
Amendments to the scope of economic crime

Law 4/2024 was published on January 15, amending the Portuguese Criminal Code and the Anti-economic and Public Health Offenses Regime.

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Key aspects

Law 4/2024 of January 15 (“Law 4/2024”):

- > completes the transposition of [Directive \(EU\) 2017/1371](#) of the European Parliament and of the Council of July 5, 2017;
- > broadens the scope of the crime of money laundering by introducing new predicate offenses;
- > broadens the scope of the crime of embezzlement; and
- > criminalizes the misuse of European Union (“EU”) funds.



Law 4/2024

Law 4/2024 was published on January 15 and will come into force on February 14, 2024. The purpose of this law is to complete the transposition of Directive (EU) 2017/1371 of the European Parliament and of the Council of July 5, 2017, on the fight against fraud to the Union's financial interests by means of criminal law. With the entry into force of this law, the Portuguese Criminal Code (approved by [Decree-Law 48/95](#) of March 15) and the Anti-economic and Public Health Offenses Regime (approved by [Decree-Law 28/84](#) of January 20) will be amended.

Amendments to Portuguese Criminal Code

Law 4/2024 makes several amendments to the Portuguese Criminal Code. Regarding *economic crime*, the following are particularly significant:

> **Crime of money laundering**

Regarding the crime of money laundering, new predicate offenses have been introduced in article 368-A.1.j) of the Portuguese Criminal Code. Previously, this article only referred to the crimes of tax fraud and social security fraud.

Effectively, the crimes of smuggling, smuggling of excise goods, and smuggling of restricted excise goods by sea, provided for, respectively, in articles 92, 93 and 94 of the General Tax Offenses Regime (approved by [Law 15/2001](#) of June 5), are now considered predicate offenses for the purposes of the crime of money laundering, due to their inclusion in the list provided for in article 368-A(1) of the Portuguese Criminal Code.

Therefore, with the entry into force of Law 4/2024, laundering the proceeds from these criminal acts now constitutes a criminal offense.

> **Crime of embezzlement**

The scope of the crime of embezzlement, provided for in article 375 of the Portuguese Criminal Code, will also be broadened with the entry into force of Law 4/2024.

The crime of embezzlement is a specific crime, which can only be committed by someone who, for the purposes of criminal law, is considered a "public officials." Article 386 of the Portuguese Criminal Code defines this concept, and article 386.3 equates "public officials" with persons who hold the positions listed in its subparagraphs. These include magistrates, civil servants, agents, and equivalent persons of international public law organizations, regardless of their nationality and residence; national civil servants of other states; magistrates and civil servants of international courts, provided Portugal has accepted their jurisdiction; people who exercise functions in extrajudicial dispute resolution procedures, regardless of their nationality and residence; and jurors and arbitrators who are nationals of other states.

Before Law 4/2024 entered into force, this equivalence was only made for the purposes of the crimes of influence peddling, receiving or offering an undue advantage, and passive and active corruption. However, from February 14, 2024, this equivalence will also be made for the crime of embezzlement. Consequently, those who hold the positions listed in the subparagraphs of article 386.3 of the Portuguese Criminal Code can now be considered to have committed this crime.

Amendments to Anti-economic and Public Health Offenses Regime

Law 4/2024 added articles 37-A and 72-A to Decree-Law 28/84. These articles define the type of conduct that constitutes a misuse of EU funds.

- Under paragraph 1 of article 37-A, it constitutes a **crime** punishable by up to five years in prison to use a legally obtained benefit deriving from EU funds—other than those arising from value-added tax own resources—for a purpose other than its intended use and involving a loss or benefit exceeding €100,000.
- Under paragraph 2 of the same article, if this use of proceeds involves a loss or benefit equal to or greater than €10,000 and equal to or less than €100,000, the crime is punishable by up to two years in prison or a fine of up to 240 days.
- Under paragraph 3, the same penalties apply to anyone whose conduct constitutes an omission of a duty that their position requires them to perform.
- In turn, under article 72-A, the misuse of EU funds involving a loss or benefit of less than €10,000 is an **administrative offense**, punishable by a fine of between €5,000 and €20,000.
- The commission of these new offenses also makes legal persons, companies and de facto associations liable when these offenses are committed by their representative bodies or persons acting on their behalf and in their collective interest, unless the agent acted against the express orders or instructions of those in charge (article 3 of Decree-Law 28/84).

Given that the misuse of EU funds constitutes a criminal offense harmful to the financial interests of the EU, as a result of the transposition of Directive (EU) 2017/1371, the European Public Prosecutor's Office—an EU body with legal personality—will be responsible for investigating, initiating criminal proceedings, and bringing charges and upholding them in the investigation and trial against the perpetrators and accomplices under article 4 of Council Regulation (EU) 2017/1939 of October 12, 2017.

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