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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

COUNCIL

Sixteenth Extraordinary Session
Geneva, March 26, 1999

EXAMINATION OF THE CONFORMITY OF THE LAWS
OF THE REPUBLIC OF SLOVENIA WITH THE
1991 ACT OF THE UPOV CONVENTION

Document prepared by the Office of the Union

Introduction

1. By letter dated February 4, 1999, Mr. Ciril Smrkol, the Minister for Agriculture, Food and Forestry of the Republic of Slovenia, requested the advice of the Council of UPOV on the conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as "the Convention") of The Protection of New Varieties of Plants Act (hereinafter referred to as "the Law") which was adopted by the National Assembly of the Republic of Slovenia on December 3, 1998, and which came into force on January 2, 1999. A copy of the letter is reproduced in Annex I. Annex II to this document contains a translation of the Law provided by the Government of the Republic of Slovenia.

2. The Republic of Slovenia did not sign the Convention. Under Article 34(2) of the Convention, it must deposit an instrument of accession in order to become a member State of UPOV on the basis of the Convention. Under Article 34(3), an instrument of that kind can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the Convention and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in the Republic of Slovenia

3. The protection of new plant varieties will be governed in the Republic of Slovenia by the Law and its implementing regulations. An analysis of the Law follows in the order of the substantive law provisions of the Convention.

Article 1 of the Convention: Definitions

4. Article 2.1 of the Law defines the breeder as “the natural person who has bred, discovered or developed a variety, either on his own or together with other natural persons.” Article 12 of the law regulates the situation where a variety is bred pursuant to an employment contract or some other contractual arrangement, thus reproducing and amplifying the essence of the definition of “breeder” appearing in Article 1(iv) of the Convention.

5. Article 2.6 of the Law reproduces the definition of variety found in Article 1(vi) of the Convention.

Article 2 of the Convention: Basic Obligation of the Contracting Parties

6. Article 1 of the Law provides that the Law “regulates the procedure for the protection of new varieties of plants and the granting and protection of the plant breeders right.” The Law thus satisfies Article 2 of the Convention.

Article 3 of the Convention: Genera and Species to be Protected

7. Article 1 of the Law provides that “the varieties of all genera and species are to be protected, including cross-breeds between genera and species.” The Law accordingly satisfies Article 3 of the Convention.

Article 4 of the Convention: National Treatment

8. Article 13 provides that “a legal or natural person who is a citizen of a foreign country is granted the same plant variety rights in the Republic of Slovenia as a domestic legal or natural person, if so stipulated by the international contracts signed or acceded to by the Republic of Slovenia” This provision satisfies Article 4 of the Convention.

Articles 5 to 9 of the Convention: Conditions of Protection; Novelty; Distinctness; Uniformity; Stability

9. The conditions for protection are set out in Articles 4 to 8 of the Law in terms which conform with Articles 5 to 9 of the Convention. Article 54 contains provisions concerning the transitional application of the novelty condition.

Article 10 of the Convention: Filing of Applications

10. The Law contains no generally applicable provision which conflicts with Article 10 of the 1991 Act.

Article 11 of the Convention: Right of Priority

11. Article 27 of the Law establishes a right of priority which conforms with Article 11 of the Convention.

Article 12 of the Convention: Examination of the Application

12. Articles 29 to 33 of the Law make comprehensive provision for the examination of applications for protection in terms which satisfy Article 12 of the Convention.

Article 13 of the Convention: Provisional Protection

13. Article 18 of the Law provides for provisional protection in terms which conform with Article 13 of the Convention.

Article 14 of the Convention: Scope of the Breeder's Right

14. Article 15 of the Law contains provisions which satisfy all provisions of Article 14 of the 1991 Act.

Article 15 of the Convention: Exceptions to the Breeder's Right

15. Article 16 of the Law sets out the compulsory exceptions to the breeder's right in terms which satisfy Article 15(1) of the Convention.

16. It also establishes a "farmer's privilege," in accordance with Article 15(2) of the Convention in terms designed to enable the application of the principles on this subject established by the Regulation of the European Community on Community plant variety rights.

Article 16 of the Convention: Exhaustion of the Breeder's Right

17. Article 17 of the Law makes provisions for the exhaustion of the breeders right in terms which conform with Article 16 of the Convention.

Article 17 of the Convention: Restrictions on the Exercise of the Breeder's Right

18. Article 42 of the Law contains provisions concerning the grant of compulsory licenses which satisfy the provisions of Article 17 of the Convention. There are no other provisions in the Law which restrict the exercise of the breeder's right.

Article 18 of the Convention: Measures Regulating Commerce

19. The Law contains no provisions which conflict with Article 18 of the Convention.

Article 19 of the Convention: Duration of the Breeder's Right

20. Article 18 of the Law provides for periods of protection of 25 years for hops, vines and trees and 20 years for all other species, thus conforming with Article 19 of the Convention.

Article 20 of the Convention: Variety Denomination

21. Articles 10, 11 and 38 contain provisions which comprehensively satisfy the requirements of Article 20 of the Convention.

Article 21 of the Convention: Nullity of the Breeder's Right

22. Article 35 of the Law contains provisions which satisfy Article 21 of the Convention.

Article 22 of the Convention: Cancellation of the Breeder's Right

23. Article 36 of the Law contains provisions which satisfy Article 22 of the Convention.

Article 30 of the Convention: Implementation of the Convention

24. The Law makes comprehensive provision for the implementation of the Convention in the Republic of Slovenia. Thus:

(a) Articles 47 to 52 make provisions for civil, administrative and criminal liability for infringement thus providing effective remedies for the enforcement of breeders' rights (Article 30(1)(i) of the Convention).

(b) Articles 3 and 19 of the Law entrust the administrative functions related to the operation of the protection system to the Plant Variety Protection and Registration Office as a legal body within the Ministry responsible for agriculture and forestry (Article 30(1)(ii) of the Convention).

(c) Article 19 of the Law calls for the regulation by the Minister of a Gazette and other publications of the Office. Articles 21, 22, 26, 33, 34 and 38 contain comprehensive provisions for the publication of information relating to matters administered by the Office.

General Conclusion

25. The Law conforms in all respects with the provisions of the Convention.
26. The Office of the Union therefore suggests that the Council may wish
- (a) to decide that the Law conforms in all respects with the Convention;
 - (b) to request the Secretary-General to advise the Government of the Republic of Slovenia of this decision.

27. The Council is invited to take note of the information given above and to adopt the decision set out in the preceding paragraph.

[Two annexes follow]

The annexes are physical cut and paste. Don't exist in electronic form.
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