

Legal framework workbook

2019

France

Contributors

Caroline Protais, Cristina Díaz-Gómez, Aurélie Lermenier-Jeannet (OFDT)

2019 National report (2018 data) to the EMCDDA by the French Reitox National Focal Point

Supervision: Julien Morel d'Arleux

Coordination and editorial: Aurélie Lermenier-Jeannet, Anne de l'Eprevier and Julie-Émilie Adès

Contribution to the workbooks

1. *Drug Policy*: Cristina Díaz-Gómez, Julie-Émilie Adès
2. *Legal Framework*: Caroline Protais, Cristina Díaz-Gómez, Aurélie Lermenier-Jeannet
3. *Drugs*: Olivier Le Nézet, Magali Martinez, Clément Gérôme, Julie-Émilie Adès, Stanislas Spilka, Michel Gandilhon
4. *Prevention*: Carine Mutatayi
5. *Treatment*: Christophe Palle, Anne-Claire Brisacier
6. *Best Practice*: Carine Mutatayi, Anne-Claire Brisacier, Christophe Palle
7. *Harms and Harm Reduction*: Anne-Claire Brisacier, Cristina Díaz-Gómez, Magali Martinez
8. *Drug Market and Crime*: Michel Gandilhon, Magali Martinez, Aurélie Lermenier-Jeannet, Victor Detrez
9. *Prison*: Caroline Protais, Anne-Claire Brisacier, Julien Morel d'Arleux
10. *Research*: Maitena Milhet, Isabelle Michot

Proofreading (French version): Julie-Émilie Adès, Julien Morel d'Arleux (OFDT); Nicolas Prisse, 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

Bibliographic references: Isabelle Michot

Legal references: Anne de l'Eprevier

Table of Contents

T0. Summary	3
T1. National profile	4
T1.1. Legal framework	4
T1.2. Implementation of the law	6
T2. Trends	7
T3. New developments	8
T4. Additional information	10
T5. Sources and methodology	10

T0. Summary

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

- Summary of T.1.1.1 on 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)?
- Summary T1.1.2: on how do the penalties vary by drug / quantity / addiction / recidivism?
- Summary T1.1.3: are there distinct laws for controlling NPS?

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. These penalties are applicable to occasional or habitual use of narcotics, whether used in public or in private.

The law of 23 March 2019 finally provided for the introduction of a fixed fine for drug use. This offence may be punishable by a fixed fine of 200 euros - except in the case of minors - without going to a judge, who may only intervene in the event that the person concerned disputes the offence.

In practice, the penal response to use is graduated, particularly taking into account the nature of the used substance, how much was taken and the individual's criminal record. The public prosecutor may prefer an alternative to prosecution, for example a drug warning, an onward referral to a health, social or professional facility, an awareness course on the dangers of drug and alcohol use or, when circumstances suggest that the alleged offender requires treatment, a drug treatment order (Article L. 3413-1 of the CSP).

The public prosecutor may also implement a simplified procedure (fixed penalty notice, criminal order) to penalise users with a fine and/or a training course.

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.

With regards to cannabis, French regulations stipulate that all activities concerning it (production, possession, use) are prohibited (Art. R.5132-86 I -1° of the Public Health Code). Some forms of hemp without psychoactive properties may, however, be used for manufacturing and commercial purposes, provided that the variety is authorised, the plant contains less than 0.2% THC, and that only the seeds and fibres are used (with the use of the resin, flowers and leaves of the plant being prohibited). Cannabidiol may be advertised if it is addressed through one of the pharmaceutical specialities with a marketing authorisation (art. R.5132-86 III CSP) and if it complies with the relevant drug regulations (CSP, Book 1, Title II, Chapter II, R.5122-1 to 8).

Since December 2018, an expert committee from the National Agency for Medicines and Health Products Safety (ANSM) has been responsible for setting up a two-year trial of therapeutic cannabis in France, targeting patients with neuropathic pain that is resistant to therapy, who have

certain severe forms of epilepsy that are resistant to treatment, who are receiving supportive care in oncology, who are in palliative situations, who are experiencing painful spasticity due to multiple sclerosis or who have other central nervous system pathologies. On 26 June 2019, the Committee delivered a favourable opinion for carrying out an experiment. This experiment's principle was confirmed by the ANSM on 11 July 2019.

There are no specific laws regulating new psychoactive substances (NPS). The rationale for classifying a NPS on the list of narcotics is both individual (each prohibited substance is named on the list) and generic.

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.

Public prosecutors can also decide to implement alternative measures to prosecution, such as a drug warning, an onward referral to a health or social facility or they may make it compulsory to attend an awareness course on the dangers of drug and alcohol use. These measures are 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). Offenders may also be prosecuted in accordance with the simplified procedures for a fixed penalty notice or criminal order, meaning they will be sentenced to pay a fine and/or take an awareness course.

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](#)]. 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).

With regards to cannabis, French regulations stipulate that all activities concerning it (production, possession, use) are prohibited (Art. R.5132-86 I -1° of the Public Health Code). Some forms of hemp without psychoactive properties ([arrêté modifié du 22 août 1990 portant application de l'article R.5181 pour le cannabis](#) [amended legislative order of 22 August 1990 implementing Article R.5181 for cannabis]) may, however, be used for manufacturing and commercial purposes, provided that the variety is authorised, the plant contains less than 0.2% THC, and that only the seeds and fibres are used (with the use of the resin, flowers and leaves of the plant being prohibited). Cannabidiol may be advertised if it is addressed through one of the pharmaceutical special cases with a marketing authorisation (Art. R.5132-86 III Public Health Code) and if it complies with the relevant regulations on prescription drugs (Public Health Code, Book 1, Title II, Chapter II, R.5122-1 to 8). Outside this framework, so far it cannot be presented as having therapeutic virtues, even if an experiment on cannabis for medical use will soon be launched (see section T3).

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. According to Article 132-10 of the penal code, sentences may be doubled in the event of a subsequent offence within 5 years, although this does not specifically concern drug law offences (DLO).

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

There are no specific laws regulating new psychoactive substances (NPS). The legal framework relating to narcotics applies to NPS, as soon as they are included on the list of substances classified as narcotics. The rationale for classifying a NPS on this list is both individual (each substance is named) and generic: it "starts with a basic molecular structure (not necessarily psychoactive) and stipulates the variants affected by the ban" (Martinez 2013). The decision is taken by the Ministry of Health further to the proposal by the French National Agency for Medicines and Health Products Safety (ANSM).

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.

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.

In 2017, according to the Ministry of Justice, DLO convictions for main offences (single or multiple) represented 12% of all criminal record convictions, i.e. around 67,500. These offences can be broken down as follows: illegal use (50%), possession-acquisition (47%), supply and sale (2.4%), trade-transport (0.6%), import-export (61 cases), helping others use (55 cases) and other DLOs (199 cases). In the majority of possession-acquisition offences, offenders were sentenced to prison (85%), while using offences were mainly sanctioned by fines (non-fixed fines as the law has not yet come into force) (70%). The number of fixed penalty notices amounted to 8,075.

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 directive 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).

Lastly, the law of 9 July 2010 (the so-called "Warsmann law") established a new penal procedure enabling assets of individuals undergoing prosecution to be seized to ensure that they are confiscated if the suspects were eventually found guilty [[Loi n°2010-768 visant à faciliter la saisie et la confiscation en matière pénale](#)]. The scope of this law is broader than drug law offences, but applies to these offences in particular.

The National Action Plan on Addictions (MILDECA 2018) provided for a revision of the 1970 French law on narcotics, advocating "adopting the principle of the criminal fine procedure" with regards to using. (see the "Policy" workbook for the content of this 2018-2022 plan). This flat-rate fine was recently adopted by the [loi de programmation 2018-2022 et de réforme pour la justice du 23 mars 2019](#) [2018-2022 Programming Act for Justice of 23 March 2019] (see section T3). The measure will be implemented after publication of the regulatory texts that are in preparation.

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 20 years, the number of arrests for simple use has more than doubled, increasing from around 77,000 to more than 161,300 persons taken to court in 2018 (unpublished data from the ministry of Justice). 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, alternatives to prosecutions now represent nearly 54% of perpetrators referred to the prosecution services for illicit drug 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 nine-fold between 2000 and 2017 (around 30,000 convictions for a single drug use offence). Among all drug law offences the proportion of convictions for drug use only, to the exclusion of any other offences, reaches today more than 45%: this was three times lower in 2000 (15%) (unpublished data from the ministry of Interior).

As regards trafficking, the number of arrests by the police and *Gendarmerie* has almost doubled since the 2000s (approximately 15,400 individuals accused in 2018).

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.

The 2018-2022 French Programming Act for Justice of 23 March 2019, which particularly aims to simplify judicial procedures and better take victims' rights into account, was promulgated in the [Official Journal on 24 March 2019](#). It also provides for a criminal procedure with a fixed-fine for using narcotics for adults. The fine is issued by a police officer or *gendarme* and is set at 200 euros, which is then reduced or increased depending on the payment period (from 150 to 450 euros). This payment ends the legal proceedings; otherwise, the offender may be brought before a criminal court and risks the penalties set out in Article L. 3421-1 of the Public Health Code (see T1). However, the process is not systematic, as the assessment of when this is to be enforced is left to law enforcement services.

Following decision n°2018-209 of 10 September 2018 (ANSM 2018), a temporary scientific committee from the National Agency for Medicines and Health Products Safety (ANSM) was created, which is responsible for assessing whether it is appropriate and feasible to make therapeutic cannabis available. In December 2018, this committee gave the go-ahead for an experimental therapeutic cannabis trial in France. The aim is to evaluate the prescription and delivery system of the targeted drugs as well as the extent to which prescribing professionals and patients adhere to regulations, in order to ultimately secure patient prescriptions and

monitoring. The committee last met on 26 June 2019 to approve the experimental protocol (<https://www.ansm.sante.fr/S-informer/Points-d-information-Points-d-information/Cannabis-a-visee-therapeutique-en-France-L-ANSM-publie-la-proposition-du-Comite-d-experts-sur-le-cadre-de-la-phase-experimentale-de-mise-a-disposition-Point-d-Information>). This will last two years: it will be offered to centres and physicians who volunteer to sign up to the experiment. It will target clients with neuropathic pain that is refractory to therapy, who have certain severe forms of epilepsy that are resistant to treatment, who are receiving supportive oncological care, who are in palliative situations, who are experiencing painful spasticity due to multiple sclerosis or who have other central nervous system pathologies. It will be carried out through the establishment of a national registry to monitor clients involved in the experiment.

The main objective of this experimental phase is to evaluate, in real situations, the prescription and delivery system as well as the extent to which prescribing professionals and patients adhere to these conditions. Its secondary objective is to collect the first French data on effectiveness and safety. The most important elements of this framework aim to ensure the best possible safety when prescribing to and monitoring clients:

- Securing prescriptions: treatment can only be initiated by physicians who work in reference centres/facilities and in the targeted indications throughout the territory. Participation is voluntary; prescribing physicians must have been trained in advance to be able to prescribe cannabis;
- Securing patient monitoring: setting up a comprehensive electronic national registry that will also collect the first data on French clinical effectiveness and safety;

To set up and evaluate the experiment, the experts recommend that a multidisciplinary scientific committee is established, made up of client representatives and health professionals. This experiment's principle was confirmed by the ANSM on 11 July 2019.

The amendment to the specifications for drug consumption rooms (DCR), by the [legislative order of 15 July 2019](#) extends DCR access to users by inhaling or smoking. Previously, these users, could only access an inhalation station after having injected a product during an earlier visit to these rooms (see "Harm and Harm Reduction" workbook).

The issues of decriminalising or legalising cannabis in France is currently the subject of much debate (see T3 in the "National Strategy and Policy" workbook).

T3.2. How was the law implemented in the last year? What, if any, changes have occurred? Please provide sentencing or other outcome data, or provide the link to any relevant reports or information.

See T1.2.1 of this workbook.

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

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.

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. Sources and methodology

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

T5.1. Please list notable sources for the information provided above.

Legislative sources used are mainly the Public Health Code and the Penal Code. All information provided herein is based on permanent monitoring of legislation by the OFDT and on the following data:

- *Etat 4001*, Ministry of the Interior (for data on accused individuals)
- National criminal record, Ministry of Justice (for convictions)

ANSM (2018). Décision DG n° 2018-209 du 10/09/2018 - création CSST Evaluation de la pertinence et de la faisabilité de la mise à disposition du cannabis thérapeutique en France. Available: <https://ansm.sante.fr/Decisions/Comites-Creation-et-nomination-des-autres-comites/Decision-DG-n-2018-209-du-10-09-2018-creation-CSST-Evaluation-de-la-pertinence-et-de-la-faisabilite-de-la-mise-a-disposition-du-cannabis-therapeutique-en-France> [accessed 07/08/2019].

Martinez, M. (2013). Contrôler les NPS : du classement comme stupéfiant à l'utilisation d'autres réglementations. *Acta* (13) 62-66.

MILDECA (2018). Alcool, tabac, drogues, écrans : Plan national de mobilisation contre les addictions 2018-2022 [Alcohol, tobacco, drugs, screens: National plan for mobilisation against addictions 2018-2022]. Mission interministérielle de lutte contre les drogues et les conduites addictives, Paris. Available: <https://www.drogues.gouv.fr/la-mildeca/le-plan-gouvernemental/mobilisation-2018-2022> [accessed 19/06/2019].

T5.2. Where studies or surveys have been used please list them and where appropriate describe the methodology?