



Universität Augsburg
Juristische Fakultät

International developments regarding the loot box business model

date: 15 September 2026, 5.50 pm (Beijing Time)

location: Beihang University, Beijing, China)/
Beihang University

duration: approximately 90 minutes, including time for discussion

Prof. Dr Martin Maties



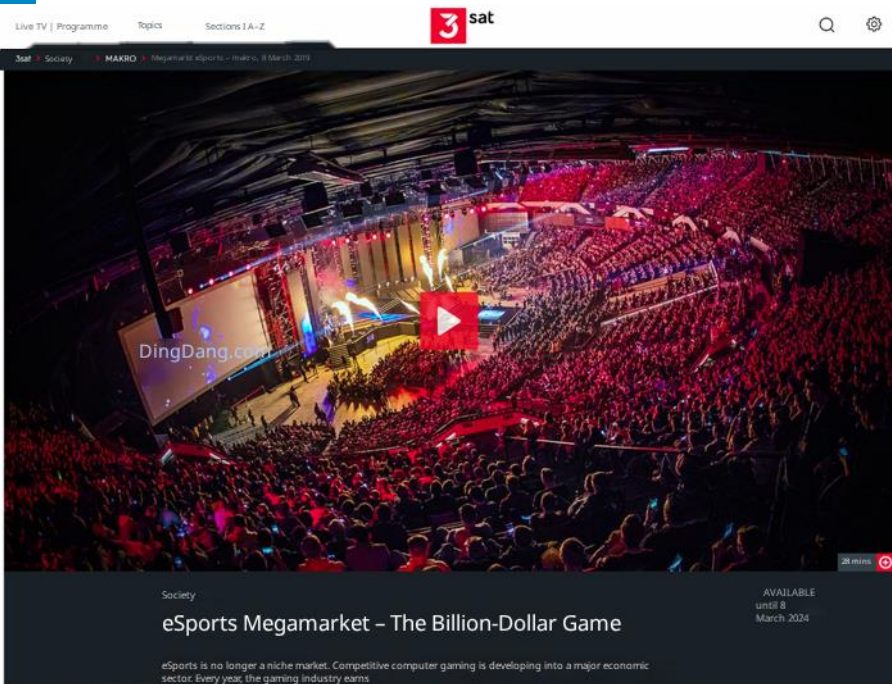


Agenda

- 1 Lootboxes in Society and Law
- 2 Economic significance
- 3 The concept and practical reality of loot boxes
- 4 Purchasing loot boxes, loot box systems and follow-on systems for loot box content
- 5 Gambling – definition and constituent elements
- 6 Classification under major esports titles
- 7 Conclusion – Rule of thumb

Lootboxes in Society and Law

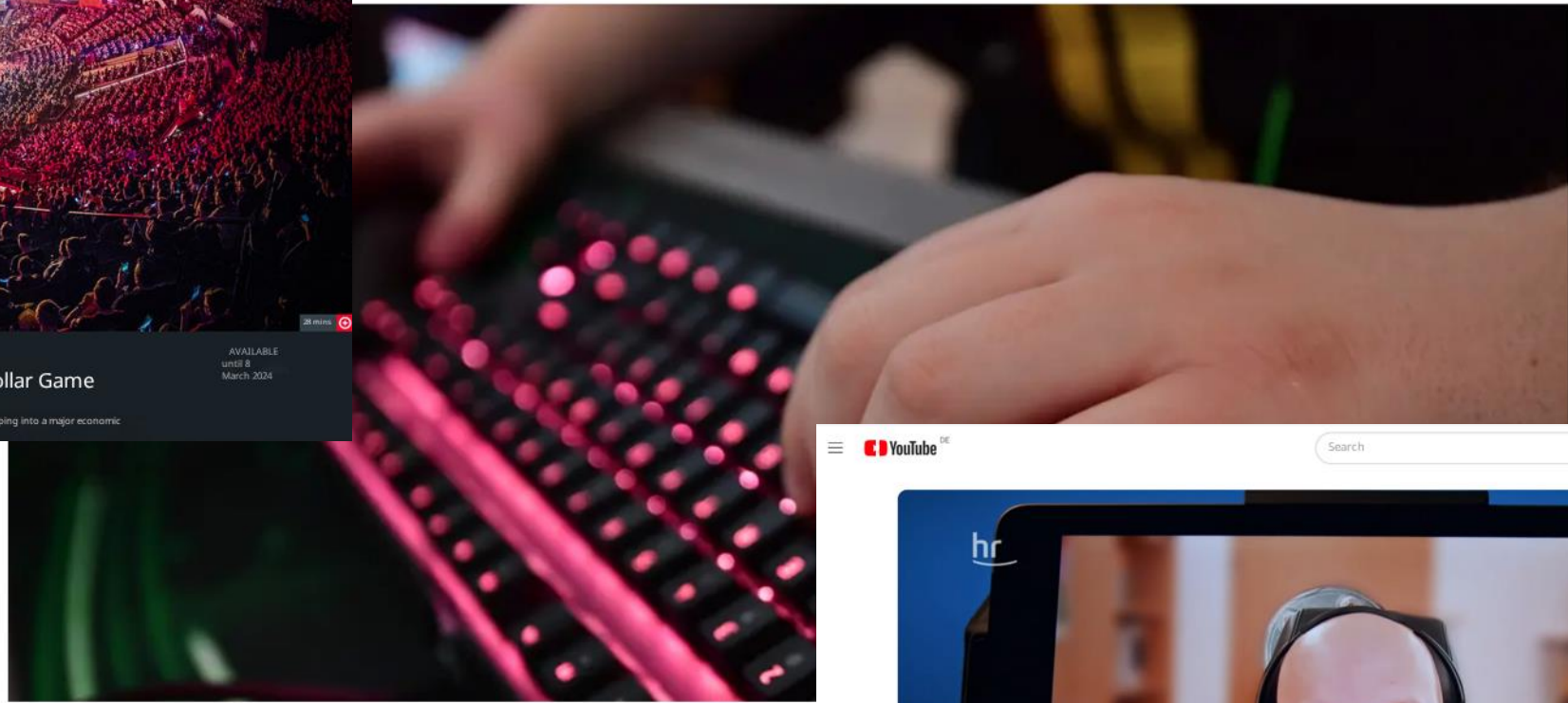




economic factor

16 December 20
<https://www.yo>

15 January 2024
available at: <http://erste/Y3JpZDov>



Virtual treasure chests

Gambling for children?

Updated: 9 January 2024, 11:27

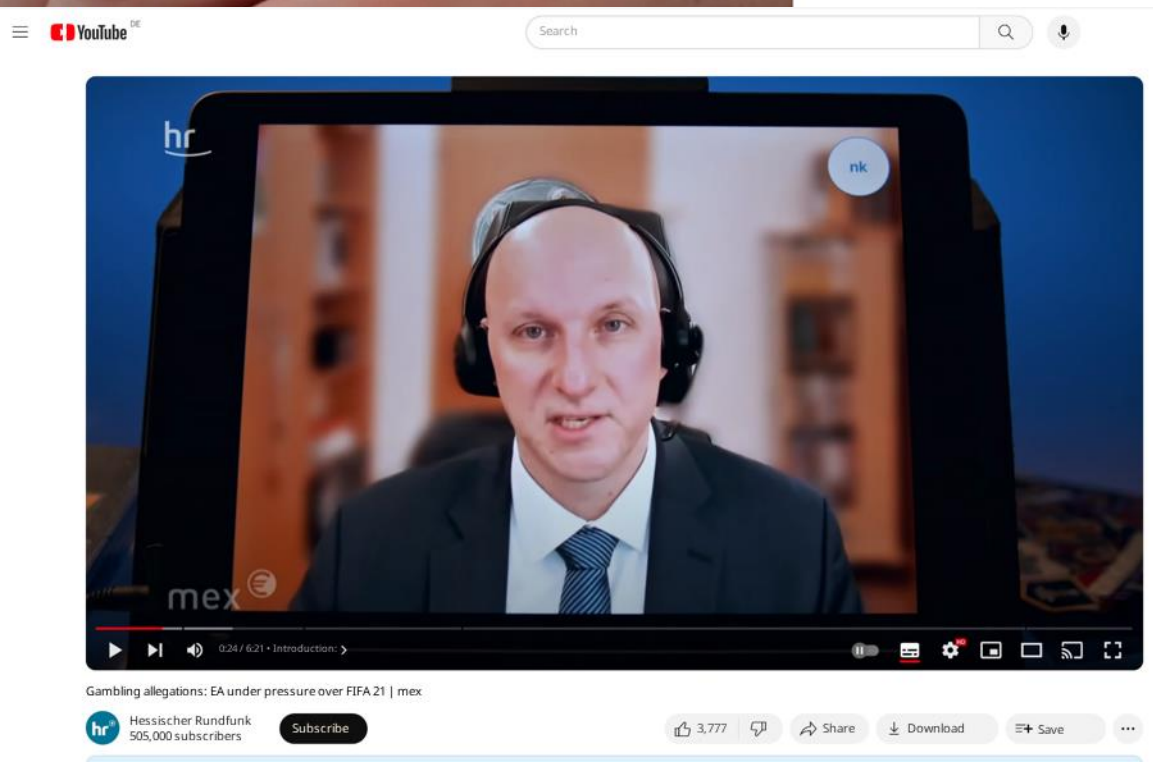
One click and the virtual treasure chest opens: Paid the hope of getting a mega-star for his team. But it's mainly the game developer who comes out on

Missed the programme?



to have
loot

in



Current regulatory approaches in German politics



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German Gaming Congress

26 and 27 June 2024



Misleading information from interest groups?

Scope of application

As a general rule, a minor is also a consumer within the meaning of Section 13 of the German Civil Code (BGB).

Depending on the structure of the loot box, it may constitute gambling.

If all three elements of the offence are present, all three areas of law are affected.

If the player is not a minor, only consumer protection and gambling law are affected.

If the player is an adult professional esports player and a self-employed individual, then 'only' gambling law would apply, as they are not a consumer.

If they are a minor and a self-employed professional esports player, then the law relating to minors and gambling law are affected ...

It is therefore not a question of whether the protection of minors **OR** consumer protection **OR** gambling law, but rather it depends on the **AND**, although the 'AND' must be assessed on a case-by-case basis.

Protection of

Minors

Loot
boxes

Consumer
protection

Gambling law



Misleading information from interest groups?

Distinguish between regulatory proposals and the application of the law

Need for regulation = A set of circumstances is not yet regulated by law and should be brought under regulation

→ There is a need for **legislative action**.

Application of the law = A set of facts is already regulated and the prescribed legal consequence **MUST** be applied

→ There is an **obligation on the judiciary** to adjudicate the legal consequence provided for under the law (Article 20(3) of the Basic Law)

In Germany, the State Treaty on Gaming already contains provisions governing loot boxes within the legal framework of gambling. Consequently, these provisions must be applied! Should there be a perceived need for further regulation in the areas of youth protection or consumer protection, this does not exempt the courts from applying the law as set out in gambling legislation.

→ *The only conceivable regulatory need would be to exclude loot boxes from gambling law (as far as is apparent, this is not yet under discussion)..*



Elements of an offence and legal consequences in public law

Discretion regarding legal consequences

In public law, it is often the case that, whilst the facts of a case may be established, there may be a margin of discretion regarding the legal consequences.

In cases of discretion, the classic stages of the exercise of discretion must then be examined:

- Exercise of discretion regarding WHETHER to intervene
- regarding AGAINST WHOM action is taken
- as to HOW action is taken

It is sometimes pointed out (see also the comments below regarding other EU countries) that where the authorities do not intervene (tolerance), it must be clearly understood that this does NOT affect the constituent elements of the offence!!!!

Thus, if a provision stipulates that, in the case of gambling, there is scope for discretionary action within the elements of the offence, this actually clarifies that gambling has taken place; otherwise, there would be no scope for discretion at all.



Loot boxes in legal literature and case law

Update 15 May 2025

A search on juris yielded the following results in total:

Source	Number
Provisions	1
References in commentaries and handbooks	24
Citations in journals	51
Bibliography for essays on the topic of loot boxes	21
Case law in Germany	0

→ Loot boxes have not yet been sufficiently researched in Germany.

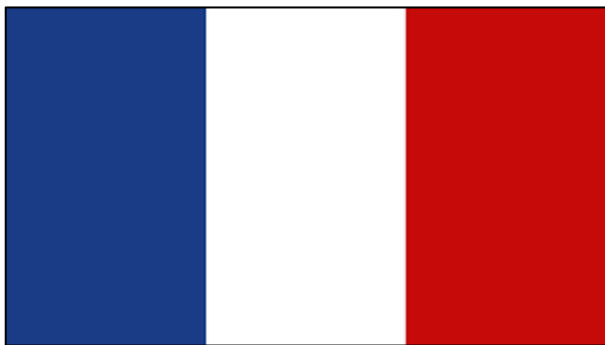
An interesting was: ECJ 29 April 2025, C-47/25 Reference for a preliminary ruling from the Ondernemingsrechtbank Antwerpen, Antwerp Division (Belgium), lodged on 24 January 2025 – LS v Apple Distribution International Ltd (Loot boxes in the context of the Directive on electronic commerce (2000/31) for prize draws)

→ *The case has been closed ...*

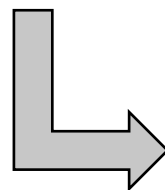


EU Member States and their assessment

Caution! ONLY an INTERNET SEARCH



Not classified as gambling, as long as the publisher does not offer an authorised means of converting the item into a monetary value outside the platform **to**.



It depends (+/-)



<https://www.connectontech.com/french-gambling-regulator-releases-its-position-on-loot-boxes/>

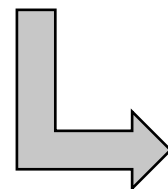


EU Member States and their assessment

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As things stand, it is probably **not classified as gambling** , but there were **2022** a **bill** which was specifically intended to ensure that access by **minors** to loot boxes must be prevented, **odds of winning must be stated** , and that players must be given the means to set their own **purchase limits or blocks** on loot boxes. This is unlikely to be pursued further at present.



Probably not (-)

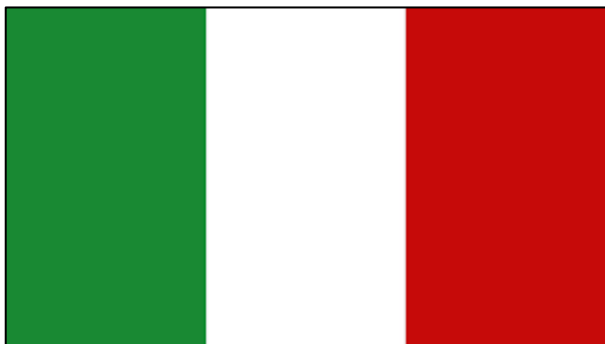


<https://www.dentons.com/en/insights/guides-reports-and-whitepapers/2023/june/28/loot-box-regulation-in-the-eu-loading-status>; ; <https://www.gamesindustry.biz/loot-box-state-of-play-2023-a-global-update-on-regulation>

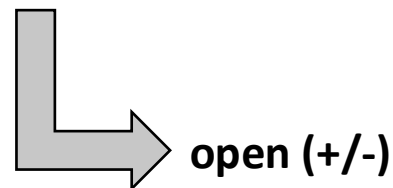


EU Member States and their assessment

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A 2020 investigation by the Gambling Commission, which was discontinued following concessions from publishers. In particular, it was agreed that loot boxes **must specify the odds of obtaining items**, and **that publishers must provide information on loot boxes** clearly indicate **must clearly highlight loot boxes** and parents are given easier ways to monitor their children's activity, e.g. through emails when an account is created and the active approval of loot box purchases.



<https://www.connectontech.com/updates-from-italy-on-in-game-purchases-and-loot-boxes/>

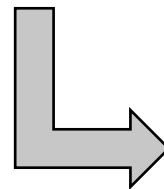


EU Member States and their assessment

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In 2018, the Gaming Authority classified loot boxes as gambling and initially won its case against EA in court. However, in 2022, these rulings were overturned by the Administrative Jurisdiction Division of the Council of State (the Netherlands' highest administrative court), on the grounds that loot boxes are not considered gambling **if they form an integral part of a game in which the player's skill and ability are decisive**. Only if the **game as a whole has the character of gambling** can it fall under gambling legislation.



It depends; probably more likely (-)



<https://www.simmons-simmons.com/en/publications/clgm1i0ko0020upv4ipezwfz4/status-of-loot-box-regulations-in-europe-q1-2023>

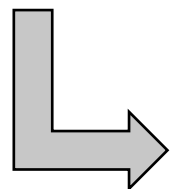


EU Member States and their assessment

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Loot boxes are classified by the Gambling Commission as **gambling** and therefore require a licence. However, **under current legislation, however, cannot be granted for loot boxes in games.**



probably (+)



<https://www.gamingcommission.be/sites/default/files/2021-08/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf>; <https://www.simmons-simmons.com/en/publications/clgm1i0ko0020upv4ipezwfz4/status-of-loot-box-regulations-in-europe-q1-2023>

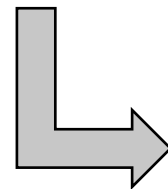


EU Member States and their assessment

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Decision in 2024 that loot boxes, in particular, **with reference to the sale of 'prizes' on the secondary market, are to be classified as gambling.**



probably (+)



<https://www.simmons-simmons.com/en/publications/clgm1i0ko0020upv4ipezwfz4/status-of-loot-box-regulations-in-europe-q1-2023>

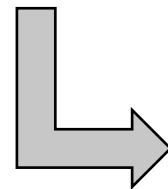


EU Member States and their assessment

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“NEW”: The Supreme Court in Austria has definitively ruled that the loot boxes in the FIFA and FC series do not constitute gambling.



probably (-)



<https://www.kicker.de/grosses-fifa-urteil-lootboxen-sind-in-oesterreich-kein-gluecksspiel-1188291/artikel>

Supreme Court: “rather, to examine the game as a whole to determine whether it meets the criteria of the definition of gambling”. The definition cited: “A game of chance is a game in which the outcome depends exclusively or predominantly on chance.”

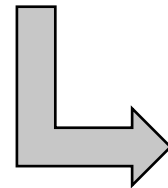


EU Member States and their assessment

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The Polish Ministry of Finance has stated that loot boxes **do not fall under the country's gambling regulations**. The **authors** of the source cited, however, see at least a **unclear legal situation**.



open, rather (-)



<https://www.dentons.com/en/insights/guides-reports-and-whitepapers/2023/june/28/loot-box-regulation-in-the-eu-loading-status>

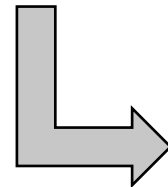


EU Member States and their assessment

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As things stand, it is probably **not classified as gambling**, but there was a **bill in 2022** that sought to equate 'virtually utilisable profits' with monetary profit, thereby **bringing loot boxes within the scope of gambling**; it is unclear whether this will be pursued further



probably not (-), but the future remains open



<https://www.dentons.com/en/insights/guides-reports-and-whitepapers/2023/june/28/loot-box-regulation-in-the-eu-loading-status>; <https://www.gamesindustry.biz/loot-box-state-of-play-2023-a-global-update-on-regulation>

A brief look at other countries:

https://kinstellar.com/upload/Kinstellar%20Regional%20Guide%20to%20Loot%20Boxes_2023.pdf

Economic
significance



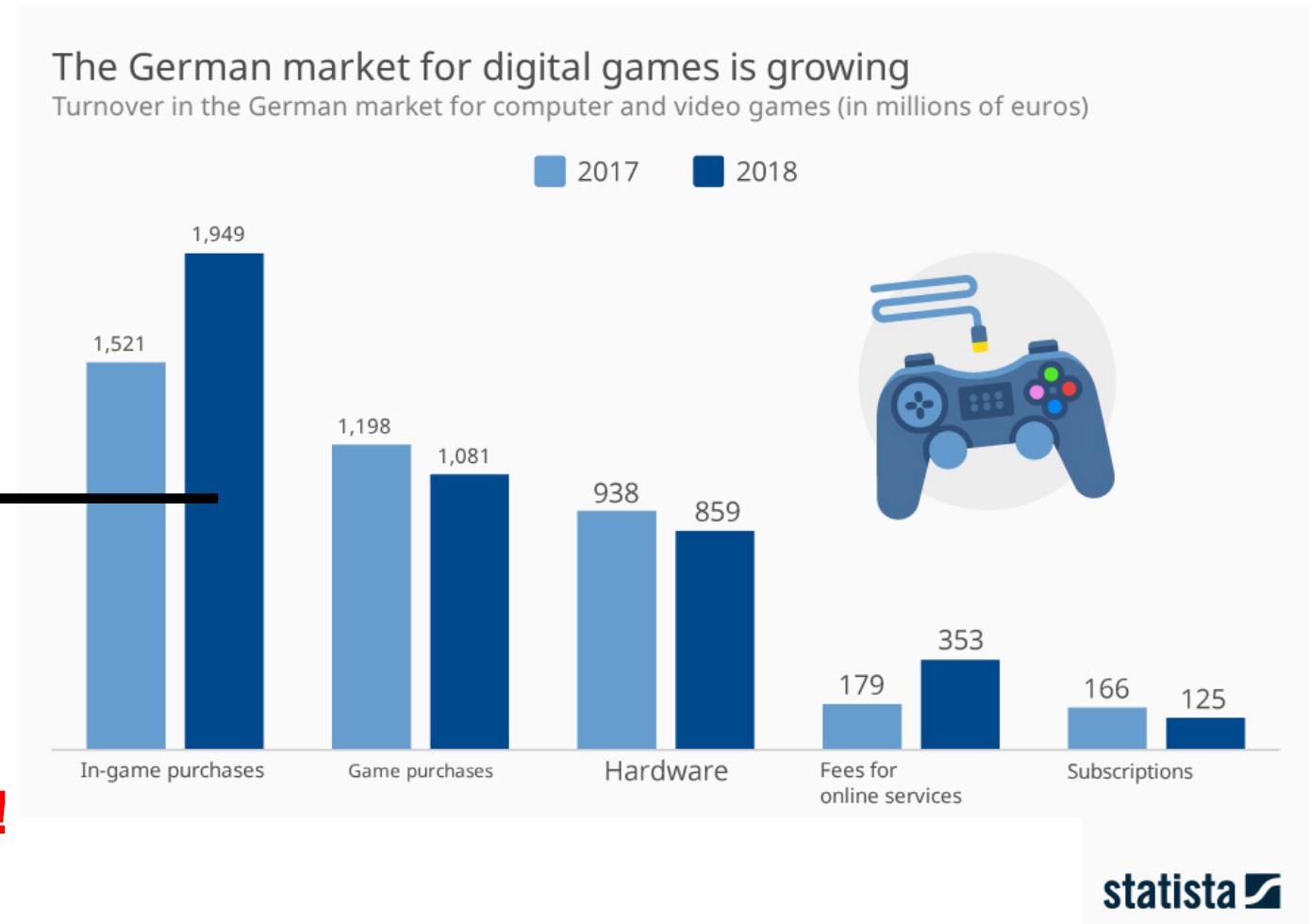


Economic significance

In-game purchases in Germany



**BUT: Not all
of them are loot boxes!**





Economic significance

In-game purchases in Germany



Revenue from in-game purchases in computer and video games (including microtransactions) in Germany from 2008 to 2021 (in millions of euros)



**BUT: Not all
of them are...**

2025 it was 4141 millions Euro
(https://www.game.de/deutscher-games-markt-waechst-2025-um-4-prozent/?utm_source=chatgpt.com)

Sources:
game; GfK; Data.ai
© Statista 2022

Further information:
Germany

The concept and reality of loot boxes





Concept/Definition

Subject of the investigation

Term/terminology relating to loot boxes (Synonym: loot crate, prize crate)

loot (English) = spoils

box (English) = box

→ loot box



Example: Loot boxes in the game
Overwatch 1 (Blizzard)
(no longer available)

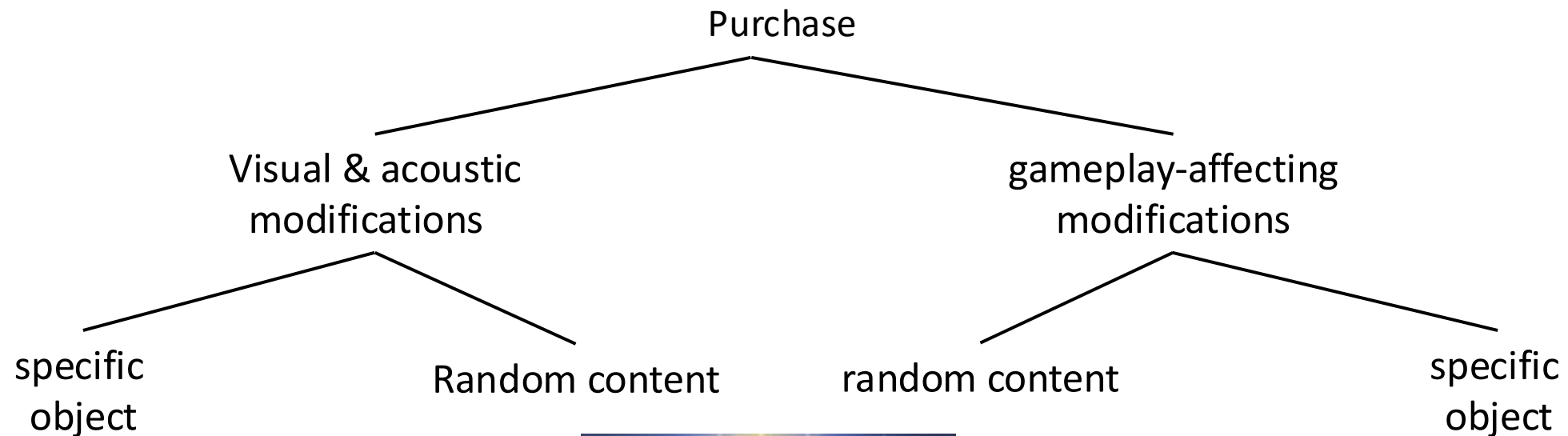
‘Actual’ Definition: A virtual box in computer games that contains a random item or a random collection of specific virtual items. Typical examples include weapons and special items that (may) influence the course of the game; however, they may also contain graphical modifications to the appearance of the game’s units (skins). Loot boxes can be unlocked, found or purchased within the game.



Subject matter of sale in computer games

Sections 433, 453(1)(1) Variant 2 (or Variant 1, strictly) of the German Civil Code (BGB)

Distinguish between:



Umbrella term for all of the above: microtransactions

Loot box contents



Visual & acoustic
modifications

gameplay-affecting
modifications
often 'pay to win'

This distinction is irrelevant when assessing whether gambling is taking place, but it is relevant when considering the 'addictive factor'.

The possibility of winning depends on the ability to resell; this may be the case for both (depending on how the publisher has designed the game).

Loot box purchases,
loot box systems and
follow-on systems for
loot box content



Loot box purchases



Performance and consideration



Seller

Buyer

Sections 433, 453 of the German Civil Code (in
conjunction with Section 262 of the German Civil Code)

Section 433(2) of the German Civil Code (BGB)

Obligation to pay the purchase price

Section 433(1) of the German Civil Code (BGB)

Obligation to make a randomly generated virtual item or a game modification available
for use



Acquisition of loot box contents

Randomly generated



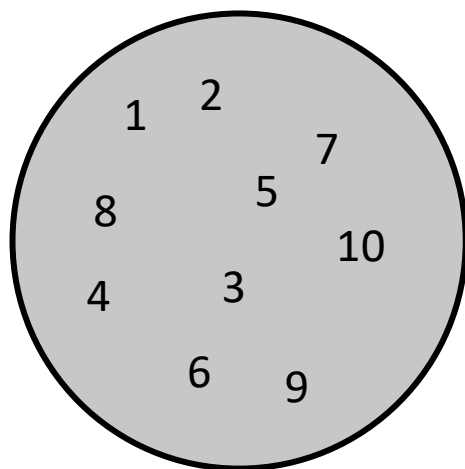
Seller

Buyer

Sections 433 and 453 of the German Civil Code (BGB) (in conjunction with
Section 262 BGB)

Section 433(1) of the German Civil Code (BGB)

Obligation to **randomly generated** virtual item or a game modification for
use





Classification of the content of the contract

Choice of performance in Germany

Section 262 of the German Civil Code (BGB): Option; Right of Choice

Where **several performances** are owed in such a way that **only one or the other** is to be performed, the **right of choice, in case of doubt, lies with the debtor**.

Section 263 of the German Civil Code (BGB): Exercise of the right of choice; effect

- (1) The choice is made **by means of a declaration to the other party**.
 - (2) The **chosen performance shall be deemed to be the one that was due from the outset**.
- Under civil law, it is possible to have the performance determined by a third party

Section 315 of the German Civil Code (BGB): Determination of the performance by one party

- (1) Where the performance is to be determined by one of the contracting parties, it must **be assumed, in case of doubt, that the determination is to be made at the party's reasonable discretion**.
- merely a rule of interpretation in cases of doubt (i.e. it may also be deliberately left to a computer-generated random selection by contractual agreement)



Loot box = loot box?

The contents of the loot box

Loot boxes, the purchase of loot boxes and related systems come in various forms.

What all loot boxes have in common is that they are a form of 'virtual packaging' containing a virtual item or a game modification, whether visual or auditory.

It is important to distinguish the **box**, the **contents**, the **purchase process**, the **transferability** and **possibility of disposal** on a **market**.

ALL these factors may, in practice, vary when assessing whether gambling is involved and may therefore lead to a different assessment of the issue.



Forms of loot box acquisition I



Rewards = rewards for playing the game (regardless of success or for specific achievements [e.g. first win of the day])

In-game purchase = purchasing a loot box in exchange for payment (either directly with real money or with the game's virtual currency, which in turn can be obtained with real money)

[Combinations are possible; for example, virtual currency can be earned and purchased.]



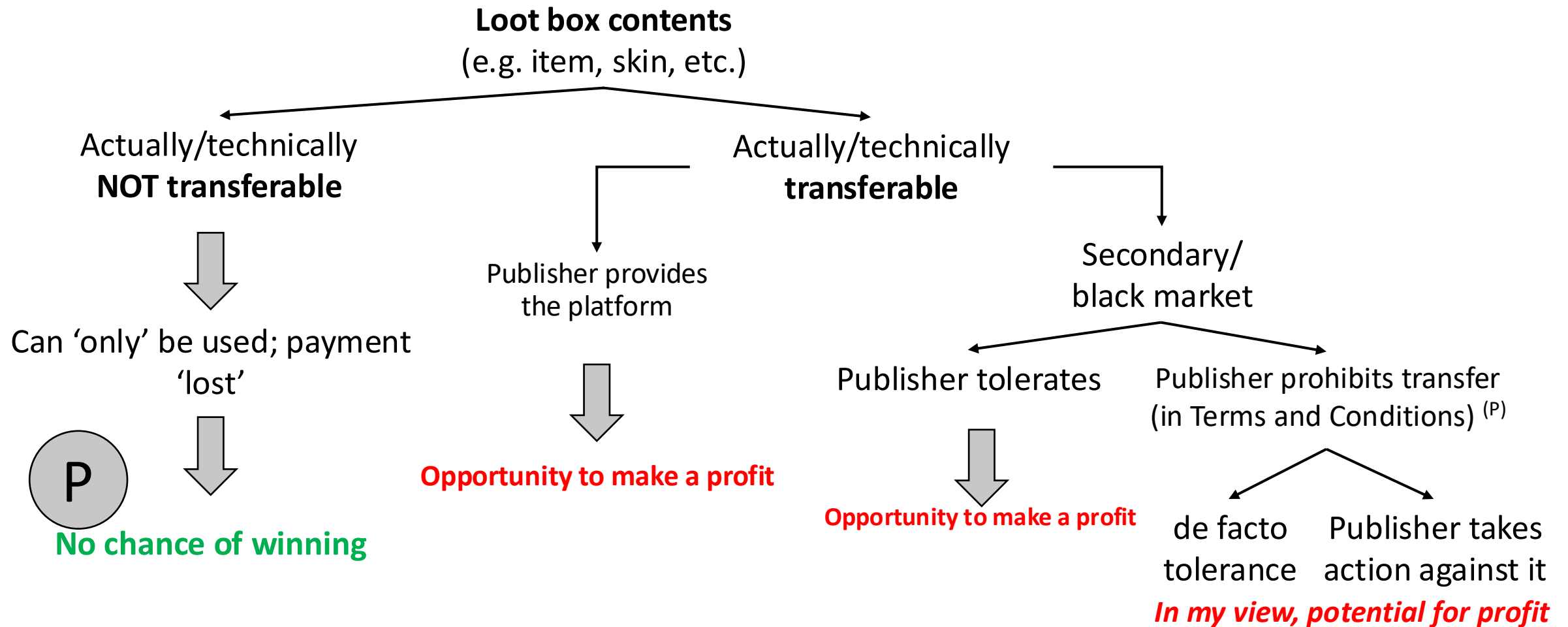
Loot box purchase method II





Loot box transferability I

Conditions for value



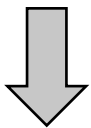


Loot box transferability II

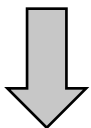
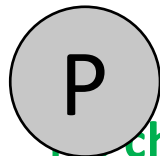
Special issue: Transferability of the entire account

Loot box contents
(e.g. item, skin, etc.)

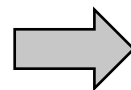
Actually/technically
NOT transferable



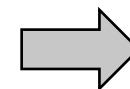
Can 'only' be used; payment
'lost'



Chance of winning



What if the account is
effectively transferable?



actually always **potential for profit**



So there is always a de facto
possibility of sale



Just like on the secondary market,
with or without tacit approval!





Loot box market

Since no money is won ...

Unlike, for example, a lottery, no money is won from a loot box.

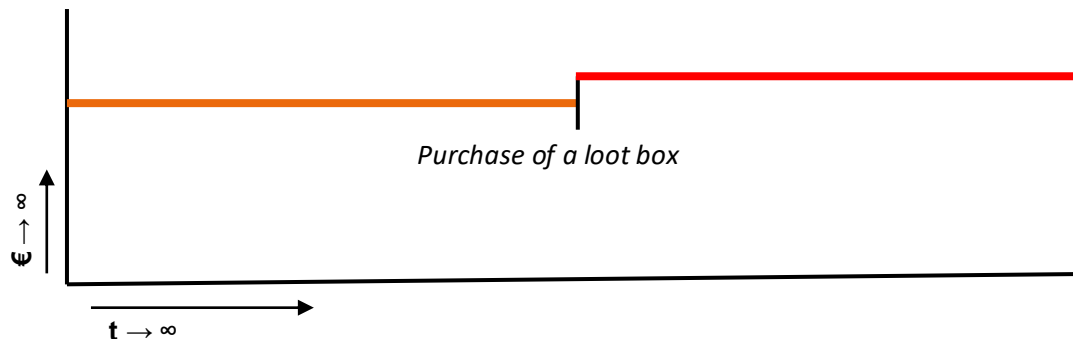
However, for there to be a possibility of a gain, it must be possible for the purchaser of the loot box to be in a better financial position AFTER purchasing the loot box than they were before.

Gain = assets after purchase > assets before purchase

Wealth = sum of all benefits of monetary value

→ The contents of the loot box must be an asset and therefore have monetary value

→ it must be possible to convert the contents into cash





Loot box market

Difference from analogue items

In the case of **analogue (physical) items**, it **cannot be ruled out that these may be handed over and/or transferred**. Even if one were to consider a legal prohibition on sale (contrary to Section 137 of the German Civil Code (BGB)), this does not alter the fact that (due to the principles of separation and abstraction) a sale is possible. The contract of sale is independent of the act of disposal under Section 929, sentence 1 of the German Civil Code (BGB).

In the case of **virtual objects** (e.g. an 'item'), however, these are rights or other objects (strictly speaking) in respect of which an assignment pursuant to Section 389 of the German Civil Code (BGB) constitutes the act of disposal (transfer). This may **be excluded by agreement pursuant to Section 399, variant 2, of the BGB**. But here too, the contract of sale pursuant to Sections 433, 453 of the BGB is independent of this. Nor is it detrimental that performance is legally impossible pursuant to Section 275(1) of the BGB (Section 311a(1) of the BGB).

In other words, the mere possibility of possessing the item in order to offer it for sale, as well as the actual ability to use it, constitutes an asset if there is a market for it.

The market enables the virtual item to be monetised.



Loot box market

Monetisation potential

