

**ACCESS TO INFORMATION IN BULGARIA**  
**2013**

**ACCESS TO INFORMATION PROGRAMME**  
**SOFIA 2014**



ACCESS TO INFORMATION PROGRAMME



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### **Access to Information in Bulgaria 2013 Report**

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## 1. Time for Changes

Access to Information Programme presents its report *Access to Information in Bulgaria 2013*.

The analysis, which we make on the base of the effective legislation, the access to information provision practices, and the court decisions, substantiates the necessity for amendments to the Access to Public Information Act (APIA).

The APIA was adopted in 2000 after almost two years of public consultation. Its amendments in 2007 and 2008 were also adopted after a wide public debate. At the time of the APIA adoption, the international standards in the area were Recommendation No. R (81) 19 of the Committee of Ministers to Member States of the Council of Europe on the Access to Information Held by Public Authorities and a limited number of freedom of/ access to information laws in the functioning democracies.

The international standards in the access to information legislation have been developing during the past 14 years. In 2008, the first international binding treaty was adopted – the Council of Europe Convention on Access to Official Documents – CETS No. 205.<sup>1</sup> The European Union adopted Regulation 1049/2001 on access to official documents.

During the past 10 years, the right of access to information was recognized as a fundamental human right by the Inter-American Court of Human Rights, the European Court of Human Rights, the United Nations Human Rights Committee and a number of other international organizations. Currently, 97 states have effective laws according to the Global Right to Information Rating.<sup>2</sup>

The implementation of the law in Bulgaria has accumulated rich experience. The first access to information request was filed only a week after the law became effective. During these years, 336,603 requests have been filed, out of which an average of 11,660 written requests per year. The number of the Supreme Administrative Court decisions on the APIA is impressive – 1,616 acts.<sup>3</sup>

During the years, the administrative practices have also changed, the types of requestors have changed, the attitudes and citizens' awareness of the right of access to information have changed. The people who took part in the protests all along 2013 demanded government transparency and accountability and mechanisms for civil participation in the policy making.

With the current report, AIP launches a necessary debate on amendments to the legal regulation of the right of access to information. It should become clear that this is not a right to an administrative service, but a fundamental constitutional human

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<sup>1</sup>

<http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=205&CM=8&DF=16/04/2014&CL=ENG>

<sup>2</sup> <http://www.rti-rating.org/index.php>

<sup>3</sup> The web portal <http://zdoi.gkzj.org/> contains the Supreme Administrative Court decisions and rulings under the Access to Public Information Act and makes them easy to search.

right. The citizen in the democratic society needs to know how they are governed, how decisions are made, how public money are spent, who carries the responsibility of actions. Only under these conditions, citizens could equally participate in the debate for the making of public policies.

In 1946, the United Nations General Assembly adopted one of its earliest resolutions which says: “Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the UN is consecrated.”

We, hereby, present to you the analyses made by the AIP team which outline the problems stemming from the right to information practices. We are convinced that there is enough experience accumulated in Bulgaria to launch a debate for amendments to the Access to Public Information Act in compliance with the developed international standards and the necessities conditioned by the practices.

The report contains the result of the work of the whole AIP team in support of the right of access to information in Bulgaria.

Authors of the analysis on different aspects of the legislation and practices are Alexander Kashumov, Darina Palova, Fany Davidova, Gergana Jouleva, and Kiril Terziiski.

April 2014

Gergana Jouleva,  
Access to Information Programme Executive Director

## **2. RECOMMENDATIONS**

### **RECOMMENDATIONS RELATED TO THE LEGAL REGULATION AND ITS IMPLEMENTATION**

#### **I. Regarding the adoption of international standards**

The government shall undertake steps for the signing and ratification of the European Convention on Access to Official Documents.

#### **II. Regarding necessary amendments to the legal regulation**

##### *A. Access to Public Information Act Amendments*

1. Improvement of the oversight, coordination and control by the establishment of an efficient institutional environment, including the establishment of a new government authority.

2. Establishment of a clear obligation for the administration to assist the access to public information requestors.

3. Improvement of the conditions for electronic access to information by:

- introduction of a clear and common obligation for the administration to respond to electronic access to information requests;
- introduction of a prohibition for requiring an electronic signature for the filing of an electronic access to information request;
- clear definition of the provision of information electronically as one of the forms for information provision.

4. Extension and precision of the proactive publication of information by:

- specification of the categories of information subject to publication in compliance with the Open Government Partnership initiative and the good legislative models from the world;
- precision of the obligations for publication and announcement of the information under Art. 14 of the APIA;
- introduction of detailed obligations for update of the information published in the Internet;
- introduction of clear legal obligations with regard to the formats in which information is disclosed;
- coordination and control of the proactive publication of information;
- introduction of sanctions for incompliance with the requirements for proactive publication of information.

5. Precision and harmonization of the regulations related to the right of access to information exemptions:

- exhaustive and simple listing of the grounds for the restriction of the right to information in the APIA;

- unification of the hypothesis for the application of the *overriding public interest* in the disclosure of the information;
- explicit inclusion of the personal data protection exemption in the APIA;
- precision of the scope and the content of the exemption related to the protection of preparatory documents (Art. 13, Para. 2, item 1 of the APIA);
- elimination of the unclearly formulated phrase *protection of the third party interests* or its definition in the law by exhaustive listing of these interests.

## B. Amendments to other laws

6. Improvement of the framework regulating the public discussion of draft normative and common administrative acts and the accompanying transparency by:

- establishment of an obligation for the publication of the statements and opinions of the participants in the public discussion;
- publication of the analysis on the necessary financial resources for the implementation of the new regulations, on the expected results from the implementation and on the compliance with the European Union law;
- publication of the reasons for rejection of recommendations and proposals given in the public discussion;
- assigning clear responsibilities within the administrative structures for the fulfillment of the obligations for publication of information related to the discussion of draft normative acts;
- definition of sanctions for non-fulfillment of the obligations for publication.

7. Improving the transparency related to the public procurements by unconditional adoption without any changes of Art. 22 b–22 of the introduced Draft Amendments to the Public Procurements Act, establishing specific obligations for publication of information.

8. Precision of the correlation between the APIA and other laws/regulations which provide for access to specific categories of information. Not allowing of the wider scope of restrictions related to the activities of specific state bodies, like the Ministry of Interior.

## III. Regarding the implementation

9. Authorities shall consider all formulated recommendations for APIA amendments and include them with priority in their internal APIA implementation rules because there is not a legal impediment for that.

10. Authorities shall undertake particular measures for the implementation of their obligations under the APIA and the obligations for proactive disclosure of information, including financial information and information related to the integrity of the administration.

### 3. Access to Information Legislation in 2013

In 2013, the executive and legislative powers have not taken serious steps in developing and improving access to information. No amendments to the Access to Information Act were drafted, although such a commitment had been taken in the Bulgarian Action Plan for the Open Government Partnership (OGP). Like in previous years, in 2013 the process of signing and ratification of the Convention on Access to Official Documents.<sup>4</sup> Meanwhile, Bulgaria has to take the necessary steps to transpose the amendments of the Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.<sup>5</sup>

Although that in the Action plan delivery self assessment report, it was noted that the “Government has undertaken legislative changes to introduce a mandatory impact assessment of legislative acts”, no amendments to the Legislative Acts Act have been adopted. This act regulates the public consultation on drafts of normative acts and the concomitant requirements to provide information.<sup>6</sup> After adopting the Public Finances Act, which entered into force in January 2014, a positive step in increasing transparency are the voted in 2013 amendments to the Public Procurement Act, which are still to be finally adopted at second hearing in parliament.

In some respects the legislative process is marked regression. In November 2013 the Council of Ministers introduced a draft for a new Ministry of Interior Act proposing a broad range of restrictions on the right to access information held by the institution. Members of the 42nd National Assembly (the Bulgarian parliament) introduced amendments narrowing of the scope of disclosure of the affiliation of citizens to the former State Security service and intelligence services of the Bulgarian People's Army. The legislative package on reforming the Security sector, discussed in detail in the 41st National Assembly, was introduced in the 42nd National Assembly by GERB (the former ruling party). Although the bills were introduced on 30 May 2013, there is no activity on their consideration in the parliamentary committees. This means that the necessary reforms of the security sector, which should include improved transparency and accountability, will not be carried out soon. Thus would not be considered either, the proposals and recommendations made during the public consultation process carried out in autumn 2012 and early 2013. As a result of this consultation, including under the Parliamentary Committee on Internal Security and Public Order in January and February 2013, agreements were reached on many positive amendments related to improving the transparency and accountability of the services and security policies. For the moment, it seems that this reform is stopped.

#### ACCESS TO PUBLIC INFORMATION ACT

One of the commitments taken in the Open Government Partnership (OGP) Action plan is amendment to the Access to Public Information Act (APIA). The Action plan delivery self assessment report indicates that the commitment “Enhancing the scope

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<sup>4</sup> Adopted by the Council of Europe, open for signature and accession on 18 June 2009

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=205&CM=1&CL=ENG>

<sup>5</sup> See [Directive 2003/37/EU](#) of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the re-use of public sector information.

<sup>6</sup> Available at: <http://www.opengovpartnership.org/sites/default/files/OGP-selfassessment-2013-Bulgaria-ENG-version-final.pdf>, page 3.

of good practices related to information access” is “in progress”.<sup>7</sup> Probably, what is meant is the Action plan commitment on amending the APIA in “setting uniform parameters for the timely development and publication of information by the administration”. The envisaged legislative amendment, consequently, involves improving the publication of information by the institutions.

Regardless of the stated OGP commitment, in practice we encounter instances indicating the necessity of other amendments to the APIA, too. Indeed, the act was adopted in 2000 when the number of similar laws in the world was not that great. Today there are 98 national laws on access to information (freedom of information)<sup>8</sup> and usually the more recent they are, the better in quality they are. Many of them have dealt in detail with the publication of information on the institutions’ websites, there have been established and are functioning Commissioners, Commissions, ombudsmen on access to information. In this respect, the Bulgarian 2000 Act is lagging behind, since internet was not that developed at the time, and this type of legislation had not yet acquired such a broad recognition and had not yet become a priority for governments in the world.

The 2007 and 2008 amendments to the APIA updated the law by requiring the administrations to provide a responsible person and premises for consultation of documents, to provide training funds, to establish webpage sections and publish certain information in them, to adopt internal rules on access to information. The scope of obliged bodies was broaden, the scope of the “trade secret” exemption was narrowed, the “overriding public interest in disclosure” test was introduced, the burden of proof concerning exemptions was clarified, a mandatory obligation to provide partial access was established.

The right of access to information aspect that is globally the most rapidly developing is the so called proactive publication – of information and documents. This is why the APIA amendment, set in the Action plan, is adequate to the trend and necessity of increased transparency through internet. In addition, the majority of recent access to information acts establish an independent body, charged with the oversight of their implementation. Problems with filing requests electronically and providing access to documents by electronic means occur in practice. Since the first version of the act in 2000, the provisions on the implementation of restrictions to the right of access to public information lacked the necessary clarity and precision. A significant problem in the functioning of the APIA is the lack of practice of imposing sanctions for failure to fulfill obligations under it.

## **INSTITUTIONAL FRAMEWORK FOR OVERVIEW AND CONTROL ON THE APIA IMPLEMENTATION**

Over the years, at global and European level an access to information legislation development towards the establishment of an independent body responsible for overseeing its implementation is observed. In Europe such a body exists in the

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<sup>7</sup> Ibid. page 5.

<sup>8</sup> The Global Right to Information Rating, carried out by the NGOs Center for Law and Democracy and AccessInfo Europe, today rates 98 laws – see [http://www.rti-rating.org/country\\_data.php](http://www.rti-rating.org/country_data.php) . In 2012 the Rating encompassed 89 laws – see. [http://www.rti-rating.org/country\\_rating.php](http://www.rti-rating.org/country_rating.php).

European Union, the United Kingdom, Scotland, Ireland, Germany – on federal and lander level, Hungary, Slovenia, Serbia. In the last couple of years such institutions were also established in Croatia and Montenegro. The commissioners' decisions on cases are in some countries purely advisory (Hungary, the European Ombudsman), in other – they are mandatory (UK, Slovenia, etc.). Apart from the legal effect of decisions, the moral authority and the culture of respect for institutions in a given society also matter. The reports of the European Ombudsman show that the degree of compliance with her decisions, although they are purely advisory, is high. The functions of these bodies vary across countries, having both preventive and repressive aspects. The first covers the activities of promoting the right to information and informing citizens on how to exercise it, oversight, training, developing tools for implementation of the law and harmonization of practices, summarizing and reporting to parliament, issuing recommendations for legislation amendments. The second comprises the powers of investigation (inquiry into cases), handling complaints, issuing instructions, imposing sanctions.

For the establishment of such an institution in Bulgaria it is important whether it would be a commission similar to the Commission for Personal Data Protection of or a single person authority such as the national Ombudsman. Our national legal system comprises both options. Next, it is possible that this independent body or commission be appointed by the National Assembly or the Council of Ministers. The requirement for independence suggests more towards the first option. It should be emphasized that this requirement is provided in Article 8, Para. 1 of the Convention on Access to Official Documents.<sup>9</sup>

A specific problem is whether it would be more appropriate that this independent institution combines oversight on personal data protection and on access to information. In this case, it would be possible to entrust the Commission for Personal Data Protection with the functions of oversight, coordination and control on the implementation of the APIA. Such a model exists in some countries like Canada, Hungary, the UK and Slovenia. In other national models institutions, charged with functions in the field of access to information are different from those in the personal data protection field. In France and Belgium there are commissions on access to administrative documents, information commissioners with functions only in the access to information field are established in Ireland,<sup>10</sup> Scotland, Serbia, Croatia, Mexico, Chile, Australia and New Zealand. In a third category of states functions on handling complaints are assigned to the parliamentary ombudsman – Sweden, Denmark, Norway, Finland.<sup>11</sup>

Currently in Bulgaria, functions in the described areas are assigned to several different government bodies. A unit of the Council of Ministers' administration is responsible for collecting information on the implementation of the Act nationwide and for preparing the annual report on the State of the Administration, part of which is the summary on the implementation of the APIA.<sup>12</sup> The inspectorates within each Ministry are empowered to carry out administrative investigations for breaches of the

<sup>9</sup> Available at: [http://www.aip-bg.org/pdf/coe\\_convention\\_access\\_official\\_docs.pdf](http://www.aip-bg.org/pdf/coe_convention_access_official_docs.pdf).

<sup>10</sup> See <http://www.oic.gov.ie/en/>

<sup>11</sup> See <http://info-commissioners.org/?id=106>

<sup>12</sup> Department "Administrative and regional coordination" with the Chief Secretary of the Council of Ministers, according to Article 59, Para. 1, item 1 of the Organic Rules of the Council of Ministers and its Administration.

law and to propose the imposition of disciplinary sanctions.<sup>13</sup> The latter are imposed by the respective authority or authorized official (Article 43, Par. 2, item 1 of the APIA) and in the other instances – by the Minister of Justice, according to Article 43, Par. 2, item 3 of the APIA. The Minister of Finance should adopt an order that sets the standards for payment of expenses for the provision of information pursuant to Article 20 of the APIA. The national Ombudsman may hear complaints of infringement of the APIA, according to his statutory powers.<sup>14</sup> The Commission for Personal Data Protection also hears complaints involving decisions on the issue of the balance between access to public information and personal data protection (e.g. in cases on access to state administration civil servants' supplementary remuneration/bonuses).<sup>15</sup> Different institutions are responsible for the implementation of obligations to publish different kinds of information, arising from various special laws. The main problem with this variety of institutions, responsible for different aspects of the implementation of the APIA, is the lack of a coordinating body that accumulates expertise and information regarding all these diverse activities. Apart from this, regarding some of the functions normally carried out by an information commissioner or a commission on access to information, such as the creation of manuals, guidelines to government bodies, coordination of state bodies, etc., Bulgaria lacks an institution that carries these out in general (see Page no. 20).

## **ACTIVE PUBLICATION OF INFORMATION**

Articles 14, 15 and 15a of the APIA are devoted to the active publication of information. Currently, the publication of some basic types of information, which should normally be disclosed under other national laws too, is required. This is the description of the functions of the administrative structures, lists of their issued acts, the contacts of the units that accept requests for access to information (Article 15). Meanwhile, other texts also contain requirements for publication – e.g. according to Article 14, Par. 2, item 2 of the APIA, information that would be of particular public interest should be published pro-actively. This provides a wide opportunity for a benevolent administration to publish important documents in the absence of other grounds. Last year, the National Assembly published numerous documents relating to the supply of electricity and others, including contracts and reports. The Ministry of Environment and Water published the Bansko ski tracks concession contract with “Yulen” AD, the State Agency National Security published parts of the “Galeria” investigation, contracts between certain state institutions and media were published. It would be overall beneficial, if the political effect sought with such PR campaign driven publications turns into a permanent institutional initiative for regular publication of information of this kind.

Some national laws employ different approaches to the publication of documents. The United Kingdom Freedom of Information Act provides that the institutions adopt publication schemes of documents without precisely specifying what information

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<sup>13</sup> Under Article 46 of the Administration Act.

<sup>14</sup> See Article 19, Par. 1, item 1 of the Ombudsman Act.

<sup>15</sup> See, per example Opinion of the CPDP no. П-7488/2013 of 14.12.2013, Opinion no. П-5864/2012 of 06.12.2012, etc. Regarding the issue on access to information concerning supplementary remuneration of civil servants see Opinion no. 753/2012 of 17.02.2012, Opinion no. 1094/2012 of 12.03.2012, including information on the gross remuneration of the President of the Communications Regulation Commission – Opinion no. П-5812/2012 of 14.11.2012, etc.

should be published. The general legal provision sets, however, a requirement for periodic review of these schemes, as well as of the means of publication.

APIA does not list exhaustively all the information that institutions should publish online. Thus, for example the provision of Article 14, Para. 2, item 4 of the APIA refers in general terms to the publication of information that “should be prepared or released by virtue of law.” Indeed, a number of laws and subordinate legislation provide requirements on the publication of certain categories of information in the institutions’ websites. Enumeration of these categories at a single place has not been carried out not only in the legislative framework, but not even in other documents relating to the implementation of the Act such as instructions, guidances, handbooks, lists, etc. This means that the public administration is devoid of any support, outside the expertise of its staff, concerning the implementation of all its obligations to publish information. Such a gap is an obstacle to both the effective implementation of the obligations to publish information and the citizens who are consumers of this information. To date the only portal of public registers, where institutions publish information under statutory requirements, is created and maintained by AIP.<sup>16</sup> A public institution with the analogous functions to maintain such a portal is missing.

It follows that, as regards the publication of information by institutions, two approaches of improvement are, in general, available – either the APIA should list in detail the categories of information to be published by institutions, or the latter should be compelled by law to draw up their publication schemes, i.e. they should systematize by themselves the different categories of information the publication of which is obligatory under different laws. Thus, their own work will become more comprehensive and coordinated and logically, the effectiveness of the publication activity should improve.

## **ELECTRONIC ACCESS TO INFORMATION**

Under Article 24 of the APIA, a request is deemed written also in cases where it is sent electronically, subject to conditions determined by the respective body. The norm was adopted in 2000 and reflects a state in which not all public institutions had their own websites and the technical capability to receive electronic requests and respond to them. In 2014 the picture is, of course, different. The AIP annual active transparency audits show that currently all executive power bodies have websites and the capability of responding to electronic requests.<sup>17</sup> Many institutions have provided in their internal rules the possibility of filing such requests. However, there are still institutions that do not accept electronic requests or require that they be signed with a digital signature.<sup>18</sup>

The Supreme Administrative Court (SAC) case-law holds that if a request is lodged via the virtual office of a public institution, then this institution cannot argue that it had no duty to respond and that the request does not meet the requirements of Art. 25, Para. 1, item 1, 2 and 4 of the APIA.<sup>19</sup> However, in this version of the Article. 24,

<sup>16</sup> Available at: <http://www.publicregisters.info/>

<sup>17</sup> <http://www.aip-bq.org/en/surveys/>

<sup>18</sup> See the results from the AIP Audit on Institutional Websites further in the report.

<sup>19</sup> See Decision no. 257/09.01.2014 on adm. case no. 8864/2013 of the Supreme Administrative Court, VII Division.

Para. 2 of the APIA the obligation to respond to electronic requests can hardly be considered an imperative. In this situation, the question whether we should adopt the same approach in cases where the applicant simply sent an application by e-mail to an institution that does not have a virtual office, does not receive a clear answer. An additional problem arises with some institutions' requirement that applicants use a digital signature. The requirement for lodging applications with a digital signature is discriminatory and is not based on the provisions of the APIA. It is discriminatory, since the use of a digital signature is not accessible to everyone, and the right of access to information is a fundamental right of citizens guaranteed by Article 41 of the Constitution. At the same time under the principle of Article 6, Para. 1, item 2 of the APIA, the administration must provide equal conditions for access to public information. The digital signature requirement breaches this principle since the owners a digital signature (which not everybody owns) are put in a privileged position compared to people who do not have one. Moreover, electronic requests are widespread in today's world and there is no digital signature requirement for filing them. Every EU citizen can file a request by e-mail to EU institutions under Regulation (EC) No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents. Digital signature is not required. In recent years are even being created online platforms for filing requests, that along with the answers and provided documents, are publicly accessible.<sup>20</sup> Next, in Article 25, Para. 1 of the APIA there is no requirement to sign the request. Detailed identification is required only in cases where an individual exercises rights of a strictly personal nature. For instance, access to one's own personal data under the Personal Data Protection Act has only the data subject and the right to require provision of administrative services, such as issuing a plan of a real estate or inheritance certificate, has only a person who has standing. Therefore, concerning administrative services, the person must prove its legal interest and her/his identity must be indisputably established. On the contrary, in the legislation on access to public information reigns the principle according to which applicants cannot be required to prove a specific interest in the information<sup>21</sup> or reasons to seek it, and everyone has the right of access to information, to which everyone else has a right. The only difference with the publication of information by the administration is that when requesting information, the applicant is the active one, no matter who he actually is. In both cases, the administration has no powers to investigate who is the reader of the published information or the applicant for the requested document.

The said negative practice to require a digital signature, however, is not being tackled within the executive, since there is no body responsible for coordinating and supervising the implementation of the APIA. There is no case law on the matter, and it is necessary that the matter be resolved for the benefit of the citizens right to information. Recognizing the power of authorities to adopt internal rules on the submission of requests by electronic means, pursuant to Article 24, Para. 2 of the

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<sup>20</sup> See the platform for filing requests with EU institutions <http://www.asktheeu.org/>

<sup>21</sup> See Article 4, Para. 1 of the Convention on Access to Official Documents. Compare to Article 4, Para. 1, letter "a" of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

APIA, as a complete and uncontrolled discretionary power, poses a risk of seriously impeding the exercise of the right.<sup>22</sup>

The SAC case-law is firmer on the matter whether an applicant may seek information by electronic means. The court held that since Article 26, Para. 1 provides a form of access “copy on a technical bearer”, it defines the technical parameters for a recording.<sup>23</sup> According to the SAC the notion “technical bearer” is not identical to “material bearer” and should not be understood “only as a physically separate object”. According to this interpretation, in view of the development of the technical methods for transfer of information and the preferences of the applicant, the legislator has provided the applicant the opportunity to use the medium that is the most convenient for her/him and that does not result in unnecessary costs for the obliged subjects. Such a medium is e-mail, as a method of exchanging digital messages across the Internet.<sup>24</sup>

Despite the efforts by way of interpretation to update the understanding and interpretation of the APIA, a legislative amendment on the identified issues would probably achieve a more significant and definite result.

## **ASSISTING THE REQUESTORS**

The comparative analysis with the Convention on access to official documents shows that the APIA does not include an obligation for the administration to assist the applicant. According to Art. 5, Para. 1 of the Convention, the public authority should assist the applicant, within reasonable limits, to identify the requested official document. It should be noted that under the APIA the communication between the administration and the applicant who filed a written request, should be carried out in a strictly formal way – in writing. While with verbal request for information on site, the administration can obviously provide even verbal explanation – Art. 26, Para. 1, item 2 of the APIA, in dealing with written request rules imply more formality and distancing between the civil servant and the applicant. In this respect the APIA differs from other laws on access to information, which provide that the civil servants gives feedback to the applicant in order to confirm receipt of the request, the identified scope and nature of the information requested, and to communicate the amount due for the material costs of providing the information. According to the APIA such communication takes place only in case that it is unclear what information is requested or it is too broadly defined (Art. 29).

Indeed, according to Article 28, Para. 1 of the Administrative Procedure Code (APC) the administrative bodies due to the citizens assistance, including through the provision of information about their functions, terms and fees due, access to the

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<sup>22</sup> In Ruling no. 8784/02.07.2009 on a. c. no. 8538/2009 of the SAC, V Division, it is held that the administrative body giving instructions to the applicant to submit a digitally signed request amounts to indicating and explaining “the procedure and manner in which it may duly receive a request under Art. 24, Para.2 of the APIA” and is not subject to judicial review.

<sup>23</sup> Decision no. 1864/11.02.2014 on a. c. no. 14317/2012 of the SAC, VII Division.

<sup>24</sup> Decision no. 512/15.01.2014 on a. c. no. 6659/2013 of the SAC, VII Division. See also the commentary in Issue 2 of 2014 of the AIP Information Bulletin, Fany Davidova “The refusal to provide information through e-mail is unlawful” (in Bulgarian) – [http://www.aip-bg.org/publications/Бюлетин/Отказът\\_да\\_се\\_предостави\\_информация\\_по\\_електронна\\_поща\\_е\\_нез/100025/1000526620/](http://www.aip-bg.org/publications/Бюлетин/Отказът_да_се_предостави_информация_по_електронна_поща_е_нез/100025/1000526620/)

forms and assistance in filling them, and organizing their activities so, when it is possible, to service citizens in one official premises. At the same time, in so far as the APIA has special provisions for due payment of costs and deadlines, and forms are not envisaged, the application of this provision could be excluded. In the administrative practice staff often does not engage active communication with citizens. Along with this it is common that executive bodies' internal rules under the APIA be published in an unfriendly format instead of simple tips, answers to frequently asked questions or a guide for the applicant. User-friendly and complete lists of acts/documents issued,<sup>25</sup> by means of which the applicants could formulate more clearly the requests, are not published. Thus, citizens are not adequately assisted in the exercise of their right to information through submitting requests. Specifying the obligation of public authorities for assistance with requests under the APIA in the indicated directions, would be appropriate.

## **SPECIFYING THE EXEMPTIONS UNDER THE APIA**

The exemptions under the APIA are not sufficiently precisely and fully defined. On the one hand, Art. 5 of the Act lists the interests for whose protection the restrictions on the right to information are set. On the other hand, Art. 7, Para. 1 of the APIA indicates that access to information can be restricted only in cases where there is classified information or other secret protected by law. A more detailed list of the restrictions is found in Art. 37, Para. 1. Indicated are state and official secret, information under Art. 13, Para. 2 (protection of the preparatory documents and negotiations) and protection of the interests of a third party (which should cover trade secrets and personal data).<sup>26</sup> This review establishes that two of the grounds for restricting access – that of Art. 13, Para. 2 and the one related to the protection of a third person – are not sufficiently simplified and incorporate in themselves more than one protected interest. Therefore, the provision of Art. 37, Para. 1 of the APIA does not contain a clear and exhaustive list, as, for example, compared with Art. 20, Para. 1 of the Environmental Protection Act.

Uncertainties appear in practice concerning the question: what lies behind the “interests of a third party.” Whether they are reduced to trade secret with merchants (professionals) and protected personal data with individuals, or encompass other protectable interests.<sup>27</sup> Occasionally raises the question: whether personal data are included in the scope of the “interests of a third party” at all. This is so because they are not explicitly mentioned in the APIA as a restriction.<sup>28</sup> Moreover, Art. 2, Para. 4 of the APIA says that the Act does not apply to access to personal data. In the majority of case-law, it is however assumed that the personal data protection is a restriction

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<sup>25</sup> See the AIP audits: <http://www.aip-bg.org/en/surveys/>.

<sup>26</sup> The grounds for restriction under Article 37, Para. 1, item 3 of the APIA – i.e. in the cases where the information sought has been provided in the last six months – are not in their substance grounds for a restriction, since implementation is not conditioned by the nature of the information per se.

<sup>27</sup> The text of Article 27, Para. 1, item 3 of the APIA shows that the legislator did not provide for a restriction to access to information on the grounds of copyright protection. Meanwhile, the expression “third party interests” is too shallow vague and broadly interpreted in practice, including as encompassing copyright protection.

<sup>28</sup> There is a discrepancy here with the analogous to Article 37, Para. 1 of the APIA provision of the Environment Protection Act – Article 20, Para. 1.

under APIA. According to the adopted interpretation, the data of civil servants are in much more reduced extent protected than those of private persons.<sup>29</sup>

The scope of the restriction provided in Art. 13, Para. 2, Item 1 of the APIA, is understood too broadly. In the practice, it extends from the expertise and advice, through administrative investigations, analyzes and reports, discussions in collegiate bodies and meetings, to speeches and opinions in public meetings and discussions. Indeed, in most of the national laws on access to information, to the exemption under Art. 13, Para. 2, Item 1 of the APIA correspond more than one grounds for restricting access. Also, under the Convention on Access to Official Documents, which contains a single very broad text, subject to protection are disciplinary investigations (Art. 3, Para. 1 point "d"), inspections, control and supervision by public authorities (Art. 3, Para. 1 point "e"), or deliberations within or between public authorities concerning the examination of a matter (Art. 3, Para. 1, letter "k"). Out of these restrictions, the closest one to the nature of the protection under Art. 13, Para. 2, Item 1 of the APIA is the last one but due to the lack of restrictions in the APIA corresponding to the other two listed by the Convention, Art. 13, Para. 2, item 1 applies to all three cases. The broad interpretation of a restriction, however, leads to a contradiction with the principle of narrow interpretation of restrictions under the APIA as exceptions to the principle (of openness).<sup>30</sup>

Another problem identified, based on the review of case-law in recent years, is the divergent implementation of the various hypotheses of overriding public interest, provided for in the APIA. Thus, for example, the hypotheses of § 6 of the Additional Provisions (AP) of the APIA, applicable to the restrictions under Art. 13, Para. 2 of the APIA, are less in number and scope than the hypotheses under § 5 of the AP of the APIA, applicable in the cases of trade secret. It turns out that in trade secret cases the scope of hypotheses where the overriding public interest test should be applied is wider than in the cases of protection of preparatory documents and negotiations. This difference, however, is not due to a legislative purpose or the nature of the restrictions. There is hardly a good reason that preparatory documents should not be disclosed under overriding public interest in the case of an ongoing discussion. The existence of such a discussion, however, gives grounds for applying overriding public interest against trade secret, but not against preparatory documents, as § 6 of the AP of APIA does not expressly provide for it. However, it is appropriate that the opinions and advice in the course of an ongoing discussion on a draft law, draft bylaw or general administrative act be made fully accessible to the public.

No less disturbing is the controversy in case-law as to whether personal data protection should be subject to the balance of interests. Some decision held that the public interest overrides only the protection of information affecting the interests of the third party under Art. 37 of the APIA, but not the protection of personal data.

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<sup>29</sup> Concerning the discrepancies in case-law on the balance between access to public information and personal data protection see the commentary in issue 12 of 2013 of the AIP Monthly FOI Newsletter "The balance between access to public information and personal data protection. Case-law in 2013" (in Bulgarian) – [http://www.aip-bg.org/publications/Бюлетин/Балансът\\_между\\_достъпа\\_до\\_информация\\_и\\_защитата\\_на\\_личните\\_д/101409/1000879511/](http://www.aip-bg.org/publications/Бюлетин/Балансът_между_достъпа_до_информация_и_защитата_на_личните_д/101409/1000879511/)

<sup>30</sup> According to Decision no. 7/26 June 1996 on const. case no. 1/1996 of the Constitutional Court of the Republic of Bulgaria. This principle has been recognized in international law – both in the case-law under Article 10 of the ECHR, as well as under Article 3, Para. 1 and 2 of the Convention on Access to Official Documents.

Hence, the latter is not considered part of “protecting the interests of a third party.”<sup>31</sup> In the same judgment it was held that the basic remuneration of the President of the Communications Regulation Commission is of public character, since “the personal data protection of persons holding public offices, is much more reduced in comparison to that of the other citizens.”<sup>32</sup>

The conclusion from the above is that the APIA can be improved by listing exhaustively and clearly in a single text all grounds for restricting access to information and unifying to the maximum extent the hypotheses of overriding public interest.

## **ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN THE DECISION MAKING PROCESS**

At the legislative level, public participation in the decision making process is regulated as regards: 1) draft laws and bylaws, 2) drafts of the so-called general administrative acts, 3) projects for certain documents, investment proposals, under special laws. The rules on access to information and participation in the preparation of draft legislation is found in Art. 26-28 of the Law on Legislative Acts (LLA). Access to information and the forms of participation in the preparation of the general administrative acts are regulated in Art. 65-69 of the Administrative Procedure Code. The Environmental Protection Act (EPA) regulates the procedure on discussions within the environmental assessment of plans and programs (Art. 84-91 of the EPA), as well as within the environmental impact assessment of investment proposals for construction, activities and technologies or their modifications and expansions the implementation of which can cause significant environmental impacts (Article 92-102 of the EPA). Special procedures on discussions are regulated by the Spatial Development Act (on drafts of general and detailed development plans), the Safe Use of Nuclear Energy Act (on draft decisions to build a nuclear power plant), etc. It follows that the subject of public consultations are draft regulations and general administrative acts, as well as plans, programs and investment proposals.

Public consultations are not limited to the existence and functioning of public councils, as is sometimes maintained, since the right of participation of stakeholders in discussions with cannot be restricted by the state authority responsible for conducting the consultation. Furthermore, the purpose, meaning and method of constitution of public councils is different. Such councils may be established at the discretion of the Council of Ministers or different ministries. In the first case they are permanent consultative bodies of the government, providing coordination in the executive branch, as well as cooperation with other government bodies, local authorities and NGOs in the formulation and carrying out of state policy in a given area or on critical matter of public importance.<sup>33</sup> Also, in carrying out her/his activities a Minister may establish councils as expert advisory units for solving problems of her/his specific competence, as well as working groups to carry out specific tasks.<sup>34</sup>

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<sup>31</sup> Decision no. 3872/19.03.2014 on a. c. no. 6575/2013 of the SAC, Seventh Division.

<sup>32</sup> Ibid. This interpretation has been adopted in a number of other decisions of the SAC, e.g. Decision no. 16380/10.12.2013 on a. c. no. 13425/2013 of the SAC, Five-Member Panel, Decision no. 6681/16.05.2013 on a. c. no. 13332/2013 of the SAC, Fifth Division.

<sup>33</sup> According to Article 21 of the Administration Act.

<sup>34</sup> According to Article 45 of the Administration Act.

One of the most common problems in practice is the failure to comply with Articles 26-28 of the LLA of the public authorities responsible for the preparation of draft laws or draft regulations. There are cases of failure to comply with the requirements to publish a draft regulatory act and to submit it to public consultation for a period of not less than 14 days. The failure to comply with these requirements provided by Art. 26, Para. 2 of LLA gives grounds for revocation of the adopted secondary legislation, according to the settled case-law.<sup>35</sup>

Furthermore, analyses on the financial resources needed for the implementation of the new legislation, on the expected results of its implementation and on the compliance with EU law,<sup>36</sup> usually, are not published, and probably not even prepared. During the public consultations, which are held, the opinions of the other participants are not being published, and when requested through the APIA their disclosure is even being refused. The result being, preventing the realization of a genuine and true discussion, prompting dialogue and the developing of arguments relative to other positions expressed within the given consultation. Meanwhile, it is rare that the body responsible for the preparation of the draft legislative act publishes the reasons for not adopting proposals and recommendations given during the public consultation. These transparency deficits lead to poor discussions of draft legislation and affect their quality and legal characteristics. The foregoing applies in no lesser extent to drafts of general administrative acts, which cover different policy documents such as plans, strategies, programs and more.

## **PUBLICITY OF INFORMATION CONCERNING PUBLIC PROCUREMENT**

Transparency of public procurement is associated with the need for proper and just spending of public funds. The legislation on public procurements dates back to 1997 when was adopted the State and Municipal Procurement Act. Amendments to this legislative framework are extremely intense and divergent, which hampers foreseeability and control on its implementation. Amendments have been undertaken also in the previous, adopted in 1999, Public Procurement Act (PPA). The amendments to the current, adopted in 2004 Act, are 27.<sup>37</sup> It is obvious that if these amendments are not aiming for the opaque and unfair spending of public funds, they, at least, are certainly not countering it. All these circumstances show the crucial need for the establishment of increased transparency, as one of the guarantees of the predictable and fair distribution of public funds.

Over the years, it was established that generally what is sought is access to the records of the commission, which carried out the procedure, the bids, the contract and data relating to the reporting on implementation. In the APIA case law before 2009-2010 we find decisions in which it is held that access to bids after the procedure's end<sup>38</sup> and to the concluded contracts<sup>39</sup> is free and not subject to restrictions. However, diverging case-law is also found.<sup>40</sup>

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<sup>35</sup> See for comparison Decision no. 78/06.01.2014 on a. c. no. 8815/2013 of the SAC, Seventh Division, Decision no. 16522/11.12.2013 on a. c. no. 11740/2013 of the SAC, Five-Member Panel, *inter alia*.

<sup>36</sup> Provided for in Article 28, Para. 2, items 3 – 5 of the LLA.

<sup>37</sup> The fact was reported in the reasons of the draft amendments to the PPA, proposed in 2013.

<sup>38</sup> Decision no. 8459/20.10.2004 on a.c. no. 3351/2004 of the SAC, Fifth Division.

<sup>39</sup> Decision no. 4717/25.05.2004 on a. c. no. 8752/2003 of the SAC, Fifth Division.

<sup>40</sup> Decision no. 16170/29.12.2009 on a. c. no. 13423/2008 of the SAC, Third Division.

In 2008, with the APIA amendments introducing “overriding public interest” of disclosure hypotheses, the case-law became more definite. In accordance with the hypothesis of § 1, item 5, letter “f” of the AP of the APIA, under presumed overriding public interest, everyone has the right to access to the contents of a contract where one party is an obliged body under the APIA.<sup>41</sup> This right covers both contracts and other information relating to them that is relevant to the accountability and transparency of public authorities.<sup>42</sup>

Notwithstanding the described development and the achieved state of things, however, access to information of public interest related to public procurement in practice is not well settled. Institutions often refuse information on requests and let the court resolve the issues on access to information. At the same time, the Public Procurement Register covers data on the contracts, but the very documents and reported performance data are not published in full. The AIP annual audits of the institutions active transparency give a clear idea about the state of the information published.

Draft amendments to the Public Procurement Act were introduced in 2013. One of the proposals is the mandatory establishment of a separate website section entitled “Buyer profile”, where must be published information related to public procurement. There should be published announcements, decisions, calls, guidelines and the other currently mandatory information, as well as the commissions protocols together with annexes thereto, the contracts, including with subcontractors and annexes thereto, the documents certifying acceptance of their execution and information on the payments made. The publication requirement is established in a new Section III “Buyer profile” in Chapter II of the Act, Articles 22b – 22d. Responsible for the publication are the contracting authorities which should to do it in their own website or in another website. Information about which participants in the procedure have applied a declaration of confidentiality under Art. 33, Para. 4 the PPA, as well as the information subject to protection under the law (Article 22 b, Para. 3 of the draft) shall be redacted in the published documents. Publication of the respective documents and information should be carried out in a 30-days period.

The proposed amendments deserve appreciation. At the same time, the fact that, from the original version of the draft, some categories of information to be published were dropped in the parliamentary debates, is concerning. We believe that there should be full disclosure of contracts and reports on their execution, and a backtrack from the objective in this regard tabled in the original draft should not be allowed.

## **PUBLICITY OF INFORMATION RELATING TO THE INTEGRITY OF CIVIL SERVANTS**

The legislation does not provide a single framework for the transparency relating to public officials integrity. It is dispersed and contained in various regulations. Publicity of the declarations under the Conflict of Interest Prevention and Ascertainment Act (CIPAA) is resulting from the provisions in this Act,<sup>43</sup> while publicity of the

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<sup>41</sup> E.g. Decision no. 8706/18.06.2012 on a. c. no. 9760/2011 of the SAC, Fifth Division.

<sup>42</sup> Decision no. 10306/30.07.2010 on a. c. no. 14068/2009 of the SAC, Fifth Division.

<sup>43</sup> Article 17, Para. 2 of the CIPAA.

declarations of income and assets of senior state officials results from the Disclosure of Property of Persons Occupying High State Positions Act (DPPOHSTPA).<sup>44</sup> Hence the fulfillment of obligations of transparency is a function of the capacity and the efforts of the authorities responsible for the implementation of the respective law. Publicity of the declarations under the DPPOHSTPA is at a maximum, while of the CIPAA declarations it is too unsatisfactory.<sup>45</sup> The responsible body in the first instance is the National Audit Office, while in the second – the respective independent authority under the CIPAA. The poor publication of the declarations under CIPAA is at least partly due to the opinions of the Commission for Personal Data Protection, which give a blurred interpretation of Art. 17, Para. 2 of the CIPAA advising the administrations to require the explicit consent of the civil servants for publishing the data.<sup>46</sup>

The question of the publicity of remuneration in the state administration and in the public sector in general, as well as on supplementary remuneration (bonuses) is being raised in the practice.<sup>47</sup> Indeed, there is no legal obligation for the full publication of the data on remuneration received in the administration. In this respect, Bulgaria departs from the established practice of transparency in most democratic countries. It is necessary to fill this gap.

## **THE APIA AND SPECIAL LAWS ON ACCESS TO INFORMATION**

According to Art. 4, Para. 1 of the APIA the right of access to public information is implemented under the provisions of this Act, unless another act provides for a special procedure to seek, receive and impart such information. In practice it appears that this text is not sufficiently clear. Thus for instance, the Environmental Protection Act refers wholly to the procedure for filing a request and replying to it provided for in the APIA. Regardless of this, the case law requires that the applicant explicitly referred to the EPA in order to be implemented the legal regime of restrictions laid down in Art. 20, Para. 1 of the EPA, and not the one under the APIA. It is also often that an action brought against a refusal under the APIA is terminated by the courts on the grounds that the applicable procedure for access to information is the one provided by the Administrative Procedure Code (APC), as the other party is a participant in proceedings under the APC. In reality, Art. 12, Para. 2 of the APC states that the parties to administrative proceedings carry out their right of access to information under this Code, and the others – under the APIA. However, procedures for the implementation of the right to information under the APC are not provided.

In principle, different aspects of the right of access to information can be conditionally determined. The right of everyone to access to public information implies equal right of every citizen to receive documents created or held by a public authority or other obliged body. Documents related to the environment, or kept in the National

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<sup>44</sup> Article 6 of the DPPOHSTPA.

<sup>45</sup> See for comparison the results of the active transparency survey further in the report.

<sup>46</sup> When the conflict of interests declarations were taken off the Supreme Judicial Council's website in 2013 three NGOs, including AIP, lodged a complaint on the docket of the SAC. After successful negotiations and the republication of the declarations on the Supreme Judicial Council's website the case was terminated. Currently, there is no clear court ruling on the issue of non-publication of declarations under the CIPAA.

<sup>47</sup> See for comparison Decision no. 178/08.01.2013 on a. c. no. 2150/2012 of the SAC, Fifth Division, Decision no. 8926/19.06.2013 on a. c. no. 11623/2012 of the SAC, Fifth Division, Decision no. 3033/04.03.2014 on a. c. no. 11847/2013 of the SAC, Seventh Division.

Archives, or the documentation of former security services include public information, but are regulated by different laws and are subject to access under a different legal regime. However, in these cases are generally applicable some of the principles that apply to the access to any public information.

A different case is the one of access that only certain individuals have to information about them or procedures in which they participate. Under the Personal Data Protection Act (PDPA) a right of access to personal data have as a rule only the data subjects, while others could have such access only in the cases where the law explicitly gives them this right (government bodies, journalists and others). According to the APC participants in the proceedings have the right to access all information related to them, including information that is not available to everyone. In many cases, the information under the PDPA and the APC is not public in nature.

The establishment of separate modes of access to public information outside the said aspects may lead to an unjustified restriction on the right of access to information. Thus for instance, the draft of a new Ministry of Interior Act (MoIA)<sup>48</sup> proposes further restrictions on the right to access information by this institution that are broader than those of the APIA. The proposed approach is unacceptable in terms of the guaranteed by Art. 41 of the Constitution right of access to public information and creates preconditions for violating the rights of citizens and opacity of a wide range of activities of the Ministry of Interior.

FUNCTIONS OF A BODY, COORDINATING AND CONTROLLING THE ACTIVITIES UNDER APIA									
Institution	Activities								
	Prevention					Repression			
	Manuals	Instructions, orders	Overview and analysis	Recommendations	Trainings	Investigation	Considering complaints	Imposition of sanctions	Coordination of the bodies responsible under the APIA
Council of Ministers Department "Administrative Development and Capacity Building"			Yes						
The Inspectorates under Article 46 of the Administration Act						Yes	Yes		
Executive bodies								Yes	
Minister of Justice								Yes	
Minister of Finance		Yes							
Ombudsman							Yes		
Public Administration Institute					Yes				

<sup>48</sup> Draft law signature no. 302-01-39, filed on 11.11.2013.

## 4. PROBLEMS AND TENDENCIES IN THE ACTIVE DISCLOSURE OF INFORMATION

### 4.1. ONLINE PUBLICATION OF INFORMATION – BASIC ELEMENT OF THE RIGHT OF ACCESS TO INFORMATION

The proactive publication of information is among the most important elements of the right of access to information. Its significance for the exercise of that right has been increasing and the standards in the area have been gradually set. In most of the access to information laws adopted during the past decade, obligations for online publication of specific categories of information have been established. States with older legislation have either amended it or adopted new laws regulating the electronic access to information. A review of this legislation shows that some categories of information mandatory for online publication are common.<sup>49</sup> For instance, information about the powers and the normative acts of the public authorities, about their structure and functions, their activities, signed contracts, the transparency of the decision making process are mandatory for publication under most of the access to information laws. In a number of states, which had access to information legislation before 1990, the obligations for proactive disclosure have been extended not only by the access to information laws, but also by specific laws introducing obligations for publication of specific categories of information – contracts, budget transparency, or developing the so called guided transparency. Recently, the process of enhancing transparency has been specifically studied and systematized.<sup>50</sup>

What are the reasons and factors which lead to the 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?

In all surveys, the conclusion is drawn<sup>51</sup> that the regulation of the obligations for proactive disclosure is conditioned by several reasons:

1. The necessity for setting minimum standards for proactive disclosure;
2. Increased demand for public information;
3. Growing recognition of the proactive disclosure as an integral part of the right of access to information.<sup>52</sup>

The development of proactive disclosure of information online legislation and practices allows 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 accessibility of legislation and the transparency of the legislative process, providing

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<sup>49</sup> Comparative review of the categories of information for proactive disclosure (standard-setting) of the Council of Europe, the Organization for Security and Cooperation in Europe, etc. can be found in Helen Darbishire's working paper: [http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbishire\\_Proactive\\_Transparency.pdf](http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbishire_Proactive_Transparency.pdf), p. 39. The paper was presented in AIP information newsletter, October 2010 issue (10)82): <http://www.aip-bg.org/publications/Бюлетин/2010/>.

<sup>50</sup> Full Disclosure. The Perils and Promise of Transparency, Archon Fung, Mary Graham, David Weil, Cambridge University Press, 2007.

<sup>51</sup> As we have already signified in the report *Access to Information in Bulgaria 2011*: [http://store.aip-bg.org/publications/ann\\_rep\\_eng/2011.pdf](http://store.aip-bg.org/publications/ann_rep_eng/2011.pdf).

<sup>52</sup> See Helen Darbishire's working paper: [http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-68250334206/Darbishire\\_Proactive\\_Transparency.pdf](http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-68250334206/Darbishire_Proactive_Transparency.pdf).

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 administrative practices 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.

The Council of Europe Convention on Access to Official Documents (CETS No. 205)<sup>53</sup> open for signatures in June 2009, sets forth active transparency as one of the principles of the right of access to information. Article 10 of the Convention gives a broad formulation of the obligation for executive power institutions, but, nevertheless, reflects 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.<sup>54</sup>

The Explanatory Report to the Convention<sup>55</sup> clarifies what the “official documents of general interest” are which shall be made public without the need for individual requests, namely: documents on 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 a 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).

During the past several years, within the global Open Government Partnership initiative, Open Government Standards were developed and widely discussed.<sup>56</sup> An

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<sup>53</sup> The Council of Europe Convention on Access to Official Documents:  
<http://conventions.coe.int/Treaty/EN/Treaties/Html/205.htm>.

<sup>54</sup> <http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=205&CM=8&DF=16/04/2014&CL=ENG>  
<sup>55</sup> <http://conventions.coe.int/Treaty/EN/Reports/Html/205.htm>.

<sup>56</sup> <http://www.access-info.org/en/open-government-data>

important part of these standards are the “Standards for Proactive Publication of Information,” namely the online publication of:

- 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 – strategies and plans, policies, activities, procedures, reports, and assessment of performance – including factual analysis and other documents and data on the base of which policies are being formulated;
- Decisions and acts – including data and documents which prove the necessity of these decisions and acts;
- Public services information – description of the services provided by the authority, manuals and guidelines, forms and information about the fees and the time periods for their provision;
- Budget information – budget procedure, draft budget, budget, financial reports, including information about the salaries within the public institution, auditor’s reports;
- Open meetings information – the topic, the time, the agenda, information about public discussions and the conditions for participation in them;
- Decision-making and public participation – information about the decision-making procedures, including the mechanisms for public consultation and participation in the process;
- Subsidies information – about subsidized persons, about the purposes of the subsidies, the amounts paid and the state of execution;
- Public procurement information – about the tender procedure, the selection criteria, the results of the tender, the contracts signed, and execution reports;
- Information volumes and resources – description of the information resources, indexes, lists of public registers, description of public registers, the access procedure, including online registers and databases;
- Information about the information generated and held by the information – register of the documents/information, generated and held;
- Information about the publications issued by the institution, including information about free and paid publications;
- 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.<sup>57</sup>

## **Bulgarian Legislation**

The standards for the proactive publication of specific categories of information that are of public interest suppose regulations for the update of the information, its free obtaining, an obligation for the authority to also seek other channels of prompt dissemination of the information, when it aims at the prevention of a threat against people’s life, health, and property. Additionally, an obligation is established for the administration to inform the citizens as fast as possible and in all appropriate ways, as it is provided by the Estonian law.<sup>58</sup> There are similar provisions in Art. 14 of the

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<sup>57</sup> <http://www.access-info.org/en/open-government-data>

<sup>58</sup> <http://www.rti-rating.org/files/pdf/Estonia.pdf>

Bulgarian Access to Public Information Act (APIA), as well as in the Environmental Protection Act, however, lacking details about the time frames, specific obligations, and formats.

Another important and debated issue is the publication of open data, in machine-readable format. The launch of open data portals does not substitute for the implementation of the obligation for proactive publication of information by public bodies, neither does the two contradict. A good example in this regard is the Australian government data portal which contains 36,000 data bases and state catalogues/registers.<sup>59</sup>

A good example for a detailed regulation of the proactive publication of information is the Estonian access to information law (Part 4).

A lot of the categories of information listed above as standards in the area are mandatory for online publication under the Bulgarian legislation as well, although not specified in such details. For instance, the institutional, organizational, and operational information, the administrative acts, information about the exercise of the right of access to information and about the information resources, registers, and data bases is mandatory for publication in the institutional Internet sites under Art. 15 and Art. 15a of the Access to Public Information Act (APIA) after its 2008 amendments. The law, however, does not specify how often the update of the publications should be done, neither what the content of some broadly formulated categories should be. Thus, the practices of proactive publication are extremely diverse.

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 2008 amendments to the Access to Public Information Act. The 2008 amendments have elucidated which acts of the authorities should be proactively published, namely “a structured aggregation of all legal, common, and individual administrative acts, issued by the respective administrative body.”<sup>60</sup>

The issue about the availability of a unified portal of all administrative acts remains legislatively unsolved. The initial intention of the legislators as of 2000 for the establishment of a Register of Administrative Structures and Administrative Acts has not been fulfilled. In 2002, the obligation for publication of administrative acts in that Register was repealed. Only the obligation for publication of the acts which establish regulatory regimes remained. Currently, the data base is titled Administrative Register and does not contain administrative acts, except for these related to the regulatory regimes.<sup>61</sup>

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<sup>59</sup> <http://www.govpond.org/index.php>; <http://data.gov.au/>

<sup>60</sup> APIA, Additional Provisions §1, item 3 (State Gazette, issue 104/2008): [http://www.aip-bg.org/en/legislation/Text\\_of\\_the\\_APIA/200432/](http://www.aip-bg.org/en/legislation/Text_of_the_APIA/200432/).

<sup>61</sup> Regulations for the Conditions and the Procedure of the Maintaining and Using of the Administrative Register, adopted with a Decree of the Council of Ministers No. 132 as of May 12, 2011, promulgated in the State Gazette, issue 39/2011, <http://ar2.government.bg/ras/>

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

The proactive disclosure of the draft budget, the budget, and the draft financial reports and the financial reports is regulated by the Public Finance Law.<sup>62</sup>

A number of laws regulate the online maintaining of public registers. A review of these obligations was made by AIP in 2011 and the results served as a basis for the launch of the Public Registers portal.<sup>63</sup>

The publication of the structure, functions, services, information resources available, registers maintained, as well as contact information are also an important element of the proactive disclosure of information. 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).

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

#### **4.2. CIVIL AUDIT ON ACTIVE TRANSPARENCY<sup>64</sup>**

AIP has been evaluating the online publication of information by the public bodies for years. The aim of the first such evaluations performed within the period 2006 – 2008 was the campaign for legal regulation of the obligations for online publication of information. The 2008 APIA amendments introduced the obligations for online publication of specific categories of information and AIP evaluations have become a tool for assessment of the implementation of these obligations. That is why we call our assessments civil audits on active transparency. In 2010, AIP has developed a range of indicators, integrated in our internal information management system, which allows the evaluation of institutional web sites at any time.

For comparison purposes, the audit is performed during a predefined period of time. On the base of the results, we formulate recommendations towards to legislative and executive power with regard to proactive disclosure of information. AIP recommendations formulated in several successive annual reports were the following:

- To assign an internal unit within the administration to coordinate the process of proactive disclosure of information online;
- To orient the internal record management systems towards the public;

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<sup>62</sup> Public Finance Law (SG issue 15/ February 15, 2013).

<sup>63</sup> [www.publicregisters.info](http://www.publicregisters.info)

<sup>64</sup> Results are available on AIP web site: <http://www.aip-bg.org/en/surveys/2014/101401/>. Comparative data from AIP audits 2011 – 2014 and 2014 Audit results by type of public body are also available: [http://store.aip-bg.org/surveys\\_eng/audit\\_comp\\_tables\\_14.pdf](http://store.aip-bg.org/surveys_eng/audit_comp_tables_14.pdf).

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

Every year, AIP reviews and increases the assessment indicators on the base of several grounds:

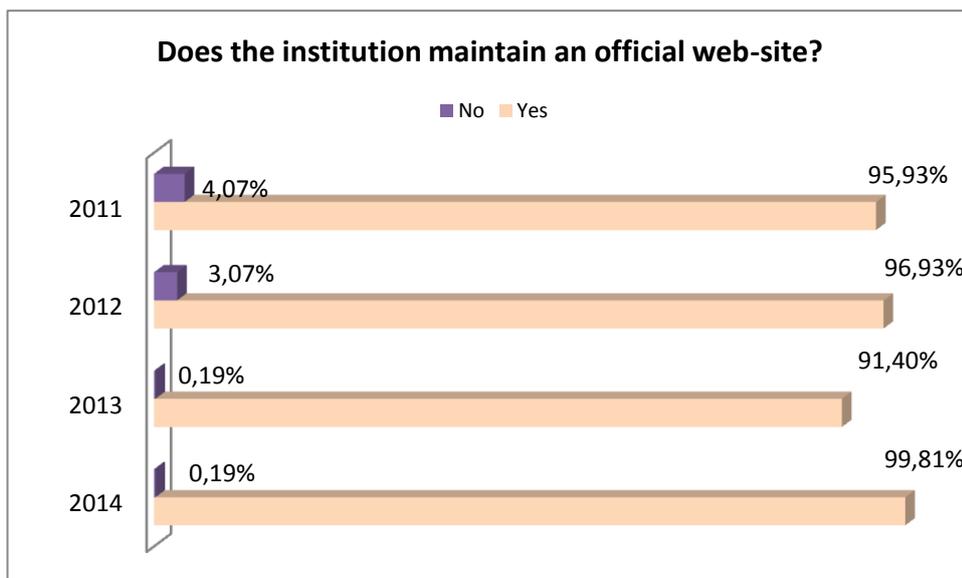
1. New legal obligations for online publication of information.
2. Precision of the indicators on the base of practical experience from the previous audits.
3. Inclusion of indicators on the base of practical seeking of specific categories of information. These categories are identified on the base of the systematization and analysis of the cases referred to AIP for legal help and consultation and the monitoring of the media publications.

Some indicators evaluate the proactive disclosure of information which is not mandatory to be published on the institution's web site but there is an explicit obligation for publication in a particular centralized register. The publication on the own web site of the institutions speaks clearly of the practical understanding of the meaning of transparency and not only the fulfillment of an obligation for online disclosure coming from above. This is the situation with the information related to the announcement and assignment of public procurements. Nobody prohibits the authorities to maintain an online register of public procurement tenders and the assigned public procurements, when a big part of that information has to be sent to the Public Procurement Agency. The information about contracted public procurements published in the centralized Public Procurement Register contains data about the contracting authority, the subject of the public procurement, description of the contract, name and address of the executing party, the price, relation to the EU funds, etc.

In 2014, the indicators evaluating the budget and financial transparency were increased following the requirements of the Public Finance Law. The AIP team also assessed the level of online publication of master and detailed city development plans and construction permits by the municipalities.

The 2014 audit encompassed 535 institutions – executive bodies at central, regional, and local level, independent state bodies and the National Insurance Institute and the National Health Insurance Fund. Last year the number of the evaluated web sites was 489. The 2014 audit scope was extended, encompassing the regional offices of central government authorities.

Within the period 3 February – 3 March 2014, 534 web sites were evaluated on the base of 66 indicators and additional 9 indicators for the municipalities' web sites. During the audit period, one web site which had been available was down – that of the Regional Governor's Administration – Vratsa.



### 4.3. RESULTS

The audit results are available on AIP web site and are visualized by type of institution, by indicators, by ways and time frames of response to the electronic requests filed to 535 institutions.

The indicators were quantitatively assessed according to the significance of the information subject to publication in Internet. This assessment served as the basis for the 2014 Active Transparency Rating. The latter also allows the generation of separate ratings by type of public body, by geographical regions, by municipalities. A comparative rating for three successive years shows the tendencies in the development of active transparency in Bulgaria.

The results are organized along several big topics which allows for a comparison with previous years' results. The topics under which we organize the results follow the "Standards for Proactive Publication of Information:"

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

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

Heads of executive bodies are obliged to publish online up-to-date information about their powers, functions and the responsibilities of the respective administration. A big *Access to Information Programme*

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

The results show an increase in the level of proactive disclosure of legal basis regulating the powers and the responsibilities of the authorities with 3% compared to 2013. There is an almost 100% implementation by the central government authorities, state agencies, commissions, executive agencies, and independent bodies of power, with the persistent tendency of the poorest performance by the regional units of central government authorities and the municipalities.<sup>65</sup>

Despite the increase in the total number of assessed bodies which have published information about their functions from 393 to 418, there is a decrease in terms of percentage. The total number of institutions which have published information about the services they provide has increased with twenty – from 422 to 442.

No considerable improvement is observed with regard to the obligation for publication of a description of the data bases and information resources. Apparently, this obligation needs detailed definitions and regulation with regard to the content, formats, and the update of the proactively disclosed information.

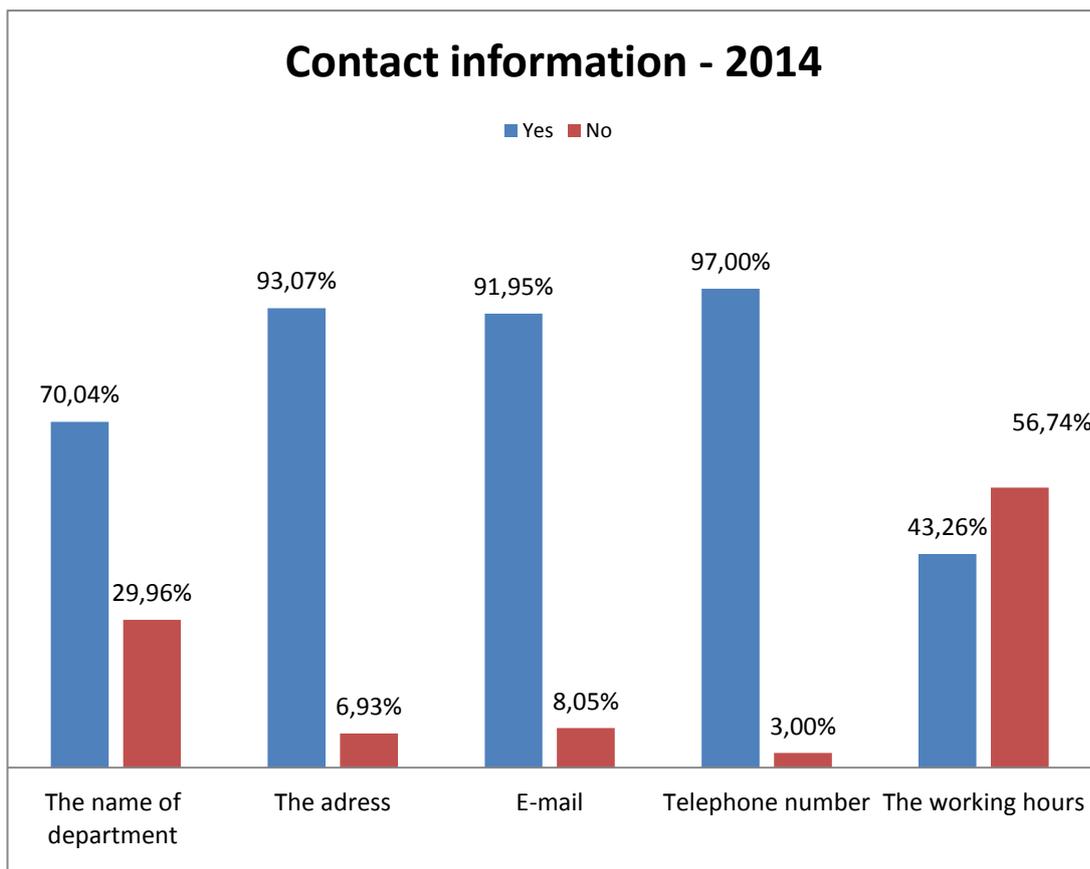
### **Organizational Structure and Contact Information**

The most considerable level of implementation relates to the obligations for online publication of information about the organizational structure of the public bodies – over 90% at all levels. A positive development is the additional information published online with the organograms – the names of the public officials by departments and directorates, their functions, and contact information.

There is a continuing tendency of increase in proactively disclosed contact information – of the public relations office, the address, the phone number, the e-mail address. However, the increase does not affect the publication of information about the working hours of the institutions.

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<sup>65</sup> See Comparative Tables 1 and 2; [http://store.aip-bg.org/surveys\\_eng/audit\\_comp\\_tables\\_14.pdf](http://store.aip-bg.org/surveys_eng/audit_comp_tables_14.pdf).  
*Access to Information Programme*



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

There is not a particular change in the disclosure of normative acts by the public bodies.<sup>66</sup> The overall implementation for 2014 is 81%, the best performance belonging to the central government authorities and the independent bodies of power – 100%.

The tendency of increasing the number of online registers of individual administrative acts remains. Regarding the implementation of the obligation for disclosure of the acts of the municipal councils, the level is very high – 93%.

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

Development plans and strategies have always been actively and well communicated, in contrast to the activity reports of the institutions. This tendency is

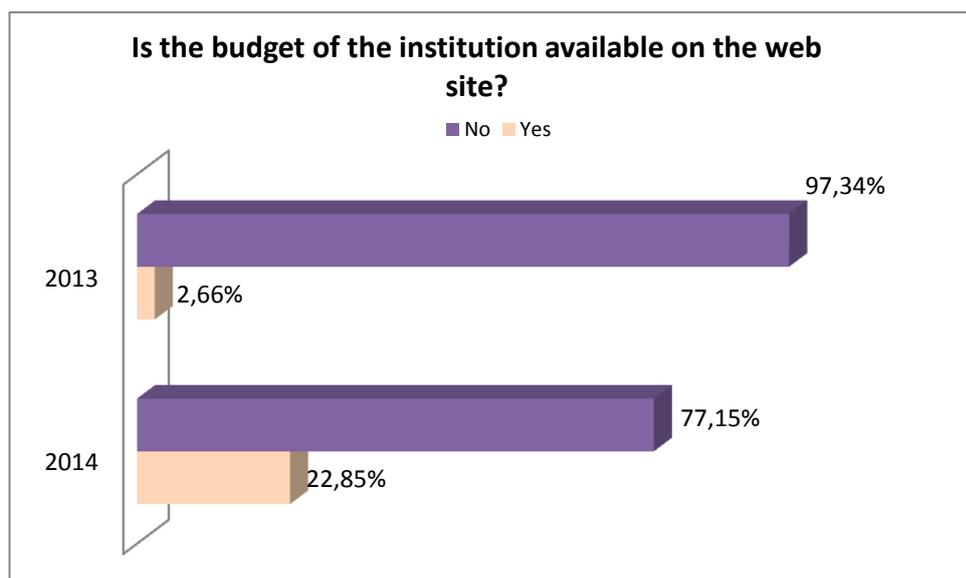
<sup>66</sup> According to the Bulgarian general administrative law, there are three categories of administrative acts: individual acts are administrative decisions with application to certain individual/individuals; general administrative act is a decision with application to unspecified number of individuals; administrative normative act applies to unspecified number of individuals multiple times i.e. it has the legal character of "rules."

preserved in 2014 as well: 76% of audited public bodies publish their development programs and strategies, and 17% publish activity reports.

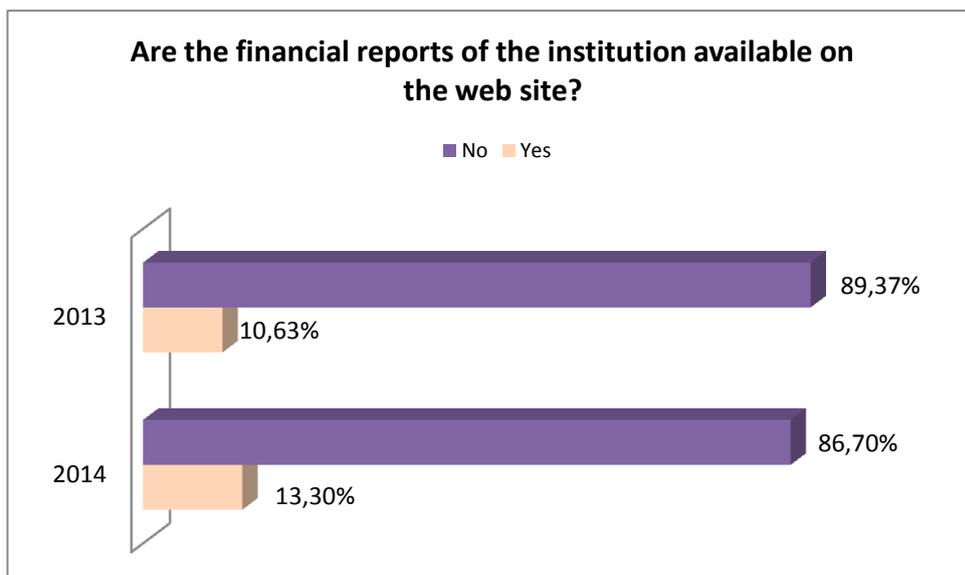
The percentage of institutions which maintain a section on their web site containing draft normative acts has increased – from 28% in 2013 to 36% in 2014. The completeness of the disclosed information, however, is another issue. As a rule, there is no information about the grounds behind the amendments of a normative act or the adoption of a new one, the time frames for the public consultation and the results of it.

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

An important element of active transparency is the disclosure of the budget and the financial reports of the authorities. The precision of that obligation was made by the Public Finance Law which establishes more obligations for first degree budget spending units, the use of program budgeting and respective reports. We have assessed the level of online disclosure of the draft budgets of municipalities, as well as the publication of the dates for their public discussion and the public discussion on the financial reports.



As a rule, the precision of the obligations for online publication in a law results in an increase in the level of proactive disclosure. This is valid for the first degree budget spending units – 71% of the central government authorities have published their 2014 budgets; out of the 264 municipalities, 39% have done so; and 50% of the independent bodies of power have published their 2014 budgets. The level of implementation regarding the proactive disclosure of the financial reports is much lower.



Out of the 534 audited institutions, 297 are first degree budget spending units. We have assessed the level of publication of the monthly and quarterly financial reports. Only 18% of the ministries and 6% of the municipalities have published monthly financial reports for 2013. Quarterly financial reports were published by 76% of the municipalities, by 2% of the state commissions and agencies and by 4% of the municipalities.

The level of implementation regarding the obligation for part of the first degree budget spending units (excluding the municipalities) to use program budgets and respectively to report on the execution of the program budgets was the following: 18 public bodies, out of 23, have published program budgets on their web sites.

The disclosure of daily payments (SEBRA)<sup>67</sup> was started in line with the *budget transparency* commitment within the global Open Government Partnership initiative. These publications are made by 32 institutions only – 15 ministries, one regional unit, eight independent bodies of power, five state agencies and commissions, and three municipalities.

Within the Open Government Partnership initiative, there is also a measure for the publication of citizens' budget. The Ministry of Finance was the first to publish an explanatory text "The Budget in Short."<sup>68</sup> Disclosure of such information was made by only 19 institutions, most of which municipalities.

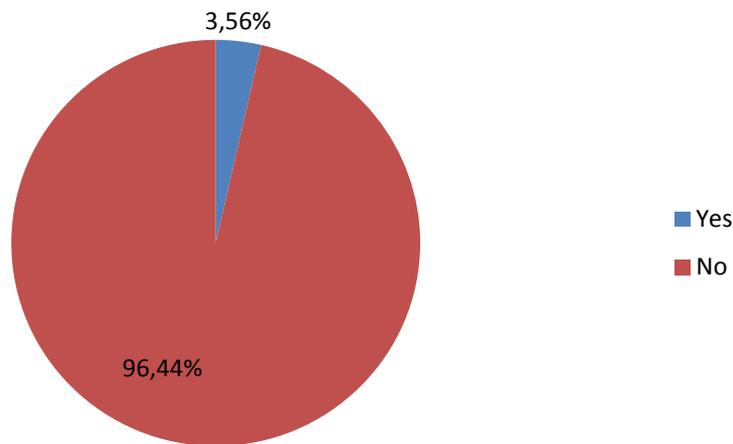
<sup>67</sup> The Electronic State Budget Payments System (SEBRA) is a system for monitoring the payments by the budget spending organizations which are part of it and management of the payments within preliminary set limits. Refer to:

<http://www.minfin.bg/bg/transparency>

<sup>68</sup>

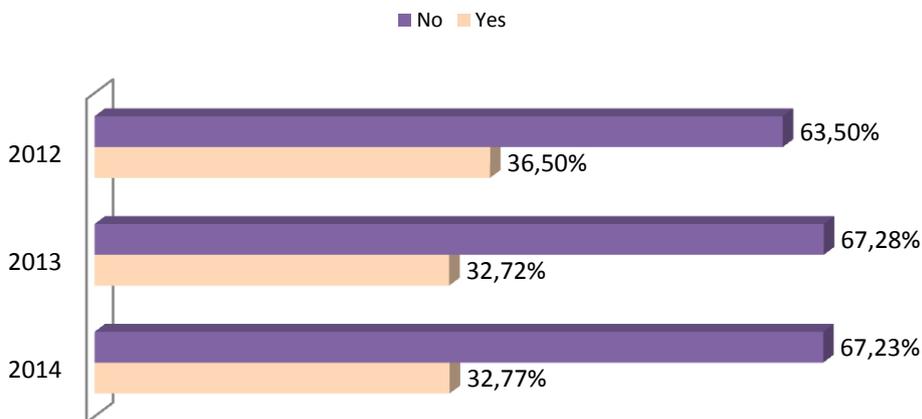
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### Is a Citizens' Budget published? 2014



The questions related to the publication of the declarations of public officials under Art. 12 of the *Prevention and Establishment of Conflict of Interests Act* and the lists of the officials who have filed such declarations were included in that part of the audit. There is a tendency of increasing the number of institutions publishing lists of public officials who have submitted such declarations, while the number of those which have disclosed the declarations themselves remains the same – 32.77% .

### Are the conflict of interest declarations published on the web site?



There is a considerable improvement in the active disclosure of public procurement tender announcements. 79.40% of audited institutions maintain a register of public procurement tender announcements. As regards registers of signed public procurements, however, the level of proactive disclosure does not exceed 10%.

Results from successive years show that below 3% of the institutions publish their contracts online. That is why AIP have filed an electronic request within the 2013 and 2014 audits for a copy of the last contract signed by the institution under the Public Procurement Act. In 2014, we have received over 300 public procurement contracts, which is a considerable improvement compared to 2013.

### ***Access to Information Section***

The *Access to Information* section has the purpose to facilitate and assist requestors or seekers of information by providing clarification on the process within the respective institution and description of the procedure for obtaining access to information, including the procedure for access to the maintained public registers. The section should contain information about the name of the department responsible under the APIA; the official assigned under the APIA; the address, the phone number, and the working hours of the department. The APIA implementation reports should also be published in the section.

Obligations for proactive disclosure established by other laws also enhance the access to information in the institution. That is why the results of two of the assessment indicators (*is a list of declassified documents published* and *is a list of the categories of information subject to classification as official secret published*) are included in the topic: information necessary for the exercise of the right of access to information.

An *Access to Information* section is created in 55.43% of the audited web sites. For comparison with the previous year audit, such sections existed in 55.42% of the web sites. 238 institutions persistently refuse to fulfill their obligations under the law to create such sections. Among them are the Council of Ministers, the Ministry of Investment Planning, the Ministry of Agriculture and Foods, and, most strangely, the Ministry of Justice, which according to the Access to Public Information Act should be the administrative body imposing sanctions as stipulated by Art.43 of the law.

The content of the sections where they have been created does not comply with the requirements of the law in 94% of the cases. Only 17 are the public bodies which comply with the legal requirements. These are the Ministry of Defense, two regional governor's administrations – Razgrad and Smolyan, the Executive Environment Agency and the Regional Inspections on Environment and Waters – Blagoevgrad, the Patent Office, and the municipalities – Devin, Dobrich, Dolni chiflik, Kocherinovo, Krivodol, Momchilgrad, Nikopol, Razgrad, Chelopech, Yablanitsa.

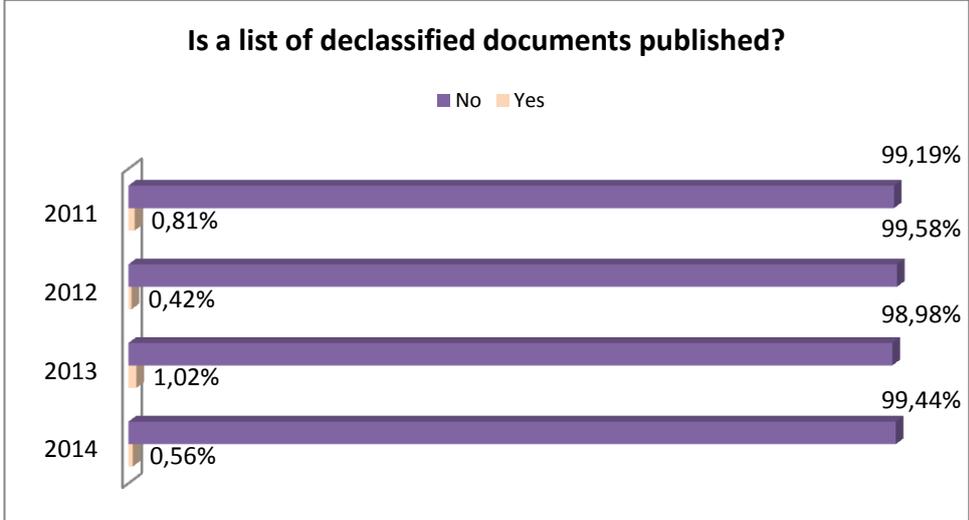
There is not a particular development with regard to the publication of the internal APIA implementation rules. Although over 50% of the institutions have published their internal APIA implementation rules online, their number has not been increased for the past three years as there is not any control over the implementation of the obligation.

There is a continuing non-fulfillment of the obligation for online availability of a description of the procedure for access to the public registers in the *Access to*

Information section. Only 30 out of 534 institutions have published such a description.

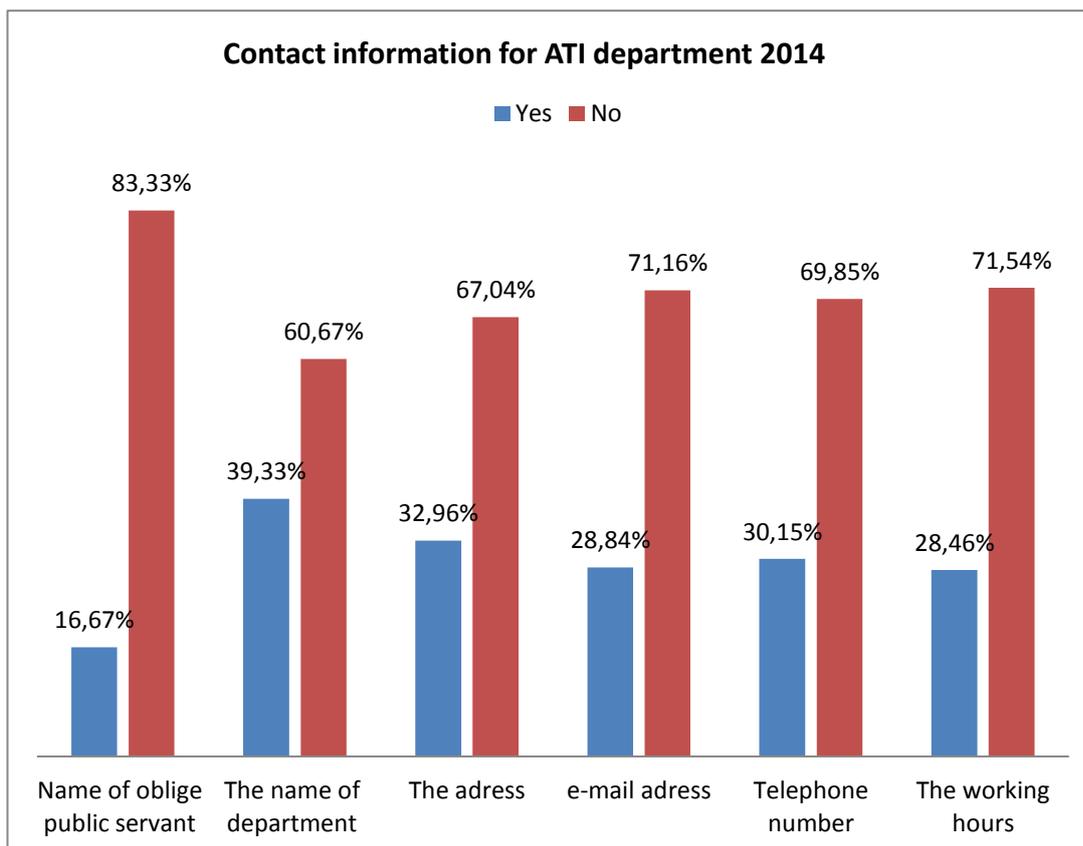
Only 3% is the increase in the online publication of the APIA implementation reports, although the reports are being sent to the “State Administration” directorate at the Council of Ministers for the preparation of the annual report *The State of the Administration*. APIA implementation reports were published by 129 institutions out of the 535 audited.

As far as the transparency of the declassification of documents under § 9 of the Final Provisions of the Protection of Classified Information Act is concerned, the level of implementation has been lamentable during the past four years.



Regarding the list of the categories, subject to classification as *official secret*, 15% of the public bodies have published it on their web sites.

The level of proactive disclosure of the contact information of the department responsible for the receiving of the access to information requests is much below 100%. The obligation for publication of the contact information of the access to information official is not well fulfilled either – it is not above 20%.

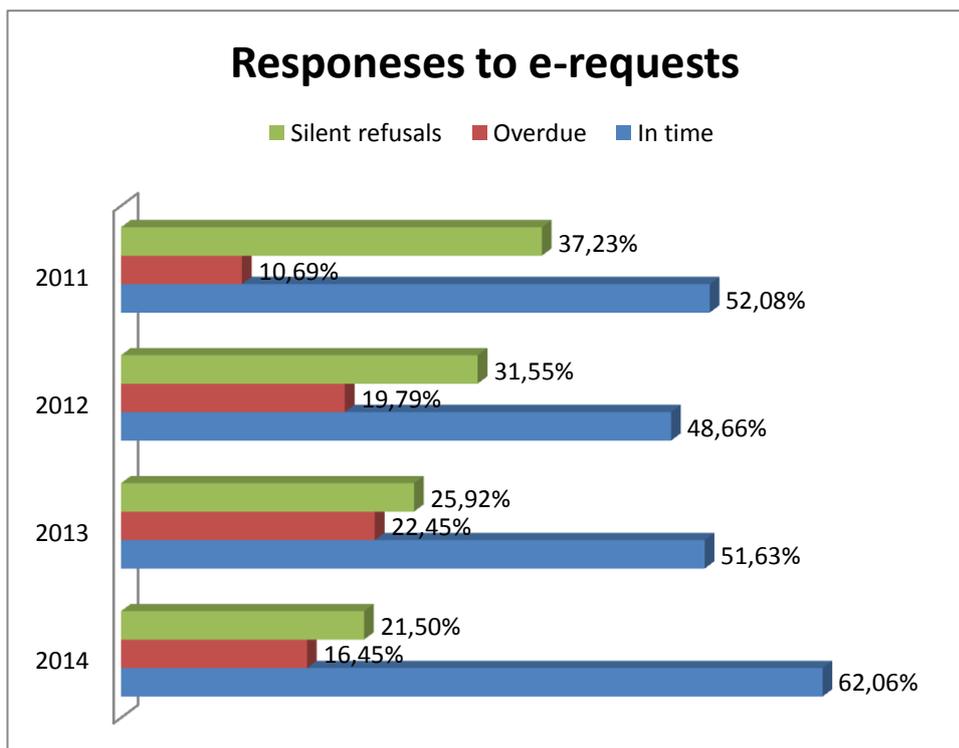


#### 4.4. ELECTRONIC REQUESTS

The Access to Public Information Act provides for the filing of a request electronically since its adoption. Pursuant to Art. 24, Para. 2

“The request is deemed written also in cases where it is sent electronically subject to conditions determined by the respective body.” This procedure or conditions could not contradict the requirements of the APIA and the rational expectation of the requestors was that it would be described in the internal access to information rules of the institutions.

AIP has been filing electronic requests within the audit of institutional web sites for a fifth successive year. The interesting conclusion that could be drawn is that the way the authorities respond to the e-requests does not depend on the topic of the requested information. During the first years, AIP was demanding information that should have been published in the Internet. During the past two years, we have requested a copy of the last contract signed under the Public Procurement Act. This type of information is usually sensitive for the institutions. The chart below shows that the responses to the e-requests have been increasing within the years, while the silent refusals have been decreasing. This is a positive tendency.



Within the 2013 audit on active transparency, AIP filed 535 electronic requests asking for copies of the last contract signed by the respective public body under the Public Procurement Act for 2013. We have received 420 responses. 115 institutions did not respond to the request at all.

We hereby present some administrative practices stemming from the responses either granting access to the requested information or refusing such.

### Contradictory Practices

The Privatization and Post-Privatization Control Agency refused access to the contract with “Mobiltel” Single Person JSC on the grounds of the trade secret exemption and the dissent of the third party– the mobile operator. At the same time, the Nuclear Regulatory Agency has sent the complete text of the contract with the “Mobiltel” Single Person JSC, without seeking the consent of the third party.

The way we have formulated our request – for a copy of the last public procurement contract, motivated some institutions to provide access to more than one contract. This happens when the latest public procurement tender contains several positions and separate contracts are signed for each of them.

The Geodesy, Cartography and Cadastre Agency informed us that they would send 12 contracts. The National Statistical Institute informed us that their last public procurement had been for official cars insurance and they had signed 36 contracts.

We shall also emphasize the attitude of the Ministry of Interior (Mol) which had decided that they should provide information for all its structures, which are independent legal persons, consequently contracting authorities under the Public

Procurement Act (the Academy of the Ministry of Interior, the Medical Institute of the Mol, the Chief Directorate “Border Police,” the Chief Directorate “National Police”, the Chief Directorate “Fire Safety and Civil Protection,” the Chief Directorate “International Projects,” the Directorate “Migration,” the Directorate “Special Delivery Services,” the Directorate “Property Management Social Policy”).

The Ministry of Interior had sought the consent of all contractors. They obtained the consent of 3 companies, one refused, 5 did not respond. In their decision, the Mol pointed out that under the Art. 31, Para. 4 of the APIA, they were obliged to provide partial access to the requested information in a way that did not disclose information about the third party. And they provided access to 9 redacted contracts. Strangely, the names of the heads of the respective directorates within the Mol were deleted, who are parties of the contracts. The names of the persons, representing the companies – parties of the contracts, were also deleted, while the data of the companies like the name, the identification number, and address were left.

We consider as a positive administrative practice the response of the National Agricultural Advisory Service with Ministry of Agriculture and Food which informed us that they had not signed any public procurement contract in 2013 that was why they were sending the same for 2012.

Among the institutions which informed us that they did not have signed procurement contracts and consequently did not send us information were the Institute for Culture at the Ministry of Foreign Affairs, the State Gambling Commission, the Executive Agency “Bulgarian Accreditation Service,” the Executive Agency “Medical Audit,” the Executive Agency “National Film Center,” the Executive Agency for Transplantation, the National Institute for Conciliation and Arbitration, the National Evaluation and Accreditation Agency, the Regional Governor’s Administration – Montana, etc.

### **Third Parties**

A common practice is that the institutions seek the consent of the third party (the contracting company) for the disclosure of the requested information. Among the inquired companies which have given their consent are the “Administrative Reform” Company under the Obligations and Contracts Act, “Armeec” Insurance JSC, “Bulstrad Vienna Insurance Group”, “Activ – College” Company under the Obligations and Contracts Act.

Among the companies which have refused to provide consent for disclosure are “Mobiltel” Single Person JSC, “Victoria Insurance” JSC, Housing Construction Cooperation “Saglasie,” “Petrol” JSC, “Komeks” Single Person Ltd, “Lukoil Bulgaria” Single Person Ltd, “Panda” Cooperation, BTK Single Person JSC, “Cerb – BSK 2009” Consortium.

Two institutions stand out with curious administrative practices after the dissent of the third party: the Regional Governor’s Administrator – Vratsa, which has provided partial access to the information after the dissent of the company, and the Regional Governor’s Administration – Smolyan which has provided full access after the company did not respond within the prescribed time frame.

The Regional Governor of Burgas has pointed out in the decision that the consent of the third party should not be sought in that case, as there was an overriding public interest in the disclosure of the contracts. One can find the same indication in the decision of the Regional Governor of Sliven.

As a negative administrative practice, we could signify the cases in which the institutions did not send a notification to the requestor that they had started the procedure of seeking the consent of the third party, respectively of extending the period for a response to the request. Often, the requestor learns that the consent of the third party has been sought after receiving the decision for the provision or the refusal of the information.

### **Electronic Signature**

Out of 535 institutions, only 10 have announced that they require an electronic signature of the e-request. Among these, which have refused or left the request unprocessed as it was not electronically signed are the State Agency "State Reserve and War-Time Stocks," the National Revenue Agency, the Regional Governor's Administration – Gabrovo, etc.

The Regional Governor of Lovech has granted access to the information despite the lack of an electronic signature, by specifying that he had taken into account the significance of the transparency of the public administration in the democratic society and as a result of evolutionary thinking he deemed that the information should be provided.

### **Provision of information electronically**

The cases in which the institutions ask for a signed and scanned protocol for the provision of information to be sent back represent a curious administrative practice (the Central Balkan National Park Directorate – Gabrovo, the Executive Agency for Exploration and Maintenance of the Danube River, the Regional Governor's Administration – Sliven, the Municipality of Bansko, etc.).

A negative administrative practice is the sending of the contract by the Ministry of Labor and Social Policy after the requestor has signed the protocol for receiving it on spot, at the institution.

Some institutions sent a scanned copy of the contract with an empty e-mail, without a decision of an accompanying letter (the Executive Forest Agency, the Regional Governor's Administration – Razgrad, the Regional Governor's Administration – Ruse).

There were institutions which sent the contracts with a short message "We are sending the requested information as an attachment" (the Executive Agency "Selection and Reproduction in Animal Breeding," the Executive Agency "Seed Testing, the Crop Approbation and Seed Control," the Commission for Protection against Discrimination, the Committee for disclosing the documents and announcing affiliation of Bulgarian citizens to the State Security and intelligence services of the

Bulgarian national Army, the National Legal Aid Bureau, the Regional Governor's Administration – Sofia, the Regional Governor's Administration – Stara Zagora, etc.).

### **Partial Access**

The cases in which we were granted partial access are divided into two types. The first is when no copy of the contract was sent, but the requestor was referred to the record in the Public Procurements Register (PPR). The second type of practice was when the contract was provided but with redacted data.

In the case of the PPR referral, not all institutions have provided the corresponding ID of the contract in the register. Only the name of the contract and the date of signing were provided without a reference to its identification number in the register which makes it considerably more difficult to find it. As regards the redacted data, the most common practice was the deletion of the names and the Unified Identification Number of the manager of the contracting company, signatures, address, bank accounts.

### **Fees for obtaining access to information**

No surprises should be expected in terms of fees as the provision of information electronically is not connected with any costs and due to that fact is free. However, there are diverse practices in this regard. The Regional Governor's Administration – Pernik sent us a copy of the contract by e-mail, only after the fee of 0.60 BGN (0.30 Euro) was paid. The highest fee charged was by the Regional Directorate of the Ministry of Interior – Sofia City – 9.45 BGN for 6 pages contract (1.59 BGN per page), the lowest – by the Municipality of Satovcha – 0.09 BGN.

## **4.5. FINDINGS AND RECOMMENDATIONS**

### **Findings**

1. Lack of methodology and unification of the structure and content of the web sites of the institutions. This lack is a result of another deficiency in the legislation – lack of a body to oversee, coordinate and provide methodological assistance to the administrations.
2. There is no other mechanism for exercising control over the implementation of the obligations for proactive publication online, but civil monitoring. Citizens, however, do not dispose of mechanisms that would push the administration to fulfill their obligations.
3. The categories of information subject to online publication under the APIA are too broad which creates the grounds for diverse practices.
4. No control and sanction mechanisms have been provided in cases of non-fulfillment of obligations.
5. The update of the information could hardly be evaluated.
6. The *Access to information* sections do not serve their purpose – to facilitate the citizens in their search for information.
7. There is a huge variety in the way by which institutions respond to electronic access to information requests, despite their increasing number.

## **Recommendations**

1. Amendments to the APIA are necessary that would specify the current categories subject to publication in compliance with the proactive disclosure of information standards within the Open Government Partnership initiative and the existing good legislative models in other countries.
2. Amendments to the APIA are necessary that would specify the publication and announcement of information under Art. 14 of the APIA.
3. Clear obligations for the update of the information disclosed in the Internet are necessary.
4. Clear legal obligations about the formats in which the information is published are necessary.
5. A body that would coordinate and exercise control over the proactive disclosure of information is necessary.
6. It is necessary that sanctions for non-fulfillment of obligations for proactive publication of information are introduced.

## 5. CASES REFERRED TO AIP FOR LEGAL ADVICE AND CONSULTATION

### 5.1. Statistics

In 2013, AIP has continued to provide legal help to citizens, journalists, and nongovernmental organizations in access to information cases. In some of these cases, AIP has provided legal help at the initial phase of the search for information and the legal team has given advice and/or has prepared a request for access to information. In other cases, we have helped after a refusal for provision of information.

(See Appendix 2: *Statistics from the Data Base of Access to Information Programme 2013*).

#### Number of Cases Referred for Legal Help

We have witnessed an increase in the number of cases referred to AIP for legal help – in 2013, there were **405**<sup>69</sup>, while in 2012, they were 311. The number of consultations provided in each particular case has also increased – for 2013, it is **853**, while in 2012, that number was **643**.

Out of the total number 19 were referred from AIP coordinators in the country. In the rest, the information seekers have requested assistance in our office, by e-mail, or by phone.

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

- The majority are related to practices of non-fulfillment of the Access to Public Information Act obligations by public bodies – **325 instances**;
- Next largest group of cases is related to violations of the right of personal data protection granted by the Personal Data Protection Act – **48 instances**;
- In a few cases, we have given legal advice with regard to violation of the fundamental right to seek, receive and impart information – **25 instances**;
- Cases related to freedom of expression – **3 instance**, etc.

#### Most Active Groups of Information Seekers

AIP experience shows that most frequently the APIA is used by citizens, journalists and nongovernmental organizations (NGOs). In 2013, again the largest number of consultations was provided to citizens who had sought the assistance of AIP - 207 instances. In 103 cases, journalists and AIP coordinators (all of them journalists) from central and local media asked for legal assistance, while 54 cases were referred to AIP by NGOs.

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<sup>69</sup>The number of consultations is twice higher – 853, since in some cases more than one consultation was provided.

## **From Which Public Bodies Do Information Seekers Mainly Request Information?**

The number of cases in which information seekers request information from the central executive power bodies and the local self-government bodies (mayors and municipal councils) is the largest - 135 and 101 cases respectively.

Less frequently, information was sought from the judicial power bodies – 27, public-law organizations – 25, regional units of the executive power bodies – 25, independent government bodies – 14, etc.

### **Most Frequently Used Grounds for Refusal**

In 2013, again the number of registered silent refusals is high – **30**. Out of the grounded refusals, the most are related to the third party interests' exemption – **21**, and the personal data protection – **12**. The preparatory documents exception under Art. 13, Para. 2 of the APIA gave grounds to **14** refusals and the trade secret exemption – to **4**.

## **5.2. Specific cases and tendencies in the Access to Information Practices**

We hereby will describe some of the most interesting cases, referred to AIP for legal help and consultation. The specific examples illustrate how the APIA is efficiently used by citizens, journalists, and NGOs for making an analysis of important public events, for journalistic investigations, or for finding solutions of every-day problems.

The past 2013 was marked with immense public discontent and distrust in government. During the protests and the public debates held during the year, issues related to the deficiency in transparency and the lack of efficient mechanisms for civil control over the decision-making were raised. All those processes had an impact on the topics on which information was sought – with a focus in the public environment and particular sensitivity towards all issues that were being resolved in darkness.

In the spring of 2013, preterm general elections were held which were also marked with conflicts and contradictions between members of political parties, as well as discussions on the necessary amendments to the elections legislation with the purpose of guaranteeing fairness and transparency of the election process. In general, we observe a positive development in the practice of the Central Election Commission which has published the protocols of its sessions in the Internet – the beginning was set in May 2012. Thus, the Commission unambiguously declared its willingness to disclose its decision-making process to the public. We remind that the publication of this type of information has become possible due to the public campaign run by the nongovernmental organization Institute for Public Environment Development which called upon the Commission to publish the protocols from its sessions thus giving an opportunity to the citizens to learn the arguments behind one or another decision. After the Commission refused access to a request filed by the NGO and an appeal was submitted with the help of AIP, the Central Election Commission started to publish the protocols from its sessions in the Internet.

During the year, there was an increased interests towards issues related to the spending of public funds; the prevention of or revealing of corruption and wrongdoings; the decision-making process; and the accountability of institutions. Out of the referred cases, it is apparent that information about signals and the results of succeeding inspections remains difficult to access, as well as the results from competitions – most often for public positions. The obtaining of the so called construction documents (construction permits, etc.) from the municipal administrations and the National Construction Control Directorate also remains difficult. It is still problematic to obtain information about signed contracts between a public body and a private body for the performing of specific services. We have witnessed plenty of and various practices in this area – from granting complete or partial access, to refusals grounded most often in the protection of the third party's interests – parties of the contract. Obtaining information from a number of regional units of executive power, regardless of the explicit legal obligation for them.

During the year, we have also witnessed several cases when information on specific topics was provided but could be classified as *incidental transparency* – very often such disclosures are made by politicians within their campaigns and unfortunately they do not turn into practices afterwards. Several such cases are described in the text with specific examples below.

## **INFORMATION ABOUT PUBLIC ISSUES AND EVENTS**

### ***Protests of Scientists Against Unlawful Distribution of Funds***

In the end of 2012, serious suspicions about unlawful distribution of funds from the "Scientific Research Fund with the Ministry of Education emerged in the public domain. The fund supports activities, programs, and projects which encourage scientific research in the country by announcing periodic calls for proposals. As a result of the emerged suspicions, protests of scientists started against the ranking of projects with questionable qualities submitted by candidates close to the Fund management. The questions set forth were related to the unclear evaluation and selection criteria; lack of sufficient information for the selected projects (only their titles are published); as well as lack of data about the scores given to each project. The Ministry of Education denied that any violations were found by them. Subsequently, an inspection held by the Council of Ministers found over 60 violations which resulted in the resignation of the minister. In the course of several months, the APIA was the main tool of the scientists who had taken part in the contestable call to obtain information related to the evaluation of the proposals. In one of the cases, Prof. Dimitar Bakalov requested from the Fund, the scores given to each proposal; the evaluation criteria and the way they were applied; the names and the qualification of the members of the temporary evaluation committees; the number, the names, and the qualification of the reviewers; the full text of the projects.

A similar request was filed by the Ass. Prof. Daniela Koleva who filed a request for the results of a call for proposals procedure in the priority area "Cultural and historical heritage" and specifically on the evaluation and ranking of all submitted projects, as well as on the reasons for approving or rejecting projects. As a result of

the numerous requests and the disclosure of information about the call for proposals, the protests stopped and the publication of information practices were changed.

### ***Protests Against the Government***

The year of 2013 was a year of protests. The initial discontent stemmed from unreasonably high winter bills for electricity and heating. Subsequently, the focus was extended to other government sectors. The first demands of the citizens who went out on the streets were related to the way by which the prices for electricity and heating was formulated. We have noted the permanent public interest in those issues in our previous year report. The non-transparent policies in this area, the ambiguity around the formulation of the end price for the customers of electric power and heating triggered the protests in February. As a result of the active public pressure, a decision was taken by the State Energy and Water Regulatory Commission to publish all protocols of its open sessions and public discussions on its web site.<sup>70</sup>

Traditionally, the interest of citizens and media towards the documents of the energy distributing companies is high. In 2013, AIP has been several times addressed by citizens who tried to obtain information from those companies about the methodology for formulation of end price of electric power and heating, as well as about the way the so called sharing of the expenses between more customers was calculated. The capital of most of these companies, however, is private, and although they are monopolists, they are not obliged bodies under the APIA. Exceptions are several such companies which are municipal property. In the end of February, journalists from “Reporter” daily filed an access to information request to the Heating Company “Toplofikatsia Sofia” EAD. They demanded information about the amount of money spent by the company for advertisement in printed and electronic media. The company refused to grant access to the requested information grounding its decision in the comprehension that they were not an obliged under the APIA body. We would like to emphasize that the refusal was unlawful since there is a persistent court practices establishing that “Toplofikatsia Sofia” EAD is an obliged under the APIA body in its capacity of a public-law organization as the company was established with the purpose to satisfy public interests and as the municipality is the sole owner of the company’s capital.<sup>71</sup> One of the morals of the February protests for the governments from now on is that the accessibility of documents and decision-making transparency, especially in such sensitive areas, should be a consistent practice and not incidental action when people go out on the street.

The second wave of citizens’ protests was triggered by the unreasonable and ungrounded proposal for appointing a new director of the State Agency for National Security without any public debate. Despite the demands during the February protests for greater transparency and public participation in the decision-making processes, apparently, the lesson has not been learned by the new government. In the end of May, in violation of the effective Law on Normative Acts, amendments to

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<sup>70</sup> <http://www.dker.bg/docsbg.php?d=100&subD=101>

<sup>71</sup> Decision of the Administrative Court Sofia – City No. 2598 as of May 14, 2012.

the Law on the State Agency for National Security were adopted.<sup>72</sup> The powers of the Agency were strengthened, practically leaving it without regulated control. The requirements for the appointment of a Director were changed. Particularly, those changes which were made in the lack of any transparency and public debate, caused the second wave of protests, which did not end till the end of 2013. Cases of citizens and journalists who have used the APIA to obtain official information related to the ongoing protests and the accompanying events were referred to AIP during the whole second half of 2013. In the current report, we would emphasize several cases which testify for the public trust in the efficiency of the APIA and the exercise of the right of access to information. Right after the beginning of the June protests, journalists from the Capital weekly used the APIA to obtain information about Delyan Peevski with different officials from the Ministry of Interior.

The following access to information requests related to the protests were filed after information was spread in the public domain that attempts were made for exercising pressure over the only public TV – Bulgarian National TV – in its coverage of the protests by an official institutions, more specifically – the Ministry of Interior. In order to cast light over the issue, a group of lawyers filed 2 requests – the first to the management of the Bulgarian National TV and the second to the Ministry of Interior. They demanded to know if a letter/instruction/order or any other written document was sent to Bulgarian National TV by the Mol, containing instructions or any kind of requirements towards the BNT for the shooting, covering or broadcasting scenes from the protests in Sofia during the period June – July 2013. The received response stated that no such written instructions were issued by the Mol which practically disproved untruthful information which was introducing additional tension in the society.

On November 12, 2013, during the protest of students in front of the National Assembly, great number of security police and gendarmerie were assembled. There were street fights between the police and the protesting students, and arrests of citizens. At the same time, the Minister of the Interior was on an official visit abroad. The journalist Hristo Hristov, owner of the web site [www.desebg.com](http://www.desebg.com), who was a participant in the incident, requested information about whose and what orders were executed by the police. The journalist was advised on the phone by the Presscenter of the Ministry of Interior to send his questions by e-mail. After doing that, he was advised to file a written request under the APIA. Hristov did so and demanded access to the following information: has the minister delegated powers to anyone within the Ministry of Interior during his absence and if “yes” – to whom; the list of documents (orders, instructions, plans, etc.) related to the security of the National Assembly provided by the Ministry of Interior on November 12, 2013; the names of the officials who had issued the above documents, as well as the level of their secrecy grading; what was the number of detached Mol officials from the country to provide the security of the National Assembly and which regional directorates were they from. The journalist did not receive a response within the legal framework and filed a complaint against the silent refusal. Subsequently, it turned out that a

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<sup>72</sup> Pursuant to Art. 26 of the Law on Normative Acts, every draft normative act with the reasons for its issuing should be published in the Internet site of the respective institution. Within minimum of 14 days, a public discussion should be held. Every draft law should be accompanied by reasons or a report which should contain impact assessment, including benefit and expenses analysis – Art. 28 of the Law on Normative Acts.

response had been prepared, but was not sent to the journalist. The reason – the Mol did not have a contract with the postal offices for delivery services. In the end, after a series of clarifications on the questions in the request, information was provided. It became clear that a surprisingly big number of policemen were detached in Sofia on that day.

### ***Politicians in the Focus***

In 2013, we have witnessed a number of political quakes – firing, government resignation, preterm elections, followed by new citizens' protests and demands for resignation. Those events resulted in increased public attention towards particular political persons. Their actions were followed “with a magnifying glass,” their political moves – discussed and criticized over and over again. With the help of the APIA, a number of inconvenient questions were raised and studied by both citizens and journalists. Answers to a big number of questions were not received and the court had to decide on them instead of the politicians. The court decisions in several such cases are an important step forward in the debate about the disclosure of information about figures.

### ***When and how many times did Delyan Peevsky meet ministers of interior?***

In the summer of 2013, the journalists Rossen Bossev filed a request under the APIA to the Ministry of Interior. He wanted to know when the member of parliament Delyan Peevsky (who was the government appointee for the director's position of the State Agency for National Security) has entered the premises of the ministry, who has he visited, and what the purpose of the visit has been. The reason for the request was the leaked information in the public domain that Peevsky had met several times the minister of interior in several governments. Information was requested for the period July 2009 – June 2013 and was refused by the director of the Legal Directorate of the Ministry of Interior on the ground that Delyan Peevski had expressed dissent for the disclosure. The refusal was appealed. The court decided in favor of transparency pointing out in its decision<sup>73</sup> that regardless of the dissent of the third party, there was an overriding public interest in the particular case since “the provision of the requested information would aim at the increase of transparency and accountability of the obliged body.” The requested information was about a public figure – a member of parliament. Furthermore, the information about his visits in the Ministry of Interior, as they were registered under the respective procedure, and the disclosure of information about their number and purpose would not have disclosed his personal information.

### ***Is the MP Volen Siderov authorized to carry a gun?***

The request was filed in July by the journalist Julian Cholakov from the online media OFFNEWS. He wanted to know from the Ministry of Interior (Mol) if the member of parliament Volen Siderov had a permission for acquiring, storage and usage of a firearm and armory, when was it issued, which body had issued the necessary medical certificate finding that the person did not have psychological disorders. The

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<sup>73</sup> Decision No. 7522/2.12. 2013, adm. case No. 9332/2013 of the Administrative Court Sofia – City.

reason for the journalistic interest was that Siderov appeared with a firearm in the National Assembly in June 28, 2013. The Ministry of Interior refused access to the information, pointing that the request was inadmissible and should not be processed. According to the ministry, the requested information was not public and did not relate to the work of the ministry under the APIA. Furthermore, these were personal data of Volen Siderov. The refusal was challenged before the Administrative Court Sofia – City. In this case gain, the court decided in favor of the overriding public interest in the disclosure of the requested information. According to the court,<sup>74</sup> contrary to the grounds stated in the refusal, the request did not demand access to personal data as it explicitly stated that no specific documents are sought, or any data about the health conditions of the person. In the particular case, there is *overriding public interest* in the meaning of § 1, item 2 of the Additional Provisions of the APIA, as the obtained information would have increased the transparency and accountability of the member of parliament (in view of the possibility for a public assessment of his actions), who was also an obliged body under Art. 3 of the APIA as well.

## **Access to Information in the Energy Sector**

### ***Renewable Sources of Energy***

The access to information in the energy sector appears as an issue in AIP reports several successive years. During 2013, we signify the unwillingness of the institutions to cast light and provide transparency in the decision and policy making in the sector. The topic is traditionally close for discussion – the refusals for granting access to information about projects like the “South Stream” and “Belené” are numerous. The practice of the Ministry of Economics and Energy to refer access to information requests to the National Electricity Company which explains that the company is not an obliged under the APIA body because it is a company is very common.

In our last year report, we have signified the efforts of business organizations – the Bulgarian Photovoltaic Association (BPA) and the Bulgarian Wind Energy Association (BWEA), to cast light in the decision making of the State Energy and Water Regulatory Commission in area. In 2013, the efforts of the two organizations continued. In the spring, due to the decreased usage of electric power, the Electricity System Operator (ESO) ordered that several photovoltaic and wind energy centrals in different regions of the country are disconnected. The BPA and the BWEA filed a request to the Regulatory Commission and to the ESO demanding access to information about how many electric energy producers had worked in a decreased power regime in the beginning of the year and how many had been switched off completely. The two organizations requested information about the criterion on which the restriction was made, inviting the regulatory body to publish the data in the Internet. Information was neither received, nor published. During 2013, the BPA and the BWEA filed over 10 access to information requests to the State Energy and Water Regulatory Commission, to the ESO, and to the Ministry of Economics and

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<sup>74</sup> Ruling No. 219/15.01.2014, adm. case No. 8306/2013 of the ACSC.

Energy. The requests demanded access to diverse categories of information – quantity of energy produced for specific period of time by types of producers; data showing the generation and the burden over the electricity power system for a specific period of time; information about the prices in the electricity sector which were to be set for the regulatory period (July 1, 2013 – June 30, 2014). Decision for the provision of the requested information was not received on neither of the requests. Often no response was received, in other cases, the refusal was grounded in the fact that the access to documents was requested, not access to information. Some refusals were grounded in the third party's interest exemption.

### ***A final stop of the reconstruction of the nuclear reactor in Sofia***

In the summer of 2013, the legal dispute about the lawfulness of the Environmental Impact Assessment for the reconstruction of the nuclear power reactor built to serve the needs of the Bulgarian Science Academy in the territory of the neighborhood Mladost in Sofia. Due to information obtained under the APIA after a request of the National Movement Ecoglasnost, it became clear that the Ministry of Health had not been consulted on the issue regardless of the apparent necessity for such a procedure. With a decision of the Supreme Administrative Court, the approving Environmental Impact Assessment report for the reconstruction of the reactor issued by the Ministry of Environment and Waters was repealed. The court found a number of deficiencies in the procedure for issuing the EIA – lack of data for any consideration of alternative actions, including the “zero” option of not having a reactor at all; there was not risk impact assessment from the point of view of the seismic character of the region; risks related to incidents and natural disasters; terrorist attacks; explosions; falling aircrafts (as the reactor is close to the airport); no safe zones were determined as stipulated by the effective legislation, etc. The court proceedings were started by Peter Penchev, deputy chairperson of the National Movement “Ecoglasnost” with the help of the APIA as early as 2010. The victorious ending was another evidence that the APIA is an important weapon for obtaining documents which reveal government wrongdoings. In the particular case – the lack of the required agreement with the Ministry of Health.

### ***Transparency of the issue regarding the safe storage of radio-active waste***

In 2013, finally light was cast on the topic related to the safety of the National Radioactive Waste Storage (NRAWS) at the “Radiana” site close to the town of Kozloduy. A five member panel of the Supreme Administrative Court repealed the affirmative statement of the minister of environment and waters on the Environmental Impact Assessment (EIA) for the NRAWS. The decision of the Ministry of the Environment and Waters approving of the investment proposal for the construction of the storage was issued on October 10, 2011. The decision was appealed in court by the ecologist Peter Penchev. With a decision No. 15645 as of November 28, 2013, the court has delivered a final decision in favor of people's health and life. One of the arguments for the repealing of the decision of the MEW was the lack of a reasonable, public, and informed debate for the preparation of the EIA of the NRAWS. The court found that the EIA report had been reworked and supplemented after the public discussions. It was also found that several institutions – the Ministry of Health, the Basin Directorate, and the Executive Environmental

Agency had presented negative statements, notes and recommendations which were not presented or accessible to the citizens during the public discussions. Those and other contradictions with the legal procedure for the preparation of the EIA, found in the course of the legal process, led to the conclusion that the contested administrative decision had been taken in violation of the law. The court found that “a number of issues of particular importance for the environment protection and the current and future generations had not been clarified in their entirety and had not been put out for public discussion.” As a results, one of the taboo topics in the Bulgarian transition period – the nuclear energy sector, is now open for not only public and political debate, but also for independent judicial control over the lawfulness of the respective administrative decisions.

## **Transparency of Administration**

In our work of providing legal help in specific cases, we have observed persistent interest towards topics related to the transparency of the administration. This interest has two directions – towards information about the appointment of public officials, and towards information about the remunerations they receive.

### ***Remunerations of Public Officials***

While in 2012, the interest of the society was directed towards the bonuses received by the public officials, in 2013, the interest of citizens and journalists was aiming at enhanced transparency of the remunerations received by public officials as a result of their work on EU funded projects. It turned out that according to a “tacit” practice in a number of municipalities, part of the officials work simultaneously under on labor and civil contracts – performing their main responsibilities under a labor contract, while their work under European projects is paid additionally under civil contracts. The lack of transparency regarding the amount of the received money under those projects has become a source of suspicion for the lawful spending of the funds. The active search of information under the procedures of the APIA helped the clarification of a number of vague issues and created a prerequisite for a persistent transparency of information in the area. In some cases, serious revelations were made of officials receiving indecent high amounts, or working 12-16 hours per day on paper. In one of the cases, Emilia Dimitrova from the “Sevlievo Dnes” newspaper requested from the mayor of Sevlievo information about the remunerations received by municipal officials, hired in the management teams of EU funded projects, who are implemented by the municipality. She also wanted to know if persons from the management teams were appointed to work less than 8 hours under their labor contract at the expense of their work on projects. After several months’ correspondence – because of provision of incomplete information and the filing of additional requests – the journalistic investigation reached results with serious public reverberation. It turned out that one of the deputy mayors had worked on a half-working day, while receiving a serious remuneration under another 8-hours labor contract for his work on a EU funded project.

In another case, after the submission of a request by the journalist Pavlin Ivanov from the online media “Lovech Today,” it turned out that part of the officials in the Municipality of Lovech had received a total of 171,761.33 BGN in the course of two

years working on EU funded projects. Information about the remunerations of officials for their work on EU funded projects was requested from the Sofia Municipality by the citizen Ivan Petrov. Access to the information was refused and court proceedings were initiated. With a decision of the ACSC, the refusal of the secretary of the Sofia Municipality was repealed.

A significant impact on the transparency of public officials' remunerations has had the court practice. With several court decisions, the consistent statement of the magistrates was reached that when information about the remunerations of state and municipal officials by positions is sought, there is no restriction for its disclosure. It is assumed that the information is public as it gives opportunity to citizens to form their own opinion about the way authorities and municipalities function and how accountable they are in terms of public money spending.

### ***Appointment of Public Officials***

In several cases, the issue of the appointment of public officials was raised. AIP experience shows that there is a tendency of nontransparent decision making process in terms of appointing officials at key government positions. Difficult to obtain is the information related to the competitions for vacant positions for government officials – often there is no information about the participants in the competition, there is no information about the grounds for selecting one applicant instead of another. In a number of cases, information is refused to participants in the competition. All these circumstances create preconditions for suspicions about the competencies of the selected applicants and questions the impartiality of the selection.

With a request filed under the APIA, in 2013, it was revealed that the director ad interim of the Customs Agency did not have a classified information clearance despite of the legal requirement for such. Among the successful cases is the provision of information by the Ministry of Interior after a request of the Bulgarian Institute for Legal Initiatives about the appointment of officials within the ministry. In response to the request, the Mol provided a big number of orders for the appointment of officials, as well as their job descriptions.

### **Access to Information and Judiciary**

#### ***Publicity of the conflict of interest declarations of the magistrates***

The topic related to the transparency of the conflict of interest declarations of judges, prosecutors, and inspectors was widely discussed during the past year. The reason for that interest was that on 25 April 2013, the Supreme Judicial Council (SJC) decided to remove from its website the conflict of interests declarations of more than 6,000 magistrates for the period January 1, 2009 – till the current date. The decision was taken after consultations with the Commission for Personal Data Protection which stated that if the declarations contained personal data different from the three names of the magistrates, the consent of the person should be sought for the publication of the document. Due to the active and timely position taken by the Access to Information Programme, the Center for NGOs Razgrad and

the Bulgarian Institute for Legal Initiatives, a public debate was initiated as regards the applicability of the SJC decision in light of the spirit of the Prevention and Establishment of Conflict of Interests Act (PECIA) aiming at the prevention of conflict of interests, dishonesty and corruption through publicity and transparency. The three organizations filed a complaint on the docket of the Supreme Administrative Court, claiming that the restriction imposed on the free access to information equaled to censorship and information monopoly after the terminology of the European Court on Human Rights. The repealing of the decision was requested as it contradicted the Constitution and created circumstances for nontransparent environment which fosters corruption. The complaint quoted Decision No. 4 as of March 26, 2012 of the Constitutional Court of Republic of Bulgaria on constitutional case No. 14/2011, according to which the protection of personal data of persons holding public positions is much lower in comparison to the protection of other citizens.

In September 2013, as a result of negotiations between the SJC and the three organizations, an agreement was reached. The SJC decided to withdraw its previous decision and to publish again all magistrates' conflict of interests declarations. The step taken by the SJC deserves a positive evaluation. The practice shows an open and European attitude towards the issues related to the transparency, integrity and trust in the judicial system, without which the judiciary could not function in the democratic society.

### ***The Supreme Cassation Prosecutor's Office reports on the Wiretapping – difficult access with unclear reasons***

The issue about the lawfulness of the use of special surveillance means (SSM) has been set forth numerous times during the years in the context of wiretapping scandals. In 2013, the topic was again in the public agenda as a result of the use of the SSM for wiretapping of high-positioned politicians. Then, at a press conference the Chief Prosecutor announced that an inspection was carried out by the Prosecutor's office and some of the findings were classified, others – public. However, up to now, a year later, the public part of the inspection report remains closed to the society. The lack of information about the inspection reports of the Prosecutor's Office is a serious problem. Very often, no grounds are given for withholding the information. One of the cases referred to AIP in 2013, is of the journalist Rossen Bossev who requested from the Supreme Cassation Prosecutor's Office the reports on inspections carried out by the institution in 2001 and 2008 with regard to the lawfulness of the activities of bodies which use special surveillance means. The information was refused and court proceedings were initiated. The decision for refusal of the deputy chief prosecutor did not mention anything about the 2001 report, while stating that the documents related to the inspection carried on in 2008 and the results of it contained both classified information graded at different levels, and public information. Furthermore, the term of the documents containing classified information had not expired and they could not be provided. In the course of the court proceedings, after the court review over the lawfulness of the classification grades, it turned out that the 2001 report had not been classified and there had been no legal grounds for its withholding. As regards the 2008 report, it had been declassified due to the classification term expiration, i.e. it should have

also been public. As a result of the court case, the two reports were made publicly available. However, the issue about the silence of the Prosecutor's Office and the unwillingness to disclose such type of information remains problematic.

### ***Access to Information and Municipal Companies***

Several specific cases have raised the issue if the so called municipal companies are obliged to provide information under the APIA. Although the majority of them fall within the scope of the APIA in their capacity of public law organizations, their work have till recently remained aside of the scope of the law. The case of the journalist from "Sega" daily, Maria Koicheva, deserves attention in that context. She requested information from the "Chistota – Iskar" EOOD company (a waste management company) about the public procurement contracts signed by the company during the past five years, the names of the contractors, the prices of the contracts, the contracted activities, etc. The request was filed to the Sofia Municipality in its capacity of a sole owner of the company's capital. The municipality referred the request to "Chistota – Iskar" EOOD. The company responded that they would not provide access to information since they were not obliged to respond to APIA requests, namely, they did not fall within the scope of obliged under the law bodies. With the help of AIP, the refusal of the company manager was appealed in the court. As a result, the court decided that "Chistota-Iskar" EOOD is obliged to provide information under the APIA as a public law organization, since, following the company's statute, it performs activities of public interest. The manager was obligated to provide access to the requested by the journalist information.

### ***City Stories***

City planning, the design and construction of public buildings, parks, children playgrounds, and emblematic city places, especially when it is related to the spending of public money and funds under European programs, are issued that are of interest to the citizens and NGOs, working in that area. We have observed active seeking of related information. We have also assessed the level of the implementation of the mandatory for proactive disclosure in the Internet master city plans and detailed city plans within the annual audits of the active transparency. Results show very low level of implementation. In 2013, the Varna based Association for optimization of Justice and Administration (SOPA), has been regularly filing requests to the Municipality of Varna for access to information related to city plans, reconstruction works, and funding of different city-planning projects. With one of their requests, the SOPA demanded access to public procurement contracts between the Municipality of Varna and different companies about the construction and reconstruction of the road covering and marking within the city road networks, as well as information about the control exercised over the execution of those activities. Again in Varna, an informal citizens' group - "Open Council of the Protesters" – filed a request for access to information related to the issuing of the so called energy passports of several buildings in the city. Access was granted to the whole information in the form of a review on spot. Due to the persistent public interest and pressure, in 2013, the Municipality of Varna launched a special section

on their web site “Directorate Architecture, city-planning and development,” where city plans, projects, construction permits, etc. are being proactively disclosed.

AIP has observed more difficult access to information about city-development projects of the Sofia Municipality, especially in the preparatory phase. The Association “City Group,” initiator of the so called City debates, related to the planning and development of Sofia city, filed several requests for access to information about different city projects. Some were targeted at the reconstruction of one of the main pedestrian streets in Sofia, Vitosha Boulevard. The reconstruction had started, but there was no public information about the author of the project, who is the executor, how the designers, architects, and executors had been selected. The other search for information related to the project for the reconstruction of the emblematic for Sofia Lions' Bridge. With their request, they demanded a copy of the reconstruction plan, information about the author of the project, what the selection criteria were, as well as information about the money spent up to that moment. The Sofia Municipality refused access to the requested information, and the NGO challenged the refusal in the court. As a result of the public pressure, the plan for the reconstruction of the Lions' Bridge was amended.

### **Incidental Transparency – Publication of Information of Public Interest**

We have observed an emerging tendency of proactive publication of specific categories of documents on sensitive topics during the year. On one hand, we would acclaim such disclosures. On the other hand, we could not deny the fact that such actions are sporadic and partial, having a political tinge and rarely becoming practices. Which were the specific actions of proactively disclosing declassified documents in 2013?

#### ***Publication of documents in the Energy Sector***<sup>75</sup>

In the beginning of the year, as a reaction to the February protests, the Parliamentary Anti-corruption Committees,<sup>76</sup> published a considerable volume of documents related to the energy sector. The latest financial reports of the National Electricity Company were published, as well as agreements and contracts for the purchase of electric power, correspondence between state bodies and electric power distribution companies, etc. The next step was taken by the caretaker government, when in April, the Ministry of Economics, Energy and Tourism opened a new section on their web site “Declassified contracts in the energy sector.”<sup>77</sup> A total of 112 contracts between the National Electricity Company and private companies were disclosed in the section. Among the published. Among the published documents are contracts between private and state companies – electric power distribution companies, Bulgartransgas, “Arsenal,” “Ideal Standard,” BTK, heating companies, etc.

### **Disclosure of information related to the construction of “Ski Zone Bansko”**

<sup>75</sup> <http://www.parliament.bg/bg/parliamentarycommittees/members/1479/documents>

<sup>76</sup> The full name of the Commission is Parliamentary Inquiry Commission for Studying Cases in which there are facts, data and document-proven public investigations, including abandoned prosecution for high government levels corruption, which have caused personal gains, damages and considerable harms for the state.

<sup>77</sup> <http://www.mi.government.bg/bg/pages/contracts-public-council-111.html>

The Ministry of Environment and Waters published on their web site<sup>78</sup> the concession contracts with the company “Iulen” Ltd for the construction of a “Ski Zone with a Center – town of Bansko,” as well as the Supreme Administrative Court decision regarding the investment proposal for the reconstruction of the facilities in the ski zone. During past years, those documents have been of particular interest to environmental organization, but were disclosed in their entirety for the first time.

### ***Publication of contracts with media***

In the beginning of their term, the newly elected government published on its web site a complete list of all media and other companies, which had received money under the communication strategies of EU operational programs. The list encompasses the period of 2007 – 22 May 2013 and all seven EU operational programs, along with the Rural Development Program. We should emphasize that disclosure of similar contracts signed by the current government was not made.

### ***Disclosure of the declassified part of the “Galeria” File <sup>79</sup>***

The State Agency for National Security published the declassified part of the file “Galeria,” which became known as a case of massive wiretapping of politicians and journalists. The “Galeria” file was partially declassified a year ago, but the Agency denied access to the documents regardless of that fact. With the help of AIP, journalists from the *Sega* daily filed an official request demanding access to the declassified information contained in the file. As a result, the orders for the start of the operation, as well as the names of the people who had been wiretapped, were published. The disclosure was made after the end of all prosecutor's investigations ended with an official conclusion that there was no crime committed.

### ***Declassification of the Report about the Incident in Kerbala***

The Ministry of Defense declassified the investigation report on the assassination attack in the Bulgarian military base in Kerbala in 2003, when 5 Bulgarian officers died and 27 were seriously wounded. The report studied details around the incident, including the security measures undertaken for the protection of the base, the mistakes made by the then military experts, the reaction and the actions of the Bulgarian military officers. The whole text of the report was declassified and access is granted under the procedure of the APIA. The question about the availability of the report was raised in the beginning of 2013, when with the help of AIP, the journalist Dobromir Videv filed a request to the Ministry of Defense for access to the report. A refusal was issued on the grounds that the requested information had no significance of its own. The refusal was not challenged in court, but apparently, the Ministry of Defense had reconsidered their position and eventually declassified the report.

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<sup>78</sup> <http://www.moew.government.bg/?show=news&nid=1913>

<sup>79</sup> <http://www.dans.bg/images/stories/Information/GALERIA120713/GALERIA.pdf>

## **PERSONAL DATA PROTECTION**

### ***Personal data of citizens in the Police Registers***

Participants in the street protests in Sofia turned to AIP for legal help because they were concerned that policemen were checking their identification documents and writing down the data from them. At the same time, no statements for finding administrative violations or protocols were made. The citizens were worried that the police had taken down their data and their names had entered a mysterious police registers. The problem with the collection and writing down of personal data by the police was outlined as early as 2008 in AIP annual report in relation to then ongoing street protests.

The issues that have been raised are several. Under what circumstances the police are allowed to require citizens to show their identification documents? Under what circumstances the police are allowed to write down data from the identification documents of the citizens? After being taken down, are these data processed and how? Are they entered into a special police register? The cases referred to AIP gave reason for the submission of a request to the Ministry of Interior (Moi). We demanded information about the collection and processing of the personal data. We received a response, in which the Moi quoted an instruction pursuant to which they perform the ID checks, assuring us that the protection of personal data within the ministry is in compliance with the effective legislation.

AIP statement on the particular case is that the Ministry of Interior Act does not contain a specific provision which authorizes the police to write down data from citizens identification documents without the purpose of issuing an act within their responsibilities. The quoted provision in the Moi response, namely Art. 61, Para. 1, item 1–4 of the Ministry of Interior Act, covers only the checking of the ID documents, not writing down data from them.

### ***Personal Data or Public Information***

In the beginning of the February protests in the city of Varna, the 36 years old Plamen Goranov set himself on fire with the demand for the resignation of the mayor and the municipal council. The security cameras of the municipality had recorded the incident. A pre-trial investigation was initiated, and the investigating bodies required and obtained copies of the video cameras records from the municipality. A day after the death of Plamen Goranov, with the help of AIP, the correspondent of the media Dnevnik.bg Spas Spasov filed a request under the APIA for copies of the video records. The request was addressed to the Municipality of Varna and to the Regional Directorate of the Ministry of Interior, as according to the speaker of the Regional Prosecutor's Office – Varna, those were the institutions which held the hard disks of the CCTV recordings. The journalistic interest was triggered due to alleged doubts that Plamen Goranov had set himself on fire. The Municipality of Varna refused access to the requested information within the legally prescribed time frame on the grounds that the request contradicted the purview of the Constitution, guaranteeing the protection of citizens private life, the Protection of Classified Information Act and two Regulations of the Council of Ministers.

In that case, the extremely sensitive content of the requested records should be taken into account, as well as their re-use. The refusal of the Municipality of Varna to provide copies of the CCTV cameras is adequate and relevant. The dissemination of the record would have violated the right of private and family life if the successors of the departed. There exists a real danger of amateur editing of the record which would have added to the negative effect. We should also take into account that the public interest was eventually satisfied by the official statements of the investigative bodies and the journalistic publications.

In 2013, the court finally resolved the issue if the information related to the receiving of an award by the chief prosecutor from the Ministry of Interior in his capacity of a Chairperson of the District Court – Plovdiv is protected personal data. The Bulgarian Institute for Legal Initiatives (BILI) filed a request to the Ministry of Interior with the questions if the Chief Prosecutor Sotir Tsatsarov had received an award during his term as a Chairperson of the District Court – Plovdiv for assisting and cooperation with the Ministry of Interior, and if awarded, what were the grounds for that, the type of the award, when was it presented and for what merits.

The court ruled in favor of the requestors. In their judgment, the court emphasized that the magistrates are persons holding public, high government position. Hence, the legal requirements for declaring in public their assets and to endure the transparency of the checks for affiliation to the former state security services. Similarly, the court resolved the issue about the access to the information about the political parties to which the independent members of parliament had transferred their state subsidies. The case was initiated by the journalist Victoria Petrova from bTV against the refusal of the Ministry of Finance to provide the requested information on the ground of the personal data protection exemption.

## 6. Litigation

The AIP legal team continued providing legal help to citizens, NGOs and journalists supporting court cases against refusals of access to information. In 2013 the AIP legal team has prepared **95** complaints and written submissions to the courts, assisting information seekers (**51** in cases led by citizens, **22** – by NGOs, **22** – by journalists).

In 2013 AIP legal team drafted a total of **78** complaints and appeals to courts. First instance complaints – **70** (Supreme Administrative Court – **3**, Administrative Court – Sofia City – **42**, Administrative Court – Sofia District – **1**, other Administrative Courts in the country – **24**), cassation appeals – **3** and appeals against rulings – **5**.

Out of the **70** complaints filed before first instance courts, **49** were against explicit refusals to provide the information sought, and **21** – against silent refusals.

In 2013 AIP legal team provided representation in court on **57** court cases against refusals to provide access to information. In the same period were prepared **17** written submissions to different courts.

In the same period different courts issued a total of **70** decisions and rulings on court cases where AIP provided legal assistance (Supreme Administrative Court – **35**, Administrative Court – Sofia City – **22**, Administrative Court – Sofia District – **1**, other Administrative Courts in the country – **12**). In **51** cases the courts ruled in favor of information seekers, supported by AIP, and in **19** cases – in favor of the administration.

### The “public information” concept

By a decision of 16 January 2013, the Supreme Administrative Court (SAC) upheld a decision of the Administrative court – Sofia District (ACSD) of June 2012 repealing the refusal by the mayor of Elin Pelin Municipality to provide information concerning the procedure for approving the expansion of the airfield in the village of Lesnovo. The court notes that in this case is requested information on issuing and approving a detailed spatial development plan, an environmental impact assessment and other documents concerning the designation of a real-estate and expansion of an airfield, i. e. concerning a construction affecting the public life in the village of Lesnovo. The information in the documents sought would allow the citizens, including the requester to form their opinion on the activities of state and local government bodies<sup>80</sup>.

### Obligated subjects

By a decision<sup>81</sup> of 28 May 2013, the Supreme Administrative Court (SAC) upheld a first instance decision<sup>82</sup> finding Toplofikatsia – Sofia EAD (the central heating provider company) to be an obliged subject under the APIA as a public law

<sup>80</sup> Decision no. 704/16.01.2013 of the Supreme Administrative Court (SAC), Fifth Division, on administrative case (a. c.) no. 9351/2012.

<sup>81</sup> Decision no. 7228/28.05.2013 of the SAC, Fifth Division on a. c. no. 11081/2012.

<sup>82</sup> Decision no. 2598/14.05.2012 of the Administrative Court – Sofia City (ACSC), Second Division, 38th panel on a. c. no. 7193/2011.

organization. The justices motivated that conclusion by the facts that Sofia Municipality is the sole owner of the company's capital and exercises management control, since it determines the company's management and supervisory bodies.

By a decision<sup>83</sup> of 24 October 2013, the ACSC repealed a refusal by the director of the Bulgarian Air Traffic Services Authority state-owned enterprise to provide information on the business trips of the managerial staff of the company in 2012. The court held that the state-owned enterprise is a legal entity (company), which by virtue of law carries out state functions in the provision of air navigation services in the civil airspace of the Republic of Bulgaria, therefore it is a subject obliged to provide information under the APIA as a body, subject to public law.

By a decision<sup>84</sup> of the 25 November 2013 the ACSC found that "Chistota-Iskar" EOOD is a subject obliged to provide information under the APIA as a public law organization, since, following the company's statute, it performs activities in order to satisfy the general interest - collection and disposal of municipal waste in landfills or other facilities for disposal, cleaning of streets and other public areas, etc. Also, more than half of the members of the company's management body are determined by the Sofia Municipality, which is a contracting authority within the meaning of Article 7 item 1 of the Public Procurement Act.

### **Overriding Public Interest in Increasing Transparency in Public Financing**

In 2013 several courts found existence of overriding public interest in increasing the transparency of public financing and on these grounds repealed refusals to provide information in several court cases, where AIP provided legal assistance to the information requesters.

By a decision<sup>85</sup> of 19 February 2013, the ACSC repealed the Ministry of Environment and Water (MOEW) refusal to provide access to information on the project "Technical assistance for the establishment of a system for integrated waste management in the Yambol region", financed under Operational Programme Environment 2007 – 2013. The court held that there was overriding public interest in providing the information since it concerns allocation and spending of funds from the EU and the state budget.

By a decision<sup>86</sup> of 1 March 2013, the SAC upheld a decision of the ACSC of June 2011 repealing a refusal by the Ministry of Economy, Energy and Tourism (MEET) to provide information concerning the Russo – Bulgarian cooperation in the energy sector and the Nuclear Power Plant "Belene" project. The Justices held that there was overriding public interest of disclosure under the APIA, since the information sought aims at increasing transparency on the obliged subject's activities.

By a decision<sup>87</sup> of 31 October 2013 the ACSC repealed the refusal of the Chief Secretary of the Ministry of Physical Education and Sports (MPES) to provide information concerning the financing of sports clubs in the federations of sport

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<sup>83</sup> Decision no. 6434/24.10.2013 of the ACSC, Second Division, 34th panel on a. c. no. 4829/2013

<sup>84</sup> Decision no. 7289/25.11.2013 of the ACSC, Second Division, 30th panel on a. c. no. 8103/2013

<sup>85</sup> Decision no. 1151/19.02.2013 of the ACSC, 25th panel, on a. c. no. 3773/2012.

<sup>86</sup> Decision no. 2932/01.03.2013 of the SAC, Fifth Division, on a. c. no. 11256/2011.

<sup>87</sup> Decision no. 6604/31.10.2013 of the ACSC, Second Division, 39th panel on a. c. no. № 456/2013

shooting, archery and volleyball. The court held that the administrative body had wrongfully decided that the lack of consent by the affected third parties gave sufficient grounds for a refusal. The court noted that the affected third party's lack of consent to provide the information does not give absolute and sufficient grounds to refuse access to the information sought and that another condition is the lack of overriding public interest in providing the information. In this case, in view of the nature of the requested information it should be held that, despite the refusal of the affected third parties, the requested public information should be provided, because of the presence of an overriding public interest within the meaning of § 1, item 6 of the AP APIA, since provision of the information requested will increase the transparency and accountability of the obliged bodies.

### **Overriding Public Interest and Trade Secret**

By a decision<sup>88</sup> of 9 April 2013, the SAC repealed a decision of the Administrative court – Targovishte as well as the refusal of the Targovishte Municipality mayor to provide a copy of the contract for sale of a municipal real-estate property (a former market place) to a private company. The court notes that the APIA provides a presumption of overriding public interest of disclosure when the information sought is related to the parties, subcontractors, the subject, the price, the rights and obligations, conditions, terms, and sanctions specified in contracts where one of the contracting parties is an obliged body under Article 3 of the APIA. Thus, the mayor, respectively the officials empowered by her/him, had the obligation to provide the information or to establish the lack of overriding public interest. There is no reasoning on the lack of such an interest in the municipality secretary's decision, upon whom rests the burden of proof of rebutting the statutory presumption. Therefore, under the statutory presumption of the APIA, which failed to be rebutted in this case, it should be held that there is overriding public interest of disclosure of the requested public information.

By a decision<sup>89</sup> of 26 April 2013, the SAC upheld a decision of the ACSC of April 2012 repealing the National Customs Agency's refusal to provide information on customs warehouses with mounted measuring instruments for excisable goods. The SAC Justices noted that they share the first instance court arguments of the existence of overriding public interest of disclosure, since the information concerns directly the transparency and accountability of the Agency. The information sought does not affect third parties' interests because it does not disclose any trade secret or information on the companies' professional activities. Furthermore, the requested information is created by the obliged subject under a legal requirement and this is why the explicit third parties' consent is not necessary for its disclosure.

### **Overriding Public Interest and Accountability**

By a decision<sup>90</sup> of 3 July 2013, the ACSC repealed the Ministry of Finance (MF) refusal to provide access to information on the supplementary remuneration (bonuses) of the civil servants in the ministry and its subordinate structures.

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<sup>88</sup> Decision no. 4904/9.04.2013 of the SAC, Fifth Division, on a. c. no. 82578/2012

<sup>89</sup> Decision no. 5915/26.04.2013 of the SAC, Fifth Division, on a. c. no. 7650/2012.

<sup>90</sup> Decision no. 4446/03.07.2013 of the ACSC, Second Division, 23rd panel, on a. c. no. 1397/2013.

According to the court, in a time of financial and economic crisis there is overriding public interest in the disclosure of this information, especially considering the contradictory statements made by the Prime Minister and the Minister of Finance on this issue.

By a decision<sup>91</sup> of 15 November 2013 the Administrative Court – Lovech repealed the refusal of the Lovech Municipality mayor to provide a copy of the service book a municipal vehicle. The court held that there was an overriding public interest in disclosing the information sought as the requester would, thus, be able to form an opinion on the lawful drafting of documents relating to the vehicle's exploitation by the municipal administration. Disclosure of the vehicle's service book will increase the accountability and transparency of the municipality's activity in accordance with the aims of the APIA.

### **Personal Data Protection and Access to Information**

By a decision<sup>92</sup> of the 8 January 2012, the SAC upheld a decision of the ACSC of November 2012 repealing the Ministry of Labour and Social Policy refusal to provide information on the supplementary remuneration (bonuses) received by civil servants in the ministry. The court held that the requester (Dinka Hristova – “Sega” newspaper) seeks information not on how much every individual civil servant in the ministry has received, but whether supplementary remunerations have been paid and under what conditions. Furthermore, the Justices note that the information requested is public and if it were requested for each individual, there is overriding public interest of its disclosure.

By a decision<sup>93</sup> of 4 February 2013, the SAC repealed a decision of the Administrative court – Yambol as well as the refusal of the Municipal Elections Commission – Yambol to provide the originals of the protocols of the sectional elections commissions of the local elections held on 23 October 2013 in 103 sections on the territory of the Yambol Municipality, as well as copies of selected protocols after review. The SAC Justices held that the names of officials do not amount to protected personal data. According to Article 19, paragraph 1 of the Elections Code the elections commissions members, including those of sectional elections commissions, have the status of public officials in the performance of their functions, so that the spelling of their names in the established by the commissions protocols identifies them as officials – members of the respective collective body and not as individuals. Therefore, with the provision of the original protocols will not be disclosed any personal data.

By a decision<sup>94</sup> of 16 May 2013, the SAC repealed a first instance decision, as well as the Ministry of Finance refusal to provide information on the declarations of the independent members of parliament showing to which party they have directed their party subsidies. The court held that according to the Constitutional court case-law,

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<sup>91</sup> Decision no. 118/15.11.2013 of the AC - Lovech, 4th panel, on a. c. no.135/2013.

<sup>92</sup> Decision no. 178/08.01.2013 of the SAC, Fifth Division, on a. c. no. 2150/2012.

<sup>93</sup> Decision no. 1619/04.02.2013 of the SAC, Fifth Division, on a. c. no. 3265/2012.

<sup>94</sup> Decision no. 6681/16.05.2013 of the SAC, Fifth Division on a. c. no. 13332/2012.

the protection of personal data of the MPs is far more lowered compared to that of other citizens and the public interest in disclosure overrides.

By a decision<sup>95</sup> of 19 June 2013, the SAC repealed a first instance decision, as well as the president of the Municipal Council of Varna refusal to provide information on the amount of remunerations received as supplementary remuneration (bonuses) by the managers and supervisors of the municipal companies in Varna. The court held that the information is regarding the amounts of funds received by municipality-owned companies and that it will give the opportunity to form one's opinion on the way of spending municipal funds which is not personal data of the persons who received those funds.

By a decision<sup>96</sup> of 2 July 2013, the ACSC repealed a Sofia Municipality refusal to provide information on the remunerations and bonuses, received by the employees of the municipal enterprise "Ecoravnovesie". The court held that the information is regarding specific positions rather than the persons who occupy them, so it does not constitute personal data. The judge noted that the amount of the remuneration received is not related to privacy and protection of personal life, but is an objective fact.

By decision<sup>97</sup> of 10 July 2013, the SAC repealed a refusal of the Minister of Interior to provide information on whether the actual Prosecutor General – Sotir Tzatzarov had received an award (a pistol) by the ministry at the time when he was president of the District Court – Plovdiv. The court held that information on awards given to persons in high state office by state institutions is not protected personal data but the interest in disclosure overrides. The Minister appealed this decision before a cassation instance – a Five-Member Panel of the SAC. By decision<sup>98</sup> of 10 December 2013 the Five-Member Panel of the SAC upheld the first instance decision, stating that a magistrate receiving an award is not a circumstance related to privacy and private life, but is an objectively existing fact.

By a decision<sup>99</sup> of 8 November 2013 the SAC upheld the decision of the ACSC repealing the Ministry of Justice refusal to provide information on the supplementary remuneration (bonuses) received by the institution's staff in 2011.

By a decision<sup>100</sup> of 2 December 2013 the ACSC repealed a refusal by the Ministry of Interior (MoI) to provide information on the visits of Delyan Peevski (MP and media mogul) in the Ministry during the time in office of the actual and the previous cabinets. The court found the existence of overriding public interest in the disclosure of the information, since it relates to a public subject – Member of Parliament. The information does not concern personal data of the MP, since the disclosure of the number and purpose of his visits in MoI would not amount to disclosure of personal data.

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<sup>95</sup> Decision no. 8926/19.06.2013 of the SAC, Fifth Division on a. c. no. 11623/2012.

<sup>96</sup> Decision no. 4401/02.07.2013 of the ACSC, Second Division, 41st panel on a. c. no. 4734/2013.

<sup>97</sup> Decision no. 10398/10.07.2013 of the SAC, Fifth Division on a. c. no. 2551/2013.

<sup>98</sup> Decision no.16380/10.12.2013 of the SAC, Five-Member Panel, II College, on a. c. no. 13425/2013.

<sup>99</sup> Decision no. 14745/08.11.2013 of the SAC, Fifth Division on a. c. no. 1042/2013.

<sup>100</sup> Decision no. 7522/02.12.2013 of the Administrative Court – Sofia City (ACSC), Second Division, 32nd panel, on a. c. no. 9332/2013.

## Preparatory Documents

By a decision<sup>101</sup> of 29 January 2013 the SAC upheld a decision of the Administrative Court – Haskovo repealing a refusal by the Haskovo Municipality mayor to provide a copy of the report on an inspection by the Public Financial Inspection Agency (PFIA) in the municipality. The Justices held that they fully share the reasoning of the first instance court that the Harmanli Municipality did not prove that the requested information is related to the preparatory work on acts of the administrative bodies, and has no significance in itself, nor did it prove that the information contains opinions and statements related to on-going or prospective negotiations to be led by the administrative body or on its behalf, as well as any data relating thereto.

By a decision<sup>102</sup> of 10 June 2013, the ACSC repealed a refusal by the Ministry of Regional Development and Public works to provide information on OLAF's final report on the possible irregularities in the execution of the project "Water's way," co-financed by the European Regional Development Fund (ERDF) Cross Border Cooperation Programme Romania - Bulgaria 2007-2013. The ministry had refused access with the argument that this information related to the preparatory work on the bodies' acts and had no significance in itself. The court held that the refusal had not specified the final acts for the preparation of which the information had been used, therefore the stakeholders had no way of obtaining information on the content of the report. The decision also stated that the findings of the report cannot be modified by the authority to whom they were sent. They have significance in themselves and access to them should be provided.

By a decision<sup>103</sup> of 14 June 2013, the ACSC repealed a refusal by the president of the Sofia City Court (SCC) to provide information on the delayed criminal and civil cases at the time of 18 February 2013. In particular, these are cases where the court sentence was declared, but reasons not yet provided or a decision was not delivered. The SCC refusal was given with the argument that the information sought had a preparatory character and has no significance in itself. The court held that the requested information has significance in itself, since the final decisions on disciplinary responsibility of judges are not issued by the president of the court. The judge noted that in past years the SCC had provided similar data. In this regard, the court stated that it is not consistent with the principle of equality that once access to the same information is free and in other cases is limited on the grounds that the information is preparatory in nature and has no significance in itself.

By a decision<sup>104</sup> of 8 August 2013, the ACSC repealed the Ministry of Environment and Water (MOEW) Chief Secretary refusal to provide access to the legal analysis of the concession of the Bansko Ski Zone. The court held that there is overriding public interest in providing this information as it concerns the exploitation and construction of large areas in the national park (Pirin).

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<sup>101</sup> Decision no. 1364/29.01.2013 of the SAC, Fifth Division on a. c. no. 3435/2012.

<sup>102</sup> Decision no. 3858/10.06.2013 of the ACSC, Second Division, 32nd panel on a. c. no. 739/2013.

<sup>103</sup> Decision no. 4010/14.06.2013 of the ACSC, Second Division, 41st panel on a. c. no. 3156/2013.

<sup>104</sup> Decision no. 5430/08.08.2013 of the ACSC, Second Division, 29th panel on a. c. no. 2496/2013.

## Access to Information – Access to Documents

By a decision<sup>105</sup> of the 17 April 2013, the SAC upheld a decision of the ACSC repealing a refusal by the Ministry of Economy, Energy and Tourism (MEET) to provide information concerning a ministry's opinion according to which the actions of the physicist Georgi Kotev, former employee in the Nuclear Power Plant "Kozloduy", and the Association of free speech "Anna Politkovskaya" supporting him, cost the state budget 2 million BGN, spent on maintaining the positive image of the Bulgarian nuclear energy industry. According to the court panel the physical bearer of the information, in this case the respective document – a letter from the director of Directorate "Energy industry security" in the MEET – is not something requested for its material substrate, but for the information it contains. Therefore, it is irrelevant how exactly the information is described, its provision is due.

## Silent Refusals

The case-law on silent refusals under the Access to Public Information act remains stable. Under the APIA case-law the sole procedure that an obliged subject should follow, after receiving a valid request for access to information, is issuing a reasoned decision for provision or refusal of access to the information requested and providing written notification to the applicant of this decision.

By a decision<sup>106</sup> of 28 February 2013, the SAC upheld a decision of the Administrative court – Haskovo repealing a silent refusal by the mayor of Harmanli Municipality to provide information about the amounts of sums (fees, travel, stay and other expenses) paid by the municipality for legal services to law offices for the period 2009 – 2012, as well as about court cases, where the municipality has used the services of attorneys for the same period. The court stated that in any case a silent refusal is unlawful under the APIA.

By a decision<sup>107</sup> of 8 April 2013, the Administrative court – Veliko Tarnovo repealed a silent refusal by the Rector of the University of Veliko Tarnovo to provide information on the "Water's way – nature and culture sightseeing routes for sustainable tourism" project, under which the University is a leading partner. Concerning the rector's argument that the application is repetitive and that is why it was left without consideration, the court held that since the law provides the opportunity to file a new request for information already obtained under the sole condition – expiry of a certain time limit, a fortiori it should be assumed that there is no obstacle to a second request on the part of the same applicant if the original one was not satisfied, regardless of the fact that the refusal was explicit or silent.

By a decision<sup>108</sup> of 19 April 2013, the ACSC repealed a silent refusal of the Council of Ministers to provide information on all flights reservations made by the CoM with the Aviosquad 28 (the government airline operator) for the period 1 January 2010 – 15

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<sup>105</sup> Decision no. 5374/17.04.2013 of the SAC, Fifth Division, on a. c. no. 7662/2012.

<sup>106</sup> Decision no. 2907/28.02.2013 of the SAC, Fifth Division, on a. c. no. 8208/2012.

<sup>107</sup> Decision no. 112/08.04.2013 of AC – Veliko Tarnovo, 3<sup>rd</sup> panel, on a. c. no. 56/2013.

<sup>108</sup> Decision no. 2603/19.04.2013 of the ACSC, 22nd panel, on a. c. no. 451/2013.

August 2012. The court held that a silent refusal under the APIA is unlawful and on that ground alone it is subject to repeal.

By a decision<sup>109</sup> of 5 August 2013, the ACSC repealed a silent refusal by the director of State Fund Agriculture to provide information on the candidates trained in the Rural Development Programme in the period 10.05.2010 – 31.01.2013. More specifically, the information sought was on the cost of that training, a copy of the list of companies which provided consultations, the number of consultations and the amount paid for them. The court held that the director should have issued an explicit decision on the request, since under an order of the Minister of Agriculture and Foods of 2007, the State Fund Agriculture is the sole Paying agency in Bulgaria for the Rural Development Programme.

By a decision<sup>110</sup> of 23 October 2013 the ACSC repealed a silent refusal of the mayor of Elin Pelin Municipality to provide information concerning the tax that parents of children enrolling in kindergarten had to pay to the municipality.

By a decision<sup>111</sup> of 28 October 2013, the ACSC repealed a silent refusal of the president of the Bulgarian Science Fund to provide information on the results of a call for proposals procedure in the priority area "Cultural and historical heritage" and specifically on the evaluation and ranking of all submitted projects, as well as on the reasons for approving or rejecting projects.

By a decision<sup>112</sup> of 7 November 2013 the Administrative Court – Sliven repealed a silent refusal by the Chairman of the Municipal Council – Nova Zagora to provide information on the procedure through which citizens can declare their interest in participating in the municipal council sessions.

By a decision<sup>113</sup> of 27 December 2013 the Administrative Court – Veliko Tarnovo repealed a silent refusal by the Rector of the University of Veliko Tarnovo to provide information on the public procurement calls and the contracts concluded under the project "Joint risk monitoring in emergency situations in the border region of the Danube river", where the University is a partner organization.

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<sup>109</sup> Decision no. 5372/05.08.2013 of the ACSC, Second Division, 29th panel on a. c. no. 3404/2013.

<sup>110</sup> Decision no. 975/23.10.2013 of the AC – Sofia District, 7th panel, on a. c. no. 749/2013.

<sup>111</sup> Decision no. 6480/28.10.2013 of the ACSC, Second Division, 24th panel on a. c. no. 3042/2013.

<sup>112</sup> Decision no. 92/07.11.2013 of the AC – Sliven on a. c. no. 67/2013.

<sup>113</sup> Decision no. 668/27.12.2013 of the AC – Veliko Tarnovo, on a. c. no. 1004/2013.

# APPENDIX

## APPENDIX I

### Comparative Tables from AIP Audits on Institutional Web Sites 2011 – 2014 and 2014 Results by Type of Public Body

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

Chart 1. Is the legal basis for the powers of the institution available?

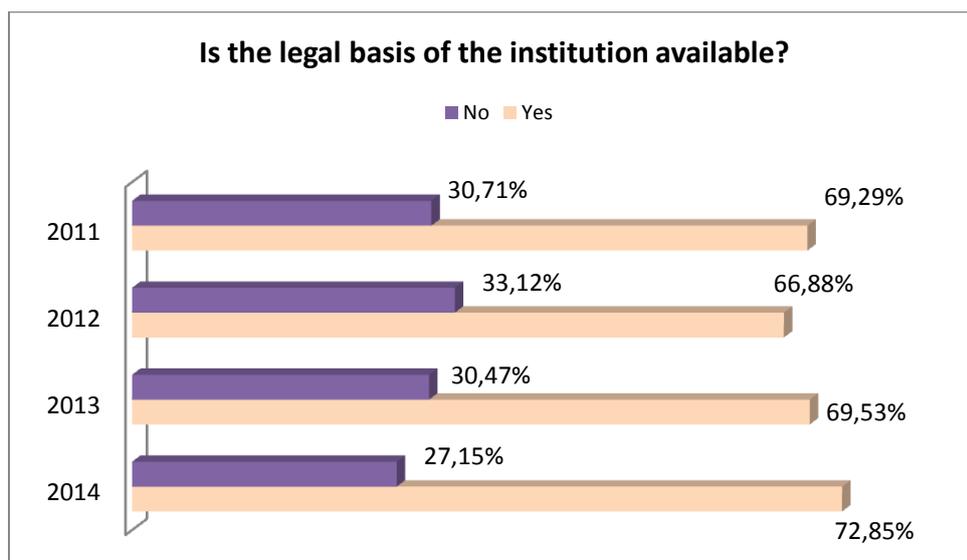


Chart 2. Is the legal basis for the powers of the institution available? (by type of public body – 2014)

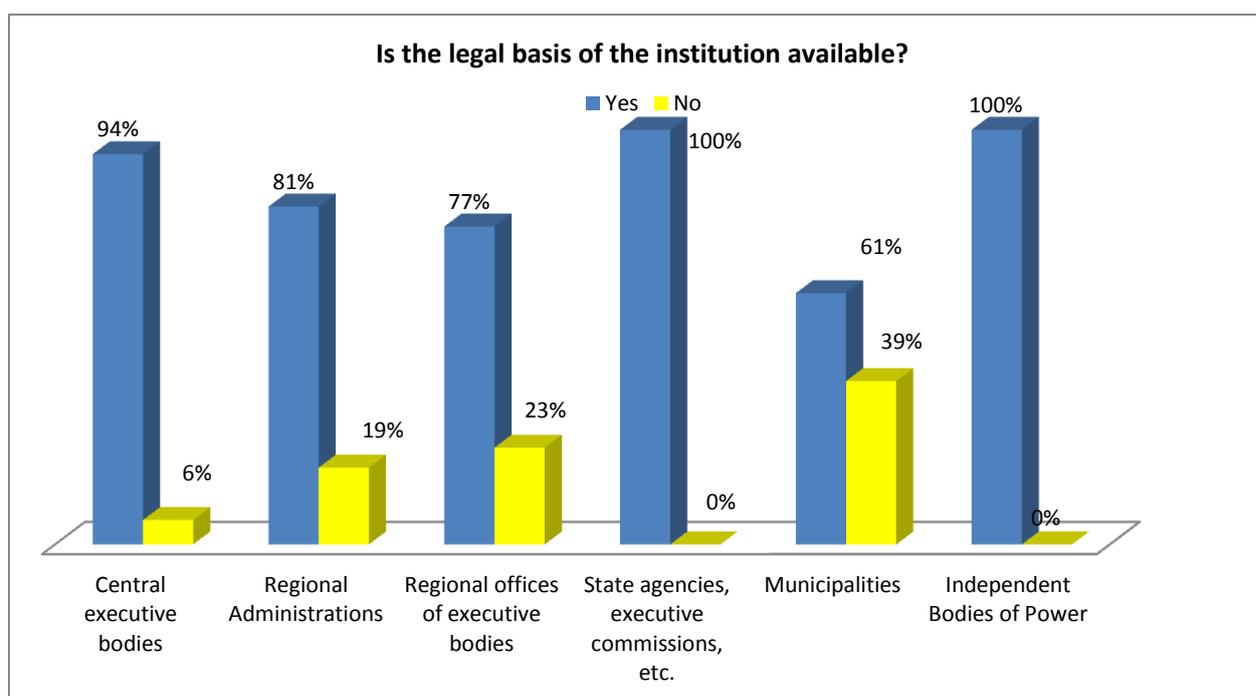


Chart 3. Are the functions of the institution published?

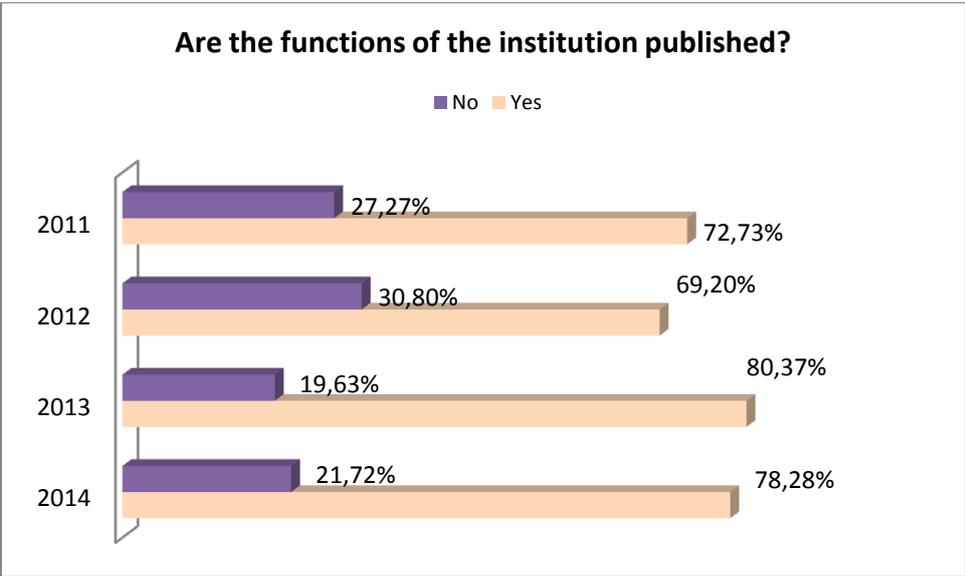


Chart 4. Are the functions of the institution published? (by type of public body – 2014)

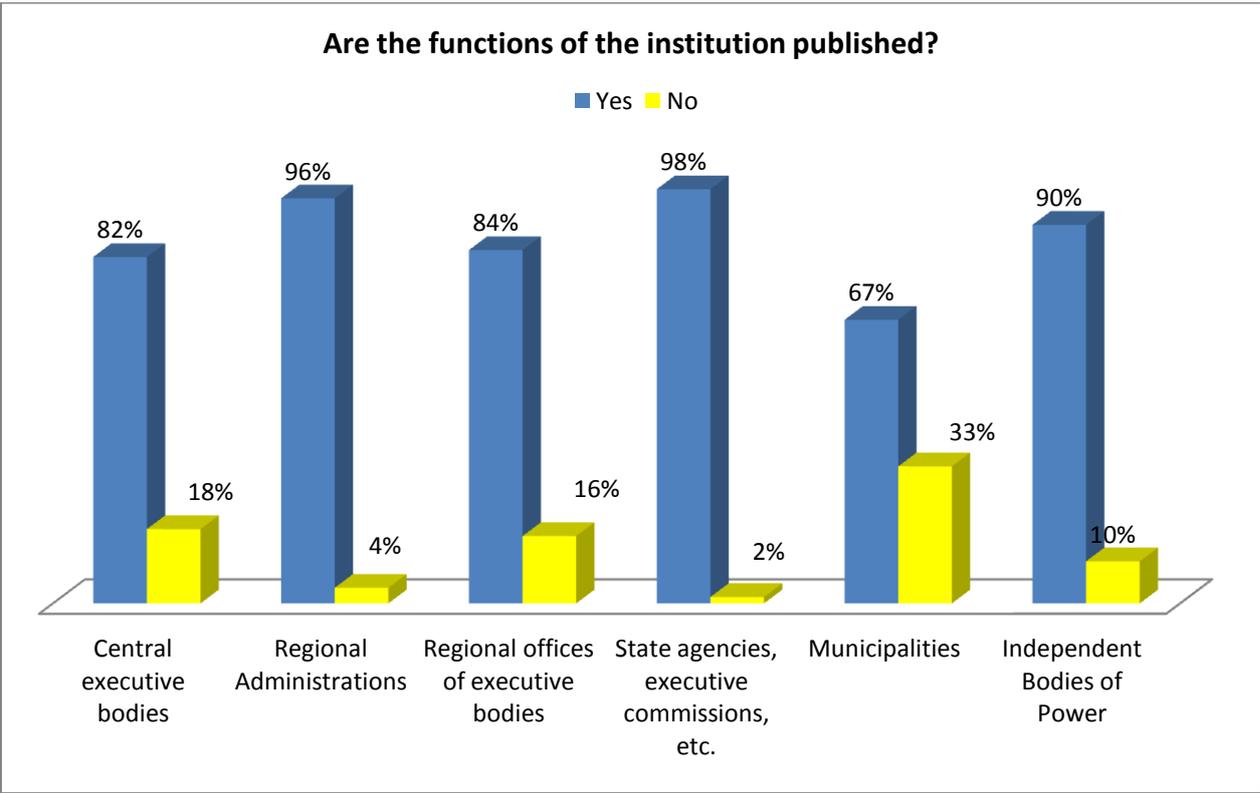


Chart 5. Is a description of the public services provided by the institution published?

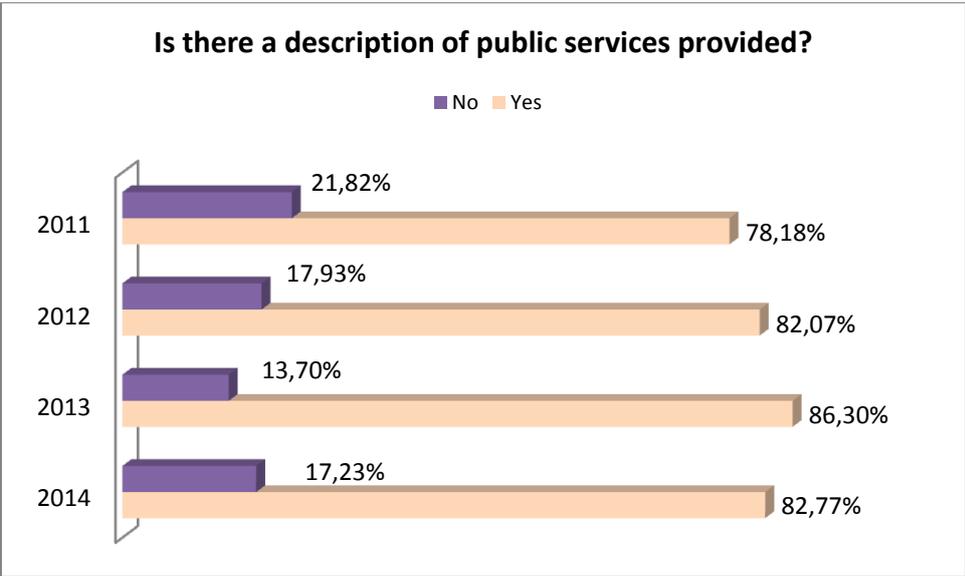


Chart 6. Is a description of the public services provided by the institution published? (by type of public body – 2014)

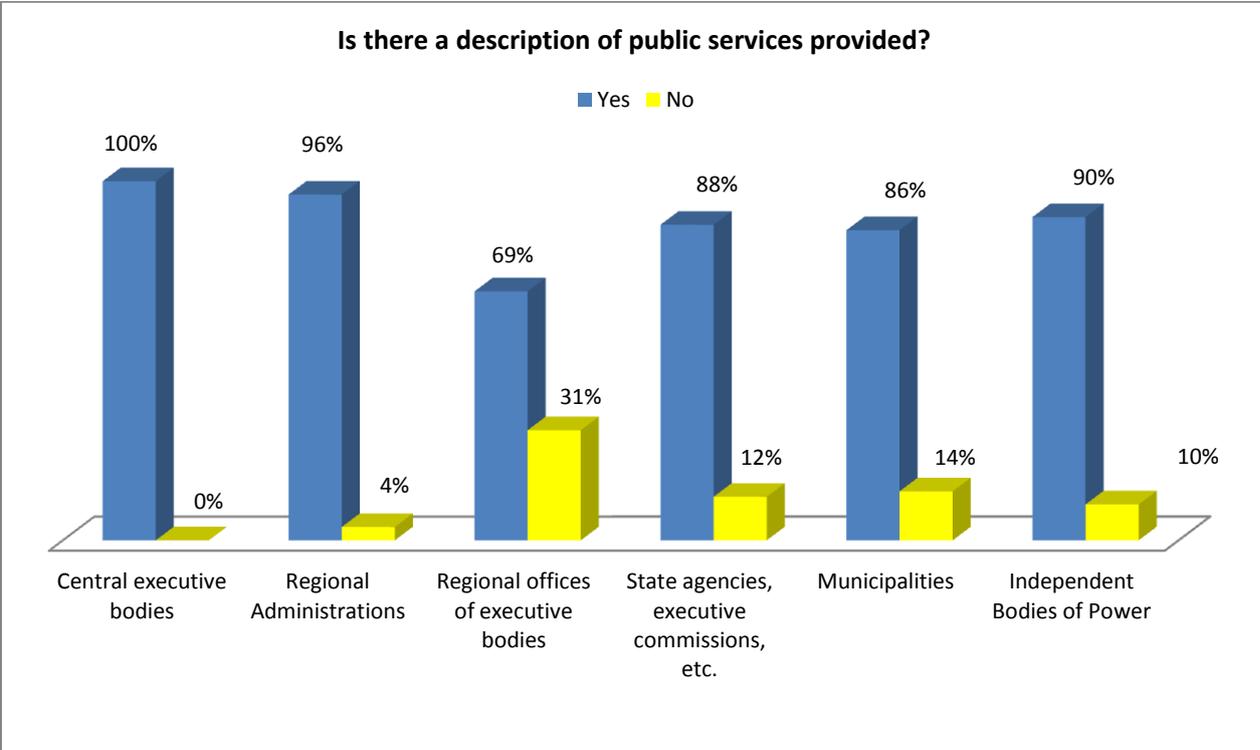


Chart 7. Is there information (list) of the registers maintained by the respective institution?

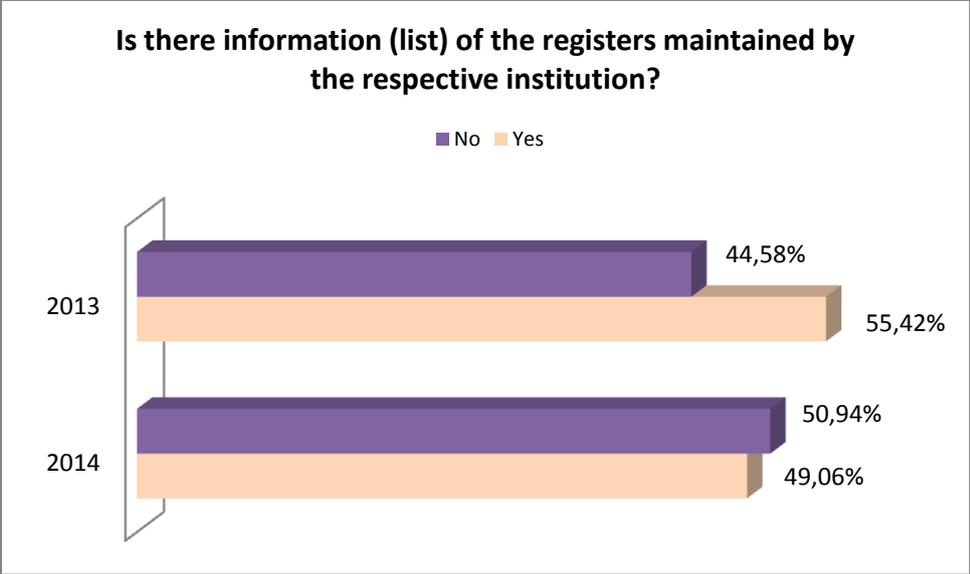


Chart 8. Is there information (list) of the registers maintained by the respective institution? (by type of public body – 2014)

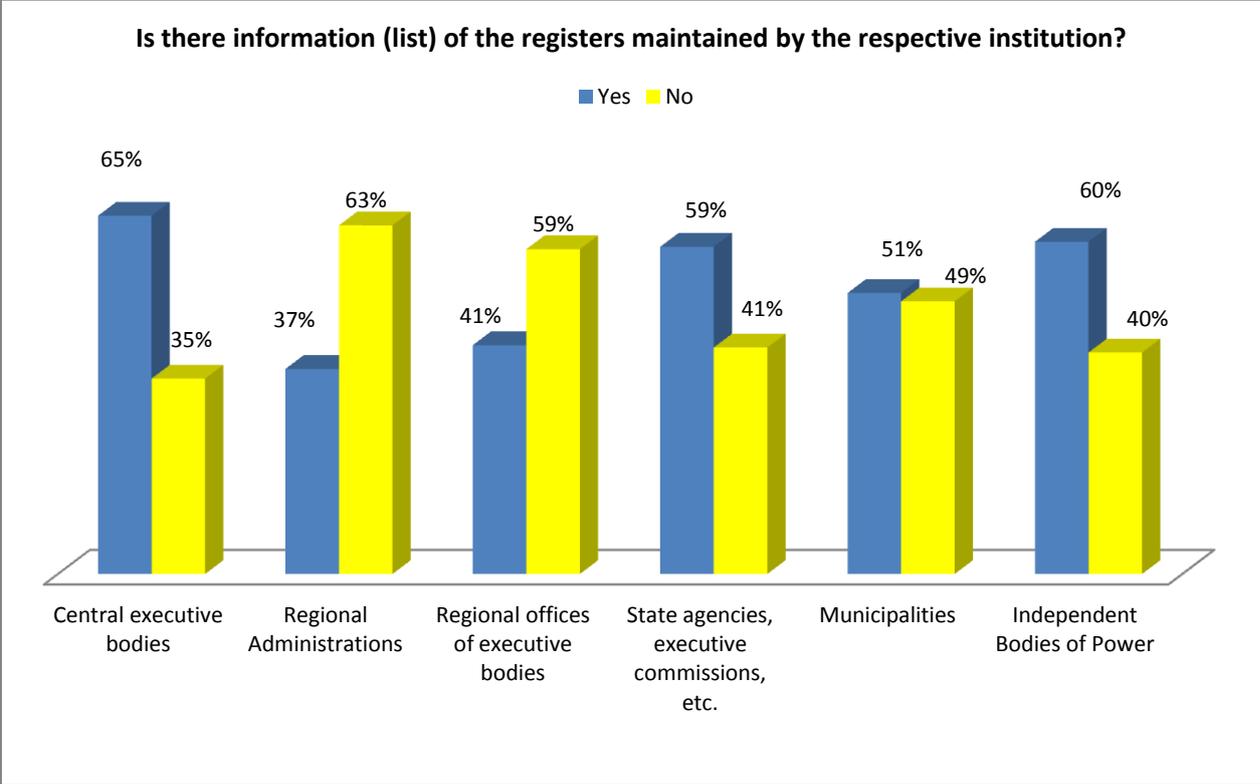


Chart 9. Are the public registers maintained by the institution available?

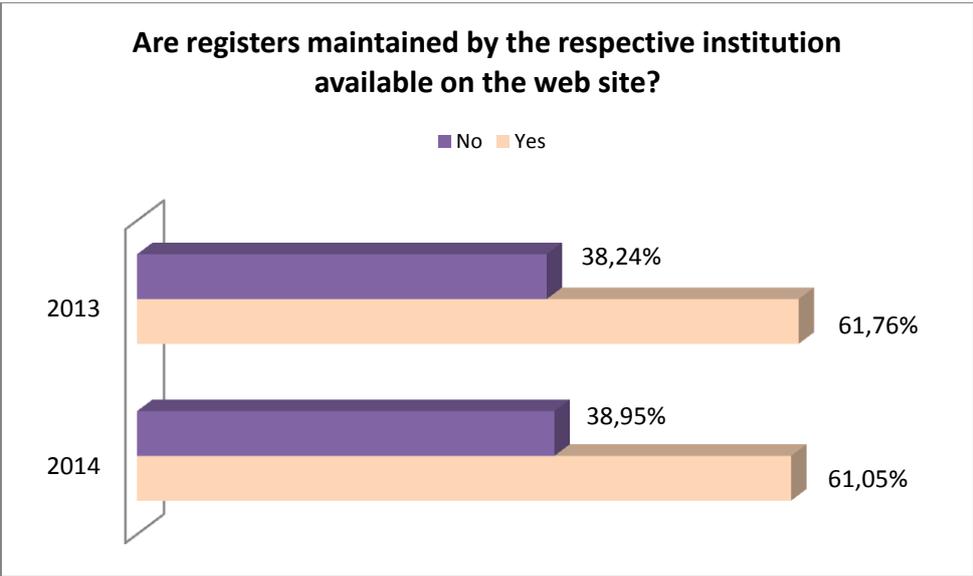


Chart 10. Are the public registers maintained by the institution available? (by type of public body – 2014)

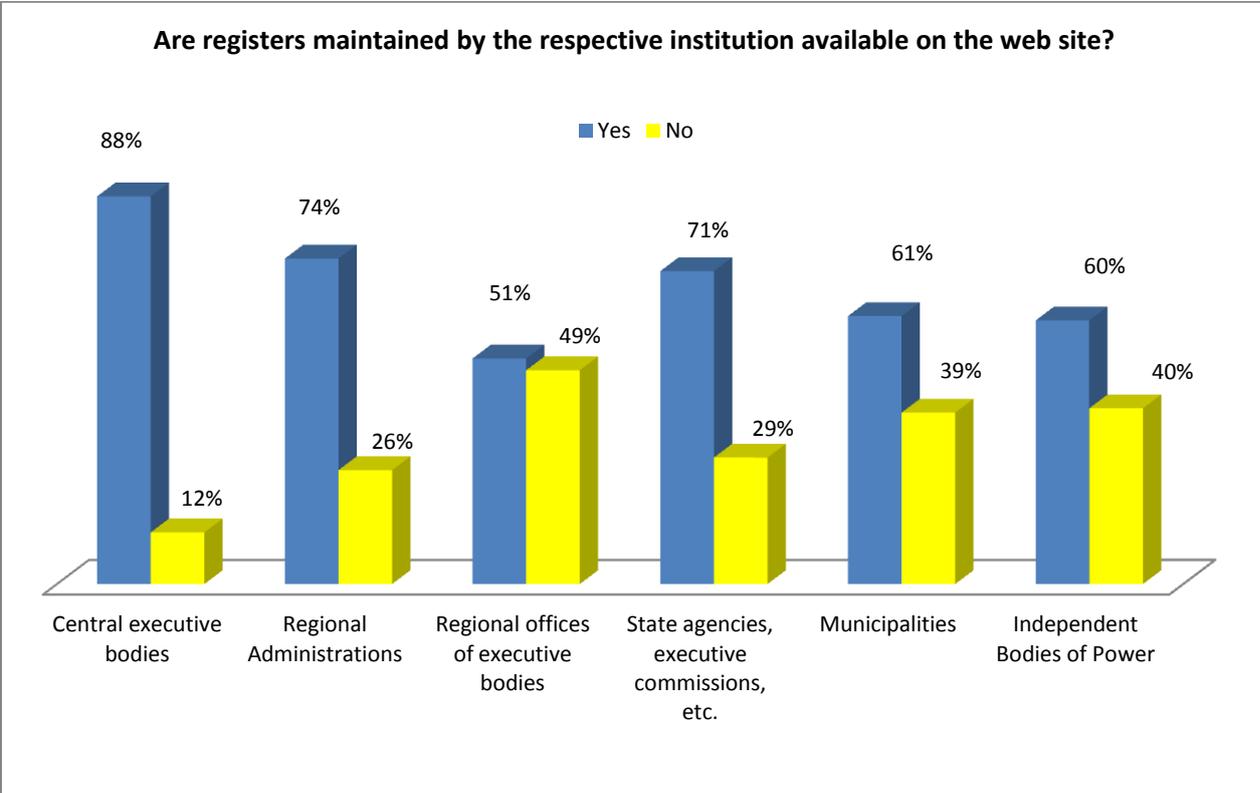


Chart 11. Is there a description of the public registers maintained by the institution?

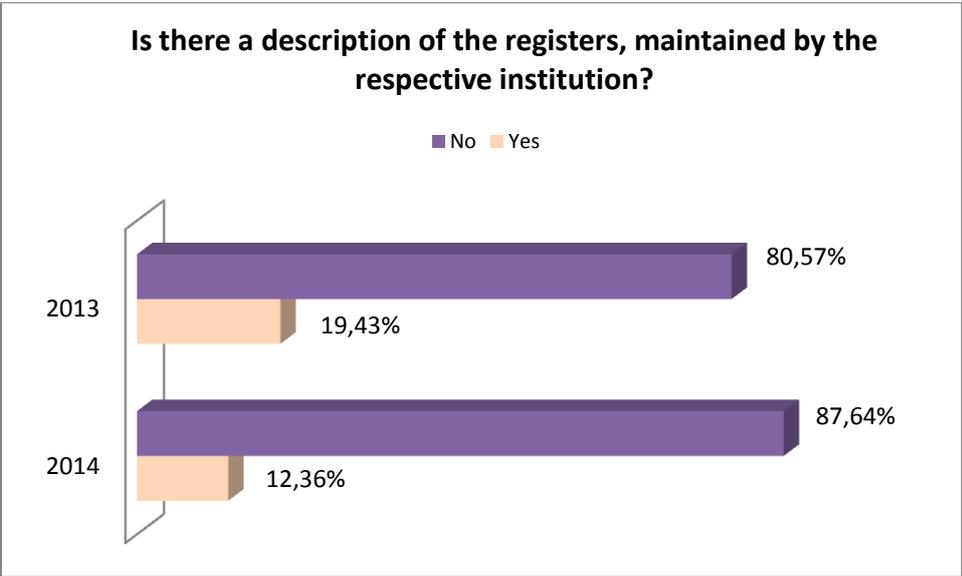
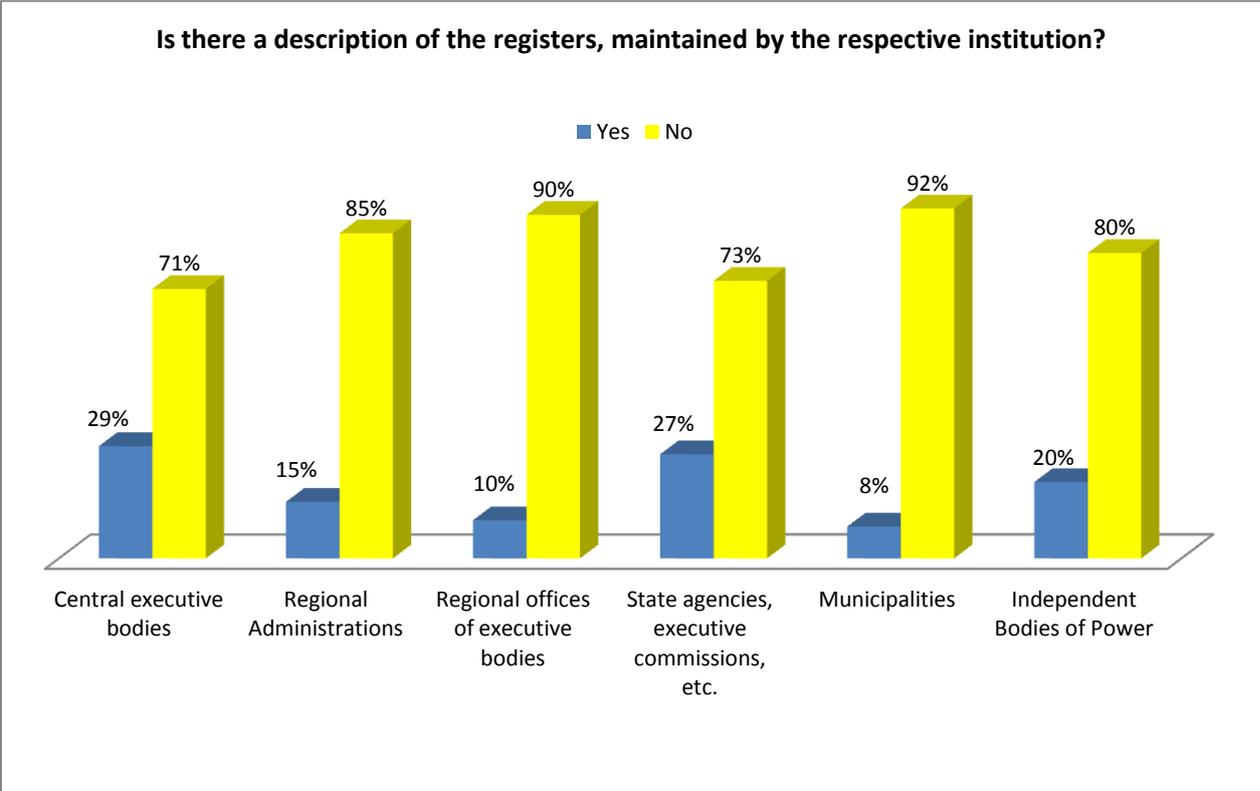


Chart 12. Is there a description of the public registers maintained by the institution (by type of public body – 2014)?



**Organizational structure and contact information**

Chart 13. Is the structure of the administration published?

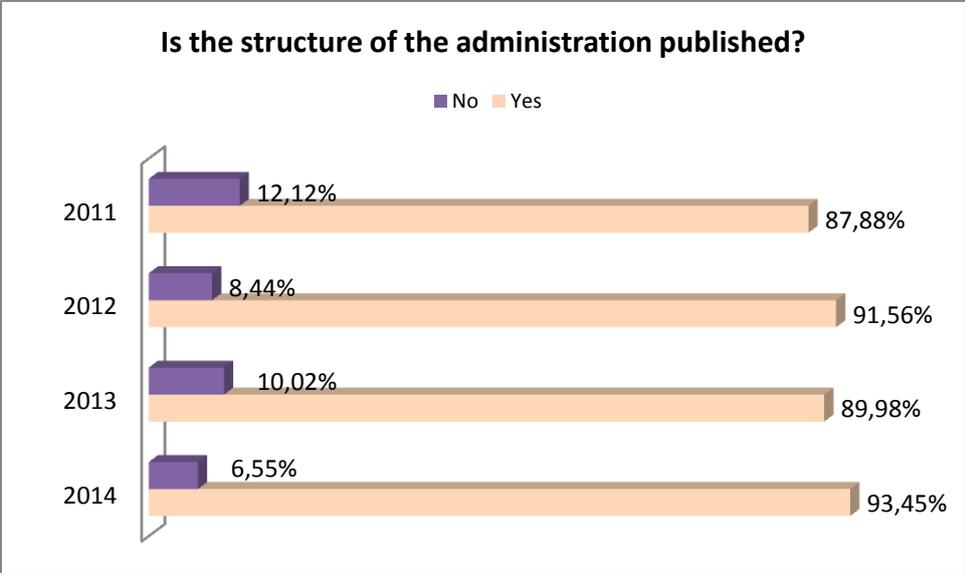
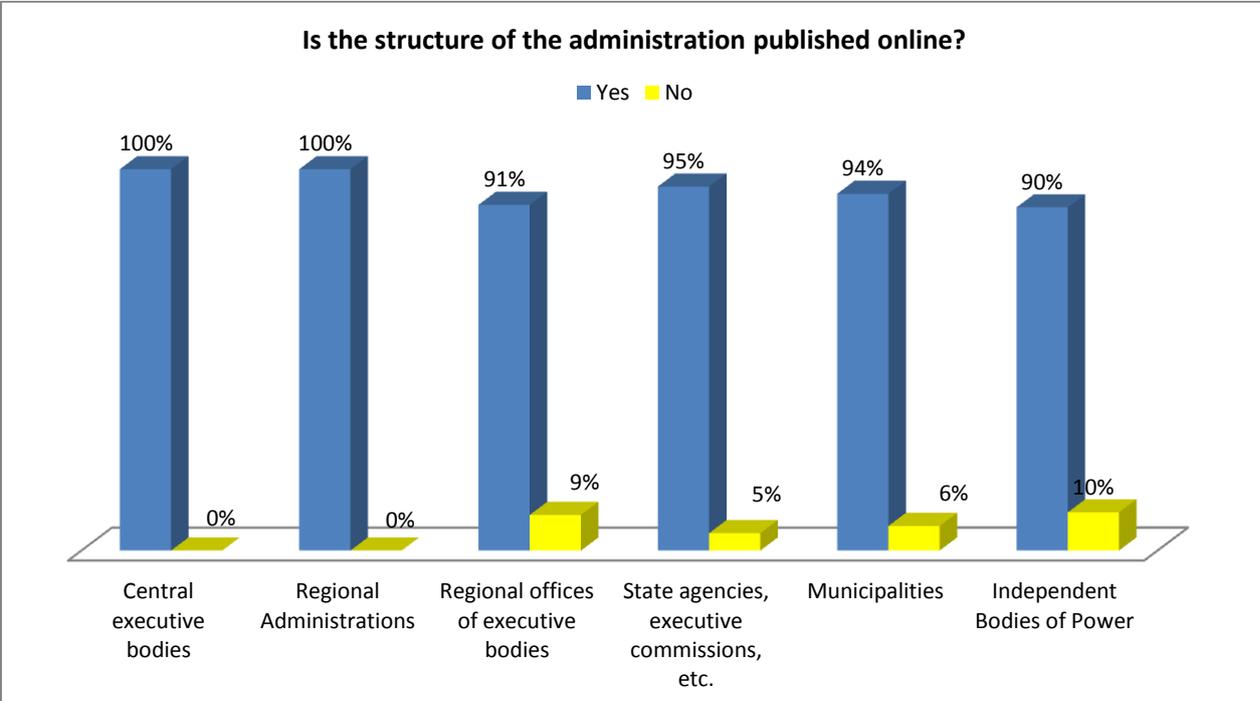


Chart 14. Is the structure of the administration published? (by type of public body – 2014)



## Contact information for citizens

Chart 15. Name of the contact department?

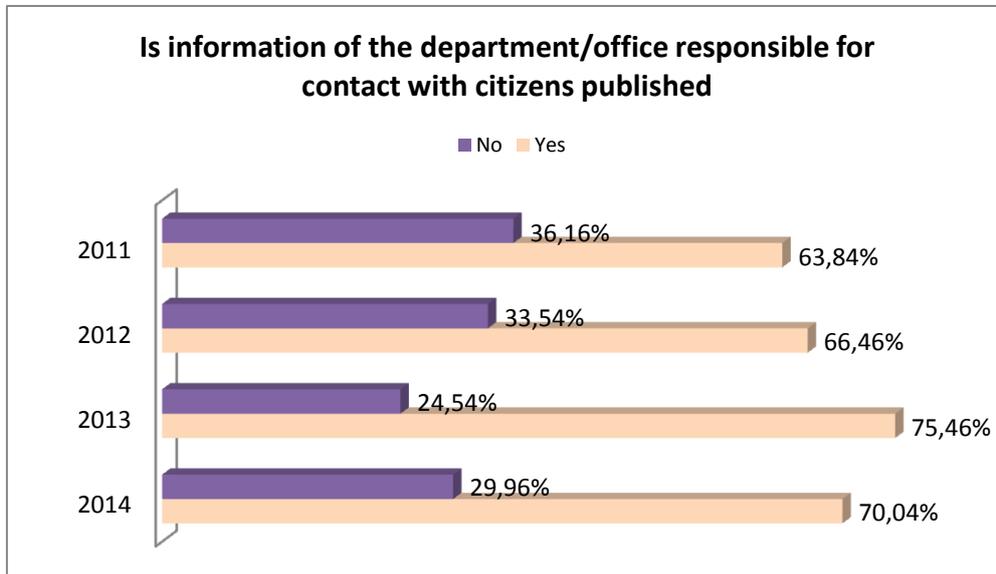


Chart 16. Name of the contact department? (by type of public body – 2014)

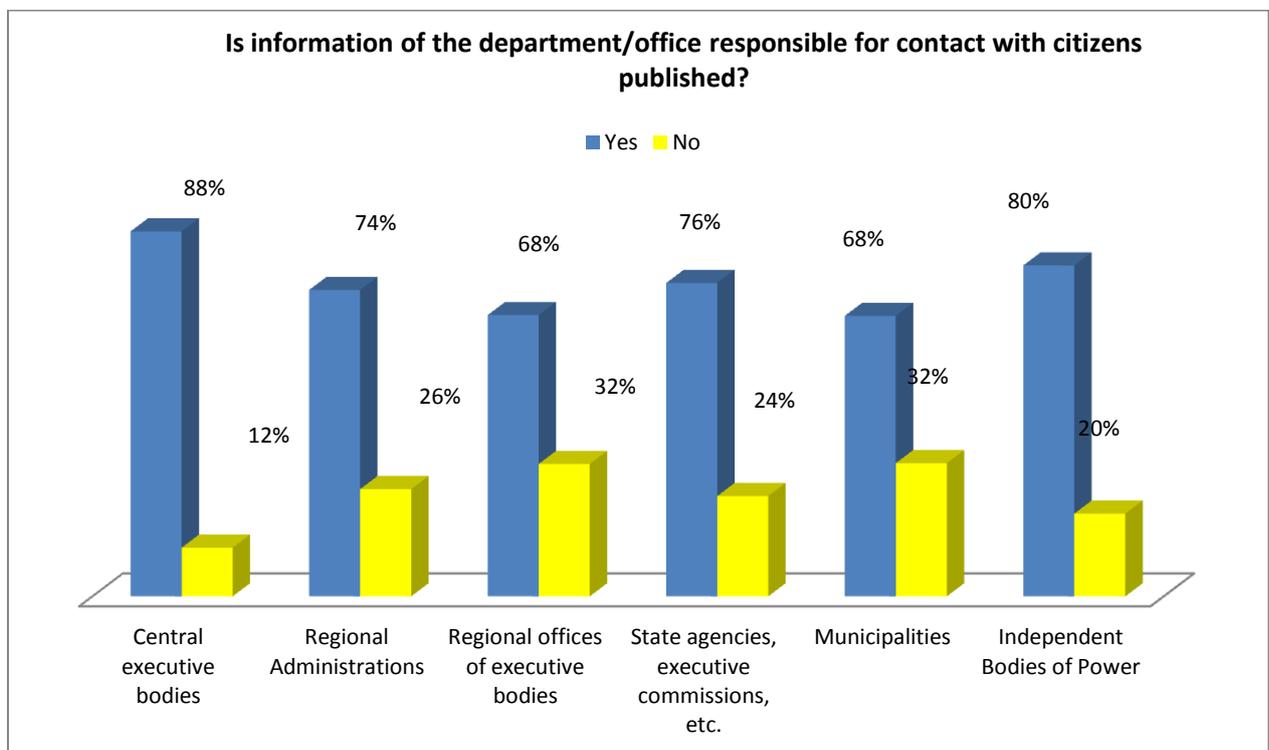


Chart 17. Address of the contact department?

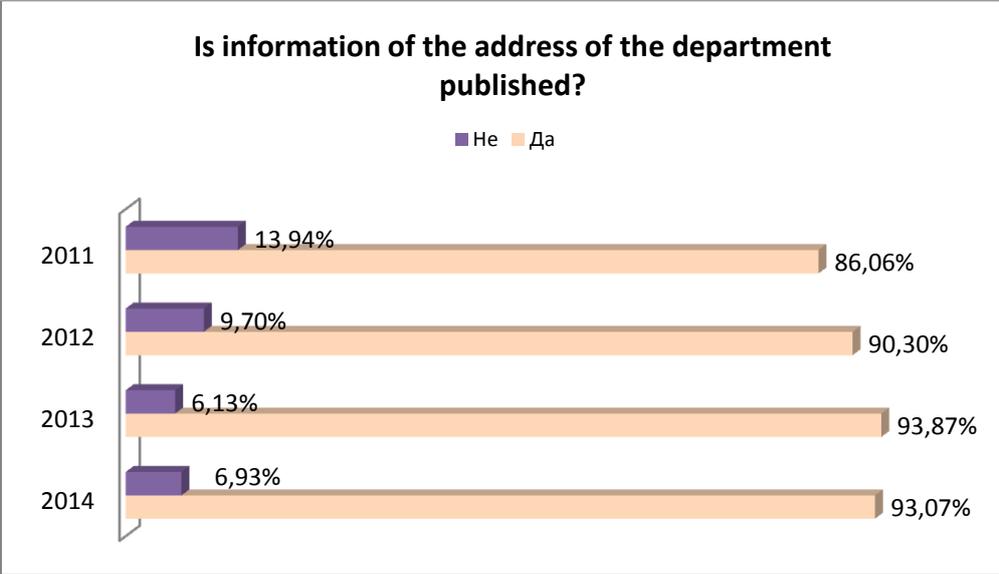


Chart 18. Address of the contact department? (by type of public body – 2014)

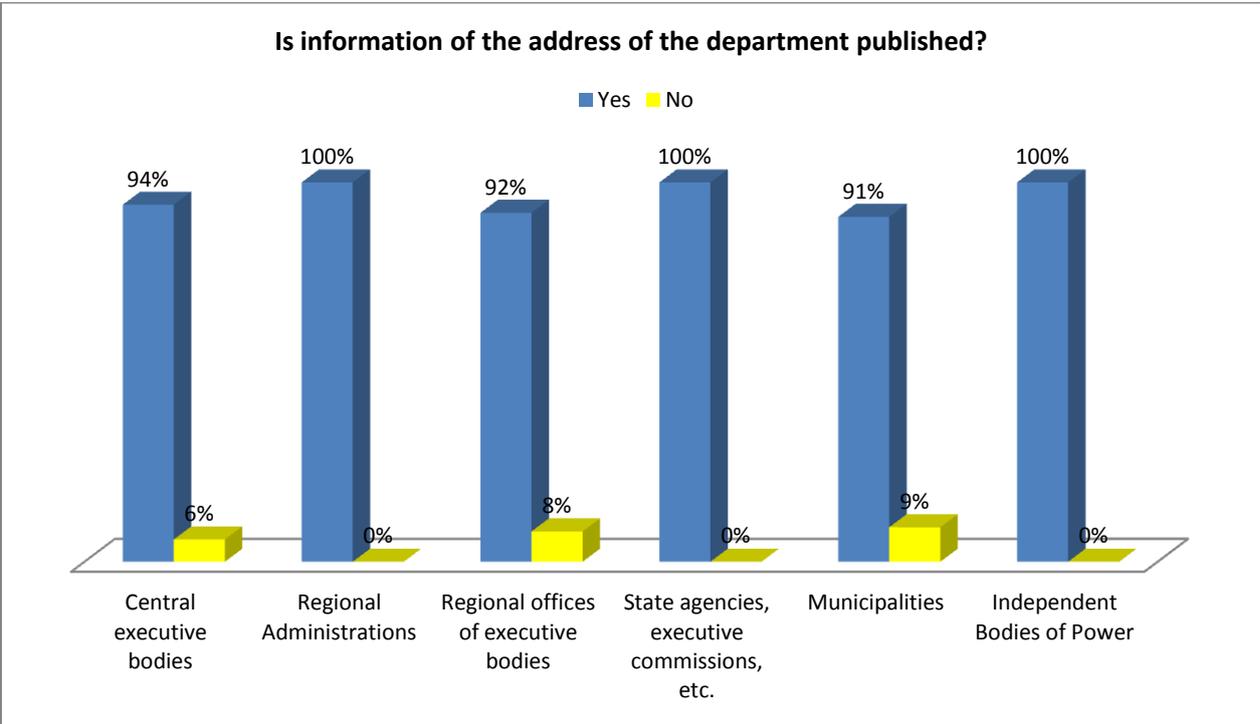


Chart 19. Contact phone number?

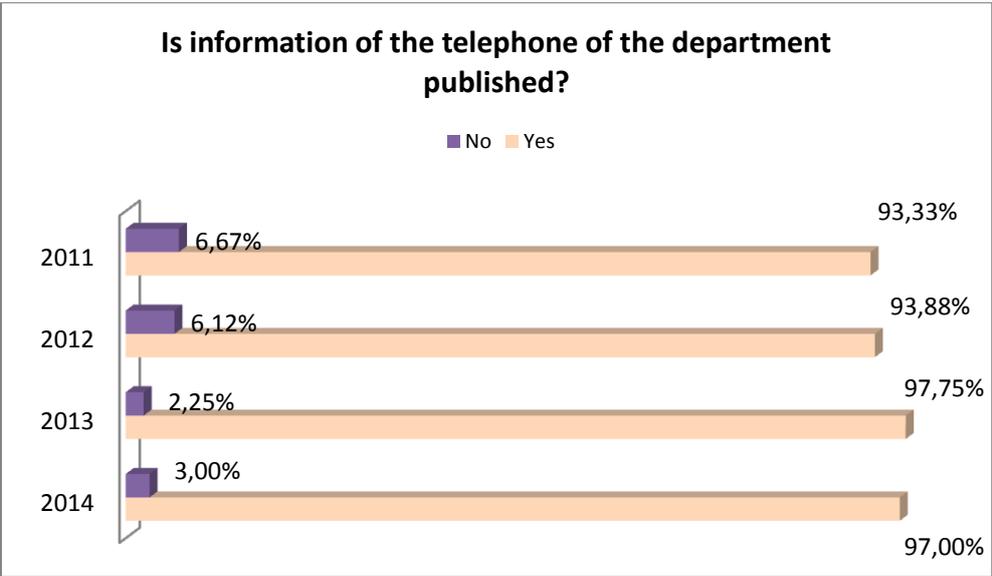


Chart 20. Contact phone number? (by type of public body – 2014)

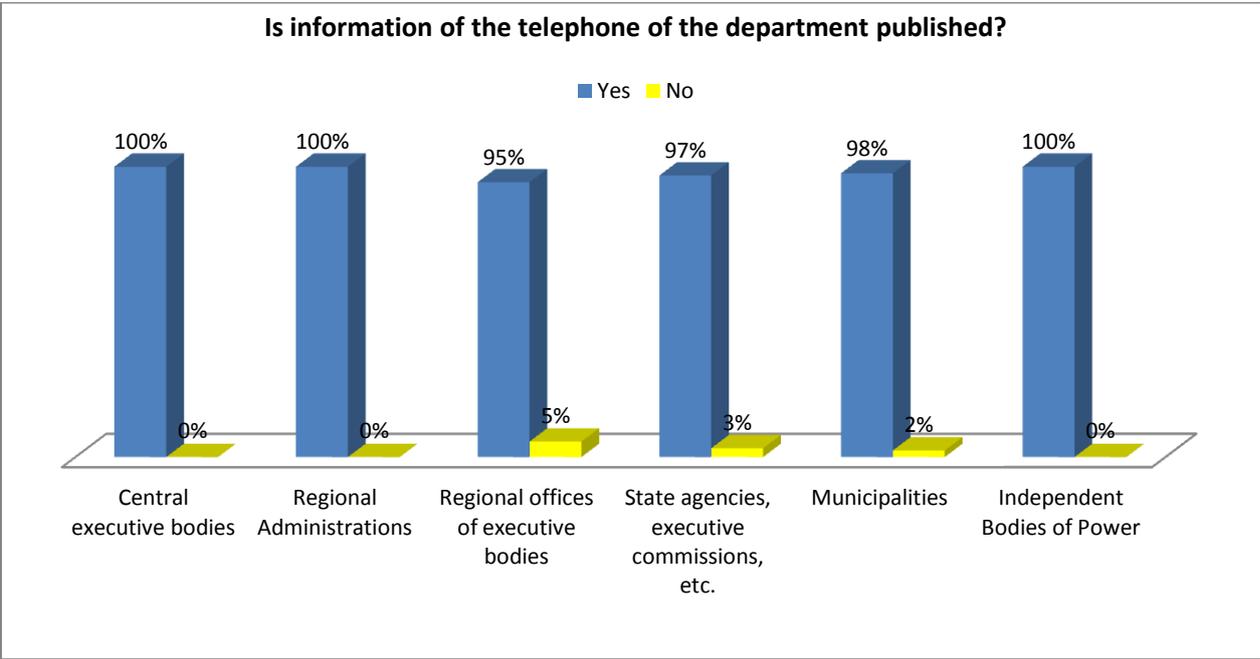


Chart 21. Is information of the e-mail address of the department published?

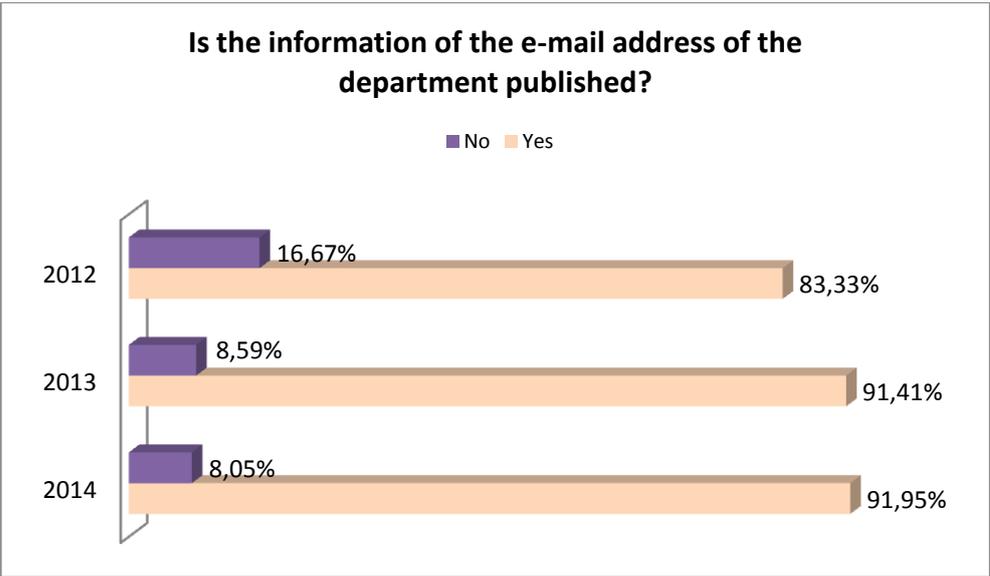


Chart 22. Is information of the e-mail address of the department published? (by type of public body – 2014)

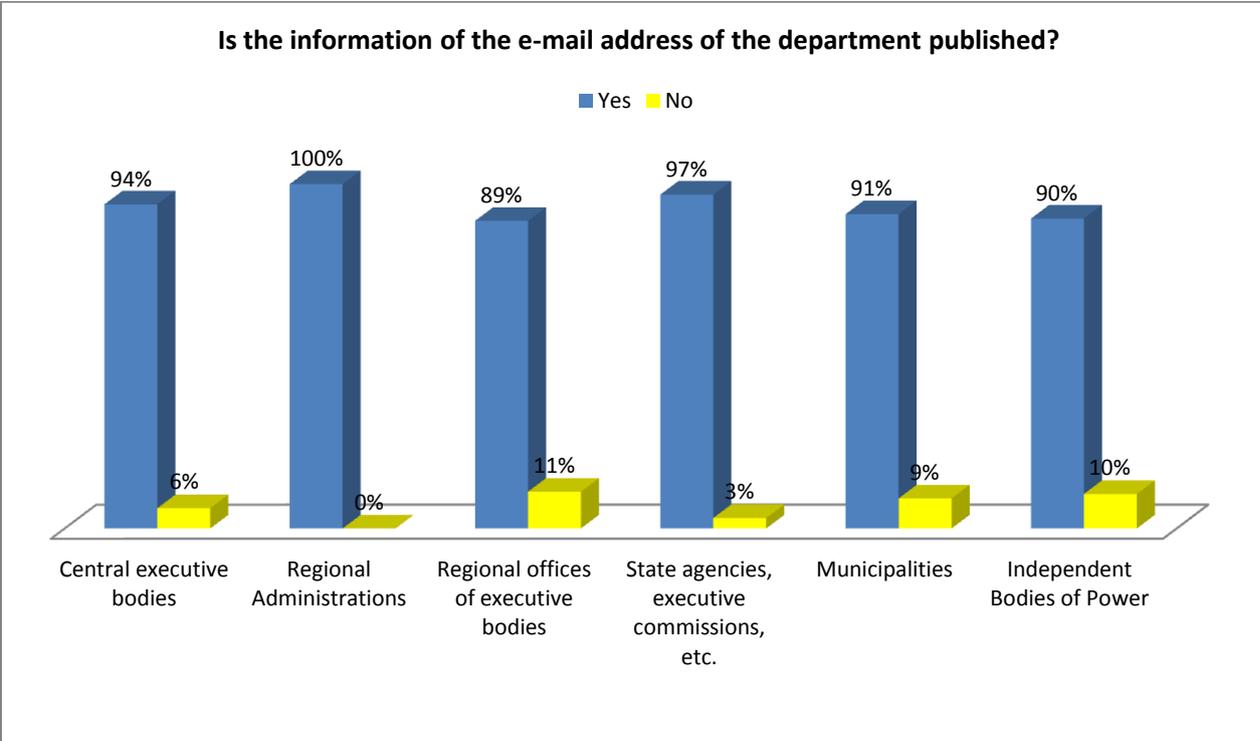


Chart 23. Working hours of the contact department?

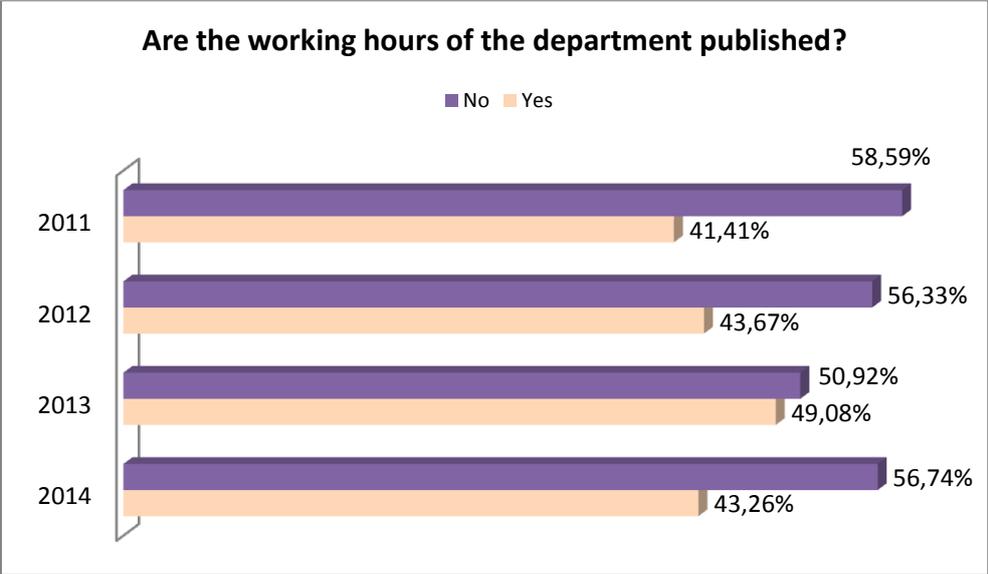
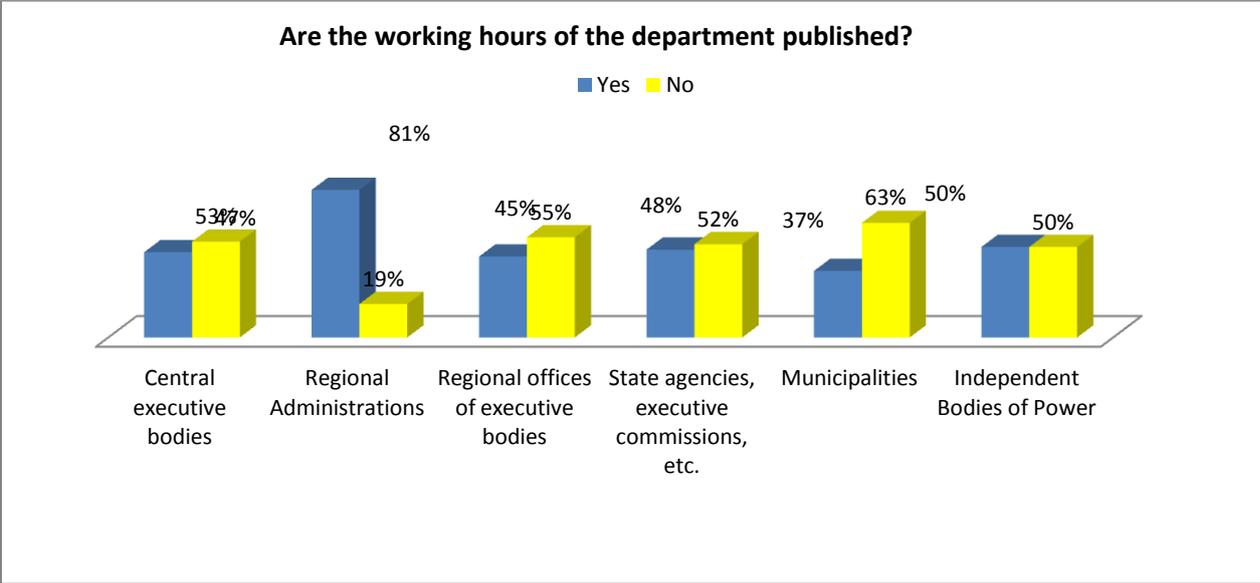


Chart 24. Working hours of the contact department? (by type of public body – 2014)



**Operational Information – acts,<sup>114</sup> strategies and plans, activities and activity reports**

Chart 25. Are the normative acts published?

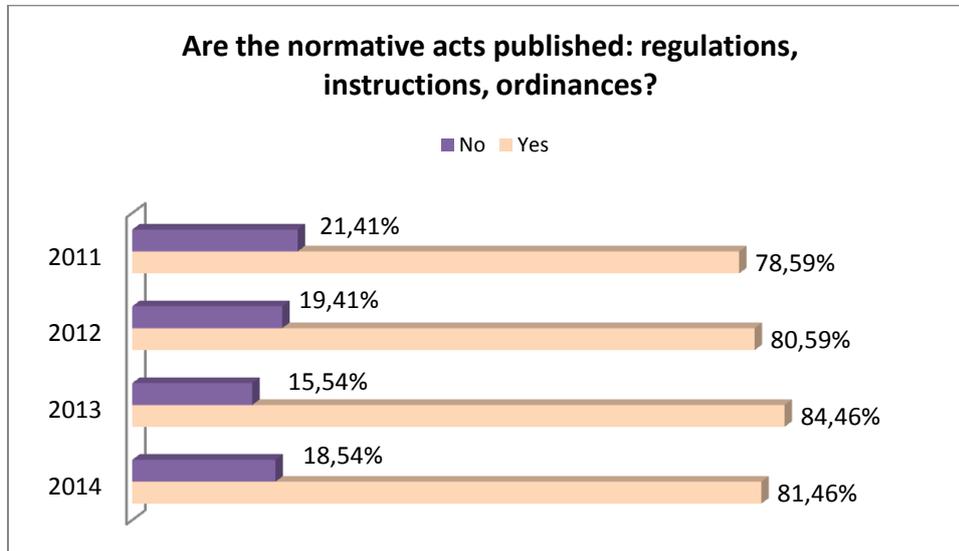
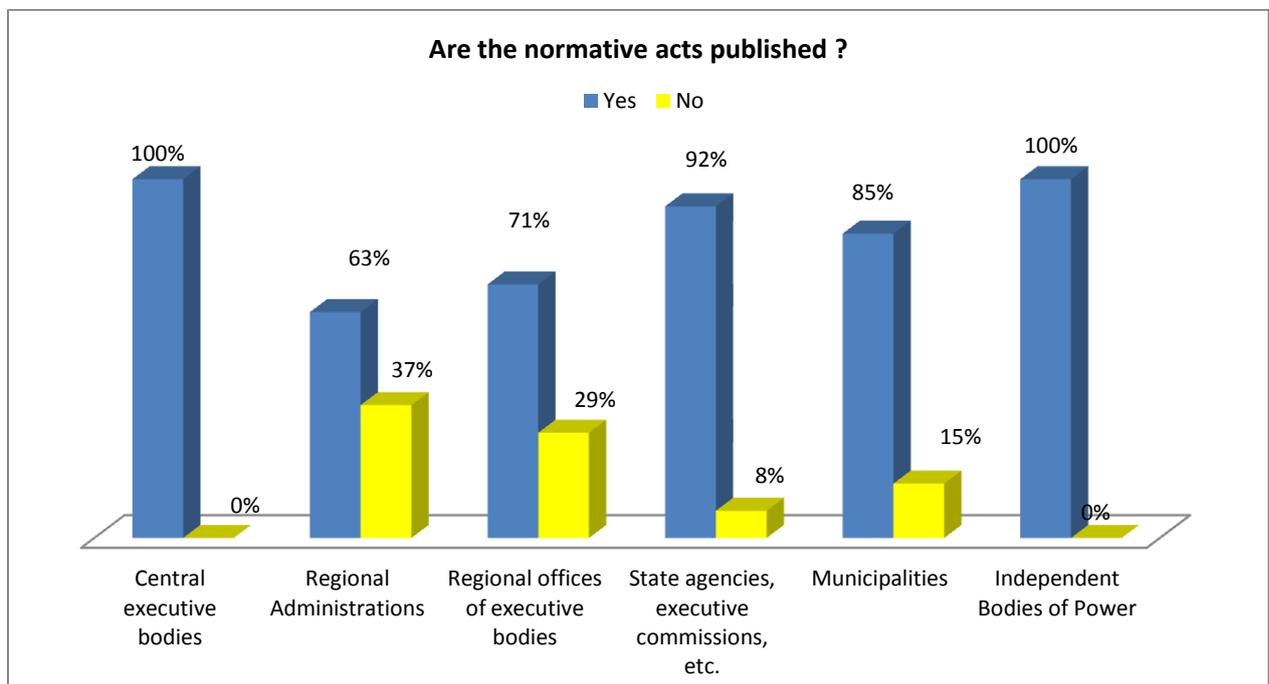


Chart 26. Are the normative acts published? (by type of public body – 2014)



<sup>114</sup> 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 27. Are the individual administrative acts published?

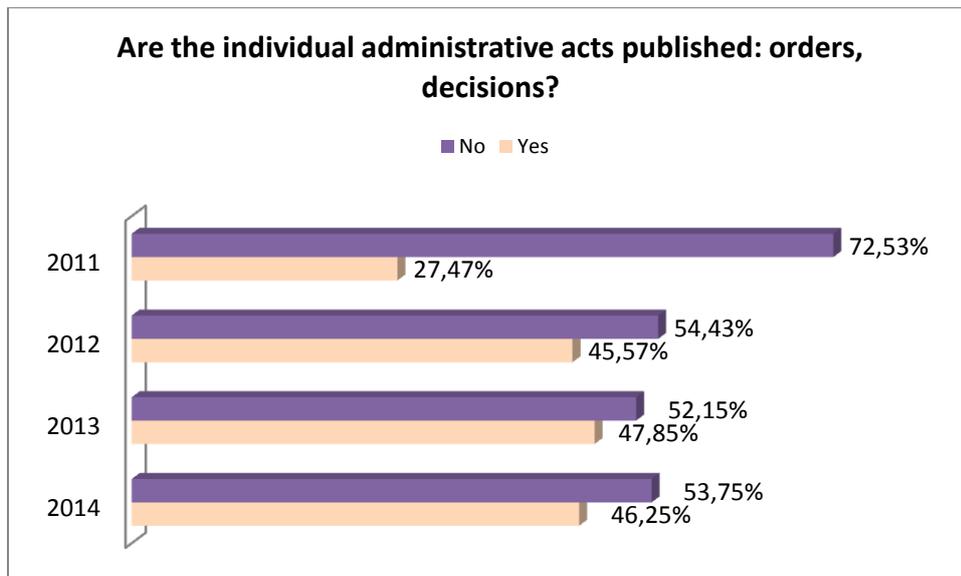


Chart 28. Are the individual administrative acts published? (by type of public body – 2014)

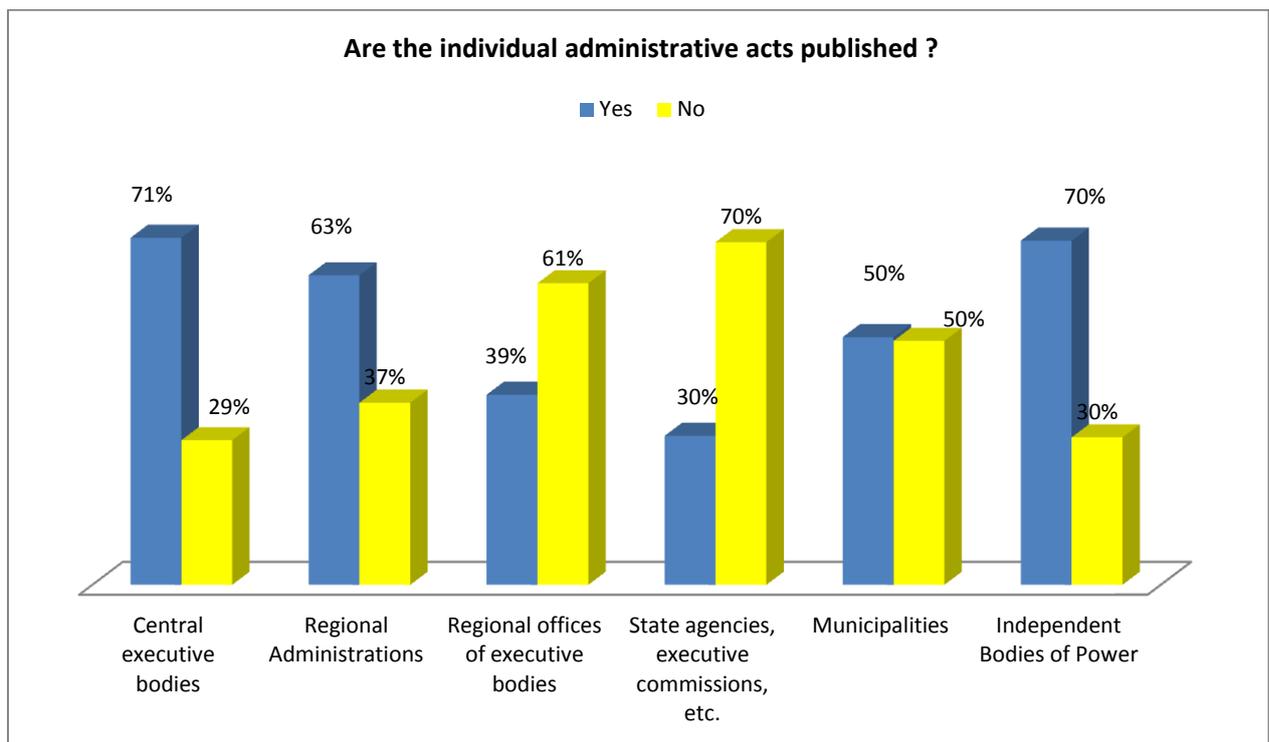


Chart 29. Are the decisions of the municipal council published? (only for municipalities – 2011 - 2014)

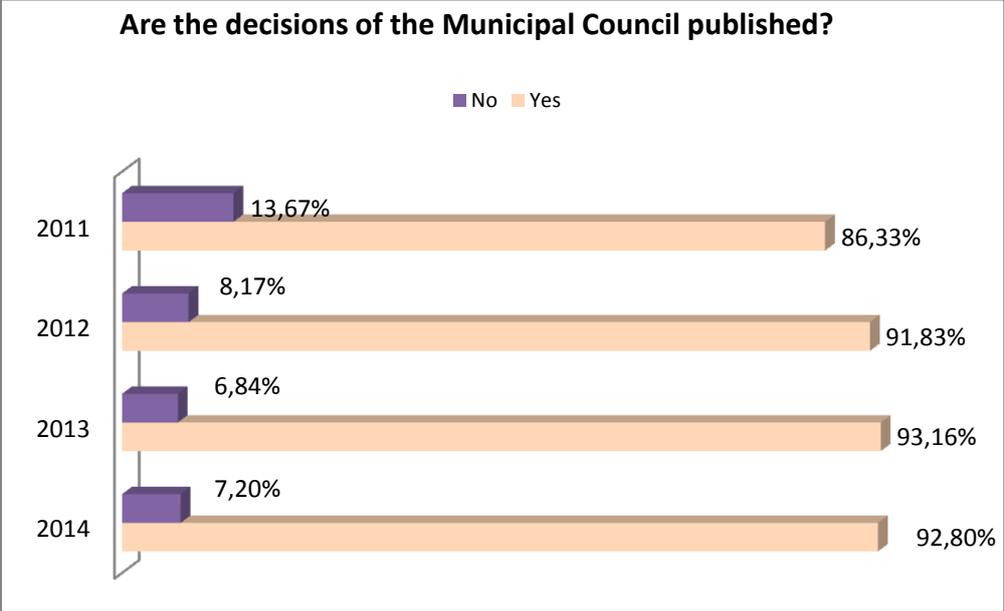


Chart 30. Are development strategies and plans published?

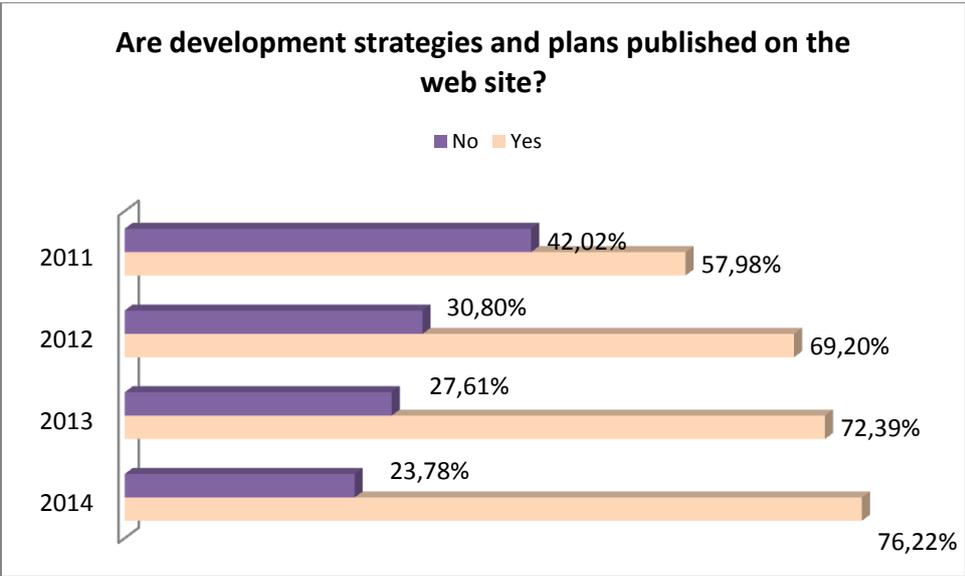


Chart 31. Are development strategies and plans published? (by type of public body – 2014)

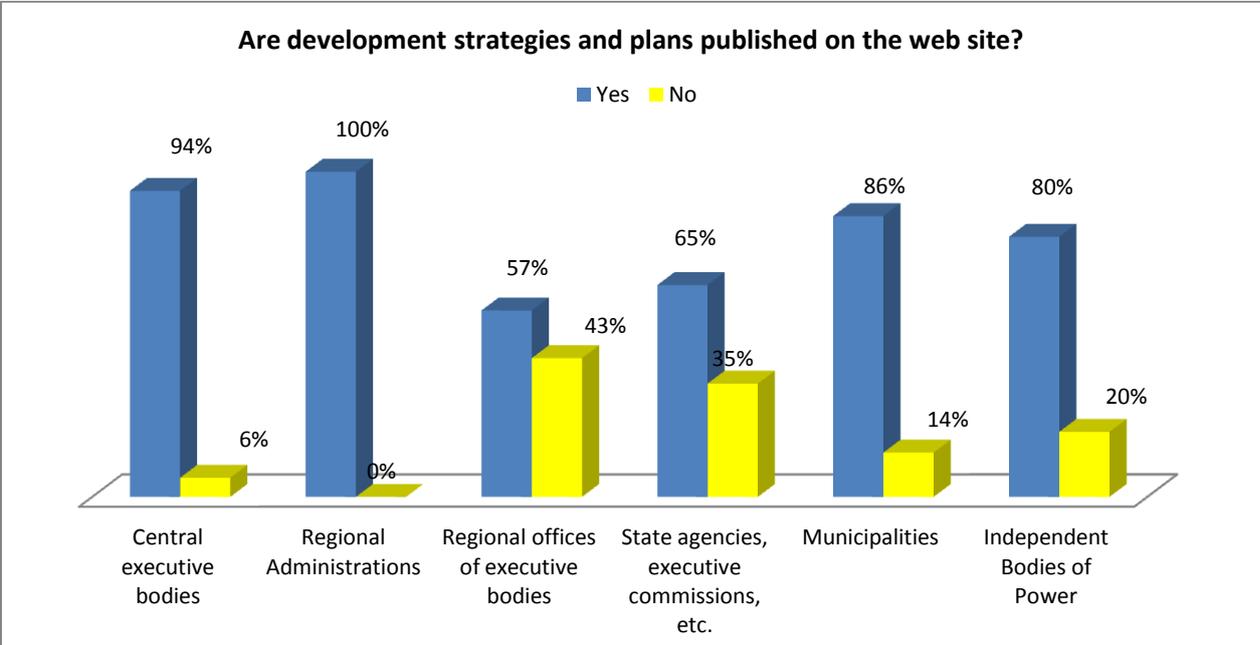


Chart 32. Are activity reports of the institution published?

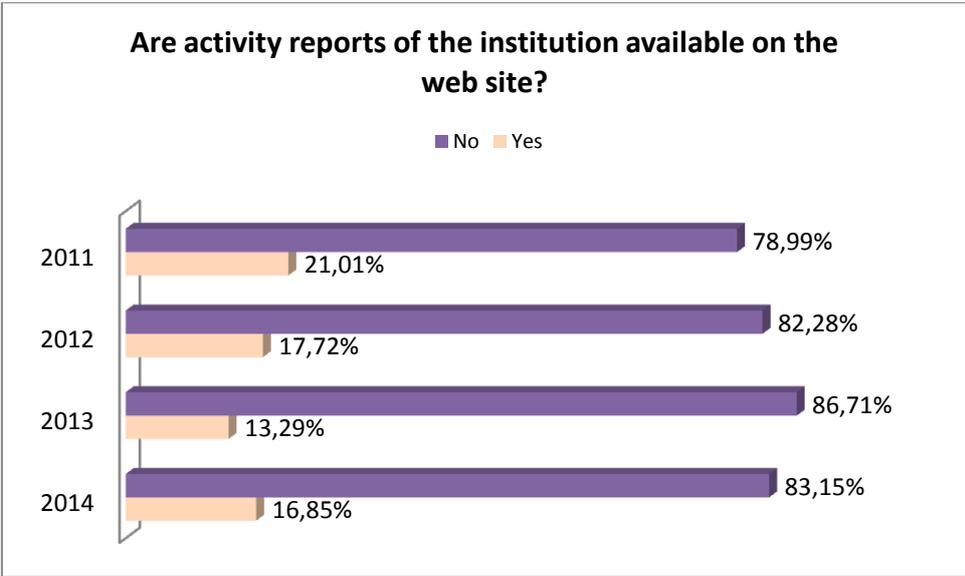


Chart 33. Are activity reports of the institution published? (by type of public body – 2014)

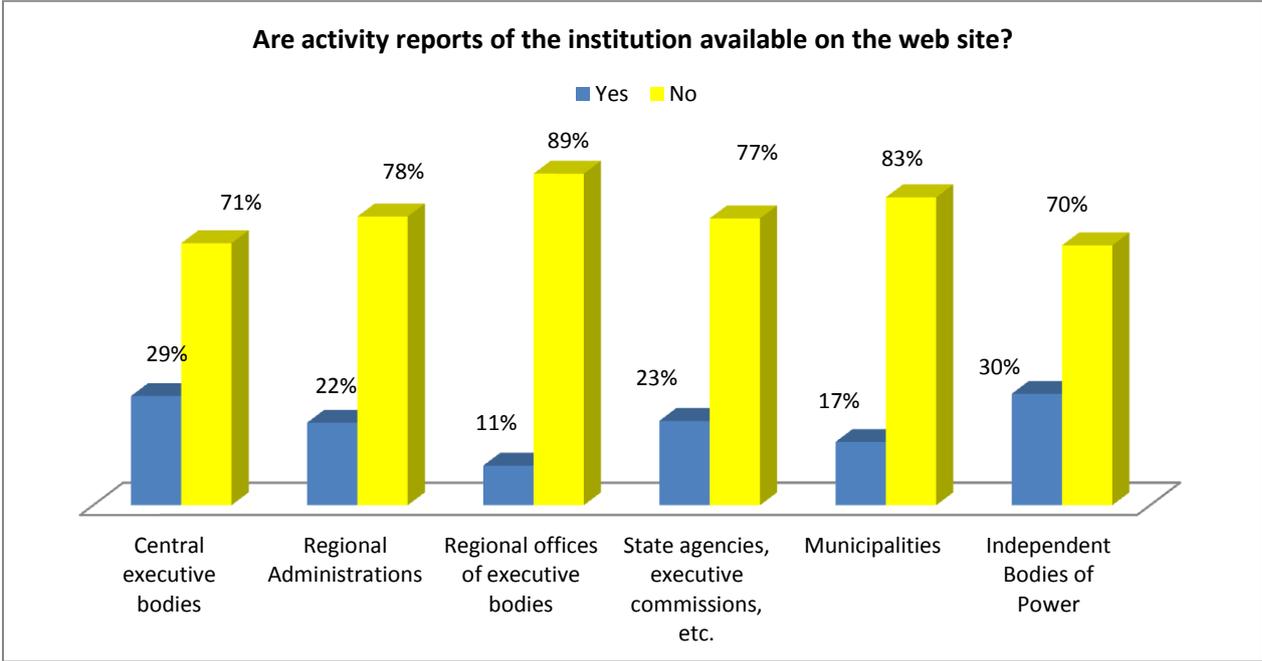


Chart 34. Are drafts of regulations published?

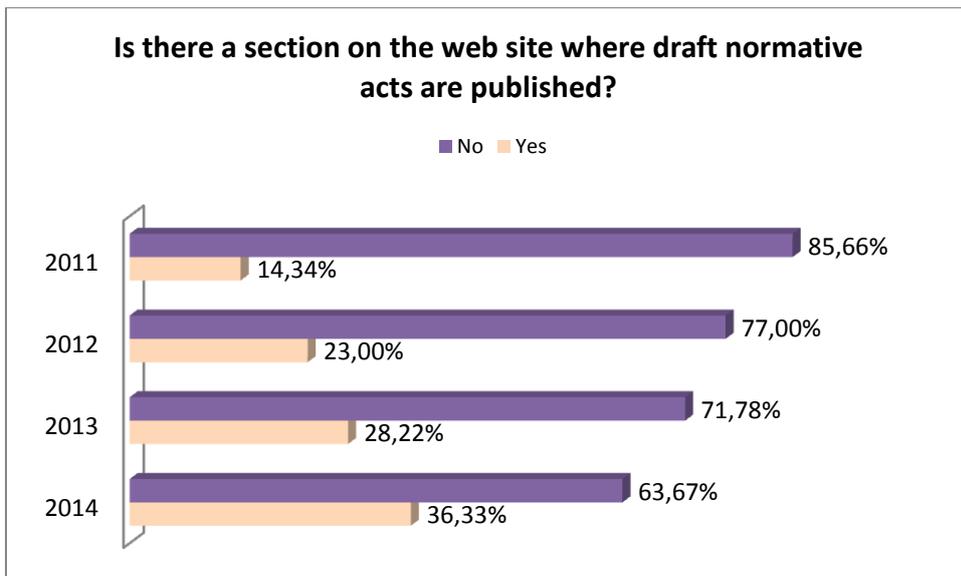
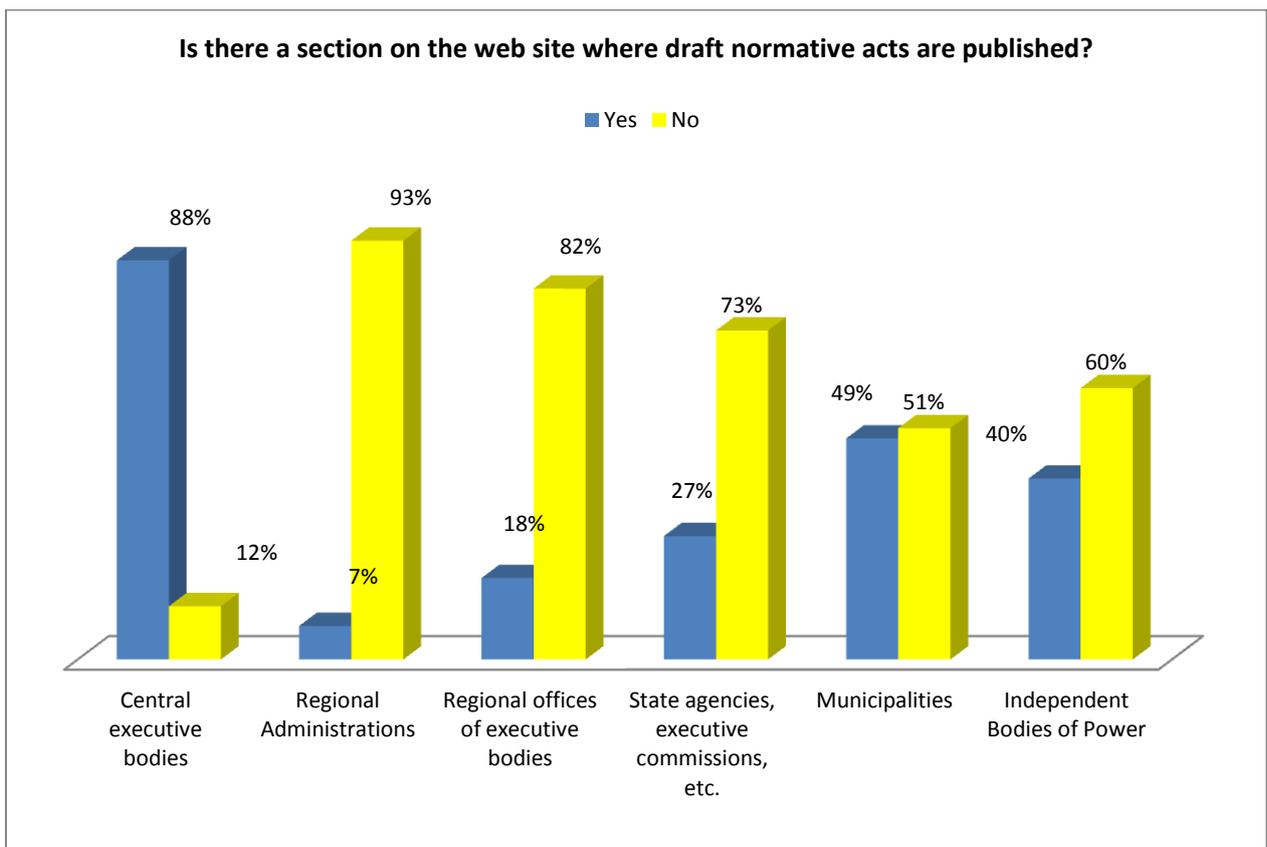


Chart 35. Are drafts of regulations published? (by type of public body – 2014)



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

Chart 36. Is the budget of the institution published?

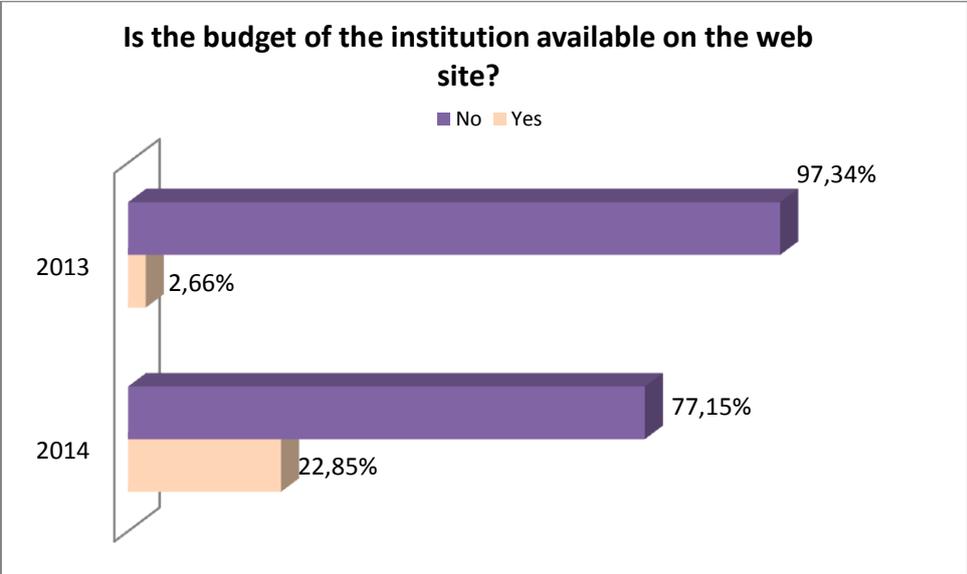


Chart 37. Is the budget of the institution published? (by type of public body – 2014)

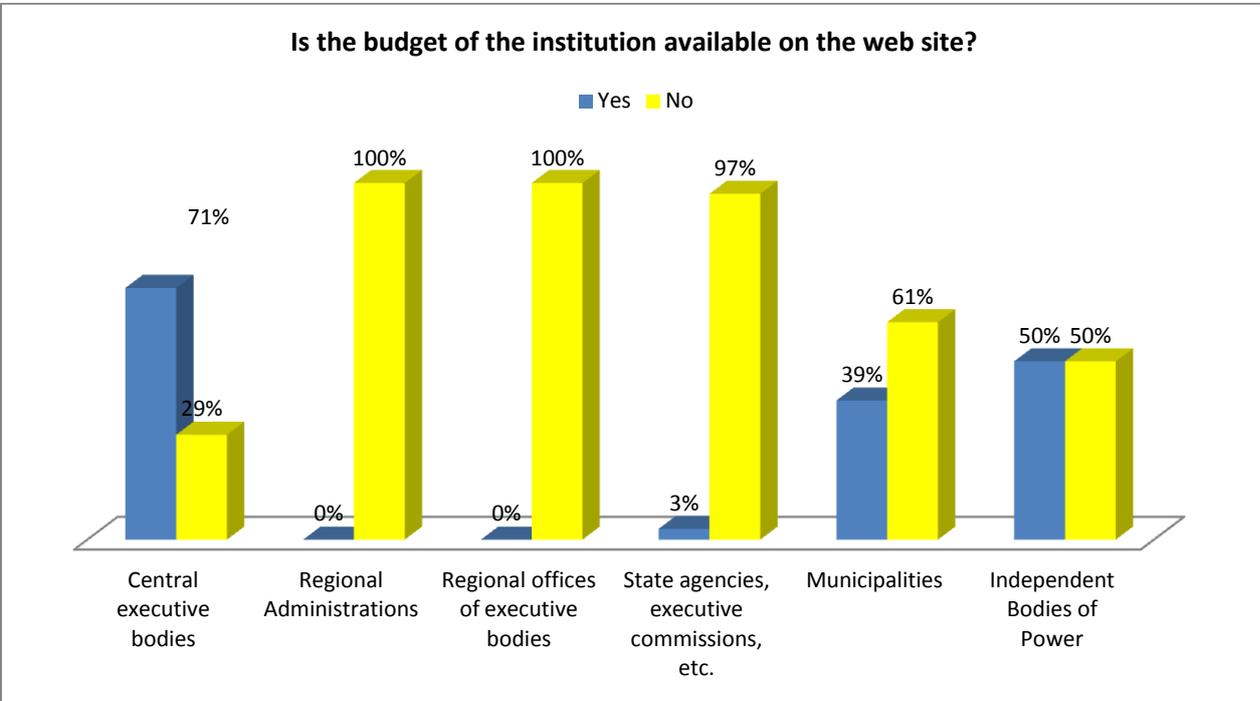


Chart 38. Are financial reports of the institution published?

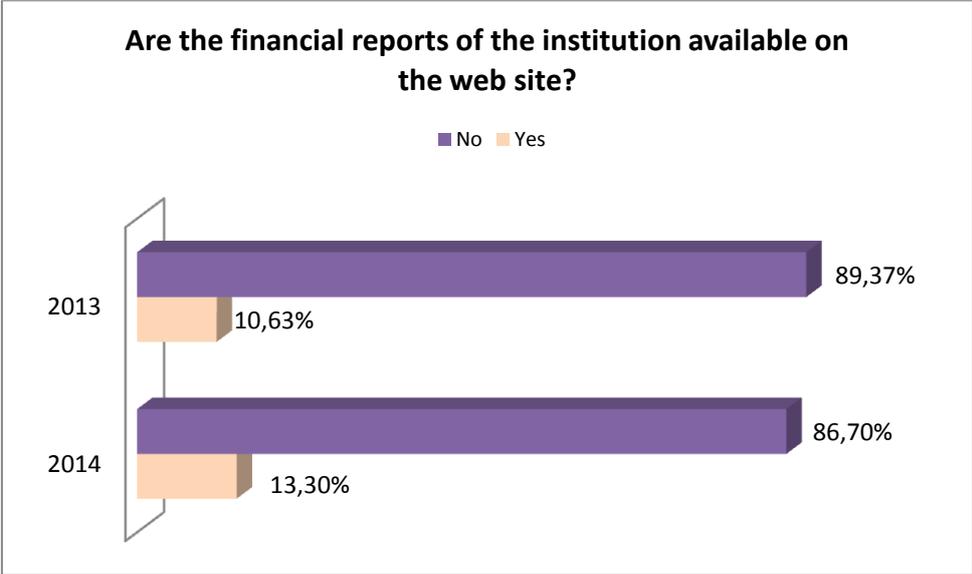


Chart 39. Are financial reports of the institution published? (by type of public body – 2014)

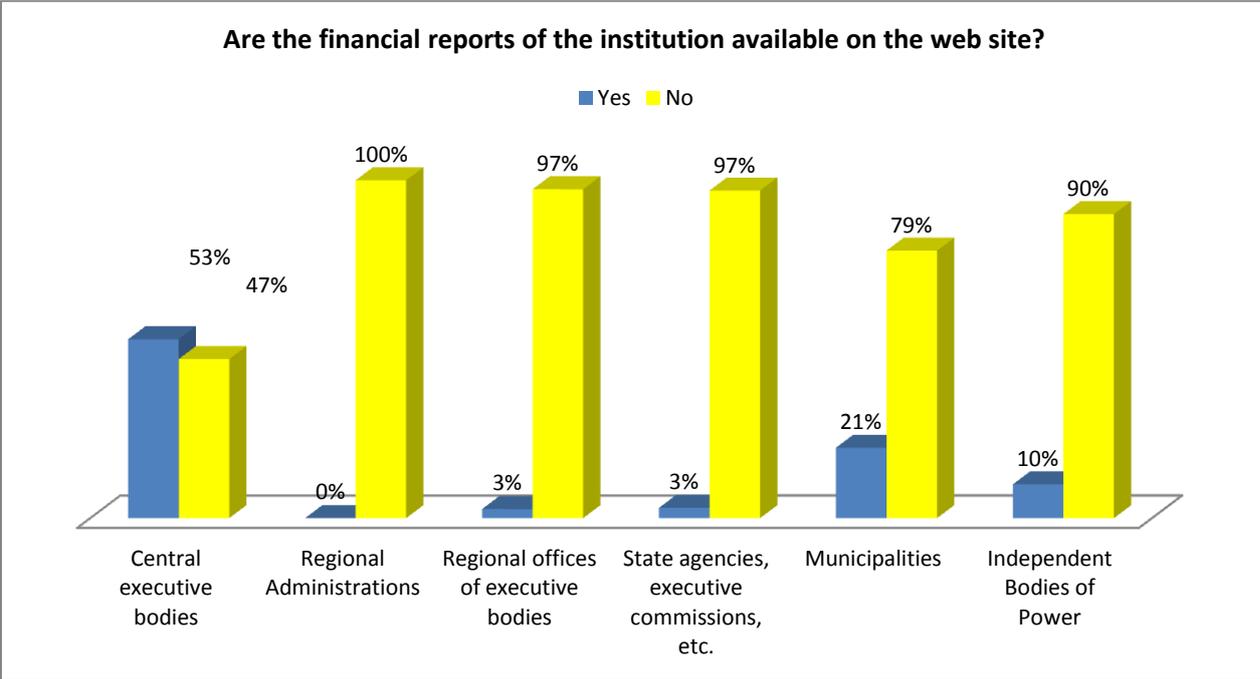


Chart 40. Is the institution a first degree budget spending unit?

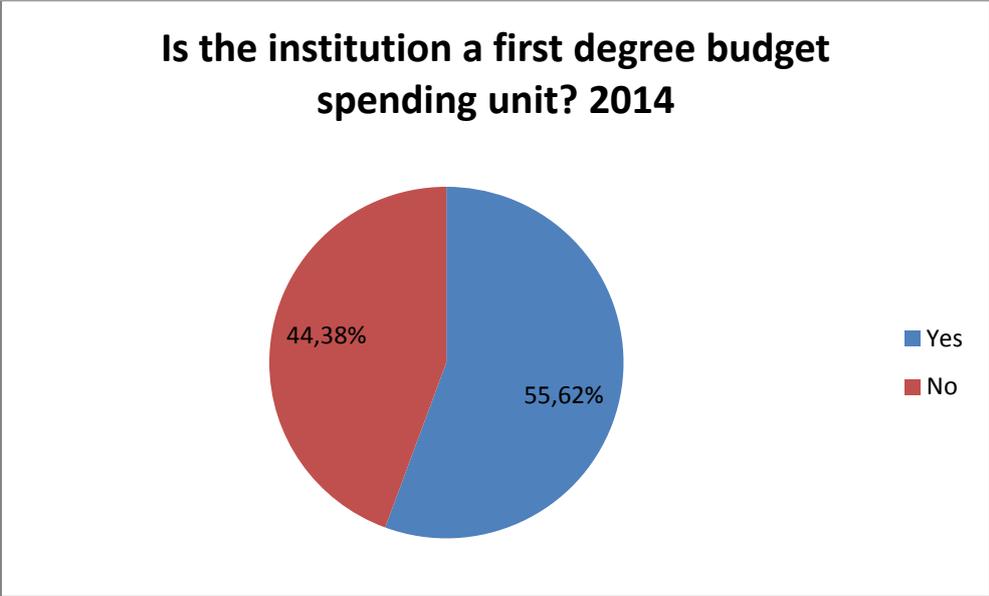


Chart 41. Is the institution a first degree budget spending unit? (by type of public body – 2014)

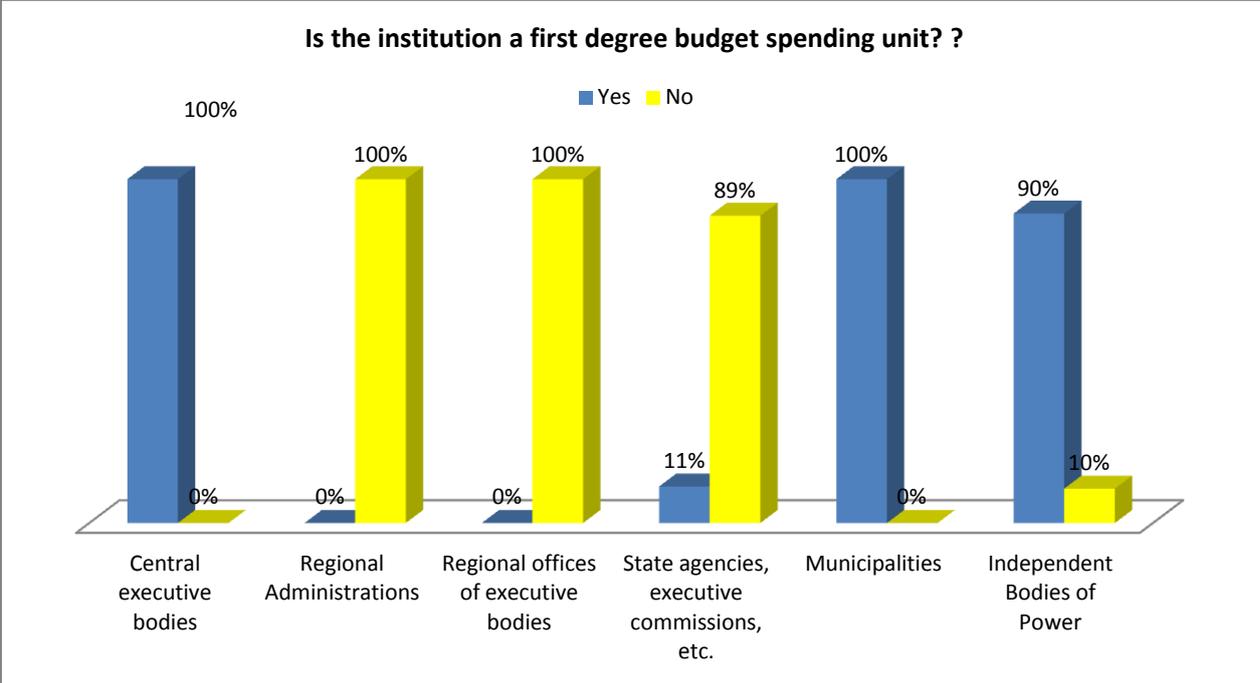


Chart 41a. The institution is a first degree budget spending unit (by type of public body – 2014)

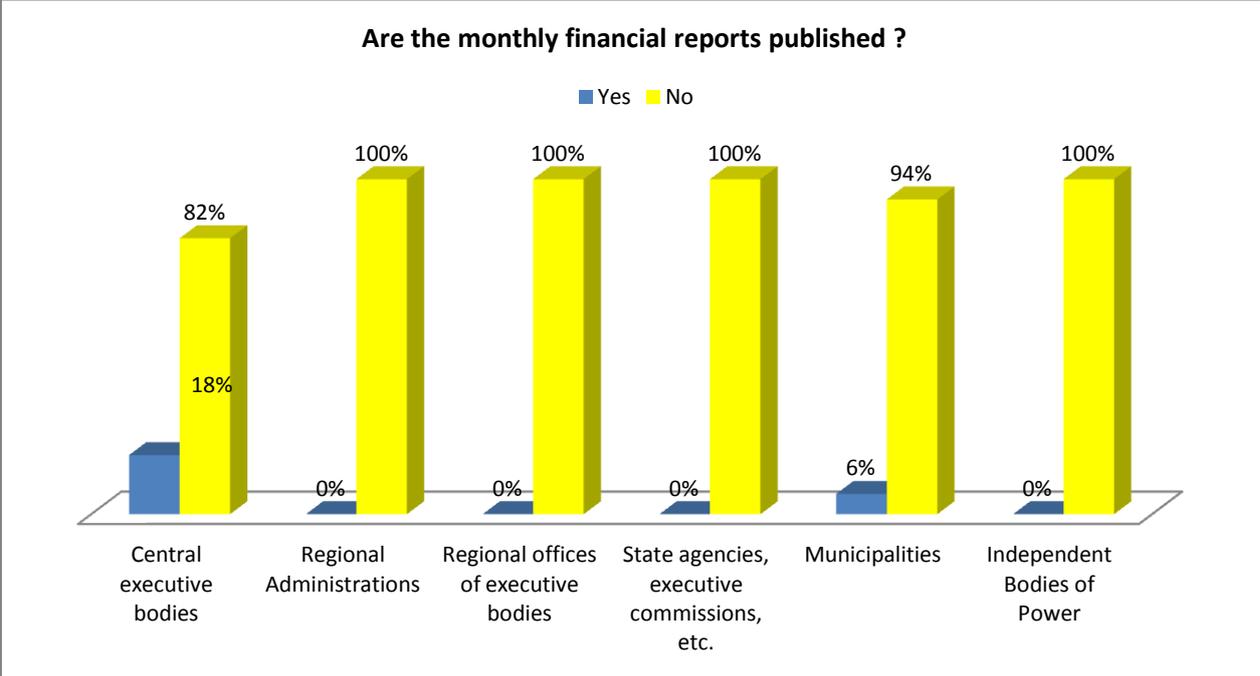


Chart 41b. The institution is a first degree budget spending unit (by type of public body – 2014)

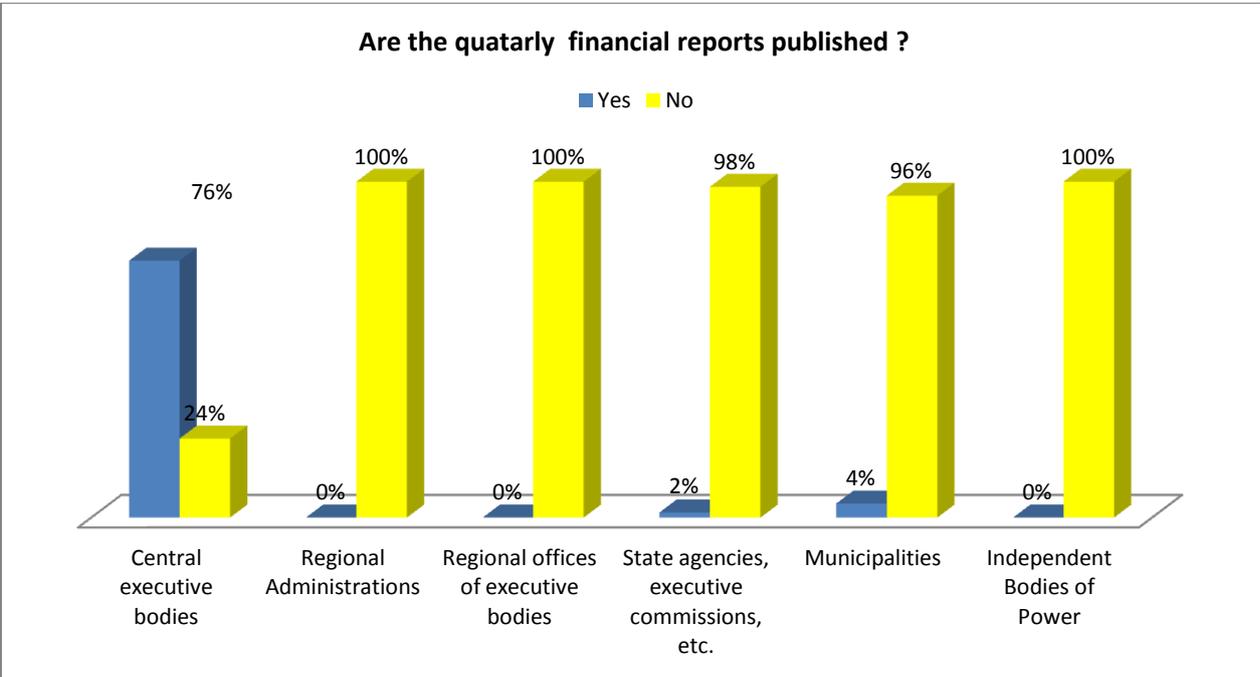


Chart 42. Is the institution obliged to use program budgeting?

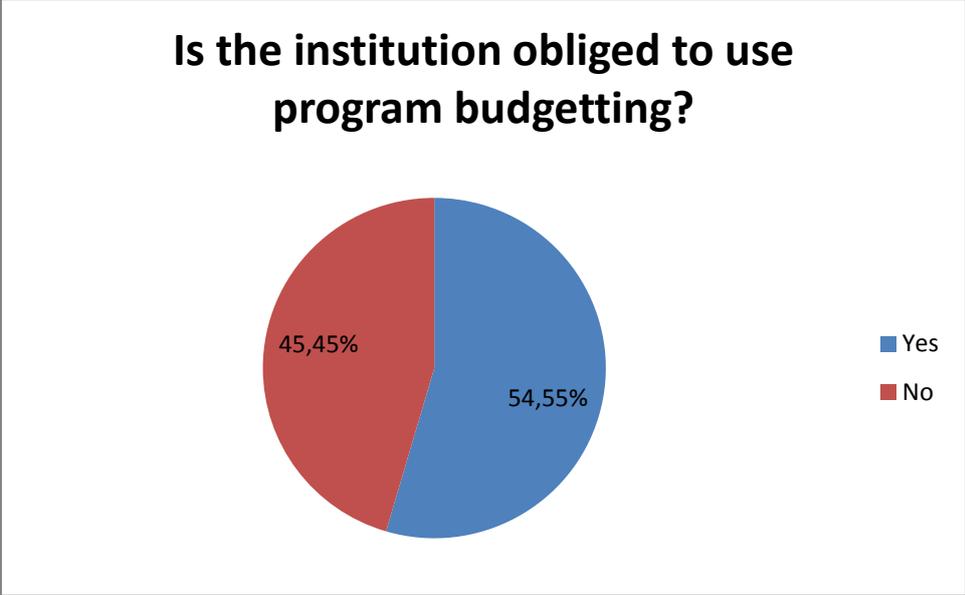


Chart 43. Is the institution obliged to use program budgeting? (by type of public body – 2014)

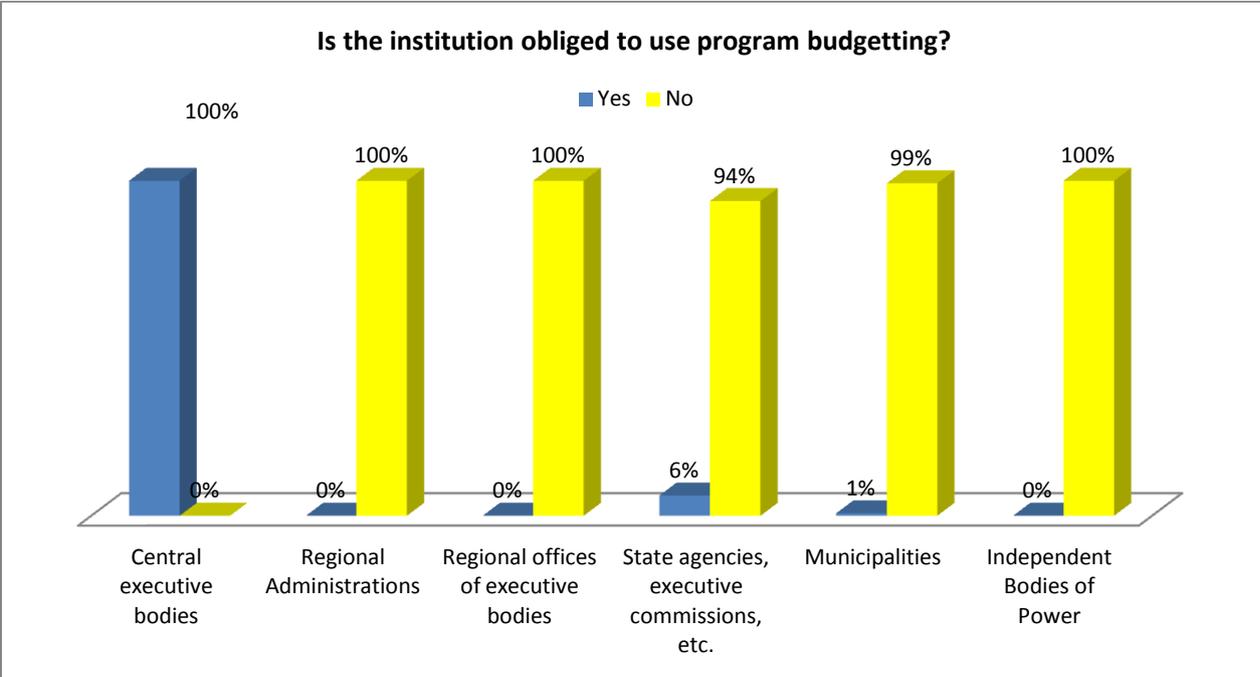


Chart 44. Is the budget by programs published? (by type of public body – 2014)

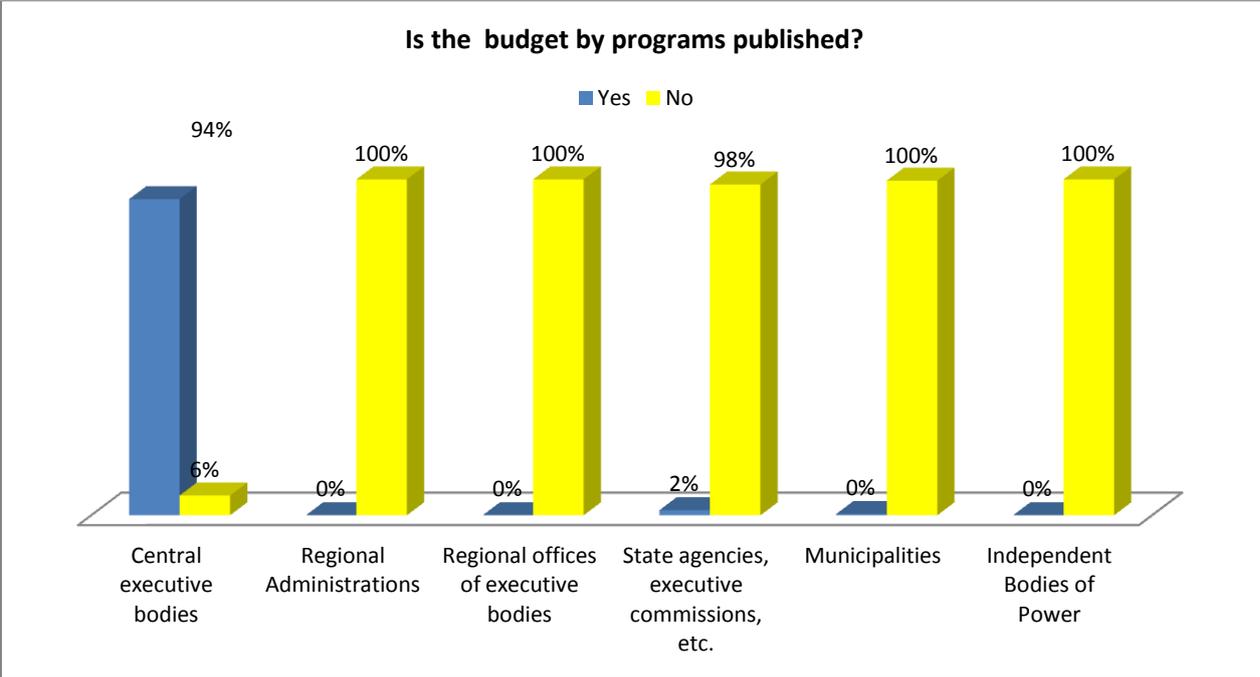


Chart 45. Is the information of the expenses of the programs for the three months published?

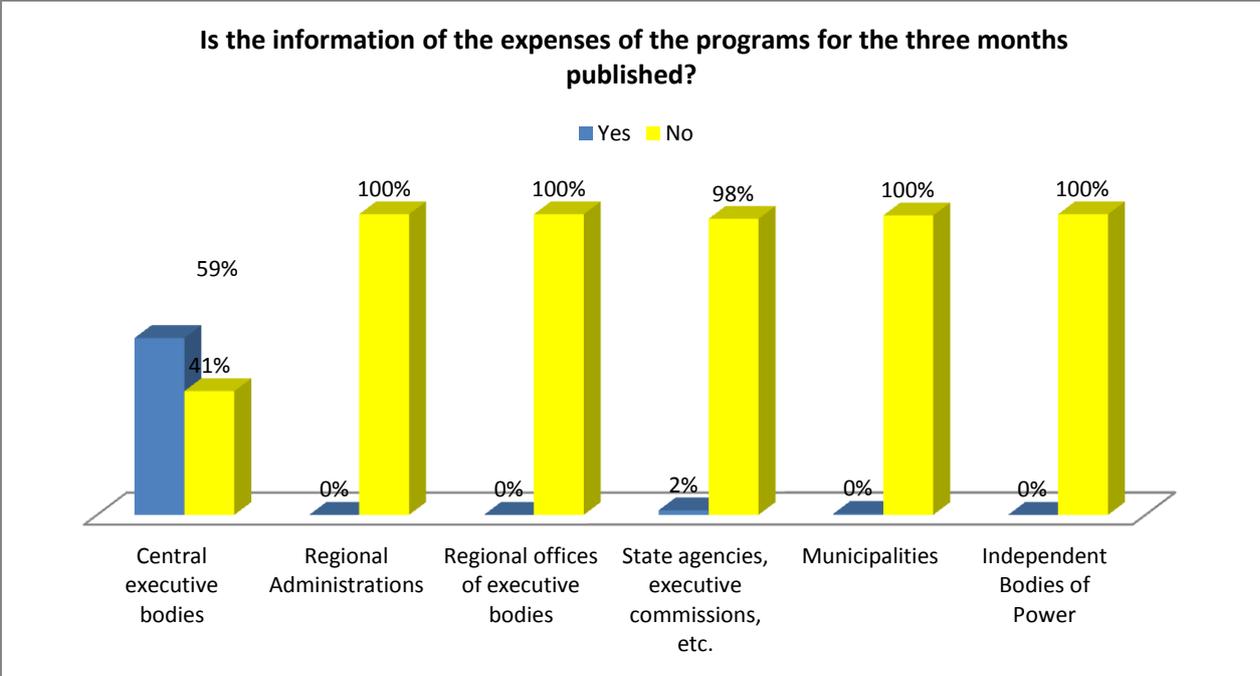


Chart 46. Is the information of the expenses of the programs for the six months published?

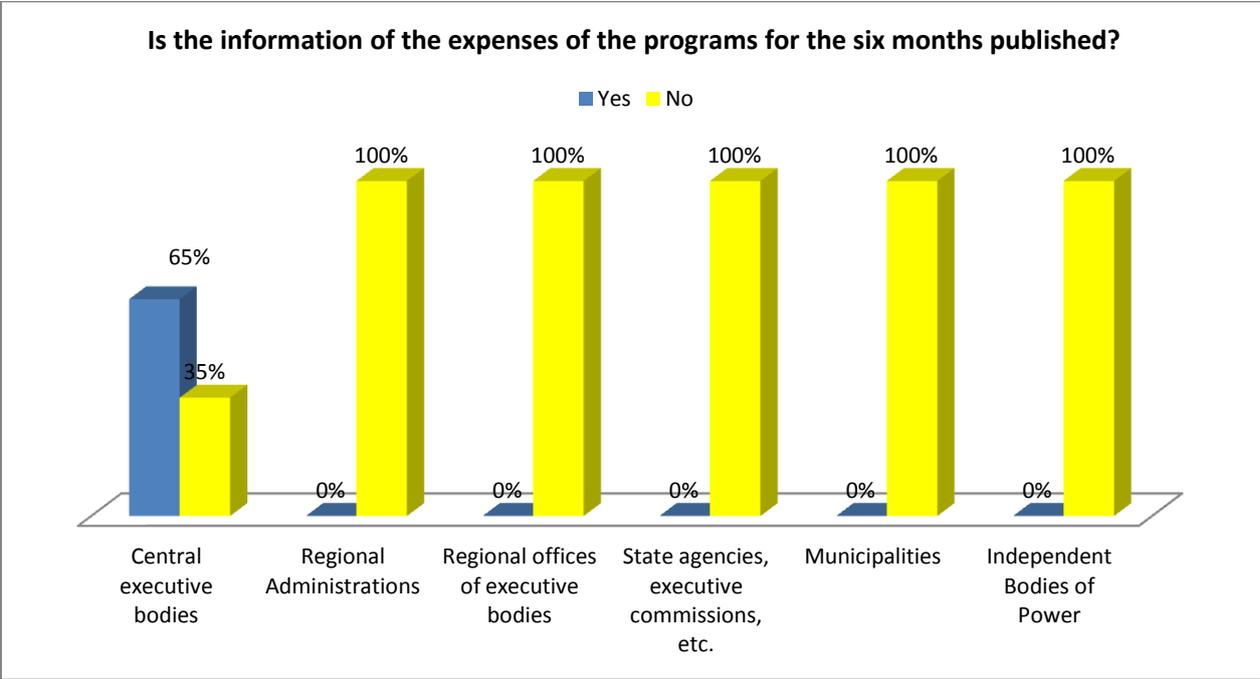


Chart 47. Is the information of the expenses of the programs for the year published?

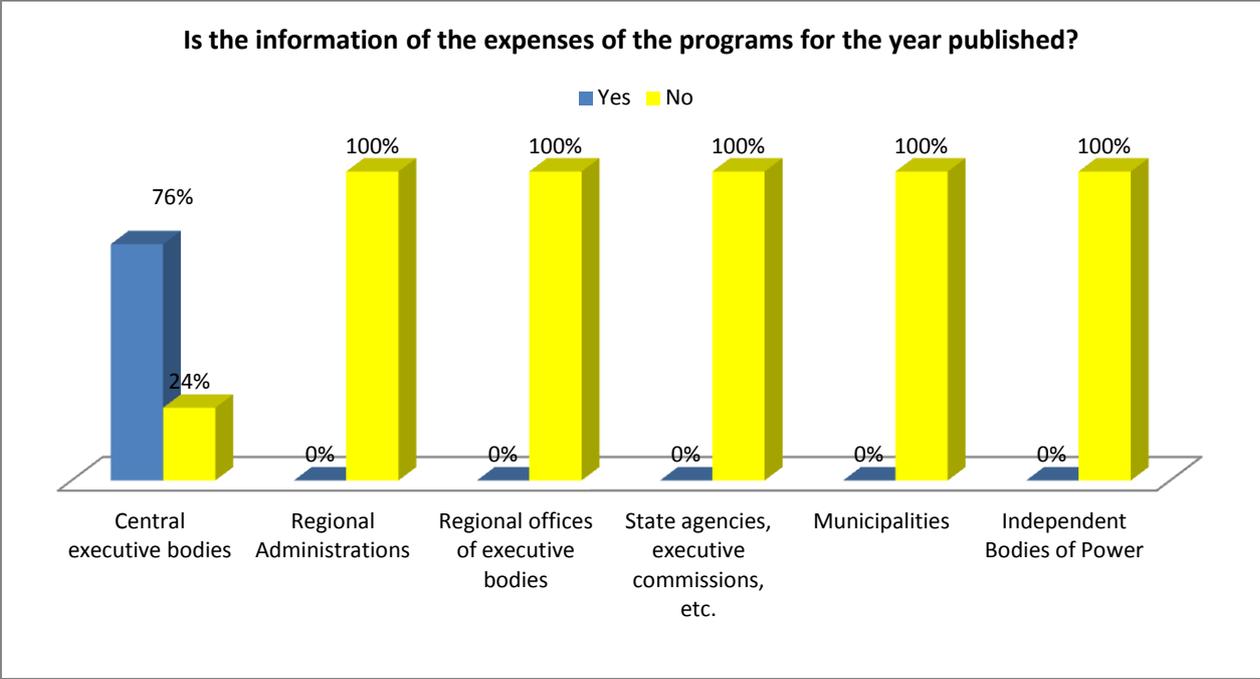


Chart 48. Is the institution using program budgeting on its own choice?

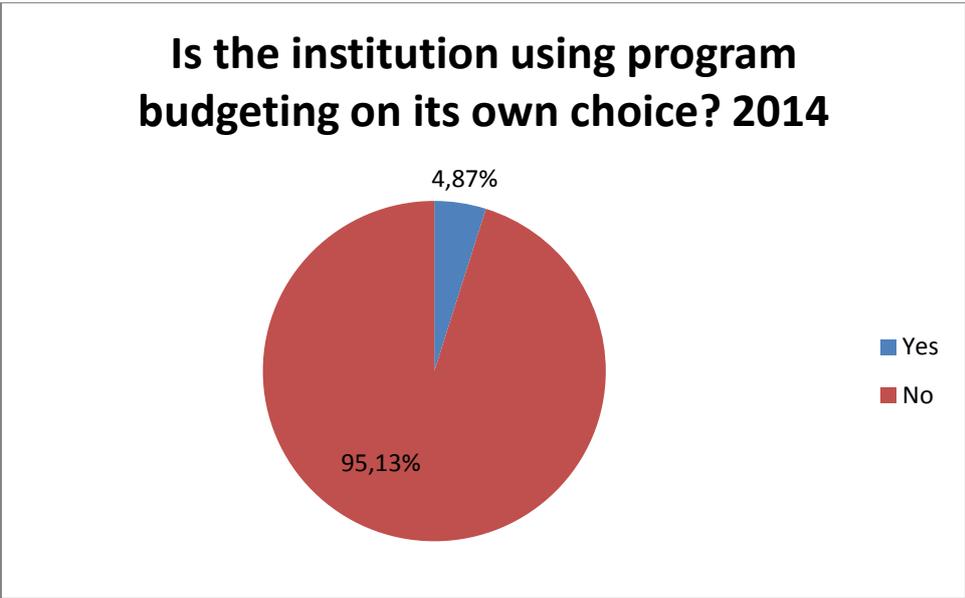


Chart 49. Is the institution using program budgeting on its own choice? (by type of public body – 2014)

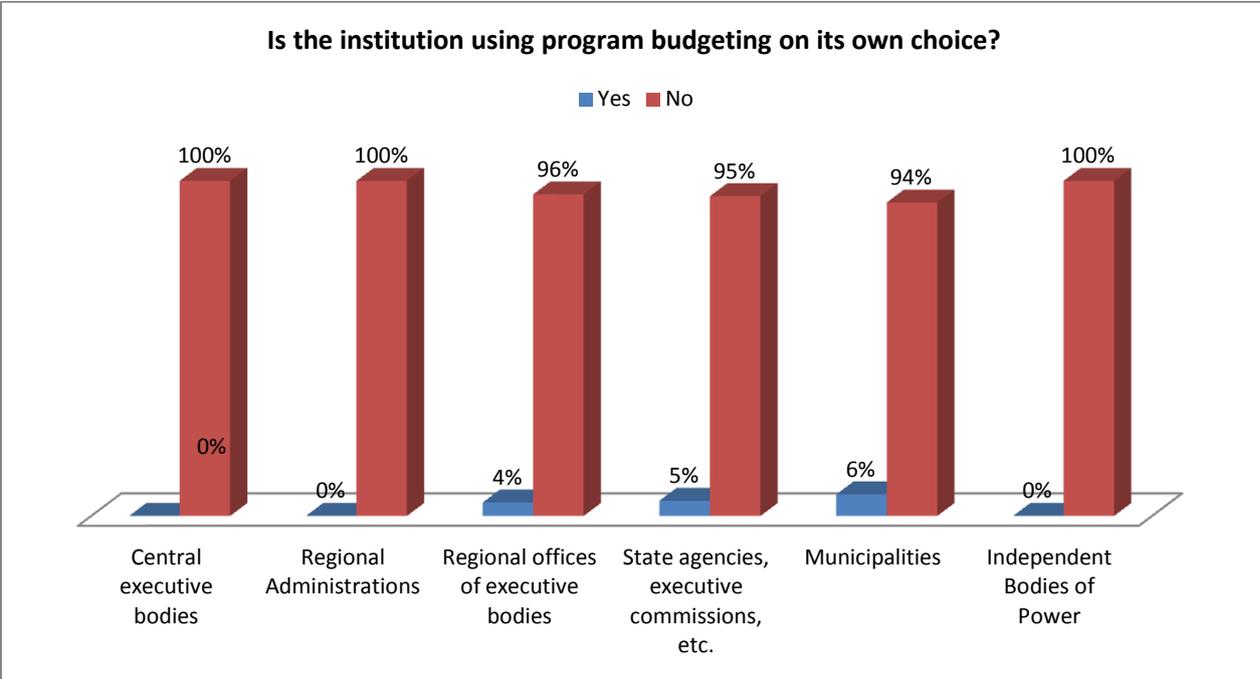


Chart 50. Are the payments made through the Electronic State Budget Payments System (SEBRA) available online?

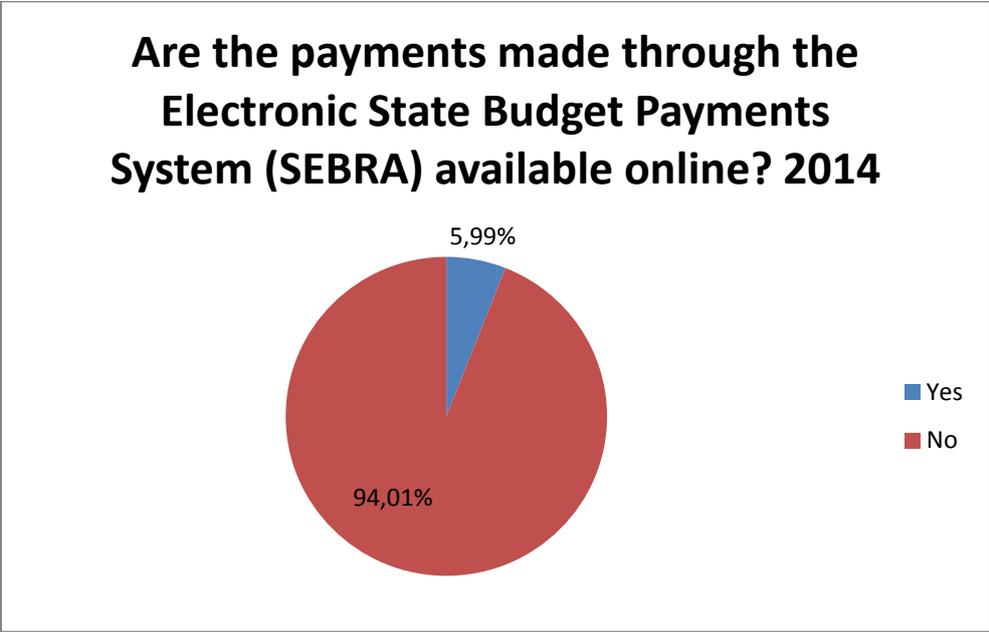


Chart 51. Are the payments made through the Electronic State Budget Payments System (SEBRA) available online? (by type of public body – 2014)

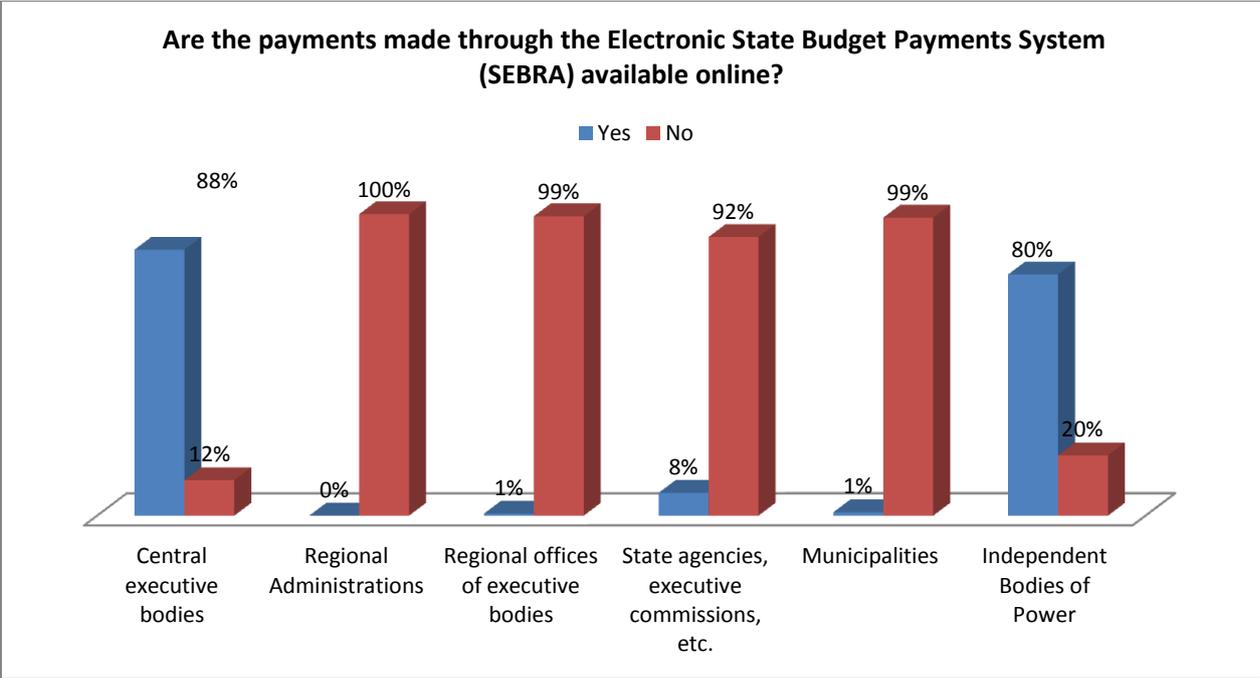


Chart 52. Is a Citizens' Budget published?

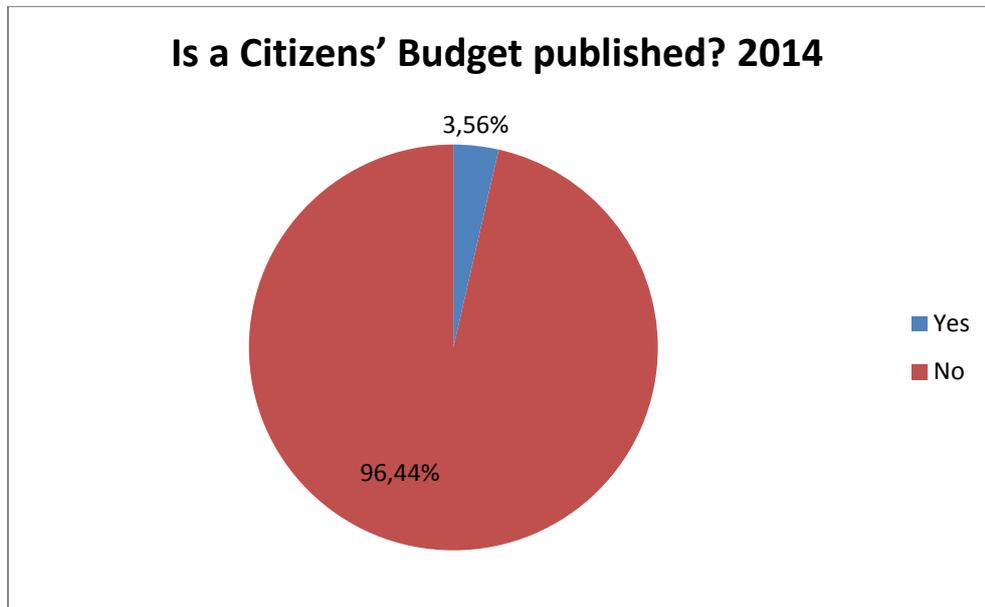


Chart 53. Is a Citizens' Budget published? (by type of public body – 2014)

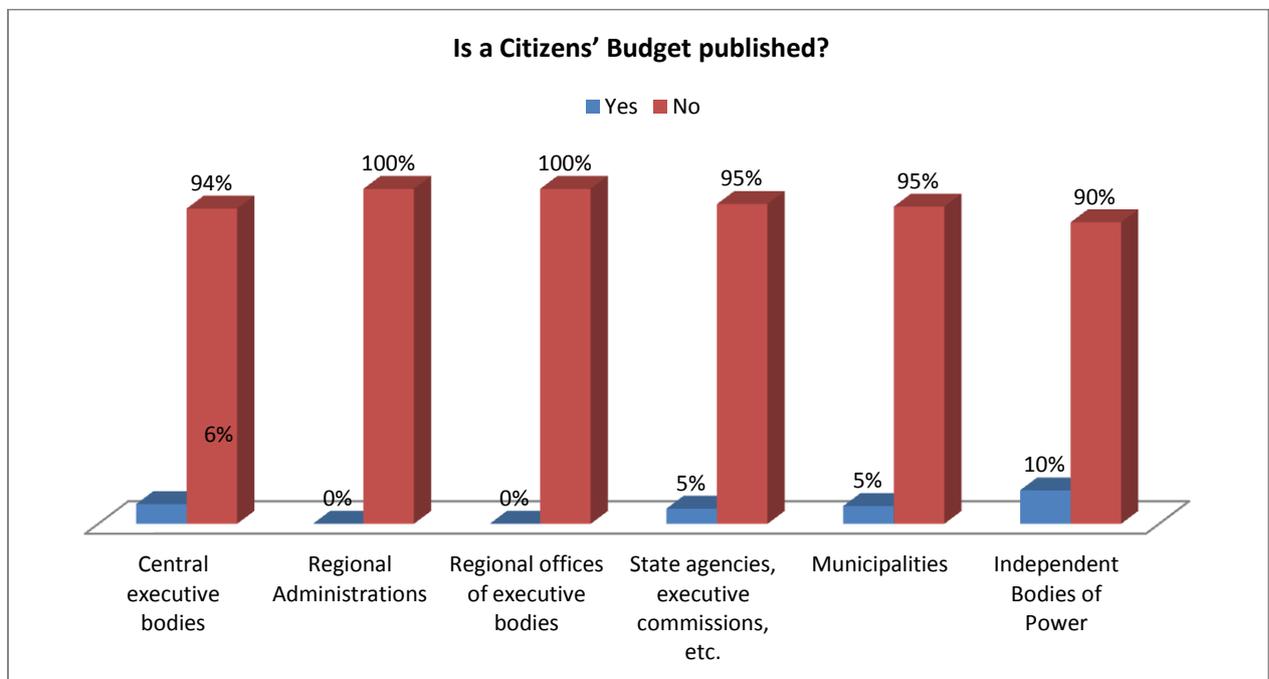


Chart 54. Is there a register of the public procurement tenders of the institution?

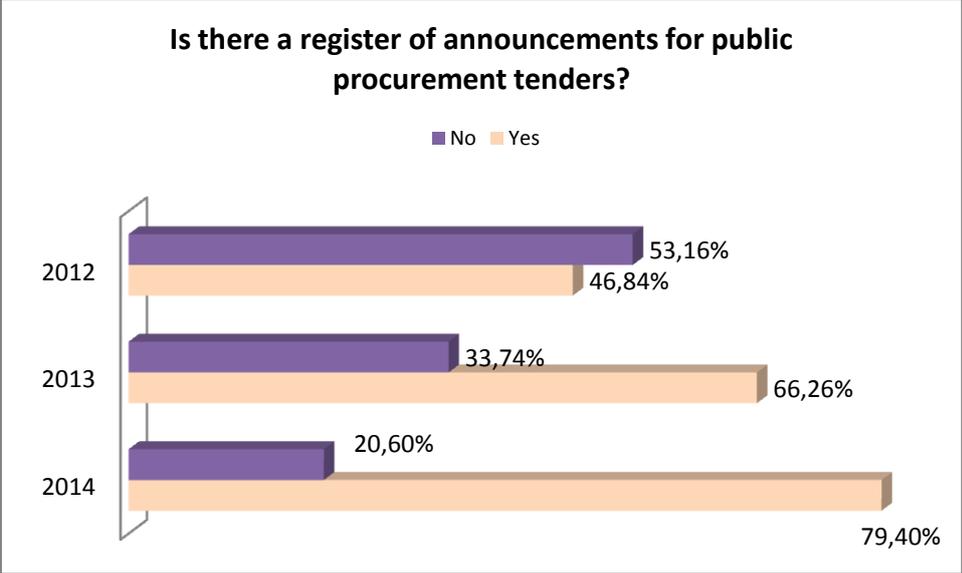


Chart 55. Is there a register of the public procurement tenders of the institution? (by type of public body – 2014)

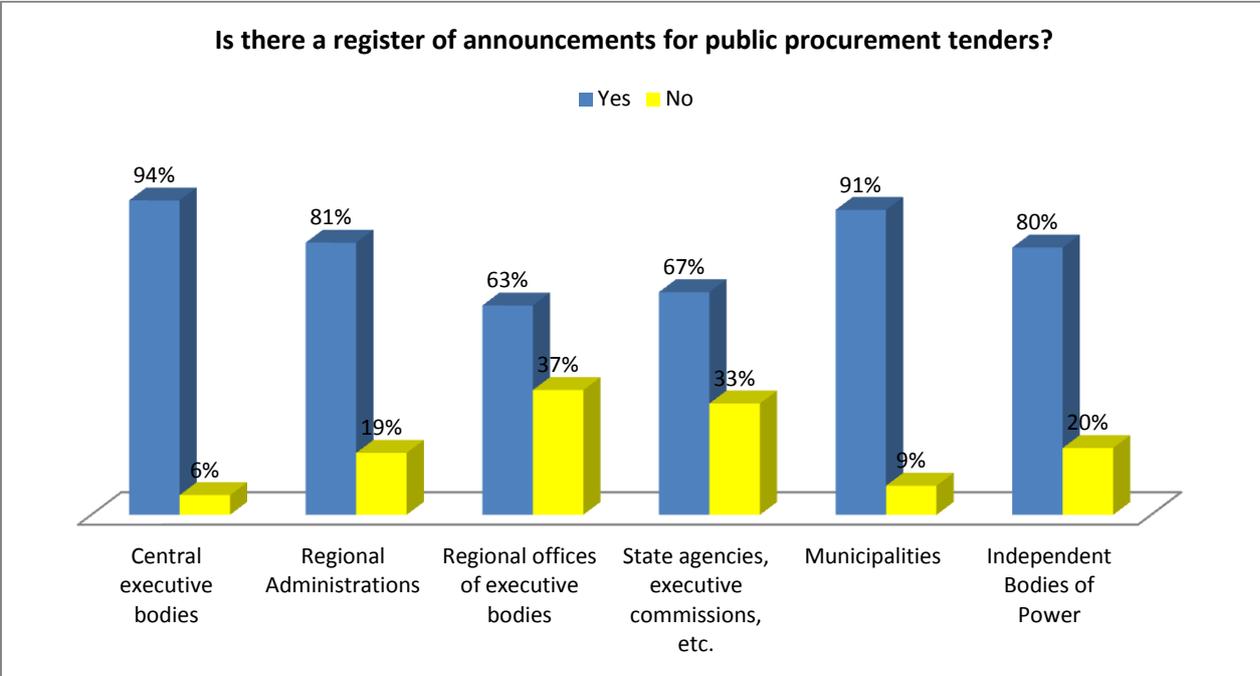


Chart 56. Is there a register of contracted public procurements?

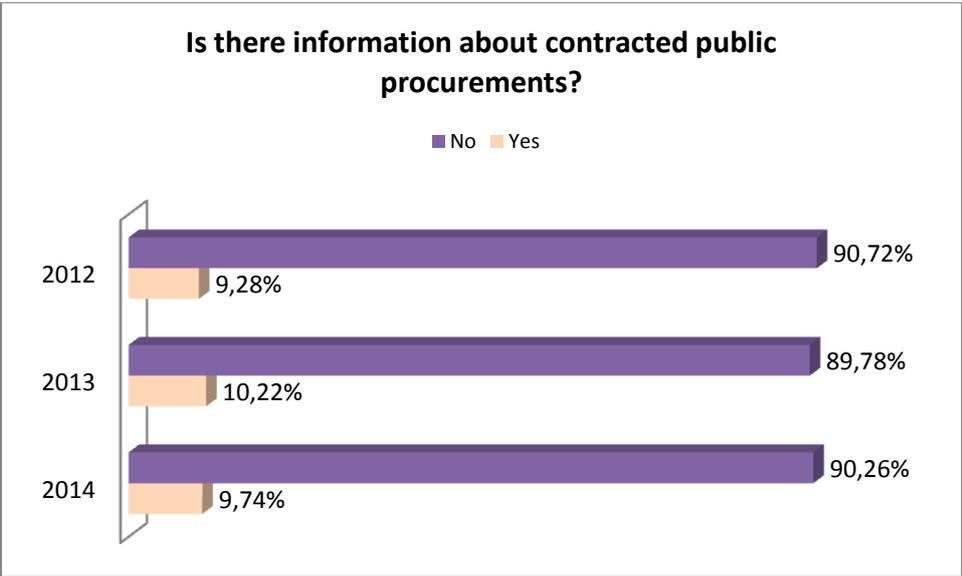


Chart 57. Is there a register of contracted public procurements? (by type of public body – 2014)

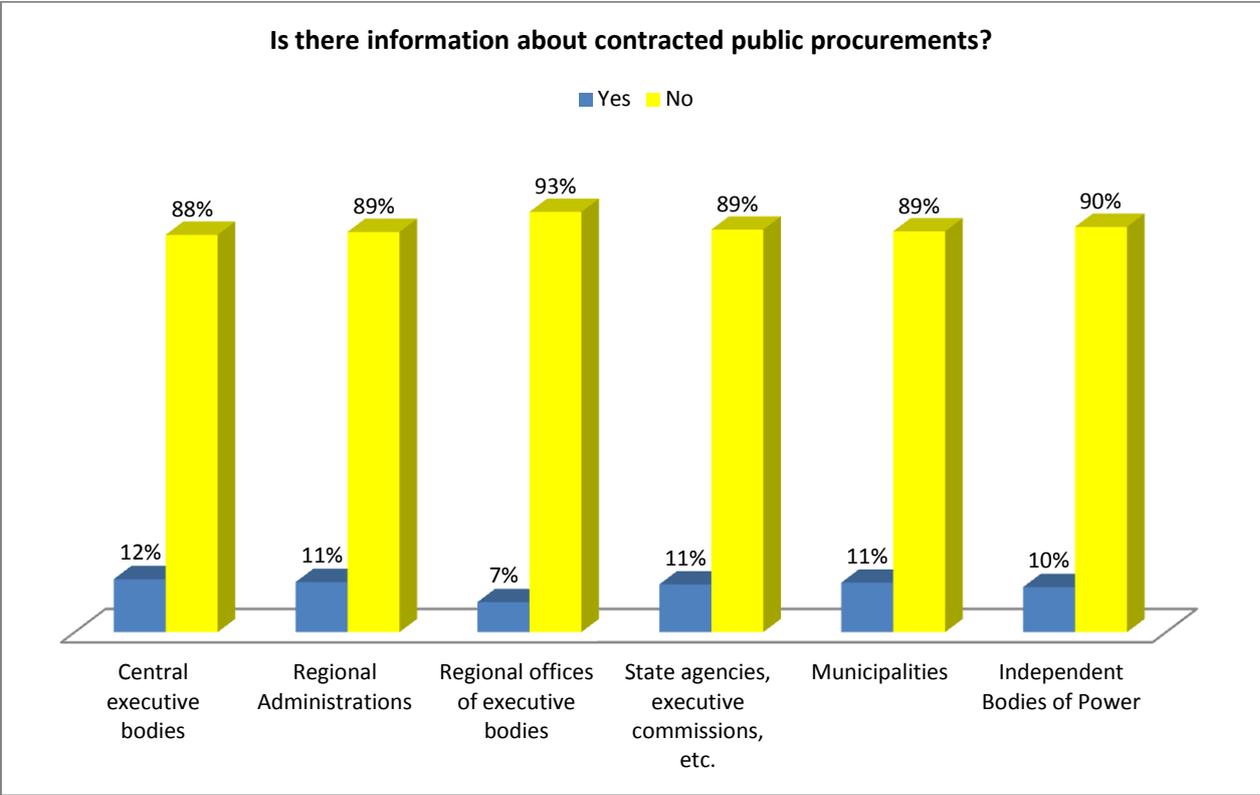


Chart 58. Are contracts of the institution published?

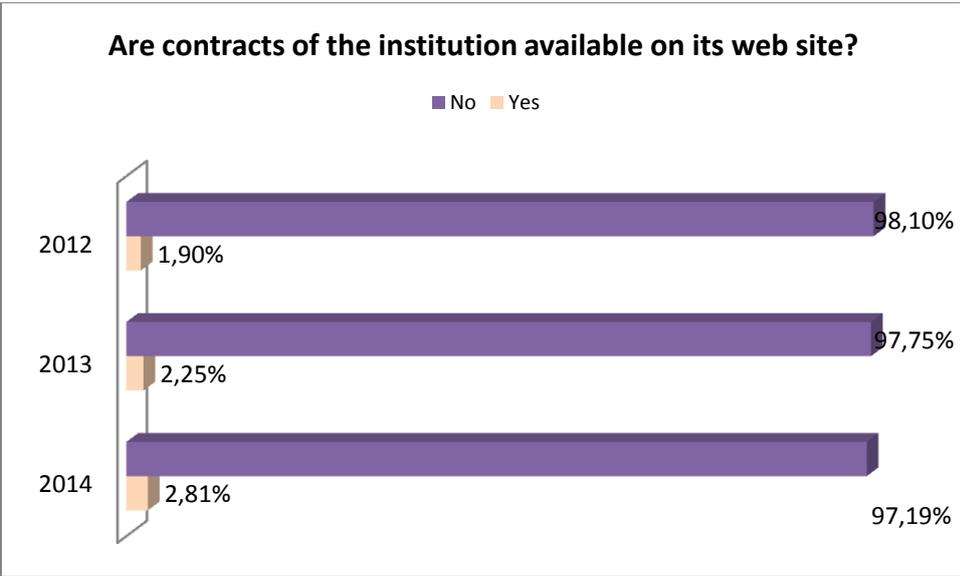


Chart 59. Are contracts of the institution published? (by type of public body – 2014)

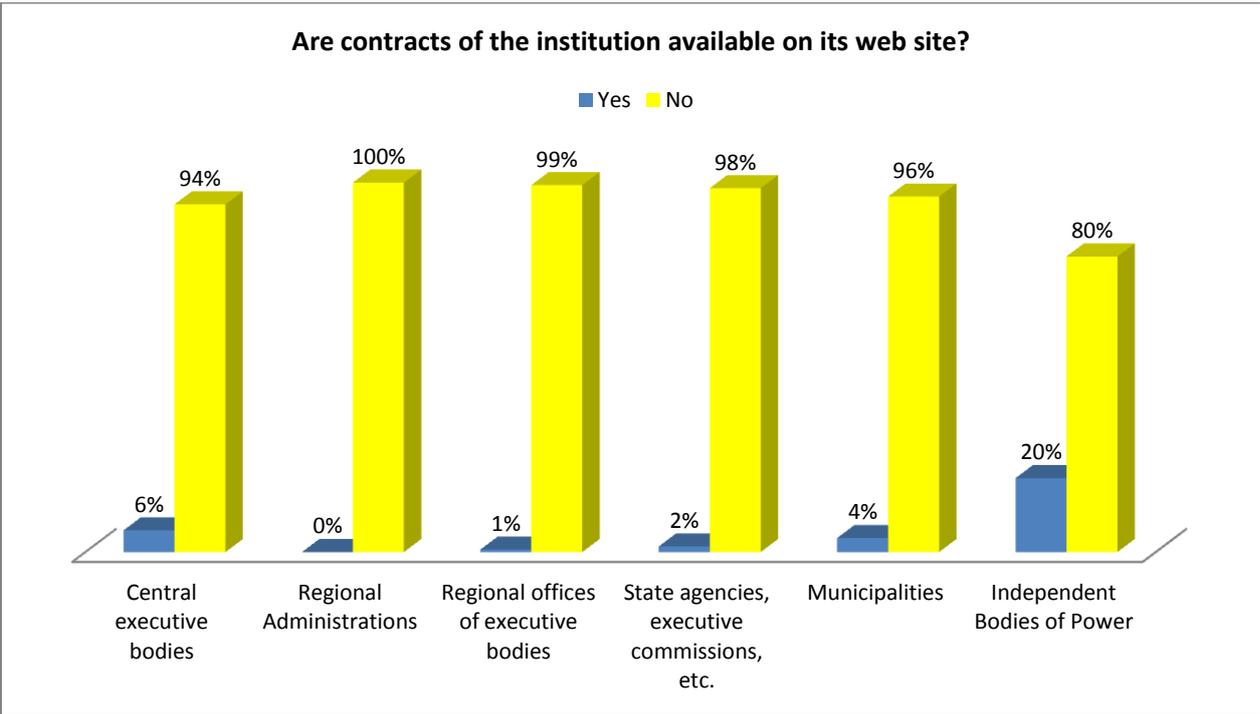


Chart 60. Are lists of public officials who submitted conflict of interests declarations published?

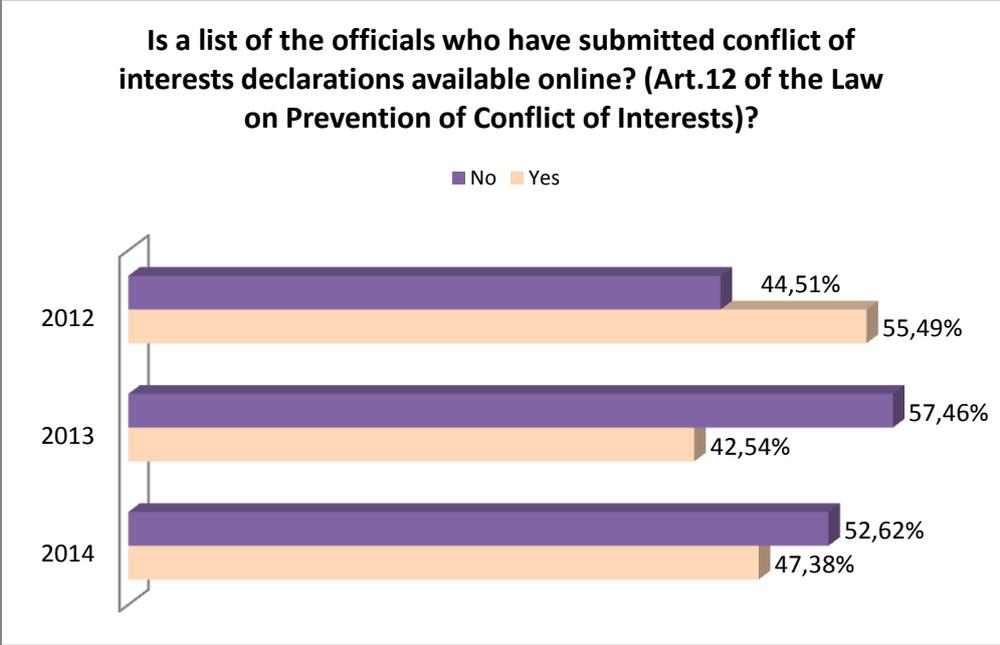


Chart 61. Are lists of public officials who submitted conflict of interests declarations published? (by type of public body – 2014)

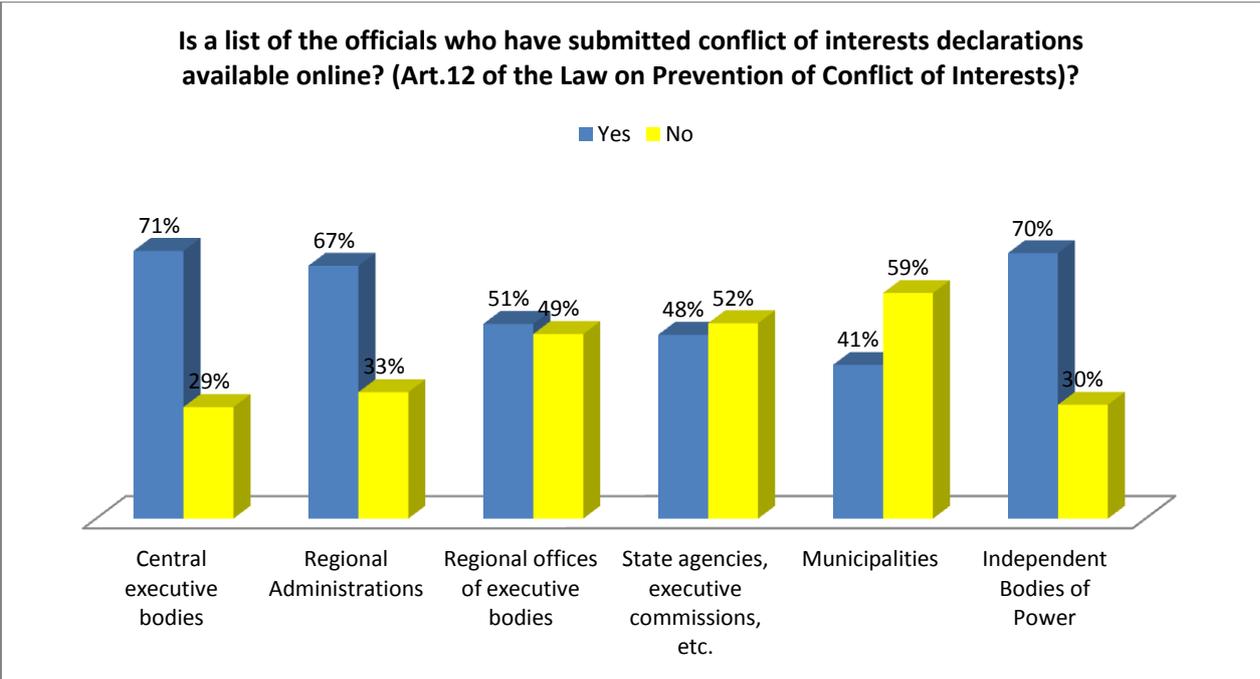


Chart 62. Are conflict of interests declarations published?

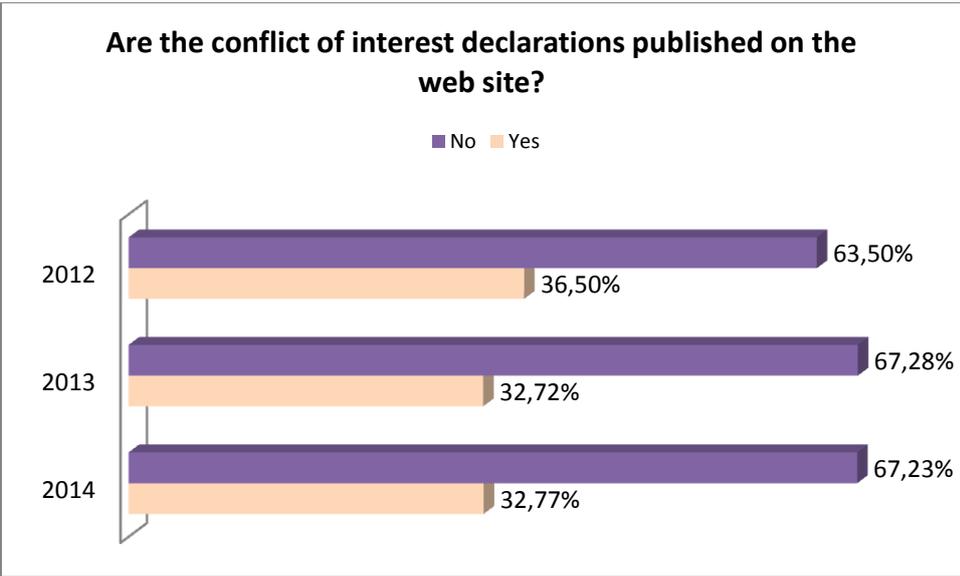
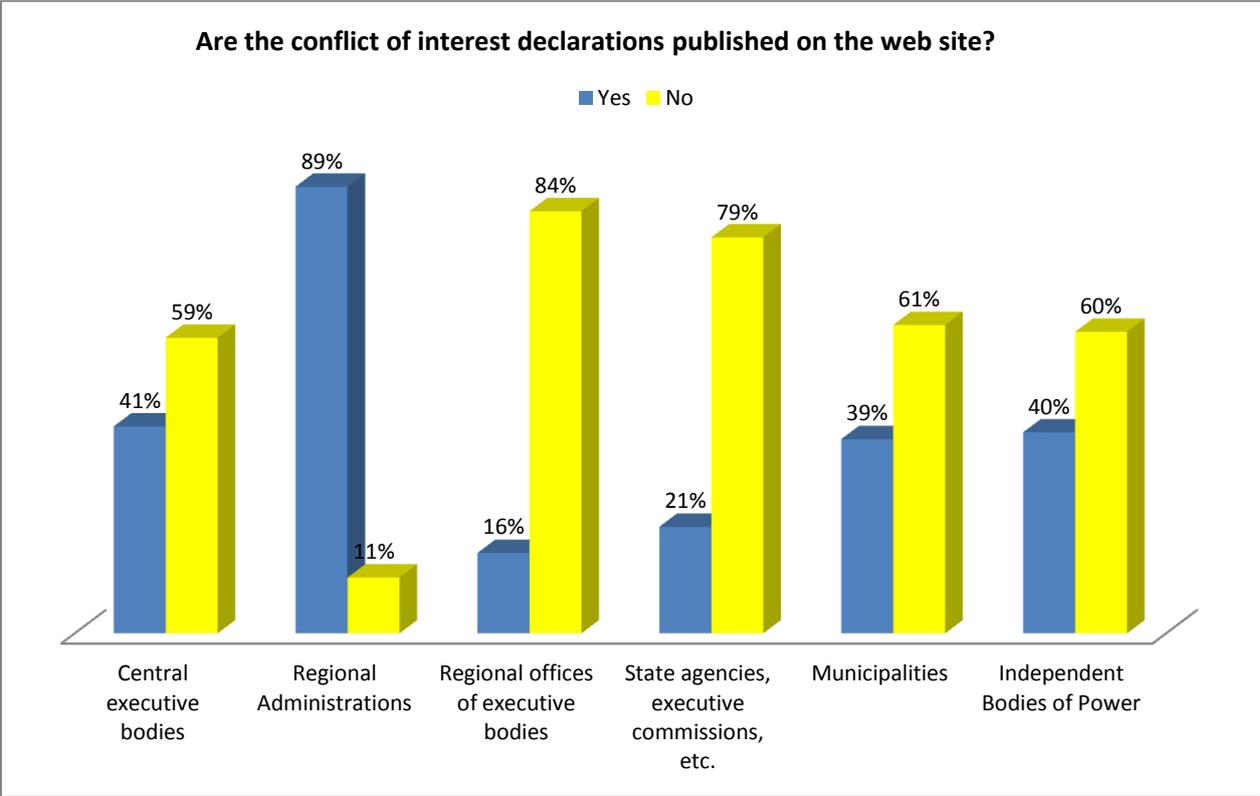


Chart 63. Are conflict of interests declarations published? (by type of public body – 2014)



**Access to Information Sections – information about the right to information and how to exercise it, including contact information**

Chart 64. Is there an *Access to Information* section?

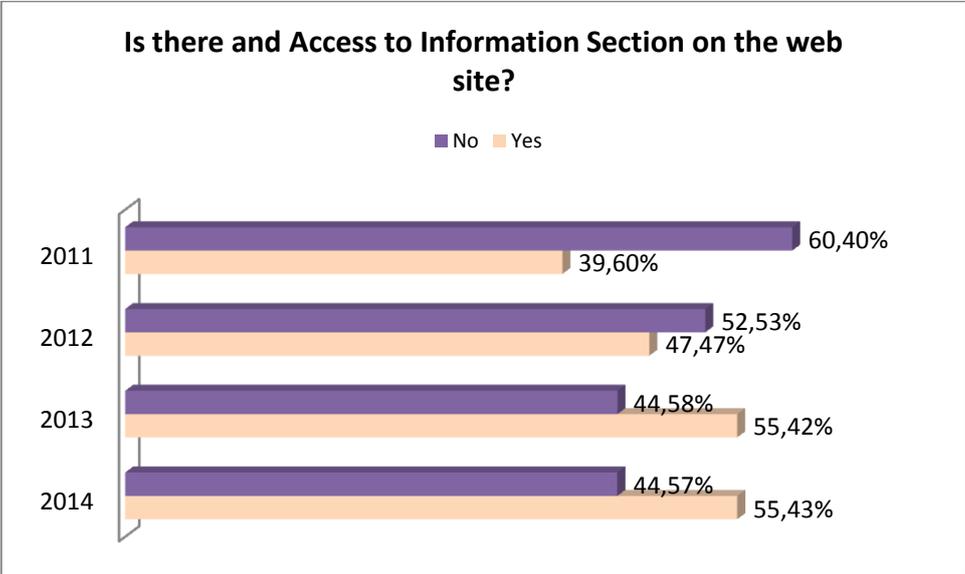


Chart 65. Is there an *Access to Information* section? (by type of public body – 2014)

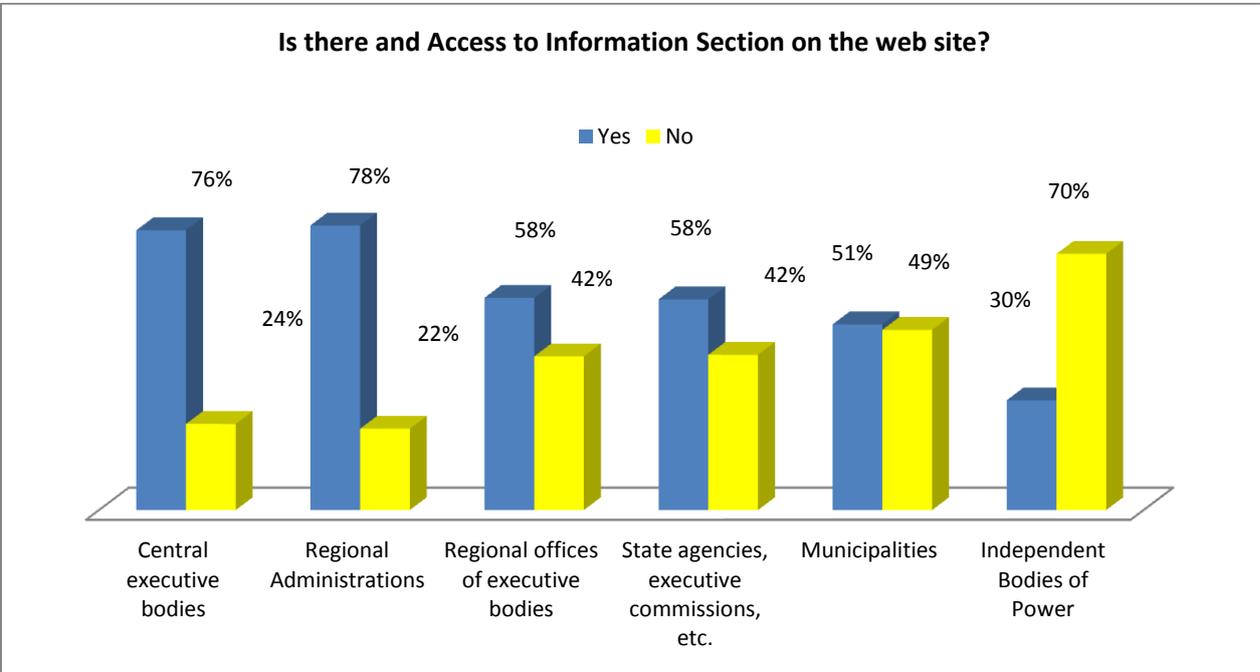


Chart 66. Are Internal Access to Public Information Act (APIA) Implementation Rules published?

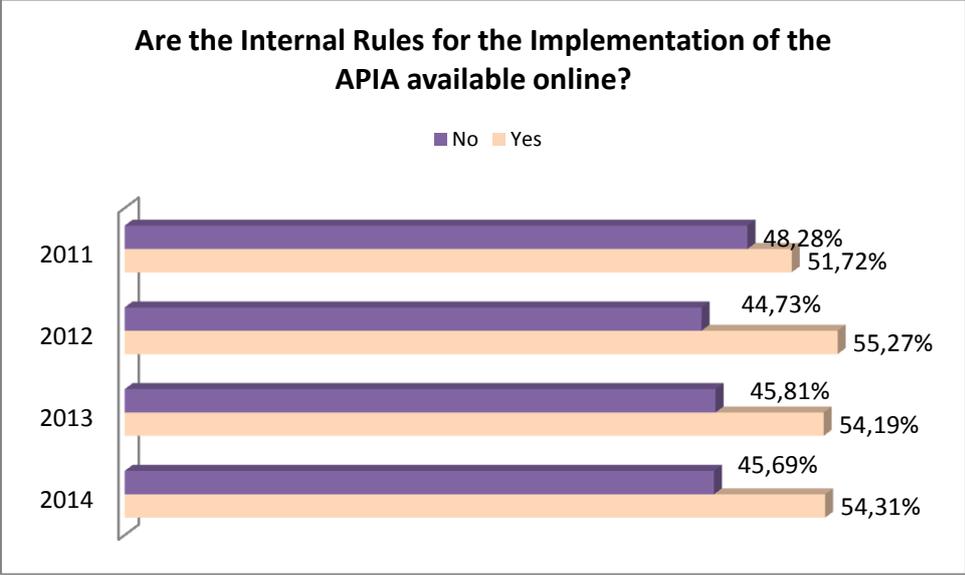


Chart 67. Are Internal APIA Implementation Rules published? (by type of public body – 2014)

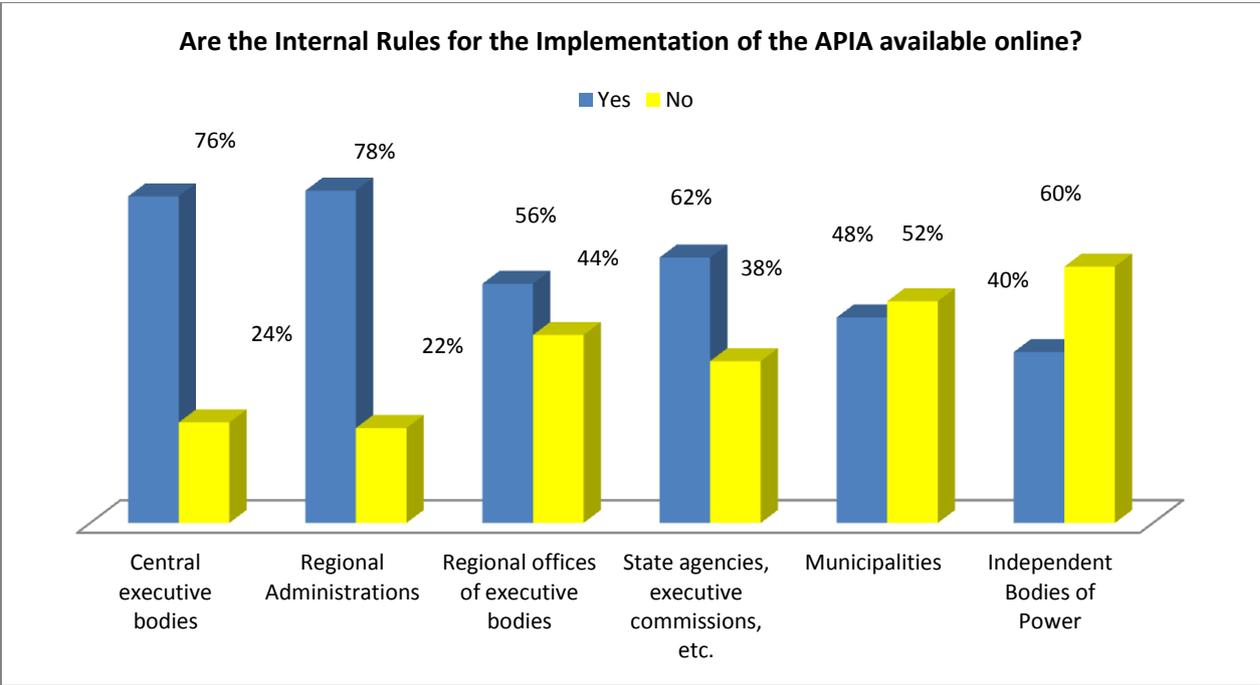


Chart 68. Is there a description of the procedure for access to public registers maintained by the institution?

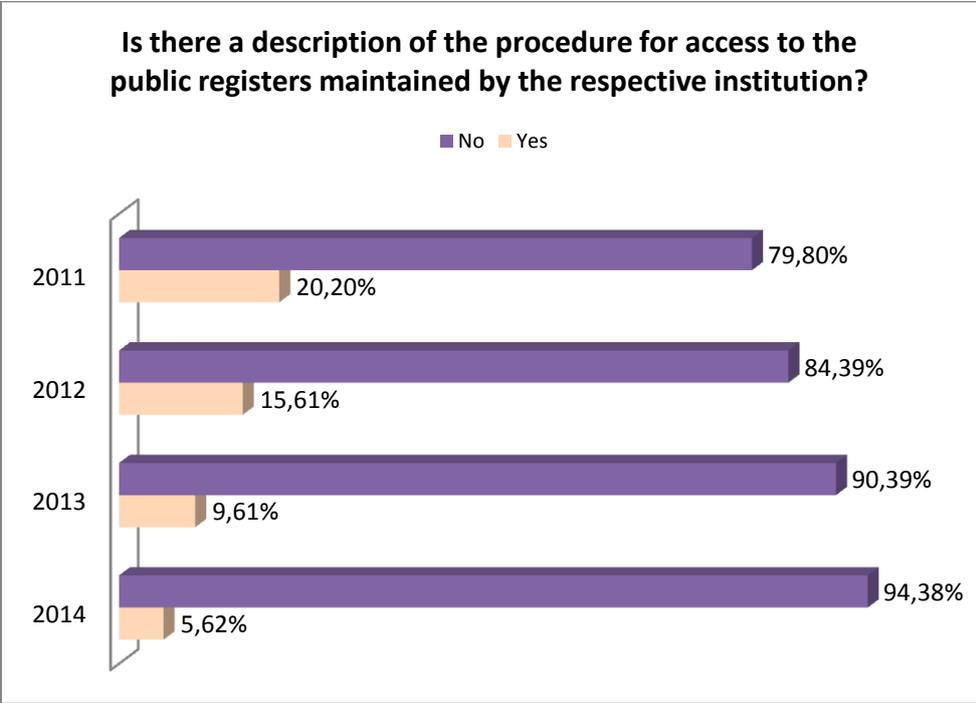
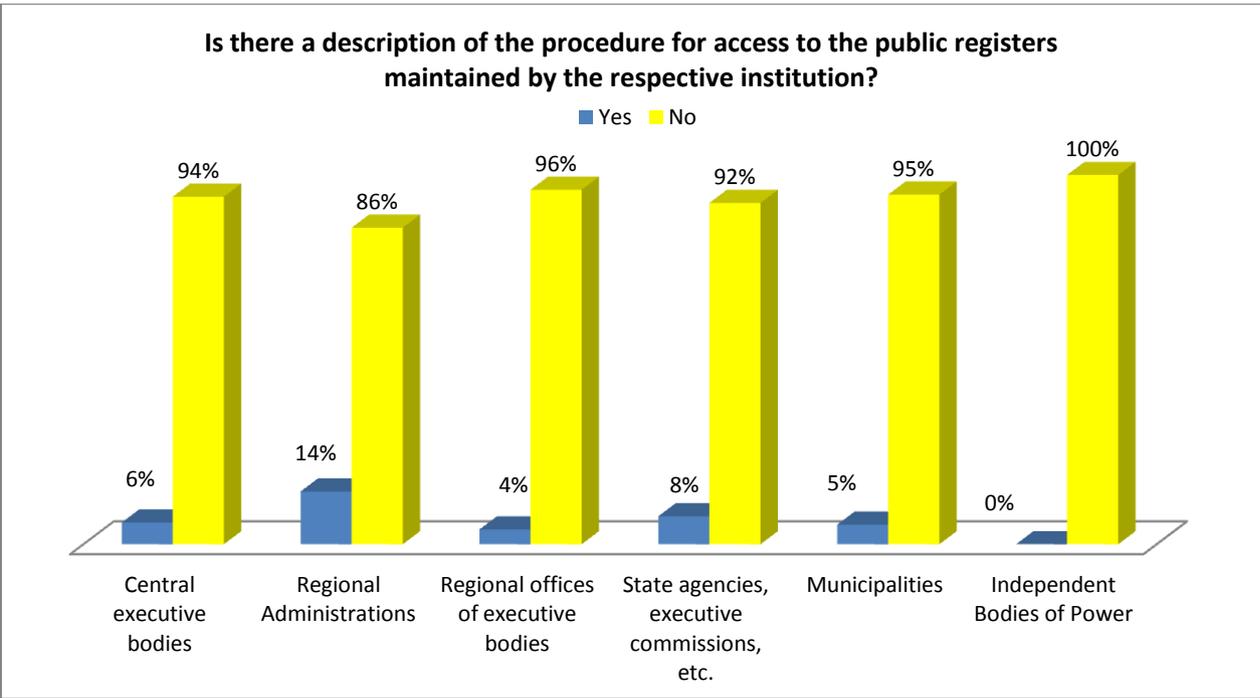


Chart 69. Is there a description of the procedure for access to public registers maintained by the institution? (by type of public body – 2014)



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

Chart 70. Is the APIA implementation report published?

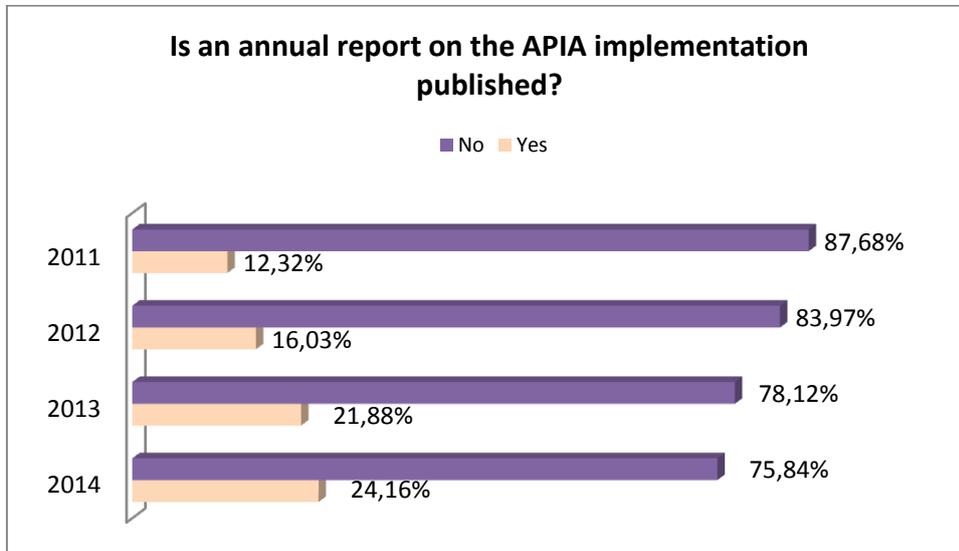


Chart 71. Is the APIA implementation report published? (by type of public body – 2014)

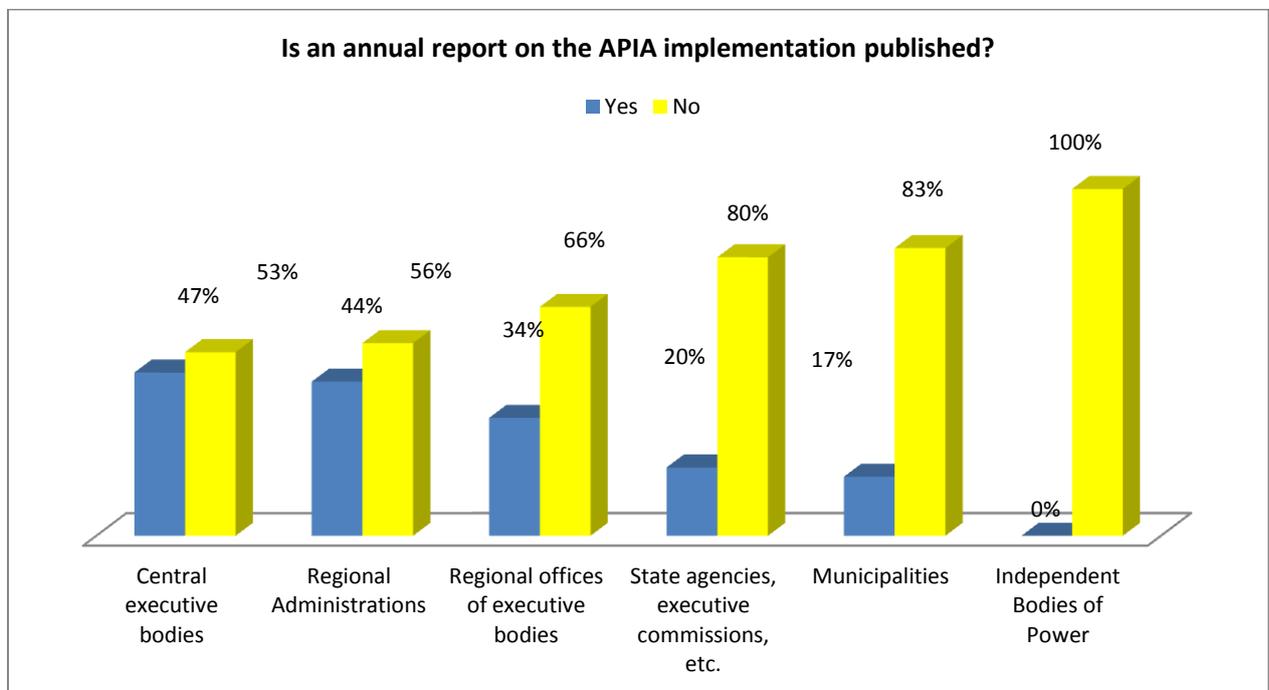


Chart 72. Does the APIA implementation report contain data about registered requests?

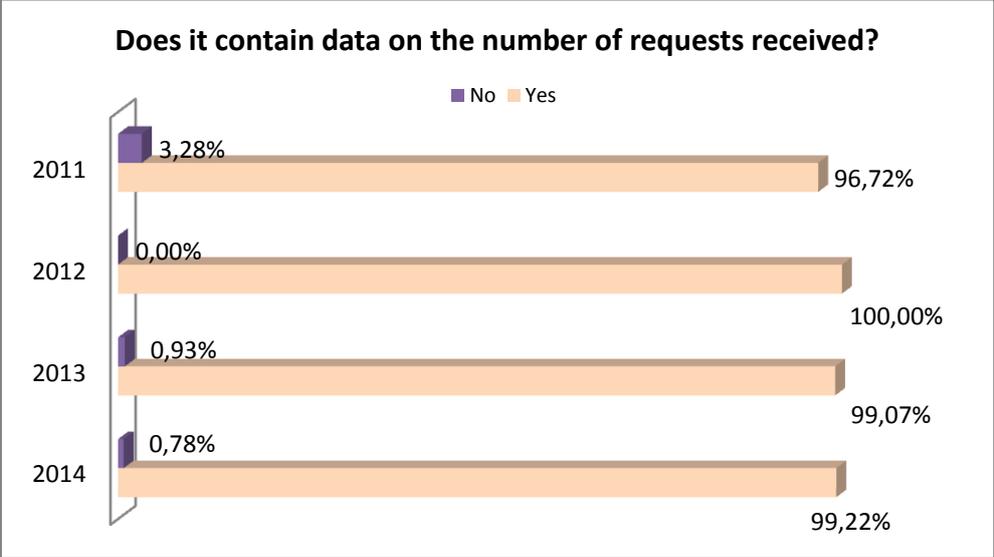


Chart 73. Does the APIA implementation report contain data about registered requests? (by type of public body – 2014)

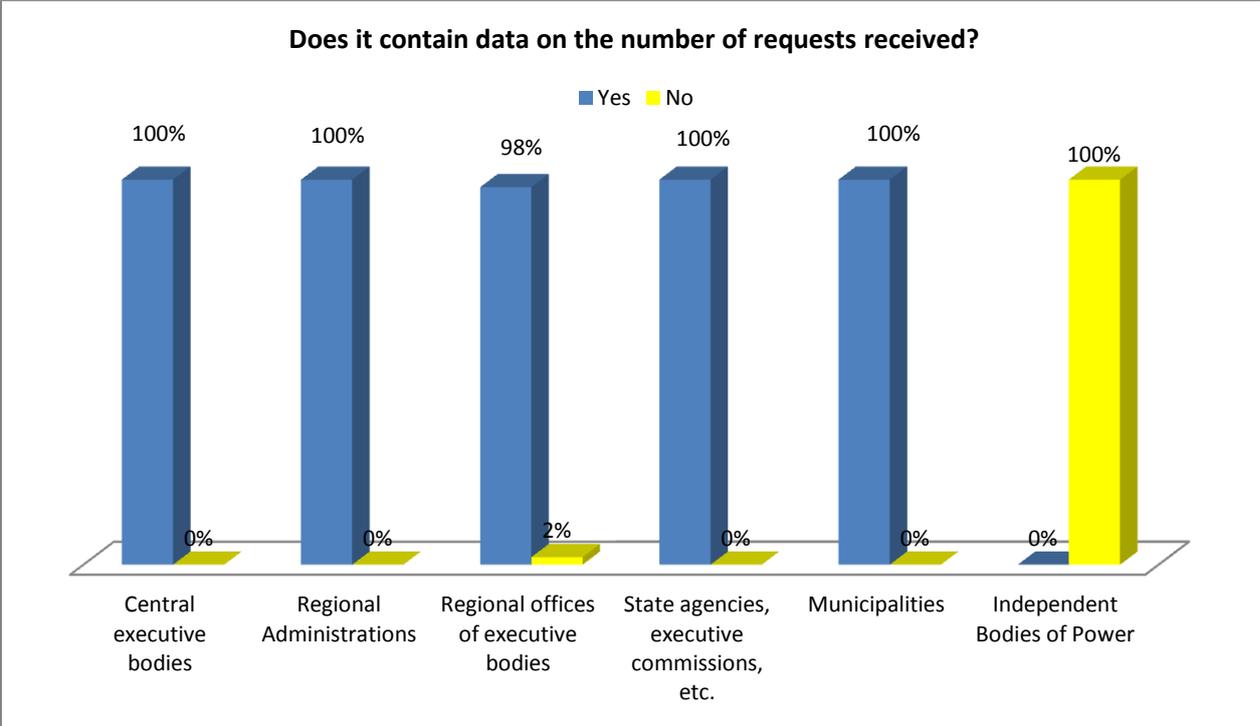


Chart 74. Does the APIA implementation report contain data about decisions of refusal on information requests?

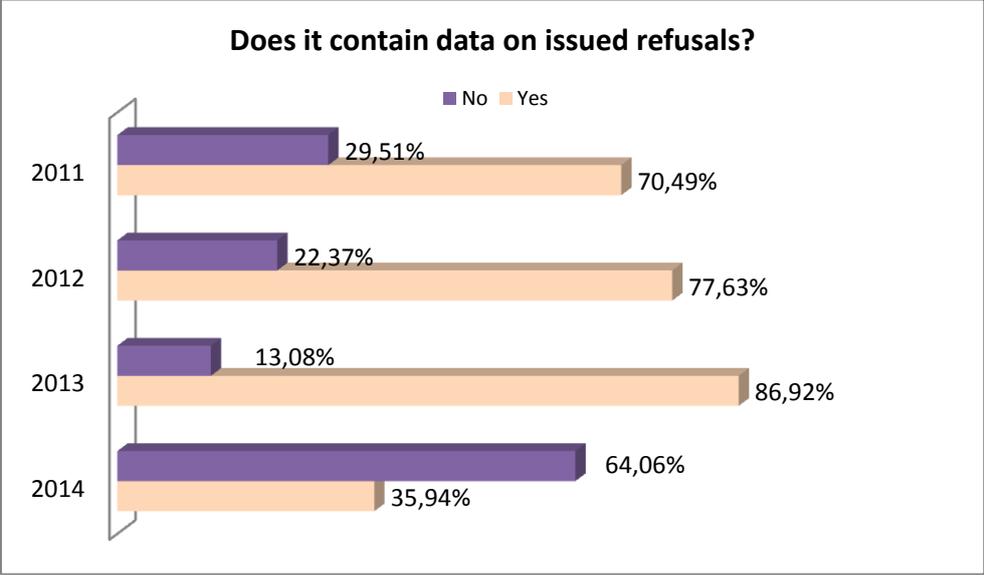


Chart 75. Does the APIA implementation report contain data about decisions of refusal on information requests? (by type of public body – 2014)

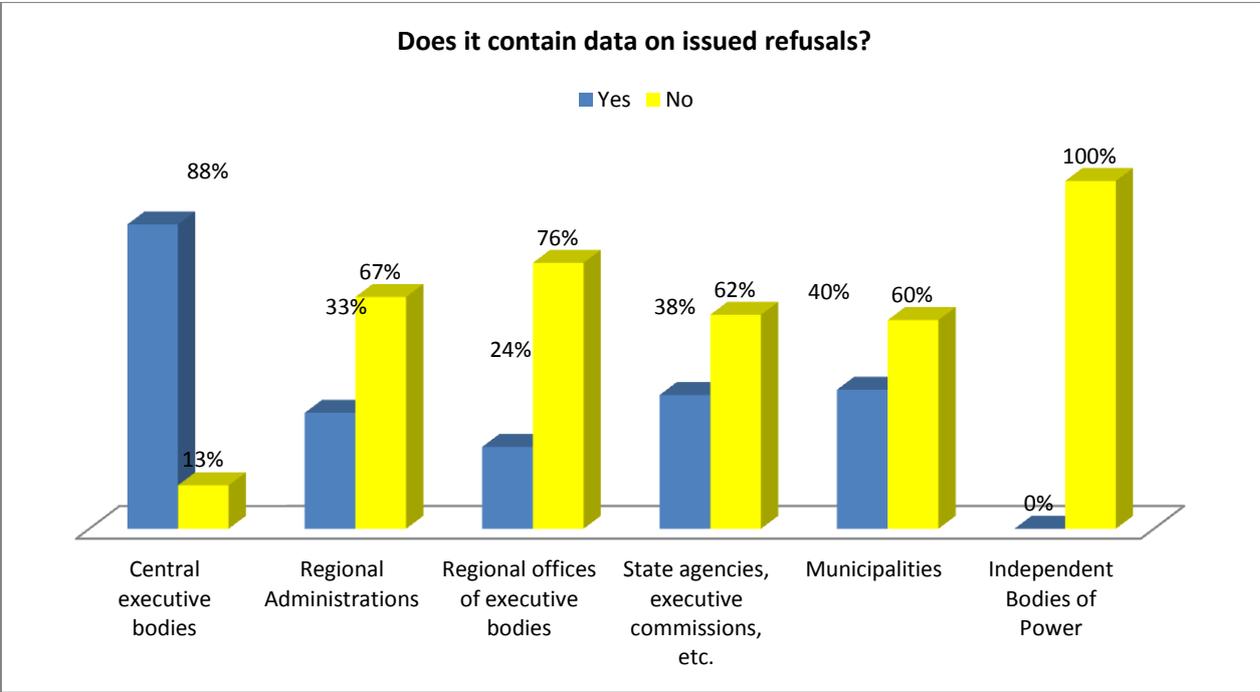


Chart 76. Does the APIA implementation report contain data about grounds on which information refusals were made?

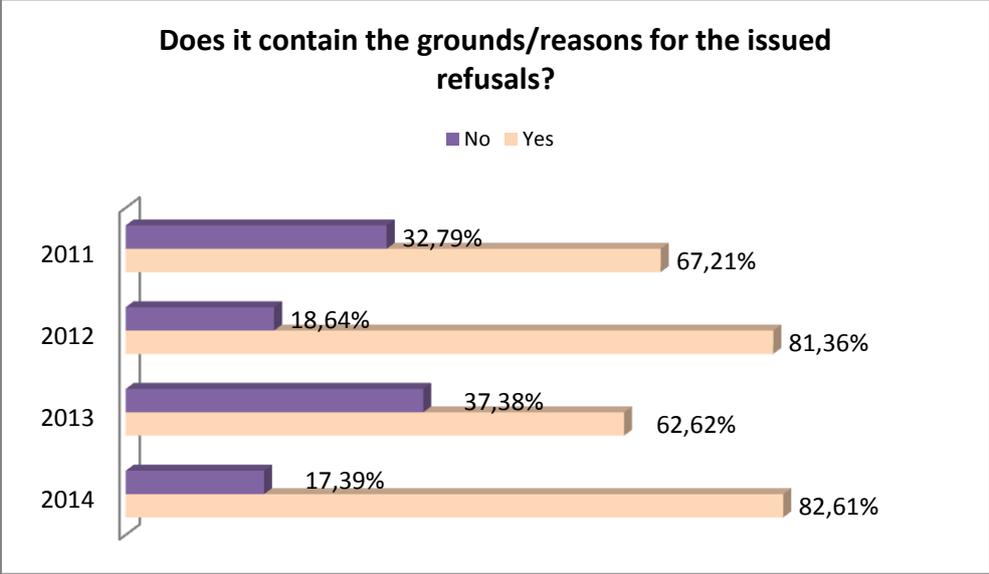


Chart 77. Does the APIA implementation report contain data about grounds on which information refusals were made? (by type of public body – 2014)

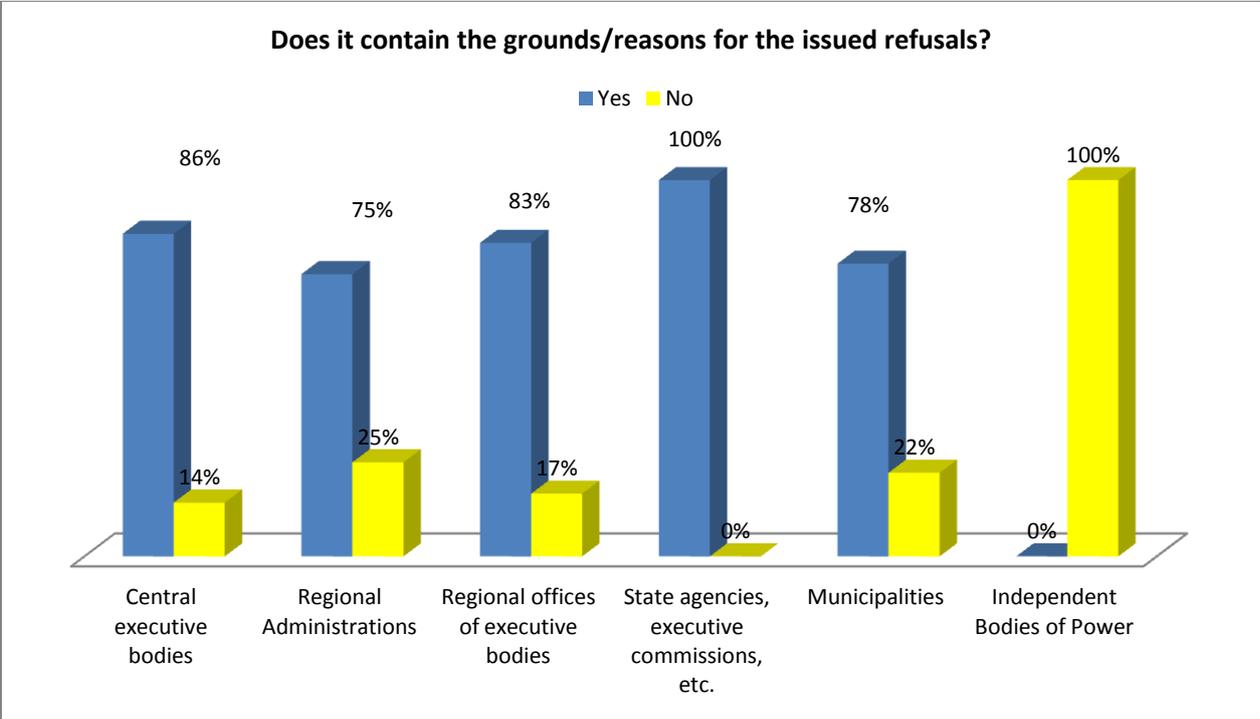
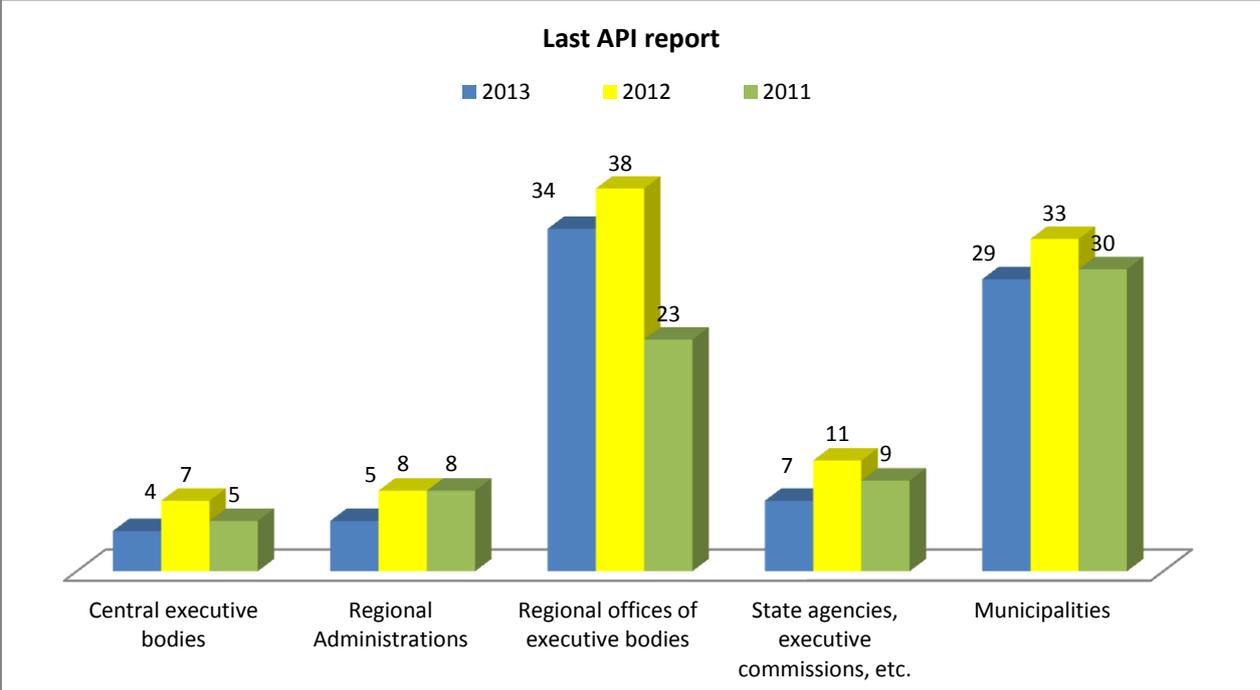


Chart 78. The last year of publication of the APIA implementation report (by type of public body – 2014)



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

Chart 79. Contact information of the APIA department?

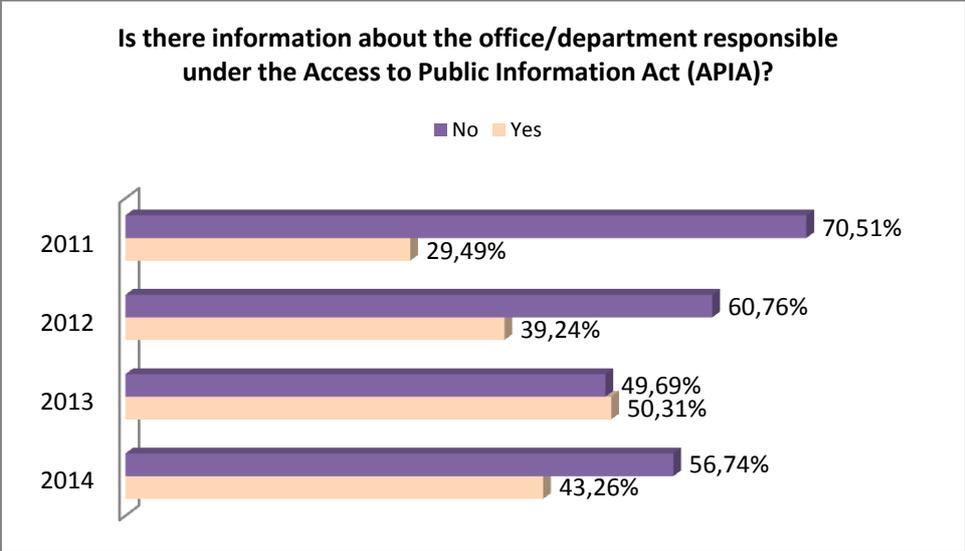


Chart 80. Contact information of the APIA department? (by type of public body – 2014)

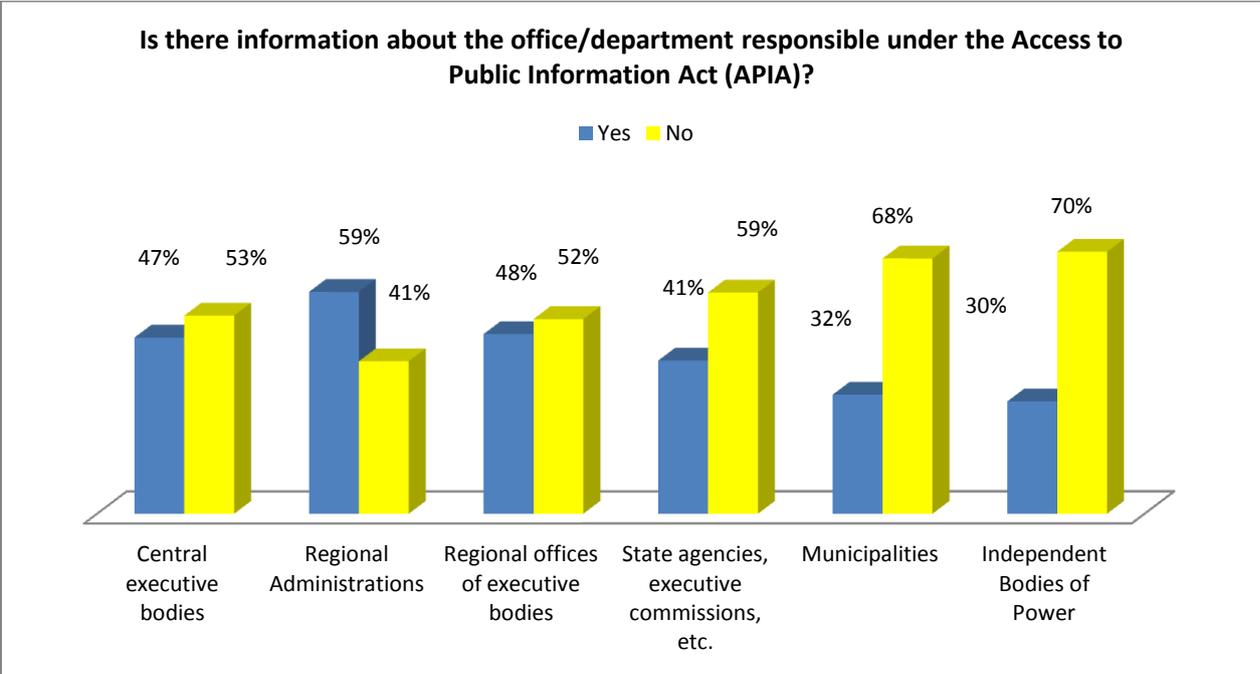


Chart 81. Contact information of the APIA department – address?

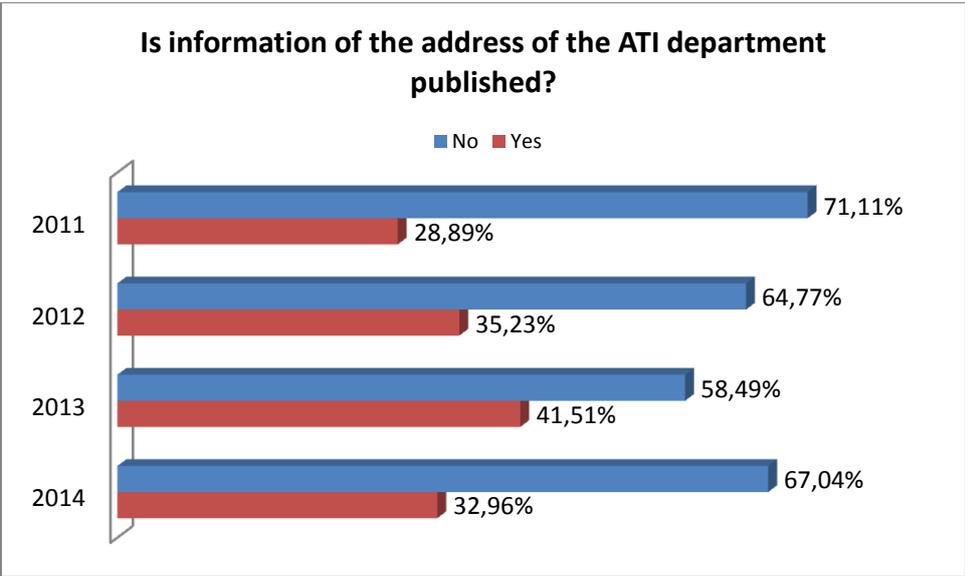


Chart 82. Contact information of the APIA department – address? (by type of public body – 2014)

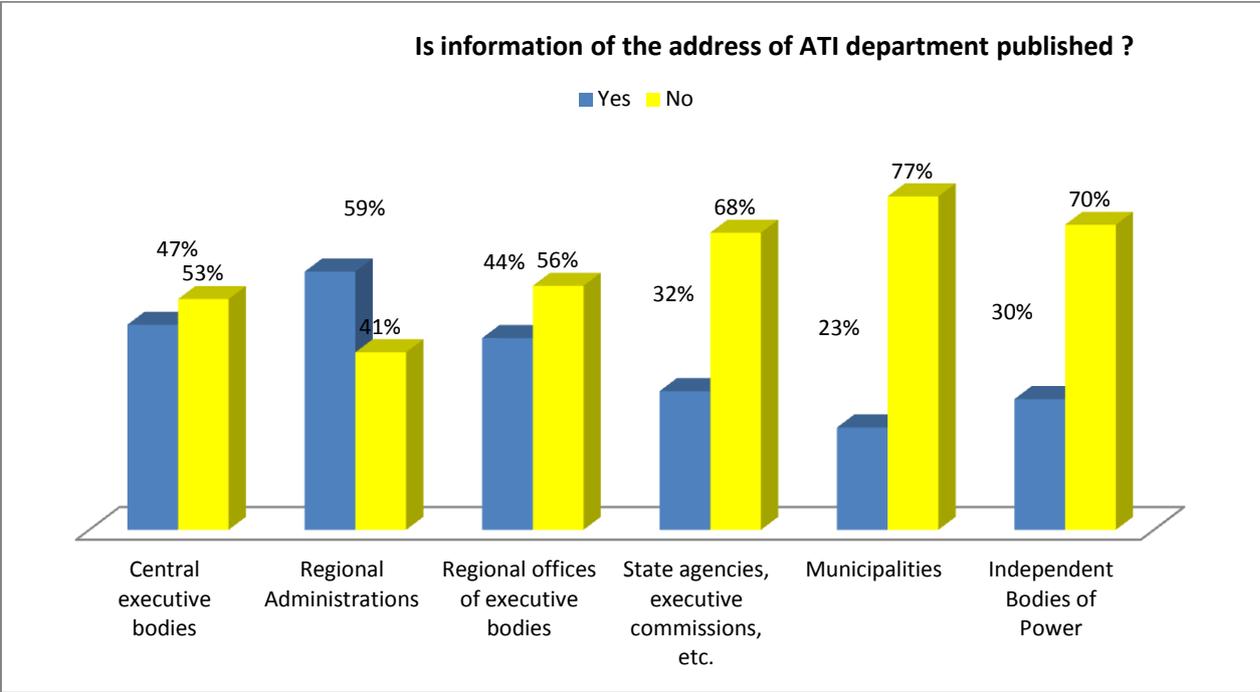


Chart 83. Contact information of the APIA department – phone number?

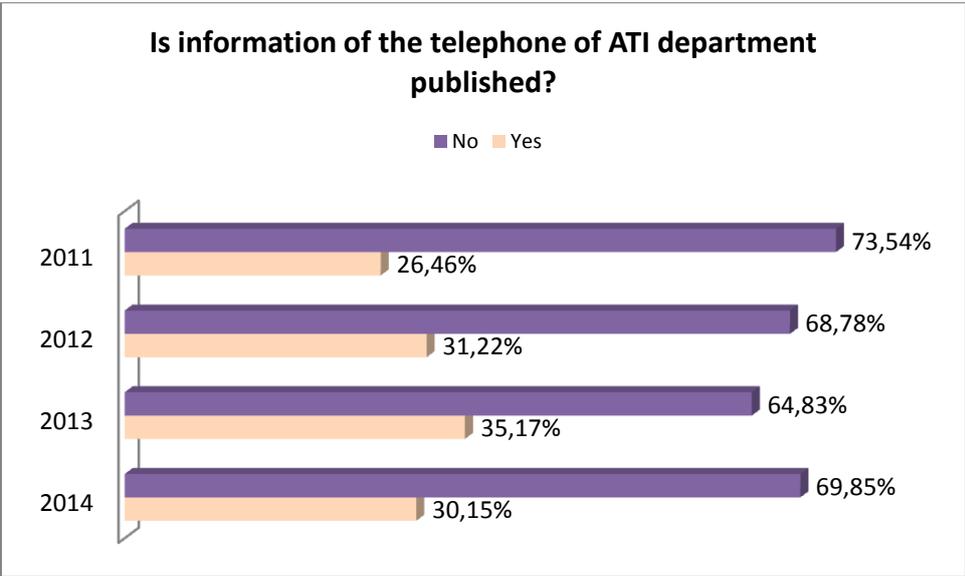


Chart 84. Contact information of the APIA department – phone number? (by type of public body – 2014)

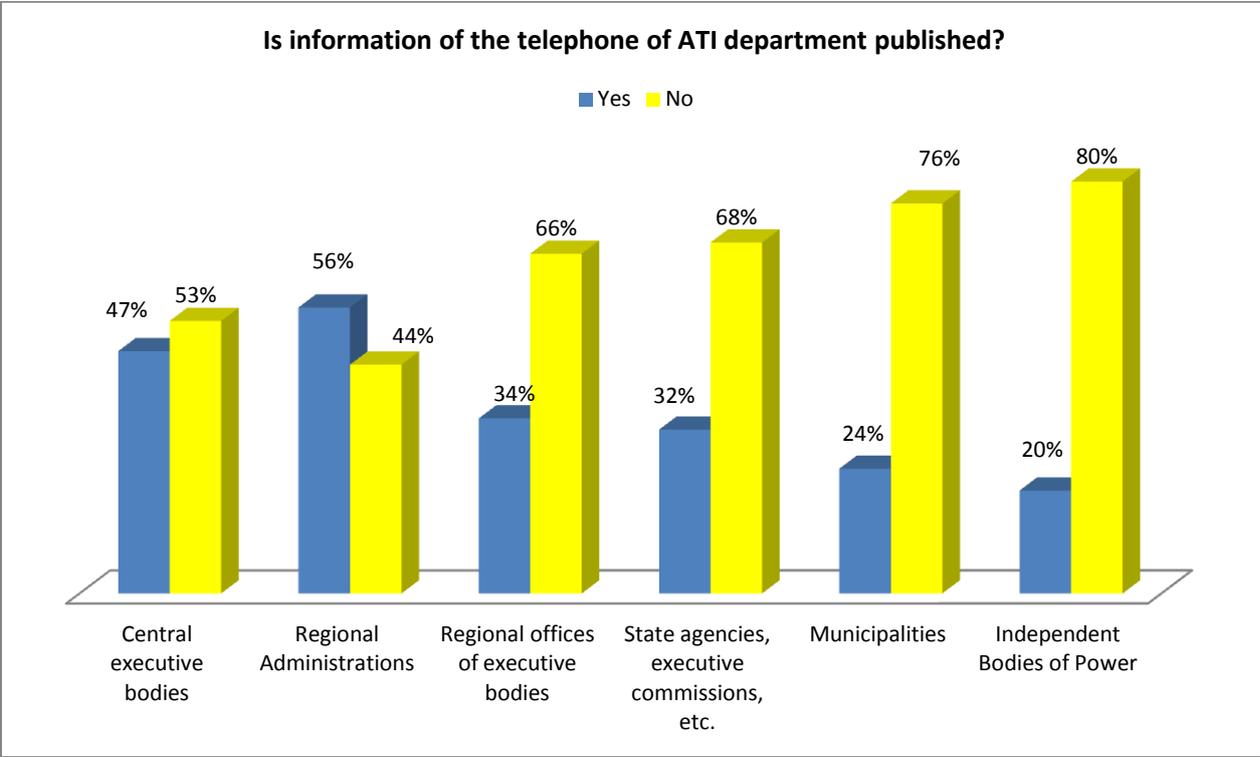


Chart 85. Contact information of the APIA department – e-mail address?

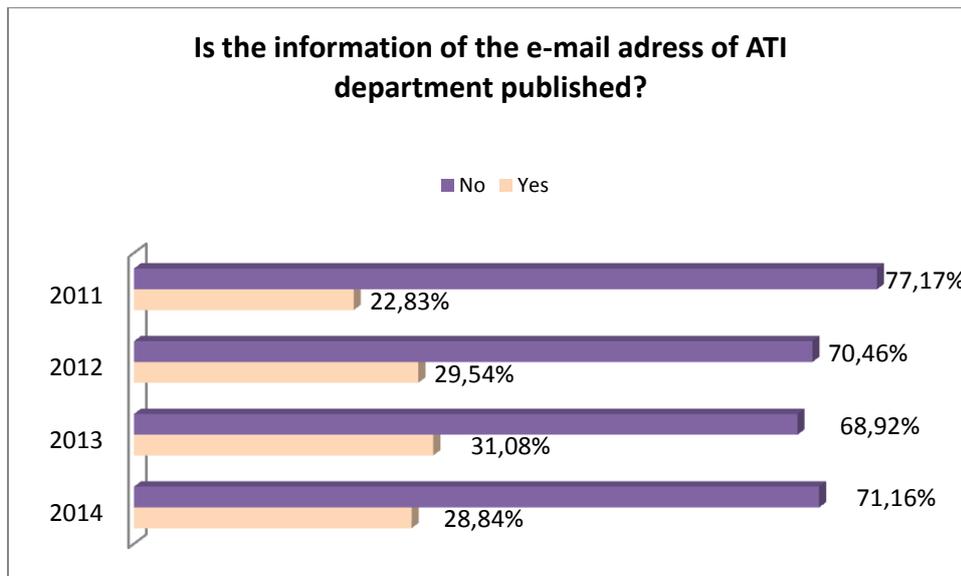


Chart 86. Contact information of the APIA department – e-mail address? (by type of public body – 2014)

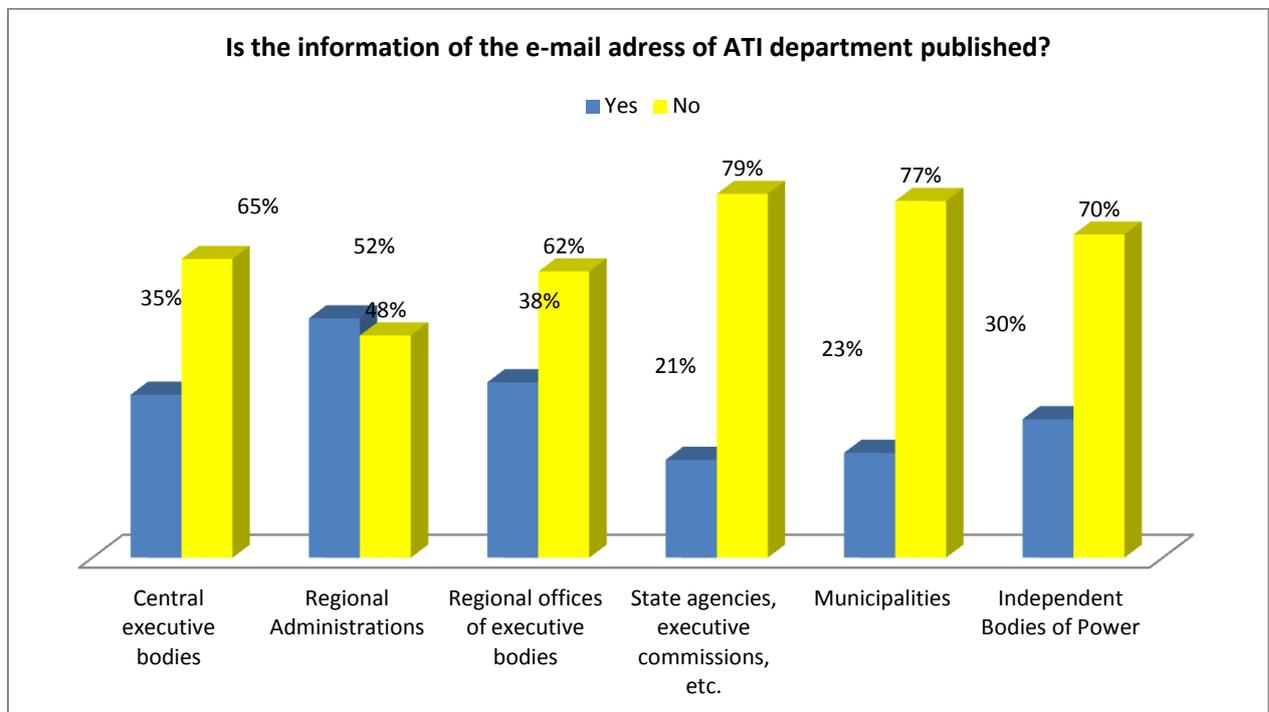


Chart 87. Contact information of the APIA department – responsible official?

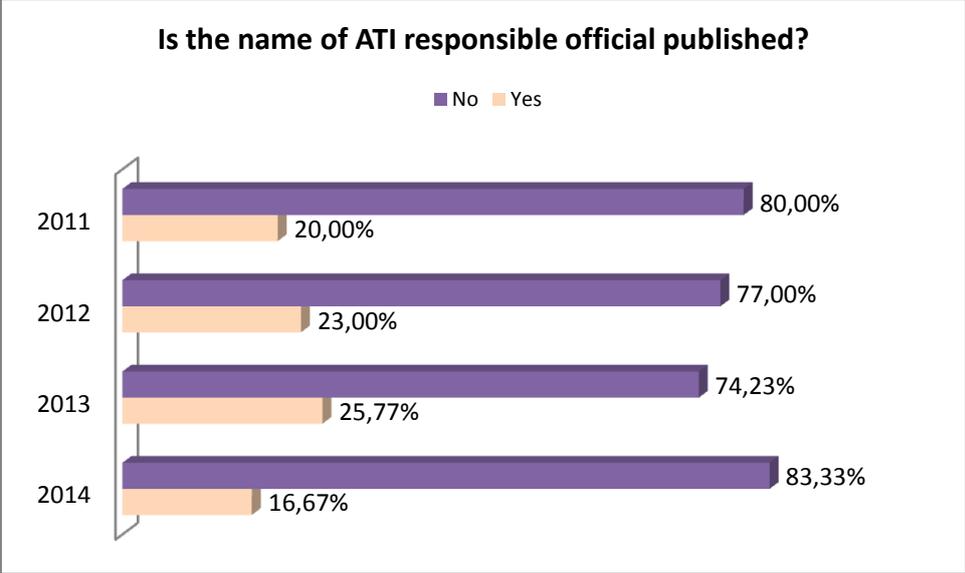


Chart 88. Contact information of the APIA department – responsible official? (by type of public body – 2014)

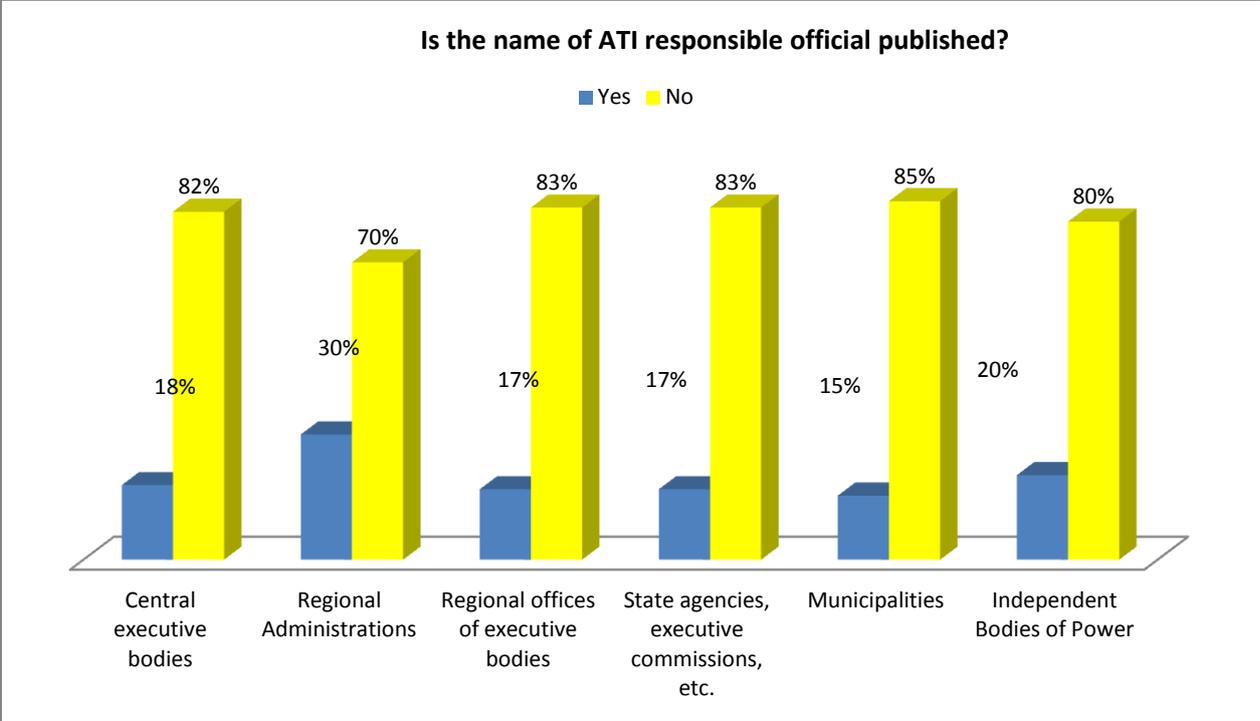


Chart 89. Contact information of the APIA department – working hours?

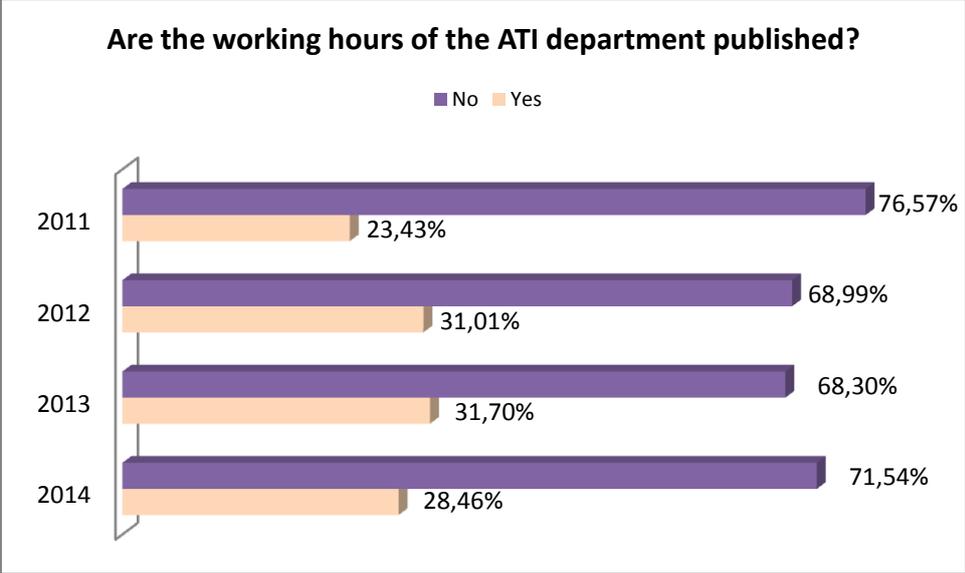
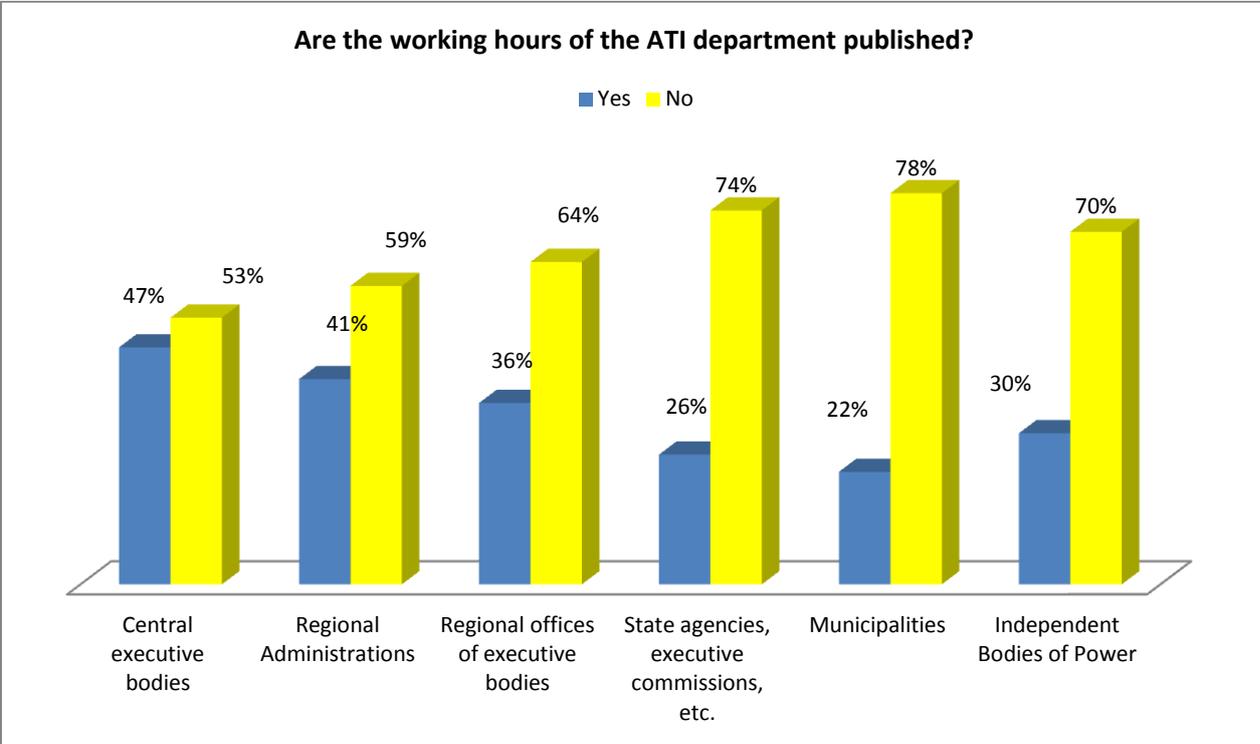


Chart 90. Contact information of the APIA department – working hours? (by type of public body – 2014)



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

Chart 91. Is a list of declassified documents published (declassified under § 9 of the Protection of Classified Information Act)?

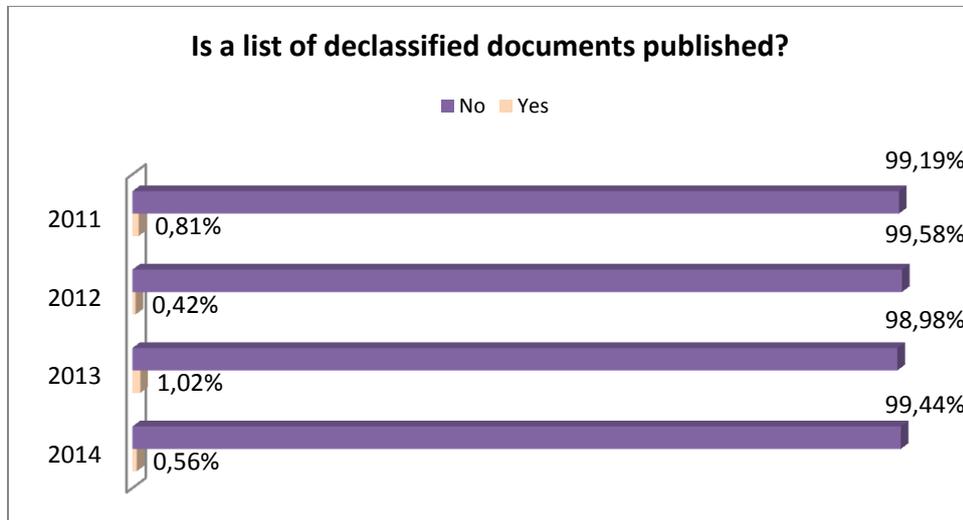


Chart 92. Is a list of declassified documents published (declassified under § 9 of the Protection of Classified Information Act)? (by type of public body – 2014)

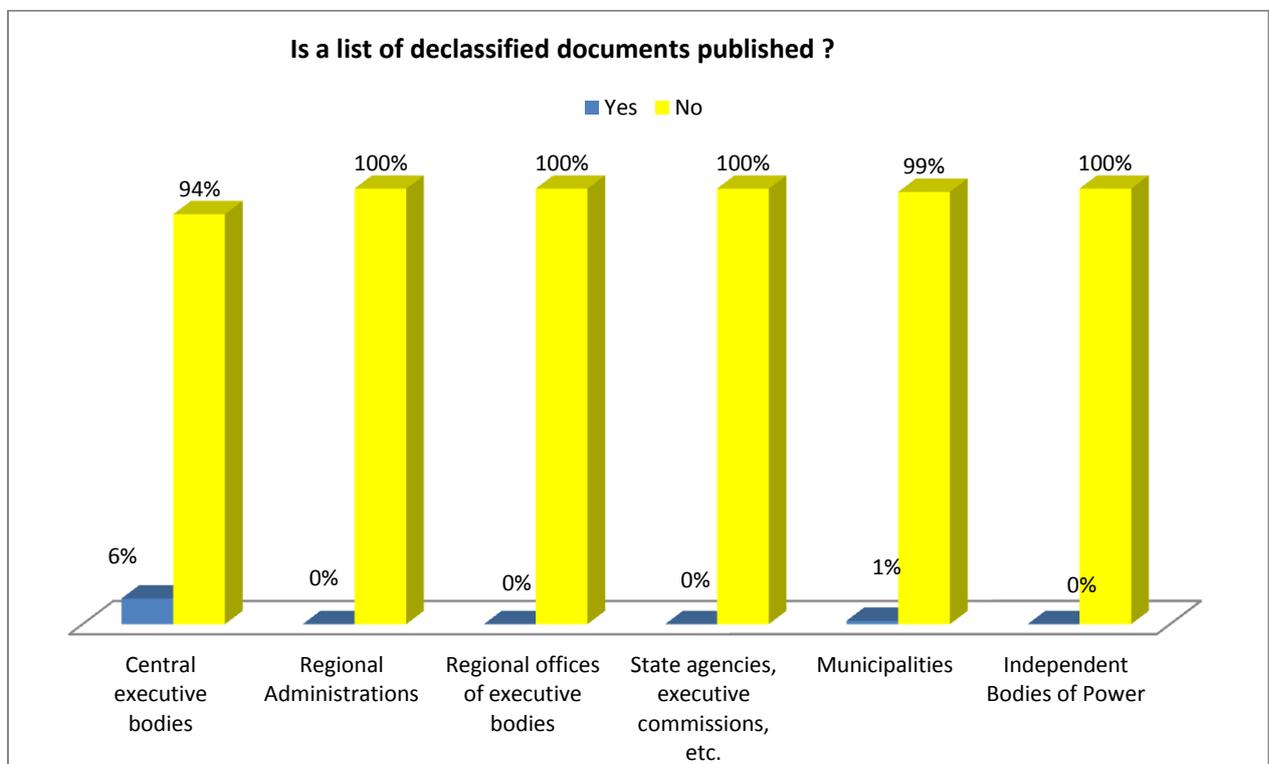


Chart 93. List of the categories of information subject to classification as *official secret*?

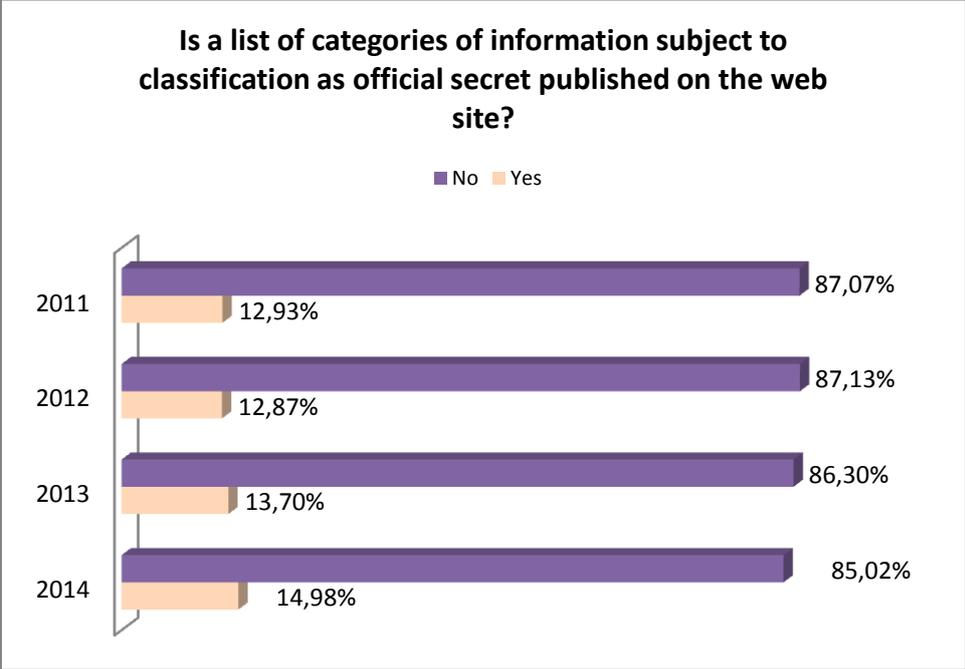
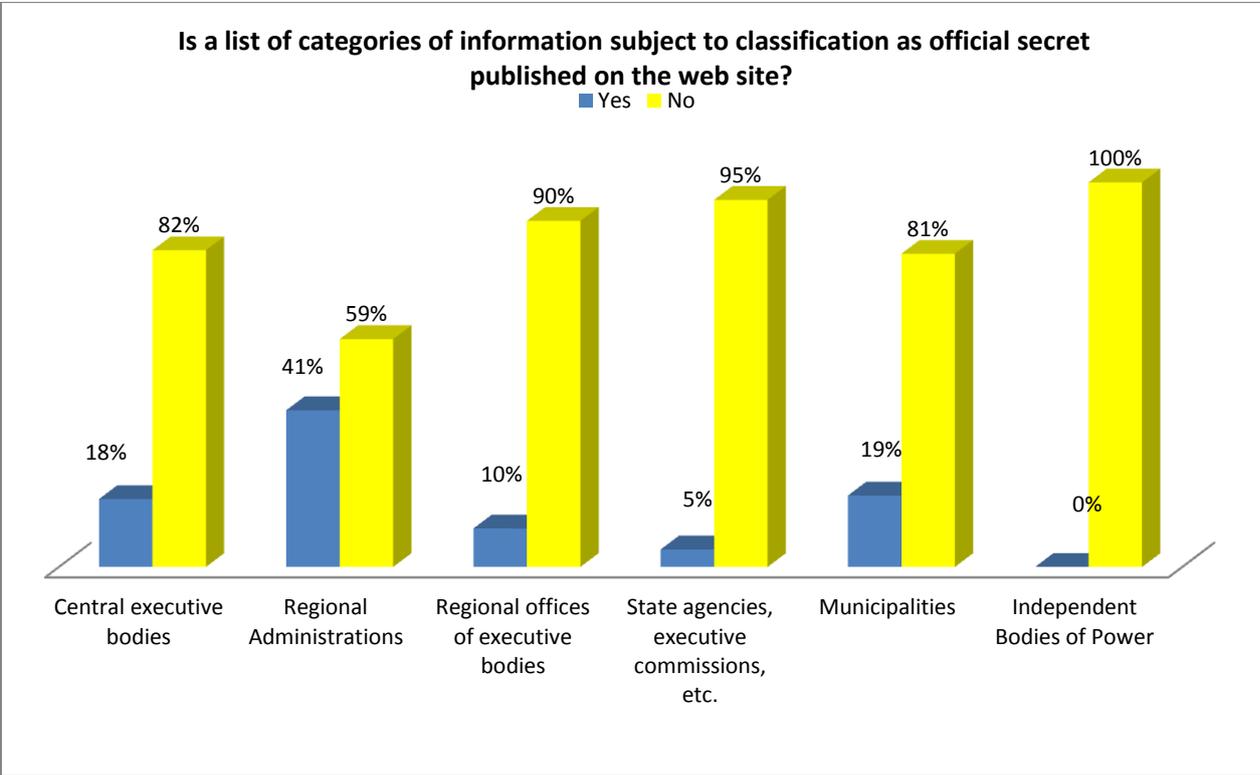


Chart 94. List of the categories of information subject to classification as *official secret*? (by type of public body – 2013)



**Response to Electronic Requests**

Chart 95. Are access to public information requests accepted electronically?

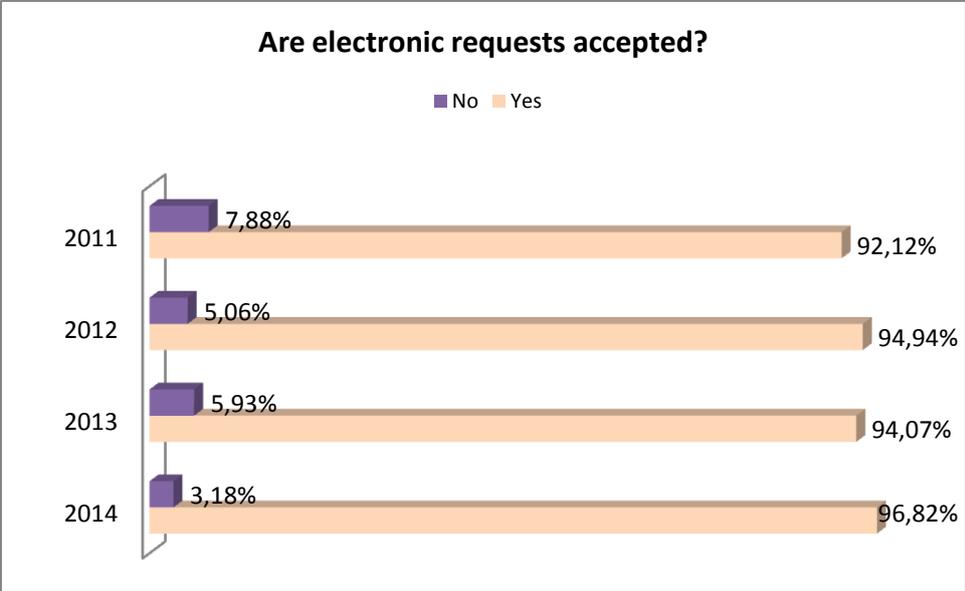


Chart 96. Are access to public information requests accepted electronically?  
(by type of public body – 2014)

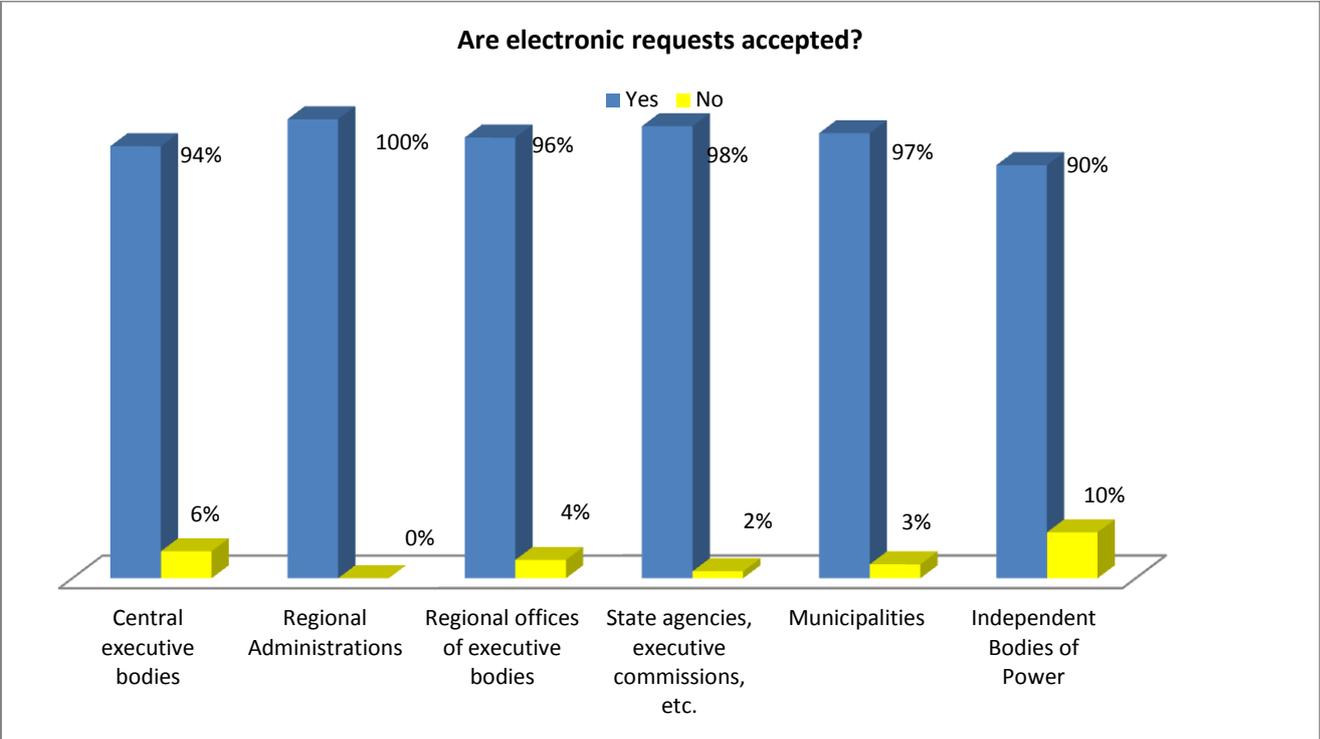


Chart 97. Is an electronic signature required for filing information request electronically?

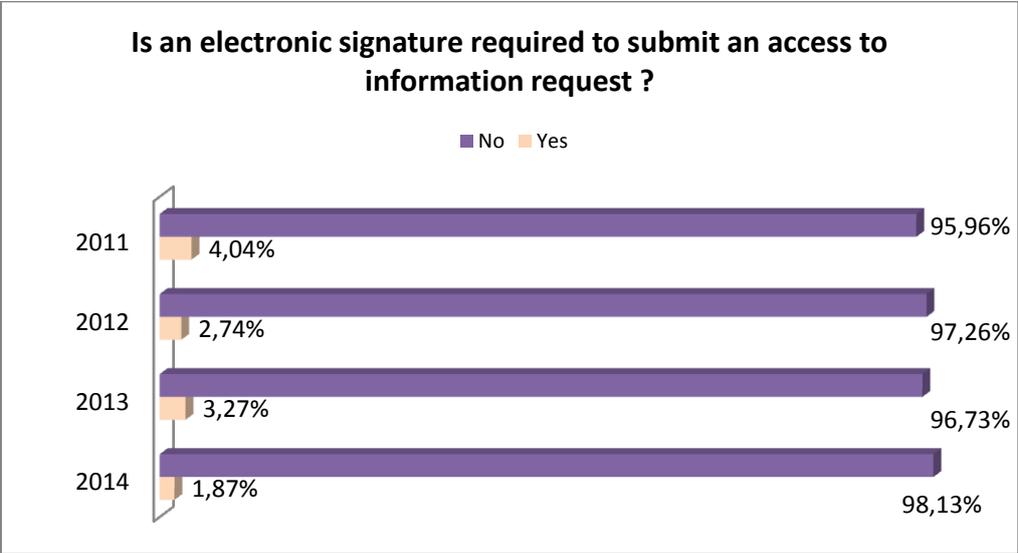


Chart 98. Is an electronic signature required for filing information request electronically? (by type of public body – 2014)

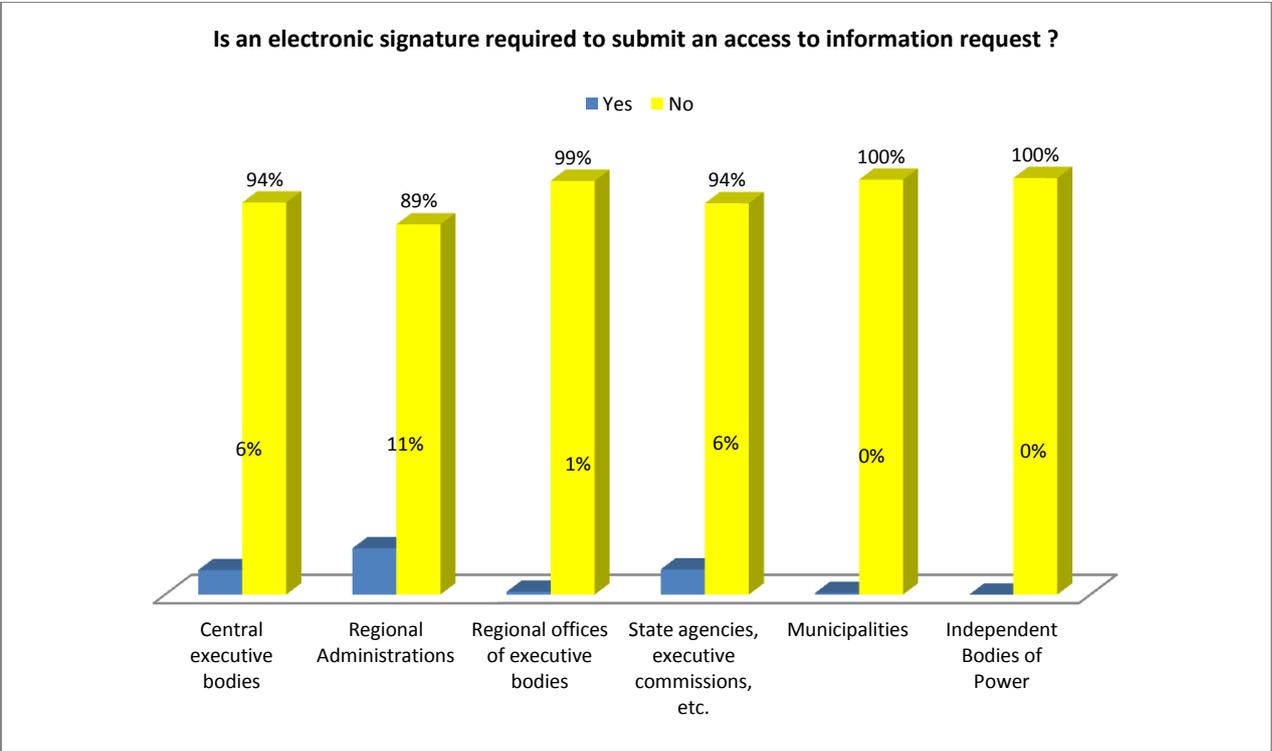
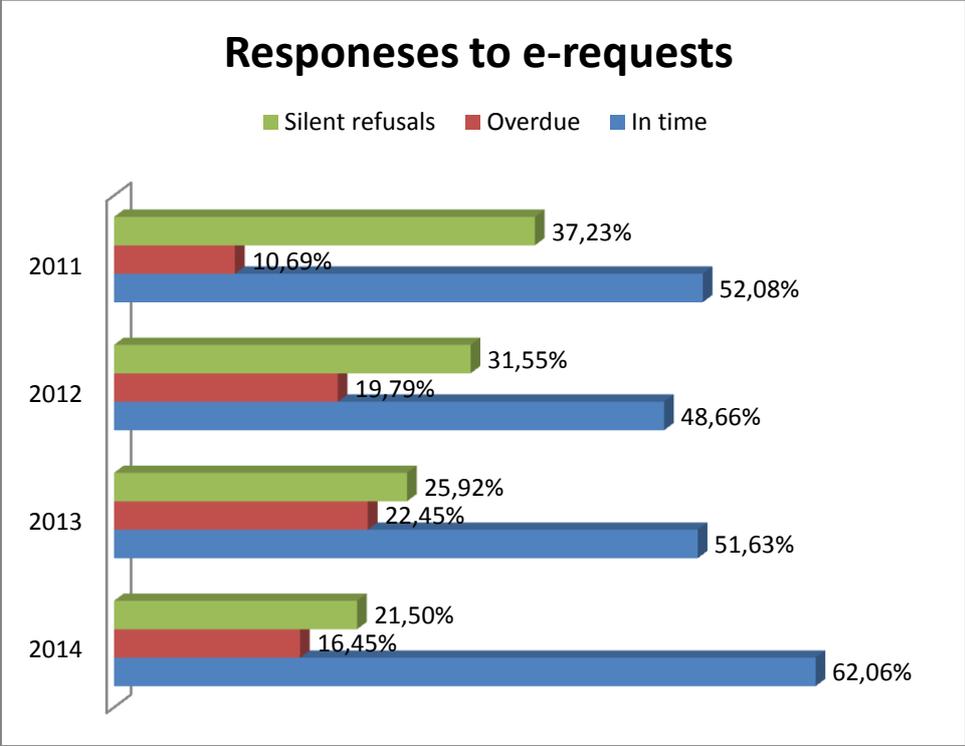


Chart 99. Response rate to access to information requests filed electronically  
2011 – 2014 up to April 9 2014



## Municipalities

Chart 100. Are the decisions of the Municipal Council published?

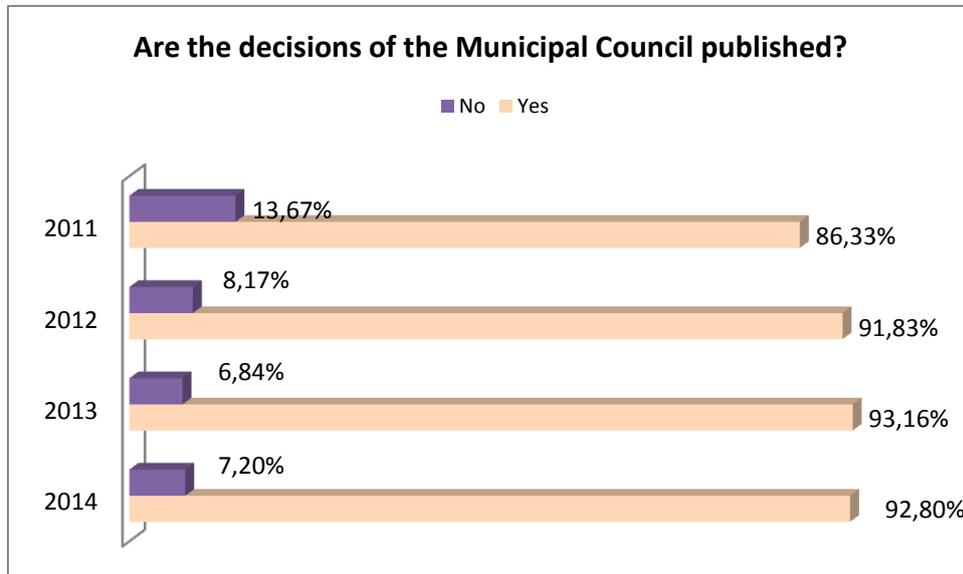


Chart 101. Is the date for the public discussion on the draft municipal budget published?

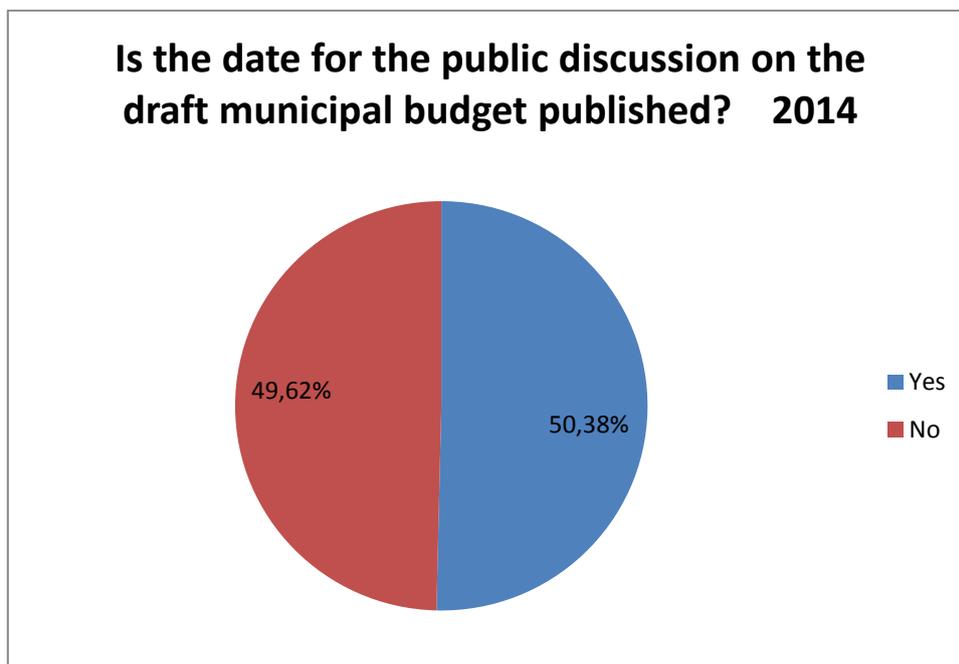


Chart 102. Is the draft municipal budget published?

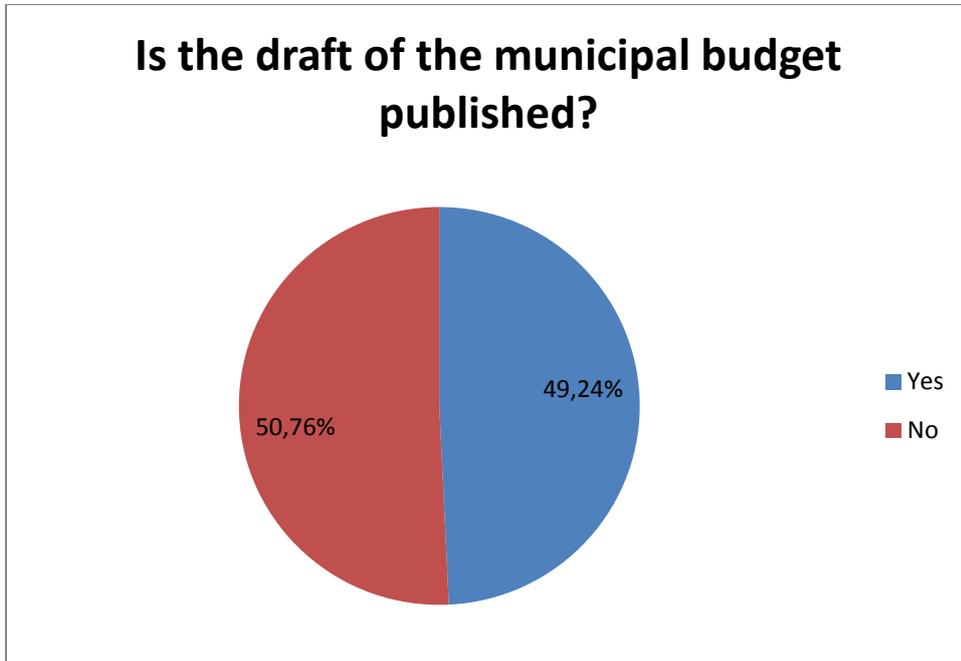


Chart 103. Is the date for the public discussion on the draft annual financial report published?

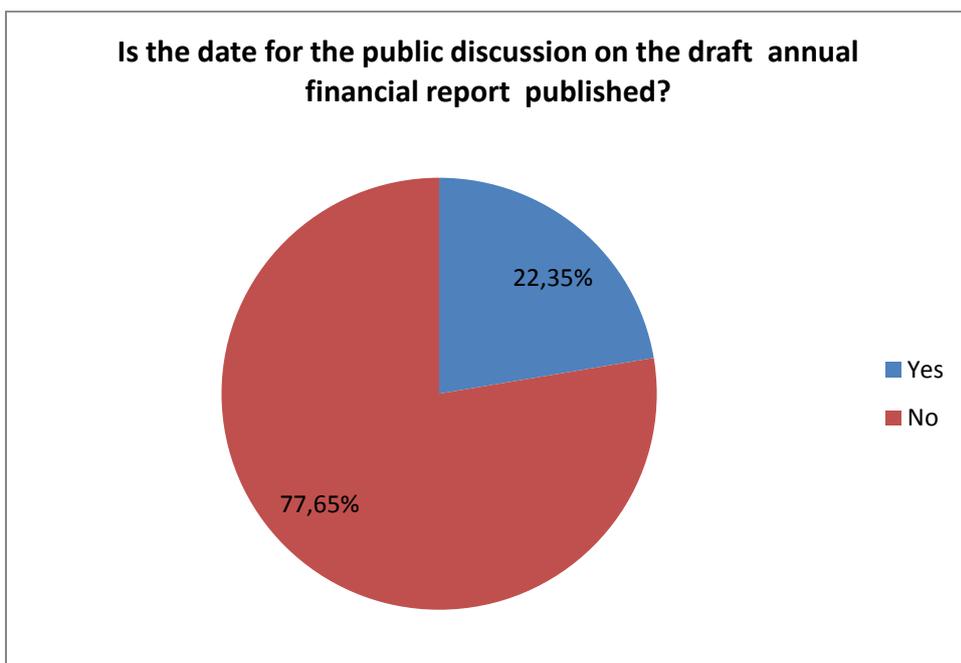
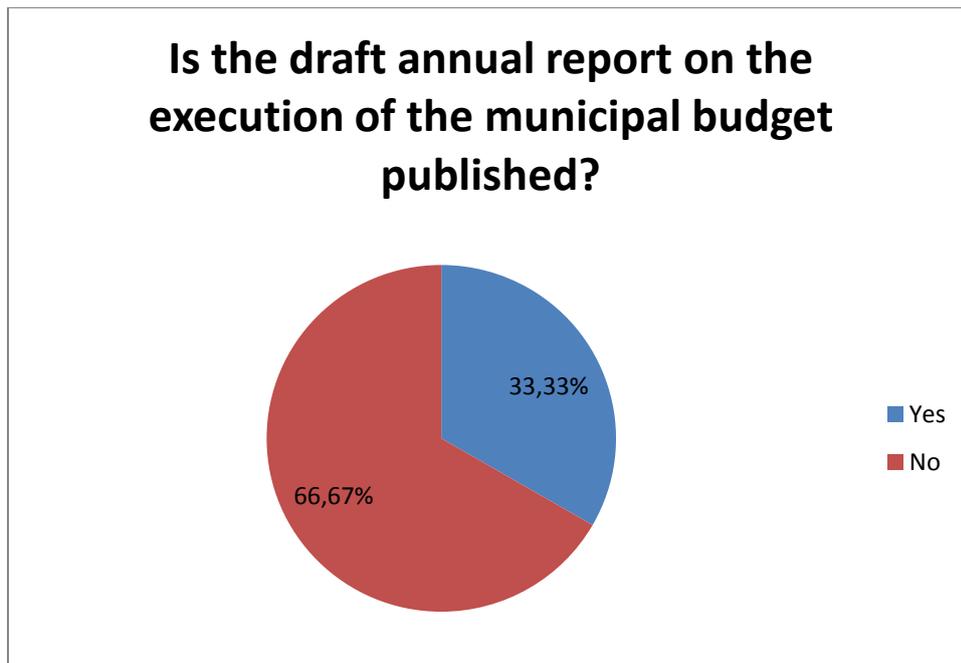


Chart 104. Is the draft annual financial report published?



### City Development plans and construction permits

Chart 105. Is a Draft Master City Development Plan published?

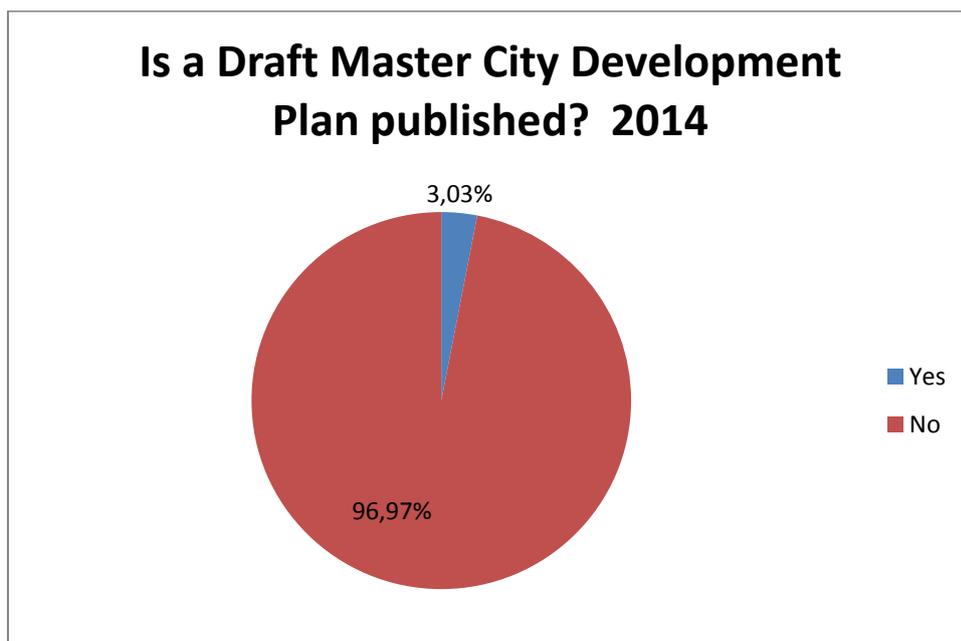


Chart 106. Is a Master City Development Plan published?

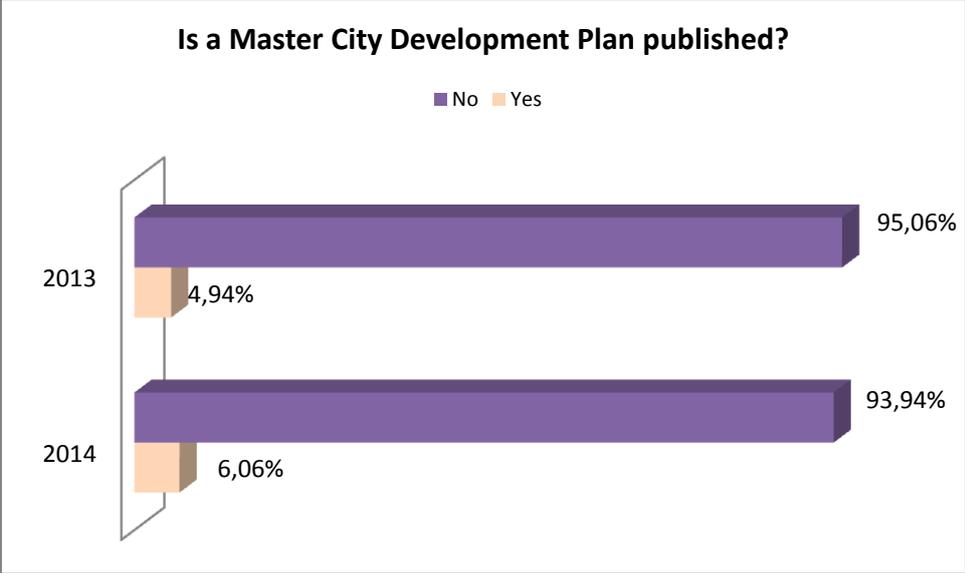


Chart 107. Is a Detailed Site Development Plan published? 2014

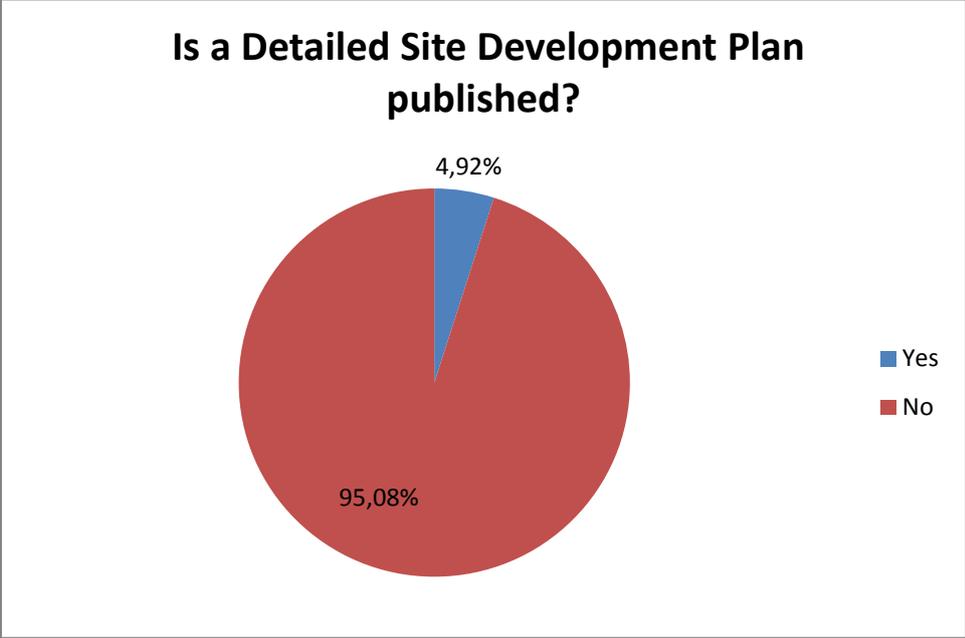
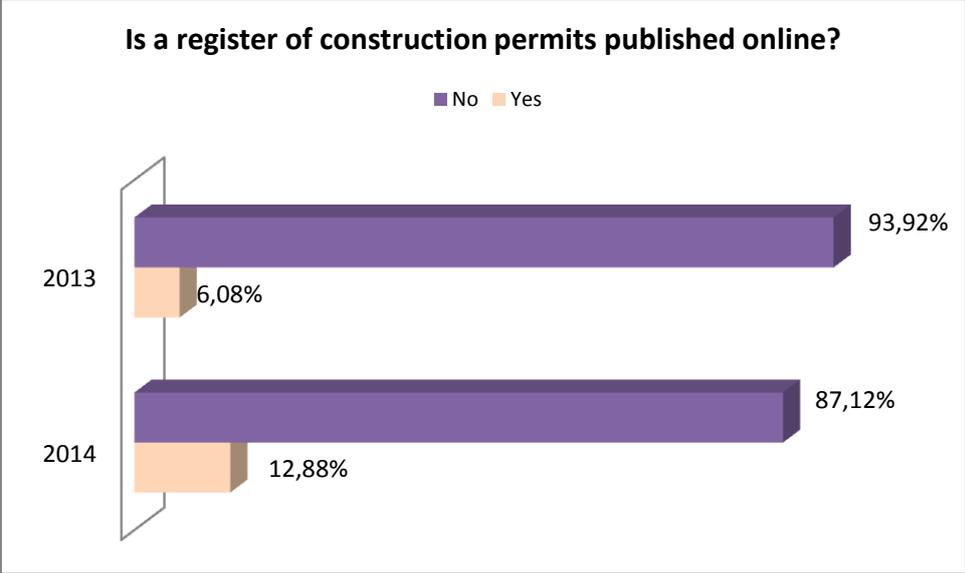
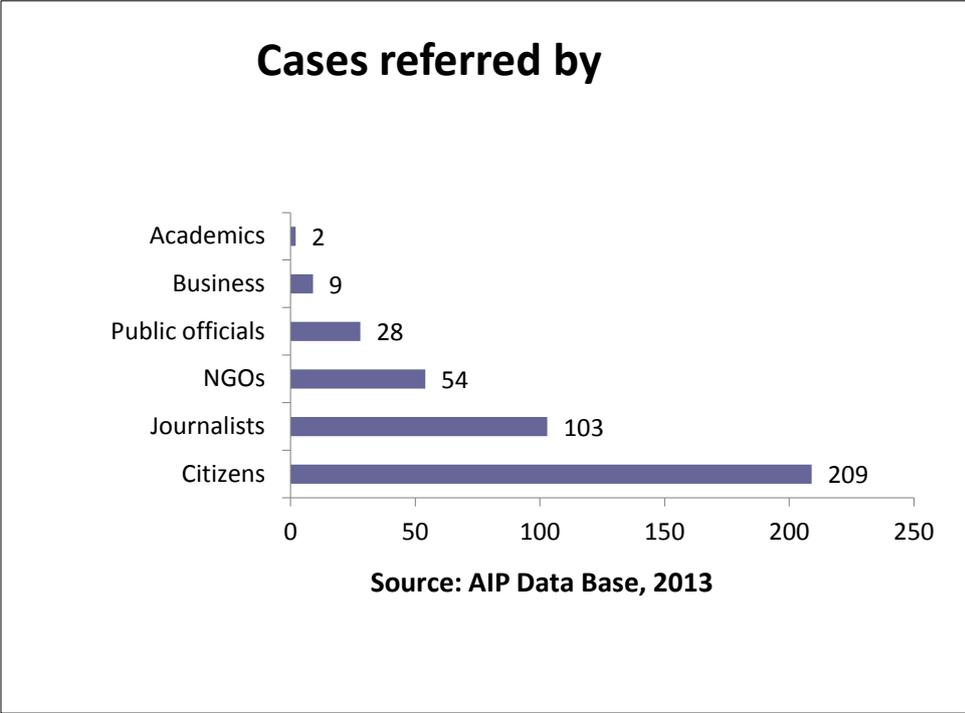
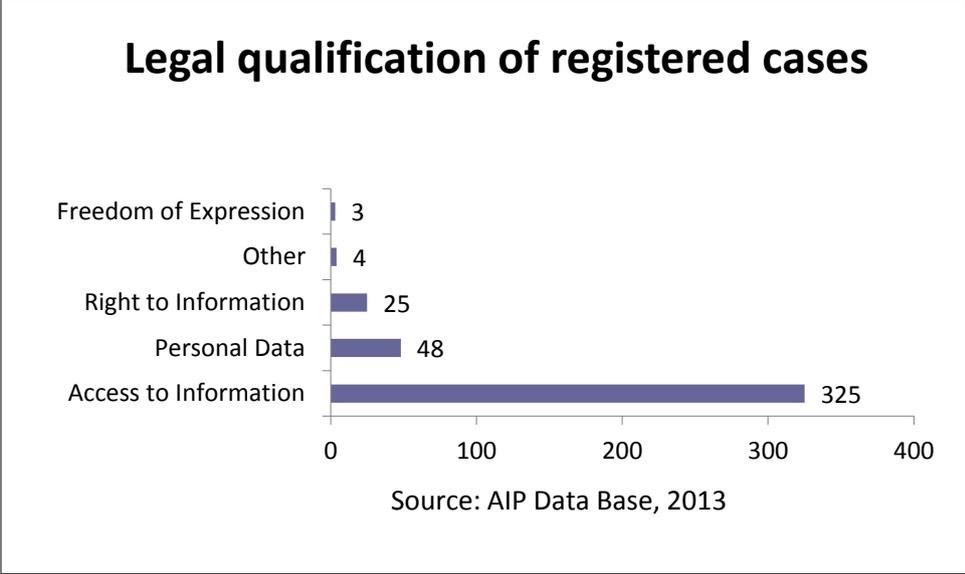


Chart 108. Is a register of construction permits published online?

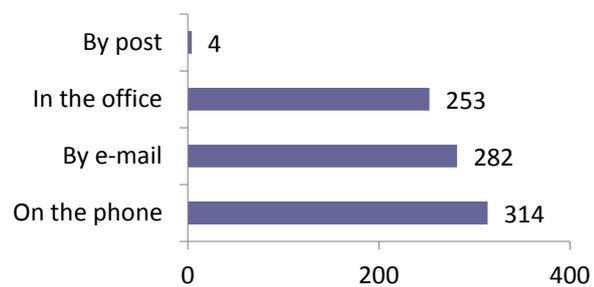


**APPENDIX 2**

**STATISTICS FROM ACCESS TO INFORMATION PROGRAMME ELECTRONIC DATA BASE OF CASES REFERRED FOR LEGAL HELP**

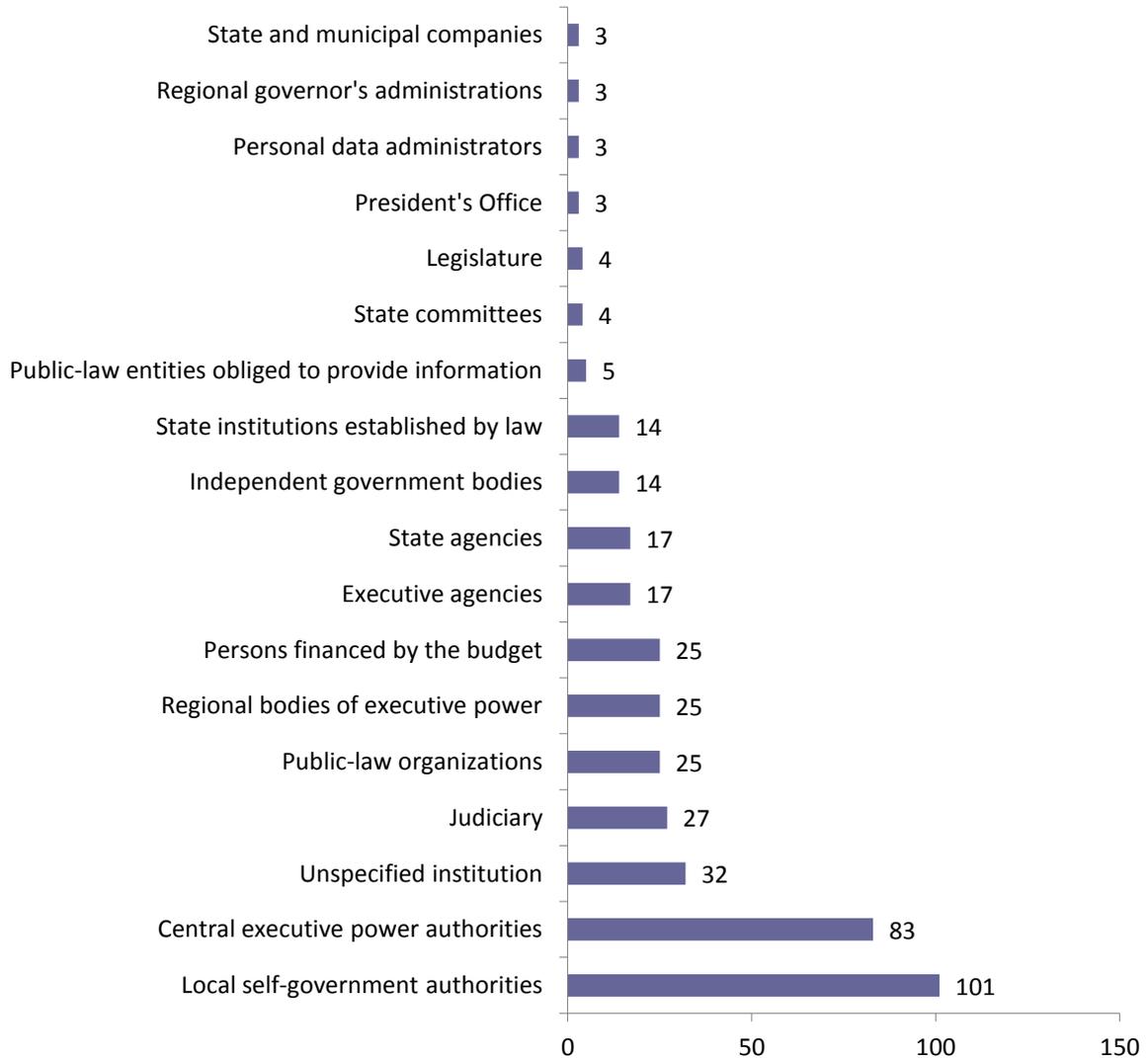


## Legal assistance provided



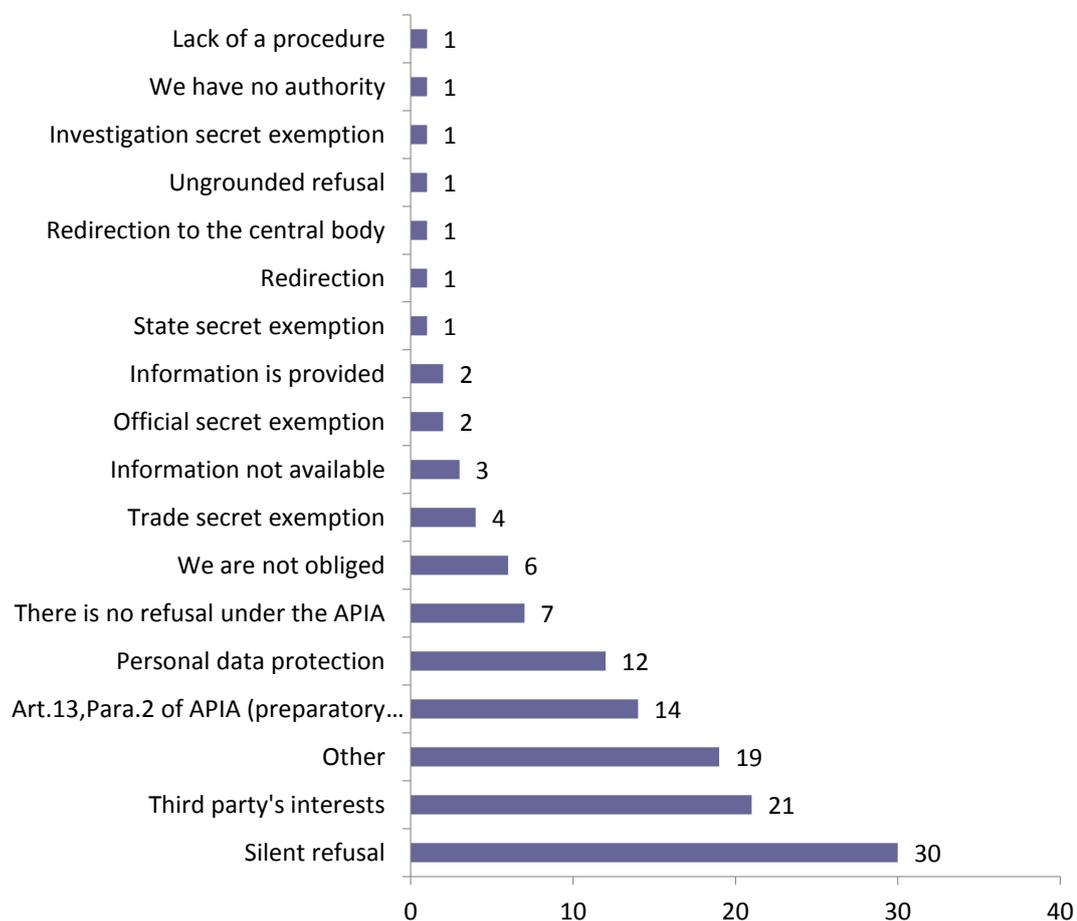
Source: AIP Data Base, 2013

## Institutions where information was sought



Source: AIP Data Base, 2013

## Grounds for refusal



Source: AIP Data Base, 2013. The data correspond to the number of cases related to access to information

## **APPENDIX 3**

### **LITIGATION CASE NOTES**

#### **1. Bulgarian Institute for Legal Initiatives Foundation v. the Ministry of Interior**

First instance – administrative case no. 2551/2013 of the Supreme Administrative Court, Fifth Division

Cassation (second) instance – a. c. no. 13425/2013 of the Supreme Administrative Court, Five-Member Panel, II College

#### **Request**

On the 15 November 2012 Bilyana Gyaurova-Wegertseder, executive director of the Bulgarian Institute for Legal Initiatives (BILI), requested that the Ministry of Interior (Mol) provide access to the information whether Sotir Tzatzarov (current Prosecutor General of the Republic of Bulgaria) has received an award under Article 216 of the Ministry of Interior Act for cooperating and providing concrete assistance to the Mol as President of the Plovdiv District Court. In case that he received an award – what were the reasons for this, the nature of the award, when and for what merits?

#### **Refusal**

The Minister did not respond to the request filed – silent refusal. After the complaint was filed, on 16 January 2013 the Minister issued a decision to leave the request without consideration as inadmissible. The Minister stated that the information sought is personal data of Sotir Tzatzarov thus falling outside the scope of the Access to Public Information Act (APIA).

#### **Complaint**

The silent and explicit refusals were attacked before the Supreme Administrative Court (SAC). The complaint argues that the purpose of personal data protection is the protection of privacy and private life, and not protection when exercising a public power, which is completely in the public sphere.

#### **First Instance Court Decision**

By decision no. 10398 of 10 July 2013 the SAC repealed the Minister's refusal and instructed him to provide access to the information sought. The court held that the information on state institutions awarding high ranking officials is not protected personal data. The amount of the awards received is not related to privacy and private life, but is an objectively existing fact. This case concerns access to public information offering the requester the opportunity to form an opinion on the Ministry's activities concerning budget funds spending for awarding Bulgarian and foreign citizens.

#### **Cassation appeal**

The Minister lodged an appeal. He claimed that the first instance court had wrongfully held that the information sought was not protected personal data.

## **Cassation (second) Instance Decision**

By decision no. 16380 of 10 December 2013 a Five-Member Panel of the SAC upheld the three-member panel decision. The court held that magistrates are high ranking officials according to Article 228 of the Judiciary Act (JA). Personal data protection for these individuals, according to the Constitutional Court of the Republic of Bulgaria is much more reduced compared to personal data protection of other citizens. An example is the declaration of income and assets of the magistrates before the National Audit Office under the Disclosure of Property of Persons Occupying High State Positions Act (DPPOHSTPA). The fact that judges, prosecutors and investigators are obliged to declare these circumstances in a public register, alone, shows that these data are not protected personal data.

## **2. Victoria Petrova (bTV) v. the Ministry of Finance**

First instance – administrative case no. 6242/2011 of the Administrative Court- Sofia City, Second Division, 35<sup>th</sup> panel

Cassation (second) instance – a. c. no. 13332/2013 of the SAC, Fifth Division

### **Request**

On 11 June 2011 Victoria Petrova (journalist from bTV) requested access to the declarations by which the independent members of parliament (MPs) direct their due state subsidy to political parties represented in parliament.

### **Refusal**

By decision of 22 June 2011 the head of the “Human Resources and Administrative Services” Directorate refused to provide the information sought with the argument that the independent MPs’ declarations contain protected personal data.

### **Complaint**

A complaint was lodged on the docket of the Administrative Court – Sofia City (ACSC), claiming that the refusal lacked grounds since it didn’t indicate the personal data the declarations contain. According to the declaration form, adopted by the Ministry of Finance, there should only be filled the names of MPs which are not protected personal data. Another argument before the court was that the information relates to state budget funds spending and does not concern the MPs private sphere, at all.

### **First Instance Court Decision**

By decision no. 5011 of 14 September 2014 the ACSC dismissed the complaint. The court held that the requested information reveals political beliefs and preferences of specific independent MPs. These political preferences, being held by independent MPs, i.e. ones who have not declared official membership to a political party, they should be treated as personal data of the respective individual.

### **Cassation appeal**

The ACSC decision was appealed before the Supreme Administrative Court (SAC). The appeal argued that the information sought does not contain MPs’ personal data. It continued that even if the declarations contain personal data, under the

Constitutional Court case-law, personal data protection of the persons who hold or have held public office or carry out or have carried out public activities is much more reduced compared to the protection of other citizens.

### **Cassation (second) Instance Decision**

By decision no. 6681 of 15 May 2013 the SAC repealed the ACSC decision and instructed the MF to provide access to the requested information. The justices stated that the case concerned access to public information, enabling the applicant to form an opinion on the fixing and distribution of a government subsidy, which is related to the state's political life. The political affiliation of an independent MP is not a fact, which is related to privacy and private life, but is an objectively existing fact which under the law should even be personally declared. MPs are public persons who identify before the public with their political orientation and budgetary spending.

### **3. Doroteya Dachkova v. the Sofia City Court**

First instance – administrative case no. 3156/2013 of the Administrative Court- Sofia City, Second Division, 41<sup>st</sup> panel

Cassation (second) instance – a. c. no. 11045/2013 of the SAC, Seventh Division

#### **Request**

On 18 February 2013 Doroteya Dachkova (journalist from “Sega” newspaper) requested from the President of the Sofia City Court (SCC) access to information on the delayed criminal and civil cases.

#### **Refusal**

By decision of 4 March 2013 the President of the SCC – Vladimira Yaneva – refused to provide the information arguing that it was of preparatory character and had no significance in itself (under Article 13, Par. 2 of the APIA), since it relates to the issuance of final administrative documents/acts by the SCC President and by the Supreme Judicial Council Inspectorate.

#### **Complaint**

The refusal was challenged before the ACSC with the argument that it violates the principle of legal foreseeability, because without explicit reasoning the SCC President was changing her practice. The SCC President had provided such information in a previous case. Furthermore, the complaint argued that the information sought has significance in itself and is not created with the purpose of issuing another final act, i.e. the restriction under Article 13, Par. 2 of the APIA is inapplicable.

#### **First Instance Court Decision**

By decision no. 4010 of 14 June 2013 the ACSC repealed the refusal and instructed the SCC to provide the requested information. The court held that the information has significance in itself, since it is of statistical and factual nature, and is not directly part of the drafting of further documents/acts. The court noted that the SCC President does not deny that her office had provided access to such information in previous years. It is not possible that the access to such information is in one instance free, but in another – restricted under Article 13, Par. 2, item 1 of the APIA. Besides, court hearings are in principle public, respectively the information on the case number, the

judge-rapporteur, the court's documents/acts, ruled in open hearings, are all public. The aggregate of this information to a certain period in a separate consultation should also be accessible to the public through a request under the APIA.

### **Cassation appeal**

The ACSC decision was challenged by the SCC President with the same arguments, namely that the information is of preparatory nature.

### **Court Hearing before the Supreme Administrative Court**

A sole hearing was held on 18 November 2013. AIP's attorney-at-law, representing the APIA applicant, argued that according to the European Court of Human Rights' case-law public trust in the judiciary is one of the pillars of a democratic society, and transparency and public awareness, including on issues of backlogs and the way the judiciary functions, are of paramount importance.

### **Cassation (second) Instance Decision**

By decision no. 132 of 7 January 2014 the SAC upheld the ACSC decision repealing the refusal. The justices stated that the requested information has significance in itself and is not directly related to the issuance of a further document/act, i.e. it is not merely preparatory information. The information reflects the performance of the judge's duties of delivery of judicial acts within a reasonable timeframe, which together with the delivery of the right acts ensures good justice, i.e. the quality implementation of the state provided judicial power.

## **4. Marta Mladenova v. the Ministry of Finance**

First instance – administrative case no. 1397/2013 of the Administrative Court- Sofia City, Second Division, 23<sup>rd</sup> panel

Cassation (second) instance – a. c. no. 11847/2013 of the SAC, Seventh Division

### **Request**

On 3 January 2013 Marta Mladenova (journalist from Darik radio) requested from the Ministry of Finance (MF) access to information on the supplementary remuneration (bonuses) distributed to the Ministry of Finance staff and to the staff of its second level budget spending units – the Customs Agency, the National Revenue Agency (NRA), the Public Financial Inspection Agency (PFIA), the Audit of European Funds Executive Agency and the State Commission on Gambling. Furthermore, the journalist requested answers to the following questions:

1. In 2012 have there been distributed supplementary remuneration (bonuses or other stimuli) to the Ministry and second level budget spending units' staff? If the answer is affirmative, when were distributed these supplementary stimuli?
2. Has there been distributed supplementary remuneration in the end of 2012?
3. What is the total amount of the distributed supplementary remuneration and what are the criteria for distribution of the bonuses amidst civil servants?
4. What is the amount of supplementary remuneration distributed to the

respective institutions' heads and their assistants (the Minister, the deputy ministers, the directors and presidents of the respective second level spenders with the Minister of Finance)?

### **Refusal**

On 17 January 2013 the Director of the "Human Resources and Administrative Services" directorate in the MF refused to provide the information under item 4 of the request arguing that the supplementary remunerations of the institutions' heads are protected personal data. Although there is no explicit refusal, information under item 1 and 3 of the request is not provided. There is only a detailed explanation of the criteria for distributing supplementary remuneration and the applicable regulation. The Director provides information only on item 2 of the request.

### **Complaint**

The Director's decision was challenged before the ACSC. The complaint argues that information on the remuneration of the MF and its subordinated structures' high-ranking officials is not protected personal data. These persons, as high-ranking officials, must declare their income and property under the Disclosure of Property of Persons Occupying High State Positions Act (DPPOHSTPA).

### **First Instance Court Hearing**

The ACSC held a single public hearing of the case on 29 April 2014. AIP's attorney-at-law presented written notes on behalf of the applicant, arguing the lack of any correspondence between question 1 and 3 of the request and the Director's reply. It was also argued that the disclosure of the information sought is of overriding public interest, since it will increase the transparency and accountability of state bodies.

### **First Instance Court Decision**

By decision no. 4446 of 3 July 2013 the ACSC repealed the challenged parts of the Director's decision and returned the file for a new decision. The court noted that the European Court of Human Rights in its 1986 decision *Lingens v. Austria* has held that in contrast to a private person, a public figure inevitably and knowingly exposes herself to close monitoring of her every word and deed by both journalists and the public at large. Adding to that, in Decision no. 4 of 26 March 2012 the Constitutional Court of the Republic of Bulgaria held that personal data protection of persons holding public positions is much more reduced in comparison to other citizens. Disclosure of the information, according to the court, is of overriding public interest in times of financial and economic crisis and in view of the contradictory statements of the Prime Minister and the Minister of Finance on this matter. Moreover, this is true in view of the sparked up serious debate in society and the existing doubts about the actual situation on the topic of public servants' bonuses.

### **Cassation appeal**

The Director of the "Human Resources and Administrative Services" challenged the ACSC decision. The appeal argued again that the information was protected personal data and added that it also is social security and tax information of these persons which could only be disclosed under the Tax and Social Security Procedure Code (TSSPC).

### **Cassation (second) Instance Decision**

By decision no. 3033 of 4 March 2014 the SAC upheld the first instance decision. The justices stated that the requested information enables the citizens to form an opinion on the functioning and accountability of government authorities through their budget spending as well as on the moral outlook of senior government officials in relation to the veracity of their statements on received or not received supplementary remuneration for the respective period of time in the central state authorities, in times of financial and economic crisis in the country. Providing information on the total amount of bonuses for the above mentioned senior officials will not lead to the financial individualization of the respective individuals and to the provision of personal data for each one of them.

### **5. Rossen Bossev v. the Ministry of Interior**

First instance – administrative case no. 9332/2013 of the Administrative Court- Sofia City, Second Division, 32<sup>nd</sup> panel

#### **Request**

On 10 July 2013 Rossen Bossev (journalist in “Capital” newspaper) requested from the Minister of Interior information on the number and purpose of the media mogul/MP Delyan Peevski’s visits in the Ministry building for the period July 2009 – June 2013. The information sought is specifically on the dates of the visits, to whom the visit was rendered and with what purpose as it is recorder in the register of the officer on duty.

#### **Refusal**

On 2 September 2013 the Director of the “Legal Activity” directorate refused provision of the information with the argument that it affects a third party and its explicit consent is required for the provision under Article 31 of the APIA. By a previous letter of the 27 August 2013, the MP has explicitly refused the disclosure of the information sought.

#### **Complaint**

The refusal was challenged before the ACSC. The complaint argues that there was no reasoning how the information on a person entering the Ministry building would affect a legally protected interest of that person. And even if there was such a legally protected interest, it should be held into account that MPs enjoy a much reduced personal data protection, especially when the matter is on their presence in public places, such undoubtedly being the Ministry building.

#### **First Instance Court Hearing**

The case was heard in public on 5 November 2013. Before the ACSC the AIP’s attorney-at-law representing the applicant argued the MP’s consent was wrongfully sought since he, as a member of parliament, is an obliged subject under the APIA.

#### **First Instance Court Decision**

By decision no. 7552 of 2 December 2014 the ACSC repealed the refusal and returned the file to the administrative body for a new decision. The court held that

there is an overriding public interest of disclosure. The information sought concerns a public figure – a MP, and his visits to the Ministry as recorded in the register of the officer on duty. Consequently, the information sought was created by the obliged body. It does not concern personal data, since disclosing the number and purpose of the visits would not lead to disclosure of personal information.

### **Cassation appeal**

The Ministry appealed the ACSC decision arguing that the information sought is protected personal data of the MP concerning his social and economic identity. Therefore, his consent was lawfully sought.

### **Cassation (second) Instance Hearing**

The case will be heard by the SAC in public on 25 May 2014.

## **6. Maria Koycheva v. “Chistota – Iskar” EOOD**

First instance – administrative case no. 8103/2013 of the Administrative Court- Sofia City, Second Division, 30<sup>th</sup> panel

### **Request**

On 27 May 2013 Maria Koycheva (journalist from “Sega” newspaper) requested from the Sofia Municipality Mayor access to the public procurement contracts concluded by the municipal company “Chistota – Iskar” (waste management company) for the last 5 years, including the contracts’ subjects, the name of the co-contracting companies and the prices. Information was also sought on the positions four employees occupy in the municipal company.

By a letter of 13 June 2013 the Sofia Mayor referred the request to “Chistota – Iskar” with the instructions that the company replies to the applicant with a copy to the Sofia Municipality.

### **Refusal**

By a written statement of 19 June 2013 the “Chistota – Iskar” manager declared that the company is not an obliged subject under the APIA and thus refused to provide access to the information.

### **Complaint**

The “Chistota – Iskar” manager’s reply was challenged before the ACSC. The complaint argues that the company is a public law organization in the meaning of Article 3, Par. 2, item 1 of the APIA and, consequently, is an obliged body. A public law organization, under § 1, item 4, letter “b” of the Additional Provisions (AP) of the APIA, is a legal entity, established to satisfy a public interest and more than the half of the members of its management or oversight body are appointed by a public procurement authority. The “Chistota – Iskar” capital is entirely owned (100%) by the Sofia Municipality. The Municipality’s rights in the company are exercised by the Sofia Municipality Mayor.

### **First Instance Court Hearing**

The case was heard in public on 24 October 2014. The AIP' attorney-at-law presented written notes arguing in detail that the company is an obliged subject under the APIA and adding that in this case there was an overriding public interest of disclosure of the information sought, since it is related to the parties, the subject and the price in contracts where one of the contracting parties is an obliged body under the APIA.

### **First Instance Court Decision**

By decision no. 7289 of 25 November 2013 the ACSC repealed the refusal of the "Chistota – Iskar" manager and instructed him to issue a decision on the request providing the information sought. The court held that the municipal company is a public law organization, since, as evidenced by its statutes, it performs activities that meet the public interest – collection and disposal of domestic waste in landfills or other facilities for disposal, cleaning of streets and other public areas, etc. Furthermore, more than half of the members of its management body are appointed by the Sofia Municipality which is a public procurement authority under Article 7, item 1 of the Public Procurement Act (PPA). The court also held that the information sought is public and there is overriding public interest of its disclosure, since it is related to the parties, the subject and the price in contracts where one of the contracting parties is an obliged body under the APIA.

## **7. Spas Spasov v. the Varna Municipal Council**

First instance – administrative case no. 1908/2012 of the Administrative Court – Varna

Cassation (second) instance – a. c. no. 11623/2012 of the SAC, Fifth Division

### **Request**

On 2<sup>nd</sup> April 2012 Spas Spasov filed a request from the President of the Municipal Council – Varna (MCV) information on the amount of salaries and bonuses received by managers, supervisors, procurators and members of the boards of directors of several municipal companies for 2010 and 2011.

### **Refusal**

By decision of 17 April 2012 the President of the MCV refused to provide the information sought, explaining that it is protected personal data in the meaning of Article 2, Par. 1 of the Personal Data Protection Act, since it regards the economic identity of the respective individuals.

### **Complaint**

The refusal was challenged before the Administrative Court – Varna. The complaint holds that the information is public because it regards the spending of public funds. The applicant refers to the existence of an overriding public interest in providing the information as it might indicate, or rule out, possible corruption and abuse of power, mismanagement of state or municipal property, or other illegal or inappropriate actions or inactions of administrative bodies and officials in the respective administrations.

### **First Instance Court Decision**

By decision no. 1902 of 17 July 2012 the Administrative Court – Varna repealed the refusal to provide information on salaries but dismissed the complaint in the part concerning bonuses. The court stated that information about the salary for the corresponding position does not concern personal data, but access to information, enabling the applicant to form an opinion on the activities of the obliged body and particularly on budget funds spending. Determination of salaries for these positions is part of the activities of the Municipal Council, which, as a local government body, should carry out in a transparent to the public way. Regarding bonuses, the court found that this information relates to specific individuals and to their economic identity and therefore is protected by the provisions of the PDPA.

### **Cassation appeal**

Both the President of the Municipal Council – Varna and the applicant, represented by AIP' attorney-at-law, lodged cassation appeals before the Supreme Administrative Court. The applicant's appeal holds that the information on bonuses is not personal data and also there is overriding public interest of its disclosure.

### **Cassation (second) Instance Decision**

By decision no. 8926 of 19 June 2013 the SAC repealed the first instance decision in the part where it had dismissed the complaint, as well as the MCV President's refusal. The justices did not share the first instance court's reasoning that information on bonuses relates to specific individuals and to their economic identity and therefore is protected by the provisions of the PDPA. They held that the requested information relates to the amount of the bonuses received in municipal companies and will allow one to form an opinion on how municipal funds are spent, which does not constitute personal data of the persons who received these bonuses.

## **8. Julian Tzankov v. "Toplofikatsia – Sofia" EAD**

First instance – administrative case no. 7139/2011 of the Administrative Court- Sofia City, Second Division, 38<sup>th</sup> panel

Cassation (second) instance – a. c. no. 11081/2012 of the SAC, Fifth Division

### **Request**

On 1<sup>st</sup> June 2011 Julian Tzankov (journalist in OFFNews) requested from the Executive Director of "Toplofikatsia – Sofia" EAD information on the value of the k-factor, calculated by the company, for a specific building in Sofia (in which he owned a flat), as well as a copy of the temperature schedules for the building, for the period 2006 – 2011.

### **Refusal**

By letter of 14 July 2011, signed on behalf of the Executive Director, "Toplofikatsia – Sofia" refused to provide the information sought on the grounds that it is a trade company and is not an obliged subject under the APIA.

### **Complaint**

This letter has been challenged before the ACSC. The complaint argued that Toplofikatsia is an obliged subject under the APIA as a public law organization, since the company is established with the purpose of satisfying a public interest and its capital is entirely owned by the municipality.

### **First Instance Court Decision**

By decision no. 2598 of 14 May 2012 the ACSC declared the refusal null and void and returned the file to the Toplofikatsia Director for a decision. The Court stated that the requested information relates to the implementation of statutory requirements for measuring and reporting of heating energy. The information allows the applicant to form an opinion on the functioning of a public law organization and therefore has the character of public information. Finally, the court reasoned the declaration of the refusal null and void by the fact that it is not signed by the Executive Director of the company, but by a person whose identity and powers have not been established in the case.

### **Cassation appeal**

The ACSC decision has been appealed by Toplofikatsia before the SAC. The appeal argues again that Toplofikatsia is not an obliged subject under the APIA and adds that the information concerns contractual relations between the company and the requester and it should not be sought and provided under the terms of the APIA.

### **Cassation (second) Instance Decision**

By decision no. 7228 of 28 May 2013 the SAC found the Toplofikatsia cassation appeal groundless and upheld the first instance decision. The justices held that Toplofikatsia is an obliged subject under Article 3, Par. 2, item 1 of the APIA as a public law organization in the meaning of §1, item 4, letter “c” of the Additional Provisions of the APIA. The company is a legal entity controlled by a public procurement authority under Article 7, item 1 of the PPA. The management and oversight bodies of the company are appointed by the Sofia Municipality which owns 100% of the company’s shares and is a public procurement authority under Article 7, item 1 of the PPA.

## **9. Krassimir Russev v. Targovishte Municipality**

First instance – administrative case no. 28/2012 of the Administrative Court – Targovishte

Cassation (second) instance – a. c. no. 8257/2012 of the SAC, Fifth Division

### **Request**

On 26 January 2012 Krassimir Russev requested from the Mayor of Targovishte Municipality a copy of the contract for sale of a municipal property (the terrain of the former flea market).

### **Refusal**

On 14 February 2012 the Targovishte Municipality Secretary refused to provide the information sought on the grounds that the third party’s (the buyer’s) consent lacked.

## **Complaint**

The refusal was challenged before the Administrative Court – Targovishte. The complaint argued that the Municipality should not have sought the third party's consent in the case, because the information does not affect any protected rights or interests of the buyer company. It was added that there is overriding public interest in disclosure of the contract, since this is information relating to the parties, subcontractors, the subject, the price, the rights and obligations, conditions, terms, and sanctions specified in a contract where one of the contracting parties is an obliged body under Article 3 of the APIA. According to § 1, item 5, letter "f" of the Additional Provisions of the APIA until the contrary is proven, there is overriding public interest in the disclosure of such information.

## **First Instance Court Decision**

By decision no. 29 of 9 May 2012 the Administrative Court – Targovishte dismissed the complaint. The court held that in this case the administrative authority has correctly requested consent from the third party, the buyer, which is party to the contract of sale of municipal property, as the contract contained identification data of the buyer and the individuals who represent it. The decision also stated that the request is essentially looking for the provision of a document, and not information, which gives sufficient grounds to justify a complete refusal. Finally, the court noted that in the case there is no overriding public interest of disclosure.

## **Cassation appeal**

The Administrative Court – Targovishte decision was challenged before the SAC. The applicant, represented by AIP's attorney-at-law, argued that the contract of sale actually contains identification data of the buyer and the individuals who represent it, but that does not mean that these identification data are protected information. Moreover, this information is public, as part of a public register – the Commercial Register. It contains not only all the identification data for companies but also for the individuals who are entitled to represent them. The appeal cites the sustainable SAC case-law according to which whether one is requesting access to the particular material medium of the information or is seeking the information itself is irrelevant to the obligation of providing it. In this case one of the parties to the requested contract is the Targovishte Municipality, consequently access to the public to all the information in the contract relating to the parties, subcontractors, the subject, the price, the rights and obligations, conditions, terms, and sanctions is of overriding public interest.

## **Cassation (second) Instance Decision**

By decision no. 4909 of 9 April 2013 the SAC repealed the first instance decision as well as the Targovishte Municipality Secretary refusal. The Justices listed a number of SAC decisions holding that the request for a copy of a document is equivalent to a request for access to the information contained in it. The court noted that the APIA contains a presumption of overriding public interest, where the information requested relates to the main clauses in contracts where one party is obliged body. In this situation, the Mayor and the persons authorized by him were required to provide the information or to establish the absence of an overriding public interest. Such

reasoning is not to be found in the decision of the Municipality Secretary, who bears the burden of proof for rebutting the statutory presumption. Consequently, the Justices held that the public interest overrides the refusal to access the information sought.

## **10. Dancho Zaverdzhiev v. the Lovech Municipality Mayor**

First instance – administrative case no. 135/2013 of the Administrative Court – Lovech

### **Request**

In the end of April 2013 Dancho Zaverdzhiev requested from the Lovech Mayor information on what distance has travelled a vehicle owned by the Municipality, what were the municipal expenses on that vehicle, as well as a copy of the vehicle's maintenance book for the period 01 January 2012 – 31 December 2012. By decision of May 2013 the Mayor provided information on points 1 and 2 of the request (on the distance travelled and the expenses made). It is provided as data incorporated in the decision itself. There is no mention, however, of the issue of the maintenance book – point 3 of the request. On 9 May 2013 Dancho Zaverdzhiev filed a new request for a copy of the municipal vehicle's maintenance book.

### **Refusal**

By decision of 23 May 2013 the Mayor refused to provide a copy of the vehicle's maintenance book. It was argued that this document is not kept in the "Economic policy and budget" directorate. It was stated that the maintenance book does not contain information on the actual use of the vehicle and the Municipality's activities. The refusal argues that there is no overriding public interest in disclosing this information, as well as that copying of such voluminous documents does not correspond to the meaning and purpose of the law.

### **Complaint**

The refusal was challenged before the Administrative Court – Lovech. The complaint, prepared by the AIP Legal team, held that the fact which directorate or department of the municipality kept the requested information was irrelevant to the provision of access to it under the APIA. The vehicle's maintenance book is not a voluminous document and the purpose of the APIA is precisely that citizens have the opportunity to receive copies of real documents, helping them form their own opinion about the activities of the obliged bodies.

### **First Instance Court Decision**

By decision no. 118 of 15 November 2013 the Administrative Court – Lovech repealed the refusal and instructed the Mayor to provide the information sought. The court held that there is overriding public interest in disclosure, since this information will allow the applicant to form an opinion on whether the Lovech Municipality follows correctly the requirements on drafting documents on the exploitation of municipal vehicles. Consequently, providing this information would increase the accountability and transparency in the Municipality's activities, in consistency with the purpose of the APIA.



# ACCESS TO INFORMATION IN BULGARIA 2013

## Report

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## ACCESS TO INFORMATION PROGRAMME FOUNDATION



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

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

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

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

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

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

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

In 2013, the Bulgarian National Audit Office recognized AIP with the Symbol of the National Audit Office and a Diploma for AIP contribution to the enhancement of the publicity and transparency of the institutions in Bulgaria and to the development of an informed society.

### Goals

- 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.