

# Report from the Forum for Gaming Trends on grey area games

To the Ministry of Culture from the Forum for Gaming Trends, 1 November 2018

The Forum for Gaming Trends was appointed by the Norwegian Gaming Authority in December 2016 at the request of the Ministry of Culture.

The group was appointed because current gambling legislation has not kept up with developments in technology and technology applications. The group's task is to follow trends and share knowledge about games in the grey area between video games and gambling.

As of 1 November 2018, the Forum for Gaming Trends consists of the following members:

- Anders Sæve Obrestad from the Consumer Authority
- Khalid Ezat Azam from the Norwegian Media Authority
- Jan Erik Kroglund from Barnevakten (Kids and Media Foundation)
- Marianne Lerdahl, a Norwegian game developer and industry representative
- Rune Mentzoni, psychologist and researcher from the University of Bergen (UiB)
- Torgeir Waterhouse from ICT-Norway
- Trude G. Høgseth Felde from the Norwegian Gaming Authority

Trygve Hermansen from the Norwegian Gaming Authority acts as the secretariat.

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## Main message from the forum

The regulation of traditional gambling is based on the category to which the games belong. Ever since the Hamar Committee wrote its report in December 2014, experts have pointed out that video gaming and social network games increasingly include elements known from gambling, and that the boundaries between gambling and video gaming are not necessarily as clear as they used to be. New generations of gamers are emerging who play a part in influencing the market, with needs and wishes that are different from those of previous generations.

There are different types of loot boxes. They differ from other lotteries in many ways, because they exist in a virtual world, where both the stake and prize can be virtual. The Forum for Gaming Trends believes that the current practice of loot boxes<sup>1</sup> in video games gives cause for concern, because they can have such clear similarities to lotteries and gambling. It is unclear whether the current Lottery Act is intended to cover functions and services such as loot boxes. Loot boxes also raise questions concerning consumer rights. Some versions of loot boxes meet the criteria in the current Lottery Act for stakes, draws and prizes, and, in all these cases, the Forum for Gaming Trends can see no reason why they should be exempt from regulation.

It is difficult to clearly define the scale of the challenges associated with loot boxes. The research of which we are aware in this area indicates a certain connection between loot boxes and problem gaming. Enquiries from the general public to the authorities are unclear in terms of what they actually perceive to be the challenge with loot boxes. Many parents highlight the difficulty of controlling their child's spending in the virtual gaming world, but it is often unclear whether their enquiries concern money spent on loot boxes or other elements of a game. Adult gamers have said that they believe that loot boxes destroy the value of a video game as a game. Relatively few people have contacted the authorities to point out gaming problems. However, there could be many reasons for the lack of enquiries about loot boxes, including that the public is unaware that loot boxes could be regulated by gambling regulations or consumer protection regulations. However, there is not enough research at present for the Forum for Gaming Trends to conclude either way whether loot boxes play a role in the development of problem gaming or whether they could be addictive.

There are many varieties of the phenomenon of loot boxes, and the Forum for Gaming Trends therefore believes that, in their work on regulating gaming, the authorities should look at what characteristics of a game are generally problematic, irrespective of whether it is a video game or a more traditional type of gambling. The Forum for Gaming Trends believes that the Ministry should evaluate whether it is necessary to change the 'stake' and 'prize' criteria in the definition of a lottery, particularly whether it must be an absolute condition that the prize can be converted into money. If this is not to be an absolute requirement, it must be made clear which other characteristics the prize must have in order to be covered by the definition of a lottery.<sup>2</sup>

Irrespective of the means of regulation that is used, the Forum for Gaming Trends believes that the Norwegian authorities should play a more active role in future work on loot boxes, in order to utilise the potential of current and future regulations in the fields of both gambling and consumer protection. It is important that legislation enables effective enforcement, and enough resources must also be available to take preventive and effective action at an early stage. Norway is a small market,

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<sup>1</sup> Loot box is a general term for a lottery-like reward model in video games; cf. section 3.

<sup>2</sup> Lottery: activity in which participants may for a stake acquire a prize as a result of a draw, guesswork, or other procedure which wholly or in part produces a random outcome, cf. section 1 of the Lottery Act, letter a).

and the fact that loot boxes are used by large international companies represents a challenge in the enforcement context – particularly in relation to gambling. Other countries are also working on these problems, and in terms of enforcement in relation to international companies, the preferred course could be to work with other authorities at the Nordic, European or international level, although it is uncertain what such efforts could actually achieve.

The Forum for Gaming Trends believes that it will be beneficial to keep this interdisciplinary forum active, with authorities, researchers and people from the industry monitoring developments in the gaming market and contributing to a valuable exchange of information and knowledge sharing.

## 1. Rapid developments in the market are blurring the boundaries between video gaming and gambling

Over the last 10 to 15 years, the video game industry has undergone major changes. In the past, games with limited content were mainly sold in physical shops. Since then, the tools for making video games have become readily available. Combined with new mobile platforms and digital distribution, this has contributed to an enormous increase in the number of games on the market. Game developers have seen a strong reduction in players' willingness to pay, and players have higher and higher expectations of the content of games. Games with more modest marketing budgets have found it extremely difficult to achieve visibility in the market. On PCs, the leading distribution platform, Steam, has experienced a dramatic increase in titles launched each year: from 112 titles in 2007 to 7,672 in 2017.<sup>3</sup> Game developers are also launching more than 500 game titles<sup>4</sup> every day on App Store.

These developments in the industry and market have been accompanied by new business models for games. Several of these models are based on the concept that elements of the game are free, and that players who want to can spend more money in order to enhance their experience of the game or to remove advertising. Offering new content after a game has been launched can be an important way of maintaining community in the player base. The lifespan of a game competing with other titles can also be extended by keeping it relevant. This is achieved by regularly updating the game with new content that is either free or available for purchase; this is often described as reflecting a transition from regarding video games as a product to regarding them as an ongoing service. Cosmetic updates geared to major public holidays or events are an example of this. For example, the players in the video game Overwatch could buy a pink outfit (skin) to support the fight against breast cancer. It is worth noting that, in some cases, it is the players who call for more content in games. Loot boxes are an element in some of these new business models.

The combination of luck and skill, including reward systems with a content that players do not know in advance, are common elements of video games, and are not unique to loot boxes. Nor is this synonymous with gambling and will not necessarily be covered by the Lottery Act's definition of lotteries,<sup>5</sup> although it may be if the criteria in the definition are met.

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<sup>3</sup> <https://www.statista.com/statistics/552623/number-games-released-steam/>

<sup>4</sup> <https://www.mcvuk.com/development/500-games-launched-daily-on-app-store-cost-40p-on-average>

<sup>5</sup> Act relating to lotteries, etc., chapter 1, section 1, letter a).

## 2. The Ministry of Culture wants to learn more about grey area games

In its letter of 27 June 2018, the Ministry of Culture refers to the ongoing legislative project in the gambling field and to the questions discussed in connection with games in the grey area between gambling and video , including loot boxes.

The Ministry refers to the fact that the Forum for Gaming Trends defines loot boxes as digital crates, packages or the like, which contain random rewards that can be used in the game.

The Ministry wishes to assess whether, and if so how, grey area gaming can be regulated in new gambling legislation. In order to make the most informed decision, the Ministry wants more background information about grey area games and the challenges that they present. The Ministry points out that loot boxes are one of several examples of how problems arise in relation to the definition of a prize in gambling legislation. In connection with the legislative project, it is important to adapt the regulations to the rapid technological developments that are taking place. This includes the question of whether or not gambling legislation should apply to this kind of grey area gaming.

The Ministry has asked the Forum for Gaming Trends to

- explain grey area games and the questions that they raise
- discuss alternative methods of regulating grey area games, and evaluate the consequences of the different alternatives
- discuss the advantages and disadvantages of the choice of regulation method
- describe the practical (financial and administrative) consequences there would be if grey area games were to be defined as gambling, including the consequences for the Ministry of Culture, the Norwegian Gaming Authority, game providers and any other affected parties
- assess any other relevant factors.

### 2.1 Delimitation

When the Forum for Gaming Trends was established, its mandate was to monitor and keep up to date with developments in social network games, video games and other electronic games, as well as digital and virtual currencies. The mandate also included sharing knowledge with others.

The Forum for Gaming Trends interprets the Ministry of Culture's commission of 27 June 2018 as a supplementary commission for a statement from the Forum on a defined area of the original mandate. A full review of all grey area games would be impossible within the given limits, because there are many concepts on the market that resemble gambling and could fall into this category. Another important point is that the market is constantly changing, and an assessment of all existing grey area games would not necessarily provide the Ministry with all the answers to how new regulations should be designed. The Forum for Gaming Trends has therefore evaluated a selection of grey area games and delimited the task in relation to the commission from the Ministry.

The Ministry of Culture has requested more background information about grey area games and the problems they entail. The Forum for Gaming Trends has chosen to limit the content of this report to loot boxes, since it is in this area that we currently see most challenges in relation to the definition of a lottery. It is not possible to give a full presentation of all the challenges, but the Forum for Gaming Trends will focus on the most prominent ones. The Forum will also discuss various means of regulation, but it does not interpret the Ministry's commission as a request for a concrete proposal for new regulations in Norway.

## 2.2 Grey area games discussed by the Forum for Gaming Trends

At meetings in September 2017 and March 2018, the Forum for Gaming Trends has looked at what types of grey area games exist. The Ministry of Culture specifically mentions loot boxes as an example of a grey area concept that gives rise to definition problems in relation to the criterion of 'prize' in gambling legislation.

When the Forum held its start-up meeting in September 2017, cryptocurrency – particularly Bitcoin – was a big issue in the media and in society otherwise. At the first meeting, cryptocurrency was therefore presented and discussed. We also discussed skin gambling, eSports, currency gambling, fantasy sports and social network games. It was agreed that it was most pressing to focus on a topic that, at that time, we called 'computer games betting', which the Forum believed included skin gambling, loot boxes and other purchases in games with elements of gambling.

With regard to eSports and odds betting in eSports, currency gambling and fantasy sports, we see few or no challenges with respect to the definition of a lottery.

There are many challenges associated with cryptocurrency, but in the main, the Forum for Gaming Trends does not consider them to be problems in relation to gambling legislation, but to other types of regulation, e.g. financial legislation. The Forum has therefore not found reason to look into this in more detail in this report.

The Norwegian Gaming Authority has previously pointed out that skin gambling falls under the current definition of a lottery, provided that the skins used as a stake or prize can be converted within or outside the game.

Social network gaming is a broad term that was first used by the Hamar Committee in the report 'Gambling without borders' (Grenselse pengespel) from December 2014. The Hamar Committee defined social network games as games on social network platforms or games offering other types of social interaction in the games. These games can be paid games, but usually tend to be free or offer the option of making purchases in the game, through in-game purchases. The games can involve prizes, and include rather more than the international gaming categories of social gaming and social gambling. They can include casino games and video games, and they can contain loot boxes.

On 17 November 2017, Electronic Arts Inc. (EA) launched Star Wars Battlefront II. This game was heavily marketed and came from a well-known, major video game producer. The game offered the option of purchasing loot boxes that could give the player advantages in the game. This led to heated debate in the gaming community, because the game was sold at full price. Previous games in the series had already been criticised for not offering a complete gaming experience for no additional outlay. The Norwegian Gaming Authority and other Norwegian authorities received complaints from various quarters. Parents criticised it because children were being pressured to make purchases. Players and game developers criticised it because they thought that loot boxes that gave players advantages in the game spoiled the game experience. The gambling authorities in several countries were critical because this part of the video game contained an element of gambling.

In autumn 2017, the Norwegian Gaming Authority stated to the media that some loot boxes could fall within the scope of the Lottery Act because they fulfil the three criteria in the definition of a lottery: stake, prize and random outcome. Unlike some other European gambling authorities, the Norwegian Gaming Authority has not assessed this in relation to specific games; see section 5.3.

At the Forum's meeting in March, the topic was computer games betting, particularly the challenges associated with loot boxes.

After these initial discussions in the Forum for Gaming Trends, the Forum concluded that we will only focus on loot boxes in our response to the Ministry of Culture. We have found no other grey area games that present similar challenges in relation to the interpretation of the current definition of lottery.

### 2.3 The dividing line between loot boxes and similar physical concepts

Loot boxes are not a new phenomenon. We are familiar with similar concepts from the physical world: football cards (Panini cards) are well known, and have been around for a long time. In the physical world, you buy a pack without knowing the content, in the same way as, when you buy a loot box in a video game, you do not know what you will get for your money. In the public debate in the past year, many people have pointed out that there is no reason to treat virtual loot boxes differently than physical purchases, and that football cards or other options of purchasing something with an unknown content can be described as loot boxes.

The Forum for Gaming Trends believes that physical concepts, despite having several features in common, cannot be seen as equivalent to loot boxes in video games. There are several reasons for this.

There are big differences in availability between physical and virtual products. To buy a physical pack of cards, you usually have to visit a physical shop. It is also possible to order physical packs of cards online, but it will still take time before you have the item in your hands. It is far easier to buy virtual loot boxes, which are included in very many different video games. With respect to gambling, research shows that, when evaluating the risk of developing gambling problems, the speed of the draw is the most important factor. If gambling research can be transferred to video games, this will mean that the quicker and easier it is to buy and open a package in order to find out what it contains, the greater the likelihood that the concept could result in gaming problems. In addition, physical cards will normally be on the market in a limited volume with lengthy production and delivery times. In a video game, it is easier to produce new virtual packs of cards and make them available immediately.

In the case of loot boxes, audio and visual effects are used actively. The actual process of opening FIFA Ultimate Team card packs is designed so that, the more valuable the content, the more colourful and 'explosive' the opening process is. If a FIFA player is extremely lucky, the card pack will contain what is known as a walkout, in which a high-ranked football player walks across the screen when the pack is opened, to emphasise how exclusive the content is.

Some video games allow players to buy loot boxes with content that can give them advantages in the game. In these games, the best items are generally also the rarest, and they are seen as extremely attractive by enthusiastic players. We see this relatively clearly in reaction videos showing players receiving attractive content in their loot boxes, and in games where there is a black market for attractive items, which can change hands for thousands of kroner. No one expects a big prize when they open a Panini pack. Every sticker is equally common or uncommon, and none have a higher value than others. One of the motivators for opening packs in FIFA is acquiring content that you would not otherwise be able to afford.

Virtual concepts such as loot boxes make it possible for game developers to adapt the content to an individual player's profile. In other words, they can use the player's data to give the him or her customised content in a loot box. Players have no way of knowing whether game developers are currently using this kind of information to influence the content of the loot boxes they are buying.

That in itself is a problem, because players will expect to have the same chances as others of acquiring the item they want.

The Forum for Gaming Trends therefore believes that there is a significant difference between loot boxes in video games and other, physical surprise packages. In this report, we will focus exclusively on loot boxes.

### 3. Loot boxes

Loot box is a general term for a lottery-like reward model in computer gaming. This model is based on regularly rewarding players with a loot box (surprise package) containing virtual items that are unknown to the player until it is opened. Some games issue loot boxes as a reward for achieving certain targets in the game. In other games, players can buy packages for virtual currency that they have earned during the game. And in others, the player can spend money on buying the packages. It is common for players to be able to acquire packages using several of these methods within the same game. Many games have their own virtual currency that the player can buy for money. We have chosen to concentrate on games in which players can spend money on buying packages, directly or indirectly.

Since the content of these packages is unknown when you buy them, this means that you must open an unknown number of packages in order to acquire a particular item. Players can receive packages by playing the game, but the process is much faster if they buy packages for real money. Games vary enormously in terms of how much money players have to spend before they can be sure that they will acquire the item they want. In most cases, this will also be impossible to calculate, since there is rarely any information about the probability of acquiring a particular item.

#### 3.1 Different loot box categories

Although the majority of loot boxes have certain features in common, there is a great deal of variation in how the reward model is implemented in the games. For example, there are major differences in how the phenomenon is presented visually, since this tends to be tailored to the game's theme or style. In the war game Call of Duty WW2, the boxes look like old ammunition crates, while in the Hearthstone fantasy card game, they look like leather-bound packs of cards. In other words, there are big variations, but there are two dimensions that attract most attention from both consumers and regulatory authorities.

##### 3.1.1: Cosmetics versus upgrades

The first dimension concerns the rewards received by the player and the function they have in the game. It is common here to distinguish between rewards that are merely cosmetic, and rewards that give the player access to upgrades or new content. Cosmetic rewards provide access to new outfits (skins), dances, emojis and other superficial elements that change the appearance of the player's player character. In contrast, there are rewards in the form of upgrades that provide access to new or better characters, abilities and weapons. These will either give the player an advantage in the game or enable the player to experience new content.

Although cosmetic rewards can have great value for the player and give the player status within the game, these rewards are regarded as more acceptable. This is because the player can perform just as well and experience the game's full content without having access to special characters or weapons. However, rewards that function as upgrades are viewed as more illegitimate. This is because they establish a direct connection between spending and performance. Game enthusiasts often use the derogatory designation 'pay-to-win' to describe this type of game or mechanism.

### 3.1.2: Closed versus open economy

The other dimension concerns whether the rewards from loot boxes have a financial value, cf. the lottery definition's requirement that a prize must be of financial value. This question is closely connected to each game's business model, and to whether it is possible to convert digital items or currencies into real money. In many video games, the answer is no, since items are locked to the player account with no possibility for players to trade with each other. However, there are video games in which it is possible to convert items into financial assets, either directly through the game's official auction system or indirectly through unofficial online black markets. In some cases, it will be difficult to assess whether the economy of a game is open or closed.

To illustrate the differences between loot boxes, we have created a typology that categorises well-known video games along two dimensions. In the table, we start with Star Wars Battlefront II, in the incarnation the game had when it was launched in autumn 2017. At that time, the game had loot boxes containing rewards that gave players advantages and therefore sparked strong reactions. The game has since removed this type of reward, but we have chosen to present the example in the typology in order to illustrate how the game's loot boxes as they were at that time can be interpreted in comparison with other popular video games.



The main function of the typology is to illustrate nuances and differences between four specific examples. None of the games can be said to have a completely open economy, only degrees of one. In the FIFA football game, players can acquire player cards from loot boxes and trade them with other players through an official auction system. This system only permits the use of virtual currency, and does not allow players to convert assets into real money. However, there are unofficial channels that enable virtual FIFA currency to be bartered or sold on external websites and auctions. The use of such services contravenes the game's terms of service and can result in exclusion from the game. In our opinion, the game's internal auction system, combined with the possibility of trading on the black market, constitutes a certain degree of open economy.

CS:GO (Counter-Strike: Global Offensive) facilitates the sale and purchase of virtual items through the auction system on the digital game platform Steam for PC. Income earned by players from the sale of skins is transferred to the player's account. Money cannot be taken out of Steam's ecosystem, but can be used for future purchases of video games or virtual items, on a par with other means of payment. In other words, the money has the same status as a gift voucher, which means that, as shown in this example, the game has the most open economy. There is also a black market for direct trading and online casinos with items from CS:GO and other video games that use Steam's auction system. The platform has tightened up on this, partly through the introduction of a week's 'quarantine period' for trading virtual items.

In an investigation carried out by the Dutch gambling authorities in 2018, it emerged that 4 out of 10 video games they investigated had mechanisms that violated the country's gambling legislation. This was because of the possibility of converting prizes into assets through official or unofficial sales channels.

## 4. Relevant regulations

### 4.1 Lottery and gambling regulations

Norway's lottery and gambling regulations currently consist of three different laws:

- Act no 11 of 24 February 1995 relating to lotteries, etc. (the Lottery Act)
- Act no 103 of 28 August 1992 concerning gambling schemes (the Gambling Act)
- Act no 3 of 1 July 1927 relating to totalisator betting (the Totalisator Act)

Gambling and lotteries can be defined as an 'activity in which participants may for a stake acquire a prize as a result of a draw, guesswork, or other procedure which wholly or in part produces a random outcome'. In this report, we use the term 'gambling' about any lottery or gambling game that meets these three conditions.

To simplify our descriptions, we also use the term gambling regulation, which covers all the regulations governing lotteries and gambling.

### 4.2 Scope of the Lottery Act

In response to questions from the press and public, the Norwegian Gaming Authority has stated that it is in doubt about whether functions and services such as loot boxes are a lottery. There are different types of loot boxes, and they differ from other lotteries in many ways, because they exist in a virtual world, where both the stake and prize can be virtual. Loot boxes have very clear characteristics that are similar to the characteristics of lotteries and gambling, but they also raise questions concerning consumer rights. There are no clear guidelines from other countries that can be drawn on; see Section 5.3. Some countries regard loot boxes in video games as gambling, while others feel that loot boxes have nothing to do with gambling.

It is unclear whether the Lottery Act is intended to cover functions and services like loot boxes. It is apparent from the preparatory works to the Lottery Act<sup>6</sup> that it will be appropriate to exempt individual events from the definition of a lottery, i.e. competitions whose nature means it would not be relevant for them to be covered by the Lottery Act. In some cases, the Ministry of Culture and the Norwegian Gaming Authority have both referred to these preparatory works, and have assessed whether certain concepts should not be regarded as lotteries because they lie outside the intended

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<sup>6</sup> Proposition No 58 to the Odelsting on the Act relating to lotteries, etc. (1993-94)

scope of the Lottery Act. This practice provides no clear guidelines about when a concept is not covered by the Lottery Act, and we have not studied this in more detail.

Section 1, second paragraph of the Lottery Act also states that ‘in doubtful cases the Ministry will decide with binding effect whether a lottery exists and if so what sort of lottery it is’. The Act thereby allows the Ministry to determine whether a concept falls outside the scope of the Lottery Act.

If loot boxes are deemed to be covered by the Lottery Act, they must be assessed in relation to the definition of a lottery in Section 1, first paragraph, letter a) of the Lottery Act, which defines a lottery as an ‘activity in which participants may for a stake acquire a prize as a result of a draw, guesswork, or other procedure which wholly or in part produces a random outcome’. All three of these conditions – stake, prize and wholly or partly random outcome – must therefore be met if the activity is to be deemed to be a lottery. It follows from Section 6 of the Lottery Act that it will be prohibited to offer a loot box that meets the three conditions without having a permit for this. A lottery permit may only be granted for socially beneficial or humanitarian purposes, and not for private financial gain. Furthermore, lotteries that do not have a permit may not be marketed, cf. Section 11 of the Lottery Act.

Current gambling regulations contain several means that can be used to stop illegal lotteries and gambling. The Norwegian Gaming Authority can demand that parties that offer, market and operate lotteries and gambling without a permit in Norway must stop the activity. The Norwegian Gaming Authority may also instruct Norwegian banks and financial institutions to stop payments of deposits and profits from gambling that do not have a permit in Norway. Failure to comply with an order to stop the activity can result in a coercive fine by the Norwegian Gaming Authority.

The Norwegian Gaming Authority has implemented several measures to ensure that the regulations are complied with. Despite this, many parties offer, market and operate lotteries and gambling in violation of the regulations. This is because the lotteries and gambling games are offered by foreign gambling companies via the internet, and the Norwegian Gaming Authority has limited possibilities of enforcing the regulations in such cases.

Report no 12 to the Storting (2016-2017) ‘Everything to win’ examined the current instruments for stopping illegal lotteries and gambling on the Internet, and proposed new measures. Its proposals included examining whether it is possible to use DNS notification as an information mechanism on websites that offer gambling without a permit in Norway. Following a private members’ bill in the Storting, it was decided to look into the option of using DNS blocking against websites that offer gambling without a permit in Norway.

Even if the Lottery Act were to be deemed not to apply to loot boxes, the purchase of loot boxes will be covered by the general consumer protection legislation provided for in the Marketing Control Act and the Cancellation Act; see more about this in sections 4.3 and 4.4 below.

## 4.3 Can loot boxes be lotteries pursuant to the definition in the Lottery Act?

### 4.3.1 Stake

There are few examples of Norwegian lotteries where the stake can be something other than money, but in the Recycling Lottery, the player’s stake takes the form of recycled bottles inserted into a reverse vending machine. When someone puts the bottles into the machine, they can choose between receiving a coupon that can be converted into cash, or participating in the lottery. If they choose to participate in the lottery, the player is immediately told whether they have won or not. We are not aware of any examples of stakes in the form of virtual means of payment in Norwegian

lotteries, but internationally, we know that some online casinos accept cryptocurrency as stakes in their games, and that skins can also be used as the stake in skin gambling.

In the case of loot boxes, the stake will be what the player must pay in order to buy a loot box. With respect to the purchase of loot boxes, the Forum for Gaming Trends has discussed whether the player's personal data or the time he spends watching an advert in order to be allowed to open a loot box can be regarded as a stake. Legislators and authorities in the field of consumer protection in the EU have acknowledged that, in a number of contexts, personal data and the collection of such data have replaced payment in money. The result is a development whereby consumer protection is gradually being extended to apply to services for which the consumer does not pay in money, but instead shares personal data with the enterprise in question.

The EU's Consumer Rights Directive of 2011, which was implemented in the Norwegian Cancellation Act, applies to agreements concerning digital content that is not delivered on a physical medium, such as some types of games and apps – regardless of whether the consumer pays money to or shares personal data with the enterprise. The European Commission's proposed amendments to the Consumer Rights Directive, which have not yet been adopted, propose also making the Directive applicable to digital services for which consumers do not pay money but instead share personal data with the enterprises – for example for services such as social media, webmail or cloud services. In its justification for the proposal, the European Commission writes about such services:

*'Given the increasing economic value of personal data, those services cannot be regarded as simply "free".'*

The European Commission has also submitted proposals for a directive about certain aspects of agreements concerning the supply of digital services, and it also proposes making the directive applicable to instances where the consumer shares personal information with the enterprise instead of paying in money.

However, this development is still at an early stage, and sharing personal data cannot be equated with the payment of money in every context. The Forum for Gaming Trends would like to remark that it would have very wide-ranging ramifications if the sharing of personal data with an enterprise were to qualify as a stake as defined by the Lottery Act. This would mean that almost all online competitions would fall under the definition of a lottery. Furthermore, different considerations apply to gambling than to consumer protection. For example, consideration for problem players would not be as strong if participation is contingent on sharing personal data. Although uncritical sharing of personal data is not ideal, no one no one will in principle get into financial difficulty because of it. Data protection legislation also stipulates limits on such activities.

It is uncertain whether spending one's time, sharing personal data and paying virtual stakes earned in games are covered by the current definition of stake, but purchasing loot boxes with money or with the game's internal currency that was purchased with money will meet the requirement.

It is clearly practice to interpret the Lottery Act to mean that, if one can pay to participate in a draw, this qualifies as a stake and applies to the entire concept, even if it is also possible to participate in the draw for free. We will therefore assume that, if a game offers players the option of buying loot boxes, this also qualifies as a stake.

#### 4.3.2 Prizes

The preparatory works and established practice regarding the interpretation of the Lottery Act have clarified that a prize can consist of money, objects or other items of financial value. Essentially, anything of value can be regarded as a prize according to the Lottery Act. When loot boxes are purchased, the player can win prizes in the form of virtual items that can be converted into money or vouchers.

When assessing lottery-like competitions in relation to the definition of a lottery, it is common practice for items of insignificant value to be excluded from the concept of prizes. Typical examples are advertising material and symbols of participation such as simple trophies, certificates, coffee mugs, badges, posters, tee-shirts etc. With regard to what falls within the concept of prizes, a minimum financial limit has never been stipulated.

Items in loot boxes can vary enormously in terms of financial value: Some are almost worthless, while others have a high collectible value. In some video games, skins can be converted, either within or outside the game. In the CS:GO video game, common and low-value skins can be converted for only a few pence. The value of items can also vary over time. Items that are of financial value may qualify as a stake or prize pursuant to the Lottery Act. Consequently, it may be natural to value worthless or almost worthless items in the same way as prizes that, according to practice, are not covered by the definition of a prize.

A loot box in a video game will normally contain a virtual item. However, the content of different loot boxes may have extremely different values. The content of a loot box could give a player higher status, increased popularity or a feeling of performing better in the game – i.e. **subjective value**. It is difficult to measure the subjective value of the content of a loot box, since it will depend on who has won it, and whether the winner feels that they have received something of value. For many people, therefore, the subjective value of a loot box could be a key factor that motivates their purchase. Some loot boxes may also give the player the possibility of performing better in the game. This can be of both subjective value and objective value, depending on whether it is possible to convert the content.

**The objective value** will be what the virtual item can be converted into, either within the game or on websites outside the game if it is possible to take the virtual item out of the game. It will be easier to measure the value in such cases. If the virtual item can be bought in the game's own shop, we can use its price as the basis for the item's value. Alternatively, we must assess whether it is possible to convert the virtual item, and at what price.

There is no case law and little administrative practice that can tell us which prizes are of financial value pursuant to the definition of a prize. As regards administrative practice, the Forum is only aware of the Gaming Board's 2010 decision concerning Alta Laksefiskeri Interessentskap, which could have a bearing on the interpretation of the question of whether it is a requirement that a prize must be convertible.

**Alta Laksefiskeri Interessentskap, case 10/02241 decided by the Gaming Board.** The case concerned a draw for the right to buy fishing permits for an extremely popular salmon river. The participants paid to participate in the draw, in which there were two quotas. One quota was reserved for residents, who were not permitted to sell on their fishing permits. The other quota was for non-residents, who were permitted to sell on the permits. The appellant believed that this practice was an illegal lottery, but only partially won the case. The Gaming Board stated that the part of the competition in which it was possible to sell on the fishing permits included a prize, because the winner could sell the fishing permit at a higher price and make a profit. However, in the part of the competition where people were not permitted to sell on their fishing permits, this would not constitute a prize, provided that the winner had not paid below market price for the fishing permit. The Board therefore concluded that draws for the right to buy fishing permits in the quota reserved for non-residents constituted a lottery in accordance with section 1, first paragraph, letter a) of the Lottery Act.

This decision cannot necessarily be interpreted to mean that it is a requirement that a prize must be convertible, but it clearly shows that a prize won in a draw will be deemed to be a prize if it can be

converted into money, allowing the winner to make a profit by selling it. However, it is unclear whether a loot box will fall within the scope of the Lottery Act if it cannot be sold on or converted into money within or outside the game.

In the debate about loot boxes and whether the content of a loot box should be regarded as a prize, several parties have argued that the assessment should take into account the virtual, subjective value of the item, and not just its potential objective value. It was argued that it cannot be a requirement that the item must be convertible. In the assessment of whether a loot box is a lottery, this will mean that it is the player's subjective perception of the content of the loot box that should count when determining whether the Lottery Act will apply or not.

Practice pursuant to the Lottery Act does not allow for subjective prizes to be included in the definition of prize. A prize must consist of money or something else of financial value. The prize must be verifiable, i.e. something that has an objective value or results in an actual advantage in the game. In theory, an actual advantage in the game can be a prize, but measuring the magnitude of this could present challenges if it does not have a clear value. The prize must therefore be convertible within or outside the game. This means that loot boxes with a content that can be converted may qualify as a prize pursuant to Section 1, first paragraph, letter a) of the Lottery Act.

We have found no cases in which individual prizes or virtual currency used as a stake in a lottery pursuant to Section 1, first paragraph, letter a) of the Lottery Act have been reviewed by the Gaming Board as an appeals body, or assessed by the Ministry of Culture pursuant to Section 1, second paragraph of the Lottery Act.

#### 4.3.3 Random outcome

If the outcome of the competition is outside the individual's control, the competition will have a completely or partially random outcome. This condition is **always** met if the winner is selected by a draw. It is this type of chance outcome that characterises traditional lotteries. The Act's wording of the random outcome condition also covers any 'other procedure which wholly or in part produces a random outcome'. This means that other methods of drawing a winner are also included, if they contain elements of chance.

A player who buys a loot box does not know in advance what is in the box. It will therefore be completely or partially random whether the player receives a loot box containing, for example, a valuable skin.

#### 4.3.4 Summary of loot boxes and the conditions in the definition of a lottery

The discussion of loot boxes in relation to the definition of a lottery shows that the most difficult assessments concern whether the stake and prize can be converted into money (or something else of financial value). Based on the above assessments, for loot boxes this would mean the following:

- Some video games allow in-game items to be converted (open economy) and, in these games, the purchase of loot boxes may be covered by the definition of a lottery.
- Some video games have mechanisms that make such conversion technically possible, but that will be in breach of the game's internal rules if the player decides to do so. The consequence of being found to be in breach of the game's internal rules is usually that the player's user is blocked, and it is uncertain whether such games will be covered by the current definition of a lottery.

- Other video games have a completely closed economy in which it is not possible to convert in-game items, and, in these games, the purchase of loot boxes will not normally be covered by the definition of a lottery.

## 4.4 The Marketing Control Act and Cancellation Act

### 4.4.1 General

The Marketing Control Act regulates all marketing of goods and services aimed at consumers in Norway, which means that the Act applies to the marketing of loot boxes to consumers in Norway. The Consumer Authority supervises compliance with the Act, and large parts of the regulations are the same as those in the EU.

According to the Marketing Control Act, all marketing must be in accordance with good commercial practice. Marketing will always be unfair and thereby prohibited if it is misleading. Marketing is misleading if it contains false information or is in any other way likely to mislead consumers in relation to a number of factors, including the main characteristics of the product or its price. Marketing is also misleading if it omits or hides material information that consumers require if they are to be able to make an informed economic decision in a given context. This also applies if the enterprise presents the information in an unclear, ambiguous or inappropriate manner.

The Consumer Authority can prohibit contractual terms and conditions that are unfair to consumers. In its assessment, it focuses on the balance between the parties' rights and obligations, and the clarity of the contractual relationship. Contractual terms and conditions that are in violation of mandatory legislation will always be unfair. Non-mandatory statutory rules provide guidelines on how to assess what is fair.

The Consumer Authority also supervises compliance with the Cancellation Act. This Act applies to contracts and the sale of goods and services concluded through distance contracts, including online contracts. The Cancellation Act thereby applies to agreements for the purchase of loot boxes in games. These regulations are also the same as those in the EU.

The Europe-wide regulations in the Cancellation Act do not automatically apply to gambling, but this is an option open to the member states, and Norway has chosen to also make the Cancellation Act applicable to such services. However, since only Norsk Tipping and Norsk Rikstoto are permitted to market gambling on the internet in Norway, and they do not market loot boxes, this is of limited practical significance in relation to this report.

The Cancellation Act contains a number of requirements regarding what information must be provided before agreements are made, including information about the main characteristics of the product or service. The business must provide this information clearly and in accentuated form before the consumer places an order.

### 4.4.2 Special provisions relating to the protection of children

The Marketing Control Act does not prohibit marketing to children, but has special rules for the protection of children. When marketing is aimed at children, or could be seen or heard by children, a business must exercise particular caution with regard to the impressionability, lack of experience and natural credulity of children. It must also take into consideration age, development and other factors that make children particularly vulnerable, and the younger the age group, the more stringent the assessment will be.

In assessing whether marketing is unfair and thereby prohibited, emphasis shall be placed on whether the marketing is aimed at children in particular, or whether it is particularly likely to influence children due to its nature or the product. If this is the case, the particular vulnerability of

the child must be taken into consideration. This means that the marketing will be assessed more stringently, and that less is required to be in breach of the rules of the Marketing Control Act.

It is prohibited to directly exhort children to buy an advertised product or persuade their parents or other adults to buy the product for them.

#### 4.5 The Consumer Authority's work on in-game purchases of virtual items and the possibility of monitoring whether loot boxes are in compliance with the Marketing Control Act

Loot boxes that are not covered by gambling regulations are nonetheless regulated by consumer protection legislation. The Marketing Control Act and Cancellation Act will apply to loot boxes that are purchased in games, which means that enterprises are required to provide information before an agreement is made, and that misleading marketing is prohibited. Although large parts of the Marketing Control Act and Cancellation Act are identical to the provisions in the EU, the Consumer Authority does not know of any cases in any of the member states where these regulations have been applied specifically to the marketing of loot boxes.

However, both the Consumer Authority and other European consumer authorities have been working on the purchase of virtual items in video games in general – of which loot boxes form a subgroup. In December 2013, the Consumer Authority and other consumer authorities in Europe jointly imposed requirements ordering Apple and Google to change their marketing of games through app stores. The result of this was that Google and Apple undertook not to use the word 'free' when games include in-app purchases. The standard settings were also adjusted so that payment must be confirmed with a password for each purchase, unless consumers actively choose to change these settings themselves. Guidelines were also developed for app developers in order to prevent children being directly exhorted to make purchases,<sup>7</sup> Although this work has had an effect, the Norwegian Consumer Council states that it receives between 100 and 150 applications annually from consumers who have incurred large costs because children have made purchases in games using their parents' bank cards.

Because there have been no specific cases concerning loot boxes, it remains unclear how stringent requirements the consumer authorities may set under the regulations. Assessments pursuant to the Marketing Control Act and Cancellation Act are partly discretionary, and the stringency of the requirements that may be set can also vary from game to game, depending on the game's target groups and which type of loot boxes are offered.

- The Cancellation Act's disclosure requirements apply to loot boxes that are purchased in games, and the enterprise must clearly and in an accentuated form provide information about the most important characteristics of the loot box. It has not been clarified through practice whether it is sufficient pursuant to the Cancellation Act to state that the consumer will receive a number of random virtual items, or whether enterprises may be required to also state the probability of receiving the various virtual items the loot box could contain.
- If the marketing of loot boxes that can be purchased in a game misleads consumers about the content of the loot box, or about the chances of obtaining the various virtual items the loot box could contain, this would be unfair and prohibited by the Marketing Control Act. This will also apply if the algorithms for the loot box contain content tailored to an individual player's profile based on player behaviour, if this is not disclosed in the marketing.
- Directly exhorting children to buy a loot box or persuade their parents or other adults to buy the loot box for them is prohibited by the Marketing Control Act.

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<sup>7</sup> <https://www.forbrukertilsynet.no/apple-google-gjor-in-app-kjop-spill-tryggere>

Based on a discretionary assessment, the Marketing Control Act may also be deemed to cover other types of misleading, aggressive or unfair practice that are in conflict with good commercial practice. The assessment will be more stringent if the practice is aimed at children or other vulnerable consumer groups.

Because many of the assessments pursuant to the Marketing Control Act are discretionary, guidelines for businesses form an important part of the Consumer Authority's work. This applies in particular to relatively new concepts. The Consumer Authority's experience is that major global companies – such as the major platforms and game developers – can best be influenced through international cooperation.

However, consumer protection legislation is poorly suited to addressing the particular considerations on which gambling regulations are based, such as the consideration for problem players.

#### 4.6 The Norwegian Media Authority participates in PEGI

Norway and more than 35 other European countries receive age recommendations for video games from Pan European Game Information (PEGI), a Europe-wide system for the age classification of video games. The system was established in 2003 to provide parents and guardians with simple information about the content of video games. PEGI was established by ISFE (Interactive Software Federation of Europe), but regulatory authorities from several European countries were also involved. It is a classification system that has elements of self- and joint regulation. PEGI is the European video game industry's self-regulating industry body, but member states also contribute input and views, which gives them an opportunity to raise national cases with both the PEGI organisation and other member states.

The PEGI system has five different age recommendations (3, 7, 12, 16, 18) and nine different content descriptors (violence, nudity, bad language etc.). Labelling video games with PEGI recommendations is compulsory across most of the major gaming platforms, including Nintendo, Sony Play Station, Microsoft Xbox and Google Play. However, some companies either have their own system for labelling content, such as iOS (Apple), or do not require age labelling, such as Steam (Valve).

In Norway, we do not have special laws regulating video games, which means that the existing age labels on video games are only a consumer recommendation. There is no legal authority to prevent children under the age of 18 from buying games containing, for example, depictions of gross violence. However, there are statutory provisions that regulate video game trading in Norway: video games may be governed by the General Civil Penal Code's Section 236 if they contain scenes of gross violence for entertainment purposes, Section 317 if they contain pornography, and Section 311a, which concerns the depiction of sexual abuse of children or depictions that sexualise children.

PEGI's assessment system contains a criterion for gambling and activities with elements of gambling, which raises the age recommendation for the video game and gives it a content symbol. However, the criterion only applies to activities that teach or otherwise encourage the player to gamble or to bet money on traditional gambling. A specific example is the Western game Red Dead Redemption, which meets the criterion by teaching the player poker. Loot boxes are not currently included in this definition. PEGI's stance is that it cannot classify loot boxes and other activities as gambling until national authorities have done so.<sup>8</sup>

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[https://www.gamasutra.com/view/news/307601/PEGI\\_is\\_leaving\\_the\\_verdict\\_on\\_loot\\_boxes\\_up\\_to\\_gambling\\_commissions.php](https://www.gamasutra.com/view/news/307601/PEGI_is_leaving_the_verdict_on_loot_boxes_up_to_gambling_commissions.php)

## 5. Is it necessary to regulate loot boxes?

### 5.1 Is it possible to effectively regulate and enforce regulations concerning loot boxes?

In section 3, we explained that loot boxes are a general term describing a lottery-like reward model in computer gaming.

As described, the loot box model is based on the concept that players can obtain loot boxes containing virtual items that are unknown to the player until they are opened. In some games, you can receive loot boxes as a reward for achieving certain targets. In other games, you can buy them for virtual currency or real money. Virtual currency can be purchased or earned in the game. There is often a combination of these variants. Since the content of a loot box is unknown when a player buys it, they must open an unknown number of boxes in order to acquire the virtual objects they really want. Although it is possible to acquire loot boxes by playing the game, it is generally much faster to buy them for real money than to acquire them only through playing. Games will vary in terms of how much money players have to spend to be sure that they will acquire the item they want. It will also be impossible to calculate this, since information is rarely provided about the probability of acquiring a particular item.

The loot box concept thus covers a great many different types of loot boxes. Some of them may fall within the scope of the Lottery Act pursuant to the current regulations, while others clearly do not. In other words, it is extremely difficult to unambiguously define what a loot box is. The distinction between gambling and computer gaming is unclear, and the Forum therefore believes that it is important that any new regulations focus on the characteristics of the game rather than on the game category. This would make future regulations technology-neutral and enable them to be applied to future concepts.

However, if the Ministry deems it necessary to develop separate regulations specifically for loot boxes, an alternative could be to define the characteristics of the game that the authorities feel it is necessary to regulate.

For example, the authorities could stipulate rules concerning

- the game's use of visualisation and audio effects when loot boxes are opened
- the player's possibility of setting a limit on exposure to loot boxes (opting out)
- the player's possibility of setting a limit on money spent on loot boxes
- age limits
- a fair and transparent draw
- a requirement that the game must disclose the probability of winning
- marketing.

There are several challenges relating to the potential regulation of loot boxes. It is difficult to exercise effective supervision and implement sanctions against businesses based abroad. In its work on stopping illegal gambling in Norway, the Norwegian Gaming Authority has found that many foreign companies do not respect the way Norway regulates gambling. In the global context, Norway is a small market. Gambling regulations are fragmented and not harmonised at the European and international level. It is probable that this could also be a problem for international operators in the video game industry. Internationally, the video game industry is enormous, and it is uncertain whether companies with a registered address abroad will respect regulations applying specifically to Norway.

It would be unfortunate if, in practice, regulations specific to Norway only have consequences for the Norwegian video game industry, which is a developing industry. Video games are a focus area for the

government, which wishes to strengthen the industry and help increase sales and exports of Norwegian video games.<sup>9 10</sup> The Forum is not aware of any complaints to the Norwegian Gaming Authority, Consumer Authority or other bodies about loot boxes in Norwegian-produced games.

It is uncertain to what extent Norway can have special Norwegian regulations for areas other than gambling. This is because most consumer rights are regulated at the EU level (fully harmonised), which means that there are limits to how far Norway can go in terms of introducing special regulations in the consumer rights field.

Payment transfer blocking and DNS blocking are measures that can be used to stop illegal gambling being offered in Norway, but the Forum does not believe that these measures could be used against loot boxes. Most of the payment transactions for video games will be legal, while transactions linked to the purchase of loot boxes will be illegal. It is uncertain whether the prohibition of payment transfers could be applied to loot boxes. It would probably also be a disproportionate intervention to stop all transactions connected with a video game, since the majority of them would be legal. DNS blocking could be a suitable measure for stopping illegal gambling being offered, but in relation to the loot box problem, DNS blocking is regarded as a less suitable tool. If it were at all possible to stop the purchase of video games and their content through DNS blocking, this would mean that the whole game would be blocked, and not just the part of the game that is deemed to be a lottery.

#### 5.1.1 Are loot boxes addictive?

In the research context, loot boxes are a new phenomenon that have received little attention. Psychologically, loot boxes are very closely related to items such as scratchcards. Potentially, they have even more powerful mechanisms to tempt players to keep making new purchases, since the act of opening boxes is often accompanied by appealing sounds and animations that send signals to your brain that you are about to get something you want. Whether the content of loot boxes can be converted into money is not really all that interesting in this context. This is because the virtual items that players can acquire will be intrinsically valuable to the players.

A question that researchers will probably investigate more closely in future is whether the purchase of loot boxes or exposure to other mechanisms in the grey area between gaming and gambling can serve as a recruitment arena for subsequent participation in traditional types of gambling. So far, one Norwegian survey has shown that a problematic relationship with video games constitutes a risk factor for a problematic relationship with gambling two years later. The survey specifies that it is not known why this relationship exists, but speculates that gambling-like mechanisms in video games (such as loot boxes) could be part of the explanation. A recent UK study has also demonstrated a connection between a problematic relationship with gambling and higher consumption of loot boxes in gaming, although, also in this case, the researchers were not able to conclude why this relationship exists.

#### 5.1.2 One example: FIFA Ultimate Team

The FIFA series is a popular football game that is released annually by the developer EA Sports. The version that was released in 2008 (FIFA 09) was the first time that the game included the Ultimate Team mode, which has now become the game's most popular mode. In Ultimate Team, the aim is to collect digital football cards that can be put together to form teams the player can use to compete against other players or against the computer. The game includes cards featuring football players from all over the world, who all have different characteristics, strengths and weaknesses. The cards are given a strength ranking from 0 to 100, where 0 is the weakest and 100 the strongest, as well as a

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<sup>9</sup>Source: <https://shifter.no/5-millioner-til-internasjonalt-satsning-pa-dataspill/>

<sup>10</sup>Source: <http://www.pressfire.no/nyheter/PC/12961/tilgi-dem-de-vet-ikke-hva-de-gjr>

range of specifications for skills such as pace, shot power and passing. For example, the Brann striker Steffen Lie Skålevik's player card has a total ranking of 66 in the most recent version of the game (FIFA 19), while Cristiano Ronaldo has a ranking of 94.

Since the different cards have different skills, it is attractive for Ultimate Team players to acquire the best cards, because this directly improves a player's chance of winning matches against others. You can acquire new player cards, either by buying them from other players through the game's transfer market or by opening card packs whose content you do not know in advance (loot boxes). FIFA has its own virtual currency (FIFA coins) that you can use to buy cards directly from the transfer market or to buy card packs. You can also buy card packs for real money, while you can only buy cards from the transfer market with FIFA coins. You can earn FIFA coins by

1. playing matches
2. trading, i.e. buying cards on the transfer market and then selling them on at a higher price, or
3. buying card packs for real money or FIFA coins and selling on the content on the transfer market.

To illustrate the difference in value between the best cards in the game and the least attractive, on 17 October 2018, Steffen Lie Skålevik could be bought for 250 FIFA coins (equivalent to about 50 øre) on the transfer market, while Cristiano Ronaldo cost 2,150,000 FIFA coins, which at that time was equivalent to packs worth around NOK 4,700. By comparison, at the moment it is possible to buy 2,150,000 coins on the black market for around USD 340. Since every match played generates between 500 and 1,000 FIFA coins, it is an impossible task for most players to acquire Ronaldo's card just by playing, and it will also be extremely difficult to earn this amount through trading. The only remaining alternative is to buy card packs for real money in the hope of either getting lucky and finding Ronaldo's card in your pack, or collecting enough other cards to be able to sell them on for currency that eventually adds up to enough to buy Ronaldo. However, as players you are given extremely little information about what value you can expect from packs. This means that it is not possible to form an opinion about how much money you will realistically have to spend in order to get hold of the card you want.

In order to examine more closely what players get for the money they spend on card packs, Rune Mentzoni of the Norwegian Competence Center for Gambling and Gaming Research at the University of Bergen (also a member of the Forum for Gaming Trends) carried out a project in which he spent around NOK 31,500 on card packs in FIFA 18. The objective was to identify what value this would yield in the game, to find out how many of the most attractive cards turned up after spending this amount, and to see whether that amount was sufficient to be able to put together the team that, at the start of the project (February 2018), would be the most expensive in the game.

Mentzoni opened a total of 651 packs, which cost from NOK 10 to NOK 170 per pack. This resulted in a total of 9,961 cards. Of these, 6,992 were player cards. (The rest were outfits, stadiums and other types of cards of no interest to this project, and that are generally regarded as of low value in the game.) The total value of the cards amounted to 14.2 million FIFA coins. By comparison, the dream team that was put together had a total value of 40.5 million FIFA coins. This meant that more than NOK 30,000 was nowhere near enough to put together the best team available.

Perhaps the most striking aspect was the proportion of the most attractive cards that turned up in the packs. For example, the game has a special category for legends who are no longer active in the sport, such as Maradona and Ronaldinho. These are known as icons in the game, and the possibility of using them on your team was marketed as an important reason for buying FIFA 18. None of these cards turned up in the packs, which must be considered surprising. Similarly, of the 'ordinary' cards, none of the best players (cards with a total ranking of over 90) turned up in the packs. It may also be worth noting that EA provides no information about how great one's chances are of getting these

cards in a pack. In other words, consumers have no way of knowing how much money, statistically, they will have to spend in order for these cards to turn up.

Finally, the cards that did turn up in the packs proved not to be distributed randomly (as in a random draw), but had a distribution that was skewed in favour of less valuable cards. It was possible to demonstrate this by comparing the distribution of the cards in existence in the game with the distribution of the cards that turned up in packs.

In addition to this, we should mention that the Ultimate Team mode is full of exhortations to buy packs, and that the game is designed to tempt players to buy packs in the hope of improving their team and thereby their chance of winning matches. Since this currently has no effect on the age labelling, the game also has a lower age limit of 3 years. Children are subjected to considerable pressure to purchase through the game, and they are also tempted to buy streamers who release content from the game. Many of the most popular YouTube clips about FIFA, which often have several million views, focus on opening packs.

We believe that it is a problem that players are subjected to this type of pressure to buy without sufficient accompanying information about what they can expect in terms of content, and where the amounts they spend can quickly mount up.

5.2 What do we know about the extent of and the problems associated with loot boxes?

The Norwegian Media Authority conducts annual surveys about children and adolescents' relationship to video games.<sup>11</sup> These surveys show that almost all young boys play (96 per cent in the 9 to 18 age group), while two out of three (63 per cent) of girls of the same age have played video games. Of the 10 most popular games in 2018, there are at least 6 that contain a type of loot box. This shows that many of the children who play video games in one form or another are exposed to loot boxes.

The table below provides an overview of the games that children and adolescents (age 9 to 18) reported that they played in autumn 2017. The relative popularity of games will change over time, but, to provide a rough overview of the market for video games, we have compiled some information about these games in the table below. Some of the games come in several versions, so in this table we selected the versions that we considered to be the most relevant. The table may contain errors, and the games can change over time, so the table is only intended to provide insight into the variation in the market.

| Video game <sup>12</sup> | Publisher | In-game purchases | Loot boxes | Convertible? | Buy advantages |
|--------------------------|-----------|-------------------|------------|--------------|----------------|
|--------------------------|-----------|-------------------|------------|--------------|----------------|

<sup>11</sup> Norwegian Media Authority's survey: Children and media 2018 - Table taken from <http://www.medietilsynet.no/barn-og-medier/dataspill/>

<sup>12</sup> Source: Children and Media 2018 - In autumn 2017, children and young people in the 9-18 age group were asked 'Which game do you play most?', where it was possible to give a total of three answers. Answers belonging to the same series of games were merged in the survey, which means that FIFA could consist of answers such as FIFA, FIFA 17 and FIFA 18. In this table, we have used the version of a game series that was most contemporary in autumn 2017. This only applies to game titles that have several versions within the same brand.

|                                      |                                |     |     |                            | in the game? |
|--------------------------------------|--------------------------------|-----|-----|----------------------------|--------------|
| FIFA 18                              | Electronic Arts                | Yes | Yes | Only through third parties | Yes          |
| Minecraft                            | Mojang                         | Yes | No  | No                         | No           |
| Overwatch                            | Blizzard Entertainment         | Yes | Yes | No                         | No           |
| GTA V (online version)               | <a href="#">Rockstar Games</a> | Yes | No  | No                         | Yes          |
| Call of Duty: WWII                   | <a href="#">Activision</a>     | Yes | Yes | No                         | No           |
| Roblox                               | Several (Roblox Corporation)   | Yes | Yes | Only through third parties | Partially    |
| Fortnite: Battle Royale              | Epic Games                     | Yes | No  | No                         | No           |
| PUBG (PLAYERUNKNOWN'S BATTLEGROUNDS) | PUBG Corporation               | Yes | Yes | Yes                        | No           |
| The Sims 4                           | Electronic Arts                | Yes | No  | Uncertain                  | Uncertain    |
| Rocket League                        | Psyonix                        | Yes | Yes | Only through third parties | No           |

As we see from the table, the most popular games are well distributed across several video game publishers. All the games offer in-game purchases, and at least six of them contain some type of loot box. There is only one of these games that has a clearly open economy, where it is possible to convert skins into something of financial value or money. The Forum for Gaming Trends is aware that there are several other video games with an open economy that are not included in this table.

The media have shown interest in this field, and both the Norwegian Gaming Authority and the Norwegian Media Authority have on several occasions issued statements to the media about loot boxes during the last year.

The Norwegian Gaming Authority estimates that it has received around 25 written and verbal enquiries from the general public about loot boxes in the last year. Several of those who get in touch say that they are speaking on behalf of several people. The Consumer Authority states that it has received five written enquiries about loot boxes since January 2017, while the Norwegian Media Authority has received four written enquiries from the public.

The Norwegian Consumer Council estimates that it receives between 100 and 150 enquiries a year about overconsumption of games by children. In many games and platforms, players have to create a profile in which they also enter their card details. Situations have arisen where parents have created a profile in their own name, which the child uses, and where the child has used the parent's registered payment card to buy services for large sums of money in games. The amount debited varied between NOK 5,000 and 80,000. There are no figures for how many of these enquiries concern overconsumption linked to loot boxes, and how many apply to other types of purchases in games.

The helpline is a low threshold service for people with a gaming problem. The helpline is intended to help people in crisis, refer them to other services and collect data on gambling addiction. The

statistics show that around 20 per cent of the calls to the helpline are about video games. The helpline told the Forum for Gaming Trends that it is mainly parents who call them, and that parents know surprisingly little about what games their children are actually playing. The parents can often not even explain why they feel that their child has a problem. Only some of the calls are about loot boxes, but some are also about spending money. It is not clear whether this concerns the purchase of loot boxes or other purchases in a game. The helpline often finds that there is an underlying reason behind a child's changed behaviour, such as moving house or parents getting divorced.

In the discussion about loot boxes, a recurring theme is the way loot boxes tend to be aimed at child gamers. The Forum for Gaming Trends is aware that adults have contacted the treatment services in order to get help for a problematic relationship with loot boxes. Adults with such problems are also mentioned in several media stories on the subject. Problems with loot boxes are therefore not something that exclusively affect child gamers. However, since the known cases are mainly reported through the media and there is a lack of systematic research in this area, it is currently difficult to say how widespread these problems are.

### 5.3 Experience from other countries

#### 5.3.1 The Netherlands

In the winter of 2018, the Netherlands carried out a study<sup>13</sup> of 10 video games containing loot boxes. They investigated whether the video games had loot boxes that were in violation of Dutch gambling legislation. The conclusion was that 4 out of 10 video games had loot boxes that breached the regulations, because it was possible to transfer the items won in loot boxes between player profiles in the game. In April, the four publishers received a letter from the Netherlands Gaming Authority. They were informed about the breach of the rules, and were requested to stop offering loot boxes that violated the regulations, or to make necessary changes to the way they offered loot boxes. If they did not comply with this, the authorities would consider imposing fines or other sanctions as a result of the violations.

Two of the publishers have since made changes to how they offer loot boxes and no longer operate in breach of the regulations. The other two video games still offer their loot boxes in a manner that violates the regulations. So far, the Dutch authorities have not issued any fines or imposed other sanctions on the publishers that are still in breach of the regulations.

#### 5.3.2 Belgium

In the winter of 2018, the gaming authorities in Belgium carried out an evaluation<sup>14</sup> of four video games with loot boxes, and assessed them in relation to Belgian gambling regulations. Overwatch, FIFA 18 and CS:GO were all deemed to be in violation of the regulations. The fourth game tested was Star Wars Battlefront II. This game was also in violation of the regulations as long as it was possible to buy loot boxes for money, but when this option was removed from the game, the authorities concluded that the game no longer breached the regulations.

The penalty in Belgium is a fine of up to EUR 800,000 or a prison sentence of up to five years, and the penalty can be doubled if the violation is aimed at children under the age of 18. We note that several video game publishers have made changes to their games, with the result that it is no longer possible to buy loot boxes directly in the games in Belgium. However, it is interesting to note that, in the Belgian authorities' view, loot boxes in video games with a closed economy are also in breach of the

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<sup>13</sup> <https://kansspelautoriteit.nl/english/loot-boxes/>

<sup>14</sup> [https://www.gamingcommission.be/opencms/export/sites/default/jhksweb\\_nl/documents/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf](https://www.gamingcommission.be/opencms/export/sites/default/jhksweb_nl/documents/onderzoeksrapport-loot-boxen-Engels-publicatie.pdf)

law. This means that it is not a requirement under the Belgian regulations that it must be possible to convert the prize into money or something else of financial value.

### 5.3.3 The UK

The gaming authorities in the UK have assessed loot boxes in relation to the British regulations.<sup>15</sup> In its report, the Gambling Commission wrote that, if it is not possible to exchange an item in a loot box for something of financial value, this will probably not be gambling. If it is possible to obtain something of financial value from the content of a loot box, the authorities can regulate this in the same way as gambling, by requiring the game to apply for a licence. In this context, we note that the Gambling Commission imposed sanctions on third-party websites<sup>16</sup> that offered skin betting using FIFA Ultimate Team coins. In this case, those responsible were ordered to pay large fines for breaching the UK's gambling regulations.

### 5.3.4 Finland

In its dialogue with the Forum for Gaming Trends, the Finnish gambling authorities stated that loot boxes will be deemed to be in breach of the regulations if the player has to pay for the purchase, if the player does not know what the loot boxes contain, and if it is possible to convert the content into money on the game platform or a third-party platform. Producers of video games containing loot boxes that break the law must be informed of this in order to modify their games so that they comply with the regulations. If the content of loot boxes cannot be converted, the games will not be covered by Finnish gambling legislation.

### 5.3.5 China

In May 2017, China introduced a law<sup>17</sup> that regulates loot boxes. It is only permitted to offer loot boxes if they cannot be purchased for real or virtual money, if it is possible to buy the content of loot boxes directly in the game, if adequate information is provided about the content of loot boxes, and if adequate information is provided about the probability of obtaining this content. The results from loot boxes must also be available for a period of at least 90 days. The result of this has been that several video game publishers have improved the information they give to players about their loot boxes.<sup>18 19</sup> However, others have modified the game to ensure that loot boxes are no longer a separate transaction, but that players receive loot boxes at no additional expense when they buy the in-game currency.

### 5.3.6 Other international work

Together with 16 other international gambling authorities, the Norwegian Gaming Authority has signed a declaration expressing a shared concern about the current unclear distinction between

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<sup>15</sup> <https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/Loot-boxes-within-video-games.aspx>

<sup>16</sup> <https://www.gamblingcommission.gov.uk/news-action-and-statistics/news/2017/Two-men-convicted-after-offering-illegal-gambling-parasitic-upon-popular-FIFA-computer-game.aspx>

<sup>17</sup> <http://www.mondaq.com/china/x/672860/Gaming/A+MiddleGround+Approach+How+China+Regulates+Loot+Boxes+and+Gambling+Features+in+Online+Games>

<sup>18</sup> <https://www.theverge.com/2017/5/2/15517962/china-new-law-dota-league-of-legends-odds-loot-box-random>

<sup>19</sup> <https://www.gamesindustry.biz/articles/2017-06-06-blizzard-avoids-chinas-loot-box-laws-by-selling-in-game-currency>

gambling and video gaming.<sup>20</sup> The authorities that have signed the declaration urge the video game industry to enter into dialogue with the gambling authorities when so requested by a country's gambling authorities. The need for dialogue with the video game industry has become more relevant because of the challenges encountered in connection with loot boxes over the last year, and several countries have found that the video game industry does not want to be compared with the gambling industry. In addition to this, the Netherlands and Belgium have taken action against some video game producers because of the loot boxes in their games. All in all, what is happening in other parts of the world appears to be affecting which loot boxes are being offered in Norway, and how they are designed.

The common denominator in the international efforts in this area is that the sale of loot boxes in video games has been assessed in relation to the national definition of gambling. The content of loot boxes varies in terms of whether it satisfies the requirements in national legislation as to what constitutes a prize, and whether the national definition of gambling contains requirements stating that there must be a prize.

## 6. Alternative means of regulation - advantages and disadvantages

One of the purposes of the Lottery Act is to prevent the negative social consequences of lotteries, and the Norwegian Gaming Authority's social mission is to endeavour to ensure that as few people as possible in Norway develop gambling problems. Section 1 first paragraph a) of the Lottery Act defines what can be deemed to be a lottery, and a similar definition is used for other gambling. The decisive factor in the assessment is whether the stake and prize have a financial value and can be converted into money. There is no specific statutory regulation of video games.

It is unclear whether the Lottery Act is intended to include functions and services such as loot boxes. In some cases, the gambling authorities have assessed whether certain concepts cannot be regarded as a lottery, because they lie outside the activities the Lottery Act is deemed to cover; this is discussed in more detail in section 4.2. In doubtful cases, Section 1 second paragraph of the Lottery Act also allows the Ministry to decide whether an activity constitutes a lottery. This means that the Ministry can establish whether a concept is or is not covered by the Lottery Act.

Irrespective of the means of regulation, loot boxes that do not meet the definition of lottery will still be covered by consumer legislation, including the Marketing Control Act and Cancellation Act. Pursuant to these regulations, traders have a duty to disclose the most important characteristics of a loot box, and their marketing cannot be misleading. These regulations are discussed in more detail in sections 4.4 and 4.5. However, consumer protection legislation is not as well suited to addressing the particular considerations on which gambling regulations are based, such as consideration for problem players.

### 6.1 Means of regulation: Loot boxes are not covered by the Lottery Act

In response to questions from the press and public, the Norwegian Gaming Authority has stated that it is in doubt about whether functions and services such as loot boxes are a lottery. The Norwegian Gaming Authority has not assessed loot boxes in relation to the Lottery Act.

There are different types of loot boxes, and they differ from other lotteries in many ways, because they exist in a virtual world, where both the stake and prize can also be virtual. Loot boxes have very

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<sup>20</sup><https://lottstift.no/nb/om-oss/aktuelt/internasjonalt-bekymring-over-uklare-skille-mellom-dataspill-og-pengespill/>

clear characteristics that are similar to the characteristics of gambling, but they also raise consumer rights issues. Practice in other countries does not provide clear and unambiguous guidelines on how loot boxes should be regulated. Some countries consider loot boxes in video games to be gambling, which means that they are covered by the applicable gambling legislation, other countries have not assessed loot boxes in relation to gambling, while, in other countries' view, loot boxes have nothing to do with gambling.

In some cases, the gambling authorities have concluded that some types of games and competitions cannot be regarded as lotteries, despite the fact that they meet the conditions of stake, prize and wholly or partial random outcome. Section 1, second paragraph of the Lottery Act also states that 'in doubtful cases the Ministry will decide with binding effect whether a lottery exists and if so what sort of lottery it is'. The Act thereby allows the Ministry to determine whether a concept is or is not covered by the Lottery Act.

**The Forum for Gaming Trends believes that it should be clarified whether the Lottery Act is intended to cover grey area gaming such as loot boxes, and, if so, which characteristics loot boxes must have in order to be covered by the regulations. If loot boxes satisfy all the criteria in the definition of a lottery, it is difficult to see any good arguments for why they should not be deemed to be lotteries. Because of the rapid developments in this area, we know too little at present about all the challenges associated with loot boxes. The Forum for Gaming Trends therefore believes that, in principle, it would be unfortunate to exclude loot boxes from the gambling regulations until we know more about which way developments are heading. This can be studied in more detail, if necessary.**

## 6.2 Means of regulation: No change in the existing definition of a lottery

One possible means of regulation is to continue with the current definition of a lottery. This entails no change in the legal situation that we have today, but could still result in tighter control through stricter enforcement of gambling regulations and consumer protection regulations.

For this alternative, we assume that it has been clarified that the Lottery Act is intended to cover loot boxes; see section 4.2.

The Norwegian Gaming Authority has not dealt with any cases in which concrete assessments have been carried out of loot boxes in video games in relation to the definition of a lottery. The Norwegian Gaming Authority has monitored trends in the market, and has assessed the situation continuously. The Norwegian Gaming Authority estimates that it has received around 25 written and verbal enquiries about loot boxes in the last year. The helpline has no figures for enquiries about loot boxes, but the statistics show that 20 per cent of enquiries concern video games. So far, the Norwegian Gaming Authority has not found reason to prioritise examining one or more video games in detail as regards how they relate to the Lottery Act.

In many video games, it is possible to buy loot boxes for money or in-game currency. A loot box will always contain elements of chance, because the player does not know in advance what a loot box contains. All loot boxes contain something, but many items are practically worthless in the traditional financial sense, and will probably not be covered by the Lottery Act's definition of a prize. A few items have high value, and can be converted within or outside the game. In terms of the interpretation of the existing definition of a lottery, this means that:

- Some video games allow in-game items to be converted (open economy) and this means that the purchase of loot boxes in these games could be covered by the definition of a lottery.
- Some video games have mechanisms that make such conversion technically possible, but that will be in breach of the game's internal rules if the player decides to do so. The

consequence of being found to be in breach of the game's internal rules is usually that the player's user is blocked, and it is uncertain whether such games will be covered by the current definition of a lottery.

- Other video games have a completely closed economy in which it is not possible to convert in-game items, and, in these games, the purchase of loot boxes will not normally be covered by the definition of a lottery.

Even if the Lottery Act could be applied to loot boxes, it will only cover those loot boxes that satisfy the conditions for a stake, prize and random outcome. This means that a large percentage of loot boxes on the market will not be covered by the definition of a lottery, even though they have many of the same characteristics; see sections 4.2.4 and 5.1.2.

Section 5.3 shows that work and processes are currently being carried out in this area, involving both other countries' gambling authorities and parties involved in the video game industry, and that the gambling authorities are working together across borders. The Norwegian Gaming Authority is participating in some of this work. At the moment, it is difficult to predict what Norwegian and international authorities might achieve through these efforts, but one possibility is that such international work could affect which loot boxes are offered in Norway, and what their characteristics will be.

**The Forum for Gaming Trends believes that it is necessary to clarify which characteristics loot boxes must have in order to be covered by the scope of the Lottery Act, through clarification of the definition of a lottery. This will clarify the legal situation for authorities and commercial parties. The Forum for Gaming Trends believes that the Norwegian authorities should play a more active role in future work on loot boxes, in order to utilise the potential of current and future regulations in the fields of both gambling and consumer protection. It is important that legislation enables effective enforcement, and enough resources must also be available to take preventive and effective action at an early stage.**

### 6.3 Means of regulation: Legislative amendments

For this alternative, we assume that it has been clarified that the Lottery Act is intended to cover loot boxes.

If the Ministry finds grounds to regulate loot boxes more stringently than at present, it makes sense to propose an amendment to the definition of a lottery. The definition of a lottery could be changed to include loot boxes that have a stake and prize of no financial value. The Forum for Gaming Trends wishes to point out that, if such a solution has no other conditions differentiating between games, this would mean that most of the loot boxes we see today would be covered by the definition of a lottery.

One key factor is the current criterion from the Lottery Act, which requires the payment of a stake, and requires prizes to have a financial value. The content of many loot boxes will essentially be worthless outside the game. This will be the case even if the items can be sold on in the game's internal market for the game's own virtual currency, provided that these assets cannot be taken out of the game and converted into ordinary currency.

This criterion is challenged by two aspects of loot boxes. Firstly, games can have a black market for the purchase and sale of items or a virtual currency that allows players to convert their game assets into financial assets. Secondly, in some games, items from loot boxes put players in a better position to win in competition with other people, with the tournaments in some games involving big cash prizes. Items from loot boxes that have no direct financial value in themselves can thereby provide an indirect opportunity to win cash prizes. It is currently unclear how both of these aspects will be covered by the Lottery Act and its concepts of stake and prize in its definition of a lottery.

As shown in section 4.2.2, the content of loot boxes could have considerable subjective value, which, in itself, can motivate purchases. For keen players, rare items that can change the experience, either in the form of cosmetic changes or advantages in the game, can be extremely attractive, which is clearly demonstrated by the fact that some players spend several thousand kroner on loot boxes, in the hope of obtaining the items they want. To summarise, the current requirements of the Lottery Act as regards stake and prize are not well suited to handling the phenomenon of loot boxes. This could be because the type of *virtual assets* involved here were presumably difficult to envisage when the current law was drafted. However, it is clear that, for keen players, rare virtual items can be just as attractive as other prizes with a direct financial value.

The Forum for Gaming Trends notes that, as a result of the development of elements of video games, the classic definition of what can be regarded as an asset that meets the criteria for stake and prize in the current definition of a lottery will not cover all grey area games, and that some grey area games that are currently not covered by this definition have several clear similarities with gambling. However, it is difficult to define where the line should be drawn if objective financial value is not to be used as an absolute threshold.

**The Forum for Gaming Trends believes that an alternative to widening the current definition of a lottery could be to regulate defined characteristics of games separately - even if they do not meet the conditions in the definition of a lottery. If a game offers players the option of purchasing opportunities to win in-game items, this should be regulated by requiring them to take responsible measures to protect players. The legal authority for this kind of regulation could be enshrined in the new Gambling Act or other relevant legislation.**

The regulations could, for example, stipulate rules for a game's use of visualisation and sound effects when opening loot boxes, for a player having the option to set a limit on exposure to loot boxes (opt-out), for a player having the option to set limits on money spent on loot boxes, and age limits, and it could also stipulate requirements for draws to be fair and transparent, and for games to provide information about the probability of winning; see the bullet list in section 5.1.

#### 6.4 Means of regulation: Self-regulation by the industry

An alternative or supplement to legislation would be for the authorities and the industry to work together to establish self-regulation for the video game industry, which could involve encouraging the video game industry to take more responsibility for making loot boxes more consumer friendly.

This kind of self-regulation could be achieved through an industry standard. For such an industry standard to be successful, however, the process would have to be controlled by the industry itself. The authorities could initiate the process and assist with the work as a facilitator, but the industry itself must have a sense of ownership of the work and the final product. It is also important that a national industry standard does not result in competitive disadvantages, but provides better opportunities for Norwegian companies in the market.

For example, an industry standard could stipulate these requirements for loot boxes:

- Allowing players to opt out of exposure to loot boxes.
- Allowing players to set limits on how much they are willing to spend on loot boxes or other purchases in the game for a defined period of time.
- Age limits for loot boxes in video games.
- A requirement that draws must be fair.
- Information about the probability of winning.
- Rules for marketing.

Some Norwegian video game developers are in favour of introducing measures that prevent problem gaming, but the fact that the Norwegian video game industry is currently not united under one industry organisation could present a challenge. However, the Forum for Gaming Trends would like

to point out that a national industry standard would not apply to international titles and providers, which means that it is unrealistic to imagine that such measures would influence international companies.

It will be extremely difficult to achieve an industry standard at the international level, since this will require the international video game industry to unite behind measures that are not necessarily required by the regulations in several markets. It is highly uncertain whether the international video game industry is willing to do this. Internationally, the industry has shown little willingness to tackle the problem, and it has in fact argued that loot boxes are entertainment and not gambling.<sup>21</sup> This work would also require a shared willingness and broad cooperation between the national authorities in many countries, for example through GREF and IAGR (European and international organisations for gambling regulators), CPC and ICPEN (European and international networks for consumer protection authorities) and PEGI (Europe-wide system for the age classification of video games). International organisations that could cooperate on this include the International Game Developers Association (IGDA), and the European Game Developer Federation (EGDF).

**The Forum for Gaming Trends believes that, due to the considerable uncertainties associated with the establishment of self-regulation, this is not something that the Forum for Gaming Trends can recommend as an alternative to statutory regulation of loot boxes. However, given the circumstances, it could be expedient for the authorities to look into the possibilities of persuading all the parties in the Norwegian market to establish self-regulation as a supplement to statutory regulation and other types of enforcement.**

## 7. Financial and administrative consequences

The Forum for Gaming Trends was asked to study what practical and financial consequences it would have if grey area gaming were to be defined as gambling. We have limited the content of this report to loot boxes. The report discusses two different means of regulation that entail defining loot boxes as gambling; see sections 6.2 and 6.3. The means of regulation in section 6.1 assumes that loot boxes are not covered by gambling legislation, while section 6.4 does not require grey area gaming to be defined as gambling.

This report has proposed four different alternatives for how the Norwegian authorities can choose to approach regulation of grey area games. The Forum for Gaming Trends points out that the Norwegian Gaming Authority will need more information in order to study the consequences of the various means of regulation, since this report does not make a specific recommendation on which means of regulation to choose. We will briefly summarise all four of the alternative means of regulation here.

Loot boxes that are not covered by gambling regulations will still be regulated by consumer protection legislation under the supervision of the Consumer Authority. The more types of loot boxes that are not covered by gambling legislation, the more resources the Consumer Authority will need to follow up any questions raised by loot boxes in relation to consumer protection legislation.

With regard to the alternative presented in section 6.1, the Forum believes that, if the Ministry of Culture decides to conclude that the Gambling Act will not cover loot boxes, this will not have any consequences for the Norwegian Gaming Authority. The Norwegian Media Authority will be able to oversee the PEGI labelling of games, and the Consumer Authority will be able to deal with video games and loot boxes pursuant to the Marketing Control Act and Cancellation Act. It can be expected

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<sup>21</sup>[https://www.polygon.com/2018/2/27/17058456/loot-boxes-esrb-game-industry?fbclid=IwAR230lmsU9rlydVgEuplN9jNWIWtjQ2MIFnJ\\_pAlklOw57LgRwpNj34a3uo](https://www.polygon.com/2018/2/27/17058456/loot-boxes-esrb-game-industry?fbclid=IwAR230lmsU9rlydVgEuplN9jNWIWtjQ2MIFnJ_pAlklOw57LgRwpNj34a3uo)

that this work will be carried out within the existing framework unless clear signals are given that the work must be given higher priority, which will require more resources. This measure will have no direct consequences for the video game industry.

The proposal presented in section 6.2 means that the Norwegian Gaming Authority will have to give priority to investigating whether loot boxes violate the regulations, sanction any breaches of the law and utilise the potential of the regulations. This solution would be resource-intensive, due to the sheer (and growing) volume of video games that must be investigated. Nor can we be sure of how many resources would be needed to shut down loot boxes that are in breach of the regulations.

Section 6.3 requires the inclusion of regulations in a new Gambling Act to regulate loot boxes based on the characteristics of these games. Since a new Gambling Act is to be drafted, this would not involve significant extra use of the Ministry's resources. This measure would require the use of extensive resources by the Norwegian Gaming Authority in connection with supervision of the regulations, both to identify whether the various video games have characteristics that breach the regulations and to deal with any video game developers that offer games that violate the regulations. A change of this kind could have consequences for Norwegian video game developers, since it would give the Norwegian Gaming Authority more effective tools for enforcing the regulations in relation to the national industry than those available for controlling the international video game industry.

Self-regulation is discussed in section 6.4. This process involves a lot of uncertainty about the resources that the supervisory authorities would need to coordinate the work. To a greater degree than the other alternatives, this alternative would require resources during the initial phase and until an industry standard is established. There would then be less need for follow-up afterwards, since this would be a standard and not legislation requiring enforcement.