

*Legal questionnaire completed by Fenech & Fenech Advocates • November 2025*

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## **Is this jurisdiction a European Union (EU) Member State or otherwise subject to EU laws/regulations (such as an overseas territory or department of an EU Member State)?**

Yes

### **1. What laws and regulations contain legal definitions of the following terms or corresponding terms in your local jurisdiction (links to existing U.S. legal definitions are included, where relevant, as background for comparison – please include definitions of any corresponding terms in your jurisdiction):**

#### **a. child or minor (18 U.S.C. 2256(1), <https://www.law.cornell.edu/uscode/text/18/2256>)**

Under Maltese law, a child or minor is defined as any person who has not yet attained the age of eighteen (18) years.

However, Maltese legislation distinguishes between various age thresholds for specific legal capacities:

- **Civil Capacity:**
  - A person is considered a minor until the age of eighteen (18), at which point they acquire full legal capacity to enter contracts and perform all acts of civil life according to Article 157 of the Civil Code.
  - For certain civil matters, such as marriage, a person may give valid consent from the age of sixteen (16), subject to parental or guardian approval according to Article 3 of the Marriage Act (CAP 255).
- **Criminal Responsibility:**
  - The minimum age of criminal responsibility is fourteen (14) years. Below this age, a child cannot be held criminally liable according to Article 35 of the Criminal Code (CAP 9).
- **Sexual Consent:**
  - The legal age of consent for sexual activity is sixteen (16) years. Engaging in sexual activity with a person under sixteen (16) may constitute a criminal offense under Article 204C of the Criminal Code (CAP 9).

These distinctions are essential for interpreting the rights and protections afforded to children and minors under Maltese law.



**b. child sexual exploitation (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(9), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)**

While Maltese legislation does not provide a singular definition of “child sexual exploitation”, the concept is interpreted and enforced through various provisions of the Criminal Code (CAP 9), particularly Articles 204A and 204B.

These articles criminalize a range of exploitative acts involving persons under the age of 18, including:

- Article 204A: Prohibits the instigation, encouragement, or coercion of a minor to engage in prostitution. This includes any form of manipulation or pressure that leads a child to offer sexual services. The prescribed penalty ranges from six to twelve years of imprisonment.
- Article 204B: Expands the scope of criminal liability to include:
  - Recruiting, engaging, or causing a minor to practice prostitution.
  - Inducing a minor to participate in pornographic performances.
  - Profiting from or otherwise exploiting a minor for such purposes.

Offenses under this article carry penalties ranging from five to ten years of imprisonment. These provisions collectively reflect Malta’s legal framework for addressing child sexual exploitation, aligning with international standards such as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. They serve as the guiding basis for identifying and prosecuting acts of sexual exploitation involving minors, even in the absence of a formally defined term within the Criminal Code.

**c. sexually explicit conduct (18 U.S.C. 2256(2), <https://www.law.cornell.edu/uscode/text/18/2256>)**

While Maltese law does not provide a standalone definition of “sexually explicit conduct,” Article 204D of the Criminal Code outlines the criminalization of acts involving minors in the context of pornographic material. The article prohibits:

- Producing, distributing, disseminating, importing, exporting, offering, selling, or possessing any material that depicts a person under the age of 18 engaged in sexually explicit conduct, whether real or simulated.

This includes visual representations, such as photographs, videos, or digital content, that portray minors in sexual acts or in a manner intended to sexually arouse or exploit.

The law treats such conduct as a form of child sexual exploitation, and penalties vary depending on the nature and severity of the offense, with imprisonment being the primary sanction ranging from five to ten years.

**d. child sexual abuse (18 U.S.C. 2243(a), <https://www.law.cornell.edu/uscode/text/18/2243>)**

The Criminal Code (CAP 9) includes many acts of a sexual nature that can be considered as “child sexual abuse”, involving coercion, manipulation, or exploitation. The relevant provisions include:



- Article 203 – *Defilement of Minors*: Criminalizes sexual acts with persons under the age of 16, regardless of consent. This includes acts that corrupt or deprave the minor morally or sexually.
- Article 204A and 204B – *Sexual Exploitation*: Addresses the use of minors (under 18 years) in prostitution and pornography, including coercion, recruitment, and profiting from such acts.
- Article 204D – *Unlawful Sexual Activities*: Criminalizes the possession of pornographic material involving minors (under 18), the sexual exploitation, involvement, coercion or exposure of a minor to sexual acts or content including through information and communication technologies.

These provisions collectively form the legal framework for prosecuting child sexual abuse in Malta. They reflect Malta’s obligations under international instruments such as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Istanbul Convention, which have influenced amendments to national law to better protect children from sexual violence.

**e. child pornography or child sexual abuse material (CSAM) (18 U.S.C. 2256(8), <https://www.law.cornell.edu/uscode/text/18/2256>)**

Maltese law does not use the term “child sexual abuse material” explicitly. Article 204D of the Criminal Code encompasses this as any visual representation, including photographs, videos, or digital content, that depicts a person under the age of 18 engaged in sexually explicit conduct, whether real or simulated. This includes material that shows minors participating in sexual acts, portrays minors in a sexualized manner intended to arouse or exploit, depicts adults performing sexual acts in the presence of minors and involves bestiality where a child is present.

Article 204D(1)(e) does not refer directly to “child pornography” but describes an unlawful sexual activity where an individual knowingly attends a pornographic performance involving the participation of a person underage.

These offences are punishable by imprisonment for a term from five to ten years.

Article 208A of the Criminal Code criminalizes production, distribution, dissemination, importation, exportation, offering, sale, possession, and access to such indecent material depicting persons underage. These acts are considered serious offenses and are punishable by imprisonment for a term from twelve months to five years.

**f. computer-generated images or videos of child pornography or CSAM (created by artificial intelligence or morphed) (18 U.S.C. 2256(8) & (9), <https://www.law.cornell.edu/uscode/text/18/2256>)**

There is no explicit definition for “computer-generated images or videos of CSAM” in Maltese law, however, the below provisions of the Criminal Code are relevant:

- Article 208A – Criminalizes the production, distribution, dissemination, importation, exportation, offering, sale, possession, acquisition, or knowingly accessing



pornography involving minors (defined as persons under 18 years). This includes simulated representations of minors engaged in sexually explicit conduct where such depictions are intended for sexual purposes or likely to cause harm.

- Article 208D – Criminalizes acts involving extreme pornographic images, as defined in the Extreme Pornographic Images Regulations, 2015 (S.L. 9.05), which covers realistic and explicit depictions of certain acts (e.g., rape, life-threatening injury, bestiality, necrophilia) even if created digitally.
- Article 204D – Criminalizes the exposure of minors to witness sexual activities (real or simulated) or to be depicted, by any technological means, in sexually explicit conduct or exhibitions.

The above provisions apply where:

1. The depiction portrays a person under 18 engaged in sexually explicit conduct (real or simulated).
2. The content is created, possessed, distributed, or accessed for sexual purposes, or with intent to normalize exploitation or incite sexual interest in minors.
3. The imagery is realistic enough to simulate abuse or exploitation, regardless of whether an actual child was involved in its creation.

For offences under Articles 208A or 208D there is a penalty of imprisonment of 18 months to 3 years, a fine of €3,000 to €6,000, or both. Penalties may be aggravated if the material is produced for gain, involves organized criminal activity, or is disseminated to the public.

- g. enticement or grooming (encouraging, persuading, or coercing a child to engage in sexual activity or to create child pornography or CSAM) (18 U.S.C. 2422(b), <https://www.law.cornell.edu/uscode/text/18/2422>)**

While Maltese law does not provide a standalone definition of “grooming,” Article 208AA of the Criminal Code criminalizes the meeting or the arrangement to meet a person under the age of 16 intending to engage with a minor (under 16) in sexual activity or to produce child pornography.

- h. legal age of consent for sexual activity – are there laws and regulations, if so, what ages are specified?**

Under Article 204C of the Criminal Code, the legal age of consent for sexual activity is 16 years. Therefore, individuals aged 16 and above are legally considered capable of consenting to sexual activity. Sexual activity involving persons under the age of 16 may constitute a criminal offense, including defilement of minors under Article 203 of the Criminal Code.

Furthermore, Malta does not have a close-in-age exemption, meaning that even consensual sexual activity between minors close in age may still be subject to legal scrutiny.

- i. Sextortion (extorting money or sexual favors from a child by threatening to share sexually explicit, child pornography or CSAM images of the child) (Missing Children’s Assistance Act of 2023, Section 2, (a)(1)(8), <https://www.congress.gov/118/bills/s2051/BILLS-118s2051es.pdf>)**



Under the Criminal Code, “sextortion” is not explicitly defined but rather its definition is discussed under Article 208A as the act of coercing or manipulating a person under the age of 18 to provide sexual favours, explicit images or financial gain through the threat of exposing or distributing sexually explicit material. This may include real or simulated content such as photographs, videos or digital representations depicting the minor in a sexual context.

The misuse of indecent material, particularly where the intent is to exploit or intimidate the minor, is a criminal offence. The act of threatening and the actual dissemination of such material is also a serious offence under this article that brings a penalty of imprisonment for a term from twelve months to five years.

Resources:

- Chapter 9, The Criminal Code: [LEĠIŻLAZZJONI MALTA](#)
- Chapter 16, The Civil Code: [LEĠIŻLAZZJONI MALTA](#)
- Chapter 255, The Marriage Act: [LEGISLATION MALTA](#)

2. Please explain any legal or regulatory requirement or recommendation for Online Platforms to undertake any of the following activities on their systems to protect children online from sexual exploitation:
- a. review, screen, moderate, or detect content to identify child pornography or CSAM content
  - b. review, screen, moderate, or detect content to identify enticement, grooming, or sextortion of a child
  - c. report child pornography, CSAM, enticement, grooming, or sextortion that they become aware of or are notified about on their systems to a law enforcement or government agency or nongovernmental organization
  - d. remove or take down any child pornography, CSAM, enticement, grooming, or sextortion that they identify, become aware of, or are notified about
  - e. review content by human moderators to screen or moderate for child pornography or CSAM
  - f. remove child pornography, CSAM, enticement, grooming, or sextortion from their systems when notified of its presence by a victim, nongovernmental organization, law enforcement, or government agency
  - g. use any specific technology to detect, remove, block, or take down any child pornography, CSAM, enticement, grooming, or sextortion, including:
    - i. “Hashing technology” (<https://www.thorn.org/blog/hashing-detect-child-sex-abuse-imagery/>). Many Online Platforms hash and tag images and videos of child pornography or CSAM and then use hashing technology to scan content on their systems to detect the distribution of child pornography or CSAM online so it can be removed.
    - ii. Artificial intelligence or machine learning tools to detect the presence of child pornography, CSAM, enticement, grooming, or sextortion.
  - h. if the applicable laws or regulations require some, but not all, Online Platforms to perform any of the above activities, describe how the differing requirements apply. For example, are differences based on the number of online users, types of services offered, etc.?

As a Member State of the European Union, Malta adheres to the obligations, standards, and enforcement mechanisms set out under the Digital Services Act (Regulation (EU) 2022/2065), which establishes

harmonized rules for online intermediary services, including specific provisions aimed at the protection of minors and the prevention of online sexual exploitation.

There is no standalone domestic legislation regulating these matters; accordingly, the legal and regulatory framework aligns with that established by the EU. Please refer to the general EU questionnaire for additional details.

**3. Are Online Platforms legally required or recommended to implement any method to verify the age of a user before allowing access to an online platform?**

There is no standalone domestic legislation mandating a uniform age verification requirement for all online platforms. As an EU Member State, Malta applies the relevant provisions of the Digital Services Act which may require certain platforms to implement proportionate age verification or parental control measures. Please refer to the general EU questionnaire for additional details.

**4. Are Online Platforms legally required or recommended to implement any method to obtain parental consent before a child uses the services of such Online Platforms?**

In Malta, there is no standalone domestic legislation imposing a general obligation on online platforms to obtain parental consent before a child uses their services. As an EU Member State, Malta applies the requirements of the GDPR, which sets the age of digital consent at 16.

Under the GDPR, where information society services are offered directly to a child under 16, parental consent must be obtained and verifiable. In Malta, enforcement falls under the Office of the Information and Data Protection Commissioner (IDPC). However, according to Article 33 of the Data Protection Act (CAP 586), the responsible Minister may establish an age lower than sixteen years (16) where the processing of personal data of a child shall be deemed lawful in the absence of consent by the holder of parental responsibility over the child, provided that such lower age is not below thirteen years (13).

**5. Are there legal remedies for children who have been victimized by online child sexual exploitation? This may include children who are victimized by the distribution of child pornography or CSAM imagery in which they are depicted, or children victimized by enticement, grooming or sextortion. If such legal remedies exist, do they include:**

Yes

**a. The ability to stop the publication of the pornography or CSAM imagery by the Online Platform?**

The Minor Protection Act (CAP 602) does not directly regulate online platforms; it empowers authorities to take protective action when a child is at risk or has been harmed. Under Article 19, a protection order may be issued to protect the child, which can include measures to prevent further exposure or harm, including requesting removal of harmful content from platforms .

**b. An obligation on the part of the Online Platform to take active steps to remove the pornography or other imagery from their servers?**



The Minor Protection Act (CAP 602) does not impose direct obligations on platforms, it works in tandem with criminal law (CAP. 9) and EU regulations (e.g., the Digital Services Act), which require platforms to remove illegal content, including CSAM. Maltese authorities can act under this framework to compel removal.

- c. An ability to get an injunction or other court order against the Online Platform to stop them from publishing the pornography or imagery?**

Under Article 19 and Article 20 of The Minor Protection Act (CAP 602), one finds the possibility of issuing care orders and emergency protection orders, which may include court directives to third parties (including platforms) to cease harmful actions or remove content

- d. A protective order or other court order that prohibits the person who posts the pornography or imagery from doing so in the future on the same or other Online Platform?**

Yes. Article 19(1)(a) of The Minor Protection Act (CAP 602) allows for care orders against individuals who pose a risk to minors. These orders can prohibit contact, sharing of content, or further exploitation. Article 74–82 also outlines offences and penalties for those who breach such orders.

- e. the ability to seek financial damages or any sort of monetary recovery from an offender who has shared the child’s image or video, either in a civil or a criminal proceeding?**

The Minor Protection Act (CAP 602) itself does not provide for civil damages, but victims may pursue compensation through civil proceedings under the Civil Code or through the Criminal Code if the offender is convicted under it. The Minor Protection Act (CAP 602) supports this by ensuring the child is represented and protected during legal processes by the Children’s Advocate under Article 25.

- f. the ability to seek any other forms of victim compensation/recovery/services provided for under the law and/or by a government-funded source?**

The Minor Protection Act (CAP 602) mandates the creation of a Care Plan under Article 13 which relates to education, health, maintenance and well-being of the minor. Furthermore, access to services via Aġenzija Appoġġ, an agency designed to protect minors including necessary care such as psychological support, legal aid and alternative care arrangements.

- g. notification to a victim when an offender is arrested for distributing child pornography or CSAM in which the child is depicted?**

The Minor Protection Act (CAP 602) does not explicitly require notification to a victim when an offender is arrested for distributing child pornography or CSAM.

- 6. “Safety by Design” is defined as tools or processes that are built into an Online Platform to protect children by making it easier for the relevant Online Platform to detect or prevent the distribution of child pornography or CSAM.**

- a. Are Online Platforms legally required to incorporate “Safety by Design” into their systems?**



- i. If so, must these steps be taken before the launch of an Online Platform?
  - ii. If so, if an Online Platform has already been in public use, when must they have incorporated “Safety by Design” measures?
  - iii. For each of 6(a)(i) or (ii) above, please describe the legal requirement or recommendation.
- b. Please include information about the parameters for monitoring, management, and enforcement of any legal or regulatory requirements for the Online Platform’s incorporation of “Safety by Design”?

In Malta, there is no standalone domestic legislation specifically requiring online platforms to incorporate “Safety by Design” measures. As an EU Member State, Malta follows the relevant provisions of the Digital Services Act, which requires platforms to take proportionate measures to mitigate risks, including the detection and prevention of the dissemination of CSAM and other harmful content. Please refer to the general EU questionnaire for additional details.