

LEGAL ALERT

AMENDMENT TO THE PORTUGUESE CRIMINAL CODE AND TO THE ECONOMIC AND PUBLIC HEALTH OFFENCES REGIME

LAW NO. 4/2024, OF JANUARY 15

On January 15, 2024, [Law no. 4/2024](#) was published in the Official Journal of Portugal (*Diário da República*), scheduled to take effect on February 14, 2024, with the following objectives:

- i. To complete the transposition of the [Directive 2011/93/EU](#) of the European Parliament and of the Council, on December 13, 2011, addressing the prevention of sexual abuse, sexual exploitation of children, and child pornography (Directive 2011/93/UE);
- ii. To complete the transposition of the [Directive \(EU\) 2017/1371](#) of the European Parliament and of the Council, on July 5, 2017, concerning the fight against fraud to the Union's financial interests by means of criminal law (Directive (EU) 2017/1371);
- iii. To broaden the scope of offences related to discrimination and incitement to hatred, and violence (*crime de discriminação e incitamento ao ódio e à violência*) by amending the [Portuguese Criminal Code](#), approved by Decree-Law no. 400/82, of September 23 (Portuguese Criminal Code); and
- iv. To criminalise the improper use of European Union revenue by amending the [Decree-Law no. 28/84](#), of January 20, which lays down the current regime regarding anti-economic offences and offences against public health (Decree-Law no. 28/84).

The implementation of Law No. 4/2024 will bring about amendments to both the Portuguese Criminal Code and Decree-Law No. 28/84. This Legal Alert is intended to highlight the principal changes that will be introduced within these two legal frameworks.

I. Amendments to the Portuguese Criminal Code

The multiple alterations introduced into the Portuguese Criminal Code by Law no. 4/2024 exhibit a variety of characteristics and are guided by distinct legislative and criminal policy objectives.

a) Limitation periods

The revised Article 118(5) of the Portuguese Criminal Code, as per Law no. 4/2024, has expanded the limitation period, under specific circumstances, for offences related to the sexual freedom and self-determination of minors (*crimes contra a liberdade e a autodeterminação sexual de menores*), as well as for the crime of female genital mutilation (*mutilação genital feminina*) committed against a minor victim.

Previously, as stipulated by the wording of Article 118(5) introduced by [Law no. 59/2007](#) of September 4, criminal proceedings regarding the aforementioned crimes would not be extinguished due to the end of their limitation periods until the victim reached 23 years of age.

With the enactment of Law No. 4/2024, criminal proceedings will not be extinguished due to the end of their limitation periods until the victim reaches 25 years of age.

Coincidentally, Law no. 4/2024 has introduced a new paragraph (5) in Article 119 of the Portuguese Criminal Code, altering the commencement point for the countdown of limitation periods associated with offences against the sexual freedom and self-determination of minors. The relevant moment will no longer be, in accordance with the general rules for the countdown of limitation periods, that of the commission of the crime (cf. Article 119(1) of the same Code).

The recently incorporated Paragraph 5 in Article 119 of the Portuguese Criminal Code now specifies that, regarding crimes against the sexual freedom and self-determination of minors, the countdown of the limitation period will only begin when the victim reaches the age of majority. In

the event that the victim passes away before reaching that age, the countdown of the limitation period will initiate from the date of their death.

b) Offences of Pornography of Minors and Organization of a Trip for the Purpose of Sex Tourism with Minors

The revised wording of Article 176(3) of the Portuguese Criminal Code, as introduced by Law No. 4/2024, broadens the scope of actions encompassed within the offense of child pornography (*pornografia de menores*), punishable by an aggravated prison sentence ranging from 1 to 8 years.

Under the previous wording of Article 176(3) of the Portuguese Criminal Code, individuals who involved a minor in a pornographic performance or in a pornographic photograph, film, or recording, irrespective of its format, or enticed minors for these purposes (as outlined in Article 176(1)(a) and (b) of the Portuguese Criminal Code) through the use of *violence or serious threats* were subject to an aggravated prison sentence of 1 to 8 years.

With the amendment introduced by Law No. 4/2024 to Article 176(3) of the Portuguese Criminal Code, engaging in the conduct described in Article 176(1)(a) and (b) of the same Code now incurs a prison sentence of 1 to 8 years if the perpetrator employs “any form of threat, constraint, or violence”.

Furthermore, the revised wording of Article 176-B of the Portuguese Criminal Code extends the actions falling within the criminal offense of organizing a trip for the purpose of sex tourism with minors (*organização de viagem para fins de turismo sexual com menores*), adjusting the penalties applicable to the perpetrator based on whether or not the conduct occurs within the scope of their professional activity or is driven by lucrative intent.

Under the wording introduced by [Law No. 40/2020](#), dated August 18, the offense outlined in Article 176-B of the Portuguese Criminal Code would be committed by those who, within the scope of their professional activity or with the intent of gaining profit, organized, provided, facilitated, or advertised a trip or journey, knowing that such an excursion was intended for the commission of crimes against the freedom and sexual self-determination of a minor. This conduct is punishable

with imprisonment up to 3 years, unless a more severe penalty applies under another legal provision.

With the revised wording of Article 176-B of the Portuguese Criminal Code, engaging in the described behaviour shall be considered a criminal offense, categorized as organizing a trip for the purpose of engaging in sex tourism with minors, irrespective of whether the conduct occurs within the scope of a professional activity or with a profit motive. In such cases, a conviction could result in a prison sentence of up to 2 years, unless a more severe penalty is applicable under another legal provision.

c) Offence of Discrimination and Incitement to Hatred and Violence

The amended text of paragraphs 1 and 2 of Article 240 of the Portuguese Criminal Code, as brought about by Law no. 4/2024, leads to an expansion of the behaviours falling under the purview of the crime of discrimination and incitement to hatred, and violence (*crime de discriminação e incitamento ao ódio e à violência*).

Specifically, in accordance with the revised wording of Article 240(1)(a), individuals who establish or organize an entity or engage in activities of propaganda that incite or endorse discrimination, hatred, or violence against a person or group of persons based on ethnic-racial origin, national or religious background, colour, nationality, ancestry, place of origin, religion, language, sex, sexual orientation, gender identity or expression, sexual characteristics, or physical or mental disability may face imprisonment ranging from 1 to 8 years.

In addition to the extension of the discriminatory factors relevant for the commission of the crime, also reflected in the updated wording of Paragraph 2 of the same article – now encompassing, for instance, characteristics such as language and gender expression –, Law no. 4/2024 has eliminated the previous requirement of the existence of “organized” propaganda activities and the “incitement” of discrimination, hatred, or violence. For the commission of the crime, it is now sufficient that the entity or the propaganda activity “encourages” such discrimination, hatred, or violence.

Additionally, Law no. 4/2024 has introduced a new Paragraph 3 into Article 240 of the Portuguese Criminal Code. This paragraph specifies that if the offences delineated in the preceding paragraphs

of the same article are committed through a computer system, the court may issue an order for the deletion of the relevant data or content.

d) Crime of Money Laundering

Concerning the crime of money laundering (*crime de branqueamento*), Law no. 4/2024 has incorporated additional precedent offences into paragraph j) of number 1 of Article 368-A of the Portuguese Criminal Code.

Previously encompassing precedent offences such as tax fraud (*fraude fiscal*) and fraud against social security (*fraude contra a segurança social*), this paragraph now covers offences related to smuggling (*contrabando*), circulation of smuggled goods (*contrabando de circulação*), and smuggling of goods with restricted circulation on vessels (*contrabando de mercadorias de circulação condicionada em embarcações*), as defined in the General Regime of Tax Offences (*Regime Geral das Infrações Tributárias*), foreseen in [Law no. 15/2001](#), dated June 5.

e) Status of Official

Finally, Law no. 4/2024 amended the wording of Article 386(3) of the Criminal Portuguese Code, extending to the crime of embezzlement (*crime de peculato*), provided for in Article 375 of the same Code, the effects of equating certain positions and functions, listed in its subparagraphs a) to f), with the concept of official (*funcionário*).

Initially introduced by [Law no. 108/2001](#), on November 28, and subsequently modified by Law no. 59/2007, on September 4, and [Law no. 30/2015](#), on April 22, Paragraph 3 of Article 386 of the Portuguese Criminal Code stipulates that, regarding the offences outlined in Articles 335 (influence peddling [*tráfico de influência*]), 372 (undue receipt or offering of money [*recebimento ou oferta indevido de vantagem*]), 373 (passive corruption [*corrupção passiva*]), and 374 (active corruption [*corrupção ativa*]) of the Portuguese Criminal Code, certain positions, specified in paragraphs a) to f) of the same Article, are equivalent to the status of official.

With the recent modification of Article 386(3) by Law no.4/2024, this equivalence to the status of official, crucial for determining the criminal liability of those mentioned in its subparagraphs for the

specified offences, now extends to the crime of embezzlement (*crime de peculato*) outlined and punishable under Article 375 of the Portuguese Criminal Code.

II. Amendments to the Decree-Law no. 28/84

Regarding the Decree-Law no. 28/84, Law no. 4/2024 introduced two additional articles, in alignment with the provisions of Directive (EU) 2017/1371. These newly added provisions address both criminal and administrative offences associated with the improper utilization of European Union (EU) funds.

a) Criminal Offence of Misuse of European Union Revenue

In accordance with the recently enacted Article 37-A, paragraph 1, of Decree-Law No. 28/84, the misuse of legally obtained benefits derived from EU revenue, excluding value-added tax resources, for purposes other than their intended use, resulting in a loss or advantage exceeding 100.000,00 euros, will be subject to a maximum imprisonment term of 5 years.

This offense is distinct from that of misappropriation of a grant or subsidy (*crime de desvio de subvenção ou subsídio*) outlined in Article 37(1) of the same law, which imposes a penalty of up to 2 years of imprisonment or a fine not less than 100 days for those redirecting benefits acquired through a grant or subsidy for purposes contrary to their legal designation.

As per paragraph 2 of the new Article 37-A of Decree-Law 28/84, if the loss or advantage associated with the misappropriation of EU revenue, as mentioned in paragraph 1 of the same article, falls between 10.000,00 euros and EUR 100.000,00 euros, the offense will instead incur a penalty of up to 2 years of imprisonment or a fine of up to 240 days.

Under the provisions of paragraph 3 of the new Article 37-A of Decree-Law 28/84, the offences described in the preceding paragraphs will also be punishable if stemming from an omission contrary to duties associated with the position of the perpetrator.

Given that this criminalization is a consequence of the transposition of the Directive (EU) 2017/1371 aimed at combating fraud impacting the financial interests of the EU, this newly

instituted legal provision holds significance regarding the jurisdiction of the European Public Prosecutor's Office, as outlined in Article 4 of [Regulation \(EU\) 2017/1939](#) of the Council, dated October 12, 2017, and Article 3(2)(c)(iii) of the mentioned Directive.

b) Administrative Offense of Improper Use of European Union Revenue of Lesser Amount

Finally, in light of the provisions of the new Article 72-A of Decree-Law no. 28/84, introduced by Law no. 4/2024, under the heading “Improper use of European Union revenue of lesser amount” (*Utilização indevida de receitas da união europeia de menor montante*), a new administrative offense is now stipulated. Such administrative offense is committed by those who use a legally obtained benefit, even if due to an omission contrary to the duties of their position, derived from European Union revenue other than that originating from the own resources of value-added tax, for a purpose different from its intended use, resulting in a loss or advantage of an amount less than 10.000,00 euros.

The specified administrative offense is subject to a fine ranging from 5.000,00 euros to 20.000,00 euros.

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