Warsaw, 27 March 2019

**Comments of the Republic of Poland**

**to the draft *Guidelines on the implementation of the Optional Protocol to the Convention
on the Rights of the Child on the sale of children, child prostitution and child pornography***

**General opinion about the document**

Poland welcomes the document and believes that it will be a useful tool in everyday work of national authorities and institutions that deal with child protection. We wish to emphasize that on the one hand, the draft is a sui generis commentary on the provisions of the Protocol which so far did not exist. On the other hand, it plays a very important role because it treats the Protocol’s provisions as a “living” tool of international law, making them capable of addressing new risks that children are exposed to in the discussed area, which are generated by the development of ICTs, in particular the Internet and mobile phones, which started after the Protocol became effective. We agree with the draft’s main thesis, according to which technological progress that happened since that time will provide more opportunities to abuse children and act to their detriment. For this reason, the Protocol rightly discusses the “new” phenomena of grooming, sexting, sexual extortion, etc*.*

It is worth emphasizing that apart from the Protocol, there exists no similar international or EU legal act that has such a wide use and deals with the prevention of offences specified in Article 3. The sphere of risks to children covered by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Journal of Laws of 2015, item 608) is different from the subject matter of the Protocol.

Poland believes that the Committee’s Guidelines have practical importance due to the following reasons:

1. They set out “new” forms of threats to children, which emerged after the Protocol became effective, and which are a consequence of the development of IT, especially owing to a wide use of the Internet and mobile phones;
2. They stress the need for each State party to the Protocol to develop a comprehensive policy and strategy with respect to combatting the sale of children, including the sale of children for the purpose of prostitution or adoption, and with respect to counteracting the production and dissemination of child pornography. One of the elements of such policy should be permanent training and education of all entities operating in the area of addressing the consequences of the above-mentioned acts, in particular law-enforcement authorities and the judiciary. This applies also to parents, guardians, teachers and institutions operating in the sector of leisure and tourism, in the context of child sex tourism, which is becoming more and more widespread. The idea is also to train children and make them aware of the risks and dangers that are connected with new forms of IT;
3. They underline the necessity to systematically analyze penal law provisions applicable in States parties to the Protocol in order to adjust them to new forms of sale of children, sexual abuse of children and production and dissemination of child pornography;
4. They highlight the importance of coordination between national authorities and institutions tasked with preventing the offences set out in the Protocol to increase their effectiveness in this field;
5. They focus on the need to strengthen international cooperation in the field of child protection by among others concluding agreements to raise the effectiveness of prevention of offences that fall under the scope of the said Protocol and to improve the system of punishment of people responsible for committing such offences;
6. They draw attention to the obligation of providing child victims of the offences with broadly defined help, in particular psychological aid.Abused children should also obtain free-of-charge legal assistance in seeking compensation for the harm that was done to them.

**Detailed remarks regarding the text**

**III. General measures of implementation**

**Paragraph 15**

We recommend changing the beginning of the first sentence to account for the shape of national law-making procedures and to make sure that the sentence is stylistically correct. We suggest re-formulating the text in the following way: “Hence, States parties should make efforts to**ensure that the views of children****are considered in the drafting process of legislative and policy measures** (…)”.

We would also like to note that citing the features of children in Paragraph 15 is not consistent with the text of the Protocol, which uses the term “child” without differentiating on account of their gender or sexual preferences. Poland believes that it is not necessary to underline differences in this regard, given that each child has the right to protection (this also applies to Paragraphs 33 and 34).

**Paragraph 21 (a)**

It should be analyzed whether the provision regarding the collection of data concerning national and ethnic origin of children is legally admissible – in Poland and in other European states it is prohibited to collect such information.

**Paragraph 25**

Instead of recommending to establish a body to coordinate the implementation of the Protocol, it would be advisable to recommend that states specify a body within their government administrations that would coordinate the implementation of national policy or strategy against the trafficking of children, child prostitution and child pornography, without indicating where this body should be placed, as the text now suggests.

**Paragraphs 27 and 28**

It would be advisable to change the term “implementation of the OPSC” into “implementation of a national policy or strategy.”

In addition, the guideline to allocate separate funds in the state budget for fighting the trafficking of children, child prostitution and child pornography, as well as to earmark human and technical resources for this purpose is unfeasible. Such actions and measures are part of solutions that have a wider scope. Likewise, it is not possible to allocate separate funds for children in the budgets earmarked for the justice system, family policy, social aid or health care (the Committee expects States to provide information on such budgetary allocations in their reports on the implementation of the Convention).

**Paragraph 29 (d)**

We suggest that the text “about the risks of sexual exploitation and abuse” be followed by “including conducts which are not necessarily illegal or wrongful in themselves,” meaning conduct and actions that are referred to in Paragraphs 70 and 71, which is important in the context of a wide access to communication technologies, and in light of the fact that teenagers consider the conduct covered by the term sexting and self-generated sexual content/material as “normal” (quote from Paragraph 71).

**IV. Prevention of the sale of children, child prostitution and child pornography**

**Paragraphs 33 and 34**

The Protocol uses the term “child" without differentiating children on account of their gender and sexual preferences. However, the Committee’s Guidelines mention this differentiation at several points, in particular in Paragraphs 33 and 34. Poland believes that it is not necessary to underline differences in this regard, because each child has the right to protection.

**Paragraph 35**

It is worth considering the idea to complement the guideline to establish a register of convicted sex offenders by including an obligation to adopt the necessary solutions regarding the access to such register (which part is publically accessible and which has limited access, as is the case in Poland). The guideline could also be complemented by mentioning the need to adopt measures regarding the prohibition of contacts of sex offenders with children while performing professional duties, as a means of preventing them from reoffending.

**Paragraph 48**

The draft Guidelines contain certain shortcomings, such as the laconic description of the sale of children for the purpose of transfer of organs for profit. As such offences are extremely serious, they deserve to be discussed more widely. Specifically, we would expect the Committee to explain the term “transfer of organs of a child for profit,” which can be found in Article 3 of the Protocol.

**Paragraph 52**

We have also some doubts about the laconic mention of the problem of surrogacy. We would like the Committee to explain which cases of surrogacy are criminalized, and which are exempt from criminalization. When analyzing the practice and legal norms applicable in this regard in some countries, we come to the conclusion that international law provides no tools to regulate this problem.