

1. The Netherlands and Belgium are currently the only two jurisdictions which have ruled that loot boxes constitute gambling.

a. Is this due to the way your legislation defines gambling, or is it because you have taken a broader policy approach to the issue?

It is because of the way our legislation defines gambling. In the Dutch Betting and Gambling Act (art. 1) the following is stated:

"(...) it is prohibited to provide 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."

There are two defining elements in this article:

1. "an opportunity to compete for prizes or premiums";
2. "unable to exercise a dominant influence".

Starting with the second element: When opening loot boxes, the player cannot influence the outcome. But only when the in-game goods from the loot boxes are transferable (when they have a potential economic value), there's an opportunity to compete for prizes or premiums; the first element. This is when the Netherlands Gambling Authority (NGA) considers the in-game goods as prizes. A (sophisticated) secondary market, is not covered by the Dutch Betting and Gambling Act.

Loot boxes are prioritized by the NGA, because loot boxes can possibly have a negative effect on the objective of preventing addiction as much as possible. The integration of loot boxes into games of skill, without the corresponding suitable addiction prevention measures and provisions, is inconsistent with Dutch gambling policy to limit the negative effects of games of chance as much as possible.

2. Other jurisdictions, including Australia, have taken the view that because virtual items contained in loot boxes do not have a monetary value, and games are not played for the purpose of winning money, then loot boxes do not constitute gambling.

a. Could you expand on why the Netherlands Gambling Authority has taken a different view?

Prizes are defined as all goods to which economic value can be assigned that accrues to the participants in the games of chance by virtue of their participation. Where they do not exist in cash, prizes shall be taken into consideration at their economic value.

Prizes can also be intangible game outcomes (items) that represent an economic value. When trading of items between players is possible, items represent a potential economic value. In practice, we see that items sometimes represent a value of thousands of euros.

3. Other jurisdictions have noted community concerns, particularly in relation to children suffering gambling-related harms as a result of loot boxes.

a. Could you expand on whether these concerns were considered by the Gambling Authority in deciding to ban loot boxes?

The NGA did not ban loot boxes. The NGA assessed loot boxes on the basis of existing legislation. The NGA has determined that loot boxes are in contravention of the Betting and Gambling Act because they meet the two defining elements of art. 1 (see the answer to question 1) and a license has not been granted pursuant to the Act (a licence cannot be issued for this offering under the applicable legislation). Before reaching that conclusion, the NGA has outlined whether there is sufficient reason to make an assessment. This assessment is made by examining any potential damage the game causes to the public goals of the NGA. Finally, the NGA assessed whether it involved a game of chance within the meaning of the Betting and Gambling Act.

However, to reach a conclusion, the NGA has outlined whether there is sufficient reason to make an assessment. This assessment is made by examining any potential damage the game causes to the public goals of the NGA. Finally, the NGA assessed whether it involved a game of chance within the meaning of the Betting and Gambling Act.

Loot boxes could possibly have a negative effect on the objective of preventing addiction as much as possible. The integration of loot boxes into games of skill, without the corresponding suitable addiction prevention measures and provisions, is inconsistent with Dutch gambling policy to limit the negative effects of games of chance as much as possible. This because of the following:

1. According to our analyses, loot boxes have, on average, an addiction potential between moderate and high. A lot of loot boxes have integral elements that are similar to slot machines. Loot boxes with a higher score are often comparable with blackjack or roulette in terms of addiction potential. Loot boxes with a lower score are comparable with small-scale bingo in terms of addiction potential.
2. A very large group of minors (75% – 95%) play video games. This group can currently be exposed to loot boxes. The risk of gambling addiction in this group is higher than in other groups.
3. The integration of loot boxes into games of skill provides a low threshold for playing a game of chance. This integration creates a mixture of games of chance and games of skill in an environment that is comparable, in physical terms, with the low threshold of the hotel and catering industry. Such mixing at these locations was prohibited in the Netherlands in the 1990s to reduce exposure to games of chance and to protect minors.

The NGA has not been able to establish that providers of the games implement control measures to exclude vulnerable groups such as minors and to prevent addiction. The NGA puts the protection of vulnerable groups, such as minors, first.

4. Does the ban on loot boxes extend to all types of loot boxes or only those where items are tradeable on marketplaces such as Steam?

The NGA did not ban loot boxes. Loot boxes contravene the Dutch law if items from the loot boxes are transferable. A liquid market is not a requirement to fall under Article 1, opening line and Clause (a) of the Betting and Gambling Act.

5. Could you explain the timeframe for the implementation of the ban, and how game developers have complied?

The NGA did not ban loot boxes. So far, we see that a large part of the market cooperates. We structurally evaluate which interventions lead to the desired effects. This requires carefulness.

The NGA cannot make any further statements about the timeframe or specific game developers.

a. In addition, what enforcement action and penalties are available to the Authority?

In general, the NGA can impose a fine (or another sanction, such as an Administrative Order for incremental penalty payments) of €830.000,- or 10% of the company's worldwide turnover. If administrative enforcement does not prove effective, the NGA can appeal to the Public Prosecution Service to prosecute criminal proceedings.

b. Do you have any information on whether users will avoid or have avoided the ban through the use of VPN technology?

No, there's no information available.

6. Is the Gambling Authority considering the implementation of other measures such as labelling or classification of games?

We structurally evaluate which interventions lead to the desired effects. We are also in consultation with the industry to see which measures and provisions can be taken to limit possible risks.