



Gaming and eSports: The Legal Status of Loot Boxes in Spain

1. Economic Transactions Within Video Games and the Evolution of the Business Model

Video games and the entire industry that encompasses them constitute a sector that has been growing meteorically for years. In Spain, they have become the **most widely used entertainment product by the population**¹, particularly since the onset of the global COVID-19 pandemic, offering many consumption avenues. These include the purchase of video games for traditional consoles (available on physical media or various other formats), cloud gaming services, digital downloads of mobile games, and even the viewing of online games

through streaming platforms such as Twitch, along with a multitude of events crafted around this medium.

The surge in consumption of this form of entertainment in Spain and globally has correspondingly led to a year-on-year exponential increase in the revenues of the companies in this industry. In 2022, the total turnover of the industry in Spain amounted to €2.012 billion². Moreover, it is anticipated that the global economic valuation of the video games market will reach US\$334 billion by the end of 2023³.

To provide a general overview, it is crucial to underline the functioning of the video game

¹ [Asociación Española de Videojuegos \(AEVI\): The Video Game Industry in Spain in 2022 \(pg.49\)](#)

² [Asociación Española de Videojuegos \(AEVI\): The Spanish video game industry in Spain in 2022 \(pg.16\)](#)

³ [Statista: Video Games - Worldwide](#)



industry through the main stakeholders in the sector: **publishers, event organizers, clubs/players, broadcasters, streamers/casters and sponsors**. An example is the eLaLiga Santander 2023, which is the official competition in Spain for the EA Sports FIFA 23 video game, running from March to May 2023. In this case, the publisher is Electronic Arts, the entity responsible for creating the EA Sports FIFA 23 video game; it also retains the intellectual and industrial property rights of the software. One of the event's organizers is LaLiga, which brings to the table its experience, brand, and prestige as an organizer of competitions, thereby enhancing the appeal of the virtual competition due to its "official" status. The clubs, which are the participants in the competition, contract players to represent them; in this instance, 38 clubs from the two top leagues of Spanish football in the 2022/2023 season selected their players through a draft system. Broadcasters include platforms like Twitch, YouTube, and DAZN, where the event is aired. The casters/streamers serve as the commentators. Lastly, sponsors, such as PlayStation and Banco Santander in this case, are the companies that invest money to promote their brand during the event.

The industry is continually generating increasing revenue, with a correlating rise in profits for its primary stakeholders. This exponential growth is attributable not only to an increasing number of fans and players globally but also **to evolving**

business models and advancements in technology. The most relevant changes in recent years have been new devices and, most importantly, the technological evolution of smartphones, which are generally more affordable than consoles or computers, hence vastly accessible to the worldwide populace. Consequently, mobile devices have overtaken others as the dominant platform for gaming, securing over half of the market, outpacing consoles and PCs⁴.

This technological shift has also encouraged the development of fresh business strategies to capitalize on the altered consumer behaviors more effectively. The conventional approach to purchasing video games, **Game as a Product** (GaaP), where users incur a one-time charge to experience the full game in either a physical or digital format, has lost ground to new monetization models, notably those based on the **Game as a Service** (GaaS) concept. These video games operate without upfront acquisition costs, and no monetary payment is required to access them. Thus, they are categorized as free-to-play, even though their revenue is primarily derived from in-game purchases that ensure a continuous stream of income for the publisher post-launch. While traditional games are viewed as a product, requiring only a single payment to enjoy all features, a video game operating as a service tends to keep players engaged and active for a more extended period. This strategy

⁴ [Statista - Number of digital video game users worldwide from 2017 to 2027, by segment](#)



maximizes the profitability of the developed software. Therefore, unlike the finite lifespan of earlier video games, those adopting a GaaS model are designed to offer a virtually endless experience through consistent updates and additions made by the publishers.

The **free-to-play** model has become so prevalent in this sector that, as of 2018, it accounted for 80 %⁵ of all revenue generated by the video game industry. This trend is evident in the financial reports of two of the industry's major publishers: Electronic Arts and Activision Blizzard. In its last fiscal year (April 2022 to March 2023), Electronic Arts generated US\$5.5⁶ billion from in-game purchases. Similarly, Activision Blizzard reported earnings of US\$5.886⁷ billion from in-game transactions alone in the 2022 fiscal year, constituting well over two-thirds of the total annual revenue for both corporations.

In-game purchases are typically conducted using virtual currency, which is acquired through transactions involving real money. These purchases can take various forms, including, among others: **one-time purchases**, wherein a single payment grants permanent access to a specific item (such as a Fortnite skin); **season pass purchases**, which provide limited-time access to a variety of bonuses (as seen in the Fortnite model); and **micro-transactions**, which entail low-cost purchases of known digital objects for a specified amount.

⁵ [SuperData \(Nielsen\) - 2018 year in review](#)

⁶ [Statista - Net revenue generated by Electronic Arts from fiscal 2016 to 2023, by composition](#)

Furthermore, accompanying the trend of in-game purchases and transactions, the so-called “**loot boxes**” has surfaced as a popular choice. These loot boxes are **virtual packages that contain objects or additional functionalities related to the specific video game in question. Players can acquire them as rewards for their skill and ability in the game, through regular gameplay, or alternatively, purchase them with real or virtual currency.** A distinctive feature of loot boxes is the element of surprise; users remain unaware of the contents until they have acquired and opened the box, introducing a randomness to the process. While with other forms of in-game acquisitions players are fully aware of what they are purchasing and its respective value, in the case of loot boxes, the rewards are dictated by chance, potentially resulting in items of high or low value in the game. This dynamic establishes a scenario where players might not attain the item they desire even after making a payment. Essentially, they are paying for the potential of what might be, rather than a guaranteed item, and this could sometimes mean paying more than the acquired item's true value.

For instance, in the EA Sports FIFA 23 video game's Ultimate Team mode, when you open a “Premium Gold pack”, the user is guaranteed to receive 12 cards, each having an overall value of +75 or more⁸. However, the hope is to secure the

⁷ [Statista - Net revenue generated by Activision Blizzard from 2014 to 2022, by composition](#)

⁸ [FIFA Ultimate Team - YOUR GUIDE TO: FIFA ULTIMATE TEAM PACKS](#)



best possible card, ideally one approaching the maximum overall value of 99. Clearly, the higher the overall value of the card, the more difficult it is to obtain. Furthermore, the chances of securing the best card are not cumulative; they are determined separately for each pack. This kind of reward can be accessed either through in-game rewards or by using virtual currency, costing 7,500 Coins or 150 FIFA Points. For reference, the conversion rate between Euros and FIFA Points is as follows: €10 equals 1050 FIFA Points, while €20 equates to 2200 FIFA Points. Depending on the video game, loot boxes can offer aesthetic enhancements, such as League of Legends skins, or items that grant in-game advantages, facilitating faster progression as seen in “EA Sports FIFA 23 Ultimate Team” mode packs.

The characteristics outlined above have rendered loot boxes a lucrative enterprise. In 2020, the video game industry generated US\$15 billion solely from loot boxes, a figure projected to grow to US\$20 billion by 2025⁹. Despite this, the annual growth rate of consumer spending is anticipated to decelerate¹⁰, largely due to the emerging regulations governing the loot box market.

2. The regulation of loot boxes in Spain

Spain could become a pioneer in establishing a

⁹ [Juniper Resarch - VIDEO GAME LOOT BOXES TO GENERATE OVER \\$20 BILLION IN REVENUE BY 2025](#)

¹⁰ [Statista - Annual growth of consumer spending on gaming loot boxes and currency packs worldwide from 2021 to 2025](#)

dedicated law to regulate loot boxes. The Ministry of Consumer Affairs has long warned for the necessity of governing these mechanisms in video games, likening them to gambling activities that foster addictive, impulsive, and pathological consumer behavior. This concern is amplified considering that in Spain, a significant portion of the population — 79 % of individuals aged 6 to 11, 84% of those aged 11 to 14, and 71 % of those between 15 and 24 — actively engage with video games¹¹, and are consequently exposed to such content.

The initial idea was to oversee it by amending Spanish Law 13/2011, dated 27 May, which pertains to the regulation of gambling (hereinafter, “**Gambling Law**”)¹², effectively categorizing loot boxes as games of chance. However, it now appears that the government plans to institute a dedicated law to govern loot boxes, opting not to include this concept within the existing Gambling Law framework. This decision stems firstly from the intricate nature of loot boxes, characterized by their diversity and the rapid pace of their evolution, which complicates the preemptive incorporation of prospective technologies into the law. Secondly, the ancillary status of loot boxes sets them apart from the games of chance included in the Gambling Law; loot boxes operate not as standalone entities but utilize video game platforms to reach consumers.

¹¹ [Asociación Española de Videojuegos \(AEVI\): The Spanish video game industry in Spain in 2022 \(pg.25\)](#)

¹² [Spanish Law 13/2011, of 27 May 2011, on the regulation of gambling](#)



It should also be borne in mind that if these mechanisms were to be regulated under the Gambling Act, game publishers that incorporate loot boxes into their offerings would be subject to the stipulations outlined in the act. These regulations encompass various obligations such as abiding by restrictions on advertising, sponsorship, and the promotion of gambling activities unless appropriately authorized. Moreover, they would need to uphold consumer protection measures and encourage responsible gambling policies, among other requirements. In addition, these publishers would find themselves subject to Spanish Law 10/2010, enacted on 28th April, which mandates the prevention of money laundering and the funding of terrorism¹³. This would imply that players must disclose the nature of their professional or business activities to the publishers, verifying their identity with reliable documents such as ID cards each time they engage with the video game. Nevertheless, the government, through the enactment of Spanish Law 23/2022 on 2 November, which amends Law 13/2011 from 27th May concerning gambling regulation¹⁴, has expressed a commitment to formulate a series of guidelines in collaboration with industry stakeholders. These guidelines aim to, at the very least, oversee the commercial communications of these products, include the requisite consumer information addressing the risks

associated with usage and potential misuse, and establish the security measures necessary for proper storage.

In light of the foregoing, the Ministry of Consumer Affairs has formulated a **preliminary draft legislation**, to regulate the random reward mechanisms found in interactive leisure software products¹⁵. This initiative aims to regulate the use of such “virtual products” in the public interest, protect consumers, and prevent potential public health issues associated with gambling.

The Preliminary draft legislation has defined loot boxes as “**random reward mechanisms**” (hereinafter, “RRM”), and only regulates those in which random rewards are exchangeable between the participants of the video game or exchangeable for real money or virtual objects (euros, cryptocurrencies, NFT, FIFA Points, etc.) through any platform, either within the videogame itself or any other available platform (for example, in EA Sports FIFA 23 loot boxes can be opened from the videogame itself through a console such as the PlayStation5, or through the videogame's mobile application or official website¹⁶).

How does this law seek to protect consumers? On the one hand, **it prohibits individuals under the age of 18 to use RRM**s, placing the responsibility for this prohibition on the entities that exploit or market RRMs. These entities are mandated to introduce systems for

¹³ [Spanish Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing](#)

¹⁴ [Spanish Law 23/2022, of 2 November, which amends Law 13/2011, of 27 May, on the regulation of gambling.](#)

¹⁵ [Preliminary draft legislation regulating randomised reward mechanisms associated with interactive leisure software products](#)

¹⁶ [EA Sports FIFA 23 - FUT web application](#)



documentary identity verification, and optionally, biometric identification mechanisms like facial recognition technologies, popularly known as Face ID. In addition, they are required to incorporate parental control systems with the objective of barring minors from accessing RRM on any device.

On the other hand, obliging publishers to introduce three mechanisms would help users to control their consumption of RRM, especially the most vulnerable groups such as people with gambling disorders. Specifically: **self-exclusion mechanisms** that permit users to temporarily suspend their access to RRM for a duration ranging between a minimum of 3 months and a maximum of 5 years. During this period, the users should not be able to modify the chosen timeframe and should be eligible for a refund of the money used exclusively for activating RRM; **mechanisms to set a spending limit**, thus allowing the user to voluntarily establish a maximum amount to be spent on RRM; session start mechanisms, which necessitate users to define, before initiating each session, both the maximum time and the highest amount they are willing to spend on RRM in that session.

Regarding the right to consumer information, one of the most important rules concerns the disclosure of odds. Publishers are mandated to **provide clear information regarding the odds** of obtaining various virtual items through RRM that players spend real or virtual money on—a

practice already adopted by some publishers such as Electronic Arts. For instance, in its EA Sports FIFA 23 video game, the company clearly includes the odds: within an Ultimate Team Premium Gold pack, the likelihood of acquiring a player with an over 75 rating is 100%, a player rated over 82 stands at 18%, and one rated over 84 is at 4.2%.

Furthermore, consumers are entitled to be informed of **the real monetary value, in euros, corresponding to the RRM in question**, to avoid confusion that can arise from transactions involving virtual currency. Similarly, the consumer will have the right to **know the number of RRM activated, the amount spent in euros, and the time spent on activating them**. This transparency aims to provide the user with a comprehensive context, allowing them to assess their engagement with these mechanisms.

Lastly, pursuant to Royal Decree 958/2020, dated November 3, on commercial communications of gambling activities¹⁷, the preliminary draft legislation restricts advertising that promotes RRM, but not the advertising of the video game that encompasses the RRM. Consequently, RRM-related advertising is **permitted exclusively between 1:00 and 5:00 a.m. on audiovisual media, and on social networks or platforms primarily dedicated to offering information or content on games governed by the Gambling Act (like betting websites) or pertaining to RRM**. However, such promotions must include

¹⁷ [Spanish Royal Decree 958/2020 of 3 November on commercial communications for gambling activities.](#)



messages and warnings emphasizing prevention and safety while using these mechanisms. Advertising RRM through **outdoor mediums**, such as physical posters at metro stations, is prohibited.

To implement this legal framework, the preliminary draft legislation introduces an **administrative sanctioning system**, entrusting the Directorate General for the Regulation of Gambling with the authority to impose sanctions. The potential violations are categorized as very serious (such as the publisher allowing minors access to the RRM), serious (like the publisher failing to fulfill the mandate of informing consumers on the safe use of RRM), or slight. These infringements carry the possibility of incurring fines, which can escalate up to a maximum of 3 million euros for very serious offenses.

This Preliminary draft was approved on 28 June 2022, and published on 1 July 2022. It has not yet commenced its legislative journey, as various opinions and specialized reports are still being sought. However, according to the Preliminary draft, the law will enter into force on 2 January 2024.

3. Status of loot boxes in other countries

In Europe, the legal treatment of RRM is very heterogeneous. **Belgium** stands as one of the countries enforcing a stricter approach. In 2018,

the Belgian Gambling Commission released a report¹⁸ determining loot boxes in certain scrutinized games — namely, Overwatch, EA Sports FIFA 18, and Counter-Strike: Global Offensive — qualify as gambling. This classification is due to the presence of all the fundamental characteristics of gambling, such as elements of playing a game, betting, chance, and outcomes of win or loss. Consequently, publishers were mandated to remove them, facing potential financial penalties of up to €800,000.

In the **Netherlands**, the government has announced its aim of banning loot boxes¹⁹, especially after a highly criticized ruling by the Court of the Administrative Jurisdiction Division of the Council of State²⁰. This court reversed a previous ruling against Electronic Arts, absolving the American company of a €10 million fine initially imposed for not aligning the Ultimate Team mode packages with Dutch gaming regulations. The court justified this reversal by categorizing the packages as elements of a skill-based game with an added factor of chance, thereby excluding them from being classified as gambling or betting activities requiring a license. In the **UK**, the government has chosen to allow the industry to self-regulate rather than imposing legislation²¹. This decision was reached through an agreement with the UKIE (UK Interactive

¹⁸ [Belgian Gambling Commission - Loot boxes](#)

¹⁹ [Dutch Government - Updating the rules of the game](#)

²⁰ [Council of State - Judgment EA Sports FIFA 22](#)

²¹ [UK Government - Government response to the call for evidence on loot boxes in video games](#)



Entertainment Industry body)²², wherein basic principles were established, including a prohibition on access to loot boxes for individuals under 18 without parental or guardian consent. In **Finland**, a draft to revise the Finnish Gambling Act is under consideration, with the proposition to classify loot boxes as gambling²³. Meanwhile, in **Austria**, where no specific regulations exist concerning loot boxes, the Hermagor District Court ruled that the FIFA Ultimate Team card packs are in violation of the Austrian Gambling Act²⁴. It is noteworthy that this lawsuit was directed at Sony Interactive Entertainment Network Europe Ltd., given that the packs were bought via the PlayStation Store, establishing the purchase contracts with Sony, not with Electronic Arts. As per the court's ruling, Sony is mandated to refund the user for the purchases, although the company retains the right to appeal this decision.

The European Union, through the European Parliament, has passed two significant resolutions regarding loot boxes. One such the European Parliament Resolution of 10 November 2022 on e-sports and video games²⁵, emphasizes the necessity for greater transparency surrounding these mechanisms. Furthermore, it encourages the European Commission and the member states to consider legislative measures

where appropriate, with the aim of protecting the most vulnerable players. The parliament welcomes the guidance presented in the “Guide on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market (Directive 2021/C 526/01)²⁶,” which seeks to shield loot boxes consumers from what they consider unfair commercial practices.

Furthermore, the European Parliament Resolution of 18 January 2023 on consumer protection in online video games: a single European market approach²⁷ calls on the European Commission to create a European Video Games Strategy so that it can become a global market benchmark, while evaluating the sufficiency of the existing consumer protection legislation in addressing the concerns posed by loot boxes. If found inadequate, the resolution advocates for the introduction of a legislative proposal to amend the EU legal framework on video games, aiming to create a harmonized European regulatory environment that upholds a high standard of consumer protection. This includes contemplating whether to impose a ban on loot boxes, either for all users or exclusively for minors.

Outside of European borders, in the **United**

²² [UKIE - The 11 industry principles are designed to meet UK Government objectives to improve protections for all players.](#)

²³ [Finnish Parliament - Legislative Initiative Gambling Act](#)

²⁴ [Austrian court rules that FIFA loot boxes violate gambling laws](#)

²⁵ [European Parliament resolution of 10 November 2022 on e-sports and video games](#)

²⁶ [Guide to the interpretation and implementation of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market](#)

²⁷ [European Parliament resolution of 18 January 2023 on consumer protection in online video games: a single European market approach](#)



States, there is no specific regulation. However, Epic Games, the publisher behind the Fortnite video game, faced a fine of US\$ 520 million, with US\$ 245 million of this amount attributed to the game's facilitation of exceedingly accessible in-game purchases, which could be made with a single click and without requisite parental supervision²⁸. Meanwhile, in **Canada**, where specific regulation is also absent, a British Columbia Supreme Court judge ruled that while loot boxes do not constitute gambling, they can be subject to legal action under charges of deceptive practices²⁹.

In order to assess all possible scenarios, it is useful to analyze the effects 5 years after the banning of loot boxes by the **Belgian Gaming Commission**. According to a study conducted by Copenhagen University professor Leon Y. Xiao³⁰, the loot box ban has been **counterproductive**. According to his study, in 2022, 82 games out of 100 analyzed still contained loot boxes, due to the lack of effective enforcement of the ban. In his analysis, Professor Xiao observed that many of the companies that have removed loot boxes have been overtaken by those that have not. This, coupled with the Belgian Gambling Commission's failure to exert control and impose fines, has evidently fostered unfair competition. Furthermore, he contends that the ban has not served the consumers favorably; a substantial number of users and parents labor under the

misguided belief that they enjoy heightened protection post-ban, a perception detached from the actual state of affairs.

Another paradigmatic case is that of **Apple**. Since 2017, the tech giant has mandated that video game creators who incorporate loot box in their games disclose the odds of obtaining the various items within these loot boxes if they want their games to be available on the Apple Store. However, a study by researcher Leon Y. Xiao in 2021 revealed that **a third of the video games containing loot boxes available on the Apple Store did not include the required odds**³¹. Also noteworthy is the action of PEGI, the body responsible for classifying video game content at European level. It penalized the publishers Activision Blizzard (for “Diablo Immortal”) and Plaion (for “Hunt: Showdown Bounty Hunter - Limited Edition”) with fines amounting to **€5,000 for neglecting to inform users about the contents of loot boxes in their video games**.

4. Final comments

It seems clear that, due to the risks inherent in this kind of activity, it is essential to foster transparency and security within the system to avoid or reduce the potential problems and dangers that users of these kinds of games might encounter. Not only would this protect users, but it would also shield the companies themselves,

²⁸ [USA Federal Trade Commission - Epic Games](#)

²⁹ [British Columbia Supreme Court decision - Electronic Arts](#)

³⁰ [Study Leon Y. Xiao - Breaking Ban: Belgium's Ineffective Gambling Law Regulation of Video Game Loot Boxes](#)

³¹ [The Guardian - More than 850 people referred to clinic for video game addicts](#)



as regulating the activity should help eliminate unfair commercial practices executed by some. Companies should be able to monetize their creations without jeopardizing the well-being of users or engaging in unfair commercial practices. It remains to be seen what will become of the aforementioned Spanish Preliminary draft legislation (political inclemencies permitting), which aligns with the European Parliament's call for states and the European Commission to study the possibility of adopting legislative measures to regulate loot boxes. The proposed model represents one potential approach. Yet, as noted in the report accompanying the Preliminary draft legislation by the Ministry, other viable options exist, some of which have already been adopted in various countries. These alternatives include

(i) the self-regulation of the video games industry, (ii) the implementation of a shared or “co-regulatory” system where the administrative body primarily assumes a supervisory and oversight role, and finally, (iii) regulating loot boxes as a form of gambling and, consequently, amending the Gambling Act to for this purpose. Regardless of the path taken, all stakeholders should stay attentive to the developments of the Preliminary draft legislation and any potential new developments that may occur, to be well-prepared and understand how legislative interventions that may occur will affect their activities. Statim will persist in providing updates and analyzing the actions undertaken by the legislator.