



# Sustainability and Intellectual Property in Malta

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## 18.1 Intellectual Property and Sustainability in the Maltese Islands

### 18.1.1 A Brief Overview of Existing Legislation

In Malta, intellectual property (hereinafter referred to as ‘IP’) is regulated by various laws both at EU level—either through transposition or else by virtue of their direct applicability—as well as locally. For the purposes of responding to the questionnaire, we have focussed on the local legislative framework and local landscape (save where we have felt it necessary to expand our response to include the EU). The ‘main’ laws regulating IP in Malta are the Copyright Act (Chapter 415 of the Laws of Malta), the Trademarks Act (Chapter 416 of the Laws of Malta), the Patents and Designs Act (Chapter 417 of the Laws of Malta), the Intellectual Property Rights (cross-border measures) Act (Chapter 414 of the Laws of Malta), the Enforcement of Intellectual Property Rights (Regulation) Act (Chapter 488 of the Laws of Malta), the Trade Secrets Act (Chapter 589 of the Laws of Malta) and the Commercial Code (Chapter 13 of the Laws of Malta). Additionally, Malta is also a party to various international treaties, conventions and agreements including the World Trade Organisation’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Berne Convention, the Patent Cooperation Treaty, the European Patent Convention and the Unified Patent Court and Regulation.

Although there is clearly an abundance of legislation which serves to regulate IP and related rights in Malta, the Maltese legislator has yet to enact any regulations, acts, bills, legal notices, by-laws or other legal instruments which specifically regulate the emerging relationship between IP and sustainability. While Malta

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does have its own Sustainable Development Act (Chapter 521 of the Laws of Malta), the Act makes no reference to IP. Nonetheless, over recent years there have been schemes and incentives which have been established, as well as broad guidance documents which have been published, at a local level, which indicate that Malta is growing increasingly conscious of the vital role that IP can play when it comes to promoting and increasing sustainable solutions for the future.

### **18.1.2 Existing Local Initiatives, Programmes and Strategies: A General Perspective**

One initiative which has been taken at local level is the annual ‘*Malta Intellectual Property Awards*’, which was first launched in 2009. The scope of the awards, which are organised by the Commerce Department of the Maltese Ministry for the Economy, Investment and Small Business, is to recognise and encourage the development of innovative ideas and products which have a degree of potential that is both sustainable and unique. Through the initiative, the Maltese Ministry has sought to promote the creation of IP in Malta, including patents, trademarks and designs which can benefit society in innovative and sustainable ways.<sup>1</sup> As of 2022, the amount of available funding for the awards is 60,000 euros and Maltese nationals, groups of Maltese individuals, as well as entities established in Malta may participate and are eligible for funding. Furthermore, the awards are divided into four wide-ranging categories, which are: Creative Innovation, Scientific Innovation, Technological Innovation and Emerging Innovation, and which allow for a broad range of innovative, sustainable ideas to be considered.<sup>2</sup> Examples of novel IP which has managed to secure funding over the years through these awards are, inter alia, (i) the creation of an integrated offshore energy store (in 2017), (ii) the creation of a mechanism to teach sustainable development through gaming (also in 2017), (iii) the development of an idea for a multitrophic polyculture food production system for Malta (in 2020), and (iv) an evaporative cooling method for lithium-ion batteries (in 2021). The initiative shows that Malta has been, for a number of years, placing heightened focus on the protection and promotion of ideas and creations which can serve to enhance sustainability, and these efforts are clearly bearing fruit. Moreover, the initiative plays a crucial role in providing persons who might not have the financial ability or the necessary know-how to protect their IP with an avenue to develop and simultaneously protect their ideas.

The Maltese government, through its dedicated ministries and departments, has also on a number of occasions supported the development of innovative, sustainable projects in Malta through financial grants for research, testing, and the creation of infrastructure. One example is the Malta Council for Science and Technology’s

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<sup>1</sup>Malta Intellectual Property Awards, 2022. In: [Commerce.gov.mt. https://commerce.gov.mt/en/Awards/Pages/Malta-Innovation-Awards.aspx](https://commerce.gov.mt/Commerce/Pages/Malta-Innovation-Awards.aspx). Accessed 13 May 2022.

<sup>2</sup>Ibid.

'FUSION' programme, which is a Maltese funding programme that supports local research and innovation—particularly for ideas which aim to improve the quality of life, and provides the necessary support for researchers and technologists to turn their innovative ideas into market-ready realities.<sup>3</sup> In previous years, the funding has been granted for the development of a sustainable water treatment plan for local hotels which was developed by a Maltese engineer, and for a research project carried out by a group of Maltese researchers to develop efficient storage systems for energy generated on structures at sea. Although the scheme does not specifically target the protection of sustainable IP, it can certainly be said that most of the projects which fall to be considered under the programme have sustainable characteristics, and are also likely to be patentable due to their inventive aspects.

Notably, a consultation document published in 2016 by the Maltese Ministry for Sustainable Development, the Environment and Climate Change entitled '*Greening our Economy – Achieving a Sustainable Future*',<sup>4</sup> emphasises the need for local policy action to be taken to reduce the costs associated with acquiring IP rights, particularly for small and start-up firms. While the consultation document encourages '*a greener economy*' and '*enhance[d] sustainability*', it also explains that these aims are unlikely to be achieved if barriers to entry, particularly in relation to IP, are not removed. Furthermore, the consultation document also cites, as an area for consideration, the need to provide adequate training to persons working in emerging fields. Specifically, the protection of IP in the field of new energy technologies through the provision of part-time courses and internal company training to improve the competencies of the work force in IP institutions.

Clearly the Maltese government and local government authorities already recognise that IP plays a key role in enhancing sustainability, whether the sustainable component or aim of the IP in question relates to environmental, social, economic, technological or even to other forms of sustainable innovation. While the strategies, schemes, and initiatives which have been and which continue to be pursued at a local level might not appear to be on a grand scale in comparison with other larger and wealthier jurisdictions, in our view Malta's efforts are commensurate with its size, amount of resources, and available funds which can be allocated towards this scope.

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<sup>3</sup>FUSION - MCST. In: MCST. <https://mcst.gov.mt/ri-programmes/fusion/>. Accessed 7 November 2022.

<sup>4</sup>MSDEC, *Greening our economy – achieving a sustainable future* 2022. Available at [https://meac.gov.mt/en/public\\_consultations/msdec/documents/green%20economy/consultation%20document%20-%20green%20economy.pdf](https://meac.gov.mt/en/public_consultations/msdec/documents/green%20economy/consultation%20document%20-%20green%20economy.pdf). Accessed 7 November 2022.

## **18.2 The Role of Intellectual Property in the Journey Towards Sustainability**

### **18.2.1 Introduction**

In our view, IP should continue to become more relevant in the achievement of sustainable solutions. Although, as we have elaborated upon in Sect. 18.1, the importance of sustainability has already started to intersect with IP rights and related notions in Malta, we perceive that the relationship between the two will continue to grow in the years to come. On a global level, it is already evident that sustainability has moved to the fore both on a social level as well as at policy level. Laws are being enacted to better ensure sustainable practices are adopted while at the same time, governments and supranational authorities are committing towards initiatives which have sustainability, climate protection, and the protection of the environment at the heart of such initiatives. It is therefore reasonable to expect that innovators and creators will develop ideas that better serve these central themes. Accordingly, IP will become all the more critical in ensuring that such innovative solutions and ideas are protected.

### **18.2.2 The Role of Intellectual Property in Malta, and How It Should Be Pursued**

From the foregoing, it is evident that IP should play a primary role in not only enhancing and promoting sustainability but also in incentivising people to create such solutions. As we have elaborated, Malta has been making efforts in recent years to support sustainable innovation on a local level and it is expected that Malta will seek to continue to incentivise people to pursue these objectives in the future. In fact, in a press release published by the Maltese Ministry for the Economy, Investment and Small Businesses, it was emphasised that the Maltese government has plans to encourage local innovation which serves the common good, and wants to provide increased assistance to individuals and entities that are in the process of developing innovative or technological ideas that can contribute further to the economy and society in general.<sup>5</sup>

To pursue these ends, we would hope to see Malta supporting sustainable innovation not just through financial incentives—as it has already done, but also through other forms of incentives. While it is recognised that financial incentives are key to the innovative process, there are also other aspects which will help bolster sustainable innovation. Financial aid on its own will only ensure progress to some extent but coupled with other elements—such as education, technical, strategic and

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<sup>5</sup>Press Release by the Ministry for the Economy, Investment and Small Businesses, 2020. Available at <https://www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2020/April/25/pr200751en.aspx>. Accessed 20 May 2022.

legal support, it could be ensured that there is much further development. The aim should be to create a one-stop shop for innovators to have access to funding, as well as information and advice on the IP registration processes, the bounds of such protection, etc. Such additional aspects could potentially facilitate innovative development in the field of sustainability and remove any unnecessary barriers for persons or entities seeking to develop sustainable IP, such as through the reduction of costs or waiting time associated with obtaining the IP rights in question.

### 18.2.3 Creating Change Through New Policy and Legislative Frameworks

It is pertinent to note that in 2015, Malta, along with all other United Nations Member States, adopted the 2030 Agenda for Sustainable Development (hereinafter referred to as the ‘2030 Agenda’) which aims to ‘*achieve a better and more sustainable future for all*’.<sup>6</sup> The 2030 Agenda is based on 17 sustainable development goals (hereinafter referred to as ‘SDGs’) which call for urgent action by all countries to address issues regarding poverty, health, education, inequalities, economic growth, climate change and the preservation of oceans and land ecosystems. In our view, IP is of relevance and can play a critical role in achieving the SDGs, despite the fact that the 2030 Agenda does not itself directly refer to the notion of IP. The only direct reference to intellectual property in the 2030 Agenda framework is in Goal 3, which mentions the relevance of the Agreement on Trade Related Aspects of Intellectual Property Rights (hereinafter referred to as the ‘TRIPS Agreement’) in the context of the public health aim to provide medication and vaccines to all. In a 2021 Report entitled ‘*WIPO and the Sustainable Development Goals: Innovation Driving Human Progress*’,<sup>7</sup> WIPO explains the role that IP and innovation can have, particularly in achieving SDG 3 (dealing with good health and well-being), SDG 6 (dealing with clean water and sanitation), SDG 7 (dealing with affordable and clean energy), SDG 8 (dealing with decent work and economic growth), SDG 9 (dealing with industry, innovation and infrastructure) and SDG 13 (dealing with climate action), among others.<sup>8</sup> In our view, the role pursued by IP to achieve these goals should be one which, inter alia, advances the development of green technologies and eco-friendly products, supports a healthy environment that improves the quality of life, promotes sustainable agricultural and economic development, and creates new jobs in the process. Having strong IP rights and effective IP legislative frameworks in place are necessary to achieve this, namely because

<sup>6</sup>2030 Agenda for Sustainable Development. Available at <https://www.itu.int/en/ITU-D/Statistics/Pages/intlcoop/sdgs/default.aspx>. Accessed 7 November 2022.

<sup>7</sup>(2021) World Intellectual Property Organization (WIPO) [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1061.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1061.pdf). Accessed 20 May 2022.

<sup>8</sup>WIPO Illustrates How Innovation, Intellectual Property Can Support, 2018, available at [Sdg.iisd.org. https://sdg.iisd.org/news/wipo-illustrates-how-innovation-intellectual-property-can-support-sdgs/](https://sdg.iisd.org/news/wipo-illustrates-how-innovation-intellectual-property-can-support-sdgs/). Accessed 7 November 2022.

creators and innovators will reasonably expect to be granted proper protection for their hard-earned efforts and a return on their investments.

Currently, Malta is revising its national sustainable development strategies and has also launched inter-ministerial consultations with the aim of incorporating the 2030 Agenda and the SDGs within its local policy,<sup>9</sup> and is developing a comprehensive action plan on a local level.<sup>10</sup> As Malta pursues different courses of action it should also give consideration to whether its intellectual property frameworks could benefit from being improved or amended (as we will elaborate upon further in our responses to the questions below), as in our view, having an effective and modern local intellectual property system will serve not only as a driver of innovation, but can also have the effect of fostering sustainable economic, environmental, social and cultural growth both in Malta and abroad.

### 18.2.4 Creating Change by Incentivising Sustainable Innovation

In our view, the role of intellectual property in the journey towards sustainability should be directed mainly towards supporting sustainable innovation. The provision of incentives and the creation of legislative frameworks which encourage sustainable innovation can, however, have the indirect effect of discouraging innovation which lacks a sustainable impact. However, creating a distinction between the type of protection that ‘unsustainable innovation’ attracts versus ‘sustainable innovation’ is not something that should be handled on a legislative framework as IP laws are there to protect based on a set of objective criteria. Additionally, it is entirely possible that a ‘sustainable solution’ may later be deemed ‘unsustainable’ which creates potential for future issues on how such protection may have been applied. Thus, incentives, and benefits, must necessarily only extend to those sustainable solutions such that there is not a situation where ‘unsustainable innovation’ is rewarded — to the extent possible.

Within the IP industry, Malta currently has in place a number of financial and tax-related incentives, as well as other IP-related schemes; however, unfortunately, many of them fail to specifically apply to or target IP which has some form of sustainable element or which pursues a sustainable end. Section 18.1 further elaborates upon the incentives which are currently available in Malta that relate to IP and sustainability concurrently. However, in our view, the necessity for Malta to develop new ways to encourage this type of IP cannot be overstated, particularly when we consider the fact that the vast range of technology, medicines, and

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<sup>9</sup>European Environment Agency. Malta country profile - SDGs and the environment, 2020 <https://www.eea.europa.eu/themes/sustainability-transitions/sustainable-development-goals-and-the-country-profiles/malta-country-profile-sdgs-and>. Accessed 21 May 2022.

<sup>10</sup>Malta Voluntary National Review on the Implementation of the 2030 Agenda, 2018 [https://sustainabledevelopment.un.org/content/documents/20203Malta\\_VNR\\_Final.pdf](https://sustainabledevelopment.un.org/content/documents/20203Malta_VNR_Final.pdf).

renewable energy inventions which are available on the market today would not be possible without the existence of robust IP protection.

One recommendation could be to establish a new dedicated local branch within the Malta Industrial Property Registrations Directorate (the ‘MIPRD’), which would be entrusted with handling IP filings, renewals and other requests solely in relation to those types of IPR, i.e. IPR having a proven sustainable goal or element which could potentially be determined based on a list of objective criteria. Through the creation of these dedicated branches, the relevant procedures would become more streamlined, and members of staff could be provided with specialised training to be equipped to handle specific requests more efficiently. As a result, IP right holders can expect to have their requests expedited since they will not go through the standard local channels. We have already seen streamlining of certain functions by other registries and authorities in Malta with great success and it would be expected that this would also work at the MIPRD. Additionally, while registration fees for IP in Malta are not too costly, reduced fees for sustainable solutions and business operating in a sustainable manner could also be applied to further incentivise this type of development.

In fact, this role should be a twofold approach where the focus is both on sustainable solutions which are developed as well as businesses which operate in a sustainable manner. Targeting the latter through, e.g., lower tax brackets, government funding opportunities, etc. will also ensure that it is not only the innovative sector of a country’s population which is targeted as all businesses will be able to participate by ensuring they develop, practice and (indirectly) promote sustainable methods.

Moreover, we do not think it necessary to alter the existing conditions required under the law to acquire IP rights, but rather we think it would be fruitful to provide favourable conditions to those persons or entities that, in filing their patent applications, or other IPR applications, satisfy certain sustainability requirements.

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## **18.3 Malta’s Current Intellectual Property Framework**

### **18.3.1 The Current Landscape**

A variety of IP rights exist in Malta, namely trademarks, copyrights, design rights, patents, trade secrets, and protected geographical indications. From a sustainability perspective however, the IP rights available in Malta cannot be said to be playing any specific role in driving sustainability, nor are they pursuing any specifically sustainable goals.

From a purely legal perspective, the IP rights available in Malta fulfil their traditional roles of granting legal protection to the endeavours of inventors and creators, while also restraining third parties from doing any acts which might prejudice or violate those rights. However, from a sustainability perspective, in our view the IP rights available in Malta cannot really be said to be playing a specific role in driving sustainability, nor are they pursuing any specifically sustainable goals.

The main reason for this view is that as yet, Malta has not implemented any system or framework which requires that an applicant fulfils any environmentally, economically or socially sustainable criteria to be granted an IP right, and the success or otherwise of an IP filing is mainly determined on a 'first-to-file' basis.

### **18.3.2 Creating Further Rights to Support Sustainability**

In our view, an IP right which could be created in Malta is the utility model, which is a patent-like IP right typically used to protect inventions that improve or adapt existing products, from being commercially exploited without the consent of the right holders. The term 'utility model' only appears once in Maltese law, in Article 78 of the Patents and Designs Act (Chapter 417 of the Laws of Malta), however as of today Malta has no legal regime for the utility model.

The main reason why this new IP right could be beneficial for Malta is that the conditions that must be fulfilled to obtain utility model protection are much less rigorous than those required to obtain patent protection. For an invention to qualify for patent protection, it must be new, involve an inventive step, be capable of industrial application and not specifically excluded from protection. In our view, what makes utility models attractive is that they cover inventions that may fail to meet the formalities required for patent protection, but which nonetheless warrant some form of protection.<sup>11</sup> Therefore, the individuals or entities behind sustainable inventions which could potentially fall short of qualifying for patent protection, will not risk having their sustainable ideas overlooked and will still be in a position to obtain legal protection through the utility model. In addition, Malta does not see a lot of patentable work, particularly since it is relatively small in comparison with neighbouring states. Therefore, having an effective utility model could also supplement the low patent work in Malta, while encouraging those who may be deterred from developing their ideas, due to non-patentability, to obtain legal protection for their ideas.<sup>12</sup>

### **18.3.3 Enforcement of IP Rights in Malta**

Generally, the rigorous enforcement of IP rights would have an indirect benefit, as prospective innovators and licensees would have more peace of mind in knowing that any infringements would be actively and effectively pursued. That being said, enforcement mechanisms should not be the primary driver towards promoting sustainability but rather should be a by-product of Malta having an environment which actively promotes sustainable practices.

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<sup>11</sup>N. Sultana, *Utility Models: A Comparative Analysis with a View to Determining the Feasibility of Introducing this Intellectual Property Regime in Malta*, 2016, pp. 37-46.

<sup>12</sup>*Ibid.*



In our view, a positive recommendation could be the introduction of a form of fast-tracked ‘green IP’ system in Malta. Green IP would be protection granted for environmentally sustainable inventions and technology which are designed to stop or prevent environmental degradation and promote environmental sustainability. Examples include technology concerning waste, wind power, geothermal energy, solar energy, and tidal energy, to name a few. The creation of a local system that processes green IP applications in priority over other applications, within a considerably shorter period of time and through specially trained personnel, could serve as an incentive for this type of innovation and could generate both environmental and economic benefits for Malta. Research and technical studies have shown that Malta, particularly due to its geographical location and climate, has a strong potential to produce wind energy<sup>13</sup> and solar energy<sup>14</sup> for example, so the creation of such a system is likely to maximise Malta’s renewable energy potential, while achieving an environmentally and economically sustainable goal.

Although the MIPRD does provide information on the different types of IP Rights through its website and there is information on other government websites providing information regarding sustainability, the two are not always directly linked. Therefore, carrying out such an assessment is dependent on the individual who is gathering such information and it would be beneficial if these two were to be linked more closely.

### **18.3.4 The Role of Intellectual Property Authorities in the Journey Towards Sustainability**

When it comes to the local procedures in place for the registration of IP rights, Malta like many EU Member States, has digitised most of its processes allowing applicants to submit applications to register their trademark, patent, or design and other requests through an online form at <https://ips.gov.mt/>. This has made the application procedure easier and more efficient—not to mention that the public also has access to view and conduct searches of local trademarks and patents online via the Malta Trademark Register and the Malta Patent Register respectively. Notwithstanding this, the time periods involved between the date of filing and the date of registration of an IPR may be lengthy; with the average time for registering a Maltese trademark being three to five months, Maltese patents being around eighteen months, and Maltese designs being around two months. Additionally, IPR related fees imposed by the Maltese Commerce Department are not excessive and not a barrier to entry for a prospective applicant.

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<sup>13</sup>I. Camilleri, Wind energy good prospect for Malta, In: Times of Malta 2009. <https://timesofmalta.com/articles/view/wind-energy-good-prospect-for-malta.261375>. Accessed 3 June 2022.

<sup>14</sup>C. Pille, Renewable Energies: Malta’s location, a little-used energy advantage - Friends of the Earth Malta, 2020. In: Friends Of the Earth Malta. <https://foemalta.org/blog/renewable-energies-maltas-location-a-little-used-energy-advantage/>. Accessed 3 June 2022.

### 18.3.5 The Way Forward

Naturally, there is always room for improvement, both with regards to the duration for registration of IP Rights (where possible) as well as the duration vis-à-vis proceedings before courts. Although the Maltese courts ensure the issuance of injunctions very swiftly to ensure the parties to a case are not prejudiced, greater expediency for court proceedings to be concluded would always be welcomed. This is naturally the case irrespective of whether that IP right is pursuing a sustainable goal or otherwise. It is pertinent to note that the European Commission (the ‘Commission’) identified these as obstacles which are being faced in Member States generally and in 2020, it published an Action Plan on Intellectual Property to implement specific IP-related policies which provide persons with wider access to IP rights, and with the aim of removing challenges and barriers to entry that undermine creative and innovative efforts—particularly, as the Commission explains, in times of serious health and economic crises. In a Q&A concerning the Action Plan, the Commission identified IPR industries as major contributors to the EU’s economy and to the generation of employment within the EU, particularly in renewable energy and low-carbon energy-intensive industries, and therefore sought to also encourage green transitions.<sup>15</sup> The Action Plan has encouraged Member States, including Malta, to take action through participation in the Unitary Patent System; which aims at simplifying patent protection in the EU, reducing related costs and strengthening legal certainty, as well as participation in financing programmes; targeted at helping SMEs to better manage their IP assets while granting them access to strategic IP advice, to name a few.<sup>16</sup>

## 18.4 Promoting National and International Cooperation

To reiterate what we have discussed in Sect. 18.3, in our view, IP rights and IP authorities in Malta could be improved through inter alia the establishment of dedicated branches within our local IP departments, the creation of a local green-IP scheme, the introduction of the utility model as a new local IPR, as well as through the promotion of further schemes, financial or otherwise, which serve to encourage various types of sustainable innovation such as ‘FUSION’ and the ‘Malta Intellectual Property Awards’.

To implement these changes, amendments to existing local legislation will need to be made, for example to introduce the concept of a utility models and to provide

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<sup>15</sup>European Commission, Action Plan on Intellectual Property - Questions and Answers, 25 November 2020. [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2188](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2188). Accessed 4 June 2022.

<sup>16</sup>E. Hoss, European Commission’s Action Plan on Intellectual Property, 2021, available at <https://www.elvingerhoss.lu/publications/european-commissions-action-plan-intellectual-property#:~:text=On%2025%20November%202020%2C%20the,field%20and%20helping%20small%20and>. Accessed 4 June 2022.

for its regulation under the Patents and Designs Act (Chapter 417, Laws of Malta). The introduction of new legislation might also be required to provide for the regulation of the green IP, potentially through a dedicated Legislative Act or subsidiary legislation. Furthermore, for the aforementioned dedicated branches within the local IP institutions to function efficiently and effectively, the provision of specialised training to members of staff will be of utmost importance, so that staff can acquire specialised knowledge and be equipped to handle specified IP rights requests.

Most of the ideas that we elaborated upon in our responses to the previous questions, would require efforts that are taken mainly on a local level in Malta. Having said this, a concerted effort on an international scale, from the various state parties of the international treaties and conventions pertaining to IP but also from non-state parties around the world is required to raise awareness and effectively promote sustainable IP globally. Such a holistic approach at a global level will ensure homogenous development of sustainable initiatives which tie in with IP. In our view, this can only be achieved once more states understand that having effective intellectual property rights and sound intellectual property regimes and policies are key components for sustainable development and innovation.

#### **18.4.1 The Role of International Treaties and Agreements**

Although today there are numerous international treaties which regulate IP rights—many of which Malta is also a party to, it can decisively be said that the TRIPS Agreement is to date the most comprehensive and extensive multilateral agreement on intellectual property, with 164 states from all over the world being parties to it.

In spite of its large number of signatories, including those from less developed and developing countries, the TRIPS Agreement has been criticised as being incompatible with the achievement of socially sustainable goals by developing countries, such as the reduction of poverty or the increase of public health, to name a few. While in theory the TRIPS Agreement does meet these aims, its implementation in practice has at times come under fire from critics who have argued that in practice the manner in which the TRIPS Agreement is implemented can have a detrimental impact certain countries which may still be developing certain IP regimes.<sup>17</sup>

For example, it has been argued that the TRIPS Agreement imposes excessively strict protection of intellectual property rights, which in turn has the effect of placing access to essential and life-saving medication further out of reach for those in developing countries, by decreasing access or increasing the costs to obtain those medications.<sup>18</sup> In fact, initiatives similar to those observed in the competition law

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<sup>17</sup>M. Banda (2019) [https://www.wto.org/english/tratop\\_e/trips\\_e/colloquium\\_papers\\_e/2019/chapter\\_9\\_2019\\_e.pdf](https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2019/chapter_9_2019_e.pdf).

<sup>18</sup>J. Subhan, *Scrutinized: The TRIPS Agreement and Public Health*, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2323529/>. Accessed 7 November 2022.

sphere (predominantly matters relating to FRAND licensing) would be a step in the right direction to ensure that IP, international treaties regulating IP and sustainable initiatives reach the desired result both in theory as well as in practice.

In our view, the TRIPS Agreement could benefit from being amended to create specific criteria for managing compulsory licensing in relation to IP (similar to standard setting with certain essential patents) which is of great sustainable benefit on a global or national level. This type of increased flexibility will ensure that creators are sufficiently protected and remunerated while also ensuring that member states benefit from such sustainable innovations.<sup>19</sup>

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## 18.5 Conclusion

In conclusion, it should be highlighted that the sustainability goals that we seek to achieve through IP cannot be achieved through national efforts alone, irrespective of how effective, modern or environmentally and socially conscious a nation's IP frameworks might be. Although it is crucial for each state to participate and contribute its own efforts, the best outcomes are not achieved through national efforts in isolation from other states—particularly when we speak of the efforts of smaller nation states such as Malta. Global cooperation is necessary. Although in recent years, the concepts of sustainable development and the effective protection of IP rights have rightly become more of a priority for many states, we must keep in mind that most environmental, economic and social impacts are not confined to a state's territory, and more states—including Malta—must continue to adopt modern IP policies that facilitate the transition to a more sustainable world.

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<sup>19</sup>R. Cardwell, *The Effects of the TRIPS Agreement on International Protection of Intellectual Property Rights*, 2012.