

# FILE MEMO – Assessment of the LRLF repayment obligation upon the potential exercise of the put option by Nyrstar NV

Date: 26 July 2022

## 1. Purpose of this memo

The purpose of this memo is to document Nyrstar NV's ("NNV") assessment of the required repayment of the Limited Recourse Loan Facility ("LRLF") provided by Trafigura to NNV upon the completion of the restructuring of the Nyrstar Group in 2019 if the put option, that allows NNV to sell its 2% investment in NN2 NewCo Limited ("NN2") to Trafigura for an agreed price of EUR 20 million, is exercised before the end of July.

## 2. Background

### 2.1 *Prepayment of the facilities of the LRLF*

The LRLF provides that immediately upon receipt of any disposal proceeds from the put option, and subject to the limited recourse provisions described below (paragraph 2.2), the Company shall procure that these shall be applied first to prepay any amount outstanding under Facility B (being the litigation tranche), and secondly, if (i) any Disposal Proceeds remain after any required prepayment of Facility B, and (ii) the aggregate amount of all amounts outstanding under Facility A (being the operational costs tranche) exceeds EUR 5 million, to prepay such Facility A amounts to or towards an aggregate amount of EUR 5 million.

Without the operation of the limited recourse provisions (paragraph 2.2), it would mean that under Facility A, the amount to be repaid by NNV would be a difference between the amount expected to be drawn at 31 July 2022 of approximately EUR 6,143k and the amount of EUR 5,000k, i.e. the amount to be repaid (without the consideration of the limited recourse in paragraph 2.2) would be EUR 1,143k.

### 2.2 *Limited recourse*

The LRLF states that the facility is repayable only to the extent the Company has sufficient "Company Net Assets", as defined by the LRLF agreement (see below). For the accounting purposes, Net Assets (total assets less total liabilities) = Equity. Based on the accounting definition, the Net Assets exclude contingent liabilities, however, the definition of Net Assets under the LRLF includes contingent liabilities (as shown below).

The relevant clauses of the LRLF are shown below:

#### 2.3 **Limited recourse**

- (a) Notwithstanding any other provision of the Finance Documents, subject to paragraph (b) below:
  - (i) the recourse of the Lender to the Company in respect of repayment of the Facilities or any other obligation of the Company under or in connection with the Finance Documents is limited to the Company Net Assets; and
  - (ii) to the extent that the Company Net Assets are insufficient to discharge the obligations of the Company under the Finance Documents, such obligations shall be deemed to be limited to the amount of the Company Net Assets, and the Lender shall not be entitled to make a claim and shall have no further recourse against the Company and the Company shall have no Liability to pay or otherwise.

(e) In this Clause:

**Company Net Assets** means the assets of the Company (other than assets held or received on trust for a person which is not a member of the Group) having satisfied or provided for the Company's Liabilities (except for Liabilities of the Company under the Finance Documents which shall be disregarded for this purpose). For this purpose, **assets** includes present and future properties, revenues and rights of every description.

**Liabilities** means all present or future liabilities and obligations, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity.

(vi) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

The disclosures of the limited recourse of the LRLF have been disclosed in the 31 December 2021 financial statements, paragraph 1.5.5. "Limited recourse":

#### 1.5.5.Limited recourse

As mentioned above, the recourse of NN2 as Lender under the Limited Recourse Loan Facility in respect of repayment thereof or any other obligation of the Company thereunder is limited to the "Company Net Assets", being the assets (including all present and future properties, revenues and rights of every description) of the Company (other than assets held or received on trust for a person which is not a member of the Company or its subsidiaries) having satisfied or provided for its "Liabilities" (meaning all present or future liabilities and obligations, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity), except for Liabilities of the Company under the Limited Recourse Loan Facility and related finance documents, which shall be disregarded for this purpose.

Further, to the extent that the Company Net Assets are insufficient to discharge the Company's obligations under the Limited Recourse Loan Facility, such obligations shall be deemed to be limited to the amount of the Company Net Assets, and the Lender shall not be entitled to make a claim and shall have no further recourse against the Company and the Company shall have no liability to pay or otherwise.

However, this limitation on NN2's recourse against the Company shall not apply to the extent that the value of the Company Net Assets is impaired, or NN2 suffers loss as a result of any breach by the Company of any provision of the Limited Recourse Loan Facility (or any related finance document) other than the repeating representations / warranties thereunder or the provisions requiring payment of interest / fees or repayment / prepayment of principal thereunder.

In addition to these disclosures the Company has also make the following disclosures in paragraph 1.5.4:

Immediately upon receipt of any Disposal Proceeds, the Company shall procure that these shall be applied first to prepay any amount outstanding under Facility B (being the litigation tranche), and secondly, if (i) any Disposal Proceeds remain after any required prepayment of Facility B, and (ii) the aggregate amount of all amounts outstanding under Facility A (being the operational costs tranche) exceeds EUR 5 million, to prepay such Facility A amounts to or towards an aggregate amount of EUR 5 million.

The Company shall ensure that, if any distribution is paid to the Company's shareholders on or after the Company Exit Date, an amount equal to that distribution is applied to repay or prepay amount outstanding under Facility A before or simultaneously with such distribution.

Accordingly, as at the date of this report funds have been drawn under Facility B, the exercise of the Put Option would not only result in a draw-stop under the Limited Recourse Loan Facility, but repayment of the funds drawn under the Limited Recourse Loan Facility would so need to be repaid with the proceeds of the exercise of the Put Option. At the date of this report the amount of EUR 20 million would need to be used to reimburse EUR 2.1 million under Facility B and EUR 0.5 million (out of EUR 5.5 million) under Facility A.

In accordance with the Limited Recourse Loan Facility, however, the recourse to the Company in respect of repayment of funds drawn or any other obligation thereunder is limited to the Company's net assets, if any. If the net assets of the Company are negative or insufficient to discharge the obligations of the Company under the Limited Recourse Loan Facility, such obligations shall be deemed to be limited to the amount of the net assets of the Company.

The Company has also agreed that, if it receives any amounts from costs awards, damages awards and / or any other recovery from any counterparty to a Claim (as defined above) (such amounts constituting "Claim Proceeds"), then such Claim Proceeds must be used immediately to repay or prepay any amounts outstanding under Facility B.

Additionally, there are customary provisions that require mandatory prepayment of amounts outstanding under either or both Facility A and B in the case of an event of default followed by acceleration by the Lender.

### 3. Assessment of the impact on NNV

Based on the LRLF definitions shown above, the recourse to the Company in respect of repayment of funds drawn under the LRLF is limited to the Company's (positive) net assets (as defined by the LRLF agreement), if any. If the net assets of the Company are negative or insufficient to discharge the obligations of the Company under the Limited Recourse Loan Facility, such obligations shall be deemed to be limited to the amount of the net assets of the Company, as defined by the LRLF.

At the time of (or immediately after) the exercise of the put option (if exercised) and the related receipt of funds from the exercise of the option, all actual, contingent and prospective liabilities (including those resulting from the shareholder litigation) at that time would need to be factored in when calculating NNV's net asset position for the purposes of the LRLF – regardless of whether they had been included in the financial statements of NNV. At the time if and when the put option has been exercised and proceeds of the put option received, the Company will have to determine the actual, prospective and contingent liabilities.

There is no definition of contingent liabilities included in the LRLF. In addition, the relevant provisions in the LRLF were not drafted with a view to the accounting definitions of this term (or other definitions thereof) – the language used was deliberately broad with a view to ensuring that all third-party creditors would be paid in full.

Specifically in relation to estimating the potential liability under the litigation matters as a contingent liability, the view is that, while the litigation remains afoot and unresolved, it would be in the corporate benefit of Nyrstar NV when considering the Company Net Assets for the purposes of the mandatory prepayment provisions to provision for it in full, on a worst case scenario basis, also considering that the Company stands to be criticised by minority shareholders if it were to reimburse too much.

It needs emphasis that this provisioning is only done to calculate the Company's repayment obligations under the LRLF, and thus:

- has not been calculated in accordance with IFRS or Belgian GAAP and has no relation with or bearing on the Company's accounting. Indeed, in its 31 December 2021 financial statements NNV

has not recognized a provision related to various ongoing legal cases and investigations. However, it has disclosed the nature of these cases and investigations as contingent liabilities even though it has not quantified them.;

- is not based upon the Company's assessment of the likelihood of such contingent or prospective liabilities eventually materialising (which in respect of the contingent or prospective liabilities the Company, based upon its own assessment of all facts and based upon the external legal advice it has over the years received, considers to be very unlikely).

The calculation below shows the expected repayment of the LRLF if the put option is exercised (assumed 31 July 2022 for the assessment) based on the latest financial information.

		Higher range (when applicable) in EUR	Lower range (when applicable) in EUR	
1	Equity (Net Assets) at 31/12/2021 (as per the audited annual financial statements)	-1'649'043	-1'649'043	
2	Less: Expected decrease in equity between 1/1/2022 and 31/7/2022	-	-	Given all P/L charges are offset against the utilisation of the provisions for discontinuation and the provision amount will be only reassessed for the HY financial statements as at 30 June 2022
3	Plus: Exercise of the option	20'000'000	20'000'000	
4	Less: Carrying value of the 2% investment in NN2 in the financial statements	-15'395'000	-15'395'000	
5	Plus: The liabilities under the LRLF as at 20/7/2022	9'786'121	9'786'121	Closing balance of the LRLF at 13/7/2022 (as the definition of Net Assets in LRLF excludes the liabilities under LRLF)
6	Plus: Expected drawing on the LRLF between 20/7/2022 and 31/7/2022	-	-	No further material drawing expected on the LRLF until 31/7/2022
7	Plus: Any future properties, revenues and rights	-	-	None
8	Less: Any contingent liabilities at 31/7/2022	-18'756'638	-32'406'638	Calculated on a worst case scenario basis, as explained
	<b>Estimated Net Assets (as defined by the LRLF) as at 31/7/2022</b>	<b>-6'014'560</b>	<b>-19'664'560</b>	

#### 4. Expected repayment of the LRLF (if the put option is exercised)

Based on the information stated above, the estimated balances of Facility A of the LRLF at 31 July 2022 is EUR 6,143k and the estimated amount of the Facility B of the LRLF at 31 July 2022 is EUR 3,643k, in total EUR 9,786k. As the net asset position is estimated to be negative even taking into account the receipt of the proceeds of the put option, the Company would make no repayments of the LRLF if and when such proceeds are received.

The Company should continue to monitor the development of the Company Net Assets (as defined by the LRLF) until the completion of the liquidation process to consider whether any repayment of the LRLF needs to be made during or at the end of the liquidation process.