

Austrian Court Classifies EA's FIFA Ultimate Team Loot Boxes as Gambling

QUICK READ:

- The Austrian district court of Hermagor has ruled that EA's FIFA 23 FUT packs, i.e., loot boxes, qualify as a form of gambling that requires a licence.
- Although EA is responsible for developing the game, Sony is the defendant in the lawsuit as it handles the payments.
- While the verdict is not yet legally binding, the imposition of gambling regulation has re-emerged.



JURISDICTION RELEVANCE

Austria

REGULATOR

Ministry of Finance

TIMELINE

August 2021 - February 2023

KEY INSIGHTS:

- As of August 2021, Salburg Rechtsanwalts GmbH, a Vienna-based law firm, representing a 17-year-old player, has brought a lawsuit against Sony, for the reimbursement of €338.26 spent on EA's FIFA Ultimate Team (FUT) packs; this is one of five lawsuits that Salburg has filed against Sony and EA.
- The plaintiffs argue that these loot boxes qualify as a 'game of chance' according to Austria's [Gambling Act](#) as there is a flourishing secondary market, and it is irrelevant that Sony and EA forbid it since the assets are actually traded.
- Similarities can be drawn with an action by the Dutch Gaming Authority against EA's FUT packs. Ultimately, the Netherlands State Council ruled that these packs were not gambling because 1) they are not a standalone game of chance; and 2) trading on illicit secondary markets is 'relative'.
- Notably, such markets that do exist focus on trading complete accounts instead of individual packs or their contents. Nonetheless, a threat that the mere existence of a secondary market might be considered sufficient to warrant classification as gambling has remained.
- **Unlike the Netherlands case, this lawsuit is not directed at EA**, as it is Sony, via the PlayStation Store, who collects the money for the FUT packs.
- As of February 26th, the Austrian district court of

Hermagor has ruled that the content of the FUT packs depends on chance and represents a financial benefit within the meaning of the Austrian Gambling Act, because they are traded in a secondary market, making it possible to make a profit.

- **Under this ruling FUT packs qualify as 'gambling games that require a licence'**. As such, since Sony does not have a licence, the contracts concluded between the company and the plaintiff are void. The verdict is not yet legally binding, and the Japanese video games company can appeal.

MOST TELLING:

'The judgment is a bang for the entire video game industry ... Sony and several other gaming groups should dress warmly from now on' - Padronus Managing Director Richard Eibl

DELANY & CO HOT TAKE:

Mirroring the Netherlands, this ruling appears to reflect the decision by the Dutch district administrative court that was later overruled. Still, if this verdict becomes legally binding, floodgates may open for lawsuits against providers of loot boxes without a licence. The judgment, which is likely to be appealed, may also be of interest in Germany, which shares similar legal regulations, as well as the UK and EU, who are both set on strengthening consumer protection with a focus on minors.