

Art. 4 WBF Ordinance on the Release of Compulsory Stocks of Protein Carriers (SR 531.211.11): Adapting the Compulsory-Stock Contract before Withdrawal

Function of the provision within the release regime

Art. 4 requires the compulsory-stock contract (Pflichtlagervertrag) with the Federal Office for National Economic Supply (BWL) to be adapted before goods are withdrawn from the compulsory stock

Art. 4 (SR 531.211.11). The German text speaks of "der Ware". The French and Italian versions name the goods expressly (fourrages protéagineux, alimenti ricchi di proteine). This confirms that the rule covers only the protein carriers within the ordinance's scope

Art. 4 (SR 531.211.11). Those goods are the products listed by tariff number in the annex, in each case "zu Futterzwecken"

Art. 1 (SR 531.211.11) Annex 1 (SR 531.211.11).

The provision is the contractual link in a chain of sovereign measures:

- Art. 31(1) and (2)(f) LVG allow the Federal Council, in an imminent or existing serious shortage, to take time-limited intervention measures. These include rules on "die Freigabe von Pflichtlagern und anderen Vorräten" **Art. 31 NESA**.
- Art. 21(1) VWLV allows the WBF to order the release of compulsory stocks in a threatened or existing serious shortage **Art. 21 VWLV**. The ordinance rests expressly on that provision **Preamble (SR 531.211.11)**.
- The 2014 message on the total revision of the LVG explains this structure. The Federal Council may delegate its release competence to the WBF in advance, so that decisions can be taken quickly in a crisis **BBi 2014 7119**.

Within the ordinance, the release is a two-step procedure. First, a holder that lacks sufficient free stocks and cannot procure the missing quantity applies to the Fachbereich Ernährung, giving reasons. That body then fixes the released quantity and the duration of the release by Verfügung **Art. 3 (SR 531.211.11)**. Second, Art. 4 requires the contract to be adapted before the goods physically leave the stock **Art. 4 (SR 531.211.11)**. The ceiling for any release is the difference between demonstrated domestic demand and the quantity freely available on the domestic market **Art. 2 (SR 531.211.11)**. That ceiling also limits how far the contract can be adapted.

Temporal scope. The ordinance entered into force on 15 October 2026 **Art. 9 (SR 531.211.11)**. It contains no expiry clause. The time limit that Art. 31(1) LVG requires for intervention measures is applied through the duration fixed in each release decision under Art. 3(2) **Art. 31 NESA Art. 3 (SR 531.211.11)**.

The LVG amendment of 19 June 2026 is relevant to future application:

- It moves the release power to a new Art. 32(1)(b) LVG ("die Freigabe von Pflichtlagern").
- It adapts the reservation in Art. 13(1) LVG accordingly.
- It adds an express duty to set time limits in Art. 31(3) LVG.
- Amended Art. 57(3)(a) LVG allows the Federal Council to delegate the release power to the WBF. Amended Art. 58b(1) and (5) LVG has the Federal Council designate the Fachbereiche and allows it to assign them tasks under Art. 32.
- It repeals Art. 10(1)(f) LVG and provides for a separate BWL contract with a third party that stores the goods.

- Amended Art. 21 LVG excludes contributions on domestic food and feed and limits federal cover of costs to the short term.
- Its entry into force is left to the Federal Council **BBi 2026 1771**.

Until then, the article numbers of the current LVG apply.

Why the contract must be adapted: the contractual content of the stock

The Pflichtlagervertrag is a public-law contract. The Federal Administrative Court describes compulsory-stock contracts as "öffentlich-rechtliche Verträge, also um Vereinbarungen zwischen (mit Hoheitsbefugnissen ausgestatteter) Behörde und Privaten in Gebieten, welche nach öffentlichem Recht geregelt sind" **b-1483-2019**. The 2014 message also treats it as a public-law contract. It explains that the contractual form was kept because the essential terms leave some room for discretion and negotiation **BBi 2014 7119**.

The BWL concludes these contracts with the undertakings concerned. If no contract is concluded in good time, the BWL can order its conclusion by Verfügung **Art. 7 NESA**. For each economic sector, the BWL uses uniform contracts **Art. 15 VWLV**.

A withdrawal necessarily affects the contract's mandatory content. Art. 10 LVG requires the contract to regulate, in particular:

- the type and quantity of the stored goods;
- their storage and replacement;
- financing and insurance;
- the cover of storage costs and price losses;
- any participation in a Garantiefonds;
- any contractual penalty **Art. 10 NESA**.

In the case law, holding the contractual stock continuously and in full is the central obligation. In a 1991 decision on an oil stock, the federal appeals commission held: "Die ständige und vollständige Lagerung der vertraglichen Pflichtlagermengen ist - neben den Entschädigungsansprüchen der Lagerhalter - Hauptinhalt des Pflichtlagervertrages." **150002072**. A release order therefore cannot simply sit alongside an unchanged contract. Without adaptation, every withdrawal would breach the holder's core obligation. Art. 4 removes this conflict by requiring the contractual quantity and its related terms to be brought into line with the release first.

The relation to Art. 13(1) LVG needs care. As a rule, compulsory stocks may be changed only with the BWL's written consent, but "vorbehalten bleibt die Freigabe nach Artikel 31 Absatz 2 Buchstabe f" **Art. 13 NESA**. The reservation means that a release does not depend on the ordinary consent procedure for reductions. The 2014 message explains its purpose: owners should be able to bring released goods to market when they are urgently needed **BBi 2014 7119**. Art. 4 does not reintroduce that consent requirement. It ensures that the contract reflects the sovereign release before the goods are withdrawn.

Sovereign release decision and contractual adaptation as separate tracks

The Federal Supreme Court distinguishes sharply between the BWL as a contracting party and the BWL as a sovereign authority. In BGE 135 II 38, decided under the former LVG, the Court held that the action procedure is designed for "inhaltlichen Streitigkeiten aus solchen öffentlich-rechtlichen Pflichtlagerverträgen", where the parties stand "auf grundsätzlich gleicher Stufe" **BGE 135 II 38**. By contrast, when approving rules of compulsory-stock organisations, the Office acts "hoheitlich und nicht als Vertragspartei". Its revocation of an approval is therefore a contestable Verfügung **BGE 135 II 38**. The case concerned approval of an organisation's rules, not a release. Applying it to Art. 4 is therefore an analogy, but a close one. The ordinance itself separates the Verfügung of the Fachbereich Ernährung under Art. 3(2) from the contractual adaptation with the BWL under Art. 4 **Art. 3 (SR 531.211.11) Art. 4 (SR 531.211.11)**.

Several consequences follow:

- The release decision is a sovereign act. It fixes the quantity and duration of the release **Art. 3 (SR 531.211.11)**. Under Art. 21(2) VWLV, a release may be made subject to conditions and combined with technical or administrative requirements after the industry organisations have been heard **Art. 21 VWLV**. The message on the 2026 amendment likewise states that a release may be tied to conditions or requirements and that a delivery duty may be imposed on the holder **BBi 2025 3538**. The ordinance imposes such a delivery duty directly in Art. 5 **Art. 5 (SR 531.211.11)**.
- The adaptation is contractual. Art. 21(3) VWLV states: "Das BWL legt die Freigabe im Einvernehmen mit den Pflichtlagerhaltern im Einzelfall fest" **Art. 21 VWLV**. The ordinance gives the release decision to the Fachbereich Ernährung, but the contract partner remains the BWL. Art. 4 can be read as preserving the consensual element that Art. 21(3) VWLV assigns to the BWL. Both bodies are responsible for enforcing the ordinance **Art. 8 (SR 531.211.11)**.
- Unilateral adaptation is not built for crisis timing. Under Art. 19(2)(b) VWLV, the BWL may terminate the contract at any time "mit dreimonatiger Kündigungsfrist, wenn das öffentliche Interesse die Änderung oder Ergänzung einzelner Bestimmungen erfordert". Under Art. 19(3), the parties may dissolve the contract by mutual agreement at any time **Art. 19 VWLV**. Because a unilateral change takes three months, the adaptation under Art. 4 will in practice be a consensual amendment. This conclusion follows from how the provisions are structured.

The release decision itself does not empower the holder to withdraw goods. The physical withdrawal is lawful only once the contractual adaptation has also been made.

Timing and scope of the adaptation

Timing. "Vor der Entnahme" (before withdrawal) means the adaptation must be in place when the goods leave the stock

Art. 4 (SR 531.211.11). The 1991 decision shows why this timing matters:

- The contract there required the BWL's express consent for any reduction.
- A shortfall of 1 to 47 tonnes over 14 days, without prior authorisation, was a serious breach.
- An authorisation for a temporary reduction granted later, on 9 April 1991, did not cover the earlier shortfall **150002072**.

That decision concerned an ordinary reduction under a contract clause, not a crisis release. It nevertheless shows that a later adaptation does not cure a premature withdrawal.

Scope. The adaptation must stay within the quantity and duration fixed by the release decision **Art. 3 (SR 531.211.11)**. That decision is in turn capped by the ceiling in Art. 2 **Art. 2 (SR 531.211.11)**.

Correct contract and goods. Where the stockholding duty has been transferred to a third party, the BWL concludes a separate contract with that third party for the quantities concerned **Art. 11 NESa**. The

contract may provide for such a transfer **Art. 17 VWLV**. The adaptation must then concern the contract that actually covers the withdrawn goods.

The annex to the release ordinance is broader than the list of protein carriers admitted to compulsory stocks. The stockholding ordinance admits, among others:

- soybean extraction meal;
- limited shares of sunflower and rapeseed meal, maize gluten and potato protein, seed, and peas **Art. 4 531.215.111**.

A withdrawal can only concern goods actually held under the contract.

Records. The adaptation also relies on the holder's records. Holders must keep quantity records of stocks and of goods received and dispatched per storage location **Art. 16 VWLV**. During the release, they must keep accounts of all stocks and changes and report weekly to the Fachbereich Ernährung **Art. 6 (SR 531.211.11)**.

Financing, guaranteed loans and the Garantiefonds

The financial terms are the main reason why adapting the contract is more than a formality:

- Guaranteed loans. A loan guaranteed by the Confederation may not exceed 90 percent of the value of the stocked goods, calculated on the base price. It may reach 100 percent where the base price is clearly below the market price **Art. 18 VWLV**. A withdrawal removes part of the goods that secure this loan.
- Repayment on reduction. Art. 13(2) LVG requires pro rata repayment of guaranteed loans and fulfilment of Garantiefonds obligations before a reduction or dissolution of the stock. If that is not possible, the BWL may require adequate security instead (Art. 13(3)) **Art. 13 NESa**.

Whether Art. 13(2) and (3) LVG apply in full to a crisis release is not answered by the statute. The release reservation in Art. 13(1) refers only to the consent requirement **Art. 13 NESa**. The 2014 message links prior repayment to the partial or full dissolution of the stock, and in the same passage reserves the release so that goods can reach the market quickly **BBi 2014 7119**. The adaptation under Art. 4 is the place where the treatment of the loan and of security for the released quantity must be settled.

Garantiefonds. Garantiefonds are private earmarked funds that cover storage costs and offset price fluctuations. They are administered by a private body and are subject to WBF approval **Art. 16 NESa**. Payments and contributions follow statutes approved by the authorities. Approval of the rules and of contribution decisions is given by Verfügung **Art. 22 VWLV**. Contributions may not be levied on domestic food and feed **Art. 16 NESa**.

The Federal Administrative Court held that the duty to pay Garantiefonds contributions arose from cooperative membership and the organisation's statutes. It did not depend on whether the contract annex on stocks and financing had already been signed. The holder therefore owed contributions for a transitional period before the annex was signed **b-1483-2019**. By analogy, adapting the contract with the BWL does not by itself change the holder's obligations towards the Garantiefonds organisation. These follow their own statutory basis.

Consequences of withdrawal without prior adaptation

The ordinance does not specify a sanction for breach of Art. 4. The consequences follow from the contract and from the LVG.

Contractual penalty and performance. The BWL fixes the contractual penalty in each case within the framework agreed in the contract. If the penalty is disputed in principle or in amount, the BWL refers the matter to the Federal Administrative Court. The penalty "entbindet nicht von der Vertragserfüllung" (does not release the holder from performing the contract) **Art. 43 NESa**. In the 1991 case, the contract provided for a minimum penalty of CHF 2,000 and a maximum equal

to the value of the missing goods. A negligent, unauthorised shortfall was regularly to be treated as a serious breach. The minimum penalty was upheld because the breach was not the first **150002072**. This contractual scale comes from that particular contract. It is not a statutory tariff.

Termination. The BWL may terminate with immediate effect if the holder has seriously breached the contract and the nature of the breach shows that compliance is no longer assured **Art. 19 VWLV**. When the contract ends, the import entitlement lapses unless it arises from other obligations **Art. 19 VWLV**.

Administrative measures. If the Act, its ordinances, Verfügungen or contracts are breached, the BWL may order:

- substitute performance at the holder's expense;
- provisional seizure;
- withdrawal or refusal of permits;
- restrictions on supply or purchase, or reduced allocations

Art. 40 NESA.

Goods and financial advantages obtained through such breaches fall to the Confederation **Art. 41 NESA**. The BWL orders these measures by Verfügung **Art. 42 NESA**.

Revocation of the release. Under Art. 5(3), the Fachbereich Ernährung may revoke a granted release or refuse a planned one. That provision, however, refers only to breaches of the delivery duties in Art. 5(1) and (2) **Art. 5 (SR 531.211.11)**. It is not the specific sanction for a breach of Art. 4.

Criminal liability. Art. 7 refers breaches of the ordinance to Art. 49 LVG **Art. 7 (SR 531.211.11)**. Art. 49 LVG provides for different grounds of liability:

- Under Art. 49(1)(a), it is punishable to breach rules on measures issued under, among others, Art. 31(1) LVG.
- Under Art. 49(1)(c), breach of a contract concluded under the LVG is punishable only "trotz Hinweis auf die Strafdrohung dieses Artikels", that is, despite a warning of the criminal sanction.
- Negligence is punishable by a monetary penalty of up to 180 daily units (Art. 49(2)) **Art. 49 NESA**.

A withdrawal without adaptation breaches both the ordinance and the contract. The ordinance rests on the release power of Art. 31(2)(f) LVG **Art. 31 NESA Preamble (SR 531.211.11)**, so Art. 49(1)(a) is the more natural basis. The warning requirement in Art. 49(1)(c) becomes decisive where the conduct is assessed only as a breach of contract. Under the 2026 amendment, once it is in force, Art. 49(1)(a) LVG will cover the measures in Art. 32(1)(a)-(e), including the release. A new Art. 49a will also provide for fines **BBI 2026 1771**.

Disputes and legal protection

The procedural route depends on whether the dispute concerns the contract or a sovereign act:

- Contractual disputes. The Federal Administrative Court decides on action (Klage) disputes between parties to public-law contracts under the LVG and between holders and compulsory-stock organisations **Art. 47 NESA**. Art. 35(a) VGG gives it first-instance jurisdiction on action for disputes arising from public-law contracts of the Confederation **Art. 35 VGG**. Disputes about whether and how the contract was adapted under Art. 4, and about contractual penalties **Art. 43 NESA**, therefore go to the action procedure. In B-1483/2019, the court's judgment stated that a public-law appeal to the Federal Supreme Court lay within 30 days **b-1483-2019**. This is consistent with Art. 86(1)(a) BGG **Art. 86 BGG**.
- Sovereign acts. The release decision of the Fachbereich Ernährung is a Verfügung **Art. 3 (SR 531.211.11)**. The same applies to its revocation or refusal under Art. 5(3) and to the BWL's administrative measures **Art. 42 NESA**. Following BGE 135 II 38, sovereign acts in the compulsory-stock system are challenged by appeal, not by action **BGE 135 II 38**.

The regime is entirely federal. The ordinance assigns enforcement only to the BWL and the Fachbereich Ernährung, so there is no cantonal implementation **Art. 8 (SR 531.211.11)**.

Practical sequence for holders

1. Apply to the Fachbereich Ernährung, giving reasons. Show the lack of free stocks and that the missing quantity cannot be procured **Art. 3 (SR 531.211.11)**.
2. Obtain the release Verfügung and check the quantity, duration and any conditions **Art. 3 (SR 531.211.11) Art. 21 VWLV**.
3. Have the contract with the BWL adapted before any withdrawal. Cover the contractual quantity and the treatment of the guaranteed loan, the security and the Garantiefonds positions for the released goods **Art. 4 (SR 531.211.11) Art. 10 NESA Art. 13 NESA**. Where a third party holds the stock, make sure the right contract is adapted **Art. 11 NESA**.
4. Withdraw only within the adapted quantity. Supply only Swiss customers, and only to the extent of their actual demand **Art. 5 (SR 531.211.11)**.
5. Keep accounts and report weekly **Art. 6 (SR 531.211.11)**. On why the order of steps 3 and 4 cannot be reversed, see "Timing and scope of the adaptation" above.