



ACTIVE DISCLOSURE AND ELECTRONIC ACCESS TO INFORMATION

GENERAL BACKGROUND

In 2010, AIP evaluated the implementation of the obligations for active disclosure of information on the Internet sites of the executive power bodies. We made the same assessments in 2006, 2007 and 2008. The adoption of the Access to Public Information Act (APIA) in 2000 established an obligation for publication of certain categories of information, listed in Art. 15 of the APIA. The previous surveys attempted to assess the publication of these categories on the web sites of the public authorities. Till 2008, publication in the Internet was evaluated as a possibility for a cheaper and more democratic way of disclosing the information mandatory for publication. Amendments to the APIA as of December 5, 2008 introduced the obligation for online publication of categories listed in Art. 15. The heads of the administrative structures within the system of the executive power had a year since the enactment of the APIA amendments to prepare the process and fulfill their obligations for online publication. The transition period ended in December 2009. In the beginning of 2009, AIP had assessed the existence of some of these categories on the web sites of the institutions – *Access to Information* section, APIA responsible official, rules for submission of electronic requests.

This year's survey, performed by the team of AIP in February 2010, assessed the implementation of the new obligations by the executive power bodies. The level of implementation can be compared to the results of previous surveys in order to delineate the dynamics of changes and the impact of the legislation.

2008 amendments to the APIA are important with regard to another aspect as well. They established obligations for the regional units of the executive power bodies. Till then they did not have explicit obligations under the APIA, unless the special laws regulating their functions and responsibilities did not provide them.

That condition obstructed the requestors in their search for information generated and held by the regional units of the executive bodies. The requests used to be transferred to the central authorities. Thus one of the aims of the survey was to observe how the territorial units of the central government bodies fulfill their obligations under the APIA.

Parallel to the assessment of the websites, an electronic request was sent to the surveyed institutions. The aim was to outline the problems in handling electronic requests, considering the fact that their number has been increasing during the last years. According to the data in the reports *The State of the Administration in Bulgaria*, which have been published till last year by the Minister of State Administration and Administrative Reform, the number of electronic requests since 2007 have exceeded the number of written requests received by the institutions (2007: written requests– 5521, electronic requests – 7522; 2008: written requests – 5363, electronic requests – 9124).

The transition period of one year for preparation and fulfillment of the obligations for publication was long enough. Public authorities had the possibility to use additional resources due to the fact that



one of the priority areas of the Operational Program for Administrative Capacity was exactly the transparency of institutions.

Two of the categories under Art.15 required more attention and time for preparation. The list of the acts and the review of public registers depend on the efficient information management within an institution. Part of that information shall be submitted to the Register of Administrative Structures and the Acts of the Executive Power Bodies. No doubt the bodies of power have record management systems. However, the fulfillment of the obligations under Art. 15a suggested their assessment from the point of view of active disclosure on the institutional web sites.

METHODOLOGY

In the period 10.02.2010 - 02.03.2010, AIP has reviewed the web sites of 511 institutions (central, regional and local bodies of power). The list of administrative structures within the system of the executive power is accessible through the register of these structures,¹ created after the adoption of the Administration Act in 1998 and a Regulation by the Council of Ministers as of May 2000. Changes made by the new government after the 2009 summer elections were also taken into account.

The researchers who were doing the survey had to find the institutional web site of the public body from the list and evaluate it from the point of the obligations under the APIA and other laws. We were looking for an answer to the question if a certain obligation had been fulfilled or not.

The assessment indicators were organized in three groups.

The first group of questions aimed at the assessment of the publication of categories of information under Art. 15 of the APIA, namely:

1. Description of the powers, data on the organizational structure, the functions, and the responsibilities of the administration;
2. List of the administrative acts issued by the respective institution– normative, general and individual;²
3. Description of the data bases and information resources, maintained by the respective institution;
4. The name, the address, the telephone number and the working hours of the office responsible for contact with citizens.

The second group of indicators assessed the existence and the content of an *Access to Information* section. According to the 2008 amendments to the APIA, the section shall contain the following information:

¹ See Register of Administrative Structures and the Acts of the executive power bodies at: <http://www1.government.bg/ras/>

² 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".



1. The name, the address, the telephone number and the working hours of the respective administration's office in charge to receive access to public information requests.
2. The internal rules for working with the access to information requests;
3. Short description of the procedure for access to the public registers maintained by the respective institution;
4. The annual report on the requests for access to public information, “which shall contain among others data on the refusals made and the reasons therefor” (Art. 15, Para.2 of APIA).

The third group of indicators was related to information subject to publication under other laws or related to the transparency policy of the public authorities such as:

1. Budget;
2. Financial reports;
3. Activity reports;
4. Concession contracts;
5. Public procurement contracts;
6. Programs and development strategies;
7. Declassified documents;
8. Conflict of interest declarations;
9. Draft normative acts.

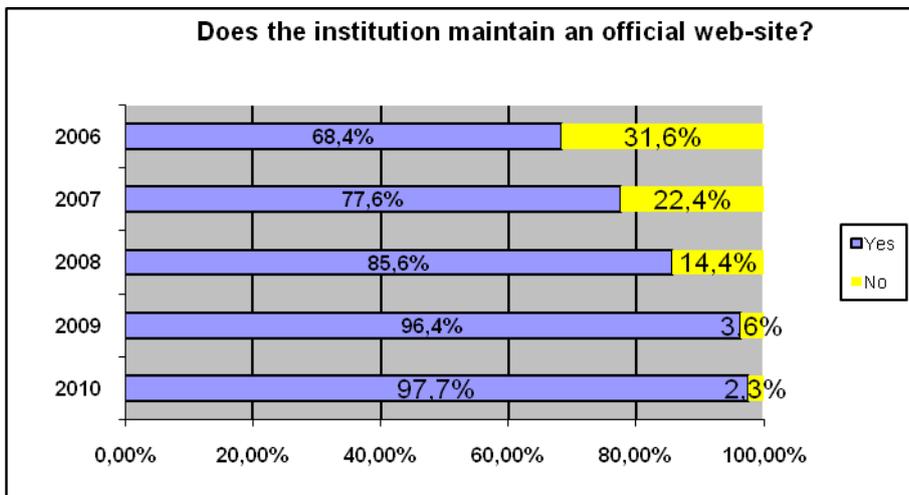
The team of AIP had the task to evaluate whether the published information was up-to-date. Within the survey, electronic requests were submitted. The question was: what is the budget for the implementation of the obligations under Art, 15a, i.e. for online publication of information and for the training of officials to fulfill that obligation, if such funds were envisaged as part in the 2010 budget of the institution. We had expected that the question would not have posed any difficulties to the heads of the administrative structures or to the officials responsible for the provision of information due to the fact that we asked about an item from the budget which should be public anyway.

RESULTS

The survey shows that out of 511 institutions from the executive power, 499 have their official web sites, i.e. 97.65%. To observe the dynamics in the development of implementation practiced of the obligations, we show the 2010 survey results in comparison to the previous years.



Chart 1. Presence in the Internet



Information Mandatory for Online Publication

1. The description of the powers, the organizational structure, the functions and the responsibilities of the administrative structure which are subject to publication find a practical expression in the publication of the statutes regulating the functions of the institution, the internal rules, the organizational structure, and the functions of the institutions. Here are the results from the survey, compared with the results from three preceding years.

Chart 2. Description of the powers

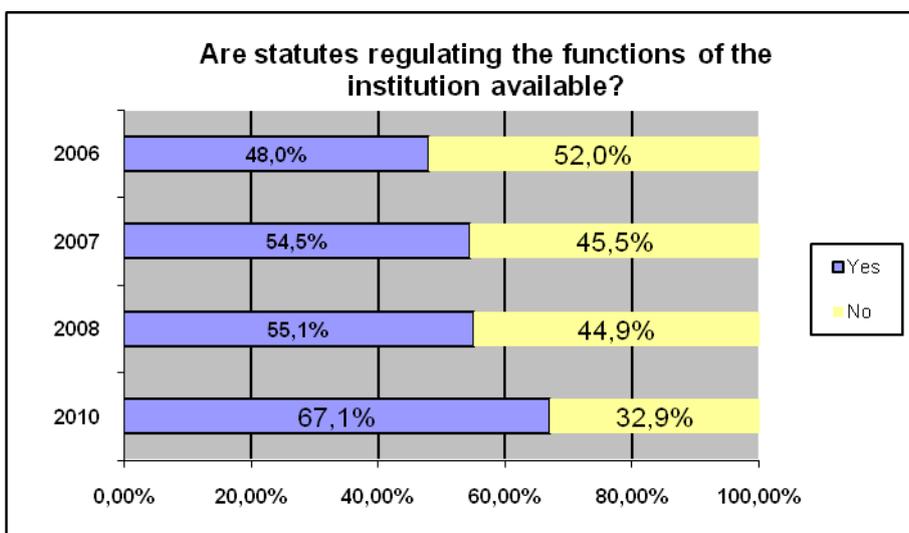
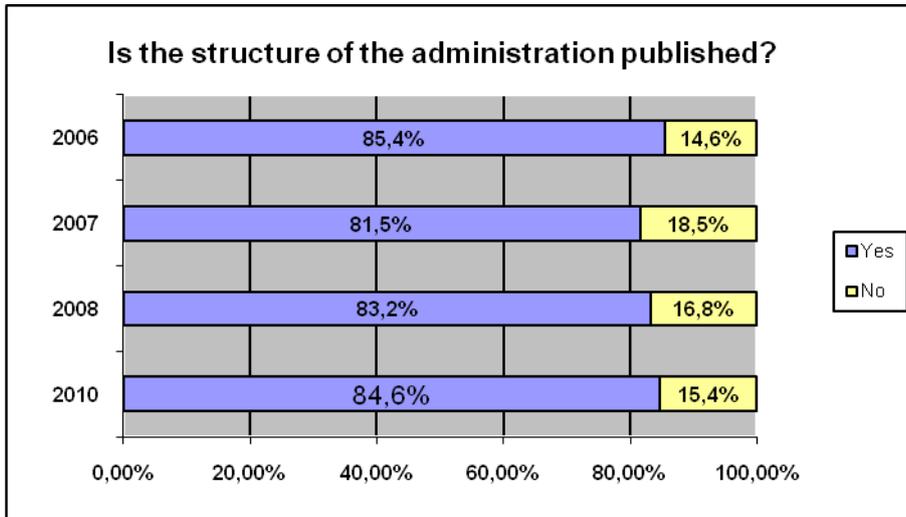
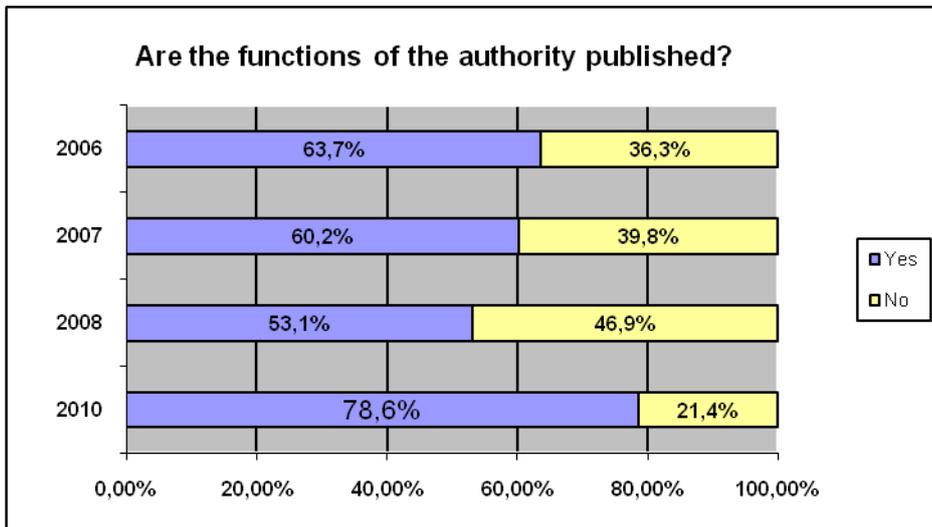




Chart 3. Description of the organizational structure



Charts 4. Description of the functions



2. The lists/registers of the acts issued by the public authorities are a particularly important category of information subject to active disclosure.

This category is undoubtedly subject to active disclosure under the laws for access to information which comply with the international standards in the area. Some administrative systems with a long history of implementation (Sweden) and newer free access to information laws introduce the obligation for maintaining a register of the documents of the public authorities. Such requirements are stipulated by Regulation (EC) No. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. Article 11 of the Regulation introduces the obligation for maintaining of such a register and the



provision of electronic access to it.³ Besides the obligation for the maintaining of the lists/registers of the documents, many laws, including Regulation 1049/2001, provide for the requirements for the record of the documents *ин тхе регистер*.⁴ Each document in the register shall have a reference number, the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References have to be made in a manner which does not undermine protection of the interests listed in Article 4 of the Regulation. Pay attention to the fact that even documents which under the Bulgarian terminology shall be classified, have to be listed in the register, unless their reference would undermine the protection of the interests in Article 4 of the Regulation which regulate the measures and exhaustively lists the categories of protected interests and rights.

Till the adoption of the amendments to the APIA as of December 2008, executive power bodies were not very certain about the meaning of the *list of the acts issued within the scope of its powers* and therefore they among all used to publish statutory acts. The amendments introduced a definition of the *list of issued acts* as a *structured aggregation of all normative, general, and individual administrative acts, issued by the respective administrative body* (Additional provision §1, Item 3 of the APIA, amended – State Gazette, issue 104, 2008). The law does not provide for details how this aggregation shall be structured, nor introduces the obligation for the reference of the acts by dates or subject. There shall be noted, however, that according to the amendments to the *Regulation on the Conditions and Procedure for Maintaining a Register of the Administrative Structures and the Acts of the Executive Power Bodies* as of 2002, there are requirements about the data that shall be recorded with regard to individual administrative acts which are in the lots of the Register and relate to the regulatory regimes.

How is this obligation fulfilled? In order to take into consideration the characteristics of the Bulgarian administrative system for the publication of administrative acts, but not for publication of individual administrative acts, we evaluated both.

Traditionally, normative acts are being published. That is why the difference between the online publication of the normative acts and other administrative acts is considerable.

³ http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf

⁴ *Idem*, Art. 11, Item 2



Chart 5. List of issued normative acts

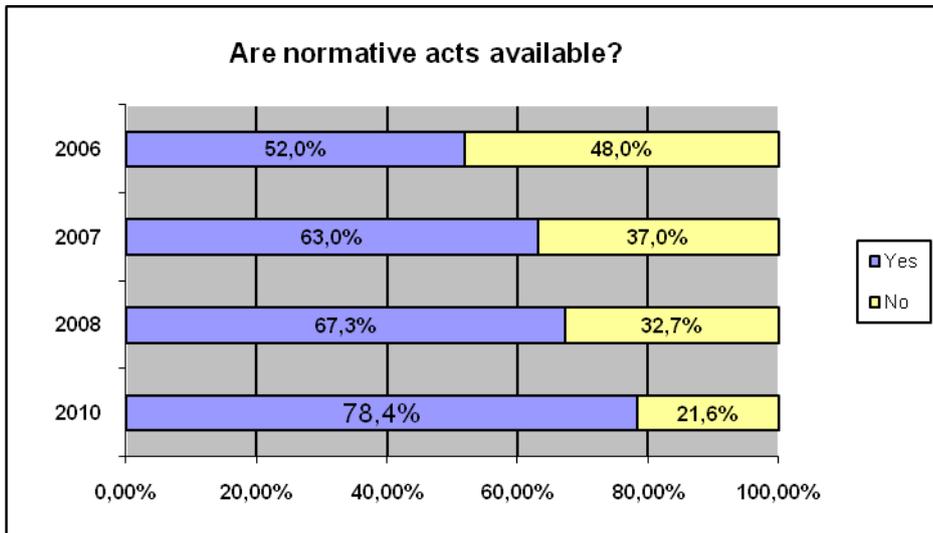
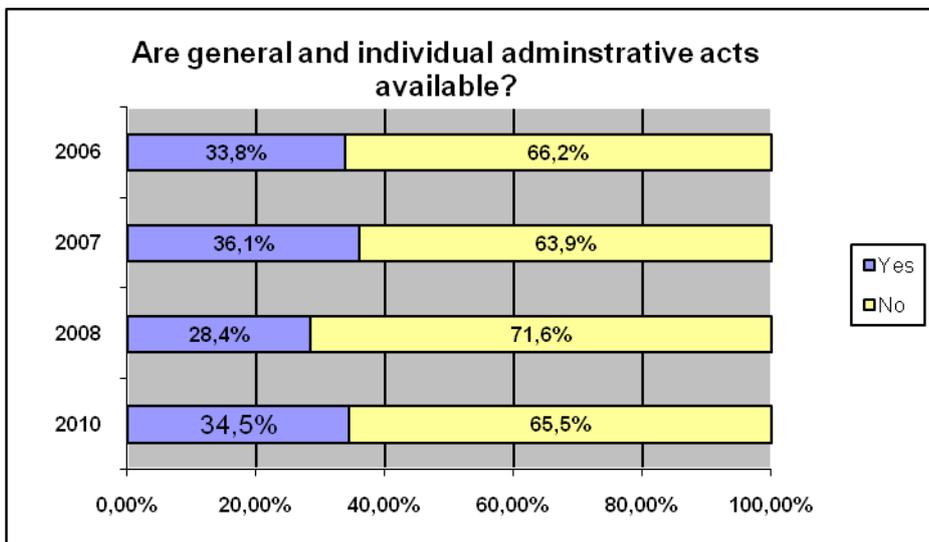


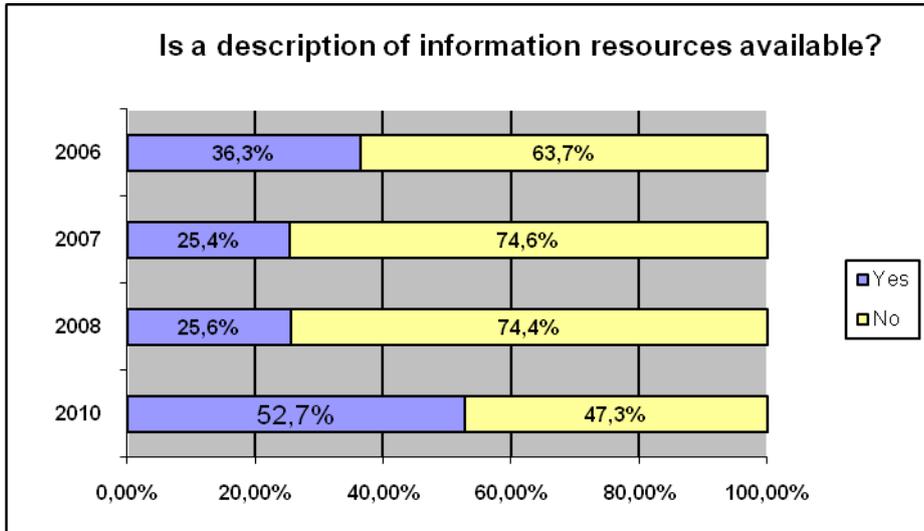
Chart 6. List of issued general and individual administrative acts



3. The description of the information resources and the data bases, maintained by the respective public body is an important condition for the exercise of the right of access to information. That is why the legislator has provided for the active publication of that information ever since the adoption of the APIA. The implementation of that obligation had been poor during the years. Results from this year's survey show a considerable improvement in the implementation.



Chart 7. Description of information resources and data bases



4. Another important element of the active publication of information and a condition for the exercise of the right of access to information is the contact information of the institution – address, telephone and working hours of the office that works with the citizens. Evaluating this type of information, we assessed the availability of all types of contact information of the institution. The comparison we make is again with the results from preceding years. That category of information is easier to publish though the implementation is far from 100%. In some cases it was difficult to find the name of the mayor of the municipality or an e-mail address for contact even though the web site had been recently launched and containing a lot of information, including tourist.

Chart 8. Contact information –public communication office

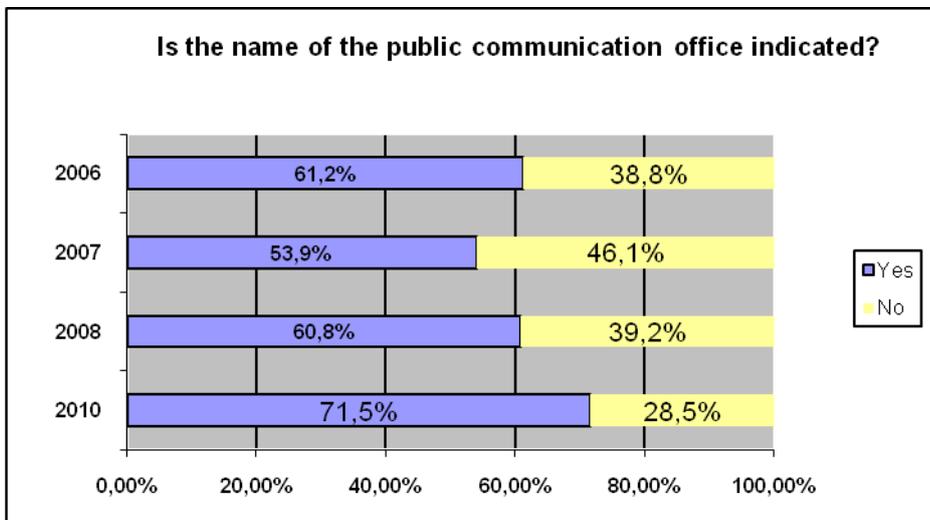




Chart 9. Contact information- address of the public communication office

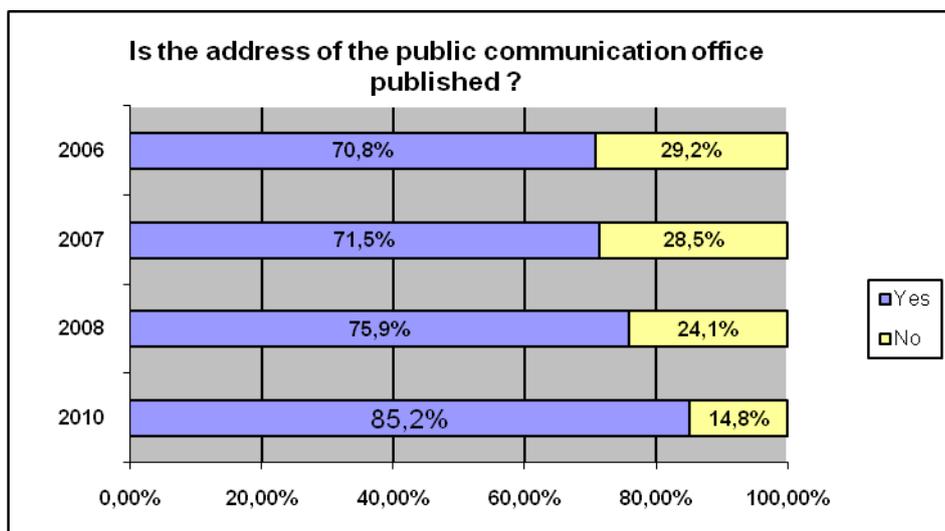


Chart 10. Contact information – phone number of the public communication office

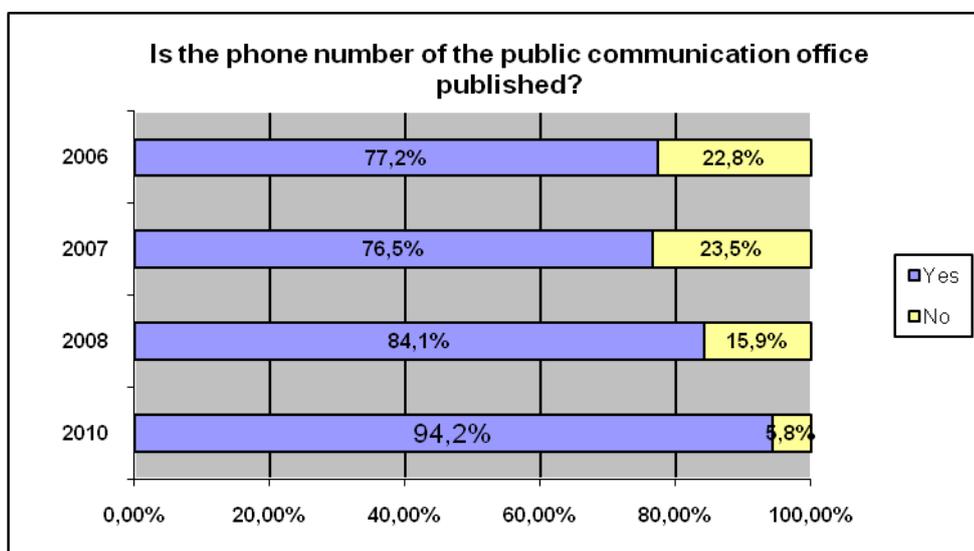
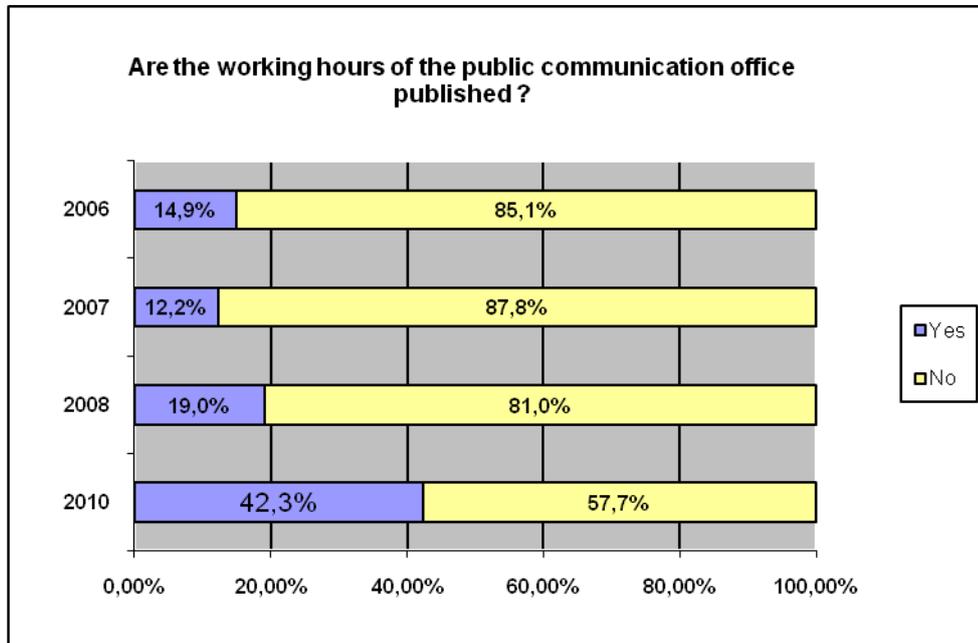




Chart 11. Contact information – working hours of the public communication office



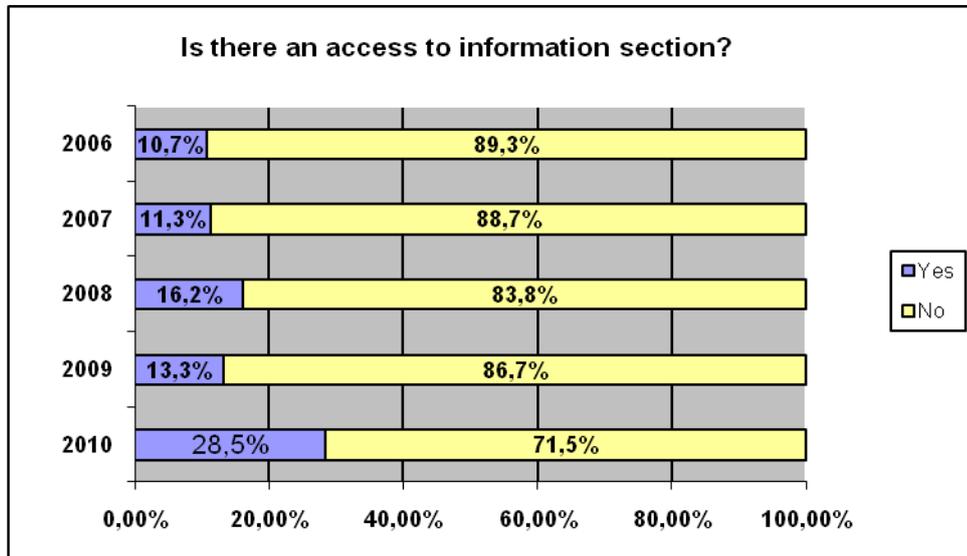
Access to Information Section

An essential new obligation introduced with the 2008 amendments to the law is the creation of an *Access to Information* section on the web sites of the institutions. As it has been already mentioned, the content of this section is clearly defined in Paragraph 2 of Article 15a in 2008. The list of the required information is the following:

1. The name, the address, the telephone number and the working hours of the respective administration's office or official who is authorized to receive requests for access to public information;
 2. Internal rules for working with access to information requests;
 3. Short description of the procedure for access to the public registers maintained by the respective institution;
 4. The annual report on the number of requests for access to information, "which shall contain among others data on the refusals made and the reasons therefor." (Art. 15, Para. 2 of the APIA).
- How is this obligation fulfilled and has such a section been made? Only 15% increase in the number of the public authorities which have fulfilled the already legal, and not advisable, obligation. 142 out of 499 institutions have *Access to Information* section.



Chart 12. Access to Information section on the Internet sites



With regard to the content of these sections, the results are the following:
Among all, this section shall indicate the contact information of the official or the office responsible for the access to public information. This is the first condition for effective exercise of the right. An official should have been assigned – as required by the amendments to the APIA as of June 19, 2007, State Gazette, Issue 49 – within six months period, i.e. till the end of 2007.

Chart 13. Official/office, assigned under the APIA

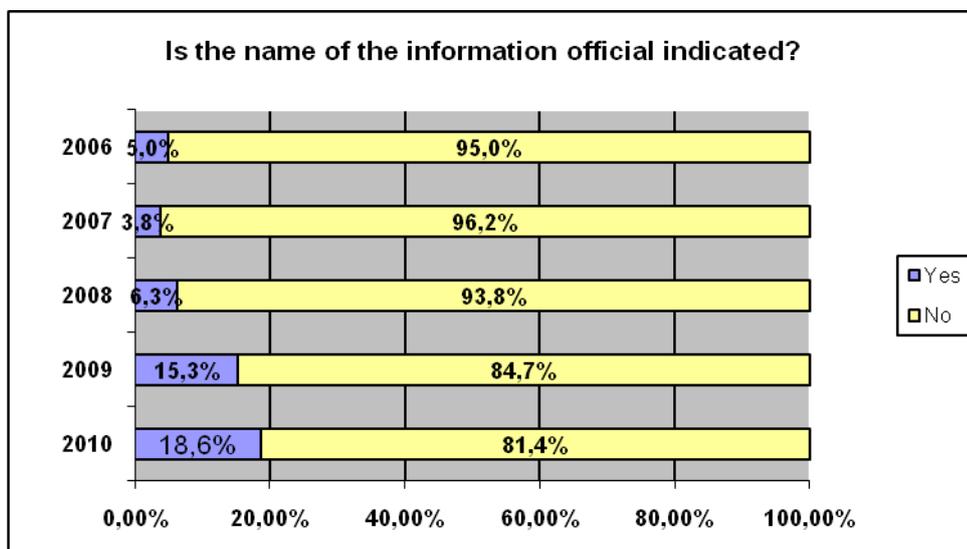




Chart 14. Contact telephone number of the official/office under the APIA

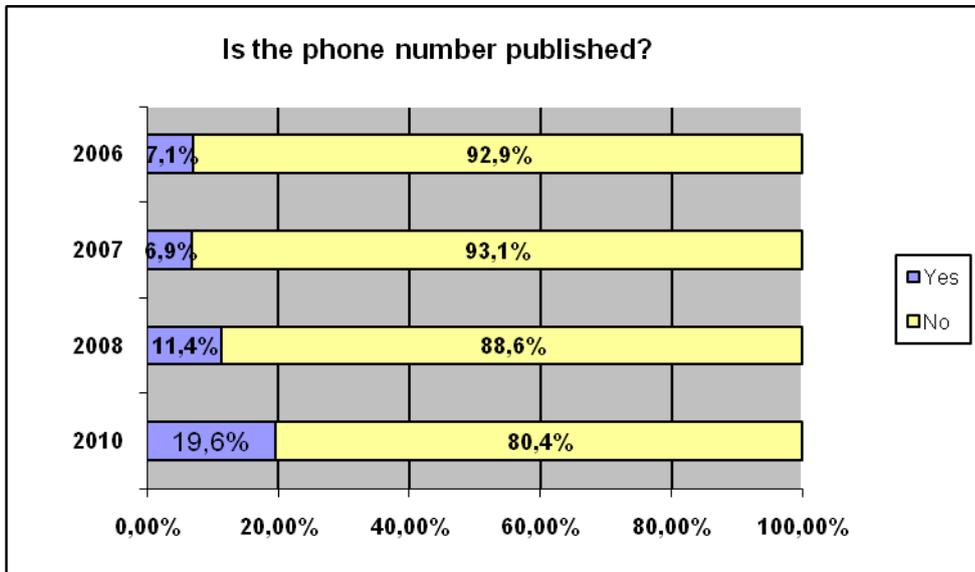


Chart 15. E-mail address of the official/office under the APIA

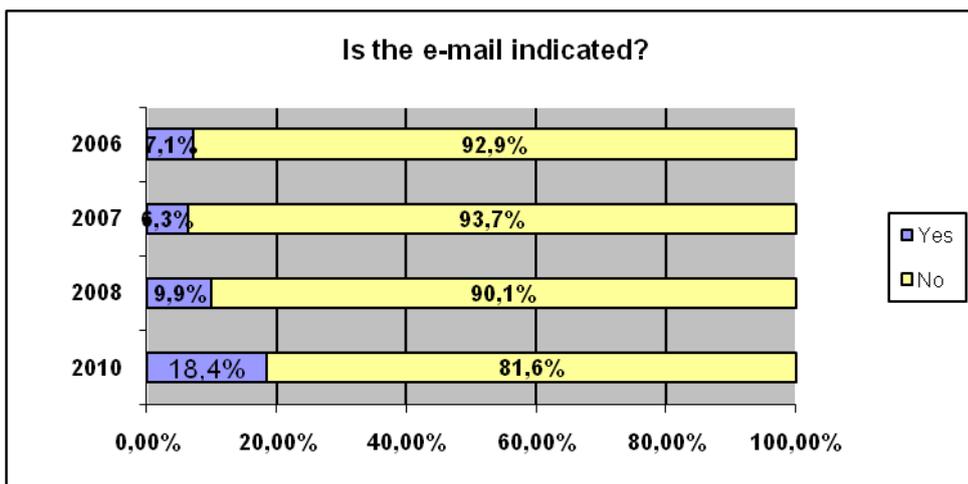




Chart 16. Address of the official/office under the APIA

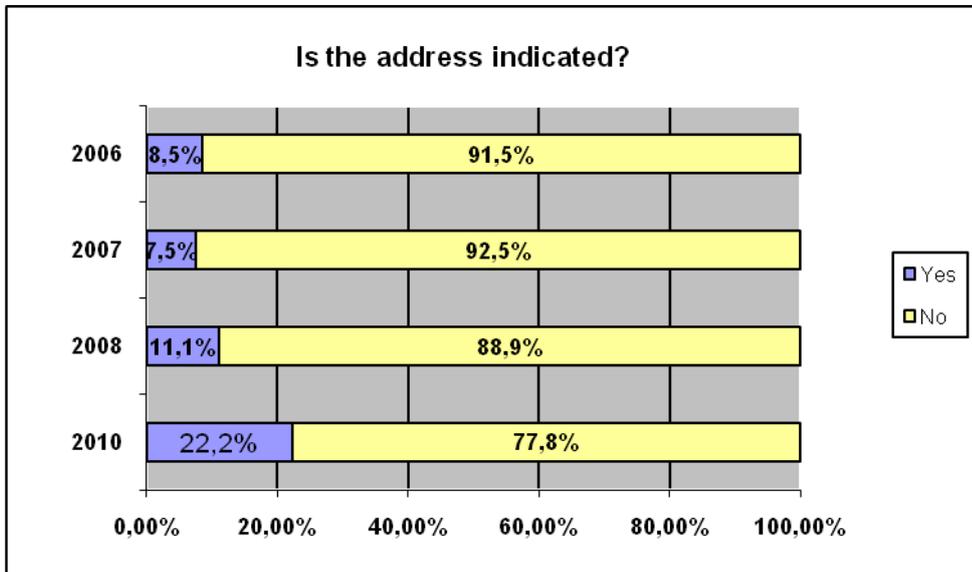
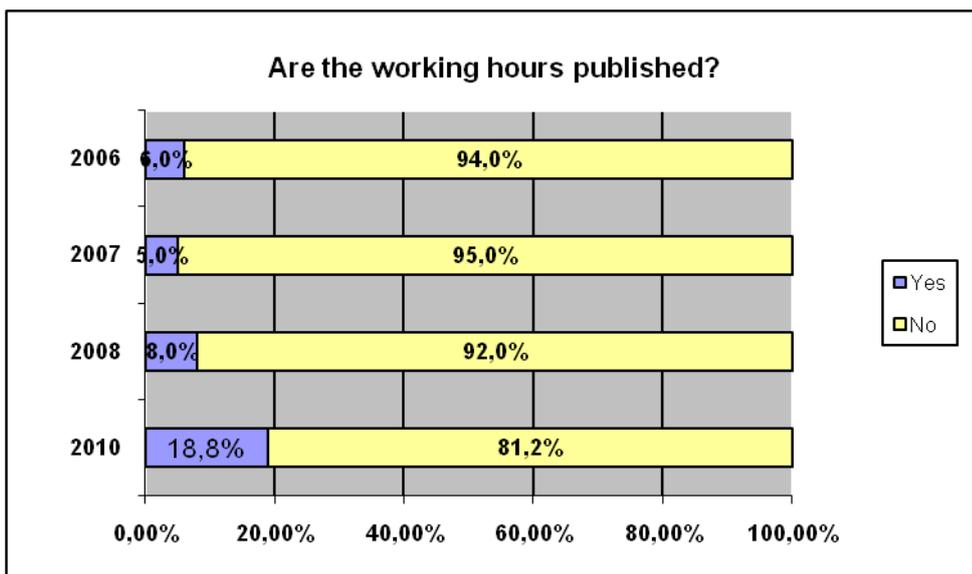


Chart 17. Working hours of the official/office under the APIA



How can we explain such a poor fulfillment of a legal obligation? The reasons can be different – an official has not been assigned, she/he does not have an address or a telephone number, or the head of the administrative structure has simply not paid attention to this obligation of theirs.

In this case, the information is simple, but extremely necessary for the exercise of the right of access to information by the citizens.

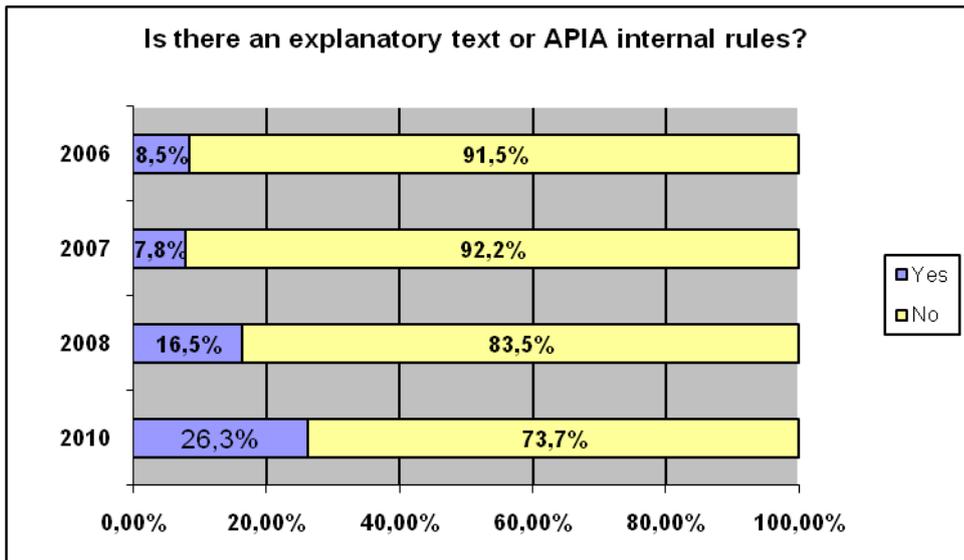


The next element in the content of the *Access to Information* section is the internal rules regarding the access to public information and the procedure for access to the public registers, maintained by the public authorities.

The survey shows that only 131 out of 499 institutions have their internal rules. Some of these do not have *Access to Information* section on their web sites, but has issued and published these internal rules. In other cases, no internal APIA implementation rules can be found in the *Access to Information* section. The characteristics of the internal rules are also different. In some cases, they are a repetition of the law itself, without consideration of the specifics of the institution. In other cases, it is in the internal rules where the contact information with the assigned officials is available. The AIP team is going to make an analysis of the existing internal implementation rules.

The purpose of these internal rules is to facilitate both the work of the officials in the respective institution and the information seekers by establishing a straightforward procedure and responsibilities for the provision of information. The internal rules should have regulated the information management within the institution, including the responsibilities for the officials for publication of information on the Internet site, as well as the rules and responsibilities for the information provision at oral, written and electronic requests. The internal control on the implementation of the obligations under the law shall also be part of the internal rules.

Chart 18. Internal APIA implementation rules

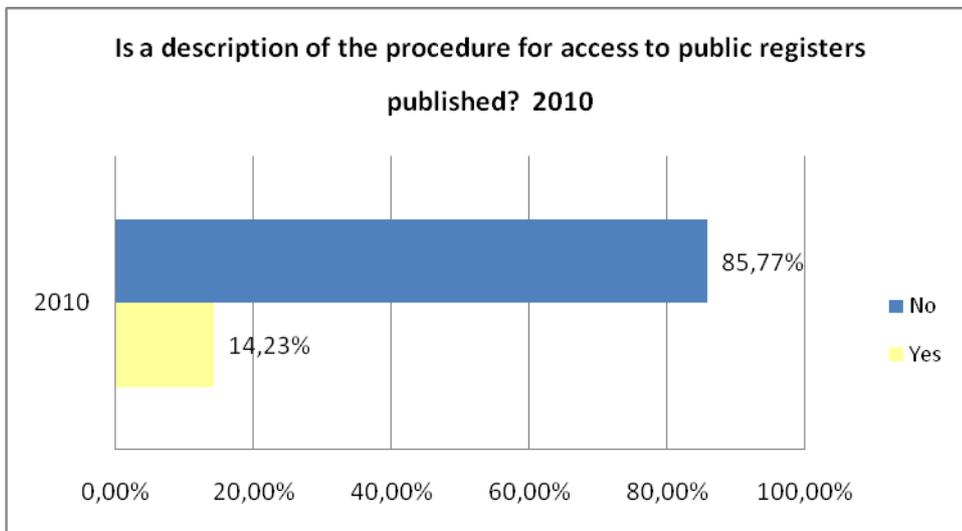


The *Access to Information* section shall contain an explanatory text with regard to the access to public registers maintained by the respective institution. Since the majority of the public registers are still not available in the Internet, a short description of the procedure of accessing them would have helped a lot those who seek information from them.



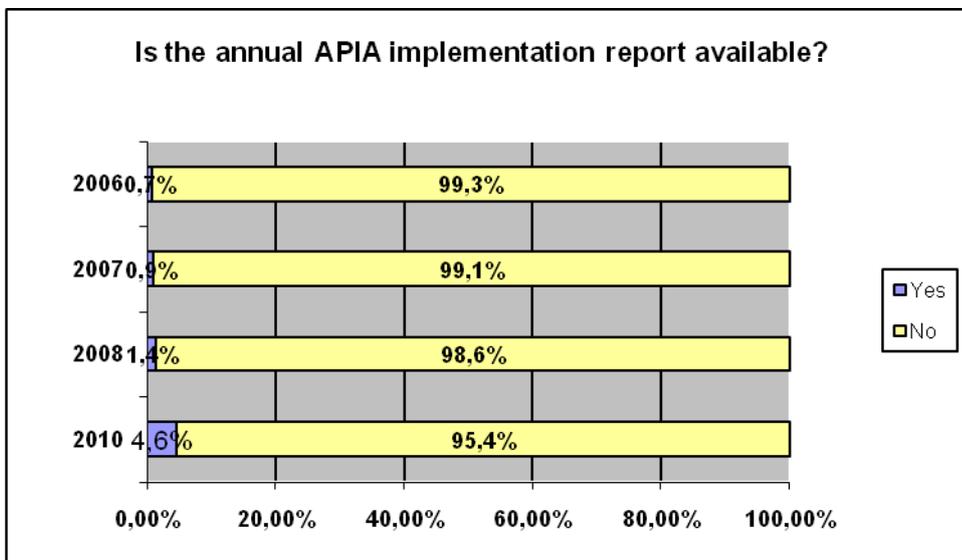
The survey shows that only 71 institutions out of the 499 have done it. In most of the web sites where this information is available, it constitutes the registers themselves but not a description of all registers maintained by the institution.

Chart 19. Description of the public registers maintained by the institution



Regarding the annual report on the number of submitted access to information requests, “which shall contain among others data on the refusals made and the reasons therefor”⁵, which shall also be published in the *Access to Information* section, the implementation of this obligation is extremely unsatisfactory. Only 23 out of 499 executive power institutions have fulfilled it.

Chart 20. Annual report on APIA implementation



⁵ Art. 15, Para. 2 of the APIA.



Other Obligations for Publication

AIP assessed the implementation of other obligations for online publication of information of significance to the citizens. We were interested if the budget and the reports – financial and activity, of the public authorities were published. Also, contracts – concession and public procurement, asset declarations and conflict of interest declarations, draft normative acts and lists of declassified documents within the institution. With regard to the publication of that information there was even a decrease in the indicators, especially with regard to the budgets and the reports of the public authorities, as well as the contracts signed with third parties.

Chart 21. Budget of the institution

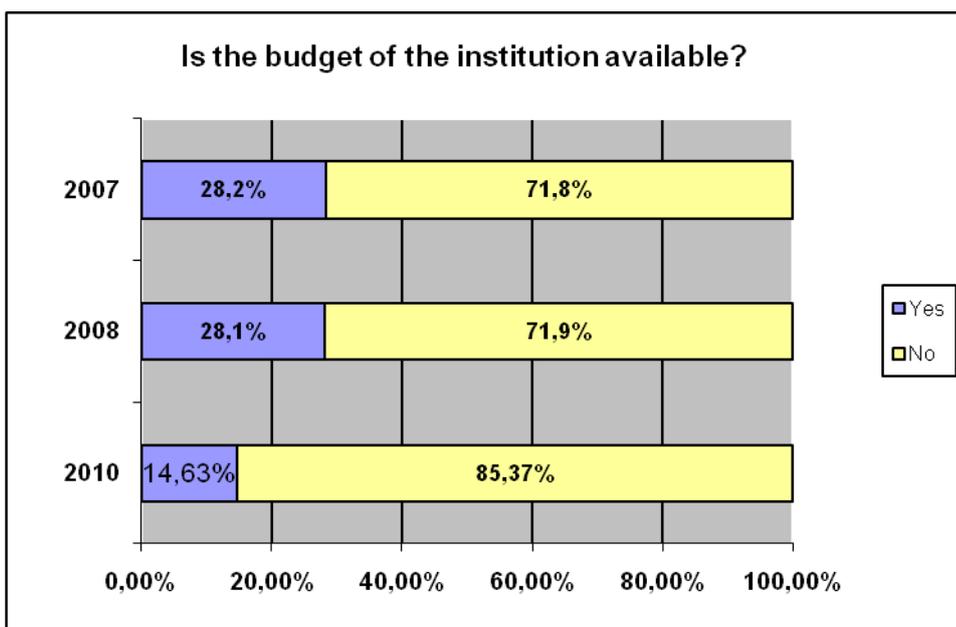


Chart 22. Financial report of the institution

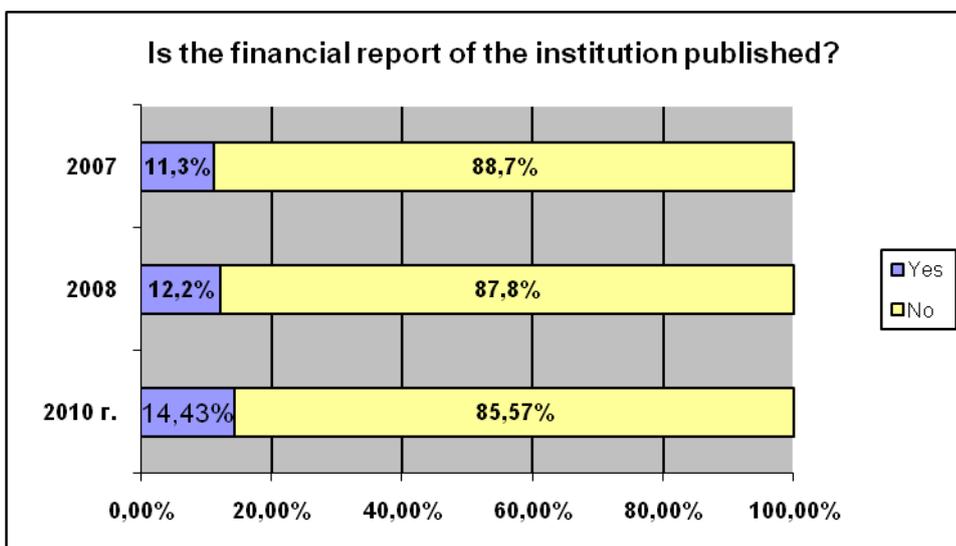




Chart 23. Activity report of the institution

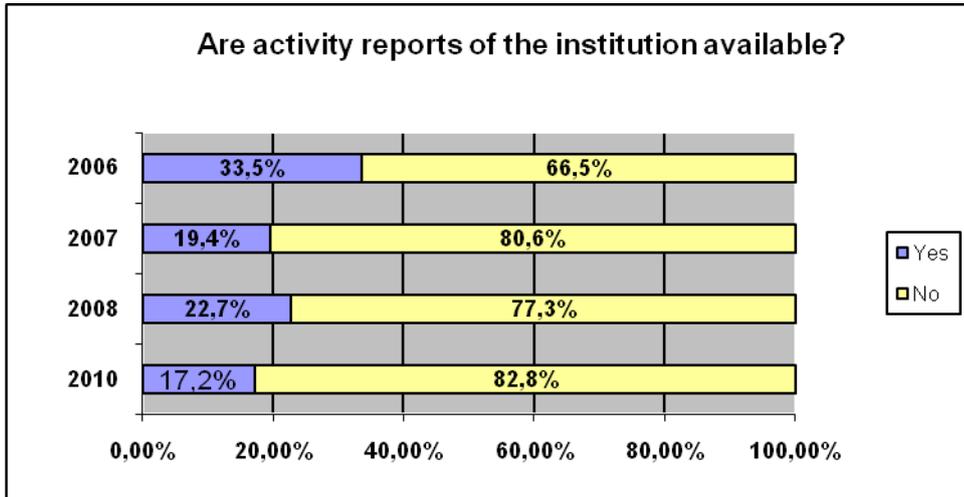


Chart 24. Contracts with third parties

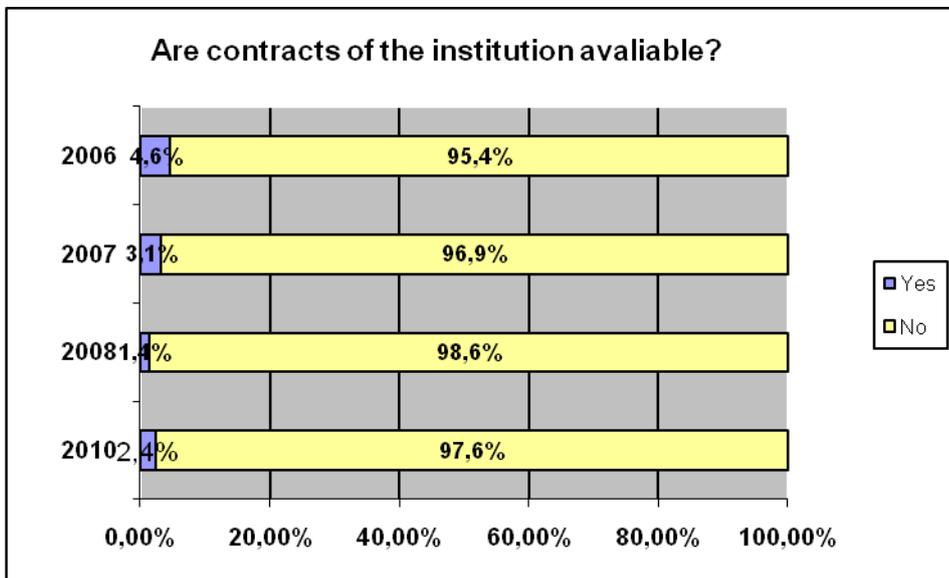
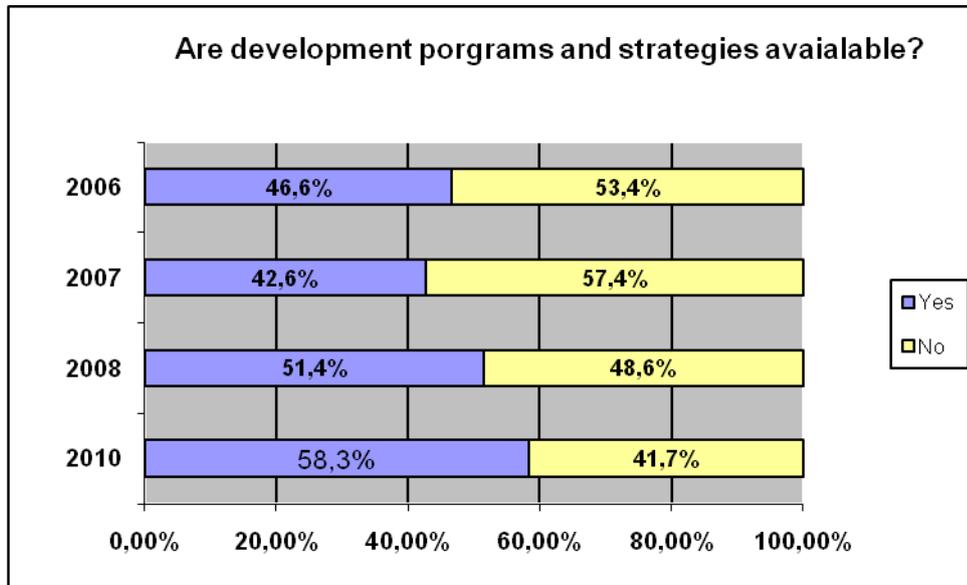




Chart 25. Development programs and strategies



Like in previous years, the announcement of development programs and strategies is comparatively good. Not publishing budgets and reports impedes the forming of own opinion about the efficiency and the consistency of these development programs and strategies.

Electronic Requests

For a second successive year, Access to Information Programme submits electronic requests for access to information to the institutions.

In 2009, requests were submitted to 399 institutions. The results were the following:

137 institutions (34,3%) responded within the legally prescribed timeframe, i.e. within 14 days. Twenty-eight (7%) responded after the deadline. 234 (58,65%) did not respond at all to the requests for access to information which is subject to mandatory publication.

In 2010, we submitted 500 requests to the executive power bodies at central, regional and local level.

Within the legally prescribed timeframe, 212 (41,49%) institutions responded. After the deadline, we received responses from 73 (14,29%), i.e. 56% of the public authorities answered the submitted request, out of them 47% did it electronically. No response at all given by 215 (42%) institutions.

Besides the statistics of the results, the responses to the requests indicated other interesting developments as well.

31 of the institutions which have established procedure for handling electronic requests required electronic signature – a rule that contradicts the law. This contradiction has obviously been comprehended by the officials since, regardless of the requirement, the requested information was sent.

Others, disregarding the spirit of the law and its purpose, focused on the procedure but not to facilitate the requestor and themselves but to impede the provision of the requested information.



Prominent in this regard was the Municipality of Razgrad which invited the requestor to visit the Front Office and present the payment receipt for 2.16 BGN, VAT included. The decision of the mayor was written in three pages and was sent via regular mail, regardless of the well maintained web site of the municipality. The decision explains in detail why the answer to the request could not be sent to the signified electronic address since that was the *place* signified by the requestor, while the law required that place to be signified by the body. Furthermore, “no part of this administrative service shall be provided electronically” as the Municipality of Razgrad “have no technical capacity” to provide electronic administrative services.

Let us remind that the time spent for the preparation of that one or any other decision also costs money – to the taxpayers. Following the procedure under the law cannot be an end in itself. It serves for more efficient achievement of the purpose of the law. Formalities for requests shall not exceed what is essential in order to process the request.⁶

It is a common practice in a lot of countries with effective access to information laws that the requested information is sent electronically free of charge (especially when it is small in size), as well as the provision of paper copies. The rational administration takes into consideration the revenues and the expenses in providing the service. For instance the procedure for obtaining access from the institutions of the European Union stipulated by Art. 10, Item 1 and Item 2 of the Regulation 1049/2001. The requestor may have access to documents either by consulting them on the spot or by receiving an electronic copy, according to the requestor's preference. “Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be **free of charge**.”⁷

Bulgaria is a member of the Council of Europe and the European Union and supposedly should follow open government standards and values.

Information was provided in the manner signified in the request by 235 institutions. This makes 47% out of all institutions to which we submitted requests. If we compare the result with the 35% which had responded in 2009, we believe that there are grounds for optimism.

¹¹Refer to Council of Europe Convention on Access to Official Documents, Art. 4

<https://wcd.coe.int/ViewDoc.jsp?id=1377737&Site=CM>

⁷http://www.europarl.europa.eu/RegData/PDF/r1049_en.pdf