

Comments from Asociación Española de Videojuegos, Video Games Europe, and European Games Developer Federation on the Spanish Draft Organic Law for the protection of minors in digital environments.

(Notification TRIS 2024/0531/ES).

I. SUMMARY

1. Asociación Española de Videojuegos (*AEVI*), Video Games Europe (*VGE*), and European Games Developer Federation (*EGDF*)¹ - hereinafter *the Respondents* - are grateful for the opportunity to submit comments to TRIS notification 2024/0531/ES, regarding the Draft Organic Law for the protection of minors in digital environments (*the Draft Law*).
2. From the standpoint of this industry, there are two specific provisions that could be deemed disproportionate and a potential source of market fragmentation, contrary to the freedom to provide services enshrined in the Treaty on the Functioning of the European Union (*TFEU*) and in certain EU secondary legislation: Article 4, which imposes measures on manufacturers of digital terminal equipment, namely regarding parental control functionalities and information requirements, and Article 5, which prohibits minors from accessing certain types of loot boxes present in some video games.
3. Article 4 of the Draft Law establishes various obligations for certain manufacturers of digital terminal equipment, namely regarding parental control functionalities and information requirements.
 - 3.1. This is a disproportionate obligation to impose on manufacturers, particularly in the case of video game consoles, which have incorporated parental control functionalities for several decades now. This is particularly the case, insofar as the parental control must be set “by default”.
 - 3.2. Furthermore, this obligation runs counter to the free movement of goods set out in Art. 28 TFEU and certain Directives and Regulations such as the Radio Equipment, Sale of Goods, e-Commerce, or Audiovisual Media Services Directives and the Digital Services Act.
4. Article 5 of the Draft Law sets out a ban on minors’ access to certain loot boxes.
 - 4.1. This provision is disproportionate insofar as the current evidence base and the existing degree of protection do not justify such a measure, in particular the extension of the ban to items obtained through loot boxes when they can be transferred in the absence of a monetary exchange. This restriction to transferability disproportionately impacts certain games – video games that allow for players to transfer items only in-game, without any exchange of

¹ See end of Document for details of these associations.

money. It will also negatively affect Spanish nationals and even non-residents located in Spain, both under and over the age of 18.

- 4.2. The measure, based upon an unsubstantiated harm premise, will impose inconsistencies with the freedom to provide services under Art. 56 TFEU, and other regulatory texts like the Digital Content Directive, the Unfair Commercial Practices Directive or the eIDAS2 Regulation preparatory process.
5. The Respondents kindly request the European Commission to take these arguments, which are explained in depth below, into consideration in its response to this initiative from the Government of Spain, and to ask the latter to suppress or modify Articles 4 and 5 of the Draft Law in order to avoid any potential clash with EU Law and principles, and to maintain a harmonised regulatory landscape throughout the EU.

II. BACKGROUND

6. On 11 June 2024, the Government of Spain initiated the public information process for the Draft Organic Law for the protection of minors in digital environments. On 20 September 2024, the Draft Law was submitted to the TRIS procedure.
7. The Draft Law aims to advance the protection of minors and to generate an increasingly safe digital environment, aimed at guaranteeing their integral development, avoiding the risks to which they may be exposed.
8. The Draft Law contains a series of cross-cutting measures related to the protection of minors in digital environments: consumer protection, training or cooperation. Various existing national laws are also amended, such as the Penal Code, the Law on Contentious Jurisdiction, the Law on Consumers and Users, the General Audiovisual Law and the Law on Data Protection.
9. The Respondents, as associations that represent the video game sector, share the Spanish Government's purpose of protecting minors in digital environments, including in video games. Respondents also emphasize the commitment and willingness of the video game industry to support users, parents and guardians in the protection of minors in order to guarantee a healthy use of video games.
10. The video games industry has a track record of over 20 years of minor protection since the introduction of the Pan-European Game Information (*PEGI*) system in 2003. AEVI is a member of VGE, an association that endorses at the European level responsible industry practices and the adequate protection of video game users, including minors. Likewise, DEV is a member of EGDF, both sharing the common interest of protecting users and minors in video game environments.

11. Without prejudice to sharing the objective of the Spanish Government, this document will show that parts of the Draft Law, in its current form as submitted to TRIS, are not in line with EU law for various reasons. From the perspective of the video games industry, the focus shall be maintained on two specific provisions: Article 4 and Article 5 of the Draft Law.

III. ARTICLE 4 OF THE DRAFT LAW – PARENTAL CONTROL AND OTHER OBLIGATIONS TO MANUFACTURERS

12. Article 4 sets out certain obligations for digital terminal equipment manufacturers, namely for those terminals having an operating system and that have the ability to connect to the Internet and through which content harmful to minors may be accessed, such as mobile phones, electronic tablets, smart TVs and personal computers.

Parental control requirements

13. Paragraph 3 of Article 4 setting out certain parental control requirements is to be directly enforced against manufacturers, who must ensure that the operating systems installed on their terminal equipment incorporate the said functionality, with heavy fines (up to EUR 2M) and the withdrawal or recall from the market of the affected equipment.

14. As it stands, the wording involves a certain overlap between the parental control mechanism required in Article 4 - which is set out at the operating system level - and parental control functionalities currently present in video games, which are laid out at the video game manufacturer level, with successful results alongside the PEGI age rating system.

15. Indeed, console manufacturers have been offering parental control tools for many years, with the aim of providing parents and guardians with the most innovative and accessible tools and solutions. In addition, as part of the video game sector's safety by design and minor protection commitment, the PEGI system, adopted in over 35 countries, is considered an example of European harmonisation in terms of child protection and a model of sectoral self-regulation, with express public/lawful recognition in various EU Member States. This approach has proved effective as video game play on consoles is one of the safest and most controlled digital activities that children can engage in.

16. Furthermore, such an overlap seems not only potentially redundant and disproportionate but ineffective, taking account of what is intended by the exercise of setting parental control parameters; in particular having regard to the default obligation stated in Article 4.3, first paragraph: "*should occur by default at the time of the initial configuration of the terminal equipment*".

17. From the extensive experience of video game manufacturers gathered in applying parental control mechanisms, default mechanisms would actually defeat the purpose of protecting minors.

18. Parental control mechanisms in the video game field allow protection to be adapted to a wide range of elements: select which video games minors can play, according to PEGI age ratings; limit access to the Internet; control the playing time of minors; monitor and limit online communications and the exchange of data with other users; turn off the program or device at the time parents deem appropriate. Such tools include in some cases the control of the expenditure of minors, by limiting, partially or completely, the amount available for purchases.
19. Requiring, as Article 4 does, that not only must parental control functionalities be activated upon initialisation of the device - which the Respondents do not oppose - but that they must be activated by default, will weaken the achievement of the general objective of the law to create a safe digital environment and to promote the comprehensive development and digital literacy of minors. It is more effective to require parents or guardians to make a series of choices as to the level of parental control and filtering on a device, making them mentally engage with what is appropriate for their family, than to simply have all such controls switched on automatically when they first use a device. This active involvement by parents when setting up the different elements of the parental control mechanism strengthens the degree of protection for their children. This process also allows for engaging in discussions about activity of playing and introducing education to digital tools and activities. If a passive setting is provided by default, this exercise is prevented, and so it will result in less, rather than more minor protection.
20. Furthermore, a default activation of parental controls does involve a degree of added technical burden. Parental control tools require a secure PIN code that should be set by the parent, in order to function effectively as a tool available to the parents -not their children. However, any default activation of parental controls means that a PIN code has to be provided 'out of the box', or the parental controls have to be available 'unlocked' by default; in both cases, rendering them ineffective.
21. Lastly, an additional source of disproportionality is the fact that manufacturers are to be responsible for the obligation of parental control, which is technically imposed on operating systems.

Other restrictions

22. Article 4.2 states that manufacturers affected by the provision must provide information on their products, at least on the packaging and in the instruction book, user manual or user guide of the equipment, in a language that is accessible, inclusive and appropriate for all ages, on the risks arising from access to content harmful to the health and physical, mental and moral development of minors. They must also provide information on data protection measures and risks related to privacy and security; on the time recommended for using the products and services, appropriate to the age of the user; on parental control

systems; and on the risks to cognitive and emotional development and to sleep quality from prolonged use of such services. Likewise, the adaptation of language and visual and audiovisual elements to the needs of people with disabilities and people with autism spectrum disorder must be taken into account.

23. Likewise, manufacturers must prove to importers, distributors and marketers that the devices supplied meet the requirements and conditions set out in the preceding subparagraphs. Importers, distributors and marketers must carry out actions to verify compliance with these requirements and conditions.
24. Lastly, the Draft includes a provision stating that the Government may pass implementing regulations in which it expands and develops further requirements.
25. All these are onerous requirements that imply considerable intensification of the current situation.

Market fragmentation and incompatibility with EU Law

26. By virtue of the above, Article 4 poses a number of restrictions in the way terminal devices, including certain video game consoles, maybe offered in Spain. This involves issues both from primary and secondary EU Law.
27. From a Treaty standpoint, Article 4 of the Draft Law involves a restriction affecting free movement of goods, as the provision involves a restriction on placing terminal devices on the market introducing conditions of conformity where sanctions can go as far as the withdrawal of products from the market, thus equating to a ban on placing products that do not comply with these specific provisions. Where a Member State imposes a universal ban, it thereby erects a frontier between itself and those Member States in which the product may still lawfully be marketed.
28. Article 36 TFEU allows Member States to take measures having an effect equivalent to quantitative restrictions only where these are justified by general, non-economic considerations or by a mandatory requirement, and where such measures have a direct effect on the public interest to be protected without going beyond the necessary level, thus observing the principle of proportionality. As will also be stated below in the context of Article 5, Member States must not restrict the free movement of goods further than is necessary to this end. This disproportionality claim is applicable to Article 4 as well, for example in the parental control requirements and specifically the default obligation.
29. Furthermore, it is of note that Article 4 conflicts with certain pieces of secondary EU Law, whether or not exclusively in the context of video game consoles. *Inter alia:*

- 29.1. The Radio Equipment Directive.** The RED limits the powers of the Member States to legislate in this area with the aim of promoting harmonisation, establishing in its Articles 3 and 9 that it is up to the EU legislator – and only it – to define the essential requirements that radio equipment must meet and to determine the rules applicable to its marketing. In this area, the Member States may only regulate the putting into service or use of radio equipment, always in compliance with very specific requirements. In other words, Member States have no authority to subject the placing on the market of radio equipment to requirements other than those provided for in Article 3 of the RED Directive, such as the mandatory inclusion of parental control functionality. Furthermore, it directly prohibits preventing “*the placing on the market in their territory of radio equipment which complies with this Directive*”.
- 29.2. The Sale of Goods Directive.** This Directive already harmonises objective conformity requirements for goods within the EU, so the introduction of this new conformity requirement creates a disproportionate burden for retailers operating within the EU, in particular those engaged in cross-border trade.
- 29.3. The e-Commerce Directive.** This Directive in Article 3 sets out the country-of-origin principle, according to which each Member State must ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field. Member States may not, therefore, restrict the freedom to provide information society services from another Member State, for reasons falling within the coordinated field set out in the Directive. As regards the potential applicability of this Directive to a similar situation, the Commission, in its Detailed Opinion pertaining to TRIS notification [2023/0205/I](#), states that a measurer affecting a user interface may be considered an information society service and so fall under the scope of this Directive.
- 29.4. The Audiovisual Media Services Directive.** The AVMSD states the same country-of-origin principle in Articles 3 and 4. However, Article 4 of the Spanish draft imposes an overlap between the parental control functionalities of devices as required in their country of origin, and the provisions of Article 4, particularly the default mechanism.
- 29.5. The Digital Services Act.** In particular, Article 28, since parental control mechanisms are included in operating systems. This is a remark that has already been raised in the context of the TRIS procedure in case Notification 2024/188/DE, State Treaty on the Protection of Human Dignity and the Youth Media Protection in Broadcasting and Telemedia (Youth Media Protection State Treaty – JMStV).
- 30.** It is worth noting that some of these potential incompatibilities have been raised in Spain by the reports by the Economic and Social Committee ([CES](#)) and the

National Commission for Competition and Markets ([CNMC](#)), regarding the previous version of the draft.

IV. DETAILS ON ARTICLE 5 OF THE DRAFT LAW – THE PROHIBITION OF ACCESS TO LOOT BOXES BY MINORS

The provision

31. Loot boxes are digital content, whether paid or not, whereby a video game user obtains an item to be used in the game, and the content of the item is determined by a random mechanism.
32. Loot boxes have been present in a wide range of video games, on all platforms, for well over a decade. These mechanisms, like other mechanisms for accessing in-game content, allow players to obtain virtual items for use within the video game itself, and allow players to customize their experience and make it even more entertaining. Always optional, they are never necessary or essential to play the video game.
33. Video games that include the possibility of optionally purchasing loot boxes are subject to multiple transparency requirements. Prior to engaging with a game, the player/consumer is informed if the game includes the possibility to make optional purchases of in game content. Further, in the game itself the player is informed of the probabilities of receiving a specific item or category of items.
34. At the European level, loot boxes are subject to provisions in the European Commission Guidance from 2021 applying to the Unfair Commercial Practices Directive. In addition, industry self-regulating guidelines apply (see *infra*).
35. Article 5 of the Draft Law as submitted to TRIS sets out a radical ban on access by minors to a wide range of loot boxes – with severe enforcement implications. As we will set out in detail below, this is highly disproportionate to any identified harm, and would create significant fragmentation of the digital single market.
 - 35.1. The provision covers any item that is transferred within the game or platform, even if not in exchange for money: “...consists of obtaining a virtual object that can be exchanged for money or other virtual objects”. Therefore, this wording, by not requiring a monetary exchange, bans the access by minors to items obtained from loot boxes, which have no use whatsoever outside of the video game itself, when exchanged in the same video game for other items.
 - 35.2. On top of that, Article 5’s paragraph 2 sets out that “...the offer of random reward mechanisms can only be made when there are systems of age verification of users that prevent access or activation of these contents to minors”. It therefore requires the video game publisher to set up an age verification system in order to even offer paid loot boxes to adults – a

significant technical barrier that will not be possible for many companies, effectively imposing a total ban without justification.

Disproportionality

36. According to European Court of Justice (CJEU) case-law, the principle of proportionality requires that measures adopted by Member States and, when applicable, EU institutions should not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question, and where there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued².
37. This principle also informs the European Commission's handling of the TRIS mechanism. For instance, in the very recent submission in the context of Notification 2024/188/DE, State Treaty on the Protection of Human Dignity and the Youth Media Protection in Broadcasting and Telemedia (Youth Media Protection State Treaty – JMStV), the European Commission states (p.10): "*For a national measure to be justified under Article 36 TFEU or on the basis of one of the mandatory requirements established in the case law of the Court of Justice, it must comply with the principle of proportionality (Judgment in Case C-390/99 Canal Satélite Digital). The measure in question must be necessary in order to achieve the desired aim and the aim must not be achievable by less extensive bans or restrictions or measures with a lesser impact on intra-Union trade. In other words, the means chosen by Member States must be confined to what is actually necessary to achieve the aim, and they must be proportional to the aim thus pursued (Judgment in Case C-319/05 Commission v Germany)*".
38. Applying this principle, the ban on random reward mechanisms for minors in the manner set out in the Draft Law is disproportionate for different reasons.
39. Firstly, this measure is targeted only on random rewards that can be transferred between players (covering also merely transferrable items, even when not in exchange for money). This targets a specific kind of gameplay design, while claiming a harm rationale that broadly equates randomization mechanisms of any kind to gambling products³.

² ECJ, judgments of 18 November 1987, *Maizena and Others*, 137/85, EU:C:1987:493, paragraph 15; and of 11 September 2002, *Pfizer Animal Health v Council*, T-13/99, EU:T:2002:209, paragraph 411.

³ Such is the claim stated by Spain's Government itself, in the Draft Bill's RIA, page 12: "*As the scientific literature has demonstrated, the evident functional identity of some of the modalities under which these random reward mechanics are presented with traditional gambling also brings with it the negative consequences associated with the latter, [...]*". AEVI/VGE wish to state that, to date, there is no conclusive study demonstrating any causal relationship between the consumption of loot boxes and gambling behaviour, including highly involved consumption of loot boxes at a minor age and risk-pathological gambling behaviour further down the line. The RIA omits this fact and instead name-drops a range of studies, none of which are, self-reportedly, conclusive in what they analyse or indeed in demonstrating the said causality.

40. There has not been a single conclusive study to date determining a causal link between loot box use by minors and problematic gambling behaviour at a later stage in life. In order for a gambling-like rationale to apply, apart from the randomness element, at the very minimum both a cash-in (an economic financial spend) and a cash-out (an immediate conversion of the item acquired to money or money's worth) should occur. There has further been no evidence provided of the harm or substantiated risk of harm to minors from consumption of loot boxes, beyond the simple fact of the possibility of spending money, merely the unfounded assertion of a link to gambling.
41. A gambling link does not hold in this case, in particular, as the measure affects video games that allow for transferability of virtual objects - coming from loot boxes - between users within the game, however not in exchange for money.
- 41.1. The focus on transferability creates a limited scope for this measure in an attempt to find a link to gambling. However, this can only be effective if content is transferred in exchange for money. When the in-game content acquired via loot boxes is purchased, there is only one economic transaction: the acquisition of the said content – or the loot box in this case - with fiat currency. Any further exchanges are merely a form of gameplay. and cannot by definition be transactions: they do not involve a disposal of economic currency. This is true regardless of whether an intermediate measurement instrument, such as the conversion into in-game currency, coins, tokens and the like, is used to enable the transferability of items between users.
- 41.2. The proposed ban departs from recent precedents from fellow EU Member States. France's JONUM rules, for example, which ban randomized item exchanges for money that occur within the very same video game platform.
- 41.3. If the government's focus is on restricting mechanisms with a genuine link to gambling, this outcome could be provided by less restrictive measures, such as either/both:
- 41.3.1. Banning loot boxes where the items can be traded in exchange for money, within the video game itself or on related platforms, and enforcing this prohibition against the video game provider. This option would allow for a better alignment between the cash-out concern and the enforcement against the video game provider, for something for which the latter is responsible.
- 41.3.2. Banning loot box-obtained item trading in exchange for money, or betting upon such items - so-called skin gambling -, via 3rd party exchange platforms-, and enforcing it against those 3rd party platforms. This would address fraudulent transactions where they happen - namely where the exchange of money or illegal betting occurs - and punish those responsible for enabling said transactions.

42. Therefore, the measure set out in Article 5 of the Draft Law is not the least restrictive measure available to address the legitimate aim of protecting minors. Consequently, for this reason alone, Article 5 in its current form infringes the principle of proportionality.
43. It is important to note that video games companies not only disallow exchanges for money within their video game platforms, but also actively fight against third-party re-selling or betting of items, via external platforms, whether obtained from loot boxes or any kind of microtransaction for that matter. Respondents' members prohibit such behaviour in user contractual terms and conditions and devote significant resources to enforcing this: they share the same goal as the government of preventing gambling behaviours.
- 43.1. In fact, the March 2024 *joint Position Paper* of VGE and EGDF, [*Transparent and Fair Purchases of In-Game Content*](#), details, in addition to the new PEGI rules mentioned, the additional safeguards for players that the members of these associations – including related associations in Spain – commit to establish.
- 43.2. Among them, we can highlight policies of persecution of trading – economic exchange mediating money such as buying and selling or betting – by which users are prohibited from engaging in such practices, and may be suspended or expelled from the use of the video game, if they are identified in it.
44. Secondly, the age verification system requirement places a disproportionate onus on the video game publisher and video game users, whether adults or minors.
- 44.1. Given the dynamic of transferability that is inherent to video games that allow for item transferability - not in exchange for money - of items whether or not coming from loot box microtransactions, this obligation will in practice affect any item transfer, even when that item is not directly acquired through a loot box.
- 44.2. The age verification regulatory/implementation process is still at a very early stage in the EU, and being actively developed and supported by the European Commission and other Member States. Under this proposed law, Spain would be the only country where any such provision would be in place, which would cause publishers to radically alter the way they offer video games in the rest of the EU. In many cases it would not be technologically feasible at this point for individual publishers to operate a separate age verification system, most likely leading them to withdraw their products from the Spanish market. The requirement is also not aligned, as explained below, with the European Commission's intention to develop a harmonised approach to age verification in Europe. This anticipation would lead to EU fragmentation and would hinder an efficient harmonized solution that could be established through a collective reflection at a global level.

- 45.** Thirdly, the current state of affairs does not point towards increasing concerns about minors' behaviour regarding microtransactions and particularly loot box consumption, or a remarkable - or increasing - lack of control from parents. Surveys conducted since 2018 by Ipsos of the five largest consumer markets in Europe, including Spain, show that⁴: (i) the proportion of children that are allowed to spend on in-game content has not increased but has slightly declined, (ii) the amount of money has not increased and has in the years 2023 to 2024 decreased by 21%, (iii) loot boxes remain the least popular type of in-game content, (iv) parental supervision is very high, as in 2024, 95% of parents that allow their children to spend on content in a game supervise their children. In previous years, that percentage has been between 89 and 97%.
- 46.** Lastly, there are additional parental awareness and control mechanisms that limit children's spending and video game/microtransaction use, including on loot boxes.
- 46.1.** Video games that include the possibility of optionally purchasing loot boxes are subject to transparency requirements: prior to engaging with a game, the player/consumer must be informed if the game includes the possibility to make optional purchases of in-game content. Indeed, PEGI requires labelling of games with loot boxes, via the mandatory use of the "In-Game Purchases: Includes Random Items" content descriptor notice. Further, in the game itself the player is informed of the probabilities of receiving a specific item or category of items. Currently, at the European level, loot boxes are subject to certain provisions in the European Commission Guidance from 2021 applying to the Unfair Commercial Practices Directive.
- 46.2.** As a standard practice, should a consumer/player wish to buy content to use in the game such as a loot box, the commercial transaction – the purchase - takes place separate from gameplay, in a separate 'shop'.
- 46.3.** To engage in a purchase, a credit card or similar payment instrument is generally needed, involving a pin code, sometimes two-factor authentication, that parents are responsible for. This type of information can also be requested when setting up an account and any subsequent use is managed by passwords, pin codes and various authentication measures.
- 46.4.** In addition, parents have an easily-accessed toolset allowing them to block any purchases or to set an amount limit, should their child be allowed to purchase in-game content. All video game consoles have included such tools for many years, and more recently online platforms such as Google and Apple have introduced similar functions, allowing parents to manage their children's access to certain features in games such as spending, interactions with other players, play time and access to age-appropriate content.

⁴ [In-game spending by children & parent supervision 2024: A GameTrack survey.](#)

- 46.5.** Furthermore, the VGE-EGDF *Position Paper* informs of additional safeguards that their members are committed to, such as refund policies, if it is proven that the expense has occurred without parental consent and informing players well in advance if the in-game currency is discontinued.
- 47.** Notably, the effect of the “any kind of transferability, even if not in exchange for money” element will be borne asymmetrically by certain specific video games, and so certain specific video game providers. This is something that affects their whole value proposition, not only to minors but to all players of the video game and that would radically change the nature of the product, to the detriment of Spanish players and, even, non-Spanish EU nationals when they access the game within Spain. It would affect matchmaking between Spanish and non-Spanish players, thereby impacting playability for the whole player community⁵.
- 48.** Additionally, these video game providers will asymmetrically suffer the disproportionate obligation to incorporate an age verification mechanism. They will be subject, and consequently subject users, to a burden that the rest of the providers will not face.

Internal market fragmentation

- 49.** In addition, Article 5 of the Draft Law implies severe market fragmentation in the way the affected video games will be offered in Spain, with consequences for:
- Video game providers that will be forced to modify substantially the way they distribute video games should these include loot boxes, for example to geo-block certain features for the Spanish market, to the extent of considering ceasing entirely the offer of such games.

⁵ On the contribution of item transferability to the value proposition of a video game:

- Transferability in games creates a strategic layer of gameplay, whereby resources or assets available to players shape their capacity to compete with each other and evolve according to circumstances, on top of the tactical layer of more moment-to-moment gameplay. Transferability, creating this strategic challenge, is a key part of the fun in such games.
- While assets can also be obtained according to performance ratings, gameplay level or via direct purchase, the availability of items accessed via random mechanisms also helps correct imbalances between more involved, skilled or resourceful players, adding a layer of fairness that helps all subsets of players to maintain interest in the game.
- Transferability is based on pursuing item efficiency - optimising item utility. Its key element is allowing all the different items to be transferred. Once an item is gained, regardless of how it was obtained - via a random mechanism or otherwise - part of its value comes from the fact that it is transferable, just like the rest of the items. Likewise, the same item holds a different value for different users, since this will depend on whether or not any given player has this item in his portfolio.

- Users accessing the game from Spain, even if they are not Spanish nationals or residents, whether or not they are minors, who will be deprived of purchasing/transferring assets acquired through loot boxes, to the detriment of their gameplay and competitive position against other players.
- 50.** This fragmentation of the EU's internal market - namely the digital single market - resulting from the Draft Law not only infringes Article 56 of the TFEU safeguarding free movement of services but also conflicts with EU secondary legislation.
- 51.** Firstly, it has been made clear that current EU Consumer Protection Law covers purchases of in-game content, including loot boxes. The European Parliament indicated in its 2022 report, following a previously commissioned study from 2020, that loot boxes should be examined from the perspective of consumer protection legislation, calling on the Commission to take the necessary steps to bring about a common European approach to ensure adequate protection of consumers, in particular minors and young children. Certain aspects of loot boxes offered within video games are expressly covered by the European Commission's 2021 Guidelines on the Unfair Commercial Practices Directive. Member States should and do already apply EU consumer protection law when dealing with complaints related to random reward objects in games.
- 52.** Secondly, in the context of consumer contracts, *Directive 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services*, under which digital video games and games offered in the cloud fall - and, consequently, paid loot boxes -, sets out under Article 4, Level of harmonisation, that "*Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more, or less, stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive*". Article 5 of the Spanish Draft clearly departs from this principle.
- 53.** Furthermore, in the context of the recent Fitness Check of *EU consumer law on digital fairness*, the Commission addresses this issue from an EU-level approach, building from the EP's 2020 study recommendation on broadening the policy perspective beyond gambling aspects towards a wider consumer protection angle. The Fitness Check, acknowledging that inter alia loot boxes are not prohibited as such by the UCPD, reflects certain areas for improvement regarding the Directives, which could be further analysed.
- 54.** Within those identified areas in the context of an EU-wide approach, we can identify reducing legal uncertainty for market participants about the application of EU consumer law to practices in the digital environment, preventing regulatory fragmentation between Member States and promoting fair growth and competitiveness in the digital economy; ensuring the consistent application of EU consumer law and other EU legislation, and facilitating more effective enforcement and compliance with EU consumer law.

- 55.** The measures set out in Article 5 of the Draft Law conflict with all of the above conclusions, irrespective of the particular course of action that the European Commission adopts as regards the issue.
- 56.** Equally, the degree of intervention embedded in Article 5 is misaligned with the country-of-origin principle enshrined in applicable EU legislation such as the e-Commerce, as explained in the preceding sections regarding Article 4. This principle ensures that online service providers are primarily regulated by the law of the Member State in which they are established, thus preventing Member States from imposing additional obligations on providers established in other Member States. The country-of-origin principle is also maintained in the DSA (Digital Services Act), as a fundamental pillar of EU Law.
- 57.** Lastly, the age verification requirement clashes with the current EU path towards full adoption of eIDAS2 Regulation in 2026. The careful implementation of that regulation reveals a currently immature ecosystem, with different initiatives under the Commission's auspices, which could render immature, or directly unfeasible, the imposition of such an obligation before that date.
- 57.1.** The Commission has set up a Working Group on Age Verification, which includes the national digital services coordinators (DSCs), the European Regulators Group for Audiovisual Media Services (ERGA) and the European Data Protection Board (EDPB), which is working to develop an EU-wide approach to age assurance, including age verification and age estimation technologies.
- 57.2.** The Commission has also announced funding for a new age verification app that will allow users to prove their age by filing an electronic declaration in a privacy-preserving way to access age-restricted content. The app will be built in accordance with the EUDI Wallet technical specifications so that it can connect to the EU eIDAS Regulation as of 2026.

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About [AEVI](#)

Asociación Española de Videojuegos (AEVI) is the main video game industry organisation in Spain. AEVI represents over 85 companies and academic centers that generate most of the jobs in the sector in Spain and represents 90% of video game market consumption in the country.

About [Video Games Europe](#)

Video Games Europe (VGE) comprises national trade associations covering 19 countries throughout Europe which represent in turn hundreds of games companies at national level. VGE also has as direct members the leading European and international video game companies, which publish and develop video games for use on personal computers, consoles, portable devices, mobile phones and the

Internet. The European digital single market area is the third-largest market for video games globally. All in all, there are around 5,000 game developer studios and publishers in Europe, employing over 98,000 people.

About EGDF

The European Games Developer Federation e.f. (EGDF) unites national trade associations representing game developer studios based in 23 European countries: Austria (PGDA), Belgium (FLEGA), Croatia (CGDA), Czech Republic (GDACZ), Denmark (Producentforeningen), Estonia (GameDev), Finland (Suomenpelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Lithuania (LZKA), Netherlands (DGA), Norway (Produsentforeningen), Poland (PGA, Indie Game Poland Foundation), Portugal (APVP), Romania (RGDA), Serbia (SGA), Spain (DEV), Slovakia (SGDA), Sweden (Spelplan-ASGD), Switzerland (SGDA), Turkey (TOGED) and the United Kingdom (TIGA).