



PROBLEMS AND TENDENCIES IN ACTIVE DISCLOSURE OF INFORMATION (Results from AIP Audit of the Web Sites of Executive Power Bodies in Bulgaria)

Online Publication – Basic Element of the Right of Access to Information

Active disclosure of information is among the basic elements of the right to information. Its significance for the exercise of the right to information has been increasing and the standards in the areas have been gradually being set. Most of the access to information laws adopted during the past decade introduce obligations for publication of certain categories of information online. States with older legislation either amend existing laws or adopt new laws on electronic access to information. The review of the legislation shows that some categories of information subject to online publication are common.¹ For instance, the powers and the acts of the authorities, as well as their operational structure and functions, their activities, contracts and information related to the transparency of the decision making are categories of information subject to active disclosure pursuant to most of the access to information law. In a number of countries which had such legislation before 1990, the obligations for active disclosure are extended not only by the access to information laws, but also by special laws introducing obligations for publication of specific categories of information – contracts, budget transparency, or developing the so called *targeted transparency*. Recently, the process of extending transparency has been specially studied and systematized.²

What are the reasons and factors which lead to elaboration of legislation providing for active transparency of institutions? What is the role of the crises in that process? Why concepts of active transparency should be leading in the establishment and the development of the electronic government? Is active transparency really the future of access to information?

All surveys draw the conclusion that the regulation of the obligations for active disclosure is conditioned by several reasons:

1. The necessity for setting minimum standards for active disclosure;
2. Increased demand for public information;
3. Growing recognition of active disclosure as an integral part of the right of access to information.³

The development of active disclosure of information online legislation and practices allow for an analysis of the moving forces and the factors influencing the process. One of the main moving forces

¹ Comparative review of the categories of information for proactive disclosure (standard-setting) of the Council of Europe, the Organization for Security and Cooperation in Europe, etc. can be found in Helen Darbishire's working paper: http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbishire_Proactive_Transparency.pdf, p.39. The paper was presented in AIP information newsletter, October 2010 issue (10)82): <http://www.aip-bg.org/publications/Бюлетин/2010/>

² Full Disclosure. The Perils and Promise of Transparency, Archon Fung, Mary Graham, David Weil, Cambridge University Press, 2007

³ See Helen Darbishire's working paper: http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-68250334206/Darbishire_Proactive_Transparency.pdf.



of the functioning democracy is the transparency of legislation and the possibility for interested parties to take part in its discussion. The second moving force coming to the front especially in the new democracies is the necessity for accountability, transparency of government actions and the role of access to information for the exercise of other rights. Active transparency is significant for the decrease of bad administration and corruption. The third factor for the development of active transparency is the increasing public participation in the decision making process for public policies. Civil participation in this process is impossible without the development of active transparency. Citizens and interested parties should dispose of as much information as government experts in order to take part and be equal in the discussion process. Clearly, access to information in this regard is related to active publication and not to the comparatively slower process of filing written requests. A number of papers and surveys on online active publication practices and legislation systematize standards on the base of analysis of legislation and practices.

For example, the already quoted paper of Helen Darbishire classifies the following common categories on the base of comparison between documents and regulations of the Council of Europe, the Organization for Security and Cooperation in Europe, the Organization for American States, Hungary, India, Mexico and the United Kingdom:

- Institutional information - Legal basis of the institution, internal regulations, functions and powers
- Organizational information – Organizational structure, information on personnel, and the names and contact information of public officials
- Operational information – Strategy and plans, policies, activities, procedures, reports, and evaluations
- Decisions and acts
- Public services information
- Budget information
- Open meetings information
- Decision-making and public participation:
- Subsidies information
- Public procurement information
- Information volumes and resources - public registers, databases
- Information about information resources, indexes
- Information on publications issued by the institution
- Information about the right to information:
- Information on the right of access to information and how to request information, including contact information for the responsible person in each public body.⁴

The Council of Europe Convention on Access to Official Documents adopted on November 27, 2008 sets forth active transparency as one of the principles of the right of access. Art. 10 of the Convention gives a general formulation of the obligation for the executive power institutions, however reflecting the developing legislation in the member states, namely:

Article 10 – Documents made public at the initiative of the public authorities
At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and

⁴ Ibid, Annex A: Classes Information Comparative, pp. 39.



*efficiency of public administration and to encourage informed participation by the public in matters of general interest.*⁵

The Explanatory Report to the Convention⁶ clarifies what the “official documents of general interest” are which shall be made public without the need for individual requests, namely: Documents on their structures, staff, budget, activities, rules, policies, decisions, delegation of authority, information about the right of access and how to request official documents, as well as any other information of public interest.

All these documents ensuring that citizens are able to form an opinion on the authorities that govern them and to become involved in the decision-making process should be published at the initiative of the public authorities.

One more criterion to serve as guideline for national legislators in regulating the obligations for proactive publication has been introduced – the orientation towards the most frequently requested documents. In a number of regulations on electronic access to information, this principle has been followed for quite a long time (USA, Mexico, Slovenia).

The Bulgarian legislation regulating active publication online follows the tendencies and the requirements of the standards reviewed above. However, in many regards, as it is also apparent from the AIP survey, it is still at the beginning of the process.

Publicity of *legislation* is among the oldest characteristics of normal government. The development of technologies requires that this characteristic is also developed online.

The 2008 amendments to Art. 3, Para 2 of the State Gazette Act established an obligation for publication of both, the official and unofficial part of the State Gazette (SG) also on the Internet site.

The list of the acts issued within the scope of the powers of the administrative structures is subject to mandatory publication under Art. 15, Para. 1, Item 2 of the APIA since 2000. The online publication of that list is obligatory since the December 2008 amendments to the Access to Public Information Act (APIA).

The acts of the municipal councils should be announced “through the Internet site of the municipality or by other appropriate means” pursuant to Art. 22, Para 2 of the amended Local Self-government and Local Administration Act (SG, issue 69 as of 2006).

The December 2008 amendments to the Access to Public Information Act introduced clarification with regard to the type of acts of the authorities which should be published, namely “structured aggregation of all legal, common, and individual administrative acts, issued by the respective administrative body.”⁷

The publication of the structure, functions, services, information resources available, registers maintained, as well as contact information are also important element of active transparency. The

⁵ Council of Europe Convention on Access to Official Documents:

<http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>.

⁶ <http://conventions.coe.int/Treaty/EN/Reports/Html/205.htm>.

⁷ APIA, Additional Provision §1, Item 3 (SG, issue 104 as of 2008)



Bulgarian legislation regulates the publication of the structure, functions, and the information resources available as early as 2000 when the APIA was adopted. These categories of information should be published online pursuant to the 2008 APIA amendments (Art. 15a of the APIA). 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.

With the December 2008 APIA amendments, the obligation for creating and *Access to Information* section in institutional web sites was established (Art. 15a, of the APIA).

AUDIT ON THE INTERNET SITES OF THE EXECUTIVE POWER AUTHORITIES AT A CENTRAL, REGIONAL, AND LOCAL LEVEL

Methodology

In 2011, *Access to Information Programme (AIP)* made again an assessment of the Internet sites of the Bulgarian executive power bodies in order to evaluate the level of implementation of the legal obligations for active publication of information and the declared policy of transparency on a central and local level.

The assessment was performed within the period February 22 – March 25, 2011. AIP has reviewed 495 web sites out of a total of 516 institutions.⁸ 21 institutions still do not have official web sites. Out of these, 12 are of regional unit of central authorities, three are from the category Agencies and Commissions, and six are municipalities.

The web sites audit was based on several groups of indicators which encompass the standards for active disclosure of information under the APIA and other regulations:

- 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

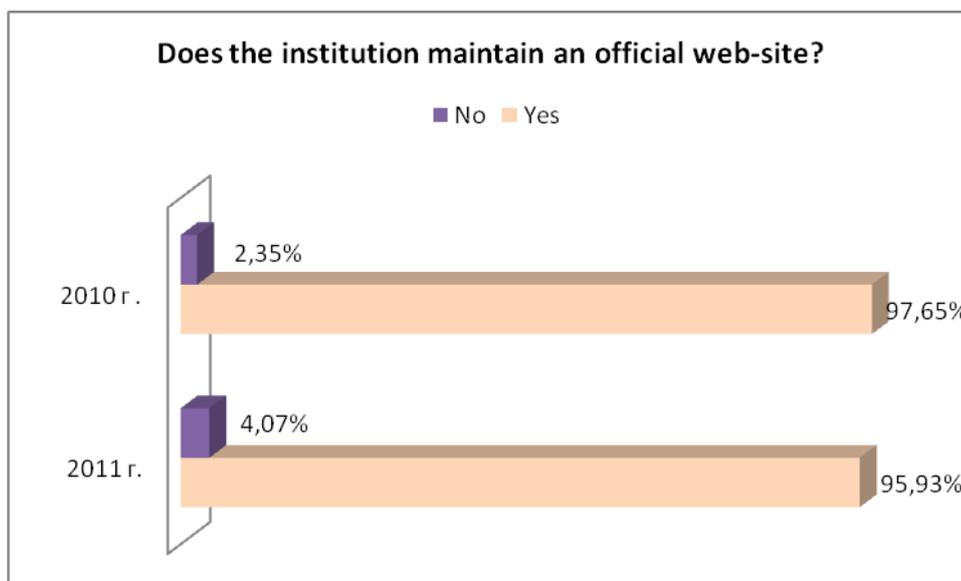
Also, 505 requests were filed electronically for access to the Internal APIA Implementation Rules in an electronic form, or by signifying the exact link to the web address where they could be found.

⁸ The 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/Резултати_по_институции/208943/.



Results⁹

The general conclusion from the assessment is that there has not been a substantial progress in the creation and maintaining of the Internet sites by the executive power bodies. In comparison to the February 2010 survey of AIP, the percentage of institutions not maintaining web sites has increased. In 2011, the Regional Health Care Centers were merged with the Regional Inspectorates for Control and Oversight of Public Health. However, six municipalities still has not found resources to create and maintain Internet sites in 2011.¹⁰



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

There is not much development regarding the description of the powers and responsibilities of the executive power bodies. In comparison to 2010, the increase in the percentage of institutions who have fulfilled their obligation is 2. In 2010, 67% of the institutions which were assessed had published the legal basis for their activities. In 2011, 69% did so. The best performance is scored by the central government authorities (100%), the weakest – by the municipalities (59%).

Regarding the publication of the functions and the relevant services provided, as well as the information resources, the results show slight improvement in comparison to the previous year. The functions were described in 72% of the web sites with central authorities leading the score with 94% having the information available online. The implementation by the municipalities us 57%. Apparently, the municipal administrations (77%) are customer oriented publishing a description of the services they provide.

⁹ Results are available on AIP web site by institution and by indicators (in Bulgarian): http://www.aip-bg.org/surveys/2011_година/104100/ and in graphs in Appendix 1: Comparative Data from AIP Audit on the Web Sites of the Executive Power Bodies: http://store.aip-bg.org/surveys_eng/websites_audit_results_2010_2011.pdf

¹⁰ Bulgaria has 264 municipalities governed by an elected mayor and elected municipality council.



The implementation of the obligation under Art. 15a for online publication of data bases and information resources is still poor. The number of administrations uploading that type of information on their web sites has increased with only 1% with a less than 50% of implementation for all institutions.

Organizational Structure and Contact Information

The online publication of the organizational structure of the institution as well as the relevant contact information is also mandatory. This information is basic for the developing of the web site and does not require additional resources. With regard to the organizational structure, the implementation is the highest in comparison to all other categories of information listed under Art. 15a of the APIA. The organizational structure is presented in 87% of the web sites. The implementation reaches up to 100% by the central government authorities and 82% by the municipalities.

As far as information about how, whom, when and by what phone number citizens could reach, the last year tendencies retain – the address and phone number are published in 86% and 93% of the web sites respectively, while the name of the department for contact with citizens and its working hours are in 64% and 41% of the web sites.

Operational Information – acts,¹¹ strategies, plans, activities and reports

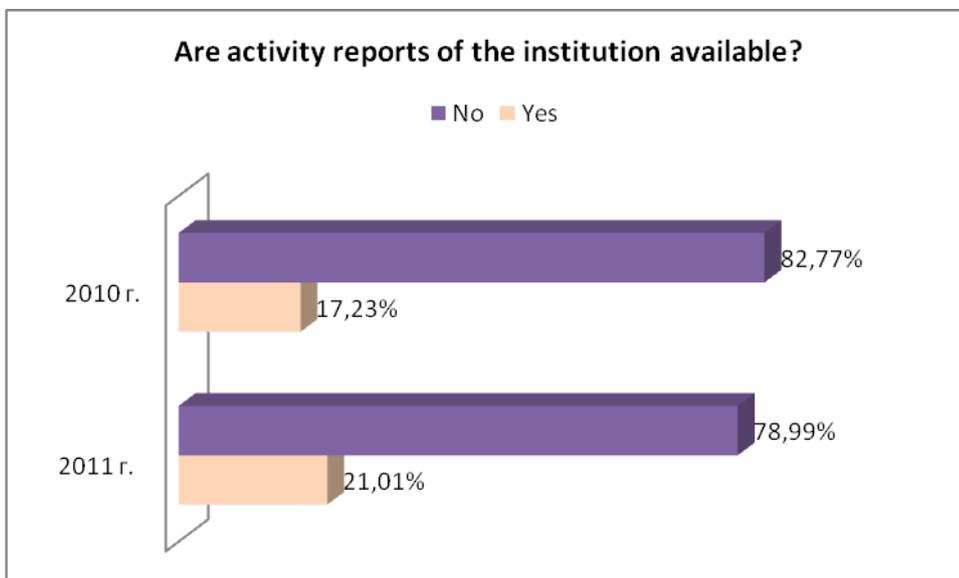
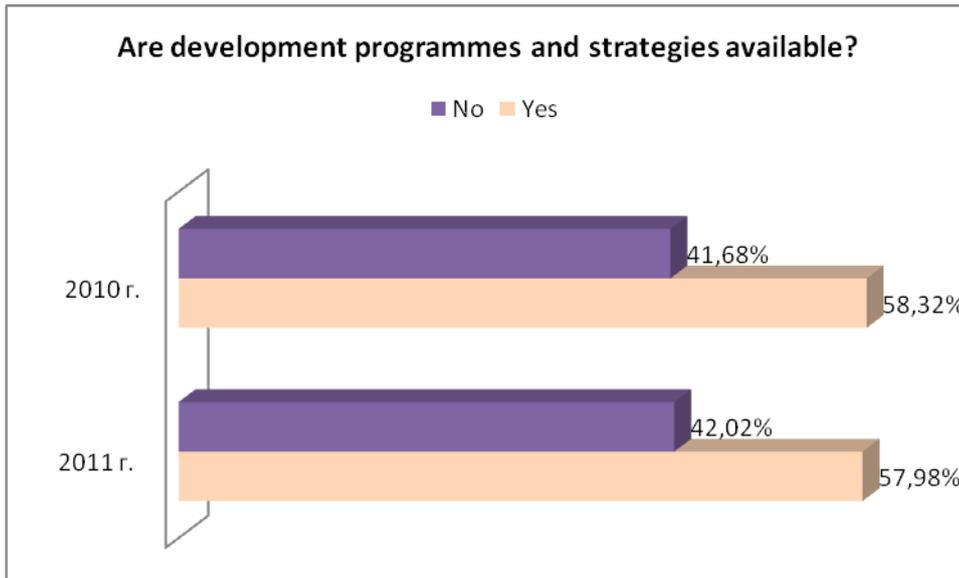
The obligation for publication of public bodies acts in relation to the implementation of their powers is connected with the basic element of active transparency. The 2010 tendency of publication of normative acts retains. Regarding the individual acts or at least a list of these, the implementation is poor. The extent of publication of normative acts is the same for the two successive years – 78% implementation. The municipalities perform significantly well – 86% maintain registers of the decisions and the normative acts of the municipal councils, while the publication of individual administrative acts is even decreasing in comparison to 2010 being 27%.

It should be signified that some municipalities have followed the example of the Council of Ministers and opened their internal legal system online which allows the publication of acts by categories helping further the information seekers. A good example in this regard is the legal information system of the Municipality of Plovdiv.¹²

According to all AIP surveys, the publication of development plans and strategies has comparatively good implementation in comparison to the financial securitisation of these plans and strategies, while the accountability on the implementation of these plans and strategies is not the type of information that is preferably published.

¹¹According 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."

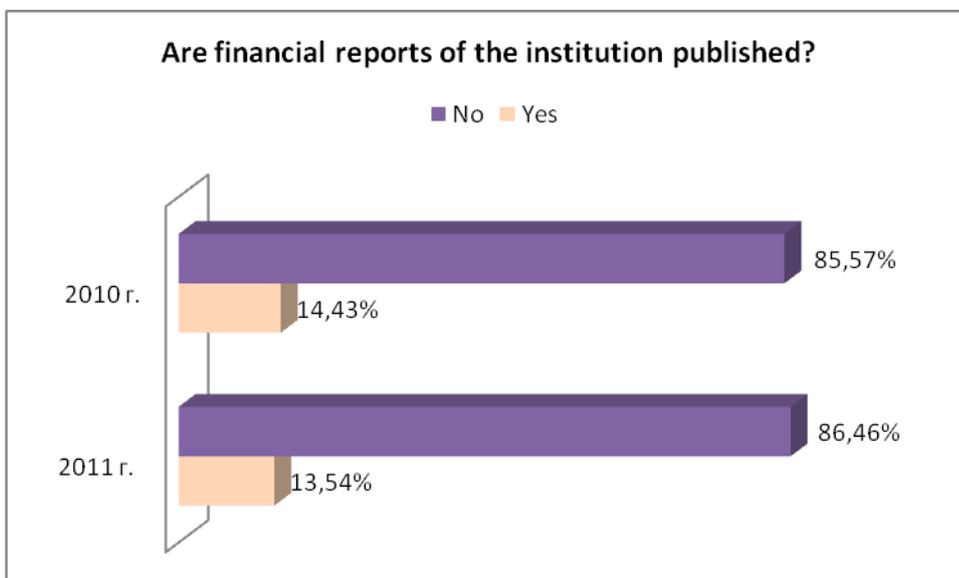
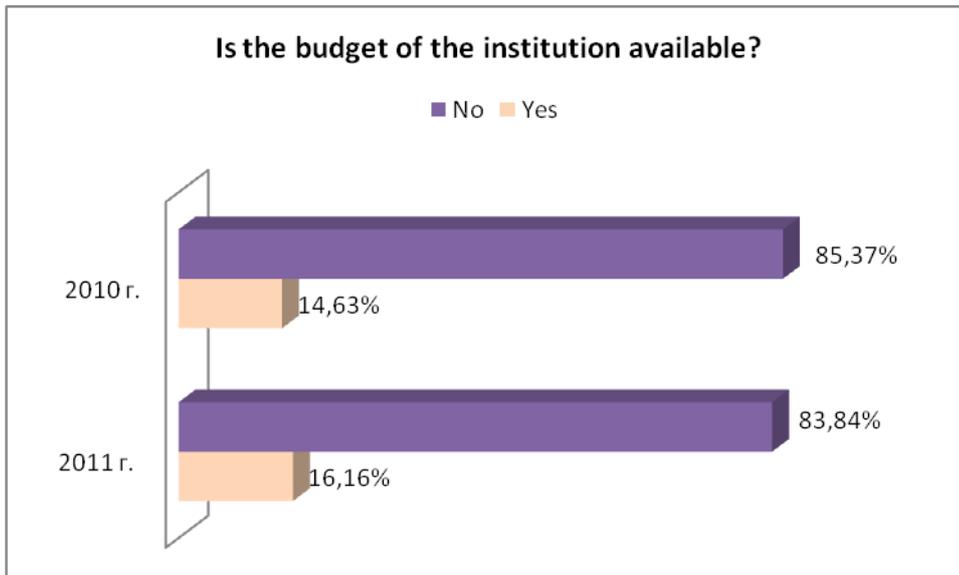
¹² Legal Information System of the Municipality of Plovdiv: <http://jurist.banksoft-bg.com/>



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

An important element of active transparency is the publication of the budget and the financial reports. Although the missing explicit requirement for publication online, AIP is evaluating its implementation in its assessment as the adoption of the budget is related to public discussions suggesting that the interested parties have been informed. This is particularly important for the adoption of the municipal budgets.

The results show that regardless of the 2% increase of the institutions which have published their budget, the level of financial transparency is still far behind the standards and the practices developing in other countries. The same is valid with regard to financial accountability as well.



An important indicator for transparency of operational work and the prevention of corruption is the publication of the public bodies contracts and the conflict of interests declarations.¹³ In 2011 again, as it was in 2010, only 2% have published public procurement or concession contracts. Such a low level of transparency with regard to one of the most interesting to the media and the society type of information even after the 2008 APIA amendments raises the question if it is high time to start drafting a special law for transparency of public bodies contracts.

Comparatively good is the implementation of one not so pleasant obligation for public officials – the publication of the declarations under Art. 12 of the *Prevention and Determining of Conflict of*

¹³ The obligation to publish online conflict of interests declarations was established under Art. 17, Para. 2 of the Prevention and Determining of Conflict of Interests Act (SG, issue 94 as of 2008, effective January 1, 2009).



Interests Act (PDCIA) under the unclear requirement for observing the provisions of the Personal Data Protection Act. As this obligation is legally bound under Art. 17, Para. 2 of the *PRCIA*, regardless of the short period of its enforcement, its implementation is 41% for all institutions and is considerably higher than last year – 25%.

The unclear requirement set forth by Art. 17, Para. 2 that the publication should be done in observation of the provisions of the PDPA resulted in the publication of not the declarations themselves but only a list of those who have filed declarations, or the declarations of only those who had given their consent.

Access to Information Section

The obligation for creating an *Access to Information* section in institutional web sites was introduced with the December 2008 APIA amendments. AIP has been monitoring for years what explanatory information is uploaded on the web sites with regard to the right of access to information and its exercise. Due to the fact that specific obligations were introduced in the law as late as 2008, the trends in the online publication during the last two years were interesting. Moreover, the implementation of that obligation was funded through EU funds under the Operational Programme Administrative Capacity for increasing the transparency of the institutions. Authorities had the possibility to secure funding for improvement of the online content and the creation of the special section.

The fact that besides the *State of the Administration* report in its *Access to Public Information* chapter there is no other mechanism of coordination and oversight of what is going on in the administration with regard to the implementation of legal obligations brings to insufficient results in the area. The mere statement and recommendation in the last year report of the Council of Ministers that internal APIA implementation rules should be drafted and published resulted in the increase of the authorities which have adopted such rules.

The *Access to Information* section has the purpose to facilitate and assist the requestors or those seeking information on how the process is organized in the particular institution by signifying the established procedure, including the procedure for accessing the public registers maintained. The section should contain information about the department in charge of accepting APIA requests, the responsible official, the address, the phone number and the working hours of the department. The section should also contain a report on the implementation of the APIA. In our assessment, AIP evaluated two more conditions necessary for the exercise of the right to information. Obligations for publication emerge on the base of other laws – the list of the categories subject to official secret and the list of the declassified documents within the respective authority – the organizational unit as stipulated by the Protection of Classified Information Act.

Access to Information section is created in 40% of the web sites assessed. In comparison to 2010 – 28% of the web sites had such sections.

What is the content of these sections? Only 20 institutions have completely fulfilled the legal obligations. Among them are: the Ministry of Finance and the Ministry of Education, Youth and Science; the regional administrations of Veliko Tarnovo and Smolian; the municipalities of



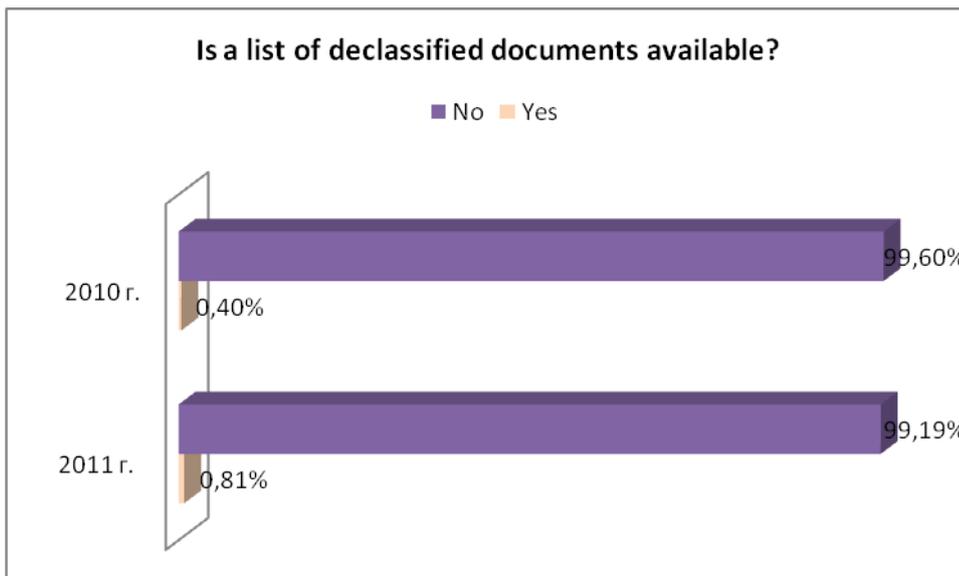
Kozlodui, Lovech, Razgrad, Sliven, Sofia, Suhindol and ten Regional Inspectorates on Environment and Waters.

The published internal access to information rules have doubled – from 26% to 56%. Although 256 institutions have uploaded them online, they are not available in the *Access to Information* section as the seeker would have expected. Also, 12% of the institutions which have published their internal rules do not have such a section. The places where one can find the rules are various. Big proportion are published in the section (148 out of 256), but rules can also be found in the operational rules of the administration, in the customer's charter, in section *Municipal Documents*, and elsewhere. The implementation of the obligation for online description of the procedure for access to public registers in the *Access to Information* section is still poor – 20% in 2011, in comparison to 2010 when the implementation was only 14%.

As far as the report for the implementation of the law during the previous year, the level of publication is still poor – only 12%. Only 61 institutions have published their reports and only 41 of these reports cover the previous year.

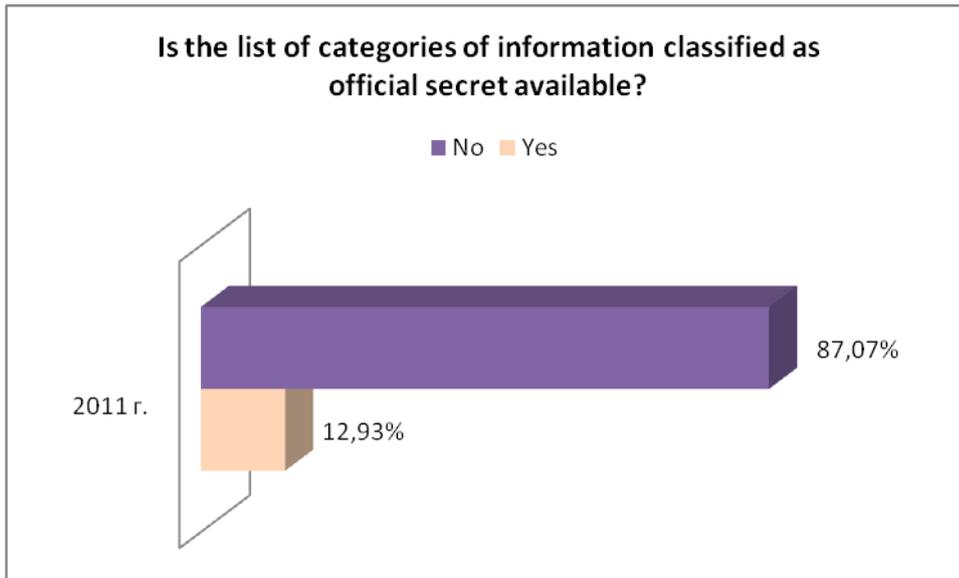
The obligation for publication of contact information of the APIA responsible official or department is not well implemented either – it does not exceed 20%.

The implementation of the obligation for publication of lists of declassified documents – established under § 9 of the Protection of Classified Information Act – is lamentable like the previous year.



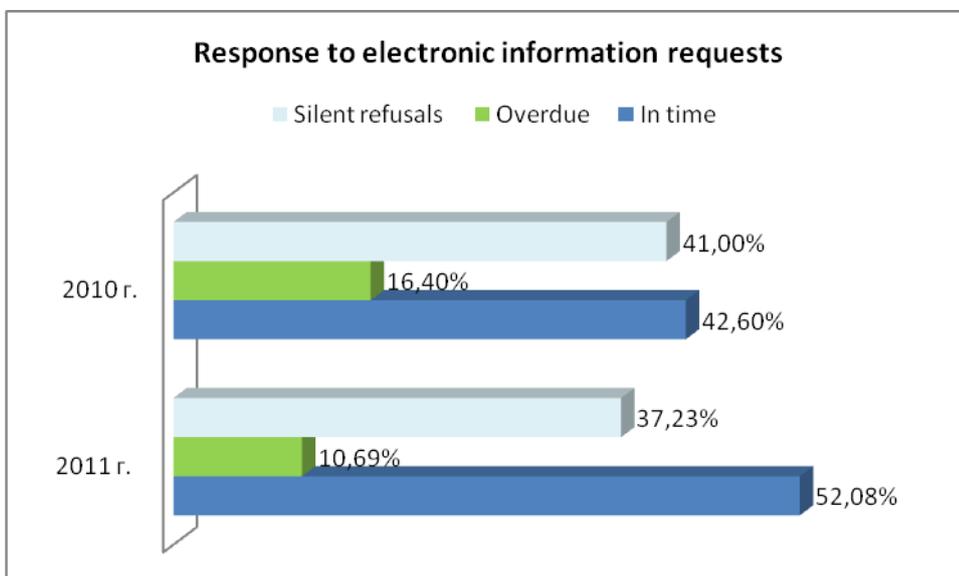
With regard to the list of categories subject to classification as official secret, although the implementation is still low, there is a significant improvement in comparison to past years. One of the reasons is the initiative of the State Commission on Information Security which was undertaken after the recommendations in the report *Access to Information in Bulgaria 2009*, AIP, 2010.¹⁴

¹⁴ *Access to Information in Bulgaria 2009*, Sofia: AIP, 2010: pp. 7-9: http://www.aip-bg.org/pdf/report_2009_eng.pdf.



Electronic Requests

The submission of requests by electronic means is provided by the APIA as early as its adoption. Pursuant to Art. 24, Para. 2 “the request is deemed written also in cases where it is send electronically subject to conditions determined by the respective body.” These conditions of course should not contradict the requirements of the APIA and the rational expectation of the requestors was that they were signified in the internal access to information rules of the institutions. For a third successive year AIP files electronic requests within the assessment of the Internet sites. The responses to those requests were 63%, while in 2010, 59% responded. The portion of the silent refusals has decreased with four percent though their number still remains high – 37%. The number of responses which were sent electronically is 262, while in 2010, they were 242.



Part of the responses contain decisions for refusing access to information. Even by institutions which had already published the requested information online. The responsible official could have just



pointed to the exact link on the web site. Some institutions required payment of certain amount of money in order to point out that link, others used formal requisites from the requests to hide the fact that they had not adopted internal rules. The number of these institutions is not high – 13.

The impact from the filing of the requests is significant. Within the period of the assessment, *Access to Information* sections were created, internal access to information rules were uploaded. The Ministry of Interior adopted the internal rules valid for not only the ministry but also for its regional directorates.

The whole process is to prove that one of the main factors for the improvement of active transparency and access to information is the seeking of information, the filing of requests. Bulgarian experience in developing these practices gives a good example in this regard.

CRITICAL REMARKS

The first impression after the review of the web sites is that there is no unification of the content – the variety verges on chaos, putting it more carefully – the variety depends on the views of both the government officials and the companies developing the web sites. It is strange that municipalities which have ISO certificates have not fulfilled legal requirements – do not have *Access to Information* sections.

The variety of formats of uploaded information is also impressive. The internal rules of the Agency for Disabled People are uploaded in TIF and one will be lucky if succeeding to open them. It turns out that some public authorities like the Bulgarian Agency for Investments believe that they do not generate or hold public information – it was only information from customers and for customers.

Let us remind the meaning of *rational ignorance*, a concept we are using not for the first time to describe the administrative practices under the APIA.¹⁵ Mancur Olson uses the concept of *rational ignorance* to describe the situation, when the *typical citizen* chooses not to be interested in issues of public importance because the cost of educating oneself about the issue exceeds the benefit of not knowing anything. The choice of a number of heads of administrative structures is similar. Apparently, the benefits from non-complying with the requirements of the law are higher than the costs of its effective implementation.

What will the consequences be for such a *typical government official* if they did not publish information mandatory for active disclosure? Practically nothing, considering that there is not even a Ministry of State Administration to oversight the implementation of certain obligations for active disclosure under the legislation. Citizens who have thousands of everyday problems would hardly keep a close watch to what has been published and what the legal obligations are.

That is why it is easy to publish programs and strategies, but not reports. It is easy to present organizational structures and rules, but not effective administrative acts. It is easy to make fuss about and spend money on electronic government, but not for adopting instructions for the content of the

¹⁵ Jouleva, Gergana. “The Year of the Rational Ignorance (Results from a Sociological Survey).” Sofia: AIP, 2002: <http://www.aip-bg.org/pdf/ignorance2.pdf>



institutional web sites with the purpose of unification and facilitation of the tax payers and also the public officials. It is even easier to declare transparent government, but not to have a single procurement contract published online. Not to speak about institutional budgets and reports – this is science fiction. There is no control. A citizen might file a request for such information but that is all. This would not bring to any significant expenses.

The benefit from not-publication is much higher than the costs for doing it. In the latter case, the tax payers could ask more sensible questions, take informed part in the debate, demand explanations about taking one or other decision. That is why, the *typical government official* chooses completely rationally not to publish *sensitive information*, which could increase the costs and more important, the troubles.

The Procedure as a *Rational Ignorance* Instrument

The director, or the minister, or the mayor is requested a document which they either have not adopted or deemed inappropriate to disclose. In that moment, the PROCEDURE comes to help. The requestor would not signify their three names – so, no information shall be provided and the requestor should learn a lesson. The requestor would signify their working address – so, a power of attorney shall be required, a proof of really working there, a proof that the working place exists in the legal world, etc. The requestor would file an electronic request – so, they would be answered that there was no technical possibility for disclosure as if the administration still works on typewriters or is handwriting.

The generation of plenty of documents and their categorization in such a way that only initiated people could find anything is another instrument of the *rational ignorance*. How could the requestor know that they could find the address and the phone number of the public official they need in the customer's charter, or in some of the internal rules? Moreover, why should the citizen be assisted – let them search, read everything and thus find their way. While searching, however, the citizen could get angry and turn negative to the administration – but it would have more *tanks* and get over them. Very often the battle between the administration and the citizens¹⁶ starts from small things, from arrogant disrespect to the requestor, from mocking attitude towards them, or attempts of apprehension. Then, the citizens start their own battle. And the administration is surprised at the persistence and consistency of information seekers. What is motivating them – to torture the administration, or this is the strategy of the political opponents?

CONCLUSIONS

1. Lack of methodology and unification of the institutional web sites structure and content. Such a lack is a result of another deficiency in the legislation and structural changes during the past two years – currently, there is no authority to oversee, coordinate and assist methodologically the process. Was it really necessary to close the Ministry of State Administration and Administrative Reform?

¹⁶ The Council of Ministers Report *The State of the Administration in 2009* (Decision of CoM from August 11, 2010) shows: number of requests filed to the administrative structures of the executive power – 24,694. Out of them: 14,076 by citizens; 7,440 by journalists; 2,265 by companies; 856 by NGOs; 57 by stateless persons.
<http://pris.government.bg/prin/default.aspx>



2. Besides civil monitoring, there is no one else to oversee the implementation of the obligations for online publication. Citizens, however, do not have pressure mechanisms to push the administration to fulfill its obligations.
3. The efforts for more detailed and targeted regulation of the obligations for online publication should be continued. The regulation should provide for mechanisms of control and sanction of non-implementation.
4. Specific efforts are necessary for the legal and practical development of the financial and operational transparency.
5. The update of the information could hardly be evaluated at the current state of the web sites. It, however, is an important condition for the participation of citizens and interested groups in the discussion of public policies.
6. *Access to Information* sections should serve their purpose – to facilitate and help citizens in their search for information.