Germany has some concerns regarding some elements of the Draft Guidelines.

With regard to No. 21 c, Germany has doubts as to whether the collection of data at this level of detail, however desirable, is indeed feasible for States Parties. It might be wiser to replace “as well as” with “preferably including”.

With regard to No. 66, the recommendation to avoid the term “child pornography” altogether seems to go too far. While acknowledging the discussion mentioned in No. 65, Germany would prefer a recommendation to bear the ongoing discussion mentioned in the preceding paragraph in mind when formulating legislation and policy.

In No. 98, the Guidelines request Member States to implement a formal determination process to identify the best interests of the child. That process is to affect the introduction of criminal investigation proceedings by having the victim first be given a certain period to receive the necessary support before criminal prosecution is initiated. In the view of the German Federal Government, the initiation of investigative measures cannot be made dependent upon whether a victim has already received support. It must be taken into account that the securing of evidence plays an especially significant role in criminal prosecution. If the victims must be given a certain time for recovery before criminal prosecution is initiated, this could make criminal prosecution more difficult or even prevent it completely, which is neither consistent with the interests of the victims nor those of society as a whole. There are other ways to do justice to the children’s justified interests in recovery and well-being. One example of this is the rule in German law (section 48 (3) Code of Criminal Procedure (*Strafprozessordnung* – StPO), which provides that in cases where the witness is also the aggrieved person, the hearings, examinations and other investigation measures are always to be carried out in a manner which takes into account the special need for protection of the witness. Also, many legal orders have numerous provisions to protect victims; and the demand for a formal “determination procedure” which goes beyond this does not seem useful.

In the view of the Federal Government, what is determinative is that there are sufficient support services available for children in such situations, and that children are also made aware that these services exist. In Germany, this is guaranteed by a multi-faceted infrastructure of assistance and support services for children at the federal and *Land* levels, as well by requiring criminal prosecution authorities to keep aggrieved persons informed during the criminal proceedings.

Also, the Federal Government is sceptical about the recommendation stated in number 99 to allow hearsay evidence in order to spare child victim-witnesses from testifying. This would make the quest for the truth in criminal proceedings more difficult because direct evidence should always take precedence over indirect evidence. Other protective measures for children who are victim-witnesses, for example video recording of a judicial examination and the possibility of using that recording at trial, seem better suited to creating a proper balance in the area of tension between the mission of ascertaining the truth and the rights of the accused to a fair trial on the one hand, and the justified interest of the child victims to protection against renewed trauma on the other.