

# Gambling

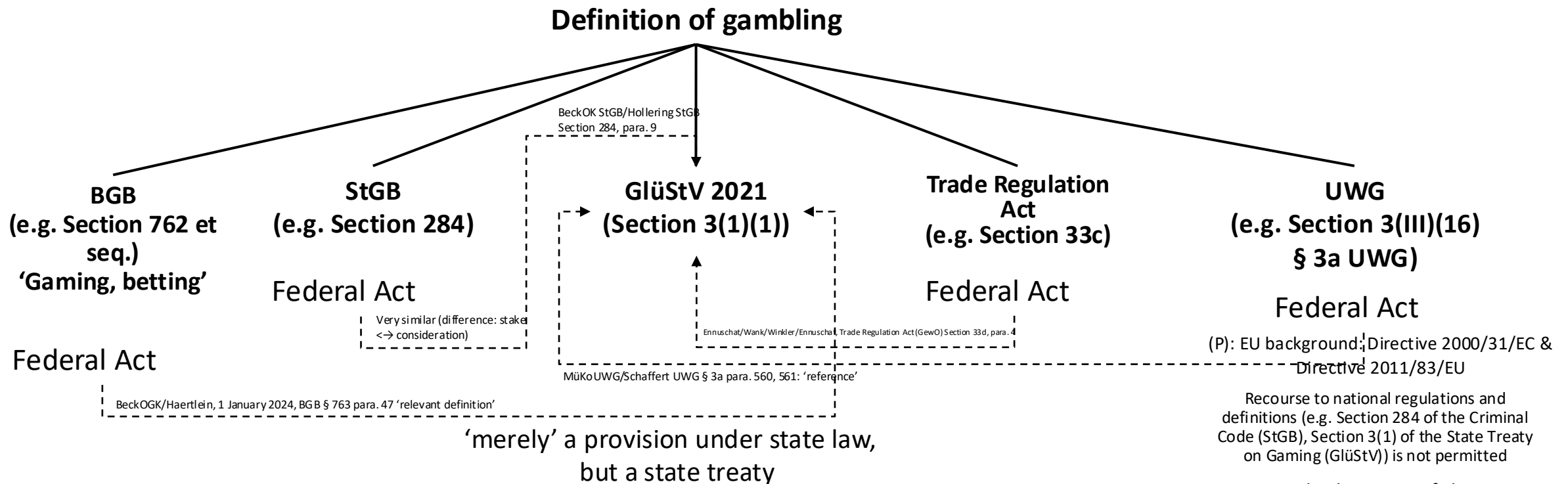
## Definition and constituent elements





# Definition of gambling

## The relativity of legal concepts?



*And many more ... e.g. Section 1 GwG (an independent definition of gambling under money laundering law, but insights from case law and the literature regarding the concept of gambling within the meaning of Sections 284 et seq. of the German Criminal Code (StGB), Sections 762 et seq. of the German Civil Code (BGB) and Section 3(1) of the 2021 State Treaty on Gambling (GlüStV) are drawn upon as aids to interpretation (BeckOK GwG/Ennuschat/Güldner, GwG Section 1(8), para. 4).*

(P): EU background; Directive 2000/31/EC & Directive 2011/83/EU

Recourse to national regulations and definitions (e.g. Section 284 of the Criminal Code (StGB), Section 3(1) of the State Treaty on Gambling (GlüStV)) is not permitted

Accordingly, games of chance are characterised primarily by **two characteristics**, which the **element of chance** and the requirement for a **stake**.

MüKo UWG/Alexander UWG Annex § 3(3) No. 16 para. 17 et seq.



# Definition of gambling

## Constituent elements

### § 3 GlüStV 2021 Definitions

(1) <sup>1</sup>Gambling **activity constitutes gambling** if, in the context of a game **for the purpose of acquiring a chance of winning** a **fee** is demanded and the **decision regarding** the **profit** depends entirely or predominantly **on chance**. <sup>2</sup>In every case, the decision on the win depends on **chance**, provided that the **uncertain occurrence or outcome of future events** is decisive.

(1a) ... is not relevant to loot boxes

(2) A **public game of chance exists** if, for a **large, open group of people** there is **the opportunity to take part** *or* it involves *games of chance organised on a regular basis within clubs or other private societies*.

...



# Definition of gambling

## Relevant legal provision

Constituent elements of the concept of gambling:

- within the context of a game? → Significance of this criterion questionable (1)
- for the acquisition of a chance of winning → a chance of winning is required (2)
- Consideration → a stake is required (3)
- Decision on the win ... depends on chance → element of chance required (4)



# Within the context of a game

## Is the loot box purchaser's intention to win required?

Meaning of 'within the context of the game' in Section 3 of the GlüStV 2021?

The Federal Court of Justice's (BGH) definition of Section 284 of the German Criminal Code (StGB) appears to contain a corresponding restriction:

Gambling is defined as a game in which the participants **for entertainment or in the hope of winning** wager on the win or loss of a **not entirely insignificant asset** a **an uncertain event**, the occurrence of which does not depend substantially on the players' attention, skills or knowledge, but **solely or chiefly on chance** (BGHSt 2, 274; 36, 74 (80); NStZ 2003, 372 (373); LK StGB/Krehl para. 7; LPK-StGB § 284 para. 1; Mitsch StrafR BT II/2 § 5 para. 168).

For entertainment or for profit = the difference lies solely in the amount of the potential profit (game for entertainment = no or minimal profit; game of chance = the primary interest lies in obtaining a financial advantage) [pure motive = subjective]

→ BOTH forms are sufficient → Does anything change if it is not just a matter of opening the box for entertainment, but also of playing with the contents? → in my view, NO

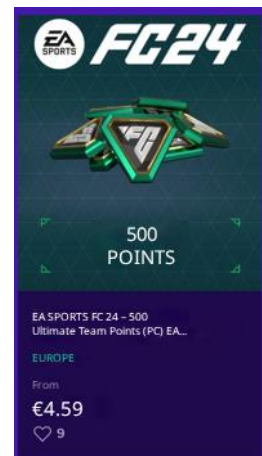


# Chance of winning

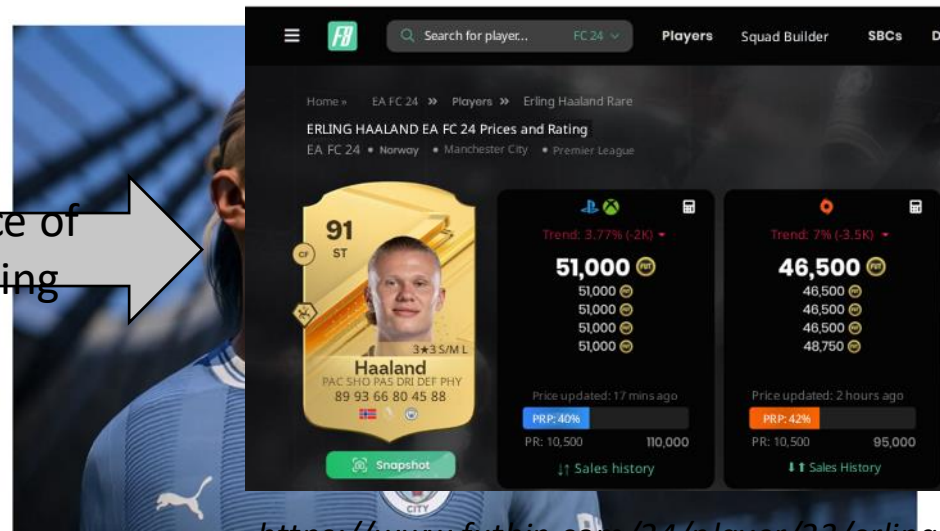
Chance of winning → possibility that the increase in assets exceeds the consideration (stake) opens a single pack and wins players worth 13 million

If the stake is, for example, a Lootbox Gold Pack = 5,000 coins or 100 points (<https://www.esports.com/de/eaafc24-ultimate-team-das-ist-die-pack-preisliste-183469>)

(Price: 500 Points ≈ 0.92 euros, as at 26 February 2024)



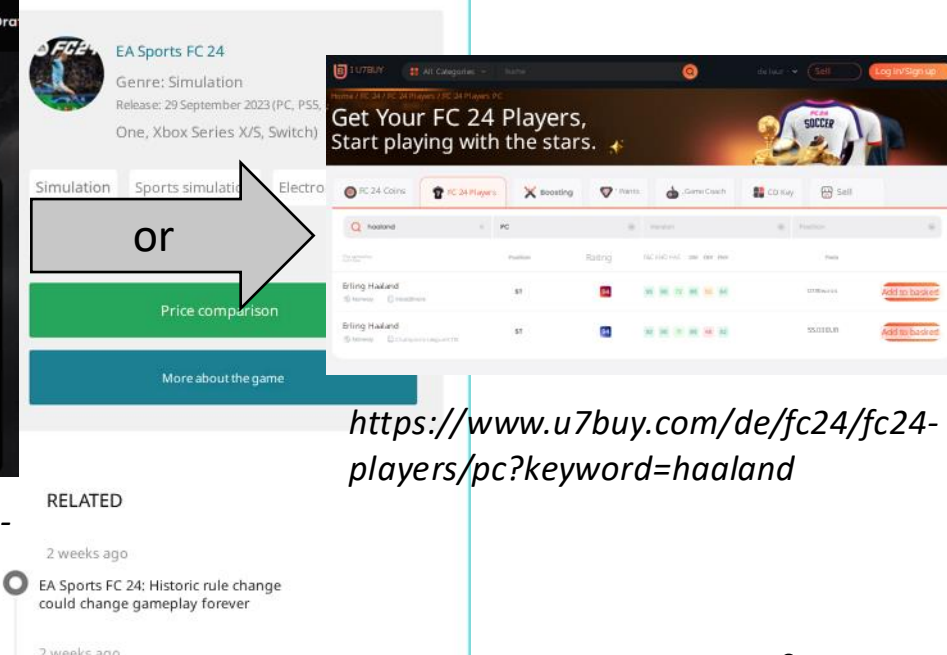
<https://www.eneba.com/de/store/fc-points>



<https://www.futbin.com/24/player/23/erling-haaland>

Fans can hardly believe their luck,

In EA Sports FC 24, Ultimate Team once again entices players with gambling mechanics, letting you put together your dream team if you manage to get the right players in your packs



<https://www.u7buy.com/de/fc24/fc24-players/pc?keyword=haaland>



# Chance of winning

## A subjective factor?

Does it matter whether the player 'wants to make a profit'?

In my opinion: No!

- firstly, the risk of circumvention
- on the other hand (and crucially), the definition of gambling does not require that the player must be aiming to win

→ if a player simply wants the footballer card or the footballer to play with, this does not alter the situation



# Chance of winning

## Low probability

Does it matter that the drop probabilities are specified and/or that the probabilities are stated?

No!



### Eurojackpot odds at LOTTO Bayern

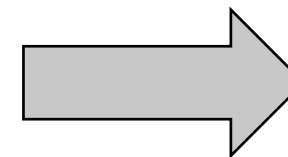


#### Theoretical odds

All figures are subject to change

Zarejackpot Eurojackpot

| Prize tier |                         | Theoretical odds of winning* |
|------------|-------------------------|------------------------------|
| 1          | (5 + 2 correct numbers) | 1 : 139,838,160              |
| 2          | (5 + 1 correct numbers) | 1 : 6,991,908                |
| 3          | (5 + 0 correct numbers) | 1 : 3,107,515                |
| 4          | (4 + 2 correct numbers) | 1 : 621,503                  |
| 5          | (4 + 1 correct numbers) | 1 : 31,075                   |
| 6          | (3 + 2 correct)         | 1 : 14,125                   |
| 7          | (4 + 0 correct)         | 1 : 13,811                   |
| 8          | (2 + 2 correct)         | 1 : 985                      |
| 9          | (3 + 1 correct)         | 1 : 706                      |
| 10         | (3 + 0 correct)         | 1 : 314                      |



Not a constituent element of the offence!



# Application

## Loot boxes are cheap

Is there a materiality threshold?

In my view: NO, not for loot boxes!

Case law recognised very early on with regard to Section 284 of the German Criminal Code (StGB) that:

a property value that is not entirely insignificant = case law states that anything under 0.50 euros is insignificant  
(P): Repeatability

→ on the one hand, loot boxes are generally more expensive

→ on the other hand, the (unlimited) repeatability definitely pushes the value above the materiality threshold



# Use

## Money

Is it necessary to use real money or cryptocurrency (e.g. Bitcoin)?

### Section 3 GlüStV 2021 Definitions

(1) <sup>1</sup>A **game of chance exists** if, in the context of a game **for the purpose of acquiring a chance of winning a fee** is demanded and the **decision regarding the profit** depends entirely or predominantly **on chance**. <sup>2</sup>In every case, the decision on the win depends on **chance**, provided that it is based on the **uncertain occurrence or outcome of future events** is the determining factor.

**fee** ≠ money

Remuneration = an asset (the German Civil Code (BGB) even includes personal data; see Section 312 Ia BGB)

In-game currency = an asset if the in-game currency can be bought or sold



if the in-game currency can only be earned and not sold (-), otherwise (+)



# Element of chance

## Point of reference

Legally defined in:

<sup>2</sup>The decision on whether a win occurs depends in every case on the **chance** , provided that the **uncertain occurrence or outcome of future events** is decisive.

Important: In the case of e-sports titles, the game involving the contents of loot boxes in competitive matches between people via computer is not a game of chance, but a game of skill in which abilities (physical and/or intellectual) are the primary determining factor in victory.

HOWEVER: The issue is not e-sports as such, but the (preceding) purchase of loot boxes, which must be considered in isolation.

→ The fact that it is part of an e-sports title does not alter the potential gambling nature of the loot box purchase!

*This appears to be viewed differently in the Netherlands; see above.*



# Element of chance

## Limited randomness

Is it detrimental that the possible outcomes of a random draw are mathematically limited?

No!

There is a finite number of possible outcomes; this does not alter the nature of chance.

Just like in the lottery, there is a maximum number of possibilities that lead to the top prize category.

→ Neither the specification of drop probabilities nor the manageable number of 'outs' alters the random nature of the process in any way!



# Unwritten criterion – is total loss possible?

## Heard of it, but never read about it

It has been brought to my attention that, for an activity to be classified as gambling, it must be possible for the player to suffer a so-called total loss, i.e. to receive nothing despite having placed a stake.

- With loot boxes, something is always received. However, what is received would only be relevant if it also constitutes an asset.  
→ but this is not a standalone element of the offence, but rather a prerequisite for the possibility of a win

- An absurd argument, as it invites the most trivial ways of circumventing the rule:

A lottery ticket seller sells 1,001 tickets at 2 euros each. The minimum prize is always 1 euro; the only other prize (which is also the maximum prize) is 502 euros. [Winnings: 500 euros]

→ Equivalent to the variant: 1,001 tickets at 1 euro and a (single) chance of winning of 501 euros. [Winnings: 500 euros]

→ By passing on the minimum prize to the ticket price, any total loss can be avoided.



# Unwritten element of the offence – is a total loss possible?

## A Misunderstood Element

So-called 'total loss' is not a prerequisite for gambling.

Rather, a CERTAIN (100%) total loss is 'merely' the exclusion of any possibility of winning.

In other words, if it is certain that no winnings can be achieved in return for the participation fee (stake), then it cannot be classified as gambling.



## A selection of the best-known esports titles as examples.

Loot boxes (+/-)

| Game titles            | Publisher                       | Game titles                             | Publisher                       |
|------------------------|---------------------------------|-----------------------------------------|---------------------------------|
| League of Legends      | Riot Games                      | Valorant                                | Riot Games                      |
| Counter-Strike 2       | Valve                           | Call of Duty: Modern Warfare III (2023) | Microsoft (Activision Blizzard) |
| Dota II                | Valve                           | Hearthstone                             | Microsoft (Activision Blizzard) |
| PUBG: Battlegrounds    | Krafton                         | Teamfight Tactics                       | Riot Games                      |
| FIFA/EA Sports FC      | EA                              | Street Fighter 6                        | Capcom                          |
| Rainbow Six Siege      | Ubisoft                         | Super Smash Bros.                       | Nintendo                        |
| Overwatch 1            | Microsoft (Activision Blizzard) | NBA 2K                                  | Take 2 Interactive              |
| Overwatch 2            | Microsoft (Activision Blizzard) | Arena of Valor                          | Tencent                         |
| Rocket League          | Epic Games                      | PUBG Mobile                             | Krafton                         |
| Fortnite Battle Royale | Epic Games                      | Call of Duty Mobile                     | Microsoft (Activision Blizzard) |

Red = Loot boxes

Green = no loot boxes

Classification under  
major esports titles





# Key to the table

## Abbreviations for the example titles

| Key                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Real money = Purchasable directly with real currency                                                                                                                                                            |
| In-game currency (real money) = In-game currency that <b>can only</b> purchased with real money                                                                                                                 |
| In-game currency (real money/in-game) = in-game currency that can be purchased with real money and in-game currency, or two different in-game currencies – one earned in-game and one purchased with real money |
| In-game currency = currency that <b>can only</b> can be obtained in-game                                                                                                                                        |
| Earnable = Obtained as a game reward                                                                                                                                                                            |

Strict interpretation = if account transfer is deemed sufficient to enable the possibility of winning

Publisher-friendly approach = when account transfers are NOT considered sufficient to generate a profit

# League of Legends



Strict interpretation = **Gambling**

Publisher-friendly view = **not gambling**

| Loot boxes | How to purchase?                                               | In-game benefits    | Melt down or sell for in-game currency?                                                       | Can they be sold for real money?              | Can they be sold: officially or on the black market? | Special features                                                                                               | Example box                                                                                           | Example of black market sale                                                                                    |
|------------|----------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------------------|-----------------------------------------------|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Yes        | In-game currency (real money)/ Earnable (see Special features) | No, purely cosmetic | Yes, but a different currency that only allows you to upgrade items, not to purchase new ones | Not individually, only for the entire account | Black market for entire accounts                     | Various types of boxes; only the box with the poorest contents or the lowest chance of good loot can be earned | <a href="https://www.youtube.com/watch?v=c52LygP43VM">https://www.youtube.com/watch?v=c52LygP43VM</a> | <a href="https://www.igv.com/de/items/1753012573735215106">https://www.igv.com/de/items/1753012573735215106</a> |

# Counter-Strike 2



Strict interpretation = **Gambling**

Publisher-friendly view = **Gambling**

| Loot boxes | How to purchase?                    | In-game benefits    | Melt down or sell for in-game currency?                                        | Can they be sold for real money? | Can they be sold: officially or on the black market?                                                                                                                                | Special features                                                                                    | Example box                                                                                         | Example of black market sale                                              |
|------------|-------------------------------------|---------------------|--------------------------------------------------------------------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|
| Yes        | Real money (see 'Special features') | No, purely cosmetic | Multiple skins of the same rarity can be converted into a random higher rarity | Yes                              | Officially via the Steam Marketplace, only using real-money credit on Steam, but no cash-out; on the black market, cash-out in real money is also possible for each individual skin | Boxes can be earned in-game, but require a key to open, which can only be purchased with real money | <a href="https://www.youtube.com/shorts/c7Af0e-9U_c">https://www.youtube.com/shorts/c7Af0e-9U_c</a> | <a href="https://cs.money/cs-go/trade/">https://cs.money/cs-go/trade/</a> |



Strict interpretation = **Gambling**

Publisher-friendly interpretation = **Gambling**

| Loot boxes | How to purchase? | In-game benefits    | Melt down or sell for in-game currency?                                        | Can they be sold for real money? | Can they be sold: officially or on the black market?                                                                                                                          | Special features | Example box                                                                                           | Example of black market sale                                                                                                      |
|------------|------------------|---------------------|--------------------------------------------------------------------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Yes        | Real money       | No, purely cosmetic | Multiple skins of the same rarity can be converted into a random higher rarity | Yes                              | Officially via the Steam Marketplace, only in Steam real-money credit, but no cash-out; on the black market, cash-out in real money is also possible for each individual skin |                  | <a href="https://www.youtube.com/watch?v=4j_JB9crmHo">https://www.youtube.com/watch?v=4j_JB9crmHo</a> | <a href="https://dmarket.com/de/ingame-items/item-list/dota2-skins">https://dmarket.com/de/ingame-items/item-list/dota2-skins</a> |

# PUBG: Battlegrounds



# KRAFTON

Strict interpretation = **Gambling**

Publisher-friendly view = **Gambling**

| Loot boxes | How to purchase?                      | In-game benefits    | Melt down or sell for in-game currency?             | Can they be sold for real money? | Can they be sold: officially or on the black market?                                                                                                                           | Special features                                             | Example box                                                                                           | Example of black market sale                                                                                                                                                                                |
|------------|---------------------------------------|---------------------|-----------------------------------------------------|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Yes        | In-game currency (real money/in-game) | No, purely cosmetic | Yes, but a different currency is used for upgrading | Yes (see special features)       | Officially via the Steam Marketplace, only in real-money Steam credits, but no cash-out; on the black market, cash-out in real money is also possible for each individual skin | Some items are marked as 'non-tradable' and cannot be traded | <a href="https://www.youtube.com/watch?v=O5nPCJg_z88">https://www.youtube.com/watch?v=O5nPCJg_z88</a> | <a href="https://gameflip.com/de/shop/game-items/pubg?status=onsale&amp;page=1&amp;limit=36&amp;start=0">https://gameflip.com/de/shop/game-items/pubg?status=onsale&amp;page=1&amp;limit=36&amp;start=0</a> |



# KRAFTON

Strict interpretation = **Gambling**

Publisher-friendly view = **not gambling**

| Loot boxes | How to purchase?                        | In-game benefits    | Melt down or sell for in-game currency? | Can they be sold for real money?              | Can they be sold: officially or on the black market? | Special features | Example box                                                                                       | Example of black market sale                                                                                                                |
|------------|-----------------------------------------|---------------------|-----------------------------------------|-----------------------------------------------|------------------------------------------------------|------------------|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Yes        | In-game currency (real money)/ Earnable | No, purely cosmetic | No                                      | Not individually, only for the entire account | Black market for entire accounts                     |                  | <a href="https://www.youtube.com/shorts/TjqWQ8NjS0">https://www.youtube.com/shorts/TjqWQ8NjS0</a> | <a href="https://www.eldorado.gg/pubg-mobile-accounts-for-sale/a/21-1-0">https://www.eldorado.gg/pubg-mobile-accounts-for-sale/a/21-1-0</a> |



Strict interpretation = **Gambling**

Publisher-friendly interpretation = **Gambling**

| Loot boxes | How to purchase?                               | In-game benefits                  | Melt down or sell for in-game currency? | Can they be sold for real money? | Can they be sold: officially or on the black market?                                                                                                                                                          | Special features | Example box                                                                                       | Example of black market sale                                                                  |
|------------|------------------------------------------------|-----------------------------------|-----------------------------------------|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Yes        | In-game currency (real money/in-game)/Earnable | Yes (player cards for the roster) | Yes, in-game marketplace                | Yes                              | Officially only for in-game currency via the in-game marketplace; on the black market, cash-outs are also possible, either directly to players or in exchange for coins redeemable on the in-game marketplace |                  | <a href="https://www.youtube.com/shorts/gQUJhFjWoY">https://www.youtube.com/shorts/gQUJhFjWoY</a> | <a href="https://www.u7buy.com/fc24/fc24-players">https://www.u7buy.com/fc24/fc24-players</a> |

# Rainbow Six Siege



Strict interpretation = **Gambling**

Publisher-friendly interpretation = **not gambling**

| Loot boxes | How to purchase?                                                                                                                      | In-game benefits    | Can they be melted down or sold for in-game currency? | Can they be sold for real money?              | Can they be sold: officially or on the black market? | Special features | Example box                                                                                         | Example of black market sale                                                                                                          |
|------------|---------------------------------------------------------------------------------------------------------------------------------------|---------------------|-------------------------------------------------------|-----------------------------------------------|------------------------------------------------------|------------------|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| Yes        | In-game currency / Earnable <u>or</u> in-game currency (real money) or in-game currency (real money)/ Earnable (see special features) | No, purely cosmetic | No                                                    | Not individually, only for the entire account | Black market for entire accounts                     | ***              | <a href="https://www.youtube.com/shorts/bhtXB5CIktQ">https://www.youtube.com/shorts/bhtXB5CIktQ</a> | <a href="https://www.eldorado.gg/rainbow-six-siege-accounts/a/48-1-0">https://www.eldorado.gg/rainbow-six-siege-accounts/a/48-1-0</a> |

\*\*\* = 3 types of packs: one that can only be earned in-game or purchased using in-game currency that cannot be bought with real money (Alpha Packs), one type available for a limited time during events in exchange for real money (Event Packs), and one type that can only be obtained via each season's Battle Pass, whereby one pack is available in the Free Pass, whilst further packs are only available if the Premium Battle Pass is purchased using in-game currency (real money) (Beta Packs)



# Overwatch 1



Strict interpretation = **Gambling**

Publisher-friendly interpretation = **not gambling**



| Loot boxes | How to purchase?        | In-game benefits    | Can they be melted down or sold for in-game currency? | Can they be sold for real money?          | Can they be sold: officially or on the black market? | Special features | Example box                                                                                           | Example of black market sale                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------|-------------------------|---------------------|-------------------------------------------------------|-------------------------------------------|------------------------------------------------------|------------------|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Yes        | Real money/<br>Earnable | No, purely cosmetic | No                                                    | Not individually, only the entire account | Black market for entire accounts                     |                  | <a href="https://www.youtube.com/watch?v=rSf-PpsOEzM">https://www.youtube.com/watch?v=rSf-PpsOEzM</a> | <a href="https://www.igv.com/de/overwatch-2/accounts?utm_source=google&amp;utm_medium=cpc&amp;utm_campaign=GG-FPS-DE-SN-240112&amp;utm_term=O2-Acc-240131&amp;gad_source=1&amp;gclid=CjwKCAiAivG_uBhBEEiwAWiFmYYfsfcuSlzyAU3juoGpkAt5WNGfjSlm1RSTXLdwlRd3k-2cJbugThoChvoQAvD_BwE">https://www.igv.com/de/overwatch-2/accounts?utm_source=google&amp;utm_medium=cpc&amp;utm_campaign=GG-FPS-DE-SN-240112&amp;utm_term=O2-Acc-240131&amp;gad_source=1&amp;gclid=CjwKCAiAivG_uBhBEEiwAWiFmYYfsfcuSlzyAU3juoGpkAt5WNGfjSlm1RSTXLdwlRd3k-2cJbugThoChvoQAvD_BwE</a> |

# Overwatch 2



Strict interpretation = **no gambling**

Publisher-friendly interpretation = **not gambling**



| Loot boxes                               | How to purchase? | In-game benefits | Can they be melted down or sold for in-game currency? | Can they be sold for real money? | Can they be sold: officially or on the black market? | Special features | Example box | Example of black market sale |
|------------------------------------------|------------------|------------------|-------------------------------------------------------|----------------------------------|------------------------------------------------------|------------------|-------------|------------------------------|
| No (Overwatch 1: yes, removed in Part 2) |                  |                  |                                                       |                                  |                                                      |                  |             |                              |

# Rocket League



Strict interpretation = **not gambling**

Publisher-friendly interpretation = **not gambling**

| Loot boxes                             | How to purchase? | In-game benefits | Can they be melted down or sold for in-game currency? | Can they be sold for real money? | Can they be sold: officially or on the black market? | Special features | Example box | Example of black market sale |
|----------------------------------------|------------------|------------------|-------------------------------------------------------|----------------------------------|------------------------------------------------------|------------------|-------------|------------------------------|
| No (previously yes, abolished in 2019) |                  |                  |                                                       |                                  |                                                      |                  |             |                              |

# Fortnite



Strict interpretation = **no gambling**

Publisher-friendly interpretation = **not gambling**



| Loot boxes | How to purchase? | In-game benefits | Can they be melted down or sold for in-game currency? | Can they be sold for real money? | Can they be sold: officially or on the black market? | Special features | Example box | Example of black market sale |
|------------|------------------|------------------|-------------------------------------------------------|----------------------------------|------------------------------------------------------|------------------|-------------|------------------------------|
| No         |                  |                  |                                                       |                                  |                                                      |                  |             |                              |



Strict interpretation = **no gambling**

Publisher-friendly interpretation = **not gambling**

| Loot boxes | How to purchase? | In-game benefits | Can they be melted down or sold for in-game currency? | Can they be sold for real money? | Can they be sold: officially or on the black market? | Special features | Example box | Example of black market sale |
|------------|------------------|------------------|-------------------------------------------------------|----------------------------------|------------------------------------------------------|------------------|-------------|------------------------------|
| No         |                  |                  |                                                       |                                  |                                                      |                  |             |                              |

# Call of Duty: Modern Warfare III



Strict interpretation = **not gambling**

Publisher-friendly interpretation = **not gambling**



| Loot boxes                    | How to purchase? | In-game benefits | Can they be melted down or sold for in-game currency? | Can they be sold for real money? | Can they be sold: officially or on the black market? | Special features | Example box | Example of black market sale |
|-------------------------------|------------------|------------------|-------------------------------------------------------|----------------------------------|------------------------------------------------------|------------------|-------------|------------------------------|
| No (Yes in earlier spin-offs) |                  |                  |                                                       |                                  |                                                      |                  |             |                              |

# Call of Duty Mobile



Strict interpretation = **Gambling**

Publisher-friendly view = **not gambling**

| Loot boxes | How to purchase?                                                      | In-game benefits                                    | Can they be melted down or sold for in-game currency? | Can they be sold for real money?          | Can they be sold: officially or on the black market? | Special features                                    | Example box                                                                                         | Example of black market sale                                                                                                                                |
|------------|-----------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------------------------|-------------------------------------------|------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Yes        | In-game currency (real money)/ Earnable/ Other (see Special Features) | Yes (some weapon skins provide bonus stats/effects) | No                                                    | Not individually, only the entire account | Black market for entire accounts                     | Loot boxes can also be obtained by watching adverts | <a href="https://www.youtube.com/watch?v=QB_RPLMJIE">https://www.youtube.com/watch?v=QB_RPLMJIE</a> | <a href="https://www.u7buy.com/call-of-duty-mobile/call-of-duty-mobile-accounts">https://www.u7buy.com/call-of-duty-mobile/call-of-duty-mobile-accounts</a> |

# Hearthstone



Strict interpretation = **Gambling**

Publisher-friendly view = **not gambling**



| Loot boxes | How to purchase?                       | In-game benefits      | Can they be melted down or sold for in-game currency? | Can they be sold for real money?          | Can they be sold: officially or on the black market? | Special features | Example box                                                                                         | Example of black market sale                                                                                          |
|------------|----------------------------------------|-----------------------|-------------------------------------------------------|-------------------------------------------|------------------------------------------------------|------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Yes        | Real money/ in-game currency/ earnable | Yes (cards for decks) | Yes, Dust for new cards                               | Not individually, only the entire account | Black market for entire accounts                     |                  | <a href="https://www.youtube.com/shorts/2l-B0wwvzD0">https://www.youtube.com/shorts/2l-B0wwvzD0</a> | <a href="https://www.playerauctions.com/hearthstone-account/">https://www.playerauctions.com/hearthstone-account/</a> |

# Teamfight Tactics



Strict interpretation = **Gambling**

Publisher-friendly view = **not gambling**

| Loot boxes | How to purchase?                        | In-game benefits    | Can they be melted down or sold for in-game currency? | Can they be sold for real money?              | Can they be sold: officially or on the black market? | Special features | Example box                                                                                           | Example of black market sale                                                                          |
|------------|-----------------------------------------|---------------------|-------------------------------------------------------|-----------------------------------------------|------------------------------------------------------|------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| Yes        | In-game currency (real money)/ Earnable | No, purely cosmetic | No                                                    | Not individually, only for the entire account | Black market for entire accounts                     |                  | <a href="https://www.youtube.com/watch?v=5s1RmrgR25g">https://www.youtube.com/watch?v=5s1RmrgR25g</a> | <a href="https://www.gamermarkt.com/buy-tft-accounts">https://www.gamermarkt.com/buy-tft-accounts</a> |

# Street Fighter 6



**CAPCOM®**

Strict interpretation = **no gambling**

Publisher-friendly interpretation = **not gambling**

| Loot boxes | How to purchase? | In-game benefits | Melt down or sell for in-game currency? | Can they be sold for real money? | Can they be sold: officially or on the black market? | Special features | Example box | Example of black market sale |
|------------|------------------|------------------|-----------------------------------------|----------------------------------|------------------------------------------------------|------------------|-------------|------------------------------|
| No         |                  |                  |                                         |                                  |                                                      |                  |             |                              |

# Super Smash Bros.



Strict interpretation = **no gambling**

Publisher-friendly interpretation = **not gambling**

| Loot boxes | How to purchase? | In-game benefits | Melt down or sell for in-game currency? | Can they be sold for real money? | Can they be sold: officially or on the black market? | Special features | Example box | Example of black market sale |
|------------|------------------|------------------|-----------------------------------------|----------------------------------|------------------------------------------------------|------------------|-------------|------------------------------|
| No         |                  |                  |                                         |                                  |                                                      |                  |             |                              |



Strict interpretation = **Gambling**

Publisher-friendly view = **Gambling**



| Loot boxes | How to purchase?                                 | In-game benefits                  | Melt down or sell for in-game currency? | Can they be sold for real money?                   | Can they be sold: officially or on the black market? | Special features | Example box                                                                                           | Example of black market sale                                                                      |
|------------|--------------------------------------------------|-----------------------------------|-----------------------------------------|----------------------------------------------------|------------------------------------------------------|------------------|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Yes        | In-game currency (real money/ in-game)/ Earnable | Yes (player cards for the roster) | Yes, in-game marketplace                | No individual cards, but currency/ entire accounts | Black market for entire accounts/ Currency           |                  | <a href="https://www.youtube.com/watch?v=-7_1YX5wpL8">https://www.youtube.com/watch?v=-7_1YX5wpL8</a> | <a href="https://www.playerauctions.com/nba-2k-mt/">https://www.playerauctions.com/nba-2k-mt/</a> |

# Arena of Valor



# Tencent

Strict interpretation = **Gambling**

Publisher-friendly interpretation = **not gambling**

| Loot boxes | How to purchase?                                                       | In-game benefits             | Melt down or sell for in-game currency? | Can they be sold for real money?          | Can they be sold: officially or on the black market?                                                                                               | Special features                                                                        | Example box                                                                                                               | Example of black market sale                                                                                                                                                      |
|------------|------------------------------------------------------------------------|------------------------------|-----------------------------------------|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Yes        | In-game currency (real money/in-game)/ Earnable (see Special Features) | Yes (stat boosts for heroes) | No                                      | Not individually, only the entire account | Black market for entire accounts (it's questionable whether this is still possible, as there are only old listings or, on many sites, none at all) | On Switch, it's probably not possible to buy with in-game currency, but on mobile it is | <a href="https://www.youtube.com/watch?v=I1CjYGmPQnU&amp;t=53s">https://www.youtube.com/watch?v=I1CjYGmPQnU&amp;t=53s</a> | <a href="https://www.todogadget.net/en/videojuegos/cuentas-videojuegos/arena-of-valor.html">https://www.todogadget.net/en/videojuegos/cuentas-videojuegos/arena-of-valor.html</a> |



# eSports titles with loot boxes

## Gambling

| Game titles         | Publisher                       | Game titles       | Publisher          |
|---------------------|---------------------------------|-------------------|--------------------|
| League of Legends   | Riot Games                      | Teamfight Tactics | Riot Games         |
| Counter-Strike 2    | Valve                           | NBA 2K            | Take 2 Interactive |
| Dota II             | Valve                           | Arena of Valor    | Tencent            |
| PUBG: Battlegrounds | Krafton                         |                   |                    |
| PUBG Mobile         | Krafton                         |                   |                    |
| FIFA/EA Sports FC   | EA                              |                   |                    |
| Rainbow Six Siege   | Ubisoft                         |                   |                    |
| Overwatch 1         | Microsoft (Activision Blizzard) |                   |                    |
| Call of Duty Mobile | Microsoft (Activision Blizzard) |                   |                    |
| Hearthstone         | Microsoft (Activision Blizzard) |                   |                    |

Strict assessment: ALL GAMBLING

Publisher-friendly:      Red = gambling      Green = no gambling

Conclusion – Rule of thumb  
&  
Impact analysis





## Rule of thumb

### Money in → Money out

As soon as real money or cryptocurrency is introduced into the game by any means (stake/fee) [Special case for in-game currency earned through gameplay] AND you have the option of retrieving it via sales (official markets, third-party markets or even black markets) (potential for profit), then a loot box (which inevitably involves an element of chance regarding the drop) constitutes gambling.

- It makes no difference whether it is purchased directly with real money *or*
- in the case of indirect purchase (real money is exchanged for in-game currency or used to buy it), there is a payment/stake *or*
- in the case of in-game currency earned through gameplay, it depends on whether this can be converted into real money in any way (e.g. by selling it on a black market)



# Conclusion

## Loot box ≠ Loot box

The question of whether loot boxes constitute gambling is the wrong question!

It is not the loot box itself that matters, but the system by which it is acquired and the possibility of selling its contents!

This must be assessed on a case-by-case basis for each individual game title!

The most obvious and best example is the analogue parallel in, for example:

- Magic: The Gathering
- Pokémon
- Yu-Gi-Oh!

See the simple explanation of the chances of winning at: <https://www.cardmarket.com/de>



# Open

## Account transfers

It has not yet been conclusively clarified whether monetisation can or must be assumed if the individual loot box contents are not transferable or saleable, but only the account (which contains all loot box contents).

Problem: Strictly speaking, it constitutes gambling, as a stake is involved and there is a possibility of winning; however, on the one hand, the focus is on the game itself – players are generally not playing to make a profit – and, on the other hand, the loot box system – even if the isolated sale of items is prevented – would always constitute gambling, as the transfer of accounts (including illegal transfers) is virtually unavoidable.

- (P) Does this constitute an infringement of Article 12 or Article 14 of the German Basic Law (GG) if it always constitutes gambling?
- In my view, this is justified as it is not disproportionate, given that, in abstract terms, the possibility of authorisation exists.  
(P): AT PRESENT, it is not possible to classify this under any licensing provision!!!



# Assessment of consequences

## Criminal and civil law consequences

Criminal law: Section 284 of the German Criminal Code (StGB) → BUT: Section 16 of the German Criminal Code (StGB) (intent) remains open

→ However, as there is no established case law and the issue is disputed in the literature → in dubio pro reo, no intent

Civil law:

→ The purchase of loot boxes is void pursuant to Section 134 of the German Civil Code (BGB) in conjunction with Section 284 of the German Criminal Code (StGB)

‘... but are void under Section 134 of the German Civil Code (BGB), contracts which involve the organisation of or participation in games of chance prohibited under Sections 284 et seq. of the German Criminal Code (StGB) ’  
(BeckOGK/*Vossler*, 1 December 2023, BGB Section 134, para. 220)

→ All contracts of sale would have to be rescinded in accordance with Sections 812 et seq. of the German Civil Code (BGB).

(P): Section 817 of the BGB? → cf. case law on online casinos etc.