Chapter 16

“Lex Lata” and “de lege Ferenda” for the R&D Law of Turkey

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ABSTRACT

In this chapter, the content sophistication (legislative-executive and techno-economic conception and implementation) of the R&D Law No. 5746 of Turkey is analyzed by the constructed general framework of reference for content sophistication analysis with respect to the framing principles of neo-classical (optimizing) and evolutionary (adaptive) policy making and policy implementation approaches (Metcalfe, 1995) through their distinct underlying conceptions and implementations regarding to the “nature of technology,” “using, creating, diffusing technology and knowledge,” “specificity, variety, and mode of transfer,” “externalities,” and “risk/uncertainty” (Lall & Teubal, 1998). According to the results of the analysis, it is shown that, for the time being, the R&D Law No. 5746 of Turkey exhibits features of neo-classical (optimizing) policy making frames from conception to implementation in legislative-executive and techno-economic spheres of research and technology development. In comparison to these neoclassical features, features of evolutionary (adaptive) policymaking frames in other economies around the world are exemplified separately. By concentrating on “Iter Legis”: “path that a law takes from its conception to its implementation,” this chapter aims to contribute to discussions and recommendations on “Lex Lata”: “the current law” and “de lege Ferenda”: “future law” for R&D and innovation in any country where “the future cannot be predicted, but futures can be invented” (Gabor, 1963) through legislative-executive terms of techno-economic demand and imagination.

INTRODUCTION

The R&D Law No. 5746 of Turkey is analyzed to detect the underlying legislative-executive frames of techno-economic demand and imagination. The framing principles of (1) neo-classical (optimizing) and (2) evolutionary (adaptive) policy making and policy implementation approaches (Metcalfe, 1995) through their distinct underlying conceptions and implementations regarding to (a) “nature of technology,” (b) “using, creating, diffusing technology and knowledge,” (c) “specificity, variety, and mode of transfer,” (d) “externalities,” and (e) “risk/uncertainty” (Lall...
& Teubal, 1998) is used to construct the general framework of reference. The analysis of the content sophistication (legislative-executive and techno-economic conception and implementation of R&D in the design of the R&D Law No. 5746 of Turkey) is principally conducted not to draw lessons but to systematically question the lessons learned in legislative-executive frames of techno-economic demand and imagination by introducing the framework of reference for content sophistication analysis, for the case: the R&D Law No. 5746 of Turkey.

In this chapter, an R&D Law is not simply taken as a tax law, on the contrary, it is being argued that considering or not considering an R&D Law as simply as a tax law, in itself, is a sub-activity associated with framing principles and conceptions about Research and Development (R&D) in legislative-executive terms of techno-economic demand and imagination. Furthermore, special attention is given to the content sophistication (conception and implementation details of R&D in the legislative-executive both for legislative-executive and techno-economic spheres). This setting is then identified as—up to a significant extent—related to the institutionalization processes of laws and regulations. Therefore, internal and external amendments and the way the R&D law interacts with other laws (citations) are also included in the analysis.

Law on Supporting Research and Development (R&D) Activities, No. 5746 of Turkey, which aims to deliver discounts, exemptions, incentives and supports for R&D activities in Turkey entered into force by 1 April 2008 after being approved on 28 February 2008 and published on 12 March 2008 in the Official Gazette. It is planned to be effective until 31 December 2023. Revisions according to the articles of the Law No. 5904 (July 2009), “Law on Making Revision in Income Tax Law and Some Laws” and the Law No. 6215 (April 2011), “Law on Making Revision in Some Laws” affecting the R&D Law No. 5746 of Turkey are also taken into account. Not necessarily only the long term validity, but also “how the dynamism that the law may confront during these fifteen years was planned to be managed in the content of law for the purposes of both institutionalization of the law and of consistent, but not necessarily static or dynamic, signaling to domestic and/or international actors” is also discussed.

Turkey, according to the United Nations 1990-developed Human Development Index (HDI), has 0.750–0.799 HDI (UNDP, HDI, 2007), and stands as a newly industrialized country, an emerging market (Morgan Stanley Capital International Report, 2006) and an emerging and developing economy in the middle-upper income class (IMF, Emerging and Developing Economies List World Economic Outlook Database, April 2008) while developing countries are formed by the group of countries which have a medium to low standard of living in general and have not achieved a significant degree of industrialization relative to their populations (UNDP, HDI, 2007). Given the developing country context of Turkey and the long term validity of the R&D Law No. 5746 as a central (?) policy instrument, the general perspective of this chapter is to comprehensively analyze the actual content of the Law No. 5746 of Turkey in order to assess the degree of content sophistication which may foster or constrain its capacity and capability in being able to address certain fundamental concerns in the field of research and technology development.

Therefore, specifically, the objectives of the chapter are to construct a general framework of reference for content sophistication analysis in innovation-related laws, here R&D, to analyze “Iter Legis”: “path that a law takes from its conception to its implementation,” to exemplify policy making frames in other economies around the world where necessary—and for the purposes and main themes of the edited book—and to contribute to discussions and recommendations on “Lex Lata”: “the current law” and “de lege Ferenda”: “future law” for R&D and innovation in any country where “the future cannot be predicted, but