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**Submission by FEDITO BXL
and IDPC with regard to drugs**

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FEDITO BXL asbl, *Brussels Federation of Institutions for Drug Addicts*, was created in 1987 and represents 29 institutions working in Brussels in the field of information, prevention, harm reduction, care, support and epidemiology relating to drug use and addiction. One of the missions of FEDITO BXL is to be a privileged interlocutor of the public authorities and the media in the development of a health and research policy in the field of drug addiction in the broadest sense of the term. It is mandated for this purpose by its member institutions.

The *International Drug Policy Consortium (IDPC)*, which was created in 2006, is a global network of 196 NGOs that focus on issues related to drug production, trafficking and use. IDPC promotes objective and open debate on the effectiveness, direction and content of drug policies at the national and international level, and supports evidence-based policies that are effective at reducing drug-related harm.

Introduction:

1. This is the first time that a submission for the Universal Periodic Review for Belgium has identified shortcomings in the field of human rights relating specifically to narcotics issues. Therefore, no specific recommendations have previously been made on this matter, and it is not possible to measure any progress made in that regard since a previous Universal Periodic Review.

2. We draw attention to the fact that many of the sources cited here can be considered to be first hand. Indeed, as a federation, FEDITO BXL represents 29 organizations, including Eurotox, Infor-Drogues and Modus Vivendi, whose reports are cited here (see endnotes) and which have provided much of the information included in this report.

I. Criminalization of users:

3. Amend the law of February 24, 1921 in order to put an end to the criminalization of people who use drugs, and to ensure that drug use and addiction are treated exclusively from a public health perspective.

4. The Belgian law on the trafficking of poisonous, soporific, narcotic, psychotropic, disinfectant or antiseptic substances provides for prison terms of three months to five years and fines of one thousand to one hundred thousand euros¹. While this law does not punish consumption per se, drug users are nonetheless targeted through the criminalization of drug possession.

5. This law dates back to February 24, 1921, and urgently requires an in-depth revision. Indeed, despite a century of prohibition, the prevalence of drug use in Belgium has only increased, as has drug trafficking². The differentiated enforcement of this law, based on ethnic and social profiling, has also given rise to serious inequalities and injustice³. But the biggest failure of prohibition lies in its inability to provide an adequate response in terms of public health, protection and empowerment of people who use drugs, and support to those with addictions and other use problems related to illegal drugs. It is therefore urgent to take into account the positive public health outcomes witnessed elsewhere as a result of the decriminalization of users⁴.

6. The recommendation to decriminalize drug use and ancillary activities has already been made by a plethora of international human rights bodies, including: the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health⁵, the United Nations Committee on Economic, Social and Cultural Rights⁶, as well as the guidelines for action set out in the UN System Common Position on drug matters (2018)⁷. Furthermore, a recent analysis of over 100 peer-

reviewed studies showed that for many years, the scientific literature has been compiling evidence that criminalization has a negative effect on access to HIV prevention and treatment.⁸

II. Harm reduction:

7. Harm reduction is regularly advocated in various safety and prevention plans in Belgium, but its implementation stumbles on legal uncertainty due to the aforementioned 1921 law.

8. Amend the law of February 24, 1921 in order to allow the establishment and/or maintenance, with legal certainty, of drug consumption rooms (DCRs).

9. DCRs are spaces in which illegal drugs can be used under the supervision of trained staff, with the aim of reducing the risks of disease transmission through unhygienic injecting, preventing drug-related overdose deaths, and connecting high-risk drug users with addiction treatment and other health and social services⁹. In 2018, a total of 78 DCRs operated across seven countries in the EU alone, as well as in other countries such as Canada, Switzerland and Australia¹⁰. There is a substantial body of evidence showing their effectiveness in reducing high-risk injecting behavior¹¹.

10. A DCR reopened in Liège in 2018¹², and others are planned in Brussels¹³ and Charleroi¹⁴. However, the law of February 24, 1921, which had been adopted, among other reasons, to ban opium dens, formally prohibits "providing a premise" to facilitate the consumption of a controlled substance¹⁵. While city and regional authorities support and subsidize these projects, the federal level is not currently in favor, and the DCRs *de facto* remain in violation of the law and exist in great legal uncertainty.

11. This recommendation is in line with the Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health¹⁶.

12. Amend the law of February 24, 1921 and the Royal Decree of September 6, 2017 to allow the generalization of substance testing and to give it legal certainty.

13. Drug testing is still embryonic in Belgium: indeed, only one organization, Modus Vivendi¹⁷, located in Brussels, is authorized to carry out analyses of substance samples for the benefit of anonymous users¹⁸. Both the law of February 24, 1921 and the royal decree of September 6, 2017¹⁹ prohibit possession and transport of controlled substances, and the exceptions and authorizations provided do not explicitly pertain to testing. The legal framework therefore remains vague and uncertain, despite the fact that Modus Vivendi's testing project has been receiving subsidies for more than 10 years, and that the organization has concluded an agreement with the ministry of Health allowing it to transport controlled substances within very strict limits²⁰. However, a change in the legal framework is necessary in order to allow the spread of testing throughout the country and to provide it with the necessary legal security.

14. Set up harm reduction programs in prisons (needle exchange programs, supply of Naloxone® kits aimed at preventing overdoses, substitution treatments, screening and treatment for hepatitis C).

15. In Belgium, incarceration should normally result exclusively in the deprivation of liberty, but not in the deprivation of any other rights. This fundamental principle is enshrined in the main legislation concerning prison administration as well as the legal status of prisoners of January 12, 2005²¹, which reaffirms the inalienable nature of other prisoners' rights, including the right to health and the equivalence of care between prisoners and free people.

16. However, the prison environment exacerbates health risks, and the European Committee for the Prevention of Torture (CPT) regularly puts Belgium on the spot for the unsanitary conditions of its penitentiary institutions and for the mistreatment of certain prisoners²². Moreover, as everywhere else, the prevalence rates of HIV and HCV are significantly higher in prisons than in the community²³. Lastly,

regarding drugs, in 2008, 36.1% of people deprived of liberty in Belgium admitted to using drugs while in detention²⁴.

17. Nonetheless, it is currently still not possible to set up needle exchange programs in Belgian prisons, despite international recommendations to that effect²⁵. Access to Opioid Substitution Therapies (OSTs), such as methadone, is uneven and variable across institutions, and hepatitis C screening is not systematically offered²⁶. As a consequence, people deprived of liberty in Belgium are also deprived of access to sterile injecting equipment, thus putting them at risk of HIV transmission, as well as of other blood-borne viruses like Hepatitis B and C, and in some cases they are also deprived of access to OSTs.

18. This goes directly against the principle of equivalence of care, which requires that people in prison have access to health care at least equivalent to that in the community²⁷. In this regard, it would be very urgent to transfer the care of detained persons from the jurisdiction of the FPS Justice to the FPS Public Health and Social Security, as requested by many organizations in the sector since 2014²⁸.

III. Interventions in schools:

19. Cease using the police in response to drug use problems in schools; both drug prevention and support in case of drug use problems should be approached as a health issue.

20. The number of police interventions related to drug issues in schools for underage children has increased more than tenfold between 2007 and 2017, the latter having seen an average of 4 such interventions per day²⁹. Apart from the fact that these interventions seem completely out of proportion compared to the results obtained (an average of 2.3 grams of controlled substances per intervention³⁰), and thus in relation to the scale of the problem, they seriously undermine the climate of trust between schools and their students, and compromise the educational mission of the school by introducing a spirit of repression.

21. Some of these operations are labeled 'preventive' and take place without any prior indication of trafficking or consumption; they are carried out systematically, with judicial searches of all students and with the help of sniffer dogs, accompanied by temporary deprivation of freedom³¹.

22. This way of proceeding is illegal under article 28, §2 of the Law on the police function of 5 August 1992. It could also violate article 17 of the International Covenant on Civil and Political Rights, as well as article 16 of the International Convention on the Rights of the Child. Lastly, it could violate Article 11 of the United Nations Minimum Rules for the Administration of Juvenile Justice (Beijing Rules – A/RES/40/33). A report on this subject by the Standing Committee for the Control of Police Services (Committee P)³², published in 2015, recommends that police services thoroughly examine the legality, proportionality and subsidiarity of this type of intervention. However, it has not been followed up so far.

- 1 Law of February 24, 1921, concerning the trafficking of poisonous, soporific, narcotic, psychotropic, disinfectant or antiseptic substances and substances which may be used for the illicit manufacture of narcotic and psychotropic substances (M.B. March 6, 1921), art. 2bis, §1.
- 2 Stévenot, C., & Hogge, M., (2019). *Tableau de bord de l'usage de drogues et ses conséquences socio-sanitaires en Région de Bruxelles-Capitale*. Brussels: Eurotox asbl; https://eurotox.org/wp/wp-content/uploads/Eurotox-TB-2019-Bruxelles_2tma.pdf
- 3 *Contrôler et Punir ? Étude exploratoire sur le profilage ethnique dans les contrôles de police : paroles de cibles*. Brussels, Ligue des Droits de l'Homme, 2017 ; https://www.liguedh.be/wp-content/uploads/2017/03/rapport_profilage_ethnique_ldh.pdf ; see also: "On ne sait jamais, avec des gens comme vous" – *Politiques policières de prévention du profilage ethnique en Belgique*. Brussels, Amnesty International, 2018 ; https://www.amnesty.be/IMG/pdf/rapport_profilage_ethnique.pdf
- 4 Greenwald, G. (2009). *Drug Decriminalization in Portugal – Lessons for creating fair and successful drug policies*. Washington D.C.: Cato Institute; https://www.cato.org/sites/cato.org/files/pubs/pdf/greenwald_whitepaper.pdf
- 5 Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2010), A/65/255, para. 62-69.
- 6 United Nations Committee on Economic, Social and Cultural Rights (2020), *Concluding observations on the sixth periodic report of Norway*, UN Doc. E/C.12/NOR/CO/6, <https://undocs.org/sp/E/C.12/NOR/CO/6>, para. 42.
- 7 UN Chief Executives Board (2019), *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UN Doc. CEB/2018/2, p. 14; https://digitallibrary.un.org/record/3792232/files/CEB_2018_2-EN.pdf.
- 8 DeBeck, K. et al. (2017), 'HIV and the criminalization of drug use among people who inject drugs: a systematic review', *The Lancet* 4(8): e357-e374, <https://www.sciencedirect.com/science/article/abs/pii/S2352301817300735>
- 9 *Perspectives on Drugs – Drug consumption rooms: an overview of provision and evidence*. Lisbon: European Monitoring Center for Drugs and Drug Addiction (EMCDDA) (2018), p.1; https://www.emcdda.europa.eu/system/files/publications/2734/POD_Drug%20consumption%20rooms.pdf
- 10 Ibid, p. 2.
- 11 *Perspectives on Drugs – Drug consumption rooms: an overview of provision and evidence*. Lisbon: European Monitoring Center for Drugs and Drug Addiction (EMCDDA) (2018); https://www.emcdda.europa.eu/system/files/publications/2734/POD_Drug%20consumption%20rooms.pdf
- 12 <https://www.liege.be/fr/actualites/une-salle-de-consommation-a-moins-de-risque-ouvre-a-liege>
- 13 https://www.rtbef.be/info/regions/bruxelles/detail_le-parlement-francophone-bruxellois-adopte-le-principe-des-salles-de-shoots-pour-toxicomanes?id=10205856
- 14 <https://www.dhnet.be/regions/charleroi/le-projet-de-salle-de-shoot-se-poursuit-5ddece4c9978e272f9386f4f>
- 15 Law of February 24, 1921, concerning the trafficking of poisonous, soporific, narcotic, psychotropic, disinfectant or antiseptic substances and substances which may be used for the illicit manufacture of narcotic and psychotropic substances (M.B. March 6, 1921), art. 3, §2.
- 16 Report of the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2010), A/65/255, para. 50.
- 17 <http://www.modusvivendi-be.org>
- 18 Stévenot, C., & Hogge, M. (2017). *L'usage de drogues en Wallonie et à Bruxelles – Rapport 2016*, pp. 156-157. Brussels: Eurotox asbl; https://eurotox.org/wp/wp-content/uploads/Eurotox_Rapport-2016_Usage_de_drogues_en_Wallonie_et_a_Bruxelles.pdf
- 19 Royal Decree of September 6, 2017 regulating narcotic and psychotropic substances (M.B. September 26, 2017)
- 20 Stévenot, C., & Hogge, M. (2017), p. 157.
- 21 Principle law of January 12, 2005 concerning the prison administration as well as the legal status of prisoners (M.B. February 1, 2005).
- 22 *Rapport au Gouvernement de la Belgique relatif à la visite effectuée en Belgique par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT)*. Strasbourg, Council of Europe, 2018; <https://rm.coe.int/16807913b1>
- 23 Fazel, S., & Baillargeon, J. (2011). *The Health of Prisoners*. *The Lancet*, 377: 956-65; [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(10\)61053-7/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(10)61053-7/fulltext).
- 24 Glibert, P., Hogge, M., Saliez, V., Todts, S., Van Huyck, C. & Van Malderen, S. (2008). *Usage de drogues dans les prisons belges : Monitoring des risques sanitaires*. Bruxelles : Modus Vivendi asbl and Federal public service for Justice ; http://www.modusvivendi-be.org/IMG/pdf/Rapport_usage_drogues_2008_version_fr_defin.pdf
- 25 Jürgens, R. (2007). *Interventions to address HIV in prisons: needle and syringe programmes and decontamination strategies*. Geneva : World Health Organization ; https://apps.who.int/iris/bitstream/handle/10665/43758/9789241595810_eng.pdf; *HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings – A Framework for an Effective National Response*, action 60. Geneva, United Nations Office against Drugs and Crime (2008); https://www.unodc.org/documents/hiv-aids/HIV-AIDS_prisons_Oct06.pdf
- 26 Stévenot, C., & Hogge, M., (2019). *Tableau de bord de l'usage de drogues et ses conséquences socio-sanitaires en Région de Bruxelles-Capitale*, p.180. Brussels: Eurotox asbl.
- 27 United Nations, Human Rights Council, *Human rights in the administration of justice: Report of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/42/20, <https://undocs.org/en/A/HRC/42/20>, para. 35.
- 28 See <https://www.atasp.be/appel/>
- 29 *La drogue très présente dans les écoles en Belgique : la police a dû intervenir près de 750 fois en 2017, soit 4 fois par jour*, Sudinfo.be, 26/09/2018; <https://www.sudinfo.be/id76717/article/2018-09-26/la-droque-tres-presente-dans-les-ecoles-en>

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- 30 Calculation made for 2012 based on the figures presented in: *La politique policière en matière de drogues en milieu scolaire*. Brussels: Comité permanent de contrôle des services de police (Comité P), 2015.
- 31 Boucher, A. & Guillain, C. (2014). *Les fouilles "anti-drogues" dans les écoles, il est urgent... d'arrêter !* Brussels: Infor-Drogues asbl & Ligue des Droits de l'Homme ; <https://infordrogues.be/pdf/ecole-police%20vlongue.pdf>
- 32 *La politique policière en matière de drogues en milieu scolaire*. Brussels: Standing Committee for the Control of Police Services (Committee P), 2015; <https://comitep.be/document/onderzoeksrapporten/2015-12-23%20politique%20policiere%20en%20matiere%20de%20drogues%20en%20milieu%20scolaire.pdf>