

International responses to loot boxes

To assist the Environment and Communications References Committee, the ACMA has collated recent international responses to the loot box issue.

Belgium

The Belgium Gaming Commission's secretariat, Peter Naessens, published a research report on loot boxes in April 2018.¹ The research examined four games: Overwatch, Star Wars Battlefront II, FIFA18 and Counter-Strike: Global Offensive. The report applied the definition of game of chance found in the Belgium *Gaming and Betting Act*, which is, as noted in the report: 'any game whereby a bet of any kind that is placed leads to the loss of this bet by at least one of the players, or a win of any kind for at least one of the players or organisers of the game, and whereby chance may even be a secondary element in the course of the game, indication of the winner or determination of the size of the winnings.'

Applying Belgium's definition of game of chance to the game titles studied, Naessens concluded that:

The paid loot boxes in the examined games Overwatch, FIFA 18 and Counter-Strike: Global Offensive fit the description of a game of chance because all of the constitutive elements of gambling are present (game, wager, chance, win/loss). The loot box system in Star Wars Battlefront 2 prior to the official release of the game also fits this definition, but this is no longer the case today.

Naessens outlined several recommendations for the Belgium Gaming Commission; entities which license brands to game developers (such as FIFA and Disney); game platforms which facilitate payments; and distributors and game developers. These recommendations were as follows.

For the Belgium Gaming Commission:

- A recommendation to update information and research on gambling elements in video games so parents and children can be better informed
- In responding to complaints about gambling elements in video games, the regulator should be able to inspect the video game
- Specific permits should be developed for games of chance in video games
- A ban on minors buying video games which have paid-for loot boxes
- Age verification when purchasing gift cards/codes for video games, in order that minors cannot make payments for video games not suitable for minors.

For entities which grant licenses (such as FIFA and Disney):

- If a license is granted, quality standards should be considered, such as no illegal gambling, no promotion of match fixing etc.

For game platforms which facilitate payments:

¹ Belgium Gaming Commission, *Research Report on Loot Boxes*, April 2018
<https://www.gamingcommission.be/opencms/export/sites/default/jhkswb_nl/documents/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf>

- If games are not approved for minors, minors should not be permitted to make payments.

For distributors and game developers:

- Transparency regarding the chance of winning items
- The Belgium Gaming Commission should have complete control of the random number generator used for loot boxes
- Provide data regarding players and payments
- Introduce spending limits ('a financial ceiling') on loot boxes
- Paid-for loot boxes should not impede or disadvantage a game without paid-for loot boxes
- An informational symbol for 'gambling' to inform that the game contains gambling.

China

In December 2016 it was reported that China's Ministry of Culture requires video games which have loot boxes to provide information about the odds of receiving loot box items.²

Denmark

The Danish Gambling Authority included reference to loot boxes in its Annual Report 2017.³ The report noted that during the European autumn last year the Danish Gambling Authority received an increased number of "enquiries from worried citizens and parents about so-called loot boxes." The authority also noted the connection between loot boxes and skin betting which the authority has previously considered.

In response to the enquiries it received the Danish Gambling Authority issued a statement⁴ on loot boxes clarifying when a game falls within the Danish *Gambling Act*. This statement noted that loot boxes must have a licence if the following three criteria are met:

1. There must be a deposit
2. There must be an element of coincidence
3. There must be a win (if the prize is a virtual item, it should be able to translate it into financial terms).

Applying the above criteria to some well-known loot box video games the Danish Gambling Authority observed:

The winnings obtained in a loot box in Star Wars Battlefront 2 cannot be converted into financial means, as the fictional items in the loot box cannot be sold or otherwise converted into money. Therefore, loot boxes in their present form in Star Wars Battlefront 2 are not covered by the gaming act. This is also the reason why skinbetting in connection with computer games such as Counter Strike Global Offensive etc. are covered by the Danish Act on Gambling. They are covered by the Act on Gambling because skins from these games can be sold on different websites, and thus converted into money. Loot boxes in games other than Star Wars Battlefront 2 must be considered individually as it is not possible to generally assess whether the items won in a loot box can be converted into money. Therefore, it cannot be excluded that loot boxes may in some cases be covered by the Act on Gambling.

² ZhugeEX, *China's New Online Gaming Regulations*, 12 December 2016
<<https://zhugeex.com/2016/12/chinas-new-online-gaming-regulations/>>

³ Danish Gambling Authority, *Annual Report 2017* <https://spillemyndigheden.dk/sites/default/files/filer-til-download/danish_gambling_authority_-_annual_report_2017_0.pdf>

⁴ Danish Gambling Authority, *Statement about loot boxes / loot crates*, 29 November 2017
<<https://spillemyndigheden.dk/en/news/statement-about-loot-boxes-loot-crates>>

The Danish Gambling Authority's Director, Brigitte Sand concluded the authority's statement which was repeated in its annual report, saying:

Australian
Communications
and Media Authority

www.acma.gov.au

We follow the developments in the field; especially because loot boxes and the like are typically found in games that are largely aimed at children and we have a special obligation to protect children and young people. However, I would like to emphasize the importance of parents taking an interest in the games their children play and to talk about responsible gaming behaviour. Then we may hopefully avoid unfortunate situations where minors spend money they should not have used.

France

During November 2017 a French Senator, Jérôme Durain, wrote to Autorité de regulation des jeux en ligne (ARJEL), the French online gambling regulator, regarding microtransactions in video games.⁵

The President of ARJEL, Charles Coppolani, replied, outlining three issues which, in his opinion, loot boxes raise. In his letter⁶, Coppolani noted three issues raised by loot boxes⁷:

- A consumer protection issue with respect to microtransactions which are added to a video game's original purchase price, which is not clearly informed to the player
- An issue of tracking spend in a game. Coppolani contrasted loot box microtransactions with pay-to-win microtransactions in which a player knows what they are purchasing.
- The issue of converting loot box items into something of real-world value.

ARJEL further elaborated on its position on loot boxes in its activity report for 2017-2018 (Rapport D'activité 2017-2018). In this report, ARJEL outlined what the definition of gambling was under French law and how it essentially requires a stake, chance and a prize. With respect to whether loot boxes fall within the definition of gambling in French law, ARJEL observed that:

Given the French definition of gambling, all loot-boxes cannot be qualified as gambling, but it is different when it is possible to monetize the prize. The legality of this type of game is arguable when the prize may be transferred out of the gaming platform and when the gaming editor enables the use of prizes won elsewhere than in the environment of the platform.⁸

More broadly, ARJEL noted in its 2017 activity report that regardless of whether loot boxes fall within the French definition of gambling, loot boxes challenge public policy objectives which underpin French gambling policy because⁹:

- The lack of age verification means minors can play games with loot boxes
- Loot boxes introduce minors to gambling-like elements
- There is a lack of transparency with respect to the random number generator used in loot boxes.

Germany

Germany's Federal Review Board for Media Harmful to Minors (BPjM) issued a statement on loot boxes on 17 October 2017.¹⁰ In the statement the BPjM noted that risks posed by loot

⁵ Sebastian Schwidessen, 'French gambling regulator releases its position on Loot Boxes', 30 June 2018 <https://www.linkedin.com/pulse/french-gambling-regulator-releases-its-position-loot-sebastian/?trk=aff_src.aff-liipar_c.partners_learning&irgwc=1&trk=aff_src.aff-liipar_c.partners_learning&irgwc=1>

⁶ <http://www.arjel.fr/IMG/pdf/20171120courrier.pdf>

⁷ See note 5 and 6

⁸ Translation provided to the ACMA by ARJEL, 18 July 2018

⁹ See note 5

¹⁰ Federal Review Board for Media Harmful to Minors, 'Stellungnahme der BPjM zum Thema Loot-Boxen', 17 October 2017 <http://www.bundespruefstelle.de/bpjM/service_did=229290.html>

boxes are not in the content of the game but how the game mechanics function, noting it poses new challenges for authorities which seek to protect minors. The BPJM noted that it is working with other agencies (the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, as well as state youth agencies) on a child and youth policy strategy which will encompass loot boxes.

On 23 February 2018, another Germany agency, the Commission for the Protection of Youth in the Media (KJM) issued a statement on loot boxes. The KJM indicated that some loot boxes may contravene Germany's prohibition on direct advertisement appeals to purchase products directed at minors.¹¹

Netherlands

Alongside the Belgium Gaming Authority, Netherlands Gaming Authority (NGA) has conducted a study into loot boxes.¹² The Gaming Authority analysed ten video games and their compliance with the Dutch *Betting and Gaming Act*, which prohibits (at Article 1): 'an opportunity to compete for prizes or premiums if the winners are designated by means of any random process over which the participants are generally unable to exercise a dominant influence, unless a licence for this has been granted pursuant to this Act.'

The NGA found that four of the ten video games analysed contravene Dutch law. This was because:

These are the loot boxes in games where the in-game goods from the loot boxes are transferable. When opening loot boxes, the consumer cannot influence the outcome. Those games that feature a combination of in-game goods that can be traded and the obtaining of these goods through loot boxes fall under Article 1 of the Betting and Gaming Act. As a licence cannot be issued for this offering under the applicable legislation, these loot boxes are prohibited in the Netherlands.

The NGA does not consider prohibiting the re-sale or transfer of loot box items, by game publishers, sufficient to avoid the application of the *Betting and Gaming Act*.¹³ Rather, the NGA, considers whether a prize has an economic value. In its *Guide on assessing games of chance*¹⁴ the NGA provides guidance as to the economic value of so-called 'skins', which are items commonly included in loot boxes:

The games League of Legends (LoL) and Counter Strike – Global Offensive (CS-GO) are popular computer games (E-sports). These are primarily free games ('freemium' games) where participants can spruce up their accounts by buying or winning so-called 'skins' (cosmetic elements in the game). These skins often have no influence on the outcome of the game. The difference between the two games is that the skins of CS-GO, but not of LoL, are currently being traded. LoL skins are 'attached' to the player account, while CS-GO skins are transferable between accounts. Trade in CS-GO skins is therefore possible and CS-GO skins represent a potential economic value. This does not apply to LoL skins and these skins therefore do not represent any economic value.

In its report, the NGA also evaluated loot boxes with respect to their addiction risk potential and found that 'loot boxes have a moderate to high Addiction risk potential' but it depends 'on how the loot box is offered.' The NGA went on to state:

The loot boxes with a higher score have integral elements that are similar to slot machines. With these loot boxes, there is very often a (higher) jackpot where the

¹¹ Baker McKenzie, *Loot Box Regulation – Germany's KJM issues its decision*, March 2018 <https://www.bakermckenzie.com/-/media/files/insight/publications/2018/03/al_germany_lootboxregulation_mar18.pdf?la=en>

¹² Netherlands Gaming Authority, *Study into loot boxes: A treasure or a burden?*, 10 April 2018 <https://www.kansspelautoriteit.nl/publish/pages/4956/onderzoek_naar_loot_boxes_-_een_buit_of_een_last_-_eng.pdf>

¹³ This was confirmed to the ACMA in correspondence from the NGA on 18 July 2018

¹⁴ Netherlands Gaming Authority, *Guide on assessing games of chance*, 13 April 2018 <https://www.kansspelautoriteit.nl/publish/library/6/guide_on_assessing_games_of_chance.pdf>

virtual goods are transferable, players can keep opening unlimited loot boxes, multiple visual and sound effects are added and a 'near miss' effect is used. According to this tool, the loot boxes with a higher score are comparable with blackjack or roulette in terms of addiction potential. According to this tool, the loot boxes with a lower score are comparable with small-scale bingo in terms of addiction potential. This tool is intended for games of chance that involve scriptural or cash money. Some care is therefore required in interpreting the results from this tool.

Of the six video games found not to be in contravention of Dutch law, the NGA nonetheless considers those games at odds with Dutch policy regarding preventing addiction as those 'loot boxes could nevertheless foster the development of addiction.' With respect to minors and game of chance mechanisms and addiction, the NGA noted:

Once minors are exposed to game of chance mechanisms, there is a significantly higher risk that they will have problems with it at a later stage in their lives. The literature indicates that exposure at an early age increases the risk of addiction and the severity of the addiction. [citation omitted]

New Zealand

The Department of Internal Affairs' Gambling Compliance office issued a media statement¹⁵ in December 2017 to the effect that loot boxes do not meet the definition of gambling under New Zealand law. The statement noted:

There are many games which enable the user to purchase additional items to enhance gaming experience. Loot boxes are a variation on this theme. Gamers do not purchase loot boxes seeking to win money or something that can be converted into money. They buy loot boxes so that they can use their contents within the game and thereby have a better gaming experience.

United Kingdom

On 6 October 2017, the UK's Secretary of State for Digital, Culture, Media and Sport was asked via a written question in Parliament: 'what steps she plans to take to help protect vulnerable adults and children from illegal gambling, in-game gambling and loot boxes within computer games.' Tracey Couch MP, Parliamentary Under Secretary of State for Sport and Civil Society, answered the question on 16 October 2017 as follows:

Where items obtained in a computer game can be traded or exchanged outside the game platform they acquire a monetary value, and where facilities for gambling with such items are offered to consumers located in Britain a Gambling Commission licence is required. If no licence is held, the Commission uses a wide range of regulatory powers to take action.

Protecting children and vulnerable people from being harmed or exploited by gambling is one of the core objectives of the regulation of gambling in Great Britain and a priority for the government. The Gambling Commission have a range of regulatory powers to take action where illegal gambling is taking place. Earlier this year the Gambling Commission successfully prosecuted the operators of a website providing illegal gambling facilities for in-game items which was accessible to children - the first regulator in the world to bring such an action.

¹⁵ Katherine Cross, *New Zealand says lootboxes 'do not meet the legal definition for gambling'*, 11 December 2017
<https://www.gamasutra.com/view/news/311463/New_Zealand_says_lootboxes_do_not_meet_the_legal_definition_for_gambling.php>

The government recognise the risks that come from increasing convergence between gambling and computer games. The Gambling Commission is keeping this matter under review and will continue to monitor developments in the market.¹⁶

Australian
Communications
and Media Authority
www.acma.gov.au

The Gambling Commission of Great Britain provided further guidance on loot boxes within video games on 24 November 2017. The Gambling Commission's Executive Director, Tim Miller, explained that the commission's starting point is to 'look closely at whether or not it falls under UK gambling law. The definition of what is legally classed as gambling is set by Parliament rather than by us. Our role is to apply that definition to activities that we see and any changes to that definition need to be made by Parliament.'

Miller further noted that the 'law sets a line between what is and is not gambling. As the regulator we patrol that line and where an activity crosses it and presents a risk to people, especially children, we have and will take robust action.' In deciding if that line is crossed with respect to loot boxes, a key consideration is:

whether in-game items acquired 'via a game of chance' can be considered money or money's worth. In practical terms this means that where in-game items obtained via loot boxes are confined for use within the game and cannot be cashed out it is unlikely to be caught as a licensable gambling activity. In those cases our legal powers would not allow us to step in.

Miller concluded the Gambling Commission's note by observing that:

many parents are not interested in whether an activity meets a legal definition of 'gambling'. Their main concern is whether there is a product out there that could present a risk to their children. We are concerned with the growth in examples where the line between video gaming and gambling is becoming increasingly blurred. Where it does meet the definition of gambling it is our job to ensure that children are protected and we have lots of rules in place, like age verification requirements, to do that.

Where a product does not meet that test to be classed as gambling but could potentially cause harm to children, parents will undoubtedly expect proper protections to be put in place by those that create, sell and regulate those products. We have a long track record in keeping children safe and we are keen to share our experiences and expertise with others that have a similar responsibility. Whether gambling or not, we all have a responsibility to keep children and young people safe.

United States

Developments in the US regarding loot boxes have involved self-regulatory initiatives, as well as state-based legislative proposals. Some of these are briefly outlined below.

Self-regulation

The Entertainment Software Rating Board (ESRB) is self-regulatory body which assigns ratings for video games and apps sold in the US and Canada, in order for parents to make informed choices. During October 2017 the ESRB issued a statement that loot boxes are not considered gambling, because '[w]hile there's an element of chance in these mechanics, the player is always guaranteed to receive in-game content (even if the player unfortunately receives something they don't want). We think of it as a similar principle to collectible card games: Sometimes you'll open a pack and get a brand new holographic card you've had your eye on for a while. But other times you'll end up with a pack of cards you already have.'¹⁷

¹⁶ Gambling: Video games: written question – 106043, 6 October 2017, answered on 16 October 2017 <<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-10-06/106043/>>

¹⁷ Jason Schreier, 'ESRB Says It Doesn't See 'Loot Boxes' As Gambling', 12 October 2017 <<https://www.kotaku.com.au/2017/10/esrb-says-it-doesnt-see-loot-boxes-as-gambling/>>

On 27 February 2018 the ESRB launched an initiative to assign an 'in-game purchase' label to physical copies of video games. In a statement¹⁸ the ESRB noted:

With the new In-Game Purchases interactive element coming to physical games, parents will know when a game contains offers for players to purchase additional content. Moreover, we will be expanding our efforts to educate parents about the controls currently at their disposal to manage in-game spending before their kids press 'Start'.

The new In-Game Purchases label will be applied to games with in-game offers to purchase digital goods or premiums with real world currency, including but not limited to bonus levels, skins, surprise items (such as item packs, loot boxes, mystery awards), music, virtual coins and other forms of in-game currency, subscriptions, season passes and upgrades (e.g., to disable ads).

On the same day of the launch of the labelling scheme the ESRB also launched the website ParentalTools.org¹⁹, which assists parents in tracking their child's in-game spending.

Legislative responses

Several US states have had or currently have legislative in train which addresses loot boxes.

The first was **Washington state**, which saw a bill introduced, Senate Bill 6266²⁰ on 11 January 2018. The bill noted the concerns raised by loot boxes, which included:

- (a) Whether games and apps containing these mechanisms are considered gambling under Washington law; (b) whether these mechanisms belong in games and apps; (c) whether minors and other young people, who may be more vulnerable to gambling addiction, should have access to games and apps with these mechanisms; and (d) the lack of disclosure and transparency with respect to the odds of receiving each type of virtual item.

The bill seeks to compel the Washington State Gambling Commission to commission a study on loot boxes, to report back by 1 December 2018.

Also, during January 2018, **Hawaii's** legislature saw four bills registered:

- House Bill 2686 and Senate Bill 3024 proposed to, in effect, prohibit the sale of video games which contain loot boxes to consumers under 21 years of age.²¹
- House Bill 2727 and Senate Bill 3025 proposed, in effect, disclosure requirements for loot box games, such as the probability rates of receiving loot box items.²²

All four bills have failed to progress according to reporting on the issue.²³

On 12 February 2018, **California's** legislature saw Assembly Bill 2194 filed. This bill 'would require the manufacturer of a video game that is sold in California and includes the opportunity to engage in a microtransaction, as defined, within the video game to provide a clear disclosure that the video game includes the opportunity to engage in a microtransaction on the physical box the video game is sold in. The bill would make a video game manufacturer that violates this provision subject to a civil penalty of up to \$1,000 per violation.'²⁴

¹⁸ ESRB, 'ESRB to begin assigning 'in-game purchases' label to physical video games', 27 February 2018 <<https://esrbstorage.blob.core.windows.net/esrbcontent/about/news/downloads/igp-press-release-final-22718.pdf>>

¹⁹ <http://www.esrb.org/parentalttools/>

²⁰ Senate Bill 6266 <<http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Senate%20Bills/6266.pdf>>

²¹ House Bill 2686 <https://www.capitol.hawaii.gov/session2018/bills/HB2686_.HTM>; Senate Bill 3024 <https://www.capitol.hawaii.gov/session2018/bills/SB3024_SD2_.HTM>

²² House Bill 2727 <https://www.capitol.hawaii.gov/session2018/bills/HB2727_HD1_.HTM>; Senate Bill 3025 <https://www.capitol.hawaii.gov/session2018/bills/SB3025_SD1_.HTM>

²³ Michael Brestovansky, 'Loot box' bills fail to advance', 24 March 2018 <<http://www.hawaiitribune-herald.com/2018/03/24/hawaii-news/loot-box-bills-fail-to-advance/>>

²⁴ Assembly Bill 2194 <http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=20170180AB2194>

On 24 April 2018, a bill was introduced into the **Minnesota** House of Representative, HF 4460.²⁵ The bill introduces a prohibition and a warning. The prohibition would be on selling games with loot boxes to persons under 18 years of age:

Australian
Communications
and Media Authority
www.acma.gov.au

(a) No retailer may sell to a person under 18 years of age a video game containing a system that permits the in-game purchase of (1) a randomized reward or rewards, or (2) a virtual item that can be redeemed to directly or indirectly receive a randomized reward or rewards.

(b) No video game may be updated to include a system described in paragraph (a) unless the provider of the update verifies, using commercially reasonable technology, that the recipient of the update is not under 18 years of age.

The warning which is required to accompanying the sale of games with loot boxes (with games sold through electronic means, the warning must be acknowledged by the purchaser), as proposed in the HF 4460 would be:

Warning: This game contains a gambling-like mechanism that may promote the development of a gaming disorder that increases the risk of harmful mental or physical health effects, and may expose the user to significant financial risk.

²⁵ HF 4460

<https://www.revisor.mn.gov/bills/text.php?number=HF4460&version=0&session_year=2018&session_number=0>