We are writing to you as individual members of the EU Financial Affairs Sub-Committee to register an issue we feel ought to be addressed by the Liaison Committee in its review of investigative and scrutiny committees. In the EU Financial Affairs Sub-Committee’s previous inquiry, Brexit: the future of financial regulation and supervision, published 27 January this year, we noted the Liaison Committee's review and its potential to bear on questions of Parliamentary scrutiny of financial services legislation.

During the course of our inquiry, witnesses were primarily concerned about two issues: difficulties involved in transposing EU legislation into primary or secondary legislation in the UK and the increased powers of regulators.

On the first issue, many told us that the UK's legislative processes, as currently configured, would be unsuitable for this. Some of this turned on the degree of parliamentary scrutiny made possible by the committee structures in the European Parliament. Dr Kay Swinburne MEP was especially clear on this, telling us that:

"As a member of a committee in the European Parliament ... I have resources that allow me to do impact assessments if we feel that the Commission's impact assessments are not good enough. We have a policy unit that supports our work ... We have external consultancies on our books that we can call upon to do external studies for us at any point, and we can call hearings and workshops on any topic that the committee decides to investigate. We have a very comprehensive set of tools at our disposal, with significant financial resources to make sure that, as non-experts, we have experts advising us at every stage."

On the second issue, to the extent that technical rule-making will be in the hands of the Bank of England and the Financial Conduct Authority, proper scrutiny of their activities will be paramount. These organisations stand to acquire vastly greater powers post-Brexit and there is a danger of a lack of accountability should Parliament not have the capacity to scrutinise their exercise of those powers.

Accordingly, we recommended that Parliament will need to reconfigure its scrutiny processes to enable it to properly scrutinise legislation. This need is perhaps greater in financial services than in many other legislative spheres in virtue of the detailed and technical nature of the EU rules and because of the substantial powers that will likely be granted to domestic regulators.

This recommendation is properly addressed to Parliament, rather than the Government, and so the Government response to our report did not address this matter, merely noting that "Parliament may wish to consider its future approach to scrutiny of financial services regulation". Nor did the Minister, Lord Bates, touch on this issue in the debate on the report on 6 June.
Finally, whatever the mechanisms selected to transfer the *acquis*, given the debates about mutual market access for financial services there is a question about scrutiny of post-March 2019 legislation. And if the UK commits to some form of mirroring of EU rules, post-2020 incoming EU legislation will also need scrutinising. Our main concern is that, in the absence of the scrutiny reserve, we will lose a main tool for informing ourselves of legislative developments. The requirement for the Government to deposit EU documents in Parliament and submit associated Explanatory Memoranda is a valuable tool in allowing Parliament to stay abreast of developments.

It seems to us that a properly supported select committee mechanism will continue to be necessary to deal with these matters. We therefore wish to bring them to the attention of the Liaison Committee as it considers the future shape of select committee activity and would welcome an opportunity to speak to the Committee on these matters.

Baroness Falkner of Margravine
Lord Butler of Brockwell
Lord Giddens
Lord Desai
Lord de Mauley
Lord Cavendish of Furness
Lord Thomas of Cwmgiedd
Baroness Liddell of Coatdyke
Lord Bruce of Bennachie
Lord Vaux of Harrowden
The Earl of Lindsay
Baroness Neville-Rolfe

*July 2018*