By email: media@bfe.admin.ch
Swiss Federal Office of Energy (BFE/ OFEN)
cc. Elcom [cornelia.kawann@elcom.admin.ch]

Dear BFE,

EVIA & LEBA Stellungnahme to the VATE Draft Ordinance

The European Venues and Intermediaries Association together with the London Energy Brokers Association [together "LEBA"] appreciates the opportunity to respond to the draft VATE ordinance[1] concerning the implementation of the BATE[2] regulation and the scope of the new OSTE regime[3]. We look forward further implementing and supervisory discussions with ELCOM to exchange views and to better understand expectations over the period through to March 2027.

We note that there is no prescribed response form, questionnaire, or template; so this response will restrict itself to broader high-level comments, many of which may be applicable to the supervisory practices and the reporting schema's as well as to the articles published. We note also that the consultation was published in German and French, and so would commend the BFE/ OFEN to also publish in English where the ordinance shall apply to many international market participants and seeks to align with an EU regulation and delegated acts which are themselves presented in English.

Our members operate a number of Organised Market Places ("OMPs") under REMIT2, each conjointly operated with an OTF under MiFIR in order for the forward contracts in gas and power to be treated under the "c6 carveout". This results in the close adherence to both sets of rules as well as the related requirements under EU MAR and EU IFPR for licenced "Investment Firms". Evidently in Switzerland they do not operate under this dual venue approach although the institutional controls, conduct and prudential frameworks are exactly the same. In certain aspects, notably the approach the algorithmic trading and sponsored (or direct ["DMA" / "DEA") market access this bears some relevance to the applicable rules.

Comments

i. Ostensibly, and as by express design, the provisions under both BATE and VATE mirror those of EU REMIT2. We completely advocate for and endorse this approach since the common application of reporting schemas and timeframes enables a consolidated approach to both rules, systems transmission protocols both within operators of OMPs and across the trading and reporting chain.

ii. We note that BATE and VATE commonly require the registration of both market participants and of RRMs, however it appears that there is no such requirement for OMPs. This mirrors the situation in both the EU and the UK, although ACER does

[1] *Verordnung über die Aufsicht und Transparenz in den Energiegrosshandelsmärkten*
[2] *Bundesgesetz über die Aufsicht und Transparenz in den Energiegrosshandelsmärkten* federal act adopted by Parliament in March 2025.
[3] The broader Swiss regime for oversight and transparency in wholesale energy markets,

maintain a register of OMPs, and Article 9 of REMIT obliges market participants (MPs) entering into reportable wholesale energy transactions to register with an NRA via CEREMP. Evidently in the EU the OTFs operated by member IFs do require a s-MIC code, but these do not map across to OMPs.

iii. <u>VATE Articles on transaction & order reporting:</u> The reporting requirements for OMPs under Swiss law[4] are set out in the transaction- and order-reporting chapter of the VATE, i.e. the articles implementing BATE Article 11; VATE Art. 19 ("Actions that must be reported to ElCom on an ongoing basis")

a. This is the Swiss analogue of Article 8(1a) REMIT (EU), where OMPs report venue-executed activity. VATE sets out that if a transaction takes place on an OMP, the OMP reports; if not, the market participant remains responsible (directly or via a service provider).
b. Importantly for our members, who operate using voice brokers alongside screen assisted ("hybrid") methodologies, products traded via voice broker services that do not appear on electronic screens appear to be exempt from continuous reporting requirements. Such an exemption for voice-brokered trades apart from "continuous / screen-based" reporting arises indirectly from:
    i. How reporting obligations are defined and triggered in BATE, and
    ii. How "organised marketplaces" and "electronic trading systems" are framed in VATE and its Explanatory Report (*Erläuterungen*)—by alignment with EU REMIT Article 8 and Implementing Regulation 1348/2014.
c. Art. 11 para. 1 BATE establishes the obligation to report transactions and trading orders in wholesale energy products to ElCom whilst Art. 11 para. 2 BATE empowers the Federal Council to specify:
    i. who must report,
    ii. how reporting takes place, and
    iii. which technical arrangements apply.
d. Therefore it appears that BATE does not impose any concept of "continuous" or "real time" reporting. It also does not mention voice brokers or screen based systems at all. Rather, the distinction between electronic execution and non-electronic (voice and hybrid) execution is delegated to VATE and its interpretation.
e. We would appreciate confirmation that the relevant provisions are in the VATE chapter on "*Meldung von Transaktionen und Handelsaufträgen*", implementing BATE Art. 11 (draft Arts. 23–27 VATE). These provisions:
    i. allocate reporting responsibility to OMPs only where transactions or orders are concluded on such systems;
    ii. otherwise leave reporting with the market participant, using standard post-trade reporting.
f. The relevant text sits in the VATE Explanatory Report (*Erläuterungen*) state, in substance that reporting obligations for organised marketplaces apply only where transactions or orders are processed via electronic trading systems that allow systematic capture and transmission of order data. Consequently one may assume that transactions concluded via bilateral communication (e.g.

[4] "Meldung von Transaktionen und Handelsaufträgen"

voice / hybrid methodologies may not qualify as electronically executed marketplace transactions.[5]

g. This does not mirror EU REMIT Art. 8(1a) concerning OMP reporting which holds no qualifiers or references to OTC trades, such that Article 10 of the recast REMIT IR prescribes that "*standard contracts*" should be reported within two business days ["t+2"]
h. As a result, it remains somewhat unclear how voice-brokered and hybrid trades that may appear (in part) on electronic screens, such as "*indications of interest*" are subject to venue responsibility for reporting, versus counterparty responsibility. This is regardless of how the reporting mechanism via an RRM is subsequently interposed as discussed in point iv below.
i. Unlike REMIT2, the Swiss analogue considers OTC trades made in standard contracts. REMIT2 however directly maps the concept of a "Table1" standard contract to OMP activity as if there were an implicit trading obligation. Whilst this is open to exceptions in itself, the Swiss analogue however also holds problems not limited to the gap to REMIT2. This is because BATE does not set out any notion of a trading venue perimeter or rulebook (in the way that EU MiFIR does[6]). Therefore it appears opaque as to when and whether a trade is made under the rules of the OMP and where the act of "arranging and bringing about" may construe a bilateral "OTC trade". To this point, it appears that the VATE makes an implicit assumption that the concept of an OMP trade requires an order-book, or perhaps a closing auction as opposed to the EU MiFIR designation of any multilateral system.
j. Overall, the Swiss analogue approach appears confusing at best and would better be written closer to that in EU REMIT2. We would consider that the VATE text should better align with both EU REMIT and EU MIFIR in setting out the treatment of standard contracts where they are arranged in multilateral systems without regard to the trading methodology or clearing status.

iv. Chapter 7: Transmission of Information to ElCom Section 1: Communication Channels and Technical Details

a. Article 1 sets out the difference in the reporting responsibility between standard contracts turning on the matters discussed in point (iii) above.
b. Evidently under EU REMIT2 broker OMPs collectively deploy a single third-party RRM[7] in such a manner that MPs are able to directly contract and connect to the RRM such that trade details, lifecycle information and reverse reporting assurances do not need to be intermediated by the OMP. This was further elaborated in the recent ACER letter[8]. This refers to the ACER guidance which sets out that the data quality, sufficiency and timeliness responsibilities therefore are split between the MPs, the OMPs and the RRMs according to their role.
c. We note that the Swiss approach intends to be directly analogous. Therefore Article 17 would benefit from additional language to qualify the joint and

[5] This is redolent of the pre-MIFID2 approach in the EU where brokered energy markets were characterised as "Non-MTFs" for regulatory purposes as a consequence to clearing provisions then live in EMIR1
[6] ESMA issues Opinion on the trading venue perimeter
[7] Equias – Industry-leading post-trade automation for Europe's energy market
[8] Open letter on recast Implementing Regulation (07/04/2026)

several responsibilities between the reporting parties and role of delegation from the OMP to the RRM where third-party services are deployed.

v. Chapter 3: Registration, designation of a representative, algorithmic trading and direct electronic access
   a. Algorithmic Trading
   b. We note that under Art. 7 ["*Technology Reporting*"]: Participants must report if they use algorithmic trading or provide direct electronic access to a market. Whilst we firmly agree with this, we note that concise definitions of both terms should be adopted, or a cross-reference to the definitions in the EU.
   c. In general, algorithms are not owned or deployed by the OMP. Furthermore, algorithms are generally deployed in energy trading either where the contract is a financial derivative or where the trading is within the day. Therefore any such reporting and notifications should not be routed through the OMP.
   d. There are a number of pending issues related to the EU REMIT approach to Field 5 ["Algorithm ID"] including the co-dependency of this new obligation with MiFIR RTS6, segregation from the concept of "High Frequency Trading", the ownership and control of algorithms as well as the constantly evolving form, formats and presentation of any such execution technologies alongside the development of Artificial Intelligence. Collectively, this means that the concept of any "Algo ID" is not straightforward and best replaced with a simple notification approach.
   e. In this regard therefore, any approach to mirror the EU-REMIT2 approach appears fraught with difficulties, whilst any other Swiss only approach may hold divergent complications.
   f. Direct Electronic Access ["DEA"] (Article 17 BATE).
   g. We understand that the approach to DEA is similarly restrained to a registration requirement via the appropriate forms.
   h. We note that there are a number of pending issues related to the EU REMIT approach to Direct Market Access ["DMA"] and would caution the Swiss to go any further than a straightforward registration and notification requirement. In the EU approach these relate to the conflagration of DEA, DMA and "Sponsored Access" across the following regulations: REMIT2, MiFID2; MAR; and EMIR2. Together these create an overlapping set of related, but separate obligations which invoke reporting chains and disparate responsibilities and reliance's between market participants, their clients and their trading venues.
   i. Again this is one area where the general rule of mirroring the EU regulations should be absolutely avoided.

vi. Spreads and Packages
   a. The VATE does not consider instruments which may comprise both EU Wholesale Energy Products ["WEPs"] and Swiss WEPs together as a contingent transaction, a spread or a package. Energy market products are however very commonly traded as related spreads. Similarly such transactions may also include Swiss or EU Financial Instruments as contingent legs which are not Swiss WEPs. In these cases, where the legs may not be able to be segregated and disaggregated ["Complex Instruments traded via a single price"] it may be the case that dual reporting could be required under both Swiss and EU regimes. There may be a case for such considerations to form a part of

subsequent guidance which express reference to the operational duplication risk for cross border trades.

vii. Insider trading & market manipulation

a. Whilst most of the provisions related to Insider trading & market manipulation are substantially similar to those under EU-REMIT, we note the further treatment of "*Negligent market manipulation*[9]" as an item of explicit supervisory law treatment in Switzerland. We note that from the standpoint of OMP market surveillance, any such identification of negligence, or the absence of behaviours would be very hard to codify. We therefore note to BFE and OFEN that the capacity for appropriateness and proportionality should be expressly provided for in the role of Elcom to supervise these markets.
b. We note that, "*Attempted manipulation*" is included only implicitly via Swiss supervisory standards whereas EU REMIT article 5 is more demonstrative. Article 5 does not only prohibit completed manipulation, but—through the definitions in Article 2 REMIT—also prohibits attempts to manipulate. This is an intentional drafting choice, aligning REMIT with EU financial-market abuse concepts. We would appreciate further guidance in the VATE to consider the expected approach by OMP market supervision.

viii. Other areas of divergence

a. We note that minor aspects of divergence appear in relation to Local representative requirement (which in the Swiss version is mandatory and unconditional) and where supervisory fees are tied to oversight activity via a new cost centre. Both of these appear to be appropriate.

ix. Entry into Force & Transitional Provisions

a. We note that the ordinance and the underlying law take effect on January 1, 2027, and under the Transitional Periods, OMPs shall have until April 1, 2027 to start reporting. We would caution that due to the trilateral arrangements between OMPs, RRMs and MPs, these obligations can only be effected whereby each of the reporting pillars are in a position to comply. In this respect we would urge that the VATE confer powers of transitional arrangements to Elcom directly, or consider a supervision based capability to defer or to enable a phased approach.

[9] Market manipulation; Art. 17 BATE (cf. Art 5 REMIT2); Swiss version explicitly clarifies negligent manipulation (*aufsichtsrechtlich*), aligned with parliamentary record