



# **REPORT FOR CONGRESS**

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## **FOREIGN LAWS ON CONTROLLED SUBSTANCE ANALOGUES**

*This report summarizes the laws on the treatment of controlled substance analogues in Brazil, Canada, China, the European Union, France, Germany, India, Italy, Japan, Mexico, the Russian Federation, and the United Kingdom.*

## LAW LIBRARY OF CONGRESS

## LAWS OF SELECTED COUNTRIES ON CONTROLLED SUBSTANCE ANALOGUES

JURISDICTION	CONTROLLED SUBSTANCE ANALOGUES TREATED AS CONTROLLED SUBSTANCES?  (as in the US Controlled Substances Act)	SCHEDULE OF CONTROLLED SUBSTANCE ANALOGUES
<b>Brazil</b>	<p>Law No. 11,343 of August 23, 2006,<sup>1</sup> does not separately define a controlled substance analogue.</p> <p>However, article 1(§1) determines that for the purposes of Law No. 11,343, substances or products that can cause dependence are considered drugs, as specified by law or itemized on lists updated periodically by the executive branch of the federal government.</p>	<p>Administrative Act (<i>Portaria</i>) No. 344 of May 12, 1998,<sup>2</sup> issued by the National Agency of Sanitary Surveillance, lists the substances or products mentioned in article 1(§1) of Law No. 11,343. There are also Annexes to the Act that provide the necessary forms to be used in connection with the Act's requirements.<sup>3</sup></p>
<b>Canada</b>	No	<p>The Controlled Drugs and Substances Act<sup>4</sup> controls and restricts the importation, exportation, production, distribution, and use of drugs. A</p>

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		<p>“controlled substance” means a substance included in Schedule I, II, III, IV, or V of the Act.<sup>5</sup></p> <p>The Governor in Council may, by order, amend any of the eight schedules in the Act by adding to them or deleting from them any item or portion of an item, when he deems it “necessary in the public interest.”<sup>6</sup></p> <p>One of the schedules (VI) includes two classes of precursors.<sup>7</sup></p> <p>Certain substances are placed on the list as they become a matter of concern. The analogue to specifically designated substances can also be listed as a “controlled substance.”<sup>8</sup></p>
<p><b>China</b></p>	<p>No</p>	<p>The Anti-Drug Law of the People’s Republic of China defines as narcotics opium, heroin, methylalnine (“ice”), morphine, marijuana, and cocaine as well as “other narcotic drugs and psychotropic substances that are addictive and under state control” unless they are used for purposes of medical treatment, teaching, and scientific research.<sup>9</sup> The Law also subjects the manufacture, marketing,</p>

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		<p>purchase, and transport of precursor chemicals to a licensing system.<sup>10</sup></p> <p>The Regulation on the Control of Narcotic Drugs and Psychotropic Substances authorizes the competent authorities to publish catalogs of narcotic drugs and psychotropic substances.<sup>11</sup> Unlisted drugs or substances will be added to the catalogs when they are misused to the extent of causing or being likely to cause serious harm to the public.<sup>12</sup></p> <p>The Regulation on the Administration of Precursor Chemicals contains a catalog of precursor chemicals.<sup>13</sup></p>
<p><b>European Union</b></p>	<p>No</p> <p>Analogues of controlled substances fall within the purview of the twenty-seven Member States of the European Union as well as the EU. The Members have the discretion to maintain or to introduce any national control measures that seem</p>	<p>Analogues are also governed by Council Decision 2005/387/JHA on the Information Exchange, Risk Assessment and Control of New Psychoactive Substances,<sup>14</sup> which requires EU Members to transmit information on the manufacture, trafficking, and use of a new synthetic or analogue drug to the European Monitoring Center of Drugs and Drug Addiction (EMCDDA) and EUROPOL.<sup>15</sup></p> <p>The European Council may initiate a procedure for the assessment of the potential risk to health and society of the new substance and the</p>

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	<p>appropriate when a new psychoactive substance is identified within their respective territories.</p>	<p>impact of placing it under control,<sup>16</sup> and, at the request of the European Commission or a Member State, issue a decision on a specific drug that was subject to the risk-assessment review, making the drug subject to control measures and criminal penalties.<sup>17</sup> Within a year of the date of adoption of the decision, the Member States must adopt measures to control the drug and make it subject to criminal penalties.<sup>18</sup></p>
<p><b>France</b></p>	<p>No</p>	<p>The Public Health Code provides for controlled substances, including narcotics and psychotropic substances, to be listed on one of four lists.<sup>19</sup> Absent such listing, no criminal prosecution may take place.</p> <p>The Code sets forth the procedure for adding new substances to the respective lists. If a proposed addition is approved by the Ministry of Health, a ministerial decree or regulation to that effect is published in the <i>Journal Officiel</i>, France’s official gazette.<sup>20</sup> Synthetic cannabinoids, for example, were added to the original list of narcotics by a ministerial regulation of February 24, 2009, under this procedure.<sup>21</sup></p>

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<p><b>Germany</b></p>	<p>No</p>	<p>Section 1(1) of the Narcotic Drugs Act refers to positive lists of drugs.<sup>22</sup> Substances suitable for the making of synthetic drugs are listed in Schedule I to § 1(2).<sup>23</sup></p>
<p><b>India</b></p>	<p>No</p>	<p>The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985<sup>24</sup> prohibits the “cultivation, production, manufacture, possession, sale, purchase, transportation, warehousing, consumption, inter-State movement, transshipment and import and export of narcotic drugs and psychotropic substances ... except for medical or scientific purposes and in accordance with the terms and conditions of any license, permit or authorization given by the Government.”<sup>25</sup></p> <p>A list of controlled substances prohibited under the Act has been published on the website of India’s Narcotics Control Bureau.<sup>26</sup></p>
<p><b>Italy</b></p>	<p>Yes</p>	<p>The Consolidated Law on Narcotic and Psychotropic Substances, Prevention, Treatment, and Rehabilitation of Drug Addicts<sup>27</sup> provides for the prosecution of those involved in the illegal production, traffic and possession of certain narcotic or psychotropic substances and their analogues.<sup>28</sup> These substances are listed in two schedules attached to</p>

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		<p>the statute.<sup>29</sup></p> <p>The definition of the term “controlled substance analogues” can be extrapolated from article 14 of the Law as designating those substances whose chemical structure or effects are similar to the chemical structure or effects of the substances included in Schedules I and II.<sup>30</sup> Schedule I contains substances that present a high risk of causing dependence and abuse;<sup>31</sup> Schedule II lists substances that have a currently accepted use in medical treatment (medicines).<sup>32</sup></p>
<p><b>Japan</b></p>	<p>No</p>	<p>All the laws on illegal drugs—the Narcotic Drugs and Psychotropic Substances Control Law (Law No. 14 of 1953), the Cannabis Control Law (Law No. 124 of 1948), the Opium Law (Law No. 71 of 1954), and the Stimulants Control Law (Law No. 252 of 1951)—specify controlled substances.</p> <p>An amendment to the 2006 Pharmaceutical Affairs Law added a provision that bans the production, importation, and sale of substances that contain specified ingredients of illegal drugs.<sup>33</sup> Some of these substances may be designated as a narcotic or a psychotropic under</p>

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		<p>the Narcotic Drugs and Psychotropic Substances Control Law.</p>
<p><b>Mexico</b></p>	<p>No</p>	<p>Article 234 of the General Health Act provides a list of substances that are considered narcotic drugs under the Act. The article also includes as narcotics “[a]ny other derivative product or preparation containing substances indicated in [that] list, their chemical precursors, and in general those [substances] of an analogous nature and any other substance determined by the Secretary of Health or the General Health Council. The corresponding lists shall be published in the Diario Oficial de la Federación [Mexico’s official gazette].”<sup>34</sup></p> <p>Article 245 contains a similar provision, which provides lists of drugs, divided into five groups, that are considered psychotropic substances.<sup>35</sup></p>
<p><b>Russian Federation</b></p>	<p>No</p>	<p>The Federal Law of January 8, 1998, on Narcotic Substances<sup>36</sup> requires the government to maintain a list of narcotic and psychotropic substances and their precursors that are subject to control. The list is divided into four parts and includes narcotic and psychotropic</p>

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		<p>substances, and their precursors.<sup>37</sup></p> <p>Under Criminal Code provisions on punishments for the illegal acquiring, storing, transporting, producing, reworking, shipping, and distributing of narcotic or psychotropic substances, analogues are to be treated the same as the original narcotic substances.<sup>38</sup></p>
<p><b>United Kingdom</b></p>	<p>The Misuse of Drugs Act 1971<sup>39</sup> does not separately define the treatment of controlled substance analogues, but the Act broadly controls drugs that are “dangerous or otherwise harmful,” and these are listed in a schedule to the Act.</p>	<p>Section 2 of the Act provides that the schedule can be amended. When drugs are added to this schedule, analogues are included using a generic definition so that regulations will capture a range of derivatives and current/future trends.<sup>40</sup></p>

Compiled by Wendy Zeldin  
 Senior Legal Research Analyst  
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<sup>1</sup> Lei No. 11.343, de 23 de Agosto de 2006, website of the Brazilian Presidency, [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2004-2006/2006/Lei/L11343.htm](http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2006/Lei/L11343.htm).

<sup>2</sup> Portaria No. 344, de 12 de Maio de 1998, website of the Ministry of Health, [http://bvsmms.saude.gov.br/bvs/saudelegis/svs/1998/prt0344\\_12\\_05\\_1998\\_rep.html](http://bvsmms.saude.gov.br/bvs/saudelegis/svs/1998/prt0344_12_05_1998_rep.html). Updates to Portaria No. 344 are available at [http://portal2.saude.gov.br/saudelegis/leg\\_norma\\_espeelho\\_consulta.cfm?id=3520383&highlight=&tipoBusca=post&slcOrigem=0&slcFonte=0&sqlcTipoNorma=27&hdTipoNorma=27&buscaForm=post&bkp=pesqnorma&fontes=0&origem=0&sit=0&assunto=&qtd=10&tipo\\_norma=27&numero=344&data=&dataFim=&ano=1998&pag=1#](http://portal2.saude.gov.br/saudelegis/leg_norma_espeelho_consulta.cfm?id=3520383&highlight=&tipoBusca=post&slcOrigem=0&slcFonte=0&sqlcTipoNorma=27&hdTipoNorma=27&buscaForm=post&bkp=pesqnorma&fontes=0&origem=0&sit=0&assunto=&qtd=10&tipo_norma=27&numero=344&data=&dataFim=&ano=1998&pag=1#).

<sup>3</sup> Annexes to Portaria No. 344, de 12 de Maio de 1998, website of the Ministry of Health, [http://bvsmms.saude.gov.br/bvs/saudelegis/svs/1998/anexo/anexosprt344\\_12\\_05\\_1998.pdf](http://bvsmms.saude.gov.br/bvs/saudelegis/svs/1998/anexo/anexosprt344_12_05_1998.pdf).

<sup>4</sup> Controlled Drugs and Substances Act, S.C. 1996, c. 19, <http://laws-lois.justice.gc.ca/eng/acts/C-38.8/>.

<sup>5</sup> *Id.* § 2(1).

<sup>6</sup> *Id.* § 60, <http://laws.justice.gc.ca/eng/acts/C-38.8/page-20.html>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, sched. I, § 3, <http://laws-lois.justice.gc.ca/eng/acts/C-38.8/page-22.html#h-26>. For example, Schedule I designates phenylpiperidines and their “intermediates, salts, derivatives and analogues and salts of intermediates, derivatives and analogues” as controlled substances.

<sup>9</sup> Jindu Fa [Anti-Drug Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 2007, effective June 1, 2008), art. 2, 2007 P.R.C. LAWS 327.

<sup>10</sup> *Id.* art. 21.

<sup>11</sup> Mazui Yaopin he Jingshen Yaopin Guanli Tiaoli [Regulation on Control of Narcotic Drugs and Psychotropic Substances] (promulgated Aug. 3, 2005) art. 3, 2005 FAGUI HUIBIAN 481. The two catalogs are available on the website of the State Food and Drug Administration. Guo Shi Yao Jian An [2007 No. 633], <http://www.sda.gov.cn/WS01/CL0055/26026.html>.

<sup>12</sup> *Id.*

<sup>13</sup> State Council Decree No. 445, Aug. 26, 2005, effective Nov. 1, 2005, [http://www.gov.cn/zwggk/200511/23/content\\_30777.htm](http://www.gov.cn/zwggk/200511/23/content_30777.htm).

<sup>14</sup> 2005 O.J. (L 127) 32. The Decision applies to new psychoactive substances, either new narcotic drugs or new psychotropic drugs in pure form or preparation, that have not been included in Schedules I, II, or IV of the 1961 United Nations Single Convention on Narcotic Drugs or in Schedules I, II, III, or IV of the 1971 United Nations Convention on Psychotropic Substances and that may pose a threat to public health.

<sup>15</sup> *Id.* art. 4. If the EMCDDA and EUROPOL need to follow up on the data collected, they prepare a joint report and forward it to the Council of the EU and the Commission to do determine whether a risk-assessment procedure should be initiated.

<sup>16</sup> *Id.* art. 6. The task of assessment belongs to the Scientific Committee of the EMCDDA. Its risk-assessment report is forwarded to the Council of the EU and the European Commission.

<sup>17</sup> *Id.* art. 8.

<sup>18</sup> *Id.* art. 9. The Member States will impose the controls and penalties pursuant to their domestic laws and to the 1971 United Nations Convention on Psychotropic Substances and the 1961 UN Single Convention on Narcotic Drugs, and report to the Council and the European Commission on the measures taken.

<sup>19</sup> Code de la Santé Publique arts. L. 5132-1 to L. 5132-9, LEGIFRANCE, [http://legifrance.gouv.fr/affichCode.do?jsessionid=DD13C09414B9A6F7DE607BEFF327E966.tpdjo02v\\_1?idSectionTA=LEGISCTA000006171376&cidTexte=LEGITEXT000006072665&dateTexte=20111222](http://legifrance.gouv.fr/affichCode.do?jsessionid=DD13C09414B9A6F7DE607BEFF327E966.tpdjo02v_1?idSectionTA=LEGISCTA000006171376&cidTexte=LEGITEXT000006072665&dateTexte=20111222) (last visited Dec. 22, 2011).

<sup>20</sup> *Id.* arts. L.5132-7, R5132-74, and R.5132-88. Any new psychoactive substance must be added to the respective controlled list at the initiative of the General Director of the French Agency for the Safety of Health Products, following the proposal of the National Narcotic and Psychotropic Substances Board. The proposed addition is then submitted to the Ministry of Health for approval.

<sup>21</sup> Arrêté du 24 février 2009 modifiant l'arrêté du 22 février 1990 fixant la liste des substances classées comme stupéfiants [Regulation of February 24, 2009, amending the regulation of February, 22, 1990, setting forth the list of substances classified as narcotics], LEGIFRANCE, <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020315197&fastPos=2&fastReqId=2026737940&categorieLien=id&oldAction=rechTexte> (last visited Dec. 22, 2011).

<sup>22</sup> Betäubungsmittelgesetz (BtMG), repromulgated Mar. 1, 1994, BUNDESGESETZBLATT [BGBl.] I at 358, as last amended May 11, 2011, BGBl.I at 821, [http://www.gesetze-im-internet.de/btmg\\_1981/BJNR10681\\_0981.html](http://www.gesetze-im-internet.de/btmg_1981/BJNR10681_0981.html) (website of the *Bundesministerium der Justiz* [Federal Ministry of Justice], “*Gesetze im Internet*” [“Law on the Internet”]).

<sup>23</sup> At the end of Anlage [Schedule] I is a separate listing that includes, under certain restrictive criteria, ethers, esters, molecular compounds, salts, and stereoisomers of substances listed in Schedule I, as well as substances and preparations thereof and biological matters that may be abused to induce intoxication. Definitions of substances and biological matters are provided in BtMG, § 2.

<sup>24</sup> The Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, <http://india.gov.in/allimpfrms/allacts/2482.pdf>.

<sup>25</sup> Centre for Narcotics Training: National Academy of Customs, Excise and Narcotics, Drug Information Sheet 1: Drug Laws in India, [http://www.antidrugs.gov.il/download/files/indian\\_drug-laws.pdf](http://www.antidrugs.gov.il/download/files/indian_drug-laws.pdf) (last visited Jan. 6, 2012).

<sup>26</sup> GOVERNMENT OF INDIA: NARCOTICS CONTROL BUREAU, <http://narcoticsindia.nic.in/listofsubst.htm> (last visited Jan. 6, 2012).

<sup>27</sup> Testo Unico in Materia di Disciplina degli Stupefacenti e delle Sostanze Psicotrope, Prevenzione, Cura e Riabilitazione dei Relativi Stati di Tossicopendenza, Decreto Presidente della Repubblica [D.P.R.] [Presidential Decree] 9 ottobre 1990, n. 309, GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA [G.U.] [Official Gazette] 31 ottobre 1990, n. 255. The Law has been amended and updated multiple times over the years in order to implement EU Directives and keep pace with the evolution of drugs. E.g., *Medicinali, Sostanze Stupefacenti e Psicotrope (Medicines, Narcotic and Psychotropic Drugs)*, MINISTERO DELLA SALUTE [MINISTRY OF HEALTH], <http://www.salute.gov.it/medicinaliSostanze/archivioNormativaMedicinaliSostanze.jsp?lingua=italiano&menu=normativa> (last visited Jan. 2, 2012).

<sup>28</sup> Art. 72, D.P.R. 9 ottobre 1990, n. 309.

<sup>29</sup> *Id.* art. 14.

<sup>30</sup> *Id.*

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<sup>31</sup> *Tabelle Sostanze Stupefacenti e Psicotrope* [Schedule of Narcotic and Psychotropic Substances], MINISTERO DELLA SALUTE [MINISTRY OF HEALTH], <http://www.salute.gov.it/medicinaliSostanze/paginaInternaMedicinaliSostanze.jsp?id=7&menu=strumenti> (last visited Jan. 2, 2012).

<sup>32</sup> *Id.* Schedule II is divided into five sections, where Section A presents the highest potential for abuse, and Section E the lowest.

<sup>33</sup> Pharmaceutical Affairs Law, Law No. 145 of 1960, art. 76-4, inserted by Law No. 69 of 2006.

<sup>34</sup> Ley General de Salud art. 234, DIARIO OFICIAL DE LA FEDERACIÓN [DO], Feb. 7, 1984, available as amended at the website of the Mexican Chamber of Deputies, at <http://www.diputados.gob.mx/LeyesBiblio/pdf/142.pdf> (translation by the author).

<sup>35</sup> *Id.* art. 245. Group I comprises narcotics “that have little or no therapeutic value” and that “constitute an especially grave problem for public health” because they are susceptible to being improperly used or abused, as well as “[a]ny other derivative product or preparation containing substances indicated in the above list [Group I] and, when expressly determined by the Secretary of Health or the General Health Council, their chemical precursors and, in general, those of an analogous nature.”

<sup>36</sup> The Federal Law of January 8, 1998, on Narcotic Substances, SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [SZ RF] [Official Gazette of the Russian Federation] 1998, No. 2, Item 21.

<sup>37</sup> The Russian list was approved by Government Resolution No. 681 of June 30, 1998, SZ RF 1998, No. 27, Item 3198. The List is periodically amended; the last update occurred on October 6, 2011. The four parts of the list are prohibited substances; restricted substances controlled under Russian legislation and international treaties; restricted psychotropic substances, in regard to which some control measures may be lifted; and controlled precursors, the usage of which is restricted. The complete list of the controlled substances and of precursors’ concentration levels (i.e., the amount of a specific precursor that, when added to a controlled substance makes it illegal) is available at GARANT, an online commercial legal database, <http://base.garant.ru/12112176/> (last visited Dec. 23, 2011).

<sup>38</sup> UGOLOVNIY KODEKS ROSSIISKOI FEDERATSII [UK RF] [RUSSIAN FEDERATION CRIMINAL CODE] § 25, SZ RF 2011, No. 48, Item 6730, *as amended*.

<sup>39</sup> Misuse of Drugs Act 1971, c. 38, <http://www.legislation.gov.uk/ukpga/1971/38/section/1>.

<sup>40</sup> *See, e.g.*, Home Office, A Change to the Misuse of Drugs Act 1971: Control of Naphyrone and other Naphthylpyrovalerone Analogues, Home Office Circular 011/2010, <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2010/011-2010/>.