Pleas in law and main arguments

In support of her action, the applicant relies on four pleas in law.

1. The dismissal, delivered orally and without reasons being given, infringes Article 25 of the Staff Regulations, which provides that *'any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which is based …'*; written notification to the employee ensures that the latter is made aware of decisions relating to her employment relationship.

2. The extension of the probationary period infringes Article 84 of the Conditions of Employment of other Servants (CEOS), paragraph 3 of which provides that the probationary period may be extended in exceptional circumstances *'… referred to in the first paragraph …'*, this being a specific reference that does not justify an extension of indeterminate and uncertain duration. Furthermore, that extension infringes Article 84(2) of those Conditions, which provides that the probationary period may be terminated at any time before its normal end, allowing eight days for submissions on the proposal of dismissal and — in any event — *'… giving … one month's notice …'*;

3. The administrative inquiry report is unlawful, given that it is based on an email sent by the employee, the contents of which — as the other party acknowledges — were altered, and because it expresses merely subjective doubts as to the authenticity of documents submitted by the employee, without ordering any technical checks to be conducted;

4. The employer's decision of 22 December 2016 is manifestly void since it seeks to terminate an employment relationship that no longer existed, that relationship having come to an end following the oral dismissal. Furthermore: (A) the dismissal of the employee for failing successfully to complete the probationary period is unlawful given that, as of 1 November 2016, there was no longer any probationary period; and (B) the unlawful nature of the assertions in the administrative inquiry report made on the basis of the assessment of the failure successfully to complete the probationary period renders the act of dismissal at issue totally and absolutely arbitrary and unlawful.

Action brought on 28 July 2017 — Iccrea Banca v Commission and SRB

(Case T-494/17)

(2017/C 318/29)

Language of the case: Italian

Parties

Applicant: Iccrea Banca SpA Istituto Centrale del Credito Cooperativo (Rome, Italy) (represented by: P. Messina, F. Isgrò and A. Dentoni Litta, lawyers)

Defendants: European Commission and Single Resolution Board

Form of order sought

The applicant claims that the Court should:

— annul Single Resolution Board Decision No SRB/ES/SRF/2016/06 of 15 April 2016, as well as all subsequent decisions of that Board on the basis of which the Banca d'Italia adopted the following measures: No 1547337/16 of 29 December 2016; No 0333162/17 of 14 March 2017; No 0334520/17 of 14 March 2017; No 1249264/15 of 24 November 2015; No 1262091/15 of 26 November 2015;

— order the payment of compensation to ICCREA Banca for the damage caused to it by the Single Resolution Board when determining the contributions owed by the applicant in the form of higher rates paid by ICCREA Banca;

— in the alternative, and in the event that the above claims are rejected, declare Article 5(1)(a) and (f) (or, as the case may be, the Regulation in its entirety) invalid, as being contrary to the basic principles of equality, non-discrimination and proportionality;

— in any event, order the Single Resolution Board to pay the costs occasioned by the present proceedings.

Pleas in law and main arguments

The present action is brought against Single Resolution Board Decision No SRB/ES/SRF/2016/06 of 15 April 2016 and against all subsequent decisions of that Board which constituted the basis for the measures of the Banca d'Italia seeking contributions to the Single Resolution Fund.

In support of its action, the applicant relies on six pleas in law.

1. First plea in law, alleging (i) failure to communicate the measures, (ii) infringement of the principle of transparency, (iii) infringement and misapplication of Article 15 TFEU, and (iv) infringement of the principle of the protection of legitimate expectations.

   — The applicant claims in this regard that it was at no time placed in a position to be aware of the decisions of the Single Resolution Board, or to understand the merely material role of the Banca d'Italia in the enforcement of those decisions.

2. Second plea in law, alleging (i) failure to carry out a proper enquiry, (ii) error of assessment of the facts, (iii) infringement and misapplication of Article 5[(1)](a) of Regulation 2015/63, and (iv) infringement of the principles of non-discrimination and sound administration.

   — The applicant claims in this regard that the Single Resolution Board erred in its application of Article 5[(1)](a) of Regulation 2015/63 ([1]) when determining the amount of the contributions owed by the applicant by not having taken intragroup liabilities into consideration.

3. Third plea in law, alleging (i) failure to carry out a proper enquiry, (ii) error of assessment of the facts, (iii) infringement and misapplication of Article 5[(1)](a) of Regulation 2015/63, and (iv) infringement of the principles of non-discrimination and sound administration.

   — The applicant claims in this regard that the Single Resolution Board erred in its application of Article 5[(1)](f) of Regulation 2015/63, thereby resulting in double counting.

4. Fourth plea in law, alleging unlawful conduct of an EU body and claiming non-contractual liability under Article 268 TFEU.

   — The applicant claims in this regard that the conduct of the Single Resolution Board meets all the relevant conditions for non-contractual liability under EU case-law, namely unlawfulness of the alleged conduct of the institutions, the actual existence of damage, and the presence of a causal link between the adopted conduct and the alleged damage.

5. Fifth plea in law, in the alternative and incidentally, alleging that Regulation 2015/63 is in breach of the principles of effectiveness, equivalence and equal treatment and is consequently inapplicable.

   — The applicant claims in this regard that a possible contradiction between Regulation 2015/63 and the situation of the applicant would be in breach of the aforementioned principles to the extent that persons in the same factual situation as ICCREA would be subject to reductions of contributions, with a resulting unlawful deterioration of the applicant's situation, with the consequence that similar situations would be treated differently.

6. Sixth plea in law, alleging infringement of Article 15 TFEU, impossibility for the applicant to have knowledge of the decisions of the Single Resolution Board, and requesting an order for the production of those documents.

   — The applicant claims in this regard that it has still not been placed in a position to have knowledge of the decisions for 2015, 2016 and 2017 relating to its position, conduct which is patently at variance with Article 15 TFEU and with the right to access documents of EU institutions, bodies, offices and agencies, whatever their medium.

([1]) Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements (OJ 2015 L 11, p. 44).