The Law on Organ Donation in Germany: A Declaration-Based Solution

In Germany, a declaration-based solution has been in force since 1 November 2012. The aim of the declaration-based solution is to encourage the willingness to donate, so as to give more people the chance to receive a life-saving organ. This approach is designed to provide independent and unbiased advice to everyone living in Germany: each and every person should regularly be offered the chance to seriously (re)consider their personal attitude to organ donation, and to document their decision by making a written declaration. Accordingly, all persons aged 16 and over with health insurance are contacted at regular intervals by their public or private health insurer and encouraged to make a voluntary decision about organ and tissue donation. This decision can be given as a “Yes”, “No” or “Yes, with restrictions” declaration – or the decision can be delegated to another individual. To document this declaration, public and private health insurers provide their policy holders with organ donor cards.

While no-one is coerced into making a decision, you should remember that, if the worst comes to the worst, a failure to make a declaration will mean that your relatives will have to make the decision on your behalf.

Public and private health insurers do not themselves keep a record of the declaration you make. There is no register in which the decisions made by private citizens are saved. In the long term, there are plans to store the decision for or against the donation of organs or tissue on the electronic health insurance card.

The organ donor card

The decision for or against organ donation can be documented on the organ donor card. The organ donor card is an official, legally-valid document. It ensures that your decision will be honoured after your death. We recommend that you carry your organ donor card as part of your personal ID. Please always ensure that your relatives know about your decision – and let them know where you keep your organ donor card.

1 Write down your name, date of birth and address in this space.
2 If you check this box, you agree to donate any organs or tissue that may be required. This declaration can be made by anyone aged 16 and over.
3 You can select this option to exclude specific organs/tissue from your donation. You must state these by name.
4 You can select this option to restrict your donation to specific organs/tissue. You must state these by name.
5 If you check this box, none of your organs or tissue will be donated. This declaration can be made by anyone aged 14 and over.
6 If you check this box, another person will make the decision on your behalf. You should enter their name and address in the space provided. Please inform this person about their responsibility. We recommend that you carry this person’s contact details with the organ donor card.
7 You must sign and date the organ donor card to make it a legally-valid document.
The decision for or against organ donation can also be documented as part of a living will

A living will is used to document the medical procedures that can and cannot be performed on an individual once the person signing the will is no longer legally competent.

A living will can also be used to document a decision for or against organ and tissue donation. We recommend the following wording:

“In the event of my death, I agree to the retrieval of my organs for use in transplantation.” (Include “I have completed an organ donor card.” if relevant). “If I should be considered as an organ donor due to a medical assessment of my condition indicating the permanent and irreversible total failure of the cerebrum, cerebellum and brainstem (“brain death”), and if medical procedures would then need to be performed that I have prohibited in my living will, then (alternatives)

• my organ donor declaration takes priority
• the decisions made in my living will take priority
Or
I do not agree to the retrieval of my organs or tissue for use in transplantation in the event of my death.


Informed consent

The deceased must have given personal consent for organ retrieval – e.g. on an organ donor card – before his/her death. If no consent has been given, relatives can make a decision about retrieval. This decision is based on the known or presumed wishes of the deceased on the subject.

Presumed consent

If the deceased has not expressly prohibited organ retrieval before his/her death – e.g. in an opt-out register – then organs may be retrieved for transplantation. In some countries, the right to opt out is extended to relatives.

Declaration-based

In Germany, all citizens are given the chance to consider their own willingness to donate organs and tissue as an informed decision that is then put down in writing. Under current German law, all public and private health insurers write to their policyholders every two years, asking them to make a personal decision about organ donation and including an organ donor card on which the individual can document this decision. A declaration can be made for or against organ and tissue donation or the individual can decide to make no decision at all at this time.

The legal situation in countries you visit on holiday may be very different. Wherever you are going, we advise you to carry a completed organ donor card as part of your ID and to inform close relatives or fellow travellers about your decision.

A completed organ donor card from Germany is a legally-valid document in other countries. To ensure that your personal decision is understood and honoured in countries where English is not spoken, the German Federal Centre for Health Education (BZgA) has translated a fact sheet about the organ donor card into all of the EU’s 23 official languages.

For further information about organ and tissue donation, please visit: www.organspende-info.de.