

Art. 9 WBF Ordinance on the Release of Compulsory Stocks of Protein Carriers (SR 531.211.11): Entry into Force

Function of the provision and the regime it activates

Art. 9 provides that the ordinance enters into force on 15 October 2026 **Art. 9 (SR 531.211.11)**. The French and Italian texts fix the same date. On its face the clause only sets a starting point. What gives it practical weight is the regime it switches on:

- Application. A compulsory stockholder of a protein carrier listed in the Annex may apply for release if it lacks sufficient free stock and cannot obtain the missing quantity. The application must state reasons **Art. 1 (SR 531.211.11) Art. 3 (SR 531.211.11)**.
- Ruling. The Fachbereich Ernährung (the food division of the national economic supply organisation) fixes the released quantity and the duration of the release by ruling **Art. 3 (SR 531.211.11)**.
- Quantity cap. The maximum is the difference between proven domestic demand and the quantity freely available on the domestic market **Art. 2 (SR 531.211.11)**.
- Contract. The compulsory stock contract with the BWL must be adapted before any goods are withdrawn **Art. 4 (SR 531.211.11)**.
- Delivery. A holder that has obtained release must supply Swiss customers, but only up to their actual need **Art. 5 (SR 531.211.11)**.
- Reporting. Holders must keep books and report weekly **Art. 6 (SR 531.211.11)**.
- Sanctions. Breaches are punishable under Art. 49 LVG **Art. 7 (SR 531.211.11)**.

The ordinance has existed in a single version since 15 October 2026 and has not been amended or repealed **Art. 9 (SR 531.211.11)**. Its open-ended duration is discussed below.

The chain of authority behind the date

The WBF adopted the ordinance on the basis of Art. 21(1) VWLV **Preamble (SR 531.211.11)**. That provision allows the WBF to order the release of compulsory stocks "für den Fall einer drohenden oder im Fall einer bestehenden schweren Mangellage" (where a serious shortage is threatened or exists) **Art. 21 VWLV**. Art. 57(3) LVG lets the Federal Council delegate this power to the WBF as a precaution **Art. 57 NESA**. The substantive statutory basis is Art. 31(2)(f) LVG, which covers "die Freigabe von Pflichtlagern und anderen Vorräten" (the release of compulsory stocks and other reserves) **Art. 31 NESA**.

The Federal Council's message on the total revision of the LVG explains the delegation. It continued earlier practice under Art. 12 of the 1983 stockholding ordinance. Its purpose is to get released stock onto the market quickly when it is urgently needed **BBJ 2014 7119**.

Two consequences follow for Art. 9:

- The date makes the general release framework available but releases no goods itself. Each release still requires an individual ruling **Art. 3 (SR 531.211.11)**.
- Art. 21(1) VWLV allows a release order even where a shortage is merely threatened **Art. 21 VWLV**. The entry-into-force date therefore does not establish that a shortage already exists on 15

October 2026. Whether a release is justified is assessed application by application, within the cap set by Art. 2 **Art. 2 (SR 531.211.11)**.

Publication as a condition for obligations to arise

Whether the ordinance's obligations actually arise on the date fixed by Art. 9 **Art. 9 (SR 531.211.11)** depends on publication in the Official Compilation (AS):

- Ordinary publication. Enactments are published at least five days before they enter into force **Art. 7 PubIA**.
- Urgent publication. Exceptionally, a text is published on the day of entry into force at the latest, where this is "zur Sicherstellung der Wirkung erforderlich" (necessary to ensure the enactment's effect) **Art. 7 PubIA**. In that case the hour of entry into force is also fixed, and obligations arise "frühestens im Zeitpunkt der Veröffentlichung" (at the earliest at the moment of publication) **Art. 12 PubIV**.
- Effect of publication. Obligations arise only once the text has been published. If an enactment is published after its entry into force, obligations arise only on the day after publication, subject to the urgent procedure. If publication was extraordinary, the person concerned may prove that they neither knew the enactment nor could have known it despite due care **Art. 8 PubIA**.

Cantonal case law illustrates what happens when publication comes late. The Solothurn Administrative Court held that "Im demokratischen Rechtsstaat ist die Publikation unabdingbare Voraussetzung für das Inkrafttreten gesetzlicher Vorschriften und damit für deren Anwendbarkeit" (in a democratic state governed by the rule of law, publication is an indispensable precondition for the entry into force of statutory provisions and thus for their applicability). A regulation stated to apply from 1 July 2003 but published only on 6 February 2004 entered into force on its publication. A ruling issued before then on the basis of that regulation lacked a legal basis and was void **VWBES.2004.10**. That decision concerns cantonal law. For federal law the result follows directly from Art. 8 PubIG **Art. 8 PubIA**.

This matters for the burdensome rules of the ordinance. The delivery duty and quantity limit in Art. 5 **Art. 5 (SR 531.211.11)**, the reporting duty in Art. 6 **Art. 6 (SR 531.211.11)** and the penalty clause in Art. 7 **Art. 7 (SR 531.211.11)** bind only from the time determined by Art. 8 PubIG. The ordinance was adopted on 28 September 2026, which in principle left enough time for ordinary publication. Even so, anyone relying on a breach committed around 15 October 2026 should check the actual AS publication date.

Duration: an open-ended ordinance within a regime of time-limited measures

Art. 9 sets a starting date but no end date, and the ordinance contains no sunset clause **Art. 9 (SR 531.211.11)**. Art. 31(1) LVG, by contrast, permits only "zeitlich begrenzte wirtschaftliche Interventionsmassnahmen" (time-limited economic intervention

measures) **Art. 31 NESA**.

The ordinance meets this requirement through the individual ruling. The Fachbereich Ernährung fixes "die Dauer der Freigabe" (the duration of the release) in each case **Art. 3 (SR 531.211.11)**. The ordinance thus operates as a standing framework. The statutory time limit is implemented through the duration stated in each ruling, not through a general expiry date. That reading fits the LVG in force, which is the version applicable since 1 November 2025

LVG (2025-11-01)

The LVG amendment of 19 June 2026 makes the requirement more explicit **BBi 2026 1771**:

- The new Art. 31(3) LVG reads "Die Massnahmen sind zu befristen" (the measures must be time-limited).
- The release power moves to the new Art. 32(1)(b) LVG.
- Under the new Art. 57(3) LVG, the WBF may also be empowered to require holders to place released goods on the market, to supply them only in Switzerland or only in set quantities, and to restrict their use.

The referendum period expired on 8 October 2026, and the Federal Council determines when the amendment enters into force **BBi 2026 1771**. The consolidated LVG does not yet show the amendment in force **LVG (2025-11-01)**.

The Federal Council's message states that intervention measures still "zu befristen sind" (must be time-limited) **BBi 2025 3538**. It adds that measures may be taken even where a serious shortage is only expected within a few months, and it confirms that the WBF may attach conditions, requirements and delivery duties to releases **BBi 2025 3538**. On this reading, the amendment would not invalidate the ordinance. It would reinforce the need to time-limit every release ruling.

Two questions will arise once the amendment is in force. No court has ruled on either:

- whether an ordinance without an end date still satisfies the express duty to time-limit measures;
- how the references to Art. 31 LVG in Art. 13(1) and Arts. 45 to 46 LVG are to be read once release is governed by Art. 32 LVG **BBi 2026 1771**.

Because the ordinance is functionally tied to a serious shortage **Art. 31 NESA**, it must be repealed or adapted once the shortage ends.

Temporal application: no retroactivity, immediate effect on continuing relationships

Art. 9 contains no retroactivity clause, so the general principles apply.

Genuine retroactivity. Under Federal Supreme Court case law, an enactment has genuine retroactive effect if it attaches consequences to facts completed before it was adopted. Such retroactivity is "grundsätzlich unzulässig" (in principle impermissible) **2A.228/2005**. It is allowed only if it meets all of the following conditions **2A.228/2005**:

- it is expressly ordered or clearly intended;
- it is moderate in time;
- it causes no shocking inequalities;
- it is justified by weighty reasons;
- it does not infringe vested rights.

In **2A.228/2005** the Court struck down the repeal of a pension fund's interest guarantee for an accounting year that had already closed. Fiscal reasons did not count as weighty reasons **2A.228/2005**.

Favourable rules. According to the Federal Administrative Court, retroactivity is possible above all for favourable enactments. The cumulative conditions still apply, including an express order or a clear intention. In **A-1515/2006** the court refused to apply a later statute retroactively because no such order existed. It allowed only a favourable change in administrative practice to apply to the past **a-1515-2006**. In **BGE 119 Ib 103** the Federal Supreme Court

accepted that an authority could exclude any retroactive effect of a more favourable new legal basis **BGE 119 Ib 103**.

For the release ordinance, this means its permission cannot cover withdrawals made before 15 October 2026. Before that date, any change to a compulsory stock required the BWL's written consent under Art. 13(1) LVG **Art. 13 NESA**.

Continuing relationships. Non-genuine retroactivity means applying new rules to relationships that arose under the old law and still exist when the new law takes effect. It is in principle permissible unless vested rights stand in the way **2A.228/2005**. In **BGE 146 V 364** the Federal Supreme Court applied a revised ordinance to continuing benefit relationships "ex nunc et pro futuro". It stressed that an amendment that only improves the position of its addressees is in principle permissible **BGE 146 V 364**. By analogy, compulsory stock contracts existing on 15 October 2026 fall under the release regime from that date. Before any withdrawal they must, however, be adapted **Art. 4 (SR 531.211.11)**.

Pending applications. Where there is no transitional provision, the Federal Administrative Court applies to continuing situations the law in force when the administrative act is issued. Changes in the law during appeal proceedings are generally irrelevant **2013-20**. That decision concerned asylum law, so it applies here only by analogy. On that basis, an application filed before 15 October 2026 but decided afterwards is governed by the ordinance. A ruling issued before that date could not rest on it. The Solothurn decision discussed above shows that such a ruling would lack a legal basis **VWBES.2004.10**.

Criminal liability, contractual penalty and the temporary-law question

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

Art. 49 LVG punishes three kinds of wilful conduct **Art. 49 NESA**:

- breaching rules issued under Art. 31(1) LVG, among other provisions;
- failing to comply with a ruling that warned of the penalty;
- breaching a contract that warned of the penalty.

Negligence is punishable by a monetary penalty of up to 180 daily units **Art. 49 NESA**. Separately, the compulsory stock contract may provide for a contractual penalty **Art. 10 NESA**, so stock shortfalls can also be sanctioned under the contract.

Under Art. 2(1) StGB, only conduct after entry into force is judged under the new rules **Art. 2 SCC**. Read together with Art. 8 PubLG, this means conduct before 15 October 2026, or before publication if that came later, cannot be punished under the ordinance **Art. 8 PubLA**.

The harder question arises once the ordinance or a release ruling ends. The lex mitior rule in Art. 2(2) StGB applies in principle in administrative criminal law **BGE 116 IV 258**. It does not apply to Zeitgesetze (temporary enactments), meaning enactments "deren Geltung ausdrücklich oder gemäss der Funktion des Erlasses von vornherein zeitlich beschränkt ist" (whose validity is limited in time from the outset, either expressly or by the enactment's function) **6B_118/2024**.

In **6B_118/2024** the Federal Supreme Court classified the Covid-19 Ordinance on the Special Situation as such an enactment. The decisive point was that its repeal reflected changed circumstances, not a changed legal view **6B_118/2024**. **BGE 116 IV 258** names economic and supply crises as typical occasions for such blanket rules. It adds that the classification depends on the concrete content and purpose of the rule that fills in the blanket provision **BGE 116 IV 258**.

The release ordinance has no fixed end date **Art. 9 (SR 531.211.11)**. It is, however, clearly tied functionally to a serious shortage **Art. 21 VWLV**. On the criteria above, it can be classified as a functional Zeitgesetz. Breaches committed while it is in force would then remain punishable after its repeal.

The most recent case law qualifies this. Where one Zeitgesetz is replaced by another, the Federal Supreme Court applies a concrete lex mitior comparison **6B_583/2025**. That becomes relevant if the ordinance is replaced by a new crisis ordinance adopted under the amended Art. 57(3) LVG **BBI 2026 1771**. No court has yet classified this particular ordinance.

Material scope from the start date: which goods and which stocks

Art. 9 brings the regime into force only for the protein carriers listed in the Annex **Art. 1 (SR 531.211.11)**. Every tariff line in the Annex is limited to goods "zu Futterzwecken" (for feed purposes). The Annex covers **Annex 1 (SR 531.211.11)**:

- dried pulses;
- soya beans, rapeseed and sunflower seed;
- starch residues, including potato protein;
- oilcakes from soya, groundnuts and other oilseeds.

A release can only reach goods actually held as compulsory stock:

- Energy and protein carriers for feed are subject to compulsory stockholding **Art. 1 531.215.11**.
- The WBF determines which goods must be stored, after consulting the industries concerned **Art. 6 531.215.11**.
- The protein stock must cover two months of average demand. Soya extraction meal is admitted as a protein carrier, together with the following, each within a percentage cap: sunflower and rape meal, maize gluten and potato protein, seed for soya, rape and sunflower, and peas **Art. 4 531.215.111**.

The release Annex is therefore broader than the list of goods admitted for stockholding. A product's presence in the Annex does not show that a compulsory stock of it exists.

Competent authorities after entry into force

From 15 October 2026 the BWL and the Fachbereich Ernährung share responsibility for enforcing the ordinance **Art. 8 (SR 531.211.11)**. Under Art. 3(2), the Fachbereich Ernährung issues the release rulings **Art. 3 (SR 531.211.11)**. If a holder breaches its delivery duties, the Fachbereich may revoke a granted release or refuse a planned one **Art. 5 (SR 531.211.11)**.

Statute permits this allocation. The Federal Council may assign tasks to the Fachbereiche for measures under Arts. 31 to 33 LVG and may empower them to issue rulings **Art. 58b NESA**. The Fachbereich Ernährung covers food and agricultural inputs. It enforces measures only where enforcement has been transferred to it **Art. 7 VWLV**.

Two provisions sit uneasily with this arrangement:

- Art. 21(3) VWLV reserves to the BWL the case-by-case determination of releases "im Einvernehmen mit den Pflichtlagerhaltern" (in agreement with the stockholders) **Art. 21 VWLV**.
- The BWL is generally responsible for compulsory stockholding and for rulings not transferred to another body **Art. 6 VWLV**.

The provisions can be reconciled. The Fachbereich issues the release ruling under the special rule in the departmental ordinance, while the BWL keeps control of the compulsory stock contract, which must be adapted before any withdrawal **Art. 4 (SR 531.211.11)**. No court has ruled on this allocation.

Legal protection: ruling route or action

The legal route depends on the type of act:

- Release rulings. Rulings based on Arts. 31 to 33 LVG, or on implementing provisions resting on them, can be challenged by objection. The objection must be lodged in writing with the authority that issued the ruling within five days **Art. 45 NESA**. An

appeal must also be lodged within five days and has no suspensive effect **Art. 46 NESA**. Release rulings rest on this ordinance, which implements Art. 31(2)(f) LVG through Art. 21 VWLV **Preamble (SR 531.211.11)**, so they fall within this special regime.

- Sovereign acts in the stockholding regime. According to the Federal Supreme Court, compulsory stock contracts are in principle public-law contracts. Where the BWL acts "hoheitlich und nicht als Vertragspartei" (as a sovereign authority, not as a contracting party), its act is an appealable ruling and the action procedure does not apply **2C_376/2008**. B-456/2022 shows this route in practice: réservesuisse withdrew an import licence for an unpaid Garantiefonds contribution, the importer appealed to the BWL, and the case then went to the Federal Administrative Court **b-456-2022**. This matches Art. 46(1) LVG and the BWL's competence to decide such appeals **Art. 46 NESA Art. 6 VWLV**.
- Disputes between a holder and the stock organisation. These are decided by the Federal Administrative Court on an action, under Art. 44 VGG and the Federal Act on Federal Civil Procedure (BZP) **b-1483-2019**. In B-1990/2009, decided under the former LVG, the court held that the organisation's letters and invoices were not rulings and that the civil courts had no jurisdiction **b-1990-2009**.

In practice, this means two different routes. A challenge to the release ruling itself, or to its revocation under Art. 5(3), must be brought within five days. Settlement claims against the stock organisation arising from the release are pursued by action.

Financial consequences of release

Art. 13(1) LVG exempts a release under Art. 31(2)(f) LVG from the general requirement of the BWL's written consent to any change in a stock **Art. 13 NESA**. Art. 13(2) LVG ties two duties to a "Reduktion oder Aufhebung" (reduction or dissolution) of the stock: proportionate repayment of guaranteed loans and fulfilment of Garantiefonds obligations **Art. 13 NESA**. The statute does not say expressly whether a release counts as a reduction for this purpose.

The release ordinance leaves the financial consequences to the compulsory stock contract, which must be adapted before withdrawal **Art. 4 (SR 531.211.11)**. By statute, that contract must cover financing, the storage costs and price losses of stockholding, and any duty to contribute to the Garantiefonds **Art. 10 NESA**.

Federal Administrative Court case law gives these rules substance:

- Settlement price. The Garantiefonds is a "gemeinsame Kasse" (common fund) of the stockholders of a product group. It covers storage costs and price risk. When durum wheat stocks were reduced in 2008, the settlement price owed to the fund was meant to leave the holder with neither a gain nor a loss. Because of an extraordinary market development, the court reduced it under the clausula rebus sic stantibus **b-1990-2009**. That case concerned a stock reduction, not a release under a crisis ordinance, so it applies only by analogy.
- Contribution duty. The duty to contribute arises from membership in the stock organisation. It does not depend on the composition of the individual stock or on any compensation being paid **b-1483-2019**. A release does not suspend it.

According to the Federal Council's message on guaranteed loans, the price risk lies "in jedem Fall" (in every case) with the Garantiefonds, and lost amortisation payments are made up through additional contributions **BBI 2023 2121**. After the 2022 release of mineral oil products, the released quantities were restocked **BBI 2023 2121**. The message sets no general rule on loan repayment after a release and does not deal with feed. The Federal Council's message on the LVG amendment adds that any federal coverage of uncovered costs is only temporary and that private funding must be restored quickly **BBI 2025 3538**. The contract adaptation under Art. 4 is therefore where loan, settlement and restocking questions for the released

quantities are to be resolved.

Practical points

- AS publication. Establish the actual publication date. Obligations under Arts. 5 to 7 arise only in accordance with Art. 8 PubLG
Art. 8 PubLG.
- Earlier withdrawals. Withdrawals before 15 October 2026 required the BWL's written consent under Art. 13(1) LVG. The ordinance does not cover them retroactively **Art. 13 NESA 2A.228/2005.**
- Application and ruling. Base the application on the cap in Art. 2 and state reasons. Check that the ruling sets a duration
Art. 2 (SR 531.211.11) Art. 3 (SR 531.211.11).
- Contract. Adapt the compulsory stock contract before any withdrawal, including the financial settlement
Art. 4 (SR 531.211.11) Art. 10 NESA.
- Deadlines. Diarise the five-day deadlines for objection and appeal. An appeal has no suspensive effect **Art. 45 NESA Art. 46 NESA.**
- LVG amendment. Watch for the Federal Council's decision bringing the 19 June 2026 LVG amendment into force, which also renumbers the release power **BBl 2026 1771.**