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New proposal on organ donations – a good or a bad idea?

Donor organs such as hearts, lungs and kidneys are in short supply in Switzerland. That's why the Federal Council and parliament want to change the national organ donation system, moving from explicit to presumed consent. A referendum has been called on the issue, with voters due to give their verdict in May.

SUSANNE WENGER

At the end of last year, 1,434 anxious, hopeful people were on the official Swisstransplant waiting list for a new organ. In 2021, the phone call came too late for 72 people, who died while still waiting for a suitable organ. Organs from 166 people who died were transplanted in the same year. Although this was more than in the previous year, Switzerland's organ donation rate is low compared to other countries. This does not appear to be down to any marked reluctance to donate organs. On the contrary, surveys show that the majority of the population are favourable to the idea. Nevertheless, only a relatively small number of people explicitly give their consent on an organ donor card. The Federal Council and parliament want to maximise the potential for organ donation by altering the principle of consent.

Since 2007, organ donation after death has been governed by an explicit opt-in model. It means that only people who have given their consent while still alive are permitted to be donors. The government is seeking to reverse this policy, whereby anyone who does not wish to donate their own organs must make this known during their life-

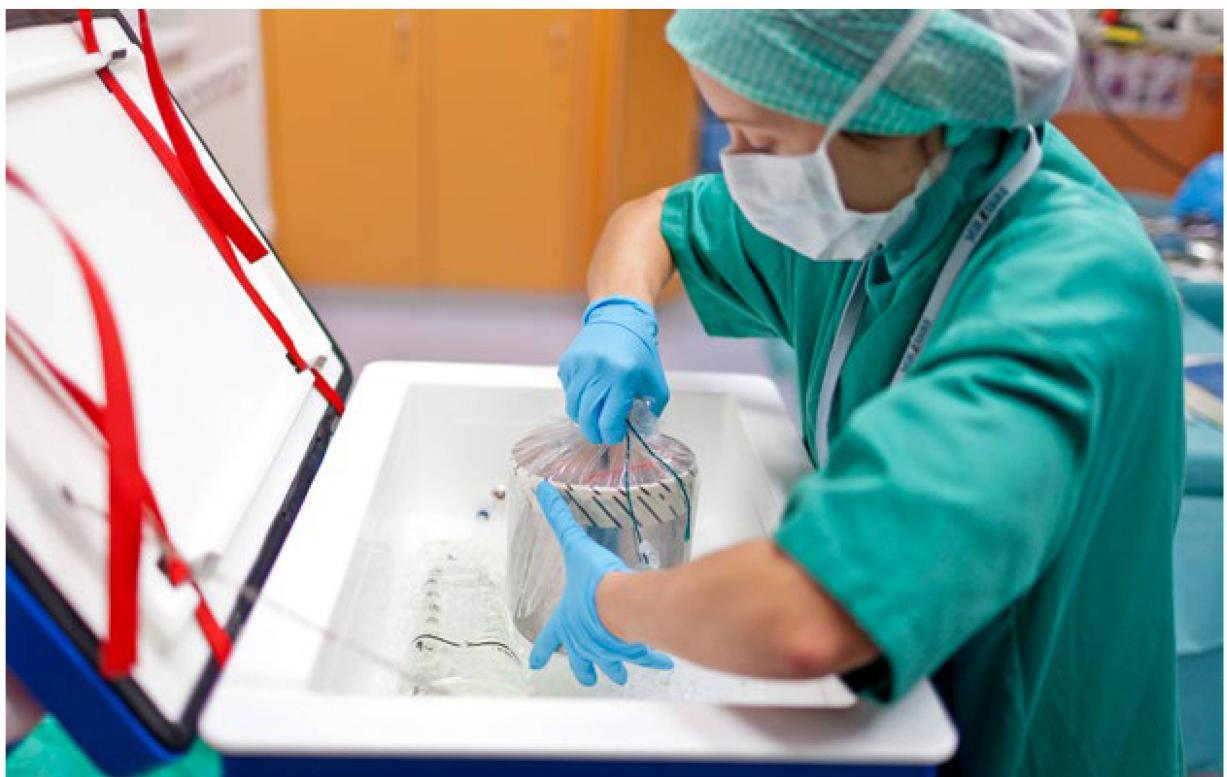
time. This is referred to as the presumed consent or opt-out model, which applies in several European countries including France, Italy, Austria and Spain. The organ donation rate in these countries is notably higher than in Switzerland. New research shows that this is attributable in part to the system of presumed consent, said the Federal Council in its dispatch to parliament.

Broader application

The government decided to intervene after a campaign group in French-speaking Switzerland submitted a popular initiative called "Donate organs – save lives" in 2019, calling for a switch in favour of the opt-out system as well as strict implementation of the regime. For the Federal Council, this initiative overstepped the mark. In response, the government submitted to parliament an indirect counterproposal to amend the Transplantation Act, allowing for a broader application of the principle of presumed consent. Loved ones of the deceased must also be consulted, says the Federal Council. They should retain their current right to

A cooler box containing a donor heart arrives in the operating theatre at a Zurich hospital.

Photo: Keystone



express their opinion, provided nothing attests in writing to the deceased having explicitly ruled out organ donation. If no loved ones can be contacted, the removal of organs will not be permissible unless there are clear instructions to the contrary.

Furthermore, proactive measures will ensure that all sections of the population are informed of their presumed consent. A clear majority in parliament voted in favour of this wider interpretation of the opt-out model. The authors of the original initiative withdrew their proposal on condition that the indirect counterproposal comes into effect. However, the counterproposal now has to survive the ballot box, after a referendum was submitted in January 2022 by campaigners who say that Switzerland needs to debate the matter.

Not without “informed consent”

The referendum was forced not by political parties or associations, but by private individuals and experts from the fields of healthcare, law and ethics. Susanne Clauss, co-chair of the referendum committee, is one of them. Clauss, who comes from Berne, wants the current system – voluntary, informed consent, as she puts it – to remain the same. Without informed consent, which is a key principle in medicine, organs should not be removed, says Clauss, a nurse and midwife who runs a home birthing service. “If there is no clear evidence that the deceased wanted to donate their organs, organ removal is unethical and questionable on constitutional grounds.”



“This will put loved ones under more pressure.”

SUSANNE CLAUSS
CO-CHAIR OF THE REFERENDUM COMMITTEE

Most opponents of the counterproposal will agree that a sufficient supply of donor organs is in the public interest. But they doubt whether the principle of presumed consent will solve the problem. And the system would involve the government encroaching on personal freedom, which also extends to the bodies of the deceased, they argue. If staying silent is deemed to be the same as giving consent, this could erode the right to bodily autonomy.

“Physical integrity preserved”

Clauss disagrees with the assertion made in the parliamentary debate that a broader application of the principle of

presumed consent is good news for loved ones. In her job, she has often seen how stressful the decision on donating organs can be for them. This will now put them under even more pressure. “Society will expect them to give consent on behalf of the deceased,” she says. Organ donation at the end of life is a personal matter on which debate is split not only along party-political lines, but also shaped by personal values and experience. Clauss, a local SP politician in the city of Biel, opposes the idea of presumed consent, whereas



“Enough safeguards have been put in place.”

FRANZ GRÜTER, LUCERNE NATIONAL COUNCILLOR
FROM THE RIGHT-WING SVP

most of her Social Democratic parliamentary colleagues at national level voted in favour of it.

Conversely, Lucerne National Councillor Franz Grüter from the right-wing SVP supports the law change, but his parliamentary party does not. “Enough safeguards have been put in place to ensure that the physical integrity of organ donors is preserved,” he says, adding that people, while alive, should be trusted to be able to say no if they want. And if they don’t specifically say no, their loved ones can still say no if they think the deceased would have objected to organ donation.

Concern for his daughter

This issue is close to home for Grüter, an IT entrepreneur. His 26-year-old daughter suffers from a heart condition and has already had six operations. “She is doing well at the moment but will probably need a donor heart eventually,” he says. Four out of five donor hearts needed in Switzerland come from abroad, as he is aware. The country’s low donation rate gives Grüter pause for thought. As a father and politician, he has put himself on the organ donor register and wants to get involved in the referendum campaign.

In addition to presumed and explicit consent, a theoretical third option is also possible: mandatory choice. The model would regularly require people – when visiting their GP or renewing their identity card, for example – to state whether they are willing to donate organs. The Swiss National Advisory Commission on Biomedical Ethics recommends this approach. Germany recently introduced it to complement its opt-in model. However, Swiss parliamentarians have rejected related motions, saying its implementation would be too laborious.