

**Question for written answer E-000546/2022  
to the Commission**

Rule 138

**Christine Anderson (ID)**

**Subject:** Unconstitutional law-making by the Robert Koch Institute

With the approval of the Bundestag and Bundesrat, the Federal Government has introduced amendments to the COVID-19 Protective Measures Exemption Ordinance. Among other things, these affect the requirements for the validity of the so-called proof of recovery, which is used to prove immunity after recovering from COVID-19. According to the new regulation, pursuant to § 2 No 5 of the Exemption Ordinance, proof of recovery from an infection is considered proof of recovery under the Exemption Ordinance only if it 'complies with the guidelines published by the Robert Koch Institute, which can be found on the website [www.rki.de/covid-19-genesenennachweis](http://www.rki.de/covid-19-genesenennachweis), taking into account the current medical guidelines'. To this end, the Robert Koch Institute (RKI) should provide guidelines on what kind of immunisation tests are required, and when the recovery status begins and expires.

The Research Service of the German Bundestag has been critical of this transfer of competence. The reference to an internet page in § 2 No 5 of the Exemption Ordinance appears problematic, because there is doubt as to whether such a reference complies with the principle of promulgation under Article 82(1) and the principle of determinedness under Article 20(3) and Article 103(2) of the Basic Law. Moreover, it appears the reference could be classified as an inadmissible hidden subdelegation.

1. What is the Commission's assessment of this transfer of competence that restricts fundamental rights as regards compatibility with Article 2 TEU?
2. What is the Commission's view of Germany's unusual approach of reducing the recovery status period from 6 to 3 months, when no other Member State has done the same?