



Public Affairs Update November 2020

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03/11/2020

New Network Information Systems Regulations proposed

- DCMS announced plans to extend the NIS regulations (based on the NIS Directive) in August
- Changes to qualifying Essential Services:
 - Will lower the threshold for IXPs from 50% market share to 30% market share
 - Will bring foreign DNS resolvers and TLD registries within scope if they pass qualifying threshold based on number of queries from the UK
 - TLD Registry threshold to 14 billion queries in 168 hours (was 2 billion in 24 hours)
 - Authoritative servers threshold to 100,000 domains hosted (was 250,000)
 - Resolver threshold to 500,000 queries in 168 hours (was 2 million in 24 hours)

NIS revisions: information sharing and inspection

- Extends information sharing between regulators and law enforcement; adds new grounds for sharing (also: national security, prevention, detection, investigation and prosecution of crime)
- Creates a new post of “inspector” who can be appointed by regulator to carry out inspections
 - Can exercise most of the regulators’ powers to obtain information directly, take statements, conduct tests, “any other action relevant to the inspection”;
 - Can order OES to leave equipment/config/records undisturbed
 - Can issue instructions to regulated parties

NIS revisions: enforcement and penalties

- Enforcement of duty to appoint a person in the UK as representative
- All enforcement notices must be complied with even if you've paid a penalty for non-compliance
- Now two stages: notice of intended penalty, and final penalty notice
- Penalties changed:

£1m	Breach is not material
£3.5m [tier removed]	Breach
£8.5m	Severe breach
£17m	Breach causes threat to life, or has significant impact on UK Significant impact on service provision by OES

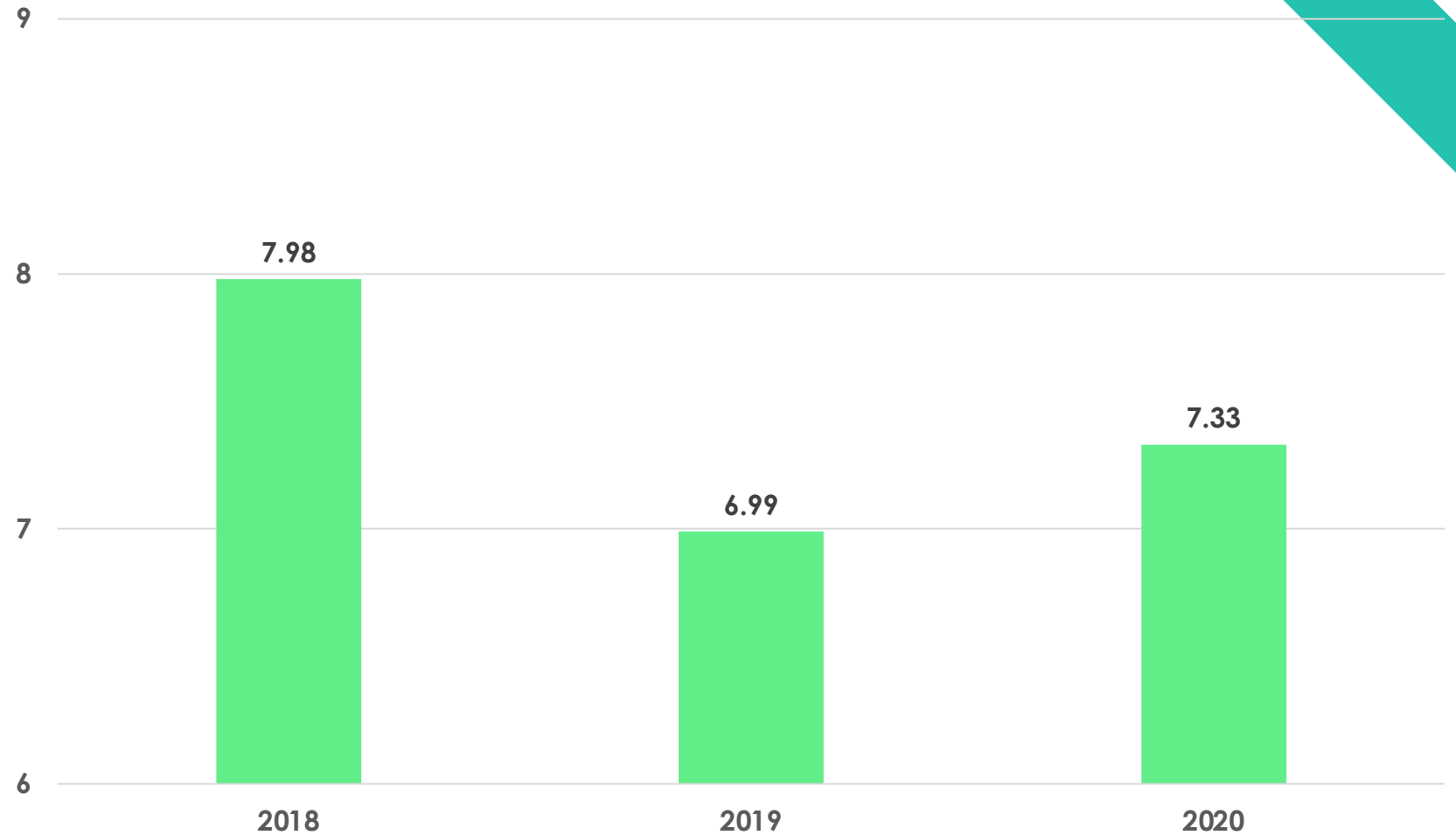
NIS revisions: appeals

- Replacing 'independent appeals' with appeal to the First Tier Tribunal (General Regulatory Chamber)
 - i.e. a more standard regulatory affairs tribunal process; this tribunal also handles GDPR enforcement cases, for example.
- First Tier Tribunal will only have power to remit notices back to the regulator to be redone
- Regulator's decision on how to comply will be final

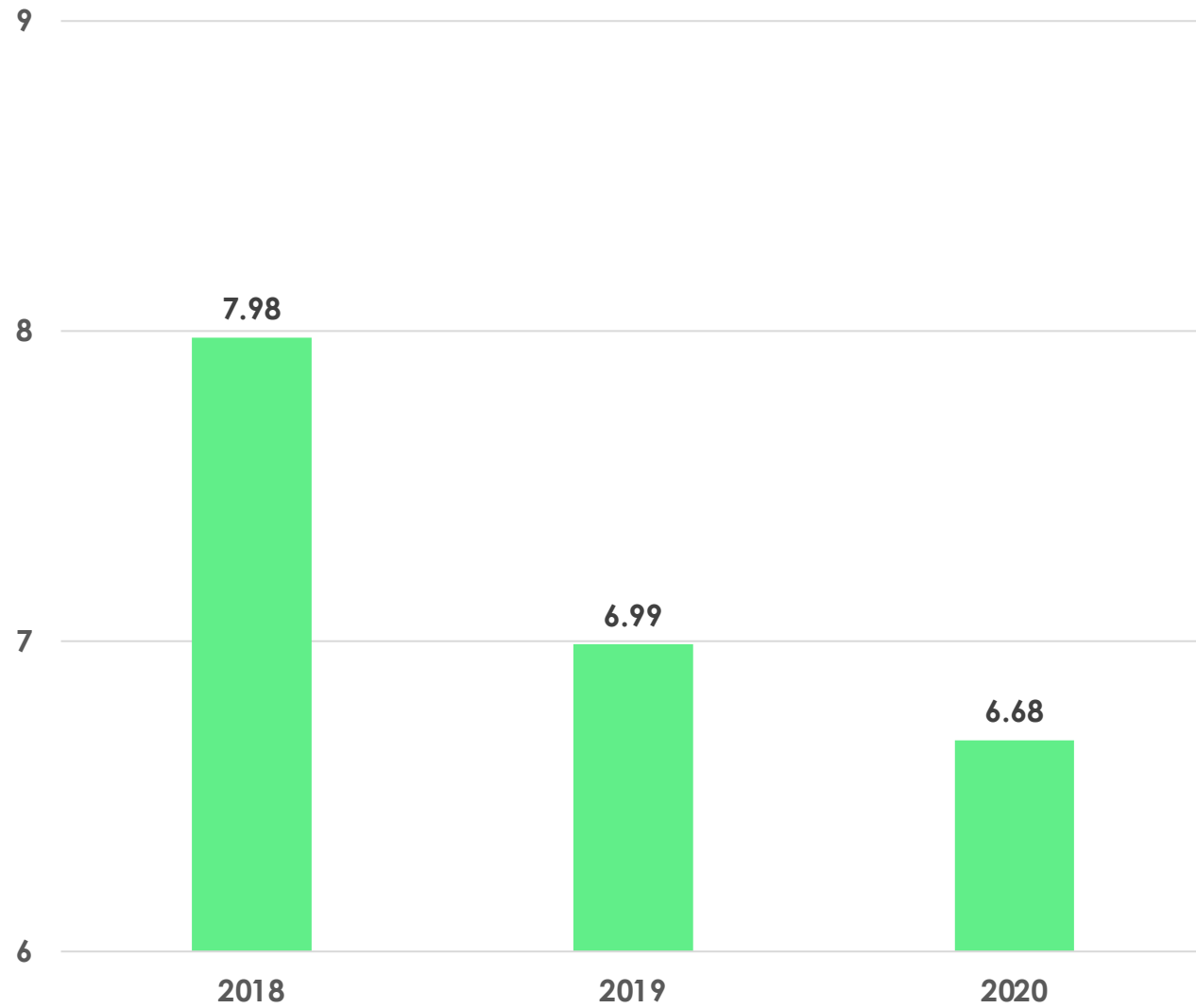
NIS revisions: potential issues

- Potential size of fines for smaller entities
 - Fairness currently depends very heavily on the regulator having a reasonable view of what is proportionate
- Non-reviewable nature of regulator's compliance with Tribunal directions
- Inspectors' powers
 - Could be very onerous
 - Could include power to demand compliance (unintended)
 - "Leave undisturbed" orders could create operational problems

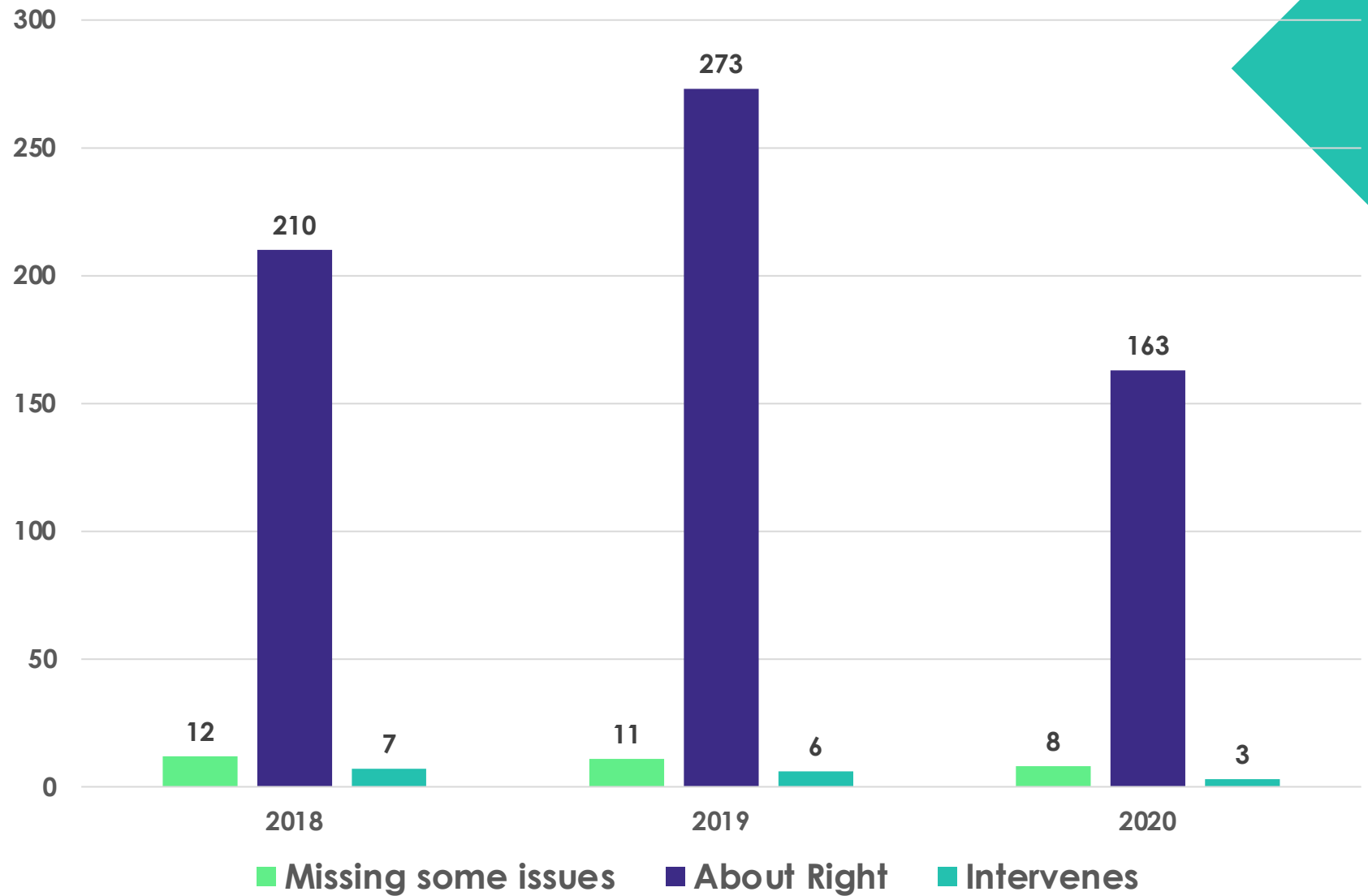
How satisfied are you with the approach LINX takes to Public Affairs?



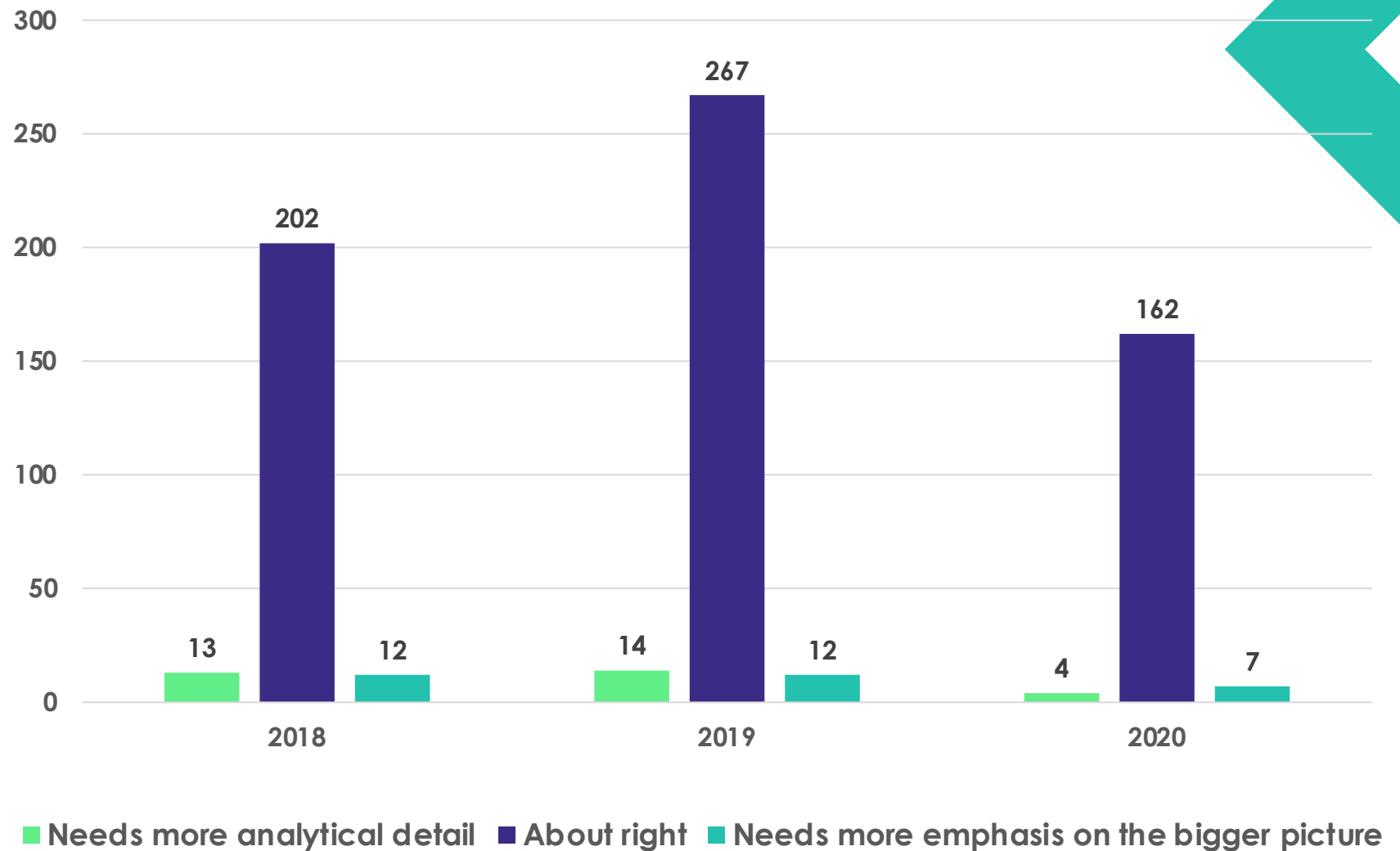
How aware are you of the work of LINX's Public Affairs team?



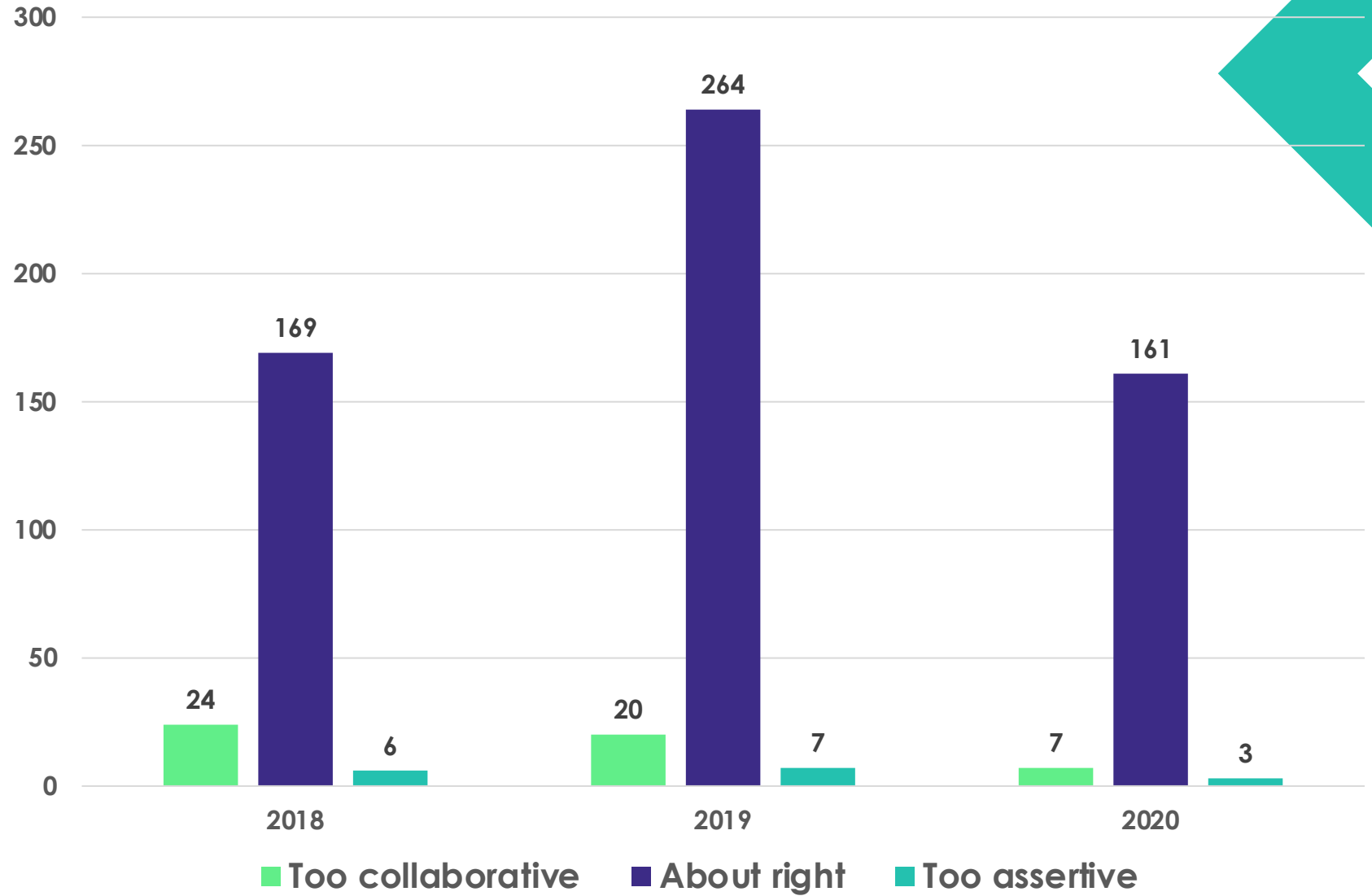
Are you satisfied with the range of issues LINX takes up with policy makers on behalf of our members?



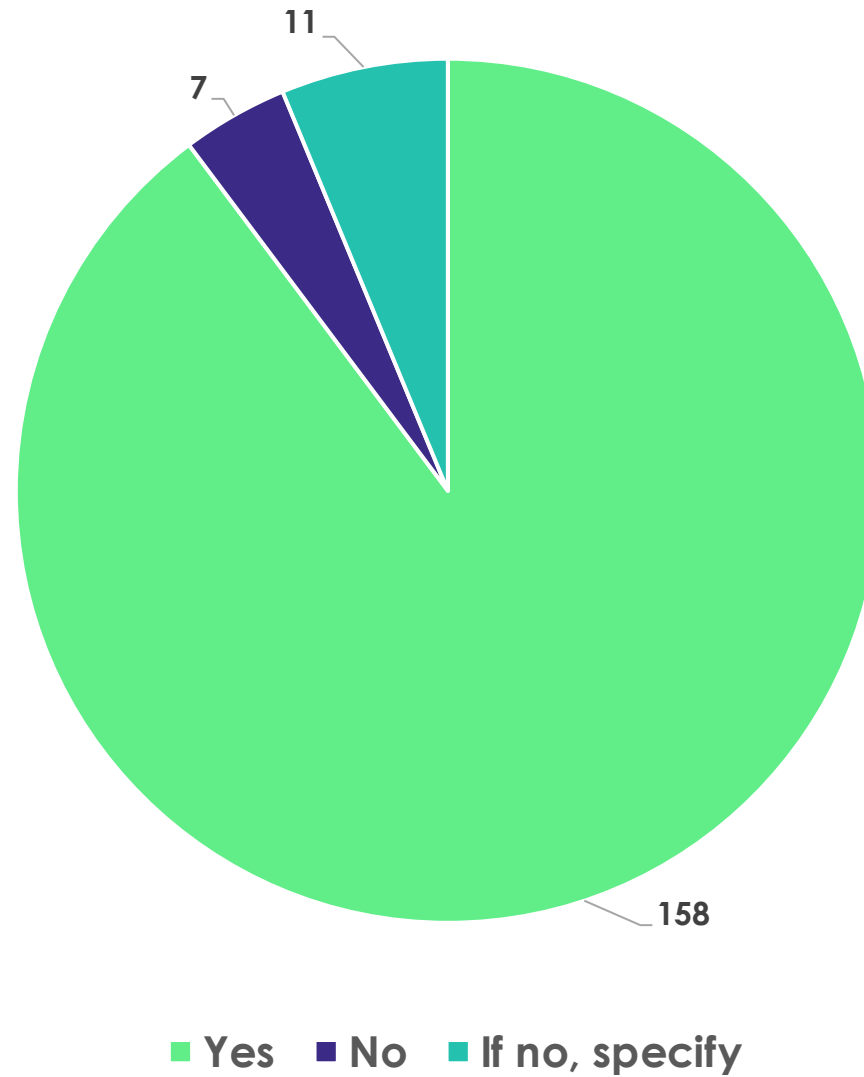
Are you satisfied with LINX's thoroughness in raising points of detail with policy makers?



Are you satisfied with LINX's lobbying style?



Are you satisfied LINX is speaking to the right people in your organisation when consulting members' opinions on public policy issues?





Thank you

