



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 24 September 2012 (25.09)
(OR. fr,it)**

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ADD 1**

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PI 107
AUDIO 84
CULT 113
OC 502**

ADDENDUM TO "I/A" ITEM NOTE

from: General Secretariat of the Council

to: COREPER/COUNCIL

No. Cion prop.: 10832/11 PI 61 AUDIO 18 CULT 37 CODEC 926

Subject: Proposal for a Directive of the European Parliament and of the Council on certain permitted uses of orphan works **(first reading)**
- Adoption of the legislative act **(LA + S)**
= Statement

Unilateral Statement by the Italian Delegation
regarding Articles 1(5), 10 and 1(3)

"In casting its negative vote, Italy notes that Article 1(5) of the Directive allows the coexistence of two parallel and alternative legislative systems: firstly the system of exception introduced by the Directive, and secondly the framework defined by individual national legislation, in which the system introduced by the Directive cannot interfere.

Italy remains convinced that such an arrangement would lead to serious mismatches within the internal market and would compromise the harmonising function of the Directive.

This harmonising function is further compromised by the review clause proposed in Article 10, since this establishes that in the event that a Member State reports a case of incompatibility between the national system and that of the Directive, the European Commission will be asked to consider a possible review of the Directive.

Moreover, the introduction of the "unpublished works" category (Article 1(3)) seems to fall outside the objective scope of the Directive, as well as being incompatible with and far-removed from the general principles of copyright. This provision could in fact infringe the author's personality rights, the so-called "moral rights", which are exercised on the basis of legislation of the Union's Member States, in accordance with the provisions of the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty."

