



## EUROPEAN COMMISSION

Brussels, 16.03.2015  
C(2015) 1639 final

**Subject: State aid / Italy (Marche)  
Aid No SA.38876 (2014/N)  
Project Carnj – Società Cooperativa Agricola – Istituto Sviluppo  
Agroalimentare S.p.A.**

Sir,

The European Commission ("the Commission") wishes to inform Italy that, having examined the information supplied by your authorities on the measure referred to above, it has concluded that the measure does not constitute aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union (hereinafter "TFEU").

In taking this decision the Commission has relied on the following considerations:

### **1. PROCEDURE**

- (1) By letter of 9 June 2014, registered by the Commission on 12 June 2014, Italy notified to the Commission pursuant to Article 108(3) of the TFEU the above mentioned measure.
- (2) By letters of 31 July and 4 November 2014 the Commission asked for supplementary information which the Italian authorities submitted on 1 September 2014 and 19 January 2015 respectively.

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## **2. DESCRIPTION**

### **2.1. Title**

- (3) Project Carnj – Società Cooperativa Agricola – Istituto Sviluppo Agroalimentare S.p.A.

### **2.2. Objective**

- (4) The notified measure concerns an investment project to be undertaken by Istituto Sviluppo Agroalimentare S.p.A. (hereafter "ISA") in the share capital of Carnj Cooperative (hereafter "Carnj" or "cooperative"). The project is designed as an equity investment to finance an investment plan aimed at optimization of production processes, the implementation of a bio-gas plant and the purchase of a new slaughter line.
- (5) The Italian authorities are bound by law<sup>1</sup> to individually notify all interventions by ISA at market economy conditions.

### **2.3. Public authority**

- (6) ISA is a public company whose shares are held integrally by the Ministry for Agriculture, Food and Forestry Policies of Italy. It promotes and supports projects of agro-industrial development that aim at structural improvements in the income level of agricultural companies<sup>2</sup>. ISA may either provide investment aid to the sector of processing and marketing of agricultural products by granting soft loans with a maximum duration of 15 years or invest at market conditions by acquiring a minority shareholding in companies' capital<sup>3</sup>.

### **2.4. Beneficiary**

- (7) The implementing proponent of the initiative presented by ISA is Carnj Coop., large company with 1587 employees and a turnover of EUR 266.358 million. Carnj is the structure of the Group Fileni for slaughtering, processing, transformation and packaging of the poultry and rabbit meat products and, to a smaller extent, also pork and beef meat. Carnj is cooperative<sup>4</sup> with a mutualistic objective, owned by agricultural enterprises of the group Fileni and by third-party shareholders.
- (8) Fileni Simar Ltd. is a subsidiary of Fileni and together with ISA is a co-investor in the project at hand. Fileni Simar is active in the marketing of

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<sup>1</sup> Paragraph 31 of the Decision of the Interministerial Committee for Economic Planning (CIPE) of 31 July 2009 "Modifica della delibera CIPE n. 90/2000 come integrata e modificata dalla delibera n. 58/2002. Criteri e modalità di intervento di "ISA S.p.a.". (Deliberazione n. 65/2009).

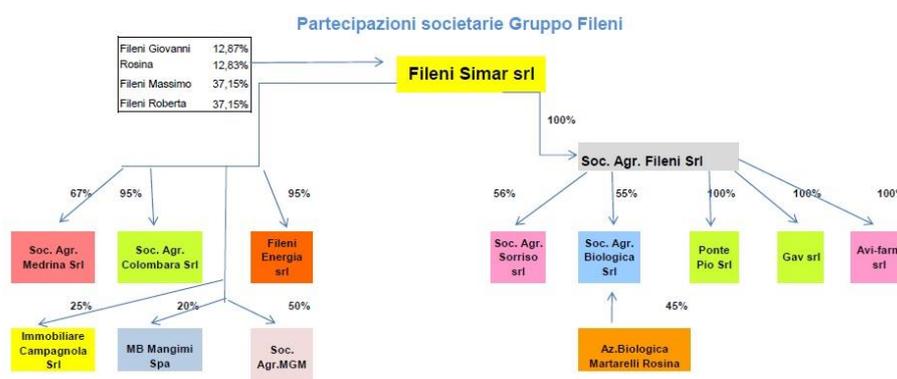
<sup>2</sup> Examples of ISA's interventions include investments in such companies as Conserve Italia S.C.A., Giv Verona S.p.A., Rigoni di Asiago S.p.A., Amaltea S.p.A., Ferrarini S.p.A.

<sup>3</sup> Delibera CIPE n. 65, parte D.

<sup>4</sup> The cooperative type of company is governed by Codice civile, libro V, Titolo VI: cooperatives are companies with variable capital and mutualistic objectives carrying out activities in favour of their members which confer goods produced by them to the cooperative. Conferring members are remunerated on the basis of quality and quantity of the conferred products.

meat, mainly poultry, both fresh and frozen, and of processed products both cooked and raw. Following a reverse merger with the agricultural company Fileni Ltd as from 1 January 2013 Fileni Simar became the leader of the group Fileni, covering the entire vertical chain of production of poultry and rabbit meats.

- (9) Fileni Simar is the owner of the real estate part of the Carnj establishments which have been rented to Carnj. These contracts are long term, concluded until 2020 and 2021 respectively and are envisaged to be renewed afterwards. The machinery and production lines at the plant site are the property of Carnj. The Carnj's production is almost entirely sold to Fileni Simar that deals with their placement on the market. Carnj is the only processor of meat from organic farms marketed by Fileni Simar under the brand "AlmaverdeBio."
- (10) Fileni Simar is at present the third poultry and rabbits' producer in Italy and the first producer of white meat from organic farming.
- (11) Below is shown the current structure of the Group Fileni which is the result of the following operations carried out in 2012:
- Transformation of all partnerships into limited liability companies;
  - Reverse merger between Soc. Agr. Fileni Ltd Simar and Fileni Ltd and transfer of all zootechnical shares and assets from Fileni Simar to Agr. Fileni, with effect from 1 January 2013.



- (12) The Soc. Agr. Fileni plays a role of a sub-holding, controlling the companies in the upstream sector (farms), in the production and distribution of animal feed (Gav srl.) and in reproduction (Avi-farm srl.).
- (13) The breeding activities of the group Fileni are carried out for about 20% on its farms, the remaining 80% being carried out through external breeders bound by long-term agistment contracts.
- (14) The chain is completed with the Carnj cooperative, established in 1983, in which all the agricultural societies of the group Fileni participate. Carnj, dealing with the slaughtering and processing of all products, has a

primary role within the group Fileni. The cooperative is fully integrated within the supply chain and its activity is defined according to the business needs defined by the Fileni Simar.

- (15) The investment plan of Carnj has been prepared in line with the long-term commercial development plan defined by the Fileni Simar, envisaging, in addition to the increase in overall sales volumes, also a particular focus on high value-added products (organic products, processed and cooked products).
- (16) The group participates in the Consortium Almaverde with a share of 10% and since 2001 has exclusive right to use the brand Almaverde for the entire sector of meats (red and white). All other trademarks (Fileni and Magic Club of the Gauls) are the property of Fileni Simar.

## **2.5. Legal Basis**

- (17) The legal basis of the measure consists of:
  - a) Delibera CIPE n. 65 del 31.07.2009
  - b) Legge n. 662 del 3.12.1996, art. 2, comma 132
  - c) Legge n. 700 dell'19.12.1983, art. 3, come modificata dalla legge n. 248 del 2.12.2005, art. 10
  - d) Legge n. 248 del 2.12. 2005.

## **2.6. Duration**

- (18) In compliance with the Delibera CIPE n. 65, the participation of ISA in Carnj will be minority and temporary. The investment is envisaged for 8-10 years.

## **2.7. Budget and type of intervention**

- (19) The proposed intervention is designed as an equity investment into the share capital of Carnj. According to the Italian authorities the intervention is proposed at conditions which would be acceptable for a private investor operating under normal market conditions. The overall budget of the investments is estimated at EUR 20 million, with a contribution by ISA and by Fileni Simar amounting each equally to EUR 10 million.
- (20) Although the investment by ISA is structured as an equity investment, it shows some characteristics of a loan (e.g. guaranteed minimum and limited maximum return, fixed term, postponed participation in losses). This is reinforced by the choice of so called participating financial instruments (cf. recital 24 below) which bear some similarities with preferred shares (hybrid between debt and regular equity). Also, the funds are earmarked for a specific period and for a specific purpose, as described below.

## **2.8. Description of the project**

(21) The proposed capitalization shall provide Carnj with necessary resources to carry the investments described below. Out of the total budget of EUR 20 million, about EUR 17.5 million are to support the strategic lines of development to be carried out in the factories sites in Cingoli and Castelplanio in first two years. Pending the entry of ISA into its capital, the cooperative has already initiated the investment project; on 31/12/2013, financial statements show the realization of investments for EUR 2.926 million.

(22) Specifically, the following investments are foreseen:

- Cingoli site: investment in plant machinery and equipment amounting to EUR 7.440 million and investment in freezing machinery amounting to EUR 1.5 million.
- Castelplanio site: investment in buildings amounting to EUR 2 million; investment in machinery and equipment of EUR 0.05 million; investment in slaughtering line (for turkeys) of EUR 4 million and investment in biogas plant of EUR 2.5 million.

(23) The objectives of the industrial plan are to:

- increase sales;
- develop new products;
- save costs for services related to energy and manufacturing;
- reduce the costs of disposal;
- reduce the incidence of the cost of personnel for the automation of production processes that enable the increase of employees.

## **2.9. Terms of intervention**

(24) The investment plan provides for an overall increase in shareholders' equity of EUR 20 million, consisting of the issuance of participating financial instruments (hereafter "PFI") for ISA in a value of EUR 10 million and shares of corresponding value for Fileni Simar. According to the Italian authorities, the contribution of Fileni Simar will be made in view of the financial needs of Carnj and before or, at the latest, at the same time with the contribution of ISA.

(25) The PFI of ISA will enjoy several privileges: right to vote at ordinary and extraordinary meetings within the limits imposed by law<sup>5</sup>, the priority in the reimbursement of capital and of goodwill produced compared to all other financial instruments, including shares of Fileni

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<sup>5</sup> Art. 2526 co.2 of the Civil Code

Simar and cooperative partnerships and subordination to all other financial instruments in bearing losses.

(26) The entry of ISA into the capital of Carnj is foreseen on the basis of the following assumptions:

- ISA's participation will amount to EUR 10 million, through the issuance of 20 000 PFI with the nominal value of EUR 500 each;
- the co-investor Fileni Simar will subscribe the corresponding amount of EUR 10 million;
- Carnj will have an obligation to distribute dividends in the presence of profit;
- ISA will have an absolute privilege in the distribution of profit;
- ISA's financial instruments shall enjoy the privilege in repayment of the capital in respect of all other shares issued or to be issued even in the event of dissolution and/or liquidation.

(27) The increase of value of the PFI of ISA will be calculated for each year and shall correspond to a share of ISA's instruments in the goodwill produced by the Carnj in each year.

(28) The market value of ISA's financial instruments as on 31 December of each year (hereinafter also "Vm") will be equal to their nominal value increased by the goodwill produced in the same year. The quantity sold will be determined by the quantities processed and sold, to the net of quantities which are only marketed. More in detail, the goodwill produced by Carnj in each year of the presence of ISA in the capital of Carnj (or a part of a year) will be equal to a fixed percentage of the nominal value of the investment represented by ISA's financial instruments: this percentage will be applied in full or in part subject to achieving in that year a targeted increase in the production quantities sold by Carnj, as summarized in the following table:

<i>Incrementi-obiettivo di Quantità Vendute da Carnj nell'anno (esclusa la mera commercializzazione di prodotto vivo)</i>		% annua di incremento di valore partecipazione (Avviamento)
<i>Anno 1</i>	<i>Base di riferimento</i>	4,25%
<i>Anno 2</i>	<i>pari o superiore a</i>	0,39% 4,75%
<i>Anno 3</i>	<i>pari o superiore a</i>	0,52% 5,25%
<i>Anno 4</i>	<i>pari o superiore a</i>	0,46% 5,75%
<i>Anno 5</i>	<i>pari o superiore a</i>	0,46% 6,25%
<i>Anno 6</i>	<i>pari o superiore a</i>	0,46% 6,75%
<i>Anno 7</i>	<i>pari o superiore a</i>	0,46% 7,25%
<i>Anno 8</i>	<i>pari o superiore a</i>	0,46% 7,75%

(29) The increase in value of ISA's financial instruments is fixed in the first year (or fraction of the first year) at 4.25% of the investment. From the

second year onwards an increase will be recognized for ISA corresponding to its participation share in the goodwill produced by Carnj in a given year, equal to the percentage of the initial investment indicated in the table above, provided that the "growth target" is reached. In the case where such target is not reached, the percentage that will be used for the calculation of the goodwill attributable to ISA will be reduced proportionally, but not below the limit of the percentage used in the previous year, which then will be deemed to be definitively established.

- (30) According to the Italian authorities, the basic level of 4,25% will be the minimum recognized for ISA in any case, even in the case of lower performance of Carnj. From the second year, this percentage will increase if Carnj increases the amounts sold; in the case of an increase in the percentage of the return, the higher value will become the new minimum for the subsequent years.
- (31) In the presence of profit, ISA will be entitled to receive the annual increase of the value of its shareholding in the form of dividends. In the absence of profit distribution, where the goodwill generated and not paid to ISA is to exceed a total amount of EUR 0.2 million, ISA may exercise a right of early termination, unless Fileni Simar, who guarantees all liabilities of Carnj, intervenes, declaring preparedness to buy ISA's financial instruments and to pay a deposit equal to at least the amount due but not paid to ISA by Carnj.

### **Corporate bodies**

- (32) For the duration of its participation in the Carnj, ISA will have the power to make the following appointments:
- an auditor, whose annual compensation shall not be less than EUR 6 000, which can be revalued upwards upon the expiration of each term on the basis of ISTAT index, in addition to reimbursement of expenses incurred for the office;
  - a member of the Board of Directors, whose annual compensation shall not be less than EUR 5 000, which can be revalued upwards upon the expiration of each term on the basis of ISTAT index, in addition to reimbursement of expenses incurred for the office.

### **Disposal of the investment of ISA**

- (33) ISA commits not to exercise its right of withdrawal before the eighth year from the date of the subscription and no later than the tenth year. It will, however, have the right to early termination in cases of breach of

the obligations of Carnj described in recital 31 above, as well as in the cases listed in contractual agreements between ISA and Carnj<sup>6</sup>.

- (34) The basis for calculating the price of the withdrawal of the ISA's financial instruments at the time of withdrawal will be the annual calculation of goodwill produced by the Carnj, calculated as follows:
- the nominal value of the financial instruments; plus
  - goodwill produced during the stay of ISA in the capital of Carnj, calculated for each year as a percentage of the nominal value of the instruments in proportion to the company's performance, measured as an annual percentage increase of quantities sold, minus dividends received by that time.
- (35) The exit price of ISA's financial instruments will be therefore equal to their nominal value at the time of withdrawal, including capital increases or reductions due to capital losses, plus increased goodwill produced every year, minus amounts already paid to ISA in the form of dividends. In general, therefore, the exit price of PFI is defined as equal to the capital plus overall produced goodwill, taking into account the time of presence in the equity structure of Carnj and calculated as the sum of goodwill produced in each period (calendar year or the part thereof), minus amounts already distributed in the form of dividends.
- (36) Fileni Simar will have the pre-emptive right of purchase of the ISA's PFI at the exit price: in the event of exercise of this right, all sums paid by Fileni Simar to ISA during the time of its presence in the capital of Carnj will be deducted from the aforesaid price. In case of not exercising the pre-emptive right, in compliance with art. 2437 of the Civil Code the shares of the withdrawing shareholder shall be reimbursed directly by the cooperative, according to the ordinary procedure and using available reserves. Moreover, since ISA's financial instruments shall have priority in repayment in respect of all other financial instruments, Carnj cannot proceed to refund any of the other members until the rights of ISA have been honored.
- (37) As regards the early termination of the investment by ISA, the due exit price shall be paid by Carnj within 60 days of receipt of the letter in which ISA announces its intention to exercise its right of withdrawal. In the event of partial or total non-payment, ISA will ask Fileni Simar to pay. Such guarantee by Fileni Simar will be issued before the date of entry of ISA in the capital of Carnj and will remain valid up to the last day of the ninth year from that entry date.

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<sup>6</sup> E.g. in the presence of particularly negative economic and financial situations, citing cases where financial debt exceeds the equity or where cumulative losses rise to more than 20% of shareholders' equity.

## 2.10. Key financial data

- (38) The Italian authorities provided financial data of Carnj for the period 2010-2013, presented under the international reporting standards (ISA/IFRS<sup>7</sup>).
- (39) The analysis of the statements show that the company's revenue has a steady upward trend, most visible in 2011, when it reached + 13%, while the increase of 4% was recorded in 2012 and of 9% in 2013.
- (40) The consumption of raw materials has grown proportionally with respect to the evolution of turnover, due to both the increase of the average return to cooperative's members and to recognition of a "bonus" to Fileni Simar for larger quantities purchased. In consequence, the percentage of the gross margin on the value of production has been progressively reduced.
- (41) The levels of EBITDA<sup>8</sup> and EBIT<sup>9</sup> compared to the value of production have remained stable, with EBITDA's range of 2% and EBIT's of 1% and with a substantial profit (always bearing in mind the mutualistic purposes of Carnj).
- (42) The development of the sales volume has led to an increase in the purchase of raw materials (increased by more than 35% over the four years), which includes the contributions of the members, together with the increase in their remuneration: compared to the value of production the incidence of this cost item has increased from 73.80% in 2010 to 77.85% in 2013. According to the Italian authorities these results are largely attributable to the purchase of the former Arena business and to the increased sales of products with higher added value, as well as to a constant improvement of efficiency and productivity.
- (43) During the analyzed period, an increase in (fixed) assets has been recorded, which included the purchase of the business of ex-Arena in Castelplanio in 2011 by the poultry society Marchigiana. The net working capital has increased in 2010, decreased in 2011 and 2012 and again increased in 2013. The increase in 2010 was due to the increase in inventory and customers which was greater than that recorded by suppliers. These increases are related to the development of the use of the plant in Castelplanio and to the increase in collection and payment times.
- (44) The decrease in net working capital in 2011 resulted from the increase in trade payables and other payables higher than the increase of customers and inventory. The decrease in 2012 in net working capital was due to the significant reduction of customers (due to lower collection times), offset partly by inventory and partly by the decrease of suppliers.

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<sup>7</sup> International Standards on Auditing/International Financial Reporting Standards.

<sup>8</sup> Earnings before interests, taxes, depreciation and amortization

<sup>9</sup> Earnings before interests and taxes

- (45) The liabilities are represented mostly by long-term liabilities (equity and loans). In 2012 a long-term debt was reduced, also due to the increase in the loan capital. In 2013 short-term debts have increased (+ EUR 13.909 million), represented mostly by a new credit from IFS Bank (EUR 7.7 million) and the collection of two unsecured loans granted by Banca Popolare dell' Emilia Romagna and the CARIM Bank. The achievement of this funding has allowed the reduction of the loan capital.
- (46) The NFP<sup>10</sup> had in 2013 adequate ratio, compared to EBITDA as well as to NP<sup>11</sup>, being about 3.5 times EBITDA and equal to 1.5 times the NP.
- (47) During all financial exercises the needs generated by the investments were mainly covered by cash generated from operations, while in 2013 the coverage was ensured by the increase in short-term debts.

## **2.11. Peer comparison**

### **Company valuations**

- (48) The company valuation was carried out with the use of the market criterion which assesses the company by reference to prices in the market for companies considered “comparable” in the same industry, trying to establish, in relation to the degree of “likeness” of the company assessed to the reference sample, parameters reasonably usable for the company being valued.
- (49) This criterion was chosen with regard to the examined business plan, which sets out the economic-financial and market objectives of the company, incorporates the proposed capital increase and therefore shows the impact expectations for further growth.
- (50) The foregoing assessment has been carried out with the aim to verify whether the valuations underlying this equity investment would also reflect the value assessments of the market.

## **2.12. Strategies and business structure**

- (51) Fileni intends to become in next few years the dominant brand in the segment of wellness and gastronomy. To achieve this goal, actions are planned to create its value in the commercial channel, in order to become a reference point in the national market for ready meals. For the development of sales in the organized distribution major management projects are planned, with a goal to meet the needs of a consumer. The group envisages the implementation of business, marketing, merchandising and assortment strategies that allow being in line with the purchasing decisions of consumers. There will also be tailor-made activities with major retail chains in order to retain users and to communicate the presence in the sale points. To support these activities, Carnj has a division of Research and Development, where

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<sup>10</sup> Net financial position

<sup>11</sup> Net position

food technicians and *chefs* work together to discover the tastes and trends and to develop and implement new recipes to ensure the highest quality standards.

- (52) Promotional activities play a vital role in corporate strategies: important promotional activities have been launched to build customer loyalty and encourage purchases. To this end, television, print and the web channels are used. In 2012 the corporate website was completely redesigned to facilitate interaction with the users, which earned to Fileni the Italian Web Award 2012 in the category Innovative Copywriting. In 2013 began a successful communication campaign on the main platforms of web 2.0: video recipes, tips and suggestions to make mealtimes more fun.
- (53) As regards the economic and financial forecasts, these were drawn up considering the historical trends, industry dynamics and expectations arising from the implementation of the business plan.
- (54) At the economic level the main assumptions are:
- consolidation of the turnover achieved in 2013, increased by approximately 9% compared to 2012, with an average annual growth in the years of the plan by 1%. Growth is expected in terms of both sale volumes, with the focus on products with higher added value (organic, processed and cooked, brand products) and average selling price;
  - stabilization of the incidence of raw materials on production value, from an average of 76% over the period 2010-2013 to an average of 77% in the years of the plan, due to the increase of the settlement prices to contributing shareholders resulting from the development of sales of brand products;
  - reducing the burden of service costs on production value from 6% in 2010-2013 to 5% in the years of plan, resulting from the reduction of energy costs (due to the introduction of cogeneration in the two factories) and from the lower use of external work (due to the realization of investments aimed at production "in house");
  - increase in the cost of labor for the greatest needs and the hiring of 40 work units per annum;
  - increase in depreciation due to the realization of investments;
  - the impact of the expected increase in annual profit (it is foreseen to rise up from 0.07% of production value in 2013 to 0.37% in 2017), which is still at a rather low absolute levels, this being in line with the nature of the co-operative society.

### 2.13. The reference scenario/market analysis

- (55) The proposed investment concerns the Italian meat sector: according to estimates of Unaitalia<sup>12</sup>, the domestic production of poultry meat in 2012 amounted to 1 261 million tons, with an increase of 2.3% compared to 2011. The poultry meat represents the best performing meat category, within which in particular beef and pork have been affected by the difficult economic situation. The reasons that have enabled white meat to maintain its performance are to be found not only in the intrinsic content of lightness, versatility and innovation, but also in the price variability.
- (56) The breakdown of the Italian white meat production is as follows:
- 816,810 tons of chicken meat (+ 2.6% compared to 2011);
  - 286,400 tons of turkey meat (+ 3.6%);
  - 87,400 tons of hen meat (-1.4%);
  - 70,400 tons of meat of other avian species (-0.8%).
- (57) The sector has, therefore, been driven by the performance of the chicken and turkey meat, which together account for nearly 90% of the entire production.
- (58) The amount of poultry meat absorbed by domestic consumption amounted to 1,181,300 tons, representing an increase of 3.8% compared to 2011. The per capita consumption of poultry meat amounted to 19.40 kg and increased by 3,5% compared to 18.75 kg in the previous year.
- (59) The consumption of processed poultry meat (raw and cooked) have continued their upward trend, although at lower rates than in previous years (+ 1.5% volume increase compared to 2011) with superior performance in modern distribution. Processed poultry meat products respond to the changing needs of consumers, also in the context of the difficult economic situation, and to the current socio-demographic trend. The best result was achieved by poultry burgers and all the raw grounds, while the breaded products have seen a drop in purchases by -1% at the end of 2012 compared to the previous year. In the sausage category sausage, basically stable, the poultry segment continues to perform well, up to +2.7% in volume and +3.5% in value, eroding further shares to pig products and now representing in this category the most consumed product, by virtue of a very competitive price in relation to the protein intake. As for the salami, the poultry products also continue to show positive trends, with an increase of 20% of sliced products.
- (60) As regards the foreign trade (EU and non-EU), in 2012 the total amount of poultry meat imported, albeit modest (88,500 tons), resulted in increase (+ 13.6% compared to 2011). The total exports, decreased by

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<sup>12</sup> Unaitalia is a trade association set up to promote the Italian meat and egg agri-food sectors. It represents over 90% of the entire national poultry and rabbit sector and a significant part of the pig husbandry sector.

2.5% compared to the previous year, represent 168,200 tons and almost double the imports, with a positive balance of 79,700 tons.

## The export

- (61) Revenues from sales and services of Carnj are almost entirely generated through Fileni Simar, which deals with the marketing of products processed by Carnj, to a value of about 95% of total revenues. Therefore there are not direct exports from Carnj.
- (62) Fileni Simar sells its products mainly in Italy (98% of revenues) and only to a minor extent in the EU countries (1.7%) and in countries outside the EU (0.3%). Its sales are therefore not sensitive towards export changes.

## The competitive framework and benchmark analysis

- (63) The benchmark analysis was performed by comparing the indicators of profitability, financial solidity and strength of assets - calculated on the basis of data 2010-2012. The following table shows the competitive framework of Carnj:

Denominazione	2012							2011							2010						
	Ricavi (KE)	Ebitda/ Valore Produz.	Ebit/ Valore Produz.	PFN/ Ebitda	PFN/PN	ROE	ROI	Ricavi (KE)	Ebitda/ Valore Produz.	Ebit/ Valore Produz.	PFN/ Ebitda	PFN/PN	ROE	ROI	Ricavi (KE)	Ebitda/ Valore Produz.	Ebit/ Valore Produz.	PFN/ Ebitda	PFN/PN	ROE	ROI
AVICOOP SOC. COOP. AGR.	329.043	1,6%	0,2%	0,2	0,2	0,3%	9,3%	296.116	2,0%	0,3%	0,2	0,2	0,4%	10,6%	262.588	2,2%	0,2%	0,2	0,2	1,1%	8,0%
ALLCOOP SOC. COOP. AGR.	222.682	4,0%	0,7%	1,7	0,8	1,2%	4,9%	221.523	3,5%	0,7%	2,2	0,9	0,3%	4,4%	198.214	3,6%	0,7%	1,6	0,7	0,3%	4,9%
POLLO DEL CAMPO SOC. COOP. AGR.	142.493	2,4%	0,2%	0,3	0,6	1,5%	10,4%	138.104	2,5%	0,2%	0,5	0,8	2,6%	7,6%	126.424	2,9%	0,6%	0,6	1,1	1,8%	17,2%
CARNJ SOC. COOP. AGR.	266.358	2,1%	0,5%	3,1	1,3	2,7%	4,4%	256.262	2,4%	0,7%	3,1	1,4	4,9%	5,9%	227.652	2,6%	0,9%	3,2	1,5	5,7%	3,9%
Media		2,5%	0,4%	1,3	0,7	1,4%	7,3%		2,6%	0,5%	1,5	0,8	2,0%	7,1%		2,8%	0,6%	1,4	0,9	2,2%	6,5%
Mediana		2,3%	0,4%	1,0	0,7	1,3%	7,1%		2,4%	0,5%	1,3	0,9	1,5%	6,2%		2,7%	0,6%	1,1	0,9	1,4%	6,4%

- (64) The sample was selected from national operators deemed comparable in activity and product range and having the same legal form (Società Cooperativa Agricola) and turnover within a range between EUR 100 million and EUR 350 million.
- (65) The companies identified through the application of these criteria and compared with Carnj are all part of the group Amadori, one of the main leaders in the Italian agri-food sector.
- (66) In this context the Commission takes note that in the case of cooperatives the evaluation method of earnings does not always appear entirely consistent with the objective sought by the evaluation, the objective of a cooperative being not the maximization of returns but that of the quantities traded and, above all, the maximization of the price paid for products contributed by the cooperative members.
- (67) For this reason, with regard to the direct profitability of Carnj, it seems more appropriate to refer to the return of capital contributed by shareholders, properly measured by ROE<sup>13</sup>. According to Italian authorities, over the years taken as a reference all the cooperatives selected in the sample have never paid dividends; therefore the ROE of

<sup>13</sup> Return on equity

Carnj has been consistently higher than that of all other companies in the sample.

- (68) The return on investment ("ROI") of Carnj has been constantly lower than that of its competitors, however, ROI of a company is known to be related to multiple factors, linked not only to the level of profitability of the operations but also to investment choices and financial structure. These aspects are particularly relevant in the case of cooperatives, whose primary objective is to maximize the return on the raw material supplied by its members rather than the net profit of the financial statements. In the case of Carnj in the last four years a significant increase in sales has been observed, growing from EUR 225 to almost EUR 300 million, against which the capital employed remained broadly stable. Consequently, also the financial requirement has remained very low, with a significant increase in liquidity. These circumstances have helped to maintain the profitability levels stable, not having to cover a lot of costs for depreciation and rising borrowing costs and allowed therefore to increase the remuneration of raw materials bestowed: there has been indeed an increase in the raw materials' input (mostly conferred by cooperative members) on the value of production from 74% in 2010 to 76% in 2012.
- (69) The results of the analysis show for all the companies taken into consideration a reduction in margins in the period under review; for Carnj in particular, a degree of capitalization compared to net financial position as well as EBITDA are generally lower, with a recovery at the level of EBIT, this being due to a lower incidence of tangible assets (due to the absence of buildings) and therefore of the related depreciation. In general, the fact of not having owned properties decreases the invested capital and therefore also the demand for capital coverage; similarly, from the economic point of view the reduced incidence of depreciation determines the smaller need for an industrial margin to cover expenses and financial assets, which nevertheless remains sufficient to ensure good profitability, with net ROE significantly higher than the average of the selected sample.
- (70) The results of the analysis show the following for Carnj in comparison with the averages of the main players in the relevant sector:
- Gross operating margin (EBITDA/Value of Production) slightly lower and net operating margin (EBIT/Value of Production) slightly higher than those of other competitors examined;
  - Return on equity significantly exceeds that of other operators and there is lower return on invested capital;
  - NFP/EBITDA ratio higher than the average of competitors;
  - PFN/NP ratio greater than the market average.
- (71) As already noted, the characteristics of the proposed investment by ISA bear some similarity to those of a medium-to long-term loan, albeit with a variable yield depending on the actual performance of Carnj. In this

regard the Italian authorities confirmed that in compliance with IAS this investment will be classified in ISA's balance sheets as long-term credit.

(72) The table below shows the conditions of financing granted to Carnj:

Istituto di credito	Data erogazione	Scadenza	Durata (anni)	Importo originario (KC)	Residuo al 31/12/2012 (KC)	Tipologia	Condizioni	Media Euribor 2013 (1 o 3 o 6 mesi)	Spread	Tasso
Pool MPS	2008	31/05/2018	10	7.389	3.953	Ipotecario	euribor 6 m + 1,75	0,33	1,75	2,08
Banca Pop. Nuova Terra	16/06/2011	16/06/2016	5	2.500	1.805	Chirografario	euribor 3 m + 2,50	0,21	2,50	2,71
Centrobanca 1 *	07/07/1998	01/01/2014	16	1.033	94	Ipotecario	tasso fisso 5,15	-	-	5,15
Centrobanca 2 *	23/04/1999	01/01/2015	16	271	182	Ipotecario	tasso fisso 6,55	-	-	6,55
Carifac	2001	30/12/2015	15	1.033	296	Ipotecario	tasso fisso 6,80	-	-	6,80
Banca Popolare Puglia 1	04/12/2006	31/12/2016	10	600	272	Ipotecario	euribor 1 m + 1,00	0,12	1,00	1,12
Banca Popolare Puglia 2	02/07/2008	31/08/2013	5	300	44	Ipotecario	euribor 1 m + 1,25	0,12	1,25	1,37
General Fond	22/02/2012	30/06/2017	5	288	261	Chirografario	tasso fisso 2,50	-	-	2,50
TOTALE					6.908			<b>Media complessiva</b>	-	<b>3,54</b>
								<b>Media tassi variabili</b>	<b>1,63</b>	<b>1,82</b>

(73) It can be noted that the average of interest rates of these financing transactions was approximately 3,54%; in more recent period 2008-2012 the obtained average interest rate was at even lower level of 2,19%.

(74) The minimum guaranteed return of 4.25% for ISA appears to be higher by approximately 0,7 percentage point compared to the conditions granted by the banking system to Carnj in operations in the medium to long term and by more than 2% higher compared to transactions closed in more recent period 2008-2012. The average expected return for ISA of 6% appears higher by approximately 2,5% compared to the average interest rate granted by the banking system to Carnj in the medium to long term.

### 3. Assessment

#### 3.1. Application of Article 107(1) TFEU

(75) Pursuant to Article 107(1) TFEU, aid granted by a Member State or through State resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States.

(76) ISA is an entirely public company whose shares are held integrally by the Ministry of Agriculture, Food and Forestry Policies of Italy. Therefore, the investment involves resources that are imputable to the State.

(77) The Commission document "Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings"<sup>14</sup> stipulates in section 3.2 that there is no aid when fresh capital is contributed in circumstances that would be acceptable to a private investor operating under normal conditions of a market economy.

(78) Pursuant to paragraph 3.2. (iii) of the said document, the MEIP can be taken to apply where the public holding in a company is to be increased, provided that the capital injected is proportionate to the number of

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shares held by the authorities and goes together with the injection of capital by a private shareholder; the private investor's holding must have a real economic significance.

- (79) As detailed above in recitals 24 and following, ISA will receive a number of shares corresponding to the invested amount; therefore, the capital injected by the public investor will be proportionate to the number of shares it will hold.
- (80) The acquisition of share capital by ISA in Carnj will take place at the same as (or more favourable conditions than) those applying to Fileni Simar company in a position of a co-investor, which shall subscribe the corresponding amount in the form of cash contribution. Therefore, it can be concluded that the private investor's share in this investment has a real economic significance.
- (81) Hence, in line with Section 3.2. of the Commission document "Application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings" the assessment of the notified measure is being based on the "Market Economy Investor Principle" (hereafter "MEIP") as further developed in the jurisprudence of the EU courts<sup>15</sup> and the Commission's decisional practice<sup>16</sup>.

### **3.2. Lawfulness of the investment – Application of Article 108(3) TFEU**

- (82) The investment was notified to the Commission for legal certainty on 9 June 2014. The part to be subscribed by the public investor has not been implemented to date. Therefore, Italy has complied with its obligation under Article 108(3) TFEU.

#### **The financial position of Carnj**

- (83) The financial position of Carnj is sound with a solid equity base and stable profit margins. It is a well-established company, economically and financially sound, whose revenues have been steadily increasing over the last three years, with a return always positive and in line - taking into account the mutualistic aims - with competitors in the market.

#### **Viability of the Carnj**

- (84) The Commission analysed the provided financial data in order to determine whether Carnj is a company in difficulty within the meaning of the Community Guidelines on state aid for rescuing and restructuring

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<sup>15</sup> Case C-334/99, Germany v. Commission [2003] ECR I-1139, para. 133 and following and Joined Cases T-228/99 and T-233/99, Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen v. Commission [2003] ECR II 435, para. 255; and Joined cases T-129/95, T-2/96 and T-97/96, Neue Maxhütte Stahlwerke GmbH and Lech-Stahlwerke GmbH v Commission [1999] II-17, para. 104 and following.

<sup>16</sup> Decisions of 22 December 1998 on Aid No N 191/1998 (Pomella), 3 February 2000 on Aid No N 652/1999 (Granarolo), 4 August 2000 on Aid No N 164/2000 (Floramiata), 14 October 2004 on Aid No N 342/2004 (Valle del Leo), 21 September 2005 on Aid No N 170/2005 (Conserve Italia), 10 July 2007 on Aid No N 102/2007 (GIV Verona).

firms in difficulty<sup>17</sup> (hereafter "R&R Guidelines"<sup>18</sup>) in order to see whether the notified measure might have to be assessed under these rules. To this end, points 10 (c) and 11 of the R&R Guidelines were applied for the assessment, as the Carnj is a cooperative type of company.

- (85) Pursuant to the R&R Guidelines, points 10 (c) and 11, the firm is regarded as being in difficulty where:
- it fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings,
  - the other usual signs of a firm in difficulty are present.
- (86) According to the balance sheets for the financial years 2009-2013, as well as other information provided by the Italian authorities, Carnj has not suffered from capital losses, neither has it shown the other usual signs of a firm in difficulty, such as diminishing turnover, growing stock inventories, excess capacity, declining cash flows, mounting debts, rising interest charges and/or falling or nil net asset value.
- (87) Further, the Italian authorities have verified that Carnj does not show signs or conditions provided for in the national law for opening an insolvency proceeding.
- (88) On the basis of the above analysis it has been established that Carnj is not a company in difficulty within the meaning of the R&R Guidelines.

**The profitability of the intervention is sufficient with regard to its risks.**

- (89) The entry of ISA in the capital of Carnj will occur at a value of EUR 500 per share (cf. recital 26). As from its entry into the capital of Carnj, ISA will have the right to the minimum guaranteed return of 4.25%, increased by a spread based on the performance of the Carnj up to a possible maximum of 7,75%, with an expectation about 6% (cf. table in recital 28 and recitals 29 & 30).
- (90) This yield, equated to the actual success of the operation and standing at a level between fixed minimum and maximum, appears to be consistent with the risk profile of the transaction. The expected return is in line with the market and, moreover, a series of "safeguards" is attached to the proposed intervention (minimum rate of return, shares financing partner).
- (91) During the period of presence of ISA in the capital of Carnj the financial years are foreseen consistently in profit, which helps to avoid the erosion of capital and allow for the distribution of dividends to shareholders; this

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<sup>17</sup> In compliance with point 136 of Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01) notifications registered by the Commission prior to 1 August 2014 will be examined in the light of the criteria in force at the time of notification.

<sup>18</sup> Community Guidelines on state aid for rescuing and restructuring firms in difficulty, 2004/C 244/02.

aspect is particularly relevant for ISA, which in the case of dividend distribution would be satisfied to a greater extent and before other shareholders. Furthermore, the agreement with Fileni provides that Fileni Simar - in case of absence or inadequacy of profits - supplements each year the amounts paid by Carnj to ISA so as to maintain substantial balance in the entire intervention, *vis-à-vis* the increase of value of participating financial instruments calculated according to the mechanism detailed in recital 31, so that increases in value accrued but unpaid to ISA never exceed the amount of EUR 0.2 million.

- (92) The Commission takes note that the method of calculation of the annual value increase of the SFP determines expected returns for ISA incorporating, in the simulations performed, a spread awaited compared to expected 6-month Euribor between 5,2% and 5,6% (on 28 February 2014), while the minimum yield (4.25%) is higher by about 3.7% compared to the EU reference return rate for Italy (February 2014). This demonstrates the good consistency of expected returns compared to the capital market and to the risk profile of the transaction. The Commission also notes that the equity instruments issued for ISA benefit from a "protection" in the event of losses compared to other shares, which further confirms that the risk-return profile of the operation is as well satisfactory.
- (93) With reference to the evaluation of Carnj on the basis of conditions at which ISA would make its investment, it is noted that the subscription of the newly issued instruments would be at equal nominal value for both investors, public and private. In other words, the market value of Carnj was set equal to its share capital, currently amounting to approximately EUR 3 million, for a company with a turnover of nearly EUR 290 million, being in operation for more than twenty years and employing over 1,500 employees and which has at its disposal technical and human resources as well as the know-how to ensure the processing of all the product marketed by the Group Fileni which is the third largest Italian operator in poultry and rabbit meat. The value of the newly issued shares therefore does neither take into account capital reserves so far already accrued and amounting to more than EUR 10 million, nor any goodwill that could reasonably be expected from an undertaking of this type.
- (94) In addition to the above aspects, the private partner Fileni Simar invests the same amount, although it shall subscribe the financial instruments with fewer privileges and protections compared to those offered to ISA, either from the point of view of income or assets. It should also be noted that the commitments of Carnj to ISA, particularly with regard to the recognition of the amount due at the time of withdrawal, Fileni Simar will fully guarantee these commitments: this aspect is obviously connected to the evident interest of Fileni Simar in promoting stability and financial soundness of Carnj, which processes all its product (receiving it mostly from agricultural companies owned by or in any way related to the same family Fileni), but it represents a further important element of protection for the investment of ISA.

- (95) The main strength of the transaction is an opportunity to invest alongside one of the major players in the Italian poultry market and the expected return appears satisfactorily in relation to the expected timing and the contractual characteristics of the investment. In contrast, the main threat to the full achievement of the objectives remains an unfavorable trend of the market, even under the assumption that the current crisis will continue in the medium term. In such case Fileni Simar could record a decline in sales which would be inevitably reflected at the level of Carnj activity, since Fileni Simar is its main customer. However, based on the above evidence, the growth forecast appears reasonable.
- (96) Furthermore, a benchmark analysis was carried out in order to verify the reasonability of the proposed rate of return in comparison with the returns offered on the relevant market by the competitors.
- (97) In this regard, the following has been taken into account by the Commission:
- Carnj is a cooperative and therefore has as its objective not the maximization of profitability and/or cash flows but rather the high remuneration of the raw material supplied by its members;
  - Carnj has no direct ownership of real estate in which it works and therefore has a limited absorption of capital, with the result that the need for operating margin is further reduced by not having to cover the related depreciation and financial charges;
  - It has a function of service to the Group Fileni, as the processor of the meat, without having a direct projection on the market, demonstrating that the production structure of the group is considered the most efficient of all the market leaders.
- (98) The Commission takes note that in the case of cooperatives the evaluation methods of earnings do not always appear entirely consistent with the evaluation exercise whose mission is not the maximization of returns but that of the quantities traded and, above all, the price paid for the materials contributed by the cooperative members. This makes the usual methods of company valuations unusable.
- (99) For this reason, with regard to the direct profitability of Carnj it seems more appropriate to refer, instead of to ROI (c.f. also detailed explanation in recitals 67 & 68), to the return of capital contributed by shareholders, properly measured by ROE. According to Italian authorities, over the years taken as a reference all the cooperatives selected in the sample have never paid dividends; therefore the ROE of Carnj has been consistently higher than that of all other companies in the sample.
- (100) The ROI of Carnj has been constantly lower than that of its competitors, however, ROI of a company is known to be related to multiple factors, linked not only to the level of profitability of the operations but also to

investment choices and financial structure, the aspect particularly relevant in the case of cooperatives. In the case of Carnj in the last four years a significant increase in sales has been observed, growing from EUR 225 to almost EUR 300 million, against which the capital employed remained broadly stable. Consequently, also the financial requirement has remained very low, with a significant increase in liquidity. These circumstances have helped to maintain the profitability levels stable, not having to cover a lot of costs for depreciation and rising borrowing costs and allowed therefore to increase the remuneration of raw materials bestowed: there has been indeed an increase in the raw materials' input (mostly conferred by cooperative members) on the value of production from 74% in 2010 to 76% in 2012 and 78% in 2013.

- (101) This analysis showed that the expected return for ISA is consistent with the profitability of the sector and is above the average ROE identified for the main competitors of the CCDP.
- (102) As already noted above in recitals 20 and 71 to 74, the proposed investment shows some characteristics of a medium to long-term loan. It therefore seemed useful to compare the expected return for ISA with the conditions obtained by Carnj on the debt capital market, in order to verify both the reasonableness of the expectations of ISA compared to a private investor's expectations and the respect for the MEIP (in particular relating to the yield, which shall be in line with normal market conditions).
- (103) The loan financing profile of Carnj has been moving in the spread of 120-150 basis points which suggests a rating of BBB-BB (under the normal collateral assumption). Italian government bonds (10 year gross yield), which can be considered at similar risk, stood at the time of notification of the investment to the Commission at 2.8%. The investment into Carnj capital offers an initial guaranteed rate significantly higher, moreover, with the upside potential of a rate of 7.75%. Moreover, German government bonds (10 year gross yield) stood at the time of notification at 1.4%. Adding a risk margin of 200 bsp would give a rate of return of 3.4%, which is approximately 0.8 percentage point lower than the proposed guaranteed minimum return. Therefore, the profitability of the investment seems adequate.
- (104) The proposed return also appears to be consistent with the investment policies of ISA and corresponding to the reasonable expectations of a private investor, taking into account, on the one hand, the risk profile of the investment, and on the other hand, a series of connected additional guarantees - "safeguards" (minimum guaranteed rate of return, exit mechanism in favor of ISA, postponed participation in losses, collateral in the event of failure to pay dividends beyond a fixed amount). Therefore, the risks involved are considerably lower than in a pure equity investment.

**The State's participation should not be accompanied by the disengagement of the private investors.**

- (105) The private shareholder Fileni Simar is prepared to subscribe a cash-contribution equal to the investment of ISA. In fact, according to information furnished by the Italian authorities, pending the subscription by ISA, the private shareholder has already started with the envisaged investments, so far in the amount of nearly EUR 3 million (c.f. recital 21).
- (106) This investment is directly linked to the existing processing and marketing chain and contracts between Carnj as the processing entity and Fileni as the marketing part of the chain.
- (107) Further, the payment of dividends will be secured through the mechanism giving ISA the right to early terminate its participation in the capital of Carnj (c.f. recital 31) and, furthermore, the agreement Fileni provides that Fileni Simar - in case of absence or insufficiency of profits – can pay, in each year the sums due but unpaid by Carnj to ISA in order to maintain substantial balance of the intervention, with regards to the increase of value of PFI calculated according to the described mechanism, so that the increase in value accrued and unpaid to ISA never exceeds the amount of EUR 0.2 million. (c.f. recital 31)
- (108) The current shareholding of Carnj consists only of cooperative members who hold a share capital of EUR 2.976 million, virtually unchanged over the last decade. The project presented to the ISA provides that the share capital of cooperative members remain the same and that there will be a financing by Fileni Simar as a financing member, equal to the subscription of ISA in the form of PFI. ISA' subscription and payment of the capital increase is conditional upon the signing and full payment of the share of the private investor, which, moreover, cannot exit from the capital of Carnj before ISA.
- (109) In view of the above it is thus confirmed that the investment of ISA in Carnj is designed to be accompanied by a similar investment by the private partner and, on the other hand, there are no signs of disengagement of the private investor.

**Potential aid elements**

- (110) Certain elements of the described investment may still raise the question whether they involve an aspect of aid within the meaning of paragraph (iii) of Section 3.3 of the Commission document, which refers to State aid when the holding is a short-term one and with duration and selling price fixed in advance.
- (111) In the case at hand, while the duration of the project is fixed, though guaranteeing a flexibility from 8 to 10 years, as well as a protective mechanism of early withdrawal under specific conditions, only the minimum rate of return is fixed, while the actual yield will depend on

the performance of Carnj during ISA's presence in its capital, within the minimum and maximum fixed levels. The selling price will depend on the market price of the Carnj's participating instruments at the time of exercising the exit option, including the value of goodwill created during ISA's participation (cf. recital 35). As a result, the Commission considers that paragraph (iii) of Section 3.3 does not apply to the notified intervention.

- (112) Furthermore, the structure of equity investment follows the structure of MEIP measures financed by ISA in the past and approved by the Commission<sup>19</sup>.
- (113) In view of all the factors described above, the Commission considers that the participation by ISA in the Carnj's share capital is proposed in circumstances that would be acceptable for a private investor operating under normal market economy conditions. The proposed intervention will not provide Carnj with capital at better terms than what it would have been able to obtain on the market.
- (114) In light of the above, the measure in question does not confer any economic advantage onto Carnj. Since one of the conditions of Article 107(1) TFEU is not fulfilled, it can be concluded that the proposed measure does not constitute State aid within the meaning of that Article.

#### 4. CONCLUSION

The Commission has accordingly decided:

- that the measure does not constitute State aid.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent via the secured e-mail system Public Key Infrastructure (PKI) to: [agri-state-aids-notifications@ec.europa.eu](mailto:agri-state-aids-notifications@ec.europa.eu).

Yours faithfully,  
For the Commission

Phil HOGAN  
Member of the Commission

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<sup>19</sup> E.g. N 102/2007 "GIV Verona"; N 342/2004 "Valle del Leo"; N 164/2000 "Floramiata", N 423/2010 "Amalattea", SA. 35180 (2012/N) "Ferrarini", SA. 36178 (2013/N) "CCDP", SA. 38298 (2014/N) "Olio Dante".