

Fact sheet on the opt-out solution

Current situation

In the context of organ donation, the requirements for the removal of organs, tissues and cells are governed by a variety of regulations. In European countries, a distinction is made between two models for expressing intent. These are the consent solution and the opt-out solution, both of which are applied in restricted and extended forms.

In Switzerland, the extended consent solution has applied since the Swiss Transplantation Act came into force in 2007. Previously, transplantation medicine was regulated at the cantonal level, with the cantons recognizing both models for expressing intent. There is currently discussion in Switzerland about whether the system should be changed to an extended opt-out solution. The popular initiative "Promote organ donation – save lives" was filed in 2019, with the aim of implementing the opt-out solution in Switzerland. The Federal Council opposed the initiative with an indirect counter-proposal. The aim of the latter is also to see the opt-out solution introduced, but in an extended form with the inclusion of relatives.

Overview of the models for expressing intent

	Consent solution	Opt-out solution
Restricted version	<p>The removal of organs, tissues and cells is only permitted if the deceased person has given consent during his or her lifetime (opt-in).</p> <p>If no consent is given, this is considered a refusal.</p>	<p>The removal of organs, tissues and cells is permitted if the deceased person did not object to this during his or her lifetime (opt-out).</p> <p>The lack of an opt-out is deemed to constitute consent to organ removal.</p>
Extended version	<p>If the wishes of the deceased person are not known, the next of kin must decide on organ removal in accordance with the presumed wishes of the deceased person.</p> <p>This regulation applies in Denmark, Ireland and Iceland.</p>	<p>The next of kin also have a right of opt-out. They may refuse organ removal on behalf of a deceased person if a donation is presumed not to be in accordance with the wishes of the deceased person.</p> <p>This regulation applies in Austria, Belgium, the Netherlands, England, Finland, Norway, Italy, Spain and France, among other countries.</p>

Comparison of the consent solution and the opt-out solution

The consent solution has the advantage that people actively and consciously decide for or against organ donation when expressing their wishes. However, it also means that more than 50 per cent of the population do not address the issue of organ donation.¹ In five out of ten cases, the wishes of the deceased are unknown and the decision about organ donation is delegated to the relatives, who have to act as representatives for the deceased person's presumed wishes.² If the relatives do not know the wishes of the deceased person, the majority of them refuse a donation.³ As a result, despite the high level of willingness to donate among the Swiss population, a deceased person's wish to donate organs is often not taken into account. The opt-out solution appeals strongly to the personal responsibility of individuals. This can be a relief for relatives. A switch to the opt-out solution offers no guarantee of more organ donations. However, it holds great potential. The National Organ Donor Register plays a key role in this context. For the sake of clarity about the wishes of deceased persons and to ease the burden on relatives and hospital staff, the register should be kept as a yes/no register even after a change of system.

Declaration scheme

In addition to the consent solution and the opt-out solution, a declaration scheme is also being discussed on the basis of an opinion issued by the National Advisory Commission on Biomedical Ethics (NCE). In the declaration scheme, individuals are to be regularly prompted to consider the issue of organ donation and to express their wishes.⁴ However, as there is no obligation to express wishes, this model must be combined with the consent solution or the opt-out solution. Even a declaration scheme does not provide absolute certainty about the wishes of a deceased person in individual cases. Germany voted on a declaration scheme around a year ago and is due to introduce it in 2022 at the earliest.

¹ Wiedenmayer G. "Einstellung und Verhalten der Bevölkerung zum Thema 'Spenden von Organen, Geweben und Zellen': Veränderungen von 2007 bis 2017 – Eine Auswertung der Schweizerischen Gesundheitsbefragungen (SGB) von 2007, 2012 und 2017" [Attitudes and behaviour of the population regarding the "Donation of organs, tissues and cells": changes from 2007 to 2017 – an evaluation of the Swiss Health Surveys (SHS) from 2007, 2012 and 2017]. 2019. www.aramjs.admin.ch/Default.aspx?DocumentID=50289&Load=true

² Swisstransplant. "Neuer Höchststand an Organspendern in der Schweiz" [New record high number of organ donors in Switzerland]. *Schweizerische Ärztztg.* 2019, 100(05), p. 125.

³ Swisstransplant. Swiss Monitoring of Potential Donors (SwissPOD) reporting. 2018.

www.swisstransplant.org/fileadmin/user_upload/Infos_und_Material/Statistiken/SwissPOD/TX_S1_2018_D.pdf; Weiss J., Immer F. "Organspende in der Schweiz – explizite oder vermutete Zustimmung?" [Organ donation in Switzerland – explicit or presumed consent?]. *Schweizer Ärztztg.* 2018, 99(05), p. 137–139.

⁴ National Advisory Commission on Biomedical Ethics. Press release "Organspende: Die NEK favorisiert eine Erklärungsregelung" [Organ donation: the NCE favours a declaration scheme]. Bern, 9 September 2019. www.nek-cne.admin.ch/inhalte/Medienmitteilungen/de/MM_Organspende_DE.pdf

The opt-out solution ...

... provides reassurance, clarity and relief: an explicit "no" can be bindingly recorded in a centrally maintained register.

... is not automatic organ donation. A discussion is always held with the relatives.

... raises awareness about organ donation among the general public.