

# Games Law Briefing

May 2023



Dear Reader,

In our May edition, you can once again expect case law and regulatory news that we think are of particular interest to the games industry.

This time, for instance, there is a special focus on consumer protection and loot boxes.

Two very interesting rulings have their origin in Austria, but their effects can be felt in Germany and Europe.

# Games Law Briefing:

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## I. CASE LAW

### +++ ECJ: **No recourse to statutory basis of claim in case of unlawful B2C Terms and Conditions** +++ +++

The ECJ has decided a case in which according to the general terms and conditions for a purchase contract with a furniture store, the consumer had to pay flat rate damages in the event of withdrawal. The Austrian courts found the corresponding clause to be invalid, which is why the plaintiff (i.e., the furniture store) subsequently based its claim for damages on statutory law. The ECJ took the view that the company should not be entitled to compensation by virtue of statutory law. Companies should take this as an opportunity to thoroughly review their terms and conditions. In the event that they are invalid, recourse to statutory claims is in any case very uncertain, as the ECJ has demonstrated.

[To the ECJ judgment \(dated 8 December 2022, available in German and French\)](#)

### +++ Austria (Hermagor District Court): **Loot boxes classified as illegal gambling** +++

Last year, a FIFA player filed a lawsuit in Austria asking for a refund of several hundred euros that he had invested in loot boxes for the sports game FIFA. The Hermagor District Court classified the FIFA packs as "illegal gambling" and ordered Sony Interactive Entertainment Network Europe Limited to refund the amount paid. In the meantime, the judgment has become legally binding since no appeal has been lodged. Further proceedings are pending in Austria, and it remains to be seen if and when similar lawsuits will be filed elsewhere in Europe.

[To the news \(last updated on 4 April 2023, in German\)](#)

## II. LEGISLATIVE PROJECTS AND NEWS

### +++ Implementation of the **EU Directive on collective actions in Germany** on the finishing line +++

The Federal Government has presented a draft law to implement Directive (EU) 2020/1828 on collective actions (Verbandsklagen) for the protection of collective interests. The purpose of the law is to strengthen consumers' rights by having them register their claims, which are asserted collectively by consumer associations, in a register of collective actions. Consumers then do not have to bring an action themselves and still benefit directly from the proceedings. Pursuant to the Directive, the law must enter into force on 25 June 2023.

[To the legislative draft of the federal government \(in German\)](#)

### +++ EU Parliament adopts draft **Data Act**: new draft relevant for games companies +++

The European Parliament adopted a draft for the Data Act, which now represents the Parliament's position in the trilogue negotiations. The subject of the Data Act is the handling of personal and non-personal data. The draft law entails far-reaching changes that will subject manufacturers of networked products such as wind turbines, smart home appliances, modern cars, or related services on the Internet of Things to an extensive catalogue of obligations. The draft is highly relevant as the previous version by the European Commission excluded devices to display or play content such as consoles from the scope of the Data Act. The deletion of this exclusion broadens the scope of the law significantly.

[To the press release of the European Parliament dated 14 March 2023\)](#)

### +++ German Centre for Protection against Unfair Competition takes action against **deception through fake reviews** +++

The German Centre for Protection against Unfair Competition (Wettbewerbszentrale) received 72 complaints about "paid for" customer reviews last year and this year. In these cases, various incentives such as vouchers or discounts had been offered in exchange for writing customer

reviews. The Wettbewerbszentrale acts against this. Since 28 May 2022, companies must also provide information on whether and how they ensure the authenticity of consumer reviews. Among other things, a violation can result in a fine.

[To the press release \(dated 9 March 2023, in German\)](#)

### **+++ Federal government considerably broadens the powers of the Federal Cartel Office +++**

The eleventh amendment to the German Act against Restraints of Competition (GWB) is intended to significantly increase the Federal Cartel Office's powers. The amendment is intended to significantly facilitate the skimming off of pecuniary advantages in antitrust violations and is intended to lower the prerequisites for intervention by the Federal Cartel Office. Among other things, this opens up further possibilities for regulating providers of gaming platforms or app stores.

[To the press release of the Federal Ministry for Economic Affairs and Climate Action \(dated 5 April 2023, in German\)](#)

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