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**TRANSPARENCY AS A KEY PREREQUISITE FOR
THE SUCCESS OF ENERGY SUBSIDY REFORM: A
CASE STUDY OF TAX SUBSIDIES IN TURKEY**

Leyla Ateş

Associate Professor of Tax Law

Altınbaş University Faculty of Law

Transparency as a Key Prerequisite for the Success of Energy Subsidy Reform: A Case Study of Tax Subsidies in Turkey

Abstract : During the 2009 Pittsburgh Summit, G20 leaders recognized the harmful effects of inefficient fossil fuel subsidies on markets and the environment, and committed to “rationalize and phase out over the medium term inefficient fossil fuels subsidies that encourage wasteful consumption.” To achieve this commitment, Turkey and other G20 member countries need to make parallel efforts to reform their domestic policies. However, national governments must share a more-or-less common understanding to define, measure and evaluate fossil-fuel energy subsidies for the success of the subsidy reform. Otherwise, this commitment could be negatively impacted by creating an opportunity to hide subsidies. The OECD contributes to these parallel efforts with statistical studies providing transparent and accurate estimates of budgetary support and tax expenditures to fossil fuel producers and consumers in many countries, including the G20. However, the OECD measurement method requires identifying and evaluating individual countries’ fossil-fuel subsidy policies. The OECD collects and assembles the information mainly from publicly available government sources. Thus, adequate national transparency rules are a prerequisite for the accurate measurement of fossil-fuel subsidies leading to successful international efforts. This study aims to demonstrate the extend to which national transparency rules impact the evaluation and definition of domestic fossil fuel tax subsidies by external agencies by using a case study of Turkey.

Key words : Fossil fuel tax subsidies, energy subsidy reform, transparency.

Enerji Sübvansiyon Reformlarının Başarısı İçin Bir Anahtar Önkoşul Olarak Şeffaflık: Türkiye’de Vergi Sübvansiyonları Üzerine Bir Vaka Analizi

Özet : 2009 Pittsburg Zirvesi esnasında, G20 liderleri verimsiz fosil yakıt sübvansiyonlarının piyasa ve çevre üzerindeki olumsuz etkilerini tanıdı ve “boşa tüketime yol açan verimsiz fosil yakıt sübvansiyonlarını rasyonalize etmeyi ve orta vadede aşamalı olarak kaldırmayı” taahhüt etti. Bu taahhüdün gerçekleştirilmesinde, Türkiye ve diğer G20 üyesi ülkeleri ulusal politikalarını reforma tabi tutmak için paralel çaba sarf etmelidir. Ancak, ulusal hükümetlerin sübvansiyon reformunda başarısı için fosil yakıt enerji sübvansiyonlarını tanımlama, ölçme ve değerlendirmede az çok ortak bir anlayışı paylaşması gerekmektedir. Aksi takdirde, bu taahhüt, sübvansiyonların gizlenmesi ihtimalini yaratarak olumsuz yönde etkilenebilir. OECD söz konusu paralel çabalara, G20 ülkeleri dâhil birçok ülkede fosil yakıt üretici ve tüketicilerine yapılan bütçe desteği ve vergi harcamalarının şeffaf ve doğru tahminlerini sağlayan istatistiki çalışmalarla katkıda bulunmaktadır. Bununla birlikte, OECD ölçüm metodu, her bir ülkenin fosil yakıt sübvansiyon politikalarının tanımlanması ve değerlendirilmesini gerektirmektedir. OECD esasen kamuya açık hükümet kaynaklarından bilgileri toplamakta ve bir araya getirmektedir. Böylece elverişli ulusal şeffaflık kuralları, uluslararası çabalarda başarıyı getirecek fosil yakıt sübvansiyonlarının doğru ölçümü için bir önkoşuldur. Bu çalışma ulusal şeffaflık kurallarının, ülkelerin fosil yakıt vergi sübvansiyonlarının harici kurumlar tarafından değerlendirilmesi ve tanımı üzerinde ne ölçüde etkili olduğunu Türkiye’ye ilişkin bir vaka analizi yaparak ortaya koymayı amaçlamaktadır.

Anahtar kelimeler : Fosil yakıt vergi teşvikleri, enerji sübvansiyon reformu, şeffaflık.

Introduction

Countries have increasingly operated energy subsidies to reach their climate change, energy security or economic development policy goals. The type of energy subsidized varies from nuclear, fossil fuel to renewables. Nevertheless, fossil fuel energy subsidies are prevalent policy tools for developing countries as well as developed countries (Skovgaard 2017, 348). Recently, the Group of Twenty (G20) -an international network of major developed and emerging economies including Turkey- made fossil fuel energy subsidies a high-priority issue on the international agenda (Skovgaard 2017, 346). During the 2009 Pittsburgh Summit, G20 leaders recognized the harmful effects of inefficient fossil fuel subsidies on markets and the environment, and committed to “rationalize and phase out over the medium term inefficient fossil fuels subsidies that encourage wasteful consumption.” (G20 Communique 2009, para. 29). Rationalizing or phasing-out inefficient fossil fuel subsidies requires the reform of domestic policies. Thus, the G20 member countries must limit their freedom of subsidy governance to fulfill their commitments. However, there is an intrinsic risk within the definition of energy subsidies and the scope of “inefficient” fossil fuel subsidies that encourage “wasteful consumption”.

Even if fossil fuel energy subsidization is a shared practice, there is no common definition for energy subsidies. According to a UN study, the most common definition is “a direct cash payment by a government to an energy producer or consumer to stimulate the production or use of a particular fuel or form of energy.” (UN 2008, 8). This definition considers only the form of direct budgetary spending. The same study also criticizes this narrow framing of types of government interventions and demonstrates its preference for a broader scope by referring to the definitions of various institutions as encompassing “any government measure” (UN 2008, 8).

Without a shared definition, commitment to fuel subsidy reform could be negatively impacted by creating an opportunity to hide subsidies. National governments might easily claim that they fulfill their reform commitment while omitting some measures taken in their countries that in fact increase production or consumption of fossil fuels. Moreover, they might recognize fossil fuel subsidies but they claim that they are efficient whereas the reverse is in fact true. Thus, national governments must share a more-or-less common understanding to define, measure and evaluate fossil-fuel energy subsidies for the success of the G20 initiative (GSI 2010, 10). In this regard, the G20 aimed to set parameters for national reform efforts and tasked the International Energy Agency (IEA), the Organization of Petroleum Exporting

Countries (OPEC), the Organisation for Economic Co-operation and Development (OECD) and World Bank to “provide an analysis of the scope of energy subsidies and suggestions for the implementation of this initiative” and report back (G20 Communique 2009, para. 30). This mandate also moved definition and measurement issues around current fossil fuel subsidies into these institutions’ respective agendas (Skovgaard 2017, 346).

The mandated institutions prepared a joint report and submitted it to the G20 at the 2010 Toronto Summit (hereinafter the Joint Report). The Joint Report recognized the difficulty of finding a commonly agreed definition and intended to capture all types of government interventions that affect production or consumption of energy directly or indirectly within the scope of subsidies (IEA, OPEC, OECD, & World Bank 2010, 8). It explicitly embraced tax expenditures, i.e., government spending through tax system, also referred to as tax subsidies, tax preferences or tax incentives, and approached them in the same way as budgetary spending (IEA, OPEC, OECD, & World Bank 2010, 14). This approach breaks with the most common definition of energy subsidies which considers only direct budgetary spending.

In respect of methods of measurement, the Joint Report essentially relied on the “price-gap approach”, which uses the price-gap between domestic fuel price and an international reference price to estimate fossil fuel subsidies (IEA, OPEC, OECD, & World Bank 2010, 4). This method does not fully capture producer subsidies and does not cover countries, mostly OECD countries, which have domestic prices that are at least at world-market parity as a result of relatively higher taxes on energy use (OECD 2011, 25-26). Nonetheless, at the time of the subsidy reform commitment of G20 Leaders, consistent cross-country estimates for fossil fuel subsidies were available only in the form of price-gap data (OECD 2015, 21). The Joint Report pointed to the IEA’s estimate for 2008 which amounted to USD 557 billion. The IEA uses the price-gap method to estimate consumer fossil fuel subsidies in forty countries, including Turkey, and has published an annual report since 1999. According to the last IEA study, the subsidy amount dropped in 2015 to USD 325 billion (IEA 2016, 21).

Yet the Joint Report also referred to government accounts in order to estimate fossil fuel subsidies (IEA, OPEC, OECD, & World Bank 2010, 14). This reflects another measurement approach called the “conferred-benefits approach” focusing on individual policies of government that confer benefits on a specific group of energy consumers or producers (Skovgaard 2017, 343). The OECD adopts the conferred-benefits approach which supports both production and consumption subsidy estimations. The OECD Secretariat earlier

discussed this approach to identify and measure energy subsidies in a paper (*see*, OECD Secretariat 2010) which in turn became one of the background papers for the Joint Report (IEA, OPEC, OECD, & World Bank 2010, 3). Afterwards the OECD prepared the “Inventory of Estimated Budgetary Support and Tax Expenditures for Fossil-Fuels 2011” and later on updated its estimate in the years of 2013 and 2015. In the Inventory of 2011, the OECD emphasized that this was a significant departure from the estimates of fossil-fuel subsidies published by the IEA (OECD 2011, 25). According to the 2011 Inventory, the fossil fuel subsidies of several OECD member countries, including Turkey, was an annual average of USD 45-75 billion between 2005 and 2010 (OECD 2011, 3). The amount rose to an annual average of USD 55-90 billion for all member countries in the 2005-11 period (OECD 2012, 3), and an annual average of USD 160-200 billion for all member countries and selected partner economies (Brazil, the People’s Republic of China, India, Indonesia, the Russian Federation, and South Africa) in the period between 2010 and 2014 (OECD 2015, 4). The reason for the lower estimates of the OECD compared to the IEA was ascribed to the differences in the countries covered and the sophisticated types of subsidy they employed (European Parliament 2017, 9).

The conferred-benefits approach requires the identification and measurement of individual fossil-fuel subsidy policies in different countries (Skovgaard 2017, 346). The OECD first collects and assembles the information from government sources (annual budgets e.g. budget statements, public accounts or budget statistics and tax expenditure reports) and then, if needed, verifies this information with the help of national governments (OECD 2015, 26, 28). At this point, the conferred-benefits approach bound investigators to each country’s legal rules for subsidy transparency. As Steenblik stated, “Work on measuring subsidies at the international level can only be as good as data collected and made publicly available by governments themselves.” The public availability of data corresponds to the fundamental right of access to documents that is one of the aspects of transparency along with openness in decision-making process, legal clarity and the duty to give reasons (Karageorgou 2006, 6-13). For this reason, the OECD emphasized in the 2016 Inventory that “A key lesson from OECD work on measures supporting fossil fuels is that transparency matters.”

On the other hand, production of documents is a quintessential precondition for the right to access to documents. If there is no document, there is nothing for the public to access. Thus, this study begins with an examination of Turkish legal system requirements for tax subsidy documentation. Then, the study indicates the extent to which the documents produced under

the laws are accessible. The first part follows this structure for tax laws whereas the second part examines budget laws. The third and final section examines a Turkish fossil fuel tax subsidy practice to ascertain to what extent the Turkish tax expenditure transparency rules contribute to defining and evaluating the tax subsidies. To discuss the accuracy of produced documents is beyond the scope of this paper. It must be also emphasized that, even if openness in decision-making processes, legal clarity and the duty to give reasons have a crucial role in transparency, this study mainly focuses on the right of access to documents. Nevertheless, legal clarity is not excluded completely.

To this end, Part I examines domestic tax transparency rules, while Part II examines domestic budget transparency rules in Turkey. Part III analyzes transparency practice around an example of investment tax subsidy for fossil fuel producers.

1. Tax Transparency

a. The Principle of Legality in Taxation

The principle of legality is inherent to liberal democracy models that protect fundamental rights and freedoms by granting to parliament the main authority to restrict them by law (Cagan 1982, 193). Taxation limits the right to property and the principle of legality in taxation requires a statutory intention to impose or to abrogate a limitation from the right to property (Yalti 2006, 43, 64 etc.). In regard to this principle, The Turkish Constitution, Article 73, paragraph 3 states: “*Taxes, fees, duties, and other such financial obligations shall be imposed, amended, or revoked by law*” (for the full text of the Constitution in English, see, TBMM 2011). And the Turkish Constitution, Article 87, assigns the duty and power “*to enact, amend, and repeal laws*” to the Turkish Grand National Assembly, i.e., the parliament. Tax subsidies “operate through the tax system and confer benefits in the form of reductions in the tax that would otherwise be payable” (Easson 2004, 2). In other words, they abrogate fully or partly taxes for qualified taxpayers. Thus, the parliament must express its intention to grant tax subsidies by laws.

Based on the statement rule in Article 73, the Turkish Constitutional Court has promoted democracy by requiring greater clarity in the drafting of statutes that engage with taxation. The Court held a decision on law granting investment allowances along with custom duty exemptions. Investment allowance or credits are a form of tax subsidies that enable the investor to write off an amount that is greater than the cost of the investment (Zolt 2014, 17). In this decision, the Court stated: “*As investment allowance means at the end to reduce tax*

rates -that were imposed by laws- via an amendment for taxpayers who will benefit from this allowance; even the refund of custom duties represents the exemption of taxpayers fully or partly from those duties. Indeed, the Constitutional Court have given several decisions so far -even if not mentioning the element of tax exemption-, stating that the elements of taxes and other duties such as taxpayers, the tax base, rates, assessment, accrual, and payment procedures as well as penalties imposed and the statute of limitation shall be regulated by law under Article 61¹ of the Constitution. Undoubtedly, even the elements of tax exemption or exception are as important subjects as those. For this reason, those elements must also be determined by law as a result of the rule in the referred Constitutional article” (Anayasa Mahkemesi E. 1967/41, K. 1969/57, 23-25.10.1969, <http://www.anayasa.gov.tr/icsayfalar/kararlar/kbb.html>).”

In its established case law, the Turkish Constitutional Court (TCC) also states that “*While designing the legality principle for all kinds of financial impositions, the basic intent of the legislators of the Constitution is to prevent arbitrary and discretionary practices... In this respect, in the law, the basic elements of financial impositions must be clarified and be framed in a determinant and concrete way*” (Yalti 2009, 2). Thus, the parliament must consider legal clarity in terms of both context and content when drafting tax subsidies. In other words, the parliament must grant tax subsidies with clear expression in laws.

On the other hand, the Turkish Constitution, Article 73, paragraph 4 provides a constitutional exception to the principle of legality in taxation. According to its wording, “*The Council of Ministers may be empowered to amend exemptions, exceptions or reductions or rate provisions in taxes, fees, duties and other such financial obligations, within the minimum and maximum limits prescribed by law.*” In this case, the parliament may delegate tax powers by a law within the framework of constitutional limitations. The first limitation pertains to “competence”. The parliament may delegate its powers of taxation only to the Council of Ministers. The second limitation concerns “elements”. The parliament may delegate its taxation powers only for tax rates or tax exemptions. The third limitation covers “limits”. The parliament must determine the minimum and maximum limits within the delegated law. The Council of Ministers always exercises delegated power by an ordinary decree (Yalti 2009, 3).

¹ This article is from the former Turkish Constitution of 1961 and equivalent of Article 73 of the current Turkish Constitution of 1982.

b. Transparency of Tax Laws

In its infancy, the parliament adopted the principle of accessibility of laws and regulations and transcripts of parliamentary debates. The Turkish Grand National Assembly congregated for the first time in 23 April 1920 and Parliament established an official gazette to publish notices on 7 October 1920 (<http://www.mevzuat.gov.tr/RegaTarihce.aspx>). The first constitution of Turkey was enacted in 20 January 1921 in a very abstract form since Turkey was still fighting the War of Independence at that time. For this reason, there was no constitutional rule about access to parliamentary documents. Nonetheless, the first Official Gazette containing the very first statute of the parliament, a tax law, was published in 7 February 1921. After the war, Turkey accepted a new constitution in 1924. Article 35 of the 1924 Constitution assigned the power to proclaim laws to President of the Republic. This article corresponds to the current 1982 Constitution, Article 89. The detailed rules of the Official Gazette were first set by a regulation entitled “Regulation on the Implementation of the Publication and Sales of the Official Gazette” (*Resmi Gazete'nin Sureti Nesir ve Muamelatinin Tarzi Icrasına Dair Yonetmelik*) (Official Gazette: 29.06.1927, 620) and after that by “Law No. 1322 on the Publication and Promulgation and Enforcement Date of Laws and Regulations” (*1322 Sayili Kanunların ve Nizamnamelerin Sureti Nesir ve Ilani ve Meriyet Tarihi Hakkında Kanun*) (Official Gazette: 04.06.1928, 904).

According to Article 1 of Law No. 1322, not only laws but also regulation shall be published in the Official Gazette. Nonetheless, publication of a type of regulation called “yonetmelik” was restricted by another law with the permission of Article 124, Paragraph 2 of the 1982 Constitution (see, 3011 sayili Resmi Gazete'de Yayimlanacak Olan Yonetmelikler Hakkında Kanun, Official Gazette: 01.06.1984, 18418). Since, the government exercises its limited rulemaking power in taxation only via ordinary decrees, this restriction does not affect the transparency of tax subsidy laws.

Besides its printed format, the Official Gazette has been published in electronic format accessible online since 2000 (<http://www.mevzuat.gov.tr/RegaTarihce.aspx>). In 2011, the electronic copies of all Official Gazettes to be published since its inception were made available online (<http://www.mevzuat.gov.tr/RegaTarihce.aspx>). In line with its policy commitment to observe the principle of data transparency (see, <https://www.dijitaldonusum.gov.tr/en/open-data-portal/>), a new article was added to Law No. 1322 in 2017 that secures the online publication of the Gazette alongside its printed version (690 sayili Olaganustu Hal Kapsamında Bazı Düzenlemeler Yapılması Hakkında Kanun

Hukmunde Kararname, Official Gazette: 29.04.2017, 30052). The official portal of the Gazette is <http://www.resmigazete.gov.tr/default.aspx>. The responsible government agency for the publication the of Official Gazette is the Prime Ministry General Directorate of Legislation Development and Publication (*Basbakanlik Mevzuati Gelistirme ve Yayin Genel Mudurlugu*) under Law No. 3505, Article 10, paragraph e (Official Gazette: 19.10.1984, 18550).

The accessibility of transcripts of the General Assembly is also under constitutional protection in Turkey. According to Article 97, paragraph 1, “*Debates held in the Plenary of the Grand National Assembly of Turkey shall be public and shall be published verbatim in the Journal of Minutes.*” Paragraph 2 also states that “*Public debates in the Assembly may be freely published through all means*”. Based on this provision, the Journal of Minutes (*Tutanak Dergisi*) is available not only printed format but also online at the Turkish parliament’s official webpage (see, https://www.tbmm.gov.tr/kutuphane/tutanak_sorgu.html). Even if the Standing Orders of the Turkish Grand National Assembly principally requires keeping the summary minutes of parliamentary commissions, they have only been public since 2011 via the journals of Commission minutes (*komisyon tutanak dergileri*) (TBMM Tutanak Hizmetleri Baskanligi 2106, 34). At the same time, those minutes are available online at the Turkish parliament’s official webpage (see, https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.kom_liste). One must keep in mind that the accessibility of transcripts of parliamentary debates is an issue of tax subsidy laws. While Parliament empowers the Council of Ministers by law to amend exemptions, exceptions and reductions or tax subsidy rules, there is no public access to preparatory lawmaking documents drawn up by the Council of Ministers.

2. Budget Transparency

a. The Principle of Unity and Budget Accuracy

A budget is a special kind of law in which the parliament authorizes the executive to collect revenue and to make spending (Gunes 2000, 185). This authorization means that the parliament sets the upper limits of spending and allows collection of revenue imposed by the tax laws (Gunes 2000, 175). The right to budget played a key role in the establishment and evolution of representative parliamentary democracy (Cagan 1986, 199; Wehner 2005, 2).

Turkey adopted national sovereignty and has been a representative democracy since 1920. Considering the budget laws' peculiarity, the 1982 Constitution regulates parliament's budget-making power along with its law-making power in Article 87. The 1982 Constitution, Article 87, assigns the duty and power "to debate and adopt budget bills and final accounts bills" to the Parliament. In Article 163, the Constitution bans the Parliament from empowering the Council of Ministers to amend the budget. On the other hand, the Council of Ministers is responsible for drafting central Government budget law and reporting on the national budgetary estimates to Parliament as determined by Article 162, paragraph 1. Thus, the executive has the right to initiate budgetary changes. This provision is in accordance with Article 110. According to the provision in paragraph 2, the Council of Ministers sets out the program for government. Since the program is implemented via the budget, the Council of Ministers is assigned the authority to prepare the budget (Cagan 1986, 201). In other words, the Council of Ministers is the organ that can ensure that the budget fits government policies. Additionally, like other contemporary constitutions (Cagan 1986, 200), the 1982 Turkish Constitution sets detailed rules and principles to enact and amend budget laws.

One of the principles governing budgetary rules is the unity and accuracy of the budget. This principle obliges all revenue and expenditure to be entered in the budget (CVCE 2016, 2). However, the 1982 Constitution enshrines this principle in a limited manner. Article 161, paragraph 1 mentions only expenditures to be determined in the budget law, not revenue. Nonetheless, paragraph 2 of Article 161 designates the parliament as responsible for legislation "at the beginning of the fiscal year and the preparation, implementation, and control of the central government budget". In this regard, the current Law No. 5018 on Public Finance Management and Control Law (*Kamu Mali Yönetimi ve Kontrol Kanunu*) (for the full text in English, see, Ministry of Finance 2012) has been in force since 2003. Article 3, paragraph c of the Law No. 5018 defines the budget as "the document which indicates the revenue and expenditure estimations of a certain period and issues related to their realization, and which is put into force as required by the relevant procedures." Thus, not only expenditures but also revenues are published in the budget documentation. Moreover, Law No. 5018, Article 15, paragraph 2 details the scope of the budget law as saying: "Central Government Budget Law shall include revenue and expenditure estimations of the first year and the following two years; the budget deficit or surplus amount, if any, and how the deficit will be covered or where the surplus will be used, if any; tax revenues renounced due to tax exemptions, exceptions, reductions and similar practices; borrowing and warranty limits;

authorities to be granted for the implementation of budgets; attached schedules and provisions pertaining to the revenues and the expenditures, to be implemented totally, to be implemented partially or not to be implemented at all (...) during the fiscal year.” Even if the budget documentation of revenues as well as expenditures had existed also in the previous public finance law, this provision integrated tax subsidies for the first-time into the expenditure documentation. Therefore, the Turkish parliament brought legally binding requirement to report tax subsidies considering that tax subsidies are indirect “spending programs delivered through the tax system” (see, Ruggeri 2005, 5).

Before turning to the next sub-section, it must be emphasized that the fiscal rule stated in Article 163 is not valid for tax expenditure budgets. This provision states that in the event of “Government bills and private members’ bills entailing financial burden in the budgets of the current or following fiscal year, the financial resources to meet the stated expenditure shall be indicated.” Even if tax subsidy laws impose a burden on the budget, tax expenditures escape the control of this fiscal rule.

b. Transparency of Budget Laws

The accessibility of budget laws and transcripts of parliamentary budget debates is identical to other laws. However, there is a specific time limitation for the budget law to be published in the Official Gazette. The 1982 Constitution, Article 162, paragraph 3 requires the parliament to debate the budget bill and to adopt budgetary law before the beginning of the fiscal year. Under the above-mentioned constitutional mandate in Article 161 of the 1982 Constitution, Law No. 5018 determines the beginning of the fiscal year as the calendar year in its Article 3. Thus, the budget law must be published before January 1st of the pertinent year. As stated above, Law No. 5018 requires an inventory of tax expenditure (*vergi harcamaları listesi*) to be annexed to the budget. The related article came into force as of January 1, 2005 and thus such inventories have been published as an annex to budget laws since then.

Budgets since the year 1995 along with annexes are also available collectively on the official website of the General Directorate of Budget and Fiscal Control (see, Butce ve Mali Kontrol Mudurlugu 2017, <http://www.bumko.gov.tr/TR,926/butce-kanunu-ve-ekleri.html>).

Besides the budgetary law and its annexes, i.e., the enacted budgets, there are other budgetary documents published by governments at various points in the budgetary cycle which promote transparency. The International Budget Partnership (IBP) -an international nonprofit research and training institute- defines eight key budget documents and conducts surveys on their

public availability, timeliness, and comprehensiveness to rank the level of transparency of budget transparency in a given country (OECD 2017, 21). Then the IBP produces the Open Budget Index on yearly basis. Those eight key documents pertain to the formulation and approval stages of the budgetary process or the government's execution and oversight of the budget. Together with the enacted budget, the pre-budget statement, the executive's budgetary proposal, and citizens budget belong to the first stage of documentation. The second group of budgetary documentation comprises in-year reports, the mid-year review, year-end report and audit report (Guide to Transparency in Government Budget Reports 2017, 5).

Turkey is one of the countries surveyed in the IBP reports. Nevertheless, the enacted budget is the only one among the defined budget documents that consists of concrete information about tax expenditures. As mentioned earlier, a tax expenditure inventory is annexed to annual budgets. This weak practice on tax expenditure transparency is compatible with Turkey's general budget transparency score in the Open Budget Index which is 44 out of 100. The IBP commented on the budget transparency in Turkey as follows: "The Government of Turkey provides the public with limited budget information" (IBP 2016, <http://www.internationalbudget.org/opening-budgets/open-budget-initiative/open-budget-survey/country-info/?country=tr>).

Nonetheless, the IBP overlooked a budget proposal document on the matter of tax expenditures, termed the "tax expenditure report" (*vergi harcamaları raporu*) and produced by the Ministry of Finance. The reason for this must be that by the time the IBP prepared its report, there was only one such report published in 2007 (see, Maliye Bakanlığı 2007). The Ministry of Finance subsequently published another report at the end of 2016 after a nine-year interval (see, Maliye Bakanlığı 2016). This recent report has contributed to tax expenditure transparency by giving a tax expenditure realization figure for the first time. Like the 2007 report, it not only elaborated the items in the inventory of tax expenditure, but also calculated the actual level of tax expenditure for 2015. The government had estimated its 2015 tax expenditure as 26.412.222.992 TL in its 2014 budget (see, TBMM 2013, <http://www.bumko.gov.tr/Eklenti/7780,1420142016vergi-harcamalarilistesipdf.pdf?0>). This report showed that the actual amount for 2015 was 79.582.000.000 TL. Moreover, the report evaluated the estimated quality of each tax expenditure item as *Poor*, *Fair*, *Good* and *Very Good*. As a matter of fact, the government updated the tax expenditure estimates in the 2017 budget in line with the report (cf., TBMM 2016, <http://www.bumko.gov.tr/Eklenti/10415,2017vergi-harcamalarilistesipdf.pdf?0>).

3. Transparency in Practice: Investment Tax Subsidies for Fossil Fuel Producers in Turkey

The OECD has launched a web-based platform to provide transparent and accurate estimates of budgetary support and tax expenditures on fossil fuel production and consumption. This platform is called the Inventory of Support Measures for Fossil Fuels and Turkey is one of the countries on the database. According to this database, Turkey has eight different measures of tax expenditure: (1) Rebate for diesel used in agriculture, (2) Fuel tax exemption for ships in cabotage lines, (3) Regional investment incentive scheme, (4) Tax exemption for oil and gas exploration and transportation, (5) Tax exemption for the transportation and distribution of oil and gas, (6) Tax exemption for LPG consumption, (7) Fuel tax exemption for domestic commercial aviation, and (8) Fuel tax exemption for vehicles used for national security (OECD 2017b, http://stats.oecd.org/Index.aspx?DataSetCode=FFS_TUR).

On the contrary to the OECD's determination, the first measure is not a tax expenditure. The rebate for diesel used in agriculture is a direct cash transfer not a revenue-forgone measure. Even if the OECD stated the characteristics of this measure in its earlier published inventories (OECD 2011, 298; OECD 2012, 355), it is unclear why they classified the measure in this way. Nonetheless, this study does not aim to discuss the accuracy or completeness of the OECD's inventory. Instead, this section aims to ascertain to what extent the Turkish tax expenditure transparency rules contribute to define and evaluate the Turkish fossil fuel tax subsidies by external reviews. One of the enumerated measures, namely the "Regional Investment Incentive Scheme" is the subject of this examination.

The Investment Incentive Schemes have been effective since the beginning of 2012 and provides tax subsidies, including for fossil fuel producers. These take the form of value-added tax exemption, customs duty exemption, tax rate reduction, income tax withholding support, or social security premium support (both employer's share and employee's share). The new schemes were introduced by an ordinary decree of the Council of Ministers (2012/3305 sayılı Bakanlar Kurulu Kararı, Official Gazette: 19.06.2012, 28328) based on delegations of legislative power in the Corporate Income Tax Law (*Kurumlar Vergisi Kanunu*), Article 32/A, Social Security Law (*Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*), Additional Article 2, and Custom Tariff Law (*Gümrük Giriş Tarife Cetveli Hakkında Kanun*), Article 2. The decree also integrated by repetition the subsidy provisions in favor of investors in the Value Added Tax Law (*Katma Değer Vergisi Kanunu*), Articles 13 and temporary 30 and Personal Income Tax Law (*Gelir Vergisi Kanunu*), Temporary Article 80. Since 2012, the

Council of Ministers has amended the investment schemes fourteen times. Even if all those decrees as well as tax laws had been published in the Official Gazette,² the Council of Ministers' over-exercise of its delegated authority raises legality and legal certainty concerns that undermines tax subsidy transparency.

Before turning to budget transparency aspects of the investment tax subsidies for fossil fuel producers in Turkey, it must be noted that, contrary to the OECD's determination, subsidies vary not only according to geography but also to scale, and type (whether strategic or not) of the fossil fuel investment. In other words, fossil-fuel producers benefit not only from the Regional Investment Incentive Scheme, but also from the Large Scale Investment Incentive Scheme (*büyük ölçekli yatırım teşvikleri*) and the Strategic Investment Incentive Scheme (*stratejik yatırım teşvikleri*). Thus, it is not correct to refer to them simply as "regional".

The budget document of the 2017 Tax Expenditure Inventory enumerates legal provisions including a tax subsidy (TBMM 2016, <http://www.bumko.gov.tr/Eklenti/10415,2017vergiharcamalarilistesipdf.pdf?0>). It has three columns: the name of the code and its number, the number of the provision, and a concise description of the provision. As the IMF stated in its fiscal transparency evaluation report for Turkey, the list lacks breakdown by other criteria such as function, type of tax expenditure, sector, policy area or geographical area (IMF 2017, 23). When we look at the list to see fossil fuel tax subsidies, we can only see Corporate Income Tax Law, Article 32/A, Value Added Tax Law, Articles 13 and temporary 30 and Personal Income Tax Law, Temporary Article 80 and references to investment scheme in their descriptive columns. The list does not enumerate Social Security Law, Additional Article 2 and Custom Tariff Law, Article 2. Moreover, the references are to the investment incentive schemes in general. It is not possible to see those provisions' relation to the energy sector without accompanying knowledge of the Turkish investment incentive schemes.

Nonetheless, the Tax Expenditure Report mentioned in the previous subsection consists of a breakdown of tax expenditure provisions by function and estimates tax expenditure amounts for each provision. One type of function is to support "infrastructure, energy and communication" (*altyapi, enerji ve ulastirma*). However, this type does not contain any provision of the investment incentive schemes for fossil fuel producers. On the other hand,

² For the Council of Ministers' degrees, see, RG: 13.10.2012, 28440; RG:15.02.2013, 28560; RG: 30.5.2013, 28662; RG: 09.05.2014; 28995; RG: 06.08.2014; 29080; RG: 05.03.2015; 29286; RG: 08.04.2015, 29320; RG: 27.08.2015, 29458; RG: 19.11.2015, 29537; RG: 08.04.2016, 29678; RG: 05.10.2016, 29848; RG: 22.02.2017; 29987; RG: 03.05.2017, 30055; RG: 17.08.2017, 30157.

those provisions i.e. the Corporate Income Tax Law, Article 32/A, Value Added Tax Law, Articles 13 and temporary 30 and Personal Income Tax Law, Temporary Article 80 are enumerated under the function of “improving business and boosting investment” (*is dunyasinin gelistirilmesi ve yatirimlerin arttirilmesi*). Again, those provisions refer to all investment incentives, so it is not possible to estimate the extent to which tax expenditure belongs to fossil fuel tax subsidies. Thus, it is not possible to assess fossil fuel tax expenditure made through the budget (see, IMF 2017, 23). Thereby, the OECD database codes the regional investment incentive scheme as ‘M’ for ‘Missing’ data, i.e., the data is not available.

Conclusion

Fossil fuels subsidy reform has been at heart of the agenda of intergovernmental organizations as well as non-governmental organizations. It was the G20 member countries’ commitment to phase out inefficient fossil fuels subsidies that brought reform up front in the international agenda in 2009. To achieve this commitment, Turkey and other G20 member countries need to make parallel efforts. The OECD contributes to these parallel efforts with statistical studies providing transparent and accurate estimates of budgetary support and tax expenditures to fossil fuel producers and consumers in many countries, including the G20. However, the OECD measurement method requires identifying and evaluating individual countries’ fossil-fuel subsidy policies. The OECD collects and assembles the information mainly from publicly available government sources. Thus, adequate national transparency rules are a prerequisite for the accurate measurement of fossil-fuel subsidies leading to successful international efforts. This study used a Turkish case study to demonstrate that inadequate national transparency rules impact the full evaluation and definition of Turkish fossil fuel tax subsidies by external agencies. Consequently, international initiatives should continue to encourage greater transparency in domestic subsidy policies in general and tax subsidy policies in particular.

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