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National legislation

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France

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In this section you will find an overview of the different sources of law in France.

Sources of law

The law in France is essentially made up of written rules called sources of law. These can be rules adopted by States or between States at national level, but they also include case-law from national and international courts. In addition, they cover rules made at local level, such as municipal by-laws, or by professional and trade organisations, such as the College of Physicians, or rules established by citizens between themselves, such as collective agreements or contracts, and finally mere custom.

This collection is ordered in accordance with a hierarchy of rules. So, a new rule:

- must respect the previous, superior rules;
- may amend previous rules at the same level;
- repeals inferior, contradictory rules.

International sources of law

Treaties and international accords

A treaty only comes into force in France when it has been ratified or approved and then published. Some treaties are directly applicable in the French legal order, while others need to be transposed by an internal rule.

European Union law

The notion of European Union law refers to the rules made by the institutions of the European Community and the European Union. They can be recommendations, opinions, regulations, decisions or directives.

National sources of law

Constitutional rules

- the Constitution of 4 October 1958;
- the preamble to the Constitution of 27 October 1946, along with the Declaration of the Rights of Man and of the Citizen of 26 August 1789 and the fundamental principles recognised by the laws of the Republic to which they refer;
- the organic laws submitted to the Constitutional Council before their enactment, the purpose of which is to complement the Constitution.

Legislative rules

Legislation, passed by Parliament, is subordinate to the Constitution. When addressed, the Constitutional Council reviews the constitutionality of legislation before it is enacted, that is, it checks to see if it conforms to the

Constitution. The Constitutional Council may also be addressed by the President of the Republic, the Prime Minister, the Presidents of the National Assembly and the Senate, or by 60 members or 60 senators.

In addition, the Council of State or Court of Cassation may refer a case to the Constitutional Council for a ruling on the constitutionality of an existing legislative provision. This happens in cases where a party to the legal proceedings to which the provision applies is contesting the legislation with a view to having it annulled on the basis that it infringes the rights and freedoms guaranteed by the Constitution.

Under Article 55 of the Constitution, international treaties ratified by France are superior to legislation. Courts from both the administrative and ordinary jurisdictions must refuse to apply legislation which appears to be incompatible with a treaty, whether it was ratified before or after the legislation.

Statutory instruments

1. Orders

Under Article 38 of the Constitution, in order to implement its programme, the Government may seek permission from Parliament for a limited period of time to take measures of a legislative nature. These orders have the rank of regulations until such time as they have been ratified by the legislature and may therefore be challenged in the the administrative courts pending their ratification.

2. Regulations

Regulations differ according to the authority which introduced them:

- decrees from the President of the Republic or the Prime Minister (when they are adopted in the Council of Ministers or the Council of State they may only be amended under the same circumstances);
- interministerial or ministerial orders;
- regulatory decisions taken by authorities delegated by the State (prefect, mayor etc.) or decentralised authorities (municipality, *département* – similar to a county – or region).

3. Collective agreements

The Employment Code establishes the general rules governing employment conditions. In this context, social partners from the private sector (employers and trade unions) negotiate agreements and contracts. Thus collective agreements define employment conditions and guaranteed employment benefits for the employees of the organisations concerned (scrap and recycling trade and industries, homes for young workers, supplementary pension institutions, etc.). Collective accords, on the other hand, only concern a specific area (wages, working hours, etc.). Collective agreements and accords can be concluded at the level of a particular sector (all the businesses carrying on the same activity in a given territory), a particular business or a particular establishment. The collective agreement can be 'extended' by the Ministry of Employment, Social Affairs and the Solidarity Fund or the Ministry of Agriculture and Fisheries so that it applies to all the organisations in the target sector.

Case-law laid down by the ordinary and administrative courts

Case-law can be laid down by both the ordinary and administrative courts. Case-law laid down by the ordinary courts interprets the law but in principle applies only to the case before it. The case-law of administrative courts takes precedence over regulations in that it can annul a regulation, but ranks beneath statute law.

Institutional framework

The legislative process in France

It is important to distinguish between a government bill, the text of which is initiated by the government and which is presented to the Council of ministers by a minister, from a Parliamentary bill, the text of which is initiated by Parliament. The government bill must be lodged with the National Assembly or the Senate.

The bill is then examined by Parliament, and will be adopted if it has been approved in the same terms by both Chambers.

In the event of a disagreement between the two Chambers, a joint committee is convened. This committee is made up of seven members and seven senators and is given the task of proposing an agreed text, normally after two readings by each chamber. The government may expedite the procedure, however. If this happens, a joint committee may be set up after the first reading.

The act is promulgated (i.e. signed) by the President of the Republic within 15 days of the act being transmitted to the government after having been adopted by the Parliament. During this time, the President can request a new reading of the text, and the Constitutional Council may be consulted to verify whether it complies with the Constitution. The promulgated act comes into force after it has been published in the Official Journal.

Publication of acts and regulations

In order to have binding effect, acts and regulations must have been brought to the attention of the citizens. Individual measures must therefore be notified to people who are affected by them, which means that regulatory measures must be published.

The rules relating to legislative and regulatory texts coming into force were amended by Order no. 2004-164 of 20 February 2004 as of 1 June 2004. Now, Article 1 of the Civil Code provides that, unless otherwise stated, texts come into force the day after their publication in the Official Journal.

However, in emergencies, the following may come into force on the same day they are published: laws where their enacting decree have prescribed this, and administrative measures for which this has been preordained by the Government through a special provision.

Apart from decrees, regulatory provisions, introduced by the competent State authorities at national level (ministerial orders, measures taken by independent administrative authorities, etc.) are also published in the Official Journal. The orders of the ministries are often published, in addition, in the ministries' Official Gazettes.

For a regulatory provision to be published in just the Official Gazette, it must concern only a very specific category of citizens (essentially civil servants and agents of the ministry).

Measures taken by local authorities follow specific publications methods. They do not appear in the Official Journal.

Circulars or instructions do not as a general rule have any regulatory effect. These measures are limited to giving instructions to departments for the application of laws and decrees, or to clarify the interpretation of certain provisions.

In order to be applicable, they must have been published on the website of the Prime Minister's Office intended for this purpose (decree No 2008-1281 of 8 December 2008). The usual method is for them to be included in the ministries' Official Gazettes. Only the most important circulars are published in the Official Journal.

Legislation databanks

The public legal databases in France are covered by a public dissemination service over the Internet (SPDDI) under [Decree no. 2002-1064 of 7 August 2002 \(English version\)](#)

This system is explained in detail in the [Fact sheet](#) on reusing data available on [Légifrance](#):

[Légifrance](#) contains the following:

- the codes, acts and regulations in their consolidated version ('Legi' database);
- the documents as they are published in the '*lois et décrets*' (laws and decrees) edition of the Official Journal ('Jorf' database);
- the extended national collective agreements ('Kali' database);
- the decisions of the Constitutional Council ('Constit' database);

- the decisions of the Court of Cassation and the Courts of Appeal ('Cass' database for decisions published in the Gazette, 'Inca' database for unpublished decisions, and 'Capp' database for decisions of the Court of Appeal);
- the decisions of the Conseil d'Etat and the Conflicts Court, the decisions of the Administrative Courts of Appeal and a selection of decisions from the Administrative Courts of First Instance ('Jade' database);
- the deliberations of the National Commission for Information Technology and Civil Liberties (CNIL) ('CNIL' database).

For reference purposes, other sites, accessible either directly or through [Légifrance](#), take part in this service (SPDDI); they concern:

- the [Court of Auditors](#) for decisions from the financial courts,
- each Ministry for its Official Gazette,
- the Directorate General for Taxes for [tax documentation](#),
- the Ministry of Foreign and European Affairs for international conventions ('Pact' database).

Information relating to the terms and conditions for retrieving and reusing data concerning the second category above is available on each site.

It is also possible to find a [Catalogue of the databases](#) listed above on the [Légifrance](#) site.

The [list of Légifrance licence tariffs](#) is also available.

Databases

The following is a non-exhaustive list of legal databases:

- The [LEGI](#) database contains codes, acts and regulations in their consolidated version;
- The [JORF](#) database contains documents as they are published in the '*lois et décrets*' (laws and decrees) edition of the Official Journal;
- The [KALI](#) database contains the extended national collective agreements;
- The [CONSTIT](#) database contains the decisions of the Constitutional Council;
- The [JADE](#) database contains the decisions of the Conseil d'Etat and the Conflicts Court, the decisions of the Administrative Courts of Appeal and a selection of decisions from the Administrative Courts of First Instance;
 - The [CNIL](#) database contains the deliberations of CNIL (the National Commission for Information Technology and Civil Liberties).

The case-law of the [Court of Cassation](#) is available on its website.

There is an online service for ordering the [decisions of the Court of Cassation](#), and some [decisions of the Court of Cassation are translated](#) into English, Arabic and Mandarin.

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