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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	WK 5263/17
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Subject:	Proposal for a Council Regulation on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) - Policy debate

In document 9317/17 INIT, on page 3, paragraph 9 should read:

9. The right of the child to be given an opportunity to be heard is protected by Article 24(1) of the Charter of Fundamental Rights of the European Union as well as by Article 12 of the United Nations Convention of the Rights of the Child ('UNCRC'). This is also regarded as an integral part of providing the child with a fair trial under Article 6 of the European Convention on Human Rights and providing a right to respect for private and family life under Article 8 of the same Convention. In 2005, the Brussels IIa Regulation raised the standards for intra-EU 1980 Hague Convention proceedings. Under the latter Convention there is no explicit requirement to hear the child, but **Article 13 second paragraph** of this Convention provides for the possibility that an order of return of the child may be refused if the child objects to being returned and this child has attained an age and degree of maturity at which it is appropriate to take account of its views.

Article 11(2) of the Brussels IIa Regulation, therefore, provides that a child is given the opportunity to be heard in return proceedings under the 1980 Hague Convention following an international child abduction between two Member States. According to the case-law of the European Court of Justice, neither Article 24 of the Charter of Fundamental Rights of the European Union nor Article 42(2)(a) of the Brussels IIa Regulation refer to the hearing of the child *per se*, but both refer to the child having the opportunity to be heard. The Court also stated that a child may not be heard if the hearing would not be in his or her best interests or if it is unnecessary. A child may also not be heard if this appears inappropriate having regard to the child's age or maturity.
