



ACCESS TO INFORMATION PROGRAMME

ACCESS TO INFORMATION IN BULGARIA

2010

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2010

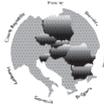
ACCESS TO INFORMATION PROGRAMME

Sofia, 2011

This Report is published with the financial support of the Trust for Civil Society in Central and Eastern Europe (CEE Trust) in the framework of the project *Support to Access to Information Programme as a Freedom of Information Civic Resource Center (FOICRC)*, and America for Bulgaria Foundation within the framework of the project *Responding to the New Demand for Freedom of Information* - both implemented by Access to Information Programme.



ACCESS TO INFORMATION PROGRAMME



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Access to Information in Bulgaria 2010 Report

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ISSN 1314-0523 (online)

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TIME FOR ACTIVE TRANSPARENCY, CONTROL, AND SANCTIONS

2010 was the year of the tenth anniversary of Access to Public Information Act (APIA). Last year *Access to Information Programme (AIP)* findings and recommendations reflected on the positive developments and the problems in the exercise of the right of access to information. Alas, most of these findings and conclusions are valid for the 11th year of the APIA implementation as well.

Active seeking of information by filing requests is characteristic for Bulgaria since citizens, NGOs, and journalists who use the law believe that this is the way to form own opinion on how they are being governed, to take informed part in policy formulation, to do their investigations. Although the amendments to the APIA as of December 2008 introduced the overriding public interest in the application of most of the exemptions to the right of access to information, this principle has not become leading for the administration. It ignores the legal clarity on what could not be *production and trade secret* (contractors, subcontractors, the subject, the price, the rights and the obligations, the conditions, the terms, the sanctions), especially with regard to the obliged bodies' contracts with private companies.

Instead of complaining that there is corruption in public procurements, or that contracts are not being implemented, or there are suspicions of conflict of interests or wrongdoings - simply publish these contracts. If amendments are necessary to the legal framework - make them. Since the contracts of the authorities are among the most frequently sought type of information.

This year again, *AIP* assessed the level of implementation of the obligations for active disclosure of information pursuant to the Bulgarian legislation. The results show negligent attitude by the administration. Considering the consistent ignoring of legal obligations, it is time for measures for control and sanctions. Citizens just could not beat over administrative arrogance by filing requests and appeals before the court. Moreover, there is not a single case of an institution sued for not publishing certain information online.

The implementation of the obligations by the administration depends to a big extent on the internal management of record systems and their orientation towards citizens' free access, on their capacity to supply information at demand and to fulfill their obligations for active disclosure of information, on the control over the implementation and sanctions for non-compliance with the requirements. Citizens' troubles, however, are piling up - silent refusals, bureaucracy, unwillingness for quick response, ungrounded refusals which the court reviews.

On November 27, 2008, the first Council of Europe legally binding treaty on access to official documents was adopted. In the beginning of 2010, 12 states signed and two ratified this treaty. The Council of Europe Convention on Access to Official Documents should be ratified by 10 out of the 47 member states in order to become effective and the oversight bodies for its implementation to be established.

In 2010, the Bulgarian government did not do anything to start the procedure of signing and ratification of the Convention. Although at the conference for the 10th anniversary of the adoption of the APIA, organized by *AIP*, the Chairperson of the National Assembly, Ms. Tsetska Tsacheva, and the Ministry of Foreign Affairs expressed willingness for ratification, Bulgaria is still not among the countries recognizing transparency and openness as fundamental values.

The *AIP* Report on access to information starts with recommendations. They are based on the analysis of the legislation and problems which have emerged in the practices. That is why they do not differ so much from the recommendations in the previous Report.

The first part is an analysis of the legislation regulating the access to information. We pay particular attention to some weaknesses - the lack of an overseeing and coordinating body, insufficient regulation of control, practical lack of sanctions for failure to fulfill obligations. The author of the analysis is Alexander Kashumov

The second part presents the results from the assessment of the online publication of mandatory categories of information by the administrative structures of the executive power. The survey was performed by the team of *AIP*. Darina Palova, Diana Bancheva, Fany Davidova, Gergana Jouleva, Kiril Terziiski, Nikolay Ninov, Ralitzka Katzarska, and Tereza Mandjukova evaluated 495 web sites and filed 505 electronic requests. The team of *Svetlozar Online Ltd* developed the software necessary to perform the survey. Gergana Jouleva made the analysis of the results.

The third part of the report is 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 and gives a short description of the characteristics of court practices during 2010. The review was made by Kiril Terziiski.

As an appendix, we include the results from the Internet sites audit compared to the 2010 results, as well as comparative results by executive power institutions.

The findings of the report show that it is time for changes in the active disclosure practices in order for the actions of the administration to be really transparent. It is time for control over the implementation of the obligations and sanctions for those who unceremoniously ignore them.

April 2011

Gergana Jouleva, PhD

Executive Director of *Access to Information Programme*

RECOMMENDATIONS

RECOMMENDATIONS RELATED TO THE LEGAL REGULATION

- ❑ 2010 recommendation that the government shall undertake steps for the signing and ratification of the European Convention on Access to Official Documents remains relevant.
- ❑ The following amendments to the APIA shall be drafted and introduced:
 - To authorize a specific public body to supervise and coordinate the APIA implementation activities;
 - To change the officials responsible for finding and sanctioning non-compliance with the APIA so that they shall not coincide with the officials subject to sanctioning;
 - To extend the scope of administrative sanctions under the APIA so that they would cover not responding in the legally prescribed form.
- ❑ 2010 recommendation that the Minister of Finance shall review and amend Order No. 10 of 2001 for determining the fees for the provision of information, in consideration with the sharp decrease of the price of the information carriers, remains valid. The provision of information by electronic mail, as well as to an oral request, should be free of charge.
- ❑ The process initiated by the State Commission on Information Security to draft binding instructions and model lists of categories of information subject to official secret exemption, taking into consideration that the restriction of the right to information is an exception to the principle, shall be continued.
- ❑ The recommendation remains that the *professional secret* shall be repealed as a ground for restricting the right of access to information by a review of respective legal norms and their bringing in compliance with the legitimate exemptions to that right.
- ❑ 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 assign to the public authority responsible for the supervision and coordination of the APIA implementation activities, or respectively the Chief Secretary of the Council of Ministers, the issuing of an instruction for accepting electronic requests for access to information and unification of the requirements for active publication of information under Art. 15 and Art. 15a of the APIA, as well as an instruction regarding the record management within the public administration. Respective amendments to the APIA and/or to the Structural Regulation of the Council of Ministers and its Administration to be made.

- ❑ 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 IMPLEMENTATION OF THE ACCESS TO PUBLIC INFORMATION ACT AND RELATED LEGISLATION

- ❑ The inspectorates shall undertake their functions regarding inspections and control over the APIA implementation and regarding proposals for imposing respective disciplinary sanctions.
- ❑ The recommendation remains that the heads of the central bodies of the executive shall undertake measures their regional units to be aware of their obligations under the law, including the obligations for active publication of information, in places where this has not been done.
- ❑ The recommendation remains that the process of implementation of the obligation for publication of mandatory information under Art. 15a of the APIA shall be continued, including:
 - Particular attention shall be paid to the lists of administrative acts.
 - The heads of administrative structures within the system of executive power shall assign the review and description of public registers and data bases which they maintain with the purpose of publication on the Internet sites.
 - The *Access to Information* web site sections shall be created and filled in with the minimum content prescribed by the law by every administrative structure within the executive power system. This section shall contain:
 - information about the official/office responsible under the APIA to accept access to information requests;
 - contact information;
 - internal APIA implementation rules;
 - the procedure for access to the public registers maintained by the institution;
 - annual report on registered APIA requests.
- ❑ The internal APIA implementation rules of the institutions shall contain by all means the following:
 - Regarding the procedure for providing information:
 - Instructions for assisting the requestors in identifying the information they are seeking;
 - Specified internal procedure for processing requests for and provision of access to information;
 - Rules for processing electronic requests within the institution.
 - Regarding the application of the exemptions:

- Specified steps for identification of existing overriding *public interest* in the disclosure of the information;
- Description of the steps for the application of each of the exemptions;
- Court instructions on the interpretation and application of the law.
- Regarding the active disclosure of information:
 - Clear description of the steps for publication of public information;
 - Preliminary designation which part of the information is subject to publication and which shall be publicly available;
 - Definition of relevant cases for announcing information under Art. 14 in terms of the functions of the respective institutions;
 - Definition of time frames within which the information in the Internet shall be updated.
- Regarding responsibilities and control over the implementation of the law:
 - Assigning the officials who would be responsible for the implementation of the listed activities;
 - Assigning the officials who would be responsible for the oversight of the implementation of the listed activities.
- ❑ Responding to the requests submitted by electronic mail shall be free of charge. Requiring requestors to submit requests signed with an electronic signature shall be discontinued as it contradicts to the principles set forth by the APIA.
- ❑ The State Commission on Information Security to issue instructions for the publication of declassified documents with the purpose to facilitate citizens' exercise of their right under the APIA as set forth by Art. 34, Para. 3 of the Protection of Classified Information Act.
- ❑ Trainings on APIA should be carried out for officials in the administration, especially with regard to identifying *overriding public interest*.
- ❑ The obligations under Art. 26, Para. 2 of the the Law on the Normative Acts shall be fulfilled by:
 - Online publication of all drafts of legislative acts,
 - Online announcement of the publication date of the drafts,
 - Online announcement of the timeframes for the public discussion of the drafts.
- ❑ The recommendation about starting the imposition of sanctions on officials who do not apply the provisions of the APIA remains relevant. Information about these sanctions shall be published in the annual report *Report on the State of the Administration*.

LEGISLATION

ACCESS TO PUBLIC INFORMATION

During 2010, the Access to Public Information Act (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.

In 2010, the AIP team presented the Convention and the analysis on the APIA consistency with it throughout the country. In July 2010, the translated text of the Convention, the Explanatory report and a comparative analysis on the consistency of the APIA with the Convention were presented to the National Assembly, the Council of Ministers, the Ministry of Foreign Affairs (MFA) and the Ministry of Justice.¹ Regardless the MFA statement that the APIA is consistent with the Convention and the lack of obstacles to its signing and ratification, such steps have not been undertaken by the Bulgarian government.

On another hand, problems are identified as regards the control over the implementation of the APIA and the mechanism of imposing sanctions for its violation.

Obligation to Help Requestors

The only clear discrepancy of the APIA with the Convention is the lack of prescribed obligation for the public authority to help the requestor, as far as reasonably possible, to identify the requested document (Art. 5, item 1 of the Convention).² Such obligation shall be stipulated because the practice now is inconsistent; moreover the administration not only fails to assist the citizens, but often creates obstacles to the exercise of the right to information. It is not rare that public administration does not respond to requests explaining that they are not valid if merely identify documents rather than describing information. This practice reveals not only a misinterpretation of the law,³ but also reluctance of the administration to serve the citizens.⁴ In our opinion, the obligation to help the requestor shall be set forth in the internal rules for access to information which shall be published pursuant to Art. 15a, Para. 2 of the APIA.

¹ More information is available at: <http://www.aip-bg.org/annual.htm>.

² The full text of the analysis on the consistency is available in Bulgarian at: http://www.aip-bg.org/pdf/consistency_report_conv.pdf

³ Case law, according to which such interpretation is unlawful: Decision No. 2761 as of February 23, 2011 of the Supreme Administrative Court, Five-member Panel - II Division, administrative case No. 13930/2010.

⁴ Which contravenes not only the APIA but also the principle of openness and accessibility of the administration pursuant to Art. 2 Para. 1, item 2 of the Administration Act, the duty of the public officer to issue a decision upon the citizens' requests without delay, the obligation to treat them respectfully - Art. 20, Para. 1-2 of the Public Servants Act and the obligation to provide all necessary information - Art. 4, Para. 1 of the Public Servants Code.

A State Body Coordinating the Implementation of the APIA

In the 2009 AIP annual report, we recommended an amendment to the APIA assigning to a specific state body within the executive power the functions to supervise and coordinate the fulfillment of the obligations under the APIA. The reason for this recommendation was the closure of the Ministry of State Administration and Administrative Reform (MSAAR). Formerly, 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 (Art. 71, Para. 1.1 of the Structural Regulation of the Council of Ministers and its Administration).

With an amendment (promulgated in the State Gazette, issue No. 15, 2011, entered into force on February 18, 2011) to the Structural Regulation of the Council of Ministers and its Administration, the functions of drafting the Report on the State of the Administration were once more transferred to a department „Administrative and regional coordination“ to the Chief Secretary of the Council of Ministers. The above cited amendments show that the functions of coordinating the administration and drafting the Report on the State of the Administration are assigned to an ever lower division of the administration. It comes out that for almost two years now there is no political figure responsible for the „coordination of the implementation of the Access to Public Information Act and the accountability to the society“ - function of the former Minister of the State Administration and Administrative Reform, pursuant to Art. 15, Item 9 of the Structural Regulation of the MSAAR.

As a result, the political responsibility for overseeing the implementation of the APIA is fuzzy and unclear. This activity is no longer distinct. According to the legislation in force, the Report on the State of the Administration itself should be presented to the Council of Ministers by the Prime Minister by April 30 each year. It could be assumed that the Head of the Executive cannot focus on a specific area of government such as monitoring and coordinating the implementation of the APIA. The problem of who is the minister responsible before the National Assembly on issues regarding the access to information remains also unsolved.

Oversight Over the Implementation of APIA

In the absence of a minister responsible for the enforcement of the APIA, the control mechanisms of the Parliament for systematic problems in the implementation of the law are very limited. Both, *de facto* and *de jure*, the most effective oversight currently is the judicial review by the regional administrative courts and the Supreme Administrative Court (SAC). It covers the decisions to grant or refuse access upon a request (Art. 40 of the APIA). According to the court practice, subject to review is also the failure of the obliged authority to reply within the time limits (silent refusal). Nonetheless, the judicial review does not cover all aspects of the APIA - for example, it is inapplicable with regard to the obligation for proactive publication of information. Indeed, our experience proves that judicial review is an important tool for achieving binding interpretation of the APIA

provisions and a guidance for its implementation, especially as relates to refusals, as well as compelling the authorities to provide certain information. Judicial review is not so effective when it comes to procedural or systematic organizational problems within the administration.

The APIA does not provide for an administrative review by a higher authority and citizens may seek relief directly to the court. On another hand, there are administrative sanctions under APIA for non-compliance with the law. A civil servant who fails to respond within the time limits without exculpatory reason shall be fined between 50 and 100 BGN. Failure of the bodies under Art. 3, Para.2 (categories of obliged authorities who are not state bodies) to provide information are subject to fines from 100 to 200 BGN (approximately 50 - 100 EURO). It is not clear why the lack of grounds for the refusal (requisites under Art. 38 of the APIA) does not incur sanctions.

The procedure establishing administrative liability and imposing sanctions is not well settled by the law. In cases where the obliged authority is a state body, the infringements are established by authorized persons of the respective body i.e. they would establish their own distortion (when civil servants responsible for the provision of public information were not appointed). Thus, the sanctions shall be imposed by the respective body or by an authorized official, which means that the responsible official should fine himself/herself. In the light of this regulatory framework, it is not surprising that there is a lack of cases of imposed sanctions, unless it relates to non-execution of court decisions. In the latter case the sanctions are under the supervision of the judiciary, not the executive.

Inspectorates within the ministries or other executive authorities have the powers to carry out inspections upon alerts for unlawful acts or omission to act pursuant to the procedure under Art. 107 of the Administrative Procedure Code (APC). When the Inspectorate establishes violations, disciplinary proceedings may be carried out (Art. 46, Para. 4, Item 5 of the Administration Act). Having in mind the lack of information on any activity in this area, it is recommendable that the Inspectorates include the issue of APIA implementation in their investigations.

Who Is Responsible for the Implementation of the APIA Pursuant to the Structural Regulations

Unlike other laws which require a specific civil servant to be appointed to manage certain type of information (such as the Protection of Classified Information Act (PCIA), the APIA did not establish a separate position named „information officer.“ The 2007 amendments created an obligation for the authorities to assign officials with the task to provide public information (§ 18 of Miscellaneous and Final Provisions of the APIA). Twenty-six Structural Regulations (SR) of bodies within the executive set up administrative units to handle different aspects of the APIA implementation. This fact in itself reveals that the fulfillment of the obligations under the APIA is taken seriously. The review of these regulations showed different approaches which can be summarized into several categories.

In the first group of cases the provision of public information is seen as a routine activity of the administration. According to the Structural Regulation of the Ministry of Regional Development and Public Works, the Director of Directorate „European coordination, public relations and analysis“ organizes, coordinates, and supervises the provision of public information, related to the activities of the Ministry (Art.10, Item 11). Pursuant to the SR of the State Agency of Metrological and Technical Surveillance, the Chief Secretary is responsible for the provision of access to information to citizens in accordance with their legal rights (Art. 9, Para. 1, Item 4b). According to the SR of the Public Financial Inspection Agency, the Directorate „Information technologies and communications“ organizes the provision of access to information to citizens in accordance to their legal rights (Art. 11, Para. 6). According to the SR of the Executive Environment Agency, the Directorate „Information services and technologies, international cooperation and public relations“ is responsible for the provision of information under the APIA (Art.14, Item 15). According to the SR of the Executive Forestry Agency Directorate „Administrative and legal services and human resources“ is responsible for providing information to the citizens in accordance with their constitutional rights (Art. 23, Item 22). It can be seen that in this category the functions to provide information are assigned to departments responsible for the public relations, communications or the Chief Secretary.

In other cases, the access to information requests are assessed very seriously. Each decision of the administration is considered carefully. The SR of the Ministry of Labor and Social Policy enables the Legal Department to draft decisions granting or refusing information based on the grounded statement of the respective directorate whether the information is available or not in each case (Art. 25, Item 5). According to the SR of the „Customs“ Agency, the Directorate „Legal and Regulations“ drafts decisions granting or refusing information based on the grounded statement of the respective directorate whether the information is available or not (Art. 16, item 10). Pursuant to the SR of the Registry Agency, the Directorate „Administrative and legal services, human resources and public relations“ prepares „legal statements upon alerts and proposals under the Administrative Procedure Code and upon requests under the APIA“ (Art. 11, Item 1, pt. i). In this category of cases, usually the legal departments are responsible for the provision of information.

In the third category of cases, the focus is on the follow-up of the fulfillment of the obligations under the APIA. According to the SR of the State Agency for Refugees to the Ministry of Justice, the Inspectorate oversees the implementation of the obligations under the APIA and the proceeding with alerts and proposals of citizens (Art.11, Para. 2, Item 4). The oversight may be attributed separately from the function of drafting of statements under the law. For example, the SR of the National Construction Control Directorate provides that the Directorate „Financial, administrative, legal and technical services“ shall draft statements on the lawfulness of procedures under the APIA and the Chief Secretary shall supervise the activities of the National Construction Control Directorate under the APIA.

These three approaches shall be present together in each public body. Instead, usually only one of them is present in the regulations. Furthermore, the specific functions of the

respective administration and the nature of information held are not taken into account. Thus, in the area of labor and social policy, hardly each request needs to be assessed in scrutiny. In this respect, the failure of many authorities to consider their obligations under the APIA as a routine everyday work is an obvious problem.

Furthermore, the three groups of cases attribute the responsibilities under APIA in a different way. In the first category of cases, the main and the most important activity is covered - the provision of information. The second category covers the decisions upon specific requests, i.e. issuing decisions granting or denying access. In very rare cases, the competent unit under the APIA is vested with other functions. This is the case of the Directorate „Human resources and administrative services“ within the Ministry of Finance. In addition to proceeding with requests and drafting of decisions, it carries out inspections and drafts annual reports under the act (Art. 17, item 14 of the SR).

The review of the structural regulations shows that for some public bodies *deciding* upon requests is the main activity under the APIA, rather than the *provision* of information. This approach reveals the lack of a culture of openness and accountability. Indeed, structural regulations take into consideration the specificities of each administration, but still what is needed is more consistent approach to the provision of public information.

Related Legislation

The review of the legislation shows that eleven other statutes regulating access to specific categories of information refer to the APIA. Precisely, these are the Administrative Procedure Code, 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, the Electronic Communications Act, the Protection of Classified Information Act, the Concessions Act, the Environmental Protection Act, the Public Disclosure of Property Owned by High Government Officials Act, the Organs, Tissues and Cells Transplantation Act, the Territory Planning Act and the Black Sea Coast Planning Act.

Some of these acts refer to the procedure under the APIA with regard to access to documents or files of documents. This is the case of access to documents of the former State Security Services, access to „environmental information,“ access of third persons to administrative files, access to certain type of development plans. Other laws provide for the availability of certain public registers - register of the property declarations of high government officials, register of the green areas, of the perennial ornamental trees, and of trees of historic worth in the municipality, etc.

The fact that special laws providing access to certain categories of information refer to the procedure under the APIA reveals a very positive trend. It helps the requestors who seek different information and establishes conditions for effective work of the administration on the requests through a well settled procedure. Despite this clear regulatory framework, sometimes there is malpractice when public servants decline requests explaining that a „special law“ is applicable.

As far as public registers are concerned, it is reasonable to expect extension of the free access to the registers via Internet, where the formal procedure of access under the APIA is less needed. This is the case, for instance, of the access to the property declarations of high government officials which are available on the Internet for years now. It is difficult to imagine that one would file a request for that information. However, it should be borne in mind, that the percentage of people without Internet access is still high, therefore public registers should not be accessible only online.

Access to Public Registers: Online Access to the Trade Register

One very strange and unexpected initiative in 2010 was the legislative initiative to limit the free access to the Trade Register. AIP took a critical position with regard to the proposed amendments to the Trade Register Act (TRA). Some of the amendments would in their essence restrict the free access to data in the Register which are currently available online. AIP published its position as early as June 3, 2010 after the intention of such amendments was made public. On August 9, 2010 the Ministry of Justice published a draft bill to the TRA which proposed restricted access to the Register. On August 12, 2010 AIP sent to the ministry a critical statement on the draft, which was published on the AIP website.⁵ After minor changes in a positive way the draft bill was passed by the Cabinet and submitted to the National Assembly on October 18, 2010. On November 17, 2010 AIP submitted a critical statement to the leading Parliamentary Legal Affairs Committee. The public debate took place in December 2010 and early 2011.

Basically, the proposals aim the restriction of the free access to the companies' files. The access to the register itself remains free. However, a number of important documents are listed in the company file, therefore it remains unclear what kind of information will continue to be available on the register, and what will be hidden. Two ways of restricted access were proposed. The Ministry of Justice suggested registered access for everyone - by means of a digital certificate or electronic signature. Mr. Emil Radev, an MP, proposed that only representatives of certain professions can access the company files.

The proposals were justified by the need to protect personal data in business files (data from marriage certificates, from scanned IDs, etc.) and the need to prevent from fraud, by blanking out the signatures of the documents, for example.

According to AIP, access to the Register and the documents contained, including the companies' files is very important for the society. This access guarantees security of the transactions, secures the rights and legal interests of investors and consumers and prevents from fraud and wrongdoings. The documents listed in Directive 2009/101/EC of The European Parliament and of the Council should remain accessible at least. According to its provisions, information about the authorized persons to represent the company in dealings with third parties and in legal proceedings, the persons who take part in the administration, supervision or control of the company shall be published and available. The Directive does not at all refer to the legislation on protection of personal data. This is clear evidence that the European legislators did not at all consider the possibility that

⁵ Accessible online in Bulgarian at: http://static.aip-bg.org/stanovishta/2010/08_11_ZRT.pdf

the personal data in business files revealing identity of members of management and advisory boards are entitled to any protection. The obligation to publish this information is an absolute one and does not stand any exceptions. The same applies to the obligation to announce and publish the subscribed capital and annual financial statements and other accounting documents.⁶

It is a different question whether the published data are excessive compared to those required by the Directive. It should be noted that the documents to be published are not defined by the TRA. The practice of unnecessary collection of personal data by the officers of the Registry Agency is not based on any legal requirement. In this respect, the provision to be scrutinized for its compliance with the law is Ordinance No. 1 on the Keeping, Storage and Access to the Trade Register (State Gazette No.18, 2007, entered into force July 1, 2007).

ACCESS TO INFORMATION EXEMPTIONS

In 2010, initiatives to narrow the scope of some exemptions to the right of access to public information were undertaken. This applies to the classified information exemption, precisely the state and official secrets. The State Commission on Information Security (SCIS) took the leading part.

Information Classified as *Official Secret*

As a result of the AIP recommendations made in our previous report to reconsider the regulation regarding the *official secret*, the SCIS, as a body responsible for the implementation of the Protection of Classified Information Act (PCIA), set up a working group. The group is composed of representatives of the SCIS, the State Agency „National Security,“ of the Council of Ministers and experts from AIP. The group identified the need to review the existing lists of what information may be classified as *official secret*. The lists of different bodies within the executive are to be scrutinized and on that basis and analysis recommendations to harmonize the practices shall be drafted. The work of the group is ongoing.

Information Classified as *State Secret*

Appendix No. 1 to Art. 25 of the Protection of Classified Information Act, the *List of the Categories of Information Subject to Classification as State Secret* needs to be amended. In 2009, AIP submitted an official statement to the Ministry of Interior (MoI) and to the National Assembly with recommendation to narrow the scope of this exemption as we noticed in the 2009 AIP annual report.⁷ We recommend the repeal of some categories of information stipulated by Appendix No. 1 to the PCIA, precisely:

1. Information regarding the type of special surveillance means used, Item 6, Section II, Appendix No. 1 to Art. 25 of the PCIA;

⁶The accounting documents for each financial year which are required to be published in accordance with Directives listed in Art. 2, f of Directive 2009/101/EC.

⁷The statement is accessible in Bulgarian at:

http://static.aip-bg.org//stanovishta/2009/10_07_zid_zmvr.pdf

2. Information collected through the special surveillance means, Item 8, Section II, Appendix No. 1 to Art. 25 of the PCIA;
3. Reports, newsletters, statistical and other data related to the operational work of the security services and the services for public order, Item 9, Section II, Appendix No. 1 to Art. 25 of the PCIA;
4. Summarized data on the functioning of the system for protection of the classified information, Item 24, Section II, Appendix No. 1 to Art 25 of the PCIA.

Under the first category of information fall statistics, reports and analysis on the use of special surveillance means - information which is public in other European countries. This is an important obstacle to the civil control over the interference with the fundamental right to privacy. The nature of the information under the third and the fourth categories is similar. The protection of information collected by special surveillance means is the reason to classify court cases of high public interest simply because evidence was collected by intercept devices, therefore the principle of publicity of judicial proceedings is undermined. It should be noted that this practice applies to the greatest extent to cases of high public interest related to allegations of bribery, wrongdoings and serious crimes. At the same time, there is no harm of the publicity of this information, therefore the conditions of the harm test under Art. 25 of the PCIA are not met. It is not likely to harm the legally protected interests, namely, the national security, the defense, the foreign policy or the protection of the constitutionally established order. This practice of proceedings *à huis clos* contradicts a fundamental principle of the legislation related to the right of information according to which the free access is the principle and each limitation shall be exceptional and „necessary in a democratic society.“ In this regard, it disregards the principle of proportionality - each restriction to the free access shall be proportionate to the interest protected. Particularly problematic in this respect is Art. 30, Para. 3 of the PCIA according to which if in a set of documents there is even only one classified document, the whole set would be marked as classified. In 2010 and early 2011, the SCSJ and the Supreme Prosecutor's Office of Cassation organized discussions. The participants (representatives of the SCSJ and the Supreme Prosecutor's Office of Cassation and NGOs) agreed that the PCIA needs to be amended.

Information Classified as *Professional Secret*

In the 2009 AIP annual report, we pointed out the emergence of a new exemption - the so called *professional secret*. The term is mostly used in connection to the duty of confidentiality to clients of certain professions. Therefore, this exemption is not applicable when it comes to public bodies. It is completely inappropriate to assign to the public body the responsibility to keep this information secret in addition to the obligation to protect the information which is classified as *state secret*, *official secret*, *trade secret*, *preparatory information*, *information on ongoing negotiations* and information which is personal data. The term professional secret is not used in Art. 41 of the Constitution. Therefore, this exemption is of a questionable constitutionality and should be completely repealed by amendments to the relevant provisions of the Consumer Protection Act, Fair Competition Act and the Financial Supervision Commission Act.

PERSONAL DATA PROTECTION LEGISLATION

In 2010, a pressing topic was the debate on the balance between the protection of privacy, on one hand, and the effective fight against serious crime, on the other.

Draft Bill to the Electronic Communications Act

In 2010, AIP continued its campaign against the draft bill to the Electronic Communications Act (ECA) which aimed to provide the Ministry of Interior with an unauthorized direct electronic access to the communication data retained by providers of electronic services (the so called *traffic* data) i.e. information on who, where, when and with whom one has written or spoken by electronic means (through mobile phones or the Internet). AIP submitted statements to the National Assembly and took part in the public discussions held in January and February before the leading Internal Security and Public Order Committee. AIP members also participated in a round table organized by the Union of Democratic Forces (UDF). Martin Dimitrov, an MP and Co-Chair of the Blue Coalition and Chair of the UDF, brought to voting at second reading the AIP proposed texts, which have all been adopted. As a result of the public pressure, the AIP campaign and participation in discussions of precise texts, the final amendment provisions were substantially improved. Access to data may be given only after a court warrant, periods for the retention of data are set forth, after their expiration the data shall be destroyed, parliamentary oversight is previewed.

Following the entry into force of the amendments in May 2010, the Prosecutor General issued an instruction which reads Art. 250 v, Para. 4 of the ECA as precluding the necessity of a court warrant when criminal proceedings were initiated. Accordingly, the ECA provides for two categories of access to traffic data. One is the data used by the security services for the purposes of their operational activities, and another is the access of the prosecutors and investigative services for the purpose of specific criminal proceeding. The two types of access are treated differently - the first one requires a court warrant and the second - not. Thus, the standard for securing the rights of individuals is lower than before the 2010 amendments to the ECA.

Necessary Amendments to the Special Surveillance Means Act

In 2010 and 2011, problems on the implementation of the Special Surveillance Means Act (SSMA) became evident. Many of these problems were acknowledged in the decision of the European Court of Human Rights upon the complaint brought by the Association for European Integration and Human Rights and Ekimdjiev against Bulgaria, binding decision since 2008. The main problem is the lack of adequate legal safeguards against the secret surveillance to protect the rights of individuals under Art. 8 of the European Convention on Human Rights.

It was established that the scope of the SSMA was not well defined. This is so because the term *national security* is only defined by the PCIA and the definition is extremely broad. In the same time, according to the report of the Chairperson of the criminal divisions within the Supreme Prosecutor's Office of Cassation Grozdan Iliev, about 16,000 warrants were granted allowing the use of special surveillance means in 2010 and the number of

interferences of privacy tends to increase. Each request to use special surveillance means shall be motivated, but the requisites of the request are vaguely defined (Art. 14). This results in difficulties for the court to find grounds for refusal upon the request. The parliamentary oversight is carried out by a subcommittee, but it has no power to impose sanctions. The procedure of oversight upon the use of special surveillance means by the Minister of Interior and the Chair of the State Agency „National Security“ is not satisfying (Art. 34a). The citizens to whom such means were applied are hardly ever notified of it, and the legal persons are not entitled to notification at all.

According to AIP, very worthy and constructive opinions and recommendations were made during the public debate in early 2011. There is almost unanimity on some important issues. Special attention and priority shall be given to the following amendments to the legislation:

1. Narrowing the scope of application of special surveillance means:
 - a. narrowing the scope of the definition *national security*,
 - b. precise indication of what is *operational-investigation activity*,
 - c. a list of crime whose revelation needs special surveillance means to be used.
2. Precision of the procedure of issuing warrants to use special surveillance means:
 - a. introducing further requisites of the request to use special surveillance means,
 - b. the requisites shall be reflected in the warrants.
3. Improvement of the oversight upon the use of special surveillance means:
 - a. increase in the powers of the parliamentary subcommittee, including the power to impose sanctions,
 - b. setting up of supervising procedure by the Minister of Interior.
4. Regulating a broad right of citizens and legal entities to be informed about the use of special surveillance means with regard to them.
5. Regulating the possibility of compensation if there was an interference with special surveillance means with the fundamental right to privacy.
6. Abolishment of the conditions giving the possibility to classify court cases in which evidence was collected by special surveillance means.

PROBLEMS AND TENDENCIES IN ACTIVE DISCLOSURE OF INFORMATION

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 standards in the area 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.⁸ 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.⁹

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.¹⁰

⁸ 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 Darbshire's working paper: http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbshire_Proactive_Transparency.pdf, p.39 . The paper was presented in AIP information newsletter, October 2010 issue (10)82): <http://www.aip-bg.org/publications/Бюлетен/2010/>

⁹ Full Disclosure. The Perils and Promise of Transparency, Archon Fung, Mary Graham, David Weil, Cambridge University Press, 2007.

¹⁰ See Helen Darbshire's working paper: http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-68250334206/Darbshire_Proactive_Transparency.pdf.

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 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.¹¹

¹¹ Ibid, Annex A: Classes Information Comparative, pp. 39.

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 efficiency of public administration and to encourage informed participation by the public in matters of general interest.¹²

The Explanatory Report to the Convention¹³ 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).

¹² Council of Europe Convention on Access to Official Documents:
<http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>

¹³ <http://conventions.coe.int/Treaty/EN/Reports/Html/205.htm>

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.“¹⁴

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 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.¹⁵ 21 institutions still do not have official web sites. Out of these, 12 are of regional units 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.

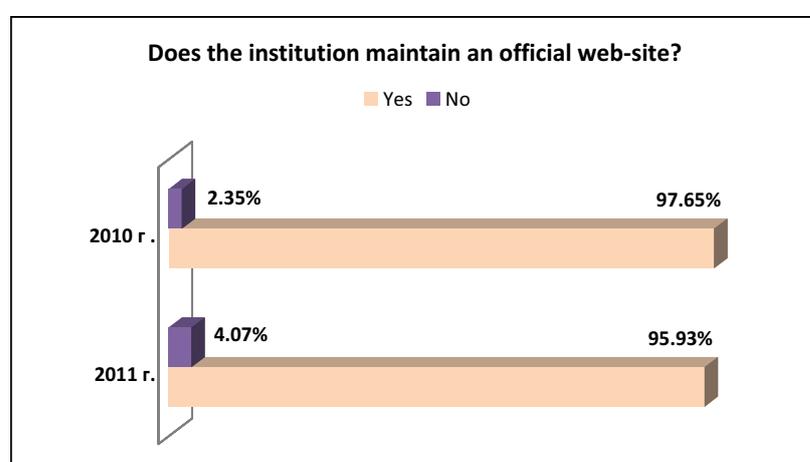
¹⁴ APIA, Additional Provision §1, Item 3 (SG, issue 104 as of 2008)

¹⁵ 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/Резултату_но_уисмумууу/208943/

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.

Results¹⁶

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 2011.¹⁷



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

¹⁶ Results are available on AIP web site by institution and by indicators (in Bulgarian): http://www.aip-bg.org/surveys/2011_zoguna/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

¹⁷ Bulgaria has 264 municipalities governed by an elected mayor and elected municipality council.

by the municipalities is 57%. Apparently, the municipal administrations (77%) are customer oriented publishing a description of the services they provide.

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,¹⁸ strategies, plans, activities and reports

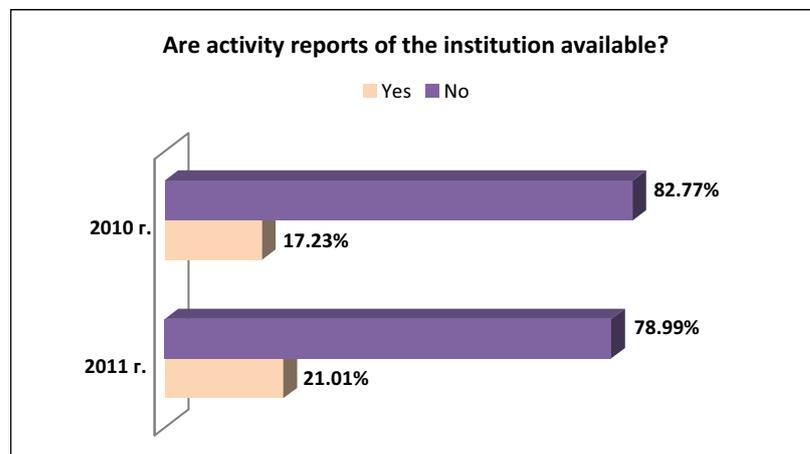
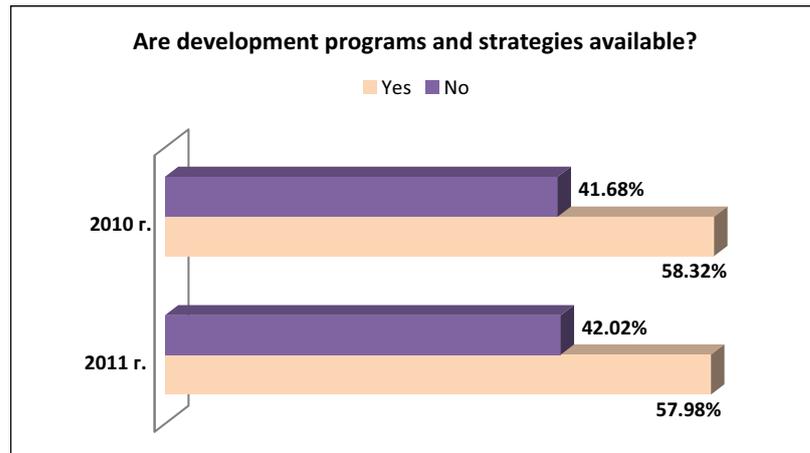
The obligation for publication of public bodies acts in relation to the implementation of their powers is connected with the basic element of active transparency. The 2010 tendency of publication of normative acts retains. Regarding the individual acts or at least a list of these, the implementation 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.¹⁹

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.

¹⁸ 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.“

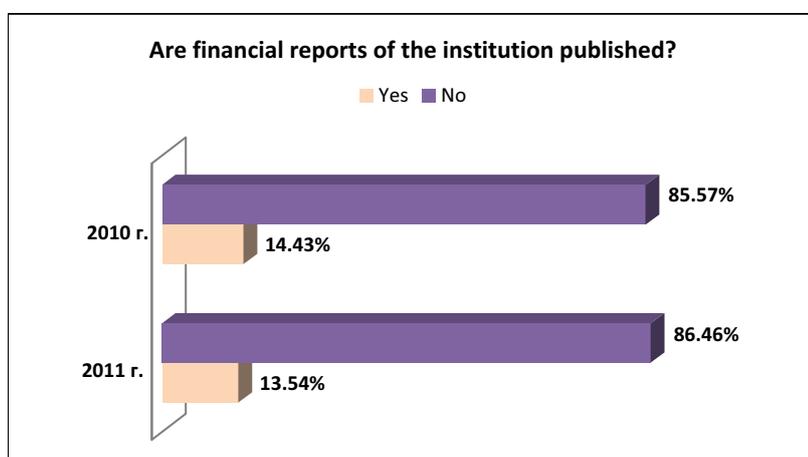
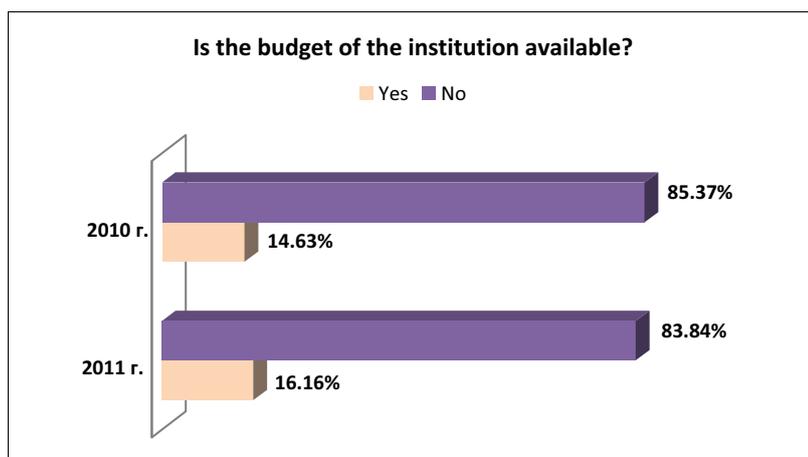
¹⁹ Legal Information System of the Municipality of Plovdiv: <http://jurist.banksoft-bg.com/>



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.²⁰ 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 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 PDCIA, regardless of the short period of its enforcement, its implementation is 41% for all institutions and is considerably higher than last year - 25%.

²⁰ 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).

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 *Report on the State of the Administration* 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.

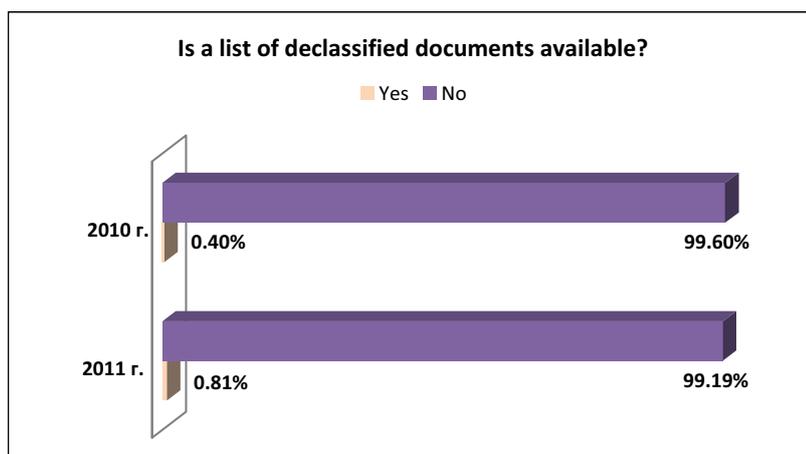
The published internal access to information rules have doubled - from 26% to 56%. Although 256 institutions have uploaded them online, they are not available in the *Access to Information* section as the seeker would have expected. Also, 12% of the institutions which have published their internal rules 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.

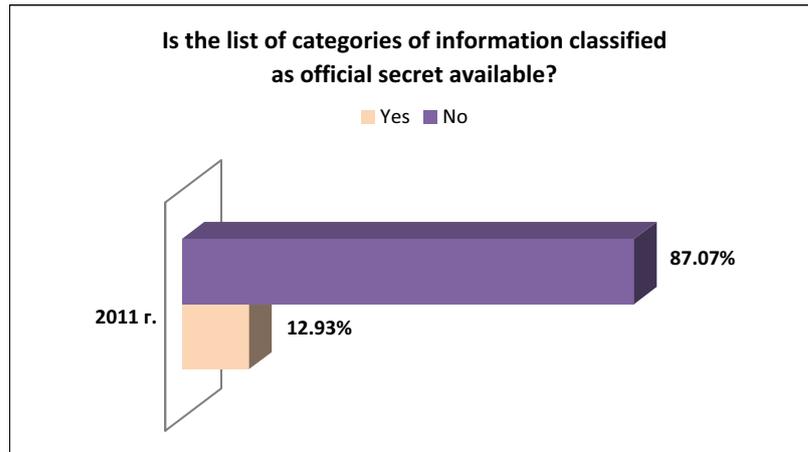
The obligation for publication of contact information of the APIA responsible official or department is not well implemented either - it does not exceed 20%.

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.



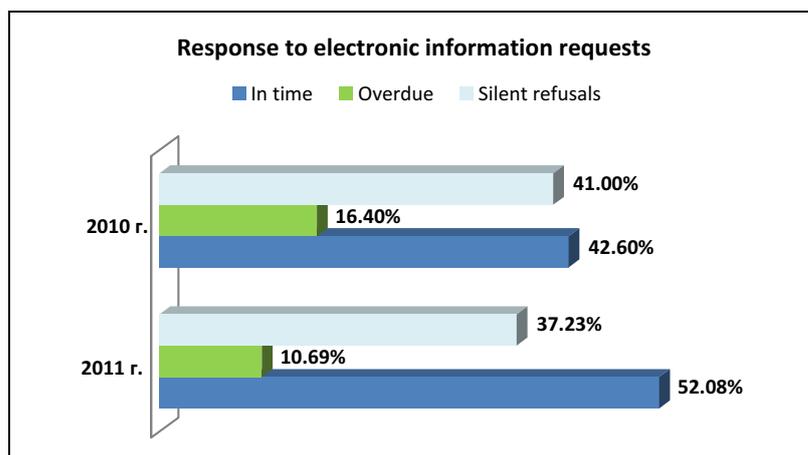
With regard to the list of categories subject to classification as official secret, although the implementation is still low, there is a significant improvement in comparison to past years. One of the reasons is the initiative of the State Commission on Information Security which was undertaken after the recommendations in the report *Access to Information in Bulgaria 2009*, AIP, 2010.²¹

²¹ *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.²² 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

²² Jouleva, Gergana. „The Year of the Rational Ignorance (Results from a Sociological Survey).“ Sofia: AIP, 2002: <http://www.aip-bg.org/pdf/ignorance2.pdf>

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 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 citizens²³ 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?

²³ 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>

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?
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.

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. This year, part of the annual report focuses on 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.

Type of Legal Help Provided

In 2010, AIP legal team has provided legal help in the following ways:

- Oral consultations on referred cases - by phone or at the office.
- Written consultations in two ways:
 - written comments on the cases sent by the journalists from AIP coordinators' network - **42**;
 - consultation on the cases received via the electronic mail - **137**.
- Significant part of the legal help provided by AIP is the preparation of appeals to the court and court representation in cases of complainants requesting the help of the organization.

Number of Cases

The total number of cases in which legal help was provided within the period January - December 2010 is **328**.²⁴ Based on their nature and legal qualification, we classify them in three groups:

- Most cases relate to practices of non-fulfillment of the APIA obligations by the institutions (248 instances);
- Next largest group of cases is related to violations of the right of personal data protection granted by the Personal Data Protection Act (44 instances);
- In a few cases, we have given legal advice with regard to violation of the right to seek, receive and impart information (22 instances), and etc.

²⁴The number of legal consultations given on referred cases is 440 since more than one consultation was necessary in some of the cases.

From Which Public Institutions 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 - **129** and **73** cases respectively. In a few cases, information was sought from regional units of the executive power bodies (23), public-law organizations (20), public-law entities (16), from the judicial power bodies (14), etc.

(See Appendix 2: *Statistics from the Data Base of Access to Information Programme 2010*).

Most Frequently Used Grounds for Refusal

The highest number of registered refusals is that of the silent refusals - **48**. Out of the grounded refusals, the most are related to the third party interests exemption (Art. 37, Para. 1, Item 2 of the APIA) - **19** and the personal data protection - **15**. The official secret exemption was used in five cases; the same is the number of refusals based on respectively the trade secret exemption and the provision of Art. 13, Para. 2 of the APIA.²⁵

Information Requestors

AIP experience shows that the APIA was most frequently used by citizens, journalists, and nongovernmental organizations. In 2010 again, citizens have most frequently turned to AIP legal team for assistance - **in 144 cases**. In **109** cases, journalists from local and national media, as well as AIP coordinators in the country also journalists, have sought the help of AIP. The number of cases referred by nongovernmental organizations is **44**.

Also, officials from the state administrations have addressed AIP when they had difficulties implementing the APIA - in **19** cases.

Specific Characteristics

There is a continuing tendency that the number of cases referred to AIP for legal help increases in comparison to the previous years. From 235 in 2008, their number has reached 328 in 2009 and 2010 (the number for the two successive years is the same). There is also an increase in the number of cases related to the right of access to information - from **151 in 2008**, to **237 in 2009**, and **248 in 2010**.

The largest number of cases referred to AIP for legal advice and consultation came from citizens. In 2009, they were **138**, and in 2010 they were **144**.

²⁵ 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.

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 2009 was **122**, while in 2010 they were **137**.

It was already mentioned that the number of silent refusals during the past year remains high.

SPECIFIC EXAMPLES

Cases Related to Information about Wrongdoings and Corruption

During the past ten years, the APIA has turned into one of the main tools of citizens and journalists to seek and reveal information about important topics which have remained beyond the range of public vision. In 2010, with the help of the information requestors, light was cast over public issues which were triggering suspicions for wrongdoings and power abuse.

Transparency of State Companies Funds

With an access to information request, 11 chief editors of newspapers and magazines, members of the Union of Publishers in Bulgaria, demanded that the Minister of Finance disclose the banks in which the largest state companies keep their money. Thus, some of the biggest printing media in the country urged for transparency of the management of state companies money among which the *Bulgarian Posts PLC*, the *National Electric Company EAD*, the *Bulgartabac Holding AD*, the *Sofia Airport EAD*, the *Bulgargaz EAD*, etc. The chief editors requested information about the amount of the deposits of ministries and state companies and about the criteria for selecting the operating banks.

The urge for the request came after media found out that as of the middle of 2009, over 50 percent of the money of state companies was deposited in three Bulgarian banks. Those media publications increased the suspicions that the money of the state was managed in darkness, without public procurements which inevitably created conditions for corruption. The information requested by the chief editors was disclosed with a decision of the Ministry of Finance.

On the Trail of a High Government Official Degree Diploma

During the autumn of 2010, news was spread that the degree diploma of the former executive director of the State Fund *Agriculture*, Kalina Ilieva, had been falsified. Based on media sources, and more precisely of *168 Hours* weekly, Kalina Ilieva had not graduated the German university signified in her diploma which meant that she did not have the necessary education to hold that former government position. Pursuant to Bulgarian legislation, higher education completed abroad should be legalized by an authorized body which had been done. Based on her diploma and the letter of certificate issued by

the Ministry of Education, Youth, and Science, Ilieva was managing for more than a year the state body operating the EU farm aid for Bulgaria.

In terms of those suspicions, journalists Darinka Nikolova and Daniela Teofanova from *168 Hours* weekly turned to AIP for legal advice with regard to an access to information request by which they aimed at revealing the facts around Kalina Ilieva's education abroad. The journalists requested the Ministry of Education, Youth, and Science to provide access to information regarding the legalization of Ilieva's education completed at a German university, more precisely documents evidencing the graduation of the particular university, the name of that university, which was the year of earning a Master's Degree, etc. The ministry transferred the request to the responsible National Center for Information and Documentation, while in the meantime the consent of Kalina Ilieva was sought for disclosing the requested information. Since such consent had not been given, the Center explained that they would not be able to decide on the request and left it without a response.

With the help of AIP, the silent refusal was challenged before the Administrative Court Sofia City. Despite the silence of the Ministry and the National Center, the suspicions about the falsified diploma were confirmed with a statement of a representative of the *Berlin Institute of Mechanics and Economics*.

Municipal Council of Convicted Municipal Councilors

During the summer of 2010, the journalist Diana Boncheva from *Tundzhanets* newspaper at the town of Yambol requested the Chairperson of the Municipal Council of Yambol to provide copies of the criminal conviction certificates of all the members of the Council. Her interest was triggered by the fact that the Chairperson informed her in a phone conversation in June 2010 that the number of municipal councilors who had been convicted of a crime was six and that two of the convictions became effective during their term in the local parliament. Initially, access to the requested information was refused on the ground that the certificates had been sent to the Municipal Election Committee. The refusal was challenged in court and few days before the hearing the Chairperson reconsidered his decision and granted full access to the requested information to the journalist.

Seeking Trade and Financial Information

In several cases during the past year, the requestors obtained access to contracts of high public significance. Still, obtaining access to such information is an exception regardless of the obligation under the APIA for providing information when there is overriding public interest in the disclosure.

Access to the Contract with Siemens Bulgaria For New Identification Documents

In April 2010, Genka Shikerova, journalist from the bTV requested access to documents related to the contract between the Ministry of Interior and Siemens EOOD and related

documents for producing new ID documents of Bulgarian citizens. The contract triggered the interest of the media due to the delay in the production of the new ID documents which led to long queues and public dissatisfaction. In response to the request, the Ministry of Interior granted the bTV reporter access to 150 pages of documents for review, including the annex to the contract as of November 2009. Access was restricted only to that part of the information connected to the security of the ID cards.

Access to Contracts for Utilization of Old Ammunition

Citizen William Popov requested access to copies of all contracts signed by the Ministry of Defense for utilization of out of use and unnecessary ammunition for the period 01.01.1990 - 31.12.2009 with Bulgarian or foreign contractors. Information about purchased equipment and/or technology for the utilization of ammunition was also demanded with the request - by type and price, as well as information about financial aid, equipment, technologies, or expertise granted by other countries to Bulgaria free of charge for utilization of old ammunition. Full access to the requested information was granted. William Popov obtained 14 contracts for utilization of old or unnecessary ammunition at the amount of 30 million BGN (15 million Euro). From the response to the other demands, it turned out that the Ministry of Defense had signed a 294,000 BGN (150,000 Euro) contract with the Bulgarian Hydrogen Society for development, integration, and testing of an experimental *Equipment for Gunpowder Utilization*. Also, three utilization projects at the amount of 3 million USD were implemented with the US State Department aid, with a leading contractor *TEREM EAD*. The response of the ministry also stated that in 2010 nearly 10,000 units of small and light weapons and 1.5 million ammunitions were destroyed.

Information About Remunerations of Experts Under the EU Operational Program „Administrative Capacity“

In 2010, the journalist Rossen Bossev from *Capital* weekly requested the Supreme Judicial Council (SJC) for information about the implementation of projects under the EU funded Operational Programme „Administrative Capacity.“ The SJC provided partial access to the requested information. The names of the experts who had received remuneration under the program were refused on the ground of *personal data* protection. The refusal was appealed in the court as unlawful since the 2008 APIA amendments made the recipients of funds under the European Union projects and programs obliged bodies. Thus, such information should not be refused on the ground of the „protection of third party's interests.“ In the meanwhile, the journalist filed a request demanding the same information but from the Ministry of Finance. The ministry granted access to the information about their experts.

Cases Which Should Not Happen

Ten years after the adoption of the APIA we are still witnessing cases referring to the past. Correct application of the APIA provisions may be a very hard task for some administrations, even if the case did not require complex assessment. During the year,

we have assisted information seekers who had problems indicative of the existence of some „harmful“ practices.

The Police Investigates APIA Requestors

In the end of 2010, a group of citizens, who had requested information from the Mayor of the Municipality of Varna, were investigated by the Regional Directorate of the Ministry of Interior - Varna.

Within a campaign for transparency of the discussions on the Urban Development Plan of the Municipality of Varna, 20 citizens filed form-requests with identical content, demanding from the mayor the minutes of all public discussions on the Draft Urban Development Plan of the Municipality of Varna on paper, as well as the audio records of the discussions. In the meanwhile, some of the requestors, Yulian Cholakov, chairperson of the Association for Optimization of Justice and Administration SOPA; Architect Kalina Pavlova (member of the Steering Committee of the Union of Architects in Bulgaria - Varna Chapter), and the citizen Nikolay Tsvetkov were summoned to the Regional Directorate of the Ministry of Interior - Varna at the „Economic Crimes“ office of the „Pre-legal Trial“ Department. The citizens were summoned as witnesses within the pre-legal proceedings No. 218/2010, initiated against unknown perpetrator. The witnesses were refused information about the grounds for the pre-trial proceedings. They were informed that proceedings were started by an appeal of the „Legal Services“ Directorate in the Municipality of Varna. Citizens were interrogated on who made the form-request, did they have apprentices, where was the form drafted and printed, who disseminated it. They were made to give signature specimens for graphology analysis.

Access to Information Programme disseminated a declaration to express disagreement with such unacceptable actions against information requestors. Pursuant to the Bulgarian and international legislation, only the court has the power to solve access to information arguments.

Restricting Access With an Order

In the beginning of the summer of 2010, AIP coordinator in the town of Montana, Lyubomir Lyubenov, sent us a copy of the letter by the Director of the Regional Agricultural Service to all municipal agricultural services in the region. The Director was reminding all regional agricultural directorates, as well as the municipal services, that they „did not have the authority to provide information about their activities.“ The same letter also conveyed the instructions that citizens and journalists who seek information from these services without signifying specific interest should be transferred to the Ministry of Agriculture and Food. AIP sent an official letter to the Regional Agricultural Service - Montana stating that instructions of that kind violated the provisions of the APIA which with the 2008 amendments introduced explicit obligation for all regional units of the executive power authorities to provide access to information on their own and on their own grounds (Art. 3, Para. 1 of the APIA). AIP recommended that the Regional Director reviewed the existing practices and ceased the restriction of free access to information on a regional level. As a result, we received a response stating that the practices of referring information

requestors to the Ministry had been ceased and „regional and municipal services in the region of Montana conscientiously apply the APIA with all its requirements.“

Access to Information Only After a Legal Status Certificate

Another example is the case of Association *Zachatie (Conception)*, a nongovernmental patients' organization, working in the area of reproduction health. In November 2010, the organization filed a request to the Commission for Protection against Discrimination (CPD) demanding access to copies of all CPD decisions on an alleged age discrimination allowed by Regulation No. 28 as of June 20, 2007 for Activities in Assisting Reproduction by the Minister of Health Care. In order to provide the requested documents, the Commission demanded a copy of the Legal Status Certificate of the association. Commission's practices to provide information to legal persons only after a submitted legal status certificate was confirmed by the response we received from its administration within AIP performed audit on institutional web sites and filing electronic requests:

...the request for access to public information is in your capacity of representative of an organization registered under the Law for Non-Profit Legal Bodies. Consequently, you should present evidence for the existence of such an organization, as well as legal status certificate valid to the moment of filing the request, including the methods and persons of representation pursuant to the requirements of Art. 27, Para. 2, Items 4 and 6 in relation to Art. 18 of the Administrative Procedure Code. These provisions are applicable in the current case since the provision of public information at the request of any person is an administrative procedure for issuing an individual administrative act and requires a special form of authorized representation.

The practices of the CPD as described above contradict not only the provisions of the APIA, but also the court practices,²⁶ according to which access to public information is a phenomenon intrinsic to the civil society. This means that even informal organizations of citizens could request and have the right to receive any type of public information which is to their interest, regardless of the fact that they are not explicitly listed in the legal norm. That is why the APIA lacks a provision requiring organizations of citizens requesting access to information to prove its legal status.

²⁶ Ruling No. 3334 as of April 13, 2005 of the Supreme Administrative Court (SAC), administrative case No. 3167/2005, Fifth Division, reporting judge - the panel chairperson Alexander Elenkov; Ruling No. 3335 as of April 13, of the SAC, administrative case No. 3169/2005, Fifth Division, reporting judge - the panel chairperson Alexander Elenkov

PERSONAL DATA PROTECTION

In 2010, AIP team also provided legal help and consultation in cases related to the personal data protection. We were addressed by citizens who had concerns about their personal data being unlawfully processed, but also by personal data administrators who had questions regarding the correct application of the provisions of the Personal Data Protection Act. An employee from a national university hospital asked for consultation regarding the overall internal regulation of the personal data protection in the hospital. AIP team advised the drafting of internal rules for personal data processing, the organization and description of the hospital registers, as well as necessary measures which the management should take to guarantee lawful processing of the data of the patients.

Personal Data Protection and the Schengen Information System

In the beginning of November 2010, Bulgaria was included in the Schengen Information System (SIS). The topic triggered the interest of the journalists. The AIP team was often addressed with questions about the content, operating mechanism of the system and citizens' rights in processing their personal data. What exactly is the SIS and whose personal data are processed? What could citizens do if they had suspected violation of their rights at the processing of data in the SIS? Which are the national competent bodies, responsible for the operation of the system and which is the oversight body with regard to the lawful processing of personal data? Those were some of the most frequently asked questions.

The Schengen Information System is the largest shared European database on maintaining public security, supporting police and judicial co-operation and managing external border control. The SIS contains entries, called "alerts," on wanted and missing persons, lost and stolen property and entry bans. Everybody has the right of access to their personal data contained in the SIS if any had been collected. If citizens suspect unlawful processing of their personal data in the SIS, they should address the national body responsible for the collection of the data (in Bulgaria this is the Ministry of Interior) or the national authority for protection of personal data (in Bulgaria - the Commission for Personal Data Protection).

Personal Data Protection and Video Surveillance

Are video records from the cameras installed in banks, shops, ATMs, hospitals, schools, and kindergartens personal data subject to protection? Should personal data administrators declare the processing of these data in the public register of data administrators maintained by the Commission for Personal Data Protection (CPDP)? Such questions were referred to AIP by citizens, as well as data administrators subject to registration to the CPDP. Citizens inquired about the cases and places where video surveillance was allowed, while the administrators questioned about their obligations with regard to video surveillance personal data protection. According to a written statement by the CPDP as of July 27, 2010, each administrator processing personal data by producing a video record from a surveillance tool is obliged to keep and declare a specific register *Video Surveillance*. The administrators should inform the persons about

the video surveillance with signs put in a visible way containing information, identifying the respective personal data administrator, including contact information.

Right to Information and Personal Data Protection

In several cases, AIP has provided representation in proceedings before the Commission for Personal Data Protection. The newspaper *Rositsa* from the town of Sevlievo has requested our assistance. In 2009, the newspaper had published part of the bulletin of the Ministry of Interior which contained information about arrested persons for alleged robbery identified with the first letters of their names. After „recognizing“ themselves in the publication, the perpetrators filed an appeal to the Commission for Personal Data Protection arguing that the newspaper had violated their right to privacy by publishing information about their arrest containing their initials. The Commission dismissed the appeal against the journalists motivating their decision in the fact that initials are not enough to identify a person in an unambiguous way. That is why there was no violation of the Personal Data Protection Act.

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 2010, AIP legal team prepared **98 complaints** and written defenses on behalf of citizens (35), non-governmental organizations (36), and journalists (27).

In 2010, AIP legal team prepared **71 complaints**. Out of this number, the complaints submitted to a first instance court are **55** (Supreme Administrative Court - **12**, Administrative Court - Sofia City- **32**, administrative courts in the country - **10**, Personal Data Protection Committee - **1**); court appeals are **seven** and the rest **nine** are appeals against court rulings.

Out of the 55 complaints filed to the first instance court, 38 were against explicit refusals of access to information, and 17 were against silent refusals.

In 2010, AIP provided court representation in 62 cases in which access to information had been denied. AIP legal team prepared 27 written defenses in court cases assisted by the organization.

Forty-six court decisions and rulings were delivered on cases assisted by AIP (Supreme Administrative Court - 19; Administrative Court - Sofia City - 22; administrative courts in the country - 5). In 29 cases the court ruled in favor of the information requestors, while in 17 in favor of the public authorities.

The court decisions were related to the interpretation of different exemptions to the right of access to information, and precisely, the principle of *overriding public interest* and the *extended scope of obliged bodies including the public-law organizations* introduced by the 2008 APIA amendments

OBLIGED BODIES

Public-Law Organizations

The progress observed during 2010 is in litigation against refusals of trade companies, which in practice are monopolists in certain areas. The information sought from them is of high public interest and after the 2008 amendments to the APIA, these companies are obliged to provide access to information in their capacity of public-law organizations.

Huge success is the case of the Chairperson of Association *Public Barometer* - town of Sliven, Yuri Ivanov. He requested the register of the positions, qualification and salaries received by all employees in the Water Supply and Sewerage Systems Ltd. - Sliven. The refusal was grounded on the fact that it was a trade company, therefore, not obliged body under the APIA. The Administrative court - Sliven²⁷ repealed the refusal and stated that

²⁷ Decision No. 102 as of July 13, 2010 of Administrative Court - Sliven, adm. case No. 54/2010.

the company is owned by the state, therefore falls under the legal definition of public-law organization.

Another case which was supported by AIP regarding the definition of trade companies as public-law organizations and thus falling in the scope of bodies obliged under the APIA was of Petko Kovachev, Director of *Green Policy Institute*. In March 2010, Petko Kovachev filed six requests to the Ministry of Energy, Economics, and Tourism (MEET). The requestor sought information related to the Russian-Bulgarian cooperation in the area of the energy and to the project for the construction of a new nuclear power plant in Bulgaria (NPP *Belene*). The MEET provided partial access to one of the requests while the other were referred to the Bulgarian Energy Holding Sole JSC (BEH) and the National Electricity Company Sole JSC (NEC) with the reasoning that the ministry did not dispose of the information. In May 2010, both the BEH and the NEC refused access to information on the ground of not being obliged bodies under the APIA, although they are entirely owned by the state and are the main electricity suppliers. Seven lawsuits were brought before the Administrative Court - Sofia City. In December 2010, the court dismissed the case and ruled that the companies are not obliged under the APIA. The rulings are challenged before the Supreme Administrative Court (SAC) with the AIP help, rulings will be given by the SAC in 2011.

Public-Law Entities

In 2010, the architect Kalina Pavlova requested from the Chamber of Architects in Bulgaria (CAB) minutes of a session of the CAB. The Chairperson refused to provide the information on the ground that the CAB is a professional organization and is not an obliged body under the APIA. With a decision as of December 2010,²⁸ the Administrative Court - Sofia City (ACSC) repealed the refusal and held that the Chambers of Architects and Engineers of Investment Design Act vested the CAB with public functions, therefore, the CAB is obliged body within the meaning of Art. 3, Para. 2, Item 1 of the APIA in its capacity of public-law entity different from a state body.

OVERRIDING PUBLIC INTEREST

The principle of overriding public interest was introduced in the APIA in 2008. According to this principle, access to information shall be granted when there is overriding public interest in the disclosure even at the presence of other protected interests such as preparatory documents, trade secret or third party interests. In several court cases, assisted by AIP, the courts assumed that there was overriding public interest in the disclosure of requested information and repealed public bodies refusals on this ground.

Third Party Interests and Overriding Public Interest

The Administrative Court - Razgrad admitted two complaints of the Chairperson of NGO Center - Razgrad, Georgi Milkov. One of the cases was against the refusal of the Mayor of Razgrad to provide information regarding 12 projects financed by EU funds. The other was

²⁸ Decision No. 4374 as of December 22, 2010, ACSC, Second division, 27th panel, adm. case No. 6720/2010

against the refusal of the Director of the Regional Inspectorate on Education (to the Ministry of Education, Youth and Science) to provide information about reports on found conflicts of interest of high government officials. In the judgments on the two cases, the court repealed the refusals as unlawful stating that access to public information should not be restricted when there was overriding public interest.

On the ground of overriding public interest, the Supreme Administrative Court²⁹ (SAC) repealed the refusal of the Ministry of Education, Youth and Science to provide access to the contract with the Microsoft Co. for user licenses of high schools, universities and science institutes to the journalist Rossen Bossev.

The Administrative Court - Sofia City (ACSC) also found overriding public interest in the disclosure when repealing the refusal of the *National Institute for Preservation of Immovable Cultural Values* to provide all documents regarding authorizations or refusals of intervention in historic gardens in Sofia.³⁰

Trade Secret and Overriding Public Interest

In two cases during 2010, the court held that even if the information is protected as trade secret access to it should not be denied if there is overriding public interest in disclosure.

With a decision as of March 2010,³¹ the ACSC repealed the refusal of the Chairperson of the Nuclear Regulatory Agency (NRA). The information sought was about the technical decision of the NRA and its attachments on the substitution of nuclear fuel in the Nuclear Power Plant (NPP) „Kozlodui.“ The refusal was grounded on the lack of consent for disclosure of the information by the third party, namely the NPP „Kozlodui“ and the stipulation of a confidentiality clause in the agreement between the NPP „Kozlodui“ and the Russian supplier of fuel. The court held that the information sought is environmental within the meaning of the Environmental Protection Act (EPA) and the conditions for its disclosure shall be assessed under its provisions. The EPA provides for a narrow interpretation of the restrictions to the access to information and requires the public authority to take into consideration the public interest in disclosing the information.

The Administrative Court - Lovech repealed the refusal of the Mayor of the Municipality of Lovech 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.“ The refusal was grounded on the fact that the information was protected as trade secret and its disclosure would bring to unfair competition between business persons. Furthermore, the refusal was based on the lack of consent to provide the information of the third person (the company) concerned. The court compelled the mayor to provide the information pointing out that the refusal was not grounded in any specific circumstances showing that disclosure of the information would lead to unfair competition. The court held that even if disclosure would result in unfair competition, the public authority is required to assess the public interest and if

²⁹ Decision No. 523 as of January 12, 2011, SAC, Five member panel, adm. Case No. 12512/2010.

³⁰ Decision as of February 22, 2010, ACSC, Second division, 23th panel, adm. case No. 5139/2009.

³¹ Decision No. 670 as of March 29, 2010, ACSC, 36th panel, adm. case. No.3857/2009.

such is present - to provide the information because the public interest overrides the trade secret exemption.

Preparatory Documents and Overriding Public Interest

In two cases, the court ruled unlawful the refusals of the administration to provide copies of reports of inspections on the ground that they constitute preparatory documents, which have no significance in themselves.

The first was the case of the Bulgarian Helsinki Committee (BHC) against the Ministry of Justice (MoJ). The SAC repealed³² the refusal of the MoJ. In June 2009, the BHC requested the reports of the Inspectorate within the Ministry of Justice (MoJ) on the inspections of prisons which took place in 2007 and 2008. The BHC was particularly interested what was established in the reports about the living conditions in prisons, the state of medical care in prisons, and the work conditions of inmates. The court held that the reports contained not only recommendations to the Minister of Justice, but also findings of facts made during the inspections. According to the court, these findings have an independent significance because they reflect the current situations in the places of deprivation of liberty at the time of the inspection. This situation does not depend on the opinions and the recommendations of the supervisors and cannot be changed by subsequent acts. The Court also stressed on the fact that the MoJ never presented the final act adopted on the basis of the reports. According to the Court, the restriction under Art. 13 of the APIA aims to restrict access to official information only in cases where it is connected to the preparation of an act and the public can access the final act itself. On the contrary, when final act, incorporating this internal information has never been adopted, access to it could not be denied on the ground of Art. 13, because it would be absolutely impossible for the public to access the information.

In the second case, the ACSC repealed the refusal of the Prosecution Office to provide access to the report on the state of the Sofia Regional Prosecutor's Office and the acts and omissions to act of a regional prosecutor. In its decision,³³ the court held that the report is the final act of supervisions and audits of the prosecutors under Art. 142, Para. 2 of the Judiciary Act. For this very reason, it cannot be assumed that this act had no significance in itself and only had a character of opinion or recommendation.

SILENT REFUSALS

The case-law regarding repealing of silent refusals remains extremely stable. With a decision³⁴ as of May 2010, the SAC upheld a decision of the ACSC which had repealed the silent refusal of the Sofia Municipality to provide access to the Green Areas Management Strategy and Programme to the citizen Maria Samardzhieva.

³² Decision No. 15158, as of December 12, 2010, SAC, Fifth division, adm. case No. 3051/2010.

³³ Decision No. 3959 as of December 2, 2010, ACSC, First division, 13th panel, adm. case No. 3617/2010.

³⁴ Decision No. 6924 as of May 27, 2010, SAC, Fifth Division, adm. case No. 10715/2009.

With a decision as of October 2010,³⁵ the SAC repealed the silent refusal of the Minister of Health to provide access to the Masterplan for Hospitals Reform in Bulgaria to Georgi Todorov M.D. from the town of Ruse. In November 2010, the SAC repealed other two silent refusals on Mr. Todorov's requests. Copies of job descriptions of seven positions in the Legal Directorate in the Ministry were requested with the first request.³⁶ In the second case,³⁷ statements, opinions, and references regarding the drafting of the Hospitals Accreditation Regulation were sought.

With a decision as of May 2010,³⁸ the Administrative Court - Yambol repealed a silent refusal of the Mayor of the Municipality of Yambol in the case of journalist Diana Boncheva. She had requested information about public procurement for reconstruction of a building in a Social Assistance Complex for Children and Elderly People in the town of Yambol.

With a decision as of November 2010,³⁹ the Administrative Court - Silistra repealed the silent refusal of the Mayor of the Municipality of Silistra to provide information about the payments made by the municipality to transportation companies within the period 2007 - 2010.

In a landmark decision of November 2010,⁴⁰ the ACSC repealed the silent refusal of the Chief Secretary of the President's administration for access to the transcripts of the meeting between the former Russian President Vladimir Putin and the Bulgarian President, held in 2008. Even more, the court explicitly obligated the Chief Secretary to provide access to the requested information. A day after the court decision - on November 20, 2010, the transcript of the meeting of the two delegations and a memo of the *in private meeting* were published on the website of the President. A day after that the Administration of the Council of Ministers published online the transcript of the meeting of the Prime Ministers in Russia and Bulgaria, held the previous day in Sofia.

Public Discussions

A huge success in 2010 was the case brought by more than 20 associations and citizens against amendments to the Regulation for the Organization and the Activities of the Sofia Municipal Council which had restricted access to its sessions. The Head of AIP legal team, Alexander Kashumov, represented a majority of the complainants. With a decision as of July 2010,⁴¹ the ACSC repealed the provision of the Regulation which had restricted citizens' access to the sessions of the Sofia Municipal Council, ruling that the amendment contradicted the Local Self-Government and Local Administration Act which stated that the sessions of the municipal councils should be public. The Sofia Municipal Council filed an appeal against the court decision. Hearing by the SAC is scheduled for April 20, 2011.

³⁵ Decision No. 11766 as of October 12, SAC, Fifth Division, adm. case No. 128/2010.

³⁶ Decision № 12784/01.11.2010, SAC, Fifth Division, adm. case No. 1911/2010.

³⁷ Decision No. 13238 as of November 08, 2010, SAC, Fifth Division, adm. case No. 1910/2010.

³⁸ Decision No 131 as of May 11, 2010, Administrative Court - Yambol, adm. case No. 96/2010.

³⁹ Decision No 70 as of November 04, 2010, Administrative Court - Silistra, adm. case No. 156/2010.

⁴⁰ Decision No 3593as of November 11, 2010, ACSC, Panel 37th, adm. case No. 5159/2010.

⁴¹ Decision No. 2339 as of July 12, 2010, ACSC, adm. case No. 8925/2010.

APPENDIX

APPENDIX 1 COMPARATIVE DATA FROM AIP AUDIT ON THE WEB SITES OF EXECUTIVE POWER BODIES

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

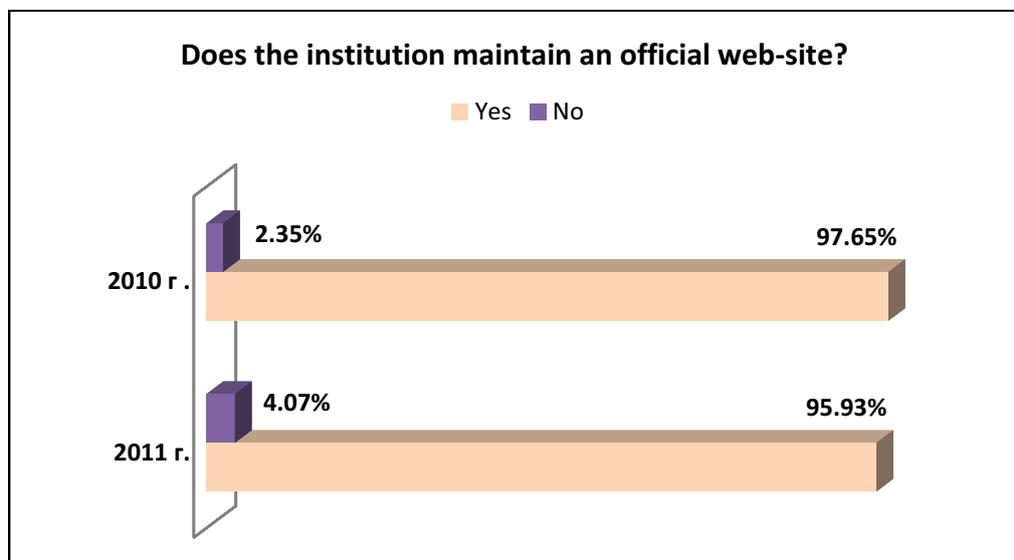
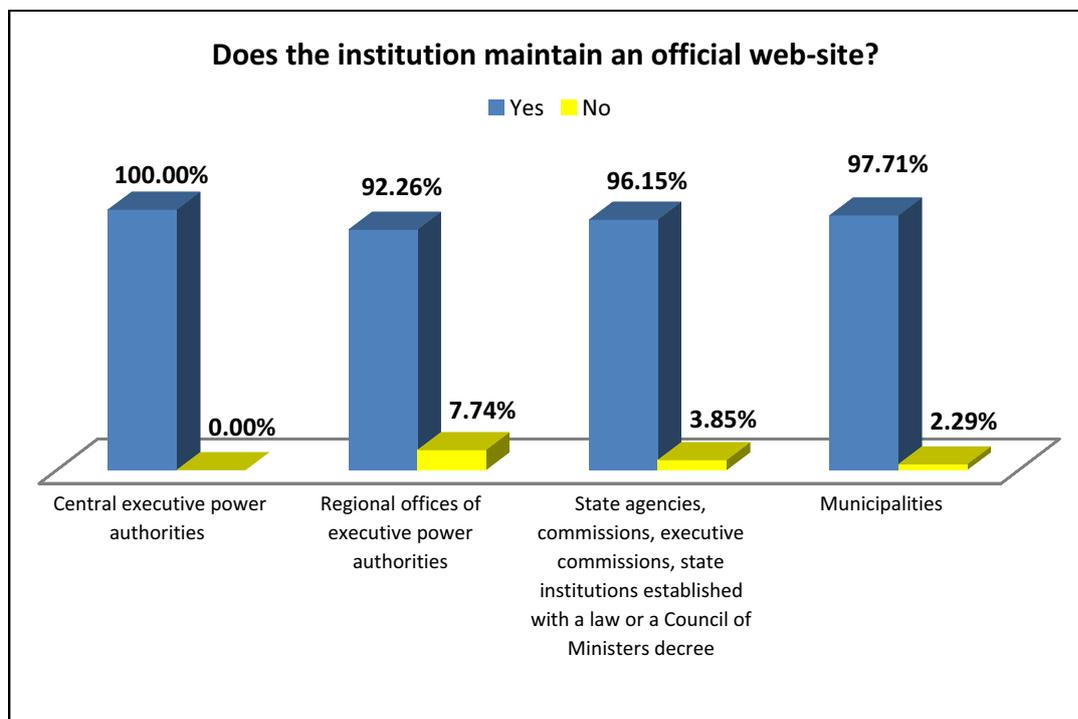


Chart 2. Does the institution maintain an official web-site?
(by type of public body - 2011)



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?

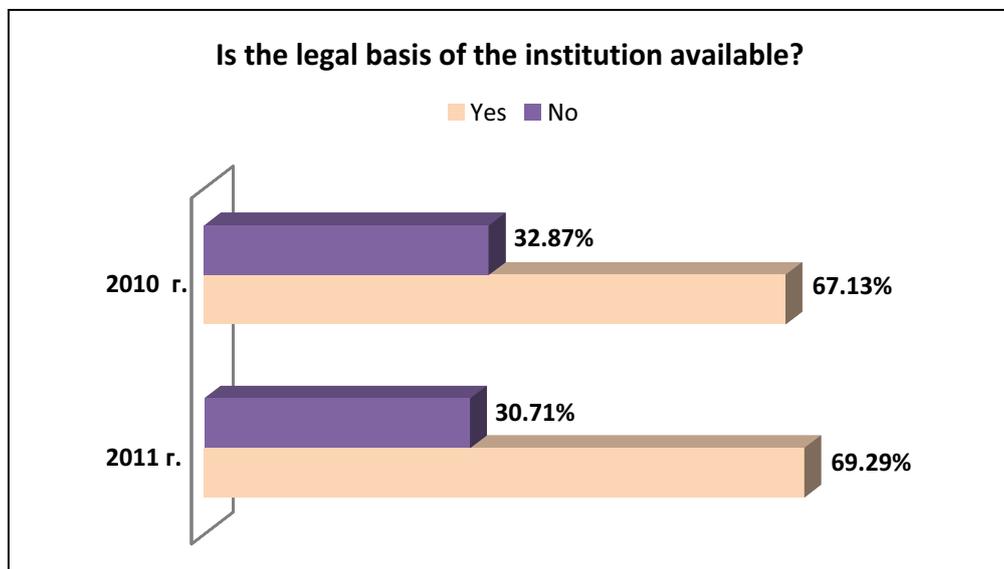


Chart 4. Is the legal basis for the powers of the institution available? (by type of public body - 2011)

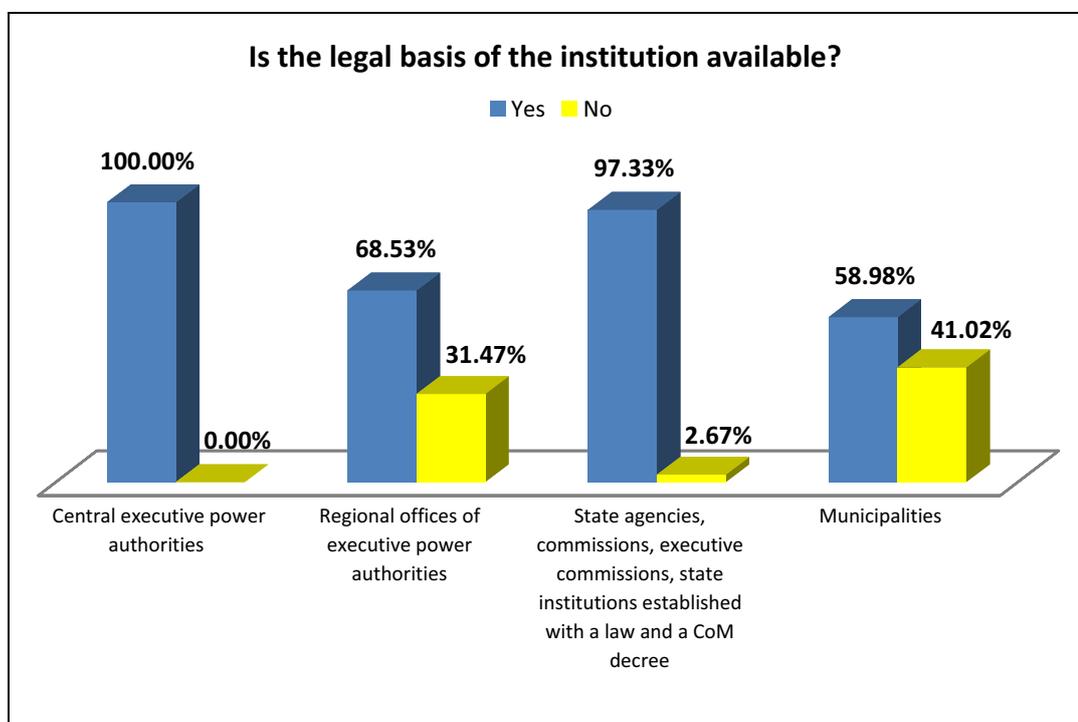


Chart 5. Are the functions of the authority published?

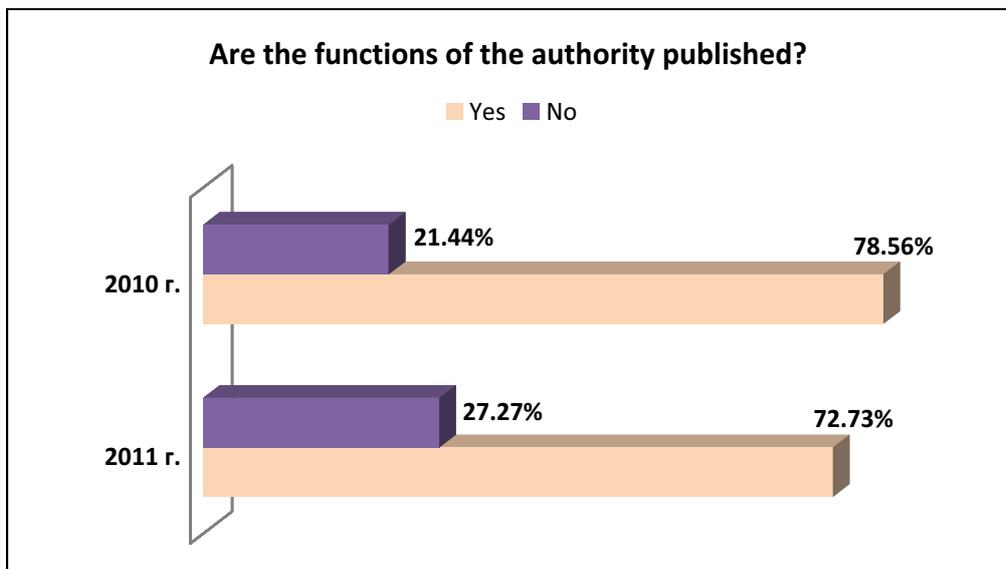


Chart 6. Are the functions of the authority published?
(by type of public body - 2011)

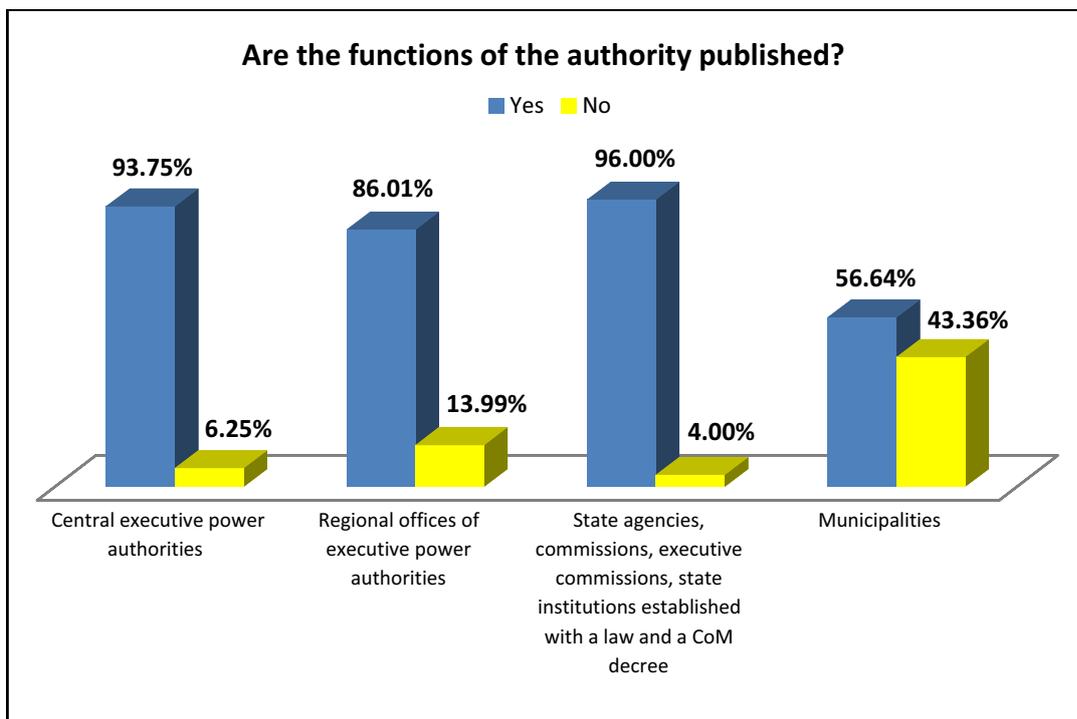


Chart 7. Is a description of the public services provided by the institution published?

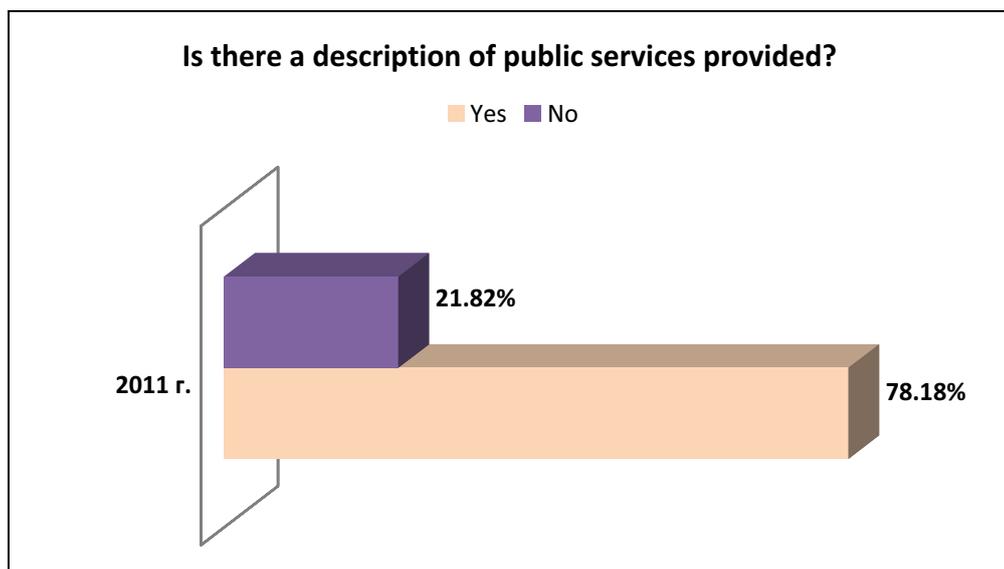


Chart 8. Is a description of the public services provided by the institution published? (by type of public body - 2011)

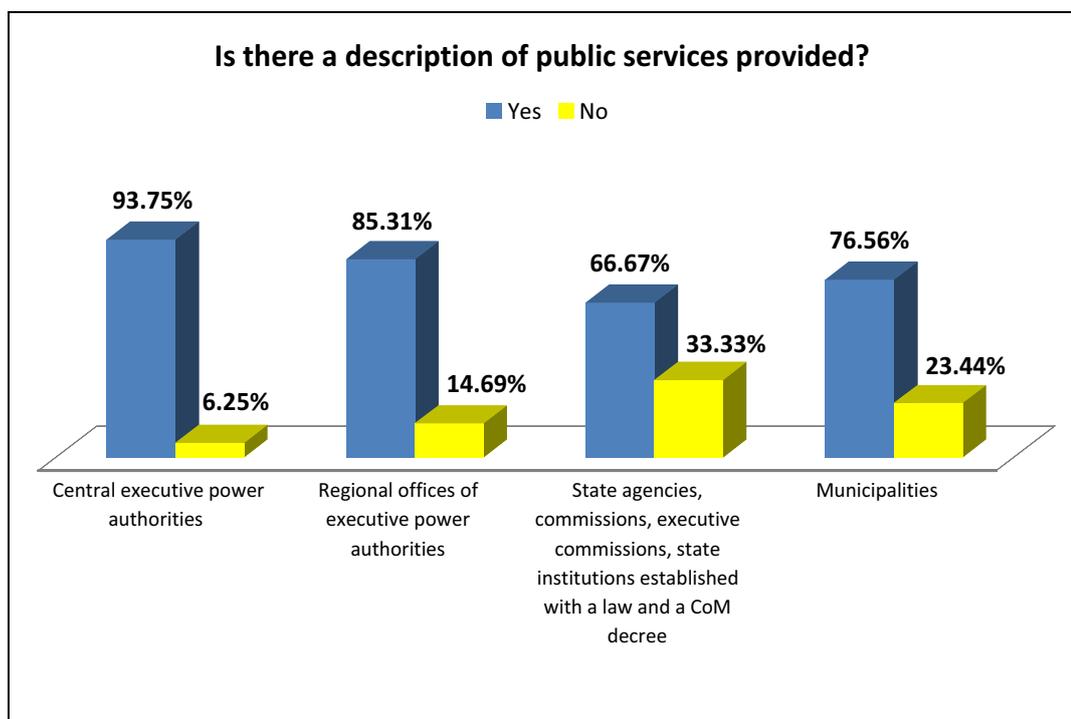


Chart 9. Are information resources and data bases described?

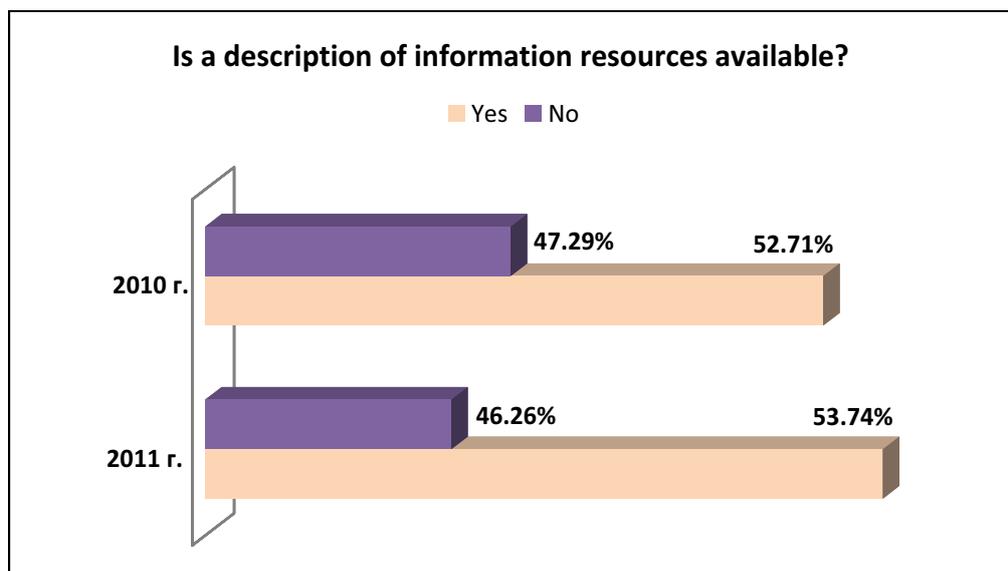
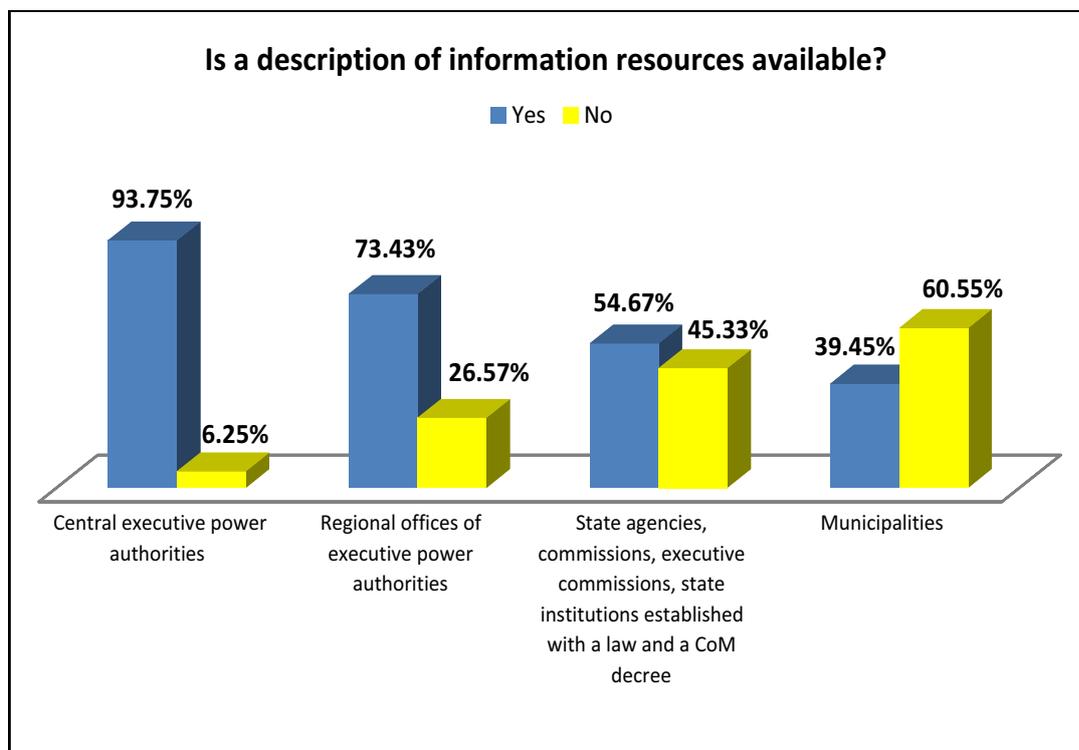


Chart 10. Are information resources and data bases described?
(by type of public body - 2011)



Organizational structure and contact information

Chart 11. Is the structure of the administration published?

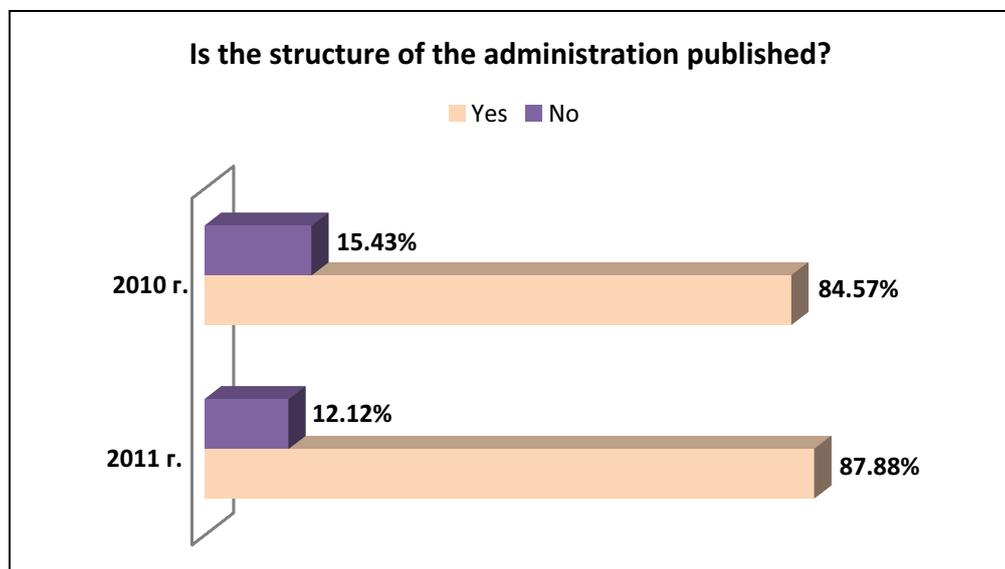
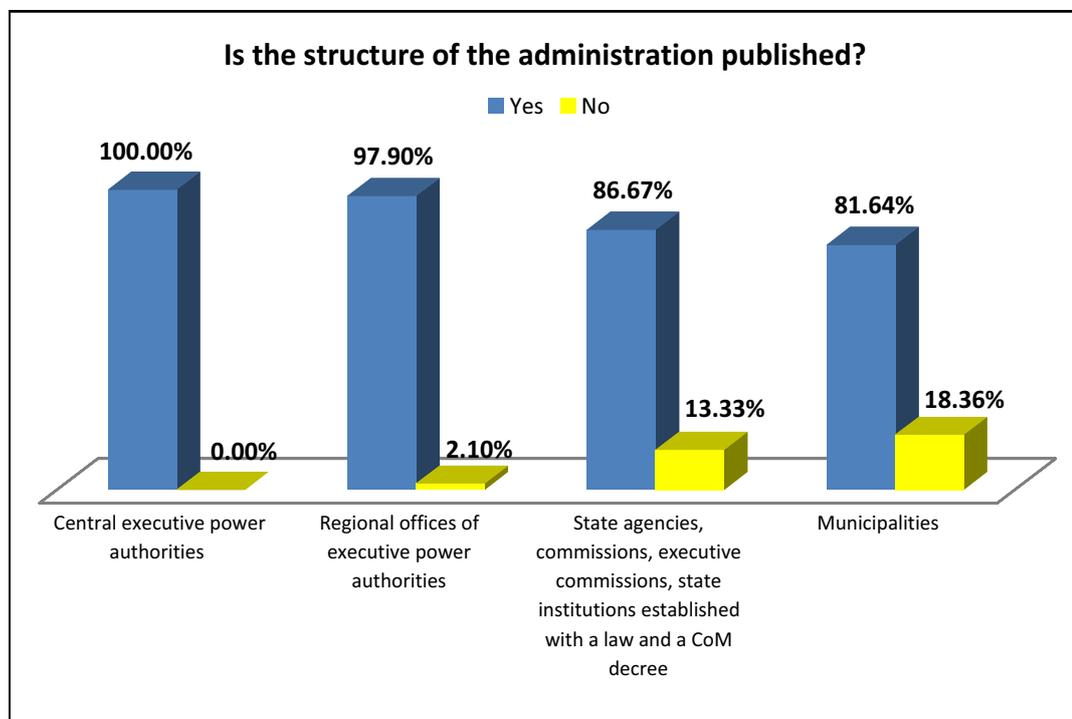


Chart 12. Is the structure of the administration published?
(by type of public body - 2011)



Contact information for citizens

Chart 13. Name of the contact department?

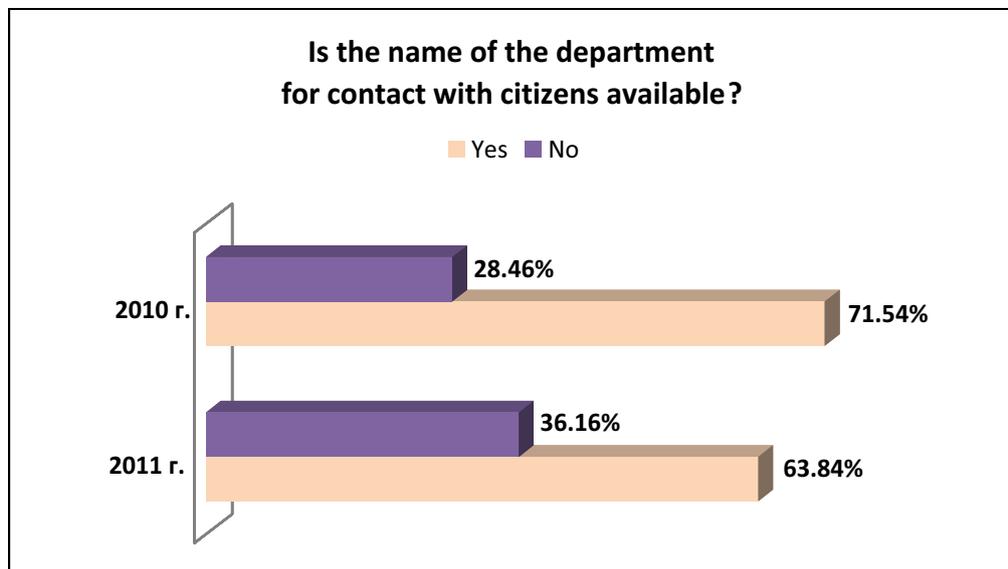


Chart 14. Name of the contact department?
(by type of public body - 2011)

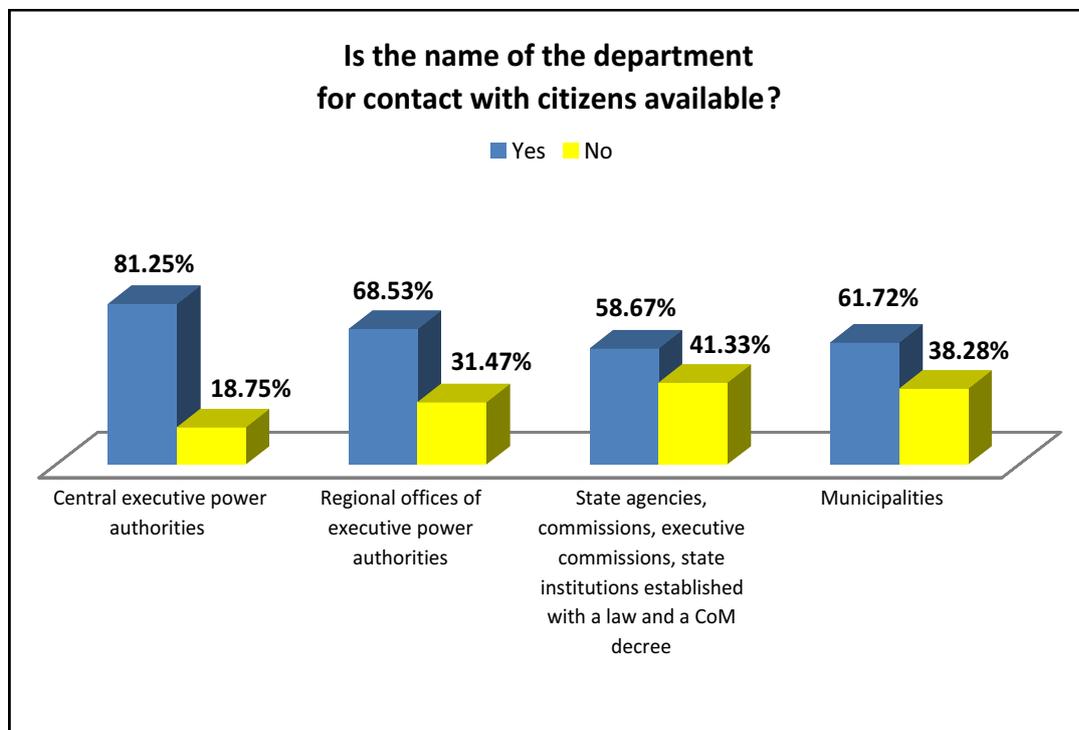


Chart 15. Address of the contact department?

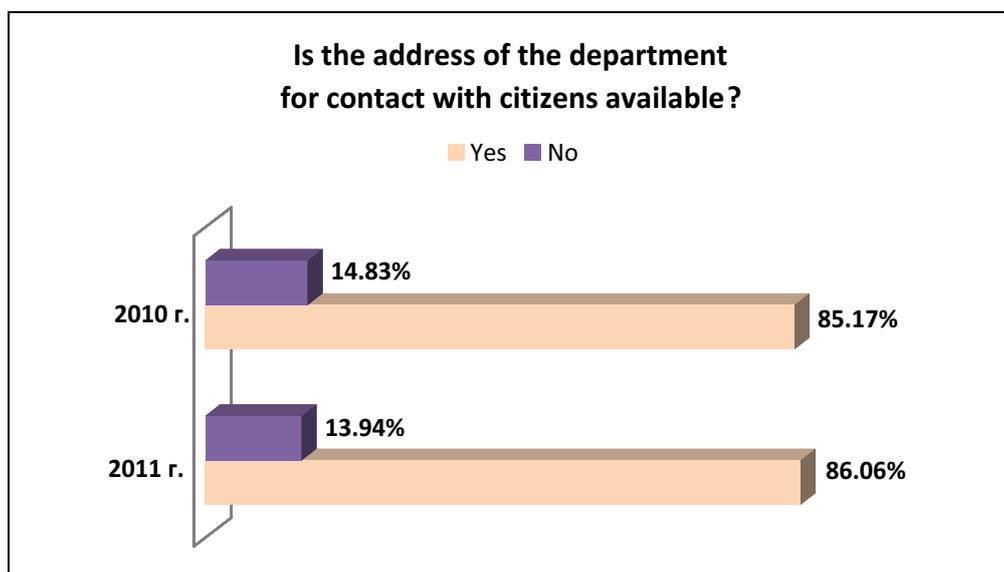


Chart 16. Address of the contact department?
(by type of public body - 2011)

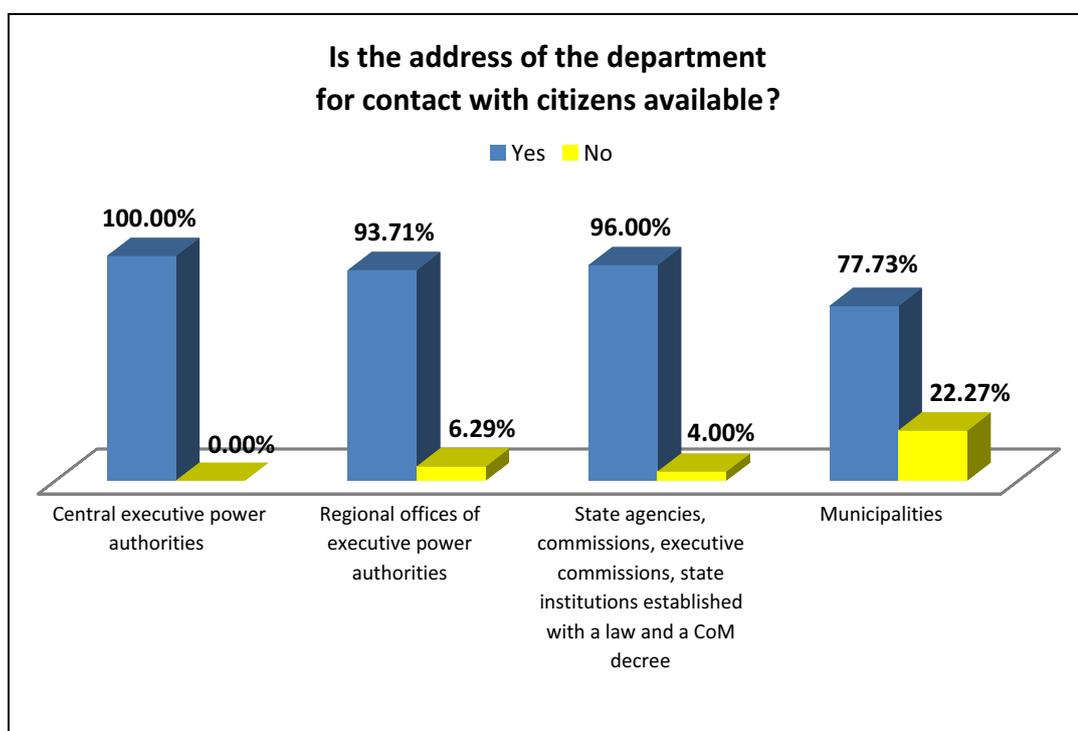


Chart 17. Contact phone number?

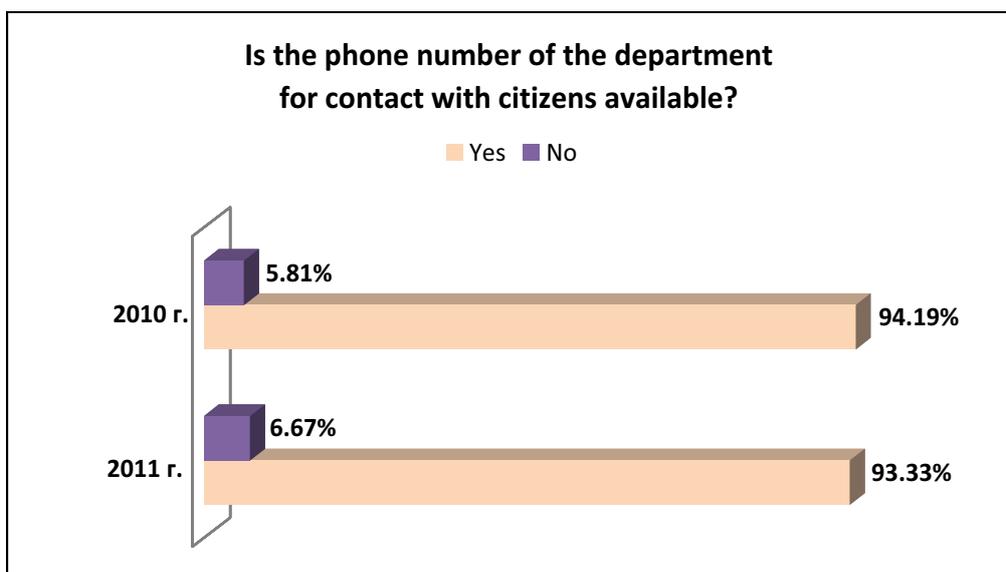


Chart 18. Contact phone number?
(by type of public body - 2011)

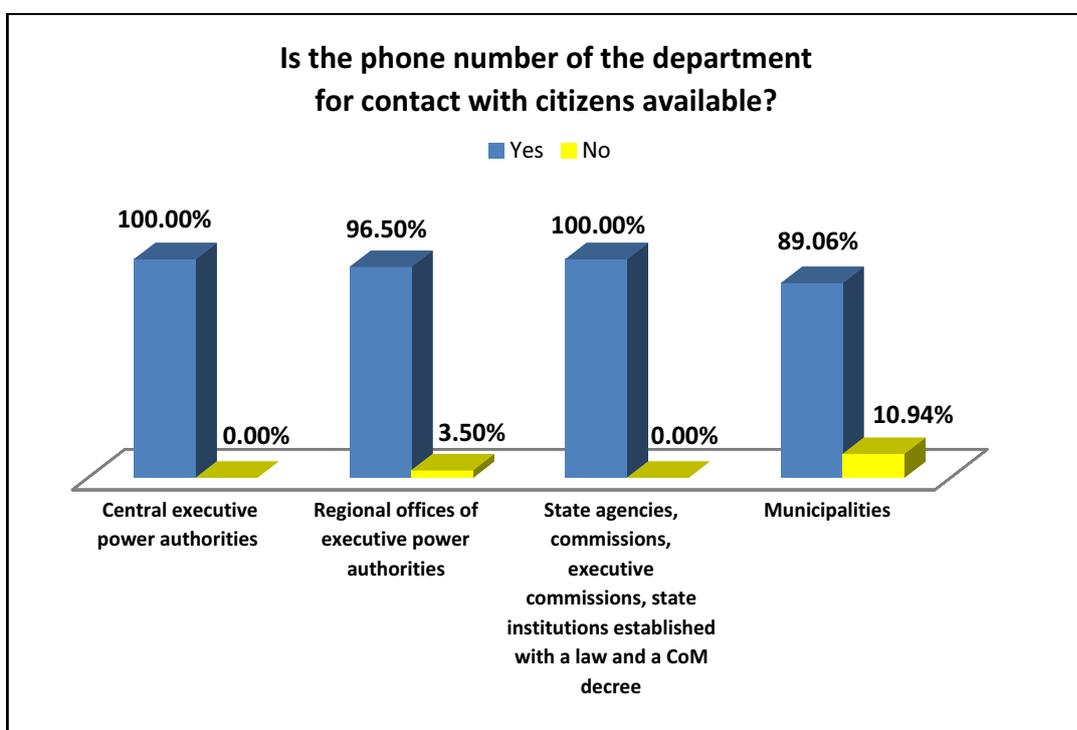


Chart 19. Working hours of the contact department?

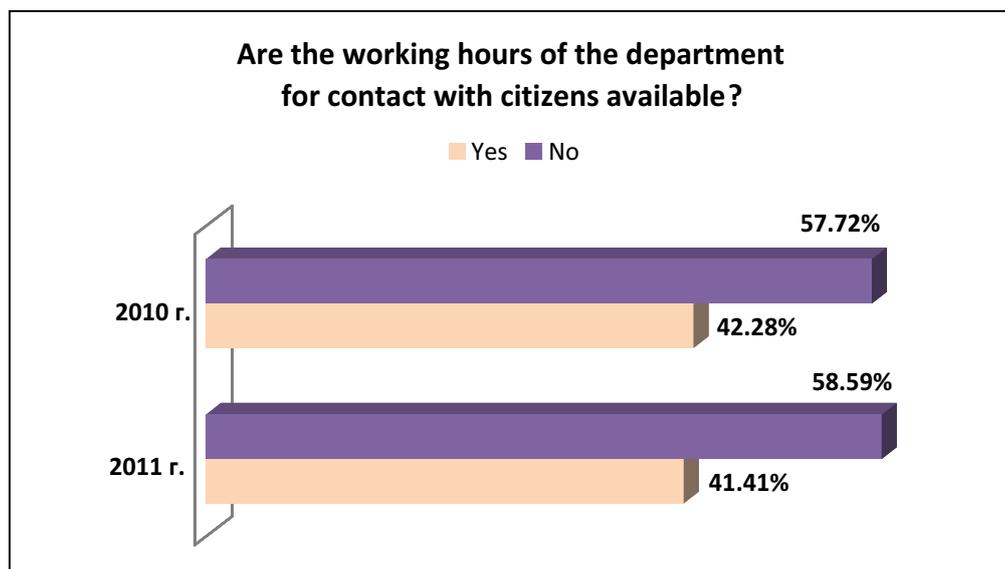
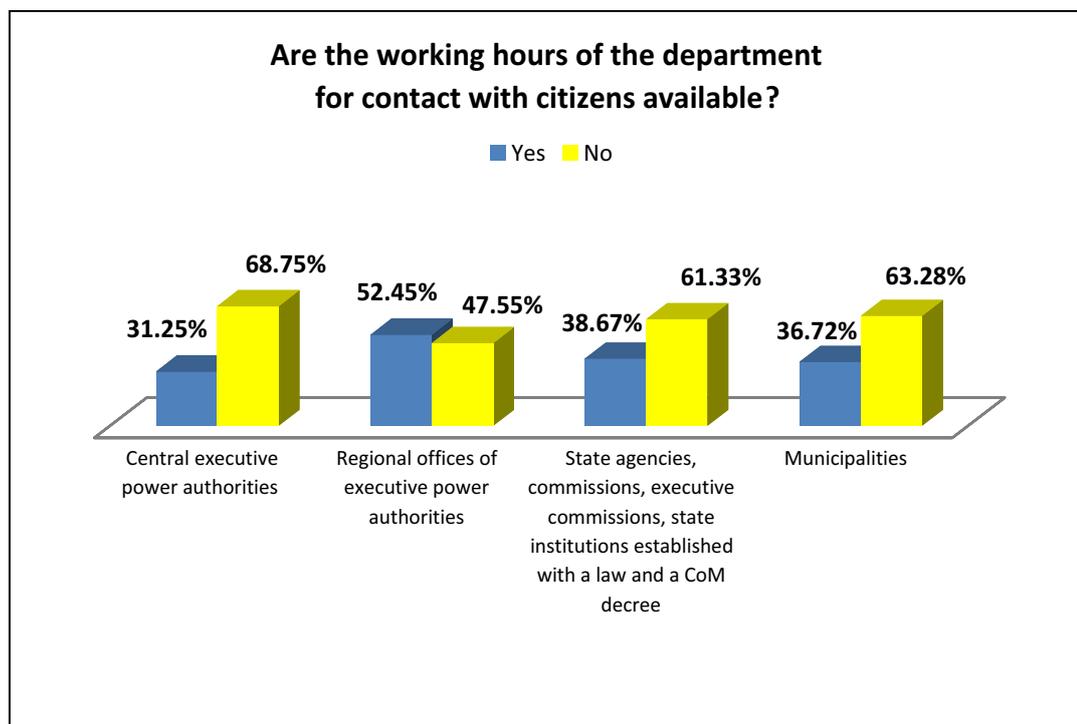


Chart 20. Working hours of the contact department?
(by type of public body - 2011)



Operational Information - acts,⁴² strategies and plans, activities and activity reports

Chart 21. Is there a list of normative acts?

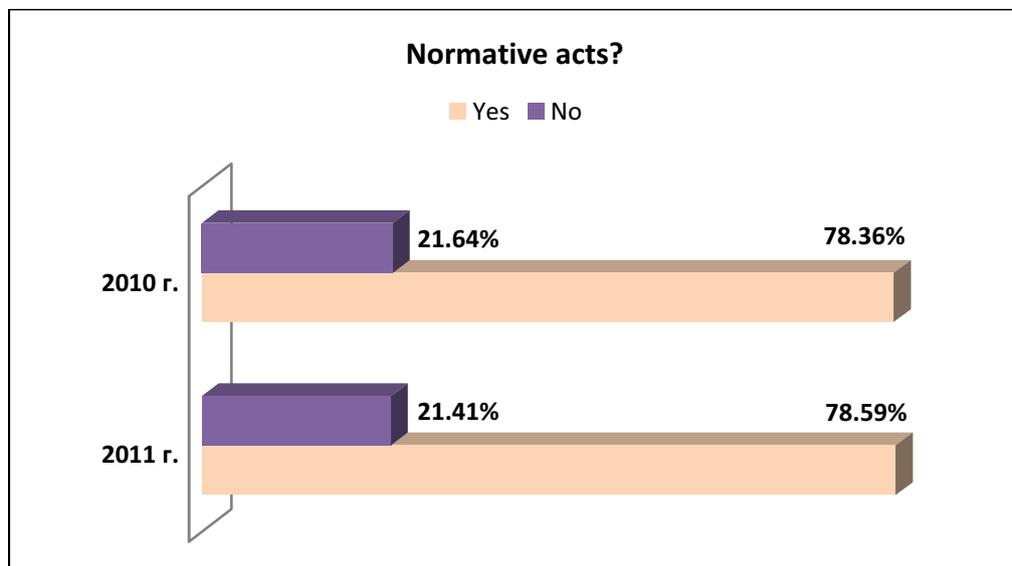
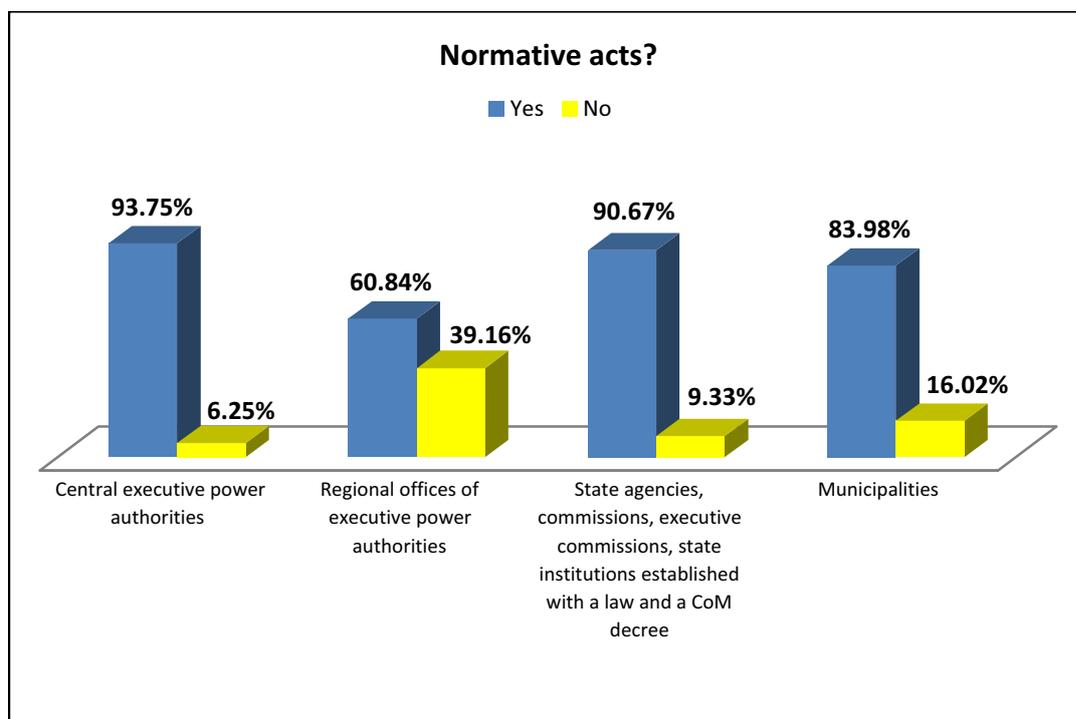


Chart 22. Is there a list of normative acts? (by type of public body - 2011)



⁴² 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?

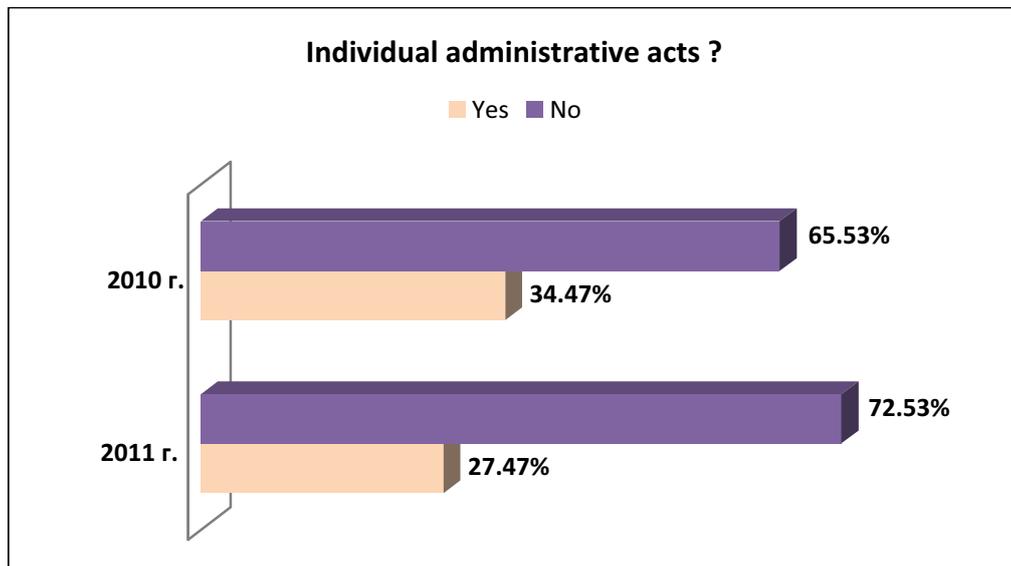


Chart 24. Is there a list of individual administrative acts?
(by type of public body - 2011)

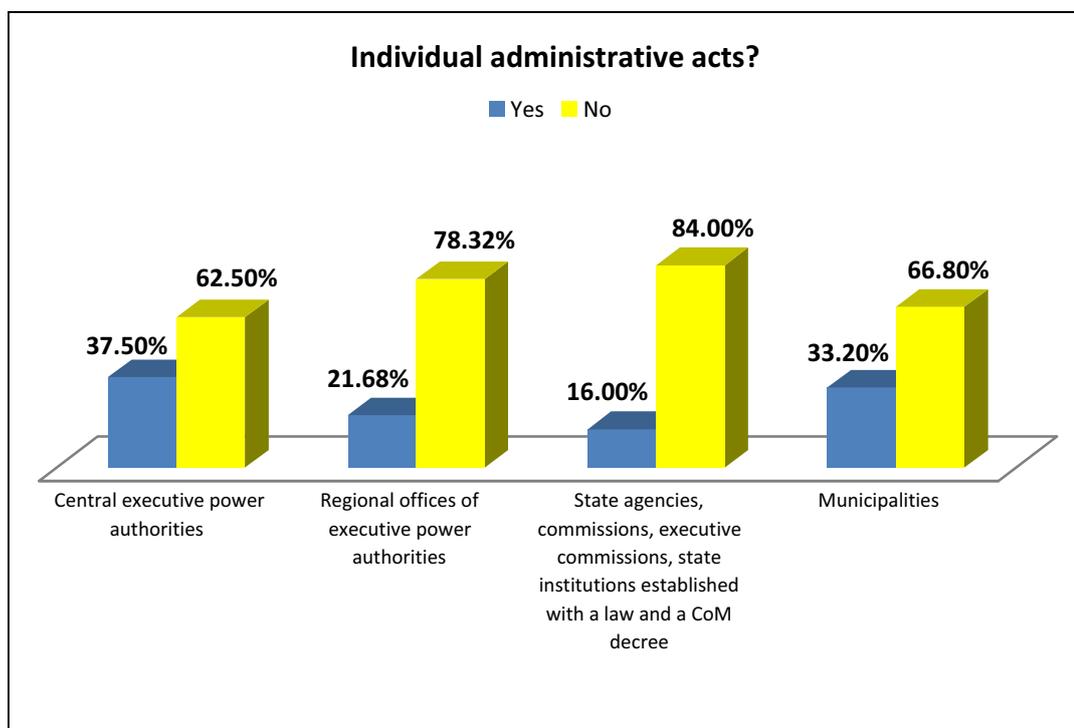


Chart 25. Are the decisions of the municipal council published?
(only for municipalities - 2011)

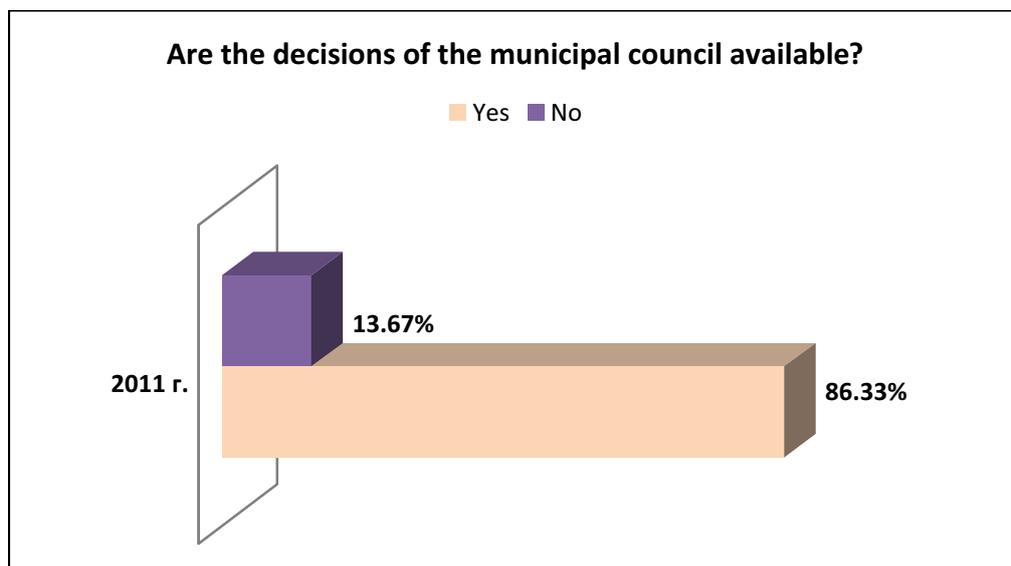


Chart 26. Are development programs and strategies published?

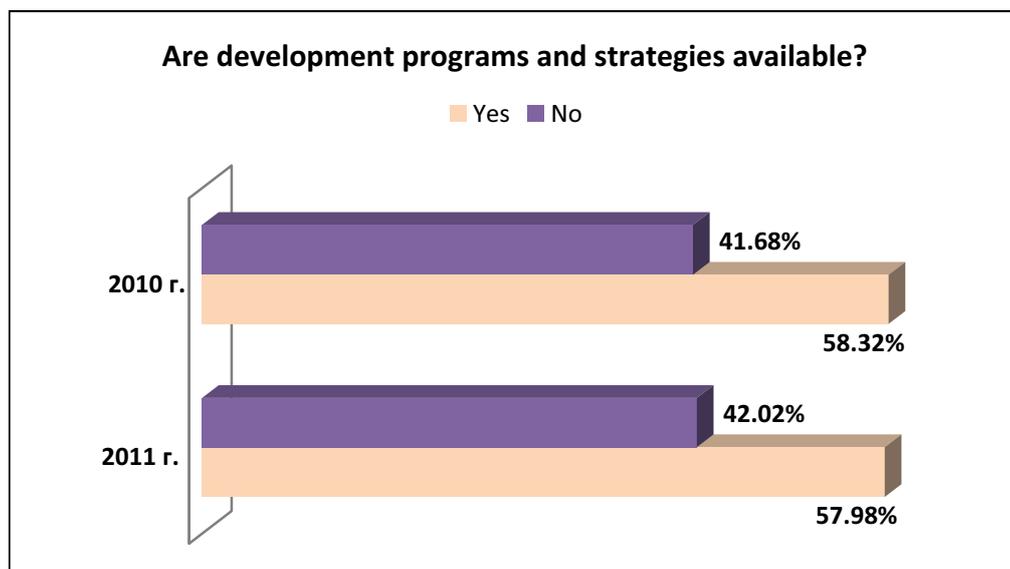


Chart 27. Are development programs and strategies published?
(by type of public body - 2011)

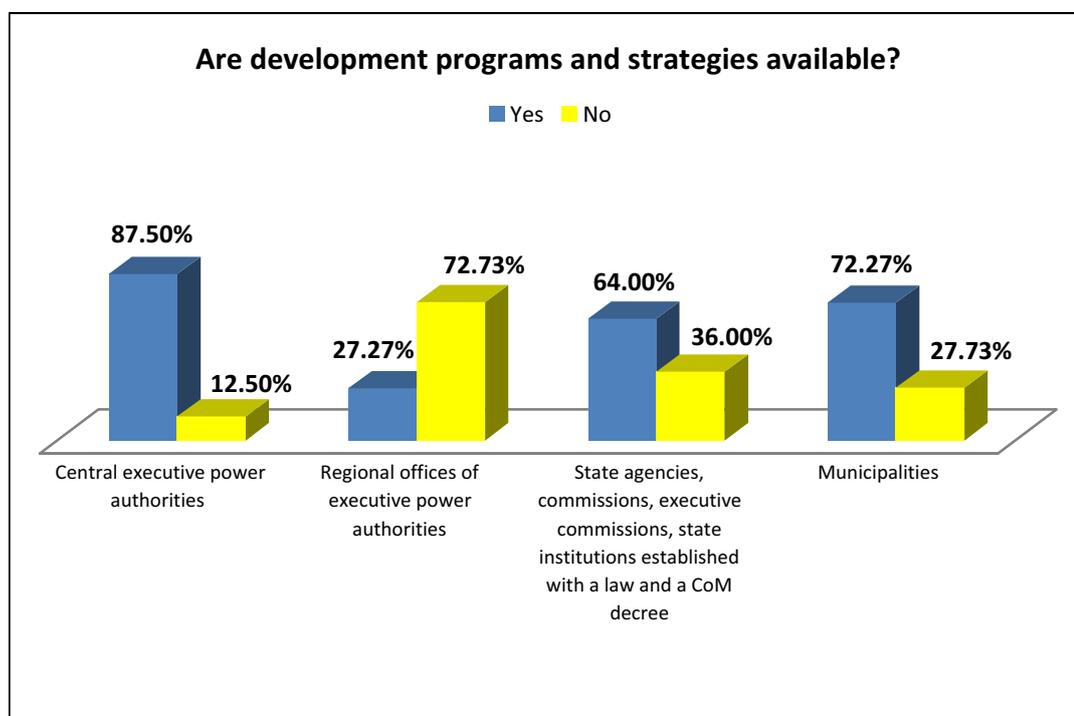


Chart 28. Are activity reports of the institution published?

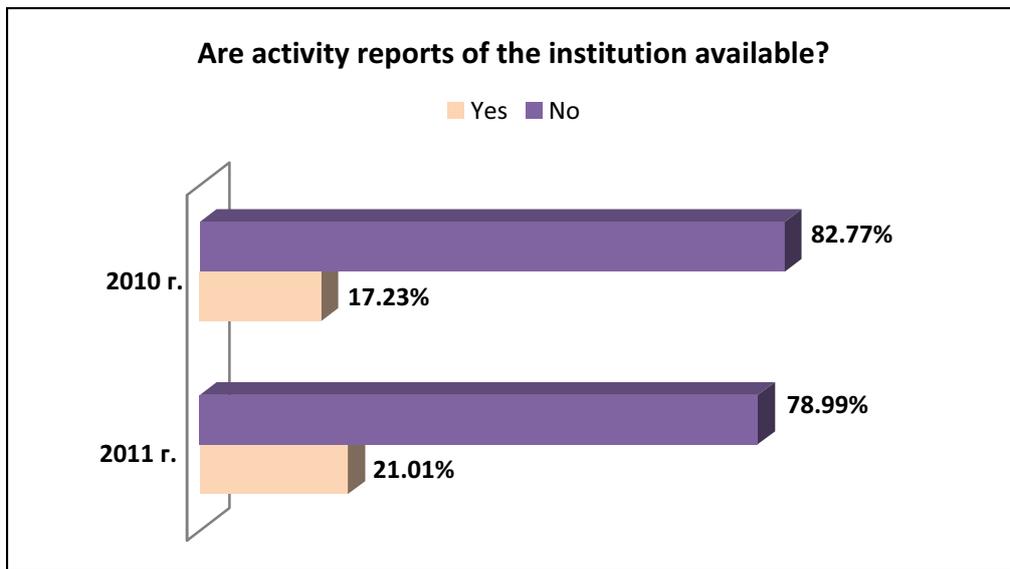


Chart 29. Are activity reports of the institution published?
(by type of public body - 2011)

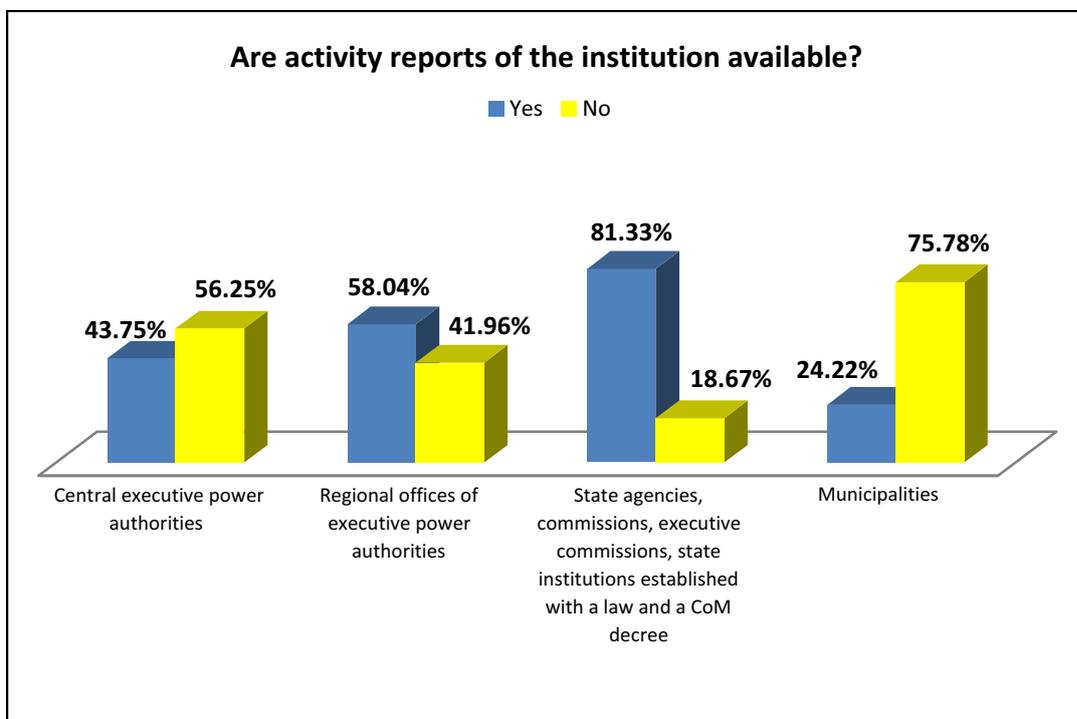


Chart 30. Are drafts of regulations published?

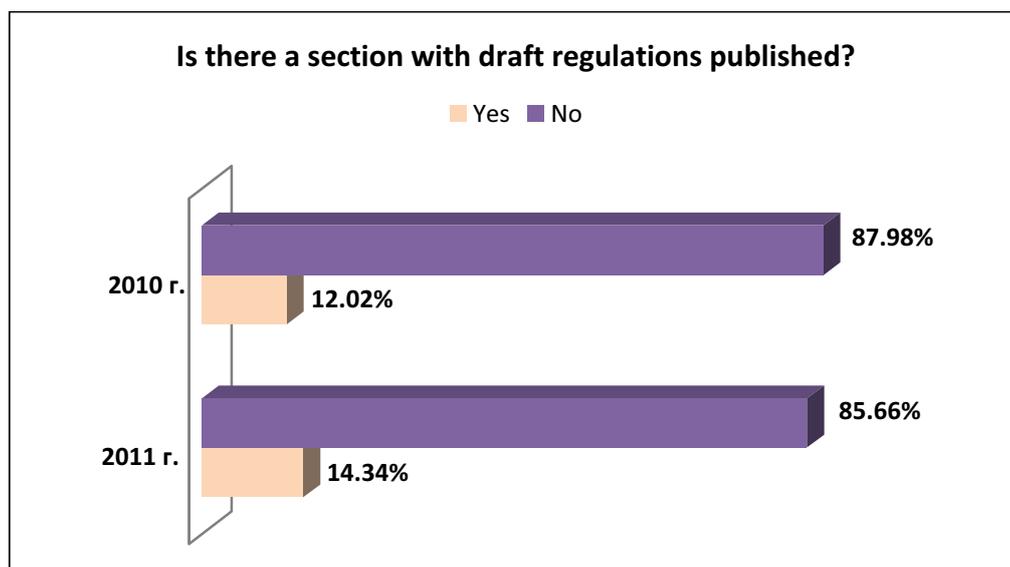
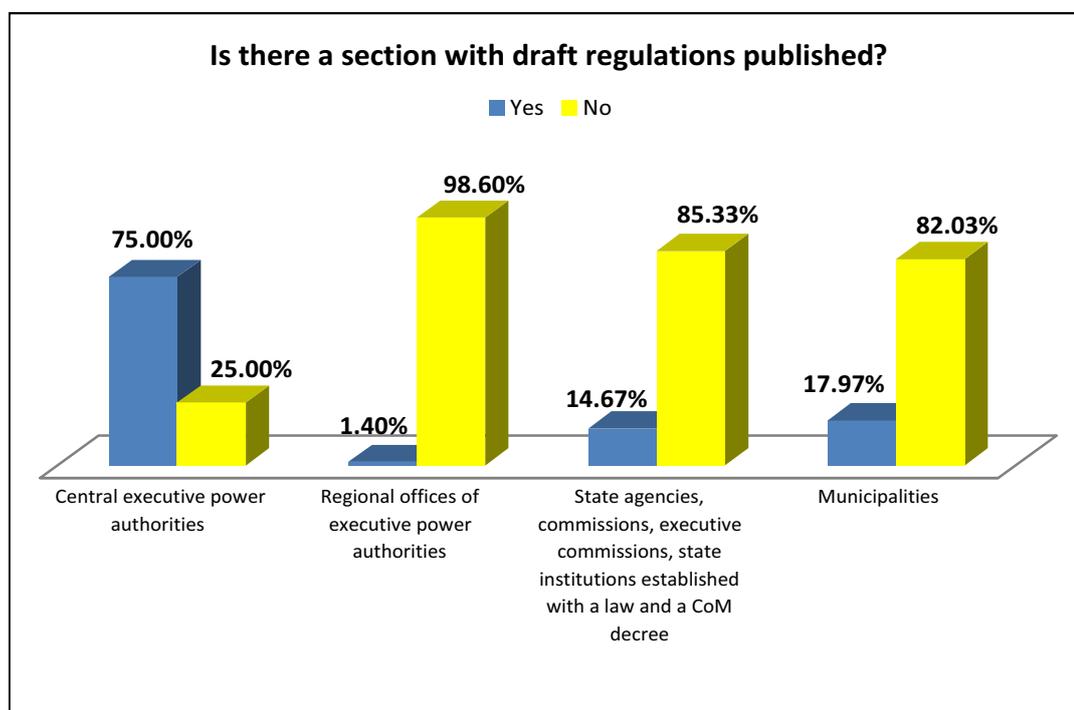


Chart 31. Are drafts of regulations published?
(by type of public body - 2011)



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

Chart 32. Is the budget of the institution published?

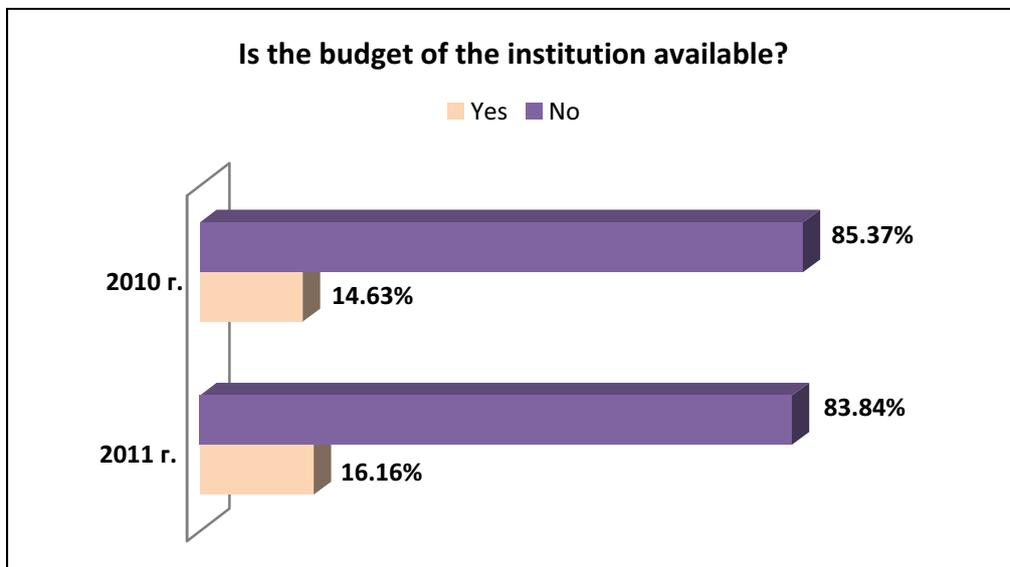


Chart 33. Is the budget of the institution published?
(by type of public body - 2011)

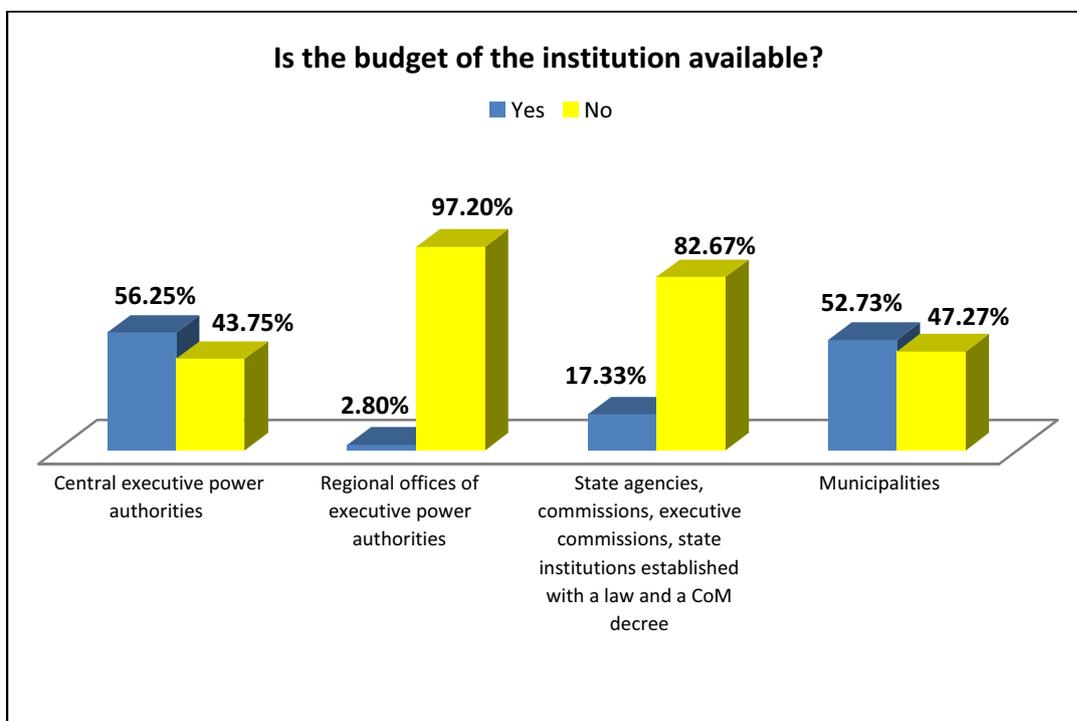


Chart 34. Are financial reports of the institution published?

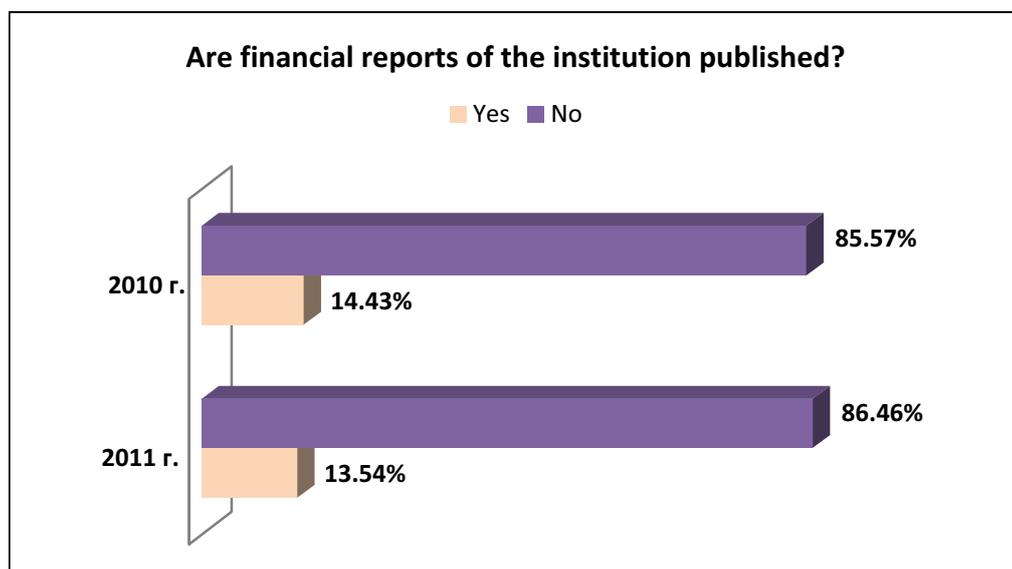


Chart 35. Are financial reports of the institution published?
(by type of public body - 2011)

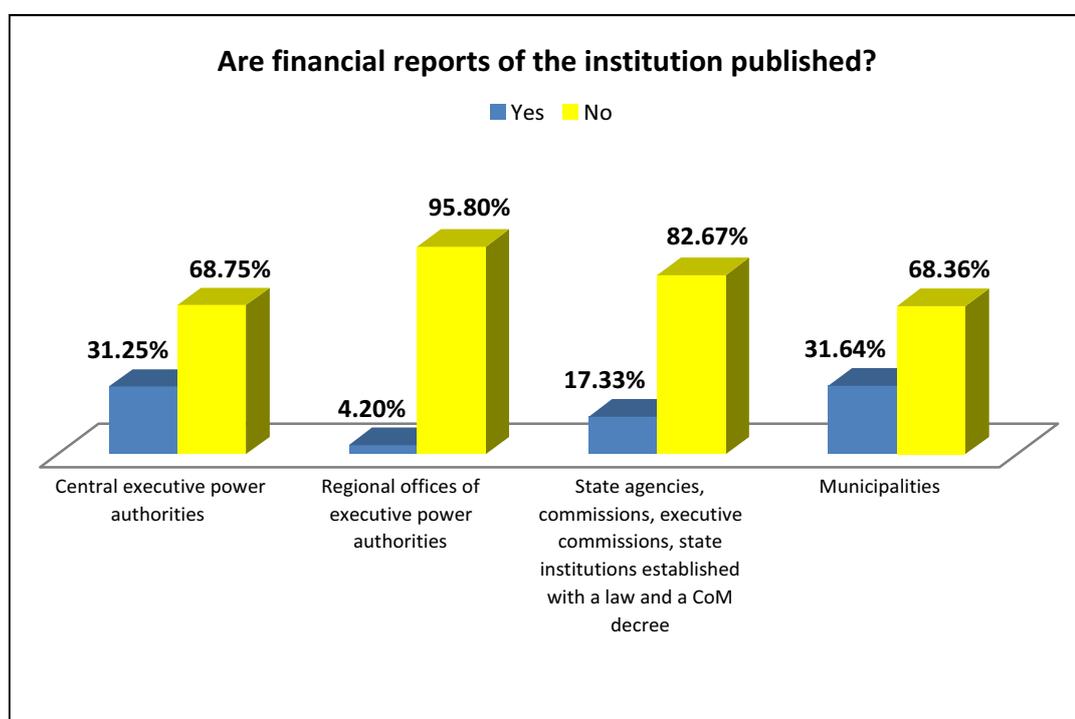


Chart 36. Are contracts of the institution published?

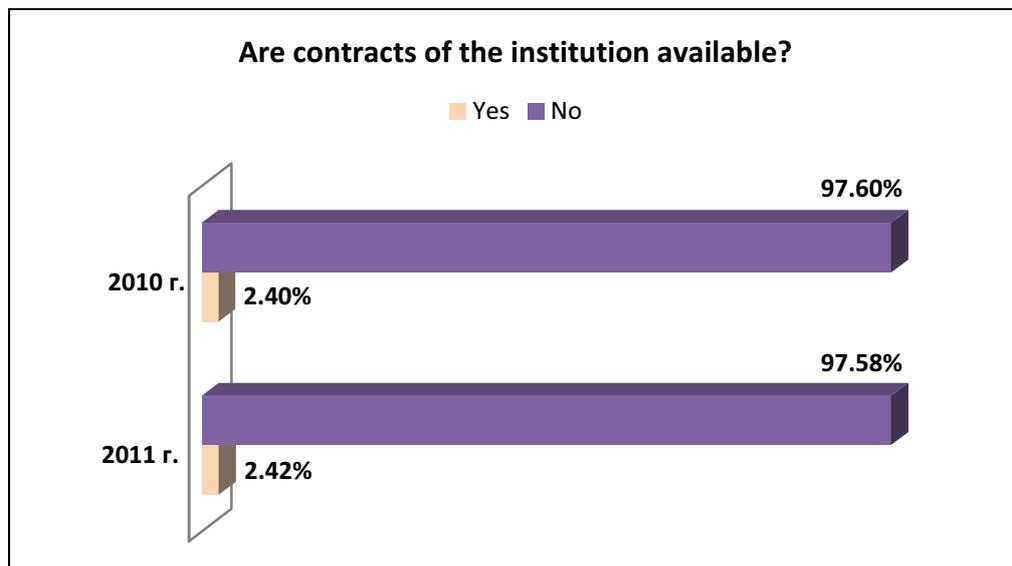


Chart 37. Are contracts of the institution published?
(by type of public body - 2011)

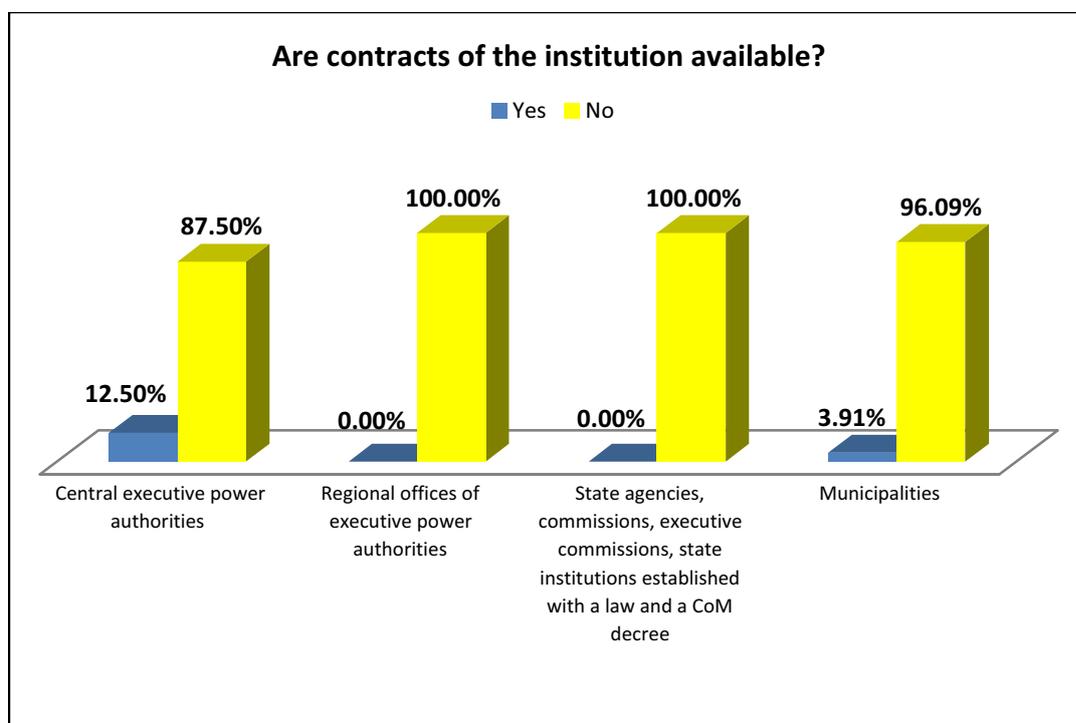


Chart 38. Are asset declarations published?

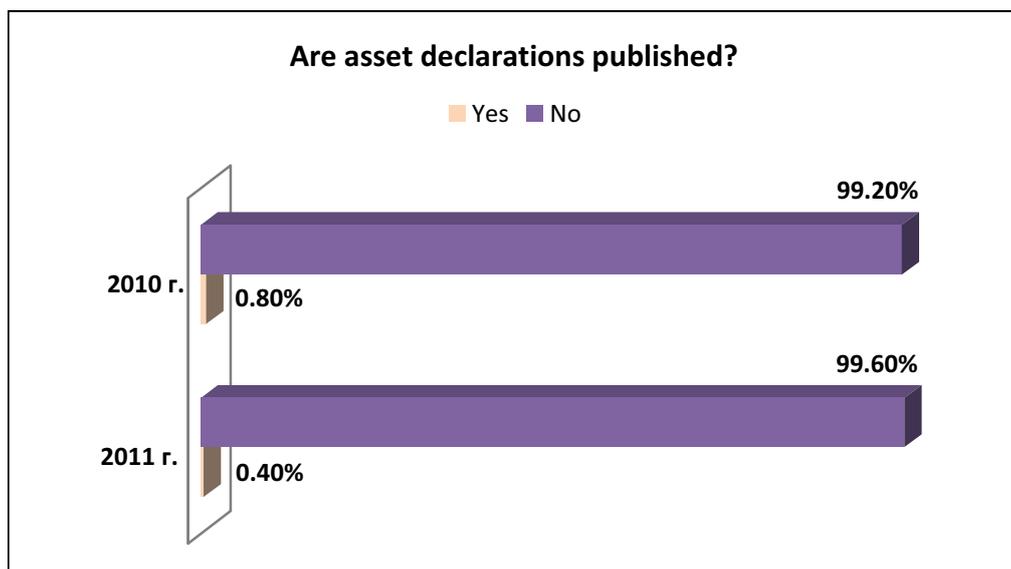


Chart 39. Are asset declarations published?
(by type of public body - 2011)

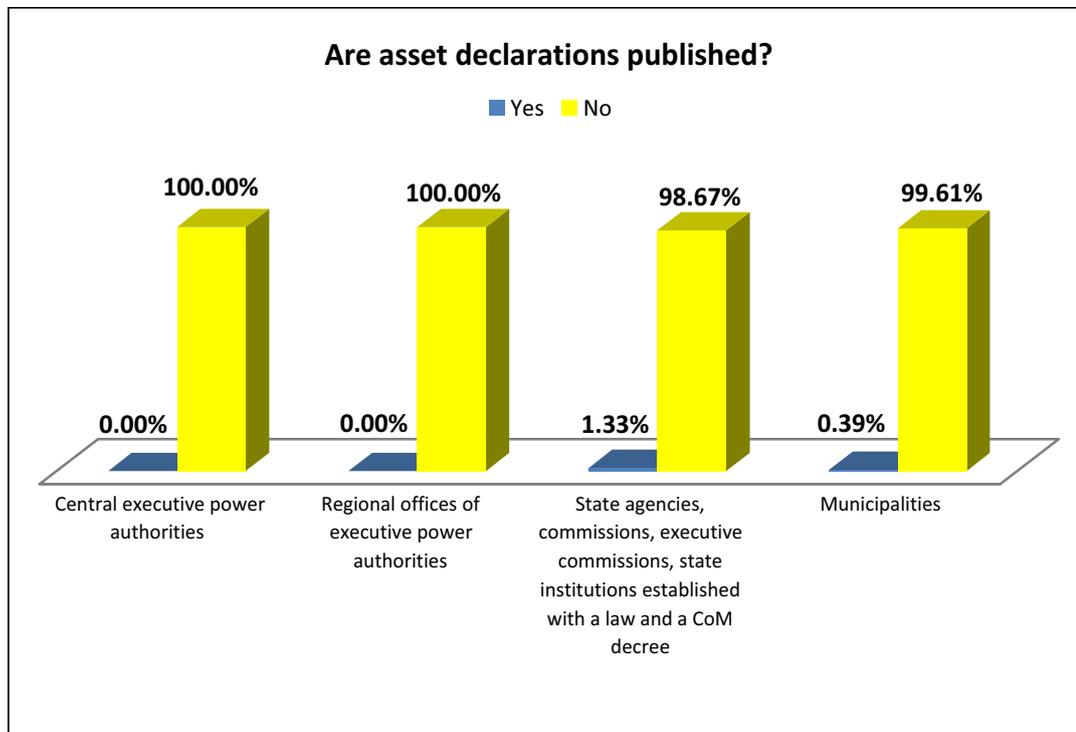


Chart 40. Are conflict of interests declarations published?

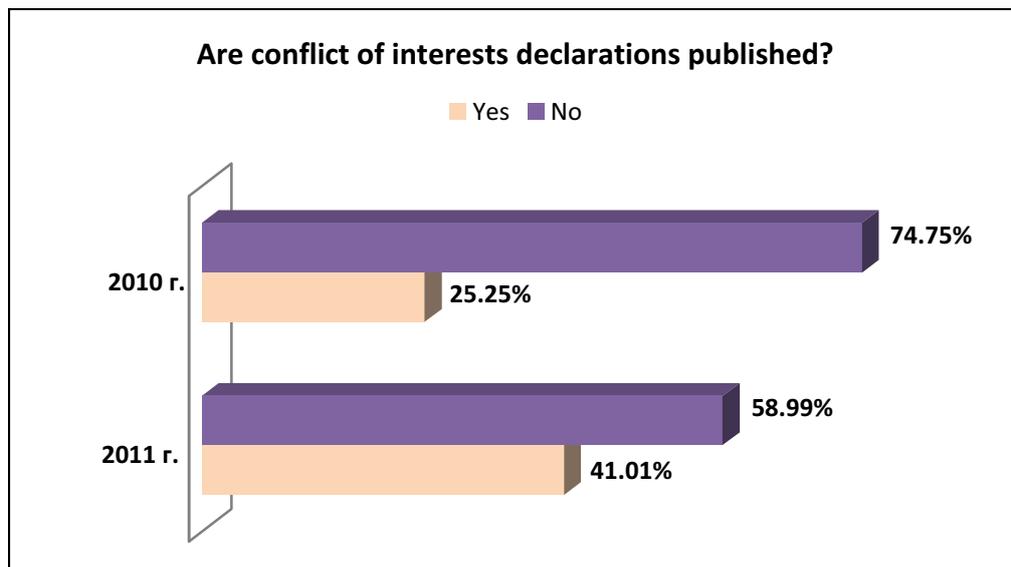
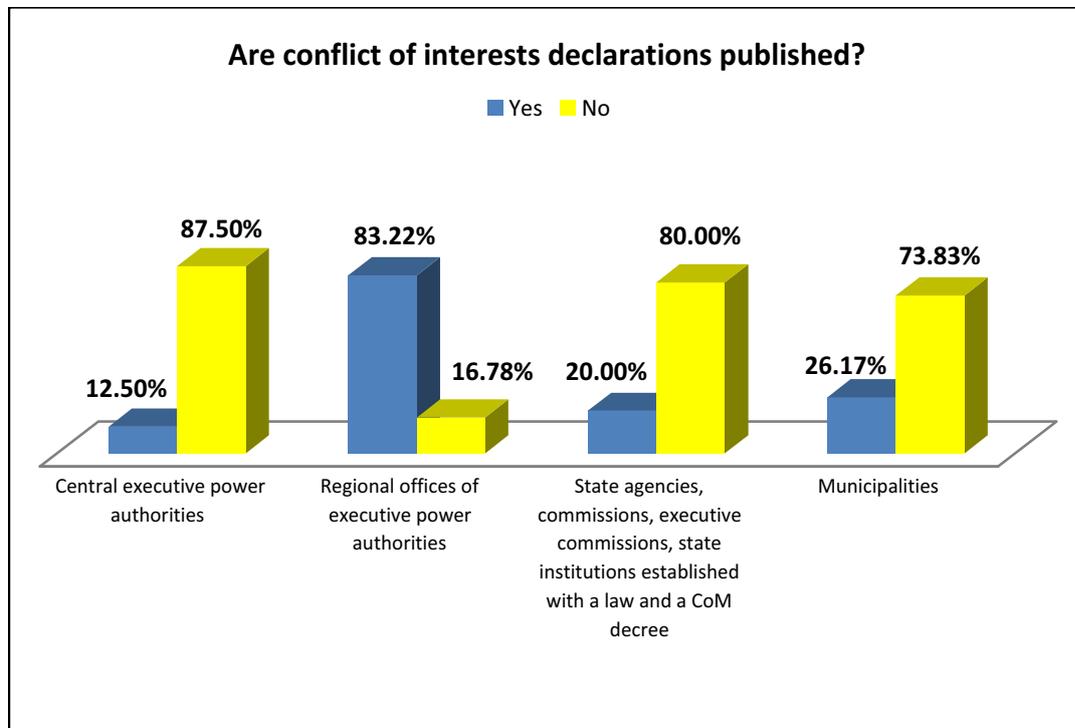


Chart 41. Are conflict of interests declarations published?
(by type of public body - 2011)



Access to Information Sections

Chart 42. Is there an Access to Information section?

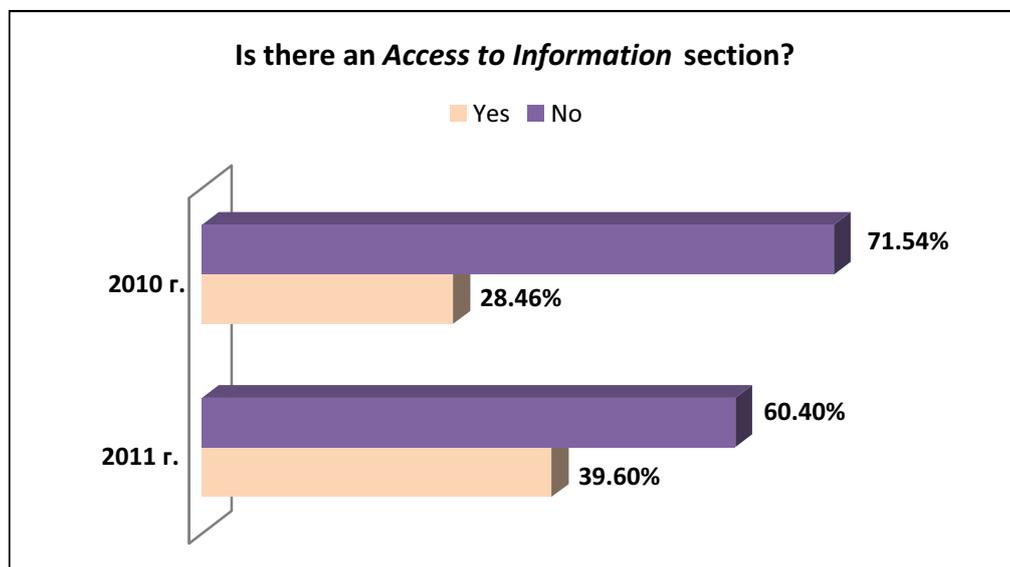
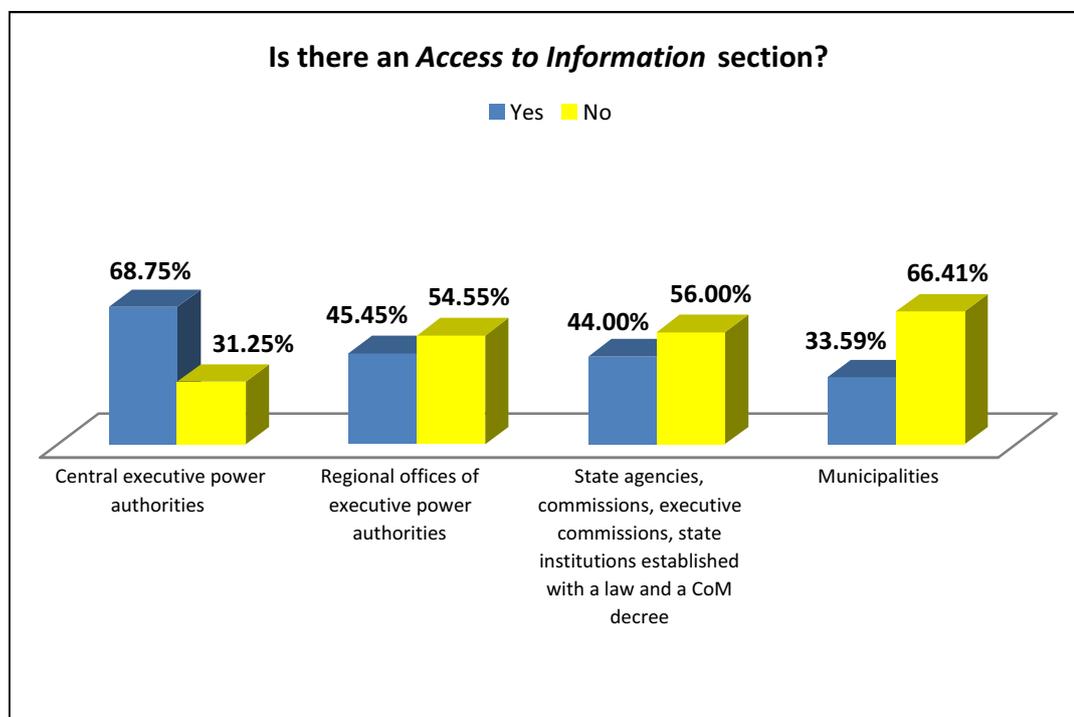


Chart 43. Is there an Access to Information section?
(by type of public body - 2011)



Internal Rules

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

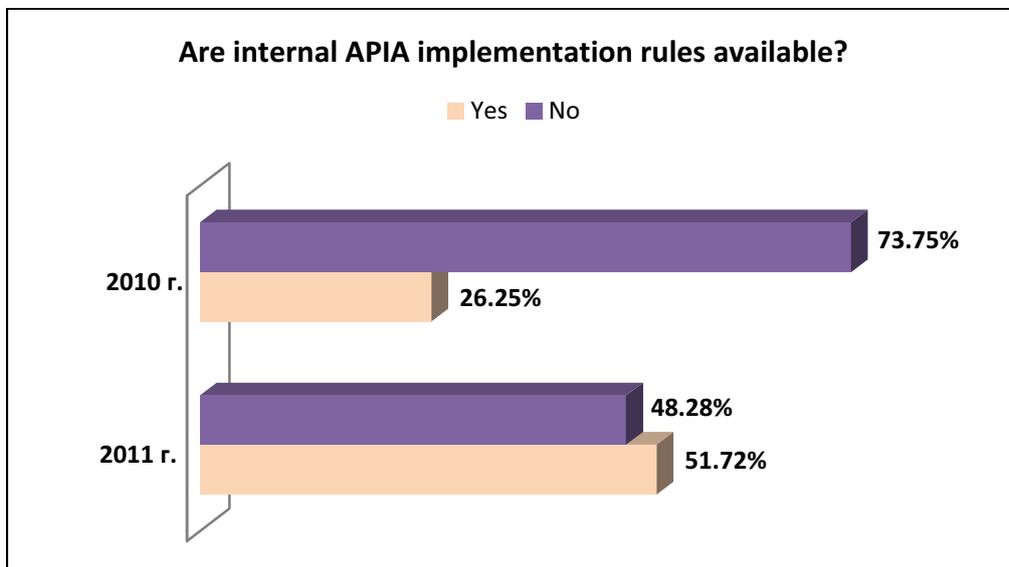


Chart 45. Are Internal APIA Implementation Rules published?
(by type of public body - 2011)

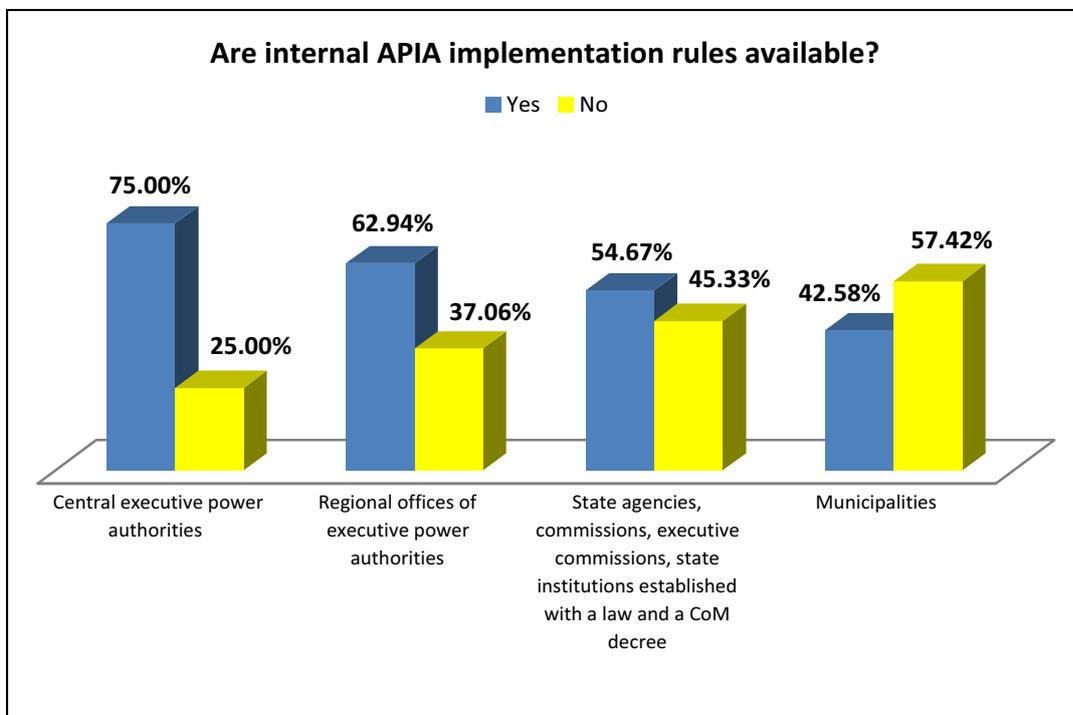


Chart 46. Is there a description of the procedure for access to public registers maintained by the institution?

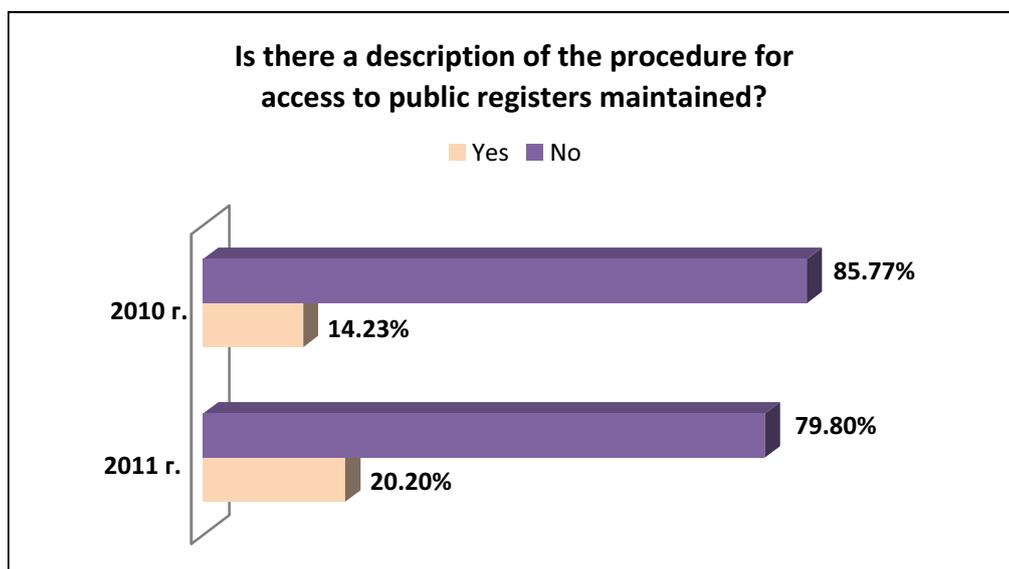
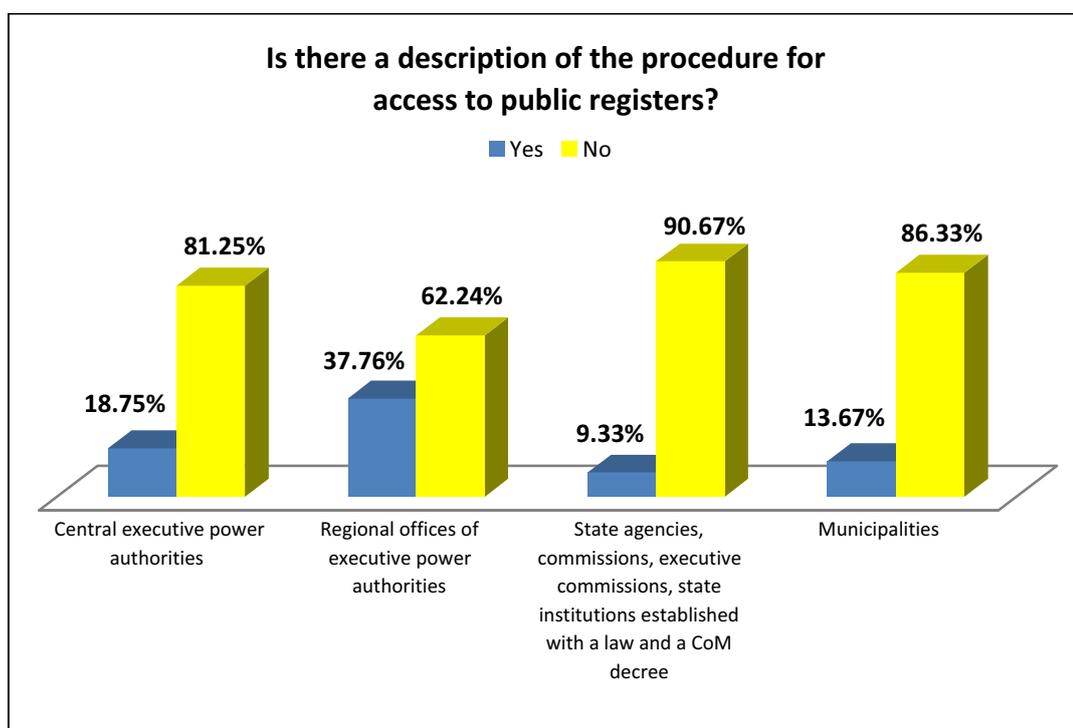


Chart 47. Is there a description of the procedure for access to public registers maintained by the institution? (by type of public body - 2011)



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

Chart 48. Is the APIA implementation report published?

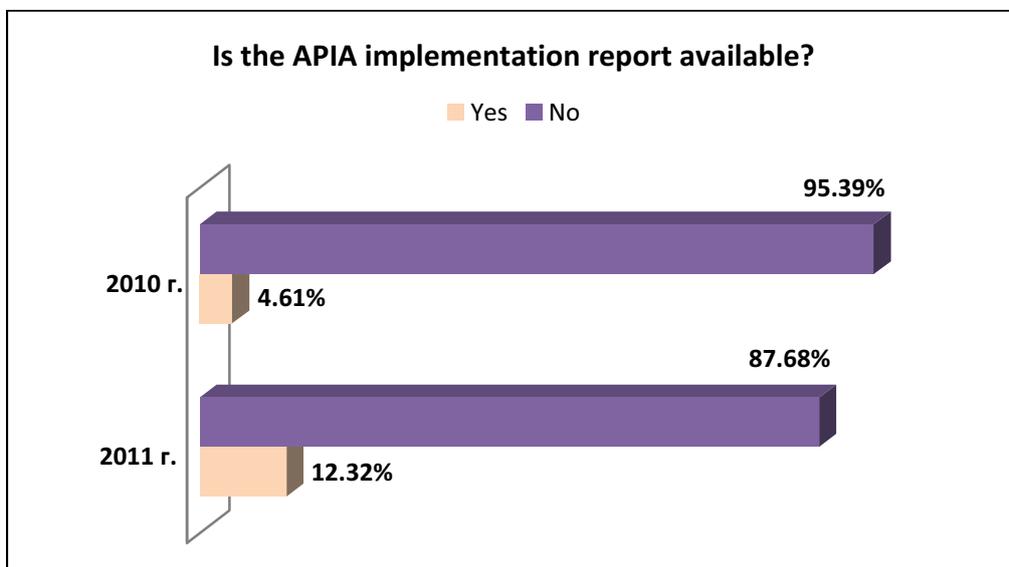


Chart 49. Is the APIA implementation report published?
(by type of public body - 2011)

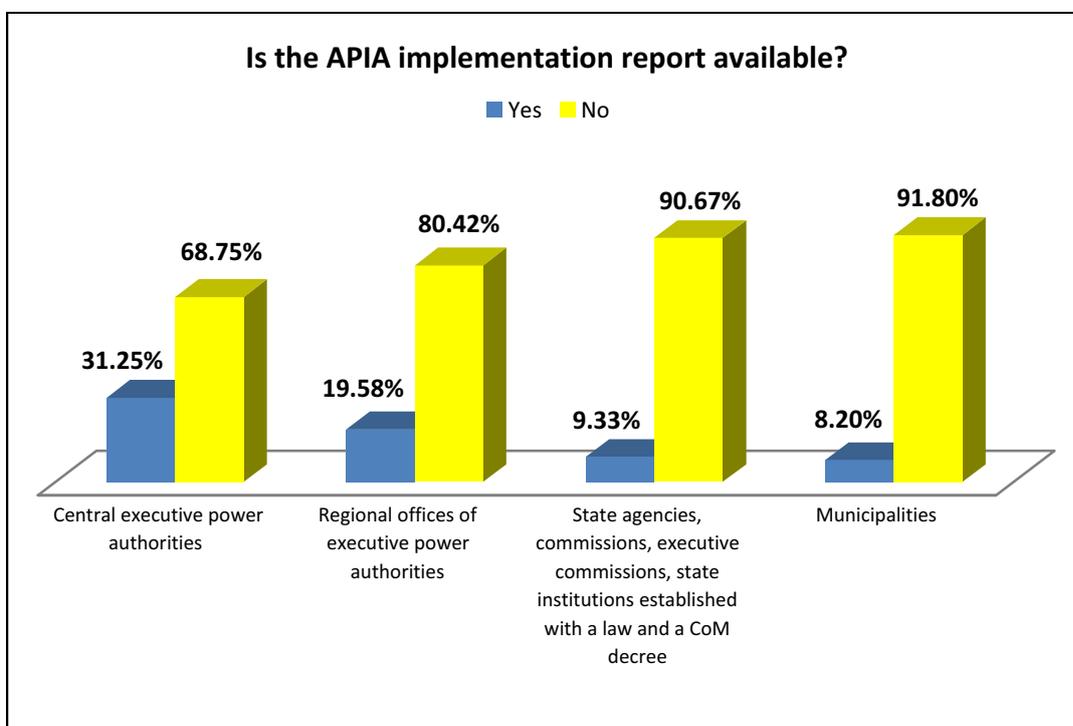


Chart 50. Does the APIA implementation report contain data about registered requests?

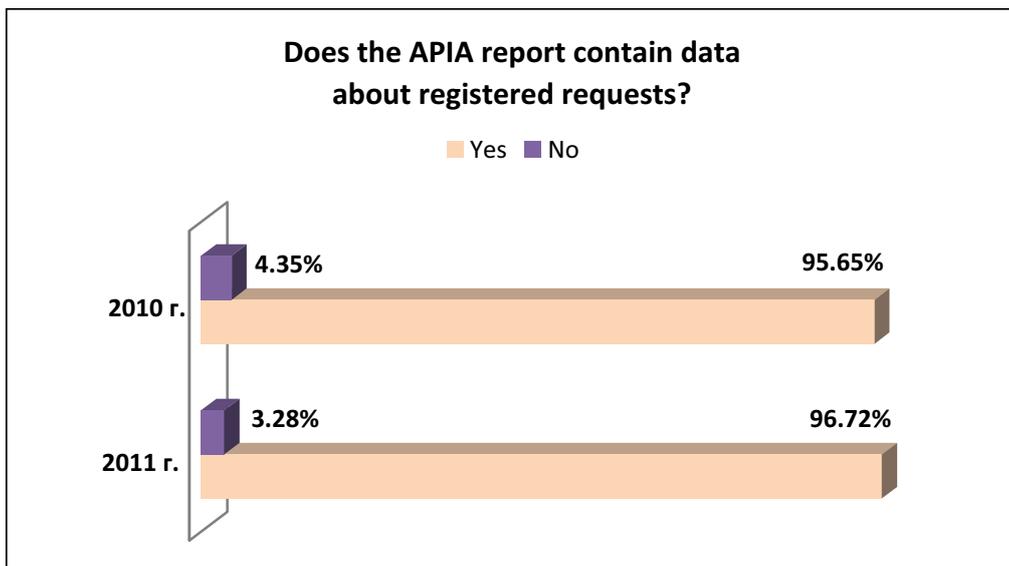


Chart 51. Does the APIA implementation report contain data about registered requests? (by type of public body - 2011)

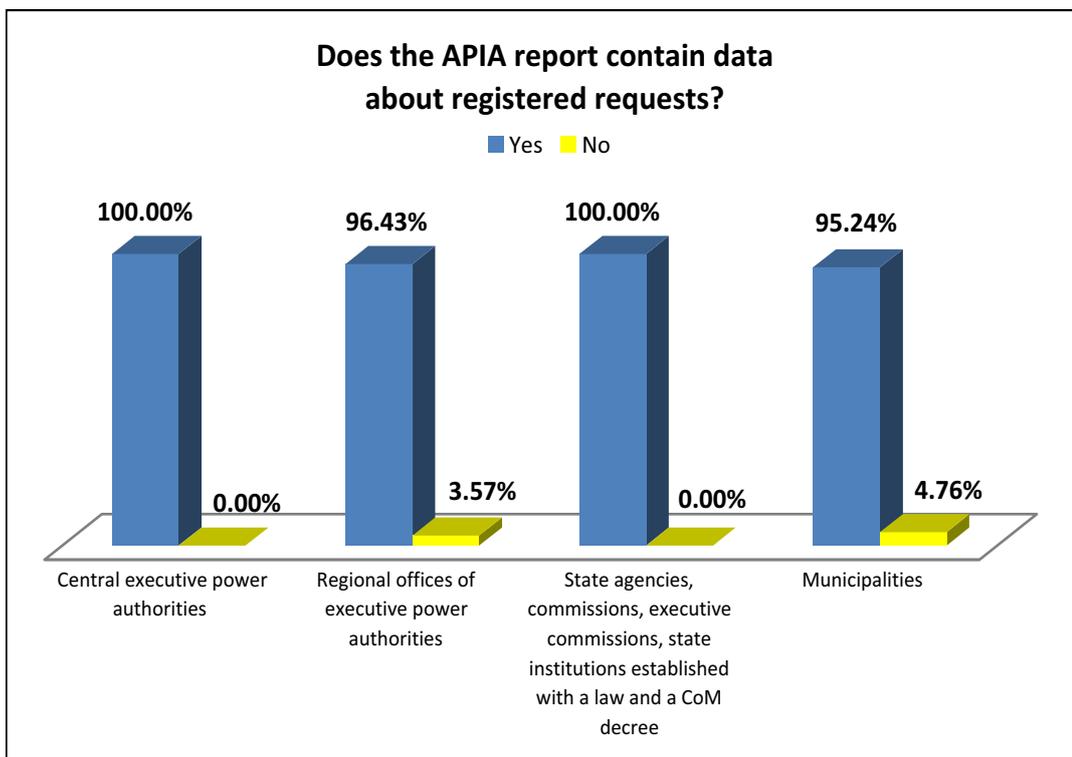


Chart 52. Does the APIA implementation report contain data about refusals on information requests?

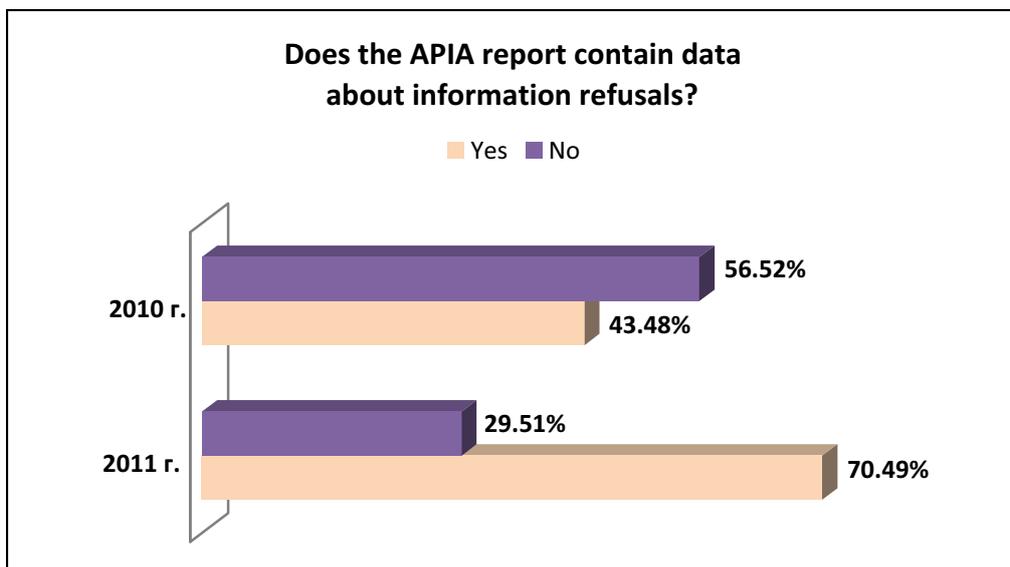


Chart 53. Does the APIA implementation report contain data about refusals on information requests? (by type of public body - 2011)

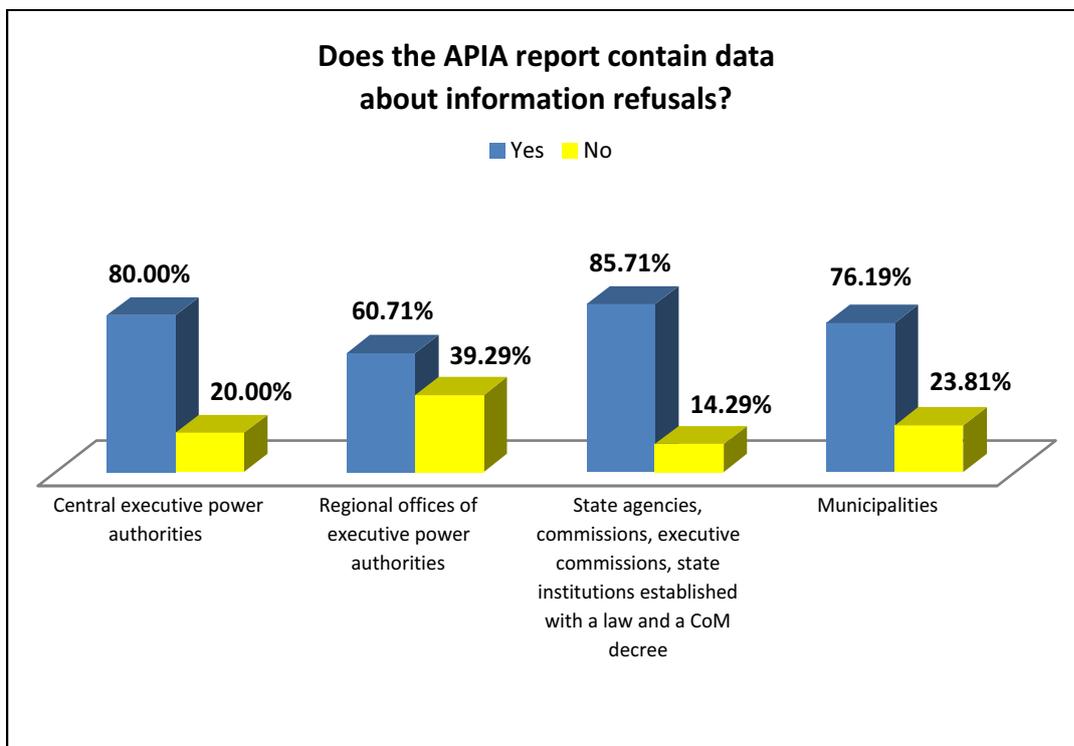


Chart 54. Does the APIA implementation report contain data about grounds on which information refusals were made?

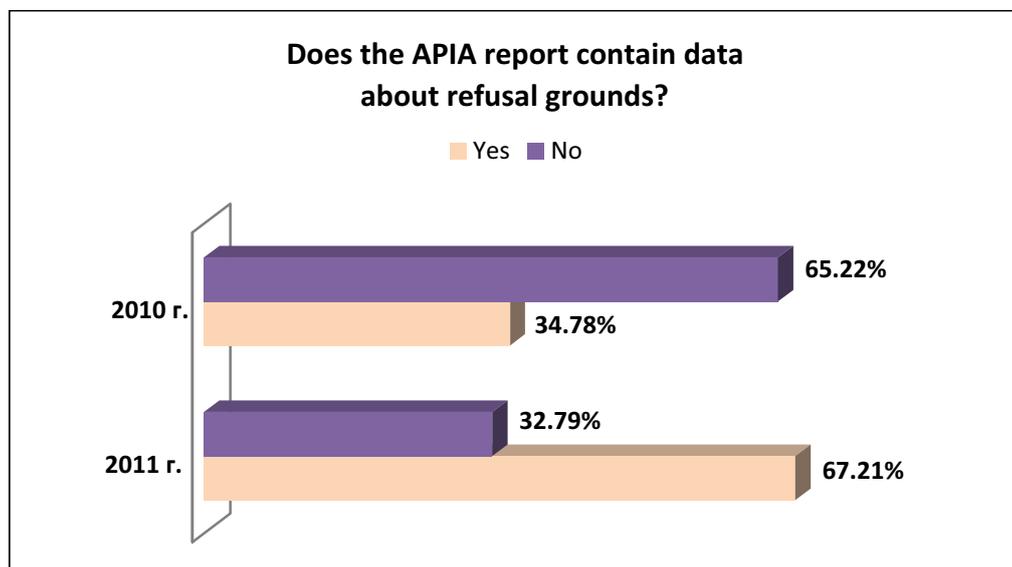
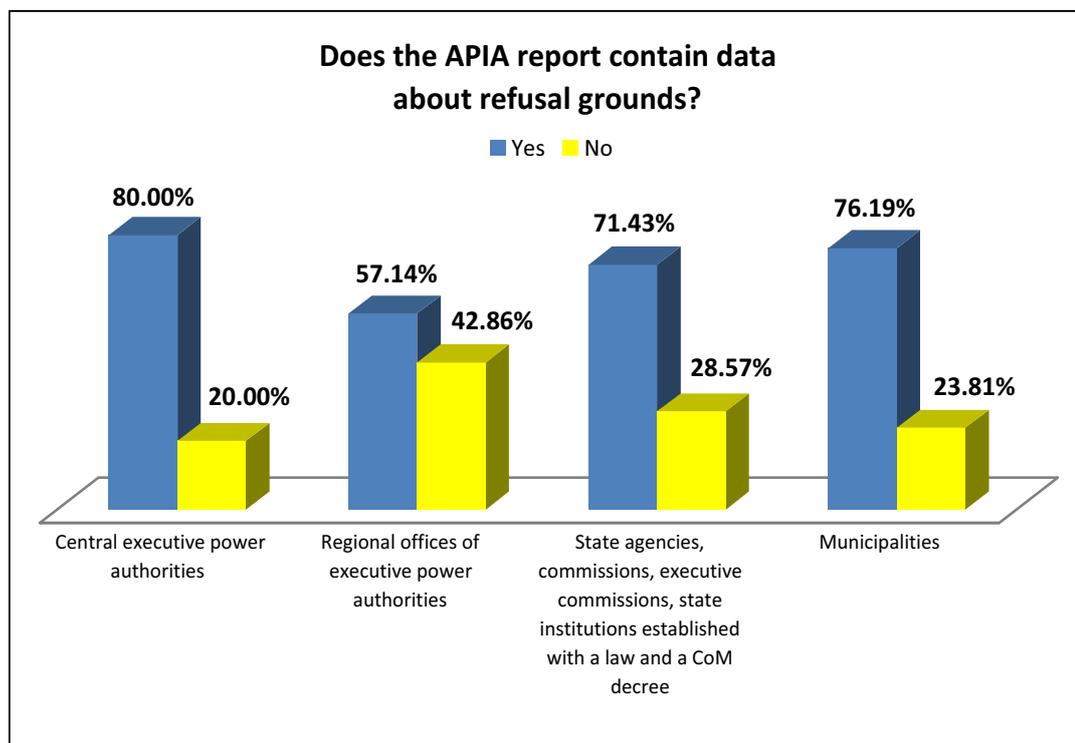


Chart 55. Does the APIA implementation report contain data about grounds on which information refusals were made? (by type of public body - 2011)



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?

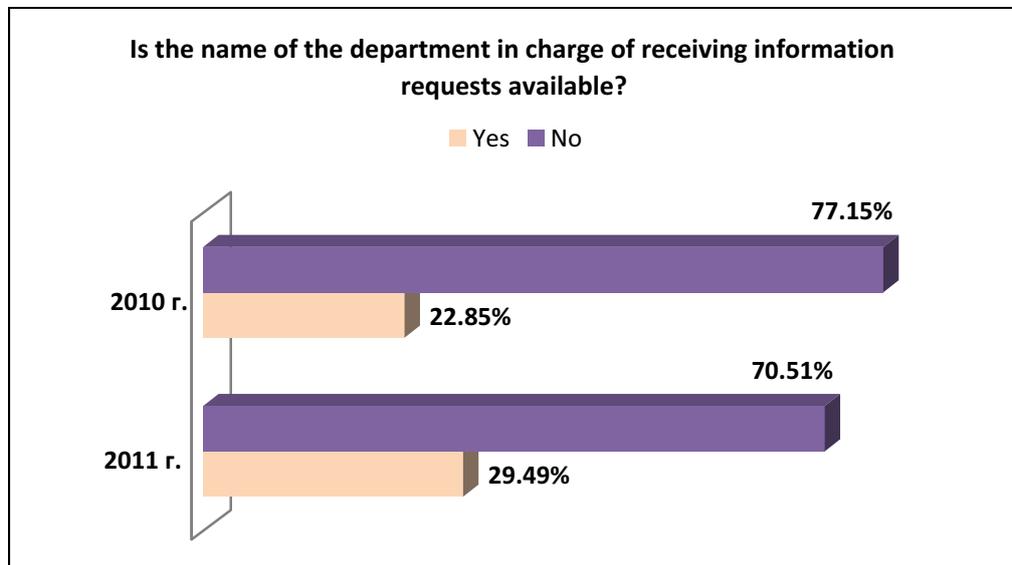


Chart 57. Contact information of the APIA department - name? (by type of public body - 2011)

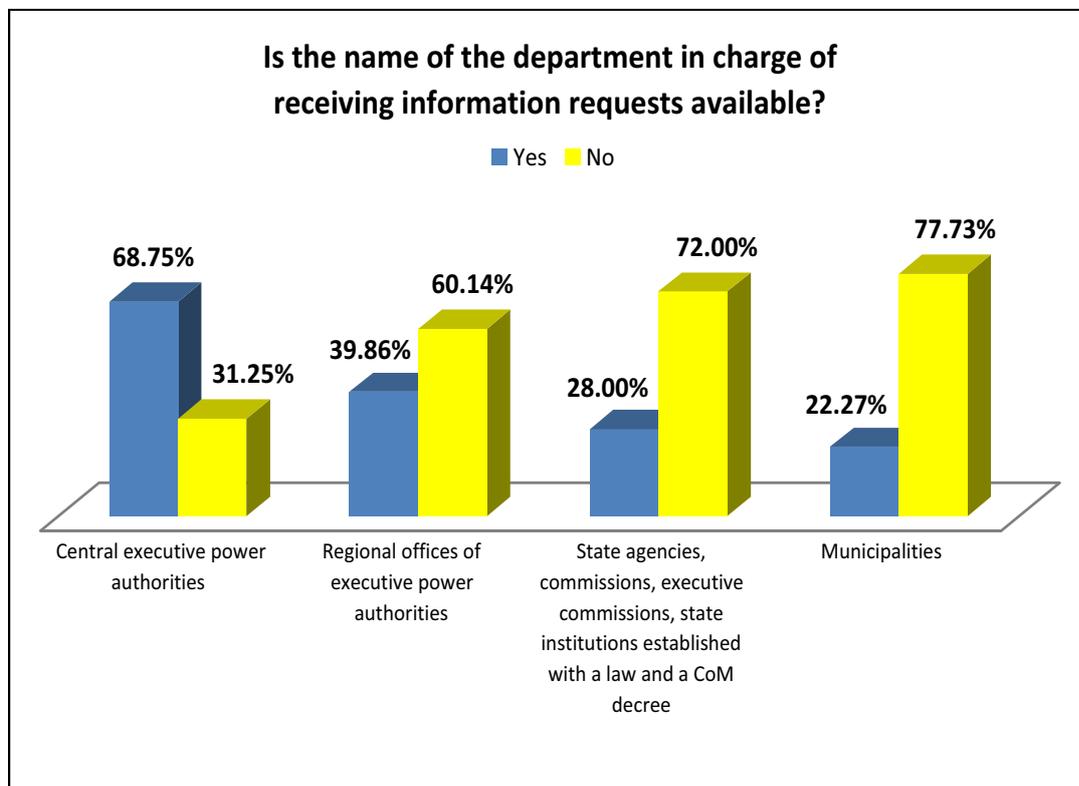


Chart 58. Contact information of the APIA department - phone number?

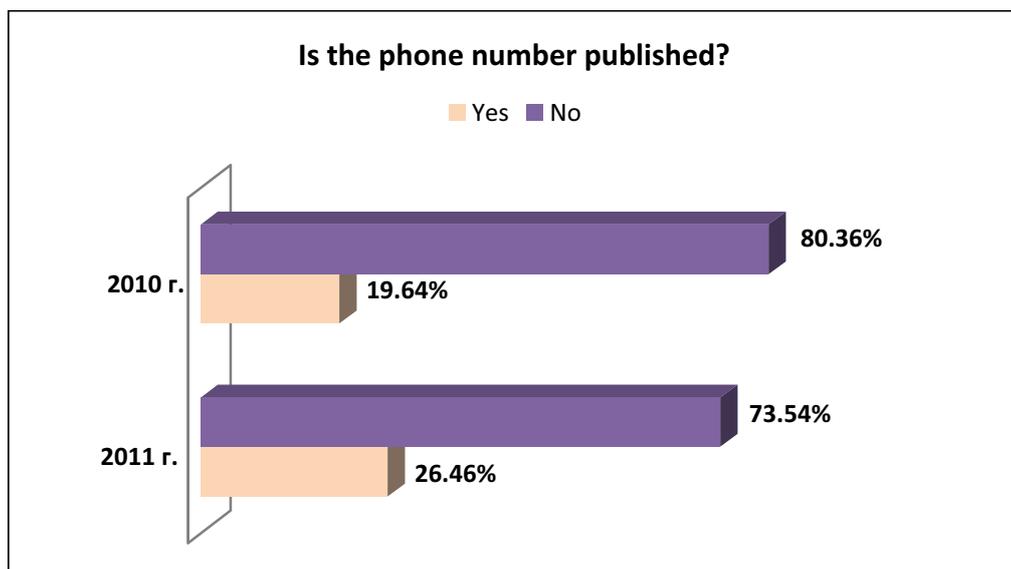


Chart 59. Contact information of the APIA department - phone number? (by type of public body - 2011)

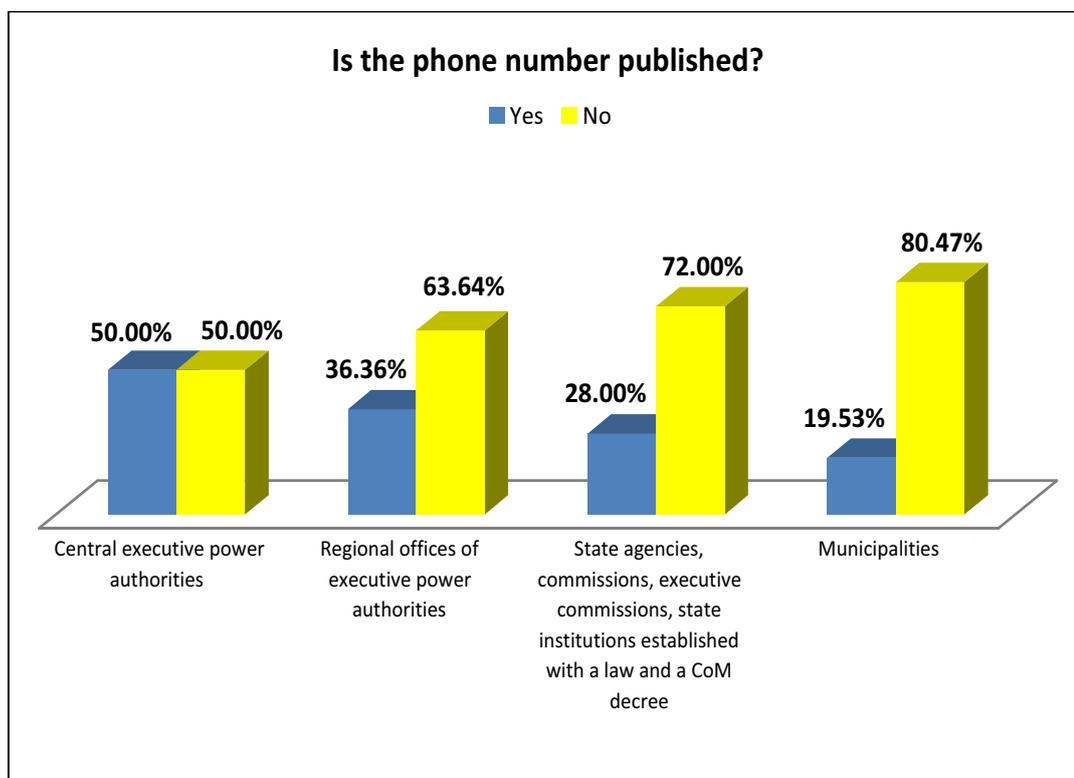


Chart 60. Contact information of the APIA department - responsible official?

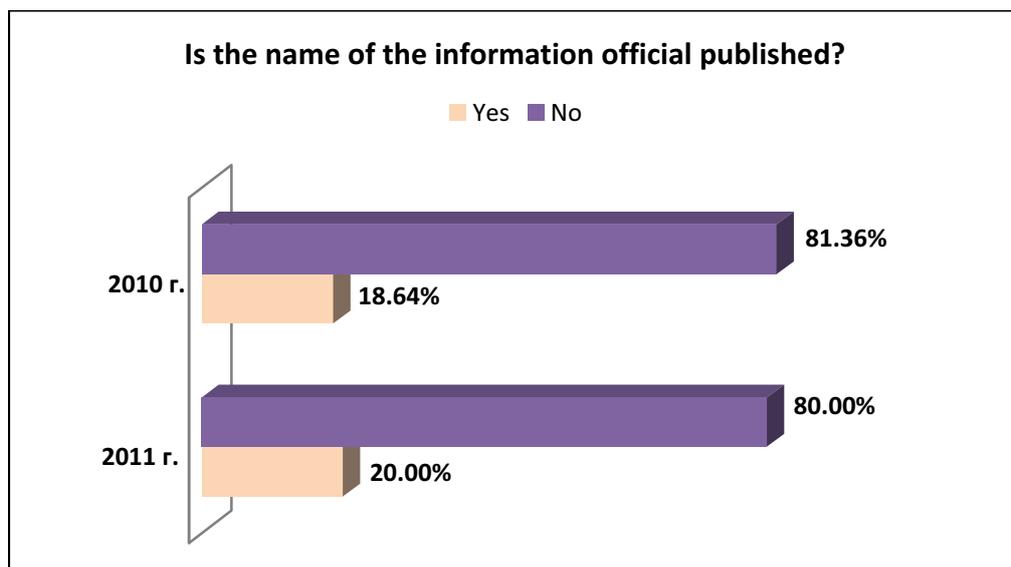


Chart 61. Contact information of the APIA department - responsible official?
(by type of public body - 2011)

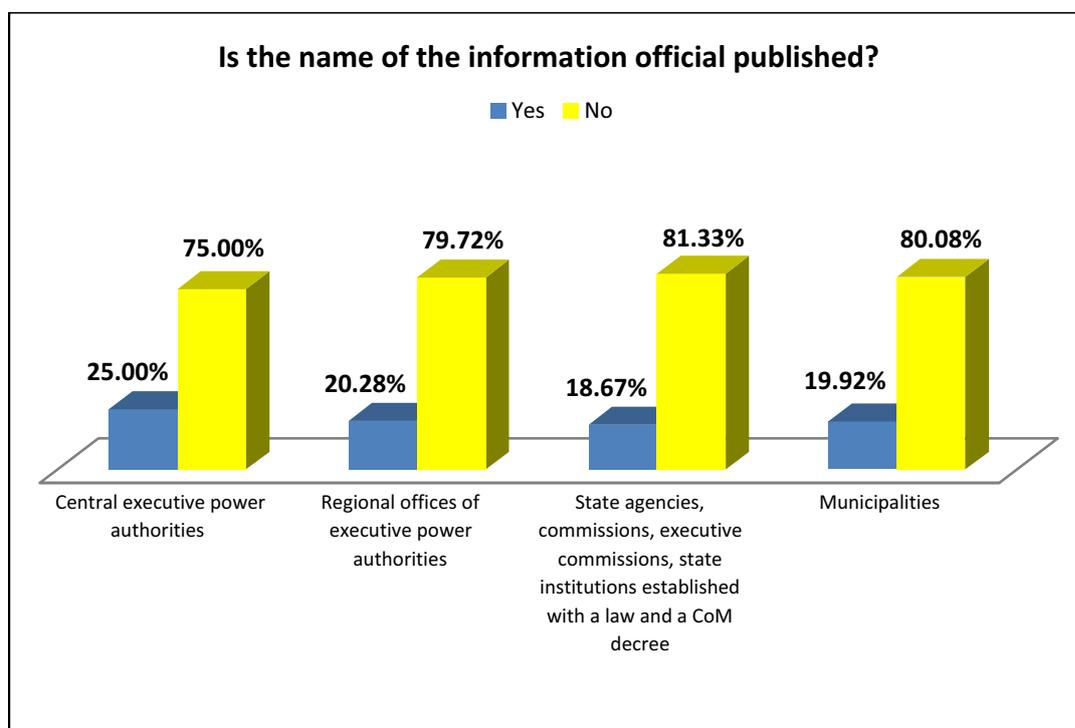


Chart 62. Contact information of the APIA department - e-mail address?

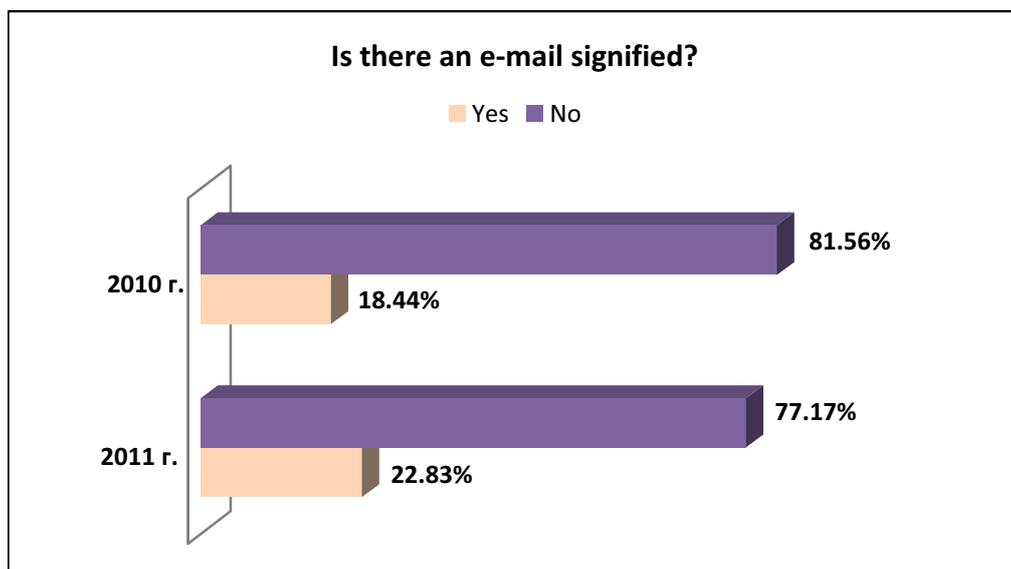


Chart 63. Contact information of the APIA department - e-mail address?
(by type of public body - 2011)

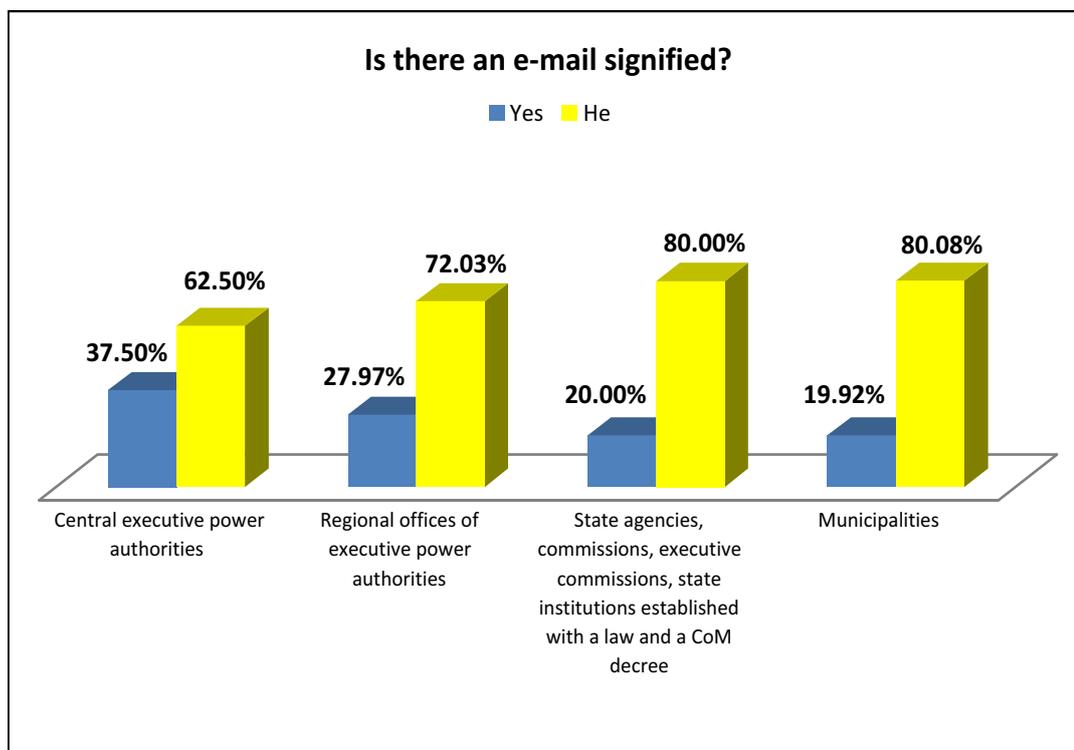


Chart 64. Contact information of the APIA department - address?

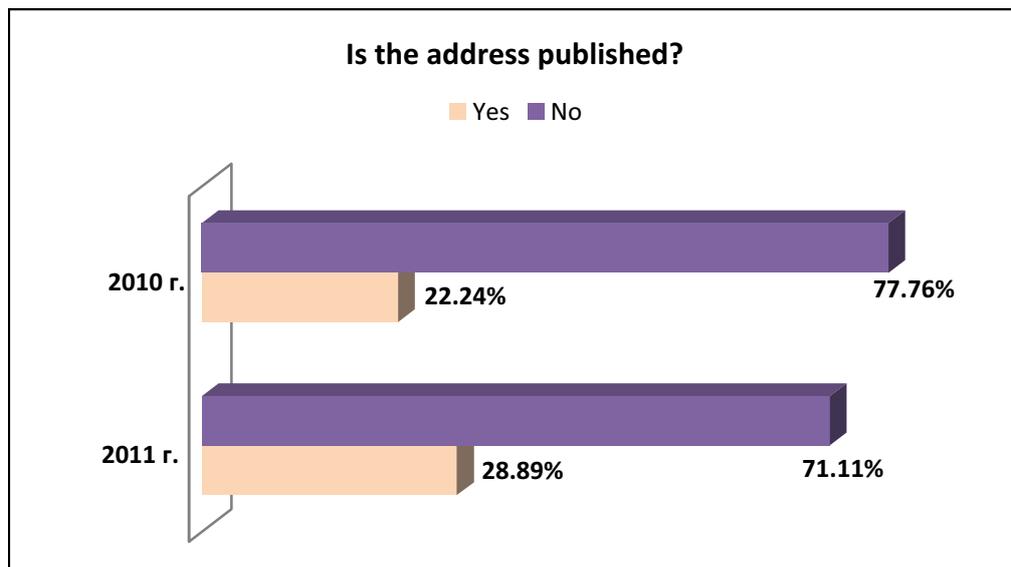


Chart 65. Contact information of the APIA department - address?
(by type of public body - 2011)

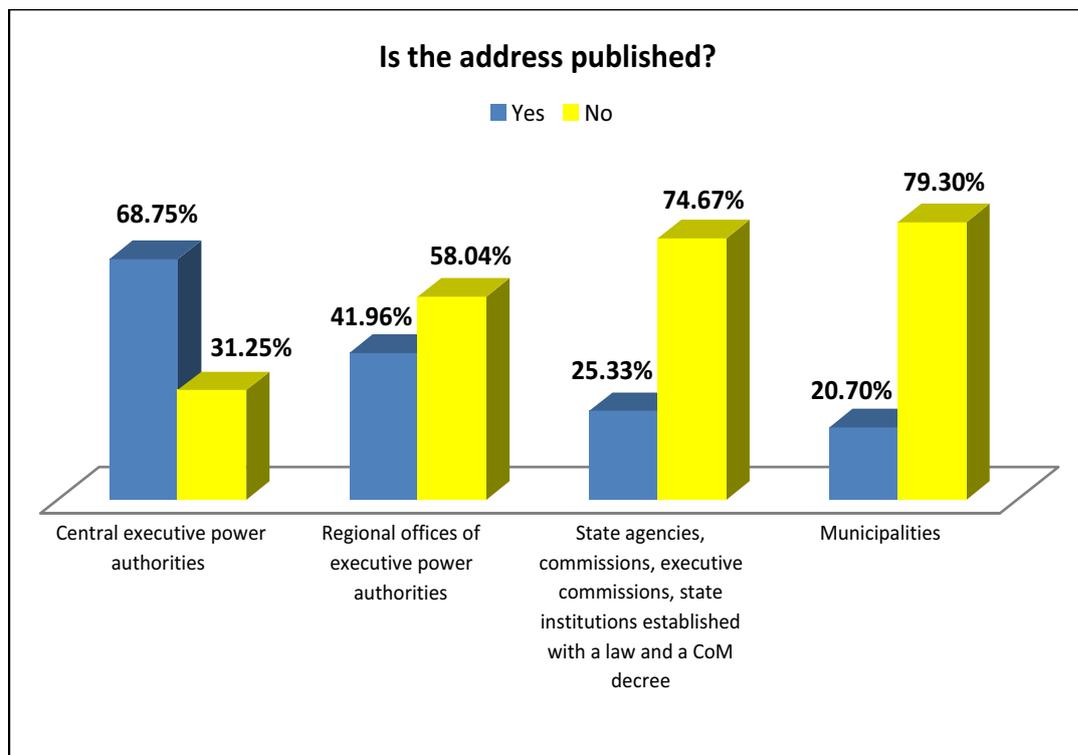


Chart 66. Contact information of the APIA department - working hours?

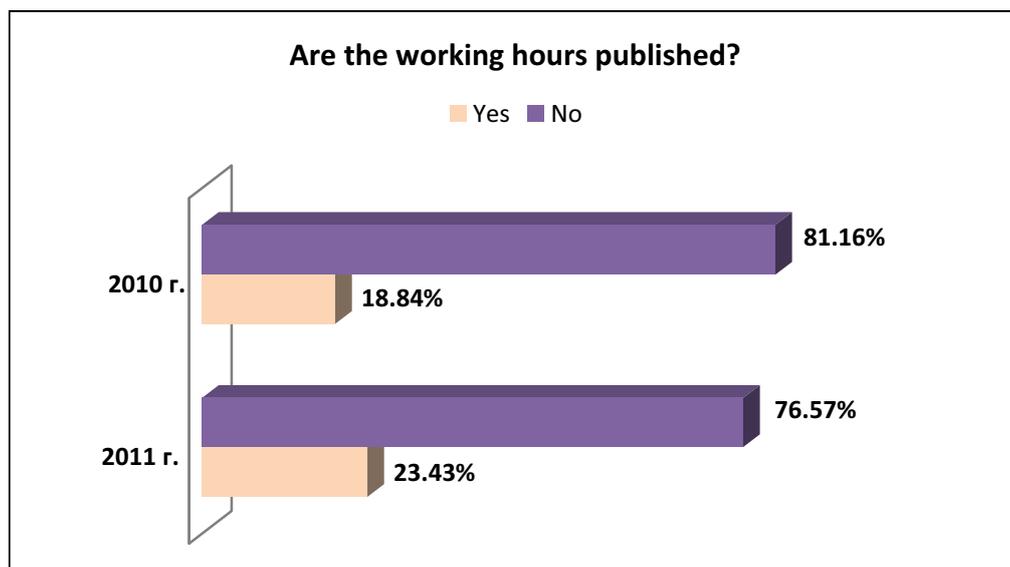
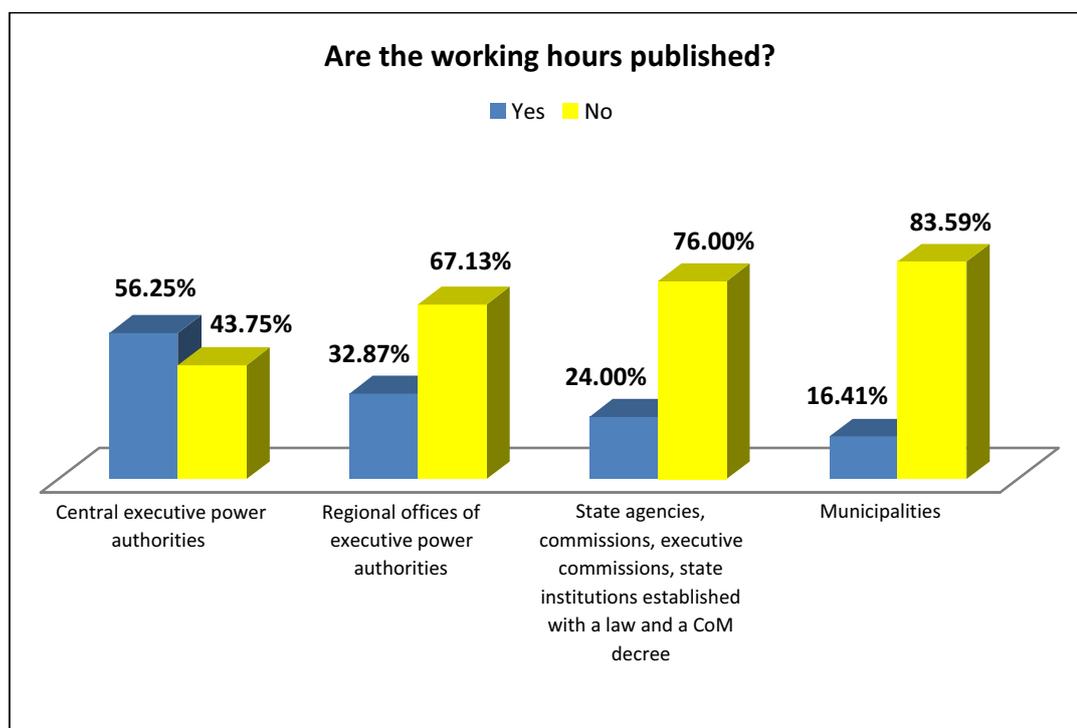


Chart 67. Contact information of the APIA department - working hours? (by type of public body - 2011)



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

Chart 68. List of declassified documents?

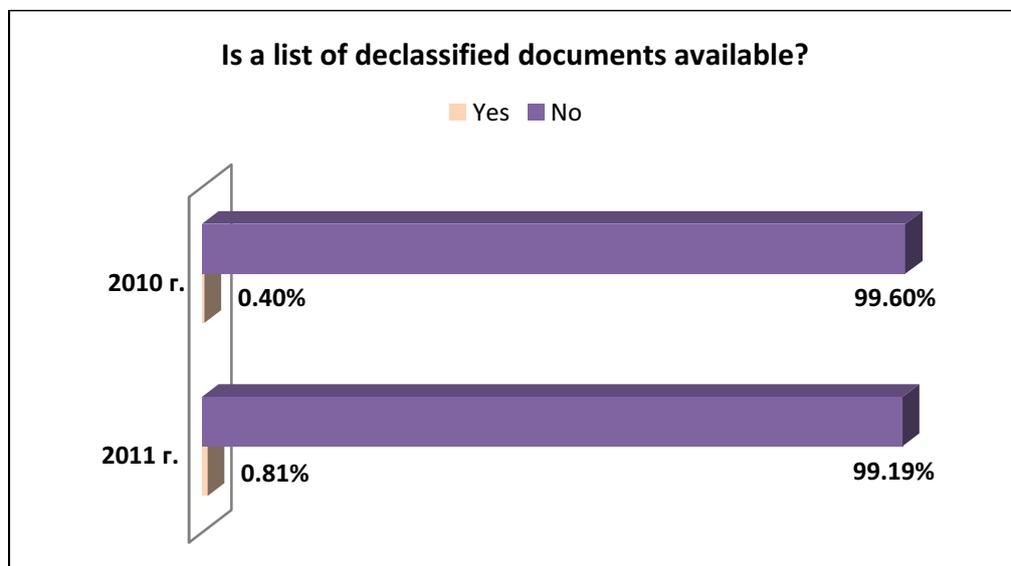


Chart 69. List of declassified documents?
(by type of public body - 2011)

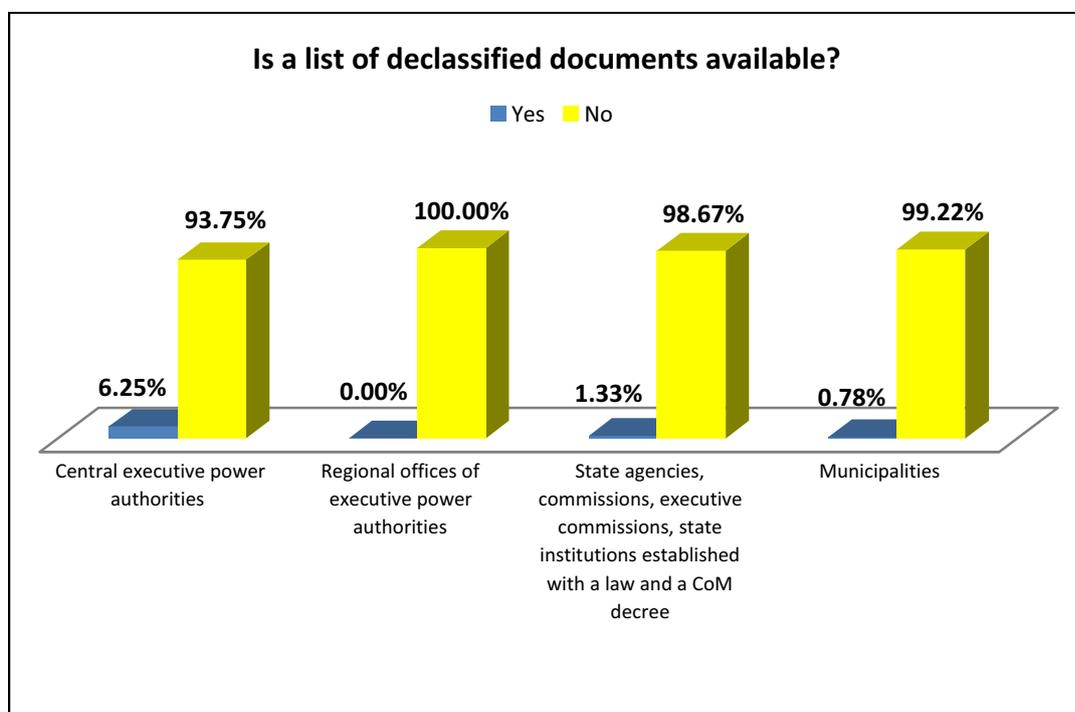


Chart 70. List of the categories of information subject to classification as official secret?

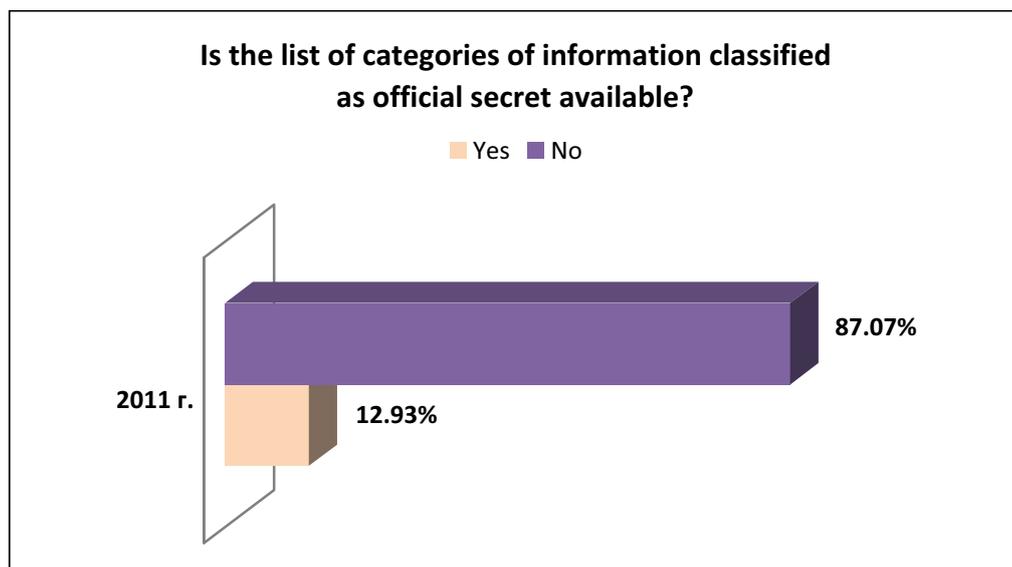
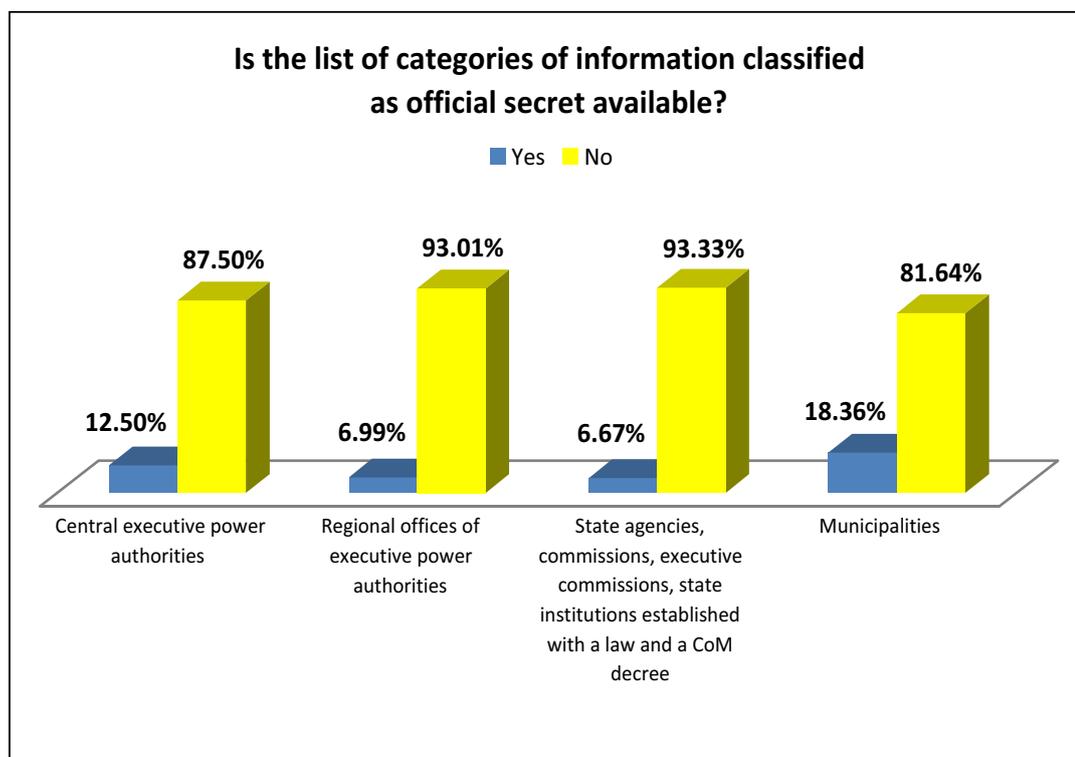


Chart 71. List of the categories of information subject to classification as official secret? (by type of public body - 2011)



Response to Electronic Requests

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

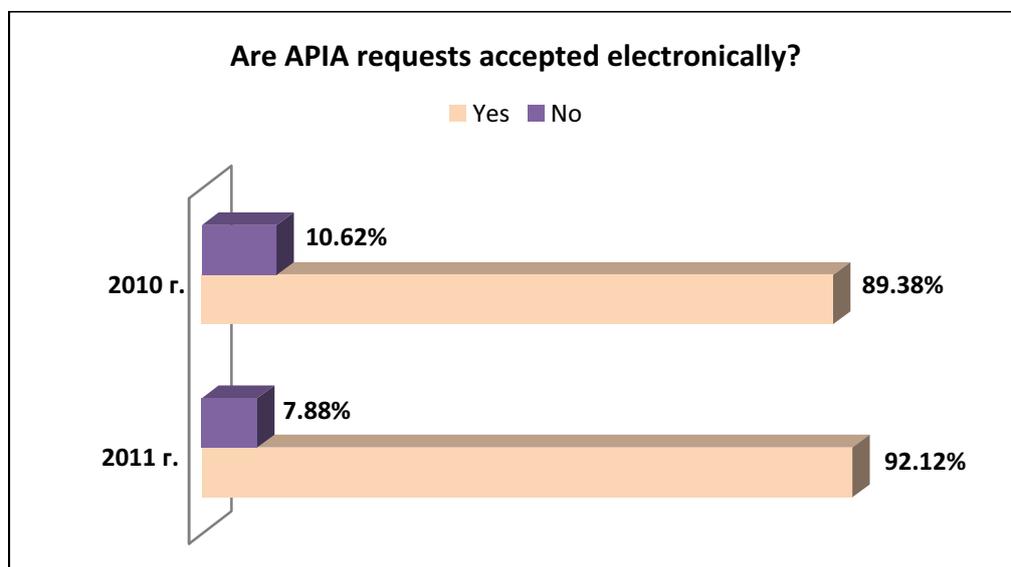


Chart 73. Are access to public information requests accepted electronically? (by type of public body - 2011)

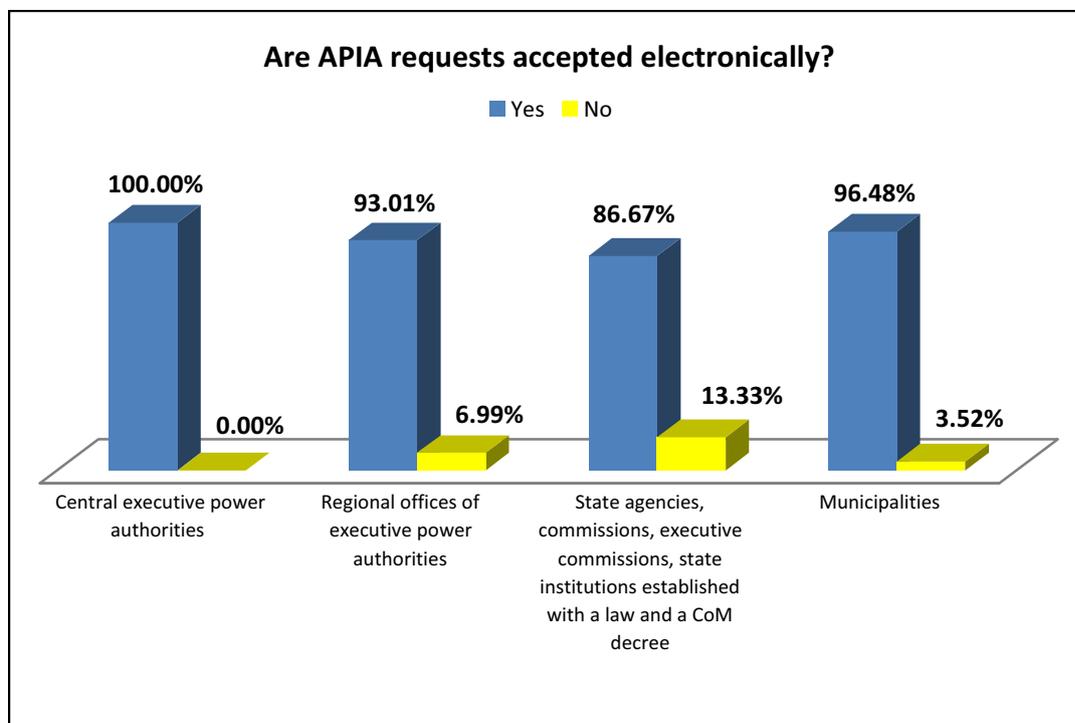


Chart 74. Is an electronic signature required for filing information request electronically?

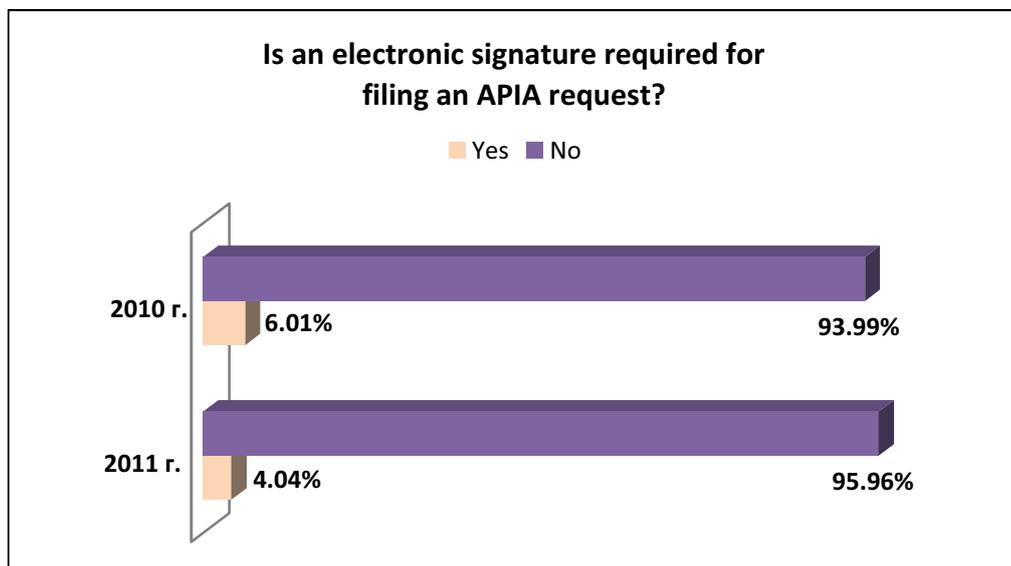


Chart 75. Is an electronic signature required for filing information request electronically? (by type of public body - 2011)

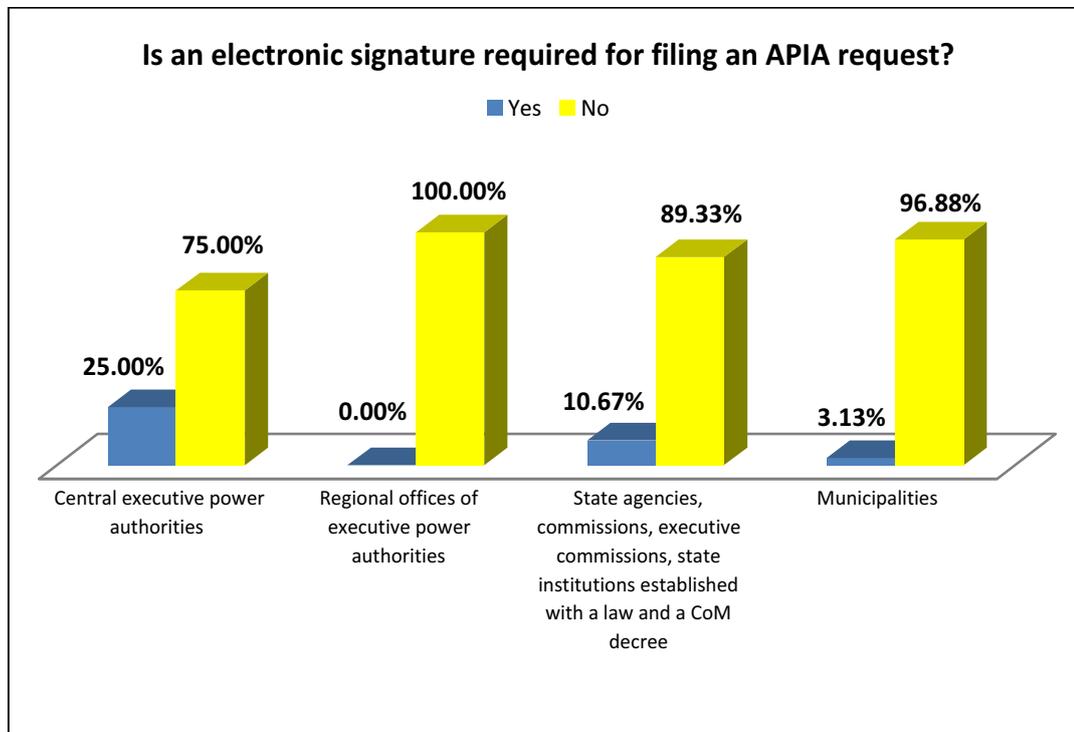
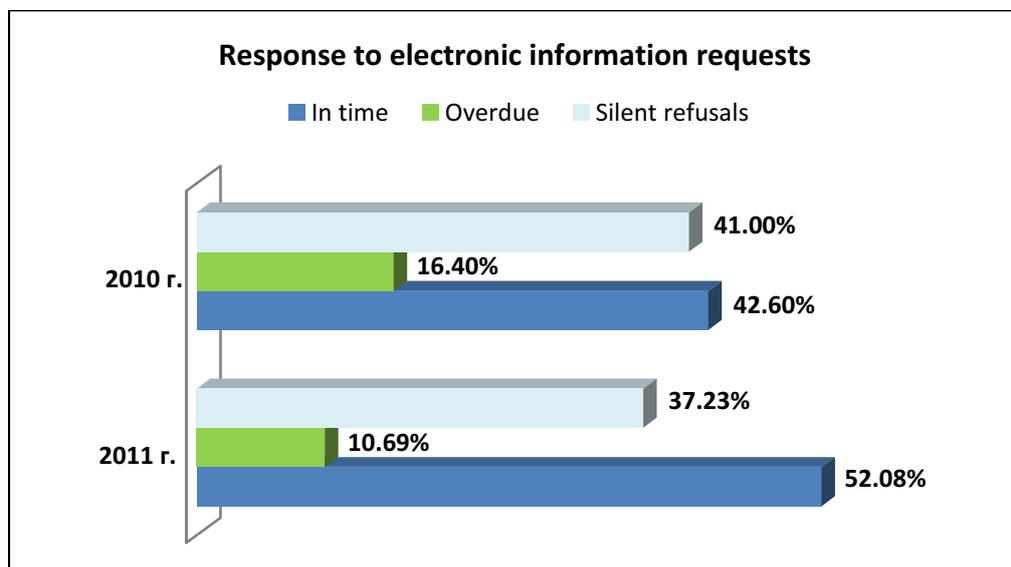
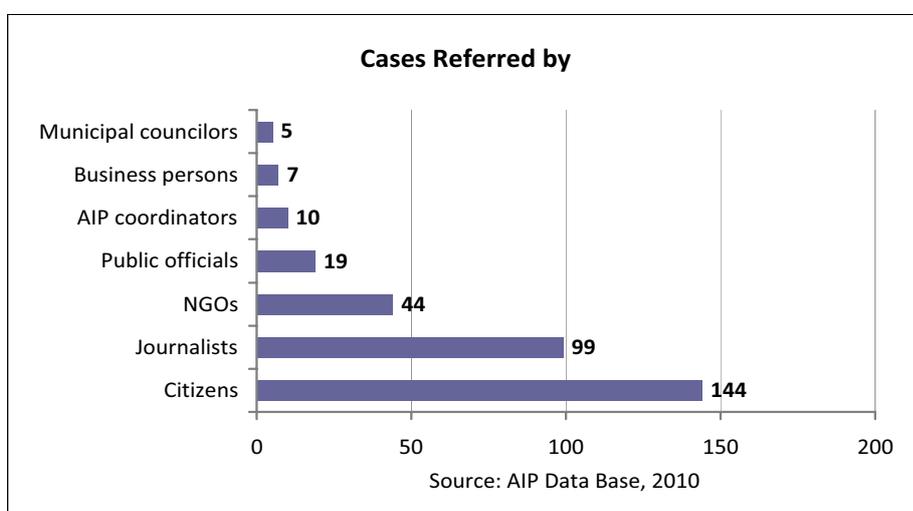
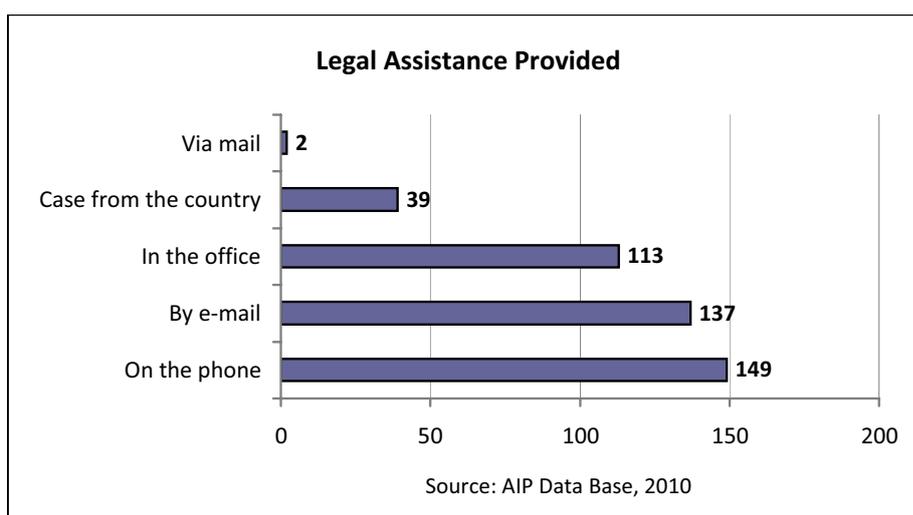
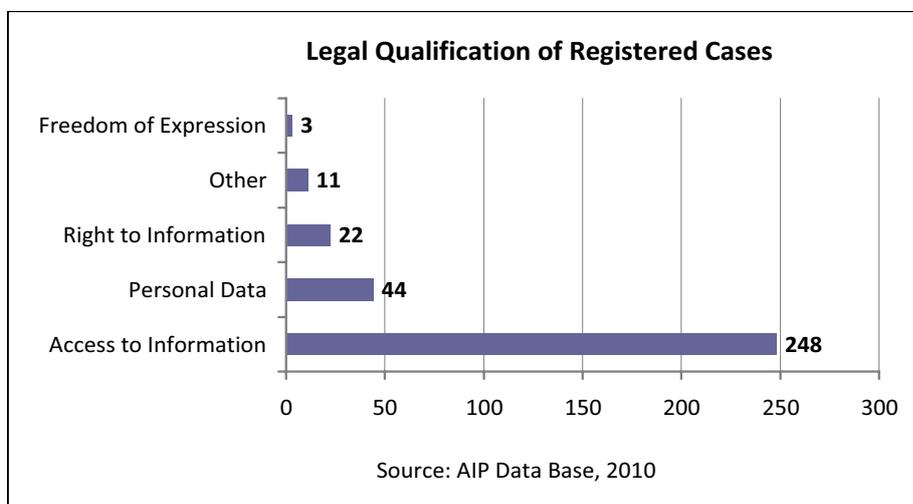


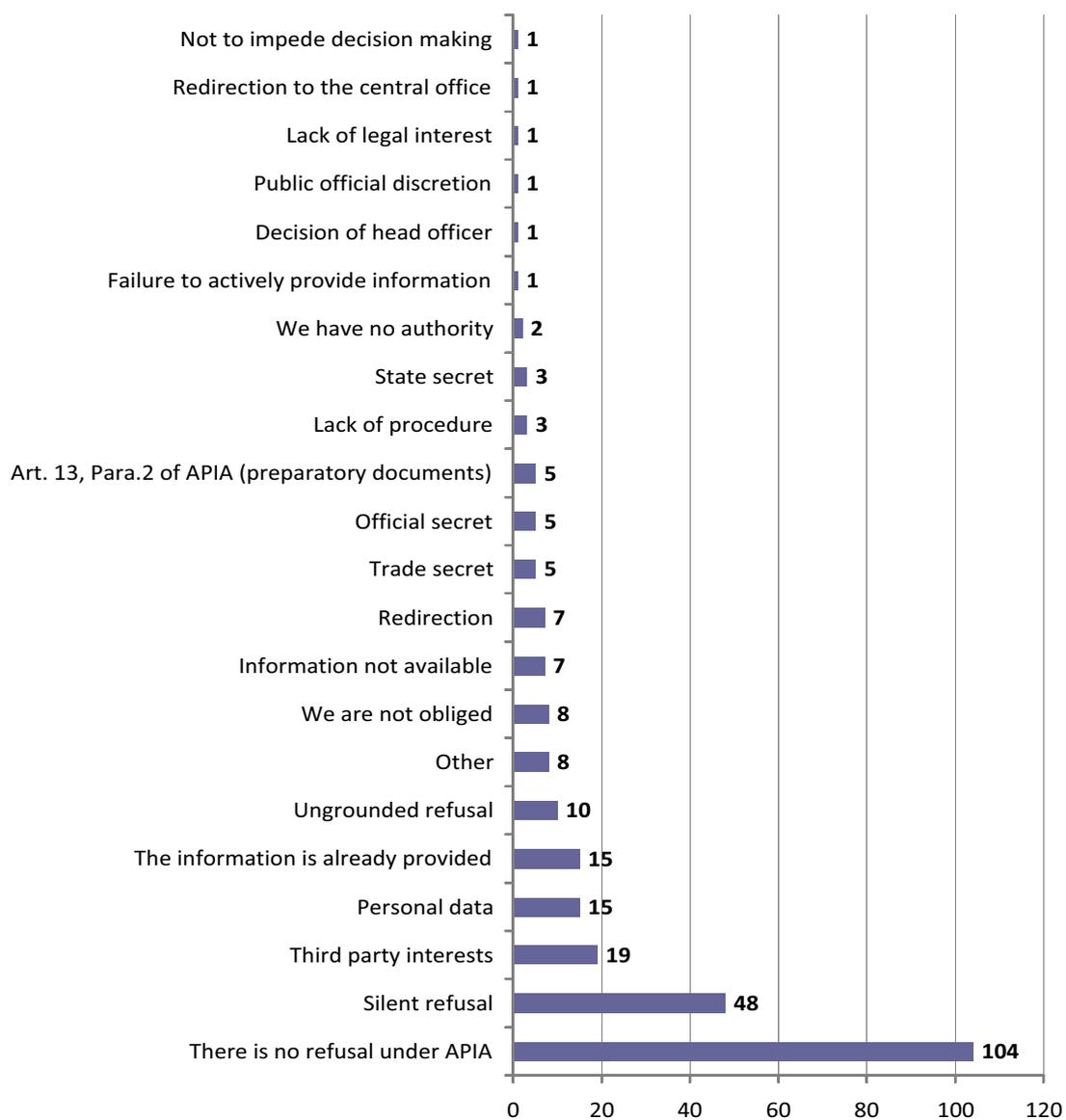
Chart 76. Response rate to access to information requests filed electronically
2010 - 2011



APPENDIX 2 STATISTICS FROM ACCESS TO INFORMATION PROGRAMME ELECTRONIC DATA BASE

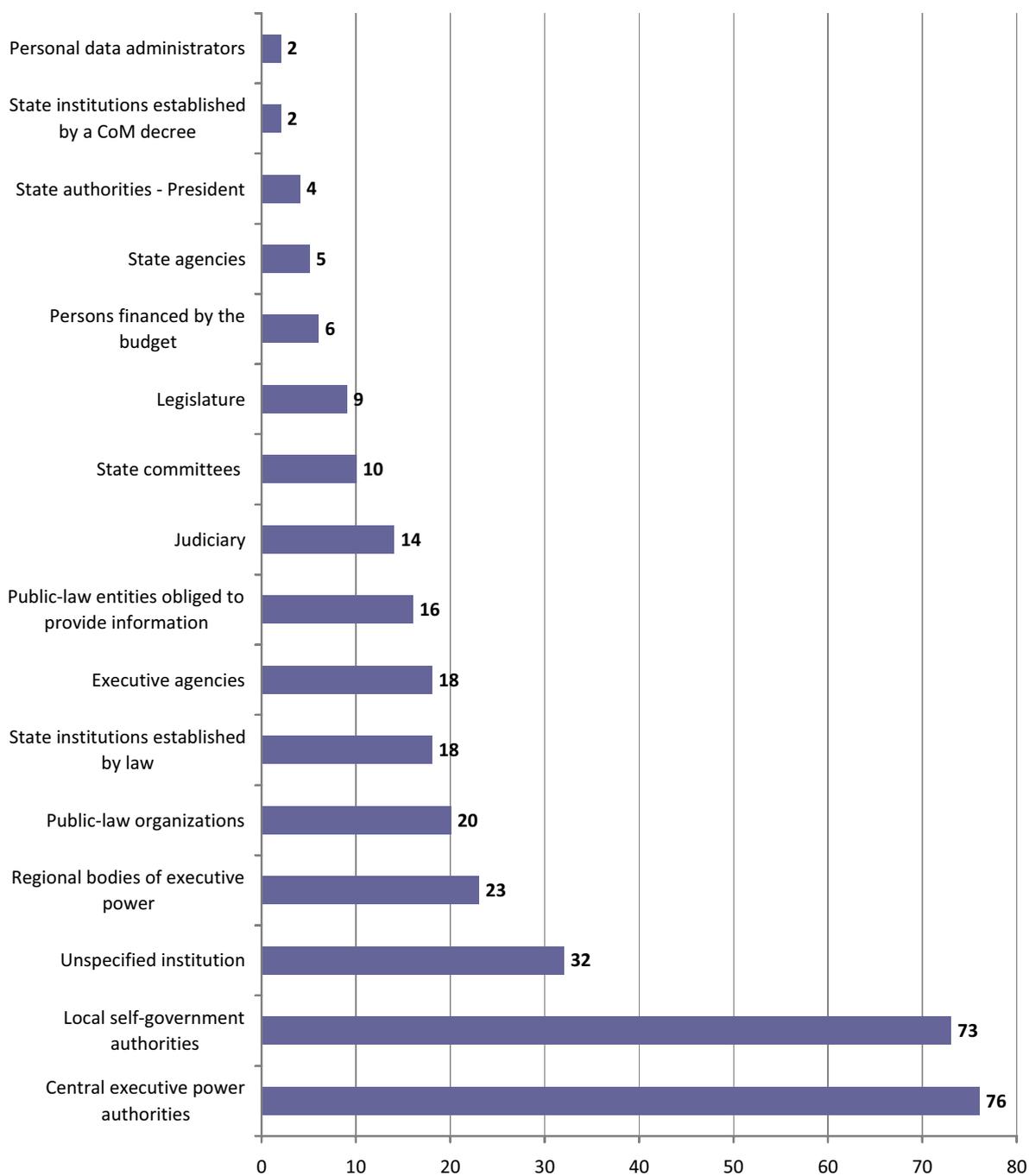


Grounds for Refusal



Source: AIP Data Base, 2010. Data refer to the total number of cases related to access to information.

Institutions where information is sought



Source: AIP Data Base, 2010

APPENDIX 3

LITIGATION CASE NOTES

1. Bulgarian Helsinki Committee vs. the Ministry of Justice

First Instance Court - administrative case No. 4858/2009, ACSC, First division, 19th panel

Second Instance Court - administrative case No. 3051/2010, SAC, Fifth division

Request:

In June 2009, the Bulgarian Helsinki Committee (BHC) requested the reports of the Inspectorate within the Ministry of Justice (MoJ) on the inspections of prisons which took place in 2007 and 2008. The BHC was particularly interested what were the findings in the reports about the living conditions in prisons, the state of medical care in prisons, and the work conditions of inmates.

Refusal:

The public servant responsible for the provision of access to information in the MoJ sought the opinion of the director of Execution of Sentences Directorate within the Ministry. He had not allowed access to the reports on the ground that the BHC team had free access to the prisons. Therefore, they could form an opinion of the matters of their interest. Having in mind these considerations, the MoJ decided that the reports of the Inspectorate were for official use only and had recommendatory character and did not constitute public information within the meaning of the Access to Public Information Act (APIA). Therefore, access was denied.

Complaint:

The refusal was challenged before the Administrative Court Sofia City (ACSC). The complainant stated that the reports on the inspections were not internal acts and had independent significance.

Developments in 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. 106 as of November 24, 2009, a panel of the ACSC dismissed the complaint. The Court held that the reports had no significance in themselves, and the findings and recommendations therein were the basis to issue a final act of the Minister of Justice, therefore the refusal was correctly grounded in Art. 3, Para. 2, Item 1 of the APIA.

Court Appeal:

The decision of the ACSC was appealed by the BHC with the help of Access to Information Programme (AIP) before the Supreme Administrative Court (SAC). In the complaint it was pointed out that the reports compile two parts - findings on specific problems and recommendations aiming at the adoption of a final act. The exemption under Art. 13, Para. 2, Item 1 of the APIA does not cover the factual findings made during the inspection.

Developments in the Court of Second Instance:

The case was heard in an open session on November 10, 2010 and was scheduled for judgment.

Court Decision:

With a decision No. 15158 as of December 10, 2010 a panel of the SAC overrode the decision of the First Instance and repealed the decision of the MoJ. The justices agreed with the complainant that the reports contained not only recommendations to the Minister, but also findings of facts made during the inspections. According to the Court, these findings have an independent significance because they reflect the current situations in the places of deprivation of liberty at the time of the inspection. This situation does not depend on the opinions and the recommendations of the controllers and cannot be changed by subsequent acts. The Court also stressed on the fact that the MoJ never presented the final act adopted on the basis of the reports. According to the Court, the exemption under Art. 13 of the APIA aims to restrict access to official information only in cases where it is connected to the preparation of an act and the public can access the final act itself. On the contrary, when final act, incorporating this internal information has never been adopted, access to it could not be denied on the ground of Art. 13, because it would be absolutely impossible for the public to access the information.

2. William Popov vs. The Ministry of Emergency Situations

First Instance Court - administrative case No. 8978/2009, SAC, Fifth division

Second Instance Court - administrative case No. 13930/2010, SAC, Five member panel

Request:

On May 7, 2009, William Popov filed a request to the Ministry of Emergency Situations (MES) for the contract for the design, construction, and maintenance of the Aerospace Observation Center between „Kontrax“ Company and the MES. He also requested information about the performance of the contract.

Refusal:

With a letter as of May 27, 2009 the MES notified the requestor of the extension of the period for responding to the request because of the substantial volume of the information sought. With a decision as of June 5, 2009 the Ministry granted access to the information in the form of consultation. All financial information of the cost of the Center was provided, including cost of „equipment for receiving visual information in real time from the point of crisis.“ Thanks to this equipment the Prime Minister and the Minister had the opportunity to watch in real time the rescuing of a drowning man in Pancharevo Lake. Access to the rest of the information was denied on the ground that pursuant to the APIA, a requestor may only seek access to information but not access to documents.

Complaint:

The partial refusal was challenged before the SAC with the AIP help. The complainant argued that the requested documents related directly to the activities of the MES and that the obliged authority wrongly held that the APIA does not provide for access to specific documents, but only to information.

Developments in the Court of First Instance:

At the first open hearing, the case was adjourned in order to enable the constitution of the Ministry of Interior (MoI) as a party (in the meantime the MES was closed, and the MoI was its successor). In June 2009, the case was heard in an open court session and was scheduled for judgment.

Court Decision:

With a Decision No. 10529 as of September 8, 2010, the SAC dismissed the complaint on the ground that there was no description of the information sought in the request.

Court Appeal:

The decision was appealed before a five-member panel of the SAC. The complaint stated that there is a well established judicial practice on the question that people can seek access to documents under the APIA. Relevant case-law of the SAC was cited - when the Court found that the request for a specific document is a valid request for access to information.

Developments in the Court of Second Instance:

The case was heard in an open court session in January 2011 and was scheduled for judgment.

Court Decision:

With a Decision No. 2761 as of February 23, 2011, a panel of the SAC revoked the decision of the First Instance. The Justices found that the three-member panel wrongly held that access may be refused if the requestor pointed a specific document and did not simply describe the information. The law defines „public information“ as any information relating to the public life and which enables the citizens to form their own opinion on the activities of the obliged authorities. The information sought falls under this definition. Furthermore, the APIA exhaustively enumerates the exemptions of the right of access and the one the refusal was grounded in is not on the list. The obligation for provision of the information does not depend on the material carrier. The material carrier of the information - in the specific case the document, is not being requested for its material subject but for its information content.

3. Dancho Zaverdjiev vs. the Municipality of Lovech

First Instance Court - administrative case No. 196/2010, Administrative Court - Lovech

Request:

On August 10, 2010, Dancho Zaverdjiev requested a copy of the contract between the Municipality of Lovech and a private company for construction works and maintenance under the project „Improvement of the physical and vital environment in the municipality of Lovech.“

Refusal:

With a decision as of August 16, 2010 the mayor refused access on the ground that the information was protected as trade secret and its disclosure would bring to unfair competition between business persons. Furthermore, the refusal was based on the lack of consent to provide the information of the third person (the company) concerned.

Complaint:

The refusal was challenged before the Administrative Court - Lovech with the AIP help. The complainant stated that the mayor should have considered the arguments of the private company with regard to the existence of a confidentiality clause in the agreement, but he should also have carried out a balance of interest test before deciding to deny access to the information.

Developments in the Court of First Instance:

The case was heard in an open court session on January 27, 2011 and was scheduled for judgment.

Court Decision:

With a decision as of February 2011, a panel of the court repealed the refusal and compelled the mayor to provide the information. The court pointed out that the refusal was not grounded in any specific circumstances showing that disclosure of the information would result in unfair competition. The court held that even if disclosure would result in unfair competition the public authority is required to assess the public interest and if such is present - to provide the information because the public interest overrides the trade secret exemption. According to the court, in this case there was undoubtedly overriding public interest because the request was for a contract, signed after a public procurement procedure, containing information about the parties, the cost, subcontractors, terms and penalties. The court stated that under Art. 31, Para. 5 of the APIA the consent of the third party to provide the information was not required because there was an overriding public interest in its disclosure. Therefore, the lack of the third party consent was irrelevant to the case and was not a lawful ground for refusal.

4. Zornitsa Stratieva vs. the National Construction Control Directorate

First Instance Court - administrative case No. 2261/2010, ACSC, Second division, 25th panel

Request:

On January 25, 2010, Zornitsa Stratieva filed a request to the National Construction Control Directorate (NCCD). She sought information on the construction of a chair lift in the Rila Mountain, precisely three ordinances of the Deputy Chief related to the activity of the State Acceptance Committee and the Protocol establishing the safety of the lift.

Refusal:

With a decision as of February 2010, the Chief Secretary of the NCCD refused access to the information on the ground that the information relates to the preparatory work of an act and has no significance in itself, therefore falls under the exemption of Art. 13, Para. 2 of the APIA.

Complaint:

The refusal was challenged before the ACSC. The complainant stated that the information sought relates to the environment, consequently its disclosure should have been assessed under the Environment Protection Act (EPA), which is special law with regard to the APIA.

The information is environmental because the construction and the exploitation of the chair lift will affect the environment within the meaning of Art. 19, Item 2 of the EPA which defines „information about the environment.“ The refusal grounded on the exemption of preparatory documents is unlawful because the EPA does not provide for such an exemption. When environmental information is sought the procedure for granting or refusing access to it is set forth by the EPA. To this procedure apply only the exemptions under Art. 20, Para. 1 of the EPA, and the preparatory documents exemption is not among them, therefore it was inapplicable to this case.

Developments in the Court of First Instance:

The case was heard in an open court session on May 10, 2010 and was scheduled for judgment.

Court decision:

With a Decision 2455 as of July 19, 2010, a panel of the ACSC repealed the refusal and compelled the Chief Secretary of the NCCD to grant access to the information. The court held that acts of public authorities are official information within the meaning of Art. 10 of the APIA and access to it cannot be restricted, this is especially so because there was an overriding public interest in the disclosure.

With a decision as of August 23, 2010, the Chief Secretary granted full access to the information sought.

5. Ivailo Hlebarov vs. the Sofia Municipality

First Instance Court - administrative case No. 1003/2008, ACSC, Second Division, 31st panel

Second Instance Court - administrative case No. 11136/2009, SAC, Fifth Division

Request:

On December 10, 2008, Ivailo Hlebarov (member of the Environmental Association *For the Earth*) filed an access to information request to the mayor of Sofia Municipality. The applicant requested a copy of the contract for *Prefeasibility Study* and accompanying documents for the project *Waste Management of Sofia Municipality* financed by EU funds, signed on October 24, 2007 between the Sofia Municipality and a consortium of three companies after a public procurement procedure.

Refusal:

The competent authority has not issued a decision upon the request within the 14-days time limit set forth by the APIA.

Complaint:

The silent refusal was challenged before the ACSC. The complaint stated that the APIA requires the competent authority to issue an explicit decision when refusing access to the information stating the legal and factual grounds for the refusal. It was pointed out that the information sought relates to the public life and enables the citizens to form their own

opinion on the activities of the municipality. Furthermore, none of the restrictions of the right to information was applicable.

Developments in the Court of First Instance:

During the court proceedings, the municipality presented a letter from the consortium explicitly refusing to give its consent to provide the documents as it considered them confidential. At the public court hearing on May 18, 2009, the representative of the municipality argued that access to the documents shall be refused because the third person concerned (the consortium) did not consent to make the information public. The complainant claimed that such consent is not necessary as the activities in performance of the contract were entirely funded by the municipal budget. Therefore, the tax-payers were entitled to access and scrutinize the contract. For that reason, the third party (the consortium) became an obliged body under the APIA within the meaning of Art. 3, Para. 2, Item 2 of the APIA as a legal entity whose activities are financed with funds from the consolidated state budget. Furthermore, in this case there is a clearly overriding public interest in disclosing the information as it would undoubtedly increase transparency and accountability of the municipality in the waste management - a very burning issue for the Sofia residents.

Court decision:

With a decision as of June 8, 2009, a panel of the ACSC repealed the refusal and returned the case to the Sofia Municipality for reconsideration. The court held that the only consistent with the APIA way to proceed with requests is to issue a motivated decision granting or refusing access and the obliged authority is required to notify the requestor about it.

Court appeal:

The Sofia Municipality appealed the decision on the grounds that the information sought affects the interest of a third party who did not consent to grant access to it.

Developments in the Court of Second instance:

With a ruling as of April 29, 2010, the SAC sent back the case to the ACSC to correct an obvious error in fact - the name of the complainant and the number of the case file were mistaken in the decision. In May 2010, the court of first instance fixed the error. In October 2010, the case was heard in an open court session and was scheduled for judgment.

Court Decision:

With a Decision 14896 as of 7 December, 2010, the SAC rejected the appeal of the municipality and upheld the decision of the first instance. The justices grounded their decision in the fact that even in a case where the third party's interests were affected and it did not consent to provide the information the competent authority should have assessed whether there was an overriding public interest. If such is present - access to the information shall be granted.

In early March 2011, the municipality provided the contract sought. Only the unique identification number of the consortium and its address were blanked out.

6. Kalina Pavlova vs. the Chamber of Architects in Bulgaria

First Instance Court - administrative case No. 6720/2010, ACSC, Second division, 27th panel

Request:

On August 20, 2010, Kalina Pavlova requested from the Chamber of Architects in Bulgaria (CAB) all minutes, documents and decisions taken at sessions of the Regional College Nova (RCN) and of the Regional College Sofia generated since the establishment of the RCN.

Refusal:

With a letter as of August 25, 2010 the Chairperson of the CAB refused to provide the information on the ground that the CAB is a professional organization and is not an obliged body under the APIA.

Complaint:

The refusal was challenged before the ACSC. The complaint stated that the CAB is obliged body as body subject to the public law, other than the public authorities, since it is established by law and regulates entirely the profession of architects, landscape architects and urban planners.

Developments in the Court of First Instance:

The case was heard in an open court session on November 30, 2010 and was scheduled for judgment.

Court Decision:

With a decision No. 4374 as of December 22, 2010, a panel of the ACSC repealed the refusal and returned the case to the CAB for reconsideration. According to the court The Chambers of Architects and Engineers of Investment Design Act vested the CAB with public functions. Therefore, the CAB is obliged body within the meaning of Art. 3, Para. 2, Item 1 of the APIA.

7. Lachezar Lisicov (*Desant* daily) vs. the President of Bulgaria

First Instance Court - case No. 5159/2010, ACSC, Second division, 37th panel

Request:

On April 26, 2010 Lachezar Lisicov, a journalist from *Desant* daily filed a request to the Chief Secretary of the President. He requested:

- the transcript of the *in private meeting* held on January 18, 2008 between the Bulgarian President Georgi Parvanov and the former President of the Russian Federation Vladimir Putin;
- the transcript of the meeting of the official delegations.

Refusal:

Within the 14-days time limit, the President's Administration failed to reply.

Complaint:

With the help of AIP, the journalist brought a complaint before the ACSC against the silent refusal. The complaint stated that the silent refusal was unlawful as the APIA requires the public authority to issue an explicit decision on the request and in case of refusal to motivate it. The complainant argued that the requested information is public within the meaning of Art. 2, Para. 1 of the APIA as it enables the citizens to form their own opinion on the work of the President representing the State in its international relations and none of the restriction to the right of access is applicable.

Developments in the First Instance:

The case was heard in an open court session on October 14, 2010 and was scheduled for judgment. The Chief Secretary of the President's Administration, who is authorized to decide on access to information requests, argued that transcript of the *in private meeting* of the Presidents cannot be provided as the international practice is such conversations not to be recorded. He also claimed that the meeting was widely covered by the media and this was enough for the public to form its opinion.

Court Decision:

With a Decision No. 3593 as of November 11, 2010, a panel of the ACSC repealed the refusal and compelled the administration of the President of Bulgaria to provide the information. The court held that according to the administrative practice, records of official meetings, discussions and sessions are being made. The court pointed out that pursuant to the Regulation for the Implementation of the State Protocol Act the *in private meetings* are not excluded from the general obligation to make and keep records. The court also stressed on the fact that this was official meeting and the fact that the conversation was only between the two heads of state does not mean that it was confidential and even if this was the case the public authority is still obliged to issue a motivated decision on the access to information request. The decision is final because the Chief Secretary of the President's Administration did not appeal the first instance decision within the timeframe.

A day after the court decision, the transcript of the meeting of the two delegations and a memo of the *in private meeting* prepared by the Chief Secretary of the President were published on the website of the President.

8. National Committee for Improvement of Water Supply in Bulgaria vs. Sofia Municipality

First Instance Court - administrative case No. 3907/2010, ACSC, First division, 5th panel

Request:

In the end of 2008, Gancho Hitrov, chairperson of the *National Committee for Improvement of Water Supply in Bulgaria*, filed an access to information request for a copy of the legal analysis of the performance of the concession contract between the Sofia Municipality and Sofia Water JSC for the period 2000-2007, drafted by a law firm in late 2008 on the Municipality request. With a decision as of February 2, 2009, the Mayor of the Sofia Municipality refused access because the legal analysis was drafted by a law firm and it was

covered by the attorney-client privilege. The refusal was repealed by two court instances (administrative case No. 1884/2009, ACSC, Second Division, 33 panel, Court of Second Instance - administrative case No. 10514/2009, SAC, Fifth Division).

Refusal:

Instead of granting access in compliance with the court decision, the Sofia Municipality refused to provide the documents on the grounds that the information was neither public nor official information.

Complaint:

The refusal was challenged before the ACSC. The complaint stated that the refusal was in flagrant violation of the constitutionally guaranteed right to information and a huge disrespect with regard to the authority of the courts. The administrative authorities are bound by the acts of the court and it is absolutely unacceptable to imagine and set different grounds for refusal than the ones established by law.

Developments in the Court of First Instance:

The case was heard in an open court session on December 2, 2010 and scheduled for judgment.

Court Decision:

With a decision No. 4107 as of December 10, 2010, a panel of the ACSC repealed the refusal and compelled the Sofia Municipality to grant access. The Court pointed out that, undoubtedly, the information was public in so far as it gives the opportunity to the citizen to form an opinion on the activity of the municipality related to the performance of the concession agreement. The Court further noted that it was unacceptable that the authority tried to find other arguments to refuse access after the final court decision, which repealed the first refusal grounding on attorney-client privilege.

9. National Movement *Ekoglasnost* vs. the Nuclear Regulatory Agency

First Instance Court - administrative case No. 3857/2009, ACSC, Second division, 36th panel

Second Instance Court - administrative case No. 8872/2010, SAC, Fifth division

Request:

On October 30, 2008, The National Movement *Ekoglasnost* sought information about the technical decision of the Nuclear Regulatory Agency (NRA) and its attachments on the substitution of nuclear fuel in the Nuclear Power Plant „Kozloduy.“ The reason for such a request came from the statement of a former employee in the Nuclear Power Plant „Kozloduy,“ Georgi Kotev - published in the Internet. Kotev claimed that there is a corruption mechanism which might threaten the safety of the nuclear reactors, as the fuel used was not fresh but recycled.

Refusal:

With a decision as of November 2008 the chairperson of the NRA refused access on the ground of lack of consent for the disclosure of the information by the third party, namely

the NPP „Kozloduy.“ According to the decision of refusal, the information sought was protected by the trade secret exemption as there was a confidentiality clause stipulated in the agreement between the NPP „Kozloduy“ and the Russian supplier of fuel.

Complaint:

The refusal was challenged before the ACSC. The complainant stressed on the fact that there is an overriding public interest in disclosing the information because it relates to a question which hides potential risks for the environment.

Developments in the First Instance:

The case was heard in an open court session on December 3, 2009 and was scheduled for judgment. NPP „Kozloduy“ was constituted as interested party.

Court Decision:

With a decision No. 670 as of March 29, 2010, a panel of the ACSC repealed the refusal and returned the case to the NRA for reconsideration. The Court held that the information sought is environmental within the meaning of the Environmental Protection Act (EPA) and the conditions for its disclosure shall be assessed under its provisions. The EPA provides for a narrow interpretation of the restrictions to the access to information and requires the public authority to take into consideration the public interest in disclosing the information. The Court refuted the argument of the NRA that the information constitutes a production secret because of the confidentiality clause. Further, the Court found that the chairperson of the NRA has not shown that the information requested falls under the confidentiality clause, therefore, it cannot be concluded that disclosure of the information would harm any legal interests.

Appeal:

The decision of the ACSC was appealed by the NRA and by the NPP „Kozloduy“ before the SAC. The appellants argued that the information was not related to the environment and there is no public interest in its disclosure.

Developments in the Court of Second Instance:

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

10. Nikolai Kolev vs. the Prosecution Office of Bulgaria

First Instance Court - administrative case No. 3617/2010, ACSC, First division, 13th panel

Request:

On February 16, 2010, Nikolai Kolev filed a request to access the Report on the state of the Sofia Regional Prosecution Office and the acts and omissions to act of a particular regional prosecutor.

Refusal:

With a Decision No. 2780 as of April 21, 2010, the Deputy Attorney General refused access to the report on the ground that it contained conclusions, opinions, and recommendations of the supervising prosecutors and the report was prepared for the Attorney General for the exercise of his power to give instructions to the prosecutors and it had no significance in itself.

Complaint:

The refusal was challenged before the ACSC. The complainant stated that for the successful supervising function, the establishment of facts and violations is essential. Precisely, this establishment of facts during the inspection is indispensable for effective supervising. Therefore, the report had significance of its own.

Development in the Court of First Instance:

At the first hearing of the case in September 2010, the Court required the Prosecution Office to provide the report for consultation. In November 2010, the case was heard in an open session and was scheduled for judgment.

Court Decision:

With a Decision No. 3959 as of December 2, 2010, a panel of the ACSC repealed the refusal and compelled the Prosecution Office to grant access to the report. For the Court, the report is the final act of supervisions and audits of the prosecutors under Art. 142, Para. 2 of the Judiciary Act. For this very reason, it cannot be assumed that this act had no significance in itself and only had a character of opinion or recommendation. The court reached this conclusion after scrutinizing the report. It is noteworthy to mention that the court decision reproduces many of the findings and recommendations of the supervising prosecutors. They establish number of violations and inefficient organization of the work in the Sofia Regional Prosecution Office.

ACCESS TO INFORMATION IN BULGARIA 2010

Report

English First Edition

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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).

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.

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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.

Activities:

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.



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