

## 9. IP LAW ASPECTS IN BILATERAL AND MULTILATERAL TREATIES OF THE REPUBLIC OF NORTH MACEDONIA

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### ABSTRACT

The aim of this paper is to analyze the existing bilateral and multilateral agreements which the Republic of North Macedonia has signed since its independence in 1991, determine trends in the provisions related to intellectual property (IP) and evaluate how they have affected the IP policy within the country.

Since its independence, the country has signed a number of bilateral investment treaties (BITs), free trade agreements (FTAs), and multilateral agreements. The core of these treaties is achieving economic development and a higher level of economic cooperation at both the regional and international levels by fostering an environment for the attraction of foreign investments, enabling the free flow of goods, services, workers and capital. The protection of IP rights plays a significant role in the achievement of these goals. In addition, the Republic of North Macedonia has been in the process of accession to the largest regional integration – the European Union (EU). The country has been a candidate country for accession since 2004. Consequently, a lot of effort has been made over the years to implement the *EU acquis communautaire*. IP is an integral part of the EU legislation, as expressed in Chapter 7.

The goal of the paper is to analyze relevant IP provisions contained in various bilateral and multilateral treaties which the country has concluded since its independence. The paper discusses the percentage of agreements that contain such provisions, the types of provisions that are incorporated, as well as whether there is a shift in relation to IP policy over the years and whether these provisions have influenced national IP legislation.

**Key words:** Intellectual property, IP policy, bilateral investment treaties, free trade agreements, multilateral agreements, Republic of North Macedonia

### 1. INTRODUCTION

In the current era of globalization, all countries are interconnected and it is very difficult for a country to exist in complete isolation. In line with this interconnection, the economies of countries are also irreversibly interlinked. Therefore, it is very difficult to analyze them in isolation since they present only a small piece of the global puzzle.

While many methods enable the establishment of connections among countries throughout the world, the most effective method has to be a connection through international treaties. Multilateral and bilateral treaties have been traditionally used for ending wars and overcoming political conflicts. However, in the last decades, they have also been used as powerful tools for tackling global problems and paving the way for economic prosperity. Additionally, treaties are very often used to set standards and impact on national policies in various areas.

The Republic of North Macedonia is a small, landlocked country located in the middle of the Balkan peninsula. For most of the twentieth century, the country was part of Yugoslavia (first the Kingdom of Yugoslavia and later the Socialist Federal Republic of Yugoslavia), gaining independence only in 1991. Prior to its independence most of its policies and initiatives were fully aligned with those set at the federal level. Therefore, the country had very little autonomy in such matters. However, after gaining independence the country was at a crossroads and faced various challenges. The transition towards the open market economy required major changes in the social, political and economic systems.

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The country has a small, open economy that is import-dependent.<sup>1</sup> Achieving economic growth is one of its priorities. Nonetheless, in previous decades, the Republic of North Macedonia struggled to achieve continual economic growth and lagged behind some countries of the region and countries of the European Union (EU).<sup>2</sup> Numerous authors highlight a positive correlation between effective protection and enforcement of IP rights and economic growth.<sup>3</sup>

The paper focuses on aspects of IP law arising from bilateral and multilateral treaties to which the country is a party, and how these treaties have affected and shaped the IP policy of the country in the last 30 years. The research should indicate the percentage of agreements that contain IP provisions, the obligations arising from these provisions, as well as whether there has been a shift in relation to IP policy throughout the years and whether these provisions have influenced national IP legislation.

The paper is structured in four parts. The first part focuses on IP aspects arising from multilateral treaties on a global scale, the second part focuses on IP aspects arising from regional economic treaties and the third part on IP aspects contained in bilateral treaties. The final part analyses the effects of these treaties on national IP policy and legislation.

## 2. IP LAW ASPECTS ARISING OUT OF MULTILATERAL TREATIES

In this part, the analysis focuses on multilateral treaties. The paper will only analyze treaties that have a global

reach and that are open to accession by any country in the world. Regional treaties as part of regional integration processes are further analyzed in part 2 of the paper.

Multilateral treaties regulating IP matters can be broadly categorized into two groups: treaties administered by the World Trade Organization (WTO) and treaties administered by the World Intellectual Property Organization (WIPO).

### 2.1. WTO-administered treaties

The most significant WTO-administered treaty on IP is the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).<sup>4</sup> What started as an initiative to discourage the importation of counterfeit goods in the mid-1970s was transmuted into a working group with a full mandate to negotiate what is now the current version of the TRIPS Agreement.<sup>5</sup>

The Republic of North Macedonia became a Member of the WTO in 2003.<sup>6</sup> The country is also a signatory to the TRIPS Agreement, which was adopted in 2010.<sup>7</sup> The TRIPS Agreement influenced the latest national acts on IP rights, particularly the Law on Copyright and Related Rights (LCRR) which was adopted in 2010 and the Law on Industrial Property (LIP), which was adopted in 2009.<sup>8</sup> The LIP even makes direct reference to the TRIPS Agreement, concerning issues such as compulsory licenses for public health purposes and the obligatory application of the

<sup>1</sup> Nikola Kljusev (ed), Taki Fiti, Mihail Petkovski, Trajko Slaveski, Vladimir Filipovski, *Ekonomijata na Makedonija vo tranzicija : (problemi, dilemi, celi)* (Macedonian Economy in Transition (Problems, Dilemmas, Aims)), (Macedonian Academy of Sciences and Arts 2002), p.207.

<sup>2</sup> Peter Sanfey and Jakov Milatovic, 'North Macedonia Diagnostic' (EBRD 2019).

<sup>3</sup> For example: Abdul Sattar and Mahmood Tahir, 'Intellectual Property Rights and Economic Growth: Evidence from High, Middle- and Low-Income Countries' (2011) 49 *Pakistan Economic and Social Review* 163; Edward Gold, Jean-Frédéric Morin, and Erica Shadeed, 'Does Intellectual Property Lead to Economic Growth? Insights from an Improved IP Dataset' (2017) 13 *Regulation & Governance*; Biswajit Dhar and Reji Joseph, 'Foreign Direct Investment, Intellectual Property Rights and Technology Transfer the North-South and The South-South Dimension' (2012) No. 6 UNCTAD Background Paper.

<sup>4</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (adopted on 15 April 1994), Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 UNTS 299.

<sup>5</sup> Antony Taubman, Hannu Wager and Jayashree Watal, *A Handbook on the WTO Trips Agreement* (Cambridge University press 2020), p.7.

<sup>6</sup> WTO, 'WTO | North Macedonia and the WTO- Member Information' (wto.org)

<[https://www.wto.org/english/thewto\\_e/countries\\_e/macedonia\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/macedonia_e.htm)> accessed on 10 January 2023.

<sup>7</sup> WTO 'WTO | Intellectual Property (TRIPS) and Public Health Agreement - Members and Dates of Acceptance' (wto.org) <[https://www.wto.org/english/tratop\\_e/trips\\_e/amendment\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/amendment_e.htm)> accessed 10 January 2023.

<sup>8</sup> Jadranka Dabovik Anastasovska and Valentin Pepeljugoski, *Intellectual Property Law (Право на интелектуална сопственост)* (Iustinianus Primus Faculty of Law 2012), p. 66.



Declaration on the TRIPS Agreement and public health, adopted on November 14, 2001.<sup>9</sup>

- Both acts adopt the standards outlined in the TRIPS Agreement. However, it is important to note that in some respects, both acts go beyond the TRIPS standards by adopting TRIPS-plus provisions. For example, the LCRR envisages moral rights for the author alongside economic rights.<sup>10</sup> It also provides that the economic rights of authors are protected for the duration of their life and for 70 years after their death.<sup>11</sup> The LIP, in a similar manner as the TRIPS Agreement, grants 20 years of protection to registered patents from the date of the filing of the patent application. However, the LIP allows for a possibility for extension of the patent protection for up to 5 years, specifically for patents related to medical products or plant protection products if these products are subject to regulatory approval before being placed on the market.<sup>12</sup>

## 2.2. WIPO-administered treaties

While IP is an area that is within the scope of the WTO, it is just one of the three broad areas of trade, alongside trade in goods and services. WIPO is the global forum for IP services, policy, information and cooperation, with 193 members to date.<sup>13</sup> The Republic of North Macedonia has been a WIPO Member State since 1991,<sup>14</sup> when the country gained its independence. WIPO-administered treaties have played a major role in shaping national IP legislation. As evident from Table 1 below, of the 26 WIPO-administered treaties, the country has adopted 21. Of these 21 agreements, only six have been adopted by succession from the Socialist Federal Republic of Yugoslavia, while 15 were adopted through accession. This indicates the willingness of the country to adopt

international treaties that regulate relevant topics in the sphere of IP.

Table1: List of WIPO-administered treaties and their status in the Republic of North Macedonia

#	Treaty	Year of adoption	Date of entry into force in North Macedonia
1	Paris Convention for the Protection of Industrial Property	1883	Sept 8, 1991 (succession)
2	Berne Convention for the Protection of Literary and Artistic Works	1886	Sept 8, 1991 (succession)
3	Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods	1891	Not a member
4	Madrid Agreement Concerning the International Registration of Marks	1891	Sept 8, 1991 (succession)
5	Hague Agreement Concerning the International	1925	March 18, 1997 (accession)

<sup>9</sup> Law on Industrial Property 2009 No. 07-1006/1 (North Macedonia), Article 102(2).

<sup>10</sup> Law on Copyright and Related Rights 2010 (North Macedonia), Article 21.

<sup>11</sup> *ibid*, Article 55.

<sup>12</sup> Law on Industrial Property 2009 (n 10), Article 74.

<sup>13</sup> WIPO 'Inside WIPO' ([wipo.int](http://wipo.int)) <<https://www.wipo.int/about-wipo/en/>> accessed 12 January 2023.

<sup>14</sup> WIPO 'Information by Country: North Macedonia' ([wipo.int](http://wipo.int)) <[https://www.wipo.int/members/en/details.jsp?country\\_code=MK](https://www.wipo.int/members/en/details.jsp?country_code=MK)> accessed 12 January 2023.

	Registration of Industrial Designs		
6	Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks	1957	Sept 8, 1991 (succession)
7	Lisbon Agreement for the Protection of Appellations of Origin and their International Registration	1958	October 6, 2010 (accession)
8	Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	1961	March 2, 1998 (accession)
9	Convention Establishing the World Intellectual Property Organization	1967	Sept 8, 1991 (succession)
10	Locarno Agreement Establishing an International Classification for Industrial Designs	1968	Sept 8, 1991 (succession)
11	Patent Cooperation Treaty	1970	May 10, 2005 (accession)

12	Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms	1971	March 2, 1998 (accession)
13	Strasbourg Agreement Concerning the International Patent Classification	1971	April 30, 2003 (accession)
14	Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	1973	May 26, 2010 (accession)
15	Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite	1974	November 17, 1991 (succession)
16	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	1977	August 30, 2002 (accession)
17	Nairobi Treaty on the Protection of the Olympic Symbol	1981	June 27, 2014 (accession)



18	Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	1989	August 30, 2002 (accession)
19	Washington Treaty on Intellectual Property in Respect of Integrated Circuits	1989	Not a member
20	Trademark Law Treaty	1994	Not a member
21	Singapore Treaty on the Law of Trademarks	1994	June 10, 2010 (accession)
22	WIPO Performances and Phonograms Treaty	1996	March 20, 2005 (accession)
23	WIPO Copyright Treaty	1996	April 4, 2004 (accession)
24	Patent Law Treaty	2000	April 22, 2010 (accession)
25	Beijing Treaty on Audiovisual Performances	2012	Not a member

26	Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Disabled	2013	Not a member
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Source: wipo.int<sup>15</sup>

Not only has the country adopted and ratified the majority of the WIPO-administered treaties, but these treaties have also served as the foundation for the drafting of national IP legislation. For example, both the text of the LCRR of 2010 and its predecessor, the Law on Copyright and Neighbouring Rights of 1996 were drafted based on the standards provided, among other acts, in the Berne Convention, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and the Geneva Phonograms Convention.<sup>16</sup> Similarly, the LIP from 2009 was drafted in line with the principles arising from the Paris Convention, the Madrid Agreement and Madrid Protocol, the Patent Cooperation Treaty, the Locarno Agreement, The Hague Agreement and the Nice Agreement. The LIP even makes direct reference to these agreements throughout the text.<sup>17</sup>

Consequently, it can be concluded that the WIPO-administered treaties have had a major impact on the IP system in the Republic of North Macedonia since the most significant and widely recognized treaties serve as the foundation of its national legislation.

### 3. IP LAW ASPECTS ARISING OUT OF REGIONAL ORGANIZATIONS AND INTEGRATIONS

While international treaties have the benefit of setting standards on a global scale, their major setback is that in order to gain wide acceptance they have to contain only

<sup>15</sup> WIPO, 'WIPO Administered Treaties' (wipo.int) <<https://www.wipo.int/treaties/en/>> accessed 10 January 2023.

<sup>16</sup> Jadranka Dabovik Anastasovska and Valentin Pepeljugoski *Автоматско нправа (Copyright)* (Iustinianus Primus Faculty of Law 2015), p. 55.

<sup>17</sup> Law on Industrial Property 2009 (n 9), Article 3 & others.



general, broad rules and only set *de minimis* standards. If international conventions aim at regulating certain aspects more thoroughly, they run the risk of being rejected. Additionally, the more countries are involved in the drafting of a convention or an agreement, the need for compromise increases and there are bigger chances for an impasse. Likewise, the more countries are involved, the duration of the negotiations and the *travaux préparatoires* also increases. For example, the first five rounds of multilateral trade negotiations of Members of the General Agreement on Tariffs and Trade lasted between 1 and 2 years.<sup>18</sup> From the Kennedy round onwards, the period of negotiations started to increase, from 6 years for the Kennedy round to 9 years for the Uruguay round.<sup>19</sup> The Doha round of negotiations started in 2001 and has been ongoing for more than 20 years.

According to the former Director General of WIPO, Mr. Gurry, in the past decades "the biggest challenge is the growing contrast between the extremely rapid speed of technological change and the business responses to that change, on the one hand, and the relatively slow speed of conventional intergovernmental processes for the development of international cooperation, on the other hand."<sup>20</sup> He adds that these processes are inclusive and require that all states are comfortable with the change that occurs, which can take time.<sup>21</sup>

In light of these limitations of international global treaties, many countries seek economic cooperation on a more scaled-down, regional level. These initiatives enable countries with similar legal, social, and political systems to cooperate more closely and more thoroughly on areas of importance, including IP.

For the Republic of North Macedonia, there are two important regional integrations: the EU, to which the country is aspiring to become a member, and the Central European Free Trade Agreement (CEFTA 2006), of which the country has been a member since 2006. These integration processes are closely interconnected, since CEFTA 2006 is intended to serve as a prelude to EU integration.<sup>22</sup>

### 3.1. IP law aspects from the European Union

The EU was initially intended as an economic integration among six countries, but throughout the years it evolved into a supranational political union of 27 Member States in Europe. While the Republic of North Macedonia is not a member of the EU, the EU legislation has had the biggest influence in shaping its national legislation in recent decades, including in IP.

The journey of the Republic of North Macedonia to EU accession has been long and arduous, lasting more than 20 years. In 2001, the country signed the Stabilisation and Association Act (SAA), which entered into force in 2004.<sup>23</sup> The country has had a status of a candidate country since 2005; however, various political disputes have prevented the country from becoming a full member of the EU.

To be accepted as a member of the EU, candidate countries must adopt and accept EU standards and values.<sup>24</sup> These values are reflected primarily in the EU legislation (*EU acquis communautaire*).<sup>25</sup> Consequently, one of the most important obligations of candidate countries is the adoption and transposition of the *EU acquis* in national legislation. The *EU acquis* was initially

<sup>18</sup> Mitsuo Matsushita, Thomas Schoenbaum, Petros C. Mavroidis, and Michael Hahn, *The World Trade Organization: Law, Practice, and Policy* (Oxford University Press 2006), p.6.

<sup>19</sup> *Ibid.*

<sup>20</sup> WIPO, 'Francis Gurry on the Challenges for Multilateralism in the Field of Intellectual Property' (2016) 5 WIPO Magazine 2 <[https://www.wipo.int/export/sites/www/wipo\\_magazine/en/pdf/2016/wipo\\_pub\\_121\\_2016\\_05.pdf](https://www.wipo.int/export/sites/www/wipo_magazine/en/pdf/2016/wipo_pub_121_2016_05.pdf)> accessed 3 January 2023.

<sup>21</sup> *Ibid.*

<sup>22</sup> Anna Maria Mostetschnig, 'CEFTA and the European Single Market: An Appropriate Preparatory Exercise?' (Master's Thesis, College of Europe 2011).

<sup>23</sup> Stabilisation and Association Agreement between the European Communities and Their Member States, and the Former Yugoslav Republic of Macedonia [2004] OJ L 84/13 available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A22004A0320%2803%29>> accessed 10 January 2023.

<sup>24</sup> European Commission, 'EU Enlargement' (commission.europa.eu) <[https://commission.europa.eu/strategy-and-policy/policies/eu-enlargement\\_en](https://commission.europa.eu/strategy-and-policy/policies/eu-enlargement_en)> accessed 10 January 2024.

<sup>25</sup> European Commission, 'Acquis' (European Neighbourhood Policy and Enlargement Negotiations (DG NEAR)) <[https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/acquis\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/acquis_en)> accessed 10 January 2024.



divided into 31 chapters related to various areas.<sup>26</sup> In 2013, several new chapters were added.<sup>27</sup> In this process, IP was separated from the first chapter (free movement of goods) and was introduced as chapter 7.

An important aspect of this process is that the European Commission issues yearly country progress reports which track and monitor the progress of candidate countries.<sup>28</sup> The reports contain a narrative evaluation of the current progress made in each of the 35 chapters and indicate areas of priority for further alignment.<sup>29</sup> The narrative grades range between "some level of preparation" to "moderately prepared" to "good level of preparation".<sup>30</sup> From 2011 to 2023, the European Commission issued 11 progress reports for the Republic of North Macedonia.<sup>31</sup>

Table 2: Status of the Republic of North Macedonia in relation to the alignment of IP matters with the EU acquis

Year	Evaluation in relation to intellectual property	Key areas of concern and improvement
2011	Moderate preparedness (some progress)	Unclear responsibilities for law enforcement institutions in relation to enforcement of IP; Improvement in tackling piracy and counterfeits; Low level of awareness of public for IP.

2012	Moderate preparedness (some progress)	Improvement of collective rights management; Strengthening enforcement of IP rights; Low level of awareness of public for IP.
2013	Moderate preparedness (some progress)	Further improvement of the procedures for prosecuting counterfeiters; Low level of awareness of public for IP.
2014	Moderate preparedness (some progress)	Strengthening enforcement of IPR; Establishing track record of investigations, prosecutions and trials for offenses relating to IPR; Limited level of awareness of public for IP.
2015	Moderate preparedness (some progress)	Step up efforts to investigate and prosecute infringements of IP.

<sup>26</sup> Economic Development Foundation, 'EU Acquis: THE EUROPEAN UNION ACQUIS' (IKV) [https://edf.mk.org.mk/cerik\\_en.asp?konu=abmuktesebati&baslik=E](https://edf.mk.org.mk/cerik_en.asp?konu=abmuktesebati&baslik=E) accessed 10 January 2024.

<sup>27</sup> European Commission, 'Steps towards joining' (European Neighbourhood Policy and Enlargement Negotiations (DG NEAR)) [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/north-macedonia\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/north-macedonia_en) accessed 10 January 2024.

<sup>30</sup> European Commission, 'North Macedonia- European Commission' (European Neighbourhood Policy and Enlargement Negotiations (DG NEAR)) [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/north-macedonia\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/north-macedonia_en) accessed 10 February 2023.

<sup>31</sup> National Assembly of the Republic of North Macedonia, 'Документи во процесот на ниспуштање МК/ЕУ (Documents Related to the EU Accession Process)' (*sobranie.mk*) <https://www.sobranie.mk/dokumenti-rm-eu.nsp> accessed 15 January 2023.

2016	Moderate preparedness (limited progress)	<p>Improve consultation of the stakeholders when drafting legislation;</p> <p>Step up efforts to investigate and prosecute infringements of IP;</p> <p>Reinforce capacity and coordination among the authorities in charge of IPR enforcement;</p> <p>Raise public awareness of the importance of protecting IPR.</p>
2017	No report was issued	/
2018	Moderate preparedness (limited progress)	<p>Step up efforts to investigate and prosecute infringements of IP;</p> <p>Improve coordination among the authorities in charge of IPR enforcement;</p> <p>Raise public awareness of the importance of protecting IPR;</p> <p>Strengthen the collective management system.</p>
2019	Moderate preparedness (some progress)	<p>Increase the number of investigations for infringements of IP;</p> <p>Improve the legal framework on collective rights management system by aligning with the Collective Rights Management Directive, the Enforcement Directive and the Trade Secrets Directive;</p> <p>Establish an information platform for law enforcement</p>

		Institutions to exchange data on IPRs.
2020	Moderate preparedness (some progress)	<p>Improve the legal framework on collective rights management system by aligning with the Collective Rights Management Directive, the Enforcement Directive and the Trade Secrets Directive;</p> <p>Establish an information platform for law enforcement institutions to exchange data on IPRs.</p>
2021	Moderate preparedness (some progress)	<p>Improve the legal framework on collective rights management system by aligning with the Collective Rights Management Directive, the Enforcement Directive and the Trade Secrets Directive;</p> <p>Render fully operational the online information platform for law enforcement institutions to exchange data on IPRs.</p>



2022	Moderate preparedness (no progress was made)	improve the legal framework on collective rights management system by aligning with the Collective Rights Management Directive, the Enforcement Directive and the Trade Secrets Directive; Render fully operational the online information platform for law enforcement institutions to exchange data on IPRs.
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Source: Country reports issued by the European Commission<sup>37</sup>

Although the reports specifically address EU standards rather than general IP standards, there are notable similarities since the EU and its Member States themselves must align their national legislation with the standards in the adopted multilateral treaties. Consequently, the reports provide valuable recommendations which can be analyzed in general and beyond their importance solely in the EU context.

As can be seen from Table 2, throughout the years North Macedonia has constantly received an average grade (moderate preparedness) in relation to national alignment with IP matters of the EU *acquis*. The country has been endeavoring to implement the EU standards, however, as evident, consistency is lacking. While in some years progress was made, there are also some years in which the country was at a standstill.

An analysis of the findings of the reports unequivocally points to two problems that the country has not been able to overcome: the management of collective rights

and achieving an efficient level of IP enforcement and protection. Although recommendations for improvement in these two areas have been persistent throughout the years, to this day, the country has been unable to achieve satisfactory results. In order to improve the adoption of the EU standards, especially in the area of efficient protection of IP, it is not sufficient just to enact national regulations. It is equally important to create a system for efficient enforcement of these rules. As observed by the European Commission, the country has had problems in this area ranging firstly from "problems in relation to the responsibilities of enforcement institutions", later to "improving efforts to investigate IP offenses," and finally to "establishing an operational platform for data exchange among institutions tasked with IP enforcement".<sup>38</sup> To tackle these issues, the Government adopted a national strategy for IP (2021-2025),<sup>39</sup> which defines the objectives and goals of the country in relation to IP policy in the next 5 years. However, the implementation was postponed several times and the implementation period was changed to 2022-2026.<sup>40</sup> Although it is now 2024, there is still no date by which this strategy would be adopted, or a fixed period for its implementation.

Nevertheless, aside from these areas for improvement, national legislation and by extension, national IP policy must be fully aligned with the EU standards. The EU *acquis* has served as the basis for the enactment not only of laws but also by-laws, such as decisions, recommendations, guidelines and the like. Consequently, it can be concluded that by virtue of the obligations arising from the SAA from 2004, the EU *acquis* has had the largest impact on the national legislation of the Republic of North Macedonia.

<sup>37</sup> European Commission (n 30).

<sup>38</sup> Ibid.

<sup>39</sup> Единствен Национален Електронски Регистар на Промети - ЕНЕР (Single National Electronic Register of Regulations-EHER), 'Национална Стратегија за ИКТ 2021-2025 (Draft National ICT Strategy 2021-2025)' (ener.gov.mk)

<sup>40</sup> <https://ener.gov.mk/Default.aspx?item=newdocumentdetails&detailsid=23> accessed 10 January 2024.

<sup>41</sup> State Office of industrial property of the Republic of North Macedonia 'Final Draft-Version of the National Strategy for Intellectual Property (2022-2026)' (<https://www.ippo.gov.mk/MK/Novosti/View.aspx?id=10537&cat=GM>) accessed 15 January 2023.



### 3.2. IP law aspects from CEFTA 2006

CEFTA is a regional free trade agreement between countries in Central and Southeast Europe, aimed at promoting economic cooperation and trade among its Member States.<sup>36</sup> Originally, CEFTA was established in 1993 between five countries: Poland, Hungary, the then Czech Republic, Slovakia and Slovenia.<sup>37</sup> Once these countries became members of the EU, they left CEFTA.

In 2006, a substantially expanded and updated version of CEFTA, known as CEFTA 2006, was signed. The participating countries in CEFTA 2006 include Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia, Moldova, Serbia and the UNMIK administration in Kosovo.<sup>38</sup> In 2013 Croatia left CEFTA 2006 since it became a member of the EU, while the rest of the countries remain members to this day.

The primary objective of CEFTA 2006 is to establish a free trade area among its members by reducing and eliminating trade barriers, including tariffs and other restrictions on the movement of goods and services.<sup>39</sup> CEFTA 2006 aims to harmonize the regulatory framework of its parties with EU and international standards. It also covers issues such as the protection of IP rights, competition rules and state aid.<sup>40</sup> CEFTA 2006 is an important step towards economic integration in the region and is also seen as a complementary and preparatory step to joining the EU.<sup>41</sup>

CEFTA 2006 incorporates several provisions related to IP rights.<sup>42</sup> Their aim is to ensure a high level of protection and enforcement of IP rights among its Member States. However, it is important to note that CEFTA 2006 does not create specific obligations for its members, but rather

refers directly to already-recognized multilateral treaties. For example, CEFTA 2006 recognizes and defines IP rights as established in the Paris Convention and the TRIPS Agreement.<sup>43</sup> Furthermore, the Agreement obliges parties to grant and ensure adequate and effective protection of IP rights "in accordance with international standards."<sup>44</sup> These international standards are derived from the TRIPS Agreement, as well as from a number of multilateral conventions listed in Annex 7 of the agreement.<sup>45</sup> The Annex lists 25 multilateral treaties which encompass all relevant treaties on IP rights adopted prior to CEFTA 2006.<sup>46</sup> Consequently, there is very little autonomy or novelty within CEFTA 2006 related to IP. Instead, it relies on the already established standards in existing multilateral treaties.

Moreover, the Agreement imposed an obligation on its members to accede to the treaties listed in Annex 7 and to take all necessary measures to implement adequately and effectively the obligations arising from them, no later than 1 May 2014.<sup>47</sup> Unfortunately, despite the optimistic nature of this strict provision, many members failed to fully accede to the treaties by the provided deadline and some still have not acceded to the treaties.<sup>48</sup>

While CEFTA 2006 was envisaged as a platform for the effective economic integration of the countries of Central and Southeast Europe, it is evident that to this day it has not reached its full potential. There were many obstacles and many necessary steps were undertaken to facilitate trade among the Member States. However, the integration has been hindered by factors such as the weak economic structure of the countries in the region, the low level of finalization of manufactured goods, the low level of integration of the countries from the region and their industries within the supply and value-added

<sup>36</sup> Consolidated Version of the Central European Free Trade Agreement (CEFTA 2006) (Adopted on 19 December 2006), Chapter VI, Section D.

<sup>37</sup> CEFTA 2006 (n 42), Article 37.

<sup>38</sup> CEFTA 2006 (n 42), Article 38(2).

<sup>39</sup> CEFTA 2006 (n 42), Article 38(2).

<sup>40</sup> CEFTA 2006 (n 42), Annex 7.

<sup>41</sup> CEFTA 2006 (n 42), Article 38(3).

<sup>42</sup> Ujben Kocov and Ors, 'Enhancing Regional Cooperation Through Custom Digitalization in CEFTA - 2006' (Proceedings of FIB Zagreb 10<sup>th</sup> International Odyssey Conference on Economics and Business, University of Zagreb 2019).

<sup>36</sup> CEFTA 'About Central European Free Trade Agreement (CEFTA)' (<https://cefta.int/about/>) accessed 17 January 2023.

<sup>37</sup> Le Centre virtuel de la connaissance sur l'Europe (CVCE), 'The Visegrad Group and CEFTA - historical events in the European Integration Process (1993-2009)' (cvce.eu) <<https://www.cvce.eu/en/education/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/2016e1f6390-4f9a-978f-401942c778a6>> accessed 10 January 2024.

<sup>38</sup> CEFTA (n 36).

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*



chain; and the competitive instead of complementary structure of the exchange of goods.<sup>46</sup>

Consequently, it can be concluded that although CEFTA 2006 regulates IP in some respects, since it only refers to other multilateral treaties, it has had a limited and indirect influence and impact on national IP policy and legislation.

#### 4. IP LAW ASPECTS ARISING FROM BILATERAL TREATIES

Bilateral treaties have existed the longest and have been used far more often than any other type of treaty.<sup>47</sup> The first recognized bilateral treaty is the Egyptian–Hittite peace treaty, known as the Treaty of Kadesh, dating back to 1259 BC.<sup>48</sup> Traditionally, bilateral treaties were used to end wars between kingdoms and states, but over the years they have found prominence in regulating various matters, ranging from economic cooperation, trade liberalization, resolution of political issues, judicial assistance, double taxation and the like.<sup>49</sup>

In recent decades, they have gained in prominence because of the inability of the multilateral system to respond to rapid technological changes. According to Mr. Gurry, over the last 20 years, there has been an increase in cooperation at the bilateral or regional levels – since it is easier to agree among a smaller number of states than it is to do so with the whole world.<sup>50</sup> Since regional organizations and integrations were analyzed in the previous section, this section will focus on bilateral treaties. The bilateral treaties which most commonly

contain IP provisions are bilateral free trade agreements (FTA) and bilateral investment treaties (BITs).

##### 4.1. IP matters in bilateral free trade agreements

In its essence, a free trade agreement (FTA) is a treaty or agreement between two or more countries that aims to promote trade and remove or reduce barriers to trade, such as tariffs, quotas and other restrictions. The primary goal of FTAs is to increase economic integration and cooperation between participating countries by facilitating the flow of goods, services and investments across borders. FTAs typically cover a wide range of trade-related issues, including the elimination or reduction of tariffs and other trade barriers, rules of origin, customs procedures, IP rights, competition policy and dispute settlement mechanisms.<sup>51</sup> As of today, there are around 400 FTAs in use worldwide.<sup>52</sup>

FTAs can be either multilateral, involving multiple countries, or bilateral, involving only two countries. CEFTA 2006, analyzed in the previous section, is an example of a multilateral trade agreement. While the SAA agreement can, to some extent, be considered a bilateral agreement for preferential trade, since it is concluded between the Republic of North Macedonia and the Member States of the EU, in essence, it is a much broader agreement covering issues beyond trade and allowing intra-EU matters to have a direct effect on the interrelationship. Consequently, it was also analyzed in the previous section.

<sup>46</sup>

<sup>47</sup> For example, according to the United Nations, it is the depositary of more than 540 multilateral treaties which cover a broad range of subject matters such as human rights, disarmament and protection of the environment. See, United Nations, 'United Nations Treaty Collection' ([treaties.un.org](https://treaties.un.org/)) <<https://treaties.un.org/>> accessed 10 January 2024. On the other hand, according to UNCTAD Database, the number of bilateral treaties regulating only foreign investments is more than 1300. See, UNCTAD, 'International Investments Agreements Navigator' [UNCTAD Policy Hub] (<https://investmentpolicy.unctad.org/international-investment-agreements>) accessed 10 January 2024.

<sup>48</sup> Joshua J. Mark, 'The Battle of Kadesh & the First Peace Treaty' (World History Encyclopedia, 28 January 2012).

<<https://www.worldhistory.org/article/78/the-battle-of-kadesh-the-first-peace-treaty/>> accessed 10 January 2024.

<sup>49</sup> National Geographic, 'Treaty' ([nationalgeographic.org](https://education.nationalgeographic.org/resource/treaty/#)) <<https://education.nationalgeographic.org/resource/treaty/#>> accessed 10 January 2024.

<sup>50</sup> WIPO (n 20).

<sup>51</sup> Leonardo Baccini, Andreas O'ur and Manfred Elsig, 'The Politics of Trade Agreement Design: Depth, Scope and Flexibility' Proceedings to the conference on the Political Economy of International Organizations (Paper prepared for the 2012 conference on the Political Economy of International Organizations, 26-28 January 2012) <[https://www.peio.me/wp-content/uploads/2014/04/ConfS\\_Baccini-02.12.12.pdf](https://www.peio.me/wp-content/uploads/2014/04/ConfS_Baccini-02.12.12.pdf)> accessed 10 January 2024.

<sup>52</sup> Laure Tampieri (ed.), 'FTAs Using Free Trade Agreements as a Strategic Management Tool to Improve Competitiveness' (2023) 100 (1) WCO News 15.



To date, the Republic of North Macedonia has entered into only four bilateral free trade agreements, with the following parties:

- Türkiye, from 1999;<sup>56</sup>
- European Free Trade Association (EFTA) countries, from 2000;<sup>57</sup>
- Ukraine, from 2001;<sup>58</sup> and
- The UK, from 2020.<sup>59</sup>

The number of FTAs is low primarily since all trade aspects connected with other countries in Europe are either regulated in the SAA (relating to EU Member States) or in CEFTA 2006 (relating to countries from Southeast Europe). The four existing bilateral FTAs are with countries outside two regional integration processes. Currently, there are no FTAs concluded with countries outside Europe.

All four agreements contain IP provisions, although these are very limited in scope.

The FTA with Türkiye contains only one provision related to intellectual, industrial and commercial property where, very broadly, the parties make an obligation for effective protection and enforcement of these rights in line with the highest international standards.<sup>60</sup>

The FTA with the European Free Trade Association (EFTA) also contains only a few provisions related to IP. EFTA itself is a free trade association between Norway, Iceland, Switzerland and Lichtenstein, as European countries which are not members of the EU. In the FTA, the protection of IP is considered a justified exception for prohibitions or restrictions on imports, exports or goods in transit.<sup>61</sup> The FTA also contains specific provisions

related to the protection of IP, where in general reference is made to the accepted standards within the TRIPS Agreement and other relevant multilateral treaties listed in Annex 5 of the agreement.<sup>62</sup> The agreement contains no further standards concerning IP.

The FTA with Ukraine contains very similar provisions to the one with EFTA countries both in content and scope – the protection of IP is considered a justified exception for prohibitions or restrictions on imports, exports or goods in transit<sup>63</sup> and cooperation concerning IP would be based on relevant multilateral treaties administered by the WTO and WIPO.<sup>64</sup>

Finally, the agreement concluded with the UK is not a free trade agreement per se. Entitled the Partnership, Trade and Cooperation Agreement, its purpose is to regulate the relationship between the parties in connection with the exit of the UK from the European Union. The main goal of the agreement is to continue the preferential trade treatment between the parties, as established within the SAA concluded between the Republic of North Macedonia and the EU.

In conclusion, while bilateral FTAs are a powerful tool that can enable countries to set higher standards for the protection and enforcement of IP, so far, the Republic of North Macedonia has not concluded many bilateral trade agreements; the ones that it has so far concluded contain provisions for enhanced cooperation and standards which go beyond the TRIPS Agreement or other relevant multilateral treaties.

#### 4.2. IP matters in bilateral investment treaties

<sup>56</sup> UNCTAD, 'International Investment Agreements Navigator- Macedonia -Turkey FTA (1999)' <<https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/3176/macedonia---turkey-fta-1999->> accessed 10 January 2024.

<sup>57</sup> UNCTAD, 'International Investment Agreements Navigator- EFTA-Macedonia FTA (2000)' <<https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/3186/efta---macedonia-fta-2000->> accessed 10 January 2024.

<sup>58</sup> Agreement on Free Trade between The Republic of Macedonia and Ukraine (Signed on 18 January 2001).

<<https://wits.worldbank.org/GPTAD/PDF/archive/FYROM%20-%20Ukraine.pdf>> accessed 10 January 2024.

<sup>59</sup> UNCTAD, 'International Investment Agreements Navigator- North Macedonia - United Kingdom Partnership, Trade and Cooperation Agreement (2020)' <<https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/4943/north-macedonia---united-kingdom-partnership-trade-and-cooperation-agreement-2020->> accessed 10 January 2024.

<sup>60</sup> FTA-Turkey-Republic of Macedonia (n 56), Article 26.

<sup>61</sup> FTA-EFTA- Republic of Macedonia (n 57), Article 9.

<sup>62</sup> FTA-EFTA- Republic of Macedonia (n 57), Article 16.

<sup>63</sup> FTA-Republic of Macedonia-Ukraine (n 58), Article 23.

<sup>64</sup> FTA-Republic of Macedonia-Ukraine (n 58), Article 28.



Table 3: BIT treaties of the Republic of North Macedonia

Bilateral investment treaties (BITs) are a newer concept of bilateral cooperation, with the first BIT concluded between Germany and Pakistan dating back to 1959.<sup>40</sup> However, as the number of foreign direct investments on a global scale started to grow from the middle of the 1990s,<sup>41</sup> the number of concluded BITs followed suit. Today, an estimated 2,500 known BITs exist.<sup>42</sup>

A BIT is an agreement between two countries that establishes reciprocal obligations for the promotion and protection of private investments made by nationals of the signatories in each other's territories. The primary objectives of a BIT include safeguarding against illegal nationalization and expropriation of foreign assets and addressing other actions by a signatory of the BIT that may undermine the ownership or economic interest of a national of the other signatory. One of the essential elements of the BITs is the inclusion of mechanisms for the resolution of disputes between foreign investors and the host state. In this light, an important consideration concerning BITs and IP is whether the bilateral investment treaties can be considered as a basis for TRIPS-plus dimensions as regards the protection of IP rights.<sup>43</sup>

To this date, as evident from Table 3 below, the Republic of North Macedonia has concluded 43 bilateral investment treaties (BITs). Among these, 39 BITs are currently in force, two have been signed but never entered into force (with Qatar and Egypt), one has expired and has not been renewed (with Italy) and one has been unilaterally terminated (by India).

No.	Parties	Status	Date of signature	Entry into force	Protection of IP
1	United Arab Emirates	In force	February 22, 2021	January 16, 2023	Yes
2	Denmark	In force	May 8, 2015	June 30, 2016	Yes
3	Kosovo	In force	January 22, 2015	December 7, 2015	Yes
4	Viet Nam	In force	October 15, 2014	January 11, 2016	Yes
5	Azerbaijan	In force	19.04.2013	12.08.2013	Yes
6	Kazakhstan	In force	July 2, 2012	May 21, 2016	Yes
7	Qatar	Signed	October 17 2011	/	Yes
8	Lithuania	In force	March 8, 2011	January 13, 2012	Yes
9	Montenegro	In force	December 15, 2010	September 30, 2011	Yes

<sup>40</sup> UNCTAD, *The Entry into Force of Bilateral Investment Treaties (BITs)*, International Investment Agreements Monitor No. 3 (UNCTAD 2006), p. 3.

<sup>41</sup> UNCTAD, "Global Foreign Direct Investment Flows over the last 30 years" (<https://unctad.org/data/visuamtion/global-foreign-direct-investment-flows-over-the-last-30-years>) accessed March 11, 2023.

<sup>42</sup> OECD, "The Future of Investment Treaties" (<https://www.oecd.org/investment/investment-policy/investment-treaties.htm>) accessed 11 February 2023.

<sup>43</sup> Bertam Boie, "The Protection of Intellectual Property Rights through Bilateral Investment Treaties: Is there a TRIPS-plus Dimension?" (Tallinn University of Technology, Working Papers 2010/19, 2010).

10	Morocco	In force	May 11, 2010	October 15, 2012	Yes
11	Slovakia	In force	June 25, 2009	August 25, 2011	Yes
12	Kuwait	In force	April 4, 2008	November 2, 2011	Yes
13	India	Terminated (2019)	March 17, 2008	October 17, 2008	Yes
14	Spain	In force	June 20, 2005	January 30, 2007	Yes
15	Czech Republic	In force	June 21, 2001	September 20, 2002	Yes
16	Belarus	In force	June 20, 2001	November 22, 2002	Yes
17	Hungary	In force	April 13, 2001	March 14, 2002	Yes
18	Austria	In force	March 28, 2001	April 14, 2002	Yes
19	Bosnia and Herzegovina	In force	February 16, 2001	April 26, 2004	Yes
20	Finland	In force	January 25, 2001	March 22, 2002	Yes
21	Islamic Republic of Iran	In force	June 12, 2000	July 10, 2013	Yes

22	Romania	In force	June 12, 2000	February 13, 2002	Yes
23	Egypt	Signed	November 22, 1999	/	Yes
24	Taiwan Province of China	In force	June 9, 1999	June 9, 1999	Yes
25	Bulgaria	In force	February 22, 1999	June 5, 1999	Yes
26	BLEU (Belgium-Luxembourg EU)	In force	February 17, 1999	November 4, 2002	Yes
27	Netherlands	In force	July 7, 1998	June 1, 1999	Yes
28	Sweden	In force	May 7, 1998	October 1, 1998	Yes
29	Ukraine	In force	March 2, 1998	March 25, 2000	Yes
30	France	In force	January 28, 1998	March 31, 2000	Yes
31	Democratic People's Republic of Korea	In force	December 15, 1997	April 30, 1998	Yes



32	Albania	In force	December 4, 1997	March 4, 1998	Yes
33	Malaysia	In force	November 11, 1997	February 26, 2001	Yes
34	Russian Federation	In force	October 21, 1997	July 9, 1998	Yes
35	China	In force	June 9, 1997	November 1, 1997	Yes
36	Italy	Expired (2019)	February 26, 1997	May 28, 1999	Yes
37	Poland	In force	November 28, 1996	April 22, 1997	Yes
38	Switzerland	In force	September 26, 1996	May 6, 1997	Yes
39	Germany	In force	September 10, 1996	September 17, 2000	Yes
40	Serbia (former Yugoslavia)	In force	September 4, 1996	July 22, 1997	Yes

41	Slovenia	In force	June 5, 1996	September 21, 1999	Yes
42	Türkiye	In force	July 14, 1995	October 27, 1997	Yes
43	Croatia	In force	July 6, 1994	November 4, 1995	Yes

Source: UNCTAD Investment Policy Hub<sup>69</sup> and the Ministry of Finance of the Republic of North Macedonia.<sup>70</sup>

All the treaties contain IP provisions. The provisions can be categorized into three sections:

1. IP in the definition of an "investment" – all BITs consider IPRs to fall within the broad definition of investment. While differences exist as to whether the BIT refers only to intellectual and industrial property rights, or also contains an enumeration of various IP rights, it can be concluded that all IPRs would be covered since these lists are not exhaustive but are merely meant to provide an example. In addition, many BITs also cover know-how, trade secrets and goodwill. An important consideration might be that some BITs require that the investment be made in accordance with the national laws of the territory, while others do not contain such a requirement. This might have an influence on registrable IP rights, which might need to be subjected to prior registration in the host country to receive protection under the BIT.<sup>71</sup>
2. IP in the definition of "income" or "returns" – all BITs consider royalties or fees from licenses or other use of IPRs to be considered as income of the investor.<sup>72</sup>

<sup>69</sup> UNCTAD Investment Policy Hub, 'International Investment Agreements Navigator – North Macedonia' ([investmentpolicy.unctad.org](https://investmentpolicy.unctad.org/international-investment-agreements/countries/124/north-macedonia)) <<https://investmentpolicy.unctad.org/international-investment-agreements/countries/124/north-macedonia>> accessed 20 February 2023

<sup>70</sup> Ministry of Finance, 'Bilateral Investment Treaties Concluded between the Republic of Macedonia and Other Countries' ([finance.gov.mk](https://finance.gov.mk))

<<https://finance.gov.mk/склучени-договори-за-поттикнување-и-3/?lang=en>> accessed 11 March 2023

<sup>71</sup> Authors findings based on the agreements that are available on the UNCTAD Investment Policy Hub & the Ministry of Finance of the Republic of North Macedonia, *ibid*.

<sup>72</sup> *ibid*.

3. IP in relation to the transfer of payments related to the investment – All BITs contain a guarantee clause for investors, granting them the right for a free transfer in and out of the territory where the investment is made of all payments related to the investment, which include returns or income, royalties or other fees for the use of IP rights.<sup>73</sup>

All three sections are closely interconnected, leading to the unanimously accepted position throughout the BITs that firstly, IP rights (in their broadest iteration) are considered investments and would enjoy the protection for investment granted within the BIT, and secondly, all profits, royalties, or fees arising from the economic exploitation of IP rights within the territory of the investment would not be subject to restriction or prohibition of transfer. However, this only illustrates a universal standard that is common not only for the BITs concluded by the Republic of North Macedonia but for most BITs in general. The analyzed BITs also contain Most Favoured Nation (MFN) clauses and obligations for national treatment; however, it is more likely that these standards have the effect of equalizing treatment, but not raising or setting higher IP standards within a country.<sup>74</sup> Consequently, while these BITs are aimed at increasing the number of investments between their signatories, it cannot be considered that they contain provisions that would set higher IP standards and consequently that they would affect the national legislation or national IP policy of the country. In principle, the BITs merely reflect national IP legislation and national policy related to IP.

The country is drafting a new model of BIT which should replace the existing model from 2009. The new model should reflect the newest trends and include provisions related to environmental protection, sustainability and development and corporate social responsibility. While the process is still ongoing and the model BIT has not yet been adopted, the current draft shows that IP in its

broadest definition (including goodwill and know-how) would still enjoy protection as an "investment" and that royalties, fees, and payments related to the economic exploitation of IP would be considered as revenues which would not be subject to any prohibition for transfer in and out of the host state.<sup>75</sup>

One notable distinction is that the new model of BIT, in its current version, refers to the TRIPS Agreement. In the current provision related to expropriation and compensation, it is explicitly stipulated that the provision would not apply to compulsory licenses issued in line with the TRIPS Agreement. When comparing the proposed new version of the model BIT with the existing version (which has been the basis for the conclusion of most existing BITs) it can be concluded that the new version narrows the scope of protection of IP rights in the area of expropriation. Put differently, under the current existing BITs foreign investors would be able to seek protection under the dispute resolution mechanism within the BIT for compulsory licenses, whereas all future investors from countries whose BIT with North Macedonia would be concluded under the terms of the new model BIT would not be able to seek protection under the terms of the BIT. They would only be able to rely on protection for compulsory licenses existing within the national legislation. In any case, since this is only a draft version that has not yet been adopted, all discussions about its content are hypothetical.

## 5. CONCLUSION

Multilateral and bilateral treaties are powerful tools for economic cooperation and standard-setting on a global scale. Consequently, many of these instruments have been used to influence national policies concerning specific matters and thus to achieve convergence throughout various national legislations. In the Republic of North Macedonia, multilateral and regional treaties

<sup>73</sup> *ibid.*

<sup>74</sup> Peter Drahos, 'Bits and Bips' (2005) 4 *The Journal of World Intellectual Property* 791.

<sup>75</sup> Draft version of the Model BIT of Republic of North Macedonia 2022 (unpublished), Article 1 & 9.



have had the largest impact and influence on national IP legislation and policy.

As evident from the previous sections, the Republic of North Macedonia is a party to the majority of multilateral treaties that regulate various aspects of IP, construed in its broadest sense. Some of these treaties were adopted by way of succession, but a large number were also accepted by way of accession after the independence of the country. Many of these treaties, including the TRIPS Agreement, the Berne Convention and the Paris Convention, serve as the basis for the enactment of current national IP statutes. Both the LIP and the LCRR accept the standards adopted within these treaties by way of direct reference to them in their respective texts. In addition, they also influence the shaping of the regional economic cooperation of the country. CEFTA 2006 accepts the TRIPS Agreement and the WIPO-administered treaties as the foundation for standard-setting and protection of IP rights among its Member States.

The second major factor in the shaping of the national legislation is the *EU acquis* that the country adopts as part of its obligations arising out of the EU integration process. While the multilateral treaties have the goal of setting minimum standards for various aspects of IP, the EU raises the level of harmonization to a higher level, regulating IP matters more thoroughly and in depth, with special emphasis on effective enforcement and protection of IP rights. Moreover, as part of the accession process, the implementation of the EU standards is tracked by the European Commission, which analyses not only the level of implementation of EU legislation but also assesses the institutional capacity of the country, including the capacity related to IP protection. In this sense, the tracking process itself is a tool for impact as it creates an incentive for further improvements of detected weaknesses and directly influences the national IP policy to achieve the set objectives.

Finally, while bilateral free trade or investment treaties can also be an important influence on national IP

legislation and policy, in the case of the Republic of North Macedonia, their impact on IP matters is limited. While 100 per cent of the FTAs and BITs contain IP provisions, in essence, they only contain broad obligations for adherence to international standards arising out of multilateral treaties. In addition, by virtue of the MFN and national treatment clauses they contain, they merely reflect the national position concerning various aspects of IP, instead of creating higher standards. A significant factor as to why these treaties do not contain more thorough regulation of IP rights is that many of these issues have been already regulated within the EU legislation, which by an extension (through the SAA) has an effect on the national IP legislation and policy, thus making such regulation within bilateral treaties obsolete.

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