

REPORT 14/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS DATED NOVEMBER 6, 2012, ON THE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) No 1093/2010 ESTABLISHING A EUROPEAN SUPERVISORY AUTHORITY (EUROPEAN BANKING AUTHORITY) AS REGARDS ITS INTERACTION WITH COUNCIL REGULATION (EU) No.../... CONFERRING SPECIFIC TASKS ON THE EUROPEAN CENTRAL BANK CONCERNING POLICIES RELATING TO THE PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS [COM (2012) 512 FINAL] [2012/0244 (COD)]

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality attached to the Lisbon Treaty of 2007, in force since December 1st, 2009, establishes a procedure allowing national parliaments to verify European legislative initiatives' compliance with the subsidiarity principle. The said Protocol has been developed in Spain by Act 24/2009, of December 22, amending Act 8/1994, of May 19. In particular, new articles 3 j), 5 and 6 of Act 8/1994 are the legal basis for this report.

B. The Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No.../... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, has been adopted by the European Commission and conveyed to the national parliaments, which have a period of eight weeks to verify the subsidiarity check of the initiative, being the deadline November 8, 2012.

C. The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on October 8, 2012, to examine the said European legislative initiative, appointing to that end as Rapporteur MP Mr. Rubén Moreno Palanques (GPP), and requesting the Government the report envisaged in section 3 j) of act 8/1994.

D. The Joint Committee for EU Affairs, in its meeting held on November 6, 2012, adopted the following

REPORT

1.- Article 5 (1) of the Treaty on the European Union indicates that “*the use of Union competences is governed by the principles of subsidiarity and proportionality*”, and adds in Article 5 (3) of the same Treaty that “*under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall only act in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level*”.

2.- The proposal is based on Article 114 of the TFEU, since it modifies Regulation (EU) n° 1093/2010 adopted according to the same legal basis.

3.- The establishment of the European Banking Authority (EBA) by Regulation (EU) n° 1093/2010 of the European Parliament and of the Council, dated November 24, 2010, establishing a European Supervisory Authority (European Banking Authority) and of the European System of Financial Supervision (ESFS) already contributed to improved cooperation between national supervisors and to the development of a single rulebook for financial services in the EU. However, supervision of banks remains to a large extent within national boundaries and thereby fails to keep up with integrated banking markets. Supervisory failings have, since the onset of the banking crisis, significantly eroded confidence in the EU banking sector and contributed to an aggravation of tensions in euro area sovereign debt markets. The Commission has therefore called in May 2012, as part of a longer term vision for economic and fiscal integration, for a banking union to restore confidence in banks and in the euro. One of the key elements of the banking union should be a Single Supervisory Mechanism (SSM) with direct oversight of banks, to enforce prudential rules in a strict and impartial manner and perform effective oversight of cross border banking markets. Ensuring that banking supervision across the Euro area abides by high common standards will contribute to build the necessary trust between Member States, which is a pre-condition for the introduction of any common backstops. Under this new mechanism, the ECB will carry out a wide range of key supervisory tasks over credit institutions in the Euro area Member States. With a view to maintaining and deepening the internal market, other Member States will be allowed to enter into close collaboration with the ECB. To avoid fragmentation of the internal market following the establishment of the single supervisory mechanism, the proper functioning of the EBA needs to be ensured. The role of the EBA should therefore be preserved in order to further develop the single rulebook and ensure convergence of supervisory practices over all EU.

4.- Along with the proposal for a Council Regulation conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions in

accordance with Article 127(6) TFEU, this proposal introduces targeted amendments to the Regulation establishing the European Banking Authority. The proposal is limited to an adjustment of the procedural modalities under which the EBA operates to take account of the conferral of supervisory tasks on the ECB and to ensure that the EBA can continue to pursue its functions to protect the integrity, efficiency and orderly functioning of the internal market for financial services and maintaining the stability of the financial system within the internal market. It does not alter the balance of respective competences between the EBA and national authorities.

5.- Concerning EBA powers, in particular binding mediation/emergency situations, the wording of Articles 4, 18(1) and 35(1) to (3) is amended to ensure that EBA can carry out its tasks also in relation to the ECB by clarifying that the notion of "competent authorities" includes also the ECB, as it does in the other articles which make reference to "competent authorities". Likewise, in order to ensure that the EBA can carry out its tasks to settle disagreements and act in emergency situations also in relation to the ECB, in Articles 18 and 19, paragraphs 18(3a) and 19(3a) are introduced to provide for a specific procedure in relation to the decision taken by the EBA under Article 18(3) or 19(3). The procedure provides that if the ECB does not comply with an action by EBA to settle a disagreement or to address an emergency situation, it should be required to explain its reasons. In that unlikely case, where the relevant requirements are set out in directly applicable Union law, the EBA can adopt an individual decision addressed to the financial institution concerned to enforce its action. This will ensure full enforceability of EBA's settlement of a disagreement and its action in an emergency situation.

6.- On the other hand, the fact that the ECB will coordinate the position of the Euro area Member States requires a review of the voting modalities currently provided for in the EBA regulation, in order to ensure that EBA decisions are taken in the interest of maintaining and strengthening the internal market for financial services. The best option identified to achieve this objective is to confer decision making powers on an independent panel and provide for a strong reverse voting mechanism which will ensure that the proposal prepared by the independent panel is supported by Euro area and non-Euro area Member States. This will also ensure that Euro area Member States cannot have a blocking minority in case of actions taken against one of them. Article 41 of the EBA Regulation is therefore amended in order to confer stronger decision making powers to the independent panel on breaches of EU law and settlement of disagreements, and adapt rules on its composition accordingly. Article 44 of the EBA Regulation is likewise amended to provide that the decisions proposed by the independent panel are adopted unless they are rejected by a simple majority, including at least three votes of participating Member States and non-participating Member States. A specific provision is added on the appointment of the independent panel.

7.- In view of the decisive influence of members from Member States participating in or closely cooperating with the single supervisory mechanism when electing the Management Board (simple majority of members present), members from Member States not participating in the SSM could not be appropriately represented adequately in the Management Board. To ensure a balanced composition of the Management Board, reflecting the EU as a whole and including Member States not participating in the single supervisory mechanism, the proposal amends the composition of the Management Board of the EBA (Article 45 of the EBA Regulation) to ensure that at least two members from Member States not participating in the single supervisory mechanism are represented in the Management Board.

8.-. Finally, in order to take into account any developments in the number of Member States whose currency is the Euro or whose competent authorities have entered into a close cooperation, the Commission is required to review the proposed provisions to examine whether in light of such developments any further adjustments are necessary to ensure that EBA decisions are taken in the interest of maintaining and strengthening the internal market for financial services.

9.- The provisions in the proposal do not go beyond what is strictly necessary to achieve the objectives pursued. The proposal is therefore in line with the principles of subsidiarity and proportionality set out in Article 5 of the Treaty on the European Union.

10.- Finally, the proposal has no implications for the EU budget.

CONCLUSION

For the aforementioned reasons, the Joint Committee for EU Affairs considers that the Proposal for a Regulation amending Regulation establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, complies with the principle of subsidiarity laid down in the Treaty on the European Union in force.