

Mainstreaming is one concept that since the 1990's has gained popularity in international spheres. The United Nations¹, the Council of Europe² and the European Commission³ have been developing gender mainstreaming with more or less success for some time. The term non-discrimination mainstreaming is now used at the European Union level to include other groups, which have been discriminated against, amongst which lesbian, gay, bisexual and transgender (LGBT) people.⁴ This factsheet will look at equality mainstreaming (as going beyond the anti-discrimination framework to achieve equality in practice). After defining the term equality mainstreaming, it will highlight why this methodology is important and what are the conditions for it to work. Finally some sample questions and recommendations are given to contribute to the process of equality mainstreaming for policy-makers.

1. Definition of equality mainstreaming

Equality mainstreaming is based on the idea that equality is an aim to achieve in decision-making. In order to achieve equality, the impact of decisions on all groups should be considered. Therefore concern for groups which have been traditionally discriminated against is brought to the core of policy making.

When equality is mainstreamed, concern for real equality or equality of outcomes is one guiding principle in making political choices. Another element of equality mainstreaming is the participation of excluded groups in the decision-making process. This is done at different stages of the decision-making process by consulting groups which are marginalised. Equality mainstreaming opens the promise of greater consideration of LGBT issues by decision-makers. It presumes that in all decisions the impact these will have on LGBT people is assessed.

Equality mainstreaming complements but does not replace other systems put in place to achieve equality such as anti-discrimination legislation, positive action and a rights-based approach. Equality mainstreaming is built on a different framework from legislation, which is based on an individual justice model of equality. Equality mainstreaming is more likely to address institutionalised discrimination, structural discrimination and unmet needs of certain groups which are invisible in society.

Equality mainstreaming means that attention is being paid to avoid possible discrimination on the grounds of sexual orientation⁵, gender identity⁶ or gender expression.⁷

¹ UN ECOSOC Resolution 1997/2 describes gender mainstreaming as the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality. Gender Mainstreaming: Strategy for Promoting Gender Equality Office of the Special Advisor on Gender Issues and Advancement of Women, 2001.

² Recommendation No. r (98) 14 of the Committee of Ministers to Member States on gender mainstreaming (Adopted by the Committee of Ministers on 7 October 1998 at the 643rd meeting of the Ministers' Deputies); EG (99) 13 – Gender mainstreaming: practice and prospects, report prepared by a consultant expert; CDEG-GM (2001) 4 – Report of the informal Council of Europe network on gender mainstreaming (Strasbourg, 3 October 2001).

³ For more information see http://europa.eu.int/comm/employment_social/equ_opp/gms_en.html

⁴ Research commissioned by the European Commission: Centre for Strategy and Evaluation Services Non discrimination mainstreaming - instruments, case-studies and way forward. http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mainstr07_en.pdf

⁵ Sexual orientation refers to a person's sexual and emotional attraction to people of the same and/ or different sex.

⁶ Gender Identity is the individual's gender concept of self, not necessarily dependent on the sex they were assigned at birth. Gender Identity concerns every human being and it is not only a binary concept of either male or female. Please see also: European Court of Human Rights, Case Goodwin v UK, Application No 28957/95, judgement of 11 July 2002, also: X, Y and Z v UK (1997) 24 EHRR 143, and: Court of Justice of the European Communities, Case P v. S. and Cornwall County Council, Case C-13/94, Judgment of the Court of 30 April 1996.

⁷ Gender expression relates to the expression of oneself in external presentation and/or appearance through for instance behaviour, clothing, hair-cut, voice and body characteristics.

2. Why is Equality mainstreaming important?

There are several reasons why such an approach is useful:

- **Better decision-making and implementation:** It allows for making better policy, reflecting the diversity of different groups and overcoming power structures in society, and also to effect changes in policy as necessary.
- **Increased awareness of diversity and needs:** Equality mainstreaming creates a change in the culture of the organisation and society which becomes more open to diversity and to differences.
- **Social inclusion and cohesion:** since it takes into consideration the various needs of the members of society and treats them equally. It ensures that all groups and individuals within society are duly served in the provision of public services and care, and are represented in society and its power structures.
- **Preventive vs. punitive:** because the consideration for discriminated groups takes place at the time of decision-making, it prevents discrimination from occurring. It is very different from anti-discrimination legislation in that it operates at the time when the policy is developed or the legislation drafted (preventive) rather than after the

discrimination has occurred (curative), e.g. through a legal judgment. The idea is to “get it right” immediately and avoid discrimination of LGBT people.

- **Law is not always the answer.** The good implementation of law often requires cases to be taken in the courts. It is very difficult for individuals to take cases: it is a public coming out, it takes time, it costs money, it is difficult to find lawyers that are experts in the area of sexual orientation discrimination, gender identity or gender expression.
- **What appears neutral can impact negatively on LGBT people.** Policies which implement the law can have an adverse impact on LGBT people. Some policies seem neutral but have a detrimental effect. For instance, in countries which do not recognise same-sex marriage, benefits restricted to married partners are not available for same-sex couples. An indirect discrimination is created from the fact that this benefit is linked to the requirement of marriage. This is also the case of many policies in relation to families which are based on the premise that all families are based on opposite-sex relationships.

3. What are the conditions for equality mainstreaming to work?

In order to allow for a process which is open, transparent and meaningful, the main pre-requisite is proper **consultation** of representative organisations to be informed of the needs of LGBT people and relevant actions to meet them. Another important factor is the existence of **data and research** to demonstrate the lived reality of LGBT people. For instance data are needed in relation to access of LGBT people to employment, education, health care, goods and services or the occurrence of crimes and violence motivated by bias against LGBT people. This can also highlight areas which need further attention and assess the needs of LGBT people in these areas.

Information needed can be collected through different means⁸:

- Case-law
- Research
- Data collection (quantitative or qualitative)
- Consultation with representatives of excluded groups

Another important element to support good equality

mainstreaming is **training** of policy makers on issues affecting marginalised groups. For instance, training on issues related to LGBT people can offer decision-makers a better understanding and integration of the issues in the decision-making and the implementation of policies.

Equality mainstreaming requires developing a **framework for analysis**. Discrimination can happen at **different levels** in society or organisations and at **different times**:

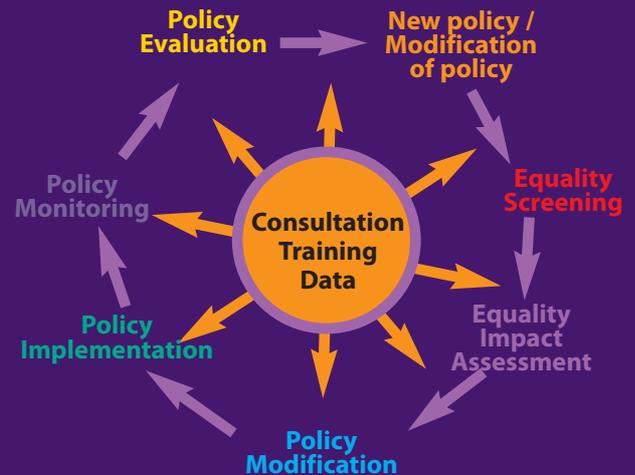
- Discrimination during the development of the policies: this is the type of discrimination we want to address in particular with equality mainstreaming at EU level since the EU plays a role as policy maker rather than services provider.
- Discrimination in employment and organisation policies and the need to diversify the workforce.
- Discrimination in the delivery of goods and services.
- In the context of the EU institutions it is important to remember the Commission's role as a funding organisation and the degree to which equality mainstreaming needs to be addressed through analysing funding decisions and suppliers.

⁸ For an interesting overview of data collection methods, see European Handbook on equality data http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/hb07_en.pdf

4. Process

The mechanism consists of screening policies to find the ones which have an impact on certain groups (equality screening). The impact of the policy is then assessed to see whether the policy or its implementation will have any detrimental effects (impact assessment). This presupposes the existence of information to know about the exclusion or detrimental impact and also the consultation of groups which have been identified as potentially affected.

The process should be on-going and integrated in policy-making and not an additional step. It should happen from the very beginning of the discussion of the policy. It is better performed in-house with expert advice than with external intervention as this allows for a change in the culture of the organisation and the administration.



5. Thematic questions

These issues or questions can offer some help when seeking to assess the impact of a decision on LGBT people. These questions are by no means exhaustive, and are intended as indicative of some recurrent issues.

Health

There are many issues in relation to health care for LGBT people. Many LGBT people encounter discrimination in accessing services. The following are a few questions highlighting issues met by LGBT people in accessing health.

- Has medical staff been trained in dealing with LGBT patients (anti-discrimination training)?
- Are same-sex partners included as next of kin in the hospital's policy?
- Are there adequate mental health services to deal with LGBT people (especially youth) facing troubles as a consequence of victimisation, isolation or marginalisation?
- Are services for prevention and treatment of HIV/ AIDS and Sexually Transmitted Infection accessible anonymously to LGBT people of all ages?
- Are medical employees aware of their responsibility to respect the privacy of their patients?

Education

Several measures are needed to increase equality at school.

- Has the school created policies to combat bullying at school, on the grounds of (perceived or actual) sexual orientation and gender identity and expression?
- Are teachers offered training on LGBT issues?
- Has the school agreed equal opportunity policies for teachers regardless of their sexual orientation and gender identity?
- Are textbooks and curricula inclusive of LGBT people and their families?
- Does sex education include mention of different sexual orientation?

Policing

In order to appraise the policies put in place, the following questions should be considered:

- Is there a legislation to deal with hate crime targeting people perceived as LGBT?

- Is the occurrence of violence against lesbian, gay, bisexual and transgender people recorded and monitored?
- Has the police been trained on dealing with victims of homophobic/transphobic crimes?
- Has the police approached LGBT organisations to work together?
- How is the police behaving during Pride marches?

Immigration and asylum

Some of the obligations referred to are prescribed by law so the lack of implementation could also result in cases being brought before courts.

- Have the obligations of the directive on the freedom of movement been correctly implemented in all member states?
- Have member States who recognise same-sex partnerships agreed to recognise those from other member States as equivalent?
- Are the public authorities dealing with families issues aware of relevant directives?
- Have the obligations of the directive on the definition of refugee been correctly implemented in all member States?
- Are the personnel working on immigration aware of the obligations in the directive?
- Is diversity training provided to the personnel working on immigration?
- Is diversity training provided to the translators in asylum cases?

EU Institutions

These are a few questions in relation to the EU institutions, which are by no means exhaustive:

- Will the EU Commission develop an inter-service working group such as the one in relation to disability, gender and race to deal with all aspects of discrimination and inequality on the ground of sexual orientation and gender identity?
- How will issues in relation to rights of LGBT people be represented in the new Fundamental Rights Agency?
- How will the Gender Institute consider the particular issues facing transgender people?
- Are staffing rules compliant with the Directive on employment?
- Are specific difficulties for LGBT people in accessing their rights in the fundamental rights impact assessment conducted by the Commission taken into account?
- How will data collection be developed in relation to LGBT people?

⁹ Directive 2004/58/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, [2004] OJ L229/35.

¹⁰ Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, [2004] OJ L304/12.

6. General recommendations on dealing with LGBT issues

- Equality mainstreaming questions and challenges heteronormativity¹¹, and instead caters for all regardless of their sex, sexual orientation, gender identity or gender expression amongst other grounds. This does not mean that in equality mainstreaming these characteristics are disregarded, but on the contrary the policies are developed with full knowledge of social diversity and ensure that they have an equally beneficial effect for all.
- At the individual level, there should be no assumption about a person's sexual orientation or gender identity.
- The group constituted of LGBT people is varied and constituted of people with invisible and sometimes visible identities.
- Policy in relation to partnerships and family should be adapted to include same-sex couples and rainbow families.
- Policy decisions and implementation should always pay respect to a person's right to privacy.
- Use of data for evaluation of policy: the evaluation can be done with the use of qualitative and quantitative data.
- Multiple identities and multiple discrimination need to be part of the picture. It is important for decision makers to remember the intersection between different identities for example sexual orientation and age, or nationality and ethnic origins.
- Training on diversity should be mainstreamed in schools and educational institutions and professionals' training. Specific emphasis on diversity should be integrated in the curricula of providers of goods and services, in the police academy, as part of the medical studies or teachers' training.

¹¹ Heteronormativity is the assumption that everyone is heterosexual and that the norm is heterosexuality. This assumption denies the existence and the validity of sexual orientation different from heterosexuality. It also embeds the invisibility of LGBT people in the action of states authorities.

More information on equality mainstreaming

Centre for Strategy and Evaluation Services for the European Commission Non discrimination mainstreaming - instruments, case-studies and way forward, 2007

http://ec.europa.eu/employment_social/fundamental_rights/pdf/pubst/stud/mainstr07_en.pdf

Office of the First Minister and Deputy Minister of Northern Ireland, Proposals for a draft sexual orientation strategy and action plan 2006 – 2009 <http://www.ofmdfmi.gov.uk/sexualorientationstrategy-5.pdf>

Jo Shaw, Mainstreaming Equality in European law and Policy Making, ENAR, 2004 http://www.enar-eu.org/en/publication/reports/mainstreaming_04_en.pdf

For more information please contact:

Christine Loudes

Policy Director

ILGA-Europe

rue de la Charité 17

Brussels B-1210

Belgium

christine@ilga-europe.org