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Our ref:	RJ-EFRAG 635 B
Direct dial:	+31 (0)88 4960391
Date:	Hoofddorp, March 11, 2025
Re:	DRAFT DASB Commentletter on EFRAG DCL on Exposure Draft ED/2024/8 ‘Provisions – Targeted Improvements Proposed amendments to IAS 37’

Dear members of the EFRAG Technical Expert Group,

The Dutch Accounting Standards Board (DASB) appreciates the opportunity to provide a response to the EFRAG Draft Comment Letter on the Exposure Draft ED/2024/8 ‘Provisions – Targeted Improvements Proposed amendments to IAS 37’, issued by the IASB in November 2024.

The DASB welcomes the initiative to provide feedback on the proposed amendments as well as input on the amended and additional illustrative examples included in the guidance on implementing IAS 37. We believe that the amendments address many practical application issues and potential areas of confusion and will benefit both preparers and users of financial statements.

The DASB in general supports the targeted improvements as proposed by the IASB. The DASB largely agrees with the EFRAG draft comment letter. However, within the scope of this project, we have the following concerns and remarks:

- The DASB notes that, while the improvements do clarify the accounting for specific issues such as levies, the application of the proposed targeted improvements in relation to the recognition of provisions is complex and may be difficult to apply in practice. Whilst the improvements does have its benefits especially in specific areas such as the accounting for levies, there might be unintended consequences in other aspects or areas. The DASB suggests that further outreach and field testing be concluded to mitigate the risk of unintended consequences when applying the improvements in practice.
- The DASB notes that one of the identifiable unintended consequences would be the application of the proposed amendments to transactions which may have limited guidance (such as contingent consideration payable). It is suggested to clarify the scoping of the standard in this regard

- The DASB believes that the proposed targeted improvements related to the guidance on the practical ability to avoid an action would benefit from additional illustrative examples demonstrating when an entity has the practical ability to avoid an action and therefore will not recognise a liability.
- The DASB has noted that the application of a risk-free rate that does not take performance risk into account is specific to IAS 37. It is expected that this creates day 2 accounting differences for example when a provision is reclassified to a financial instrument or obtained via a business combination as the discount rate applied is different. The standard should clarify how these impacts should be accounted for.

We have included our detailed response to the Exposure Draft questions in Appendix 1 and have responded to your specific questions to constituents in Appendix 2.

If you have any questions, please do not hesitate to contact me.

Yours sincerely,

drs. G.M. van Santen RA
Chairman Dutch Accounting Standards Board

Appendix 1 : Responses to Exposure Draft questions
Appendix 2: Questions to Constituents

Appendix 1: Responses to Exposure Draft questions

Appendix 1 – IASB – Responses to Exposure Draft

Question 1—Present obligation recognition criterion
The IASB proposes: • to update the definition of a liability in IAS 37 Provisions, Contingent Liabilities and Contingent Assets to align it with the definition in the Conceptual Framework for Financial Reporting (paragraph 10); • to align the wording of the recognition criterion that applies that definition (the present obligation recognition criterion) with the updated definition of a liability (paragraph 14(a)); • to amend the requirements for applying that criterion (paragraphs 14A–16 and 72–81); and • to make minor amendments to other paragraphs in IAS 37 that include words or phrases from the updated definition of a liability (Appendix A). The proposals include withdrawing IFRIC 6 Liabilities arising from Participating in a Specific Market—Waste Electrical and Electronic Equipment and IFRIC 21 Levies (paragraph 108). Paragraphs BC3–BC54 and BC86 of the Basis for Conclusions and Appendix A to the Basis for Conclusions explain the IASB's reasoning for these proposals. Do you agree with these proposals? Why or why not? If you disagree, which aspects do you disagree with and what would you suggest instead?

Conceptually, the DASB generally agrees with the proposals to clarify the present obligation recognition criterion in IAS 37. Given the improvements, especially as they relate to the accounting for levies, the DASB supports to repeal the guidance in IFRIC 6 and IFRIC 21 in favour of the targeted improvements. However, we have identified certain areas in which further clarification may be necessary:

- ***Complexity in the application of the targeted improvements***

  The DASB notes that the targeted improvements in relation to the recognition of a provision introduce a more complex framework to recognise provisions. It is understood how the improvements might assist in providing more reliable and transparent information when applied to specific transactions such as levies. However, it is unknown what new issues or consequences the improvements might create when applying them to other types of transactions. It is suggested that further outreach and field testing be initiated in this regard to identify any consequences prior to publishing the improvements.

- ***Assumption that an entity has no practical ability to avoid taking an action if it prepares its financial statements on a going concern basis (paragraph 14R).***

The paragraph describes a situation that an entity has no practical ability to avoid taking an action if it could only do so by liquidating the entity or ceasing to trade. In this instance, the paragraph states that if an entity's financial statements are prepared on the *going concern basis, it is assumed that an entity does not have such practical ability. The question arises as to whether this has been considered in a situation whereby the entity prepares its financial statements on a going concern basis but the provision might relate to a discontinued activity or an operating subsidiary within the context of a consolidated group. The question also arises on how this aspect should be considered in a situation where an entity has several business activities and a specific business activity can be discontinued without a going concern issue for the entity as a whole. We suggest the paragraph to be drafted clearer in this regard.*

Consider the example whereby a financial institution is obliged to pay an annual levy if it continues to operate. One may interpret this paragraph to mean that since the financial institution prepares its financial statements on the going concern basis, they might need to provide for all potential levies for the periods that the financial institution is expected to operate. It is suggested that the IASB make a clarification in the application of this paragraph.

- ***Completeness of legal obligation requirement (paragraph 14F(a)(ii))***

The paragraph indicates that the economic consequences of failing to fulfill or discharge a legal obligation must be significantly worse than the costs of fulfilling it for the obligation condition to be satisfied. As currently worded, there is a risk that this requirement may fail to include all provisions that should be recognised. Consider a scenario where the economic consequences of not fulfilling a legal obligation are anticipated to be less or equal to the costs of fulfilling it. A certain reading of paragraph 14F(a)(ii) may result in the interpretation that the obligation condition would not be satisfied, and no provision should be recognized. However, we believe the obligation condition should be satisfied, and the associated provision could then be measured based on the lowest cost.

- ***Additional guidance on practical ability to avoid discharging a responsibility (paragraph 14F)***

Since 'practical ability to avoid' is one of the factors considered in the recognition of all liabilities under IAS 37, it would be beneficial to include additional examples where an entity has the practical ability to avoid discharging a responsibility. In practice, there might be confusion as to when an entity may have the ability to avoid a responsibility or an actual settlement of a responsibility. Therefore, an example included in the application guidance might assist in this area.

- ***Scope of the amendments and impact on other liabilities***

In the process of forming our views on the proposed amendments, we also considered their scope and identified potential specific unintended impacts. Some preparers might apply the amendments to areas such as accounting for royalty payables, trailing commission payables and contingent consideration payable for purchases of assets because of the lack of guidance in these areas. Our view is that the application of the guidance to these areas might result in unforeseen consequences, and therefore further reiterate the need for further outreach and field testing of the application of the targeted improvements.

- ***Illustrative guidance of when the criteria are not met (paragraph 14T))***

The paragraph describes a situation whereby an entity has an established pattern of past practice but an obligation does not arise. The DASB believes that it would be beneficial to include an illustrative example to clarify in what kind of situations this may arise. The distinction seems to be an area that needs clarification as evidenced by the IFRIC discussion on Negative Low Emission Vehicle Credits.

Question 2—Measurement—Expenditure required to settle an obligation
The IASB proposes to specify the costs an entity includes in estimating the future expenditure required to settle an obligation (paragraph 40A). Paragraphs BC63–BC66 of the Basis for Conclusions explain the IASB's reasoning for this proposal. Do you agree with this proposal? Why or why not? If you disagree, what would you suggest instead?

The DASB broadly agrees with this proposal but notices an area which may require further clarification as follows:

Paragraph 40A indicates that the costs to include in the measurement of a provision are both the incremental costs of settling the obligation as well as an allocation of other costs that relate directly to settling obligations of that type.

Consider a scenario whereby an entity has a possible fine. The entity determines that if certain costs are incurred (such as investigative costs, legal fees, or in-house salaries of legal staff etc.), it is probable that the fine will not materialise. Given that these costs may be seen as incremental and/or directly associated with the fine, would there be a minimum threshold to consider the costs to recognise as a provision being the lower of the actual fine and the costs to avoid the fine. Or conversely, should the transaction be looked at as a single unit of account, and if the transfer of economic resources is not considered to be probable (albeit due to incurred costs to challenge the fine) then an entity would not provide for any costs. The DASB suggests the application thereof be clarified, possibly be means of an illustrative example.

Question 3—Discount rates
The IASB proposes to specify that an entity discounts the future expenditure required to settle an obligation at a rate (or rates) that reflect(s) the time value of money— represented by a risk-free rate—with no adjustment for non-performance risk (paragraphs 47–47A). The IASB also proposes to require an entity to disclose the discount rate (or rates) it has used and the approach it has used to determine that rate (or those rates) (paragraph 85(d)). Paragraphs BC67–BC85 of the Basis for Conclusions and Appendix B to the Basis for Conclusions explain the IASB's reasoning for these proposals. Do you agree with: a. the proposed discount rate requirements; and b. the proposed disclosure requirements?

Why or why not? If you disagree, what would you suggest instead?

We agree with the proposed discount rate requirements. However, there are a few related issues that we believe should be addressed to prevent unintended consequences – the DASB identified inconsistencies within IFRS 3 but also noted an inconsistency within IFRS 9:

1. ***Interaction of IAS 37 with the different measurement bases in IFRS 3 and IFRS 9***

The proposed amendments to IAS 37 require provisions to be measured using a discount rate that excludes the entity's non-performance risk. This approach may differ from the fair value measurement basis for liabilities as required under IFRS 3 and IFRS 9, where non-performance risk is typically included in the discount rate. This difference in discount rates introduces an arbitrary difference in the measurement of liabilities in the following scenarios:

a. *Provisions acquired as part of a business combination are initially measured at fair value in accordance with paragraph 18 of IFRS 3. However, subsequent measurement under IAS 37 requires excluding non-performance risk from the discount rate. This results in an arbitrary change in the carrying amount of the provision. The DASB maintains that there might be options in treating this difference: added to the carrying amount of a related asset (as per IFRIC 1),recognised directly in the statement of profit or loss or a specific measurement exception is provided for within IFRS 3 in this area. However, this is not clear from the current guidance.*

b. *An entity recognising a provision for a litigation claim measures the provision in accordance with IAS 37 by applying a discount rate that excludes its non-performance risk. When the litigation parties agree on settlement terms by <u>means of a contract</u>, the provision transitions into a financial liability to be initially measured at fair value under paragraph 5.1.1 of IFRS 9. The ensuing change in discount rate may result in an arbitrary change in the carrying amount of the liability. It is also unclear how this corresponding adjustment should be accounted for in this case. The DASB suggests that the difference would be recognised within profit or loss.*

It is suggested that the IASB should clarify how IAS 37 interacts with these other standards in relation to the discount rate.

The DASB agrees with the proposed disclosure requirements.

Question 4—Transition requirements and effective date
4(a) Transition requirements The IASB proposes transition requirements for the proposed amendments (paragraphs 94B–94E). Paragraphs BC87–BC100 of the Basis for Conclusions explain the IASB's reasoning for these proposals. Do you agree with these proposals? Why or why not? If you disagree, which aspects do you disagree with and what would you suggest instead?

4(b) Effective date If the IASB decides to amend IAS 37, it will decide on an effective date for the amendments that gives those applying IAS 37 sufficient time to prepare for the new requirements. Do you wish to highlight any factors the IASB should consider in assessing the time needed to prepare for the amendments proposed in this exposure draft?

It is noted that there is no option to apply a full retrospective approach for the improvements in relation to the measurement of a provision. The DASB considered that there may be benefit in also allowing a full retrospective approach for those preparers that believe that a full retrospective approach could result in more relevant information.

In addition, the transitional provisions for costs included in the measurement and the application of the discount rate are different. The DASB suggests that these may be aligned to ease the transition. The DASB also notes that in relation to decommissioning liabilities, the requirement to apportion the adjustment between the related asset and retained earnings might be difficult to apply. The DASB suggests that the IASB consider providing further examples to illustrate how this transition requirement should be applied or to adjust the entire difference to the carrying amount of the related asset and perform an impairment test for the asset, when needed.

We do not have additional comments on factors to be considered in assessing the time needed to prepare for the proposed amendments.

Question 5—Disclosure requirements for subsidiaries without public accountability
The IASB proposes to add to IFRS 19 Subsidiaries without Public Accountability: Disclosures a requirement to disclose the discount rate (or rates) used in measuring a provision, but not to add a requirement to disclose the approach used to determine that rate (or those rates) (Appendix B). Paragraphs BC101–BC105 of the Basis for Conclusions explain the IASB's reasoning for this proposal. Do you agree with this proposal? Why or why not? If you disagree, which proposal do you disagree with and what would you suggest instead?

The DASB agrees and supports the proposed amendments to IFRS 19 to include a requirement to disclose the discount rate (or rates) used in measuring a provision, but not to add a requirement to disclose the approach used to determine that rate.

Question 6—Guidance on implementing IAS 37
The IASB proposes amendments to the Guidance on implementing IAS 37 Provisions, Contingent Liabilities and Contingent Assets. It proposes: a. to expand the decision tree in Section B; b. to update the analysis in the illustrative examples in Section C; and

c. to add illustrative examples to Section C. Paragraphs BC55–BC62 of the Basis for Conclusions explain the IASB's reasoning for these proposals. Do you think the proposed decision tree and examples are helpful in illustrating the application of the requirements? If not, why not? Do you have any other comments on the proposed decision tree or illustrative examples?

The DASB thinks that the proposed decision tree and examples are helpful in understanding the proposed requirements and their application. Nevertheless, we believe that there should be an introductory paragraph or box for each example outlining the objective of the example and what paragraph specifically in IAS 37 or other IFRS Accounting Standard they relate to.

However, DASB has noted some general observations as follows:
- the references to other standards or paragraphs within the examples in IAS 37 are not complete;
- add considerations for interim periods in examples where this is relevant;
- delete topics that are not relevant for this standard (for example 'terminations penalties');

The DASB does not have any further comments.

Question 7—Other comments
Do you have comments on any other aspects of the proposals in the Exposure Draft?

It has been noted that no effective date has been included in the Exposure Draft. The DASB suggests that sufficient time be provided, especially for entities that may have large impact by virtue of them having large levies that are currently accounted for within the scope of IFRC 21.

The DASB does not have any further comments on other aspects of the Exposure Draft.

Appendix 2 – EFRAG – Questions to constituents

Question 1

EFRAG Questions to Constituents

Paragraphs 7 to 8 list arguments in favour and against the proposals in the ED on when a present obligation exists as a result of a past event.

1.1 Do you have additional arguments in favour and against the proposals?

1.2 Do you support (some of) the proposals, or would you prefer the current requirements as reflected in IFRIC 21? Would your answer depend on the type of provision being considered (e.g. reciprocal versus non-reciprocal transactions)? If so, for which types of provisions would you support/not support the proposals?

1.3 The ED proposes to maintain the requirements that a provision should only be recognised if (1) it is probable that an entity will be required to transfer an economic resource to settle the obligation; and (2) a reliable estimate can be made of the amount of the obligation. It will still be specified that it is only in extremely rare cases that an entity will not be able to make a reliable estimate of the amount of the obligation. Do you consider that these requirements should be amended following the proposals of the ED on when an entity has a present obligation?

1.4 Would the proposals have any economic impact on some sectors (e.g. sectors in which funds have to be set aside to cover provisions)?

1.5 Could you foresee the proposals resulting in any unintended consequences? If so, which?

1.6 Do your answers to the question above depend on whether you consider the proposed requirements in relation to the annual financial report or in relation to an interim financial report? If so, please specify how your answers differ for the two types of financial reports.

1.1 In general, in our view is that we do not have any additional arguments in favour and against the proposals. However, the DASB notes EFRAG's inclusion of arguments in favour and against the updated criterion related to the recognition of a present obligation as a result of a past event (i.e. the past event condition). The DASB agrees with the arguments put forward by EFRAG, but believes on a balance of the arguments that the arguments in favour potentially outweigh the arguments against. However, the DASB notes that the targeted improvements in relation to recognition introduce a more complex framework to recognise provisions. It is understood how the improvements might assist in providing more reliable and transparent information where they relate to specific transactions such as levies. However, it is unknown what new issues or consequences the improvements might create when applying them to other types of transactions, which we believe to be a serious concern.

1.2 The DASB endorses the IASB's proposals to align the wording in IAS 37 to the wording within the Conceptual Framework as well as to clarify the present obligation criterion. There is also support to repeal the guidance in IFRIC 21 and IFRIC 6 in favour of the targeted improvements irrespective of whether the provisions are identified as reciprocal or non-reciprocal in nature.

1.3 The DASB does not believe that there needs to additional amendments to the recognition criteria noted by question 1.3.

1.4 The proposals are expected to result in the earlier recognition of certain provisions, especially for those entities that are liable for levies in the scope of IFRIC 21.

1.5 We have noted that there might be unintended consequences by applying the amendments to other types of liabilities where there is limited guidance available. These types of liabilities include royalty payables and contingent consideration. We suggest that the IASB performs further field testing or outreach in this regard to identify any unintended consequences and/or makes a clarification about this in the Basis of Conclusions.

1.6 The responses were not contemplated based on the different application between a set of annual financial statements as opposed to an interim set of financial statements.

Question 2

EFRAG – Question to Constituents

2.1 Although EFRAG assesses the proposals related to the expenditure required to settle an obligation will result in useful information, it notes that performing an assessment of the internal cost (e.g., the cost of the internal legal department) related to settling the obligation given the type may be associated with uncertainty and cost.

Do you foresee any complexity/costly process in determining the costs that relate directly to settling the obligation(s) (which include both incremental costs and other directly attributable costs)? Please explain.
(c) another interpretation? Please explain.

2.1 The DASB agrees with this proposal and does not foresee any increased complexity in determining the costs as the guidance is aligned to the existing guidance on onerous contracts. We also agree that more application guidance and illustrative examples will be beneficial in explaining the guidance. However, the DASB identifies a situation whereby the application of the improvement might not be as clear as follows:

Consider a scenario whereby an entity has a possible fine. The entity determines that if they incur certain costs (such as investigative costs, legal fees, or in-house salaries of legal staff etc.), it is probable that the fine will not materialise. Given that these costs may be seen as incremental and/or directly associated with the fine, would there be a minimum threshold to consider as the costs to recognise as a provision being the lower of the actual fine and the costs to avoid the claim or fine. Or conversely, should the transaction be looked at as a single unit of account, and if the fine is not considered to be probable (albeit due to incurred costs to challenge the fine) then an entity would not provide for any costs. The DASB suggests the application thereof be clarified, possibly be means of an illustrative example.

Question 3

EFRAG Questions to Constituents

3.1 In cases when regulation describes the rate(s) to be used or determined to discount certain provisions within the scope of IAS 37, do you agree with the proposal to use a risk-free rate(s) or would you prefer to use the rate prescribed by the applicable regulation? Please explain.

3.2 Do you consider that the IASB should specify whether an entity should include or exclude inflation expectations when estimating the future expenditure required to settle its present obligation and then discounting this amount (see paragraph 52)? If so, please explain how the IASB could address the issue.

3.3 Would you expect that in practice, differences between how provisions acquired in a business combination would be accounted for at the day of acquisition and subsequently would result in day-2 losses being reporting in profit or loss (see paragraph 49(b) above)? If so, how would you recommend the issue to be solved?

3.1; 3.2 & 3.3 The DASB agrees with the targeted improvements in relation to the discount rate as it ensures comparability between entities. The DASB also recognises the inconsistencies in the interaction between IFRS 3 and IFRS 9 as follows:

a. Provisions acquired as part of a business combination are initially measured at fair value in accordance with paragraph 18 of IFRS 3. However, subsequent measurement under IAS 37 requires excluding non-performance risk from the discount rate. This may result in an arbitrary increase in the carrying amount of the provision. The DASB maintains that there might be two options in treating this difference: added to the carrying amount of a related asset (as per IFRIC 1), recognised directly in the statement of profit or loss, but this is not clear from the current guidance or a specific measurement exemption is introduced in IFRS 3.

b. An entity recognising a provision for a litigation claim measures the provision in accordance with IAS 37 by applying a discount rate that excludes its non-performance risk. When the litigation parties agree on settlement terms by means of a contract, the provision transitions into a financial liability to be initially measured at fair value under paragraph 5.1.1 of IFRS 9. The ensuing change in discount rate may result in an arbitrary decrease in the carrying amount of the liability. It is also unclear how this corresponding adjustment should be accounted for in this case. The DASB suggests that the difference may be recognised in profit or loss.

It is suggested that the IASB should clarify how IAS 37 interacts with these other standards in relation to the discount rate. In addition, the inclusion of whether inflation expectations should be included in the future expenditure seems to be a valuation of discounted cash flows issue and not necessarily an area to be clarified within IAS 37. Current discounting principles are sufficient to determine whether inflation expectations are to be included. Notwithstanding the assessment above, the DASB proposes to maintain that the unwinding of the discount is based on the nominal discount rate as this may be the most consistent application.

The DASB agrees with EFRAG's assessment that the IASB should provide clarity in relation to paragraph 47A on whether non-performance risk can be adjusted in the cash flows for measuring a provision.

The DASB agrees with EFRAG that the disclosure requirements are appropriate.

Question 4

EFRAG Questions to Constituents

4.1 Have you identified any possible difficulty in applying the proposed transition requirements, in particular related to the simplified retrospective approach for changes in discount rates? Please explain.

4.2 Have you identified any factors the IASB should consider in assessing the time needed to prepare for the proposals?

4.1 The DASB agrees with EFRAG's assessment of the transition provisions. The DASB recognises EFRAG's note that the requirement to apportion the adjustment between the related asset and retained earnings might be difficult to understand and apply. The Board should consider providing examples and further guidance to illustrate how this transition requirement should be applied. Alternatively the IASB may consider to adjust the entire difference to the carrying amount of the related asset and perform an impairment test for the asset, when needed.
In addition, the DASB notes that there is no option to apply a full retrospective approach for the improvements in relation to the measurement of a provision. The DASB considers whether there is benefit in also allowing a full retrospective approach for those preparers that believe that a full retrospective approach could result in more relevant information.

4.2 We do not have additional comments on factors to be considered in assessing the time needed to prepare for the proposed amendments

Question 5

EFRAG Questions to Constituents

5.1 Do you think that disclosing the discount rate (or rates) used in measuring a provision, but not the approach used to determine that rate (or those rates) results in useful information for entities applying IFRS 19? Please explain.

5.1 The DASB agrees with the EFRAG assessment and supports the proposed amendments to IFRS 19 to include a requirement to disclose the discount rate (or rates) used in measuring a provision, but not to add a requirement to disclose the approach used to determine that rate. The DASB does not have any further recommendations in this regard.