

Art. 2 WBF Ordinance on the Release of Compulsory Stocks of Protein Carriers (SR 531.211.11): Maximum Quantity

Function of the maximum quantity rule

Art. 2 caps the quantity of compulsory stocks of protein carriers that may be released. The cap is the difference between the proven domestic need ("ausgewiesener Bedarf im Inland"; "besoin prouvé en Suisse"; "fabbisogno comprovato in Svizzera") and the quantity freely available on the domestic market **Art. 2 (SR 531.211.11)**. The rule does not grant anyone a quantity. It sets the upper limit within which the individual release decision under Art. 3 must stay (see the section on the ceiling below).

The formula expresses in arithmetic form the subsidiarity principle of the National Economic Supply Act (LVG). Supplying the country is the task of the economy. The Confederation acts only where the economy cannot ensure supply in a severe shortage **Art. 3 NESA**. The 2014 Federal Council message on the total revision of the LVG states that stocks are released when a crisis makes it no longer possible to meet demand for essential goods through the market ("Ist es aufgrund eines Krisenereignisses nicht mehr möglich, die Nachfrage nach lebenswichtigen Gütern über den Markt zu befriedigen, werden bei Bedarf die an Lager gehaltenen Vorräte lebenswichtiger Güter freigegeben.") **BBI 2014 7119**. Art. 2 turns that rationale into a limit: the state may release only the part of demand the market leaves uncovered. Anything beyond this would put compulsory stock goods into competition with freely traded goods. The message, however, frames subsidiarity as a general principle and does not set a numerical formula **BBI 2014 7119**.

Normative basis, scope and temporal application

Delegation chain

The ordinance is a departmental ordinance. The WBF enacted it on the basis of Art. 21(1) of the Ordinance on National Economic Supply (VWLTV) **Preamble (SR 531.211.11)**. That provision allows the WBF to order the release of compulsory stocks in the event of a threatened or existing severe shortage. Under Art. 21(2) VWLTV, the WBF may make the release subject to conditions and attach technical or administrative requirements, after consulting the economic organisations concerned **Art. 21 VWLTV**. The statutory basis is Art. 31 LVG. It allows time-limited economic intervention measures in an imminent or existing severe shortage, expressly including "die Freigabe von Pflichtlagern und anderen Vorräten" (Art. 31(2)(f)) **Art. 31 NESA**. Under Art. 13(1) LVG, any change to a compulsory stock normally requires the BWL's written consent, but release under Art. 31(2)(f) is reserved **Art. 13 NESA**. The 2014 message records that the Federal Council may delegate its competence to release compulsory stocks to the WBF in advance, so that decisions can be taken faster in a crisis **BBI 2014 7119**. The maximum quantity in Art. 2 is one of the "Voraussetzungen" the WBF may set under Art. 21(2) VWLTV.

Trigger: severe shortage

Art. 2 presupposes the statutory trigger. A severe shortage ("schwere Mangellage") is a substantial threat to national economic supply with imminent, large economic damage, or a substantial disruption of that supply **Art. 2 NESA**. According to the 2014 message, a severe shortage exists only where supply bottlenecks affect the whole country or large parts of it, and a mere price increase is not a sufficient indication **BBI 2014 7119**. This bears directly on Art. 2. A regional or company-specific bottleneck, or merely a higher market price, does not in itself create a proven domestic need for released goods.

Material scope: protein carriers for feed

The ordinance applies only to the protein carriers listed in the annex **Art. 1 (SR 531.211.11)**. The annex lists, by customs tariff number, dried pulses, soya beans, rapeseed and sunflower seeds, starch residues including potato protein, and oilcakes from various oilseeds. Every heading is limited to goods "zu Futterzwecken" **Annex 1 (SR 531.211.11)**. Both elements of the Art. 2 formula must therefore be determined for feed use of the listed goods. Demand for food or oil-extraction purposes does not count towards the need, where the tariff line excludes it.

Temporal application and pending statutory changes

Art. 2 has been unchanged since the ordinance entered into force on 15 October 2026. The ordinance contains no expiry clause **Art. 9 (SR 531.211.11)**. This open-ended validity has to be read with Art. 31(1) LVG, which allows only "zeitlich begrenzte" intervention measures **Art. 31 NESA**. The message adds that such measures must end as soon as the shortage has been remedied **BBI 2014 7119**. In the ordinance, the time limit operates through the individual decision: the competent unit fixes the duration of each release **Art. 3 (SR 531.211.11)**.

On 19 June 2026, Parliament adopted an amendment to the LVG. The referendum deadline expired on 8 October 2026, and the Federal Council will determine when it enters into force **BBI 2026 1771**. The amendment moves release to new Art. 32(1)(b) LVG. It provides that measures "sind zu befristen" (new Art. 31(3)). It allows measures where a severe shortage threatens to occur "innerhalb weniger Monate". New Art. 57(3) allows the WBF to be authorised in advance to release stocks, to oblige holders to market released goods, to supply them only in Switzerland or only in certain quantities, and to restrict their use **BBI 2026 1771**. According to the Federal Council's message, the subsidiarity principle stays unchanged: "Am Erfordernis der Subsidiarität wird dabei festgehalten." **BBI 2025 3538**. The logic of Art. 2 is therefore not affected. Once the amendment is in force, however, the references to Art. 31 LVG (and the procedural rules discussed below) must be read against the new numbering.

The elements of the formula

Proven domestic need

The need must be "ausgewiesen", that is, proven ("prouvé", "comprovato"). This wording reflects a requirement of substantiation, not a presumption. The ordinance does not say how the need is to be established. Several provisions fill that gap:

- On the applicant's side, a release request must give reasons **Art. 3 (SR 531.211.11)**.
- Stockholders must keep accounts of all stocks and changes in stocks and report weekly to the Fachbereich Ernährung **Art. 6 (SR 531.211.11)**. These reports supply the data for both sides of the calculation.
- On the delivery side, Art. 5(2) allows released goods to be supplied only in quantities covering customers' "effektiven Bedarf" **Art. 5 (SR 531.211.11)**. Effective need at customer level is the counterpart of the aggregated need under Art. 2. A need claimed in order to build up stocks or to profit from price movements is therefore not covered.

The message on the 2026 LVG amendment shows how the authorities are expected to assess need. They must take account of the particular features of the economic sector concerned, "insbesondere die Veränderungen des Angebots und der Nachfrage bei Preisänderungen", and the decision "muss jedoch in jedem Fall sachlich begründet und nachvollziehbar sein" **BBI 2025 3538**. These statements concern the decision to intervene in general, not the Art. 2 figure specifically. They support reading "proven" need as a documented, comprehensible figure that takes demand reactions to price into account. The text leaves open whether the need is assessed for each annex product separately or across protein carriers as a whole. The duty to fix "die freigegebene Menge" in each decision **Art. 3 (SR 531.211.11)** at least requires the authority to state its calculation in a way that allows review.

Quantity freely available on the domestic market

The deductible quantity is what is "frei verfügbar" on the domestic market. This plainly covers freely tradable stocks outside the compulsory stocks. Art. 3(1) confirms this at the level of the individual holder: release may be requested only by a holder who "nicht über genügend freie Vorräte" has stocks and cannot procure the missing quantity **Art. 3 (SR 531.211.11)**. The ordinance does not say whether imports already contracted or in transit, or domestic harvests not yet marketed, count as freely available. Given the subsidiarity principle **Art. 3 NESA**, quantities the market can realistically supply within the release period should reduce the cap. The authority must justify any such forecast in the decision. By analogy, the former compulsory stock commission accepted economic pressure as a milder first step than revising a contract **150002066**. This supports treating release as a measure of last resort, after the holder's own market options have been used.

A decision of the former Federal Commission for compulsory stocks provides an analogy only. It concerned compensation for heating-oil stocks, not a release. It accepted a three-year import average as a benchmark for calculating individual stock obligations **150002066**. The decision shows that averaged market data have been accepted as a basis for quantity calculations in the compulsory stock system. It does not decide how current availability is to be measured in a crisis.

Territorial reference

Both terms refer to Switzerland ("im Inland"). This matches the duty in Art. 5(1) to supply the Swiss customer base with released goods **Art. 5 (SR 531.211.11)**. Demand abroad does not count towards the need. Goods physically in Switzerland but committed to export are not freely available on the domestic market in the sense of the formula.

A ceiling, not an entitlement

Relationship to the individual release decision

Art. 2 limits the total that may be released. The individual quantity is fixed under Art. 3(2): the Fachbereich Ernährung "legt die freigegebene Menge und die Dauer der Freigabe fest; er erlässt eine Verfügung" **Art. 3 (SR 531.211.11)**. The release power is discretionary at every level. The WBF "kann" order releases **Art. 21 VWLV**, and a holder "kann" apply **Art. 3 (SR 531.211.11)**. Two consequences follow:

- A holder cannot derive from Art. 2 a claim to a release equal to the gap between need and supply. The decision may stay below the cap, for instance because the remaining stock must be conserved for a crisis expected to last longer.
- The sum of all individual releases may not exceed the cap. A release decision that exceeds it, alone or together with other decisions, has no basis in the ordinance.

The 2026 message illustrates the dynamic nature of the quantity in medicines. There, steering released goods depends on the goods still available in stocks already released, and on the foreseeable duration and severity of the disruption **BBI 2025 3538**. This is an analogy from another sector. It supports recalculating the cap as market data change, rather than treating it as a figure fixed once at the start of a crisis.

Allocation among several holders

Art. 2 sets one national ceiling, while Art. 3 grants releases holder by holder. The ordinance has no rule on how the ceiling is to be allocated when several holders apply and their combined requests exceed it. General constitutional principles therefore govern. The former compulsory stock commission held that compulsory stock organisations are bound by equal treatment, proportionality and good faith. A rule that applies "für alle Mitglieder genau gleich" does not amount to unequal treatment, even if not every member is actually affected **150002066**. That decision concerned a compensation rule. It nevertheless suggests that an allocation key applied uniformly (for example in proportion to compulsory stock size or to documented customer demand) will withstand challenge more easily than an allocation by order of application. The 2026 message accepts that releases may be tied to conditions, delivery duties and delivery to certain recipients only **BBI 2025 3538**. Differentiation is therefore permitted, but must be objectively justified.

Consequences of a release within the cap

Contract adjustment before withdrawal

The release decision does not by itself authorise withdrawal. The compulsory stock contract with the BWL must first be adjusted **Art. 4 (SR 531.211.11)**. The regime is therefore two-track: a unilateral release decision and a contractual adjustment. This matters for the choice of procedure (see the section on actions for disputes arising from the compulsory stock contract below). Compulsory stock contracts are in principle public-law contracts **BGE 135 II 38**.

Delivery duty, reporting and revocation

A holder who receives a release must supply Swiss customers, and only in quantities covering their effective need **Art. 5 (SR 531.211.11)**. The holder may refuse delivery to an insolvent customer (Art. 5(4)) **Art. 5 (SR 531.211.11)**. If the holder breaches the delivery duty or the effective-need limit, the Fachbereich Ernährung may revoke a granted release or refuse a planned one (Art. 5(3)) **Art. 5 (SR 531.211.11)**. Weekly reporting (Art. 6) allows the authority to verify whether released goods actually go to covering domestic need **Art. 6 (SR 531.211.11)**. These duties make sure that the quantity released under Art. 2 reaches the domestic gap it was calculated to fill.

Financial consequences: loans and the guarantee fund

Art. 13(1) LVG exempts a release from the BWL consent requirement. Art. 13(2) separately requires the holder to repay federally guaranteed loans pro rata and meet obligations towards the guarantee fund "Vor einer Reduktion oder Aufhebung des Pflichtlagers". Art. 13(3) allows the BWL to require appropriate security instead **Art. 13 NESA**. The carve-out in paragraph 1 refers only to the consent requirement. The text does not settle whether the financial duties in paragraph 2 also attach to a release. Because a release physically reduces the stock, the purpose of paragraph 2 supports applying it, with security under paragraph 3 as the practical solution in an acute crisis. Ordinance Art. 4, which requires a contract adjustment, is the natural place to settle these points **Art. 4 (SR 531.211.11)**.

The guarantee funds cover storage costs and price fluctuations on compulsory stock goods **Art. 16 NESA**. Levying guarantee fund contributions on domestic feedstuffs is not permitted (Art. 16(5)) **Art. 16 NESA**. Settlement with the guarantee fund when a stock is reduced can be disputed. In B-1990/2009, the Federal Administrative Court decided a dispute between a holder and a compulsory stock organisation over the settlement price owed to the guarantee fund for a 2008 stock reduction of wheat. The settlement rule (a rolling three-month average price) produced an unfair result because market prices fell continuously and exceptionally. The court adjusted the rule under the "clausula rebus sic stantibus" as a general legal principle and fixed the price owed at "Fr. 60.00 / 100 kg" **b-1990-2009**. The decision concerned a stock reduction, not a crisis release, and was decided under the former LVG. Its point for Art. 2 is indirect: the financial terms that accompany a quantity release follow their own rules and can be corrected by the court where an extraordinary price trend makes them unfair.

Competence and legal protection

Who decides

Art. 21(3) VWLV states that the BWL fixes the release "im Einvernehmen mit den Pflichtlagerhaltern im Einzelfall", involving the economic organisations concerned **Art. 21 VWLV**. The ordinance instead gives the Fachbereich Ernährung power to fix quantity and duration by decision (Art. 3(2)) **Art. 3 (SR 531.211.11)**, and gives enforcement to the BWL and the Fachbereich Ernährung (Art. 8) **Art. 8 (SR 531.211.11)**. VWLV Art. 6(1)(c) makes the BWL competent for decisions, except where they are delegated to economic organisations or Fachbereiche **Art. 6 VWLV**. VWLV Art. 7(1)(e) gives the Fachbereiche the enforcement of measures where this has been delegated to them, and Art. 7(3)(a) makes the Fachbereich Ernährung responsible for food and agricultural inputs **Art. 7 VWLV**. Read together, the departmental ordinance makes such a delegation. The BWL's role is preserved through the contract adjustment under Art. 4 **Art. 4 (SR 531.211.11)**, and the requirement of agreement in Art. 21(3) VWLV can be met through the reasoned request and the contract adjustment.

Appeal against the release decision

The Fachbereiche are part of the federal economic supply organisation, alongside the Delegate's office and the BWL **Art. 58 NESA**. The organisation is subordinate to the WBF **Art. 1 VWLV**, and the Delegate leads both the BWL and the Fachbereiche **Art. 2 VWLV**. The Fachbereiche are therefore distinct from the "Organisationen der Wirtschaft", private bodies to which the Federal Council may transfer public tasks **Art. 60 NESA**. Art. 46(1) LVG provides for an appeal to the BWL only against decisions of those economic organisations **Art. 46 NESA**. On the wording, it does not cover a decision of the Fachbereich Ernährung. However, VWLV Art. 6(1)(d) assigns to the BWL "Beschwerden gegen Verfügungen nach Artikel 46 Absätze 1 und 3 LVG" **Art. 6 VWLV**. The reference to paragraph 3 could be read as making the BWL the first appeal

instance for all intervention decisions. The enactments do not expressly settle this. A cautious appellant should file within the statutory time limit and refer to both readings. The Federal Administrative Court followed the two-stage route (BWL, then Federal Administrative Court) for a decision of the compulsory stock organisation réservesuisse withdrawing a general import licence for unpaid guarantee fund contributions **b-456-2022**. That case, however, concerned an economic organisation and not a Fachbereich.

Whatever the instance, appeals against decisions based on Arts 31 to 33 LVG or their implementing provisions must be filed within five days and have no suspensive effect **Art. 46 NESA**. A release decision under Art. 3 of the ordinance rests on Art. 31(2)(f) LVG **Art. 31 NESA** and falls under this rule. Otherwise, the general rules of federal administrative procedure apply (Art. 46(4)) **Art. 46 NESA**. The short time limit matters most for competitors or holders who consider that the cap in Art. 2 has been exceeded or wrongly allocated. Once the amendment of 19 June 2026 is in force, decisions based on new Art. 32 or 33 LVG can be challenged first by objection ("Einsprache"), and the five-day time limit will apply to appeals against objection and appeal decisions **BBI 2026 1771**.

Action for disputes arising from the compulsory stock contract

Disputes between the parties to public-law contracts under the LVG, and between holders and compulsory stock organisations, are decided by the Federal Administrative Court on action **Art. 47 NESA**. The Federal Supreme Court distinguishes the two routes by the nature of the act. The action procedure is designed for "inhaltlichen Streitigkeiten aus solchen öffentlich-rechtlichen Pflichtlagerverträgen". Where the BWL acts "hoheitlich und nicht als Vertragspartei", its act is a decision open to appeal **BGE 135 II 38**. Applied to the ordinance, the release decision (Art. 3) and its revocation (Art. 5(3)) are sovereign acts and are challenged by appeal. Disputes over the terms of the contract adjustment under Art. 4 belong in the action procedure. So do disputes with the guarantee fund organisation over settlement: in B-1990/2009 the Federal Administrative Court held that a letter from a compulsory stock organisation had no sovereign character, and treated the settlement dispute as a matter for action **b-1990-2009**.

Sanctions

Breaches of the ordinance are punished under Art. 49 LVG **Art. 7 (SR 531.211.11)**. Intentional breach of rules adopted under Art. 31(1) LVG carries a custodial sentence of up to three years or a monetary penalty. So does failing to comply with a decision, or breaching a contract based on the LVG, but only "trotz Hinweis auf die Strafdrohung dieses Artikels". Negligence carries a monetary penalty of up to 180 daily rates **Art. 49 NESA**. Delivering beyond customers' effective need, or diverting released goods, may therefore be punishable. Where liability rests on the release decision or the adjusted contract, the express warning of the penalty is a condition.

Contractual consequences apply alongside criminal ones. Under the former law, the compulsory stock commission held that compulsory stock contracts may provide for contractual penalties. Whether a breach is serious depends on "dem Ausmass und der Dauer der Unterdeckung sowie dem Verschulden", and no rule makes every unauthorised shortfall serious automatically **150003983**. The forum described in that decision no longer exists. Its criteria for weighing the breach remain useful where an adjusted contract after a release provides for penalties.

Non-criminal administrative consequences are also available. In B-456/2022, the withdrawal of a general import licence by réservesuisse for unpaid guarantee fund contributions was upheld **b-456-2022**. Breaches of the financial duties that accompany a release can therefore have consequences beyond the release itself.

Practical points

- Holders applying for a release should document in the request (Art. 3(1)) the exhaustion of their own free stocks, unsuccessful procurement efforts, and customer demand. These are the data that feed the calculation under Art. 2 and the effective-need limit under Art. 5(2) **Art. 3 (SR 531.211.11) Art. 5 (SR 531.211.11)**.
- Weekly reports under Art. 6 should be complete and consistent with the request. Inconsistencies weaken the proof of need and expose the holder to revocation **Art. 6 (SR 531.211.11) Art. 5 (SR 531.211.11)**.
- During the contract adjustment under Art. 4, holders should clarify loan and guarantee fund obligations or substitute security (see the section on financial consequences above) **Art. 13 NESA**.
- Choosing the procedure: release decisions are challenged by appeal within the short time limit, while contract and fund-settlement disputes go by action (see the section on competence and legal protection above) **Art. 46 NESA Art. 47 NESA**.
- The authority should state in each decision the need figure, the free domestic quantity, the resulting cap and how it has been allocated. Without this, neither the limit in Art. 2 nor equal treatment can be reviewed **Art. 2 (SR 531.211.11) BBl 2025 3538**.