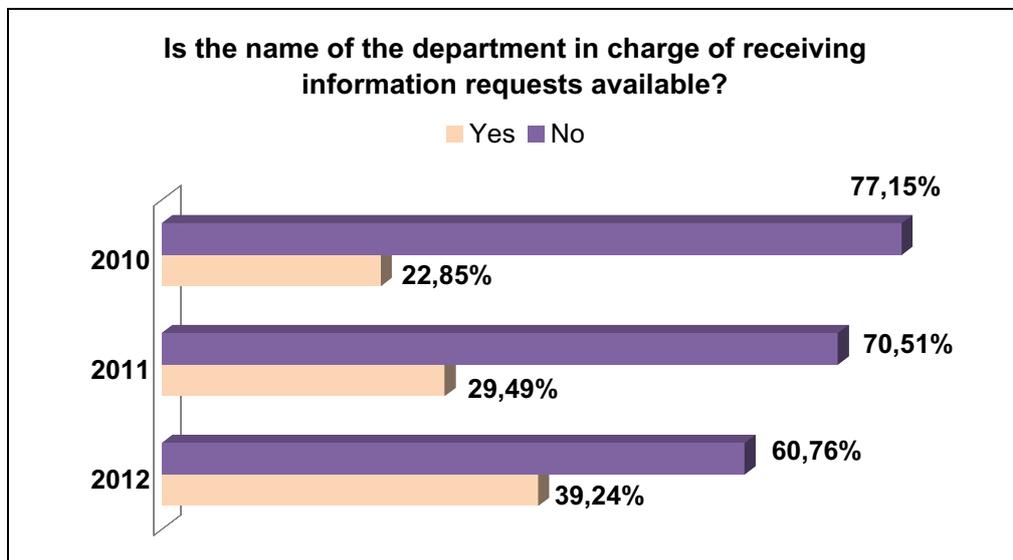


Chart 57. Contact information of the APIA department - name? (by type of public body - 2012)

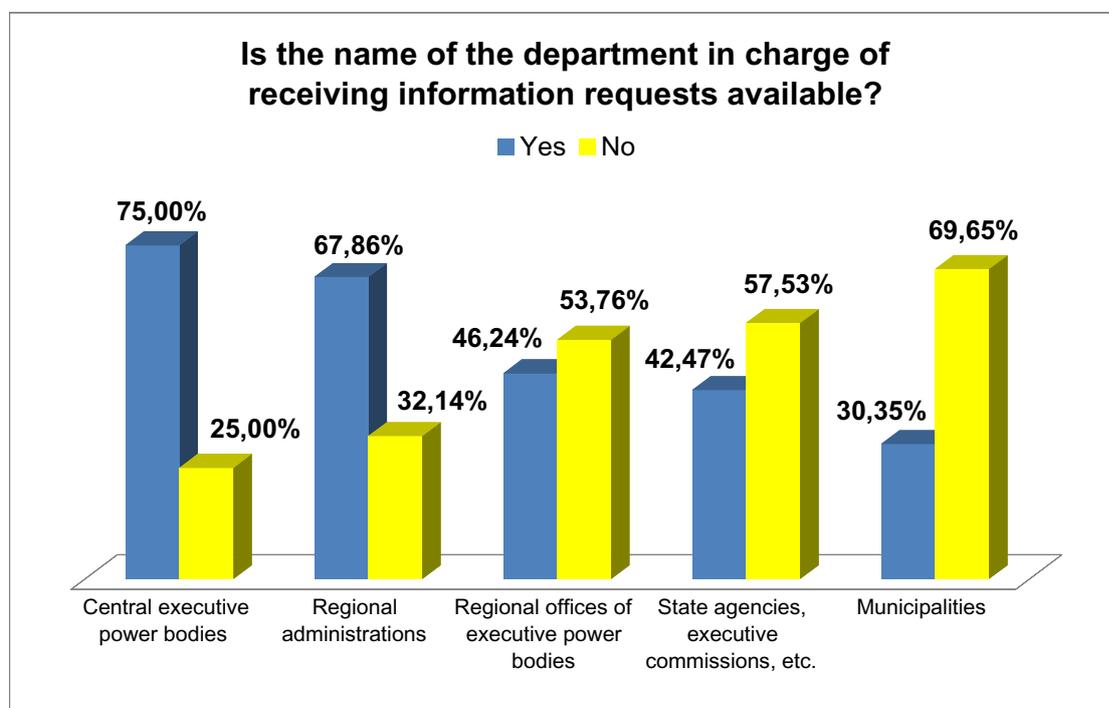


Chart 58. Contact information of the APIA department - phone number?

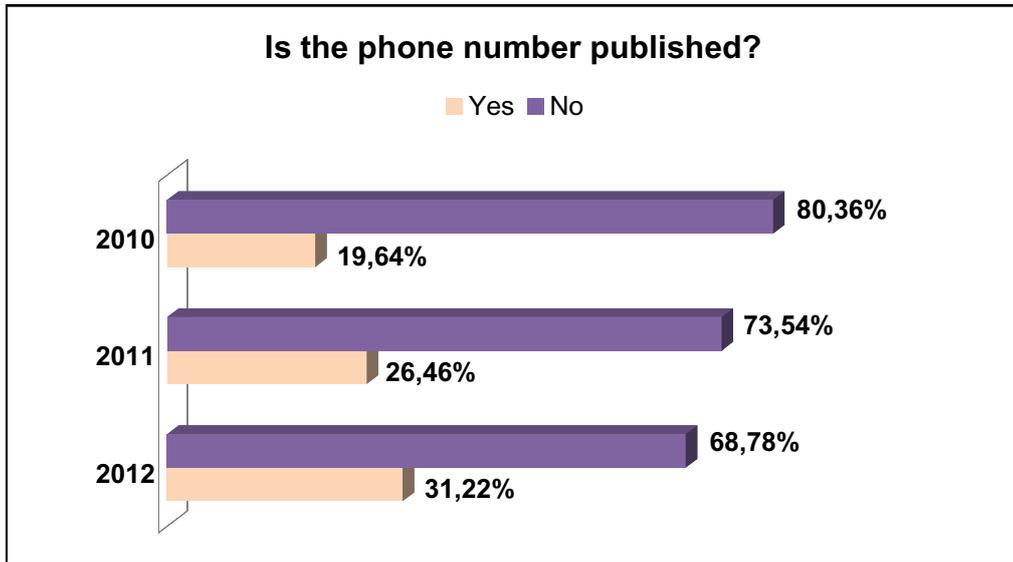


Chart 59. Contact information of the APIA department - phone number?
(by type of public body - 2012)

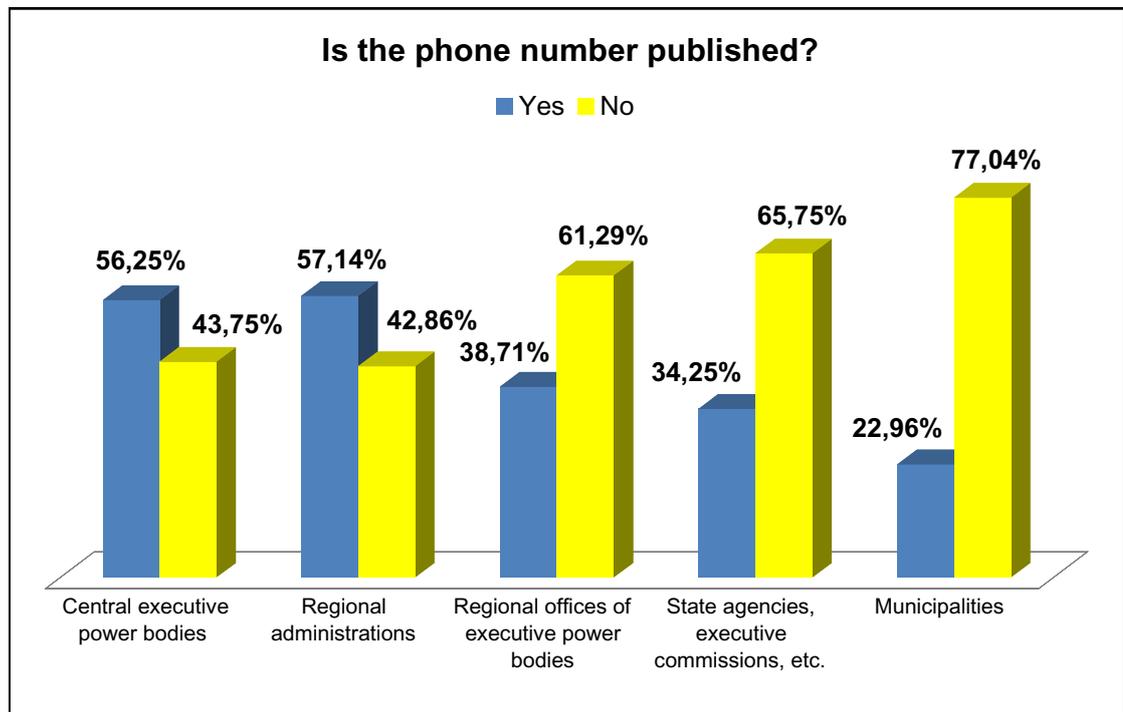


Chart 60. Contact information of the APIA department - responsible official?

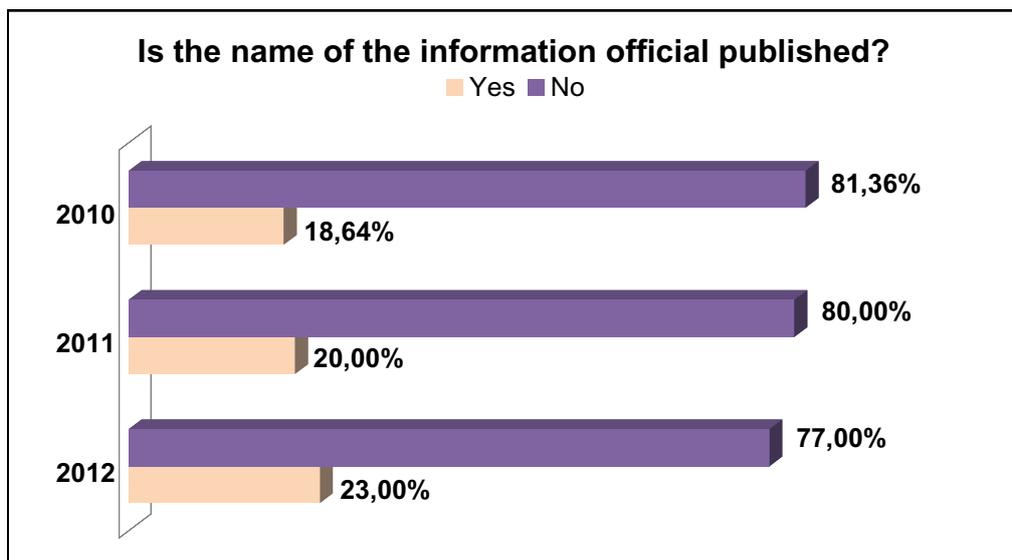


Chart 61. Contact information of the APIA department - responsible official?
(by type of public body - 2012)

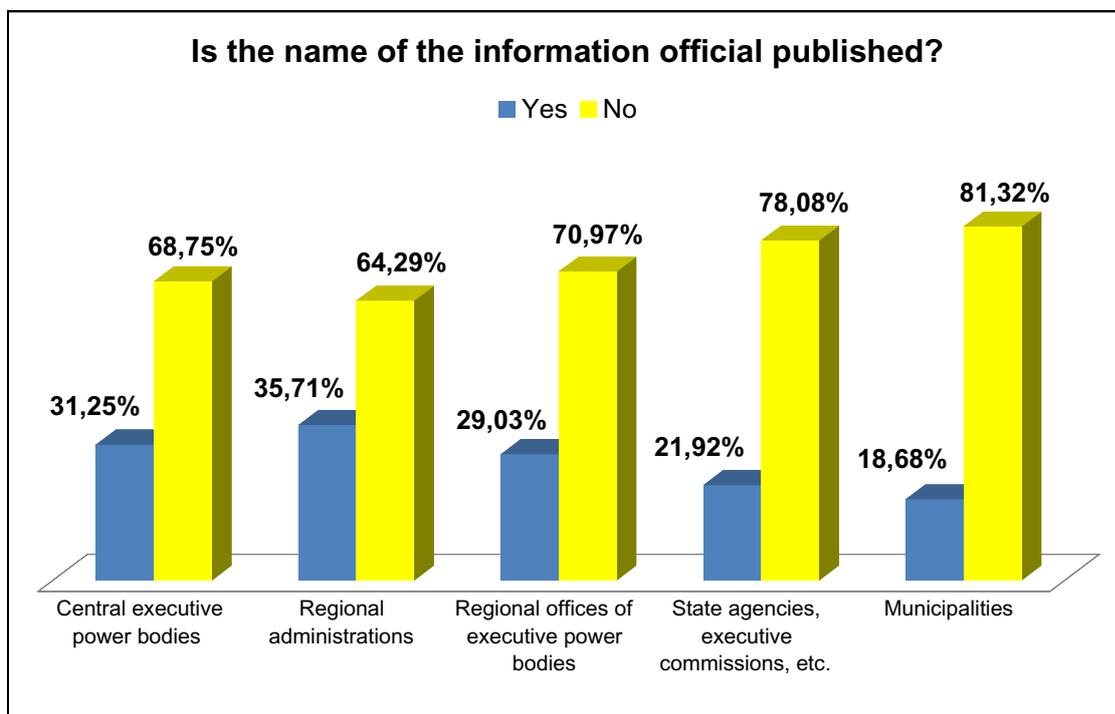


Chart 62. Contact information of the APIA department - e-mail address?

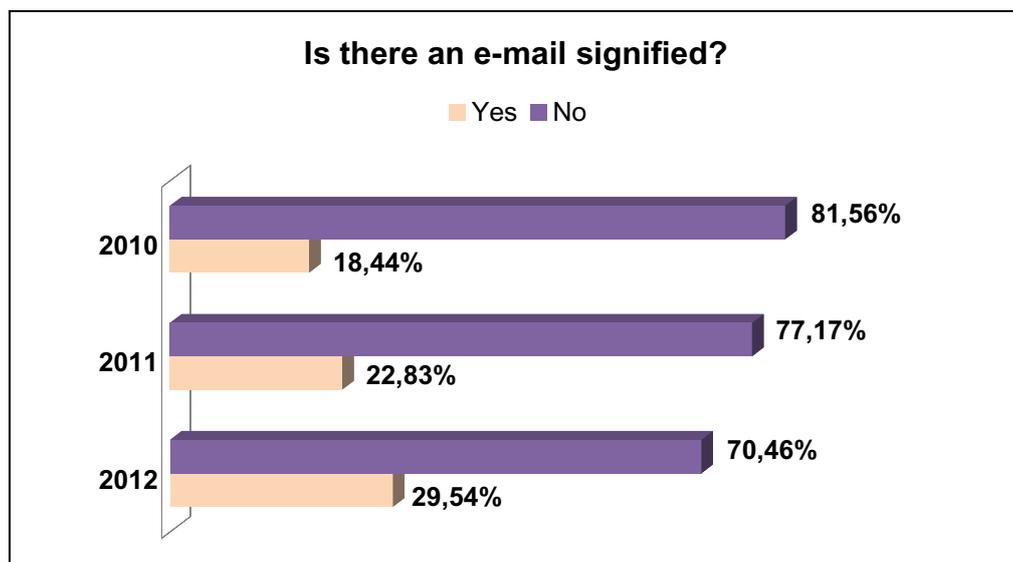


Chart 63. Contact information of the APIA department - e-mail address?
(by type of public body - 2012)

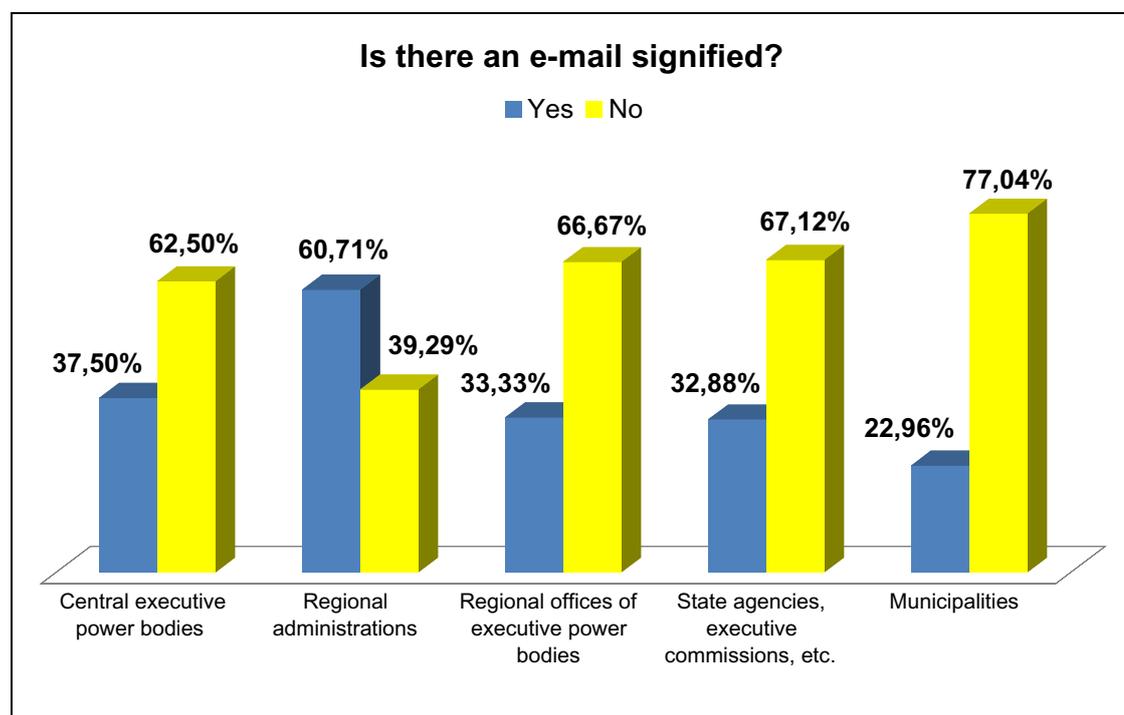


Chart 64. Contact information of the APIA department - address?

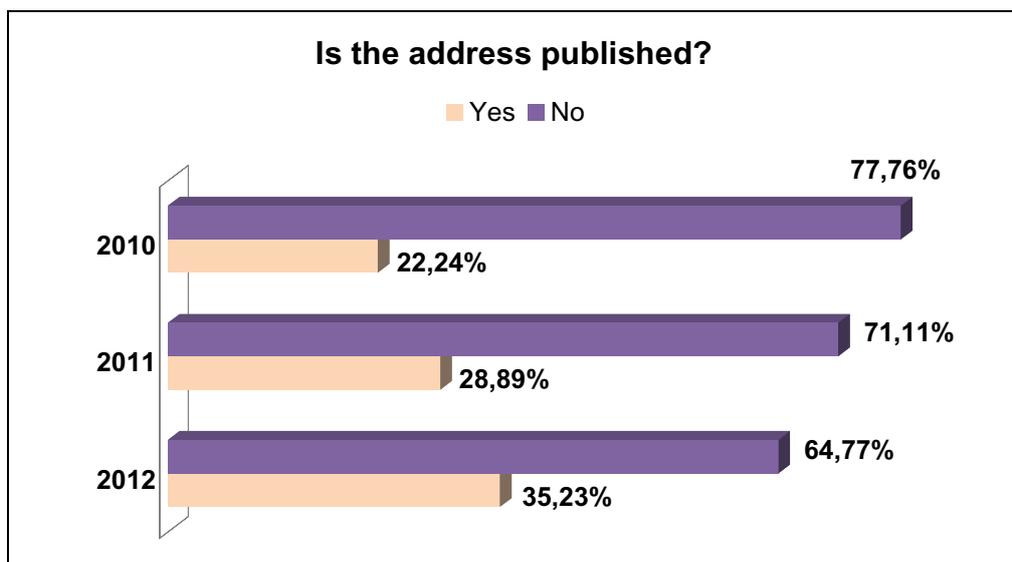


Chart 65. Contact information of the APIA department - address?
(by type of public body - 2012)

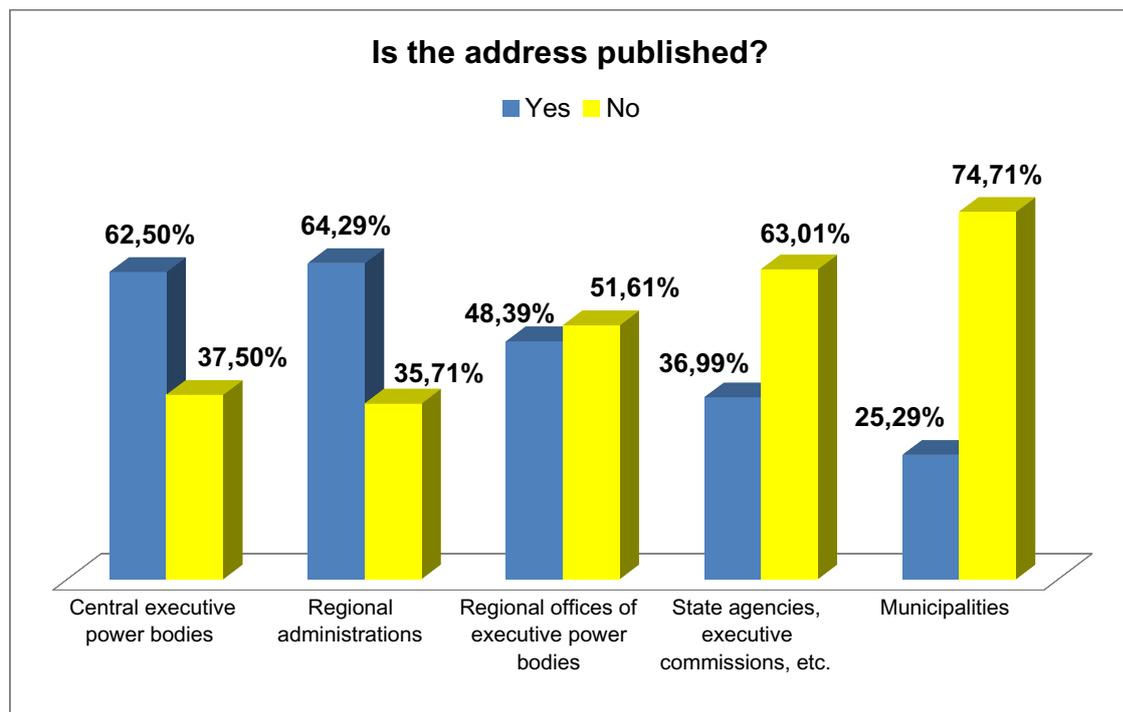


Chart 66. Contact information of the APIA department - working hours?

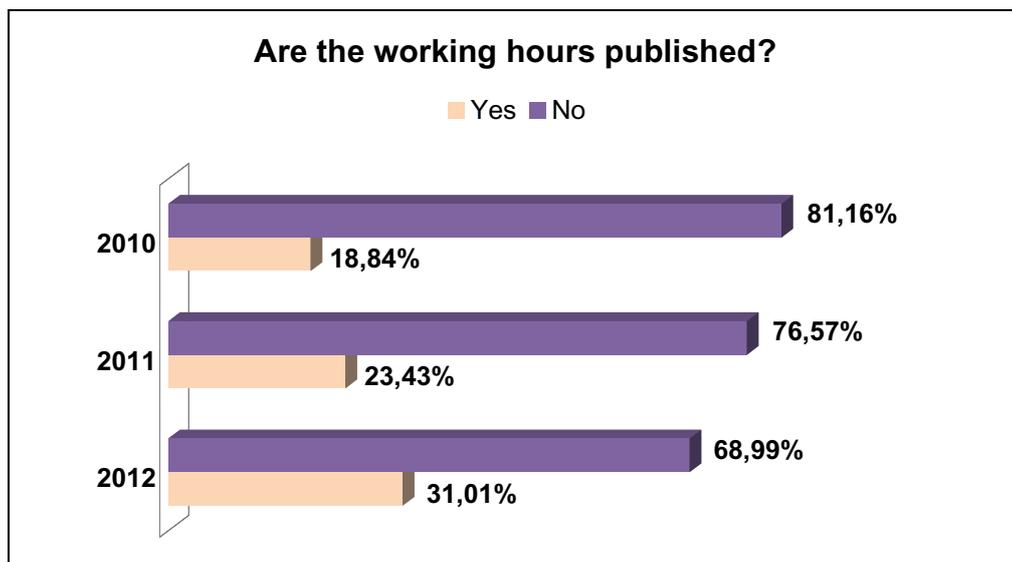
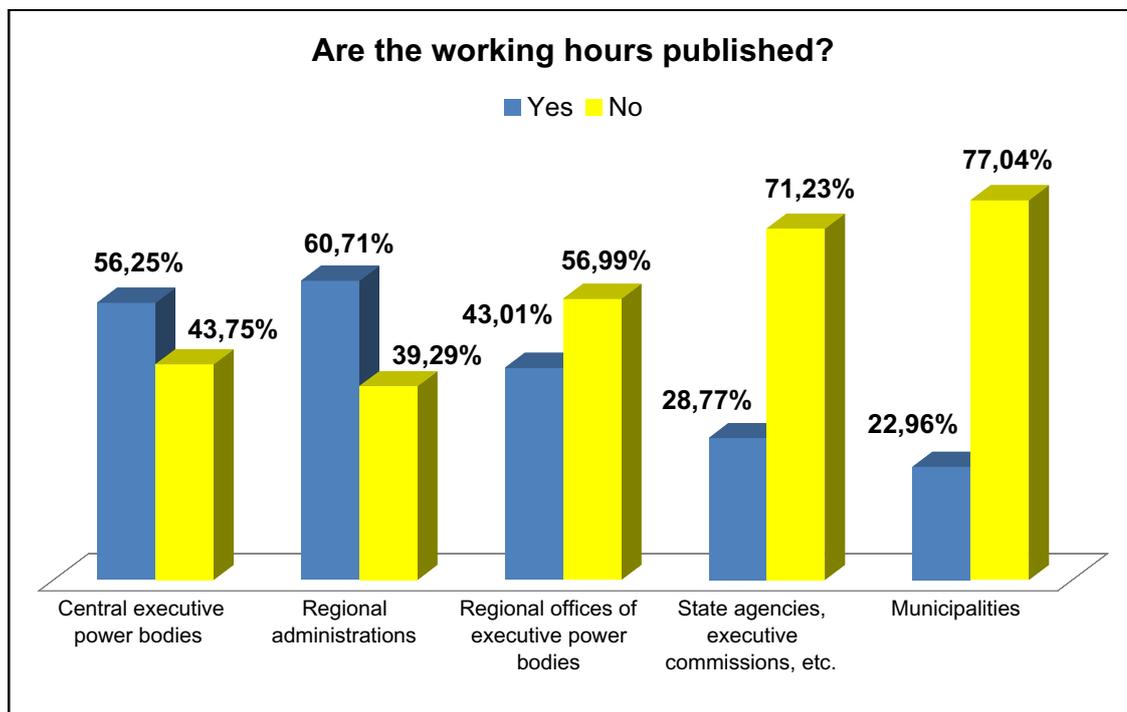


Chart 67. Contact information of the APIA department - working hours?
(by type of public body - 2012)



Other Type of Information Necessary for the Exercise of the Right of Access to Information

Chart 68. List of declassified documents?

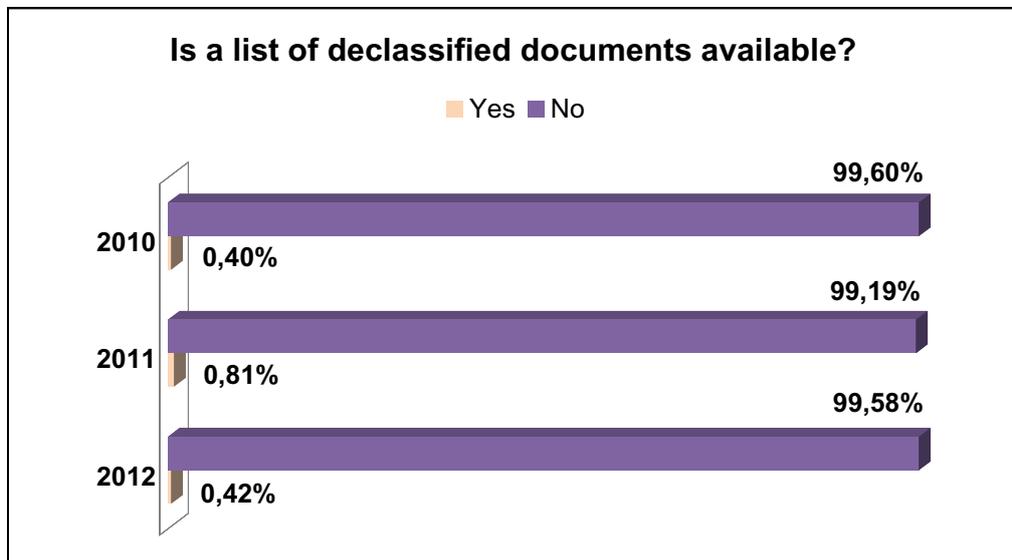


Chart 69. List of declassified documents?
(by type of public body - 2012)

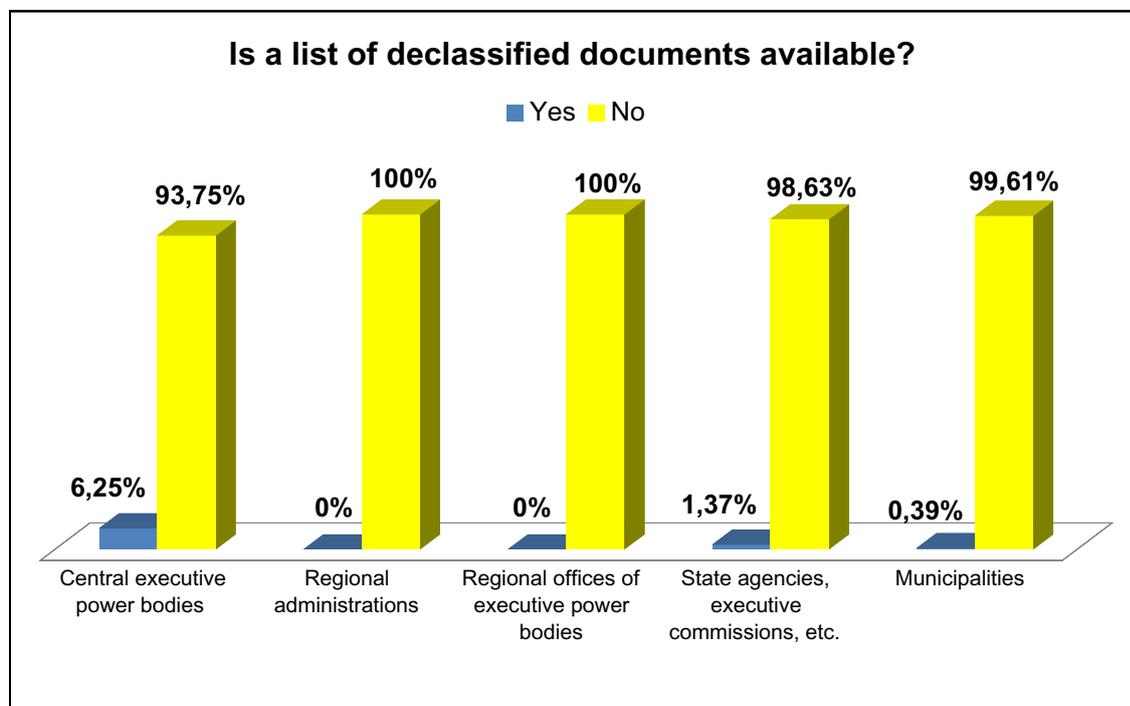


Chart 70. List of the categories of information subject to classification as official secret?

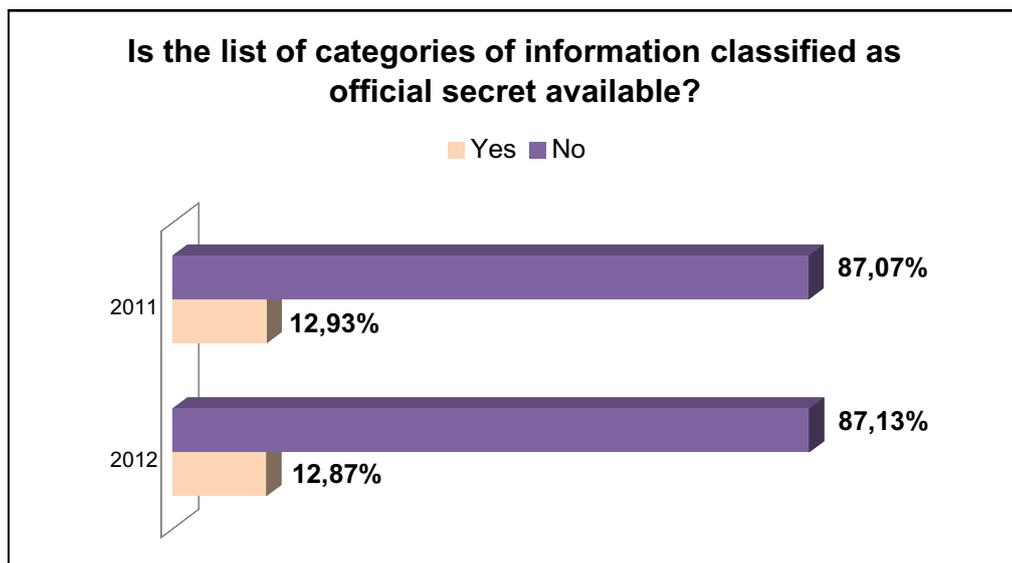
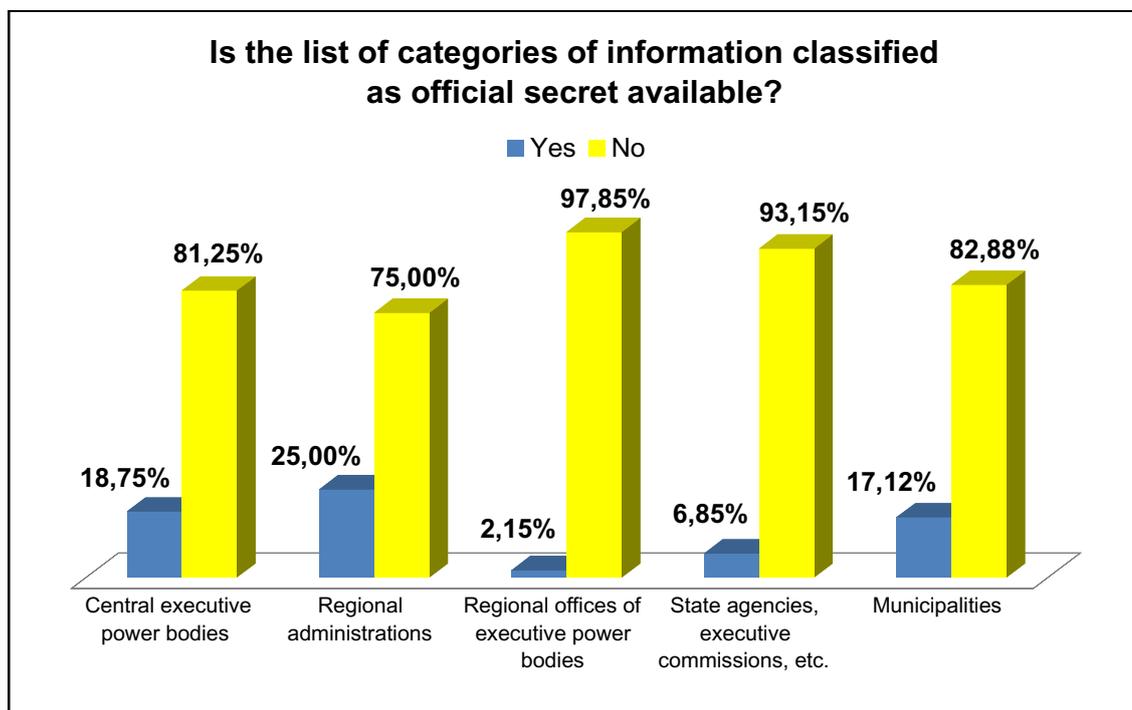


Chart 71. List of the categories of information subject to classification as official secret? (by type of public body - 2012)



Response to Electronic Requests

Chart 72. Are access to public information requests accepted electronically?

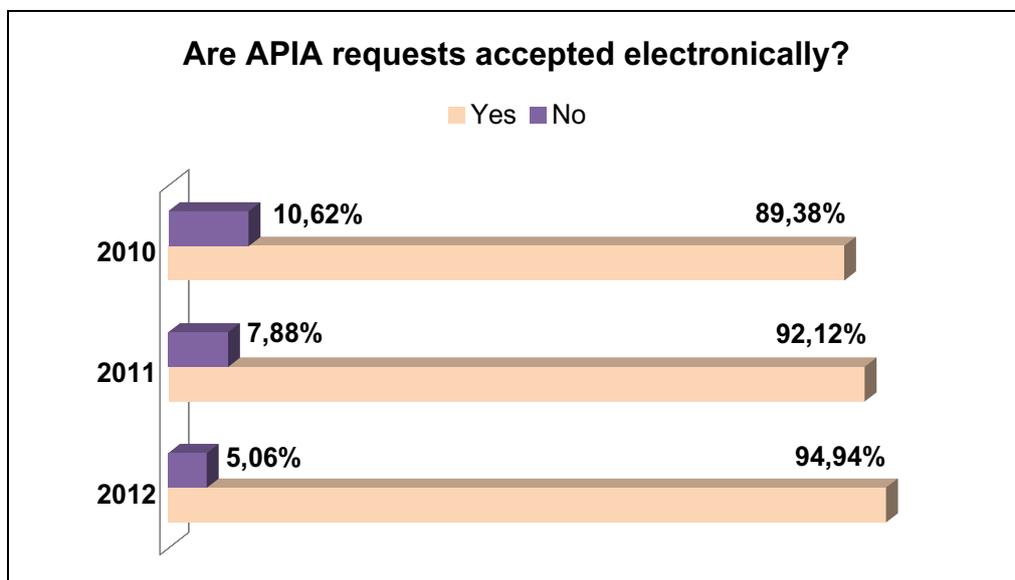


Chart 73. Are access to public information requests accepted electronically?
(by type of public body - 2012)

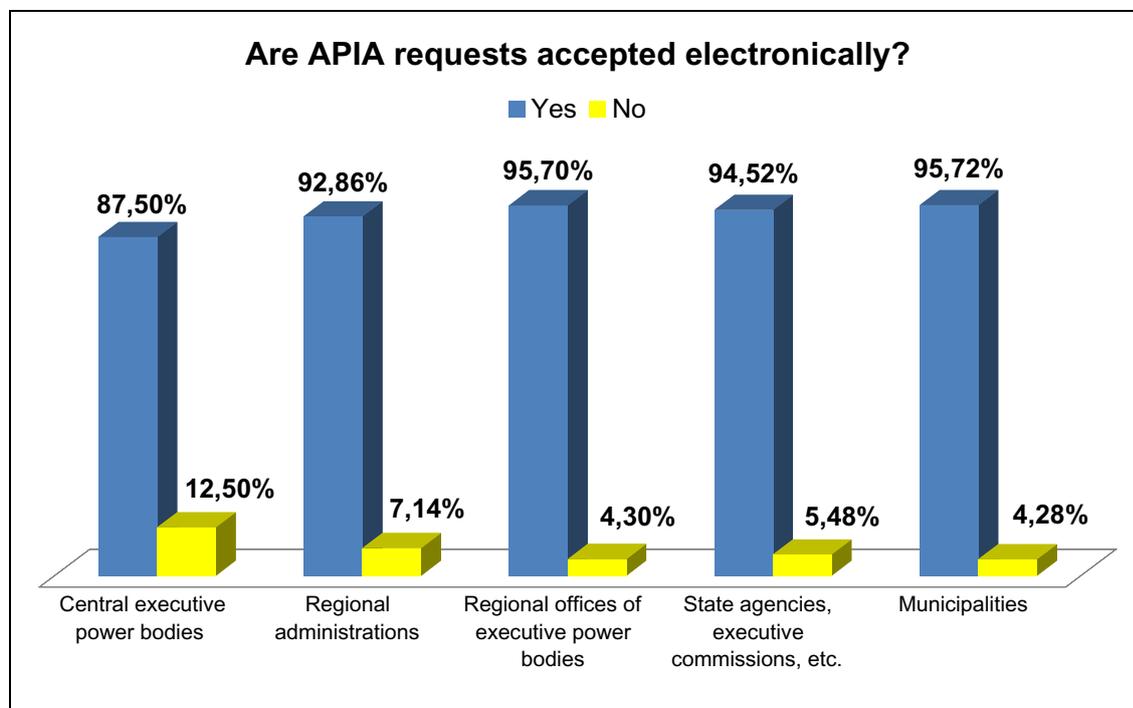


Chart 74. Is an electronic signature required for filing information request electronically?

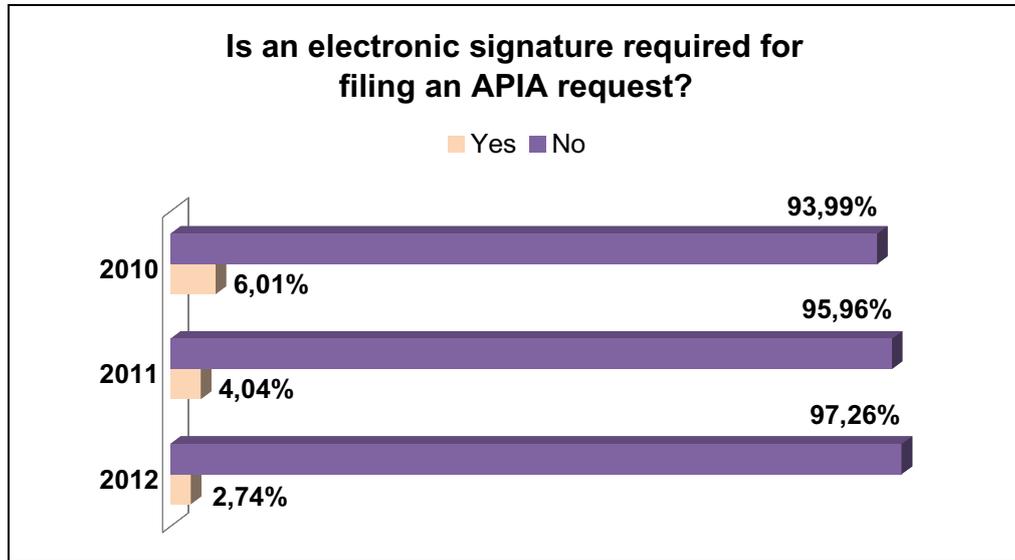


Chart 75. Is an electronic signature required for filing information request electronically? (by type of public body - 2012)

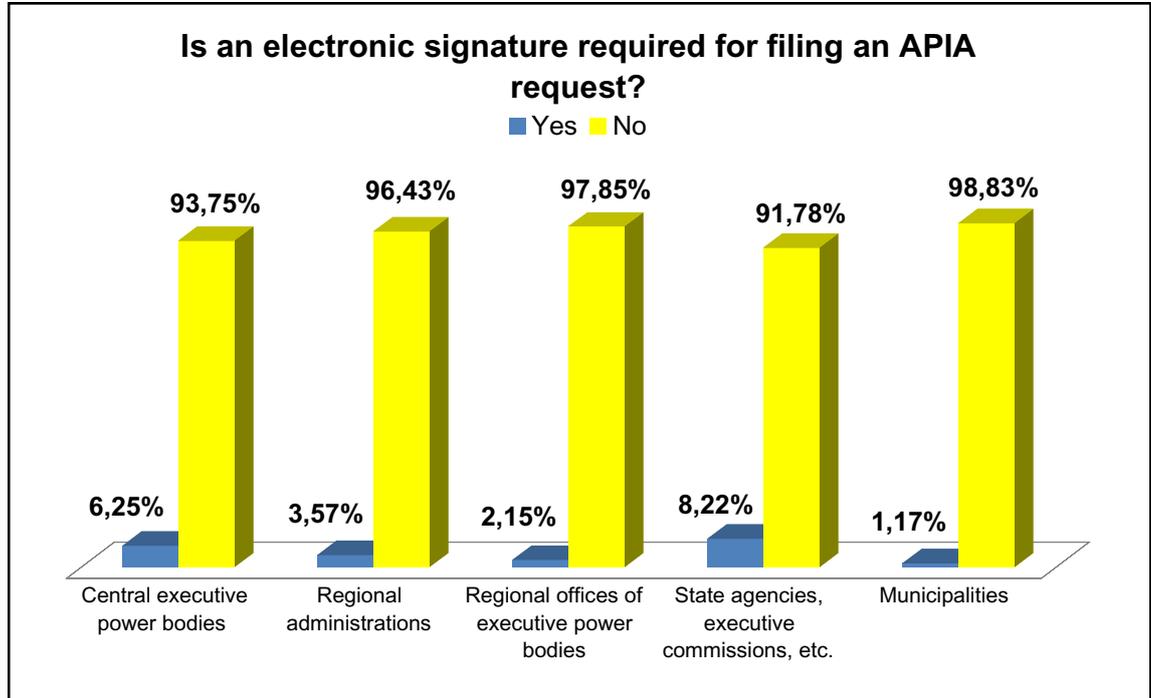
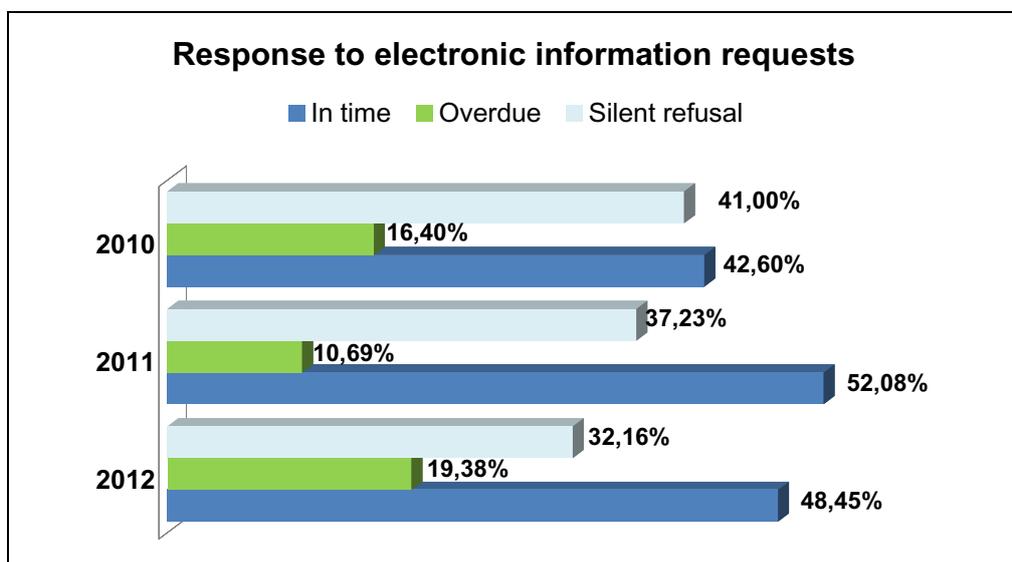
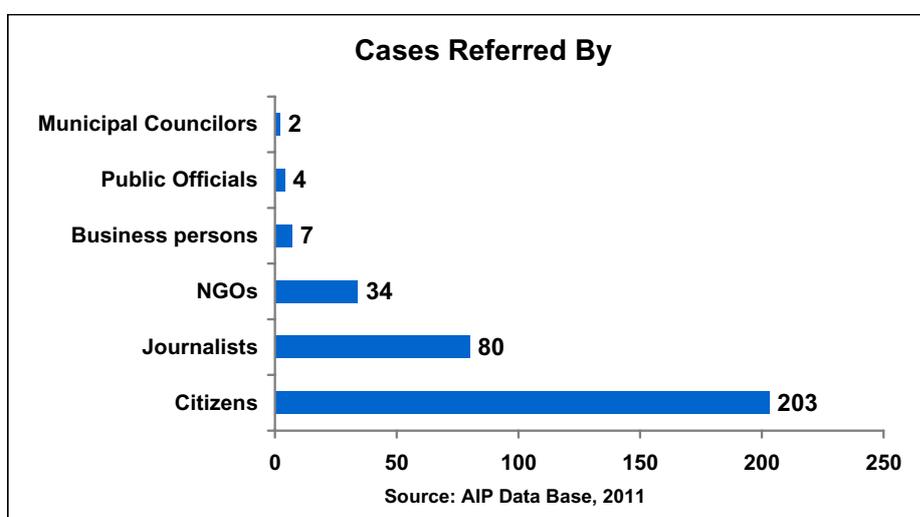
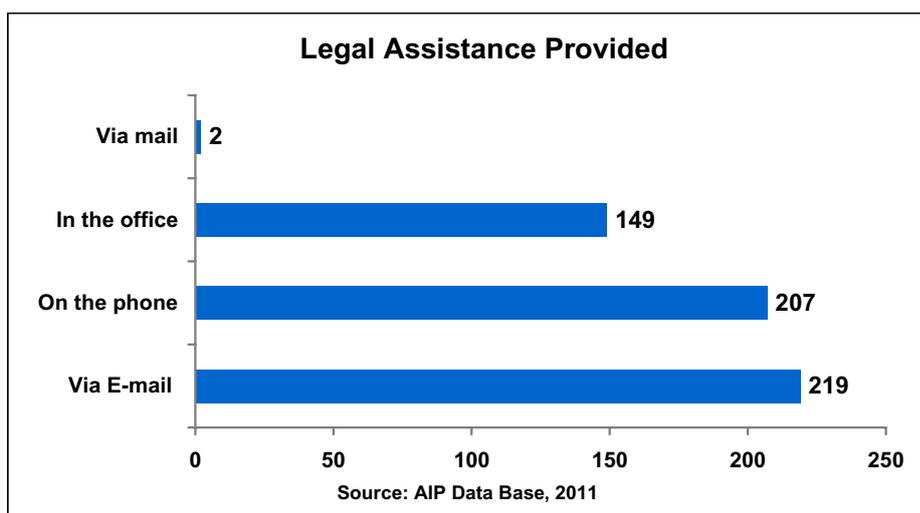
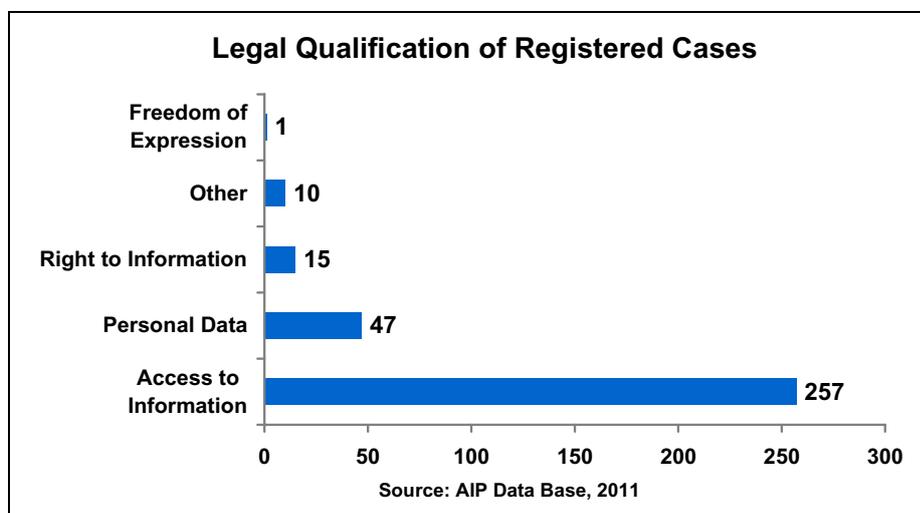


Chart 76. Response rate to access to information requests filed electronically
2010 - 2012

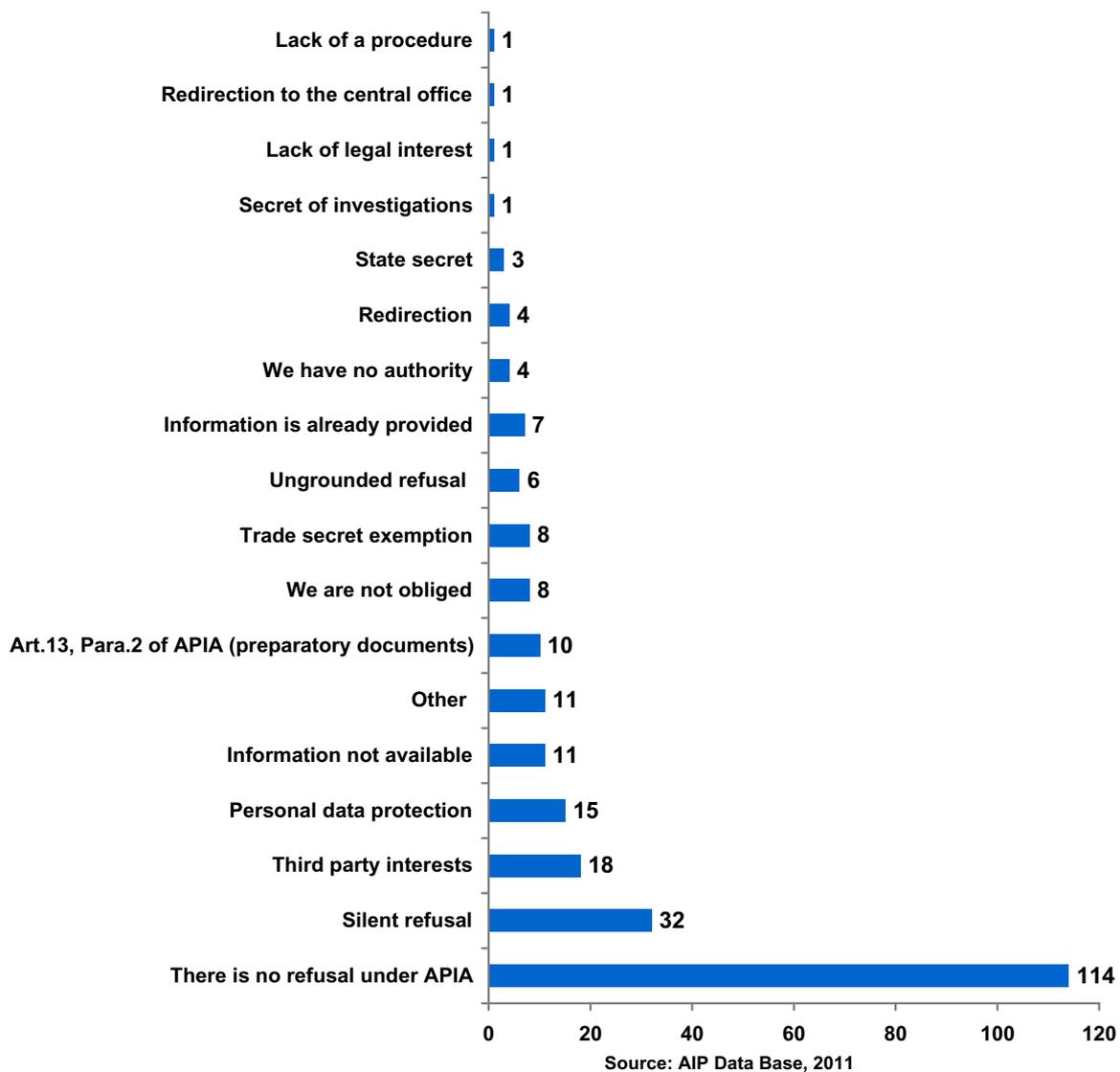


APPENDIX 2

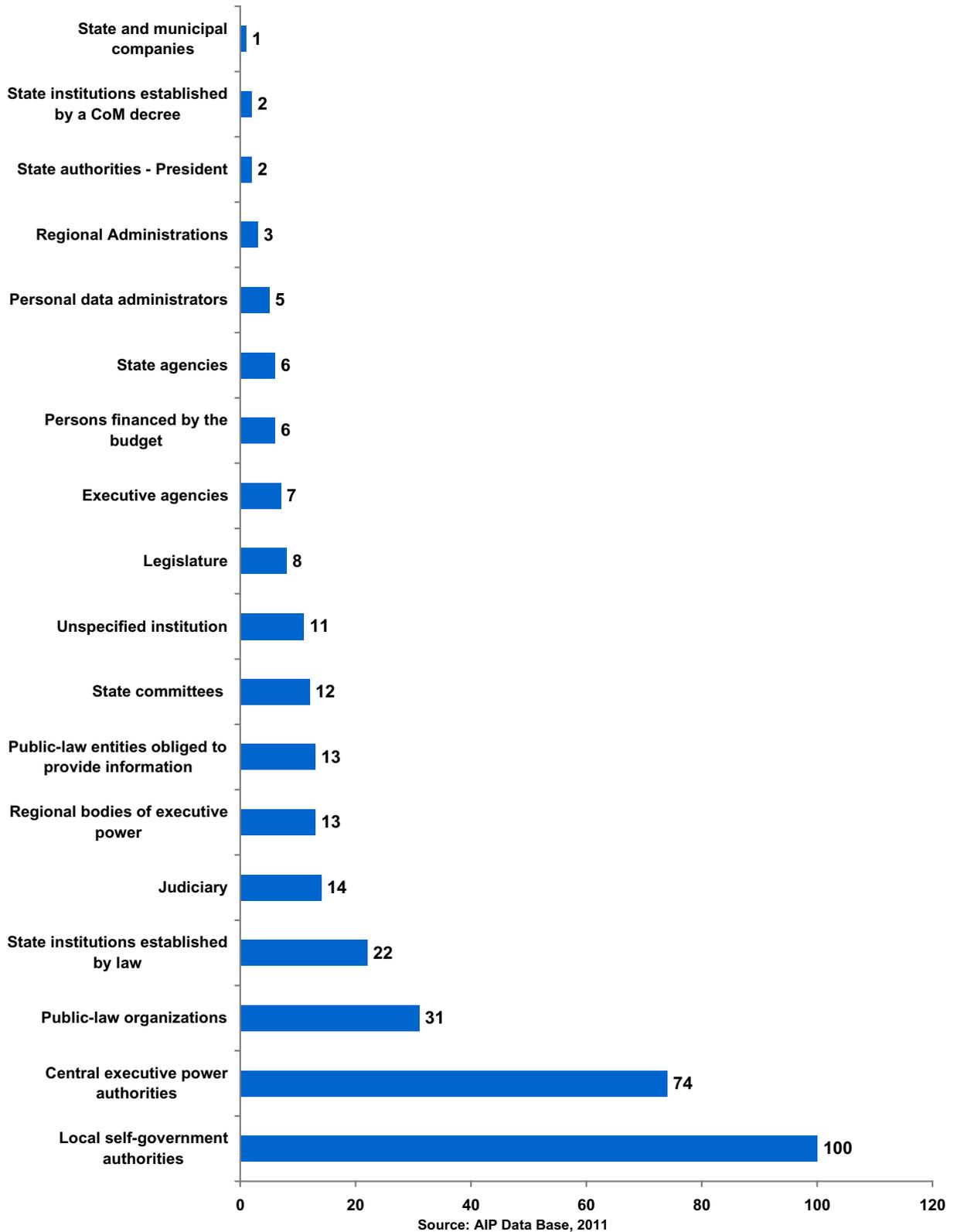
STATISTICS FROM ACCESS TO INFORMATION PROGRAMME ELECTRONIC DATA BASE



Grounds for Refusal



Institutions where information is sought



APPENDIX 3

LITIGATION CASE NOTES

1. Zarko Marinov (*Otzvuk newspaper*) vs. the Municipality of Smolyan

First Instance Court - administrative case No. 169/2011, Administrative court -Smolyan
Second Instance Court - administrative case No. 9760/2011, Supreme Administrative Court, Fifth division

Request:

With a request as of March 2011, the chief editor of the regional newspaper *Otzvuk* Mr. Zarko Marinov requested from the Mayor of Smolyan copies of two municipal agreements.

- Agreement between the Municipality of Smolyan and „Titan-Cleaner“ LTD - town of Kardzhali, as of 2006 for „winter maintenance and snow removal, maintenance of public parks, lawns and landscaping; waste collection and disposal, cleanliness of public space“;
- and Agreement between the Municipality of Smolyan and „Eco Titan Group“ JSC as of 2008 for waste disposal and management of waste depot located within the municipality.

Refusal:

The Mayor sought the consent of the third parties concerned - the contractors who explicitly refused access to be granted. In response, the mayor provided partial access to the contracts - the costs and the liability clauses were blacked out.

Complaint:

The partial refusal was challenged before the Administrative court - Smolyan with the AIP help. The complainant stated that pursuant to Art. 31, Para. 5 of the APIA explicit consent of the affected parties is not required if there is overriding public interest in the disclosure of information. In this respect, § 1, item 5, „f“ of the Miscellaneous and Final Provisions of the APIA establishes a legal presumption that overriding public interest is always present where the information relates to the parties, sub-contractors, the subject, the cost, the rights and obligations, terms and liability agreed when one of the party is an obliged under the APIA public authority.

Proceedings before the Court of First Instance:

The case was heard in an open court session and was scheduled for judgment.

Court Decision:

With a decision No.195 as of June 16, 2011, the Administrative court - Smolyan repealed the partial refusal and compelled the Mayor to provide full access. The court held that the APIA establishes a legal presumption for overriding public interest in the disclosure of the information. The respondent failed to produce any evidence refuting this presumption, therefore the court found for the presence of public interest.

Appeal:

The Mayor appealed the decision before the Supreme Administrative Court (SAC). The complaint states that the legal presumption is refutable and the burden of proof is on the onus of the party claiming the presence of overriding public interest.

Proceedings before the Court of Second Instance:

The case is scheduled for an open court hearing on May 30, 2012.

2. Violeta Andreeva vs. the Chair of *Rayna Knyaginya* Community Centre, Sofia

First Instance Court - administrative case No. 4092/2011, Administrative Court - Sofia City, First division, 16th panel

Request:

On January 10, 2011, Mrs. Violeta Andreeva filed a request to the Chairperson of *Rayna Knyaginya* Community Centre, Sofia. She sought access to the bylaws of the community center; the names of the members of the board of trustees and the auditing committee; minutes of the general assembly meetings; activity reports, as well as revenue reports.

Refusal:

The Chairperson failed to respond within the 14-days time limit under the APIA.

Complaint:

The silent refusal was challenged before the Administrative Court - Sofia City (ACSC).

Proceedings before the Court of First Instance:

The case was heard in an open court session and was scheduled for judgment. At the hearing, the procedural representative of the community centre argued that the centre was not an obliged under the APIA body, therefore there was no legal ground for the Chair to decide upon the request. The claimant, with the AIP help, adduced arguments that the community centre is an obliged body as it is funded by the consolidated state budget. According to the Community Centers Act, the institution receives annual subsidy from both, the state and the municipal budgets.

First Instance Court Decision:

With a decision No. 4642 as of October 2011, the ACSC repealed the silent refusal and returned the file to the Chair for reconsideration with instruction to give formal explicit decision. According to the court, the community centers are obliged bodies within the meaning of Art. 3, Para. 2, item 2 of the APIA as they are financed by the consolidated budget. The court points out that the Chairperson represents the community centre, therefore this is the person in charge of access to information requests and is required by law to issue an explicit decision.

3. Liuben Obretenov (*Sega* daily) vs. the Chief Secretary of the President

First Instance Court - administrative case No. 9104/2009, ASCS, Second division, 31st panel

Second Instance Court - administrative case No. 9708/2011, SAC, Fifth division

Request:

On November 23, 2009, the journalist from *Sega* daily, Mr. Liuben Obretenov filed a request to the Presidency. He sought information about the names of the members of the Pardons Committee and the names of the persons to whom pardon was granted in 2008 and 2009.

Refusal:

With a decision as of 3 December 2009, the Chief Secretary of the President refused access on the ground of personal data protection. The Chief Secretary further fears that disclosure of the names of the members of the Pardons Committee may result in pressure over them and their impartiality may be compromised.

Complaint:

With the AIP support, the explicit refusal was challenged before the Administrative Court - Sofia City (ACSC). The claimant argues that the decision-making and pardoning process shall be more transparent. The pardon privilege is exercised in the public interest. Thus, it supposes unconditional openness and disclosure at least of the names of the Pardons Committee. The complaint also stresses on the principle that the sentencing is always public; therefore disclosure of names of pardoned people does not infringe their personal data protection.

Proceedings before the Court of First Instance:

In July 2010, the ACSC decided to terminate the case and found that the complaint was barred for expiration of time limits for appeal. The decision to drop the case was challenged before the SAC which overruled it and returned the case to the ACSC for judgments on the merits. On March 14, 2011 the case was heard in an open court session and was scheduled for judgment.

Court Decision:

With a decision No. 1767 as of April 14, 2011, the ACSC repealed the refusal and compelled the Chief Secretary to provide partial access. The court found that the Chief Secretary should have had provided the names of the members of the Pardons Committee and rebutted the argument that pressure might have been exercised upon them. The court goes further by pointing out that the president, ministers, chairs of agencies etc., might also be under duress in some circumstances, but this does not mean that their names should be kept secret. With regard to the pardoned persons, the court found that the Chief Secretary should have had provided information but in a way that the persons cannot be unequivocally identified. According to the court, information on how many Bulgarian citizens and how many foreigners have been granted pardon, the type of crime the pardoned was convicted for, is undoubtedly public and shall be released.

Appeal:

The ACSC decision was appealed by both parties. The Chief Secretary maintained his assertion that the information is protected as personal data, therefore exempted from disclosure. The claimant with the AIP support argued that the information would enable the requestor to make an opinion on the exercise of the presidential pardon privilege.

Proceedings before the Court of Second Instance:

The case will be heard in an open court session on May 28, 2012.

4. Krum Blagov vs. the Chief Secretary of the President

First Instance Court - administrative case No. 144/2011 of the ACSC, Second division, 30 panel

Second Instance Court - administrative case No. 9761/2011 of the SAC, Fifth division

Request:

On December 7, 2010, Mr. Krum Blagov filed a request to the President. He was seeking information about the list of persons, invited as guests to three official receptions held by the President. More precisely, he demanded access to the guest lists for Christmas (December 2009), for the National Holiday of Bulgaria (March 3, 2010), and for the Day of Bulgarian Education and Culture (May 24, 2010).

Refusal:

In response, on December 17, 2010, the Chief Secretary of the President granted access to information only about the persons holding high public office and refused to disclose information about the others, arguing that their names were subject to protection under the Personal Data Protection Act (PDPA).

Complaint:

The partial refusal was challenged before the Administrative Court - Sofia City with the support of AIP. The complaint stated that the PDPA aims at the protection of the privacy and not at the protection of public sphere. The official receptions are public events and information about people attending them, or present at any other public place does not fall under the protection as personal data.

Proceedings before the Court of First Instance:

The case was heard in an open court session on April 14, 2011 and was scheduled for judgment.

Court decision:

With a decision No. 2882 as of June 13, 2011, the ACSC repealed the refusal and returned the file for reconsideration. The court found that the names of persons who do not hold public office are protected as personal data. Nevertheless, the court agrees that the receptions are covered by the media, therefore it finds the presence of overriding public interest in the disclosure.

Appeal:

The Chief Secretary appealed the first instance decision before the SAC. He sustained that the names of attending people who do not hold public office shall be protected as personal data. He also argued that the public interest test does not apply when the protection of personal data is at stake.

Proceedings before the Second Instance Court:

The case was heard in an open court session in January 2012 and was scheduled for judgment. The procedural representative of the requestor claimed that the first instance court correctly applied the law considering that the information is not in any way personal, that it is associated with public figures and the public life.

Court Decision:

With a decision No. 1405 as of January 27, 2012, the SAC overturned the first instance decision and rejected the requestor's complaint. The Justices found that the public interest test does not apply to the personal data protection exemption. The court make the difference between personal information which may affect third parties and personal information which falls within the protection under the PDPA.

5. Konstantin Bobotsov vs. the Municipality of Plovdiv

Firs Instance Court - administrative case No. 989/2011, Administrative court - Plovdiv

Request:

On February 15, 2011, Mr. Konstantin Bobotsov filed a request to the municipality of Plovdiv. He sought access to an audit report for 2010 under the Improvement of Air Quality Program in Plovdiv.

Refusal:

The Chief Secretary of the municipality issued a decision granting full access to the requested information. The requestor paid the cost estimated to 0.14 BGN, but instead of the audit report, the requestor was given a notification that the information (the report) itself was to be drafted.

Complaint:

The decision was challenged before the Administrative Court - Plovdiv. The complaint states that the decision is unlawful, as the requestor did not access the information sought but in the mean time he was charged with a fee.

Proceedings before the Court of First Instance:

The case was heard in two open court sessions and on September 15, 2011 was scheduled for judgment. During the trial the complainant adduced evidence proving that at the time of the filing of the request, the audit report was in process of compilation and drafting. Therefore, instead of issuing decision granting access and collecting fee, the Chief Secretary should have informed the requestor that the information did not exist.

Court decision:

With a decision No.1500 as of October, 2011, the Administrative Court - Plovdiv repealed the Chief Secretary's resolution granting access and returns the file for reconsideration. The Administrative Court - Plovdiv repealed the decision of the Chief Secretary signifying that the challenged decision was unlawful since the requested information had not existed neither at the moment of the filing of the request nor at the moment of the delivery of the decision which substantiated the lack of ground for issuing a decision for provision of access to that information. Instead, the hypothesis of Art. 33 of the APIA should have been applied by informing the requestor that the municipality did not dispose of the requested information.

6. Ana Mihova (*Klassa daily*) vs. the Ministry of Justice

First Instance Court - administrative case No. 6954/2010, ACSC, First division, 16th panel

Second Instance Court - administrative case No. 8102/2011, SAC, Fifth division

Request:

In August 2010, Ms. Ana Mihova filed a request to the Ministry of Justice (MoJ) seeking access to information on the application process and the evaluation procedure for projects of non-profit organizations applying for funding from the 2010 state budget. More precisely she asked for information about approved for financing organizations, results of inspections and audits, the names of the members of the Committee considering the applications for funding and approving specific projects.

Refusal:

The Ministry granted access to the larger part of the requested information, but refused information about the names and the positions of the members of the Ministry of Justice Committee which evaluated the projects submitted by non-profit legal entities on the ground of personal data protection. The decision was signed by a senior expert within the MoJ.

Complaint:

The partial refusal was challenged before the ACSC. The complaint states that the public authority does not and cannot in any way be exercised anonymously. The appointment by the Minister of Justice of persons who assess projects of non-profit organizations is an obligation established by law. The implementation of this obligation is not in any way personal matter.

Proceedings before the Court of First Instance:

The case was heard in an open court session on March 23, 2011 and was scheduled for judgment.

Court Decision:

With a decision No. 1902 as of April 21, 2011, the ACSC repealed the partial refusal and compelled the MoJ to provide the information. The court signified that the requested information could not be defined as personal data since the disclosure of the official position of the persons did not contain identification data about their personal lives.

Appeal:

The MoJ appealed the ACSC decision before the SAC. The MoJ upheld its position that the names and the positions of the members are personal data and revealing them would infringe their right to privacy.

Proceedings before the Court of Second Instance:

The case is scheduled for an open court hearing on April 18, 2012.

7. Ilia Valkov (*Darik Radio*) vs. the Ministry of Finance

First Instance Court - administrative case No. 7543/2011, ACSC, First division, Fifth panel

Request:

In summer 2011, a public debate was held in the media about the transparency of political parties' financing from the state budget. In the Political Parties Act there is a norm providing that the state attributes subsidies to the parliamentary represented parties on the basis of their seats in the Parliament. The sum attributed to each MP is defined by order of the Minister of Finance. Therefore, the question was to which parties the 17 independent MPs sent their attributed subsidy. In August 2011, Ilia Valkov filed a request to the Ministry of Finance (MF) for access to copies of the MPs' declarations to find it out. The media interest was triggered by the fact that some MPs have declared their political affiliation to parties other from those which they have been nominated and elected as MPs.

Refusal:

With a decision as of August 10, 2011, the Ministry of Finance refused access on the ground of personal data protection exemption. According to the Director of „Human resources“ Directorate, within the MF who signed the refusal the declarations announcing political affiliation of MPs contain personal data within the meaning of Personal Data Protection Act (PDPA).

Complaint:

The refusal was challenged before the ACSC. The complaint stated that the MPs are public figures within the meaning of the European Court of Human Rights case-law, therefore exposed to greater extent to publicity and scrutiny than private individuals. It also emphasized that MPs hold high public office, therefore information on property, assets and income shall also be publicly available in order to increase transparency and prevent wrongdoings and conflict of interests. In this line of thinking, information on the allocation of state subsidy cannot be in any way personal data.

Proceedings before the Court of First Instance:

The case was heard in an open court session on November 3, 2011 and was scheduled for judgment.

Court Decision:

With a decision No. 534 as of 24 November, 2011, the ACSC repealed the refusal and returned the case to the MF for reconsideration with clear and compulsory instructions to grant access to the MPs' declarations. The court emphasized that blank of the declaration

was produced as evidence during the trial proceedings and it came clear that they do not contain any personal data. The court further pursued by finding that affiliation to political party is not personal data. Apart from that an MP is obliged under the APIA body, therefore their consent for the disclosure of information is not required by law.

8. Dinka Hristova (*Sega* daily) vs. the Ministry of Labor and Social Policy

First Instance Court - administrative case No. 6487/2011, ACSC, Second division, 28th panel

Request:

On June 16, 2011, Ms. Dinka Hristova filed a request to the Ministry of Labor and Social Policy requesting the amounts of additional benefits, apart from salaries, given to experts in the political cabinet and civil servants within the Ministry. More precisely, she sought information about bonuses paid since the beginning of 2011, what was the total amount paid, how many civil servant were additionally paid and on what ground.

Refusal:

On June 30, 2011, the Chief Secretary of the Ministry formally refused access on the ground of personal data protection exemption. According to the Chief Secretary, the consent of the third parties affected was required for the disclosure.

Complaint:

The refusal was challenged before the ACSC. The complainant argued that the personal data protection exemption was not applicable in this case since the journalist only sought general information on additional benefits and not specific payments made to civil servants or experts. And even if information on specific payments to specific person was requested, it should have been disclosed as such payments are funded by the state budget.

Proceedings before the Court of First Instance:

The case was heard in an open court session on November 16, 2011 and was scheduled for judgment.

Court Decision:

With a decision No. 5317 as of 23 November 2011, the ACSC repealed the refusal and returned the case to the Ministry of Labor and Social Policy for reconsideration with compulsory instructions to grant access. The court signifies that the requested information is public as it would enable Mrs. Hristova to form her own opinion on the work of the Ministry and in what way and with what means it promotes and encourages the employees.

9. Mariika Hurtova vs. the Ministry of Justice

First Instance Court - administrative case No. 7157/2010, ACSC, First division, Second panel

Second Instance Court - administrative case No. 3992/2011, SAC, Fifth division

Request:

Ms. Hurtova requested from the Ministry of Justice (MoJ) information about the execution of the capital punishment adjudged to her son. Precisely, she wanted to know where the sentence was executed on January 17, 1989. She also sought access to her son's prison file.

Refusal:

In July 2008, the senior legal expert within the MoJ issued a decision to refuse access on the ground that the information was not public within the meaning of the APIA and it affected the interest of a third party. The refusal also emphasized that the information contained in the prison files did not solely relate to the convicted but also to third parties, that the information was created for internal use and only limited number of employees had access for purposes of fulfilling their professional duties and obligations.

Complaint:

The refusal was challenged before the ACSC. The complaint states that the refusal lacks grounds as it enumerates number of contradictory arguments. For example, according to the refusal, the information is nor public or personal. According to the MoJ administration, disclosure of information would harm the interest of third parties, but it is completely unclear who they are - the prison staff or other prisoners.

Proceedings before the Court of First Instance:

At first, in June 2009, the ACSC found the refusal void on the ground of lack of authority of the senior legal expert to decide upon access to information requests. With a decision as of July 2010, the SAC overturned the first instance court decision and returned the case to the ACSC for judgment on the merits. Before the SAC, the MoJ proved that the signing person was authorized by the minister to handle requests, therefore the refusal was not void. On January 20, 2011 the case was heard in an open court session and was scheduled for judgment.

Court Decision:

With a decision No. 356 as of January 26, 2011, the ACSC repealed the refusal and returned the case to the MoJ for reconsideration with clear instructions to grant access. The court emphasized that the refusal was unlawful since it did not point whose interests might be affected by the disclosure of information. The justices also stress that the administration failed to produce any evidence showing that the consent of the third parties was sought. They go further highlighting that even in case of formal lack of consent this ground for refusal might be circumvented by granting partial access pursuant to Art. 37, para. 2 of the APIA. The court found that the public authority misinterpreted and misapplied the APIA by holding that the information sought did not fall within the meaning of the definition of public information under the APIA as the prison files contain documents related to the

official information which are generated and kept by the administration in fulfillment of professional duties.

Appeal:

The MoJ appealed the first instance court decision before the SAC. The appellant argued that the court should have summoned the Directorate General „Execution of Sentences“ within the MoJ and it should have required the prison file in question as evidence in order to establish the facts.

Proceedings before the Court of Second Instance:

The case was heard in an open court session on February 1, 2012 and was scheduled for judgment.

Court Decision:

With a decision No. 2082 as of February 13, 2012, the SAC found the complaint ungrounded and upheld the first instance court decision. The court signified that the fact that the Directorate General „Execution of Sentences“ is independent from the MoJ legal entity did not deprive the Minister of Justice of authority to provide (respectively refuse) information related to the Directorate General activities as this entity is under the authority of the MoJ. The court also agreed that at first glance, the information contained in the prison file did not directly relate to the public life, but implicitly the orders, initial and current reports, psychological findings, risk assessment and other documents generated and related to the stay of the convicted in prison enabled the citizen to make his own opinion on the activities of the obliged authority. Therefore, the court found that this information fell within the scope of application of the APIA.

10. Valentin Nenkov (*Videlina* daily) vs. the Municipality of Pazardzhik

First Instance Court - administrative case No. 62/2011, Administrative court - Pazardzhik
Second Instance Court - administrative case No. 4763/2011, SAC, Fifth division

Request:

On November 16, 2010, the chief editor of *Videlina* daily Mr. Valentin Nenkov filed a request to the Mayor of Pazardzhik for access to contracts between the Municipality and suppliers for the period 2007-2010. He also sought information about the co-contractors, the cost of the contract, the unpaid amounts to the co-contractor. On November 30, 2010, the Mayor sent a notification to specify the request by enumerating specific contracts to which he seeks access. After specification, the Mayor would proceed to seeking consent of the third parties (co-contractors) for disclosure.

Specification:

On December 3, 2010, the requestor filed his specification. He narrowed the volume of information by stating that he requested a written reference covering the name of the co-contractors and the cost of the contract. He also wanted information on the debts of the Municipality to private entities. He paid attention that he is not in the position to be more specific except by defining the type of contract (for services or for goods) and the exact time frame. Apart from that, the requestor adduced arguments that with the 2008

amendments to the APIA, the explicit consent of the third party - co-contractor is not required if there is overriding public interest in mx disclosure of information. The existence of overriding public interest is presumed when the information relates to the name of the parties to the contract, the subcontractors, the subject, the price, the rights and obligations, terms, and penalties and liability (pursuant to § 1, item 5, „f“ of the Miscellaneous and Final Provisions of the APIA) when at least one party to the contract is obliged under the APIA authority.

Refusal:

The Mayor failed to issue a decision within the 14 day time limit under the APIA.

Complaint:

The silent refusal was challenged before Administrative court - Pazardzhik.

Proceedings before the Court of First Instance:

The case was heard in an open court session on February 17, 2011 and was scheduled for judgment.

Court Decision:

With a decision No. 86 as of February 21, 2011, the Administrative court - Pazardzhik repealed the silent refusal and returned the file to the Municipality for reconsideration. The court emphasized that the only consistent with the APIA way to proceed with access to information requests is to issue a formal explicit decision either granting or refusing access.

Appeal:

The Mayor appealed the first instance court decision before the SAC. The complaint reiterates the concern that during the period 2007-2010 the Municipality had concluded thousands of contracts and the requestor should have determined precisely to which contracts he had sought access.

Proceedings before the Court of Second Instance:

The case was heard in an open court session on February 8, 2012 and was scheduled for judgment.

Court Decision:

With a decision No. 2077 as of February 10, 2012, the SAC found the complaint ungrounded and upheld the first instance decision. The court found that the chief editor of *Videlina* daily made sufficient specifications to his request - number of concluded contracts for goods or services for specific time period, list of co-contactors, the cost and unpaid amounts to co-contactors. According to the justices, it is obvious that the requestor had a general query with regard to contracts to which the Municipality is a party and did not express any specific interest in particular contract, what the Mayor tried to imply to the requestor.

ACCESS TO INFORMATION IN BULGARIA 2011

Report

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Authors

Gergana Jouleva, PhD
Alexander Kashumov
Darina Palova
Kiril Terziiski
Fany Davidova

Editor

Nikolay Ninov

Translation from Bulgarian

Diana Bancheva
Tereza Mandjukova

Design and prepress

Vesselin Komarsky

Published by

Access to Information Programme
76, Vassil Levski Blvd. Floor 3, Apt. 3
Sofia 1142
phone/fax(+ 359 2) 988 50 62, 986 77 09, 981 97 91
e-mail: office@aip-bg.org
www.aip-bg.org

ACCESS TO INFORMATION PROGRAMME



Access to Information Programme was founded on October 23, 1996 in Sofia by journalists, lawyers, sociologists and economists determined to contribute to the establishment of informed public opinion.

Access to Information Programme Foundation is a member of the International Freedom of Information Advocates Network (FOIA Net), The Access Initiative (TAI) network, the European Citizen Action Service (ECAS), the European Civil Liberties Network (ECLN), and the Network of Democracy Research Institutes (NDRI).

AIP maintains a countrywide network of coordinators in all regional cities in Bulgaria

In 2005, the Atlas Economic Research Foundation recognized Access to Information Programme with two of the most prestigious awards for establishing and promoting the principles of democracy and market economy: *The Templeton Freedom Prize for Ethics and Values* and *The Templeton Freedom Award for Institute Excellence*.

In 2010, AIP was recognized with a plaque for contribution to the opening of the archives of the communist secret services and strengthening the reputation of the Committee for Disclosing the Documents and Announcing Affiliation of Bulgarian citizens to the State Security and the Intelligence Services of the Bulgarian National Army.

In 2011, the Civil Association *Vidovden* recognized AIP with the annual award *Vidko* for contribution to the raised awareness about and the exercise of the right of access to government information.

In 2011, AIP was recognized with the Human of the Year Special Award for outstanding contribution to the protection and strengthening of human rights in Bulgaria, given by the Bulgarian Helsinki Committee

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AIP assists the exercise of the right of access to information.

AIP encourages individual and public demand for government held information through civic education in the freedom of information area.

AIP works for the increase of transparency in the work of public institutions at central and local level.

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Monitoring of legislation and practices related to access to information.

Provision of legal help in cases of information seeking.

Trainings in the access to information area.

Public awareness campaign on access to information.



ACCESS TO INFORMATION PROGRAMME