

Valerii Tertychka¹

 <https://orcid.org/0000-0002-9788-3190>

Policy-making in post-war recovery: procedures of stakeholder analysis vs/or “quick solutions”

Abstract

Policy analysis cycle: standardization and application practice. The policy analysis cycle is regulated by the regulations of the Cabinet of Ministers and other NPAs. Stakeholder analysis: normalization, training and implementation. Why are stakeholder analysis procedures approved but not fully implemented in direct practice? What hinders and prevents the implementation of innovations? For the practice of Ukraine’s integration into the EU, the implementation of stakeholder analysis procedures in the practice of government is important. This paradoxical situation is related to the “simplification” of policy analysis in general and stakeholder analysis in particular. In practice, this is manifested in: “playing in the procedure of policy makers” for the sake of populism and “unprofessionalism” of performers. That is, the situation is unfortunately getting worse... In the conditions of the post-war reconstruction of the country – will the policy-making procedures be followed or will there be “quick decisions”?

Keywords: public policy, policy-making, policy analysis cycle, stakeholder analysis, group of stakeholders, “quick solutions”

¹ Valerii Tertychka, Doctor of PA, professor, Head of Andriy Meleshevych Kyiv-Mohyla School of Governance, National University of Kyiv-Mohyla Academy.

I. Policy-making

Public policy is not made in a vacuum – the head of state, lawmakers, representatives of executive branch, judges, managers (official participants) and political parties, public organizations, interest groups, research organizations, mass media, individual citizens (informal participants) are the leaders of this process.

New civil service: legitimization of activities and obstacles to implementation. For a long time, there has been a wave-like process of civil service reform and the introduction of policy analysis procedures into the practice of government. We have state secretaries in the ministries, we have directorates for analysis and coordination of policy, strategic planning etc.

Also, the Secretariat of the Cabinet of Ministers of Ukraine (CMU)² as a coordination center for the implementation of reforms in the civil service and the implementation of policy analysis procedures in the practice of government. The activity of the Minister of the Cabinet of Ministers as an organizer of change management in the government is interesting.

Also, the Office of Reforms,³ partly as a duplication of the actions of the CMU Secretariat, was the coordinator/dis-coordinator of reforms. This was an interesting case for coordinating reform actions. This often did not happen...

II. Policy analysis cycle: standardization and application practice

The policy analysis cycle is regulated by the regulations of the Cabinet of Ministers and other NPAs.⁴ Also, for example, the first article of the Ukrainian Law “On Civil Service” states that “civil service is a public, professional,

² Про затвердження Положення про Секретаріат Кабінету Міністрів України [Електронний ресурс]: постанова Кабінету Міністрів України від 12 серп. 2009 року, № 850, із змінами і доповненнями, <https://www.kmu.gov.ua/npas/235022359> (accessed: 22.11.2023).

³ Офіс реформ [Електронний ресурс], Електрон. Дані, <https://rdo.in.ua/> (accessed: 22.11.2023).

⁴ Регламент Кабінету Міністрів України, затверджений постановою Кабінету Міністрів України від 18 липня 2007 року, № 950 [Електронний ресурс], Офіц. вісн. України 2007,

politically impartial activity for the practical implementation of tasks and functions of the state, including: 1) analysis of public policy...”.⁵ We have a sufficient body of work on the practical application of policy analysis procedures.

For the practice of Ukraine’s integration into the EU, the implementation of stakeholder analysis procedures in the practice of government is important. It is the practice of preparing Policy Papers⁶ by civil servants that is relevant for civil service reform and EU integration.

Stakeholder analysis procedures are directly relevant to public administration practices and public policy. It is the procedures of stakeholder analysis that are “forced” to be performed by civil servants, as it is described in the Regulations of the Cabinet of Ministers of Ukraine.⁷ In addition, the analysis of regulatory acts is based on the analysis of stakeholders, which should also be performed in local governments. Materials and video about stakeholder analysis.⁸

Policy analysis should include identifying stakeholders – all those individuals (groups of people) who are involved in the policy process (both in government and outside the authorities). That is, everyone who is affected by a problem and possible ways of its solution (related costs, output and consequences of policy implementation). These individuals are “shareholders” of the policy process, because they have a “share” – they need to be considered in the policy process.

№ 54, ст. 2180, <http://zakon2.rada.gov.ua/laws/show/950-2007-%D0%BF/page> (accessed: 22.11.2023).

⁵ Про Кабінет Міністрів України [Електронний ресурс]: Закон України від 27 лют. 2014 року, № 794-VII, із змінами і доповненнями, <http://zakon4.rada.gov.ua/laws/show/794-18> (accessed: 22.11.2023).

⁶ *Аналітичні записки з розробки напрямків державної політики*, уклад. В.Є. Романов, О.І. Кілієвич, Київ 2001; *Вироблення державної політики. Аналітичні записки*, уклад. О.І. Кілієвич, В.Є. Романов, Київ 2003, www.IPAS.org.ua/library.htm (accessed: 22.11.2023); *Вироблення державної політики: рекомендації для України в контексті євроінтеграційного досвіду країн Балтії та Польщі: зб. аналіт. звітів і записок учасників Програми урядового стажування*, уклад. О.І. Кілієвич, В.В. Тертичка, Київ 2006, www.IPAS.org.ua/library.htm (accessed: 22.11.2023); О.І. Кілієвич, Г.Л. Рябцев, В.В. Тертичка, *Практикум з підготовки аналітичних документів: навч. посіб.*, Київ 2016, 95 с., www.IPAS.org.ua (accessed: 22.11.2023); Е. Янг, Л. Куїн, *Як написати дієвий аналітичний документ у галузі державної політики: практ. посіб. для радників з держа. політики у ЦСЄ*, пер. з англ. С. Соколик, ред. О. Кілієвич, Київ 2003, www.IPAS.org.ua/library.htm (accessed: 22.11.2023).

⁷ Регламент Кабінету Міністрів України, затверджений постановою...

⁸ <http://ipas.org.ua/index.php/library/educational-materials/348-public-policy-analysis>; <https://www.youtube.com/watch?v=uPym71XfkI4>; <https://www.youtube.com/watch?v=jXVwfK3qjGU> (accessed: 22.11.2023).

Stakeholders participate in the policy process, they are policy makers, decision makers as well as policy analysts.

Policy makers are those who “make” policy, individuals who are responsible for policy development and decision-making in the authorities – the head of state, legislators, representatives of executive branch, judges, managers (official participants) and political parties, public organizations, groups of interests, research organizations, mass media, individual citizens (informal participants) are participants of the process.

Policy analysts are experts who carry out a preliminary analysis, prepare recommendations for policy analysis customers.

Carrying out policy analysis it is needed to consult with two groups of stakeholders, with representatives of interest groups and interested authorities.

Interest groups are institutionalized groups of participants, that have a common interest in the policy process (hereby we take into account formal and informal connections linking participants to the group). For example, they are groups of business interests, lobbying groups of entrepreneurs; political parties and movements (for example, “greens”, who should be considered in the implementation of most investment projects that affect the environment). Representatives of interest groups need to hold appropriate consultations in the policy process, especially before making any decisions.

Stakeholders are a part of society that is a carrier of a group (corporate) interest. For example: students, apartment owners in apartment buildings, parents, local council members, bakers, dairy consumers, etc.

The other group of stakeholders, whose representatives are to hold preliminary consultations with, are interested bodies. Normative documents or experts, taking into account the expediency, determine these authorities.

The CMU rules introduce a new procedure for forecasting the impact of decisions taken by the Government on the key interests of interested parties. As a result the forecast of impact of an act on key interests of interested parties (hereinafter – the forecast of impact) is prepared as a mandatory annex to the explanatory note (Annex 41 to paragraph 1 § 50).⁹

The forecast of impact is a complex task and one of the elements of the public policy development process. Therefore, to understand the methodology of preparing a forecast of impact, it is necessary to understand its place in the process of policy development.

⁹ Регламент Кабінету Міністрів України, затверджений постановою...

The forecast of impact is usually prepared when the optimal ways of problem solving are being developed. It is usually carried out before the draft act is prepared. However, we can carry it out in relation to the draft act developed for well-founded reasons without the prior conduct of the appropriate stage of the public policy development.

Before we prepare a draft act, we usually study the state of affairs in certain spheres, while it is recommended to collect and systematize all available information about the stakeholders and their interests. It can greatly simplify to develop the forecast of impact.

We can collect quantitative statistics (number of jobs created, volume of output, wage level, level of execution of court decisions, number of persons sentenced to imprisonment, etc.), and qualitative data (opinions of experts, international organizations in certain fields, results of public opinion polling, other studies). Information should include the most diversified data on various social factors (gender, age, income level, etc.).

To manage this process it is recommended to form a list of sources of information and carry out their constant monitoring. Information on the state of affairs in the field should be formulated in the “policy dossier,” and on the stakeholders – in the “dossier of the stakeholders.”

III. Stakeholder analysis: forecast of policy impact

Policy analysis should aim at identifying stakeholders – all those individuals (groups of people) who are involved in the policy process (both in government and outside the authorities).

The forecast of impact on stakeholders occurs as follows:

- collection and analysis of all relevant data, scientific recommendations, expert opinions, other data for the development of the project of impact forecast;
- determination of the stakeholder, who will be affected by the implementation of the act;
- development of the draft forecast of impact on the basis of the data available to the developer;
- acquainting the stakeholders with the content of the proposed innovations in order to get some feedback on possible changes in meeting their interests in case when the decision is adopted;

- verification (confirmation) of stakeholders' forecasts by experts (representatives of state bodies, research institutions, think tanks or public organizations that are experienced specialists in a particular area of public policy). All the differences between the stated and verified forecasts should be fixed and, if required, further discussed with stakeholders;
- comments and suggestions received from stakeholders and experts are captured or reasonably rejected or adjusted based on available data. At the same time, if necessary, it may be decided to hold additional consultations;
- development of the final version of the forecast of impact.

According to the new wording of the explanatory note, if the draft act on the subject of legal regulation does not have the appropriate effects, this is indicated separately.

Considering the specifics of Ukrainian legislation and practice, the forecast of impact should NOT be developed for the following acts:

- on creation and approval of the working groups on the issues of liquidation of the consequences of emergencies;
- on allocation of funds from the reserve fund of the public budget;
- on delegation of the CMU powers to executive authorities in certain cases;
- on transfer of property;
- on personnel and other organizational and administrative issues;
- on changing the person authorized to sign the international treaty of Ukraine;
- on approval of the financial plan of the economic entity of the public sector of the economy;
- on establishment, reorganization and liquidation of consulting, advisory and other subsidiary bodies;
- on amendments to the CMU Regulations.

In any case (but not exceptionally), the forecast of impact is being developed for:

- draft laws, existing laws that set out in the new edition (the previous text of the law varies by more than half),
- Resolutions of the Cabinet of Ministers of Ukraine.

The prepared forecast of impact and the draft act, in accordance with the procedure provided by the CMU Regulations for the approval of draft acts, must be sent to all interested bodies to enable them to state the impact on

the stakeholders in the spheres, which they are responsible for the formation of the public policy in.

At the same time, one should be aware that according with paragraph 38 of the CMU rules the terms for the approval of the act have not been changed. So, suggestions for the forecast of impact at the conciliation stage can be submitted within a maximum of 30 working days.

Despite the fact that the CMU regulations do not require the drafting of an act solely based on policy documents, the departments responsible for policy making are encouraged to develop a comprehensive policy document, and then prepare, on their basis, draft acts of the Cabinet of Ministers of Ukraine.

It is necessary to ensure a gradual transition to the introduction of the process of developing public policy on the principle of “from a policy document to a subordinate act” (at least for acts that are developed on its developer’s initiative). In this case, it is desirable to carry out a deep forecast of impact once for the whole policy or its significant part when developing a policy document. Later this estimate will be used for a draft act that is submitted within the same policy as it relates to this act.

Thus, before drafting an act, it is desirable to use the tools of development of policy documents envisaged by the laws of Ukraine and Chapter 8 of Section 4 of the CMU Regulation.

The forecast of impact on the interests of the stakeholders is expressed in the appendix to the explanatory note (Annex 4–1 to the CMU Regulation). Annex 4–1 contains a brief description of the essence of the draft act and a table consisting of the following columns:

1. Stakeholder.
2. Main interest.
3. Expected (positive or negative) influence on the main interest, indicating the expected dynamics of changes in key indicators (in numerical or qualitative terms). The column is divided into two columns: short-term impact (up to year) and medium-term impact (over a year).
4. Explanation.

The description of the project should be short, specific, and understandable and contain only the essence of the innovations. The description should answer the questions:

- Who is not satisfied with the current legal regulation and what particularly with?
- What is proposed to change in the relevant regulatory legal regulation and in what a way?

The sentences are to be built as simple as possible with a minimum of coordinated and subordinate clauses. The description should not contain any unnecessary text, in particular, it is not necessary to indicate the formal basis for the development of the project and the acts of legislation that are proposed to amend. It is necessary to minimize the use of abstract structures such as: “medical reform,” “reforming the system of punishment,” “increasing the efficiency of registration,” etc. The main task of the description is for the members of the Government to understand immediately the essence of the proposed solution.

Who are the stakeholders? How to identify them? A department that is to ensure the formation of public policy in a certain field should compile a list of interested parties that are the objects of the influence of public policy in the fields of its responsibility. This stems in particular with the requirements of the Decree of the Cabinet of Ministers of Ukraine dated April 11, 2018, No. 239.

IV. Group of stakeholders for analysis

In order to organize the work with stakeholders it is proposed to proceed from their conditional distribution into six groups:

1. Target group. Separate layers (groups) of the population, having a direct influence on which is the purpose of the policy (including the act).

Testing question:

- Whose life will change because of implementation of the policy?
- Who cannot avoid the influence of this policy?
- Who should change their behaviour because of policy implementation?

2. Group of indirect impact. Separate layers (groups) of the population, having a direct impact on which is NOT the purpose of the act, but such influence will be caused by the implementation of the act.

Testing question:

- Whose life will change because of the direct impact of policies on the target group?
- Who wins or loses due to changes arising from this policy?

3. Group of potential impact. Individual strata (groups) of the population, having a direct impact on which is NOT the purpose of the act, but for which there is an assumption that under certain circumstances the influence may be caused by the implementation of the act.

Testing question:

- Who will be forced to change their behaviour because of policy implementation in specific circumstances?

4. Group with strong authority. Individual groups (organizations, institutions, experts, etc.), that are authorities in a certain field and whose opinion is important for decision-making. Involving this category is important for advocating a draft act.

Testing question:

- Are there any important persons or groups, without who it is impossible to implement the policy?
- Who can prevent implementation of the policy, if not involved?

5. Experts. Specialists in the field of policy who can provide qualified assistance in comparing and predicting both an act and politics in general.

Testing question:

- Who studied the field of politics and published an expert opinion on this topic?
- Who has a detailed action plan for policy implementation?
- Are there any individuals or groups, who are authorities in the field?

6. Groups of interest. Groups that are actively interested in the policy field. Their involvement also contributes to the advocacy of the act.

Testing question:

- Are there any organizations or individuals, who have demonstrated interest publicly?
- Has anyone conducted a public campaign to highlight issues in the relevant field?
- Is there anyone who publishes or broadcasts a public position on these issues?

Thus, identified stakeholders can be divided into the six groups described above. However, a forecast of impact should NOT be prepared for all six groups. The groups described above can be divided into two categories:

I. Category of stakeholders, who are the objects of the influence of public policy – this category includes the following groups:

- target group;
- group of indirect impact;
- group of potential impact.

II. Category of stakeholders, who are not affected, but who facilitate the adoption of an act and can improve its quality. This category includes the following groups:

- group with strong authority;
- experts;
- groups of interest.

We need to develop a forecast of impact **ONLY** for the first category of stakeholders. The act will have an impact during its implementation on this category. The second category is to be involved at the consultation stage – they will promote the advocacy of the act, help to make the act qualitative, advise on the impact on the first category of interested parties.

According to the CMU regulations, public authorities, which position should be taught separately in paragraph 9 of the explanatory note, are not stakeholders. The position of the interested bodies is determined when developing an act, if the development is carried out in the interdepartmental working groups, in the course of approval of the act, during other conciliation procedures.

At the same time, civil servants, state notaries, state executors, servicemen, etc. can be stakeholders, as public policy in a certain field may relate to their social protection, access to the profession, conditions for the provision of services to citizens, etc. Thus, these stakeholders are the objects of public policy; therefore, their interests should be taken into account while a forecast of impact is being prepared.

Stakeholders' analysis. We also should consider that the impact of an act might be different within the same circle of stakeholders of the first category. An act can affect women and men differently, depending on their socioeconomic status, on vulnerable groups even if at first glance such an impact is not obvious. If such an impact differs significantly, when defining the stakeholders, it is necessary to consider the factors that allow the most accurate and detailed description of the impact of the act by dividing the stakeholders into the relevant subgroups.

For example, when making decisions the Government of Canada takes into account the following factors:

- gender;
- age;
- incomes;
- employment;
- marital status;
- education;
- national minority;
- status of an immigrant, foreigner, stateless person;
- residence;
- health (including but not exceptionally disability);
- race;
- other factors that the developer considers necessary.

The selection and use of the above-mentioned factors is carried out, where necessary, depending on the essence of the public policy, which is implemented. Moreover, the factor “gender” is mandatory for application in accordance with the requirements of Article 4 of the Law of Ukraine “On ensuring equal rights and opportunities for women and men.” Also, the developer of the draft act must take into account the factors that may lead to discrimination of individuals or groups of individuals when implementing the act. For this purpose, an anti-discrimination expertise is provided according to Article 8 of the Law of Ukraine “On the Principles of Prevention and Counteraction of Discrimination in Ukraine.”

If the draft act has no impact on the provision of equal rights and opportunities for women and men, and it does not contain any signs of discrimination, this should be noted separately in paragraph 11 of the explanatory note.

Stakeholders are groups (strata) of the population, who are carriers of common interest, make up one group (for example, medium-sized business entrepreneurs). The developer of an act must describe a stakeholder in such a generalized form in Annex 4-1.

At the same time, stakeholders have their own representatives (for example, associations of medium-sized business entrepreneurs) that represent their interests. The developer of the act should conduct consultations with these representatives to identify and clarify the interest of the party and influence on this interest.

It is important to distinguish between interested parties and their representatives / intermediaries in order that the influence of public policy

is carried out on the general interests of individual strata (groups) of the population, and not on the private interests of individual representatives of such a group.

V. Conclusions

Since 2014, there were reforms with multi-level results in the system of public administration of Ukraine. Therefore, we can talk about a new civil service. We have an approved Civil Service Reform Strategy and monitoring of its performance results SIGMA. We have new challenges to governance because of the renewed political situation in the country – the election of the President of Ukraine and parliamentary elections (probably in the fall). We have the main tasks and steps to be taken in the reform in 2019–2020.

The CMU Regulations have been amended, stakeholders analysis and forecast of impact on interests of stakeholders are regulated. Stakeholders are divided into six groups:

- target group;
- group of indirect impact;
- group of potential impact;
- group with strong authority;
- experts;
- groups of interest.

The groups of stakeholders can be divided into two categories:

1. Category of stakeholders, who are the objects of the influence of public policy:
 - target group;
 - group of indirect impact;
 - group of potential impact.
2. Category of stakeholders, who are not affected:
 - group with strong authority;
 - experts;
 - groups of interest.

According to the CMU regulations a forecast of impact must be developed only for the first category of stakeholders indicating:

- stakeholder;
- main interest;
- expected (positive or negative) influence on the main interest;
- explanation.

It is also important to distinguish between interested parties and their representatives/intermediaries in order that the influence of public policy is carried out on the general interests of individual strata (groups) of the population, and not on the private interests of individual representatives of such a group.

Why are stakeholder analysis procedures approved but not fully implemented in direct practice? What hinders and prevents the implementation of innovations?

First, the approved procedures for stakeholder analysis are gradually being implemented in the practice of government activities due to the CMU Regulations. We have a number of training programs, trainings on stakeholder analysis. What is holding back is the professionalism of the performers and the political component. For example, in order to facilitate the preparation of the “Policy Proposal,” the Rules of Procedure of the Cabinet of Ministers removed Annex No. 9 – the template for the preparation of the “Policy Proposal.” That is, in the text of the CMU Regulations there is a “Policy Proposal,” and the training template itself has been removed. Here is a relief for the performers... The political component is related to the oligarchization of political life and the corruption component.

Second, the quality of stakeholder analysis is influenced by “manual” political governance. Ministries are gradually turning from “producers” of policy into “implementers” of policy that has already been “produced” in the Office of the President of Ukraine. Political ratings and attempts to produce popular political and media topics have a significant impact on the “direction” of policy-making: de-oligarchization, planting a billion trees, overcoming the covid locally, and so on. That is, “politics” falls victim to “politics” with frequent changes of ministers as policy makers – the search for “the perfect absolutely loyal professional”...

Third, this paradoxical situation is related to the “simplification” of policy analysis in general and stakeholder analysis in particular. In practice, this is manifested in: “playing in the procedure of policy makers” for the sake of populism and “unprofessionalism” of performers. That is, the situation is unfortunately getting worse...

What we are trying to do in this situation is to continue to teach professional policy analysis and stakeholder analysis. We can not do anything else, so we do. Training professionals is an ungrateful but noble thing...

Bibliography

- Аналітичні записки з розробки напрямків державної політики*, уклад. В.Є. Романов, О.І. Кілієвич, Київ 2001.
- Вироблення державної політики. Аналітичні записки*, уклад. О.І. Кілієвич, В.Є. Романов, Київ 2003, www.IPAS.org.ua/library.htm (accessed: 22.11.2023).
- Вироблення державної політики: рекомендації для України в контексті євроінтеграційного досвіду країн Балтії та Польщі: зб. аналіт. звітів і записок учасників Програми урядового стажування*, уклад. О.І. Кілієвич, В.В. Тертичка, Київ 2006, www.IPAS.org.ua/library.htm (accessed: 22.11.2023).
- <http://ipas.org.ua/index.php/library/educational-materials/348-public-policy-analysis> (accessed: 22.11.2023).
- <https://www.youtube.com/watch?v=uPym71XfkI4>. <https://www.youtube.com/watch?v=jXVwfK3qjGU> (accessed: 22.11.2023).
- Кілієвич О.І., Рябцев Г.Л., Тертичка В.В., *Практикум з підготовки аналітичних документів: навч. посіб.*, Київ 2016, 95 с., www.IPAS.org.ua (accessed: 22.11.2023).
- Офіс реформ [Електронний ресурс], Електрон. Дані, <https://rdo.in.ua/> (accessed: 22.11.2023).
- Про затвердження Положення про Секретаріат Кабінету Міністрів України [Електронний ресурс]: постанова Кабінету Міністрів України від 12 серп. 2009 року, № 850, із змінами і доповненнями, <https://www.kmu.gov.ua/pras/235022359> (accessed: 22.11.2023).
- Про Кабінет Міністрів України [Електронний ресурс]: Закон України від 27 лют. 2014 року, № 794-VII, із змінами і доповненнями, <http://zakon4.rada.gov.ua/laws/show/794-18> (accessed: 22.11.2023).
- Регламент Кабінету Міністрів України, затверджений постановою Кабінету Міністрів України від 18 липня 2007 року, № 950 [Електронний ресурс], Офіц. вісн. України 2007, № 54, ст. 2180, <http://zakon2.rada.gov.ua/laws/show/950-2007-%D0%BF/page> (accessed: 22.11.2023).
- Янг Е., Куїнн Л., *Як написати дієвий аналітичний документ у галузі державної політики: практ. посіб. для радників з держ. політики у ЦСЄ*, пер. з англ. С. Соколик, ред. О. Кілієвич, Київ 2003, www.IPAS.org.ua/library.htm (accessed: 22.11.2023).