WB 1.2 Legal Framework

France

2015 National report (2014 data) to the EMCDDA by the French Reitox National Focal Point

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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 prefilled 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

Please provide an abstract of this workbook (target: 500 words) under the following headings:

National profile

Use or possession of illicit drugs is a criminal offence in France. An offender charged with personal use faces a maximum prison sentence of one year and a fine of up to €3,750, though prosecution may be waived or a simplified procedure of a fine of up to €1,875 can be ordered in minor cases. The possible sentence increases to five years and a fine of €7,500 if endangering transport or if the offence is committed by a public servant on duty. Users in simple cases may receive a caution, but this should usually be accompanied by a request for a compulsory drug awareness course, introduced in March 2007, for which the non-addicted offender may have to pay up to €450. Addicts would continue to receive the therapeutic injunction directing them to treatment. The application of educational and health measures is prioritised for simple drug-law crimes and for minors. Drug supply is punishable with imprisonment of up to 10 years, or up to life in prison if offences are particularly serious, and a fine of up to €7.5 million.

The law itself does not distinguish between possession for personal use or for trafficking, nor by type of substance. However, the prosecutor will opt for a charge relating to use or trafficking that is based on the quantity of the drug found and the context of the case.

Convictions handed down for drug-related offences represent 9% of all convictions recorded in criminal records, i.e. 56,700 convictions. These offences are broken down as follows: illegal use (59%), possession, acquisition (23%), commerce-transport (12%); import-export, dealing and selling, aiding and abetting account for the last 6%.

Trends

The framework for French policy on combating illicit drugs is set forth in the 1970 French law on narcotics. It has not been modified since; however, with a constant legislative framework, the orientations of the policy on combating drug addiction have led to the creation of a systematic penal response to the use of narcotics.

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

In 2014, a single legislative text relating to drugs was adopted by the *Assemblée Nationale* and the Senate. This legislation dated 15 August 2014 offers new provisions aiming to increase the effectiveness of penal sanctions by highlighting the goal of tailoring sentences to individual offenders (recourse to sentence adjustment) according to the circumstances of the offence, together with the character of the offender and their financial, family and social situation. A decree published in October 2015 and implementing this law, allows the use of penal transaction for petty offenses (offenses punishable by a maximum of one year's imprisonment), such as simple use of narcotics. Furthermore, the *Assemblée Nationale* and the Senate passed a health bill, that has yet to be definitively adopted, including several measures on the issue of addictions, particularly the prevention of addictive behaviours (Article 8a) and harm reduction (Articles 7-9). It assigns a major role to prevention (particularly among young people), affirms the need to define an ambitious HCV screening strategy and lays down the framework for trialling drug consumption rooms (DCR).

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.

Please structure your answers around the following questions.

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)?

Use or possession of illicit drugs is a criminal offence in France. An offender charged with personal use faces a maximum prison sentence of one year and a fine of up to €3,750, though prosecution may be waived or a simplified procedure of a fine of up to €1,875 can be ordered in minor cases. The possible sentence increases to five years and a fine of €7,500 if endangering transport or if the offence is committed by a public servant on duty. A Directive of 9 May 2008 [Circulaire CRIM 08-11/G4 relative à la lutte contre la toxicomanie et les dépendances] defined a new 'rapid and graduated' policy. Users in simple cases may receive a caution, but this should usually be accompanied by a request for a compulsory drug awareness course, introduced in March 2007, for which the non-addicted offender may have to pay up to €450 [Loi n°2007-297 du 5 mars 2007 relative à la prévention de la délinquance]. Addicts would continue to receive the therapeutic injunction directing them to treatment. Users in aggravating circumstances, such as recidivists, might be imprisoned. In 2012 a Directive 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]. The application of educational and health measures is prioritised for simple drug-law crimes and

Drug supply is punishable with imprisonment of up to 10 years, or up to life in prison if offences are particularly serious, and a fine of up to €7.5 million.

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

The law itself does not distinguish between possession for personal use or for trafficking, nor by type of substance. However, the prosecutor will opt for a charge relating to use or trafficking that is based on the quantity of the drug found and the context of the case. Based on the principle of the appropriateness of proceedings, s/he may decide to take legal action against the offender, to simply close the case or to propose other measures as an alternative to prosecution.

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, in 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. This decree 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. In 2015, the health authorities classified ethylphenidate [Arrêté du 17 mars 2015 modifiant l'arrêté du 22 février 1990 fixant la liste des substances classées comme stupéfiants] and synthetic cannabinoids, which represent the NPS class most frequently identified in Europe [Arrêté du 19 mai 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 understanding 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 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]. Drivers 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 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

T1.2 Implementation of the law

The purpose of this section is to

use.

- 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.

Please structure your answers around the following questions.

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.

In 2013, convictions handed down for drug-related offences represent 9% of all convictions recorded in criminal records, i.e. 56,700 convictions (Ministère de la justice *et al.* 2014). These offences are broken down as follows: illegal use (59%), possession, acquisition (23%), commerce-transport (12%), import-export (2%), dealing and selling (4%), aiding and abetting, which may comprise incitement to use and facilitation of use (34 cases) and other (141 cases). Prison sentences without remission, or partial sentence suspension concern nearly 27% of convictions for drug-related offences.

Other than for sentences handed down by the courts, criminal records also list lighter procedures such as fixed penalty notices. In 2013, one out of ten offences for narcotic use were handled by the State prosecutor in the context of a fixed penalty notice. Close to 8,800 fixed penalty notices for drug-related offences were implemented in 2013, nearly all of which (98%) for illegal narcotic use. Alternative sentences were more widely used than fines, 5,000 versus nearly 3,800.

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 law enforcement services, in order to remove it from the market, the substance may be assimilated to a "medication by function". The judge may challenge the proceedings or decide to authorise the inquiry and pursue legal proceedings.

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.

Please structure your answers around the following questions.

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]. It has not been modified since 1970; with a constant legislative framework, the orientations of the penal policy for combating drug use have been redefined on several occasions, 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 for reductions in the sentences handed down to offenders for offences ranging from drug dealing to all forms of trafficking 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 avoid a 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 adults and to minors 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 proceedings for simple use has more than doubled, increasing from 76,700 to 176,700 persons taken to court between 2000 and 2014. 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 seven-fold between 2000 and 2012 (24,100 convictions for a single drug use offence). The proportion of convictions for drug use only, to the exclusion of any other offences, reached 45% in 2012: this was three times lower in 2000 (15%).

As regards trafficking, the number of proceedings increased 1.6-fold, from 7,350 to 12,000 persons taken to court between 2000 and 2014. Import-export offences give rise to sentences increasingly involving prison sentences: the proportion of prison sentences or partially suspended sentences increased from 65% to 78% between 2000 and 2010. 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, 34% in 2010) in favour of totally suspended sentences (increasing from 38% to 49% over the same period) and, marginally, alternative sentences or educational penalties (13% in 2010).

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.

Please structure your answers around the following questions.

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.

In 2014, a single legislative text relating to drugs was adopted by the Assemblée Nationale and the Senate. This legislation offers new provisions aiming to increase the effectiveness of penal sanctions [Loi n°2014-896 du 15 août 2014 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales]. This new law reaffirms the legislator's desire to tailor sentences to the circumstances of the offence, together with the character of offenders, and their financial, family and social situation. This highlights the ambition to increase recourse to sentence adjustment measures, except in the event of major contraindications (severity of the offence and character of the offender). A decree published in October 2015 and implementing this law [Décret n°2015-1272 du 13 octobre 2015 pris pour l'application des articles 41-1-1 du code de procédure pénale et L. 132-10-1 du code de la sécurité intérieure], allows the use of penal transaction for petty offenses (offenses punishable by a maximum of one year's imprisonment), such as simple use of narcotics. This provision allows law enforcement services to offer, after agreement of the prosecutor, a fine payable immediately that suspend the judicial process. Moreover, the law of August 2014 affirms the role of the Ministry of Justice, in collaboration with the other authorities contributing to this mission (State services, local authorities, associations, etc.), notably through "agreements on objectives", to facilitate access to the health and social management of convicts.

In terms of screening for infection, Article 47 of the law of 22 December 2014 [Loi n°2014-1554 de financement de la sécurité sociale pour 2015] announces the merging of anonymous free screening centres (CDAG) for HIV and hepatitis with information screening and diagnosis centres on sexually transmitted diseases (CIDDIST). As from the 1 January 2016, these facilities will merge with a view to creating free information, screening and diagnosis centres

(CeGIDD) on human immunodeficiency virus infection, viral hepatitis and sexually transmitted infections (see T3.2 for the implementing texts).

Furthermore, other research and parliamentary debates took place in 2014 (and continued in 2015). More precisely, in April 2015, the *Assemblée Nationale* passed a health bill (311 to 241 votes), the main orientations of which were presented by the government for the first time in June 2014. This bill falls within the scope of the prolongation of the national health strategy initiated in 2013. It comprises 57 articles in total. Several measures concern the issue of addictions, particularly the prevention of addictive behaviours (Article 8a) and harm reduction (Articles 7-9). The bill was transferred to the Senate on 15 April 2015 (http://www.senat.fr/leg/pjl14-406.html [accessed 30/07/2015]) and should be examined in September.

The bill prioritises prevention in order to provide better protection for young people against the consequences of drug use. Another major concern is the populations furthest removed from the health system, particularly injecting drug users. The text passed by the *Assemblée Nationale* thus affirms the need to define an ambitious strategy for generalised screening for hepatitis C. In this context, it also authorises pharmacy sales of rapid diagnostic tests (RDT). Furthermore, the bill defines a framework for trialling drug consumption rooms (DCR), allowing users and professionals working in these facilities to be legally protected. Lastly, this text introduces a final paragraph in Article 8 in order to safeguard the French part of the European "Early Warning System" (the SINTES scheme: National Detection System of Drugs and Toxic Substances).

T3.2 What, if any, changes have occurred in the implementation of the law in the last year? Please provide the link to any relevant reports or information.

The new texts which have been added to the French regulatory collection focused on pharmacovigilance and the restriction of potentially poisonous substances.

In terms of medications classified as narcotics, the decree of 13 October 2014 modifies the prescribing conditions for methadone in capsule form: only the oral form (syrup) will continue to be subject to limited prescription for 7 days or 14 days; the capsule form may henceforth be prescribed for a maximum period of 28 days [Arrêté modifiant l'arrêté du 20 septembre 1999 modifié fixant la liste des médicaments classés comme stupéfiants dont la durée maximale de prescription est réduite à quatorze jours ou à sept jours].

In 2015, the health authorities banned ethylphenidate and synthetic cannabinoids by including them on the list of substances classified as narcotics (see T1.1.3).

The creation of free information, screening and diagnosis centres (CeGIDD) on human immunodeficiency virus infection, viral hepatitis and sexually transmitted infections announced by the law of 22 December 2014 was enforced by the publication of a decree stipulating the conditions for accreditation and funding of these facilities [Décret n°2015-796 du 1er juillet 2015] and by a decree describing in detail the specifications and content of the accreditation application dossier [Arrêté du 1er juillet 2015].

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
Loi n°2014-896 du 15 août 2014 relative à l'individualisation des peines et renforçant l'efficacité des sanctions pénales		Tailoring sentences (according to the circumstances of the offence and personal situation) and increasing recourse to sentence adjustments.	

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.

Please structure your answers around the following questions.

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.

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).

T5. Notes and queries

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

Please structure your answers around the following questions.

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	A parliamentary report on the evaluation of the fight against illicit drug
	use (Le Dain et al. 2014) proposed to transform cannabis-use offense
	into a third class contravention (a maximum fine of €450). One of the
	two rapporteurs even recommended to legalise use in the private

setting for adults, and to establish a regulated supply of the product under the control of the State.

On 2 April 2015, the ecologist group presented a legislative draft authorising the controlled use of cannabis, which was not adopted. The need for discussion on all types of addiction in order to define a global prevention policy was the central point of the debates (http://www.senat.fr/leg/ppl13-317.html [accessed 20/10/2015]).

In the framework of the draft law on health currently under discussion, the Senate approved an amendment proposing to punish the first drug use by a third class contravention. The draft law will be further discussed in Parliament.

Recent publications on the legal status of cannabis include the report of the French think tank Terra Nova (Ben Lakhdar *et al.* 2014).

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.

Please structure your answers around the following questions.

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

The information discussed herein is based on permanent monitoring of legislation and data relative to the activity of law enforcement services (police and *Gendarmerie*) and the justice system.

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

No studies or surveys used here.

Bibliography

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- Ministère de la justice, Timbart, O. and Busch, F. (2014). <u>Les condamnations. Année 2013</u>. Ministère de la Justice, Paris.