REPORT 13/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS ON THE COMPLIANCE OF THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A COUNCIL REGULATION CONFERRING SPECIFIC TASKS ON THE EUROPEAN CENTRAL BANK CONCERNING POLICIES RELATING TO THE PRUDENTIAL SUPERVISION OF CREDIT INSTITUTIONS [COM (2012 511 FINAL] [2012/0242 (CNS)]

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 Council regulation 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 deadline 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*". According to Article 5(3) of the same Treaty, "*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 127 (6) TFEU, which provides a legal basis for conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions and other institutions with the exception of insurance undertakings.

3.- The creation of the European Banking Authority (EBA) by Regulation (EU) No. 1093/2010 of the European Parliament and the Council of 24 November 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.

4.- The proposal confers certain key supervisory tasks necessary for the supervision of credit institutions on the ECB, while all tasks not spelt out in the regulation will remain the competence of national supervisors. The proposal also mandates the ECB with carrying out supervision of financial conglomerates. However, to ensure compliance with Article 127 (6) TFEU, the ECB will be only responsible for carrying out its tasks for the supplementary supervision of financial conglomerates on a group-wide basis, while the prudential supervision of the individual insurance undertaking itself will be carried out by national competent authorities.

5.- After a transitional period, the ECB will be responsible for carrying out key supervisory tasks for all credit institutions established in participating Member States, regardless of their business model or size. The ECB shall be the host supervisor for credit institutions established in non-participating Member States, which establish a branch or provide cross-border services in a participating Member State

6.- For the purposes of carrying out its tasks, the ECB will be considered as the competent authority of participating Member States and will have the supervisory powers that those authorities shall have in accordance with the EU banking legislation. Those include supervisory powers such as the authorisation of credit institutions and the withdrawal of authorisations and the removal of a member of a credit institution's management board. In order to be able to carry out its tasks the ECB will have all necessary investigatory powers and will be able to request all relevant information from supervised entities and persons involved in their activities, related or connected to those activities or carrying out operational functions on their behalf. The exercise of the investigatory powers will be subject to appropriate safeguards.

7.- The ECB will be independent when carrying out banking supervision and will be subject to strong accountability provisions to ensure that it uses its supervisory powers in the most effective and proportionate way, within the boundaries set by the Treaty in parallel to the arrangements provided for the European Supervisory Authorities.

8.- Monetary policy tasks of the ECB will be strictly separated from supervisory tasks to eliminate potential conflicts of interest between the objectives of monetary policy and prudential supervision.

9.- Due to the urgency of setting up an effective SSM, the regulation will enter into force on 1 January 2013. In order to ensure a smooth start of the mechanism a phasing-in approach is envisaged, which provides for the possibility for the ECB as of 1 January 2013 to apply its supervisory tasks to any banks, in particular banks which have received or requested public financial assistance, while the most significant credit institutions of European systemic importance shall be subject to ECB supervision as of 1 July 2013. The ECB will assume in full its tasks in relation to all other banks as from 1 January 2014 at the latest.

10.- The objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore be better achieved by the EU. Recent events have clearly demonstrated that only supervision at the European level can ensure appropriate oversight of an integrated banking sector and a high level of financial stability in the EU and the Euro area in particular. The provisions of this proposal do not go beyond what is necessary to achieve the objectives pursued. The ECB is entrusted with the supervisory tasks which need to be exercised at EU level to ensure uniform and effective application of prudential rules, risk control and crisis prevention. National authorities will continue to carry out certain tasks which can be better performed at national level.

11.- According to Article 127 (6) TFEU, the Council acts by means of regulations. Therefore a regulation is the only legal instrument that allows for the conferral of supervisory tasks on the ECB.

12.- This proposal has no implication for the Union budget, since in accordance with the Treaty the ECB's budget is not part of the Union budget. Expenditures relating to the ECB's supervisory tasks will be financed by charging fees from supervised institutions.

CONCLUSION

For these reasons, the Joint Committee for EU Affairs considers that the Proposal for a 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 established in the EU Treaty in force.