



Tendencies in Online Disclosure of Information

***Results from AIP 2013 Audit of the Web Sites
of Executive Bodies in Bulgaria.
2013 Active Transparency Rating***

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General Remarks

Access to Information Programme previous report *Access to Information in Bulgaria 2011* contains detailed analysis of the developments of the standards, the driving forces, the elements and the legislation regulating the online publication of specific categories of information.¹ 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 proactive disclosure of information online has not been amended in 2012

The Access to Public Information Act (APIA), adopted in 2000, introduced the general 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 of the administrative office responsible for the provision of public 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, contacts of the information official/department, and a description of the procedure for accessing the public registers maintained by the public body should be disclosed, as well as the annual data on the APIA implementation, which the heads

¹ http://store.aip-bg.org/publications/ann_rep_eng/2011.pdf.

of the executive bodies should report to the department *State Administration* as part of the annual report *The State of the Administration*.²

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 laws creating obligations for online publication of information covering different aspects of government activities, but we also have to consider the obligations under the legal acts of the local government bodies and the secondary 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. 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*.³

Civil Audit on the Online Disclosure of Information

AIP has been evaluating the online disclosure of information by the public bodies for years.⁴ The aim of the first such evaluations performed within the period 2006 – 2008 was part of the advocacy campaign for regulation of the obligations for online publication of information. The 2008 APIA amendments introduced the obligations for online publication of specific categories of information and AIP evaluations has become a tool for monitoring the implementation of these obligations. That is why we call our assessments civil audit on active transparency. AIP has developed a range of indicators, integrated in our internal information management system, which allows the evaluation of institutional web sites at any time.

For comparison purposes, the audit is performed during a specific period of time. On the base of the results, we formulate recommendations towards to legislative and executive power with regard to proactive disclosure of information.

What were the recommendations in the 2012 annual report?

² 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 June 20, 2012, the Council of Ministers adopted *The State of the Administration* report for 2011: http://www.government.bg/fce/001/0211/files/200612_Admin_Report_PDF.pdf.

³ *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.”

⁴ <http://www.aip-bg.org/en/surveys/>

- To assign to an internal unit the coordination of the process of proactive disclosure of information online;
- To orient the internal record management systems towards the public;
- To precise the procedure for proactive publication of information online and to ensure its timeliness;
- To unify the process of handling electronic requests without contradicting the requirements of the APIA;
- To assign a unit within the administration to be responsible for the oversight of the APIA implementation;
- To outline measures for enhancing financial and budget transparency, including the public procurement contracts.

A positive development with regard to the legislation regulating financial and budget transparency is the adoption of the Public Finance Law in the beginning of 2013. It regulates the obligations for proactive publication of the budgets and financial reports of the authorities.⁵

This is a considerable step forward, whose implementation we will monitor closely.

In 2013, the civil audit covered 490 institutions – executive bodies at a central, regional and local level, independent government bodies and the National Social Security Institute and the National Health Insurance Fund.

Within the period 7 - 25 January 2013, AIP team evaluated the institutional web sites on the base of 40 indicators, and 43 more for the municipalities' web sites. These indicators encompass the standards for proactive disclosure of information, although the publication on the institution's **own** web site is not always legally bound.

Every year, AIP reviews and updates the indicators for the assessment on the base of several factors:

1. New legal obligations for online publication.
2. Necessity for more detailed indicators on the base of previous years' observation and experience.
3. Inclusion of indicators on the base of the search for specific categories of information. These categories we determine on the base of systematization and analysis of cases referred to AIP for legal help and consultation and the monitoring of media publications.

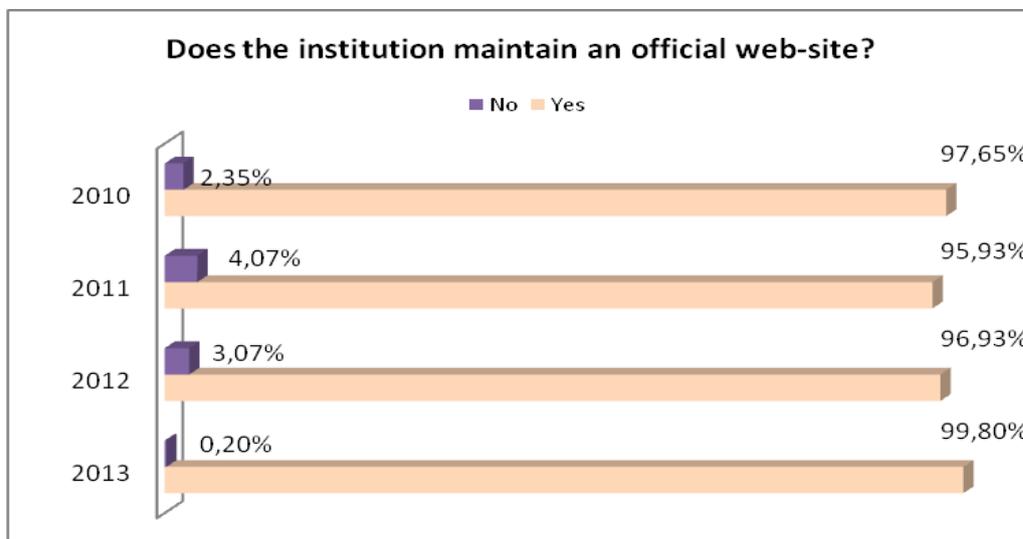
Some indicators evaluate the proactive disclosure on the institution's own web site although not legally bound, but when an obligation exists for publication in a particular centralized register. The publication on the own web site speaks clearly of the practical understanding of the meaning of transparency and not only the

⁵ Public Finance Law (SG issue 15/ February 15, 2013).

fulfillment of an obligation for online disclosure coming from above. This is the situation with the information related to the announcement and assignment of public procurements. Nobody prohibits the authorities to maintain an online register of public procurement tenders and data on the assigned public procurements, especially when a big part of that information has to be sent to the Public Procurement Agency and is published in the centralized Public Procurement Register. The latter contains data about the contracting authority, the subject of the public procurement, description of the contract, name and address of the executing party, the price, relation to the EU funds, etc.⁶

In 2013, we increased the indicators for the municipalities. The AIP team has additionally assessed the online disclosure of urban development plans and construction permits. We have assessed 489 institutional web sites. As of January 25, the web sites of two municipalities were not found – the Municipality of Simitli and the Municipality of Tsar Kaloyan. After the press conference we held to present the audit results, we were informed that the Municipality of Simitli had its web site and it was evaluated as of February 27, 2013. The Municipality of Tsar Kaloyan responded to the electronic request we filed and provided access to the requested information.

Results



The results are uploaded on AIP web site and are visualized by type of institution, by indicators, by ways and time frames of response to the electronic requests filed to 490 institutions.

⁶ Public Procurement Register: http://rop3-app1.aop.bg:7778/portal/page?_pageid=173,1&_dad=portal&_schema=PORTAL.

The indicators were quantitatively assessed according to the significance of the information subject to publication in Internet. The results are organized along several categories which allow comparison with previous years' results of online publication of:

- 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 transparency and integrity related information – budgets and financial reports, contracts, conflict of interests declarations, asset declarations;
- Existence and content of the *Access to Information* sections.

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

Heads of executive bodies are obliged 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 internal rules of the administration which regulate the establishment and the activities of the respective 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 based on the assessed indicators show increase with 3% in the level of proactive disclosure of legal basis regulating the functions and the responsibilities of the authorities compared to the 2012 results. There is a persistent tendency that the poorest performance belongs to the regional units of the central government authorities and the municipalities.⁷

A considerable increase is observed in the level of publication of information related to the functions of the authorities – 11%. The description of the services provided by the public body is generally well presented on institutional web sites with 86.30% implementation this year.

No considerable improvement is observed with regard to the obligation for publication of a description of the data sets and information resources this year. The reason, we believe, is the unclear formulation of the obligation for a

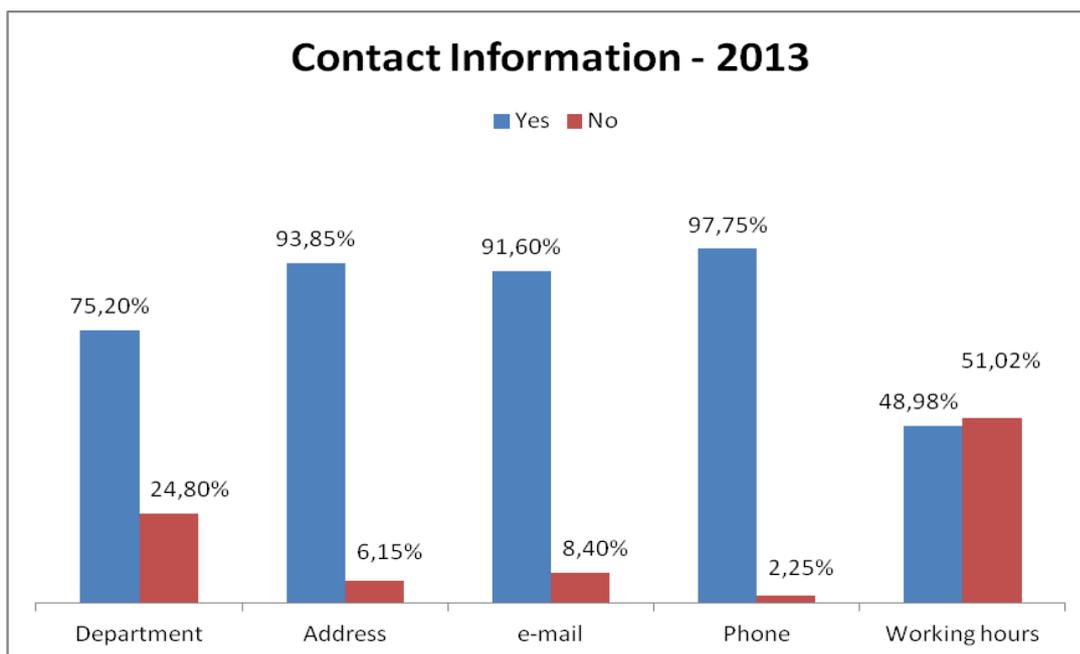
⁷ See Comparative Tables 1 to 10: http://store.aip-bg.org/surveys_eng/Audit_comp_tables_13.pdf.

description of the data bases and information resources, used by the respective administration,⁸ and of what exactly should be published and updated by the public body. Apparently, this obligation needs more detailed definitions and regulation with regard to the content, the formats, and the standards for proactive disclosure.

In 2013, AIP specified the question about the description of the data bases and the information resources, splitting it in three. We assessed if the lists of the registers maintained by the respective authority were published, if the registers themselves are online available, and if a description of the registers is published.

Organizational Structure and Contact Information

Besides the increase in the availability of contact information, we have again observed insufficient level of publication of information about the working hours of the public body. The highest level of implementation is by the municipalities (58%) due to everyday communication with citizens.



Regarding the availability of information about the structure of the administration, we detect no development. It is, however, worth mentioning that along with the organograms, descriptions of the functions and responsibilities of the directorates and the units within the respective administrative structure appear, as well as the names of the department/unit officials.

⁸ Art. 15 (1), item 3 of the APIA: http://www.aip-bg.org/en/legislation/Text_of_the_APIA/200432/.

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

The tendency of increasing disclosure of acts⁹ of the public bodies remains stable. The overall implementation for 2013 is 84%, the best performance belonging to the central government authorities and the municipalities – 94%.

The tendency of increasing the number of online registers of individual administrative acts also remains stable – 48%, compared to 45% in 2012, and 27% in 2011.

As far as the obligation for publication of the Municipal Council acts is concerned, the level of implementation is very high – 93%.

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.

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 2013 as well: 72% of audited public bodies publish their development programs and strategies online, and 45% publish activity reports.

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

An important element of active transparency is the disclosure of the budget and the financial reports of the authorities. Moreover, the adoption of the budgets is in its essence a consultation process and includes holding of public discussions, especially with regard to the municipal budgets which implies that interested parties have the information well in advance.

The results should be considered in the context of the time period when the audit was performed – in January, when there is no clearness with regard to the budgets, especially of the municipalities and public bodies different from the central government bodies.

⁹ 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."

We have observed increase in the financial accountability in comparison to previous years, but the implementation is still very much under 50%.

On the other hand, the contracts of the public bodies remain one of the most sensitive aspects of transparency. In 66% of the evaluated web sites, there is a register of public procurement tenders, but only 10% of the web sites contain information about contracted public procurements.

As regards the disclosure of the declarations under Art. 12 of the *Prevention and Determining of Conflict of Interests Act*, the level of availability of both the lists of officials who have submitted such declarations and the declarations themselves is decreasing despite of the explicit obligation for online publication.¹⁰

Access to Information Section

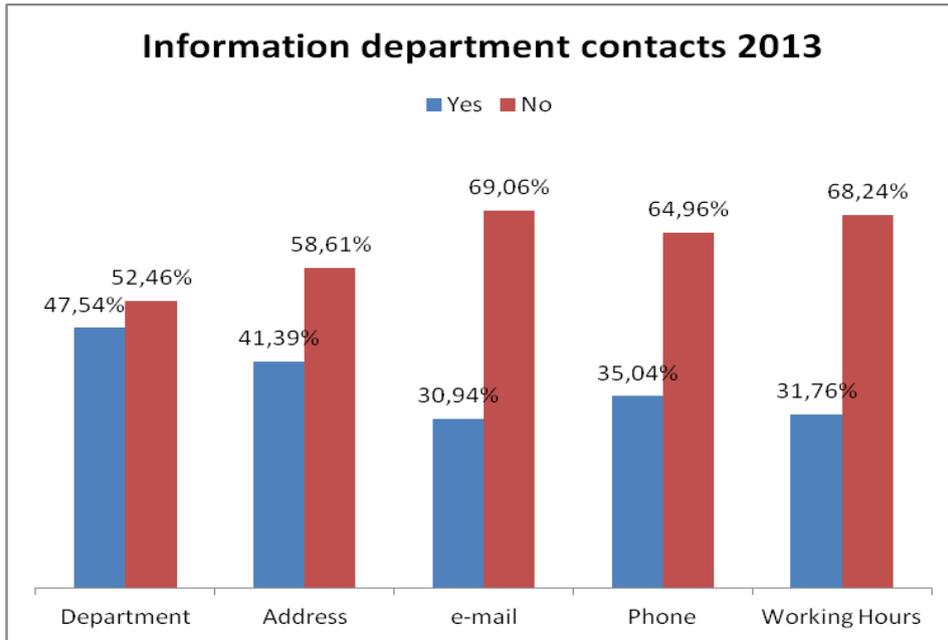
The obligation for the creation of an *Access to Information* section with a legally prescribed content was introduced with the APIA amendments as of December 2008. The section has the purpose to facilitate and assist requestors or seekers of information by providing clarification on the process within the respective institution and description of the procedure for obtaining access to information, including the procedure for access to the maintained public registers. The section should also contain information about 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. The APIA implementation reports should also be published in the section.

The number of *Access to Information* sections has been increasing – 55% of the institutions have created such sections. However, few have published the information required under the APIA. The implementation of the obligation for publication of a description of the procedure for access to the public registers maintained is very poor – below 10%.¹¹

There are stable tendencies of non-disclosure of internal APIA implementation rules, the annual APIA implementation reports, contact information of the department responsible for processing APIA requests, the lists of declassified documents, the lists of categories of information classified as *official secret*.

¹⁰ See Charts 42 to 45: http://store.aip-bg.org/surveys_eng/Audit_comp_tables_13.pdf.

¹¹ See Charts 46 to 59: http://store.aip-bg.org/surveys_eng/Audit_comp_tables_13.pdf.



Out of the central government authorities, the Council of Ministers, the Ministry of Interior, and the Ministry of Agriculture and Food do not have *Access to Information* sections. The fact that the section can be found in the main menu of only two ministries – the Ministry of Environment and Waters and the Ministry of Justice, while the rest which maintain such a section have placed it under *administrative services* show a particular attitude towards the right of information and defines the position of the administration towards this right and the corresponding duties for its exercise.¹²

Electronic Requests

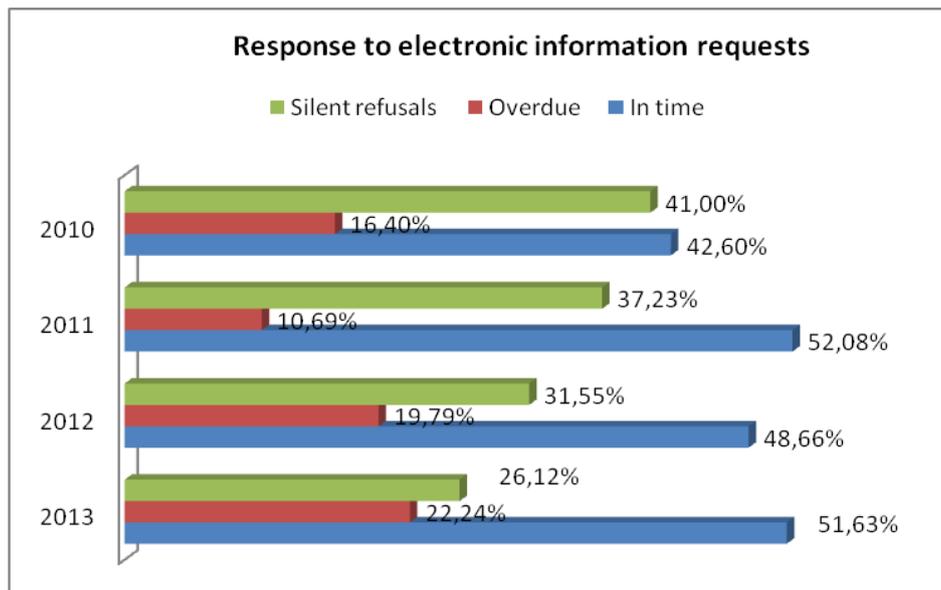
Within the 2013 audit, we filed 490 electronic requests asking for copies of the last contract signed by the respective public body under the Public Procurement Act for 2012. As a rule, these contracts are not published. There is no obligation for their proactive disclosure. There is an obligation, however, to submit a big part of the content of the contract to a centralized register maintained by the Public Procurement Agency which makes main elements of the contracts online available.

The online available information on each signed contract contains data about the contracting authority, the subject of the public procurement, description of the contract, name and address of the executing party, price, relation of the procurement to EU funds, etc.

¹² Refer to results by indicators (in Bulgarian): http://www.aip-bg.org/surveys/2013_година/103353/

The maintaining of registers of public procurement tenders and contracted procurements on the institution's own web site speaks of a clear understanding of the meaning of transparency and responds to the public interest.

The comparative results of the responses to the requests show considerable decrease of the number of the so called *silent refusals*.¹³ The number of decisions within the legally prescribed time frame is comparatively similar during the years.

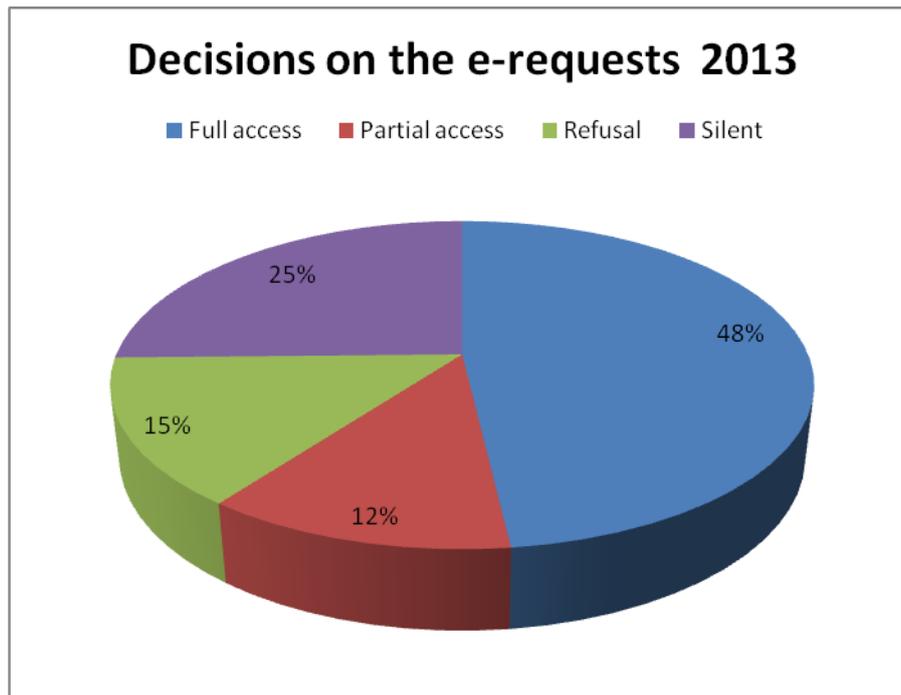


Detailed results can be seen on AIP web site.¹⁴ Moreover, the genuine decisions for granting or refusing access can be reviewed in the section *results by institution*.¹⁵ Analysis of the responds to the requests will be published in the part *Cases Referred to AIP for Legal Help and Consultation* of AIP annual report *Access to Information in Bulgaria 2012*.

¹³ The subject of requests is different every year. The comparison is how the procedure of responding is followed.

¹⁴ In Bulgarian: <http://www.aip-bg.org/surveys/db/2013ii/stats.php>

¹⁵ In Bulgarian: http://www.aip-bg.org/surveys/Резултати_по_институции/206149/



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

In 2013 again, AIP made a quantitative assessment of the implementation of the obligations for proactive disclosure of information online. A rating of active transparency was thus created. The maximum score for all institutions was 78.5. The three additional indicators for the local-government bodies made the possible total for municipalities 81.5.

The Rating is uploaded on AIP web site. The system allows for the visualization of the results by type of public body and shows how the quantitative assessment was accumulated for each institution.¹⁶

The Municipality of Dobrich ranks first for a second year.

Conclusions

A considerable improvement in the online disclosure of information is observed with regard to the administrative acts of the authorities. The level of implementation with regard to the publication of the municipal councils' acts is good. The proactive disclosure of budgets, the online availability of registers and public services has been improving.

¹⁶ In Bulgarian: <http://www.aip-bg.org/surveys/Рейтинг/200775/>

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, the Regional Health Inspections, the Regional Inspections on Environment and Waters.

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 online publication. This conclusion can be also drawn on the basis of the review and analysis of the Internal APIA Implementation Rules of a number of public bodies.

A precision of some of the existing categories of information mandatory for online publication is necessary.

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

The lack of an independent body to coordinate and oversee the proactive disclosure of information online is becoming a main problem for both – the administrations and the citizens.