

Opinion of the European Economic and Social Committee on the Legal framework for consumer policy

(2006/C 185/13)

On 10 February 2005, the European Economic and Social Committee, acting under Rule 29(2) of its Rules of Procedure, decided to draw up an opinion on the *Legal framework for consumer policy*.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 28 March 2006. The rapporteur was Mr Pegado Liz.

At its 426th plenary session, held on 20 and 21 April 2006 (meeting of 20 April), the European Economic and Social Committee adopted the following opinion by 45 votes to 26, with two abstentions.

1. Summary

1.1 In any community of law, the policy the community intends to pursue must be founded on a legal basis which defines the limits to the community's powers and the parameters of its remit. The European Union is a community of law and, as such, it must meet this requirement.

1.2 For a legal basis to be suitable, workable and effective, it needs to be clear, precise and independent. It must set out the objectives, founding principles and implementing criteria for the policy which the community of law intends to pursue, and cover all the policy areas for which it was designed.

1.3 With the adoption of the Maastricht Treaty, Article 129a of the Treaty became the new legal basis for action in the area of consumer protection policy in the European Union. It soon became apparent that it was an inadequate basis for developing a fully-fledged policy in this field.

1.4 The non-application of this legal basis over the years highlighted its inadequacies as a suitable and effective legal basis for promoting a genuine policy for the protection of consumer interests at Community level.

1.5 The changes introduced by the new Article 153 of the Amsterdam Treaty did not address these shortcomings. Nor did the texts proposed with a view to the adoption of the European Constitution.

1.6 Consumer policy is clearly one of the policy areas closest to European citizens. It can play a key role in influencing their commitment to the European ideal, insofar as the latter satisfies their needs and aspirations, which has not always been the case ⁽¹⁾.

⁽¹⁾ As is noted by the EESC in, *inter alia*, its opinion on *Consumer policy post-enlargement of the European Union* (OJ C 221, 8.9.2005), and also acknowledged by the European Parliament in its report on the promotion and protection of consumer interests in the new Member States (rapporteur: Dam Kristensen, EP 359.904/02-00). Moreover, better account could be taken of this aspect by the additional development of approaches for self-regulation, co-regulation and alternative dispute-settlement arrangements.

1.7 Unfortunately, the Commission's approach to consumer protection policy ⁽²⁾ confirms a worrying decline in the promotion and protection of consumer interests, thus underlining the need and urgency to give careful consideration to the legal basis of the Treaty in this regard.

1.8 These are the issues addressed in the present opinion. In it the EESC notes that, in addition to the necessary political will to further consumer protection policy by promoting increased consumer involvement and protection of consumer interests in all Community policy areas, there is a need for an in-depth study on overhauling the legal framework in order to establish a firm foundation for consumer protection policy.

1.9 Aided by contributions from a large number of European lawyers with universally recognised expertise in this subject, the EESC concludes by putting forward a proposal for a new legal basis for consumer policy. This should significantly help to improve, simplify and even reduce regulation. It recommends to the Commission, the Council and the Member States that such a proposal be taken into consideration with a view to the next revision of the Treaty text.

2. Introduction — purpose of the own-initiative opinion

2.1 When the EESC authorised this own-initiative opinion, its purpose was to encourage a detailed examination of the legal basis to be selected for consumer policy at European level (i.e. Treaty Article 153), bringing it in line with both the constitutional text submitted to the Member States and secondary law. It also sought to ensure the involvement of stakeholders' representatives with an interest in this issue and of specialists in Community consumer law.

⁽²⁾ This is very evident in the new Directive 2005/29/EC of 11 May 2005 (OJ L 149, 11.6.2005) on unfair commercial practices, the Community action programme in the field of health and consumer protection 2007-2013 (COM(2005) 115 final) and the withdrawn proposal for a Regulation on sales promotion in the internal market (COM(2005) 462 final, 27.9.2005).

2.1.1 There was widespread feeling that the current shortcomings in the drafting of Article 153 were at the root of why, in practice, this article is not used as the legal basis for secondary legislation in promoting consumer rights and interests and developing consumer policy in the EU. The latter would therefore have much to gain from a suitable, workable and effective legal framework.

2.2 The European institutions as a whole and, in particular, civil society organisations, consumer bodies and the social stakeholders would most certainly be the first to benefit from any improvement in the legal basis of consumer policy in the Treaty.

2.2.1 As the institutional forum representing organised civil society, the EESC was felt to be the most appropriate body to successfully take this task on board, consulting with the social stakeholders and backed up by university experts in the field.

2.2.2 The EESC feels that consumer policy is clearly a policy that most closely touches grassroots concerns. It may — and indeed must — have a major influence on grassroots support for the European ideal as people see that ideal meet their own needs and aspirations.

2.2.3 On 14 October 2005, the EESC heard the views of numerous representatives who had responded to a questionnaire devised for this purpose. The views and suggestions received provided a more solid basis for the opinion. The EESC takes this opportunity to warmly thank all those whose contributions made it possible to draw up this opinion ⁽³⁾.

3. The issue at hand: a legal basis for consumer policy

3.1 The current legal basis for consumer policy is Article 153, which appears in Title XIV of the Treaty under the heading *Consumer protection*. The article reads as follows:

'1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting

⁽³⁾ The following persons attended the hearing held on 14 October 2005: Mr Carlos Almaraz (UNICE), Professor Thierry Bourgoignie (University of Quebec in Montreal), Ms Nuria Rodríguez (The European Consumers' Organisation), Mr Denis Labatut and Ms Kalliopi Spyridaki (UGAL - Union of Groups of Independent Retailers of Europe), Mr Jon-Andreas Lange (Forbrukerradet - The Consumer Council of Norway), Mr William Vidonja (CEA), Mr Patrick von Braunmühl (Verbraucherzentrale Bundesverband - vzbv) and Mr Hubert J.J. van Breemen (VNO NVW).

In addition, written responses to a questionnaire that was sent out to several dozen lawyers and academics across Europe were received from the following: Professor Thierry Bourgoignie (University of Quebec in Montreal), Professeur Jean Calais-Auloy (Faculté de Droit et des Sciences Economiques de Montpellier), Mr Stephen Crampton (Which?), Professor Mário Frota (APDC - Associação Portuguesa de Direito do Consumo), Ms Cornelia Kutterer (The European Consumers' Organisation), Mr Jon-Andreas Lange (Forbrukerradet - The Consumer Council of Norway), Ms René-Claude Mäder (CLCV - Consommation, Logement et Cadre de Vie), Professor Stephen Weatherill (ECLG), Professor Hans Micklitz (Institut für Europäisches Wirtschafts- und Verbraucherrecht e.V. Universität Bamberg), Ms Gaëlle Patetta (UFC-Que Choisir?), Professor Norbert Reich (Universität Bremen Fachbereich Rechtswissenschaften), UNICE and EuroCommerce.

their right to information, education and to organise themselves in order to safeguard their interests.

2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.
3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:
 - (a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;
 - (b) measures which support, supplement and monitor the policy pursued by the Member States.
4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).
5. *Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them ⁽⁴⁾.*

3.2 If consumer protection is to become part of the EU's remit, then it must be subject to a specific Treaty provision, in line with Treaty Article 5 which, in its consolidated version, reads as follows:

'The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.'

3.3 This rule — under which the Member States have the power to determine their own jurisdiction — is of key importance, since a text which is deficient, imprecise or contradictory may invalidate any subsequent provisions adopted by the European institutions under the Treaty.

⁽⁴⁾ In addition to this article, consumer policy is underpinned by various other provisions of the Treaty on European Union, not least the preamble under which the Member States commit themselves 'to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market' and 'to establish a citizenship common to nationals of their countries'. Consumer policy is also underpinned by Articles 2 and 6 of the same Treaty, and by Articles 2; 3(1)(t); 17(2); 33(1)(e); 34(2) II; 75(3) II; 81(3); and 87(2)(a) of the Treaty establishing the European Community as amended by the Treaty of Nice.

3.4 It would be well at this stage to recall the Court of Justice judgment of 5 October 2000 which states that a measure adopted on the basis of Article 100a (now Article 95) of the Treaty must genuinely have as its object the improvement of the conditions for the establishment and functioning of the internal market. The Court notes that, if a mere finding of disparities between national rules and of the abstract risk of obstacles to the exercise of fundamental freedoms or of distortions of competition liable to result therefrom were sufficient to justify the choice of Article 100a as a legal basis, judicial review of compliance with the proper legal basis might be rendered nugatory ⁽⁵⁾.

3.5 This requirement for a legal basis that is clear and thus verifiable at international level must also be placed on the political agenda as a fundamental and incontrovertible sign of the need for consumer protection policy. In this context, it would be well to recall the Single European Act of 17 and 28 February 1986, which to some extent filled a gap in the Rome Treaty by introducing a separate environment title as Articles 130r to 130t (now Articles 174 to 176). The objectives set out in Article 175 and the criteria laid down in the same article for Community action on the environment have clearly done much to foster the emergence of an effective body of standards in this area.

3.5.1 A comparison between the current Treaty Articles 175 and 153 clearly shows that the quality of the legal basis itself is a crucial factor in any subsequent action. The environmental objectives are set out clearly and precisely.

Moreover, Article 175 establishes the principles underpinning Community action on this front.

The technical parameters laid down in Article 175(3) also help secure the rational and effective application of environment policy.

3.5.2 Where the Community legislator has discretionary powers as to the appropriateness of any intended measures, the quality of the legal basis is obviously of critical importance, as this limits the potential for obvious error, misuse of power, or any clear overshoot of the discretionary remit ⁽⁶⁾.

4. Is Article 153 an acceptable legal basis for Community policy for European consumers?

4.1 In the light of the lessons that can be drawn from the above observations, it has to be said that the current Treaty Article 153 no longer provides a legal basis that affords adequate safeguards for consumer protection objectives.

4.2 It should be noted that, in essence, European consumer law has grown up on the basis of Treaty Article 95 and owes much to the impetus generated by the development of the single market. Consumer protection is, of course, supposed to be a cross-sectoral policy, and explicit mention of the need to take account of it is also made in other parts of the Treaty. It is

⁽⁵⁾ Court of Justice (CJ), 5 October 2000, Case C-376/98, *Federal Republic of Germany v Parliament and Council*, ECR-I/8149, particularly nos 76 to 89.

⁽⁶⁾ On these questions see CJ, 20 October 1977, Case 29/77, *Roquette Frères*, ECR 1835.

broadly agreed, however, that, as it stands, Article 153 falls short of the mark.

4.3 It has also been noted that Article 153 (or formerly Article 129a) has been used as the basis for measures to protect and defend consumer interests in exceptional cases only.

4.4 As well as voicing the criticism that consumer policy is a mere adjunct to the rules on the development of the single market, consideration must also be given to the impact, mentioned above, of the Court of Justice judgment of 5 October 2000 ⁽⁷⁾. The uncertainty thrown up by this case law may even result in challenges — *inter alia* through referrals for preliminary rulings — to the legal basis of certain consumer protection directives, such as those on guarantees and doorstep sales.

4.5 Moreover, the text as it stands establishes the yardstick of a high level of consumer protection. As defined in Article 153, this high level of consumer protection does not necessarily mean that Member States' legal systems do in fact provide the optimum safeguards. Indeed, Article 153(5) gives Member States the right in such cases to maintain more stringent protective measures provided they are compatible with the Treaty.

4.5.1 Furthermore, it is by no means easy to define what is meant by a high level of protection. Article 153 fails to lay down any parameters, resulting in potential difficulties of interpretation.

4.6 The legal basis is now in need of review in the light of the considerations outlined below.

4.6.1 Consumer protection policy should be part of the Union's own battery of powers rather than an adjunct to the Member States' own policies. Indeed, it is somewhat paradoxical that consumer protection, which is supposedly a tool to help complete the single market, should fall within the remit of the Member States.

4.6.2 The health, safety and economic interests of consumers are cited as areas in which the European Union has a role to play. Indeed, these interests should more properly be seen as objectives that most certainly deserve broadening. For instance, is it only consumers' economic interests that need to be taken into consideration? There is a clear inconsistency between promoting these interests and taking steps to help protect them.

4.6.3 With regard to consumers' right to information, education and to organise themselves in order to safeguard their interests, these are principles that should be recognised as fundamental yardsticks of Union policy.

4.6.4 The criteria for determining what is meant by a high level of protection are not specified. These ought to be outlined in the Treaty itself.

⁽⁷⁾ Case C-376/98, *Germany v Parliament and Council*, ECR-I/8498.

4.6.5 Any discussion of an independent legal basis for consumer protection will have to take account of the key priority that must be given to Community policy in both substance and form. The 'dual subsidiarity' principle is obviously restrictive and paralyses, at both European and national level, any policy designed to enhance consumer protection. Hence, the 'dual subsidiary' provided for under Article 153 clearly needs to be abandoned.

4.6.6 The legal basis under the Treaty should seek not only to protect and defend consumers but to give them a pro-active role as well. Consumers are citizens, who clearly must also have a right to a say and to be heard on any options society might propose.

4.6.7 Consideration should also be given to whether the relevant Treaty provisions should not provide for direct access to the Court of Justice by consumer associations as representative groups with a stake in European Union activities.

4.6.8 Also, the idea of consumer protection underpinning the current text is restrictive in that it focuses virtually exclusively on the benefits of information.

5. Objectives, principles and yardsticks for establishing a legal basis for consumer policy

5.1 What are the broad yardsticks that must determine the quality of a legal basis in any treaty?

From the points made above, it is clear that any legal basis needs to:

- be clear and precise;
- set out the objectives to be pursued under the policy concerned, the principles underpinning that policy and the implementing criteria; and
- be independent.

These factors are vital in any attempt to resolve the difficulties described above.

5.2 Attendant issues may also be included to improve the legal basis. Consideration must therefore be given to the various different options for harmonisation. The Commission, among others, backs a policy of maximum or full harmonisation. However, the level of protection selected must be genuinely high, otherwise there is a risk that maximum or full harmonisation will prove detrimental to consumer interests.

5.3 The proposed text seeks to amend Treaty Article 3(1)(t) by clearly indicating that policies to promote and protect consumer interests are among the objectives to be pursued by the institutions.

5.4 The proposed Article 153 is three-pronged:

5.4.1 It lists the customary objectives of EU consumer policy, albeit with certain special features:

- One new element is the promotion of the rights of consumers to information, education, participation and to orga-

nise themselves to safeguard and represent their interests, not least through the recognition of individual and collective rights in this area. This expressly means not only that the machinery must be put in place to facilitate class actions, but also that steps must be taken to involve consumers collectively in drawing up rules in which they have a stake.

- The protection of consumer health and safety has obviously long been a live issue that needs to be established as a Treaty objective.
- Another novelty is the promotion of consumers' legal, economic, social and cultural interests. The consumer is thereby recognised as an active player in society, rather than a mere user of products and services. Recognition of the promotion of these interests is also a conduit for the development of policies in areas such as sustainable development. The same goes for a policy that closely links the promotion of consumer interests with due respect for the environment.

5.4.2 Expression may be given to the following principles when drawing up Article 153:

- the principle of preventative action;
- the principle of effective redress;
- the principle of developing sustainable consumption;
- the principle of risk-creator pays;
- the principle of participation.

These five principles are vital for the successful implementation of the policy described above.

5.4.3 The proposed text states in the usual way that the requirements underpinned here by an independent legal basis also cannot be ignored when working out other EU policies.

5.4.4 Certain parameters need to be taken into consideration when drawing up these measures. The concept of a high level of protection will reflect, among other things, available social and economic data which make it possible to accurately identify the behaviour of consumers when acquiring and using products and services placed on the market. Explicit recognition of class actions must be also be included.

5.4.5 The proposal for Article 153a sets out the policy to be pursued by the Council.

One issue discussed is the direct impact of directives. The proposed wording gives priority to regulations as a tool of harmonisation, obviating the need for the ongoing debate on the precise impact of directives. The result is a flexible approach under which Member States can make their views known when they intend to maintain or introduce protection measures.

This approach fosters maximum harmonisation, but subject to a case-by-case assessment.

5.4.6 Article 153 also introduces a new provision whereby consumer associations are deemed to be 'addressees' within the meaning of Treaty Article 230. In other words, these associations may institute proceedings directly before the Court against any Community acts that infringe the Treaty provisions.

6. Conclusion: proposal for a new legal basis

In the light of the above observations, the following proposal is made:

'Article 153

1. Community consumer policy shall ensure the pursuit of the following objectives:

- promoting consumers' right to information, education, participation and to organise themselves in order to safeguard and represent their interests, including through the recognition of individual and collective rights in these areas;
- protecting consumers' health and safety;
- promoting consumers' legal, economic, social and cultural interests.

2. Community consumer protection policy shall aim at the highest level of protection. It shall be based on the following principles:

- the principle of preventive action;
- the principle of effective redress for infringements of consumers' individual and collective rights and interests;
- the principle of risk-creator pays;
- the principle of developing a policy for sustainable consumption and protection;
- the principle of consumer participation, through bodies representing their interests, in drawing up and applying the rules.

3. Consumer protection requirements shall be taken into account in defining and implementing other Community policies.

4. In formulating its consumer protection activities, the Community shall take account of:

- high levels of protection afforded to consumers in the Member States;
- available social and economic data on the acquisition and use of products and services placed on the market;

- effective redress in cases of infringement of consumers' rights or interests, including through recognition of collective actions.

Article 153a

1. The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt such measures as are necessary to attain the objectives referred to in Article 153(1); these measures shall be subject to regular review in order to ensure that they continue to guarantee a high level of consumer protection.

2. Harmonisation measures adopted pursuant to paragraph 1 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty and the Commission shall be notified of them.

3. The Commission shall, within six months of the notification referred to in paragraph 3, decide whether to reject the national provision on the grounds that, among other things, it constitutes an obstacle to the functioning of the internal market. In the absence of a decision within this period, the provision shall be deemed to have been approved unless the complexity of the matter requires that the deadline be extended for a further period of up to one year, in which case the Member State shall be notified of that fact within the first six-month period.

4. The Commission, in close cooperation with the Member States, shall ensure the effective application of the measures taken to promote consumers' rights and interests. In particular, the Member States shall be required to take the necessary steps to:

- a) define and apply effective, proportionate and dissuasive penalties in the event of infringements of measures imposing obligations or prohibitions designed to protect consumers;
- b) put an end to such infringements;
- c) provide for simplified judicial and non-judicial procedures to prevent and remedy infringements of consumers' rights and interests and for fair compensation for losses incurred.

5. Measures taken under this article and under Article 153 shall be considered as being addressed, within the meaning of Treaty Article 230, to the consumer associations duly recognised under Member States' national law or by the European Commission.'

Brussels, 20 April 2006.

The President
of the European Economic and Social Committee
Anne-Marie SIGMUND

APPENDIX I

to the opinion of the European Economic and Social Committee

The following amendments were rejected by the plenary session but received at least one-quarter of the votes cast:

Point 1.3

Delete the entire point.

Reason

Point 1.3 contains a strong statement saying that *'it soon became apparent that the Maastricht Treaty, Article 129a of the Treaty was an inadequate basis for developing a fully-fledged policy in this field.'* This serious criticism is not supported by any evidence.

Outcome of the vote

For: 23

Against: 39

Abstentions: 5.

Point 1.4

Delete the entire point.

Reason

Point 1.4 contains a strong statement saying that *'the non-application of this legal basis over the years highlighted its inadequacies as a suitable and effective legal basis for promoting a genuine policy for the protection of consumer interests at Community level.'* This serious criticism is not supported by any evidence.

Outcome of the vote

For: 23

Against: 39

Abstentions: 5.

Point 1.5

Delete the entire point.

Reason

Point 1.5 contains a strong statement saying that *'the changes introduced by the new Article 153 of the Amsterdam Treaty did not address these shortcomings. Nor did the texts proposed with a view to the adoption of the European Constitution.'* This serious criticism is not supported by any evidence.

Outcome of the vote

For: 23

Against: 39

Abstentions: 5.

Point 4.6.1

Delete the entire point.

Reason

This point making consumer policy a competence for the EU would make it impossible to have better rules for consumers in the Member States.

Outcome of the vote

For: 26

Against: 35

Abstentions: 8.

Point 4.6.7

Delete the entire point.

Reason

It is not appropriate to give consumer associations direct access to the Court of Justice, as any interest group could then make a similar demand on behalf of its members. Granting such a right could give rise to unacceptable situations (class actions in the USA being a case in point).

Outcome of the vote

For: 30

Against: 38

Abstentions: 4.

Point 5.4.1

Delete as follows:

- *'One new element is the promotion of the rights of consumers to information, education, participation and to organise themselves to safeguard and represent their interests, not least through the recognition of individual and collective rights in this area. This expressly means not only that the machinery must be put in place to facilitate class actions, but also that steps must be taken to involve consumers collectively in drawing up rules in which they have a stake.'*

Reason

It is not appropriate to give consumer associations direct access to the Court of Justice, as any interest group could then make a similar demand on behalf of its members. Granting such a right could give rise to unacceptable situations (class actions in the USA being a case in point).

Outcome of the vote

For: 30

Against: 40

Abstentions: 3.

Point 5.4.4

Delete the last sentence as follows:

- '5.4.4 Certain parameters need to be taken into consideration when drawing up these measures. The concept of a high level of protection will reflect, among other things, available social and economic data which make it possible to accurately identify the behaviour of consumers when acquiring and using products and services placed on the market. ~~Explicit recognition of class actions must be also be included.~~*

Reason

It is not appropriate to give consumer associations direct access to the Court of Justice, as any interest group could then make a similar demand on behalf of its members. Granting such a right could give rise to unacceptable situations (class actions in the USA being a case in point).

Outcome of the vote

For: 27

Against: 42

Abstentions: 4.

Point 5.4.6

Delete the entire point.

Reason

It is not appropriate to give consumer associations direct access to the Court of Justice, as any interest group could then make a similar demand on behalf of its members. Granting such a right could give rise to unacceptable situations (class actions in the USA being a case in point).

Outcome of the vote

For: 26

Against: 44

Abstentions: 2.

Point 6

Delete the entire point.

Reason

Point 6. contains an ambitious proposal for a new legal basis for consumer protection policy. As it was demonstrated on previous points 1.3, 1.4, 1.5, the text of the opinion is missing sufficient amount of evidence that such changes are necessary or needed. Instead of initiating an extensive amendment of the current legal basis for consumer protection policy the opinion should be much more strengthened in focusing on real arguments why the new legal basis should be the priority when it will come to the next revision of the Treaty text.

Outcome of the vote

For: 23

Against: 39

Abstentions: 5.

Article 153

Delete the last indent of Article 153(4) as follows:

~~'effective redress in cases of infringement of consumers' rights or interests, including through recognition of collective actions.'~~

Reason

It is not appropriate to give consumer associations direct access to the Court of Justice, as any interest group could then make a similar demand on behalf of its members. Granting such a right could give rise to unacceptable situations (class actions in the USA being a case in point).

Outcome of the vote

For: 27

Against: 44

Abstentions: 2.

Article 153a

Delete point 4.

Reason

The text would make consumers policy subordinate to the rules of the internal market. This is not according to the contents of the rest of the opinion.

Outcome of the vote

For: 27

Against: 34

Abstentions: 14.

*APPENDIX II***to the opinion of the European Economic and Social Committee**

The following passage from the section opinion was rejected in favour of an amendment adopted by the assembly, but received at least a quarter of the votes cast:

Point 6, Article 153a

2. Harmonisation measures shall, as a matter of priority, take the form of a regulation.

Outcome of the vote

31 votes in favour of deleting this point

24 against

14 abstentions.
