

CREOS RESPONSE TO SUDSTROUM IN RELATION TO THE TERMS AND CONDITIONS FOR BALANCE RESPONSIBLE PARTIES IN THE LUXEMBOURG SCHEDULING AREA.

05/02/2026

In relation to the new Terms and Conditions for Balance Responsible Parties in the Luxembourg scheduling area in accordance with Article 18 of Commission Regulation (EU) 2017/2195 of 23 November 2017 establishing a guideline on electricity balancing system, please find below further explanations of our interpretation of Article 11 and the manner in which we intend to apply it.

Comments Sudstrom S.à r.l. & S.e.c.s.:

In the framework of the finalized Terms and conditions for Balance Responsible Parties in the Luxembourg scheduling area (version dated 06.01.2026), please find our additional questions or suggestions concerning the latest amendments to article 11 below:

a. Article 11 paragraph 1 (on page 13)

“The balancing energy is intended exclusively for the compensation of imbalances caused by unavoidable and inherent inaccuracies in the forecasts of the Balance Responsible Parties for their balancing perimeter. Any use of balancing energy for other purposes, in particular to cover all or part of the consumption of a balancing perimeter, is to be regarded as misuse.

A balancing perimeter is considered exhibiting a significant imbalance if one of the two following criteria is fulfilled [...]”

- The pursued purpose of the balancing energy should be specifically distinguished from the significant imbalance in perspective in order to avoid any misunderstanding and to clarify the consequences in case of a misuse (unless we should interpret this paragraph through a combined reading of the aforementioned purpose and the significant imbalance defined by one of the described criteria).
- In the same manner, subject to the above-mentioned potential combined reading, applicable penalties in the event of a misuse should be outlined. In fact, any Balance Responsible Party should maintain some control over her liability.

b. Article 11 paragraph 3 (on page 14)

“If a significant imbalance occurs in a balancing perimeter, the Balance Responsible Party and the Balance Coordinator shall jointly attempt to clarify whether and to what extent this imbalance could have been avoided by the Balance Responsible Party and inform ILR of the result.”

- The purpose(s) for which the result may be used by ILR should be mentioned.

- Moreover, the conditions under this collaborative work should be more defined or explained, especially to prevent operational issues in the frameworks of the Balance Responsible Party and limit, as far as possible, a threat of penalties.
- In order to avoid unnecessarily pronouncing warnings, a reasonable period for compliance should be given before sending any written warning (*see also comments below*).

c. Article 11 paragraph 4 (on page 14)

“The Balance Coordinator is entitled to issue a written warning to the Balance Responsible Party if, in the opinion of the Balance Coordinator, the clarification is insufficient or unjustified. The Balance Coordinator is also authorised to issue a written warning to the Balancing Responsible Party if the latter fails to comply with the demand for improvement in its balancing perimeter. If no clarification is provided by the Balance Responsible Party, the Balance Coordinator is also authorised to issue a written warning to the Balance Responsible Party.”

- We notice that the Balance Coordinator seems to reserve a unilateral power to impose penalties, on the one hand, and, on the other hand, a unilateral decision-making power at its own discretion. However, a proper contractual balance in such a context should be ensured.
- We suggest that the Balance Coordinator should justify its “opinion” by using objective, transparent, and determined criteria in the mentioned various circumstances, which should be clearly stated in this paragraph.

To ensure transparency and impartiality, this paragraph should also indicate the appropriate procedures laid down.

- A unilateral power to impose penalties is, in principle, a matter of a competent authority like the ILR; therefore, we emphasise that such a power could lead to abuses. Hence, any written warning should be subject to the control of the ILR to prevent abuses.

d. Article 11 paragraph 5 (on page 14)

“A balancing perimeter may, in specific and limited cases, exhibit a significant imbalance not covered by points 1 and 2 of this Article. In such an event, the Balance Coordinator shall immediately inform ILR and provide all relevant information, supporting documentation, and contextual details. Subject to the favourable opinion of ILR, the Balance Coordinator is entitled to issue a written warning to the Balance Responsible Party and shall further send to ILR a copy of the written warning issued to the Balance Responsible Party.”

- We question which scenarios referred to the specific and limited cases that are considered. In order to provide predictability, special situations should be listed in this paragraph, or at least, criteria for such cases should be outlined.
- Such information should also be promptly communicated to the Balance Responsible Party.

e. Article 11 paragraph 7 (on page 14)

“In the event of a failure by the Balance Responsible Party to comply with its scheduling obligations, the procedures defined in Chapter 3 of the modified Regulation E08/09/ILR of 30 April 2008¹⁰ shall apply.”

- To ensure a good understanding, we kindly ask you to confirm to us that such penalty is the consequence of the termination contract between the Balance Coordinator and the Balance Responsible Party.

An immediate contract termination should be implemented in the event of at least two failures, insofar as a penalty of such severity (irreversible penalty) shouldn't be inflicted on an irregular situation that could be corrected.

- We suggest considering unforeseeable circumstances or force majeure. Moreover, before immediate termination, gradual penalties could be laid down.

Answer Creos Luxembourg S.A.:

The Balance Responsible Party (BRP) is responsible for submitting a separate and as accurate as possible forecast of energy needs for each of its balancing perimeters. These energy needs are intended to cover the injection or consumption of the registered customer portfolio of a given balancing perimeter. As stated, imbalances resulting from unavoidable and inherent inaccuracies are compensated through balancing energy provided by the Balance Coordinator. The role of the Balance Coordinator is to monitor the market and to forecast the energy needs for the area under its responsibility.

Significant deviations shall be avoided, and it is the responsibility of the Balance Coordinator to monitor and detect such significant deviations. For this purpose, the Balance Coordinator, in collaboration with the ILR, has defined the relevant criteria. In our opinion, these criteria are not excessively strict and offer every BRP sufficiently generous limits for their forecasts. However, these criteria reveal significant deviations that we believe are in most cases easily avoidable. In this regard, we rely on a collaborative clarification of any identified significant deviations and working together to develop and exchange possibilities to improve for future cases.

As each significant deviation is different and may vary in complexity, we refrain from setting a fixed process and deadline for the joint clarification. Our objective is to refrain from issuing a written warning by clarifying the deviations in a cooperative manner. ILR is kept informed of all steps taken in this regard and can be consulted by both parties at any time in the event of any disagreements.

At the same time, the Balance Coordinator must retain the option to intervene in situations involving market manipulation or criminal activity of a BRP, which may involve issuing written warnings or, in the most severe case, terminating the concerned balancing agreement.

Regarding the procedures defined in Chapter 3 of the modified Regulation E08/09/ILR of April 2008, a termination of a balancing agreement shall occur only if a BRP is unable to fulfil its scheduling obligation. In addition, the market partner must either refuse to cooperate with the



Balance Coordinator in resolving the situation or be unreachable via the contact details specified in the balancing agreement for two consecutive days during which schedules are missing. Only when both conditions are met, the Balance Coordinator shall notify the failure (“défaillance d’un fournisseur”) to the ILR, which will formally declare the failure.