

# Legal framework workbook

*France-2016*

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## 2016 National report (2015 data) to the EMCDDA by the French Reitox National Focal Point

**Supervision:** François Beck

**Coordination and editorial:** Aurélie Lermenier-Jeannet and Anne de l'Eprevier

### Contribution to the workbooks

- 1.1 *Drug Policy:* Cristina Díaz-Gómez
- 1.2 *Legal Framework:* Caroline Protais, Cristina Díaz-Gómez
- 2 *Drugs:* Olivier Le Nézet, Agnès Cadet-Taïrou, Magali Martinez, Eric Janssen
- 3.1 *Prevention:* Carine Mutatayi, Caroline Protais
- 3.2 *Treatment:* Christophe Palle, Anne-Claire Brisacier
- 3.3 *Best Practice:* Carine Mutatayi
- 3.4 *Harms and Harm Reduction:* Anne-Claire Brisacier, Cristina Díaz-Gómez, Maitena Milhet
- 4 *Drug Market and Crime:* Michel Gandilhon, Magali Martinez, Thomas Néfau, Caroline Protais, Cristina Díaz-Gómez
- 5.1 *Prison:* Caroline Protais
- 5.2 *Research:* Isabelle Michot, Maitena Milhet

### Proofreading (French version)

Julie-Émilie Adès, François Beck, Aurélie Lermenier-Jeannet, Marie-Line Tovar (OFDT)  
Danièle Jourdain Menninger, president of the Interministerial Mission for Combating Drugs and Addictive Behaviours, and the project managers of the MILDECA

### Proofreading (English version)

Anne de l'Eprevier, François Beck

**Documentation:** Isabelle Michot

**Legal references:** Anne de l'Eprevier

The EMCDDA is investigating how the submission of the workbooks could be made easier through the use of technology. In the first instance, a pilot using templates in Word with defined fields to distinguish the answers to questions is being tried. The outcome of the pilot will be to evaluate the usefulness of this tool and establish the parameters of any future IT project.

Templates have been constructed for the workbooks being completed this year. The templates for the pre-filled workbooks were piloted in the EMCDDA.

1. The principle is that a template is produced for each workbook, and one version of this is provided to each country, in some instances pre-filled.
2. Answers to the questions should be entered into the "fields" in the template. The fields have been named with the question number (e.g. T.2.1). It will be possible to extract the contents of the fields using the field names.
3. Fields are usually displayed within a border, and indicated by "Click here to enter text". Fields have been set up so that they cannot be deleted (their contents can be deleted). They grow in size automatically.
4. The completed template/workbook represents the working document between the NFP and the EMCDDA. Comments can be used to enhance the dialogue between the EMCDDA and the NFP. Track changes are implemented to develop a commonly understood text and to avoid duplication of work.

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## T0. Summary

- National profile

In France, the illegal use of any substance or plant classified as a narcotic is an offence punishable by sentences of up to one year in prison and a fine of €3,750 (Article L.3421-1 of the French Public Health Code - CSP). The sentences incurred may be up to five years in prison and a fine of €75,000 when the offence is committed by a public authority, a person responsible for public services or personnel in a company carrying out duties calling into question transport safety. Persons prosecuted for these offences also face additional penalties such as a compulsory awareness course on the dangers of drug and alcohol use, in accordance with the provisions set forth in Article 131-35-1 of the French Penal Code.

Aside from the sentences issued by the courts in compliance with Article L.3421-1 of the CSP, an awareness course may also be proposed by the public prosecutors as an alternative to prosecution or simplified procedure (fixed penalty notice, criminal order). In this context, this measure is particularly intended for occasional narcotics users who do not appear to present health or social integration problems. The course applies to all individuals aged over 13 years. When circumstances show that the respondent requires health care, the legal authorities may require them to undergo court-ordered treatment (Article L.3413-1 of the CSP). Public action is not taken once it has been established that the individual has undergone court-ordered treatment, following the events of which s/he was accused (Article L.3423-1 of the CSP).

Illegal transport, possession, proposal, sale, acquisition or use and the fact of facilitating the illegal use of narcotics are punishable by a maximum of ten years in prison and a fine of €7.5 million (Article L.222-37 of the French Penal Code). The illegal proposal or sale of narcotics to a person with a view to personal use is punishable by five years in prison and a fine of €75,000; however, the prison sentence is extended to ten years when narcotics are proposed or sold to minors, in learning or educational establishments or on government premises, and at or very close to the time when students or the public are entering or leaving these establishments premises, in the vicinity of these establishments or premises (Article L.222-39 of the French Penal Code). The maximum penalties incurred for trafficking are life imprisonment and a fine of €7.5 million (Article L.222-34 of the French Penal Code). The law itself does not distinguish between possession for personal use or for trafficking, nor by type of illegal substance.

- Trends

The framework of the French policy for combating narcotic use and trafficking is described in the French Penal Code (trafficking, possession, etc.) and the French Public Health Code (notably the provisions relating to illegal use). The general leanings of the penal policy are defined in the directives issued by the French Ministers of Justice tending towards a systematic response from the legal authorities. Thus, during the 2000s, the number of proceedings for simple use increased dramatically; the response to this rapid increase in arrests was the growing recourse to both alternative measures to prosecution and court convictions.

- New developments

Regarding recent legislative developments, at the beginning of the year, the French National Assembly and Senate passed a law on health system reform. This law has a threefold objective: to promote prevention, facilitate access to care and consolidate the health system. In addition to measures relating to alcohol and tobacco, two major provisions in the field of addiction should be pointed out: the trialling of drug consumption rooms (DCR) for a maximum period of six years and the extension of rapid diagnostic tests (RDT) to personnel in community or prevention facilities having received appropriate training.

Pursuant to the French law of 22 December 2014 which merged anonymous free screening for HIV and hepatitis (CDAG) with information screening and diagnosis centre on sexually transmitted diseases (CIDDIST) to create free information, screening and diagnosis centres (CeGIDD), the decree of 9 December 2015 authorises these centres to hold and dispense medications necessary for the prevention and treatment of sexually transmitted infections and emergency contraception. Lastly, regarding the procedure relating to the identification of new psychoactive substances, in November 2015, the health authorities classified 25xNBOMe and AH-7921.

Regarding the evolution of the Justice of activity data in the fight against drugs, in 2014, convictions handed down for drug-related offences represent 9% of all convictions recorded in criminal records, i.e. 66,672 convictions (convictions and fixed penalty notices, which are recorded in criminal records). These offences are broken down as follows: illegal use (64%), possession, acquisition (20%), commerce-transport (10%). Traffic, import-export, dealing and selling, aiding and abetting account for the last 6%.

## T1. National profile

### T1.1 Legal framework

The purpose of this section is to:

- Summarise the basic penalties and other responses to the offences of use, possession for personal use, supply (including production) of illicit drugs.

T1.1.1 Please describe the characteristics of drug legislation and national guidelines for implementation within your country (are offences criminal; what is the range of possible penalties; are there alternatives to punishment)?

In France, the illegal use of any substance or plant classified as a narcotic is an offence punishable by sentences of up to one year in prison and a fine of €3,750 (Article L.3421-1 of the French Public Health Code - CSP). The sentences incurred may be up to five years in prison and a fine of €75,000 when the offence is committed by a public authority, a person responsible for public services or personnel in a company carrying out duties calling into question transport safety. Persons prosecuted for these offences also face additional penalties such as a compulsory awareness course on the dangers of drug and alcohol use, in accordance with the provisions set forth in Article 131-35-1 of the French Penal Code.

Aside from the sentences issued by the courts in compliance with Article L.3421-1 of the CSP, an awareness course may also be proposed by the public prosecutors as an alternative to prosecution or simplified procedure (fixed penalty notice, criminal order). In this context, this measure is particularly intended for occasional narcotics users who do not appear to present health or social integration problems. The course applies to all individuals aged over 13 years. When circumstances show that the respondent requires health care, the legal authorities may require them to undergo court-ordered treatment (Article L.3413-1 of the CSP). Public action is not taken once it has been established that the individual has undergone court-ordered treatment, following the events of which s/he was accused (Article L.3423-1 of the CSP).

In 2012 a circular establishing a criminal policy strategy for drug crimes reiterated that, when sentencing, courts should take account of factors suggesting a simple use or drug addiction, the principle of proportionality with respect to the seriousness of the alleged offence, calls for systematic penal responses and increasingly effective judicial measures [[Circulaire CRIM 2012-6/G4 du 16 février 2012 relative à l'amélioration du traitement judiciaire de l'usage de stupéfiants](#)]. Hence, the legal authorities are invited to pass the measure relating

to awareness courses for simple first use and to systematically envisage court-ordered treatment measures when circumstances reveal drug addiction and a need for treatment. With regard to minors, the response by the legal authorities should remain predominantly educational and health-based.

Illegal transport, possession, proposal, sale, acquisition or use and the fact of facilitating the illegal use of narcotics are punishable by a maximum of ten years in prison and a fine of €7.5 million (Article L.222-37 of the French Penal Code). The illegal proposal or sale of narcotics to a person with a view to personal use is punishable by five years in prison and a fine of €75,000; however, the prison sentence is extended to ten years when narcotics are proposed or sold to minors, in learning or educational establishments or on government premises, and at or very close to the time when students or the public are entering or leaving these establishments premises, in the vicinity of these establishments or premises (Article L.222-39 of the French Penal Code).

The maximum penalties incurred for leaders of criminal narcotic trafficking groups are increased in view of the scale of the penalties. Hence, the fact of leading or organising a group which aims to illegally produce, manufacture, import, export, transport, hold, propose, sell, purchase or use narcotics is punishable by life imprisonment and a fine of €7.5 million (Article L.222-34 of the French Penal Code).

Furthermore, Article L.321-6 of the French Penal Code makes it possible to implicate “the fact of not being able to justify resources corresponding to one's lifestyle or not being able to justify the origin of goods in one's possession, while normally associating with one or more persons [having committed a crime or offence punishable by at least five years in prison (which includes narcotic trafficking)]”.

In addition, money laundering operations relating to narcotic trafficking are punishable by a sentence of ten years in prison and a fine of €750,000 (Article L.222-38 of the French Penal Code).

#### T1.1.2 How do the penalties vary by drug / quantity / addiction / recidivism?

The law itself does not distinguish between possession for personal use or for trafficking, nor by type of illegal substance. However, it differentiates between the illegal sale and supply of narcotics to an individual for personal use and other situations. In practice, the prosecutors and courts take into account the quantity in their possession and the circumstances of the offence when defining the events in criminal terms.

#### T1.1.3 What, if any, legislation within your country is designed to control New Psychoactive Substances (NPS)?

In France, the mission for vigilance and detection of potentially hazardous substances is entrusted to the (French) National Agency for Medicines and Health Products Safety (ANSM). The Ministry of Health is responsible for placing these substances under restriction, and decides on whether to classify them in the list of narcotics. This decision is taken after evaluation of the pharmacological properties, psychoactive effects and potential of these substances for abuse and addiction. Moreover, the Head Pharmacist delegated to the Customs Department can classify an NPS-containing product as a “functional drug” according to Article L.5111-1 of the Public Health Code. This legislation allows then Customs to seize non-classified substances.

In response to the incessant emergence of these new substances on the market, France made a decision, since July 2012, to have recourse to a "generic" classification which extends prohibition to a group of substances belonging to the same category and no longer

to a single product. Thus, the legislative order of 27 July 2012 [[Arrêté modifiant les arrêtés du 22 février 1990 fixant la liste des substances classées comme stupéfiants et la liste des substances psychotropes](#)] prohibits all chemical classes derived from cathinone which have already been identified; then synthetic cannabinoids were scheduled [[Arrêté du 19 mai 2015 modifiant l'arrêté du 22 février 1990 fixant la liste des substances classées comme stupéfiants](#)] as well as the 25xNBOMe family [[Arrêté du 6 novembre 2015 modifiant l'arrêté du 22 février 1990 fixant la liste des substances classées comme stupéfiants](#)].

*T1.1.4 Optional. If available provide information in a separate paragraph on other topics relevant to the under standing of the legal framework for responding to drugs in your country, such as: drug driving, workplace regulations, drug testing, precursor control, organised crime legislation relevant to drug trafficking, issues focused on minors. Regulatory aspects of treatment and harm reduction are also of interest.*

The law of 3 February 2003 introduced a new offence punishing any vehicle driver whose blood test revealed the presence of narcotics [[Loi n°2003-87 relative à la conduite sous l'influence de substances ou plantes classées comme stupéfiants](#)]. Offenders can be imprisoned for up to two years and be fined up to €4,500. These sentences can be increased to three years' imprisonment and a fine of €9,000 (as well as a three-year driving licence suspension) if alcohol is consumed in conjunction with the use of illegal substances. Driving after using narcotics constitutes aggravating circumstances in the event of bodily harm or a fatal accident: the penalties can run up to a €100,000 fine and seven years' imprisonment (in the event of involuntary manslaughter). These sanctions are harsher for public transport personnel.

The law also steps up the penal sanctions applicable to employees in a position of public authority (or those carrying out a public service activity or involved in national defence) who commit drug use offences. They risk a five-year prison sentence and a total fine of up to €75,000. Public transport company employees committing drug use offences while on duty are also subject to these penalties, in addition to further sanctions prohibiting them from carrying out their professional activities in the future and (where applicable) requiring them to undergo, at their own expense, an awareness-building training course on the dangers of drug and alcohol use.

## T1.2 Implementation of the law

The purpose of this section is to:

- Summarise any available data on the implementation of legislation.
- Provide any additional contextual information that is helpful to understand how legislation is implemented in your country.

T.1.2.1 Is data available on actual sentencing practice related to drug legislation?

Please provide a summary and a link to the original information or state if no information is available.

Convictions and fixed penalty notices recorded in criminal records handed down for drug-related offences represent 9% of all convictions. More than half of these convictions stand for illegal use offences; then followed by possession, acquisition (around 20%) and commerce-transport (10%). Prison sentences without remission or partial sentence suspension concern nearly one third of convictions for drug-related offences.

T.1.2.2 Is data available on actual sentencing practice related to legislation designed to control NPS?

Please provide a summary and a link to the original information or state if no information is available.

Actual court practices on the penal response to NPS cannot be documented at present. They may have recourse to the article on inciting use, but no detailed statistics according to type of substances are available.

Furthermore, when suspect goods are detected by the services, particularly Customs, in order to remove it from the market, the substance may be assimilated to a "medication by function". The public prosecutor may decide to initiate an investigation and, if appropriate, to prosecute the offenders in court.

*T1.2.3 Optional. If possible, discuss why implementation might differ from the text of laws (e.g. political instructions, resource levels, policy priorities).*

## T2. Trends

The purpose of this section is to:

- provide a commentary on the context and possible explanations of trends in legislation and the implementation of the legislation within your country.

T2.1 Please comment on any changes in penalties and definitions of core offences (offences of use, possession for personal use, supply (including production) of illicit drugs) in the legal framework since 2000.

If possible discuss the possible reasons for change (e.g. political philosophy, changes in the drug situation, public debate, policy evaluation).

The framework of the French policy for combating illicit drugs is set forth in the 1970 French law on narcotics [[Loi n°70-1320 relative aux mesures sanitaires de lutte contre la toxicomanie et à la répression du trafic et de l'usage illicite des substances vénéneuses](#)]. However the orientations of the penal policy for combating drug use and traffic are regularly redefined, leading to the creation of a systematic penal response to the use of narcotics (see T1.1.1).

The law of 9 March 2004 [[Loi n°2004-204 portant adaptation de la justice aux évolutions de la criminalité](#)] allows to reduce by half sentences handed down to offenders in particular for offences ranging from drug dealing to all forms of trafficking (production, import-export, traffic) if, "by having informed the administrative or legal authorities, the offender has made it possible to put an end to the offence and possibly identify other guilty parties". This possibility for "penitents" to get a reduced sentence for trafficking is a new feature in the French penal process.

The "delinquency prevention law" of 5 March 2007 [[Loi n°2007-297 relative à la prévention de la délinquance](#)] provided for a wider range of law enforcement measures that could be taken against drug users. It introduced a new penalty: a mandatory awareness course on the dangers of drug and alcohol use (€450 maximum, the amount of a third class contravention). Its aim is to make offenders fully aware of the danger and harm generated by the use of narcotic substances, as well as the social impact of such behaviour. The drug awareness course may be proposed by the authorities as an alternative to prosecution and to fixed penalty notice. An obligation to complete the drug awareness course may also be included in the criminal ruling as an additional sentence. It applies to all individuals over the age of 13.

This 5 March 2007 law expands the scope of court-ordered drug treatment measures, which now can be ordered at any stage of criminal proceedings: originally conceived as an alternative to prosecution (resulting in a suspension of the legal process), court-ordered



treatments can now be ordered as a sentence enforcement measure. The application circular issued by the Ministry of Justice on 16 February 2012 [[Circulaire CRIM 2012-6/G4 relative à l'amélioration du traitement judiciaire de l'usage de stupéfiants](#)] invites the legal authorities to systematically envisage a drug treatment order when circumstances reveal that the suspect needs treatment. The "delinquency prevention law" also provides for more severe penalties in the event of "directly inciting a minor to transport, possess, propose or sell narcotics" (up to 10 years imprisonment and a fine of €300,000).

Finally, the law of 9 July 2010 (the so-called "Warsmann law") established a new penal procedure enabling assets of suspects to be seized to ensure that they are confiscated if the suspects are eventually found to be guilty [[Loi n°2010-768 visant à faciliter la saisie et la confiscation en matière pénale](#)].

T2.2 Please comment on how the implementation of the law has changed since 2000. If possible discuss the possible reasons for change (e.g. new guidelines, availability of alternatives to punishment)

In the past 15 years, the number of arrests for simple use has more than doubled, increasing from around 77,000 to more than 160,000 persons taken to court. In 2010, (since 2010 national statistics no longer provide details of arrests for each substance), 90% concerned simple cannabis use, 5% heroin use and 3% cocaine use.

In response to this rapid increase in arrests, alternatives to prosecutions (drug warning, referral to a health and social centre, drug treatment order, etc.) have been systematically applied (see T2.1). Although infrequent at the end of the 1990s, they now represent 70% of referrals ordered by prosecutors as disciplinary action against narcotics use. Furthermore, the penal response to these cases of use is characterised by the increasingly frequent recourse to court convictions during the 2000s. Although the number of annual convictions remained below 5,000 in the 1990s, these increased almost eight-fold between 2000 and 2014 (more than 25,000 convictions for a single drug use offence). The proportion of convictions for drug use only, to the exclusion of any other offences, reaches today 45%: this was three times lower in 2000 (15%).

As regards trafficking, the number of arrests increased 1.6-fold (about 12,000 persons taken to court nowadays). Import-export trafficking offences give rise to sentences increasingly involving prison sentences: the proportion of prison sentences or partially suspended sentences increased from 65% in 2000 to almost 80%. However, the proportion of prison sentences or partial suspended sentences ordered for the supply and sale of narcotics as the main offence has decreased (47% in 2000, a third less 15 years later) in favour of totally suspended sentences (increasing from 38% to 42% over the same period) and alternative sentences or educational penalties (almost 20% nowadays).

### T3. New developments

The purpose of this section is to provide information on any notable or topical developments observed in legislation, the implementation of legislation, evaluation, and the political position on drug legislations **since your last report**.

T1 is used to establish the baseline of the topic in your country. Please focus on any new developments here.

If information on recent notable developments have been included as part of the baseline information for your country, please make reference to that section here. It is not necessary to repeat the information.

T3.1 What, if any, laws have changed in the last year?

Please use the following table to structure your answer, providing the title of the law, a hyperlink if available and a short summary of the change and explanatory comments.

Regarding recent legislative developments, at the beginning of the year, the French National Assembly and Senate passed a law on health system reform [[Loi n°2016-41 de modernisation de notre système de santé](#)]. This law has a threefold objective: to promote prevention, facilitate access to care and consolidate the health system. In addition to measures relating to alcohol and tobacco (see workbook Prevention), two major provisions in the field of addiction should be pointed out: the trialling of drug consumption rooms (DCR) for a maximum period of six years and the extension of rapid diagnostic tests (RDT) to personnel in community or prevention facilities having received appropriate training (see workbook Harms and harm reduction).

Pursuant to the French law of 22 December 2014 [[Loi n°2014-1554 de financement de la sécurité sociale pour 2015](#)] which merged anonymous free screening for HIV and hepatitis (CDAG) with information screening and diagnosis centre on sexually transmitted diseases (CIDDIST) to create free information, screening and diagnosis centres (CeGIDD), the decree of 9 December 2015 [[Décret n°2015-1621 relatif aux centres gratuits d'information, de dépistage et de diagnostic mentionnés à l'article L. 3121-2 du code de la santé publique](#)] authorises these centres to hold and dispense medications necessary for the prevention and treatment of sexually transmitted infections and emergency contraception.

Lastly, regarding the procedure relating to the identification of new psychoactive substances, in November 2015, the health authorities classified 25xNBOMe and l'AH-7921 [[Arrêté du 6 novembre 2015 modifiant l'arrêté du 22 février 1990 fixant la liste des substances classées comme stupéfiants](#)].

T3.2. What (sentencing/outcome) data is there regarding implementation of the law in the last year?

What, if any, changes have occurred?

Please provide the link to any relevant reports or information.

In 2014, convictions handed down for drug-related offences represent 9% of all convictions recorded in criminal records, i.e. 66,672 convictions (convictions and fixed penalty notices, which are recorded in criminal records). These offences are broken down as follows: illegal use (64%), possession, acquisition (20%), commerce-transport (10%), import-export (1.5%), dealing and selling (3.4%), aiding and abetting (27 cases). Prison sentences without remission, or partial sentence suspension concern nearly 38% of convictions for drug-related offences.

T3.3 Has there been an evaluation of the law in the last year, or other indications as to its effects?

Please specify and provide links to the original report.

No recent evaluation of the law in France.

*T3.4 Optional. Summarise any major political discussions in the last year relating to legislation or its implementation that you feel is important in understanding the current legal framework within your country.*

The regulatory document subjected to amendments / Initial version of the text	The amended regulatory document / Current version of the text		
Title. Hyperlink	Title. Hyperlink	Summary of change	Comments
<a href="#">Loi n°2016-41 du 26 janvier 2016 de modernisation de notre système de santé</a>		About addiction: to promote the prevention of legal (tobacco, alcohol) and illegal drug use and to improve harm reduction	

## T4. Additional information

The purpose of this section is to provide additional information important to understanding drug legislation in your country that has not been provided elsewhere.

*T4.1 Optional. Please describe any additional important sources of information, specific studies or data on the legal framework. Where possible, please provide references and/or links.*

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*T4.2 Optional. Please describe any other important aspect of the legal framework that has not been covered in the questions above. This may be additional information or new areas of specific importance for your country (e.g. money laundering, tobacco, alcohol legislation, new/changing organisations/structures, regulations related medical or industrial cannabis, and regulatory framework of opioid substitution treatment).*

The law on health system reform has set in place a number of measures to prevent tobacco and alcohol use, particularly among young people (see workbook Prevention).

## T5. Notes and queries

This section should highlight areas of specific interest for possible future elaboration. Detailed answers are not required.

Yes/No answers required. If yes please provide brief additional information.

T5.1 Have there been any recent developments in the debate on cannabis legislation?

YES	In June 2016, a member of parliament presented a bill to reduce cannabis use to a petty offence ( <a href="http://www.assemblee-nationale.fr/14/propositions/pion3819.asp">http://www.assemblee-nationale.fr/14/propositions/pion3819.asp</a> [last access 14/09/2016]). This bill states that "illegal cannabis or cannabis resin use is [...] punishable as a second-class misdemeanour [...]. In the event of a subsequent offence, the offender faces up to a year in prison and a fine of €3,750".
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## T6. Sources and methodology

The purpose of this section is to collect sources for the information provided above, including brief descriptions of studies and their methodology where appropriate.

T.6.1 Please list notable sources for the information provided above.

Legislative sources used are mainly the Public Health Code and the Penal Code. The information discussed herein is based on permanent monitoring made by OFDT of legislation and data relative to the activity of law enforcement services (statistics from police, customs and *Gendarmerie*) and the justice system (criminal records).

T6.2 Where studies or surveys have been used please list them and where appropriate describe the methodology?

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