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THE SECRETARIAT

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**Subject :       Contribution by Mr Jacob Söderman, member of the Convention**  
**"The place of the European Ombudsman in the future Constitution of the**  
**European Union"**

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The Secretary-General of the Convention has received the attached contribution from  
Mr Jacob Söderman, member of the Convention.

Strasbourg, 12.12.2002

**Contribution from the European Ombudsman to the European Convention**

***“The place of the European Ombudsman in the future Constitution of the European Union”***

The various draft constitutions of the European Union that have been circulated differ significantly in their treatment of the European Ombudsman. The differences seem to result from uncertainty about the European Ombudsman's role under the present Treaties rather than from deliberate political choice by the drafters. The purpose of this contribution is to explain why and where to put the European Ombudsman in a constitution.

*Why include the European Ombudsman in the Constitution?*

**In most countries, the existence, independence and mandate of the Ombudsman are considered sufficiently important to be mentioned in the constitution.**

The ombudsman institution is one of the great constitutional successes of our time. It has found its way to all continents and more than 100 countries. The institution was invented in Europe and there is now an ombudsman office in most Member States of the Union and in all 10 States that are expected to join the Union in 2004.

**The Ombudsman demonstrates a commitment to the fundamental values of the Union, including democracy, the rule of law and respect for human rights**

Many countries established ombudsman offices when they liberated themselves from dictatorship, to demonstrate their commitment to democracy, the rule of law and respect for human rights. This was the case, for example, in Portugal, Spain and many of the new democracies of Eastern Europe.

**The Ombudsman plays a key role in bringing the Union closer to its citizens**

The idea of creating an ombudsman for the European Union was to promote a more open, accountable and service-minded administration so as to enhance the relations between the European administration and the citizens.

*Where to put the European Ombudsman in the Constitution?*

(i) The part of the Constitution dealing with the institutional framework of the Union should mention the European Ombudsman, alongside the Economic and Social Committee and the Committee of the Regions.

*Why: The European Ombudsman is established by the EC Treaty, as are the Committee of the Regions and the Economic and Social Committee. These three bodies were all mentioned together in the Laeken declaration as having Observer status at the Convention on the future of Europe, as they had at the Convention which drafted the Charter of Fundamental Rights.*

(ii) The part of the Constitution concerned with citizens' rights should include the right to complain to the European Ombudsman.

*Why: Since the European Ombudsman began work in 1995, 11 000 citizens have exercised their right to complain. The institutions have improved their performance as a result of the Ombudsman's investigations, making for a more open, accountable and service-minded administration. Details of the European Ombudsman's work can be found in a new guide for citizens entitled "What can the European Ombudsman do for you?"*

(iii) The parliamentary nature of the Ombudsman should be mentioned by including the appointment and supervision of the Ombudsman in the constitutional functions of the European Parliament.

*Why: Many national constitutions provide for parliament to appoint and supervise the ombudsman as a guarantee of independence.*

The Ombudsman's mandate could be included in either (i) or (ii) above, depending on the overall architecture of the Constitution.

### **Background note: The existing Treaty provisions**

The provisions of the EC Treaty concerning the European Ombudsman were added by the Maastricht Treaty.

Under Article 21 EC, complaint to the European Ombudsman is one of the rights of citizenship of the Union.

Article 195 EC establishes the European Ombudsman. It contains two elements of constitutional importance. First, it provides for the European Parliament to appoint and supervise the Ombudsman. Second, it sets out the European Ombudsman's mandate, by defining the scope of inquiries and who can make a complaint. The European Ombudsman may inquire into maladministration in the activities of the Community institutions and bodies with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. Any citizen or any natural or legal person residing or having its registered office in a Member State has the right to complain to the European Ombudsman.

Article 41 TEU extends Article 195 EC to include the "third pillar".

The mandate of the European Ombudsman is also set out in Article 43 of the Charter of Fundamental Rights of the EU.