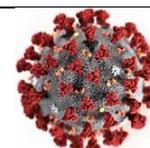


# National COVID-19 Science Task Force (NCS-TF)



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| <b>Type of document:</b> ELSI Report  |                                     |
| <b>In response to request from:</b>   | <b>Date of request:</b>             |
| <b>Expert groups involved:</b> Ethical, legal, social issues  | <b>Date of response:</b> 09/05/2020 |
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| <b>Comment on planned updates :</b>   |                                     |
| <b>Title: Social, legal, and ethical issues of Test-trace-isolate-quarantine strategies</b>   |                                     |
| <b>Summary of request/problem :</b> The Scientific task force was tasked with refining aspects of possible transition strategies. In complement to the “SARS-CoV-2 Contact tracing strategy: epidemiological and strategic considerations», the Ethical, legal, and social group explored ELSI aspects of Test-trace-isolate-quarantine strategies.   |                                     |
| <b>Executive summary</b><br><br>Together with testing, analog contact tracing, and digital contact tracing, protection of those in isolation and quarantine -legally, socially, and economically- is an essential component of the Test-trace-isolate-quarantine (TTIQ). Without this fourth pillar, the other three will not function. A TTIQ strategy requires altruism, which should be facilitated and recognized. It also requires great clarity on who pays for testing, contact tracing, isolation, and quarantine, what happens to those identified as ill or as contacts, the reasons for policy choices including the trade-offs involved and why chosen policies fulfill the subsidiarity requirement, and the status of digital proximity tracing. Cooperation with the strategy must be made easy for populations with very different pressures and needs; its success therefore depends on our ability to clarify relevant information to all of these populations, and to make cooperation feasible for all of them as well. |                                     |
| <b>Main text</b><br><br><a href="#">The Test-trace-isolate-quarantine strategy needs four pillars</a><br><br>Together with testing, analog contact tracing, and digital proximity tracing, <b>protection of those in isolation and quarantine -legally, socially, and economically-</b> is an essential component of the Test-trace-isolate-quarantine. Without this fourth pillar, the other three will not function.<br><br>People who need to go into quarantine need to have adequate protection and assistance, including testing that is completely free of charge. In order to make quarantine a realistic option, legal protection must exist against job loss for the duration of quarantine; social protection must exist against loss of income for the same period; those affected by the isolation and quarantine of others, for example when a parent or caregiver is quarantined, should be provided with alternative solutions.   |                                     |

These considerations are important from an epidemiological perspective: If quarantine is perceived as having negative personal consequences, compliance and support will be low, and the effects of contact tracing and quarantine will be minimal.

Since isolation and quarantine aim to protect others, it should be clear that the families of those who go into isolation and quarantine are among those who should be protected as well. For quarantined persons who live with others, personal protective equipment should be provided to their families. For those who live with persons who are particularly vulnerable to COVID-19, an alternative to home quarantine should be provided. Since quarantine requires the assistance of at least one person, the legal and social protections required for quarantined persons should also be extended to their informal caregivers.

The economic aspects of Test-trace-isolate-quarantine are addressed by the Economics group in the policy brief on “Economic Considerations on the Cost of Testing and Quarantining”. In this brief we address the ethical, legal, and social aspects of this strategy.

### The strategy requires altruism and this should be explicitly recognized

A TTIQ strategy implies a number of altruistic behaviors on the part of individuals. Testing with benign symptoms, agreeing to comply with contact tracing, isolating when not very ill, going into quarantine when not symptomatic, all this is not for the benefit of the person herself; it is behavior adopted for the benefit of others and at a cost to oneself. Whether voluntary or compulsory, and whether or not an altruistic motivation is present, it represents altruistic behavior. This has several implications :

- These behaviors should be made as easy as possible.
  - Test costs should not be born by individuals when they are done to protect others or to enable return to work.
  - Isolation and quarantine should not risk job loss or cause loss of income.
  - Deductibles and co-pays are designed as disincentives. Maintaining disincentives as regards tests that should be widespread for epidemic control is counter-productive.
- Even if there are no financial costs, there is still personal cost. It is still altruistic. Whether or not obligations exist to go into isolation or quarantine, the solidaristic nature of these actions should be stressed.

Altruistic behaviors should be facilitated. They should also be promoted and recognized as such explicitly. For example, testing centers could implement methods applied by blood banks such as calls to solidarity, thanks, and snacks for those who come to be tested. During confinement, financial support for those unable to work was cast as a safety net. In quarantine, such support might better be cast as payment for services rendered to the community.

### The strategy requires clarity

### “Who pays”

There should be a transparent **testing** strategy and the cost question must be resolved. Full coverage of testing costs by the central federal authorities would have the great advantage of clarity and it seems appropriate in case of a unified testing strategy. In case there is cantonal discretion, cantons should also contribute to the costs of testing. If the cantonal strategy is to do “more aggressive” testing, they should be allowed to do so within the limits of the law and not within the limits of what federal authorities would be willing to finance. This must not prevent federal solidarity from operating. According to the constitution (Art. 135), there must be an “equitable equalisation of financial resources and burdens between the Confederation and the Cantons as well as among the Cantons”. Stating that the cantons should pay for testing, does not question (but increases) the need for financial equalisation. Furthermore, if some cantons perform targeted testing campaigns of national interest (e.g. to help refine the national testing/contact tracing/quarantining strategy), the costs of such campaigns should be defrayed centrally.

In addition to that, any person should be allowed to test at his or her own costs, if sufficient tests are available (for instance, during voluntary self-isolation).

### “What will happen to me?”

The strategy requires clarity on the measures taken, on their reasons, and on their implementation. In our policy brief on “Ethical, legal, and social benchmarks for transition strategies” we remarked that:

*“Navigating through transition requires a **commitment to share publicly as much information as possible** (while respecting privacy of individuals and other justified exceptions) on key aspects of the evolution of the epidemic **and the broader societal impacts of response measures**. (...)*

*It is important to explain the **reasons** for the implementation, withdrawal, or re-implementation of measures, especially as regards any elements on which the Swiss approach differs significantly from other similar countries or WHO guidance.”*

In order to cooperate with the strategy, individuals need to know exactly what test results, or the identification as a contact, imply. When I have been traced as a contact, can I continue to work, commute, take care of children and parents when I wear a mask? If not, why not? What are my duties vis-à-vis my employers, my employees? What is the financial compensation scheme? Where can I isolate if I cannot do so at home and who is paying for extra costs? Who will assist me and who will assist those I care for and cannot for the coming two weeks? If I am free to quarantine or not, what are the choices I have and how will my choices affect me and others? Is there a resource for psychological support when I am informed that I may have been infected?

In addition, does the fact that I have been identified through traditional or through digital proximity tracing change anything to my rights and obligations? This must be clearly communicated before people start using the app.

### Reasons for policy choices

Government also has a duty to explain and justify policy choices. This includes a duty to present different policy options, their advantages and disadvantages from an epidemiologic perspective in

an evidence-based manner, but also to explain how choices were arbitrated more broadly from a pandemic reply perspective. The reasoning and justification must also relate to fundamental rights considerations (what strategy limits fundamental rights the least? What strategy reduces negative impacts on vulnerable people the most?) as well as economic, political, ethical and social considerations. Currently, only the epidemiologic and economic aspects are present in justifications. But the answers to the questions “what works best” and “what costs the least ” do not give the answer to what the government should decide - and what the public should accept.

In extraordinary situations, almost all usual political and legal mechanisms of participation, checks-and-balances and other constraints are absent, but the duty to respect the principle of proportionality remains. From a legal point of view, it is the dominant benchmark against which all the decisions must be measured. The reasons why the chosen strategy is assessed as fulfilling this principle need to be clear for the public. The government is not dispensed from its duty to inform, reason on justify its choices when it opts for non-mandatory strategies. These also come at a price for some actors (the willing, their employers, social security, etc.) and burden some more than others.

### The status of digital proximity tracing

There will be two methods of tracing: classic, person-based contact tracing, and proximity tracing via a mobile app. The first is government-run (and in the hands of cantonal authorities), the second one is developed in a semi-private manner, is operated by the federal government, and will direct identified contacts towards the cantons. The first is mandatory and based on law, the second one is optional and will be endorsed by the federal government in a Covid-19 ordinance. In early May, the parliament accepted a motion to clarify the legal basis of the proximity tracing app, and the federal government announced the creation of a pilot phase ordinance. Overall, there is a great need for ongoing clarification regarding the status of digital proximity tracing. We all understand that the use of the app is supposed to be optional, but it is also officially endorsed in an ordinance. Without further clarification, this creates a blur in the dividing line between a private initiative and a government order.

No one is obliged to use the app or to call in case of notification. Those using the app, can change their minds at any time and turn off the app whenever they like. Government recommendations have problematic effects as they create unclarity. For instance, can employers recommend to their employees to use or not to use them? Can they sanction them for staying away from work “voluntarily” in case no official obligation to quarantine exists? In many ways, clarity can be guaranteed and solidarity be eased by legal obligations. If the use of the app is voluntary, this clarity must be provided for the population in some other manner.

Those not having a smartphone should not be stigmatised - the same goes for those who cannot afford to quarantine - either economically, socially or culturally. While it is clear that state authorities are not allowed to differentiate between those using apps and those who decide differently, there is a need to clarify the situation in the private sphere. Can restaurant owners and event organisers, for example, require people to use apps? Currently, this would probably be covered by the right to economic freedom. The potential effect is, however, that people without an app could suffer from exclusion or marginalisation. This would be problematic.

## Making cooperation easy for everyone will require different strategies for different populations

A useful categorization of social groups was provided by Robert Reich (2020), who identified the “new social classes” generated by COVID19 as :

- the remote: those who are able to continue working from home
- the essentials: those who must leave their homes to continue essential activities during confinement and place themselves in the way of harm for the benefit of others
- the unpaid: those who have lost their jobs or their income, who would take the risk of disease because the risk of lacking money is more immediate and threatening
- the forgotten: persons living in institutions, prisoners, the homeless, illegal immigrants

A containment strategy based on testing, contact tracing, isolation, and quarantine, needs to enable all those steps for all of those populations. Essential workers, for example, will need to know they can be replaced if they go into quarantine. Otherwise, they may not go. Illegal immigrants need to know that they can seek care without fear of expulsion. Those without formal work contracts also need to have protection against loss of income during isolation and quarantine.

Clarifying what will happen, and what they should do, will require different communication strategies targeted at these different segments of the population.

### Unresolved issues

### References

National COVID19 Science Task Force policy brief: “Economic Considerations on the Cost of Testing and Quarantining”

National COVID19 Science Task Force policy brief: “SARS-CoV-2 Contact tracing strategy: epidemiological and strategic considerations”

Reich R: Covid-19 pandemic shines a light on a new kind of class divide and its inequalities. The Guardian. April 26<sup>th</sup> 2020

### Appendices