

New initiative on loot boxes – motion for a resolution by the states of Mecklenburg-Western Pomerania and Saarland

Article by attorney at law Dr. Carsten Bringmann and attorney at law Elena Marks

A. Introduction

Digital games are an integral part of young people's everyday lives. According to the "Youth, Information, Media" (*Jugend, Information, Medien*) study in 2024, some 73% of 12- to 19-year-olds in Germany play games every day or several times a week, spending an average of 91 minutes on them on weekdays. What worries parents, educators and addiction experts is that many of these games contain what are referred to as "loot boxes" and other mechanisms that are strongly reminiscent of gambling and can have potentially serious consequences for young people. This is why addiction and legal experts have been calling for these "virtual loot boxes" to be regulated for some time now. The states of Saarland and Mecklenburg-Western Pomerania have now set the regulatory ball rolling with their motion for a "Resolution of the Bundesrat on reducing the risk of addiction through improved regulation of loot boxes and other gambling-like mechanisms in video games (https://dip.bundestag.de/drucksache/entschlie%C3%9Fung-des-bundesrates-zur-reduzierung-der-suchtgefahr-durch-verbesserte-reglementierung/281681?f.wahlperiode=21&f.typ=Dokument&f.herausgeber_dokumentart=Bundesrat-Drucksache&rows=25&sort=verteildatum_ab&pos=18&ctx=d)" (in German only) (Bundestag Document 517/2025) dated 24 September 2025 in the upper house of parliament (Bundesrat). This article first provides a brief overview of the status quo of loot box regulation (see B.), presents the contents of the proposed resolution (see C.) and assesses what can be expected from this initiative (see D.).

B. Status quo of regulations on loot boxes

Loot boxes are virtual containers that can be purchased for a fee and contain one or more items such as skins, weapons or equipment that can be used in the game. Players does not know in advance what items a loot box actually contains; instead, the contents are generated randomly or based on predetermined probabilities. The risks of such game features are obvious: children and young people could be led into problematic gaming behaviour, their financial interests could be harmed, and, last but not least, there is a risk that this form of simulated gambling could introduce them to real gambling (online or otherwise).

Even before the State Treaty on a New Regulatory Framework for Gambling in Germany (*Staatsvertrag zur Neuregulierung des Glücksspielwesens in Deutschland*) ("**2021 Treaty**") came into force, there was controversy in legal literature about whether loot boxes fall within the concept of gambling. The 2021 Treaty failed to conclusively resolve this disputed question. The reference in

the explanatory notes to the 2021 Treaty (<https://www.gluecksspiel-behoerde.de/de/fuer-gluecksspielanbieter/gesetzliche-regelungen>) (in German only) stating that “simulated gambling” of the kind occurring in some computer and video games does not fall under the definition of gambling did not help to clarify this situation. This seemingly clear statement is immediately qualified by the statement “however, if elements are offered in computer and video games which meet the definition of gambling [...], this State Treaty applies, including the licensing requirement [...]” (see explanatory notes to the 2021 Treaty). It is correct that loot boxes can be gambling, but they do not have to be. The reference in the explanatory notes is also to be understood in this sense. Whether a loot box is to be classified as gambling in legal terms depends above all on how it is designed in a specific case. The decisive factors are mainly whether the loot obtained has any monetary value and what criteria can be used to determine this value.

Irrespective of this, the fundamental question arises as to whether gambling law is the appropriate regulatory framework for loot boxes in the first place, or whether such regulations should be anchored in youth protection law instead. But what is clear is that other countries such as Spain have already enacted regulations explicitly targeting loot boxes and their use. The federal states of Mecklenburg-Western Pomerania and Saarland are now attempting to exert pressure on the German government to achieve regulation of loot boxes in Germany at a national level.

C. The motion for resolution

The motion for resolution proposes that the Bundesrat ask the German government to look into harmonising youth protection law with the gambling laws of the federal German states, focusing on six listed measures for preventing certain circumstances and behaviours:

First, the Federal Government, in consultation with the Joint Gaming Authority of the Federal States (*Gemeinsame Glücksspielbehörde der Länder* (“**Joint Gaming Authority**”)) should examine whether and how gambling-like mechanisms such as those found in particular in loot boxes can be treated as equivalent to gambling within the meaning of Article 3 of the 2021 Treaty and regulated in a similar way.

This proposal is surprising since neither the German government nor the Bundestag are the authors of the 2021 Treaty. This means that the government could neither independently amend the provisions of Article 3 of the 2021 Treaty nor initiate an amendment. Nor could it dictate to the Joint Gambling Authority how this standard under the State Treaty should be interpreted. This proposal therefore probably relates to a form of informal cooperation between the government and the federal states, represented by the Joint Gambling Authority, within the framework of a working group for example.

Second, it should be examined whether binding verification of whether someone is 18 years of age can be introduced for all games with loot boxes in order to effectively protect minors. Such an examination is based on a recommendation by the European Commission from 14 July 2025 which calls for minors to be effectively protected from paid loot boxes and other gambling-like mechanisms.

In contrast to the first proposal, there is no issue of jurisdiction here: a corresponding regulation on age verification could in fact be implemented at a national level in the Youth Protection Act (*Jugendschutzgesetz*).

Third, the German government should look into the extent to which providers can be obliged to transparently disclose the probabilities of winning and to provide warnings about the dangers of gambling-like mechanisms. For conventional gambling, such transparency and warning requirements are mainly regulated in the terms regarding content and ancillary terms of the gambling licence concerned.

The *fourth* requirement is also to be read in this context, being that the German government should examine whether and to what extent the licensing requirement for gambling providers can be extended to video games. Caution is also needed here from the aspect of statutory powers, since the government cannot simply extend a licensing system existing under regional state law. However, it could very well establish its own licensing system for loot boxes by invoking the federal powers under Article 74(1)(7) (public welfare) and Article 74(1)(11) (law relating to economic matters) of the Basic Law (Grundgesetz). Whether such a licensing requirement is even practicable for the numerous games concerned is another matter.

Fifth, the German government should examine the extent to which the national health objectives (*Nationale Gesundheitsziele*) can be expanded to include the aspect of “protecting health in the digital space”. The health objectives are a supplementary control instrument in the health care system. Their aim is to improve the health of individuals or specific groups in defined areas and, at the same time, strengthen health-promoting structures. Since 2003, the health objectives have been continuously developed with the participation of the government, the federal states, statutory health and pension insurance funds, private health insurance companies, doctors, other service providers, patients’ representatives and self-help groups. For example, the objective of reducing tobacco consumption has been in place since 2003, and the objective of reducing alcohol consumption since 2015. Against this backdrop, a new goal to improve health in the digital space does not seem farfetched.

Sixth and finally, the German Government should assign the Federal Institute for Public Health (*Bundesinstitut für Öffentliche Gesundheit*) the task of compiling target group-specific information materials on loot boxes for children, young people, parents and stakeholders in the health and

social sectors. The Institute already provides relevant materials for conventional gambling (for example the website <https://www.check-dein-spiel.de/>).

D. Upshot and outlook

The motion for resolution could be a starting point for targeted regulation of loot boxes and other gambling-like mechanisms. It will initially be discussed in the committees of the Bundesrat. If the motion is approved following the deliberations, attention would then turn to the German government. Since resolutions are not legally binding, the government would not actually be obliged to take action. But at least there would then be political pressure to introduce regulations, which could reignite the debate on the regulation of loot boxes.

The contents of the motion for resolution remain vague, which is probably due to the nature of a motion for resolution, which is not legally binding. The intention to oblige the federal government to examine the definition of gambling under state law and a transfer of the state licensing system to loot boxes is, from a constitutional perspective, unfortunate to say the least. The issues addressed in the motion have already been considered in political initiatives at state level, most recently in Lower Saxony's state parliament for example (see Regional Parliament Document 19/6617), as well as by authors in legal circles and others as possible contents of statutory regulations. If the German government is to be motivated to actually take action, it might be more effective to submit specific proposed regulations – possibly in the context of a binding legislative initiative.

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Kontakt:

Noerr Partnerschaftsgesellschaft mbB
Speditionstr. 1
40221 Düsseldorf

Rechtsanwalt Dr. Carsten Bringmann
Mail: carsten.bringmann@noerr.com (<mailto:carsten.bringmann@noerr.com>)
Tel.: +49 15151758273

Rechtsanwältin Elena Marks
Mail: elena.marks@noerr.com (<mailto:elena.marks@noerr.com>)
Tel.: +49 89 28628233

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