

Art. 7 of the WBF Ordinance on the Release of Compulsory Stocks of Protein Feed (SR 531.211.11): Penal Provisions

Function of the referral clause

Art. 7 does not define an offence or a penalty of its own. It states that breaches of the ordinance are punished under Art. 49 of the National Economic Supply Act of 17 June 2016 (LVG). The criminal law content therefore lies entirely in Art. 49 LVG. Intentional breaches carry a custodial sentence of up to three years or a monetary penalty; negligent breaches carry a monetary penalty of up to 180 daily units **Art. 49 NESA**. The ordinance exists in a single version, in force since 15 October 2026, so Art. 7 has not been amended **531.211.11 (2026-10-15)**. Art. 49 LVG has also remained unchanged across the LVG versions in force since 2020 **LVG (2025-11-01)**

Taken together, Art. 7 and Art. 49 LVG form a blanket criminal norm (Blankettstrafnorm). The ordinance supplies the conduct and the statute supplies the sanction. The Federal Supreme Court describes such filling provisions as norms that must be read and interpreted together with the penal norm. It adds that the penal provision is to be read as if the text of the filling norm stood within it ("Die Strafbestimmung ist so zu lesen, als stünde in ihr der Text der Ausfüllungsnorm") **6P.62/2007**. That decision concerned the road traffic signals ordinance. It applies here as a general method of reading blanket norms, not as a ruling on supply law.

Strictly speaking, the referral is largely declaratory. Art. 49(1)(a) LVG already covers breaches of rules "über Massnahmen" (on measures) issued under Art. 31(1) LVG, among other provisions **Art. 49 NESA**. The clause still matters for notice and for certainty about which norm applies. The Ticino Court of Appeal shows the consequence when such a link is missing. Under customs law, breaches of administrative rules were punishable only where another enactment expressly declared them punishable. Because the trade statistics ordinance no longer contained such a clause, the court acquitted the accused, applying the *lex mitior* principle **17.2010.27**. Art. 7 removes any comparable doubt for this ordinance.

Delegation chain and the legality principle

From Art. 31 LVG to a departmental ordinance

Under Art. 1 StGB, a penalty may be imposed only for conduct that the law expressly makes punishable **Art. 1 SCC**. Under Art. 164(1)(c) and (2) BV, the basic rules on persons' rights and duties belong in a federal statute, and legislative powers may be delegated only by federal statute **Art. 164 Cst.**. For Art. 7, the decisive question is therefore whether the ordinance counts as a set of rules issued "gestützt auf" (on the basis of) Art. 31(1) LVG within the meaning of Art. 49(1)(a) LVG.

The statutory chain supports that reading:

- Art. 31(1) LVG authorises the Federal Council to take time-limited economic intervention measures in an imminent or existing severe shortage. Art. 31(2)(f) and (g) list the release of compulsory stocks and the delivery duty among the permissible rules

Art. 31 NESA.

- Art. 57(3) LVG allows the Federal Council to transfer the power to release compulsory stocks to the WBF in advance (vorsorglich), in order to remedy severe shortages **Art. 57 NESA**.
- Art. 21(1) of the Ordinance on National Economic Supply (VWL) uses that power. It allows the WBF to order release in a threatened or existing severe shortage. Art. 21(2) VWLV allows the WBF to attach conditions and technical or administrative requirements **Art. 21 VWLV**.
- The ordinance's preamble rests expressly on Art. 21(1) VWLV **Preamble (SR 531.211.11)**.

The Federal Council's dispatch on the LVG confirms that the delegation to the WBF was intended to allow compulsory stocks to be released quickly in a crisis **BBI 2014 7119**.

The limit is the scope of that express delegation. In BGE 108 IV 52, the Federal Supreme Court held that the enactment of general rules could not be delegated to a department, so that the departmental act covered only execution **BGE 108 IV 52**. That limit arose from the reservation in the road traffic act. Under the LVG, Art. 57(3) supplies the express authority, but only for release **Art. 57 NESA**. Rules in the ordinance that are closely tied to release are covered: the conditions of release, the delivery duty and the reporting attached to it. Any departmental rule going beyond release-related matters would be harder to bring within Art. 49(1)(a) LVG.

Penalty in formal statute, conduct in the ordinance

Delegation is acceptable here because the ordinance does not set the sanction. The Basel-Stadt Court of Appeal stated that, under more recent Federal Supreme Court practice, a statute in the formal sense is required at least where the penalty involves deprivation of liberty. It refused to convict under a COVID-19 ordinance that had turned the fine (Busse) provided by the Epidemics Act into a monetary penalty or custodial sentence **SB.2022.39**. Art. 7 follows the permissible model: the sanction comes from Art. 49 LVG itself, and the ordinance adds no penalty of its own.

Required precision of the filling norm

The requirement of legal certainty also applies in ancillary criminal law. Criminal offences must be described with sufficient precision. According to the Federal Supreme Court, the requirements are less strict where the sanction is low **6B_478/2022**. Art. 49 LVG carries up to three years' imprisonment **Art. 49 NESA**. On that sliding scale, the duties in the ordinance must be stated with correspondingly clear precision.

The Bern High Court shows what happens when they are not. It read the COVID-19 special-situation ordinance together with its penal clause and found that neither the ordinance, nor its annex, nor the official explanations clearly imposed on take-away operators a duty to send away non-compliant guests. The defendants were acquitted for lack of the precision required by Art. 1 StGB **SK 2022 444**. For this ordinance, a holder can be punished only for duties the text actually

states. Duties derived from the ordinance's purpose, or from informal guidance by the Fachbereich Ernährung, are not enough.

Which duties can be breached

Not every provision of the ordinance addresses the stockholder.

- Art. 1 defines scope by reference to the protein feeds listed in the annex **Art. 1 (SR 531.211.11)**.
- Art. 2 caps the releasable quantity at the difference between demonstrated domestic demand and the quantity freely available on the domestic market **Art. 2 (SR 531.211.11)**.
- Art. 3 governs the reasoned application and the release decision **Art. 3 (SR 531.211.11)**.

Arts. 2 and 3 bind the authority. A holder cannot "breach" them in the sense of Art. 49(1)(a) LVG, although a quantity unlawfully obtained through false statements in the application may fall under Arts. 50 or 51 LVG (see below).

The duties that holders can breach, and that therefore fill the blanket norm, are:

- Contract adaptation before withdrawal (Art. 4): before goods are taken out of the compulsory stock, the compulsory-stock contract with the BWL must be adapted **Art. 4 (SR 531.211.11)**. Withdrawal before adaptation is the typical breach. It also touches Art. 13(1) LVG, under which compulsory stocks may be altered only with the BWL's written consent, subject to release under Art. 31(2)(f) LVG **Art. 13 NESA**.
- Delivery duty (Art. 5(1)): after release, the holder must supply Swiss customers with the goods **Art. 5 (SR 531.211.11)**.
- Quantity limit per customer (Art. 5(2)): the holder may deliver only the quantities customers need to cover their effective demand **Art. 5 (SR 531.211.11)**. The ordinance does not define "effektiver Bedarf" (effective demand). Given the precision requirement discussed above, a conviction for over-delivery requires an excess that is clear on the facts. A debatable estimate of a customer's needs is not enough.
- Bookkeeping and weekly reporting (Art. 6): holders must keep records of all stocks and changes in stock, and report to the Fachbereich Ernährung every week **Art. 6 (SR 531.211.11)**.

Art. 5(4) works as a built-in limit on the delivery duty. The holder may refuse to deliver to an insolvent customer **Art. 5 (SR 531.211.11)**. A refusal on that ground does not fulfil the offence of breaching Art. 5(1).

Three gateways in Art. 49 LVG

Art. 7 refers to breaches of "die Vorschriften dieser Verordnung" (the rules of this ordinance). The primary gateway is therefore Art. 49(1)(a) LVG, which needs no prior warning **Art. 49 NESA**. Two further gateways come into play through the instruments the ordinance itself creates.

- Breach of a ruling (lit. b): the release is granted by a ruling (Verfügung) that fixes the released quantity and the duration of the release **Art. 3 (SR 531.211.11)**. Exceeding the released quantity or the release period is a breach of that ruling. Under lit. b, it is punishable only if the ruling was disobeyed despite a reference to the penalty in Art. 49 LVG **Art. 49 NESA**.
- Breach of a contract (lit. c): the same requirement applies to the adapted compulsory-stock contract under Art. 4 **Art. 4 (SR 531.211.11)**. A contractual breach is punishable only if the contract was breached despite a reference to the penalty in Art. 49 LVG **Art. 49 NESA**.

The Ticino decision draws the same line in customs law. An accused charged with breaching the ordinance could not be convicted under the separate head covering disobedience of a ruling notified under penalty warning, because no such ruling formed part of the charge **17.2010.27**. The indictment must therefore identify which gateway is

invoked.

For the content of the warning, case law on Art. 292 StGB, which also requires a penalty warning, offers a guide by analogy. The Federal Supreme Court requires the offender to know of the order and of the criminal consequences of non-compliance; mere knowledge of a prohibition is insufficient **6B_280/2010**. The Graubünden Cantonal Court discontinued proceedings where an order merely cited the article without expressly threatening the specific sanction **BK 2003 68**. By analogy, release rulings and contract adaptations should expressly name the Art. 49 LVG penalty.

Where lit. b applies, Art. 292 StGB is generally displaced. Art. 292 is subsidiary to special criminal norms that punish particular forms of disobedience, unless the protected interests differ **6B_478/2022**.

Fault, classification and general rules

Intent, negligence and grading

Intent must extend to every element of the offence, including, under lit. b and lit. c, the warning **6B_280/2010**. The negligent form under Art. 49(2) LVG is punishable without any further statutory provision **Art. 49 NESA**. This matters in practice for reporting and stock-keeping errors under Art. 6 of the ordinance.

Both forms are misdemeanours (Vergehen), not contraventions. Neither threat consists of Haft or Busse alone, which is the defining feature of a contravention (Übertretung) under Art. 333(3) StGB **Art. 333 SCC**. Art. 10 StGB classifies offences carrying a custodial sentence of up to three years or a monetary penalty as Vergehen **Art. 10 SCC**. The dispatch on the LVG confirms that all breaches under the provision that became Art. 49 were deliberately classified as Vergehen **BBI 2014 7119**.

General part, limitation, attempt and participation

The general part of the StGB applies insofar as the LVG has no rules of its own **Art. 333 SCC**. Because both forms are Vergehen, the following consequences apply:

- Limitation: prosecution of the intentional offence becomes time-barred after 10 years, because the maximum penalty is three years' imprisonment. The negligent offence becomes time-barred after 7 years. Limitation no longer runs once a first-instance judgment has been delivered **Art. 97 SCC**. The much shorter special periods debated under the 1982 LVG are of historical interest only **20010717**.
- Attempt: an attempt is punishable, with optional mitigation **Art. 22 SCC**.
- Instigation: an instigator is punished under the principal's penalty **Art. 24 SCC**.
- Aiding: an accessory is punished more leniently **Art. 25 SCC**.
- Art. 105(2) StGB does not apply: its restriction of attempt and aiding to expressly provided cases applies only to Übertretungen **Art. 105 SCC**.

Relationship to the other LVG offences

The generic referral in Art. 7 competes with specific LVG offences:

- False or incomplete information (Art. 50 LVG): anyone obliged to give information under Art. 64 LVG, an implementing rule, a ruling or a contract who gives untrue or incomplete information faces up to one year's imprisonment or a monetary penalty **Art. 50 NESA**. Art. 64 LVG imposes a general duty to provide all information needed to implement the Act **Art. 64 NESA**. The weekly reports under Art. 6 of the ordinance are an implementing duty of this kind.
- On the statutory structure, false or incomplete reports fall under the more specific Art. 50 LVG.
- Failure to keep records or to report at all remains a breach of

the ordinance under Art. 49 LVG.

- Fraud and document offences (Art. 51 LVG): where false statements are used to obtain a release or other benefits by deception, Art. 51 LVG applies Arts. 14 to 16 of the Federal Act on Administrative Criminal Law (VStrR), with a penalty of up to five years' imprisonment or a monetary penalty **Art. 51 NESA**. A misleading release application under Art. 3 of the ordinance therefore falls in a higher penalty range.
- Receiving (Art. 52 LVG): anyone who acquires, conceals or helps dispose of goods they know, or must assume, were obtained through an LVG offence commits receiving (Hehlerei). If the predicate offence carries a milder penalty, that milder penalty applies **Art. 52 NESA**. For a customer who knowingly takes over-delivered goods in breach of Art. 5(2) of the ordinance, the Art. 49 LVG range therefore caps the penalty.
- Assisting an offender (Art. 53 LVG): Art. 53 LVG covers Begünstigung, including frustrating the execution of measures **Art. 53 NESA**.

Liability within enterprises

Compulsory-stock holders are usually companies. The LVG refers to the VStrR only for the offences in Art. 51 **Art. 51 NESA**. The VStrR rules on offences committed in business operations are therefore not made applicable to Art. 49 LVG by any express provision:

- Art. 6 VStrR makes liable the natural persons who acted, and principals or organs who culpably fail to prevent the offence **Art. 6 VStrR**.
- Art. 7 VStrR allows the enterprise itself to be ordered to pay fines of up to CHF 5,000 **Art. 7 VStrR**.

Without such a referral, the StGB general part governs through Art. 333(1) StGB **Art. 333 SCC**. Liability then lies primarily with the individuals who committed the act. Because Art. 49 LVG offences are Vergehen, the subsidiary liability of the enterprise under Art. 102(1) StGB is available. It applies where the offence was committed in the course of business and cannot be attributed to any particular natural person because of deficient organisation. The fine can reach CHF 5 million **Art. 102 SCC**.

Temporal application: temporary law and lex mitior

Measures under Art. 31(1) LVG are by law time-limited **Art. 31 NESA**. Each release is also limited in duration by ruling **Art. 3 (SR 531.211.11)**. The ordinance itself contains no expiry clause; Art. 9 only fixes its entry into force **Art. 9 (SR 531.211.11)**. This raises the question of whether conduct committed during the release period remains punishable once the ordinance is repealed or relaxed.

The Federal Supreme Court's position is that lex mitior under Art. 2(2) StGB does not apply to temporary laws (Zeitgesetze). It defines them as enactments whose validity is limited in time from the outset, expressly or by the function of the enactment ("deren Geltung ausdrücklich oder gemäss der Funktion des Erlasses von vornherein zeitlich beschränkt ist"). Later milder law, including repeal of the temporary law without replacement, therefore has no retroactive effect **6B_824/2023**. In an earlier case, the Court derived the classification from an ordinance's title and its expiry clause. Successor ordinances for later years did not alter that classification, because the need for the measure depended on factual conditions that change from year to year **6B_398/2010**. The lex mitior rule extends to ancillary criminal law in ordinances as well **SU230028**.

Since this ordinance has no express end date, its classification depends on its function. Its function is to manage a supply shortage under Art. 31 LVG and Art. 21 VWLV **Art. 21 VWLV**. Cantonal practice shows how such functional classification works:

- Zurich: the High Court reversed an acquittal. It held that the COVID-19 special-situation ordinance was limited from the outset

to the duration of the special situation, and that its repeal reflected changed facts rather than a changed legal assessment **SU230028**.

- Basel-Stadt: the Court of Appeal distinguished temporary laws in the strict sense (fixed calendar duration) from those in the broad sense (dependent on temporary facts). Where a relaxation occurs while the law is still in force, the court asks whether it stems from changed facts or from a shift in legal opinion ("Wandel der Rechtsanschauung"). It refused to apply lex mitior only after that examination **SB.2022.103**.

Applied to Art. 7, repeal of the ordinance after the shortage ends, or expiry of an individual release, does not make earlier breaches unpunishable. A different result is conceivable only if the WBF eased a duty during a continuing shortage because it no longer regarded the conduct as deserving punishment. That is a question of fact about the reason for the change.

Parallel administrative and contractual consequences

Criminal liability is one of several sanction tracks:

- Administrative track: under Art. 5(3) of the ordinance, the Fachbereich Ernährung may revoke a release or refuse a planned release if the holder breaches its delivery duties under Art. 5(1) or (2) **Art. 5 (SR 531.211.11)**.
- Contractual track: the compulsory-stock contract may include a contractual penalty (Konventionalstrafe) **Art. 10 NESA**. The BWL fixes its amount within the contractual range. If the penalty is disputed, the BWL refers the matter to the Federal Administrative Court. Paying the penalty does not release the holder from performing the contract **Art. 43 NESA**. Disputes under public-law contracts under the LVG are decided by the Federal Administrative Court on action **Art. 47 NESA**.

A 1997 decision under the former LVG shows how the contractual penalty is graded. Under the contract at issue, a single minor breach first called for a written warning and a time limit to restore compliance. Whether a breach is minor or serious, and how large the penalty should be, depends on the extent and duration of the shortfall and on the holder's fault **150003983**.

The dispatch on the LVG states that enforcement measures and criminal prosecution of a contractual breach remain reserved alongside the contractual penalty **BBI 2014 7119**. The legislator therefore planned for the tracks to apply cumulatively. Whether a particular cumulation is compatible with ne bis in idem must be assessed case by case.

Prosecution and the role of the BWL

Prosecution and adjudication lie with the cantons, not with the WBF, the BWL or the Fachbereich Ernährung **Art. 55 NESA**. The dispatch notes that this continues the earlier allocation of competence **BBI 2014 7119**. The Federal Office for Customs and Border Security (BAZG) prosecutes only offences concerning import licences and export restrictions **Art. 55 NESA**. Breaches of the release ordinance are not among them.

The BWL nonetheless has its own procedural position. It may exercise the rights of a private claimant and file an objection against a penalty order. The public prosecutor must notify it when preliminary proceedings are opened **Art. 56 NESA**. A penalty order that the BWL considers too lenient can therefore lead to full proceedings even if the accused accepts it.

Practical points

- Authorities: name the Art. 49 LVG penalty expressly in release rulings and contract adaptations (see "Three gateways in Art. 49 LVG").
- Holders:

- adapt the contract before any withdrawal **Art. 4 (SR 531.211.11)** ;
- document each customer's effective demand **Art. 5 (SR 531.211.11)**;
- record and report changes in stock weekly **Art. 6 (SR 531.211.11)**.

Negligent errors are also punishable **Art. 49 NESA**, and false reports engage the separate offence in Art. 50 LVG **Art. 50 NESA**.

- Defence: the main defence points are
 - whether the alleged duty is stated precisely in the ordinance **SK 2022 444**;
 - whether the indictment uses the correct gateway **17.2010.27**;
 - whether a warning was given where lit. b or lit. c is invoked **6B_280/2010**;
 - whether Art. 5(4) of the ordinance justified a refusal to deliver **Art. 5 (SR 531.211.11)**.

For why a later repeal of the ordinance will normally not help, see "Temporal application".