

The Choice-Architecture behind Policy Designs

From Policy Design to Policy Practice in the European Integration Context

Edited by:
Michiel S. de Vries
Juraj Nemec
Veronica Junjan



NISPAcee

THE NETWORK OF INSTITUTES AND
SCHOOLS OF PUBLIC ADMINISTRATION
IN CENTRAL AND EASTERN EUROPE



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The Choice-Architecture behind Policy Designs: An Introduction to this Volume

Michiel S. de Vries¹, Juraj Nemec², Veronica Junjan³

This volume is the result of the NISPAcee project PRACTIC, aimed at the sharing and dissemination of knowledge and experience among policy makers and other practitioners on behalf of their utilisation in evidence-based public policy making. The book includes (with the exception of this introduction) the framework chapter, introducing the topic of policy design, four empirical research papers, five case studies and twelve policy papers dealing with different aspects of policy design and policy practice.

As NISPAcee's base is in Central and Eastern Europe, the subsequent chapters especially address the evidence following on from policy processes found in countries belonging to these regions. It is important to make this observation, because the context in which policies-design takes place is deemed to be crucial and the CEE context is rather different from the context in OECD countries. The importance of this context is not always acknowledged by scholars writing on policy design.

Nearly all major scholars theorising about public policies perceive them as choices regarding means and ends to solve societal problems. The logical consequence thereof is to see the design as contingent on the nature of the problem at hand. Simple, straightforward problems are in need of a policy design that is different from the one needed for complex and especially wicked problems. This also applies to problems surrounded by much uncertainty vis-à-vis problems on which much knowledge is available. An overview of such theories on policy designs from a scholarly perspective is provided in the framework chapter 1.1 by Veronica Junjan. The chapter addresses the development in scholarly literature from the 1950s onwards in which the enduring search was for the optimal policy design given the characteristics of the problem at hand.

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This chapter is followed by chapter 2.1 written by B. Guy Peters, emphasising that ‘The assumption of a good deal of design is that one size fits all, and that an effective design in one context equals an effective design in another context. A more realistic conception of design will include the political, economic and social context explicitly in the policy design. In addition, the design must consider adaptation over time as those elements of context continue to change and to require continuing change within the policy.

This continues to be seen in recent literature. Since the famous book by Pawson and Tilley (1997), we witness a call for evidence-based policy promoting policy designs based on scholarly knowledge and empirical references of what works. Already in 2002, Sanderson acknowledged that this idea is based on three assumptions. The first is that policy makers could arrive at more effective and efficient policies by making more use of the available scholarly knowledge. The second assumption is that scholars are able to produce knowledge about the effectiveness of public policies. The third assumption is that policy makers are able to use such knowledge in designing their policies (Sanderson, 2002).

The basic idea behind evidence-based policies is that policy making is similar to providing medicine and that public policies should undergo the same rigorous testing, preferably through experiments with randomised controlled trials before application. Public policymaking should depart from a thorough diagnosis of the problem; transform it from being ambiguous, complex and uncertain into an issue that is solvable. Subsequently, it should search systematically for the best evidence available to remedy the problem (cf. La Caze, 2006; La Caze, 2008; de Vries & Sobis, 2015).

In this regard, scholars promote the use of outcomes of sociological and psychological research as needed evidence (Thaler et al, 2008). Scholars call for the advanced analysis of large, flexible and reliable statistical data (Palangkaraya et al, 2012). They call for commissioned research, including monitoring and evaluation studies through which policy makers actively seek and receive advice from scholars and research institutes in order to increase the effectiveness of new policies. Last but not least, there is a call to disseminate best practices. Those policies which have proved themselves to work somewhere might also be expected to be effective and efficient in solving the problem a policy maker elsewhere is facing.

Basic to the approach of evidence-based policymaking is the sole attention for the strength of the relation between the policy-design and the policy-problem at hand; the crucial question being whether the policy, i.e. the implementation of the policy instruments to achieve specified goals, does significantly change the existing situation in a preferred situation. Within the perspective of evidence-based policymaking, policy makers could do a much better job if only they would incorporate existing knowledge about the effectiveness of policies in general in their own endeavours to solve the societal problems they face.

This is especially seen in the new kid on the block in policymaking called nudging. It is a specific type of evidence-based policy design, having become popular since Richard Thaler received the Nobel Prize in 2017. Nudges are interventions that steer people in particular directions but that also allow them to go their own way (cf. Abdulkadirov, 2016; Alemanno & Sibony, 2015; Pawson, 2001; Pawson & Tilley, 1997). In nudging people, one alters the context in which people make their choices in the hope that they will become more inclined to opt for desired alternatives. When a tax office sends a letter to taxpayers to tell them that already 80 % of people have filled in their tax-forms, they nudge people to follow this ‘widely adopted’ and desired behaviour. When one rearranges goods in a shop it nudges people to buy or not buy certain goods. As Thaler and Sunstein (2008, 6) argue, a nudge is “any aspect of the choice-architecture that alters people’s behaviour in a predictable way without forbidding any options or significantly changing their economic incentives.”

Taking the contextual features of an individual choice into consideration, the question is whether one could alter that context i.e. choice-architecture in such a way that people become inclined to make more optimal choices and show the desired behaviour. According to adherents of this approach “Governments should take seriously the idea of choice-architecture and seek to structure their policies in ways that nudge people towards better choices (in the government’s best judgement, at any rate)” (Low, 2011, 29). Such nudging is based on four assumptions (Rizzo, 2016, 38):

1. There is a set of general normative criteria for “rational” or welfare-increasing behaviour, with respect to both judgment and preferences.
2. Real-world behaviour significantly departs from these criteria.
3. Policy makers have the ability to craft policies that move people towards more welfare-enhancing behaviour.
4. Policies can be carried out without unacceptably high costs in both welfare and freedom.

Despite the fact that such an approach is very appealing, all the above seems perfectly rational, and in itself one would applaud any attempt to make public policies more evidence-based, the criticism on the assumptions of evidence-based policymaking principle is huge. It is increasingly seen in literature that scholars conclude that it is an (almost) impossible endeavour. The reasons have become abundant. For instance, policy makers most often do not have the time to wait for the evidence. Jasanoff (2007) pointed out that uncertainty, ignorance and indeterminacy will always be present, implying that humble policies are the only ones that could fulfil the requirements from an evidence-based perspective. The research method most highly valued in science – the experimental method – is ranked lowest by the users thereof, i.e. the policy makers, because of its low usability (Vedung, 2010).

As to the use of large statistical databases, Palangkaraya et al (2012, 12) conclude that “there are many areas where analysis based on aggregate data is simply inadequate. Especially when the objective of a policy evaluation is to know the differential policy effects on the very unit targeted by the policy”. Palangkaraya et al also argue that there may be “significant aggregation biases if there is significant heterogeneity in the responses” (p. 13), that different data may yield different estimates of the same policy even under a social experiment setting (ibid) and that “sample size limitations and, more importantly, limitations in terms of details at the unit of observations imposed by privacy concerns make it very difficult to construct the counterfactuals” (ibid).

As to copying best practices, many scholars have suggested that the concept of best practices is relative. Best practices depend on context and moment. This makes it rather difficult to find best practices, let alone transfer them to other situations. In spite of good intentions, a best practice often becomes a rather awkward standard that inhibits improvements (cf. de Vries, 2010; Löffler, 1999). Universalists are wrong to assume that managerial practices are culturally neutral and thus applicable to different contexts. Löffler (1999) argued that one has to consider change-triggering stimuli, structural specifics and implementation barriers before transferring best practices.

The preliminary observation is that one needs to unravel the choice-architecture of policy makers regarding their inclination to proceed in one way or another in their policy design. That architecture consists of the context in which policy design takes place, the specificities of the situation in which the problem manifests itself, as well as the characteristics of the problem in need of a solution.

As to the context, one must establish, first of all, whether the national political regime a policy maker is facing reflects the standards of a full democracy in which all the elements of good governance are established, or is rather an autocratic presidential system, a military regime, or a religious state, or some combination thereof. This has severe implications for the preferred way of providing collective goods (de Vries, 2016).

In chapter 2.3, Martin Potůček points to the importance of these factors in recommending scholars to “[B]ecome more reflective of the conditions of democratic society that make public policy schools possible now and in future, and therefore focus not only on the realisation of given political objectives but on their formation as well” And in chapter 3.4, Martin Klus and Juraj Nemec find for Slovakia that although “there is a general consensus that with increasing participation in elections and referendums, the level of democratic legitimacy also increases, theoretical concepts, but also practical approaches towards this phenomenon deviate across the political systems of different nations.”

Second, one has to consider the intergovernmental relations in a country. These determine – at least partly – whether policy makers at the local level have

the autonomy, authority and responsibility to develop policies in a certain policy area. As David Špaček, Mihály Csóto and Nicolae Urs argue in chapter 3.5, the way e-governance is realised also in policy designs, depends on ‘the development of e-government and its enablers (e.g. IDs), the national approach to e-government policy, the level and the readiness of legislation for digitisation, and whether service delivery is organised in a centralised, decentralised or mixed way’ This is related to legal, financial, and political arrangements, through which local policy makers are enabled or limited to even make choices to deviate from existing standards and/or to search for and propose novel solutions based on evidence.

Third, the organisational structure in which a policy design is to be made is at least co-determinative for the processes involved and the effectiveness and efficiency of the result. Whether a policy is designed in a bureaucratic organisation in which hierarchy, rule-following and procedures dominate, or a professional organisation enabling autonomous actions of knowledgeable and experienced policy makers and front-office officials, makes all the difference in a choice-architecture.

The next factor important for the choice-architecture surrounding policy designs refers to the organisational culture. Whether there is a high level of risk-avoidance, whether the culture of the organisation emphasises caring (feminine) or achieving (masculine), whether the long-term or short-term orientation dominates, whether individualism or collectivism is prevalent, and whether the power-distance is high or low, does make a huge difference for the choice in a policy design. In chapter 4.1.5, Almedina Vukić argues for Montenegro, that “effort must be put into building the evidence-based ‘culture’ of policy planning, defining result-oriented priorities and goals and ensuring full costing of strategic documents, as well as reporting on the financial costs of their implementation.”

Last but not least, the choice-architecture is co-determined by the perceptions, values and inclinations of the individual policy maker. This concerns his or her values and attitudes and whether it is, for instance, a true public service motivation or a more selfish attitude. In this regard, as Mitja Dečman argues in chapter 3.2, the design of innovative developments in co-creation and co-production at the local level depend on the perception of citizens as it sees citizens as partners in the development and use of public services, instead of seeing them as customers, deciding to use the service or not, and whether or not policy makers and politicians consider co-creation and co-production as a necessary condition for public innovation. Regarding values, Sovik Mukherjee argues in chapter 4.1.2 that “there is substantial evidence that individual perceptions of ‘what is fair’ are correlated with the economic costs and benefits implied by the respective equity criteria” and that such “differing perceptions are also apparent in the use of equity principles as arguments in bargaining processes”.

Next to the contextual characteristics influencing the choice-architecture is the policy design, i.e. the possibilities to opt for specific policy instruments to

achieve the policy goals are also furthered or restricted by the specifics of the situation at hand. This refers to local leadership, local stakeholders, the local culture, the local socio-economic structure, the local progress in human development, and local path-dependencies. In chapter 3.1, Richard Callahan concludes that political leadership can generate a model of administrative and policy change for building sustainable and just institutions. In addition, we have argued that exemplary political leadership can explicitly address wicked societal problems, with significant human impact’ and that ‘political leadership can successfully address wicked problems’. Similarly, in chapter 4.3.5 Edit Soos argues that leadership responsibility is essential.

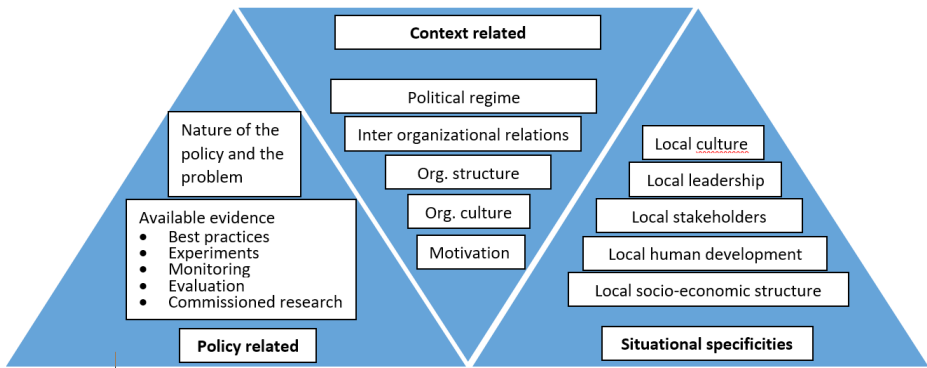
As to taking the local stakeholders along in a policy-design, Geert Bouckaert emphasises in chapter 2.2, that “The classical decision-making within a policy cycle is affected by the urgencies, turbulences, and citizen pressures. There are several elements that have affected and changed such decision-making. The need to be able to continue to deliver public services and to guarantee a continuity of presence in the public sphere in a context of reduced funding, has pushed the public sector to allow for participation through investments and co-production.” If a policy-design does not address the local circumstances or incorporates the local stakeholders, it is doomed to fail, no matter what the success of a best practice in a similar policy elsewhere, the policy’s inherent logic, or the positive evidence of its usefulness provided by scholarly research. The need to switch to participation and partnerships is similarly stressed by Lilita Seimuskane and Eduard Lielpeters (chapter 4.2.2) and Yuri Krivorotko (chapter 4.2.1).

On the other hand, incorporating major stakeholders may open up the policy design to become more ambitious, as Lesya Ilchenko, Jaroslav Dvorak, and Mihaela Carausan argue when introducing policy papers that involve businesses, universities, citizens and active state/local authority support, could accomplish what otherwise could not even be dreamed about. In a similar way, Francesca Ferranti argues in chapter 4.1.1 that “Consultation between representatives of different stakeholders and representatives of the economy and practitioner group (all from various levels) is highly recommended in order to discuss the various positions and arguments, to negotiate the most beneficial solutions and to prioritise it together with several policy objectives that affect the environment.”

The above results in a complex choice-architecture of a policy design as given in Figure 1. Effective and efficient, rational and legitimate policies do not only depend on the nature of the policy and the problem it addresses, but is embedded within a specific context and specificities of the local situation. Sometimes policies do seem optimal given the available knowledge, but simply are not feasible given the contextual features within which the policy has to be decided upon and implemented. Sometimes the local circumstances are so awkward that a best practice turns into a worst practice if applied in that locality.

Most important is that the figure suggests that in order to have more evidence-based policies and to ‘nudge’ policy makers towards such a type of policy-designs, one needs to be aware of the elements in the choice-architecture within which they have to operate in order to be able to change these parameters. The model tells us that this might not be easy, but is rather a complex process. However, the factors mentioned in the model are not always adversary to the emergence of evidence-based policies and an evidence-based policy design. Neither are all the factors of equal importance in all situations. That depends on the context, on the situation at hand and on the kind of policy and on the nature of the problem to be addressed.

Figure 1
The elements in a choice-architecture of a policy design



Source: Authors

The predictable issue with this model is its complexity. However, not all elements need change in order to nudge policy-makers towards a desired policy-design. As Milan Jan Půček in chapter 4.3.4 states for museums in the Czech Republic “a seemingly minor problem may form an obstacle to a more comprehensive change”. The crucial question is where to alter the choice-architecture in order to accomplish a preferred policy design.

The remaining chapters in this volume present texts on actual policy designs and implementation issues emerging in Central and Eastern Europe and in Central Asia. These texts introduce different sub-elements of policy design and policy practice as follows – the improvement of social services and the modernisation of the organisational system of public administration (Bakhytzan Kurmanov in chapter 4.3.3); the rule of law (Polona Kovač in chapter 2.4); the management of human resources in public administration (Nino Dolidze in chapter 3.3); the transparency and ethics (Bruno E. Esien in chapter 4.3.2) the development of digital administra-

tion (Judit Szakos in chapter 4.1.4); the development of professional competences of students (Guliya K. Nurlybaeva in chapter 4.1.3); and the reorganisation of hospitals (Olga Angelovska in chapter 4.3.1).

The main recommendation from scholars from these countries is that the best way to alter the choice-architecture is to involve the main stakeholders. Incorporation of either internal or external stakeholders in the policy design seems to be the crucial element. In Central Asian countries such as Kazakhstan, this refers especially to the involvement of internal stakeholders, i.e. government agencies, while in Central Europe, scholars call for the inclusion of external stakeholders, i.e. societal groups, citizens, NGOs et cetera. In Central Europe, this could be accomplished through consultations and meetings and the creation of community-based organisations. In Central Asia, one seeks a solution by bringing different governmental agencies into the policy design.

What is most effective depends on the analysis of the choice-architecture and the detection of the major issues therein. The studies at the end of this volume all seem to point out that regarding Central and East Europe, the crucial problem is the dominance of the ‘top-down’ approach in policy making. According to the authors, this is still visible in the new EU-member states in Central Europe although opportunities do exist to alter this in those countries. In Central Asian countries, this top-down approach has never changed and has always been completely determinative for the policy design. Therefore, the intervention in the choice-architecture in Central vis-à-vis Eastern Europe needs to differ. In many central European countries, involving the people might do the trick, but in many central Asian countries, higher expectations exist regarding the creation of alliances among government agencies as they are seen as the main stakeholders.

Concluding, this introductory chapter put the policy design within a contextual and situational perspective. The proper kind of policy design does not only depend on the characteristics of the policy problem, but also on the specifics of the context and the situation at hand. To change such a policy design needs to take the whole picture into account, i.e. the choice-architecture the policy maker is facing. This introductory chapter does not suggest that all the elements therein are of equal importance. That varies as does everything in life. The model does imply that the effectiveness of an intervention is dependent on a proper analysis of the context and the situation at hand and the singling out of the most important issue. Only after such an analysis, might an intervention altering the nature of that issue be expected to become effective.

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