



ACCESS TO INFORMATION PROGRAMME

SOFIA 2015

ACCESS TO INFORMATION IN BULGARIA

2014

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AMERICA FOR BULGARIA
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Access to Information in Bulgaria 2014 Report

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Contents

FOREWORD	7
1. ACCESS TO INFORMATION LEGISLATION 2014 – 2015.....	9
2. PROACTIVE PUBLICATION OF INFORMATION	21
3. LEGAL HELP IN CASES REFERRED TO AIP – 2014.....	62
4. LITIGATION	82
APPENDIX	
APPENDIX 1	
Comparative Tables of 2012 – 2015 results and results from 2015 Audit on 544 Institutional Web Sites by Type of Public Body	100
APPENDIX 2	
Statistics From Access To Information Programme Electronic Data Base Of Cases Referred For Legal Help	156
Appendix 3	
Litigation Case Notes	159

FOREWORD

This year Access to Information Programme's annual report on the state of access to information in Bulgaria is released with a little delay and contains no recommendations.

The reasons are the following.

In the beginning of 2014, AIP launched a public consultation on the necessary amendments to the access to information legislation. Several discussions with interested parties were held regarding identified problems with the APIA implementation and possible legal solutions. In December 2014, AIP published a *Concept Paper on Amendments for the Access to Public Information Legislation*.

In the summer of 2014, a working group was formed at the Ministry of Transport, Information Technologies, and Communications. AIP experts were invited to take part in the working group whose mandate was to draft amendments to the Bulgarian legislation regarding the introduction of the revised Directive 2013/37/EU on the Re-use of Public Sector Information. In 2007, the Directive 2003/97/EC on the Re-use of Public Sector Information was transposed in the Access to Public Information Act. In the course of the discussions in the working group, AIP presented its proposals for necessary amendments to the Access to Public Information Act based on identified problems in the implementation practices. Part of the recommendations which we made within the discussions were taken into consideration and included in the texts of the Draft Law on Amendments to the Access to Public Information Act which was introduced in the National Assembly on April 29, 2015.

However, one of the main recommendations – for the establishment of an oversight body to coordinate and control the implementation of the Access to Public Information Act – was not supported.

The report contains an assessment of the Draft Law on Amendments to the Access to Public Information Act from the perspective of AIP experience in monitoring the proactive disclosure of information practices, providing legal help to requestors, and analysing the access to information litigation practices.

The report presents and analyses the results of the Audit on Active Transparency on the web sites of 544 institutions, performed between 23 February and 23 March 2015 by researchers from the AIP team.

The report also contains systematization and analysis of the cases referred to AIP for consultation and legal help, as well as an analysis of the 2014 judicial practices.

Gergana Jouleva

June 2015

1. ACCESS TO INFORMATION LEGISLATION 2014 – 2015

In 2014, a major step was taken towards improving the Access to Public Information Act. In August the Ministry of Transport, Information Technology and Communications set up a working group to draft a bill amending the APIA. AIP representatives actively participated in the group's work.

The main impetus of the legislative reform is the transposition of Directive 2013/37/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. The amendments enlarge the scope of the directive to include archives, libraries and museums. They create obligations for publication of certain information, for calculating the re-use charges in accordance with objective, transparent and verifiable criteria, they also create an obligation to review and unify practices. Part of the APIA amendments is aimed at introducing these requirements.

Meanwhile, in April AIP started work on a broad discussion on the necessary amendments to the APIA. During the months of June, July and October 2014 AIP conducted five discussions with various stakeholders – journalists, lawyers, representatives of state administration, NGOs, bloggers and business sector. After taking into account the identified problems, the received proposals for their solution and the analysis of the experience that AIP acquired through the constant legislation monitoring and provision of legal help, the AIP team drafted a [Concept for amendments to the access to public information legislation](#). The concept is based on international standards, some of the best examples of foreign legislative and practical experience, and the case law on the implementation of the APIA in the last 15 years.

Second Open Government Partnership National Action Plan

The initiative for amending the APIA was also prepared during the April and May 2014 meetings held by the Ministry of Regional Development team with different stakeholders – non-governmental organizations, representatives of business, employees organizations, and the National Association of Municipalities in Bulgaria – on the occasion of drafting and

discussing the Second National Action Plan under the Open Government Partnership (OGP) initiative. AIP representatives took active part in these meetings, which resulted in the plan providing for commitments concerning amendments to the APIA towards expanding and detailing the obligations to proactively publish information and towards enhancing the coordination and control of the implementation of the act.

The Second OGP Action Plan included a commitment that Bulgaria ratify the Council of Europe Convention on Access to Official Documents.¹ This has been recommended in our annual reports for many years.² According to AIP's assessment, the current legislation is in compliance with the Convention.

The Directive 2013/37/EU requirements

Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amended Directive 2003/98/EC on the re-use of public sector information and introduced more detailed rules in several aspects:

- extending the scope of the re-use of public sector information by including documents held by libraries, archives and museums³;
- obligation to publish information in order to facilitate the search – by publication, where possible and appropriate, online and in machine-readable format, of asset lists of main documents with the relevant metadata, and portal sites that are linked to the asset lists of main documents⁴;
- provision of information in convenient for re-use open formats – where possible and appropriate, in open and machine-readable format together with their metadata⁵;

¹ Treaty open for signature and ratification since 18 June 2009, <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=205&CM=1&CL=ENG>

² This recommendation is included in each AIP Annual Report on the State of Access to Information in Bulgaria since 2009. It was formulated for the first time in the "Access to Information in Bulgaria 2009" report, page 7, available at: http://store.aip-bg.org/publications/ann_rep_eng/09.pdf

³ Amendment to Article 3, § 2 of Directive 2003/98/EC.

⁴ Amendment to Article 9 of Directive 2003/98/EC. We refer her to the more precise English version of the Directive, since the Bulgarian translation introduces the more vague wording "lists of materials", where the reference to "materials" does not define what these materials are.

⁵ Amendment to Article 5, § 1 of Directive 2003/98/EC. While the expression used is "where possible and appropriate", § 2 specifies that § 1 does not imply an obligation to create or adapt documents or provide extracts where this would involve a disproportionate effort. That is, where it possible by a simple operation to be carried out the creation, adaptation or providing an extract, then there is an obligation.

- online publication of the criteria in determining the costs – transparency of all applicable conditions, the actual amount and the method of calculation of the costs (fees) for the re-use of public sector information;⁶
- the introduction of a limit on the amount of fees – to the amount of the marginal costs incurred for the reproduction, provision and dissemination of documents⁷, with some exceptions⁸;
- obligation to justify refusals on the same grounds as those applicable to access to public information⁹, obligation to include a reference¹⁰ and inform¹¹ of the means of redress which include the possibility of review by an impartial body;¹²
- detailing the directive's scope by listing the applicable limits according to national access to official documents regulations and making a clear reference to the applicability of these national regulations.¹³

Access to public information and re-use of public sector information. History of the problem

Directive 2003/98/EC was transposed in national law in 2007 following heated debates in parliamentary committees, where AIP also took part. It was agreed that the directive be introduced through the Access to Public Information Act, but refining of the imported provisions was carried out in a hurry. The edits associated with transposing the Directive were indispensable and time-consuming, as the version originally proposed in 2007 contained a number of texts violating international standards on the right of access to public information. The work on the substance of these texts was of greater priority and as a consequence it was not possible to spend the necessary time to refine the provisions. A similar approach in the implementation of Directive 2003/98/EC – through the access to information laws can be seen in other member states of the European Union (EU). In some of them the functions of oversight of the implementation of the legislation on the re-use of public sector information are assigned to the access to information commissioners. Discussing the problems with implementing this legislation at international forums shows

⁶ Amendment to Article 7 of Directive 2003/98/EC.

⁷ Amendment to Article 6, § 1 of Directive 2003/98/EC.

⁸ The exceptions are provided for in Article 6, § 2 of the amended text of Directive 2003/98/EC.

⁹ Amendment to Article 4, § 3 of Directive 2003/98/EC.

¹⁰ Amendment to Article 4, § 4, first sentence of Directive 2003/98/EC.

¹¹ Amendment to Article 7, § 4 of Directive 2003/98/EC.

¹² According to Article 4, § 4, sentence two of Directive 2003/98/EC in its new version, this may be the national authority on access to documents, the competition authority or the court.

¹³ New version of Article 1, § 2 (ii), letter „c“ of Directive 2003/98/EC.

that in many cases there still exist uncertainties as to the implementation of the directive, as the rights flowing from it are far less intensively exercised than the right of access to public information. The Bulgarian government's reports on the state of public administration also fail to present any data on the exercise of the right of re-use of public sector information.

Another legislative approach that has been adopted by some EU members is the adoption of a separate law governing the re-use of public sector information. This approach in Bulgaria has been used for the adoption of the Access to Spatial Data Act, which introduced Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE).

Between 2007 and 2015 the matter was very sporadically treated in case law¹⁴. Both Supreme Administrative Court (SAC) decisions discussing the distinction between "access to public information" and "re-use of public sector information" stress that Directive 2003/98/EC "aims to create favorable conditions for the use of the economic resources of the information created and kept by public sector organizations, focusing on the vital importance of the right to re-use it for the development of the information industry, economic growth and creating new employment..." According to the court, in view of the directive's objectives "under Article 2a, par. 1 of the Act is sought information, possibly not created by the relevant public body, and most commonly not in connection with the implementation of its organizational duties of management and oversight. That is information that has been collected, produced, reproduced and disseminated in the cases listed as an example in Art. 4 of Directive 2003/98/EC: such as social, economic, geographical, weather, tourist, business, patent and educational information... typical for it [public sector information for re-use] is that it relates to the specific "public" activity of the administrative unit, and not to the organizational management, oversight and the organization of its work."

¹⁴ Decision no. 14206/30.10.2013, on administrative case no. 58/2013, of the Supreme Administrative Court, Fifth Division, and Decision no. 3324/25.03.2015, on administrative case no. 5619/2014 of the SAC, Fifth Division. In these court decisions distinction is made between "access to public information" and "re-use of public sector information." In both cases it is held that the requested information is part of the former category.

The comparison that is made in the decision of the SAC between the legal regimes of access to public information and re-use of public sector information leads to the conclusion that “in the case of access under Art. 2, par. 1 of the APIA the information is the means by which is achieved the information seeker’s aim – to form their own opinion on the activities of the obliged body. In the cases of re-use of public sector information pursuant to Art. 2a, par. 1 of the Act the objective is the acquisition of the information itself for its further use. The means of achieving this goal are the request of the information by the interested person or organization and the obligation to provide it that binds the public sector organization that collects it and / or stores it.”

At the time of discussion and adoption of Directive 2003/98/EC, in two of the most influential EU member states – Germany and the United Kingdom – no access to public information act was being implemented yet.¹⁵ On the other hand, the term "re-use" goes beyond the problems of access to information, as it covers issues related to its use. As far as the EU legislation refers to the use of data and databases, to the duties and opportunities in publishing and dissemination of information, including through the Internet, besides access to information, it covers issues concerning the conditions and licenses for the use of this information, their unification, the prohibition of monopoly and exceptional clauses in favor of individual customers. More so, the purposes and provisions of the Directive take into account the possibility of further processing by the applicant of the public sector information received for commercial or non-commercial purposes.

Expanding the scope of obliged bodies.

Obligation to proactively publish information

Directive 2013/37/EC provides for broadening the scope of the Directive on re-use of public sector information by including information created by archives, libraries and museums. Accordingly, these organizations are now required to publish the conditions for providing information for re-use.¹⁶

¹⁵ A federal Freedom of Information Law was adopted in Germany in 2005, and in the United Kingdom in 2000, but because of the long period set for preparation of the administration (*vacatio legis*) it only entered into force in 2005 (Freedom of Information Act). The Directive was adopted in 2003 and discussions and consultations on it began earlier.

¹⁶ Article 15, par. 4 of the Bill on amendments to the APIA.

The amendment of Art. 15, par. 1 of the APIA broadens the list of categories of information that the heads of the administrative structures within the system of the executive should publish. The thirteen additional categories of information largely replicate existing publication obligations,¹⁷ but from a systematic point of view it is actually more appropriate to list them in a single general provision. Along with the specific purposes referred to in the relevant special legislation, the publication of these categories of information will be carried out with the overall objective to ensure transparency and maximum facilitation of access to public information.¹⁸ The aim of disclosure of the information is relevant in cases where disputes arise regarding the volume that has to be published.

There are also some new publication requirements. For example, from now on the categories of information subject to disclosure pursuant to Article 14 of the APIA should also be published in electronic form on the institutions' websites.¹⁹ The amendments also introduce an obligation to publish online the information that has been provided on requests more than three times.²⁰ After the bill's public consultation and interagency consultation procedures, the proposed text of Article 15, par. 1, item 16 of the APIA has acquired new wording, according to which "information provided more than three times under this chapter" should be published. Since "this chapter" (Chapter Two of the APIA) refers to the proactive disclosure of information, the current wording of this text in the bill (Article 15, par. 1, item 16 of the APIA) actually provides that information published three times will have to be published another fourth time, which is obviously not the original intent.

It is possible that the purpose of this text is to publish the requests submitted electronically through the platform for access to public information, which is being created by the new provision of Article 15c of the APIA. An obligation to publish any application submitted through the platform and the corresponding decision and provided information is contained in Article 15c of the APIA. Hence, a contradiction occurs – according to Art. 15c the obligation to publish refers to any request lodged via the platform, and the information received thereupon, but according to Art. 15, par. 1, item 16 the obligation to publish arises

¹⁷ Items 5 – 17 of Article 15, par. 1 of the bill.

¹⁸ According to the proposed text of Article 15, par. 1 of the APIA.

¹⁹ Practically this is being done in some cases currently, but for the first time a legal obligation is introduced. Meanwhile, online publication cannot replace the notification by other means, such as the media, since in cases of disasters, accidents etc. (Art. 14, par. 2, item 1 of the APIA) it is necessary to notify people in the shortest time by all available means.

²⁰ Such an obligation for proactive publication is found in other national laws with similar subjects of regulation.

only after three requests on the same issue have already been submitted. It is obvious that the obligation to publish the information provided on three requests must relate to every application submitted under Chapter Three of the APIA. The information provided upon requests submitted via the platform under Chapter Two of the APIA will be published right after its provision on the first such application. Because of these technical legal reasons, it is advisable that the words “under this chapter” be eliminated from the text of Article 15, par. 1, item 16 of the APIA.

A new obligation for periodic publication of information falling within most of the categories listed in the Article 15, par. 1 of the APIA is assigned to public law organizations that in many cases are companies with state or municipality owned shares meeting certain criteria.²¹

The bill introduces an obligation for all heads of bodies in the executive, as well as of public law organizations to announce annually a list of the categories of information to be published on the internet concerning the sphere of activity of the respective administration. This duty enables the heads of organizations to expand at their discretion the scope of mandatorily published information outside of the minimum provided for in Article 15, par. 1 of the APIA.

From now on public sector organizations should gradually publish on the internet information sets and resources in open format. The administration of the Council of Ministers should establish and maintain an open data portal. The procedure and manner of publication of this information will be determined by an ordinance of the Council of Ministers.²²

Electronic access to information requests and responses

In recent years, the number of people with access to the internet, including in Bulgaria, has been expanding.²³ A large part of the administrations of public authorities have provided

²¹ To a large extent the criteria match the characteristics of determining which organizations are assignors of public procurements.

²² See Article 15d, par. 3 of the bill.

²³ The percentage of Internet users is increasing every year, as the global number approaches 3 billion people in 2014. In Bulgaria Internet users are about 57% of the population, while in more developed countries, the percentage is even higher: United States (86, 75%), Germany (86.78%), Japan (86.03%), UK (89.90%). See more at: <http://www.internetlivestats.com/internet-users-by-country/>

the possibility, in accordance with Article 24, par. 2 of the APIA, for requests to be submitted electronically²⁴. However, the AIP annual surveys report a certain percentage of institutions that do not accept electronic requests. Besides them, there are some that require an electronic signature in violation of Article 41 of the Constitution and the APIA. The citizens' and legal entities' right to information is a right that pertains to everyone and the corresponding obligation of public bodies is to provide access to information. The introduction of undue restrictions of procedural nature restricts the right and creates privileges for the users and owners of the respective technical skills and devices, while for the other citizens the submission of requests via e-mail becomes an inaccessible form of exercise of their right. At the same time, the positive identification of each applicant is not necessary in view of the nature of the right of access to public information, and such a requirement is not contained in the current provision of Article 25, par. 1 of the APIA, either.

These trends require an appropriate legislative solution, one example of which has been proposed in the bill. The amendment introduces a prohibition to require an electronic signature from the requesters. The other side to the process – providing information electronically, is also subject to the statutory amendments. The practice has also illustrated problems and divergent interpretations of the law in this regard. The newly established case law on this issue has not led in turn to the development of a clear and unified administrative practice.²⁵ Therefore the bill specifically introduces the possibility that access be granted both by email and by reference to the Internet address where the data is stored or published.²⁶

In this respect, the rules on signing a protocol attesting the provision of the information are also being amended. In the cases of provision of information by electronic means such a protocol will not be required. The decision and disclosed document/s/ will be subject to provision electronically, whereby the deadlines for appeals will be counted from the time of receipt,²⁷ and when the applicant has indicated an incorrect or nonexistent address – from the moment of sending the information.²⁸

²⁴ The procedure is often provided for in the internal rules of the institution.

²⁵ According to case law on the matter established in 2014, the provision of information electronically falls within in the form "provision on technical carrier": see Decision no. 512 of 15.01.2014, on a. d. no. 6659/2013 of the SAC, Seventh Division, Decision no. 1864 of 11.02.2014, on a. c. no. 14317/2012 of the SAC, Fifth Division.

²⁶ Art. 26, par. 1, item 4 of the Bill of amendments to the APIA.

²⁷ Art. 35, par. 3 of the Bill of amendments to the APIA.

²⁸ Art. 35, par. 4 of the Bill of amendments to the APIA.

The bill also creates a platform for access to public information.²⁹ The platform will be maintained by the Council of Ministers. Those who wish to submit requests for access to information through it will achieve an effect similar to publication. The bill provides for the obligation of the respective administrative body to publish each filed via the platform request, the administration's decision thereupon and the provided information.³⁰ There is the unresolved issue of creating the necessary capacity of the state administration to ensure the work for the publication of these documents, which is in addition to handling the requests.³¹ At the same time, it is necessary to ensure the control over the implementation of the obligations of public authorities that will arise in relation to the platform.

Restrictions on the right of access to public information and the re-use of information

The bill proposes to amend Article 31 of the APIA regulating the request for consent from an affected third party to provide the requested information. Under current law, the information is provided in volume and manner not disclosing the information related to the third person, when that person has not explicitly given his consent or has not replied to the request. Therefore, in the current version the third party's dissent is presumed. Under the proposed new text the lack of explicit dissent is considered consent of the third party for provision of the information. Thus, the presumption is reversed – the lack of response is considered to be a lack of objection to the provision of the information.

More significant are the amendments to the rules in Chapter Four of the APIA relating to the restrictions on provision of public sector information for re-use. The number of hypotheses increases.

With Directive 2013/37/EC is amended Article 1 of Directive 2003/98/EC, according to which outside of the scope of information for re-use remains the information excluded by virtue of national access to information legislation on the grounds of:

²⁹ Art. 15c, par. 1.

³⁰ Art. 15c, par. 3.

³¹ Such platforms are www.asktheeu.org, maintained by AccessInfo Europe, and www.whatdotheyknow.com, maintained by MySociety. In these cases, the responsibility for maintaining the platforms is not effectively taken entirely by a public authority. In this sense, the Bill of amendments to the APIA proposes a unique legislative solution that has no analogue to date, therefore there is a lack of experience on potential challenges.

- the protection of national security (i.e. State security), defence, or public security;
- statistical confidentiality;
- commercial confidentiality;
- documents for which citizens or companies have to prove a particular interest to obtain access to;
- parts of documents containing only logos, crests and insignia;
- documents access to which is excluded or restricted on the grounds of protection of personal data.

Indeed, in the current version of the APIA there are only four cases in which information for re-use should not be provided. At the same time, the reasons listed above justify legitimate restrictions on access to public information, including under the current Bulgarian legislation. Classified information, trade secret and personal data protection are grounds for refusal on a request for access to public information submitted under the APIA.³² Statistical secret constitutes “other protected secret” within the meaning of Article 37, par. 1, item 1 of the APIA and the information to which access may be granted only upon demonstration of a personal interest does not fall within the definition of “public information”.³³

In the very Directive 2013/37/EC lies the idea that restrictions on the re-use of information should follow the regime of restrictions on access to public information under national law. Indeed, it is difficult to justify the reasonableness of a legal regime under which access to information is subject to more restrictions or such having a broader scope than the re-use of public sector information. This would mean, for example, that access to a given document would be subject to restriction, whereas access to the entire database of which the document forms part would be unrestricted. Therefore, the envisaged expanding of the number of restrictions in Chapter Four of the APIA is justified.³⁴

³² See Art. 37, par. 1 of the APIA.

³³ This includes for example access to stored data, access to which is recognized only to the person to whom they refer, or who would protect their rights and legitimate interests through this access.

³⁴ See Art. 41b of the APIA.

Certainly, it is essential that the grounds for any restriction on the re-use of information be subject to an assessment of a potential overriding public interest, as is the case with the regime of access to public information.

An important point in Directive 2013/37/EU is the obligation that the reasons for refusal be explained in any refusal to provide information for re-use to the applicant.³⁵ The requirement to state the reasons for refusals and the possibility of redress before the courts was laid down in the APIA as early as 2007.³⁶

Charges for re-use of public sector information

The amendments to the APIA in 2007,³⁷ which introduced the regime of re-use of public sector information provided for the charges to be determined by a Tariff of the Council of Ministers.³⁸ Such a tariff has not been adopted.

Directive 2013/37/EU affirms the principle that charging for re-use of information should be limited to the marginal costs incurred for the reproduction, provision and dissemination of the documents.³⁹ The proposed amendments to Article 41g envisage that charges be determined by the cost of reproduction and provision of the information.

The criteria for calculating charges should be objective, transparent and verifiable. Standard charges for re-use should be defined in advance and published, possibly by electronic means.⁴⁰ This is also envisaged in the bill.

At the same time, the bill is abandoning the approach that a general tariff of the Council of Ministers be adopted for all obliged bodies and that municipal councils be empowered to adopt the amount of charges for re-use of information concerning individual municipalities. Indeed, these amounts may not exceed the amounts determined by the tariff of the Council of Ministers, but the benefit for citizens and legal entities flowing from the possibility that there be over two hundred municipal tariffs for re-use of information

³⁵ Art. 4, § 3 of Directive 2003/98/EC, amended by Directive 2013/37/EU.

³⁶ Art. 41i of the APIA.

³⁷ Published in the State Gazette in number 49 of 2007 (promulgated SG, issue 49/ 2007)

³⁸ Art. 41g of the APIA.

³⁹ Art. 6, § 1 of Directive 2003/98/EC, amended by Directive 2013/37/EU. A reasonable return on investment is permissible according to art. 6, § 3.

⁴⁰ Art. 7, § 1 of Directive 2003/98/EC, amended by Directive 2013/37/EU.

remains dubious. The aim of the 2013 Directive is that charges be limited to the marginal costs and be objective, transparent and accessible to users. It is doubtful that the aim will be achieved better by replacing the single tariff provided for until now /though still nonexistent/ with any set of tariffs that will be subject to future assessment of compliance with the requirements of the directive and the law.

APIA implementation oversight

The bill introduces administrative penal liability for violation of the obligations related to the provision of information for re-use. However, the issue of the necessary strengthening of oversight over the implementation of APIA is not resolved. After the closure of the Ministry of State Administration and the Administrative Reform of 2009, laws concerning civil servants and public administration, including the APIA, remained without oversight. Burdening the administration of the Council of Ministers with extraneous functions cannot compensate for this lack of oversight. The government's administration cannot grow into a mega-ministry. Other countries, including in the European Union, have put in place special institutions – Information Commissioners. In some legal systems these functions are performed by the national ombudsman and are part of his/her mandate. With about 10,000 requests under the APIA annually and more than 500 executive bodies obliged to provide information on requests, but also proactively, the monitoring and harmonization of practices is essential to increase the transparency and accountability of governance. This is necessitated in view of the increasingly broader obligations for publishing documents on the Internet, the new obligations to ensure accessibility in open format, and the increasing electronic access and electronic provision of information. Reducing silent refusals is also a necessary step for the entire administration. It is, therefore, advisable, following the adoption of the introduced bill, to consider the improvement of control over the implementation of the APIA. The measures to prevent corruption cannot be identified sporadically, spontaneously, and without regard to the overall system of the state administration and the fulfillment of its basic duties towards citizens. The work of each government towards a transparent and accountable administration, capable of winning the trust of the citizens, is the only pledge for real and lasting solution to these issues.

2. PROACTIVE PUBLICATION OF INFORMATION

The main principle underpinning the access to information legislation is that all information generated and held by public institutions which is not subject to restrictions, i.e. access to it would not harm any common or personal interest, should be accessible. The accessibility of the information not subject to any restrictions should encompass its unfettered publication, and the latter is most effective when using the new technologies, i.e. in the Internet.

2.1. The principle of proactive publication

One of the main elements of the access to information legislation is the principle that the public bodies shall pursue a policy of publishing information of general interest without the need for an individual request, the so called [policy of proactive publication](#).

The Convention on Access to Official Documents of the Council of Europe (the Convention), adopted in November 28, 2008, determines the active transparency as one of the principles of the right of access. Article 10 of the Convention gives a broad formulation of the obligation of executive bodies, but, nevertheless, reflects the developing legislation in the member states, namely:

Article 10 – Documents⁴¹ 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.⁴²

⁴¹ The definition of “official documents” given by the Convention coincides with the term “public information” provided by the Bulgarian APIA, namely “Art.1...b: “official documents” means all information recorded in any form, drawn up or received and held by public authorities.”

⁴² The Convention was open for signature on June 18, 2009. See:

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

The Explanatory Report to the Convention⁴³ clarifies what “official documents of general interest” shall be made public without the need for individual requests, namely: documents concerning 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 are supposed to be published at the initiative of the public authorities.

2.2. Legal regulation of the principle of proactive disclosure

The policies of proactive publication of information by public bodies are regulated mainly by the access to information laws, but by other laws as well.

The Explanatory Report to the Convention gives advice to the member states to establish national rules for proactive publication and thus encourage the policy of making public information accessible without the need for individual requests.

With the adoption of the Bulgarian Access to Public Information Act in 2000, the obligations for promulgation, announcement, and publication of specific categories of information were established, particularly in the provisions of Art. 12, Para. 1 and Para. 2, Art.14, Art. 15, and Art. 16. The categories of information of common interest, subject to **promulgation by all bodies obliged under the law** were listed: normative acts, other official public information provided by law or by a decision of the authority;⁴⁴ **announcement by all authorities** – information which could prevent some threat to the citizens' life, health or security, or to their property; disproves previously disseminated incorrect information that affects important social interests; is of public interest; must be prepared and released by virtue of law; and **publication by the executive bodies**: description of powers, and data on the organizational structure, the functions and the responsibilities of the administration; list of acts issued within the powers; contact information; summary of data related to the APIA implementation.

⁴³ Ibid.

⁴⁴ The definition of “official information” is provided by Art. 10 of the APIA: “information contained in the acts of the state or local self-government bodies in the course of exercise of their powers.”

2.3. Elements of the legal regulation of the proactive disclosure

2.3.1. Harmonization of the obligations to publish

Although all bodies of authority maintain Internet sites and publish information about their powers, functions, structure, acts, strategies, and activities, the legal obligation for proactive publication of information under the APIA is valid for the executive bodies alone.

The Judiciary Act establishes the obligations for the courts and the Supreme Judicial Council to publish information related to their justice administering activities and the administration of the judicial power. The Judiciary Act provides in detail the time frames within which information shall be published on the Internet.

The Regulations for the Organization and Activities of the National Assembly⁴⁵ establish the rules for the publication on the Internet of specific categories of information, related to the legislative process.

The obligation for proactive publication by the bodies under Art. 3, Para.2, item 1, i.e. “bodies, subject to the public law, other than those under sub-art. 1, including public law organizations” is not yet regulated.⁴⁶

The proactive publication practices show that different bodies of power fulfill the requirements of Art. 15 and Art 15a of the APIA, regardless of the fact that the latter affect only the executive bodies.

The draft amendments to the APIA,⁴⁷ introduced in the National Assembly,⁴⁸ would increase the obligations of the heads of administrative structures and the “public sector bodies”⁴⁹ with regard to the publication of information resources and data bases in open

⁴⁵ Regulations for the Organization and Activities of the 43th National Assembly, promulgated in issue 97 as of November 25, 2014 of the State Gazette.

⁴⁶ A definition of “public law organization” is given by the Additional Provisions of the APIA, item 4: http://www.aip-bg.org/en/legislation/Text_of_the_APIA/200432/.

⁴⁷ Available in Bulgarian at the Government Public Consultations Portal: <http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1474>

⁴⁸ By decision No. 279 as of April 29, 2015, the Council of Ministers approved of the Draft Law on Amendments to the Access to Public Information Act. The bill was introduced in the 43th National Assembly on the same date: <http://www.parliament.bg/bg/bills/ID/15366/>.

⁴⁹A term used in the Directive 2013/37/EU of the European Parliament and the Council for revision of the Directive 2003/98/EC regarding the re-use of public sector information which encompasses all subjects under Art. 3, Para. 1 and Para. 2, item 1 of the APIA, i.e. state bodies, their regional offices, the local self-government bodies, and the public-law organizations together with their associations.

formats in the Internet (Art.15b) and with regard to specific categories of information under Art. 15 and 15a.

2.3.2. The Internet rule

The Explanatory Report to the Council of Europe Convention on Access to Official Documents, in its paragraph 72 related to Art. 10 of the Convention, encourages public authorities to use different forms of proactive publication, including the use of new information technologies and publicly accessible Internet sites, together with the traditional reading rooms and libraries of the institutions.

Before the Internet era, the approach embedded in the access to information legislation with regard to the important for society information generated by public bodies was that it shall be promulgated, announced, or published.

In the XXI century, the standard for publishing information of importance to society is complemented by publication on the Internet. Currently, the so called “Internet clause” is introduced in the access to information legislation. States with older legislation are amending it or are adopting new laws for electronic access to information, containing rules for publication on the Internet sites of public authorities.

The “Internet rule” was introduced in the Bulgarian Access to Public Information Act with the amendments as of 2008.⁵⁰

2.3.3. Categories of information of general interest

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 gradually been 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. A review of this legislation shows that some categories of information mandatory for online publication are common across

⁵⁰ State Gazette, issue 104/2008.

national laws.⁵¹ For instance, information about the powers and the normative acts of the public authorities, about their structure and functions, their activities, signed contracts, and the transparency of the decision making process are mandatory for publication under most of the access to information laws.

During the past several years, within the global Open Government Partnership initiative, Open Government Standards were developed and widely discussed.⁵² An 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 basis 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;

⁵¹ Comparative review of the categories of information for proactive disclosure (standard-setting) of the Council of Europe, the Organization for Security and Cooperation in Europe, etc. can be found in Helen Darbishire’s working paper: http://siteresources.worldbank.org/WBI/Resources/213798-1259011531325/6598384-1268250334206/Darbishire_Proactive_Transparency.pdf, p. 39. The paper was presented in AIP information newsletter, October 2010 issue (10)82): <http://www.aip-bg.org/publications/Бюлетин/2010/>.

⁵² <http://www.access-info.org/en/open-government-data>

- Subsidies information – about subsidized persons, about the purposes of the subsidies, the amounts paid and the state of execution;
- Public procurement information – detailed 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 generated and stored information – register of the documents/information, generated and stored;
- Information about the publications issued by the institution, including information about free and paid publications;
- Information on the right of access to information and how to request information, including contact information for the responsible person in each public body.⁵³

The APIA Bill extends the obligations for online publication of the categories of information under the effective Art. 15. Some of the existing categories are being specified in more detail. For instance, item 2 of Art. 15 is extended by including “the texts of the normative and general administrative acts issued by the public body,” also, the “address of the e-mail” is added to the contact information under item 4. Thirteen new categories are being introduced which are currently mandatory for publication in the Interent under other laws.

- „5. The internal rules and the organizational regulations related to the provision of administrative services to the citizens;
6. strategies, plans, programs, activity reports;
7. information about the budget of the administration which shall be published pursuant to the Public Finances Act;
8. information about public procurements – a Customer’s Profile as stipulated by Art. 22b of the Public Procurements Acts;
9. drafts of normative acts with the corresponding motives and the report and the results from the public consultation on the draft;
10. notifications for beginning the procedure of issuing a general administrative act under Art. 66 of the Administrative Proceedings Code, including the main grounds for

⁵³ <http://www.access-info.org/en/open-government-data>

the issuing of the act and the forms and timeframes for participation of the stakeholders and the interested groups in the proceedings;

11. the procedure and conditions for access to public information and re-use of information contained in the public registers, information data bases and resources – internal rules for provision, prices, and formats in which the information is maintained;

12. announcements for public officials appointment competitions;

13. information subject to publication under the Law on Prevention and Ascertainment of Conflict of Interests;

14. information that is public pursuant to the Protection of Classified information Act and the corresponding regulations for its application;

15. the information under Art. 14, Para. 2, items 1-3;

16. the information that has been provided more than three times under the procedure stipulated by this Chapter;

17. other information prescribed by law.”

The Bill provides for the establishment of an obligation for public law entities and public law organizations (Art. 3, Para. 2, item 1) to proactively publish information under Art. 15, namely:

- Description of their powers and data about the organization, functions and responsibilities of the administration managed by them;
- The name, the address, the e-mail, the telephone number, and the working hours of the office within the respective administration which is responsible for the reception of the access to information requests;
- Organization and internal rules related to the provision of administrative services to the citizens;
- Strategies, plans, programs and activity reports;
- Public procurement information – Customer’s Profile section under the Art. 22b of the Public Procurements Act;
- The procedure and conditions for access to public information and re-use of information, contained in public registers, data sets and resources, including internal rules for their provision, fees, and formats in which they are maintained;
- Information under Art. 14, Para. 2, items 1-3, i.e. such that could prevent a threat to the life, health and safety of citizens and their property;

- Information which disproves corrupt information which affects significant public interests;
- Is of or would be of public interest;
- information that has been provided more than three times under the procedure stipulated by this Chapter;
- other information, prescribed by law.”

These subjects should not publish a list of issued acts within the performing of their functions; a description of the information resources and data sets; budget information pursuant to publication under the Public Finances Act; drafts of normative acts with the corresponding motives and the report and results from the public consultation on the draft; notifications for beginning a procedure of issuing a general administrative act under Art. 66 of the Administrative-Procedure Code, including the main grounds for the issuing of the act and the forms and timeframes for participation of the interested persons (stakeholders) in the proceedings; announcements for public officials appointment competitions; information subject to publication under the Law on Prevention and Ascertainment of Conflict of Interests; information that is public pursuant to the Protection of Classified information Act and the corresponding regulations for its application.

The obligation for proactive publication on the Internet of the above listed information is clear for the head of institutions under Art. 15, but it is not clear if an obligation is established for the persons under Art. 3, Para. 2, item 1 to publish and update information on the Internet.

The list of the acts⁵⁴ 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 normative, general, and individual administrative acts, issued by the respective

⁵⁴ 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."

administrative body.”⁵⁵ The Draft APIA amendments, as it has been pointed out, specify the obligations for proactive publication of not only the list of the issued acts within the scope of powers, but also of the full texts of the general and normative administrative issued acts.

The issue about the availability of a unified portal of all administrative acts remains legally 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.⁵⁶

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.⁵⁷

The Electronic Government Act (EGA)⁵⁸ established obligations for the electronic services providers to announce on their Internet sites information about the services they provide (Art. 10 of the EGA). Besides, they have an obligation to provide unimpeded, direct, and constant access to the customers of their services to information about the contacts, the control bodies, the possibilities for filing appeals, etc., the appealing procedure, the value of the service and the ways of payment, the technical description of the service, the way the issued act could be accessed, the technical means for finding and removing errors and the languages in which the service could be used (Art. 13 of the EGA).

⁵⁵ APIA, Additional Provisions §1, item 3 (State Gazette, issue 104/2008): http://www.aip-bg.org/en/legislation/Text_of_the_APIA/200432/.

⁵⁶ 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/>

⁵⁷ Public Finance Law (SG issue 15/ February 15, 2013).

⁵⁸ Electronic Government Act, promulgated SG issue 46/June 12, 2007, effective June 13, 2008; amended SG issue 82/October 16, 2009, effective October 16, 2009; amended SG issue 20/February 28, 2013; amended SG issue 40/ May 13, 2014, effective as of July 1, 2014.

The amendments to Chapter III “**Customer’s Profile**” of the Public Procurement Act as of 2014 (more specifically, Art.22b, 22c and 22d)⁵⁹ introduced obligations for publication of the complete documentation related to a public procurement on the Internet site of the contracting authority or on another Internet address, as well as the obligation for connectivity of this information with the one published in the Public Procurement Register which is a serious step towards transparency in the area and responds to the increased public interest in that type of information.

2.3.4. Flexible approach towards the categories of information to be published

Apparently, it is evident that the list of categories of information subject to publication under the law can not be exhaustive. Increased interest towards a specific type of information may emerge as a result of ongoing debates, crises, and other public issues.

The states whose legislation establishes the institution of the Information Commissioner have that independent, centralized, specialized body entitled to create model publication schemes and to approve of the publication schemes of specific institutions. Thus, on one hand, the possibility for consideration of the specifics of the generated and stored information within the powers of the institution is increased. On the other hand, external control is exercised over the publication schemes.

A possible legislative solution for deciding which information should be additionally published is the consideration of the extent to which it is sought with requests. Such an approach is proposed in the Council of Europe Convention (Art. 10, item 73). A similar approach is embedded in the laws of Mexico, Slovenia, USA,⁶⁰ etc.

The Bill of APIA has adopted that approach together with an annual review of the list of categories of information subject to proactive publication in the Internet under Art. 15a, Para. 3. The Draft Law also provides for the establishment and maintenance of a centralized access to public information portal by the administration of the Council of Ministers (Art. 15c). Via the portal, requestors **are able** to file access to information requests to the state authorities, their regional offices, and local self-government bodies.

⁵⁹ Public Procurement Act, promulgated SG; amended SG issue 40/May 13, 2014, effective July 1, 2014.

⁶⁰ Assessment of access to/freedom of information laws of 100 states: Global Right to Information Rating: http://www.rti-rating.org/country_data.php

The authorities **are obliged** to publish the requests they have received via the portal, the decision issued and the public information that is provided. The introduction of these new obligations along with the effective ones for the preparation and publication of APIA implementation reports in the *Access to Information* section raises the question about the capacity of the administration to implement these new obligations. The assigned, and not appointed,⁶¹ officials who are performing a wide range of duties according to their job descriptions would hardly be able to cope with their new responsibilities without trainings, assistance, and detailed instructions. The process of publishing already disclosed information cannot be entirely automatic, as is apparent from the experience of states with older legislation and accumulated implementation practices.⁶²

2.3.5. Extension of the categories of information of general interest through special laws

Besides setting the obligation for maintaining an Internet site and ensuring access to the information which is uploaded on it, the law should also require the publication of information about the public authority that is of general interest to the people – how citizens could contact the institution; what kind of services could they obtain; how the institution fulfills its powers and functions; information which helps the citizen to form an opinion about the activities of the institution; how the public funds are spent; how to obtain information from that authority.

The APIA Bill⁶³ extends the categories of information listed in Art. 15 from 4 to 17, gives the possibility for a dynamic increase of these categories in its item 14: “other information prescribed by law,” and creates the obligation for the heads of administrative structures to annually review and update the lists of categories for publication (Art.15a, Para. 3).

⁶¹ Law on Amendments to the Access to Public Information Act – promulgated in SG, issue 49/19.06.2007.

⁶² See, the Annual Report 2013-14 of the Office of the Australian Information Commissioner, pp. 120 – 121
<http://www.oaic.gov.au/advanced-search?layout=default&searchword=Annual%20Report%202013-2014>

The Australian Freedom of Information Act was adopted in 1982. The obligation for publication of already disclosed information in the Internet sites of the obliged bodies is effective since May 1, 2011. The Office of the Australian Information Commissioner issues guidelines and provides assistance to the administration for the proactive publication of information disclosed after the filing of requests.

⁶³ The text is published in Bulgarian in the government portal for public consultations:
<http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=1474>

The process of review and update of the lists of categories of information subject to publication should also follow common approaches and should be subject to control. This approach has not been provided in the currently proposed APIA Bill.

In a number of states with pre-1990 access to information legislation, the obligations for proactive disclosure have been extended not only by 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, this process of increasing transparency has been explored and made systematic.

The development and maintenance of online public registers is another reason for the development of *guided transparency*.

A number of laws regulate the maintenance of online public registers. A review of these obligations was made by AIP in 2011 and the results served as a basis for the launching of the Public Registers portal.⁶⁴

2.3.6. Determining the ways, channels, formats of publication, metadata of published information

The standards for the publication of specific categories of information which is of public interest require that there are rules concerning the update of the information and its obtaining free of charge. For some categories of information, public bodies are obliged to seek other channels of dissemination when there is a risk to the life, health and property of citizens. In such cases, an additional obligation is established for the administration to inform the citizens as fast as possible by all appropriate means.

There are such provisions in Art. 14 of the Access to Public Information Act and in Art. 23 of the Environmental Protection Act, however lacking specific time frames and obligations.

In 2003, the European Community adopted the Directive on the Re-use of Public Sector Information 2003/98/EC.

⁶⁴ www.publicregisters.info

In 2013, the Directive was revised⁶⁵ and will be transposed in national legislation through the Access to Public Information Act via which it was also transposed back in 2007.

The purpose of the revisions of the Directive on the Re-use of Public Sector Information is to provide for a clear obligation of the Member States to permit the re-use of all available documents, unless the access is restricted or excluded pursuant to the national access to documents regulations and in compliance with the other exemptions provided for by the Directive.

With the purpose of facilitating the re-use of information, the Directive provides that when possible and appropriate, public sector bodies should make documents available in open and machine-readable formats. The new Directive introduces a few important principles which are significant for the legislation on access to and free use of information.

The data sets maintained by public sector bodies should contain:

- A.** Description of the information contained in data sets and data bases, its thoroughness and coherence. The current text of the law establishes an obligation for a “description of data bases and data sets” and the “procedure for accessing” them. The Directive introduces the requirement for the provision of data, together with the metadata, at the best level of precision and granularity, in a format that ensures interoperability in order to facilitate their re-use.
- B.** Coherence of the published data and their relativity to other data.
- C.** Transparency of the criteria for formulation of charges for access to data sets, registers, etc.

These principles are set forth by the Draft Law on Amendments to the APIA and are analyzed in the first chapter of this report.

2.3.7. Rules for the update of information and its availability

The legal regulation of the proactive publication of up-to-date information presumes that there are rules and time frames for its publication.

⁶⁵ By Directive 2013/37/EU.

The Bulgarian Access to Public Information Act establishes the obligation for regular update of the published information without specifying the time frames in which this should be done.

The Draft Law on APIA Amendments, in its Art. 15a (Publication on the Internet), Para. 4 provides that the “information under Art. 15 should be published, respectively updated, within three working days of the adoption of the act or the generation of the information. If the act is to be promulgated – within three days of its promulgation, except for cases in which other timeframes are prescribed by law.”

In the course of discussions within the working group drafting the law on amendments to the APIA in 2014, AIP recommended that specific time frames are prescribed for the publication of each category of information, an obligation and time frames for its accessibility on the Internet, and the procedure for archiving it. Furthermore, we recommend transparency with regard to the update of the information similar to the mandatory time frames for publication under the Judiciary Act.

2.3.8. Accessibility of the content on the Internet sites

Public bodies, which are obliged to publish information on the Internet, should undertake measures to make that information accessible on their Internet sites by providing a unique address to it, automatic redirection to the new address if changed, accessibility of the addresses of the published information to the search engines.

2.3.9. Equal opportunities for access to the Internet sites

The Art. 26, Para 4 of the effective APIA law stipulates that disabled persons may request access in a form that corresponds to their ability to communicate. However, such obligations are not pertinent to the proactive publication of information. The most recent amendments to the Electronic Government Act formulate as an aim “accessibility of the electronic administrative services, including for disabled persons.”⁶⁶ When we have such

⁶⁶ Law on Amendments to the Electronic Government Act (promulgated SG issue 46/2007; amended SG issue 82/2009; SG issue 20/2013; SG issue 40/2014).

an aim set with regard to the e-services, i.e. a part of the work of the administration, this principle should also be applied with regard to the publication of information about the activities of the public body in the Internet.

2.3.10. Assistance to persons without technical skills

The access to information laws guarantee that all requestors are equal.

It should be considered that the publication on the Internet does not substitute for the obligation of the public bodies to provide access to information to people with no technical skills to work with a PC and the Internet. The required by the APIA reading rooms in the public bodies are a necessary condition, but should be complemented with rules for assisting the requestors which should most appropriately be embedded in the Internal APIA implementation rules.

2.4. Coordination and control over the active transparency

The selection of information which should be published on the Internet should not be left only to the discretion of the administration. This issue could be resolved by coordination and supervision over the implementation of the proactive disclosure obligations. Besides the legal regulation, this requires the functioning of a centralized specialized body to oversee the implementation of the law, or the entrusting of an existing body with such coordination and control functions.

The APIA Bill provides time frames for preparation of the proactive publication obligations implementation – three months after the law becomes effective. It also provides for sanctions to the amount of 100 – 200 BGN for non-compliance with the obligations for publication under Art. 14, 15, 15a, 15b by legal persons. It, however, does not provide for a specialized body of implementation control.

Civil Audit on Active Transparency 2015

<http://www.aip-bg.org/en/surveys/2015/101758/>

Methodology

Within the period 23 February – 23 March 2015, an assessment of 544 websites of executive public bodies was made, among which 18 ministeries, 28 regional governor's administrations, 150 regional offices of executive bodies, 70 executive agencies, state agencies, etc, 264 municipalities, 11 independent bodies of authority, and public law subjects like the National Health Insurance Fund and the National Insurance Institute.

Comparative data for 2012 – 2015 results are online available at: http://store.aip-bg.org/surveys_eng/Appendix_1_2015.pdf and are part of this report as Appendix 1.

The assessment of the websites was made on the basis of 72 indicators for all institutions and 81 – for the municipalities. Each indicator adds relative weight to the total score. In this way, the Active Transparency Rating of all institutions and the Rating of the Municipalities is calculated.

Eight reviewers from the AIP team took part in the audit.

The indicators are combined in several groups:

Implementation of the obligations under Art. 15 of the Access to Public Information Act

These indicators encompass the publication of legal acts, regulating the activities of the respective institution, its functions, the services it provides and the description of the information resources, the organizational structure, the contact information, operational information – administrative acts, activities, strategies and development plans, and activity reports.

Implementation of the obligations under Art. 15a of the Access to Public Information Act

These obligations encompass the existence of an “Access to Information” section and its content – an explanatory text regarding the right of access to information and how to exercise it in the respective institution: contact information of the office and the official responsible for the receiving of the access to information requests and the provision of the information, reports on the access to information requests and the issued decisions, internal APIA implementation rules – responsible office/official, procedure, internal procedure for proactive disclosure and responsible offices/officials, conditions for filing e-requests, the way fees are paid, reading rooms; the procedure for access to the public registers maintained by the respective institutions.

Implementation of the obligations under the Public Finance Act, the Law on Establishment and Prevention of Conflict of Interests

The indicators cover the publications of the budget, the annual financial reports, program budgets and reports on program activities for first degree budget spending units, a list of officials who have submitted conflict of interest declarations and the declarations themselves, publication of the draft budget and the draft financial report by the municipalities, together with the date of their public discussion.

Implementation of the obligations under the Public Procurements Act

The indicators of the survey do not encompass all obligations established by the latest PPA amendments, but cover the following main categories: publication of the announcement for public procurement tenders, publication of the decisions for the selection of the contractor, the contracts signed and the money installments under these contracts.⁶⁷

⁶⁷ <http://www.aip-bg.org/en/surveys/2015/101758/>.

The results are published on AIP web site and allow for the visualization of the results by type of public body, by indicators, by regions, by institutions and by the form and period of the response to the e-requests filed to 542 institutions.

The indicators were quantitatively evaluated according to the significance of the information which should be proactively published in the Internet. This evaluation forms the active transparency rating. The system allows for inquiries by different types of ratings: by type of public body, by regions, by municipalities. A comparative rating tracking the results three years back was produced to show the tendencies in the proactive publication.

Results

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

Heads/Directors of executive bodies are obliged to publish online up-to-date information about the powers, functions, and responsibilities of their respective administration. A big part of this information is contained in the published online legislative acts and the regulations of the administration which regulate the establishment and the activities of the respective institution, complemented with special website sections where a summary of the functions and responsibilities of the authority is published, as well as the services it provides to citizens and legal entities. With regard to performing its functions and fulfilling its responsibilities, the administration also maintains information resources and 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 of 6% in the level of proactive disclosure of the legal basis regulating the powers and the responsibilities of the authorities compared to the 2014 results. The overall implementation rates amount to circa 80% with an almost 100% implementation by the central government authorities, state agencies, executive agencies, and independent bodies of authority. The tendency of poor performance by the regional offices of the central government authorities and the municipalities remains.⁶⁸

⁶⁸ See Comparative Tables 1 and 2.

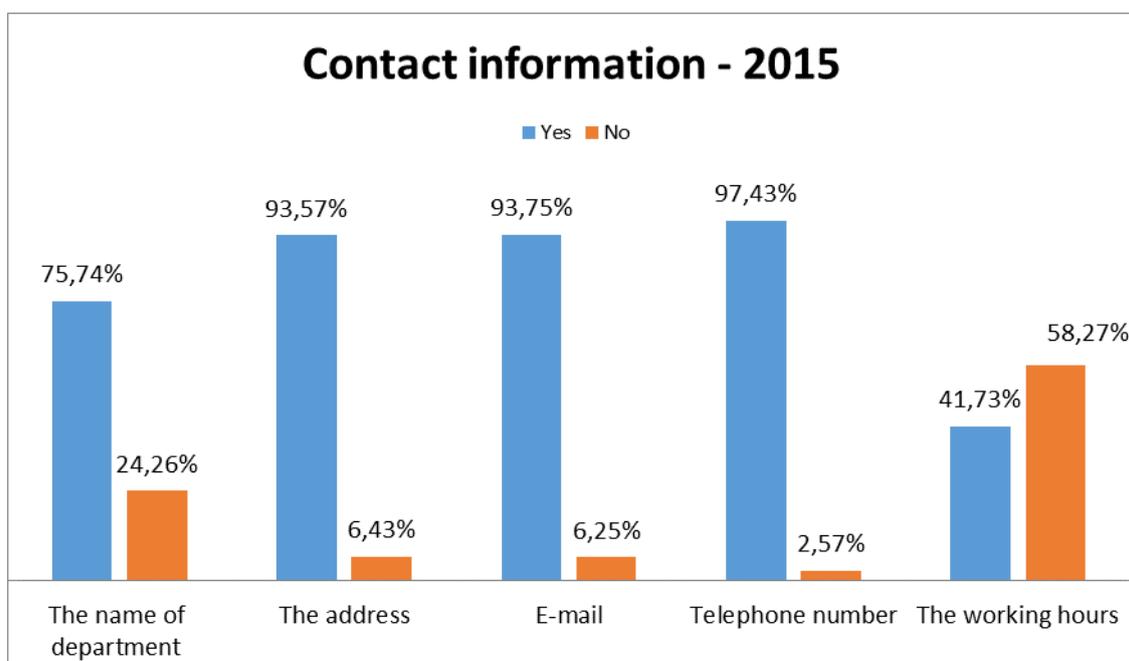
The publications related to the functions and the services provided by the public body have increased and it should be noted that all central government bodies and regional governor's administrations have submitted such publications.

Regarding the obligation to publish a description of the data bases and information resources, no considerable improvement is observed. However, the number of online registers and the lists of maintained registers has increased this year. It is evident that the obligation for a "description of the information volumes and resources" requires more detailed definitions and regulation with regard to the content, the formats, and the update of the proactively disclosed information.

Organizational Structure and Contact Information

The most considerable level of implementation is of the obligations for online publication of information about the organizational structure of the public bodies – over 93% at all levels. A positive development is the additional information published online along with the organograms – the names of the public officials by departments and directorates, their responsibilities, and contact information.

There is a continuing tendency of increase in the proactive disclosure of the so called 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.



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

It is observed that there is an increase in the disclosure of normative acts by the public bodies.⁶⁹ The overall implementation for 2015 is 85%. For comparison, the level of implementation in 2014 was 81%, with the best performance belonging to the central government authorities and the independent bodies of authority – 100%.

The tendency of increasing the number of online registers of individual administrative acts remains.

Regarding the obligation for disclosure of the acts of the municipal councils, the level of implementation is very high – 93%. Only nine out of 264 municipalities do not maintain such registers.

We believe that the integration of internal information management systems and the adoption of the practice of opening the registers of the normative, general, and individual

⁶⁹ 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."

administrative acts (administrative decisions) of the municipalities to the public is a step forward to the operational transparency of 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 preserved in 2015 as well: 78% of audited public bodies publish their development programs and strategies, and only 25% publish their activity reports.

The percentage of institutions which maintain a “Draft normative acts” section on their website has increased – from 28% in 2013 to 36% in 2014, and 40% in 2015. 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.

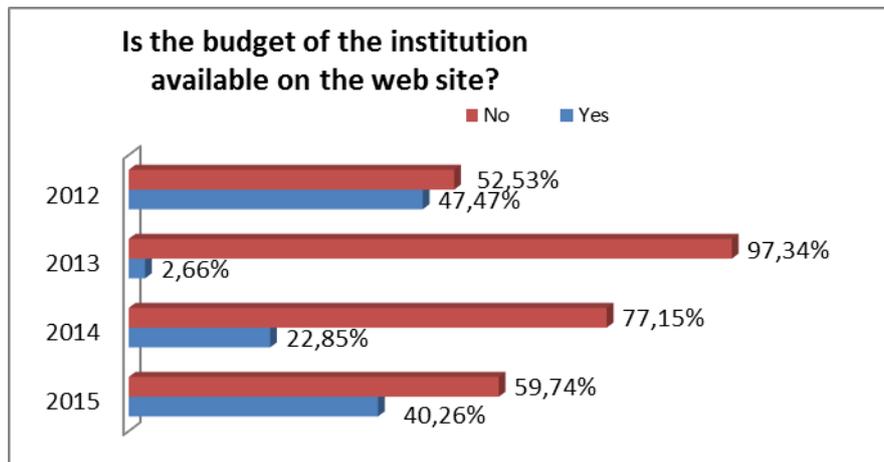
The web site which fulfills these requirements is the centralized Public Consultations Portal maintained by the administration of the Council of Ministers: www.strategy.bg.

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 to use program budgeting and 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 financial reports.

For a second successive year as part of its [Civil Audit on Active Transparency](#), AIP examines in a separate section whether public bodies publish basic financial documents of theirs, their activity reports, as well as the conflict of interest declarations of their officials. The larger part of the criteria for budget and financial transparency reflect the obligations for publication under the Public Finance Act (PFA), effective as of January 1, 2014. At the time of the 2015 audit, the new obligations under the PFA had already been effective for a year. Thus, public bodies should have had enough time to align their practices with the

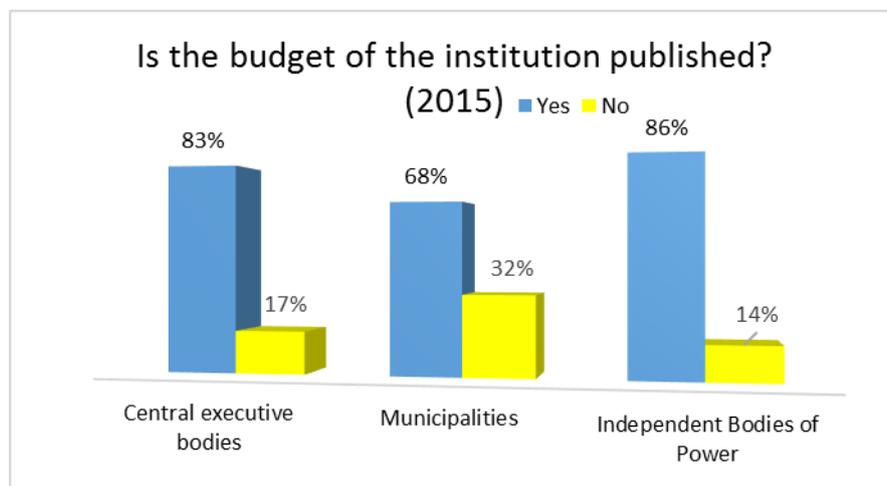
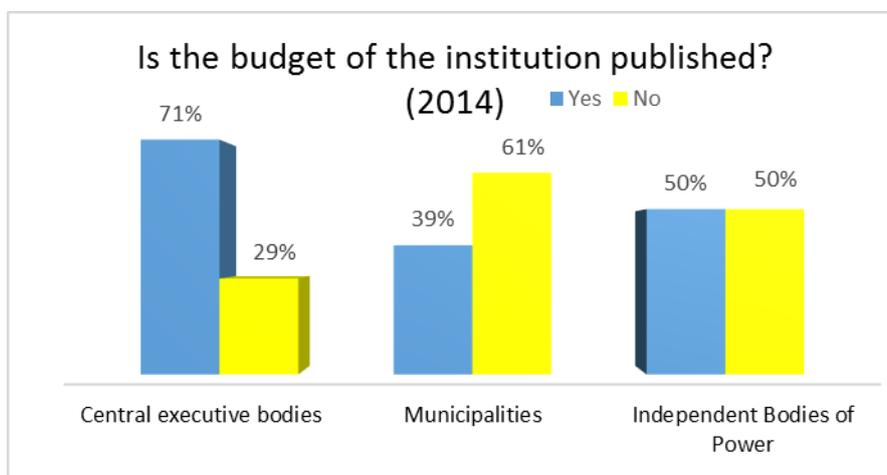
requirements of the law and, consequently, a complete implementation of the obligations was expected. The results show slight improvement in implementation, but not all obliged bodies follow the law. We start with the fundamental question related to financial transparency: “Is the institutional budget published online?” Only 40,26%, or 211 out of 544 public bodies have published their 2015 budget.



Although the PFA (Art. 93) obligates all budget funded institutions to publish their budgets, only the first degree budget spending units feel bound by this obligation – ministries, state agencies, municipalities, most of the independent bodies of authority and some other – slightly over 300 institutions. According to the PFA, the second degree budget spending units are generally not obliged to publish current and annual financial reports, which the first degree units should publish. This, however, does not apply to the publication of annual budgets. Second degree budget spending units are some institutions of particular importance such as the National Revenue Agency, the “Customs” Agency, the executive agencies, the regional governor’s administrations, regional offices of department “Agriculture,” regional forest directorates, regional health inspections, regional inspectorates of education, etc. These and almost all other second degree budget spending bodies have not published their budgets. The explanation probably lies in the fact that neither the [Law on the State 2015 Budget](#), nor the [Ordinance for its Implementation](#) specify or refer to the obligation under the PFA. The exception which confirms the “normality” of the situation is the explicit obligation for publication of budgets and reports by a small segment of second degree units – schools and kindergartens – pursuant to Art. 14 of the Ordinance. They are not part of our audit, however, and thus in

practice, there are no second degree budget spending units which have published their 2015 budget.

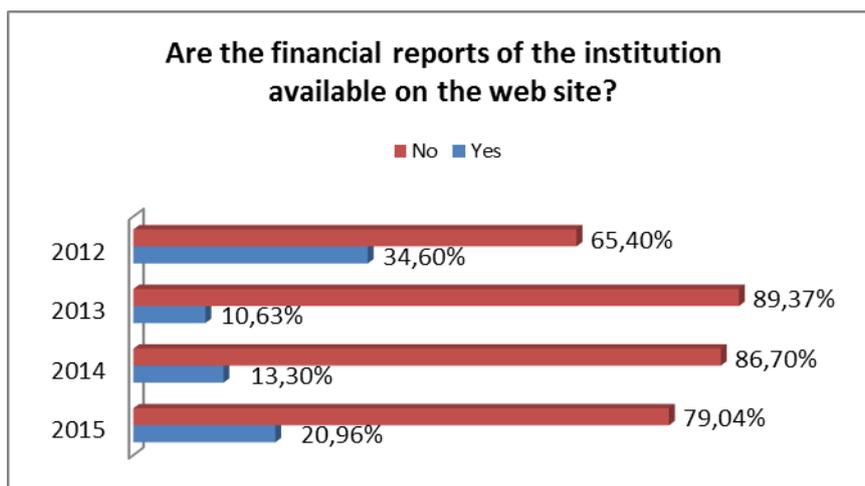
With regard to the **first degree budget spending units**, if we recalculate the results corresponding solely to their number, it turns out that **the obligation is fulfilled in 71% of the cases**. The increase is considerable because with an almost unchanged number of audited first degree units, in 2014 only 122 had published their budgets, while in 2015 their number is 219. The comparison of the results by types of bodies show that the most considerable increase is in the publication of budgets by the municipalities, followed by the independent bodies of authority.



Compared to 2014, in 2015 77 new municipalities have fulfilled the obligation to publish their annual budget, which is an increase of 76%. As a matter of fact, this increase has due to the large number of municipalities, reflected on the overall increase in the results

related to the publication of budgets by the institutions. Nevertheless, still one third of the municipalities have not published their budgets.

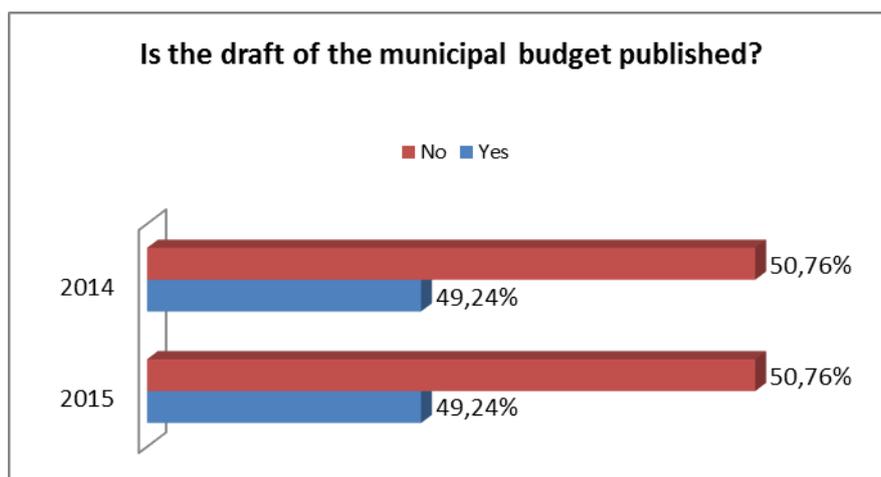
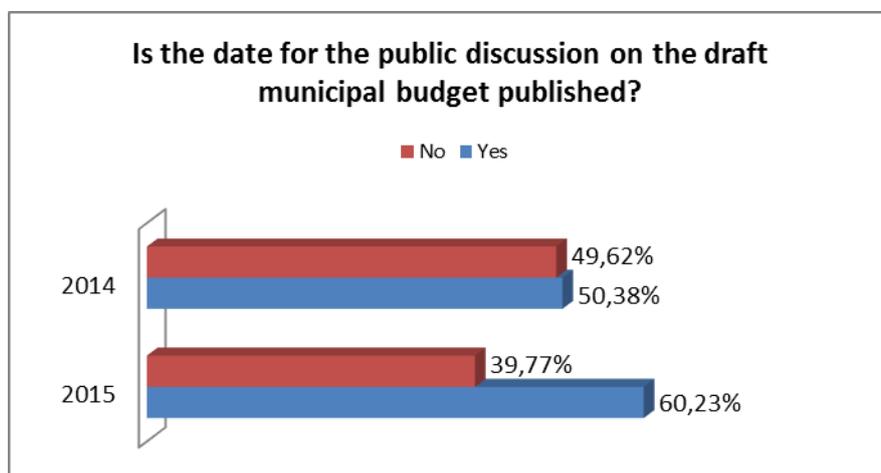
A similar increase and tendency, although on a smaller scale, is observed in the publication of annual financial reports. The latter have been published by 114 institutions in 2015, compared to 71 in 2014. In practice, only first degree budget spending units have published them – around 37% of all first degree units.



Only the first degree budget spending units should publish monthly and quarterly reports for ongoing implementation of their budget. The statistics about the publication of monthly reports are comparable to the results related to the annual reports – 120, or around 39% of the first degree budget spending units have uploaded them on their website. The level of implementation related to the quarterly reports is even poorer – only 76 of the audited institutions have published them, which is below 25% of the first degree budget spending units. The poorest implementation is by the municipalities – 36% and 19% respectively, while around 89% of the central government authorities fulfill both obligations for publication of current financial reports.

Around 25 public bodies – the Council of Ministers, the ministries, and the state agencies – are obliged under the Public Finance Act to use the so called program budgeting. It supposes that the distribution of expenses should align with the policies for which the public body uses its program budgets and should consider the financial forecast of the budget. Twenty out of the 25 public bodies have published their program budgets in 2015 and only twelve – their annual reports on the execution of the program budgets.

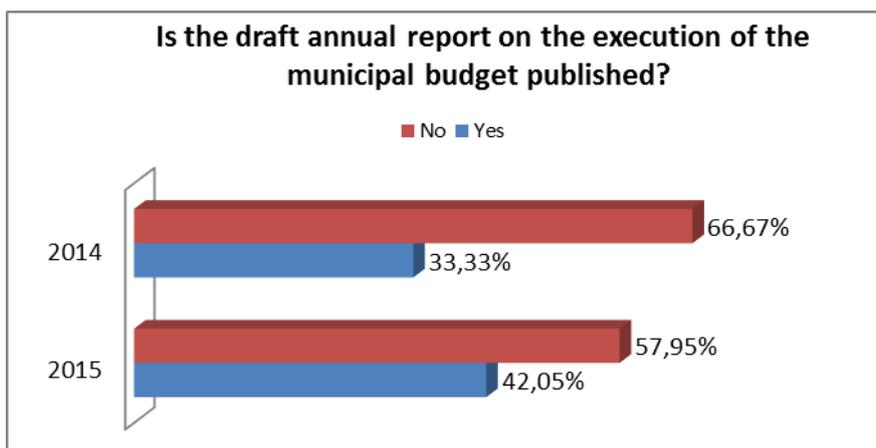
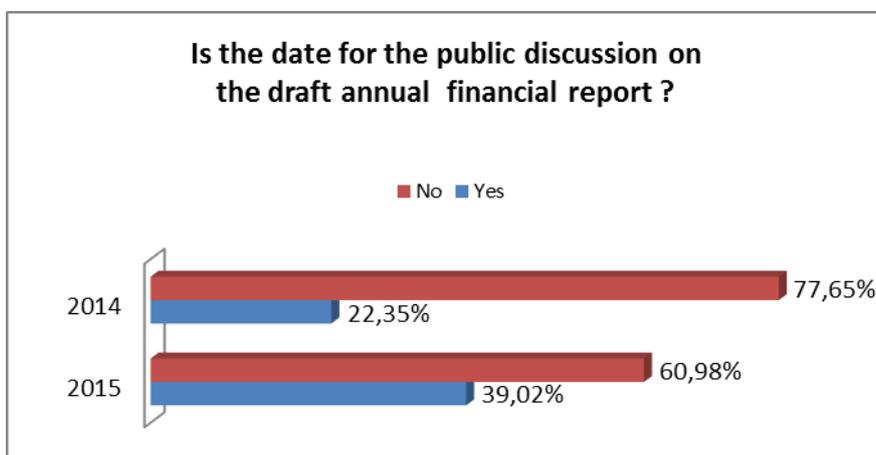
Other specific obligations for publication of information by a group of public bodies are the obligations for the municipalities to publish announcements/invitations for public discussions on the draft annual budgets and the draft annual financial reports. The law provides for an obligation to publish only the date of the public discussion with the local community, but not to publish the drafts of the financial documents. It is clear that citizens would not be able to form an opinion and their participation in the public discussions would become meaningless if they were not able to get to know the draft texts that would be discussed. That is why AIP evaluated the publication of the texts of the draft budgets and financial reports.



Regarding the implementation of the obligation for publication of the date of the public discussion on the draft municipal budget, we observe an increase in comparison to the previous year. Twenty five new municipalities have published an announcement bringing

the total number of the implementing municipalities to 159. Unfortunately, in 28 municipalities, we have found only the announced date of the public discussion without the text of the draft budget. The total number of those which have published the draft budgets is with 1 more than in 2014, meaning 131 municipalities compared to 130 in 2014. These are, however, still less than half of the number of Bulgarian municipalities.

44 new mayors' administrations have published the date of the public discussion on the draft annual financial report, making the total number of municipalities which have fulfilled their legal obligation still far from half of all obliged self-government bodies – 104 have published the information against 160 which have violated the law.



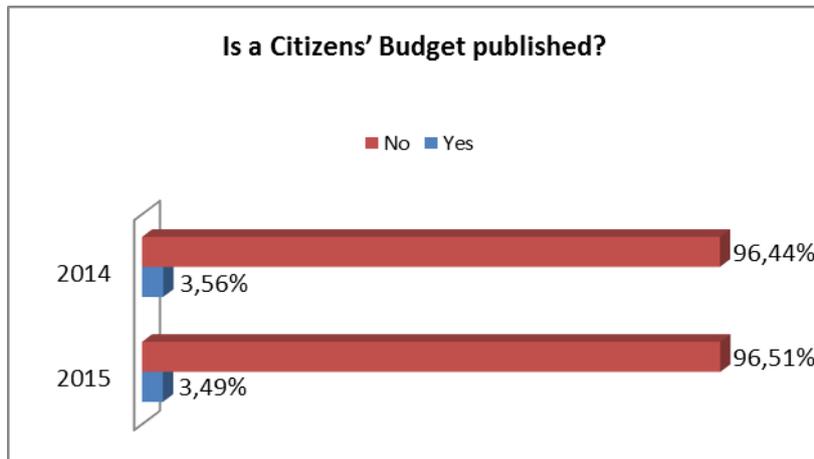
It is curious that we have found more published draft annual financial reports than announcements for their public discussion.

Despite that fact, **the overall implementation** of the obligations for announcement by means of the Internet of the date for public discussion of the drafts of the most important financial documents of the local self-government administrations remains inexplicably low. **Over 100 municipalities do not comply with at least one of these obligations**, and many of them most probably violate both obligations. At the same time, excluding the newly founded Municipality of Sarnitsa which was not audited, all municipalities in Bulgaria have well maintained and updated websites.

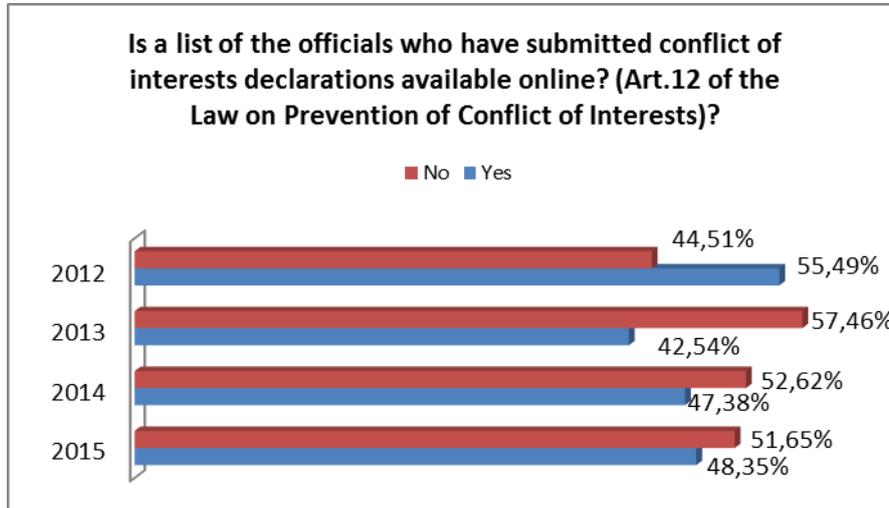
With regard to the disclosure on the Internet of daily payments (SEBRA),⁷⁰ which started in line with the *budget transparency* commitment within the Open Government Partnership initiative, these publications are made by only 38 institutions – 17 ministries, two regional offices of central bodies, seven agencies, and twelve independent bodies of authority.

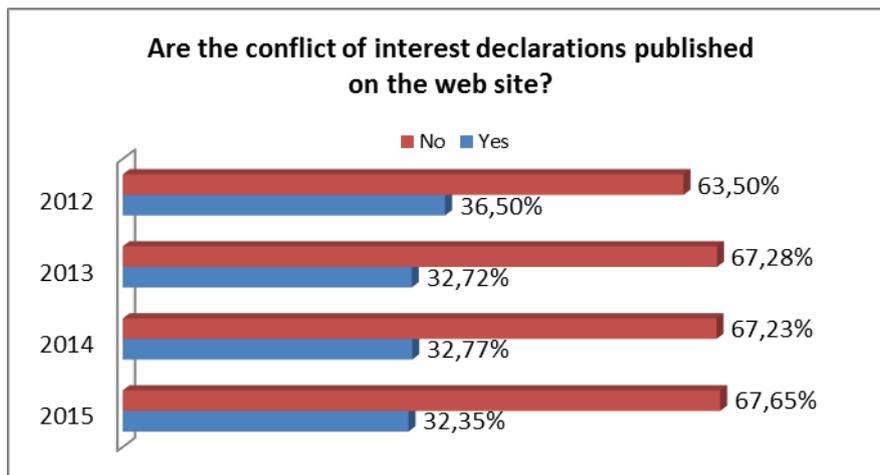
In its 2015 audit, AIP included for a second year an additional indicator with the purpose to popularize among the public authorities the generation of understandable explanations about the collection and spending of the state/municipality funds. What we talk about is the so called **citizens' budget**. The Ministry of Finance prepared and published an explanatory text for the state budget, which is called "The Budget in Short." Disclosure of such information was made by overall 19 institutions, most of which municipalities. It is good, however, that this practice be adopted by the other administrations as well in order to make citizens part of their activities through a simple and clear explanation. Since there are no specific criteria concerning the content and format of such a document, we have accepted every accompanying explanatory or visualizing document which would help for understanding the budget of the respective administration. Very often, these took the form of published presentations from public discussions on the draft budgets or even the transcripts from these discussions containing the questions raised by citizens and the responses received from the officials. Nevertheless, the cases in which we have found such documents are rare – a total of 19 or 3.49%. It is interesting that more frequently it is the municipal administrations who have realized the need for publishing of information that is closer to the people.

⁷⁰ 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>



And since one of the main aims of the budget and financial transparency is to guarantee the integrity of the public servants, we will conclude with the results from a part of the audit which adds to the evaluation of the integrity of the public body and its officials from another perspective. Here, we evaluate the implementation of the obligation for disclosure of information about the conflict of interest declarations of the officials under the Prevention and Establishment of Conflict of Interests Act. We assess the availability of the lists of officials who have filed such declarations and also the publication of the declarations.





It is clear that citizens could exercise control only by reviewing the declarations themselves, however most of the institutions still disclose only the lists of the officials who have filed the declarations. In comparison to 2014, there is a slight improvement, but it is unworthy of attention. The public bodies which have published the declarations themselves are still less than a third of all institutions, while those which have published the lists of declarations are below half of the total. The legal obligation for proactive publication has been violated on a large scale.

In conclusion, we could say that there is an improvement in the budget and financial transparency of public bodies. Local self-government bodies make considerable progress, however the colors of the [2015 Map of Municipal Budget and Financial Transparency and Integrity](#) remain mixed. A light in the tunnel are some small and not rich municipalities like the Municipality of Strazhitsa, which is the first in the [2015 Active Transparency Rating](#). Their administrations, however, persistently invest efforts in enhancing their transparency and gradually have surpassed the richest and the traditional leaders (See [Comparative Ratings](#)). Another good example is a small group of municipalities in the Northeast of Bulgaria, which have formed a peculiar competition in budget transparency and accountability – the Municipalities of General Toshevo, Alfatar, Sitovo, Tervel and Dobrich. Unfortunately, the implementation of the legal obligations for proactive publication of information is far from complete even by the best performers and we are only measuring against the minimum standard prescribed by the law.

Publications related to Public Procurements – Customer’s Profile

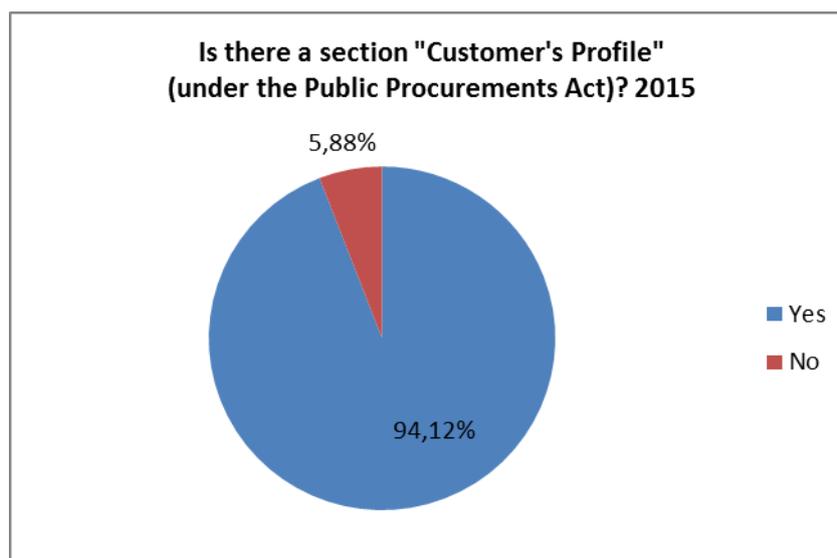
The 2014 amendments to the Public Procurements Act (PPA) introduced new obligations for the contracting authorities which affected the practices of proactive publication of related information. With the introduction of Art. 22b of the PPA, the public procurement contracting authorities should create a “Customer’s Profile” section to be publicly accessible either on their own website or at a separate Internet address.

Pursuant to Para. 2 of the same provision, 21 categories of electronic documents are mandatory for publication in this section. Subject to proactive disclosure are for instance: the decisions for opening calls and the announcements for public procurement tenders; the documentation for participation in the public procurement calls; the transcripts and the reports of the committees evaluating the submitted tenders; the decisions for closing the tender procedures; the public procurement contracts with all appendices, as well as information about the date, the ground, and the amount of each payment under the public procurement contract, etc. AIP’s audit aimed to evaluate the extent to which the amendments related to the proactive publication of information have resulted in changes of the existent practices.

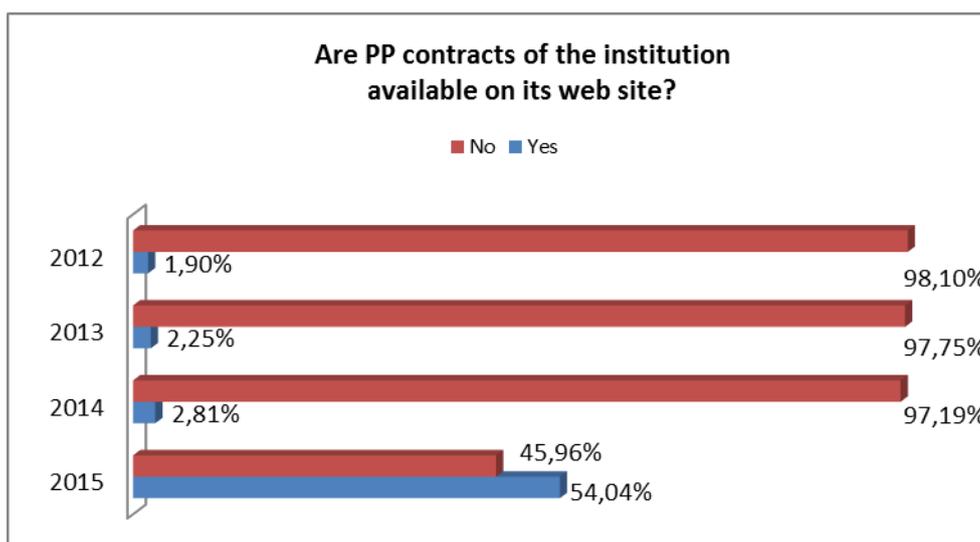
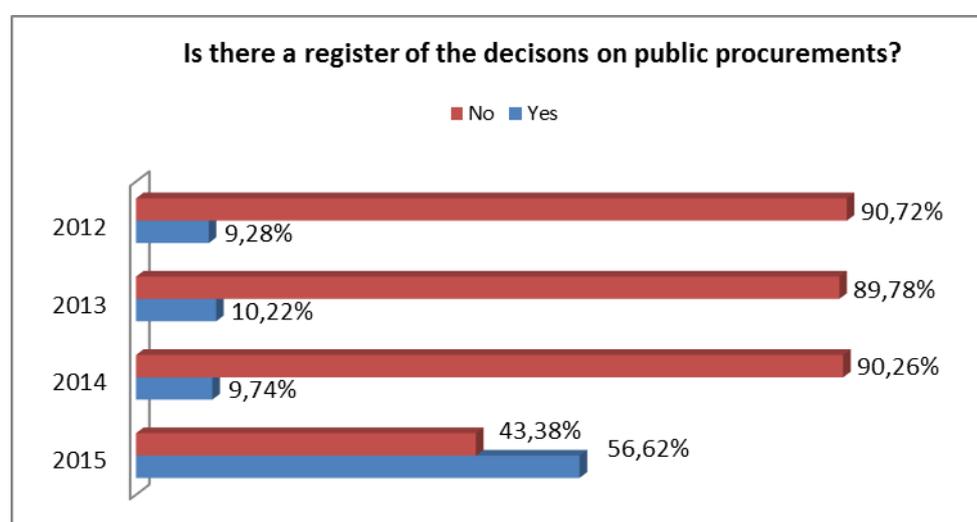
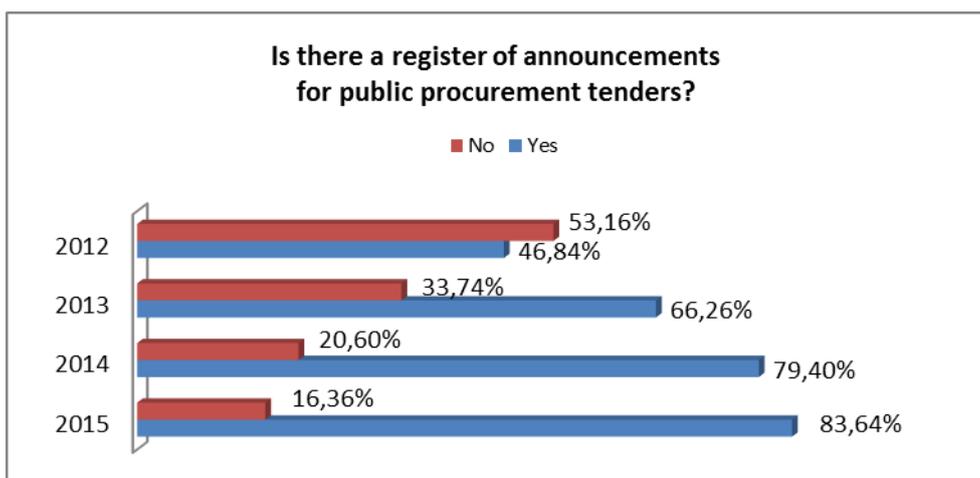
Up to 2015, the audit contained three questions related to public procurements, which were assessed within a period of three years – from 2012 to 2014: Is there an online register of announcements of public procurement tenders?; Is there information about contracted public procurements?; Are the public procurement contracts published on the website? In view of the PPA amendments, two more questions were added to the 2015 survey: Is there a “Customer’s Profile” section on the website?; and Are payments under public procurement contracts published?. That is why the comparability of the 2015 results is possible only with regard to the first three questions.

Results – Statistics by years

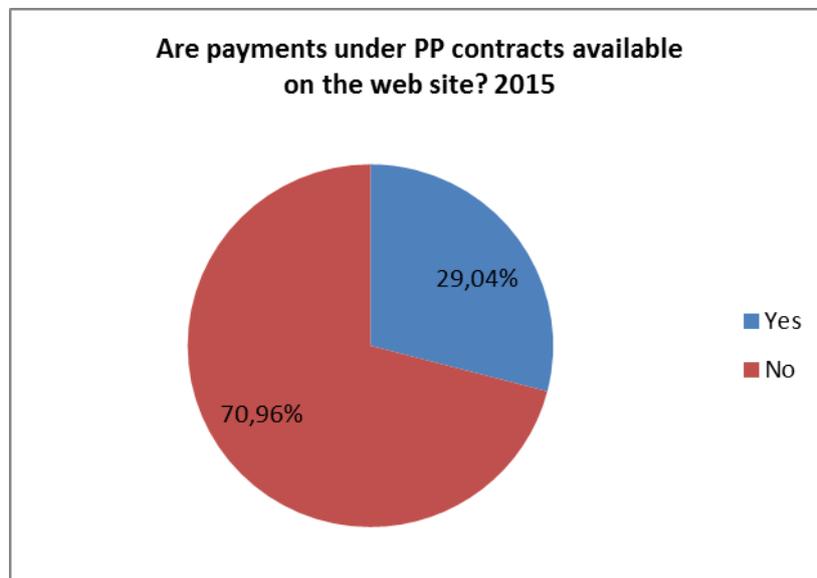
The implementation of the new obligation for the creation of a “Customer’s Profile” section on the institutional website is very well performed. The 2015 audit shows that the highest level of implementation belongs to the legal obligation of the public procurement contracting authorities to create a “Customer’s Profile” section – 94% have done so.



The audit results show an increase in the volume of information published by the public procurement contracting authorities in comparison with previous years. In 2015, 83.64% (455) out of all 544 institutions have published decisions for opening calls and the announcements for public procurement tenders. For comparison, in 2012 such information was found on the websites of only 46% of the institutions – nearly two times less. The same is valid for the publication of information about the decisions for contracting public procurements (for instance, the decisions for determining the contractor, for ranking the participating tenders, for ending the public procurement procedure, etc). In 2012 – 2014, the percentage of implementation was not higher than 10.22%, while in 2015, the obligation is fulfilled by over 56% of the public bodies (308 institutions). The most considerable change in the results is in the availability of the information about the public procurement contracts. AIP has repeatedly pointed out in its annual report on the state of access to information that such type of information has been hardly accessible and the institutions have issued refusals to provide it even after the filing of a written request, and the question of whether a copy of a public procurement contract should be disclosed or not had to be decided by the court. At that time, although there was an obligation for sending information to the Public Procurements Register at the Public Procurements Agency, the contracts were not actually published there, nor was there any information about their execution. According to the 2015 results, 54% of audited institutions have fulfilled the legal requirement to publish signed public procurement contracts. This is many times more than the information published in previous years when few institutions published their contracts online – in 2012, they were 1.90%, in 2013 – 2.25%, and in 2014 – 2.81%.

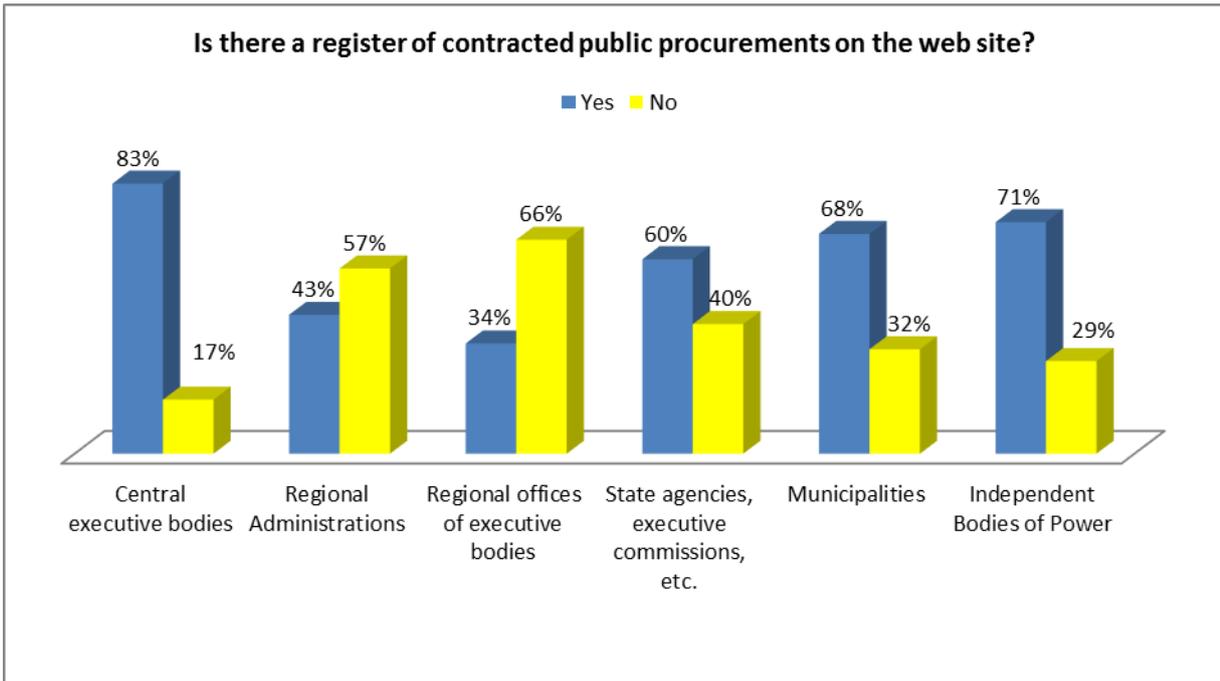
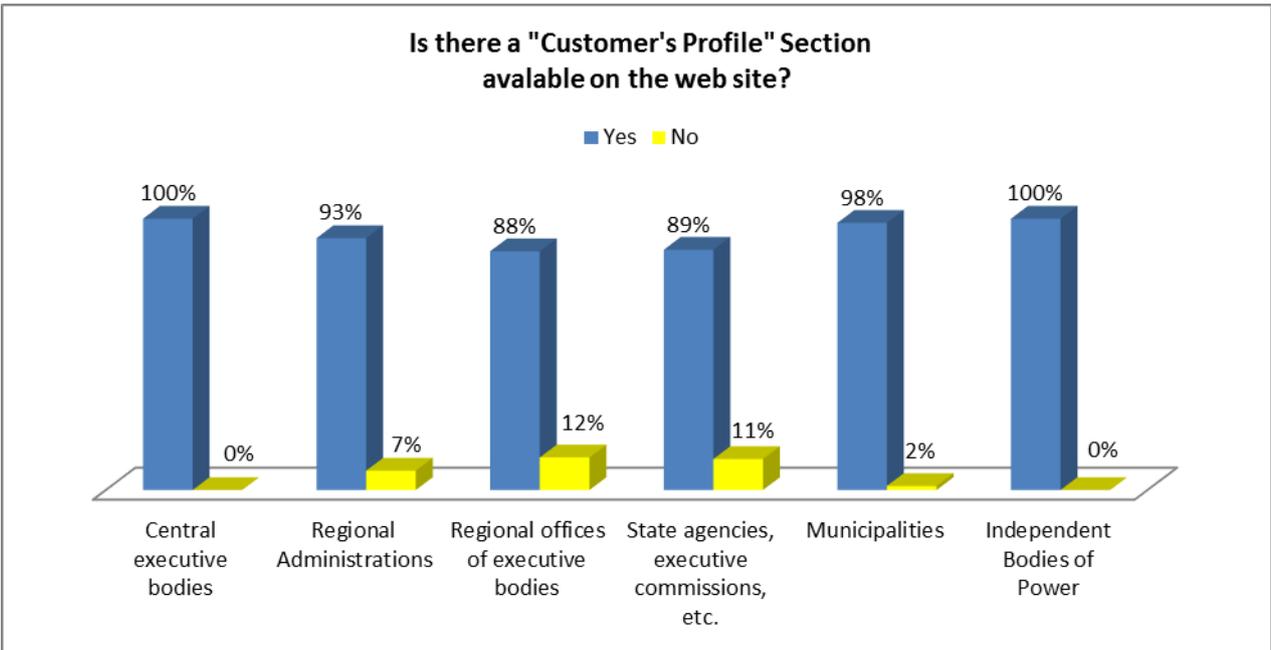


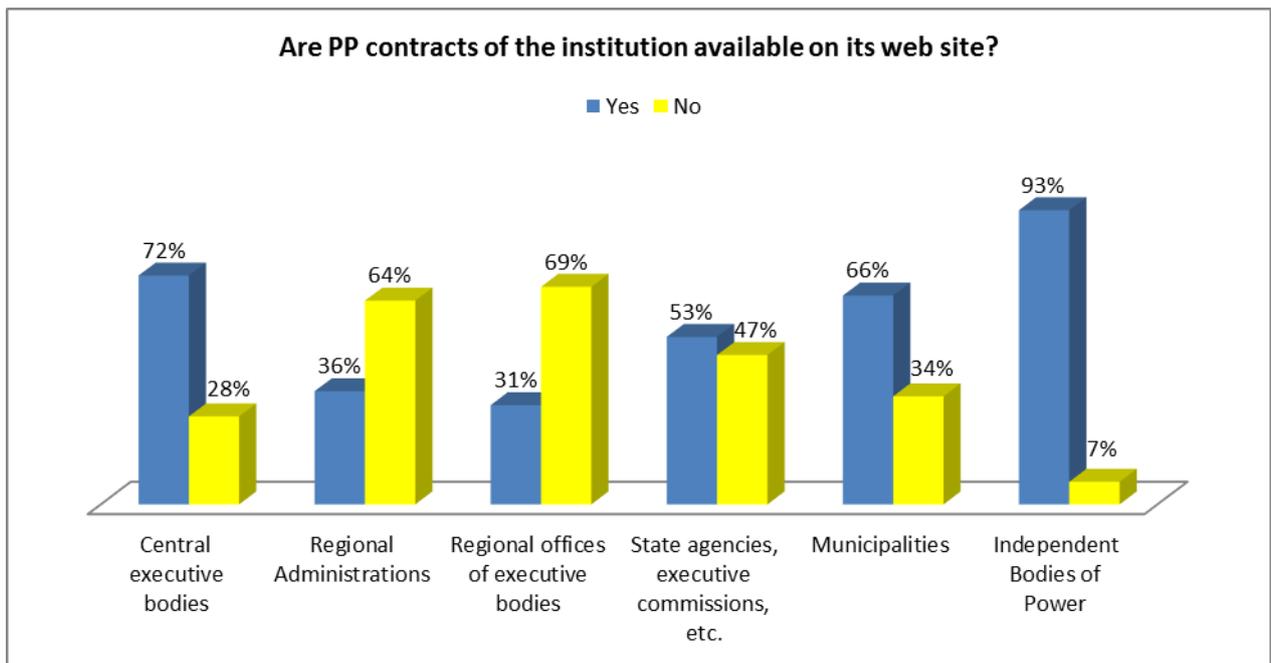
Considerably lower is the percentage of implementation of the obligation for publishing information about the payments made under public procurement contracts – only 29% of the institutions have published data about the date, the grounds, and the amount of the payments.



Results – statistics by type of public bodies

Regarding the level of implementation of the obligation for publication of information related to the public procurements by different type of institutions, the results show that it is highest in the central government bodies. The percentage of implementation is also high in the independent bodies of authority and the municipalities.





Conclusions

There is a positive development in the practices of publishing information about the opening of a tender procedure, its progress, the ranking of the participants, the signing of contracts, and the fulfilled payments under them. The reasons are complex. Firstly, an explicit and clear legal requirement was established for the publication of several important categories of information on the Internet in a preliminarily determined virtual place – the “Customer’s Profile” section. Secondly, there is a competent state authority which supervises the implementation of the obligations under the PPA – the Public Procurements Agency, whose powers also include the ability to impose sanctions for violations. Thirdly, the administrative-penal provisions of the Public Procurement Act provide for several serious sanctions for public contracting authorities. Pursuant to the provision of Art. 128c, Para 7 of the PPA, a public contracting authority which violates the requirement of Art. 73, Para 4 (does not publish a decision for ranking of the participants in the tender procedure and the determining of a contractor) would be punished with a penalty payment to the amount of 500 – 2,000 BGN or a fine to the amount of 300 – 1,000 BGN.

The law amendments and the consequitive changes in the practices of the institutions with regard to the proactive publication of information about public procurements is a serious and long-awaited step forward which, in the long run, should result in limiting the

possibilities for wrongdoings and corruption practices. In pursuit of that purpose, however, the positive practices found by AIP's 2015 audit should turn into a permanent and integral feature in the activities of the public contracting authorities.

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.

The obligations for proactive disclosure established by other laws also facilitate 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 66% of the audited websites. For comparison, in 2014 such sections existed in 55.43% of the websites. The institutions which have not created such sections on their websites are 186, while in 2014, their number was 238. The largest number belongs to the municipalities – 113. Like in 2014, three central government bodies are also among the institutions which do not fulfil their obligation under the APIA – the Council of Ministers, 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 under Art.43.

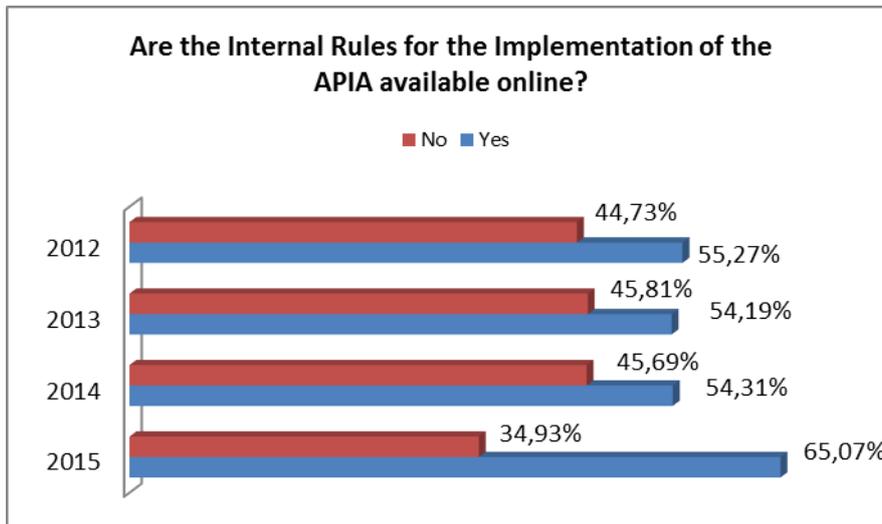
At the date of finalizing the text of this report (May 6, 2015), one can find a document on the website of the Ministry of Justice titled "Procedure and Conditions for Access to Public Information" in a subsection "Access to Public Information", which is uploaded under the category "Central Pledge Register" of section "Registers." In fact, the text of this document constitutes "Internal Rules for the provision of access to public information, generated and

stored by the Central Pledge Register.” It is evident that the AIP reviewer has correctly assumed that a characteristic of a part of the whole is not a characteristic of the whole, and has recorded that there is no *Access to Information* section on the Ministry of Justice website.

The content of the *Access to Information* sections complies with the legal requirements in 7% of the public bodies which have created such sections, i.e. in 25 institutions. These are the Ministry of Defense and the Ministry of Education; five regional governor’s administrations – Blagoevgrad, Vratsa, Razgrad, Smolyan, and Targovishte; the Public Financial Inspection Agency; The Executive Agency For Exploration And Maintenance Of The Danube River; the Executive Environment Agency; the Regional Inspection on Environment and Waters – Blagoevgrad; the Regional Inspectorate on Education - Blagoevgrad; three regional Health Inspections – Kuystendil, Silistra, and Targovishte, The National Audit Office and the Patent Office; and the municipalities – Dobrich, Zlatograd, Kocherinovo, Krivodol, Momchilgrad, Razgrad, Chelopech, Yablanitsa.

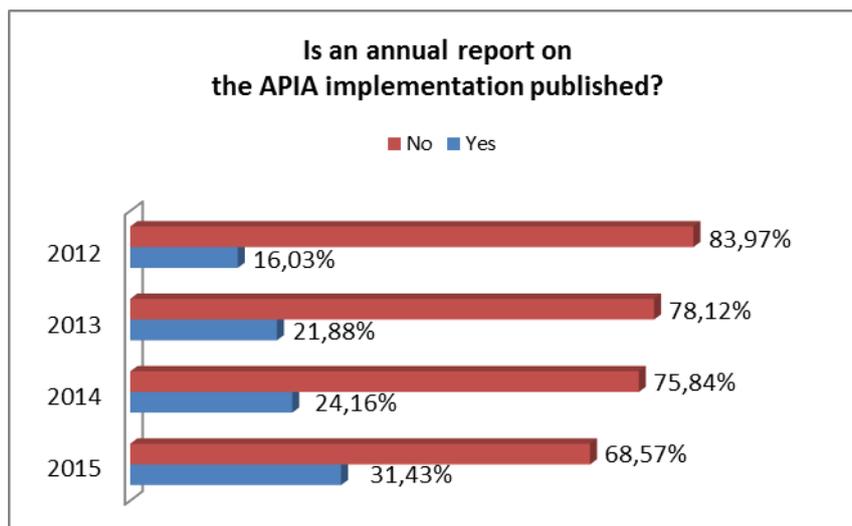
Unlike the unclear formulation of the requirement given by Art. 15, item 3 “Description of the information volumes and resources, used by the respective administration,” the requirements for the content of the *Access to Information* section are clearly explained by the law, specifically in the provision of Art. 15a, Para. 2. The fact that this obligation has not been fulfilled for years speaks of something else. This is the unwillingness to fulfill an obligation the incompliance with which does not attract any sanctions and is not overseen by anyone but the citizens, who visit the website. Citizens, however, do not have legal means to appeal against the lack of information online.

There is no particular development with regard to the publication of the internal APIA implementation rules, too. In the absence of any control over the the level of implementation of this obligation, and regardless of the slight increase of the number of publications, the performance is far from 100%.



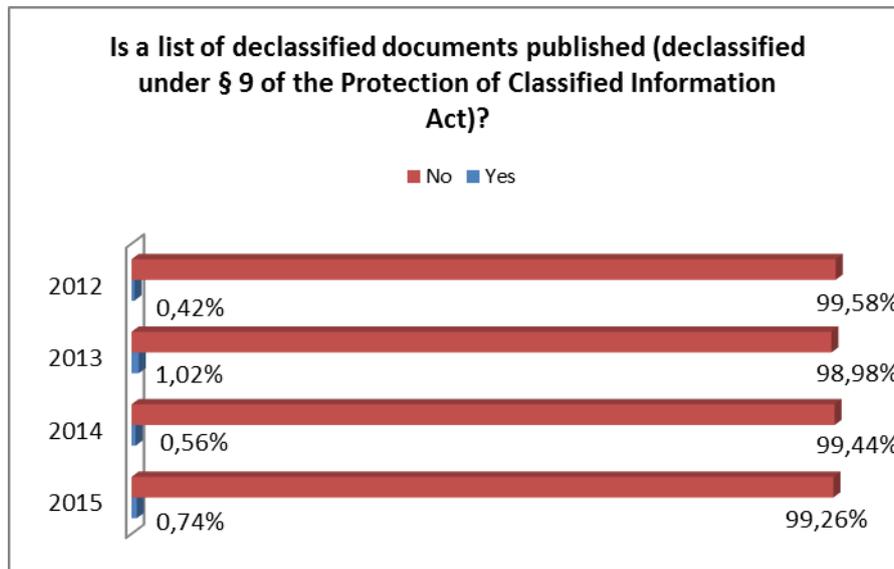
There is a continuing non-fulfillment of the obligation for online availability of a description of the procedure for access to the public registers in the *Access to Information* section. Only 7%, that is 38 out of 544 institutions, have published such a description.

The level of fulfilment of the obligation for online publication of the APIA implementation reports is also poor. It is a continuous tendency, 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*. In 2015, the APIA implementation reports were published by 171 institutions out of the 544 audited.



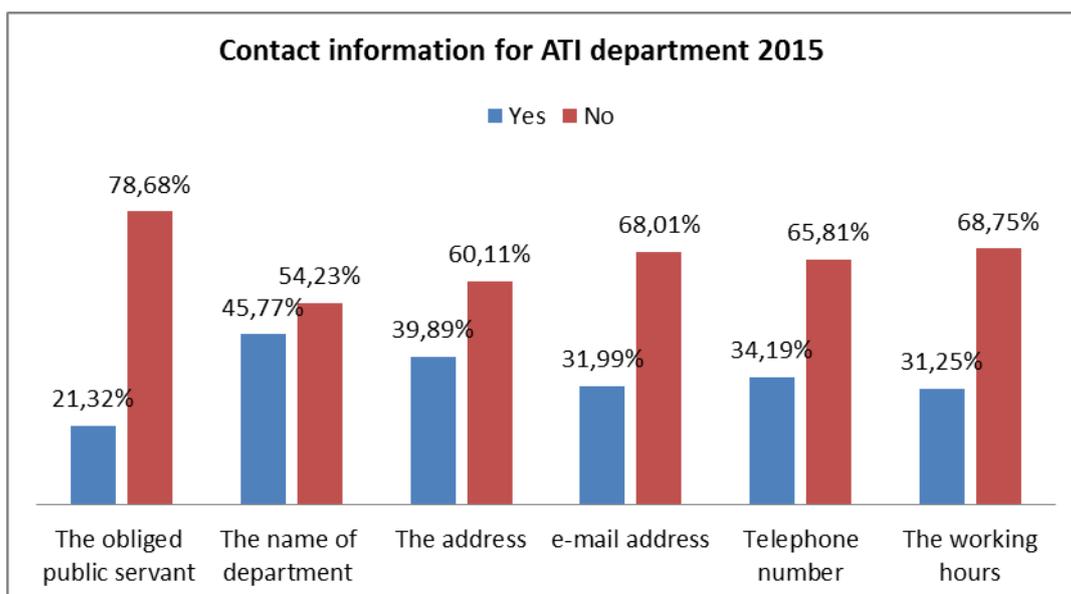
Regarding the transparency of the declassification of documents under § 9 of the Final Provisions of the Protection of Classified Information Act which provides for access to

these documents under the procedure of the APIA, the level of implementation has been lamentable during the past four years.



Regarding the list of the categories, subject to classification as *official secret*, 14% of the public bodies have published it on their websites.

The level of proactive disclosure of the contact information of the department responsible for receiving the access to information requests is much below 100%.



Conclusions

The results of the 2015 civil audit once again illustrate the necessity for a new legal regulation of the proactive publication of information on the Internet. AIP's grounded recommendations are presented in detail in the Concept Paper for Amendments to the Access to Public Information Legislation (the Concept).⁷¹ Part of the proposals have found their place in the text of the Draft Law on Amendments to the Access to Public Information Act. Others were not accepted.

The main and most important proposal from the Concept Paper remains – the establishment of a specialized, centralized, independent body that would set the standards, coordinate, and supervise the implementation of the Access to Public Information Act. No such body is envisaged in the Draft Law on Amendments to the APIA.

The functions of such a body, which would facilitate the implementation of the obligations for proactive publication of information on the Internet sites of public bodies not only under the APIA, but also under other laws, are the following:

- Review of the publication schemes;
- Working out the proactive publication standards;
- Trainings of the administration with regard to the proactive publication of information;
- Monitoring of the proactive publication of information;
- Imposition of sanctions for non-compliance with the legal requirements;
- Legislative initiative when problems related to the proactive publication are encountered.

The most important role of such an institution, according to the opinion of some of the effective Information Commissioners in other states, is to be a leader in the area of transparency and freedom of information.

Now, when the draft amendments to the Access to Public Information Act presuppose the establishment of a centralized platform containing the electronically filed requests and the

⁷¹ The English version is available at: http://www.aip-bg.org/en/news/Concept_on_Amendments_to_the_Access_to_Public_Information_La/20150115009472/

information granted, the administrations would need consultations and support. In the 2013 – 2014 report of the Office of the Australian Information Commissioner, a special place is saved for the role of the Commissioner's Office in providing support to the administrations for the maintaining of the so called FOI disclosure log, maintained by every obliged body under the law. It is exactly the Office of the Information Commissioner which assists the administrations in deciding which information could reasonably be published in light of the common framework prohibiting the publication of personal data.

The debates on the establishment of the platform in Bulgaria focused more on technical issues and on the automatization of the publication. States with older legislation and practices in the freedom of information and the protection of personal data areas focus more on the essence of the content to be published and the human approach towards the application of the restrictions.⁷²

⁷² See the report, pp. 120-121, на <http://www.oaic.gov.au/advanced-search?layout=default&searchword=Annual%20Report%202013-2014>

3. Legal Aid in Cases Referred to AIP – 2014

STATISTICS

Provision of legal aid continues to be among the principal activities of Access to Information Programme (AIP). In 2014, on some of the cases referred to it AIP provided legal assistance at the initial stage of the search for information, where the legal team gave advice and / or prepared a request for access to information. In other cases legal aid was rendered following a refusal by an obliged body to disclose information. (See: [Statistics from AIP data base](#))

An essential part of the legal assistance provided by the legal team of AIP is the preparation of complaints to the court and the representation in court of requestors who sought help from the organization.

Number and type of cases handled

Between January and December 2014, legal aid was provided in 391 cases.⁷³ Eight of these cases were referred through AIP's coordinators operating throughout the whole country. In the remaining cases the information seekers have requested our assistance directly at the office via e-mail or phone.

Depending on the nature and legal qualification of the cases, we divide them in the following groups:

- the majority of them reflect practices in violating the obligations of the institutions under the APIA – 326;
- the next group of cases are related to violations of the right of personal data protection – 47;
- less frequently we have provided advice in cases involving violations of the general right to seek, receive and impart information – 10;
- a small group of cases concerned freedom of expression – 8, etc.

⁷³The number of provided consultations on cases is twice as large – 923, since some cases require more than one consultation.

Who is most frequently seeking information

AIP statistics show that most frequently information under APIA is sought by citizens, journalists and NGOs. In 2014, once again most consultations were provided to citizens seeking legal aid from AIP – in 214 cases. In 77 cases, journalists and AIP coordinators from central and local media turned to us for legal aid, and 56 cases were submitted by NGOs. In 28 cases, our team was contacted for advice from civil servants, and in 13 – from businesses.

Which institutions information is sought from

The largest number belongs to cases where information seekers turn to the central executive bodies – 132, followed by institutions of local government (mayors and municipal councils) – 109 cases.

In fewer cases information is requested from public law bodies and organizations – 26, territorial executive authorities – 21, bodies of the judiciary – 35, independent government bodies – 18, etc.

The 18 registered cases of legal advice where a defendant was not indicated are those in which our team was contacted for a general consultation on the law, or with a question on the development of a court case, on the respective time limits, etc.

(See: [Statistics from AIP data base](#))

The most frequently used grounds for refusals

In 2014, the number of silent refusals remained significant – 28. Out of the refusals in substance, dominant are the grounds related to affecting third party interests– 22 and personal data – 12. The protection of preparatory documents under Article 13, par. 2 of the APIA was cited in 7 of the handled cases, and the protection of trade secrets – in 1.

SPECIFIC EXAMPLES FROM AIP'S PRACTICE IN 2014

Cases characteristics

As every year, this part of the report will present some of the most interesting and typical cases filed for legal advice or comment in AIP. The specific examples of our practice are an illustration of how the APIA is effectively used by citizens, journalists and NGOs in cases of public reaction to current events, in campaigning, in investigative journalism or in solving everyday problems.

The seeking of information during the year reflects important public events. While 2013 was marked as a year of protests, 2014 was the year of the banking crisis. In early summer, the fourth largest bank in the country went bankrupt, which provoked a strong social reaction. The bank's offices were closed, and the depositors' money – withheld. For months the topic was central in the news, and representatives of the competent state institutions did not cease to give explanations about what is happening. In parallel, citizens, informal groups of depositors in the bank, and journalists began to request access to public information from various government bodies, realizing that the APIA is the only tool through which it is possible to obtain reliable information in such a situation.

As witnessed in this part of the annual report on the state of access to information, virtually all events, exciting public life and debate in 2014, are accompanied by a wave of requests for access to public information, addressed to the institutions involved with the case. Citizens, journalists and NGOs ask questions relating to the deficit of transparency in the investigation of each particular case, as well as to the processes of decision-making conducted by the competent authorities in resolving the specific problem.

The year that passed was a year of yet another special parliamentary election. Thanks to the increased civilian control by the NGOs involved in the elections monitoring, we note positive developments in terms of transparency in the preparation of the elections. Many of the media promptly published their tariffs and contracts with participants in the election campaign and the Council for Electronic Media published a list of the media who did not. The Central Elections Commission continued to publish on the Internet the protocols of its sittings and for the second time it took special measures to protect the personal data of

voters, giving citizens the opportunity to check whether their personal data are included in the lists of supporters of the respective parties registered for the elections.

Outside the emblematic public debates, the interest in seeking access to information traditionally remains in several areas: seeking information relating to the expenditure of public funds – regarding methods of selection of contractors for public procurement, the contracts, setting prices for various activities, etc.; prevention or detection of corruption and irregularities; as well as the process of decision making and accountability of institutions. Consulted cases show that it remains difficult to access information on the results of inspections, as well as results of conducted competitions for public officials' posts.

Some of the cases on access to public information presented in this section of the annual report found their continuation in court, and their development in the judicial phase can be traced in the "Litigation" section.

Seeking information on current public issues

Bank secret about the banking crisis

The Corporate Commercial Bank (CCB) bankruptcy was one of the leading topics in 2014. Only weeks after the International Monetary Fund declared the Bulgarian banking system "stable and liquid, with banks' non-performing loans buffered by provisions and significant capital,"⁷⁴ it was shown that this is not exactly the case for one of the largest banks in the country. Media reports about the risks associated with Corporate Commercial Bank, and about how it has been drained by loans to companies close to the bank manager surfaced (on the news plane). Subsequently the bank was placed under the supervision of the Bulgarian National Bank (BNB) after depositors began withdrawing their deposits from it en masse. The CCB crisis raised many questions on the banking policy led by BNB, as well as on the specific mechanisms of oversight over the banking business. Citizens and journalists submitted requests on the subject. In one of those cases the citizen Branimir Morfov made a request to the Governor of the Bulgarian National Bank, asking for

⁷⁴ [IMF Concludes Visit to Bulgaria, 12 June 2014, IMF Press Release No. 14/278](#), on a visit to Bulgaria during 6 – 11 June 2014.

information on banking supervision performed by the institution in connection with the collapse of CCB. The specific information that was requested, concerned the existence of a written assessment by the BNB on the approval for acquisition by CCB of "Credit Agricole Bulgaria" JSC (subsequently renamed to Commercial Bank "Victoria"). By decision of the Deputy Governor of the National Bank the requested information was refused on the ground that it was covered by professional secret under the provisions of the Credit Institutions Act. BNB did not indicate in its decision how disclosure of the requested information would harm the protected interest. There was also no assessment of the overriding public interest, particularly necessary in a time when the problems surrounding CCB were among the headlines in the media and affected the social, economic and political life in the country. Currently, the refusal is challenged before the Supreme Administrative Court.

After the management of Corporate Commercial Bank informed the BNB of the depletion of liquidity and suspension of payments, as well as all types of banking operations, the BNB Governing Council decided to place the Corporate Commercial Bank under special supervision. From this moment all shareholders rights were revoked and conservators were appointed. On this occasion the journalist Tsvetelina Yordanova from "Trud" (a leading newspaper) requested from the National Bank the conservators' reports and audit reports (prepared by "Deloitte Audit", "Ernst & Young" Ltd. and "AFA" Ltd.) on the state of Corporate Commercial Bank and "Credit Agricole Bulgaria", prepared after putting the credit institutions under special supervision. On this case too, the National Bank refused to provide access stating in its decision that the information was not public, since it is not created by the BNB and is related to the activities of third parties – banks, which are not obliged bodies under the APIA. As additional grounds for refusal were stated the existence of "banking secrecy" and "professional secrecy."

Depositors in CCB also made attempts to obtain information on the measures taken by the state in solving the bank crisis. In one of the cases AIP's legal aid was sought by Radka Petrova, a customer of the bank and a coordinator of an informal civic association representing its depositors. After the placing of the bank under special supervision, citizens asked the National Bank to provide them with information on the amount of remuneration of the auditors. In response they received a refusal based on the protection of personal data.

The presented cases are a small part of the requests for information concerning the bank crisis received and consulted by our team during last year. Unfortunately, it turns out that, despite the increased interest in the subject and the need for transparency of the banking supervision by the BNB, it is difficult to obtain clear and definitive answers and bank secrecy clearly outweighs the public interest, at least for now.

Seeking information on the construction of the gas pipeline “South Stream”

The “South Stream” gas pipeline topic – an international project for transportation of natural gas from Russia to Italy and Central Europe across Bulgaria – was constantly discussed in the public space over the last few years. During this period, on several occasions we noted the reluctance of institutions to inform the public of the decisions they were taking on this important issue for our country. Between 2011 and 2014, multiple refusals to disclose any specific information on the project were received in response to requests from citizens, journalists, and political parties. In the end, thanks to public pressure and the court cases challenging the refusals, in the autumn of 2014 the caretaker government published on the internet most of the documents concerning the project.

Among the cases submitted to AIP for advice on seeking information on the subject, the case of the political association “National Union Edinstvo (unity)” stands out. In early February 2011 the Bulgarian Energy Holding (BEH) selected a contractor for the feasibility study on the Bulgarian section of the project. The contractor had to examine the technical, legal, environmental, financial and economic feasibility of the Bulgarian section of the South Stream gas pipeline in order to ensure the supply of natural gas to Central and Southern Europe. In August 2013 the Supreme Expert Environmental Council with the Ministry of Environment and Water (MEW) approved the section through which the gas pipeline would pass and the construction officially began in the autumn of that year. On this occasion – the public announcement and start of the construction by the Bulgarian side to the project South Stream – the National Union Edinstvo, represented by several members of the Bulgarian parliament, requested under the Access to Public Information Act from the Ministry of Economy and Energy (MEE) the documents related to the project : agreements, contracts, transcripts of meetings, minutes of meetings, memoranda and

other documents concerning the project, its implementation and financing on the territory of Bulgaria. The then Minister of Economy said that such documents were not stored in the ministry. The ministry's refusal was challenged in court, the case was led with legal assistance from AIP. During the trial, it became clear that the statements in the ministry's refusal do not reflect reality. The court instructed the General Secretary of the Ministry to submit on the case a list of "all documents concerning the project South Stream, including copies and duplicates stored in the entire documentary data set of the ministry." From the presented printout of all documents that have been registered and contain the words "South Stream", became evident the huge number of documents related to the project that the MEE kept. Precisely due to the ongoing court case, a major part of the information on the construction of the South Stream gas pipeline was revealed. From the set of documents lodged on the case, for instance, it became clear that the company "South Stream Transport" made proposals for legislative amendments to the Energy Act, in order to circumvent EU antitrust legislation, in relation with the "Sea gas pipeline – South Stream" project. As a result, a signal was submitted to the prosecution, while in the meantime in early September 2014 the MEE made publicly available the majority of the documents on the project by publishing them on its website. In late 2014, Russia declared its intention to suspend the development of the South Stream project through Bulgaria, and to realize a similar project through the territory of Turkey, under a different name.

The National School for Ancient Languages and Cultures case

This example of seeking information on current public events is also an illustration of disclosing information necessary for the campaign of an active citizens' group defending a public cause. The story began in 2013, received its final outcome at the beginning of 2015 and throughout 2014 was the focus of constant public debates. The National School for Ancient Languages and Cultures is a specialized high school that provides classical education in humanities. In 2013, the Ministry of Culture (MC), the school's patron and owner, undertook renovation of the school building. The renovation was financed with funds from an EU program and the amount of funding is over 2 million BGN (over 1 million euros). Upon completion, however, the MC decided that in spite of the renovation it will provide the school with another building, which – though not renovated and in poor condition – is located in the city center, unlike the newly repaired one, which is based in an outer neighborhood of Sofia. This decision provoked a strong public reaction of teachers,

former and current high school students, as well as the general public. Two civic groups took opposing positions in the debate where the school should be housed: in the renovated building in the outer neighborhood of the city or in the outdated not renovated building in the city center. The particular questions that were raised in the public debate are: Is it rational to spend 2 million BGN to repair a building, which ultimately will not be used for the needs of the school? What are the reasons for giving the school a building in poor condition that needs the spending of new funds for repair? What is the technical condition of the two buildings? What are the competent authorities' assessments regarding the satisfaction of health and safety regulations in both buildings?

In 2013, the group of teachers and students defending the return of the school in the renovated building, submitted more than 30 requests for access to public information, addressed to various government institutions, the purpose of which was to obtain information that would prove the good quality of the repair and the effectiveness of the project's implementation. The main institutions to which the access to information requests were addressed are:

- **The Ministry of Culture** – the submitted requests sought access to copies of various documents concerning the effected repair works on the building, to documents regarding public discussions held in the MC on the issue, opinions, expert statements, etc. Access to information from this institution is difficult to obtain and disclosure of much of the information has been refused, such as the protocol from a public discussion in the MC, for example. The refusal was challenged and the successful development of the case at its court phase can be found in the “Litigation” section of this report.
- **Regional Health Inspectorate (RHI) – Sofia City** – requests have been submitted for access to copies of documents containing the findings of the RHI on the safety of the renovated school building, and in particular on the levels of asbestos in the walls. The information received indicates that the building is safe and fit for use, and the detected asbestos was below the maximum permissible levels. With the disclosure of this information was put an end to the speculations that the building is dangerous and the educational process in it could not be carried out.

- **Sofia Municipality** – requests have been submitted for access to information regarding the ownership of the two school buildings together with a copy of the technical passport of the renovated building.
- **Ministry of Regional Development and Public Works (MRDPW)** – requests have been submitted for access to copies of all correspondence between the MRDPW and the Ministry of Culture, which concerned the case of the project for renovation of the school. The Ministry of Regional Development provided full access to the requested information, which reveals how the repair works were carried out and what are the assessments of these activities.

Thanks to the information received under the APIA a group of teachers and students were able to argue their positions in the public discussions.

Explosion in a munitions factory in the village of Gorni Lom

In the autumn of 2014, a blast in the workshop for utilization of ammunition of the company Videx in the Midjur factory (Gorni Lom village), killed 12 people. The incident raised questions related to the safety of the activities carried out on the utilization of old ammunition, the oversight by public authorities on this activity and the procedures for issuing permits.

The topic of the safety of utilization activities was brought to public attention for the first time in 2009, when the citizen Petar Penchev, Deputy Chairman of the National Movement Ecoglastnost submitted requests for access to information to the Ministry of Environment and Water (MEW) and the Interagency Council on the military industrial complex and mobilization readiness of the country to the Council of Ministers. Back then, using the APIA, Petar Penchev received key documents such as a copy of the authorization for the transfer of weapons issued to Videx for the import of landmines, a copy of a company's contract for utilization of ammunition and others. Again following the APIA procedure, the MEW also disclosed Videx's authorization for utilization of ammunition. Despite the request made, the Ministry did not provide assessments of the impact on the environment, together with the results of activities (if they were being already carried out) on destruction of Greek mines in Bulgaria, including on monitoring of the impact on the environment. Using the obtained documents back in 2009, Penchev warned in writing the responsible

institutions of the danger to human health and the environment that exists in the import and utilization of old ammunition, but received no response to his signals. In 2014 a tragic accident actually happened.

Immediately after the blast in Gorni Lom, Petar Penchev once again submitted requests for access to information to the same institutions, seeking various documents attesting the imports of 1,568,159 landmines in view of their utilization. He also sought information on the price to pay for the destruction – € 0.32 for a mine. The information was disclosed and using the received documents, Petar Penchev submitted a signal to the prosecution of the Republic of Bulgaria for committed abuses and violations of safety rules.

Information on the expenditure of public funds

In the past year, the interest in the topic of public expenditure exceeded the usual interest shown from citizens, journalists and NGOs. Several local administrations took the role of access to information seekers. The case was prompted by the distribution of funds under the Public Investment Program (PIP) of the government “Growth and development of the regions,” according to which some municipalities have received funding, while others have not. How did the actual distribution of around half a billion BGN happened remained unclear to the public. Therefore, in early 2014, the Municipality of Gabrovo requested access to the minutes of the committee evaluating the projects. In an official letter to the then Minister of Finance in his capacity of Chair of the Interagency Council for Evaluation, Prioritization and Selection of Project and Program Proposals to Implement the Objectives of the PIP “Growth and development of the regions”, the Mayor of Gabrovo requested to receive copies of the following documents:

- Minutes of the sittings of the Interagency Council;
- The methodology developed under the criteria set in Council of Ministers Decree №4 / 16.01.2014, under which the project proposals were evaluated;
- The detailed evaluations of all project proposals received – by criteria, and the total score obtained.

Later in the year the mayors of three other municipalities – Kozlodui, Byala Slatina and Oryahovo – challenged in court two Decrees of the Council of Ministers that actually allocated the funds under the program. Among the grounds for the challenge was the lack

of transparency and access to information to the methodology of the allocation of funds. That battle for transparency was lost and access to information was not obtained.

Citizen monitoring and evaluation of specific areas of governance

During 2014, we noted cases of “campaign based search for information.” These are cases in which, mostly NGOs, sent identical requests to different institutions in order to monitor and apply civic control on certain of their administrative practices. We will point out two examples to illustrate.

The first one is a case of an international charity organization working in the field of animal protection – the “Four Paws” Foundation. The organization works actively to reduce the number of stray animals in a humane way by applying the Protection of Animals Act (PAA). In 2014, the organization aimed to assess the state of the stray animals’ populations in all municipalities, as well as the fulfillment of the respective obligations by local authorities under the PAA. Therefore, the organization sent identical requests for access to public information to all municipal administrations which asked whether the municipal council had adopted a program for controlling the population of stray animals under Article 40, par. 1 of the PAA, as well as for a summary, organized on an annual basis, on the activities carried out by the municipality under this program. In response to the applications, despite the occurrence of some refusals – explicit and implicit – was received a large amount of information that enabled the organization to perform the desired assessment and to make recommendations to the new national program for controlling the population of stray animals.

The second such case was initiated by the environmental NGO Foundation “BlueLink” which planned to produce a complete image and assessment of civic participation in the work of central and local executive power. For this purpose, the organization sent identical applications for access to public information, addressed to all central executive and local self-governing bodies, which sought the provision of information on the number of civil society councils functioning at the respective authorities, as well as normative grounds on which these councils operate.

Such campaign submissions of requests for access to public information aimed at assessing the state of a particular field of governance are becoming more and more popular in the activities of various NGOs and are used to support the work of the organizations.

Searching for public sector information for re-use

Amendments to the Bulgarian Access to Public Information Act in 2007 introduced the European Directive 2003/98/EC on the re-use of public sector information. The amendments included the introduction of a new chapter in the APIA on the access to such information. Although in the past seven years cases where we were asked for advice on requests under this chapter were rare, in 2014 we noted an increased interest in this type of information. AIP provided legal aid in initiating the first case against a refusal to provide information for re-use. The request on this case was submitted in April 2014 to the National Assembly. It sought a copy on technical carrier in an open format of the entire structured database used by the website of the National Assembly, with the exception of the data protected under special legislation. In his request, Petko Tsikov from the NGO “Obshtestvo.bg” indicated that he wanted to obtain the information in order to create a new product aimed at improving citizens' awareness of the activities of the National Assembly. According to the applicant the appropriate visualization of the parliamentary process will facilitate involvement of the citizens in the political process. Since, the President of the National Assembly did not issue a decision on the application in the statutory deadline, the silent refusal was appealed from in court. By decision⁷⁵ of the Administrative Court – Sofia City, the refusal was repealed, the court pointed out that the President of the National Assembly was obliged to issue a decision on the application within the statutory deadline, which he did not do, therefore the case was returned to him for explicit pronouncement.

In another case, information for re-use was once again refused, this time by the National Revenue Agency (NRA) at the request of Bozhidar Bozhanov from the “Obshtestvo.bg” Foundation, submitted electronically. He asked for the provision in open format of a list of names and addresses (and / or geographic coordinates) of petrol stations in the country that have a digital connection with the NRA. The purpose of the request was for the data to be used for a website, which collects information on all petrol stations in Bulgaria and the

⁷⁵ Decision no. 7832/15.12.2014, of the Administrative Court – Sofia City.

fuels they offer. Initially, the NRA specifically requested that the application be signed with electronic signature – a requirement that, although contrary to the provisions of the APIA, for years has been part of the practice of the agency on provision of information electronically. Subsequently, the data was refused on the grounds that they could constitute a trade secret of the persons engaged in commercial activities through petrol stations, therefore it was necessary to ask each one of them whether the provision of the data would violate such a trade secret. The NRA pointed out that this is objectively impossible due to the large number of persons who should be asked. In addition, the information was refused on the grounds that the required investment of effort and resources go beyond the normal procedure of providing access to information available at the Agency (Art. 41a, par. 2 of the APIA).

An example of a successful exercise of the right of access to information for re-use is the “WWF-Danube-Carpathian Programme – Bulgaria” work on creating a unified platform of the rivers in Bulgaria, which will help the conservation and restoration of river ecosystems. By submitting dozens of requests under the APIA, the organization was able to collect the full database of all rivers in Bulgaria with information about their environmental condition. Requests were made to the basin directorates in the country, the Regional Environment and Water Inspectorates, the Executive Environment Agency, as well as the Sustainable Energy Development State Agency. The collected data has been analyzed, processed and opened for re-use by creating a web-based GIS platform concerning the rivers with an open public access (<http://gis.wwf.bg/rivers/>). The platform provides the opportunity for all citizens to obtain detailed online information about the location, condition, use and threats to each river in Bulgaria. Checks can be made on all existing and approved hydropower plants, as well as their technical characteristics. The platform containing the rivers database was launched for public use in August 2014 and aims to enable civil society to participate more actively in the conservation of the rivers in Bulgaria.

Investigative journalism on issues of public interest

The consulted by AIP cases of journalists indicate that the use of the law in journalistic work is especially effective when its purpose is investigating opaque practices of the institutions; where there are serious doubts about the abuse of power or it is necessary to shed light on a topic of public interest. Journalistic investigations using the APIA do not

always give clear answers, nor do they necessarily change existing practices. Sometimes it is more important that they raise “uncomfortable” questions and make them public.

The construction of a chlorine plant in Gorna Oryahovitsa was suspended with the help of the APIA

In a case of seeking information for an investigation of the journalist Zdravka Masliankova, from “Yantra TODAY”, a Veliko Tarnovo newspaper, the construction of a chlorine production plant in Gorna Oryahovitsa was suspended. The news of the construction of the factory led to an escalation of tension in the city, where an “Antichlorine” protest movement was immediately formed and produced a petition to the responsible authorities which received the support of over 3,000 people.

The investor company planned to create a production base for a huge amount of liquid chlorine – nearly 15,000 tons per year, which according to the Environmental Protection Act qualifies the enterprise as having high risk potential. The hazardous production had to be located less than a kilometer away from two schools, a hospital and residential neighborhoods in the city.

Documents received under the APIA showed that for years the company has been operating in its own warehouse for chemicals in Gorna Oryahovitsa thus occasioning numerous violations of the current legislation. It turned out that the base was operating illegally, without having been commissioned and despite the inspections by a number of institutions.

As a result of the investigation and the published information about the detected irregularities on the pages of "Yantra Today", as well as thanks to the active civil actions against the construction of the plant, at the end of 2014 the investor company withdrew its investment intent (plan).

A publication on an accident on the railway line in Lovech raised once again the issue of safety of level crossings

Using the APIA, the journalist Tzvetan Todorov from “People’s Voice”, a Lovech newspaper, managed to collect, analyze and publish information on the status of railway crossings on the territory of Lovech region. His interest in the subject was triggered by a lawsuit concerning an accident with a disabled person, who, while trying to pass through the only nearby railway line crossing, which was closed and left without maintenance by the Bulgarian State Railways, saw his electric scooter fail just before the train passed. At the last moment he managed to move himself away from the line, but the train wrecked his vehicle. Following the incident the man remained immobilized for over a year because he could not get around without his scooter and therefore sought compensation before the court for pecuniary and non-pecuniary damages.

On this occasion, the journalist decided to request official information on the status of the crossings in Lovech region through access to information requests made to the competent institutions – the “Railway Administration” Executive Agency and the National Company “Railway Infrastructure”. The answer showed that for the last three years the incidents in the area are 11, but also that this is not the actual number, i.e. the official data are not complete. Of all the crossings in the area (31) only eight are equipped with automatic three – light systems with flashing light, while in the meantime no crossings had been closed. The provided information elucidated some of the problems associated with this topic, but it is up to state institutions to react, since it is in their powers to take measures to prevent accidents. Dozens of people living near the railway line in Lovech (and not only there), are still forced to cross it at unregulated crossings at their own risk.

City stories

Regulation of urban environment, designing the plans for urban development, construction of public buildings, parks, playgrounds, and improvement of landmark urban areas are topics traditionally sensitive for citizens, journalists and NGOs working in this field. Evidence of this high interest is the significant number of cases in this area, where AIP’s legal aid and advice was sought. Examples of such cases are the requests for access to information of the NGO “Association of Parks in Bulgaria”, which sought documents

related to the detailed urban plans of the town of Tsarevo, where the obtained information testified for numerous suspicious transformations as to the purpose of certain plots in the municipality. On the territory of Sofia the organizations “Grupa grad” (“City Group”), “Citizens for Green Sofia”, as well as individual citizens in 2014 sought information on urban planning, renovation of the city’s central area and various symbolic places in Sofia such as the “Lions Bridge”, blvd. “Vitosha”, etc. In this report we also note the conclusion from our annual survey of the websites of the institutions – very few are still the municipalities that publish their general spatial/urban plans on the Internet, even though it is their duty under the Spatial Development Act.

One of the interesting cases of seeking information about urban environment, which was consulted by our team, illustrates how information obtained under the APIA supported a journalistic investigation revealing a waste of public funds.

The case is initiated by the journalist Spas Spassov – correspondent of the “Dnevnik” newspaper in Varna. In 2014, Spassov investigated the expenditures of the Municipality of Varna on the occasion of the participation of the city in the competition for European Capital of Culture in 2019. Researching how half a million levs (BGN) of municipal funds were spent for promoting the city in the contest, Spassov submitted requests for access to information, which sought the provision of minutes of meetings of the municipal committees, minutes of meetings of the Municipal Council of Varna, and a full report on the expenditures of the municipality made under the “Varna 2019” project. Following provision of the requested information, Spassov published his investigation into two parts: “The secret Plan B in Varna” and “How much does Varna’s loss in the contest for Capital of Culture 2019 costs”. The obtained documents reveal interesting facts, such as the way in which decisions are taken in the municipal committees and municipal council, the size of specific costs, and the curious fact that a 7,000 BGN (around 2,500 euros) fee was paid to the author of a drawing on an asphalt road. Spassov published all documents received using the APIA on his Internet blog.⁷⁶

In another case related to the topic, a group of citizens of Veliko Tarnovo asked the municipality to provide information concerning the reconstruction of a residential building

⁷⁶ <http://spasspasov.com/?p=1621#more-1621>

that forms part of a group cultural monument called “Historical Settlement Veliko Tarnovo”, located in the “old town”. With their application they requested access to the construction documentation of the project for reconstruction of the building, and in particular – the visa for research and design; the building permit (reconstruction); the approved architectural project (in its architectural and design part); as well as a document certifying the approval of the National Institute of Immovable Cultural Heritage (NIICH). The reason for submitting the request were the construction works on the site which were in obvious conflict with the requirements for construction and repair of buildings, declared as cultural monuments. This gave rise to doubts that they were performed without the requisite permits and approvals from competent institutions. In response to the application, the mayor of Veliko Tarnovo refused information on all the points on the grounds that the requested documents are part of administrative files and as such are not public information, but are documents on administrative services to individuals and legal entities, i.e. information outside the scope of APIA within the meaning of Art. 8, item 1 of the Act. The refusal also stated that, since the requesters do not have the status of interested parties within the meaning of the Spatial Development Act (SDA), they have no right of access to the requested information. The information was also refused, on the grounds of “personal data of third parties” and “the requested documents are not carriers of public information.” Subsequently, the case against the refusal was won on two court instances – the Administrative Court – Veliko Tarnovo and the Supreme Administrative Court. In its decisions, the court held that the applicable rules for access to the requested information are those of the APIA and not as the refusal stated – those of the Spatial Development Act. The judges added that the information makes it possible to increase transparency and accountability of the Veliko Tarnovo Municipality in connection with a socially sensitive activity – the preservation of architectural heritage and building the image of the city, i.e. there is an overriding public interest in disclosure. (More on this case can be found in the “[Litigation](#)” section of this report). Eventually, thanks to the legal proceedings and decisions of the court, the mayor of Veliko Tarnovo provided access to the requested information.

Personal data protection

There are several important points that should be noted in the area of citizens' right to protection of personal data for the past year.

Access to Information Programme

Firstly, we have to mention the constitutional case № 8 of 2014 initiated at the request of the Ombudsman of the Republic of Bulgaria. Following the publication of the decision⁷⁷ by the European Court of Justice declaring the EU Directive 2006/24/EC (the Data Retention Directive) invalid, the Ombudsman asked the Constitutional Court of the Republic of Bulgaria to review the compliance with the Constitution of the provisions in the Electronic Communications Act (ECA) relating to the storage and access to traffic data generated in electronic communications. According to the Ombudsman the contested provisions were adopted by an amendment of the ECA, which aims precisely at the introduction of the abovementioned directive. Under the law, providers of public electronic communication networks or services are required to keep all data generated or processed in the process of their activities relating to the traffic of messages. The purpose of storing the data is detection and investigation of crimes and the retention period is set out in the law.

The Constitutional Court constituted as third parties on the case a number of state bodies and NGOs, including the Access to Information Programme. In early July 2014 AIP submitted an official statement, which supported the request of the Ombudsman and provided extensive reasoning for the position that the challenged texts of the ECA do not contain the necessary guarantees for the rights of citizens in relation to secret surveillance and contribute to unjustified interference with their personal sphere. Through Decision № 2 of 12 March 2015⁷⁸ the Constitutional Court declared unconstitutional all attacked texts of the ECA. The justices noted that the generated and stored data for the legally specified period contain full details of who has communicated, as well as when, with whom, how, with what device and from where.. In turn, this information allows for extremely detailed and full profiling of monitored people, including on sensitive criteria. The court adds that in transposing the European Directive the Bulgarian legislator has illegally expanded its scope both in terms of the purposes for which traffic data are stored, and in terms of the number of persons who have access to these data. One of the main problems with the impugned provisions is associated with the disproportionately long period for data retention – 12 months, as well as with the fact that in one of the hypotheses that period may be extended by six months, without any control by an independent authority or court.

⁷⁷ [ECJ, Grand chamber, 8 April 2014, Judgment in Joined Cases C-293/12 and C-594/12 Digital Rights Ireland and Seitlinger and Others](#)

⁷⁸ Bulgarian version at: <http://constcourt.bg/contentframe/contentid/4467>

Next, it is important to mention the published formal opinion of the Commission for Personal Data Protection (CPDP) on video recording in the context of personal data protection. The opinion is binding on all personal data administrators who maintain a video surveillance register. In its opinion, the Commission considers that in order for the processing of personal data through the use of video surveillance systems to be permissible, in each case an assessment of the balance of interests of the administrator and the recorded subjects is required. The competent state authorities are entitled to carry out video surveillance with the purpose of protection of national security and public order, but this should be regulated so as to avoid the possibility of misuse of the collected data. Whenever action is taken for processing data collected by video surveillance systems, a concrete assessment should be carried out of the proportionality of the purposes for which these data are collected and whether these purposes could not be achieved in a different manner.

During the past 2014, the AIP legal team offered assistance in 47 cases where citizens considered their rights of personal data protection violated. As noteworthy in terms of the right balance between the right of access to information and protection of personal data we will present the case of Georgi Serbezov against whom several complaints were submitted to the CPDP. Serbezov is an access to public information activist – he has led and won trials against refusals of the administration to provide information throughout the years. It is this activity that has demonstrated how important the knowledge of case law is, but at the same time even the Supreme Administrative Court's site, recognized as the best in the judiciary, is not comfortable enough for use by citizens. Therefore, Georgi Serbezov created a specialized site that makes it easy to search through the already published decisions and rulings of the SAC specifically and solely on litigation under the APIA. In 2014 complaints were filed against Serbezov, in his capacity as administrator of the site in question, alleging that there has been unlawful processing of personal data, as the site (re)publishes the names of the applicants in their capacity as parties on cases of access to public information. The applicants do not deny that indeed the initial publication of their three names was made on the official website of the SAC, but they claim that Georgi Serbezov's site makes their names searchable through the Google search engine. Therefore, the applicants requested from the CPDP that the alleged violation of their rights be discontinued. Subsequently, the Commission rejected both complaints as unfounded and after assessing the balance between the two rights –personal data protection of the

parties to a public trial and the right of citizens of fast and easy access to case law, ruled in favor of the latter.

Among the most common cases in which citizens have turned to us for advice in the field of personal data according to AIP's database are the following:

- cases where citizens seek advice on the illegal processing of their personal data by political parties through the inclusion of their names and other data in the lists of supporters of the respective parties upon their registration for elections;
- cases where citizens turn to AIP for advice on the illegal processing of their data by debt collection companies;
- cases of seeking access to personal data of children from the State Agency for Child Protection. Primarily, these are cases of separated families where one parent approaches the Agency with the request for an inspection on how the other parent is raising the child, and then seeks access to information on the results of that inspection.

4. LITIGATION

STATISTICS

The AIP legal team continued to provide legal aid to citizens, NGOs and journalists through supporting court cases against refusals of access to information. In 2014, the AIP legal team has prepared **71** complaints and written submissions to the courts, assisting information seekers (**45** in cases led by citizens, **nine** – by NGOs, **17** – by journalists).

In 2014, the AIP legal team drafted a total of **47** complaints and appeals to courts. First instance complaints – **38** (Supreme Administrative Court – **4**, Administrative Court – Sofia City – **16**, Administrative Court – Sofia District – **one**, other Administrative Courts in the country – **16**, Commission for Personal Data Protection - **one**), appeals to the Supreme Cassation Court – **seven** and appeals against rulings – **2**.

Out of the **38** complaints filed before first instance courts, **29** were against explicit refusals to provide the information sought, and **nine** – against silent refusals.

In 2014, the AIP legal team provided representation in court on **68** court cases against refusals to provide access to information. **24** written submissions to different courts were prepared in the same period.

In the same period different courts issued a total of **83** decisions and rulings on court cases where AIP provided legal assistance (Supreme Administrative Court – **38**, Administrative Court – Sofia City – **30**, Administrative Court – Sofia District – **one**, other Administrative Courts in the country – **14**). In **72** cases, the courts ruled in favor of information seekers, supported by AIP, and in **11** cases – in favor of the administration.

Obligated subjects

By its decision of January 22,⁷⁹ 2014, the Administrative Court Sofia City (ACSC) repealed the refusal of the “Railway Administration” Executive Agency (RAEA) to provide to the

⁷⁹ Decision No. 396/22.01.2014, ACSC, Second Division, 37th Panel, adm. case No. 7938/2013.

Association “Friends of Railway Transport” its annual reports on the oversight of the Bulgarian State Railways (state company) activities in the delivery of rail transportation public services (rail transport of passengers). The NGO also demanded information about the inspections held by the agency in its capacity of a national oversight body under the EU Regulation 1371/2007. The refusal was grounded on the third party interests exemption, in the face of the state company, and the lack of the latter party’s consent to the disclosure. The court ruled that the Bulgarian State Railways is an obliged body under the APIA as on one hand the company is a public-law organization and on the other, it receives subsidies from the state budget. Consequently, its consent is not required under the provision of Art. 31, Para. 5 of the APIA. The decision of the ACSC was upheld by a decision of the Supreme Administrative Court as of October 29,⁸⁰ 2014. According to the supreme justices, the first instance court had rightly ruled that the third party in the face of the Bulgarian State Railways was an obliged body under Article 3, par. 2, item 2 of the APIA since in 2013 the company had received a state subsidy for the delivery of a public service – rail transport of passengers. Thus, the company’s consent as a third party is not required according to Article 31, par. 5 of the APIA and the information sought should be disclosed.

By a decision⁸¹ of 19 February 2014 the ACSC repealed a refusal by the municipal company “Toplofikatsia Sofia” EAD to provide access to the contract concluded with a “heat distribution calculation” company for the requester’s condominium. The court held that “Toplofikatsia Sofia” EAD is an obliged subject under the APIA as a public law organization, since regardless of its commercial nature the company was created to meet the public interest and its sole shareholder is the municipality.

By decision⁸² of 12 May 2014 the Administrative Court – Sofia City (ACSC) declared null and void the refusal of the Financial Supervision Commission’s president to provide access to the Commission’s financial supervision legislation analyses. The court noted that the Commission had set in its procedural rules that decisions on access to information are to be taken by the Commission on proposal of the president. Thus, the Commission had preserved this right for itself as a collective body and had not authorized its president to take these decisions.

⁸⁰ Decision no. 12826/29.10.2014 of the SAC, Seventh Division, on administrative case no. 3456/2014

⁸¹ Decision no. 921/19.02.2014 of the ACSC, II Division, 24th panel on a. c. no. 1785/2013

⁸² Decision no. 3114/12.05.2014 of the ACSC, Second Division, 39th panel, on administrative case no. 36/2014

By ruling⁸³ of 3 June 2014 the SAC declared the Bulgarian Medical Association (BMA) an obliged subject under the APIA as a body, subject to public law, thus repealing an ACSC ruling. The justices held that the BMA should be considered a body, subject to public law, because its establishment, existence, structure, organization and activities are regulated by law – the Professional Organizations of Physicians and Dentists Act and it has public law functions under primary and secondary legislation.

The “public information” concept

By decision⁸⁴ of 8 May 2014 the Supreme Administrative Court (SAC) upheld a decision of the Administrative Court – Veliko Tarnovo (ACVT) repealing the refusal of the Veliko Tarnovo University President to provide information on the project “Joint risk monitoring on emergencies in the border region of the Danube.” The president had based his refusal on the argument that the information sought was not public, since it did not concern public life in Bulgaria. The court held that the information is public since it was created and kept by an obliged under the APIA body in relation to its activity on a project, financed by EU funds, which determines its relation to public life in the Republic of Bulgaria, and also since such an activity in general falls within the scope of interest and public life of the EU.

By decision⁸⁵ of 26 June 2014 the Administrative Court – Stara Zagora (ACSZ) repealed the Stara Zagora mayor’s refusal to provide access to the full text of a project proposal, with which the Stara Zagora Municipality participates in the “Mayors challenge” initiative of the Bloomberg Philanthropies foundation. The mayor had noted in the refusal that the project’s full text was being evaluated by the Bloomberg Philanthropies foundation and the information is not yet “public” and will be disclosed after the end of evaluation if the project is approved. The court held that under the APIA public information are all data concerning public life, contained in documents and other material data carriers, created, received or kept by an obliged body. Thus, in the context of this definition, the information requested was “public”. The full text of the project proposal is contained in the application form, filed by the Stara Zagora mayor in his capacity of an executive body. The court also concluded that the information should be provided since the time frame for the project proposals’ consideration had expired and therefore there was no harm as a result of the disclosure.

⁸³ Ruling no. 7441/03.06.2014 of the SAC, Fifth Division, on administrative case no. 6447/2014

⁸⁴ Decision no. 6040/08.05.2014 of the SAC, Seventh Division, on administrative case no. 16854/2013

⁸⁵ Decision no. 116/26.06.2014 of the ACSZ, 3rd panel, on administrative case no. 158/2014

By decision⁸⁶ of 29 May 2014 the Administrative Court – Veliko Tarnovo (ACVT) repealed the refusal of Veliko Tarnovo's mayor to provide information on the flora mapping and geological research of a terrain, for which the municipality had approved a building investment project. The mayor based his refusal on the argument that the information sought fell outside the scope of the APIA (Article 4, par. 1 of the act), since the Spatial Development Act (SDA) provides a special procedure for requesting, receiving and disseminating such information and it could only be disclosed to interested parties within the meaning of the SDA. The court held that the APIA is applicable to information concerning the approval of investment projects and the issuing of building permits by the municipal administration. The judge noted that the APIA and the SDA are not in a relation of a general and a special law (*lex generalis / lex specialis*). The very fact that the applicant is not an interested third party under the SDA justifies his right to seek information under the APIA.

Overriding Public Interest and Protection of Personal Data

By a decision⁸⁷ of 4 March 2014 the Supreme Administrative Court (SAC) upheld a decision of the ACSC repealing the Ministry of Finance refusal to provide information to Marta Mladenova (journalist from Darik radio) on the supplementary remunerations (bonuses) of the Ministry and its subordinate structures' staff. According to the court, the disclosure of the requested information is of overriding public interest in view of the serious public debate on the topic of civil servants' bonuses and the existing doubts as to the actual situation. The Justices held that this information gives citizens the opportunity to form an opinion on the functioning and accountability of government bodies based on their expenditure of budget funds, as well as on the moral image of senior government officials in relation to the veracity of their public statements in time of financial crisis in the country. In the case, the minister of finance had commented publicly on the issue of received supplementary remuneration in the central state administration.

By a decision⁸⁸ of 6 March 2014 the ACSC repealed a refusal by the Sofia Municipality to provide access to the municipal employees' overtime (work) logbook for 2012. The refusal

⁸⁶ Decision no. 233/29.05.2014 of the ACVT, 4th panel, on administrative case no. 8/2014

⁸⁷ Decision no. 3033/04.03.2014 of the SAC, VII Division, on a. c. no. 11847/2013

⁸⁸ Decision no. 1378/06.03.2014 of the ACSC, II Division, 37th panel on a. c. no. 11068/2013

was based on the grounds that the information amounted to personal data of the employees who had worked overtime and could not be provided without their consent. The court held that the information on overtime work under an employer-employee relationship that is even for the benefit of Sofia Municipality does not constitute personal information or personal data of employees. In addition, the court stated that there is an overriding public interest since providing this information will lead to increased transparency and accountability of the Municipality. The ACSC decision was upheld by the SAC on 4 Dec 2014.

By a decision⁸⁹ of 11 March 2014 the Veliko Tarnovo Administrative Court (VTAC) repealed a refusal by the Mayor of Veliko Tarnovo to provide information on the reconstruction of a residential building, part of a protected group cultural monument. The refusal was based on the grounds that the requested information contains personal data of third persons (the residential building's owners). The court held that the lack of the third parties' explicit consent is not a ground for refusal, since in this case the obliged body must provide partial access to the information sought, which the Municipality did not do. In conclusion, the court noted that the existence of overriding public interest in disclosure of the information sought could be admitted in view of the Veliko Tarnovo Municipality's practice of approving building documentation contrary to the public interest and without regard to the conservation of the architectural heritage requirements.

By decision⁹⁰ of 24 March 2014 the ACSC repealed the Supreme Cassation Prosecution's refusal to provide to Dorotheya Dachkova (journalist from "Sega" newspaper) a list of all court and prosecutor clerks, containing their names, the judicial body they are employed by, as well as the date and grounds of their employment. The SCP refused on the grounds of personal data protection. The court held that the information sought does not fall in the "personal data" category since it concerns a public institution, its structure and staff, and not the persons who occupy the respective positions. Disclosure of this information will help the journalist and the public to form an opinion on the Prosecutor's Office activities, including those related to respecting the legal requirements on staff employment. The ACSC's decision was upheld by a decision⁹¹ of the SAC of 8 December 2014.

⁸⁹ Decision no. 101/11.03.2014 of the VTAC, 8th panel on a. c. no. 45/2014

⁹⁰ Decision no. 1860/24.03.2014 of the ACSC, II Division, 25th panel on a. c. no. 11585/2013

⁹¹ Decision no. 14701/08.12.2014 of the SAC, Fifte Division, on adm. case no.6440/2014

By decision⁹² of 30 June 2014 the SAC repealed a first instance decision as well as the minister of culture's refusal to provide a copy of an audio recording of a meeting held in 2013 between the Ministry of Culture high officials and protesting teachers from the National School for Ancient Languages and Cultures "Constantine Cyril the Philosopher" (NSALC). The minister had based his refusal on the argument that the audio recording may contain personal data, therefore it could not be disclosed without the consent of the affected third parties. The justices noted that the minister had wrongfully relied on protection of personal data since he had not provided any proof of affecting the interests of third parties. They held that there is an overriding public interest in the disclosure of the information sought, since the national school's problems had acquired media publicity through the headmaster's participation in a TV broadcast, as well as through the minister of culture's media announcement of this meeting aimed at hearing the different positions and taking an objective decision on the school's future. Thus, the overriding public interest in the disclosure flows from the need for citizens to monitor the administration and the settlement of conflicts in the NSALC, which is supervised by the Ministry of Culture.

Personal data of public figures

By a ruling⁹³ of 15 January 2014 the ACSC repealed a refusal by the Ministry of Interior (Mol) to provide information to Julian Hristov (journalist from OFFNews) on whether the MP Volen Siderov (the leader of the nationalistic party "Ataka" in parliament) had a gun permit and when it was issued, as well as which medical institution issued the necessary medical certificate. The Mol had refused on the grounds that this information is not public since it is not related to the ministry's activities but rather to personal data of the Member of Parliament. The court held that the information sought was public. A firearm permit is an official document issued by the respective body of the Mol structure in carrying out its powers under the Firearms and Ammunition Act. Furthermore, according to the court, in this case there is an overriding public interest in disclosure of the information since it will increase the transparency and accountability not only of the ministry, but also of the Member of Parliament himself.

⁹² Decision no. 9079/30.06.2014 of the SAC, Five-member Panel, II College, on adm. case no. 4913/2014

⁹³ Ruling no. 216/15.01.2014 of the ACSC, II Division, 34th panel on a. c. no. 8306/2013

By decision⁹⁴ of 18 March 2014 the ACSC repealed the Supreme Judicial Council's refusal to provide to Dorotheya Dachkova (journalist from "Sega" newspaper) information on the current MP Delyan Peevski's work in the Sofia Investigation Service and on his magistrate status. The refusal was based on the grounds that the Member of Parliament had not given his explicit consent to disclosure of the information. The court held that information on the professional activity of magistrates in Bulgaria, including the data on acquiring immovability, attestations, workload, the results of oversight by higher judicial instances and others are public information. This is information relating entirely to the magistrate's work, which under current law is indicator of the quality and quantity of his ongoing work. Activities of the judiciary as a whole have received increased public attention, in an atmosphere of sensitization of the public towards the judiciary's problems. Each magistrate should be aware that there is no aspect of their professional activity that may be hidden from the public.

By decision as of May 13,⁹⁵ 2014, the Administrative Court Sofia City (ACSC) repealed the refusal of the Sofia Regional Prosecutor's Office to provide information about the activities of the regional Prosecutor Roman Vasilev for the period 2006 – 2013. The information was requested by the journalist Rossen Bossev (Capital weekly) and was more specifically related to the number of indictments, writs for discontinuation or a refusal to start pre-trial proceedings, the agreements prepared by the prosecutor, as well as the number of pre-trial proceedings in which he was appointed as the supervising prosecutor. The court ruled that the request was for statistical data and not for the content of the issued acts, thus their disclosure would not harm the rights of the parties in the relevant proceedings, nor would they disclose any of their personal data.

By decision⁹⁶ as of 28 May 2014, the Administrative Court Gabrovo (ACG) repealed the refusal of the Secretary of the Municipality of Sevlievo to provide to the journalist Emilia Dimitrova information about the main monthly remuneration of the deputy mayor of the municipality. The court pointed out that the information was not personal data as the minimum and maximum permissible amount for the position is legally prescribed.

⁹⁴ Decision no. 1751/18.03.2014 of the ACSC, II Division, 27th panel on a. c. no. 12160/2013

⁹⁵ Decision No. 3179/13.05.2014 of the ACSC, Second Division, 41th Panel on adm. case No. 1931/2014

⁹⁶ Decision No. 35/28.05.2014 of the ACG, adm. case No. 33/2014.

By decision as of 27 June 2014,⁹⁷ the Supreme Administrative Court upheld the decision of the ACSC that repealed the refusal of the Ministry of Interior to provide to the journalist Rossen Bossev (Capital weekly) information about the visits and meetings of the MP Delyan Peevsky at the ministry within the period July 2009 – June 2013. The court panel emphasizes that the requested information does not constitute personal data as it is not related to the personal inviolability and private life of the third person, but to his public life and activities in his capacity of a member of parliament, as well as to the activities of bodies and officials in the Ministry of Interior.

By decision as of November 17,⁹⁸ 2014, the Administrative Court Sofia City repealed a refusal of the Chairperson of the State Agency “National Security” (SANS) to provide information to the journalist Viktor Ivanov (24 Hours daily) about the bonuses received by the chairperson of the agency for the years 2013 and 2014. The court ruled that the requested information did not fall within the scope of protected personal data. According to the court, the alleged affection of the personal sphere of the chairperson of the SANS could not override the public interest.

Protection of the Interests of Third Parties

By decision⁹⁹ of 27 October 2014 the ACSC repealed the refusal by the mayor of Sofia’s “Mladost” district to provide information on an issued permit for construction activities in hours outside those laid down in the relevant municipal ordinance. The mayor had based the refusal on the argument that the investor company’s consent was not given. The court held that the information sought does not affect the interests of the third party in a way that may justify the need for their consent. The fact that the third party is an addressee of the permit does not automatically lead to the conclusion that disclosure of the permit would affect the third party’s protected interests.

By decision as of 1 December 2014,¹⁰⁰ the ACSC repealed the refusal of the Ministry of Agriculture and Food (MAF) to provide access to six expert reports (so-called “market assessments”) on determining the market value of real estate properties sold by the

⁹⁷ Decision No. 8987/27.06.2014 of the SAC, Seventh Division adm. case No. 2078/2014.

⁹⁸ Decision No. 6918/17.11.2014 of the ACSC, Second Division, 38th Panel, adm. case No. 6398/2014.

⁹⁹ Decision no. 6396/27.10.2014 of the ACSC, Second Division, 34th panel, on administrative case no. 9474/2013

¹⁰⁰ Decision No. 7309/01.12.2014 of the ACSC, Second Division, 32th Panel on adm. case No. 10032/2014.

ministry. The grounds of the refusal were that the assessments were not public information and their disclosure would harm the copyright of the independent experts who had made them. According to the court, the market assessments allow, on one hand, to find out whether the ministry had complied with the assessments of the experts, and, on the other, whether the assessments were made in compliance with the Law on State Property. According to the court, the rights of the authors over the assessment reports could not be an obstacle for their disclosure under the APIA since the public interest in the disclosure should also be taken into account when assessing their copyright.

Overriding Public Interest and Accountability in Public Expenditure

By decision¹⁰¹ of 24 March 2014 the SAC upheld the decision of the Veliko Tarnovo Administrative Court repealing the refusal by the President of Veliko Tarnovo University to provide information on the project “The Water’s Way - nature and culture sightseeing itineraries for sustainable tourism”. The refusal was based on the grounds that the information is not public and its disclosure would not give the requester the opportunity to form an opinion on the University’s activities. The SAC adopted the reasoning of the first instance court that the information is public and the project resources’ origin (EU funds) by itself supposes that in this case there is an overriding public interest in disclosure of the information sought.

By decision¹⁰² of 6 March 2014 the ACSC repealed a refusal by Sofia Municipality to provide a copy of the contract concluded with a private company for the restoration and management of the “Ariana” lake in Sofia. The refusal was based on the grounds that the company had not given its explicit consent to disclosure. The court held that in this case applied the legal presumption of existence of overriding public interest in disclosure of information related to the parties, subject, price, rights and obligations, conditions, terms, and sanctions specified in contracts where one of the contracting parties is an obliged body under the APIA. The ACSC decision was upheld by the SAC on 25 Nov 2014. The supreme justices held that the onus was on the obliged body to rebut the presumption of an existing overriding interest. In this case, however, the obliged body failed to present facts testifying for the lack of an existing overriding interest in the course of the trial.

¹⁰¹ Decision no. 4032/24.03.2014 of the SAC, VII Division, on a. c. no. 15139/2013

¹⁰² Decision no. 1388/06.03.2014 of the ACSC, II Division, 39th panel on a. c. no. 9074/2013

By decision¹⁰³ of 24 June 2014 the ACSC repealed a refusal by the Ministry of Economy and Energy (MEE) to provide a copy of a contract from November 2012 between MEE and a trade consortium under The Energy Efficiency and Green Economy Programme – a joint initiative between the Ministry of Economy and Energy and the European Bank of Reconstruction and Development (EBRD) to promote sustainable energy solutions for Small and Medium Enterprises (SME). The ministry based its refusal on the argument that the information sought concerns a contract concluded as a result of a public procurement procedure and affects the interests of a third party (the consortium – party to the contract) which had not given its consent to the disclosure. The court noted that the lack of consent of the third party cannot justify a refusal to provide access to the information, when there is an overriding public interest in its disclosure. The judge held that contracts concluded with bodies obliged under the APIA as a result of a public procurement procedure are, by definition, not covered by trade secret and access to them cannot be restricted because there is an overriding public interest in the disclosure of the expenditure of public funds.

By decision¹⁰⁴ of 23 July 2014 the SAC upheld the repeal of a refusal by the Targovishte Municipality administrative secretary to provide a copy of a contract for the sale of a municipal real estate (the terrain of the former marketplace). The court held that in such cases the private interest of the third party (the buyer company) in protecting trade information included in the contract does not override the public interest in its disclosure.

By decision¹⁰⁵ of 10 June 2014 the SAC upheld the repeal of a refusal by the Targovishte Municipality administrative secretary to provide a copy of a contract for the exchange of a municipal agricultural property. The court held that the public interest in the disclosure of information on the circumstances of a transaction involving municipal property and in whether the legal conditions and procedures were complied with, is undoubtedly overriding within the meaning of § 1, item 6 of the Additional Provisions of the APIA. The disclosure of such information will increase the transparency and accountability of the bodies obliged under the APIA.

¹⁰³ Decision no. 4229/24.06.2014 of the ACSC, Second Division, 25th panel, on administrative case no. 9989/2013

¹⁰⁴ Decision no. 10304/23.07.2014 of the SAC, Seventh Division, on administrative case no. 15032/2013

¹⁰⁵ Decision no. 7875/10.06.2014 of the SAC, Seventh Division, on administrative case no. 79/2014

By decision¹⁰⁶ of 10 July 2014 the SAC repealed the first instance decision, as well as the refusal by the Targovishte Municipality administrative secretary to provide a copy of a contract for the sale of a municipal real estate (a restaurant). The refusal was based on the argument that the third party (the buyer company) had not provided its consent to the disclosure. The court held that the administrative body did not consider the applicant's claim of the existence of an overriding public interest, which amounts to a significant violation of the procedural rules. If an overriding public interest exists, the information affecting the third party could be disclosed without its consent.

Official Secret

By decision¹⁰⁷ as of November 28, 2014, the ACSC repealed the refusal of the Sofia City Prosecutor's Office to provide to the journalist Rossen Bossev (Capital weekly) copies of the activity reports of the Prosecutor's Office for the period 2006 – 2013. The refusal was grounded in the official secret exemption. The court emphasized that the Prosecutor's Office did not provide evidence that the documents had been marked with a security stamp *for official use only*. According to the justices, even if the information had lawfully been classified, the access should have been granted under the APIA after a declassification procedure, as the timeframe for protection had expired – six months since the date of classification or a year after a one-time extension by the State Commission on Information Security.

Preparatory Documents

By decision¹⁰⁸ of 7 January 2014 the SAC upheld the decision of the ACSC repealing the Sofia City Court President's refusal to provide to Dorotheya Dachkova (journalist from "Sega" newspaper) information on delayed criminal and civil cases decisions. The SCC refusal was based on the grounds that the information sought had a preparatory character and had no significance in itself. The SAC held that the information sought is not related to the preparation of the court's decision and has proper significance. It reflects the fulfillment of the judge's duties to pronounce court decisions and rulings within a reasonable time, which, together with the pronouncing of court decisions and rulings with certain quality

¹⁰⁶ Decision no.9683/10.07.2014 of the SAC, Seventh Division, on administrative case no. 2905/2014

¹⁰⁷ Decision No.7259/28.11.2014of the ACSC, Second Division, 23rd Panel adm. case No. 7446/2014.

¹⁰⁸ Decision no. 132/07.01.2014 of the SAC, VII Division, on a. c. no. 11045/2013

guaranties good justice, i.e. the quality implementation of judicial power provided by the state.

By decision¹⁰⁹ of 25 September 2014 the ACSC repealed the refusal by the Sofia Municipality administrative secretary to provide a copy of the internal rules on the organization and delivery of administrative services in the municipality. The refusal was based on the argument that the internal rules are of ancillary nature to the overall work process in the municipal administration, and therefore are neither official, nor administrative public information, and should not be disclosed. The court held that these rules are administrative public information, access to which cannot be restricted, since the relevant conditions under Article 13, par. 2, item 1 or 2 of the APIA, are not met.

By decision¹¹⁰ of 9 October 2014 the SAC repealed a first instance decision, as well as the refusal by the Ministry of Environment and Waters (MEW) to provide a copy of the report on the reduction of emissions of harmful substances from large combustion plants, related to the European Commission's warning towards Bulgaria for its failure to comply with the emission limits of sulfur and nitrogen oxides and of fine dust particles. The court held that the information sought is information on the environment in the meaning of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and in the meaning of the Environment Protection Act (EPA). The text of Article 13, par. 2 of the APIA providing the possibility of restricting access to preparatory documents is inapplicable to information concerning the environment and in particular the emissions of harmful substances. The court noted that in Article 20, par. 6 of the EPA the legislator has provided explicitly that the right of access to public information concerning the environment and in particular the emissions of harmful substances cannot be refused or restricted.

By decision¹¹¹ of 27 October 2014 the ACSC repealed the refusal by the Sofia Municipality Mayor to provide access to an order of hers, as well as to a report from the Chief Architect on an inspection of the movable objects in the “Borissova gradina” park. The refusal was based on the argument that the information is of internal administrative nature and does not have any significance in itself, since it is not a final administrative legal document

¹⁰⁹ Decision no.5745/25.09.2014 of the ACSC, Second Division, on administrative case no. 5155/2014

¹¹⁰ Decision no.11951/09.10.2014 of the SAC, Five-member Panel, II College, on adm. case no. 7396/2014

¹¹¹ Decision no.6363/27.10.2014 of the ACSC, Second Division, 34th panel, on administrative case no. 9073/2013

(“act”). The court held that the grounds for refusal under Article 13, par. 2 of the APIA are inapplicable, since the information sought is not administrative public information, but official public information, contained in official legal document (“acts”) of the Mayor and Chief Architect, issued in the implementation of their powers and related to the results of a completed administrative inspection.

Access to Information – Access to Documents

By decision¹¹² of 28 January 2014, the SAC upheld a decision of the ACSC repealing the refusal by the National Construction Supervision Directorate (NCSD) to provide to the citizen Manol Zlatev access to protocols concerning the removal of several illegal constructions. The refusal was based on the grounds that under the APIA one could request access to certain information but not to specific documents. The SAC adopted the first instance court’s arguments that under the APIA information could be requested by description as well as by identifying specific documents. The justices noted that the NCSD is the only institution controlling construction in Bulgaria under statute. In view of that, the information contained in the requested documents is directly related to the NCSD’s activities as a government body.

By decision¹¹³ of 17 March 2014 the ACSC repealed a refusal by the Ministry of Transport, Information Technology and Communications (MTITC) to provide to “Friends of Railway Transport” association a copy of the contract between the Ministry and “BDZ – Passenger Services” EOOD (the national railway transport company) for carrying out rail transport of passengers on the territory of the Republic of Bulgaria. The MTITC’s refusal was based on the grounds that under the APIA access to specific documents cannot be requested, as well as that the contract was concluded under the requirements of the Public Procurement Act (PPA) which has special provisions on publicity that exclude the applicability of the APIA. The court held that the APIA request is valid, specific and clearly formulated. The judge noted that the PPA provisions on publishing information about contracts do not prevent the seeking of access to information through requests under the APIA.

¹¹² Decision no. 1113/28.01.2014 of the SAC, VII Division, on a. c. no. 2506/2013

¹¹³ Decision no. 1703/17.03.2014 of the ACSC, II Division, 36th panel on a. c. no. 4981/2013

Electronic Access to Information

By a decision as of 9 January 2014,¹¹⁴ the Supreme Administrative Court (SAC) upheld the decision of the Administrative Court Sofia City (ACSC) to repeal the silent refusal of the Sofia Municipality to provide to Ivailo Popov (Environmental Association For the Earth) information about the conditions of the depot of nonhazardous waste in the Sofia neighbourhood of Suhodol. According to the SAC, the first instance court had rightly assumed that the arguments of the municipality that the request had not been duly filed as it was sent via the virtual/online registry were unmotivated. The court emphasizes that the request had been duly filed to the municipality and the latter should have issued a response since under the APIA a request filed electronically is considered a written request.

By decision as of 11 February 2014,¹¹⁵ the Supreme Administrative Court upheld the decision of the Administrative Court Haskovo (ACH) to repeal the refusal of the head of the Regional Inspectorate of Education – Haskovo (RIE) to provide to the citizen Liliana Valcheva information about inspections held in a particular school in the town of Topolovgrad (Haskovo Region). The grounds of the refusal were that the APIA does not provide for the form of response requested by the citizen – by e-mail. The justices pointed out that the request that the information is provided by e-mail is a valid request since the APIA provides for the provision of information on any carrier.

Silent Refusals

By decision¹¹⁶ of 17 April 2014 the ACSC repealed a silent refusal of the Mayor of Sofia Municipality to provide information to Svetla Vassileva (journalist “Duma” newspaper) on the property transactions and deals carried out concerning a municipal property premise in the period 2009 – 2013. The court held that a silent refusal under the APIA is illegal since the administrative body must issue a decision on the request and inform the requester of it.

¹¹⁴ Decision No.257/09.01.2014 of the SAC, 7th Division on adm. case No. 8864/2013.

¹¹⁵ Decision No. 1864/11.02.2014 of the SAC, Seventh Division on adm. case No. 14317/2012.

¹¹⁶ Decision no. 2616/17.04.2014 of the ACSC, II Division, 35th panel on a. c. no. 4735/2013

By decision as of 1 December 2014,¹¹⁷ the Administrative Court Pernik repealed the silent refusal of the Mayor of Pernik Municipality to provide to the local NGO “Active Citizens for Pernik City” the municipal contract for waste management. The court emphasized that the only legal option of the obliged body is to issue a decision of either granting or refusing access and inform the requestor in writing.

By decision as of 15 December 2014,¹¹⁸ the Administrative Court Sofia City (ACSC) repealed the silent refusal of the chairperson of the National Assembly on a request for re-use of public sector information filed by Petko Tsikov from the NGO Obshtestvo.bg. He requested a copy of the data base used on the web site parliament.bg on a technical carrier, except for the legally protected data. In its judgment, the court pointed out that the only possible legal option after the submission of a due request for re-use of public sector information is that the obliged body issues an explicit decision – for granting or refusing access.

By decision as of 24 November 2014,¹¹⁹ the Supreme Administrative Court upheld a decision of the Administrative Court Veliko Tarnovo (ACVT) which repealed the refusal of the President of the Veliko Tarnovo University to provide to Kamelia Dzhanabetska information about a project concerning risk monitoring in the transborder region of the Danube river. The court pointed out that the body obliged under the APIA owes a motivated written decision on the access to information request. A legal imperative exists for providing a written response to the requests, including when refusing.

By decision¹²⁰ of 19 December 2014 the ACSC repealed a silent refusal of the Chief Secretary of the Supreme Judicial Council (SJC) to provide to Rossen Bossev (journalist from “Capital” newspaper) the *Report of the Prosecutor’s Office of the Republic of Bulgaria on its activities on signals for corruption of magistrates in the period 1999 – 2005*, which was submitted by the Prosecutor’s Office to the SJC, discussed and approved in a sitting on 15 February 2006. The Court held that the SJC was asked through a lawful request for access to information which is public and is created or kept by the SJC. The Court did not accept the arguments of the Chief Secretary that the information is neither created nor

¹¹⁷ Decision No. 761/01.12.2014 of the Adm. Court – Pernik on adm. case No. 774/2014.

¹¹⁸ Decision No. 78328/15.12.2014 of the ACSC, Second Division, 24 Panel on adm. case No. 5592/2014.

¹¹⁹ Decision No. 14024/24.11.2014 of the SAC, Seventh Division on adm. case No. 2819/2014.

¹²⁰ Decision No. 8009/19.12.2014 of the ACSC, Second Division, 29th panel, on adm. case No. 7087/2014

kept by the SJC, because it has been considered, approved and used by the SJC only at a meeting of 15 February 2006. The court instructed the Chief Secretary SJC to provide access to the requested information.

By decision¹²¹ of 29 December 2014 the ACSC repealed a silent refusal by the President of the Governing Board of the Bulgarian Medical Association (BMA) to provide to d-r Georgi Todorov information on the selection of consultants and the fees paid to them by the association, the amounts spent by the association for legal services, and the donations received by the association in 2013. The Court noted that, by not issuing a decision through an explicit motivated act, despite being obliged by law, the Chairman of the Board of BMA has committed a substantial violation of the administrative procedural rules set out in Articles 38 and 39 of the APIA.

Requests left without consideration on the merits by the administration

According to Articles 197 – 200 of the Administrative Procedure Code (APC) in cases when requests are left without consideration, the court is empowered to declare *in camera* the administrative decision unlawful and to order the public body to respond duly on the request. In 2014 AIP supported two cases of that type.

By ruling¹²² of 23 May 2014 the Administrative Court – Yambol (ACY) repealed a notice by the Yambol Municipality secretary for leaving without consideration (on the merits) a request filed by Marieta Sivkova (a member of the Municipal council) on access to a copy of a settlement of a court dispute concluded by the municipality and a building company. The notice for leaving the request without consideration was based on the argument that under the APIA access could be sought to information, but not to specific documents. The court held that the request contains all necessary attributes under the APIA, therefore it cannot be left without consideration and the secretary of the municipality should issue a decision on the merits of the request.

¹²¹ Decision No. 8213/29.12.2014 of the ACSC, Second Division, 36th panel, on adm. case No. 2102/2014

¹²² Ruling no. 182/23.05.2014 of the ACY, Second panel, on administrative case no. 67/2014

By ruling¹²³ of 29 May 2014 the Administrative Court – Yambol (ACY) repealed a notice by the Yambol Municipality Secretary for leaving without consideration (on the merits) the request filed by Marieta Sivkova (a member of the Municipal council) on access to a summary of the municipality’s court cases and the expenses on them for the period 2011 – 2013. The court held that the request contains all necessary attributes under the APIA and clearly defines what information (as a type and amount) is sought. In these circumstances, the public body was bound to issue a decision on the merits of the request.

¹²³ Ruling no. 197/29.05.2014 of the ACY, Second panel, on administrative case no. 66/2014

APPENDIX

APPENDIX 1

Comparative Tables of 2012 – 2015 results and results from 2015 Audit on 544 Institutional Web Sites 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?

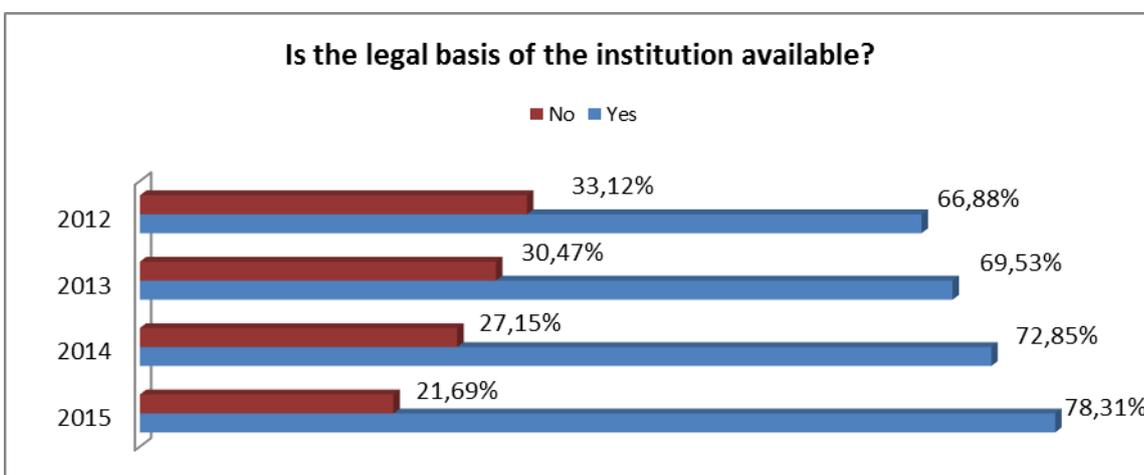


Chart 2. Is the legal basis for the powers of the institution available? (by type of public body – 2015)

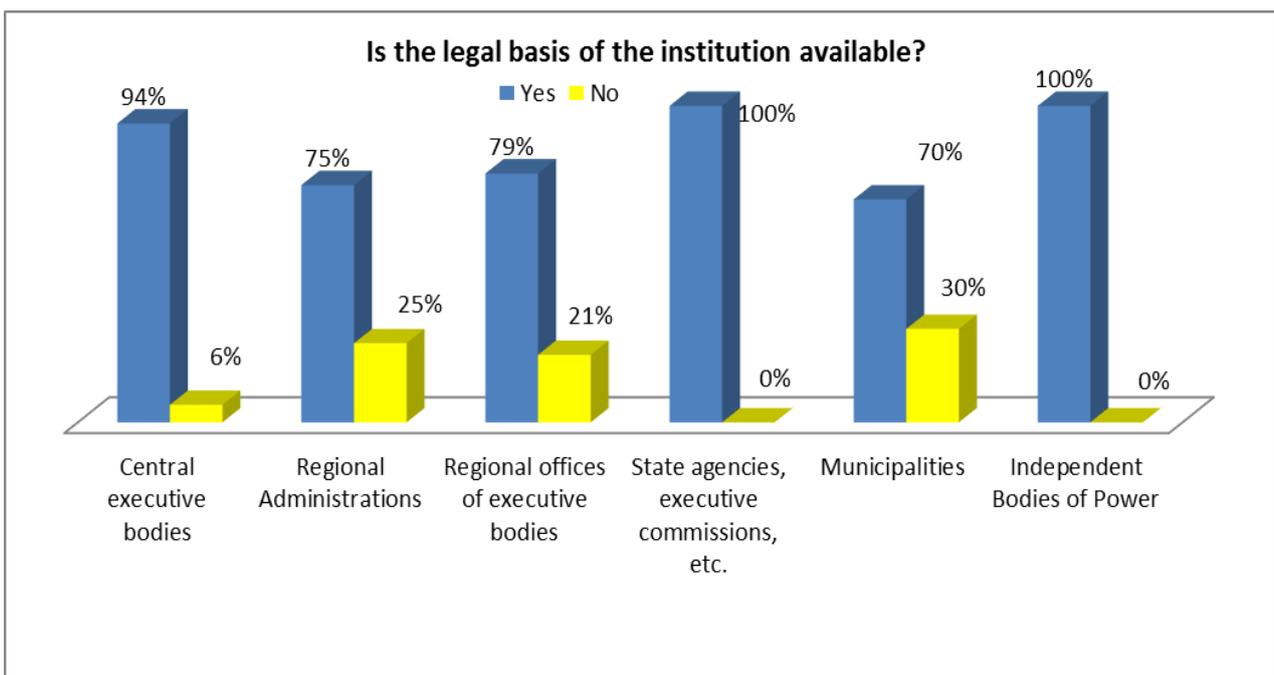


Chart 3. Are the functions of the institution published?

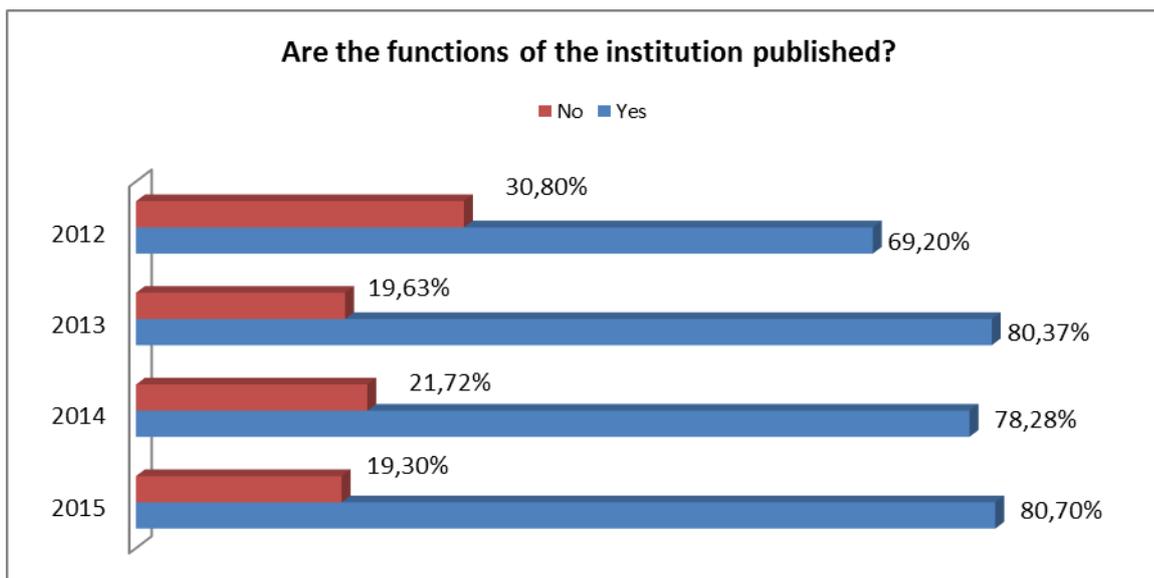


Chart 4. Are the functions of the institution published? (by type of public body – 2015)

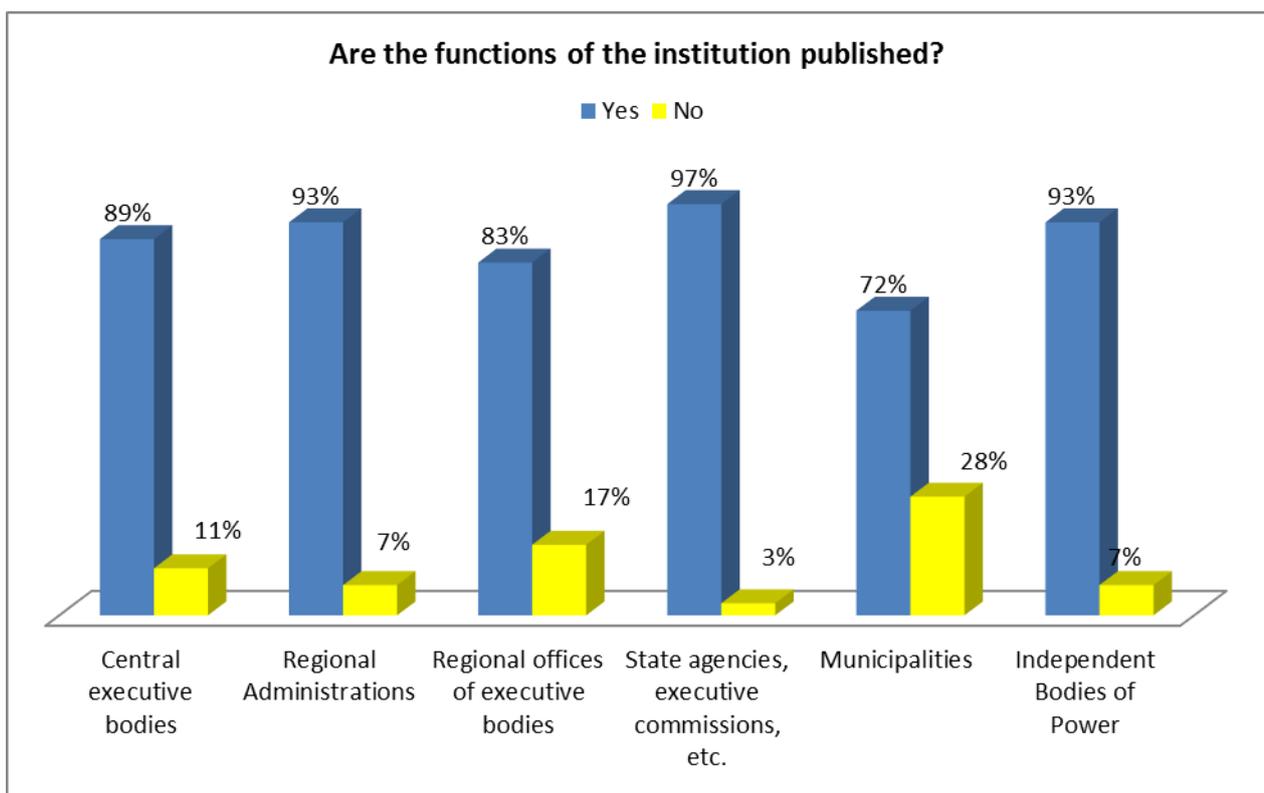


Chart 5. Is a description of the public services provided by the institution published?

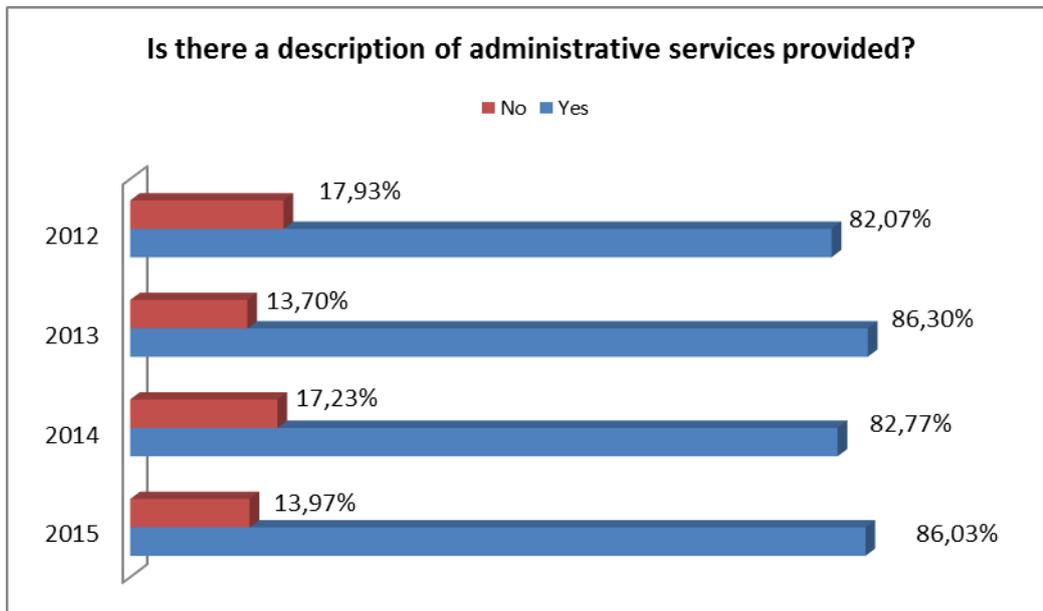
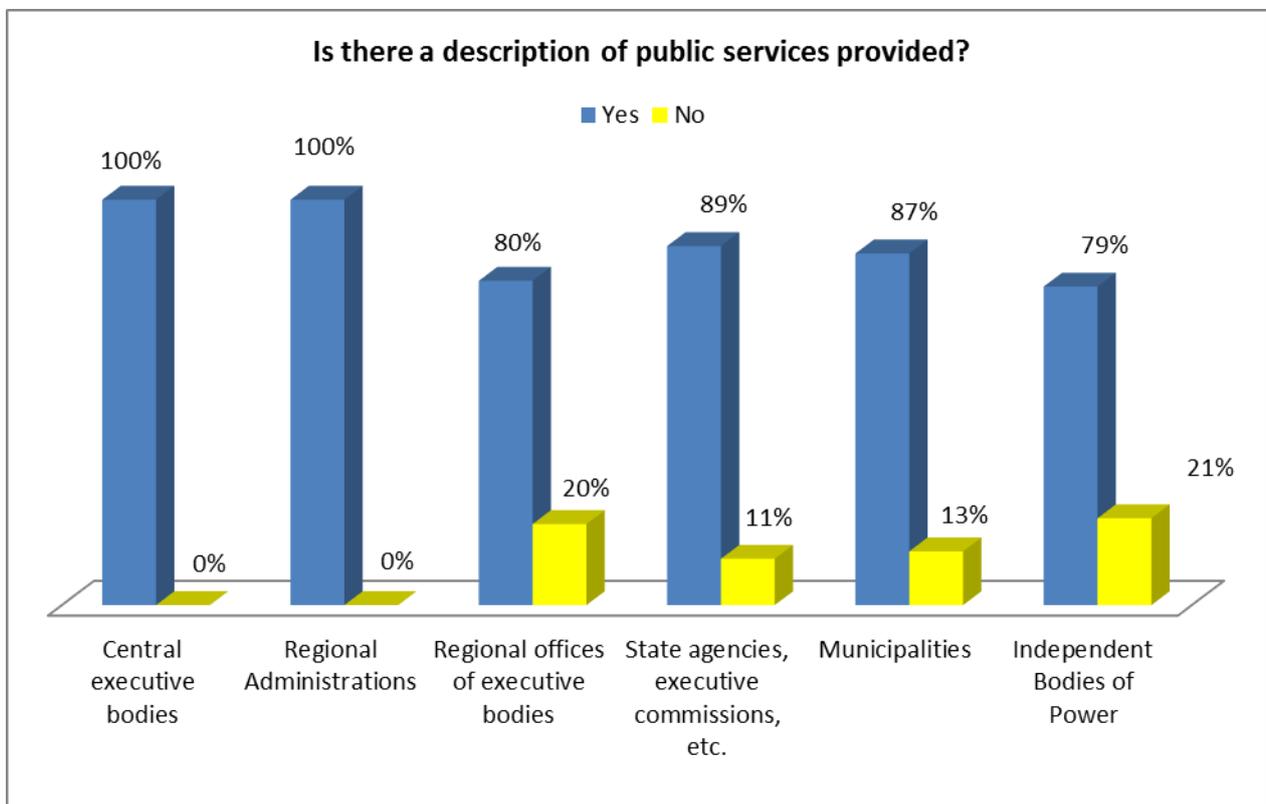


Chart 6. Is a description of the public services provided by the institution published? (by type of public body – 2015)



INFORMATION RESOURCES AND DATASETS

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

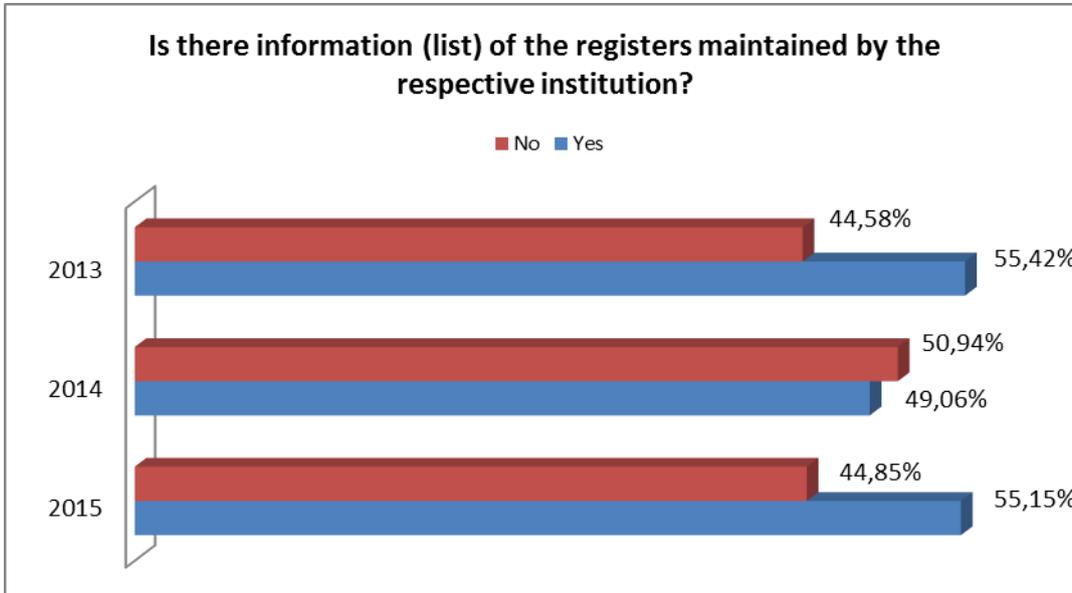


Chart 8. Is there information (list) of the registers maintained by the respective institution? (by type of public body – 2015)

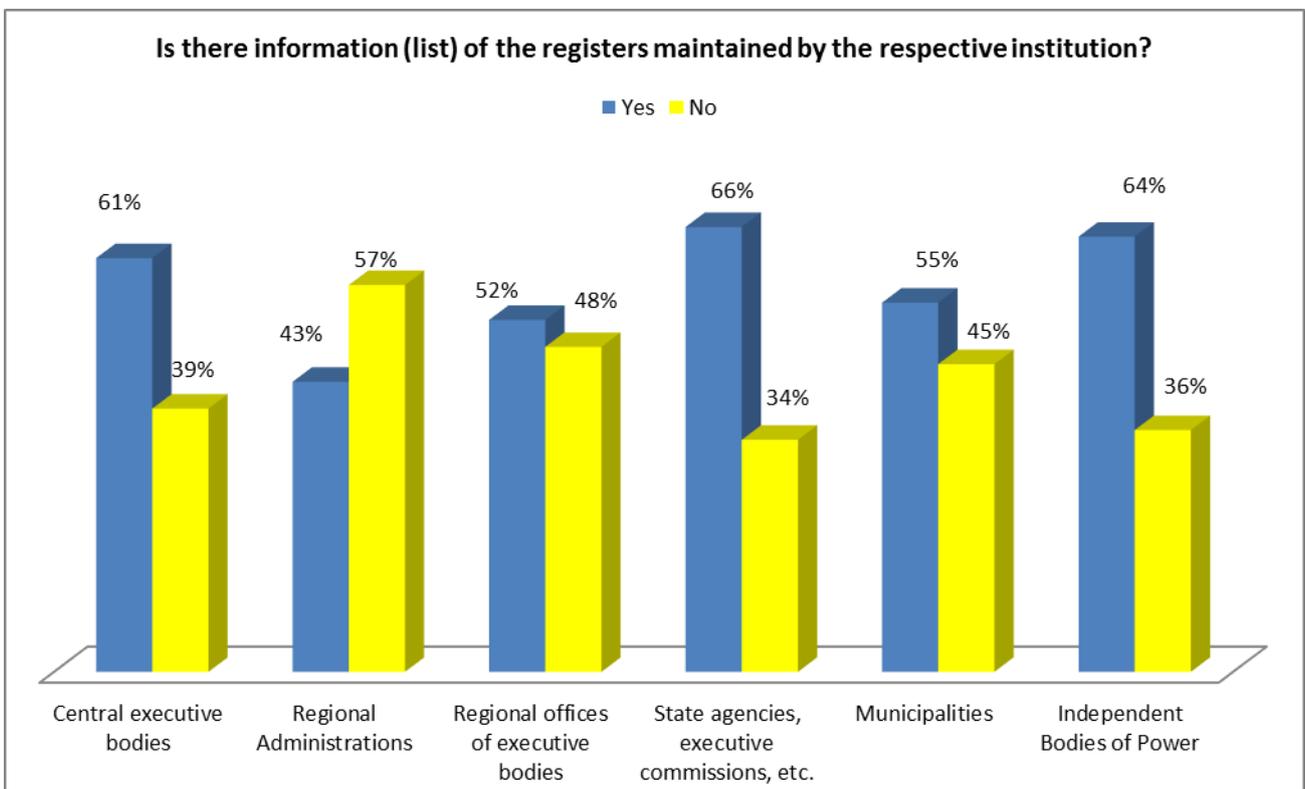


Chart 9. Are the public registers maintained by the institution available online?

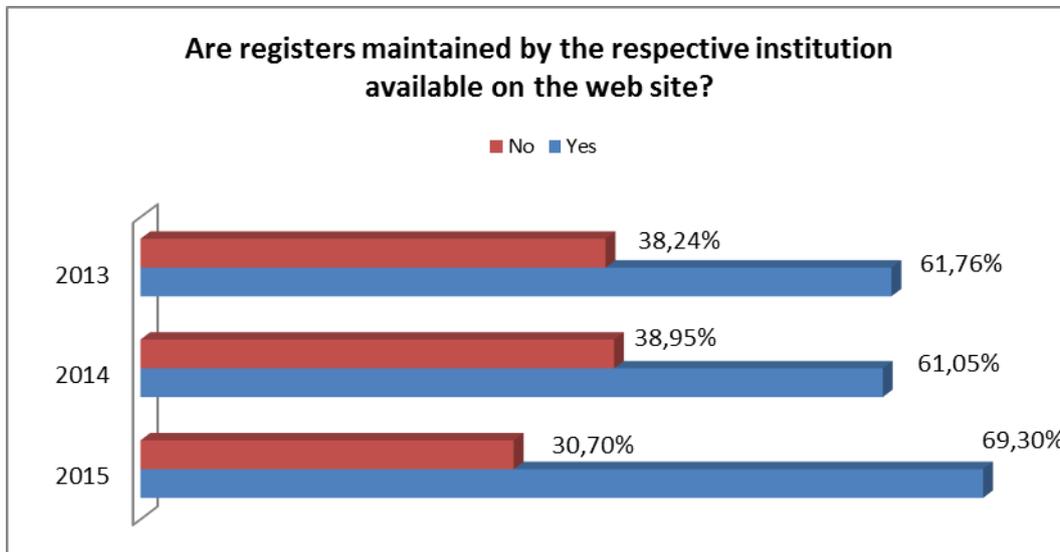


Chart 10. Are the public registers maintained by the institution available online? (by type of public body – 2015)

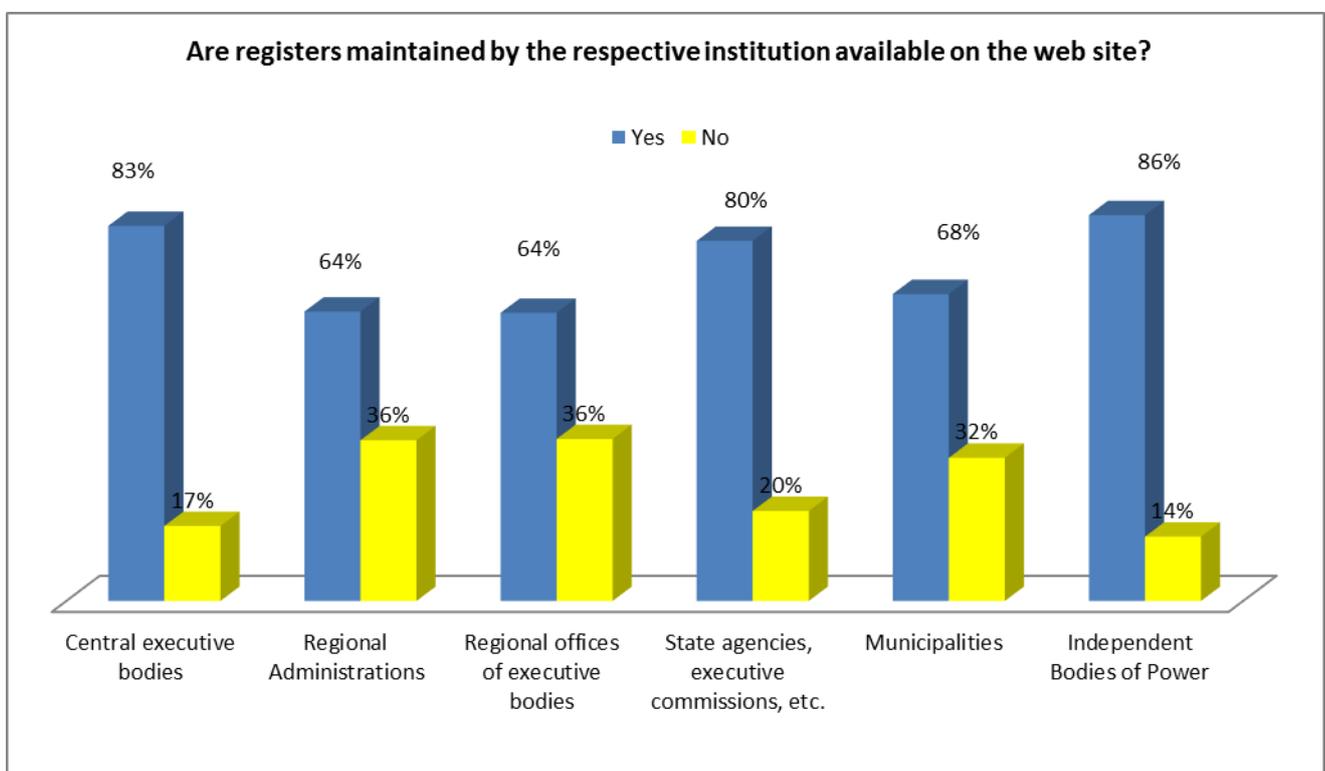


Chart 11. Is there a description of the public registers maintained by the institution?

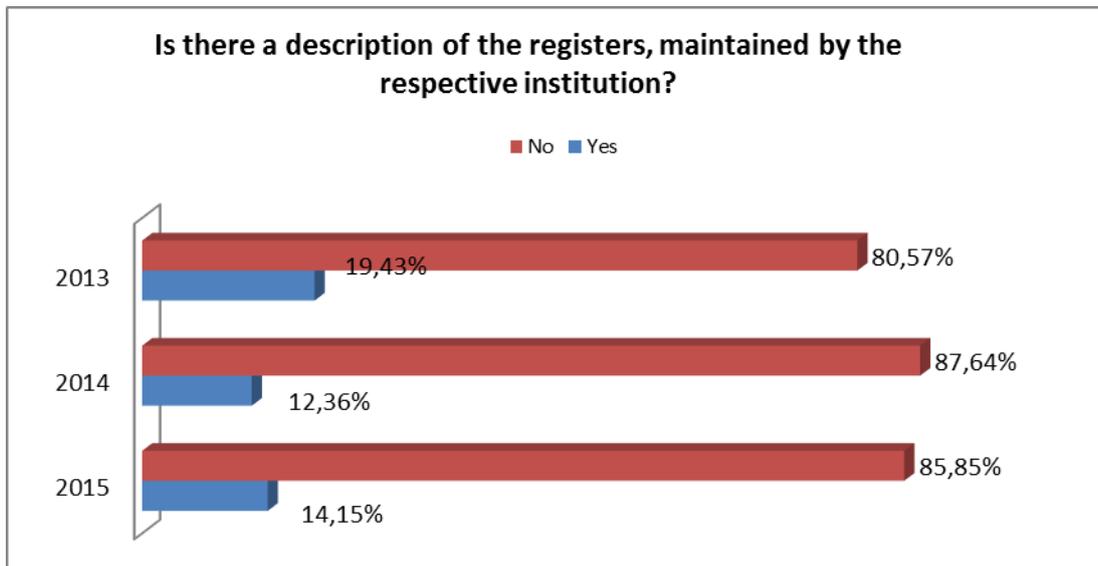


Chart 12. Is there a description of the public registers maintained by the institution (by type of public body – 2015)?

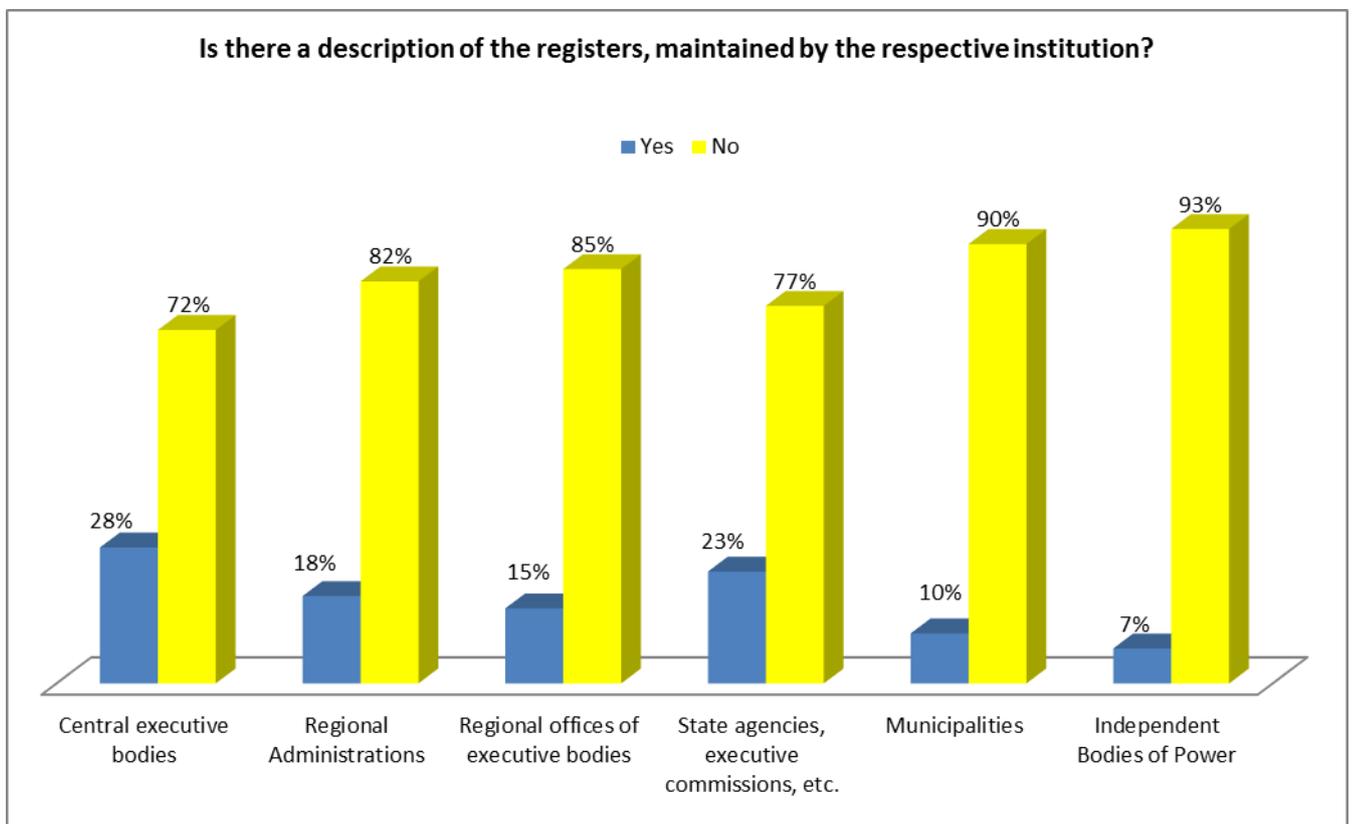


Chart 13. Is there a section on the web site where draft normative acts are published?

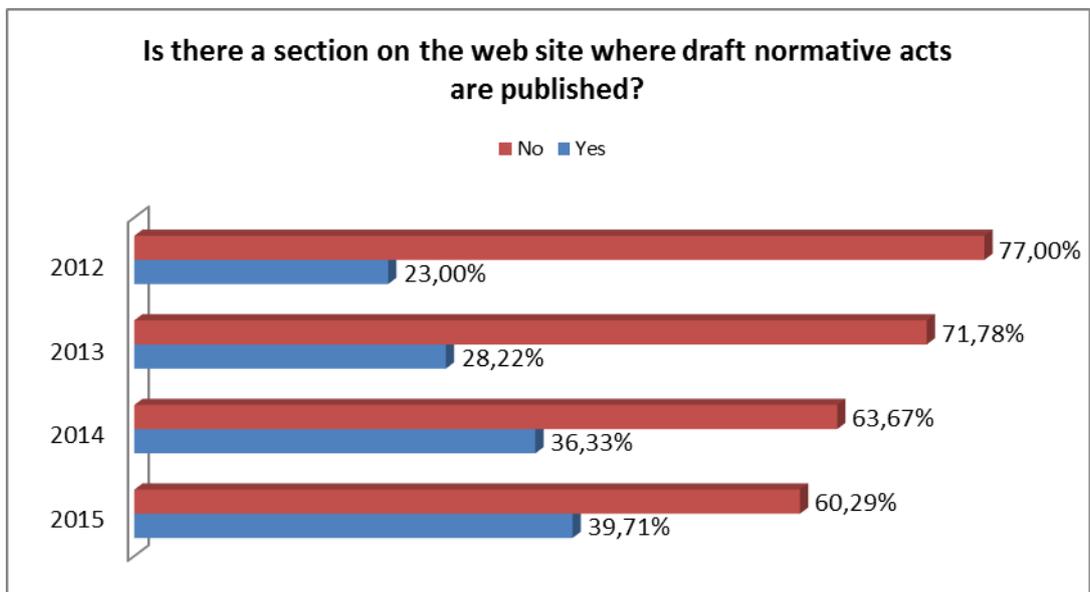
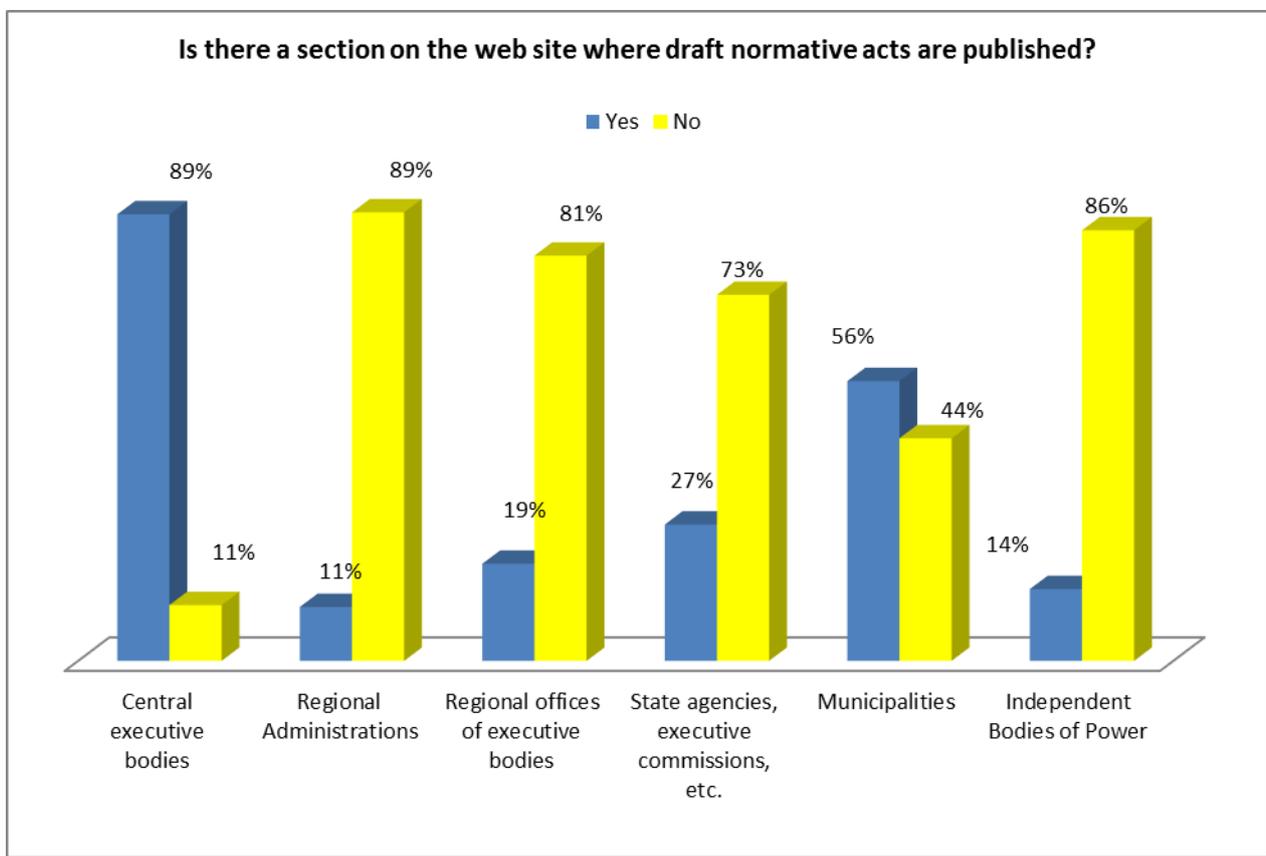


Chart 14. Is there a section on the web site where draft normative acts are published? (by type of public body – 2015)



Organizational structure and contact information

Chart 15. Is the structure of the administration published?

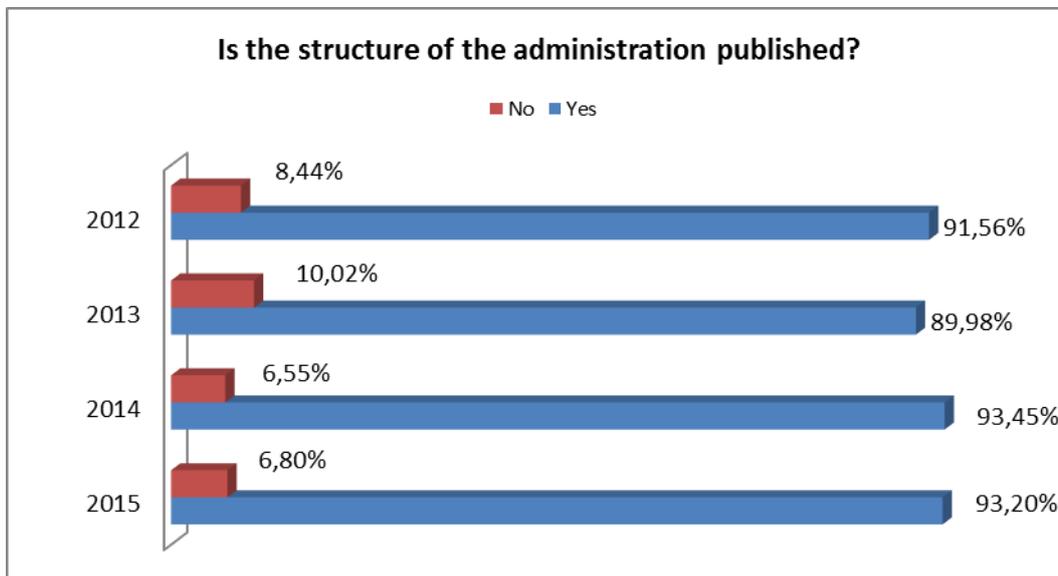
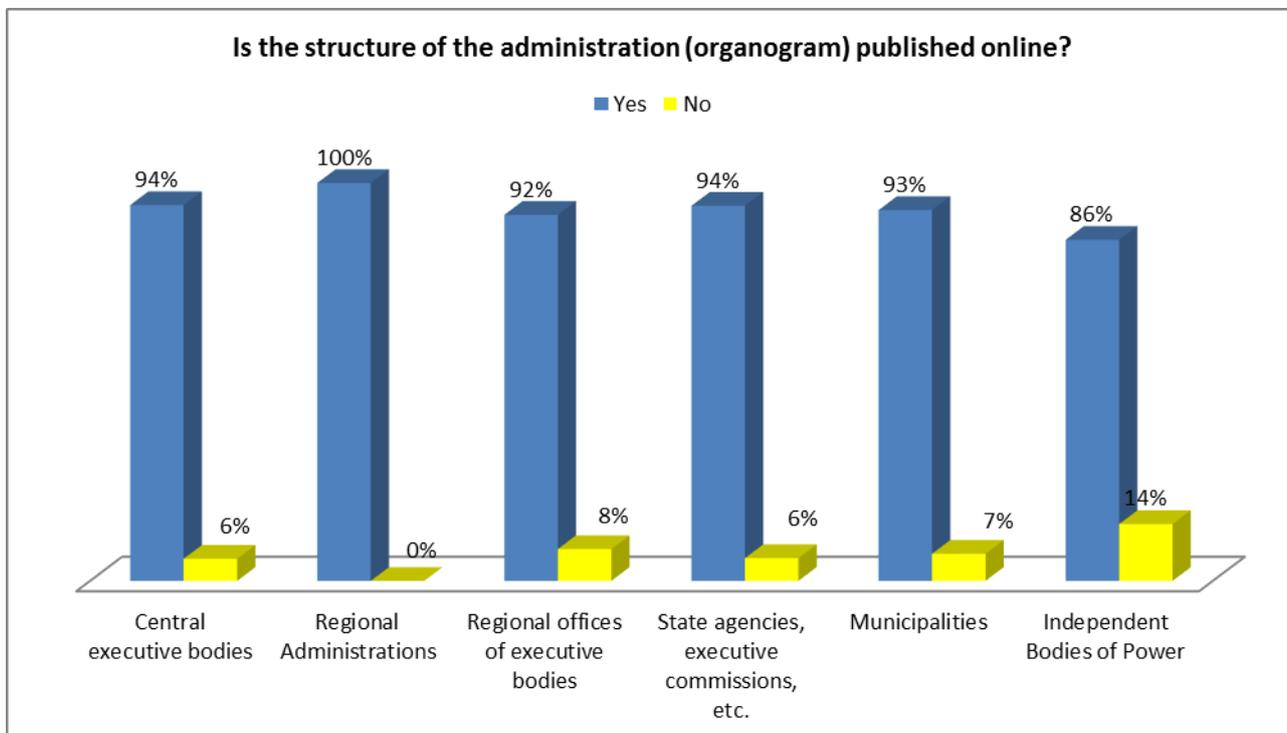


Chart 16. Is the structure of the administration published? (by type of public body – 2015)



Contact information for citizens

Chart 17. Name of the contact department?

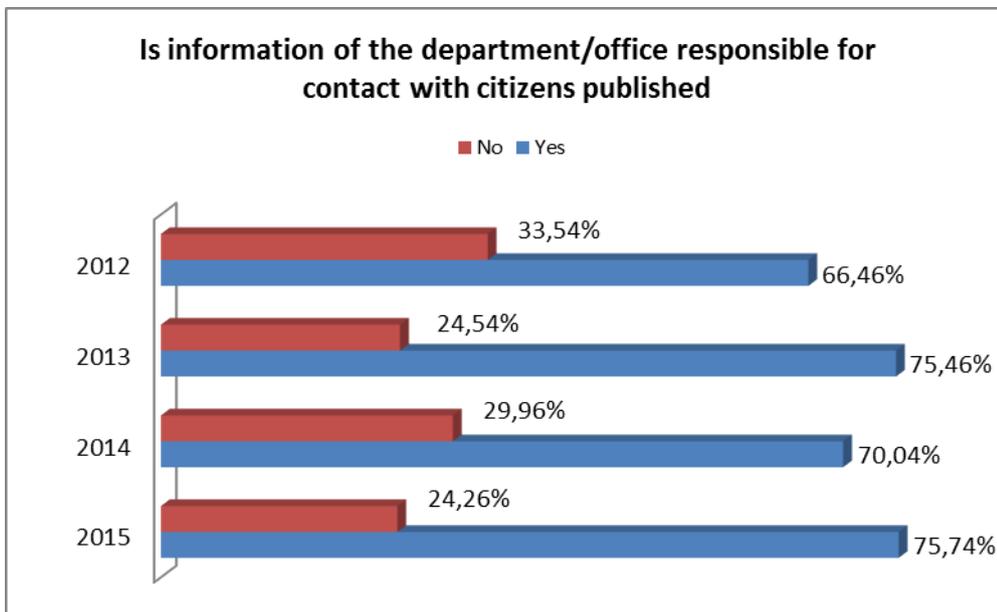


Chart 18. Name of the contact department? (by type of public body – 2015)

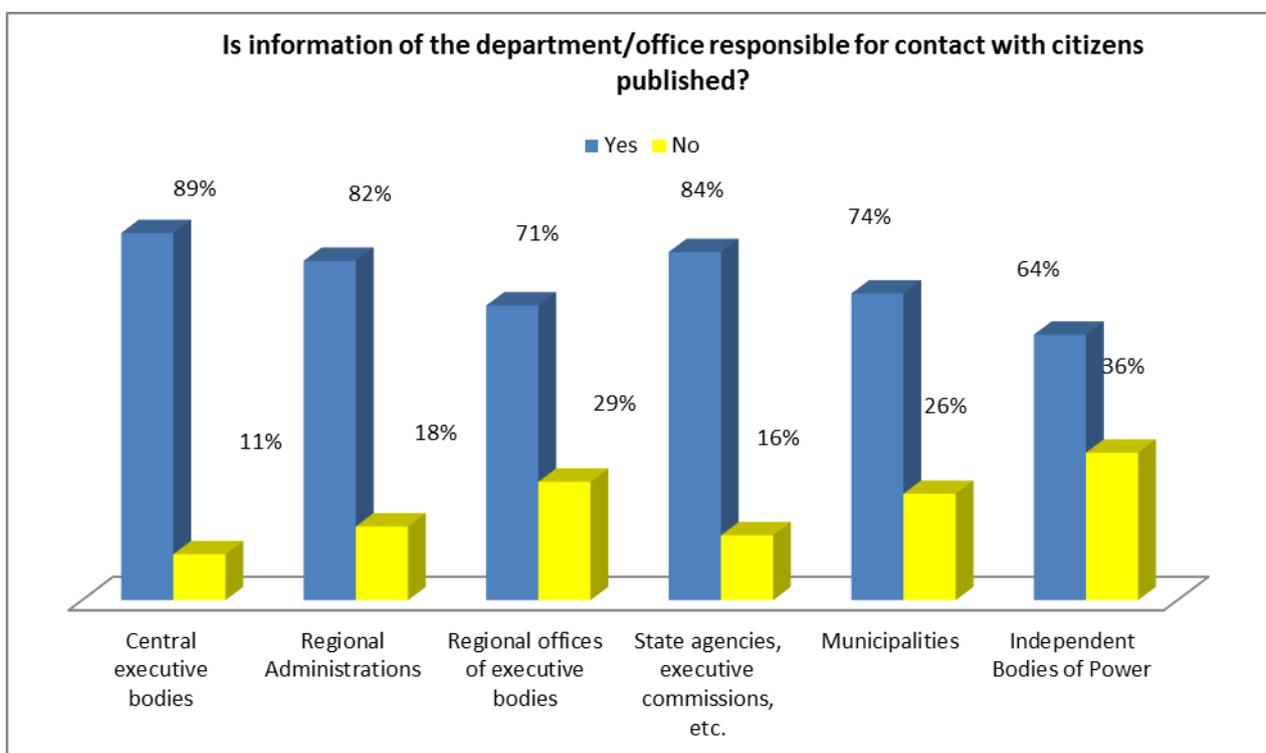


Chart 19. Address of the contact department?

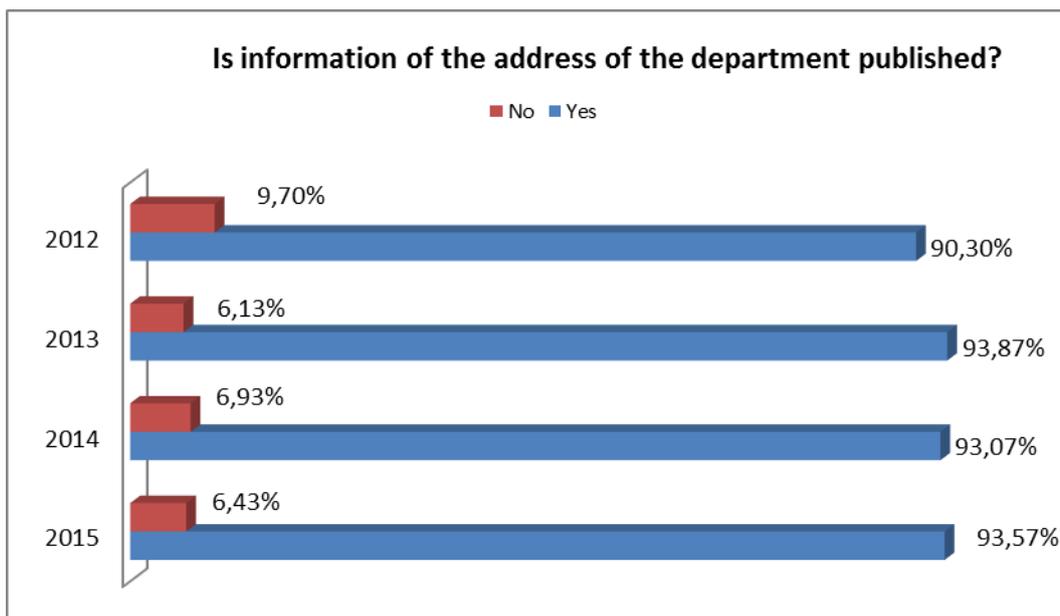


Chart 20. Address of the contact department? (by type of public body – 2015)

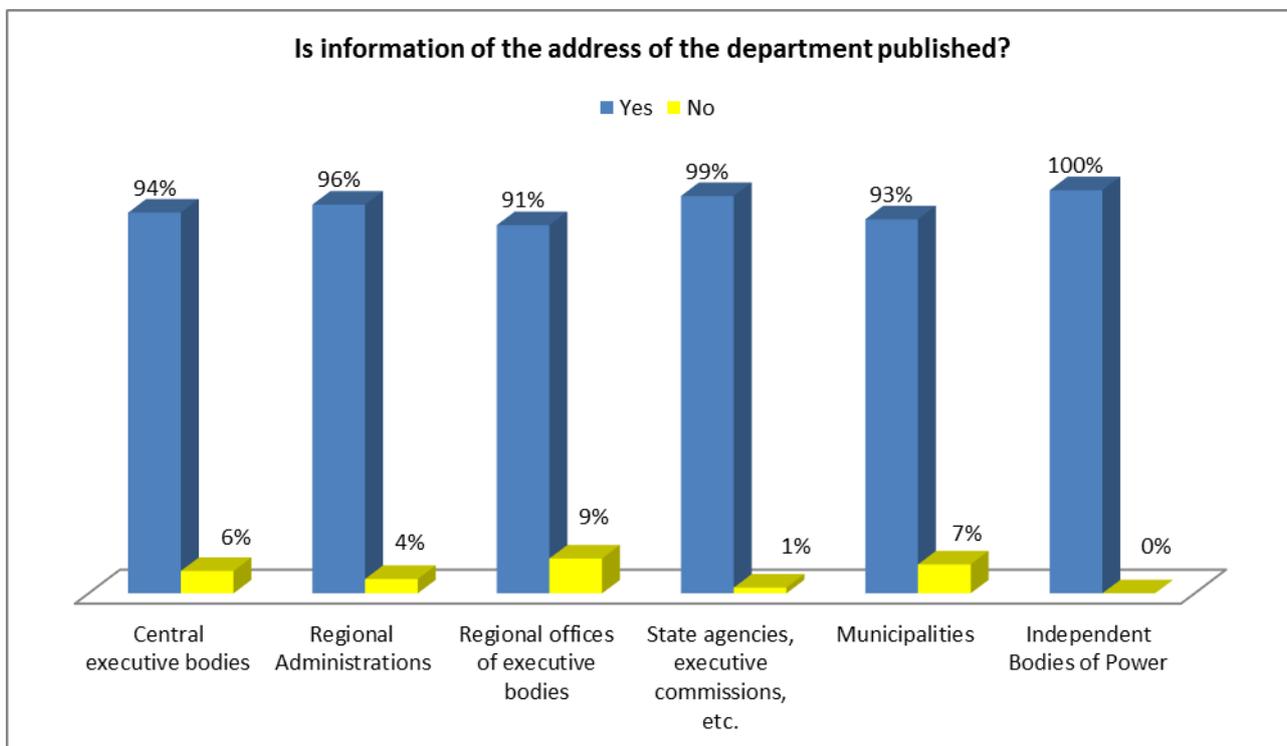


Chart 21. Contact phone number?

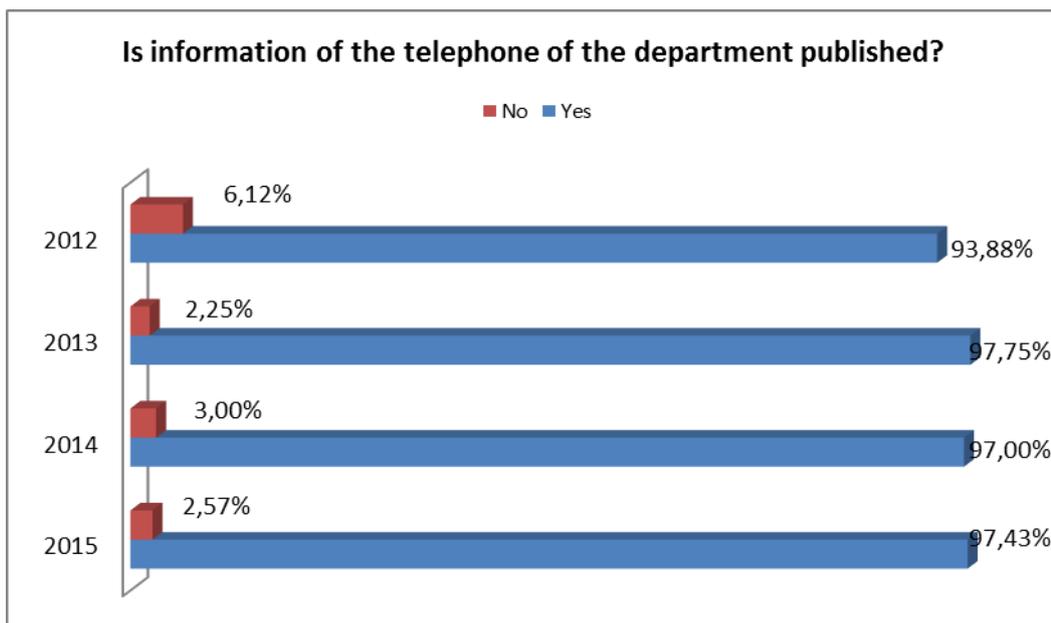


Chart 22. Contact phone number? (by type of public body – 2015)

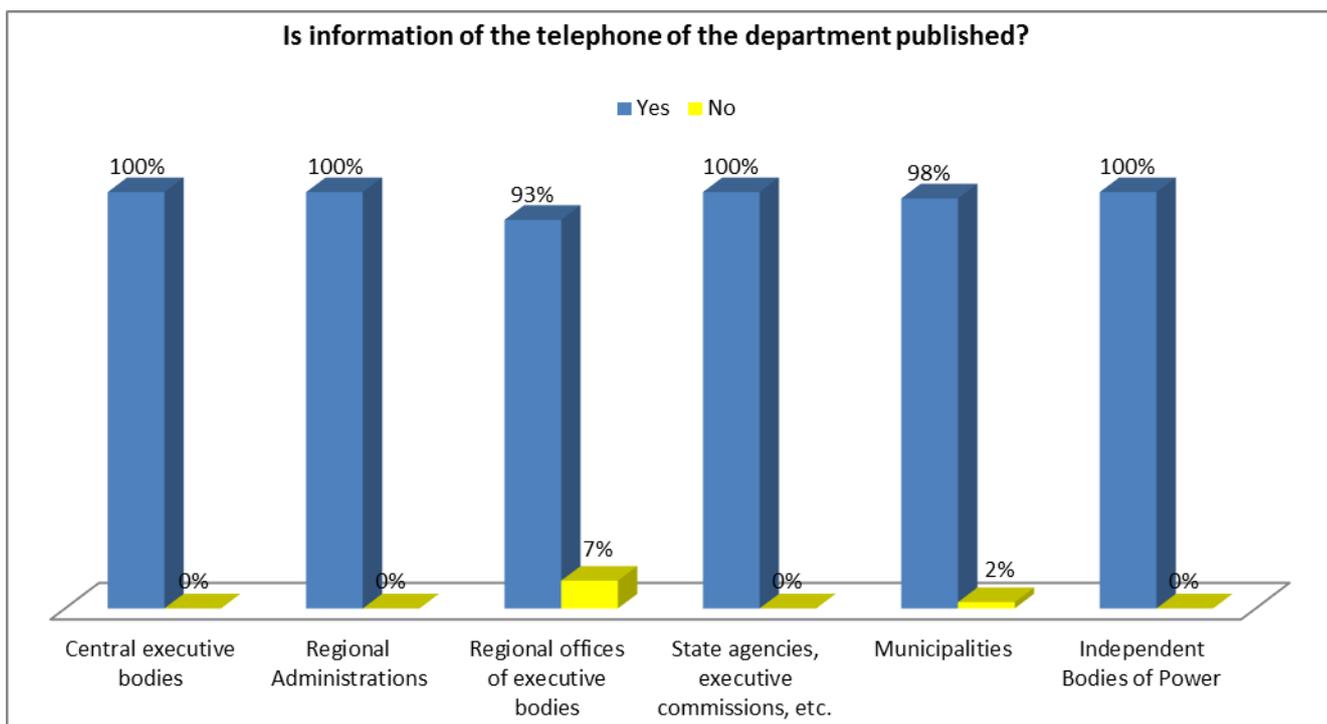


Chart 23. Is information of the e-mail address of the department published?

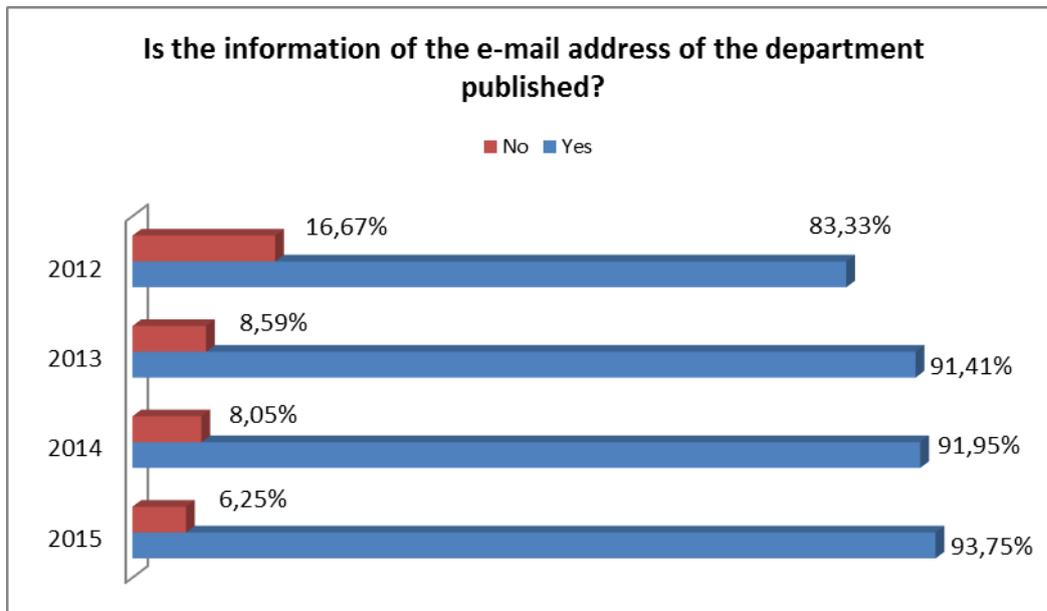


Chart 24. Is information of the e-mail address of the department published? (by type of public body – 2015)

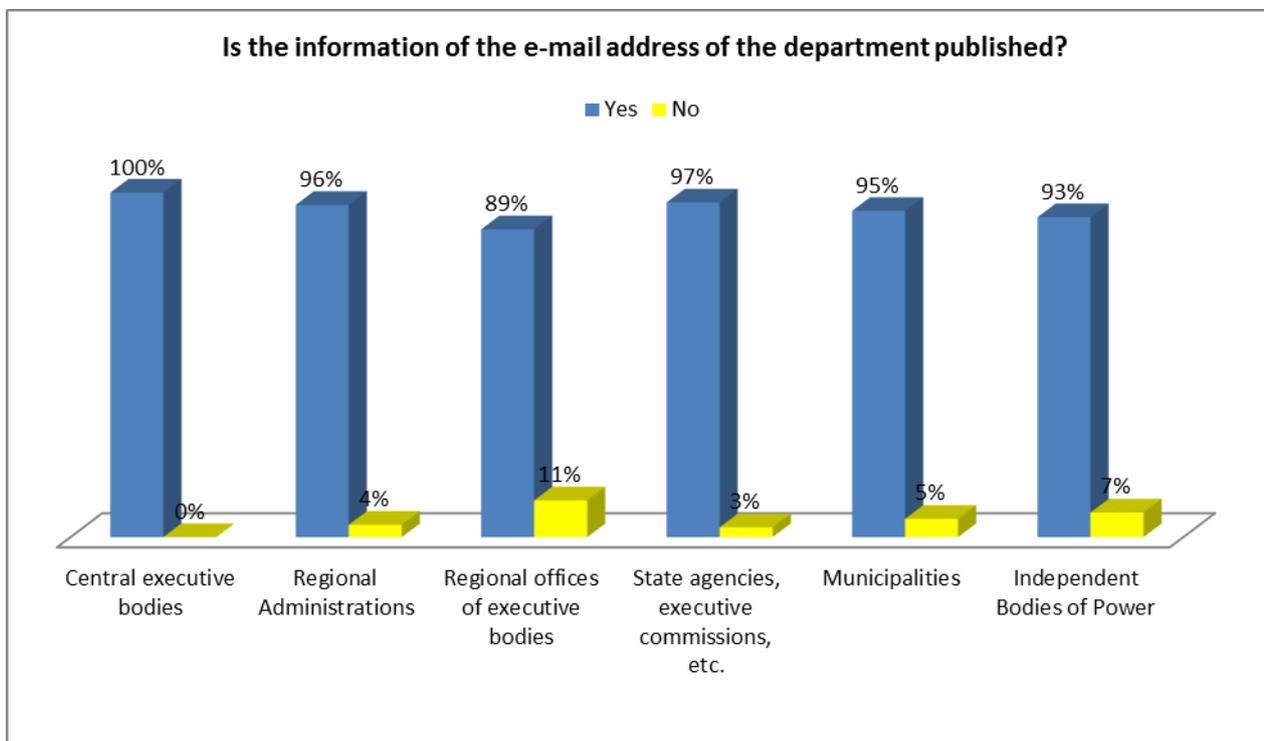


Chart 25. Working hours of the contact department?

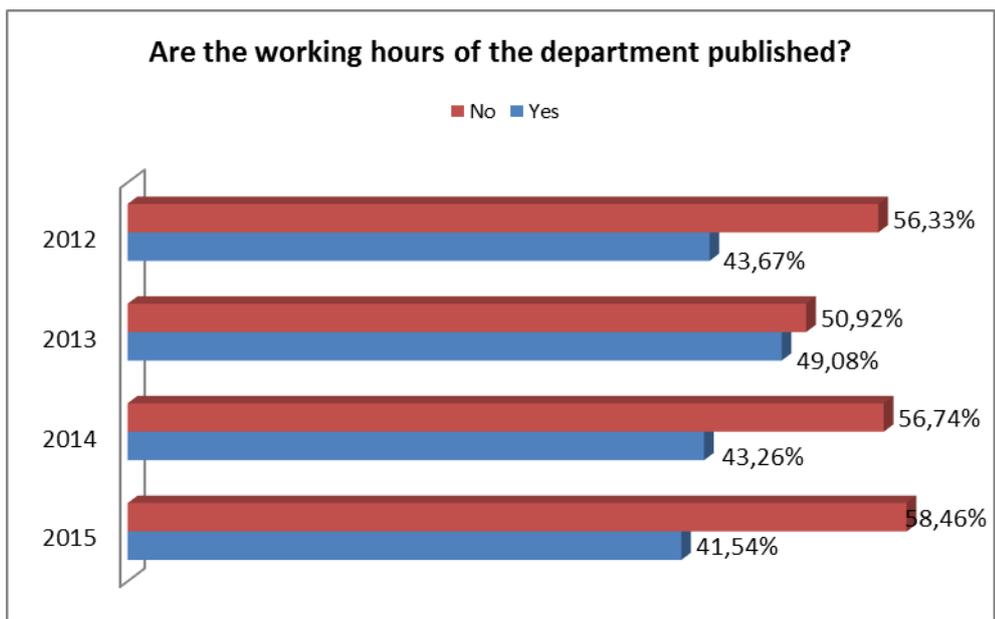
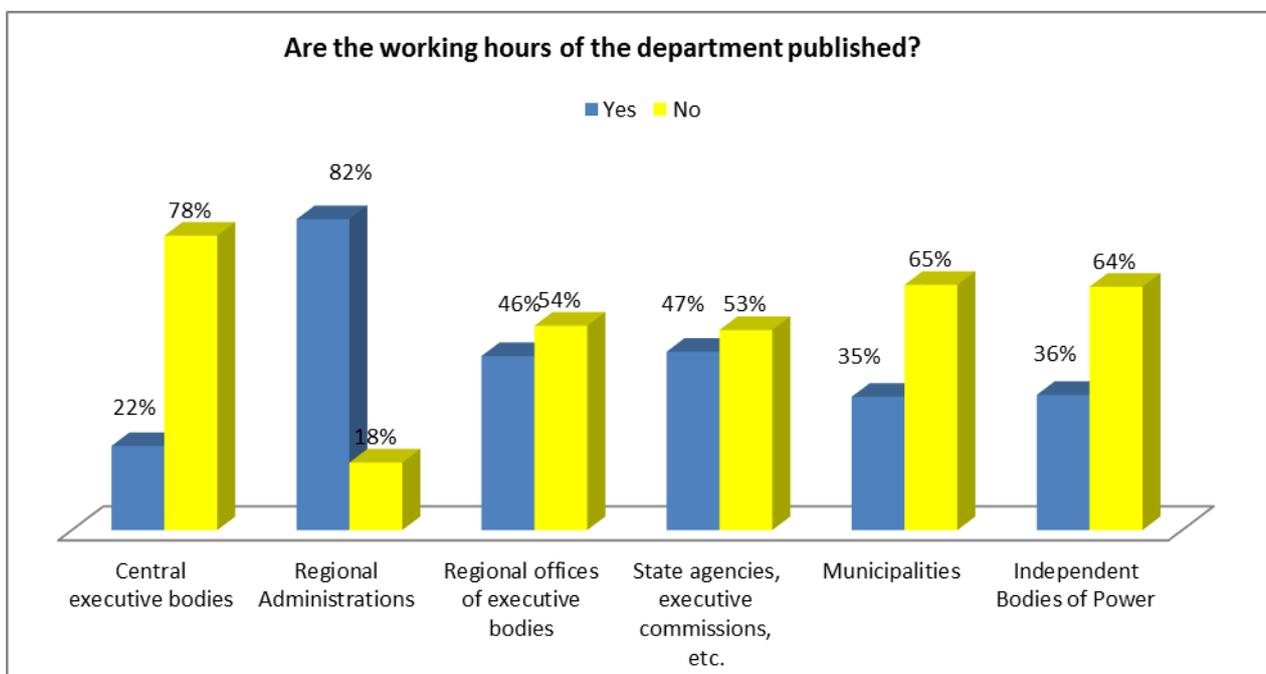


Chart 26. Working hours of the contact department? (by type of public body – 2015)



Operational Information – acts,¹²⁴ strategies and plans, activities and activity reports

Chart 27. Are the normative acts published?

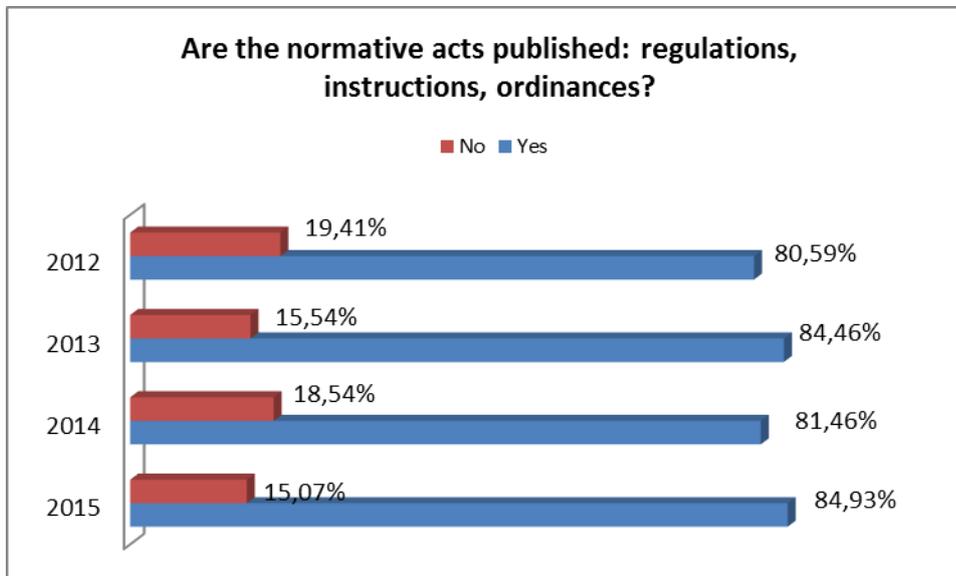
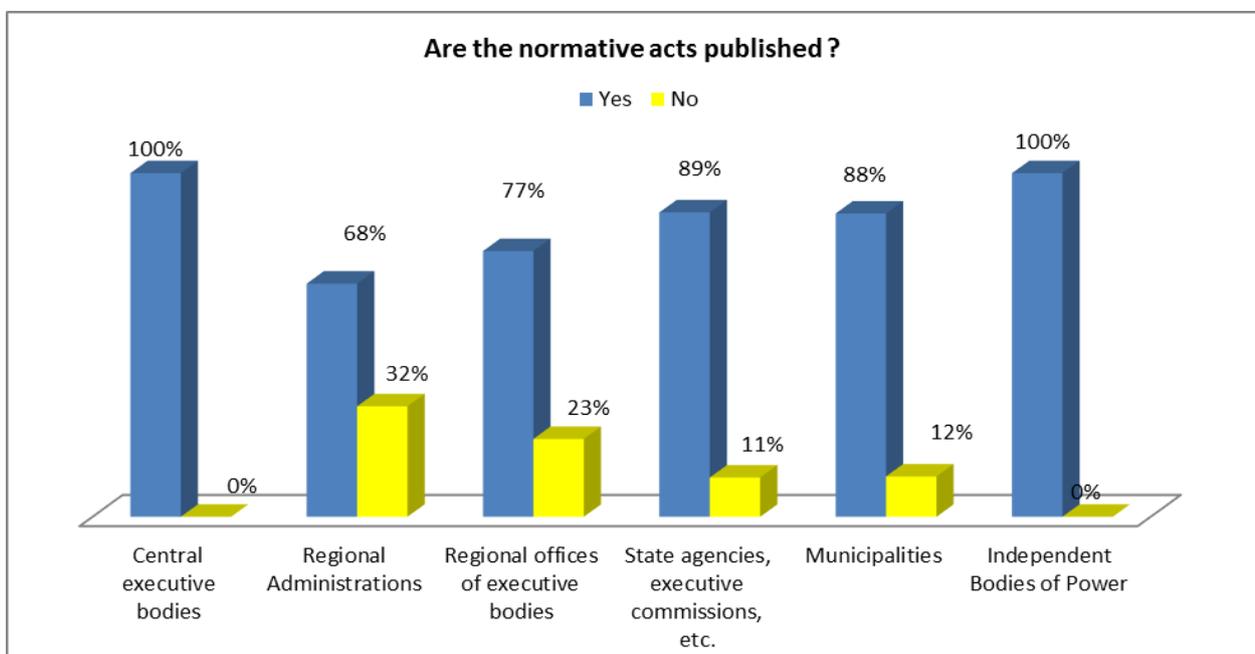


Chart 28. Are the normative acts published? (by type of public body – 2015)



¹²⁴ 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 29. Are the individual administrative acts published?

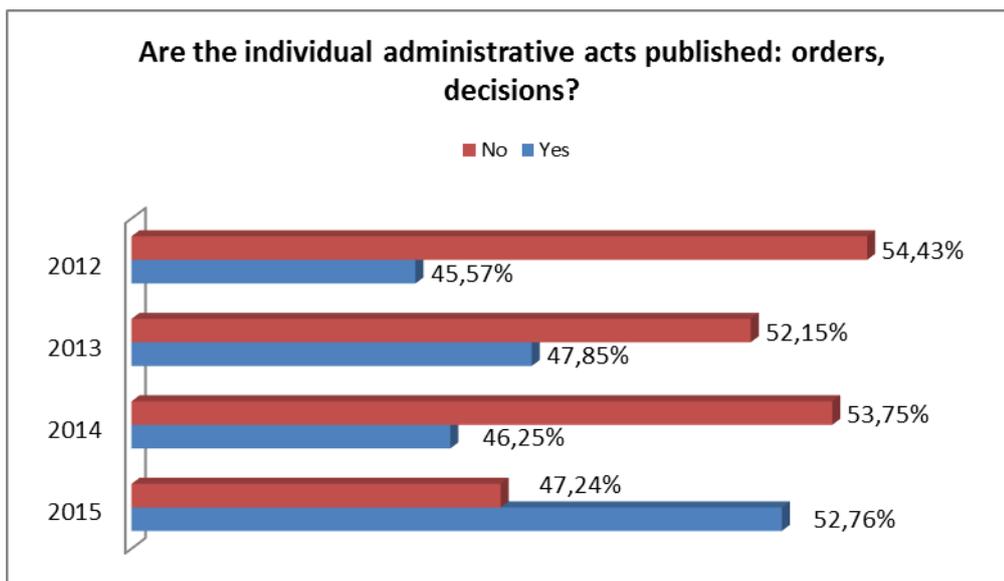


Chart 30. Are the individual administrative acts published? (by type of public body – 2015)

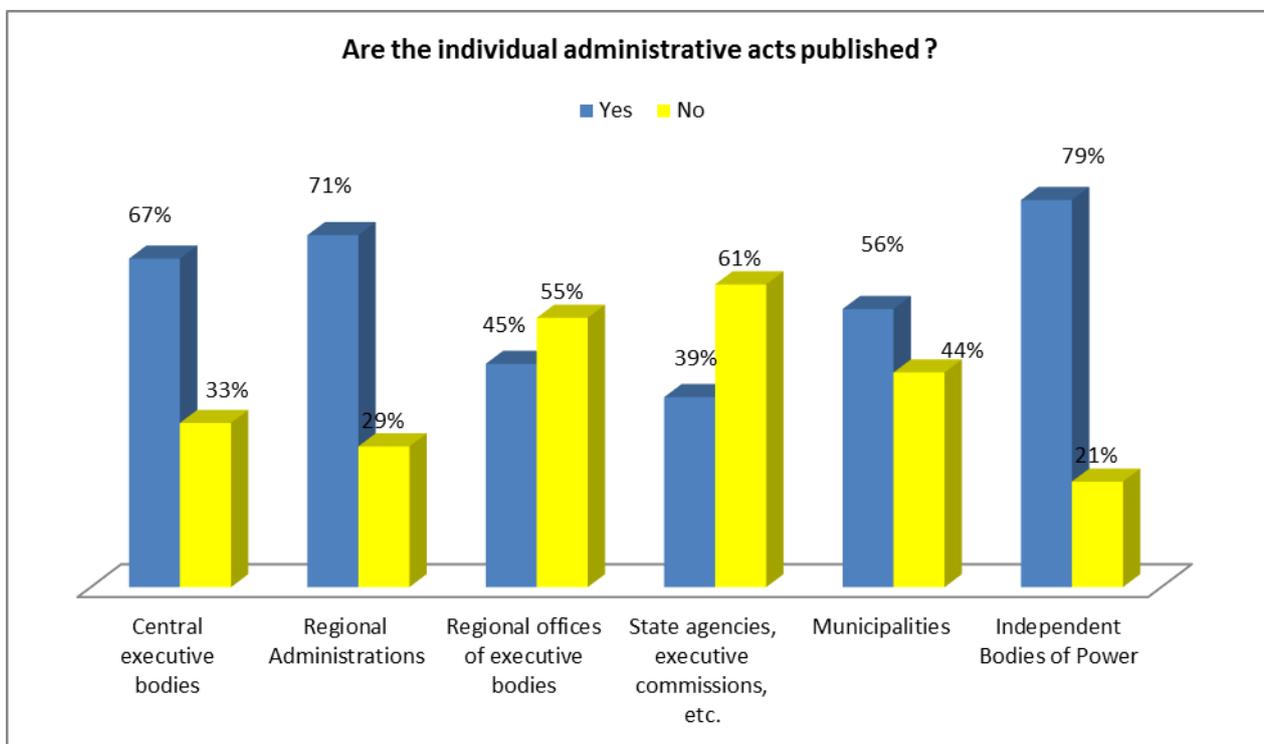


Chart 31. Are the decisions of the municipal council published?
(only for municipalities – 2012 - 2015)

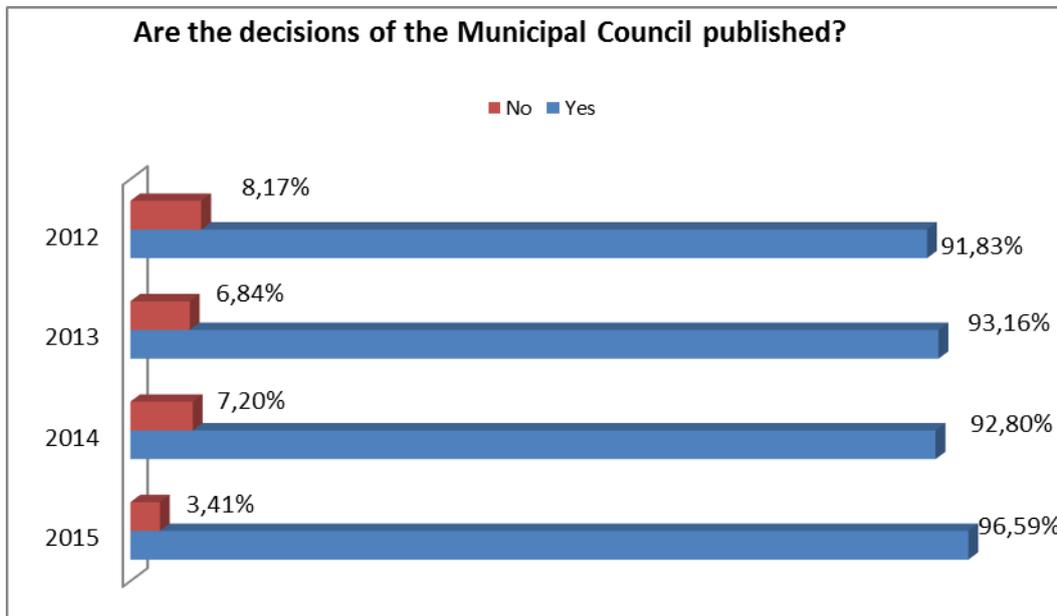


Chart 32. Are development strategies and plans published?

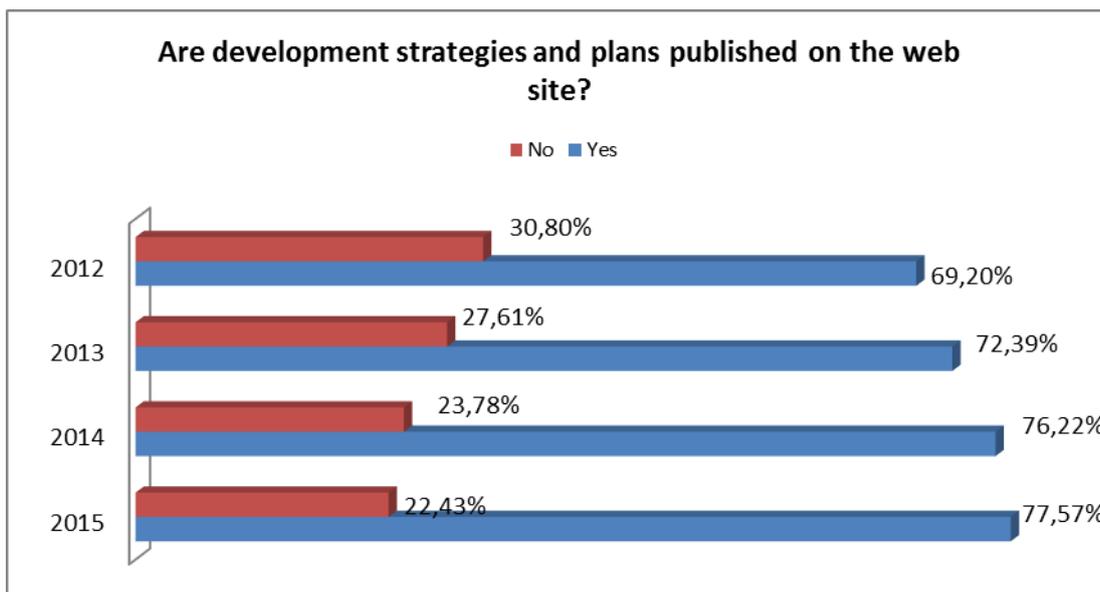


Chart 33. Are development strategies and plans published? (by type of public body – 2015)

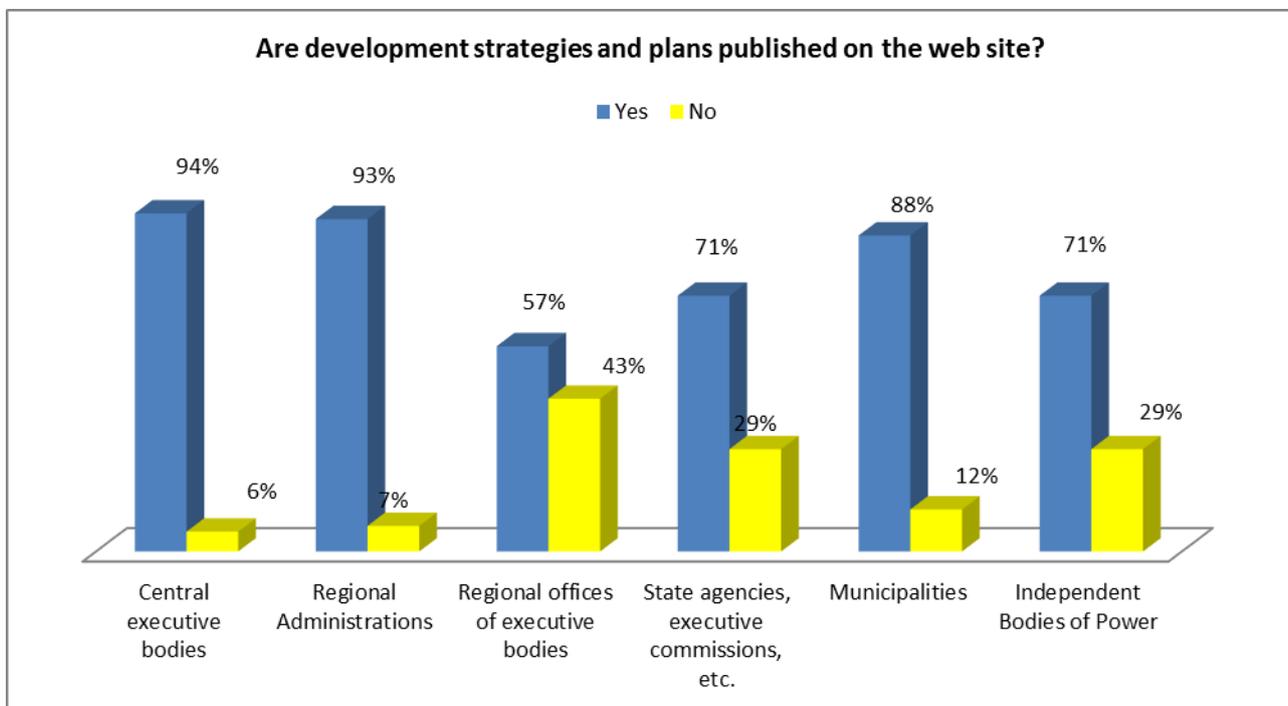


Chart 34. Are activity reports of the institution published?

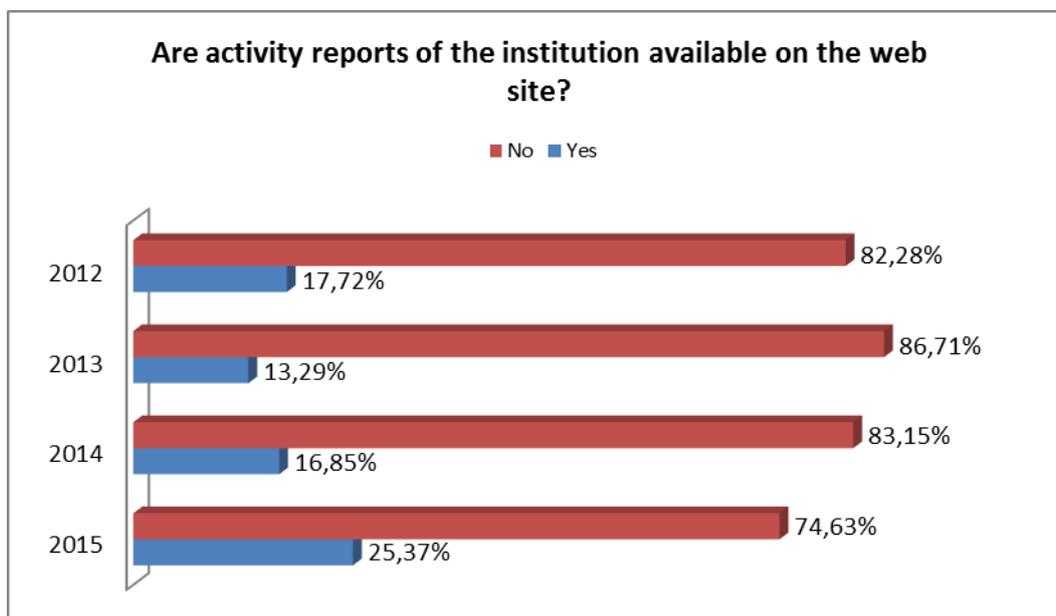
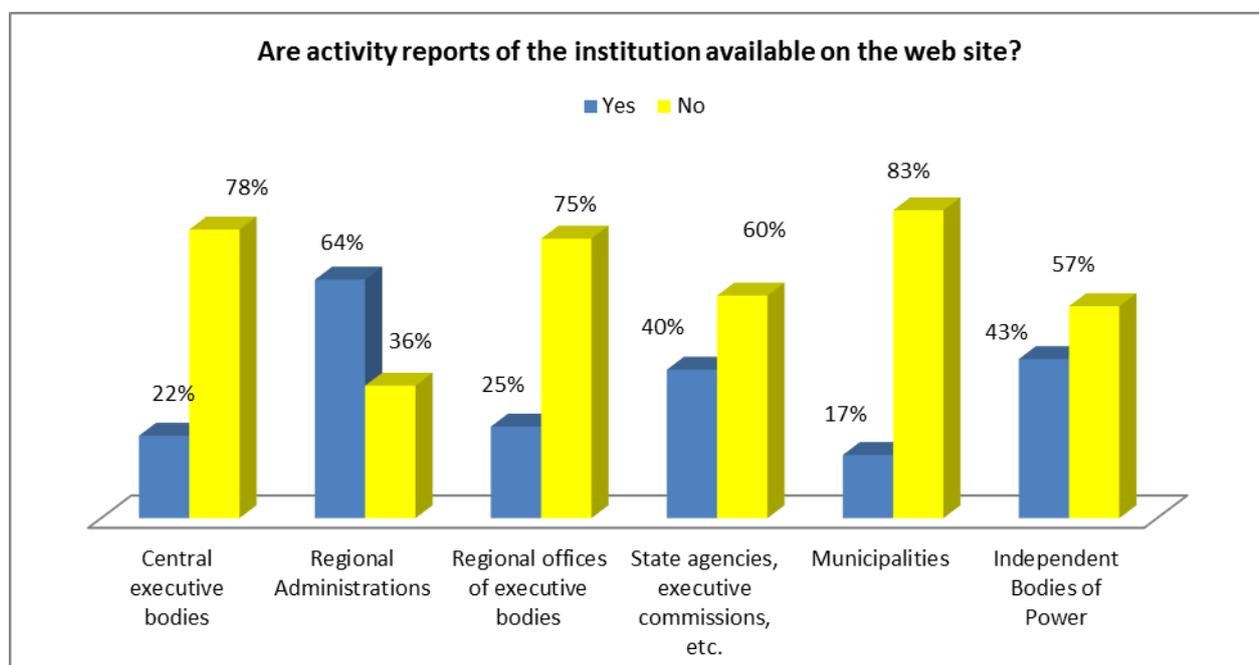


Chart 35. Are activity reports of the institution published? (by type of public body – 2015)



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

Chart 36. Is the budget of the institution published?

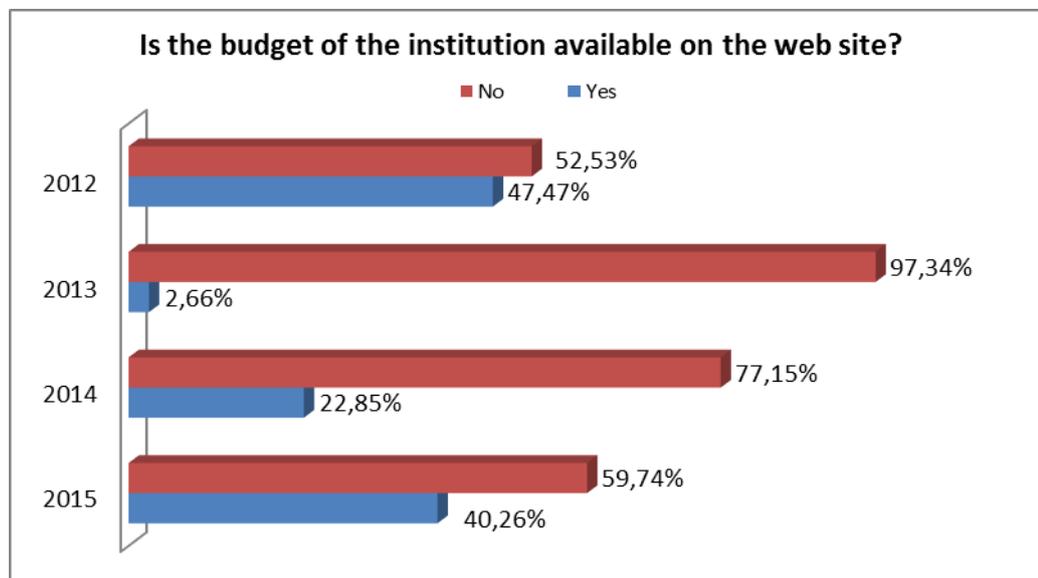


Chart 37. Is the budget of the institution published? (by type of public body – 2015)

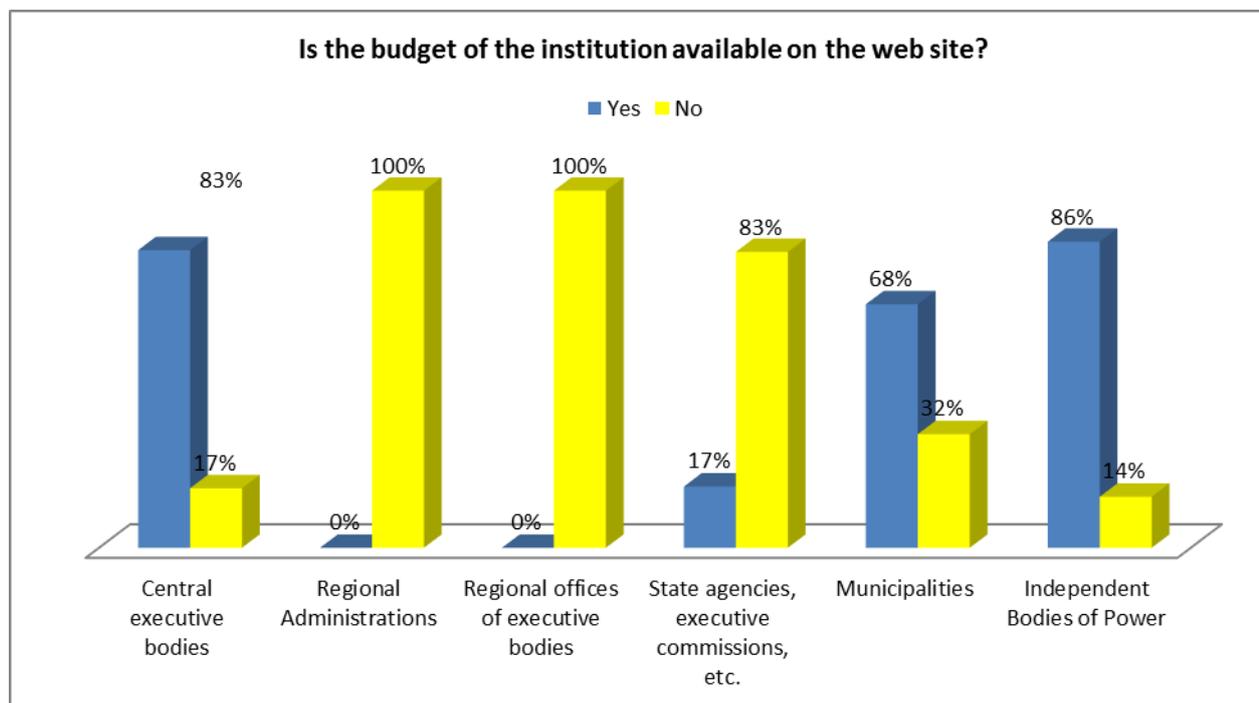


Chart 38. Are financial reports of the institution published?

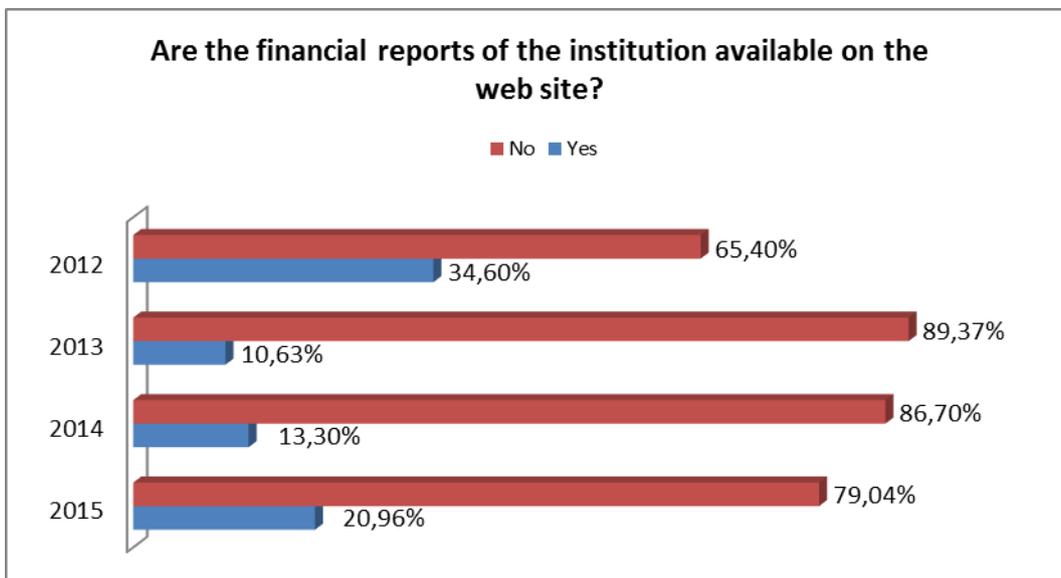


Chart 39. Are financial reports of the institution published? (by type of public body – 2015)

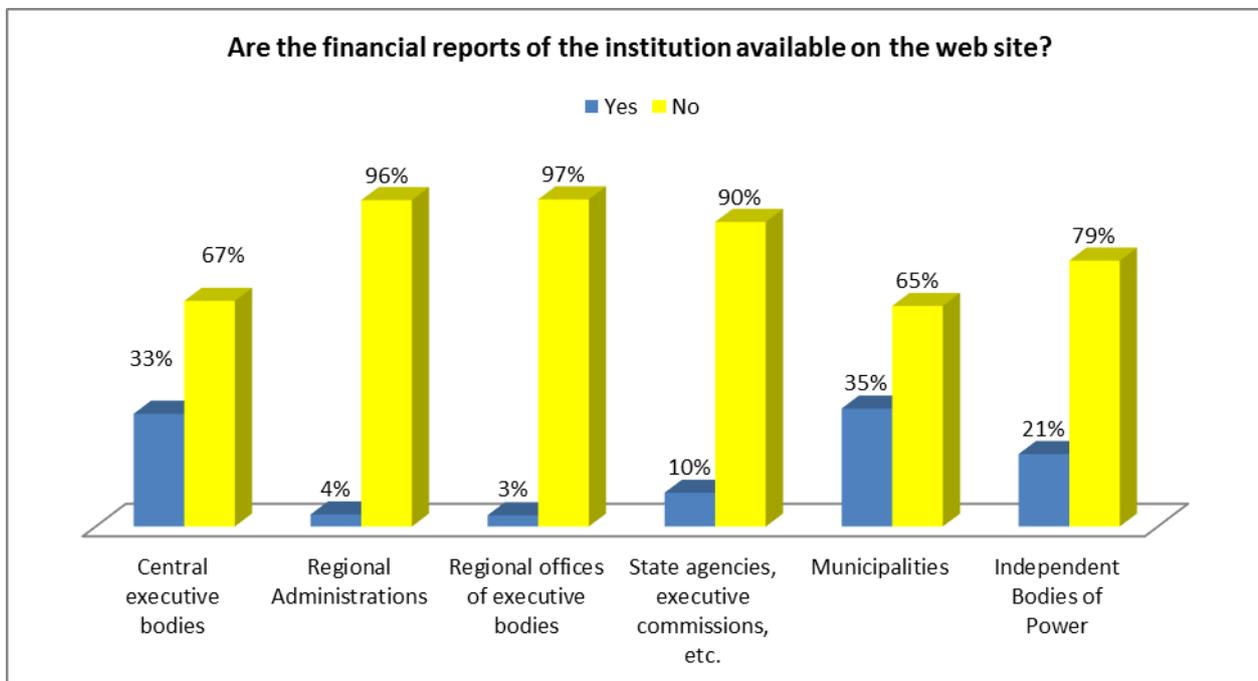


Chart 40. Is the institution a first degree budget spending unit?

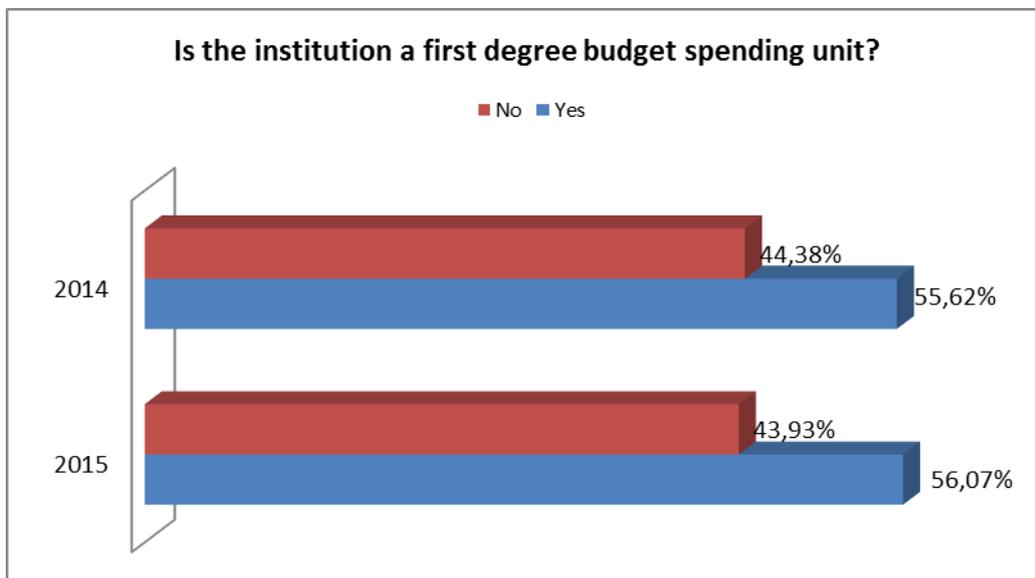


Chart 41. Is the institution a first degree budget spending unit? (by type of public body – 2015)

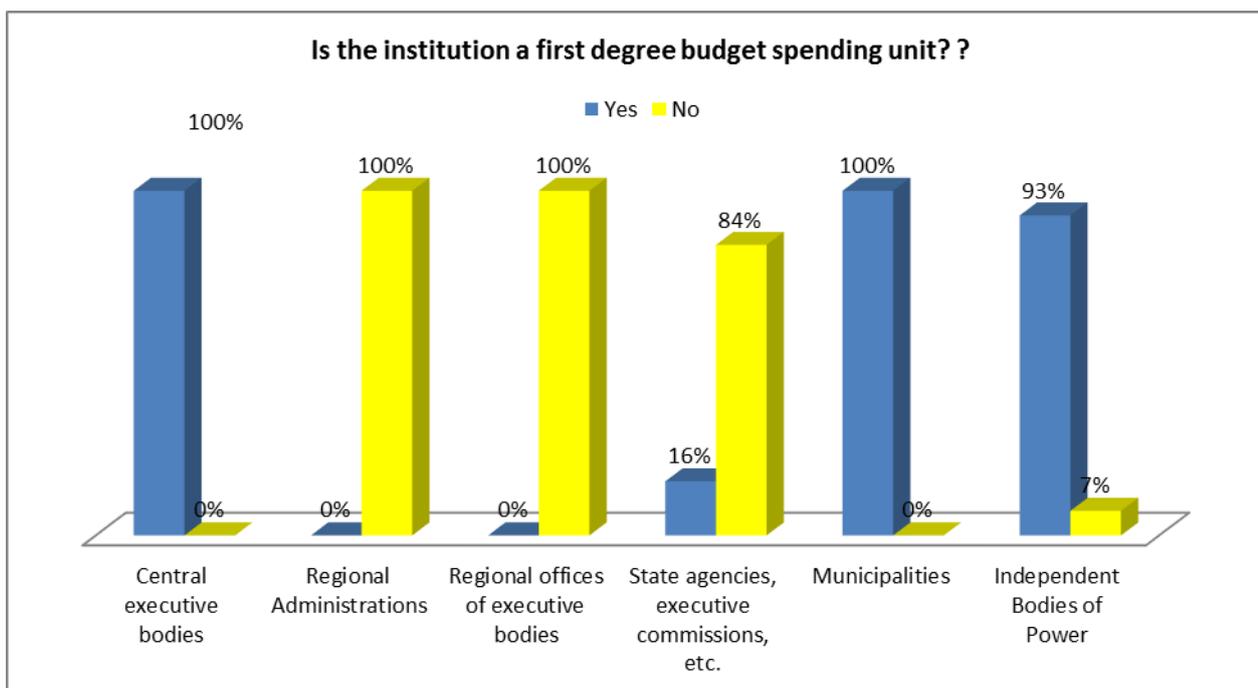


Chart 41a. The institution is a first degree budget spending unit (by type of public body – 2015)

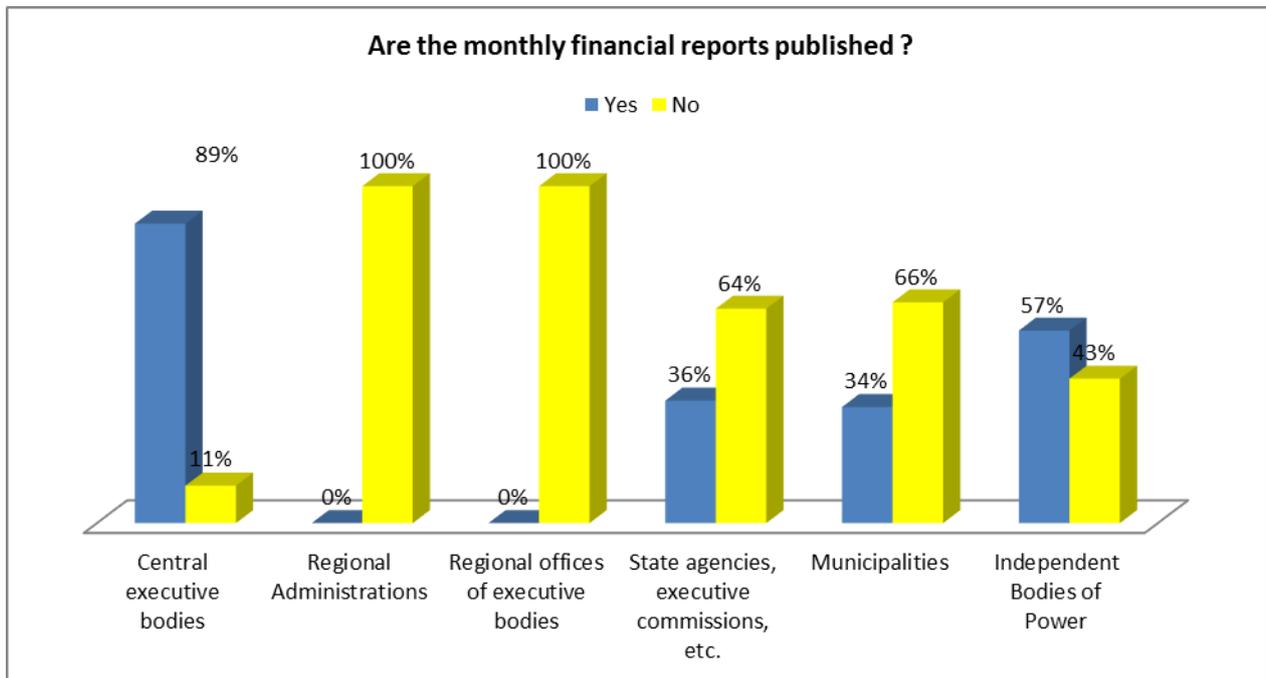


Chart 41b. The institution is a first degree budget spending unit (by type of public body – 2015)

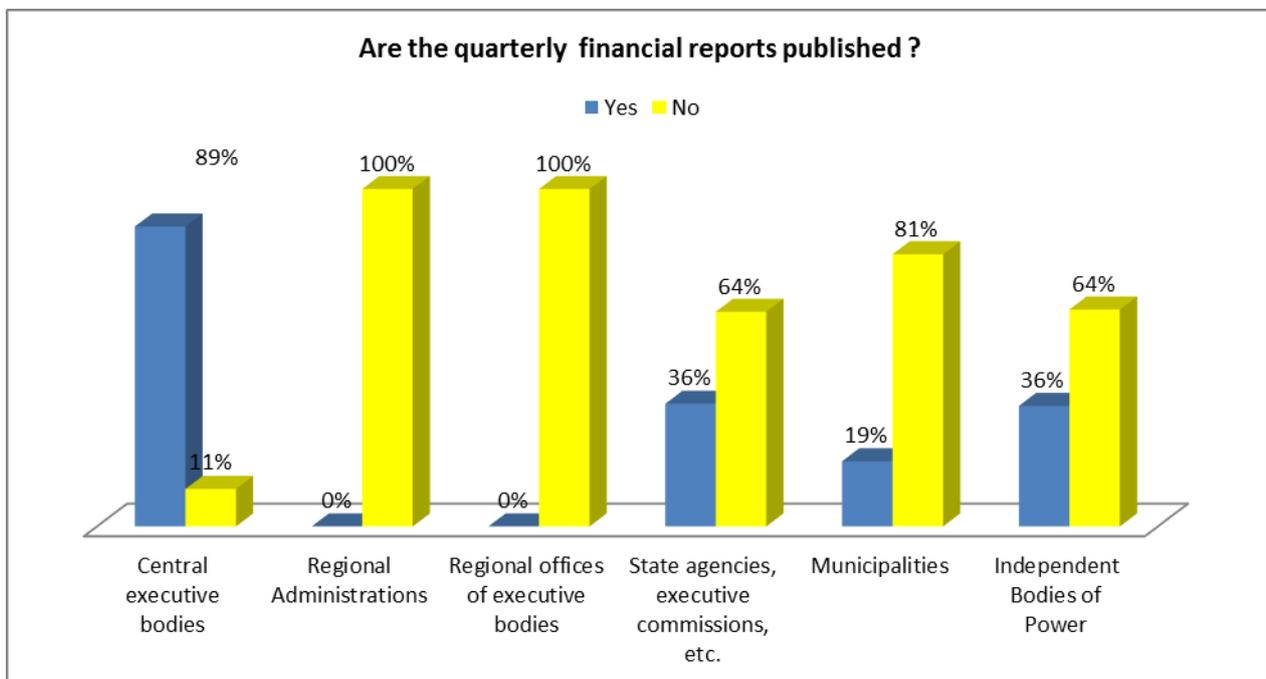


Chart 42. Is the institution obliged to use program budgeting?

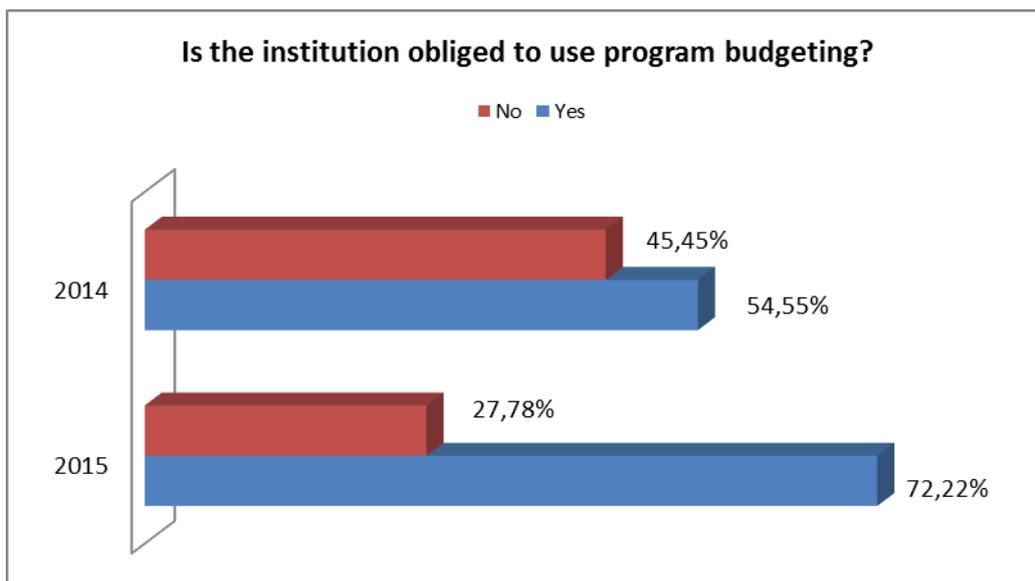


Chart 43. Is the budget by programs published? (by type of public body – 2015)

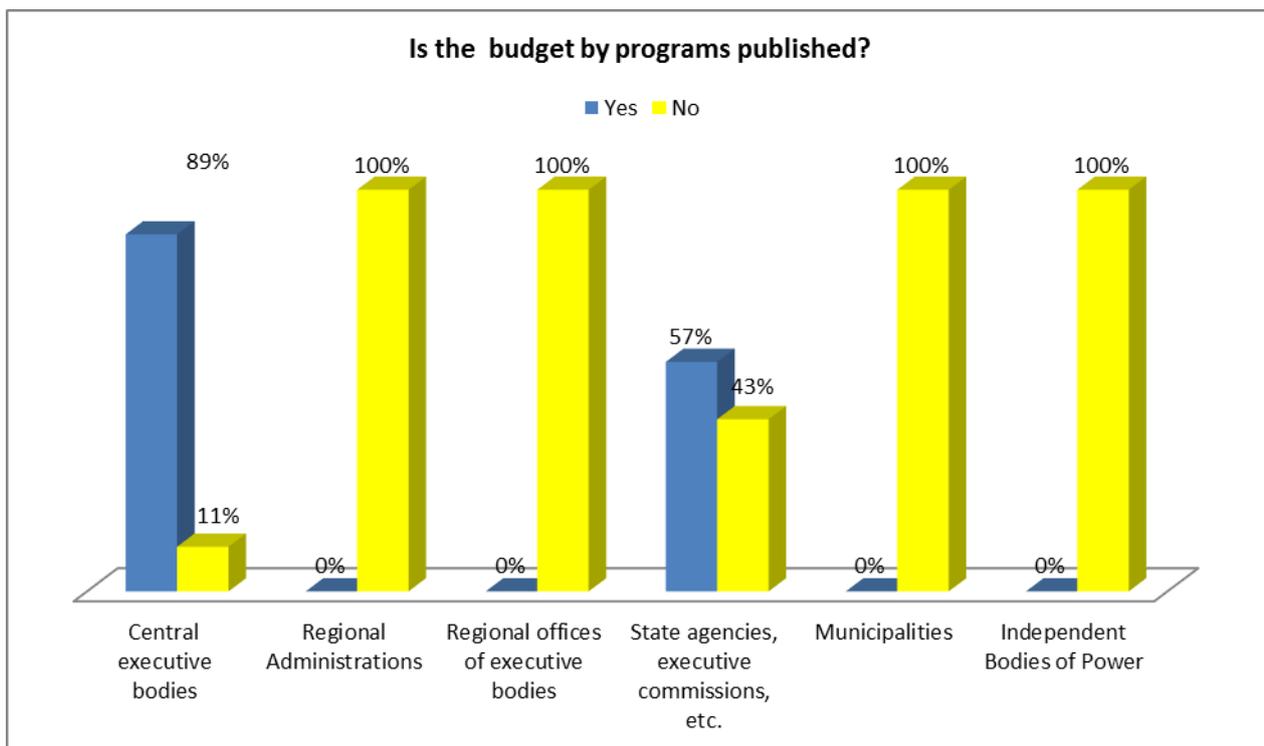


Chart 44a. Is quarterly information about the expenses made under the program budget published?

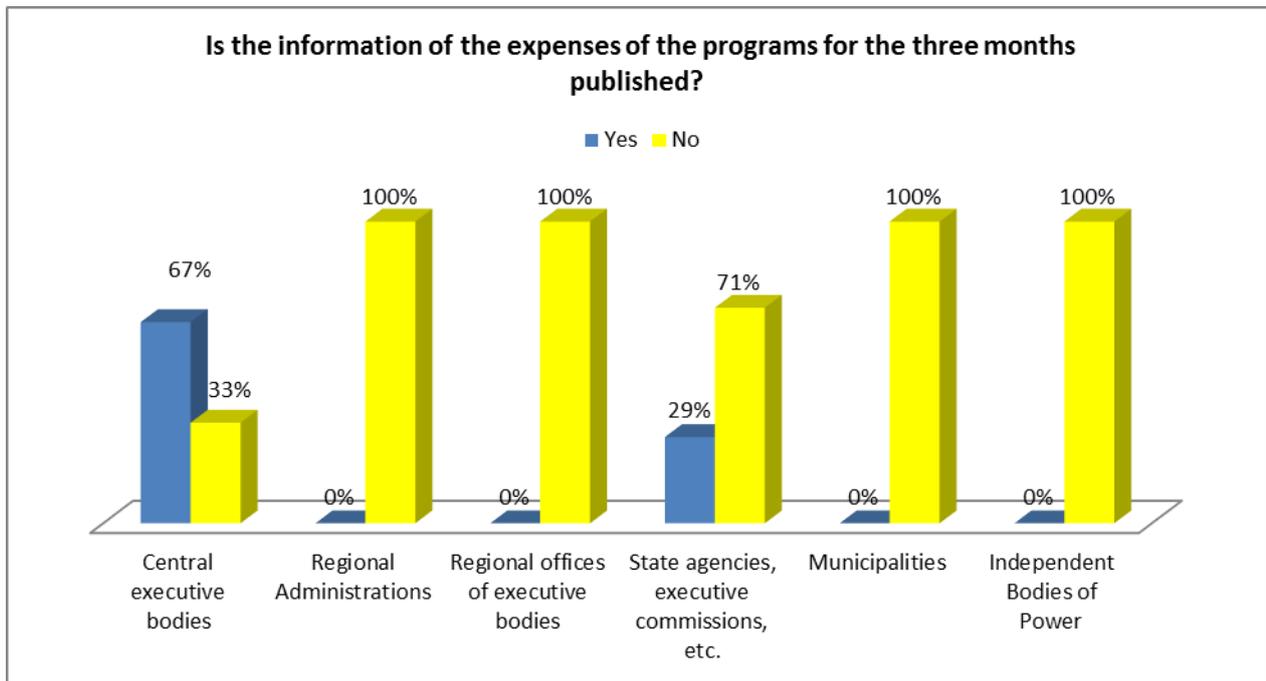


Chart 44b. Are bi-annual reports on the execution of the program budget published?

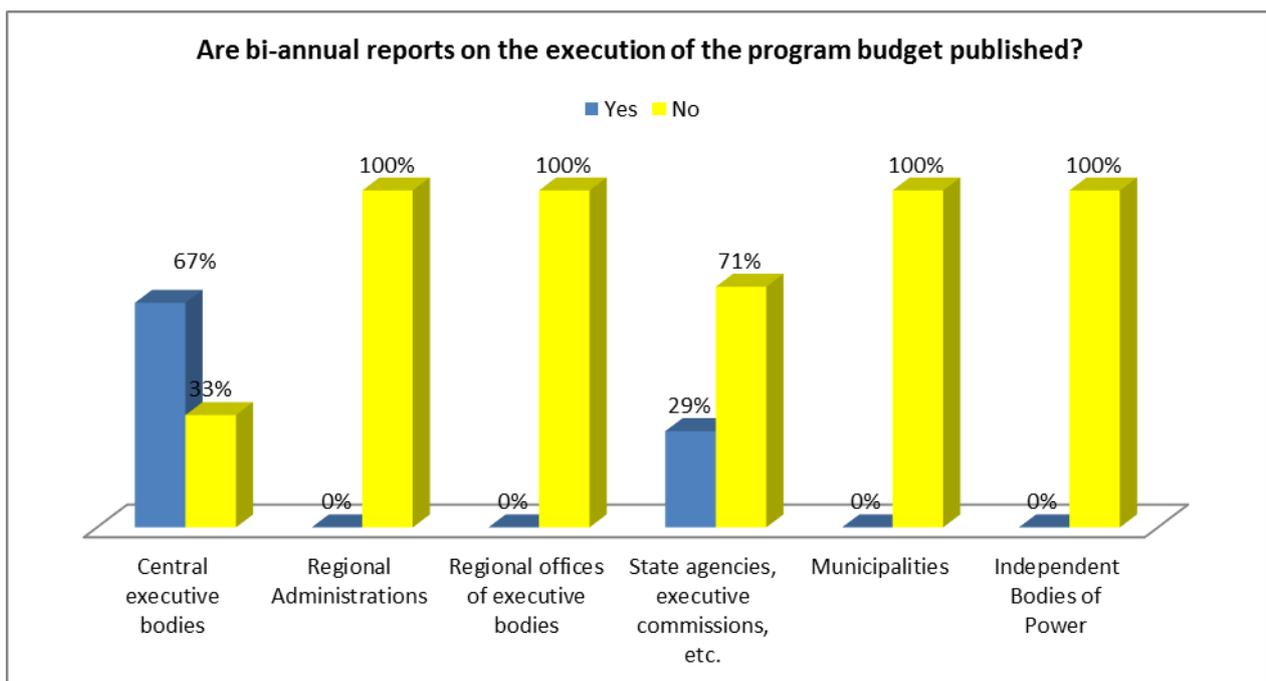


Chart 44c. Is an annual report for the execution of the program budget published?

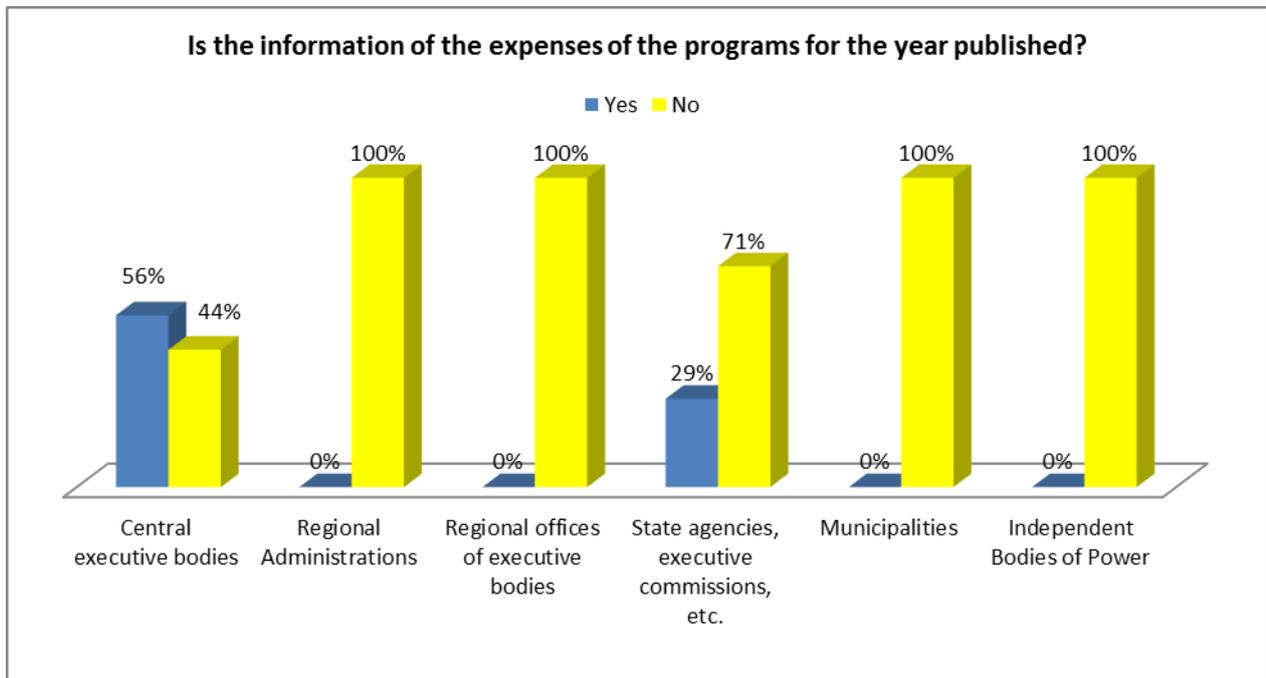


Chart 45. Is the institution using program budgeting on its own choice?

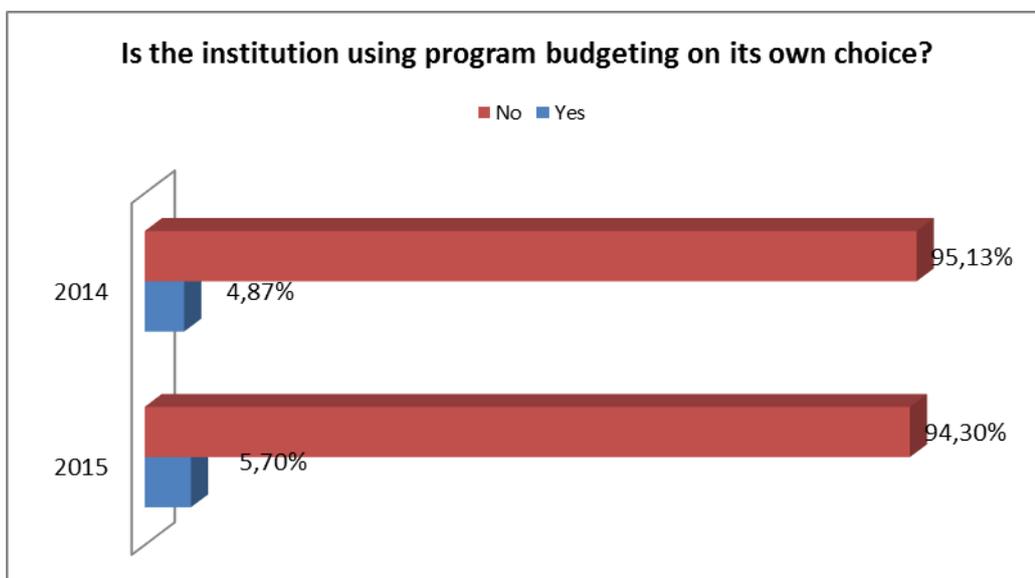


Chart 46. Is the institution using program budgeting on its own choice? (by type of public body – 2015)

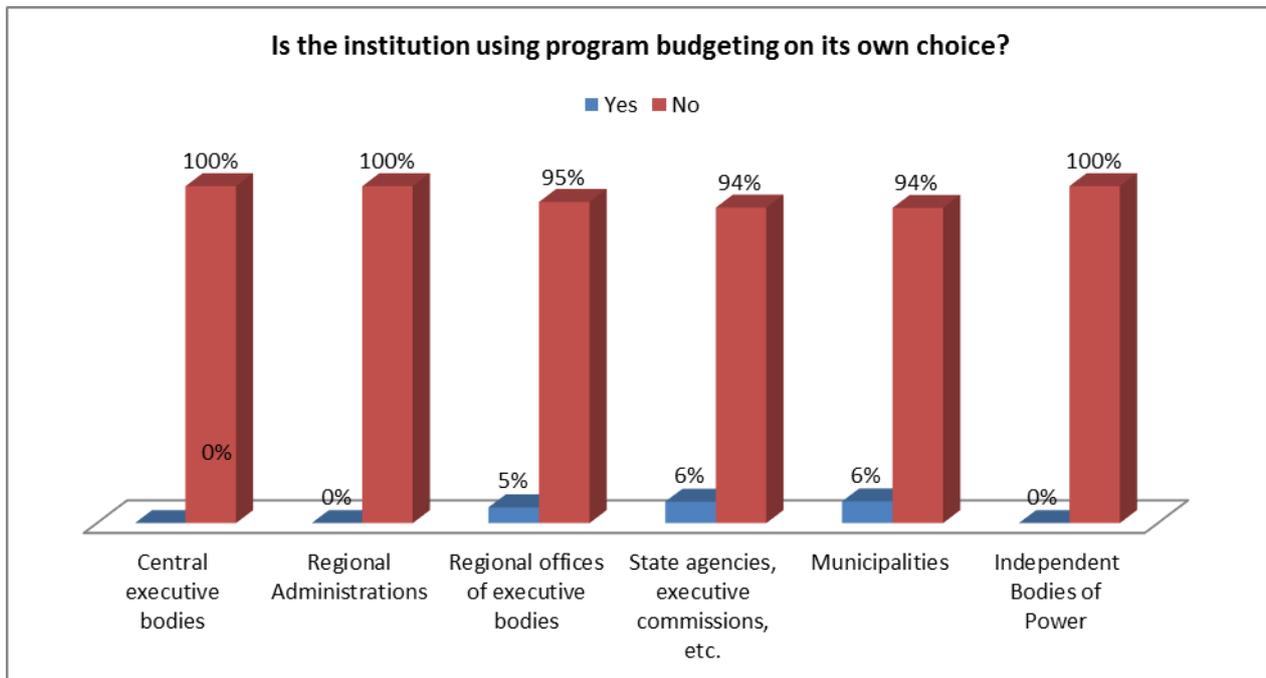


Chart 47. Are the payments made through the Electronic State Budget Payments System (SEBRA) available online?

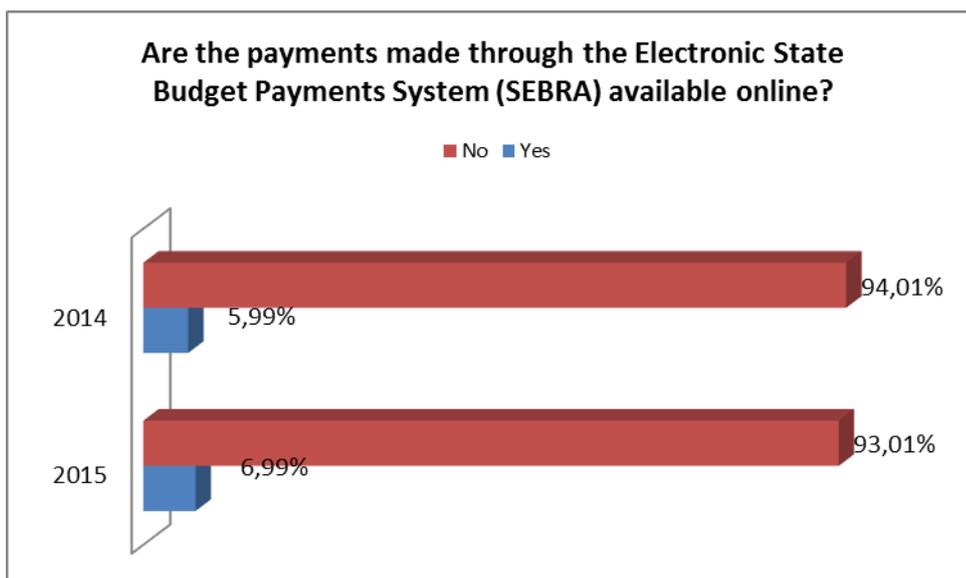


Chart 48. Are the payments made through the Electronic State Budget Payments System (SEBRA) available online? (by type of public body – 2015)

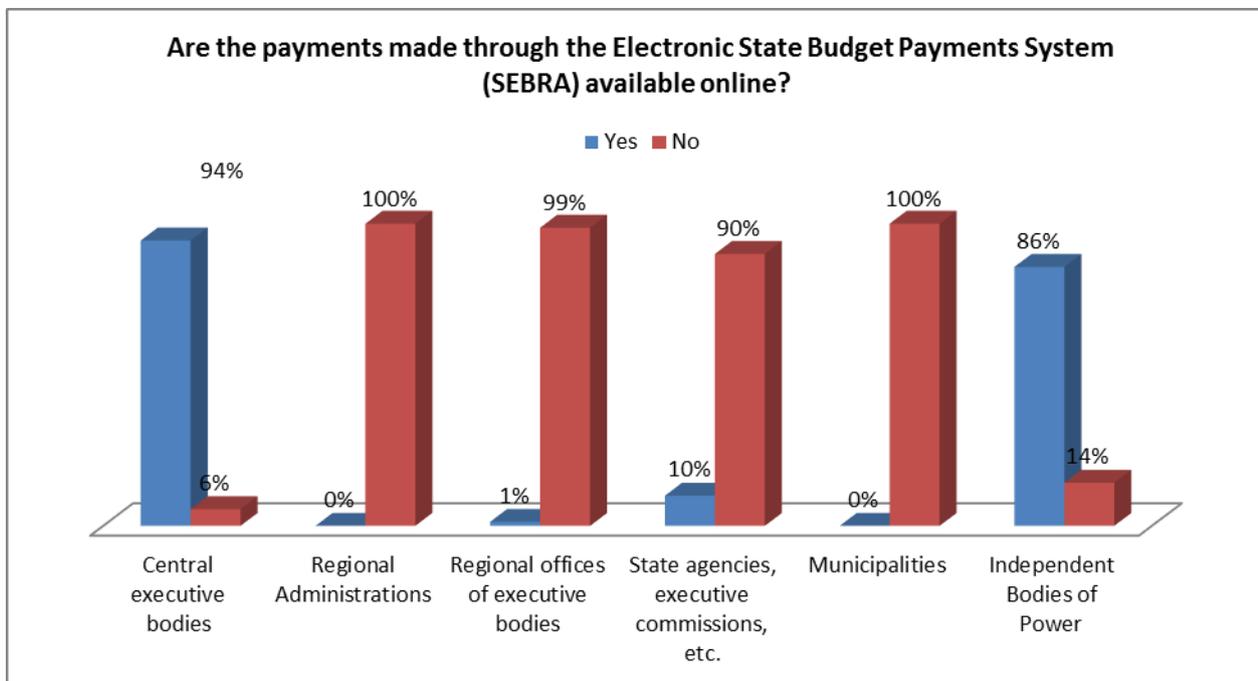
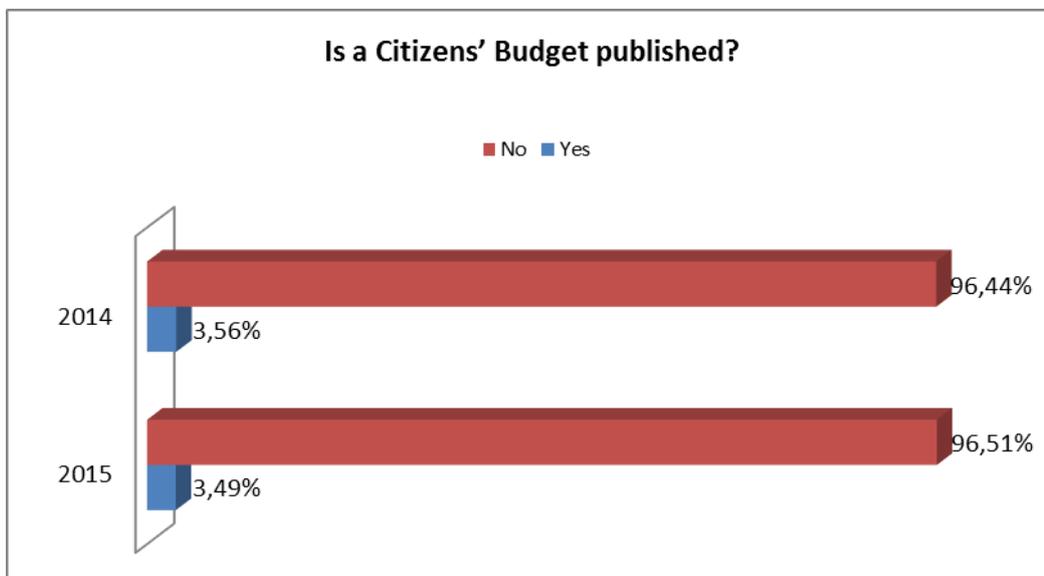


Chart 49. Is a Citizens' Budget published?



Public Procurements – the Content of “Customers Profile” Section

Chart 50. “Customers Profile” section under the Public Procurements Act - 2015

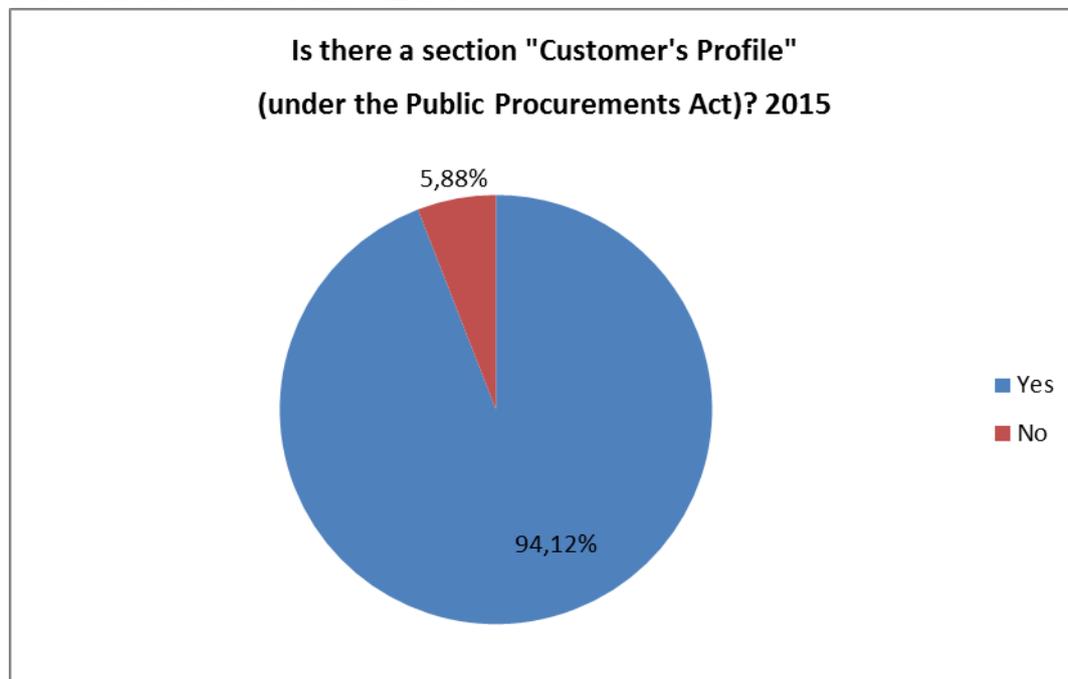


Chart 51. “Customers Profile” section under the Public Procurements Act (by type of public body – 2015)

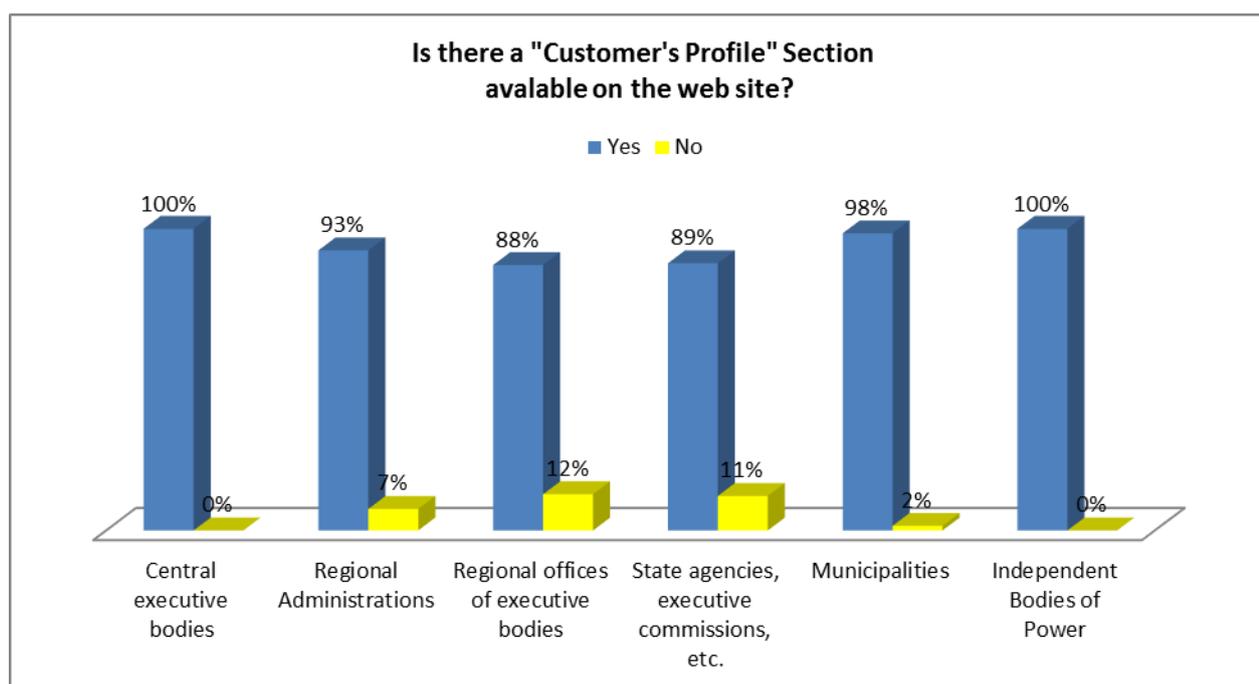


Chart 52. Is there a register of announcements for public procurement tenders of the institution?

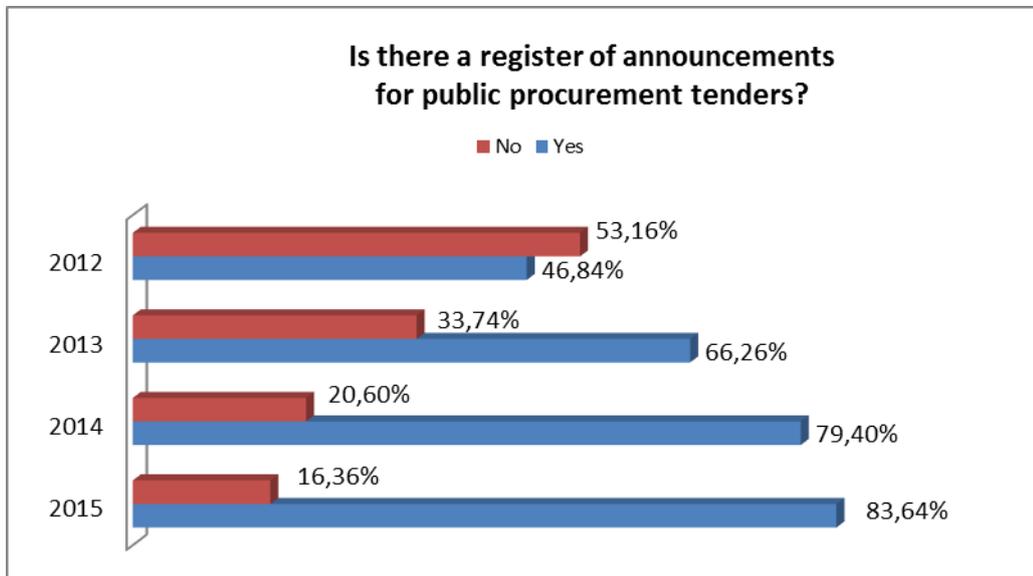


Chart 53. Is there a register of announcements for public procurement tenders of the institution? (by type of public body – 2015)

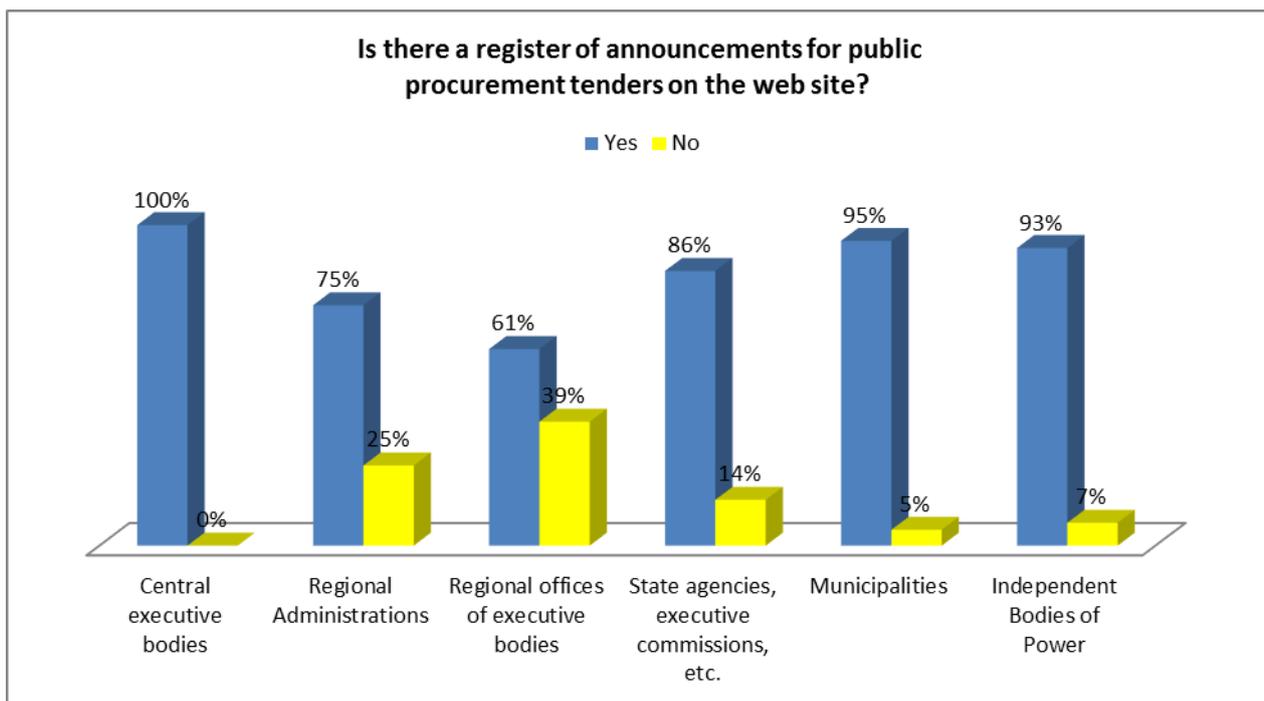


Chart 54. Is there a register of contracted public procurements?

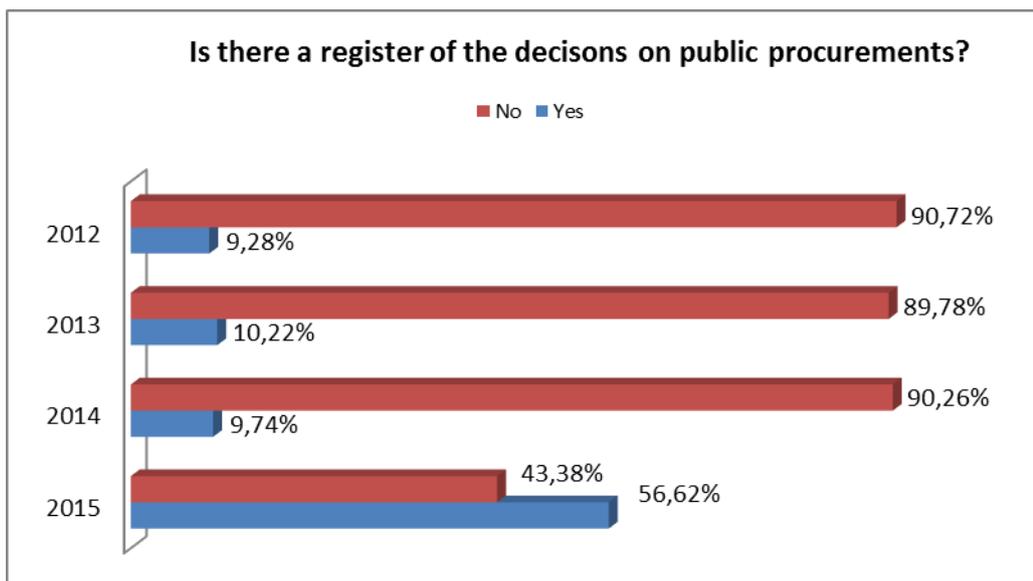


Chart 55. Is there a register of contracted public procurements? (by type of public body – 2015)

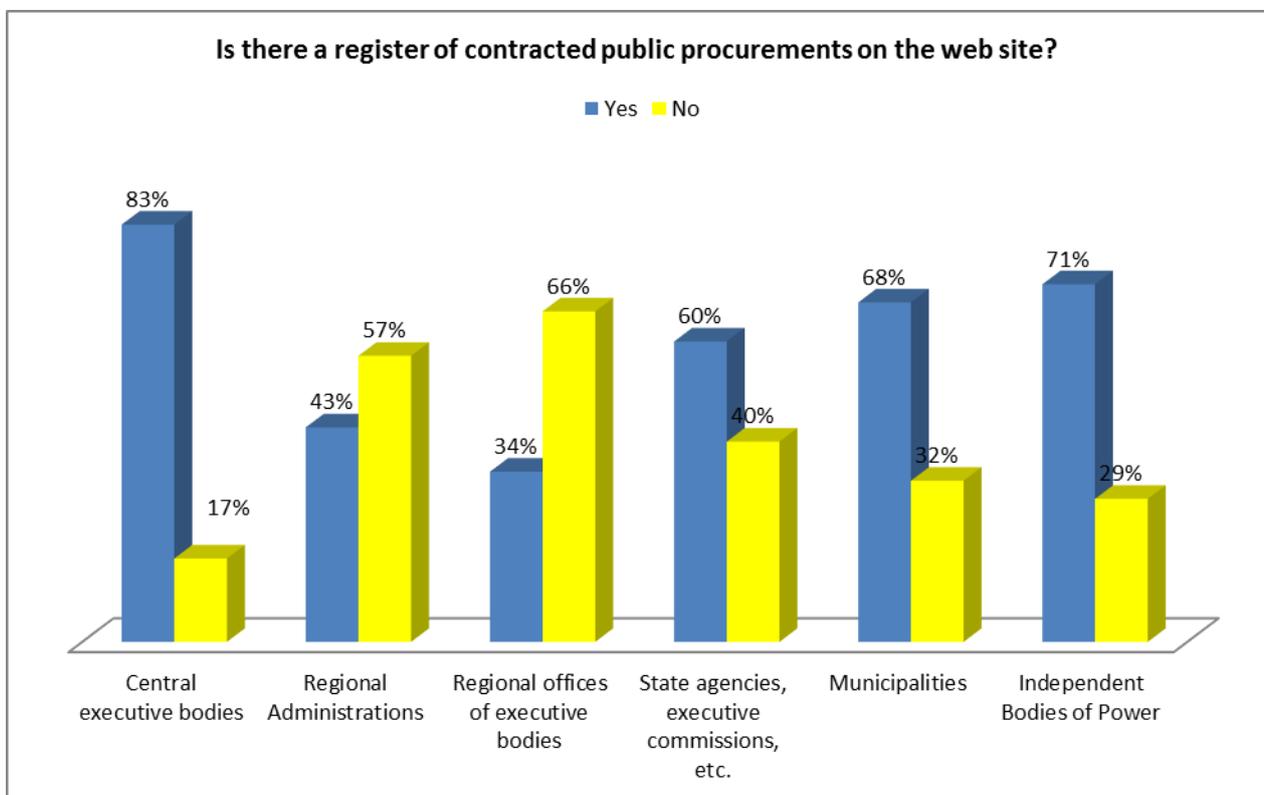


Chart 56. Are public procurement (PP) contracts of the institution published?

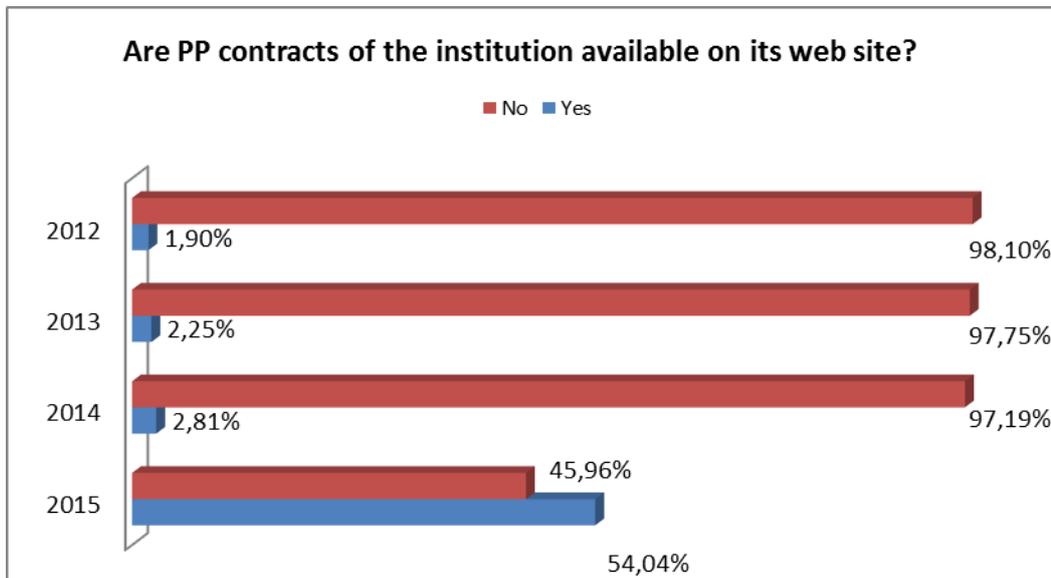


Chart 57. Are public procurement (PP) contracts of the institution published? (by type of public body – 2015)

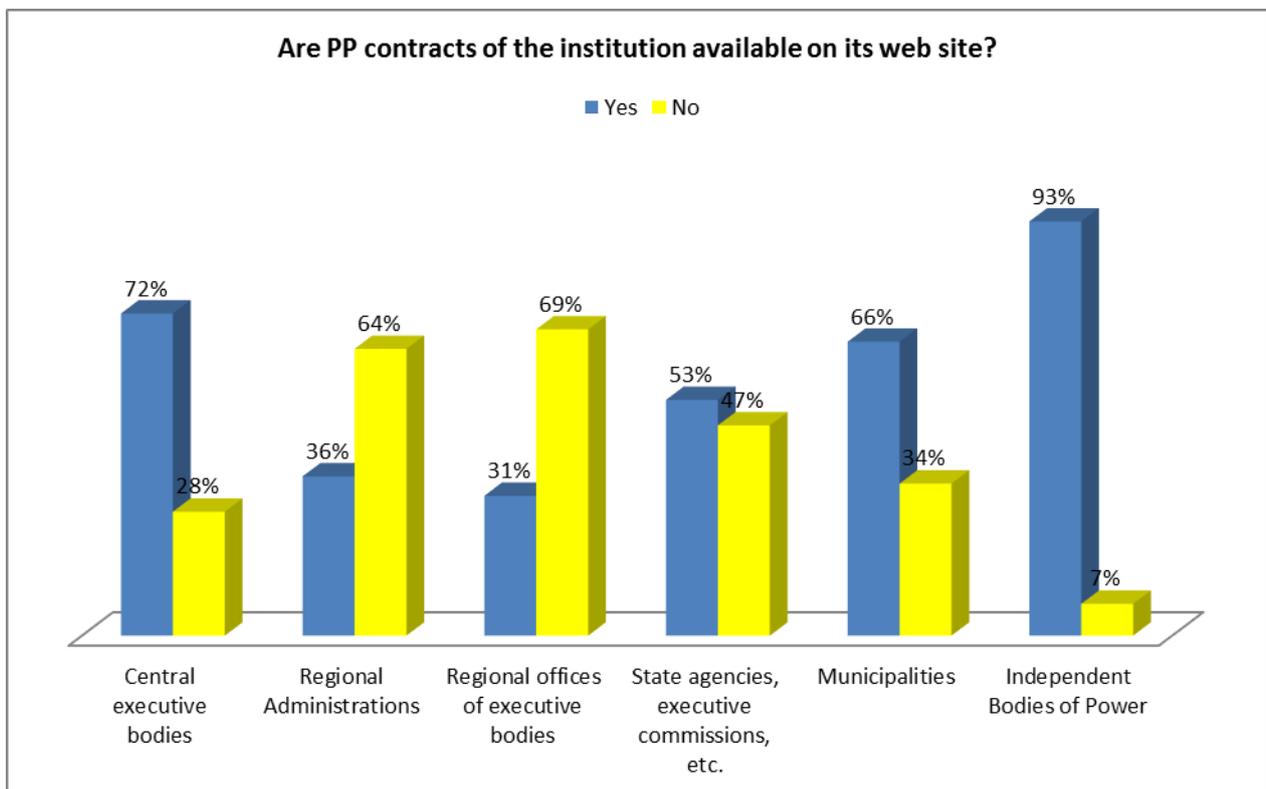


Chart 58. Are payments under public procurement contracts published?

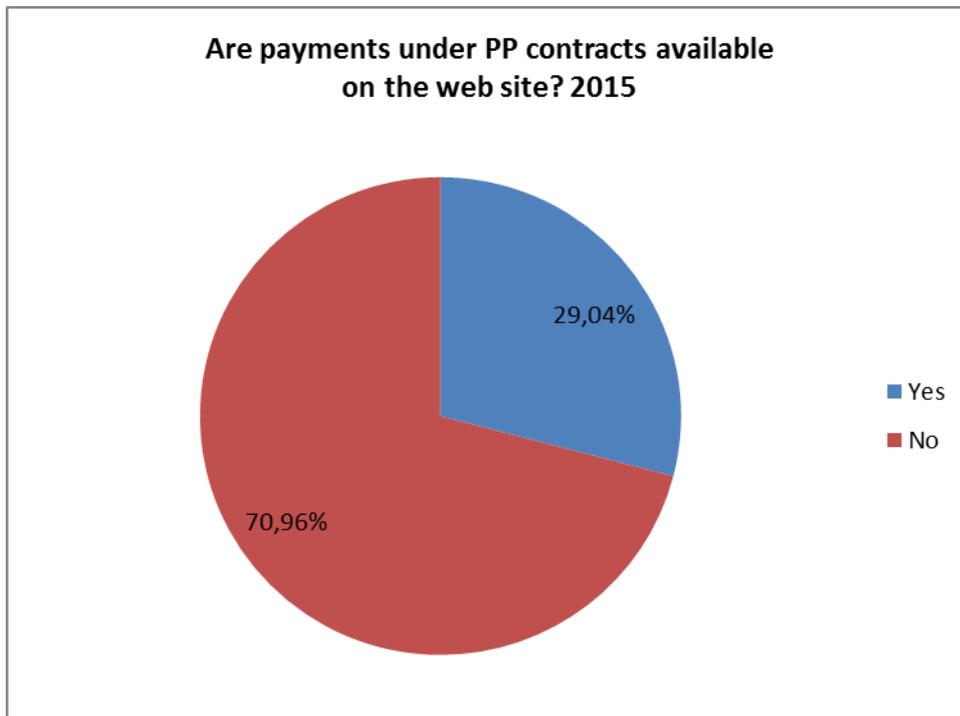
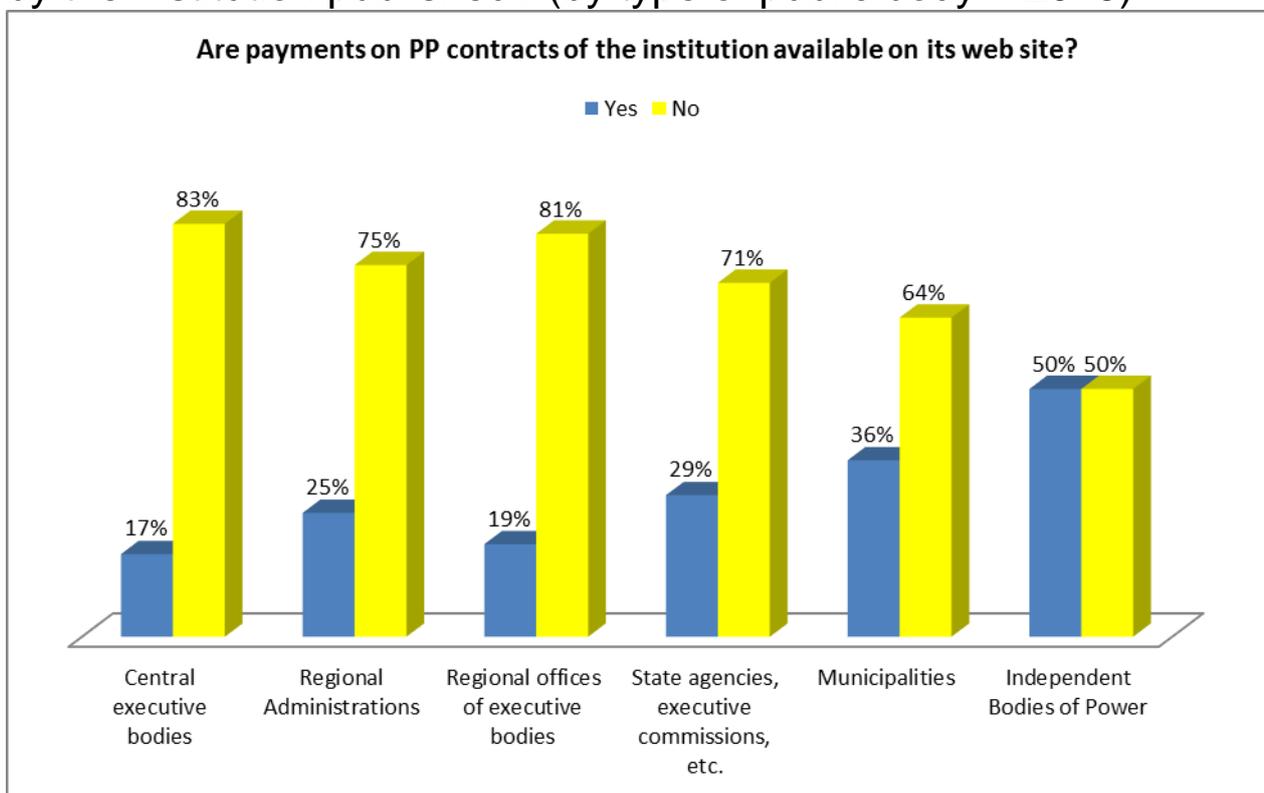


Chart 59. Are payments under public procurement contracts made by the institution published? (by type of public body – 2015)



Integrity

Chart 60. Is a list of public officials who have submitted conflict of interests declarations published?

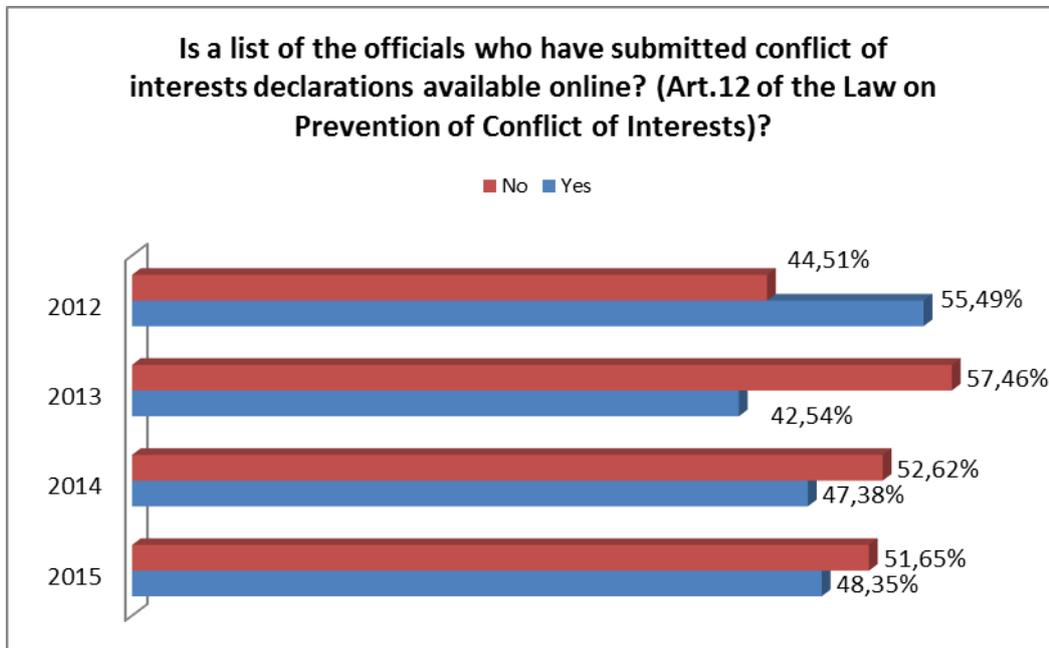


Chart 61. Is a list of public officials who have submitted conflict of interests declarations published? (by type of public body – 2015)

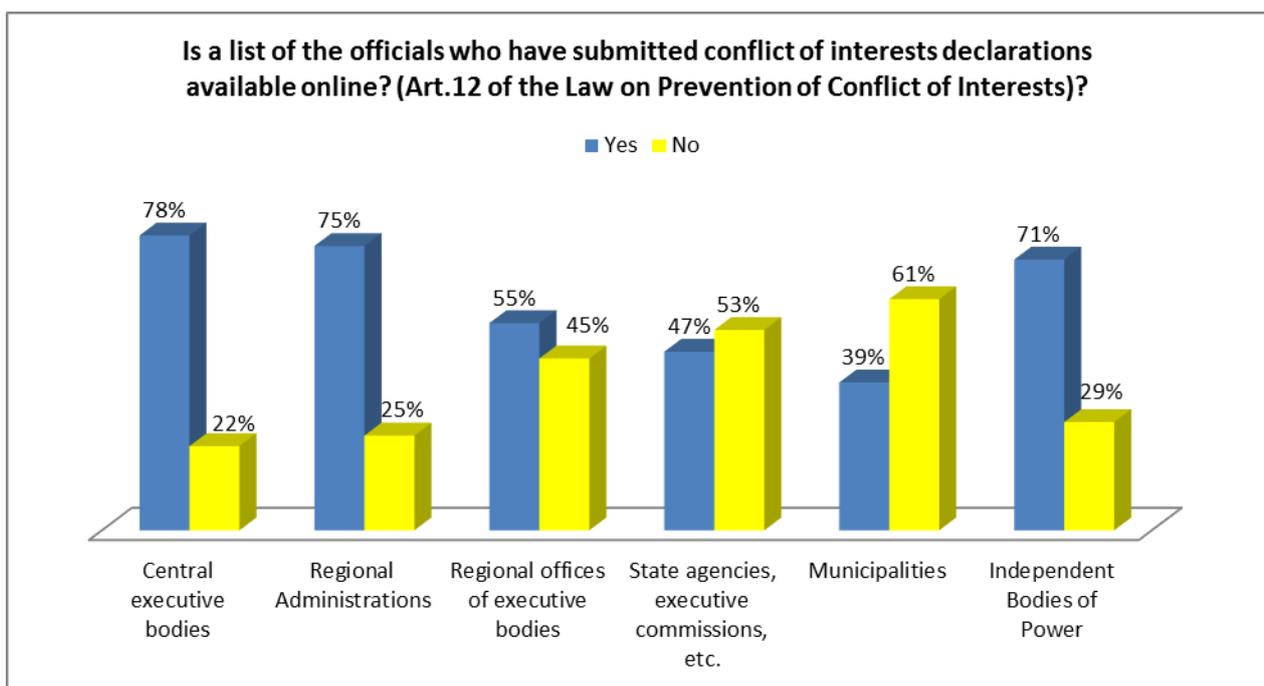


Chart 62. Are conflict of interests declarations published?

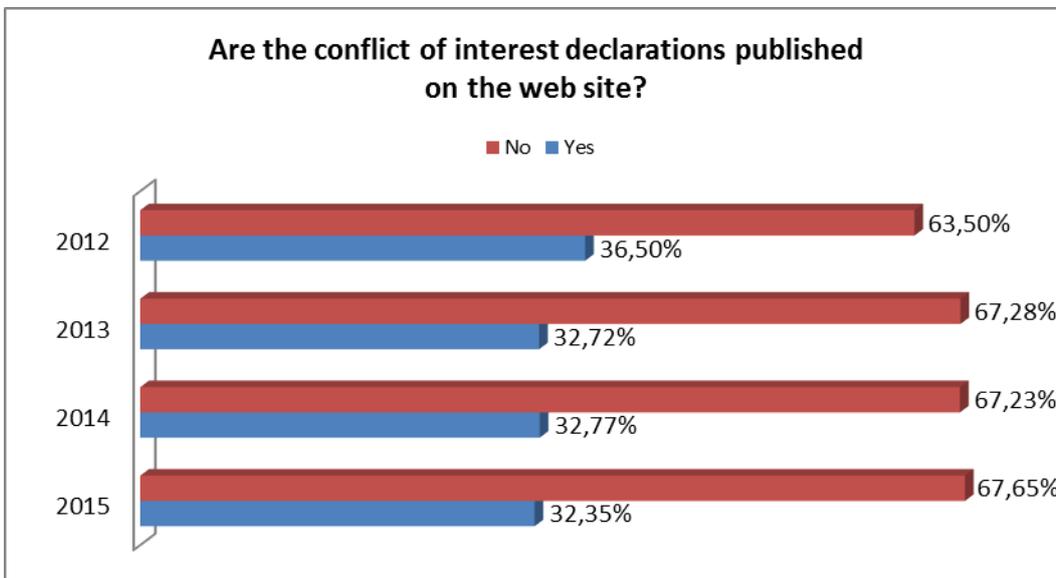
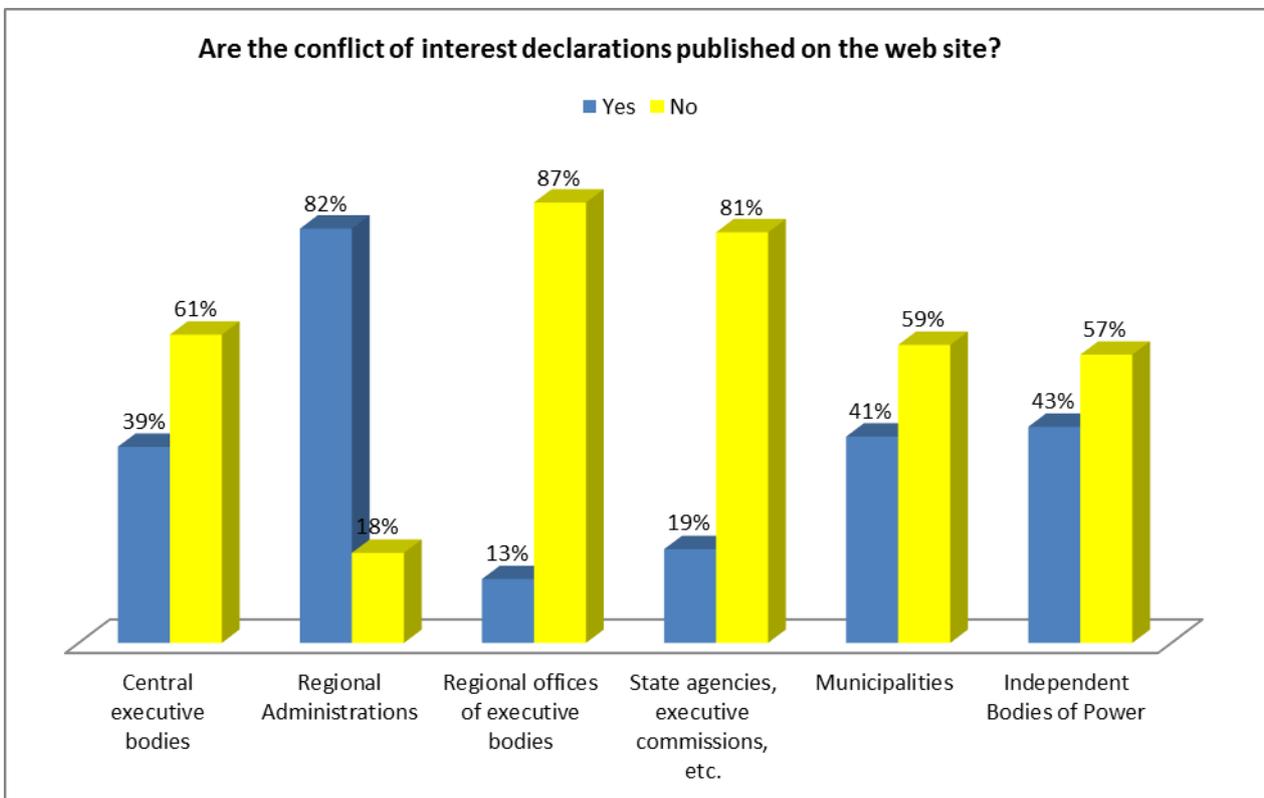


Chart 63. Are conflict of interests declarations published? (by type of public body – 2015)



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?

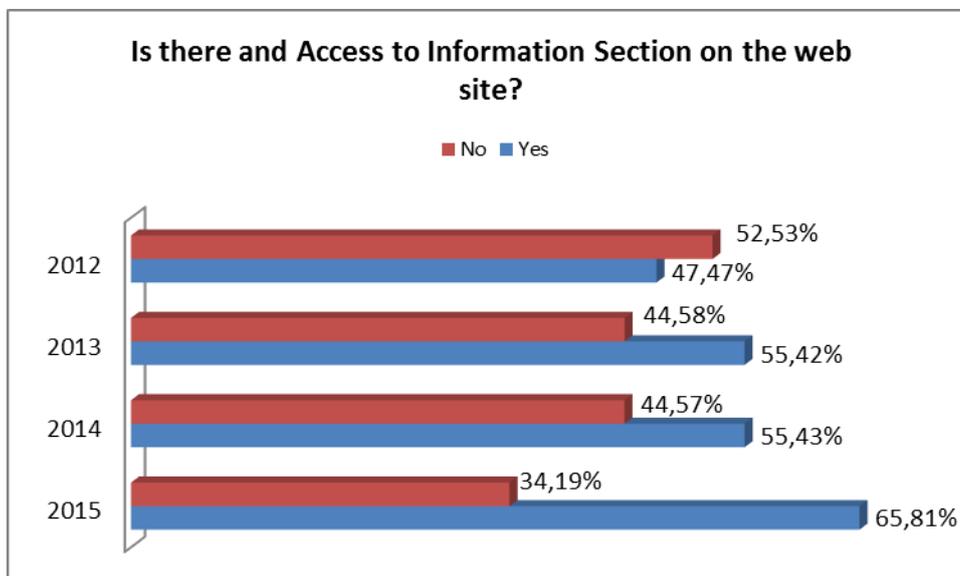


Chart 65. Is there an *Access to Information* section? (by type of public body – 2015)

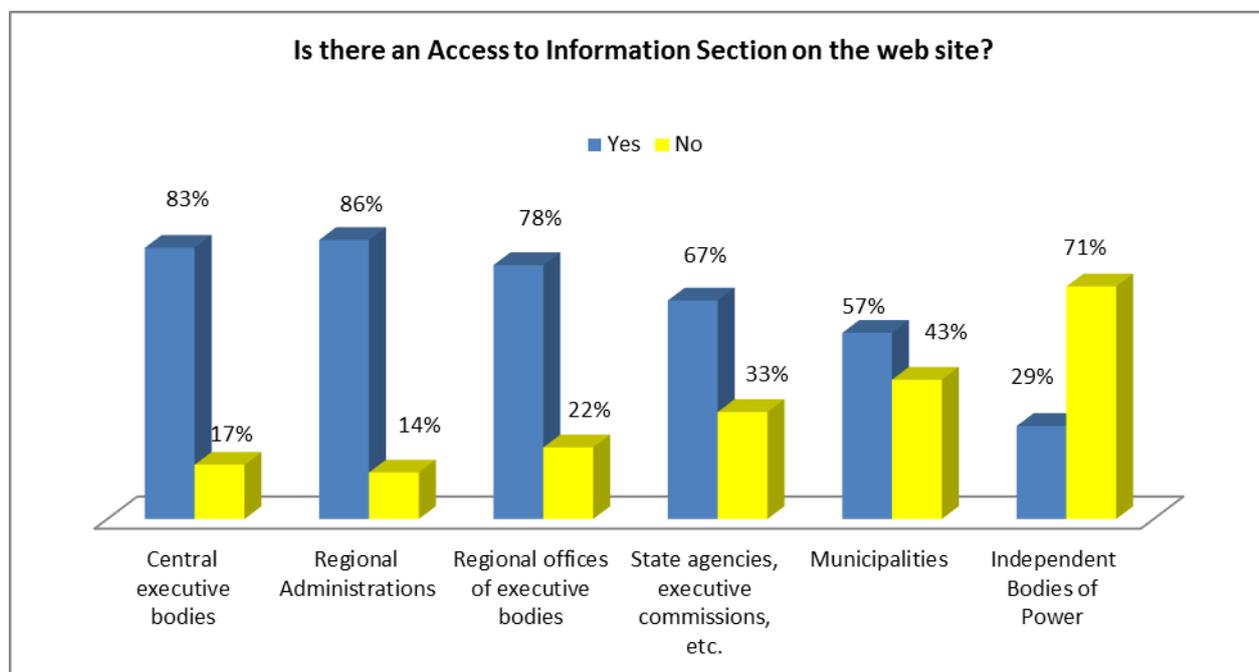


Chart 66. Are Internal Access to Public Information Act (APIA) Implementation Rules published?

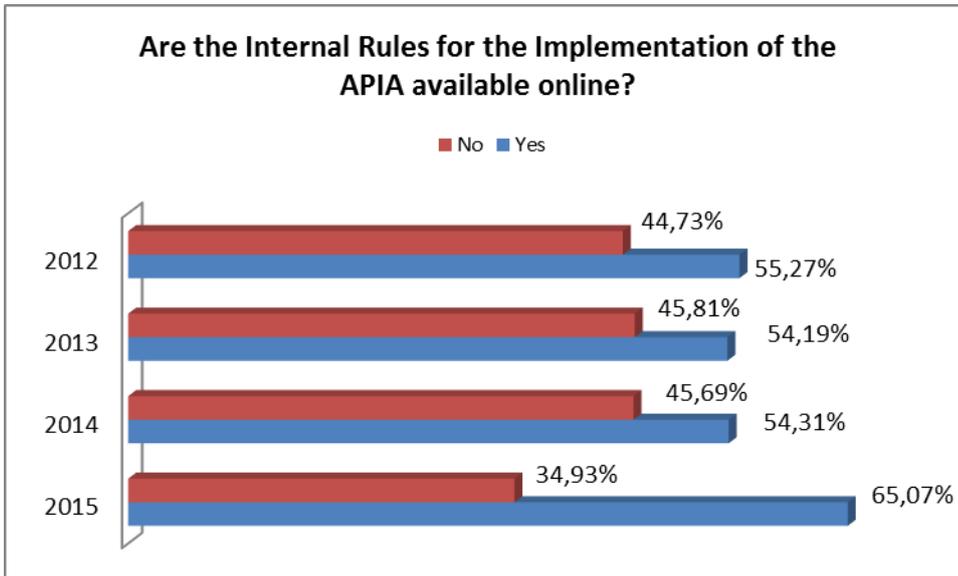


Chart 67. Are Internal APIA Implementation Rules published? (by type of public body – 2015)

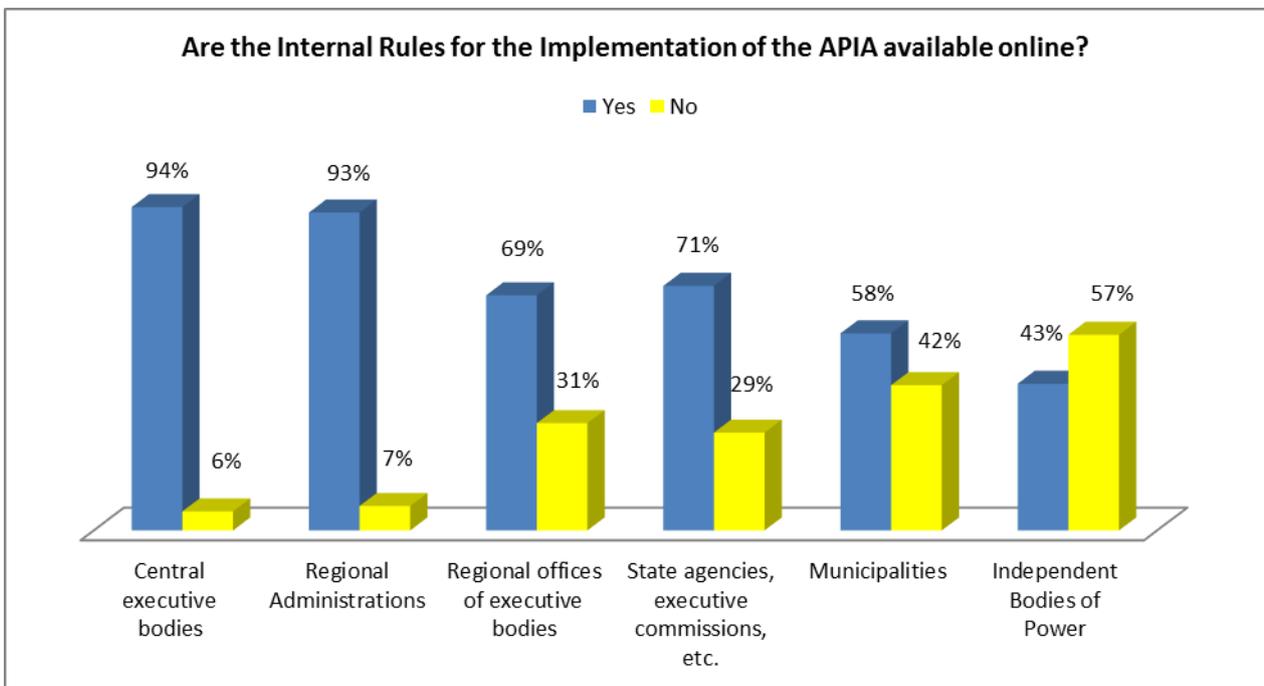


Chart 68. Is there a description of the procedure for access to public registers maintained by the institution?

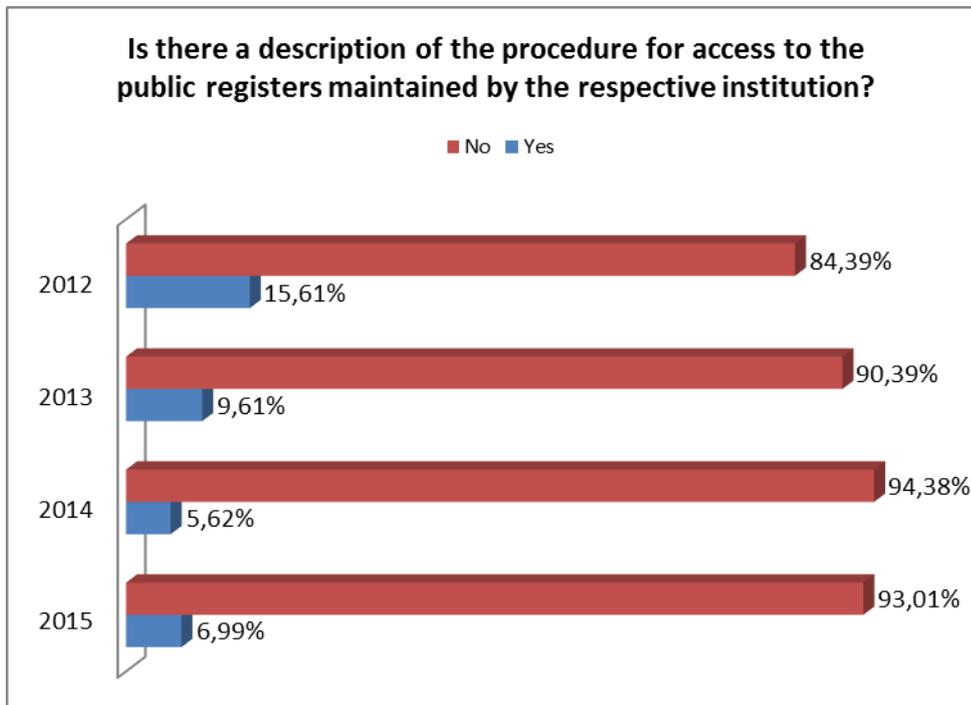
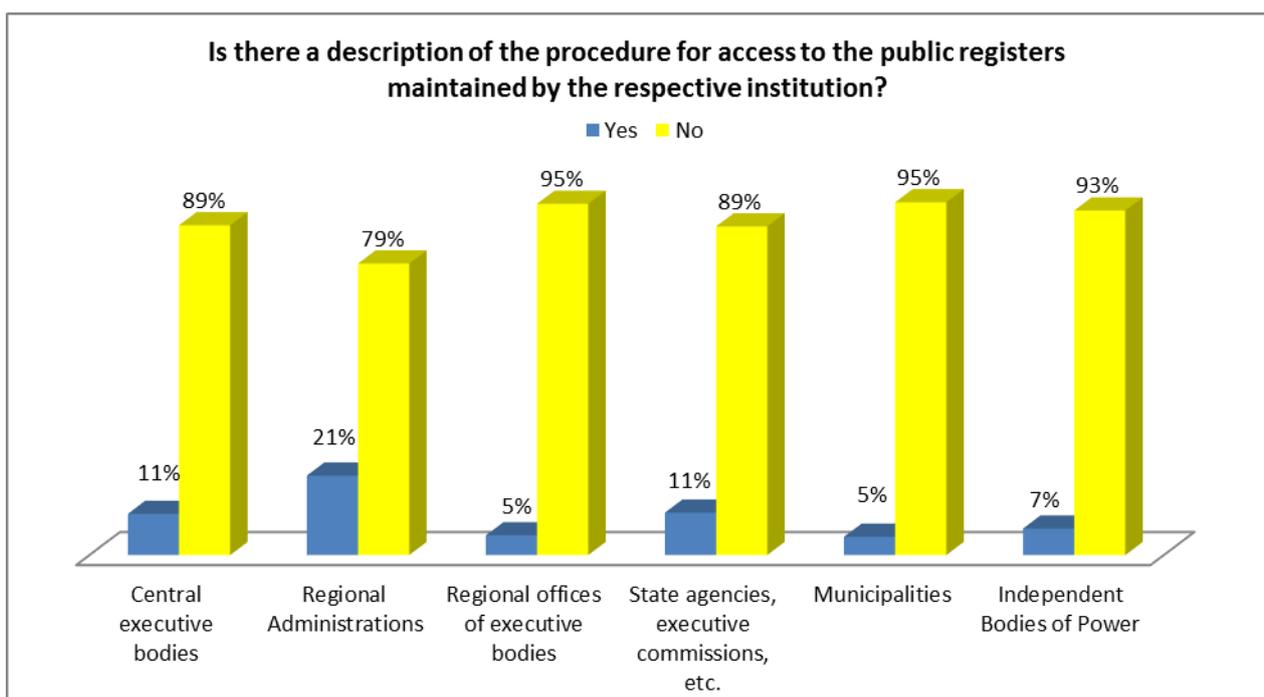


Chart 69. Is there a description of the procedure for access to public registers maintained by the institution? (by type of public body – 2015)



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

Chart 70. Is an APIA implementation report published?

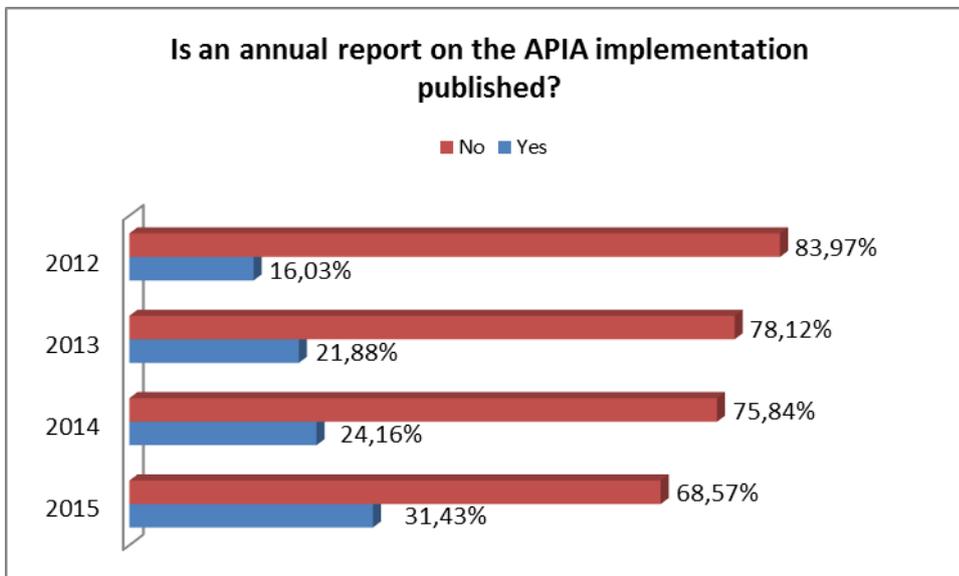


Chart 71. Is an APIA implementation report published? (by type of public body – 2015)

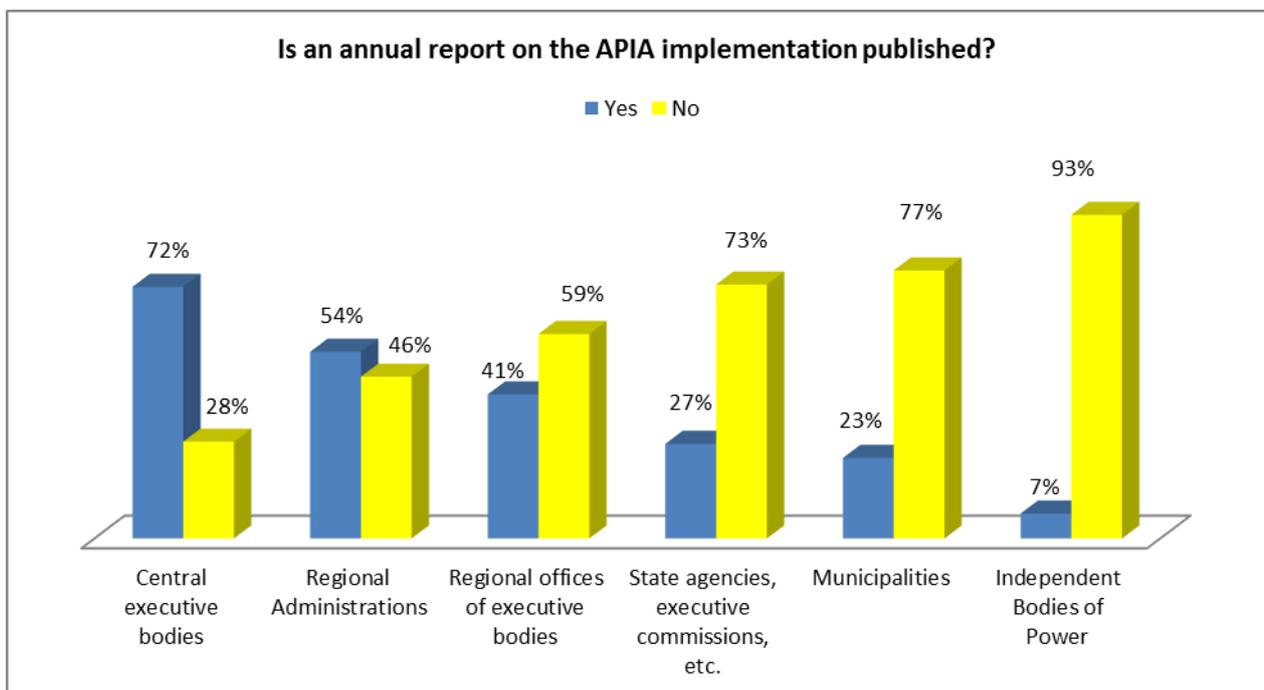


Chart 72. Does the APIA implementation report contain data about registered requests?

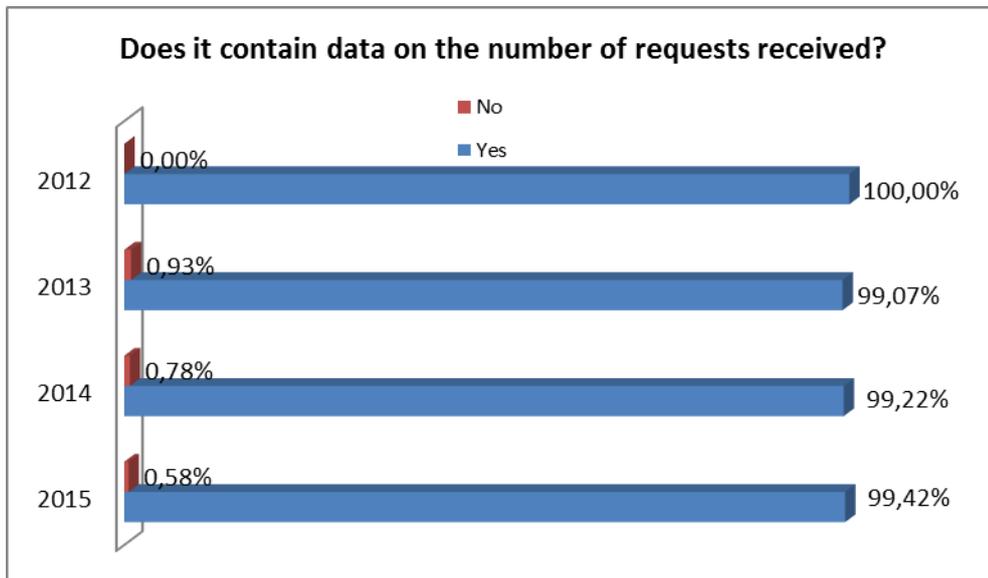


Chart 73. Does the APIA implementation report contain data about registered requests? (by type of public body – 2015)

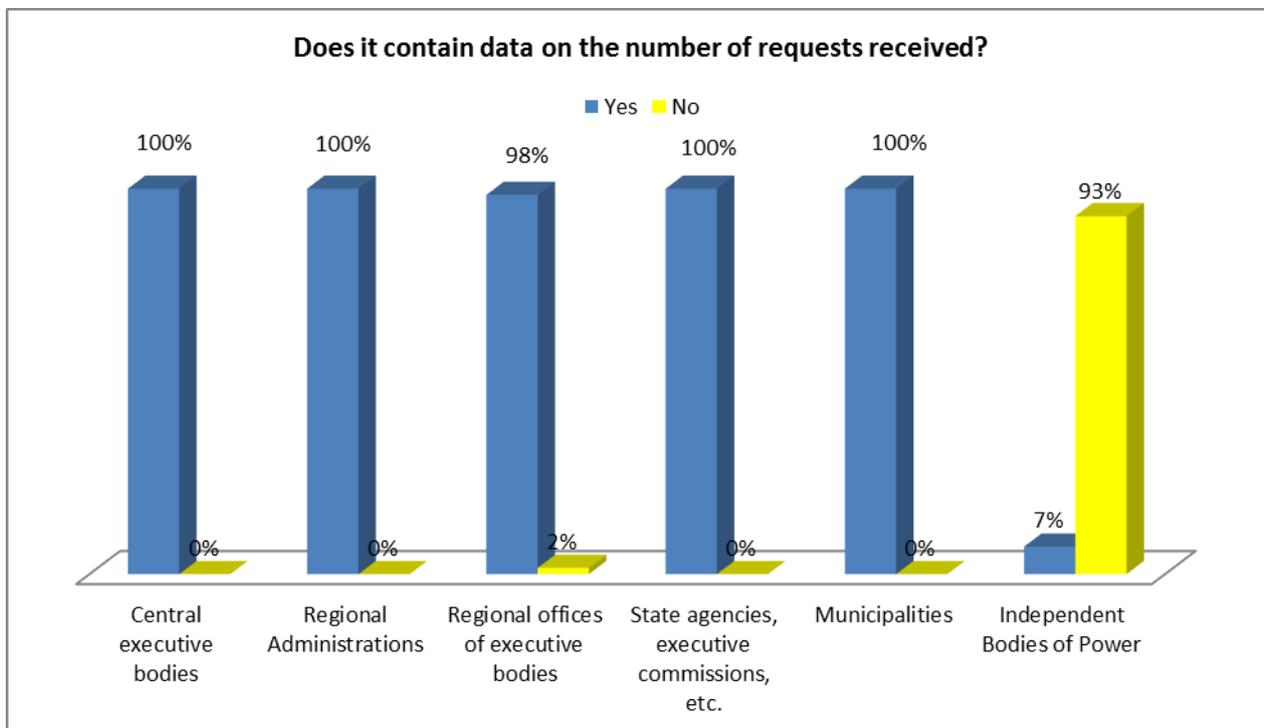


Chart 74. Does the APIA implementation report contain data about the decisions refusing to grant access to information?

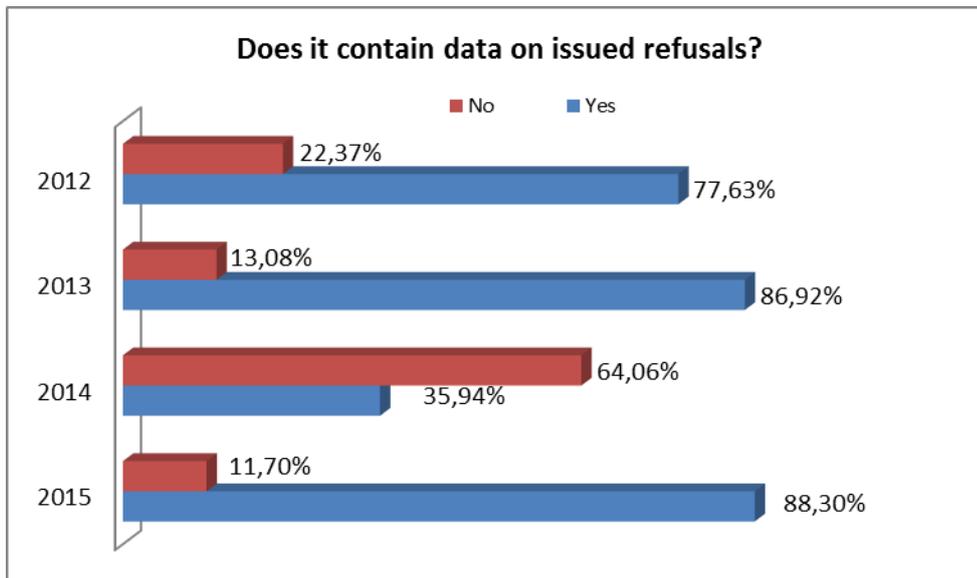


Chart 75. Does the APIA implementation report contain data about the decisions refusing to grant access to information? (by type of public body – 2015)

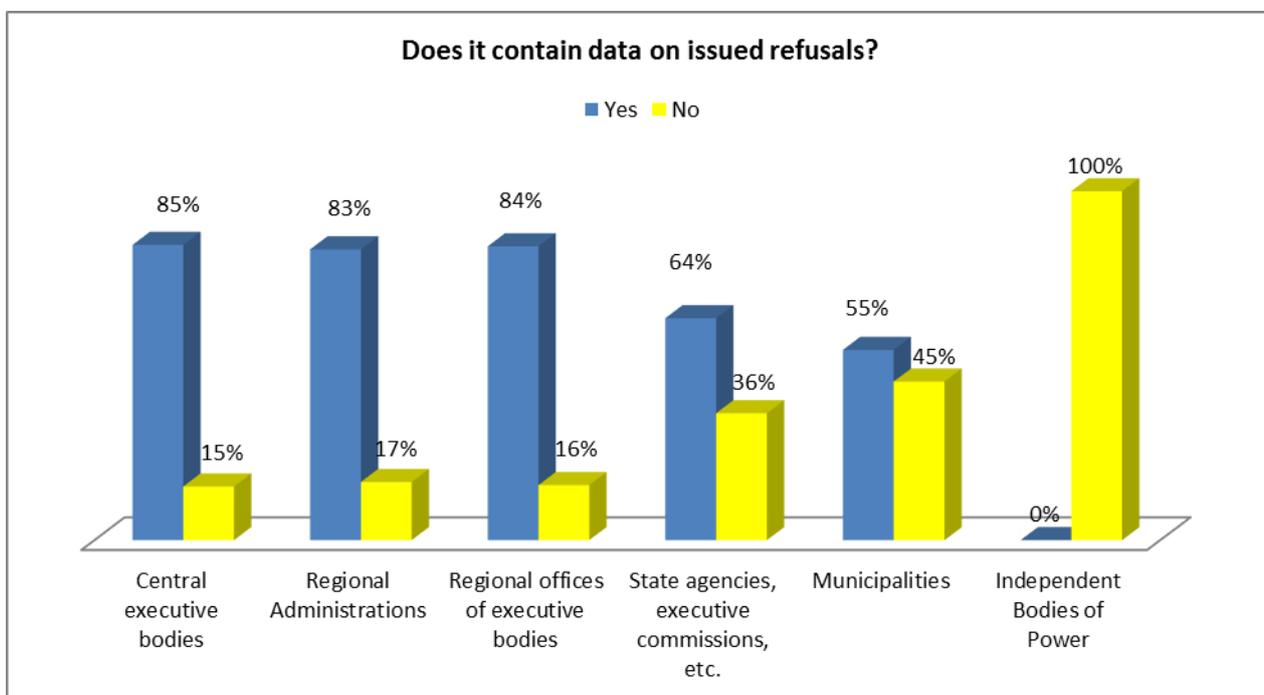


Chart 76. Does the APIA implementation report contain data about grounds on which information refusals were issued?

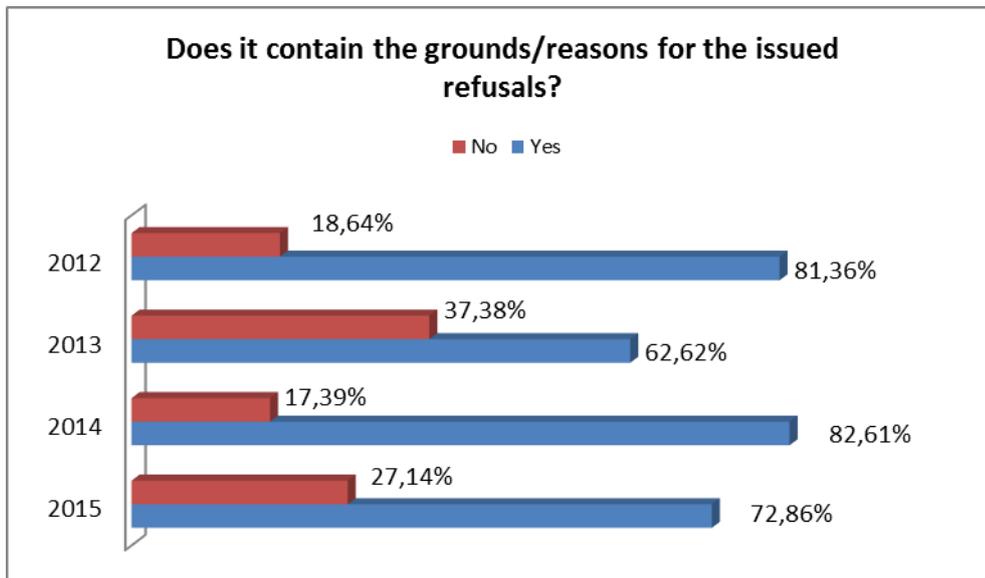
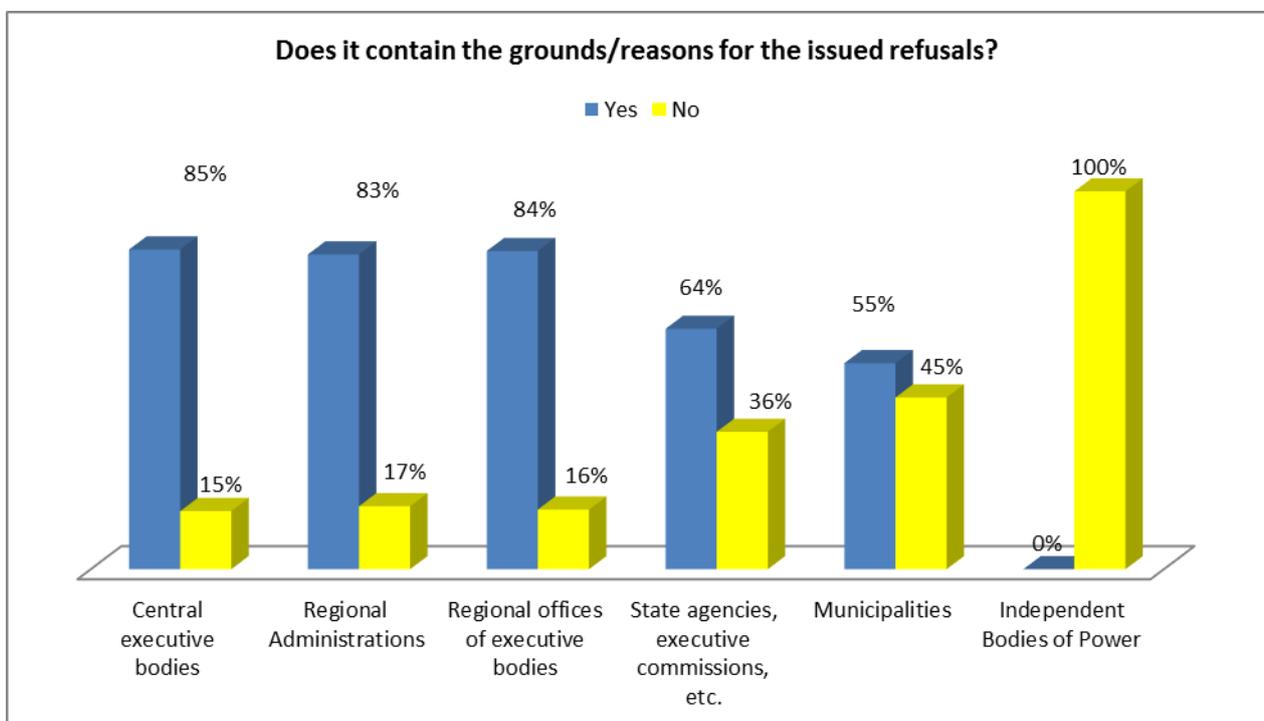


Chart 77. Does the APIA implementation report contain data about grounds on which information refusals were made? (by type of public body – 2015)



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

Chart 78. Contact information of the APIA department – name?

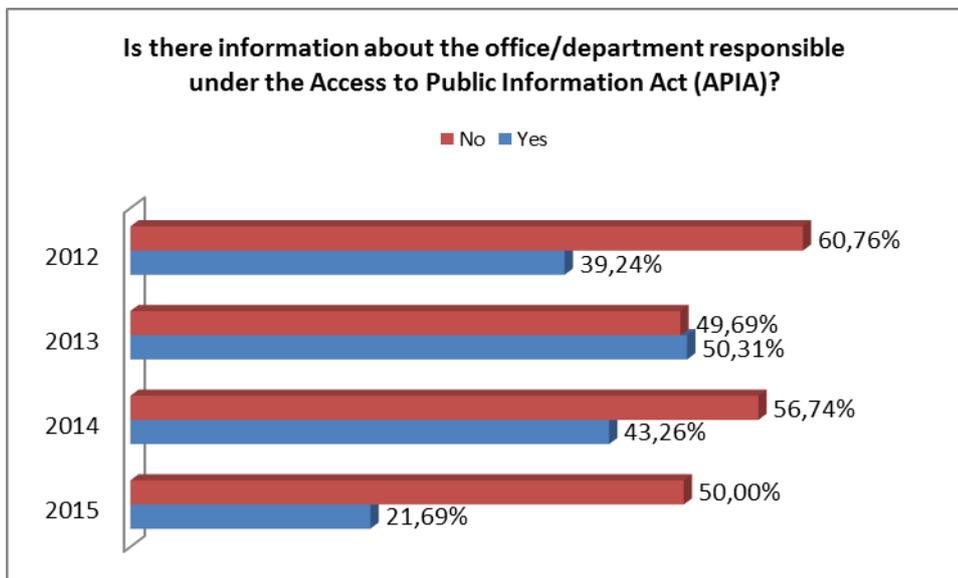


Chart 79. Contact information of the APIA department – name? (by type of public body – 2015)

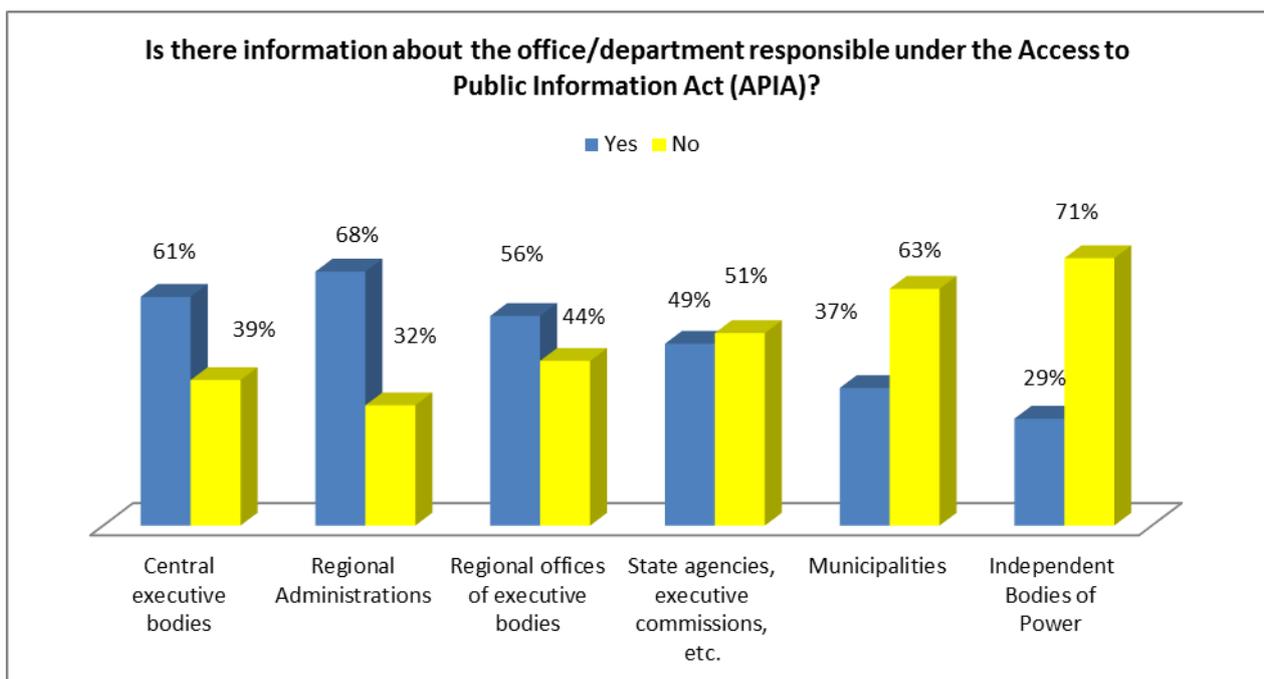


Chart 80. Contact information of the APIA department – address?

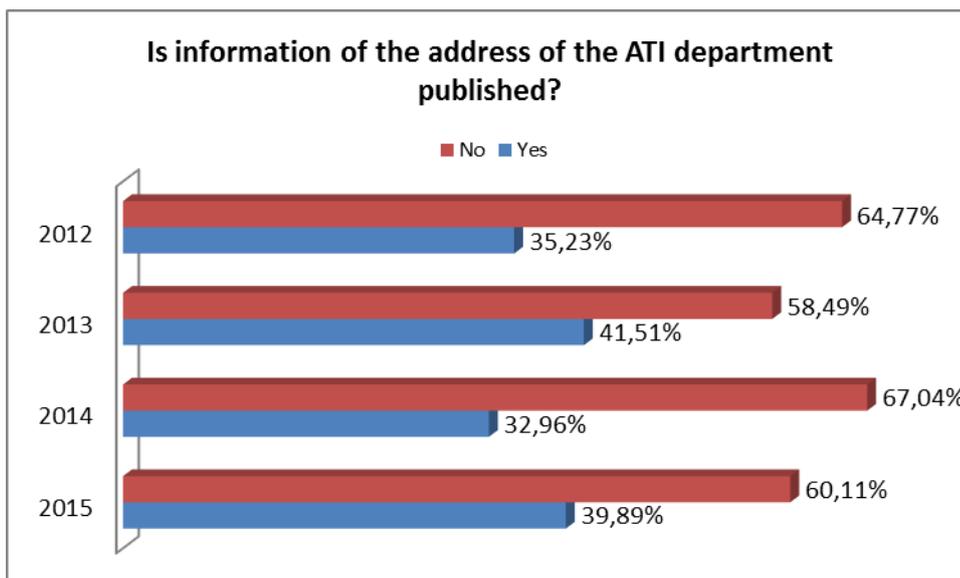


Chart 81. Contact information of the APIA department – address? (by type of public body – 2015)

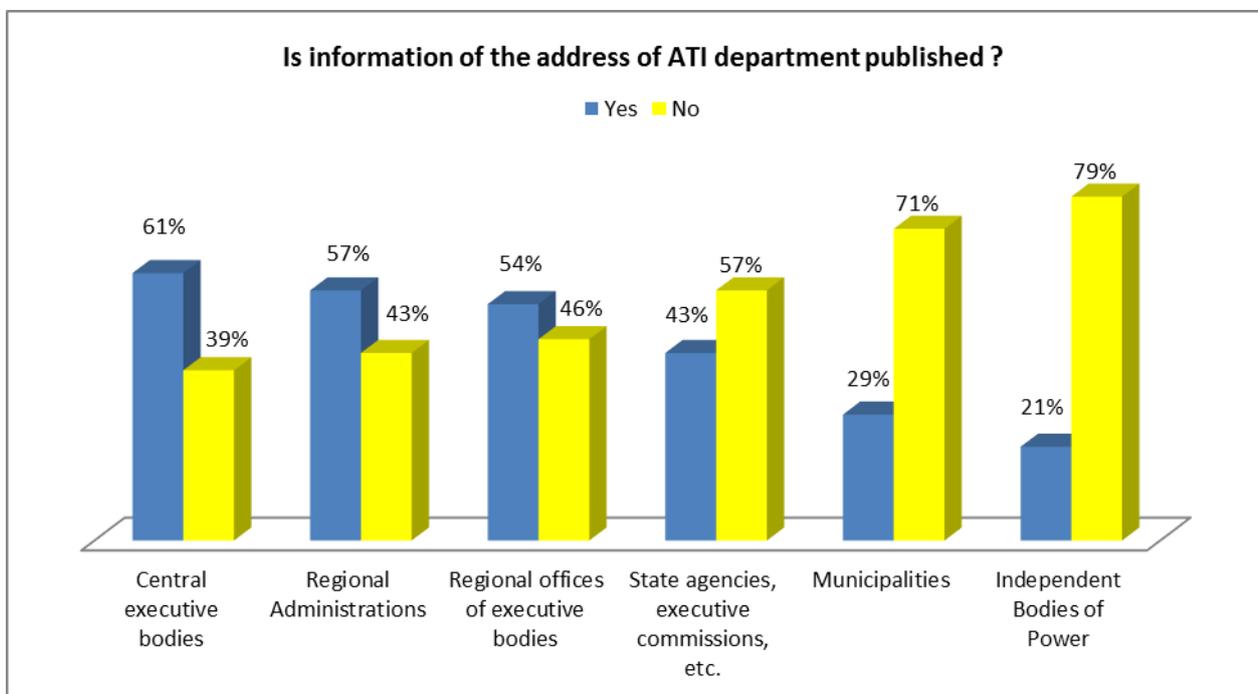


Chart 82. Contact information of the APIA department – phone number?

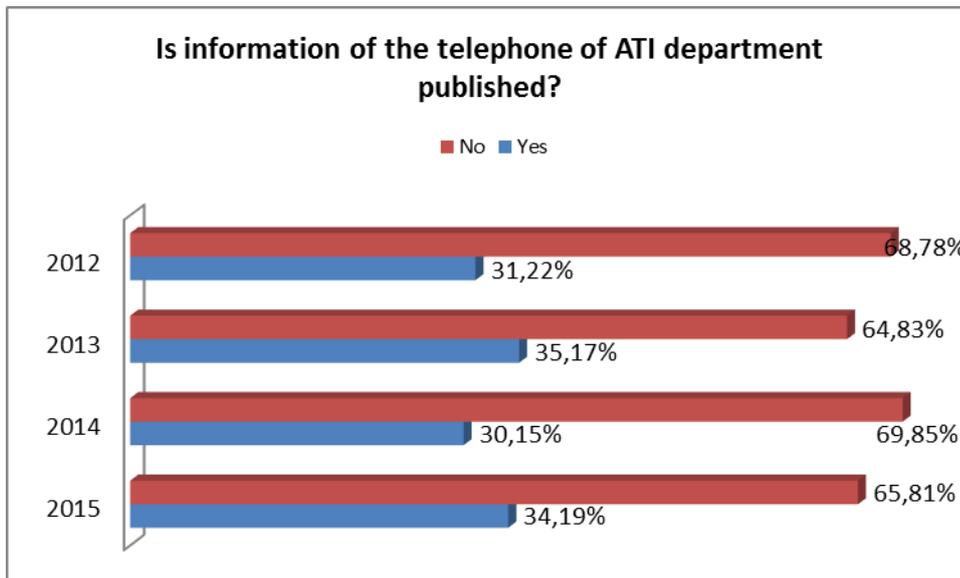


Chart 83. Contact information of the APIA department – phone number? (by type of public body – 2015)

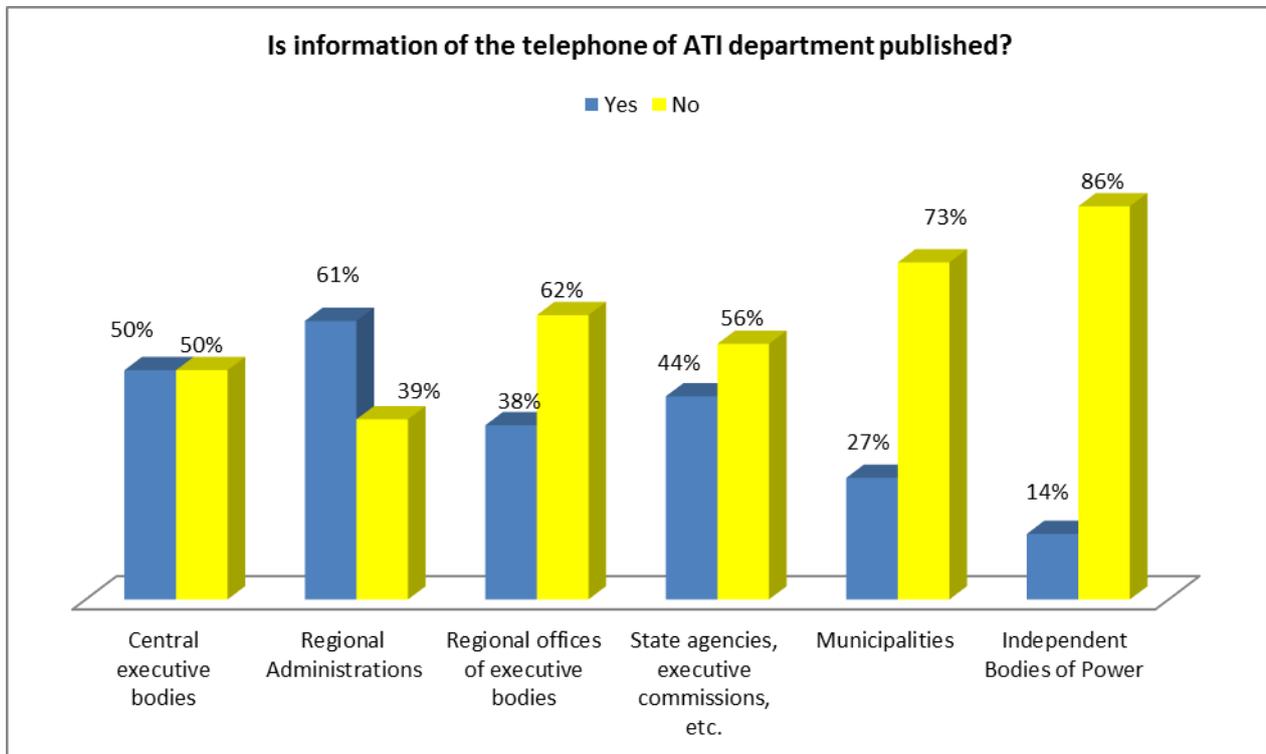


Chart 84. Contact information of the APIA department – e-mail address?

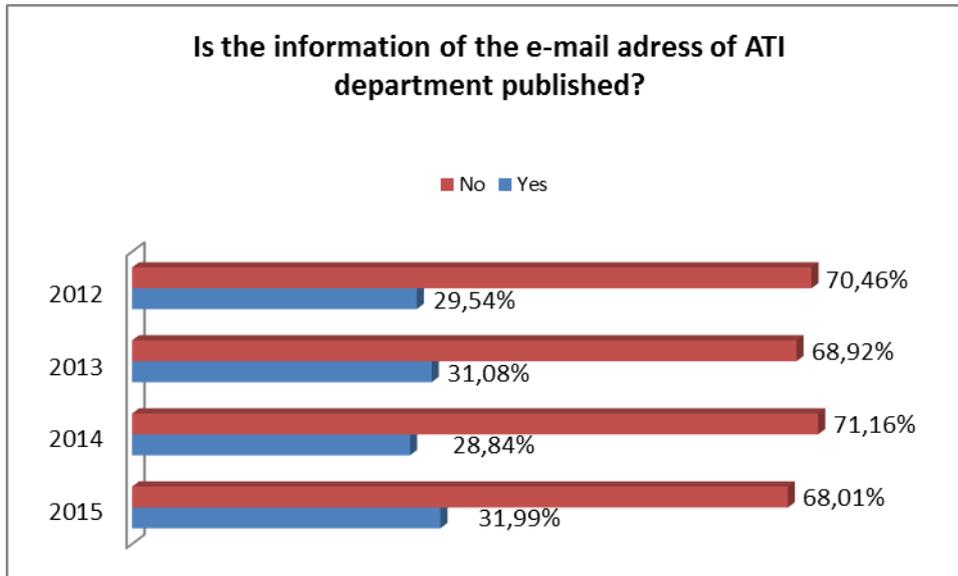


Chart 85. Contact information of the APIA department – e-mail address? (by type of public body – 2015)

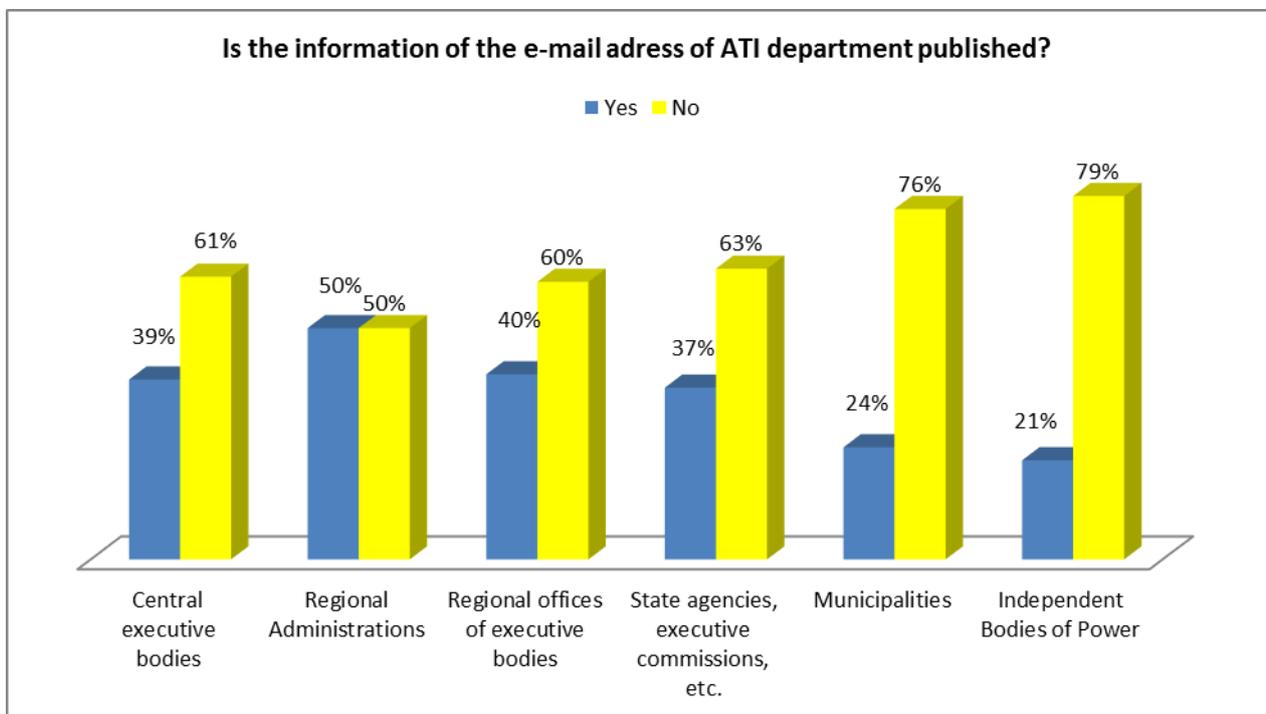


Chart 86. Contact information of the APIA department – responsible official?

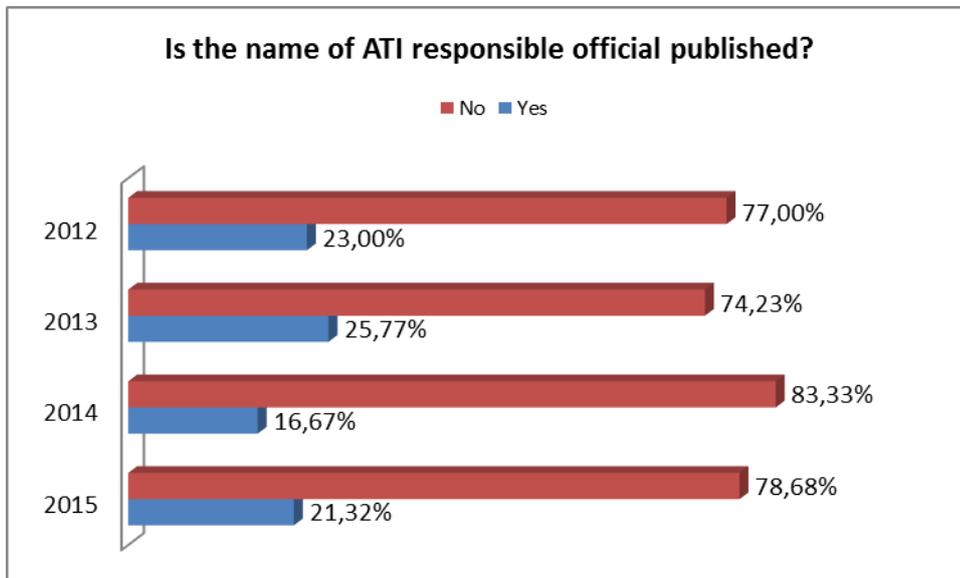


Chart 87. Contact information of the APIA department – responsible official? (by type of public body – 2015)

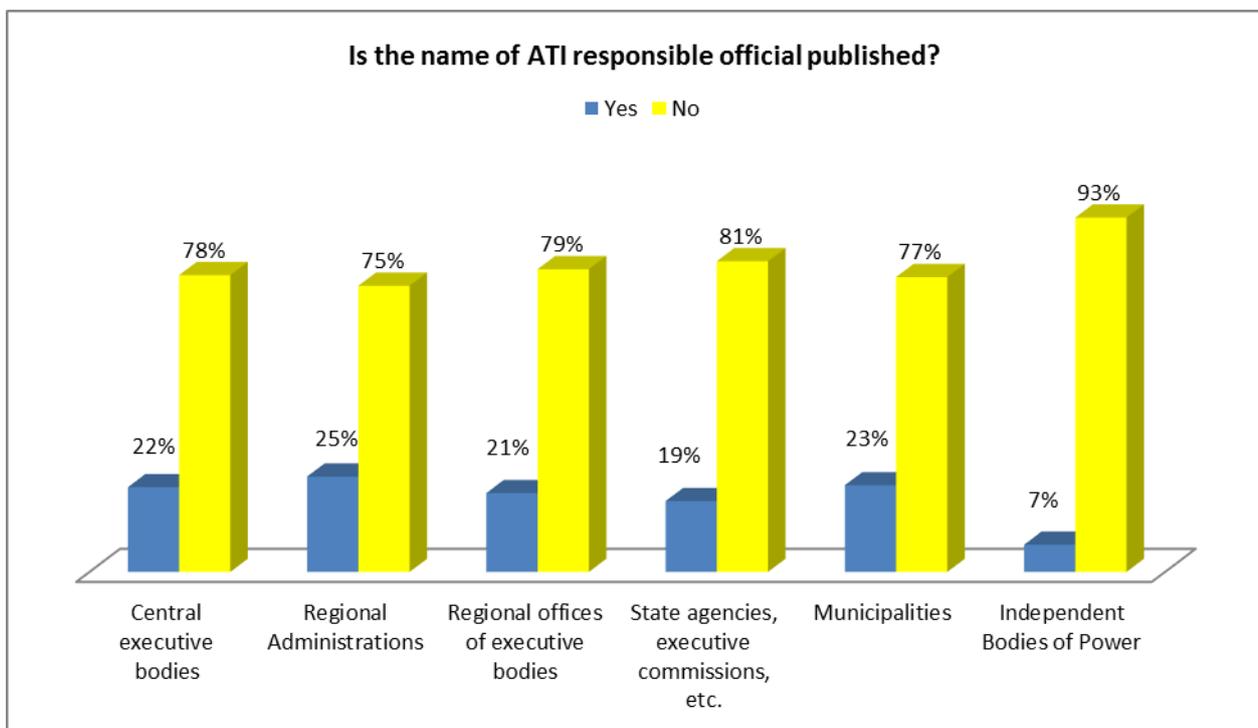


Chart 88. Contact information of the APIA department – working hours?

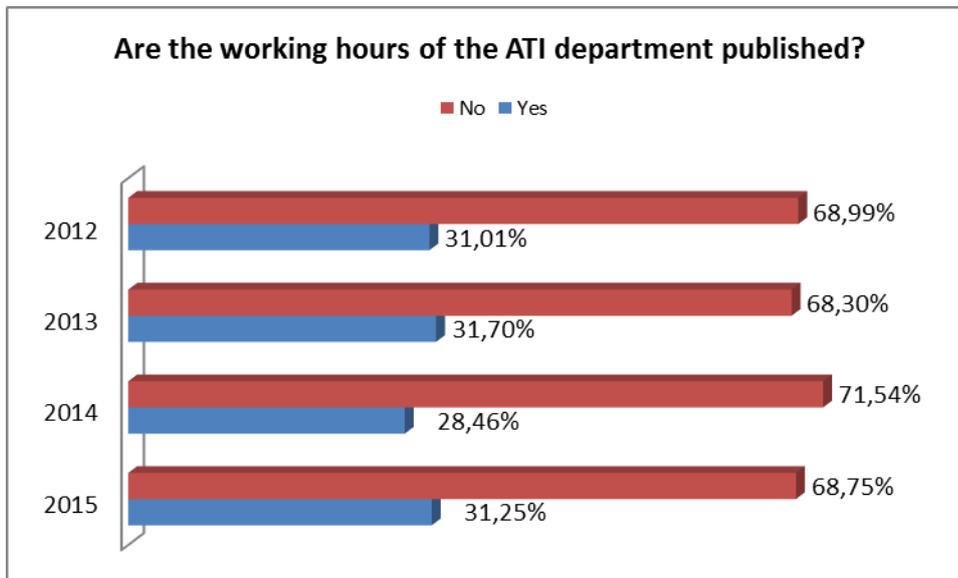
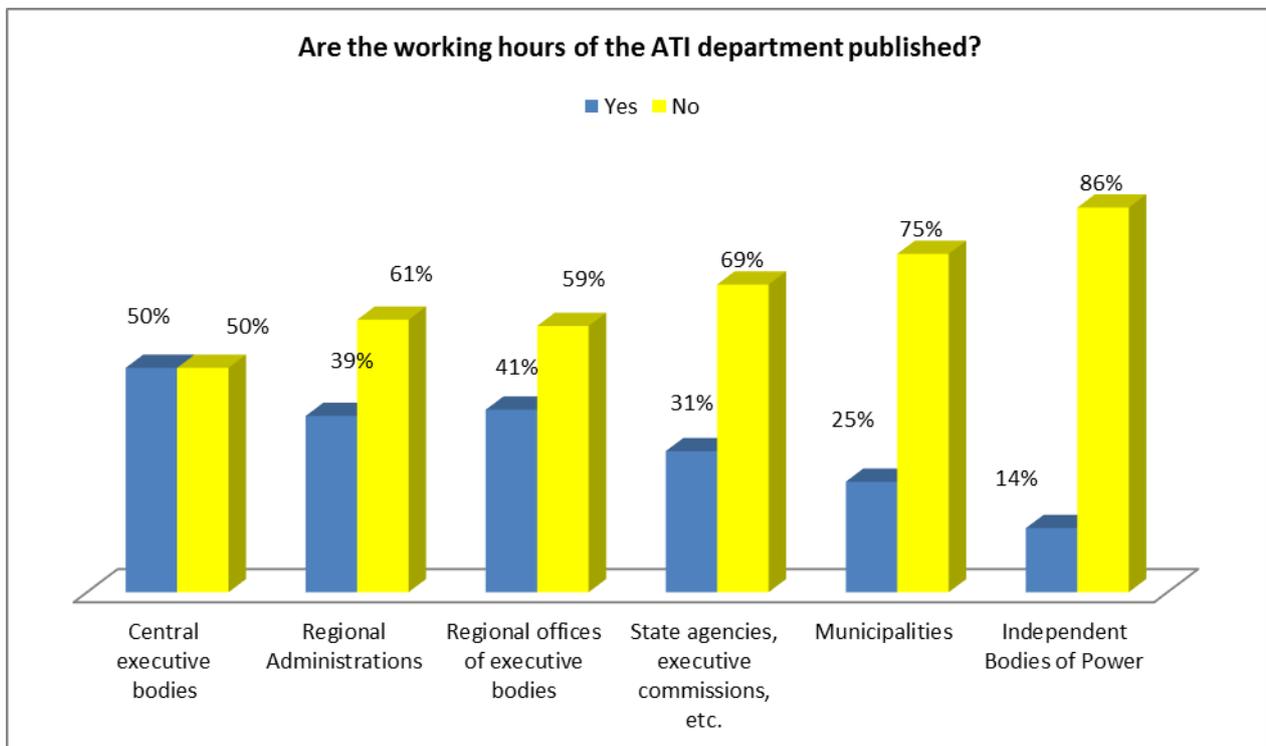


Chart 89. Contact information of the APIA department – working hours? (by type of public body – 2015)



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

Chart 90. Is a list of declassified documents published (declassified under § 9 of the Protection of Classified Information Act)?

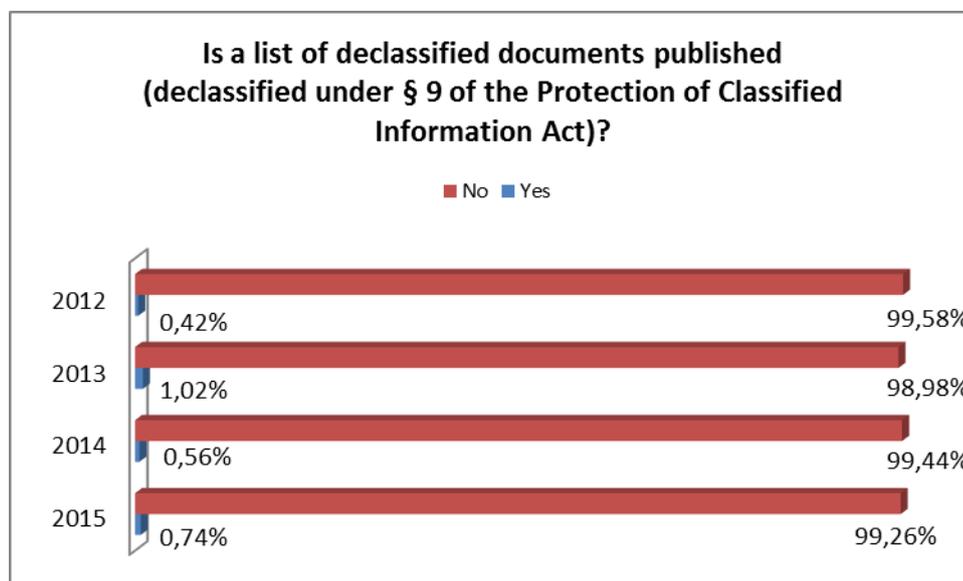


Chart 91. Is a list of declassified documents published (declassified under § 9 of the Protection of Classified Information Act)? (by type of public body – 2015)

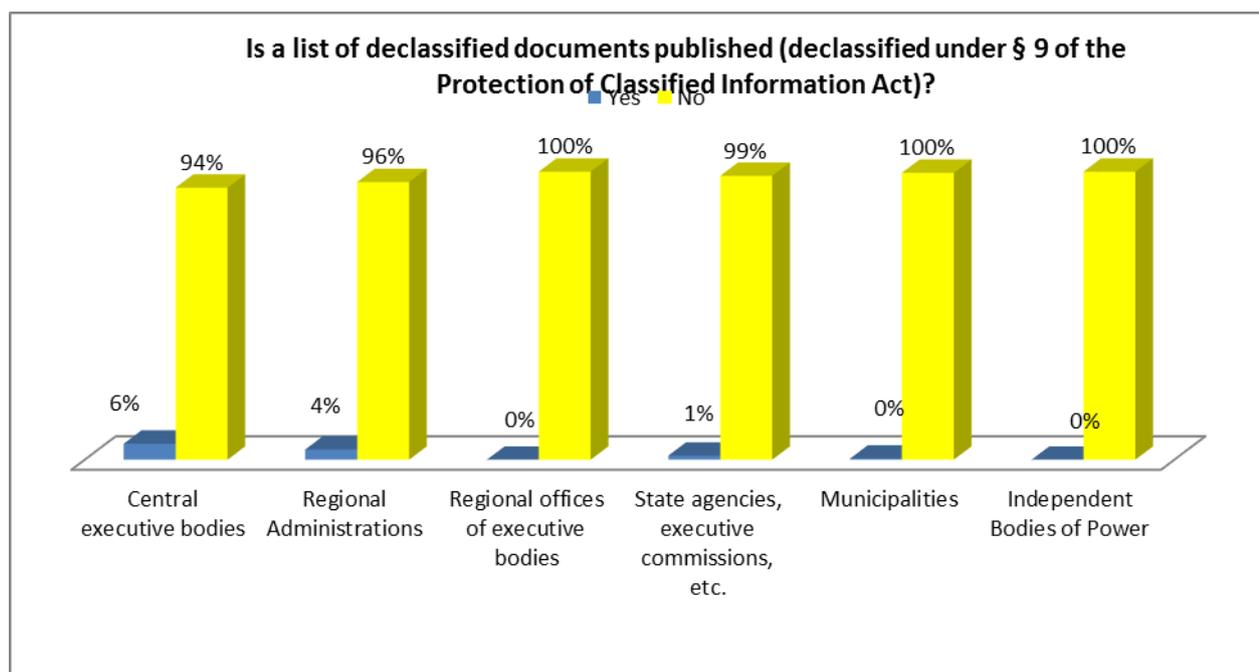


Chart 92. List of the categories of information subject to classification as *official secret*?

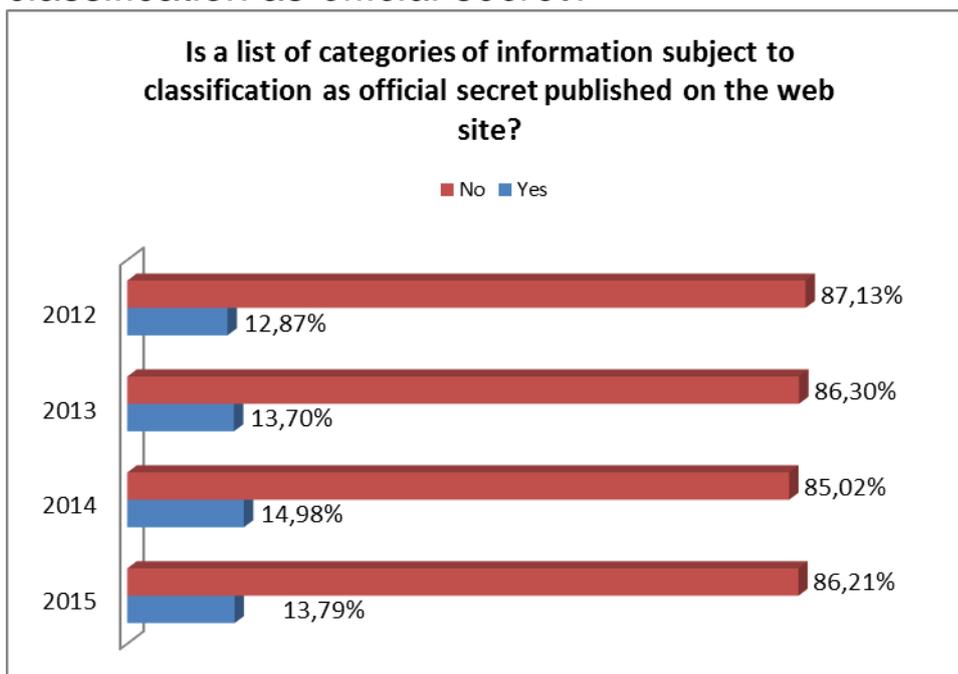
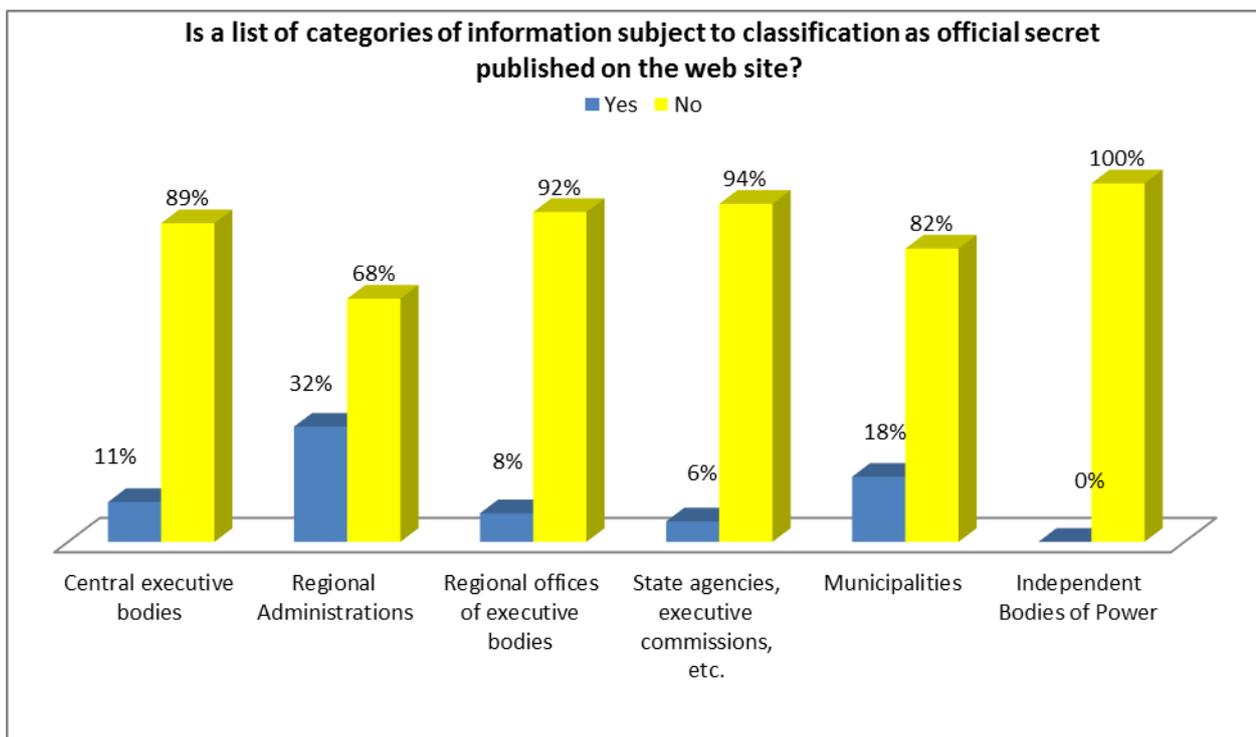


Chart 93. List of the categories of information subject to classification as *official secret*? (by type of public body – 2015)



Response to Electronic Requests

Chart 94. Are electronic access to public information requests accepted?

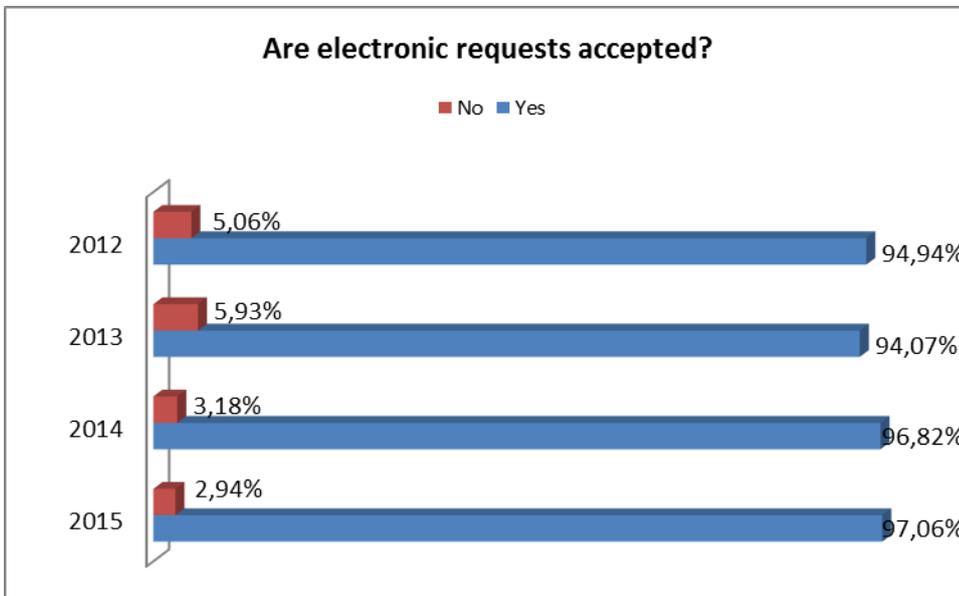


Chart 95. Are electronic access to public information requests accepted? (by type of public body – 2015)

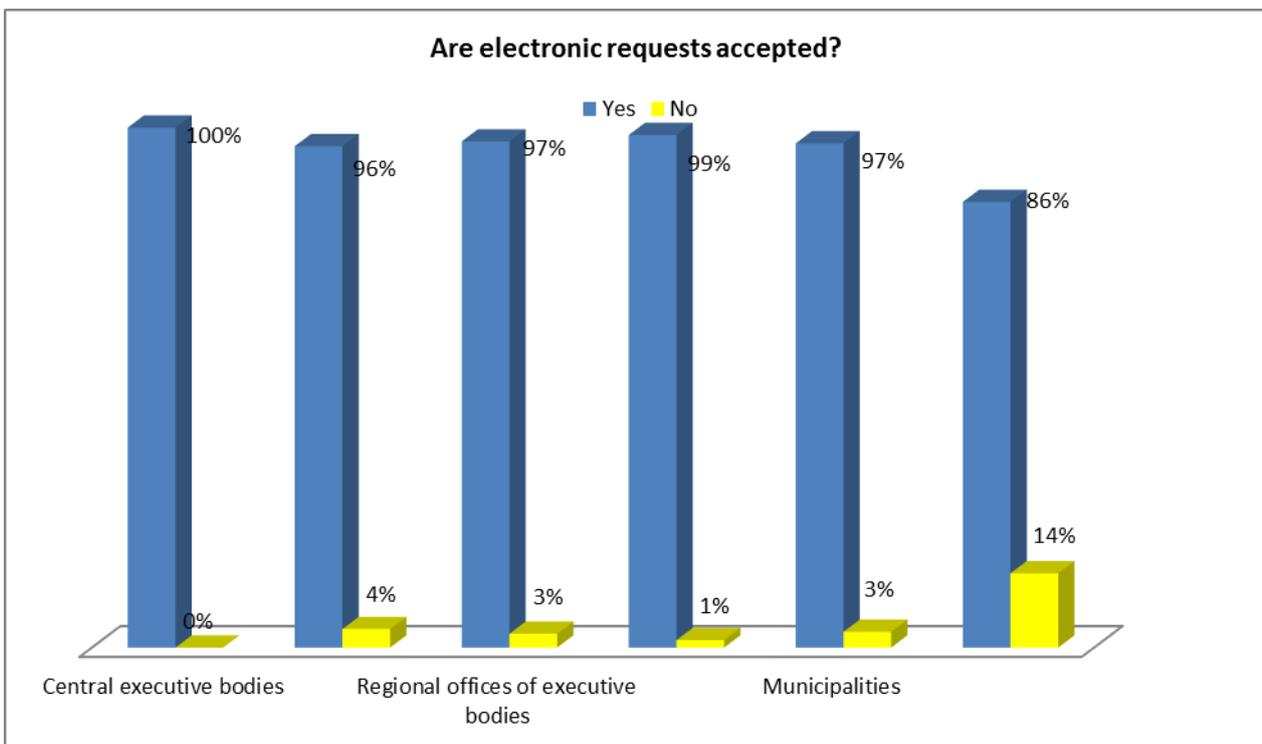


Chart 96. Is an electronic signature required for filing information request electronically?

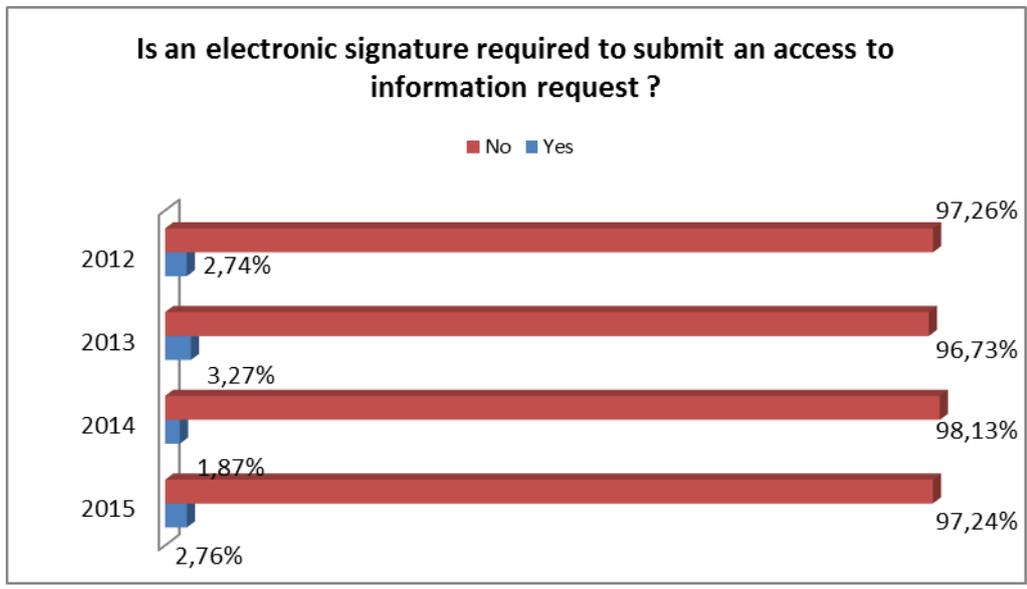


Chart 97. Is an electronic signature required for filing information request electronically? (by type of public body – 2015)

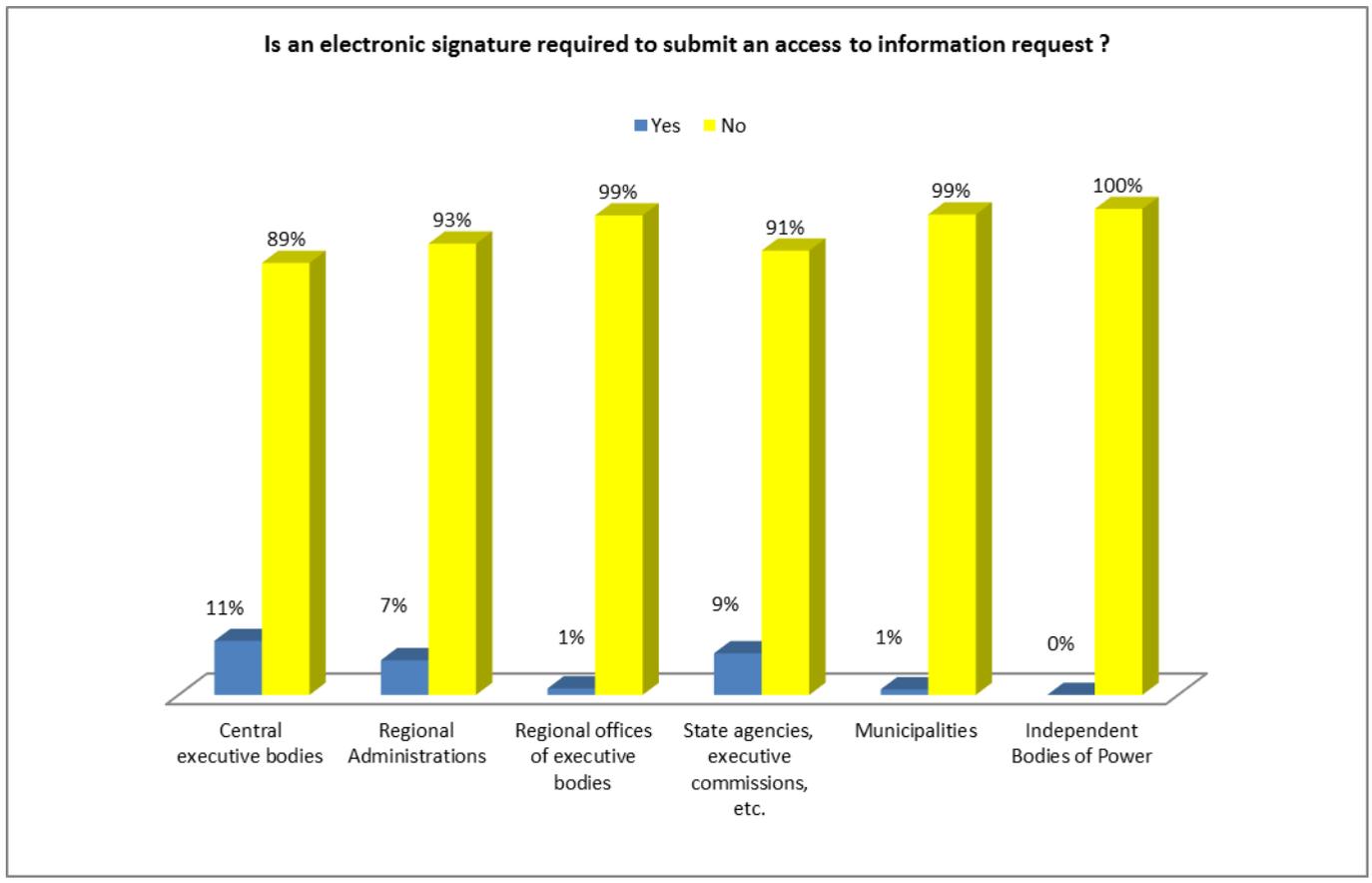
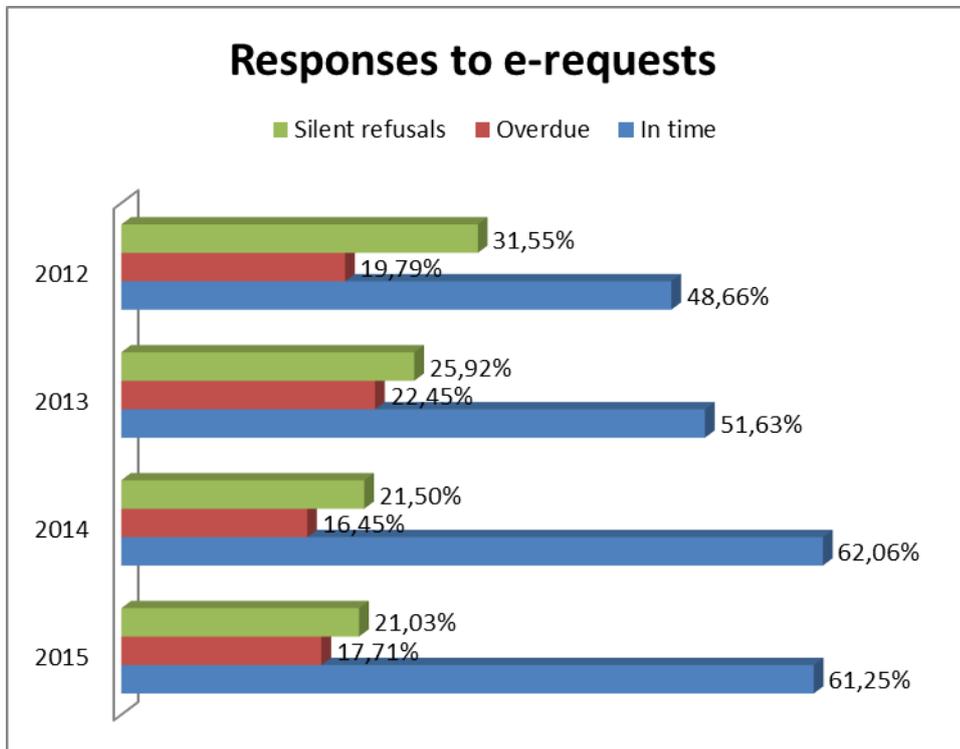


Chart 98. Response rate to access to information requests filed electronically 2012 – 2015 up to April 14, 2015



MUNICIPALITIES

Chart 99. Are the decisions of the Municipal Council published?

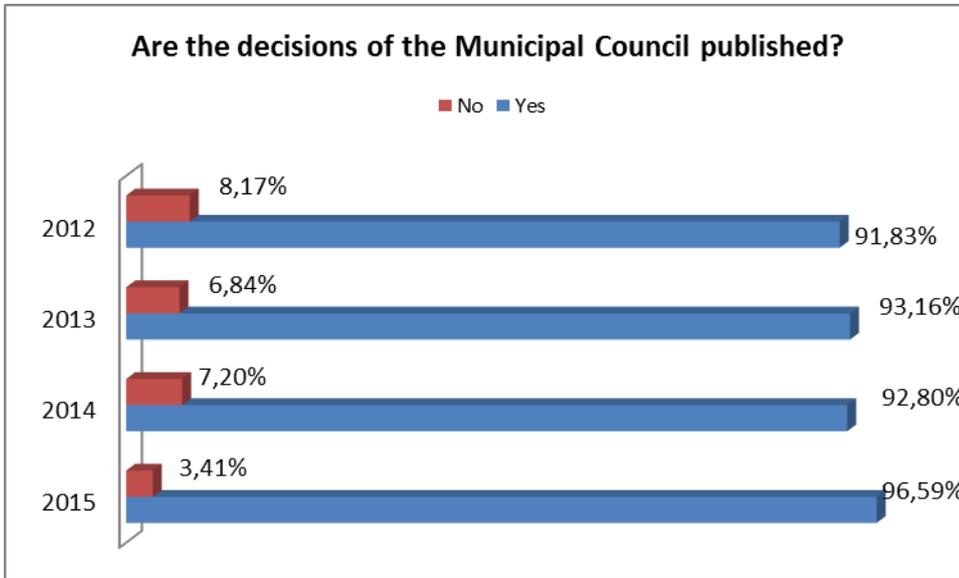


Chart 100. Is the date for the public discussion on the draft municipal budget published?

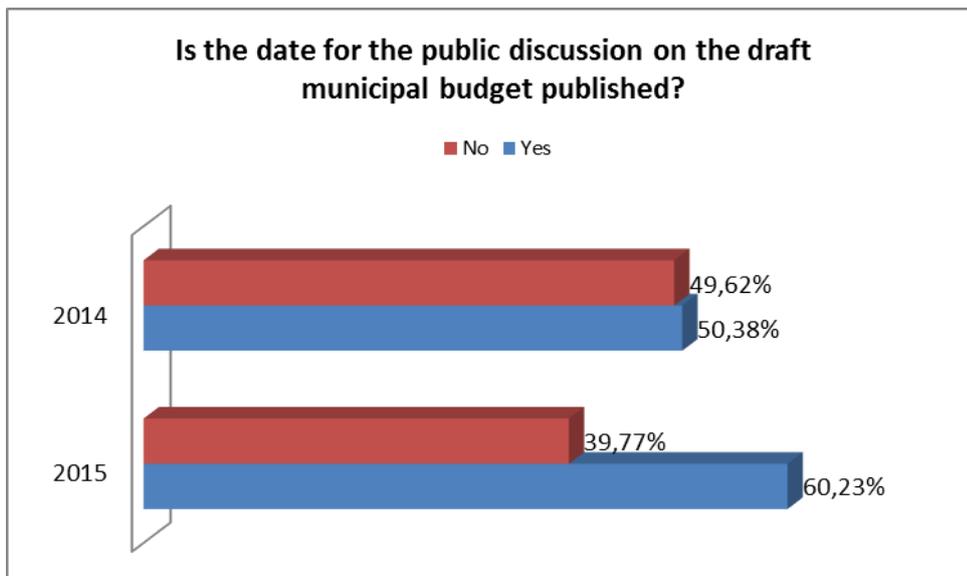


Chart 101. Is the draft municipal budget published?

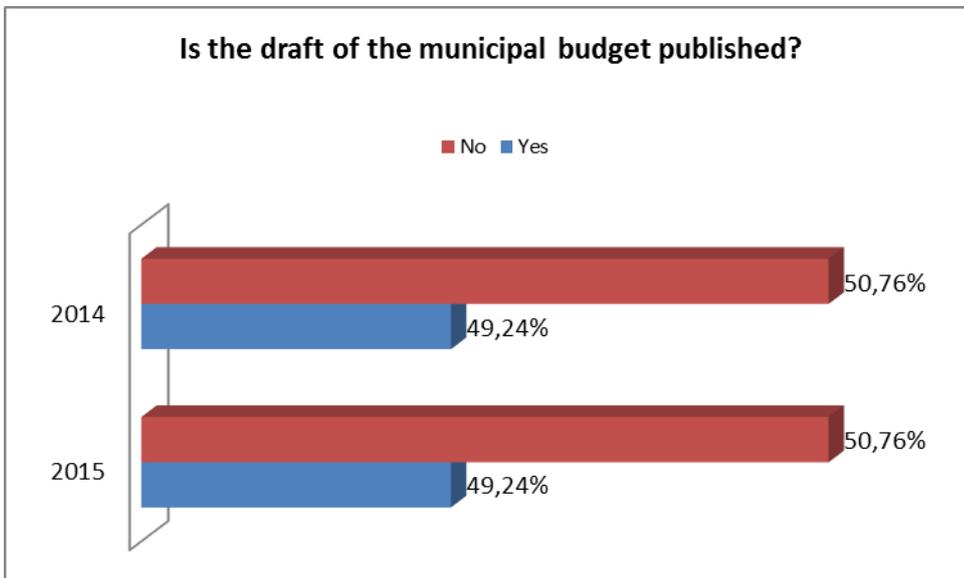


Chart 102. Is the date for the public discussion on the draft annual financial report published?

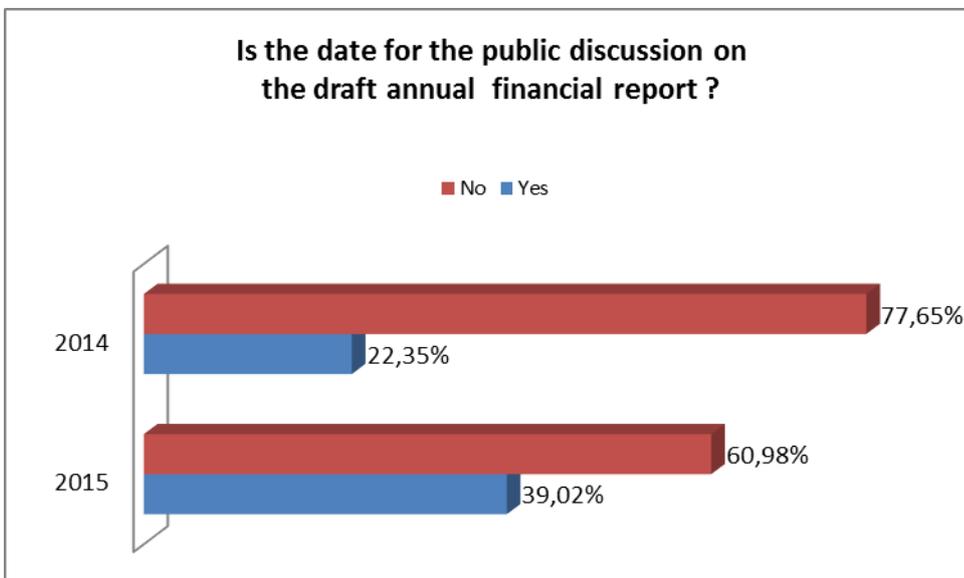
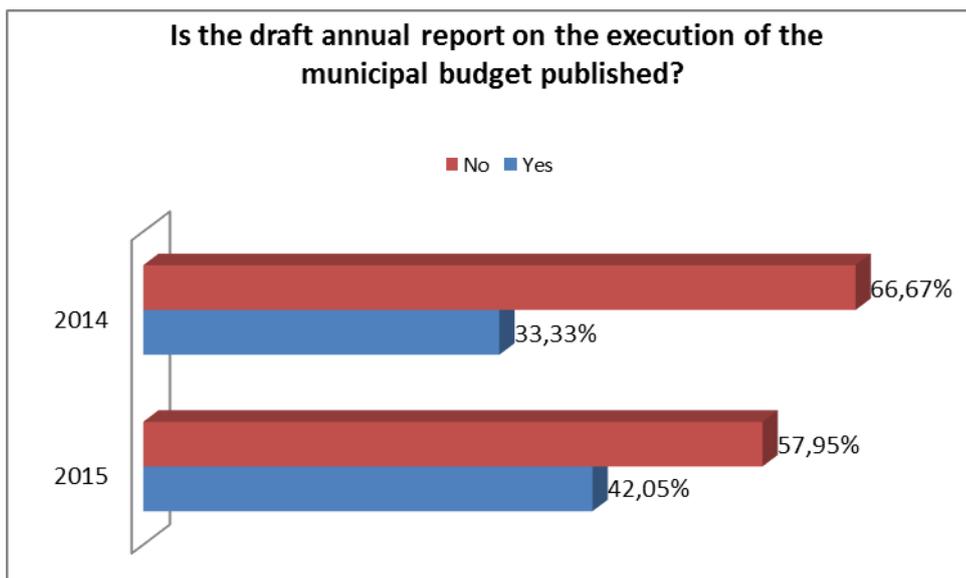


Chart 103. Is the draft annual financial report published?



City Development plans and construction permits

Chart 104. Is a Master City Development Plan published?

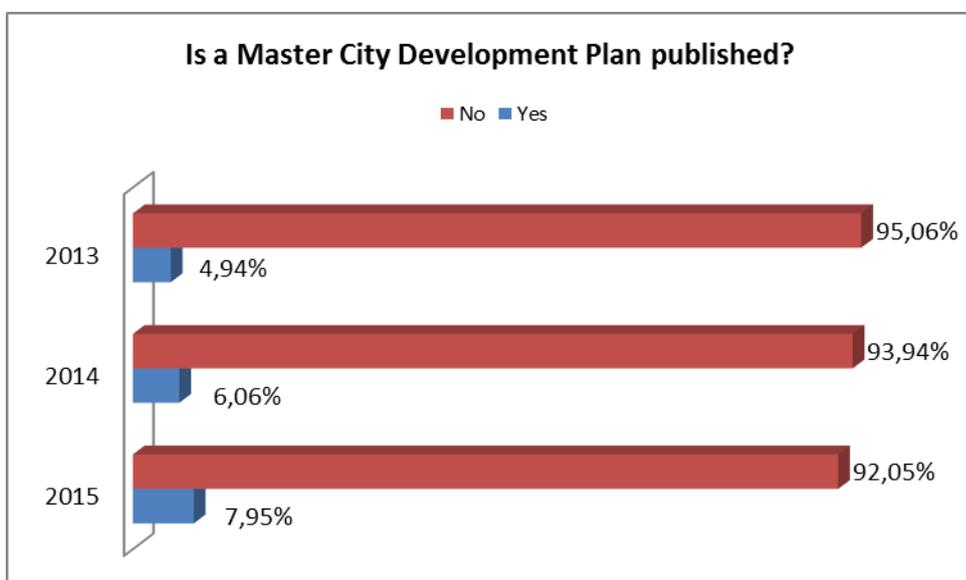


Chart 105. Is a Draft Master City Development Plan published?

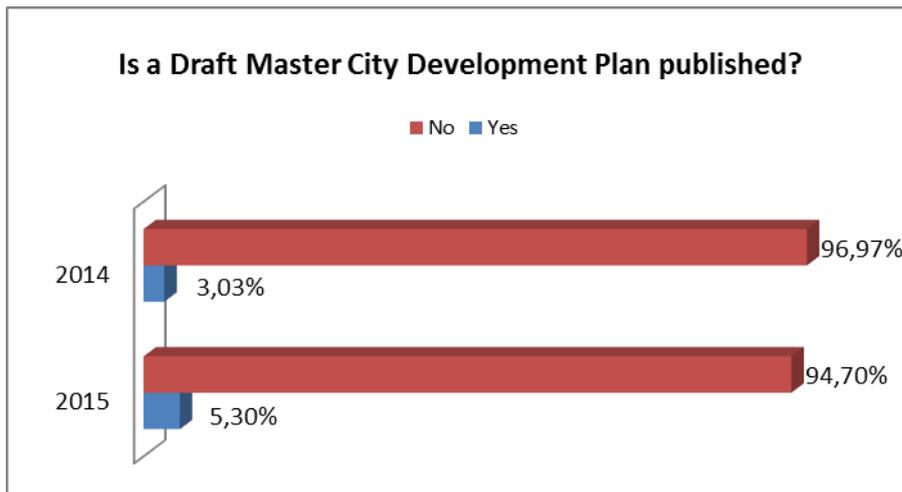


Chart 106. Is a Detailed Site Development Plan published?

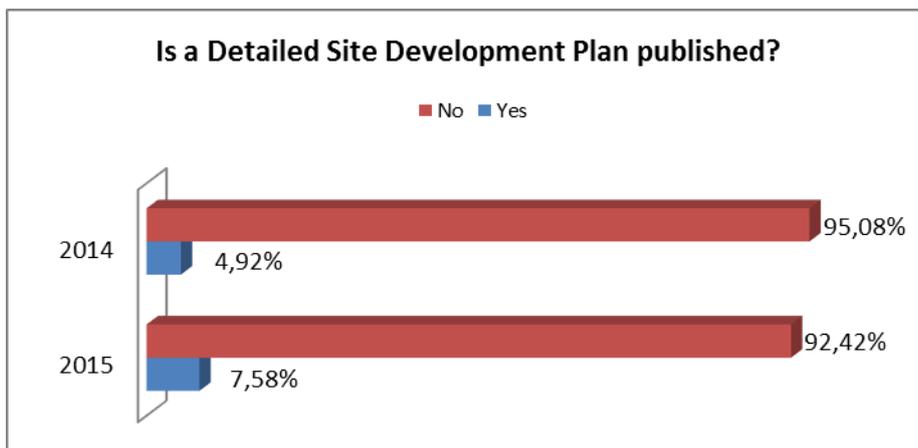
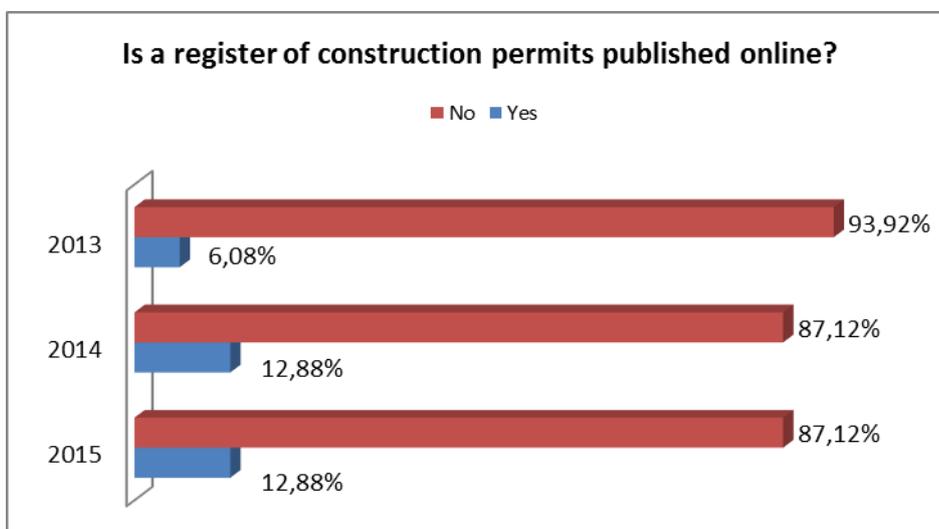
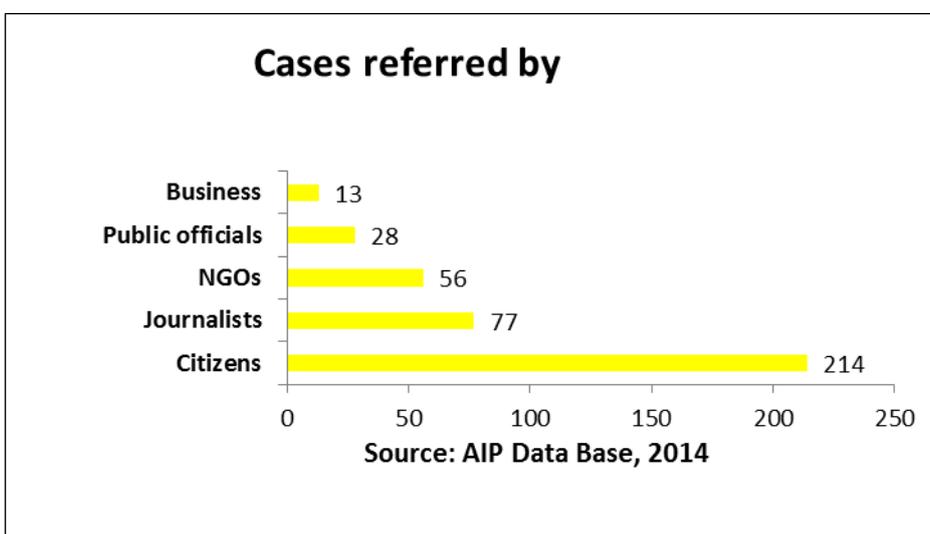
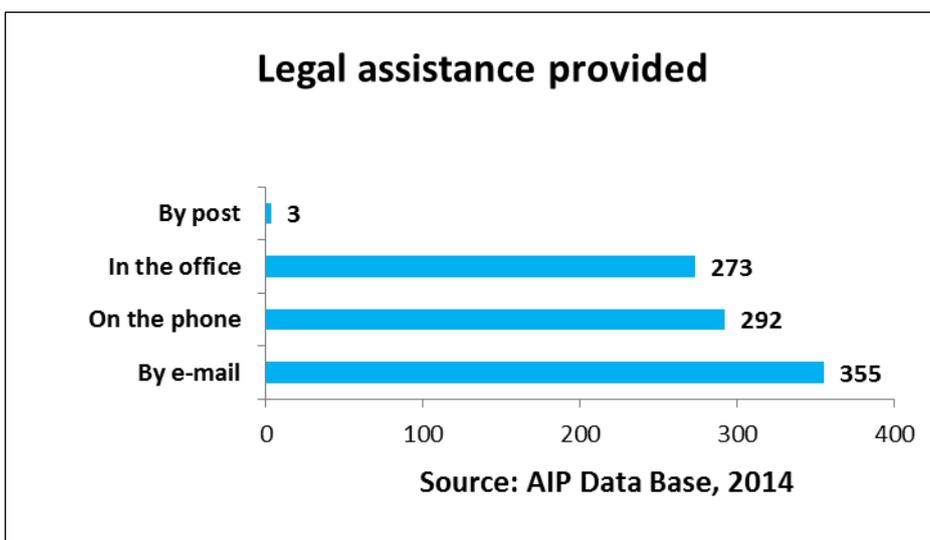
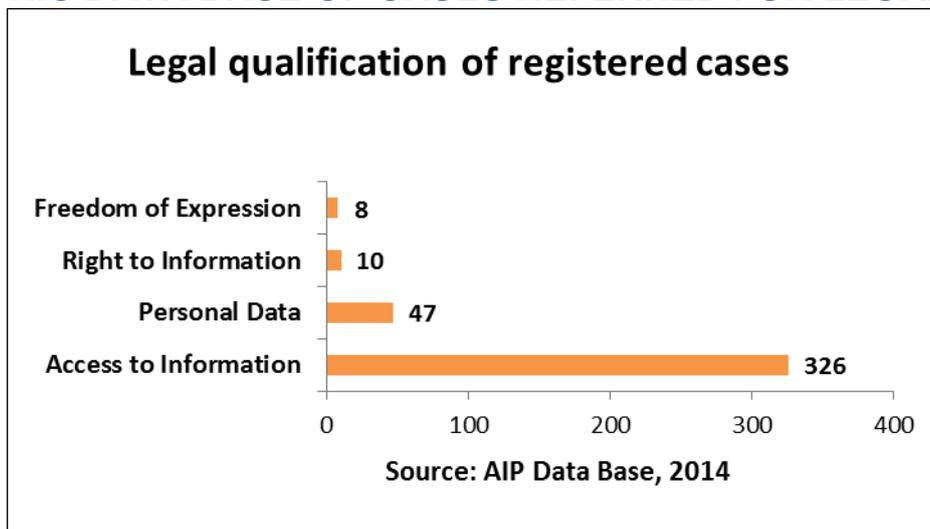


Chart 107. Is a register of construction permits published online?

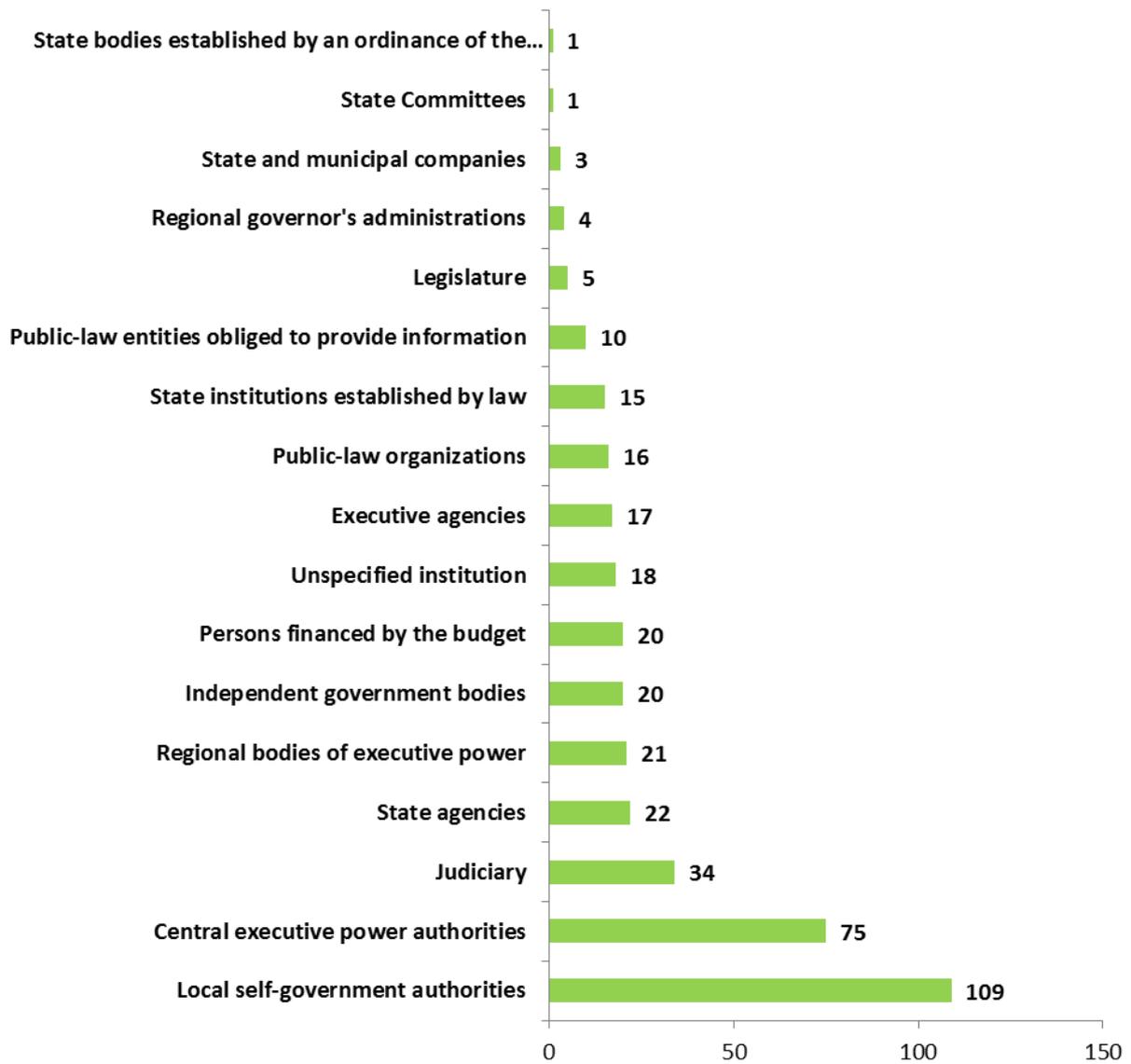


APPENDIX 2

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

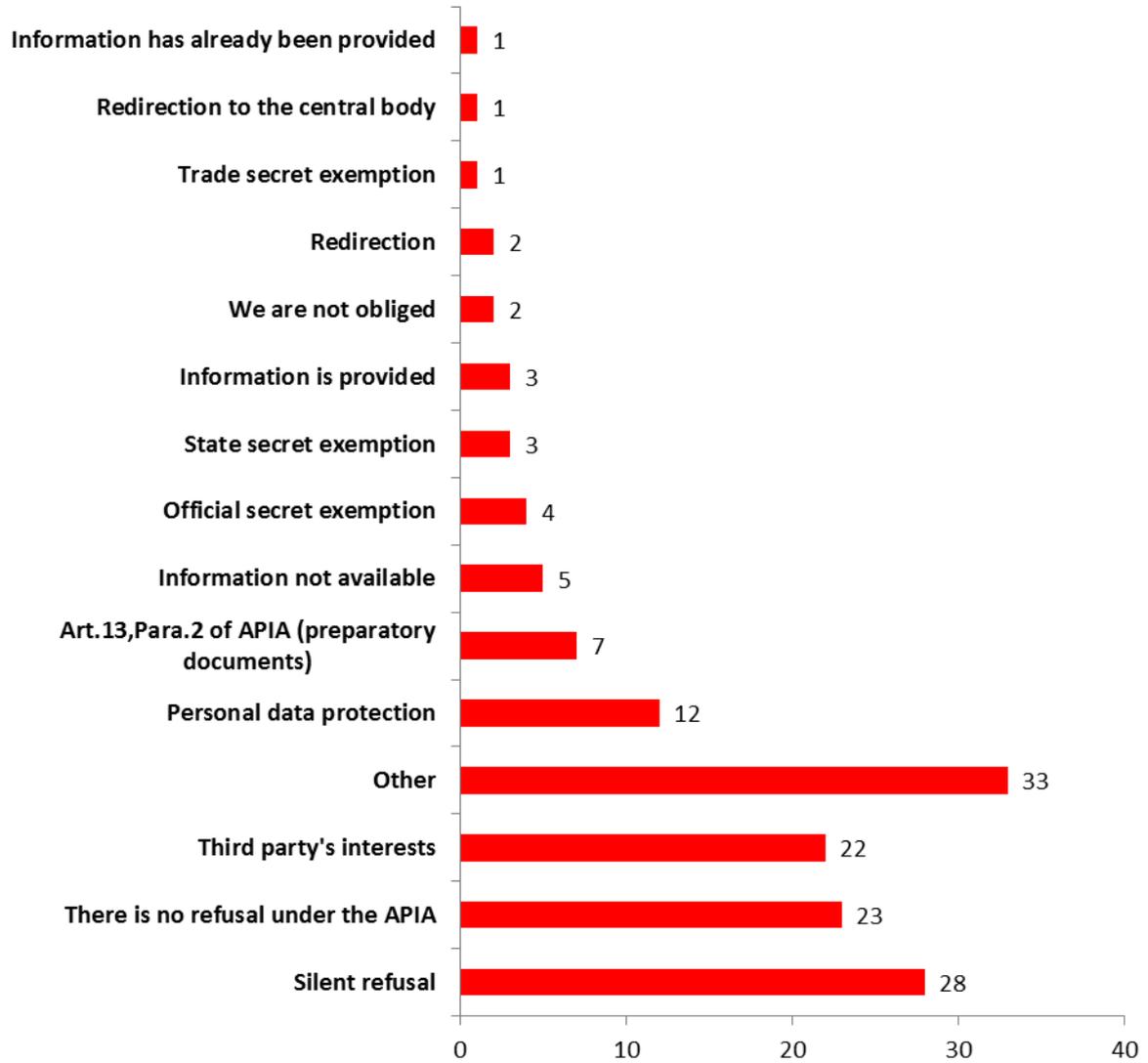


Institutions where information was sought



Source: AIP Data Base, 2014

Grounds for refusal



Source: AIP Data Base, 2014. The data correspond to the number of cases related to access to information

Appendix 3

Litigation Case Notes

1. Association “Friends of Railway Transport” vs. the “Railway Administration” Executive Agency

Administrative Case No. 7938/2013 of the ACSC, Second Division, 37th Panel

Administrative Case No. 3456/2014 of the SAC, Seventh Division

Request:

In June 2013, the NGO Association “Friends of Railway Transport” filed a request to the “Railway Administration” Executive Agency (RAEA) to provide access to the Agency’s annual reports on the supervision of the public service “rail transport of passenger”, as well as information on the inspections carried out by the Agency as a national enforcement body under Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers’ rights and obligations.

Response:

With a decision as of July 17, 2013, the executive director of the RAEA granted access to information related to the supervision performed within the requirements of the Regulation (EC) No 1371/2007. The Director, however, refused access to the requested reports on the grounds of third party’s interests exemption whereas the third party – “BDZ – Passenger Services” EOOD (the national railway transport company) – had not given its formal consent for disclosure of the information requested.

Complaint:

The partial access of the RAEA was challenged before the Administrative Court Sofia – City (ACSC). The complaint argued that the requested information would not affect the BDZ in a way that would require its consent for disclosure. Furthermore, the consent of the company was not necessary as it was a body obliged under the APIA in its capacity of public law organization.

First Instance Court Hearing:

The case was heard in an open court session on January 16, 2014 and scheduled for judgment.

First Instance Court Decision:

By a [Decision No. 39 as of January 22, 2014](#), (in Bulgarian), the Administrative Court Sofia - City repealed the refusal holding that the BDZ itself is an obliged subject under the Access to Public Information Act (APIA) since it is a public law organization and also is financed by the state budget. Consequently, under article 31, par. 5 of the APIA, its consent was not necessary for the provision of the information sought. And the reports constitute public information under the law.

Cassation appeal:

The decision of the ACSC was appealed by the RAEA before the Supreme Administrative Court (SAC). The appeal argued that the Ministry of Transport is a party of the contract signed with the BDZ for the provision of the public service rail transport of passengers and the supervision over its implementation was performed by a department of that ministry.

Second Instance Court Hearing:

The case was heard in an open court session on October 13, 2014 and scheduled for judgment. Arguments in writing were presented on behalf of the requestor Association "Friends of Railway Transport", which emphasized that the RAEA director presented completely new grounds for the refusal of the requested information. Those new grounds were unfounded since they had not been included in the appealed administrative decision. Presenting new grounds for the issuing of an administrative act in the course of court proceedings, and even at the second instance, was inadmissible. It was pointed out that under the Regulations for the Work of the RAEA, the agency is a regulating body in the railway transport sector and supervises the performance of related public services.

Second Instance Court Decision:

By [Decision No. 12826 as of October 29, 2014](#) (in Bulgarian), the Supreme Administrative Court (SAC) upheld the decision of the first instance court. The supreme justices found that the provision of article 31, par. 5 of the APIA is applicable, under which the consent of

the third party was not required in cases when the latter is an obliged body and the requested information is public under the APIA, as well as when there is an overriding public interest in the disclosure. The first instance court had rightly judged that the third party – the BDZ – is an obliged body under the meaning of Art. 3, Para. 2, Item 2 of the APIA, since in 2013, the national railway transport company had received state subsidy for the performance of the public services – rail transport of passengers. The decision of the SAC is final.

2. MD Georgi Todorov vs. the Bulgarian Medical Association

Administrative Case No. 2102/2014 of the ACSC, Second Division, 36th Panel

Administrative Case No. 6447/2014 of the SAC, Fifth Division

Request:

In December 2013, Doctor Georgi Todorov from the city of Russe requested from the Bulgarian Medical Association (BMA) access to information about the activities of the association in 2012 and 2013 - the decisions of the Steering Committee of the BMA by which external consultants to the association were selected; the contracts signed with those consultants and the amount of remunerations received by them, etc.

Response:

The Chairperson of the BMA did not respond to the request within the 14 days legally prescribed period.

Complaint:

The silent refusal of the Chairperson of the BMA was challenged before the Administrative Court Sofia–City (ACSC). The complaint claimed that the BMA is an obliged under the APIA body as it was subject to public law since it functions under the Professional Organizations of Physicians and Dentists Act.

First Instance Court Hearing:

With a [Ruling No. 1547 as of 31 March 2014](#) (in Bulgarian), the ACSC left the appeal without consideration on the ground that the BMA was not an obliged body under the

APIA. In their judgment, the justices held that the BMA was a professional organization funded by independent sources – membership fees, etc. The ACSC pointed out that the BMA was neither a state body, nor public-law organization under the meaning of the APIA.

Cassation appeal:

The Ruling was appealed before the Supreme Administrative Court (SAC). The appeal argued that the BMA was an obliged body not in its capacity of a public-law organization, but as a body subject to public law that was different from the state body. The appeal further emphasized that the functions and powers of the BMA showed that it had authority and under the law was entrusted with state functions, more precisely, the regulation of the profession of the physicians in Bulgaria.

Second Instance Court Hearing:

By [Ruling no. 7441 as of 3 June 2014](#) (in Bulgarian), the Supreme Administrative Court (SAC) repealed the Ruling of the ACSC and returned the case to the ACSC for continuation of proceedings. The supreme justices held that the BMA should be considered a body, subject to public law, because its establishment, existence, structure, organization and activities are regulated by law – the Professional Organizations of Physicians and Dentists Act and it has public law functions under primary and secondary legislation.

First Instance Court Hearing (again):

After it was returned to the ACSC, the case was heard at an open court session on November 27, 2014 and scheduled for judgment.

First Instance Court Decision:

By [Decision No. 8213 as of 29 December 2014](#) (in Bulgarian), the ACSC repealed the silent refusal and obligated the Chairperson of the SC of the BMA to issue an explicit decision on the request. In their judgment, the court emphasized that the BMA should be viewed as a public-law body under the meaning of Art. 3, Para. 2, Item 1 of the APIA. In that regard, the Ruling of the SAC, grounded in Art. 235, Para. 2 of the Administrative Procedural Code, is obligatory for the ACSC. The court pointed out that the silent refusal was inadmissible under the APIA and that was a ground enough for its repealing. According to the justices, the requirement for a written grounded decision was a guarantee

for the lawfulness of the issued act. Thus, the grounds of the defendant that part of the requested information contains personal data, and another part is public cannot overcome the inaction of the public body and to substantiate the lawfulness of the silent refusal.

The ACSC decision was not appealed and entered into effect.

3. Ivan Petrov vs. the Sofia city Municipality

Administrative Case No. 11068/2013 of the ACSC, Second Division, 37th Panel

Administrative Case No. 5081/2014 of the SAC, Seventh Division

Request:

On October 17, 2013, Ivan Petrov (citizen from Sofia) filed a request to the Sofia City Municipality demanding access to the logbook under Art. 149, Para. 1 of the Labor Code containing information about the municipal officials' overtime (provided under Art. 143, Para. 1 of the Labor Code) for 2012. The request stated that the preferred form of access was an in-house review.

Response:

By a decision as of October 23, 2013, the chief secretary of the Sofia Municipality refused to grant access on the grounds that the APIA provides for the request of access to information, but not access to documents. The refusal also stated that the requested information amounted to personal data of the officials who had worked overtime and could not be provided without their consent. It was not possible to request the consent of all officials as stated in the request, the refusal continued.

Complaint:

The refusal of the Chief Secretary of the Sofia Municipality was challenged before the Administrative Court Sofia – City (ACSC). The complaint stated that the issue *access to information – access to documents* have been resolved by four decisions of Five-member panels of the Supreme Administrative Court (SAC). According to the SAC court practice, the question if the request is for a specific material carrier of information or contains description of the information is irrelevant for its provision. The complaint also develops the

arguments that the requested information does not constitute personal data, as it is not related to the personal life of the municipal officials and is completely related to the fulfilment of official duties. At the same time, the requested form of access, in-house review, excludes any possibility of illegal processing of the information.

First Instance Court Hearing:

The case was heard in an open court session on February 13, 2014 and scheduled for judgement.

First Instance Court Decision:

By [Decision No. 1378 as of 06 March 2014](#) (in Bulgarian), the Administrative Court Sofia – City (ACSC) repealed the refusal holding that the question if the request is for a specific material carrier of information or contains description of the information is irrelevant for its due provision. According to the court, the material carrier of information, the logbook maintained under the Labor Code in the specific case, is not something that is requested because of its material substance but because of the information it contains. The court also holds that the information on overtime work under an employment relationship and for the benefit of Sofia Municipality does not constitute personal information or personal data of employees. In addition, the court stated that even if third party interests might be affected, there is an overriding public interest in the disclosure since providing this information will lead to increased transparency and accountability of the Municipality.

Cassation Appeal:

The decision of the ACSC was appealed by the Sofia Municipality before the Supreme Administrative Court (SAC). The appeal repeated the arguments in the refusal that the APIA does not provide for access to specific documents and that the requested information constitutes personal data of the municipal officials, as the logbook contains their names, the order assigning the overtime, the date and hour of starting and ending the overtime, and the amount of the overtime payment.

Second Instance Court Hearing:

The case was heard in an open court session on November 4, 2014 and scheduled for judgment. Written notes were presented on behalf of the requestor, which argue that the information about the overtime payment to municipal officials is not personal data since its

disclosure would allow for forming opinion about the way municipal budget is spent. Thus, the information about who has received the money could not be protected personal data.

Second Instance Court Decision:

By [Decision No. 14638 as of 04 December 2014](#) (in Bulgarian), the SAC upheld by the decision of the ACSC. The supreme justices hold that the first instance has rightly assumed that the information is related to the fulfillment of official duties and does not pertain to personal data. The information is not related to privacy and personal life under the meaning of Art. 1, para. 2 of the Personal Data Protection Act. The information about the overtime payment is not protected personal data. Even if it constitutes such data, in the specific case there is an overriding public interest in the disclosure since providing this information will lead to increased transparency and accountability of the Municipality.

4. Darinka Nikolova and others vs. the Municipality of Veliko Tarnovo

Administrative case No. 45/2014 of the Veliko Tarnovo Administrative Court, VIII panel
Administrative case No. 5399/2014 of the Supreme Administrative Court, Seventh Division

Request:

On August 28, 2013, a group of citizens filed a request to the Mayor of Veliko Tarnovo for access to information related to the reconstruction of a residential building, part of a protected group cultural monument.

Notification for clarification:

With a letter as of September 17, 2013, pursuant to Art. 29 of the APIA, the mayor requested a clarification regarding the subject of the access to information request.

Clarification:

With a letter as of October 7, 2013, the requestors specify that they are willing to receive paper copies of the following construction documents: an examination and construction planning permit; construction (reconstruction) permit; approved architectural plan – Architecture and Construction parts; an evidence for the approval of the National Institute for Immovable Cultural Heritage.

Notification for the extension of time frames:

With a letter as of October 14, 2013, the mayor extends the time frames for issuing a decision in order to request for the consent of the property owner as the requested information contained personal data and data about the property.

Refusal:

With a decision as of November 1, 2013, the mayor refused on the grounds that the requested information does not fall within the scope of Art. 4 of the APIA since the Spatial Planning Act provides for a special procedure for seeking, receiving and imparting such type of information. It was also pointed out that the requested information contains personal data of third persons (the residential building's owners) and they had given explicit dissent for the disclosure. Lastly, it was argued that the requested documents are not carriers of public information.

Complaint:

The refusal was challenged before the Veliko Tarnovo Administrative Court (VTAC). The complaint stated that the provisions of the Spatial Planning Act which introduce the obligation for the notification of the interested parties about issued construction permits and approved investment offers at the initiative of the responsible authorities do not exclude in any way the application of the APIA in case of requested access to information. An argument was presented that the mayor has ungroundedly sought the consent of the third party (the property owner) since the requested information does not affect the interests of the third party in a way that precondition the necessity of their consent. Even if assume that the requested information contained personal data (like names and personal identification number of the property owner), these data are known to the requestors after an inquiry in the Registry Service – office Veliko Tarnovo. Consequently, by granting access to the requested information, the mayor would not disclose more data about the property owner than the already known.

First Instance Court Hearing:

The case was heard in an open court session on February 27, 2014 and scheduled for judgment.

First Instance Court Decision:

By [Decision No 101 as of 11 March 2014](#) (in Bulgarian), the VTAC repealed the refusal of the Mayor of Veliko Tarnovo to provide information on the reconstruction of a residential building, part of a protected group cultural monument. The court holds that the requested information is public pursuant to the APIA as it pertains to construction documents related to the changing of the architectural image of the historical part of Veliko Tarnovo. The decision states that the future construction, respectively reconstruction of the residential building, part of the historical ensemble, is undoubtedly related to the public life in the city and has an impact on the legal sphere of everyone, including the requesters in their capacity of citizens of Veliko Tarnovo. According to the court, the applicable procedure for access to information is the one provided by the APIA since precisely the fact that the requestors are not interested parties in the meaning of the Spatial Planning Act preconditions their right to request access to the information about the construction procedure under the APIA. The court also holds that the lack of the third parties' explicit consent is not grounds for refusal, since in this case the obliged body must provide partial access to the information sought, which the Municipality did not do.

Cassation Appeal:

The decision of the ACVT was appealed by the mayor before the Supreme Administrative Court (SAC). The appeal repeated the grounds of the refusal, namely that the requested information was not public, that it contained protected personal data and that the APIA was not applicable due to the existence of a special procedure under the Spatial Planning Act.

Second Instance Court Hearing:

The case was heard in an open court session as of November 10, 2014 and scheduled for judgement.

Written notes were presented on behalf of the requestors, where the argument was developed that the provisions of the Spatial Planning Act related to the notification of the interested parties about issued construction permits and approved investment offers are not applicable to the ongoing case since they refer to another aspect of the right to information, namely the proactive provision of information. These provisions establish an obligation for the respective public bodies to inform at their initiative the interested parties for issued construction permits and approve investment offers.

Second Instance Court Decision:

By [Decision No. 514 as of 19 January 2015](#) (in Bulgarian), the SAC upheld the decision of the first instance court. The court found that there is an overriding public interest in the disclosure of the information since it opens the possibility to enhance the municipal transparency and accountability related to an activity of high public interest - the conservation of the architectural heritage and building the image of the city. The court panel points out that under the Cultural Heritage Act, activities related to the protection of cultural heritage should be performed in compliance with the principle of publicity and transparency. There is a legal requirement which guarantees the transparency and publicity in the management of cultural heritage and the permission of construction activities in such a property is undoubtedly part of their management.

5. Doroteya Dachkova (Sega Daily) vs. the Supreme Cassation Prosecutor's Office

Administrative case No. 11585/2013 of the Administrative Court Sofia – City, Second Division, 25th Panel

Administrative case No. 6440/2014 of the Supreme Administrative Court, Fifth Division

Request:

In October 2013, Dorotheya Dachkova, a journalist from “Sega” newspaper, filed a request to the Supreme Judicial Council, demanding access to the following information:

1. The number of available positions for court and prosecutor clerks in the country; the number of employed clerks;
2. Information about the number of employed clerks in all administrations of the judicial power.
3. A list of court and prosecutor clerks containing their names, the judicial body they are employed by, the date and grounds of their employment.

Referral of the request:

The Supreme Judicial Council referred the request to the Prosecutor's Office as a responsible institution and in compliance with the provisions of Art. 32 of the APIA.

Response:

With a decision as of November 7, 2013, a deputy of the Chief Prosecutor at the Supreme Cassation Prosecution (SCP) granted access to the requested information under points 1 and 2 and refused to provide access to the information requested under point 3. The refusal was on the grounds that the name and the body of employment would make personal identification possible, consequently, the information was protected personal data.

Complaint:

The refusal was challenged before the Administrative Court Sofia – City (ACSC). The complaint argued that the names and the positions of the officials employed within the judicial system was not personal data. It pointed out that it was unacceptable that anonymous persons work in state institutions and authorities.

First Instance Court Hearing:

The case was heard in an open court session on February 24, 2014 and scheduled for judgment.

First Instance Court Decision:

By [Decision No. 1860 as of 24 March 2014](#) (in Bulgarian), the ACSC repealed the refusal and returned the request to the SCP with instructions to provide the requested information. In their judgment, the court emphasized that information about the specific body, the type of labor relations, the date and the grounds for the employment of the prosecutors' clerks did not fall within the scope of the protected personal data, stipulated by Art. 2, para. 1 of the Personal Data Protection Act (PDPA) and Para. 1, item 2 of the Supplement Provisions of the APIA. The court shared the arguments of the complainant that the information was related to the public body, its structure and staff and not to the person who performs the duties. The court panel assumed that the provision of a list of the names of the prosecutor clerks for the purposes of the journalistic work was not contrary to the principles set forth by the PDPA. This was true as the information did not reveal a personal quality, respectively the private live, of the particular person, rather their public identity as an official in a judicial body. The court also found an overriding public interest in the disclosure of the information, since it would undoubtedly result in the increase of the transparency and accountability of the Prosecutor's Office.

Cassation appeal:

The decision of the ACSC was appealed by the SCP before the Supreme Administrative Court. The appeal claimed that the names of the prosecutors clerks were not public information as they would not give the opportunity to citizens to form an opinion on the work of the Prosecution.

Second Instance Court Hearing:

The case was heard in an open court session on November 26, 2014 and scheduled for judgment. The court representative of the requestor claimed that the requested information was official public information by the meaning of Art. 11 of the APIA.

Second Instance Court Decision:

By [Decision No 14701 08 December 2014](#) (in Bulgarian), the Supreme Administrative Court (SAC) upheld the decision of the first instance court. In their judgment, the magistrates point out that the criteria for prosecutor clerks appointment are determined by legal regulations. The necessity for publicity of the appointed prosecutor clerks is legally provided and the refusal for the disclosure of their name and structural appointment does not correspond to their public status. The conclusion of the ACSC that there is also overriding public interest in the disclosure is rightful and in line with the court practice. The decision of the SAC is final.

6. Arman Babikyan vs. the Ministry of Culture

Administrative case No. 8809/2013 of the SAC, Seventh Division

Administrative case No. 4913/2014 of the SAC, Five-member Panel

Request:

On April 10, 2013, a group of three citizens (Arman Babikyan, Stoyan Terziiski and Andrey Terziiski) filed a request to the Ministry of Culture demanding access to information related to the April 4, 2013 meeting between the Ministry of Culture high officials and protesting teachers from the National School for Ancient Languages and Cultures “Constantine Cyril the Philosopher” (NSALC) and the acting principal of the school. The future of the school

was discussed at that meeting with regard to the appeals filed against the acting principal. The requested information was described in a list of seven points, one of them demanding access to a copy of the audio recording of the meeting.

Refusal:

With a decision as of April 24, 2013, the Minister of Culture grants partial access to the requested information, refusing to provide a copy of the audio recording of the meeting on the grounds that it may contain personal data, therefore it could not be disclosed without the consent of the affected third parties.

Complaint:

The refusal was challenged before the Supreme Administrative Court (SAC). The complaint stated the argument that the audio recording did not contain protected personal data since the problems of the National School which is under the auspices of the Ministry of Culture were discussed at the meeting, and not the problems of physical persons and their personal life.

First Instance Court Hearing:

The case was heard in an open court session on December 10, 2013 and scheduled for judgement.

First Instance Court Decision:

By [Decision No. 258 as of 09 January 2014](#) (in Bulgarian), a panel of the Supreme Administrative Court upheld the refusal of the minister. The court points out that the minister has rightly assumed that the requested information contains personal data which pursuant to Art. 2, Para. 1 of the Personal Data Protection Act are all data related to a physical person, who is identified or identifiable, directly or indirectly, by reference to an identification number or to one or more specific features.

Cassation Appeal:

The decision of the three-member panel of SAC was appealed before a five-member panel of the SAC. The appeal claims that the first instance court has corrupted the legal

proceedings by ignoring the argument of the plaintiffs that there is an overriding public interest in the disclosure of the requested information.

Second Instance Court Hearing:

The case was heard in an open court session on May 22, 2014 and scheduled for judgment. The legal representative of the plaintiffs further elaborates the arguments that the audio recording does not contain personal data quoting the European Court on Human Rights practices that positions stated during public debates do not constitute personal data.

Second Instance Court Decision:

By [Decision No. 9079 as of 30 June 2014](#) (in Bulgarian), the five-member panel of the SAC repealed the first instance decision as well as the minister of culture's refusal to provide information. The justices noted that the minister had wrongfully relied on protection of personal data since he had not provided any proof of affecting the interests of third parties. They held that there is an overriding public interest in the disclosure of the information sought, since the national school's problems had acquired media publicity through the principal's participation in a TV broadcast, as well as through the minister of culture's media announcement of this meeting for hearing the different positions and taking an objective decision on the school's future. Thus, the overriding public interest in the disclosure flows from the need for citizens to monitor the administration and the settlement of conflicts in the NSALC, which is part of the responsibilities of the Ministry of Culture. The SAC decision is final.

7. Arch. Vesela Toncheva vs. the Sofia – city Municipality

Administrative case No. 9074/2013 of the ACSC, Second Division, 39th Panel

Administrative case No. 6394/2014 of the SAC, Fifth Division

Request:

On August 5, 2013, architect Vesela Toncheva requested from the Sofia Municipality a copy of the contract concluded with a private company for the restoration and management of the "Ariana" lake in Sofia.

Refusal:

With a decision as of August 28, 2013, the Chief Secretary of the Sofia-city Municipality refused to grant access to the requested information. The refusal was based on the grounds that the company had not given its explicit consent to disclosure. The refusal stated that the municipality had sent a letter as of August 13, 2013 to demand the consent of the company, which did not respond within a two-week period of time.

Complaint:

The refusal was challenged before the Administrative Court Sofia – City (ACSC). The complaint claimed that the municipality was not supposed to seek the consent of the third party, since there was an overriding public interest in the disclosure of the requested information.

First Instance Court Hearing:

The case was heard in an open court session as of February 19, 2014 and was postponed. The defendant was instructed to present the respective order for the official substituting for the Chief Secretary of the Sofia – city Municipality since the challenged refusal had been signed with a note, meaning that someone else had signed on behalf of the responsible official. On March 5, 2014, the case was heard again in an open court session and scheduled for judgment. During the hearing, the legal representative of the plaintiff emphasized that the presumption for overriding public interest in the disclosure is applicable with regard to contracts signed by obliged bodies under the ambit of § 1, item 5, letter “f” of the Supplementary Provisions of the APIA.

First Instance Court Decision:

By [Decision No. 1388 as of 06 March 2014](#) (in Bulgarian), the ACSC repealed the refusal and obligated the Sofia – city Municipality to provide access to the requested information. The court held that the legal presumption of existence of overriding public interest in disclosure of information related to the parties, the subject, the price, the rights and obligations, conditions, terms, and sanctions specified had to be applied in cases of contracts where one of the contracting parties is an obliged body under the APIA. The court pointed out that the challenged refusal did not contain evidence for a lack of an overriding public interest. Only if such lack is proven, then the ground for the third party

dissent may be applied. Otherwise, the consent of the third party was not necessary and the disclosure of the information was due.

Cassation appeal:

The decision of the ACSC was appealed by the Sofia – city Municipality with a cassation appeal before the Supreme Administrative Court (SAC).

Second Instance Court Hearing:

The case was heard in an open court session on November 19, 2014 and scheduled for judgment.

Second Instance Court Decision:

By [Decision No. 14040 as of 25 November 2014](#) (in Bulgarian), the SAC upheld the decision delivered by the ACSC. According to the supreme justices, the burden of proving a lack of overriding public interest lies within the obliged public body. In the particular case, neither the issued refusal, nor the evidence provided during the court proceedings, had shown the lack of overriding public interest. The lack of specific grounds and evidence that the disclosure of the information would affect the interests of the third party was rightly assumed by the ACSC as a lack of ground for the issuing of the refusal.

The SAC decision is final.

8. Environmental Association “For the Earth” vs. the Ministry of Environment and Waters

Administrative case No. 14648/2013 of the SAC, Seventh Division

Administrative case No. 7396/2014 of the SAC, Five-member panel, 2nd College

Request:

On August 21, 2013, the Environmental association “For the Earth” filed a request to the Ministry of Environment and Waters (MEW) demanding access to a copy of the report on reducing emissions of harmful substances from large combustion plants, related to the

European Commission's warning towards Bulgaria for failure to comply with the maxima of emission of sulfur and nitrogen oxides and of fine dust particulates.

Refusal:

By Decision as of September 13, 2013, the minister refused on the ground that the requested report had no significance of its own – a ground for refusal under Art. 13, Para. 2, item 1 of the APIA.

Complaint:

The refusal was challenged before the Supreme Administrative Court (SAC). The complaint argued that the report undoubtedly constituted environmental information under the Art. 19 of the Environmental Protection Act (EPA). The text of Article 13, Para. 2 of the APIA providing the possibility of restricting access to preparatory documents is inapplicable in the particular case, as the provisions of the EPA should be applied as a special law with regard to the APIA. The EPA does not provide for a restriction similar to that under Art. 13 of the APIA.

First Instance Court Hearing:

The case was heard in an open court session on February 10, 2014 and scheduled for judgment. The legal representative of the plaintiff presented the arguments that a report was supposed to contain facts and findings with a significance on their own outside the scope of the preparatory documents restriction.

First Instance Court Decision:

By [Decision No. 3421/11.03.2014](#) (in Bulgarian), the SAC upheld the refusal of the minister. The court found that the report was of recommendatory character for the undertaking of specific measures for the reducing of harmful particles from large combustion plants till the end of 2013. Thus, not the proposal for the measures, but the real measures taken would constitute public information.

Cassation appeal:

The decision of the Three-member panel was appealed by the requestor before a Five-member panel of the SAC. The appeal again elaborated the arguments for the

inapplicability of the restrictions provided by Art. 13 of the APIA, when access to environmental information in the ambit of the EPA was demanded.

Second Instance Court Hearing:

The case was heard in an open court session on September 25, 2014 and scheduled for judgment. The legal representative of the plaintiff emphasized that pursuant to the EPA, the right of access to information could not be restricted when information about the emissions of harmful substances was requested.

Second Instance Court Decision:

By [Decision No. 11951/09.10.2014](#) (in Bulgarian), a Five-member panel of the SAC repealed the first instance court decision, as well as the refusal by the minister. The court held that the information sought is information on the environment in the meaning of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and in the meaning of the Environment Protection Act (EPA). The text of Article 13, par. 2 of the APIA providing the possibility of restricting access to preparatory documents is inapplicable to information concerning the environment and in particular the emissions of harmful substances. The court noted that in Article 20, par. 6 of the EPA the legislator has provided explicitly that the right of access to public information concerning the environment and in particular the emissions of harmful substances cannot be refused or restricted.

The SAC decision is final.

9. Lilyana Valcheva vs. the Regional Inspectorate of Education – region of Haskovo

Administrative case No. 215/2012 of the ACH

Administrative case No. 14317/2012 of the SAC, Fifth Division

Request:

On June 2, 2012, the citizen Liliانا Valcheva requested from the Regional Inspectorate of Education – Haskovo (RIE) information about inspections held in a particular school in the town of Topolovgrad (Haskovo Region).

Letter of notification:

On June 21, 2012, the requestor received a letter of notification from the Director of the RIE-Haskovo, informing her that the request did not have the character of an access to information request under the APIA since it did not contain a description of the requested information but only a claim for the provision of documents.

Letter of specification:

With a letter as of June 25, 2012, the requestor specified that she demands access to the available information about three inspections held on specific dates. She specified the types of documents she wanted to receive (orders and finding reports), their dates and numbers.

Refusal:

With a decision as of July 9, 2012, the Director of the RIE refused to grant access to the requested information. The grounds of the refusal of the head of the RIE were that the APIA does not provide for the form requested by the citizen – by e-mail.

Complaint:

The refusal was challenged before the Administrative Court – Haskovo (ACH).

First Instance Court Hearing:

The case was heard in an open court session of October 2012 and scheduled for judgment.

First Instance Court Decision:

By [Decision No. 189/17.10.2012](#) (in Bulgarian), the Administrative Court Haskovo (ACH) repealed the refusal and returned the request to the Director of the RIE to grant access to the requested information. The court assumed that the factual ground stated in the refusal – that the APIA does not provide for the provision of information by e-mail – could not be a legal ground for refusal as it does not fall among the exhaustively listed hypotheses provided by Art. 37, Para. 1 of the APIA which give the only legal grounds for issuing an access to information refusal.

Cassation appeal:

The decision of the Administrative Court – Haskovo was appealed by the Director of the RIE before the Supreme Administrative Court (SAC).

Second Instance Court Hearing:

The case was heard in an open court session on September 25, 2013 and was postponed for the presenting of a valid power of attorney by the legal representative who had filed the cassation appeal. The case was heard again in an open court session on January 15, 2014 and was scheduled for judgment. The legal representative of the requestor claimed that if the Director of the RIE – Haskovo considered the provision of information by e-mail not a legal form of access under the APIA, the Art. 27 of the APIA provides for the provision of access in the form that the public body considers appropriate.

Second Instance Court Decision:

By [Decision No. 1864/11.02.2014](#) (in Bulgarian), the Supreme Administrative Court upheld the first instance court decision. The supreme justices emphasized that the request for information to be provided by e-mail is a valid request since Art. 26, Para. 1, item 4 of the APIA provides for the provision of information on a material carrier. In such cases access is due after the definition of the technical parameters of the recording.

The SAC decision is final.

10. Marieta Sivkova vs. the Municipality of Yambol

Administrative case No. 67/2014 of the Administrative Court – Yambol

Administrative case No. 7931/2014 of the SAC, Fifth Division

Administrative case No. 11705/2014 of the SAC, Five-member panel, 2nd College

Request:

In February, 2014, Ms. Marieta Sivkova from the city of Yambol requested from the Municipality of Yambol a copy of a friendly settlement of a court dispute concluded by the municipality and a building company.

Refusal:

With a letter as of February 25, 2014, the Secretary of the Municipality of Yambol informed the requestor that her request was left without consideration with the argument that under the APIA access could be sought to information, but not to specific documents.

Complaint:

The refusal of the Secretary of the Municipality to respond to the request upon its merits was challenged before the Administrative Court – Yambol (ACY) as a refusal of the authority to issue an individual administrative act – a decision to grant or refuse access to information. The complaint was filed under the procedure of Art. 197 – 200 of the Administrative – Procedural Codex which provide for summary proceedings if such refusals are appealed. Under this procedure, the court hears the case in a closed session and delivers a decision within one month as of the filing of the complaint. The complaint claimed that according to the persistent court practices the question if the request is for a specific material carrier of information or contains description of the information is irrelevant for its provision.

First Instance Court Hearing:

The case was heard in a close court session on May 21, 2014.

First Instance Court Ruling:

By [Ruling No. 182/23.05.2014](#) (in Bulgarian), the Administrative Court – Yambol (ACY) repealed the refusal and resend the request to the Secretary of the Municipality for reconsideration. The court assumed that the cases in which an access to information request is left without consideration are listed in the provisions of Art. 25, Para. 2 and Art. 29, Para. 2 of the APIA. In all other cases, the public bodies or explicitly assigned persons issue a decision for granting or refusal of the requested access and notify the requestor in writing (pursuant to Art. 28, Para. 2 of the APIA). Pursuant to Art. 25, Para. 1 of the APIA, the request contains: 1. full name, or respectively the business name and the seat of the applicant; 2. description of the information requested; 3. the preferred form of access to the requested information; 4. the address for correspondence with the applicant. Pursuant to Para. 2 of the same provision, the request is left without consideration if it lacks the information listed in Art. 25, Para. 1, items 1,2 and 4. The court found that the request

contains all necessary attributes under the APIA, therefore it cannot be left without consideration and the secretary of the municipality should issue a decision on the merits of the request.

Appeal:

The ACY's Ruling was appealed by the mayor of the municipality before the Supreme Administrative Court (SAC).

Ruling on the appeal:

By Ruling No. 9366/04.07.2014 (in Bulgarian), the SAC left the appeal without consideration since the mayor of the municipality has not been a party in the proceedings before the first instance court, consequently he does not have a right to challenge the delivered court ruling.

Second appeal:

The Ruling of the Three-member panel of the SAC was challenged by the mayor of the Municipality of Yambol before a Five-member panel of the SAC.

Ruling on the second appeal:

Ruling No. 12067/13.10.2014, a Five-member panel of the SAC upheld the Ruling of the Three-member panel. The Five-member panel completely shares the conclusions made by the Three-member panel that the mayor was not a party in the proceedings before the first instance court, consequently he does not have a legal ground to challenge the Ruling of the ACY which repeals the refusal of the Secretary of the Municipality.

The Ruling of the SAC was final.

ACCESS TO INFORMATION IN BULGARIA 2014

Report

English

First edition

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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.

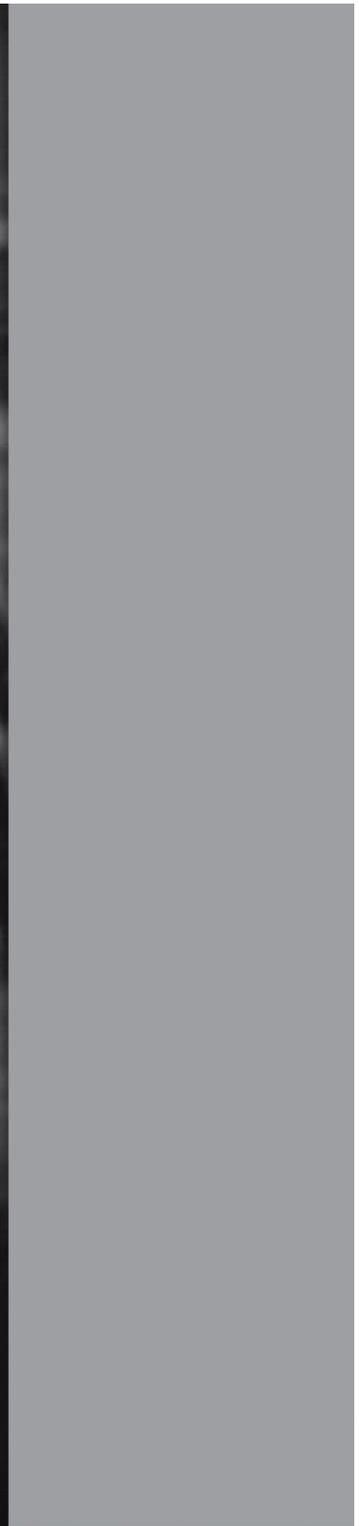
Activities

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.



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