

Art. 8 WBF Ordinance on the Release of Compulsory Stocks of Protein Carriers (SR 531.211.11): Execution by the FONES and the Food Division

What the execution clause does and where its authority comes from

Art. 8 gives execution of the ordinance jointly to two bodies: the Federal Office for National Economic Supply (BWL/OFAE/UF AE) and the Fachbereich Ernährung (domaine Alimentation, settore specializzato alimentazione) **Art. 8 (SR 531.211.11)**. The clause looks like boilerplate, but it does more than that. Since 1 November 2025 the Fachbereich Ernährung, a militia body, has had no general power to execute measures of its own (see below), and Art. 8 is what transfers execution powers to it. The clause must also be read together with the specific powers that Art. 3 to 6 of the ordinance confer.

The ordinance is a departmental ordinance of the WBF. Its only stated legal basis is Art. 21(1) of the Ordinance on National Economic Supply (VWL V) **Preamble (SR 531.211.11)**. That provision allows the WBF to order the release of compulsory stocks in an imminent or existing severe shortage **Art. 21 VWL V**. The power ultimately comes from the statute in two steps:

- Art. 31(1) and (2)(f) LVG allow the Federal Council, in an imminent or existing severe shortage, to take time-limited intervention measures, including rules on "die Freigabe von Pflichtlagern und anderen Vorräten" **Art. 31 NESA**.
- Art. 57(3) LVG allows the Federal Council to transfer the power to release compulsory stocks to the WBF in advance **Art. 57 NESA**.

The 2014 Federal Council Dispatch gives the reason for the advance transfer: it widens room for manoeuvre and speeds up decisions **BBi 2014 7119**. The execution clause is the last link in a chain that runs from the LVG to the Federal Council (VWL V), then to the WBF and finally to the executing bodies.

The ordinance entered into force on 15 October 2026 **Art. 9 (SR 531.211.11)**. Art. 8 has not been amended since then. The changes that matter for its interpretation are in the surrounding framework: the 2025 reorganisation and the LVG amendment of 19 June 2026, both discussed below.

The two executing bodies

The BWL as the permanent federal office

The Wirtschaftliche Landesversorgung (WL) consists of the Delegate, the Fachbereiche and the BWL **Art. 58 NESA**. The Delegate is appointed by the Federal Council and directs the WL **Art. 58a NESA**. Under the VWL V the Delegate directs both the BWL and the Fachbereiche, and the BWL provides the Fachbereiche with offices for their work **Art. 2 VWL V**.

Art. 6(1) VWL V gives the BWL a set of residual and cross-cutting powers **Art. 6 VWL V**.

- issuing Verfügungen, unless the law and its implementing provisions have transferred this to the business organisations or

the Fachbereiche (lit. c);

- handling appeals under Art. 46(1) and (3) LVG and conducting litigation (lit. d);
- "das Pflichtlagerwesen", i.e. the compulsory-stock system (lit. e);
- all financial and administrative matters (lit. f);
- supervision (lit. k).

The Federal Supreme Court has held that the BWL acts as a sovereign authority, not as a contracting party, when it approves the regulations of compulsory-stock organisations **BGE 135 II 38**.

The Fachbereich Ernährung: a militia body that executes only transferred powers

The Fachbereiche are composed mainly of experts from business, together with experts from the Confederation, cantons, cities and communes, and their members must disclose their interests

Art. 58b NESA. The 2014 Dispatch describes the WL as a militia system of around 240 cadre members from the private sector and from various branches of the administration, led by the Delegate **BBi 2014 7119**. The 2025 Dispatch confirms that:

- the militia principle continues;
- the Fachbereiche remain subordinate to the Delegate;
- as part of the core organisation, they remain responsible for implementation within their field of expertise **BBi 2025 812**.

The 2025 reform is directly relevant to Art. 8. Until 31 October 2025, Art. 7(1)(d) VWL V gave the Fachbereiche a general competence for both preparing and executing WL rules and measures **VWL V (2022-01-01)**. Since 1 November 2025 (AS 2025 624) the position is different:

- lit. d covers only preparation, "gemeinsam mit dem BWL";
- the new lit. e gives the Fachbereiche execution only "sofern ihnen dieser übertragen wurde" (where execution has been transferred to them) **Art. 7 VWL V (2025-11-01)**.

The Fachbereich Ernährung therefore does not execute this ordinance under its general mandate. It needs a specific transfer, and Art. 8, read with Art. 3, 5 and 6, provides it within the ordinance.

The subject matter falls within the Fachbereich's remit. Art. 7(3)(a) VWL V assigns it "Nahrungsmittel und landwirtschaftliche Produktionsmittel" (food and agricultural means of production) **Art. 7 VWL V**. Every good listed in the annex is a protein carrier "zu Futterzwecken" (for feed purposes): soybeans, rapeseed and sunflower seed, dried pulses, potato protein and oil cakes of various origins **Annex 1 (SR 531.211.11)**.

The annex covers more goods than may actually be held as compulsory stock. Under Art. 4(4) of the WBF Ordinance on Compulsory Stocks of Food and Feed, the admitted protein carriers are **Art. 4 531.215.111**:

- soybean extraction meal;
- sunflower and rapeseed meal, maize gluten and potato protein, and seed for soybeans, rapeseed and sunflowers, each limited to 4 per cent of the total quantity;

- peas, limited to 2 per cent.

A release can only affect goods that are actually held as compulsory stock. The additional tariff lines in the annex therefore matter mainly if the stock composition is adjusted in future.

How execution is divided between the BWL and the Fachbereich

Art. 8 itself does not say which body does what. The division follows from the specific provisions of the ordinance and, where they are silent, from the VWLV.

Task	Competent body	Basis
Receiving the reasoned release request; fixing quantity and duration by Verfügung	Fachbereich Ernährung	**Art. 3 (SR 531.211.11)**
Revoking a granted release or refusing a planned one for breach of the delivery duty	Fachbereich Ernährung	**Art. 5 (SR 531.211.11)**
Receiving the weekly stock reports	Fachbereich Ernährung	**Art. 6 (SR 531.211.11)**
Adapting the compulsory-stock contract before goods are withdrawn	BWL	**Art. 4 (SR 531.211.11)**
Residual tasks: compulsory-stock system, finance, administrative measures under the LVG, appeals and litigation	BWL	**Art. 6 VWLV, Art. 42 NESA**

Execution therefore runs on two tracks. A release requires both:

- a Verfügung of the Fachbereich fixing quantity and duration **Art. 3 (SR 531.211.11)**; and
- an adaptation of the compulsory-stock contract with the BWL, which must take place "vor der Entnahme der Ware" (before the goods are withdrawn) **Art. 4 (SR 531.211.11)**.

The sequence is binding. A holder that withdraws goods on the strength of the release decision alone, before the contract has been adapted, departs from Art. 4. The two tracks also lead to different legal remedies (see the section on legal protection below).

The ordinance itself limits the Fachbereich's discretion:

- the holder must lack sufficient free stock and be unable to procure the missing quantity, and the request must be reasoned **Art. 3 (SR 531.211.11)**;
- the released quantity may not exceed the difference between the proven domestic need and the quantity freely available on the domestic market **Art. 2 (SR 531.211.11)**.

The ordinance says only that the holder "kann ... ersuchen" (may apply). It creates no entitlement to a release. The Fachbereich decides within a discretion bounded by these conditions and by the ceiling. The time limit on the release reflects the statutory requirement that intervention measures be time-limited **Art. 31 NESA**.

Releases in other sectors show a consensual approach in practice. The National Council's Control Committee reported that during the Covid-19 pandemic the market for human medicines was supplied through the release of compulsory stocks of about 20 products. It also reported that additional stocks of FFP2 and FFP3 masks were released "in Absprache mit den betroffenen Unternehmen" (in consultation with the undertakings concerned) **BBi 2022 2358**. The report does not set legal criteria for releases. How this ordinance's unilateral Verfügung relates to the agreement-based release under Art. 21(3) VWLV is discussed in the next section.

Whether the Fachbereich may lawfully issue Verfügungen

The most delicate question raised by Art. 8 concerns the chain of delegation behind the Fachbereich's decisions. Two levels of norms are in tension.

The statutory level. Art. 58b(5) LVG provides: "Der Bundesrat kann den Fachbereichen im Fall von Massnahmen nach den Artikeln 31-33 Aufgaben übertragen. Er kann die Fachbereiche zum Erlass von

Verfügungen ermächtigen." In English: the Federal Council may assign tasks to the Fachbereiche for measures under Articles 31 to 33, and may empower them to issue rulings **Art. 58b NESA**. According to the 2025 Dispatch, the former Art. 57(2) LVG was moved into Art. 58b without any change of substance. The Dispatch says the law now expressly allows the Federal Council to combine the transfer of a task with the right to issue Verfügungen **BBi 2025 812**. The empowering body named in the text is the Federal Council.

This fits the Federal Supreme Court's reading of the earlier law. In BGE 135 II 38 the Court explained that, apart from the usual delegation within the federal administration, only the Delegate and the then "Bereiche" of the WL could be empowered by the Federal Council to issue generally binding rules. It also held that the private compulsory-stock organisation Carburia had received no such powers **BGE 135 II 38**. The decision concerned rule-making by a private organisation, not individual decisions by a Fachbereich. Its relevance here is limited to one point: it confirms that powers in this field reach WL bodies through a Federal Council empowerment.

The ordinance level. Three provisions of the VWLV bear on the question:

- Art. 6(1)(c) VWLV leaves the issuing of Verfügungen with the BWL unless the "Gesetz und den Ausführungsbestimmungen" have transferred it to the Fachbereiche **Art. 6 VWLV**.
- Art. 7(1)(e) VWLV likewise requires a transfer **Art. 7 VWLV**.
- Art. 21(3) VWLV, the provision under which this ordinance was adopted, states: "Das BWL legt die Freigabe im Einvernehmen mit den Pflichtlagerhaltern im Einzelfall fest" (the BWL determines the release in the individual case in agreement with the compulsory-stock holders) **Art. 21 VWLV**.

The ordinance departs from Art. 21(3) VWLV in two respects. It moves the individual decision from the BWL to the Fachbereich Ernährung, and it replaces a release agreed with the holders by a unilateral Verfügung **Art. 3 (SR 531.211.11)**.

There are two possible readings:

- A broad reading. "Ausführungsbestimmungen" in Art. 6(1)(c) VWLV includes departmental ordinances. Art. 21(2) VWLV allows the WBF to attach "technischen oder administrativen Auflagen" (technical or administrative conditions) to a release **Art. 21 VWLV**. On this view the Federal Council accepted that the WBF would organise execution, and Art. 8 together with Art. 3 is a valid transfer.
- A strict reading. Art. 58b(5) LVG reserves to the Federal Council itself the power to authorise Fachbereiche to issue Verfügungen. A WBF ordinance may assign execution tasks to the Fachbereich but cannot, on its own authority, give it decision-making power.

Neither the LVG nor the VWLV settles which reading is correct, and BGE 135 II 38 did not concern individual decisions by a Fachbereich. A holder adversely affected by a release decision may treat it as a possible ground of challenge. In practice the risk is limited, because Art. 8 makes the BWL a co-competent executing body. Under Art. 6(1)(c) VWLV the BWL keeps its residual power to issue Verfügungen and could step in if the Fachbereich's own competence were denied.

Enforcement: revocation, administrative measures and criminal law

Revocation and refusal under the ordinance

A holder that has obtained a release must supply Swiss customers, but only with the quantities they need for their actual requirements. It may refuse to supply an insolvent customer **Art. 5 (SR 531.211.11)**. If the holder breaches the delivery duty or the quantity limit, the Fachbereich Ernährung may revoke a granted release or refuse a planned one **Art. 5 (SR 531.211.11)**. This is a specific power of the Fachbereich under the ordinance itself.

Administrative measures under the LVG remain with the BWL

The LVG's general administrative measures are a separate matter. Where the LVG, its implementing ordinances, Verfügungen or contracts are breached, the BWL may **Art. 40 NESA**:

- order substitute performance at the obligor's expense;
- order precautionary seizure;
- withdraw or refuse authorisations;
- impose restrictions on supply and purchase, and reduce allocations.

The BWL takes these measures by Verfügung **Art. 42 NESA**. Goods and financial advantages obtained through a breach fall to the Confederation whether or not the breach is a criminal offence. If the goods are no longer held, the Confederation has a claim for the amount of the unlawful advantage, and these claims take priority over criminal confiscation **Art. 41 NESA**.

Art. 8 does not merge the two sets of powers:

- the Fachbereich's revocation under Art. 5(3) controls the release itself;
- seizure, forfeiture of goods sold in breach of the delivery restriction and compensation claims under Art. 40 and 41 LVG remain measures of the BWL.

Contractual penalties under the compulsory-stock contract

Where the compulsory-stock contract provides for a contractual penalty, the BWL fixes the amount. If the penalty is contested, the BWL must refer the matter to the Federal Administrative Court. Paying the penalty does not release the holder from performing the contract **Art. 43 NESA**.

A 1997 administrative decision under the former LVG shows how contractual and criminal sanctions differ. A shortfall in a compulsory stock was sanctioned by a contractual penalty, not by criminal proceedings. Whether the breach was minor or serious depended on the extent and duration of the shortfall and on the holder's fault. A shortfall of more than 10 per cent of the agreed quantity was held not to be minor **150003983**. The criteria were developed for a quantitative stock shortfall. Applying them to a holder who withdraws released goods before the contract has been adapted would be an analogy.

Criminal sanctions and the warning requirement

Art. 7 of the ordinance refers to Art. 49 LVG **Art. 7 (SR 531.211.11)**.

Art. 49 LVG distinguishes several cases **Art. 49 NESA**:

- intentional breaches of rules on measures issued under Art. 31(1) LVG are punishable by a custodial sentence of up to three years or a monetary penalty (Art. 49(1)(a));
- negligence carries a monetary penalty of up to 180 daily units (Art. 49(2));
- failure to comply with an individual Verfügung, such as a release decision fixing quantity and duration, is punishable only "trotz Hinweis auf die Strafdrohung dieses Artikels" (despite a reference to the penalty in this article);
- the same condition applies to breach of a contract concluded under the LVG.

Release decisions and contract adaptations should therefore contain that warning if they are to be enforceable under criminal law.

The cantons prosecute and judge these offences **Art. 55 NESA**. The BWL may exercise the rights of a private claimant and challenge summary penalty orders **Art. 56 NESA**. Other offences may also apply:

- false or incomplete information given under a duty to inform **Art. 50 NESA**;
- receiving goods obtained through an LVG offence **Art. 52 NESA**;
- unlawfully frustrating the execution of a measure **Art. 53 NESA**.

The Federal Supreme Court reads the LVG's criminal references

strictly. In BGE 151 IV 228, the Bern cantonal courts had convicted a defendant of benefit fraud through the reference in Art. 51 LVG to Art. 14(1) of the Federal Act on Administrative Criminal Law (VStrR). The Supreme Court held that the reference does not extend the scope of Art. 14(1) VStrR beyond its clear wording ("nicht zu einer Erweiterung des Anwendungsbereichs von Art. 14 Abs. 1 VStrR über den klaren Gesetzeswortlaut"). Federal ship guarantees were therefore not covered by the variant of the offence that the cantonal courts had applied **BGE 151 IV 228**. The decision concerns Art. 51, not Art. 49 LVG. It nevertheless supports a strict reading of the penal reference in Art. 7 of the ordinance.

Reporting, information and confidentiality

Holders must keep books on all stocks and on every change in stock levels, and must report weekly to the Fachbereich Ernährung **Art. 6 (SR 531.211.11)**. This duty is backed by the general statutory duty under Art. 64 LVG **Art. 64 NESA**:

- every person must give the competent authorities all information, documents and access to premises needed to execute the LVG;
- Art. 169 of the Criminal Procedure Code applies by analogy;
- the Federal Office for Customs and Border Security (BAZG) must make documents and data available to the BWL and the Fachbereiche despite its duty of secrecy, insofar as this is indispensable for execution.

The reports serve verification. In a 1991 administrative decision on compulsory heating-oil stocks, the decisive date for financing contributions was the date of the holder's written notice that restocking was complete. The reason given was that "seuls les stocks obligatoires existant effectivement peuvent être contrôlés" (only compulsory stocks that actually exist can be checked), whereas order dates and private price agreements are hard to verify **150002069**. The same reasoning applies to the weekly reports under Art. 6. They allow the Fachbereich to measure actual stock movements against the released quantity and the delivery restriction.

In the Covid-19 pandemic, stock reporting had to be organised outside the contractual compulsory-stock relationship. Suppliers and hospitals recorded their stocks weekly in a digital reporting system, and the BWL regularly surveyed licence holders about their stocks **BBi 2022 2358**.

Because the Fachbereich consists mainly of business experts, it receives weekly stock data from market participants who may be competitors. Three safeguards offset this:

- everyone involved in executing the LVG is bound by a duty of confidentiality **Art. 63 NESA**;
- members of the Fachbereiche must disclose their interests **Art. 58b NESA**;
- the Delegate must ensure that processing statistical data does not distort competition **Art. 58a NESA**.

Legal protection: the ruling track and the contract track

The two tracks of execution under Art. 8 lead to two different procedures.

Challenging release, refusal and revocation decisions

Release, refusal and revocation decisions are Verfügungen **Art. 3 (SR 531.211.11) Art. 5 (SR 531.211.11)**. Because they rest on implementing provisions of Art. 31 LVG, the special procedure for intervention measures applies:

- an objection (Einsprache) must be lodged in writing with the authority that issued the decision within five days of notification, and must contain a request and the facts relied on **Art. 45 NESA**;
- an appeal must also be filed within five days, and it has no suspensive effect **Art. 46 NESA**.

The 2014 Dispatch confirms that this sequence, with suspensive

effect removed by law, was designed for decisions taken in a severe shortage **BBI 2014 7119**.

The statute does not expressly say who hears appeals against a Fachbereich decision. Art. 46(1) LVG provides for an appeal to the BWL only against Verfügungen of business organisations under Art. 60 LVG **Art. 46 NESA**. The Fachbereiche are part of the WL itself **Art. 58 NESA**, not such organisations. For all other cases Art. 46(4) LVG refers to the general provisions on federal judicial procedure **Art. 46 NESA**. The wording therefore points to the general route, not to an internal appeal to the BWL. Because the statute does not say so expressly, and given the five-day deadline, an appellant should file in time and set out the competence question in the appeal.

Whether an act is open to challenge depends on its form, and the case law shows the dividing line:

- In B-8057/2007 the Federal Administrative Court treated BWL approvals of an organisation's regulations as participation in rule-making, not as Verfügungen within the meaning of Art. 5 VwVG. It found that excluding an appeal in that supervisory context was compatible with Art. 29a of the Federal Constitution and Art. 13 ECHR **b-8057-2007**.
- In BGE 135 II 38 the Federal Supreme Court held that refusing or revoking approval of an organisation's regulations does have the characteristics of a Verfügung towards that organisation, because it denies the regulations legal effect. The BWL had therefore rightly issued its revocation as a Verfügung with instructions on available remedies **BGE 135 II 38**.

The two decisions do not conflict: approving regulations is participation in rule-making, whereas refusing or revoking approval denies them legal effect. Both decisions concerned supervision of organisations, so they apply to release decisions only by analogy. Their common point for Art. 8 is that an act which shapes a legal relationship with binding effect is appealable. The ordinance expressly requires a Verfügung for releases (Art. 3(2)), and revocations under Art. 5(3) withdraw a granted legal position, so both fall on the appealable side of the line.

Disputes about adapting the compulsory-stock contract

Adapting the compulsory-stock contract under Art. 4 follows a different route. Disputes between parties to public-law contracts under the LVG, and between holders and compulsory-stock organisations, are decided by the Federal Administrative Court on an action (Klage) **Art. 47 NESA**. The civil courts have jurisdiction only over the matters listed in Art. 48 LVG **Art. 48 NESA**.

B-1990/2009, decided under the former LVG of 1982, concerned a reduction of a compulsory durum-wheat stock in 2008. The dispute over the settlement price owed to the compulsory-stock organisation was a compulsory-stock dispute to be decided on action. The court held it could not be treated as an appeal, and that the civil courts had no jurisdiction. On the merits, the court adjusted the pricing rule approved by the BWL under the *clausula rebus sic stantibus*, because the extraordinary price movement in 2008 made the three-month average unfair. It fixed the settlement price at CHF 60 per 100 kg **b-1990-2009**.

The case applies to Art. 4 of the ordinance by analogy. A dispute about the terms of the contract adaptation, including its financial consequences, belongs to the action track, not to the five-day appeal procedure. Settlement rules adopted in advance remain open to judicial adjustment if exceptional market conditions make them unfair.

Guarantee funds and business organisations

The ordinance contains no provision on guarantee funds. It also does not use the option under Art. 60 LVG of delegating execution tasks to business organisations or to private bodies that administer guarantee funds **Art. 60 NESA**. Execution is reserved to the two bodies named in Art. 8. This matches the Federal Supreme Court's finding that the

private compulsory-stock organisations have no rule-making powers of their own **BGE 135 II 38**.

Guarantee funds are earmarked private assets that cover storage costs and offset price fluctuations on compulsory-stock goods. Their creation and administration require WBF approval, and no contributions may be levied on domestic food and feed **Art. 16 NESA**. The BWL supervises them **Art. 17 NESA**.

Before a compulsory stock is reduced or dissolved, the holder must repay federally guaranteed loans proportionately and meet its obligations to the guarantee fund **Art. 13 NESA**. However, Art. 13(1) LVG exempts a release under Art. 31(2)(f) from the general requirement of written BWL consent to changes in a stock **Art. 13 NESA**.

The financial consequences of a release are therefore settled in the contract adaptation that the BWL carries out under Art. 4 of the ordinance **Art. 4 (SR 531.211.11)**. In B-1483/2019 the Federal Administrative Court held that the duty to contribute to a guarantee fund rests on membership and on the organisation's statutes, not on the fund paying out compensation. It also confirmed that disputes between holders and compulsory-stock organisations go by action under Art. 47(b) LVG **b-1483-2019**.

The LVG amendment of 19 June 2026

Parliament amended the LVG on 19 June 2026. The referendum period expired on 8 October 2026, and the Federal Council will set the date of entry into force **BBI 2026 1771**. The changes relevant to Art. 8 are **BBI 2026 1771**:

- the release of compulsory stocks moves to new Art. 32(1)(b);
- under new Art. 31, measures may also be taken where a severe shortage threatens to occur within a few months, and measures must be time-limited;
- the Federal Council's advance transfer of release powers to the WBF is limited to remedying a severe shortage;
- the first sentence of Art. 58b(5) restricts the tasks that may be transferred to the Fachbereiche to measures under Art. 32, while the second sentence, on empowering them to issue Verfügungen, is unchanged;
- Art. 60 is rewritten: the Federal Council may empower organisations and persons of public or private law, and bodies that administer guarantee funds, to issue Verfügungen, and the BWL supervises the transferred tasks;
- the special five-day objection and appeal procedure in Art. 45 and 46 will refer to Art. 32 and 33.

Once the amendment is in force, the statutory provisions on which the ordinance depends will be renumbered. The amendment does not change the rule in Art. 58b(5) LVG that the Federal Council empowers the Fachbereiche to issue Verfügungen, so the amendment does not resolve the competence question discussed above.