

Walder Wyss Newsletter | **235**

Swiss Wholesale Energy Markets under Supervision: The New BATE/VATE Regime at a Glance

On 1 January 2027, the Federal Act on Supervision and Transparency in Wholesale Energy Markets (BATE) and its implementing ordinance (VATE) will enter into force. The regime replaces the narrow, REMIT-derived reporting obligations of the Electricity Supply Ordinance (StromVV) with a comprehensive supervisory framework for energy and gas.

Persons trading or brokering Swiss wholesale energy products will become subject to new registration, disclosure and reporting obligations and the obligations of Swiss persons trading in European wholesale energy products will be expanded. In addition, the framework introduces a prohibition of insider dealing and market manipulation with respect to the Swiss wholesale energy market. The obligations are phased in until mid-2028, with the first deadlines falling in the first quarter of 2027.

New supervisory regime for Swiss wholesale energy markets: BATE and VATE enter into force on 1 January 2027



SARAH VETTIGER

M.A. HSG in Law and Economics, LL.M.,
Attorney at Law
Senior Associate
Phone +41 58 658 56 86
sarah.vettiger@walderwyss.com



RAMONA WYSS

MLaw, LL.M., Attorney at Law
Partner
Phone +41 58 658 52 44
ramona.wyss@walderwyss.com



THOMAS MÜLLER

Dr. iur., LL.M., Attorney at Law
Partner
Phone +41 58 658 55 60
thomas.mueller@walderwyss.com

In this newsletter, the authors provide an overview of the new Federal Act on Supervision and Transparency in Wholesale Energy Markets (BATE) and its implementing ordinance (VATE). They explain who will be subject to the new law, which obligations market participants will have to fulfil and when the transitional periods end. In addition, the newsletter outlines the steps market participants should take before the first deadline of 1 January 2027.

1. Background

In the wake of the energy crisis of summer 2022, the Swiss Parliament adopted the urgent Federal Act on Subsidiary Financial Aid for the Rescue of Systemically Critical Companies in the Electricity Industry (FiREG), which entered into force on 1 October 2022 allowing the Confederation to provide temporary liquidity support to systemically critical electricity companies.

The FiREG expires on 31 December 2026 and will in part be replaced by permanent rules that are designed to make the energy sector more transparent and resilient. The Federal Act on Supervision and Transparency in Wholesale Energy Markets (BATE) and its implementing ordinance (VATE) form a central element of this successor framework and will enter into force on 1 January 2027. The BATE applies to participants and brokers in the Swiss market and, in modified form, to Swiss participants in the European market that are already subject to reporting and publication obligations today. Depending on their status, market participants must register with the Federal Electricity Commission (ElCom), provide ElCom with transaction, order, risk position and fundamental data and publish inside information. Furthermore, the BATE introduces a general prohibition on insider dealing and market manipulation with respect to Swiss wholesale energy products.

2. Current law: reporting obligations only for REMIT participants

The current rules under the Electricity Supply Ordinance (StromVV) are based on the EU Regulation on wholesale energy market integrity and transparency (REMIT). REMIT prohibits insider dealing and market manipulation and requires market participants to publish inside information and to report on their transactions. As REMIT applies irrespective of the domicile of the market participant, Swiss companies trading on EU wholesale energy markets are generally already directly subject to it.

Under art. 26a^{bis} StromVV, persons with their seat or domicile in Switzerland that participate on an EU wholesale energy market, and which are required to report information under REMIT, must provide the same information to ElCom simultaneously and in the same form.

However, the current REMIT-derived reporting regime leaves three significant gaps:

- First, Swiss wholesale energy products generally fall outside the scope of REMIT and therefore also outside art. 26a^{bis} StromVV. The FiREG introduced certain temporary rules for systemically critical electricity companies, but it does not establish a comprehensive market-integrity and transparency regime for Swiss wholesale energy markets.
- Second, current Swiss law does not contain an energy-specific prohibiti-

on of insider dealing and market manipulation. The market abuse rules of the Financial Market Infrastructure Act only apply to securities admitted to trading on a Swiss trading venue and therefore generally do not cover wholesale energy products.

– Third, the existing art. 26a^{bis} StromVV reporting regime is limited to electricity. There is no comparable reporting regime for gas wholesale markets.

3. New regime under the BATE and VATE

3.1 Closing the gap

The BATE establishes a statutory framework for the transparency and supervision of Swiss wholesale energy markets, introduces energy-specific prohibitions of insider dealing and market manipulation and extends the regime to gas. The framework is largely aligned with REMIT and the corresponding EU reporting requirements. This is intended to reduce the administrative and technical burden for market participants active both in Switzerland and in the EU.

However, the Federal Council emphasises that the new framework remains an autonomous Swiss regime. ElCom will specify procedural and technical details in its directives.

3.2 Who is subject to the new framework?

The current addressees of art. 26a^{bis} StromVV remain covered as participants in the European market. These are persons with their seat or domicile in Switzerland that trade wholesale energy products within the meaning of the EU regulations. Their core obligation remains unchanged: they must provide ElCom with the same information they report to EU authorities, simultaneously and in identical form. However, the respective obligations will also extend to wholesale gas products, and participants in the European market must register with ElCom going forward.

In addition, the BATE introduces two new categories:

– **Participants in the Swiss market**: Persons that participate in transactions involving Swiss wholesale energy products within the meaning of the BATE, irrespective of their seat or domicile. This may include energy traders and producers, Swissgrid, operators of transmission, distribution and storage infrastructure for electricity or gas, balance group managers and large end consumers.

– **Intermediaries in the Swiss market**: Persons professionally arranging transactions in Swiss wholesale energy products, including transactions on organised markets, irrespective of their seat or domicile. On the Swiss market, intermediaries are primarily energy exchanges, energy brokers and capacity platforms, as well as other parties who arrange transactions on a commercial basis.

The decisive criterion for determining whether a person is subject to the new framework is therefore the conclusion of a transaction, the placing of an order on a wholesale energy market or the arranging of such transactions on a professional basis, in each case relating to Swiss wholesale energy products. A Swiss wholesale energy product is defined in art. 3 para. 1 lit. b BATE as:

– contracts for the supply of electricity or gas in Switzerland; contracts for the supply of electricity or gas to end consumers in Switzerland are only included if they are capable of having a significant influence on the prices of Swiss wholesale energy products. „Gas" primarily refers to liquefied natural gas (LNG) according to the dispatch to the BATE. It is irrelevant whether the gas is transported by pipeline or otherwise, for example by truck or by rail. Biogas and gas from biomass, as well as other types of gas, also qualify as gas, provided that such gas can technically and safely be injected into, and transported through, the gas network;

– contracts for the distribution of electricity or gas to end consumers in Switzerland who are capable of exerting a significant influence on the prices of Swiss wholesale energy products;

– contracts for the transmission of electricity or gas within, through, into or out of Switzerland;

– contracts for the storage of electricity or gas in Switzerland; and

– derivatives relating to electricity or gas that is generated, traded, stored or supplied in Switzerland, or relating to its transmission within, through, into or out of Switzerland.

However, art. 2 para. 2 VATE excludes certain contracts from the definition of a Swiss wholesale energy product. In particular, supply or distribution contracts with end consumers in Switzerland whose consumption capacity is below 600 GWh per year for the relevant commodity are not Swiss wholesale energy products, provided they are concluded for actual consumption. The relevant measure is the technical consumption capacity, not the historic consumption and the consumption capacity is aggregated for all Swiss entities that form part of the same group. In addition, contracts relating exclusively to the storage of gas in spherical or pipe storage facilities, or in any other Swiss storage facility with an installed capacity (individually or combined with other facilities) of less than 100 MW, are excluded.

As a result, the Swiss Federal Office of Energy (SFOE) expects around 250 energy traders, around 700 grid operators and other suppliers (600 in electricity, 100 in gas) and a limited number of large end consumers to be subject to the BATE. Moreover, also banks with registered seat in Switzerland that trade derivatives on Swiss electricity or gas may qualify as participants in the Swiss market under the BATE and may be subject to obligations set forth in the BATE. That said, transactions already reported to a trade repository under the Swiss Financial Market Infrastructure Act (FinMIA) need not be reported again, as ElCom has direct access to that data. Banks active in this segment should assess their role under the BATE at an early stage.

3.3 New obligations for market participants

The following duties and requirements exist under the BATE / VATE:

– **Registration**: Participants in the Swiss and European market must register with ElCom before trading. The application contains, inter alia, information on group companies, controlling persons and the indivi-

duals responsible for trading-related and operational decisions. Applicants must also state whether they engage in algorithmic trading or provide direct electronic access to an organised market. ElCom must be notified of any changes without delay. Participants concluding only intra-group transactions must still register.

If a participant is already registered with ACER, it only needs to submit to ElCom the information already provided to ACER. Participants in the Swiss market that trade exclusively certain small-scale contracts are exempt from registration (art. 6 VATE). These are contracts for the physical delivery of (i) electricity generated in one or more production or storage facilities with a capacity, individually or combined, of up to 10 MW, or (ii) of gas generated in one or more production facilities with a capacity, individually or combined, of up to 20 MW (in each case except for standard contracts traded on an organised market), and (iii) contracts for the physical delivery of hydrogen produced in a single production unit of up to 50 MW.

Participants in the Swiss market with their seat or domicile outside Switzerland have to appoint a representative in Switzerland.

- **Publication of inside information**: Participants in the Swiss market must publish inside information through an authorised platform. Inside information is defined as confidential and precise information which directly or indirectly relates to a Swiss wholesale energy product and which, if made public, could significantly influence the price of that product, in particular fundamental data relating to facilities. According to art. 11 VATE, this applies in particular to information on facilities in Switzerland for the generation or storage of electricity or gas that, alone or in combination with other facilities, have an installed capacity of at least 100 MW, as well as to information on transmission grid facilities and on major gas pipelines.

  The VATE prescribes the minimum content of publications, in particular for planned and unplanned unavailability. Participants already publishing under REMIT may use the EU format. A participant may delay publication only in exceptional cases where publication could harm its legitimate interests, and only if the delay is not likely to mislead the public, the participant can ensure the confidentiality of the information for the entire duration of the delay, and it does not take any trading decisions relating to Swiss wholesale energy products on the basis of that information. A participant that delays publication must, without delay and in electronic form, transmit the inside information itself to ElCom, together with the reasons for and the duration of the delay. ElCom reviews whether the delay is justified and may order the immediate publication of the information.

- **Reporting of transactions and orders**: Participants in the Swiss market must report their transactions and orders relating to Swiss wholesale energy products to ElCom. Who reports depends on the trading channel:
  - for standard contracts traded on an organised market, the organised market reports; lifecycle events concluded off-venue remain the participant's responsibility;
  - for OTC standard contracts and non-standard contracts, the participant reports, but may delegate reporting to a third party.

  Reports must be submitted through a reporting mechanism authorised by ElCom. The reported information must be retained for at least five years from the date of the transaction or order; this period is suspended if ElCom opens proceedings.

  Most transactions must be reported continuously within the following deadlines:

Contract type	Reporting deadline
Standard contracts	2 working days
Non-standard contracts with fixed unit price and quantity	10 working days
Other non-standard contracts	30 working days

  Certain contracts are reported periodically, e.g. supply contracts with end consumers with a consumption capacity of at least 600 GWh (semi-annually) and gas storage contracts of twelve months or more (monthly). Other contracts or activities, such as intra-group contracts which are not traded on an organised market or wholesale energy products that relate to hydrogen, only need to be reported upon ElCom's reasoned request.

- **Reporting of risk positions**: Participants in the Swiss market must report their risk positions in Swiss wholesale energy products quarterly for the following 18 months. This new requirement mirrors the latest REMIT implementing rules. Participants whose cumulative positions are below 600 GWh per year and commodity are exempt. Grid and storage operators that buy energy solely for grid operation only have to report upon request.

- **Obligations for brokers**: Brokers operating on the Swiss market are required to put in place effective safeguards and procedures to ensure that unlawful market conduct and breaches of disclosure obligations can be detected, that their staff are free from conflicts of interest and act independently, and that suspicious transactions and orders can be identified and reported. Brokers must report to ElCom without delay where there is reasonable suspicion that transactions may involve improper market conduct, or a breach of the disclosure obligation.

- **Algorithmic trading**: Participants in the Swiss and European market who engage in algorithmic trading are required to report the fact that they engage in algorithmic trading to ElCom. The BATE provides for several requirements as to the effectiveness of systems and risk controls. Upon request, these persons must provide ElCom with detailed information on their algorithmic trading strategies and on their systems and risk controls.

3.4 Prohibition of insider dealing and market manipulation

A core feature of the new framework is the prohibition on insider dealing and market abuse. It prohibits any person from exploiting inside information to acquire or dispose of Swiss wholesale energy products, from disclosing such information to third parties, and from recommending transactions to others on the basis of it. It also bans market manipulation, meaning the spreading of false or misleading information, and entering into transactions or placing orders that send false or misleading signals as to supply, demand or price, or that secure an artificial price level.

The prohibitions apply to any natural or legal person who knows, or ought to know, that the information constitutes inside information. This covers in particular members of a management or a supervisory body of a participant in the Swiss market, persons who have access to inside information by virtue of their shareholding in a company or by virtue of their position as well as persons who have obtained inside information in an unauthorised manner.

The insider dealing prohibition also covers using inside information to amend or withdraw orders that relate to earlier transactions. The prohibition does not, however, apply where a participant fulfils obligations that have become due and were entered into before the information was known, or where a producer or storage operator covers direct physical losses resulting from unplanned unavailability under the conditions set out in the VATE.

4. Sanctions under the BATE

4.1 Overview

To detect and penalise improper market conduct and serious breaches of the obligations laid down by the law, the BATE provides for supervisory measures, administrative sanctions and criminal sanctions.

4.2 Supervisory measures

In the event of improper market conduct or a breach of the aforementioned obligations, ElCom may take supervisory measures in accordance with art. 25 et seqq. BATE. These measures are primarily aimed at restoring the proper state of affairs and preventing future breaches.

ElCom's supervisory instruments are closely modelled on those under Swiss financial market law. In particular, ElCom may require market participants in the Swiss and European Market, intermediaries and, where applicable, operators of inside information platforms and authorized reporting mechanisms to provide all information and documents it needs to perform its tasks. If it becomes aware of breaches or other irregularities, ElCom must take action to restore compliance and may issue a declaratory ruling.

In the event of serious breaches of obligations of the BATE or serious improper market conduct, ElCom may confiscate any profit obtained or loss avoided. It may also prohibit responsible persons from holding a senior position with a participant or intermediary in the Swiss market for up to five years, and prohibit permanently employees of such entities from trading Swiss wholesale energy products or acting as client advisers.

4.3 Administrative sanctions for insider dealing and market manipulation

Unlike Swiss financial market law, but in line with EU rules, the BATE provides for pecuniary administrative sanctions in art. 31 et seqq. These may be imposed on participants in the Swiss or European market and intermediaries in the Swiss market.

In particular, serious improper market conduct may result in a penalty of up to 15% of the total turnover generated in Switzerland in the preceding year. Serious breaches of other obligations under the BATE, such as the publication and notification requirements (art. 7 and 8 BATE) or breaches of obligations of intermediaries (art. 18 BATE), may result in a penalty of up to 2% of the total turnover in the preceding year. The penalty is up to 1% for other breaches, such as of the registration obligation (art. 4 BATE), the obligation to appoint a Swiss representative (art. 6 BATE) or the reporting obligations (art. 12 BATE).

ElCom has discretion when setting the amount of the penalty but must observe the principle of proportionality when doing so. In cases of improper market conduct, ElCom will primarily consider the duration and seriousness of the conduct as well as the presumed profit. The same conduct may also be subject to criminal sanctions. In case of a serious unlawful market conduct or a serious breach of the obligations set forth in the BATE, ElCom may publish its final decision.

4.4 Criminal sanctions for insider dealing and market manipulation

Under the BATE's criminal provisions, criminal sanctions set forth in art. 44 et seqq. BATE for insider dealings are tiered according to how close the offender stands to the source of the information:

- The first tier covers primary insiders which are members of the management or supervisory bodies of a Swiss market participant or its group companies, and persons with access to inside information through their shareholding or their activities. They face up to three years' imprisonment or a monetary penalty if they obtain a financial advantage by exploiting inside information to trade Swiss wholesale energy products, disclose it outside the normal course of their duties, or recommend trades on the basis of it. Where the advantage exceeds CHF 1 million, the maximum penalty rises to five years' imprisonment or a monetary penalty.
- Secondary insiders, who trade on inside information or a recommendation received from a primary insider or obtained through a felony or misdemeanor, face up to one year's imprisonment or a monetary penalty.
- Any other person who trades on inside information commits a contravention punishable by a fine.

The criminal offence of market manipulation is narrower than the supervisory prohibition. It requires the intent to significantly influence the price of Swiss wholesale energy products in order to obtain a financial advantage. It also covers only two forms of conduct: knowingly disseminating false or misleading information, and wash trades executed for the account of the same or connected persons. The penalties are

the same as for primary insider dealing.

Moreover, the BATE penalizes the provision of false information. Such act is punishable by a fine of up to CHF 500'000 in case of intent and a fine of up to CHF 100'000 in case of negligence.

5. Delineation between the BATE and the FinMIA

The criminal provisions of the BATE that relate to unlawful market conduct have been formulated in accordance with the corresponding provisions of the FinMIA. The provisions of the FinMIA, however, apply only to securities admitted to trading on a trading venue or a trading facility for distributed ledger technology securities based in Switzerland. By contrast, the criminal provisions of the BATE apply to all Swiss wholesale energy products, regardless of where they are traded.

According to the dispatch to the BATE, this overlap between financial market law and wholesale energy market law is intentional, as certain types of conduct can adversely affect both the financial markets and the wholesale energy markets. In the event of such an overlap, the BATE stipulates that the FinMIA shall apply exclusively. Accordingly, the application of art. 142 or 143 of the FinMIA precludes the simultaneous application of art. 19 or 20 BATE. In the same sense, will an application of art. 154 or 155 FinMIA preclude the simultaneous application of art. 44 or 45 BATE.

A further point of overlap with the BATE is found in the reporting obligation for derivatives enshrined in the FinMIA. This requires certain market participants to report derivatives transactions to a trade repository. To resolve this matter, the BATE stipulates that details of transactions or trading orders that have already been reported under the FinMIA do not need to be submitted additionally to ElCom. ElCom may access this information directly via the trade repository. If necessary, ElCom may also request this information from the Swiss Financial Market Supervisory Authority (FINMA) within the framework of administrative assistance.

6. Transitional periods

The VATE phases in the new obligations gradually. Participants already active under REMIT generally face shorter transitional periods.

Participants with the necessary technical capabilities may implement the relevant reporting and publication processes before the end of the applicable transitional period.

Date	Obligation
1 January 2027	BATE and VATE enter into force. The prohibitions of insider dealing and market manipulation apply from this date. Participants already reporting under art. 26a^{bis} StromVV continue their existing reporting during the transition. Participants previously subject to the FiREG must continue to report the same trading information to ElCom, and Swissgrid must report balancing contracts that are standard contracts traded on an organised market.
28 February 2027	Deadline for participants in the Swiss market to file the registration application with ElCom. Participants that apply in time may continue trading until ElCom has decided.
31 March 2027	Start of additional reporting for participants in the European market and organised markets. Swissgrid starts reporting fundamental data.
31 May 2027	Organised markets start reporting on-venue standard contracts. Participants already publishing inside information under REMIT start publishing under the BATE.
1 June 2027	Participants domiciled abroad must inform ElCom of their Swiss representative.
30 June 2027	Gas transport network operators start reporting fundamental data.
31 October 2027	First risk-position reporting deadline, for the reference quarter from 1 July to 30 September 2027 (incl. aggregated data for the following 18 months). Participants already reporting to ACER also transition to the relevant OTC reporting obligations.
1 November 2027	Start of reporting for electricity storage contracts and derivatives on electricity stored in Switzerland.
31 December 2027	All other participants in the Swiss market start publishing inside information and reporting OTC standard and non-standard contracts.
1 May 2028	Start of reporting for gas storage contracts, derivatives on gas stored in Switzerland and data from order-matching systems.
1 July 2028	Swiss wholesale energy products that relate to hydrogen products become reportable.

7. Recommended next steps

For many market participants, the key date is 28 February 2027: a participant on the Swiss market that has not applied for registration by then may not trade wholesale energy products until it is registered. Market participants should therefore in particular:

- determine their status under the BATE, in particular with regard to the 600 GWh threshold and the registration exemptions;
- prepare the registration application, including group and control information;
- appoint a Swiss representative if domiciled abroad;
- select an authorised inside information platform and reporting mechanism or review existing REMIT arrangements;
- assess whether they must report risk positions; and
- review and extend their insider and market abuse policies, including insider lists, disclosure documentation and surveillance, to Swiss products.

The VATE is closely aligned with European standards, so participants with established REMIT-compliant systems should be able to build on their existing processes. However, they should not assume that these processes automatically satisfy the new Swiss requirements. Swiss-specific obligations, such as registration with ElCom, the appointment of a Swiss representative and reporting directly to ElCom, will need to be integrated, and a targeted gap analysis is advisable.

Because the market abuse provisions apply from 1 January 2027, utilities, producers, suppliers and distribution system operators that are not subject to REMIT should address the relevant governance, training, surveillance and documentation requirements before the new regime enters into force.

8. Outlook

The Swiss wholesale energy market framework is likely to evolve further in connection with the electricity agreement between Switzerland and the EU on which a public vote is expected to take place in 2028. The agreement provides for Switzerland to adopt relevant parts of the EU electricity acquis, including REMIT for electricity. Gas would remain fully governed by the BATE and the VATE. The precise interaction between the BATE/VATE regime and the future electricity agreement will therefore depend on the final implementation of the agreement and any resulting amendments to Swiss legislation. Market participants should nevertheless benefit from the fact that the BATE/VATE framework is already largely aligned with European REMIT standards.

Walder Wyss Newsletters provide comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

© Walder Wyss Ltd., Zurich, 2026