Access to Information in Bulgaria 2017

Report

The report on the state of the access to information in 2017 presents assessment of the regulations in the access to information area; analysis of the results from the assessment of the proactive transparency of 567 institutions for 2018; analyses of the access to information cases referred to AIP for legal help and consultation during 2017; tendencies in the court practices on access to information cases in 2017.

ACCESS TO INFORMATION IN BULGARIA
2017

ACCESS TO INFORMATION PROGRAMME

SOFIA 2018

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ACCESS TO INFORMATION PROGRAMME

Access to Information Programme was founded on October 23, 1996 in Sofia by journalists, lawyers, sociologists and economists determined to encourage individual and public demand for public information through civic education in the right to know area and to work for transparency of government at different levels, advocating for more active supply of information.

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The America for Bulgaria Foundation assists in strengthening a vibrant market economy and the institutions of democratic society in Bulgaria, helping the country to realize its full potential as a successful, modern European nation. The America for Bulgaria Foundation seeks to enhance the longstanding legacy of goodwill and friendship between the American and Bulgarian people and through many of its programs, to promote the US – Bulgaria people-to-people contacts and exchange of ideas and resources. The Foundation represents the generous face of the American people and embodies the highest standards of US ethical conduct, transparency, and core values.

Access to Information in Bulgaria 2017
Report

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ACCESS TO INFORMATION
IN BULGARIA 2017

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FOREWORD

The report *Access to Information in Bulgaria* is being prepared and published by the Access to Information Program (AIP) team every year since the adoption of the Access to Public Information Act (APIA) in the summer of 2000. It assesses the legislative initiatives regulating the transparency and accountability of the institutions and providing for the exercise of the constitutionally established right of access to information.

Since 2000, many things have changed. At the legislative level, the APIA has been substantially amended over the years. Although Bulgaria rates 55th among the 123 countries[1] with effective legislation in the Global Rating of the legislation on access to information, the lack of an expedite procedure for appealing to an information commissioner, the protection of the right to information and the sanction mechanism provided by the APIA are assessed the lowest in the assessment of different elements of the law.

At the end of 2014, the AIP proposed amendments to the APIA for designating a body for coordination and control on the application of the law.[2] These proposals were not accepted by the legislator, so they did not find their place in the latest amendments to the APIA in December 2015.

So far, Bulgaria has not ratified the Council of Europe Convention on Access to Official Documents (CETS No.205), known as the Tromso Convention.[3] Bulgaria has failed to be one of the first countries to have acceded and ratified this Convention and, accordingly, among countries that have adopted standards in the area of access to information as core values of governance. The main reason for the non-accession of Bulgaria is the lack of a body responsible for the implementation of the APIA.

Regarding the implementation of the law, Bulgaria has a rather rich history, although the time of the law implementation is relatively short. Apart from the AIP reports on the state of access to information, another valuable source for the level of implementation are the Government "State of the Administration· reports, in which data on the implementation of the APIA have been published since 2001.[4]

These data, as we have repeatedly pointed out, as a result of the self-assessment of administrations, would have been useful if they were to be analyzed and recommendations made to administrations on problem-solving in the course of law implementation. In the absence of an authority responsible for the implementation of the APIA, these reports remain without effect.[5]

[1] See: http://www.rti-rating.org/country-data/

[2] For the advocacy campaign and the Concept on Amendments to the Access to Information Legislation, refer to http://www.aip-bg.org/en/publicdebate/Are_APIA_Amendments_Necessary/106099/.

[3] For the AIP campaign for the accession and ratification of the Convention (in Bulgarian): http://www.aip-bg.org/publicdebate/Европейска_конвенция_за_достъп_до_официални_документи/205096/ https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/205/signatures?p_auth=R4ATL7GI

[4] http://www.strategy.bg/Publications/View.aspx?lang=bg-BG&Id=81 (in Bulgarian)

[5] http://www.aip-bg.org/en/legislation/APIA_Implementation/205704/; http://www.aip-bg.org/en/legislation/Visualization_of_the_data_for_the_APIA_implementation/201511/

Despite this major deficit of the Bulgarian legal framework on the right of access to information, there are positive developments related to the ever-increasing proactive publication of information on the websites of obliged institutions, positive developments in the APIA litigation, much greater knowledge of the law and the rights it guarantees, the development of the *Open Data Portal*.[6]

To talk about stable trends in the transparency and accountability of the institutions, we should have sound and consistent legislation in this area, knowledge of the rights and obligations, including case law and better management of information, so that proactive publication and providing information on demand is quick and effective.

With regard to the legislation, we see attempts to limit some of the rights, in particular the right of appeal. These attempts are reviewed in the first part of this report. The author is Alexander Kashumov.

Regarding the awareness about the rights under the APIA, this is a process that requires constant efforts and resources.

With respect to information management, the process also requires a clear understanding and commitment to the values of open and accountable government.

The part devoted to the proactive publication and the results of its assessment in 2018 was prepared by Stephan Anguelov and Gergana Jouleva.

The practical problems related to the electronic submission of requests and the receipt of answers and information on them were presented by Kiril Terziiski, who is also the author of the analysis of the APIA litigation and the selection of the court cases annotations annexed to this report. The summaries of the cases in which the AIP legal team worked in 2017 were prepared by Darina Palova.

The authors of the report thank the whole team of the AIP, who worked on the assessment of the active transparency of the institutions. Without the efforts of Diana Bancheva, Ralitsa Katsarska and Nikolay Ninov we would not have the exact picture of the changes that occurred in 2017.

We hope that the 17th Access to Information Program report will contribute to improving the state of access to information with recommendations to participants in the process.

The report begins with these recommendations.

Gergana Jouleva

May 2018

RECOMMENDATIONS

The recommendations with respect to the existing legislation and its implementation and interpretation are the following:

A. Amendments to the Access to Public Information Act (APIA):

- to designate a public body to coordinate and control the implementation of the obligations under the APIA by the executive power;
- to ensure an efficient mechanism for imposing sanctions on public officials for violating the APIA;
- to establish a mechanism for quick and free processing of complaints by an independent public body (Information Commissioner or Commission);
- to provide for expedited court proceedings in cases of complaints against decisions to refuse access to information under the APIA;
- to abolish the imposition of attorneys' fees in court cases initiated upon a claim for violation of the right to access information under the APIA;
- to extend the obligation for disclosing public information to all entities, the capital of which is held directly or indirectly by the State and the municipalities, or which provide public services under the control of, or by virtue of an assignment from the State and the municipalities.

B. Amendments to the Protection of Classified Information Act (PCIA):

- to introduce a ban on classifying information related to violations of human rights, or which conceals corruption and crime, as a state or an official secret;
- to introduce automatic declassification of specific categories of classified information;
- to introduce an obligation for institutions to publish lists of declassified documents.

C. Other recommendations related to the legislation:

- to adopt provisions ensuring the transparency of sessions and meetings of state authorities related to their activities through the establishment of obligations for record keeping (open government);
- to provide for effective obligation for proactive publication of the assets and interests[7] declarations of public officials.

D. The Government should undertake steps to sign and ratify the Council of Europe Convention on Access to Official Documents (CETS No.205).

E. The Chairperson of the Supreme Administrative Court to return back public access to the court cases data related to the administrative bodies – sides in the proceedings, and to the rest of the information which is not protected personal data.

[7] Anti-corruption Law and Forfeiture of Unlawful property, 2018, art.35, Para. 1, Item 2

The recommendations with regards to the „Access to Information" sections and their content and with regards to the proactive publication of information on Internet sites are:

The following recommendations require a review of the existing information volumes, data bases, and registers of records of the institution for a legally compliant and more efficient maintaining of the „Access to Information" section:

- to make the „Access to Information" section a mandatory part of the website;
- to position the section in the main menu of the website of the institution;
- to review and amend the internal rules in compliance with the obligations for proactive publication and the changes in the law; to assign teams responsible for these activities, as well as for overseeing the implementation of the obligations, including the obligations related to the proactive publication of information;
- to publish as an open text explanatory information for citizens on how to exercise their right to information and re-use public sector information in the respective institution;
- to publish explanatory information about the information data sets, and the registers;
- to pay attention to the indications for the update of the information, published on the websites;
- to comply with the norms determining the costs for provision of information under Order of the Minister of Finance No. 1472 dated 29 November 2011.

The recommendations with regards to the processing of the access to information requests submitted by e-mail:

- to signify in the explanatory information published in the "Access to Information· section an electronic address for filing the requests;
- to unify the procedure for the provision of information by e-mail – logging; receipt notification with a subject, containing the Reference number from the register of the institution; decision; requested information; requirement for confirmation of the at the receipt of the information;
- Obligatory registration of the electronic requests;
- Notification of the requestor for the date on which the request is logged;
- Sending the decision for the provision of the information and the information at the e-mail signified by the requestor;
- Sending out the decision for refusal at the postal address signified by the requestor.

LEGISLATION ON ACCESS TO INFORMATION

Review of 2017 legal initiatives and amendments related to the access to public information

The APIA amendments as of 2015 improved substantially the legal framework regulating the electronic provision of information, as well as the re-use of public sector information. In 2016, the secondary legislation – the regulations related to the licenses and formats for the re-use of public sector information, were adopted as well. Only the task for the launch of an access to information platform where citizens would file their electronic requests, remained unfinished. Pursuant to the new amendments, it was bound to be launched and managed by the administration of the Council of Ministers. In 2017, however, no initiative was undertaken for the practical construction of the platform.[8] At the same time, for a successive year, the Government, without any explanation, did not undertake any steps for the ratification of the Council of Europe Convention on Official Documents (CETS No.205), open for signature by member-states since 2009.

In 2017, as a result of the demonstrated will of the Government for a strengthened prevention and fight against the high-level corruption, a new Anti-corruption law was adopted. Several institutions with functions in the prevention of the corruption area were closed and their powers were transferred to the newly established commission by the law.

Within the framework of the 2017 public debate, a number of critical remarks and recommendations remained unaddressed, bringing to the adoption of a law, which did not provide for a clear vision on how the prevention of corruption would be realized. The main concepts in the law are unclear, including the definition of corruption, there is no clear distinction between prevention and repression with regard to the corruption, and there are some prerequisites for a lack of transparency regarding data about potential conflict of interests of government officials. The functions of the newly established commissions range from analysis of the corruption environment and maintaining of registers with the declarations of interests of high government officials, to the implementation of special surveillance means, distrainment, and seizure of property attained by crime. Such an extended mandate without a clear internal connection between each of the powers hides a risk for dispersed and disfocused work of the new state authority and a perspective of no tangible results. Another issue are the showing-up of the 2018 appointed chairman of the commission and the appearance of its employees at public places to carry out investigative actions, which create the notion that priority would be given to unobtrusive to its powers functions related to the cooperation of the criminal investigation.

Another peculiarity of the 2017 legislative activity is the attempts to weaken the judicial control over the legality of the acts of the administration. Draft laws for amendment to the Administrative Procedure Code (APC) were sponsored, containing motives in which the citizens were frankly and unobtrusively referred to as sources of „torment" for the administrative justice system for filing complaints, and not as carriers of Constitutionally

[8] In 2017, officials at the Modernization of the Administration Directorate at the Council of Ministers initiated a discussion of the draft terms of reference for the development of the platform with representatives from the AIP team.

granted rights whose protection is the main purpose of the existence of that system. In the end of the year, a draft law for amendments to the APC was sponsored which proposed the establishment of a Central Administrative Court which would have paralleled the constitutionally established functions of the Supreme Administrative Court (SAC). Simultaneously, a request was filed for interpretation of the Constitution at the initiative of the Plenum of the SAC with the open intention for clearing up the legislative path for such a parallel establishment.[9] Thanks to the Constitutional Court Decision as of 2018,[10] upholding the rule of law, the seizure or slowing down of those negative processes was possible.

The repeal of the access to a second (appeal) court instance in legal cases on the lawfulness of the Environmental Impact Assessments on big energy and infrastructure projects turned successful, though.[11] Thus one of the pillars of the Aarhus Convention which is a fundamental international treaty with regard to the access to environmental information, specifically – access to justice, was seriously shattered.

With the enactment of the 2016 Normative Acts Law amendments, the transparency of the legislative process has *de jure* improved. *De facto*, in 2017, we have witnessed examples of decrease in the transparency. Substantial amendments to key legislation like the Administrative Procedure Code, the Judicial Power Act, the Environmental Protection Act, etc. were moved to National Assemble (unicameral parliament) without complying with the statutory time for public discussion. In the case of the Draft Law for Amendments to the Environmental Protection Act, the time between its sponsoring to its vote on a second reading was 16 calendar days. i.e. a period almost twice shorter than the legally prescribed one for public consultation, which in that case was missing.

During the year, the rules of the Supreme Administrative Court[12] remained unchanged, according to which decisions and rulings of the court are published after anonymization of all data concerning the parties to the cases, including the names of the state authorities, legal entities and the names of the attorneys. A panel of the SAC upheld the ruling of the first instance administrative court,[13] according to which citizens and journalists have no legal interest in challenging these rules. The case raises questions about the compliance of the rules and the court decision on the appeal against their lawfulness with the European Convention on Human Rights.

Positive developments in the year were the reduction of the high fees paid to the administration and as a burden on citizens in the court cases. As the case law developed, the amount of legal fees awarded was considerably reduced.

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[9] The AIP submitted its statement on February 20, 2018.

[10] Decision No. 8 as of April, 23, 2018, Constitutional case No. 13/2017 of the Constitutional Court, judge-rapporteur Stefka Stoeva.

[11] The legislative amendments were adopted despite the veto imposed by the President with the motives that the legal requirements and deadlines guaranteeing transparency and public consultation had not been respected. The veto was imposed after a grounded request submitted by the AIP and a number of other nongovernmental organizations.

[12] Internal Rules for blanking out the personal data in the judicial acts already published on the web site of the Supreme Administrative Court – adopted by an Order No. 1369 as of September 7, 2016 of the Chairperson of the SAC Georgi Kolev.

[13] Ruling No. 6219/18.05.2017 on adm. case No. 4422/2017of the SAC, Fifth Division, judge-rapporteur Iliana Doycheva, which upholds Ruling No. 989/14.02.2017 delivered on adm. case No. 11173/2016 in the docket of the Administrative Court – Sofia City.

Access to information, open data, re-use of public sector information

The 2015 amendments to the APIA[14] supplemented the regulation related to the so-called „Re-use" of public sector information.[15] In line with the development of the EU law, which requires Member States to increase the publication of information on the Internet in various formats, including in an open and machine readable format,[16] in 2017 the secondary legislation which regulates this requirement was adopted.[17] The Regulations contained conditions and restrictions in the use and publication of information by public sector institutions.

On the other hand, the introduction and implementation of obligations related to the publication of information by the executive and other public institutions continued through the „opening" of the formats in which information is available on the Internet.

The number of databases available in the government's „Open Data Portal" is increasing. The portal was created within the implementation of the APIA[18] and the Second National Operational Plan for the international initative „Open Government Partnership", to which Bulgaria joined in 2012. The portal has published more than 8,000 data sets, some of which are in machine-readable format.[19] The information in it is arranged according to institutions,[20] data, formats, licenses, and a search opportunity has been created.

In 2017, the State e-Government Agency was established in the system of the executive power. Its Chairperson has the power to issue methodological guidelines and assist the administrations in defining the structure and content of data sets for publication in the Open Data Portal. The agency is supposed to maintain the portal.[21]

Access to Information and Public Registers

The review of the databases contained in the Open Data Portal shows that these are public registers, access to which is free under a legal rule. The 2015 amendments to the APIA explicitly stated that the obliged bodies under the law could also provide information by referring to the relevant public register.[22] This change is essential because in the case-law before the amendments, it was assumed that the existence of a public register is associated with the existence of a special access procedure for which the

[14] State Gazette, issue 97, December 11, 2015

[15] The legislative amendments were initiated with the purpose to introduce Directive 2015/37/EU for revision of Directive 2003/98/EC for re-use of public sector information. The aim was achieved by the text of Chapter Fourth of the APIA.

[16] See the definitions in § 1, item 7 and item 8 of the Supplementary Provisions of the APIA.

[17] Regulations Setting the Standard Requirements for the Re-Use of Public Sector Information and its Publication in an Open Format, adopted by Ordinance of the Council of Ministers No. 147 as of June 20, 2016, promulgated in SG, issue 48, June 24, 2016.

[18] The Portal was established by the provision of Art. 15 d of the APIA.

[19] As of April 26, 2018, the Open Data Portal contains 7,915 data sets, generated by a legal prescription and maintained by different public bodies.

[20] As of April 26, 2018, the Open Data Portal Contains data made available by 498 organizations.

[21] Pursuant to Art, 15d, Para. 1 of the APIA. Up to now the agency seems to not have undertaken this function, as it is not signified as one of the structures which are maintaining the portal. See section "For the Portal·: https://opendata.government.bg/about.

[22] See Art. 26, Para.1, item.1 of the APIA.

APIA is not applicable. However, it is essential for the transparency of the institutions that access to public registers through the centralized government portal does not lead to the abandonment of their maintenance on the websites of the public institutions themselves responsible for their maintenance.[23]

Oversight Bodies under the APIA

Over the years, the AIP has repeatedly highlighted as a priority issue the lack of a state body responsible for the coordination and overseeing of the implementation of the APIA by the institutions. There is no such a body, first, in the executive system.[24] Next, there is no independent authority, as created by a number of states, to oversee the implementation of the APIA. As for the so-called „public-law entities," the Minister of Justice exercises some powers over them, having the competency to impose sanctions for violations of the law. So far, it is not known to have effective control in this area.

Since 2009, the executive system has no state authority responsible for the transparency of the public administration, including for the development of policies on the transparency and the integrity of the administration, and the public participation in the decision-making process. This situation remains unchanged despite public promises for reform in this area.[25]

When reviewing the structural regulations of the administrations within the system of the executive power, it is apparent that the functions related to the provision of access to public information are assigned to different organizational units. In some ministries, the Public Relations Unit[26] is responsible for examining requests and drafting decisions, in others - the unit responsible for the provision of administrative services, in third - the Legal Directorate.[27] The unit responsible for the provision of administrative services is obliged to provide public information according to the Structural Regulations of the regional administrations[28] and those of some ministries.[29]

There are also ministries where the issue is not addressed in the Structural Regulations at all.[30] This lack of a unified approach is also highlighted in previous AIP reports. It

[23] The Ministry of State Administration and Administrative Reform had such functions. After its closure in 2009, however, the APIA was amended and the functions were not transferred to another public body.
[24] The legislative amendments were initiated with the purpose to introduce Directive 2015/37/EU for revision of Directive 2003/98/EC for re-use of public sector information. The aim was achieved by the text of Chapter Fourth of the APIA.
[25] The subsequent amendments to the Law on the Administration and the Civil Servant Act during the years did not resolve the issue.
[26] These units and departments are often responsible for more general transparency policies and the publication of information in the Internet, but in some cases they also process the access to information requests – see Art. 44, item 4 of the Structural Regulations of the Ministry of Transport, Information Technologies, and Communications.
[27] For example, see Art. 20, item 6 of the Structural Regulations of the Ministry of Justice and Art. 25, item 21 of the Structural Regulations of the Ministry of Culture.
[28] See Art. 15, item 2 of the Structural Regulations of the Regional Administrations.
[29] See Art. 35, item 25 of the Structural Regulations of the Ministry of Education and Sciences, Art. 17, item 16 – of the Ministry of Tourism, Art. 22, item 5 – of the Ministry of Defense, Art. 12, item 11 of the Ministry of Healthcare.
[30] For example, the obligation for the processing of request under the APIA is not included in the Structural Regulations of the Ministry of Foreign Affairs and only the obligation for the provision of information from the archive funds of the ministry is provided by Art. 23, item 9.

testifies to the lack of a comprehensive concept of the distribution of responsibilities in terms of transparency and access to information. Moreover, in the complicated situation in which, besides the activity of dealing with access to information requests, there is an increasing amount of obligations to actively publish and update information on the websites of the institutions, the different functions are assigned to different units. Typically, the units providing administrative services are dealing with the requests, and public relations units are responsible for publishing online information and maintaining the websites of the institutions.[31]

Often, a third type of unit is responsible for the technical support of the websites. In some authorities, specific functions for maintaining public registers are assigned to a unit other than that which is responsible for the APIA.[32]

Such a division between the different functions also exists at the level of the Council of Ministers. For instance, the Directorate „Administrative and Legal Services and Property Management" provides procedural representation in the cases under the APIA,[33] the Government Information Service Directorate maintains the Government website,[34] and the Modernization of the Administration Directorate offers measures to improve access to public information on the basis of received reports from all administrative structures.[35] In a sense, the latter performs the functions of a coordinating unit regarding the implementation of the APIA within the executive system but is not managed by a certain political figure.

Often, the functions of reviewing the requests and maintaining the websites and publishing up-to-date online information are performed by different units.

The distribution of the activities under the APIA is not a problem in itself, if there is internal awareness about it and the respective coordination relations between the different units are established. The Structural Regulations of the Ministry of Health create the impression that such a relationship is built within the institution. There, the Public Relations Unit is responsible for maintaining up-to-date information on the institution's website, organizing, coordinating and monitoring the provision of information at a request, while the Administrative and Legal Directorates assist the process accordingly, prepare statements.[36]

In a number of cases, there is the impression that such a relationship is not clearly established. It is, however, necessary because it is unthinkable that the proactive publication of information and the provision of information at a request are decided upon completely independently and without any link between them.

[31] See the Ministry of Defense, the Ministry of Culture. In the Ministry of Youth and Sports, the responsibiltities of the two departments are vice versa – compare Art. 25, item 14 and Art. 27, item 2 of the Structural Regulations.

[32] For example, in the Ministry of Justice, the maintaining of the register of conflict of interests declarations is assigned to the Management of Human Resources Directorate. In the Council of Ministers, Economical and Social Policies Directorate maintains the online Concession Register pursuant to Art. 72, Item 6 of the Structural Regulations.

[33] Art.67, item 11 of the Structural Regulations of the Council of Ministers and its Administration.

[34] See Art. 77c, item 11 of the Structural Regulations of the Council of Ministers and its Administration.

[35] Ibid, Art .77b, item 3.

[36] See Art. 12, item 9 and 11, Art. 28, item 9 and Art. 30, item 8 of the Structural Regulations of the Ministry of Healthcare.

Access to Information and Prevention of Corruption

In 2017, the government declared a clear will to strengthen the prevention of corruption. The draft law[37] drafted in June-July 2017 within the Ministry of Justice was initially conceived as relating to the prevention of corruption and not to the investigation of corruption offenses, i.e. with the repression. As a major problem to be solved with the adoption of the law, it was raised the existence of a fragmented legal framework and the lack of good coordination between bodies such as the Commission for the Prevention and Ascertainment of Conflict of Interests (CPACI), the National Audits Office, which maintained the Register of Declarations of High Ranking Officials and the BORCOR Analytical Unit.[38] At the same time, besides bringing together the functions of these structures in the new authority, there was also an intention to include some typical repressive functions that do not fall within the scope of criminal investigations. This is how the draft law included proposals the commission for illegally acquired property and the unit in the State Agency for National Security responsible for the high government corruption to be included in the new authority.

As early as in the working groups, and subsequently in the public discussion, criticism against the draft law was made because of the fact that the current experience of the individual structures in their work so far has not been taken into account in order to overcome the practical problems, as well as the literal collection of different functions of different institutions without taking into account their specificities and without seeking a unifying principle.

The law was passed by the National Assembly and came into force in the beginning of 2018, after a veto of the president was overcome.[39] The law regulates the regime of submitting declarations of assests and interest[40] and their publicity, the procedure for reporting corruption, the procedure for the application of special surveillance means and the procedure for securing and confiscation of illegally acquired property. All these activities were assigned to the newly created Commission for Counteracting Corruption and Confiscation of Illegally Acquired Property (Anti-Corruption Commission).

The law provides for merging the existing assets and income declarations with those for conflicts of interest under the generic title of „assets and interest declarations". This legislative decision deserves a positive assessment and is in line with the approach adopted in many other countries. Publicity is provided for the declarations of high ranking public officials. As far as ordinary civil servants are concerned, their declarations are to be public only in the interest part, and not in the assets, as it has been so far. At the same time, however, unlike the previous regulation under the Law on Prevention and Ascertainment of Conflict of Interest, according to which the the former Commission for the Prevention and Ascertainment of Conflict of Interests examined the signals and complaints of conflicts of interest against officials from the whole country, the Anti-Corruption Commission is limited to examining the cases, related to persons on high public positions.

[37] A representative of the AIP was also included in the working group.
[38] Center for Prevention and Fight Against the Corruption and Organized Crime.
[39] Promulgated in State Gazette, issue 7, as of January, 19, 2018, amended SG, issue 20 as of March 6, 2018, amended SG, issue 21 as of March 9, 2018.
[40] The repealed Law on Prevention and Ascertainment of Conflict of Interests (LPACI), those declarations were signified as declarations under Appendix to Art. 12, item 2, in relation to Art. 14 of the LPACI.

This is a significant step back as investigations of such signals with regard to civil servants are becoming decentralized locally. It is not taken into account that the transfer of control inside the institutions where corrupt action is possible opens a path to a possible ineffectiveness of counter-action. Indeed, the fact that the CPACI had power over all institutions and public officials has led to an increase in the publication of their declarations of conflicts of interest in 2017. The CPACI took this initiative because of data in the AIP annual reports on low implementation rates of the obligation and asked all institutions to indicate where the declarations were published. At present, the law does not provide for a function of coordination and control of the Anti-Corruption Commission regarding those about 120,000 public officials. Consequently, control and publicity regarding their integrity is diminished compared to before.

The submission of corruption reports is considered to be the main source of information for such activities among high government officials. One of the goals of the law was to increase the possibility of submitting such signals. Although protection is provided to those submitting signals by providing for their anonymity, the National Assembly rejected at second reading a proposed provision, according to which they cannot be prosecuted for filing a signal. This creates prerequisites for claims by affected public figures, in cases when the Anti-Corruption Commission found that a signal is not reasonable. In light of the fact that Bulgaria has been convicted by the European Court of Human Rights for violation of Article 10 of the European Convention on Human Rights, precisely because of convictions for defamation vis-à-vis signal submitters and complainants, the text of the law hides the risk of retaliation against the signal submitters instead of protecting them. Thus the adopted legal regime contradicts Art. 32 of the UN Convention against Corruption, which provides for an obligation on the State to provide protection for signal submitters.

These imperfections of the law are further exacerbated by the repressive powers of the Commission, related to the application of special surveillance means and the confiscation of illegally acquired property. In the latter case, the Commission has wide powers to undertake actions in cases when there are proceedings to investigate crimes such as murder, theft, robbery, etc., which have nothing to do with the fight against corruption. As regards the power to apply special surveillance means, i.e. methods of secret surveillance of people, its purpose remains totally unclear in the absence of investigative powers of the Commission. In light of the ECHR's convictions under Article 8 of the European Convention on Human Rights, the thrusting of the Anti-Corruption Commission with such powers leads to obvious problems with regard to the protection of the fundamental rights of citizens.

Effective protection of the right of access to public information

According to the APIA, the protection of the right of access to public information is exercised by the courts in the system of administrative justice. Despite the recommendations of AIP, no steps have been taken to establish an independent authority as a commission/commissioner on access to information. The National Ombudsman has general powers for violations of citizens' rights, but their acts are of recommendatory character, and in the short terms of appeal, citizens naturally prefer the court procedure where binding decisions are made.

In its previous reports, the AIP has made recommendations for changing the legal framework in order to provide faster court procedure in cases of refusals under the APIA. Instead of putting these recommendations under discussion, the legislature has

taken up its own draft laws aiming at ensuring the speed of administrative justice, but at the expense of citizens' rights and, above all, their access to court.

A draft law for amendments to the Administrative Procedure Code was submitted in June 2017. Among other things, it proposes a drastic increase in the fees for cassation appeals against the decisions of the administrative courts. It turns out that a citizen must have 90 BGN (46 EURO for comparison now is 5 EURO) to pay the fee for filing a cassation complaint and for an association or foundation this fee is 450 BGN (230 EURO for comparison now is 26 EURO). In view of the economic situation of the population, this leap in the charges means a radical limitation of the right of access to a court. We can easily realize that precisely for the protection of non-material rights, such as the right to access public information, this „deterrent effect" will be the most serious. Furthermore, the more expensive procedure would also mean that the complainant will receive a hearing in a closed session without hearing the parties' arguments and discussing the written evidence submitted by them in open session. This was another proposal for amendment to the same bill. Whether the hearing is open or closed will be decided without clear criteria, arbitrarily by the Judge-Rapporteur at the cassation instance. Besides these barriers to the access to court, citizens are also receiving others under the noble form of introducing e-Justice. Instead of increasing the publicity of the courts and their acts, it decreases. Citizens, however, acquire the obligation to receive messages in their e-mail, and lawyers – to use an electronic signature. Under the standard of the totalitarian state, more and more stringent obligations are introduced for citizens, while fewer for the courts.

In December 2017, another draft law for amendments to the APC was submitted with the proposal of establishment a new court to duplicate to a certain extent the activity of the Supreme Administrative Court. A Central Administrative Court was envisaged to perform the functions of a primary court with regard to acts of ministers. Decisions under the APIA obviously fall in that scope. The bill, however, did not take into account the Constitution regarding the matter. Moreover, no question was set whether a judge in that new court should meet the requirements for a Supreme Judge. Legal activity seemed to be considered as any manufacturing activity, and by creating a new organizational unit it would mean that the „machine" would start to produce court judgments.

Whether in connection with this proposed legislative amendment or for any other reason, in 2017, the Supreme Administrative Court plenum referred to the Constitutional Court whether the SAC is obliged to rule on the legality of the acts of the Council of Ministers and the Ministers. The main reason for the request for interpretation of the Constitution was the workload of the court. However, the Constitutional Court's decision as of April 2018 did not accept the suggestion of the SAC plenum that another court could fulfill the SAC's powers of supervision over the legality of acts of ministers and the government. In view of this decision, this draft law is likely not to reach the intentions of its sponsors.

There is no doubt that the problems of the judiciary, including the Supreme Administrative Court, as the supreme judicial authority in the system of administrative justice, must be resolved in order to improve the administration of justice. However, progress must be made through solutions based on an in-depth analysis of these issues, a broad public debate, and the preservation of the core value protected by that system – the citizen's right of access to justice.

In any case, the principle of independence and impartiality of the court must be upheld in the realization of the ideas for its development.

RESULTS FROM THE CIVIL AUDIT ON ACTIVE TRANSPARENCY 2018

The Context

The Access to Public Information Act was substantially amended in December 2015. Most of the new provisions came into force in January 2016. The new provisions require the proactive publication in prescribed timeframes of a considerable number of documents generated and held by the authorities, the establishment of mechanisms for responsibility and internal control over the fulfillment of the obligations, training of officials on the Law of Amendments to the APIA, a clearly defined procedure for registration and responding to electronic requests and others. Thus, it was necessary to reconsider the existing internal rules in the authorities so as to ensure organizational and effective implementation of the law.

Besides the general 17 categories of information subject to publication on the Internet under Art. 15, Para 1 of the APIA, the effective implementation of the new obligations for proactive publication would require an extended content of the Access to Information Sections and the preparation of explanatory texts.

It should be taken into account that the law did not provide for financial resources for the implementation of those new obligations. After the 2007 APIA amendments, the authorities should have assigned officials directly responsible for the provision of information. After the 2015 amendments, it was necessary to reconsider the organization and management of information data sets so that to comply with the new obligations for proactive publication and the control over their implementation.

In states with a centralized, specialized, and independent institutions, like the Office of the Information Commissioner/ Commissions, the proactive publication is coordinated by these public bodies, or they at least unify the publication schemes.

The Access to Public Information Act does not provide for a public body to oversee and coordinate the implementation of the law.

The surveys which the Access to Information Programme performs fill in the gap of that deficiency.

The AIP has been publishing the results from the systematic monitoring on the implementation of the APIA since the adoption of the law. Following the introduction of specific legal obligations (2008) for proactive publication on the Internet after 2010, the AIP has developed a monitoring tool for assessing the publications on websites and the monitoring results can be accessed at: http://www.aip-bg.org/en/surveys/.

The surveys during the last three years are performed within the period February – April in order to achieve comparable results, although the online-based assessment tool allows for the assessment of the publications in every single moment.

The Assessment

In 2018, the assessment was performed during the period 6 February – 30 March and has two phases.

Phase 1

It encompasses the assessment of the websites by 7 researchers and the submission of electronic requests for access to information with the same content. The total number of assessment indicators are 108, with 14 additional for the municipalities. The indicators were organized in 4 groups.

- Institutional information – functions, structure, operational information, data sets;
- Access to Information sections and their content in view of the requirements of the APIA;
- Budget transparency, public procurements, and integrity;
- Website accessibility and usability in view of compliance with the needs of persons with visual impairment (Art. 26, Para. 4 of the APIA).

Phase 2 – verification of results

On March 14, the results were sent to all covered by the assessment institutions – 567, for requesting for their feedback. By March 27, they had the opportunity to review the results and send comments and remarks. We have received responses from 45 institutions and we are grateful for their cooperation.

The websites of 567 institutions were assessed, encompassing 18 ministries and the Council of Ministers, 151 regional offices of executive bodies, 90 state and executive agencies and state commissions, 11 independent bodies of power, 2 public-law bodies, and 265 municipalities.

Considering that 559 administrative structures are obliged to submit reports to the Integrated Information System of the State Administration under the Law on the Administration, the AIP assessment covers 100% of the administrative structures within the executive system.

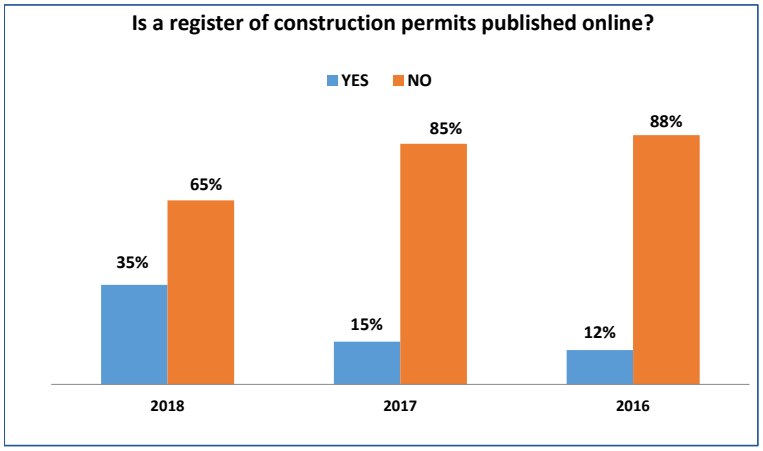
567 electronic requests were filed for the **2017 APIA Implementation Report**. The aim was to draw the picture of how electronic requests are handled – registration, notification of requestors for the receipt of the request, provision of information by e-mail, compliance with timeframes. That is why we requested information which the authorities had an obligation to prepare (Art. 15, Para. 2 of the APIA) and to publish on their websites (Art. 15a, Para 2).

Results

Positive Developments

There is a continuous increase in the publications on the websites of structural regulations, the list and description of the services provided by the respective administration, the registers, the organizational structure, the competitions conducted by the respective administration, the contact information with the exception of the working hours continue to increase. (See Annex 1)

A positive factor in the process of opening data bases and public registers (subsequently, the process of proactive publication) was the launching of the Open Data Portal – also introduced with the 2015 APIA amendments. The active involvement of the Council of Ministers in the process of uploading data on the portal and the trainings held during the year have drawn the attention of the administration to the new obligations and expedited the process as a whole, especially with regard to the publication of data sets and public registers on the official institutional websites. For instance, the publications of construction permits registers have increased with 20% during the past year.

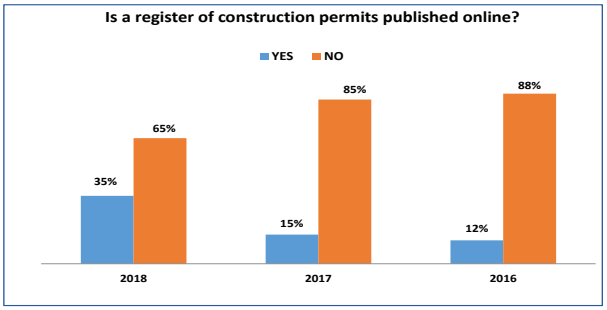


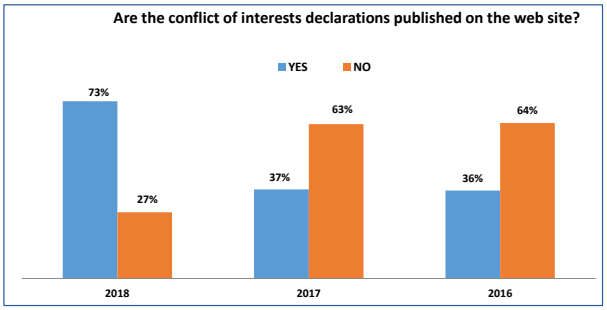
Systematic publications of normative acts, draft normative acts and accompanying motives, preliminary impact assessments, reports from public discussions, general administrative acts and notices for opening of proceedings for their issuance are increasing. (See Annex 2)

Publications of strategies, programs, development plans and reports on them are also increased. (See Annex 2)

Publications related to financial transparency and public procurement are increasing. (See Annex 3)

The most significant is the leap of publications related to conflicts of interest declarations.





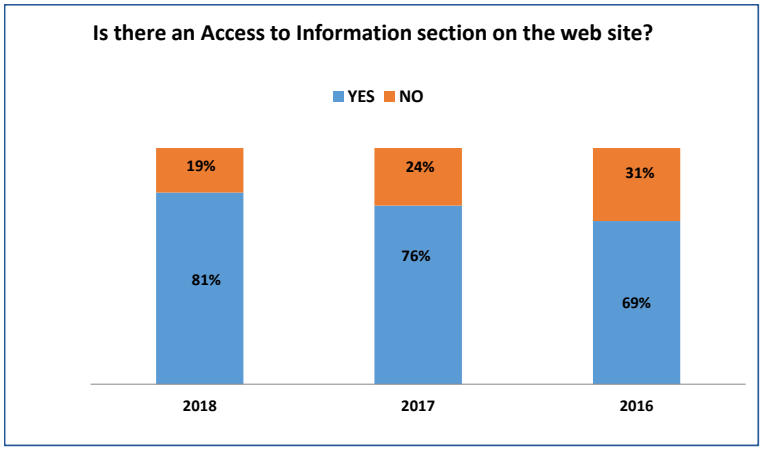
Leading in the publications are the regional governors, followed by the municipalities and the independent bodies of power.

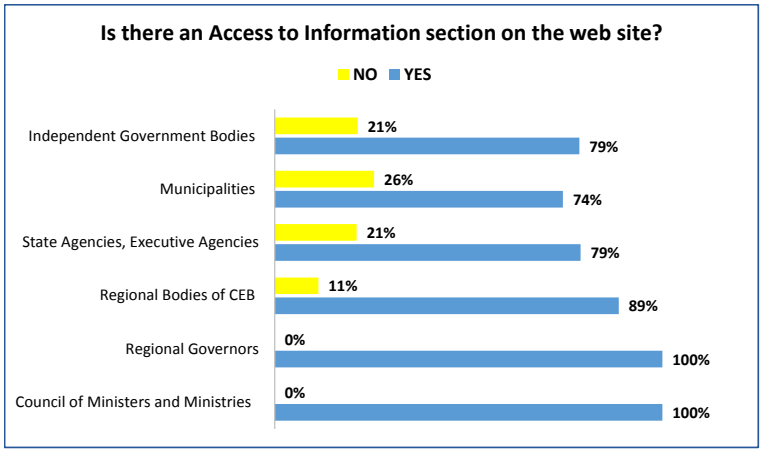
Access to Information Section

The launching of that section, an obligation since 2008, has been ignored by the institutions for a long time. In 2017, 76% (428) out of the 566 institutions have such sections. This is a considerable improvement compared to the previous year. The ministries and the regional governors' administrations are with the highest level of implementation, the latter reaching 100%.

Regardless of the obligation for the maintaining of an *Acces to Information* section since 2008, only 460 of the covered institutions have such a section.

There is a positive tendency of including the *Acces to Information* section in the website structure by default.[41] All ministries and regional governors have and maintain such a section on their websites.





With regards to the required content of the *Access to Information* section, we have found good implementation on only 4 websites – the Ministry of Finance, Regional Governor's Administration – Blagoevgrad, Municipality of Belogradchik and the Regional Department of Education – Blagoevgrad.

[41] Mandatory standard for all new websites.

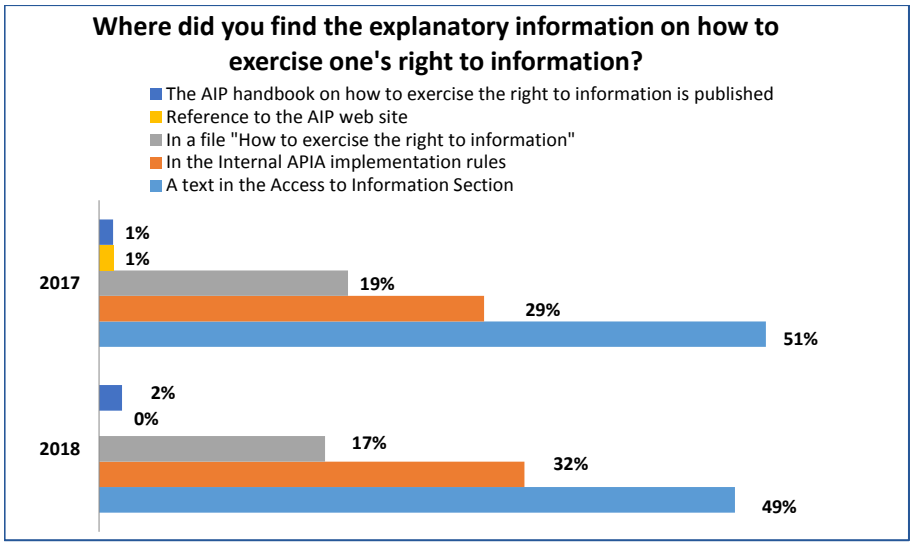
Let us have a closer look at the implementation of the obligations related to the *Access to Information* sections (See Annex 4).

While the purpose of publishing on the institutions' websites is clearly defined in the APIA, namely to ensure transparency and to enhance access to information, this goal is not leading in the concept of design and maintenance of the *Access to Information* sections.

This section should be easily found in the main menu on the official website. As of 2018, 65% of the institutions have taken the section to the main menu and it is easy to find.

Information about the department responsible for accepting and coordinating the work on access to information requests is also far from a 100% implementation, with the exception of the Council of Ministers and the Ministries. This information can be found in 68% of the websites of the assessed institutions. (See Annex 4 for details on the information about the department). Given that it is this department that engages in contact with requestors, clear information in open text about who, where, and when accepts requests will make it easier for both requestors and the institution to handle applications.

Other important information is the explanatory information on how to exercise the right of access that we find in 60% of the websites. It should be taken as a headline in the *Access to Information* section. However, the data show that only 166 (49%) of the 342 institutions that have explanatory information published it in the *Access to Information* section as open text, and not just as a part of the Internal APIA Implementation Rules.



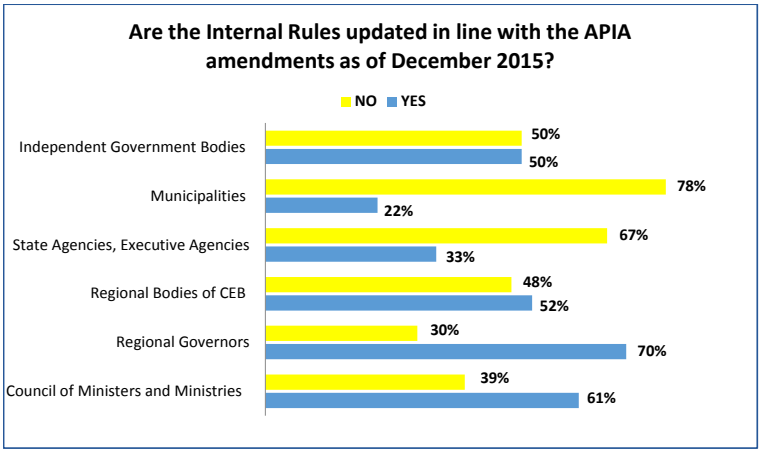
A mandatory component of the *Access to Information* sections are the Internal APIA Implementation Rules, the content of which should also be analyzed. The AIP made such an analysis in the 2012 report *Access to Information* in Bulgaria and also a publication last year[42] that highlighted the elements of the internal rules showing the established internal organization, identifying the responsible persons / units, identifying

[42] Management and Control of Access to Information, June 2017 issue of the AIP e-newsletter: http://www.aip-bg.org/publications/Бюлетин/Управлението_и_контрола_на_достъпа_до_информация/100306/1000875728/

the coordination and control unit responsible for the fulfillment of the obligations under the law. Additionally, in relation to the Law on Amendments to the APIA, we were interested in the provisions related to the new obligations under the law and their implementation – a unit responsible for the proactive publication, the control over the publication of information, provisions on the content of the *Access to Information* section.

The Internal APIA Implementation Rules had to be updated in compliance with the December 2015 amendments, in order to serve as the basis for the establishment of new organization for the provision and publication of information, and also to include the terms and conditions for public sector information.

Data shows that only 45% of the institutions with internal rules have updated them after 2016. The smallest number of institutions which have updated their internal rules belongs to the municipalities.



Although institutions publishing their Internal APIA Implementation Rules in the *Access to Information* sections are increasing, they are still under 90%.
(See Graphs 26 and 27 of Annex 4).

Other essential information that we have to find in the *Access to Information* sections is about the conditions, the procedure, and the norms for access to the databases, the public registers and the information that the institution maintain, the so-called terms and conditions for the re-use of public sector information. This information is published in an insignificant number of sections. (See Graphs 16, 17, 18, 36 of Annex 4 of this report).

In the *Access to information* section, the annual APIA implementation report should be published. These reports were published by 69% of the assessed institutions. The content of the reports is structured by the requirements under Art. 15, Para. 2 of the APIA and additionally by the requirements of the reporting forms for submission of information to the Council of Ministers as the annual reports are part of the annual reports under Art. 62, Para. 1 of the Administration Act. The AIP makes annual analyzes[43] of the data provided on access to information in these reports.

[43] For instance: http://www.aip-bg.org/en/legislation/APIA_Implementation/205704/ and analysis on the occasion of the 15th anniversary from the adoption of the APIA: 15 Years of APIA Implementation, August 2016, AIP e-newsletter.

In our assessment of publications, we also explore some additional conditions for exercising the right of access to information such as:

- Transparency of the lists of categories of information classified as official secrets;
- Transparency of the process of declassification of documents under the requirements of the Protection of Classified Information Act and its regulations;
- The list of the categories of information, subject to mandatory publication online concerning the sphere of activity of the respective administration, as well as the formats in which it is available (Article 15a, Paragraph 3 of the APIA);
- Information about the place of review of the information provided within the institution itself.

Ratings

Interesting for the institutions and the media are the results from the assessment, forming the rating of the institution.

In 2018, among the ministries and the Council of Ministers, the Council of Ministers and the Ministry of Finance ranked first. The Ministry of Finance has been leading the rating of active transparency for years, but this year was overtaken by the Council of Ministers, which launched its new website, prepared for several years.

Among the regional governor's administrations, Blagoevgrad and Dobrich are traditional leaders.

Among the state agencies, the leading are Archives State Agency and the State Agency for National Security.

The Commission for Consumer Protection is the leader among the state commissions.

The Geodesy, Cartography and Cadastre Agency is the first among the executive agencies.

The Nuclear Regulatory Agency and the Customs Agency are the leaders among the state institutions established by law.

The already closed Center for Preventing and Countering Corruption and Organized Crime at the Council of Ministers and the National Centre for Information and Documentaion are leading among the state institutions established by ordinance.

The Communications Regulation Commission and the National Audit Office are the leaders among the independent bodies of power.

Positive developments are also observed in municipalities. With very few exceptions, all municipalities show an improvement in the results of active transparency.[44] There, Bansko and Beloslav are leading the rating.

Although 151 regional units of executive bodies depend heavily on the transparency policies conducted by their principals, among them the Regional Health Inspectorate – Silistra and Regional Inspection on Environment and Waters – Blagoevgrad rank first.

[44] http://www.aip-bg.org/en/surveys/Comparative_atings/208903/?InstCategoryID=IN0012&ProvinceID=

Problems

The results of the active transparency audit carried out in 2018 together with the positive developments have shown problems that we have observed for years.

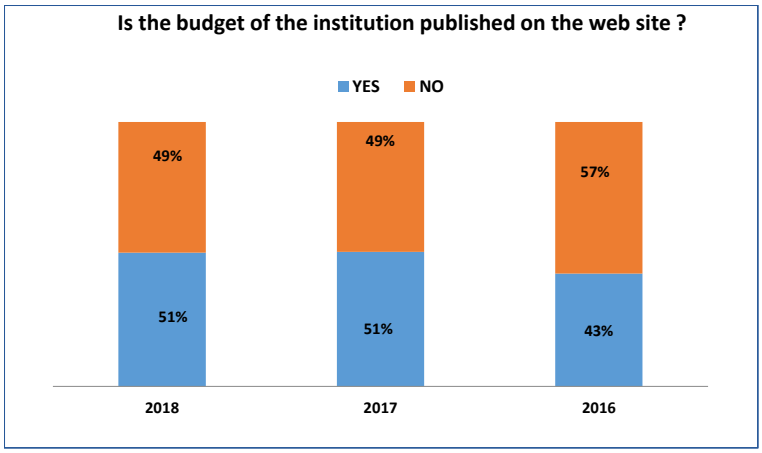
1. The provision of information and publication on websites is related to the good management of the information resources and datasets within the institution, which is not a fact.
2. There is no system for handling electronic requests in many institutions. Out of the 567 public bodies, only 98 have a system for registering electronic requests and notifying the requestor for registration, which is 17% of the surveyed institutions.
3. There is no coordination, which means a body that sets common models and assists authorities in following the models when publishing information and handling electronic requests.
4. Without control and sanctions for incompliance, the level of improvement in the proactive publications is very slow.

BUDGET, FINANCIAL TRANSPARENCY, PUBLIC PROCUREMENTS AND INTEGRITY

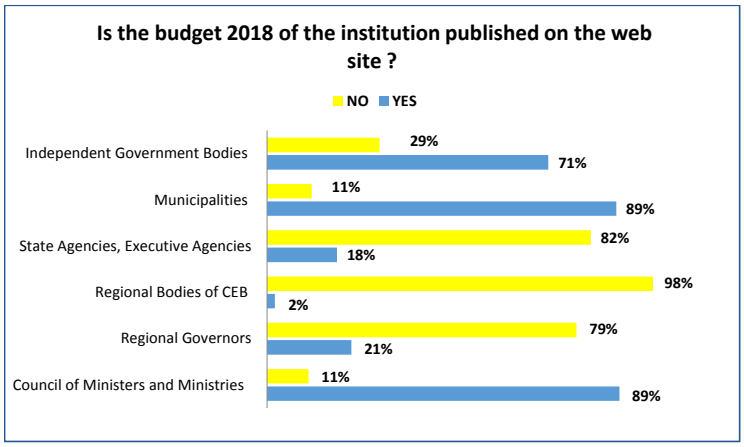
For another successive year, the AIP has assessed in its survey Civil Audit on Active Transparency whether executive bodies publish their main financial documents, information related to public procurements, and the conflict of interest declarations of their officials. The larger part of the assessment criteria for budget and financial transparency reflect the obligations for publication under the Public Finances Act (PFA), enforced since January 1, 2014. The Public Procurement Act (from 2016) provides for not a small list of documents under different procedures required for publication. In our survey this year, we reduced the assessment indicators compared to 2017, checking for only a few of the most frequently published categories of documents. Such are the „Buyer Profile" section, the announcements, public procurement documentation, proceedings of commissions' meetings and contracts. In the end, we will look at the conflict of interest declarations. The level of publication of the conflict of interest declarations has been assessed since 2012 in line with the obligations encoded in the current Law on Prevention and Ascertainment of Conflict of Interests (LPACI). The law was repealed in the beginning of 2018 and substituted in its part related to the conflict of interests by the Law on Combating Corruption and the Withdrawal of Illegally Acquired Property. The declarations for assets and interests under the new law still had not been published at the time of our audit – 6th February – 30th March 2018. However, maybe as a last breath of the old law, we have registered record level of publication of the already old conflict of interests declarations.

The good news is that we have observed increase in the financial publications of almost all categories. Apparently, the AIP audit works as a stimulus for the institutions to be more open to the citizens at least on their websites.

1. Budget and Financial Transparency

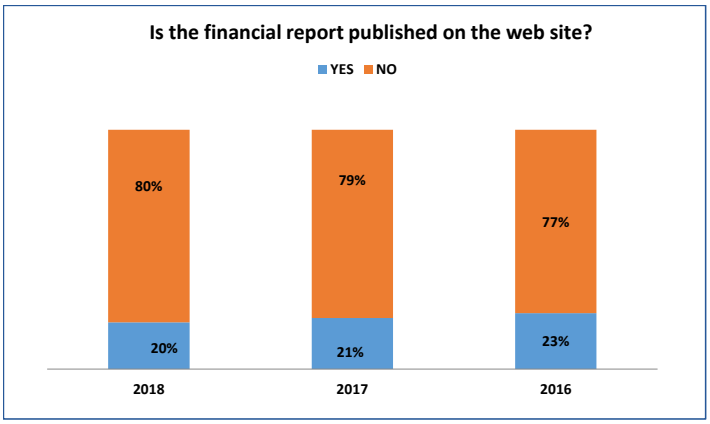


Similarly to the last years' results, over half of the assessed institutions have published their budget. These are 287 authorities out of all 567 audited.



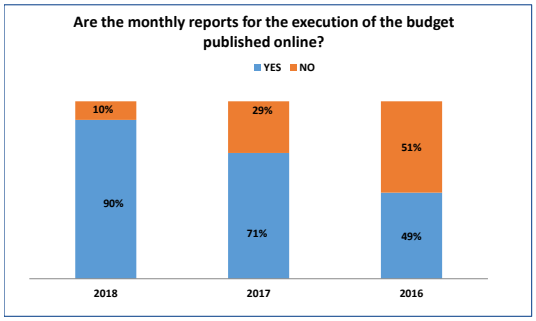
As the above graph shows, The first degree budget spending units (FDBSU) – ministries, state agencies, municipalities, independent bodies of power – are still champions as far as the implementation of the obligation is concerned. The number of second degree budget spending units that have published their budgets for the current year has also increased – executive agencies and regional units of central government bodies. A distinctive leap of over 14% has been observed in the publication of budgets for the previous year, meaning that almost two-thirds of the authorities fulfill this obligation. An explanation could be that the audit is performed in February – March when the budget procedure is not always completed by all budget spending organizations and some of them publish their current budgets later in the year.

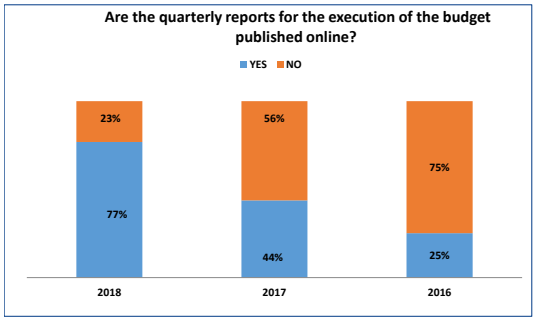
The category in which we see a decrease in the publication in comparison to the previous year is the one associated with the annual financial reports. This obligation covers only the first degree budget spending units. We have found only 111 annual reports on the spending of the 2017 budgets. These are nearly 20% out of all institutions or 36% out of the first degree budget spending units. The number is smaller compared to the data from last year where 121 (about 21% out of all audited institutions or about 39.5% of the first degree budget spending units) had published their 2016 financial reports. This outcome may have been influenced by the period in which the survey was performed. In 2018, we reviewed the websites of the institutions in February and the beginning of March, while previous years we started later. It is also obvious that the procedures for the adoption of the reports have not been completed everywhere during these months, since as usual we have found considerably more published reports for 2016 – 263 (about 46% out of all audited institutions. There is an increase of around 8% under that indicator compared to the previous survey.



The Public Finances Act obligates the first degree budget spending units to publish monthly and quarterly reports regarding the execution of their budgets. Implementing this obligation is easy, as the first degree budget spending units prepare and send these reports to the Ministry of Finance. The implementation of the obligation for publication has been growing in previous years and the tendency has been preserved. In 2016, just about 49% of the first degree budget spending units had monthly reports available on their websites. Even less, around 25%, had published quarterly reports.

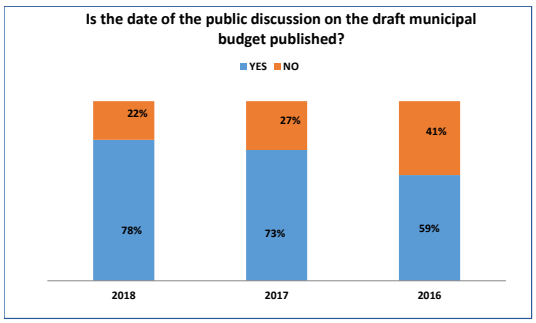
In 2017, we registered a sudden rise in the number of obliged bodies that have published their monthly reports – 22% (217 out of a total of 306 first degree budget spending units, which is 71% of obliged bodies). There was a rise in the number of institutions that have published quarterly reports as well – 134 or 44%. In 2018, the level of implementation reaches 90% for the monthly reports (total of 275 bodies) and 77% for the quarterly financial reports (235 bodies).

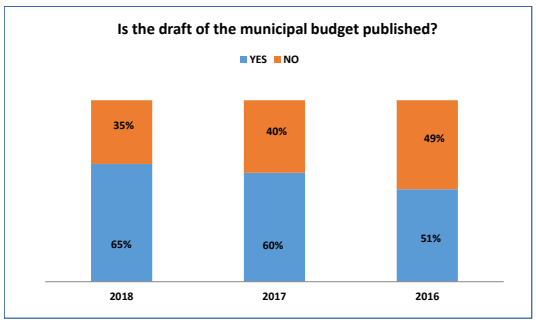




24 public bodies – Council of Ministers, ministries and state agencies, classified as first degree budget spending bodies, are obliged under the Public Finances Act to also apply the so-called program budgeting. The latter dictates that the expenditure be in line with the policies supported by the government under different budget programs and in view of the midterm financial forecast for the budget. 21 institutions have published their 2018 budgets in a program format, and 18 of them have published their annual report on the execution of the program budget.

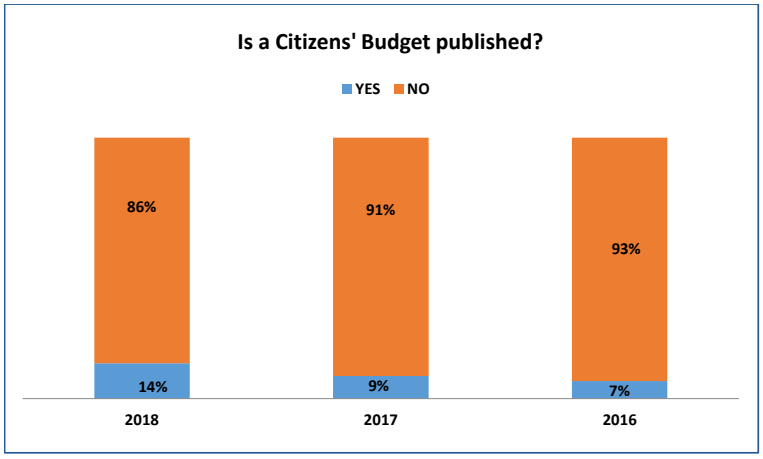
Other specific obligations for publications carried out by a group of public bodies are the obligations for the municipalities to publish announcements for public consultations on the draft annual budget and the reports on their execution. Regarding that phase of the preparation of the financial documents, the law establishes an obligation to publish only the date of the public discussion with the local community, but not the actual drafts of the documents. It is clear that the citizens can hardly form an informed opinion about the discussed documents if they have not been acquainted with their drafts, and thus their participation would be pointless. That is why, the AIP is assessing whether the drafts of the budgets and the annual reports on their execution are published.





The municipalities have again considerably improved the implementation of their obligations under the Public Finances Act. The first example is the substantial rise in the publishing of announcements and draft budgets compared to last year. In 2018, 78% (208) of the municipalities have published announcements, and 65% have published their draft budgets.

The AIP is also assessing whether the authorities have published an explanation regarding the collection and spending of delegated funds. This is the so-called ***citizens' budget***. Currently, only the Minister of Finance is obliged to regularly prepare and publish such a document, called the *Budget in Brief*, which explains in simple terms the priorities and allocation of the government budget. Local authorities can also be bound to such obligations by their own normative acts. Such an example is the Sofia Municipality which has included in its regulations on the municipal budget an obligation to publish in a separate document an explanation of how the budget will be spent in a simple, non-technical language. It would be positive if such a practice spreads among other administrations as well, in order to further clarify their activity to the citizens. Since there are no strict requirements on how to draft or what to include in such a document, we have often counted any additional text or visualization that might help for understanding the budget of the respective administration. Very often these are the presentations delivered at the public discussions of the draft budgets, or even the minutes of these discussions. In 2017, we have again observed a slight increase in the the number of *citizens' budgets* found on the websites of public bodies. The tendency we have found is that more municipalities have started to publish explanations to the draft budgets, which should be emphasized as a positive practice. We have found 28 more such documents compared to 2017, i.e. a total of 77, which is nearly 14% of the total number of assessed bodies.

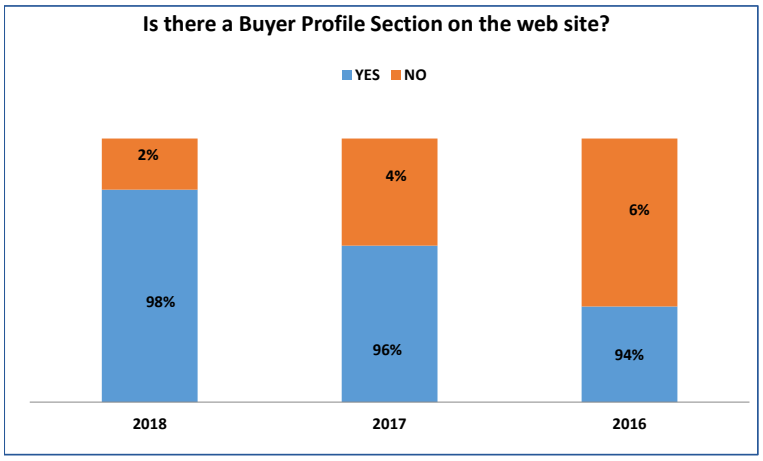


With this optimistic chart we end the review of the results from the assessment of the level of publication of financial documents and direct our view towards another significant area.

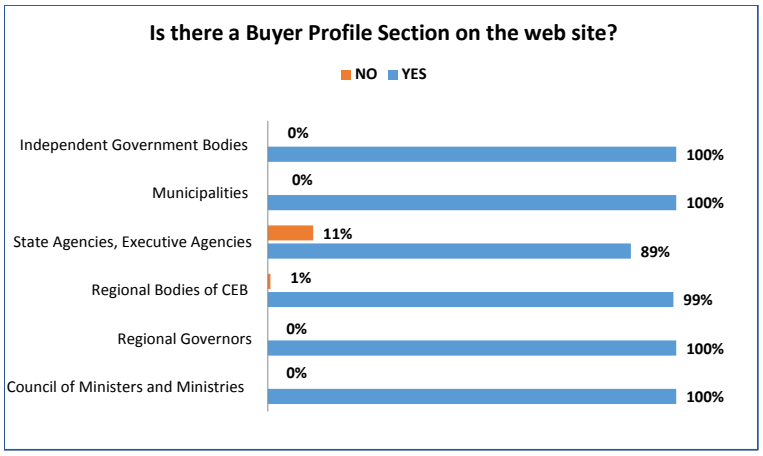
2. Proactive Publication of Public Procurement Documents

In 2017, the Public Procurements Act (PPA) regulating the proactive publication of information concerning public procurement has not been changed. The provisions of Art. 42 of the PPA and Art. 24, Para. 4 of the Regulations for the Implementation of the PPA explicitly determine the categories of information which all contractors should publish proactively in the their websites section – Buyer's Profile. The AIP has decreased the number of indicators for the 2018 assessment. The main reason was that we do not make an overall analysis of the obligations under the PPA which would have evaluated if the publications comply with all requirements. The law provides for different types of procedures and obligations for publication of different categories of information in a variety of hypothesis. An independent audit is necessary for a thorough study of the publication practices under the PPA. What the AIP is doing in the annual active transparency audit is more like a bird's view in order to outline tendencies which may serve as a bases for a further in-depth analysis. We have decided to limit the 2018 assessment to the most frequently published documents under public procurement procedure – the existence of the Buyer's Profile section on the website, the tender calls; documentation; protocols of assessment commissions; contracts.

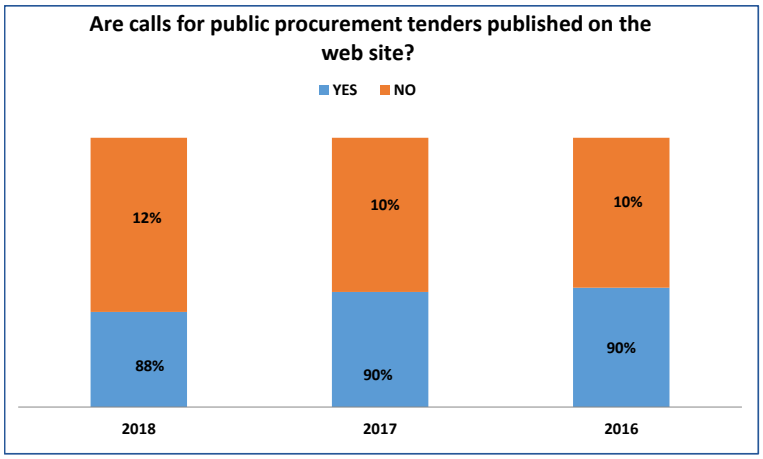
Practically, all assessed public bodies have a section Buyer's Profile, although some institutions have not published anything in it.



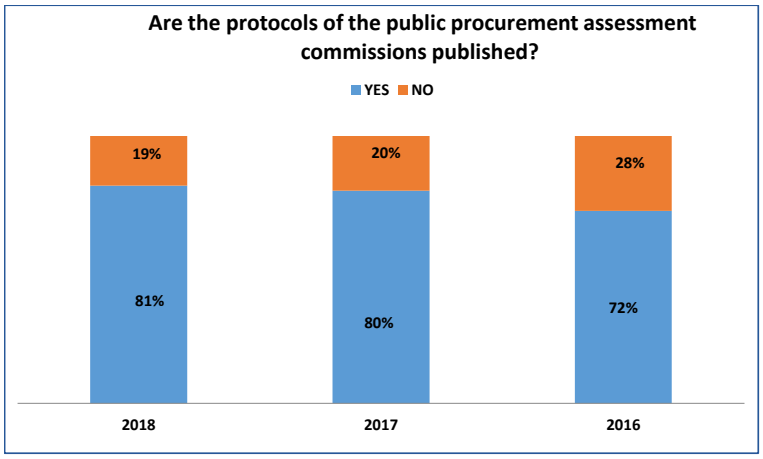
Most of the 11 institutions which have not created such a section on their websites, are secondary budget spending units. This fact implies that they most probably do not sign public procurement contracts.



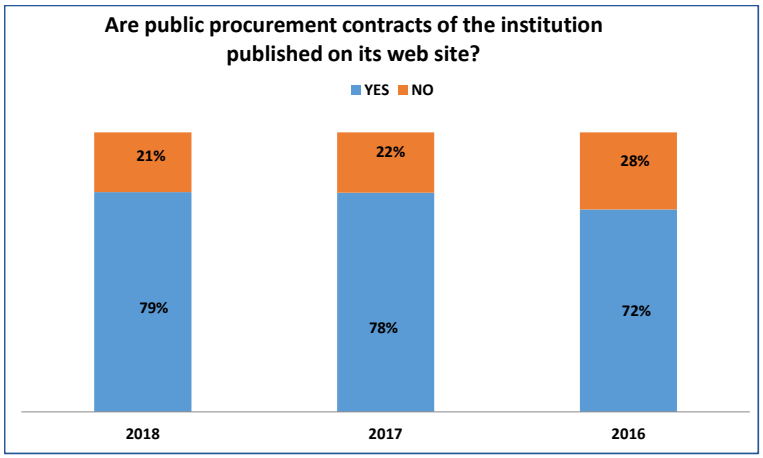
One of the criteria on which we have observed a slight fall compared to last year is the publication of public tenders calls. Negligible is the decline in the publication of public procurement documentations.



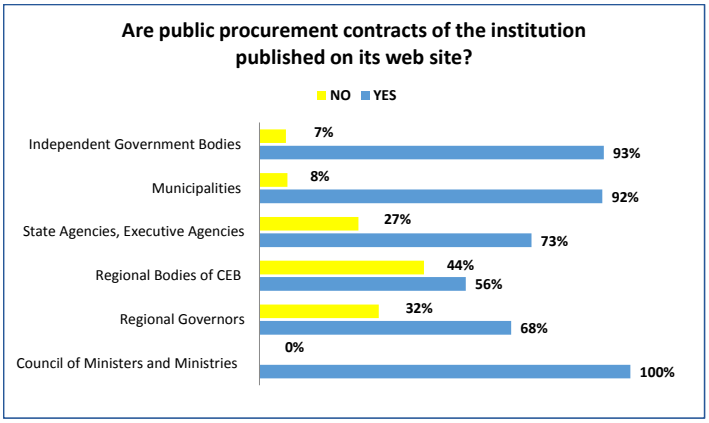
However, the level of publications of protocols of the assessment commissions have been increased.



The number of institutions which have published public procurement contracts has been increasing.



Data related to the publication of contracts by type of public body show that the weakest implementation of the obligation is reached in the secondary budget spending units – regional governors, regional bodies of central government authorities, and some other specific bodies.

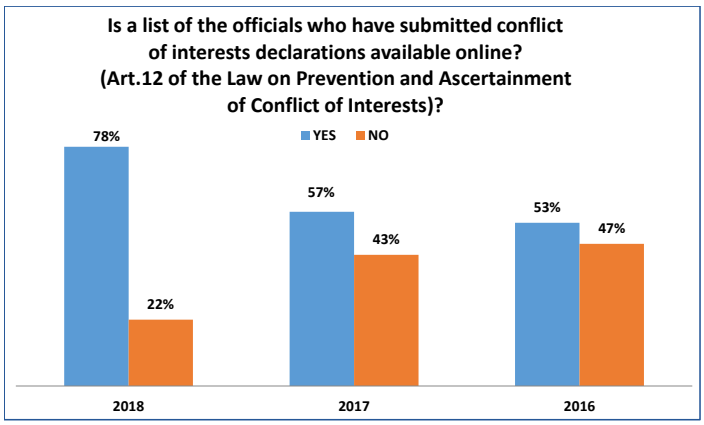


After this quick review of the level of publications of public procurement documents, we proceed to this year most interesting section.

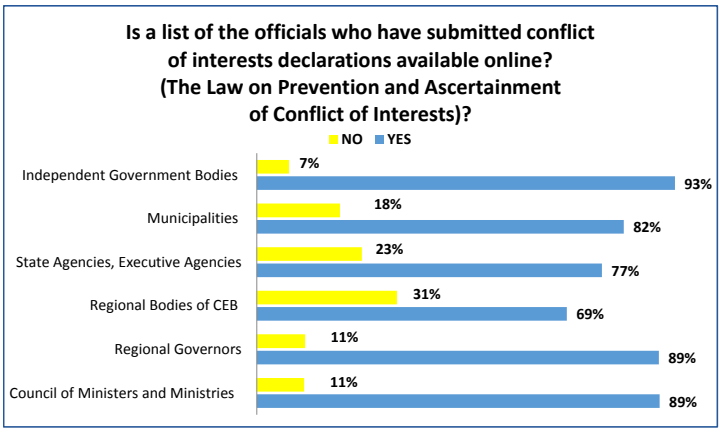
3. Conflict of Interest Declarations

Part of the AIP survey since 2012 onward has been focusing on the assessment of the implementation of the legal norm aiming to achieve higher integrity within the administration by enhancing transparency regarding potential conflicts of interest of the public officials and their management. The assessment includes on one hand whether there is a list of the public officials who have submitted declarations, and on the other hand whether the declarations themselves are published.

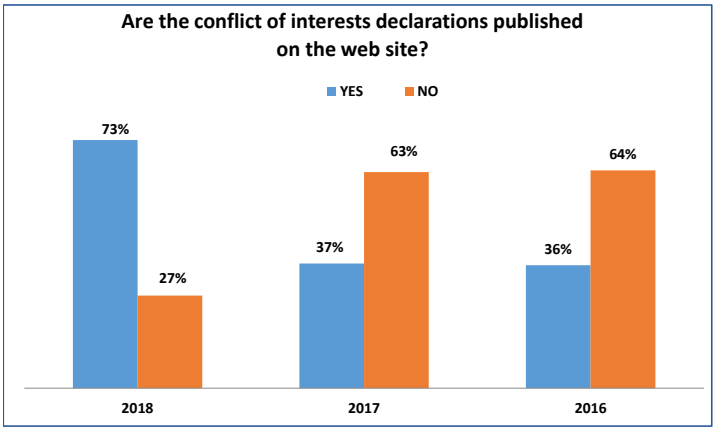
Up to now, hardly half of the assessed public bodies have published lists of the public officials who have submitted declarations. While the number of structures which have published the declarations themselves was around one third. The audit results for 2018, however, show a substantial rise in the implementation of both obligations. It is not clear if the reason is that 2017 was the last year of functioning of the Commission for Prevention and Ascertainment of Conflict of Interests, or that the Commission itself was very active in its interaction with public bodies. Nevertheless, the level of publication of the lists of the public officials who have submitted declarations reached over two thirds of the total number of assessed bodies.



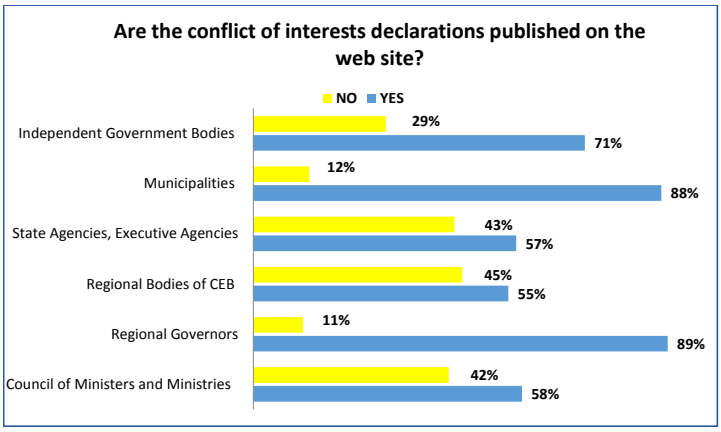
The rise has been observed in all types of public bodies, being the slightest in the regional governors' offices.



The highest rise – over 2 times, we have observed in the publication of the declarations themselves. From 207 public bodies which had published the conflict of interest declarations in 2017, their number has reached 413 (73%) in 2018.



The rise is again observed in all types of public bodies.



We hope that this positive trend will continue in the future. Next year, we will be assessing for the first time the publication of new declarations under the new Committee for Combating Corruption and the Withdrawal of Illegally Acquired Property. We can only wish the obligated bodies to maintain the high standard of publication.

THE TYPES OF RESPONSES ON ELECTRONIC REQUESTS[45]

As part of its 2018 survey on websites maintained by public bodies, the AIP team filed electronic requests to **567** institutions. We requested from each institution the annual report on the APIA implementation in 2017, which also should include data about the refusals and the grounds on which they were issued.

The number of institutions[46] which responded within the legally prescribed 14-day period is **424**. In comparison, in 2017, their number was **353**.

69 institutions responded after the specified time limit. In comparison, in 2017, the number of overdue responses was **95**.

The number of institutions which did not respond at all is **74**. In comparison, in 2017, the number of institutions which did not respond was **118**.

How did the ministries respond?

The ministries which responded within the legally prescribed time limit were: the Council of Ministers; the Ministry of Bulgarian EU Presidency 2018; Ministry of Foreign Affairs; the Ministry of Interior; the Ministry of Energy; the Ministry of Economics;[47] the Ministry of Healthcare; the Ministry of Education and Science; the Ministry of Environment and Waters; the Ministry of Defense; the Ministry of Justice;[48] the Ministry of Regional Development and Public Works; the Ministry of Transport, Information Technologies and Communications; the Ministry of Labor and Social Policy; the Ministry of Tourism, and the Ministry of Finance.

The ministries which sent overdue responses were the Ministry of Culture[49] (2 days delay), the Ministry of Agriculture and Food (3 days), and the Ministry of Youth and Sports (4 days delay).

The institutions which responded to the e-requests in 2018 and have provided full access to the requested information are **475**. In comparison, in 2017, only **377 institutions** provided full access. The increase in the number of public bodies which have provided full access this year is due to the fact that the AIP requested access to neutral type of information. Moreover, the institutions have an obligation to prepare annual reports under the APIA since the adoption of the law in 2000, and have the obligation to publish these reports in the *Access to Information* section of their websites since 2008.

In 2018, only one institution provided partial access to the requested information – the Ministry of Regional Development and Public Works.

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[45] See: http://www.aip-bg.org/en/surveys/db/2018ii/stats.php

[46] See the responses in Bulgarian:
http://www.aip- bg.org/surveys/db/2018ii/responses.php?type=RESPONSEFILES

[47] At the official presentation of the audit results at a pressconference held on 18.04.2018 at the Bulgarian News Agency, it was announced that the Ministry of Economics did not respond to the e-request. However, it turned out that the response had gone to the spam folder of the requestor's inbox.

[48] The Ministry of Justice responded to the request within the legally prescribed time frames, but refused to provide the requested information.

[49] The information in brackets refers to the number of days that the relevant institution took to provide a response, counted from the time of submission of the electronic request.

The institutions which refused to grant access in 2018 are **3**.

The Ministry of Justice notified the requestor that the APIA does not apply to access to the requested information and there was a special procedure under the Law on the Administration and the Regulations on the Administrative Register.

Regional Administration – Kyustendil informed the requestor that the APIA report is in the process of being approved because the legal deadline for its submission in the Council of Ministers has not expired and can only be received if a new request for access is submitted after 1 March.

Regional Directorate of Agriculture – Sofia District directly refused to grant access on the grounds that the requested information was not public according to the APIA because it did not contain information about the public life in the country but related to the requestor's private interest.

360 institutions have provided the requested information together with a decision granting access. This means that in over **100** cases, the information has been provided without an issued decision.

The form in which we requested access to the APIA implementation report was a copy of the report either sent electronically or by indicating the Internet address where the data is stored or published. In this regard, it should be noted that the practices related to electronic provision of information are various.

In some cases, the information is being sent together with a letter and a decision granting access. This is the most appropriate way. However, very often the accompanying letter, the decision, and the provided information are all in the same PDF file, which creates some difficulties for the requestor with respect to the successive use of the information. In some of these case, the institution includes an active link to the URL where the report is published in the e-mail (Municipality of Glavinitsa).

A positive practice is where the institution sends a decision/response in a PDF with a link to the report that is not active or can be copied, but the institution copies the URL as an active link in the sent e-mail (Ministry of Finance, Regional Administration – Haskovo, Municipalities of Mezdra, Troyan, Hitrino).

A positive practice is also the one in which the institution sends a decision/response in a word format with a link that is active and can be copied (Regional Directorate of the Ministry of Interior – Smolyan[50]).

Another positive practice is also the one in which the institution sends a decision / response in a PDF with a link to the report that is not active or cannot be copied but simultaneously sends the report itself (the Municipality of Nikola Kozlevo).

It is a negative practice if the institution sends a decision/response in PDF or jpg with a link to the report that is not active or cannot be copied and has not considered copying the link as an active link in the sent e-mail (Ministry of Youth and Sports, the Public Financial Inspection Agency, Executive agency for Exploration and Maintenance of the

[50] Although the link did not work, the APIA implementation report was indeed published on the website of the institution.

Danube river, Regional Directorate of Agriculture – Dobrich, Regional Department of Education – Yambol, Sofia Directorate of Ithe Ministry of Interior, Regional Governor's Administration – Razgrad, the Municipalities of Ruse, Tervel, Tundzha, etc.).

A negative practice is also where institutions refer to an URL where the information is uploaded in the decision which they send only in paper (Geodesy, Cartography and Cadastre Agency).

Neutral practice is that of institutions that send the answer and the requested information both electronically and on paper. Such a duplication, especially after the APIA amendments with regard to the provision of information by electronic means is redundant (Regional Governor's Administration – Yambol, Municipality of Topolovgrad).

A considerable number of institutions continue to send the requested information attached to an empty subject e-mail. This is a negative practice. Moreover, since the file attached to the email often has an automatically generated name, it becomes difficult to distinguish the institution's response from any spam email. Seldom, the files have appropriate names like *decision or report*.

Some institutions just say that the report is published on their website without referring where (Regional Directorate of the Ministry of Interior – Gabrovo, etc.)

Some institutions provide the requested information in the decision/response itself, giving the number of the requests received (Bulgarian Food Safety Agency, the Municipalities of Haskovo, Hisar, Regional Forest Directorate – Lovech, etc.). This means that the report was prepared ad hoc to satisfy the request.

In **10** cases, the institution has extended the time for the provision of the requested information. We have detected several types of approaches in this category of response:

Some of the institutions have initially misled the requestor that the report had been published on their website, but have subsequently uploaded it (Municipality of Misiya, etc.)

Some institutions have notified the requestor that the period for the report preparation has not yet expired, but the report would be ready and published soon and the requestor would be notified (the Public Financial Inspection Agency). Indeed, following the preparation and publication of the report, the requestor was notified.

Some institutions have sent a decision stating that they would provide the information within 30 days (Regional Inspection of Environment and Waters – Haskovo). 18 days later, an e-mail was sent to the requestor with a link to the report.

Some institutions have sent a decision stating that they would provide the information, but without specifying when (Regional Forest Directorate – Shumen). Curiously, the information was provided the next day.

Some institutions have sent a decision stating that the report would be prepared within two days by two nominally appointed officials and access would be provided by publication on their website (Regional Department of Education - Shumen). Indeed, two days later, the report was uploaded to the page.

Some institutions have sent a decision granting access and several hours later they have sent the requested information (Municipality of Hissar).

It should be noted that formally all those institutions that have not sent the decision granting access together with the requested information are in practice violating the Art. 35, Para. 3 of the APIA, according to which, when providing information electronically, the decision shall be sent together with the information provided.

Some institutions have sent a report that lacks information about the refusals and the reasons for them, but this information is provided in the very response to the request (Sofia Directorate of the Ministry of Interior).

We have registered several cases in which the institution informed the requestor that they did not receive access to information requests last year, but had certainly sent responses to requests sent within the AIP survey (Municipalities of Hajredin, Ugarchin, etc.).

Interesting is the response of the Regional Governor of the Sofia District. By blank email, on the 63rd day of receipt of the request, he sent a decision granting full access. He did not provide the requested information, but notified the requestor that the reports were published on the institution's website where the 2017 report was to be published. However, the latest published APIA report is from 2015.

CASES, REFERRED TO AIP FOR LEGAL ADVICE AND CONSULTATION

General Review

The provision of legal aid continues to be a priority activity of the AIP. In 2017, the AIP provided legal assistance at the initial stage of the information seeking process when the legal team provided advice and/or drafted a request for access to information. In another category of cases, legal aid was provided after a refusal to grant access to public information had already been issued.

An essential part of the legal aid provided by the AIP is the preparation of complaints and appeals to the court and provision of legal representation in access to information cases on behalf of requestors who have turned for assistance to the organization.

Number of Cases Referred for Legal Aid

The number of cases in which legal aid was provided during 2018 is **215**.[51] **15** out of these were sent by the AIP coordinators – journalists in all regional cities of Bulgaria. In the remaining cases, requestors have sought assistance in person in our office, by e-mail, or by phone.

Depending on their characteristics and legal qualification, the cases are categorized in the following three types:

- related to practices of non-fulfillment of obligations under the Access to Public Information Act by public bodies – **205 instances**;
- related to violations of the right of personal data protection guaranteed under the Personal Data Protection Act – **5 instances**;
- related to violations of the fundamental right to seek, receive, and impart information – **4 instances, etc**.

The Most Active Information Seekers

The experience of AIP shows that the APIA is most frequently used by citizens, journalists, and nongovernmental organizations (NGOs). In 2017, the largest number of consultations was provided to citizens who sought the assistance of AIP in 102 instances. In 32 cases, NGOs asked for legal assistance, while 53 cases were referred to AIP by journalists and AIP coordinators (all of them journalists) from central and local media. In 17 cases, the legal team of AIP was approached for legal advice by public officials, in 7 – by business persons, etc.

The Most Frequently Addressed Public Bodies

The number of cases in which information seekers requested information from local self-government bodies (mayors and municipal councils) is the largest – **88** cases, while information was sought from central executive bodies in **64** cases.

[51] The number of provided consultations is higher – **525**, since in some cases more than one consultation was provided.

Less frequently, information was sought from regional units of the central executive bodies – **14** cases; from public-law bodies and organizations – in **14** cases; from judicial power bodies – **10**, etc.

There are 13 registered cases in the AIP data base that do not involve an institution. These are cases in which our team has been approached for general advice on the law or on the litigation process.

The Most Frequently Used Grounds for Refusal

Although still high, the number of registered silent refusals in 2017 is lower than the previous year – **15**. For comparison – in 2016, that number was 31. Most of the grounded refusals are related to the preparatory documents exemption provided by Art. 13, Para. 2 of the APIA – in 8 cases, the protection of personal data – 8 cases, and the protection of third party interests – 4 cases. The official secret exemption was invoked – in 4 instances, and the state secret exemption – also in 4 instances, etc.

Tendencies

The tendency of a decrease in the number of consulted cases remains – 215 in 2017, while 296 in 2016, and 322 – in 2015. The number of consultations provided on referred cases, however, remains high – 525 in 2017.

The interest towards information related to the work of local self-government bodies remains high in 2017.

There is a tendency of decreasing number of cases of silent refusals. The number of refusals grounded on the third party's interests exemption (APIA, Art. 37, Para.1 item 2) also decreases (4 in 2017, while 15 – in 2016). We have observed a slight increase in the number of refusals grounded in the state or official secret exemption (APIA, Art. 37, Para.1 item 1) – 8, as well as of the refusals grounded in the exemption of preparatory work and negotiations (Art. 13, Para. 2 of the APIA) – also 8.

Most frequently, consultations have been provided by e-mail – in 241 instance, followed by those provided in the AIP office – 216, and by phone – 63 instances.

The Most Frequently Sought Information in 2016

In 2017, the information sought was mostly related to inspections and oversight activities of control bodies. Also, public money spending; transparency and accountability of public bodies; decision making process; urban development and road infrastructure; environmental issues, judicial system, etc.[52]

[52] See Annex 6 **Excerpt from the AIP Data Base of Cases Referred for Legal Assistance in 2017** http://store.aip-bg.org/publications/ann_rep_eng/2017/Annex6_Legal_cases.pdf

LITIGATION

Statistics

In 2017, the AIP legal team continued to provide legal aid to citizens, non-governmental organizations (NGOs), and journalists on court cases concerning refusals to grant access to information. In 2017, the AIP legal team prepared **35** complaints and written submissions to courts, (**11** in cases led by citizens, **7** – by NGOs, **15** – by journalists, and **2** – by the business).

In 2017, the AIP legal team drafted a total of **24** complaints and appeals to courts, including: first instance complaints – **16** (Administrative Court – Sofia City – **14**, Administrative Courts in the country – **2**), cassation appeals – **4**, and appeals against rulings – **4**.

Out of the **16** complaints filed before first instance courts, **15** were against explicit refusals to provide the requested information and **1** – against silent refusals.

In 2017, the AIP provided legal representation in lawsuits against refusals to provide information in **50** cases. In the reported period, AIP's legal team drafted **11** written submissions in cases on which the organization provided legal aid.

In the reported period, the courts issued **53** judicial acts (decisions – **42**, and rulings – **11**) regarding cases on which AIP provided legal aid (Supreme Administrative Court – **29**, Administrative Court – Sofia City – **17**, Administrative Courts in the country – **7**).

In **37** cases, the courts ruled in favor of the information seekers and in **13** – in favor of the administration. In **3** cases, the courts ruled partly in favor of the information seekers and partly in favor of the administration.

Hereafter, we present the more interesting court decisions, delivered in cases won with the help of the AIP's legal team in 2017. The cases are listed in chronological order based on the publication date of the court decision and are organized according to the grounds for refusal and the subject of the case.

Obliged subjects

With a decision as of March 21,[53] the Administrative Court – Sliven repealed the silent refusal of the manager of „Water Supply and Sewerage Company – Sliven" Ltd. to provide information about the measuring instruments used and the quantities of drinking water supplied on the territory of the Sliven District, as well as the results of a financial inspection in the company, and the number of employees dismissed and assigned to it for the past year. The information was requested by Zhivko Zhelev (Sliven) in August 2016. The court stated that from the official report in the Trade Register it is evident that „Water Supply and Sewerage Company – Sliven" Ltd is a commercial company with 51% state participation, which defines it as a public law organization within the meaning of § 1, item 4, letter „C" of the Additional Provisions of the APIA and respectively – an obliged body under Art. 3, Para. 2, item 1 of the APIA - for granting access to

[53] Decision No. 38/21.03.2017, Administrative Court Sliven, adm. case No. 314/2016, judge Galya Ivanova

public information, which is created or held by the company. The Court accepts that the only lawful possibility of handling an access to public information request is the obliged entity to issue an explicit act – a decision granting or refusing access to the requested information. The court decision has been challenged with a cassation appeal by the manager of the „Water Supply and Sewerage Company – Sliven," on which administrative case No. 7003/2016 of the Supreme Administrative Court, Fifth Section was formed, scheduled for 19.11.2018.

With a ruling as of July 26,[54] the Supreme Administrative Court repealed a ruling of the Administrative Court Sofia – City (ACSC) for suspending a case against the refusal of „Sofia Auto Transport" Ltd to provide information on the number of damaged buses on certain urban transport routes. The information was requested by Vasil Nikolov (Sofia). The refusal is on the grounds that the company is not an obliged body under the APIA and there is no overriding public interest in providing access to the requested information. Initially, the ACSC left the appeal without consideration and suspended the case by accepting that „Sofia Auto Transport" Ltd is not an obliged body under the APIA. With the support of the AIP, a cassation appeal was filed against the ruling of the ACSC before the Supreme Administrative Court (SAC). As a result, the Supreme Administrative Court repealed the ruling suspending the case and returned it to the ACSC for continuation of the proceedings. The supreme justices agree that „Sofia Auto Transport" Ltd is an obliged body under the APIA as it is a trade company that, regardless of its commercial nature, was created to satisfy public interests and more than half of its revenue for the previous year is financed by the municipal budget (§ 1, item 4, letter „a" of the Additional Provisions of the APIA). Following the return of the case to the first instance, by decision as of November 17, the ACSC repealed the refusal and returned the request to the director of „Sofia Auto Transport" Ltd for issuing a new decision on the request. The court held that the refusal was unlawful as the company was an obliged body under the APIA and had not demonstrated a lack of overriding public interest in the requested information.

The „public information" concept

With a decision as of January 3,[55] the ACSC repealed the refusal of the Chairman of the Communications Regulation Commission (CRC) to provide information on refunds paid for representative clothing of all Commission staff. The information was requested at the beginning of August 2016 by the journalist Lachezar Lisitsov. In response, the CRC chairman issued a decision granting full access to the requested information, but in reality, the information was not provided. Instead of information on the amounts paid, the decision cites the legal framework regulating the reimbursement of such expenses. The Court held that since the CRC is a state body – a legal entity, a first degree budget spending unit, the funds paid to its employees for representative clothing also form part of this budget. As it concerns the spending of public funds in connection with the performance of the activity of an obliged body, undoubtedly the information sought by the requestor is public as defined by Art. 2, Para. 1 of the APIA. With a decision as of June 21,[56] the Supreme Administrative Court (SAC) upheld the first instance court decision. The SAC decision is final.

[54] Ruling No. 9922/26.07.2017, SAC, Fifth Division, adm. case No. 6204/2017, judge-rapporteur Marina Mihailova

[55] Decision No. 12/03.01.2017, ACSC, Second Division, 40th Panel, adm. case No. 9203/2016, judge Dilyana Nikolova

With a decision as of March 7,[57] the Administrative Court – Sliven repealed the refusal of the mayor of Sliven to provide a copy of geodetic filming, a protocol of an inspection, and the names of the employees working on a case of reconstruction of a building by the company „Emiteks" EOOD. The information was requested by Dimitar Hristov (Sliven). The refusal of the mayor was grounded in the fact that the requested information is outside the scope of the APIA because it is not related to public life and is not of public interest within the meaning of Art. 2, Para. 1 of the APIA. The refusal also pointed out that any information in connection with the provision of administrative services to citizens fell outside the scope of the APIA – the information requested being such type. The court held that the requested information is not related to the administrative services, but is information on the procedures applied by the municipal administration and the work of the employees in the administration of the municipality. In this sense, access to public information is requested from a legally bound body. According to the court, there is an overriding public interest within the meaning of § 1, item 6 of the Additional Provisions of the APIA. Provision of information concerning a construction of suspicious legality, would allow the increase of the transparency and accountability of the Municipality of Sliven in an area sensitive to the public - the control of illegal construction and the claims in society that this control is not the same for all social and economic groups. A cassation complaint was filed by the Mayor of Sliven against the decision of the court, which formed administrative case. No 4687/2017 of the Supreme Administrative Court, Fifth Section, scheduled for hearing on 08.10.2018.

With a decision as of March 21,[58] the SAC repealed the refusal of the Ministry of Finance (MoF) to provide information on the maximum capacity of the tax warehouses in the country by types of fuels and the concentration of ownership. The information was requested by former MPs Petar Slavov and Martin Dimitrov. The refusal of the MoF was grounded in the fact that this information constitutes a tax-insurance secret within the meaning of the Tax Insurance Procedure Code and the APIA is not applicable for access to it. The refusal of the MoF was upheld at first instance by the ACSC, which assumes that there is a special procedure for access to the requested information, which is why the APIA is inapplicable. The SAC repealed the decision of the first instance as well as the refusal and returned the file to the MoF for a new decision with instructions on the interpretation and application of the law. The judges agree that in this case there is no special procedure for access to the requested information that might exclude the application of the APIA. Consequently, in concluding that the APIA is not applicable at all, the ACSC has ruled against the substantive law. The SAC decision also stated that the requested information is public and the procedure under Art. 31 of the APIA applies for seeking the consent of third parties concerned. The court decision is final.

With a decision as of April 4,[59] the ACSC repealed the refusal of the Ministry of Interior to provide copies of the documents prepared by the Ministry of Interior on the occasion of the handover of seven Turkish citizens by the Republic of Bulgaria to the Republic of Turkey in October 2016. The information was requested by the journalist Alexander

[56] Decision No. 7887/21.06.2017, SAC, Fifth Division, adm. case No. 2838/2017, judge-rapporteur Marieta Mileva

[57] Decision No. 17/07.03.2017, Administrative Court – Sliven, adm. court No. 315/2016, judge Slav Bakalov

[58] Decision No. 3390/21.03.2017, SAC, Fifth Division, adm. case No. 4602/2016, judge-rapporteur Donka Chakarova

[59] Decision No. 2226/04.04.2017, ACSC, Second Division, 40th Panel, adm. case No. 11904/2016, judge Dilyana Nikolova

Terziev („Capital" newspaper). The refusal of the director of the Legal Activity Directorate at the Ministry of the Interior was grounded in the fact that the information is not public, as it is not related to the activity of the Ministry of Interior, but refers entirely to an issued individual administrative act containing personal data of certain individuals. The court accepted that the documents requested constituted public information within the meaning of the APIA, as they were created and held by the obliged body within the execution of its powers and their provision would have enabled the requestor to form their own opinion about the work of the Ministry of Interior in the specific case. According to the court panel, there is also an overriding public interest in the provision of the information, and the refusal did not state reasons for overcoming the legal presumption of such an interest. Lastly, the court decision states that even if it does not obtain the consent of a third party concerned, the obliged body is obliged to provide partial access to information. A cassation appeal was filed by the Ministry of the Interior against the court decision, which led to the formation of administrative case No. 6688/2017 of the Supreme Administrative Court, Fifth Section, scheduled for hearing on 28.11.2018.

With a decision as of July 5,[60] the ACSC repealed the refusal of the State Fund „Agriculture" to provide information on the classification of the municipal projects under sub-measure 7.2 „Investments in the creation, improvement or extension of all types of small-scale infrastructure" from measure 7 „Basic services and renovation of the villages and rural areas" of the Rural Development Policy 2014-2020. The information was requested by Ognyan Georgiev („Capital" newspaper) in February 2017. The refusal of the director of SF „Agriculture" was grounded on the reason that the requested information did not fall within the legal definition of „public information." The Court has held that the requested information is undoubtedly of the nature of public information and therefore the refusal is unlawful. A cassation appeal by the SF „Agriculture" was filed against the court decision, administrative case No 10673/2017 of the Supreme Administrative Court, Fifth Section was formed and scheduled for hearing on 11.02.2019.

With a decision as of 10 July,[61] the ACSC repealed the refusal of the Bulgarian Development Bank (BDB) AD to provide information on municipal debts to construction companies that were transferred to a purchase program of the BDB. Information was requested by Desislava Leshtarska („Capital" newspaper). The BDB's refusal was grounded in the fact that the information is not public, as it is related to financial management and constitutes a professional secret under Art. 63, Para. 1 of the Credit Institutions Act (CIP). The court accepted that the information is public under the APIA and would give an opportunity to form an opinion on both – the activities of the BDB and on the municipalities, which in this case are beneficiaries of EU funds. The Court finds the grounds for the existence of a „professional" or „banking" secret unreasonable. The court decision states that bank secrecy is the facts and circumstances affecting the bank's cash and bank balances and operations. In this case, the requested information does not affect such data, nor is it related to the information created for the purposes of banking supervision. A cassation appeal by the BDB was filed against the court decision, administrative case No. 11033/2017 of the SAC, Fifth Division was scheduled for hearing on 27.02.2019.

[60] Decision No. 4529/05.07.2017, ACSC, Second Division, 52nd Panel, adm. case No. 2609/2017 , judge Tatyana Mihailova

[61] Decision No. 4593/10.07.2017, ACSC, Second Division, 25th Panel, adm. case No. 5245/2016, judge Boryana Petkova

Overriding Public Interest and Protecting the Interests of Third Parties

By decision of January 4,[62] the Supreme Administrative Court upheld the repeal of a refusal by the Supreme Judicial Council (SJC) to provide copies of the lease agreements and all annexes to them, concluded by the SJC for the accommodation of the members of the council who do not have housing in the territory of Sofia. The information was requested in February 2015 by the „Non-Governmental Organizations Center" Razgrad. The refusal of the Chief Secretary of the SJC was grounded in the fact that these contracts contained data concerning third parties and their consent for the disclosure had been sought. Within the specified time, consent for the disclosure of the contracts had been expressed by two of the landlords, but due to an explicit refusal or lack of consent from the property users and the other landlords, the requested information should not be provided. The Court held that the reference to the third parties interests as grounds to refuse access to information is not motivated, as it was reasonably found by the court of first instance, because the contested decision did not explain why and how it would affect the interests of third parties by providing copies of the lease agreements and the annexes to them. It was rightly accepted by the first instance court that no reasons were given as to the application of Art. 31, Para. 4 of the APIA for partial access to information. The ruling court legitimately justifies the conclusion that in the contested decision there are no arguments regarding the existence or the lack of an overriding public interest within the meaning of § 1, item 6 of the Additional Provisions of the APIA concerning the application of Art. 37, Para. 1, Item 2 of the APIA, in the presence of which the requested public information is provided. In accordance with these norms, a proper legal conclusion has been made by the court for the existence of an overriding public interest and for the provision of the requested information with deleted personal data of third parties. The SJC receives annual funding from the consolidated state budget and the Bulgarian citizens (taxpayers) have the right to information on the spending of public funds, and the entities receiving public funds are obliged to provide the information requested in this regard, in view of increasing its transparency and accountability. The SAC decision is final. At the end of January 2017, the SJC provided to the requesting NGO full access to 7 rental contracts and the annexes to them, which were in effect at the time of the request submission.

With a decision as of February 16,[63] the Supreme Administrative Court upheld the repealing of the refusal of the Minister of Environment and Waters (MOEW) to grant access to a legal analysis concerning the settlement of the State's relations with owners of property located and impacting on the environment in the national parks. The information was requested by the ecologist Alexander Dunchev. The refusal was grounded in the fact that, by its nature, the requested information was not publicly or environmentally related. Moreover, the refusal also stated that access to this information should be restricted, according to the provision of Art. 13 Para. 2, item 1 of the APIA – insofar as it concerns official public information related to the operational preparation of the acts of the body that has no significance of its own. Apart from those reasons, the refusal stated that the information sought would affect the interests of the law firm, in so far as the legal analysis involves specialized legal work of highly qualified lawyers, and

[62] Decision No. 40/04.01.2017, SAC, Fifth Division, adm. case No. 10987/2015, judge-rapporteur Sibila Simeonova

[63] Decision No. 1959/16.02.2017, SAC, Fifth Panel – Second college, adm. case No. 12841/2016, judge-rapporteur Marieta Mileva

the document drawn up by them should be considered as the author's legal right. The Court held that the requested information did not concern the third party who produced the analysis as it did not imply disclosure of information on the structure, organization of the work and the activities of the law firm. Therefore, the explicit dissent of the law firm to provide the requested information in the case is not sufficient to motivate the refusal of the administrative body, especially since there are no considerations for the absence of overriding public interest within the meaning of § 1, item 6 of the Additional Provisions of the APIA. The information requested is collected and analyzed under a contract mandated by the MOEW, and the assignment involves the management and spending of state funds. Furthermore, the information requested concerns the activities of the public body as they relate to possible management decisions in relation to the settlement of the State's relations with the owners of property located within the national parks. Therefore, it must be assumed that there is an overriding public interest in disclosure, as the transparency and accountability of the Ministry will be increased by providing the requested information. The motivation of the authority to refuse access on the grounds of Art. 13, Para. 2, item 1 of the APIA were correctly found by the three-member panel as illegal, since this exemption is applicable up to two years from the creation of the information, and more than two years have elapsed from the preparation of the analysis until the refusal. The decision is final.

With a decision as of 11 December,[64] the Supreme Administrative Court upheld the repeal of the refusal of the Rector of the Sofia University to provide information on all financial remunerations for the years 2013, 2014 and the first half of 2015 on labor contracts, civil contracts, project and scientific activities, and for the social, health and other expenses of the Deputy Rector, Chief Accountant and Chief Financial Officer. The information was requested by the student Simeon Georgiev. The rector's refusal was on the grounds that this information is protected personal data and that the APIA is inapplicable. The Court accepted that the requested information concerned the performance of official duties by the persons referred to in the request occupying the respective positions - the Deputy Rector, the Chief Accountant and the Chief Financial Officer and did not affect their personal data. The information is not related to the inviolability of their personality and their personal life, within the meaning of Art. 1, Para. 2 of the Personal Data Protection Act. Information on earnings received, including from a project activity funded by the European Union, does not constitute personal data. Notwithstanding this, even if it is personal data, it is rightly accepted by the court that there is an overriding public interest because the information sought is intended to make an assessment of the spending of public funds by its nature, improving the transparency and accountability of the obliged body under § 1, item 6 of the Additional Provisions of the APIA of the APIA containing the legal definition of overriding public interest. The decision is final.

Personal Data – Public Figures

With a decision as of July 11,[65] the Supreme Administrative Court (SAC), as the second instance court, repealed the decision of the first instance and the refusal of the Director of the Regional Directorate of the Ministry of Interior - Kardzhali to provide information

[64] Decision no 15137/11.12.2017, SAC, Fifth Division, adm. case no. 7317/2016, judge- rapporteur Galina Karagiozova.

[65] Decision no 9074/11.07.2017, SAC, Fifth Division, adm. case no. 4072/2016, judge-rapporteur Donka Chakarova.

on the full names of the heads of the Traffic Police Departments for the period 2000 – 2015. The information was requested by Yovo Nikolov („Capital" newspaper). The refusal of the Director was motivated by the fact that this information is protected personal data and was upheld by the first instance by the Administrative Court – Kardzhali. The Supreme Administrative Court repealed the decision of the first instance, repealed the refusal and ordered the Director of the Regional Directorate of the Ministry of Interior – Kardzhali to provide access to the requested information. The Court has held that the names of persons exercising public authority and issuing acts in their capacity as public authorities are official public information and access to them should be free. The decision is final.

With a decision as of 16 October,[66] the SAC upheld the repealing of the refusal of the Director of the Regional Directorate of the Ministry of Interior – Pazardjik to provide information on the full names of the heads of the Traffic Police Departments for the period 2000-2015. The information was requested by Yovo Nikolov („Capital"newspaper). The refusal of the Director was motivated by the fact that this information is personal data. The Court has held that information on the names of persons exercising official authority and issuing acts in their capacity as a state body constitutes official public information which is collected, created and maintained by the public authorities and their administrations. Access to this information is free. The court decision is final.

With a decision as of 8 November,[67] the Supreme Administrative Court (SAC), as the second instance court, repealed the decision of the first instance and the refusal of the Director of the Regional Directorate of the Ministry of Interior – Veliko Tarnovo to provide information on the full names of the heads of Traffic Police Departments for the period 2000-2015. The information was requested by Yovo Nikolov („Capital" newspaper). The refusal of the Director of the Regional Directorate of the Ministry of Interior – Veliko Tarnovo was motivated by the fact that this information is protected personal data. The refusal was upheld by first instance Administrative Court – Veliko Tarnovo. The SAC repealed the decision of the first instance, as well as the refusal and ordered the Director of the Regional Directorate of the Ministry of Interior – Veliko Tarnovo to provide access to the requested information. By its decision, the panel complied with established case law according to which the names of the persons exercising public powers and issuing acts in their capacity as public authority are official public information which is collected, created and stored in connection with the activity of state bodies and their administrations and access to this information is free. The decision is final.

With a decision as of 17 November,[68] the SAC upheld the repealing of the refusal of the Director of the Regional Directorate of the Ministry of Interior – Stara Zagora to provide information on the full names of the heads of Traffic Police departments for the period 2000-2015. The information was requested by Yovo Nikolov („Capital" newspaper). The refusal of the Director of the Regional Directorate of the Ministry of the Interior – Stara Zagora was motivated by the fact that this information is personal data. The Court held that the names of the persons exercising public powers and issuing acts in their capacity

[66] Decision no. 12298/16.10.2017, SAC, Fifth Division, adm. case no. 4491/2016, judge-rapporteurYovka Drazheva

[67] Decision No. 13550/08.11.2017, SAC, Fifth Division, adm. case 7186/2016, judge-rapporteurDiana Dobreva

[68] Decision No. 13977/17.11.2017, SAC, Fifth Division, adm. case No. 4487/2016, judge- rapporteur Galina Karagiozova

as public authorities are official public information which is collected, created and stored in relation to the activities of state authorities and their administrations and access to this information is free. The requested information is not personal data since the information related to the exercise of public authority by a particular person is not related to their personal life but to the public. It is unacceptable for authorized government officials to be anonymous and the disclosure of their names does not violate their legal rights and interests. The court decision is final.

Preparatory Documents

With a decision as of March 24,[69] the SAC repealed a refusal by the Ministry of Healthcare (MH) to provide information on the composition and the sessions of a working group preparing amendments to the Health Act to improve the controls on the compliance with the ban on indoor smoking and some open public places. The information was requested by the *Bulgaria Without Smoke* Association. The refusal of the Chief Secretary of the MH was motivated by the fact that this information is related to the operational preparation of the acts of the body and has no significance of its own – a ground for refusal under Art. 13, Para. 2, item 1 of the APIA. The court found that the information was requested with the purpose of forming an opinion on the work of an already established inter-institutional working group, which was made public by the Minister of Health. The task of the working group was to gather opinions and recommendations from a variety of interested groups, including from outside the government, such as associations and business representatives, to make the most beneficial changes to the Health Act in the section on the control of the smoking ban. Therefore, the result of the actions of this group, the data of which and whose work so far has been requested, will be the draft law for amendments to the Health Act. The draft amendments would be submitted to the National Assembly and then would be subject to subsequent voting and eventual approval by the competent body. Therefore, the court panel accepts that the final act, which will end the work of the committee at the level of the Ministry of Health, is the draft proposal for amendments to the law and not the amendment itself, as long as the latter is not within its competence. That is, the information on the participants in this inter-institutional working group has a significance of its own because the structure of its composition will help to form an opinion on the representation of the various interested groups – public and private, respectively the performance of its activities. The criteria for the selection of the participants are also information which has significance of its own. The decision also states that the minutes from the working group's work also contain information with significance of its own on both the subject matter of the working group, and on the degree of completion of its work. The court therefore considers that there are not any prerequisites for imposing the restriction under Art. 13, Para 2, items 1 and 2 of the APIA, which was grounds for the MH refusal. A cassation appeal was filed against the court decision by the Ministry of Health and administrative case No 6497/2017 of the Supreme Administrative Court, Fifth Section was formed, scheduled for hearing on 19.09.2018.

With a decision as of August 1,[70] the Administrative Court Sofia City (ACSC) repealed the refusal of the Executive Environment Agency (EEA) to grant access to hourly data on the level of particulate matter (PM) from ambient air quality measurements in Sofia

[69] Decision No. 1988/24.03.2017, SAC, Second Division, 48th panel, adm. case No. 12539/2016, judge Kalina Petsova

[70] Decision No. 5086/01.08.2017, ACSC, Second Division, 56th panel, adm. case No. 4095/2017 г., съдия Мария Ситнилска

for 2013-2016. The information was requested by the Association „For the Earth – Access to Justice" with a request dated March 2, 2017, addressed to the Mayor of the Sofia Municipality. The mayor forwarded the request to the EEA, whose director refused to provide access to the hourly data on the level of particulate matter in the air, as it represented primary information and is of preparatory character. The Court has held that hourly data on PM represent environmental information within the meaning of the Environmental Protection Act (EPA) and cannot be refused on the grounds that they are preparatory in nature, as in cases where environmental information is sought, the applicable restrictions to the right of access to information are those under Art. 20 of the EPA. Among these there is no restriction, analogous to the one stipulated in Art. 13 of the APIA on preparatory documents. The decision came into force.

With a decision as of 27 October,[71] the ACSC repealed the refusal of the Ministry of Justice to provide information related to the Draft Law on Amendments to the Law on Bulgarian Citizenship (LBC), with which (after the idea of President Rumen Radev) an amendment to the Electoral Code introducing a requirement for 3-month stay in the country to vote in parliamentary and presidential elections, which effectively eliminates most Bulgarians living abroad from elections. The information was requested by Krasen Nikolov (Mediapool). The refusal of the Director of the Legal Activities Directorate at the Ministry of Justice was motivated by the fact that the requested information had no significance of its own and was related to the operational preparation of the acts of the body (grounds for refusal under Article 13, Para. 2, item 1 of the APIA). The Court found that the high level of public importance of the preparation of legal acts should be taken into account here. The procedure for elaboration of drafts of normative acts is regulated by the Law on Normative Acts, in which the legislator has laid the principles of justifiability, stability, openness and coherence in the initial stage of the lawmaking process. According to the court panel, in the present case it must be assumed that the requestor may form their opinion if the draft law complies with the provisions of the Law on Normative Acts, and so there is an overriding public interest in the disclosure overcoming the restriction to preparatory documents. A cassation complaint was filed by the Ministry of Justice against the decision of the court, on which administrative case was formed No 14682/2017 of the Supreme Administrative Court, Fifth Section, and scheduled for hearing on 13.05.2019.

Access to information – access to documents

By decision of May 9,[72] the Supreme Administrative Court upheld the repealing of the refusal of the Secretary of the Sofia Municipality to provide a copy of an order for the organization and control of the document management and the execution of the tasks of the Sofia Municipality administration issued by the Mayor of Sofia Municipality. The information was requested by Ivan Petrov (Sofia) in August 2015. The refusal of the Secretary of the Sofia Municipality was motivated by the fact that according to the APIA, access to information could be requested, but not access to documents. Apart from the refusal, it is stated that the requested order is an interdepartmental act, which has an auxiliary character and has no significance of its own (grounds for refusal

[71] Decision No. 6109/27.10.2017, ACSC Second Division, 56th Panel, adm. case No. 5980/2017, judge Maria Sitnilska

[72] Decision No. 5711/09.05.2017, SAC, Fifth Division, adm. case No. 1956/2016, judge-rapporteur Marieta Mileva

under Article 13, paragraph 2, item 1 of the APIA). The Court accepted that there is no hypothesis under Art. 13 para. 2, item 1 of the APIA, to which the obligated entity invokes to refuse access to the requested information. Under the above-mentioned provision, access to official public information may be restricted when it is related to the operational preparation of acts by the authorities and has no significance of its own (opinions and recommendations drawn up by or for the authority, statements and consultations). With regard to the nature and purpose of the order for the organization and control of document management in the municipality, the first instance court had rightly acknowledged that this order was not related to the operational preparation of a final act and has no significance of its own. The order is an internal act regulating rules of conduct and control when working with documents, does not prepare the issuing of specific acts and therefore has an independent character. The Supreme Judges also share the first instance court conclusion that whether the specific material carrier of the information is sought or the descriptive information itself is irrelevant to the fact that it is subject to provision.

Classified Information – State Secret

By decision as of June 5,[73] the Administrative Court Sofia City (ACSC) repealed the refusal of the Chief Secretary of the President of the Republic of Bulgaria to provide the information contained in the minutes and the sound recording of consultations on the state's financial condition chaired by the President on July 24, 2014. The information was requested by Iliya Valkov (BiT) in January 2017. The Chief Secretary refusal was based on the fact that the minutes contained classified information within the meaning of Art. 25 of the Protection of Classified Information Act (PCIA). The refusal also indicated that President Rosen Plevneliev's statement was published on the official page of the presidency, which provided information on the consultations carried out in a manner that satisfies the public interest. The court accepted that the presidency had unlawfully invoked the classification of information as a state secret to refuse access. Undoubtedly, the information is related to public life – it related to the debates and decisions about the emerging banking crisis – an issue of particular social significance. According to the court, disclosure of that information by July 2014 would have lead to an increase in public tensions with unpredictable consequences. However, all events have passed about three years ago, and the data presented by the participants in the 14 July 2014 consultation meeting on the financial stability of the state and national security have lost their relevance. The Court observes that the refusal did not state the reasons for the classification of the information, the refusal of access in these cases could not be „presumed". The law does not exempt the institutions but, on the contrary, obliges them to state reasons on a factual basis, including the grounds for refusal, related to the alleged existence of classified information. On the other hand, it is clear from the evidence in the case that, in any event, the minutes do not contain information that can be classified as „state secret", the decision states. For example, the views and opinions of those present at the meeting cannot be such a secret. No judgment has been made to provide at least partial access to the minutes. President Plevneliev's statement published in 2014 cannot be considered as partial access because it lacks specificity and does not contain the reproduction of the position of the representatives of the executive power and the parliamentary parties or the proposals for solving the

[73] Decision No. 3750/05.06.2017, ACSC, Second Division, 40th Panel, adm. case No. 1781/2017, judge Dilyana Nikolova.

problem. The court decision has not been appealed and has entered into force, the information has been provided.

Silent Refusals

By decision as of January 16,[74] the ACSC repealed the silent refusal of the Director of the State Enterprise „Radioactive Waste" to provide to Petar Penchev (Deputy Chairman of the National Movement "Ecoglasnost·) a copy of the contract for the construction of the first stage of the National Storage Facility for Low and Medium Active Radioactive Waste (NDF), signed on 7 July 2016. By decision as of 18 October,[75] the SAC upheld the decision of the first instance court. The SAC decision is final.

By decision as of April 25,[76] the Administrative Court – Pazardzhik repealed the silent refusal of the Mayor of the Municipality of Belovo to provide to Todor Grozdev („Zname"newspaper) information related to the activities of the Water Supply Company Belovo EOOD and a number of violations found during an inspection carried out at the end of 2015 by the Energy and Water Regulatory Commission. The court accepted that the obliged under the APIA body always owes a written motivated statement of refusal. There is a legal imperative for a written decision on the request, including a refusal. In the present case, there was a silent refusal, which, according to established case-law, is unlawful. An appeal was filed by the Mayor of the Municipality of Belovo against the decision of the court.

By decision as of May 30,[77] the Supreme Administrative Court upheld the repealing of a silent refusal by the Social Assistance Agency (ASA) to provide the „Article 24" Children's Development Association with access to information on the project „I Have a Family" and other projects and programs aimed at developing foster care. The Court accepted that in this case the obliged entity had responded to the requestor, but the response did not contain the requested information and referred to places where it was claimed to have been published but could not be found in practice. This way of formulating the response to the request for access to public information has been properly assessed by the first instance court as a silent refusal to provide the requested information. The decision is final.

By decision as of 13 June,[78] the Supreme Administrative Court upheld the repealing of the silent refusal of the Mayor of the Municipality of Smolyan to give Zarko Marinov („Otzvuk" newspaper) access to all current and monthly protocols compiled between January and May 2016 on the contracts between the municipality and the cleaning companies „Titan clincher" OOD and „Eco Titan Group" AD. The Court accepted that the first instance court's reasoning was that the mayor of the municipality of Smolyan

[74] Decision No. 326/16.01.2017, ACSC, Second Division, 31st Panel, adm. case No. 11363/2016, judge Veselina Zhenavarova.
[75] Decision No. 12534/18.10.2017, SAC, Fifth Division, adm. case No. 3151/2017, judge-rapporteur Yovka Drazheva
[76] Decision No. 208/25.04.2017, AC Pazardzhik, First panel, adm. case No.105/2017, judge Mariana Shoteva
[77] Decision No. 6695/30.05.2017, SAC, Fifth Division, adm. case No. 2720/2016, judge-rapporteur Donka Chakarova
[78] Decision No. 7413/13.06.2017, SAC, Fifth Division, adm. cas No. 66/2017, judge-rapporteur Anna Dimitrova

did not decide on the whole request and did not state grounds for refusal, which was a violation of the procedure, therefore the administrative body owes a grounded decision on this part of the request. The decision is final.

By decision as of 18 October,[79] the Administrative Court – Pazardzhik repealed the silent refusal of the manager of the Water Supply Company Belovo EOOD to provide Todor Grozdev („Zname" newspaper) with information related to the company's activities. The court accepted that there is a legal imperative for a written decision on requests for access to information to be issued by the obliged bodies under the APIA, including in case of refusal.

By decision as of November 14,[80] the ACSC repealed the silent refusal of the Supreme Cassation Prosecutor's Office (SCP) to provide journalist Lachezar Lisitsov with information about what records are kept for the Chief Prosecutor's meetings. The Court accepted that the only lawful option to deal with the request for information stemming from the obligations under the APIA is to issue an explicit act – a decision granting or refusing to grant access to the requested information. The requirement for grounded decision is a guarantee of the lawfulness of the act. In this sense, there is a lasting and consistent case law.

[79] Decision No. 480/18.10.2017, adm. case No. 104/2017, Administrative Court – Pazardzhik, First Panel. judge Mariana Shoteva

[80] Decision No. 6661/14.11.2017, ACSC, Second Division, 24th Panel, adm. case No. 9072/2017, judge Branimira Mitusheva

ANNEXES

Comparative Results from Audits performed by
the Access to Information Programme 2016 – 2018
Results from the 2018 Audit on the Websites
of 567 executive bodies, regional bodies,
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Annex 1

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ACCESS TO INFORMATION IN BULGARIA 2017

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 Civil Liberties Network (ECLN), the Network of Democracy Research Institutes (NDRI), and the ATLAS network.

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 campaigns on access to information.

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