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**Statement by Mr. Werner Sipp, President,
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Special session of the General Assembly on the world drug problem

Side event on:

A public health approach as a base for drugs policy: the Portuguese case

**20 April 2016, 11.30 – 12.30 hrs.
CR 11**

Your Excellencies, distinguished guests, ladies and gentlemen,

On behalf on the International Narcotics Control Board, I would like to thank the organisers for their invitation to participate in this event and to shed some light on this very important topic from the perspective of the International Drug Control Conventions.

I would also like to thank the previous speakers for having explained in greater detail the framework which has been established in Portugal under Law 30/2000 since 2001.

This law provides for a non-punitive response to the acquisition, possession and use of illicit drugs by persons who consume these drugs: It establishes a mechanism aiming primarily at the dissuasion of drug use, instead of punishment.

I. This approach has attracted much attention in the international drug policy debate. Media, scientists and drugs policy experts considered Portugal as a pioneer and an example for a modern drug policy, commending the innovative approach to drug policy taken in Portugal.

However, the public debate is characterised by certain misunderstandings and misinterpretations:

1) First, the approach in Portugal is innovative, but not totally **unique**: Non-criminal justice responses to the possession of small quantities of drugs for personal use can be found in many other countries - for example in Europe and in Latin America. In the EU¹, a common trend can be seen across the Member States in the development of alternative measures to criminal prosecution for cases of possession of small quantities of cannabis for personal use without aggravating circumstances. Fines, warnings, probation, counselling and exemption from punishment are favoured by most European justice systems.

What is unique in Portugal is the creation of a **specific institution outside** the criminal justice system - the *Commissions for the Dissuasion of Drug Abuse (CDT)* - which provides various kinds of support for users. This is unique because most of the other countries which

¹ EMCDDA, Legal topic overviews: possession of cannabis for personal use: <http://www.emcdda.europa.eu/legal-topic-overviews/cannabis-possession-for-personal-use/countries>; EMCDDA, Alternatives to punishment for drug using offenders, July 2015: http://www.emcdda.europa.eu/attachements.cfm/att_240836_EN_TDAU14007ENN.pdf

have chosen to "decriminalise" personal use limit themselves to reducing or eliminating punishment, without offering non-punitive alternatives.

- 2) Second: The Portuguese model has often been seen as a form of "**legalisation**" or at least as a "**window into legalisation**". This is simply incorrect: According to the Portuguese legal framework, the acquisition and possession of drugs for non-medical use, including for personal consumption, are not legal and continue to be prohibited, whereas alternatives to punishment are offered.

II. The attitude of the INCB toward the "Portuguese approach"

The **INCB** has stated its view of the Portuguese approach on several occasions.

- 1) The INCB visited Portugal in 2004 and considered the implementation of Law 30/2000. In its Annual Report for 2004² the INCB stated: *The Board examined the legal framework that has been applicable to drug-related offences involving small quantities of drugs since July 2001 and noted that the acquisition, possession and abuse of drugs had remained prohibited. **While the practice of exempting small quantities of drugs from criminal prosecution is consistent with the international drug control treaties, the Board emphasizes that the objective of the treaties is to prevent drug abuse and to limit the use of controlled substances to medical and scientific purposes.***

The Board's conclusions on this matter were also reprised in the World Drug Report 2009³

- 2) Finally, the Board undertook a further mission to Portugal in June 2012 which also examined the results of the implementation of Law 30/2000. The Board acknowledged that the *Commissions for the Dissuasion of Drug Abuse (CDT)* are an important element of the demand reduction mechanism in Portugal. It noted that the Government is committed to strengthening the primary prevention of drug abuse, with a special emphasis on cannabis. The Board came to the conclusion that the Government of Portugal is fully committed to the objectives of the treaties⁴.

III. Let me explain the **issue** from a **legal perspective based on the conventions** :

- 1) I would like to begin with the basic obligation for States contained in the conventions which is to limit the possession of drugs exclusively to medical and scientific purposes⁵. Possession of drugs is **not** to be permitted except under legal authority⁶. In accordance with these provisions, the use of narcotic drugs or psychotropic substances which is not medical or scientific in nature is to be seen as unlawful behaviour, inconsistent with the conventions. No derogation to this principle is possible.
- 2) Another question is: how should the State react to such unlawful behaviour? The conventions state that possession for non-medical use shall be a "**punishable offence**". Serious offences shall be liable to **adequate punishment**⁷.

This obligation to establish specific behaviours as "punishable offences" contains several limitations:

- a) The obligation is subject to the constitutional limitations of the State Party.

² INCB Annual Report 2004, paragraph 538

³ WDR 2009, page 168

⁴ INCB Annual Report 2012, para 113

⁵ Art. 4 para 1(c) of the Convention 1961; art. 5 para 2 of the Convention 1971

⁶ Art. 33 of the Convention 1961; art. 5 para 3 of the Convention 1971

⁷ Art. 36 para 1 (a) of the Convention 1961

- b) Regarding possession for personal consumption, it is subject not only to constitutional limitations, but also to the basic concepts of the legal system of the State⁸.
- c) If serious offences shall be liable to adequate punishment, we can infer that offences of a minor nature must **not necessarily** be liable to punishment - as for example the possession of small quantities for personal consumption.

These limitations give State Parties a certain flexibility and discretion in the choice of legal and policy measures they deem appropriate to react to unlawful behaviour, namely to possession for personal consumption. In this respect, they have a certain flexibility regarding the nature and degree of punishment,

- 3) But as important as this flexibility is the possibility for States to apply **alternatives** to conviction and punishment.

All three drug control conventions⁹ explicitly allow States, to provide, as an **alternative** or in addition to conviction or punishment, that abusers undergo measures of treatment, education, after-care, rehabilitation and social reintegration when abusers of drugs have committed such offences,.

That is the legal framework of the conventions.

IV. How is this legal framework applied in the case of Portugal?

- 1. Law 30/2000 has not legalised or depenalised the possession and acquisition of drugs, as frequently misinterpreted. On the contrary, the acquisition and possession of drugs is still deemed an **offence**, but is sanctioned by **administrative** measures rather than by criminal punishment – provided the quantity held by the offender does not exceed ten days' worth of personal supply. Thus, the law remains within the ambit of articles 4 and 36 of the Single Convention.
- 2. In the case of possession of small quantities for personal use, the law states that the drugs will be confiscated and the police will refer the case to a multi-disciplinary *Commission for the Dissuasion of Drug Abuse (CDT)* composed of a lawyer, a medical professional and a social worker.

After examining the personal circumstances of the offender, the *Commission* will evaluate possible treatment, education and rehabilitation measures. The imposition of penal sanctions continues to be possible but is not the primary objective pursued by this framework which favours the treatment and rehabilitation of drug users. Several punitive options continue to be available to the *Commission*, including: warnings, banning from certain places, the imposition of an obligation to periodically visit a defined place, the removal of a professional licence or a firearms licence and the imposition of community service.

The whole procedure including the decision of the CDT can be considered as a complex and multifaceted **alternative measure** of education, treatment, after-care, rehabilitation and social reintegration. That is **in full compliance with the three drug control conventions**.

V. Conclusion

It is difficult to evaluate the **success** of the Portuguese approach. Obviously, the drug situation in Portugal has been improving in several areas since its establishment. This might be at least partly due to the specific "*dissuasion policy*" of this country, but probably also to other efforts undertaken by the Portuguese Government, namely the introduction of health

⁸ Art. 3 para 2 of the Convention 1988

⁹ Art. 36 para 1 (b) of the Convention 1961; art. 20 para 1 and art. 22 para 1 (b) of the Convention 1971; art 2 para 4 (c and d) of the Convention 1988

and social policy reforms and the expansion and improvement of prevention, treatment and social reintegration programmes for drug users. It must be noted that one of the reasons that the Portuguese experience has shown promise has been the willingness of the Portuguese State to invest the resources needed for the comprehensive implementation of this ambitious reform.

The experience from the implementation of the dissuasion scheme in Portugal may be useful for other countries where alternative sanctions for possession of drugs for personal consumption are implemented or are under consideration.

However, it is important to note that the problem of drug abuse and dependency manifests itself in different ways in different countries. States have different approaches which are informed by various considerations including the characteristics of their legal system, their policy priorities, the resources at their disposal, cultural factors, etc. What has been shown to work in one national context cannot simply be transposed to another.

Nevertheless, the Portuguese approach can be considered as a model of best practices. It shows that a drug policy which is fully committed to the principles of the drug control conventions, putting health and welfare at its centre and applying a balanced, comprehensive and integrated approach, based on the principle of proportionality and the respect for human rights, can have positive results - within the existing drug control system and **without** legalising the use of drugs.

Thank you.